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September 23, 2025

CSXT-24

VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: **STB Docket No. FD 36836, Norfolk Southern Corporation & Norfolk Southern Railway Company—Acquisition of Control—Norfolk & Portsmouth Belt Line Railroad Company**

Dear Chief of Case Administration:

On September 18, 2025, CSX Transportation, Inc. (“CSXT”) filed its Evidence and Argument in Opposition to the NS Control Application (“Opposition”) in the above-referenced proceeding.

Subsequently, CSXT determined that the filed versions of the Opposition inadvertently contained incorrect redactions and/or confidentiality brackets on the following pages: CSXT-22-581, CSXT-22-606 to -09, CSXT-22-618, CSXT-22-623, CSXT-22-630, and CSXT-22-646. Rather than submit only corrected pages, CSXT is now resubmitting the entire Opposition, with the corrected pages incorporated. Enclosed is a highly confidential version of the corrected Opposition to be filed under seal, and a public version with appropriate redactions that the Board can place in its docket.

Please contact me with any questions.

Respectfully submitted,

/s/ Peter W. Denton
Peter W. Denton
Attorney for CSX Transportation, Inc.

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Letter in Docket No. FD 36836 to be served electronically or by first class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Administrative Law Judge Jenifer Soulikias, Applicants' representative, William Mullins, and all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi

Attorney for CSX Transportation, Inc.

September 23, 2025

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PUBLIC VERSION

September 18, 2025

CSXT-22

VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: **STB Docket No. FD 36836, Norfolk Southern Corporation & Norfolk
Southern Railway Company—Acquisition of Control—Norfolk &
Portsmouth Belt Line Railroad Company**

Dear Chief of Case Administration:

Enclosed for e-filing in the above-referenced proceeding is a public version of CSX Transportation, Inc.'s Evidence and Argument in Opposition to the NS Control Application ("Opposition"), with appropriate redactions that the Board can place in its docket. We are concurrently filing a highly confidential version of the Opposition, to be filed under seal.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton
Attorney for CSX Transportation, Inc.

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

CSX TRANSPORTATION, INC.'S
EVIDENCE AND ARGUMENT IN OPPOSITION TO
THE NS CONTROL APPLICATION

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Dated: September 18, 2025

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- Exhibit 3 Excerpts from Transcript of August 6, 2025 Deposition of Thomas E. Zoeller
- Exhibit 4 Agenda for April 2, 2025 NPBL Annual Stockholders' Meeting (NPBL000612)
- Exhibit 5 October 10, 2019 Email Containing Minutes of a January 30, 2018 Meeting Between NS and CSXT (STB-NS-0005804)
- Exhibit 6 NPBL Tariff NPB 8100-H, issued March 31, 2008 (STB-NS-0014867)
- Exhibit 7 August 27, 2018 Email from NS's Robert Martinez Regarding Cannon Moss (STB-NS-0023792)
- Exhibit 8 April 3, 2018 Email from NS's Adam Wright Regarding a Prior Meeting with NPBL (STB-NS-0003607)
- Exhibit 9 March 29, 2018 Email from NS's Scott Plum Regarding a Prior Meeting (STB-NS-0008826)
- Exhibit 10 Excerpt from NS Website (Exhibit 14 in the February 19, 2020 Deposition of Kenneth Joyner)
- Exhibit 11 Robert E. Martinez, Op-Ed, *State rail plan essential to port's success*, The State, Jan. 20, 2011
- Exhibit 12 August 1, 2018 Email from NS's Robert Martinez Regarding CSXT Access Into NIT (NSR_00067467)
- Exhibit 13 Ari Ashe, *Virginia port service shuffle promises faster rail flow*, J. of Commerce, Aug. 23, 2019
- Exhibit 14 Excerpts from Transcript of August 18, 2025 Deposition of Michael R. McClellan

- Exhibit 15 Excerpts from Transcript of August 13, 2025 Deposition of Daniel L. Fapp
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- Exhibit 17 April 5, 2018 Email from NPBL's Cannon Moss Regarding CSXT's Rate Proposal (STB-NS-0008749)
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- Exhibit 20 Daniel Brock, *What's at stake in North Charleston rail debate*, Brotherhood of Locomotive Engineers and Trainmen, July 19, 2010 (Exhibit 15 in the February 19, 2020 Deposition of Kenneth Joyner)
- Exhibit 21 July 23, 2010 Email from NS's David Stinson Containing CSXT's 2010 Proposal (EDVA NPBL007430)
- Exhibit 22 February 2, 2018 Email from NS's Carroll Neville Regarding On-Dock (STB-NS-0025131)
- Exhibit 23 May 23, 2019 Email from NS's Keith Autrey Regarding On-Dock (STB-NS-0026620)
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- Exhibit 25 Ari Ashe, *NS bullish on intermodal despite truck pressure*, J. of Commerce, Apr. 24, 2019 (STB-NS-0026771)
- Exhibit 26 April 6, 2022 Email from NS's Jason Zampi Regarding NPBL Board Meeting (STB-NS-0017144)
- Exhibit 27 Minutes of a December 15, 2009 NPBL Board Meeting (EDVA NPBL007302)
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- Exhibit 29 December 4, 2024 Letter from Members of the NPBL Board Regarding CSXT's November 26, 2024 Proposals (NPBL001499)

- Exhibit 30 February 27, 2025 Letter from Members of the NPBL Board in response to a CSXT Letter (NPBL001475)
- Exhibit 31 April 9, 2015 Email from CSXT's Bill Clement Regarding NIT Access (CSXT0112576)
- Exhibit 32 Excerpts from Transcript of March 11, 2020 Deposition of Steven Armbrust
- Exhibit 33 July 17, 2009 Letter from NPBL's David Stinson Regarding CSXT's Proposed Purchase of NPBL Property (EDVA NPBL007213)

Verified Statements

- Attachment 1 Verified Statement of Maryclare Kenney, CSXT's Vice President of Merchandise – Sales and Marketing
- Attachment 2 Verified Statement of Dr. Nathan Miller, Professor at Georgetown University and Founding Partner with Econic Partners and former Chief Economist of the U.S. Department of Justice, Antitrust Division
- Attachment 3 Verified Statement of Julie M. Carey, Senior Managing Director with National Economic Research Associates, Inc.
- Attachment 4 Verified Statement of Dr. William Huneke, former STB Chief Economist and former Director of the STB's Office of Economics

TABLE OF ABBREVIATIONS

2010 Proposal	CSXT's July 23, 2010 Rate Proposal and Operating/Financial Plan regarding Rail Service Connection to NIT
2018 Proposal	CSXT's March 23, 2018 Rate Proposal for Long Term Rail Service to NIT
ATSF	The Atchison, Topeka and Santa Fe Railway Company
B&E	Berkshire & Eastern Railroad
BRC	Belt Railway of Chicago
Connecting Line	Line segment between NS Junction at MP 1.40 and Carolina Junction at MP 2.30
CSX	Collectively, CSXT and its parent company
CSXT	CSX Transportation, Inc.
CSXT MSJ Opp'n	CSXT's May 3, 2021 Consolidated Opposition to Defendant's Motions for Summary Judgment, filed under seal in FD 36836 on August 19, 2025
CWRY	The Commonwealth Railway, Inc.
District Court	U.S. District Court for the Eastern District of Virginia
DOJ	U.S. Department of Justice, Antitrust Division
GWI	Genesee & Wyoming, Inc.
ICC	Interstate Commerce Commission
IM	Intermodal

MKT	Missouri-Kansas-Texas Railroad Company
NERA	National Economic Research Associates, Inc.
NIT	Norfolk International Terminals
NPBL	Norfolk & Portsmouth Belt Line Railroad Company
NS	Collectively, NSC and NSR
NS Appl.	NS's June 13, 2025 submission filed in FD 36836
NS Prefiling Notification	NS's February 14, 2025 submission filed in FD 36836
NSC	Norfolk Southern Corporation
NSR	Norfolk Southern Railway Company
NW	Norfolk and Western Railway Company
Opposition	CSXT's September 18, 2025 Evidence and Argument in Opposition to the NS Application filed in FD 36836
PAS	Pan Am Southern LLC
PMT	Portsmouth Marine Terminal
POV or the Port	Port of Virginia
Related Proceedings	STB Docket Nos. NOR 42183, FD 36859, and AB 290 (Sub-No. 299X) and AB 1024X
SRC	Southern Railway Company
STB or Board	Surface Transportation Board
TCT	Texas City Terminal Railway Company
TEU	Twenty-foot equivalent units

UP	Union Pacific
URCS	Uniform Rail Costing System
VIG	Virginia International Gateway
Virginian Railway	Virginian Railway Company
VIT	Virginia International Terminals
VPA	Virginia Port Authority

INDEX OF DEPONENTS AND DECLARANTS¹

Allan, James	CSXT Joint Facilities Department, no longer with CSXT as of March 13, 2020
Armbrust, Steven	CSXT Assistant General Counsel as of March 11, 2020
Booth, Cary	NS Assistant Vice President of Intermodal and Automotive Operations, retired as of November 5, 2020
Booth, John	CSXT Director of Joint Facilities, retired as of March 12, 2020
Capozzi, Thomas	VIT Chief Sales Officer as of January 22, 2021
Coleman, Donna	NPBL Vice President, Comptroller, and Corporate Secretary as of March 4, 2020
Girardot, Robert	CSXT Director of Strategy and Analytics as of February 21, 2020
Hall, Jerry	NS Vice President of Transportation, retired as of February 21, 2020
Heller, Jeffrey	NS Vice President of Intermodal and Automotive as of March 10, 2020
Houfek, Ryan	CSXT Assistant Vice President, Marketing, retired as of December 9, 2020
Hunt, Randall	NS Senior Director of Interline Services as of February 18, 2020
Hurlbut, Thomas	NS Assistant Vice President, NPO Profitability as of February 21, 2020
Joyner, Kenneth	NS Group Vice President of International Intermodal and Automotive as of February 19, 2020

¹ This index lists deponents and declarants with testimony referenced in this Opposition, with each person's title as of the date of their deposition or declaration, unless otherwise indicated.

Kenney, Maryclare	CSXT Vice President of Intermodal and Automotive (former position, as of December 11, 2020)
Luebbers, Christopher	NS Director of Intermodal Yield as of February 25, 2020
Martinez, Robert	NS Vice President of Business Development, and Real Estate as of October 23, 2020
McClellan, Michael	NS Senior Vice President and Chief Strategy Officer as of August 18, 2025
Merilli, Philip	NS Vice President of Engineering, retired as of March 2, 2020
Moss, Cannon	NPBL President and General Manager as of February 14, 2020 and August 28, 2025
Stinson, David	NS Division Superintendent, Illinois Division as of February 26, 2020
Wagel, Christopher	CSXT Senior Terminal Manager in Detroit as of December 7, 2020
Warren, Carl	CSXT Director of Business Development South as of February 21, 2020
Wheeler, Michael	NS Chief Operating Officer as of February 24, 2020
Zoeller, Thomas	NS General Counsel for Markets and Regulation as of August 6, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

CSX TRANSPORTATION, INC.'S
EVIDENCE AND ARGUMENT IN OPPOSITION TO
THE NS CONTROL APPLICATION

1. Introduction and Summary

CSX Transportation, Inc. (“CSXT”) hereby asks the Board² to deny the application filed by NS in this proceeding, order NS to divest control of NPBL, and grant CSXT’s requested relief in certain related STB proceedings. If the Board decides to approve NS’s application, the Board should impose certain conditions to alleviate anticompetitive effects, including by allowing CSXT to access NIT, either directly or via NPBL switching, and the Board should conduct rigorous oversight of any such approval for at least a seven-year period.

NS’s Control of NPBL and Competition at NIT

Through its application, NS has now belatedly sought authority from the Board to control Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”), a terminal railroad established in the late 19th century as an independent railroad

² Unless otherwise defined, the acronyms and defined terms used herein are the same as those used in the Board’s *Decision No. 2*, served on March 14, 2025 in this proceeding, or in CSX Transportation, Inc.’s Petition to Reject Norfolk Southern’s Minor Application, filed on February 27, 2025.

providing all connecting railroads with equal access to facilities in the Norfolk, Virginia area. For the last four decades, NPBL has been owned by NS and CSXT, with NS owning the majority 57% share, despite NS never obtaining the required Board control authority.

NPBL's most significant potential customer facility is the Port of Virginia's ("POV") Norfolk International Terminals ("NIT"), one of the most important port terminals on the Eastern Seaboard. NS and NPBL can each access NIT directly. CSXT should be able to use NPBL switching services to compete with NS for on-dock rail at NIT. CSXT works well with many other switching railroads to access key terminal facilities similarly situated to NIT, including another nearby POV terminal, Virginia International Gateway ("VIG"). But NS, exercising its unlawful control of NPBL, has wielded NPBL as a shield from competition by CSXT for on-dock rail service at NIT.

Indeed, **only NS** has moved intermodal containers from NIT via rail in recent years, notwithstanding CSXT's many efforts to use NPBL's switching services to do so. In order to provide any service at NIT, CSXT has been forced to move intermodal containers to and from NIT by truck across town and then transload them to rail. These drayage movements are not an adequate substitute for CSXT's on-dock rail access at NIT. As a result, NS's and NPBL's conduct has effectively reduced competitive options for line haul rail service to NIT from two railroads (NS and CSXT/NPBL) to one railroad (NS).

NS now asks the Board to cement this competitive imbalance through its control application. CSXT has proposed that the Board instead address these anticompetitive and unlawful actions through separate STB cases brought by CSXT and discussed further below.

The NS/NPBL Exclusionary Campaign

Evidence of NS's exclusionary campaign to manipulate NPBL stretches as far back as 1999 and continues as recently as this year, even during the pendency of this control proceeding. The economic barriers erected by NS and NPBL include an artificially elevated \$210 per car switching rate charged by NPBL to CSXT for movements to NIT and a refusal to consider alternative commercial arrangements for CSXT access to NIT that would be profitable to NPBL and would advance the objectives of NPBL's creation, which was to give NPBL's owning railroads access to facilities served by NPBL without having to build their own tracks to do so. Additionally, NS has caused NPBL to thwart potential CSXT service to NIT at every opportunity, demanding, among other things, unnecessarily complex CSXT/NPBL interchange movements and terminating NPBL trackage rights over a crucial line segment (referred to below as the Connecting Line) that would have allowed for efficient NIT access.

NS's campaign to exclude CSXT from access to NIT is reflected in numerous internal NS documents. When CSXT proposed in 2018 an alternative to NPBL's exclusionary rate structure, NS used its control over NPBL to prevent CSXT's proposal from being seriously considered. An NS employee, Mr. Scott Plum, concisely described NS's anticompetitive strategy, noting that:

{{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

(Ex. 9, STB-NS-0008826.) This exclusionary strategy was long-standing and barely concealed.

More viscerally, NS's key witness supporting the application, Mr. Michael McClellan, asked his NS colleague, in response to one of many CSXT attempts to

reach NIT: {{ [REDACTED] }}. (CSXT MSJ Opp'n,³ Ex. 1, NSR_00306367.) NS's answer to Mr. McClellan's question has been to use NS's unlawful control over NPBL to prevent CSXT from having on-dock rail access to NIT. NS now asks the Board to make CSXT's exclusion from NIT on-dock access permanent.

NS's efforts to exclude CSXT from on-dock rail access at NIT continue today. As explained in the Verified Statement of Maryclare Kenney, CSXT's Vice President of Merchandise – Sales and Marketing, CSXT made a proposal to the NS-controlled NPBL board in November 2024 that would have given CSXT an ability to compete for NIT traffic while providing NPBL with new traffic. CSXT ensured that its proposal would create additional revenue for NPBL at a rate above NPBL's costs. Under the proposal, CSXT would cover all of NPBL's incremental costs, providing locomotives and fuel and paying for NPBL labor – in addition to paying a { [REDACTED] [REDACTED] }. (See V.S. Kenney 14, Sept. 18, 2025; *id.* at Attach. A.)

In response to this highly attractive proposal, NPBL raised concerns about the amount of trackage rights compensation that NPBL must pay NS to access NIT, and CSXT responded with assurances that NPBL would have no exposure should that amount increase. (See *id.* at Attach. G, at 2-3, 8.) In his recent deposition, Cannon Moss, NPBL's President and General Manager, { [REDACTED] [REDACTED] } (See Ex. 16, Moss Dep. Tr.146:3-15, Aug. 28, 2025.) Yet, the NS-controlled NPBL board has still refused to even consider, let alone accept, CSXT's proposal.

³ In this Opposition, "CSXT MSJ Opp'n" refers to CSXT's May 3, 2021 Consolidated Opposition to Defendants' Motions for Summary Judgment from the district court litigation, filed under seal in this STB proceeding on August 19, 2025.

The Board's Competition-Focused Review

Pursuant to the relevant statute, 49 U.S.C. § 11324(d), the Board must approve NS's control application unless it finds that (1) there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade, and (2) that such anticompetitive effects outweigh any associated public benefits.

NS believes that the Board need not conduct any real competitive analysis to fulfill its obligations under Section 11324(d). In NS's warped and self-serving view, the Board should only analyze the competitive effects of moving from the current world where NS controls NPBL without STB authority to a future world where NS controls NPBL with STB authority. Of course, a rubber stamp of approval for NS's long-standing control would not change the current competitive landscape at all.

Contrary to NS's wishes, however, Section 11324(d) actually requires the Board to analyze and compare from a competition and public benefits perspective: (1) approval of NS's application and NS's continued control of NPBL, and (2) denial of NS's application and NS's divestiture of control of NPBL. Those are the two alternatives that the STB must consider – authorize control or deny it. But NS completely ignores the competitive significance and impact of a denial of its application, the central question the STB must address.

When NS's Mr. McClellan was asked at his deposition whether the STB's denial of NS's request for control authority would affect NPBL's future decisions, he responded that {{ [REDACTED] }} (Ex. 14, McClellan Dep. Tr. 137:7-11, Aug. 18, 2025.)⁴ NS's entire case rests on its bizarre and twisted

⁴ Mr. McClellan does not have personal knowledge regarding several statements made in his verified statement. During his deposition, he stated that {{ [REDACTED] }} (Ex. 14, McClellan Dep. Tr. 138:1-140:6; 141:15-16,

rubber-stamp theory – give us control authority because we already control NPBL, so control authority won’t change anything.

In any event, the anticompetitive effects of NS’s control application are readily apparent. When compared to a “without control” world where the Board has denied the application, approval of the application would likely result in substantial anticompetitive effects not outweighed by public benefits. Unlike most control proceedings, the Board need not analyze the effects of its requested authority by positing a hypothetical future state where NS would control NPBL. That hypothetical future state already exists (through unlawful conduct by NS), and the significant harms to competition and lack of public benefits flowing from NS’s decades-long control of NPBL are clear from the record presented here by CSXT and discussed in this Opposition.

Indeed, the Board need not look too hard to see the effects of NS’s unlawful control of NPBL. As a result of NS’s unlawful control of NPBL, CSXT has **zero** on-dock rail intermodal traffic at one of the most important intermodal terminals on the East Coast. Additionally, no public benefits flow from continuing to allow NS to control NPBL – certainly no benefits that outweigh the obvious competitive harms.

On the other hand, denial of the NS application and NS’s resulting divestiture of control of NPBL would begin to ameliorate the anticompetitive effects identified here. Any such denial and divestiture would result in an independent

Aug. 18, 2025.) Similarly, Mr. McClellan stated that {{ [REDACTED] }} (Id.

at 126:11-127:12.) And Mr. McClellan stated that {{ [REDACTED] }} (Id. at 155:17-156:14.) As explained below in Section 3.1.4.2, that table in Mr. Fapp’s report was “inadvertently” missing the CWRV contractual switching rates with NS and CSXT that are much lower than the NPBL switch rate.

NPBL that would be properly incentivized to serve each of its owners, CSXT and NS, consistent with NPBL's founding purpose. Absent NS's control and manipulation, an independent NPBL could finally work with CSXT to agree on rate and service terms for switching intermodal traffic to and from NIT.

The Board should deny the NS application

Given the abject lack of competitive analysis presented by NS in its control application, the Board should summarily dismiss or deny the NS application for failure to meet its burden of proof and to present a *prima facie* case. If the Board advances to consider the merits of NS's request, the Board should apply Section 11324(d) and deny the NS application.

Switching railroads such as NPBL are generally used by all of their owners to ensure equal access to facilities in a terminal area. NS's request for authority to control NPBL – essentially proposing a 2-to-1 merger for a terminal railroad that is supposed to be independent – is fundamentally contrary to the objective of NPBL and other such railroads. And NS's incentive to misuse its control of NPBL to exclude competition is particularly strong here, since NS does not need NPBL's services to reach NIT directly and since NS is the minority user of NPBL's carload switching services. NS has every incentive to wield its control of NPBL to keep CSXT from using NPBL to access NIT. And that is exactly what NS has done. The Board should not allow these competitive harms to continue.

The Board's denial should be coupled with an order to NS to: (1) divest a sufficient stock interest in NPBL and divest sufficient voting rights in NPBL so that NS no longer has the ability to control the decisions of NPBL, either directly or indirectly, or the ability to veto any reasonable proposal to NPBL that would benefit NS's co-owners of NPBL; and (2) work jointly with CSXT to establish new and independent NPBL management. This would ensure that NPBL will be independent from NS's control, will operate independently, and will provide

meaningful and effective access to its owners, consistent with its founding purpose as a terminal railroad.

But denial of the NS application is not enough. Indeed, NS never should have requested this control authority in the first place. To fully remedy the harm caused by NS's and NPBL's anticompetitive conduct and ensure dual access to NIT going forward, the Board must also grant the relief that CSXT has requested through its related STB proceedings, which are discussed further below.

The Board should condition any approval of the NS application

To be clear, CSXT does not believe that the Board should permit NS to continue to control NPBL. But if the Board decides to approve NS's application, the Board should use its conditioning authority to alleviate the anticompetitive effects that CSXT has identified here, ensuring that there is effective dual on-dock rail access at NIT and that NS cannot continue to use NPBL as a vehicle for blocking CSXT's access to the important NIT terminal. In such a scenario, the Board should impose the following conditions:

- (1) grant CSXT terminal trackage rights over NS and NPBL lines to provide CSXT direct rail access to NIT, pursuant to a responsive application that CSXT is concurrently filing in this proceeding;
- (2) order NS to restore track assets comprising a rail line that NS unlawfully removed and that would allow for efficient service to NIT by NPBL or CSXT; and
- (3) order NS to ensure that an NS-controlled NPBL will provide meaningful and effective access to its owners, consistent with NPBL's founding purpose as a terminal railroad.

The Board should also conduct rigorous oversight of any such approval for at least a seven-year period. In a scenario where the Board approves the NS application and imposes these conditions, the Board should also grant any remaining relief that

CSXT has requested through its related STB proceedings, including damages, to fully remedy the anticompetitive harm caused by NS's unlawful control of NPBL.

* * *

There is strong public support for dual access by NS and CSXT to on-dock rail at NIT, as evidenced by the letters submitted in this proceeding by government officials, the Port of Virginia, the U.S. Department of Justice, local organizations, an ocean carrier, and other stakeholders. (*See, e.g.*, CSXT Letter, Aug. 26, 2025 (enclosing eight letters).) On August 27, 2025, Virginia Governor Glenn Youngkin submitted a letter, urging the Board to carefully review the competitive issues presented in this proceeding. (Youngkin Letter 2.) Governor Youngkin stated:

“It is my view that the current lack of dual access by NS and CSXT to on-dock rail at NIT hurts the competitiveness of the Port of Virginia. Ensuring that CSXT can access on-dock rail at NIT would increase flexibility and efficiency for the Port, increase competitive options for intermodal freight customers, and benefit the public. The Port of Virginia at NIT was always intended to be served by two railroads with on-dock rail access.”

(*Id.*)

CSXT's Opposition is supported by verified statements from:

- Maryclare Kenney, CSXT's Vice President of Merchandise – Sales and Marketing (attached hereto as Attachment 1);
- Dr. Nathan Miller, Professor at Georgetown University and Founding Partner with Econic Partners and former Chief Economist of the U.S. Department of Justice, Antitrust Division (attached hereto as Attachment 2);
- Julie M. Carey, Senior Managing Director with National Economic Research Associates, Inc. (attached hereto as Attachment 3); and
- Dr. William Huneke, former STB Chief Economist and former Director of the STB's Office of Economics (attached hereto as Attachment 4).

2. Background.

2.1. The history of NPBL and its current status.

2.1.1. NPBL was established in 1896 for the mutual benefit of all its owners.

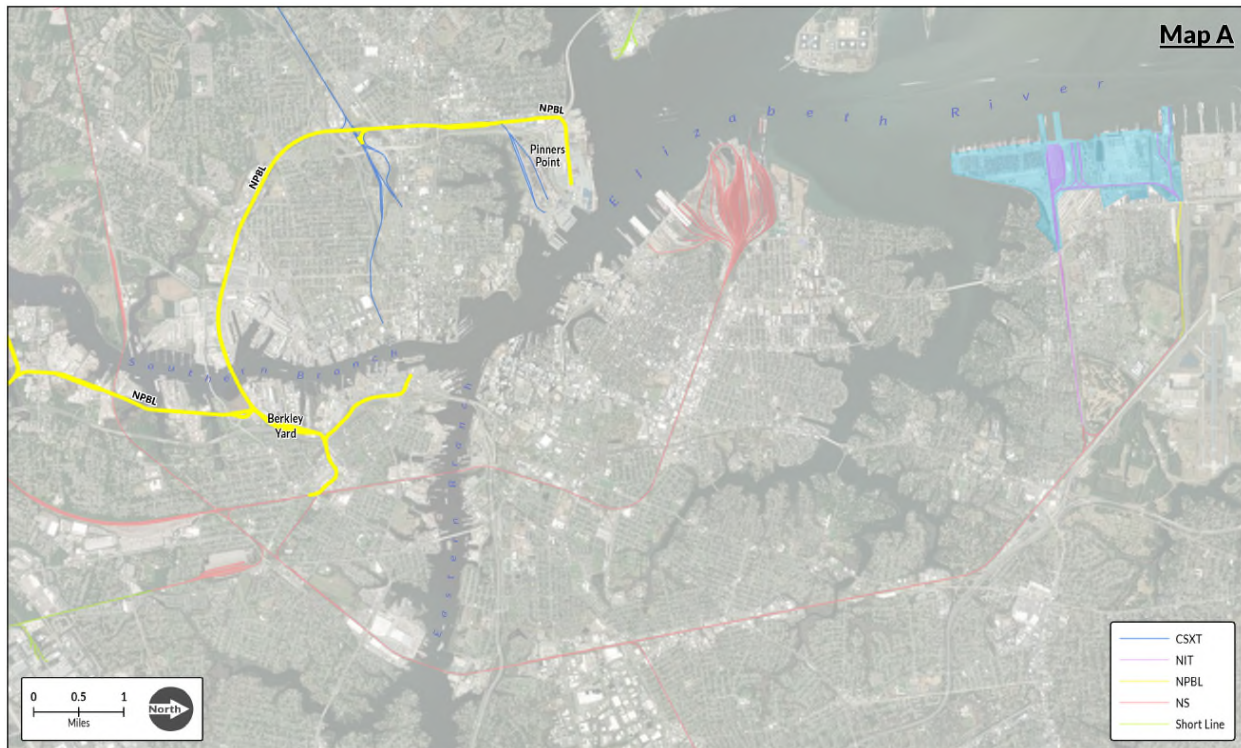
NPBL was incorporated as the Southeastern and Atlantic Railroad Company in 1896. It was formed by eight railroads: Norfolk & Western Railway; Chesapeake & Ohio Railway; Southern Railway Company; New York, Philadelphia & Norfolk Railroad; Atlantic & Danville Railroad; Atlantic Coast Line; Norfolk & Southern Railroad; and Seaboard Air Line Railroad. In 1898, the corporate name was changed to NPBL, and NPBL commenced operations.⁵ NPBL was established as a belt line railroad explicitly “for the mutual benefit of each” owner and in which “all [owners] are to be equally interested.” (CSXT Pet. to Reject, Ex. 1, at CSXT-1-76, Feb. 27, 2025.) Additionally, NPBL was to provide an efficient means of interchanging the traffic of its owners between their line and various marine terminals and industries located on NPBL’s network.

2.1.2. In 1917, NPBL was granted trackage rights by NS’s predecessor, which resulted in NPBL extending the scope of its operations to reach the area that is now occupied by NIT.

When it commenced operations, NPBL served an area from Pinnars Point on the Elizabeth River in Portsmouth, VA, to an interchange point across the Southern Branch of the Elizabeth River in Berkley, VA (in South Norfolk).

⁵ (See VPA Mot. to Dismiss 2, June 21, 2011, *Va. Port Auth.—Acquisition Exemption—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 35532.)

Figure 1: Map of NPBL's Initial Operations (Ex. 1-A)



In 1917, NPBL extended the scope of its operations through trackage rights granted to NPBL by the Virginian Railway Company (“Virginian Railway”), an NS predecessor and co-owner of NPBL at the time, over a new line that Virginian Railway was building from South Norfolk across the Eastern Branch of the Elizabeth River to reach the area in Norfolk, VA, that is now occupied by NIT. The 1917 trackage rights agreement is attached as Exhibit 2.⁶

⁶ CSXT understands that NPBL and NS’s predecessors entered into a July 26, 1917 trackage rights agreement and a July 27, 1917 trackage rights agreement. (See NS Pet. 2, Sept. 13, 2018, *Norfolk S. Ry. Co.—Petition to Set Trackage Rights Compensation—Norfolk & Portsmouth Belt Line R.R. Co. (NS Trackage Rights Compensation)*, FD 36223.) Both agreements are provided in Exhibit 2.

Figure 2: Map of NPBL's Extended Operations in 1917 (Ex. 1-B)



2.1.3. NS and NPBL both directly access NIT, while NS has effectively blocked CSXT from accessing NIT through NPBL's switching services.

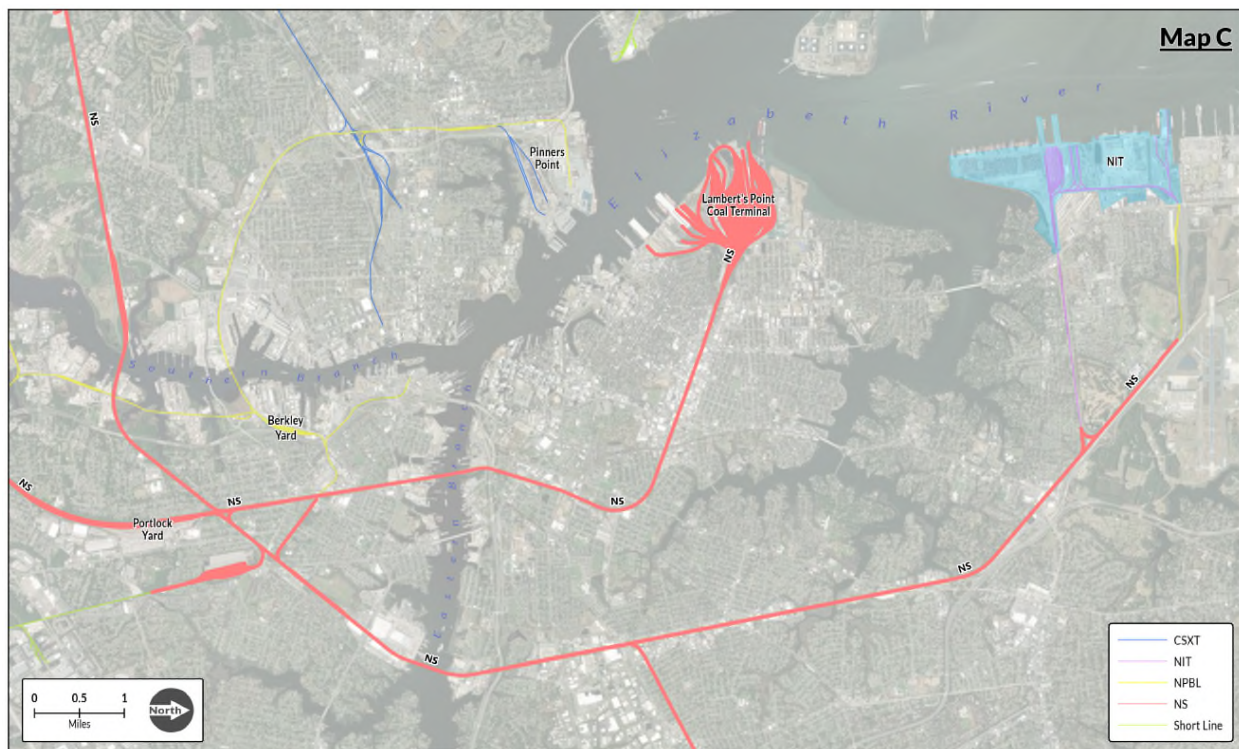
Today, NIT has become one of the most important intermodal terminals serving ocean vessels on the East Coast. NIT is owned and operated by the Virginia Port Authority ("VPA"), a political subdivision of Virginia.⁷

The NIT docks are served directly by two railroads: NS and NPBL. Crucially, NS can reach NIT directly, without using NPBL's switching services. NS's main line serving the Norfolk area enters from the west at NS's Portlock Yard, located

⁷ In fiscal year 2024, approximately 1.9 million containers (3.5 million twenty-foot equivalent units ("TEU")) moved through POV's terminal properties. POV, Annual Comprehensive Financial Report for the Fiscal Year ended June 30, 2024 at 17 (2024), <https://www.portofvirginia.com/wp-content/uploads/2024/09/Virginia-Port-Authority-06-30-2024-Annual-Comprehensive-Financial-Report-as-Issued.pdf>. (See also VPA Letter, Mar. 5, 2025.)

between the Southern and Eastern branches of the Elizabeth River. From Portlock Yard, NS has a rail line that continues north across the Eastern Branch of the Elizabeth River, eventually reaching NIT. NS travels through NIT in a continuous fashion, in part by traversing NPBL tracks, for which NS pays a nominal trackage rights fee. (See CSXT MSJ Opp'n, Ex. 10, Hunt Dep. Tr. 20:2- 22:24, Feb. 18, 2020; *id.* at Ex. 7, Moss Dep. Tr. 164:6-16, Feb. 14, 2020; Ex. 16, Moss Dep. Tr. 42:4-43:25, Aug. 28, 2025.) According to VPA's statistics, NS has moved between {{ [REDACTED] }} and {{ [REDACTED] }} rail shipments of international intermodal containers at NIT annually from 2015 through 2024. (VPA Letter 4, Mar. 5, 2025.)

Figure 3: Map of Current NS Lines (Ex. 1-C)



NPBL also has direct on-dock rail access at NIT via its own lines and trackage rights over NS's tracks. NPBL has trackage rights over NS's Norfolk lines from a point just outside of NPBL's Berkley Yard (NS Junction) to a point just outside of NIT (West Junction). NPBL connects there to its own retained freight

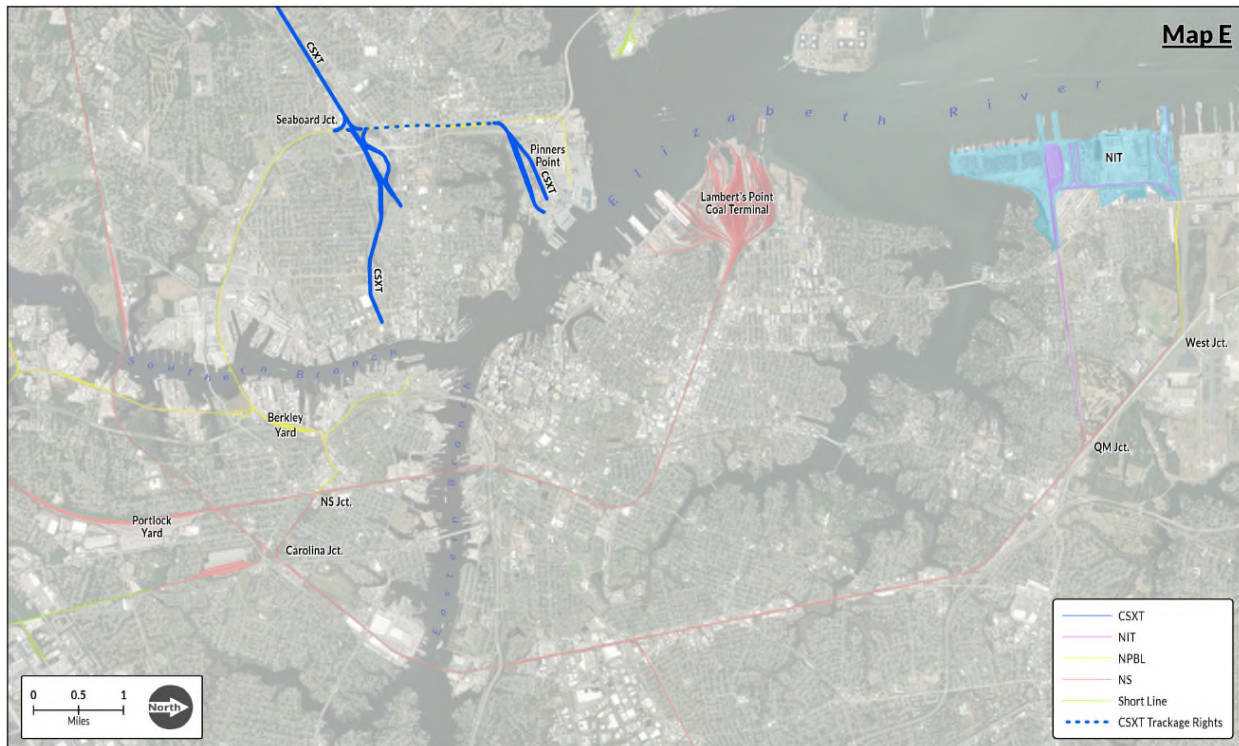
easement located inside the NIT gates. (See VPA Mot. to Dismiss 3, June 21, 2011, *VPA Acquisition Exemption*, FD 35532.) NPBL can enter and exit NIT using the terminal's "North Gate." (See CSXT MSJ Opp'n ¶ 8.) Railroads effectively manage operational patterns much like NPBL's at other terminals. (See CSXT MSJ Opp'n, Ex. 11, Girardot Decl. ¶ 10, Mar. 4, 2021; *id.* at Ex. 12, Girardot Dep. Tr. 86:24-93:12, Mar. 17, 2021.) Tom Capozzi, VIT's Chief Sales Officer, testified that {{ [REDACTED] }} about NPBL's route at NIT. (See *id.* at Ex. 13, Capozzi Dep. Tr. 40:9-20, Jan. 22, 2021.)

Figure 4: Map of Current NPBL Lines and Trackage Rights (Ex. 1-D)



CSXT does not have direct access into the Norfolk marine terminal area that includes NIT. CSXT does not have its own lines or trackage rights that would allow CSXT to operate across the Southern Branch of the Elizabeth River. Instead, CSXT's main line into the Norfolk area enters the area from the west, where it intersects with the NPBL's belt line in Portsmouth, near Pinners Point.

Figure 5: Map of Current CSXT Lines and Trackage Rights (Ex. 1-E)



Consistent with the purpose of NPBL, CSXT (the joint owner of NPBL) should be able to use NPBL’s switching services to reach shippers at NIT by rail. CSXT would do so were it not for NS’s unlawful control of NPBL and the exclusionary switch fee and operational practices that have resulted from that control.

NS has admitted that “only [NS] and NPBL have direct access to NIT,” (V.S. McClellan 3, Feb. 14, 2025), and that NS controls access to NIT. (*See, e.g.*, CSXT MSJ Opp’n, Ex. 18, NSR_00071344 (2016 email from NS’s John Friedmann, stating, {{ [REDACTED] }}).) Yet, NS also asserts that CSXT has effective access to NIT today, via a switch with NPBL at a “cost-based” rate, and that, if NS’s application is approved, CSXT will continue to have that access. (NS Appl. 6, 10, June 13, 2025.)

NS's claim that CSXT currently accesses NIT via NPBL is inaccurate and misleading. As discussed in detail below, NS and NPBL have engaged in anticompetitive conduct that has prevented CSXT from using NPBL switching services to compete with NS for freight to NIT. Among other things, NS has caused NPBL to refuse to adopt policies and practices that would allow CSXT to compete for on-dock rail traffic at NIT, including imposing NPBL's cost-prohibitive switching rate and raising operational barriers. NS has also used its control over NPBL to impede the movement of CSXT's traffic.

Therefore, while CSXT has *theoretical* rail access to NIT through NPBL, CSXT had only a small volume of rail shipments at NIT in 2015 and zero on-dock rail shipments at NIT since then. (V.S. Kenney 5, Sept. 18, 2025; *see also* VPA Letter 4, Mar. 5, 2025; Ex. 16, Moss Dep. Tr. 41:23-42:3, Aug. 28, 2025.) This exclusion is the result of NS's unlawful control of NPBL. (*See* V.S. Kenney 6, Sept. 18, 2025.)

