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The Honorable Cynthia T. Brown

Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

VIA E-FILING

ENTERED
Office of Proceedings
January 26, 2024
Part of
Public Record

Re: *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*

Finance Docket No. 36732

Dear Ms. Brown:

Pursuant to the Board's Decision No. 4, Applicants Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC respectfully submit for filing in the above-referenced proceeding CPKC's Rebuttal in Support of its Application (CPKC-13).

Enclosed are two versions of CPKC's filing. One version, marked as "PUBLIC," and from which competitively sensitive commercial information has been redacted, is to be filed on the public record. The second, marked as "HIGHLY CONFIDENTIAL," is an unredacted version to be filed under seal.

Sincerely,

Stinson LLP*/s/ David F. Rifkind*

David Rifkind

DFR:kr

Attachments

cc (Parties of Record; Secretary of Transportation; Department of Justice)

CPKC-13

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**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**

CPKC’S REBUTTAL IN SUPPORT OF ITS APPLICATION

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January 26, 2024

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC**

—ACQUISITION AND OPERATION—

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LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA**

CPKC’S REBUTTAL IN SUPPORT OF ITS APPLICATION

Canadian Pacific Kansas City Limited (“CPKCL”), a non-carrier, on behalf of itself and its wholly-owned subsidiary, The Kansas City Southern Railway Company (“KCS”) d/b/a CPKC (collectively, “Applicants”), pursuant to Decision No. 4, hereby submits its rebuttal in support of its Application.

INTRODUCTION

In this proceeding, Applicants seek approval from the Surface Transportation Board (the “Board”) pursuant to 49 U.S.C. §§ 11323-11325 and 49 C.F.R. Part 1180 for KCS to acquire from Meridian & Bigbee Railroad, L.L.C. (“MNBR”), approximately 50.4± route miles of rail line between Meridian, Mississippi and Myrtlewood, Alabama (the “Western Line”).

The Transaction would enable CPKC to establish a new, direct, efficient interchange with CSX Transportation, Inc. (“CSXT”) at Myrtlewood, Alabama and provide a new competitive option for shippers between CSXT-served markets in the Southeastern United States and CPKC-served markets in the Southwestern United States and KCSM-served markets in Mexico. MNBR would continue to provide local and overhead service on the Western Line.

There would be no two-to-one shippers and no shipper would lose an option as a result of the Transaction. This is an end-to-end acquisition by KCS, extending its line eastward from Meridian, Mississippi. MNBR would remain free to interchange with other connecting carriers on the Western Line. No gateways would be closed. The Transaction creates no risk of competitive harm or lessening of competition – it is entirely about improving the competitiveness of traffic moving overhead between CPKC and CSXT while improving the infrastructure of the Western Line to make all other traffic on the line more efficient. In short, the Transaction is entirely pro-competitive.

The Transaction would provide shippers a competitive, more direct and efficient alternative to routes that are frequently congested and vulnerable to disruption from severe weather events such as New Orleans. The availability of a Myrtlewood routing would help relieve pressure on those congested and vulnerable routes and terminals and make the rail network more resilient.

Moreover, CPKC's ownership and planned investment in upgrading the Western Line to support Class I railroad operations, and its ongoing maintenance of the Western Line, would improve service, safety, and reliability on the Western Line. CPKC's assumption of these responsibilities comes at a critical time. Nearly all of the 31 bridges on the Western Line exceed 85 years of age and will require considerable engineering work over the next several years. CPKC's ownership and resources thus would help ensure the Western Line's long term viability.

The Transaction would also enable CPKC to streamline operations in the Meridian Terminal by reducing the volume of cars switched in the Terminal, enabling CPKC to interchange short line traffic clear of NS's main line, and reducing volumes on CPKC's Artesia line. This should benefit all users.

In light of these public benefits, the Transaction enjoys strong support from a broad variety of state and local stakeholders. Letters supporting the Transaction were submitted by Mississippi Governor Tate Reeves; the City of Meridian; the Southern Rail Commission; Commissioner Willie Simmons of the Mississippi Transportation Commission; the Mississippi Department of Transportation; Mississippi State Senators Jenifer B. Branning and Rod Hickman; Mississippi State Representative Charles Busby; the Alliance for Growth; the East Mississippi Business Development Corporation; the Lauderdale County Board of Supervisors; and the Mississippi Development Authority. Notably, no shipper has raised any concern regarding service or competition.

Based on the evidence in the Application, the Board classified the Transaction as Minor and made the preliminary determination “that the efficiency and other public interest benefits would clearly outweigh the potential anticompetitive effects of the transaction.” Dec. No. 1, slip op. at 8.

The Board received four comments, three of which also requested that the Board impose conditions. None identifies any legitimate risk of anticompetitive effects, substantial or otherwise, or lessening of competition that would be likely to result from the Transaction, or challenges the public benefits identified in CPKC’s Application. Accordingly, none provides any basis for disturbing the Board’s determination that this is a Minor transaction. Further, the conditions sought by NS and CN seek to protect competitors, not competition and are beyond the Board’s conditioning power in Minor transactions, which is focused on addressing substantial harm to competition that is likely to result from a transaction.

NS, who would face intensified direct competition as a result of the Transaction, shamelessly asks the Board to condition the Transaction on CPKC contributing property, funds

and a measure of control of the Meridian Terminal, and sacrificing capacity and efficiency in favor of NS's operations, to remake the Terminal for NS's benefit. NS has long desired a Meridian Terminal makeover in order to address existing issues on NS's Atlanta-New Orleans mainline but its proposals have always been so obviously bad for KCS that KCS could not agree to them. Now, NS asks the Board to impose by fiat what NS could not persuade KCS to do at the negotiating table. NS's conditions address pre-existing issues, not transaction-related harm, require a responsive application that is not permitted in Minor cases, would undermine the significant public benefits of the Transaction, and are designed to thwart the new competition that NS would face as a result of the Transaction.

NS's request for conditions is also built on the fiction that CPKC is somehow responsible for NS's poor operating performance through Meridian. But CPKC's operations demonstrably have minimal impact on NS operations today and would have even less of an impact as a result of the Transaction. NS's own operating decisions largely cause the operating difficulties of which it complains. These decisions include operating trains that are too long for its infrastructure in and around Meridian, refueling and changing crews in Meridian, and scheduling its priority train to conflict with Amtrak's arrival in Meridian. Nor is CPKC to blame for NS's failure to invest in infrastructure that is needed to support the length and volume of trains NS operates on its north-south corridor.

Like NS, CN expresses a purported concern regarding the potential impact of Transaction-related traffic on its north-south main line through Jackson, Mississippi. This concern is unfounded. The modest increase in Transaction-related trains will have an inconsequential impact on CN's line. One reason this is so is that MSLLC previously invested tens of millions of dollars to improve capacity at the CN-owned and controlled Jackson Switch Tender, which Meridian

Speedway traffic must navigate to cross CN. Because of these investments, trains can clear the tender within just a few minutes of receiving a signal and there is ample room for the handful of new trains the Transaction would add here.

CN and NS's purported concerns are also unfounded given that CPKC, NS and CN share an incentive to cooperate to maintain fluid operations on their respective lines. Further, should an issue arise in the future, it can and should be addressed within the context of the applicable agreements governing use of the respective facilities.

To justify their overreaching requests for conditions, NS and CN adopt the pretense of concern for the potential impact on Amtrak trains that they host on their respective lines. Amtrak, however, expresses no such concerns. Rather, Amtrak focuses its comments on its I-20 Project which aims to explore bringing Amtrak service to the Meridian Speedway. That project is the subject of an agreement between CPKC and Amtrak, and CPKC, of course, intends to adhere to that agreement.

CPKC competitors, NS and CN also seek to mire the Transaction in the proverbial procedural mud. NS asks the Board to reconsider its prior denial of NS's request to consolidate of the CPKC Transaction and the CSXT Transaction. NS advances no valid basis for consolidating the dockets and the separately developed records at this late point. NS also asks the Board to revisit its determination that the Transaction is Minor, but presents no evidence of a likely risk of competitive harm necessary to support this untimely request. NS and CN each ask the Board to require CPKC to engage in additional market analysis, disregarding the fact that the Board's rules do not require any market analyses in a Minor transaction nor would additional analysis here serve any legitimate purpose but instead would delay the ability of shippers' to enjoy a new competitive transportation option.

Below we first address NS's incorrect and anti-competitive assertion that CPKC lacks rights to operate through Meridian. Section II addresses the unwarranted procedural hurdles that CPKC's competitors seek. Section III addresses the various conditions that commenters have requested and explains why the Board should reject them.

The Board should approve CPKC's Application without conditions other than standard employee protective conditions.¹

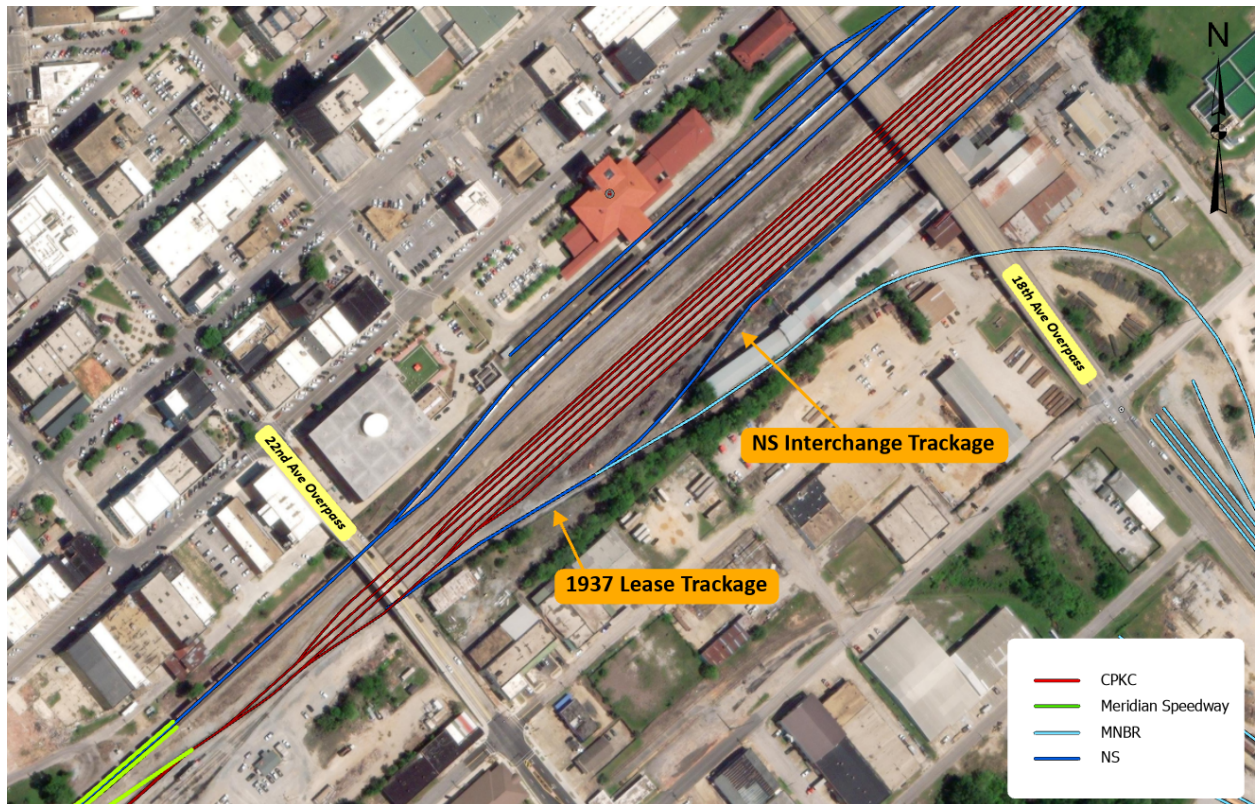
I. NS's Threat to Sever CPKC's Connection to the Western Line is Factually Baseless and Blatantly Anti-Competitive

NS makes the outlandish assertion that CPKC lacks the property and regulatory rights to use 499 feet² of track that connects CPKC's trackage at Meridian with the Western Line (see Figure 1) and suggests that CPKC would need to negotiate with NS to obtain the "access rights it needs to complete the connection between CPKC and the MNBR tracks at Meridian." NS Comments at 32. Any effort by NS that seeks to sever the century-old connection and to prevent CPKC/CSXT from offering an alternative to shippers for traffic moving between the Southeastern United States and the Mexican and Southwestern markets would be blatantly anti-competitive. It would also be unlawful.

¹ This Rebuttal is supported by the Verified Statement of Steve D. Simmons and Ronnie Phillips ("Simmons/Phillips VS") attached hereto as Exhibit 1.

² NS refers to approximately 425 feet of track but does not explain how it arrived at 425 feet. NS Comments 35, n. 101. According to the 1937 lease, the trackage is 499 feet in length. See 1937 Lease Agreement attached hereto as Exhibit 2 at 15.

Figure 1 – 1937 Lease Trackage in Meridian



Contrary to NS's claims, there is currently a valid lease giving CPKC the right to use the trackage. CPKC's predecessors in interest first leased CPKC's predecessors access to this short section of track in 1922. *See* Exhibit 2 at 16-17. _ That lease was canceled and replaced by the current lease executed in 1937. Although NS purports to have terminated the 1937 lease in 1956, with the intent of negotiating a new agreement, NS subsequently agreed to continue the lease on a temporary basis—one that has continued to this day. *See* Simmons/Phillips VS, Exhibit A. Consistent with that agreement to continue the lease, NS continues to invoice and CPKC continues to pay rent annually. Simmons/Phillips VS at 5-6, Exhibit D. CPKC also continues to maintain the track as it has for decades, which also benefits NS because traffic MNBR interchange movements to NS also use this track. The lease includes no restrictions on CPKC's use of the track. Notably,

NS has raised no concerns about CPKC's lease since 1956; that is, until this Transaction, when faced with the prospect of increased rail competition.

NS also incorrectly asserts that because NS could not locate ICC approval of the lease, CPKC lacks the regulatory authority to operate over NS's track. The 1937 lease, however, predates the Transportation Act of 1940, which extended the ICC's regulation of entry and exit to include approval of "trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier." Transportation Act of 1940, 49 U.S.C. § 5(2)(a)(ii). Accordingly, the absence of a decision approving the 1937 lease is neither surprising nor meaningful.

While the operating rights granted by the lease may not have required regulatory authority in 1937, there is no doubt that such rights became subject to ICC jurisdiction as a result of the Transportation Act of 1940. In fact, in 1941, the ICC approved a similar lease by NS to KCS's predecessors in interest of the short section of track to connect to the MNBR. *See Gulf, Mobile & Ohio RR Co. et al. Operation, Etc.*, 247 I.C.C. 435, 437 (1941). Accordingly, while entry into the 1937 lease did not require ICC approval, termination of CPKC's decades-old operating rights over the trackage undoubtedly would require STB authority. *See California v. Southland Royalty, Co.*, 436 U.S. 519, 529 (1978) *citing Thompson v. Texas Mexican R. Co.*, 328 U.S. 134, 144-45 (1946) (holding that agency approval was required to cease operations under an agreement that predated the agency's jurisdiction); *North Carolina RR Co.—Petition to Set Trackage Compensation and Other Terms and Conditions—Norfolk Southern Ry Co., et al.*, Finance Docket No. 33134, slip op. 3 (STB served May 29, 1997) (recognizing that the *Tex Mex* doctrine extends to leases which "are otherwise basically analogous to trackage rights in terms of our jurisdiction"). NS clearly cannot unilaterally declare that CPKC has no rights to use the trackage for through traffic and sever the

connection between CPKC and the Western Line. Should NS seek to terminate the lease, NS would need to obtain STB approval. NS incorrectly refers to the track as § 10906 exempt trackage. The short section, however, is an essential part of CPKC's route through the terminal and therefore is part of CPKC's main line. *See Effingham R.R. Co. – Petition for Declaratory Order – Construction at Effingham, IL*, Finance Docket No. 33468, slip op. at 5 (STB served Sept. 18, 1998) (determining 206-foot track was a line of railroad based on “tenant's use, rather than the character of the trackage itself”). *See also Chicago Rail Link, L.L.C. – Lease and Operation Exemption – Union Pacific RR Co.*, Finance Docket No. 33323, slip op. at 5 (STB served Sept. 2, 1997) (finding leased track located in yard constituted line of railroad).

