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December 29, 2023

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Canadian Pacific Kansas City Limited, et al. – Acquisition and Operation – Certain Rail Line of Meridian & Bigbee Railroad, L.L.C., in Lauderdale County, Mississippi and Choctaw and Marengo Counties, Alabama, FD 36732; CSX Transportation, Inc. – Acquisition and Operation – Rail Line of Meridian & Bigbee Railroad, L.L.C., FD 36727

Dear Ms. Brown:

On behalf of Norfolk Southern Corporation and Norfolk Southern Railway Company (together, “Norfolk Southern”), the undersigned hereby submits to the Surface Transportation Board these Comments and Request for Conditions in the above-referenced proceedings, together with the directly related proceedings, each of which were originally filed on October 6, 2023.¹ If there are any questions about this matter, please contact me directly, either by telephone: at 202-663-7831 or by e-mail: czorbaugh@bakerandmiller.com.

Respectfully submitted,

/s/ Crystal M. Zorbaugh

Attorney for Norfolk Southern Corporation and
Norfolk Southern Railway Company

Enclosures
cc:

¹ Proceedings directly related to FD 36732: CSX Transportation, Inc. – Discontinuance of Trackage Rights Exemption—in Marengo & Choctaw Cnty, AL. & Lauderdale Cnty, MS., AB 55 (Sub-No. 814X); Alabama & Gulf Coast Railway – Trackage Rights Exemption—Kansas City Southern Railway d/b/a Canadian Pacific Kansas City, FD 36731; and CSX Transportation, Inc. – Trackage Rights Exemption—Kansas City Southern Railway, FD 36730. Proceedings directly related to FD 36727: Alabama & Gulf Coast Railway – Trackage Rights Exemption – CSX Transportation, Inc., FD 36724; Meridian & Bigbee Railroad – Discontinuance of Incidental Overhead Trackage Rights – In Lowndes and Montgomery Cnty, AL., AB 1335X.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

COMMENTS AND REQUESTS FOR CONDITIONS

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December 29, 2023

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D	{ [REDACTED] } See CPKC_0000142 through 0000145.	Confidential
E	“Railroads reach agreement to create new direct connection and corridor linking Mexico, Texas and the U.S. Southeast,” Press Release published June 28, 2023, Genesee & Wyoming Inc. - Railroads reach agreement to create new direct connection and corridor linking Mexico, Texas and the U.S. Southeast (gwrr.com), accessed December 13, 2023.	Public
F	{{ [REDACTED] } See CPKC_0000158 – 0000177.	HC
G	{ [REDACTED] } See CPKC_0000182 through 0000186.	Confidential
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I	{ [REDACTED] } See CPKC_0000208.	Confidential
J	{{ [REDACTED] }} See CSXT_0000267.	HC
K	{{ [REDACTED] } See CPKC_0000744 through 0000745.	HC
L	{{ [REDACTED] }} See CSXT_0000093- CSXT_0000097.	HC
M	{{ [REDACTED] }} See CSXT_0000068.	HC
N	{{ [REDACTED] }} See CSXT_0000075.	HC
O	{{ [REDACTED] }} See CSXT_0000081.	HC
P	CSXT Transportation, Inc.’s Responses and Objections to Norfolk Southern First Discovery Requests (“CSXT ROs”)	Public
Q	CPKC’s Answers and objections to Norfolk Southern’s First Set of Interrogatories (“CPKC Interrog. Response”)	Public

² Single { } means the information is Confidential, while {{ }} means the information is Highly Confidential (“HC”).

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

COMMENTS AND REQUESTS FOR CONDITIONS

PREFACE

Norfolk Southern Corporation and Norfolk Southern Railway Company (“Norfolk Southern”) submit this consolidated set of comments and requests for conditions in the two proceedings captioned above (the “Comments”). Announced on June 28, 2023, the coordinated transaction reflected in the above-captioned proceedings and the respective related proceedings have been presented to the Surface Transportation Board (“STB” or the “Board”) as two separate transactions, neither of which make any economic or operational sense standing alone. Viewed in tandem, however, the CPKC Application³ and the CSXT Application⁴, together with the related proceedings, are a unified transaction that the parties intend to implement if approved by the STB (hereinafter, the “Growth Transaction”).⁵ Further, the

³ A reference to “CPKC” shall be a reference to Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC. A reference to the “CPKC Application” shall be a reference to the minor application submitted in FD 36732. A reference to the “Western Line” will be the same as defined in the CPKC Application.

⁴ A reference to “CSXT” shall be a reference to CSX Transportation, Inc. A reference to the “CSXT Application” shall be a reference to the minor application submitted in FD 36727. A reference to the “Eastern Line” will be the same as defined in the CSXT Application.

⁵ In its submission to the Board dated October 25, 2023, Norfolk Southern referred to the Coordinated Transaction as the CPKC/CSXT Transcon Corridor Transaction. For simplicity’s sake, Norfolk Southern will in this document simply refer to the entirety of the coordinated effort as the “Growth Transaction.”

Growth Transaction will clearly have a significant adverse impact on competition unless conditioned as requested. 49 C.F.R. Section 1180.2.

Norfolk Southern is concerned that the Growth Transaction will create a significant new operational challenge that will adversely impact the reliability and fluidity of Norfolk Southern's existing competitive rail service. In essence, Norfolk Southern wants the Board to ensure that Applicants⁶ proposed transaction does not materially and adversely harm competition.⁷

In the pages that follow, Norfolk Southern will focus its comments on the rail infrastructure in Meridian, MS⁸ – not as an endpoint to the Western Line transaction, but instead as a bottleneck over which traffic moving to and from the Western Line *must* traverse. Meridian, quite simply, is a major terminal with significant operational and infrastructure challenges. The Growth Transaction will introduce additional traffic into the Meridian Terminal⁹ without any plans to address the resulting congestion, which congestion will likely disproportionately harm shippers that use or want to use Norfolk Southern's competitive routes. The Growth Transaction may introduce some efficiencies for CPKC and CSXT, but that cannot come at the cost of added congestion and delays for Norfolk Southern's customers.

In these Comments, supported by three verified statements,¹⁰ Norfolk Southern will demonstrate that the Growth Transaction is likely to increase congestion and delays to Norfolk

⁶ CPKC and CSXT are referred to collectively herein as "Applicants."

⁷ In addition to the Board ensuring that the competitiveness of the Meridian gateway is preserved, Norfolk Southern will explain herein that similar protections are warranted at Selma, AL.

⁸ In the one exception to this, one of Norfolk Southern requests for conditions addresses CSXT's offer to protect the Selma gateway.

⁹ The Meridian Terminal is depicted in Figure 1 to the Verified Statement of Andrew Koch. The Meridian Terminal includes the portion of the Meridian Speedway that terminates into the Switch Tender Area, three yard areas, the Amtrak Station, the CPKC Diamonds, and the Norfolk Southern-MNBR Interchange Track.

¹⁰ See Appendix A - Verified Statement of Andrew Koch, Assistant General Manager Network Operations Center for Norfolk Southern Railway Company ("NSR") ("Koch V.S."), Appendix B - Verified Statement of Michael R. McClellan ("McClellan V.S."), and Appendix C - Verified Statement of William J. Rennie & Jason Kuehn ("Rennie/Kuehn V.S.")

Southern traffic, thereby diminishing service reliability and harming shippers that currently use or have the option to use Norfolk Southern service in competition with CPKC and/or CSXT. Therefore, Norfolk Southern is requesting a few narrowly tailored conditions should the Board decide to approve the CPKC Application and the CSXT Application. These requests for conditions include the construction of appropriate infrastructure projects and the implementation of modest operational changes in Meridian, Mississippi intended to mitigate the adverse impacts of the Growth Transaction on the competitive traffic flows currently operating through Meridian. However, Norfolk Southern recognizes that there may be other potential solutions to Norfolk Southern's fluidity concerns that Applicants may favor over the requested conditions. Therefore, to ensure that all options are considered, Norfolk Southern is amenable to Board-sponsored mediation among Norfolk Southern, CPKC, G&W,¹¹ and CSXT¹² to allow for a consensus on the infrastructure projects to be constructed, the cost allocation of that construction, and operational improvements in and through Meridian to the benefit of shippers. However, should the Applicants determine not to engage in such discussions, or should Applicants and Norfolk Southern fail to reach an agreement to address Norfolk Southern's fluidity concerns in Meridian, the infrastructure and operational conditions Norfolk Southern requests in these Comments should be imposed. In addition, Norfolk Southern is requesting that the Board preserve competition at the Selma, AL gateway and impose an oversight period for a minimum of five years.

¹¹ A reference to "G&W" shall be a reference to Genessee & Wyoming, Inc., and, where appropriate, its subsidiaries the Meridian & Bigbee Railroad, L.L.C. ("MNBR") and Alabama & Gulf Coast Railway ("AGR"), together with such other subsidiaries as is appropriate.

¹² On December 7, 2023, MNBR noted in a filing with the Board that MNBR is not a party in either of the CPKC Application proceeding or the CSXT Application proceeding, and objecting to the inclusion of G&W, MNBR and/or AGR as an "Applicant". Meridian & Bigbee Railroad, L.L.C.'s Reply to Combined Norfolk Southern's Motion to Amend Procedural Schedule, filed December 7, 2023, at 1-2. In deference to that request, Norfolk Southern does not include any of G&W, MNBR or AGR in the term "Applicant."

Before turning to the anticompetitive impacts of the Growth Transaction, Norfolk Southern will first put the proposed transaction into context, describing the agreements, the negotiations, and other events that culminated in the Applicants presenting their applications to the Board. After providing this background information, Norfolk Southern will raise three procedural matters: (a) Norfolk Southern will discuss the Board’s jurisdiction over { [REDACTED] }, and (b) Norfolk Southern will raise two concerns that arise out of the Administrative Procedure Act (“APA”) ¹³ that must be addressed to safeguard the integrity of the Board’s processes in this case: these two concerns involve (1) the need for the Board to issue a consolidated decision that, among other things, specifically states that the administrative record for the Growth Transaction is combined; and (2) ensure the consistency and uniformity of the operational and environmental information received and relied upon by the Board’s Office of Environmental Assessment (“OEA”) in fulfilling its obligations under the National Environmental Policy Act (“NEPA”). Then, Norfolk Southern will address the applicable standard of review for the Growth Transaction.

Following the discussion of the applicable legal standard, Norfolk Southern will explain the anticompetitive impact of the Growth Transaction and the substance of the requested conditions. The evidence submitted in these Comments will clearly demonstrate the harm that the Growth Transaction is likely to inflict on competition and shippers having the option to move their traffic with Norfolk Southern. The conditions sought are narrowly tailored to address this harm.

COMMENTS AND REQUEST FOR CONDITIONS

I. BACKGROUND INFORMATION

{ [REDACTED] }

[REDACTED]

¹³ A reference to the Administrative Procedure Act is a reference to Public Law 79-404, 60 Stat. 237, enacted June 11, 1946 and codified at 5 U.S.C section 551, et seq.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } On June 28, 2023, this was followed by a joint CPKC, CSXT, and G&W announcement that the three parties “have reached agreements that when completed will create *a new direct CPKC-CSX interchange connection in Alabama*” (emphasis added).¹⁵ CPKC, CSXT, and G&W explained that they had agreed to negotiate several definitive agreements to implement the coordinated business deal and that they would submit some of those agreements to the STB for regulatory review and approval.

{ [REDACTED]

[REDACTED] }¹⁶

¹⁴ See Appendix D - [REDACTED]
[REDACTED] }, CPKC 0000142 through 0000145, at
CPKC 0000145. {
[REDACTED]
[REDACTED] }.”

¹⁵ “Railroads reach agreement to create new direct connection and corridor linking Mexico, Texas and the U.S. Southeast,” Press Release published June 28, 2023, [Genesee & Wyoming Inc. - Railroads reach agreement to create new direct connection and corridor linking Mexico, Texas and the U.S. Southeast \(gwrr.com\)](https://www.gwrr.com/Genesee-Wyoming-Inc.-Railroads-reach-agreement-to-create-new-direct-connection-and-corridor-linking-Mexico-Texas-and-the-U.S.-Southeast), accessed December 13, 2023, attached hereto as Appendix E.

¹⁶ G&W is properly referenced here. The executed transactional agreement included in the CSXT Application is not between MNBR and CSXT but between G&W and CSXT. CSXT Application at APP-56. It includes compensation and rights not only with regard to MNBR, but also to G&W and other G&W subsidiaries. The draft transaction agreement included in the CPKC Application is not between MNBR and CPKC but between G&W and CPKC. It includes not only compensation and rights with regard to MNBR, but to AGR and Genesee & Wyoming Canada, Inc., CPKC Application, Exhibit 2 (“CPKC Transaction Agreement”) at 1, as well as other G&W subsidiaries. See Appendix F - { { [REDACTED]

{ { CPKC 0000158 – 0000177. [REDACTED]

Appendix D at CPKC_000142.

led to the June 28, 2023, announcement¹⁷ and the agreements that CPKC/CSXT/G&W developed in the months that followed. These agreements were part of a carefully structured deal between two economically rational major Class I railroads to devote many millions of dollars in cash,¹⁸ operating, and other rights,¹⁹ as well as time and other resources²⁰ to pursue the purpose identified in the joint CPKC/CSXT/G&W June press release. That identified purpose is *not* to acquire local operating rights and to upgrade speeds and traffic conditions for the sparse traffic on the Eastern Line and the Western Line.²¹ Instead, as explained in their joint press release, the enunciated purpose is the development of a transcontinental route that would have a significant effect on competition.

¹⁷ See [REDACTED]

[REDACTED] CPKC_0000187 through 0000191, attached hereto as Appendix H.

¹⁸ “CSXT will pay the purchase price for the Eastern Line to MNBR from cash on hand.” CSXT Application at APP-37. In addition, CSXT and CPKC will finance “significant investments in the track, roadbed, bridges, warning devices, and wayside detectors on the Eastern Line....” *Id.* at APP-34. “CPKC intends to invest approximately \$46 million to upgrade the infrastructure of the Western Line....” CPKC Application at 12. CPKC intends to perform \$9 million in bridge repair and other improvements. CPKC Application at 12-13. This is “year one” bridge work. CPKC also intends to engage in a “multi-year bridge rehabilitation program, which it estimates will cost more than \$100 million.” CPKC Application at 13 (apparently including the \$9 million “year one” bridge work in the \$100 million total).

¹⁹ CPKC agrees to provide to MNBR’s parent, G&W, “equivalent value in the form of rights with respect to two CPKC operating properties in Canada, a 43-mile line on CPKC’s Hoadley Subdivision, south of Edmonton, and property in the Scotford Area in the Alberta Industrial Heartland, and other agreed compensation.” CPKC Application at 16. See also, CPKC Transaction Agreement at Section 3.01(a). { [REDACTED]

[REDACTED] } CPKC Transaction Agreement at Section 2.06(b). If the Western Line Transaction between CPKC and G&W occurred (“Provided the Western Transaction closes prior to the Drop Dead Date”), CSXT agreed to other additional consideration to G&W including to “amend and extend the leases between CSXT and each of FCRD, RSOR and ETRY. CSXT Transaction Agreement, recitals, appearing in the CSXT Application at APP-56 (referring to G&W subsidiary railroads First Coast Railroad Inc. (FCRD), Riceboro Southern Railway, LLC (RSOR) and East Tennessee Railway, L.P (ETRY)).

²⁰ See, e.g., CSXT Application at APP-43 (CSXT anticipates hiring 37 additional employees as a result of reacquiring the Eastern Line segment, even if the Western Line transaction does not go through); see also CPKC Application at 17 (CPKC anticipates hiring 12 new full-time employees as a result of the combined Eastern Line and Western Line proposed transaction).

²¹ In his verified statement, CSXT’s Senior Vice President, Sales & Marketing Arthur Adams, Jr. notes that “[t]he Eastern Line has historically been a low volume rail line, and the limited traffic volumes have not justified significant investment in improving the facilities.” CSXT Application at APP-211 (Verified Statement of Arthur Adams, Jr.). { [REDACTED]

[REDACTED] } } is interchanged with AGR, and the “CSXT Transaction is not expected to

II. INITIAL LEGAL AND PROCEDURAL MATTERS

The Board must first determine whether pursuant to 49 U.S.C. Section 11323(a)(1), it has the proper transactional agreement before it for regulatory review. The Applicants should have presented to the Board for its review and approval { [REDACTED]

[REDACTED] }²²

Instead, the Applicants have presented to the Board a series of interrelated and coordinated transactions { [REDACTED] }, each either captioned as the CSXT Application (FD 36727), the CPKC Application (FD 36732), or one of the proceedings related to each of those applications. The Applicants' insistence on treating these { [REDACTED] } transactions as wholly separate and unrelated raises preliminary matters that require Board action.

Regardless of what the Board decides with regard to that matter, the Board must also address two issues that arise pursuant to the APA. The artificial separation of the Growth Transaction into separate applications raises serious concerns under the APA. To address these concerns, the Board must: (1) determine to issue a consolidated decision that, among other things, specifically states that the administrative record for the Growth Transaction is combined; and (2) ensure the consistency and

make any significant changes in this interchange traffic with AGR." *Id.* at APP-214. CSXT admits, though, that it was not able to quantify the growth in other traffic that might justify the significant investment that CSXT will be required to make in the Eastern Line in the absence of a coordinated CPKC acquisition and investment in the Western Line. *See*, CSXT Application at APP-194 (explaining that CSXT did not even attempt to quantify for the Board the economic benefits of CSXT implementing the Eastern Line transaction without the Western Line transaction taking place, noting that "[w]hile CSXT expects that rail operations over the Eastern Line will become much more efficient as a result of the Eastern Line Transaction, CSXT is not able to quantify the benefits in terms of cost savings or increases in net revenue at this time").

²² *See* { [REDACTED]

}

uniformity of the operational and environmental information received and relied upon by the Board’s Office of Environmental Assessment (“OEA”) in fulfilling its obligations under the National Environmental Policy Act (“NEPA”).

A. CPKC and CSXT should have disclosed and sought authority for the { [REDACTED] }.

The interrelation and coordination between the CPKC transaction agreement and the CSXT transaction agreement was not merely informal. CPKC and CSXT have agreed to { [REDACTED]

{ [REDACTED] }. Id. The Applicants should have sought Board regulatory approval under Section 11323(a) for { [REDACTED]

{ [REDACTED] }. Id.

{ [REDACTED]

CPKC specifically and broadly claimed there is no “secret overarching agreement between CPKC and CSXT that has not been put before the Board...”²³ CSXT echoed that claim, stating “[t]hese are separate transactions that involve different parties and thus require separate Board authority. There is no consolidated transaction that requires Board authorization.”²⁴ Further, “CSXT clearly stated in its Application that the CSXT Transaction and the CPKC Transaction are independent

²³ CPKC’s Reply to Combined Norfolk Southern Notice of Intent to Participate and Request to Hold CPKC/CSXT Transcon Corridor Transaction in Abeyance, CPKC-3, filed October 27, 2023 (“CPKC-3”) at 5.

²⁴ CSXT’s Response to the Combined Norfolk Southern Notice of Intent to Participate and Request to Hold CPKC/CSXT Transcon Corridor Transaction in Abeyance, CSXT-3, filed October 27, 2023 (“CSXT-3”) at 2.

transactions governed by different agreements between different parties: CSXT and MNBR on the one hand, and CPKC and MNBR on the other hand.”²⁵

Despite these assertions and assurances to the Board, {

[REDACTED]
[REDACTED]
[REDACTED]}

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }²⁶ { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁵ Id. at 4.

²⁶ { [REDACTED] }

²⁷ Id.

[REDACTED]

[REDACTED] }

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁸ See Appendix D at CPKC_000142.

²⁹ See Appendix J at CSXT_0000267.

³⁰ The Second Train Trigger primarily is dealt with in the CPKC/G&W transaction agreement at two locations: Section 7.14 and {{ [REDACTED] }}. In its Motion to Redesignate the Highly Confidential Designation of Certain Materials (“Motion to Redesignate”) filed on November 8, 2023, Norfolk Southern questioned the “highly confidential” designation of this Exhibit. In its response, CPKC stated that it had agreed with G&W to replace the version of the exhibit found in the transaction agreement filed with its original application with another version that “moots NS’s rationale for disclosure” insofar as it “deletes the table that NS wrongly contends set expectations regarding maximum train lengths” and “also deletes certain references to {{ [REDACTED] }}”. Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC’s Reply to NS’s Motion to Redesignate the Highly Confidential Designation of Certain Materials, CPKC-6, filed October 13, 2023, at 4. Neither of these changes to the exhibit have any bearing on the issues set forth in these Comments with regard to the Second Train Trigger as given effect in Section 7.14 or the revised {{ [REDACTED] }} found in the executed version of the CPKC/G&W Transaction Agreement.

³¹ See Appendix J at CSXT_0000267 [REDACTED] {{ [REDACTED] }}.

³² See Appendix K at CPKC_0000744 through 0000745, { [REDACTED] }

[REDACTED]

[REDACTED]}}

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³³ See Appendix L at CSXT 0000093 through CSXT 000097 {{ [REDACTED]

[REDACTED] }.

³⁴ CSXT states that “[t]he purchase price for the Assets will be paid by CSXT with cash on hand.” CSXT Application, at APP-29. CPKC claims that “[t]he only relevant financial arrangement is the in-kind consideration paid by CPKC as provided in the Draft Transaction Agreement” and then inserts a reference to “Section 1180.6(a)(2)(ii), below”. CPKC Application at [14]; see also, CPKC Decision No. 1 at 4 (“Applicants state that the only relevant financial arrangement is the in-kind consideration paid by CPKC as provided in the draft purchase agreement” and giving passing reference to the fact that “the Transaction Agreement entitles G&W to receive additional compensation under certain circumstances”). In that referenced section of the CPKC Application, CPKC speaks to { [REDACTED] } consideration that “MNBR’s parent, G&W would receive” for the “property rights that KCS would acquire” as part of the proposed transaction. CPKC then alludes to the fact that “G&W would receive additional compensation { [REDACTED] } Id. at 16. As further set forth herein, that bland characterization is not accurate and underplays the competitive nature of { [REDACTED] } in additional compensation – { [REDACTED]

In fact, {{ [REDACTED]

³⁵ The Board ordered CPKC to supplement the Application by providing “a list of all origination/destination areas, including gateways, for the projected diverted and new traffic; identify any interchange partners participating in current movements of this traffic as well as projected diverted and new movements (if applicable); and provide the associated volumes by origination/destination areas for projected diverted and new traffic.” CPKC Decision No. 1 at 10.

}}

{{

}}³⁶

Of course, one of the benefits cited by CPKC is that “[t]he Transaction will ... pave the way for CPKC to make the necessary investments in the Western Line to create an efficient Class I freight corridor with a direct interchange with CSXT at Myrtlewood that will expand shipping options for intermodal, *automotive*, and other traffic moving between the Southeastern United States and the Southwestern United States or Mexico.” CPKC Application at 4 (emphasis added). The Applicants state that “there is no agreement between CPKC and CSXT that requires that traffic be routed via Myrtlewood. Rather, the new routing options that the transaction and the resulting investment will unlock are just that: *options* that will thrive only if CPKC, and its interline partner CSXT, succeed in offering rate and service terms that attract shippers to this route.”³⁷

Messrs. Rennicke and Kuehn describe an interesting possibility that some of the new traffic attached to this route may come from an auto plant that will open soon on a G&W short line in Georgia, one that is not a party to this proceeding.

Hyundai is constructing a \$7.6 billion electric vehicle assembly plant and battery plant complex in Ellabell, GA, which is expected to start production in early 2025. The Georgia

³⁶ See Appendix L at CSXT_000093.

³⁷ CPKC-3 at 6 (emphasis in the original).

Central Railway, which will serve that plant, interchanges with CSXT in Savannah, GA, and Norfolk Southern in Macon, GA. Table 4 of the CPKC Supplemental Information “details automotive, automotive parts, and intermodal traffic that were included in CPKC’s forecasts for ‘projected diverted and new traffic.’” One category of projected diverted and new traffic listed on Table 4 is “CSXT Finished Autos (plants/imports)” originating in Georgia.

Rennicke and Kuehn VS at 45 (footnotes omitted).

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].}}

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]}}

³⁸ See CPKC-3 at 6 (noting that there is not an agreement between CPKC and CSXT that requires that traffic be routed via Myrtlewood).

Under the plain language of the controlling statute, 49 U.S.C. Section 11323(a), the “following transactions involving rail carriers ... may be carried out only with the approval and authorization of the Board: (1) *purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers....*”³⁹ To be covered by the terms of Section 11323(a)(1) there need not be a lengthy transaction agreement covering all of the implementation steps.⁴⁰ { [REDACTED]

{ [REDACTED] } { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }⁴¹ { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁹ See also, 49 CFR Section 1101.2(e)(2) (defining a “proceeding” as including “An application for (i) the granting of any right, privilege, authority, or relief under or from any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, or (ii) the consideration of any submission required by law to be made to the Board”).

⁴⁰ Authority of the Board is required for a carrier to effectuate such a transaction. { [REDACTED]

[REDACTED] } See Appendix D.

⁴¹ Id.

⁴² See, e.g., acquisition of control of Conrail, together with the *agreement to divide the assets thereof*, approved in CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation, F.D. 33388, Decision No. 89 (STB served July 20, 1998) (“The transaction for which approval is sought in the primary application involves the joint acquisition of control by CSX and NS of CRR and its subsidiaries (the Control Transaction) and the division between CSX and NS of the operation and use of Conrail's assets (the Division)”). As part of the application filed with the Board, CSXT and Norfolk Southern

B. The Board must order a consolidation of the dockets and issue a single decision covering the CSXT Application, the CPKC Application, and all of the related transactions.

Should the Board decide to require approval of {

} If the Board declines to do so, other procedural issues remain. The APA provides that “[t]he transcript of testimony and exhibits, together with all papers and requests *filed in the proceeding*, constitutes *the exclusive record* for decision in accordance with Section 557 of this title.” 5 U.S.C. Section 556 (emphasis added). This is reflected in the Board’s own regulations.⁴³ To maintain the integrity of the administrative process as laid out in the APA, and the Board’s own regulations, the Board must address all of the various elements of the Growth Transaction (the CSXT Application, the CPKC Application, and each of the respective directly related proceedings) in a single decision.

CSXT and CPKC insist that the Board should treat these two proceedings wholly separate, which would result in two independent Board decisions and two separate administrative records for each Board decision: one for the Eastern Transaction and one for the Western Transaction. Such an action by the Board would result in decisions and records not consistent with the APA and would significantly impact relief that otherwise should be available for any subsequent actions that may arise under the APA.

sought “approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by NYC [controlled by CSXT] and PRR [controlled by Norfolk Southern] of, and of the operation by CSXT and NSR over, the Conrail lines and other assets, including without limitation trackage and other rights, that will be allocated to CSX (NYC) and NS (PRR), respectively.”

⁴³ See, e.g., 49 CFR 1112.7, Modified Procedures, Records in other Board proceedings: “If any portion of the record before the Board in any proceeding other than the proceeding at issue is offered in evidence, a true copy should be presented for the record.” See also 49 CFR 1114.5, General Rules of Evidence, Records in other Board proceedings: “If any portion of the record before the Board in any proceeding other than the proceeding at issue is offered in evidence, a true copy will be presented for the record.”

The Applicants cross-reference and rely on information provided in one docket while making arguments in the other. The Board's decisions in one proceeding cross-reference and rely on decisions made in the other.⁴⁴ Continuing to address the Growth Transaction in separate proceedings with separate records enables facts, assertions, arguments, and decisions in one proceeding to be walled off from consideration in the other proceeding, should further administrative review become necessary. The Board cannot permit the records to be meshed informally at this step in the administrative review process when other steps of the administrative review process will require the records of each proceeding to be treated as entirely separate.

As further discussed below, these two transactions are inextricably intertwined and the Board has so decided, but to date only to a limited degree. "CSXT asks that the Board examine the Proposed [CSXT] Transaction independently of the CPKC Transaction. The Board declines to do so *for purposes of this decision*."⁴⁵ In its CSXT Decision No. 1 and its CPKC Decision No. 1, the Board stated that "it may further address the consolidation issue in a subsequent decision."⁴⁶ The Board should do so now. The Board need not order CPKC and CSXT to submit a consolidated application to address Norfolk Southern's APA concerns. It merely must issue a single decision encompassing all of the proceedings, and clearly delineate that the records in each of the cases are combined,

⁴⁴ See CSX Transportation, Inc. – Acquisition and Operation – Rail Line of Meridian & Bigbee Railroad, L.L.C., FD 36727 Decision No. 1, slip op. at 4 (STB served November 3, 2023) ("CSXT Decision No. 1") (referencing the representation in the CPKC application that "the CPKC Transaction is contingent on CSXT acquiring and resuming operations on the Eastern Line").

⁴⁵ See CSXT Decision No. 1 at 4 (citation omitted). See also, Id. ("because the CPKC Transaction is specifically dependent upon consummation of the Proposed [CSXT] Transaction, the CPKC Transaction, and the effects that flow from it, would themselves be effects of the Proposed [CSXT] Transaction and must therefore be considered in determining whether the Proposed [CSXT] Transaction is minor or significant under 49 CFR 1180.2").

⁴⁶ See Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC – Acquisition and Operation – Certain Rail Line of Meridian & Bigbee Railroad, L.L.C. in Lauderdale County, Miss., and Choctaw and Marengo Counties, Ala., FD 36732, Decision No. 1, slip op. at 7-8, n. 11 (STB served November 3, 2023) ("CPKC Decision No. 1"); see also CSXT Decision No. 1, slip op. at 9-10, n. 11 ("CSXT Decision No. 1").

CSXT claims that its proposed transaction is not directly related to the CPKC Transaction because it “could” implement its transaction even if the CPKC Transaction is not implemented. CSXT Application at APP-14. Although CSXT “could” implement the CSXT Transaction if the CPKC Transaction is not implemented, CSXT has retained a contractual right to *walk away from the CSXT Transaction* if the CPKC Transaction is not (1) approved by the STB without conditions, *and* (2) ultimately consummated.⁴⁷ In fact, CSXT views the two transactions as so intertwined that, in the CSXT/G&W Transaction Agreement, the definition of “CSXT Regulatory Approvals” that are required as a prerequisite for CSXT’s obligation to close on the Eastern Line transaction not only includes the regulatory approvals necessary for consummation of the Eastern Line transaction but *also* the regulatory approvals necessary for consummation of CPKC’s *Western Line* transaction.⁴⁸ In addition, CSXT did not even attempt to quantify for the Board the economic benefits of CSXT implementing the Eastern Line transaction without the Western Line transaction taking place, noting that “[w]hile CSXT expects that rail operations over the Eastern Line will become much more efficient as a result of the Eastern Line Transaction, CSXT is not able to quantify the benefits in terms of cost savings or increases in net revenue at this time.”⁴⁹ Such a statement would not be sufficient under the Board’s requirements, even if the transaction truly was a minor transaction that solely covered the acquisition of the Eastern Line by CSXT.⁵⁰ Moreover, CSXT admits that there are cross-transactional agreements

⁴⁷ See Section 8.02 of the executed CSXT/G&W Transaction Agreement, appearing in the CSXT Application at APP-75 (stating “STB Approvals with respect to all CSXT Regulatory Approvals shall have been received and become effective without any STB Conditions.”). See also Section 8.05(a) of the CSXT/G&W Transaction Agreement, appearing in the CSXT Application at 76 (stating another condition precedent to the obligations of CSXT to close on the Eastern Line transaction is that “[w]ith respect to the Eastern Line Closing, the Western Transaction shall have been consummated...”).

⁴⁸ See Section 1.01 of the CSXT/G&W Transaction Agreement, appearing in the CSXT Application at APP-58.

⁴⁹ See CSXT Application at APP-194.

⁵⁰ See 49 CFR 1180.6(a)(2)(ii) (requiring applicants to detail “[t]he financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and *any increase in traffic, revenues, earnings* available for fixed charges, and net earnings, *expected to result from the consummation of the proposed transaction*”).

and compensation for the Eastern Line and the Western Line transactions.⁵¹ Clearly, the CPKC Transaction is just as much an integral part of the CSXT Transaction as the CSXT Transaction is to the CPKC Transaction, and any assertion to the contrary rings hollow.

CPKC, on the other hand, has never denied that the CPKC and CSXT transactions are inextricably combined. CPKC is clear that its proposed transaction “builds, and *is contingent, on*” the implementation of the CSXT transaction. CPKC App. at 2 (emphasis added). Thus, it is not surprising that CPKC presents to the Board and others, data and testimony based solely on the assumption that the CSXT transaction is approved as proposed.

Additionally, notwithstanding CPKC’s protestations to the contrary, {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}⁵² Similarly, the so-called {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵¹ “In the event that the CPKC Transaction occurs along with the CSXT Transaction, CSXT has agreed to extend certain leases between CSXT and other GWI affiliates, and to make payments to AGR for interchange traffic with CSXT.” See CSXT Application at APP-30.

⁵² {{ [REDACTED] }}.

See Appendix J at CSXT_0000267.

⁵³ See CPKC Application at 186.

[REDACTED]
 [REDACTED] } }
 Fundamentally, the CSXT transaction and the CPKC transaction are the result of joint discussions among CSXT, CPKC, and G&W⁵⁵ to develop very specific, coordinated agreements implementing those discussions, as evidenced by { [REDACTED]

[REDACTED]
 [REDACTED] } } Nevertheless, CSXT and CPKC insist that the Board should treat these two proceedings as entirely independent.

Applicants cannot have it both ways. For commercial purposes, CSXT and CPKC clearly understood the necessity of working closely together to construct agreements that served their collective economic needs. However, for regulatory purposes - especially for the purposes of determining the negative impacts of the coordinated transactions on other rail lines - CPKC and CSXT urge the Board to treat the two transactions as completely separate from one another. The Board should reject this fictitious construct and issue a single decision that encompasses both transactions. Otherwise, any subsequent actions under the APA will be compromised.

⁵⁴ { [REDACTED]
 [REDACTED]
 [REDACTED] } See CSXT_000068, attached hereto as Appendix M.
 CPKC agreed to { [REDACTED]
 [REDACTED] } } See CSXT_000081, attached hereto as Appendix O.

⁵⁵ See Appendix J { [REDACTED] }

⁵⁶ Id. { [REDACTED]
 [REDACTED] } But see, CPKC-3 at 4 (claiming that the two applications represent “two separate transaction involving different parties and different agreements”).

As explained above, the APA provides that “[t]he transcript of testimony and exhibits, together with all papers and requests *filed in the proceeding*, constitutes *the exclusive record* for decision in accordance with Section 557 of this title.” 5 U.S.C. Section 556 (emphasis added). Should one of the two decisions be subject to appellate review or reconsideration, the inability to access and use relevant evidence in the other record, and determinations from the other decision, would hamper an effective and cohesive resolution of the subject decision. Such an outcome is particularly concerning in these proceedings, because, as discussed in the following section, the Applicants have made some conflicting statements. This is not simply a matter of “administrative efficiency [being] best served by keeping the procedural schedules in both proceedings in alignment...”⁵⁷ Given the highly interrelated nature of the Eastern Transaction and the Western Transaction, a single Board decision with attendant findings of fact and analysis is wholly appropriate and the only way to safeguard the integrity of the APA.

No harm to the Applicants would result from such an action. CSXT and CPKC have proposed coordinated procedural schedules. CSXT and CPKC have discussed and referenced materials in each other’s proceedings. CSXT and CPKC are working with the Board’s Office of Environmental Assessment (“OEA”) to prepare a single Environmental Assessment (“EA”) to encompass both the Western Line Transaction and the Eastern Line Transaction.⁵⁸ Accordingly, the Board should safeguard the APA process by issuing a single decision covering the various elements of the Growth Transaction and combining the records in each proceeding into one.

⁵⁷ CSXT Transportation, Inc. – Acquisition and Operation – Rail Line of Meridian & Bigbee Railroad, L.L.C., FD 36727, Decision No. 3, slip. op. at 2 (STB served December 7, 2023) (“CSXT Decision No. 2”) (follow-up decision in the CSXT Transaction realigning the procedural schedule in that transaction proceeding with the procedural schedule modification implemented pursuant to Canadian Pacific Kansas City Limited, et al. – Acquisition and Operation – Certain Rail Line of Meridian & Bigbee Railroad, L.L.C. in Lauderdale County, Miss., and Choctaw and Marengo Counties ALA., FD 36732, Decision No. 3, served December 6, 2023 (“CPKC Decision No. 3”)).

⁵⁸ See CPKC Decision No. 1 at 8, n. 11 (stating “as discussed below, the Board’s Office of Environmental Analysis (OEA) has determined that it is appropriate to prepare one EA to encompass both the Western Line and the Eastern Line”); see also CSXT Decision No. 1 at 10, n. 11 (same).

C. The Board should order CPKC and CSXT to supplement the operational data provided to the Board’s Office of Environmental Analysis.

Notwithstanding appearances to the contrary, the Applicants have *not* fully studied the cumulative effects of the Growth Transaction. The Applicants have *not* included all relevant information in their respective applications. The Board should order CPKC and CSXT to supplement the operational data provided to the Board’s OEA so that the Board has information and data sufficient to make the findings that the Applicants seek.

In CPKC Decision No. 1, slip op. at 10, FN 11, the Board notes that “Applicants further argue that the [CPKC] Application appropriately addresses the cumulative effects of the Proposed Transaction against the backdrop of CSXT’s proposed transaction.”⁵⁹ CPKC stated, “CPKC’s and CSXT’s Applications already provide information based on the combined impact of the two transactions.”⁶⁰ Similarly, CSXT stated it “expects that the Board will want to consider the impact of approval of both transactions, and CSXT, therefore, provided the Board with all the information necessary to address those combined effects” and that “CPKC did the same.”⁶¹ In fact, the Applicants repeatedly have asserted that they have fully considered all cumulative impacts from the Growth Transactions.⁶² But the records of the two proposed transactions demonstrate that is simply not the case.

⁵⁹ See CSXT Decision No. 1 at 13 (noting that “indeed, both CPKC and CSXT (under scenario two) provided volume forecasts showing exceedance of the gross ton mile thresholds based on each transaction being authorized and implemented”).

⁶⁰ CPKC’s Reply to CN’s Motion for Leave to Reference Earlier Submitted Response/Reply, CPKC-4, filed November 1, 2023, at 2 (“CPKC-4”).

⁶¹ CSXT’s Response to the Combined Norfolk Southern Notice of Intent to Participate and Request to Hold CPKC/CSXT Transcon Corridor Transaction in Abeyance, CSXT-3, filed October 27, 2023, at 2 (“CSXT-3”).

⁶² See CPKC-4 at 2 (CPKC representing that “both CPKC’s and CSXT’s Applications already provide information based on the combined impact of the two transactions.”). See also CSXT-3 at 8 (“The CSXT Application and the other October 6 filings ... contain all required information relating to the transaction for which Board approval is sought and all information needed by the Board to assess the impact of Board approval in connection with possible Board approval of the CPKC Transaction.”). See also CPKC-3 at 2 (“all of the effects of the [CSXT and the CPKC] transactions are already fully addressed in CPKC’s Application”), and at 6

Although it is true that the Applicants offer many details in their respective applications as to how the operations of the Eastern Line and Western Line will be coordinated, the reality is the Applicants have conducted no meaningful joint study of the cumulative impact of the two transactions. The absence of meaningful analysis raises concerns that the operational data submitted separately by each Applicant may conflict with operating data submitted by the other Applicant or may not have the endorsement of the other Applicant.

At first blush, it appears that CSXT and CPKC are united on the operating plan for the Growth Transaction. In its application, CSXT purports to show not only the operating effect of the CSXT transaction being implemented alone (the “CSXT Operating Plan #1”) but also when considered together with the CPKC transaction (the “CSXT Operating Plan #2”). CSXT Application at APP-179.⁶³ In describing the CSXT Operating Plan #2, CSXT provides a significant amount of detail regarding the joint operations that will exist between the CSXT and CPKC trains once both transactions are implemented.⁶⁴

CPKC purports to reflect this cooperative analysis as well, as CPKC goes into even more detail about the joint operations of CSXT and CPKC after both transactions are implemented.⁶⁵ CPKC asserts that “CPKC’s and CSXT’s Applications already provide information based on the combined impact of the two transactions.”⁶⁶ Similarly, CPKC states in its application that “CPKC has worked with both

(“the only operational, environmental, or market effects will flow from the CPKC and CSXT transactions both being implemented, and that is exactly what the CPKC Application analyzes and presents to the Board.”) and at 8 (“With respect to potential environmental impacts, the [CPKC] Application fully addresses the impacts of 100% of the new traffic anticipated as a result of the CPKC transaction occurring against the backdrop of the CSXT transaction. There would be nothing more to add to the record on a ‘consolidated’ view.”).

⁶³ See Minor Transaction Operating Plan, Exhibit 15 to the CSXT Application, at APP-192. (CSXT asserting it “created an operating plan assuming that all of the transactions occur at or about the same time.”).

⁶⁴ See CSXT Application at APP-205.

⁶⁵ See CPKC Application, V.S. Clements at 10 and 12, App. page 253 and 255, and V.S. Elphick at 8-10, App. page 235 through App. page 237.

⁶⁶ See CPKC-4 at 2.

MNBR and CSXT to establish an operating plan that will ensure fluid, efficient, and safe operations.” CPKC App. at 2. Indeed, James Clements reports that “CPKC and CSXT are aligned on their plan to establish a premium train service and have agreed on an operating plan which maximized the efficiency of the interchange.”⁶⁷

Such details give the appearance of a joint effort by the Applicants in which the Applicants cross-referenced and considered at least some of the cumulative impacts of the Growth Transaction, which, in turn, could be relied upon by the Board’s OEA.⁶⁸ However, that appearance cannot withstand scrutiny.

Indeed, although CPKC states unequivocally that “CPKC and CSXT ... have agreed on an operating plan,”⁶⁹ CSXT just as unequivocally states that “CSXT has no knowledge of the basis” for Mr. Clement’s claim that CPKC and CSXT have an agreed upon operating plan.⁷⁰ The record in one docket simply is not consistent with the record in the other docket, and that should concern the Board.

In addition, CPKC states that none of its in-house marketing or operating personnel were consulted with regard to the preparation of CSXT’s Operating Plan #2.⁷¹ And CSXT flatly states it “did not analyze operations on the Western Line”⁷² and did not “prepare[] a ‘combined’ operational and competitive analysis”.⁷³ Accordingly, despite giving the impression of a coordinated operating plan, no such plan exists.

⁶⁷ See CPKC Application, V.S. Clements at 11, App. page 254.

⁶⁸ See, e.g., CPKC Decision No. 1 at 10, FN 11 (“Applicants further argue that the Application appropriately addresses the cumulative effects of the Proposed Transaction against the backdrop of CSXT’s proposed transaction.”).

⁶⁹ See CPKC Application, V.S. Clements at 12, App. page 255.

⁷⁰ See Appendix P - CSXT ROS, Response to RFP No. 16.

⁷¹ See Appendix Q - CPKC Interrog. Response, Response to Interrogatory No. 16.

⁷² See Appendix P - CSXT ROS, Response to RFP No. 16 at 36.

⁷³ Id., Response to Interrogatory No. 15, at 25.

Despite the repeated assertions by the Applicants that their respective applications fully considered the cumulative, downstream impacts of both transactions, the responses by the Applicants to Norfolk Southern's discovery and to the Board's directive for supplemental information indicate otherwise. In fact, the Applicants fail even to respond fully to the Board's order for additional downstream effects information. For example, the Board ordered CSXT to supplement its application with details as to impacts on other rail operations outside of the Eastern Line and Western Line.⁷⁴ With regard to passenger operations, CSXT limits its response only to "passenger rail operations that cross either the Eastern Line and the Burkeville-Montgomery segment," and anything east of Montgomery, ignoring anything to the west including Meridian.⁷⁵ CSXT similarly provides limited treatment for non-passenger traffic, focusing on whether the proposed "transactions will cause any delays on any portion of the *CSXT network*" to the *east of the Eastern Line*,⁷⁶ again ignoring the true extent of order of the Board in ordering CSXT to provide supplemental information.⁷⁷

CPKC also was ordered to provide the same sort of supplemental information,⁷⁸ and CPKC also failed to respond fully to the Board's request. Although CPKC states "no delays to passenger or

⁷⁴ "As NSR notes, the [CSXT] Application does not include any analysis of the potential operational impacts to shippers or Amtrak passengers on rail segments outside the Eastern Line and the Western Line. (NSR Reply at 12-13.) Accordingly, the Board directs CSXT to detail any impacts anticipated on other rail operation, including (1) potential impacts on any passenger rail operations that involve crossing the Eastern Line, and (2) delays that maybe occasioned because a line is scheduled to handle increased traffic due to route consolidations or traffic diversions." See CSXT Decision No. 1 at 11.

⁷⁵ See CSXT's Supplemental Information, CSXT-9, filed November 21, 2023 ("CSXT-9"), at 21.

⁷⁶ See CSXT-9 at 22 (emphasis added).

⁷⁷ CSXT states in a conclusory manner that "CSXT does not anticipate that the CSXT Transaction will cause any operational impacts to shippers or Amtrak passengers on rail segments outside the Eastern Line and Western Line." Id. at 21. CSXT then proceeds to address, in the next paragraph, passenger rail service, current and future. In the next paragraph, CSXT, again in a conclusory manner, states that "CSXT does not anticipate any "delays that may be occasioned because a line is scheduled to handle increased traffic due to route consolidations or traffic diversions." Id. Importantly, CSXT explains that latter statement by referring to, first, that no route consolidations are anticipated, and, second, "CSXT does not anticipate that the transactions will cause any delays on any portion of the CSXT network." CSXT states nothing with regard to whether the proposed transaction will cause delays on any other line other than those in the CSXT network. Id. at 22.

⁷⁸ See CPKC Decision No. 1 at 11.

freight rail service should be occasioned [on] any line due to Transaction-related traffic,”⁷⁹ its evidence relies largely on its assertion that it is “unaware of any specific concerns, complaints, or alleged delays to NS’s operations as a result of any CPKC traffic or of CPKC’s dispatch and control of the crossovers.”⁸⁰ Similarly, CPKC asserts, without any analysis or support, that “Meridian can easily accommodate more cross traffic without negatively impacting fluid operations on NS’s line.”⁸¹ The information provided in Table 1 in its Supplemental Information shows only that CPKC has planned a schedule to avoid a conflict between the single new CPKC round-trip service and the Amtrak Crescent service; it does not consider *all of the other traffic* that currently has to wind its way through the integrated rail infrastructure in Meridian (referred to hereinafter as the “Meridian Terminal”).

The lack of analysis with regard to the Meridian Terminal that is supplied in support of the CPKC Application is truly concerning. CPKC stated “it has not engaged in any analysis concerning the potential location of new shippers on the Western Line.”⁸² CPKC also admits “it did not undertake a

⁷⁹ See CPKC’s Supplemental Information, CPKC-7, filed November 21 (“CPKC-7”) at 10.

⁸⁰ See CPKC-7 at 10. Regardless of whether CPKC is aware of any such concerns, in his verified statement, Andrew Koch notes that “there are specific concerns and constant 24-7 communications between Norfolk Southern and CPKC about Norfolk Southern and Amtrak operations into, out of, and through Meridian, generally focused on CPKC traffic occupying, and CPKC’s dispatch and control of, the crossovers at the Switch Tender and the diamonds at the CPKC Diamonds.” See V.S. Koch at 12. Further, Andrew Koch notes that the Norfolk Southern and the CPKC “operating teams communicate regularly, and generally involve Norfolk Southern pleading with CPKC to open operating windows for Amtrak or Norfolk Southern operations to take place. The concerns have grown so much that just over a year ago we implemented two daily scheduled calls, supplementing the constant texting that goes back and forth among the various operating folk in the region, plus an ongoing TEAMS chat. While I did not attend this meeting, in August of 2022 there was a meeting in Kansas City between Kansas City Southern (“KCS”) and Norfolk Southern, focused on precisely these concerns. That was a meeting between KCS and Norfolk Southern, and not between CPKC and Norfolk Southern, but the constant and daily congestion and consultation between Norfolk Southern and CPKC following CPKC’s acquisition of KCS certainly could not have escaped CPKC’s attention.” *Id.*

⁸¹ See CPKC’s Supplemental Information, CPKC-7, at 10.

⁸² See Appendix P - CPKC Interrog. Response, Response to Interrogatory No. 14, at 19.

formal analysis” with respect to the non-MNBR yards in Meridian.⁸³ CPKC states “it has not engaged in a formal 10-year marketing or planning analysis concerning Western Traffic volume projection....”⁸⁴

As set forth above, at a minimum the Board must assess the two proceedings together, in a single, consolidated decision, so that the information in each docket can be available for evaluation in the other. At the same time, the Board should take such steps as its OEA deems appropriate to ensure that the Applicants (1) agree on the information each Applicant is providing the OEA, so OEA is able to obtain a complete, consistent, and cohesive picture of the Growth Transaction, and (2) comply with the Board’s directive to provide evidence detailing the impacts of the Growth Transaction on other rail lines, including lines through and radiating out from Meridian.

III. The Standard of Review and Ability of the Board to Impose Conditions on the Growth Transaction

As discussed above, { [REDACTED]

[REDACTED] }⁸⁵ However, whether or not the Board requires review of the { [REDACTED] } as part of its regulatory process, the Board’s standards of review and the Board’s ability to impose conditions are clear.

The Applicants have presented the Growth Transaction as two interrelated but separate “minor” transactions. Although the two transactions are clearly interrelated, they are not “separate” in any reasonable sense of the word. The Board is clear in this regard. In CSXT Decision No. 1, the Board stated that “because the CPKC Transaction is specifically dependent upon consummation of the Proposed [CSXT] Transaction, the CPKC Transaction, and the effects that flow from it, would themselves be effects of the Proposed [CSXT] Transaction and must therefore be considered in

⁸³ Id., Response to Interrogatory 7, at 12.

⁸⁴ Id., Response to Interrogatory 18, at 22.

⁸⁵ See Appendix D.

determining whether the Proposed [CSXT] Transaction is minor or significant under 49 CFR 1180.2.”⁸⁶

In addition, neither the Growth Transaction nor the CPKC Transaction (which necessarily assumes the CSXT Transaction) is a “minor” transaction.

When a transaction does not involve the merger or control of two or more Class I railroads, the Board’s treatment differs depending upon whether the transaction would have “regional or national transportation significance.” 49 U.S.C. 11325. Under 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as “minor” – and thus not having regional or national transportation significance – if a determination can be made that either: (1) the transaction clearly will not have any anticompetitive effects, or (2) any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as “significant” if neither of these determinations can be made.

CPKC Decision No. 1 at 8. See also CSXT Decision No. 1, at 8 (same). Even in the event that the Board initially treats an application as a “minor” transaction, it can, and it will, reclassify the application as a “significant” transaction when appropriate (as it is here).⁸⁷

The proper designation of the CPKC Application and the Growth Transaction as “significant” rather than “minor” is important. “The informational requirements for these types of transactions differ.”⁸⁸ The Board must have a record that it can rely upon to fulfill its statutory obligation, and in this case, that record must include the information required for a “significant” transaction. Among other things required for a “significant” transaction, but not a “minor” transaction, a market impact analysis “describing the impacts of the proposed transaction – both adverse and beneficial – on inter-

⁸⁶ See CSXT Decision No. 1 at 4.

⁸⁷ See Canadian Pacific Railway – Control – Dakota, Minnesota & Eastern Rail Road, Decision No. 2, slip op. at 17 (STB served November 2, 2007) (burden on applicants to “clearly establish that there would be no anticompetitive effects that might result from the transaction.”); see also CSX Corporation and CSX Transportation, Inc., et al. – Control and Merger – Pan Am Systems, Inc., et al., FD 36472 (STB served March 25, 2021) (“CSXT/Pan Am Decision No. 1”).

⁸⁸ See 49 CFR 1180.0(a).

and intramodal competition with respect to freight surface transportation in the *regions* affected [and addressing] significant impacts as they relate to the applicable statutory criteria (49 U.S.C. 11324(b) or (d)), essential services, and competition.”⁸⁹ Applicants submitting a market impact analysis “must identify and address relevant markets and issues” and “must demonstrate both the relevance of the markets and issues analyzed, ... the validity of their methodology,” and identify “[a]ll underlying assumptions must be clearly stated.”⁹⁰ Failure to provide that information (as is the case with the Growth Transaction and the failure of the Applicants to address the { [REDACTED] }) and request approval for the { [REDACTED] })⁹¹ is a failure to disclose to the Board the data it needs to process the application in a fully-informed manner, and thus establish the Applicants’ burden of proof has been met.⁹² Without such information, the Applicants are able to shift the burden of proof to others, while at the same time depriving those others of the underlying data they would need to make their case.⁹³

⁸⁹ 49 CFR 1180.7(a).

⁹⁰ Id.

⁹¹ See Appendix D.

⁹² On December 21, 2023, the STB’s Office of Proceedings responded to CPKC’s December 14, 2023 request for waybill access for certain named consultants and associated with the CPKC Application docket. Presumably, CPKC now plans to undertake the analysis that it should have done in preparation for its initial application. But by doing this analysis now, it is likely to submit the results in rebuttal, thus depriving Norfolk Southern of the due process right of responding to CPKC’s evidence had it been submitted in its application. By acting in this manner, CPKC has effectively transferred the burden of proof to Norfolk Southern. If the STB were to decide, however, that the real proceeding that should be before it was that involving the Growth Transaction, and that it was a “significant” transaction (because the evidence submitted to date did not meet the regulatory requirement that the transaction’s benefits did not *clearly* outweigh its potential competitive harms), the STB could treat the October 6, 2023 CPKC Application and the CSXT Application as notices of a further application to be filed. See, CSXT/Pan Am Decision No. 1 at 11 (“Based on the information the Board has about the possible competitive impacts today, the Board is unable to conclude at this stage that any anticompetitive impacts would clearly be outweighed by the potential contribution to the public interest in meeting significant transportation needs” and ordering supplementation of CSXT’s application with the requisite information for a “significant” transaction).

⁹³ See 49 CFR 1180.7(c) (providing that the applicants “must provide supporting data” and “must make these data available” to others who desire to participate in the proceeding).

Certainly { [REDACTED] }⁹⁴ is both intended to and will have, “regional or national transportation significance.” The CPKC Transaction, alone, and the Growth Transaction, similarly will have “regional or national transportation significance.” *Both* CPKC and CSXT have stated that to be the case in their joint press release with G&W and in their separate submissions before the Board. Norfolk Southern will demonstrate that both the CPKC Transaction and the Growth Transaction clearly will have significant anticompetitive effects.⁹⁵ Further, Norfolk Southern will demonstrate that, without conditions, the anticompetitive effects of both the CPKC Transaction and the Growth Transaction will clearly outweigh the relevant transaction’s anticipated contribution to the public interest in meeting significant transportation needs. If the Board cannot make a determination that both the CPKC Transaction and the Growth Transaction *clearly* would not have any anticompetitive effects, or that the relevant transaction’s anticipated contribution to the public interest in meeting a significant transportation need does not *clearly* outweigh the transaction’s anticompetitive effect, the Board must determine that the transaction is a “significant” transaction and proceed accordingly.⁹⁶

Even if the Board determines the proceedings should be treated as “minor”, and further decides to approve the applications submitted to it, that does not preclude the Board from conditioning its approval. In each of CSXT Decision No. 1 and the CPKC Decision No. 1, the Board enunciated that it

⁹⁴ See Appendix D.

⁹⁵ The substantial evidence submitted by Norfolk Southern demonstrates this not only to be the case with regard to the Growth Transaction and the CPKC Transaction, but also with regard to { [REDACTED] }, and any discussion hereinafter should be considered made with regard thereto.

⁹⁶ See, e.g., CSXT/Pan Am Decision No. 1, slip op. at 11 (deciding that on the record before it, “the Board is unable to conclude at this stage that any anticompetitive impacts would clearly be outweighed by the potential contribution to the public interest in meeting significant transportation needs” and therefore ordering the applicants to perfect their application by supplementing their submissions with the requisite information required for a “significant” transaction). In addition, should the Board agree that the “transaction that should be evaluated is embodied in the { [REDACTED] }, then further details pursuant to 49 CFR 1180.6(a)(1)(i), 49 CFR 1180.6(a)(7) and 49 CFR 1180.7 should be required.

had the power to impose conditions on a minor transaction.⁹⁷ The purpose of such conditions is to “mitigate or eliminate any deleterious effects on regional or national transportation.”⁹⁸

Norfolk Southern will demonstrate that both the CPKC Transaction, when considered on its own, and the proposed Growth Transaction involving the CSXT Transaction, will produce a substantial lessening of competition *and* potential environmental effects that can and should be mitigated through the imposition of certain targeted conditions, regardless of whether the Board determines these transactions to be “significant” or “minor.” Mr. McClellan states it succinctly: should the Board approve the applications without conditions, “the ones that would be most adversely impacted are Norfolk Southern’s freight customers and Amtrak’s passengers.”⁹⁹

Lastly, CPKC’s proposed transaction suffers from a considerable hurdle: proposed overhead operations over a segment of track to which according to extensive due diligence¹⁰⁰ Norfolk Southern has made a good faith determination that CPKC has no contractual or regulatory authority to operate. Yet, CPKC proposes that:

CPKC and MNBR currently interchange CPKC-CSXT traffic that MNBR handles for CPKC in haulage. Following consummation of the Proposed Transaction, CPKC will interchange this traffic directly with CSXT at Myrtlewood and will not interchange it in Meridian.

See CPKC Application, Exhibit 4, at 38.

⁹⁷ See CPKC Decision No. 1 at 9; see also CSXT Decision No. 1, at 9.

⁹⁸ See Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc., FD 35873, slip op. at 10 (STB served December 16, 2014); see also Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company, FD 35087, slip op. at 13, FN 22 (STB served December 24, 2008) (“Under 49 U.S.C. 11324(c), we have broad authority to place conditions on our approval of section 11323 transactions.”).

⁹⁹ See McClellan V.S. at 6.

¹⁰⁰ Norfolk Southern reviewed its internal archives, contractual records, Interstate Commerce Commission Reports, Federal Register records dating back to 1940s, HeinOnline records, checked with the Surface Transportation Board library, and even reviewed record group 134 at the National Archives, which houses Interstate Commerce Commission historical decisions,

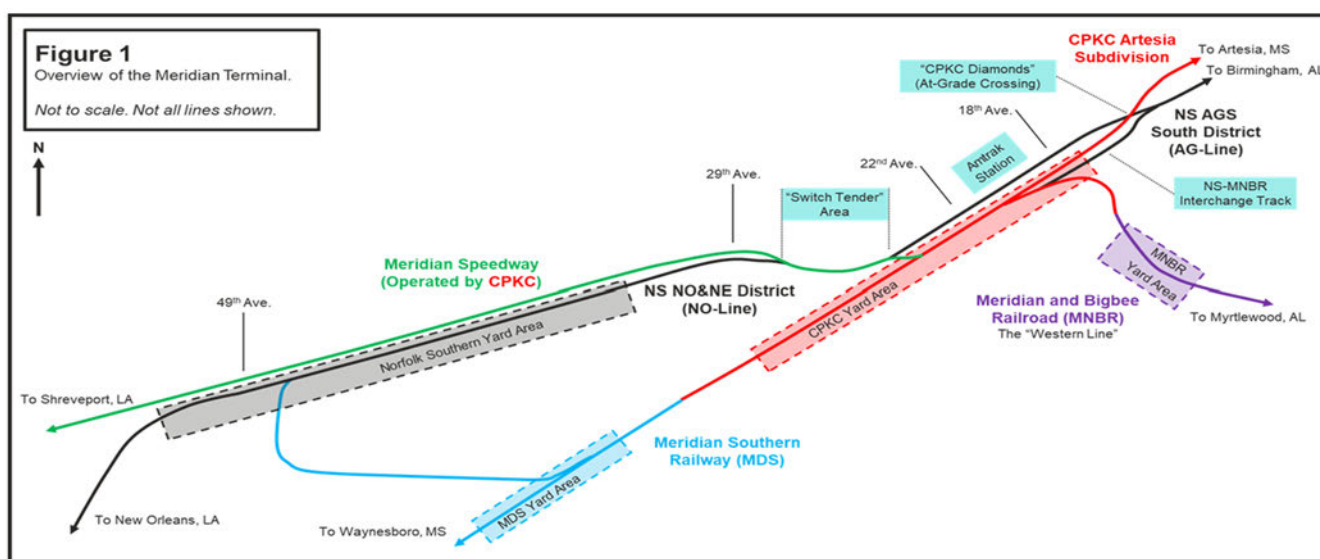
But the CPKC/MNBR interchange discussed currently takes place over an approximately 425-foot bifurcated segment of trackage owned by Norfolk Southern,¹⁰¹ not by MNBR. Based on Norfolk Southern's due diligence, no written agreement for the use of that land or track currently exists. As a result, currently, CPKC does not have a right to perform overhead trackage rights operations over that segment, and there are no overhead trackage rights or any other rights that can be transferred by MNBR to CPKC to permit CPKC to operate over that segment. Norfolk Southern is not a party to CPKC's Minor Application, and Norfolk Southern has not provided, and does not provide, consent for CPKC to perform overhead trackage rights operations on the Norfolk Southern-owned segment, which would be necessary for CPKC to provide direct service from Jackson, MS to Myrtlewood, AL. CPKC therefore must be required to acquire through private negotiation the access rights it needs to complete the connection between CPKC and the MNBR tracks at Meridian.

IV. THE PROPOSED TRANSACTIONS WOULD HAVE A SIGNIFICANT ANTICOMPETITIVE IMPACT.

A. Meridian is a major terminal with many traffic flows competing for limited capacity.

In their initial filings, Applicants paint "Meridian" as merely the western terminus of the proposed combined acquisition of the MNBR, but it is much more than that. An overview of the Meridian, MS terminal area is depicted in Figure 1 on the next page.

¹⁰¹ Prior to 1956, predecessors to Norfolk Southern and CPKC were parties to a Lease Agreement dated April 1, 1937 between Receivers of Mobile and Ohio Railroad Company (which would later become Gulf, Mobile and Ohio Railroad Company and which is a CPKC predecessor) ("Mobile and Ohio R.R. Co." or "GM&O") and Southern Railway Company (predecessor to Norfolk Southern) regarding certain trackage at Meridian, MS. A supplemental agreement was made on October 24, 1950 between Southern Railway Company and GM&O. In 1951, the property owned by Southern Railway Company in Meridian, MS was conveyed to Alabama Great Southern Railroad Company ("AGS," predecessor to Norfolk Southern). AGS, by letter dated January 28, 1956, specifically gave GM&O a 90-day notice (to April 29, 1956) for the termination of the lease and evinced a willingness to grant use of the track as an interchange joint facility pursuant to an agreement yet to be written. While the parties intended to negotiate a new agreement for the 10906 trackage, one was never executed. KCSR, CPKC's predecessor, and MNBR continued to use the trackage for interchange purposes only.



Several flows of traffic move through Meridian, all within a stone's throw of the western terminus of the MNBR.¹⁰² Norfolk Southern operates an important north-south route through Meridian for traffic moving between the U.S. Northeast, Upper Midwest, and New Orleans, through the line segment that runs generally between Birmingham and New Orleans. Norfolk Southern also interchanges trains with CPKC to operate over the Meridian Speedway towards Shreveport, LA, and beyond to the U.S. Southwest and Mexico. Amtrak operates its heritage Crescent long-distance service north-south between Penn Station, New York, and New Orleans, Louisiana, with a scheduled stop at the Meridian, Mississippi, passenger station that is located along this same line segment.¹⁰³ CPKC operates through trains between its Artesia, Mississippi route and the Meridian Speedway. MNBR interchanges traffic with CPKC and Norfolk Southern and serves local customers in Meridian.

¹⁰² See Koch V.S. at 7-9; Rennie/Kuehn at 5 (“The Meridian Terminal is a critical terminal for a half-dozen different train services provided by Norfolk Southern, CPKC, and Amtrak. Four significant routes meet at the terminal: the Norfolk Southern mainline to New Orleans, which is also used for daily Amtrak service, the Norfolk Southern mainline to Birmingham, also used for daily Amtrak service, the CPKC line to Artesia, and the eastern terminus of the Meridian Speedway, with interchange to the CPKC and Norfolk Southern mainlines. There also is a secondary line operated by the Meridian & Bigbee to Montgomery. More than 20 trains a day pass through this high-volume terminal.”). See also Koch V.S. at 5 (CPKC addresses the effect of the Growth Transaction on passenger rail by stating that “[n]o commuter or passenger service moves on the Western Line’ ... even though the MNBR Western Line trains would cross, immediately west of the west end of the Western Line, the Norfolk Southern route that Amtrak currently operates on through Meridian for its Crescent service”).

¹⁰³ See Koch V.S. at 8-9; Rennie/Kuehn at 24.

B. The rail infrastructure in Meridian provides limited capacity to handle these many competing traffic flows.

Norfolk Southern presents the testimony of Andrew Koch, the Assistant General Manager of Norfolk Southern's Network Operations Center, who describes the rail infrastructure of Meridian, including the ownership and control of important rail junctions in that city. Norfolk Southern also presents the testimony of Michael R. McClellan, Senior Vice President and Chief Strategy Officer for Norfolk Southern, who explains a specific solution set for the problems that will be exacerbated by the CPKC and CSXT minor applications.

Complementing the two Norfolk Southern verified statements is the joint Verified Statement of William J. Rennie, a partner at Oliver Wyman, Inc., and Jason Kuehn, a Vice President of Oliver Wyman, Inc. The testimony of Messrs. Rennie and Kuehn not only add to the testimony of Mr. Koch and Mr. McClellan with an analysis of the current Meridian operational challenges but also addresses specifically how those operational challenges will be exacerbated by the additional CPKC traffic that will result from the proposed Growth Transaction.

The testimony of these three experts is well reasoned and Norfolk Southern adopts that testimony herein rather than repeating all the details found in those verified statements. The evidence demonstrates that the Growth Transaction will have a significant adverse impact on traffic flows through Meridian and the competition that depends on those traffic flows. As enunciated by Mr. McClellan:¹⁰⁴

“[I]f CPKC acquires the Western Line with the intention of growing CPKC traffic, without making infrastructure improvements at the Meridian Terminal, Norfolk Southern and the shippers and passengers relying on Norfolk Southern rail service will bear the brunt of the congestion that is soon to follow.”

Much of the Meridian Terminal rail infrastructure is outside (but barely outside) the geographic boundaries of the evidence presented to the Board in the CPKC Application. This rail infrastructure

¹⁰⁴ See McClellan V.S. at 8.

serves as the entry point and the exit point for traffic moving to and from the Western Line and the Eastern Line, the subject of the two applications presented to the Board for their review. But there are current issues with that rail infrastructure. “The present configuration of the Meridian Terminal is both antiquated and complex, causing congestion and delay for both freight customers and Amtrak passengers at current traffic levels. Indeed, the Meridian Terminal is one of the biggest generators of service irregularities and delays in the entire southeastern United States. The terminal is not designed to handle either the volume or the length of trains operated by Norfolk Southern and CPKC that pass through it daily now.”¹⁰⁵

Among the several issues impeding rail operations in and through the Meridian Terminal are:

- The Switch Tender – a series of hand-thrown crossovers that control movements between the Meridian Speedway, the Western Line, the Norfolk Southern route north of Meridian, the Norfolk Southern route south of Meridian, and the CPKC line to Artesia, depicted in the Koch V.S. at Figure 2 on page 7 (see page 38 *infra*) and located as indicated in the Rennie/Kuehn V.S. at Exhibit III-1: Meridian Terminal Track Overview, at 16 (see page 43 *infra*);
- The CPKC Diamonds – diamonds at the crossing of the CPKC line to Artesia and the two Norfolk Southern tracks coming into Meridian from the north, located just to the north of the Meridian passenger rail station, depicted in Figure 1 of the Koch V.S. at 6 (see page 33 *supra*);
- The several grade crossings in Meridian that impact the staging of trains on the various MSLLC, CPKC, and Norfolk Southern tracks within Meridian depicted in Rennie/Kuehn V.S., Figure III-1 at 16 (see page [43] *infra*); and

¹⁰⁵ See Rennie/Kuehn V.S. at 5.

- The lack of sidings on all routes to the north, south, east, and west of Meridian, including the CPKC's line to Artesia, the Meridian Speedway (depicted in the Rennie/Kuehn V.S. at Figure V-3 at [53] (see page 43 *infra*), the Norfolk Southern route to the north, the Western Line, and the Norfolk Southern route to the south.

The Meridian Terminal hosts a variety of extremely important traffic flows, which, for Norfolk Southern, includes “a key feeder route for traffic from the New Orleans interchange (CN, CPKC, BNSF, and UP) to Norfolk Southern points.”¹⁰⁶ The Meridian Terminal also serves as a gateway to a major route serving rail customers in three major market areas: (1) Atlanta (and other points in the Southeast) to Dallas, TX and the Wylie, TX intermodal ramp; (2) an interchange with the UP at Shreveport for intermodal traffic flowing between the southwest United States (from Texas to California) and southeastern points along Norfolk Southern lines; and (3) traffic interchanged with CPKC, including intermodal and automotive traffic moving out of Mexico and chemicals, plastics and forest products moving from CPKC origins to Norfolk Southern destinations.¹⁰⁷ These traffic flows operating over the Meridian rail infrastructure, both today and as anticipated after the Western Line and the Eastern Line transactions have been completed, are outlined in the verified statements of Mr. Koch¹⁰⁸ and Messrs. Rennie and Kuehn.¹⁰⁹

Currently, the constrained Meridian infrastructure handles an average of 22.8 trains per day.¹¹⁰ That is an average. The daily volume can sometimes be as great as 28 trains per day.¹¹¹ The CPKC transaction would add, in just the first five years, a minimum of two regularly scheduled trains per

¹⁰⁶ See Rennie/Kuehn V.S. at 10.

¹⁰⁷ See Rennie/Kuehn V.S. at 10-11.

¹⁰⁸ See Koch V.S. at 5-8.

¹⁰⁹ See Rennie/Kuehn V.S. at 10-11.

¹¹⁰ Id. at 15.

¹¹¹ Id.

day,¹¹² an increase of approximately 10% over current average volumes. If CPKC's aspirations are fulfilled and another regularly scheduled train is added within the first ten years,¹¹³ that would reflect an increase of closer to 25% over current average volumes.

The difference between the before and after operational situation demonstrates that the CPKC Application and the CSXT Application are not nearly as benign as portrayed by the Applicants and, thus, those applications should be either denied or conditioned. CPKC essentially controls all movements through the Meridian Terminal, and, at current traffic levels, faces significant fluidity challenges,¹¹⁴ As stated by Messrs. Rennieke and Kuehn, "[t]he addition of another mainline train pair (two trains) may well be the breaking point for the terminal without infrastructure improvements – further reducing capacity, increasing delays, and worsening service performance – which will particularly impact Norfolk Southern freight and make it more difficult for Norfolk Southern to manage the delays that Amtrak already experiences through the terminal."¹¹⁵

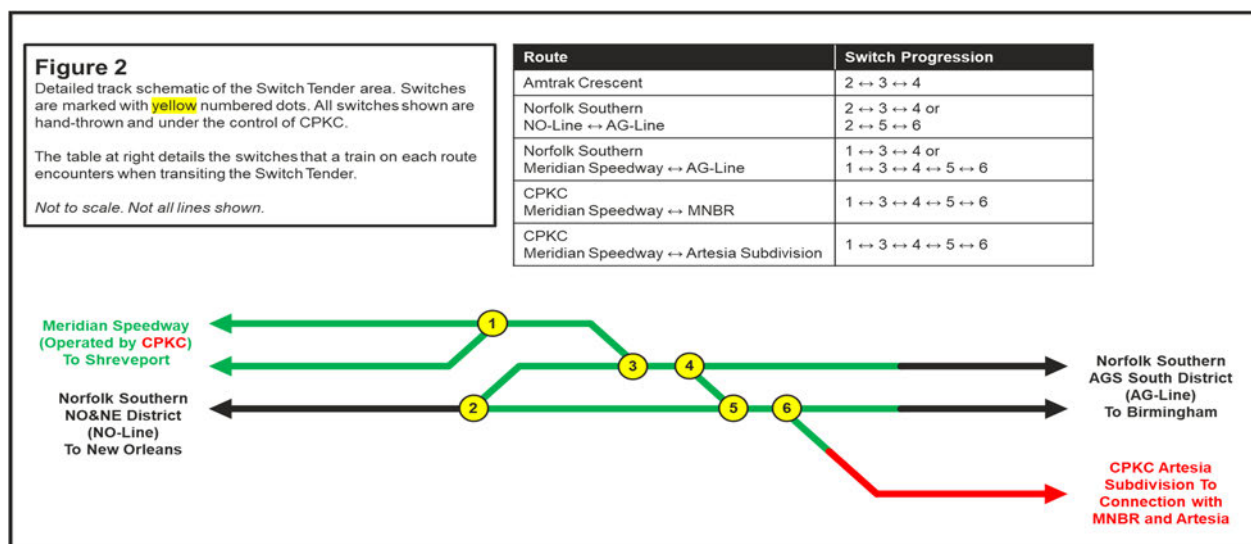
As discussed above, one of the most significant contributors to the fluidity of operations in Meridian is the crossovers known as the "Switch Tender". The Switch Tender is described in the Koch V.S. on page 7 and depicted on the next page.

¹¹² See CPKC-7 at 8.

¹¹³ CPKC states that it "does not forecast the need to operate a regularly scheduled second train pair until, at the earliest, year eight." *Id.*

¹¹⁴ See Rennieke/Kuehn V.S. at 18-19 ("Norfolk Southern does not own the ... Switch Tender or the other crossings with CPKC in Meridian, so Norfolk Southern must rely on CPKC dispatching for this critical terminal point in its network.")

¹¹⁵ See Rennieke/Kuehn V.S. at 8.



At each of the locations 1 through 6 are switches that funnel traffic. These are hand-thrown switches, meaning that before a train can operate through or switch traffic over these crossovers, the switches have to be aligned to permit that move. So, for example, a train moving from the Meridian Speedway to the Western Line must have switches 1, 3, 4, 5, and 6 aligned for the movement. The next train to enter the Switch Tender (for example, an Amtrak train moving from the Meridian passenger station to New Orleans) must then realign those same switches by hand if the switch is not aligned for the planned route of travel (in the example of the Amtrak train heading south out of the station, that means that, at a minimum, switches 3 and 4 must be realigned).

Mr. Koch explains that “[i]n order to conduct safe operations in compliance with the operating rules, all Norfolk Southern, Amtrak, and CPKC trains approaching a switch must be prepared to stop to properly line that switch. Lining these switches takes time; for example, if a conductor on a train needs to line switches, the train must come to a complete stop, the conductor needs to get off the train, safely walk to the switch or switches, align the switches to provide a route for the train, and then get back on the train to continue moving. Between the need for all trains to approach slowly and the

frequent need for employees to realign switches for a safe and proper route, this process naturally creates delays to train operations through this area.”¹¹⁶

CPKC indicates that it only takes a few minutes for a moving train to traverse these switches, but that only takes into consideration the actual movement of the train. Switches generally are not aligned for Norfolk Southern and Amtrak trains. Norfolk Southern train crews generally (1) must approach the switches at restricted speed, (2) stop the train, (3) get off the train, (4) throw the switches by hand, (5) reboard the train, and, only then, (6) start the train to progress through the crossovers. With additional CPKC traffic through the Switch Tender, traffic congestion over the crossovers naturally will increase.

A second reason that the Switch Tender is important is that the Switch Tender is a major intersection between the various lines in Meridian – one that often gets clogged in a manner that prevents any through movement. That can happen, for example, when CPKC changes crews in its yard. When CPKC trains change crews, these trains block the Norfolk Southern mainline. “While they are stopped, the ‘tail’ of the train will often occupy the Switch Tender and one of the AV tracks.”¹¹⁷

According to Mr. Koch, “[t]he Switch Tender area is notorious for delays and congestion within the Meridian Terminal. [I]t is directly on the route between the Meridian Speedway and the CPKC segment that links the Meridian Speedway and the MNBR Western Line. It also connects the route between the Norfolk Southern lines heading into the Meridian Terminal from the north and the south (utilized by Amtrak on its route between New Orleans and Birmingham), as well as the route between the Meridian Speedway and the CPKC Artesia Subdivision. Blocking the Switch Tender has cascading adverse effects that can ripple well beyond Meridian.”¹¹⁸

¹¹⁶ See Koch V.S. at 15 (footnote omitted).

¹¹⁷ See Koch V.S. at 18.

¹¹⁸ See Koch V.S. at 15.

Given that (1) almost *all* of the major traffic through the Meridian Terminal (Amtrak, Norfolk Southern north-south, Norfolk Southern north-Meridian Speedway, CPKC Meridian Speedway-Artesia, and CPKC-Western Line) must fight their way through this series of hand-thrown switches, (2) such traffic is often competing against other traffic moving through or being worked on the route, and (3) access through these switches is controlled by CPKC, it becomes easy to understand that even an incremental increase in traffic over the crossovers raises significant concerns.¹¹⁹

Also as discussed above, a second significant contributor to fluidity of operations in Meridian is the CPKC Diamonds. The vast majority of traffic passing through Meridian flows over these diamonds. CPKC traffic moving between the Meridian Speedway and the Artesia Subdivision travel across these diamonds. The Amtrak Crescent route into and out of the north side of Meridian's Amtrak station passes over these diamonds, as does all Norfolk Southern traffic moving between the north of Meridian and either the Meridian Speedway or the Norfolk Southern route south of Meridian.¹²⁰

These diamonds are often blocked by CPKC trains working in the Meridian Terminal. "Any CPKC train that exceeds 4,000 feet ... and that must set out, pick up, or change crews at the CPKC yard block the Switch Tender (Exhibit III-17, letter A) coming off the Meridian Speedway/MSLLC AV trackage, stopping traffic on Norfolk Southern – both on the Birmingham-New Orleans mainline and on the connection to the Meridian Speedway, and potentially Amtrak trains on Norfolk Southern as well."¹²¹

The Meridian Terminal is particularly complicated for some traffic. For example, CPKC traffic moving between the Meridian Speedway and Artesia interacts with *both* the Switch Tender crossovers and the diamonds. "[T]he MSLLC and CPKC route from Jackson to Artesia actually loops around east

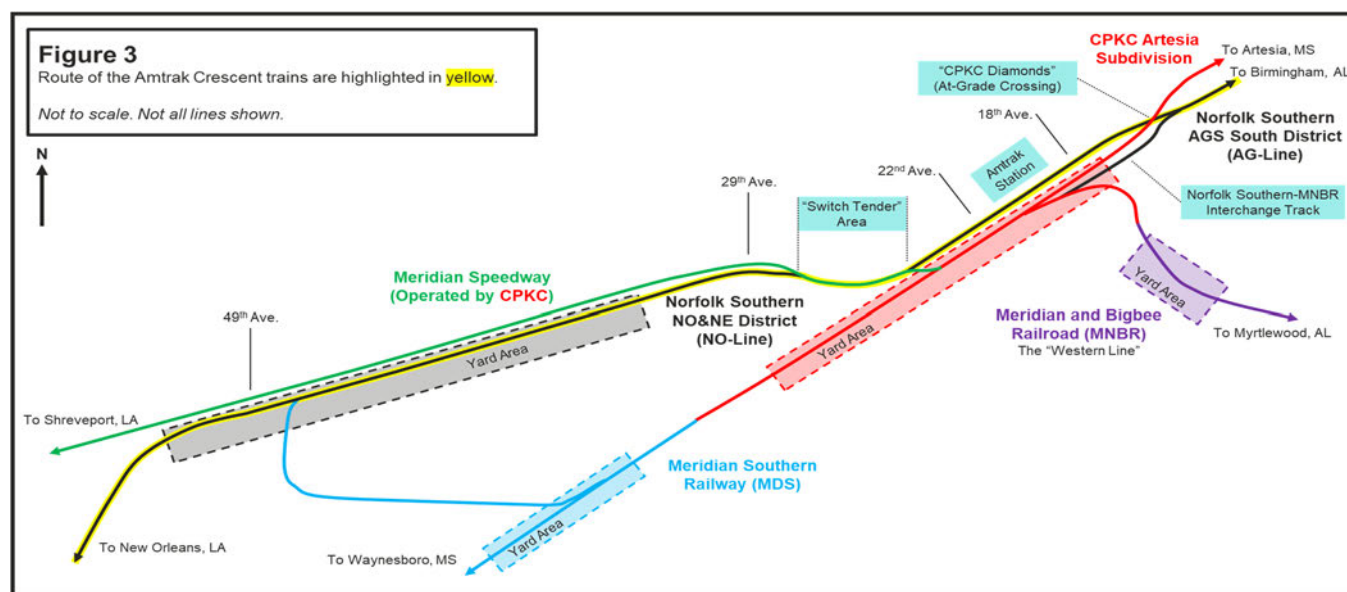
¹¹⁹ *Id.* at 1 ("Occasional increases in trains through Meridian have a disproportionate impact on traffic flows through Meridian.")

¹²⁰ *See* Rennie/Kuehn V.S. at 21, 23; Koch V.S. at 8.

¹²¹ *See* Rennie/Kuehn V.S. at 37; Koch V.S. at 8.

of the Norfolk Southern mainlines and then crosses back over in less than a mile [at the CPKC Diamonds], doubling the number of interactions” for any traffic that moves between the Meridian Speedway and the CPKC route to Artesia.¹²² Further, and just as with the Switch Tender, trains approaching the diamonds must do so at restricted speeds.

The impacts from the CPKC Diamonds or the Switch Tender not only affect freight service. Amtrak operates through Meridian on a route reflected in Mr. Koch’s Figure 3, reproduced below.



When Amtrak is held out of Meridian due to the occupation of the CPKC Diamonds and/or the Switch Tender, then the delays caused cascade down to cause further delays to Norfolk Southern traffic due to the combination of the facts that (1) Norfolk Southern has a single-track mainline north and south of Meridian, and (2) Amtrak has preference over Norfolk Southern when operating over Norfolk Southern lines.

A third significant contributor to the fluidity of operations in Meridian is the presence of a number of grade crossings that impede the holding of trains. A Norfolk Southern train that must hold north of the Switch Tender crossovers (for example, because CPKC is occupying the crossovers for a

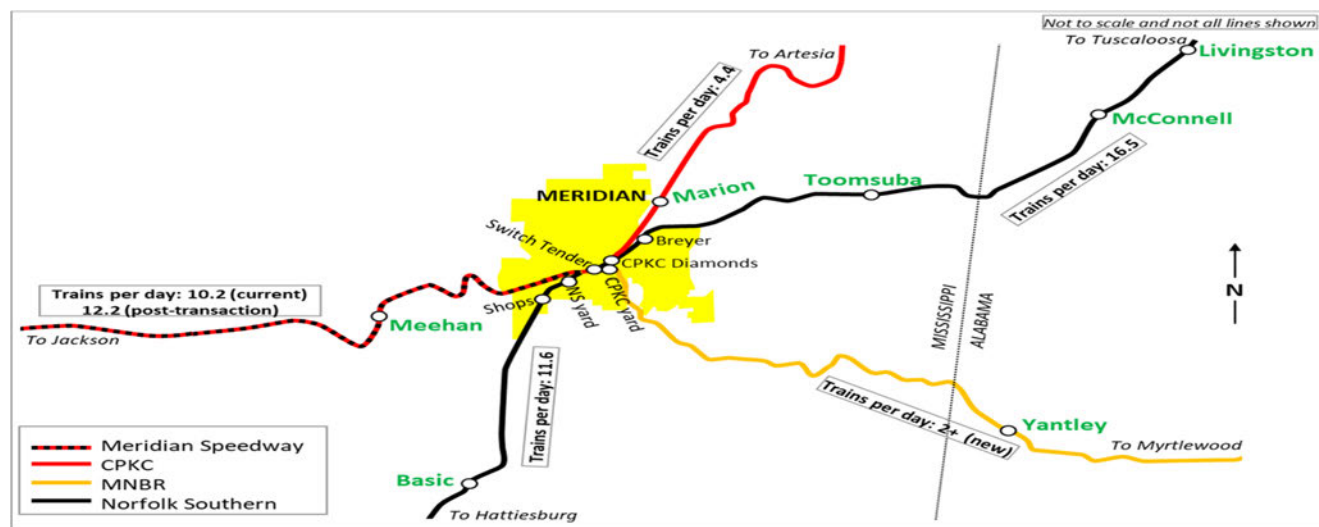
¹²² See Rennie/Kuehn V.S. at 41.

train coming off the Meridian Speedway) has to be held a significant distance north of Meridian because the double track Norfolk Southern mainlines in Meridian will block as many as three grade crossings (11th Avenue, 8th Avenue, and Hawkins Crossing Road).

The Norfolk Southern route approaching Meridian from both the north and the south are single track mainlines.¹²³ When Norfolk Southern gets notice that one of its southbound trains will be held should it arrive in Meridian, Norfolk Southern instead attempts to hold the train roughly 37 miles north of Meridian at Livingston.¹²⁴ “Once Norfolk Southern gets an indication that it is permitted to move that train into the Meridian Terminal, it can take anywhere from 60 to 90 minutes (depending upon size and composition) for that train to reach Meridian.”¹²⁵ The same complication applies to Norfolk Southern trains approaching Meridian from the south. Norfolk Southern holds northbound trains heading into Meridian at Basic, which is roughly 13 miles south of Meridian.¹²⁶

Exhibit V-3: Map of Closest Sidings to the Meridian Terminal

Sidings in green



¹²³ See Rennie/Kuehn V.S. at 37-38 (normal trains cannot be held between the CPKC Diamonds and the Switch Tender crossovers on Norfolk Southern lines because there is only approximately 4,000 of clear route available).

¹²⁴ See Koch V.S. at 9-10.

¹²⁵ Id.

¹²⁶ Id.