2.1.4. NS never obtained authority to control NPBL when NS obtained a majority ownership interest in NPBL in 1982.

In 1980, NS's predecessor filed an application seeking authority from the STB's predecessor, the Interstate Commerce Commission ("ICC"), to acquire control of Norfolk and Western Railway Company ("NW") and its subsidiary companies, and of Southern Railway Company ("SRC") and its consolidated companies. The ICC granted the control application in 1982, which resulted in NS indirectly owning approximately 57% of the shares of NPBL. *See Norfolk S. Corp.—Control—Norfolk & W. Ry. Co.*, 366 I.C.C. 173 (1982); *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co. (Decision No. 7)*, FD 36836, slip op. at 4 (STB served July 10, 2025).

NS openly admits that it has controlled NPBL for over 40 years without the necessary ICC or STB authority. (*See, e.g.*, NS Prefiling Notification 7-8, 14,

Feb. 14, 2025.) NPBL has similarly admitted that it is controlled by NS. (*See, e.g.*, Opening Statement & Evidence of NPBL 1, 5, Sept. 23, 2021, *Norfolk S. Ry. Co.—Pet. for Declaratory Order*, FD 36522.) Furthermore, NS treats NPBL as a “consolidated subsidiary” for STB economic reporting purposes, listing NPBL in its annual R-1 Report as an “affiliated railroad[] under the COMMON CONTROL of Norfolk Southern Corporation.”⁸

In support of its current request for control authority, NS asserts that CSXT did not oppose NS's 1980 control proceeding. (NS Appl. 20.) NS's assertion is completely irrelevant to the question before the Board now. At the time, CSXT had no reason to question NS's intentions because NS explicitly said that it did not plan to control NPBL.⁹ CSXT was unaware that NS would wield its control of NPBL to pursue a decades-long campaign to exclude CSXT from on-dock rail access at NIT.

NS further asserts that CSXT never raised any concerns or objections regarding NS's majority stock ownership or control of NPBL until 2018. (NS Appl. 17, 20.) This is plainly false. CSXT has raised concerns regarding NS's control of NPBL and CSXT's lack of rail access to NIT for many years. (*See, e.g.*, CSXT MSJ Opp'n, Ex. 43, EDVA NPBL012284 at -285 (2010 memo from the CSXT NPBL board members to the NPBL board, stating {{ [REDACTED]

⁸ Norfolk Southern Class I Railroad Annual Report 4 (2023), available at <https://norfolksouthern.investorroom.com/image/2023+NS+Consolidated+R1+Schedules+and+Footnotes.pdf>.

⁹ (See, e.g., NW & SRC Pet. Seeking Waiver & Clarification 11-12, July 24, 1980, *NWS Enterprises, Inc.—Control—Norfolk & W. Ry. Co. & S. Ry. Co.*, FD 29430 (“[B]oth NW and SRC have interests in certain railroad companies which are operated independently of the NW or SRC systems. NW and SRC hold 50 percent or less of the stock of such companies, do not now exercise control over them, *and have no intention of exercising control over any such companies after the control transaction is approved*”) (emphasis added).)

[REDACTED] }; *id.* at Ex. 3, NSR_00177916
 at -917 (2009 NS letter to NS-appointed NPBL board members titled {{ [REDACTED]
 [REDACTED] }} which explains that
 {{ [REDACTED]
 [REDACTED] }); *see also id.* at Ex. 30, NSR_00011118 (April 24, 2009 email in which NS
 employees discuss {{ [REDACTED] }}).)

2.1.5. NS currently controls the NPBL board.

Through a series of mergers and acquisitions, NPBL is now owned by NS (57%) and CSXT (43%). The NPBL board of directors currently consists of six voting members and one non-voting member. (CSXT Pet. to Reject, Ex. 1, at CSXT-1-92, Feb. 27, 2025.) NS controls four members of the NPBL board (including NPBL's president, who serves as chairman), and CSXT controls two members of the NPBL board. NS has appointed current and former NS employees as NPBL directors and officers, thereby exercising complete control of the NPBL board and the management and operation of the railroad.

Since at least 2005, the NS-controlled NPBL board has installed a former NS employee in the position of president. (*See* CSXT MSJ Opp’n, Ex. 4, Wheeler Dep. Tr. 31:18-22, Feb. 24, 2020; *id.* at Ex. 5, Coleman Dep. Tr. 27:17-21; 53:11-13, Mar. 4, 2020.) Two recent past presidents, who served from 2005 to 2011, returned to work at NS following their tenures at NPBL. (*See id.* at Ex. 4, Wheeler Dep. Tr. 32:1-4, Feb. 24, 2020; *id.* at Ex. 6, NS’s Resp. to CSXT’s Interrog. No. 1 at 9, 14.) Current NPBL President Cannon Moss has made clear he intends to do the same. (*See id.* at Ex. 7, Moss Dep. Tr. 24:1-11, Feb. 14, 2020; *id.* at Ex. 9, NSR_00071467; Ex. 7, STB-NS-0023792.)

NS claims that “CSXT recently conceded the current NPBL president is an independent NPBL board member,” referencing a discussion at a recent NPBL shareholder meeting. (NS Appl. 16, 22; V.S. Zoeller 1-2, June 13, 2025.) This is false. In no way did the CSXT shareholder representative “concede” that the current NPBL president is an independent NPBL board member or that NS does not currently exercise control over NPBL.¹⁰ But more importantly, it’s not clear at all what argument NS is trying to make through its false characterization of CSXT’s position. Does NS now somehow claim that it does not control NPBL? NS has admitted repeatedly to the Board that NS controls NPBL and has done so since 1982. CSXT agrees that NS controls NPBL.

2.2. NS has used its control over NPBL to conduct a decades-long campaign to exclude CSXT from on-dock rail access to NIT.

2.2.1. Evidence of NS’s anticompetitive efforts goes back as far as 1999.

NS has long viewed its stranglehold on NIT as critical to its success. NS’s own documents reveal the fundamental motivation underlying its conduct towards CSXT since 1999: {{ [REDACTED] }} (See, e.g., CSXT’s MSJ Opp’n,

¹⁰ During that shareholder meeting, Mr. Zoeller, General Counsel for Markets and Regulation in the Law Department of NSC, asked whether Mr. Moss, NPBL’s current president and a member of the board of directors, would be considered “independent” by the terms of a CSXT proposal for a new NPBL governance structure. (See V.S. Zoeller 2, June 13, 2025.) According to Mr. Zoeller, a CSXT shareholder representative indicated that because Mr. Moss’s previous employment with NS had ended more than ten years earlier, he would be considered “independent” under CSXT’s proposal. But as Mr. Zoeller conceded, { [REDACTED]

{ [REDACTED] } (Ex. 3, Zoeller Dep. Tr. 24:14-25:12, Aug. 6, 2025; Ex. 4, NPBL000612 at -623.) Mr. Zoeller also admitted that { [REDACTED]

{ [REDACTED] } (Ex. 3, Zoeller Dep. Tr. 26:21-27:6, Aug. 6, 2025.)

Ex. 1, NSR_00306367.) Other documents show not only that NS's strategy of blocking CSXT was effectively executed, but also the many ways that NS, both independently and in combination with NPBL, inflicted harm on CSXT and competition generally.

For example, in 1999, after learning that CSXT had initiated talks with Virginia International Terminals ("VIT"), the commercial entity that operates NIT, about {{ [REDACTED] }} a senior NS executive asked an NS colleague: {{ [REDACTED] }} (*Id.*) The colleague responded: {{ [REDACTED] }}
 [REDACTED]
 [REDACTED]
 [REDACTED] }} (*Id.*)

NS eventually did cancel trackage rights over part of the line needed to efficiently access NIT (the Connecting Line), and it also increased the NPBL switch rate. And NS has now asked the STB to increase the compensation that NPBL must pay to NS to use NS's tracks to access NIT in order to provide cover to artificially inflate the current switch rate even further. In a 2018 meeting, CSXT raised its access (or lack thereof) to NIT with NS, and NS's internal meeting minutes summarize NS's conduct: {{ [REDACTED] }}
 [REDACTED] }} (Ex. 5, STB-NS-0005804 at -806.)

Additionally, NS has long used NPBL "rate committees" to monitor CSXT's activities in the region and preserve its control of NIT. In a 1999 message from NS's Bob Belvin to members of the 1999 NPBL rate committee and NS-appointed NPBL directors, Belvin stated that, {{ [REDACTED] }}

}} (CSXT MSJ Opp'n, Ex. 23, NSR_00199532.)¹¹

2.2.2. In 2008, NS terminated NPBL's trackage rights over the Connecting Line and unlawfully removed certain track assets related to the Connecting Line.

In 2008, NS and NPBL sought and obtained STB authority, by invoking a class exemption from otherwise applicable STB approval requirements, to discontinue rail service and trackage rights over a line segment between NS Junction at MP 1.40 and Carolina Junction at MP 2.30 (the "Connecting Line"). (See CSXT MSJ Opp'n ¶ 43.) The Board published notice of the exemptions on May 15, 2008, and the exemptions became effective on June 14, 2008.¹² CSXT did not oppose that proceeding, as CSXT was unaware at the time that these exemptions were connected with NS's manipulation of NPBL to exclude CSXT from competing at NIT. The map below depicts the track assets prior to the 2008 discontinuances.

¹¹ (See also CSXT MSJ Opp'n, Ex. 24, NSR_00306424 (email from NS intermodal market manager Chris Luebbers, summarizing 2002 rate committee meeting, including NS's concern that {{ [REDACTED] }} id. at Ex. 25, NSR_00306426 at -427 (email from Luebbers, summarizing 2006 committee's recommended {{ [REDACTED] }}

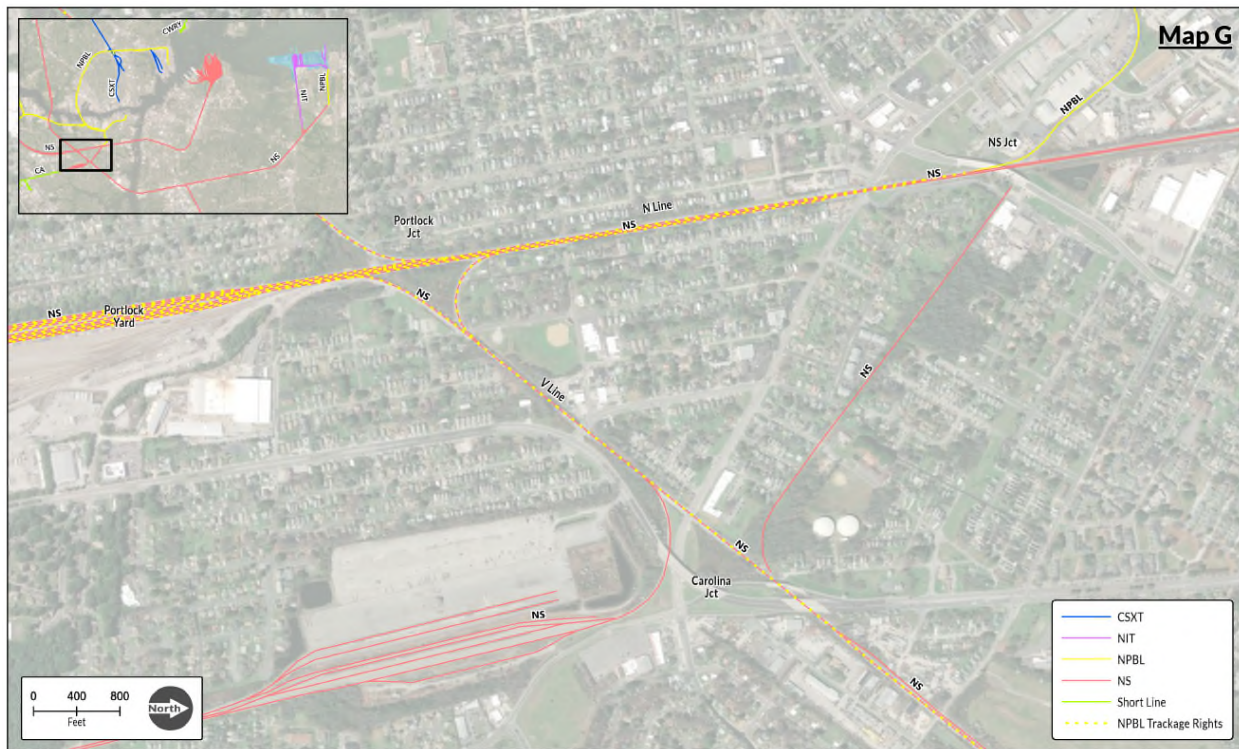
¹² See *Norfolk S. Ry. Co.—Discontinuance of Service Exemption—in Chesapeake, VA*, AB 290 (Sub-No. 299X), slip op. at 2 (STB served May 15, 2008); *Norfolk & Portsmouth Belt Line R.R. Co.—Discontinuance of Trackage Rights Exemption—in Chesapeake, VA*, AB 1024X, slip op. at 2 (STB served May 15, 2008).

Figure 6: Map of NPBL Trackage Rights Near the Connecting Line Prior to the 2008 Discontinuances (Ex. 1-F)



Subsequently, without first obtaining the necessary abandonment authority, NS unlawfully removed certain track assets associated with the Connecting Line, including a double diamond at NS Junction and a connection at Carolina Junction, which rendered the Connecting Line unusable. The map below depicts the track assets today.

Figure 7: Map of Current NPBL Trackage Rights Near the Connecting Line (Ex. 1-G)



The 0.90-mile Connecting Line allowed efficient movement of traffic between NPBL's Berkley Yard and the tracks leading to NIT without having to use other routes, such as entering and exiting NS's Portlock Yard. Specifically, the diamond had allowed NPBL to access NIT via {{ [REDACTED] }} (CSXT MSJ Opp'n, Ex. 53, Girardot Decl. ¶ 7, Feb. 21, 2020.) Without access to the Connecting Line, NPBL trains carrying CSXT intermodal freight to NIT must travel a longer distance and make a less efficient movement, such as moving into NS's Portlock Yard, where the train has to be disassembled, and the engines have to be attached to the back of the train before reassembling and proceeding along NS's track (where NPBL has trackage rights) to NIT. (*Id.*; *see also id.* at Ex. 7, Moss Dep. Tr. 170:11-172:20, Feb. 14, 2020; *id.* at Ex. 10, Hunt Dep. Tr. 159:3-160:7, Feb. 18, 2020; Ex. 16, Moss Dep. Tr. 54:1-24, Aug. 28, 2025.)

2.2.3. In 2009, NS, using its control over NPBL, induced NPBL to reject a CSXT proposal for a volume-based intermodal-specific switch rate to NIT, even though the CSXT proposal would have generated significant additional revenue for NPBL.

In 2009, NPBL convened a rate committee {{ [REDACTED] [REDACTED] }} among other reasons. (CSXT MSJ Opp'n, Ex. 26, NSR_00074104 at -107.) {{ [REDACTED] [REDACTED] }} (Id. at Ex. 19, NSR_00027070 at -071.) As part of the discussion, CSXT recommended NPBL reduce its rate to allow for CSXT intermodal traffic to NIT, which would increase NPBL's revenues. (See id. at Ex. 27, CSXT0080856 at -856 to -857 (June 2009 letter from CSXT's Tony Ingram to NPBL's David Stinson); id. at Ex. 19, NSR_00027070 at -073.)

The NS-appointed members of the NPBL rate committee had a different goal. As NS's Chris Luebbers explained in an April 2009 email to NS-appointed rate committee members Liesl McLemore and Gregg Cronk: {{ [REDACTED] [REDACTED] }} (CSXT MSJ Opp'n, Ex. 2, NSR_00084753 at -754 (emphasis added).) According to Luebbers, the rate committee was a high priority for NS's intermodal group because {{ [REDACTED] [REDACTED] }} (Id. at -753.)

NS-appointed rate committee members internally discussed how to combat CSXT's position {{ [REDACTED] [REDACTED] }} (CSXT MSJ Opp'n, Ex. 28, NSR_00084730; see also id. at Ex. 29, NSR_00027114 (April 2009 email string with Luebbers, NS's VP of Intermodal & Automotive Jeff Heller,

and NS-appointed NPBL director and former NS Chief Operating Officer Mark Manion, discussing trackage at NIT, which Heller describes as {{ [REDACTED] [REDACTED] }}); *id.* at Ex. 30, NSR_00011118 (April 2009 email from NS's Luebbers to NS rate committee members McLemore and Cronk, warning that a lower NPBL rate at NIT {{ [REDACTED] [REDACTED] }})).

Two days before the rate committee’s July 2009 meeting, NS intermodal executives drafted a letter to NS-appointed NPBL director Mark Manion and the other NS-appointed members of the NPBL board, titled {{ [REDACTED] }} (*Id.* at Ex. 3, NSR_00177916.) The letter states that {{ [REDACTED] }}

{{ [REDACTED] }} (*Id.* at -917.) Though the rate committee had yet to meet, the letter included NS’s assumption that {{ [REDACTED] }}

{{ [REDACTED] }} (*Id.*) It concludes: {{ [REDACTED] }}

{{ [REDACTED] }}¹³ (*Id.* at -917 to -918 (emphasis added).)

At the July 29, 2009 rate committee meeting, NPBL management made several proposals to the committee. (*See* CSXT MSJ Opp’n, Ex. 26, NSR 00074104

13 This is not the first time that NS personnel sought to influence the votes of NS-appointed NPBL directors to preserve NS's competitive position, without regard for NPBL's independent business interests. (*See, e.g.*, CSXT MSJ Opp'n, Ex. 15, NSR_00199530; *id.* at Ex. 16, NSR_00199524 {{ [REDACTED] }}
[REDACTED] }}
id. at Ex. 17, NSR_00199515 {{ [REDACTED] }}
[REDACTED] }}

at -105.) First, management recommended replacing the existing {{ [REDACTED] }} rate and the {{ [REDACTED] }} rate with a single \$210 line-haul switch rate, not out of concern for any perceived violation of the NPBL Operating Agreement,¹⁴ but purportedly because the NS accounting systems used by NPBL could not handle the two-tiered structure. (*See id.* at Ex. 19, NSR_00027070 at -073; *see also id.* at Ex. 5, Coleman Dep. Tr. 117:18-118:18 (NPBL claimed it wanted to eliminate dual rates because it could not distinguish between domestic and import/export traffic).)

NPBL management also recommended adopting a {{ [REDACTED] }} per car rate for “unit trains,” i.e., trains moving more than forty cars to one destination under a single waybill. (*Id.* at Ex. 19, NSR_00027070 at -073; *id.* at Ex. 33, NSR_00035548 at -549 (NPBL management proposed {{ [REDACTED] }} rate).) Management developed this rate by reviewing rates charged by other short lines for similar services and evaluating NPBL’s costs in a “worst case” scenario. (*See id.* at Ex. 19, NSR_00027070 at -074.) CSXT expressed interest in using this rate to move trains of intermodal freight to and from NIT, though these moves involved multiple

¹⁴ More recently, NS has taken a different position, asserting that “[t]he core principles in the 1897 Agreement were for NPBL to establish a switch rate that was both uniform and cost-based.” (NS Prefiling Notification 23.) However, as NS is well aware, the NPBL board can and historically has {{ [REDACTED] }} this provision, such as by approving rates that vary by commodity type and international versus domestic business. (CSXT MSJ Opp’n, Ex. 5, Coleman Dep. Tr. 137:21-138:8; *see also id.* at Ex. 19, NSR_00027070 at -071 {{ [REDACTED] }} *id.* at Ex. 20, NSR_00306443; *id.* at Ex. 21, NSR_00306377; Ex.6, STB-NS-0014867.) As Mr. McClellan acknowledged in his recent deposition, {{ [REDACTED] }} (Ex. 14, McClellan Dep. Tr. 150:12-151:20, Aug. 18, 2025; *see also* Ex. 16, Moss Dep. Tr. 60:13-61:16, Aug. 28, 2025.)

waybills. (*See id.* at -073.) NPBL management said that it was not opposed to dropping the “one waybill” requirement for this traffic. (*See id.*)

Within days of this meeting, NS’s Luebbers sent NS rate committee members McLemore and Cronk his draft recommendations, including that the NPBL board should {{ [REDACTED] }}—a proposal that would *increase* the rate for CSXT’s traffic to NIT. (CSXT MSJ Opp’n ¶ 24; *id.* at Ex. 19, NSR_00027070.) Luebbers debated whether NS should recommend approving the \$210 switch rate, but recommended “against the {{ [REDACTED] }} unit train per car rate” proposed by NPBL management. (*Id.*) As he explained:

{{ [REDACTED] }}

(*Id.*)

During the next rate committee meeting, CSXT committee members supported the consolidated \$210 rate *and* the {{ [REDACTED] }} per car unit train rate proposed by NPBL management. (*Id.* at Ex. 31, NSR_00035903 at -904 to -905.) CSXT also explained that it wanted to develop an operating plan to move regular volumes to NIT at the {{ [REDACTED] }} per car rate. (*Id.* at -905.)

NS rate committee members opposed the {{ [REDACTED] }} rate, questioning whether the analysis conducted by NPBL management was sufficient. (*Id.*) After NS raised this issue, management suggested it would reconsider its evaluation, stating that {{ [REDACTED] }} ({{ [REDACTED] }}) (*Id.*) NS rate committee members encouraged NPBL to negotiate {{ [REDACTED] }} rather than incorporating the {{ [REDACTED] }} rate into the tariff. (*Id.*)

Following this meeting, the CSXT-appointed members of the NPBL rate committee submitted a formal recommendation to the NPBL board, including an economic and operational analysis supporting the {{ [REDACTED] }} per car unit train rate proposed by NPBL management. (*Id.* at Ex. 32, CSXT0082145 at -146.) CSXT also proposed adding a volume-based discount to the line-haul tariff, to increase NPBL's revenue and "sharply enhance [NPBL's] business prospects and competitive offerings." (*Id.*; CSXT MSJ Opp'n. ¶ 27.)

The NS-appointed rate committee members submitted a formal recommendation opposing the {{ [REDACTED] }} rate. (*Id.* at Ex. 33, NSR_00035548.) They recommended the NPBL board disapprove this rate because {{ [REDACTED] }}
 {{ [REDACTED] }}
 {{ [REDACTED] }} (*Id.* at -549.)

In December 2009, NPBL management presented the NPBL board with proposed tariff changes, including the \$210 line-haul rate but *not* the {{ [REDACTED] }} per car unit train rate or the volume-based discount proposed by CSXT. (*See* Ex. 27, EDVA NPBL007302 at -302, -318.) The three NS-appointed NPBL directors voted to adopt the changes in the NPBL proposed tariff {{ [REDACTED] }}
 {{ [REDACTED] }} (*See id.* at -302.) Neither CSXT-appointed director voted to approve the tariff. (*Id.*) The \$210 rate became effective on January 1, 2010, and it remains in effect today. (CSXT MSJ Opp'n ¶ 29.)

In its application, NS briefly states that NPBL formed a rate committee in 2009 "to evaluate the NPBL tariff charges with the rate committee being composed of representatives from CSXT, NS, and NPBL," and "[t]he rate committee recommended several changes, including the uniform \$210 per-car line haul switching fee that remains in effect today." (NS Prefiling Notification 87.) NS's brief description of the 2009 rate committee leaves out the key point – the 2009 rate

committee was essentially a farce. (See CSXT MSJ Opp'n ¶ 71; *id.* at Ex. 37, Armbrust Dep. Tr. 246:17-21, Mar. 11, 2020.)

2.2.4. In 2009, NS induced NPBL to reject CSXT's offer to purchase NPBL's Port Norfolk Yard, despite its declining revenues and stated need to increase its cash flow.

In 2009, NS used its control of NPBL to induce NPBL to reject a CSXT proposal that would have benefited NPBL. CSXT offered to purchase NPBL's Port Norfolk Yard (also known as Pinners Point), but NPBL rejected the offer, despite its declining revenues and stated need to increase its cash flow. (*See id.* at Ex. 57, EDVA NPBL006972; *id.* at Ex. 58, EDVA NPBL007205 at -213.) Although NPBL's David Stinson characterized CSXT's opening offer as {{ [REDACTED] [REDACTED] [REDACTED] }} (*See* Ex. 33, EDVA NPBL007213; CSXT MSJ Opp'n, Ex. 59, EDVA NPBL014367 at -369.)

NS identified CSXT's offer to purchase this property as a threat, because it would have {{ [REDACTED] }} (CSXT MSJ Opp'n, Ex. 3, NSR_00177916 at -917.) NS personnel asked NS-appointed NPBL directors to {{ [REDACTED] }} (Id. at Ex. 3, NSR_00177916 at -918; see also id. at Ex. 30, NSR_00011118 (NS's Cronk: {{ [REDACTED] }} NS's Luebbbers: {{ [REDACTED] }}); id. at Ex. 60, NSR_00084773 (email between Heller and NS's John Friedmann, noting that NS was {{ [REDACTED] }}

██████████ }}) The NS-appointed NPBL directors followed the directive of NS.

2.2.5. In 2010, NS prevented NPBL from fairly assessing CSXT's service proposal to access on-dock intermodal container service at NIT via NPBL.

In early 2010, in response to NS's purported desire to review a {{ ██████████
██████████ }} (see CSXT MSJ Opp'n, Ex. 33, NSR_00035548 at -549), CSXT developed a comprehensive plan to access on-dock intermodal container service at NIT via NPBL (the "2010 Proposal"). (See Ex. 21, EDVA NPBL007430 at -431.)

In the 2010 Proposal, CSXT proposed paying NPBL \$37.50 per container for intermodal traffic to and from NIT, a rate higher than that charged by Commonwealth Railway ("CWRY"), a truly independent short line providing the sole means of access for NS and CSXT at VIG, the terminal just across the Elizabeth River from NIT. (CSXT MSJ Opp'n ¶ 30.) To reduce any risk to NPBL, CSXT included a volume commitment and offered to allow NPBL to use CSXT's locomotives and fuel for free. (Ex. 21, EDVA NPBL007430 at -433.)

David Stinson, then-president of NPBL, responded to the 2010 Proposal on August 5, 2010. (See CSXT MSJ Opp'n, Ex. 34, EDVA NPBL007438.) Mr. Stinson stated that CSXT's proposal would require hiring more personnel, which he projected would reduce NPBL's potential increased operating income under the proposal from {{ ██████████ }} to {{ ██████████ }} (See *id.* at -438; see also CSXT MSJ Opp'n, Ex. 35, Stinson Dep. Tr. 164:19-167:11, Feb. 26, 2020) (NPBL management did no analysis suggesting the proposal would not generate positive operating income).) Mr. Stinson also questioned whether the proposal complied with the Operating Agreement's "uniform rate" provision (see CSXT MSJ Opp'n ¶ 31), and a

prohibition on “foreign” locomotives in the NPBL by-laws. (*See* CSXT MSJ Opp’n, Ex. 34, EDVA NPBL007438 at -438.)

Although CSXT {{ [REDACTED] }} (see *id.* at Ex. 37, Armbrust Dep. Tr. 213:1-7, Mar. 11, 2020), CSXT promptly addressed Mr. Stinson’s concerns, explaining that it was not opposed to the proposed rate being incorporated into NPBL’s tariff or NPBL using its own locomotives (which are leased from NS). (*See id.* at Ex. 36, NSR_00000781 at -820; *id.* at Ex. 37, Armbrust Dep. Tr. 203:1-14, Mar. 11, 2020.) Mr. Stinson testified that this response addressed his concerns. (*See id.* at Ex. 35, Stinson Dep. Tr. 157:1-159:24, Feb. 26, 2020.)

Shortly after CSXT submitted the 2010 Proposal, NS began to “review” it. (*See id.* at Ex. 38, NSR_00073997.) NS’s Chris Luebbers—an intermodal sales and marketing manager with no operational experience and no affiliation with NPBL (*see id.* at Ex. 4, Wheeler Dep. Tr. 123:5-13, Feb. 24, 2020)—took the lead. Over the next several weeks, NS employees worked to identify economic and operational barriers that could be used to “argue” against the proposal, including route timing and terminal congestion. (*See id.* at Ex. 39, NSR_00062857; *id.* at Ex. 40, NSR_00062844.)

At the September 8, 2010 NPBL board meeting, NPBL management presented the 2010 Proposal to the NPBL board. (*See id.* at Ex. 41, EDVA NPBL019920.) The NS-controlled NPBL board directed management {{ [REDACTED] }} (Id.) Management was to report back “in 30 days.” (*Id.*) Despite these statements, handwritten meeting notes from an unidentified NS-appointed NPBL director reflect that NS had no intention of fairly assessing the proposal. (*See id.* at Ex. 36, NSR_00000781 at -781 {{ [REDACTED] }} .)

On October 8, 2010, Mr. Stinson relayed to the NPBL board that management had met with NS operations to evaluate the 2010 Proposal, and that he would update the NPBL board within 30 days after receiving additional information from NS. (*See id.* at Ex. 42, EDVA NPBL012305.) Sixty days later, however, NS had still not produced the information to Mr. Stinson. (*See id.*)

On December 27, 2010, the CSXT-appointed members of the NPBL board sent a memorandum to the NPBL board, requesting that it (1) act to remove any barriers preventing fair consideration of the 2010 Proposal, and (2) direct NS to conclude its operational review of the 2010 Proposal no later than March 30, 2011. (*Id.* at Ex. 43, EDVA NPBL012284 at -286.)

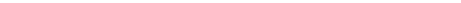
At the December 29, 2010 NPBL board meeting, Mr. Stinson presented {{ [REDACTED] }}
[REDACTED]
[REDACTED] }} (*Id.* at Ex. 44, NSR_00000704 at -712.) Management's analysis showed that the proposal would result in positive net income to NPBL *under either scenario*. (*See id.* at -736.)

Following discussion, a motion was made and seconded that NPBL be allowed to use CSXT locomotives in service to NIT. (*Id.* at -712.) Before a vote could be taken, however, NS-appointed members of the NPBL board moved to table the vote {{ [REDACTED] }} (*Id.*) The motion at first did not pass because Mr. Stinson voted against it, along with the two CSXT-appointed directors. (*Id.*) An amended motion to table the vote, which promised that {{ [REDACTED] }}
[REDACTED] }} was unanimously approved. (*Id.*)

On March 1, 2011, NS's Jeff Yates rejected Mr. Stinson's request for service to NIT in connection with the 2010 Proposal. (*See* CSXT MSJ Opp'n, Ex. 45, EDVA NPBL012988.) This letter does not mention (much less "address") the locomotive issue discussed at the December Board meeting.

On April 11, 2011—approximately eight months after CSXT’s proposal was tendered to NPBL for consideration—NS-appointed NPBL director and NSC’s VP & Comptroller¹⁵ Jake Allison emailed NPBL’s Donna Coleman, stating for the first time that the NS-appointed directors believed {{ [REDACTED]

[REDACTED] }} (*Id.* at Ex. 46, CSXT0110423 at -423 to 424.) Mr. Allison also said the
 NS directors did not believe the board could {{ [REDACTED]

 } (See CSXT MSJ Opp'n ¶ 39.)

At the April 2011 NPBL board meeting, a vote was requested on the motion about NPBL's use of CSXT's locomotives. (*See id.* at Ex. 47, EDVA NPBL017933 at -938.) The motion did not pass because all NS-appointed board members voted against it. (*Id.*) Soon after, NS removed Mr. Stinson as president and replaced him with current NPBL President Cannon Moss, who had been employed in a business development role at NS. (*See id.* at Ex. 7, Moss Dep. Tr. 15:21-16:7, Feb. 14, 2020.) CSXT did not even receive notice of, let alone a board vote approving, Mr. Stinson's removal and Mr. Moss's replacement.¹⁶

¹⁵ (See, e.g., CSXT MSJ Opp'n, Ex. 6 at CSXT-19-HC-131, NS's Response to CSXT's First Set of Interrogatories 6.)

16 When CSXT eventually learned that NS nominated Mr. Moss as Mr. Stinson's replacement, CSXT expressed serious concerns about his qualifications based on his limited experience with rail operations. (See CSXT MSJ Opp'n, Ex. 48, CSXT0127526 at -527.) CSXT proposed a candidate with significantly more relevant experience, but the NS-appointed members of the NPBL board refused to interview him and installed Mr. Moss over CSXT's objections. (See *id.* at Ex. 49,

2.2.6. In 2015, NS used its control over NPBL to impede NPBL's movement of CSXT's traffic over NS's line.

Apart from one unique instance in 2010,¹⁷ NPBL moved no international intermodal traffic until March 2015. (CSXT MSJ Opp'n, Ex. 5, Coleman Dep. Tr. 179:10-19, Mar. 4, 2020; *id.* at Ex. 61, EDVA NPBL010915.) In 2015, CSXT attempted to utilize NPBL to move intermodal traffic to meet the extraordinary demand for intermodal service from international ocean carriers seeking to use East Coast facilities. (V.S. Kenney 5, Sept. 18, 2025.) During a period of extreme port congestion, CSXT paid NPBL's \$210 rate to move backlogged freight at NIT, recognizing that doing so under these circumstances would {{ [REDACTED] [REDACTED] }} (CSXT MSJ Opp'n, Ex. 52, Allan Dep. Tr. 172:16-173:9, Mar. 13, 2020.)

To move this traffic, NPBL's Cannon Moss requested that NS provide a window during which NPBL could operate a CSXT train across its tracks to NIT. (*Id.* at Ex. 61, EDVA NPBL010915.) This request was met with a negative reaction within NS, culminating in NS's VP of Transportation and NS-appointed NPBL board member Terry Evans responding: {{ [REDACTED] [REDACTED] }} (*Id.* at -915.)

CSXT0027044 (Sept. 16, 2011 memorandum from CSXT-appointed NPBL directors, {{ [REDACTED] }}); *id.* at Ex. 50, CSXT0000508 (Sept. 19, 2011 NPBL board minutes reflecting {{ [REDACTED] }}); *id.* at Ex. 51, CSXT0000509 (Sept. 23, 2011 NPBL board minutes installing Mr. Moss as president {{ [REDACTED] }} .)

¹⁷ In January 2010, CSXT paid the \$210 rate to NPBL for the movement of a single train from NIT, to accommodate a customer's need for a one-time move of empty containers from Virginia to Wilmington, North Carolina. (CSXT MSJ Opp'n, Ex. 63, Houfek Dep. Tr. 101:18-106:24, Dec. 9, 2020.)

Although NS eventually agreed to provide an operating window for this train, it voiced {{ [REDACTED]

[REDACTED] }} (*Id.* at -917 to -918; *see also id.* {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }} .) NS

outlined strict parameters restricting how and when NPBL and VIT were to move this single train. (*Id.*) VIT's Tom Capozzi testified that {{ [REDACTED]

[REDACTED] }} (CSXT MSJ Opp'n, Ex. 13, Capozzi Dep. Tr.

238:12-239:9, Jan. 22, 2021.) According to Mr. Capozzi, {{ [REDACTED]

[REDACTED] }} (*See id.* at 238:23-24.)

After the first train in April 2015, CSXT tried to use NPBL to move other international intermodal freight to and from NIT, but NS imposed serious difficulties, repeatedly refusing to provide operating windows based on vague, unexplained {{ [REDACTED] }} (*See, e.g.,* CSXT MSJ Opp'n, Ex. 65, EDVA NPBL005672) (NPBL unable to provide operating window due to NS's claimed {{ [REDACTED] }}).)

When CSXT's Portsmouth terminal manager Tony MacDonald spoke with the NS trainmaster, he was told: {{ [REDACTED]

[REDACTED]

[REDACTED] }} (*Id.* at Ex. 66 (MacDonald Dep. Tr. 152:15-154:4,

Jan. 20, 2021).) When Mr. MacDonald drove the length of NS's track, however, he identified no visible operating issue that would prevent NPBL's movement. (*See id.*)

Mr. Moss kept NS's Chris Luebbers—an NS intermodal *sales* person—apprised of CSXT's attempts to use NPBL to access NIT. (*See id.* at Ex. 67, EDVA NPBL024288) (minutes after receipt of MacDonald's email, Mr. Moss forwards to Mr. Luebbers, commenting {{ [REDACTED]

{} Mr. Luebbers testified that {}
 {}
 {} (See *id.* at Ex. 68,
 Luebbers Dep. Tr. 281:24-282:14, Feb. 25, 2020.)

CSXT's efforts to use NPBL to move international intermodal traffic to and from NIT during 2015 proved unworkable. (See, e.g., *id.* at Ex. 66, MacDonald Dep. Tr. 165:20-166:11, Jan. 20, 2021 (describing that the {}
 {}
 {}
 {})); see also *id.* at Ex. 69, Kenney Dep. Tr. 28:12-24, Dec. 11, 2020.)

The situation escalated to the point that CSXT's Senior VP of Operations personally called NS executives to request an operating window. (*Id.* at Ex. 70, CSXT0154004; *id.* at Ex. 66, MacDonald Dep. Tr. 171:21-173:17, Jan 20, 2021 ({}
 {}
 {})).)

NPBL ultimately moved a small number—about which witness accounts vary—of international intermodal trains for CSXT over a period of several months in 2015.¹⁸ By contrast, NS moves multiple of its own trains *daily* at NIT. (See CSXT MSJ Opp'n ¶ 53; V.S. Fapp 9, June 13, 2025.)

¹⁸ (See, e.g., CSXT MSJ Opp'n, Ex. 7, Moss Dep. Tr. 128:6-129:4; 130:17-131:1, Feb. 14, 2020 (NPBL moved intermodal traffic for CSXT for a {}
 {})); *id.* at Ex. 13, Capozzi Dep. Tr. 39:18-21, Jan. 22, 2021 ({} trains) *id.* at Ex. 55, Girardot Dep. Tr. 232:6-20, Jan. 12, 2021 ({} over the course of {}); *id.* at Ex. 69, Kenney Dep. Tr. 28:18-20, Dec. 11, 2020 ({}); see also VPA Letter 4, Mar. 5, 2025 (reporting CSXT moved {} shipments by rail to NIT in 2015).)

Due to the onerous restrictions and inexplicable delays imposed by NS and the NS-controlled NPBL, CSXT lost business from customers who could not be adequately and reliably serviced without on-dock access at NIT. (*See* CSXT MSJ Opp'n, Ex. 69, Kenney Dep. Tr. 31:6-21; 104:4-18, Dec. 11, 2020.)

Nevertheless, since 2015, CSXT has been unable to move any intermodal traffic by rail via NPBL to or from NIT due to the unlawful control of NPBL by NS. (V.S. Kenney 5, Sept. 18, 2025; *see also* VPA Letter 4, Mar. 5, 2025.) NS has exercised this control to stifle competition by foreclosing CSXT's access to NIT. NS has caused NPBL to refuse to adopt policies and practices that would allow CSXT to compete for on-dock rail traffic at NIT, including imposing NPBL's cost-prohibitive switching rate for intermodal traffic.

2.2.7. In response to CSXT's attempt in 2015 to use NPBL switching services, NS promptly terminated the 1917 trackage rights agreement with NPBL.

Part of NS's anticompetitive scheme involves increasing the trackage rights fee that NPBL must pay to use NS's line to serve NIT, and thus increasing NPBL's cost to provide CSXT with switching services to NIT. NS's efforts to increase the NPBL trackage rights fee began soon after CSXT attempted to use NPBL switching services in 2015. In response to CSXT's attempt, NS promptly moved to terminate the 1917 trackage rights agreement with NPBL by serving its required one-year termination notice.

Specifically, in July 2015, while CSXT tried to access NIT using NPBL, NS internally worked to {{ [REDACTED] [REDACTED] }} NPBL and NS. (CSXT MSJ Opp'n, Ex. 73, NSR_00047112 at -113.) NS's Chris Luebbbers recommended that {{ [REDACTED] [REDACTED] }}

[REDACTED]
[REDACTED] }} (*Id.*)

On July 31, 2015, NS provided notice to NPBL that it intended to cancel NPBL's trackage rights over NS lines leading into NIT, unless the parties could negotiate new agreements to preserve NPBL's access. (*See id.* at Ex. 77, NSR_00104581.)

Although NS stated externally that it intended for the parties' new trackage rights agreement to afford NPBL "materially the same access" to NS's tracks, (*see* CSXT MSJ Opp'n ¶ 59), internally NS made clear that its purpose was to

(1) {{ [REDACTED]
[REDACTED] }}

(*Id.* at Ex. 78, NSR_00008141.)¹⁹

On July 31, 2016, NS terminated the 1917 trackage rights agreement with NPBL and began a process to replace that 1917 agreement with a new agreement charging higher trackage rights fees and imposing other costs and limitations on NPBL access to NIT. As discussed below in Section 2.3.1, NS later sought to convince the STB itself to increase the trackage rights fee, in an attempt to legitimize and immunize NS's exclusionary scheme.

2.2.8. In early 2018 and again in subsequent years, NS once again voted down governance and management changes as well as a rate proposal proposed by CSXT.