Further, even if NS could unilaterally terminate CPKC's operating rights, the Board has the authority to bridge the 499-foot gap that NS claims exists between CPKC trackage in the Meridian terminal and the MNBR trackage to be acquired pursuant to the Transaction under review in this case. *See e.g., Rio Grande Indus., Inc., et al. - Purchase & Trackage Rts. - Chicago, Missouri & W. Ry. Co. Line Between St. Louis, Mo & Chicago, Il*, 5 I.C.C.2d 952, 978 (I.C.C. Sept. 27, 1989); 49 USC § 11102(a). CPKC reserves the right to seek to reopen this proceeding to ask the Board to bridge the gap if necessary.

II. NS and CN Seek to Erect Unnecessary and Inappropriate Procedural Hurdles to Delay or Even Thwart the Transaction

A. Consolidation is neither necessary nor appropriate.

NS again asks the Board to consolidate this Transaction with the CSXT Transaction. According to NS, the Board must order consolidation if it decides to require approval of the CPKC – CSXT Letter of Intent, and in order to comply with the APA. Neither argument is correct.

The premise underlying NS's request for consolidation, i.e., that the Letter of Intent that CPKC and CSXT executed in June 2023 is subject to the Board's jurisdiction, is fundamentally

wrong. The Board regulates the exercise of control of a railroad by a railroad or the acquisition of a rail line. See 49 U.S.C. § 11323(a)(2) (requiring Board approval and authorization for “a purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers.”). The Letter of Intent is simply a non-binding agreement by CPKC and CSXT to each negotiate separate agreements with G&W for the acquisition of different portions of the rail line that MNBR owns or leases. The Letter of Intent is as its name implies, simply an expression of intent.

NS imagines the Letter of Intent as somehow being a “secret overarching agreement between CPKC and CSXT that has not been put before the Board” and that somehow implicates the competitive landscape. NS Comments at 12-13. The Letter of Intent is none of these things. It is a non-binding agreement that has largely fallen away as each party negotiated and executed separate and independent definitive agreements with G&W. The Letter of Intent does not implicate the competitive landscape as it includes no agreement on routing, divisions, or otherwise. And, while its precise terms are not public, its existence is hardly secret. On June 28, 2023, two days after executing the Letter of Intent, CPKC announced in a joint press release with CSXT and G&W that “the parties have agreed to negotiate” definitive agreements that “when completed will create a new direct CPKC-CSXT interchange connection in Alabama.” The press release further explains that “[a]s part of a 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.” See NS Comments Appendix E.

NS cites the Conrail split as precedent for the Board approval of an agreement between two Class I Carriers regarding the property of a third carrier. However, as NS correctly notes,

Conrail involved the “*acquisition of control of Conrail*, together with the agreement to divide the assets thereof.” NS Comments at 18, n. 42 (emphasis changed). Here, CPKC and CSXT are not acquiring ownership or control of MNBR, which instead will continue to exist as a G&W subsidiary. Nor did CPKC and CSXT agree to divide MNBR’s assets. Rather CPKC and CSXT each agreed to pursue negotiations with G&W to acquire certain assets from MNBR. And it is those separate, albeit related transactions, that are subject to STB jurisdiction.

Nor does the APA require consolidation in this instance. The APA affords considerable discretion to agencies to administer their own dockets. *See e.g., Fox Valley & Western Ltd. – Exemption, Acquisition and Operation – Certain Lines of Green Bay and Western R.R. Co., Fox River Valley R.R. Corp. and the Ahnapee & Western Ry Co.*, Finance Docket No. 32036 (ICC served Aug. 25, 1992)(finding consolidation was not warranted but ordered that the proceedings be handled within the procedural schedule established in the common control application). Consolidation of administrative proceedings is generally required only in those circumstances where applicants submit conflicting applications for the same prize and only one can prevail. *See Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 333-34 (1945). That is not the case here where CPKC and CSXT are each seeking to acquire different assets from MNBR.

Nor is there any apparent benefit from consolidation. Although NS continues to pretend otherwise, the CPKC Application and the CSXT Application each consider the cumulative impacts of the two transactions appropriately. The Office of Environmental Analysis (“OEA”) is already conducting a single environmental review addressing the combined impacts of the two transactions with input from CPKC and CSXT. The fact is that these transactions are separate transactions that involve different agreements, different lines, and unique facts and considerations. Each transaction concerns the transfer of assets, and neither involves “control” within the meaning of the § 11323.

CPKC will not operate on the Eastern Line, and CSXT will not operate on the Western Line except to the extent necessary to interchange traffic at Myrtlewood. CPKC and CSXT will make independent decisions with respect to operations.

That said, as CPKC previously told the Board, we do not dispute that the proposed CPKC acquisition depends on CSXT's separately-proposed lease termination transaction, and for that reason, would not object to the Board's coordination of its review of the two transactions. *See* CPKC-3 at 9-10.

B. NS Offers No Evidence that Disturbs the Board's Correct Determination that this is a Minor Transaction

The Board appropriately applied the test for a Minor transaction and determined that CPKC's Transaction meets that test. That test turns on whether the Board can make a determination either that the Transaction clearly will have no anticompetitive effects or that 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. 49 CFR § 1180.2(b). In Decision No. 1, the Board properly determined that "the potential risk of anticompetitive effects are clearly outweighed by the Proposed Transaction's anticipated benefits." Decision No. 1 at 9.

To the extent that the Board seemingly had any question about possible risks of anti-competitive impact, it was primarily with respect to the Laredo gateway. Decision No. 1 at 10. In response to the Board's request, CPKC explained why gateway foreclosure is not a concern, and if there were a theoretical concern, it would be extinguished by the continued vitality of KCSR's 2004 commitment to keep the Laredo gateway open on commercially reasonable terms. *See* CPKC-7 at 3-7. Notably, no commenter raised a concern regarding the Laredo gateway.

Nor has any commenter challenged the many public benefits that will result from the establishment of this attractive and highly competitive option for shippers. In fact, CN and NS

both suggest that CPKC's market analysis understates the volume of traffic that is likely to opt for CPKC-CSXT interline service via Myrtlewood. NS Comments at 28-30; CN Comments at 7-9.

Nevertheless, NS seeks to revisit the Board's Minor determination, boldly promising that it "will demonstrate that ... the CPKC Transaction ... clearly will have significant anticompetitive effects." NS Comments at 30. NS fails to deliver on this promise. Instead of alleging – much less proving – a risk of harm to competition, NS alleges risk of harm to NS, and NS asserts that that risk currently exists.³ Specifically, NS falsely asserts that CPKC's management of the Meridian Terminal interferes with NS main line operations through Meridian and speculates that this interference could be exacerbated by the Transaction. In a footnote, NS vaguely asserts that CPKC interference with NS operations would be anticompetitive without offering the slightest explanation of how any incremental delay to NS trains at Meridian would harm *competition* in any transportation market. NS Comments at 50 n.151. In any event, CPKC's incentive is to promote efficient terminal operations, as demonstrated by its constant communication with NS to coordinate operations and minimize interference. If anything, the Transaction makes terminal fluidity even more important from CPKC's perspective in order to support CPKC's premium train service. The mere fact that the Transaction will introduce a small number of additional trains through Meridian is not a valid reason to impose conditions. *See Norfolk S. Ry.—Acquisition & Operation—Certain Rail Lines of the Del. & Hudson Ry Co., Inc.*, ("NS/D&H"), Finance Docket No. 35873, slip op. at 27 (STB served May 15, 2015) (denying conditions to address claim that

³ NS also muses about the possibility that {{ [REDACTED] }} opens the plant, it will enjoy an additional competitive option as a result of the Transaction.

transaction “might increase the complexity of [a carrier’s] routing options by adding another carrier”).

In any event, NS’s alleged risk of harm is based on pre-existing conditions—not Transaction-related harm. In fact, a large portion of NS’s comments is focused on presenting evidence purporting to show CPKC’s supposed pre-Transaction operating issues. As discussed in III(B)(2) below, NS’s attempt to blame CPKC for NS’s own operational issues is misdirected and based on incorrect factual assertions. Further, operational concerns would not provide a basis for modifying the Board’s determination that the Transaction is Minor. *See NS/D&H*, slip op. at 27. NS’s failure to identify a risk of Transaction-related competitive harm reflects the simple truth that the Transaction is entirely pro-competitive.

Lastly, NS contends that the Letter of Intent somehow transforms this Transaction into a transaction of “national and regional significance.” But as discussed in II.A. above, the Letter of Intent is not an agreement or transaction subject to STB jurisdiction and is not before the STB. The Transaction before the Board in proceeding is between a Class I and a Class III, involving just 50.4 miles of rail line in a small geographic area. Even if considered with the CSXT lease termination transaction, the combined Western Line and Eastern Rail Line mileage is less than 150 miles, far less mileage than other transactions that the Board has treated as Minor. *See e.g., NS/D&H*, slip op. at 1-2 (determining NS’s acquisition and operation of 282.55 miles of rail line to be minor transaction); *Genesee & Wyoming Inc.—Control—Railamerica, Inc., et al*, FD 35654, slip op. at 6 (STB served Dec. 20, 2012) (minor transaction involving thousands of miles across numerous state); *Soo Line Corporation – Control – Central Maine & Quebec Railway US Inc.* (“*Soo/CMQR*”), FD 36368, slip op. at 4 (STB served May 1, 2020) (finding transaction to be minor involving over 300 miles). In any event, under the Board’s test, a determination by the Board that

the public benefits outweigh the risk of anticompetitive harm would also constitute a determination that a proposed transaction is not of national or regional significance. *See Soo/CMQR*, slip op. at 4.

C. There is No Need for Further “Market Analyses”

NS and CN insist that CPKC be required to further supplement the analysis of the rail traffic changes flowing from the Transaction set forth in the Application and the Supplemental Information filed November 21, 2023. CN offers a detailed prescription of what it envisions as an appropriately “credible study projecting future traffic volumes” (CN Comments at 5-9), whereas NS asserts (without foundation) that “Applicants have conducted no meaningful joint study of the cumulative impacts of the two transactions.” NS Comments at 26.

These demands are nothing more than another gambit to delay the Transaction. They are meritless for at least three reasons: 1) they are wrong as a factual matter – Applicants have provided the Board with extensive and sophisticated evidence addressing likely traffic gains flowing from the new, more effective competition unlocked by the Transaction taking place against the backdrop of the separate CSXT Transaction; 2) they disregard the fact that Board’s rules applicable to Minor transactions do not require a market analysis at all (*see* 49 CFR § 1180.7), meaning that the extensive analysis that Applicants have already provided goes well beyond what those rules require; and, 3) at bottom, CN’s and NS’s arguments go to the completeness of CPKC’s Application, but the Board has already determined that CPKC’s Application was complete and neither NS nor CN timely sought reconsideration of that determination.

The hollowness of CN’s and NS’s arguments is manifest on the face of their own Comments in this proceeding. They point to nothing suggesting that a more precise or robust traffic study might affect any fact bearing on the operational issues they raise. Exactly what traffic is on the two or four new trains passing through Meridian and Jackson is of no consequence to the

question whether the Transaction will have adverse competitive consequences (or even operational consequences) outweighing its clear benefits. This truth is revealed in stark terms by CN's and NS's analyses of operational issues, flawed though they may be.

The fact is that CPKC has provided the Board and the public with traffic estimates that enable the Board to fully and reliably evaluate the Transaction's likely impacts. CPKC's methodology, which relies on CPKC's Senior Vice President Sales & Marketing, Bulk & Intermodal Jonathan Wahba and his team's deep knowledge and experience in the affected markets, is both reasonable and appropriate under the circumstances. Indeed, it is the same analysis that CPKC undertook internally in determining to pursue the Transaction. It is of course a prediction about the future and subject to inherent uncertainty as with all forecasts of the future.

To be sure, in Decision No. 1 the Board instructed CPKC to detail potential impacts on other rail operations on lines beyond the Western Line, and CPKC's Supplemental Information does exactly that. That evidence, building on Mr. Wahba's underlying traffic analysis, provides ample basis for evaluating how much traffic will be added to rail lines west of Meridian – especially given that this is a Minor transaction involving an estimated increase of traffic of just two trains a day within the first five years, with incremental growth thereafter, on lines that demonstrably have available capacity.

Contrary to CN's implication, the Board did not direct Applicants to submit an entirely new traffic study. CN Comments at 5. Instead, the Board merely required that CPKC provide supplemental information regarding origins and destinations, gateways, interchange partners and associated volumes by origination/destination areas for the diverted and new traffic that CPKC has *already projected*. Decision No. 1 at 10. CPKC provided this very information in its Supplemental Information (CPKC-7).

III. THE BOARD SHOULD APPROVE THE TRANSACTION AND REJECT ALL REQUESTS FOR CONDITIONS

A. Standard for Approval and Conditions in Minor Transactions.

This is a Minor transaction subject to 49 U.S.C. § 11324(d), which requires that the Board approve the Transaction unless it finds both that the Transaction is likely to result in “substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation” and that “the anticompetitive effects of the transaction outweigh the public interest.” 49 U.S.C. § 11324(d). Thus, in order to disapprove the Transaction, at a minimum the Board must find that the competitive harm is both substantial and likely. However, even if the Board “were to find that there would be likely and substantial anticompetitive impacts, [the Board] may not disapprove the transaction unless the anticompetitive impacts outweigh the benefits and cannot be mitigated through conditions.” *NS/D&H*, slip op. at 14. Accordingly, in assessing such transactions, the Board’s “primary focus is on the anticipated competitive effects” and the Board’s exercise of its conditioning power is generally limited to addressing such competitive harm. *Id.*; see also *Norfolk & W. Ry.—Purchase—Ill. Terminal R.R.*, 363 I.C.C. 882, 891-92 (1981) (“*N&W/Illinois Terminal*”), *aff’d sub nom. Illinois v. ICC*, 687 F.2d 1047 (7th Cir. 1982). As the Board explained in *N&W/Illinois Terminal*,

we believe we should not attempt to impose a condition on our approval of a transaction-related to a matter which we could not lawfully consider as a basis for withholding our approval of that transaction. In enacting new subsection 11344(d), Congress unambiguously stated its intent that ‘the number of factors the Commission must consider in ruling on transactions other than merger would be reduced.’ H. Rept. 96-1430, 96th Cong. 2d sess. 120 (1980). Any effort to review the purchase price (or any other issue unrelated to competition) would remove all limits on the ‘number of issues’ we must consider in approving a transaction; it would frustrate Congress’ intent in enacting subsection 11344(d). To give effect to the congressional intent, we will exercise our conditioning power only where a condition bears on issues we may consider in deciding whether to approve a transaction.

Id. at 891-92. Although the Board has discussed ambiguity in the statute, it has appropriately maintained its focus on competitive harm and has generally limited the exercise of its conditioning power in non-major transactions to addressing anticompetitive effects. *See Bessemer & Lake Erie Railroad Company—Acquisition and Operation—Certain Rail Lines of CSX Transportation, Inc.*, Docket No. FD 36347, slip op. at 4 (STB served Feb. 25, 2021). Other than the exercise of its NEPA and employee protective conditioning power, and its power to impose conditions designed to protect the integrity of the Board’s processes, the Board has not imposed non-competition related conditions on non-major transactions.

The Board has “broad authority to impose conditions to ameliorate competitive harm that might result from the proposed transaction.” *NS/D&H*, slip op. at 22. In exercising that authority,

the harm caused by the transaction must be distinguished from pre-existing disadvantages that other railroads, shippers, or communities may have been experiencing . . . i.e., pre-existing disadvantages that will neither be caused nor exacerbated by the transaction. Furthermore, the harm must be to competition, not to a particular competitor. The Board’s conditioning power is thus used to preserve competitive options (not to expand them).

Id., slip op. at 22-23 (citations omitted). However, the Board may not impose “conditions to remedy anticompetitive effects” unless it finds:

(1) . . . that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market); (2) that the conditions to be imposed will ameliorate or eliminate the harmful effects; (3) that the conditions will be operationally feasible; and (4) that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger.