Complicating this is the fact that there is almost no effective reserve capacity for the Meridian Terminal, whether on Norfolk Southern north-south lines or otherwise. In fact, with CPKC's acquisition of the MNBR Western Line, five single track mainline segments will converge at Meridian; none of these line segments have a siding of 8,500 feet or greater within ten miles of the terminal.¹²⁷ Messrs. Rennieke and Kuehn's verified statement is particularly revealing with regard to the fact that the Meridian Terminal has a scarcity of reserved capacity. Exhibit V-2: Line Segments Converging at Meridian and Closest Sidings¹²⁸ and Exhibit V-3: Map of Closest Sidings to the Meridian Terminal (reproduced above)¹²⁹ demonstrate that the Meridian Terminal has a paucity of reserve capacity that Applicants have resolved not to enhance, notwithstanding the added congestion the Applicants intend to add as a result of their proposed transaction. CPKC stated it bluntly: "[CPKC] has no current plans to make any infrastructure improvements to CPKC's Shreveport Line, the Meridian Speedway, Jackson, MS, the Meridian Interchange, and other lines feeding into and out of Western Line and Eastern Line resulting from the CPKC Transaction and the CSXT Transaction."¹³⁰

A combination of the four issues (the Switch Tender crossovers, the CPKC Diamonds, the grade crossings, and the lack of terminal reserve capacity), when coupled with the significant traffic flows through Meridian, currently create operational challenges, sometimes even creating gridlock. For example, "[g]ridlock can happen if a Norfolk Southern train is held awaiting permission to enter the Meridian Speedway and is parked across the CPKC Diamonds while at the same time, a CPKC train is wanting to come off the Meridian Speedway and go to Artesia. Essentially, a CPKC train would end up blocking the Switch Tender crossovers (A) and the Norfolk Southern train would end up blocking the

¹²⁷ See Rennieke/Kuehn V.S. at 50.

¹²⁸ Id. at 51.

¹²⁹ Id. at 52.

¹³⁰ See CPKC Interrog. Response, Response to Interrogatory No. 4, at 11.

CPKC Diamonds (B).¹³¹ The challenges will only increase with the additional traffic anticipated to come from the Growth Transaction.

One measure of congestion in a rail terminal is a comparison of how long it actually takes for trains to transit that rail terminal with how long it should take to transit that rail terminal. Messrs. Rennie and Kuehn's findings from his Meridian transit time analysis are disturbing in light of the Applicants' plans to increase traffic over the Meridian, without any additional infrastructure and operational changes in Meridian. Even today, the impact of congestion on operations at Meridian is significant. On one northbound train, for example, they found an average run time that was more than twice the clear run time, and "the maximum run time was 12.15 hours – a variation of 11.2 hours for a run of a bit over 60 miles."¹³² That demonstrates a significant amount of congestion at the terminal, which contributes to unpredictable service performance. Southbound the measures are just as concerning.¹³³ When CPKC adds two more trains per day crossing the Meridian Terminal, these new trains could take up additional hours of capacity, depending on how operations are structured around pickup and setout activity. This is likely to exacerbate operational variability, especially for Norfolk Southern and Amtrak, since CPKC controls the terminal and can give its trains priority movement through the terminal unless steps are taken to restructure the terminal to improve the efficiency of train movements." And, as discussed by CPKC, the total traffic in the near term could increase to as many as *four* trains.

The likely impact on Amtrak, as mentioned above, also is of great concern for Norfolk Southern. Norfolk Southern hosts the Crescent service. Delays to Amtrak experienced because of congestion in Meridian hit Norfolk Southern in two ways:

¹³¹ See Rennie/Kuehn V.S. at 39.

¹³² *Id.* at 53.

¹³³ *Id.* at 53.

(1) when Amtrak is delayed, that contributes to the “host-responsible delays” that impact Norfolk Southern through the application of Amtrak’s agreement with Norfolk Southern,¹³⁴ and

(2) Amtrak has preference over Norfolk Southern on Norfolk Southern lines, so delays incurred by Amtrak on Norfolk Southern lines cascade back to Norfolk Southern and its operations.¹³⁵

Meridian is a particularly problematic location for Amtrak operations on Norfolk Southern. On-time performance for the Crescent passenger train was only 43.2% in the third fiscal quarter of 2023 (April through June 2023).¹³⁶ This put the Crescent in the bottom four for worst on-time performance across all Amtrak train services for that quarter.¹³⁷

Importantly, Meridian is the locus for congestion on the Crescent, as demonstrated by Exhibit III-10 from Messrs. Rennie and Kuehn’s verified statement. “[B]etween March 1, 2023, and November 8, 2023, Meridian accounted for {{[REDACTED]}} of total Crescent delays southbound on the 1,100-mile trip from Washington, DC to New Orleans, and {{[REDACTED]}} of delays for northbound trains from New Orleans to Washington, DC – far in excess of any other point through which the service passes.”¹³⁸

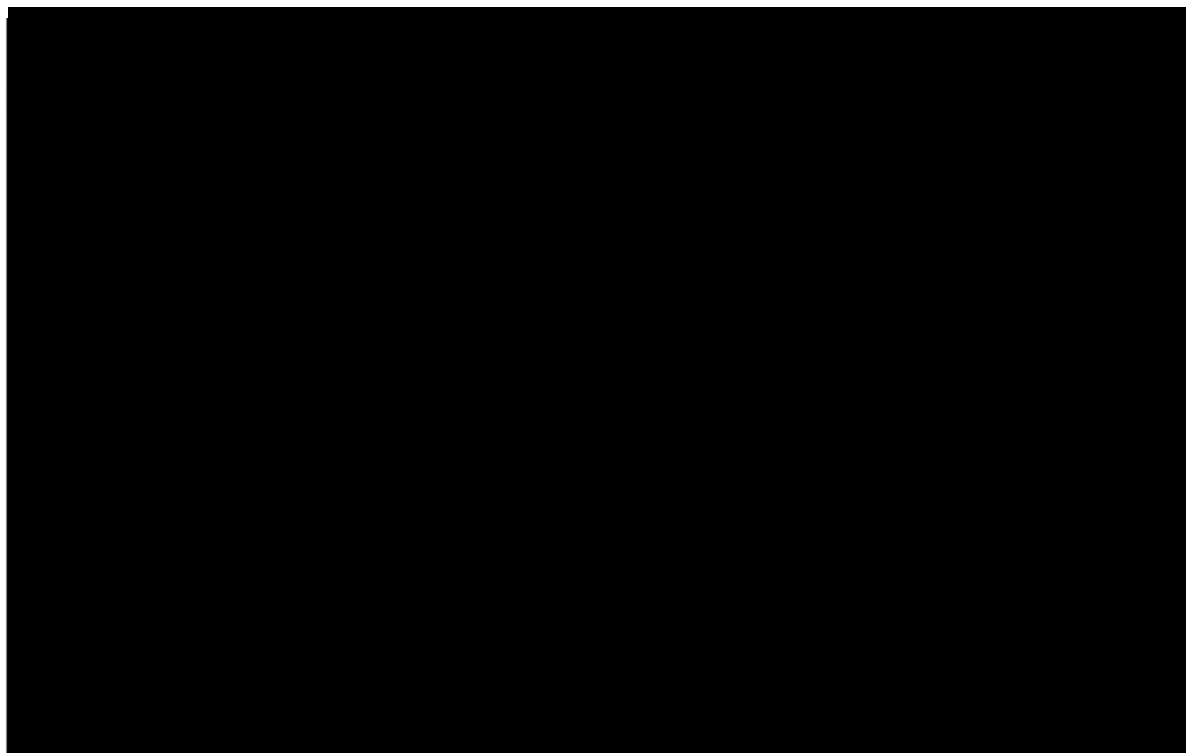
¹³⁴ See Koch V.S. at 20-22.

¹³⁵ Id.

¹³⁶ See Rennie/Kuehn V.S. at 29-30.

¹³⁷ Id.

¹³⁸ Id.

Exhibit III-12: Delays on Amtrak Crescent by Station {{

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Indeed, as Messrs. Renneke and Kuehn observe, most of the delays experienced by the Crescent passenger trains are associated with Amtrak’s attempt to wind through Meridian, including the CPKC Diamonds and the CPKC-controlled Switch Tender crossovers. The delays the Crescent experience because of the blockage of the Switch Tenders by CPKC movements, train building or otherwise are categorized as freight train interference delays (“FTI”). “Far and away the vast majority of the host responsible delays to Crescent 19 and Crescent 20 are FTI (21,589 minutes of FTI delay out of the total of 37,486 minutes of host railroad responsible train delay minutes).”¹³⁹ “Ironically, when delays are incurred at Meridian by Amtrak, it solely impacts Norfolk Southern’s on-time report card,

¹³⁹ See Koch V.S. at 21, n. 4, citing in turn the Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations, Covering the Quarter Ending June 2023 (Third Quarter of Fiscal Year 2023), published by the Federal Railroad Administration (“FRA 3rd Quarter 2023 Amtrak Service Report”) at page 34.

even when those delays are caused by actions taken or not taken by CPKC....”¹⁴⁰ Mr. Koch captures it well when he observes that “CPKC does not answer for these delays; Norfolk Southern does.”¹⁴¹

Simply put, Messrs. Rennie and Kuehn conclude that, in light of current experience and its analysis, “[n]ot fixing the issues at Meridian Terminal will result in significant increases in delay for Norfolk Southern trains and their customers as well as Amtrak trains (for which Norfolk Southern is held responsible).”¹⁴²

And Applicants, in their respective applications, only address the first set of trains. CPKC and CSXT postulate that in the near term, a second set of trains could arise out of the Growth Transaction. Mike McClellan explains that limiting the operational analysis here to only the first set of trains anticipated in the first five years following approval of the transaction(s) is not appropriate:

I understand that CPKC states that it anticipates only one additional daily train pair (that is, two new trains) to operate through the Meridian Terminal within the first five years of the closing of the transaction and that this train pair is the basis for many of the statements that CPKC makes claiming no real adverse impact arising from the proposed transaction. But in my experience, transactions like the one proposed have longer runways before the anticipated diversions and efficiencies arise. I am aware that there are a number of plans for infrastructure improvements along the Western Line. Economically rational rail companies do not enter into such transactions requiring the significant investment anticipated here with the plan that those significant investments will necessarily produce a return within the initial five years. As a result, I pay attention not only to the claim that CPKC intends to introduce one daily train pair within the first five years, but also to the statement made in the CPKC supplemental submission that discusses a second train pair as early as year eight.

McClellan V.S. at 6, n. 4.

If not addressed, the Growth Transaction has the potential to cause either general gridlock in Meridian or fluidity only for CPKC traffic, at the expense of Norfolk Southern and its shippers. This is true, especially in light of the fact that CPKC, the majority owner of the Meridian Speedway, has stated

¹⁴⁰ See McClellan V.S. at 6.

¹⁴¹ See Koch V.S. at 21, n. 5.

¹⁴² See Rennie/Kuehn V.S. at 45.

“it has no current plans to make any infrastructure improvements to” the Meridian Speedway or the Meridian Interchange arising out of the CPKC Transaction and the CSXT Transaction.¹⁴³

C. The anticipated operational impacts, if not addressed, will create competitive harm.

The STB has recognized that anticipated operational impacts can create competitive harm. When Canadian Pacific sought Board approval to acquire the Kansas City Southern, Canadian Pacific “carefully assessed capacity needs on the post-Transaction network and [represented] that they are committed to ongoing review of how traffic levels and operations affect the rail network.”¹⁴⁴ Canadian Pacific “proposed extensive new capacity improvements based on careful analysis of capacity needs of the combined network....”¹⁴⁵ As explained above, CPKC has neither carefully assessed capacity needs on the post-Transaction network, nor committed to an ongoing review of how traffic levels and operations affect the rail network.¹⁴⁶ Instead, CPKC has performed a cursory review of the capacity

¹⁴³ More specifically, CPKC states “that it has no current plans to make any infrastructure improvements to CPKC’s Shreveport Line, the Meridian Speedway, Jackson, MS, the Meridian Interchange, and other lines feeding into and out of Western Line and Eastern Line resulting from the CPKC Transaction and the CSXT Transaction. See CPKC Interrog. Response, Response to Interrogatory No. 4, at 11. Further, in its supplemental information filing, CPKC states that, “[i]f in the future, NS and CPKC volumes are expected to exceed capacity, NS and CPKC can invest in additional infrastructure under the terms of their agreements. Moreover, the MSLLC agreement governs service and addresses infrastructure needs.” CPKC-7 at 13. Some of the infrastructure projects Norfolk Southern believes are necessary to address the added congestion are not to be constructed on MSLLC property. See McClellan V.S. at 11. Even for projects to be constructed on MSLLC, “the construction would be financed in whole or in part by Norfolk Southern, even though the reason for the construction are the trains that CPKC is bringing to the line due to CPKC’s transaction.” Id. In the final analysis, though, the likelihood of CPKC’s proposal to negotiate the solutions to the congestion that now faces Meridian, and the significant exacerbation of that congestion likely to arise as a result of the proposed transaction(s) must be evaluated in the context of the very long (thirteen year) “history of failed negotiations between Norfolk Southern and KCS – and now CPKC – in which the parties have talked about improvements on numerous occasions without ever having been able to come to final terms.” Id.

¹⁴⁴ See Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al., FD 36500, Decision No. 35 at 87(STB served March 15, 2023).

¹⁴⁵ Id.

¹⁴⁶ While admittedly this transaction is not a major transaction, based on volumes purportedly anticipated in the next five years, the Growth Transaction is intended to encourage new business over the west-east routing and divert traffic from various regions throughout the country to the Western Line and the Eastern Line. Because the potential impacts to Norfolk Southern’s customers are quantifiable and foreseeable, similar protections such as those promised in the creation of CPKC are not only appropriate but warranted here.

network needs and stated categorically that it would construct no transaction-related infrastructure in Meridian.

Unlike the Canadian Pacific acquisition of Kansas City Southern, the concerns about capacity in Meridian are not speculative, as reflected above and in the verified statements supporting these comments.¹⁴⁷ Unlike the Canadian Pacific acquisition of Kansas City Southern, the concerns raised cannot be addressed by Norfolk Southern's "operational adjustments and infrastructure improvements"¹⁴⁸ as CPKC has a controlling interest in CPKC and otherwise controls operations through Meridian. Applicants do not have a strong incentive to ensure that Norfolk Southern service through Meridian is fluid¹⁴⁹ – in fact, Applicants have just the opposite incentive and the means for carrying it out. In reviewing the Canadian Pacific proposal to acquire the Kansas City Southern, the Board repeatedly imposed monitoring to see whether the anticipated concerns would be recognized, whether operational adjustments and infrastructure improvements that would be in Canadian Pacific's interests would be implemented address those concerns, and, overall, whether Canadian Pacific's interest in maintaining fluidity would prevail. None of those conditions exist here, and the concern is not one that may develop gradually. Mr. McClellan not only identifies the danger of competitive harm resulting from the proposed Growth Transaction, but he also identifies the need to address that harm with immediate action.¹⁵⁰

The Board will order mitigation conditions when a transaction is expected to exacerbate capacity and fluidity concerns that predate the Transaction. It must do so here.

¹⁴⁷ Id. at 88.

¹⁴⁸ Id.

¹⁴⁹ Id. (noting that Canadian Pacific had an incentive to keep fluid the lines that other carriers would also use to compete).

¹⁵⁰ See McClellan V.S. at 8.

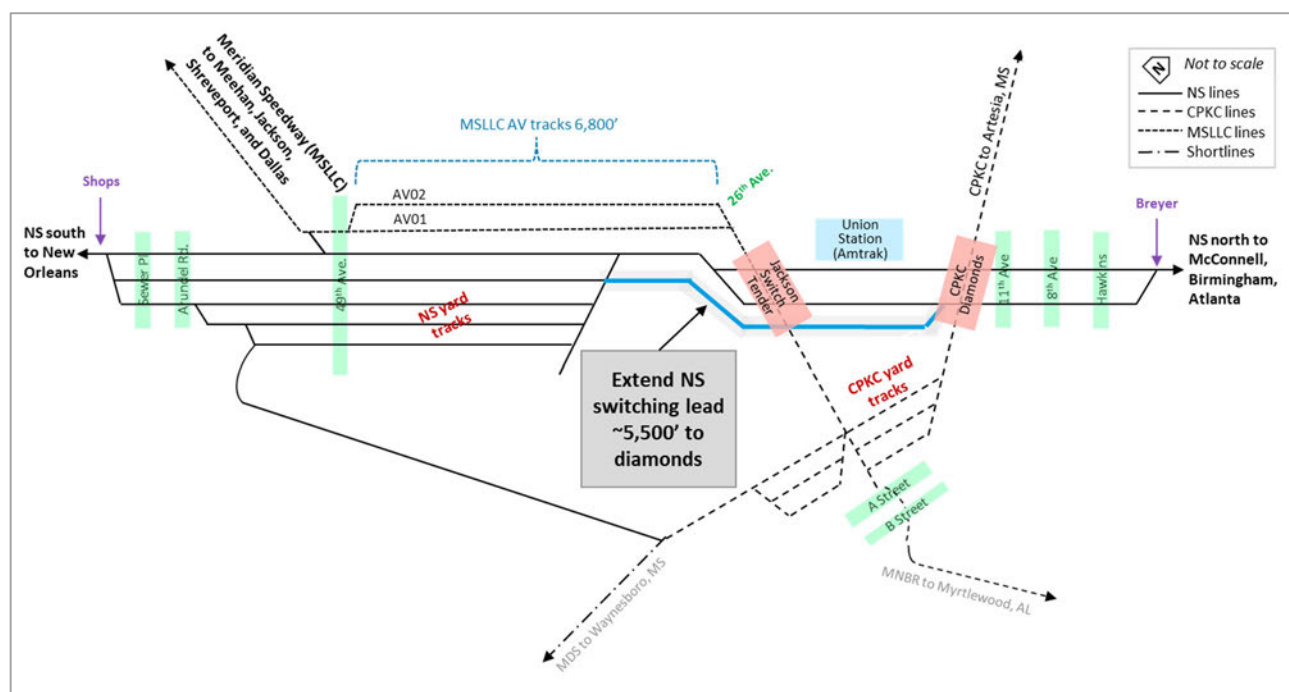
D. Norfolk Southern has developed narrowly tailored conditions that can mitigate the significant harm to competition likely to result from the CPKC Transaction.

The harm that will accompany the new traffic resulting from the Growth Transaction on both a near-term and longer-term basis can be addressed through a few targeted infrastructure projects, the grant (to CPKC) of certain associated rights, and the development of certain operational changes. The conditions that Norfolk Southern seeks (in addition to those set forth in Sections II.A, II.B, and II.C above) are simple, reasonable, and narrowly tailored to address the harm arising from the proposed transaction.¹⁵¹

First, Norfolk Southern asks the Board to order CPKC to permit Norfolk Southern to construct, at Norfolk Southern's expense, a track connecting the two Norfolk Southern routes into Meridian – the one from the north and the one from the south. The project is depicted in Exhibit VI-1: Project 1 – Norfolk Southern Track Extension (blue line), found on page 59 of the verified statement of Messrs. Rennie and Kuehn, reproduced below. This construction would permit Norfolk Southern and Amtrak trains to avoid the Switch Tender altogether on north-south operations. The impact of this project is significant. When combined with powering up the Switch Tender and the CPKC Diamonds initiative described immediately below, the construction of this connecting track will “provide additional flexibility for executing ... train meets, as well as adding flexibility for Amtrak flows.”¹⁵²

¹⁵¹ Without imposition of the requested conditions, CPKC will have the ability and incentive to engage in anticompetitive conduct; through its dispatching control of the Meridian Speedway and control of much of the trackage and junctions in the Meridian Terminal, CPKC will be incentivized to exacerbate congestion and operational issues on the Norfolk Southern to drive more traffic to the new proposed CPKC/CSXT routing.

¹⁵² See McClellan V.S. at 10.

Exhibit VI-1: Project 1 – Norfolk Southern Track Extension (blue line)

Second, Norfolk Southern asks that the Board order CPKC to upgrade the hand-thrown switches located at the Switch Tender to powered switches to be tied into the CPKC dispatching office. This would eliminate the significant amount of time spent every day by Amtrak, Norfolk Southern, and CPKC crews dealing with this impediment. CPKC controls operations through the Switch Tender, and it uses the tracks involved in the Switch Tender to its benefit, imposing much of the adverse impact associated with these switches directly on Norfolk Southern and Amtrak (and through Amtrak, indirectly adversely impacting Norfolk Southern again). This current adverse impact will be exacerbated even by the small incremental increase in traffic anticipated by CPKC in the near term, and more so as its traffic diversions and new traffic increase. This project is relatively minor in terms of both scope and financial investment, but it will have an oversized impact on fluidity in the Meridian Terminal, which will help alleviate the increase in congestion that will be caused by the Growth Transaction. In fact, Mr. McClellan states that the effect of this improvement alone means that “trains on all five lines radiating from the Meridian Terminal would encounter faster running times through

the Switch Tender, and thus a significant downstream negative effect arising from the proposed Transaction on Norfolk Southern and its shippers would be addressed.”¹⁵³

Third, Norfolk Southern asks that the Board order CPKC to install a turnout connecting the Norfolk Southern north-south line on the northside of Meridian to CPKC’s line to Artesia. CPKC must be directed to route the trains operating between the Meridian Speedway and CPKC’s line to Artesia over this Norfolk Southern route. This is *not* a fluidity improvement that will directly add capacity on a *Norfolk Southern* line for handling *Norfolk Southern traffic*. Instead, and when combined with trackage rights that Norfolk Southern is willing to provide to CPKC, it is intended to *provide CPKC with a more direct route*¹⁵⁴ for its traffic moving between the Meridian Speedway and the CPKC route to Artesia. Again, this is an improvement that will comparatively be a very small financial cost¹⁵⁵ but will have an outsized fluidity impact. According to Mr. McClellan, “by removing [the CPKC Artesian trains] from the heart of the Meridian Terminal and thus their interaction with other cross traffic, this infrastructure project and operating directive would free up a significant amount of capacity to handle the additional east-west traffic (and attendant congestion) that will result from the proposed CPKC transaction.”¹⁵⁶

The Board should condition its approval of the proposed transactions on directing CPKC to adopt a second specified operating practice, one that will contribute to a significant amount of fluidity. The Board should direct CPKC to adopt an operating practice that ensures that any train that originates or terminates east of Meridian should not be allowed to foul the Switch Tender when changing crews or when picking-up or setting-off traffic in Meridian. The major flows of traffic through Meridian – regardless of whether those flows are between the Meridian Speedway and the CPKC route to Artesia,

¹⁵³ Id. at 11.

¹⁵⁴ This route will result in CPKC trains operating over a segment of Norfolk Southern track and occupying the Norfolk Southern route for a short period of time, and Norfolk Southern is willing to provide CPKC with the necessary operating rights to do so.

¹⁵⁵ See FN143, *supra*.

¹⁵⁶ See McClellan V.S. at 12.

between the Meridian Speedway and the Western Line, or between Norfolk Southern’s north-south route through Meridian – should not be the victim of CPKC locking up the crossovers at the Switch Tender to perform switching, changing crews, or otherwise.

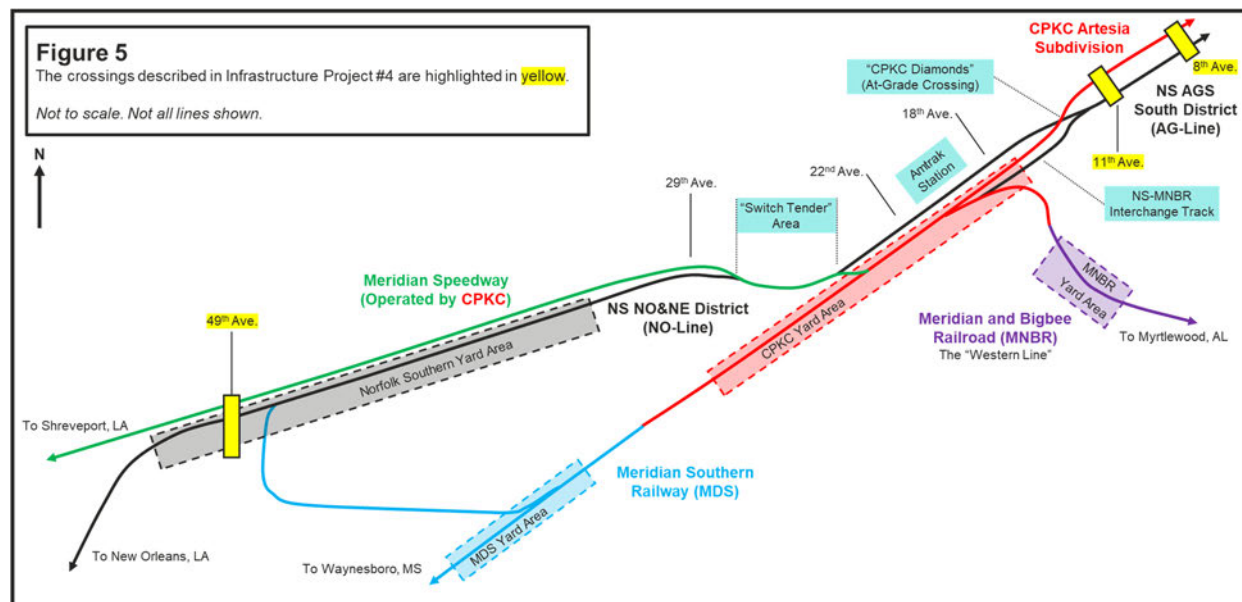
Because CPKC trains have an oversized impact on fluidity throughout the Meridian Terminal, this operating practice, when combined with the powering of the Switch Tender, the construction of the connection at the CPKC Diamonds, and the Norfolk Southern construction of a through mainline, should add a significant amount of fluidity to address the added congestion projected to arise from the introduction of new CPKC traffic (both the added traffic CPKC anticipates will develop in the short term as well as that it anticipates capturing in the future¹⁵⁷) without materially impacting north-south operations and the competitive traffic that those operations support.

Grade crossings at 8th Avenue, 11th Avenue, and 49th Avenue along the Meridian Speedway, CPKC, and Norfolk Southern routes through Meridian impede the ability of carriers to hold traffic on the terminal’s rail infrastructure. The Board should direct CPKC to join with Norfolk Southern in an attempt to obtain local, state, and federal consent and funding to create grade crossing closures at 8th Avenue, 11th Avenue, and 49th Avenue.

These grade crossings are depicted in Figure 5 from Mr. McClellan’s verified statement. As described in Mr. McClellan’s verified statement, and when also combined with the construction of the connection at the CPKC Diamonds and the operational changes that make possible, closing these

¹⁵⁷ CPKC states that it anticipates only one train pair to be added to the route in the first five years following the transaction, and that it “does not forecast the need to operate a regularly scheduled second train pair until, at the earliest, year eight.” See CPKC-7 at 8. But much of the work to be done to the Eastern Line and the Western Line is to take place during that first five years. See, CPKC Application at 12-13 (noting that CPKC intends as a first year endeavor only \$9 million in bridge repair and other improvements, but intends to spend more than \$100 in the subsequent few years in a “multi-year bridge rehabilitation program”). See also, CSXT-9 at 24-25 (CSXT stating that the improvements to upgrade the Eastern Line to allow for 25 mph speeds “will be completed within five years after consummation of the transaction.” As discussed above in FN 143, the first five years after consummation is not a realistic timeframe to capture the benefits (including new and diverted traffic) of a transaction like the Growth Transaction, which creates a new transcontinental route.

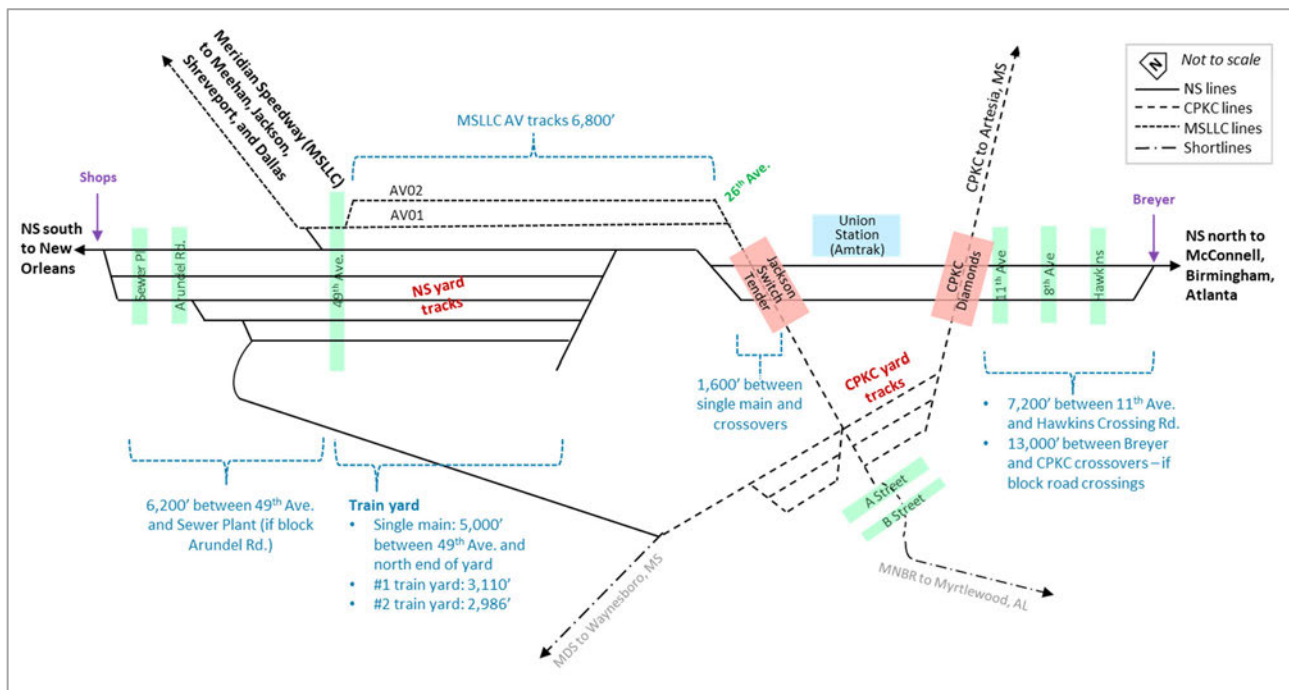
crossings would enable the staging of significantly longer Norfolk Southern trains within the Meridian area for movement through the Switch Tender area without impacting CPKC trains.¹⁵⁸



Should the effort to close grade crossings be successful, the Board should direct CPKC to lengthen the so-called “AV tracks” heading into Meridian from the west, off the Meridian Speedway. These tracks are depicted in Exhibit III-1: Meridian Terminal Track Overview, found in the verified statement of Messrs. Rennie and Kuehn, verified statement at page 18, reproduced on the next page.

¹⁵⁸ See McClellan V.S. at 14.

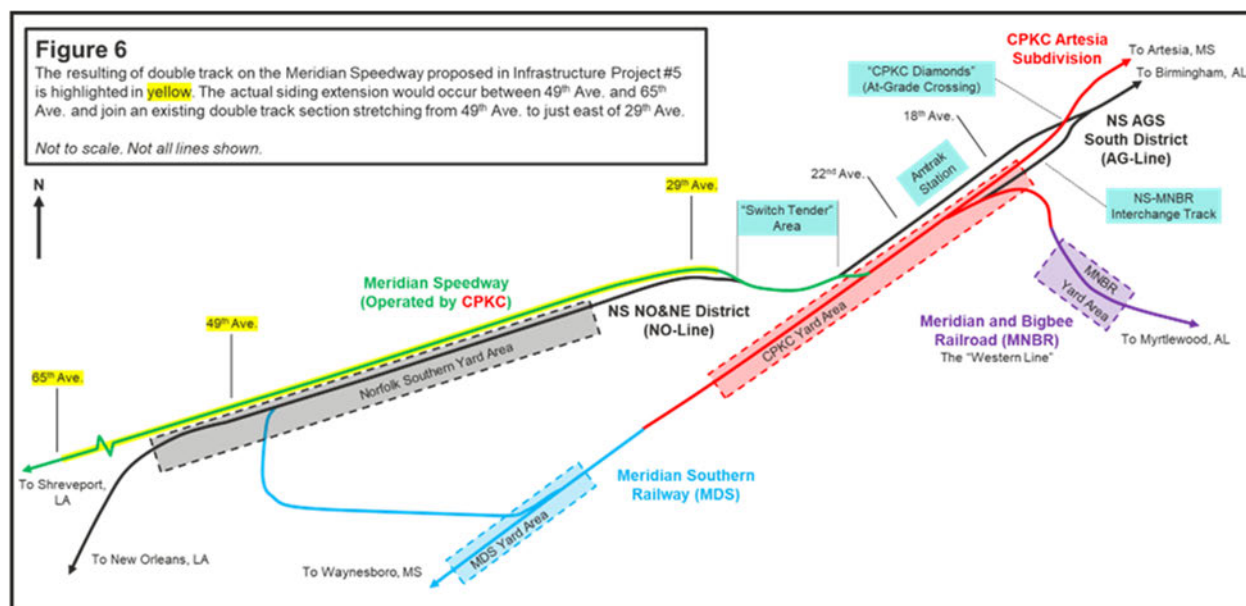
Exhibit III-1: Meridian Terminal Track Overview



Currently, these tracks can hold trains that CPKC moves over the Meridian Speedway, provided that they do not exceed 6,800 feet. So, a CPKC train that is less than 6,800 feet and is coming off the Meridian Speedway can be held in the MSLLC AV Tracks to avoid blocking the Switch Tender and tying up the Meridian Terminal. However, CPKC generally does not operate trains on the Meridian Speedway that meet this length limitation.¹⁵⁹ Therefore, it is necessary for CPKC to extend the MSLLC AV tracks to accommodate the CPKC trains in excess of 7,500 feet that operate over the

¹⁵⁹ See Koch V.S. at 20.

Speedway.¹⁶⁰ As explained by Mr. McClellan, this AV track extension “would enhance capacity, fluidity, and operational flexibility for the broader terminal area.”¹⁶¹



Finally, and as mentioned above, Norfolk Southern believes that CSXT’s commitment to keeping Selma as an open gateway must be clarified. CSXT states that it “commits to maintaining the existing gateway at Selma with Norfolk Southern Railway Company (“NSR”) open on commercially reasonable terms,” apparently in perpetuity.¹⁶² Further, as to one named shipper, CSXT committed to providing that shipper “MNBR’s existing rate for movements to NSR at Selma, subject to reasonable cost escalation, for five years,” after which the rates would revert to merely being on commercially reasonable terms.¹⁶³ But as Mr. McClellan notes, “[a]ll Class Is, particularly CSXT, understand that

¹⁶⁰ Applicants state that the new trains should “average” 70 cars per train. See CPKC Application, V.S. of Raymond A. Elphick, at 8. By definition that means that some of these trains will contain more than 70 cars. Further, “the expected growth projection does not preclude train volumes increasing faster” than what has been set forth in the CPKC application estimates. See Rennie/Kuehn V.S. at 42. More growth (both in then-existing trains and in additional trains) could be a possibility as “CPKC states that it ‘intends to grow the volumes on the Western Line as it expects existing CPKC-CSXT shippers to opt for the more efficient direct routing traffic and as CPKC and CSXT win new traffic with the new premium train service.’” *Id.* For both reasons, the ability of the AV Tracks to hold the new CPKC train service is of concern.

¹⁶¹ See McClellan V.S. at 15.

¹⁶² See CSXT Application, at APP-230, citing the Verified Statement of Arthur Adams, Jr., at APP-222.

¹⁶³ See CSXT Application, at *id.*, citing the Verified Statement of Arthur Adams, Jr., at APP-223.

true open gateways not only deal with the quoting of rates but also the need to keep the gateway open operationally.¹⁶⁴ Recognizing this, in the CSXT acquisition of Pan Am Systems, CSXT specifically promised that it was “not going to do anything either physically or financially that is going to take away a competitive option that exists today.”¹⁶⁵ CSXT may be willing to offer the same rates to customers reaching Norfolk Southern at the Selma gateway as they are able to procure today from MNBR, but CSXT will not be incentivized to provide the same level of responsive service that MNBR had to move that traffic. Recognizing that service is of the utmost importance in fulfilling the rail transportation needs of shippers, CSXT must be ordered not to do anything either physically or financially to take away the competitive option that exists today at Selma, and to provide all shippers, whether in existence today or in the future, and regardless of their physical locations, the same level of frequency and reliable service that is available to shippers today.¹⁶⁶

Board oversight of the implementation of the transaction, covering the implementation of the proposed conditions, the rapidity of the development of new and diverted traffic resulting from the proposed transaction, and the progress that parties have with regard to grade crossing closures are not only reasonable but necessary. Should CPKC and CSXT succeed in adding traffic to their new route at a pace faster than described in their applications without an associated progress in implementing the infrastructure and operating conditions, immediate adverse and long-term impacts to competition could still result without Board intervention. The Board must retain oversight jurisdiction to monitor developments.

¹⁶⁴ See McClellan V.S. at 17 (citing CSX Corporation and CSXT Transportation, Inc., et al. – Control and Merger – Pan Am Systems, Inc., et al., FD 36472 (STB served April 14, 2022) (“CSXT/Pan Am”).

¹⁶⁵ See CSXT/Pan Am at 16.

¹⁶⁶ { [REDACTED] } CSXT Application, Verified Statement of David Reishus, at APP-230.

E. SUMMARY OF REQUESTED CONDITIONS

In light of the foregoing, Norfolk Southern respectfully requests that the Board, if it decides to address only the transactions presented to it by the Applicants, impose the following conditions:

1. *Consolidate the dockets and records:* The Board should consolidate the dockets and records for the CPKC Application, the CSXT Application, and the notices, discontinuances, and other matters that the Board has already determined are related to each, thus creating a single docket and record for the Growth Transaction proceeding.
2. *Issue a single, consolidated decision:* The Board should issue a single, consolidated decision covering the Growth Transaction, addressing issues raised and any requests for conditions in that Growth Transaction proceeding. In that decision, the Board should order Applicants to provide additional information and analysis as is reasonable and necessary for the Board to fully understand the impacts of the Growth Transaction on rail operations outside of the Western and Eastern lines, so that both the Board and its OEA can sufficiently analyze the anti-competitive impacts of the Growth Transaction proceeding.
3. *Determine the transaction is “significant”:* The Board should determine that the Growth Transaction is a “significant” transaction, and not a “minor” transaction. Any specific information normally required of a significant application should be requested by the Board.
4. *Require certain infrastructure projects and operating practices:* Regardless of whether the Board determines that the CPKC Transaction or the Growth Transaction is a “significant” transaction or a “minor” transaction, the Board should condition any approval of the CPKC Transaction or the Growth Transaction on the implementation of certain mitigation, specifically:

a. CPKC must cooperate to permit Norfolk Southern to construct, at Norfolk Southern's expense, an additional main line from the north end of Norfolk Southern's yard to just south of the CPKC Diamonds, enabling a simultaneous direct north-south Norfolk Southern move between the Norfolk Southern line coming into Meridian from the north and the Norfolk Southern line coming into Meridian from the south.

b. The Applicants must power up the switches at the Switch Tender, with control of those powered switches tied into the CPKC dispatching office for remote operation.

c. The Applicants must construct a connection in the southwest quadrant of the CPKC Diamonds connecting the CPKC line to Artesia with the western-most Norfolk Southern line to permit CPKC trains moving between that CPKC Artesia line and the Meridian Speedway to travel on Norfolk Southern tracks instead of through the Meridian Terminal.

(i) Ownership of the track and associated powered switches, as well as control over the associated switches, should be in accordance with the underlying real estate.

(ii) Norfolk Southern will enter into a trackage rights agreement with CPKC to permit CPKC trains to operate over Norfolk Southern lines between the Meridian Speedway and the CPKC Diamonds, and such trackage rights will be on industry standard terms and conditions, including with provisions requiring CPKC to reimburse Norfolk Southern any costs of maintenance of the newly installed switch and track located on Norfolk Southern property.

(iii) CPKC must be directed to route the trains operating between the Meridian Speedway and CPKC's line to Artesia over this Norfolk Southern route.

d. The Board should direct CPKC to operate in a manner such that any train operating between the Western Line and the Meridian Speedway will transit and not foul the Switch Tender.

5. *Initiate a grade crossing closure initiative:* The Board should order CPKC to work with Norfolk Southern and relevant city, state, and federal authorities to develop plans and public funding streams for the closure or separation of grade crossings at 8th Avenue, 11th Avenue, and 49th Avenue.

6. *Order post-grade closing infrastructure project:* Should Norfolk Southern and CPKC be successful in eliminating the at-grade crossing at 49th Avenue, then the Board should cause CPKC to direct MSLLC¹⁶⁷ to construct an extension of the AV Tracks from just east of 49th Avenue to just east of 65th Avenue, to provide at least 11,000 feet of clear track on which to hold trains entering and exiting the Meridian Speedway.

7. *Participate in Board-sponsored mediation:* Should CPKC determine that the fluidity of the Meridian Terminal would benefit from Board-sponsored mediation to adjust or modify the infrastructure and operating requirements set forth above, to discuss other potential fluidity solutions, or to determine cost-sharing allocations, Norfolk Southern agrees to participate in such mediation.¹⁶⁸ If CPKC declines to participate in Board-sponsored mediation or such mediation is unsuccessful, the Board should condition the approval of the CPKC

¹⁶⁷ Meridian Speedway LLC is not a party to these proceedings, but CPKC is its majority owner.

¹⁶⁸ Norfolk Southern takes note that some may argue that mediation, while favored by the Board for resolution of disputes, may not be available, citing 49 C.F.R. Section 1109.1. Norfolk Southern waives any application of that Section, to the extent necessary for the Board to order such mediation.

Transaction or the Growth Transaction on CPKC's agreement to Items 4 through 6, above, subject to the Board's determination of a reasonable cost allocation between CPKC and Norfolk Southern for the implementation of such projects and practices.

8. *Establish Board Oversight:* As a condition to the Board's approval of the CPKC Transaction or the Growth Transaction, the Board should impose an oversight period of a minimum of five years,¹⁶⁹ during which, among other things,¹⁷⁰ CPKC, on a quarterly basis must report the volume of new or diverted traffic moving through the Meridian Terminal and any service reliability issues resulting from traffic congestion or delays. During this oversight period, the Board should retain authority to require infrastructure projects and operating practices, and to allocate any related cost-sharing obligations, for the purpose of ameliorating service reliability issues arising from the increases in traffic at Meridian.

9. *Protect the Selma Gateway:* CSXT must be ordered not to do anything either physically or financially to take away the competitive option that exists today at Selma, and to provide all shippers, whether in existence today or in the future, and regardless of their physical locations, the same level of frequency and reliable service that is available to shippers today.

10. *Adherence to all representations on the record:* Consistent with other recent decisions, the Board should impose a condition requiring Applicants to adhere to all of the representations made on the record during the course of the Growth Transaction proceeding.¹⁷¹

¹⁶⁹ CN/EJ&E at *Id.* (noting that its oversight would include service issues brought on by a long-haul railroad's acquisition of a regional short-line, and that its oversight and monitoring condition would enable the Board "to address any possible service issues that may arise and to ensure that service levels are reasonable and adequate.").

¹⁷⁰ *See* McClellan V.S. at 6 (discussing the fact that for this proceeding a five-year time horizon may not be appropriate); *see also*, FN 143, *supra*.

¹⁷¹ *See*, e.g., Canadian Pacific/KCS, Decision No. 35 at 173.

CONCLUSION

The Applicants have failed to request the proper authority required pursuant to 49 U.S.C. Section 11321. With regard to the requests that the Applicants have presented to the Board, the Applicants have improperly presented them as separate transactions, when it is truly a single proposed transaction. That proposed transaction is a “significant” transaction under the Board’s rules. While not a merger of two Class I railroads, the Growth Transaction between these two Class I railroads undeniably will have a transcontinental competitive impact (both east-west and north-south). However, it is the Growth Transaction’s adverse competitive impacts on the existing transcontinental (north-south) routes and services that travel through Meridian, Mississippi that are the focus of Norfolk Southern’s concerns.

The CPKC Application and the CSXT Application, when considered together, will create significant anticompetitive effects that outweigh the public interest unless otherwise ameliorated. In these Comments, Norfolk Southern demonstrates that the combined effects of the Growth Transaction will tip into overload the already congested Meridian Terminal. Because CPKC controls much of the trackage and junctions in the Meridian Terminal, it will be able to prioritize its traffic flows over the Meridian Speedway and onto the Western Line for interchange with CSXT at Myrtlewood, to the significant detriment of Norfolk Southern traffic. Norfolk Southern’s customers moving traffic over the Meridian Speedway, between Atlanta and New Orleans, and in interchange with the post-transaction remnants of the MNBR will suffer the brunt of the additional congestion resulting from the Growth Transaction.

Also affected will be the operations of the Amtrak Crescent, which currently operates on a north-south routing through the Meridian Terminal that will feed the increased CPKC traffic flows onto the Western Line. Pursuant to 49 U.S.C. Section 24308(c), Amtrak operations have preference over freight transportation in using a rail line, so the impact of the added congestion resulting from the

Growth Transaction on the Amtrak Crescent operations between Birmingham and New Orleans will have a cascading adverse effect on the freight rail operations on the line over which Amtrak operates. Simply said, the harm that is imposed on Amtrak will cascade and amplify the adverse effect of the Growth Transaction on Norfolk Southern's operations at the Meridian Terminal.¹⁷²

These Comments describe in detail the anticompetitive impact the Growth Transaction will have on the Meridian Terminal. To mitigate the harm that would be caused by these adverse competitive impacts, Norfolk Southern asks the Board to condition any approval of the Growth Transaction as set forth in these Comments (and as summarized in Section IV). Absent the conditions described above, Norfolk Southern asks the Board to deny the CPKC Application.

Respectfully submitted,

/s/ Crystal M. Zorbaugh

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December 29, 2023

¹⁷² In its November 2, 2023, submission to the Board, the National Railroad Passenger Corporation ("Amtrak") urged the Board to "ensure that approval of the transaction would not adversely impact Amtrak's existing or planned future operations."

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

COMMENTS AND REQUESTS FOR CONDITIONS

Appendix A

Verified Statement of Andrew Koch

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND
OPERATION – CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD,
L.L.C., IN LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND
MARENGO COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. –
ACQUISITION AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE
RAILROAD, L.L.C., FD 36727**

COMMENTS AND REQUESTS FOR CONDITIONS

VERIFIED STATEMENT OF ANDREW KOCH

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND
OPERATION – CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD,
L.L.C., IN LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND
MARENGO COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. –
ACQUISITION AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE
RAILROAD, L.L.C., FD 36727**

COMMENTS AND REQUESTS FOR CONDITIONS

VERIFIED STATEMENT OF ANDREW KOCH

My name is Andrew Koch. I am the Assistant General Manager Network Operations Center for Norfolk Southern Railway Company (“Norfolk Southern”). I have been with Norfolk Southern’s Operations Team for nearly 15 years. I started working in Norfolk Southern dispatch management and network operations roles in 2009. At various points during my time in Norfolk Southern’s Network Operations Center (consolidated dispatching center), I have had authority over the dispatch functions for both the Northern and Southern regions of Norfolk Southern’s network. I started gaining familiarity with the Meridian, MS area in 2013, and have had authority over the area since 2018. I started my current role in April 2022. Given my experience, I am intimately familiar with both the complexity of rail operations generally, as well as the existing conditions and operations specific to Meridian, MS.

I am aware that Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC (“CPKC”) are hoping to purchase the Meridian & Bigbee Railroad, L.L.C. (“MNBR”) between Meridian and Myrtlewood, Alabama (the “Western Line”). I am also aware that CSX Transportation, Inc. (“CSXT”) is hoping to reacquire the MNBR rail assets between Myrtlewood and Burkeville, Ala. (the “Eastern Line”).

I know that the application (the “CPKC Application”) CPKC presented the Surface Transportation Board (the “Board”) had descriptions of rail assets and operations in what was characterized as “Meridian”, but it appeared to me that most, if not all, of the document focused on descriptions of rail assets and operations currently owned by MNBR and to be acquired by CPKC. I also read the public version of the CPKC’s Supplemental Information filed with the Board on November 21, 2023 (“CPKC Supplemental Information”). The CPKC Supplemental Information dealt with rail assets and operations in the Meridian, MS area beyond just the rail assets and operations currently owned by MNBR. My testimony here will reflect that latter view of Meridian because I think it is important to understand the entire region to assess the potential effects of the transaction proposed by the CPKC Application.

I have been asked to provide a short description of the existing rail assets and challenging operations in Meridian, MS. My testimony then will be simple. I will first present a short description of the rail network as it exists in Meridian, together with the corridors that feed into that rail network. I will then describe the major flows of traffic through Meridian. Those flows (involving CPKC, MNBR, Norfolk Southern, and Amtrak) are integral to understanding the existing congestion in the rail hub that will be exacerbated by additional traffic. I will describe how those traffic flows all move slowly through Meridian daily, and how, today and without new traffic being added to the mix, the service is not fluid.

As I mentioned above, I briefly reviewed some public sections of the CPKC Application. I was struck by how carefully CPKC restricted its descriptions and analysis to the exact delineations of the rail line to be purchased. A good example of that is the claim that “No commuter or passenger service moves on the Western Line” found in the Verified Statement of Raymond A. Elphick (“Elphick VS”) on page 12, even though the MNBR Western Line trains would cross,

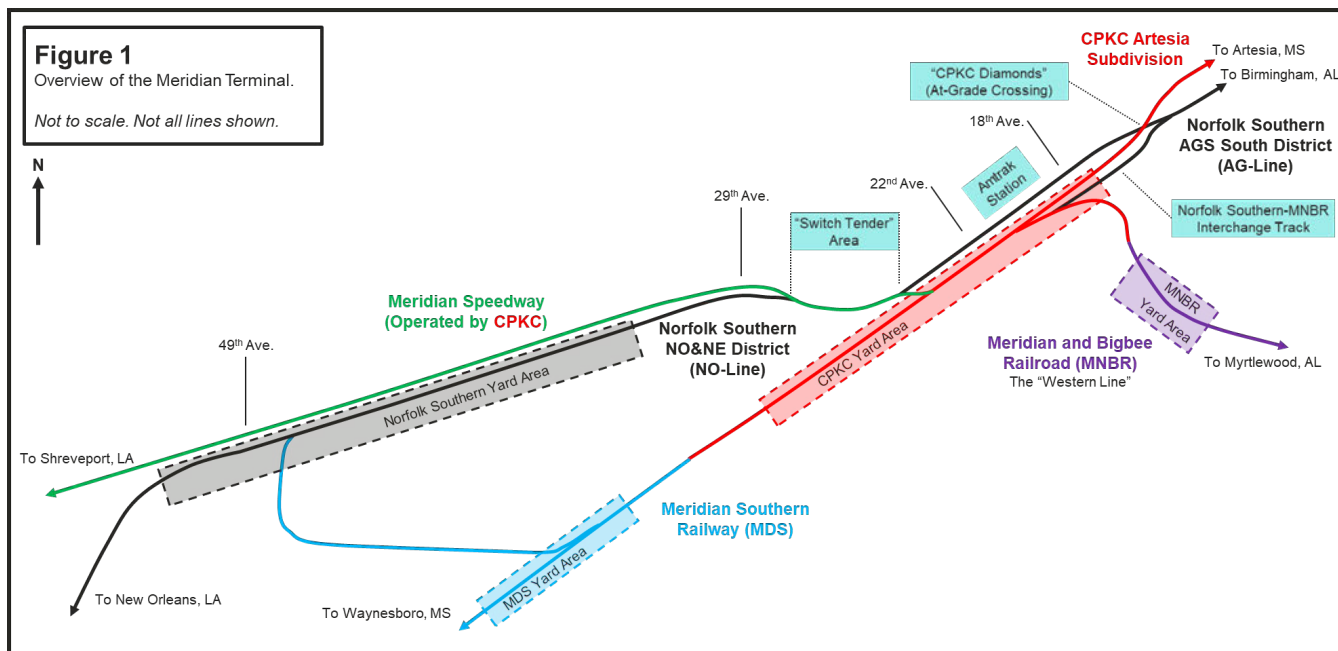
immediately west of the west end of the Western Line, the Norfolk Southern route that Amtrak currently operates on through Meridian for its Crescent service.

I believe that most of the analysis that CPKC has presented to the Board in its Application only covers the property being acquired by CPKC – marked in purple as “Meridian and Bigbee Railroad (MNBR)” in Figure 1 on the next page – without CPKC analyzing how the new traffic will navigate its way through the Meridian rail gateway to get to and from the to-be-acquired line. As such, in its Application, CPKC ignores the adverse impact of that traffic on trains moving over lines radiating from Meridian to the north, south, and west. This narrower focus seems to allow CPKC in its Application to speak generally of operations or traffic flows between, for example, Meridian and Myrtlewood, while ignoring the true flows through Meridian. CPKC further fails to discuss the potentially adverse effects of increasing traffic and operations in Meridian that, by CPKC’s and CSXT’s own predictions, will flow onto or off the current MNBR line to be acquired.

In the public version of CPKC’s Supplemental Information, filed on November 21, 2023 (“CPKC-7”), CPKC does provide some additional information about traffic flows through Meridian, but it appears that most of what is described would be ideal operations that do not resemble real life operating realities that I oversee every day. In fact, at one point, CPKC says that it “is unaware of any specific concerns, complaints, or alleged delays to NS’s operations as a result of any CPKC traffic or of CPKC’s dispatch and control over the crossovers” (referring to the “Switch Tender” depicted in Figure 1). CPKC-7 at 10. I will describe not only Norfolk Southern’s concerns, complaints, and actual delays to Norfolk Southern and Amtrak operations, but also the communication system that CPKC and Norfolk Southern have set up to deal with precisely those issues, and I will describe the relative unresponsiveness of CPKC to concerns voiced by Norfolk Southern.

I. Overview of Current Infrastructure and Rail Traffic in Meridian MS

The CPKC filing describes the assets and infrastructure specific to the property they seek to acquire. Generally, I agree with this description. Because the CPKC description is quite narrow, I will offer an overview of the entire Meridian, MS rail hub, given the potential impacts of the proposed transactions. Figure 1 provides a map of the Meridian, MS Terminal.

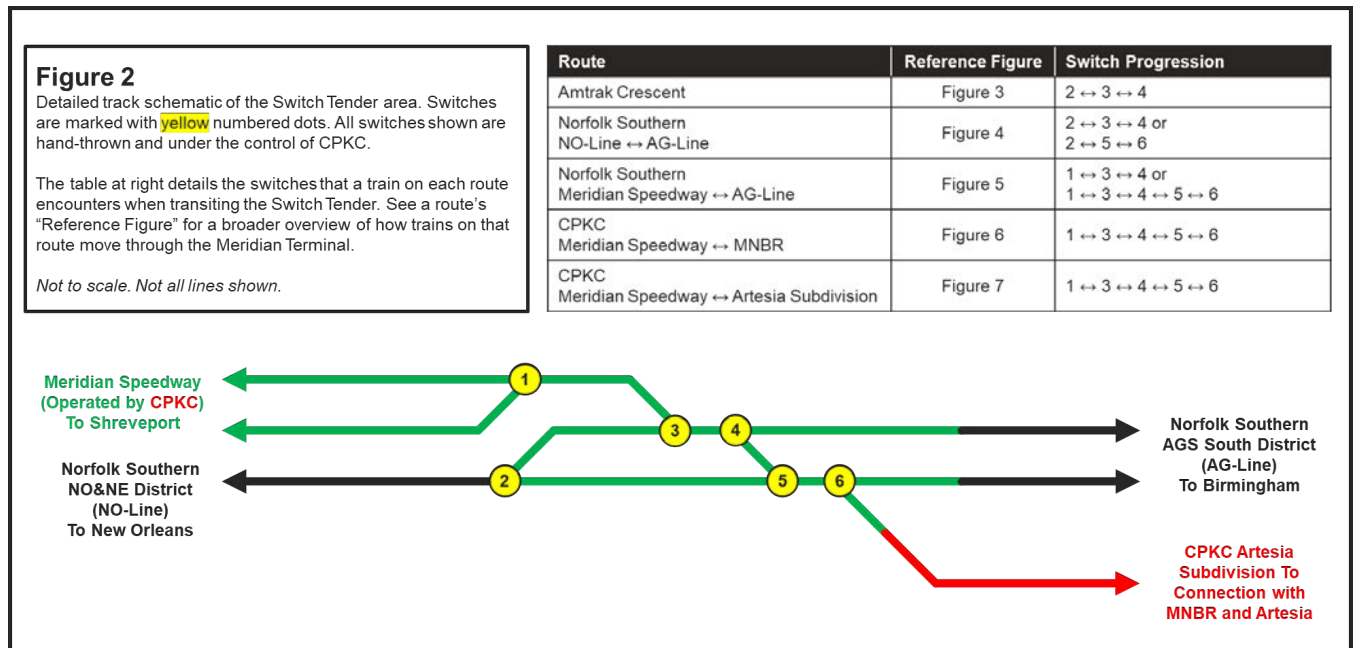


Norfolk Southern has lines into Meridian from the north and south; they are shown in black in Figure 1 above. The AGS South District, or AG-Line, runs south into Meridian from Birmingham, AL. The NO&NE District, or NO-Line, runs north into Meridian from New Orleans, LA. These two lines are connected by a short stretch of CPKC-operated track, which I will describe further below. Norfolk Southern's main yard in the area is located on the NO-Line in the southern part of Meridian Terminal.

The Meridian Speedway, which is jointly owned by CPKC and Norfolk Southern and operated by CPKC, runs east into Meridian from Shreveport, LA, and is shown in green in Figure 1 above. It parallels the NO-Line into the Meridian Terminal before connecting to CPKC-owned lines just east of the Switch Tender. (Because of its central role in most of the moves through Meridian, I

refer to the Switch Tender throughout this verified statement. It is depicted in Figure 2 immediately below. I discuss the Switch Tender in more detail on pages 14-16. Norfolk Southern trains running between the AG-Line and NO-Line operate over the Meridian Speedway at the Switch Tender.

Figure 2 shows the general layout and traffic flows in the Switch Tender area.



CPKC's Artesia Subdivision runs south into Meridian from Artesia, MS, and is shown in red in Figure 1 above. It crosses the AG-Line just north of downtown at a set of diamonds labeled in Figure 1 above as the "CPKC Diamonds" before terminating in CPKC's Meridian Yard. The Meridian Speedway connects to the Artesia Subdivision in this yard area.

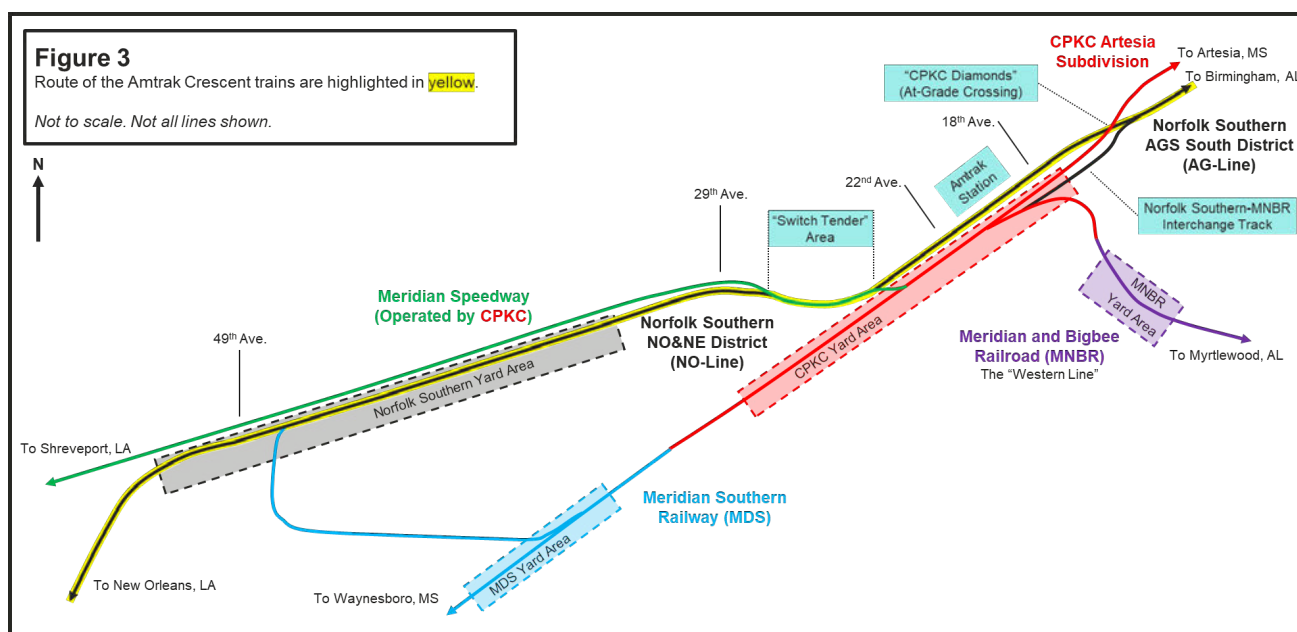
The Meridian and Bigbee Railroad ("MNBR") runs west into Meridian from Myrtlewood, AL, and is shown in purple in Figure 1 above. West of its Meridian Yard, it connects to a spur off CPKC's Artesia Subdivision in the area of CPKC's Meridian Yard.

The Meridian Southern Railway ("MDS") runs north into Meridian from Waynesboro, MS, and is marked in blue in Figure 1 above. It has interchanges with Norfolk Southern and CPKC in Meridian, but its operations typically do not have negative impacts on the broader terminal area.

The Meridian, MS rail hub is busy, with several railroads using it to serve passengers and freight customers. I will provide a high-level overview of this traffic here, with particular challenges described in greater detail later in my comments.

Amtrak

Amtrak's Crescent (Trains 19 and 20) is hosted by Norfolk Southern between Alexandria, VA, and New Orleans, LA. These trains operate through the Meridian Terminal on Norfolk Southern. This service will continue should the Western Line transaction be approved and implemented. Figure 3 below shows how the Crescent trains operate through the Meridian Terminal via the lines highlighted in yellow. That route through Meridian forces Amtrak to cross both the CPKC Diamonds and the Switch Tender. The Meridian Amtrak station is located on the AG-Line between 18th Avenue and 22nd Avenue. The Amtrak Crescent Service operates twice daily through Meridian. Amtrak 19 approaches Meridian from the north on Norfolk Southern's AG-Line. Amtrak 20 approaches Meridian from the south on Norfolk Southern's NO-Line.



Amtrak 20 is scheduled to arrive at the Meridian Amtrak station at 1:32 pm from the south and depart from the Meridian Amtrak station northbound at 1:37 pm. It passes through the Switch

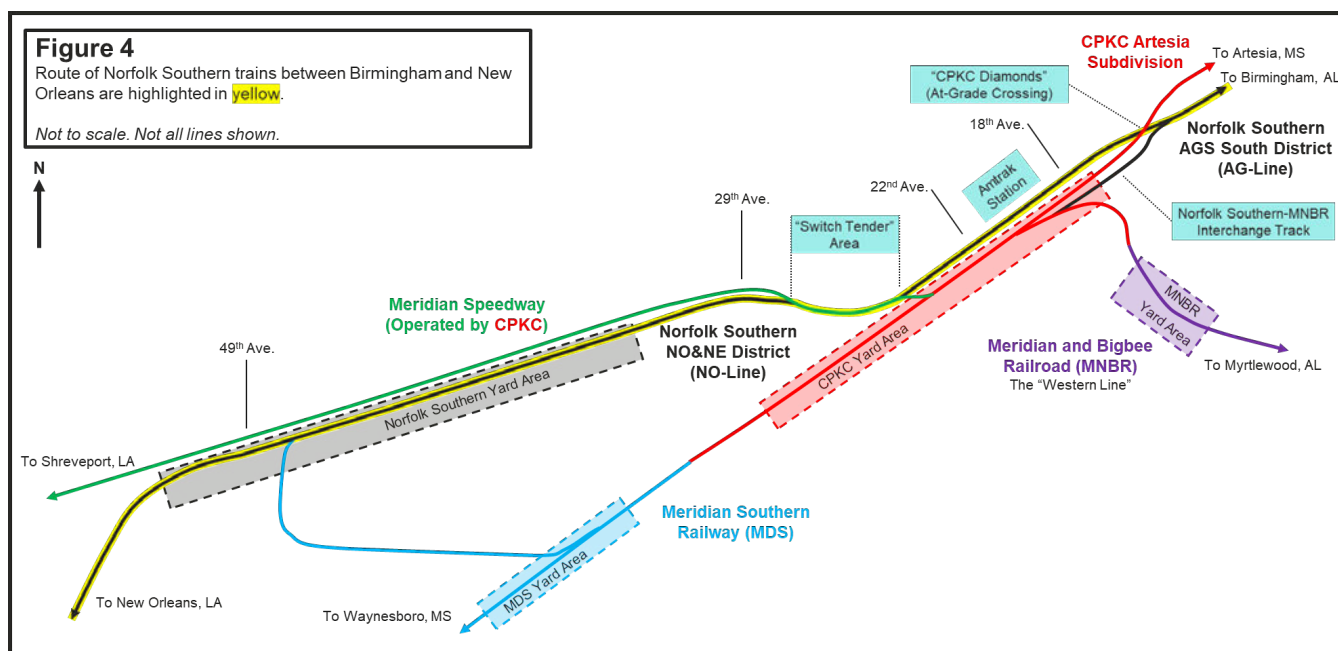
Tender area prior to arriving at the station, and it crosses the CPKC Diamonds after departing the station.

Amtrak 19 is scheduled to arrive at the Meridian Amtrak station at 4:13 pm from the north. It is scheduled to depart the Meridian Amtrak station at 4:19 pm, heading south to New Orleans. It utilizes the same route described above for Amtrak 19, but in the opposite direction.

Norfolk Southern

Norfolk Southern Operations Between Birmingham and New Orleans

Norfolk Southern moves a significant amount of north-south traffic through the Meridian Terminal between the Birmingham and New Orleans areas. The routing for this traffic through Meridian is shown in yellow in Figure 4 below.



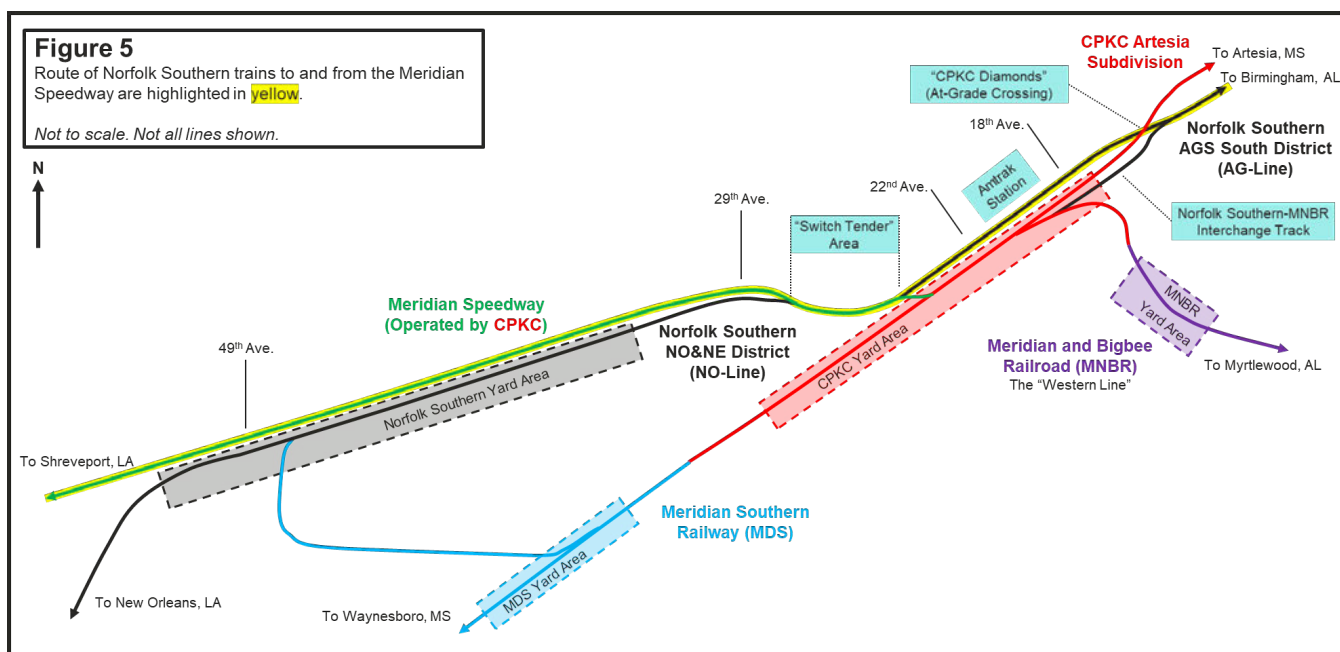
The AG-Line from Birmingham is a single track mainline, only expanding out to double track as it nears Meridian. The double track section is hampered by a series of active grade crossings, limiting Norfolk Southern's ability to use the double track section as a meet/pass location for extended periods. When a southbound Norfolk Southern train gets held out of Meridian because CPKC is occupying the Switch Tender and Amtrak needs to get through, Norfolk Southern will

routinely hold the train at Livingston, which is roughly 37 miles north of Meridian. Once Norfolk Southern gets an indication that it is permitted to move that train into the Meridian Terminal, it can take anywhere from 60 to 90 minutes (depending upon size and composition) for that train to reach Meridian. Additionally, Norfolk Southern holds northbound trains heading into Meridian at Basic, about 13 miles south of Meridian on the NO-Line, which is also a single-track mainline approaching Meridian.

The Norfolk Southern line entering Meridian from the north also hosts the Amtrak service described above. All of this traffic encounters the CPKC Diamonds as well as the crossovers in the Switch Tender area. Norfolk Southern changes crews on all of its through traffic in Meridian, and many trains are fueled there as well.

Norfolk Southern Traffic Moving to and from the Meridian Speedway

Norfolk Southern also interchanges in Meridian a significant amount of traffic with CPKC that moves to and from the Meridian Speedway. The routing of these trains through Meridian is shown in yellow in Figure 5 on the next page. Southbound trains use the AG-Line and access the Meridian Speedway via the Switch Tender. Northbound trains use the same route in the other direction. Southbound trains for the Meridian Speedway also stage at Livingston, as described above, if they cannot be processed at Meridian.



Local Norfolk Southern Interchange Traffic

I am aware that the MNBR Yard will remain with MNBR under a lease to MNBR. The MNBR Meridian Yard is shown in purple on Figure 5 above. Norfolk Southern and MNBR interchange on a track owned by Norfolk Southern and located at the northeast end of CPKC's Meridian Yard. That interchange track is also identified on Figure 5. MNBR must run over CPKC tracks to reach the interchange track. Norfolk Southern must pass through the Switch Tender and the CPKC Diamonds to move traffic between its Meridian Yard and the interchange track. CPKC's route between the Meridian Speedway and MNBR utilizes the same track that MNBR utilizes to reach the Norfolk Southern/MNBR interchange track. Norfolk Southern – MNBR interchange activity will become more difficult as through traffic increases on the new CPKC – Western Line route.

Communication between Norfolk Southern and CPKC regarding Norfolk Southern traffic

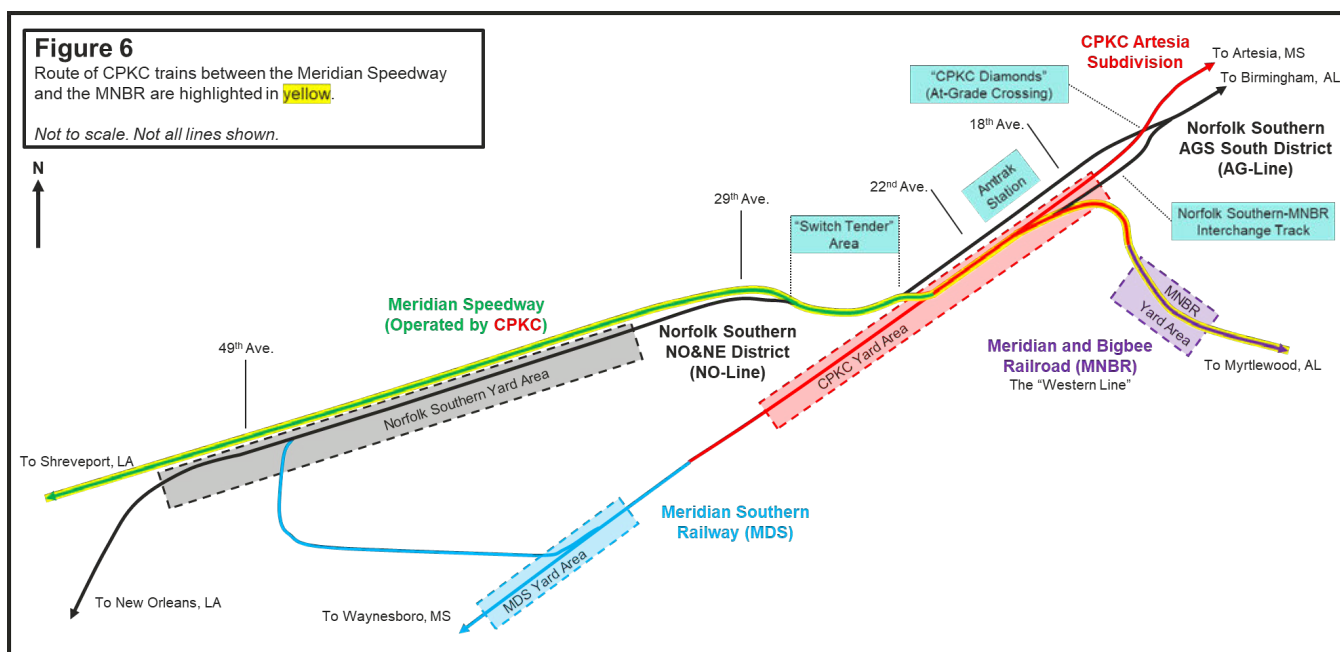
As I mentioned above, I know that CPKC claims that it is unaware of any specific concerns, complaints, or alleged delays to Norfolk Southern's operations as a result of any CPKC traffic or of

CPKC's dispatch and control of the crossovers at the Switch Tender. But there are specific concerns and constant 24-7 communications between Norfolk Southern and CPKC about Norfolk Southern and Amtrak operations into, out of, and through Meridian, generally focused on CPKC traffic occupying, and CPKC's dispatch and control of, the crossovers at the Switch Tender. CPKC and Norfolk Southern operating teams communicate regularly and generally involve Norfolk Southern pleading with CPKC to open operating windows for Amtrak or Norfolk Southern operations to take place. The concerns have grown so much that just over a year ago we implemented two daily scheduled calls, supplementing the constant texting that goes back and forth among the various operating folks in the region, plus an ongoing TEAMS chat. While I did not attend this meeting, in August of 2022 there was a meeting in Kansas City between Kansas City Southern ("KCS") and Norfolk Southern, focused on precisely these concerns. That was a meeting between KCS and Norfolk Southern, and not between CPKC and Norfolk Southern, but the constant and daily congestion and consultation between Norfolk Southern and CPKC following CPKC's acquisition of KCS certainly could not have escaped CPKC's attention.

CPKC

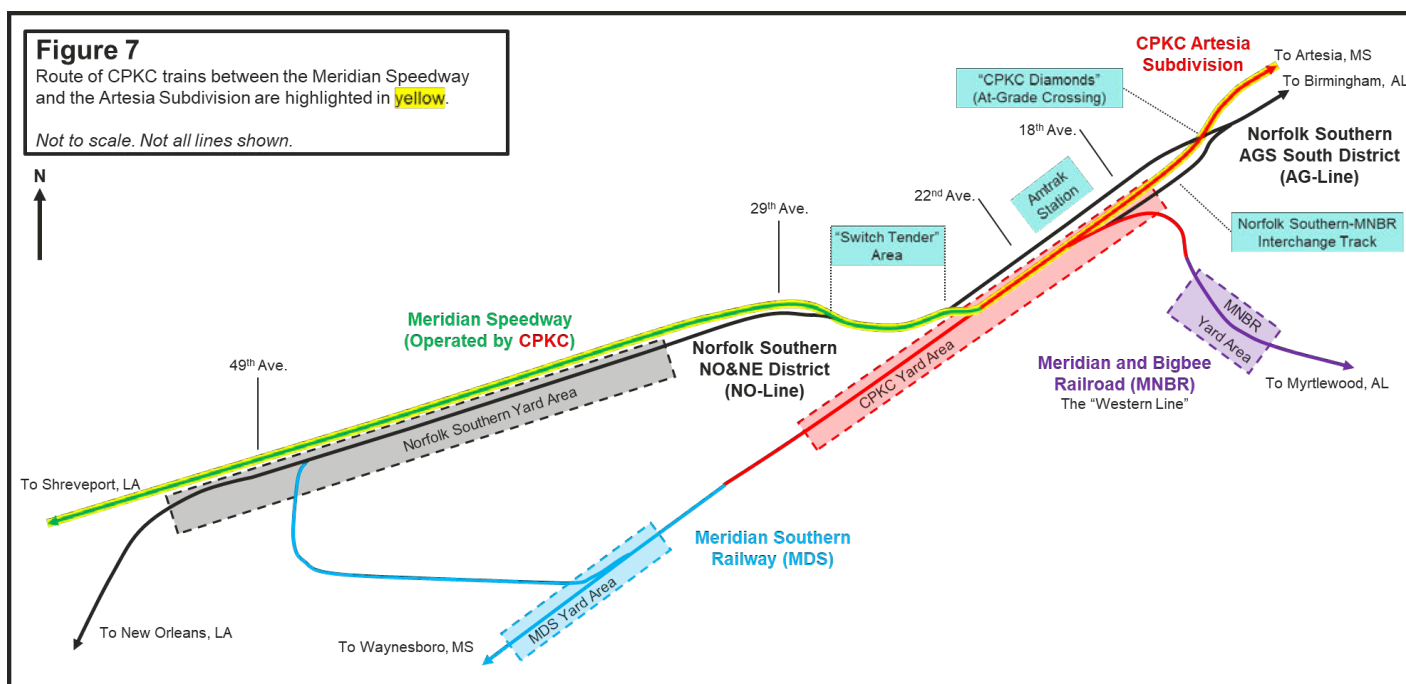
Traffic Between the Meridian Speedway and MNBR

Today, some train traffic moves off the Meridian Speedway into Meridian and onto the Western Line, or vice-versa. I understand more of this traffic is planned by CPKC as a result of its proposed transaction with the MNBR. The routing for these trains through Meridian is shown in yellow in Figure 6 below.



Traffic Between the Meridian Speedway and Artesia

CPKC trains currently operate between the Meridian Speedway and the CPKC Artesia Subdivision, and these trains may or may not be worked in the CPKC Meridian Yard. The routing of these trains is shown in yellow in Figure 7 below. The CPKC Meridian Yard is located in the middle of the Meridian Terminal between the Switch Tender (south of the Meridian Amtrak station) and the CPKC Diamonds (north of the Meridian Amtrak station). Often, when CPKC is switching in its Meridian Yard, the diamonds and/or the Switch Tender are blocked, which in turn blocks the through movement of traffic, including Norfolk Southern and Amtrak north-south traffic.



II. Operational Complexity in Meridian, MS

The operations in Meridian, MS are more complex than portrayed by CPKC in its filings. There are several factors, which I will describe in detail below, which create a complex operating environment in this location. Each of these factors alone introduces complexity, delay, and congestion, and the combination is especially challenging to navigate.

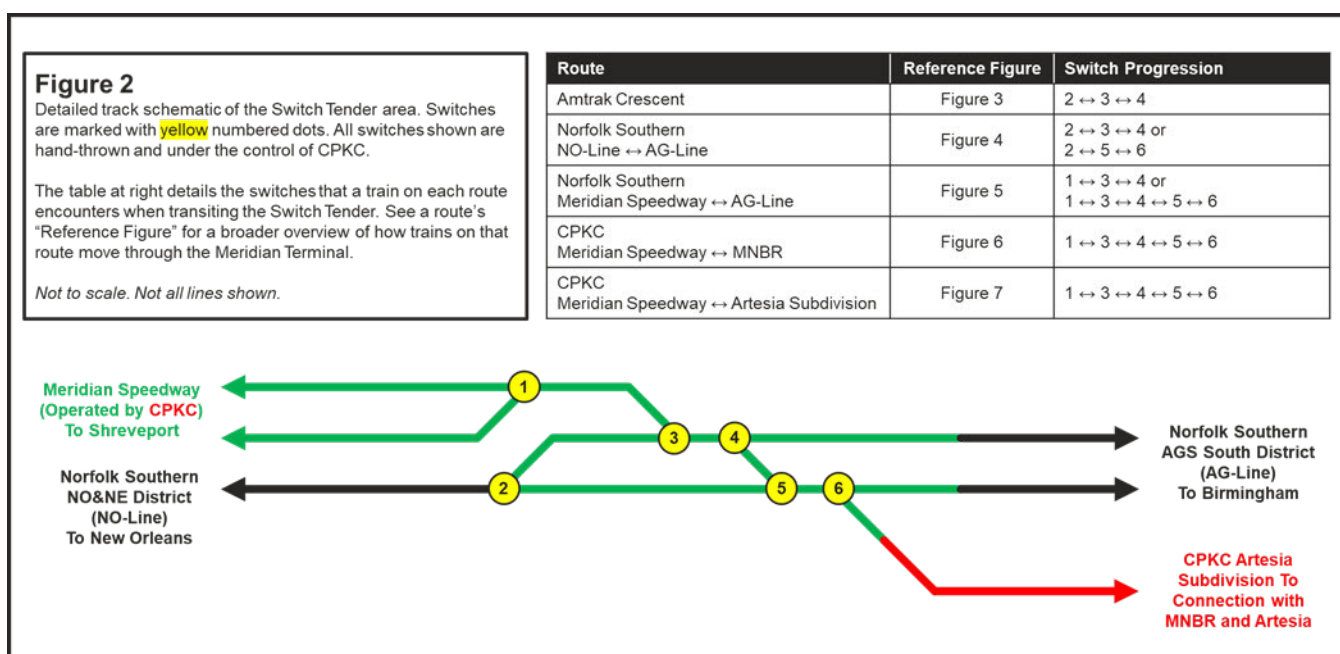
Hand Thrown Switches and the Switch Tender Area

Just about every train moving through the Meridian Terminal must make at least one diverging move through a switch. Many of the switches in the terminal are hand-thrown switches, meaning that a person on the ground must manually operate the switch. Hand-thrown switches are large contributors to congestion in Meridian. In order to conduct safe operations in compliance with the operating rules, all Norfolk Southern, Amtrak, and CPKC trains approaching a switch must be prepared to stop to properly line that switch. Lining these switches takes time; for example, if a conductor on a train needs to line switches, the train must come to a complete stop, the conductor needs to get off the train, safely walk to the switch or switches, align the switches to provide a route

for the train, and then get back on the train to continue moving.¹ Between the need for all trains to approach slowly and the frequent need for employees to properly line switches for a safe and proper route, this process naturally creates delays to train operations through this area.

One particular region in Meridian, referred to as the Switch Tender area, has a series of six hand-thrown switches within a 600-foot area. Figure 2 above and repeated below provide a detailed track schematic of the Switch Tender area. The Switch Tender area is notorious for delays and congestion within the Meridian Terminal. As described above, it is directly on the route between the Meridian Speedway and the CPKC segment that links the Meridian Speedway and the MNBR Western Line. It also connects the route between the Norfolk Southern lines heading into the Meridian Terminal from the north and the south (utilized by Amtrak on its route between New Orleans and Birmingham), as well as the route between the Meridian Speedway and the CPKC Artesia Subdivision. Blocking the Switch Tender has cascading adverse effects that can ripple well beyond Meridian. Occasional increases in trains through Meridian have a disproportionate impact on traffic flows through Meridian. Figure 2 repeated again here depicts the layout of the Switch Tender area.

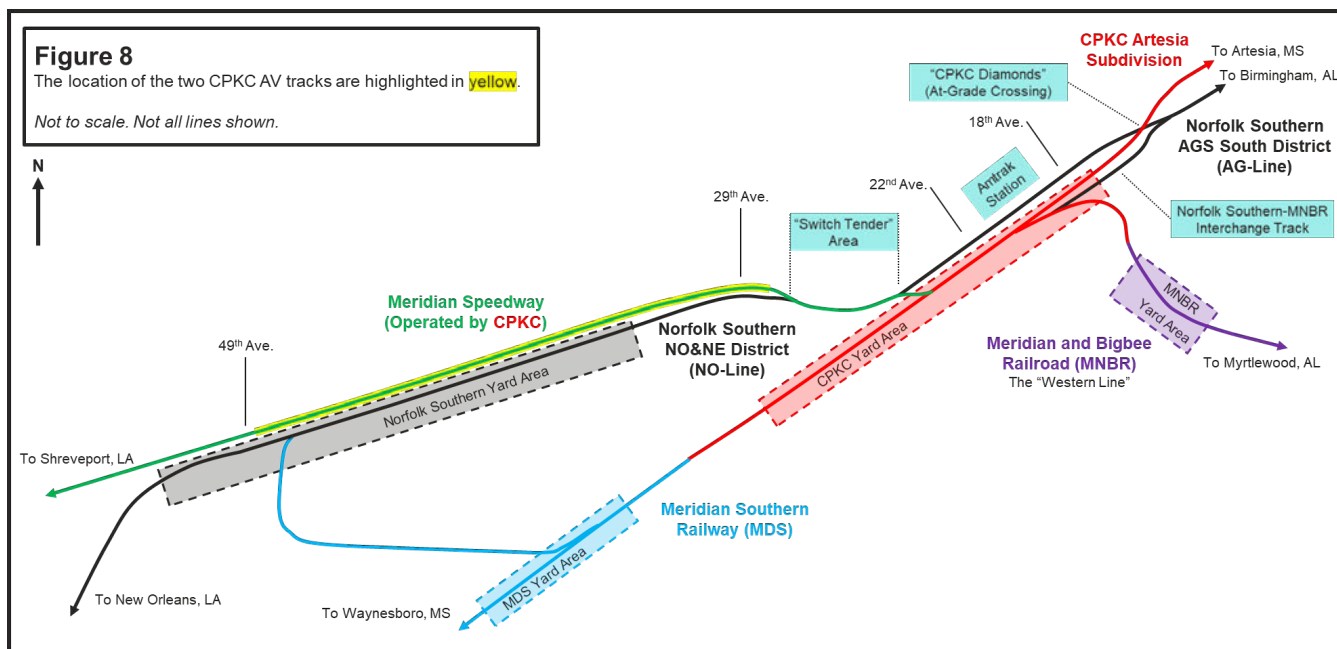
¹ Occasionally, utility employees line and restore switches at the Switch Tender. Given the flexible nature of utility assignments, this is completely dependent on availability and other work needed in the area.