After NS terminated the 1917 trackage rights agreement, CSXT continued to actively, but unsuccessfully, try to keep NPBL from acting as NS's exclusionary tool. In 2018, CSXT asked NPBL to (1) change its governance and management to

¹⁹ The trackage rights negotiation was part of NS's broader "strategy" related to CSXT's NIT access—specifically NS's {{ [REDACTED]
[REDACTED] }} (CSXT MSJ Opp'n, Ex. 79, NSR_00005173.)

be independent of NS and (2) adopt switching rate changes that would enable CSXT to compete with NS for intermodal traffic to and from NIT while guaranteeing revenue to NPBL. CSXT's proposal included free use of CSXT locomotives and free fuel for use by NPBL. (*See* V.S. Kenney, Attach. A, Sept. 18, 2025.) NS once again voted down the governance and management changes through its majority control, and NPBL did not adopt CSXT's rate and service proposal, as described in detail below.

On March 23, 2018, CSXT sent NPBL management a Rate Proposal for Long Term Rail Service to NIT ("2018 Proposal"). (CSXT MSJ Opp'n ¶ 62.) CSXT proposed a switch rate of \$80 per car, loaded or empty, for international intermodal containers moving to or from NIT, with a guaranteed minimum of 18,000 cars per year. (*Id.*) The 2018 Proposal presented NPBL with the promise of a consistent, long-term, and substantial stream of income, as well as new revenue opportunities. (*See id.*)

NPBL Vice President Donna Coleman did a "back-of-the envelope financial evaluation" of the 2018 Proposal, which she discussed with President Cannon Moss. (CSXT MSJ Opp'n, Ex. 5, Coleman Dep. Tr. 181:13-25, Mar. 4, 2020); *id.* at Ex. 80, EDVA NPBL000189 at -193.) Her calculations showed net revenue for NPBL per trip under the proposal would be \$1,500, not including supervisor costs. (*Id.* at Ex. 5, Coleman Dep. Tr. 188:9-190:8.) She concluded there was enough "validity" to send the proposal to a rate committee. (*Id.* at 189:19-22.)

On March 28, 2018, NS called an internal meeting to discuss CSXT's 2018 Proposal, including how it would be impacted by NS's {{ [REDACTED] }} (Ex. 9, STB-NS-0008826.) During this internal meeting, NS recognized that the {{ [REDACTED] }}

[REDACTED] }} (*Id.*; see also CSXT MSJ Opp'n, Ex. 82, EDVA NPBL005881
 at -882 (April 2016 email from NS's Cheryl Jenkins, {{ [REDACTED]
 [REDACTED]
 [REDACTED] })).)

On March 29, 2018, NS's Scott Plum forwarded CSXT's proposal to his NS colleagues, noting that {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] }} (Ex. 9, STB-NS-0008826.)

On April 3, 2018, NPBL personnel asked NS operations employees for permission to {{ [REDACTED] }} (Ex. 8, STB-NS-0003607.) NS reported internally: {{ [REDACTED] }}
{{ [REDACTED] }}
{{ [REDACTED] }} (Id.)

On April 5, 2018, NPBL’s Moss sent an email to CSXT’s Tony DiDeo, outlining a few “thoughts” about the 2018 Proposal. (Ex. 17, STB-NS-0008749.) Mr. Moss noted, among other things, that {{ [REDACTED] }} (Id.) Mr. Moss also noted that {{ [REDACTED] }} (Id.) Mr. Moss testified that, {{ [REDACTED] }} (Id. at Ex. 7, Moss Dep. Tr. 244:2-8, Feb. 14, 2020.)

On April 6, 2018, CSXT sent a letter to NPBL and NS demanding remedial actions at the upcoming meetings of the NPBL board and shareholders, including affording CSXT equal representation on the Board; adding qualified, independent directors to the Board; replacing members of NPBL management with qualified, independent individuals; and adopting a corporate compliance program independent of that adopted by NS. (*See* CSXT Pet. to Reject, Ex. 1, CSXT-1-112 to -120, Feb. 27, 2025.) On April 16, 2018, CSXT submitted a list of qualified candidates to serve as independent members of the NPBL board of directors, who CSXT proposed be considered for election at the NPBL shareholder meeting set for April 18. (*See* CSXT MSJ Opp’n, Ex. 85, CSXT0101908.)

At the April 18 shareholder meeting, CSXT proposed the governance changes outlined in its April 6 letter, and recommended interim officers be installed at NPBL until the transition was completed. (*Id.* at Ex. 86, CSXT0158238.) The proposal failed when NS voted its 57% majority shares against it. (*Id.*)

One NS-appointed NPBL board member conceded that several of CSXT’s requests for corporate governance changes were reasonable, but confirmed the Board ultimately took no action in response. (*Id.* at Ex. 87, Merilli Dep. Tr. 57-21-58:20, Mar. 2, 2020; *see also id.* at Ex. 88, Hall Dep. Tr. 49:15-50:22, Feb. 21, 2020.)

At its April 18, 2018 meeting, the NPBL board did not discuss the 2018 Proposal and did not vote to form a rate committee to analyze the tariff or the proposal. (*Id.* at Ex. 89, Hurlbut Dep. Tr. 67:23-68:16, Feb. 21, 2020; *id.* at Ex. 87, Merilli Dep. Tr. 75:11-21, Mar. 2, 2020.) The CSXT-appointed directors requested that the Board appoint an independent committee to review and evaluate the 2018 Proposal, but the NS-appointed directors refused, based on purported “conflicts” with NPBL’s governing documents. (*Id.* at Ex. 90, CSXT0142657 at -659; *but see id.* at Ex. 5, Coleman Dep. Tr. 110:6-15, Mar. 4, 2020 (Coleman testifying that NPBL

rate committees were “ad hoc” and “anybody” could be appointed); *see also id.* at Ex. 37, Armbrust Dep. Tr. 246:8-21, Mar. 11, 2020) (“I understood the rate committee to be essentially a farce to reject [CSXT’s] proposal.”); *id.* at 254:18-255:4 (only a committee of “independent experts” would be reasonable, based on his experience as an NPBL director).)

CSXT's proposal was raised again in subsequent years. In 2022, an NS-appointed NPBL director made clear that NS's shareholder representative would vote against the proposal at the annual NPBL shareholder meeting. (*See* Ex. 26, STB-NS-0017144 ({ [REDACTED]
[REDACTED]
[REDACTED] }) (emphasis in original).)

2.3. CSXT's District Court proceeding and related STB proceedings.

2.3.1. In June 2018, CSXT put NS and NPBL on notice of potential litigation over their anticompetitive conduct. Shortly thereafter, NS filed a petition to set compensation for the trackage rights of NPBL over NS's lines.

On June 22, 2018, CSXT made a written demand to NPBL to take suitable action to address unlawful conduct by NPBL board members and management, as required by Virginia law prior to CSXT making certain of the claims that CSXT ultimately brought in the federal district court litigation described below. (Pet. to Reject, Ex. 1, at CSXT-1-68, Feb. 27, 2025.)

On September 11, 2018, NPBL responded to the CSXT demand letter, denying that any unlawful conduct had occurred. (*Id.*) Two days later, on September 13, 2018, NS filed a petition to set compensation for the trackage rights of NPBL over NS's lines, and to allow an increase in the trackage rights fee above the existing rate. (NS Pet., Sept. 13, 2018, *NS Trackage Rights Compensation*, FD 36223.)

NS asserts that, “[a]s part of an overall examination of existing operations and cost efficiencies,” it determined that the trackage rights agreement with NPBL “was antiquated and needed to be modernized, including . . . an update of the compensation amounts and methodologies.” (*Id.* at 3.) NS further asserts that its approach [in] filing a petition with the Board to set compensation for a new trackage rights agreement “would ensure the new trackage rights fees would be fair and reasonable for both parties.” (NS Prefiling Notification 13.)

As discussed below in Section 3.1.5, the trackage rights compensation proceeding is part of the anticompetitive scheme NS has perpetuated to manipulate and conspire with NPBL to exclude CSXT from on-dock rail access at NIT. Through its fee request, NS plainly intends to cement its exclusion of CSXT from access to NIT by increasing the cost that NPBL must pay to use NS’s tracks that lead into NIT and thus further justifying an increase to the already artificially-high switching rate that the NS-controlled NPBL insists on charging CSXT for intermodal movements to NIT. An increase in the NS trackage rights fee would be one more link in the chain of anticompetitive conduct that keeps CSXT from on-dock rail access at NIT.

Out of concern that NS would use the trackage rights proceeding to further NS’s anticompetitive conduct and objectives, CSXT intervened in the STB proceeding. CSXT stated that it was “concerned that the compensation levels sought in [the] proceeding will exceed fair trackage rights compensation levels to the detriment of both NPBL and CSXT.” (*See CSXT Pet. for Leave to Intervene* 6, Oct. 3, 2018, *NS Trackage Rights Compensation*, FD 36223.)

NS strongly objected to CSXT’s intervention in the proceeding. (*See NS Reply* 5, Oct. 23, 2018, *NS Trackage Rights Compensation*, FD 36223.) Despite NS’s objections, the Board permitted CSXT to intervene in the proceeding, recognizing

that “CSXT has a distinct interest in the outcome of this case.” *NS Trackage Rights Compensation*, FD 36223, slip op. at 7 (STB served Mar. 29, 2019).

One day after CSXT filed its petition for leave to intervene in the trackage rights compensation proceeding, on October 4, 2018, CSXT filed its complaint in the U.S. District Court for the Eastern District of Virginia (the “District Court”), alleging that NS’s and NPBL’s exclusionary conduct, including but not limited to the setting of a switching rate intended to preclude CSXT from competing for intermodal traffic at NIT and refusing to consider service alternatives that would permit competitive access, constituted antitrust violations and other violations of law. (*See CSXT Pet. to Reject*, Ex. 1, at CSXT-1-33 to -120, Feb. 27, 2025.)

On April 18, 2019, CSXT filed a petition with the STB to request that the trackage rights compensation proceeding be held in abeyance until resolution of the District Court litigation. (CSXT’s *Pet. for Clarification or, if Necessary, Reconsideration, and Request to Hold Proceeding in Abeyance*, Apr. 18, 2019, *NS Trackage Rights Compensation*, FD 36223.)

On July 24, 2019, the STB agreed with CSXT and ordered that the trackage rights compensation proceeding be held in abeyance until resolution of CSXT’s District Court proceeding, including any subsequent appeals. *NS Trackage Rights Compensation*, FD 36223 (STB served July 25, 2019).²⁰

²⁰ On April 30, 2025, NS asked the Board to end the abeyance in the trackage rights compensation proceeding and adopt an unprecedented expedited procedural schedule. (NS *Mot. to End Abeyance Period*, Apr. 30, 2025, *NS Trackage Rights Compensation*, FD 36223.) On May 20, 2025, CSXT asked the Board to dismiss the NS petition in FD 36223, or to continue to hold the proceeding in abeyance, arguing that the Board should dismiss NS’s petition in order to protect the integrity of its processes from abuse by parties seeking an anticompetitive goal, and because NS failed to establish sufficient grounds for maintaining its petition. (CSXT *Mot. to Dismiss or to Continue to Hold in Abeyance*, May 20, 2025, *NS Trackage Rights Compensation*, FD 36223.) NS’s and CSXT’s motions are still pending before the Board.

2.3.2. In 2022, in response to a question referred to the STB by the District Court, the STB found that NS's predecessor was never granted authority to control NPBL.

In the District Court lawsuit, NS argued that it was immunized from CSXT's claims of anticompetitive conduct by authority previously granted to NS's predecessors to control NPBL. In response to that defense, the District Court referred the issue to the STB in May 2021. Opinion and Order, *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530 (E.D. Va. May 18, 2021).

On June 21, 2021, NS filed a petition for declaratory order, requesting that the Board institute a proceeding to address the issues referred by the District Court. (NS Pet. for Declaratory Order, June 21, 2021, *Norfolk S. Ry. Co.—Pet. for Declaratory Order*, FD 36522.) The Board instituted a declaratory order proceeding. *Norfolk S. Ry. Co.—Pet. for Declaratory Order*, FD 36522 (STB served Aug. 9, 2021). In the proceeding, NS attempted to establish that approval for its control of NPBL “was either granted *sub silentio* or that the collective conduct of NPBL and its owners in the years following 1980 should be deemed sufficient to legally ratify a control transaction—and to retroactively confer antitrust immunity—even in the absence of ICC or Board action.” See *Norfolk S. Ry. Co.—Pet. for Declaratory Order*, FD 36522, slip op. at 9 (STB served June 17, 2022).

On June 17, 2022, the Board flatly rejected NS's arguments, finding that NS's predecessor was never granted authority to control NPBL. *Id.*, slip op. at 17. The Board noted that it “expects the parties to take appropriate steps to address the unauthorized control issue immediately following resolution of the district court proceeding, including any appeals.” *Id.*, slip op. at 17 n.25.

In its application, NS attempts to relitigate the Board's 2022 finding. NS repeatedly asserts that neither CSXT, nor NPBL, nor NS knew that NS lacked STB authorization to control NPBL before the Board's 2022 decision, and that CSXT explicitly consented to NS's control in 1989. (See NS Appl. 8-9.) And NS even seems

to suggest that it may not control NPBL, with the tortuous (and incorrect) argument that “CSXT admits that NS does not currently exercise control over the NPBL board, as only 3 of 6 of those board members represent NS’s interests.” (*Id.* at 22.)

But NS’s arguments regarding why it thought it had authority to control NPBL, and its assertions that CSXT consented to NS’s control, are completely irrelevant to this proceeding. The Board has already decided this issue. *See Norfolk S. Ry. Co.—Pet. for Declaratory Order*, FD 36522, slip op. at 17 (STB served June 17, 2022) (“[P]arties cannot create control authority through their actions and beliefs. Control authority can only come from the Board, or previously from the ICC. Thus, whether CSXT has acknowledged or accepted that NSC has a right to control NPBL is irrelevant to whether the ICC granted NSC authority to control NPBL.”).

2.3.3. In 2023, the District Court proceeding was dismissed on statute of limitations grounds.

CSXT developed extensive evidence in District Court of anticompetitive conduct by NS and NPBL – enabled by NS’s unlawful control of NPBL – and the anticompetitive effects of that conduct. The District Court record shows that NS and NPBL produced dozens of internal documents and communications evidencing their conspiracy and the many overt acts committed to further it. (*See* CSXT MSJ Opp’n, Ex. 14, CSX’s 2d Supp. Resp. to NPBL’s Interrog. No. 3 & 4 (describing documents reflecting NPBL’s participation in the conspiracy).)

NS asserts that the District Court “strongly rejected CSXT’s anticompetitive claims, granting summary judgment in favor of NS and NPBL.” (NS Prefiling Notification 11-12.) NS further asserts that “CSXT has used inflammatory rhetoric, unsupported by any actual findings by any court or administrative body, that NS and NPBL had actually acted illegally and unlawfully in a manner to prevent CSXT serving NPBL.” (NS Appl. 9-10.)

NS's assertion is belied by the District Court record – which reflects overwhelming evidence of conspiracy and anticompetitive conduct by NS and NPBL, a record that NS attempted to keep out of this proceeding. Despite its early representations to the Board that the record developed in the District Court would be “ready for presentation” and was “available to the parties and the Board” in this proceeding, NS objected to the production of the District Court record in this proceeding in response to CSXT's valid discovery requests. CSXT was ultimately required to file a motion to compel the production of the District Court record, among other things, in this proceeding, and the Board granted that motion so the District Court record is available here. (*See* CSXT Letter, Mar. 20, 2025; CSXT Mot. to Compel, Apr. 9, 2025; CSXT Second Mot. to Compel, Apr. 18, 2025.)

Additionally, contrary to NS's misleading characterization of the District Court's findings, the District Court concluded that CSXT “has identified sufficient direct and circumstantial evidence of an agreement between [NS] and NPBL in and around 2009 that was aimed (and may have unlawfully succeeded) at erecting barriers to [CSXT's] ability to provide on-dock rail service at NIT.” *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, 648 F. Supp. 3d 679, 727 (E.D. Va. 2023), *aff'd*, 114 F.4th 280 (4th Cir. 2024); *see also* 648 F. Supp. 3d at 688 n.2 (finding that CSXT presented evidence that the 2009 rate was “viewed by [NS] as a ‘high’ rate that acted as an obstacle to [CSXT's] ability to provide on-dock rail at NIT” and “facially damaging evidence indicating that [NS] acted to leverage its majority stake in NPBL to prevent [CSXT] from securing a lower rate to access NIT . . .”).

Even though the anticompetitive conduct continues today, the District Court found that the conduct started outside the statute of limitations period and dismissed CSXT's complaint. *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530, 2023 WL 7273736, at *6 (E.D. Va. Apr. 19, 2023). In 2024, the U.S. Court of Appeals for the Fourth Circuit affirmed the District Court's decision, and CSXT

appealed that Fourth Circuit decision to the U.S. Supreme Court. *See CSX Transp., Inc. v. Norfolk S. Ry. Co.*, 114 F. 4th 280 (4th Cir. 2024). On April 21, 2025, the Supreme Court declined to hear CSXT's appeal in the antitrust litigation, meaning that the District Court case has now concluded. *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, 145 S. Ct. 1921 (2025).

But dismissal of CSXT's claims as untimely leaves unaddressed the adverse impacts of an on-going course of anticompetitive conduct by NS and NPBL. That issue is squarely before the Board now. In dismissing CSXT's claims for injunctive relief, the District Court explained that CSXT's concerns regarding NS's unauthorized control over NPBL, could "be subject to federal oversight and certain injunctive remedies as imposed by the STB." *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530, 2023 WL 2552343, at *10 n.13 (E.D. Va. Jan. 27, 2023).

2.3.4. NS's and NPBL's anticompetitive actions and the competitive landscape at NIT have already raised concerns with government officials.

The concern expressed by CSXT regarding competition at NIT is shared by other stakeholders, including government officials. (*See, e.g.,* Youngkin Letter, Aug. 27, 2025; VPA Letter, Mar. 5, 2025; CSXT Letter, Aug. 26, 2025 (enclosing eight letters); DOJ Comments, Aug. 27, 2025; *see also* CSXT Pet. to Reject, CSXT-1-28 to -29; Ex. 12, NSR_00067467; Ex. 19, NSR_00081982 at -983.) Numerous government officials have submitted letters in this proceeding, including Virginia Governor Glenn Youngkin; Delegate Bonita Anthony, Virginia House of Delegates, 92nd District; Delegate Jackie Hope Glass, Virginia House of Delegates, 93rd District; Delegate Phil Hernandez, Virginia House of Delegates, 94th District; and Senator Angelia Williams Graves, 21st Senatorial District.

The District Court expressly noted that CSXT's claims of anticompetitive conduct could be subject to investigation by the U.S. Department of Justice,

Antitrust Division (“DOJ”)²¹ – which has recently opened an antitrust investigation into NS’s and NPBL’s conduct.

On February 19, 2025, counsel for CSXT received a letter from DOJ stating that the Antitrust Division has opened an investigation into alleged exclusionary conduct undertaken by NS and NPBL against CSXT, a potential violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1-2. The DOJ investigation is ongoing.

On August 27, 2025, DOJ submitted comments in this proceeding “in support of the Board’s consideration of the important competition issues raised by [NS’s] application.” (DOJ Comments 2.) DOJ emphasized the benefits of railroad competition and urged the Board to carefully consider the current competitive dynamics concerning NPBL and NIT, among other topics. (*Id.* at 2-3.) DOJ further stated that the Board should “assure itself that granting the application will not limit rail competition to and from the Port of Virginia.” (*Id.* at 3.)

NS is clearly seeking Board authority in this control proceeding to immunize itself from future antitrust action. NS has explicitly asserted that the Board’s approval of its application would result in antitrust immunity for any of NS’s going-forward actions related to its control of NPBL. (*See, e.g.*, NS Prefiling Notification 37.) Much like the trackage rights compensation proceeding, NS wants to use the Board in this control proceeding to help enable its anticompetitive conduct. The Board should not allow itself or its processes to be used by NS to advance NS’s longstanding anticompetitive scheme.

DOJ also expressed concern about NS’s “likely [argument] that Board approval grants sweeping immunity.” (DOJ Comments 4.) DOJ stated that

²¹ *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, No. 2:18-cv-00530, 2023 WL 2552343, at *9 (E.D. Va. Jan. 27, 2023).

“[i]mmunizing conduct from the antitrust laws risks undermining our free market system and so must be done sparingly, carefully, and only in pursuit of legitimate—and actually attainable—benefits.” (*Id.*) DOJ further urged “the Board to take into account the risk that granting [NS’s] application, and the antitrust immunity that [NS] may argue comes along with it, could frustrate [DOJ’s] ability to bring an enforcement action to halt any potential unlawful anticompetitive actions taken by Norfolk Southern /NPBL at [NIT] or the Port of Virginia.” (*Id.* at 5.)

2.4. NS’s anticompetitive conduct continues today.

2.4.1. NS has prevented NPBL from acting on new CSXT commercial proposals for access to NIT during the pendency of this control proceeding.

Not only is NS seeking to use the STB to cement the exclusion of CSXT from on-dock rail access to NIT by setting higher trackage rights fees, NS is also using the mere pendency of the fee-setting proceeding in FD 36223, *NS Trackage Rights Compensation*, to prevent NPBL from even considering new CSXT commercial proposals for such access to NIT. NS’s efforts have continued even during this control proceeding.

On November 26, 2024, CSXT (yet again) made a proposal to the NPBL board regarding rates and contractual terms for NPBL to provide switching services to CSXT for movement of intermodal traffic to and from NIT. (V.S. Kenney 14, Sept. 18, 2025; *id.* at Attach. A.)²² The proposal provided that CSXT would pay { [REDACTED] } to NPBL and also would provide locomotive power, fuel and pay for crew. (V.S. Kenney, Attach. A, at 3, Sept. 18, 2025.)

²² NPBL’s Cannon Moss testified that the { [REDACTED] } (Ex. 16, Moss Dep. Tr. 159:21-24, Aug. 28, 2025.)

On December 4, 2024, NS responded to CSXT's proposal, claiming that { [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED] } (*Id.* at Attach. C, at 2.) The NS members of the NPBL board followed up with a letter on the same day { [REDACTED] }
[REDACTED]
[REDACTED] } (Ex. 29, NPBL001499.)

Ironically, NS also suggested that { [REDACTED] }
[REDACTED]
[REDACTED] } (V.S. Kenney, Attach. C., at 2, Sept. 18, 2025.) Of course, while CSXT's minority representation on the NPBL board cannot cause the NPBL board to accept the NS trackage fee proposal, NS could certainly do so with its majority representation, albeit without STB cover and immunity for implementing an unreasonably high rate.

At the NPBL board meeting held on December 4, 2024, one of the NS-appointed directors { [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED] } (*See* Ex. 28, NPBL000588; V.S. Kenney, Attach. D, at 1, Sept. 18, 2025.)

On February 12, 2025, CSXT responded to the December 4, 2024 letters from NS and from the NS-appointed members of the NPBL board. (V.S. Kenney, Attach. D, Sept. 18, 2025.) CSXT explained that the trackage rights compensation proceeding { [REDACTED] }
[REDACTED]
[REDACTED] }. (*Id.* at 1.) Additionally, CSXT noted that { [REDACTED] }

[REDACTED]

[REDACTED] } (*Id.*)

In a letter from NPBL to CSXT, dated February 24, 2025, NPBL { [REDACTED]
[REDACTED] } (*Id.* at Attach. E.) Then, in
a letter dated February 27, 2025, NS-appointed NPBL directors { [REDACTED]
[REDACTED] } (Ex. 30, NPBL001475.)

On February 28, 2025, NS sent a letter to CSXT, asserting again that, { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] } (V.S. Kenney,
Attach. F, at 2-3, Sept. 18, 2025 (emphasis added).)

On March 21, 2025, CSXT responded to { [REDACTED]
[REDACTED] }. (*Id.* at Attach. G.)
CSXT explained again that { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }
(*See id.* at 2-3.) CSXT further stated that { [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] } (*Id.* at 8.) CSXT also { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] } (*Id.* at 1.)

On May 1, 2025, CSXT sent a letter to NPBL, { [REDACTED]
[REDACTED]
[REDACTED] } (*Id.* at

Attach. H, at 1.) CSXT noted that { [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }²³

On May 12, 2025, NPBL sent a letter to CSXT, stating that { [REDACTED]

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

In his recent deposition, Mr. Moss testified that he { [REDACTED]
[REDACTED] } reviewing the 2024 proposal because there were { [REDACTED]
[REDACTED] } (Ex. 16, Moss Dep. Tr. 100:21-101:13, Aug. 28, 2025.) The
NS-appointed board members have repeatedly argued that { [REDACTED]
[REDACTED] } (Ex. 29, NPBL001499 (NS-appointed board
members maintain that { [REDACTED]
[REDACTED] }); Ex. 30, NPBL001475
(NS-appointed board members write, { [REDACTED]

²³ In its March 1, 2025 letter, CSXT further stated that, { [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] } (V.S. Kenney, Attach. H, at 2, Sept. 18, 2025.)

[REDACTED]
[REDACTED] }.)

Yet NPBL has { [REDACTED] } despite CSXT's extensive responses to the questions from the NS-appointed board members. (Ex. 16, Moss Dep. Tr. 116:1-16; 130:1-17; 147:14-16, Aug. 28, 2025; *see also* V.S. Kenney, Attach. H, Sept. 18, 2025.) Instead, NPBL relies on { [REDACTED] } (Ex. 16, Moss Dep. Tr. 116:1-16, Aug. 28, 2025; V.S. Kenney, Attach. G, at 2-3, Sept. 18, 2025; V.S. Kenney, Attach. H, at 1, Sept. 18, 2025.) Tellingly, Mr. Moss acknowledged in his recent deposition that { [REDACTED] } (Ex. 16, Moss Dep. Tr. 146:3-147:8; 154:18-25, Aug. 25, 2025.)

2.4.2. NS filed an application on February 14, 2025, seeking Board authority to control NPBL that was inconsistent with the Board's directive.

As noted above, in its decision finding that NS's predecessor was never granted authority to control NPBL, the Board stated that it "expects the parties to take appropriate steps to address the unauthorized control issue immediately following resolution of the district court proceeding, including any appeals." *Norfolk S. Ry. Co.—Pet. for Declaratory Order*, FD 36522, slip op. at 17 n.25 (STB served June 17, 2022).

Simultaneously with the 2024 rate and service proposal described above, CSXT made a proposal to the NPBL board that would address NS's unauthorized and unlawful control of NPBL, by adjusting the NPBL governance structure. (*See*

V.S. Kenney, Attach. B, Sept. 18, 2025.) NS used its unlawful control of NPBL to prevent that proposal from being adopted. That issue is a subject of the complaint that CSXT filed with the STB in Docket No. NOR 42183. (CSXT Compl., May 20, 2025, *CSX Transp., Inc. v. Norfolk S. Corp. & Norfolk S. Ry. Co.*, NOR 42183.)

NS clearly took a different approach in response to the Board's directive. Rather than wait as the Board explicitly directed, on February 14, 2025 – before CSXT's antitrust case had ended – NS filed a submission styled as an application for a “minor” transaction, seeking Board authority to control NPBL. NS asserted that it was filing its application “in response to the Board's directive to seek authority for its control of NPBL.” (NS Prefiling Notification 11.) NS brazenly claimed that the Board's statement that it expects the parties to take appropriate steps to address the unauthorized control issue “was directed at NS, not CSXT,” notwithstanding the Board's explicit reference to the “parties” of FD 36522, which included CSXT. (*See* NS Letter 2, June 4, 2025, *CSX Transp., Inc. v. Norfolk S. Corp. & Norfolk S. Ry. Co.*, NOR 42183 et al.)

But the Board never told NS to file a control application. The Board directed the parties to “take appropriate steps to address the unauthorized control issue.” The Board should not accept NS's false and unfounded assumption that a control application is the only “appropriate step” to address the unauthorized control issue. Rather, CSXT believes that the “appropriate steps to address” NS's unlawful control of NPBL include the governance proposal discussed earlier in this subsection and the relief requested by CSXT in certain related STB proceedings, discussed further below.

On February 27, 2025, CSXT filed a petition asking the Board to reject NS's minor application because it was not timely and because there were serious, extensive, and long-standing competitive issues that are inappropriate for a “minor”

control proceeding. (CSXT Pet. to Reject, Feb. 27, 2025.) Parties other than CSXT also expressed concern over NS's proposed acquisition of control authority.²⁴

On March 14, 2025, the Board issued *Decision No. 2*, finding that the proposed transaction would be a “significant” transaction and directing NS to “perfect” its application for a significant transaction by June 14, 2025. *Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co. (Decision No. 2)*, FD 36836, slip op. at 1 (STB served Mar. 14, 2025). The Board rightly concluded that it could not “make a determination based on the current record that the transaction *clearly* would not have any anticompetitive effects,” and that it was “unable to conclude at this stage that any anticompetitive effects would *clearly* be outweighed by the Proposed Transaction’s potential contribution to the public interest in meeting significant transportation needs.” *Id.*, slip op. at 7.

On June 13, 2025, NS filed a submission styled as a Supplement and Perfection of Application. NS's application is little more than a repackaged version of its Prefiling Notification. Once again, NS falsely asserted that, “[i]n its 2022 decision, the Board . . . directed NS to remedy its lack of control authority upon completion of CSXT’s litigation.” (NS Appl. 9.) Consistent with its Prefiling Notification, NS's purported *prima facie case* in its application is simple: We (NS) have controlled NPBL unlawfully for decades, our control of a supposedly neutral terminal railroad has had no anticompetitive effects, and nothing will change if the Board authorizes us to control NPBL going forward. In other words, there is nothing to see here.

²⁴ (See VPA Letter, Mar. 5, 2025; CSXT Letter, Mar. 12, 2025 (enclosing a letter from CMA CGM).)

On June 20, 2025, CSXT filed a petition requesting that the Board reject NS's application. (*See* CSXT Pet. to Reject, June 20, 2025.) CSXT argued that the application is incomplete for a number of reasons. Most importantly, NS failed to present an adequate impact analysis. CSXT explained that [a]n impact analysis logically must compare a world (and market and competitive conditions) “with control” and a world “without control.” Otherwise, no “impact” can actually be analyzed. Here, however, NS has unlawfully controlled NPBL for decades, so the world “with control” is the existing world. But NS utterly failed to posit what the world would look like “without control”, claiming, instead that there would be no difference. (*See id.* at CSXT-10-5 to -8.)

On July 10, 2025, the Board issued *Decision No. 7*, accepting NS's application for consideration. The Board noted that “[t]he issues raised by CSXT's motion to reject are more appropriately addressed at the merits stage of the proceeding after the record has been developed.” *Decision No. 7*, FD 36836, slip op. at 8. Accordingly, CSXT addresses these issues in Sections 3 and 4 below.

3. NS's unlawful control of NPBL has resulted in anticompetitive effects and those effects would continue and worsen if the Board approved the NS application.

This Section 3 discusses how the actions related to NS's unlawful control of NPBL, described above in Section 2, have resulted in anticompetitive effects and how those effects would continue and deepen if the Board approved the NS application. The Board's approval of NS's application would allow NS to continue to use its control over NPBL to block CSXT from effective on-dock rail service at NIT. As detailed in Section 2, beginning as early as 1999, and continuing today, NS has exercised its unlawful control of NPBL to block CSXT from using NPBL to serve ocean carrier customers at NIT through a combination of its excessive \$210 rate and

operational barriers. (CSXT MSJ Opp’n, Ex. 1, NSR_00306367 ({{ [REDACTED] }})).

Section 3.1 explains the many flaws in NS’s arguments that its control of NPBL has not lessened competition and that the Board’s approval of NS’s application will not further lessen competition. Section 3.2 discusses the anticompetitive effects of NS’s control of NPBL and why those effects would continue – and worsen – if the Board approves NS’s application.

3.1. NS wrongly claims that NS control of NPBL has not lessened (and will not lessen) competition.

3.1.1. Drayage is not an adequate substitute for on-dock rail service at NIT.

NS claims that competition has not been affected by NS’s conduct because “CSXT has been able to use drayage” to/from NIT and “provide a competitive alternative to NS.” (V.S. Fapp 18, June 13, 2025.) Drayage, particularly at busy, high-volume terminals like NIT, is not an adequate substitute for on-dock rail access because it is inefficient, expensive, lacks scalability, and imposes additional regulations on the movement of intermodal containers, among other reasons. (V.S. Kenney 7-9, Sept. 18, 2025; CSXT MSJ Opp’n ¶ 83; *id.* at Ex. 94, Warren Decl. ¶ 10, Feb. 21, 2020); *id.* at Ex. 13, Capozzi Dep. Tr. 76:16-78:15, Jan. 22, 2021 (testifying that {{ [REDACTED] }}
{{ [REDACTED] }}))

Generally, {{ [REDACTED] }}
{{ [REDACTED] }}
{{ [REDACTED] }} (CSXT MSJ Opp’n, Ex. 92, Joyner Dep. Tr. 32:9-33:12, Feb. 19, 2020; *see also* Ex. 23, STB-NS-0026620.) This process adds {{ [REDACTED] }}
{{ [REDACTED] }} to the total container transit time for transit to and from NIT. (CSXT MSJ

Opp’n, Ex. 13, Capozzi Dep. Tr. 239:16-240:11, Jan. 22, 2021.) In NS’s own words,

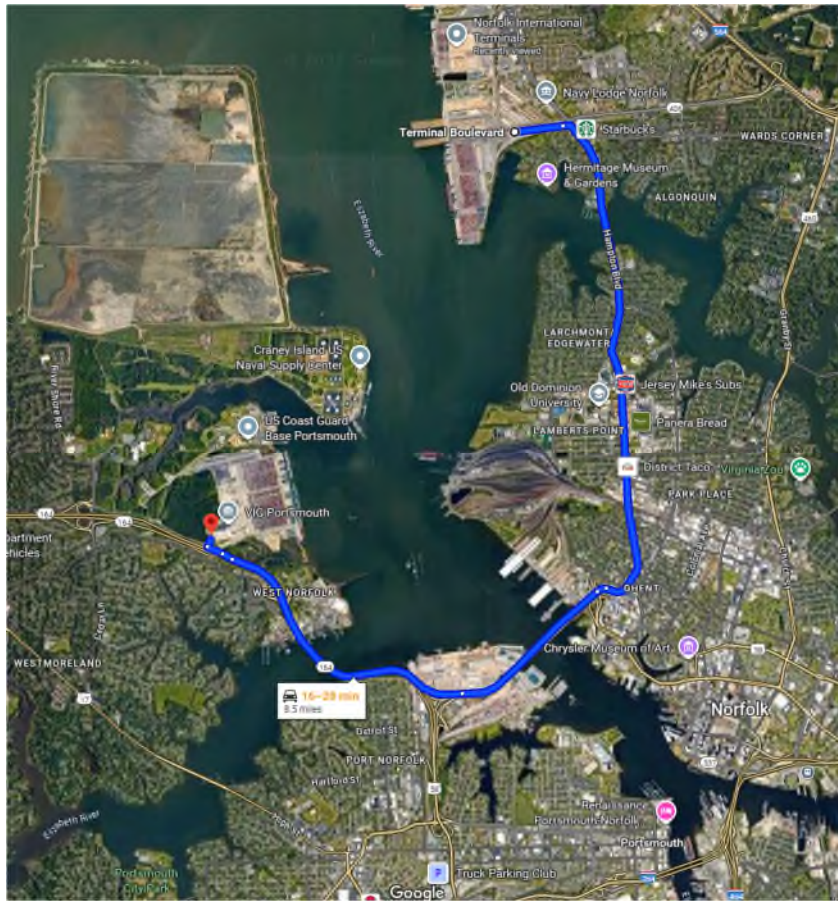
{{ [REDACTED]

[REDACTED] }} (Ex. 24, STB-NS-0027642.)

Drayage is particularly inefficient at NIT because of the route that trucks must traverse. Products arriving at NIT bound for CSXT trains to the Midwest travel by truck down Hampton Boulevard and through the Midtown Tunnel to VIG in Portsmouth, where they are loaded onto a CWRV rail car for interchange with a CSXT train at a point west of Portsmouth. The trucks drive past residential neighborhoods, through Old Dominion University, and past Norfolk General Hospital and Children’s Hospital of the King’s Daughters. The route has 20 stop lights, and according to NS’s expert, it takes between 17.4 minutes and 29.9 minutes each way – one container at a time. (V.S. Fapp 17, June 13, 2025.)²⁵

²⁵ Mr. Fapp estimated transit times between NIT and Pinnars Point. (V.S. Fapp 17, June 13, 2025.) However, as Ms. Kenney explains, CSXT drays between NIT and VIG, which is slightly further from NIT than Pinnars Point. (V.S. Kenney 7, Sept. 18, 2025.)

Figure 8: Map of CSXT's Drayage Route from NIT to VIG



(V.S. Miller 25, Figure 7, Sept. 18, 2025.)

According to VPA, “[n]ot only are these ‘cross-town’ drays for the [CSXT] cargo costly due to the additional re-handling, but the drayage service is inefficient, and unnecessarily congests local roads.” (VPA Letter 4, Mar. 5, 2025.) VPA further stated that “POV and its customers are impacted by the operational and cost consequences of the costly work-around in the form of the NIT cross-town drayage program.” (*Id.* at 5.)

{{ [REDACTED]

[REDACTED]

[REDACTED] } (CSXT MSJ Opp’n, Ex. 13, Capozzi Dep. Tr. 241:8-15, Jan. 22, 2021.) In 2023 and 2024, CSXT’s drayage volumes were {{ [REDACTED] }} containers and {{ [REDACTED] }}

containers, respectively. (V.S. Carey 15, Sept. 18, 2025; *see also* VPA Letter 4, Mar. 5, 2025 (listing CSXT drayage volumes as {{ [REDACTED] }} in 2023 and {{ [REDACTED] }} in 2024).) Additionally, local regulations prohibit trucks on Hampton Boulevard “between the hours of 4:00 p.m. and 6:00 a.m.” Norfolk Municipal Code § 25-656.2. Street congestion, gate delays, and the limited availability of truckers and chassis also contribute to the inefficiency and unreliability of drayage at NIT. (CSXT MSJ Opp’n, Ex. 108, Wagel Dep. Tr. 42:8-21, 46:18-22, Dec. 7, 2020; *id.* at Ex. 109, J. Booth Dep. Tr. 81:21-82:12, Mar. 12, 2020.)

As discussed in Section 3.2.4, many intermodal ocean carriers are unwilling to use drayage as a substitute for on-dock rail at NIT. (V.S. Carey 38-40, Sept. 18, 2025.) NS has said it is {{ [REDACTED] }} (Ex. 22, STB-NS-0025131 (emphasis added).) Elected officials in the Commonwealth of Virginia agree that drayage is inferior to on-dock rail, and that requiring CSXT to dray containers through Norfolk is creating significant disruption and increased safety risks for constituents. In 2019, POV said it wanted to increase access to on-dock rail and eliminate as many drays as possible. (Ex. 13, Ari Ashe, *Virginia port service shuffle promises faster rail flow*, J. of Commerce, Aug. 23, 2019.)

As noted above, Governor Youngkin has filed a letter with the Board in this proceeding, stating that “the current lack of dual access by NS and CSXT to on-dock rail at NIT hurts the competitiveness of the Port of Virginia.” (Youngkin Letter 2, Aug. 27, 2025.) Governor Youngkin expressed concern that CSXT’s drayage workaround “results in more than 20,000 tractor trailers annually using local roads to transfer freight between the terminals,” and ultimately “leads to congestion and delays which decreases safety.” (*Id.* at 2.) He noted that the POV at NIT “was always intended to be served by two railroads with on-dock rail access.” (*Id.*)

State Senator Angelia Williams Graves has also filed a letter with the Board, expressing her preference that CSXT have access to on-dock rail at NIT and noting that requiring CSXT to dray containers through the Hampton Roads area causes significant disruption to Norfolk residents due to the additional port traffic. (Graves Letter, Aug. 11, 2025; *see also* CSXT Letter, Aug. 20, 2025 (enclosing Anthony Letter, Glass Letter, Hernandez Letter).) Senator Graves states that dual on-dock rail access would “enhance freight efficiency, reduce road congestion, and better serve the interests of our port, our economy, and the people of Norfolk.” (Graves Letter 2.)

POV has indicated in the past that it also prefers on-dock rail because it provides “better rail connections, providing beneficial cargo owners . . . shorter dwell times and faster service inland.” (Ex. 13 at 3, Ari Ashe, *Virginia port service shuffle promises faster rail flow*, J. of Commerce, Aug. 23, 2019.) Additionally, as noted above, VPA has submitted comments in this proceeding, expressing its concerns regarding the NIT cross-town drayage program and the operational and cost consequences of this work-around. (*See* VPA Letter 4-5, Mar. 5, 2025.)