Can. Nat’l Ry.—Control—Ill. Cent. Corp., Finance Docket No. 33556, Decision No. 7, slip op. at 4 (STB served Sept. 18, 1998) (citing *Union Pac. Corp.—Control—Mo. Pac. Corp.*, 366 I.C.C. 462, 562-65 (1982)). *See also Can. Nat’l Ry.—Control—Duluth, M. & I.R. Ry.*, Finance Docket No. 34424, slip op. at 14 (STB served Apr. 9, 2004).

The burden is on the party seeking the condition to demonstrate that it is necessary. *CSXT Corp.—Control—Chessie Sys., Inc.*, 363 I.C.C. 521, 577 (1980) (“protestants have not demonstrated that any of the conditions sought are necessary”); *Rio Grande Indus., Inc.—Purchase & Trackage Rights—Chicago, M. & W. Ry. Line Between St. Louis, MO & Chicago, IL*, 5 I.C.C.2d 952, 968-69 (1989) (“*RGI/CMW*”) (in a transaction subject to the predecessor statute of § 11324(d), the burden is on the opponents to submit evidence sufficient to overcome the agency’s tentative conclusion that it would have no anticompetitive effects).

Responsive applications are not permitted in proceedings involving a Minor transaction. 49 C.F.R. § 1180.4(d)(1); *see also NS/D&H*, slip op. at 25 (finding that comments requesting the assignment of trackage rights to “essentially constitute a responsive application that is prohibited in this minor transaction.”). Board regulations define a request for “affirmative relief” that “requires an application, petition, notice, or any other filing to be submitted to the Board (such as trackage rights . . .)” as a responsive application. 49 C.F.R. § 1180.3(h).

B. The Board Should Deny NS’s Requested Conditions

In addition to NS’s requested conditions seeking to impose unnecessary procedural burdens on the Transaction, NS requests that the Board condition the Transaction on a full-scale redesign of the Meridian Terminal.⁴ As discussed below, NS’s requested conditions seek to address a long-standing desire by NS to redesign Meridian to serve its purposes at CPKC’s expense. The NS-requested conditions are also based on a false narrative that CPKC is to blame for operating issues on NS’s line. By pointing the finger at CPKC, NS hopes to persuade the Board to impose a solution that is contrary to the terms of CPKC’s and NS’s agreement governing the joint facilities in this

⁴ NS also asks the Board to impose conditions on CSXT with respect to the Selma gateway. CSXT is not an Applicant in this proceeding and CPKC cannot reach Selma. Accordingly, no such condition would be appropriate in this proceeding.

area. The conditions are also untethered from any likely Transaction-related risk of harm to competition which merit the imposition of any conditions, let alone the specific conditions requested by NS which would do inordinate harm to CPKC operations and would frustrate the public benefits of the Transaction.

1. NS's Desire to Re-Design the Meridian Terminal at KCS's Expense Long Pre-Dates This Transaction

For well more than a decade, NS has sought to persuade KCS to agree to reconfigure the Meridian Terminal so that it better serves NS's main line operations. Simmons/Phillips VS at 8-10. NS's proposals would have inflicted considerable harm on KCS. They would have required KCS to give up capacity, yard property, and control of the Meridian Terminal, and to pay for the privilege of doing so. *Id.* at 9. NS's proposals would have run NS's new main line through KCS' yard, shrinking KCS's yard and potentially subjecting KCS's switching operations to NS's main line traffic. The proposals would have significantly harmed KCS's ability to operate efficiently in or through Meridian, to compete with NS, or to grow. *See* Simmons/Phillips VS at 9. Even NS has internally acknowledged that {{ [REDACTED]

[REDACTED] }} *See* Exhibit 3.. NS's proposals were designed by NS solely for NS's benefit and without regard for KCS's operations. NS's requested conditions no. 4-7, which seek to reconfigure the Meridian Terminal to address pre-existing conditions, simply recycles NS's same self-serving proposals.

NS acknowledges, as it must, that the issues with Meridian are indeed pre-existing. A large portion of NS's filing is dedicated to inaccurately describing historical and current issues—not Transaction-related issues.

2. There Is No Basis for Concluding that the Transaction Will Cause Any Material Disruption at the Meridian Terminal

a) The Only Meaningful Current Issues Stem from NS's Operations and Actions, Not CPKC's

As Steve Simmons and Ronnie Phillips explain, four railroads operate in the Meridian Terminal. NS's north-south rail line (also used by Amtrak) crosses CPKC's rail line to Artesia and CPKC's rail line connecting the Meridian Speedway (operated by its designated operator, KCS) to MNBR.⁵ Simmons/Phillips VS at 2-3. As shown in Figure 2, NS's Atlanta-New Orleans main line runs through Meridian and crosses CPKC's main line just west of the Amtrak station. There are two crossovers where the lines meet with manual switches that are under CPKC's local trainmaster's control. The Meridian Speedway, which is operated by its designated operator, KCS, branches off from the crossovers to the west toward Jackson and Shreveport. From the crossovers, CPKC's main line continues both east to the CPKC yard and Western Line, and north to Artesia. NS's main line is double tracked east of the crossovers and single tracked south of the crossovers. East of the Amtrak station, the NS double tracked main line crosses CPKC's Artesia line using diamonds which are managed on a neutral "first come, first served" basis. Amtrak accesses the station using NS's north main line.

⁵ A fifth railroad, the Meridian Southern Railroad also operates and interchanges in the terminal, but accesses CPKC's yard and NS's yard from the south and does not operate on or across the NS, CPKC, or MSLLC main line.

Figure 2 – Meridian Terminal



Each afternoon, one northbound and one southbound Amtrak New York-to-New Orleans Crescent train stops at the Amtrak station in Meridian. The station is located on NS's north main. MNBR interchanges CPKC traffic in CPKC's yard and NS traffic on NS's interchange track. As reviewed below, CPKC operates two trains through Meridian on its Artesia line and a local from Artesia. CPKC and NS also interchange four train pairs daily in Meridian. Altogether, approximately 22 trains a day – NS, CPKC, CPKC-NS/NS-CPKC and Amtrak – operate through the Meridian Terminal.

NS complains that Meridian is a bottleneck and blames CPKC's management of the terminal for interfering with its operations. NS Comments at 157. The simple fact is that, to the

extent NS's concerns regarding terminal fluidity are genuine, NS's operating and investment decisions, not CPKC's management of the terminal, are responsible for creating congestion in the terminal and on NS's north-south corridor. NS's decisions in Meridian and elsewhere account for its dismal Amtrak Customer On Time Performance ("OTP") record and its operational challenges.

These poor decisions include refueling and changing crews in the Meridian Terminal for all NS's north-south traffic. NS refuels and recrews at Arundel Road which is south of the crossovers where NS's main line is single tracked making it difficult if not impossible for traffic on NS's main line, including Amtrak, to move through Meridian. Simmons/Phillips VS at 6, 13.

In addition, for westbound trains, NS stops on one of its main lines just east of 26th Avenue to refuel and hand off to CPKC. While the train is stopped, NS blocks CPKC's Artesia line. Simmons/Phillips VS at 6. At this location, NS has two main lines. If NS uses the north main line for interchange, as it sometimes does, it will also block Amtrak access to the Meridian station. If both mains are occupied, NS's main line is effectively plugged.

NS operates a priority transcon intermodal train's (train 29S) which is scheduled to arrive in Meridian around the same time as Amtrak's scheduled arrival. Thus, it should come as no surprise that a {{ [REDACTED] [REDACTED] }}. The delays to Amtrak are likely exacerbated by the fact that, as NS acknowledges, it has limited siding capacity in the vicinity of Meridian, which makes unscheduled meets and passes particularly challenging. NS Comments at 163. NS could address this issue by adding sidings that would relieve pressure on the terminal. Amtrak

⁶ NS contends that a significant portion of FTI events occur in Meridian. The Amtrak Delay Data NS produced in discovery, {{ [REDACTED] [REDACTED] }}

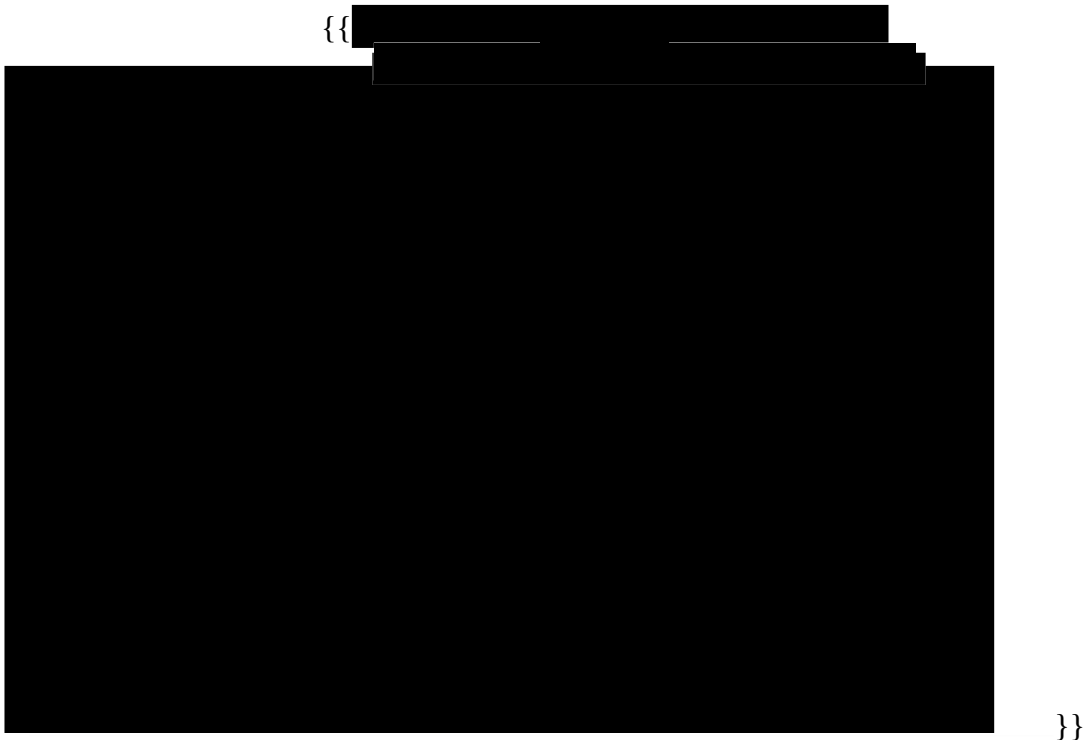
}} See Amtrak Crescent Delay Data for 2023 attached as Exhibit 4 hereto.

delays are also likely exacerbated by NS's practice of operating long trains on its New Orleans corridor.⁷ Although NS has previously identified sidings that should be extended to support its longer trains including at Boligee, Alabama (50 miles north of Meridian), it has thus far declined to make the investments necessary to align its infrastructure with the lengths and volume of trains that it insists on operating on this corridor.

That NS's lack of investment in sidings to match its capacity needs in this corridor is a problem is reflected in {{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

which suggests that the picture is more complex than NS paints.

⁷ According to NS's own data, between October 21 and November 20, 2023, 29 of its New Orleans trains exceeded 8,500 feet. NS Comments 149, Exhibit III-16.



NS's efforts to blame CPKC for over length trains that NS contends gums up the Terminal are particularly unwarranted given that for the majority of the trains that currently operate through Meridian, NS controls train length. CPKC obviously cannot control the length of trains that NS operates on its New Orleans line or the westbound Meridian Speedway trains that NS delivers to CPKC in Meridian. Less obvious is the fact that CPKC has no control over the eastbound Meridian Speedway trains that CPKC handles in haulage for NS including the UP/NS transcon intermodal priority trains that UP delivers to CPKC in Shreveport to handle in haulage on NS's account. Under the MSLLC agreements, CPKC must accept haulage trains up to 8,500 feet. .

NS identifies 80 Meridian Speedway trains between October 21, 2023 and November 20, 2023 that were too long to fit on AV track in Meridian. As it turns out, NS was responsible for 61 of these trains, 37 westbound trains that NS delivered to CPKC at Meridian and 24 eastbound

⁸ Based on Amtrak Crescent Delay Data for 2023, Exhibit 4.

haulage trains that UP/NS delivered to CPKC at Shreveport. Simmons/Phillips VS at 11. [In any event, eastbound trains that are too long to fit on the AV track overhang on to the Meridian Speedway where they block CPKC's operations until NS departs with the train; they do not block NS's main line. *Id.* at 8.

NS also complains that its train crews must line the switches by hand which causes delay. NS Comments at 152. What NS omits is the fact that KCS previously agreed to power up the switches provided NS paid, which was entirely reasonable as the project was for NS's benefit. Simmons/Phillips VS at 9. To date, however, NS has been unwilling to invest the money to address this issue. *See* December 22, 2022 E-mail from David Lehlbach included as Exhibit 3 hereto. NS also omits that, presumably to save on labor costs, it has recently reduced its use of utility employees to line the switches and now relies primarily on its train crews for this task. NS Comments at 82 n.1.

Most of NS's concerns could be addressed by NS, but NS has been unwilling to make either the investments or the operational changes necessary to address its operating issues. Instead, NS is trying to use this proceeding as leverage either to force CPKC to subsidize improvements to NS's operations and to cede control of some or all of the Terminal, or simply to poison the Transaction and thwart the onset of competition.

NS's false narrative that CPKC is responsible for NS's operational issues on its north-south corridor is based on inaccurate and misleading assumptions and assertions regarding CPKC's operations. Contrary to NS's claims, CPKC trains do not change crews in Meridian and with the exception of train 257, do not have scheduled work events in Meridian that foul the crossovers or the NS mainline. Moreover, after the Transaction, CPKC will have no scheduled work events that foul the crossovers or NS's main line. Simmons/Phillips VS at 6-8. CPKC operations are not

currently responsible for NS's operational issues and for NS's poor record as an Amtrak host, and the Transaction would only diminish the risk of future interference with NS operations.

That CPKC does not now, and will not in the future, cause undue interference with traffic on NS's line is evident from a review of CPKC's relatively limited current and proposed operations in and through Meridian:

- Shreveport-Artesia: CPKC operates daily two scheduled trains through the Meridian Terminal between Shreveport and Artesia (trains 266 and 267). Neither have scheduled work events in Meridian or change crews in Meridian and both operate in the early morning before 6:00 AM, several hours before the first Amtrak train is due in at 1:30 PM.
- Artesia Local: CPKC operates an Artesia local (trains L51) Monday through Friday out of Artesia. This train operates to and from CPKC's yard in Meridian and conducts any switching in CPKC's yard, clear of the NS main line. The Artesia local typically handles approximately 10 cars and has minimal impact on NS's main line operations.
- CPKC-NS Interline and Haulage: CPKC operates daily four eastbound trains (trains 166, 168, 256, and 968) for delivery to NS in Meridian and four westbound trains that it receives from NS in Meridian (trains 167, 169, 257, and 969). Of these, only the two manifest trains (trains 256 and 257) have scheduled CPKC work events in Meridian. The eastbound 256 delivers Meridian cars, e.g., short line interchange (including haulage) and local Meridian traffic⁹ to CPKC's

⁹ CPKC serves two customers in Meridian, both are served in CPKC's yard clear of the NS main line. Simmons/Phillips VS at 7.

yard, before interchanging the train to NS. This requires CPKC to transit the crossovers; however, the work is performed clear of the NS main line.¹⁰ The westbound 257 lifts short line interchange including haulage and local Meridian traffic from CPKC's yard. This is the only CPKC work event that requires CPKC to stop on the NS main line,¹¹ and even then, CPKC coordinates with NS to mitigate any impact on NS's main line operations. Train 257 is scheduled to perform its work in the morning and depart Meridian at 7:00 AM, long before 1:32 PM when the first Amtrak train is scheduled to arrive at Meridian. CPKC delivers the other eastbound trains to NS on the AV tracks short of the crossovers.¹²

- Transaction-Related Shreveport-Myrtlewood: CPKC plans to operate daily in each direction between Shreveport and Myrtlewood. The eastbound train will operate through the Meridian Terminal with no scheduled work events. The westbound train will lift interchange traffic from CPKC's yard on the east side of Meridian, clear of the NS main line. It will then operate through the Meridian Terminal.

b) The Transaction Will Assist in Streamlining CPKC's Operations in Meridian

¹⁰ CPKC stops on the Meridian Speedway AV tracks west of the crossovers, uncouples the Meridian block, pulls the block across the crossovers, and shoves back to the CPKC yard to set off. CPKC then moves the locomotive back to the AV track, and reassembles the train. NS then refuels the train and departs Meridian. Simmons/Phillips VS at 7.