Additionally, the track layout of the Switch Tender has a confined physical plant, which reduces the overall capacity for trains passing through Meridian. On Norfolk Southern, there is a short stretch of single track on the NO-Line from the Norfolk Southern Meridian Yard to the Switch Tender. The Meridian Speedway route briefly reduces from two siding tracks to one lead track before connecting to the Norfolk Southern AG-Line and the CPKC Artesia Subdivision. These short stretches of single track are like the center of an hourglass shape, where there is a constraint on the amount of “sand,” or trains, that can pass through the Switch Tender. The Switch Tender track arrangement does not allow for simultaneous, bi-directional “parallel moves” for trains entering or exiting the Meridian Speedway, or trains entering or exiting the NS NO-Line.

Capacity Constraints on the Meridian Speedway

Immediately west of the Switch Tender, the Meridian Speedway route toward Shreveport, LA, expands to two tracks, called the AV tracks. Figure 8 highlights the location of the two AV tracks in yellow.



In theory, these AV tracks should be able to hold trains to avoid blocking the Switch Tender region, and in turn, avoid clogging the gateway. However, these AV tracks are short and unable to hold trains longer than 6,800 feet. Many current CPKC trains are too long to be held on those AV tracks. To keep these long trains moving, CPKC will prioritize their movement through the Switch Tender. In practice, this prioritization of trains causes a disproportionate CPKC occupation of the Meridian Terminal and causes complexity, delay, and congestion in the Meridian Terminal, largely felt by Norfolk Southern and Amtrak. For example, rather than hold a train at Meehan or Jackson, just west of Meridian on the Meridian Speedway, CPKC will force the train onto the AV tracks and thus forcing Norfolk Southern to take that train before Norfolk Southern can run a westbound to the Meridian Speedway. This can delay Norfolk Southern traffic on all routes through Meridian, as well

as Amtrak's Crescent. If Norfolk Southern does not get enough notice of the delay, for example, a Norfolk Southern train might be held in front of the Meridian Amtrak station without a clear path forward. That causes delays not only for Norfolk Southern but also for Amtrak. Regardless of the cause, because Amtrak operates on Norfolk Southern lines in this area, Norfolk Southern is charged for any resulting Amtrak delay minutes.

Conflicting Moves for CPKC Artesia Subdivision Trains

As shown in Figure 7 above, trains moving between the Meridian Speedway and the CPKC Artesia Subdivision cause conflicting moves at the Switch Tender and the CPKC Diamonds. Trains will arrive in the CPKC yard and stop to change their crew. While they are stopped, the "tail" of the train will often occupy the Switch Tender and one of the AV tracks. Between the number of hand-thrown switches and the complex route, CPKC trains for the Artesia Subdivision spend a significant amount of time maneuvering through the Meridian Terminal. More importantly, and because of the CPKC track layout, those trains block the Norfolk Southern path in town – twice – even if they do not stop. That continues the theme of congestion in Meridian because CPKC controls movements through the Switch Tender. This further contributes to delays for Norfolk Southern.

High Number of Grade Crossings Through this Area

While pockets of double track exist in the Meridian Terminal, grade crossings prevent their use for meets, passes, and staging of trains. Any staging of trains waiting for CPKC trains to operate through the Switch Tender typically cannot happen on double track in the Meridian Terminal. This means that Norfolk Southern must hold trains quite a distance out of Meridian to the north if it is not able to move through the Meridian Terminal.² Because Norfolk Southern makes reasonable

² When Norfolk Southern gets held out of Meridian because, for example, CPKC is occupying the Switch Tender and Amtrak needs to get through, Norfolk Southern attempts to hold the train at Livingston, which is roughly 37 miles north of Meridian. Once Norfolk Southern gets an indication that it is permitted to move that train into the Meridian Terminal, it can take anywhere from 60 to

efforts to prevent occupying crossings, these grade crossings limit the amount of time Norfolk Southern can stop a train in Meridian.

If CPKC provides notice that it will not immediately take a train on the Meridian Speedway as described above, Norfolk Southern will typically hold its trains outside of Meridian to decrease the time spent occupying the crossings. If CPKC does not give Norfolk Southern sufficient notice to avoid this scenario, and Norfolk Southern brings a train into Meridian, Norfolk Southern will consider cutting the train at the crossings, depending on the anticipated length of delay. However, cutting the train can lead to further delays. Anytime a train is cut, the crew must set handbrakes to tie the rear portion down, make the cut, and then pull forward to unblock the crossing. The tie down process can take at least 30 minutes since it involves the manual process of setting brakes on some of the cars on the train, a time-consuming process: walking from one car to the next, climbing up a ladder, setting the handbrake, climbing off the cars, and then repeating the process until the train is sufficiently anchored. When the train is put back together, it will take the same amount of time because the same sequence of events has to be reversed. All of these manual steps are required to comply with applicable safety regulations. Overall, this consumption of time causes further harm to fluidity in Meridian.

III. Current Challenges Regarding Amtrak Operations

I want to pay special attention to the challenges we are facing regarding Amtrak operations through Meridian – and this is before the addition of new CPKC trains to and from the new MNBR Western Line route. Delays to Amtrak trains, for any reason, impact the service obligation Norfolk Southern has as the host of the Amtrak train, even in Meridian when the train is on a short stretch of

90 minutes (depending upon size and composition) for that train to reach Meridian. Norfolk Southern holds northbound trains heading into Meridian at Basic.

CPKC-controlled track at the Switch Tender. These train delays impact both Amtrak's performance as well as the host railroad's performance for that Amtrak train.

Amtrak has statutory preference over Norfolk Southern's freight traffic hosted on Norfolk Southern tracks. But CPKC often occupies the Switch Tender for its own traffic, meeting its eastbound and westbound Meridian Speedway trains in Meridian rather than just to the west of Meridian at, for example, Meehan. This delays all other traffic attempting to move through the Switch Tender on a north-south routing, including, at times, Amtrak.

Additionally, CPKC traffic moving between the Meridian Speedway and the Artesia Subdivision also can cause delays for the Amtrak trains at the CPKC Diamonds. The at-grade crossing of the Norfolk Southern AG-Line and the CPKC Artesia Subdivision at the CPKC Diamonds north of the Meridian Amtrak station is supposedly governed by a "first come – first served" rule. If a CPKC train on the Artesia Subdivision approaches the diamonds and receives a signal to cross the diamonds, it can delay any train (including Amtrak) on the Norfolk Southern AG-Line that arrives soon after.

When a Norfolk Southern train is impacted by Meridian train congestion, it can occupy track waiting for traffic ahead to clear. Once the first Norfolk Southern train stops, additional Norfolk Southern trains "following" the first train can stack up behind it and be delayed by the Meridian train congestion. Additionally, trains trying to run in the opposite direction also can be delayed. These two example train scenarios of following and opposite direction trains are caused by congestion inside the Meridian Terminal but felt outside of the area. These collateral impacts can include trains operated by Amtrak. For example, if Norfolk Southern has a delayed train holding on Norfolk Southern track in Meridian while waiting for CPKC to provide a route, and that train cannot leave town to clear space for an Amtrak train due to operational challenges outside of Norfolk Southern's control, then the Amtrak train trying to serve the Meridian Amtrak station will

also be blocked. Depending on how trains are staged on the AG-Line, Amtrak can be blocked from accessing the Meridian Amtrak station for boarding activities. For example, on November 24, 2023, Amtrak charged Norfolk Southern for a {{[REDACTED]}} because Amtrak was unable to access the station track, an issue caused by CPKC's management of the Meridian Terminal.

As discussed above, Amtrak's Crescent service must traverse the Switch Tender, which lies just south of the Meridian Amtrak station. Amtrak must physically throw those switches at least half the time they move over the Switch Tender, causing a 5-to-10-minute delay charge to be assessed against Norfolk Southern as the host of the Crescent service at this location. For example, on November 29, 2023, Amtrak charged Norfolk Southern for a {{[REDACTED]}} delay due to the Amtrak train conductor needing to throw the CPKC switches after a CPKC train occupied the Switch Tender.

I noticed that in its filing, CPKC touted its A+ score with Amtrak. In my experience, CPKC's current operating practices in Meridian often impede Norfolk Southern's ability to run Amtrak on time through this region. It is our job at Norfolk Southern to not impact the Amtrak Crescent anywhere, which includes at Meridian. Generally, the Amtrak Crescent suffers most of its train delay at Meridian, which I know both anecdotally and from the data that I have seen on Amtrak train performance.³ I take these delays seriously, and it is frustrating that some of these delays are not caused by, nor in the control of, Norfolk Southern. Again, regardless of the cause of the delay Norfolk Southern is held responsible for Amtrak delay minutes on this route.⁴

³ See Appendix C - Verified Statement of William J. Rennie & Jason Kuehn, at 28-34.

⁴ Of course, most of these delays are categorized as freight train interference delays ("FTI") that are attributable in the first instance to Norfolk Southern. In the latest quarterly report issued by the FRA, the Crescent 19 had a customer on-time performance of 47.3% and the Crescent 20 had a customer on-time performance of 38.7%. Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations, Covering the Quarter Ending June 2023 (Third Quarter of Fiscal Year 2023), published by the Federal Railroad Administration at page 66. Far and away the vast majority of the host responsible delays to Crescent 19 and Crescent 20 are FTI (21,589 minutes of FTI delay out of the total of 37,486 minutes of

The result of Amtrak running the gauntlet of the various impediments outlined above is clear. More than a quarter of all delays to Amtrak 19 and Amtrak 20 are incurred in Meridian, MS. About a third of all host-responsible delays are assigned to Meridian, MS. CPKC claims that no passenger service operates on the Western Line, but any transaction that increases traffic through Meridian will have a very direct, adverse effect on Amtrak service, and more specifically, the passengers on Amtrak's Crescent route.

IV. The Proposed Transaction Will Exacerbate Current Complexity and Congestion in Meridian, MS

As noted above, operations in the Meridian Terminal are already complex, plagued with delays and congestion. The proposed transaction would increase traffic in this area, putting additional pressure on all the constraints noted above. I will note a few examples of challenges that I foresee as a result of this transaction, but this is certainly not an exhaustive list.

Increased CPKC traffic will make accessing the gateway even more challenging. CPKC's proposed new trains are supposed to move between the Meridian Speedway and the MNBR east of downtown, utilizing the AV tracks and Switch Tender. While CPKC has testified that the proposed new trains will not have to stop in Meridian for a crew change, it does not follow that the proposed new trains will not have to stop in Meridian at all. These new trains will have to stop to line switches to get to the MNBR/Western Line route. When they do that, the eastbound trains will occupy the Switch Tender, occupying the path of Norfolk Southern and Amtrak trains. Additional traffic in the AV tracks and Switch Tender areas will exacerbate the issues at each location, as detailed above. Issues at these locations negatively impact Norfolk Southern and Amtrak traffic – and, importantly, NS customers and Amtrak passengers.

host railroad responsible train delay minutes). Id. at 34. CPKC does not answer for these delays; Norfolk Southern does.

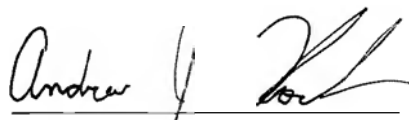
Additionally, the CPKC Supplemental Filing stated that the rail operations resulting from the proposed transaction will not delay Amtrak because CPKC's schedule for its new train is not supposed to overlap with the schedules of Amtrak trains 19 and 20. However, based on my experience, CPKC's view is myopic. For the new train to hit its scheduled slot in Meridian just right, other trains and operations in the Meridian area and beyond may be negatively impacted. Should a conflicting move arise and CPKC decides to prioritize its new eastbound train, the other move will take delay, which could ripple to affect the oncoming Amtrak trains. I also fundamentally disagree with CPKC's blanket statement that "no delays to passenger or freight rail service should be occasioned on any line due to Transaction-related traffic," based on CPKC's assertion that existing capacity that can easily accommodate additional train service. CPKC-7 at 8. Because CPKC makes this statement with regard to the route "between Shreveport and Meridian," Id., CPKC may mean to exclude consideration of traffic flowing through the Meridian Terminal itself, but in my experience Norfolk Southern and Amtrak are often delayed in movements through Meridian due to train handling by CPKC. Day-to-day fluctuations that cause temporary increases in traffic through Meridian often cause a significant amount of additional congestion (and it is almost inevitable that Norfolk Southern and Amtrak experience the adverse impact of that added congestion), and that congestion spills over onto adjacent rail lines.

The two primary keys to Meridian fluidity are to keep trains moving as they approach Meridian, and to keep occupancy of the Switch Tender at a minimum (i.e. no stopped trains). Today's CPKC-controlled operations violate those two premises. As I have described in the passages above, because CPKC controls the Switch Tender - and dispatches trains to best suit CPKC's operating needs - any additional train services, such as the proposed new "Western Line" trains utilizing the connection to MNBR, will have an adverse impact on the existing Norfolk Southern and Amtrak trains.

CERTIFICATION

I, Andrew Koch, Assistant General Manager Network Operations Center for Norfolk Southern Railway Company, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 14 day of December 2023.



Andrew Koch

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
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COMMENTS AND REQUESTS FOR CONDITIONS

Appendix B

Verified Statement of Michael R. McClellan

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
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APPENDIX B

VERIFIED STATEMENT OF MICHAEL R. MCCLELLAN

My name is Michael R. McClellan. I am Senior Vice President and Chief Strategy Officer at Norfolk Southern Corporation and Vice President of Norfolk Southern Railway Company (collectively “Norfolk Southern”). I have been with Norfolk Southern since 1998, and in my current position since April 2021. I am a career railroader and have a diverse transportation background that spans three decades in railroad management, technology, logistics consulting, and sales and marketing. As such, I am intimately familiar with the existing conditions and operations through Meridian, MS. I am aware that Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC (“CPKC”) has filed an application for approval to purchase the Meridian & Bigbee Railroad, L.L.C. (“MNBR”) between Meridian and Myrtlewood, Alabama (the “Western Line”). I am also aware that CSX Transportation, Inc. (“CSXT”) has filed an application for approval to reacquire the MNBR rail assets between Myrtlewood and Burkeville, Ala. (the “Eastern Line”).

I know that the public version of the application provided by CPKC (the “CPKC Application”) to the Surface Transportation Board (the “Board”) had descriptions of rail assets and operations in what was characterized as “Meridian, MS”, but that document appeared to me to focus mostly, if not entirely on descriptions of rail assets and operations currently owned by MNBR and to be acquired by CPKC. I also read the public version of the CPKC’s Supplemental Information, which only lightly addressed the rail operations moving through the Meridian rail hub. Similarly, I read the public version of the application put forth by CSXT (the “CSXT Application”) for CSXT to reacquire the Eastern Line, and the public version of the CSXT’s Supplemental Information.

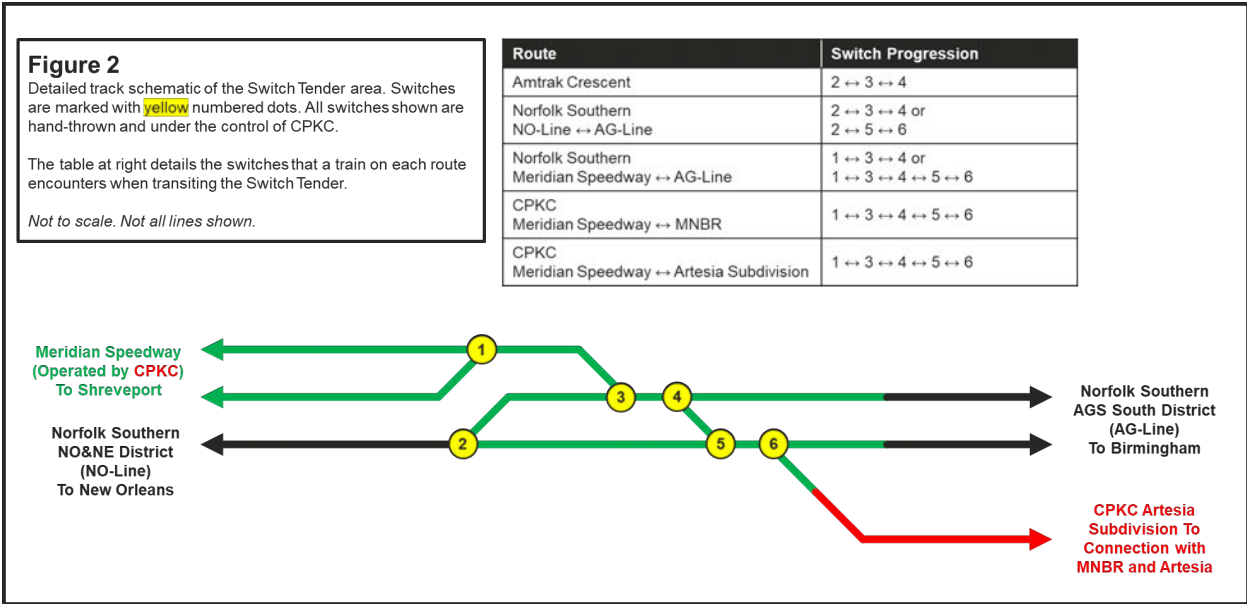
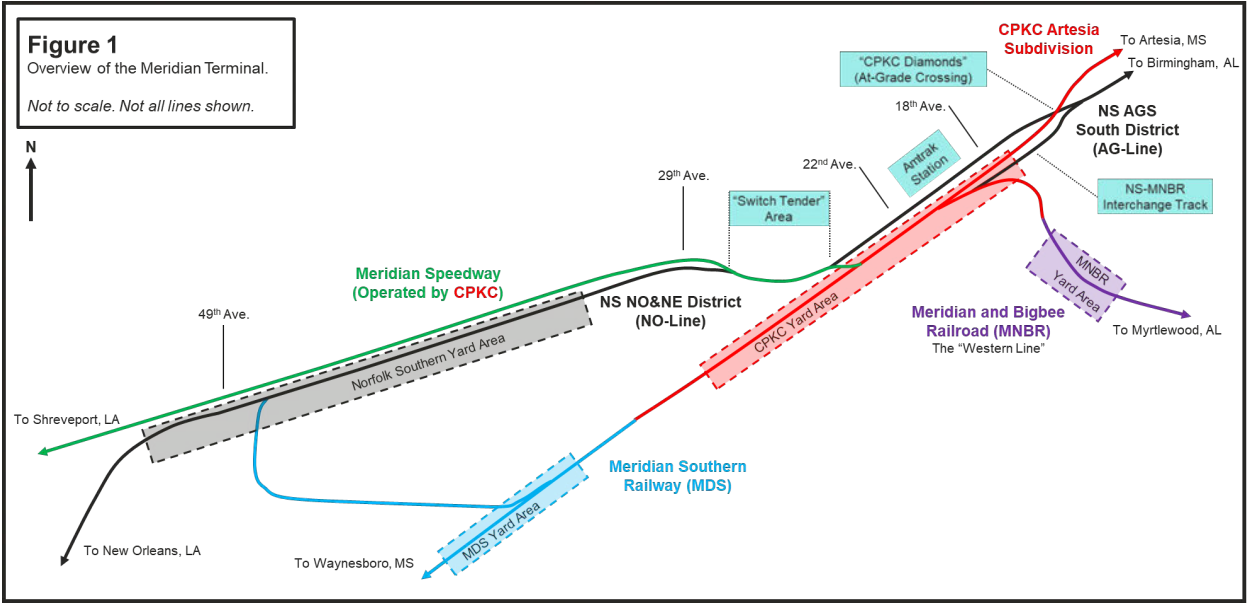
My Verified Statement will focus on the impact of CPKC’s proposed transaction on the Meridian, MS Terminal (the “Meridian Terminal”). Specifically, I will: (1) provide comment as to how rail infrastructure improvements at Meridian, MS can help mitigate the exacerbation of delays and congestion likely to accompany the introduction of new and diverted traffic resulting from the CPKC transaction; and (2) identify five specific infrastructure projects and accompanying operational proposals that Norfolk Southern has developed that will mitigate the congestion-related harm caused by this Transaction.¹

I. Rail Infrastructure Improvements Needed at Meridian, MS.

In my role at Norfolk Southern, I have a unique perspective as to the importance of the Meridian Terminal in Meridian, Mississippi, which is a singularly complex Gateway city that hosts five railroad operations, including Norfolk Southern, CPKC, Amtrak, Meridian and Bigbee, and Meridian Southern. The two primary rail operators, Norfolk Southern and CPKC, come together at a location called the “Switch Tender” which is capacity-constrained with antiquated

¹ In addition to the Board ensuring that the competitiveness of the Meridian gateway is preserved, the Board must protect the competitiveness of operations at Selma for the reasons explained herein.

infrastructure. Figure 1 provides an overview of the Meridian area, including the location of the Switch Tender. Figure 2 shows a close up of the Switch Tender.



I have read the Verified Statement of Andrew Koch.² Based upon my experience, I find his description of the operations and challenges at the Meridian Terminal to be accurate. Both Figure 1 and Figure 2 above are based on figures from his verified statement.

Further, I have read the Verified Statement of William Rennie and Jason Kuehn, both from Oliver Wyman.³ Based on my experience and knowledge of this location, I find their description of infrastructure, operations and solutions around the Meridian Terminal to be accurate as well.

Messrs. Rennie and Kuehn note in their Verified Statement that “[i]n the case of the Meridian Terminal, both Amtrak and Norfolk Southern trains already experience significant delays. . . . adding additional trains, without making any capacity improvements, will only increase the delays for all trains dependent on the [Meridian] Terminal.”⁴ Messrs. Rennie and Kuehn go on to note that while the CPKC filing confirms the addition of at least one new CPKC train pair to operate through the Meridian Terminal, CPKC leaves the door wide open to introduce additional train pairs without any acknowledgement of the additional harm that would be imposed on Norfolk Southern and Amtrak from the first, second, third, etc. new train pair introduced by CPKC.

This is the crux of my concern about this transaction: CPKC is going to introduce new trains through a constrained interlocking at Meridian, and as such worsen service performance for Norfolk Southern and Amtrak (which runs on Norfolk Southern).⁵ CPKC is less likely to be

² Appendix A - Verified Statement of Andrew Koch (“Koch V.S.”).

³ Appendix C - Verified Statement of William J. Rennie & Jason Kuehn (“Rennie/Kuehn V.S.”).

⁴ See Rennie/Kuehn V.S. at 32.

⁵ I understand that CPKC states that it anticipates only one additional daily train pair (that is, two new trains) to operate through the Meridian Terminal within the first five years of the closing of the transaction, and that this train pair is the basis for many of the statements that CPKC makes claiming no

adversely impacted as they control movement through the Switch Tender. In the end, the ones that would be most adversely impacted are Norfolk Southern's freight customers and Amtrak's passengers.

The Meridian Speedway ("MSLLC") has been one of the most innovative, successful and competitive rail ventures introduced and approved by the STB this century. Since its inception, Norfolk Southern and KCS have removed hundreds of thousands of trucks from the highway in the extremely competitive Texas to Southeast truck market. Speed, cost and reliability are critical to competing with trucks in this lane, and anything done to degrade this service reduces Norfolk Southern's competitive position and our ability to compete against trucks. It is plainly obvious from my experience, and confirmed by Mr. Koch and Messrs. Renniecke and Kuehn in their respective verified statements, that the proposed CPKC transaction will have a significant adverse impact on the ability to feed traffic onto and off of the Meridian Speedway through the Meridian Terminal.

Amtrak will be affected as well, as Mr. Koch and Messrs. Renniecke and Kuehn have thoroughly demonstrated. Amtrak Crescent trains 19 and 20 lose more time at the Meridian station than any other place by far on their route between Alexandria, VA, and New Orleans, LA, on Norfolk Southern. Ironically, when delays are incurred at Meridian by Amtrak, it solely impacts Norfolk Southern's on-time report card, even when those delays are caused by actions

real adverse impact arising from the proposed transaction. But in my experience, transactions like the one proposed have longer runways before the anticipated diversions and efficiencies arise. I am aware that there are a number of plans for infrastructure improvements along the Western Line. Economically rational rail companies do not enter into such transactions requiring the significant investment anticipated here with the plan that those significant investments will necessarily produce a return within the initial five years. As a result, I pay attention not only to the claim that CPKC intends to introduce one daily train pair within the first five years, but also to the statement made in the CPKC supplemental submission that discusses a second train pair as early as year eight. CPKC Supplemental Information ("CPKC-7"), filed November 21, 2023, at 8.

taken, or not taken, by CPKC in moving freight through the Switch Tender. Given Messrs. Rennie's and Kuehn's assessment of the capacity situation in Meridian, it is reasonable to expect even further delays on Amtrak Crescent 19 and 20 if this transaction is approved without condition.

In its supplemental information filing, CPKC states that, "[i]f in the future, Norfolk Southern and CPKC volumes are expected to exceed capacity, Norfolk Southern and CPKC can invest in additional infrastructure under the terms of their agreements. Moreover, the MSLLC agreement governs service and addresses infrastructure needs."⁶ That is true: Railroads can agree to make investments in infrastructure together. However, Norfolk Southern is hesitant to accept that this is the solution in this instance, for three important reasons. First, and as explained in the Rennie/Kuehn verified statement,⁷ some of the infrastructure projects Norfolk Southern believes are necessary to address the added congestion from the CPKC transaction are not to be constructed on MSLLC property. Second, even for those to be constructed on MSLLC property, the cost of construction would be borne in whole or in part by Norfolk Southern (directly or through its interest in the MSLLC), even though the reason for the construction are the trains that CPKC is bringing to the line due to CPKC's transaction.⁸ Finally, Norfolk Southern is hesitant to accept this as an acceptable solution based on a lengthy history of unsuccessful negotiations between Norfolk Southern and KCS – and now CPKC – in which the parties have talked about

⁶ See CPKC-7, at 13 (presumably referring to the limited liability company agreement governing the Meridian Speedway LLC ("MSLLC") which is majority owned by CPKC and in which Norfolk Southern has a minority interest).

⁷ See Rennie/Kuehn V.S. at 58, 60, and 61.

⁸ The MSLLC agreement is complicated with regard to what member of the company has to finance what proposed pieces of infrastructure, and CPKC is the majority owner of that company, but even if the cost of a particular piece of infrastructure lands on the MSLLC company itself, that affects the value of the Norfolk Southern membership interest in the company.

improvements on numerous occasions, without ever having been able to come to final terms. These conversations about investment in additional infrastructure cannot wait until “Norfolk Southern and CPKC volumes are expected to exceed capacity.”

Given the complexity and density of the current rail operations at the Meridian Terminal, I remain unconvinced by CPKC’s conclusory statements, that “existing capacity between Shreveport and Meridian can easily accommodate this modest additional train service with no material impact on the fluidity of rail operations”⁹ and further that, “Meridian can easily accommodate more cross traffic without negatively impacting fluid operations on NS’s line.”¹⁰ The failure of CPKC to provide any in-depth analysis to back up these statements underscores my skepticism. As a career railroader, it is clear to me that if CPKC acquires the Western Line with the intention of growing CPKC traffic, without making infrastructure improvements at the Meridian Terminal, Norfolk Southern and the shippers and passengers relying on Norfolk Southern and Amtrak rail service will bear the brunt of the congestion that is soon to follow.

Norfolk Southern has repeatedly expressed during this proceeding its concern that the CPKC Transaction and the CSXT Transaction combined may have “broader impacts beyond local shippers on the line segments themselves.” I lead Norfolk Southern’s strategic network development, and, as such, I join in this concern based on my first-hand knowledge that the Meridian Terminal is a crucial north-south connection for Norfolk Southern. Congestion and delays at this interchange already have an impact on Norfolk Southern’s other rail operations that will be exacerbated by the anticipated CPKC traffic growth at the Meridian Terminal as a result of this Transaction.

⁹ See CPKC-7, at 8.

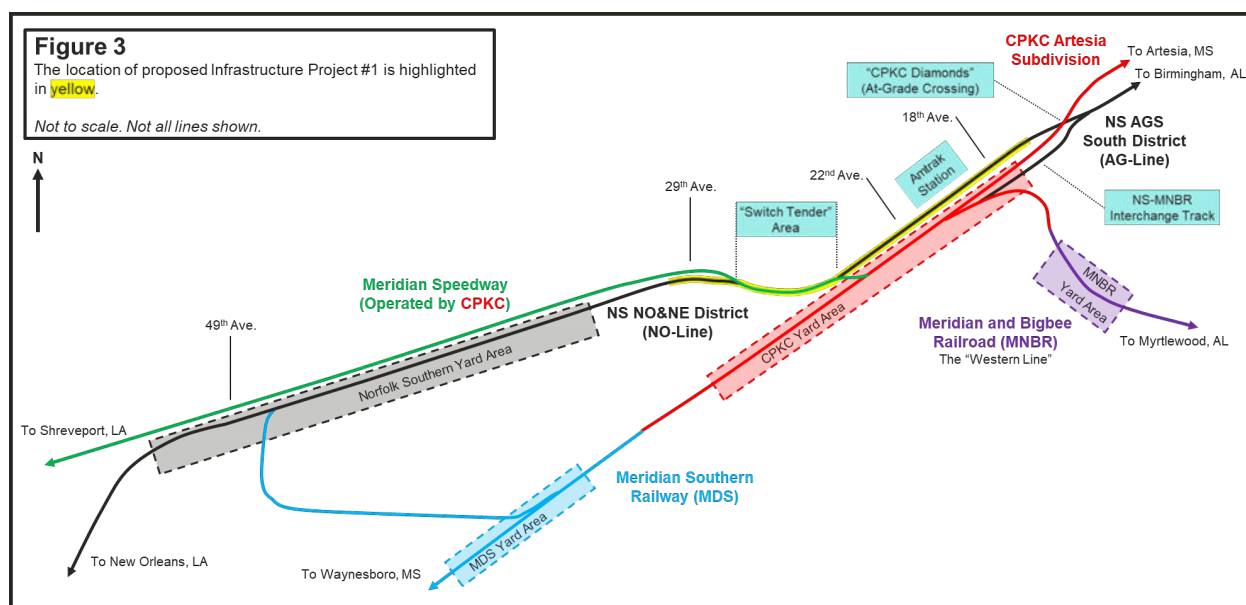
¹⁰ Id. at 10.

Fortunately, Norfolk Southern believes that it has introduced a package of infrastructure improvements and operating practices that can mitigate – but not entirely eliminate – the most adverse impacts of the introduction of these new CPKC trains. Of the five (5) infrastructure projects that CPKC and Norfolk Southern can implement, three can be implemented within the first five years of the transaction, for the purpose of ameliorating the negative impacts to Meridian expected from the CPKC Transaction. Norfolk Southern believes so strongly that these improvements are necessary, that it is willing to cost-share in the improvements, which will mitigate against the anticipated effects of the CPKC transaction, while preserving competition amongst all carriers.¹¹ Each of these projects has been tailored to address the adverse operational impacts Norfolk Southern believes will arise as a result of the CPKC Transaction.

Infrastructure Project #1: Construction of Additional Main Line

The first project involves a rail infrastructure project that would reconfigure the terminal area. It involves Norfolk Southern being permitted to construct an approximately 5,500 foot additional main line from the north end of its yard (M.P. NO 0.9) to just south of the CPKC/Norfolk Southern diamond (M.P. AG 294.9). This would include a diamond or cross-over through the Switch Tender area. This infrastructure project may involve some construction on CPKC property and/or reasonable modification of CPKC track or signaling. Figure 3 shows in yellow where this additional main line would be installed.

¹¹ Norfolk Southern would be willing to finance the cost of construction and maintenance of the first project, and would own the resulting infrastructure. The cost-sharing of the remainder of the projects remains to be determined but should predominantly be borne by CPKC as a cost of projects necessary in order to mitigate harm arising directly from its proposed transaction. The cost of the second and third projects (powering of switches and installation of a connection) are minor. Further, the cost of grade crossing closures are often subsidized by public funds in line with the value received by the general public. Norfolk Southern would agree to Board-sponsored mediation to reach a cost-sharing agreement.



This project would allow two trains to make simultaneous moves through the Switch Tender. With the current track layout of the Switch Tender, Norfolk Southern can only send one train at a time between its AG-Line and its NO-Line. This additional mainline would allow for two Norfolk Southern trains to make this move simultaneously. It would be long enough to hold trains without blocking grade crossings and trains of 6,600 feet or less, could sit south of the Switch Tender without blocking grade crossings. Furthermore, existing track configurations at the Switch Tender and on the Meridian Speedway immediately to the west limit the ability to meet trains moving between the Meridian Speedway and the Norfolk Southern AG-Line. Constructing this additional main line would provide additional flexibility for executing these train meets, as well as adding flexibility for Amtrak flows.

Infrastructure Project #2: Power Switches

The second infrastructure project to mitigate the adverse effects of the increased CPKC transaction traffic growth is to power up the switches at the Switch Tender. The Switch Tender is owned by MSLLC and operated and dispatched by CPKC, so these powered switches would be

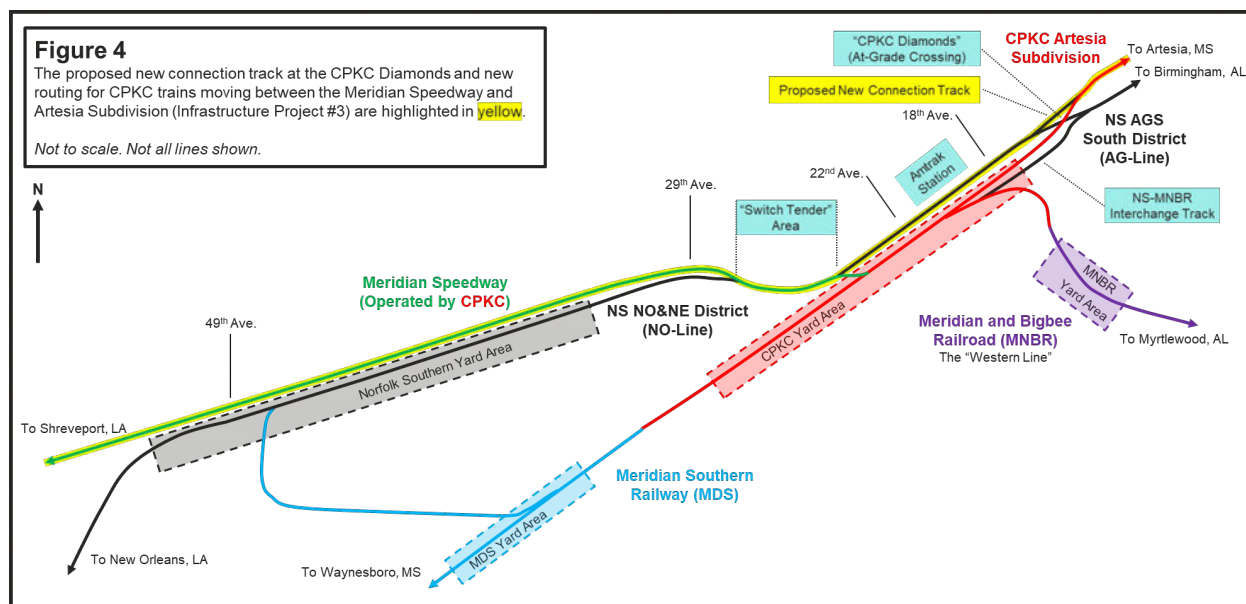
tied into the CPKC yard master or dispatcher's office. The powering of these switches would allow the CPKC dispatcher to align the switches in the Switch Tender properly as traffic approaches, eliminating the need for that traffic to stop and hand-throw switches. Trains could coordinate their arrival time at the Meridian Terminal with the dispatcher or yard master. As a result, trains on all five lines radiating from the Meridian Terminal would encounter faster running times through the Switch Tender, and thus a significant downstream negative effect arising from the proposed Transaction on Norfolk Southern and its shippers would be addressed.

Infrastructure Project #3: Connection between Norfolk Southern and CPKC Line to Artesia

The third infrastructure project that must be constructed to mitigate the adverse effect of the increased traffic resulting from the CPKC transaction also involves an operational change. The CPKC traffic that moves between the Meridian Speedway and the CPKC route to Artesia today must cross the Norfolk Southern route twice – once over the Switch Tender and again over the CPKC Diamonds. However, a simple powered connection between the Norfolk Southern tracks and the CPKC line to Artesia, when combined with CPKC trackage rights over the Norfolk Southern between KCS Interlocking and the Switch Tender, would allow some CPKC trains to avoid a significant amount of time currently spent maneuvering through the Meridian area. The CPKC trains that do not require any work at the CPKC Meridian Yard could simply “bypass” the most significant Meridian bottleneck points by using the operating rights and the proposed CPKC-NS connection.

The CPKC trains would use the Norfolk Southern track closest to the passenger station, leaving the new Norfolk Southern mainline, described as Infrastructure Project #1 above, and the existing Norfolk Southern mainline open for other train movements. This new routing is much

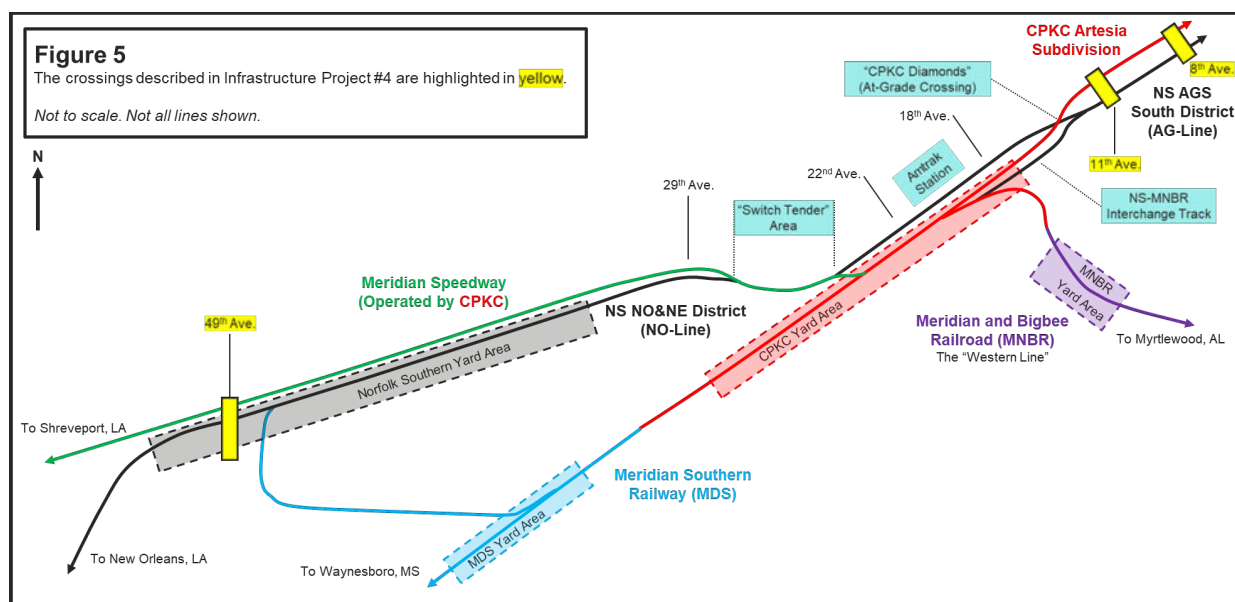
simpler and avoids causing multiple conflicts with Norfolk Southern trains both at the CPKC Diamonds and the Switch Tender. Figure 4 below shows the location of the Infrastructure Project #3: the Connection between Norfolk Southern and CPKC Artesia Subdivision.



I realize that CPKC has not forecasted an increase in the number of these specific trains as a result of the proposed CPKC transaction. Nevertheless, by removing them from the heart of the Meridian Terminal and thus their interactions with other cross traffic, this infrastructure project and operating directive would free up a significant amount of capacity to handle the additional east-west traffic (and attendant congestion) that will result from the proposed CPKC transaction. Norfolk Southern is willing to provide trackage rights to CPKC for these trains on industry-standard terms and conditions to free up capacity in the Meridian Terminal, thereby minimizing the adverse impacts to Norfolk Southern and Amtrak resulting from the proposed CPKC transaction.

Infrastructure Project #4: Crossing Closures or Grade Separations at 8th, 11th, and 49th Avenues

As described by Mr. Koch and Messrs. Rennicke and Kuehn, the current grade crossings at 8th, 11th, and 49th Avenues in Meridian are choke points that prevent any of the Norfolk Southern double track from being used as a meet-pass location at the Meridian Terminal. Figure 5 shows the locations of these crossings in yellow. The increase in traffic as a result of the CPKC Transaction will exacerbate the restrictions these crossings impose on the gateway infrastructure fluidity. While any grade crossing project will necessarily require the cooperation of City, State, and Federal authorities, as a member of the executive team at Norfolk Southern, I can ensure Norfolk Southern's full cooperation to implement this project, which is critical not only for Norfolk Southern traffic, but for the public as well.



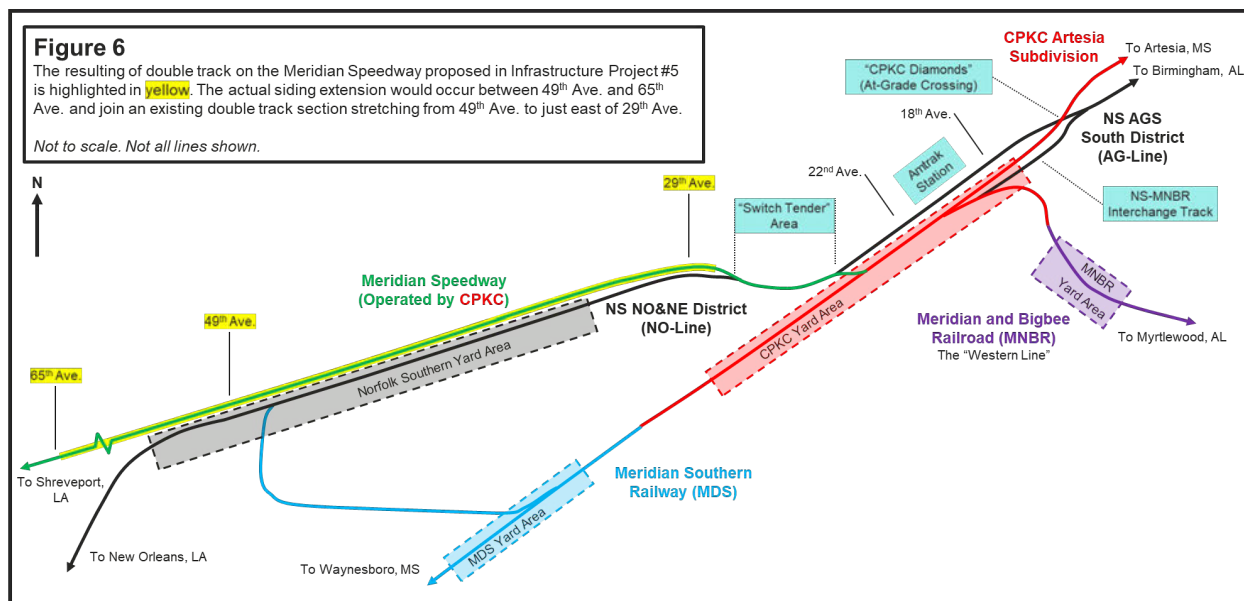
Closing these grade crossings would facilitate train meets at Meridian. For example, even the closure of both 8th and 11th Avenues alone would provide about 7,200 feet of track to hold a train on Norfolk Southern between the CPKC Diamonds and Hawkins Crossing Road. When this is combined with the connection anticipated at the CPKC Diamonds, offering an alternative route for CPKC for trains operating between the Meridian Speedway and the Artesia Subdivision,

Norfolk Southern would be able to stage trains of approximately 10,000 feet. These trains would block the diamonds, but would not impact CPKC trains.

The initiative to close or grade-separate 49th Avenue would help both NS and CPKC with capacity in Meridian. Addressing 49th Avenue will create approximately 10,500 feet of double main track for NS train meets between Arundel Road and the Switch Tender, and would add a great deal of operational flexibility for NS in Meridian. Additionally, the 49th Avenue grade crossing is important because 49th Avenue also is a constraint on the CPKC-controlled MSLLC AV tracks. Eliminating that constraint through a grade crossing project will enable the expansion of those tracks, as I discuss below.

Infrastructure Project #5: Siding Extension between 49th Street and 65th Avenue

The fifth infrastructure project is dependent on the elimination of the at-grade crossing at 49th Avenue. Once project four is complete, then MSLLC would be able to extend the siding/second track (AV02) on the Meridian Speedway from just east of 49th Avenue to just east of 65th Avenue. Exhibit VI-3: New Holding Points for Trains After Completion of the Projects, reproduced below, shows the extended double-track area that would be created on AV01 and AV02. The AV tracks are too short to hold long trains. Extending this siding would allow for trains of 12,000 feet to hold or to meet and pass on the Meridian Speedway at the western entrance to the Meridian Terminal, rather than in the heart of the Meridian Terminal, and thus remove some train meets from the Switch Tender area. This would enhance capacity, fluidity, and operational flexibility for the broader terminal area. Figure 6 below depicts Infrastructure Project #5: Siding Extension between 49th Street and 65th Avenue.



Other Operating Practice Modification

As described, Norfolk Southern has proposed that, once the connection is constructed at the CPKC Diamonds, and the switches are powered up at the Switch Tender, CPKC should be directed to route its trains running between the Meridian Speedway and the Artesia Subdivision that do not require a work event in Meridian over Norfolk Southern trackage utilizing trackage rights to be granted by Norfolk Southern. Obviously, this can only be effective once the associated infrastructure improvements have been completed.

Norfolk Southern also has proposed that the Board should condition its approval of the proposed transactions on directing CPKC to adopt an operating practice that ensures that any train that originates or terminates east of Meridian should not be allowed to foul the Switch Tender when changing crews or picking-up or setting-off traffic in the Meridian Terminal. That operating practice can go into effect immediately. Given the small amount of traffic that CPKC claims it will be moving on this route, this should not be unduly burdensome, and the practice will add significantly to the Meridian Terminal's fluidity. Extending the AV Track as described in Project #5 above, though, would go a long way to facilitating that effort. A "Master Plan"

would have to be developed by CPKC and Norfolk Southern to implement these five infrastructure projects and the Master Plan would be divided into phases. Norfolk Southern is committed to working with CPKC to come to an agreement for all phases of the road map for the Meridian Terminal.¹² Yet, this also requires a commitment from CPKC to help execute and fund these improvements, which should be a condition to the Board's approval.

Preserving Competition in Selma

CSXT's commitment to keeping Selma as an open gateway must be clarified. CSXT states that it "commits to maintain[ing] the existing gateway at Selma with Norfolk Southern Railway Company ("NSR") open on commercially reasonable terms."¹³ All Class Is, particularly CSXT,¹⁴ understand that true open gateways not only deal with the quoting of rates, but also the need to keep the gateway open operationally. CSXT specifically promised that it was "not going to do anything either physically or financially that is going to take away a competitive option that exists today."¹⁵ Service reliability is of the utmost importance to shippers, as such, CSXT must be ordered not to do anything either physically or financially to take away the competitive option that exists today at Selma, and as such must provide to all potential shippers¹⁶ the same level of frequency and reliable service shippers, whether in existence today or in the future, and regardless of their physical locations, have available to them today. The Board must ensure that Selma remains an open gateway.

¹² Projects 1, 2 and 3 could be initiated by either party within 5 years of an agreement on a Master Plan while Projects 4 and 5 are longer term in nature.

¹³ CSXT Application, at APP-230, citing the Verified Statement of Arthur Adams, Jr., at APP-222.

¹⁴ CSX Corporation and CSX Transportation, Inc., et al. – Control and Merger – Pan Am Systems, Inc., et al., FD 36472 (STB served April 14, 2022) (admitting that price was not the only consideration in preserving competition).

¹⁵ Id at 16.

¹⁶ One NSR customer physically located on the Eastern Line that is currently using the Selma interchange.

II. Conclusion

Based on my experience, and the attestations made in the Verified Statements of Mr. Koch and Messrs. Rennicke and Kuehn, I have significant concerns related to the impacts of the CPKC Transaction and the CSXT Transaction on Norfolk Southern's rail operations moving through the Meridian Terminal. The additional traffic anticipated by CPKC as a result of this Transaction will exacerbate the capacity, fluidity and service issues Norfolk Southern and Amtrak are facing at Meridian, MS. I believe that a transaction that improves CPKC's competitive position at the expense of Norfolk Southern's, Amtrak's and our customer's competitive position is antithetical to competition. Fortunately, Norfolk Southern has offered a series of projects that help CPKC to pursue its transaction while harm to Norfolk Southern, our customers, Amtrak and its passengers is mitigated. Further, Norfolk Southern is willing to share in the cost of these mitigating improvements. The result will be one where CPKC's competitive position is improved, Norfolk Southern's operating position is at least preserved, and Amtrak's passengers can be served better.

Similarly, for the reasons explained herein, the Board must clarify CSXT's commitment to keep Selma as an open gateway. Without a condition requiring CSXT to keep the gateway open operationally, in addition to preserving price protections, shippers through Selma would be deprived of a competitive rail option.

I respectfully urge that if approved, any Board approval of the CPKC Transaction be conditioned on the implementation of these five infrastructure projects and the operational directives described above, as well as expanding the gateway protections for shippers through Selma.

CERTIFICATION

I, Michael R. McClellan, Senior Vice President and Chief Strategy Officer for Norfolk Southern Corporation, and Vice President for Norfolk Southern Railway Company, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 28th day of December 2023.



Michael R. McClellan

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
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36727**

COMMENTS AND REQUESTS FOR CONDITIONS

Appendix C

Verified Statement of William J. Rennie & Jason Kuehn

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION – CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO COUNTIES, ALABAMA, FD 36732; ALABAMA & GULF COAST RAILWAY LLC – TRACKAGE RIGHTS EXEMPTION – THE KANSAS CITY SOUTHERN RAILWAY COMPANY D/B/A CANADIAN PACIFIC KANSAS CITY, FD 36731; CSX TRANSPORTATION, INC. – ACQUISITION AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., FD 36727; CSX TRANSPORTATION, INC. – TRACKAGE RIGHTS EXEMPTION – KANSAS CITY SOUTHERN RAILWAY COMPANY, FD 36730; ALABAMA & GULF COAST RAILWAY LLC – TRACKAGE RIGHTS EXEMPTION – CSX TRANSPORTATION, INC., FD 36724; MERIDIAN & BIGBEE RAILROAD, L.L.C. – DISCONTINUANCE OF INCIDENTAL OVERHEAD TRACKAGE RIGHTS – IN LOWNDES AND MONTGOMERY COUNTIES, AL, AB 1335X; CSX TRANSPORTATION, INC. – DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION – IN MARENGO AND CHOCTAW COUNTIES, AL AND LAUDERDALE COUNTY, MS, AB 55 (SUB-NO. 814X)

**VERIFIED STATEMENT OF WILLIAM J. RENNICKE, PARTNER AND
JASON D. KUEHN, VICE PRESIDENT
OLIVER WYMAN, INC.**

December 29, 2023

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Statement of William J. Rennie, Partner, and Jason D. Kuehn, Vice President, Oliver Wyman

I. Introduction and Qualifications

Oliver Wyman

Oliver Wyman is a leading general management consulting firm. It maintains one of the largest practices in the world dedicated to serving the transportation and logistics sectors. That practice provides a comprehensive set of services and capabilities to transportation carriers across all modes, and the users and regulators of transportation services. Oliver Wyman's transportation clients include national and regional governments on six continents, as well as many of the world's largest users of rail services, railroads, motor carriers, leasing companies, and industrial and consumer manufacturing firms.

William J. Rennie

I am a Partner with Oliver Wyman. I have been a railroad executive and a consultant to railroads for more than 40 years. I have worked extensively with the railroad industry in the United States and Canada, and also have worked with railways in Europe, Asia, South America, Australia, and Africa. I specialize in railroad strategic planning, cost analysis, revenue management, and operations. I have expertise in transportation pricing, railroad operations, organizational design, and transactions (including mergers and acquisitions) to improve the performance of rail operators, major rail equipment suppliers, and users of transportation services.

I have worked with senior executives at all of the major North American railroads, as well as with senior officials at many government-owned railroads worldwide. I have testified before the United States Congress and the Canadian Parliament, as well as federal transportation agencies, concerning railroad regulation, rate policy, access issues, and rail mergers. I have spoken and published widely on issues affecting the railroad industry.

Before joining Oliver Wyman, I was a vice president of the Boston & Maine Railroad. During my tenure, I managed rail industry service performance initiatives as part of the industry-wide Freight Car Utilization Program. I also have held operating positions with the Southern Pacific (now Union Pacific) and New Haven (now CSX) railroads and was a transportation consultant with Deloitte Haskins & Sells (the predecessor of Deloitte & Touche). I have a BSBA in accounting from the School of Business Administration at Georgetown University and an MBA with a concentration in transportation and logistics from the University of Minnesota. I am a member of the Council of Supply Chain Management Professionals.

Jason D. Kuehn

I am a Vice President with Oliver Wyman and have held positions at railroads and have been a consultant to the industry for nearly 40 years. I have carried out major strategy and network/operations evaluation and improvement projects for all of the Class I railroads in North America, including Norfolk Southern. For Norfolk Southern, I assisted in developing the first Thoroughbred Operating Plan (TOP) after the Conrail merger and contributed to several subsequent TOP updates.

I also have conducted numerous reviews of North American shortline railroads as part of merger and acquisition proceedings, including operations, network connections, commercial focus, and merger/acquisition synergies and cost savings. I have worked extensively as well for North American rail shippers to evaluate and optimize their use of rail services, including plant switching, car staging, transloading, and managing interfaces with Class I railroads.

Prior to joining Oliver Wyman, I worked for the Southern Pacific as a managing director of network and corporate development, with responsibility for service design, costing, and network planning. I was a manager for the Wheeling and Lake Erie Railway and Consolidated Rail

Corporation (Conrail). I hold a BS in economics and transportation engineering from the University of Alaska and an MBA from the Amos Tuck School, Dartmouth College.

Assignment and Key Findings

On June 28, 2023, Canadian Pacific Kansas City Limited and the Kansas City Southern Railway Company, d/b/a CPKC (“CPKC”), CSX Transportation, Inc. (“CSXT”), and Genessee & Wyoming, Inc. (“G&W”) jointly announced that CPKC would acquire and operate the segment of the Meridian & Bigbee Railroad LLC (“MNBR”) between Meridian, MS and Myrtlewood, AL (the “Western Line”) and that CSXT would acquire and operate the segment of the MNBR between Myrtlewood and Burkewood, AL (the “Eastern Line”).¹ On October 6, 2023, CPKC and CSXT subsequently filed minor applications with the Surface Transportation Board (“STB” or “Board”) seeking regulatory approval for their acquisition and operation of MNBR.² Oliver Wyman was asked by Norfolk Southern Corporation and Norfolk Southern Railway Company (together, “Norfolk Southern” or “NS”) to comment on the impacts of the proposed CPKC and CSXT acquisition and operations of MNBR on the Meridian, MS terminal, through which both Norfolk Southern and CPKC operate trains on and off the Meridian Speedway, and through which Norfolk Southern and Amtrak operate trains on a north-south mainline between Birmingham, AL and New Orleans, LA.

Oliver Wyman was asked by Norfolk Southern to: 1) explain why the Meridian Terminal is important for maintaining good service to customers over Norfolk Southern’s network; 2) analyze the current complexity and delays already being caused by the infrastructure at Meridian,

¹ [Railroads reach agreement to create new direct connection and corridor linking Mexico, Texas and the U.S. Southeast \(cpkr.com\).](#)

² See Canadian Pacific Kansas City et. Al – Acquisition and Operation – Certain Rail Line of Meridian & Bigbee Railroad, etc., Application for a Minor Transaction, FD 36732, filed October 6, 2023 (referred to herein as “CPKC Application”). CSX Transportation, Inc – Acquisition and Operation – Rail Line of the Meridian & Bigbee Railroad, etc., Application, FD 36727, filed October 6, 2023 (referred to herein as “CSXT Application”).

as well as the potential exacerbation of such issues with the introduction of new traffic, as anticipated by the proposed transaction; and 3) review infrastructure and operating conditions requested by Norfolk Southern to determine whether those requested conditions would serve to alleviate the added demands on the Meridian Terminal that would accompany the introduction of anticipated new traffic.

Our key findings are:

- The Meridian Terminal is a critical terminal for a half-dozen different train services provided by Norfolk Southern, CPKC, and Amtrak. Four significant routes meet at the terminal: the Norfolk Southern mainline to New Orleans, which also is used for daily Amtrak service, the Norfolk Southern mainline to Birmingham, also used for daily Amtrak service, the CPKC line to Artesia, and the eastern terminus of the Meridian Speedway, with interchange to the CPKC and Norfolk Southern mainlines. There also is a secondary line operated by the Meridian & Bigbee to Montgomery. More than 20 trains a day pass through this high-volume terminal.
- The present configuration of the Meridian Terminal is both antiquated and complex, causing congestion and delay for both freight customers and Amtrak passengers at current traffic levels. Indeed, the Meridian Terminal is one of the biggest generators of service irregularities and delays in the entire southeastern United States. The terminal is not designed to handle either the volume or the length of trains operated by Norfolk Southern and CPKC that pass through it daily now. Key issues that are generating service problems include:
 - Obsolete technology, specifically, all switches must be manually lined for traffic seeking to pass through the terminal;

- No space to stage trains near the terminal on any lines and inadequate space between crossing points in the terminal, the combination of which lead to frequent blocking of rail and road crossings; and
- Poor terminal layout, with two examples being: 1) the CPKC Artesia line loops twice across the Norfolk Southern mainline in less than a mile, and 2) trains cannot access the CPKC yard without blocking the Norfolk Southern mainline
- CPKC is proposing to add a new, additional train service pair that must navigate the Meridian Terminal and compete for access with the 20+ trains that already pass through the terminal each day. Without additional investment to modernize the terminal and changes to operating practices, the result will be increased congestion and delay and worse service performance, particularly for Norfolk Southern and Amtrak.
- Since CPKC controls all movements at the Meridian Terminal and sponsors the new service, it is not surprising that CPKC has taken the position that there are no significant delays or congestion at the Meridian Terminal, and that adding more trains will not increase service issues. To argue for there being plenty of fluidity, CPKC claims, without context, that there are no service problems because trains can pass over the main set of crossovers (at the Switch Tender) in seven minutes.³ CPKC’s experience at the crossovers, however, may not necessarily be the same as Norfolk Southern’s or Amtrak’s experience, and the time on the crossovers represents only one of several critical steps in transiting the terminal. The Meridian Terminal is far more than just the crossovers, and CPKC’s experience at the

³ CPKC states that it “takes approximately 7 minutes for a 100-car train to clear” the identified crossovers at the crossing of the Norfolk Southern north-south line and the east-west portion of the Meridian Speedway. FD 36732, CPKC Supplemental Information, CPKC-7, filed November 21, 2023 (public version), p. 9.

terminal also may not reflect that of Norfolk Southern and Amtrak.⁴ CPKC ignores essential activities at the crossovers, like the need to hand throw switches first, as well as that prior to this seven-minute movement,⁵ a train may have sat parked at the terminal or further up a mainline for hours waiting to get through the crossovers. CPKC also ignores that the Amtrak Crescent service, which must use the Meridian Terminal, has among the poorest performance of any Amtrak service and {{ [REDACTED] }} of all delays on the Crescent's run between Washington DC and New Orleans occurs at the Meridian Terminal.

- Norfolk Southern's modest proposed capital plan and operating improvements for the Meridian Terminal will correct several major infrastructure deficiencies, which should sufficiently address the delays to freight traffic and passenger rail transit times that will be exacerbated by the proposed additional CPKC train service. In the past, similar proposals have been offered by one or more of the carriers but have not been acted upon. Given the importance of the Meridian Terminal to rail customers and service levels, and given the increase in traffic proposed by this transaction, an agreed to or mandated timeline for action is needed.

⁴ CPKC states that the seven minutes includes waiting for dispatching authority, noting that "CPKC is operating within yard limits and therefore does not require clearance from the CPKC dispatcher to enter the crossovers." FD36732, CPKC's Objections and Responses to Norfolk Southern's Second Set of Discovery Requests, Response to Interrogatory No. 1, p. 3. Trains at the Meridian Terminal are subject to yardmaster control before movement.

⁵ CPKC later clarifies that "The seven minutes is an approximation to allow for the fact that there may be times that the train will be starting from a standstill before entering the crossovers and accelerating to 10 MPH while still traversing the crossovers." FD 36732, CPKC's Objections and Responses to Norfolk Southern's Second Set of Discovery Requests, Response to Interrogatory No. 1, p. 3. The approximate seven-minute window does not include any of the processes facing most Norfolk Southern trains at the terminal, such as having to approach the terminal at a restricted speed, stopping, relining the switches, waiting for authority, and, only then, being permitted to start from a standstill to enter the crossovers.

II. Importance of the Meridian Terminal to Norfolk Southern

The Meridian, MS Terminal is a complex multi-track interchange point at which several rail lines, under different ownership, converge – lines that either cross one another at the terminal or are used for interchanging traffic. The terminal requires 24/7 dispatch and both Norfolk Southern and CPKC yardmaster management of train movements, with train movements controlled by CPKC.

As described below, Meridian is an important terminal in the Norfolk Southern network. The terminal already suffers from congestion and delays at current operational levels due to its limited current infrastructure capabilities. Norfolk Southern is concerned because the proposed transaction involves running additional trains through the terminal after CPKC acquires the western portion of the MNBR line, between Meridian, MS and Myrtlewood, AL, so that CPKC may interchange traffic directly with CSXT at Myrtlewood. The addition of another mainline train pair (two trains) may well be the breaking point for the terminal without infrastructure improvements – further reducing capacity, increasing delays, and worsening service performance – which will particularly impact Norfolk Southern freight customers and make it more difficult for Norfolk Southern to manage the delays that Amtrak already experiences through the terminal.

CPKC's first train pair is expected early in the first five years after approval. A second train pair is possible as early as the eighth year after approval – or sooner if traffic increases faster than CPKC projects.⁶

A. Norfolk Southern Routes Served

For Norfolk Southern, the Meridian Terminal is where two major north/south rail line segments come together, with the Meridian Speedway joining the Norfolk Southern mainline

⁶ CPKC Application, op. cit., p. 22.

between Birmingham and New Orleans. The Birmingham-New Orleans mainline is owned by Norfolk Southern. At Meridian, there is a gap between the Birmingham-New Orleans mainline north out of Meridian and the Birmingham-New Orleans mainline south out of Meridian. The gap must be crossed on trackage owned by Meridian Speedway LLC (“MSLLC”) at the Meridian Terminal. In addition, the Meridian Speedway is owned by MSLLC, which in turn is jointly owned by CPKC and Norfolk Southern, with CPKC being the majority owner. CPKC is the rail operator for MSLLC and controls dispatching at the Meridian Terminal.

The Norfolk Southern and Meridian Speedway mainlines are the primary routes for traffic between the southeastern and southwestern United States (Exhibit II-1). Also branching off from the Meridian Terminal is the western end of the MNBR rail line.⁷

Exhibit II-1: Norfolk Southern Routes Served by the Meridian Terminal⁸



⁷ Branching off from the Terminal as well is the southern end of the CPKC Artesia line and the northern end of the Meridian Southern Railway (“MDS”), which runs between Meridian and Waynesboro, MS.

⁸ Norfolk Southern system map.

The first key route through the Meridian Terminal for Norfolk Southern, the **Meridian Speedway**, is a major feeder line serving rail customers in four major market areas:

1. Intermodal freight moving between Atlanta (and other points in the Southeast) and Dallas, TX, where Norfolk Southern and CPKC jointly use the Wylie, TX intermodal ramp.
2. Intermodal freight between the Union Pacific Railroad Company (“UP”) and Norfolk Southern over Shreveport, LA moving between the southwestern US (primarily California) and southeastern points on Norfolk Southern.
3. Intermodal freight moving between Mexico and Laredo on CPKC and southeastern points on Norfolk Southern.
4. All other freight – including automotive, chemicals, forest products, etc. – moving between CPKC in Mexico and the Gulf and points on Norfolk Southern throughout its network.

The Meridian Speedway is north and inland of the Gulf Coast and provides a more stable route with fewer weather-related disruptions than interchange through New Orleans. The Meridian Speedway is primarily single track.

The second key route through the Meridian Terminal for Norfolk Southern is the **Norfolk Southern New Orleans, LA mainline**. This north/south mainline is a key feeder route for traffic from the New Orleans interchange (CN, CPKC, BNSF, and UP) to Norfolk Southern points. Key traffic flows include intermodal, automotive, chemicals, and plastics from the Gulf Coast petrochemical industry. The route serves as a major corridor for the port of New Orleans, LA. The Norfolk Southern line to New Orleans also hosts Amtrak’s Crescent route from New York City to New Orleans via Charlotte, Atlanta, and Birmingham, with a stop in Meridian, MS. The Norfolk Southern route from Meridian to New Orleans is primarily single track.

At Meridian, these two key east/west and north/south routes merge and continue north to Birmingham, AL; Atlanta, GA; and other major market origins and destinations on Norfolk

Southern. The northern line out of the terminal on Norfolk Southern is primarily single track with occasional passing sidings. Together, these two routes handle approximately {{REDACTED}} of all Norfolk Southern intermodal traffic and {{REDACTED}} of all Norfolk Southern carload traffic, constituting essential arteries in the Norfolk Southern network.⁹

B. Norfolk Southern Traffic Through the Meridian Terminal

Norfolk Southern moves {{REDACTED}} loaded cars and containers on an average day through Meridian, MS, or {{REDACTED}} loaded units per year.¹⁰ Intermodal containers are by far the largest category, accounting for approximately {{REDACTED}} loaded plus empty revenue units in 2021. As noted above, Norfolk Southern traffic moving through Meridian, MS was {{REDACTED}} of all Norfolk Southern intermodal traffic and {{REDACTED}} of all Norfolk Southern revenue carload traffic in 2021.¹¹

Chemicals and hazardous materials each accounted for more than {{REDACTED}} annual carloads, while transportation equipment (including assembled autos) accounted for {{REDACTED}} carloads in 2021.¹² The STB Confidential Carload Waybill Sample (CCWS) only contains revenue movements, so the values for top commodities moved through the Meridian Terminal {{REDACTED}} do not include empties and other non-revenue traffic. Exhibits II-3 and II-4 show the top lanes based on origin-destination state for carload and intermodal traffic, respectively, for Norfolk Southern traffic moving through the Meridian Terminal.

- The top movement of intermodal traffic, {{REDACTED}} annual containers, originates in Georgia on Norfolk Southern and terminates in Texas on CPKC. The second largest intermodal

⁹ 2021 STB Confidential Carload Waybill Sample; Oliver Wyman analysis.

¹⁰ Id.

¹¹ Id.

¹² Id.

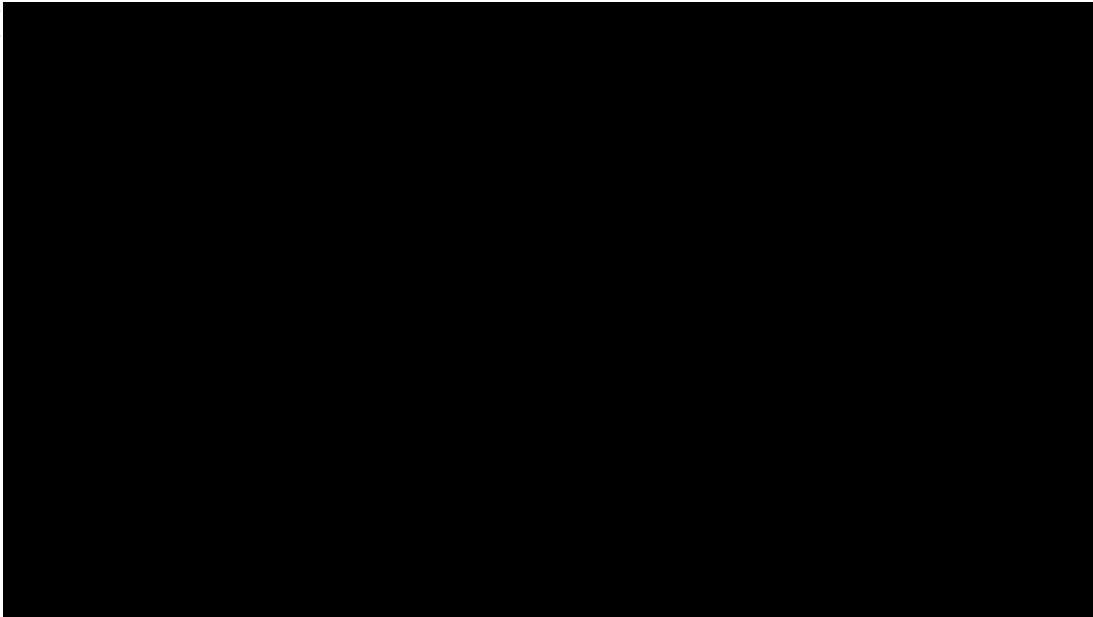
movement originates in Louisiana on Norfolk Southern and terminates in Georgia on Norfolk Southern. A daily average of {{[REDACTED]}} containers moves through the Meridian Terminal.¹³

- The top movement of {{[REDACTED]}} annual carloads originates in Louisiana on Norfolk Southern and terminates in Georgia on Norfolk Southern. The second largest move originates in Alabama on Norfolk Southern and terminates in Mississippi on Norfolk Southern. On average, {{[REDACTED]}} daily revenue carloads are moving over the Norfolk Southern line through Meridian, MS.¹⁴

¹³ Id.

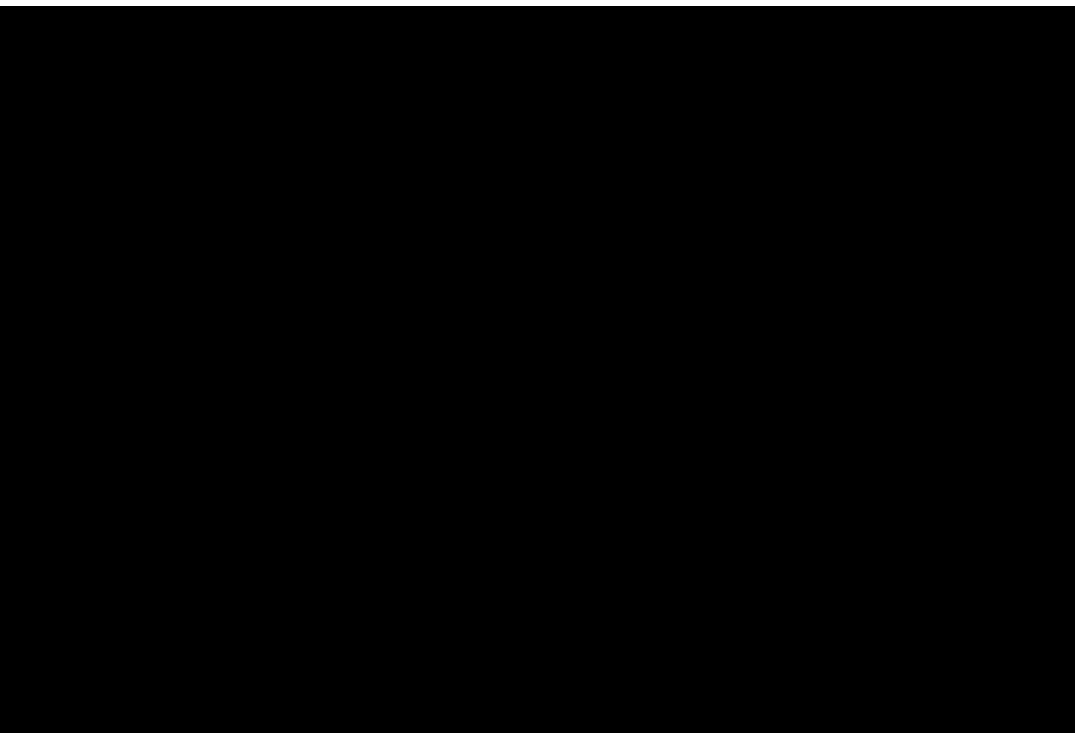
¹⁴ Id.

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¹⁵ Id.

¹⁶ Id.

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C. Service Levels to NS Customers

Service levels to Norfolk Southern customers through the Meridian Terminal are currently impacted by the interactions of current CPKC, Norfolk Southern, and Amtrak traffic and interchange levels, resulting in traffic delays and inconsistent performance. It is possible that CPKC’s positive view of Meridian arises from what may be an operating bias, which means that since CPKC controls train movements at the terminal, CPKC may be less likely than Norfolk Southern to experience service problems.

¹⁷ Id. Note: The STB Confidential Carload Waybill Sample includes “rebills” where the sampled waybill is only for a segment of the trip and not the full trip. The NS traffic shown as originating in Louisiana (both New Orleans and Shreveport) is flagged as a rebill, so the true origin for much of this traffic is not Louisiana. However, this traffic does move through the Meridian Terminal.

Now more than ever, it is critically important that network changes that could adversely impact service performance be addressed proactively and aggressively, especially when there is the potential for cascading adverse effects elsewhere along the rail network that would impact customers. The Board has itself noted that its “experience in recent service oversight proceedings reaffirms that carriers’ failure to provide reliable, timely, and efficient delivery of rail shipments can result in serious consequences for the transportation network and beyond.”¹⁸

As a result, the Board has made Class I rail service performance consistency a high priority, increasing its oversight of performance issues considerably over the past two years and requiring the Class I rail carriers to provide weekly customer-centric performance data since May 6, 2022.¹⁹ Originally, the Board directed carriers to provide this data for six months, but the Board has twice extended reporting, now through the end of 2023, “in light of continued issues.”²⁰ The Board also has recently proposed making this reporting permanent.²¹ In addition, the Board has proposed certain regulatory reforms that would provide “specific and objective remedies for inadequate rail service” and has stated its intention going forward “to provide appropriate regulatory incentives to Class I carriers to achieve and maintain higher service levels on an ongoing basis.”²²

Consistent with the Board’s concerns over rail service performance for customers, it is appropriate for Norfolk Southern to be concerned about the adverse impacts on customer service

¹⁸ Surface Transportation Board, EP711 (Sub-No. 1) Reciprocal Switching and EP711 (Sub-No. 2) Reciprocal Switching for Inadequate Service: Decision, September 5, 2023, p. 6.

¹⁹ [Surface Transportation Board \(stb.gov\): Rail Service Data](https://stb.gov/rail-service-data); Surface Transportation Board, EP 770 (Sub-No. 1), Urgent Issues in Freight Rail Service – Railroad Reporting: Decision, May 6, 2022, p. 1.

²⁰ [Surface Transportation Board \(stb.gov\): Rail Service Data](https://stb.gov/rail-service-data).

²¹ Surface Transportation Board, EP711 (Sub-No. 1) and (Sub-No. 2), op. cit., p. 2.

²² Specifically, the Board proposes to prescribe reciprocal switching “when service to a terminal-area shipper or receiver fails to meet certain objective performance standards.” Surface Transportation Board, EP711 (Sub-No. 1) and (Sub-No. 2), op. cit., pp. 2, 5.

that would result from an anticipated increase in traffic utilizing the Meridian Terminal – an increase that would directly result from the proposed CPKC transaction.

III. Current Operations Through the Meridian Terminal

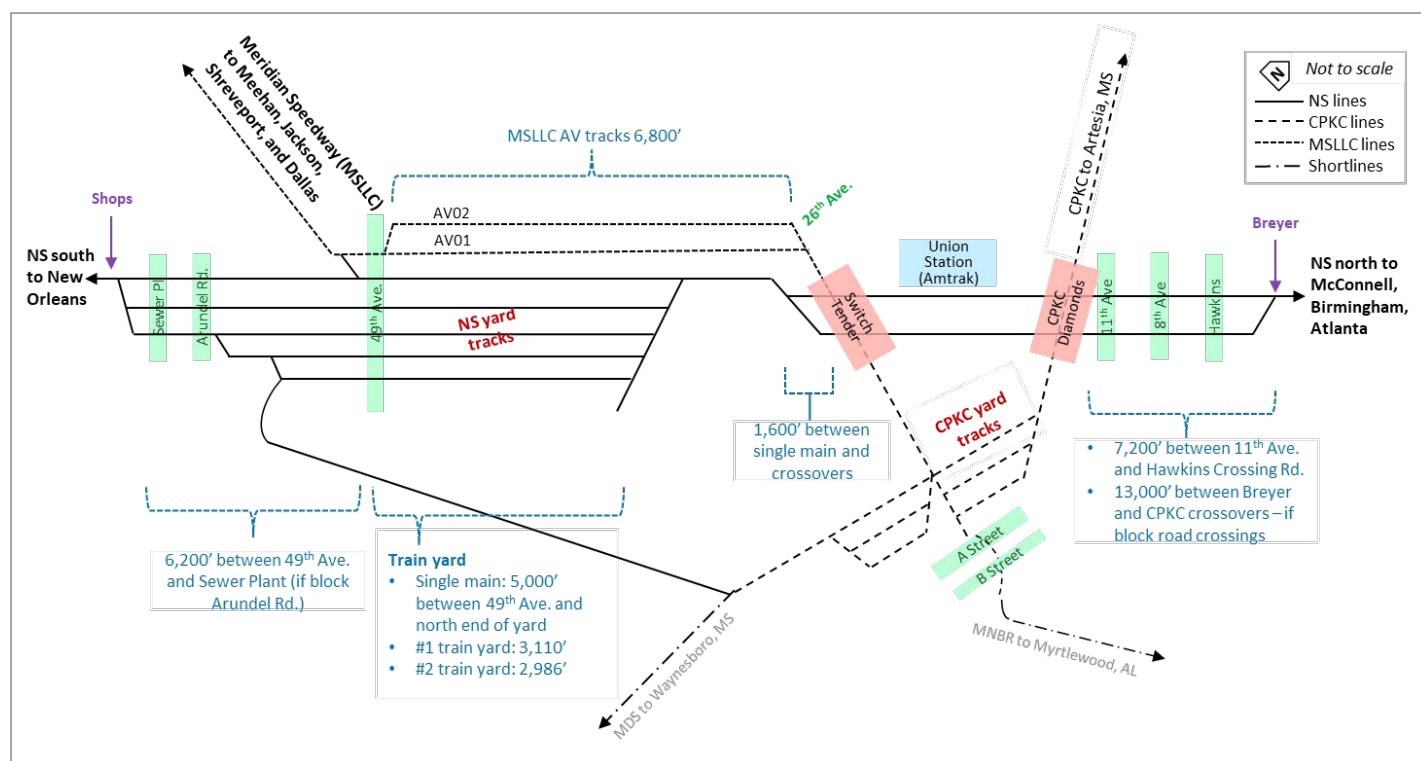
The centerpiece of the Meridian Terminal, shown in Exhibit III-1, is a double crossover on what could be considered up to a 48.8-mile stretch of single-track²³ railroad (Meehan, MS on CPKC to Livingston, AL on Norfolk Southern is the longest combined segment), which an average of 22.8 trains per day must negotiate (and as many as 28 trains per day on peak days).²⁴ These trains are operated by three different railroads, all attempting to navigate a train path entirely controlled by hand-thrown switches. Track lengths are too short for today's long trains, and both the length and volume of current trains trying to negotiate the Meridian Terminal result in the blocking of both rail lines and local roads.

Daily train volumes and the complexity of the terminal infrastructure make the Meridian Terminal one of the biggest generators of service irregularities and delays in the Southeast – even at the current volume of trains – and the terminal is a major source of service failures and operating issues that affect Norfolk Southern customers and Amtrak passengers.

²³ Single track with two sidings at Toomsaba and McConnell, but neither siding can be used to stage an 8,500-foot train.

²⁴ Oliver Wyman analysis of Norfolk Southern provided data.

Exhibit III-1: Meridian Terminal Track Overview



A. Major Train Services

At the Meridian Terminal, trains must share infrastructure or cross paths at multiple points (see Exhibit III-1 above). Seven different train services pass through the Meridian Terminal daily.

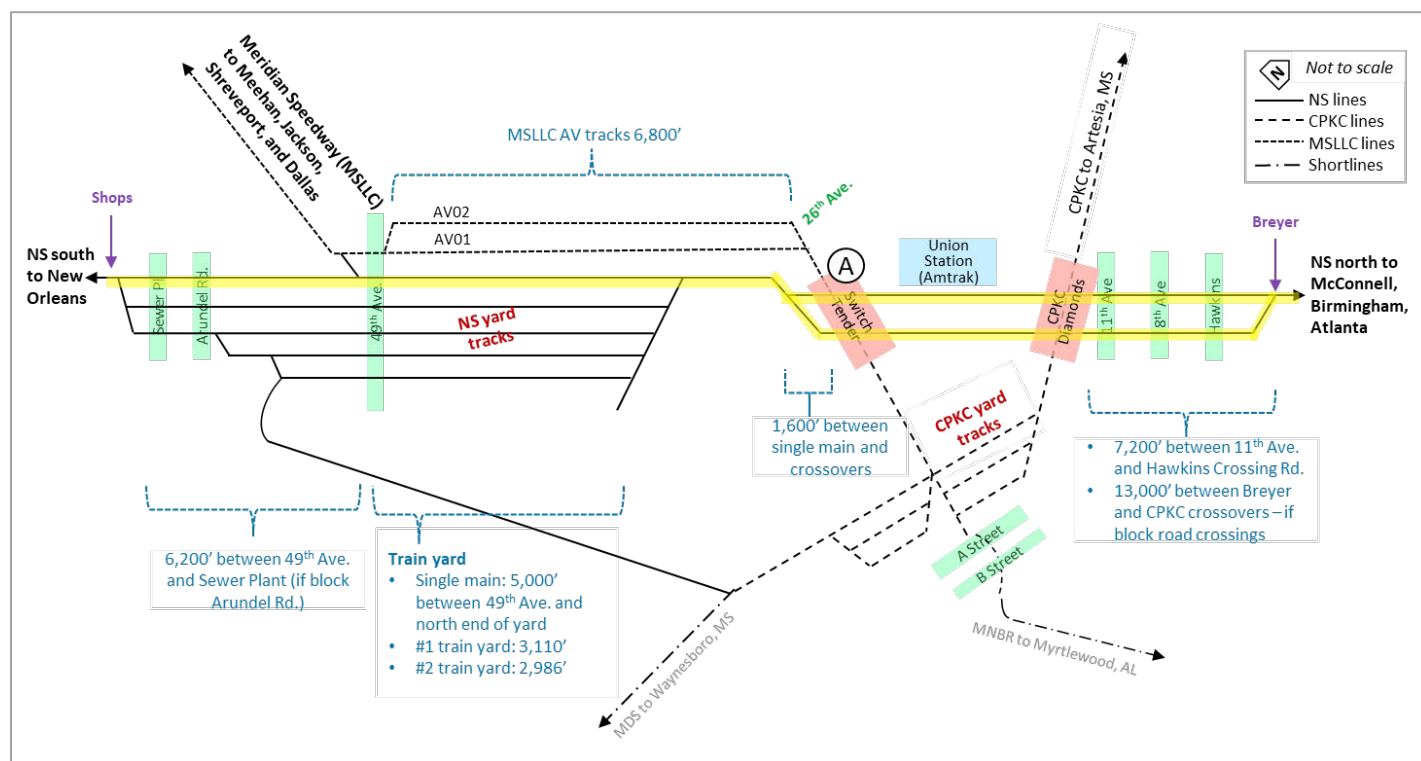
1. Norfolk Southern through trains between Birmingham and New Orleans

Seven or eight daily north/south Norfolk Southern through trains change crews at Meridian, usually at the Norfolk Southern yard or at the 49th Avenue grade crossing (Exhibit III-2). The crossovers at the terminal where CPKC crosses Norfolk Southern (letter A on the exhibit), at a location known as the Switch Tender, are hand-thrown switches. After a train passes through the Switch Tender, these hand-thrown switches are left in the position last used, so all trains must approach the terminal slowly, with the anticipation of having to stop and align the switches properly and wait for the signals to clear. Norfolk Southern does not own the tracks involved and

does not control the Switch Tender, so Norfolk Southern must rely on CPKC dispatching and local yardmaster control for this critical point in its network.

Amtrak also is hosted by Norfolk Southern on this route and operates one Crescent service train per day each way between New York City and New Orleans. The difficulties experienced by Norfolk Southern are also experienced by Amtrak. Since Amtrak passenger trains have preference over freight, any impediments to Amtrak trains may cascade and impact Norfolk Southern trains held along the route as well.

Exhibit III-2: NS Trains Between Birmingham and New Orleans (yellow path)

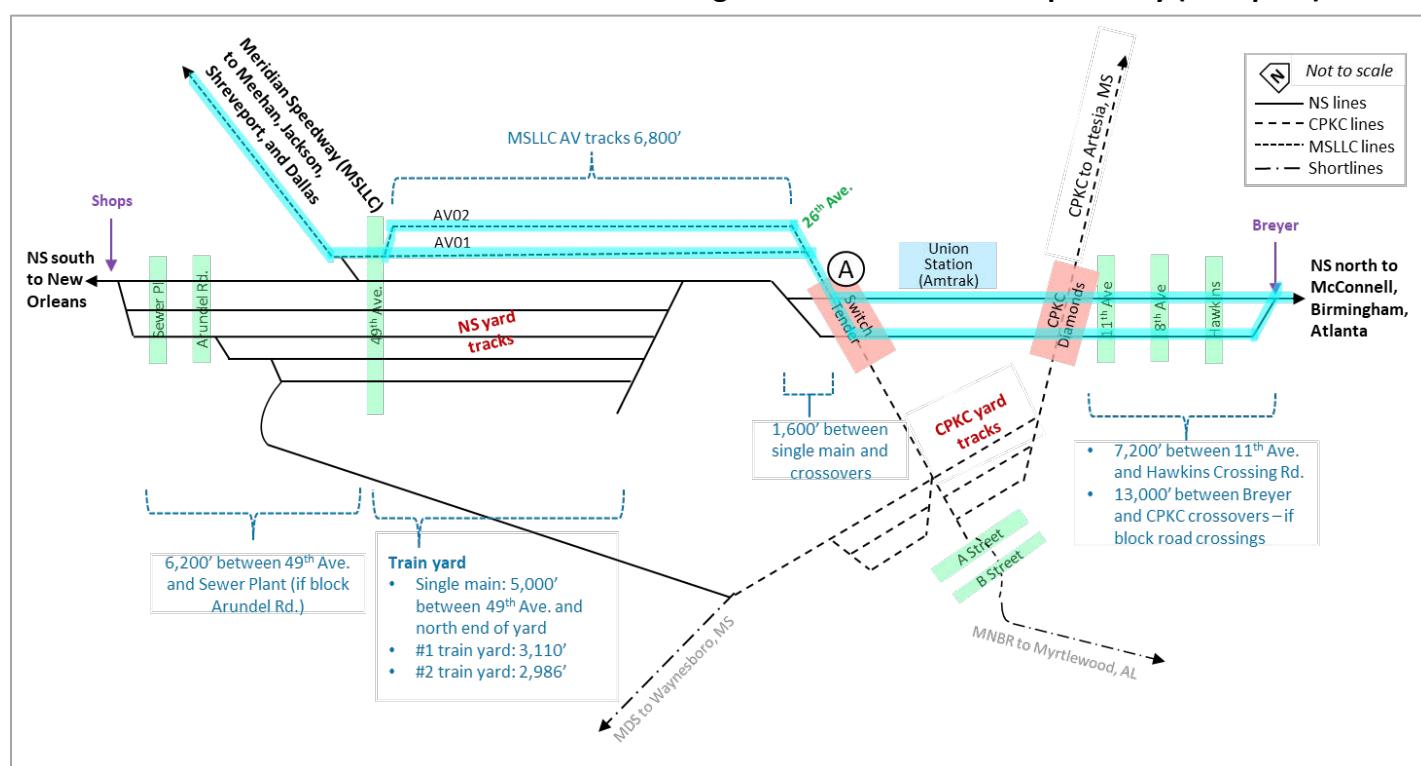


2. Norfolk Southern trains between Birmingham, AL, and the Meridian Speedway

Two or three daily eastbound Norfolk Southern trains leave the east-west Meridian Speedway and connect to the northbound Norfolk Southern mainline. (CPKC and Norfolk Southern also interchange an eastbound train daily on this route, discussed in subsection 3 below.)