NS argues that the availability of CSXT drayage is sufficient competition to NS’s on-dock rail service at NIT, claiming that “CSXT has historically favored moving NIT traffic by drayage because it receives a subsidy from POV that makes it cheaper than on-dock service.” (NS Appl. 18.) The bottom line is that CSXT has never favored moving NIT traffic by drayage. Given the choice, CSXT would access NIT via on-dock rail. (V.S. Kenney 7-9, Sept. 18, 2025.) NS’s reference to the drayage subsidy is misleading because, while POV subsidizes CSXT’s drayage of containers to and from NIT, POV incurs costs that it would not otherwise incur if a NPBL-CSXT routing to NIT could compete with NS’s offering. (V.S. Miller 55, June 20, 2025.) Furthermore, taxpayers are ultimately bearing part of the cost of the

subsidy for drayage through the portion of POV funding that comes from Virginia and the federal government.

Additionally, drayage is clearly not an adequate alternative to rail, given CSXT's minimal share of the total traffic moving through NIT and other POV terminals. Even with a subsidy provided by POV, the share of traffic served by CSXT at NIT is {{ [REDACTED] }}. (*See id.*)

While NS may claim in this proceeding that drayage is a "good enough" alternative for CSXT, NS clearly understands that on-dock rail has a competitive advantage over drayage:

- NS spokesperson Robin Chapman said, {{ [REDACTED] }}
[REDACTED] }}
(Ex. 20, Daniel Brock, *What's at stake in North Charleston rail debate*, Brotherhood of Locomotive Engineers and Trainmen, July 19, 2010.)
- NS {{ [REDACTED] }}
[REDACTED] }} (CSXT MSJ Opp'n, Ex. 92, Joyner Dep. Tr. 31:23-33:12, 79:24-80:1, Feb. 19, 2020.)
- NS has said that on-dock rail is {{ [REDACTED] }} (CSXT MSJ Opp'n, Ex. 102, Martinez Dep. Tr. 56:13-57:20, Oct. 23, 2020.)
- NS has said that on-dock rail at NIT is {{ [REDACTED] }}
[REDACTED] }}
[REDACTED] }} (*Id.* at Ex. 105, NSR_00122609 at -610.)
- NS's Carey Booth has stated that {{ [REDACTED] }}
[REDACTED] }} (*Id.* at Ex. 106, C. Booth Dep. Tr. 59:19-65:6, Nov. 5, 2020.)
- NS's website stated, "on-dock facilities offer reduced drayage cost and more efficient transportation for intermodal customers." (Ex. 10, Excerpt from NS

Website; *see also* CSXT MSJ Opp’n, Ex 92, Joyner Dep. Tr. 80:16-20, Feb. 19, 2020.)

Indeed, Michael McClellan of NS testified at his deposition in this proceeding that {{ [REDACTED] }} (Ex. 14, McClellan Dep. Tr. 52:7-53:21, Aug. 18, 2025.) Mr. McClellan also acknowledged that {{ [REDACTED] }} (Id. at 52:7-53-11.) This is not the case for CSXT. While POV has {{ [REDACTED] }} – to become the third largest container port on the East Coast – CSXT is still draying cargo from NIT because of NS’s successful efforts to block CSXT from using NPBL for on-dock rail at NIT.

3.1.2. Trucks do not compete with rail for international intermodal freight beyond short distances, and barges are not a factor.

NS also claims that, in addition to rail or “a combination of rail/truck,” “international container shippers today also have a choice to use trucks” at NIT. (NS Appl. 6.) Trucks, however, are not a competitive alternative to rail for international intermodal cargo travelling distances longer than 500-700 miles (Ex. 15, Fapp Dep. Tr. 123:7-19, Aug. 13, 2025; V.S. Fapp 15, Feb. 14, 2025; V.S. Carey 18, Sept. 18, 2025.) It costs substantially more to move intermodal cars by truck than by rail and that gap expands as the distance grows larger. (*See, e.g.*, V.S. Miller 19-20, 61, Sept. 18, 2025.)

NS’s former CEO, James Squires, acknowledged that {{ [REDACTED] }} (Ex. 25, STB-NS-0026771 at -773.) Additionally, {{ [REDACTED] }}

{} (See V.S. Carey 18, Sept. 18, 2025.) Trucks compete only for a small percentage of international intermodal traffic along these NIT/POV corridors, which have route distances of approximately 700-1,000 miles, and are generally only a competitive option for time sensitive traffic movements for which shippers are willing to pay a large price premium. (*Id.*)

As a result, trucks are likely to carry international intermodal containers outside the region around POV only {}

{} (See MSJ Opp’n Ex. 13, Capozzi Dep. Tr. 164:25-166:2, Jan. 22, 2021; V.S. Miller 4, 19-20, Sept. 18, 2025; V.S. Carey 18-19, Sept. 18, 2025.)

Additionally, NS incorrectly suggests that barge service through Richmond, Virginia is a competitive alternative to on-dock rail at NIT. (NS Prefiling Notification 34-35.) Barge is inefficient as compared to on-dock rail because (like drayage by truck) it requires an extra movement from ship to barge to rail instead of on-dock service which only requires the movement from ship to rail. Also, barges are slow. As a result, barges are used infrequently to move traffic at POV, moving only approximately 3% of traffic in fiscal year 2024. (V.S. Miller, 19 n.52, Sept. 18, 2025.) CSXT does not move any intermodal traffic from NIT by barge to rail in Richmond for transit to the Midwest because it does not see barges as a practical alternative to on-dock access at NIT. (See V.S. Kenney 9-10, Sept. 18, 2025.)

3.1.3. Other ports and terminals are not substitutes for on-dock rail at NIT.

NS further claims that instead of using NIT, international ocean carriers “have the choice to use . . . another terminal at [POV], to direct their traffic to other East Coast ports.” (NS Appl. 6.) But other East Coast ports, including the various terminals at POV, are an inadequate substitute for on-dock rail access at NIT. Ports, like railroads, compete to secure international intermodal traffic. Ports and

terminals are not uniform – they vary in the size of ship that can be accommodated, dock space, capacity, and other infrastructure. (V.S. Miller Section II.C.2, Sept. 18, 2025.)

Ocean carriers select ports to use based on a variety of factors, including the port's ability to access and connect efficiently to inland locations and the price or route of the rail service. (*Id.* at 37-38, 46.) Multiple ports may be capable of economically reaching common inland locations, but the evidence shows that this ability does not induce ocean carriers to fully substitute one port for another for this traffic. (*Id.* at 38.)

The four largest East Coast ports—the Port of New York/New Jersey, the Port of Savannah, the Port of Virginia, and the Port of Charleston—account for about 80% of all East Coast container traffic. (*Id.* at 16.) The data shows there is minimal overlap among East Coast ports to serve inland locations. While routing between each of the ports and destinations is possible, certain Midwestern states are almost entirely served by rail from the Port of New York/New Jersey and the Port of Virginia, while certain southern states are almost entirely served by the Port of Savannah or the Port of Charleston. (*Id.* at 38.) These patterns show that not all East Coast ports serve as substitutes for inland Midwestern traffic that moves through POV. (*Id.*)

Ocean carriers cannot avoid the harm to competition resulting from CSXT's inability to offer competing on-dock rail service at NIT by substituting NIT for another East Coast port. (*Id.* at 46-47.) While ocean carriers can reach Midwestern destinations from POV and the Port of New York/New Jersey, they often use both ports to serve those inland destinations due to factors including the logistics of loading and unloading containers of various carriers sharing space on the same ship, flexibility in times of congestion, and ship routing. (*Id.* at 46.) The data shows that ocean carriers do not opt to route all traffic to the port with the best price-

service combination because these other considerations are more important than the relative cost of rail service at competing ports. (*Id.*)

Additionally, within the Port of Virginia, VIG is an inadequate substitute for NIT, notwithstanding NS's claims. (NS Appl. 13.) {{ [REDACTED] [REDACTED] }}

(*See* V.S. Fapp 27, June 13, 2025.) But VIG is smaller than NIT – VIG has three berths whereas NIT has six. (*See* CSXT MSJ Opp'n, Ex. 13, Capozzi Dep. Tr. 95:18-21, Jan. 22, 2021.) VIG is close to – or at – capacity and does not have room to take on additional rail traffic from CSXT. (V.S. Kenney 10, Sept. 18, 2025.)²⁶ Therefore, the expansion of NIT and capacity constraints at VIG will mean that harm to competition will likely increase in the future. (V.S. Miller 60, Sept. 18, 2025.)

Additionally, ocean carriers have limited control over their routing to specific terminals within a port. Since an ocean carrier calling on POV could be routed either to VIG or NIT, CSXT cannot tell its customers with certainty that CSXT can provide on-dock rail at POV because it only has on-dock access at VIG. As the District Court found after reviewing the summary judgment record, “[CSXT] cannot guarantee to its international shipping customers that [CSXT] will be able to provide on-dock rail access at both POV terminals because it cannot prevent VIT from routing those customers’ vessels to NIT.” *CSX Transp., Inc. v. Norfolk S. Ry. Co.*, 648 F. Supp. 3d 679, 688-89 (E.D. Va. 2023). Therefore, because “international

²⁶ POV's terminal operator VIT has testified that it is {{ [REDACTED] [REDACTED] }} (See CSXT MSJ Opp'n, Ex. 13, Capozzi Dep. Tr. 182:15-185:23; 243:15-24, Jan. 22, 2021.) VIT also stated that, because of the nature of ocean carriers and their shipping alliances, operations at POV are “compromised when a shipping line calling NIT has boxes bound for CSXT rail.” (V.S. Miller 55-56, Sept. 18, 2025 (quoting VPA Letter 5, Mar. 5, 2025).)

shippers . . . cannot truly control which terminal they patronize due to VIT's role in routing containership traffic . . . one reasonable interpretation of the summary judgment record is that VIG is not a true 'alternative' to NIT." *Id.* at 726.

3.1.4. NS-controlled NPBL's insistence on a uniform rate of \$210 and rejection of beneficial CSXT rate proposals have lessened competition.

NS argues that NPBL's \$210 uniform rate is a product of NPBL's "foundational principles" and "does not discriminate between shippers, commodities, or railroads." (NS Appl. 6.) The unreasonableness of the \$210 rate and NS's insistence that NPBL charge the rate for intermodal traffic at NIT are two more examples of the barriers that NS has set to block CSXT from on-dock rail at NIT. As detailed above in Section 2, over the years, CSXT has repeatedly attempted to negotiate a commercially viable switch rate with NPBL for intermodal traffic at NIT and has made multiple rate and service proposals to the NPBL board. In turn, NS has consistently used its controlling interest in NPBL and its majority on the NPBL board to reject these proposals. These proposals would have created additional revenue for NPBL at a rate above NPBL's costs and enabled CSXT to offer competing on-dock rail service at NIT. But the NS-controlled NPBL board ignored these proposals and continued to insist on maintaining the \$210 switch rate adopted in 2010.

The \$210 switch rate effectively excludes CSXT from accessing NIT by rail because it is not economically viable for CSXT to move intermodal traffic with NPBL at this rate, particularly given the additional operational obstacles erected by NS and NPBL to this service. For example, the NS-controlled NPBL has unreasonably insisted on CSXT switching cars with NPBL at Berkley Yard, which would cause CSXT to incur additional unnecessary costs. (*See* V.S. Kenney 12, Sept. 18, 2025.)

Specifically, in 2009, the NS-controlled NPBL board rejected CSXT's rate proposal and {{ [REDACTED] }} (CSXT MSJ Opp'n, Ex. 32, CSXT0082145 at -146.) In 2010, the NS-controlled NPBL board rejected CSXT's rate proposal and volume commitment that included free use of CSXT locomotives and fuel that would have "provide[d] the NPBL with at least \$149,452 in risk-free incremental operating income in the first calendar year of operations alone." (CSXT Pet. to Reject, Ex. 1 at CSXT-1-105, Feb. 27, 2025.)

And in 2018, the NS-controlled NPBL board foreclosed another CSXT proposal for a rate with a volume commitment that "would have generated annually approximately \$1,440,000 in incremental revenue and potentially \$660,000 in incremental operating income for the NPBL." (*Id.* at CSXT-1-46.) Most recently, in November 2024, CSXT submitted to the NS-controlled NPBL board a rate and service proposal which provided that CSXT would pay { [REDACTED] } to NPBL plus provide locomotive power, fuel and pay for crew. (V.S. Kenney 14, Attach. A, at 3, Sept. 18, 2025.) But instead of accepting what would have been essentially a cost-free opportunity for NPBL, the NS-controlled NPBL board tabled the proposal on the grounds that NS's trackage rights fee proceeding is still pending before the Board.

Contrary to NS's claim that CSXT's rate proposals would be "financially devastating" for NPBL (NS Appl. 91), the evidence shows that NPBL's repeated rejections of CSXT's proposals have harmed NPBL financially while benefiting NS by undercutting competition from CSXT at NIT. (*See* V.S. Carey 50-56, Sept. 18, 2025.) NPBL has had to forego the significant additional yearly revenue that would have been generated under CSXT's rate proposals. (*See, e.g.*, V.S. Miller 65-66, Sept. 18, 2025.) Consequently, NS's claim that "CSXT just does not like the 2010 rate," (NS Appl. 23), distorts the reality that the \$210 NPBL switch rate, when

coupled with all of the operational hurdles to NPBL switching service, does not provide CSXT with a viable competitive option for accessing NIT via on-dock rail.

NS has also relied on its flawed interpretation of NPBL's 1897 Operating Agreement as an excuse to reject CSXT's rate proposals while ignoring the reality that the NPBL board historically approved rates that vary by commodity type and by international versus domestic business. *See supra* Section 2.2.3. NS repeatedly claims that adopting CSXT's rate proposals would violate the requirement that the switch rate be "uniform" pursuant to the 1897 Operating Agreement. (*See, e.g.*, NS Prefiling Notification 12.) However, NS fails to mention that in the past, NPBL has {{ [REDACTED] }} the provision in the Operating Agreement and use different rates for different commodities. *See supra* note 14.

In fact, before 2010, NPBL charged different rates for domestic commodities versus international intermodal traffic. (V.S. Carey 43, Sept. 18, 2025; V.S. Miller 66, Sept. 18, 2025.) Indeed, Mr. McClellan and Mr. Moss {{ [REDACTED] }} {{ [REDACTED] }} (Ex. 14, McClellan Dep. Tr. 150:12-151:20, Aug. 18, 2025; Ex. 16, Moss Dep. Tr. 61:6-16, Aug. 28, 2025.) Specifically, in 2009 NPBL charged a line haul switching rate for all domestic commodities {{ [REDACTED] }} while charging a {{ [REDACTED] }} line haul switching rate for import/export commodities {{ [REDACTED] }}. (Ex. 6, STB-NS-0014867 at -871.) NPBL also currently charges a different switch rate per car for other switching services it provides. (Ex. 18, Current NPBL Tariff NPB 8100-J, issued December 10, 2014.)

As Mr. Steven Armbrust of CSXT explained, when testifying in the District Court litigation in 2020, {{ [REDACTED] }} {{ [REDACTED] }} (Ex. 32, Armbrust Dep. Tr. 46:9-10, Mar. 11, 2020.) For example, {{ [REDACTED] }}

{{ [REDACTED] }}

{{ [REDACTED] }}

{} (Id. at 62:4-9.) As explained in further detail below, the practice of charging a single rate for all types of traffic and commodities not only runs counter to NPBL’s historical practice, but it is also contrary to standard industry practice.

3.1.4.1. A different rate should be charged for intermodal traffic.

Ms. Carey of NERA demonstrates that a single \$210 rate for all traffic types is inconsistent with the industry practice of differential pricing. (V.S. Carey 41-45, Sept. 18, 2025.) It is standard practice in the railroad industry, including for short line railroads, to charge different rates that reflect different cost characteristics and economic circumstances rather than charging a single rate for all traffic types. (Id. at 40-43.) Moreover, intermodal traffic movements have, on average, a much lower level of variable cost as compared to various types of carload traffic, meaning that NPBL’s uniform \$210 rate for all traffic results in a much larger and disproportional markup to the variable costs for intermodal traffic as compared to other types of carload traffic. (Id. at 48, Figure 10.) Therefore, charging a single rate of \$210 results in intermodal traffic paying a higher proportion of the fixed system costs than other traffic types. (Id. at 47-49.)

Figure 9 below shows the differences in the variable costs for moving different NPBL traffic types. The graph shows the {} variable costs for NPBL to move carloads of commodities such as chemicals, stone, grains, and metallic ores versus moving intermodal traffic . The graph highlights the “mark-up” between those variable costs and NPBL’s uniform rate of \$210. The {}

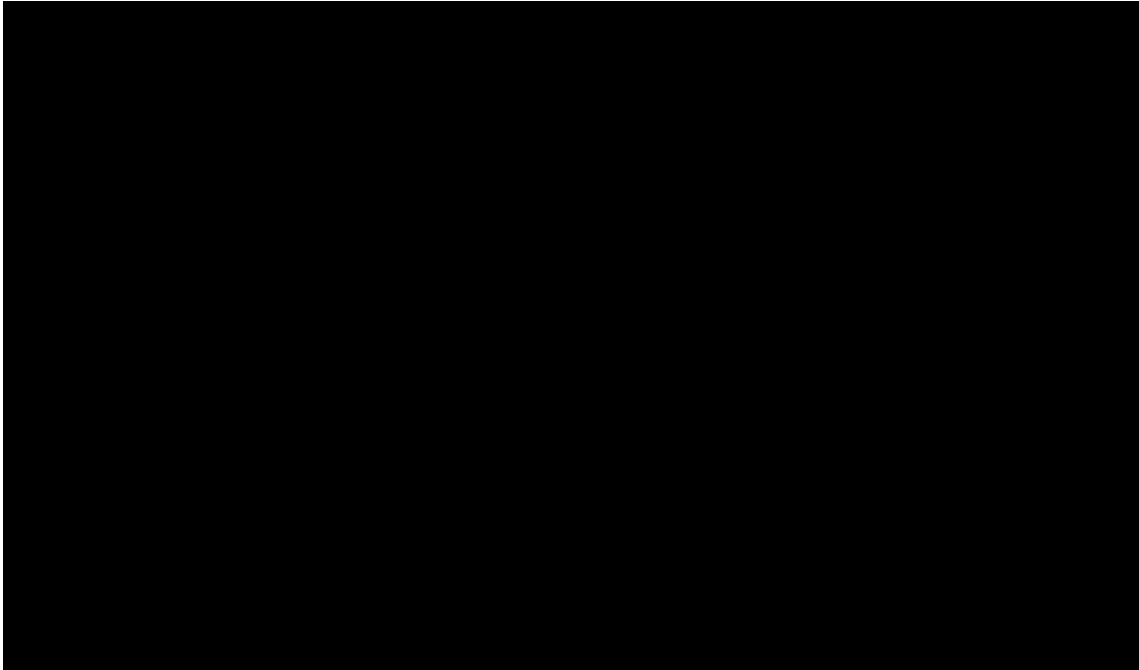
{} (Id. at 27-28, Figure 5.)

{} (Id. at 27-28, Figure 5.)

{} (Id. at 27-28, Figure 5.)

Figure 9: Markups Above URCS Generic Variable Cost for the \$210 Rate for NPBL Traffic Types and IM Traffic, 2024

{{



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NS’s interpretation of the uniform rate “requirement” and NS’s refusal to consider differential pricing for international intermodal traffic is also nonsensical from an economic perspective. As Dr. Miller explains, “[t]he economic incentive is to set lower rates for unit train traffic serving the [intermodal] port, and higher rates for more costly carload traffic,” which will move more traffic and therefore “benefits shippers and the interchange partners/owners.” (V.S. Miller 67, Sept. 18, 2025.) The willingness of other terminal railroads to use differential pricing (V.S. Carey 44-45, Sept. 18, 2025), along with the economic common sense, make NPBL the outlier for refusing to consider CSXT’s proposals for pricing intermodal traffic differently than carload traffic.

3.1.4.2. The \$210 switch rate is high compared to other railroads.

NS’s contention that NPBL’s \$210 switch rate is lower than the rates paid for switching services at other terminal railroads does not hold up to scrutiny (*see* NS

Appl. 12,) and, instead, a proper comparison shows that \$210 rate is unreasonably high.

For example, while NS decided to set the NPBL switch fee at \$210 per car (or \$105 per container based on two containers per car) for CSXT to access NIT, at the same time, NS {{ [REDACTED] }} with CWRV to access VIG. (V.S. Carey 45, Sept. 18, 2025; V.S. Fapp 29-30, Table 4, June 13, 2025.) At his deposition, Mr. Fapp agreed that CWRV is an appropriate comparison, and that excluding CWRV from the list of twelve supposedly comparable railroads was a “scrivener’s error.” (Ex. 15, Fapp Dep. Tr. 58:10-21; 96:22-97:3, Aug. 13, 2025.) Today, the negotiated contract switching rates that CWRV has with NS and CSXT {{ [REDACTED] }}. (V.S. Carey 47-48, Figure 7, Sept. 18, 2025.) Specifically, CWRV charges a contracted rate per container of {{ [REDACTED] }} to NS and {{ [REDACTED] }} to CSXT. (*Id.*)

Also, Mr. Fapp’s comparison between the switch rate for NPBL and those of other short line railroads is inapt because he limited his analysis to switching linehaul *tariff* rates and included railroads that are dissimilar to NPBL. (*See* V.S. Fapp, Ex. DLF-3, Feb. 14, 2025; V.S. Carey 45-46, Sept. 18, 2025.) CSXT understands that short line railroads usually negotiate contract rates for switching services with their connecting line-haul railroads, including with CSXT. (*See* V.S. Carey 46 n.241, Sept. 18, 2025.) Therefore, the tariff rates cited by Mr. Fapp do not provide an appropriate comparison because connecting railroads ultimately do not pay the tariff rates and, {{ [REDACTED] }} {{ [REDACTED] }}, negotiated rates are generally lower than the tariff rates. (*See id.* at 45-46.)

At least several of the ports in NS’s comparison with NPBL are significantly different than NPBL and are not proper comparison points. For example, the

Birmingham Port in Alabama is an inland container terminal that cannot be visited by ocean shipper vessels and does not move or handle intermodal traffic. NS also compared NPBL to ports with only nominal intermodal container volumes (rail or truck) or that do not handle intermodal traffic at all.²⁷

With the current prohibitively expensive switch rate and operational barriers in place for moving intermodal traffic to/from NIT via NPBL, CSXT moves zero traffic via NPBL. But if NPBL were to lower this rate to a point where it becomes economically feasible for CSXT to utilize its services (and the operational barriers are addressed), the volume of traffic that NPBL would move to or from NIT is reasonably expected to increase, generate additional revenue, and spread the fixed costs across more units to lower the cost per carload. (V.S. Carey 49-50, Sept. 18, 2025.)²⁸ Thus, the additional traffic volumes that NPBL would carry to/from NIT absent NS's control of NPBL would justify substantially reducing the "cost-based" switch rate.

3.1.4.3. NPBL can cover its costs at a lower switch rate for intermodal traffic.

The inflated variable costs for NPBL assumed by NS's expert Mr. Fapp portray an inaccurate picture of both NPBL's actual costs and the reasonableness of the \$210 "cost-based" switch rate. (V.S. Carey 51-52, Sept. 18, 2025.) Correcting NS's flawed variable costs analysis shows that NPBL can serve ocean carriers by adopting a lower switch rate that still more than covers NPBL's costs and would

²⁷ Galveston Railroad and the Brownsville & Rio Grande International Railroad handle virtually no intermodal container traffic and publish no container statistics; the Port Jersey Rail Division handles carload traffic but not intermodal containers for international movements through the Port of New York/New Jersey. (V.S. Carey 46 n.243, 244, Sept. 18, 2025 (citing V.S. Carey 12, February 27, 2025).)

²⁸ Mr. McClellan of NS {{ [REDACTED] }} (Ex. 14, McClellan Dep. Tr. 70:13-17, Aug. 18, 2025 ({{ [REDACTED] }})).

allow CSXT to interchange with NPBL to reach NIT. Specifically, Mr. Fapp's assumed variable cost for NPBL is overstated and not appropriate for intermodal traffic because he developed it focusing on higher cost carload traffic and did not account for the lower cost of moving intermodal traffic. On the other hand, Ms. Carey's analysis of NPBL's company records develops a more detailed breakdown of NPBL's variable costs and shows that NPBL's fixed and variable costs for intermodal traffic are lower than NS has claimed. (*Id.* at 52.)

A corrected variable cost figure reveals that NPBL could achieve a robust margin for international intermodal shipments, especially considering that under CSXT's current proposal, CSXT would absorb substantial additional costs including paying for fuel, locomotives, and crews. Ms. Carey's analysis revealed lower incremental costs associated with each movement of international intermodal traffic to and from NIT, absent NS control of NPBL. Her analysis also found a lower fixed cost per car based on the expanded traffic volumes that NPBL can reasonably expect absent NS control of NPBL. (*Id.* at 54-56.) Taken together, Ms. Carey calculated a cost of {{ [REDACTED] }} per car, which is approximately {{ [REDACTED] }} lower than NPBL's currently inflated rate of \$210/car. (*Id.* at 55) This analysis shows that a typical short line could charge a substantially lower rate for international intermodal movements while still covering its costs.

NS's repeated claim that the \$210 rate is not too high because it is in NS's self-interest to ensure that NPBL charges competitive rates also falls flat. (*See, e.g.,* NS Appl. 18.) NS's similar assertions that market-based forces keep NS from raising NPBL's rates to levels above what the market can bear, (NS Prefiling Notification 37), and that CSXT simply chooses not to use its on-dock rail to NIT via NPBL, inexplicably electing to use the {{ [REDACTED] }} (see Ex. 14, McClellan Dep. Tr. 110:2-10, Aug. 18, 2025), are also without merit. As discussed above, NS does not rely on NPBL for rail access to NIT and has no

business incentive to approve an NPBL switch rate for NIT that would allow NPBL to serve NS's direct competitor and NPBL's minority owner, CSXT. *See infra* Section 3.2.1. (*See also* V.S. Carey 11-12, Sept. 18, 2025.) Instead, NS has every incentive to preclude NPBL from providing on-dock rail service at NIT. (V.S. Miller Section VI.A., Sept. 18, 2025.)

NS also argues that a lower intermodal rate will raise rates for carload shippers who pay the \$210 rate without dispute. (*See, e.g.*, NS Appl. 26-27.) But this argument ignores the cost differential between international intermodal freight and carload freight. *See supra* Section 3.1.4.1. (*See also* V.S. Carey 51-52, Sept. 18, 2025.) Rather than forcing carload shippers to subsidize a lower rate for CSXT intermodal, as NS claims, charging an appropriate fee for international intermodal freight would allow NPBL to increase its revenue by expanding its operation to move more freight and would likely reduce prices for ocean carriers who would have more than one on-dock rail option at NIT. (*See* V.S. Miller 67 n.220, Sept. 18, 2025.) Under the current \$210 rate, low-cost intermodal traffic would subsidize higher-cost carload traffic.

The \$210 switching charge does not accurately reflect NPBL's costs. Nothing in the NPBL Operating Agreement requires NPBL to maintain this rate. NPBL clings to this rate in order to serve the self-interest of its controlling owner NS, at the expense of CSXT and of the ocean carriers who are left with only one railroad option to serve NIT. (*See* V.S. Miller 27-28, Sept. 18, 2025.)

3.1.5. NS's claim that adopting a trackage fee that comports with SSW as evidence that its control will not lessen competition is actually evidence of another anticompetitive act.

NS points to its commitment "to adopt a trackage rights fee that comports with the Board's SSW methodology" as evidence that it has not and will not use its control of NPBL to harm competition. (NS Appl. 17-18.) It is not. NS's trackage

rights compensation proceeding is just another part of the anticompetitive scheme NS has perpetuated to manipulate and conspire with NPBL to exclude CSXT from on-dock rail access at NIT. Through its fee request, NS intends to convince the Board to use its *SSW Compensation* methodology to increase the cost the NPBL must pay to use NS's tracks that lead to NIT. Any such increase would raise the costs for NPBL to provide switching services to CSXT to access on-dock rail at NIT. Because NS does not need to use NPBL to access NIT, NS would not be affected by the cost increases it is seeking. Successfully raising the trackage rights fee for NPBL (and consequently for CSXT) to access NIT, would further exclude CSXT from access to on-dock rail at NIT.

3.1.6. NS's argument that the Board's exemption of intermodal traffic from rate regulation affects the Board's competitive analysis here is wrong and a red herring.

NS argues that the Board's approval of NS's control application would result in no lessening of competition because intermodal traffic is a highly competitive industry that is exempt from STB regulation. (NS Appl. 18, 28-29.) NS's argument is wrong and a red herring. The Board must consider potential harm to competition that may result from approval of a control application. The Board often performs this analysis on the rail transportation of commodities not subject to the Board's rate regulation. Just because the Board has determined that the rail transportation of a certain commodity does not require economic rate regulation does not mean that the Board's approval of a control application could not harm competition or consumers of the relevant product.

Furthermore, Ms. Kenney explains that the competitive dynamic is different for international and domestic intermodal traffic. (See V.S. Kenney 2-4, Sept. 18, 2025.) She explains that, in the international intermodal transportation market, ocean carriers generally enter into multi-year contracts with railroads. (*Id.* at 2.) In

order for CSXT to compete effectively for contracts with ocean carriers, CSXT must offer competitive service at all major ports in a geographic region. (*Id.* at 3.)

3.2. NS's control of NPBL has caused negative effects on competition and the effects will worsen if the Board approves the NS control application.

3.2.1. Due to NS's control, NPBL does not operate like a normal terminal or switching railroad.

NS's control over NPBL prevents NPBL from operating like a typical terminal, belt line, or switching railroad designed to serve its connecting railroads. (V.S. Carey 6-8, 25, Sept. 18, 2025.) NPBL, like other terminal railroads, was established for the mutual benefit of its owners, and to ensure that no single railroad dominates access to a port terminal. Terminal or belt line railroads usually do this by providing switching services for multiple railroads. This can create competition among the owning railroads, ultimately benefiting the belt line's owners and shippers that rely on the rail service. (CSXT Pet. to Reject, Ex. 1, at CSXT-1-75 to -82, Feb. 27, 2025; V.S. Huneke 3-4, Sept. 18, 2025; V.S. Carey 25, Sept. 18, 2025.)

Other terminal railroads successfully provide switching services for the benefit of their owners and customers. For example, the nearby CWRY, an independent railroad owned by Genesee & Wyoming Inc., provides effective on-dock switching services to both CSXT and NS at VIG. (V.S. Miller 8-9, Sept. 18, 2025; V.S. Kenney 6, Sept. 18, 2025.)

Another example is Conrail, a much larger terminal and switching railroad that is jointly owned by CSXT and NS. Joint ownership of Conrail works well because both NS and CSXT rely on Conrail to access ocean carriers in the areas where Conrail operates. Since neither NS nor CSXT can serve the ocean carriers directly, each railroad is incentivized to ensure the smooth operation of Conrail.

(V.S. Huneke 7-8, Sept. 18, 2025; V.S. Kenney 6, Sept. 18, 2025.)²⁹ In contrast, here, NS does not need NPBL at all to reach NIT and serve international intermodal customers, so NS has no incentive to make NPBL a viable access vehicle for NIT service, and indeed has acted repeatedly to keep NPBL from being a viable access vehicle.

Like other terminal railroads, NPBL was structured to move enough traffic to generate revenue to cover its fixed costs³⁰ along with the variable and marginal costs of providing transportation service.³¹ Terminal railroads are incentivized to move more traffic because it increases the ability of the railroad to recover their operating costs. (See V.S. Carey 49, Sept. 18, 2025; V.S. Miller 66-67, Sept. 18, 2025.) But the NS-controlled NPBL does not do this, to the detriment of CSXT, NPBL, POV, ocean carriers, the surrounding community (more trucks) and the ultimate consumer of the products shipped from overseas.

Moving intermodal traffic to and from NIT in switching service on behalf of its part-owner CSXT is NPBL's most significant potential commercial opportunity. Over the years, NPBL has expressed apparent interest in considering CSXT's rate and service proposals for NIT intermodal traffic that would have generated

²⁹ Other examples of neutral terminal railroads include Belt Railway of Chicago ("BRC"), which serves CSXT, BNSF Railway Company, Canadian National, Canadian Pacific Kansas City Limited, NS, and Union Pacific, and dispatches more than 8,400 rail cars each day across its 300 miles of switching tracks and offers "unique industrial and intermodal facility development opportunities." (V.S. Huneke 3-4, Sept. 18, 2025.) Other terminal railroads, such as the Kansas City Terminal Railway and the Terminal Railroad Association of St. Louis, offer similar switching services for multiple Class I owners. (*Id.* at 4.)

³⁰ Fixed costs include cost categories related to ongoing maintenance, inspections and replacement of trackage and general and administrative costs, among others. (V.S. Carey 49-50, Sept. 18, 2025.)

³¹ The NPBL Operating Agreement also provides for up to a 6% profit dividend to its owners. (CSXT Pet. to Reject, Ex. 1, at CSXT-1-78 to -79, Feb. 27, 2025.)

significant increased revenue for NPBL. However, NS has precluded NPBL's board from seriously considering or voting on all of CSXT's proposals. *See supra* Sections 2.2 and 2.4.

Absent NS control, NPBL would provide switching services for the mutual benefit of both owners – CSXT and NS. NPBL would be incentivized to expand beyond the small amount of carload traffic it carries now to move significant volumes of intermodal traffic to and from NIT, which would generate additional revenue and help it to cover its operating costs. (V.S. Carey 49-50, Sept. 18, 2025.) Contrary to NS's claims, "a large reduction in overall total cost per carload is achievable through the additional traffic volumes and scale opportunities of spending fixed costs over more units." (*Id.* at 50.) Additionally, if NS could not control NPBL's business decisions, it is reasonable to expect that NPBL would encourage competition between CSXT and NS at NIT. (V.S. Miller 65-67, Sept. 18, 2025; V.S. Carey 23-36, 50-56, Sept. 18, 2025.)

3.2.2. NS is increasingly incentivized to block NPBL (and thus CSXT) from NIT on-dock rail access as NIT expands.

Enabling NPBL to provide CSXT with switching services to and from NIT would put NS in direct competition with CSXT for on-dock rail at NIT. As a result, NS has every incentive to maintain its {{ [REDACTED] }} share of the on-dock rail traffic at NIT and its ability to raise prices or set service terms for ocean carriers so it does not have to compete with CSXT to provide the best and most cost-effective service.³² (V.S. Miller 63, Sept. 18, 2025.) NS's incentive to restrict competition at NIT will increase in the coming years as NIT and POV grow in importance and capacity.

³² As discussed in Sections 3.1 and 3.2.4, while ocean carriers may have the option to use other terminals, ports, or alternatives to on-dock rail, on-dock rail is the most efficient and preferable option. Therefore, even if some traffic is moved via drayage to or from NIT, it does not provide the same level of competition as on-dock rail. (V.S. Miller Section V.B., Sept. 18, 2025.)

In fiscal year 2024, approximately 1.9 million containers moved through POV's terminal properties.³³ Virginia has invested heavily in POV to improve its infrastructure and increase capacity, which will encourage further growth at POV and specifically at NIT. The \$83 million capacity expansion of NIT's Central Rail Yard in 2024 increased "total annual rail capacity by more than 30%."³⁴ POV has an additional \$650 million expansion project underway that will renovate and expand the North Terminal at NIT to create capacity for an additional 1.4 million TEUs, among other upgrades.³⁵ Expansion at NIT will allow for more than 64% growth from the 2023 capacity levels and will provide more than 50% larger capacity than at VIG.³⁶ This project is expected to be completed in 2027.³⁷ As the volumes and economic activity at NIT continue to increase, the financial incentive for NS to continue restricting CSXT access to on-dock rail at NIT in order to protect its status as the sole provider of on-dock rail at NIT will likewise increase.

3.2.3. NS's control of NPBL has resulted in a disproportionate NS market share of traffic moving at NIT.

NS's control application does not adequately address the impact of NS's control over NPBL on NS's market power at NIT. (See V.S. Carey 6-9, 12-13,

³³ POV, Annual Comprehensive Financial Report for the Fiscal Year ended June 30, 2024 at 17 (2024), <https://www.portofvirginia.com/wp-content/uploads/2024/09/Virginia-Port-Authority-06-30-2024-Annual-Comprehensive-Financial-Report-as-Issued.pdf>.

³⁴ POV, Norfolk International Terminals, https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-NIT-2.pdf.

³⁵ *Id.*

³⁶ (VPA Letter 1-2, Mar. 5, 2025; V.S. Carey 9, Sept. 18, 2025.) The ongoing capacity expansion will enable the NIT terminal to handle 3.6 mm TEUs, which is more than 64% growth from its 2023 capacity level of 2.2 million TEUs. It is also substantially larger (more than 50%) than VIG's 2.2 million TEUs.

³⁷ POV, Norfolk International Terminals, https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-NIT-2.pdf.

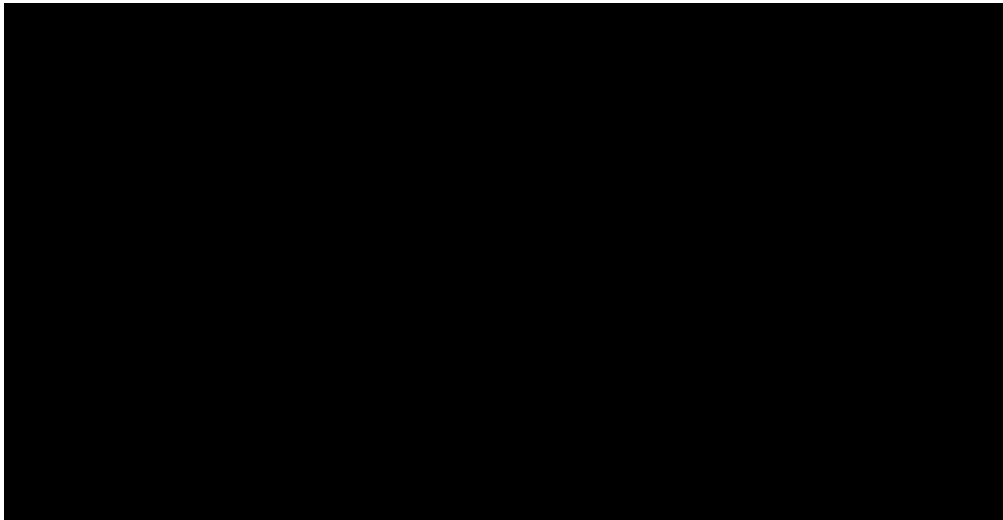
Sept. 18, 2025.) Basic economics dictate that entities with market power – such as NS at NIT – have an incentive to raise rates above competitive levels. (V.S. Miller Section VI.A., Sept. 18, 2025.) But NS has failed to analyze whether its market power at NIT has caused harm to consumers in the form of increased prices and reduced quantities of goods. Ms. Carey of NERA has concluded that NS’s {{ [REDACTED] }} share of the rail traffic moving between the dock at NIT and Midwestern locations is not justified in terms of costs, service quality, or other economic factors that could explain why NS has such a high share contrary to the competitive dynamic expected if NS did not control NPBL. (V.S. Carey 2-5, Sept. 18, 2025.)

One way in which the impact of NS’s control of NPBL and related anticompetitive conduct can be seen is by comparing the volume of traffic moving through NIT versus VIG in the POV. At NIT, NS runs {{ [REDACTED] }} of the intermodal rail traffic moved via on-dock rail access between NIT and Midwestern locations, even though CSXT is theoretically able to provide this service via NPBL switching services. (V.S. Carey 6-8, Sept. 18, 2025; VPA Letter 4, Mar. 5, 2025.)

As Figure 10 below shows, NS’s lock on NIT on-dock rail service means that CSXT drayage service comprises only {{ [REDACTED] }} of all NIT traffic and that NS moves {{ [REDACTED] }} of all NIT traffic using rail. (V.S. Carey 7, Figure 1, Sept. 18, 2025.)

Figure 10: Shares for Rail/Drayage International IM Traffic Movements NIT Corridors to/from Inland Midwestern Markets, 2023

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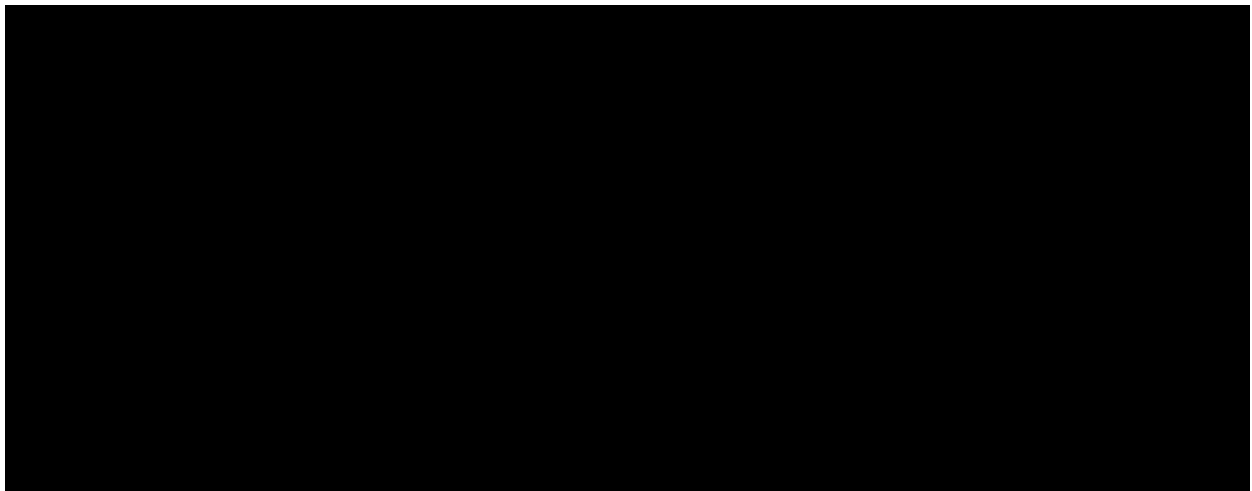


}}

In contrast to CSXT's {{ [REDACTED] }} share of NIT business, as shown below in Figure 11, CSXT has a {{ [REDACTED] }} share of on-dock rail service across the river at VIG, where CSXT and NS both have access to on-dock rail, and CSXT can compete effectively with NS. (V.S. Carey 8, Figure 2, Sept. 18, 2025.)