¹¹ After receiving this westbound train in interchange from NS, a CPKC crew pulls train 257 forward on the NS main line and then shoves back to the CPKC yard to lift MNBR interchange traffic and local Meridian traffic. During this operation, the head-end of the locomotive blocks NS's main line. Simmons/Phillips VS at 7-8.

¹² As discussed above, an eastbound train which is too long to fit on the AV track, will overhang onto the Meridian Speedway until NS takes the train. This blocks the Meridian Speedway and does not block operations on NS's main line. Simmons/Phillips VS at 8.

In a feeble attempt to tie its existing fluidity issues to the Transaction, NS speculates that the Transaction could potentially exacerbate these issues. NS Comments at 47. Just the opposite is true. The Transaction would actually streamline operations in Meridian.

The primary concern expressed by NS is that CPKC trains currently block through traffic when conducting switching operations in Meridian. NS is apparently referring to train 257, as that is the only CPKC train that fouls the NS's main line while it performs switching in Meridian. *See* Simmons/Phillips at 8. The Transaction, however, would enable CPKC to eliminate this train 257 work event. *Id.*

After the Transaction, CPKC would use the westbound CPKC-CSXT interline train to pull traffic clear of the NS main line and the crossovers. Additionally, because CPKC would handle traffic that is currently interchanged to MNBR and handled in haulage to CSXT, the Transaction would reduce the amount of cars that CPKC interchanges in Meridian. *Id.* It would also reduce traffic on the Artesia line. Thus, the Transaction would streamline operations in the terminal, mitigating, not exacerbating, the primary concern NS posits.

NS casts doubt on CPKC's ability to use the westbound CPKC-CSXT train to pick up interchange traffic from CPKC's yard clear of the NS main line. V.S. Kuehn at 159. NS's consultants wonder whether this interchange operation will be unsustainable because, according to them, it will block A Street and B Street. *Id.* In truth, the westbound train does not need to block either street in order to interchange clear of the NS main line. Simmons/Phillips at 8. The westbound train can stop short of A Street and/or B Street, and use the headend locomotive to operate light to CPKC's yard, lift interchange traffic, and shove back to the train. Once reassembled, the westbound train can move efficiently through the terminal, clearing the crossovers and continuing west on the Meridian Speedway approximately seven minutes after

beginning its move. The eastbound CPKC-CSXT train would operate through Meridian without performing any scheduled work, crew change or refueling, although it may pause to allow NS cross-traffic to clear the crossovers. Simmons/Phillips VS at 7. Its impact on NS main line operations should be similarly inconsequential.

NS also complains that NS's line crosses CPKC's line to Artesia. NS Comments at 55. This is an existing circumstance, not Transaction-caused. The Transaction, however, would reduce the traffic on the Artesia line, which may help mitigate NS's concerns. Simmons/Phillips VS at 14. While NS quibbles as to whether this reduction in volumes would have a positive impact on NS's operations, it certainly would not have a negative impact.

3. NS's Proposed Conditions Are Unwarranted and Overreaching

a) There Is No Competitive (or Even Material Operational) Impact to Address

As discussed in II.B. above, NS has not identified any likely Transaction-related harm to competition. Nor is there any such risk of harm. No shipper would lose an option as a result of the Transaction. Nor is there likely Transaction-related operational harm. Not only would the Transaction streamline CPKC operations in Meridian, it will also increase CPKC's incentive to ensure a fluid terminal as CPKC will be operating its new premium train service through Meridian.

Viewed in the best light for NS, NS is asking the Board to protect it from increased complexity in operating through the Meridian Terminal that it alleges would result from the Transaction. The Board, however, is not concerned with protecting competitors from such impacts. *Soo/CMQR*, slip op. at 6.

b) NS's Conditions Would Intrude in the Consensual Joint Operations of a Terminal and Provide It with an Unwarranted Windfall

In addition to mutual incentives to maintain terminal fluidity, NS and CPKC are party to agreements that address their joint operations through Meridian and provide mechanisms to address infrastructure and operational issues. Indeed, it is clear from NS internal correspondence, that {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }} NS, however, would prefer that CPKC bear the cost.¹³ In other words, NS is asking the Board to give it a better deal than the one it negotiated in 2006. That is not the Board’s role. *See Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 35), FD 36500, slip op. at 116-117 (STB served Mar. 15, 2023) (“The Board will not impose a condition that lacks a sufficient nexus to the transaction or that is designed to place a proponent in a better position than it occupied before the Transaction.”). NS’s request that the Board order Board-sponsored mediation is all part of the effort to resolve issues that are unrelated to the Transaction outside the context of, and contrary to, the terms of existing agreements.¹⁴ NS

13

{{ [REDACTED]

[REDACTED] }}, NS has not made the needed investments. Instead, NS continues to look for ways to make CPKC subsidize its capacity improvements.

¹⁴ NS asks the Board to order CPKC to participate in Board sponsored mediation to discuss the proposed redesign. The Board’s regulations specifically state that Board-sponsored mediation “shall not be available in a regulatory proceeding to obtain the grant, denial, stay or revocation of a request for construction, abandonment, purchase, trackage rights, merger, pooling authority or exemption related to such matters.” 49 CFR § 1109.1. NS purports “to waive any application of that Section, to the extent necessary for the Board to order such mediation.” NS Comment n. 168. The regulations do not contemplate the possibility of waivers, and in any event, NS cannot unilaterally waive the applicability of this provision.

Comments at 63. The Board has appropriately relied on the existence of private agreements such as the MSLLC and trackage rights agreements as providing a framework for addressing operational and infrastructure issues that might arise. *Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 35), FD 36500, slip op. at 99, 116-117, 130-32 (STB served Mar. 15, 2023).

NS's request for the Board to impose oversight and reporting requirements is merely an extension of this same effort to seek a better deal from the Board. NS Comments at 64. Specifically, NS asks the Board to impose a minimum 5-year oversight period during which "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." *Id.* The condition would also require CPKC to report quarterly "information to the Board related to the volume of new or diverted traffic moving through the Meridian Terminal and any service reliability issues resulting from traffic congestion or delays." *Id.* If legitimate issues should arise, those issues can and should be addressed by NS and CPKC within the context of those agreements and without Board involvement. Accordingly, the Board should reject the proposed conditions. Anything else would represent an unwarranted windfall for NS.

NS's requested conditions are also disproportionate to any alleged potential competitive harm and would undermine the public benefits of the Transaction. The conditions would take away CPKC's property, reducing its current and future operating capacity. They would significantly reduce the efficiency of CPKC's Meridian operations, subjecting its yard operations to potential interference from NS's new main line. They would also hand control of CPKC's route to Artesia to NS, changing the diamonds NS uses to cross CPKC's main line from CPKC's neutral "first come, first served" approach to NS dispatched and forcing CPKC to operate on NS's main line

(shared with Amtrak) via trackage rights to access its Artesia line.¹⁵ And all of this would be based on the alleged risk of harm posed by just two trains a day, one of which would simplify operations by performing clear of NS's main line the switching operations that train 257 currently performs on NS's main line, and the other would have no scheduled work events in Meridian. Each would carry traffic that is currently interchanged to MNBR in Meridian to handle in haulage, further simplifying CPKC's Meridian operations. Each would move through the crossovers in approximately seven minutes.

NS's proposed conditions are disproportionate even to NS's imagined harm and would impose an inordinate price on the Transaction. Further, these conditions go far beyond simply protecting NS against any potential impact of transaction-related traffic and are aimed squarely at addressing a pre-existing perceived disadvantage. For these reasons they must be rejected. *See Soo/CMQR*, slip op. at 6.

c) In any Event, NS Seeks Affirmative Relief that Requires a Responsive Application and Is Therefore Barred

As NS acknowledges, to implement NS's plan to remake the Meridian Terminal would require NS to grant CPKC trackage rights over NS's main line in order to access CPKC's Artesia line. NS Comments at 62-63. It would also require the construction of connecting track to connect NS's main line to CPKC's. *Id.* at 62. At a minimum both the grant of trackage rights and construction of connecting track would require STB authority, and therefore, require the filing of a responsive application. However, as discussed above, responsive applications are prohibited in a Minor transaction.

¹⁵ NS conditions include reconfiguring CPKC's line to Artesia even though traffic over the line is projected to decrease as a result of the transaction.

4. CPKC Does Not Object to a Condition Holding CPKC to Its Affirmative Representations Made on the Record in This Proceeding

NS asks the Board to impose “a condition requiring Applicants to adhere to all of the representations made on the record during the course of the Growth Transaction proceeding.” NS Comments at 64. CPKC has no objection to a condition that requires CPKC’s adherence to the representations relating to this Transaction that CPKC made on the record in this proceeding.

C. The Board Should Deny CN’s Requested Conditions

1. CN’s Purported Concerns About MSLLC Cross-Traffic Are Longstanding and Amply Addressed by KCS’s Past Investments in the Jackson Switch Tender

Similar to NS, CN speculates that the additional transaction-related traffic moving over the Meridian Speedway could interfere with operations on the CN main line in Jackson, Mississippi where the MSLLC and CN rail lines cross. CN Comments at 9-11. Those concerns are longstanding and were addressed between 2011 and 2015 when MSLLC invested approximately \$40 million to modernize the Jackson Switch Tender and increase capacity on the Meridian Speedway.

The Jackson Switch Tender is a 0.4-mile stretch of CN’s main line. MSLLC operates over the trackage via trackage rights to cross CN’s main line as depicted in Figure 4.

Figure 4 – Jackson Switch Tender



As Steve Simmons explains, in 2011, MSLLC paid \$25 million to CN to cover the cost of powering up the Jackson Switch Tender switches used by Meridian Speedway traffic, increasing the maximum operating speed through the switches to 30 MPH. Simmons/Phillips VS at 17-18. Between 2013 and 2015, MSLLC made additional investments in its own line on either side of the Switch Tender totaling approximately \$15 million by adding double track and straightening out curves in order to increase operating speed and allow trains to approach the Switch Tender while waiting for a signal to enter. *Id.* These investments reduced the time between when a Meridian Speedway train receives a signal from CN dispatch and when it clears the Switch Tender to as little as four minutes for an 8,500-foot train (the current maximum length for trains on the Meridian Speedway; Transaction-related trains are projected to average approximately half that length within the first five years). *Id.* Because MSLLC paid to power up the switches, the switches can

handle traffic on CN's line as soon as Meridian Speedway traffic clears. *Id.* In addition to increasing capacity and velocity on the Meridian Speedway, these investments benefited CN, Amtrak and MSLLC by increasing velocity through the Jackson Switch Tender and reducing the opportunity for conflict with Meridian Speedway traffic. *Id.*

2. There Is No Basis for Concluding that the Transaction Will Cause Any Material Disruption to CN (or Amtrak) Operations at Jackson

As to CN's new-found concern for Amtrak's City of New Orleans service's On Time Performance, CN controls and dispatches the Jackson Switch Tender. CN Comments at 10 n.25. Accordingly, whether Amtrak receives priority on CN's line is up to CN. At least when it comes to traffic on the Meridian Speedway, it has been CPKC's experience that CN's dispatchers give priority to Amtrak over traffic moving on the Meridian Speedway. Simmons/Phillips VS at 18-19. If Amtrak is within 30 minutes of the Switch Tender, MSLLC traffic is held out until Amtrak clears. *Id.*

Further CPKC purposefully schedules its trains, including the forecasted transaction-related trains, to minimize the risk of coinciding with Amtrak at the Tender. The eastbound train is scheduled to arrive in Jackson at 3:10 AM and, as the Tender is located between Shreveport and Jackson, would transit the Jackson Switch Tender just before arrival. Westbound trains are scheduled to depart Jackson at 7:50 PM¹⁶ and would transit the Tender shortly after departing. Amtrak trains are scheduled to transit through Jackson around noon and again around 6:30 PM.

CN is dismissive of the effectiveness of CPKC's efforts to schedule around Amtrak. Highlighting its own shortcomings as an Amtrak host, CN points to the fact that Amtrak often arrives out of slot. Whether Amtrak arrives out of slot is dependent in large part on CN, and is

¹⁶ CPKC's Supplemental Information incorrectly identified the westbound scheduled departure time from Jackson as 19:60. See CPKC-7 15. The correct scheduled departure time is 19:50.

wholly out of CPKC's control. So too is whether Amtrak receives priority at the Jackson Switch Tender when it does arrive late. In any event, MSLLC's prior investments in the Switch Tender mean that any impact of a conflict on either Amtrak or Meridian Speedway traffic should be negligible.

It is noteworthy that Amtrak did not specify any concern regarding the impact of Transaction-related traffic on the City of New Orleans service.

3. CN's Proposed Conditions Are Inappropriate, Unwarranted and Serve No Useful Purpose

CN also requests that the Board impose a 5-year oversight period and a regulatory reporting burden. Specifically, CN asks the Board to require monthly reporting of Meridian Speedway traffic data. However, CN has not demonstrated any need for such reporting or oversight. CPKC already reports traffic data to CN to facilitate billing under the Jackson Switch Tender trackage rights agreement. In fact, CN dispatch requires train crews to report crew, tonnage, loaded cars, and empty cars before it will provide a signal for the Jackson Switch Tender. *Simmons/Phillips VS* at 18—19. No purpose would be served by a public reporting obligation.

Nor is there a reason or need for oversight. CN has identified no risk of competitive harm which would warrant the Board's exercise of its conditioning power now or in the future. Nor has CN identified a credible concern regarding the potential harm to operations on its line. Both CPKC and CN have an incentive to coordinate to maintain efficient and fluid operations through the Jackson Switch Tender. CPKC's incentive is evidenced by its substantial prior investment in the Jackson Switch Tender and MSLLC's adjoining track. In the unlikely event an issue arises in the future, CN and MSLLC can and should address it within the context of their agreements governing use of the Jackson Switch Tender, without the need for Board involvement.

D. CPKC Will Remain Committed to Adhering to its Agreement with Amtrak Without the Need for Action in this Docket

When it comes to hosting Amtrak, CPKC has the best record in the nation. CPKC regularly earns an A+ rating from Amtrak. This rating does not happen by accident. It is a product of hard work, commitment, planning and execution on a daily basis wherever Amtrak touches our network. CPKC is proud of that distinction and intends to maintain it, by working cooperatively with Amtrak.

During the CP-KCS control proceeding, CP and Amtrak executed an agreement that, among other things, committed to a joint study for Amtrak service on the Meridian Speedway, the I-20 Service. CN Comments at 7. CPKC, of course, intends to adhere to that agreement.

Amtrak acknowledges CP's existing commitment to the joint study, but expresses a general concern regarding potential implications for the future I-20 Service of Transaction-related traffic growth and the fact that CPKC's application is "not more explicit regarding the impact on, or the commitment to, the proposed Amtrak I-20 service." CPKC believes that the evidentiary record makes clear that there would be little or no impact on a future Amtrak service of a small number of additional trains operating on the Meridian Speedway, especially in light of the inevitable changes that would have to occur to accommodate future growth in freight traffic volumes generally (including NS traffic having nothing to do with the Transaction) in this important east-west corridor.

Amtrak seeks three conditions. First, Amtrak asks the Board to require CPKC to adhere to its commitments it made in CP/KCS, which the Board imposed as a condition in that proceeding. No purpose would be served by re-imposing the same conditions here, and doing so could create unnecessary confusion.

Second, Amtrak asks the Board to require CPKC to adhere to “the commitments and representations regarding Amtrak that CPKC has made in this proceeding.” While CPKC generally does not object to a condition that CPKC be required to adhere to the formal representations it has made in this proceeding, CPKC is concerned that any such condition not be applied in an overbroad manner. The “commitments” that CPKC has articulated in this proceeding all relate to the continued vitality of the Settlement Agreement that was entered into in the CP/KCS proceeding and imposed as a condition there. Thus, as to Amtrak a condition holding CPKC to its representations would add nothing.