Once the eastbound train leaves Meehan, 11.8 miles west of Meridian, it must continue on MSLLC single-track rail line to the Switch Tender (Exhibit III-3, letter A). The trains to that point are operated by CPKC as the Meridian Speedway operator. Once the trains prepare to leave the Meridian Speedway, they must: 1) change from a CPKC to a Norfolk Southern crew, 2) get permission from the Norfolk Southern dispatcher to enter the Norfolk Southern track, and 3) manually line switches for movement onto the Norfolk Southern mainline.

Exhibit III-3: Norfolk Southern Trains Between Birmingham and the Meridian Speedway (blue path)



Two or three westbound Norfolk Southern trains leave the Norfolk Southern north-south mainline and connect to the Meridian Speedway at Meridian. (CPKC and Norfolk Southern also interchange a westbound train daily on this route, discussed in subsection 3 below.) Once the westbound train leaves Livingston, 37 miles north of the Meridian Terminal, it must continue to the Switch Tender (letter A), where it must: 1) change from a Norfolk Southern to a CPKC crew, 2) get permission from CPKC to enter the Speedway track, and 3) manually line the switch for

movement onto the Speedway track. There are no places to hold a train on the Norfolk Southern southbound line between Livingston and the Meridian Speedway. Road crossings would be blocked in York, AL if a train is held at McConnell. Road crossings would be blocked on the double-track section in Meridian if the train must be held while waiting to get onto the Speedway. The inability to hold trains close to the terminal increases the time that trains need to clear the Switch Tender and forces Norfolk Southern to run trains into sidings all along its mainline route.

Any meet between trains will block road crossings and trains cannot hold waiting for a meet. Six formal blocked road crossing complaints were filed against Norfolk Southern in Meridian during the third quarter of 2023.²⁵ An additional 75 complaints were registered in the same period for the line between Tuscaloosa, AL, and Hattiesburg, MS; for example, concerns have been voiced publicly about road crossings blocked for hours in York, AL (in the McConnell siding area).²⁶ These blocked crossings are due to the need to stage trains for long periods of time, miles from Meridian, waiting to clear the terminal. The train congestion created by the Meridian Terminal routinely affects railroads along this entire stretch of rail line, as well as communities along the route due to the blocking of motor vehicle crossings.

3. Interchange trains between CPKC and Norfolk Southern

There is one daily merchandise train each way interchanged between CPKC and Norfolk Southern. The westbound interchange train (NS339/CPKC257) is complicated, because it must pick up a local block of interchange railcars for CPKC from the CPKC yard on the eastern side of the Norfolk Southern mainline.

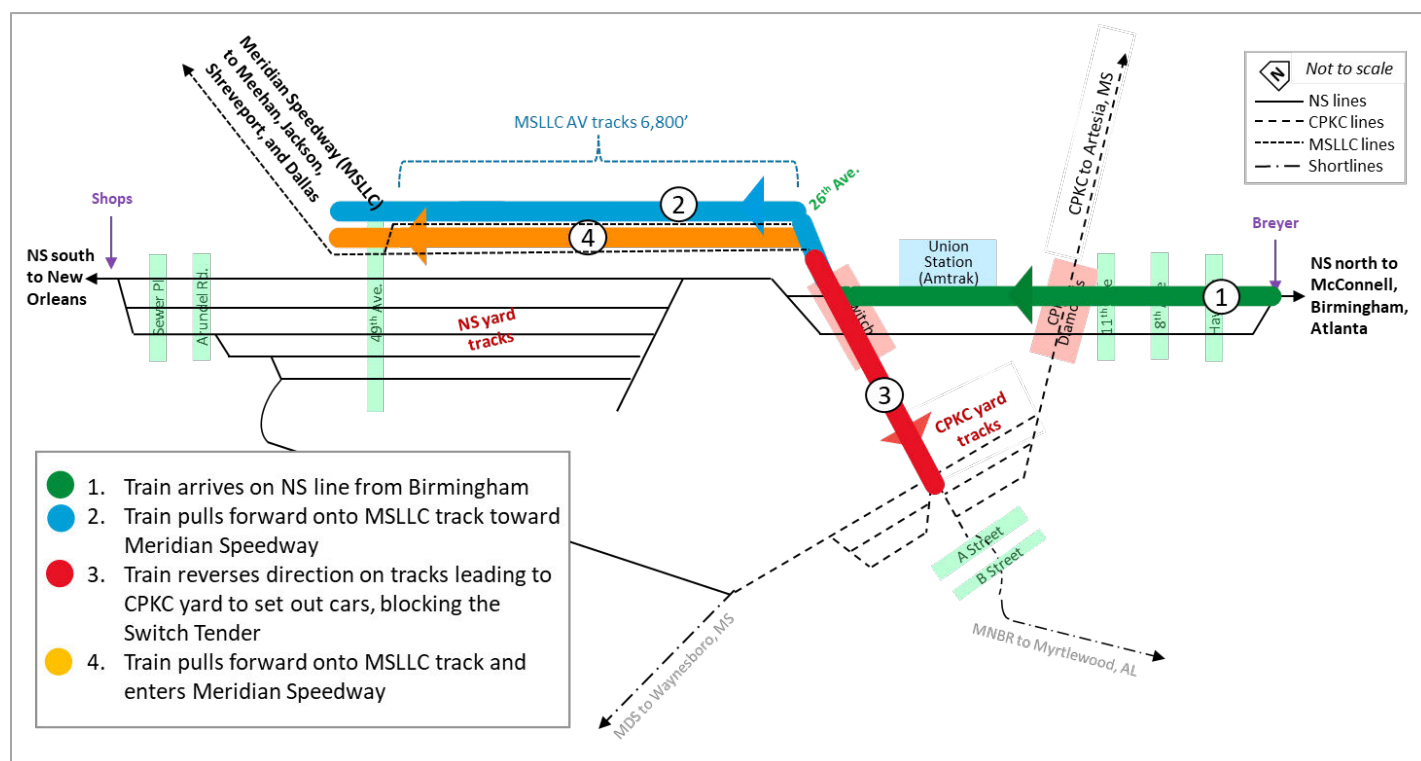
²⁵ Data provided by Norfolk Southern.

²⁶ See, e.g., New York Times, “Blocked Rail Crossings Snarl Towns, but Congress Won’t Act,” July 11, 2023.

The westbound interchange train arrives from Norfolk Southern (Exhibit III-4, #1), crosses the CPKC Diamonds, and changes to a CPKC crew at the Switch Tender. The CPKC crew must then manually line the switches and get permission from the CPKC yardmaster to pull forward onto the MSLLC AV tracks to clear the Switch Tender (#2).²⁷ The crew then must manually line the switches to back the train across the Norfolk Southern mainlines into the CPKC yard to pick up a block of cars (#3). While making this pickup, the CPKC train is parked across the Norfolk Southern mainlines, blocking all train movements in Meridian. While parked, the crew also must do a set and release brake test and move the end-of-train (EOT) device to the end of the picked-up block of cars. Only then can the train proceed west onto the Meridian Speedway, clearing the Switch Tender (#4).

According to CPKC filings, there is no pickup or setout work by the eastbound interchange train (NS340/CPKC256) at Meridian. (This train moves from the Meridian Speedway to the Norfolk Southern mainline to Birmingham.) From the CPKC filings, it is not clear how CPKC traffic destined for Meridian gets to CPKC's yard. Perhaps the daily CPKC local turn job from Artesia (see subsection 7 below) brings this traffic to the Meridian Terminal yard. Clearly, knowing how eastbound interchange traffic is handled is important to understanding the full impact of CPKC's proposed additional train service, because non-local trains picking up or setting out traffic at the CPKC yard often block the Norfolk Southern mainline for the duration of their work.

²⁷ CPKC has stated that its trains do not need to obtain clearance from its dispatcher or yardmaster to enter the crossovers. That is not the case, as the trains in subsection 3 are not through trains that will continue moving, but instead are trains that will stop and occupy the CPKC mainline.

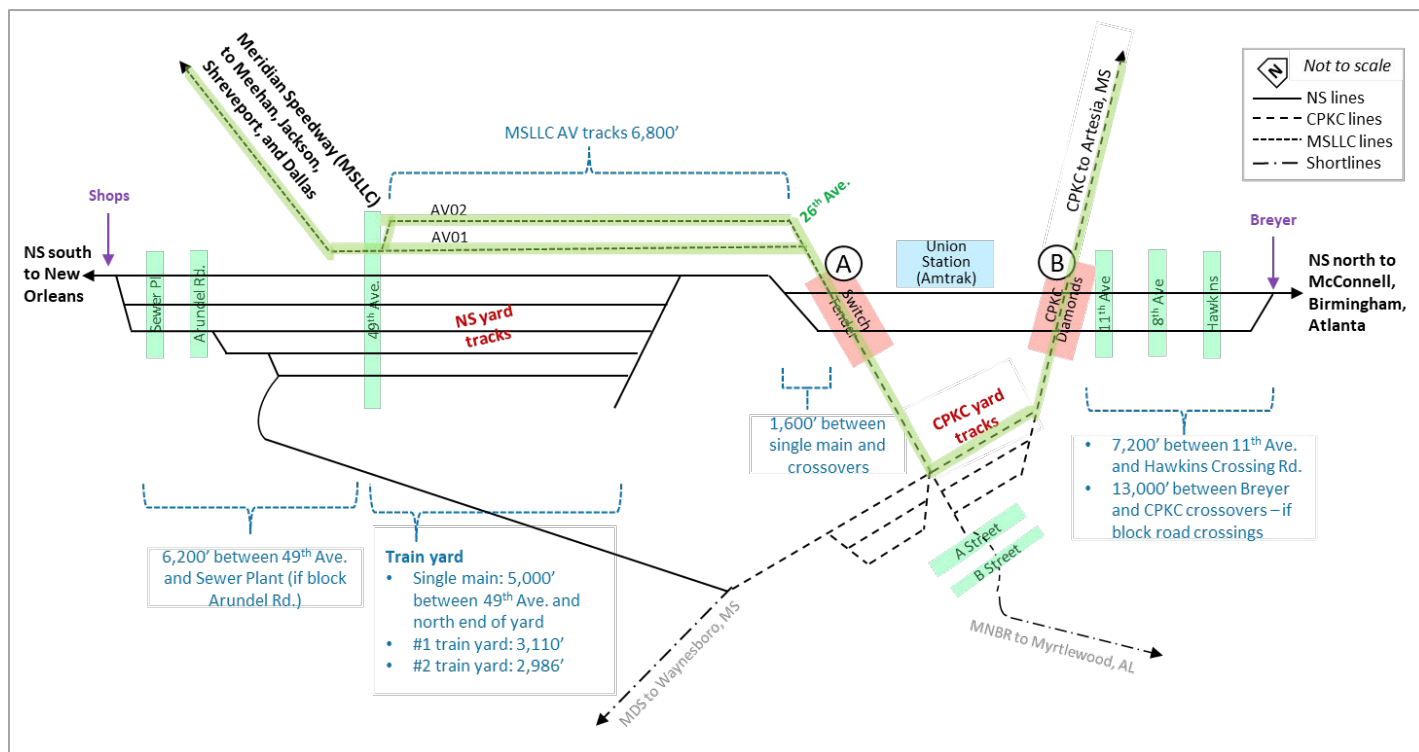
Exhibit III-4: Interchange Trains Between CPKC and Norfolk Southern

4. CPKC trains between the Meridian Speedway and the CPKC Artesia line

On average, three CPKC trains move between the Meridian Speedway and the Artesia line each day (one daily scheduled train each way, CPKC trains 266 and 267, and periodic unit trains of {{[REDACTED]}} moving northeast and empties returning southwest).²⁸ The CPKC line to Artesia crosses the Norfolk Southern mainline on the CPKC Diamonds (Exhibit III-5, letter B) just north of the Meridian Amtrak station.

²⁸ This includes one pair of merchandise trains (one each way per day), plus a {{[REDACTED]}} unit train that runs periodically, rounded to one additional train per day. The train is assumed to be loaded going to Artesia on some days, and on other days operates as an empty train returning from Artesia.

Exhibit III-5: CPKC Trains Between the Meridian Speedway and Artesia (green path)



The CPKC yard connecting the Meridian Speedway and CPKC's Artesia line is located east of the Norfolk Southern north/south mainline, so any daily CPKC eastbound train from the Meridian Speedway must cross the Norfolk Southern mainline at the Switch Tender (letter A) and then swing north and cross the Norfolk Southern mainline again at the CPKC Diamonds (letter B) for trains heading to Artesia, MS. The reverse is true for any daily CPKC westbound train from Artesia heading to the Meridian Speedway.

CPKC crews change at the CPKC yard in Meridian, which is right between the two crossing points (the Switch Tender and the CPKC Diamonds). There is only 4,400 feet²⁹ between the Switch Tender connecting Norfolk Southern to the Meridian Speedway (A) and the CPKC Diamonds across Norfolk Southern on the route to Artesia (B). The 8,500-foot trains allowed on the Meridian Speedway cannot be held on this segment clear of the Norfolk Southern main

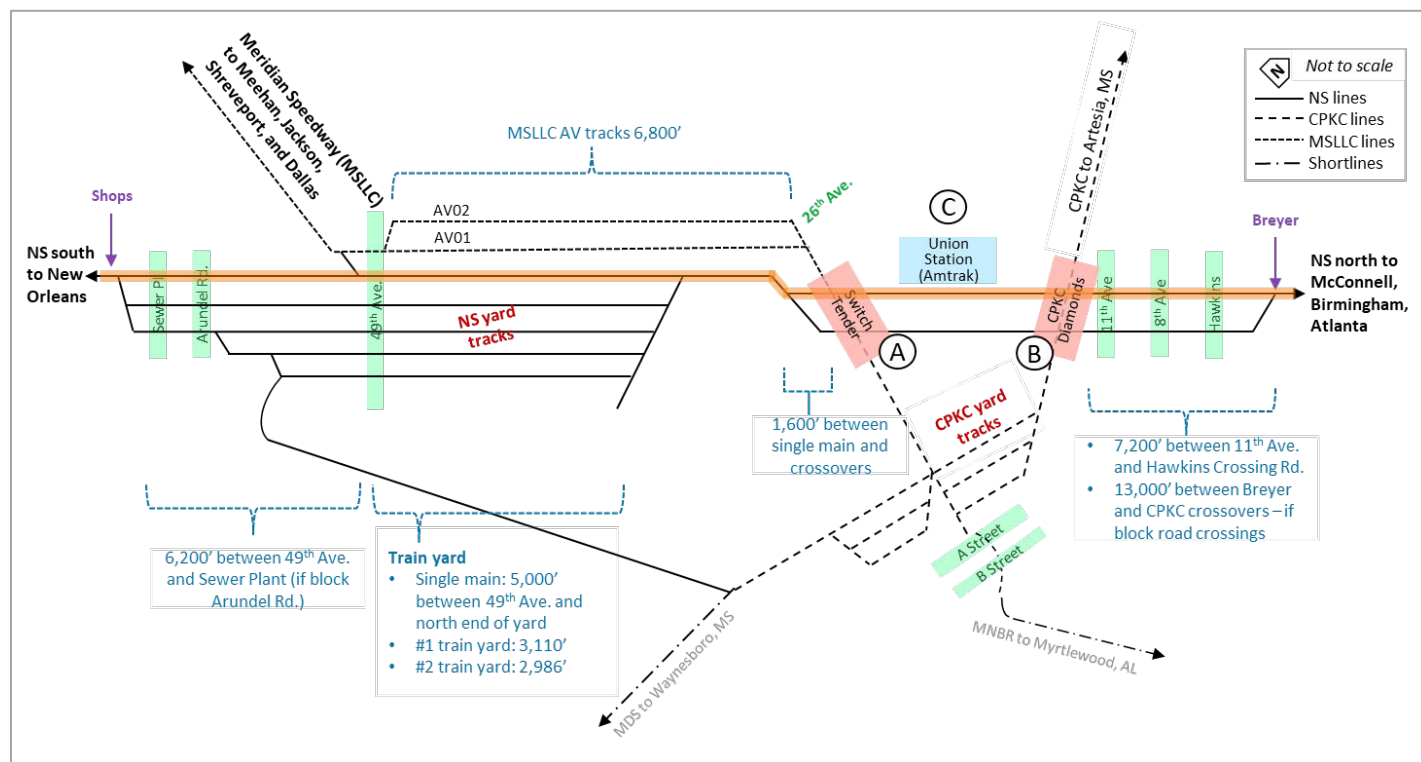
²⁹ This location fits only about 60 cars plus locomotives.

tracks. This means that trains arriving from the west (Meridian Speedway) block the Switch Tender (A), halting all traffic on Norfolk Southern, while trains arriving from the north (Artesia line) block the CPKC Diamonds (B) while changing crews, halting all traffic on Norfolk Southern for the duration.

5. Amtrak trains between Birmingham and New Orleans

Amtrak trains must use the western (typically the southbound) track on Norfolk Southern closest to the Meridian Union Station (Exhibit III-6, letter C). This means that when the Amtrak trains are in the station, the Norfolk Southern line becomes a single-track railroad. It also means that two Amtrak trains cannot meet at Meridian, as they both must use the same track next to the station. Amtrak trains change crews in Meridian and must manually line the switches at the Switch Tender (A) across CPKC and await block signal protection to proceed.

Exhibit III-6: Amtrak Trains Between Birmingham and New Orleans (orange path)

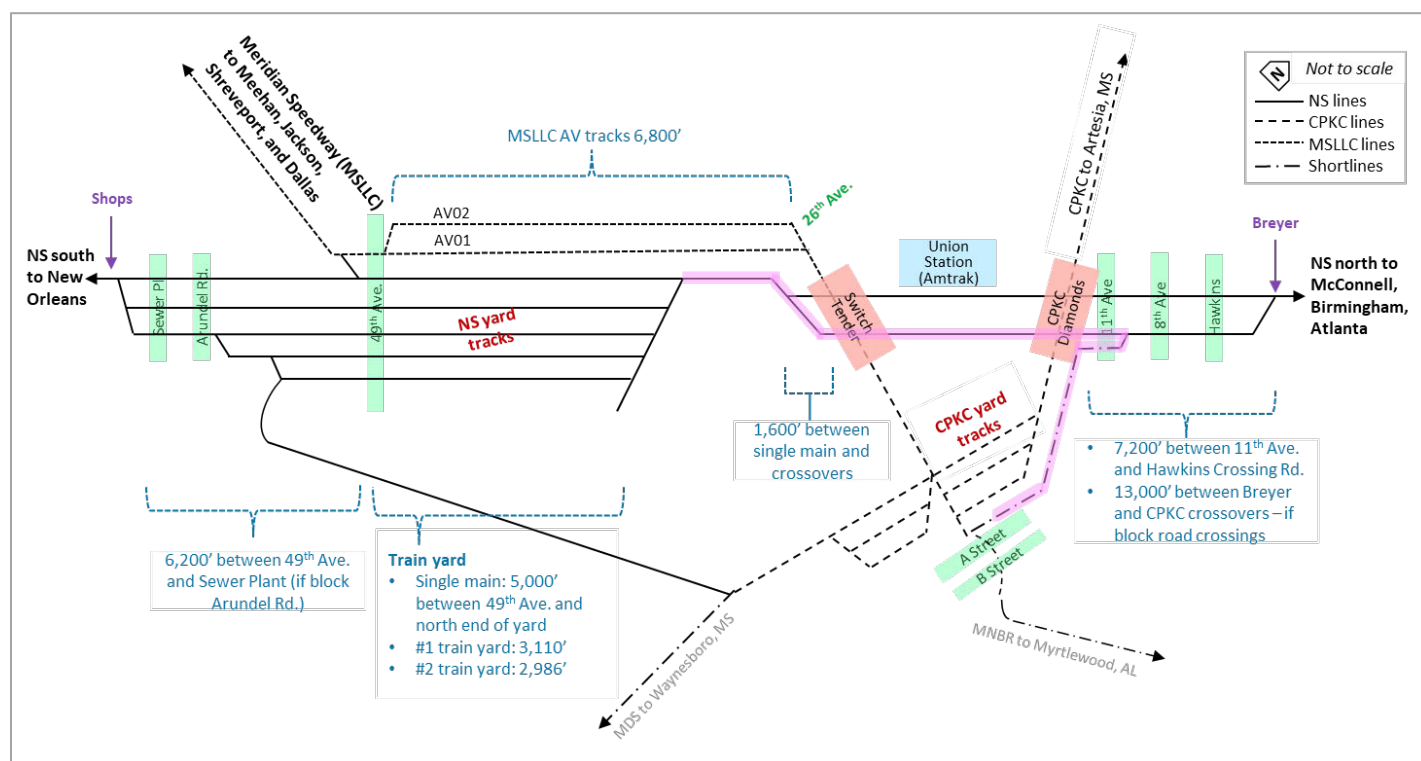


The Amtrak trains are short and can be held clear of the crossings, but they often get caught up in freight train delays at the terminal. The Amtrak trains also must wait at the CPKC Diamonds (B) for the signals to clear.

6. Norfolk Southern local operations

Norfolk Southern operates a local train to the north side of Meridian Monday through Friday and sometimes on Sunday. This local train serves customers on the north side of Meridian and the MNBR interchange, which is located north of the CPKC yard and accessed by a track that connects to the easternmost Norfolk Southern mainline, north of the CPKC Diamonds. This train must traverse both the Switch Tender and the CPKC Diamonds on the way out of the Norfolk Southern yard and again on the return back to the yard (Exhibit III-7).

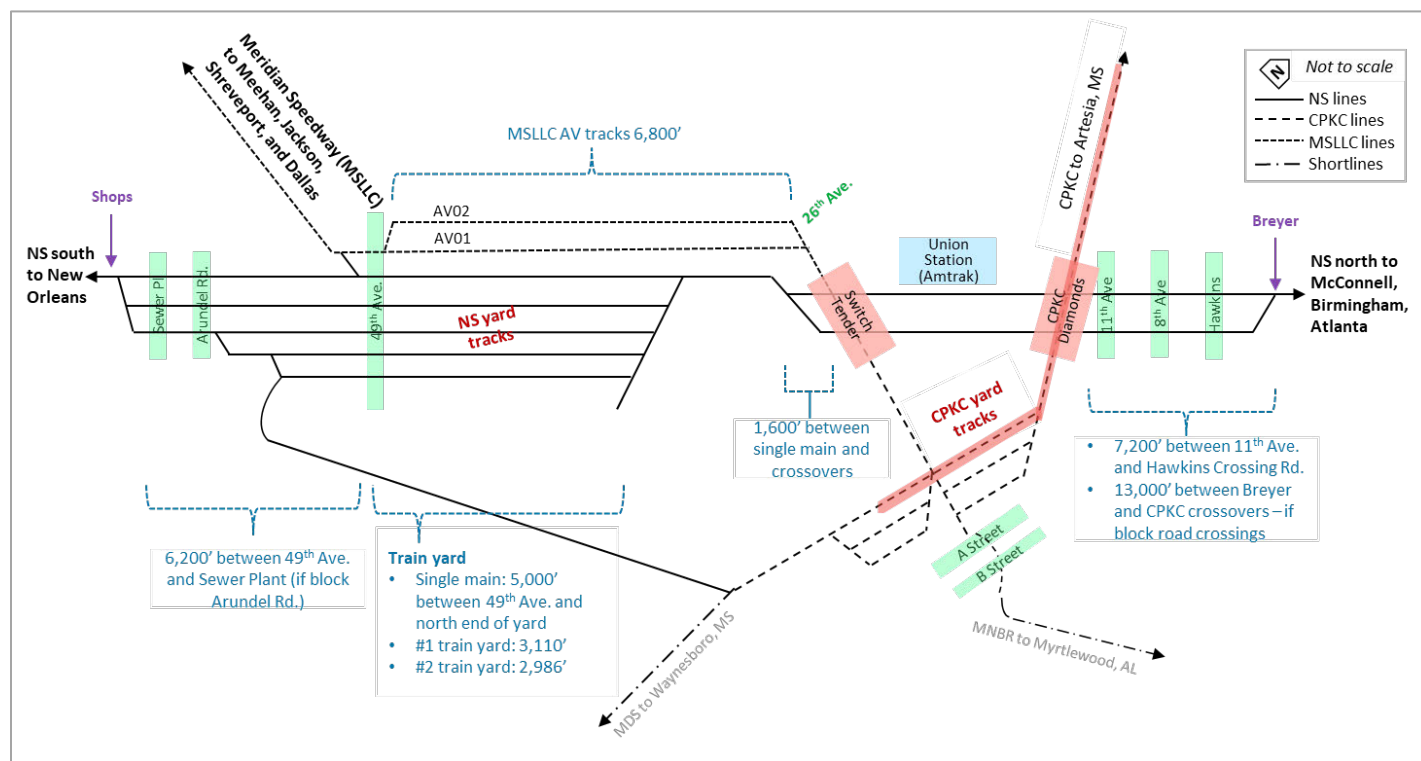
Exhibit III-7: Norfolk Southern Local Operations (pink path)



7. CPKC local operations

CPKC operates a Monday through Friday local turn train from Artesia to the Meridian Terminal. This train does not cross the Switch Tender, but does cross the CPKC Diamonds once in each direction per day (Exhibit III-8). This train likely stays clear of the Norfolk Southern mainline while working in the CPKC yard at Meridian. Interchanges with shortline MDS and Norfolk Southern are performed out of the south end of the CPKC yard and should not interfere with mainline operations.

Exhibit III-8: CPKC Local Operations (red path)



B. Norfolk Southern and CPKC Operations at Meridian

1. Daily train volumes

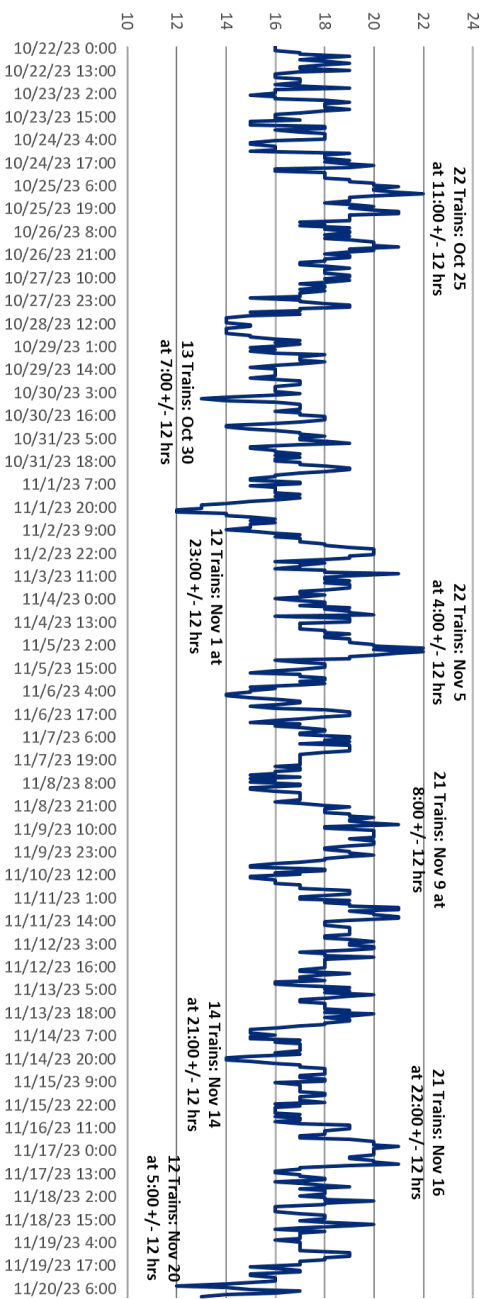
Total average daily train volume through the Meridian Terminal is 22.8 trains per day. The number of daily trains by train service and railroad are shown in Exhibit III-9 and a rolling 24-hour count of NS trains through the terminal for a recent 29-day period is shown in Exhibit III-10.

Exhibit III-9: Average Daily Train Volume by Direction³⁰

Route	Northbound	Southbound	Total
1. NS Birmingham-New Orleans	4.4	3.2	7.6
2. NS Birmingham- Meridian Speedway	2.4	2.9	5.3
3. CPKC-NS interchange	1.0	0.9	1.9
4. CPKC Meridian Speedway-Artesia	1.5	1.5	3.0
5. Amtrak Crescent	1.0	1.0	2.0
6. NS local operations	0.8	0.8	1.6
7. CPKC local operations	0.7	0.7	1.4
Total average trains per day	11.8	11.0	22.8

Exhibit III-10: NS Trains Through Meridian per Day (Breyer MP AG292.70)³¹

Rolling 24-hour train count, includes Amtrak trains, October 22-November 29, 2023



Norfolk Southern currently operates a total average of 16.4 trains daily through the Meridian

Terminal (up to a peak of 22 in the analyzed period), while CPKC operates 4.4 trains a day.

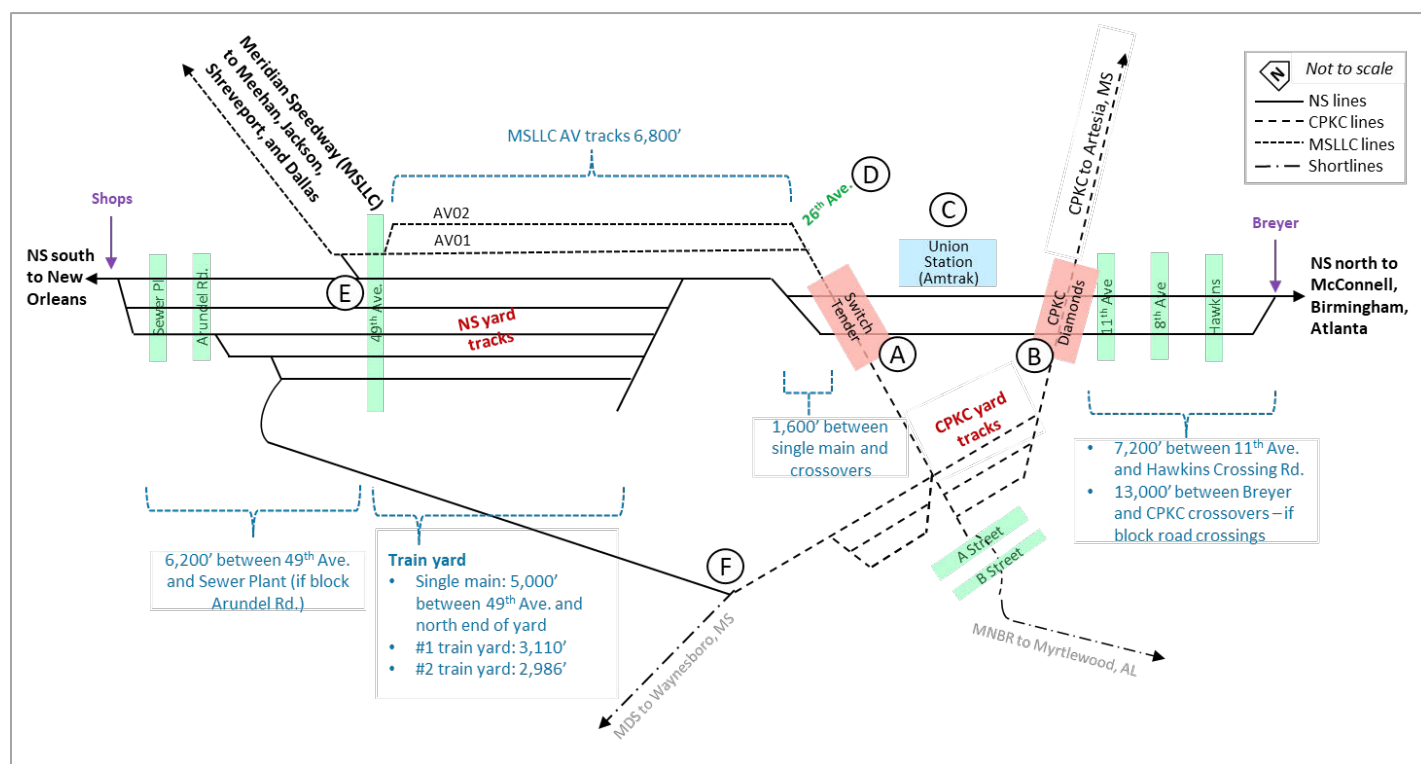
Amtrak operates two trains per day through Meridian.

2. Crew changes and work events

Exhibit III-11 (next page) provides a map for the crew change and work events described below.

³⁰ Norfolk Southern Hattiesburg to Tuscaloosa train data (October 21-November 20, 2023), Oliver Wyman analysis.
³¹ Id. Note: The first (Oct. 21) and last (Nov. 20) days were eliminated from the analysis due to incomplete train data.

Exhibit III-11: Crew Change and Work Event Locations



Norfolk Southern

All Norfolk Southern crews change at Meridian. For trains to/from the Meridian Speedway, this happens at 26th Avenue (D). For north-south trains between Birmingham and New Orleans, this takes place at the Norfolk Southern yard office or the 49th Avenue crossing (E).

The Norfolk Southern yard is on the opposite side of the mainline from the junction with the Meridian Speedway. Norfolk Southern yard moves between CPKC and shortline Meridian Southern Railway (“MDS”) are conducted via a back track connecting the CPKC and Norfolk Southern yards (F). Switching can be done from either end of the Norfolk Southern yard without interfering with other train operations. Setouts and pickups by Norfolk Southern trains are done at the Norfolk Southern yard and typically do not block the Switch Tender. Norfolk Southern interchanges with the MNBR are done north of the CPKC Diamonds by a Norfolk Southern local train, discussed in section III.A.6 above.

CPKC

All CPKC crews also change at Meridian. This crew change takes place at the CPKC yard, located between the CPKC Diamonds (B) and the Switch Tender (A). Trains stopped to change crews typically block the Norfolk Southern mainline while the crew change takes place.

The CPKC yard is primarily south of the Switch Tender. CPKC trains which have work events or a crew change in the CPKC yard typically cannot clear both the Switch Tender and the CPKC Diamonds going up to Artesia, MS, so trains stopping at the CPKC yard will block the Norfolk Southern mainline. Most yard switching activity can be performed without blocking the CPKC Diamonds that cross the Norfolk Southern line north of the Amtrak passenger train station.

C. Amtrak Services

Amtrak's Crescent service operates two daily trains between New York and New Orleans. The northbound and southbound Crescent operate through the Meridian Terminal and stop at Meridian's Union Station (Exhibit III-11 above, letter C). Amtrak's Meridian station stop requires Norfolk Southern to hold any Norfolk Southern west/southbound train outside of Meridian so that the Crescent can access the station, given it is only on one side of the route. All Amtrak trains must stop on the track closest to the depot (the platform track). All Amtrak trains change crews at Meridian Union Station.

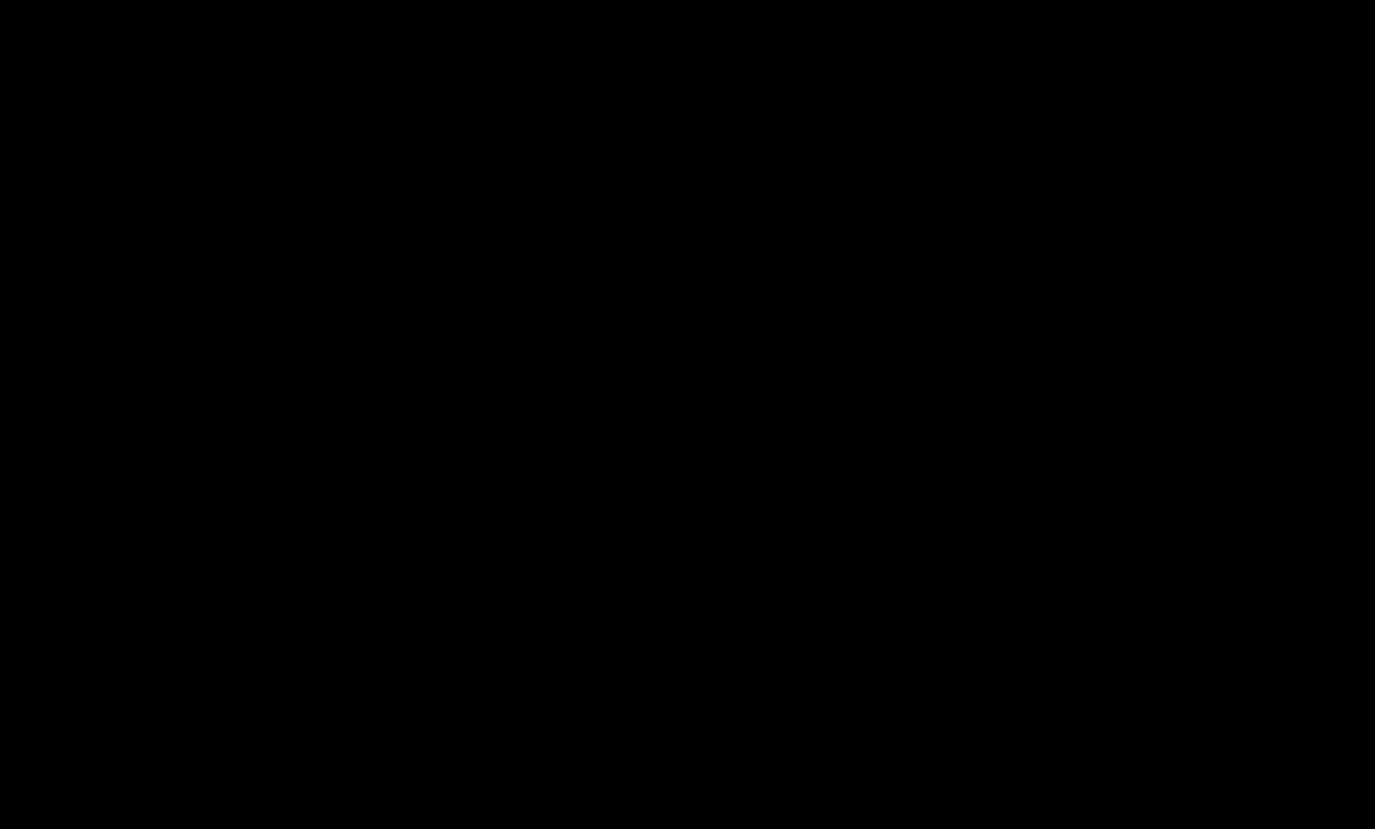
Per the published Amtrak schedule,³² both trains typically stop for 5-6 minutes at the station. Amtrak reported ridership of 202,686 and overall on-time performance for the Crescent of only 53% in 2022.³³ The latest available data from the Federal Railroad Administration shows that on-time performance for the Crescent declined to 43.2% in the fiscal third quarter of 2023 (April

³² Amtrak website.

³³ [Amtrak FY22 Fact Sheet - State of Mississippi; FY22-Year-End-Revenue-and-Ridership.pdf \(amtrak.com\)](#).

through June 2023) – putting the Crescent in the bottom four for worst on-time performance across all Amtrak train services.³⁴ As shown in Exhibit III-12, between March 1, 2023, and November 8, 2023, Meridian accounted for {{[REDACTED]}} of total Crescent delays southbound on the 1,100-mile trip from Washington, DC to New Orleans, and {{[REDACTED]}} of delays for northbound trains from New Orleans to Washington, DC – far in excess of any other point through which the Amtrak Crescent service passes.³⁵ It is likely that no other station on any Amtrak service generates as large a percentage delay.

{{[REDACTED]}}



}}

³⁴ Quarterly Report on the Performance and Service Quality of Intercity Passenger Train Operations, Federal Railroad Administration, US Department of Transportation, p. 28.

³⁵ Operations monitoring data provided by Norfolk Southern.

³⁶ Amtrak delay data for March 1, 2023 to November 8, 2023, provided by Norfolk Southern.

At Meridian, Amtrak trains can be delayed by CPKC or Norfolk Southern trains blocking the Switch Tender, including for crew changes. {{ [REDACTED]

[REDACTED] At Meridian, Norfolk Southern must at times hold the other leg of the Amtrak train outside of the congested Meridian area when an Amtrak train is approaching the station.

D. Major Impediments Impacting Capacity and Causing Delays

The state of infrastructure at the Meridian Terminal, by today’s standards, significantly reduces capacity and leads to delays in operating trains through the terminal, impacting overall service performance for rail freight customers and passengers. This impact will be greater on days when traffic volumes are higher.³⁸ CPKC appears to be the only entity that does not recognize – as do the Federal Railroad Administration (“FRA”), Association of American Railroads (“AAR”), and most railroads – that congestion increases faster when more train frequencies are added. It is both well documented and intuitive that as more trains are added to a rail line or a terminal on a rail line, all trains using that line or terminal will incur more delay. Put another way, congestion increases as available capacity is reduced. According to the FRA: “Capacity is not so much a function of the capability to move trains over a line at all, as it is the ability to move trains over a line without undue delay.”³⁹ This is demonstrated in Exhibit III-13, where trains per day are mapped against average delay per train for a variety of track configurations. In every case, the addition of trains increases the average delay for all trains. For

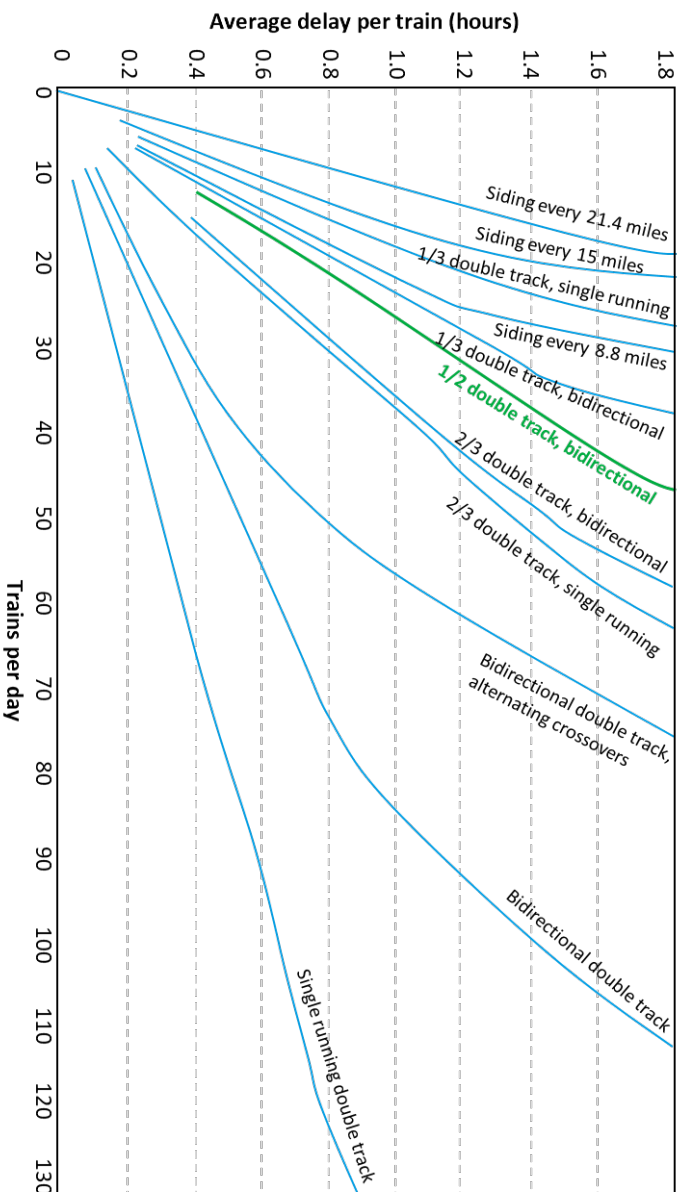
³⁷ { [REDACTED]

³⁸ See Association of American Railroads (AAR), National Rail Freight Infrastructure Capacity & Investment Study, September 2007, which describes in detail how capacity declines as traffic volumes increase.

³⁹ “Parametric Analysis of Railway Line Capacity,” Federal Railroad Administration, Report No. FRA-OPPD-75-1, August 1975, Final Report, p. vi.

example, the line “1/2 double track, bidirectional” shows that as train volumes increase from 20 to 25 per day, the average delay per train increases from 0.75 hours to 0.95 hours, which means that five new trains can be expected to cause an additional 240 minutes of delay to the original 20 trains each day.⁴⁰

Exhibit III-13: Train Volume – Average Delay Relationships for Alternative Configurations of a 100-Mile Rail Line⁴¹



The AAR also recognizes the relationship between number of trains and train delay, using a volume-to-capacity ratio to assign level-of-service grades as shown in Exhibit III-14. For a given capacity, as the volume increases, so too does the congestion and amount of train delay.

⁴⁰ At 20 trains/day, the average delay is about 0.75 hours and at 25 trains/day, the average delay is about 0.95 hours. Thus, (0.95 hours - 0.75 hours)*60 min/hr * 20 trains = 240 additional minutes of delay for the original 20 trains.

⁴¹ Federal Railroad Administration, “Parametric Analysis of Railway Line Capacity,” Report No. FRA-OPPD-75-1, op. cit., p. 27 (redrawn for clarity).

Exhibit III-14: Volume-to-Capacity Ratios and Level-of-Service (LOS) Grades⁴²

LOS Grade	Description	Volume/Capacity Ratio
A	Below Capacity	Low to moderate train flows with capacity to accommodate maintenance and recover from incidents
		0.0 to 0.2
		0.2 to 0.4
C		0.4 to 0.7
D	Near Capacity	Heavy train flow with moderate capacity to accommodate maintenance and recover from incidents
E	At Capacity	Very heavy train flow with very limited capacity to accommodate maintenance and recover from incidents
F	Above Capacity	Unstable flows; service break-down conditions

In the case of the Meridian Terminal, both Amtrak and Norfolk Southern trains already experience significant delays. It is FRA, AAR, and industry experience that adding additional trains, without making any capacity improvements, will only increase the delays for all trains dependent on the terminal.

Exhibit III-15 summarizes major current impediments at the Meridian Terminal by train service, and impediments by category are further described below.

⁴² AAR National Rail Freight Infrastructure Capacity & Investment Study, op. cit., Table 4.3, p. 4-8.

Exhibit III-15: Summary of Existing Impediments at Meridian Terminal by Train Service

Train Service	Route Through Meridian	Major Impediments
1. NS through trains between Birmingham and New Orleans	<i>See Exhibit III-2</i> • Cross CPKC at the Switch Tender • Operate through Meridian Union Station (passenger) • Cross CPKC on CPKC Diamonds	• Crew change at NS yard or 49th Avenue • Block 49th Avenue and Arundel Road • May pick up or set out at the NS yard, but typically trains do not block the Switch Tender • Receive permission to occupy the Switch Tender from the CPKC yardmaster • Must manually line switches at Switch Tender and wait for signal clearance across MSLLC • Amtrak station hosts two Amtrak trains per day, so NS main may be essentially single track for freight movements • CPKC Diamonds must be clear
2. NS trains between Birmingham, AL and the Meridian Speedway	<i>See Exhibit III-3</i> • Cross CPKC Diamonds • Operate through Meridian Union Station (passenger) • Enter MSLLC at the Switch Tender	• CPKC Diamonds must be clear • Amtrak station hosts two Amtrak trains per day, so NS main may be essentially single track for freight movements • Crew change at 26th Avenue • Receive permission to occupy the Switch Tender from the CPKC yardmaster • Must manually line switches at Switch Tender and wait for clearance onto MSLLC • Westbound trains block 11th Avenue and potentially 8th Avenue, Meridian Union Station • Eastbound trains block 49th Avenue
3. Interchange trains between CPKC and NS	<i>See Exhibit III-4</i> • Westbound trains cross CPKC Diamonds, pull onto MSLLC, back up into CPKC yard, pick up cars, proceed onto Speedway	• Receive permission to occupy the Switch Tender from the CPKC yardmaster • Crew change and manually line switches at Switch Tender • Need CPKC yardmaster clearance to enter CPKC track • Westbound trains block all train movements while picking up cars in CPKC yard, conducting an air brake test, and moving the EOT
4. CPKC trains between Meridian Speedway and Artesia	<i>See Exhibit III-5</i> • Cross NS mainline route at the Switch Tender • Enter CPKC yard • Cross NS mainline route again on CPKC Diamonds departing town	• Manually line switches and wait for signal to clear across NS mainline • Need CPKC yardmaster clearance to enter yard • Crew change at CPKC yard • East/northbound trains block Switch Tender while changing crews • South/westbound trains block CPKC Diamonds while changing crews • Most trains occupy both Switch Tender and CPKC Diamonds at the same time for some period in traversing this route, as the distance between the two is only 4,400 feet
5. Amtrak Crescent trains	<i>See Exhibit III-6</i> • Cross MSLLC at the Switch Tender	• Receive permission to occupy the Switch Tender from the CPKC yardmaster • Manually line switches

Train Service	Route Through Meridian	Major Impediments
	• Station stop and crew change at Meridian Union Station (passenger) • Cross CPKC on Diamonds	• Amtrak trains must use the westernmost mainline track at Meridian Union Station for passenger boarding, disembarking, and crew changes • While Amtrak is in the station, NS has only a single track north of the Switch Tender • CPKC Diamonds must be clear
6. NS local operations	<i>See Exhibit III-7</i> • Traverse both the Switch Tender and CPKC Diamonds between NS yard and MNBR interchange, customers on north side	• Use easternmost NS mainline, preventing use by other trains • Manually line switches in each direction of travel • Cross the CPKC Diamonds once in each direction
7. CPKC local operations	<i>See Exhibit III-8</i> • Traverse the CPKC Diamonds once each way arriving and departing the CPKC yard	• Blocks CPKC Diamonds while arriving/departing the CPKC yard

Hand-thrown switches

In the Meridian Terminal, the switches and turnouts that control the train paths are hand-thrown (i.e., not powered or remotely dispatcher-operated). For most train movements, switches are left in whatever position was used by the last train through the terminal. Because the traffic is spread evenly among the different routes, the odds of the hand-thrown switches being properly lined for the next train's route is low. Since the switch position is unknown, however, for safety reasons, every train approaching every switch inside the terminal must be prepared to stop. This requirement severely limits train speeds through the terminal, increases track occupancy times near the Switch Tender bottleneck, and reduces the efficiency of operations.

KCS Timetable number 15 (for April 1, 2020) provides an example of required operating safety procedures that can delay movements through the terminal: For trains approaching the Switch Tender, "All switches of the crossover must be lined to establish block signal protection.

After lining crossover switches, wait five (5) minutes before fouling crossover. All trains must contact Meridian Yard prior to entering yard limits.”⁴³

Yard limit speeds and authority to proceed

The last siding on the Meridian Speedway into Meridian from Shreveport is at Meehan, 11.8 miles west of Meridian. Centralized Traffic Control (“CTC”) ends 3.2 miles west of Meridian at West Meridian. From milepost 3.2 to the CPKC yard, the terminal area is operated as yard limit territory by CPKC. Operating in yard limits reduces speeds to restricted speed, which is 20 mph or less, such that a train can be stopped in half the sight distance ahead of the train. Once the terminal is reached, the switches at Switch Tender must be lined manually, and instructions require waiting for any required protective signals to be activated before a train proceeds. Waiting for the protective signals to be activated takes approximately five minutes.

Since the entire terminal area is yard limit territory, all trains coming eastbound off the Meridian Speedway must contact the CPKC yardmaster (“Meridian Yard”) for instructions on proceeding to move through the area. Trains entering the Speedway from Norfolk Southern also must get yardmaster permission to enter MSLLC terminal trackage.

Short track lengths and blocked crossings

The average length of Norfolk Southern trains through Meridian are 6,059 feet to/from the Meridian Speedway, with the longest being 8,539 feet; and 6,254 feet between Birmingham and New Orleans, with the longest being 10,873 feet.⁴⁴ The two trains interchanged between CPKC and Norfolk Southern at Meridian that pick up and set out traffic at the CPKC yard average 4,055 feet, with the longest being 7,917 feet. The problem at the Meridian Terminal is that there are a significant number of trains passing through that are long enough to block key terminal

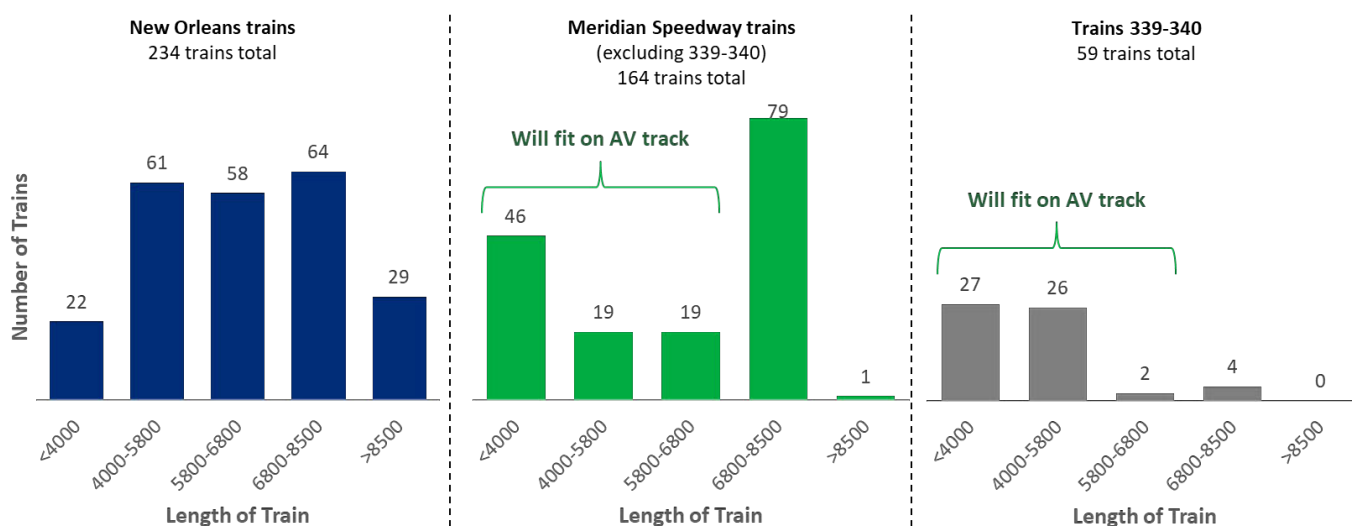
⁴³ KCS Timetable 15, April 1, 2020, p. 66.

⁴⁴ Norfolk Southern Hattiesburg to Tuscaloosa train data (October 21-November 20, 2023), Oliver Wyman analysis.

points or grade crossings if held waiting to pass or for other trains to pass through the terminal area. Both CPKC and Norfolk Southern can only hold trains at sidings outside of Meridian (see Exhibit V-2). As shown in Exhibit III-16, 79% of trains are longer than 4,000 feet and cannot easily be held in the Meridian Terminal area, and approximately half of the trains to/from the Meridian Speedway exceed the 6,800 foot capacity of the AV tracks.

Exhibit III-16: Train Length Distribution⁴⁵

Trains passing Breyer from 10/21/23 to 11/20/23



The maximum track length from the east side of the Switch Tender to the CPKC Diamonds across the Norfolk Southern mainlines is 4,400 feet.⁴⁶ Any CPKC train that exceeds 4,000 feet (approximately 60 cars) and that must set out, pick up, or change crews at the CPKC yard will block the Switch Tender (Exhibit III-17, letter A) coming off the Meridian Speedway/MSLLC AV trackage, stopping traffic on Norfolk Southern – both on the Birmingham-New Orleans mainline and on the connection to the Meridian Speedway, and potentially Amtrak trains on Norfolk Southern as well. Since many trains today are longer than 4,400 feet, it is likely CPKC

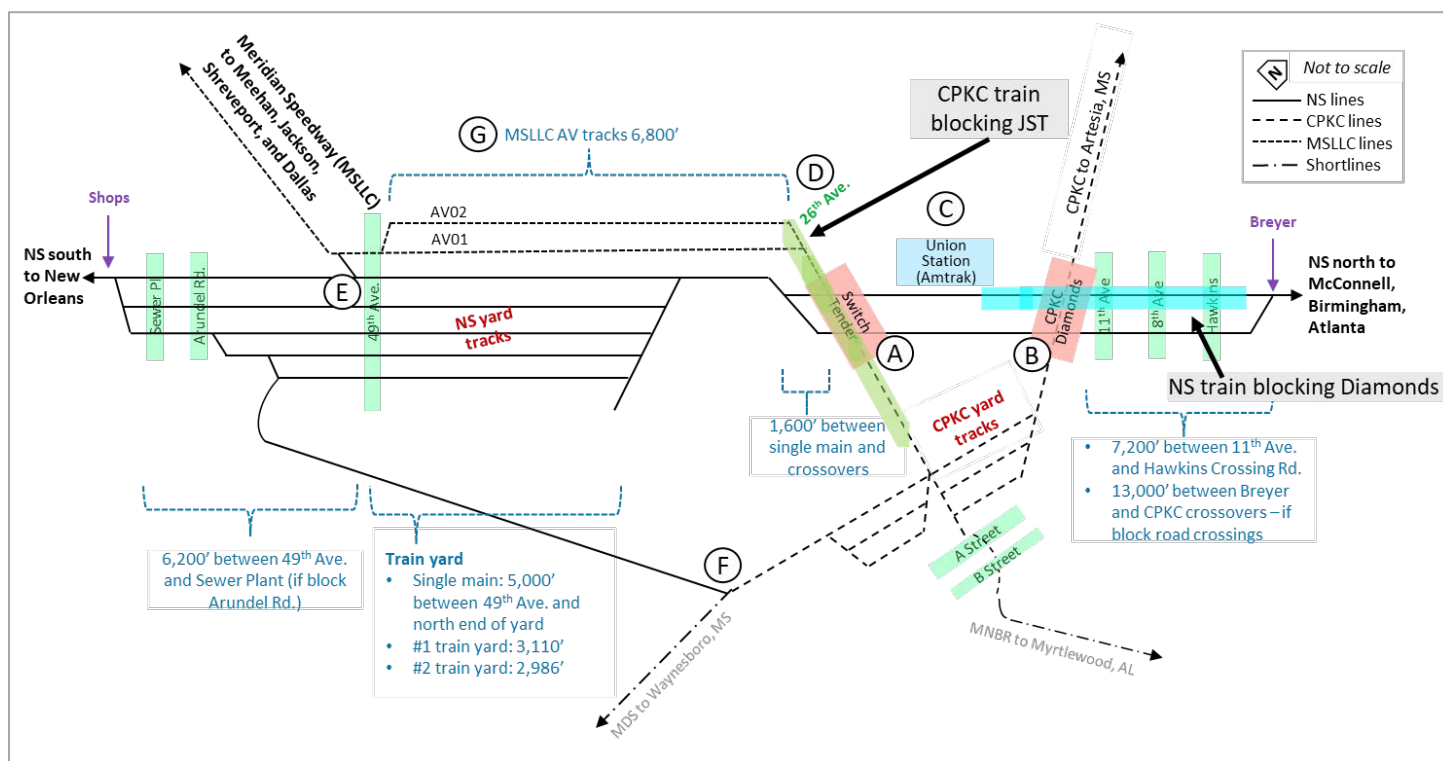
⁴⁵ Id.

⁴⁶ Of this 4,400 feet, typically only 4,000 feet can be occupied by a train.

trains going between the Meridian Speedway and Artesia will block both crossings of the Norfolk Southern mainline for a period of time.

At a point immediately before the Switch Tender, MSLLC-owned trackage splits into two tracks designated as AV01 and AV02 (G). The AV01 and AV02 tracks are 6,800 feet long and will not hold many of the trains operating across the Meridian Speedway. There is also an active grade crossing at 49th Avenue (E), so extending the MSLLC-owned AV tracks west would still block the 49th Avenue crossing if trains are held there for meets.

Exhibit III-17: Diagram for Short Track Lengths and Blocked Crossings



CPKC's control of the Switch Tender (A) means that Norfolk Southern trains must hold until a train has exited the Meridian Speedway trackage before a Norfolk Southern train can enter the Meridian Speedway from the north-south Norfolk Southern mainline. Norfolk Southern has double track north of the Switch Tender and through Union Station as far north as Breyer, but the double track is not long enough to hold most trains between the Switch Tender (A) and the

CPKC Diamonds (B). If a train is held north of the CPKC Diamonds, it will block as many as three grade crossings (11th Avenue, 8th Avenue, and Hawkins Crossing Road). Gridlock can happen if a Norfolk Southern train is held awaiting permission to enter the Meridian Speedway and is parked across the CPKC Diamonds while at the same time a CPKC train is wanting to come off the Meridian Speedway and go to Artesia. Essentially, a CPKC train would end up blocking the Switch Tender (A) and the Norfolk Southern train would end up blocking the CPKC Diamonds (B) (green and blue lines on Exhibit III-17).

Norfolk Southern trains waiting to enter the Switch Tender and holding clear of the CPKC Diamonds will block crossings at 11th Avenue and 8th Avenue and likely Hawkins Crossing Road. To ensure that trains are not going to block the CPKC Diamonds, active road crossings, and access to the train station for Amtrak trains, the next point north of Meridian to hold a long train is 37 miles north at Livingston, AL. South of the Switch Tender, on the Norfolk Southern line to New Orleans, there is also no place to hold trains near Meridian without blocking crossings at 49th Avenue and/or Arundel Road, as well as the crossing to the sewage treatment plant.

Crew change impacts

Further complicating the flow through at the Meridian Terminal is that all of the trains currently traversing Meridian must change crews in Meridian, either because of time on the clock or because of a change in control for train operations. This means that each crew has to be called and on duty, ready to go, and walk or be driven to the correct location for a train to make its required movement. The complications of interrelated crew and operating decisions between two Class I railroads increases the complexity of Meridian operations exponentially. Additionally, crew changes can block tracks and active motor vehicle crossings.

Other factors

There are two Meridian Speedway connecting tracks, AV01 and AV02, arriving from the Meridian Speedway on the west side of Meridian (Exhibit III-17, G). At 6,800 feet long, these tracks are unable to hold many trains operating on this route. The lack of sufficient capacity on the connecting tracks means that CPKC dispatching and yardmaster control can deliver a train from the Meridian Speedway but cannot accept one at the same time, because the two trains cannot meet or pass each other on Meridian Speedway trackage until Meehan (which is 11.8 miles away). Because CPKC controls dispatching and yard movement, Norfolk Southern is routinely forced to accept the CPKC train and hold Norfolk Southern trains back on Norfolk Southern trackage to keep the Switch Tender clear. Sometimes Norfolk Southern must hold its south/westbound trains as far as 60 miles outside of Meridian, which further cascades the operational impacts of the terminal across the Norfolk Southern network.

There are multiple public road crossings through Meridian that cannot be blocked, causing trains to be held further back from the city until there is a through route. There were 11 formal complaints filed for the six active grade crossings in Meridian in just the third quarter of 2023.⁴⁷ This is an average of nearly four complaints a month. The two most common complaints for blockage were 49th Avenue and Hawkins Crossing Road.

Manual hand-thrown switches at the Switch Tender, the lack of a place to hold trains, and the need to change crews make operation of trains through Meridian difficult at best. The nearest places to hold trains waiting for a move to/from the Meridian Speedway are at Meehan (11.8 miles west of Meridian on MSLLC) and at Livingston (37 miles north of Meridian on Norfolk Southern). The fact that these two points are so far apart and are located on two different

⁴⁷ Data provided by Norfolk Southern.

railroads (with two different dispatchers, plus the CPKC yardmaster, who controls the Switch Tender) makes coordination of train movements through Meridian especially difficult. Further, both railroads are single-track lines. When a train is holding at one or both points, this creates further delays in handling meets for other trains on the line. Thus, in the Meridian Terminal's current configuration, the more trains that operate through the terminal, the more likely significant delays will occur due to conflicts between trains.

It is common at normal railroad junction points to have a siding on one or both of the routes leading to the junction that can hold a train. When a junction is controlled by two different dispatchers, there is nearly always a place where a train can be held in the clear when the two dispatchers are not or cannot be fully aligned on their train movement priorities.

A further complication is that the MSLLC and CPKC route from Jackson to Artesia actually loops around east of the Norfolk Southern mainlines and then crosses back over in less than a mile, doubling the number of interactions, even if it is for a small number of trains. This means that the three trains a day operated by CPKC on this line provide the same interactions as six trains would at a standard junction point. The two other trains that interchange between Norfolk Southern and CPKC every day create multiple interactions far beyond what would be expected at a normal junction.

IV. CPKC Plans for the Meridian Terminal/MNBR Line

CPKC filed an Application for a Minor Transaction on October 6, 2023 seeking Board approval for CPKC to acquire and operate approximately 50.4 route-miles of rail line currently owned and operated by the MNBR between Meridian, MS and Myrtlewood, AL (i.e., the

“Western Line”).⁴⁸ The purpose of this acquisition, CPKC states in its Application, “is to establish a direct, efficient interchange with CSXT at Myrtlewood.”⁴⁹ The transaction is contingent upon the CSXT “retaking possession of its line east of Myrtlewood and resuming operations between Myrtlewood and Burkeville, Alabama” (i.e., the “Eastern Line” – MNBR operated this portion of the line under a lease that expired in November 2023).⁵⁰

A. Projected CPKC/CSX Investment

CPKC states in its Application that in the first year after acquisition it intends to invest approximately \$46 million to upgrade the infrastructure of the MNBR line between Meridian and Myrtlewood to Class I railroad standards and \$9 million in bridge repairs and improvements.⁵¹ CPKC does not however provide any plans or dollar figures for investment in the Meridian Terminal, other than stating that (as an unrelated effort) CPKC “intends to reduce the curvature of the CPKC-owned rail line that connects to the MNBR at Meridian.”⁵² Further, in CPKC’s response to NS interrogatories, CPKC states that “it has no current plans to make any infrastructure improvements to” the Meridian Speedway or the Meridian Interchange resulting from the proposed transaction.⁵³

CSXT, which filed an Application on October 6, 2023 to reacquire the MNBR line between Myrtlewood and Burkeville, also has not stated any plans or dollar amounts for investment in the Meridian Terminal in its Application.⁵⁴

B. Projected Increase in Volume

⁴⁸ CPKC Application, at p. 1.

⁴⁹ Id. at p. 2.

⁵⁰ Id. at p. 2.

⁵¹ Id. at pp. 12-13.

⁵² Id. at p. 12.

⁵³ FD 36732, CPKC’s Answers and Objections to Norfolk Southern’s First Set of Interrogatories, p. 11.

⁵⁴ See CSXT Application, op. cit.

CPKC states in its Application that it expects to operate one additional train a day in each direction on the MNBR Western Line, “at least for the first five years after consummating the Transaction.”⁵⁵ It further estimates that these new trains will average 70 cars per train.⁵⁶ Notably, the expected growth projection does not preclude train volumes increasing faster, and more trains are certainly a possibility. In its application, CPKC states that it “intends to grow the volumes on the Western Line as it expects existing CPKC-CSXT shippers to opt for the more efficient direct routing traffic and as CPKC and CSXT win new traffic with the new premium train service.”⁵⁷ Raymond Elphick, Vice President Service Design and Capacity for CPKC, also states in his Verified Statement that “eventually, CPKC hopes to add an additional regularly operated train pair.”⁵⁸

CPKC intends to spend \$55 million in the first year upgrading the Western Line and repairing bridges, and is exchanging a branch line in Alberta for the MNBR line.⁵⁹ CSXT may be spending even more to upgrade the Eastern Line of MNBR to the same standard to handle the anticipated CPKC-CSXT intermodal trains, since that line segment is twice as long. CPKC also states that it intends to spend as much as \$100 million on bridge repair.⁶⁰ The probability of traffic growing faster than portrayed in the CPKC and CSXT application seems high. Spending \$200 million or more on upgrades to a line is typically not justified if the expected volume facilitated by the infrastructure investment is only going to be two trains per day. Far higher volumes are needed to support this level of investment – especially since capital spending is typically heavily debated internally prior to being scrutinized by investors and the public.

⁵⁵ CPKC Application, pp. 13-14.

⁵⁶ CPKC Application, Verified Statement of Raymond A. Elphick, p. 8.

⁵⁷ CPKC Application, p. 16.

⁵⁸ CPKC Application, Elphick VS, p. 8.

⁵⁹ CPKC Application, Elphick VS, pp. 9-10.

⁶⁰ CPKC Application, Elphick VS, p. 10.

Neither CPKC nor CSXT has identified major new traffic sources that could more rapidly fill out the two new trains or result in adding a second train set sooner than five years. But as an example, Hyundai is constructing a \$7.6 billion electric vehicle assembly plant and battery plant complex in Ellabell, GA, which is expected to start production in early 2025.⁶¹ The Georgia Central Railway, which will serve that plant, interchanges with CSXT in Savannah, GA, and Norfolk Southern in Macon, GA.⁶² Table 4 of the CPKC Supplemental Information “details automotive, automotive parts, and intermodal traffic that were included in CPKC’s forecasts for ‘projected diverted and new traffic’.”⁶³ One category of projected diverted and new traffic listed in Table 4 is “CSXT Finished Autos (plants/imports)” originating in Georgia.⁶⁴ The traffic from this new Hyundai plant could be what is being referenced.

As discussed in Section III.D, higher volumes will only worsen service performance issues further at the Meridian Terminal, given that the terminal has very little resiliency already, as a result of antiquated technology, a convergence of five single-track lines owned by two different railroads (i.e., four current plus the line subject to the transaction), and a lack of capacity to hold trains near Meridian.

Andrew Koch, Assistant General Manager, Network Operations Center for Norfolk Southern stated that the Meridian Terminal is only fluid 50-60% of the time now and that he needs to watch the terminal closely every day. This suggests that even the single train pair that CPKC anticipates adding in the short term will increase train movements through Meridian by 10%, and if there is additional growth it will be more than this. The proposed additional Amtrak service

⁶¹ Associated Press, “[Hyundai is rapidly building its first US electric vehicle plant, with production on track for 2025](#),” October 25, 2023.

⁶² Trains Magazine, “[Genessee & Wyoming railroad to serve new Hyundai plant in Georgia](#),” May 23, 2022; Georgia Central Railway, <https://www.gwrr.com/gc/>.

⁶³ FD 36732, CPKC Supplemental Information, CPKC-7, op. cit., Table 4.

⁶⁴ Id.

between Meridian and Dallas will add yet more traffic. Not fixing the issues at Meridian Terminal will result in significant increases in delay for Norfolk Southern trains and their customers as well as Amtrak trains (for which Norfolk Southern is held responsible).

C. CPKC Characterization of Meridian Performance

CPKC's lack of appreciation for the Meridian Terminal as a bottleneck may be a result of insufficient performance data and linked to the unilateral exercise of Meridian dispatch control. The Switch Tender location and the CPKC Diamonds are within yard limits, so it is unlikely there is much activity data automatically collected by CPKC on Norfolk Southern trains, and perhaps not even on CPKC trains. Because CPKC controls the terminal and has only 14% of daily trains passing through the Meridian Terminal area, CPKC may have a disproportionately low experience with delays and congestion or may not recognize the extent of the delays. CPKC cites three reasons why it thinks there will be no performance issues at the terminal: the seven-minute transit through the Switch Tender, no MNBR haulage cars stopping in Meridian, and fewer cars on the Artesia line.

CPKC's claim that a 100-car train can traverse the terminal in seven minutes⁶⁵ defies the typical Norfolk Southern railroad experience, particularly as there is a requirement for a five-minute delay before fouling the crossover switches to ensure block signal protection after the switches are lined, which consumes five of the seven minutes or sets the event time to at least 12 minutes.⁶⁶ It also takes time for the conductor to leave the train and walk to the crossover switches and line them before the five-minute wait begins. The total estimated time for this event of moving several hundred feet over the Switch Tender to be at least twice the time (15 minutes

⁶⁵ *Id.*, pp. 8-12.

⁶⁶ KCS Timetable 15, *op. cit.*, p. 66.

per train) CPKC has stated for this one simple step in what often is a complex, multistep process. Total time to complete a movement through the terminal including changing crews in actuality is in the range of 30 minutes.

CPKC also states that “The crossover switches are manual switches that in their default position are lined for the Meridian Speedway’s mainline, and are controlled and dispatched by CPKC.”⁶⁷ We find this to be highly unlikely in a world of two-person train crews. Defaulting to the Meridian Speedway is counter to the experience of Norfolk Southern operating employees familiar with operating practices at Meridian, who indicated that the switches are left in the position last aligned after a train passes. If the train crew had to reline the switches after passing through the crossovers, it would just further exacerbate delays, as the conductor would have to walk the length of the train (which is often a mile or more) to get back to the locomotive cab once the train had passed through the crossovers.

A review of CPKC’s Supplemental Information, Section III Operation Issues,⁶⁸ does not provide evidence that operating conditions will be any less congested at Meridian after the transaction is completed. For example:

- CPKC states that there will be fewer *cars* on the Artesia line and therefore less congestion. CPKC does not indicate however that there will be any fewer *trains*. It is train activity that drives demand for occupancy at critical choke points – not the number of cars through a junction.
- CPKC states there will be less congestion since some of the current traffic may no longer move via Brookwood, AL (via the Artesia line). That traffic, however, just reassigned to a different train, will still move through Meridian to Myrtlewood, AL.

⁶⁷ FD 36732, CPKC Supplemental Information, CPKC-7, op. cit., pp. 8-12.

⁶⁸ Id.

- CPKC also states that the MNBR haulage cars will no longer be setting out and picking up in Meridian, but this traffic will still pass through Meridian – only now as trains rather than blocks.
- CPKC states that operations will be reduced as interchanges will be eliminated. CPKC will still have local traffic, however, including an interchange with MDS that will still have to be picked up and set out in Meridian. So at least one train each way per day should be picking up and setting out traffic, just as it happens today, even if fewer cars are handled. CPKC claims it will make the pickup and setout using only the new westbound train from Myrtlewood, and that the train will not block the Norfolk Southern mainline in doing so. CPKC does not explain how this new operation could be accomplished. While it might be possible for the westbound train to do the setout without blocking the Norfolk Southern mainline, it would create an extended blockage on the Western Line of the A Street and B Street road crossings in Meridian, depicted in Figure V-1 below, and this extended blockage is likely to be unsustainable. The distance between B Street and the switch entering the CPKC yard is less than 2,000 feet. The average size of the new trains are expected to be approximately 4,500 feet (70 cars).

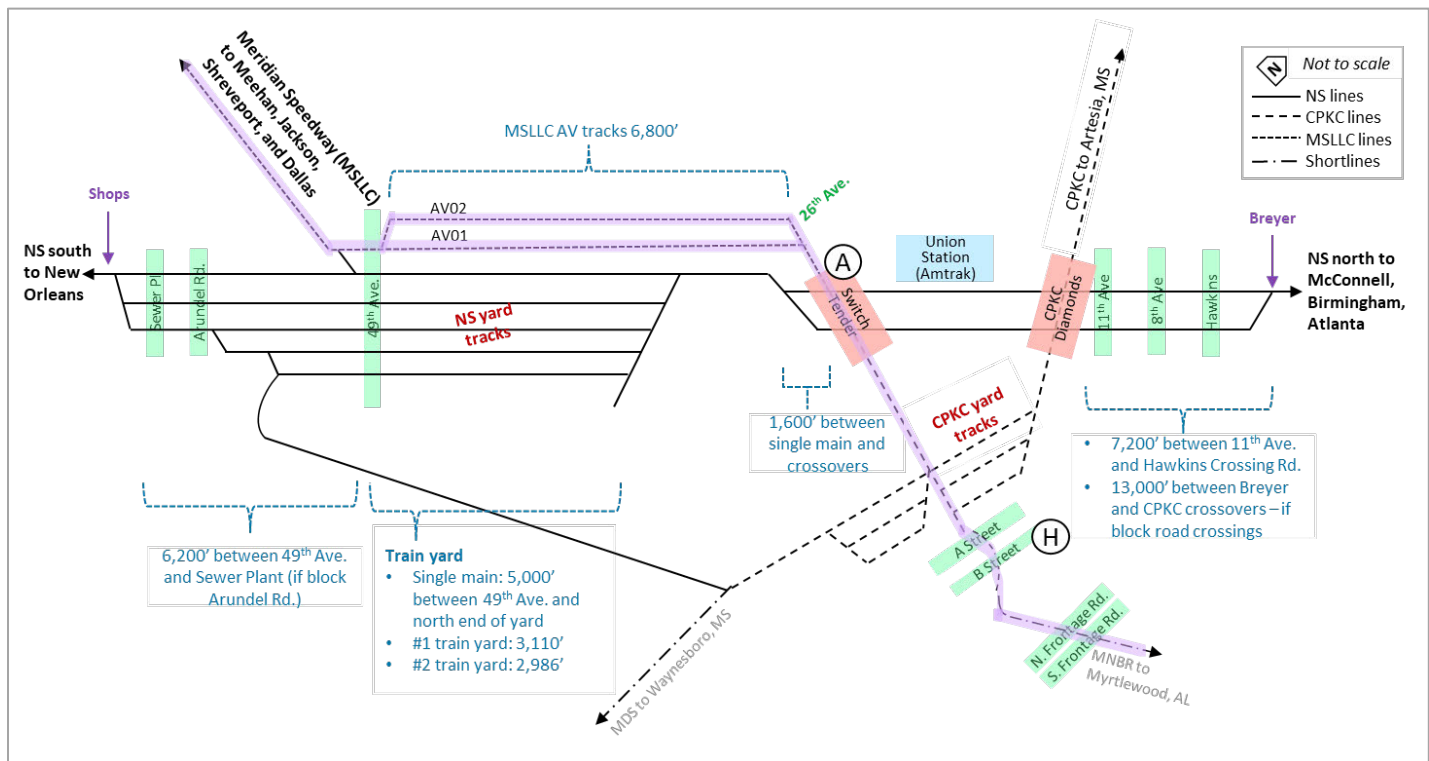
CPKC's control of dispatching and limited train count seem to provide a platform for seeing current operations and potential volume growth through the Meridian Terminal more positively than can be justified by actual daily performance. Norfolk Southern's hosting of 86% of the trains (including Amtrak) through Meridian translates to six times more train operations than CPKC, with no control of dispatch priorities or sequencing – resulting in a much larger collection of service failures and delays for Norfolk Southern.

V. Transaction Impacts on the Meridian Terminal

A. Infrastructure Impacts

Post transaction, the new CPKC-CSXT interline trains will move to/from the Meridian Speedway, across the crossovers at the Switch Tender and the Norfolk Southern mainline, and continue across the CPKC yard leads to the MNBR trackage and then on to Myrtlewood (Exhibit V-1). CPKC crews will operate the new trains between Jackson, MS and Myrtlewood (with no planned crew change at Meridian). Westbound, the train will stop to lift manifest traffic at Meridian, including traffic interchanged with MNBR and MDS.⁶⁹

Exhibit V-1: New CPKC Trains to/from Myrtlewood, AL on MNBR Line (purple path)



The new trains will move diagonally across the Switch Tender at a very slow train speed of about 10 mph. That will result in additional time that the Switch Tender switches will be

⁶⁹ CPKC Application, Elphick VS, p. 9.

occupied and need to be aligned, causing additional delays to Norfolk Southern and Amtrak traffic seeking to cross. There are then switches in the CPKC yard and the junction switch to the MNBR Western Line that are manual and will have to be lined as the train moves slowly forward beyond the Switch Tender, making for slow train movements for the eastbound train across the Switch Tender.

Trains entering and leaving the MNBR connection track traverse a sharp curve (H) and, at least until the curve is corrected, would likely be limited to 10 mph until clear of B Street to the east and the Switch Tender to the west.⁷⁰ The train also would block not just the A Street and B Street grade crossings but possibly also North Frontage Road and South Frontage Road (on either side of the elevated I-20/Route 11), if the train exceeds 5,600 feet while this activity was taking place.

B. Congestion and Capacity Impacts

To approximate the congestion and capacity impairment that the Meridian Terminal is experiencing today, and which is only likely to worsen with the addition of new CPKC trains, the following metrics were reviewed: 1) level of reserve capacity at the terminal, and 2) variation in train running times approaching the terminal.

Reserve capacity

When two rail lines come together, even if owned by the same railroad – but controlled by different dispatchers – the common practice is to have a siding available for reserve capacity, to reduce the time required to get through the terminal once a path is available. Usually, capacity is built on the less busy route, so that trains going onto the busier route can be staged and woven

⁷⁰ Although CPKC states that it intends some level of reconstruction of this curve, CPKC does not state when that reconstruction will take place nor the train speed anticipated after reconstruction. Id., p. 12.

into the traffic flow as feasible, while trains coming off the busier route can be readily accepted on the less busy route and are not held blocking traffic on the busy route. At Meridian, there are no such effective holding tracks for any of the primary lines heading into or out of Meridian, regardless of whether the line is the Meridian Speedway, the Norfolk Southern north-south line, or the MNBR line that CPKC seeks to acquire.

With critical reserve capacity lacking at or near the Meridian Terminal, Norfolk Southern, Amtrak, and CPKC cannot efficiently position trains to optimize the fluid movement of trains through the terminal. While there are tracks in Meridian long enough to hold some trains in the clear, trains occupying these longer tracks often block active road crossings and/or key terminal locations.

For the current four single-track, mainline segments that host through trains and converge at Meridian, none of the line segments have a siding of 8,500 feet or greater within ten miles of the terminal. CPKC's acquisition of the MNBR Western Line will add a fifth single track mainline segment (i.e., handling through trains) that also does not have a siding of 8,500 feet within ten miles. Exhibit V-2 provides data on the closest siding on each line segment to the Meridian Terminal; Exhibit V-3 provides a map of the siding locations. The run times shown in the table are estimated run times from a siding to Meridian. The long run times show how difficult it can be to time trains properly through the terminal. Any mistakes in exact meets can block road crossings, halt traffic on the mainlines, and/or block critical parts of the terminal, thereby creating significant congestion.

The Artesia line has the siding closest to Meridian, at 4.8 miles, but the low train count (approximately 2-3 per day) on this line and the 5,300-foot length of this siding means that it provides little operational flexibility and reserve capacity at the Meridian Terminal.

The Norfolk Southern line into the Meridian Terminal from Birmingham often must hold trains an hour or more from the Meridian Terminal area due to the siding length at Toomsuba, MS and grade crossing constraints at McConnell, AL. The closest siding where an 8,500-foot train can be staged awaiting a slot on the Meridian Speedway is at Livingston, 37 miles from the Switch Tender area. This is not a hallmark of a fluid terminal point. To work fluidly, there must be places to hold trains in the terminal area to slot them efficiently through the area.

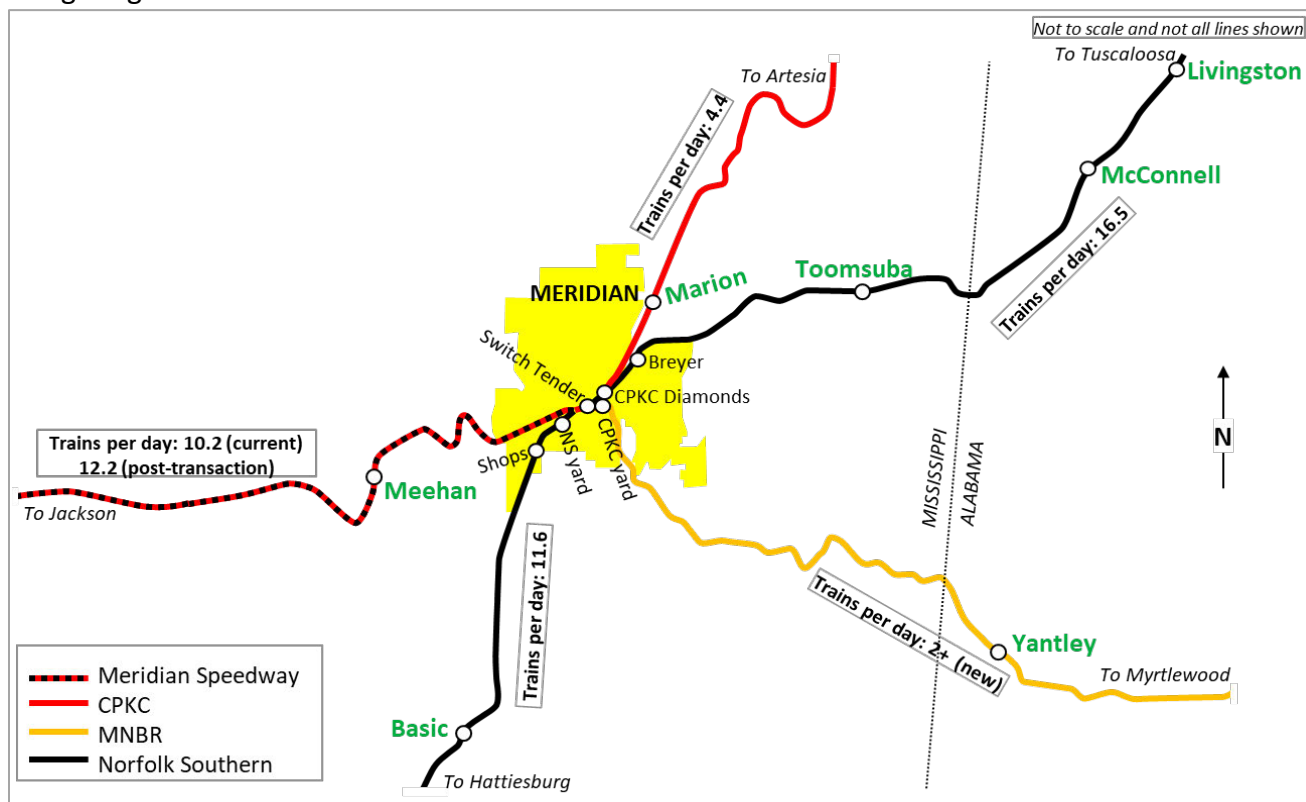
Exhibit V-2: Line Segments Converging at Meridian and Closest Sidings⁷¹

Line	Siding	Distance from terminal (miles)	Min. run time (minutes)	Length (feet)	Avg. trains per day	Notes
CPKC Artesia	Marion, MS	4.8	11	5,300	4.4	Sidings between Artesia and Meridian are all <6,000 ft. (89 miles to Artesia for longer trains)
Meridian Speedway	Meehan, MS	11.8	27	8,800	10.2, incr. to 12.2+	Maximum train length on Speedway of 8,500 ft.
NS New Orleans	Basic, MS	13.8	24	11,500	11.6	
NS Birmingham (1)	Toomsuba, MS	12.2	20	7,250	16.5	Workable for Amtrak trains, which are shorter, less useful for freight
NS Birmingham (2)	McConnell, AL	27.1	36	13,410	16.5	Road crossings in York, AL prevent holding trains for an extended period at McConnell
NS Birmingham (3)	Livingston, AL	37.0	53	11,495	16.5	
CPKC Western Line (MNBR)	Yantley, AL	23.0	78	6,300	2.0+	New route created by the transaction

⁷¹ NS Hattiesburg to Tuscaloosa train data (October 21-November 20, 2023), train timetables, Oliver Wyman analysis.