Figure 11: CSXT Shares for On-Dock Rail at VIG vs NIT (via) Dray to Rail, 2023

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NS claims that “historical advantages” have resulted in NS’s high shares at NIT (NS Appl. 22-23.), but provides no analysis or data in support. If NS did not control NPBL, Ms. Carey expects that CSXT would offer highly competitive service for on-dock rail at NIT. (V.S. Carey 50-56, Sept. 18, 2025.) With the absence of economic evidence to support NS’s significant share at NIT, Ms. Carey attributes NS’s very high share of traffic to/from the NIT corridor routes to/from the Midwest to NS’s exclusionary conduct through both economic and operational obstruction. (*Id.* at 7.)

To properly evaluate whether the Board’s approval of the NS control application would lessen competition in the future, Ms. Carey opines that NS should have conducted a forward-looking analysis that also considers increased capacity at NIT. (*Id.* at 8-9.) Instead, NS simply concluded without support that there would be no change in the competitive landscape. (NS Appl. 30.) Therefore, NS has not provided the Board with the necessary analysis of the full extent of harm to competition on the NIT/POV corridor routes that would result from the Board’s approval of the NS application.

3.2.4. CSXT has lost numerous contracts with ocean carriers because NS’s control of NPBL excluded CSXT from providing the NIT on-dock rail service that ocean carriers demand.

Evidence of the impact of NS’s anticompetitive conduct also includes CSXT’s lost opportunities to secure international intermodal shipping contracts due to CSXT’s lack of on-dock rail service at NIT. Ocean carriers prefer railroads with on-dock rail access. When on-dock rail is available, drayage is not considered a viable alternative. (See V.S. Miller Sections V.A. and V.B., Sept. 18, 2025; CSXT MSJ Opp’n, Ex. 110, NSR_00157631 ({{ [REDACTED] }}).) A railroad’s access and service at one port can dictate whether an ocean carrier uses that

railroad for its entire service across a geographic region of ports. (V.S. Kenney 3, Sept. 18, 2025.) To offer competitive service, the railroad must provide on-dock rail service at port terminal facilities wherever available. (*Id.*)

Ocean shipping companies typically enter into multi-year contracts with railroads for services over a large set of lanes that include many inland destinations and that are over several ports in a geographic area like the East Coast. (*Id.*) Ocean carriers tend to align rail shipments on the East Coast with a single carrier – CSXT or NS. (V.S. Miller 33, Sept. 18, 2025.) In 2024, most major ocean carriers shipped more than {{ [REDACTED] }} of their East Coast port containers with a single railroad and often the share can be {{ [REDACTED] }} or more. (*Id.*) Generally, to win a contract, the railroad must provide competitive service throughout the entire relevant area – and that means on-dock rail where possible.

Over the years, CSXT has lost opportunities with numerous ocean carriers because CSXT does not have the on-dock rail service at NIT that the shipping companies demand. (V.S. Carey 38-40, Sept. 18, 2025.) One major ocean carrier, {{ [REDACTED] }}, has long maintained a preference for on-dock rail. For the last 15 years, NS has contracted {{ [REDACTED] }} at Midwestern NIT/POV lanes, and the fact that CSXT does not have on-dock rail at NIT appears to be at least part of the reason. (*Id.* at 39.) In 2023, {{ [REDACTED] }} moved all its volume, approximately {{ [REDACTED] }} intermodal cars with NS at NIT and did not use VIG at all. (*Id.*) CSXT has shipped zero containers for {{ [REDACTED] }} in 2023 and 2024 at VIG or NIT. (*See id.*)

In each of 2015, 2016, 2017, 2018, 2019, 2023, and 2024, an ocean carrier entered a contract with NS instead of CSXT. The lack of on-dock rail service at NIT was a factor in those decisions. (CSXT MSJ Opp'n ¶ 88.) For example, in 2015, {{ [REDACTED] }} notified CSXT that its {{ [REDACTED] }} {{ [REDACTED] }} (Ex. 31, CSXT0112576.) In 2018, {{ [REDACTED] }}

█ } selected NS because CSXT did not have on-dock rail or a
 {█ } even though CSXT offered service at the lowest rate.
 (CSXT MSJ Opp’n, Ex. 116, CSXT0013901.)

NS argues that ocean carriers have neither suffered from NS’s exclusionary actions at NIT nor seen a reduction in competition. In support, NS claims that ocean carriers have not complained to the Board about NIT being sole-served by NS for on-dock rail. (NS Appl. 19.) But ocean carriers *have* raised these concerns with the Board. Indeed, CMA CGM submitted a letter in this proceeding to express concern that NS’s control over NPBL would have anticompetitive effects by preventing CSXT from being an effective rail competitor at NIT. (CSXT Letter, Mar. 12, 2025 (enclosing a letter from CMA CGM).)

3.2.5. NS’s control of NPBL and related anticompetitive conduct has harmed the Port of Virginia.

POV has repeatedly expressed its preference for using on-dock rail to increase competition at NIT. POV has said that {█ }
 █ } (See CSXT MSJ Opp’n, Ex. 13, Capozzi Dep. Tr. 78:16-79:14, Jan. 22, 2021.) In 2018, POV’s CEO and Executive Director, John Reinhart, sent a letter to Cannon Moss of NPBL informing NPBL that {█ }
 █
 █
 █ } (*Id.* at Ex. 118, CSXT0100756.) This letter came following a rail enhancement study, which concluded that dual rail access would enhance POV’s competitiveness. *Id.*

POV also filed a letter with the Board in this proceeding that outlined its concerns about limited competition at NIT. (VPA Letter, Mar. 5, 2025.) The Port explained that “Virginia’s model is compromised when a shipping line calling NIT

has boxes bound for [CSXT] rail” and that its “customers are impacted by the operational and cost consequences of the costly work-around in the form of the NIT cross-town drayage program.” (*Id.* at 5.)³⁸ NS claims that POV has ulterior motives because it wants to eliminate the subsidy that the Port pays for the CSXT drayage service. (NS Appl. 19.) But absent NS’s control of NPBL, POV would not need to subsidize CSXT’s drayage service in the first place. (V.S. Miller 55-56, Sept. 18, 2025.)

Also, NS knows well that ports compete to offer the most attractive proposals to ocean carriers. Indeed, NS’s VP of Business Development wrote in op-ed piece in a South Carolina newspaper that NS would not have effective access to a Port of Charleston facility when such access was operationally impracticable and that “truly competitive, near-dock rail access by both [railroad] carriers will be critical.” (Ex. 11, Robert E. Martinez, Op-Ed, *State rail plan essential to port’s success*, The State, Jan. 20, 2011.)

4. The Board should dismiss or deny the NS application, order NS to divest control of NPBL, and grant CSXT’s requested relief in the Related Proceedings.

In this Section 4, CSXT requests that the Board summarily dismiss or deny the NS application for failure to present a *prima facie* case, or that the Board otherwise deny the NS application on its merits. In either case, denial of the NS application would require NS to fully divest control of NPBL, as described in more detail below. CSXT will then ask the Board to grant the relief that CSXT has requested from the STB in certain related proceedings, because denial and divestiture will not fully remedy the harm caused by NS’s and NPBL’s anticompetitive conduct.

³⁸ POV’s preference for on-dock rail and not drayage is discussed in greater detail in Section 3.2.5.

4.1. The Board should summarily dismiss or deny the NS application because NS failed to meet its burden of proof and thus did not present a *prima facie* case.

Before the Board even considers the merits of the NS application under the applicable statutory standard, the Board should summarily dismiss or deny the NS application because NS failed to present a *prima facie* case, pursuant to the Board's rule at 49 C.F.R. § 1180.4(c)(8). That rule states that:

Applicants can fail to meet their burden of proof and thus not present a *prima facie* case either by

(i) disclosing facts that, even if construed in their most favorable light, are insufficient to support a finding that the proposal is consistent with the public interest, or by

(ii) disclosing facts that affirmatively demonstrate that the proposal is not in the public interest. See *Railroad Consolidation Procedures*, 363 I.C.C. 767 (1980).

In promulgating this rule, the Board's predecessor explained:

The case-in-chief concept of the recently adopted rail consolidation regulations permits us to have, upon the filing of an application, all of the applicants' supporting evidence. If the information contained in an application will not support findings on each of the statutory elements (and any additional elements required by court or [sic] precedent) and will not support a conclusion that the proposal is consistent with the public interest, then summary denial is an appropriate disposition of the proceeding.

Railroad Consolidation Procedures, 363 I.C.C. 767, 770 (1980).

NS's purported *prima facie* case is simple: NS has controlled NPBL unlawfully for decades, NS's control of a supposedly neutral terminal railroad has had no anticompetitive effects, nothing will change if the Board authorizes NS to control NPBL going forward, and therefore no formal competitive analysis is required. This glib approach is simply not sufficient for NS to meet its burden of proof.

In a typical control proceeding, the Board applies the 49 U.S.C. § 11324(d) standard discussed below and analyzes the likely competitive impacts of a proposed transaction by comparing the current “without control” state to a hypothetical future “with control” state. This case is unique, however, because NS has admitted that it has controlled NPBL since 1982 and is only now belatedly seeking after-the-fact control authority.

NS claims that “there is no new transaction” for the Board to review, (NS Appl. 20) and that “[t]his proceeding is solely about whether NS’s *future control of NPBL* will result in a substantial lessening of competition.” (*Id.* at 17 (emphasis in original)). NS argues that the Board should not consider “past competitive conduct and market changes stemming from the 1982 transaction.” (*Id.* at 31.) In other words, NS believes that the Board should only analyze the competitive effects of moving from the current “with control” state to a future “with control” state. NS’s answer, of course, is that there are none. The world today will remain the same tomorrow. Under this self-serving theory, NS asks the Board to reward NS for failing to seek the necessary Board authority in the first instance by avoiding any substantive competitive analysis and simply rubber-stamping NS’s belated control request.

But the governing statute does not allow NS to so neatly glide past the competitive harm that it has wrought over the last four decades. Under Section 11324(d), the Board must determine whether its **approval** of NS’s application would have anticompetitive effects. This standard presupposes that the Board may **deny** NS’s application. If the Board denies NS’s application, NS must divest control of NPBL. So while NS has flipped this control proceeding on its head, there are still two clear scenarios that the Board must analyze and compare from a competition perspective: (1) approval of NS’s application and NS’s continued control of NPBL, and (2) denial of NS’s application and NS’s divestiture of control of NPBL.

CSXT does not suggest that the Board must now rewind the clock a half-century to analyze the state of competition in Norfolk before NS acquired control of NPBL. Instead, the Board must now analyze whether the world created by the Board's approval of NS's application would differ competitively from the world created by the Board's denial of NS's application.

In essence, the Board must still compare a "without control" state to a "with control" state, just as the Board does in traditional control proceedings where responsible applicants bring their transactions to the Board for review before consummation. If the Board finds that it is "likely" that the "with control" state would result in "substantial" anticompetitive effects as compared to the "without control" state, and that the anticompetitive effects outweigh any public benefits and cannot be alleviated through Board-imposed conditions, then the Board should deny NS's application. Dr. Miller describes these issues further in his Verified Statement in Section III.B.2.

NS should have presented this "without control" and "with control" competitive analysis in its 1980 control application. The Board's predecessor could have then considered whether any anticompetitive effects would flow from NS's control of NPBL and decided whether to authorize that control or condition it to preserve any anticipated loss of competition. NS failed to do so then and fails to do so now.

NS's application fails entirely to present and support an analysis of the market in a world where the Board denies NS's application. CSXT's experts, Dr. Miller and Ms. Carey, identify the numerous issues that NS completely ignored that would show how the "without control" world would differ from the "with control" world. (V.S. Miller 28, 67, Sept. 18, 2025 (likely lower rates for intermodal traffic, leading to increased intermodal traffic and less drayage); V.S. Carey 23-36, 50-56, Sept. 18, 2025 (likely higher intermodal volumes spreading fixed costs across more

traffic and lower rates on NPBL.) As a result, the Board cannot rely on NS's application to evaluate the competitive effects that would flow from approving NS's application. This shortcoming in NS's *prima facie* case, in and of itself, requires the Board to summarily deny NS's application. In short, NS has not met its burden to provide the Board with sufficient competitive analysis to enable the Board to make a proper finding under Section 11324(d) and the Board should deny the application as a result.

CSXT has sought to fill the lack of competition analysis in the NS application with these opposition comments, describing to the Board how a "without control" state would compare to the current "with control" state. Indeed, NS's failure to even try to demonstrate how the world would look without control of NPBL may well be because any credible analysis would show beyond any doubt the substantial competitive harm that has resulted and will continue and likely worsen if NS control of NPBL is authorized.

Finally, the Board should not allow NS to cure its abject failure to meet its burden of proof in its application by submitting new evidence and argument on rebuttal that addresses, for the first time, the competitive implications of a "without control" state. Should NS seek to reform or further supplement its application by submitting such new evidence and argument on rebuttal, CSXT should have the ability to comment in opposition.

4.2. If the Board considers the merits of the NS application, the Board should deny the NS application.

The Board's merits review of NS's application must balance competitive impacts and the "public interest in meeting significant transportation needs," which the Board often describes as "public benefits." 49 U.S.C. § 11324(d) states that:

In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that—

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

An adjacent statutory provision allows the Board to impose conditions on its approval of a control application to alleviate anticompetitive effects of a transaction:

The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated.

Id. § 11324(c).

In this Section 4.2, CSXT explains that, should the Board decline to summarily dismiss or deny the NS application and consider its merits, the Board should deny NS's application because of the substantial harms to competition that have resulted from NS's control of NPBL and will likely worsen with the expansion of NIT, and the lack of any public benefits resulting from that control relationship. The denial will require NS to fully divest control of NPBL as fully described below. The Board should then grant the relief that CSXT has requested in separate STB proceedings.

4.2.1. NS's control of NPBL is inconsistent with NPBL's charter and objective as a neutral terminal railroad.

At a threshold level, the Board should deny the NS application on its merits because the continued control of NPBL by NS is fundamentally incongruent with NPBL's charter and founding objective as a neutral terminal and switching railroad. By its very charter, NPBL should be an independent and neutral provider of access to all of its owners. The current dominance and control of NPBL by NS is contrary to the core organizing principles and intent of the original NPBL

shareholders. The NPBL Operating Agreement states that its railroad “should be constructed, maintained and operated under a separate organization in which all [shareholder companies] are to be equally interested and each to have an equal representation.” (CSXT Pet. to Reject, Ex. 1, at CSXT-1-76, Feb. 27, 2025.) “Equal” interest and “equal” representation are patently inconsistent with NS’s request that the Board authorize its domination and control of NPBL.

As explained by CSXT’s economist Dr. Huneke, the equal treatment of individual owners ensures the independence of the terminal railroad and preserves competition for transportation involving shippers and facilities within a terminal area. (V.S. Huneke 3-4, Sept. 18, 2025.) Dr. Huneke shows what has happened historically when members of such a railroad seek to dominate it. (*Id.* at 4-5.) Granting NS’s request that the Board cement NS’s decades-long unlawful control over NPBL would destroy the competition that the terminal railroad was intended to foster.

The STB and its predecessor have recognized the special nature of railroads like NPBL that have been established to provide access to its owners to important markets that otherwise are not available. The STB/ICC have sought to preserve the independence of such railroads from the negative effects on competition resulting from domination by a single railroad or single owner. NS has offered no such mitigation here, only pledging to continue business as usual.

For example, in *Union Pac. Corp., et al.—Control—Mo.-Kan.-Tex. R.R. Co, et al.*, 4 I.C.C.2d 409 (1988), Union Pacific (“UP”) sought ICC authority to control the Missouri-Kansas-Texas Railroad Company (“MKT”). At the time, ownership of the Texas City Terminal Railway Company (“TCT”) was divided equally amongst UP, MKT, and The Atchison, Topeka and Santa Fe Railway Company (“ATSF”). *Id.* at 477. TCT provided switching and terminal services to the five railroads that serve Texas City: UP, MKT, ATSF, and two other railroads.

Because UP's acquisition of MKT would have resulted in UP's ownership of two-thirds of the stock of TCT, UP filed a related petition for exemption seeking authority to control TCT. *Id.* at 483-84. The ICC recognized that UP's majority control of TCT, "where presently no railroad owns more than a one-third interest, . . . clearly raises the potential for manipulation of TCT in the interests of the majority owner." *Id.* at 478. The ICC ultimately conditioned its approval of the UP/MKT consolidation on applicants alleviating the potential competitive effects of the change in control.

Similarly, as part of the *CSX/Pan Am* merger, CSXT and its parent company (collectively, "CSX") sought authority to acquire Boston & Maine's 50% ownership share in Pan Am Southern LLC ("PAS"), a 50/50 joint venture, Class II railroad controlled at the time by Boston & Maine and NS. *CSX Corp. & CSX Transp., Inc., et al.—Control & Merger—Pan Am. Sys., Inc., et al. (CSX/Pan Am)*, FD 36472 (STB served Apr. 14, 2022). Before the *CSX/Pan Am* merger, NS had access to the Boston area through its 50% ownership and use of PAS. CSXT also accessed the Boston area through its own line that ran south of PAS.

Recognizing that the STB would not permit CSX's acquisition of control of PAS (even joint control) if that control could be used to preclude NS's access to the Boston area, CSX proactively reached a settlement agreement with NS and a term sheet agreement with NS and Genesee & Wyoming, Inc. ("GWI") to ensure the competitive independence of PAS and to ensure its availability to NS as a means to access the Boston area.³⁹ The Board ultimately found that CSX's settlement

³⁹ Specifically, under a series of proposed transactions, Berkshire and Eastern Railroad ("B&E"), a wholly owned subsidiary of GWI, "would become the operator of PAS on behalf of the two owners, CSX and NSR," and "B&E would be required to operate 'in a nondiscriminatory fashion,' and set rates that 'advance the economic interest of PAS as an independent rail carrier.'" *CSX/Pan Am*, FD 36472, slip op. at 14 (quoting the NSR Settlement Agreement and the GWI Term Sheet Agreement). CSX further committed to "recuse itself from any PAS board discussion or

agreement with NS along with other conditions to the overall merger were sufficient to mitigate the anticompetitive effects and “ensure that CSX does not improperly influence PAS capital decisions in an anticompetitive manner” and that “PAS rates are not set in an anticompetitive manner.” *Id.*, slip op. at 12, 15.

In this case, NS has openly wielded its control of NPBL to exclude CSXT from access to on-dock rail at NIT and has actively rejected and sought to prevent any negotiated arrangement that would ensure the independent decision-making by NPBL. Far from seeking to ensure the competition and equal treatment that formed the basis of NPBL’s existence upon creation, NS now seeks legal authority to continue the status quo: using NPBL as a vehicle for keeping CSXT out of access to on-dock rail at NIT.

The Board should consider why NS is fighting so hard to retain control over NPBL, rather than allowing NPBL to be an independent, neutral terminal railroad, consistent with NPBL’s founding purpose. NS’s fight is not about NPBL profits flowing to NS. As NS admits, NPBL is structured to be a breakeven enterprise. (NS Appl., Ex. C, at 2 ({{ [REDACTED]

[REDACTED] })).) Nor is NS’s fight about securing preferential access to key customers. NS (unlike CSXT) has direct access to NIT without using NPBL’s switching services. NS’s true motivation is simple – NS desperately wants Board authority to control NPBL to cement its exclusion of CSXT from on-dock rail access at NIT. The STB should soundly reject NS’s request for such authority.

consideration of strategic issues that relate to CSX’s Southern Route or competition between PAS and CSXT,” and to use accelerated arbitration to resolve disputes about capital expenditures by evaluating “whether the disputed capital expenditure is one that would be made by an independent investor in PAS seeking to optimize PAS’s success.” *Id.*, slip op. at 11-12.

4.2.2. Approving NS's application would result in anticompetitive effects.

The Section 11324(d) standard discussed above first requires the Board to determine whether, as a result of the Board's approval of the NS application, there are "likely" to be "substantial" anticompetitive effects. As established above in Section 3, it is likely that many substantial anticompetitive effects would flow from the Board's approval of NS's control application.

First, approving NS's application would improperly legitimize a 2-to-1 consolidation that is contrary to long-standing precedent. One of the bedrock principles of the Board's treatment of control applications is that the Board does not permit 2-to-1 transactions, where a shipper loses its access to two railroads and would thereafter have to deal with a single railroad or with two railroads that are subject to common control. The Board has "consistently sought to assure that agency-approved transactions would not result in the creation of '2-to-1' points where shippers lose existing intramodal rail competition." *Canadian Nat'l Ry.—Adverse Discontinuance—Lines of Bangor & Aroostook R.R. Co. & Van Buren Bridge Co. in Aroostook Cnty., Me.*, AB 279 (Sub-No. 3) et al., slip op. at 5 (STB served May 3, 2004) (citing *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. 233, 252, 390-93 (1996)). Yet that is precisely what NS has asked the STB to authorize here.

On the face of it, the NS application violates the STB's 2-to-1 rule with respect to the important NIT facility. *Without* NS control of NPBL, ocean carriers seeking to have on-dock rail access at NIT have two independent options – NS and NPBL. NS reaches NIT by its own line and NPBL reaches NIT through trackage rights over NS's line. *With* NS's control of NPBL, by contrast, ocean carriers seeking to have on-dock rail access at NIT must now deal with two railroads (NS and NPBL) that are part of a commonly-controlled entity.

Under NS's twisted reasoning, however, the Board need not evaluate a situation where the Board denies NS's application and NS no longer controls NPBL. In NS's logic, there would be no reduction in competition if the Board approved NS's application because nothing would change. But when properly evaluated, the NS application presents a classic 2-to-1 transaction that the Board simply does not authorize. It should not do so here.

NS also argues that the Board should not view its application as proposing a 2-to-1 transaction because NS will supposedly continue to charge a "cost-based" rate for use of NPBL and will abide by any trackage rights fee established by the STB. (NS Appl. 25-26.) The argument is a non-sequitur and is irrelevant to the Board's competitive analysis. With or without any commitment regarding prices that will be charged by NPBL, if the Board authorizes NS's control of NPBL, NS will continue to access NIT directly and the only other railroad that will access NIT will be an entity – NPBL – controlled by NS. Two-to-one. The Board does not allow such transactions.

Moreover, NS's deceptive commitment to maintain "cost-based" pricing by NPBL only ensures NPBL can never provide switching access to NIT for NS's chief competitor, CSXT. The on-the-ground reality shows that such an assumption is flat wrong. The supposed "cost-based" pricing that NS touts as the answer to competitive problems was and remains a major source of CSXT's exclusion from access to on-dock rail at NIT.

As explained by Ms. Carey and Dr. Miller, a true "cost-based" rate that reflected the much lower costs of transporting intermodal traffic, especially a high-volume movement of intermodal containers, would likely promote competition at NIT by allowing CSXT to access NPBL's switching services. (V.S. Carey 41-42, Sept. 18, 2025; V.S. Miller 66-67, Sept. 18, 2025.) But NPBL, subject to NS's control, has

effectively prevented such a pricing arrangement that truly reflects the cost to provide intermodal service.

Indeed, the illogic of NS's reliance on NPBL's current "cost-based" pricing as a response to the elimination of 2-to-1 competition is seen in the fact that *today* NPBL charges a "cost-based" rate (at least, that is NS's claim), and *today* CSXT has *zero* share of the on-dock rail transportation at NIT. Any commitment to continue charging "cost-based" pricing at NIT as it has done in the past clearly is just a perverse way of ensuring that CSXT will not have effective on-dock rail access to NIT. NS's illusory commitment to "cost-based" pricing does not save the transaction from being a 2-to-1 transaction. To the contrary, it is a means of cementing the single-railroad access that NS has already secured through its decades-long unlawful control of NPBL.

The 2-to-1 problem also is much deeper than just the price of access to on-dock rail at NIT. Under NS control, NPBL has refused to consider alternative commercial arrangements that would permit CSXT to access NIT via NPBL while still preserving the equal treatment of NPBL owners and the profitability of NPBL itself. NPBL, under NS's control, has refused to advance CSXT's repeated rate proposals to develop a transportation arrangement that would permit CSXT access to NIT via NPBL through equipment and fuel sharing. These types of arrangements are common when the railroads act independently – the arrangements that CSXT and NS both have with CWRV are a good example (V.S. Miller 67-68, Sept. 18, 2025; V.S. Kenney 6, Sept. 18, 2025) – but CSXT has found it impossible to get NPBL to seriously consider them here. CSXT runs up against a brick wall in dealing with NPBL because NS has used its control of NPBL to prevent any serious consideration of arrangements that might introduce on-dock rail competition at NIT.

NS's apparent view that the STB need not worry about the 2-to-1 elimination of on-dock rail access to NIT because of the existence of competitive alternatives, like drayage and access to other East Coast ports, is both irrelevant and totally unsupported. As to relevance, the elimination of 2-to-1 competition is a problem on its own, regardless of the potential existence of competitive alternatives. The STB does not allow it and should not allow it here. More important, as explained above and in detail in the statements of CSXT's economists, the existence of drayage and access to other port facilities are not effective alternatives to direct on-dock rail access at one of the most important intermodal terminals on the East Coast. Ocean carriers and POV value direct on-dock rail access at NIT, and NS's elimination of that option through a prohibited 2-to-1 transaction would seriously harm competition.

The STB should deny NS's request for authority to eliminate two-railroad access to NIT.

Second, NS's manipulation of NPBL and NS's incentives to use NPBL to continue to exclude CSXT from NIT on-dock rail access demonstrate that approving NS's application would substantially harm competition.

Under the governing statute, the STB should deny authorization to any proposed transaction where there "is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade" that is not outweighed by public benefits. 49 U.S.C. § 11324(d). On the threshold question of anticompetitive effects, the STB in this case can simply look at history to see that NS's control of NPBL substantially lessens competition and restrains trade. And the STB need not look beyond CSXT's *zero* share of the on-dock rail traffic at NIT to know, with certainty, that NS's control of NPBL has resulted in these anticompetitive effects. An analysis of the underlying competitive dynamic of intermodal traffic moving into

and out of NIT and other East Coast port facilities confirms the serious anticompetitive effects of NS's control of NPBL.

The evidence of NS's efforts to impede CSXT's ability to compete at NIT through NPBL is abundant and overwhelming. As explained in detail above, NS manipulated NPBL's pricing, created operational barriers for NPBL trains that would use NS's tracks, removed efficient tracks and facilities (in particular, those associated with the Connecting Line that facilitated movement of NPBL traffic to NIT), prevented NPBL from considering attractive commercial proposals for NIT access, caused NPBL to drag its feet whenever competitive alternatives were presented, and terminated long-standing trackage rights agreements. This obstructive course of conduct began as early as 1999 and has continued to this day, even after the STB ruled that NS did not have authority to control NPBL.

The impact of this anticompetitive conduct is also clear. CSXT's expert Ms. Carey shows the impact of NS's control of NPBL on traffic movements along important rail corridors, where the traffic volumes can only be explained as the result of anticompetitive and exclusionary conduct by NS and NPBL. (V.S. Carey 5-8, Sept. 18, 2025.) CSXT's expert Dr. Miller shows that shipper options have been foreclosed by NS and NPBL's exclusion of CSXT from access to NIT on-dock rail. (V.S. Miller 28, 32, Sept. 18, 2025.) Competition has already been seriously undermined by NS's unlawful control of NPBL, and the restraint on competition will become even more acute as capacity at VIG becomes constrained (*see supra* Section 3.1.3) and access to NIT, which has recently added capacity and will add more capacity, becomes more and more important. (VPA Letter 1-2, Mar. 5, 2025; V.S. Kenney 15-16, Sept. 18, 2025.)

The harmful effects of NS's control of NPBL will continue if the Board approves NS's application, because of NS's strong incentives to continue using NPBL as a mechanism to exclude CSXT from on-dock rail access to NIT. As Dr.

Miller explains, through this exclusion, NS dominates the rail-dependent traffic at NIT and gains the ability to raise prices. (V.S. Miller 63; *see also* V.S. Carey 11-12, Sept. 18, 2025.)

Moreover, NS has the incentive to impede NPBL's ability to provide access to NIT because NS does not need NPBL to provide intermodal transportation at NIT. NS has its own direct access to NIT that does not require NPBL switching. As a result, approving NS's control application would continue to incentivize NS to adopt and promote policies that impede NPBL's ability to access NIT. NS's access to NIT would continue, because it doesn't need NPBL switching. But competitors like CSXT that rely on NPBL for access would be frozen out, as they are today.

In most control proceedings, the Board must hypothesize to determine whether approving an application would result in anticompetitive effects. Here, the Board need not look any further than the hard evidence presented by CSXT showing the anticompetitive effects resulting from NS's decades-long unlawful control of NPBL and how those substantial effects would likely continue and deepen should the Board approve NS's application.

4.2.3. NS does not and cannot identify any public benefits that would outweigh the substantial harm to competition that would result from approving NS's application.

Under the applicable statutory standard discussed above, the Board must approve NS's control application unless the Board finds that the many anticompetitive effects discussed here outweigh the "public interest in meeting significant transportation needs." 49 U.S.C. § 11324(d). The Board often broadly refers to this quoted statutory language as "public benefits." *See, e.g., CSX/Pan Am*, FD 36472, slip op. at 21. Conversely, if the Board finds that the public benefits do not outweigh the anticompetitive effects, the Board should deny NS's control application.

Because CSXT has established that approval of NS's application would result in significant anticompetitive effects, the Board must determine whether any public benefits would outweigh those effects. NS claims that three public benefits would result from the Board's approval of NS's application. (NS Appl. 30-31.) As discussed in this Section 4.2.3, these benefits are all illusory and NS has made no effort to quantify them. Therefore, the Board should deny NS's application.

First, NS claims that by imposing a one-size-fits-all uniform NPBL switch rate as it has committed to do, NS will ensure that all NPBL customers equally contribute to NPBL's variable and fixed costs so no user is forced to subsidize another user's portion of NPBL costs. (*Id.* at 30.) As an initial matter, NS fails to mention that in the past, the NPBL switch rate has not always been uniform – NPBL has used different switch rates for different commodities as recently as 2009. *See supra* Section 3.1.4. More significantly, claimed benefits from a uniform switching rate are nonsensical from an economic perspective. (V.S. Miller 66-67, Sept. 18, 2025; V.S. Carey 42-43, Sept. 18, 2025.) And CSXT has offered a switch rate proposal to NPBL that { [REDACTED] }, so no user will be subsidizing another user's NPBL costs under CSXT's switch rate proposal. (*See* V.S. Kenney, Attach. D, at 1, Sept. 18, 2025.)

Second, NS claims that its commitment to impose a “cost-based” NPBL switch rate will ensure NPBL's long-term viability of its operations for years to come. (NS Appl. 30-31.) But, as shown in Section 2.2.6 above, under NPBL's current “cost-based” switch rate, except for a few shipments in 2015, no intermodal traffic has moved over NPBL to NIT during the past 10 years. As a result, NPBL has received virtually no revenue from intermodal traffic moving to NIT. History teaches us that approving NS's control application is unlikely to contribute anything towards NPBL's long-term viability of operations.

Third, NS claims that if NPBL becomes part of NS's corporate family, it will continue to have public benefits such as "lower operating costs, better access to capital for infrastructure investments, cost savings from purchasing and [sic] lower insurance premiums and better liability protections." (*Id.* at 31.) But as described above in Section 3.2.1, NS has no incentive to make NPBL more competitive at NIT because NS does not use NPBL to access NIT. And history shows that for the last 42 years NS has blocked efforts to make NPBL more competitive at NIT. *See supra* Sections 2.2 and 2.4. This claimed future and past public benefit is entitled to no weight.

NS further claims that the Board should consider past "public benefits that occurred through NS's initial control of NPBL" in 1982 if it considers past competitive conduct. (NS Appl. 31) As explained in Section 4.1, NS's past anticompetitive conduct is relevant to the Board's inquiry in this proceeding and must be considered. Consequently, CSXT agrees that the Board also should consider the supposed public benefits that NS claims have occurred through NS's initial control of NPBL in 1982.

The supposed past public benefits identified by NS are the applicants' and commenters' "expected benefits" as the time of the transaction in the early 1980s, including a "new single-system service" that would offer "opportunities for significantly improved routings, more efficient operations" and "a direct single-system competition to CSXT between numerous midwestern, northeastern and southeastern points." Similarly, the expected benefits included "providing needed competition to CSXT." (*Id.* at 32 nn.56-57.) However, those expected benefits did not occur so they are entitled to no weight. To the contrary, NS has effectively used NPBL to stifle competition with CSXT over the last 42 years, as CSXT has not moved traffic over NPBL to NIT. *See supra* Section 3.1.

Far from providing public benefits, approval of NS's control application would result in public harm. CSXT has been excluded from on-dock rail access at NIT because of NS's anticompetitive conduct and, as a result, CSXT has moved virtually no traffic to NIT via NPBL. Without on-dock rail access, CSXT must access NIT using drayage. As POV has explained, "[n]ot only are these 'cross-town' drays for the [CSXT] cargo costly due to the additional re-handling, but the drayage service is inefficient, and unnecessarily congests local roads." (VPA Letter 4, Mar. 5, 2025.)

4.2.4. Imposition of conditions cannot fully alleviate the anticompetitive effects of approving NS's application.

In past proceedings where the Board has applied the Section 11324(d) review standard, the Board has grafted on to that mandatory "shall approve" standard the Board's permissive "may impose conditions" ability under Section 11324(c). Accordingly, the Board has held that it must approve a control application unless the anticompetitive effects outweigh any public benefits, pursuant to Section 11324(d)(2), **and** unless such anticompetitive effects cannot be alleviated through conditions imposed pursuant to Section 11324(c). *See, e.g., CSX/Pan Am*, FD 36472, slip op. at 10. However, while "it is impossible to claim that subsections (c) and (d) represent the zenith of legislative clarity,"⁴⁰ the statute itself does not explicitly link the Board's power to impose conditions under Section 11324(c) to the mandatory approval standard of Section 11324(d).

Therefore, the Section 11324(d) approval standard does not explicitly require the Board to approve NS's control application if the Board determined that conditions imposed pursuant to Section 11324(c) would alleviate associated

⁴⁰ *Bessemer & Lake Erie R.R. Co.—Acquisition & Operation—Certain Rail Lines of CSX Transp., Inc. in Onondaga, Oswego, Jefferson, St. Lawrence, & Franklin Cntys., N.Y.*, FD 36347, slip op. at 25 (STB served Feb. 25, 2021) (with Board member Fuchs dissenting).

anticompetitive effects. The Board's conditioning authority under Section 11324(c) is permissive ("The Board may impose conditions . . .") and the mandatory Section 11324(d) approval standard ("the Board shall approve such an application unless it finds . . .") does not mention the Board's conditioning authority at all.

As discussed in Sections 4.1 and 4.2, the Board should summarily deny NS's application for failure to make a *prima facie* case, or otherwise deny NS's application on the merits because NS's control of NPBL is inconsistent with NPBL's charter and because the anticompetitive effects that would flow from the Board's approval of NS's application are not outweighed by any corresponding public benefits. The statutory scheme does not require the Board to determine whether the imposition of conditions pursuant to Section 11324(c) would cure these substantial and obvious anticompetitive effects such that the Board "must" approve the application under Section 11324(d).

However, CSXT acknowledges that the Board has taken the position in past proceedings that it must approve an application under Section 11324(d) if anticompetitive effects could be alleviated through conditions imposed under Section 11324(c). As discussed below in Section 5, there are certain conditions that the Board could impose to at least partly ameliorate the anticompetitive effects of NS's control of NPBL. Indeed, these conditions are necessary should the Board decide, for whatever reason, to approve NS's application.

In discussing and applying the Board's Section 11324(c) conditioning authority, the STB's predecessor the ICC noted that it "would deny merger proposals that were substantially adverse to the public interest, rather than use our conditioning power 'to restructure a transaction beyond the scope proposed by applicants.'" *See Santa Fe S. Pac. Corp.—Control—S. Pac. Transp. Co. (SF-SP Control)*, 2 I.C.C.2d 709, 807 (1986) (quoting *Union Pac. Corp., Pac. Rail Sys, Inc., & Union Pac. R.R. Co.—Control—Mo. Pac. Corp. & Mo. Pac. R.R. Co.*, 366 I.C.C.

462, 565 (1982)). While the Section 11324(d) standard for the Board's approval of NS's "significant" application in this case is different than the broader public interest standard applicable to "major" transactions, the same Section 11324(c) authority for imposing conditions on Board approvals of control applications applies regardless of the transaction classification.

The conditions described below in Section 5 would be necessary to at least partly ameliorate the anticompetitive effects of NS's control of NPBL. But these conditions would not address the fundamental disconnect between NPBL's purpose and sole control of NPBL by one of its owners. The conditions also may still allow NS to use its control over NPBL to stymie CSXT service to NIT in various ways. And the conditions would restructure the NS/NPBL transaction far "beyond the scope proposed by applicants." *SF-SP Control*, 2 I.C.C.2d at 807.

The ICC noted in *SF-SP Control* that "if appropriate public interest conditions cannot be formulated, then the transaction should either be approved without conditions, if it offers benefits that outweigh the threatened harm, or be denied, if the harm outweighs the benefits." *Id.* In this case, NS's control of NPBL creates harms that clearly outweigh the benefits and conditions cannot fully address the anticompetitive effects of that control. The Board should therefore deny NS's application.

4.3. Dismissal or denial of NS's application would require NS to divest control of NPBL.

NS currently controls NPBL and has done so unlawfully for decades. Therefore, when the Board dismisses or denies the NS control application, the Board must order NS to divest control of NPBL. At a basic level, divestiture of control is required to ensure compliance with the governing statute, which does not allow control to be exercised without STB authorization. The Board is clearly authorized to order divestiture where control authority is denied and it has used

divestiture in the past to ensure compliance with the governing statute. *See SF-SP Control*, 2 I.C.C.2d at 834-36 (requiring divestiture due to denial of a control application and retaining jurisdiction to ensure compliance with divestiture order).

With dismissal or denial of the application, the Board should order NS to:

(1) divest a sufficient stock interest in NPBL and divest sufficient voting rights in NPBL so that NS no longer has the ability to control the decisions of NPBL, either directly or indirectly, or the ability to veto any reasonable proposal to NPBL that would benefit NS's co-owners of NPBL; and (2) work jointly with CSXT to establish new and independent NPBL management. Such an order would ensure that NPBL is independent from NS's control, will operate independently, and will provide meaningful and effective access to its owners, consistent with NPBL's founding purpose as a terminal railroad. The Board should order NS to propose its divestiture solution within 30 days of the Board's denial of NS's application, allowing public comment on the sufficiency of NS's proposal.

4.4. Dismissal or denial of NS's application would allow the Board to grant the relief requested by CSXT in the Related Proceedings.

Dismissal or denial of NS's application and NS's divestiture of control of NPBL, standing alone, will not fully remedy the harm caused by NS's and NPBL's anticompetitive conduct. Indeed, NS never should have asked the Board for authority to control NPBL. Following the Board's denial of NS's control application, the Board could address these issues and entirely address NS's unauthorized control of NPBL by granting the relief that CSXT has requested from the STB through three related proceedings (the "Related Proceedings").

First, in Docket No. NOR 42183, CSXT filed a complaint on May 20, 2025, alleging that NS has exercised and continues to exercise unlawful control of NPBL and that NS unlawfully removed certain track assets without first obtaining abandonment authority from the Board, making the Connecting Line, the line of

railroad between NS Junction and Carolina Junction, unusable. (CSXT Compl., May 20, 2025, *CSX Transp., Inc. v. Norfolk S. Corp. & Norfolk S. Ry. Co.*, NOR 42183.)