To be sure, CPKC has also provided statements, analysis, and evidence showing that there is no basis for concern about the impact on Meridian Speedway operations – and by extension potential future Amtrak operations over the Speedway – associated with the Transaction. But as the Board has consistently held, that kind of evidence – e.g., about train length, capacity, and operational design – is not an appropriate foundation for rigid and inflexible conditions imposed on a transaction. *See, e.g., Guilford Trans. Indus., Inc.—Control—Delaware and Hudson Railway Co.*, 366 I.C.C. 396, 419 (1982)..

A salient example illustrating why any such condition would be inappropriate is Amtrak’s request that the Board impose as a condition that, “except in an emergency, its representation that train lengths on the Meridian Speedway will not be permitted to exceed the length of sidings along the Speedway.” Amtrak Comments at 5. Amtrak attempts to turn CPKC’s representation that it does not currently permit over-length trains to operate on the Meridian Speedway into a hard and fast rule that CPKC will not permit such trains in the future. CPKC should not be held to a representation that it did not make, and one that could have unintended and harmful consequences.

Although as a general practice, CPKC believes that carriers should align their operations with their physical capacity, converting an operating practice or philosophy into a rigid condition imposed by the Board goes too far. There are instances where operating a train that exceeds the length of some number of sidings on a line would make good operational sense. For example, it would not be necessary to lengthen every siding on the Meridian Speedway to facilitate the operation of at least some longer trains, perhaps in one direction or the other during a particular part of the day. There is no *a priori* reason to believe that any and all such movements would impact fluidity or Amtrak service, especially if traffic volumes were low or given that Amtrak's potential operations are yet undetermined. In those instances, running an over-length train may be desirable. CPKC needs the operational flexibility and not just in an “emergency.”

At the end of the day, the central question is whether a host railroad’s operating practices are improperly impacting Amtrak’s OTP metrics, as NS’s operating practices appear to be doing to Amtrak’s Crescent service and CN’s to the City of New Orleans service. If there are issues that cannot be resolved within the context of the Amtrak-host agreements, Congress has provided Amtrak with an avenue to seek relief. Congress has not given the Board authority to act prophylactically.

E. The Brotherhood of Railroad Signalmen

The Brotherhood of Railroad Signalmen (“BRS”) also filed comments in this proceeding but do not request the imposition of conditions. Rather BRS encourages CPKC to carefully plan the upgrade and maintenance of the Western line and highlight the importance of such planning for safety.

CPKC agrees with BRS that careful planning is a crucial step in upgrading and future maintenance of the line. CPKC has already begun the planning process as reflected in the information CPKC provided to the Board in its Supplemental Information filing.

CPKC also agrees that safety is paramount. CPKC finished 2023 with the lowest FRA train accident frequency among Class 1 railroads: building on CP's previous 17 consecutive years leading the industry. CP's safety record has been hard-earned and reflects a deep and enduring corporate commitment. This commitment includes its innovative "HomeSafe" program that reinforces safety as part of our culture. During 2023, CPKC has successfully integrated several key safety deliverables such as an integrated safety rule books, uniform safety accountabilities and rolling out engagement initiatives across the network such as safety walkabouts and our annual safety awards for excellence that showcased award winners from all three countries.

CPKC's ownership, investment, in and maintenance of the Western Line will improve the safety of the line and will create jobs.

CONCLUSION

Applicants respectfully request that the Board grant CPKC's Application in its entirety and without conditions other than standard employee protective conditions.

Dated: January 26, 2024

Respectfully submitted,

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*Counsel for Canadian Pacific Kansas City Limited and
The Kansas City Southern Railway
Company d/b/a CPKC*

CERTIFICATE OF SERVICE

I hereby certify that I have caused Applicants Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC's Rebuttal in Support of its Application (CPKC-13) to be served by e-mail or by first class mail this 26th day of January, 2024 on all parties of record, the Secretary of Transportation, and the Attorney General of the United States.

/s/ David F. Rifkind

EXHIBIT 1

VERIFIED STATEMENT OF

STEVE D. SIMMONS AND RONNIE

PHILLIPS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**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**

VERIFIED STATEMENT OF STEVE D. SIMMONS AND RONNIE PHILLIPS

My name is Steve D. Simmons. I am Director of Border and Interline Operations for The Kansas City Southern Railway Company (“KCS”). I have held several positions at KCS since 2010, including Director of Border and Interline Operations and Senior Manager of Network Planning. In those capacities I have become familiar with MSLLC and the Meridian Terminal and discussions with Norfolk Southern (“NS”) regarding the Meridian Terminal, including potential reconfiguration of the Meridian Terminal. I am also familiar with MSLLC’s investments in the Meridian Speedway including the Jackson Switch Tender.

My name is Ronnie Phillips. I am the General Manager Operations for CPKC’s Southeast Division, a position that I have held since April 2023. In this capacity, I have responsibility for the operations in the Meridian Terminal and the Meridian Speedway. I have been employed by KCS since 2002 and have held a variety of positions including as Division Superintendent and Terminal Superintendent which also have included operational responsibility for the Meridian Terminal.

Accordingly, I am familiar with rail operations in the Meridian Terminal and through the Jackson Switch Tender.

We have reviewed the public versions of comments filed in this proceeding including the NS's Comments and Requests for Conditions, Illinois Central Railroad Company's ("CN") Comments and Requests for Conditions on CPKC's Acquisition of the MNBR's Western Line, and the Comments of National Railroad Passenger Corporation ("Amtrak").

The purpose of our statement is to 1) provide the Board with an overview of Meridian and its operations and refute NS's assertion that CPKC does not hold the rights needed to operate through Meridian to the Western Line; 2) describe the impact of NS and CPKC's respective operations on fluidity in Meridian; 3) provide some history of discussions between KCS and NS going back at least a dozen years regarding reconfiguration of the Meridian Terminal and how those are unrelated to the current transaction; 4) describe steps that NS could take today to address its fluidity and capacity concerns that do not require Board action and would not harm CPKC operations and capacity; 5) explain how the Transaction would streamline operations in Meridian; and, 6) explain how NS's requested conditions would negatively impact CPKC's operations and current and future capacity. Additionally, we provide some historical background regarding MSLLC's investment to improve efficiency and increase capacity of the CN-owned Jackson Switch Tender, address some misleading assertions in CN's comments, and explain why CN's proposed conditions are unnecessary.

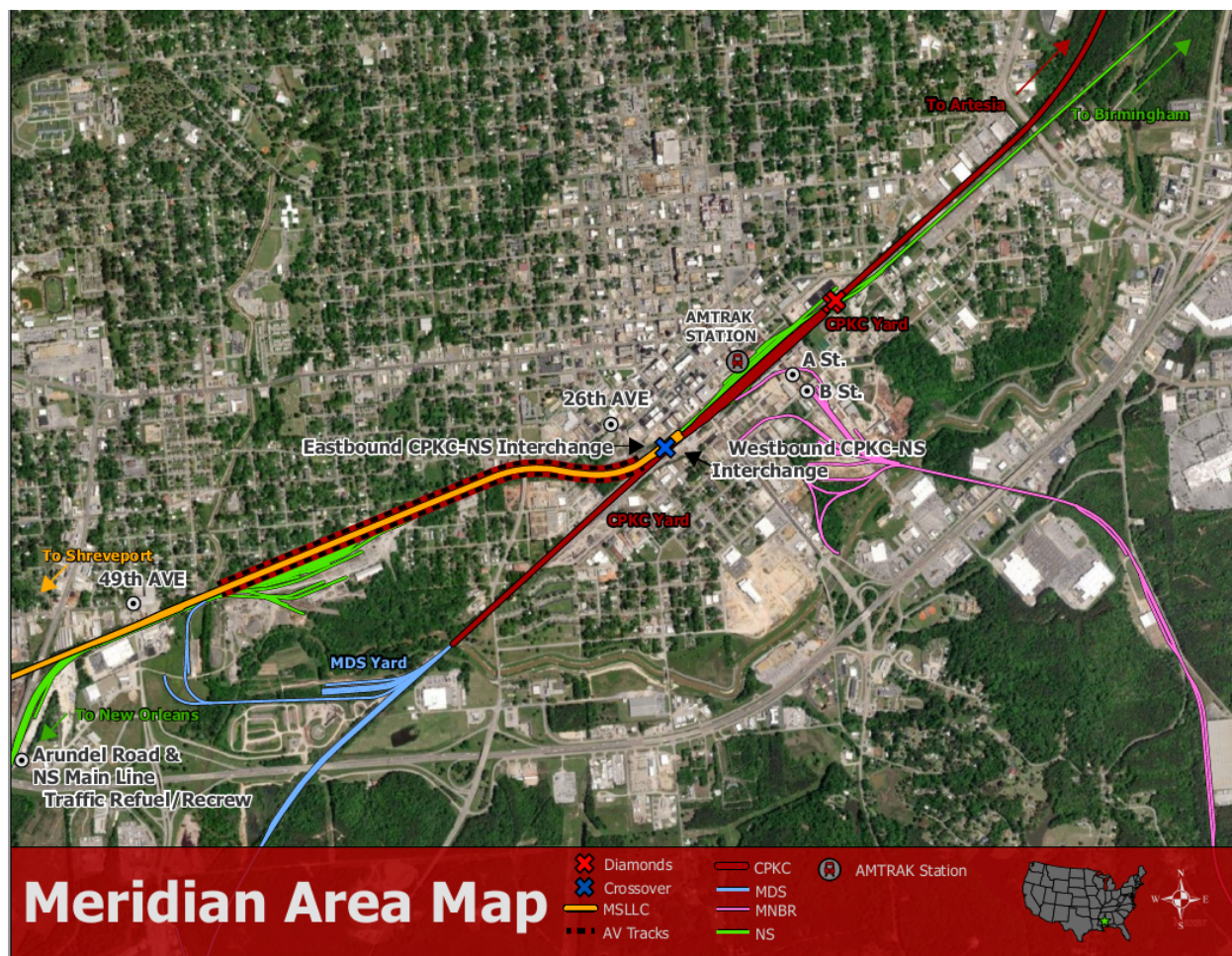
I. Meridian

A. Meridian Today

Four railroads operate in the Meridian Terminal. NS's north-south rail line (also used by Amtrak) crosses CPKC's rail line to Artesia and CPKC's rail line connecting the Meridian

Speedway (operated by its designated operator, KCS) to MNBR. A fifth railroad, the Meridian Southern Railroad also operates and interchanges in the terminal, but accesses CPKC's yard and NS's yard from the south without the need to cross either the NS, CPKC, or MSLLC main line.

Figure 1 – Meridian Area Map



There are double crossovers in Meridian where NS's Atlanta – New Orleans double tracked main line crosses CPKC's main line. These crossovers are about 200 feet in length and include a series of hand thrown switches. There is also a set of diamonds east of the Amtrak station where NS's main lines cross CPKC's Artesia line. As the senior railroad, CPKC controls and dispatches the crossovers and the diamonds where NS crosses CPKC. Control and dispatch of the crossovers

is under the local CPKC trainmaster's authority. The diamonds, where NS crosses CPKC's Artesia line are on a "first come, first served" basis.

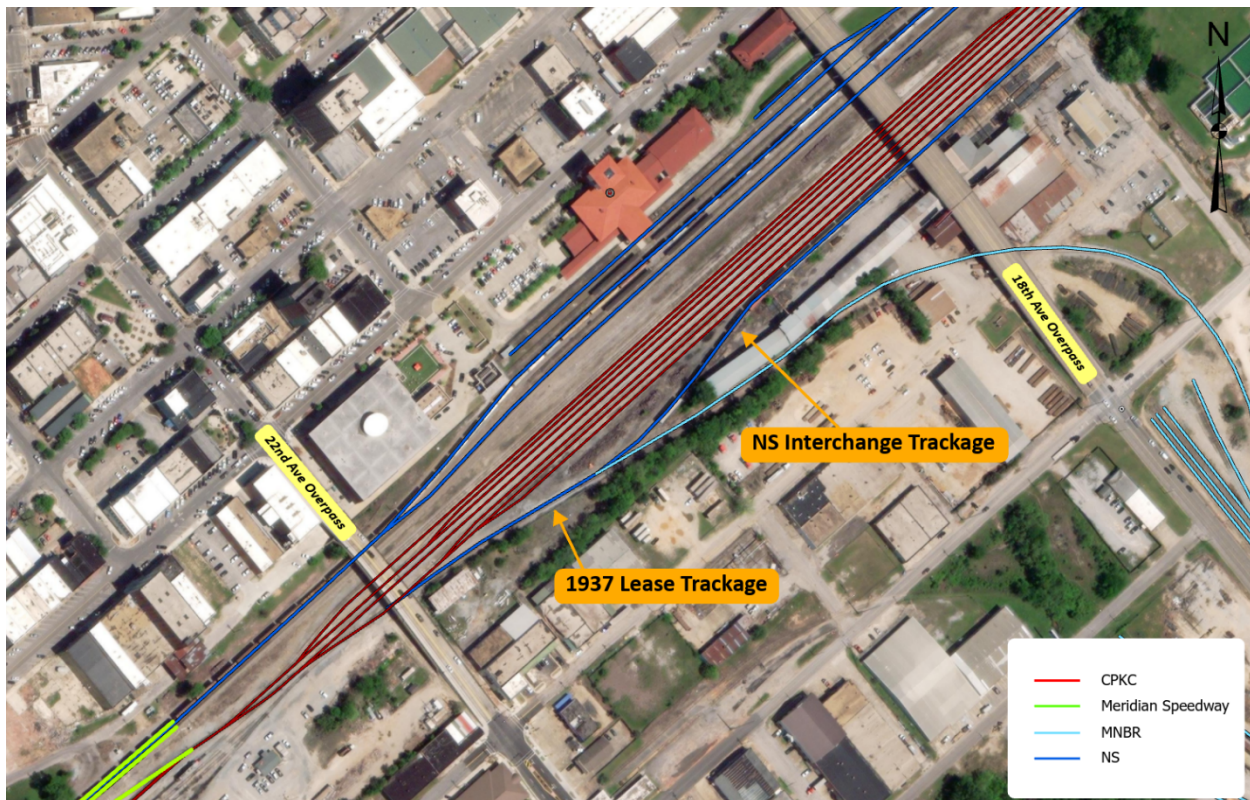
Each afternoon, one northbound and one southbound Amtrak New York-to-New Orleans Crescent train stops at the Amtrak station in Meridian. The station is located on NS's north main. MNBR interchanges CPKC traffic in CPKC's yard and NS traffic on NS's interchange track. As reviewed below, CPKC operates two trains through Meridian on its Artesia line and a local from Artesia. CPKC and NS also interchange four train pairs daily in Meridian. Altogether, approximately 22 trains a day – NS, CPKC, CPKC-NS/NS-CPKC and Amtrak – operate through the Meridian Terminal.

CPKC delivers eastbound manifest and haulage trains to NS on the Meridian Speedway's AV tracks (2 sidings on the east end of the Meridian Speedway) on the west side of Meridian. NS delivers westbound manifest and haulage trains to CPKC east of 26th Avenue on either of NS's two main lines (NS's main line is double-tracked at this location in the terminal). The trains are refueled and we swap crews. NS is responsible for dispatching fuel trucks. We give each other two hours' notice of expected arrival so that crews can be called in advance. In our experience, the vast majority of the time, a CPKC crew is ready to move the westbound train as soon as NS gives us authority. All of NS's main line traffic stops in Meridian at Arundel Road to refuel and change crews.

At least since 1937 and likely as far back as 1922, CPKC (and its predecessors) have leased from NS (and its predecessors) and maintained approximately 500 feet of track in the CPKC Meridian yard. This track, shown in royal blue below in Figure 2, connecting to the light blue track on one end and the red track on the other, connects CPKC's main line to the MNBR and connects to NS's interchange track. MNBR currently uses the track to deliver interchange traffic to CPKC's

yard. MNBR also uses the track, as well as CPKC's track, when it interchanges traffic to NS. After the Transaction, CPKC will use this leased track in operating through Meridian between the Meridian Speedway and the Western Line. Further, MNBR will continue to use this track to interchange in Meridian, including MNBR interchange with NS. There are no other viable options for connecting to the MNBR and the Western Line.