Exhibit V-3: Map of Closest Sidings to the Meridian Terminal

Sidings in green



The new proposed CPKC-CSXT routing on the MNBR line will not have a siding closer than 23 miles to the Meridian Terminal, so operational flexibility, in terms of reserve capacity, will not be enhanced by the transaction.

It is perhaps unprecedented to have four, and soon possibly five, single-track through routes controlled by two different railroads converge at a single point like the Switch Tender, with manually lined switches and yard limit control systems. Furthermore, there are no tracks long enough in the immediate vicinity of the Switch Tender to stage trains through this point in an orderly, efficient manner. An additional route and additional trains will add significantly to the complexity and delays experienced at such a unique and complex location.

Transit time variation

A combination of outdated technology, poor layout, the complexity of the routes into the terminal, and the lack of reserve capacity all contribute to a highly dysfunctional operation at the Meridian Terminal. The service dysfunction is highlighted by the high variation in running time for trains moving toward the Meridian Terminal from either the north or south. As shown in Exhibits V-4 and V-5, the “minimum run time” is what would be expected if the terminal is clear and operations are running smoothly. The “maximum run time” and the range between minimum and maximum run times demonstrate the order of magnitude efficiency penalties that trains now incur as a result of congested terminal operations.

To narrow down the impacts of just the Meridian Terminal on running times, the northbound train running times shown are from Dragon (just north of Hattiesburg, MS) to departure at Basic, MS, the last siding south of Meridian. It was assumed that a train would not depart Basic northbound unless there was capacity to handle the train through Meridian. For southbound trains, the running times are shown from Tuscaloosa, AL to Breyer, the last NS control point at the north end of the Meridian Terminal complex.

Exhibit V-4: Northbound Train Running Times, Hattiesburg to Basic⁷²

In hours, 10/10/2023-11/20/2023

Train number	Number of trains	Minimum run time	Avg. run time	Maximum run time	Min.-max. difference
130	30	1.1	2.51	7.83	6.7
312	29	1.17	2.61	6.07	4.9
344	30	1.18	2.87	6.98	5.8
346	27	.98	2.34	12.15	11.2

The impact of congested terminal operations can be significant: for example, for Train 346 in Exhibit V-4, the minimum run time in October and November 2023 was less than an hour, but

⁷² Id.

the average was more than twice that, and the maximum run time was 12.15 hours – a variation of 11.2 hours for a run of a bit over 60 miles. Overall, minimum run times on this stretch are consistent, but average run times are at least double that, suggesting that a considerable amount of delay is common. And maximum run times are more than six hours, implying significant congestion at the terminal and contributing to unpredictable service performance.

Exhibit V-5: Southbound Train Running Times, Tuscaloosa to Breyer⁷³

In hours, 10/10/2023-11/20/2023

Train number	Number of trains	Minimum run time	Avg. run time	Maximum run time	Min.-max. difference
29K (Prem)	30	1.87	2.48	3.47	1.6
29S (Prem)	30	1.92	2.97	4.33	2.4
245	28	2.05	3.12	10.97	8.9
339	29	2.05	3.75	14.85	12.8
131	30	1.47	4.29	14.72	13.3
245	28	2.32	3.12	10.97	8.7
345	26	2.32	3.40	6.77	4.5
355	30	2.45	4.15	6.63	4.2

The situation is similar on the 93-mile southbound run from Tuscaloosa, as shown in Exhibit V-5. Average run times are nearly twice the minimum run times. Two daily premium intermodal trains – 29K and 29S – maintain a small range between minimum and maximum run times, under 2.5 hours. But run time ranges otherwise show a wide variation, from 4.2 to 13.3 hours, for non-premium trains.

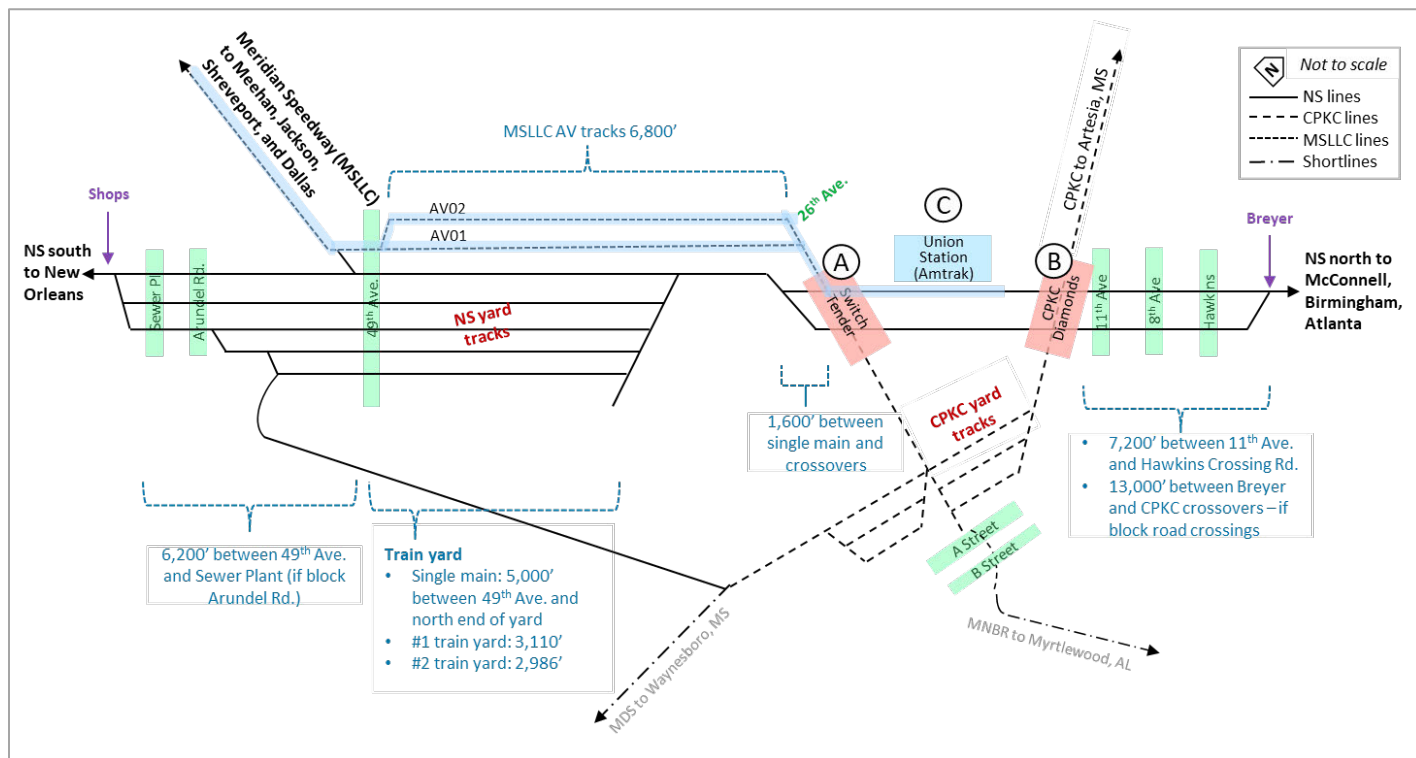
C. Future Amtrak Considerations

Another factor that could influence the Meridian Terminal’s future capacity is that Amtrak is interested in pursuing a “train split” operation at Meridian, similar to what it now does at Spokane, WA. Trains would be split going one direction and combined in the other direction, so

⁷³ Id.

the Crescent trains would not only service New Orleans (as they currently do) but also Dallas via the Meridian Speedway (Exhibit V-6).

Exhibit V-6: Possible New Amtrak Train Split at Meridian to/from Dallas (blue path)



As part of the CP-KCS merger, CP agreed with Amtrak to participate in a joint study (with Amtrak, NS, UP, and relevant governmental agencies) “with the goal of the introduction of a single round trip Amtrak train between Meridian, MS and Dallas, TX and with the potential for a 2nd daily round trip.”⁷⁴ In December 2023, Amtrak and the Southern Rail Commission received a Corridor Identification and Development grant from the FRA to study the I-20 corridor from Dallas to Meridian.⁷⁵

If an additional Amtrak service is added at Meridian, this additional train activity will only add to the current and projected level of congestion at the terminal, by increasing dwell time at

⁷⁴ Surface Transportation Board, FD 36500, Amtrak-Canadian Pacific Agreement, filed Feb. 2, 2022, redacted public version, p. 5.

⁷⁵ [FY22 CID Project Summaries-Map-r1.pdf \(dot.gov\)](#), Federal Railroad Administration, p. 7.

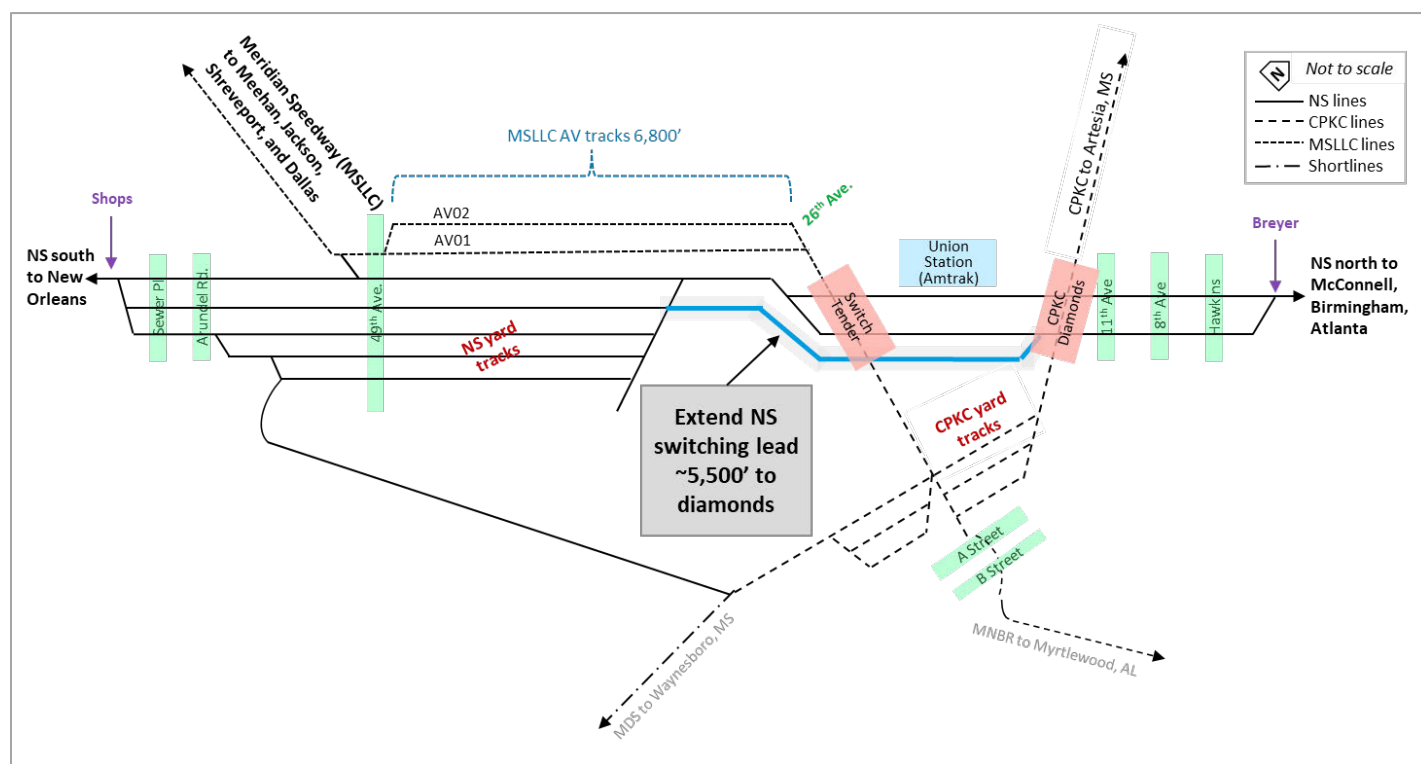
Union Station (letter C), especially if that service is accomplished through a splitting or combining of the Amtrak trains. And both tracks on Norfolk Southern would be blocked during such switching operations.

VI . Norfolk Southern Proposed Investment and Operating Changes to Accommodate New Service

In an effort to resolve the impacts on the Meridian Terminal of adding new CPKC trains, Norfolk Southern has proposed certain improvement projects and operational changes, which would be undertaken jointly by Norfolk Southern and CPKC. Norfolk Southern's proposed changes were reviewed and the proposal presents a reasonable approach to address bottlenecks and improve transit time velocity. The improvements would help maintain and potentially even improve service levels through the terminal for all parties and their customers.

Project 1: Norfolk Southern would construct a second mainline (approximately 5,500 feet) from the north end of its yard (MP NO 0.9) to just south of the CPKC/Norfolk Southern diamond (MP AG 294.9) (Exhibit VI-1). The location of the second mainline would require CPKC cooperation, because it would likely require an easement from CPKC along the western edge of CPKC's yard, a shift of ~300 feet of industry track, and two switches to cross CPKC's lead connecting the yard to the MSLLC (used by four trains per day).

Exhibit VI-1: Project 1 – Norfolk Southern Track Extension (blue line)



The second mainline improvement would offer the following benefits:

- It would create a second main track extending to 49th Avenue, by using one of the tracks in the Norfolk Southern yard and adding a new track north of the yard to the CPKC Diamonds.
- From the CPKC Diamonds to 49th Avenue is a distance of 11,000 feet, which would hold trains of all lengths without blocking any grade crossings, and for trains of 6,600 feet or less, also not block the Switch Tender.
- Trains coming on or off the Meridian Speedway could use the other crossovers on both sides of 49th Avenue to enter either the existing or new Norfolk Southern mainline, leaving one mainline still available for through trains or for a train going onto the Meridian Speedway from the Union Station track via the Switch Tender.

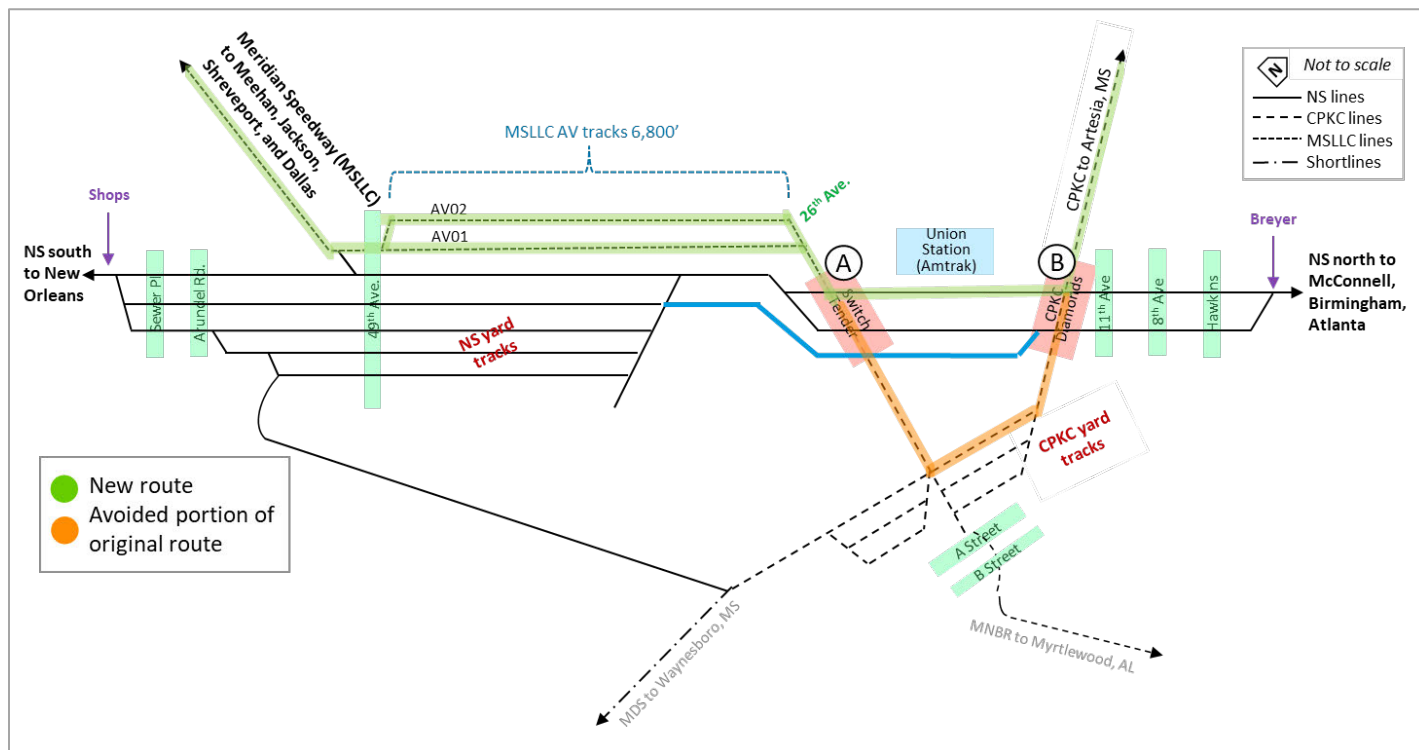
- It also creates a third main track in the area of the Amtrak station, so Norfolk Southern could keep both mainlines available while Amtrak is making its station stop and crew change twice a day.

Project 2: CPKC would power all of the switches at the Switch Tender. CPKC would continue to have control of the interlocking. The benefit of this improvement would be that no trains would have to stop to line switches manually at the Switch Tender, reducing transit time by half or more for trains passing through Meridian Terminal. Because of an even split of traffic traveling the various lines, it is expected that trains must often stop and align switches at the Switch Tender for their route of travel. If CPKC powers the switches at the Switch Tender, train crews could contact the CPKC dispatcher (or perhaps just the CPKC yardmaster) and request clearance across the Switch Tender in advance (and ideally have the route lined for them) or could coordinate their arrival time at the terminal with the dispatcher or yardmaster.

Project 3: CPKC would build a connection in the southwest quadrant of the CPKC Diamonds, north of the Amtrak Meridian station, between the Norfolk Southern main and the CPKC line to Artesia, and Norfolk Southern would grant CPKC operating rights through the Amtrak Meridian station from the Switch Tender to the new connection at the CPKC Diamonds. CPKC trains to/from Artesia would then be able to stay clear of most other trains by using the track closest to the passenger station, leaving the new 5,500 feet of Norfolk Southern mainline, Project 1 above, and the existing Norfolk Southern mainline available for train movements (Exhibit VI-2). This would eliminate as many as six interactions per day between Norfolk Southern and CPKC trains (i.e., each train going through both the CPKC Diamonds and the Switch Tender) for CPKC trains that do not need to access the CPKC yard at Meridian. This project also would increase train velocity for CPKC trains passing through Meridian, since these

trains would have significantly fewer switches to stop and check for alignment as they traverse the terminal area.

Exhibit VI-2: Project 3 – New Connection Between Artesia Line and NS Mainline (green line)



The construction and operating changes discussed in Projects 1, 2, and 3 above (the construction of 5,500 feet on the second Norfolk Southern mainline, the powering of the Switch Tender switches, and the construction of the Norfolk Southern-CPKC connection at the CPKC Diamonds) would mitigate the adverse operational impacts anticipated to arise from implementation of the proposed CPKC Western Line transaction.

Project 4: NS and CPKC would work with city, state, and federal authorities to develop plans and public funding streams for the closure or separation of grade crossings at 8th, 11th, and 49th Avenues. The proposed plan would reduce the number of crossings in town, opening up additional track where trains could be staged. 49th Avenue is likely the most expensive to do, but provides the most benefits, as it crosses multiple tracks operated by both

CPKC and Norfolk Southern. 8th Avenue and 11th Avenue are close enough together that it likely makes sense to do both crossings as one project.

Closing 8th Avenue and 11th Avenue would provide about 7,200 feet of track to hold a train on Norfolk Southern between the CPKC Diamonds and Hawkins Crossing Road. With the connection track in place near the CPKC Diamonds offering an alternative route for CPKC (see Project 3 above), Norfolk Southern could block the CPKC Diamonds most of the time without impacting CPKC trains, including those trains moving between the Meridian Speedway and the Artesia line. This would provide approximately 10,000 feet of track length between Hawkins Crossing Road and the Switch Tender for trains going between the Meridian Speedway and the Norfolk Southern mainline.

Closing or grade-separating the 49th Avenue crossing would provide approximately 10,500 feet of double main track between Arundel Road and the Switch Tender, which could then hold trains from the south in close proximity to the Switch Tender, offering greater operational flexibility through the terminal. Also, removal of 49th Avenue is a key prerequisite to extending the MSLLC AV tracks (see Project 5 described below), as the AV tracks are in a critical location to meter trains through Meridian to/from the Meridian Speedway from Norfolk Southern's line to Birmingham, and CPKC's lines to Artesia and (as proposed) Myrtlewood.

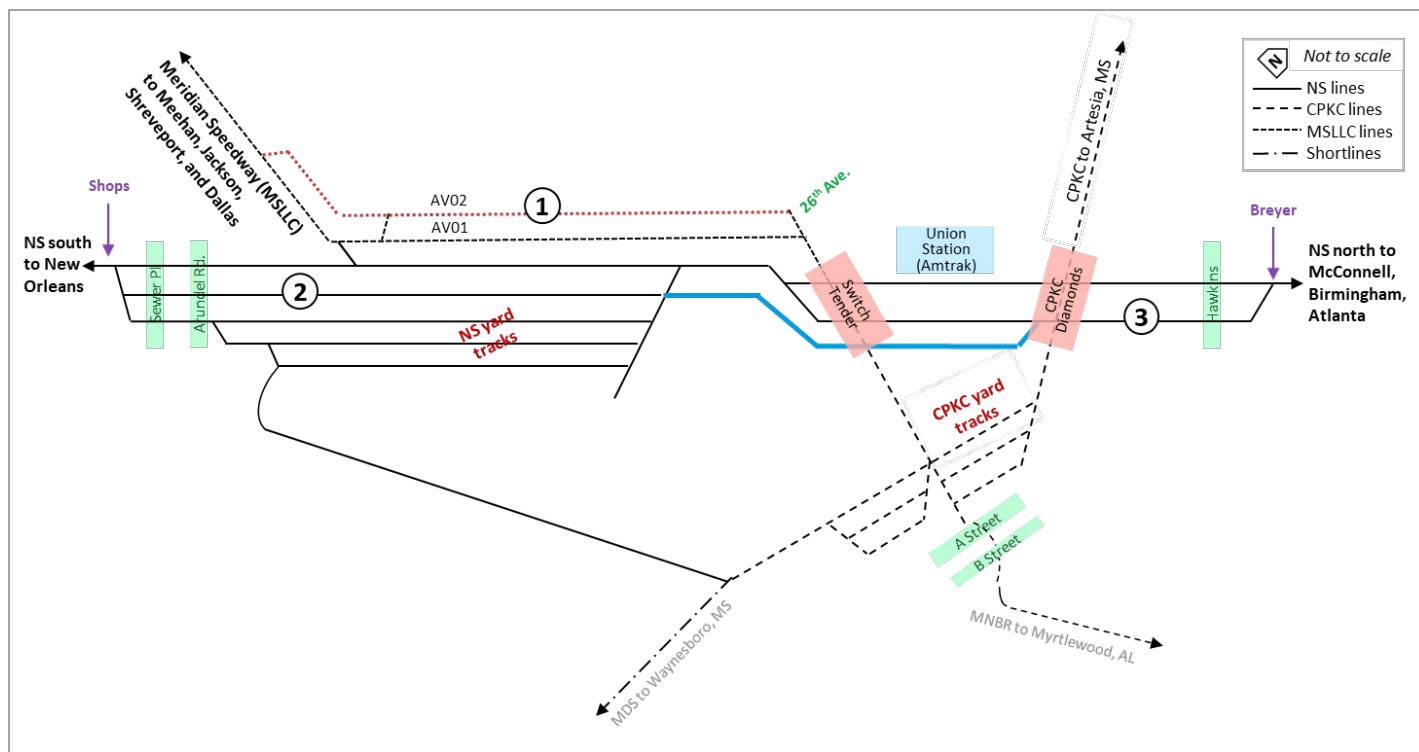
Project 5: If Norfolk Southern and CPKC are able to eliminate the at grade crossing at 49th Avenue, then Norfolk Southern and CPKC would agree to have MSLLC permit CPKC to extend the siding/second track (the AV tracks) from just east of 49th Avenue to just east of 65th Avenue. This project would provide as much as 11,000 feet of clear track on which to hold trains entering and exiting the Meridian Speedway.

The improvements described in Projects 4 and 5 above would further streamline operations through Meridian, by greatly enhancing the reserve capacity to stage trains for quick movement

through the terminal. They also would allow CPKC to grow traffic through the terminal area (as anticipated by the CPKC Application) without further adverse impact on Norfolk Southern and Amtrak operations. The Board's acknowledgement of the importance of these projects in improving rail network reliability would certainly assist in securing grant funding for the grade crossing projects.

With completion of the projects above, up to three trains of 8,500 feet or more (compared to none today) could be held in the immediate Meridian Terminal area without blocking any active crossings, meaning that trains could more quickly move through the terminals when the Switch Tender and the CPKC Diamonds are clear. As shown in Exhibit VI-3:

- Longer MSLLC AV tracks connecting the Meridian Speedway would allow trains to be held headed from the Meridian Speedway onto Norfolk Southern, or trains from the CPKC Western Line (MNBR), the CPKC Artesia line, or the Norfolk Southern line from Birmingham to be held awaiting access to the Meridian Speedway heading westbound to Shreveport (#1).
 - On Norfolk Southern trackage between Arundel Road and the Switch Tender, trains could be held going north toward Birmingham from New Orleans on the Norfolk Southern route (#2).
 - On Norfolk Southern between the CPKC Diamonds and Hawkins Crossing Road, trains could be held for routing south toward New Orleans or onto the Meridian Speedway (#3).
- Amtrak access to the Meridian passenger station also would not be obstructed.

Exhibit VI-3: New Holding Points for Trains After Completion of Projects

Norfolk Southern has acknowledged that not all of the projects described above are completely within the power of the railroads to accomplish, even with the Board's backing; one requires cooperation of others as well. In total, however, these projects would greatly improve Meridian Terminal train path availability and mitigate the impacts of the proposed transactions. The Artesia trains would avoid the terminal completely and make the CPKC Diamonds an alternative routing for CPKC. The CPKC trains still regularly using the Meridian Terminal would include the new trains to/from Myrtlewood and the daily CPKC local from Artesia to Meridian and return. Clear train paths and tracks would be created of sufficient length that Norfolk Southern and CPKC trains could be held right in the Meridian area until the Switch Tender is clear and/or a path is available between the Meridian Speedway and Norfolk Southern's mainline. Automating switches would cut in half the time it takes trains to transit the Switch Tender today.

The five projects described above necessarily would likely have to be divided into phases, and Norfolk Southern and CPKC would coordinate in completing each phase. Projects 1, 2, and 3 could be initiated by either party within 5 years of an agreement. Projects 4 and 5 are longer term, so funding commitments, operating practices, and other terms would need to remain in effect beyond a 5-year period.

VERIFICATIONS

I, William J. Rennie, Partner at Oliver Wyman, Inc., verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

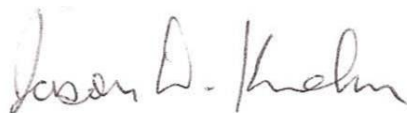
Executed this 29th day of December 2023.



William J. Rennie

I, Jason D. Kuehn, Vice President at Oliver Wyman, Inc., verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed this 29th day of December 2023.



Jason D. Kuehn

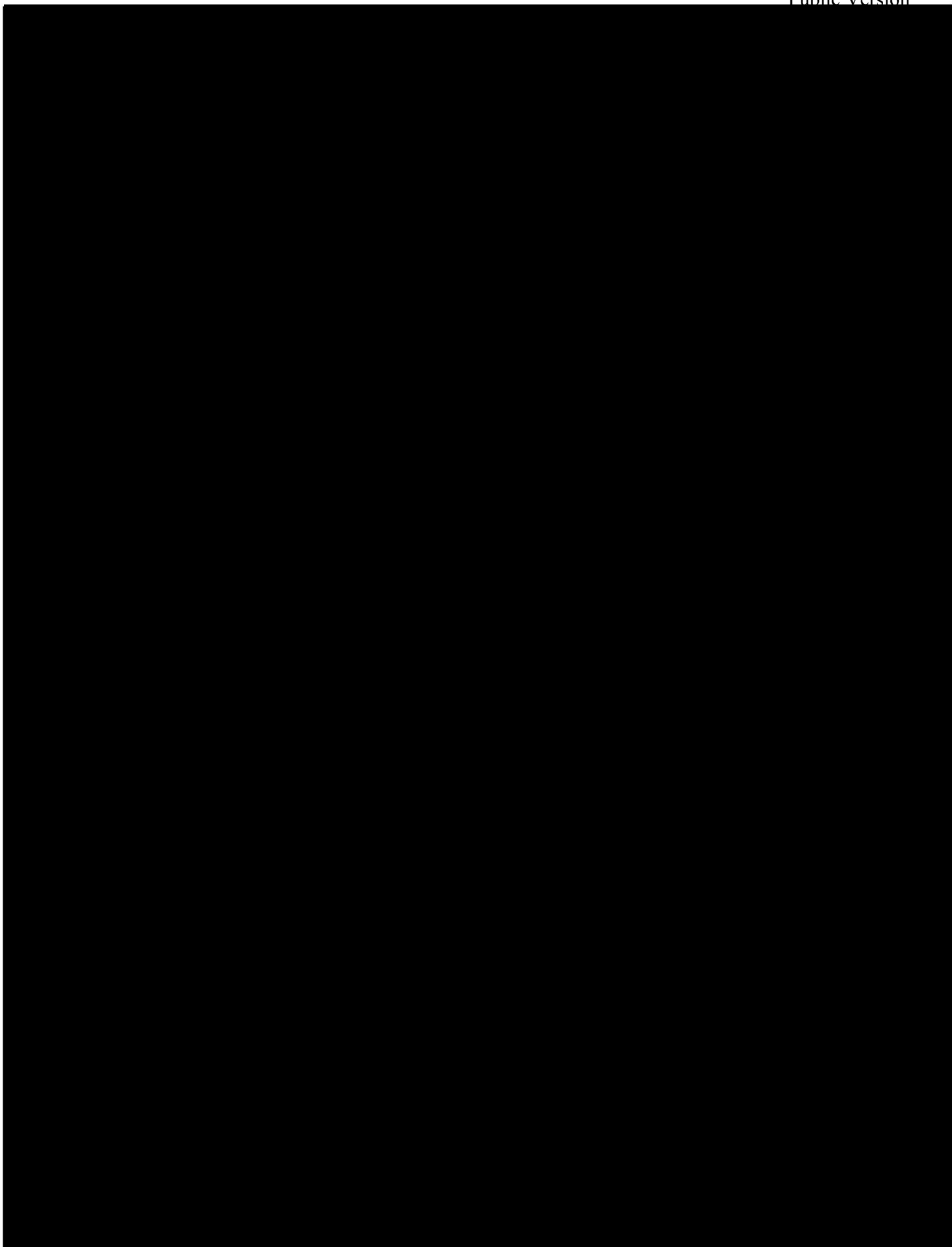
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

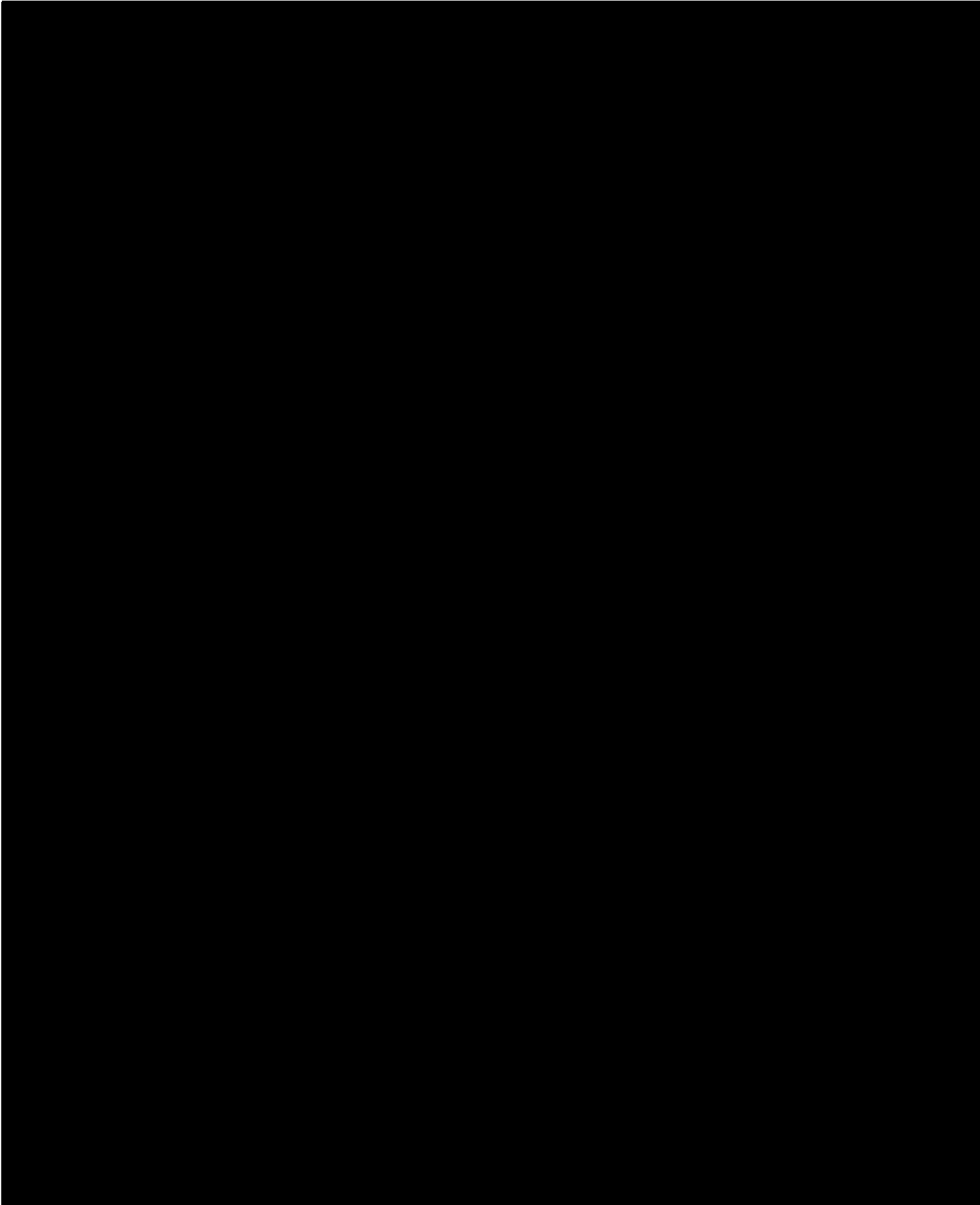
**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

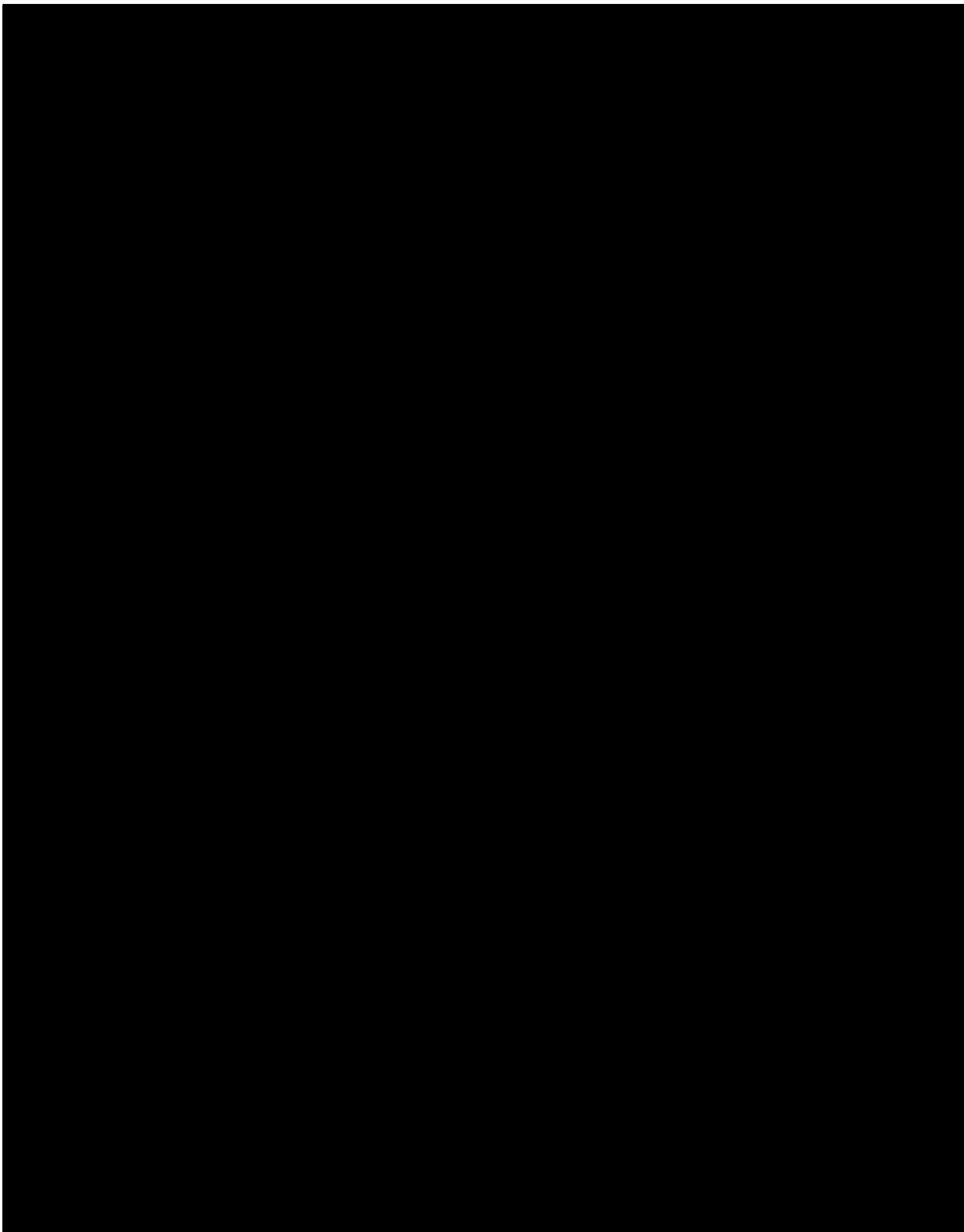
COMMENTS AND REQUESTS FOR CONDITIONS

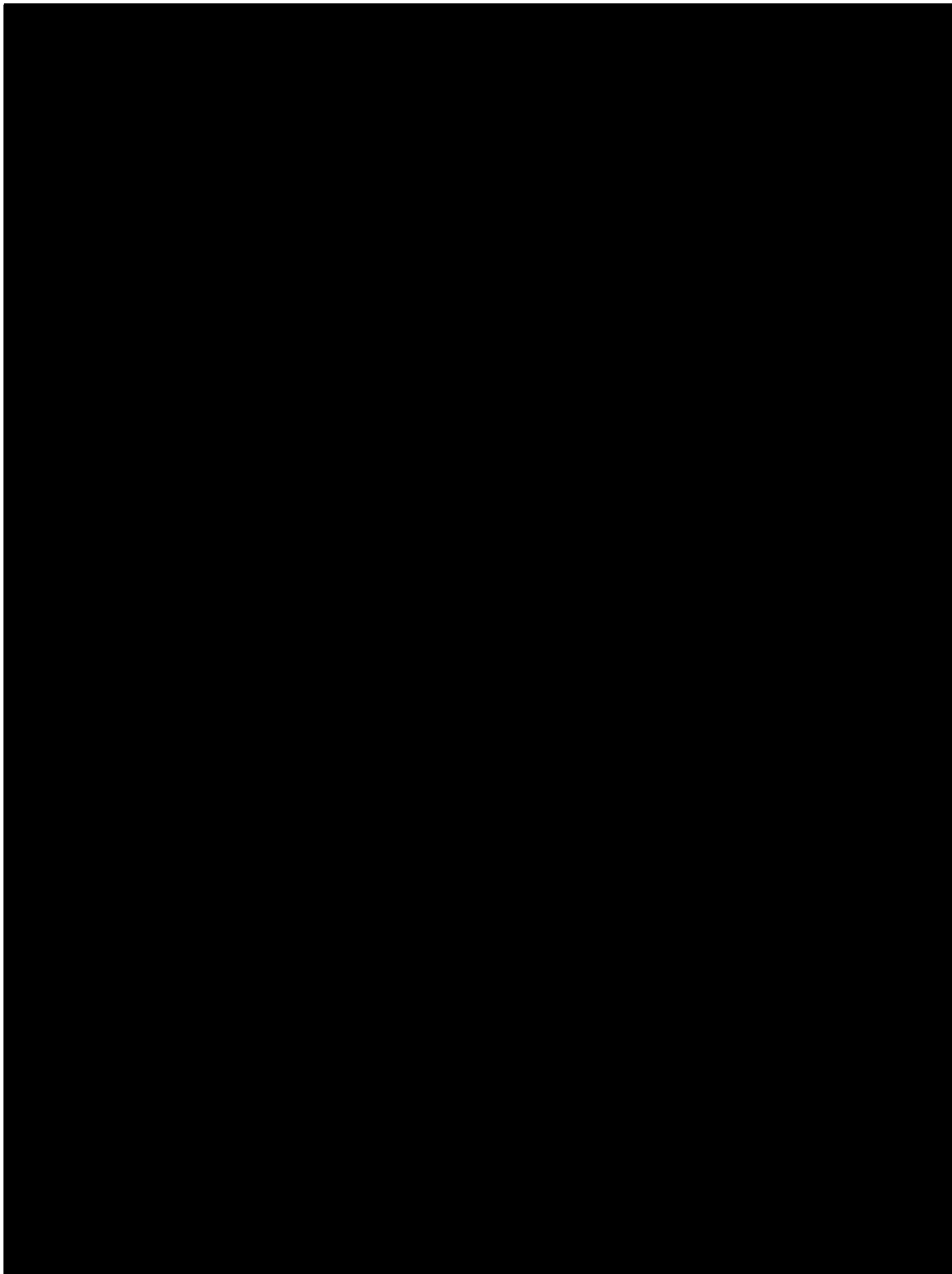
Appendix D

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

COMMENTS AND REQUESTS FOR CONDITIONS

Appendix E

Genessee & Wyoming, Inc. Press Release, dated June 28, 2023

 EMERGENCY NUMBERS

FIND A RAILROAD

SERVICES & CUSTOMERS

ABOUT

Railroads reach agreement to create new direct connection and corridor linking Mexico, Texas and the U.S. Southeast

June 28, 2023

CALGARY, Alberta and JACKSONVILLE, Fla., June 28, 2023 (GLOBE NEWSWIRE) -- Canadian Pacific Kansas City (TSX: CP) (NYSE: CP) (CPKC), CSX Corporation (NASDAQ: CSX) (CSX) and Genesee & Wyoming Inc. (G&W) today announced they have reached agreements that when completed will create a new direct CPKC-CSX interchange connection in Alabama.

As part of the series of proposed transactions, CPKC and CSX would each acquire or operate portions of Meridian & Bigbee Railroad, L.L.C. (MNBR), a G&W-owned railway in Mississippi and Alabama, to establish a new freight corridor for shippers that connects Mexico, Texas and the U.S. Southeast.

"This strategic acquisition will bring more shipping options to intermodal, automotive and other customers by providing a new, efficient corridor connecting expanding markets in Mexico, Texas and the U.S. Southeast," said Keith Creel, CPKC President and Chief Executive Officer. "With this new east-west connection taking advantage of each railway's routes and service, we can extend our reach converting more freight traffic to rail and off our highways."

"CSX is excited to establish this new interchange connection with CPKC, which provides shippers with a compelling transportation option with access to markets in Texas and Mexico as well as into the heart of the thriving and dynamic U.S. Southeast," said Joe Hinrichs, President and Chief Executive Officer of CSX. "This new service is a demonstration of our commitment to creating product offerings for shippers that help them leverage the efficiency and sustainability advantages of rail to drive growth."

"We are pleased to have entered into agreements with CSX and CPKC that will enable MNBR to continue providing customers with outstanding short line service from Linden, Alabama, to Meridian, Mississippi, while enabling our Class I partners to create a new connection into the Southeast U.S.," said Jack Hellmann, G&W CEO. "At the same time, we have enhanced several agreements related to other G&W short line railroads and are collaborating on the expansion of our service to Alberta and the Alberta Industrial Heartland in conjunction with CPKC."

The MNBR runs between Meridian, Miss. and Montgomery, Ala., and currently is operated under a combination of ownership and operating agreements.

Under the agreements announced today, CPKC would acquire and operate the segment of the MNBR between Meridian and Myrtlewood, Ala. and CSX would operate the lines currently leased by MNBR east of Myrtlewood. As a result, CPKC and CSX would establish a direct CPKC-CSX interchange at or near Myrtlewood, Ala. In exchange, G&W would acquire certain Canadian properties owned by CPKC and other rights. MNBR would receive rights to continue to provide local service to existing customers on former MNBR-owned lines and connect with other railroads without interchange restrictions.

Terms of the transactions were not disclosed and will be addressed in definitive agreements that the parties have agreed to negotiate. Certain portions of the transactions are subject to regulatory review and approval from, or exemption by, the U.S. Surface Transportation Board.

Forward-looking information

This news release contains certain forward-looking information and forward-looking statements.

This news release contains certain forward-looking information and forward-looking statements (collectively, "forward-looking information") within the meaning of applicable securities laws in both the U.S. and Canada. Forward-looking information includes, but is not limited to, statements concerning the parties' expectations, beliefs, plans, goals, objectives, assumptions,

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as "financial expectations", "key assumptions", "will", "anticipate", "believe", "expect", "plan", "should", "commit", "outlook", "guidance" or similar words suggesting future outcomes.

This news release contains forward-looking information relating, but not limited, to agreements between CPKC and CSX, between CPKC and G&W and between G&W and CSX to create a new direct interchange connection in Alabama, the anticipated impact of the agreements on available shipping options for customers, the effects of the agreements on access to markets in Texas, Mexico and the southeast U.S., the negotiation of definitive agreements among the parties, plans and expectations regarding the integration of a CPKC-CSX interchange, and other related matters associated with the changes in ownership and/or control, and operation of segments of the MNBR and assumptions underlying or relating to any of the foregoing.

The forward-looking information contained in this news release is based on the parties' current expectations, estimates, projections and assumptions, having regard to the parties' experience and the parties' perception of historical trends, and includes, but is not limited to, expectations, estimates, projections and assumptions relating to: changes in business strategies; the fuel efficiency of railways and the parties' operations; the impacts of existing and planned capital investments; North American and global economic growth; commodity demand growth; sustainable industrial and agricultural production; commodity prices and interest rates; performance of the parties' assets and equipment; sufficiency of the parties' budgeted capital expenditures in carrying out the parties' business plans; geopolitical conditions; applicable laws, regulations and government policies; the availability and cost of labour services and infrastructure; the satisfaction by third parties of their obligations to the parties; carbon markets, evolving sustainability strategies, and scientific or technological developments; and capital investments by third parties. Although the parties believe the expectations, estimates, projections and assumptions reflected in the forward-looking information presented herein are reasonable as of the date hereof, there can be no assurance that they will prove to be correct. Current conditions, economic and otherwise, render assumptions, although reasonable when made, subject to greater uncertainty.

Undue reliance should not be placed on forward-looking information as actual results may differ materially from those expressed or implied by forward-looking information. By its nature, CPKC's forward-looking information involves inherent risks and uncertainties that could cause actual results to differ materially from the forward looking information, including, but not limited to, the following factors: changes in business strategies and strategic opportunities; general Canadian, U.S., Mexican and global social, economic, political, credit and business conditions; risks associated with agricultural production such as weather conditions and insect populations; the availability and price of energy commodities; the effects of competition and pricing pressures, including competition from other rail carriers, trucking companies and maritime shippers in Canada, the U.S. and Mexico; North American and global economic growth and conditions; industry capacity; shifts in market demand; changes in commodity prices and commodity demand; uncertainty surrounding timing and volumes of commodities being shipped via CPKC; inflation; geopolitical instability; changes in laws, regulations and government policies, including regulation of rates; changes in taxes and tax rates; potential increases in maintenance and operating costs; changes in fuel prices; disruption in fuel supplies; uncertainties of investigations, proceedings or other types of claims and litigation; compliance with environmental regulations; labour disputes; changes in labour costs and labour difficulties; risks and liabilities arising from derailments; transportation of dangerous goods; timing of completion of capital and maintenance projects; sufficiency of budgeted capital expenditures in carrying out business plans; services and infrastructure; the satisfaction by third parties of their obligations; currency and interest rate fluctuations; exchange rates; effects of changes in market conditions and discount rates on the financial position of pension plans and investments; trade restrictions or other changes to international trade arrangements; the effects of current and future multinational trade agreements on the level of trade among Canada, the U.S. and Mexico; climate change and the market and regulatory responses to climate change; anticipated

in-service dates; success of hedging activities; operational performance and reliability; customer and other stakeholder approvals and support; regulatory and legislative decisions and actions; the adverse impact of any termination or revocation by the Mexican government of Kansas City Southern de México, S.A. de C.V.'s Canadian public opinion; various events that could



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to them, and technological changes; acts of terrorism, war or other acts of violence or crime or risk of such activities; insurance coverage limitations; material adverse changes in economic and industry conditions, including the availability of short and long-term financing; the pandemic created by the outbreak of COVID-19 and its variants and resulting effects on economic conditions, the demand environment for logistics requirements and energy prices, restrictions imposed by public health authorities or governments, fiscal and monetary policy responses by governments and financial institutions, and disruptions to global supply chains; the realization of anticipated benefits and synergies of the Canadian Pacific Railway Limited (CP) - Kansas City Southern (KCS) transaction and the timing thereof; the satisfaction of the conditions imposed by the U.S. Surface Transportation Board in its March 15, 2023 final decision; the success of integration plans for KCS; the focus of management time and attention on the CP-KCS transaction and other disruptions arising from the CP-KCS integration; estimated future dividends; financial strength and flexibility; debt and equity market conditions, including the ability to access capital markets on favourable terms or at all; cost of debt and equity capital; improvement in data collection and measuring systems; industry-driven changes to methodologies; and the ability of the management of CPKC to execute key priorities, including those in connection with the CP-KCS transaction. The foregoing list of factors is not exhaustive. These and other factors are detailed from time to time in reports filed by CPKC with securities regulators in Canada and the United States. Reference should be made to "Item 1A - Risk Factors" and "Item 7 - Management's Discussion and Analysis of Financial Condition and Results of Operations - Forward-Looking Statements" in CPKC's annual and interim reports on Form 10-K and 10-Q.

About CPKC

With its global headquarters in Calgary, Alta., Canada, CPKC is the first and only single-line transnational railway linking Canada, the United States and México, with unrivaled access to major ports from Vancouver to Atlantic Canada to the Gulf of México to Lázaro Cárdenas, México. Stretching approximately 20,000 route miles and employing 20,000 railroaders, CPKC provides North American customers unparalleled rail service and network reach to key markets across the continent. CPKC is growing with its customers, offering a suite of freight transportation services, logistics solutions and supply chain expertise. Visit cpkcr.com to learn more about the rail advantages of CPKC. CP-IR

About CSX

CSX, based in Jacksonville, Florida, is a premier transportation company. It provides rail, intermodal and rail-to-truck transload services and solutions to customers across a broad array of markets, including energy, industrial, construction, agricultural and consumer products. For nearly 200 years, CSX has played a critical role in the nation's economic expansion and industrial development. Its network connects every major metropolitan area in the eastern United States, where nearly two-thirds of the nation's population resides. It also links more than 230 short-line railroads and more than 70 ocean, river and lake ports with major population centers and farming towns alike. More information about CSX Corp. and its subsidiaries is available at www.csx.com.

About Genesee & Wyoming

G&W owns or leases 115 freight railroads with 7,300 employees serving 3,000 customers. The company's North American operations include 110 short line and regional railroads that serve 43 U.S. states and four Canadian provinces over more than 13,000 track-miles. G&W subsidiaries and joint ventures also provide rail service at more than 30 major ports, rail-ferry service between the U.S. Southeast and Mexico, transload services, and industrial railcar switching and repair. G&W is owned by Brookfield Infrastructure Partners, L.P. and GIC.

Contacts:

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mediarelations@cpkcr.com

CSX

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G&W

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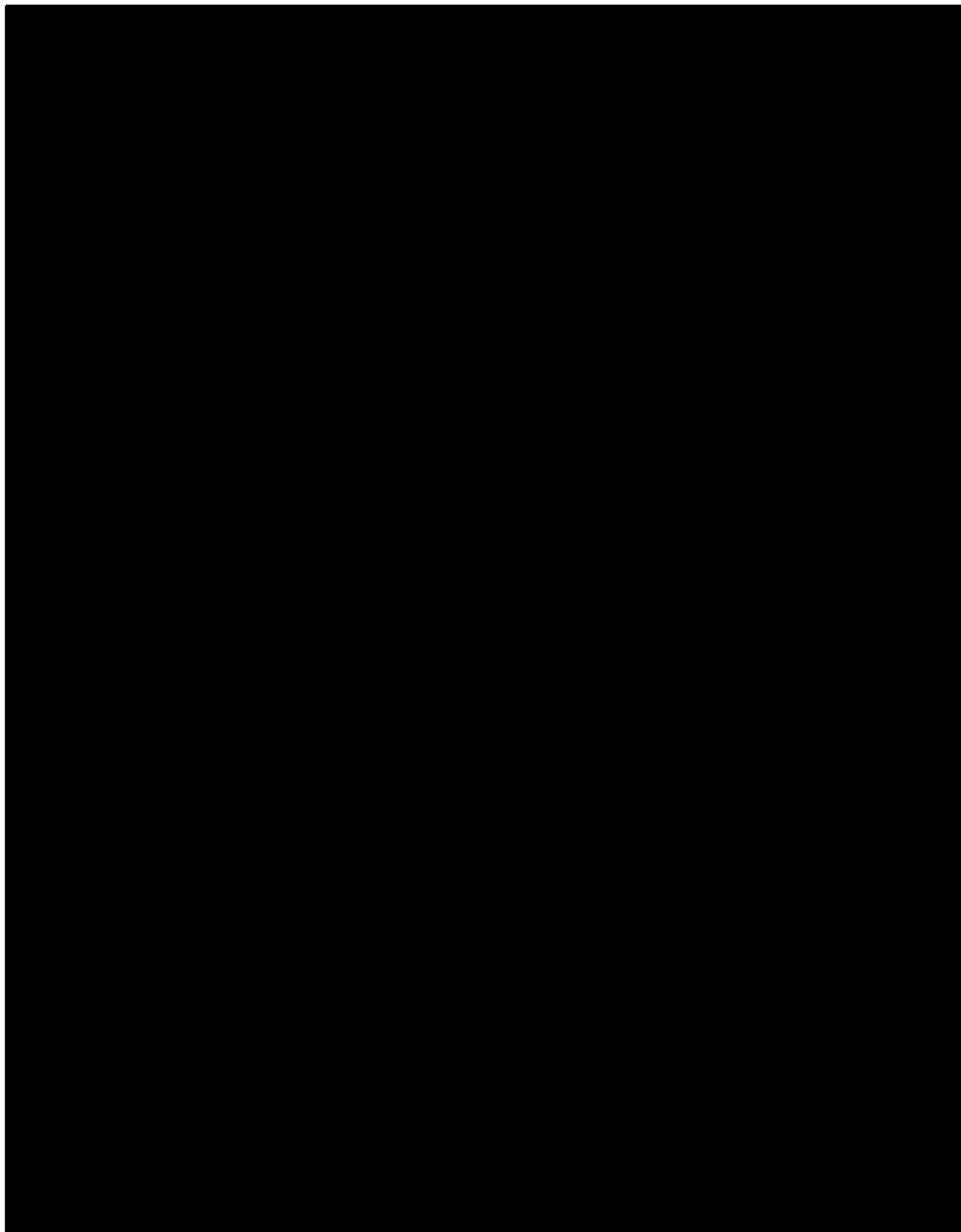
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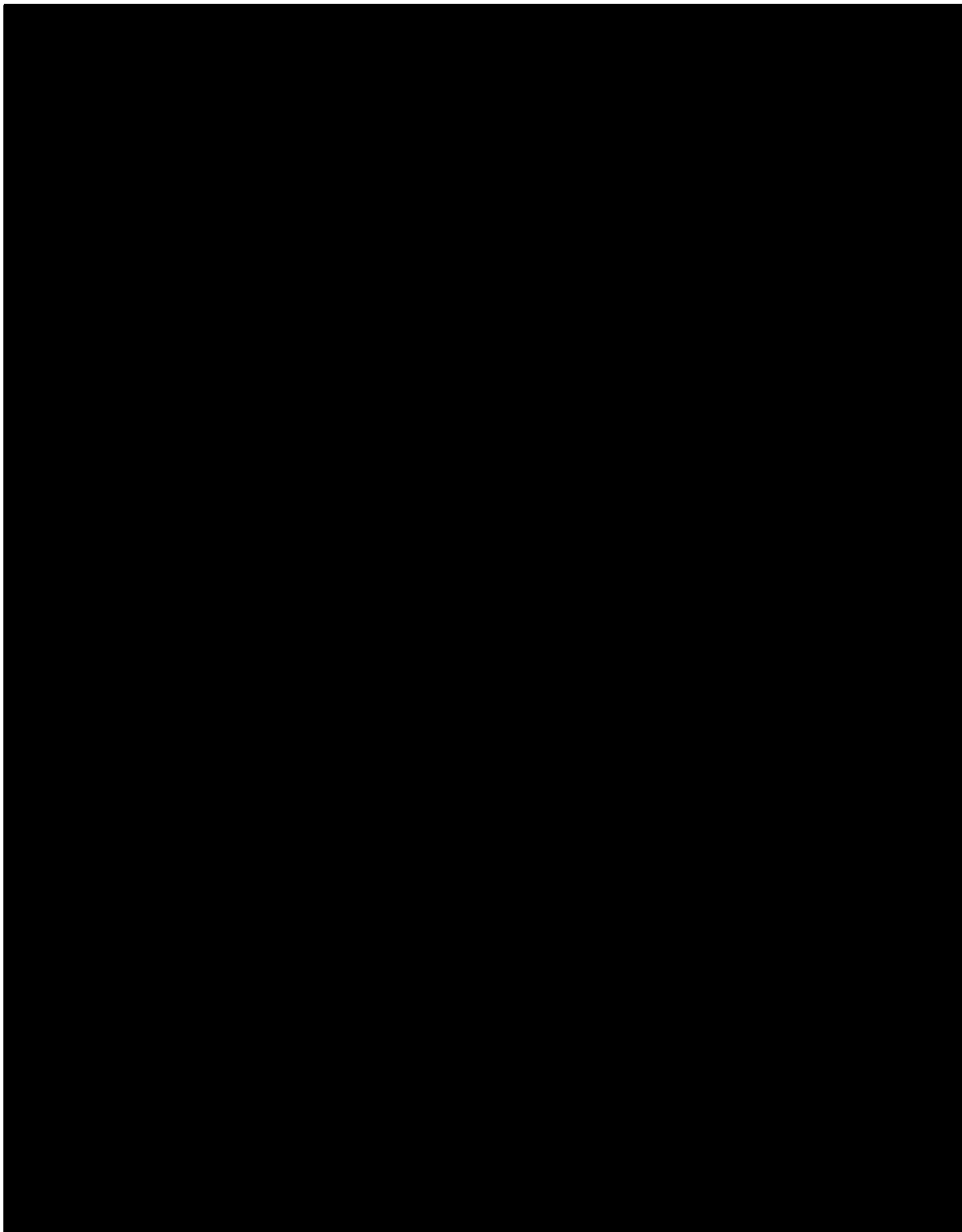
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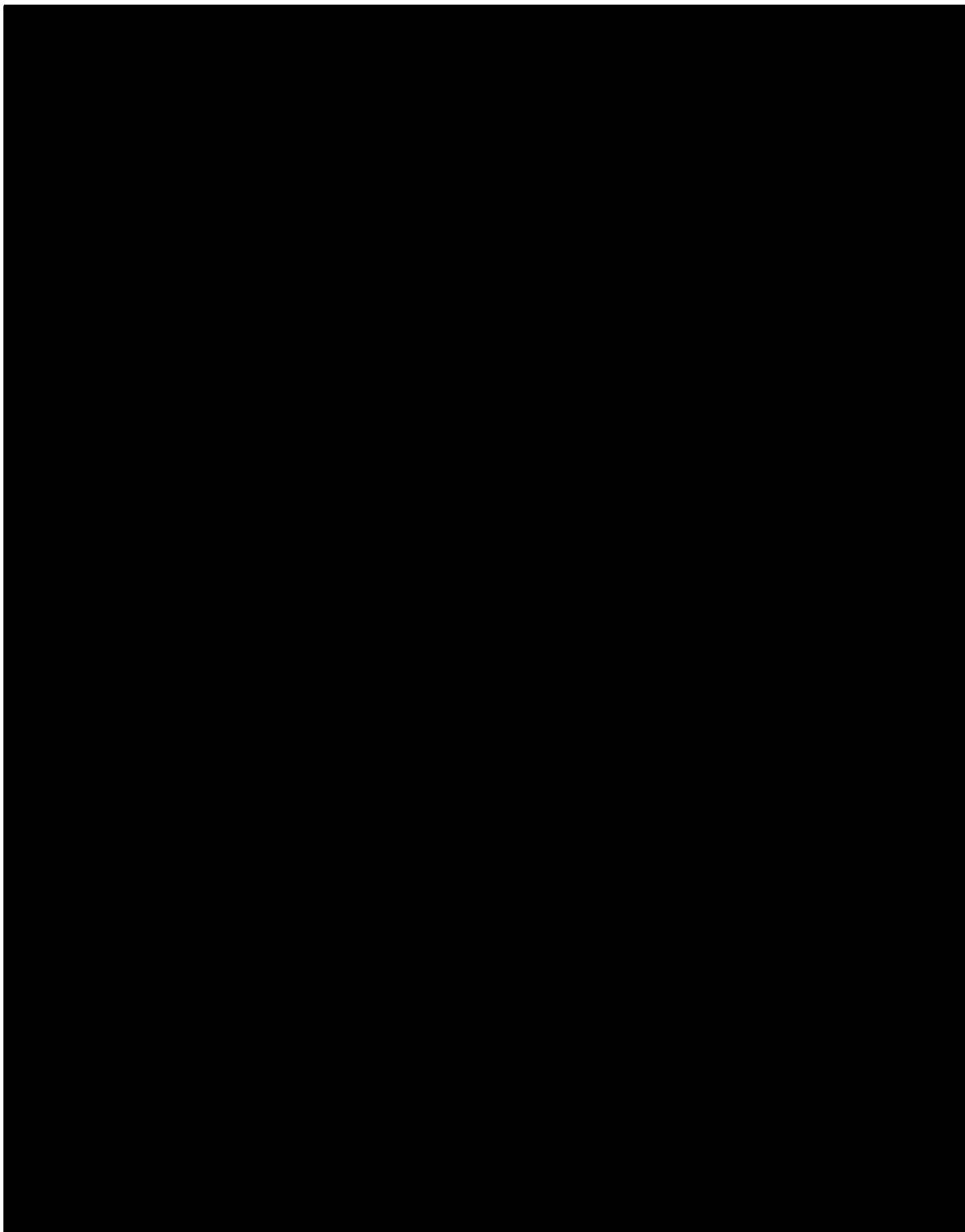
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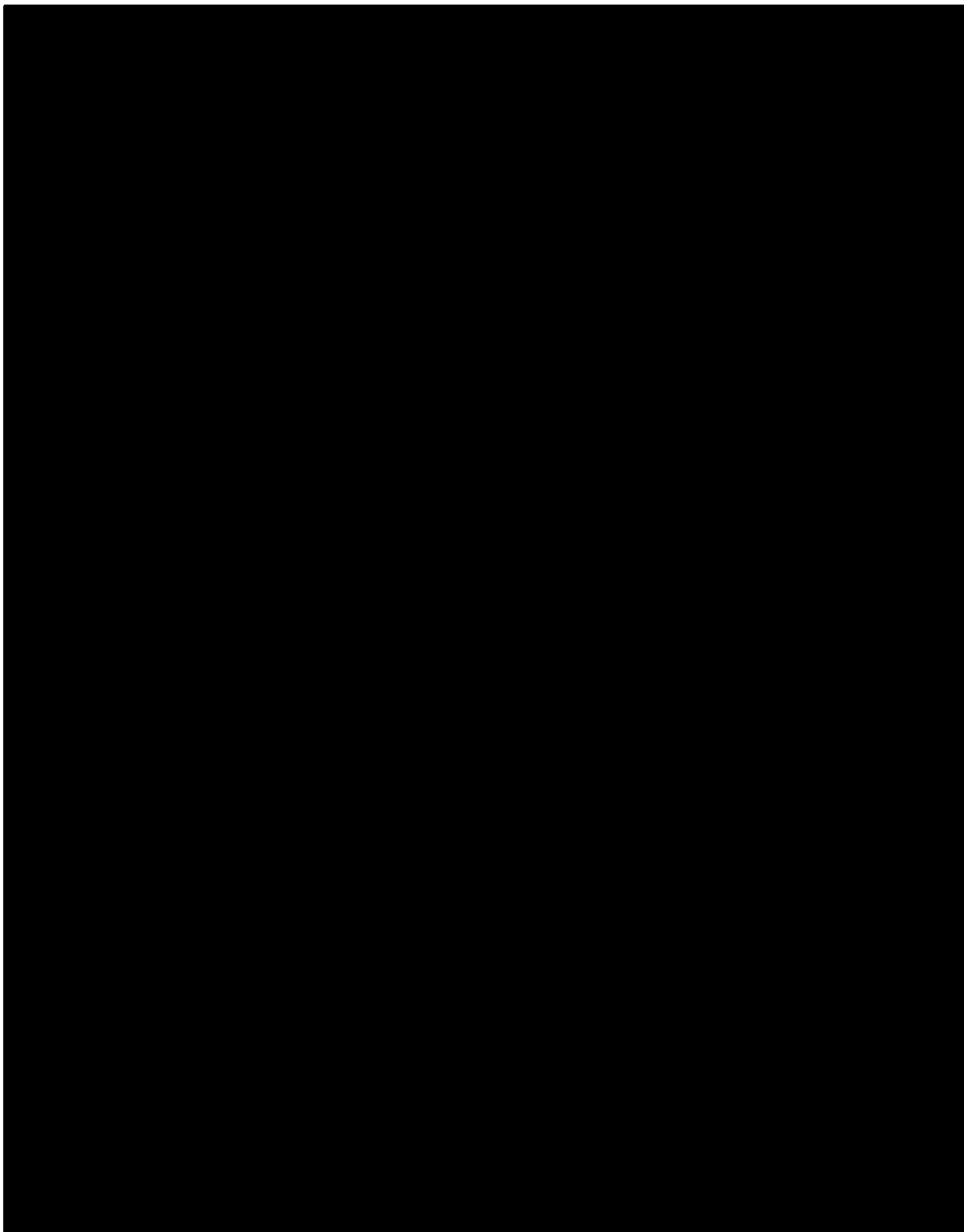
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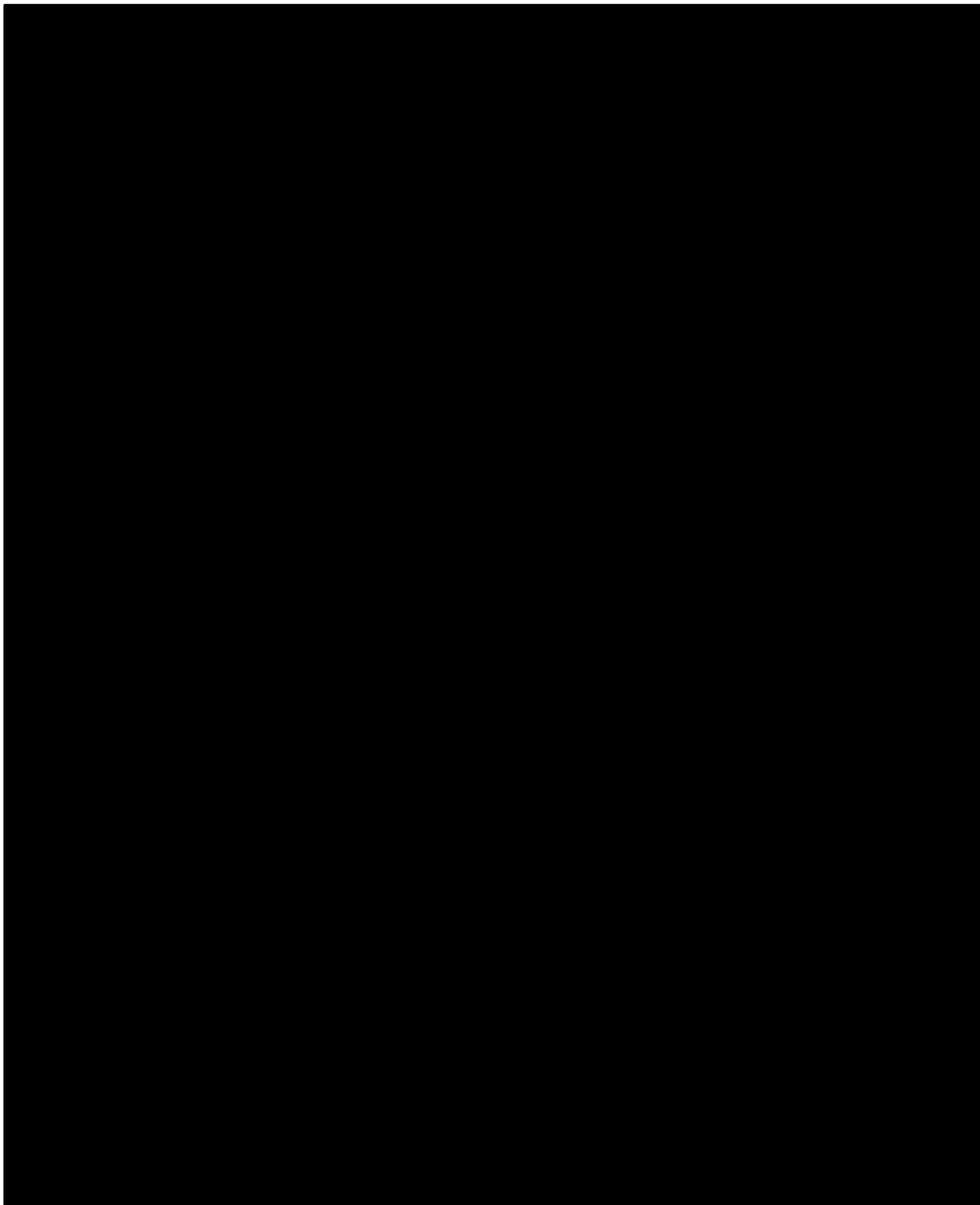
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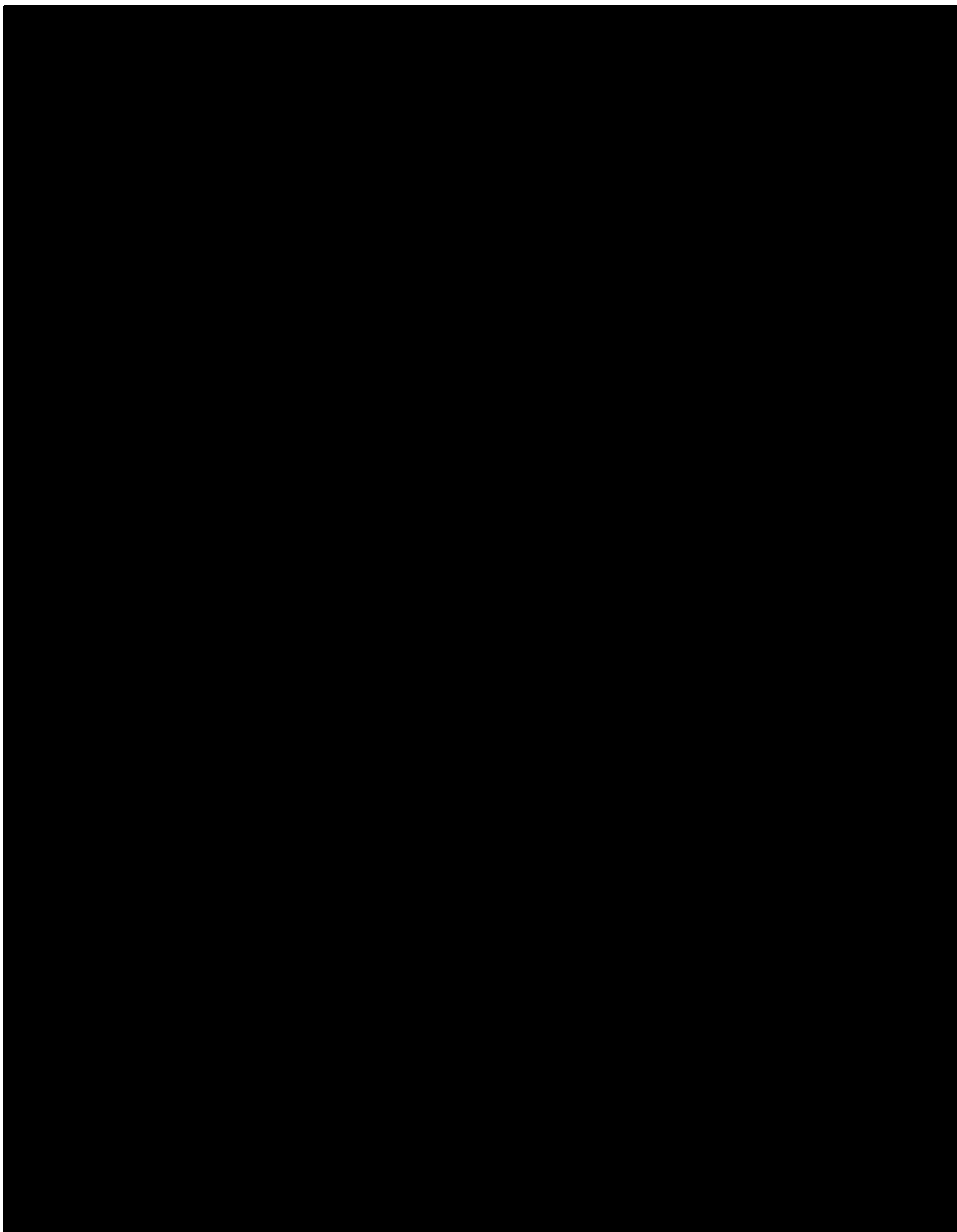