In its complaint, CSXT requested various forms of relief, including that the Board (1) order NS to comply with the Board's control provisions by divesting control of NPBL and ensuring that NPBL will operate independently; (2) order NS to reinstall and rehabilitate the track assets associated with the Connecting Line, restore NS's service obligation over the Connecting Line, and permit NPBL to restore its trackage rights over the Connecting Line; (3) award CSXT damages, including interest, as may be shown to have resulted from NS's violations; and (4) apply civil penalties on NS, as may be warranted. While denial of NS's control application here may address the first form of relief identified above, any such straight denial may not address the other three forms of relief.

Second, in Docket No. FD 36859, CSXT filed an application on May 20, 2025 pursuant to 49 U.S.C. § 11102 for terminal trackage rights over certain lines owned by NS and NPBL in the Norfolk, VA and Chesapeake, VA areas. (CSXT Appl. for Terminal Trackage Rights., May 20, 2025, *CSX Transp., Inc.—Terminal Trackage Rights—Norfolk S. Ry. Co. & Norfolk & Portsmouth Belt Line R.R. Co.* (CSXT *Terminal Trackage Rights*), FD 36859.) The requested trackage rights would allow CSXT to serve NIT directly. Concurrent with these opposition comments, CSXT is submitting a responsive application in this proceeding requesting that the Board grant CSXT these terminal trackage rights as a condition of any Board approval of NS's application. But any straight denial of NS's application here would presumably not be coupled with the approval of CSXT's responsive application, leaving the terminal trackage rights request to be addressed separately in FD 36859.

Third, in Docket Nos. AB 290 (Sub-No. 299X) and AB 1024X, CSXT filed a petition on June 9, 2025 to reject the Notice of Exemption jointly filed by NS and

NPBL in that proceeding as void *ab initio* because NS and NPBL provided false or misleading information in the notice. Alternatively, CSXT requested that the Board reopen these proceedings and revoke the exemptions based on new evidence and substantially changed circumstances.⁴¹ As discussed above in Section 2.2.2, these exemptions allowed NS and NPBL to discontinue service over the Connecting Line, which allowed efficient movement of traffic between NPBL's Berkley Yard and tracks leading to NIT without having to use other routes, such as entering and exiting NS's Portlock Yard. Again, denial of NS's application here may not result in an order for NS or NPBL to restore service obligations over the Connecting Line, leaving this issue to be addressed separately through CSXT's petition in Docket Nos. AB 290 (Sub-No. 299X) and AB 1024X.⁴²

As CSXT has explained, the Related Proceedings provide the appropriate steps for the Board to remedy NS's unlawful conduct. (*See, e.g., CSXT Reply 5, 7, June 12, 2025, CSX Transp., Inc. v. Norfolk S. Corp. & Norfolk S. Ry. Co., NOR 42183 et al.*) CSXT has suffered and continues to suffer direct economic damages and other harm from this unlawful conduct. Other parties, including ocean carriers and POV, are also continuing to suffer harm due to NS's on-going unlawful conduct. CSXT is clearly entitled to ask the Board promptly to remedy those harms and to prevent further harm through remedial measures designed to ensure effective competition at NIT. Granting CSXT the relief requested in the Related Proceedings, along with denial of NS's application, will ensure that NS and NPBL no longer

⁴¹ (CSXT Petition, June 9, 2025, *Norfolk S. Ry. Co.—Discontinuance of Service Exemption—in Chesapeake, VA*, AB 290 (Sub-No. 299X); CSXT Petition, June 9, 2025, *Norfolk & Portsmouth Belt Line R.R. Co.—Discontinuance of Trackage Rights Exemption—in Chesapeake, VA*, AB 1024X.)

⁴² Separately, in Docket No. FD 36223, CSXT has asked the Board to dismiss or continue to hold in abeyance the NS petition to increase the trackage rights fee paid by NPBL for use of certain NS lines.

succeed in acting anticompetitively to artificially exclude CSXT from accessing NIT by rail.

NS has openly sought to put off any Board consideration of CSXT's requests for relief. Pursuant to NS's request, the Board entered a "housekeeping stay" in the Related Proceedings, tolling the procedural deadlines until the Board rules on NS's motion to hold those proceedings in abeyance. *CSX Transp., Inc. v. Norfolk S. Corp. & Norfolk S. Ry. Co.*, NOR 42183 et al. (STB served June 5, 2025); *Norfolk S. Ry. Co.—Discontinuance of Service Exemption—in Chesapeake, VA*, AB 290 (Sub-No. 299X) et al. (STB served June 13, 2025). CSXT continues to believe that the Related Proceedings should not be held in abeyance pending resolution of NS's control application. But once the Board denies NS's application, there will be no impediment to the Board granting CSXT's requested relief through the Related Proceedings.

5. If the Board decides to approve the NS application, the Board should impose certain conditions to alleviate anticompetitive effects and allow CSXT to access NIT, either directly or via NPBL switching.

As explained above, CSXT believes that, given the significant harms to competition resulting from NS's control of NPBL and the lack of any public benefits resulting from that control relationship, the Board should deny NS's application and then grant the relief that CSXT has requested in the Related Proceedings. However, if the Board decides to approve NS's application, the Board should use its conditioning authority to begin to alleviate the anticompetitive effects that CSXT has identified here by imposing certain conditions on its approval that should allow CSXT to access NIT directly or through NPBL switching. Additionally, the Board should conduct rigorous oversight of any approval decision for at least a seven-year period, consistent with recent precedent. *See Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500, slip op. at 142 (STB served Mar. 15, 2023). The Board should

also then grant any remaining relief that CSXT has requested through the Related Proceedings to fully remedy the anticompetitive harm.⁴³

CSXT believes that the conditions identified in this Section 5 would at least partly alleviate the anticompetitive effects of the proposed transaction, although they would not fully cure the fundamental problems identified in Section 4.2 associated with NS's control of NPBL.

5.1. Two conditions are necessary under any scenario where the Board approves NS's application.

Under any scenario where the Board approves NS's control application, two conditions are necessary to ameliorate the anticompetitive effects associated with NS's control of NPBL and to ensure that CSXT could access NIT, either directly through trackage rights or via NPBL's switching services: (1) order NS to restore the physical assets of the Connecting Line, and (2) order NS to ensure that an NS-controlled NPBL will provide meaningful and effective access to its owners, consistent with NPBL's founding purpose as a terminal railroad.

First, the Board should condition any approval of NS's control application on requiring NS to restore the Connecting Line between NS Junction and Carolina Junction. The restoration of the Connecting Line is critical to ensuring that either NPBL or CSXT can efficiently move traffic to NIT. Without use of the Connecting Line, CSXT is concerned that CSXT could not effectively compete with NS for NIT on-dock rail access.

⁴³ In CSXT's Complaint in Docket No. NOR 42183, CSXT has asked the Board to grant CSXT certain relief that the Board could not necessarily grant through its conditioning authority in this proceeding, including: (1) awarding CSXT such damages as may be shown to have resulted from NS's violations of the law; and (2) applying penalties on NS to the extent that the STB believes they are warranted.

As discussed in the Verified Statement of Maryclare Kenney, the Connecting Line allowed efficient movement of traffic between NPBL's Berkley Yard and the tracks leading to NIT without having to use other routes, such as entering and exiting NS's Portlock Yard. However, as part of their anticompetitive scheme, NS and NPBL sought and obtained STB authority in 2008 to discontinue rail service and trackage rights over the Connecting Line. Subsequently, NS unlawfully removed certain track assets associated with the Connecting Line, which rendered the Connecting Line unusable. Due to NS's unlawful conduct, NPBL and CSXT can only make efficient movements to NIT if the Connecting Line is restored. (*See* V.S. Kenney 11-13, Sept. 18, 2025.) Accordingly, the Board should order NS to restore the Connecting Line, including the restoration of the double diamond at NS Junction and the connection at Carolina Junction.⁴⁴

Second, the Board should ensure that an NS-controlled NPBL will provide meaningful and effective access to its owners, consistent with NPBL's founding purpose as a terminal railroad. Even if the Board decides to grant NS authority to control NPBL, the Board should ensure that NS cannot continue to wield that control to exclusionary and anticompetitive effect. Imposing this condition would also enable the Board to enforce any deviations by NS from NPBL's important founding principles, pursuant to the Board's oversight and ongoing statutory authority under 49 U.S.C. § 11327. As noted above, the Board should impose an oversight period of at least seven years to ensure that NS complies with its commitments and any conditions imposed by the Board.

⁴⁴ As discussed above, the Board could also address this issue by denying NS's control application and granting the relief requested in CSXT's Complaint in Docket No. 42183.

5.2. If the Board approves NS's application, the Board should also approve CSXT's responsive application for terminal trackage rights that would allow CSXT to serve NIT directly.

In addition to the two conditions identified above in Section 5.1, the Board should condition any approval of NS's primary application on allowing CSXT to directly access NIT via trackage rights. NS has proven over the last half-century that it can wield its control over NPBL to exclude CSXT from accessing NIT via NPBL's switching services. Only direct trackage rights for CSXT would ensure that NS could no longer manipulate NPBL in this anticompetitive manner if the Board allows NS to continue to control NPBL.

The Board can use its conditioning authority to achieve this effect by approving the CSXT responsive application for terminal trackage rights over NS and NPBL rail lines that would allow CSXT to serve NIT directly. CSXT is concurrently submitting a responsive application in this proceeding, seeking terminal trackage rights pursuant to 49 U.S.C. § 11102 over certain lines owned by NS and NPBL in the Norfolk, VA and Chesapeake, VA areas. As described in Section 2.1.3 above, while NS's rail lines reach NIT directly, and NPBL has on-dock rail access at NIT via trackage rights over NS's tracks, CSXT can only reach NIT by interchanging with NPBL.

NS has used its control over NPBL to prevent CSXT from using NPBL switching services to compete with NS for freight to and from NIT. As discussed above, NS has indicated that approval of its control application will result in continuation of the status quo, and NS has every incentive to continue to block CSXT from using NPBL switching services to access NIT. Therefore, if the Board allows NS to continue to control NPBL, the Board should allow CSXT to serve NIT directly, bypassing the NPBL switching services that CSXT has not been able to

use, by granting CSXT terminal trackage rights over NS and NPBL rail lines that lead into NIT.⁴⁵

Coupled with approval of CSXT's responsive application for terminal trackage rights, the Board should also order NS to provide operational assent to CSXT direct movements to NIT. Again, this condition is critical to ensuring that CSXT can efficiently move traffic to NIT. Ms. Kenney explains that CSXT attempted to utilize NPBL to move intermodal traffic to NIT in 2015 to meet the extraordinary demand for intermodal service from ocean carriers seeking to use East Coast facilities, despite the \$210/car cost-prohibitive rate. However, NS used its control over the line and NPBL to impede the movement of CSXT's traffic, and CSXT was able to move only a small number of trains and containers. Since 2015, CSXT has been unable to move any intermodal traffic by rail to or from NIT. (*See* V.S. Kenney 5, Sept. 18, 2025.)

Based on CSXT's experience in 2015, CSXT has good reason to be concerned that NS may seek to interfere with CSXT's direct movements to NIT. As a result, if the Board decides to approve NS's application and approve CSXT's responsive application for terminal trackage rights, the Board should order NS to provide operational assent to CSXT's direct movements to NIT.

⁴⁵ As discussed above, the Board could also address this issue by denying NS's control application and granting the relief requested in CSXT's Application for Terminal Trackage Rights, filed on May 20, 2025, in FD 36859, CSXT Terminal Trackage Rights. Each application covers the same rail lines. If the Board grants CSXT's responsive application, CSXT's application in FD 36859 would be moot.

5.3. If the Board approves the NS application and denies CSXT's responsive application for trackage rights, the Board should impose certain conditions that would enable NPBL to provide CSXT with effective switching services to NIT.

If the Board approves NS's application but denies CSXT's responsive application seeking terminal trackage rights, the Board should impose the two necessary conditions identified above in Section 5.1 and further impose the conditions specified in this Section 5.3 to enable NPBL to provide CSXT with effective switching services to NIT. To be clear, none of the additional conditions identified in this Section 5.3 would be necessary if the Board imposes the condition described above in Section 5.2 providing CSXT with direct trackage rights into NIT.

First, the Board should order NS to restore NPBL's trackage rights over the Connecting Line. As Ms. Kenney explains, NPBL discontinued its trackage rights over the Connecting Line in 2008, as part of its anticompetitive scheme with NS. (*See V.S. Kenney 11, Sept. 18, 2025.*) For NPBL to make efficient movements to NIT by avoiding NS's Portlock Yard, the Connecting Line must be restored, as discussed above in Section 5.1, and NPBL must have trackage rights over the Connecting Line.

Therefore, if the Board decides to approve NS's control application and deny CSXT's responsive application for direct trackage rights to NIT, thus requiring CSXT to rely on NPBL switching services to access NIT, the Board should order NS to restore NPBL's trackage rights over the Connecting Line. The Board could accomplish this by conditioning its approval of NS's control application on requiring NS to grant NPBL new trackage rights consistent with those discontinued in 2008,

or otherwise revoking the 2008 discontinuance of NPBL trackage rights exemption over the Connecting Line.⁴⁶

Second, the Board should order NS to provide operational assent to NPBL switching movements to NIT. Just like the similar condition discussed above in Section 5.2 related to CSXT's trackage rights, this condition is critical to ensuring that CSXT can use NPBL to efficiently move traffic to NIT. Absent this condition, CSXT is concerned that NS may seek to continue to interfere with NPBL's switch movements to NIT.

Third, the Board should order NS to effectively remove itself from any NPBL decisions related to CSXT's access to NIT, and to require NS to work with CSXT to refer any such decisions to an independent decision-maker. Any such decisions would include those relating to NPBL's trackage rights fee for moving traffic over NS's track to NIT.⁴⁷

The record reflects overwhelming evidence of anticompetitive conduct by NS and NPBL over many years to exclude CSXT from effective on-dock rail access at NIT. CSXT is concerned that, if the Board approves NS's application and denies CSXT's responsive application for direct trackage rights, NS will continue to attempt to exclude CSXT from on-dock rail access at NIT by manipulating NPBL to limit NPBL's ability to offer effective switching services to CSXT.

In a recent control proceeding involving CSX and NS, CSX sought to acquire a one-half interest in a railroad, PAS, where NS already owned the other half

⁴⁶ The Board could also address this issue by granting the relief requested in CSXT's petition filed in Docket Nos. AB 290 (Sub-No. 299X) and AB 1024X, discussed above in Section 4.4.

⁴⁷ As discussed in *supra* note 20, CSXT has asked the Board to dismiss the NS petition in FD 36223 for the Board to set increased compensation for the trackage rights of NPBL over NS's lines. An NS-controlled NPBL could not effectively negotiate with NS to set such a fee, making it important for NS to remove itself from any NPBL decisions regarding that fee negotiation process.

interest. PAS enabled NS to reach the Boston market, while CSX separately had access to Boston via its own rail lines. In order to ensure that CSX did not use its one-half ownership of PAS to artificially close the PAS route into Boston for NS or any other railroads that connected to PAS, CSX made certain voluntary commitments “to preserve existing competition and ensure PAS’s viability,” including a commitment “to recuse itself from any PAS board discussion or consideration of strategic issues that relate to CSX’s Southern Route or competition between PAS and CSXT.” (CSX Rebuttal CSXT/PAR-37-46 to -47, CSXT/PAR-37-118, Oct. 18, 2021, *CSX/Pan Am*, FD 36472.)

The Board concluded that the combination of settlement agreements and additional commitments that CSX requested the Board impose as conditions to the overall merger transaction were sufficient to ensure that CSX did not improperly influence PAS capital decisions in an anticompetitive manner. *CSX/Pan Am*, FD 36472, slip op. at 12. The Board specifically noted that “CSX’s commitment to recuse itself from certain decisions relating to strategic issues that relate to CSX’s Southern Route or competition between PAS and CSX would prevent CSX from influencing PAS decisions in a way that would solely benefit CSX.” *Id.*

Here, if the Board decides to approve NS’s control application and to deny CSXT’s responsive application for direct trackage rights to NIT, thus requiring CSXT to rely on NPBL switching services to access NIT, the Board should similarly order NS to effectively remove itself from any NPBL decisions related to CSXT’s access to NIT, and to require NS to work with CSXT to refer any such decisions to an independent decision-maker. This condition would prevent NS from influencing NPBL decisions in a way that would only benefit NS, which would be consistent with the purpose of NPBL.

6. Conclusion.

For the reasons set forth above, CSXT respectfully requests that the Board summarily dismiss or deny the NS application because NS failed to meet its burden of proof and thus did not present a *prima facie* case. Alternatively, if the Board considers the merits of the NS application, the Board should deny the NS application. In either case, the Board should order NS to divest control of NPBL and grant CSXT's requested relief in the Related Proceedings. If the Board decides to approve NS's application, the Board should impose certain conditions to alleviate anticompetitive effects and allow CSXT to access NIT, either directly or via NPBL switching, and conduct rigorous oversight of any such approval for at least a seven-year period.

Respectfully submitted,

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Attorneys for CSX Transportation, Inc.

Dated: September 18, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

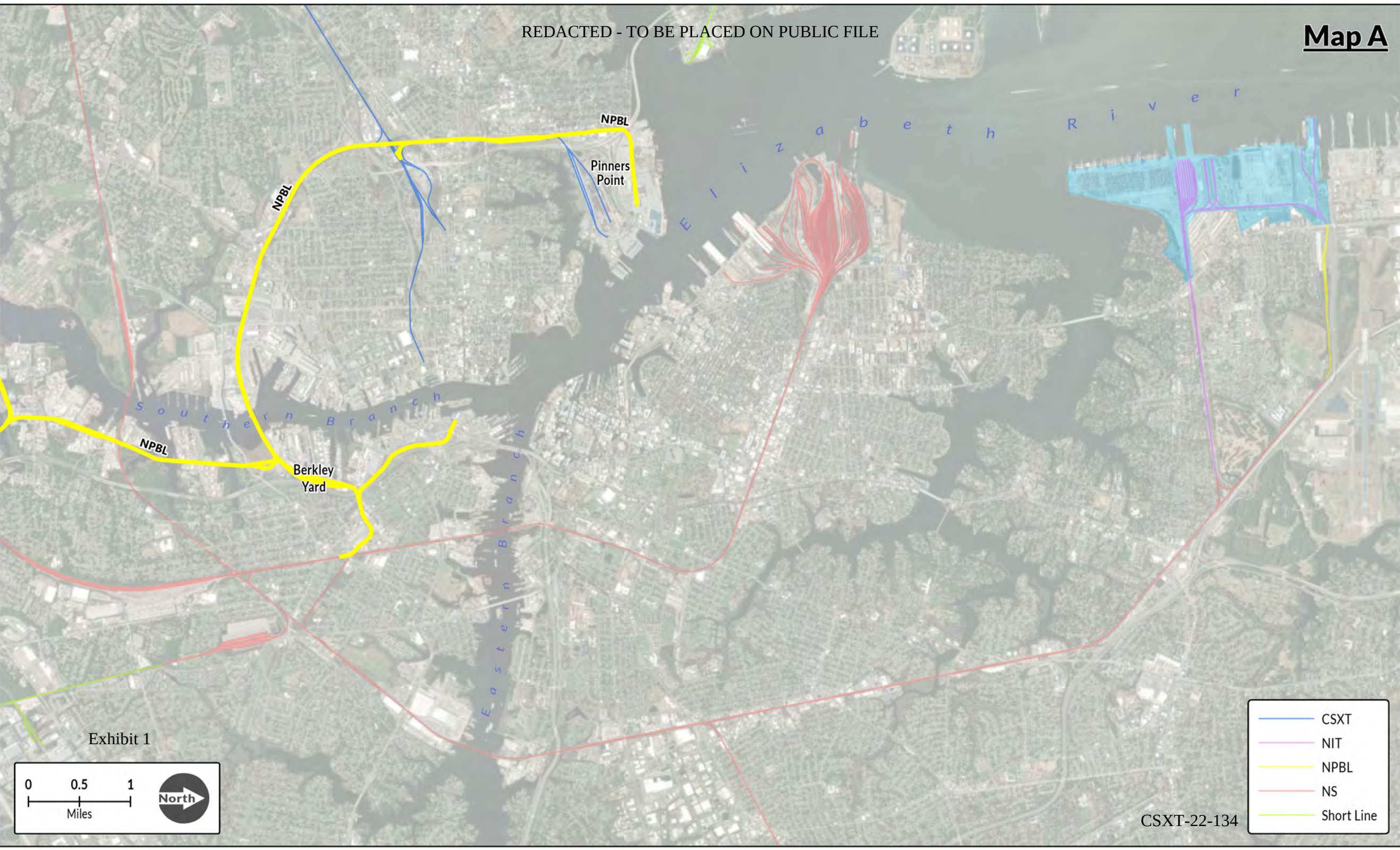
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 1

MAPS

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Exhibit 1-F	NPBL Trackage Rights Near the Connecting Line Prior to the 2008 Discontinuances
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Exhibit 1-H	Current CSXT, NPBL, and NS Operations Near NIT
Exhibit 1-J	Trackage Rights Sought by CSXT



Southern Branch

Elizabeth River

Eastern Branch

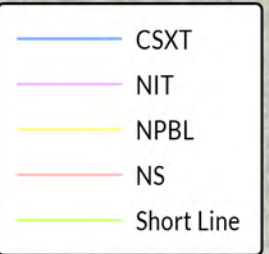
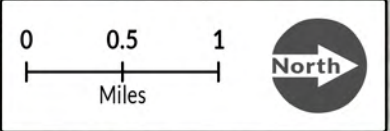
NPBL

Pinners Point

NPBL

Berkley Yard

Exhibit 1



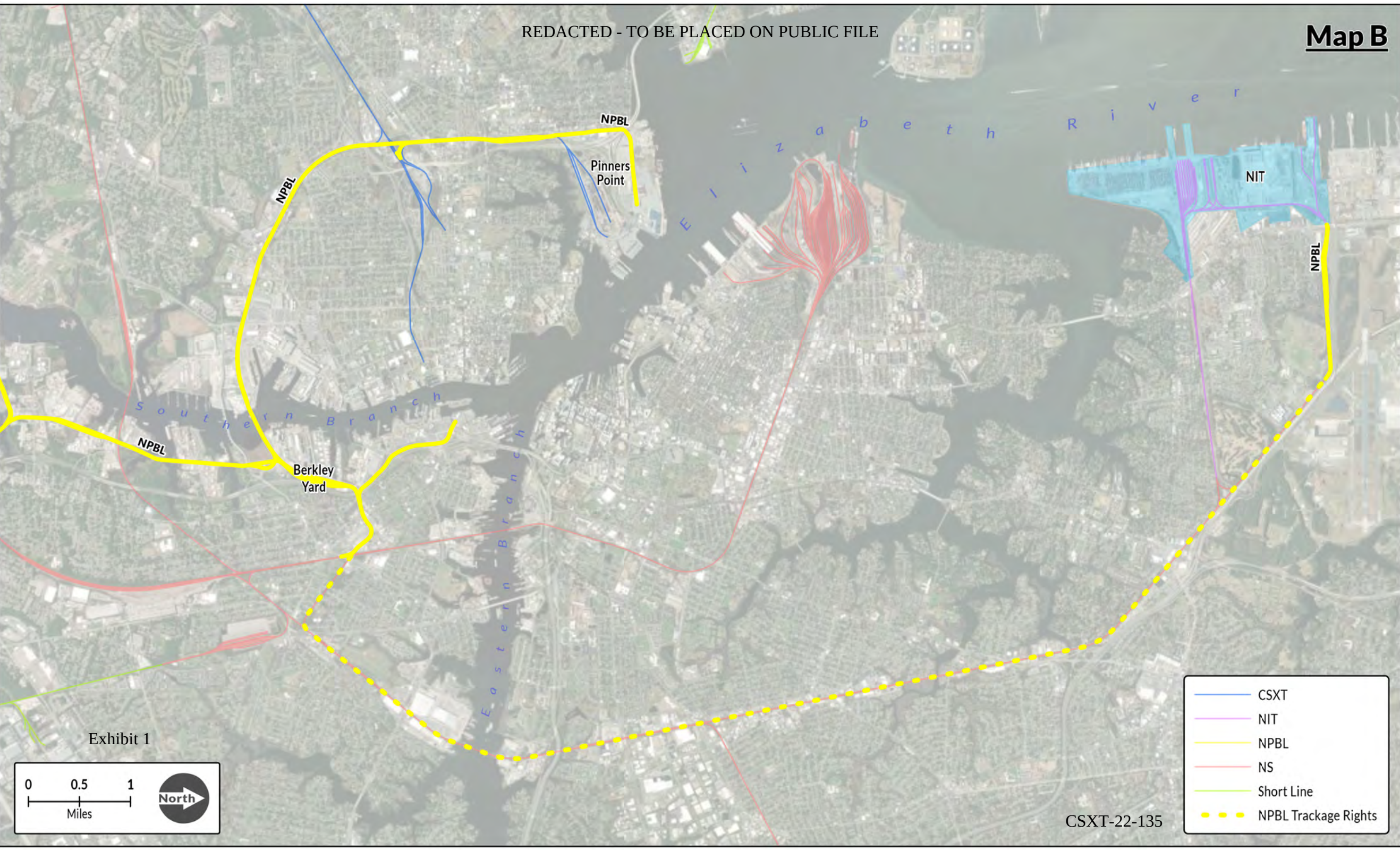
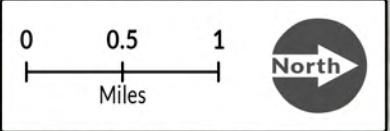


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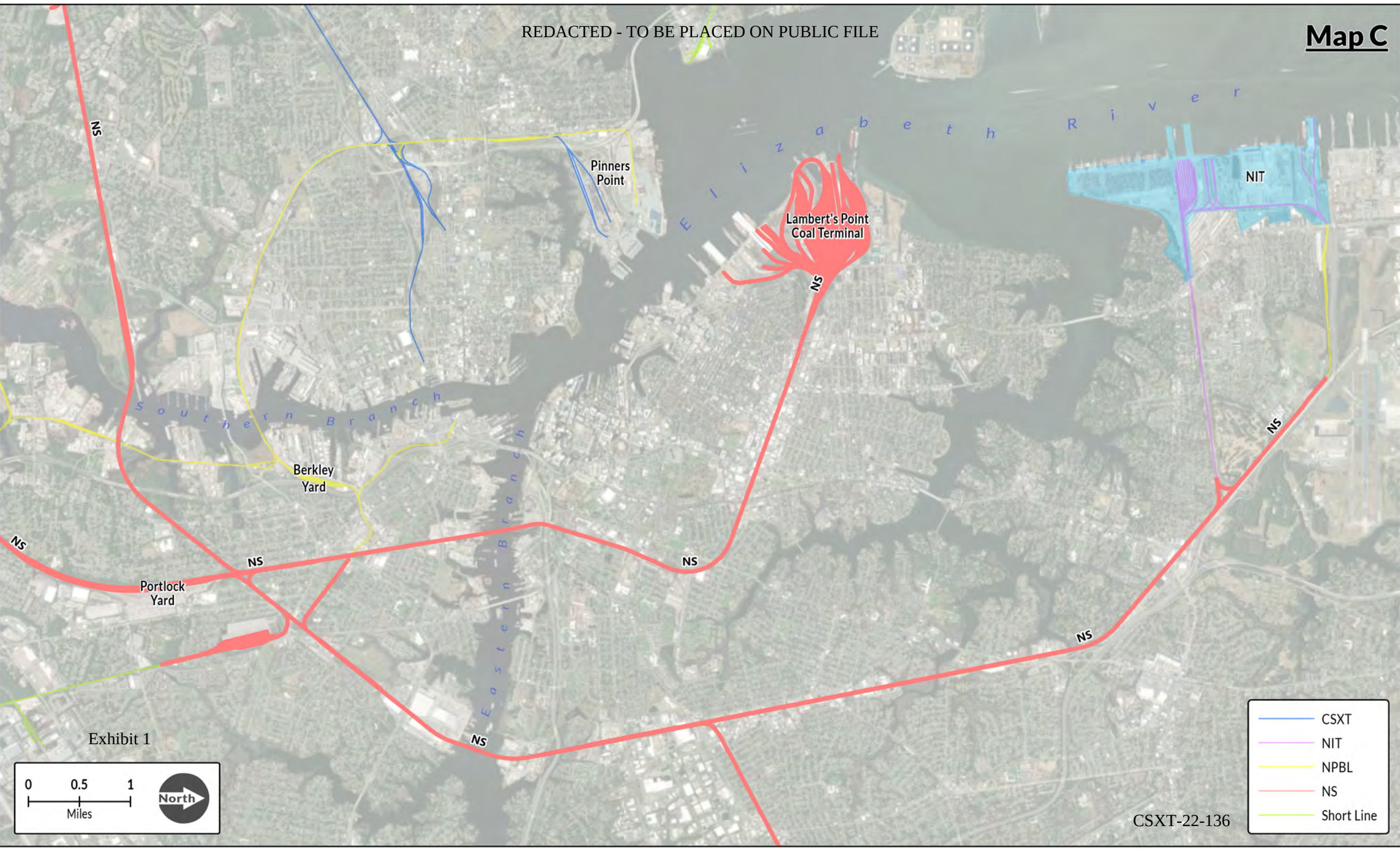


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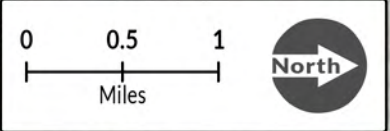
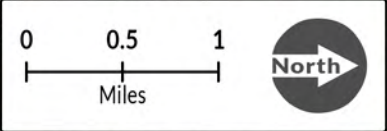




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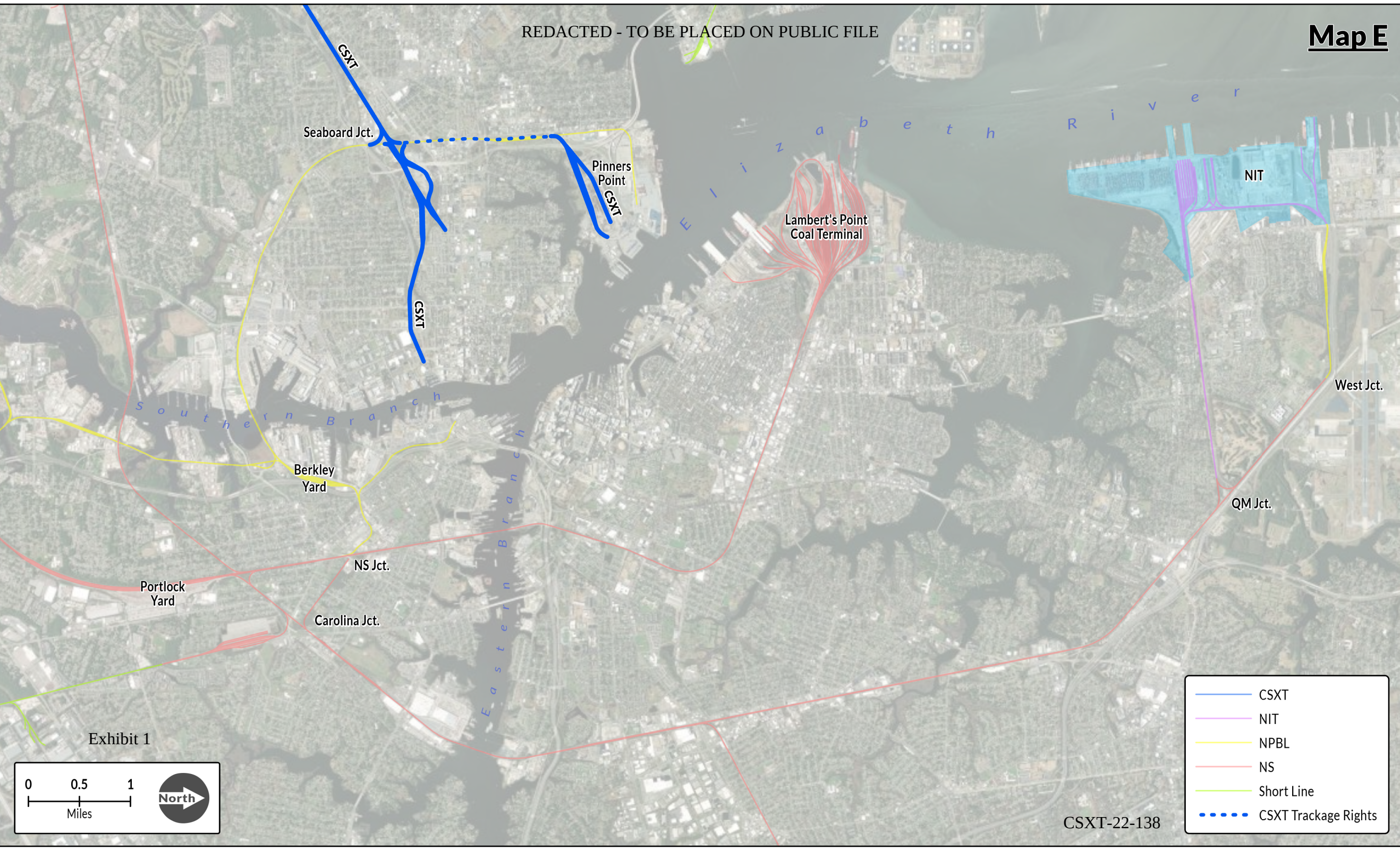
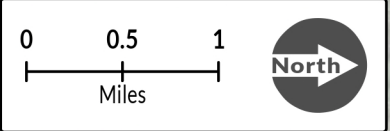


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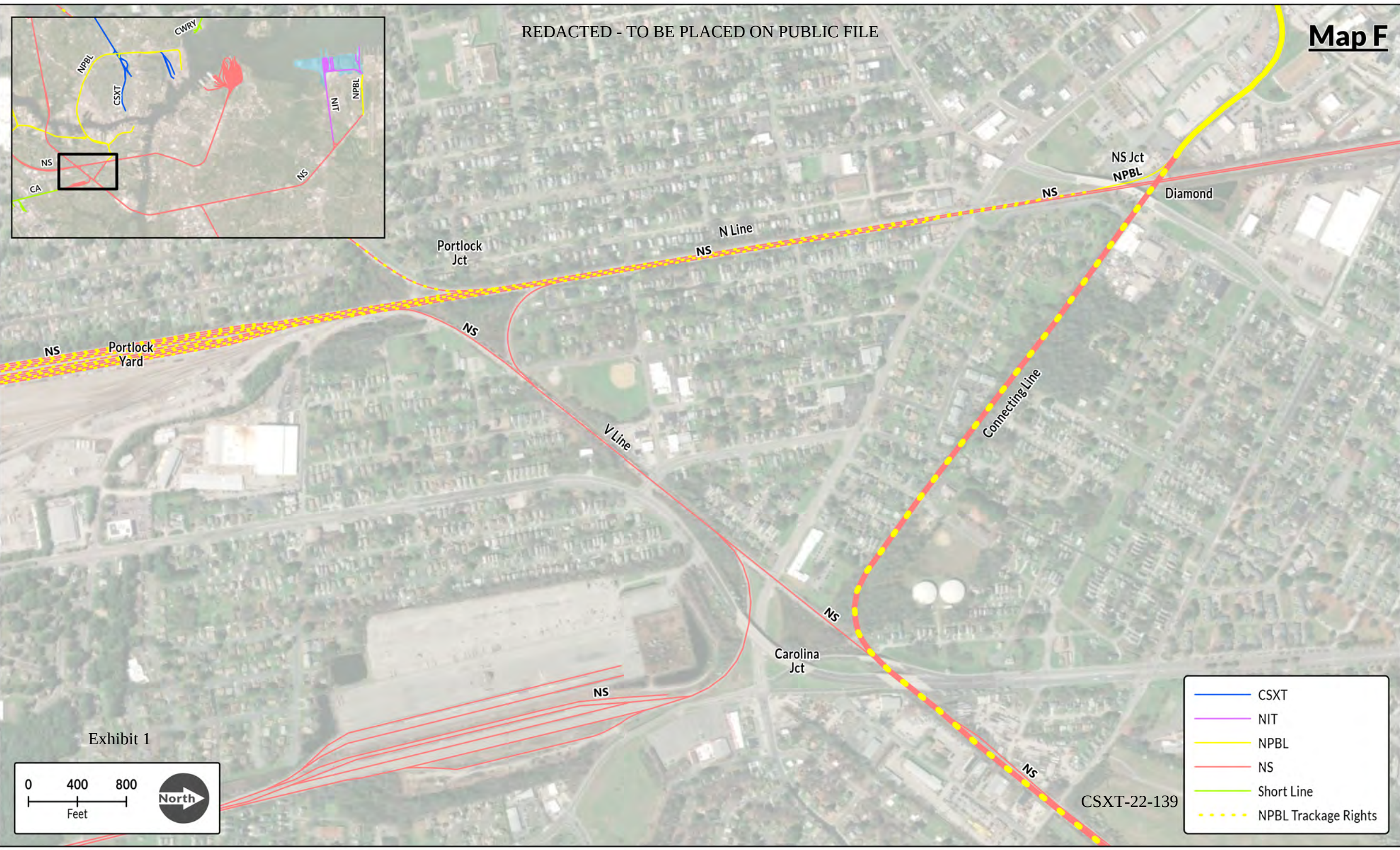
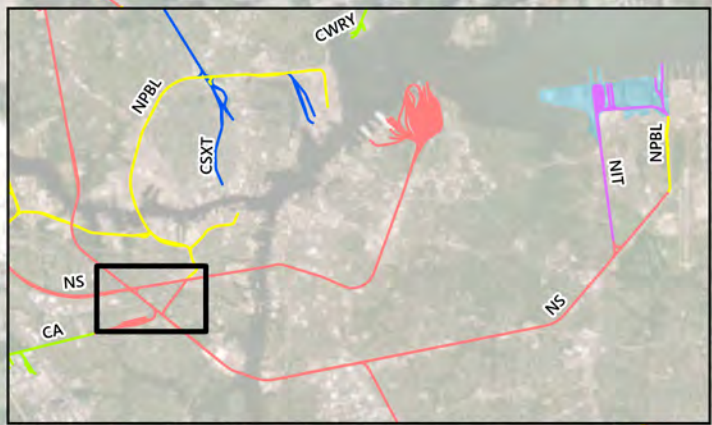
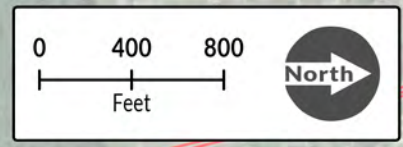


Exhibit 1



- CSXT
- NIT
- NPBL
- NS
- Short Line
- NPBL Trackage Rights

CSXT-22-139

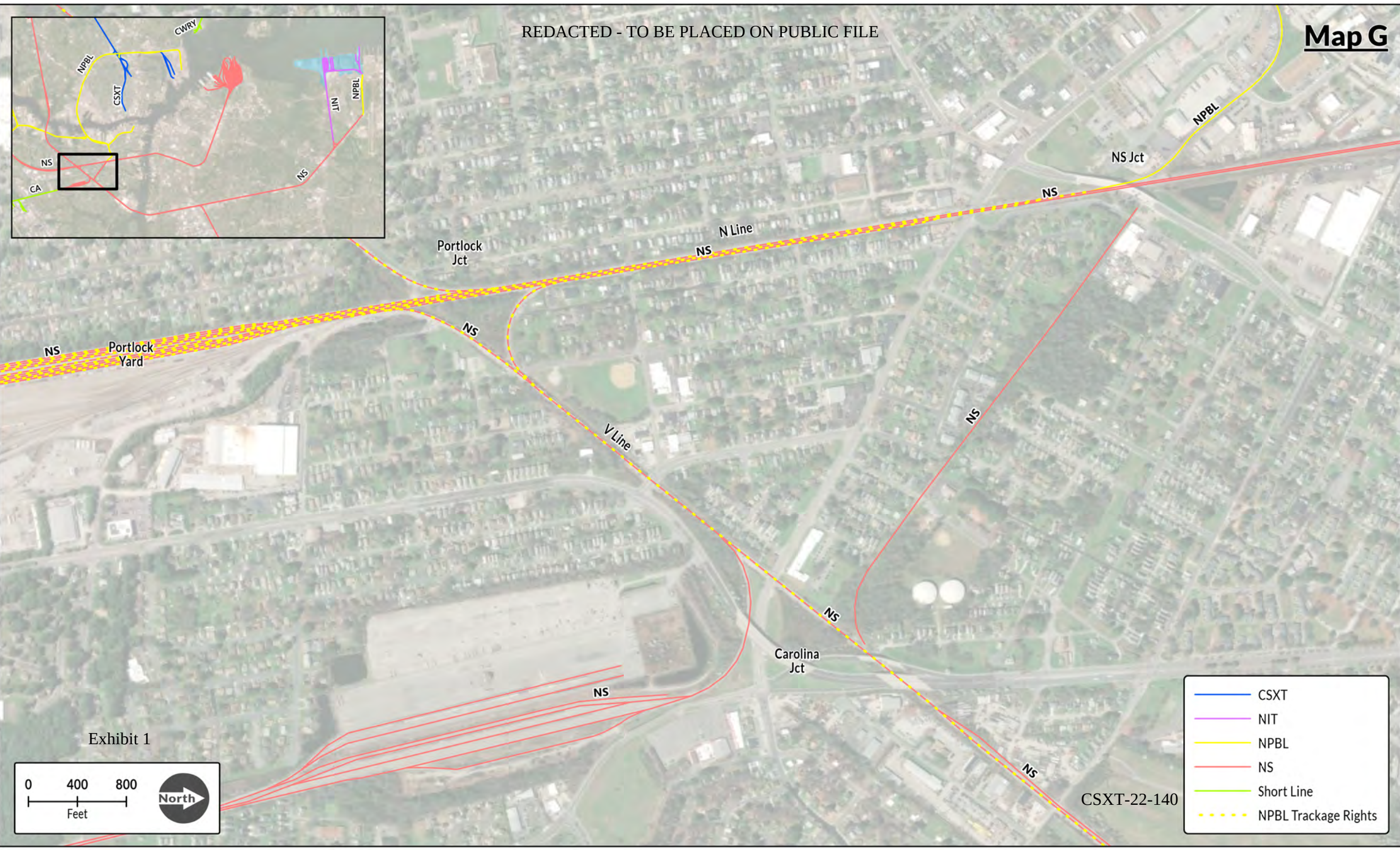
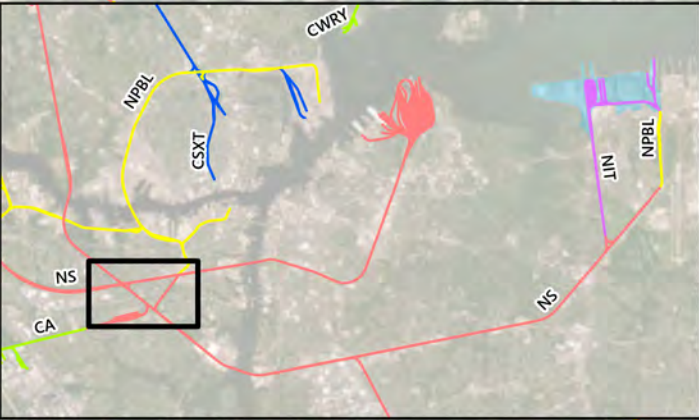
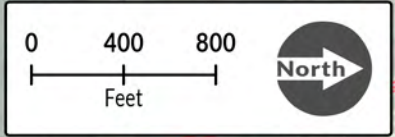