Figure 2 – Meridian Map Showing Leased Short Section of Trackage



It is my understanding that NS is asserting that it terminated the lease of this short section of track to KCS's predecessor in 1956 and that CPKC does not have rights to operate over the leased track. This assertion is not correct. Although NS sought to terminate the lease in 1956 and replace it with a new lease, NS agreed to KCS's continued "use of this track after the expiration of the cancellation notice on a temporary basis pending conclusion of a new agreement." See Exhibit A hereto. It appears that the parties never got around to concluding a new lease. In the

meantime, NS has continued to invoice, and KCS has continued to pay rent annually, to use the track, and to maintain it. See Exhibit B hereto.

B. NS Operations Impact Meridian Fluidity; CPKC's Meridian Operations Have Minimal Impact on NS's Operations

In our experience, NS's operating issues in Meridian stem primarily from the operating choices NS makes. This includes stopping all NS trains in Meridian to refuel and change crews. When it stops a train on its Atlanta-New Orleans main line at Arundel Road, NS blocks its single tracked main line. This practice thus creates a bottleneck for NS and can make it difficult if not impossible for Amtrak to go around, depending on the length of NS's train and available yard track capacity. When NS delivers westbound trains to CPKC it does so on either of its two main lines in front of the Amtrak station and blocks CPKC's line to Artesia. If NS uses the north main next to the station, it will also block Amtrak's access to the station. These practices contribute to any congestion NS experiences moving through the Terminal. Other factors, including the volume and length of trains and NS's lack of sidings in the vicinity of Meridian also contribute to NS's challenges.

NS asserts that CPKC's operations and management of the Meridian Terminal are responsible for interfering with NS's main line traffic including Amtrak's Crescent service. NS variously asserts that CPKC trains conduct crew changes and work events that regularly block the crossovers, diamonds, Amtrak's access to the station and NS's mainline and that this will be made worse by the addition of Transaction-related traffic. NS's description of CPKC's operations, however, is inaccurate. The following description of CPKC's current scheduled, and planned Transaction-related, train operations in Meridian demonstrates that CPKC operations have minimal impact on NS's and Amtrak's Meridian operations and will have even less of an impact following the Transaction:

- Shreveport-Artesia: CPKC operates daily two scheduled trains through the Meridian Terminal between Shreveport and Artesia (trains 266 and 267). Neither have scheduled work events in Meridian or change crews in Meridian and both operate in the early morning several hours before Amtrak.
- Artesia Local: CPKC operates an Artesia local (train L51) Monday through Friday out of Artesia. This train operates to and from CPKC's Meridian yard and conducts any switching in CPKC's yard clear of the NS main line. The Artesia local typically handles approximately 10 cars and has minimal impact on NS's main line operations.
- CPKC-NS Interline and Haulage: CPKC operates daily four eastbound trains (trains 166, 168, 256, and 968) for delivery to NS in Meridian and four westbound trains that it receives from NS in Meridian (trains 167, 169, 257, and 969). Of these, only the two manifest trains (trains 256 and 257) have scheduled CPKC work events in Meridian. The eastbound 256 delivers Meridian cars, e.g., short line interchange (including haulage) and local Meridian traffic (CPKC has two customers which it serves in CPKC's yard clear of the NS main line) to CPKC's yard, before interchanging the train to NS. That work, however, is performed clear of the NS main line. CPKC stops on the Meridian Speedway AV tracks west of the crossovers, uncouples the Meridian block and pulls it across the crossovers before shoving back into the CPKC yard. CPKC then moves back across the crossovers and shoves back to the AV track, and reassembles the train. An NS crew then refuels the train and departs Meridian.

The westbound 257 lifts short line interchange including haulage and local Meridian traffic from CPKC's yard. This is the only CPKC work event that blocks the NS main line, and even then, CPKC coordinates with NS to mitigate any impact on NS's main line operations. Train 257 is scheduled to perform its work in the morning and depart Meridian at 7:00 AM, long before 1:32 PM when the first Amtrak train is scheduled to arrive at Meridian. After the Transaction, train 257 will no longer be scheduled to pick up traffic in Meridian. That work will be performed by the westbound train from Myrtlewood.

CPKC delivers eastbound trains to NS on the AV tracks short of the crossovers. If the train is too long to fit on the AV tracks, it will overhang on to the Meridian Speedway until NS takes the train. This blocks the Meridian Speedway and does not block operations on NS's main line.

- Transaction-Related Jackson-Myrtlewood: CPKC plans to operate daily in each direction between Jackson and Myrtlewood (eventually this train would operate between Shreveport and Myrtlewood once there is sufficient traffic). The eastbound train (train 998) will operate through the Meridian Terminal with no scheduled work events. The westbound train (train 999) will lift interchange traffic from CPKC's yard on the east side of Meridian, clear of the NS main line. It will then operate through the Meridian Terminal.

C. NS's Desire to Redesign Meridian Dates Back More Than a Dozen Years

KCS and NS have long discussed changes to Meridian Terminal operations. Those discussions predate my (Steve Simmons) joining KCS. This statement focuses on the discussions that have occurred since I joined KCS in 2010.

In 2011, I (Steve Simmons) attended a meeting of the MSLLC's Joint Operating Committee ("JOC") in Jackson, Mississippi (the JOC is a committee of executives designated by the MSLLC's owners, KCS and NS, to monitor and manage operations and maintenance on the MSLLC). At this meeting, KCS and NS discussed the progress of the engineering plans for the possible full-scale redesign of the Meridian Terminal. This plan would use a significant portion of the initial capital that NS invested in MSLLC to fund this terminal redesign, despite the fact the terminal is not MSLLC property. At the August 11, 2011, MSLLC Management Committee meeting, the placeholder on funds for the Meridian Terminal was moved to the CN Jackson Switch Tender project (discussed below) by unanimous consent of the MSLLC Management Committee. Due to the reallocation of funds, and disputes over the design itself, the JOC members were unable to reach consensus on a plan for Meridian.

Of particular concern to KCS was the fact that the proposed realignment would have reduced KCS's yard capacity, negatively impacted access to MNBR, and negatively impacted KCS's operations in and through the terminal.

Since 2011, KCS and NS have had repeated discussions outside of the MSLLC framework regarding the Meridian Terminal. This includes a 2020 discussion regarding NS's desire to power up and control the switches in Meridian. *See* E-mail from Randall Hunt to Steve Simmons dated Sep. 11, 2020 attached hereto as Exhibit C . At the time, KCS agreed to power up the switches, but believed that NS should fund the project because powering up the switches was of no benefit to KCS. KCS was not prepared to cede control of the switches to NS which would have reduced KCS's current and future capacity and exposed KCS operations to significant risk of delay and interference from NS.

NS again raised the issue in 2021 in the context of discussions regarding NS's desire to operate longer trains on the Meridian Speedway. NS had gone ahead and begun running much longer trains to and through Meridian before putting infrastructure in place to accommodate those trains. That change to longer trains was prompting a significant increase in run times. To address this issue, KCS identified sidings on the MSLLC and one siding on KCS's Greenville Sub (between Shreveport and Dallas) that would need to be extended to accommodate the longer trains NS wanted to run. In addition, NS identified sidings on its network, including at Boligee, Alabama, which is approximately 50 miles from Meridian, that would need to be extended. NS also identified changes at Meridian that it wanted to make. Those discussions initially were unsuccessful in part because NS wanted KCS to make certain changes to the Meridian Speedway Agreement and for KCS to bear 100% of the costs of improvements on the Greenville Sub, even though they were to support NS's ability to run longer trains and there was not a business case for KCS to invest in the siding extensions.

Following those discussions, I (Steve Simmons) was surprised when NS unexpectedly sent KCS a Memorandum of Understanding ("MOU") dated June 30, 2021, that provided that NS would pay for the improvements, reconfigure Meridian, and increase NS's ownership share in MSLLC. *See* June 30, 2021 MOU attached hereto as Exhibit D. To my knowledge (including based on discussions I have had with others involved), although NS had neither previously discussed the proposed increased ownership stake, nor shared a draft of the MOU, the MOU that NS sent KCS was already executed by NS's CEO. KCS did not execute the MOU as it was inconsistent with the terms of the MSLLC agreements.

Under the MSLLC agreements, NS has the option of funding a project that is for its benefit, but this does not entitle NS to an increased ownership share.

D. NS Could Take Steps to Improve its Operations Through Meridian Without Involving CPKC

If NS is in fact experiencing issues moving through the Meridian Terminal and is serious about improving its and Amtrak's operations through Meridian, there are several steps that NS could take on its own that would not interfere with or burden CPKC operations, reduce CPKC's capacity, or require CPKC contribution. They include the following:

1. Align Train Lengths with Capacity

NS's description of its line as having a "lack of sidings" in the vicinity of Meridian is consistent with our understanding of the NS north-south line. NS Comments at 36. This limited capacity means that there are fewer places for meets and passes on the corridor. If trains exceed the length of the available sidings, this further limits operational flexibility and typically increases run times.

According to NS's own data, in just one month on its Atlanta-Birmingham-New Orleans line that runs through Meridian, NS operated 29 trains through Meridian that were longer than 8,500 feet and 64 trains between 6,800 and 8,500 feet. *See Exhibit III-16 at NS page 149.*

We reviewed CPKC's data for the same period that is covered by NS's Exhibit III-16 (p. 149); *i.e.*, October 21, 2023 to November 20, 2023. NS identifies 80 Meridian Speedway trains between October 21, 2023 and November 20, 2023 that were too long to fit on AV track in Meridian. NS was responsible for 61 of these 80 trains: 37 westbound trains that NS delivered to CPKC at Meridian and 24 eastbound haulage trains that UP delivered to CPKC at Shreveport to move on NS's account. NS refers to these trains as CPKC trains and suggests that CPKC is to blame for these trains blocking the crossovers, including when Amtrak is in the station. However, CPKC has no control over the length of these trains or when NS delivers the westbound trains to

CPKC in Meridian. Also, no train should ever occupy the crossovers other than to transit through them.

2. Invest in Powering Up the Switches

KCS previously offered to power up the crossover switches in Meridian at NS's expense but NS declined. CPKC derives little benefit from powering up the switches given traffic volumes and the fact that the agreement governing NS's use of the crossovers provides that the switches must be left in their "normal position lined and locked for [CPKC's] mainline movement." Powering up the crossover switches is thus for NS's benefit and it is undoubtedly fair that NS should fund it. Alternatively, NS could also make greater use of its utility employees to line and reset switches, an option it has used in the past. Either option would address NS concerns regarding delay occasioned by its train crews stopping to line the switches.

3. Invest in Infrastructure on its Own Lines

NS could invest in more and longer sidings which would facilitate more meets and passes of its longer trains, which would undoubtedly help improve Amtrak performance on the line. For example, several years ago, NS identified needed siding extensions at Boligee, Alabama on its line north of Meridian, but it is our understanding that NS has not yet pursued these projects.

4. De-conflict its Schedule and Adhere to Schedule

NS could take steps to eliminate the conflict between Amtrak's schedule and NS's longer southbound and westbound trains, to reduce the risk that NS's trains will be blocking the main line tracks when Amtrak arrives in Meridian or that Amtrak will meet or need to pass NS's trains on a segment of NS's main line where NS admittedly has limited sidings. Of course, NS would also need to do a better job of adhering to those schedules. In my (Ronnie Phillips) experience, NS trains, and Amtrak, operating to or through Meridian are frequently out of slot when they arrive in Meridian. This unpredictability makes it both more challenging for CPKC terminal operations and

increases the likelihood of an NS / Amtrak conflict both in the terminal and in unplanned meets and passes along the route where there is limited available siding capacity to meet or pass.

5. Move Work Events Outside the Terminal

NS could relocate its crewing and fueling facilities from Meridian which would free up NS's main line in Meridian and minimize the amount of time NS westbound trains block access to the Amtrak stations. In fact, KCS previously proposed moving refueling out of Meridian for trains that CPKC and NS interchange in Meridian. NS refused.

E. The Transaction Would Streamline, Not Exacerbate Delays In Meridian Operations

As we describe above, train 257 lifts traffic in Meridian from CPKC's yard. These interchange operations take approximately one hour during which at least one of NS's mainline tracks is tied up. After the Transaction, CPKC intends to use the westbound train 999 from Myrtlewood to lift that traffic. That operation would be performed without the need to occupy NS's main line as currently happens with train 257. Train 999 would stop likely before B Street as it comes off the Western Line. The locomotive would then operate light to CPKC's yard to lift interchange traffic before returning to the train with the interchange traffic, reassembling the train and departing through Meridian on to the Meridian Speedway. The train would take approximately seven minutes to transit the crossovers. These operations simplify CPKC's operations through Meridian.

In addition, CPKC would no longer interchange haulage traffic to MNBR in Meridian. That traffic will now be handled by CPKC to Myrtlewood. Thus, the volume of cars switched in Meridian will also decrease.

CPKC also expects that some traffic that currently moves on CPKC's Artesia line will shift to a Myrtlewood routing. This should reduce the volumes on the Artesia line, at a minimum reducing the length of trains that use the diamonds east of the Amtrak station.

F. NS-Proposed Conditions Would Take Away Capacity from CPKC and Harm CPKC's Operational Fluidity

NS's prior proposals had three things in common which made them unacceptable to KCS. First, KCS would have to pay to make improvements that were for the sole benefit of NS. Second, NS would assume control of the switches which would put KCS's operations at the mercy of NS. CPKC had concerns regarding NS's management of its main line and the implications for CPKC traffic and capacity. Third, KCS's property would be used by NS to construct a second NS main line which would cut through the KCS yard, potentially significantly interfering with KCS yard operations and reducing future capacity. In sum, NS's proposals involved KCS paying in dollars, in operational fluidity, and in current and future capacity—all to improve NS's operations, which KCS was not prepared to agree to on the terms NS was offering. NS's current request for conditions recycles nearly all aspects of these prior proposals by asking the Board to impose them on CPKC for NS's benefit.

For example, NS's Condition No. 4(a) involves NS building a new main line, which Mr. McClellan acknowledges, would be on CPKC property. This condition would have several harmful effects on CPKC operations. First, it would take away CPKC active yard tracks and property that is available for future CPKC capacity. Second, it would result in NS's main line traffic operating through CPKC's yard which, depending on the new line's location, could cause significant interference with CPKC yard operations. Third, it would force CPKC's Artesia trains to operate via a new trackage rights arrangement over NS's existing main line—the same line that Amtrak uses.

NS's Condition 4(b) would require CPKC to power up the switches at CPKC's expense even though powering up the switches is for NS benefit. As noted above, KCS previously agreed to power up the switches for NS at NS's expense, but NS refused.

As described by NS, NS's Condition 4(c) would require CPKC to fund and build a new connection to NS's mainline with switches to be controlled by NS. CPKC trains operating to and from Artesia would now need NS authority for Meridian access and egress and would be required to pay NS a trackage rights fee under a new trackage rights arrangement as well as to pay to maintain the switches that NS would control. Further, the condition would require severing the current connection between the Artesia line and CPKC's yard in Meridian. This would require CPKC's local Artesia assignments to access the NS line via the crossovers, further offsetting any efficiency NS contends would be realized by CPKC Artesia traffic.

NS's condition 4(c) would impose operating conditions that dictate that CPKC use NS's proposed new trackage rights route for its Artesia traffic, thereby cementing NS's control of that CPKC traffic. Proposed condition 4(c) also seeks to impose a one-sided condition that new CPKC Transaction-related traffic "transit and not foul the Switch Tender." CPKC trains have no planned stops in the Switch Tender/crossovers.

Mr. McClellan's description of the required infrastructure projects includes a requirement that MSLLC extend the AV tracks in Meridian. The AV tracks consist of two sidings on the Meridian Speedway. Extending the AV tracks is a project that NS is free to pursue within the context of the MSLLC agreements which provide a mechanism for making improvements and resolving disputes between the parties. Also, as Mr. McClellan acknowledges in his verified statement, extending the AV tracks is dependent on closing or grade separating the 49th Avenue crossing which, as discussed below, is not feasible.

NS's condition 5 would require CPKC to expend considerable resources in grade crossing closures/separation projects for crossings at 8th Avenue, 11th Avenue and 49th Avenue. 8th and 11th Avenues are north of CPKC's yard and cross multiple NS tracks, making the proposed closures for NS's benefit, yielding no meaningful benefit for CPKC's traffic.