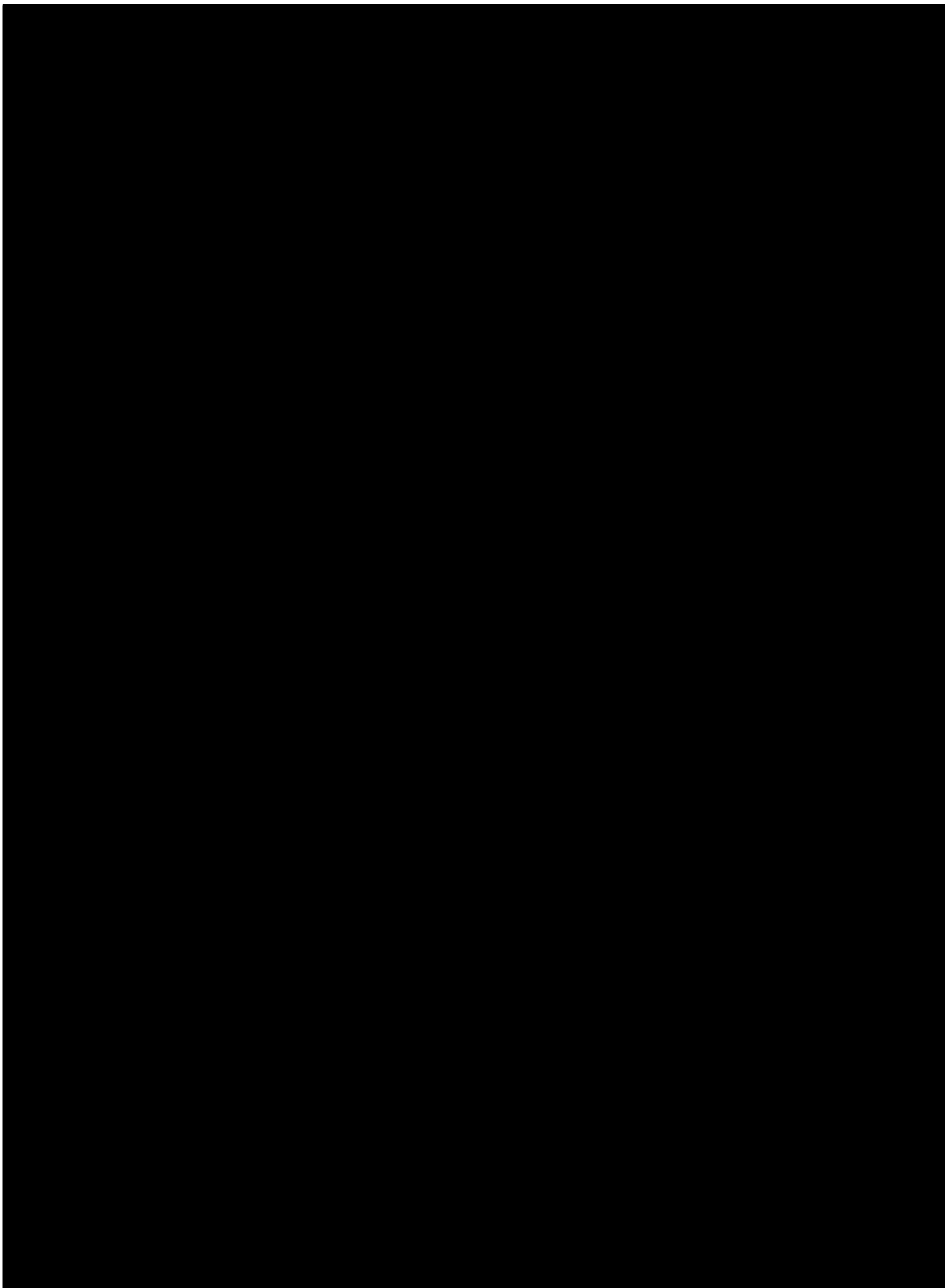


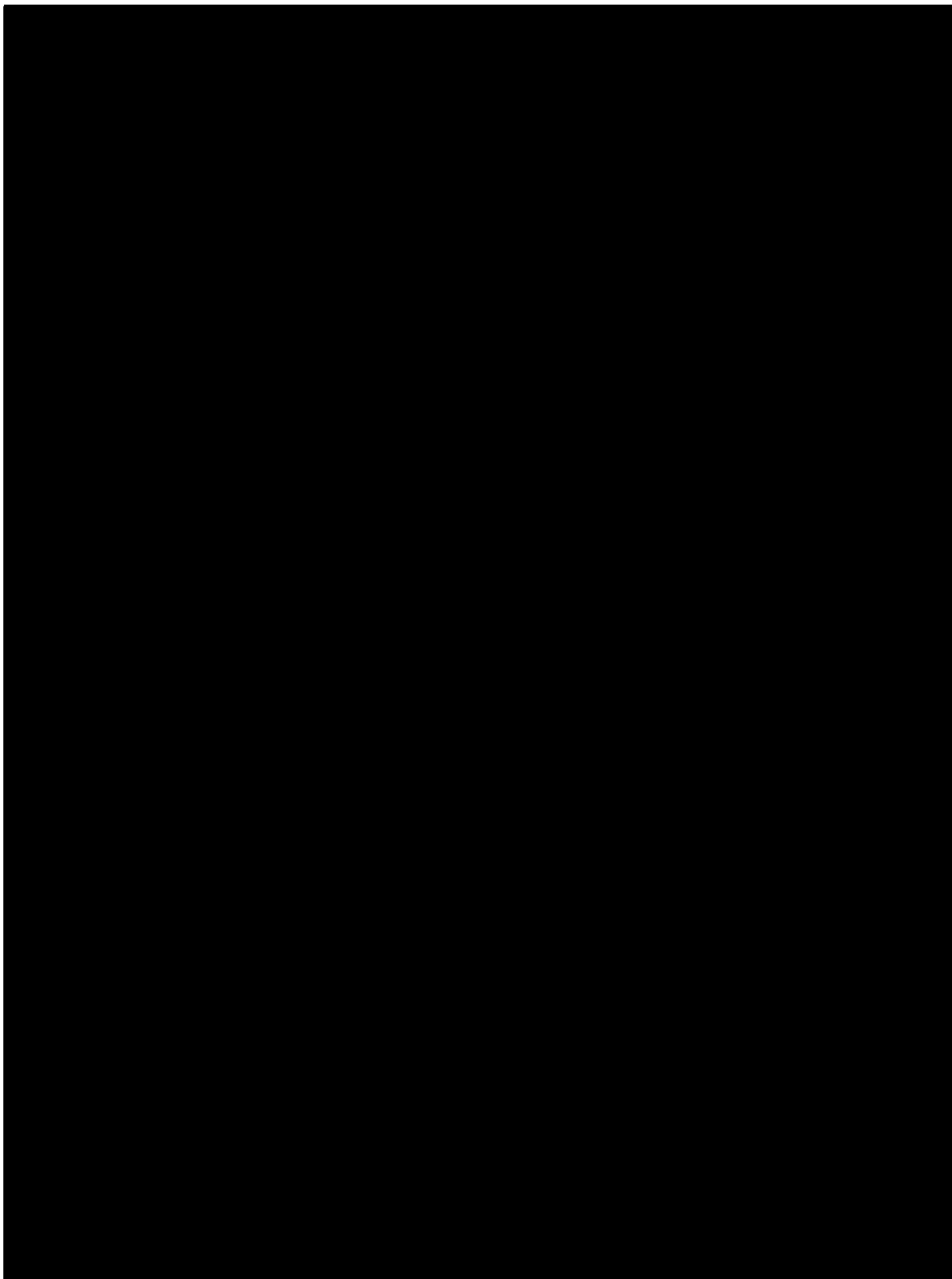


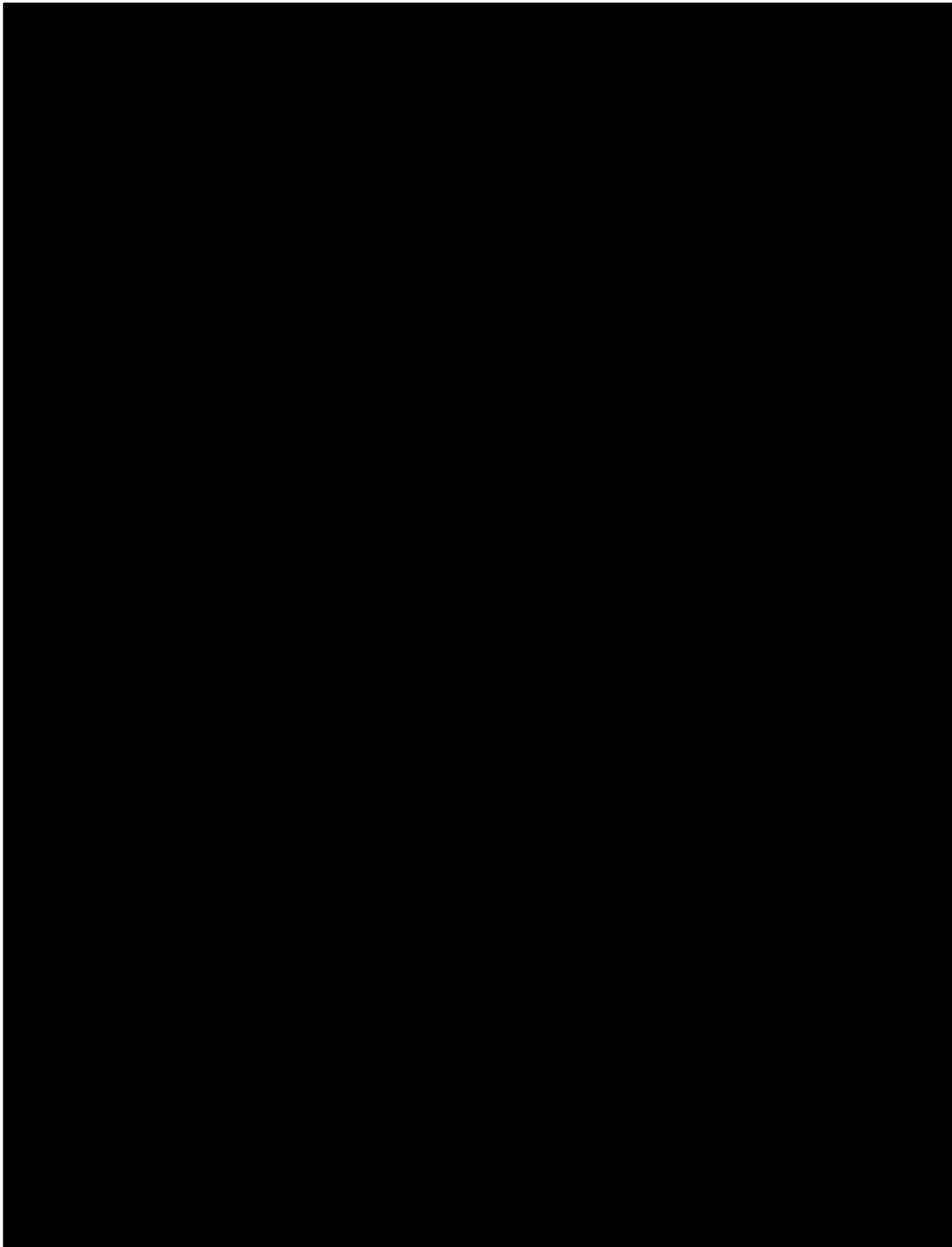


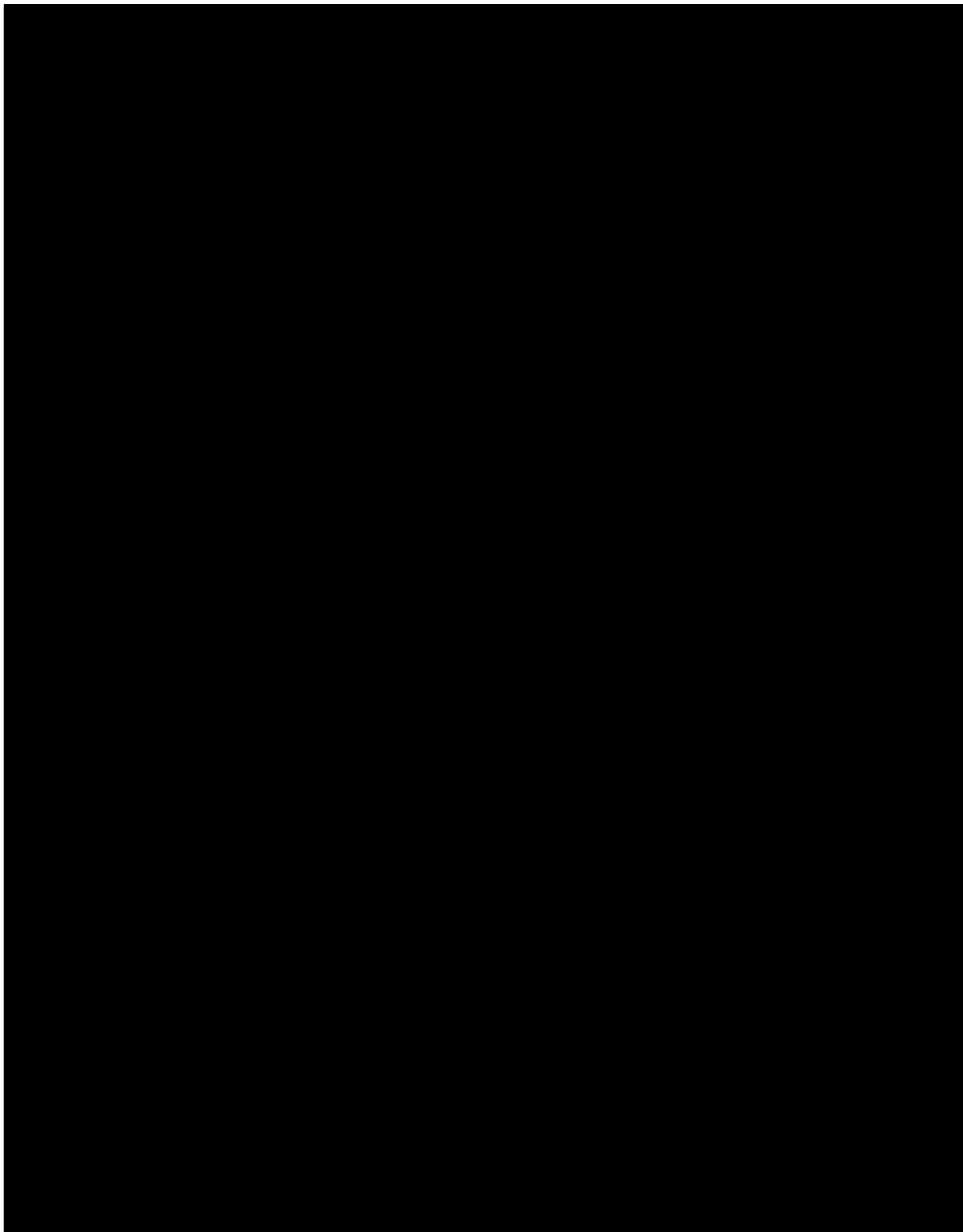


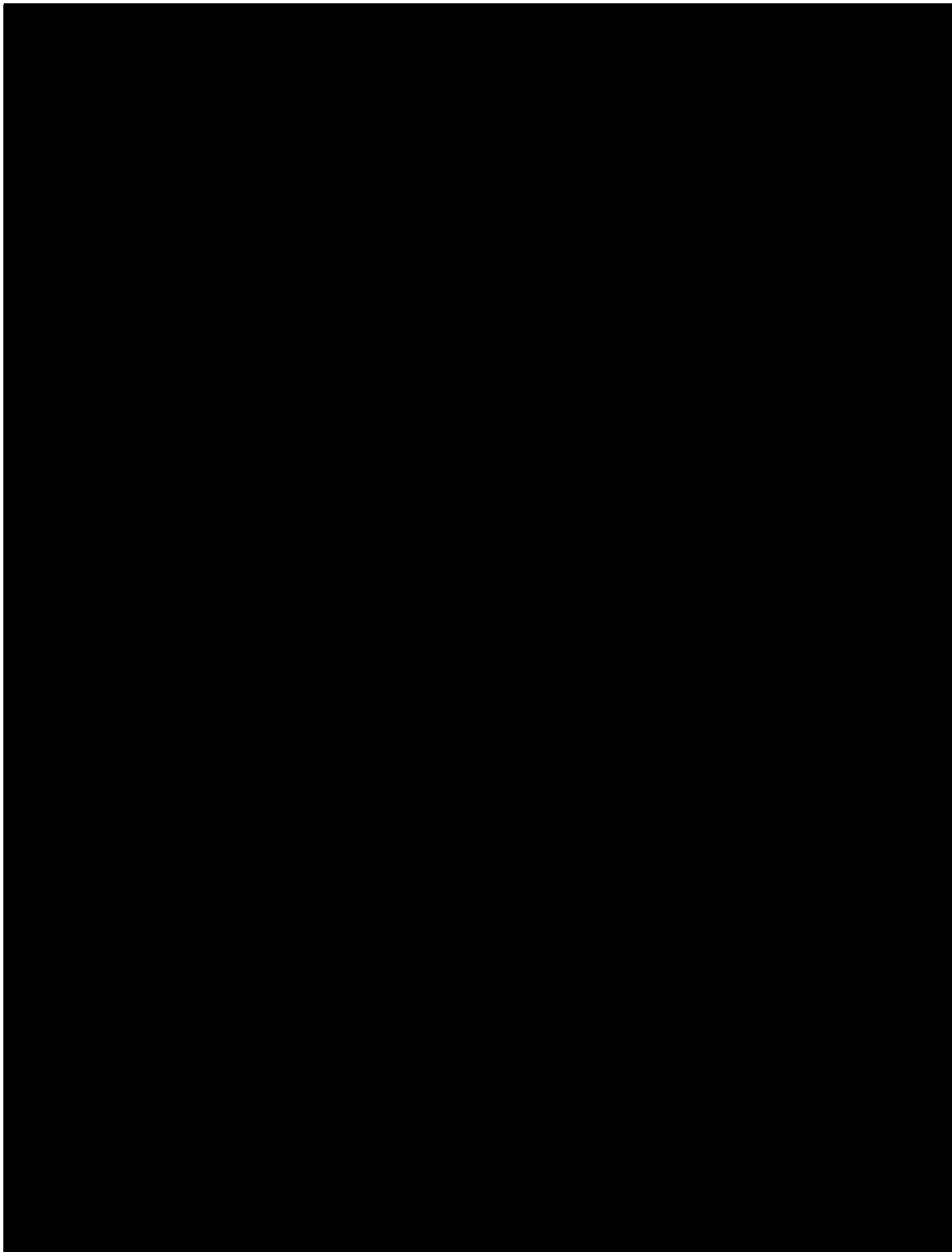


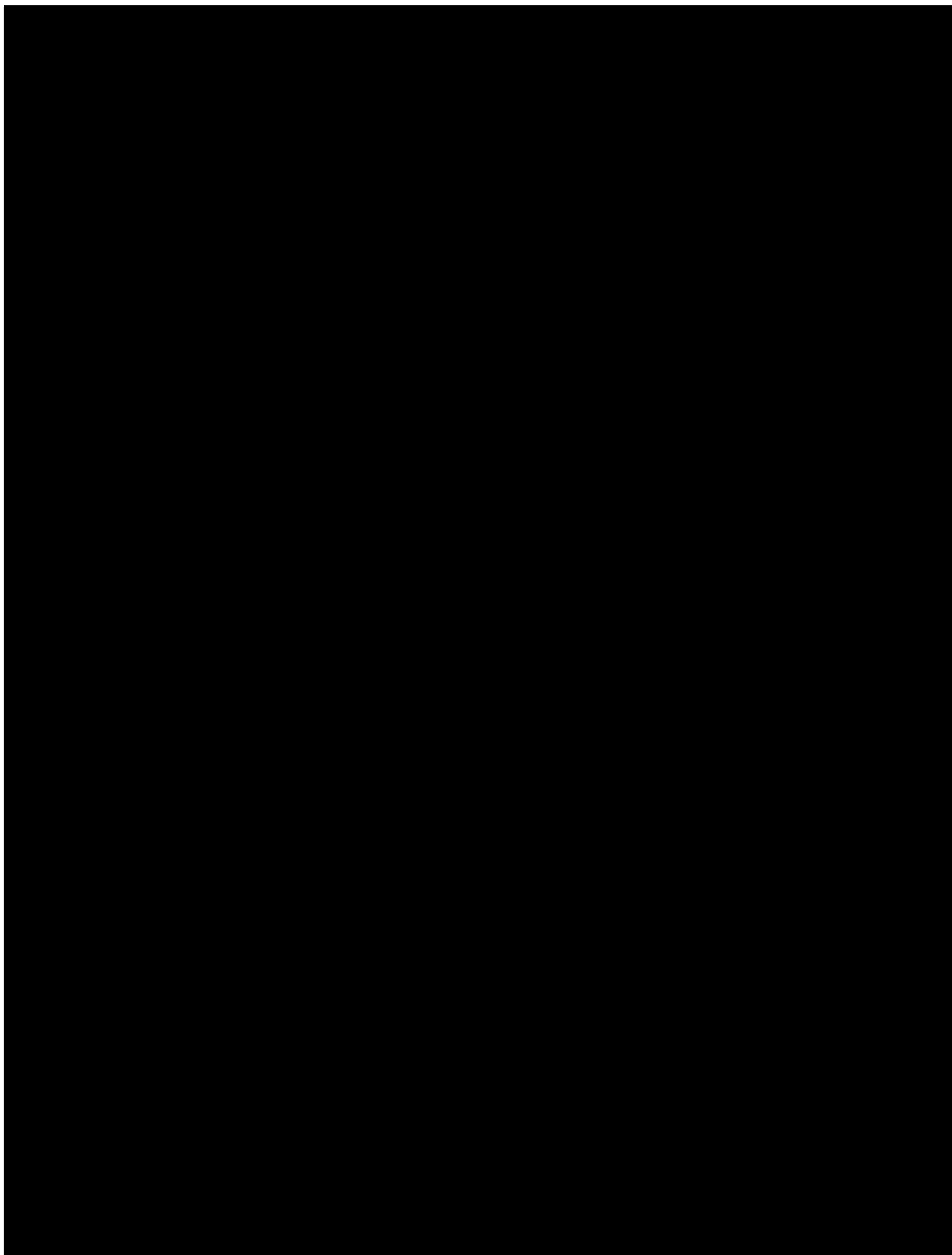


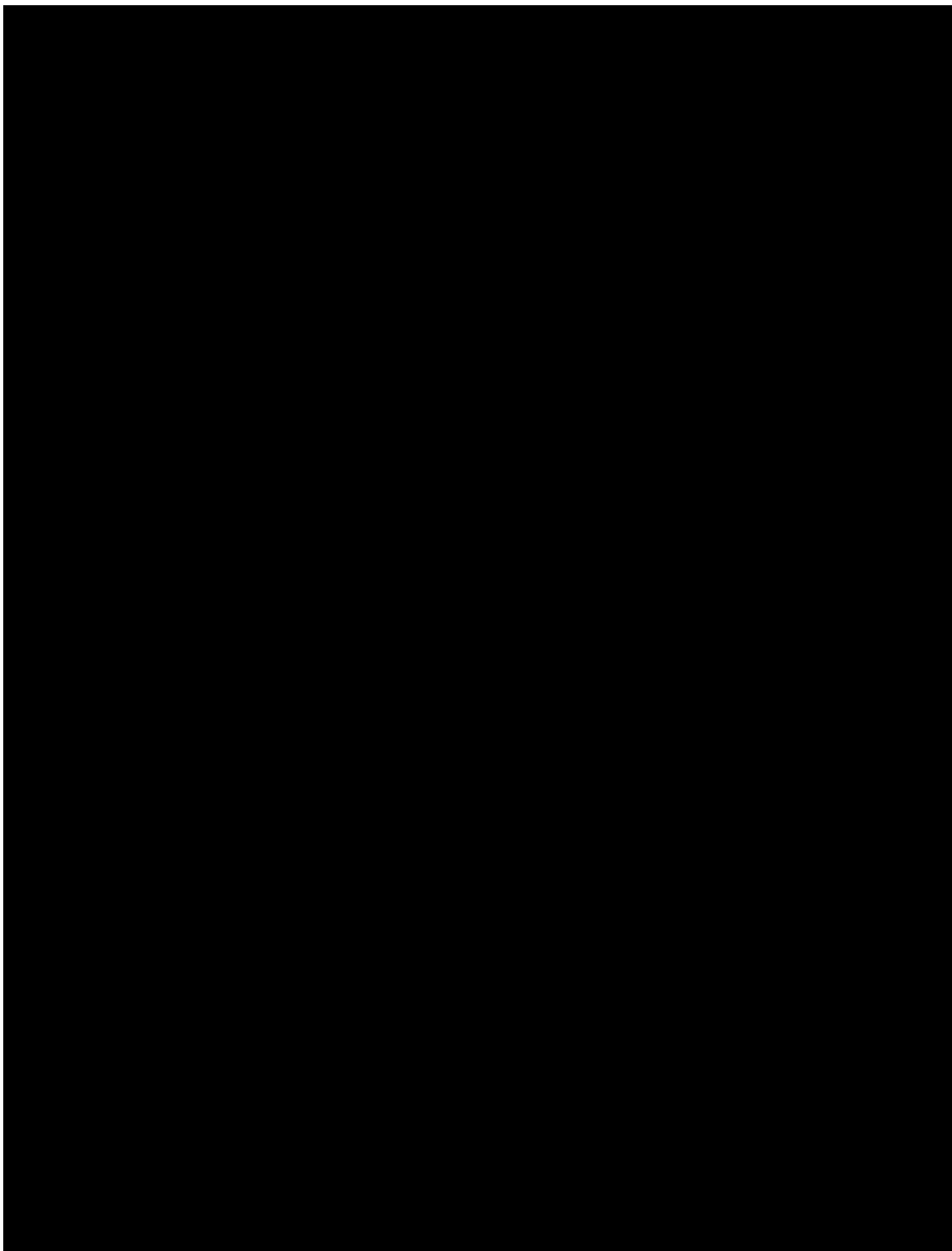


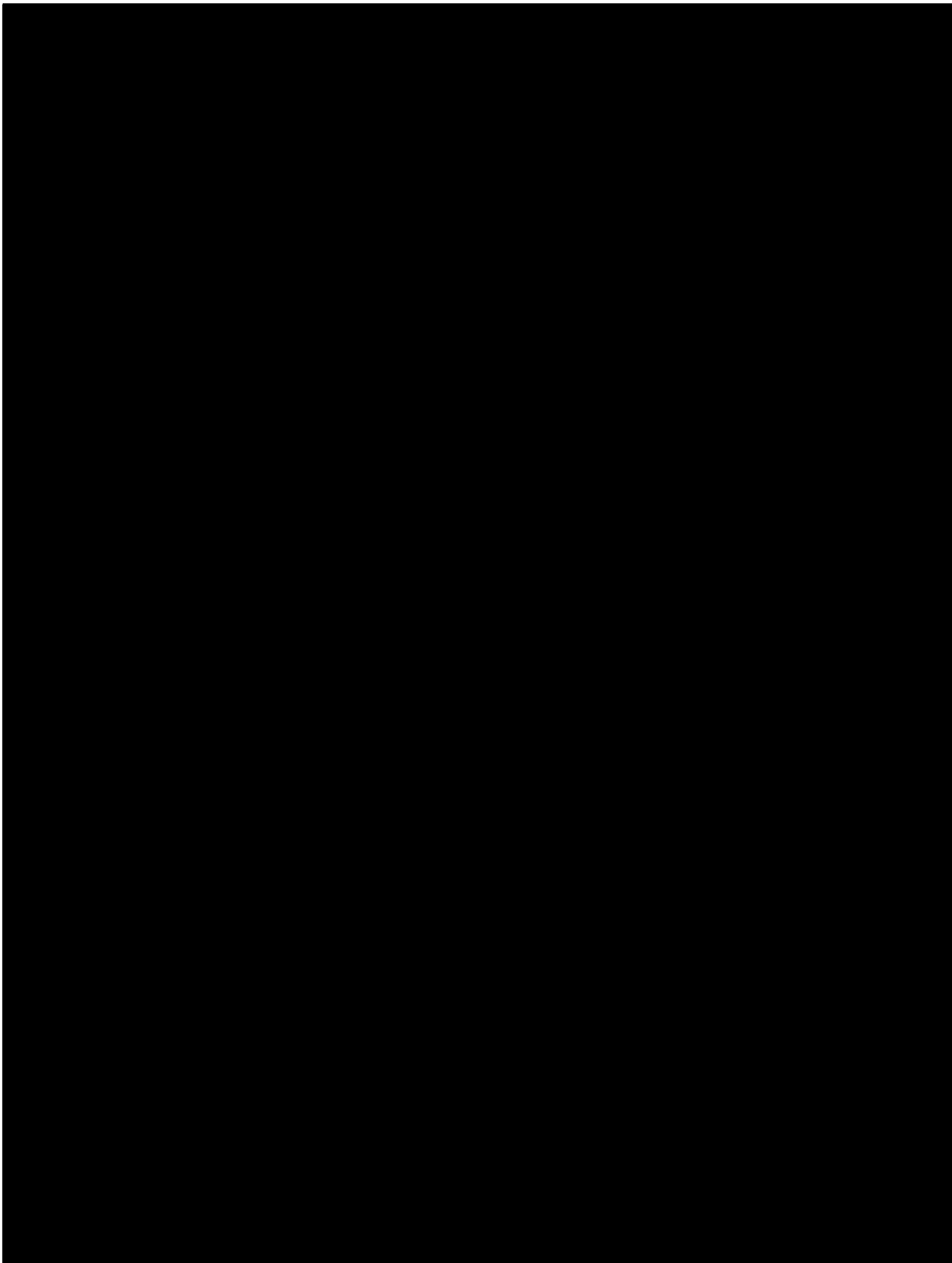


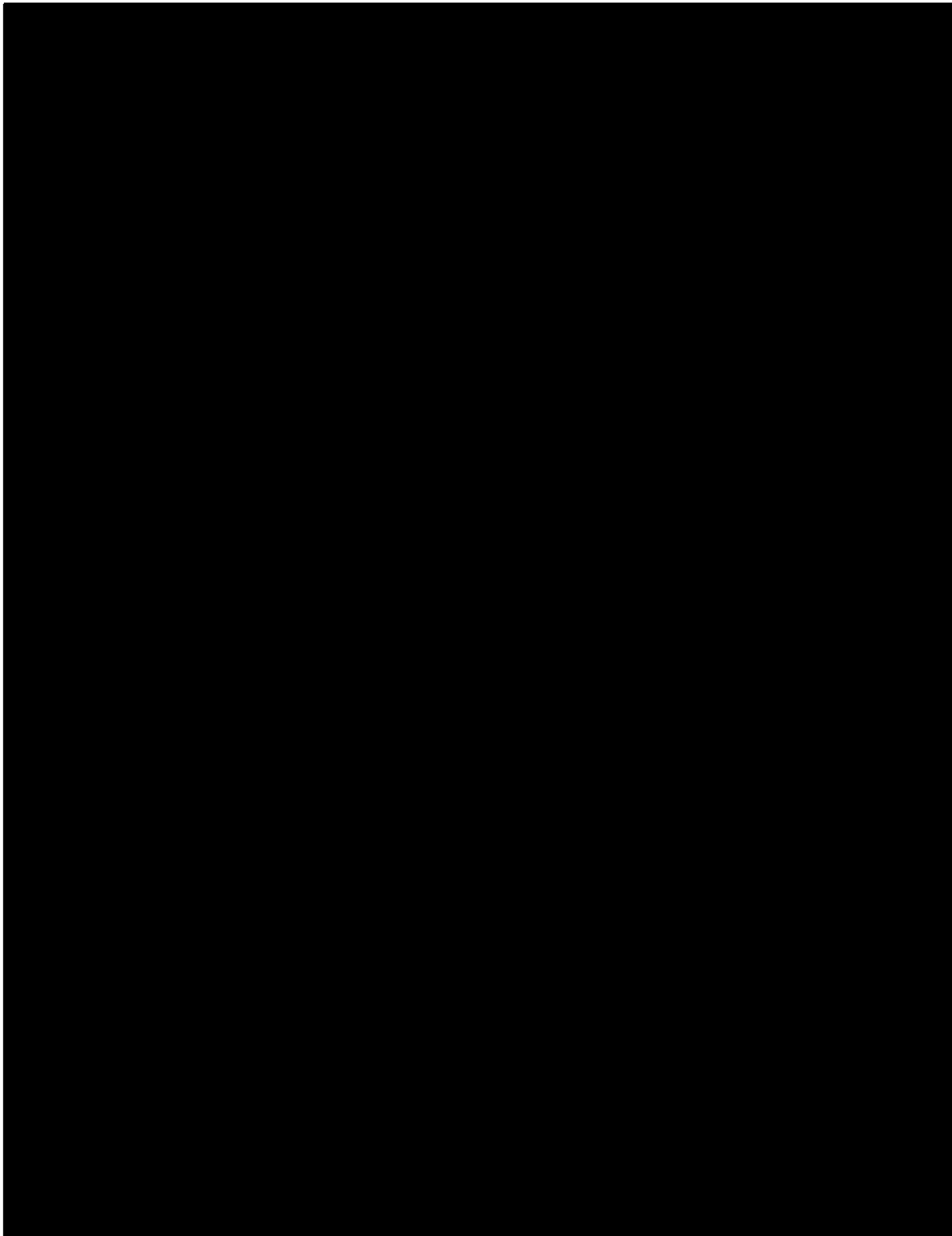


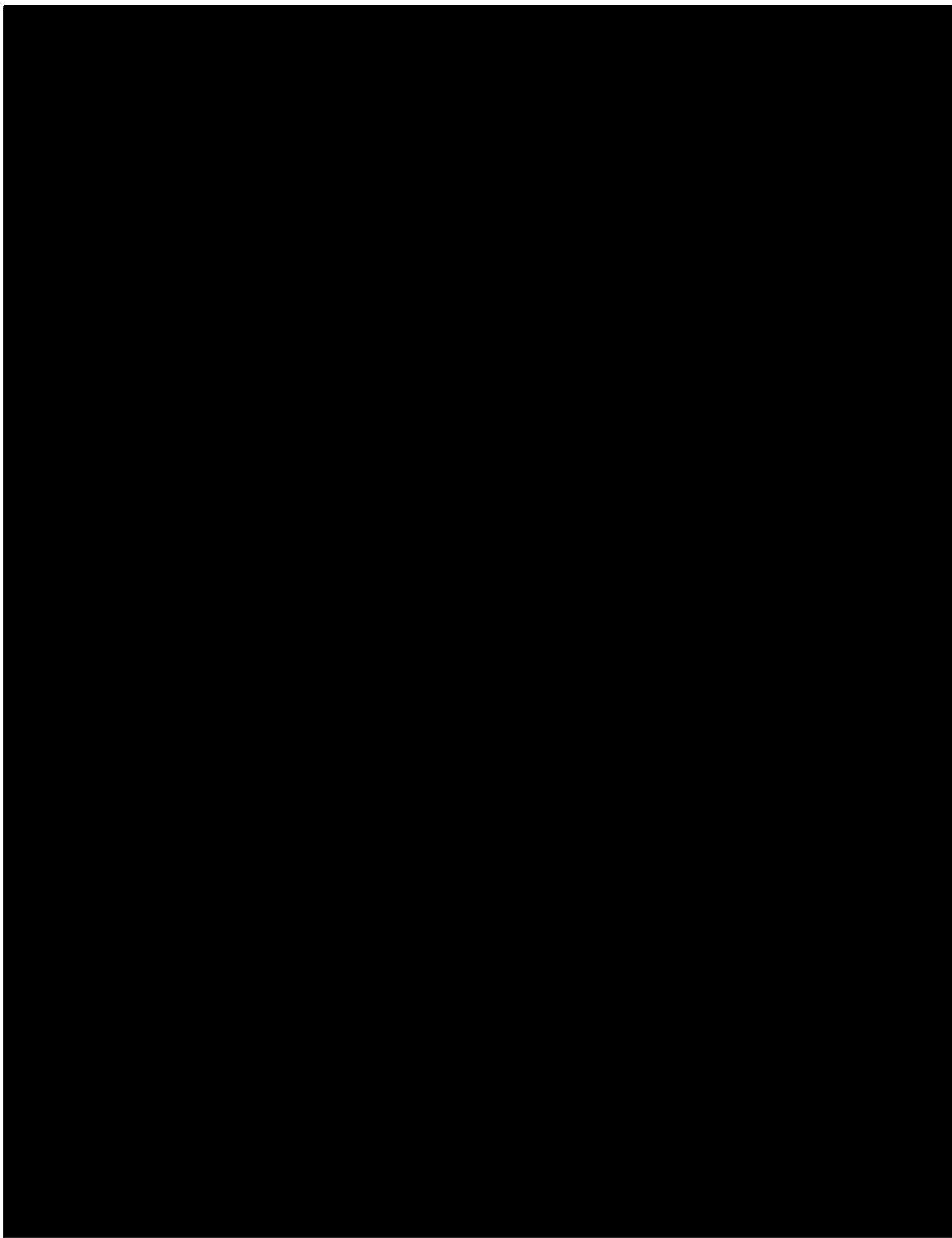


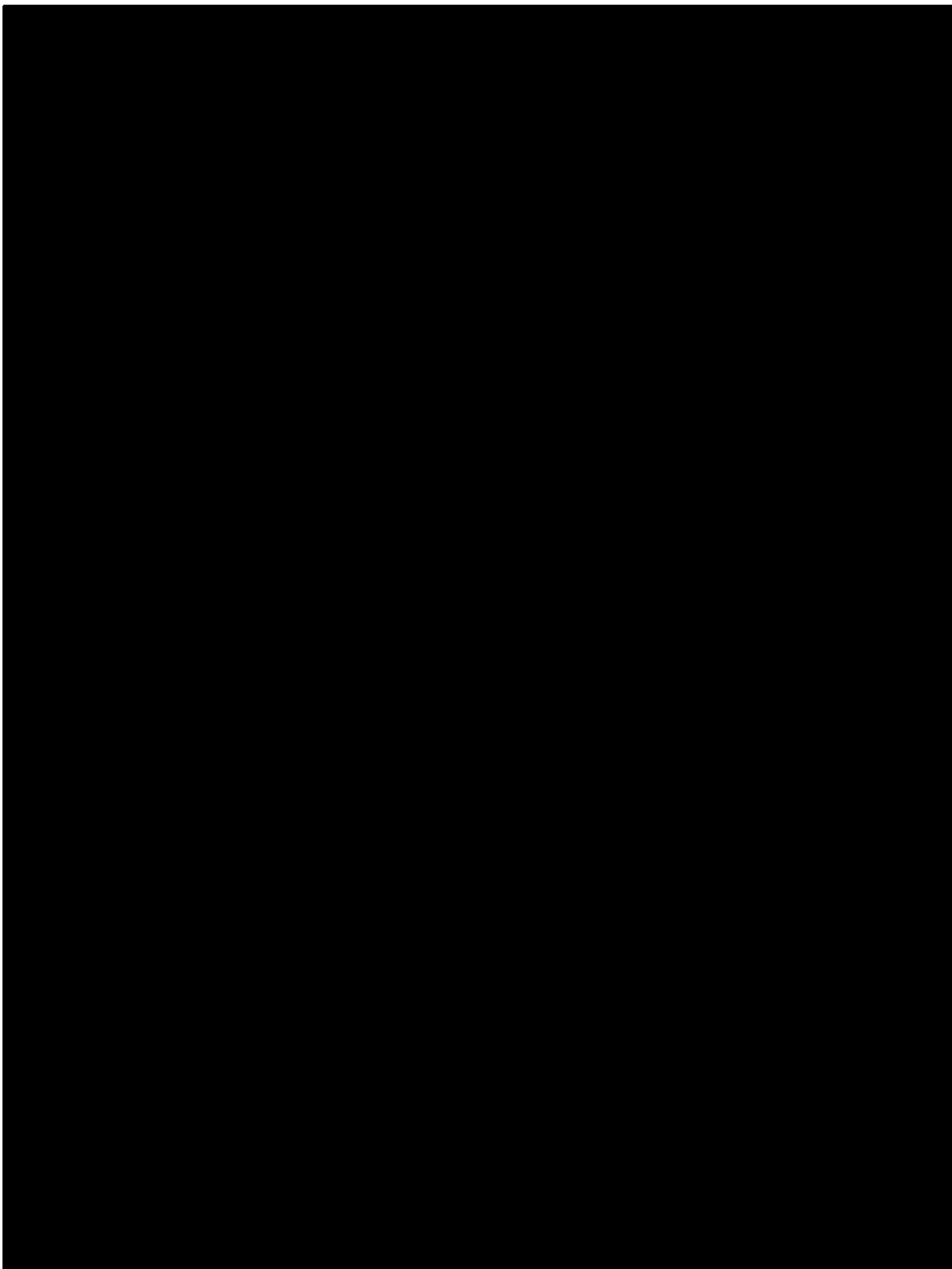


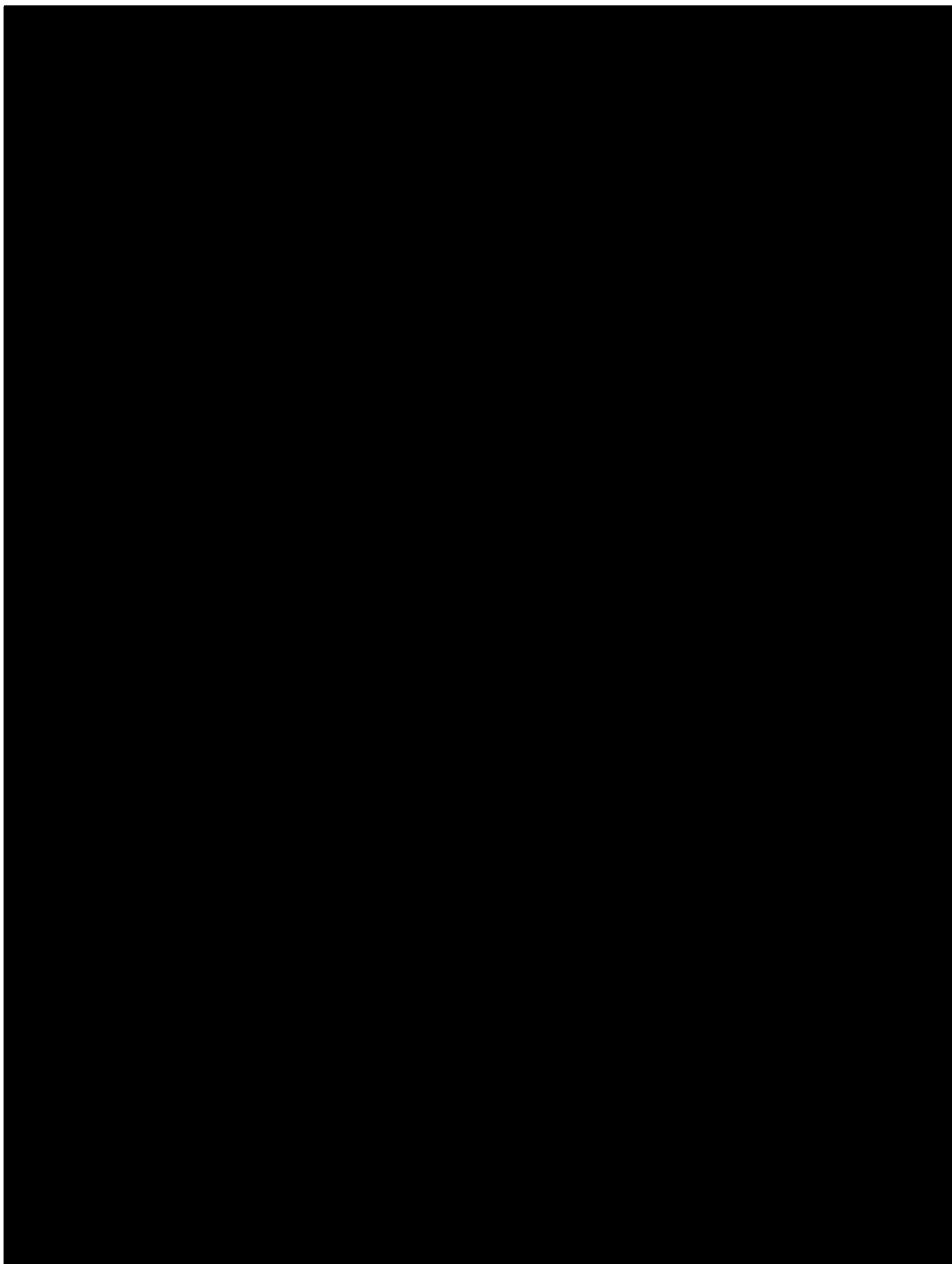


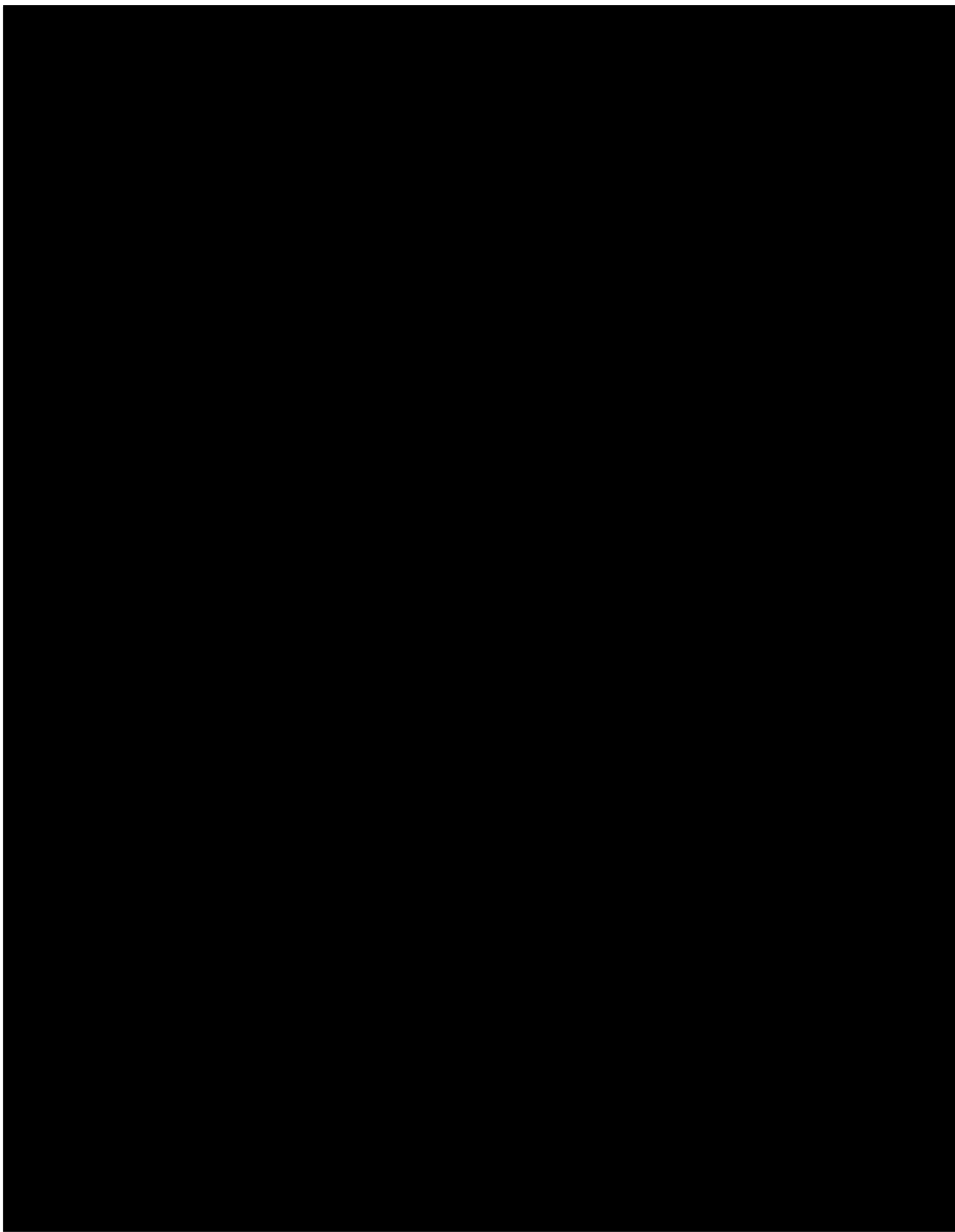


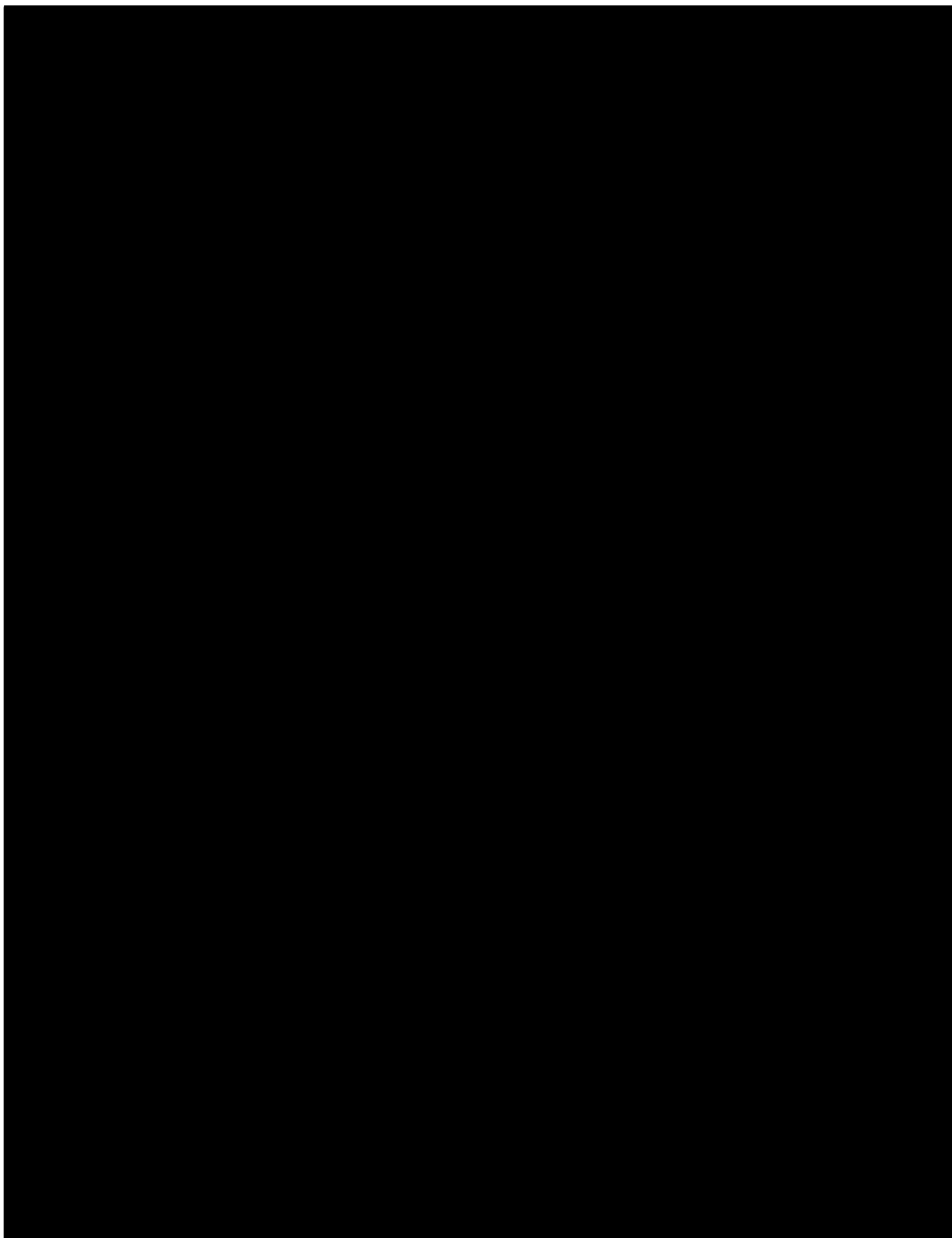












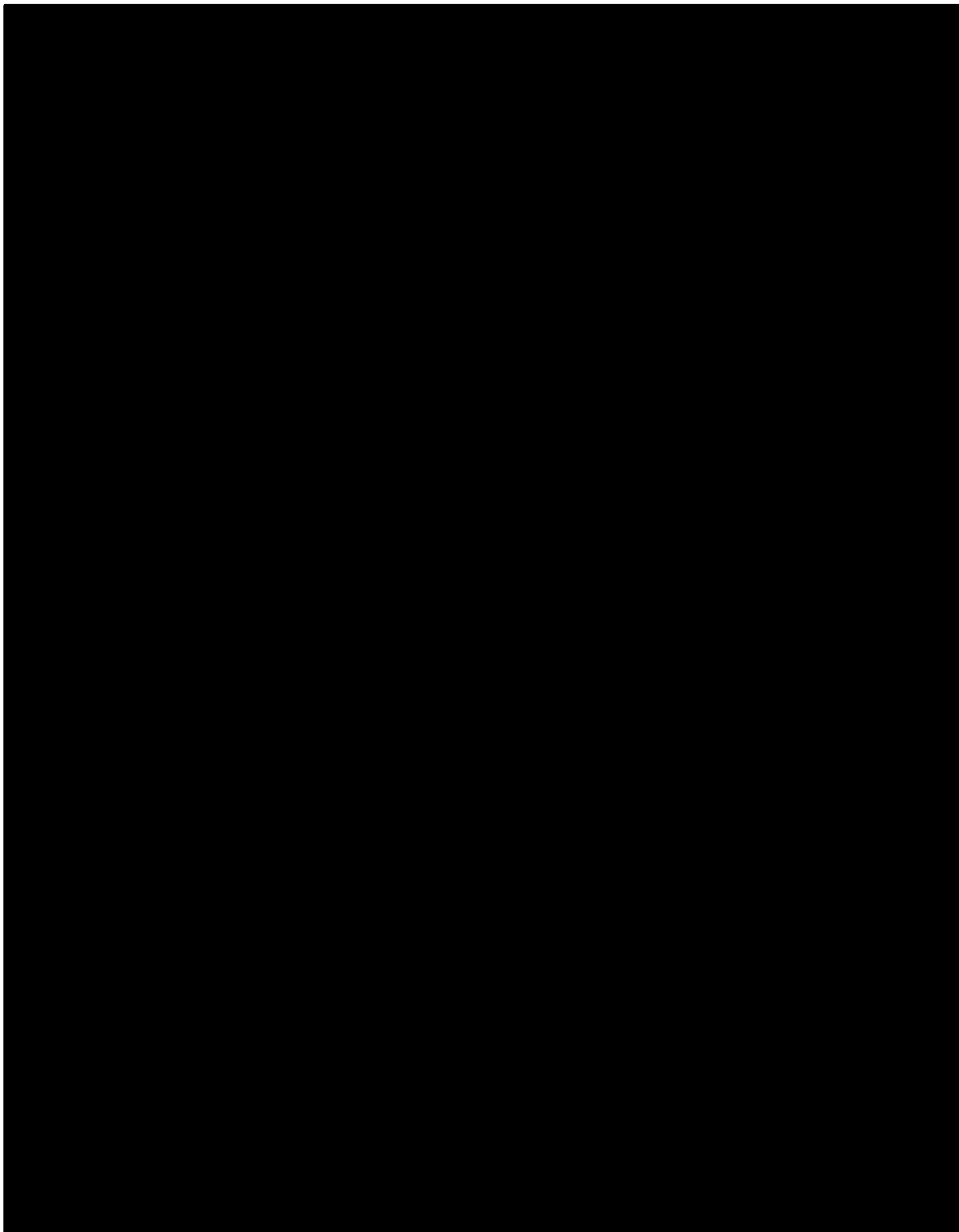
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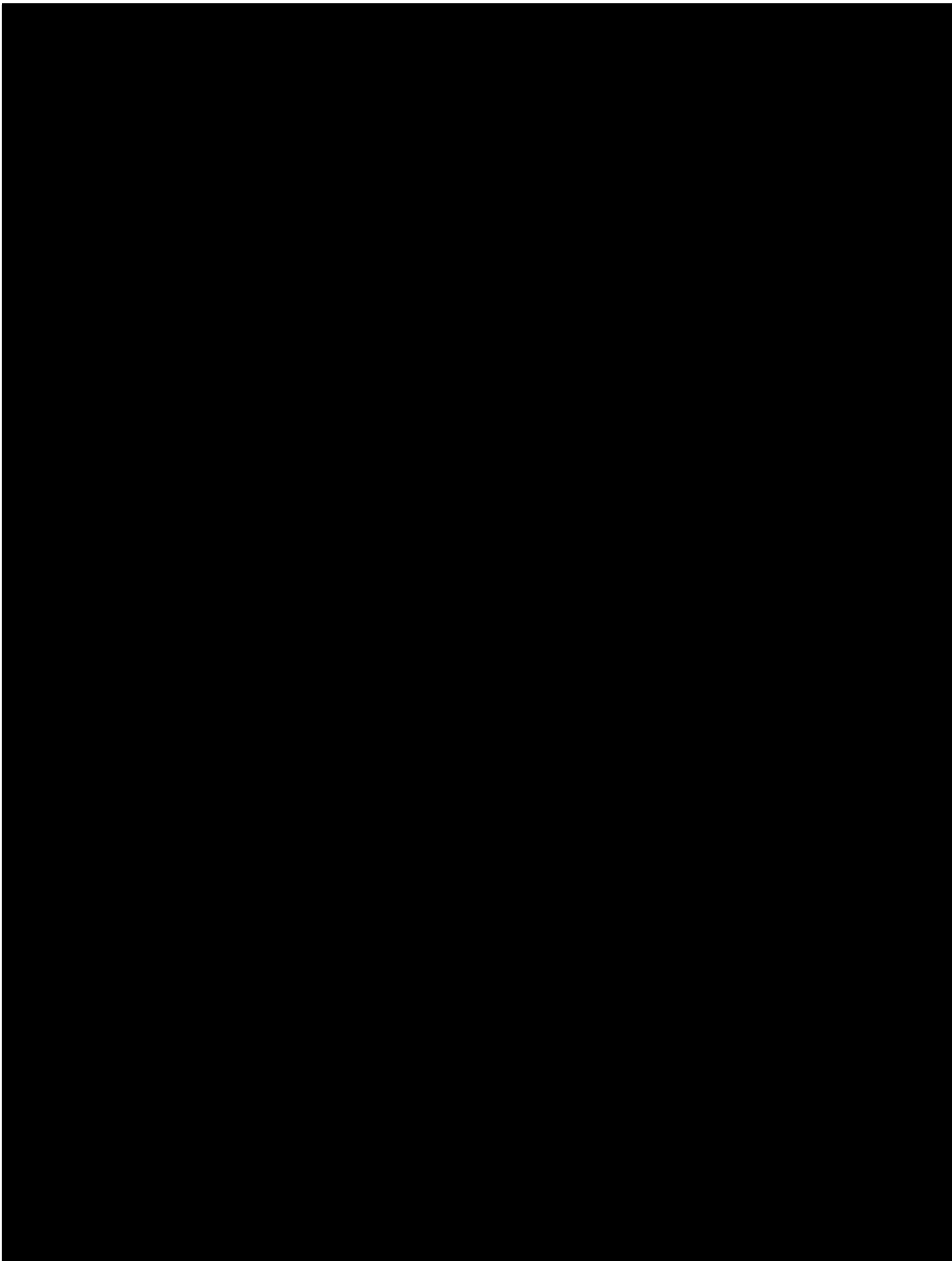
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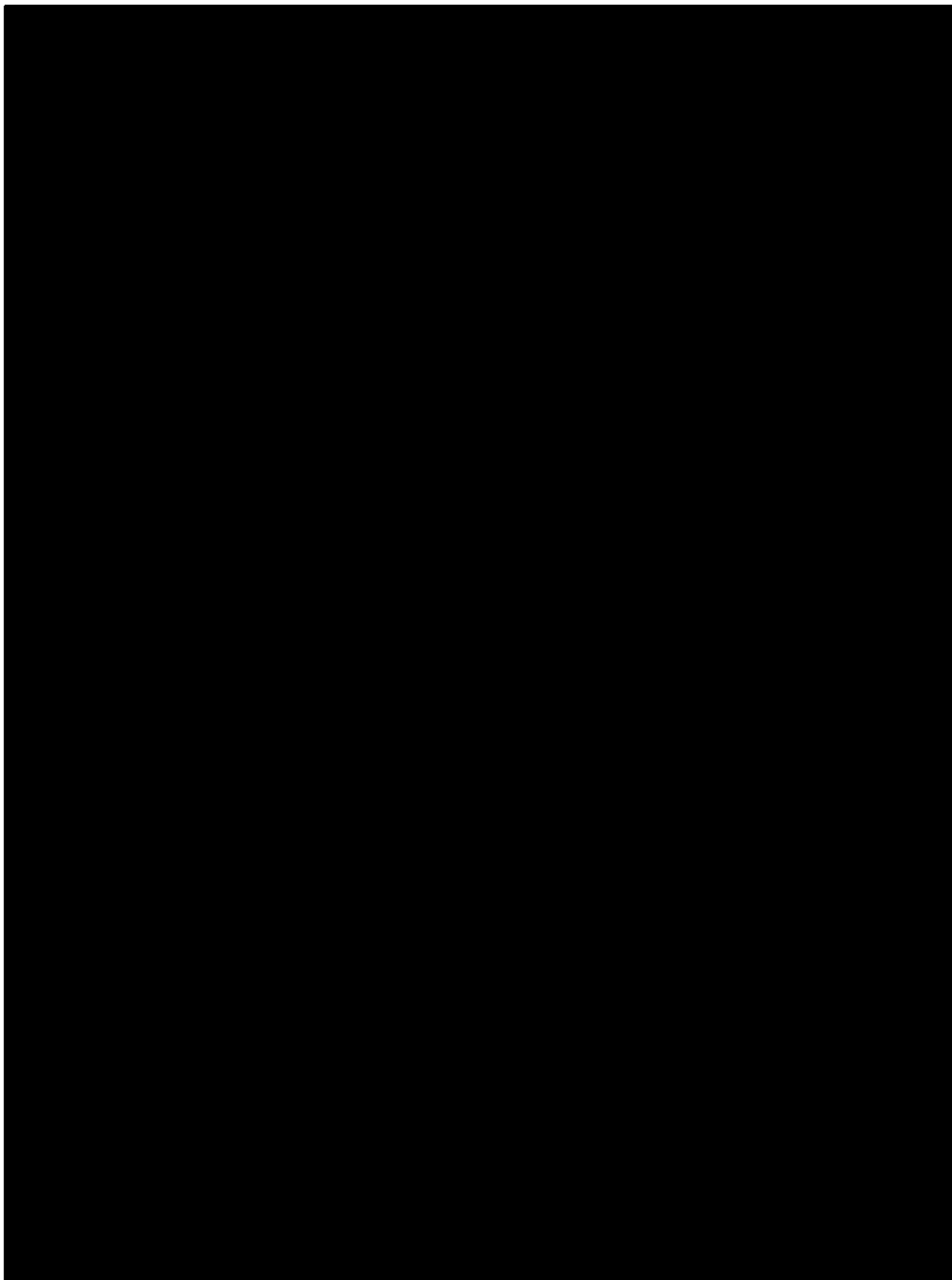
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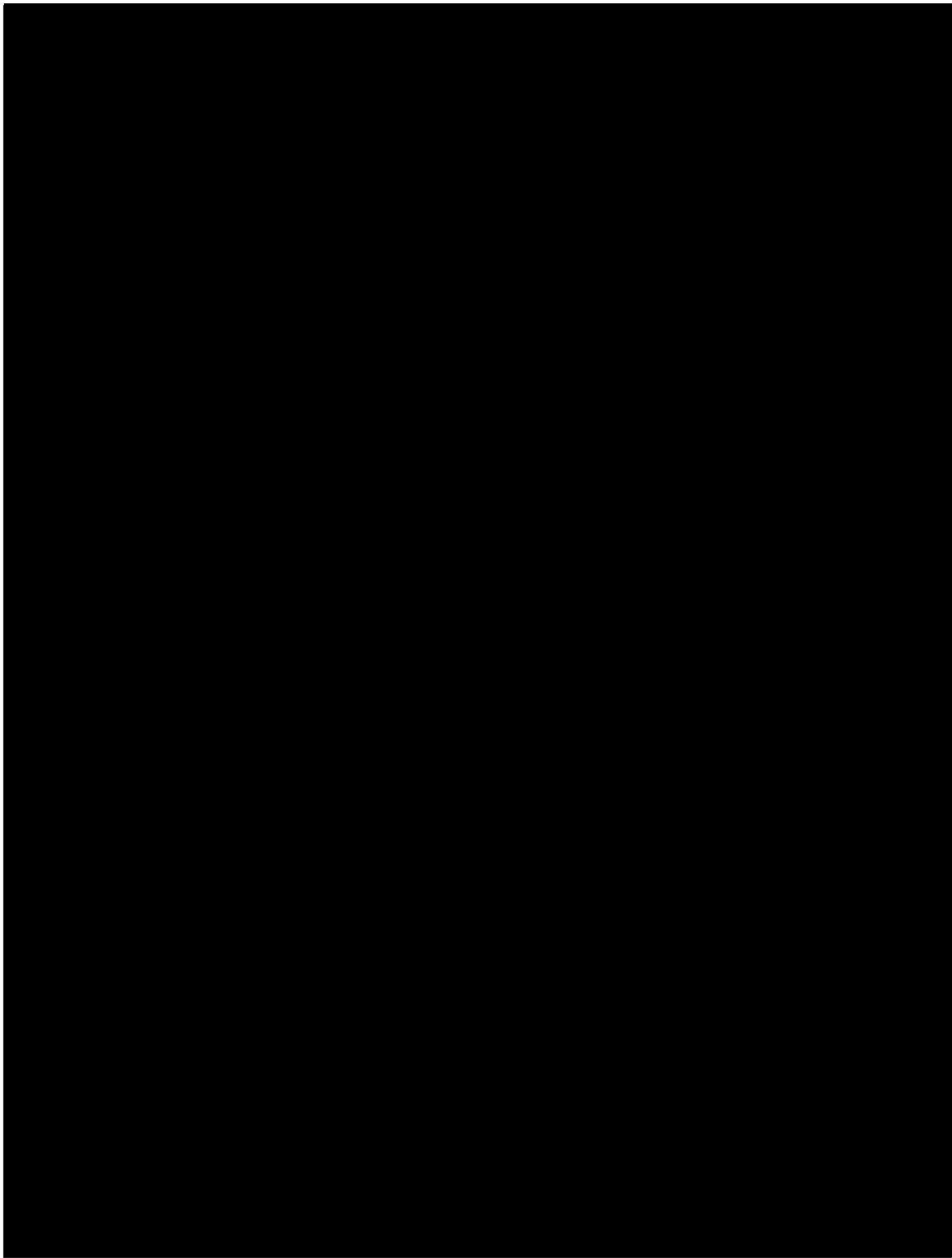
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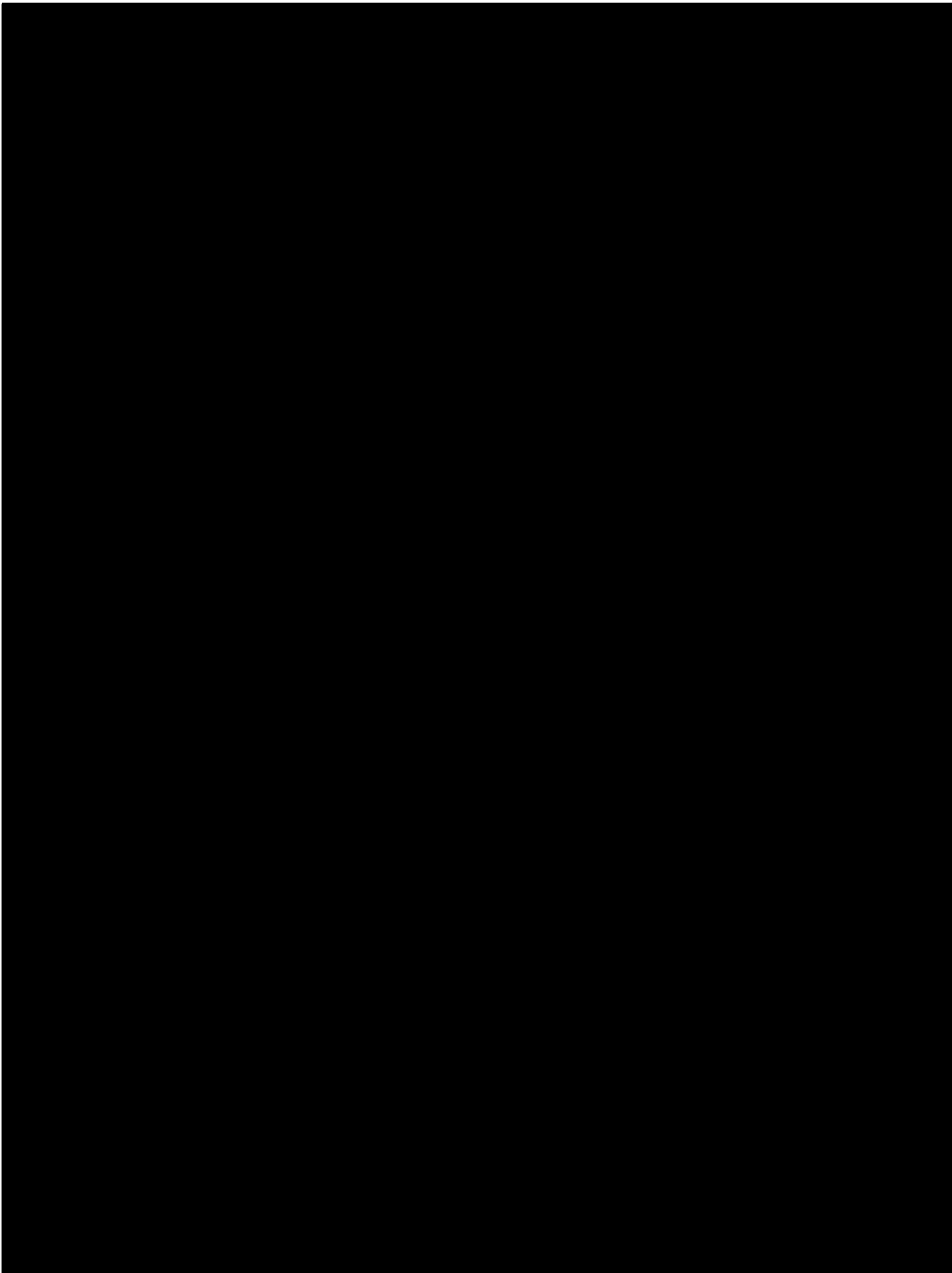
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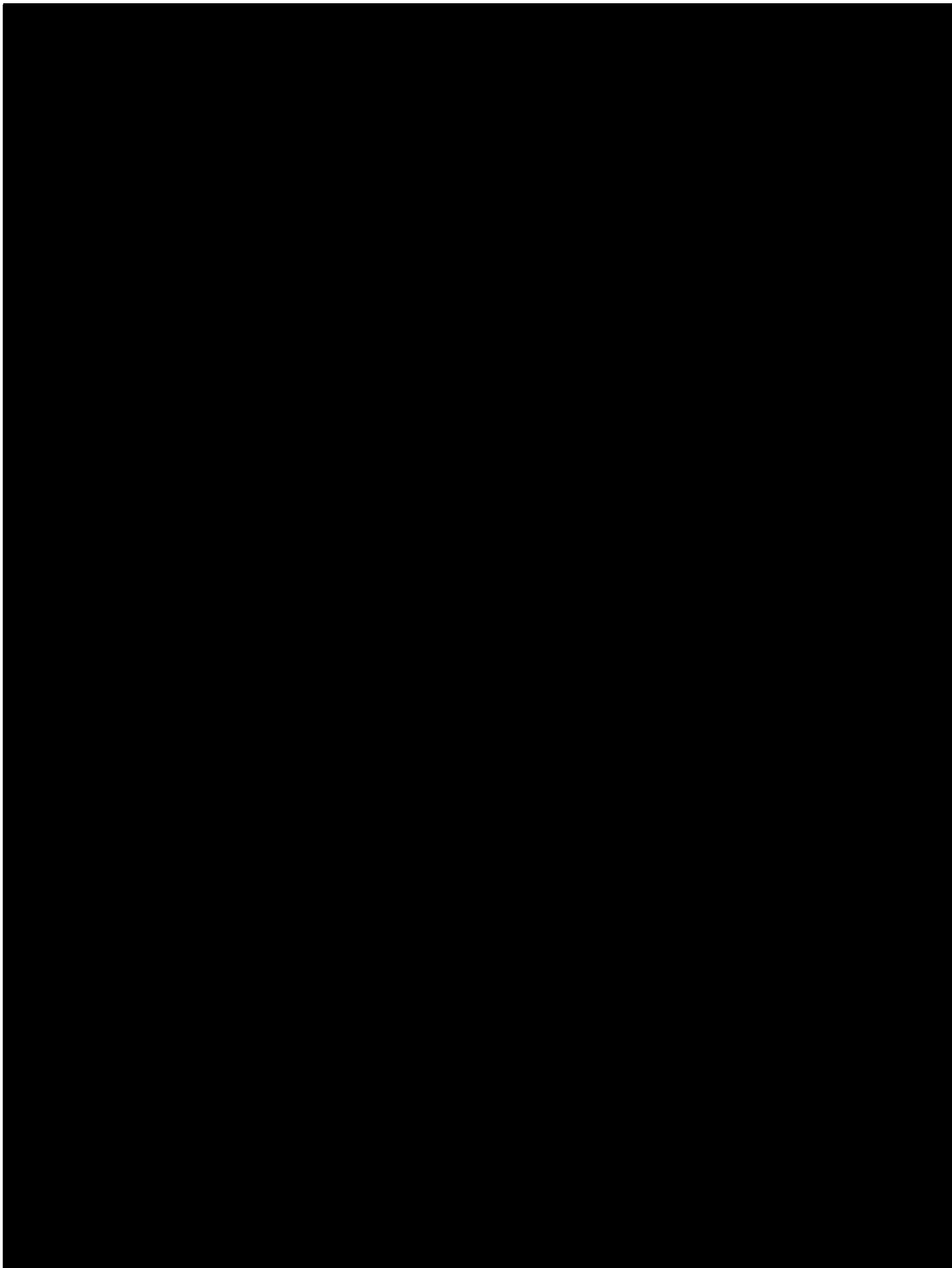
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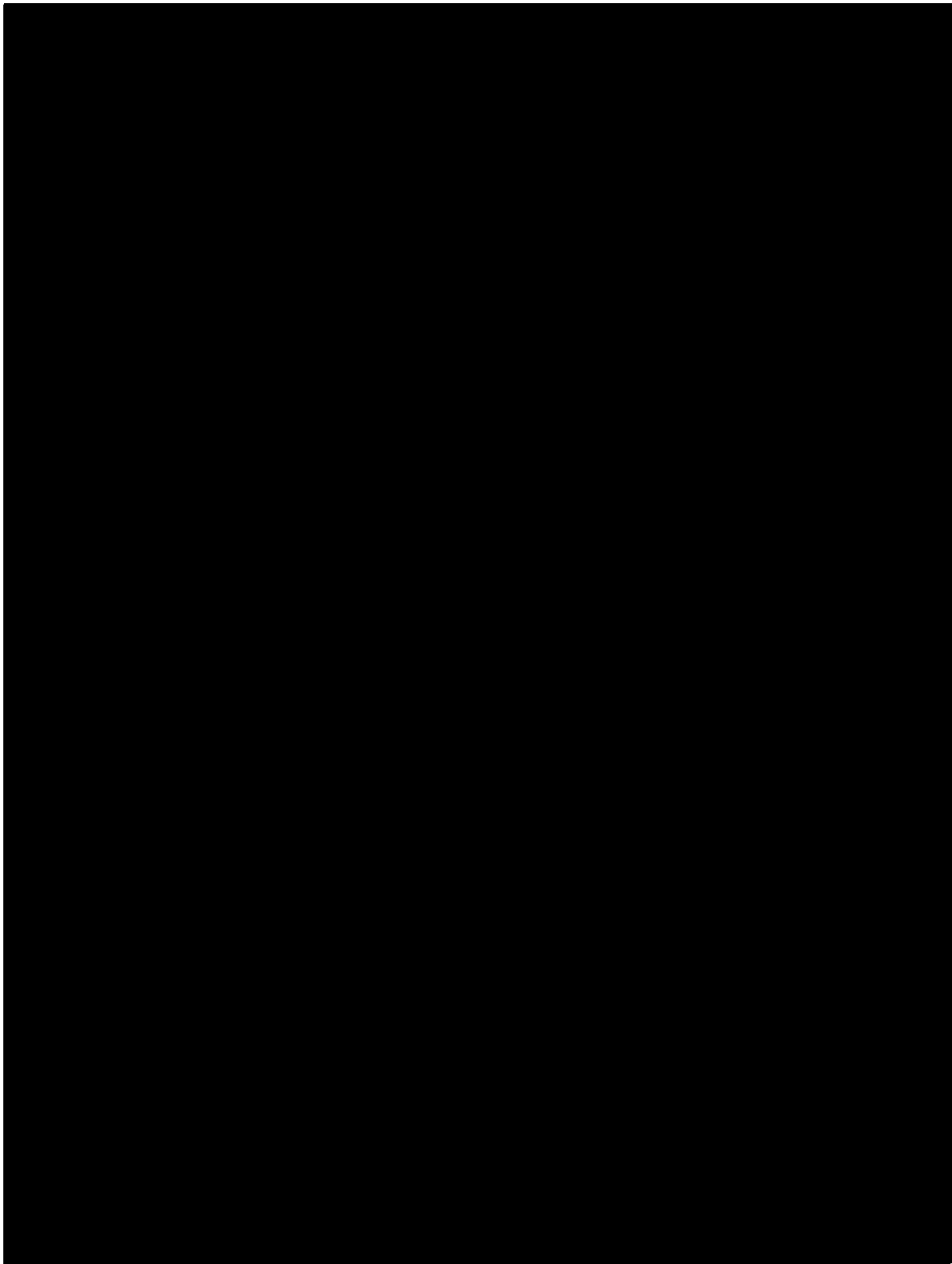
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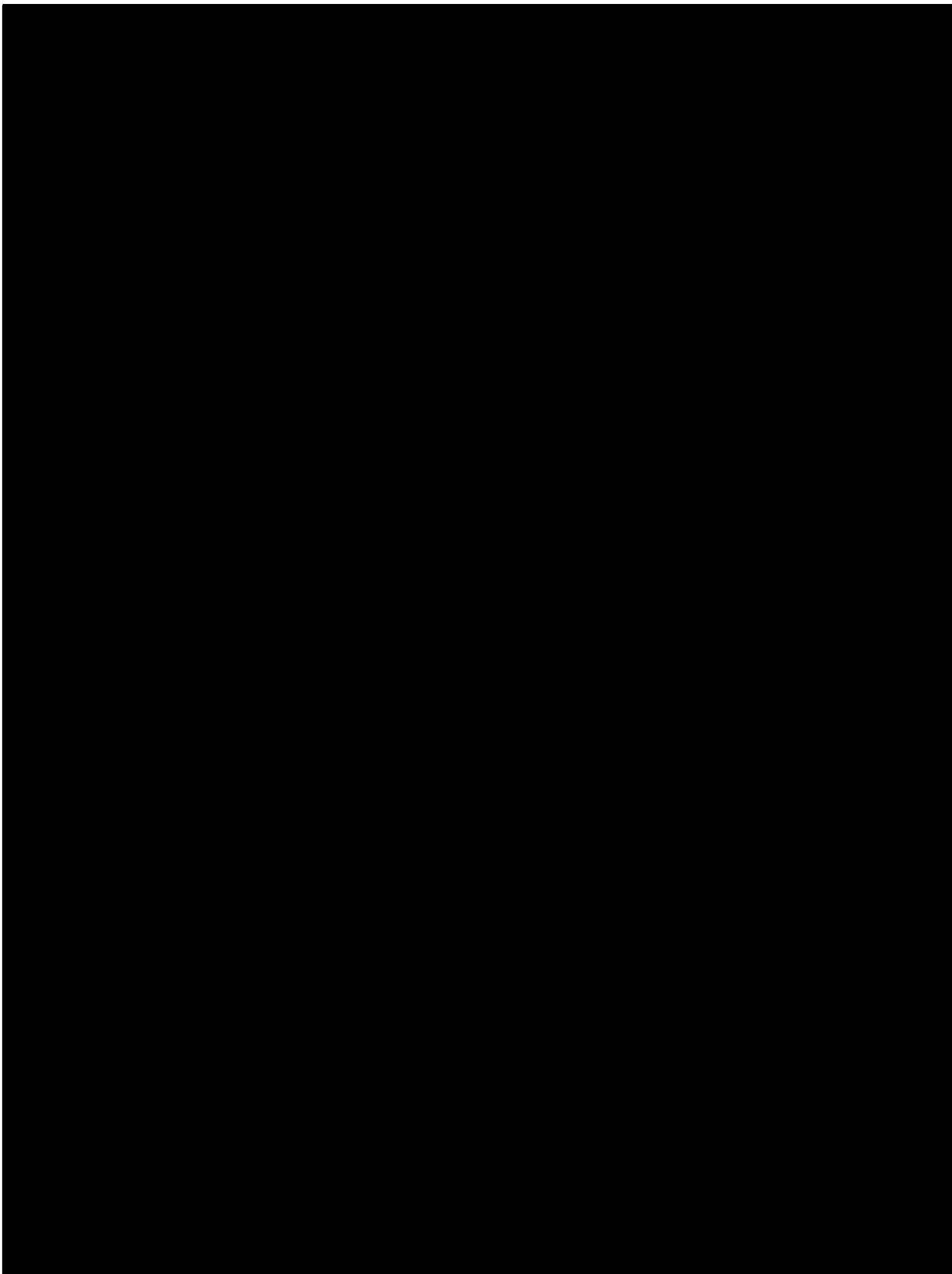
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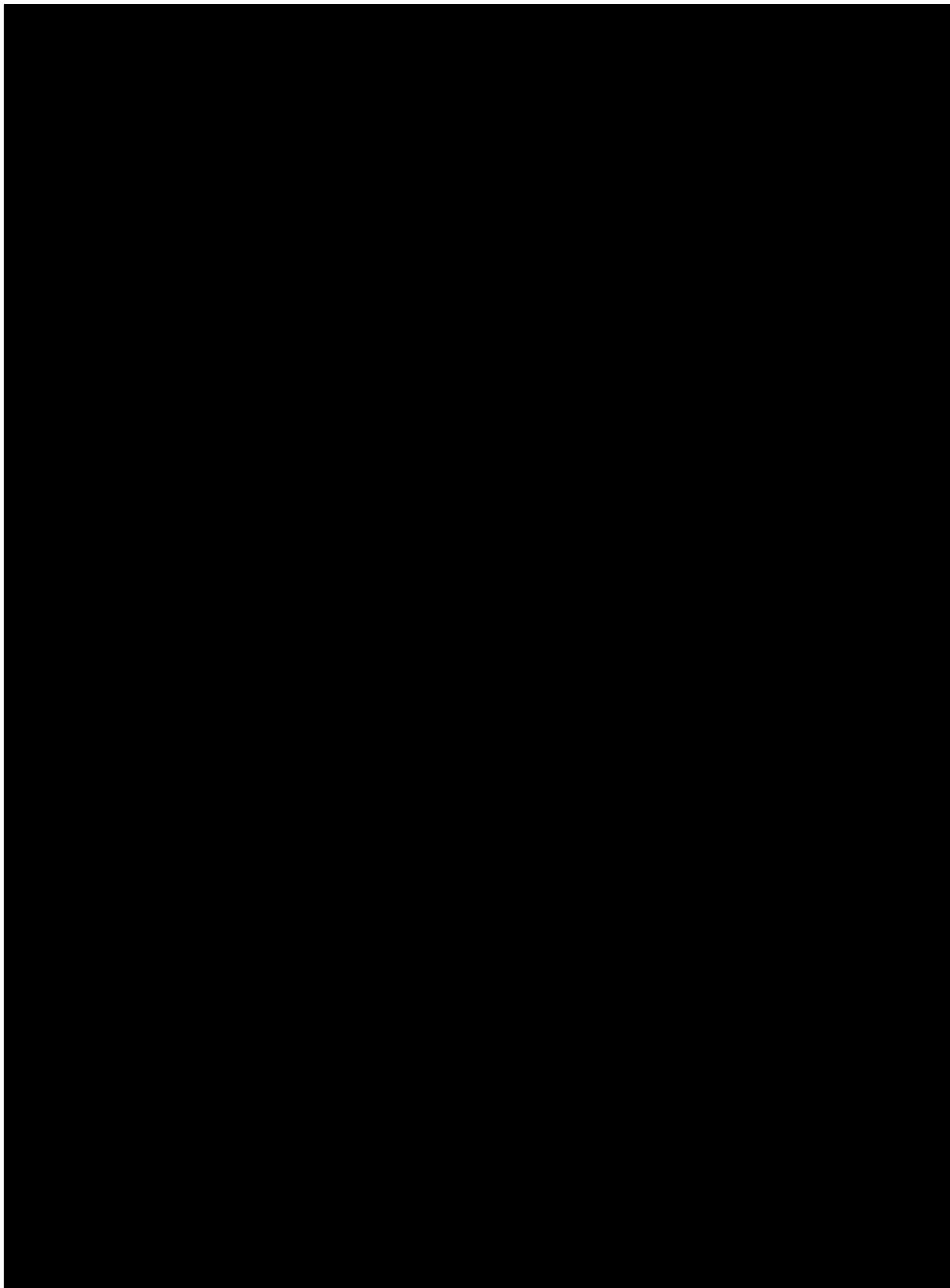
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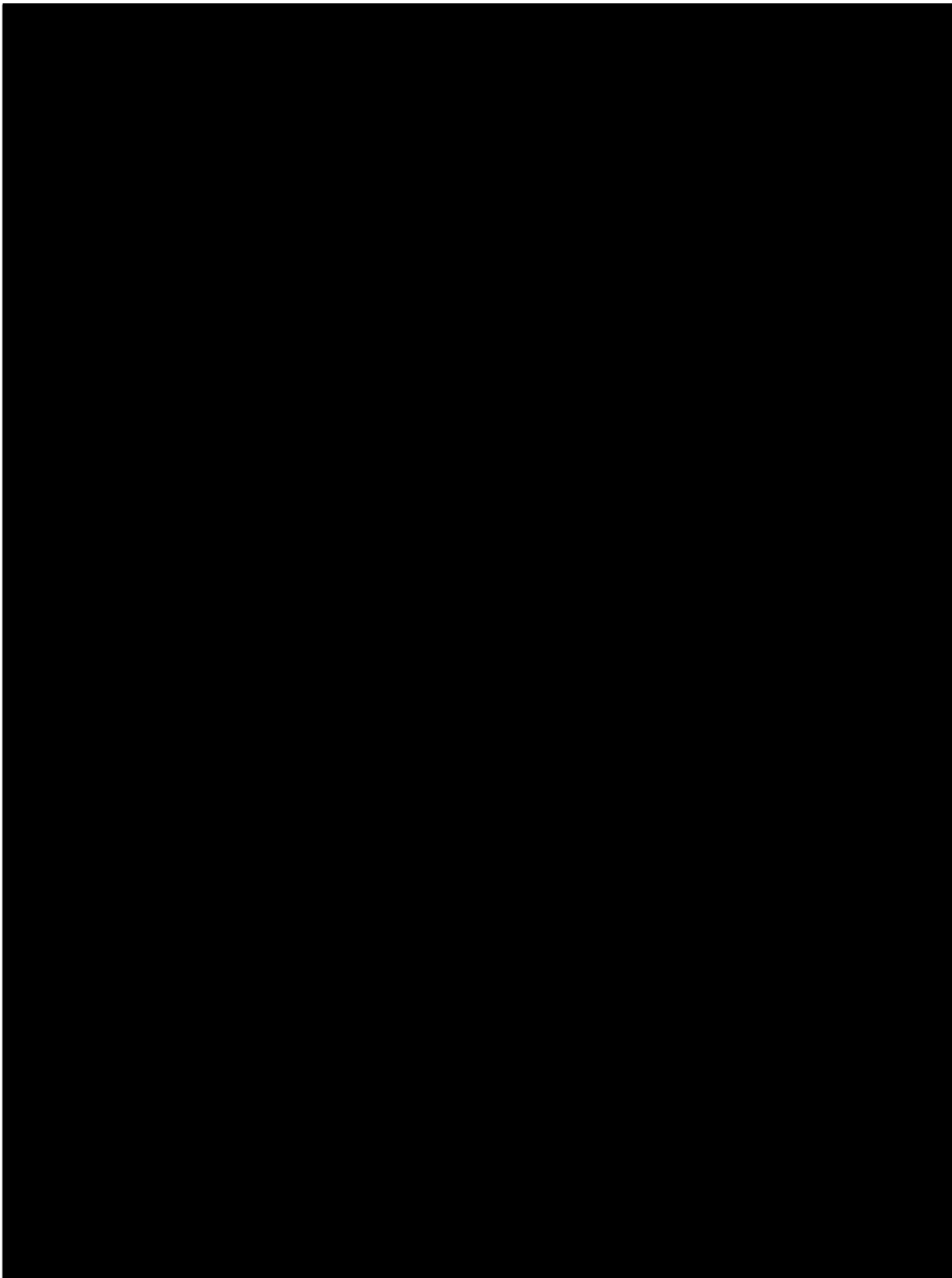
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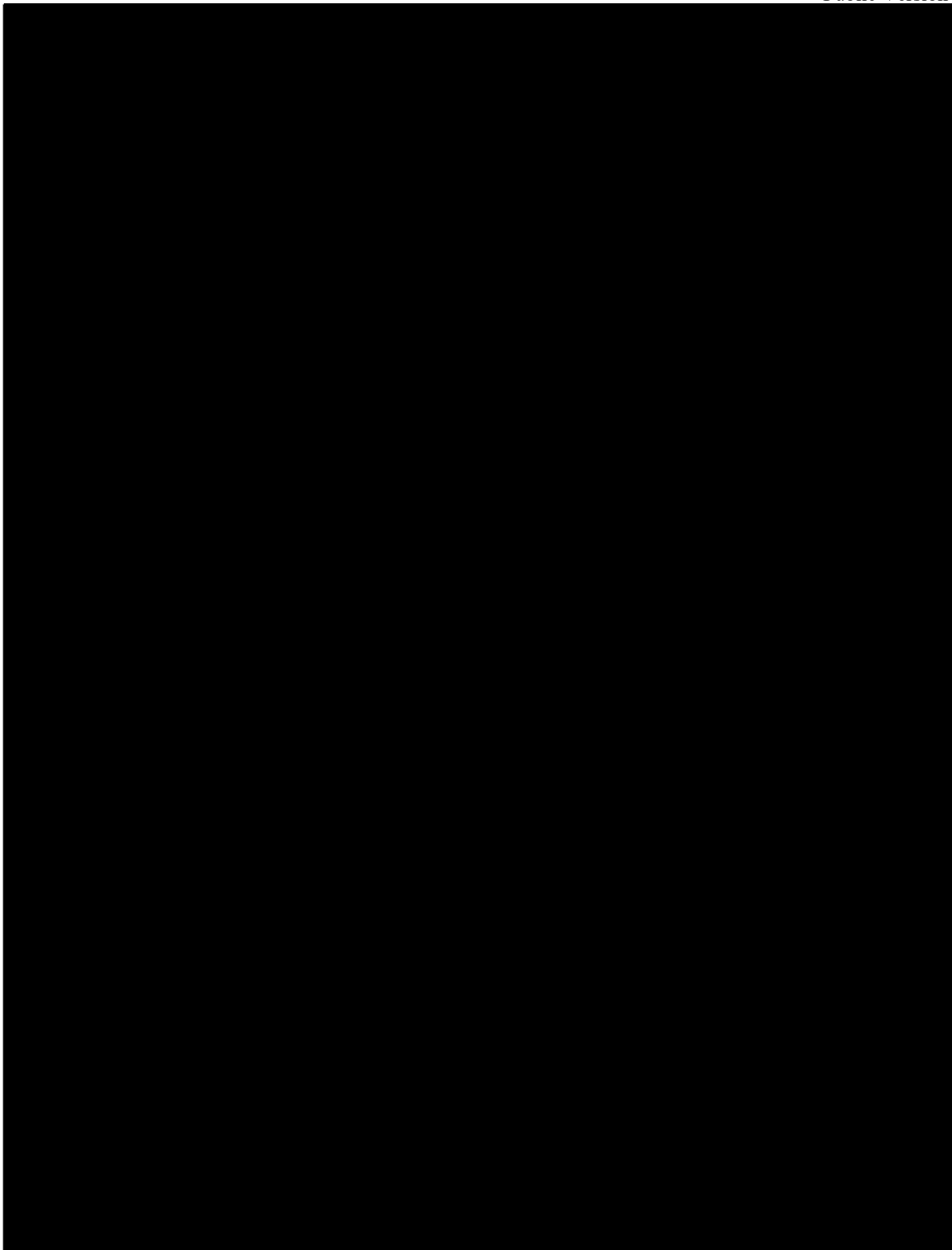
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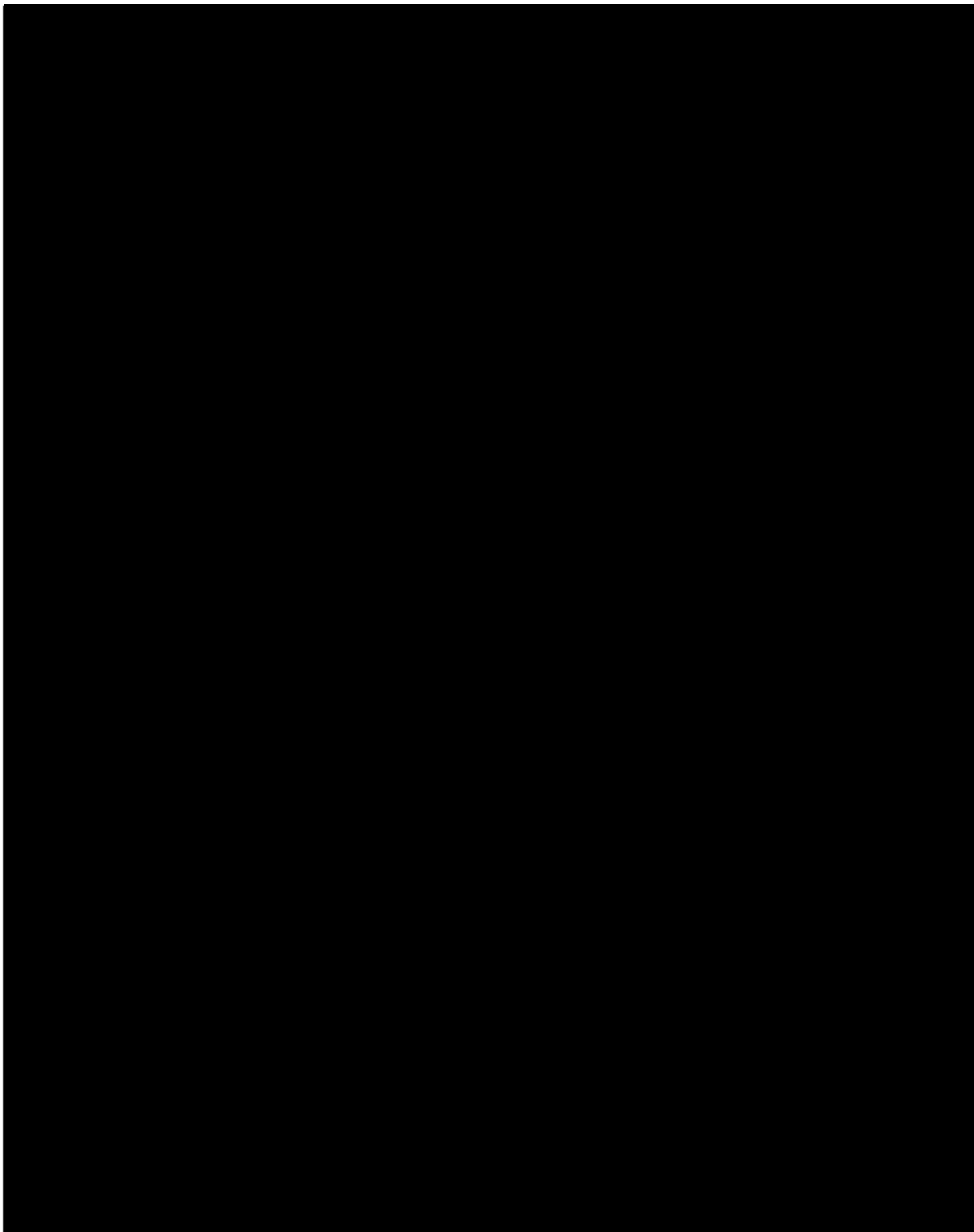
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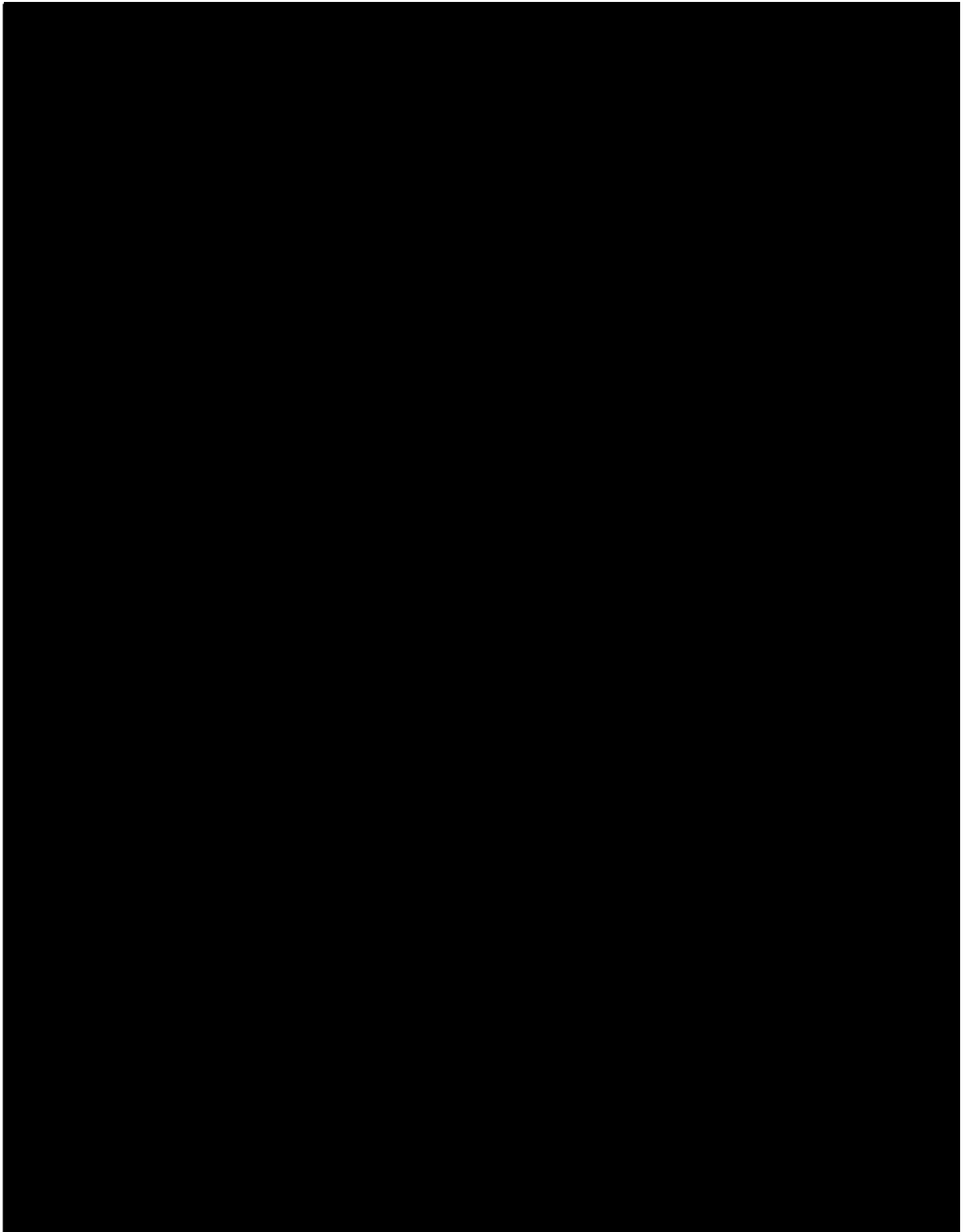
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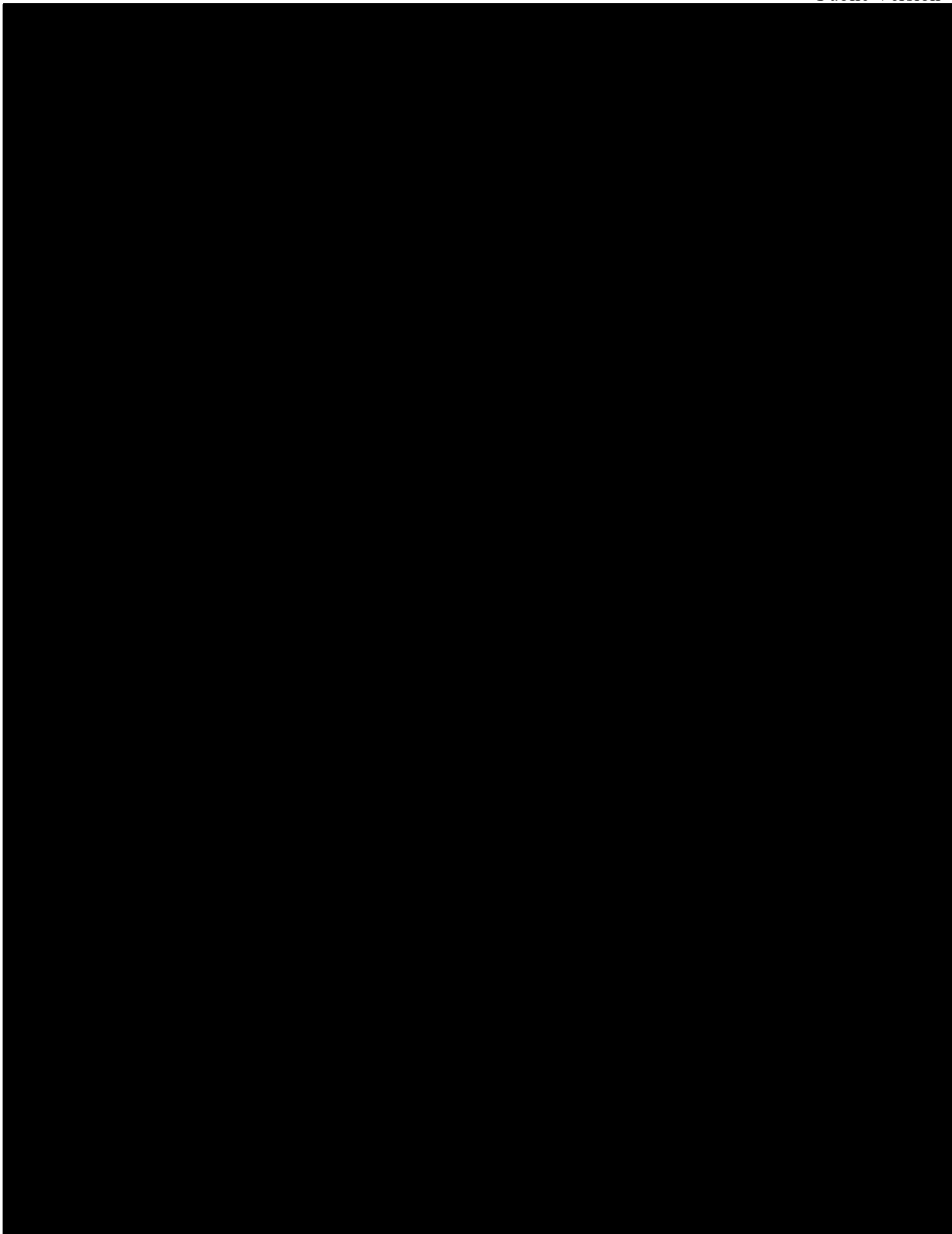
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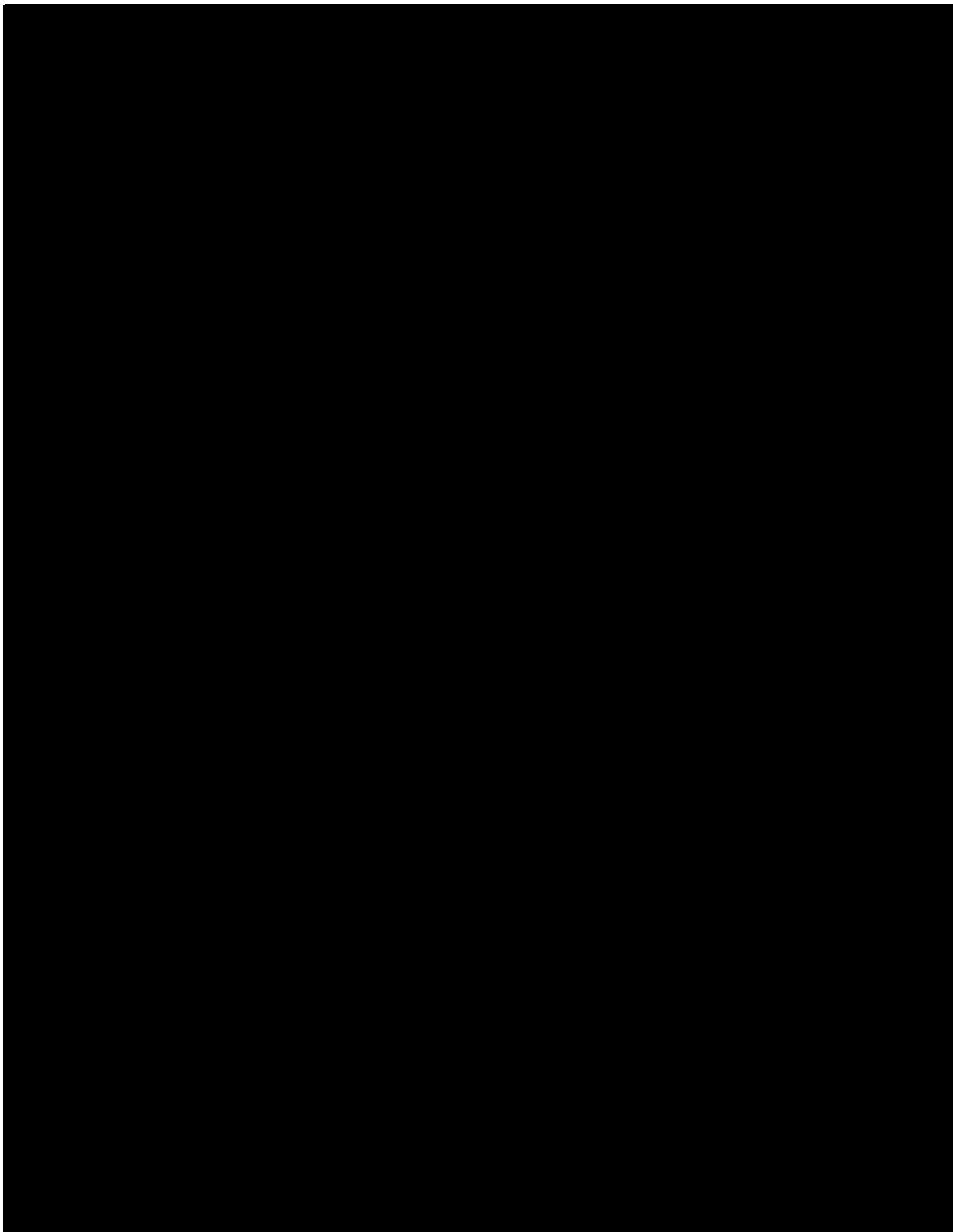
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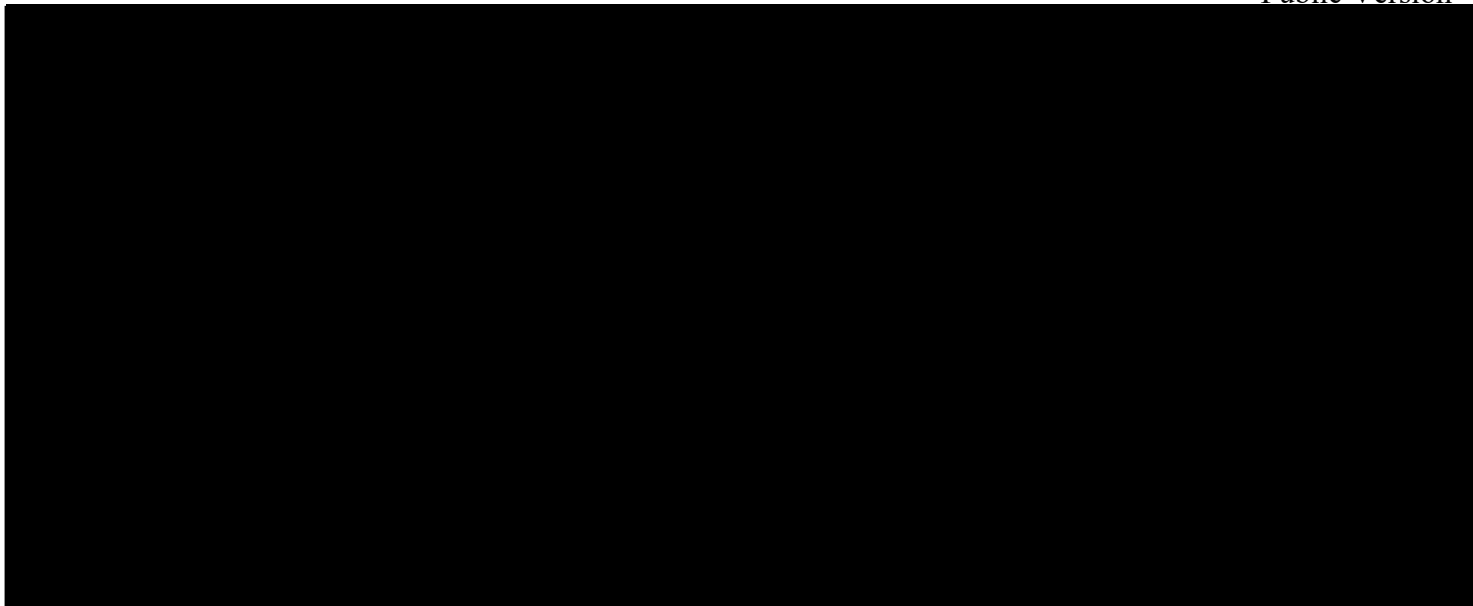