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- CSXT
- NIT
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- Short Line
- NPBL Trackage Rights

CSXT-22-140

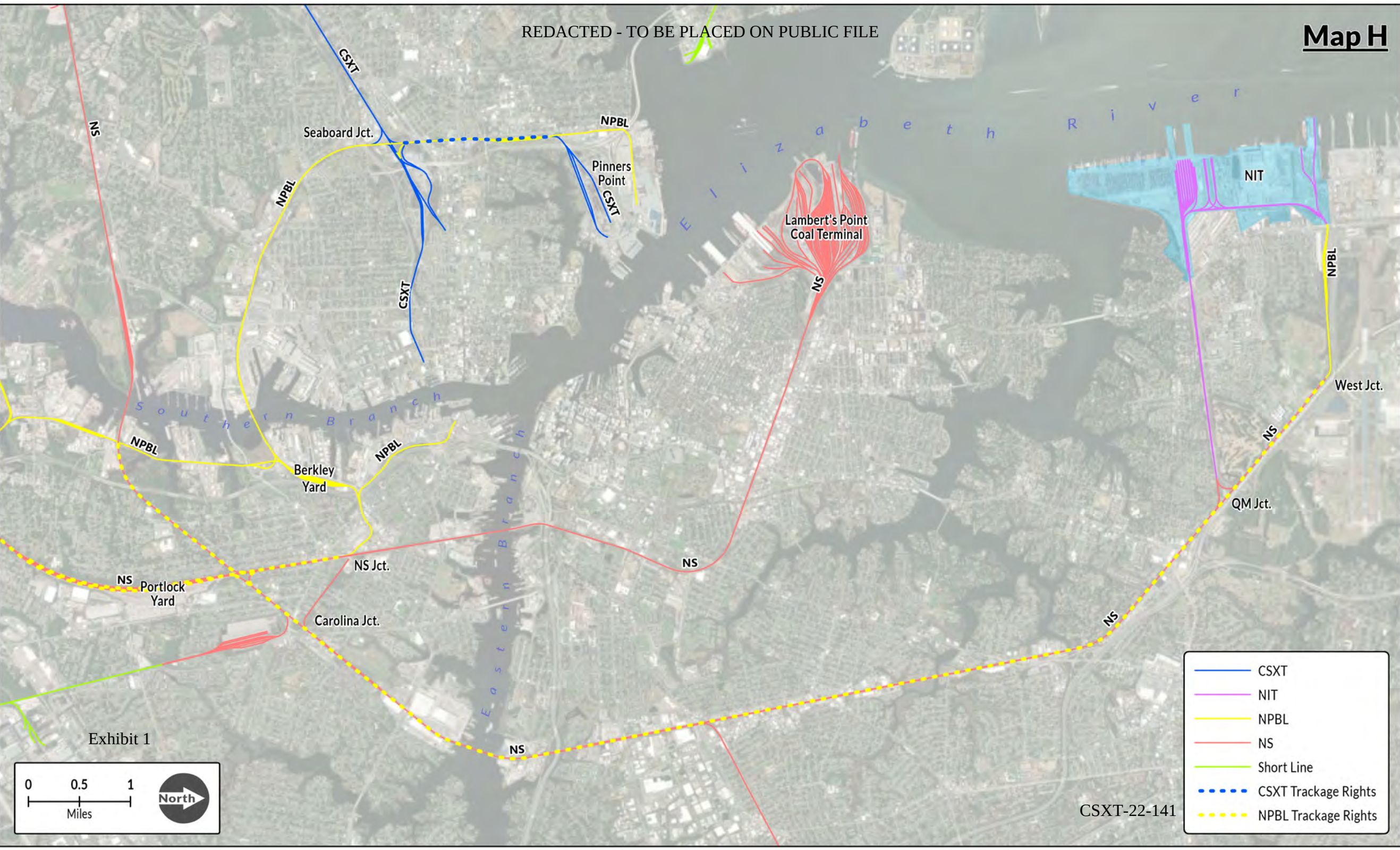
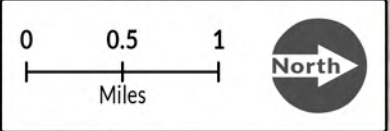
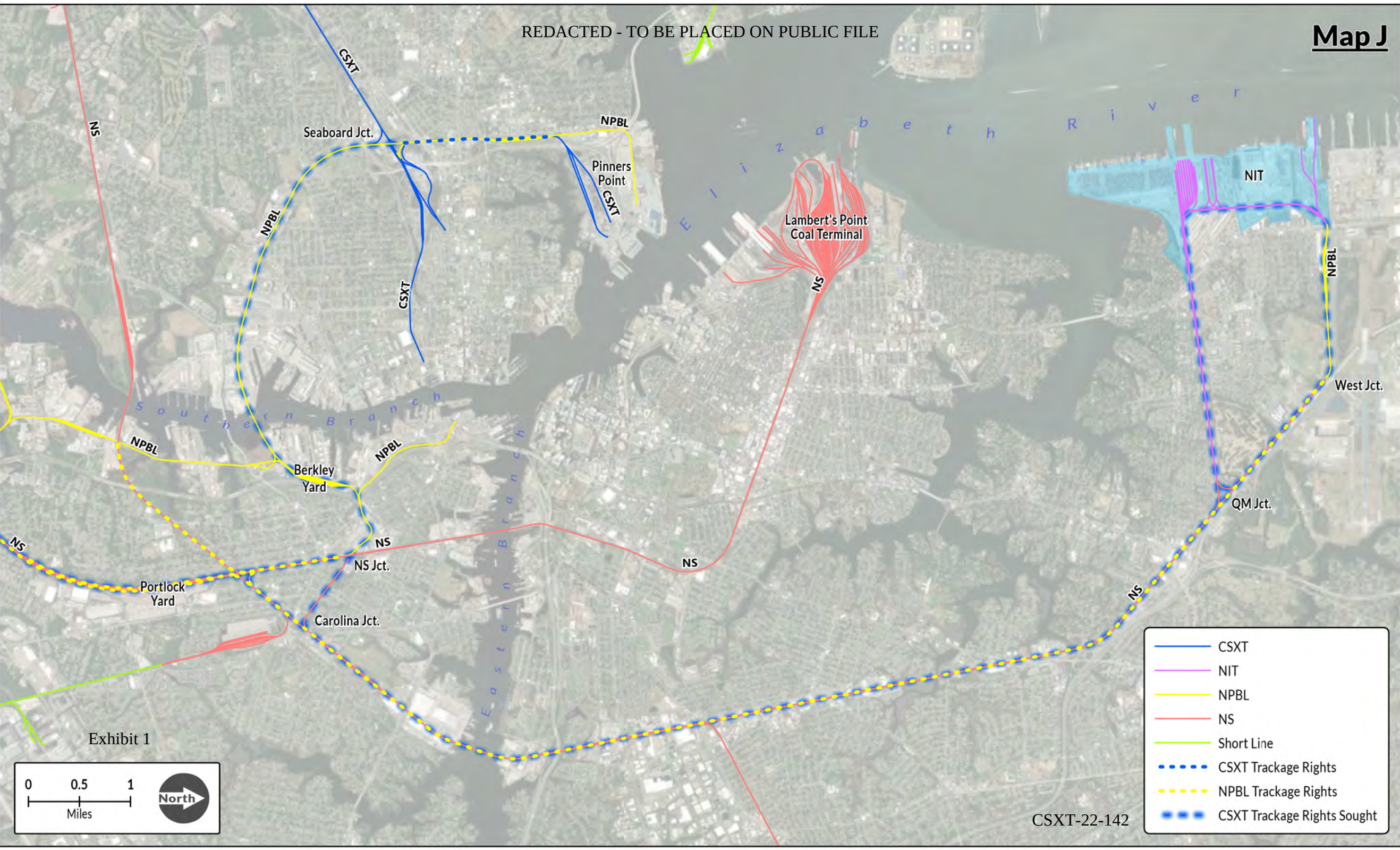


Exhibit 1



- CSXT
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- NPBL
- NS
- Short Line
- CSXT Trackage Rights
- NPBL Trackage Rights

CSXT-22-141



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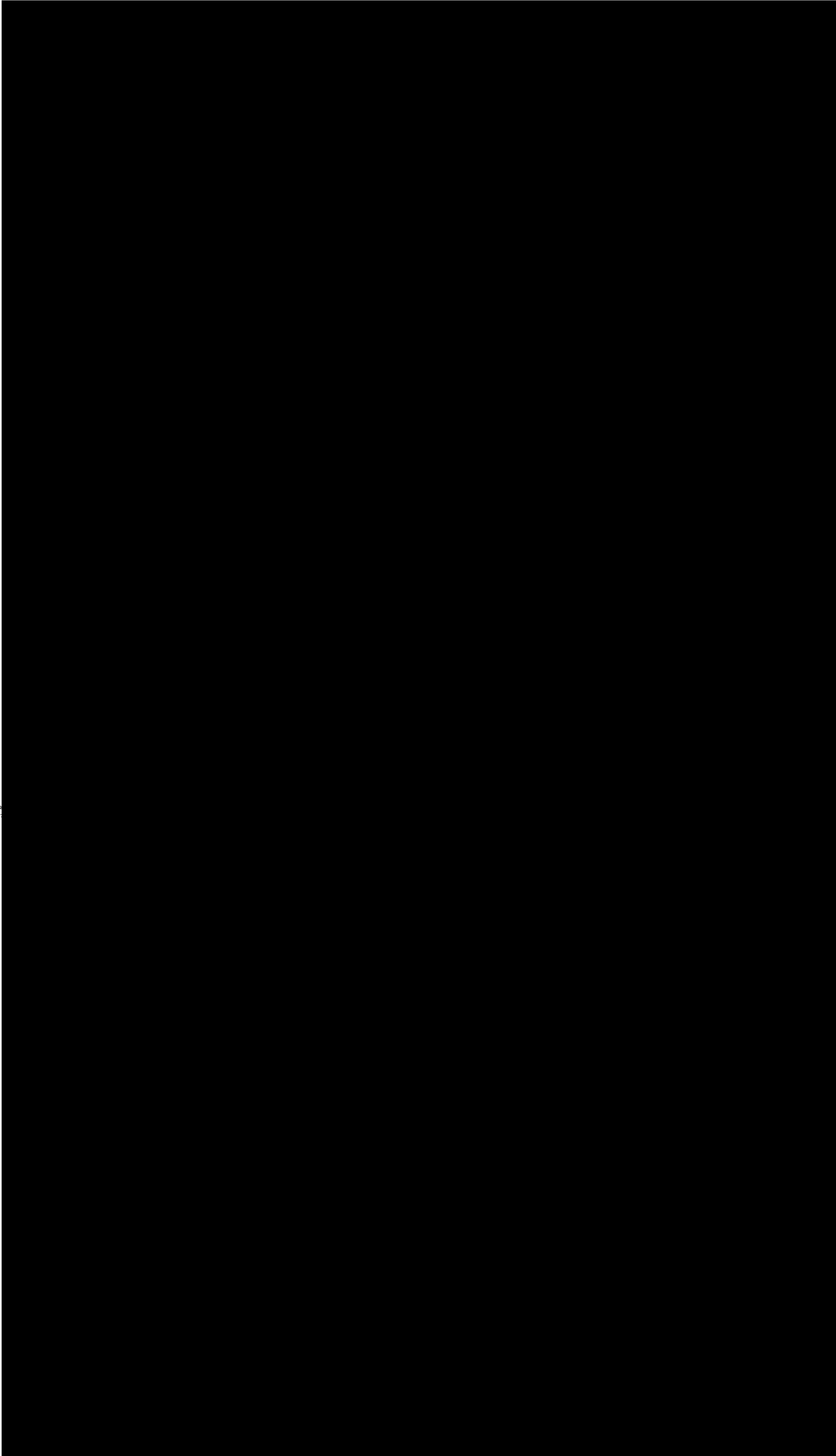
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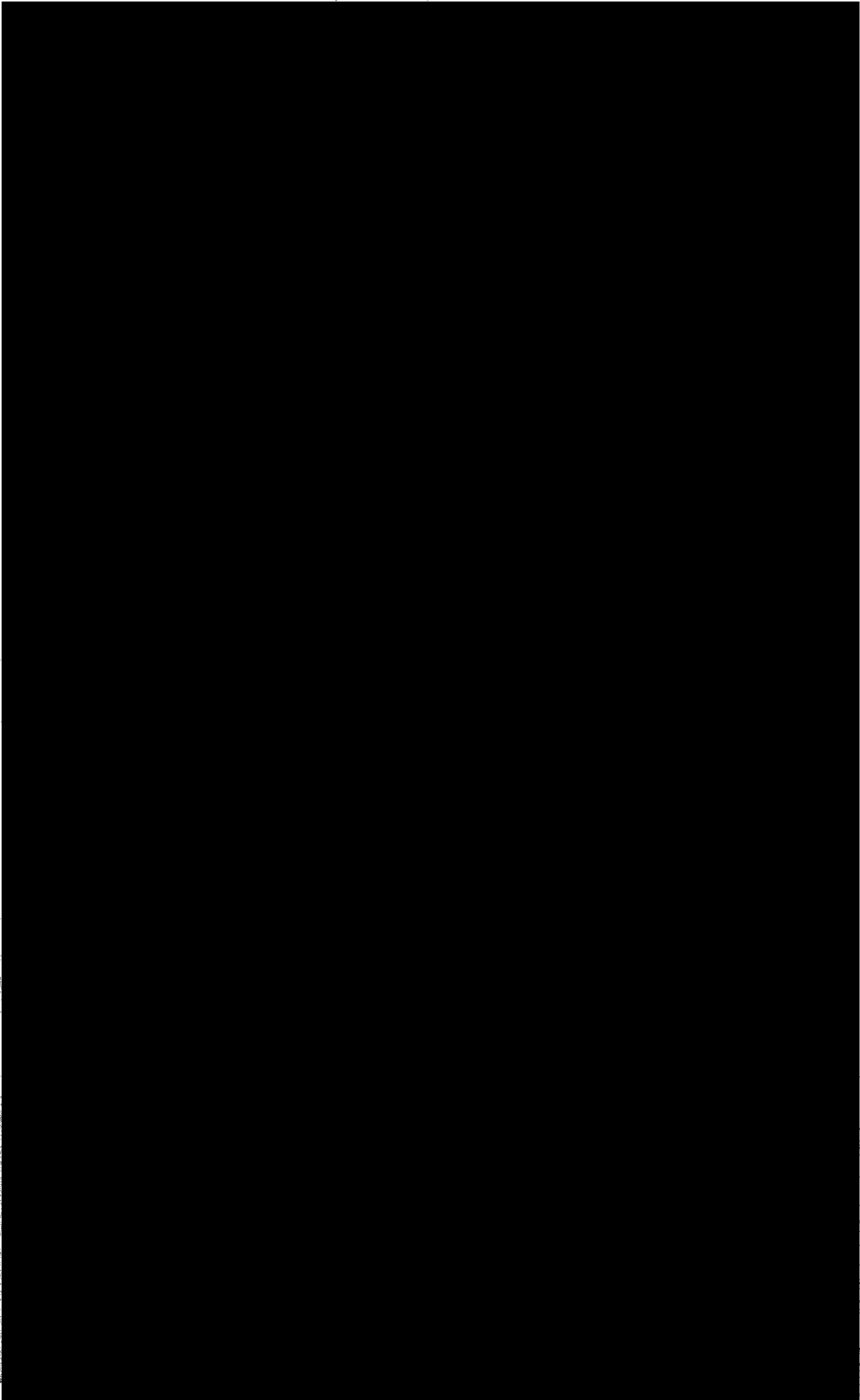
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—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

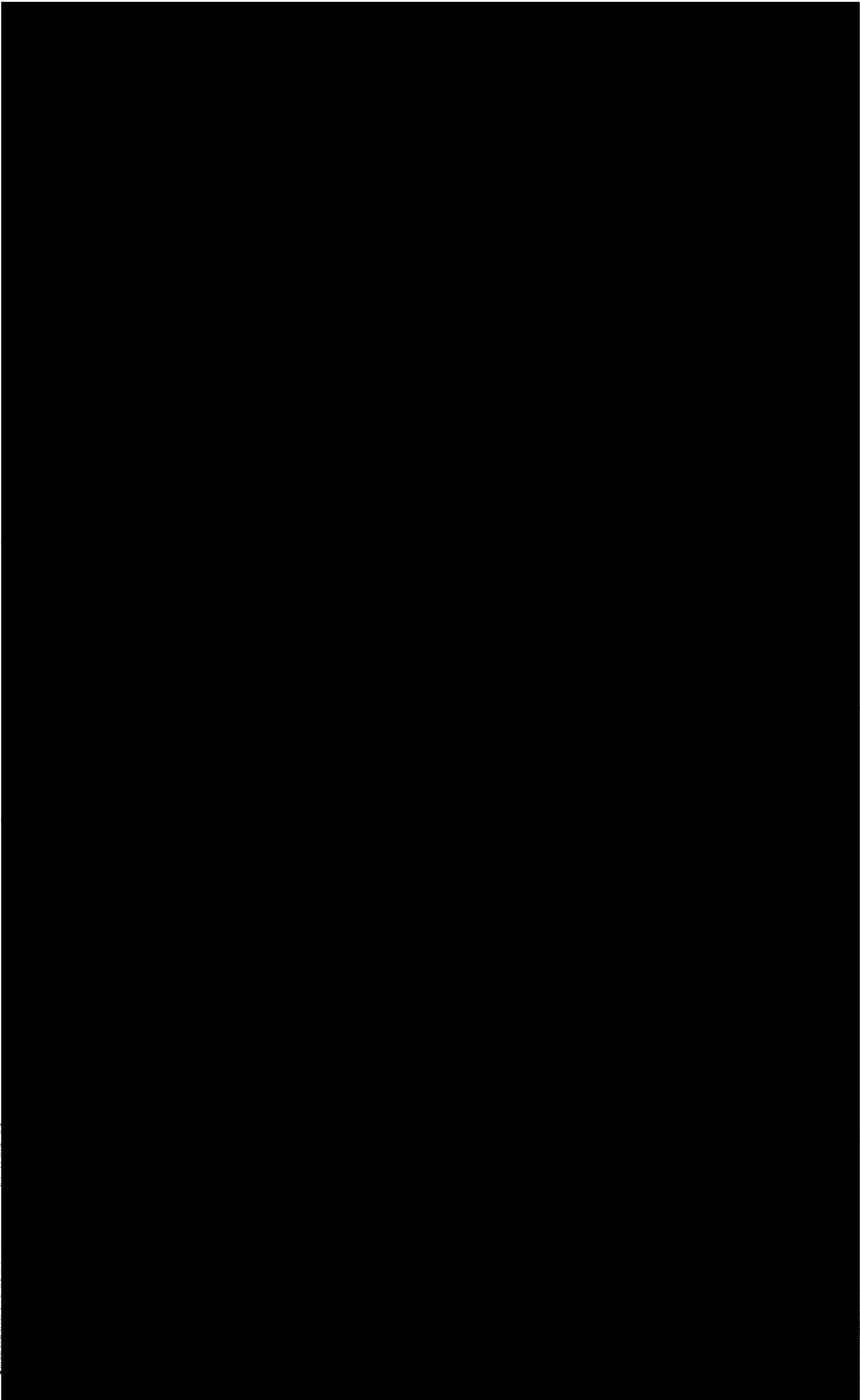
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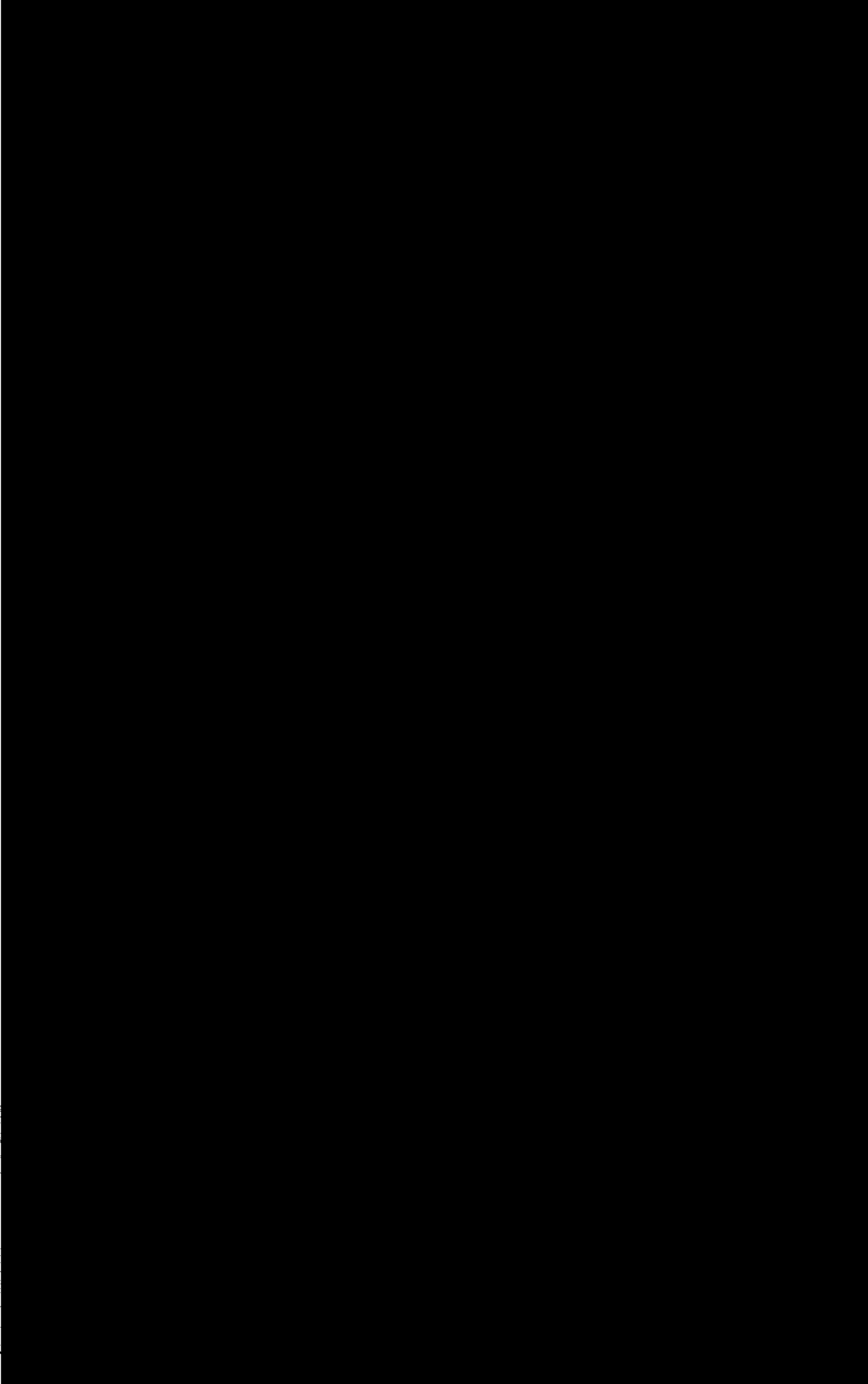
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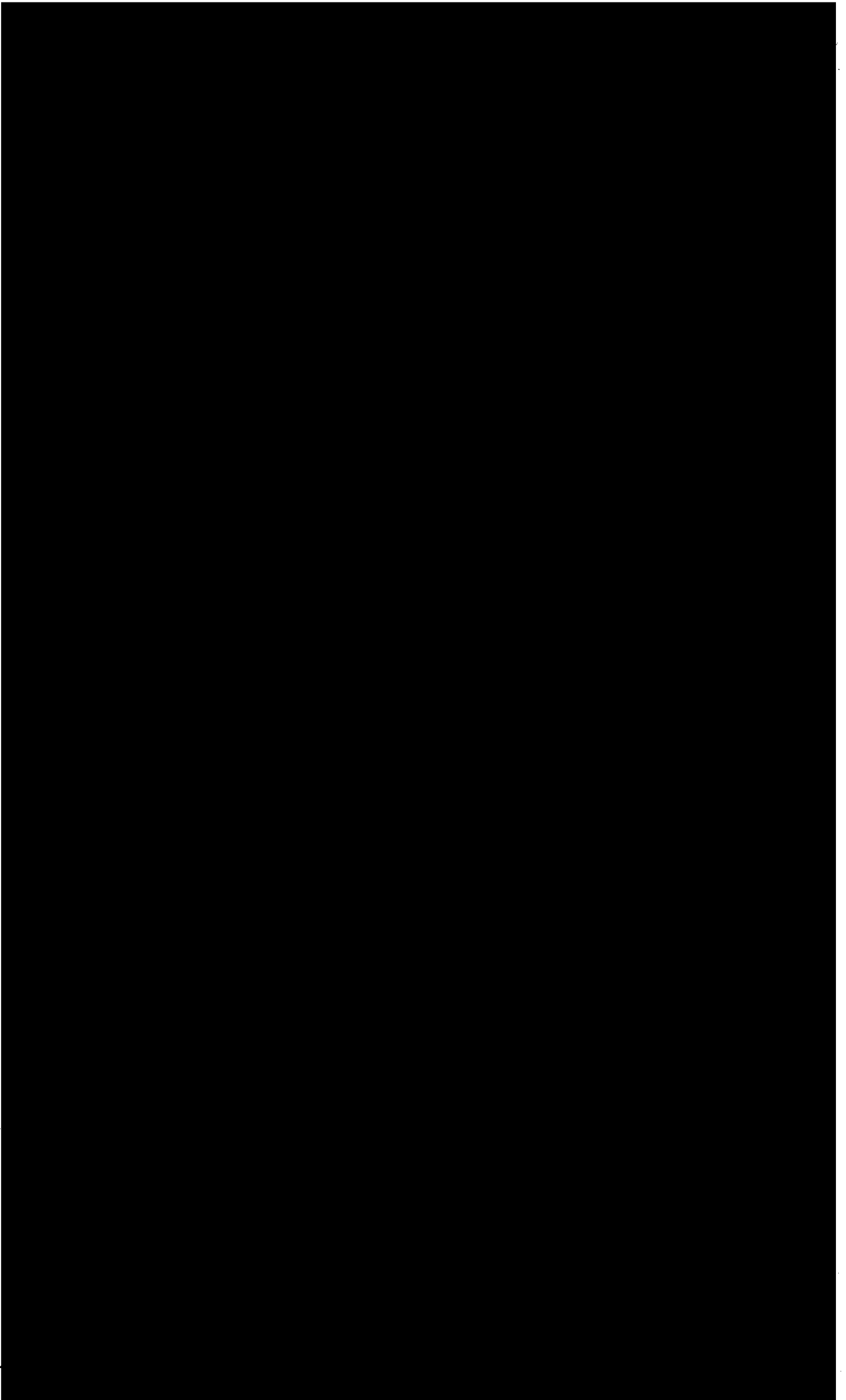
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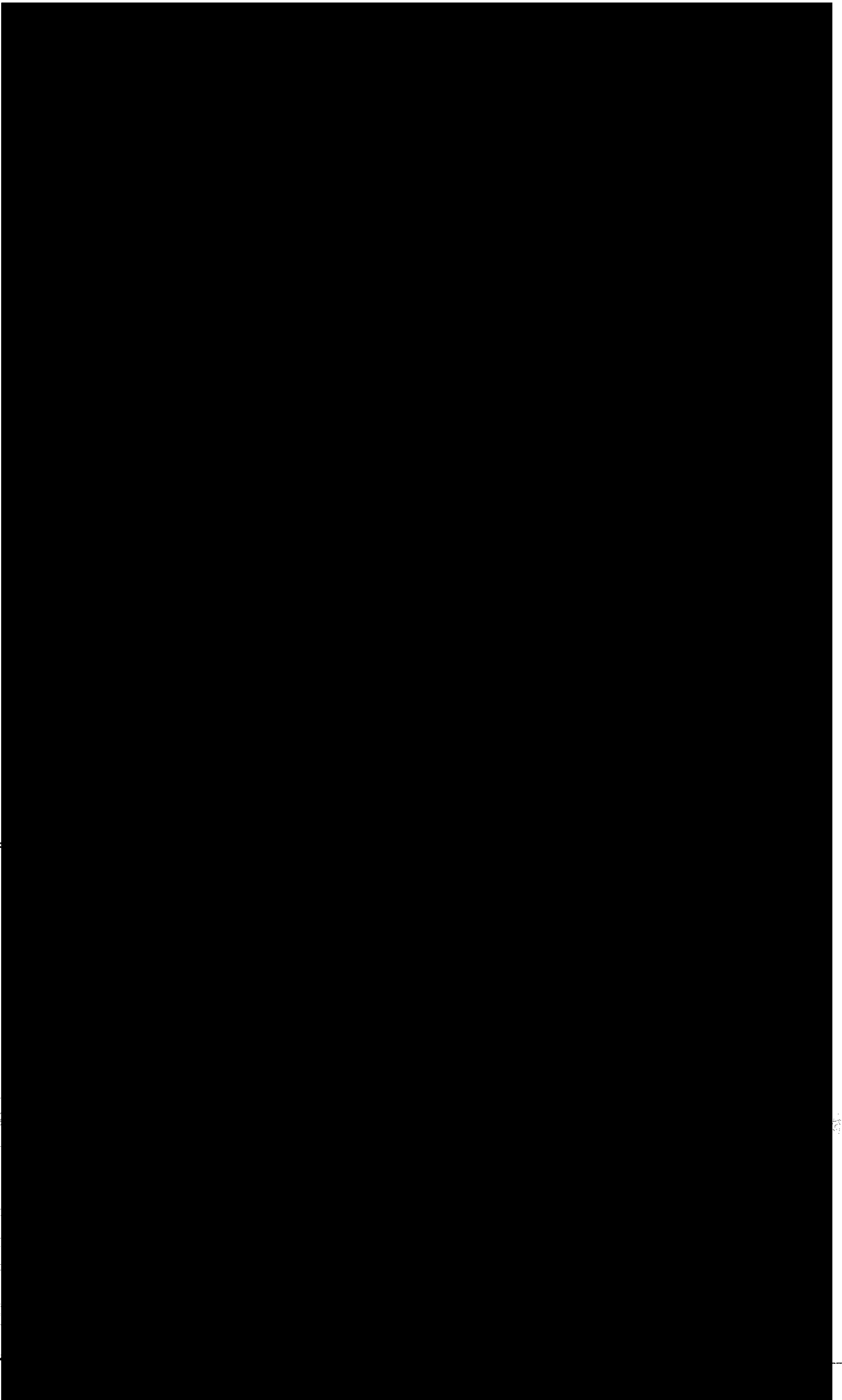