We had previously looked at 49th Avenue and concluded that neither closure nor grade separation was a viable option. 49th Avenue is a major route carrying traffic between downtown and I-20, making closure infeasible. As to grade separation, there are businesses immediately adjacent to the track on both the north and south sides. Trucks use 49th Avenue to access a distribution center north of the track there, with entrances about 100, 160 and 300 feet from the track. To bring a grade separation structure back to surface level after spanning the 6 tracks crossing 49th Avenue would probably block entrances to these businesses, and foreclose the current direct truck access to the distribution center, necessitating that trucks reroute through Meridian. There would be similar impacts to businesses south of the tracks on 49th Avenue. Accordingly, grade separation is not a feasible option.

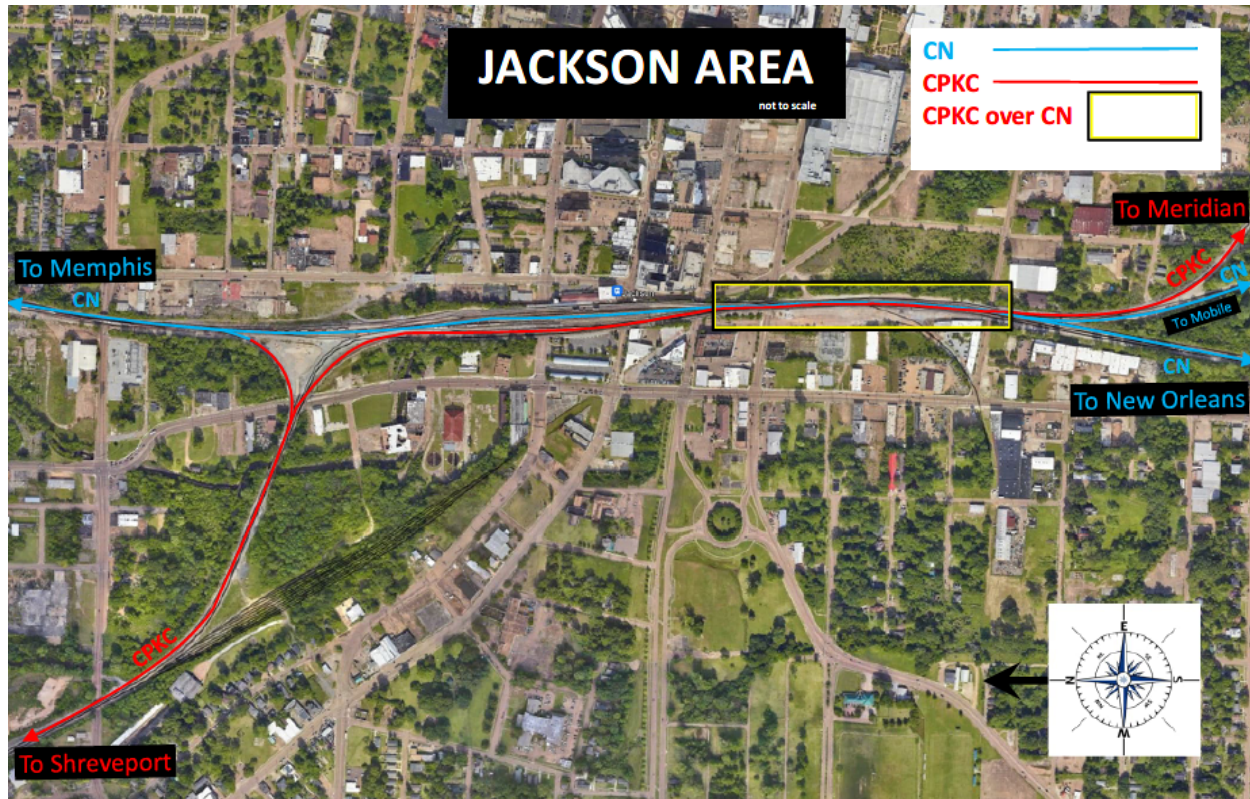
II. Jackson

A. The Jackson Switch Tender Has Sufficient Capacity to Absorb the Transaction-Related Traffic Without Impacting CN and Amtrak Traffic

As explained in CPKC's Supplemental Information [CPKC-7], the Jackson Switch Tender, or Joint Tracks, is a .4-mile stretch of track that is owned and controlled by CN and is located on the west side of downtown Jackson. See Figure 3. KCS has trackage rights over the Jackson Switch Tender. CN and Amtrak trains operating on CN's north-south line and CPKC's trains operating east-west on the Meridian Speedway must utilize the Jackson Switch Tender to cross each other's

lines. A train on MSLLC line must obtain authority from a CN dispatcher before it can enter the Switch Tender.

Figure 3 – Jackson Switch Tender



CN implies that it takes a long time for a Meridian Speedway train to traverse all six switches of the Jackson Switch Tender. This may have been true prior to 2011, when KCS crews had to stop to line the switches manually in both directions (the switches had to be left lined for CN's main line; CN main line traffic did not have to line the switches), but is not the case today because of investments MSLLC made. In 2011, because the investment was for MSLLC's benefit, MSLLC agreed to pay CN to power up the Jackson Switch Tender switches at a cost of approximately \$25 million. In addition, in 2013-14, MSLLC invested approximately \$15 million to double-track the approaches and straighten the curve on MSLLC's rail line east and west of the Switch Tender. Together, these projects increased maximum operating speeds on the approach

and through the tender to 30 MPH. At 30 MPH, an 8,500-foot train (the current maximum length operated on the Meridian Speedway) should clear the Jackson Switch Tender in approximately four minutes.

Double-tracking the approaches also shortened the time between when a train receives a signal to enter the Jackson Switch Tender and when it actually enters. On the west side, MSLLC was able to double track to Gallatin Street which lines along the west side of the Switch Tender. This allows eastbound trains to approach the entrance of the Switch Tender while waiting on a signal and to enter the Tender almost immediately upon receiving the signal. On the east side, MSLLC was able to double track from our yard to the Pearl River dyke to get within approximately 6,300 feet of the Tender. This allows westbound trains to enter the Tender within approximately two to four minutes of receiving a signal, depending on train speed.

Thus, MSLLC's prior investments significantly reduced the potential for conflict with traffic moving on CN's line and created additional available capacity over the Jackson Switch Tender for both CN, Amtrak and CPKC.

CN references a weekly four-hour maintenance work block that CN attributes to heavy traffic on the Meridian Speedway. This statement is potentially misleading. While we are aware that CN performs maintenance during a work block each week, it is our understanding that this window is also used to perform necessary maintenance on switches that are used solely by traffic on CN's north-south line, not just those that allow MSLLC trains to cross the CN line.

CN also expresses concern that the Transaction-related trains will compress operating windows for other traffic. First, as we discuss above, because of MSLLC's prior investments, from the time that an 8,500-foot train receives the signal to the time it clears the Jackson Switch Tender is generally between four and eight minutes depending on speed and location of the train when it

receives the signal. Thus, the two Transaction-related trains should have a negligible impact on CN and Amtrak's operating windows.

Second, it is worth noting that on those days on which the maintenance work-block compresses the operating windows for the day by four hours, we still manage to maintain fluid operations on the Meridian Speedway through Jackson. CN does not indicate that the four-hour work-window is disruptive to CN operations. If it was, we presume CN would have spread the work-window over multiple days. This continued fluidity of the line reflects the fact that the Jackson Switch Tender can easily accommodate many more movements than it currently handles.

CN also raises a concern that, notwithstanding CPKC's scheduling its Transaction-related trains to avoid Amtrak's slots, there is a potential for conflict because Amtrak trains frequently run out of slot. We are aware that Amtrak trains operating on CN's lines have a poor on-time performance record and frequently arrive in Jackson late. However, this does not change the fact that CN controls and dispatches the Jackson Switch Tender and can protect Amtrak movements through the Tender. In fact, it is our experience that CN dispatch will hold Meridian Speedway trains short of the Tender if there is an Amtrak train within 30 minutes of arriving at the tender. It also does not change the fact that a Meridian Speedway train is able to clear the tender in approximately four minutes.

B. CN's Requested Conditions Are Unnecessary

We see that CN is requesting that CPKC be required to submit monthly reports during an oversight period regarding all trains moving on the Meridian Speedway through Jackson including average number of trains per day, maximum number of trains per day and average and maximum length. CN already has this information. Under the trackage rights agreement applicable to the Jackson Switch Tender, MSLLC must report on its usage of the Jackson Switch Tender monthly.

In addition to the contractual reporting obligations, CN's dispatcher requires each MSLLC train to provide information regarding the crew, tonnage, and the number of loaded cars and empty cars, before the dispatcher will grant a train authority to traverse the Jackson Switch Tender.

VERIFICATION

I, Steve D. Simmons, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed on this 26th day of January, 2024.

A handwritten signature in black ink, appearing to read "Steve D. Simmons", written over a horizontal line.

Steve D. Simmons

VERIFICATION

I, Ronnie Phillips, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed on this 26th day of January, 2024.



Ronnie Phillips

EXHIBIT A

LETTER EXTENSION OF 1937

LEASE AGREEMENT

Mr. [redacted]
 5/15
 5/28
 RECEIVED
 APR 30 1956
 ASST. VICE-PRESIDENT, C. & N.
 April 19, 1956
 1-523

Mr. O. P. Brock,
 Executive Vice President & General Manager,
 Gulf, Mobile and Ohio Railroad Company,
 Mobile 5, Alabama.

Dear Mr. Brock:

Your letter of April 10th about agreement dated April 1, 1937 and supplement of October 24, 1950 covering use of AGS track east of your yard at Meridian, Mississippi, which will be cancelled effective April 29, 1956.

It will be agreeable to continue use of this track after the expiration of the cancellation notice on a temporary basis pending conclusion of a new agreement.

Yours very truly,

/s/ D. W. Brosnan

Vice President

Cy. Mr. O. H. Zimmerman, Vice President,
 Illinois Central Railroad,
 Chicago, Illinois.

D W B

B/Cy. J. T. M.:
 C. B. N.: ✓

D W B

EXHIBIT B

NS INVOICE AND KCS PAYMENT

FOR SHORT SECTION OF

TRACKAGE IN

CPKC MERIDIAN YARD

NORFOLK SOUTHERN RAILWAY COMPANY
MISCELLANEOUS BILLING
650 WEST PEACHTREE STREET NW
ATLANTA GA 30308



KANSAS CITY SOUTHERN RWY CO
ATTN: ACCOUNTS PAYABLE
PO BOX 219563
KANSAS CITY MO 64121-9563

Invoice

Invoice Number	93183210
Date	April 20, 2023
Reference Number	RYY4776002
Sales Order	28733

For questions, please contact:

Felicia Bethea
Telephone: 470 463 6259
Email: FELICIA.BETHEA@NSCORP.COM

NS INVOICING AS AGENT FOR ALABAMA GREAT SOUTHERN RAILROAD COMPANY

RENTAL & TAXES ON TRACK AT MERIDIAN MISS - RENT \$100 TAXES \$153.07 CHARGE 8-541 \$253.07

SO# 28733 MJB
JF 157A J70003

Service Period(s): 04/01/2023 to 03/31/2024

Item		Item Detail				
1	Material:	RECURRING AGREEMENT				
	Quantity:	1 EA				
	Prices:	Unit Price	253.07 USD	per 1	EA	253.07

Items total: 253.07

Final amount: \$253.07

PLEASE PAY THIS AMOUNT

Please Detach and Remit with Payment

KANSAS CITY SOUTHERN RWY CO
ATTN: ACCOUNTS PAYABLE
PO BOX 219563
KANSAS CITY MO 64121-9563

Invoice Number	Invoice Date	Customer
93183210	April 20, 2023	112368

PAYMENT DUE BY MAY 20, 2023

AMOUNT DUE \$253.07

Make your payment online at:
<https://nspay.radiusone.com/>

Remit To:

Lockbox Number 0005629
Lockbox Address Norfolk Southern Railway Company
Mail Code 5629
PO BOX 71209
CHARLOTTE NC 28272-1209

EXHIBIT C

E-MAIL FROM RANDALL

HUNT TO STEVE SIMMONS

SEPTEMBER 11, 2020

From: Steve D Simmons <SSimmons@KCSouthern.com>
Sent: Friday, January 19, 2024 12:48 PM
To: Steve D Simmons
Subject: FW: Meridian, MS - past looks to improve the operation
Attachments: #3 MERIDIAN-NS SUGGESTED PH 1 for JAI - 101112.pdf; #1 Current Conditions Schematic_041012 NS DAB.pdf; #2 PHASE 1 LIGHT - CONCEPT PLAN - per NSR 022610.pdf

PUBLIC VERSION



Steve Simmons

Director of Border and Interline Operations
427 West 12th Street, Kansas City, MO 64105
Office: 816.983.1589 | Cell: 816.718.0891
Email: Stephen.Simmons@CPKCR.com

From: Hunt, Randall W. <Randall.Hunt@nscorp.com>
Sent: Friday, September 11, 2020 3:22 PM
To: Steve D Simmons <SSimmons@KCSouthern.com>
Cc: Meador, Chip <Frank.Meador@nscorp.com>
Subject: FW: Meridian, MS - past looks to improve the operation

This email originated from outside the company. Please use caution when opening attachments or clicking on links. If you suspect this to be a phishing attempt, please report via PhishAlarm.

Steve:

Per our discussion a couple weeks ago, see attached a few schematics that had been prepared by NS' Design group in the past to support discussions around a potential reconfiguration at Meridian. These concept drawings reflect input from past KCS Transportation leadership that we feel, frankly, added cost and complexity due to uncertainty around who should control the routes at Meridian. Given the vastly different traffic volumes between NS and KCS at this location, we feel it makes the most sense for NS to control the interlocking, though we feel that powering up the switches and allowing more efficient movements are the most important goal of this potential effort, regardless of who controls what aspects.

While these drawings shed light on past thinking around possibilities, we feel taking a fresh look at this from scratch would be the best way to tackle the question. I copy Chip as he and I have discussed this, and we'd be happy to talk through it in more detail with you in the near future.

Have a nice weekend.

RWH

Randall W. Hunt

Atlanta, GA 30309

(o) 404-529-1813

(c) 412-807-9085

(f) 757-823-5927

randall.hunt@nscorp.com

PUBLIC VERSION

EXHIBIT D

MARKED HIGHLY CONFIDENTIAL

NS MEMORANDUM OF

UNDERSTANDING - JUNE 30, 2021

EXHIBIT 2

1937 TRACKAGE RIGHTS

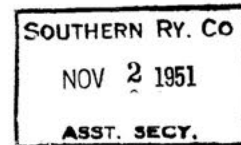
AGREEMENT

Atlanta, Georgia
October 31, 1951

Mr. R. L. Eddington:

This will acknowledge receipt of your letter dated October 24, file 2013-60, with information concerning the transferring and assignment of an agreement.

Haddon Johnson
Haddon Johnson



Agreement April 1, 1937, between Southern Railway Company and Receivers of Mobile and Ohio Railroad Company (now Gulf, Mobile and Ohio Railroad Company), for lease of tracks, Meridian, Miss., as modified by supplemental agreement October 24, 1950.

Messrs. Deay +	Compt.
McClain	AVP
Waters (JB)	CE
Thompson	SRE&C
Johnson (H)	Tax Comr.-Atlanta
Young	GM-Cinti.
Simpson	GST-Cinti.
Learn	CEMW&S-"
Shultz (KC)	Supt.-Birmingham

By deed dated September 1, 1951, the interest of Southern Railway Company in and to the above mentioned agreement was transferred and assigned to The Alabama Great Southern Railroad Company.

1 for ICC
+5 - 1 for MFH

Mr. Johnson:
Please acknowledge receipt.
R. L. E.

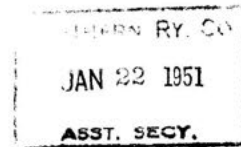
R. L. E.

Atlanta, Georgia
January 19, 1951

Mr. R. L. Eddington:

This will acknowledge receipt of your letter dated January 17, file 2013-60, enclosing copy of supplemental agreement October 24, 1950, with Gulf, Mobile and Ohio Railroad Company, modifying and amending the above mentioned agreement.