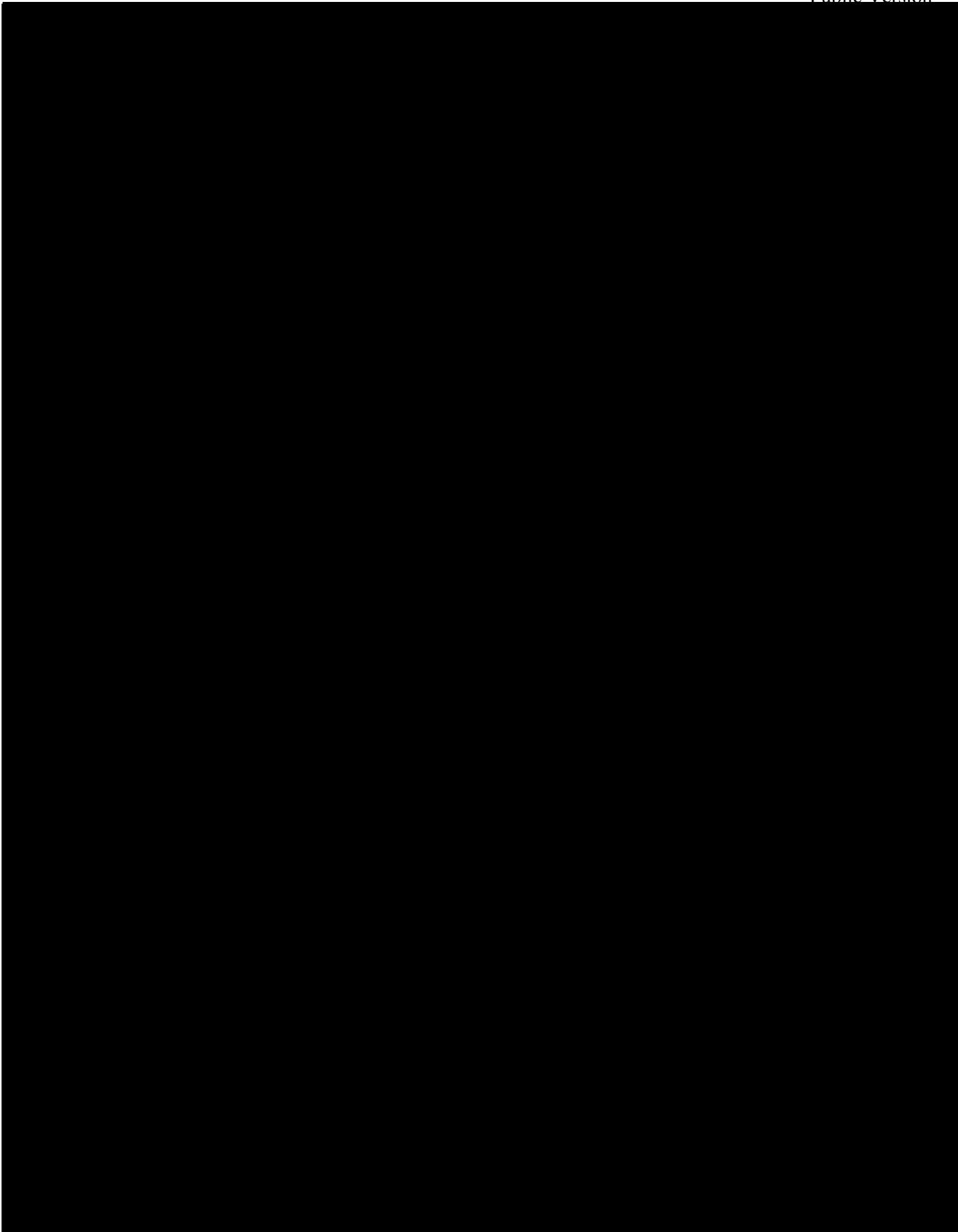
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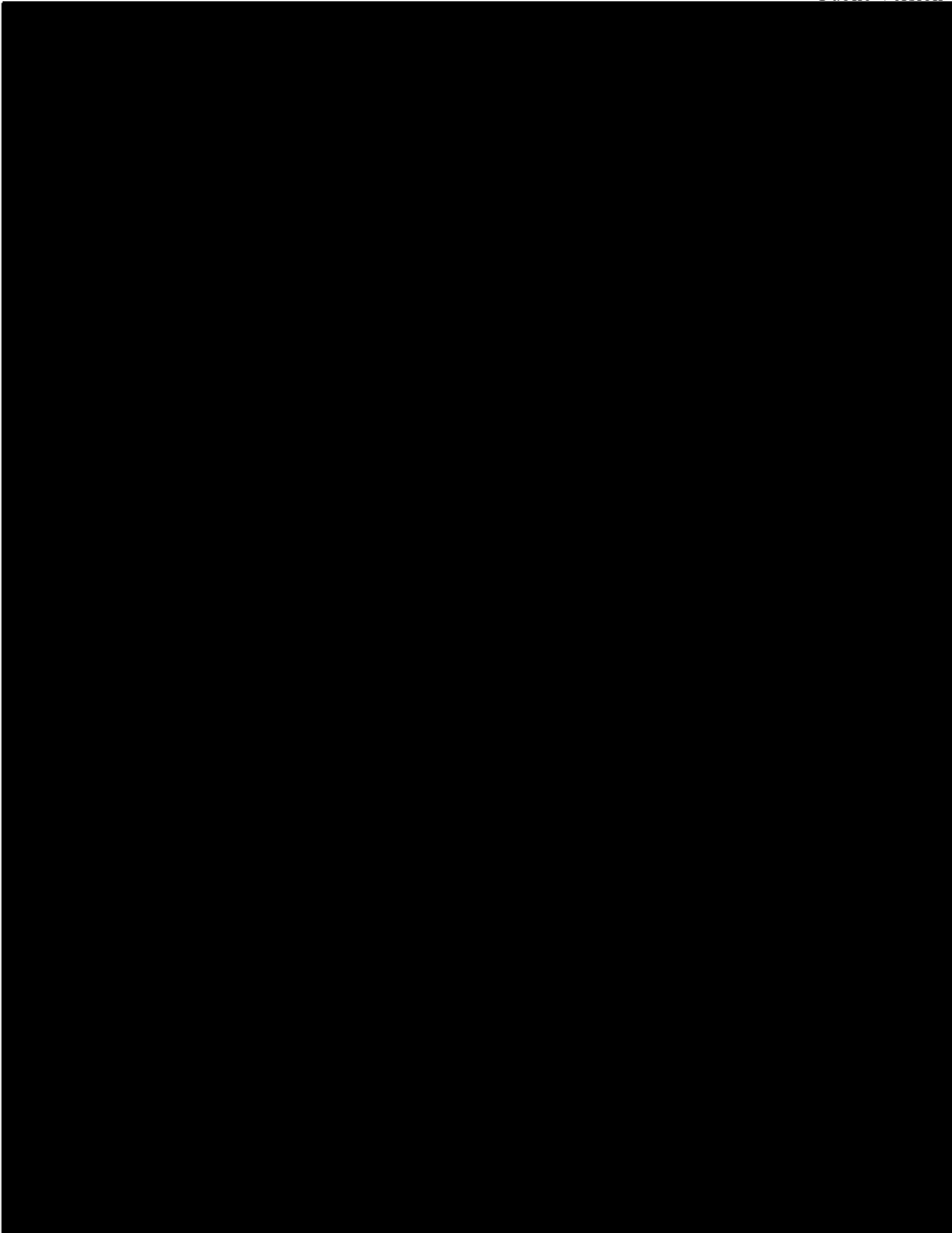
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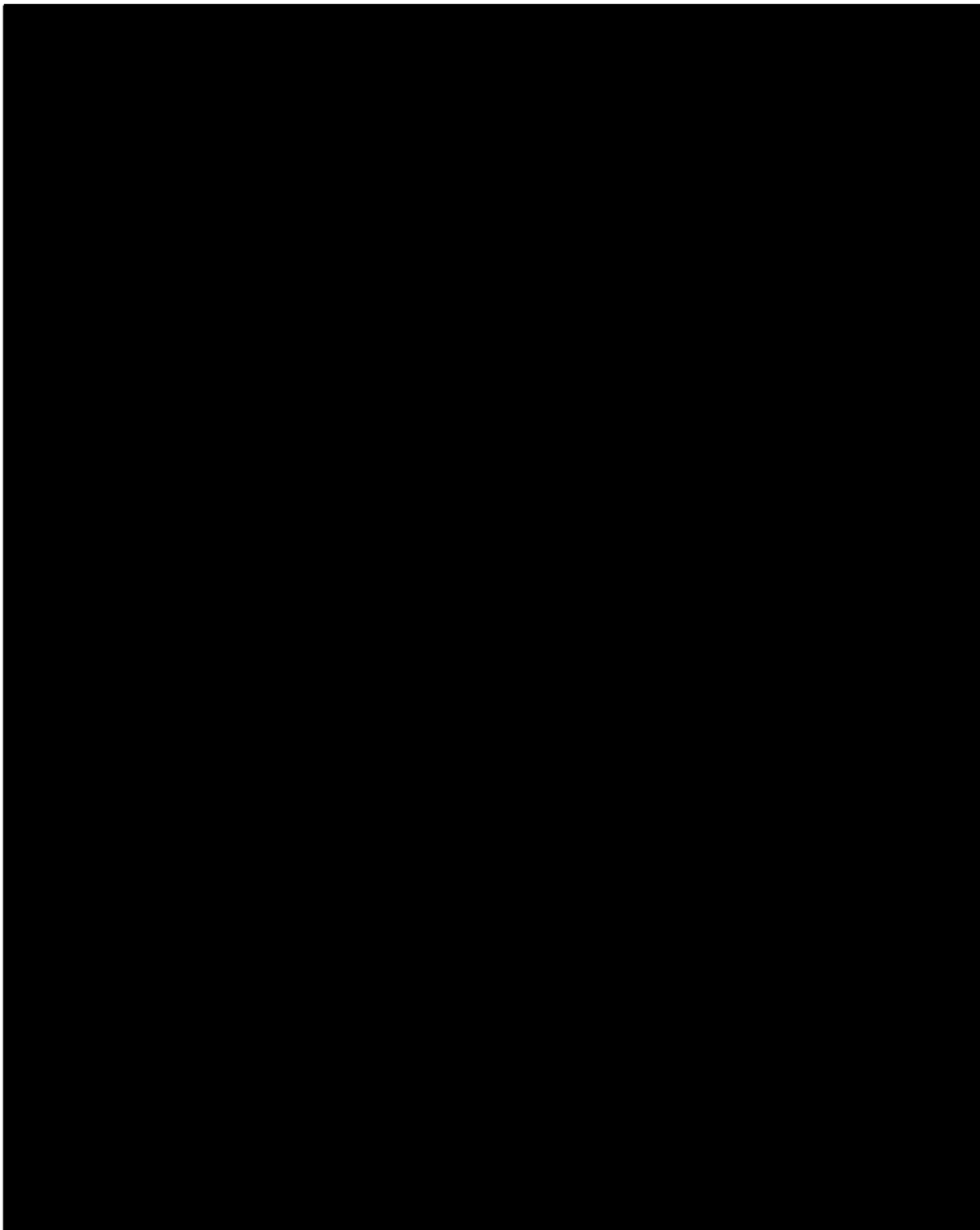
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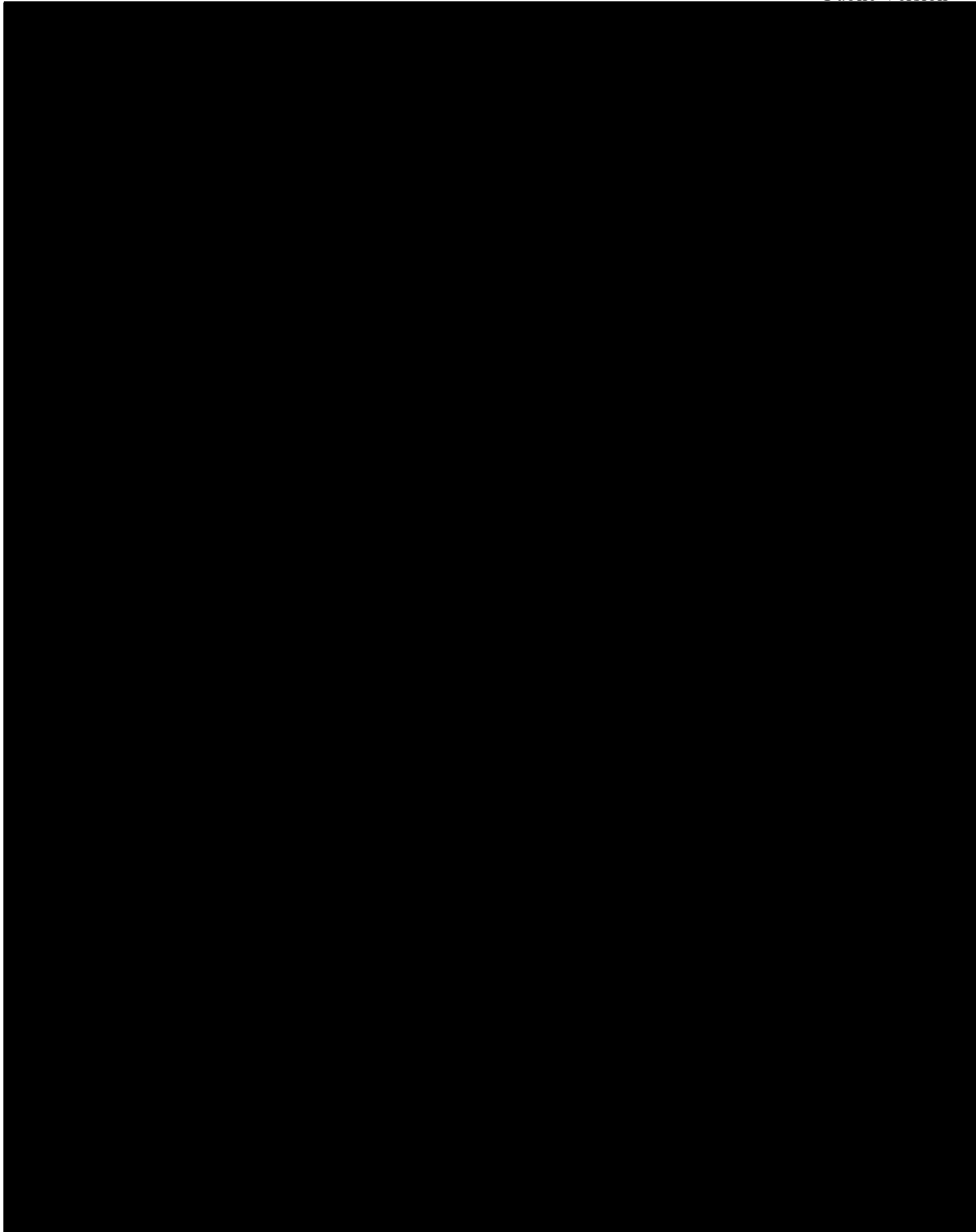
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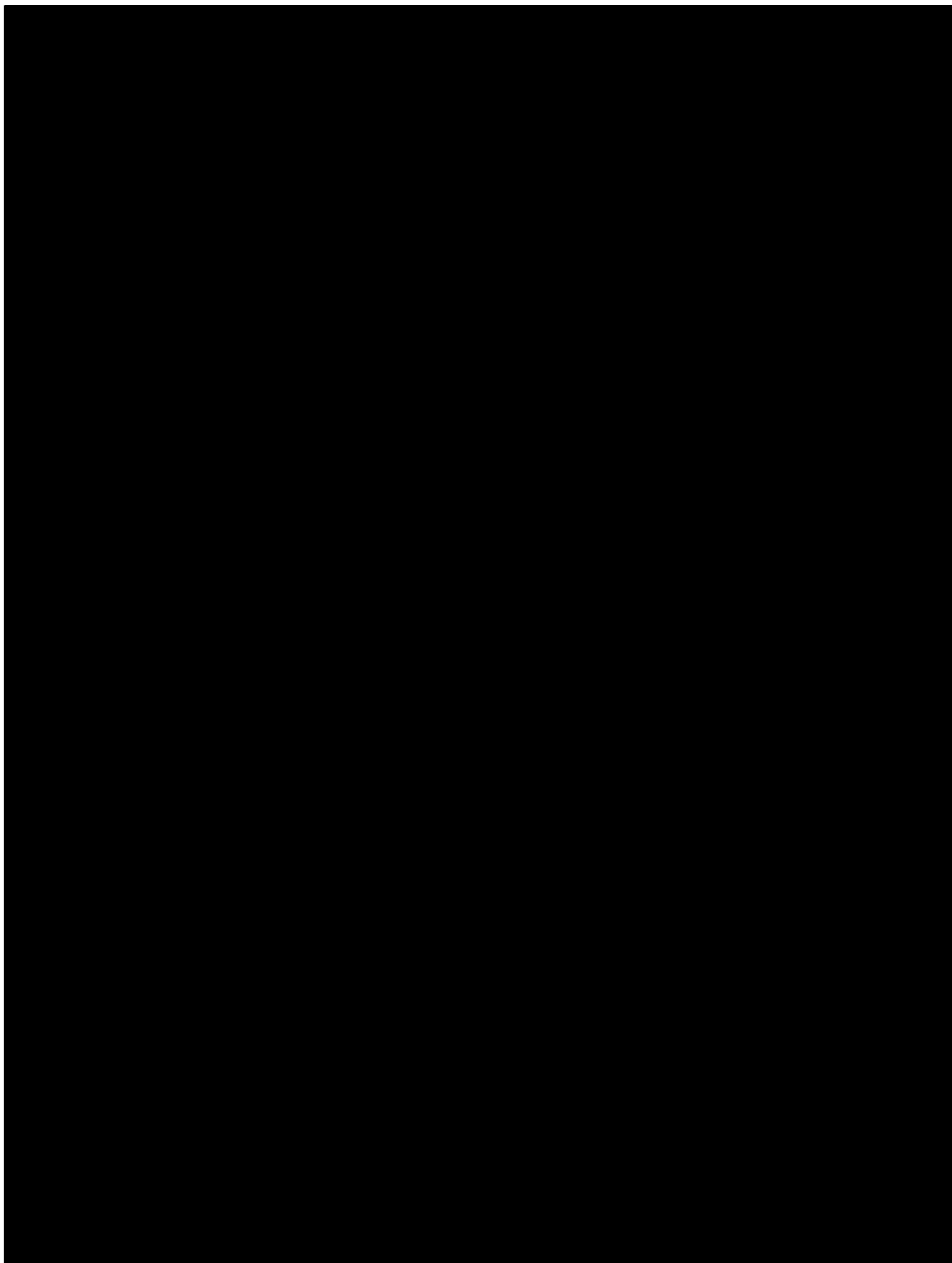
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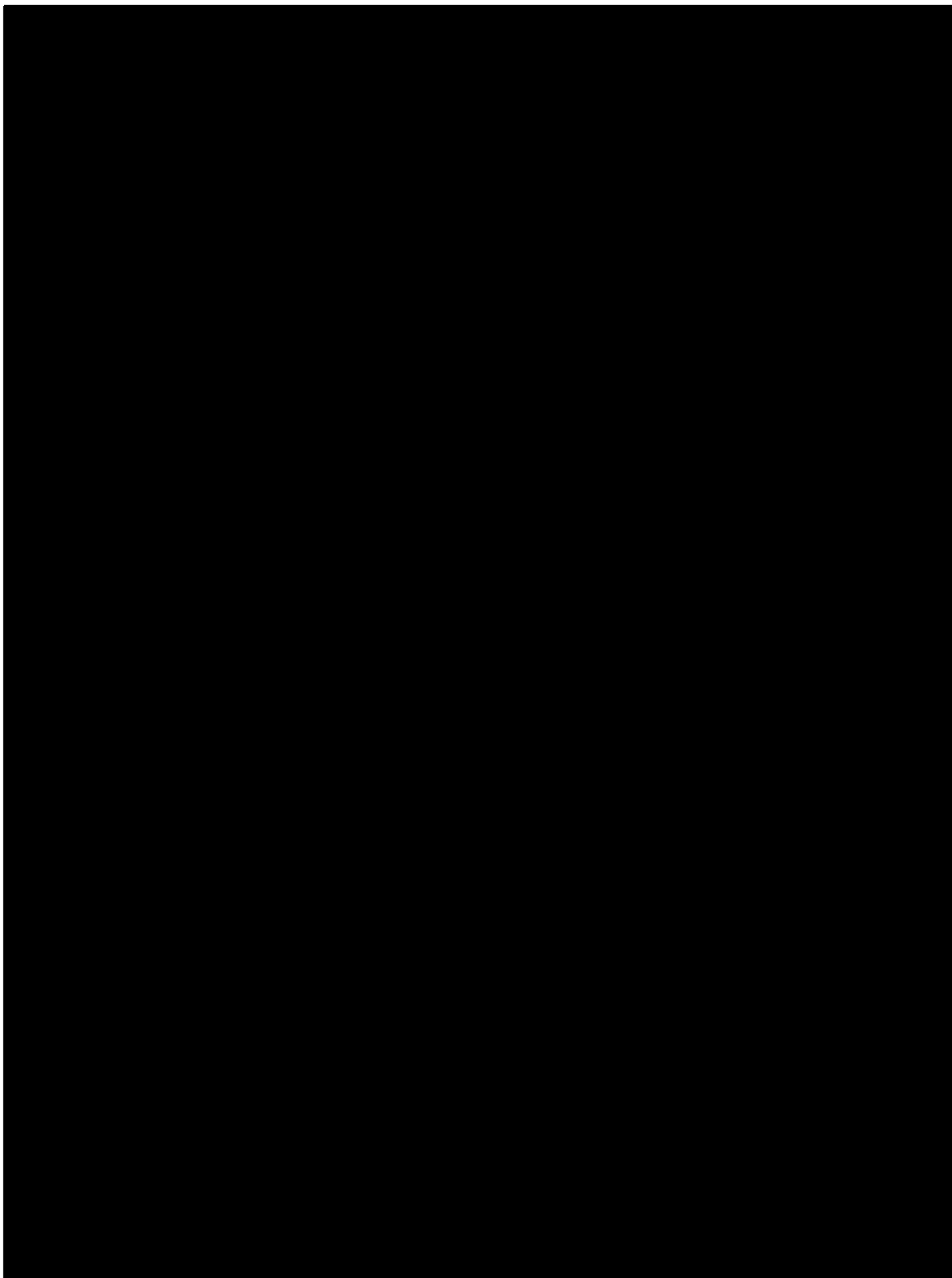
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Appendix K

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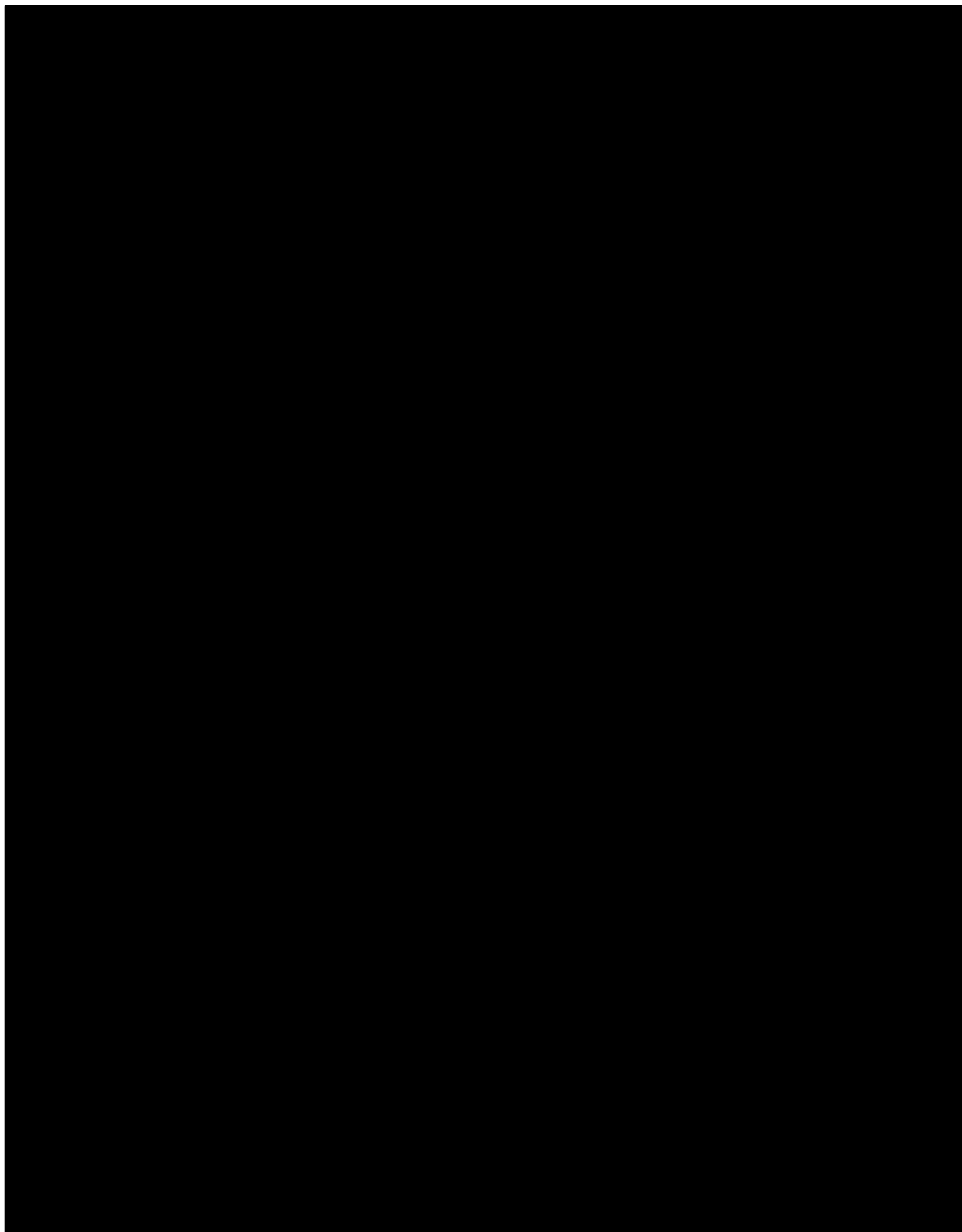
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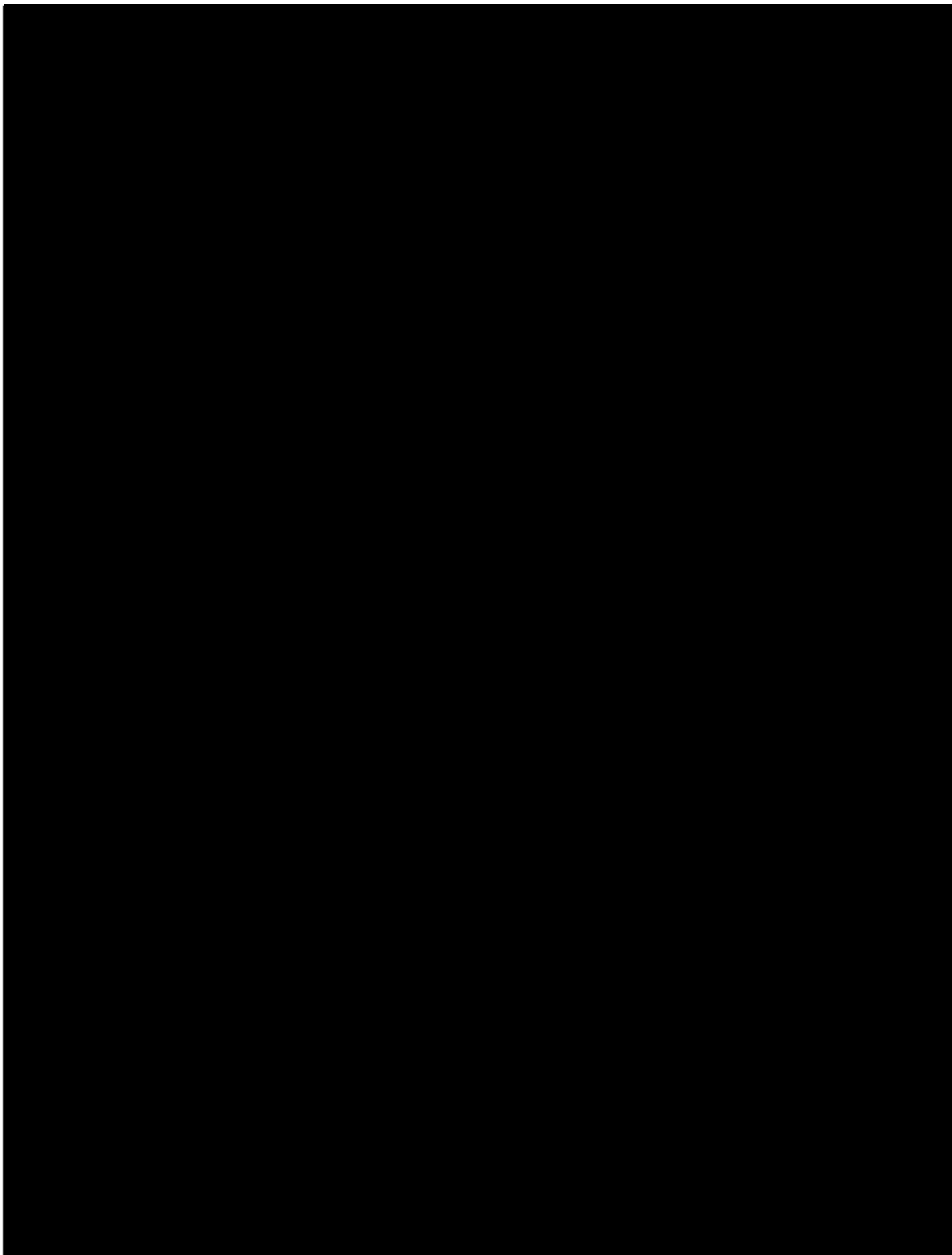
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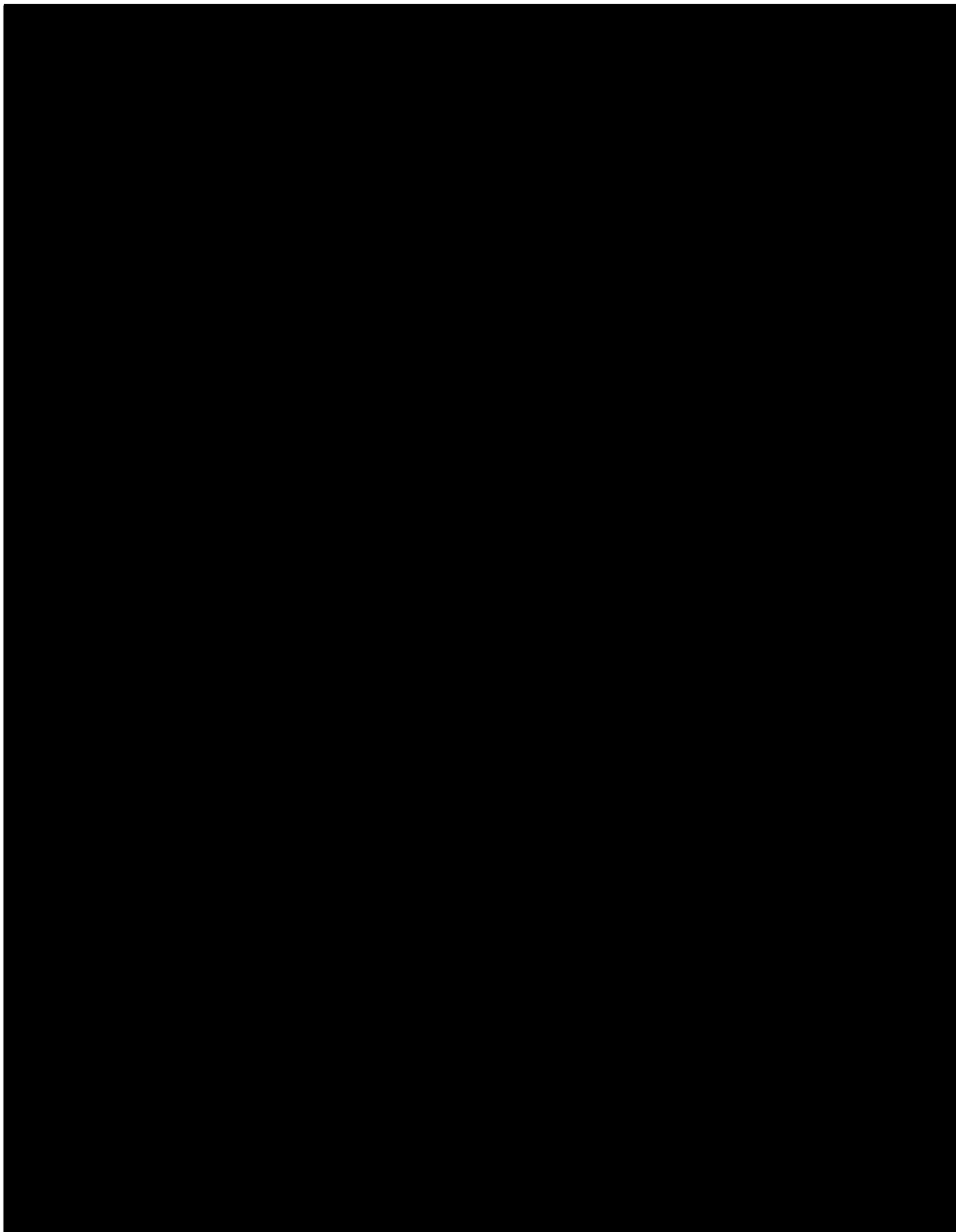
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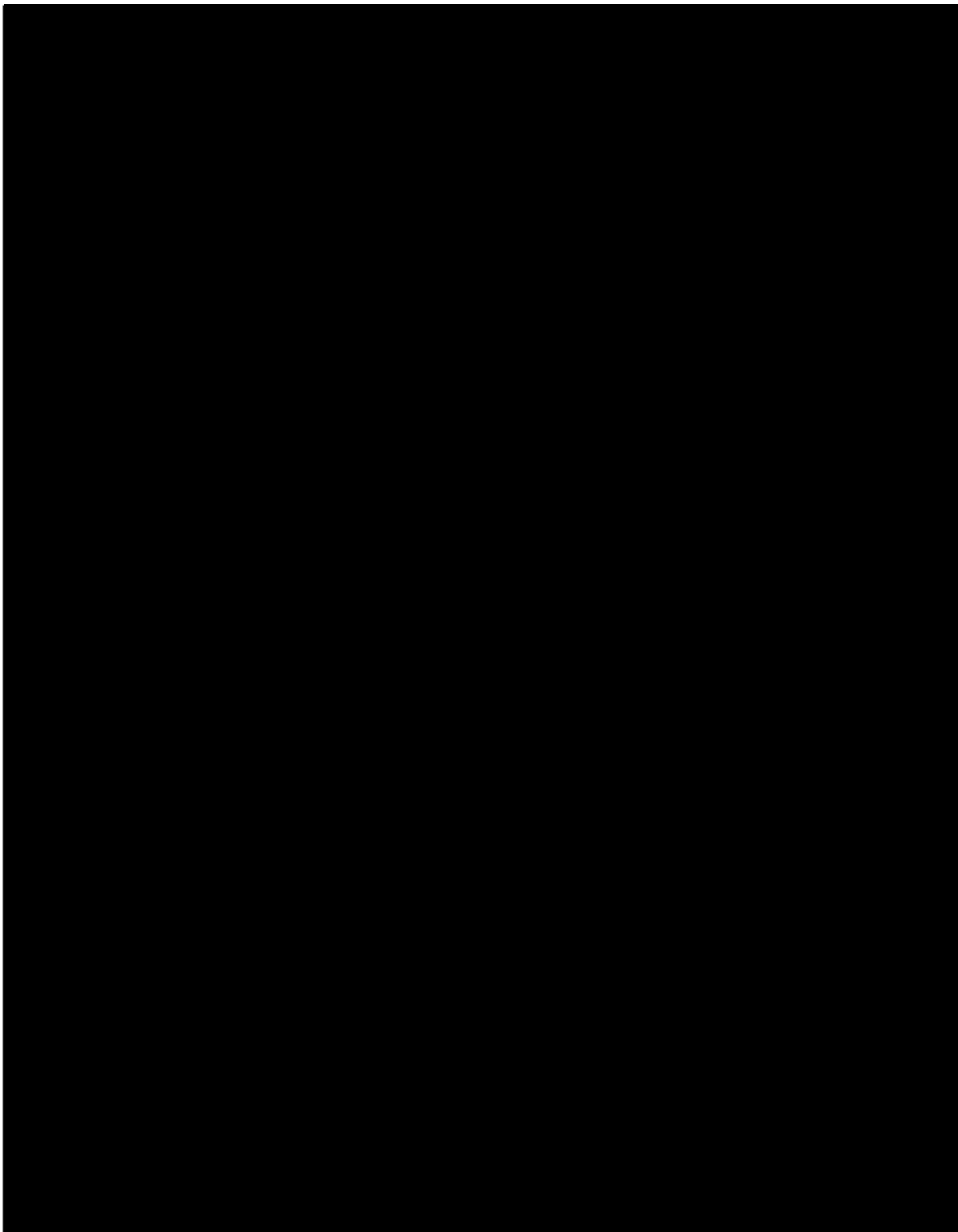
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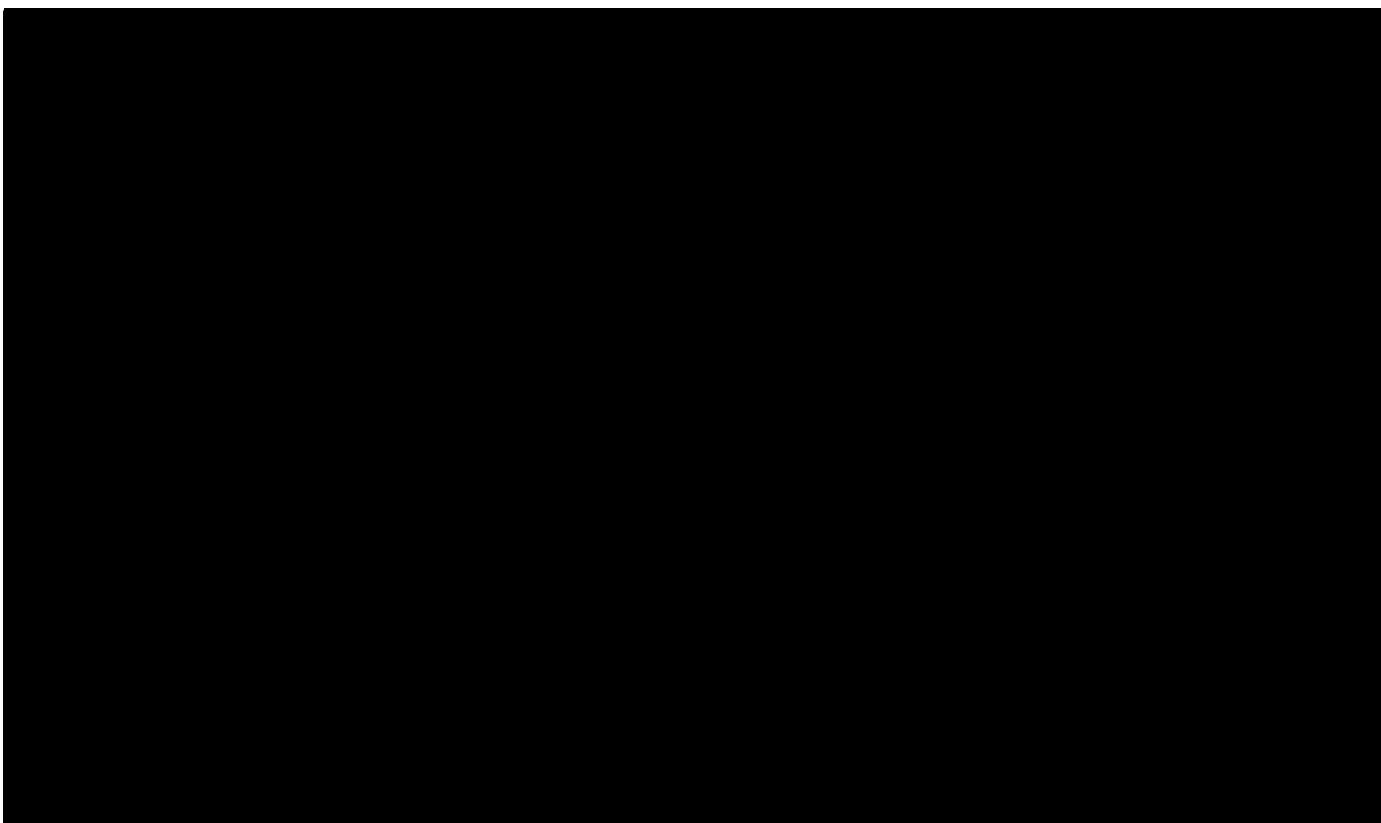
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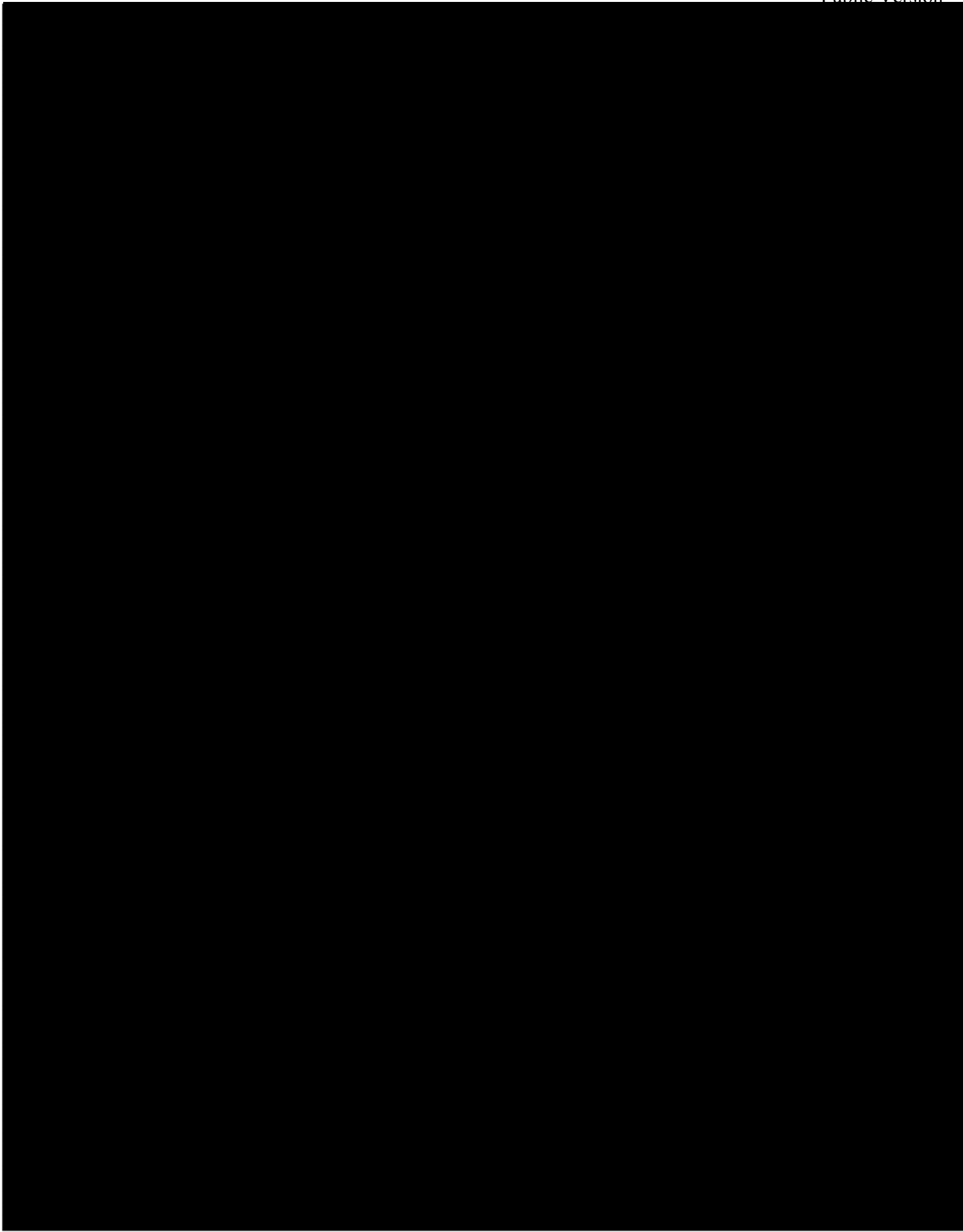
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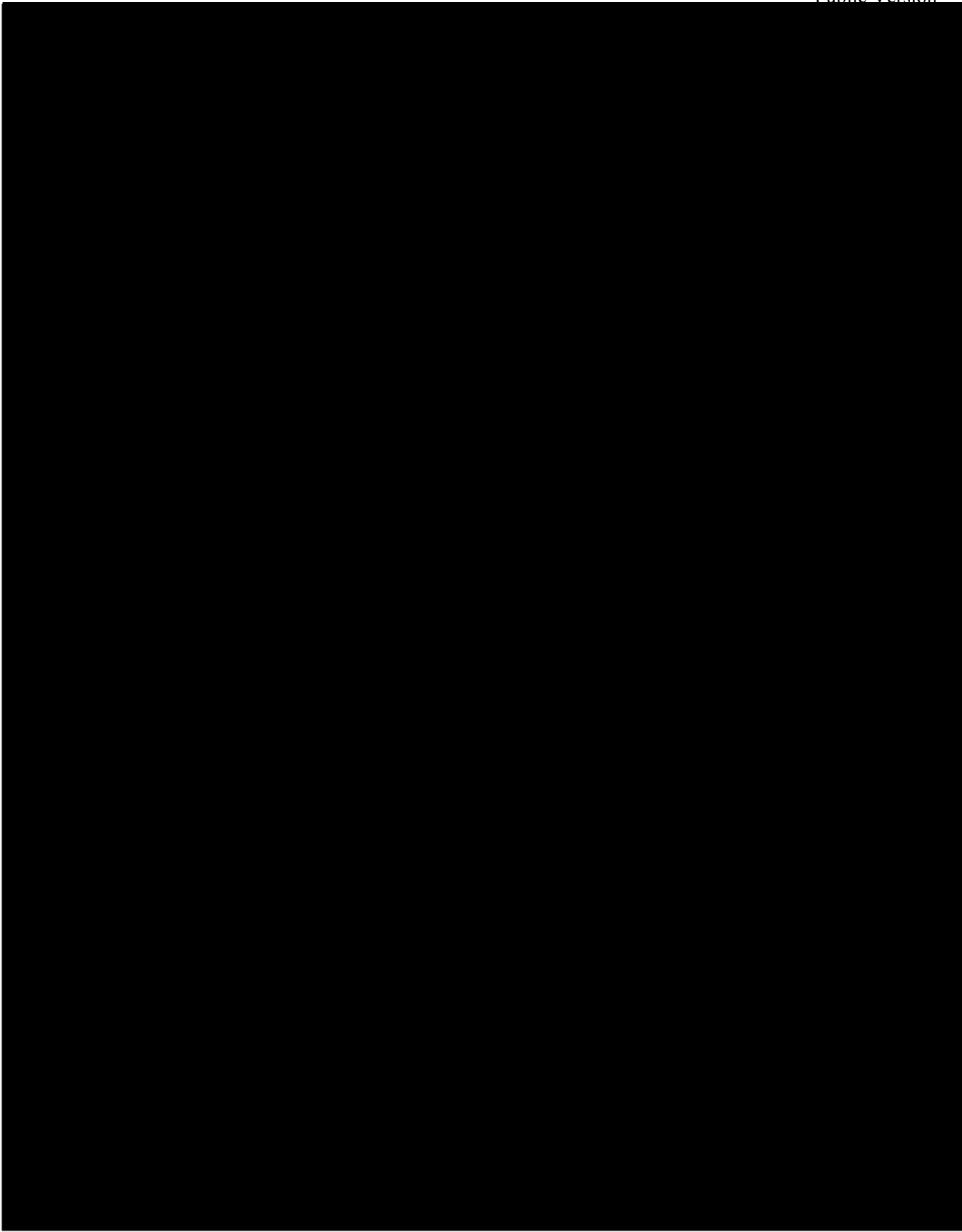
**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

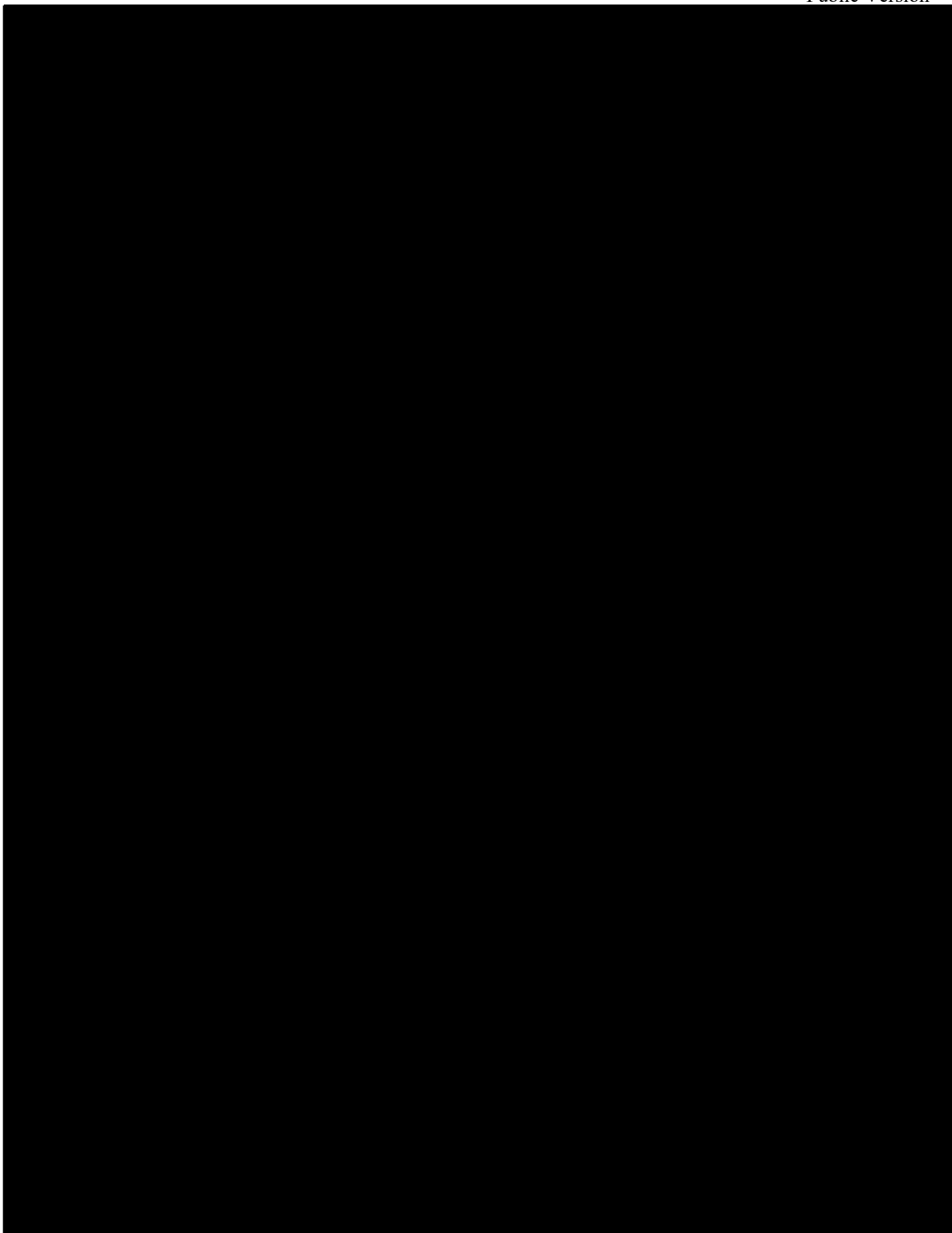
COMMENTS AND REQUESTS FOR CONDITIONS

Appendix M

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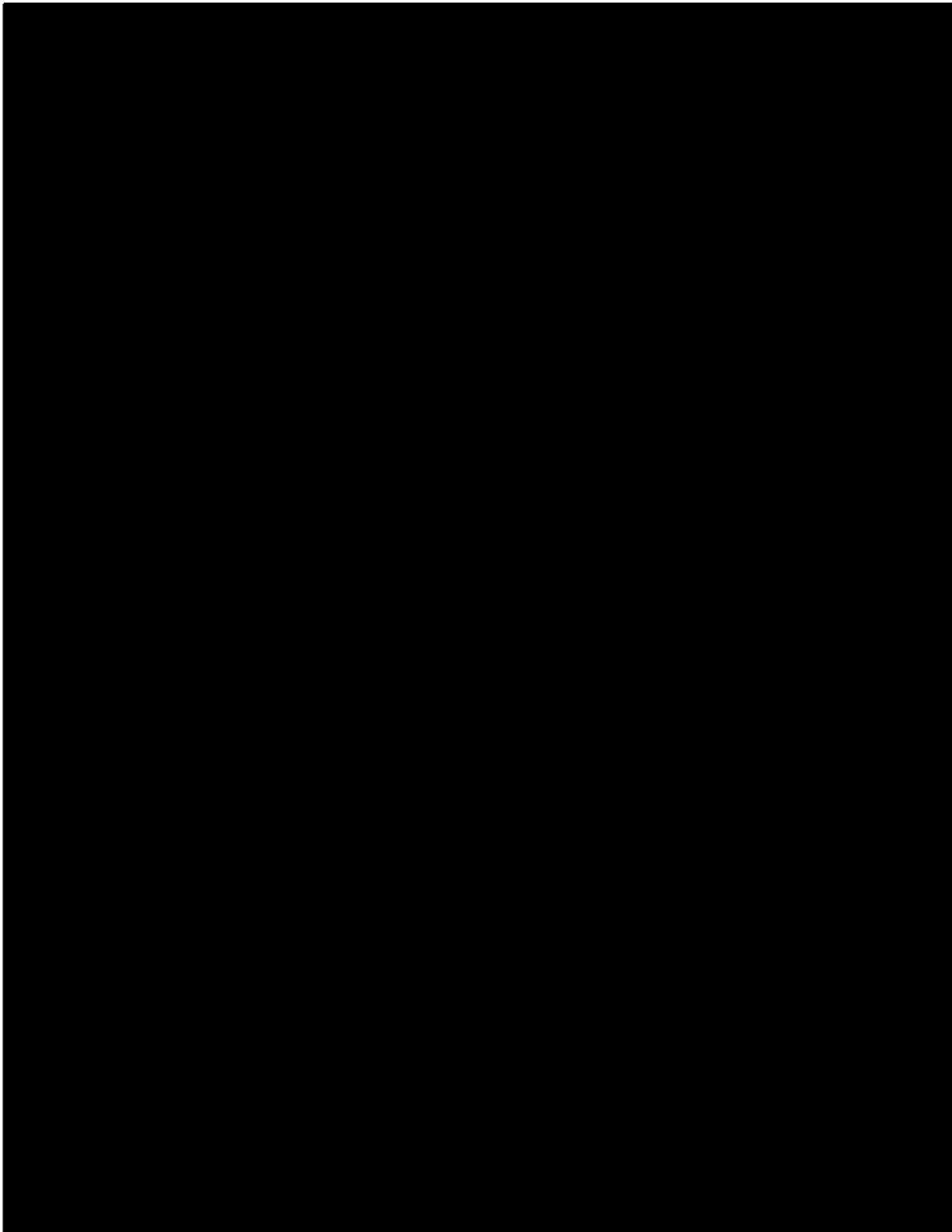
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

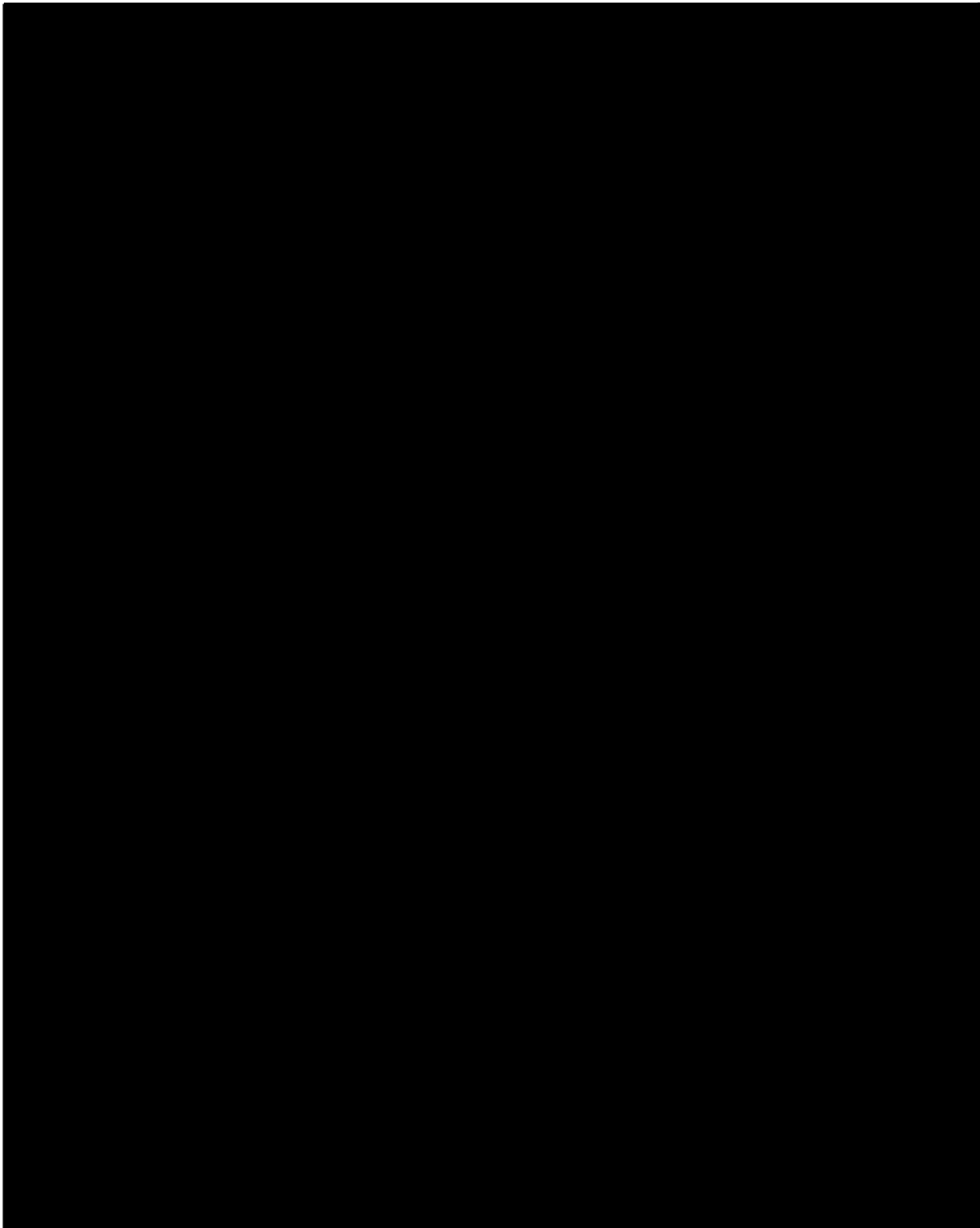
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AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

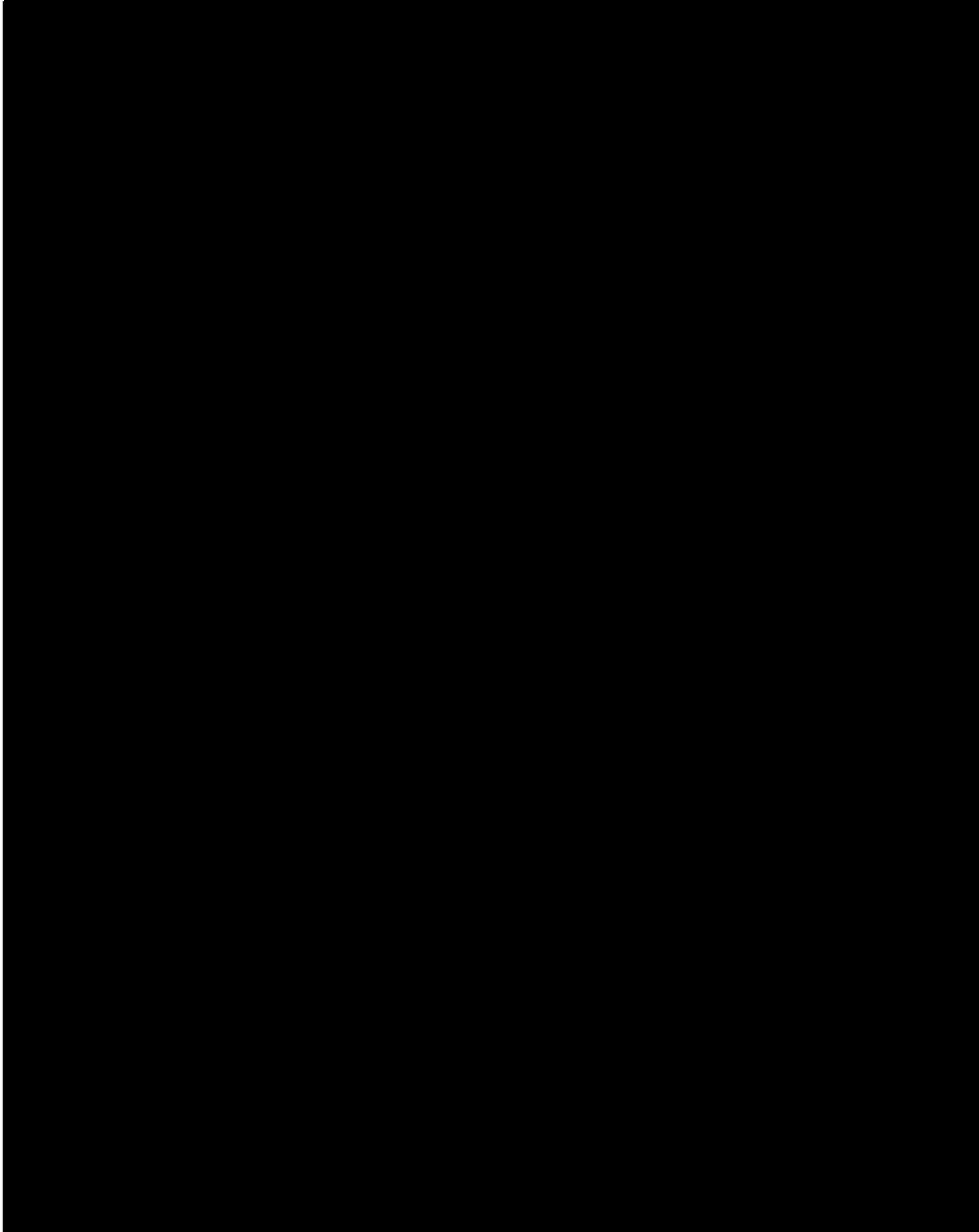
COMMENTS AND REQUESTS FOR CONDITIONS

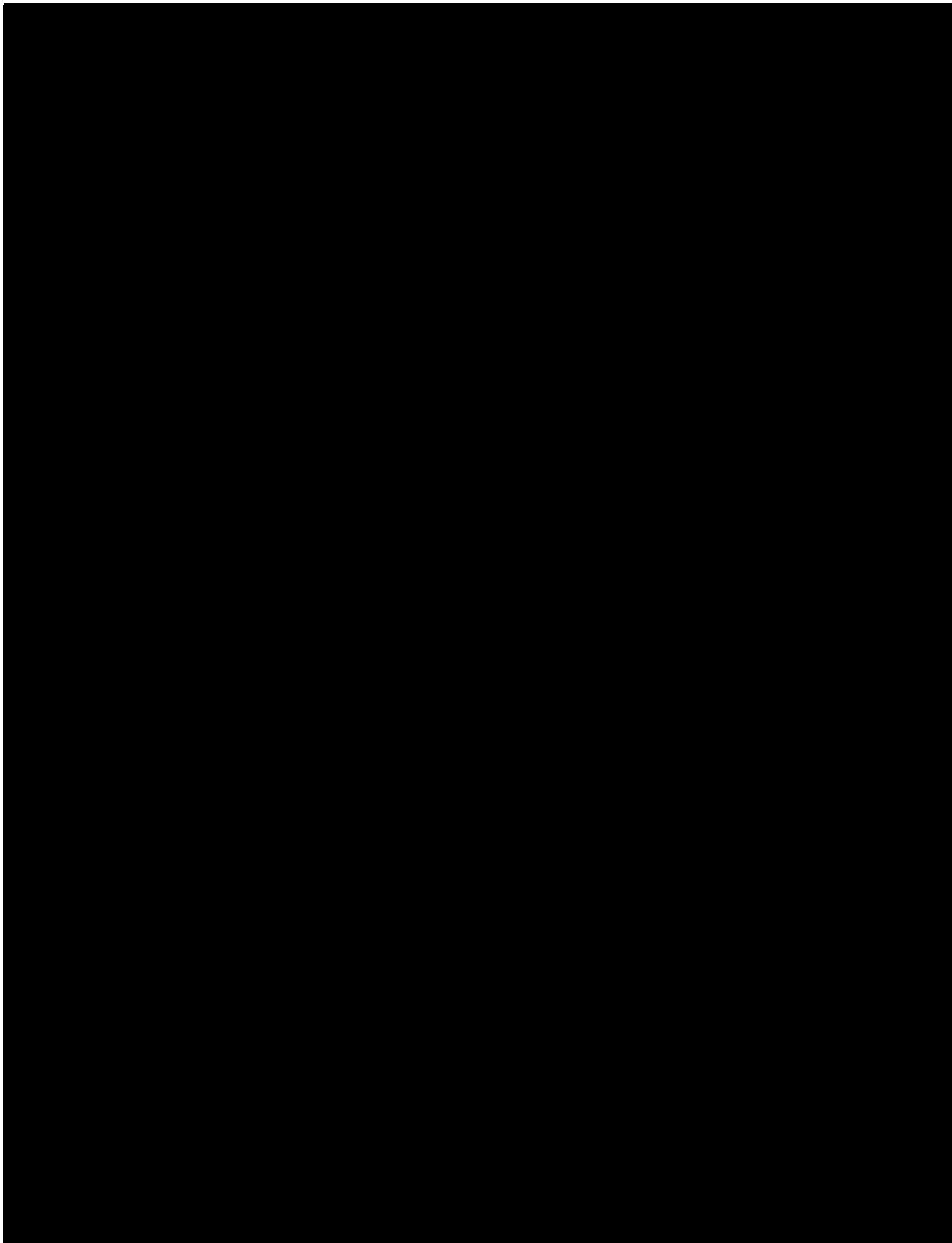
Appendix N

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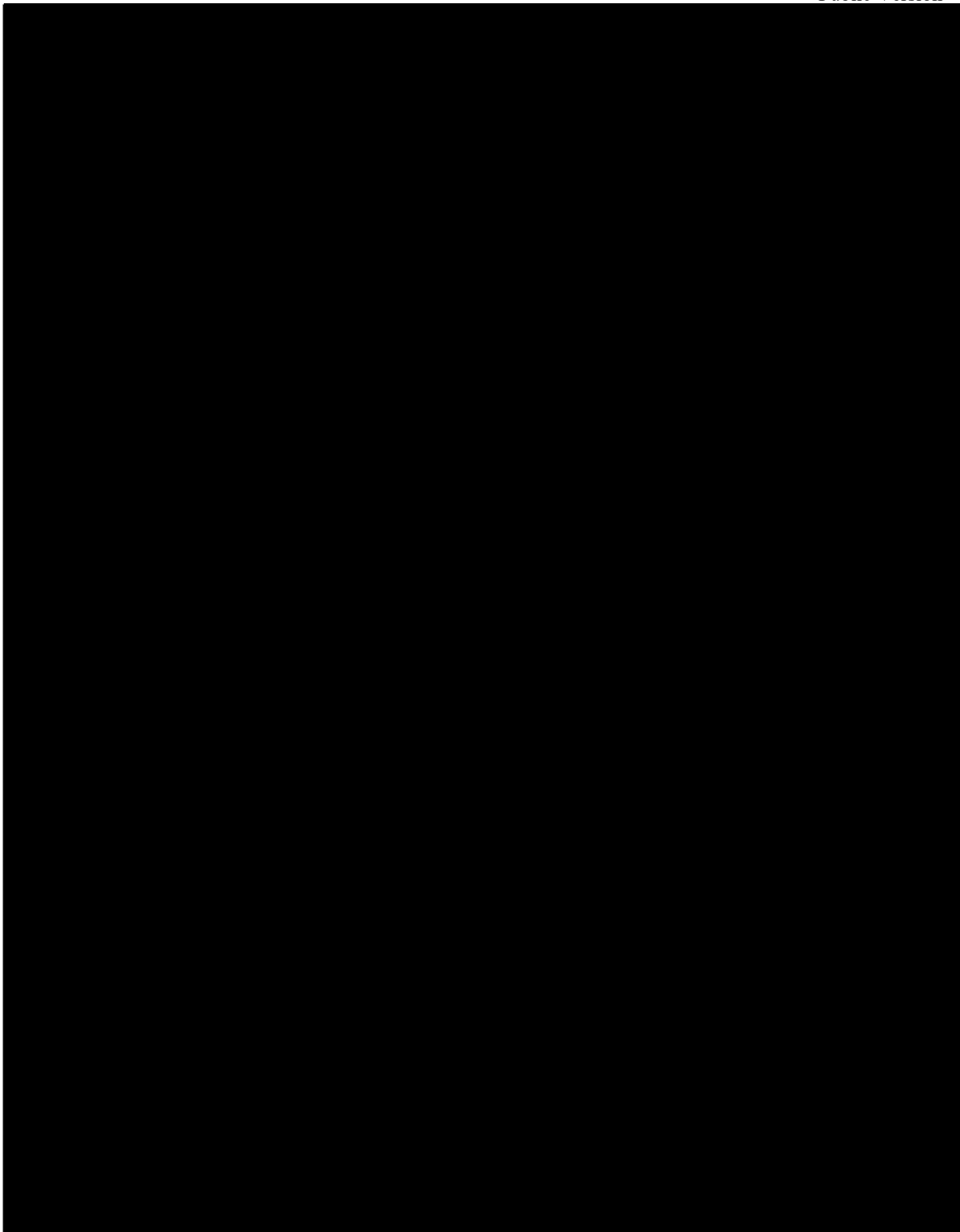
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

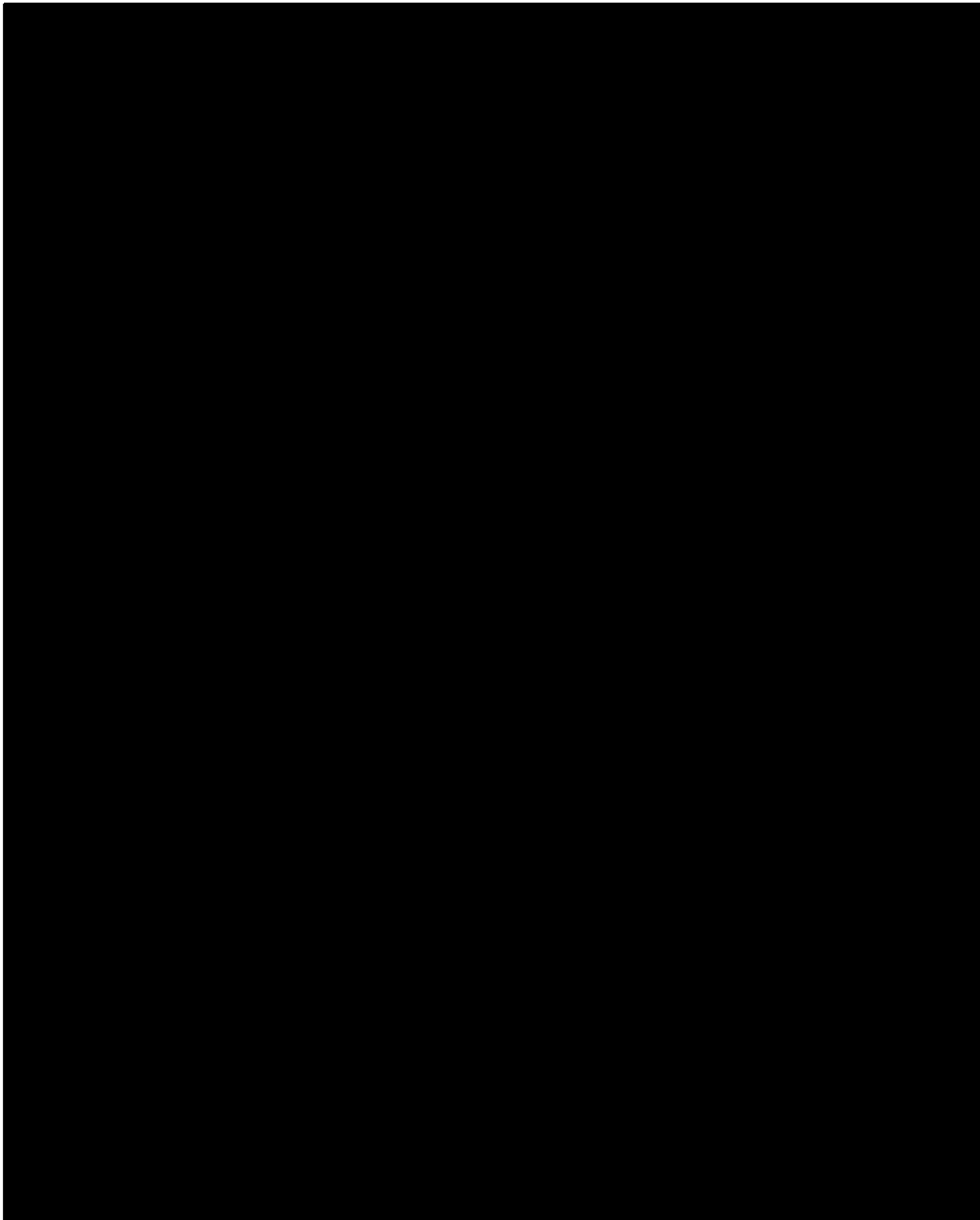
**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

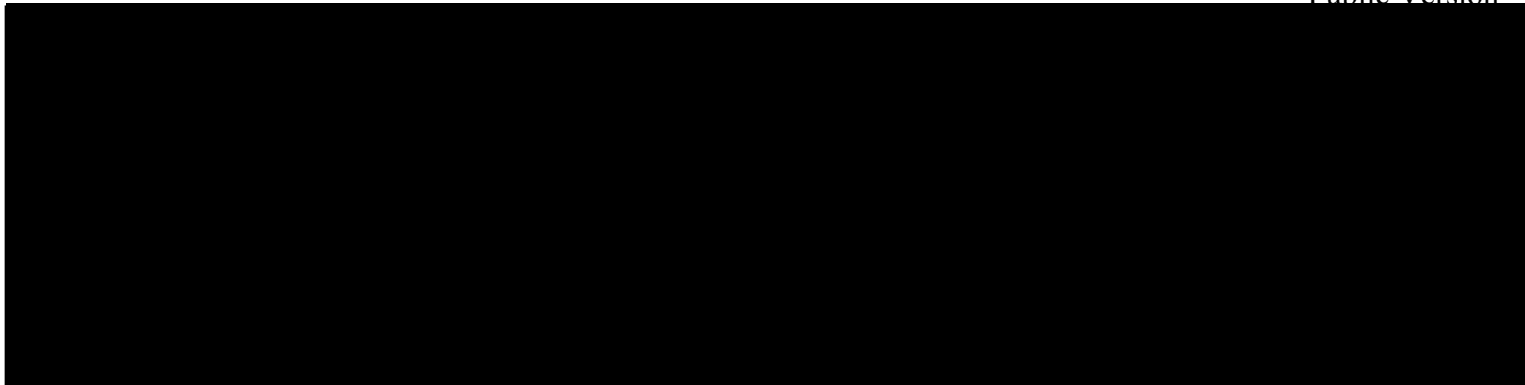
COMMENTS AND REQUESTS FOR CONDITIONS

Appendix O

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

COMMENTS AND REQUESTS FOR CONDITIONS

Appendix P

**CSXT Transportation, Inc.’s Responses and Objections to Norfolk Southern First Discovery
Requests**

Peter W. Denton
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November 22, 2023

VIA E-MAIL

Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Ave., N.W. Suite 300
Washington, DC 20037
Telephone: (202) 663-7820
Email: czorbaugh@bakerandmiller.com

Re: CSX Transportation, Inc. – Acquisition and Operation – Rail Line of Meridian & Bigbee Railroad, L.L.C., FD 36727

Dear Crystal:

On behalf of CSXT Transportation, Inc. (“CSXT”), I am enclosing herein CSXT’s Responses and Objections to Norfolk Southern’s First Discovery Requests (dated November 9, 2023) in the above-captioned proceeding.

Sincerely,

/s/ Peter W. Denton
Peter W. Denton

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36727

CSX TRANSPORTATION, INC.
—ACQUISITION AND OPERATION—
RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.

CSXT TRANSPORTATION, INC.'S RESPONSES AND OBJECTIONS TO NORFOLK
SOUTHERN'S FIRST DISCOVERY REQUESTS

Dated: November 22, 2023

Respectfully submitted,

/s/ Peter W. Denton

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Attorneys for CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36727

CSX TRANSPORTATION, INC.
—ACQUISITION AND OPERATION—
RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.

CSXT TRANSPORTATION, INC.’S RESPONSES AND OBJECTIONS TO NORFOLK
SOUTHERN’S FIRST DISCOVERY REQUESTS

Pursuant to 49 C.F.R. §1114.21 et. seq. and related regulations, CSX Transportation, Inc. (“CSXT”) hereby responds and objects as follows to Norfolk Southern Railway Company and Norfolk Southern Corporation’s (collectively, “Norfolk Southern”) First Discovery Requests (“Requests,” and each a “Request”) served on November 9, 2023, in connection with the above-captioned proceeding.

PRELIMINARY STATEMENT

CSXT has attempted in good faith to respond to Norfolk Southern’s Requests. However, it is clear that Norfolk Southern served these Requests in an attempt to unduly burden CSXT. Exceedingly few of the Requests cogently seek discoverable information in CSXT’s possession. Instead, the majority of the Requests appear to be the product of copying and pasting from the requests that Norfolk Southern served on CPKC, regardless of whether they apply to CSXT. It is telling that many of the Requests seek information regarding the Western Line, Meridian, the Meridian Speedway, and the Verified Statement of James Clements of CPKC, none of which is the subject of the CSXT Application or CSXT’s Operating Plans. Instead of seeking a protective order—which CSXT had every right to do—CSXT endeavored to interpret and respond to

Norfolk Southern's Requests despite their incoherence or irrelevance to the CSXT Application.

The following responses are made solely for the purposes of this action. Each response is subject to all appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, and admissibility) that would require the exclusion of any document, information, or statement contained therein if the Requests were asked of, or if any statement contained therein was made by, a witness present and testifying in court. All such objections are reserved and may be interposed at the time of this proceeding. No incidental or implied admission is intended in these responses. The fact that CSXT has responded to all or any part of any request is not intended to and shall not be construed to be a waiver by CSXT of all or any part of any objection to any requests. CSXT's responses are subject to correction and modification for inadvertent errors or omissions, if any such errors or omissions should be found to exist.

GENERAL RESPONSES

CSXT makes the following General Responses to the Requests and incorporates them into its responses to each and every Request, whether or not specifically stated in the individual response.

1. CSXT is conducting a reasonable search for information and documents responsive to the Requests. Subject to the specific and general objections that follow, responsive documents will be produced on a rolling basis.
2. Production of information or documents does not necessarily imply that the information or documents are relevant to or admissible in this proceeding and is not to be construed as waiving any objection stated herein.

GENERAL OBJECTIONS

CSXT makes the following General Objections to the Requests and incorporates them, as well as the Objections to Definitions and Instructions below, into its responses to each and every Request, whether or not specifically stated in the individual response. An assertion of the same, similar, or additional objections in response to a specific Request does not waive any of these General Objections as to that or any Request. CSXT's failure to object to a specific Request on a particular ground shall not be construed as a waiver of its right to object on any ground.

1. CSXT objects to the Requests, including the Definitions and Instructions, to the extent they impose burdens, obligations, or requirements which are greater than the requirements or permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board ("Board") rules or precedents.

2. CSXT objects to the Requests to the extent they seek identification of "all" or "any" documents, data, or a category of information where the production of a subset of documents, data, or information would be sufficient to respond to the Request, on the basis that such Requests are unduly burdensome.

3. CSXT objects to the Requests to the extent they are overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence in the proceeding to the extent that the Requests purport to require CSXT to conduct anything beyond a reasonable search of readily accessible sources.

4. CSXT objects to the Requests to the extent they seek documents, data, or information in a form not maintained by CSXT in the regular course of business or not readily available in the form requested by Norfolk Southern, where such documents, data, or information

could be developed, if at all, only through the preparation of compilations, documents, summaries, analyses, or other special studies of any sort not already in existence, and CSXT by its responses does not, unless otherwise noted, undertake to prepare or produce any special studies. Any production by CSXT of information or documents in this category shall not be considered a waiver of this objection.

5. CSXT objects to the Requests, including the Definitions and Instructions, to the extent a particular Request, Definition, or Instruction is vague or ambiguous.

6. CSXT objects to the Requests, including the Definitions and Instructions, to the extent they seek information that is not in the possession, custody, or control of CSXT.

7. CSXT objects to the Requests, including the Definitions and Instructions, to the extent they seek information that is already in Norfolk Southern's possession, custody, or control, or that is obtainable from publicly available sources, or from another source that is more convenient, less burdensome, or less expensive, including, without limitation, by other means of discovery.

8. CSXT objects to the Requests to the extent they seek information that is protected by the attorney-client privilege, the work product doctrine, and/or other applicable privileges, immunities, protections, or exceptions. CSXT does not intend to produce privileged information, and nothing contained in these responses is intended as, or shall in any way be deemed, a waiver of any attorney-client privilege, work product doctrine, and/or other privileges, immunities, protections, or exceptions.

9. CSXT objects to the Requests to the extent they seek documents or information created after November 9, 2023. Where CSXT agrees to produce documents or information "to present," CSXT will produce documents or information created on or before November 9, 2023.

Any production by CSXT of documents or information created after November 9, 2023, shall not be considered a waiver of this objection.

10. CSXT objects to the Requests to the extent they seek production of documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

11. CSXT objects to the Requests to the extent they seek information protected from disclosure by confidentiality or nondisclosure agreements with third parties, as well as disclosure of non-public, financial, or otherwise confidential or commercially sensitive information.

12. CSXT objects to the Requests to the extent they seek information that CSXT is prohibited from disclosing under 49 U.S.C. § 11904.

13. CSXT objects to the Requests to the extent they are unduly burdensome and do not allow adequate time to respond.

14. By responding to the Requests, CSXT does not concede or adopt any misleading statement, misleading definition, inaccurate assumption and/or mischaracterization of the facts or the position that CSXT has taken in this case contained in any Request.

15. CSXT reserves the right to provide responsive material on a rolling basis.

16. CSXT reserves all rights to supplement, amend, revise, correct, or clarify these objections and/or responses, and CSXT reserves its rights to assert any applicable objection, privilege, or other protection in connection with such supplement or amendment.

17. CSXT's response to each Request is without waiver, limitation, or prejudice to CSXT's rights at any later time, in this or in any subsequent proceeding, to raise objections to: (a) the competence, use, relevance, materiality, privilege, or admissibility of (i) the Requests or

any part thereof, or (ii) statements made in these responses to the Requests, or any part thereof; or (b) any other demand for discovery involving or relating to the matters raised in the Requests or information produced in response to the Requests.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. CSXT objects to each and every “Definition” to the extent such definition purports to impose obligations on CSXT broader than or inconsistent with reasonable compliance with the obligations created by 49 C.F.R. §1114.21 et. seq. and related regulations.

2. CSXT objects to the definition of “Application” to the extent it refers to CPKC’s Application and “related transactions filed by CPKC” as it renders many Requests unintelligible to the extent they request information regarding the “CSXT Application.”

3. CSXT objects to the definition of “CSXT” and Instruction 6 based on its inclusion of non-carrier CSX subsidiaries, including (1) CSX Intermodal Terminals, Inc.; (2) CSX Real Property, Inc.; (3) CSX Technology, Inc.; (4) Total Distribution Services, Inc.; and (5) TRANSFLO Corporation [sic], because it seeks information regarding those entities that is not relevant, is not proportional to the needs of the proceeding, and is unduly burdensome to produce.

4. CSXT objects to the definition of “Document” to the extent it is unduly burdensome and seeks information that is not proportional to the needs of the proceeding, including that it seeks production of documents other than the final version of a responsive document.

5. CSXT objects to Instruction 1, in addition to the Requests to the extent they seek documents or information created before January 1, 2022. Documents and information created before January 1, 2022 are irrelevant to this Proceeding because CSXT did not begin working on

its Application or the underlying transaction prior to this date. CSXT agrees to produce documents or information created on or between January 1, 2022 and November 9, 2023. Any production by CSXT of documents or information created before January 1, 2022, shall not be considered a waiver of this objection.

6. CSXT objects to Instructions 1 and 13, in addition to the Requests to the extent they seek documents or information created after November 9, 2023. Where CSXT agrees to produce documents or information “to present,” CSXT will produce documents or information created on or before November 9, 2023. Any production by CSXT of documents or information created after November 9, 2023, shall not be considered a waiver of this objection.

7. CSXT objects to Instruction 2 to the extent that it seeks information in the possession, custody, or control of non-CSXT entities or counsel. CSXT will produce non-privileged information in the possession, custody, or control of CSXT.

8. CSXT objects to Instruction 11 because it would impose burdens, obligations, or requirements which are greater than the requirements for discovery under 49 C.F.R. Part 1114, Subpart B, or under other STB rules or precedents. CSXT will not prepare a log of documents withheld pursuant to 49 U.S.C. § 11904 in response to these Requests.

9. CSXT objects to Instruction 12 because it would impose burdens, obligations, or requirements which are greater than the requirements for discovery under 49 C.F.R. Part 1114, Subpart B, or under other STB rules or precedents.

RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSION

Request for Admission No. 1: Admit or Deny: CSXT does not intend to allow any trains exceeding 8,500 feet to traverse the Western Line and Eastern Line to accommodate the new west-to-east service routing referenced in the third paragraph on page APP-194 (carrying over to page APP- 195) of the CSXT Application.

Response to RFA No. 1: CSXT reasserts the above General Objections and further objects to RFA No. 1 as being vague, ambiguous, and not relevant to this Proceeding. CSXT has no control over the length of trains on the Western Line. Regarding operation of the Eastern Line, the CSXT Application sets out CSXT's intentions. Thus, CSXT denies the allegation.

Request for Admission No. 2: Admit or Deny: The current 3,500-foot clearance designated interchange location in Meridian, Mississippi, located at the Meridian Interchange and the point of interchange for the trackage rights granted in CSX Transportation, Inc. – Trackage Rights Exemption – Meridian and Bigbee Railroad, FD 32962 (served June 6, 1996), and sought to be discontinued in This Proceeding, can accommodate at most 60 cars.

Response to RFA No. 2: CSXT reasserts the above General Objections and further objects to RFA No. 2 as being vague and ambiguous. CSXT further objects to RFA No. 2 to the extent it seeks information that is not in the possession, custody, or control of CSXT. CSXT further objects to RFA No. 2 on the basis that it is not relevant to this Proceeding and CSXT does not currently use the trackage rights sought to be discontinued in this Proceeding. Subject to and without waiving the foregoing objections, despite having made a reasonable inquiry, CSXT does not currently have sufficient information to admit or deny this Request.

Request for Admission No. 3: Admit or Deny: CSXT employees worked with CPKC employees to develop the “Operating Plan #2: All Transactions Implemented Simultaneously” as is reflected in the CSXT Application beginning on page APP-203 of the CSXT Application.

Response to RFA No. 3: CSXT reasserts the above General Objections and further objects to RFA No. 3 as being vague and ambiguous to the extent that the Request does not define “worked with.” Subject to and without waiving the foregoing objections, CSXT admits that it received information from CPKC employees in order to assist in preparation of CSXT’s Operating Plan but denies that development of the Operating Plan was a joint effort between CSXT and CPKC. CSXT developed its Operating Plan independently.

Request for Admission No. 4: Admit or Deny: CSXT employees had access to CPKC traffic analysis projections including shipper-specific information, in the CSXT employees’ efforts to aid in the development of the “Operating Plan #2: All Transactions Implemented Simultaneously” as is reflected in the CSXT Application beginning on page APP-203 of the CSXT Application.

Response to RFA No. 4: CSXT reasserts the above General Objections and further objects to RFA No. 4 as being vague and ambiguous to the extent that the Request does not define “had access to,” “CPKC traffic analysis projections,” or “efforts to aid in the development.” Subject to and without waiving the foregoing objections, CSXT admits that some CSXT employees received limited information relating to CPKC traffic projections but denies that they had access to CPKC shipper-specific traffic projections and denies that any CPKC traffic projections were used “in the CSXT employees’ efforts to aid in the development” of any of CSXT’s operating plans.

Request for Admission No. 5: Admit or Deny: The CSXT Transaction Operating Plan #1, the discussion of which begins on page APP-199 of the CSXT Application, does not discuss or analyze

combined operations or impacts to fluidity over the Western Line and Eastern Line. *See* APP-192 of the CSXT Application (“In each [of the scenarios analyzed for Operating Plan #1 and the Operating Plan #2], the operating plan includes information regarding railroad operations on the Eastern Line, the Burkeville-Montgomery segment, and the connection with the Western Line... Because the CSXT Transaction does not involve the Western Line, the operating plans do not discuss operations on the Western Line.”).

Response to RFA No. 5: CSXT reasserts the above General Objections and further objects to RFA No. 5 as being vague and ambiguous to the extent that it refers to combined operations and fluidity over the Western Line and Eastern Line. Subject to and without waiving the foregoing objections, CSXT admits – as it stated in its Application – that because the CSXT Transaction does not involve the Western Line, the CSXT operating plans do not discuss operations on the Western Line. CSXT admits that CSXT’s Operating Plan considered fluidity on the Eastern Line. CSXT denies any other allegation or inference sought through this RFA.

Request for Admission No. 6: Admit or Deny: The CSXT Transaction Operating Plan #2, the discussion of which begins on page APP-203 of the CSXT Application, does not discuss or analyze combined operations or impacts to fluidity over the Western Line and Eastern Line. *See* APP-192 of the CSXT Application (“In each [of the scenarios analyzed for Operating Plan #1 and the Operating Plan #2], the operating plan includes information regarding railroad operations on the Eastern Line, the Burkeville-Montgomery segment, and the connection with the Western Line... Because the CSXT Transaction does not involve the Western Line, the operating plans do not discuss operations on the Western Line.”).

Response to RFA No. 6: CSXT reasserts the above General Objections and further objects to RFA No. 6 as being vague and ambiguous to the extent that it refers to combined operations and fluidity over the Western Line and Eastern Line. Subject to and without waiving the foregoing objections, CSXT admits – as it stated in its Application – that because the CSXT Transaction does not involve the Western Line, the CSXT operating plans do not discuss operations on the Western Line. CSXT admits that CSXT’s Operating Plan considered fluidity on the Eastern Line. CSXT denies any other allegation or inference sought through this RFA.

Request for Admission No. 7: Admit or Deny: The statement in the CSXT Application on page APP-203 that “No adverse impacts on commuter or other passenger services are anticipated” only applies to operations covered by Operating Plan #1 and that any analysis performed in making that statement does not apply to Operating Plan #2 and potential adverse impacts on commuter or other passenger services in Meridian, MS.

Response to RFA No. 7: CSXT reasserts the above General Objections and further objects to RFA No. 7 as being vague and ambiguous as to whether this RFA is limited to the meaning of the specific quoted statement or whether the RFA asks whether impacts on commuter or other passenger services are anticipated under Operating Plan #2. Subject to and without waiving the foregoing objections, CSXT denies RFA No. 7 and refers to Operating Plan #2 which also states that “No adverse impacts on commuter or other passenger services are anticipated.” *See* APP-207.

Request for Admission No. 8: Admit or Deny: The total volume of diverted traffic from New Orleans, LA., East St. Louis, MO., and Brookwood, AL. anticipated to be diverted to a direct

CPKC – CSXT operation as described in the second complete paragraph of page APP-215 was developed in direct consultation with CPKC personnel.

Response to RFA No. 8: CSXT reasserts the above General Objections and further objects to RFA No. 8 as being vague and ambiguous as to the meaning of “direct consultation.” Subject to and without waiving the foregoing objections, CSXT admits that it conferred with CPKC employees regarding projections of anticipated diverted traffic but denies any inference that CSXT did not make its own decisions regarding those projections.

Request for Admission No. 9: Admit or Deny: The increase in total overhead traffic on the Eastern Line and the Western Line discussed in the carry-over paragraph on APP-217 was developed in direct consultation with CPKC personnel.

Response to RFA No. 9: CSXT reasserts the above General Objections and further objects to RFA No. 9 as being vague and ambiguous as to the meaning of “direct consultation.” Subject to and without waiving the foregoing objections, CSXT admits that it conferred with CPKC employees regarding overhead traffic but denies that CSXT determined or projected traffic related to the Western Line. CSXT further denies any inference that CSXT did not make its own decisions regarding the Eastern Line traffic.

Request for Admission No. 10: Admit or Deny: The environmental analysis included in Exhibit 4 of the CSXT Application does not include any increased speeds or other conditions anticipated by the maintenance work and the improvements anticipated by the agreement discussed in the second full paragraph on page APP-220.

Response to RFA No. 10: CSXT reasserts the above General Objections and further objects to RFA No. 10 as being vague and ambiguous as to any anticipated conditions or improvements anticipated by the maintenance work or agreement. Subject to

and without waiving the foregoing objections, CSXT denies RFA No. 10. *See* APP-185 to 187 (Exhibit 4).

RESPONSES AND OBJECTIONS TO INTERROGATORIES

Interrogatory No. 1. On page 12 of the Verified Statement of James Clements, contained in the CPKC Application, Mr. Clements states that “In addition, CPKC and CSXT are aligned on their plan to establish a premium train service and have agreed on an operating plan which maximizes the efficiency of the interchange. Under the operating plan, the carriers will coordinate closely on scheduling and utilize run through power, which will enable CPKC’s crew to step off the train and CSXT’s crew to step on, or vice-versa.”

(a) Describe the train composition and length that CSXT and CPKC will utilize to provide service roundtrip service over the Eastern Line and Western Line described in the quoted Verified Statement of James Clements.

(b) Describe the operating schedule over the Eastern Line and the Western Line for that train.

(c) Describe any analysis and the operating plan and operating schedule at Meridian and over the Meridian Speedway for that train.

(d) Identify the CPKC and CSXT personnel involved in creating the operating plan described in the quoted Verified Statement of James Clements.

Response to Interrogatory No. 1:

CSXT objects to Interrogatory No. 1 on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome as it requires speculation as to the meaning of a verified statement written by a third-party and contained in a third-party’s application. CSXT further objects to Interrogatory No. 1 on the grounds that it seeks information already in Norfolk Southern’s (and the STB’s) possession, custody, or control, or is in the public domain.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that its Operating Plan does not discuss or analyze the Western Line, Meridian, or the Meridian Speedway. CSXT further states that Exhibit 15 to its Application fully sets out all of CSXT's plans with respect to the operations of the Eastern Line (APP-188). Train compositions and lengths vary—CSXT has not set a particular composition or length of the trains that will traverse the Eastern Line and CSXT does not and will not control the Western Line. Additionally, CSXT did not work on the CPKC application or the Clements Verified Statement. The following CSXT personnel worked on CSXT's operating plan: (1) Tom Tisa; (2) Chris Maffett; and (3) Stuart Sweat.

Interrogatory No. 2. When did discussions between CSXT and CPKC commence concerning CSXT's plans to take back the Eastern Line, and CPKC's plans to acquire the Western Line from MNBR? Describe any verbal conversations and coordination by CSXT and CPKC concerning undertaking both This Proceeding and the CPKC Transaction and Identify all agreements (draft or executed).

Response to Interrogatory No. 2:

CSXT objects to Interrogatory No. 2 on the grounds that it is overbroad and unduly burdensome to the extent that it seeks information that is more appropriately provided by the production of documents and to the extent that it asks to describe "any" verbal conversations and coordination by CSXT and CPKC. CSXT further objects to Interrogatory No. 2 to the extent that it is vague and ambiguous as to the meaning of "coordination." CSXT further objects to providing or identifying unexecuted draft agreements to the extent it is unduly burdensome and seeks information that is not proportional to the needs of the proceeding. CSXT will not produce or identify unexecuted agreements.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that discussions between CSXT and CPKC commenced in the first half of 2023. In addition to the agreements filed with the CSXT's Application, CSXT states that CSXT and CPKC entered into a Memorandum of Understanding to commit to each seek STB authorization of their respective transactions. CSXT personnel had occasional verbal conversations with CPKC personnel to exchange information regarding the anticipated interline movements and coordination of future interchange operations at Myrtlewood. Additionally, CSXT will produce documents containing information responsive to this request.

Interrogatory No. 3. Describe existing and anticipated capacity challenges on lines feeding into and out of the Western Line and Eastern Line, which could worsen as a result of This Proceeding and the CPKC Transaction.

Response to Interrogatory No. 3:

CSXT objects to Interrogatory No. 3 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks information regarding the Western Line or any "lines feeding into and out of the Western Line." CSXT's Operating Plan only discusses the Eastern Line.

Subject to and without waiving the foregoing General and Specific Objections, CSXT refers to APP-193, which states that "[t]he CSXT Transaction will not result in any changes to downstream CSXT operations further east from Montgomery."

Interrogatory No. 4. Describe in detail any planned infrastructure improvements to the Eastern Line, and other lines feeding into and out of the Eastern Line and the Western Line to ameliorate any congestion resulting from This Proceeding and the related CPKC Transaction.

Response to Interrogatory No. 4:

CSXT objects to Interrogatory No. 4 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks information regarding the Western Line or “other lines feeding into and out of . . . the Western Line.” CSXT’s Operating Plan only discusses the Eastern Line. CSXT objects to Interrogatory No. 4 to the extent it implies that CSXT has projected any congestion will result from This Proceeding, because CSXT has not projected any such congestion.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that its Application and supplemental November 21, 2023 filing provides the planned infrastructure improvements to the Eastern Line. *See, e.g.*, APP-18-19 (“As discussed below, CSXT plans to make significant investments in the track, roadbed, bridges, warning devices, and wayside detectors on the Eastern Line.”); APP-22 (“CSXT expects to enter into an agreement with MNBR that, prior to consummation of CSXT’s acquisition of the Assets comprising the line, MNBR will conduct maintenance work and make certain improvements to the Eastern Line, including adding automated equipment identification (AEI) readers and defect detectors.”); APP-184 (providing additional information in section titled “Infrastructure Improvement Work”); CSXT’s Supplemental Information, FD 36727, at 23-25 (STB filed Nov. 21, 2023) (“Supplemental Filing”).

Interrogatory No. 5. Describe any communications (draft or executed) involving CSXT, Amtrak, CPKC, and/or MNBR concerning current or future Passenger service over the Meridian Speedway, the Western Line, and the Eastern Line.

Response to Interrogatory No. 5:

CSXT objects to Interrogatory No. 5 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it seeks to information regarding communications (“draft or executed”) in which CSXT did not participate.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that it had no communications (“draft or executed”) with Amtrak, CPKC, or MNBR concerning current or future Passenger service over the Meridian Speedway, the Western Line, and the Eastern Line.

Interrogatory No. 6. Does the operational analysis done for the Western Line and the Eastern Line and reflected in the “Operating Plan #2: All Transactions Implemented Simultaneously” as is reflected in the CSXT Application beginning on page APP-203 of the CSXT Application consider impacts resulting from the CPKC Transaction and the CSXT Transaction to the portion of the Meridian Speedway controlled by CN at Jackson, MS? If so, please describe in detail how.

Response to Interrogatory No. 6:

CSXT objects to Interrogatory No. 6 on the grounds that it is vague, ambiguous, and not proportional to the needs of the case to the extent it seeks information regarding Western Line. CSXT’s Operating Plan only discusses the Eastern Line.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that it did not analyze operations on the Western Line.

Interrogatory No. 7. Describe the basis for the claim, found on Page 38 of Appendix 4 to the CPKC Application, that “Yard activity at Meridian should decrease as a result of this Proceeding and the CPKC Transaction,” including whether the reference to “Yard activity” includes all rail

yards located in Meridian, Mississippi. If the “Yard activity” refers only to the MNBR yard, describe any analysis that CSXT and/or others associated with the submission of the This Proceeding or the CPKC Transaction performed with regard to any other rail yard located at Meridian.

Response to Interrogatory No. 7:

CSXT objects to Interrogatory No. 7 on the grounds that it is vague, ambiguous, not proportional to the needs of the case to the extent that it requires speculation as to the meaning of a statement contained in a third-party’s application. CSXT had no role in preparing the CPKC Application. CSXT stands on this objection as it cannot describe the intended meaning behind a third-party’s statement. CSXT further states that it did not perform an analysis associated with the submission of the CPKC Transaction performed with regard to rail yards located at Meridian.

Interrogatory No. 8. Describe in detail any siding improvements CSXT anticipates making to the Eastern Line to preserve the fluidity of rail operations over the Eastern Line and Western Line.

Response to Interrogatory No. 8:

CSXT objects to Interrogatory No. 8 on the grounds that it is overbroad and unduly burdensome to the extent that it seeks details about “any” siding improvements. CSXT further objects to Interrogatory No. 8 on the grounds that it seeks information already in Norfolk Southern’s (and the STB’s) possession, custody, or control, or is in the public domain. CSXT additionally objects to Interrogatory No. 8 as vague and ambiguous as to what siding improvements would necessarily “preserve the fluidity of rail operations.”

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that any relevant information is included in CSXT's Application and CSXT's Supplemental November 21, 2023 filing.

Interrogatory No. 9. Describe in detail the significant investments in the infrastructure of the Eastern Line that CSXT plans to make to increase safety, reliability, and speeds of the Eastern Line and identified in the last, carry-over, paragraph beginning on page APP-220 of the CSXT Application.

Response to Interrogatory No. 9:

CSXT objects to Interrogatory No. 9 as vague and ambiguous as to the meaning of "significant investments." CSXT further objects to Interrogatory No. 9 on the grounds that it seeks information already in Norfolk Southern's (and the STB's) possession, custody, or control, or is in the public domain.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that information responsive to this request can be found in its response to Interrogatory No. 4.

Interrogatory No. 10. Describe any discussions between CSXT, CPKC, AGR, and G&W concerning:

- (a) the composition (including train length and number of cars) of the four CSXT trains that will operate over the Eastern Line, including the Burkeville-Montgomery segment; specifically (1) the westbound road train, (2) the eastbound road train, (3) the local Selma train, and (4) the local Montgomery train, as referenced on page APP-200 of the CSXT Application; and

- (b) any projected volumes (and the projected composition and timing) anticipated to introduce additional CPKC interchange trains (beyond the “one train in each direction daily” that CPKC identified as being anticipated to move to and from the Eastern Line and described on the bottom carry-over paragraph found on the page designated 37 in Exhibit 4 of the Environmental Information of the CPKC Application).

Identify prospective connecting line segments from which the foregoing discussed traffic is anticipated to be diverted.

Response to Interrogatory No. 10:

CSXT objects to Interrogatory No. 10 as vague and ambiguous as to whether the “discussions” must be between all four parties, CSXT and another party, or any of the four parties whether or not CSXT was part of the discussion. CSXT further objects to Interrogatory No. 10 as vague and ambiguous as to the meaning of “projected composition and timing,” “anticipated to introduce,” and “prospective connecting line segments.” CSXT further objects to Interrogatory No. 10 to the extent it asks CSXT to interpret information provided in the CPKC Application.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that CSXT and CPKC conferred regarding the aspects of the operating plan dealing with the overhead traffic that will run over the Western Line and the Eastern Line, including anticipated volumes and the schedule, along with the logistics of interchange between carriers at Myrtlewood. In addition, CSXT and MNBR/AGR discussed existing MNBR/AGR operations on the Eastern Line in order to understand how CSXT will step into the shoes of MNBR post-transaction and how AGR will operate post-transaction, along with the logistics of interchange between carriers at Myrtlewood. CSXT further states that

its Application already identifies anticipated diversions of traffic (APP-215, APP-216) and CSXT's projected volumes (Exhibit 4). Additionally, CSXT will produce documents containing information responsive to this request.

Interrogatory No. 11. Describe any operational analysis performed by CSXT on the potential location of new shippers on the Western Line in the five years following consummation of the transaction, including the impact on fluidity on the Western Line, the Eastern Line, or any of Meridian, Myrtlewood, and/or Burkeville, caused by CPKC having to serve these shippers while MNBR was required to continue to serve existing local shippers. Include the identity of the potential newly-located local shipper, the commodities anticipated to be moved, and the volumes anticipated to be moved therefrom or thereto.

Response to Interrogatory No. 11:

CSXT objects to Interrogatory No. 11 on the grounds that it is vague, ambiguous, and not proportional to the needs of the case to the extent that it seeks information or analysis related to the Western Line.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that it did not perform an operational analysis on the potential location of new shippers on the Western Line.

Interrogatory No. 12. Describe plans and discussions concerning coordination of CSXT's and AGR's operations over the Eastern Line.

Response to Interrogatory No. 12:

CSXT objects to Interrogatory No. 12 to the extent that it is vague and ambiguous as to the meaning of "coordination" and the meaning of CSXT's "operations over the Eastern Line" given that CSXT currently does not operate over the Eastern Line.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that CSXT and AGR discussed post-transaction operations on the Eastern Line based on AGR's operations on the line between Linden, AL and Myrtlewood, AL. CSXT, CPKC, MNBR and AGR had a meeting in Myrtlewood to see the existing infrastructure and discuss potential future operations. Additionally, CSXT will produce documents containing information responsive to this request.

Interrogatory No. 13. This interrogatory is presented with recognition that MNBR is only permitted to serve existing customers at existing locations.

- (a) Assuming that new customers locate on the Eastern Line, please describe plans developed among CSXT, MNBR, AGR and CPKC for ensuring that AGR and CSXT operations would not unreasonably impact fluidity if CPKC was required to serve local shippers on the Western Line.
- (b) Describe any coordination of schedules amongst all named railroads in the event an additional daily train (in addition to the one referenced in Interrogatory No. 10) traveled the Western Line and Eastern Line in each direction.

Response to Interrogatory No. 13:

CSXT objects to Interrogatory No. 13 on the grounds that it is vague, ambiguous, and not proportional to the needs of the case to the extent that it seeks information or analysis related to the Western Line. CSXT further objects to subparts (a) and (b) as vague and ambiguous as to what information they seek, especially when premised on a statement about MNBR's operations, given that MNBR will not operate on the Eastern Line under either of CSXT's Operating Plans.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that MNBR will be serving local customers on the Western Line, not the Eastern Line. CSXT further states that it has not coordinated schedules amongst the named railroads in the event an additional daily train traveled the Western Line and Eastern Line in each direction.

Interrogatory No. 14. Describe discussions with potential shippers concerning plans for new plants and/or facilities in the Southeastern United States that could result in additional traffic over the Meridian Speedway, the Western Line, and/or the Eastern Line.

Response to Interrogatory No. 14:

CSXT objects to Interrogatory No. 14 on the grounds that it is vague, ambiguous, and not proportional to the needs of the case to the extent that it seeks information or analysis related to the Western Line and Meridian Speedway.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that it did not have discussions with potential shippers concerning plans for new plants or facilities in the Southeastern United States that could result in additional traffic over the Meridian Speedway, the Western Line, and/or the Eastern Line.

Interrogatory No. 15. Describe how CPKC's in-house marketing and operational personnel were involved in preparing the combined Western Line-Eastern Line operational and competitive analysis offered in support of the Transaction and the CSXT Transaction and reflected in the "Operating Plan #2: All Transactions Implemented Simultaneously" as is reflected in the CSXT Application beginning on page APP-203 of the CSXT Application.

Response to Interrogatory No. 15:

CSXT objects to Interrogatory No. 15 as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it asks about information about CPKC and the Western Line. CSXT did not analyze the Western Line. CSXT further objects to Interrogatory No. 15 as vague and ambiguous to the extent that it refers to preparing a “combined” Western Line-Eastern Line operational and competitive analysis.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that it has not prepared a “combined” operational and competitive analysis. Operational Plan #2 solely considers the possibility that the CSXT Transaction and the CPKC Transaction may take place around the same time. CSXT states that CSXT and CPKC conferred regarding the aspects of the operating plan dealing with the overhead traffic that will run over the Western Line and the Eastern Line, including anticipated volumes and the schedule. Notwithstanding those conversations, CSXT prepared its Operating Plan independently.

Interrogatory No. 16. Describe any marketing or planning analysis concerning growth activity and/or change in traffic volume over the Western Line and/or the Eastern Line in the next five years to 10 years.

Response to Interrogatory No. 16:

CSXT objects to Interrogatory No. 16 as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent it asks about information about the Western Line. CSXT did not analyze the Western Line.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that it prepared traffic projections spanning five years after anticipated

consummation of the transaction. CSXT further states that CSXT’s traffic projections and all relevant “marketing or planning analysis” are discussed in the Adams Verified Statement (APP-209).

Interrogatory No. 17. Confirm whether Table 2, referenced in the first paragraph of Section 3.2.1 on page APP-1987 of the CSXT Application, is missing, and, if so, please provide it.

Response to Interrogatory No. 17:

Subject to and without waiving the foregoing General Objections, CSXT states that the Table 2 does not exist. All interchange partners and locations on the Eastern Line and the Burkeville-Montgomery segment are described in Section 3.2.1 (APP-197 to 199).

Interrogatory No. 18. Describe the maintenance work and the improvements anticipated by the agreement discussed in the second full paragraph on page APP-220, as well as the cost of the maintenance work and improvements anticipated therein and the party bearing the cost thereof.

Response to Interrogatory No. 18:

Subject to and without waiving the foregoing General Objections, CSXT states that its current plans are fully set out in its Application and supplemental November 21, 2023 filing. *See* Response to Interrogatory No. 4.

Interrogatory No. 19. Describe the origin, destination, route, and volumes of the “new traffic, particularly, for intermodal and automotive traffic” described in, among other locations, the Verified Statement of Jonathan Wahba in the CPKC Application. Explain whether these are new intermodal volumes, new automotive volumes, diverted intermodal volumes, diverted automotive volumes, or a defined combination of each (and, to the extent a combination of each, the percentage of each).

Response to Interrogatory No. 19:

CSXT objects to Interrogatory No. 19 on the grounds that it is vague, ambiguous, overbroad, unduly burdensome to the extent that it requires speculation as to the meaning of a verified statement written by a third-party and contained in a third-party's application.

CSXT had no role in preparing the CPKC Application. CSXT stands on this objection as it cannot describe the intended meaning behind a third-party's statement.

Interrogatory No. 20. Describe discussions with potential shippers concerning plans for new intermodal facilities in the Southeastern United States that could result in additional traffic over the Meridian Speedway, the Western Line, and/or the Eastern Line.

Response to Interrogatory No. 20:

CSXT objects to Interrogatory No. 20 on the grounds that it is vague, ambiguous, and not proportional to the needs of the case to the extent that it seeks information or analysis related to the Western Line and Meridian Speedway.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that it did not have discussions with potential shippers concerning plans for new intermodal facilities in the Southeastern United States that could result in additional traffic over the Meridian Speedway, the Western Line, and/or the Eastern Line.

Interrogatory No. 21. Identify all Persons who assisted in the preparation of CSXT's answers to these discovery requests, including Norfolk Southern's Request for Admissions and Interrogatories, or that have knowledge relating to the matters covered in Norfolk Southern's Request for Admissions and Interrogatories.

Response to Interrogatory No. 21:

CSXT objects to Interrogatory No. 21 as vague, ambiguous, overbroad, and unduly burdensome to identify all persons who “have knowledge relating to” the matters covered in Norfolk Southern’s Requests. CSXT will not perform an extensive search for individuals who may have any knowledge relating to any matter covered in Norfolk Southern’s thirty-one Requests for Admissions and Interrogatories.

Subject to and without waiving the foregoing General and Specific Objections, CSXT states that the following individuals provided information to assist in the preparation of CSXT’s answers to these discovery requests:

- Arthur Adams, Jr. – Senior Vice President, Sales & Marketing
- Will Roseborough – Director of Project Development and Public Projects
- Stuart Sweat – Director of Scheduling and Interline
- Tom Tisa – Head of Network Development Strategies
- Christopher Maffett – Director of Marketing Chemicals

RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS

Document Request No. 1. Produce all Documents, Communications, Agreements, Studies, Analyses, and Reports used, relied upon, or referenced in CSXT’s responses to the Requests for Admissions and in response to any of the Interrogatories served by Norfolk Southern. If CSXT objects to answering any interrogatory or request for admission on the basis that doing so would be too burdensome or would require a special study, Produce all Documents, Communications, Agreements, Studies, Analyses, and Reports from which the answer to the interrogatory or request for admission can be derived.

Response to RFP No. 1: CSXT objects to RFP No. 1 as overbroad as it seeks “all Documents, Communications, Agreements, Studies, Analyses, and Reports” upon which CSXT used, relied upon, or referenced in its responses. Subject to the foregoing General and Specific Objections, CSXT will produce non-privileged documents responsive to this Request that are identified through a reasonable search.

Document Request No. 2. Produce all Documents and Communications related to and containing the Track Charts and Schematics of Meridian, including the Meridian Interchange and the connection between the Western Line and the Meridian Speedway, and supporting interchange facilities on the Meridian Speedway, the Western Line, and the Eastern Line.

Response to RFP No. 2: CSXT objects to RFP No. 2 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks “all Documents and Communications” related to and containing the Track Charts and Schematics of Meridian, including the Meridian Interchange and the connection between the Western Line and the Meridian Speedway. CSXT further objects to RFP No. 2 as vague and ambiguous as to documents “supporting interchange facilities.” CSXT further objects to

RFP No. 2 to the extent that it calls for the production of documents or electronic information that are not within CSXT's possession, custody or control. CSXT does not have any involvement with the Meridian, the Meridian Interchange, the Meridian Speedway, and the Western Line. Subject to the foregoing General and Specific Objections, CSXT will produce non-privileged track charts and schematics for the Eastern Line that are identified through a reasonable search.

Document Request No. 3. Produce all Documents and Communications related to and containing the Track Charts and Schematics of the AGR/CSXT Interchange and its connection to the Eastern Line, and supporting interchange facilities (including sidings) on the Eastern Line.

Response to RFP No. 3: CSXT objects to RFP No. 3 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks "all Documents and Communications" related to and containing the Track Charts and Schematics. CSXT further objects to RFP No. 3 as vague and ambiguous as to the connection between the AGR/CSXT Interchange and the Eastern Line. Subject to the foregoing General and Specific Objections, CSXT will produce non-privileged track charts and schematics for the Eastern Line that are identified through a reasonable search.

Document Request No. 4. Produce all Documents and Communications related to and containing CSXT's timetables for the relevant divisions and subs, and the proposed schedule for both CSXT's proposed and AGR's existing operations over the Eastern Line.

Response to RFP No. 4: CSXT objects to RFP No. 4 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks "all Documents and Communications" related to and containing CSXT's timetables and the proposed schedule. CSXT objects to RFP No. 4 as vague and ambiguous as it seeks

information regarding “relevant” divisions and subs. CSXT further objects to RFP No. 4 on the grounds that it seeks information already in Norfolk Southern’s (and the STB’s) possession or is in the public domain. CSXT’s Operating Plan already includes the post-transaction materials, including the proposed schedule (*See* APP-26). Subject to the foregoing General and Specific Objections, CSXT will produce non-privileged timetables and proposed schedules for the Eastern Line that are identified through a reasonable search.

Document Request No. 5. Produce all Documents and Communications related to and containing CPKC and MNBR timetables for the relevant divisions and subs, and the proposed schedule for CPKC’s proposed operations over the Western Line.

Response to RFP No. 5: CSXT objects to RFP No. 5 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks “all Documents and Communications” related to and containing CPKC and MNBR timetables. CSXT further objects to RFP No. 5 to the extent that it calls for the production of documents or electronic information that are not within CSXT’s possession, custody or control. CSXT has no proposed operations over the Western Line, with the exception of the limited trackage rights operations to effectuate interchange at Myrtlewood. *See* Verified Notice of Exemption, FD 36730 (STB filed Oct. 6, 2023). CSXT will not produce documents in response to Request No. 5.

Document Request No. 6. Produce all Documents, Communications, Agreements, Studies, Analyses, and Reports concerning the operational capabilities of CPKC’s Shreveport Line, the Meridian Speedway, and other lines feeding into and out of Western Line and Eastern Line, to handle the additional west-east traffic proposed in the CPKC Transaction and the CSXT Transaction in the next five years and should traffic levels increase in the next decade.

Response to RFP No. 6: CSXT objects to RFP No. 6 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks “all Documents, Communications, Agreements, Studies, Analyses, and Reports” concerning the operational capabilities of CPKC’s lines. CSXT further objects to RFP No. 6 to the extent that it calls for the production of documents or electronic information that are not within CSXT’s possession, custody or control. As part of the Application, CSXT analyzed the CSXT network east of Montgomery. *See* APP-181. Following a reasonable search, CSXT has not identified any documents responsive to Request No. 6.

Document Request No. 7. Produce any agreement (draft or executed) between CSXT and CPKC, between CPKC and G&W, between G&W and CSXT, among CSXT, G&W and CPKC or, with respect to any of the foregoing, between or among their respective affiliates and/or subsidiaries with regard to interchange, routing, pricing, service of existing or new, or development of, traffic, and/or the construction or financing of infrastructure and/or maintenance of infrastructure on or between the Eastern Line, the Western Line, and/or the Meridian Speedway.

Response to RFP No. 7: CSXT objects to RFP No. 7 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks “any agreement,” including drafts. Subject to the foregoing General and Specific Objections, CSXT will produce non-privileged executed agreements responsive to Request No. 7 that are identified through a reasonable search and not contained in CSXT’s Application.

Document Request No. 8. Provide copies of all Documents, Communications, Agreements, Studies, Analyses, and Reports concerning CSXT’s planned train activity and/or projections for traffic growth through the Meridian gateway, and over the Western Line and Eastern Line.

Response to RFP No. 8: CSXT objects to RFP No. 8 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks “all Documents Communications, Agreements, Studies, Analyses, and Reports” concerning CSXT’s planned train activity and/or projections for traffic growth, including for the Meridian gateway and Western Line. CSXT further objects to RFP No. 8 to the extent that it calls for the production of documents or electronic information that are not within CSXT’s possession, custody or control. Subject to the foregoing General and Specific Objections, CSXT will produce non-privileged documents sufficient to show its traffic projections for the Eastern Line that are identified through a reasonable search.

Document Request No. 9. Provide copies of all Documents involving efforts by CSXT to market, solicit, obtain, and transport any fuel, industrial products, agricultural products, automotive, intermodal, or other traffic to/from Western Line and Eastern Line, including copies of any prior, existing, or future contracts, proposals, or tariffs.

Response to RFP No. 9: CSXT objects to RFP No. 9 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks “all Documents” involving efforts by CSXT to market, solicit, obtain, and transport any fuel, industrial products, agricultural products, automotive, intermodal, or other traffic to/from Western Line and Eastern Line, including copies of any prior, existing, or future contracts, proposals, or tariffs. As stated in response to RFP No. 8, CSXT will produce non-privileged documents sufficient to show its traffic projections for the Eastern Line that are identified through a reasonable search. CSXT will not produce any additional information response to this overbroad request.

Document Request No. 10. Provide documents concerning siding capacity at Myrtlewood and over the Eastern Line.

Response to RFP No. 10: Subject to the foregoing General Objections, CSXT will produce non-privileged documents responsive to this Request that are identified through a reasonable search.

Document Request No. 11. Produce workpapers in support of all filings encompassed in This Proceeding.

Response to RFP No. 11: CSXT objects to RFP No. 11 on the grounds that it is vague and ambiguous as to the meaning of “workpapers.” Subject to the foregoing General and Specific Objections, CSXT asserts that it did not prepare or submit workpapers in support of its filings, as that term is typically used in STB proceedings. CSXT does not possess documents responsive to Request No. 11.

Document Request No. 12. Provide copies of all Documents, Communications, Agreements, Studies, Analyses, and Reports concerning CPKC planned train activity and/or projections for traffic growth through the Meridian, MS gateway and over the Western Line and Eastern Line.

Response to RFP No. 12: CSXT objects to RFP No. 12 as overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks “all Documents, Communications, Agreements, Studies, Analyses, and Reports” concerning CPKC planned train activity and/or projections for traffic growth through the Meridian, MS gateway and over the Western Line and Eastern Line. CSXT further objects to RFP No. 12 to the extent that it calls for the production of documents or electronic information that are not within CSXT’s possession, custody or control. CSXT will not produce documents in response to Request No. 12.

Document Request No. 13. Produce all promotional and shipper marketing materials, including those featuring a specific commodity and/or shipper, developed by CPKC or CSXT involving the proposed movement of goods over the Western Route and/or the Eastern Route.

Response to RFP No. 13: CSXT objects to RFP No. 13 as irrelevant, overbroad, unduly burdensome, and disproportionate to the needs of the proceeding in that it seeks “all promotional and shipper marketing materials” developed by CPKC or CSXT involving the proposed movement of goods over the Western Route and/or the Eastern Route. CSXT will not produce documents in response to Request No. 13.

Document Request No. 14. Provide a map of the MNBR’s interchange partners and locations on the Eastern Line and the Burkeville-Montgomery segment, as discussed on page APP-197 of the CSXT Application.

Response to RFP No. 14: CSXT objects to RFP No. 14 on the grounds that it seeks information already in Norfolk Southern’s (and the STB’s) possession, custody, or control, or is in the public domain. CSXT already provided this information in its Application (*See* Exhibit 1 at APP-47). CSXT will not produce additional documents in response to this Request.

Document Request No. 15. Provide the Haulage Agreement dated as of February 28, 2022, that is being amended by the proposed First Amendment to Haulage Agreement, which appears in Exhibit F to the Transaction Agreement included in its application, beginning on page APP-140.

Response to RFP No. 15: Subject to the foregoing General Objections, CSXT will produce non-privileged documents that are responsive to this Request that are identified through a reasonable search.

Document Request No. 16. Produce the operating plan discussed in the following statement appearing on page 12 of the Verified Statement of James Clements in the CPKC Application:

“CPKC and CSXT ... have agreed on an operating plan....”

Response to RFP No. 16: CSXT objects to RFP No. 16 as vague and ambiguous as it references the statement of a third party in that party’s Application. CSXT has no knowledge of the basis for the statement included in the Verified Statement of James Clements. CSXT provided its operating plans (#1 and #2) in its Application (*See* APP-199, APP-203). CSXT will not produce additional documents in response to this Request.

Dated: November 22, 2023

Respectfully submitted,

/s/ Peter W. Denton

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CERTIFICATE OF SERVICE

I, Peter W. Denton, hereby certify that on November 22, 2023, copies of the foregoing Responses and Objections to Norfolk Southern's First Discovery Requests were served by email upon counsel for Norfolk Southern, and all Parties of Record.

/s/ Peter W. Denton

Peter W. Denton
Attorney for CSXT Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36727

CSX TRANSPORTATION, INC.
—ACQUISITION AND OPERATION—
RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.

VERIFICATION

I, Thomas J. Tisa, hereby certify under penalty of perjury that the Responses are true to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to sign this verification on behalf of CSXT Transportation, Inc. (“CSXT”).

Executed on November 22, 2023, in Jacksonville, Florida.

/s/ Thomas J. Tisa
Thomas J. Tisa
CSXT Transportation, Inc.
Head of Network Development Strategies

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA, FD 36732; CSX TRANSPORTATION, INC. – ACQUISITION
AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.,
FD 36727**

COMMENTS AND REQUESTS FOR CONDITIONS

Appendix Q

CPKC's Answers and objections to Norfolk Southern's First Set of Interrogatories

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FD 36732

**CPKC’S ANSWERS AND OBJECTIONS TO
NORFOLK SOUTHERN’S FIRST SET OF INTERROGATORIES**

Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC (“CPKC”), in accordance with 49 C.F.R. Part 1114, hereby provide the following answers and objections to Norfolk Southern Railway Company and Norfolk Southern Corporation’s (collectively, “Norfolk Southern”) First Set of Interrogatories (“Interrogatories”).

As a preliminary matter, CPKC objects to Norfolk Southern’s improper attempt to combine the CPKC application proceeding (FD 36732), the CSXT application proceeding (FD 36727) and all of the proceedings related to each of those separate applications into a single proceeding by propounding discovery in a combined proceeding that does not exist. The Board—in CSXT Decision No. 1, pp.9-10, fn. 11 and CPKC Decision No. 1, pp. 7-8, fn. 11—denied Norfolk Southern’s request to consolidate the applications, to require a single combined application and to hold the proceeding in abeyance. Rather, the Board accepted each of the CSXT application and CPKC application as separate minor transactions. *See* CPKC Decision No. 1 and CSXT Decision No. 1. Accordingly, CPKC objects to Norfolk Southern’s attempt to combine the proceedings, as well as the propriety of directing the instant Interrogatories in a fictional combined proceeding.

GENERAL RESPONSES

CPKC makes the following General Responses to the Interrogatories and incorporates them into its responses to each and every Interrogatory, whether or not specifically stated in the

individual response.

1. CPKC is conducting a reasonable search for information and documents responsive to the Interrogatories. Subject to the specific and general objections that follow, responsive documents will be produced on a rolling basis.

2. Production of information or documents does not necessarily imply that the information or documents are relevant to or admissible in this proceeding and is not to be construed as waiving any objection stated herein.

GENERAL OBJECTIONS

These General Objections apply to each Interrogatory and thus, for convenience, they are not repeated after each Interrogatory, but rather are hereby incorporated into each Answer. The assertion of the same, similar, or additional objections or the provision of partial answers to an Interrogatory does not waive or modify any of CPKC's General Objections.

1. CPKC objects to Norfolk Southern's Interrogatories, including the "Instructions" and "Definitions" sections thereof, and to each interrogatory, to the extent that they impose burdens or obligations on CPKC exceeding those specified in applicable provisions of the Rules of Practice at 49 C.F.R. Part 1114 by the Surface Transportation Board ("Board"), or under other Board rules or precedents.

2. CPKC objects to Norfolk Southern's Interrogatories, including the "Instructions" and "Definitions" sections thereof, and to each interrogatory, to the extent they call for documents and/or information that is not relevant to the subject matter of this case or proportional to the needs of the case.

3. CPKC objects to Norfolk Southern's Interrogatories, including the "Instructions" and "Definitions" sections thereof, and to each interrogatory, to the extent they seek the

identification of documents or information protected by the attorney-client privilege, the work-product doctrine, or any applicable privilege or protection from disclosure. CPKC does not intend to produce privileged information, and nothing contained in these responses is intended as, or shall in any way be deemed, a waiver of any attorney-client privilege, work product doctrine, and/or other privileges, immunities, protections, or exceptions.

4. CPKC objects to Norfolk Southern's Interrogatories, including the "Instructions" and "Definitions" sections thereof, and to each interrogatory, to the extent they are vague, ambiguous, or would unreasonably require CPKC to speculate as to the nature or scope of the information or documents sought thereby.

5. CPKC objects to Norfolk Southern's Interrogatories, including the "Instructions" and "Definitions" sections thereof, and to each interrogatory, to the extent they seek documents or information that: (1) are outside CPKC's possession, custody, or control (including, but not limited to documents or information in the possession, custody, or control of its outside counsel, consultants, affiliates, and directors); (2) have been previously provided or produced; (3) are already within the knowledge of, or equally available to, Norfolk Southern; (4) are more readily available to Norfolk Southern than CPKC; (5) are readily available from public sources; or (6) are best obtained (and/or which Norfolk Southern has obtained) by alternative means, including interrogatories or document requests to others or third parties. CPKC objects to Norfolk Southern's Interrogatories, including the "Instructions" and "Definitions" sections thereof, and to each interrogatory, to the extent they would require CPKC to obtain documents or information from any person or entity other than a party to this case.

6. CPKC objects to Norfolk Southern's Interrogatories, including the "Instructions" and "Definitions" sections thereof, and to each interrogatory, to the extent they require the

production of information or documents that would violate or be inconsistent with any applicable statute or regulation in a manner not addressed by the Protective Order entered in this proceeding (the “Protective Order”). CPKC objects to providing confidential information generated by any third party without first giving that party an adequate opportunity to object to such production.

7. CPKC objects to Norfolk Southern’s Interrogatories, including the “Instructions” and “Definitions” sections thereof, and to each interrogatory, to the extent they request information and/or documents in a format not maintained by CPKC in the regular course of business or not readily available in the form requested by Norfolk Southern, or on grounds that such information or documents could be developed, if at all, only through an unduly burdensome special study or analysis. Where a request seeks relevant, non-privileged information or documents in a form different from that maintained by CPKC in its ordinary course of business, CPKC may produce any responsive information or documents in the form in which it is maintained by CPKC in the ordinary course of business.

8. CPKC objects to Norfolk Southern’s Interrogatories, including the “Instructions” and “Definitions” sections thereof, and to each interrogatory, to the extent they ask for CPKC to produce “each,” “every,” “each and every,” “any,” “all,” or “any and all” documents that discuss, relate, address, show, support or identify a subject matter as vague, ambiguous, confusing, overly broad, and unduly burdensome.

9. CPKC objects to Norfolk Southern’s Interrogatories, including the “Instructions” and “Definitions” sections thereof, and to each interrogatory, to the extent they are overly broad, unduly burdensome, redundant, harassing, or oppressive, as well as to the extent that responding to them would impose an undue burden on CPKC and require it to engage in an excessive expenditure of time or money.

10. CPKC objects to Norfolk Southern's Interrogatories, including the "Instructions" and "Definitions" sections thereof, including without limitation the definition of "CPKC" contained in the "Definitions" section, as overbroad, vague, unduly burdensome, and as attempting to propound Interrogatories on persons and entities other than CPKC.

11. CPKC reserves the right to amend, supplement, or alter these Answers as additional information becomes available to it.

CPKC's willingness to provide information or documents containing competitively-sensitive, proprietary, trade secret, railroad traffic or other confidential information, materials, or documents is conditioned upon Norfolk Southern's compliance with the Protective Order governing the production and disclosure of confidential, highly confidential, or sensitive security information, materials, and documents. In addition, CPKC's willingness to provide contractual information is conditioned upon CPKC being able to fulfill any notice requirements that may be present in individual agreements prior to disclosure.

CPKC submits its answers herein, and produces documents, without conceding the relevancy or materiality of the information or documents provided, and without prejudice to its rights to object to further discovery or to the admissibility of any additional proof on the subject matter of any answer.

Further, no answer herein is intended, nor may be construed, as an admission or representation as to the accuracy or existence of any fact on which the interrogatory is predicated or as to the existence of documents responsive to the interrogatory.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. CPKC objects to each and every “Definition” to the extent such definition purports to impose obligations on CPKC broader than or inconsistent with reasonable compliance with the obligations created by 49 C.F.R. §1114.21 et. seq. and related regulations.

2. CPKC objects to the definition of “Application” to the extent it refers to CSXT’s Application and “related transactions filed by CSXT” as it renders many Interrogatories unintelligible to the extent they request information regarding the “CPKC Application.”

3. CPKC objects to the definition of “Document” to the extent it is unduly burdensome and seeks information that is not proportional to the needs of the proceeding, including that it seeks production of documents other than the final version of a responsive document.

4. CPKC objects to Instruction 1, in addition to the Interrogatories, to the extent they seek documents or information created before May 1, 2023. Documents and information created before May 1, 2023 are irrelevant to this Proceeding because CPKC did not begin working on its Application or the underlying transaction until May 2023. CPKC agrees to produce documents or information created on or between May 1, 2023 and November 8, 2023. Any production by CPKC of documents or information created before May 1, 2023, shall not be considered a waiver of this objection.

5. CPKC objects to Instructions 1 and 13, in addition to the Interrogatories, to the extent they seek documents or information created after November 8, 2023. Where CPKC agrees to produce documents or information “to present,” CPKC will produce documents or information created on or before November 8, 2023. Any production by CPKC of documents or information created after November 8, 2023, shall not be considered a waiver of this objection.

6. CPKC objects to Instruction 2 to the extent that it seeks information in the possession, custody, or control of non-CPKC entities or counsel. CPKC will produce information in the possession, custody, or control of CPKC.

7. CPKC objects to Instruction 11 because it imposes burdens, obligations, or requirements which are greater than the requirements for discovery under 49 C.F.R. Part 1114, Subpart B, or under other STB rules or precedents. CPKC will not prepare a log of documents withheld pursuant to 49 U.S.C. § 11904 in response to these Interrogatories.

8. CPKC objects to Instruction 12 because it imposes burdens, obligations, or requirements which are greater than the requirements for discovery under 49 C.F.R. Part 1114, Subpart B, or under other STB rules or precedents. CPKC will not prepare a privilege log in response to these Interrogatories.

SPECIFIC OBJECTIONS AND ANSWERS TO INTERROGATORIES

Interrogatory No. 1. Describe the train composition and length of the train referenced in the carry-over paragraph on pages 11 to 12 in the CPKC Application that CPKC will utilize run-through power.

ANSWER: CPKC objects to this interrogatory as vague and ambiguous because the phrase “train composition” is not defined and CPKC, therefore, must speculate as to the information Norfolk Southern seeks. For example, CPKC cannot determine whether Norfolk Southern is requesting information about the train design for the number of locomotives or where distributed power units will be placed within the train.

Subject to and without waiving the objections set forth above, CPKC estimates the train will be approximately 70-cars long, which is approximately 4,200-feet based on an average of 60-feet per car. CPKC expects that the train will operate utilizing two engines on the head-end.

Interrogatory No. 2. When did discussions between CPKC and CSXT commence concerning CSXT's plans to take back the Eastern Line, and CPKC's plans to acquire the Western Line from MNBR? Describe any verbal conversations and coordination by CPKC and CSXT concerning undertaking both the CPKC Transaction and the CSXT Transaction and Identify all agreements (draft or executed) pertaining thereto.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, the common interest privilege and/or is otherwise protected from disclosure. CPKC also objects to this interrogatory as overbroad and unduly burdensome because it asks CPKC to provide detailed information about potentially numerous conversations that took place over a significant period of time, making precise details difficult, if not impossible, to recall. The interrogatory is also overbroad and unduly burdensome to the extent it seeks information that is more appropriately provided by the production of documents. CPKC further objects to this interrogatory to the extent that it is vague and ambiguous as to the meaning of "coordination." CPKC further objects to providing or identifying unexecuted draft agreements to the extent it is unduly burdensome and seeks information that is not proportional to the needs of the proceeding.

Subject to and without waiving the objections set forth above, CPKC states that discussions between CPKC and CSXT commenced sometime in or around May 2023 regarding the possibility of the subject transactions and such discussions have continued over the course of several months, primarily between Adolph Gameiro of CPKC and Tom Tisa of CSXT. Such communications initially focused on CSXT's intent to retake possession of the Eastern Line and invest in it, and its interest in establishing a direct efficient interchange with CPKC should CPKC acquire the Western Line. Subsequent communications focused on CSXT's willingness to pursue its Transaction in

order to support premium rail service and the timing of the Transactions, among other related issues, and on June 27, 2023, CPKC and CSXT entered into a Memorandum of Understanding. CPKC and CSXT personnel have conferred regarding a protocol for interchange at Myrtlewood and regarding non-shipper specific traffic projections for an interline CPKC-CSXT service via Myrtlewood. Further, in accordance with 49 C.F.R. 1114.26(b), CPKC answers this interrogatory by referring Norfolk Southern to the documents CPKC will produce, from which information responsive to this interrogatory may be derived or ascertained, including but not limited to documents produced in response to Request No. 5 of Norfolk Southern's First Set of Document Requests.

Interrogatory No. 3. Describe existing capacity limitations currently impacting CPKC's operations over the CPKC's Shreveport Line.

ANSWER: CPKC objects to this interrogatory as irrelevant to the subject matter of this action because Norfolk Southern does not operate on the Shreveport Line and the proposed transaction, therefore, has no operational impact on Norfolk Southern with respect to the Shreveport Line. CPKC further objects to this Interrogatory as vague as ambiguous as CPKC has no idea what Norfolk Southern means when it asks about "existing capacity limitations currently impacting CPKC's operations" and whether it is referring to capacity limitations on the Shreveport Line or on some other Line. CPKC focuses relentlessly on ensuring fluid and efficient operations and designs its rail service taking into account the network's physical capacity, being careful to match train length to the physical infrastructure on a route so as to ensure efficient meets and passes, and, thus, in a broad sense, capacity limitations inevitably have some impact on operations.

Subject to and without waiving the objections set forth above, CPKC states that it is not

aware of any existing capacity limitations on the Shreveport Line that currently impact CPKC's operations over the Shreveport Line. However, as Norfolk Southern is aware, 18 of the 21 sidings on the connecting approximately 320-mile, single-track Meridian Speedway can accommodate maximum train lengths of 8,500 feet. This capacity limitation on the Meridian Speedway impacts the length of trains operating on the Shreveport Line. In accordance with 49 C.F.R. 1114.26(b), CPKC further answers this interrogatory by referring Norfolk Southern to the non-privileged, responsive documents CPKC will produce, from which information responsive to this interrogatory may be derived or ascertained, including but not limited to documents produced in response to Request Nos. 2 and 3 of Norfolk Southern's First Set of Document Requests.

Interrogatory No. 4. Describe in detail any planned infrastructure improvements to CPKC's Shreveport Line, the Meridian Speedway, Jackson, MS, the Meridian Interchange, and other lines feeding into and out of Western Line and Eastern Line resulting from the CPKC Transaction and the CSXT Transaction.

ANSWER: CPKC objects to part of this interrogatory as irrelevant to the subject matter of this proceeding because Norfolk Southern does not operate on the Shreveport Line and the proposed transaction, therefore, has no operational impact on Norfolk Southern with respect to the Shreveport Line. CPKC further objects to this interrogatory because it seeks information about rail lines that CPKC does not own, including the lines into and out of the Eastern Line. CPKC does not have such information in its possession, custody or control. Further, Norfolk Southern, as a co-owner of the MSLLC, is equally as aware as KCS of plans for infrastructure improvements on the Meridian Speedway and, indeed, has a voice in determining whether or not such improvements are made.

Subject to and without waiving the objections set forth above, CPKC states that it has no current plans to make any infrastructure improvements to CPKC's Shreveport Line, the Meridian Speedway, Jackson, MS, the Meridian Interchange, and other lines feeding into and out of Western Line and Eastern Line resulting from the CPKC Transaction and the CSXT Transaction.

Interrogatory No. 5. Describe any communications (including any draft or executed agreements and/or settlements) involving CPKC, Amtrak, CSXT, and/or MNBR concerning current or future Passenger service over the Meridian Speedway and/or the Western Line.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine and/or is otherwise protected from disclosure. CPKC objects to this interrogatory as overbroad and unduly burdensome because it asks CPKC to provide detailed information about potentially numerous conversations that took place over a significant period of time, making precise details difficult, if not impossible, to recall. CPKC further objects to this interrogatory as overbroad, unduly burdensome, and not proportional to the needs of the proceeding because it potentially seeks information about communications that CPKC not participate in, meaning such information is not in CPKC's possession, custody or control.

Subject to and without waiving the objections set forth above, CPKC states that as Amtrak's only A-rated host, CPKC frequently engages in discussions with Amtrak on a variety of issues and, in 2021, entered into an agreement with Amtrak to participate in a joint study to establish Amtrak rail service that would operate over the Meridian Speedway. However, CPKC has not engaged in any discussions regarding future passenger rail service over the Western Line.

Further, in accordance with 49 C.F.R. 1114.26(b), CPKC answers this interrogatory by referring Norfolk Southern to the non-privileged, responsive documents CPKC will produce, from which information responsive to this interrogatory may be derived or ascertained.

Interrogatory No. 6. Does the operational analysis done for the Western Line and the Eastern Line and reflected in the “Operating Plan #2: All Transactions Implemented Simultaneously” as is reflected in the CSXT Application beginning on page APP-203 of the CSXT Application consider impacts resulting from the CPKC Transaction and the CSXT Transaction to the portion of the Meridian Speedway controlled by CN at Jackson, MS. If so, please describe such impacts in detail.

ANSWER: CPKC objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the proceeding because it seeks information about the CSXT Transaction, which is not in CPKC’s possession, custody, or control.

Interrogatory No. 7. Describe the basis for the statement in the Transaction that “Yard activity at Meridian should decrease as a result of the Transaction,” page 38 of the Application, including whether the reference to “Yard activity” includes all rail yards located in Meridian, Mississippi. If the “Yard activity” refers only to the MNBR yard, describe any analysis that CPKC and/or others associated with the submission of the CPKC Application or the CSXT Application performed with regard to any other rail yard located at Meridian.

ANSWER: CPKC objects to this Interrogatory to the extent that it seeks analyses that CPKC did not perform or that are not in CPKC’s possession, custody, or control.

Subject to and without waiving the objections set forth above, CPKC refers Norfolk Southern to CPKC's Supplemental Information filed with the Board on November 21, 2023.

Further CPKC states that while it did not undertake a formal analysis with respect to any other rail yard located at Meridian, CPKC personnel, including local operating personnel, reviewed the rail infrastructure and facilities in Meridian, and determined that the additional Transaction-related traffic would have no meaningful impact on other rail operations or facilities in or through Meridian and may, in fact, benefit operations as described in CPKC's Supplemental Information filed with the Board on November 21, 2023.

Interrogatory No. 8. Describe in detail the specific improvements that comprise the \$46 million in immediate improvements and the \$100 million in additional improvements that CPKC plans to invest in the MNBR rail line it proposes to acquire in the CPKC Transaction. Specifically, explain which improvements (and the estimated cost of those improvements) that are referenced in the first complete paragraph on page 39 of the CPKC Application, and which improvements (and the estimated cost of those improvements) that are referenced in the second complete paragraph on page 39 of the CPKC Application.

ANSWER: CPKC objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case because CPKC must speculate as to the "details" Norfolk Southern seeks beyond the information already provided in CPKC's Application and because it seeks information regarding CPKC's estimated costs that are competitively sensitive and are not germane to any issue that Norfolk Southern might legitimately raise in this proceeding. Further, providing each and every detail about planned infrastructure improvements would require CPKC to engage in an excessive expenditure of time and money.

Subject to and without waiving the objections set forth above, CPKC refers Norfolk Southern to CPKC's Supplemental Information filed with the Board on November 21, 2023. Further, in accordance with 49 C.F.R. 1114.26(b), CPKC answers this interrogatory by referring Norfolk Southern to the non-privileged, responsive documents CPKC will produce, from which information responsive to this interrogatory may be derived or ascertained. CPKC states that the documents reflecting the cost of anticipated initially included improvements to MNBR's rail yard in Meridian, however, the parties have since agreed that MNBR will continue to be responsible for the MNBR yard. In addition, with respect to anticipated improvements to bridges, the documents that will be produced assume that CPKC will spend approximately \$9 million in year 1 and approximately \$4 to \$5 million per year over the following 19-years.

Interrogatory No. 9. Describe in detail the specific improvements (and the cost thereof) that are required to facilitate the increase of maximum track speed from 10 mph to 25 mph as referenced in the last, carry-over, paragraph on page 9 of the Verified Statement of Raymond A. Elphick and, separately, what other track improvements are anticipated (including the cost thereof).

ANSWER: CPKC objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case because CPKC must speculate as to the "details" Norfolk Southern seeks beyond the information already provided in CPKC's Application and because it seeks information regarding CPKC's estimated costs that are competitively sensitive and are not germane to any issue that Norfolk Southern might legitimately raise in this proceeding. Further, providing each and every detail about planned improvements would require CPKC to engage in an excessive expenditure of time and money.

Subject to and without waiving the objections set forth above, CPKC refers Norfolk Southern to CPKC's Supplemental Information filed with the Board on November 21, 2023. Further, in accordance with 49 C.F.R. 1114.26(b), CPKC answers this interrogatory by referring Norfolk Southern to the non-privileged, responsive documents CPKC will produce, from which information responsive to this interrogatory may be derived or ascertained.

Interrogatory No. 10. Describe any discussions between CPKC, CSXT, and G&W concerning (i) the composition (including train length and number of cars) of the "one train a day in each direction" referenced on page 13 of the CPKC Application; (ii) projected volumes (and the projected composition and timing) anticipated to introduce additional trains (beyond the "one train a day in each direction" anticipated to move over the Western Line) and identify prospective connecting line segments from which that traffic is anticipated to be diverted.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, common interest doctrine and/or is otherwise protected from disclosure. CPKC also objects to this interrogatory as vague and ambiguous as to the meaning of "composition," "anticipated to introduce," and "prospective connecting line segments," meaning CPKC must speculate as to the information Norfolk Southern seeks. In addition, CPKC objects to this interrogatory to the extent it seeks information about discussions between CSXT and G&W, which is not in CPKC's possession, custody, or control.

Subject to and without waiving the objections set forth above, CPKC states that it has not engaged in discussions with G&W regarding the composition of the trains that CPKC anticipates operating on the Western Line or forecasted volumes. With respect to (i), CPKC refers Norfolk

Southern to the non-privileged, responsive documents that CPKC will produce, from which information responsive to this interrogatory may be derived or ascertained, including but not limited to documents produced in response to Request Nos. 5 and 9 of Norfolk Southern's First Set of Document Requests. With respect to (ii), CPKC states that CPKC and CSXT have communicated regarding interchange protocol for Myrtlewood and generally regarding non-shipper specific traffic projections for a CPKC-CSXT interline train service via Myrtlewood. Further, CPKC refers Norfolk Southern to CPKC's Supplemental Information filed with the Board on November 21, 2023.

Interrogatory No. 11. Describe the operating plan at Meridian for the run-through power train that will be exchanged between CPKC and CSXT at Myrtlewood, and provide any analysis of the interaction of that operating plan with other operations anticipated to be undertaken in Myrtlewood.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine and/or is otherwise protected from disclosure. CPKC objects to this interrogatory to the extent it is duplicative of other requests propounded by Norfolk Southern, including but not limited to Interrogatory No. 1. CPKC further objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case because the terms "describe" and "analysis" are not defined and CPKC, therefore, must speculate as to the scope of the information Norfolk Southern seeks.

Subject to and without waiving the objections set forth above, CPKC refers Norfolk Southern to CPKC's Supplemental Information filed with the Board on November 21, 2023.

In accordance with 49 C.F.R. 1114.26(b), CPKC also refers Norfolk Southern to the non-privileged responsive documents that CPKC will produce, from which information responsive to this interrogatory may be derived or ascertained.

Interrogatory No. 12. What is the proposed operating schedule for the anticipated run-through power train over the Western Line and the Meridian Speedway?

ANSWER: The current proposed schedule for the anticipated run-through power train over the Western Line and the Meridian Speedway is as follows:

999			
RR	Status	Station	Time
CSX	Arrives	Myrtlewood	8:00
CSX	Departs	Myrtlewood	10:00
CPKC	Arrives	Meridian	13:15
CPKC	Departs	Meridian	15:00
CPKC	Arrives	Jackson	13:55
CPKC	Departs	Jackson	14:10
CPKC	Arrives	Shreveport Yd	3:35

998			
RR	Status	Station	Time
CPKC	Departs	Shreveport Yd	20:15
CPKC	Arrives	Jackson	3:10
CPKC	Departs	Jackson	5:25
CPKC	Arrives	Meridian	7:55
CPKC	Departs	Meridian	7:55
CSX	Arrives	Myrtlewood	11:10
CSX	Departs	Myrtlewood	13:10

Interrogatory No. 13. Describe the designated operating windows for MNBR's local operations over the Western Line referenced on page 7 of the Verified Statement of Raymond A. Elphick, including identifying the designated operating windows' times of the day and days of the week.

ANSWER: CPKC objects to this interrogatory as vague and ambiguous because the term "describe" is not fully defined, requiring CPKC to speculate as to the scope of information Norfolk Southern seeks.

Subject to and without waiving the objections set forth above, CPKC states that a 12-hour operating window will be made available to MNBR between the hours of 4:00 PM and 4:00 AM, seven days a week.

Interrogatory No. 14. Describe any operational analysis performed by CPKC on the potential of location of new shippers on the Western Line in the five years following consummation of the transaction, including the impact on fluidity caused by CPKC having to serve these shippers while MNBR was required to continue to serve existing local shippers. Include the identity of the potential newly-located local shipper, the commodities anticipated to be moved, and the volumes anticipated to be moved therefrom or thereto.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine and/or is otherwise protected from disclosure. CPKC further objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case. CPKC has no idea what Norfolk Southern means by "operational analysis" or "fluidity" in the context of this Interrogatory."

Subject to and without waiving the objections set forth above, CPKC states that it has not engaged in any analysis concerning the potential location of new shippers on the Western Line.

Interrogatory No. 15. Describe discussions with potential shippers concerning plans for new automotive plants and/or parts facilities in the Southeastern United States that could result in additional traffic over the Meridian Speedway, the Western Line, and/or the Eastern Line.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, the common interest doctrine, and/or is otherwise protected from disclosure. CPKC objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome and not proportional to the needs of the case because it asks CPKC to provide detailed information about potentially numerous conversations that took place over a significant period of time, making precise details difficult, if not impossible, to recall. CPKC further objects to this interrogatory to the extent it is duplicative of other requests propounded by Norfolk Southern, including but not limited to Interrogatory No. 14.

Subject to and without waiving the objections set forth above, CPKC is not aware of any specific discussions with potential shippers concerning plans for new automotive plants and/or parts facilities in the Southeastern United States that could result in additional traffic over the Meridian Speedway, the Western Line, and/or the Eastern Line.

Interrogatory No. 16. Describe how CPKC in-house marketing and operational personnel were involved in preparing the combined Western Line-Eastern Line operational and competitive analysis offered in support of the Transaction and the CSXT Transaction and reflected in the

“Operating Plan #2: All Transactions Implemented Simultaneously” as is reflected in the CSXT Application beginning on page APP-203 of the CSXT Application.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine, the common interest doctrine and/or is otherwise protected from disclosure. CPKC objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome and not proportional to the needs of the case because the term “describe” is not fully defined, requiring CPKC to speculate as to the scope of information Norfolk Southern seeks. CPKC further objects to this interrogatory as vague and ambiguous to the extent that it refers to preparing a “combined” Western Line-Eastern Line operational and competitive analysis.

Subject to and without waiving the objections set forth above, CPKC states that in-house marketing and operating personnel were not involved in preparing a combined Western Line-Eastern Line operational and competitive analysis that may be reflected in CSXT’s “Operating Plan #2: All Transactions Implemented Simultaneously” (“CSXT’s Operating Plan #2”). CPKC operating personnel have communicated with CSXT operating personnel in order to arrive at a mutually agreeable interchange plan for Myrtlewood, and CPKC marketing personnel conferred about non-shipper specific projected traffic information, both of which may in some manner be reflected in CSXT’s Operating Plan No. 2.

Interrogatory No. 17. Describe the basis for CPKC’s planned train activity and/or traffic projections through the Meridian Gateway. Specifically, describe what types and volumes of traffic are planned to move on the Meridian Speedway and how CPKC plans to grow traffic through the Meridian Gateway and over the Western Line.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine and/or is otherwise protected from disclosure. CPKC objects to this interrogatory as duplicative of other requests Norfolk Southern has propounded, including but not limited to Interrogatory Nos. 5, 7, 10, 11, 14 and 15. CPKC further objects to this interrogatory because CPKC has already provided this information in its Application. CPKC further objects to this interrogatory to the extent that it seeks information regarding portions of the Meridian Gateway other than the Meridian Speedway and the Western Line as seeking information unrelated and not relevant to the CPKC transaction and to a large extent not in CPKC's possession, custody or control.

Subject to and without waiving the objections set forth above, CPKC refers Norfolk Southern to its Application and the Supplemental Information that CPKC filed with the Board on November 21, 2023. Further answering, CPKC states that it plans to grow traffic over the Meridian Speedway and the Western Line by providing fast and reliable rail service between Mexico and the Southwestern United States on the one hand and the Southeastern United States on the other hand, that is competitive with, and superior to, other rail and intermodal options, thus providing an attractive option to shippers.

Interrogatory No. 18. Describe any marketing or planning analysis concerning the Western Line's traffic volume projections over the next 10 years.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine and/or is otherwise protected from disclosure. CPKC also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the proceeding because the

terms “describe” and “planning analysis” are not defined, leaving CPKC to speculate as to the scope of information Norfolk Southern seeks. CPKC further objects to this interrogatory because CPKC has already provided this information in its Application.

Subject to and without waiving the objections set forth above, CPKC states that it has not engaged in a formal 10-year marketing or planning analysis concerning Western Line traffic volume projections. CPKC’s planning and marketing analysis is described in CPKC’s Application at Appendix 3 - Verified Statement of Jonathan Wahba.

Interrogatory No. 19. Identify all Persons who assisted in the preparation of CPKC’s answers to these discovery requests, or that have knowledge relating to the matters covered in Norfolk Southern’s First Discovery Requests Directed to Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC.

ANSWER: CPKC objects to this interrogatory as vague, ambiguous, overbroad, and unduly burdensome to identify all persons “who have knowledge relating to” the matters covered in Norfolk Southern’s Requests. CPKC will not perform an extensive search for individuals who may have any knowledge relating to any matter covered in Norfolk Southern’s thirty-seven Requests for Admission, Interrogatories, and Document Requests.

Subject to and without waiving the objections set forth above, CPKC states that the following individuals provided information to assist in the preparation of CPKC’s answers to these discovery requests:

- Adolph Gameiro – Managing Director, Interline & Network Strategy, CPKC
- Ryan Klepitz – Manager, Rail Network Capacity, CPKC
- Joe Skinner – Managing Director, Automotive, CPKC

- Ricky Stover – Assistant Vice President, Sales and Marketing Domestic Intermodal, CPKC
- Brian Nelson – Director, Service Design, CPKC
- Ronnie Phillips – Southeast Division Superintendent, CPKC
- Matt Foot – Chief Engineer Track, CPKC

These individuals may only be contacted through counsel.

Interrogatory No. 20. Describe the impact, if any, of the transaction on Dallas Intermodal Terminal Traffic as defined in the NSR Joint Use Agreement (“domestic intermodal containers or trailers with an origin and destination in the United States, with a lift or drop at KCSR’s Dallas Intermodal terminal, that moves over the [Meridian Speedway] and over KCSR's tracks between Shreveport and the [Dallas intermodal] terminal, and that originates or terminates at or east of Meridian, and that originates or terminates at or west of the Dallas/ Ft. Worth, TX. Standard Metropolitan Statistical Area (SMSA) as published by the Office of Management and Budget (OMB).”)

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine and/or is otherwise protected from disclosure. CPKC also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case because the term “impact” is not defined, forcing CPKC to speculate as to the scope of information Norfolk Southern seeks.

Subject to and without waiving the objections set forth above, CPKC states that the transaction has not had any impact on Dallas Intermodal Terminal Traffic. Further, CPKC states

that such traffic is, and will continue to be, governed by CPKC's various agreements with Norfolk Southern, as applicable.

Dated: November 22, 2023

Respectfully submitted,

/s/ David F. Rifkind

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*Attorneys for Canadian Pacific Kansas City
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Company, d/b/a CPKC*

VERIFICATION

I, Adolph Gameiro, hereby certify that I am authorized to sign this verification on behalf of Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC (“CPKC”). I affirm that the Answers are true to the best of my knowledge, information, and belief. I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 22, 2023.



Adolph Gameiro

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November 2023, I served a copy of CPKC's Responses and Objections to Norfolk Southern's First Set of Interrogatories by first class mail, postage pre-paid or by electronic mail on parties of record.

/s/ David F. Rifkind

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this “Comments and Request for Conditions” on the Surface Transportation Board, Judge Thomas McCarthy, Charles Tolbert, Connor Brightwell, the Secretary of Transportation, the Attorney General of the United States, and all parties of record and counsel in the following proceedings:

Canadian Pacific Kansas City Limited and the Kansas City Southern Railway Company, D/B/A CPKC – Acquisition and Operation – Certain Rail Line of Meridian & Bigbee Railroad, L.L.C., in Lauderdale County, Mississippi and Choctaw and Marengo Counties, Alabama, FD 36732, Alabama & Gulf Coast Railway LLC – Trackage Rights Exemption – The Kansas City Southern Railway Company D/B/A Canadian Pacific Kansas City, FD 36731, CSX Transportation, Inc. – Acquisition and Operation – Rail Line of Meridian & Bigbee Railroad, L.L.C., FD 36727, CSX Transportation, Inc. – Trackage Rights Exemption – Kansas City Southern Railway Company, FD 36730; Alabama & Gulf Coast Railway LLC – Trackage Rights Exemption – CSX Transportation, Inc., FD 36724, Meridian & Bigbee Railroad, L.L.C. – Discontinuance of Incidental Overhead Trackage Rights – In Lowndes and Montgomery Counties, AL, AB 1335X; CSX Transportation, Inc. – Discontinuance of Trackage Rights Exemption – in Marengo and Choctaw Counties, AL and Lauderdale County, MS, AB 55 (Sub-No. 814X)

by first class mail, properly addressed with postage prepaid, or via more expeditious means of delivery, and on all parties of record.

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh
Attorney for Norfolk Southern Railway Company and Norfolk
Southern Corporation

December 29, 2023