Haddon Johnson



Agreement April 1, 1937, with Receivers of Mobile
and Ohio Railroad Company (now Gulf, Mobile and
Ohio Railroad Company), for lease of tracks,
Meridian, Miss.

Messrs. Seay *
McClain
Akers (JB)
Thompson
Johnson (H)
Moon
Simpson
Hearn
Gault (AC)

Compt.
AVP
CE
SRE&C
Tax Comr.-Atlanta
GM-Cinti.
GST-Cinti.
CEM&S-"
Supt.-Birmingham

One copy to Mr. Johnson House

He send herewith copy of supplemental agreement
October 24, 1950, with Gulf, Mobile and Ohio Railroad Company, modify-
ing and amending the above mentioned agreement.

Mr. Johnson:

Please acknowledge receipt.

R. L. E.

R. L. E.

4075
*5 enc. - 1 for ICC
1 for MFH

2013-60
stencil 17
Washington, D. C., January 2, 1951
4075

PUBLIC VERSION

RE: Supplement between Southern and GM&O, dated October 24, 1950, modifying agreement dated April 1, 1937, concerning lease of tracks at Meridian, Miss., by retiring portion of track and reducing rental from \$150.00 to \$100.00 per annum, payable quarterly.

MR. EDDINGTON:

I send you herewith the original. Your file 2013-60.

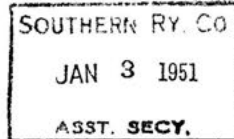
F. H. T.

Cy: MR. MOON (31975 - 31569 - 49944)

MR. AKERS:

Returning counterpart for delivery. Your file 109-2303.

F. H. T.



THIS SUPPLEMENTAL AGREEMENT, made and entered into this 24 day of October, 1950, by and between

SOUTHERN RAILWAY COMPANY, a corporation, party of the first part; and
GULF, MOBILE AND OHIO RAILROAD COMPANY, a corporation, party of the second part;

W I T N E S S E T H:

THAT the PARTIES HERETO, for good and sufficient considerations thereunto moving them, do hereby mutually covenant and agree that the agreement, in writing, heretofore made and entered into by and between the party of the first part hereto and C. E. Ervin and T. M. Stevens, as Receivers of Mobile and Ohio Railroad Company (Gulf, Mobile and Ohio Railroad Company, successor), dated April 1, 1937, concerning the lease by the party of the first part of two (2) tracks, at MERIDIAN, in the State of Mississippi, to said C. E. Ervin and T. M. Stevens, Receivers, shall be and the same hereby is modified and amended, effective as of the 24 day of October, 1950, in the following manner, but not otherwise, that is to say:

(1) By excluding from the terms and provisions thereof the portion of track designated as track No. 296-7 extending from the point of switch therein of a certain track of the party of the second part in a southwesterly direction for a distance of 640 feet, more or less, to the terminus thereof, as indicated on blueprint of Drawing No. 27889, dated August 30, 1950, hereunto annexed and hereby made a part hereof; it being understood that said portion of said track will be taken up and removed by the party of the first part; and

(2) By decreasing the rent or sum payable under the provisions of said agreement of April 1, 1937, from ONE HUNDRED FIFTY DOLLARS (\$150.00) per annum, payable in equal quarterly installments in advance, to ONE HUNDRED DOLLARS (\$100.00) per annum, payable in equal quarterly installments in advance.

IN WITNESS WHEREOF, the parties hereto have executed these presents, in duplicate, each part being an original, as of the day and year first above

written.

In presence of:

SOUTHERN RAILWAY COMPANY,
By

H. T. Sale
E. H. Dyer
 As to party of the first part.

Harry A. Roberts
 Vice President.

In presence of:

GULF, MOBILE AND OHIO RAILROAD
COMPANY,
By

E. H. Dyer
Marie D. McIntosh
 As to party of the second part.

G. P. Brock
 Vice President & General Manager.
 G. P. Brock

9-20-50 F/e
4075

22ND AVE

G.M. & O. R.R. Lauderdale Co. Miss.
Vol. Sec. 96 Map 1



Notes:

1. Automobile Unloading Platform Covered by Agmt with Mobile & Ohio R.R. (G.M. & O. Successors) Dated Jan. 1, 1922. To be cancelled.
2. Agmt. Dated April 1, 1937 with Receivers of M. & O. R.R. for use of Tracks (296-7) & (296-1) to be Amended to Exclude that Portion of Track (296-7) - Shown Dotted - not Directly used as Part of the Connection Track by G.M. & O. R.R.
3. Space Proposed for Lease to the Feed and Supply Company Shown Outlined in Red. Approximate Area 14,750 sq.

SOUTHERN RAILWAY SYSTEM
Western Lines Mobile Div.
MERIDIAN, MISS.

Proposed Lease of Space to
Feed and Supply Company

Office Ch. Engr. M.W. & S. Cincinnati, Ohio
Scale: 1" = 100' ^{approx.} Aug. 30, 1950
Dr. No. 27889

NOTICE

THE PRECEDING PAGE HAS
INFORMATION NOT
PICKED UP BY SCAN. CONTACT
ARCHIVES DEPARTMENT FOR MISSING
INFORMATION.

Washington, June 24, 1949. rl.
2013-60

Mr. Hawkshaw:

We have your memorandum June 10,
file 411-157 and send herewith copy of agreement
April 1, 1937, with Receivers of Mobile and Ohio
Railroad Company (Gulf, Mobile and Ohio Railroad
Company, successor), for use of tracks, Meridian,
Miss.

R. L. E.

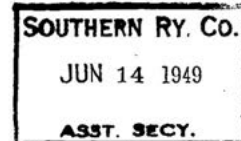
Atlanta, Ga., June 10, 1949

411-157

Mr. R. L. Eddington:

Please furnish copy of agreement dated April 1, 1937,
between Southern Ry. Co. and Gulf, Mobile and Ohio RR Co.
for joint use of facilities at Meridian, Miss. - Yard tracks used to
reach Bonita Park line.

MFK
M. F. Hawkshaw



Atlanta, Ga., July 16, 1937.p

Mr. Mauldin:

Yours May 6th, file 2013-60, giving me copy of agreement between Southern Railway Company and C. E. Ervin and T. M. Stevens, Receivers of Mobile and Ohio Railroad Company, dated April 1, 1937, covering lease of certain tracks at Meridian, Miss.

Haddon Johnson
Tax Commissioner



1 copy for Mr. Hobbs 10/31/44

Washington, May 6, 1937. v
2013-60

PUBLIC VERSION

Agreement between Southern Railway Company and C. E. Ervin and T. M. Stevens, Receivers of Mobile and Ohio Railroad Company, dated April 1, 1937, covering Lease to the M&O of two tracks of the Southern at Meridian, Miss. Supersedes main and supplemental agreements with the M&O dated March 1, 1930, October 16, 1932, and June 25, 1933, respectively.

Messrs. Messers.	VP - Cincinnati
Seay *	Compt.
Andrews (WS)	AVP
Herman	Chf. Engr.
Horne	SRE&C.
Johnson (H)	TC - Atlanta
DeHaven	GM - Cincinnati
Triplett	GSofTrans. - "
Woods	CEMofW&S - "
Post	Supt. - Selma
Payne	Supt. - Birmingham

Mr. Johnson:
Please acknowledge receipt.

G. E. M.

Mr. Seay:
Two copies for ICC Book.

Respectfully,

G. E. M.

Copy to Mr. Jacoby.

*5 enc.

Additional copy handed Mr. Herman 10/2/40
" " " " 4/11/56

PUBLIC VERSION

Washington, D.C., April 24, 1937. M
107-1-1082

SUBJECT: Agreement between Southern Railway Company and Receivers of the M&O, dated April 1, 1937, concerning lease to the M&O of two tracks of the Southern at Meridian, Miss., annual rent \$150. terminable on 90 days' notice, superseding agreement between the Southern and M&O, dated March 1, 1920, and supplements thereto dated Oct. 16, 1922, and June 25, 1923.

Mr. Mauldin:

Herewith executed original of the above mentioned agreement for file and promulgation.

2

B.H.



13

AN AGREEMENT, made and entered into this 1st day of April, 1937, by and between

SOUTHERN RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Virginia, hereinafter for convenience styled the Southern Company, party of the first part; and

C. E. ERVIN and T. M. STEVENS, as Receivers of Mobile and Ohio Railroad Company, hereinafter for convenience styled the Receivers, parties of the second part,

W I T N E S S E T H:

THAT the SOUTHERN COMPANY, for and in consideration of the rents or sums of money herein reserved to be paid to it by the Receivers, and of the covenants of the Receivers on their part to be kept and performed, as hereinafter expressed, has leased and demised, and by these presents does lease and demise unto the Receivers those two (2) certain tracks of the Southern Company as now located and constructed at MERIDIAN, in the State of Mississippi, one being a track 728 feet in length and designated as No. 296-7, and the other being a track 499 feet in length and designated as No. 296-1, as shown colored red on the blue print map dated January 7, 1937, hereto annexed and made a part of this agreement.

TO HAVE AND TO HOLD the said tracks unto the Receivers for a term beginning as of the date of these presents and to continue thereafter until such time as either party hereto shall terminate this agreement by serving upon the other ninety (90) days notice, in writing, of the election so to do; upon the Receivers'

YIELDING AND PAYING, however, unto the Southern Company, the rent or sum of ONE HUNDRED FIFTY DOLLARS (\$150.00) per annum, payable in equal quarterly installments in advance.

The Southern Company will, moreover, and hereby does, give and grant unto the Receivers the right, during the life of this agreement, to maintain upon the right of way of the Southern Company, as the same is now located and constructed thereupon, the section of track owned by the Receivers extending from a cen-

nection with the aforesaid track of the Southern Company No. 296-7, a distance of 198 feet, to a point of connection with the aforesaid track of the Southern Company No. 296-1, as shown upon the said annexed blue print map.

AND the RECEIVERS hereby covenant and agree:

1. That they will pay the rents herein reserved in the manner specified.
2. That they will not assign this lease or sublet the said tracks to any third person or persons, except upon the consent, in writing, of the Southern Company.
3. That they will, during the life of this agreement, pay all taxes which may be assessed or levied upon the said tracks of the Southern Company, or against the Southern Company by reason of its ownership of the same.
4. That they will, at all times during the life of this agreement, maintain the said tracks in good serviceable condition and repair.

AND it is mutually covenanted and agreed:

5. That subject to any right to terminate this agreement as provided herein, or given by law, the provisions of this contract shall be binding upon and shall inure to the benefit of the Receivers of the Mobile and Ohio Railroad Company (as Receivers but not individually) and their successors, the Mobile and Ohio Railroad Company and its successors, the railroad corporation which may, after the termination of the receivership of the Mobile and Ohio Railroad Company, control and operate the line of railroad and appurtenant physical properties on or along which the property covered by this agreement is located, and/or to the business of which the subject matter of this agreement relates, and the successors of such railroad corporation. The said Receivers covenant unto and with the Southern Company that they are authorized by order of the court appointing them as such Receivers to make and enter into this agreement and thereby to bind the estate in their trust.

6. That this agreement is intended to and does supersede and cancel that certain other agreement, in writing, made and entered into by and between Southern Railway Company and Mobile and Ohio Railroad Company dated March 1st, 1920, and the agreements supplemental thereto dated October 16th, 1922, and

and June 25th, 1923, respectively, concerning the joint use of certain tracks at Meridian, Mississippi.

IN WITNESS WHEREOF, the parties hereto have executed these presents, in duplicate, each part being an original, the day and year first above written.

In presence of;

W. M. Mahan
.....
W. M. Mahan
.....
As to Southern Company.

SOUTHERN RAILWAY COMPANY,
By

W. M. Mahan
.....
Vice-President.

C. E. ERVIN and T. M. STEVENS, as
Receivers of Mobile and Ohio Railroad
Company,
By

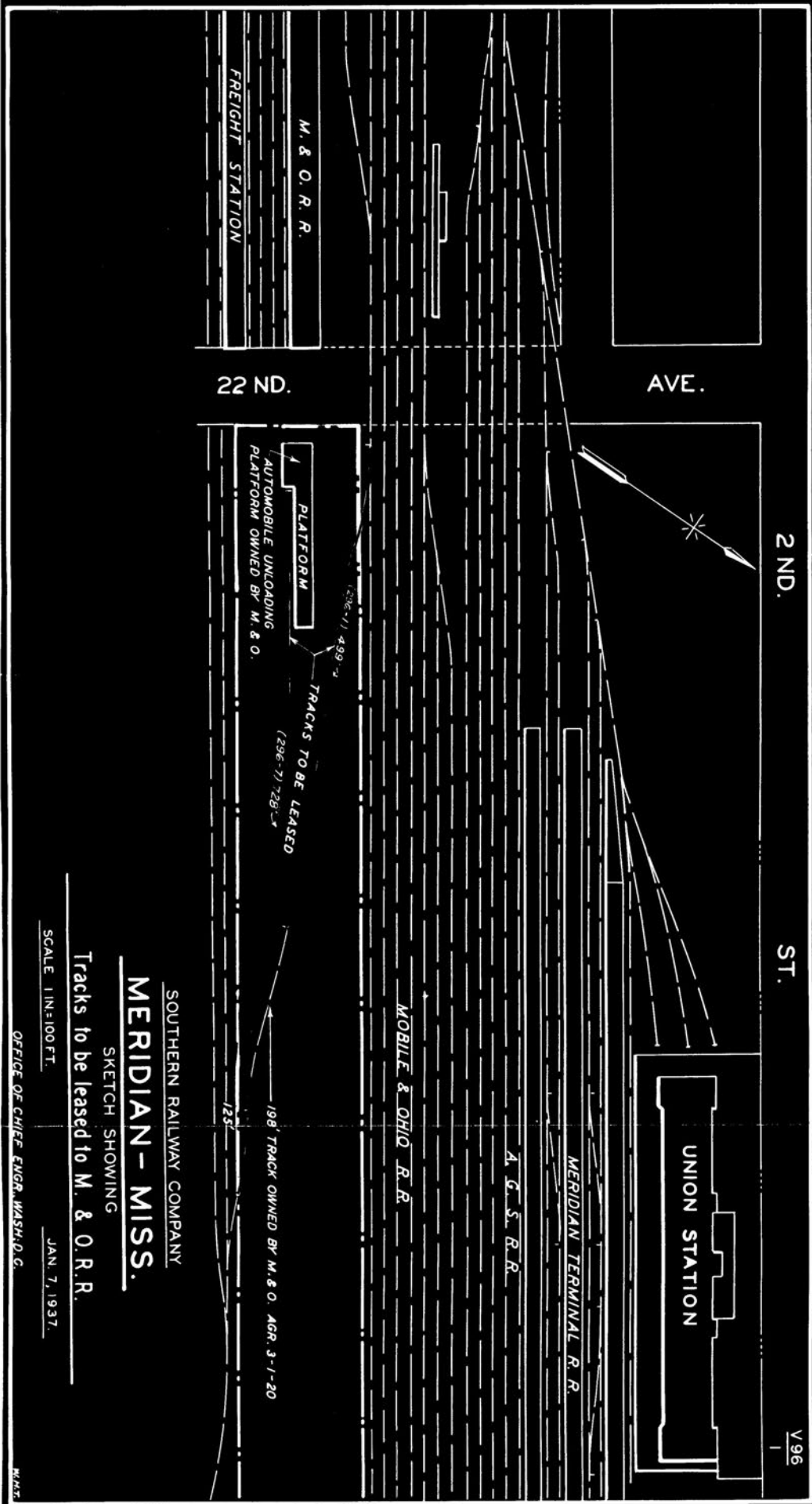
C. E. Ervin
.....
One of the Receivers.

In presence of;

C. E. Ervin
.....
T. M. Stevens
.....
As to Receivers.

Approved as
to Engineering

RCW



NOTICE

THE PRECEDING PAGE HAS
INFORMATION NOT
PICKED UP BY SCAN. CONTACT
ARCHIVES DEPARTMENT FOR MISSING
INFORMATION.

EXHIBIT 3

DESIGNATED AS HIGHLY

CONFIDENTIAL

DECEMBER 20 EMAILS

EXHIBIT 4

DESIGNATED AS HIGHLY

CONFIDENTIAL

AMTRAK DATA