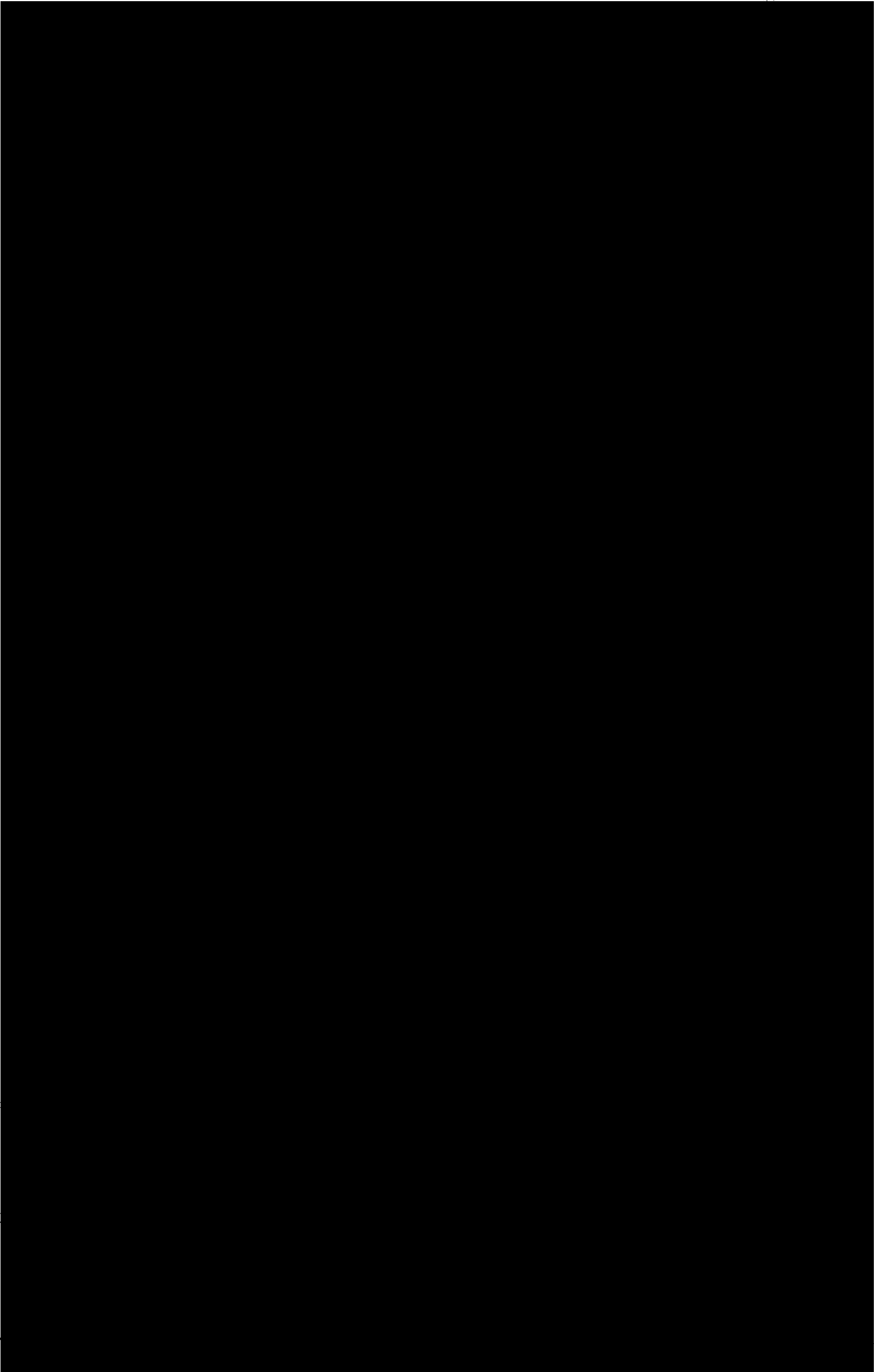


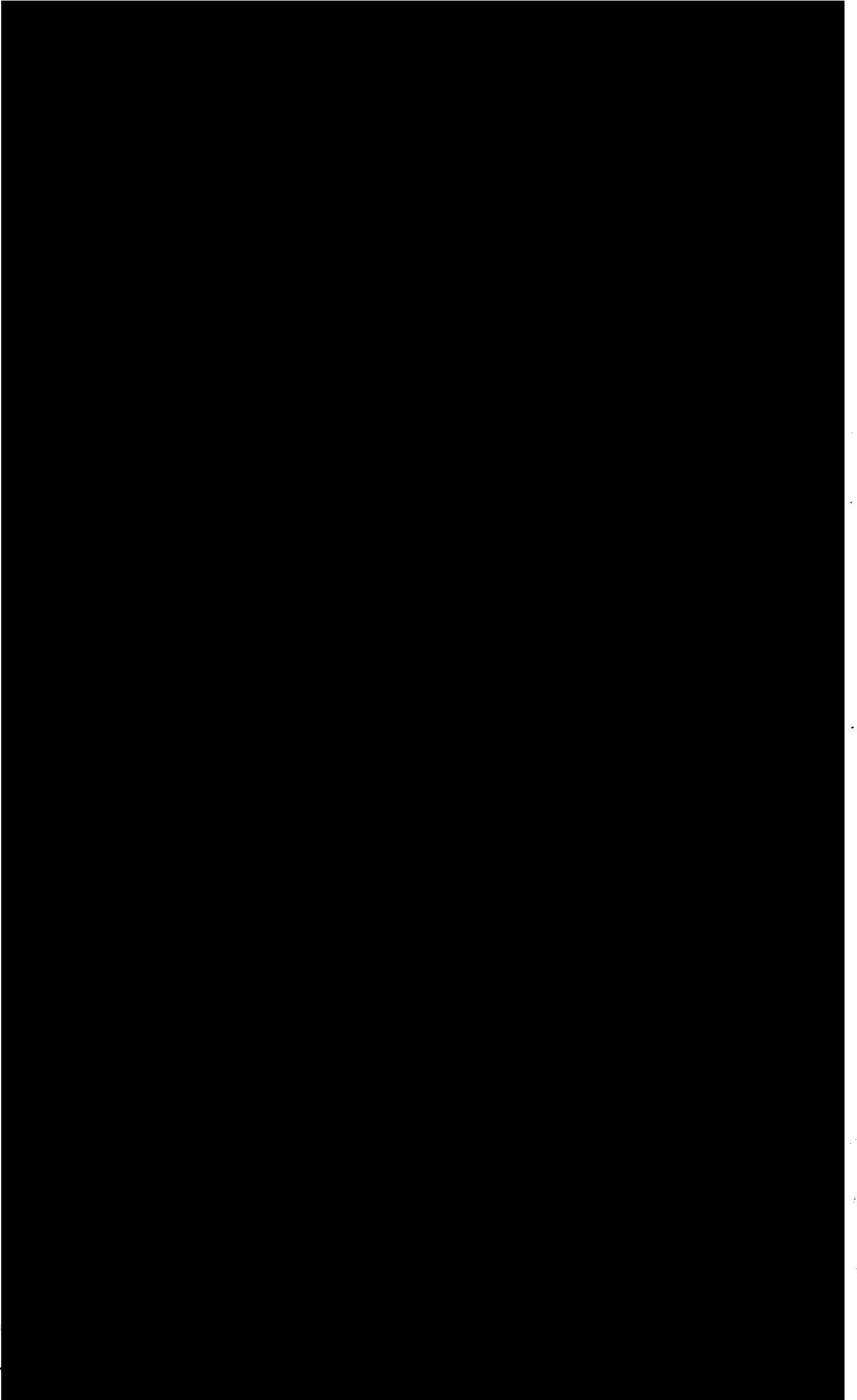


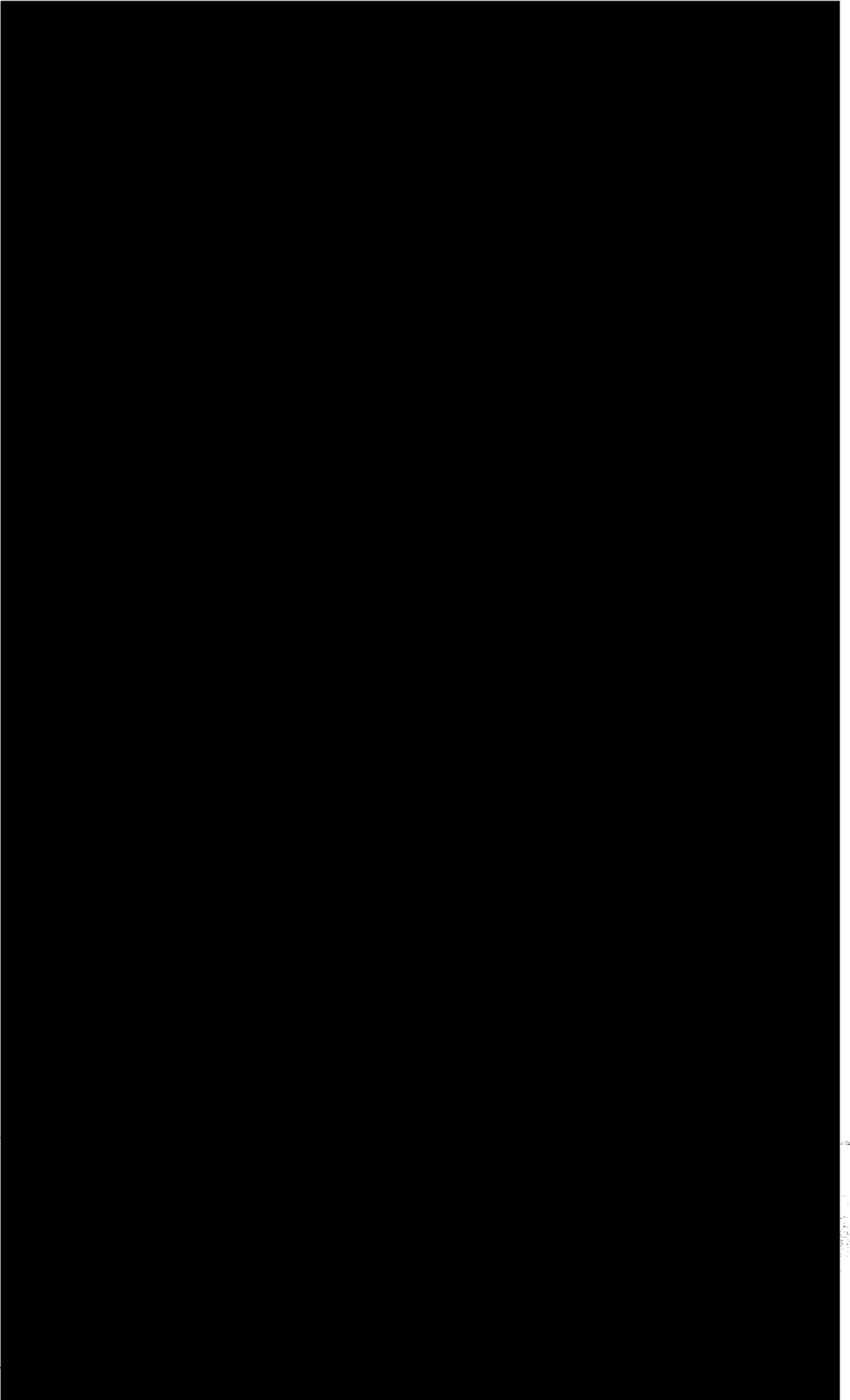


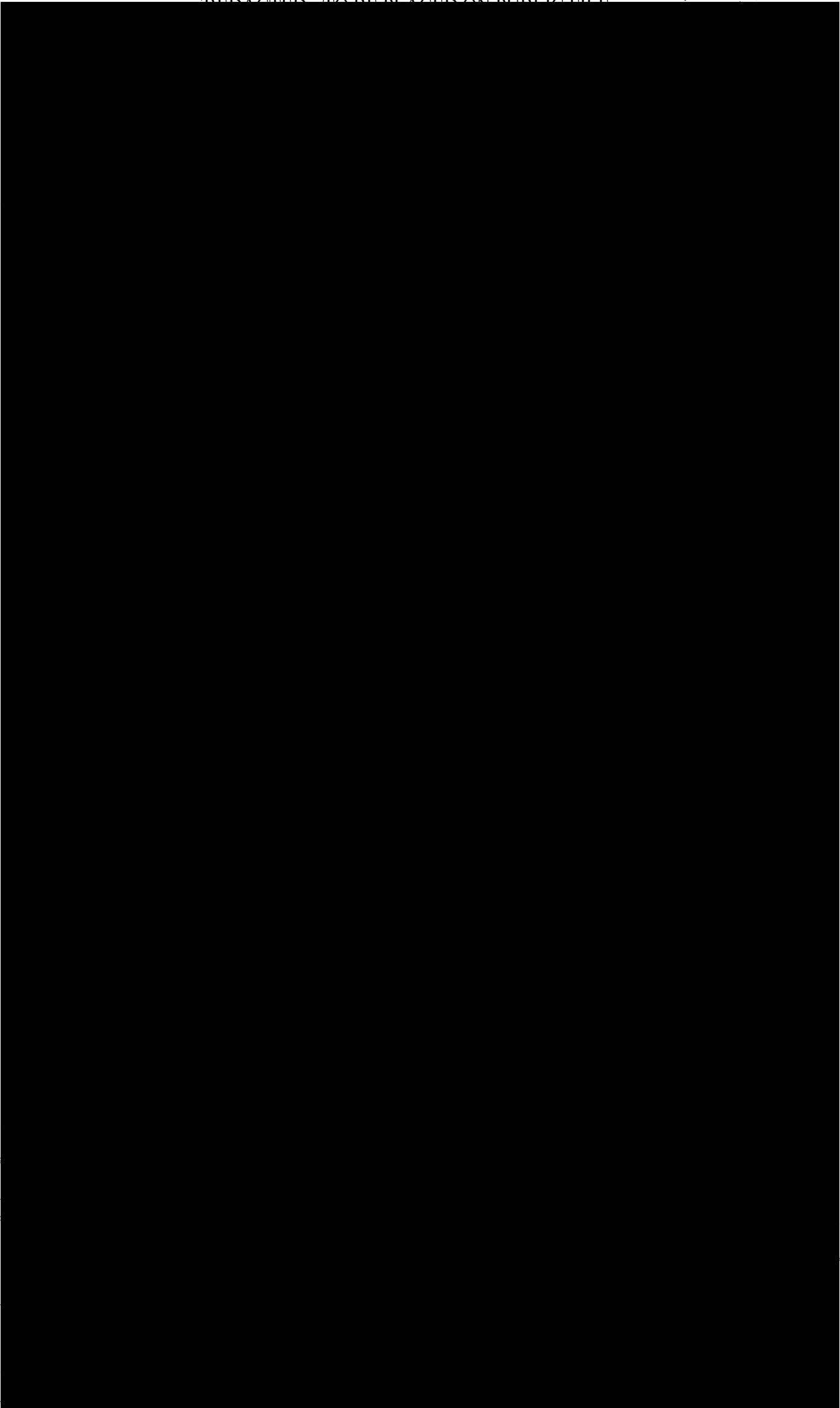


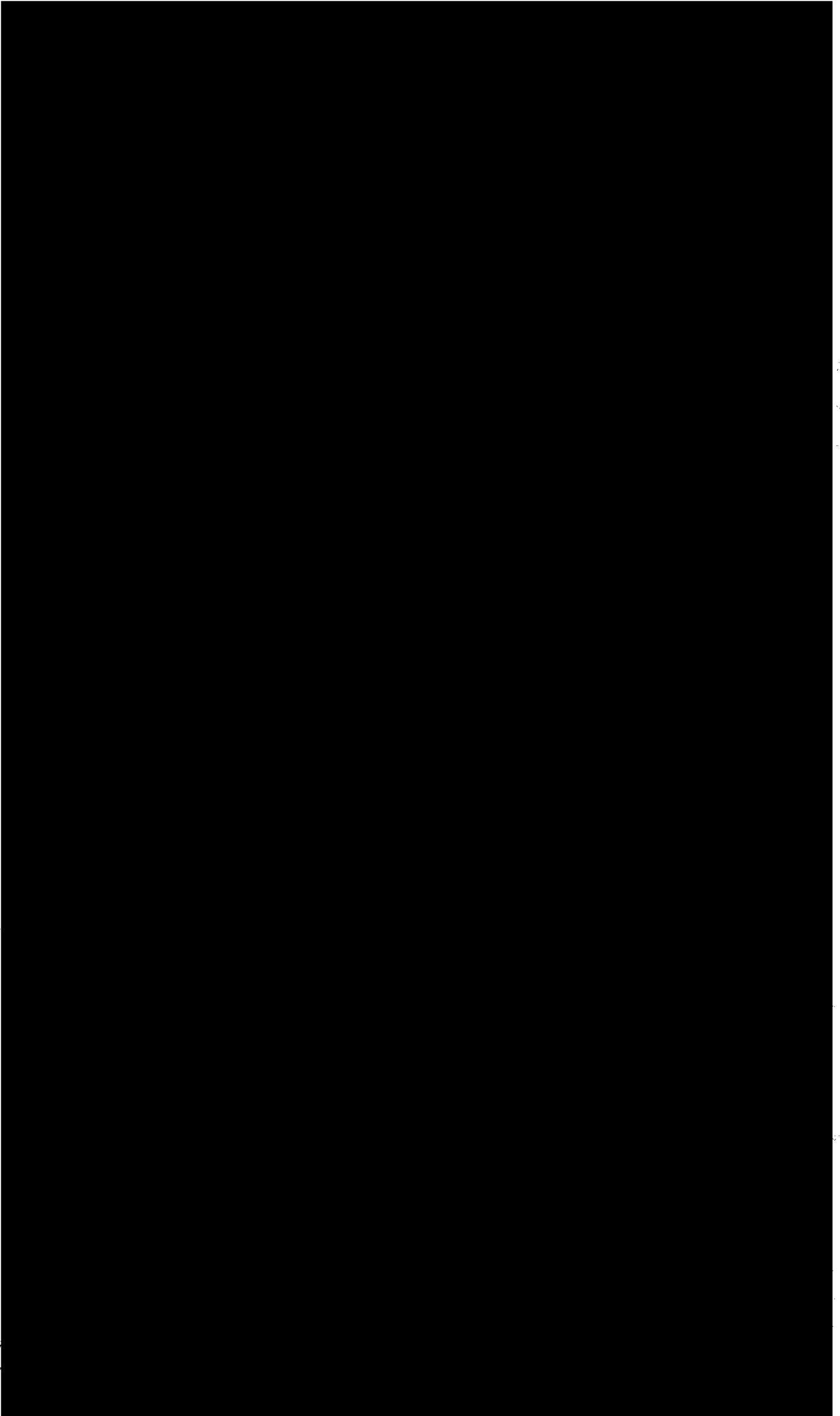


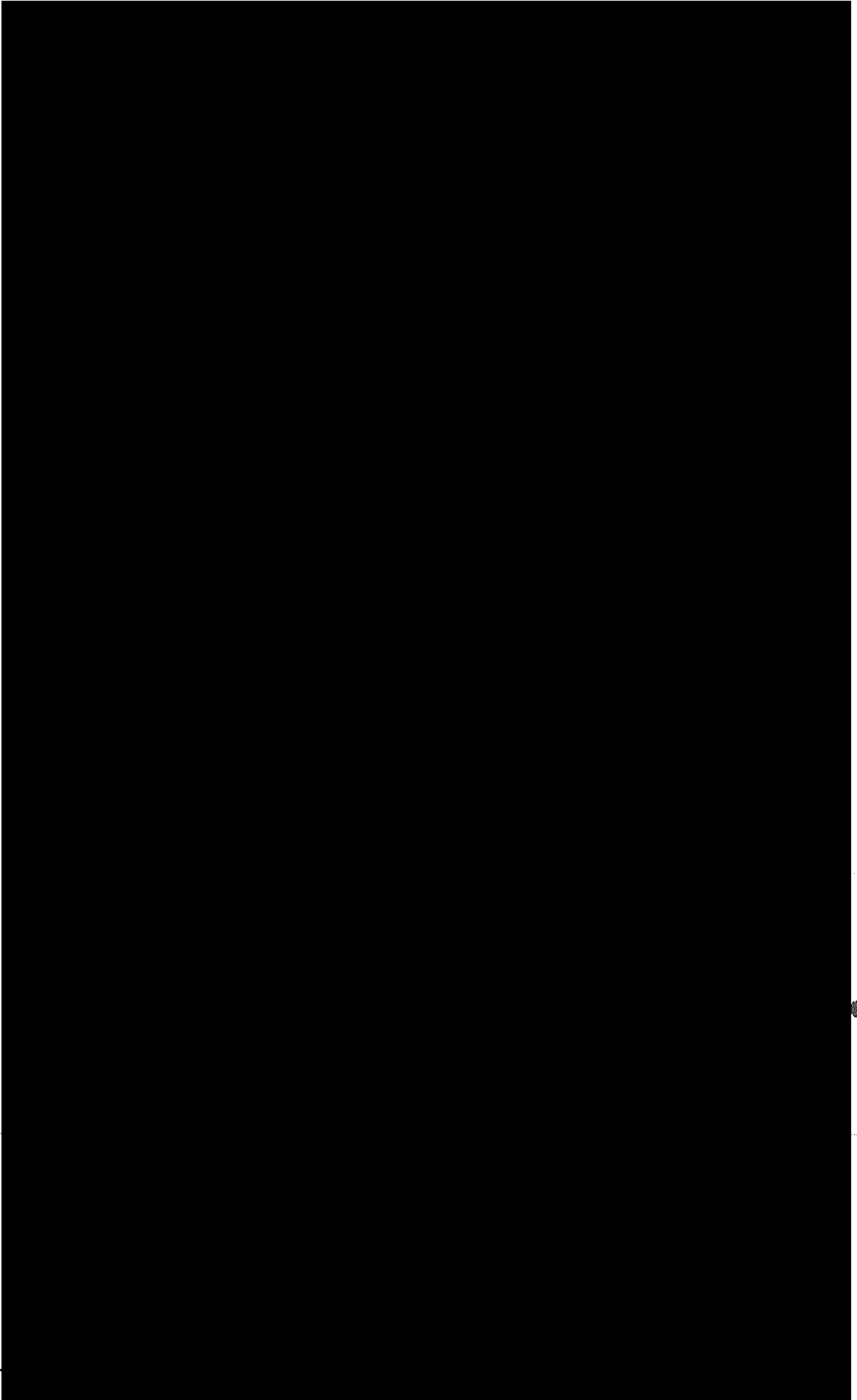


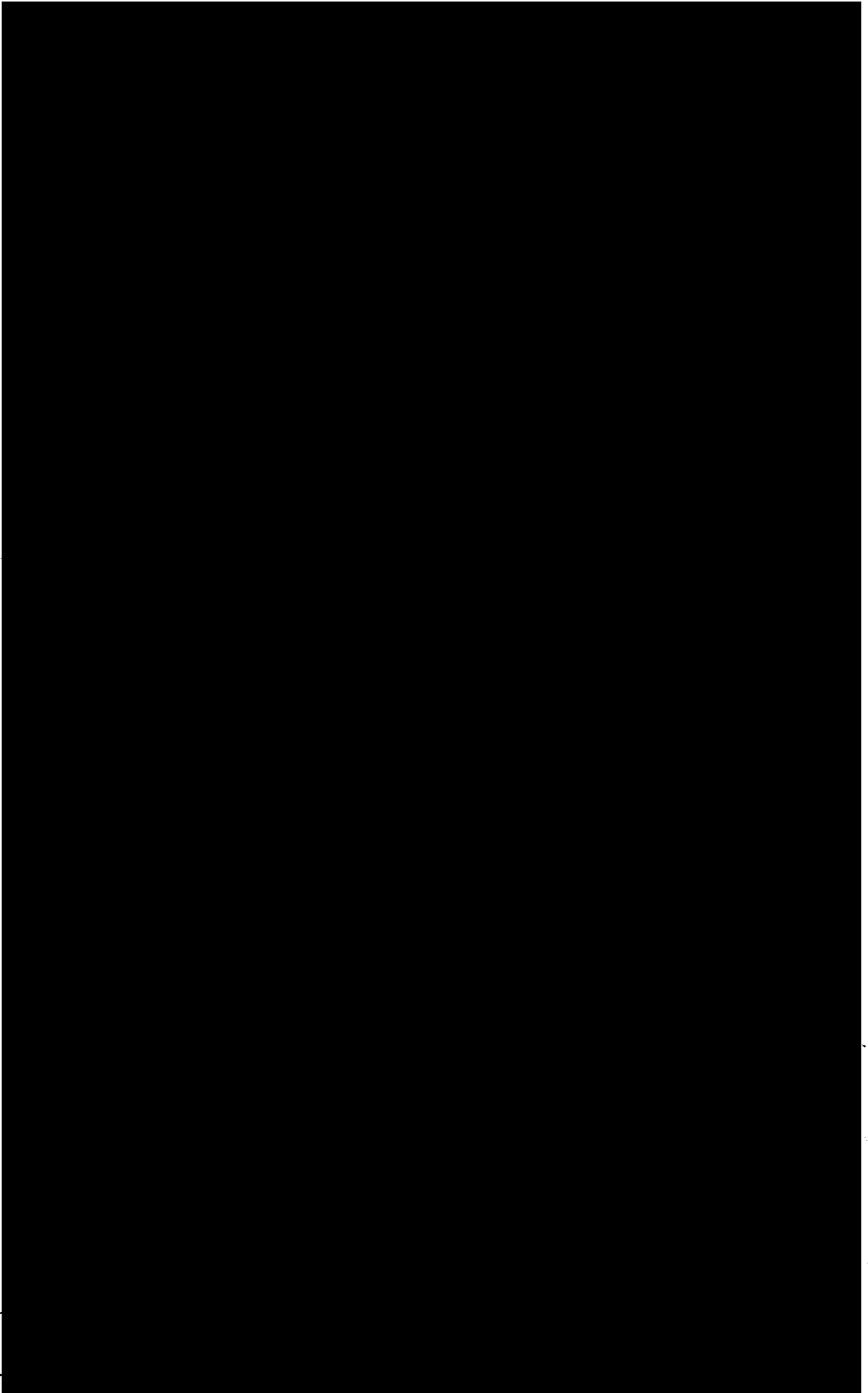


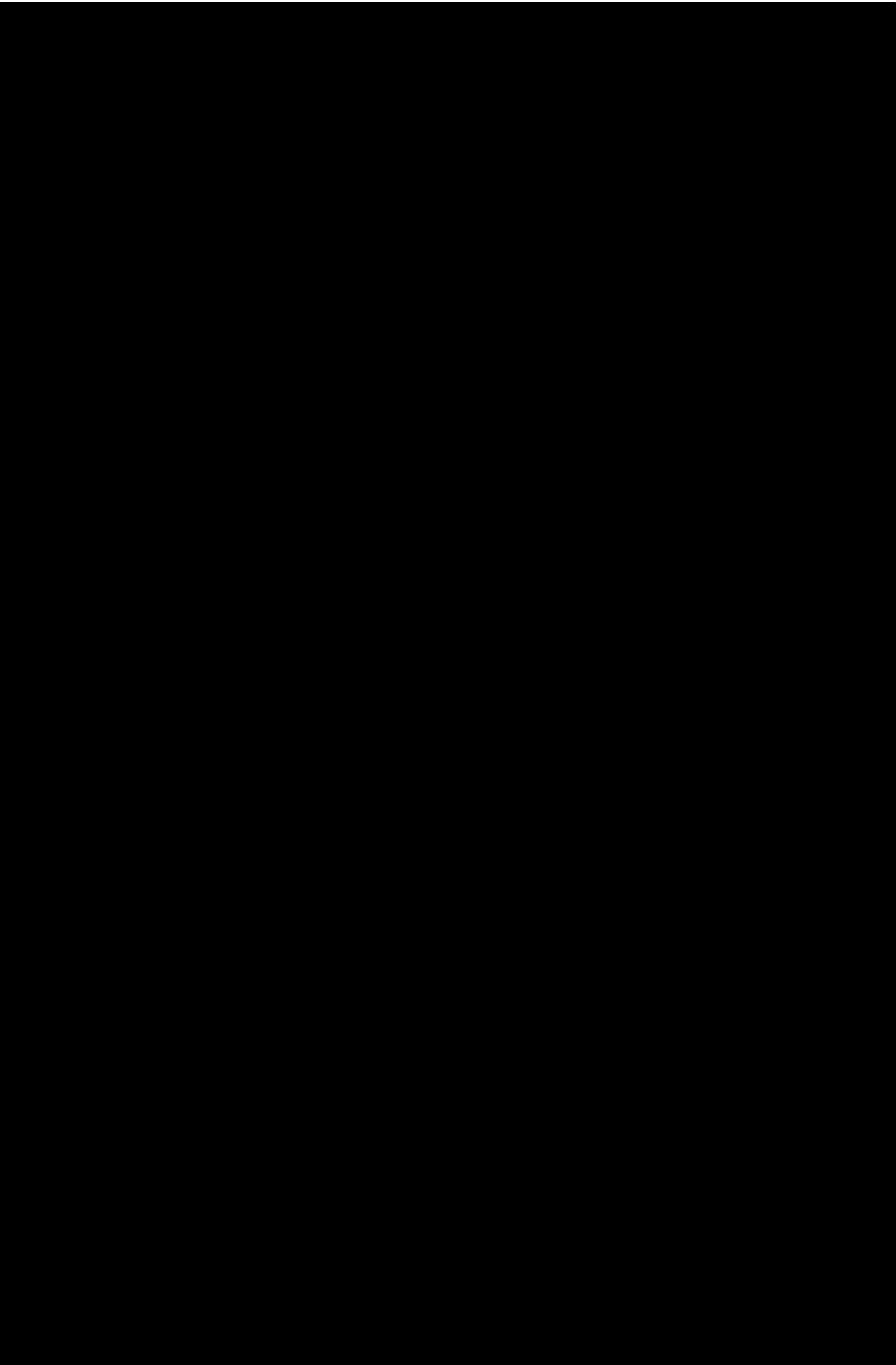


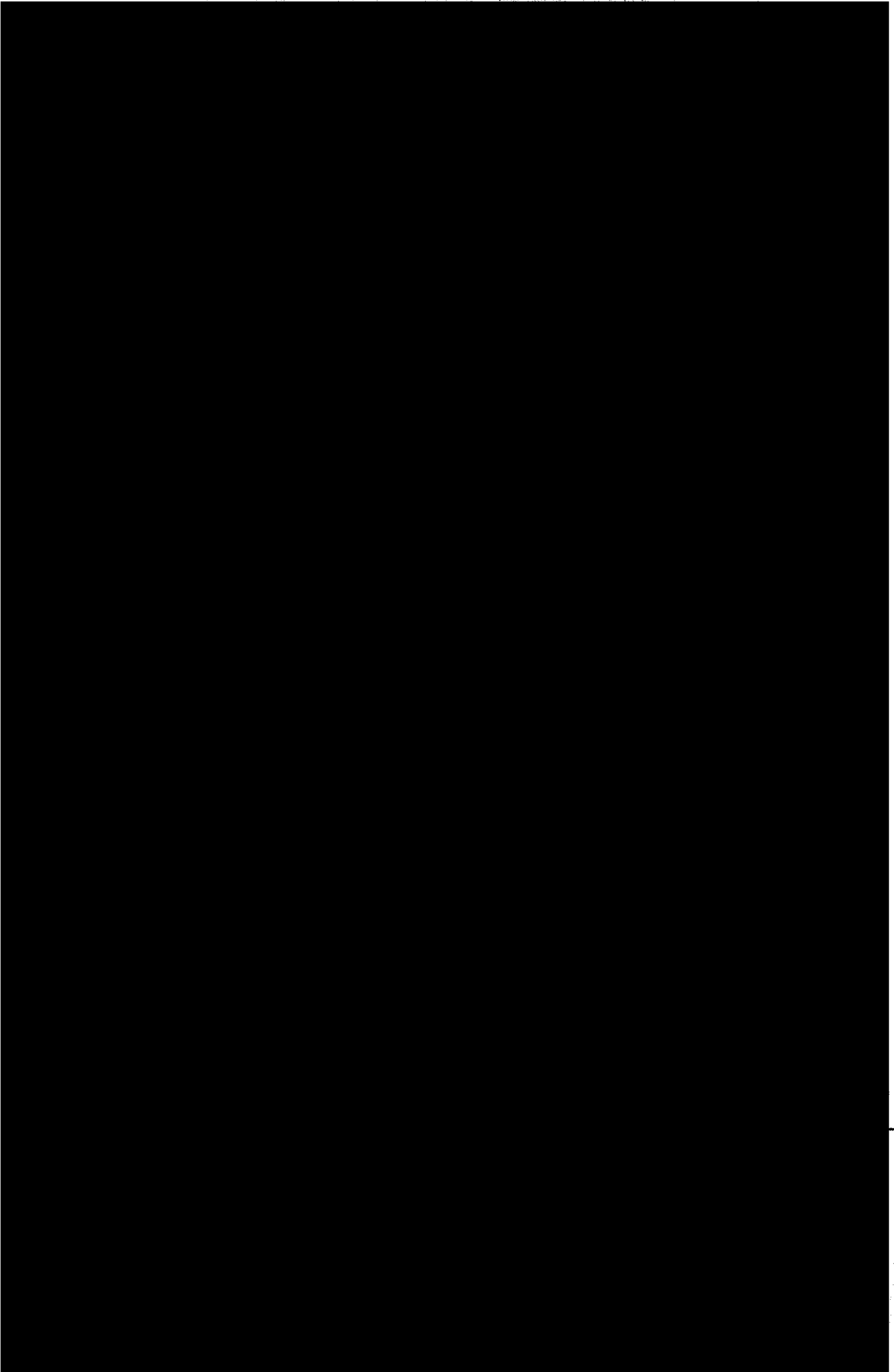




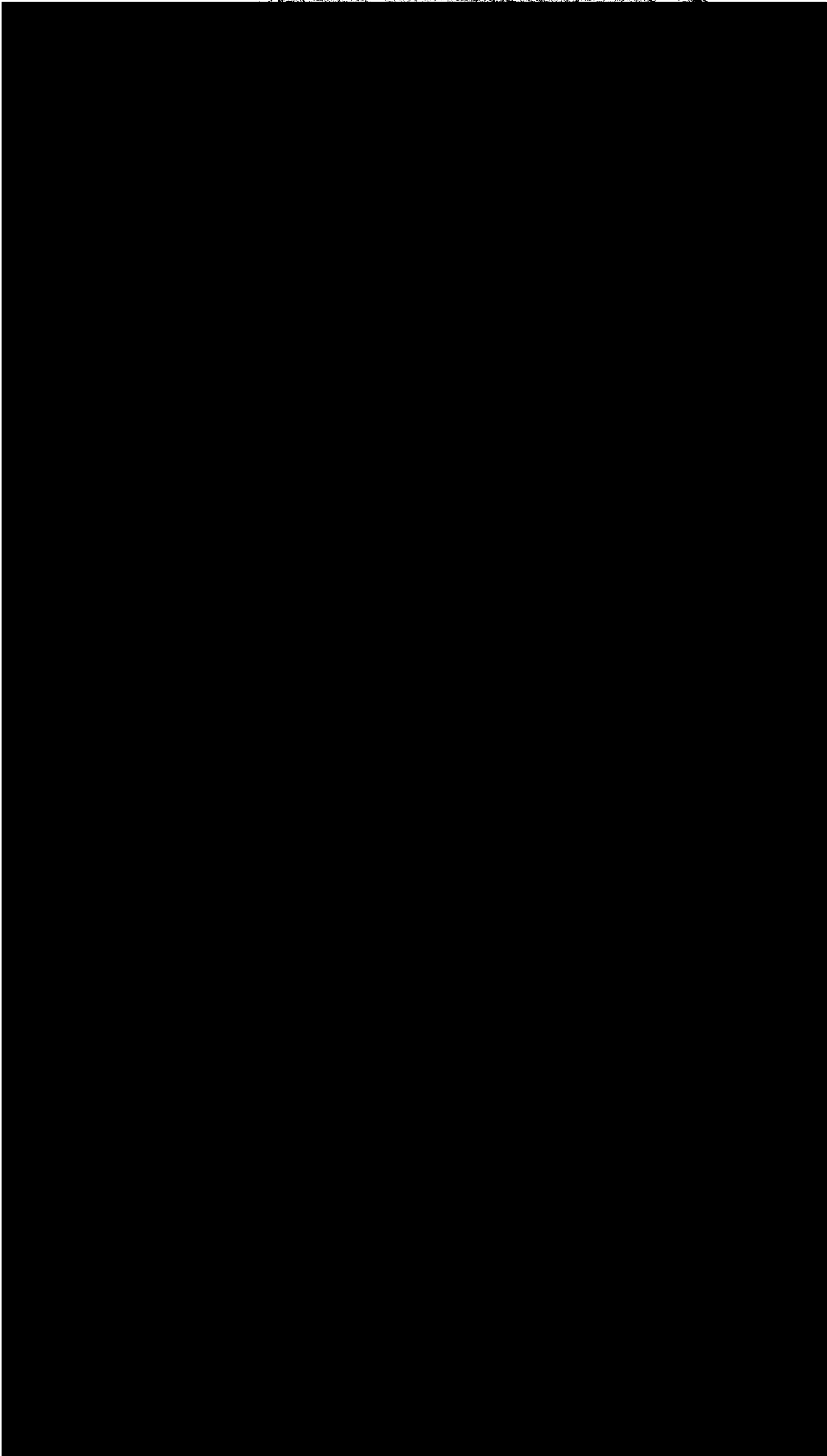








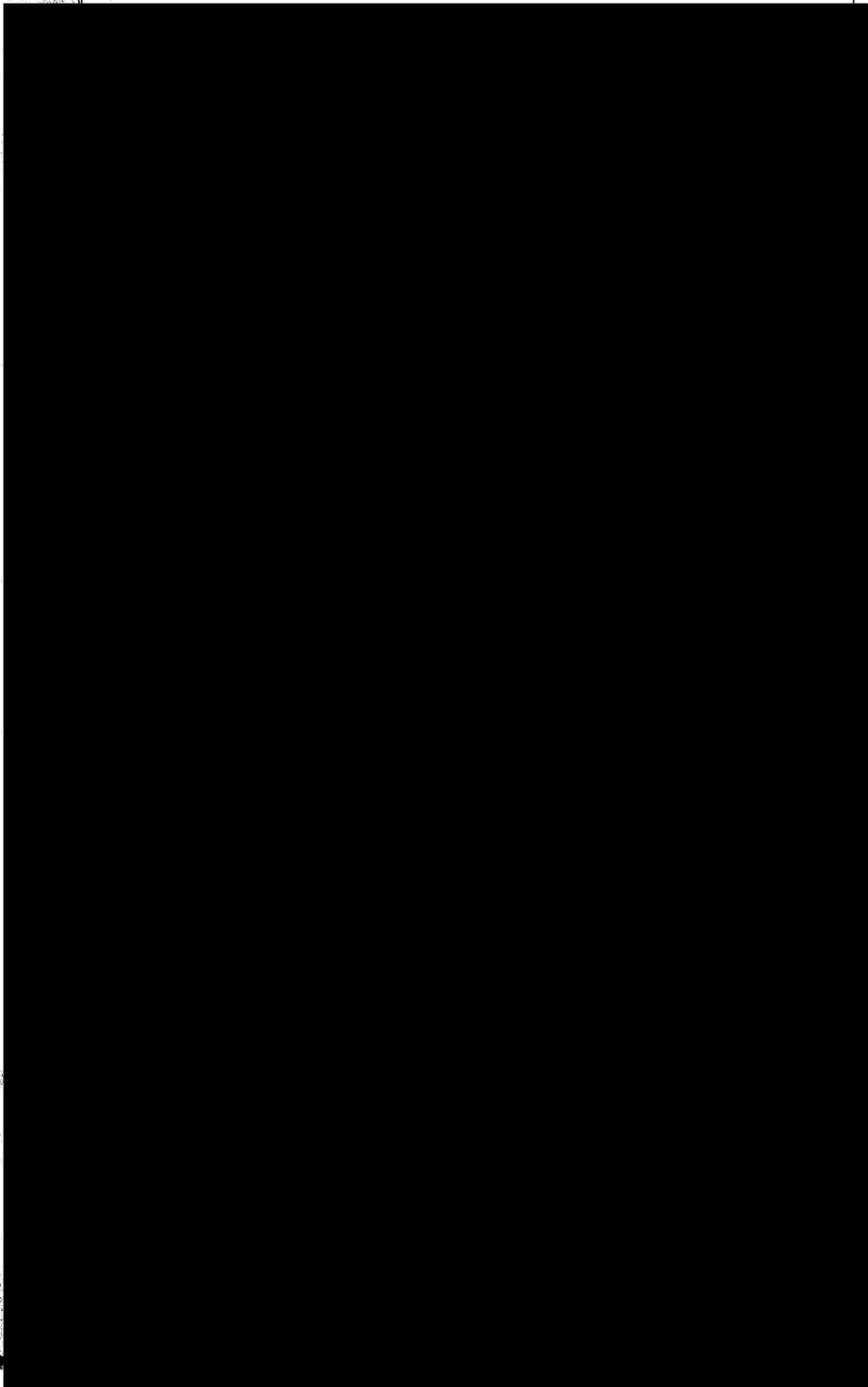
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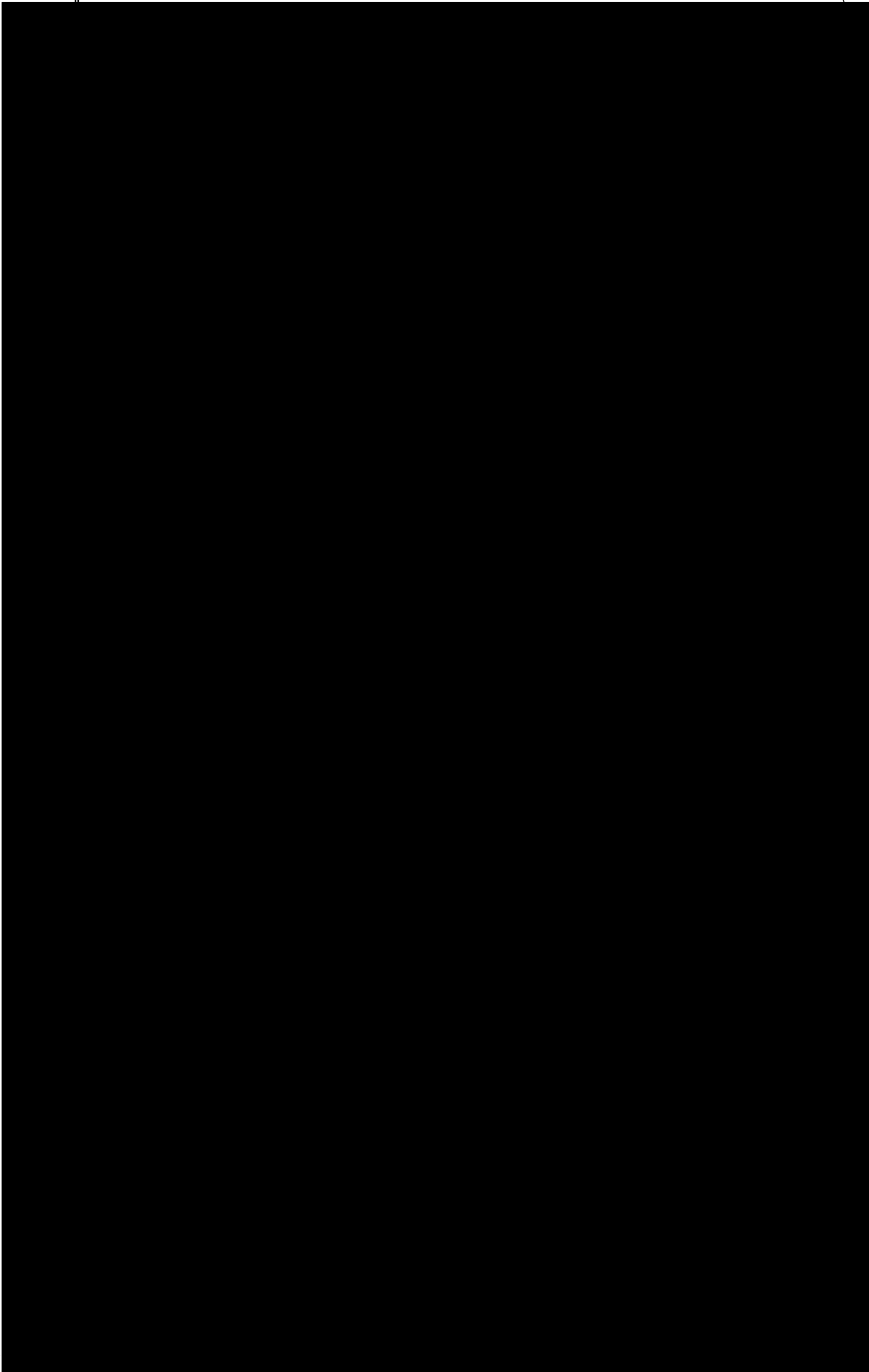


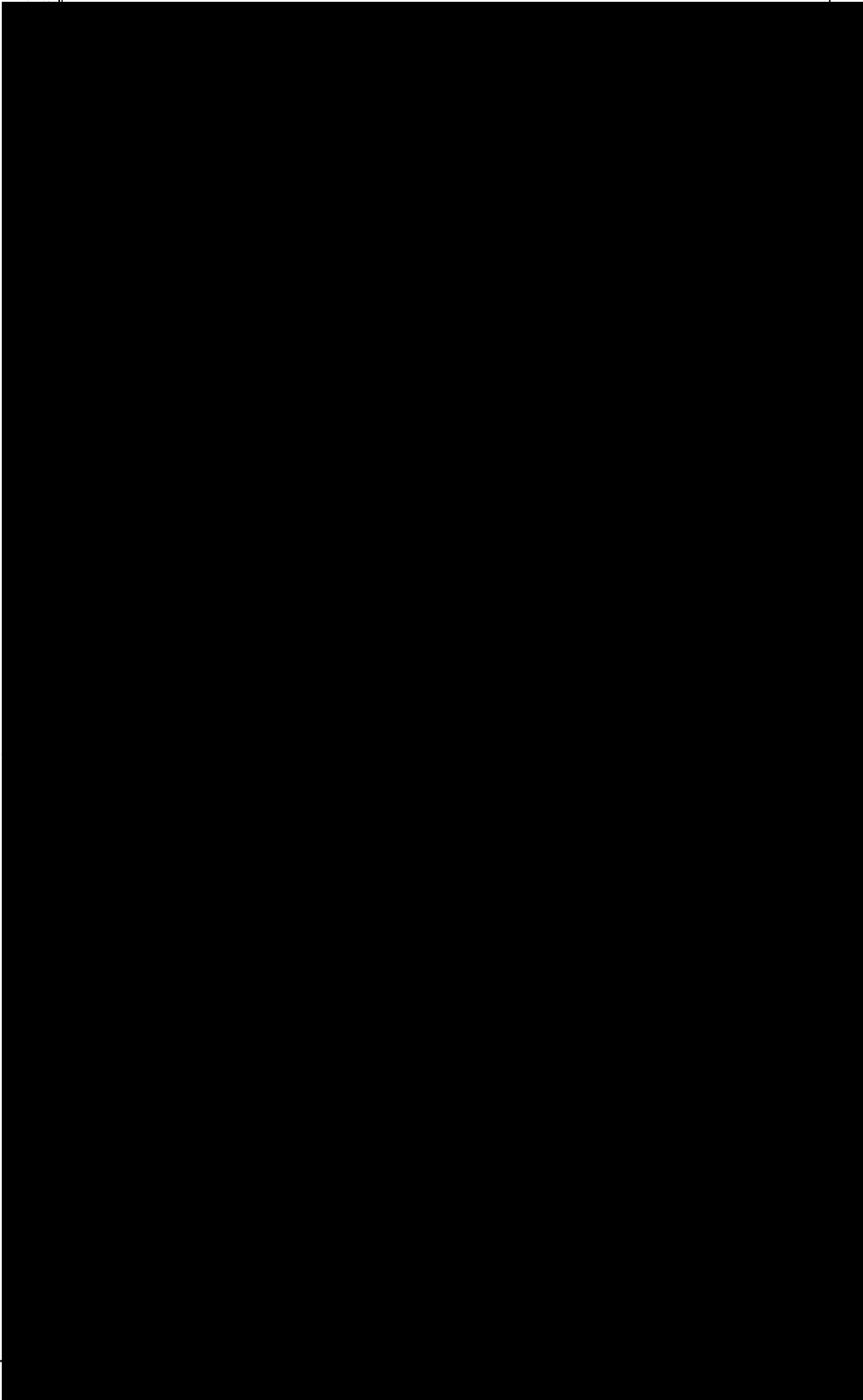
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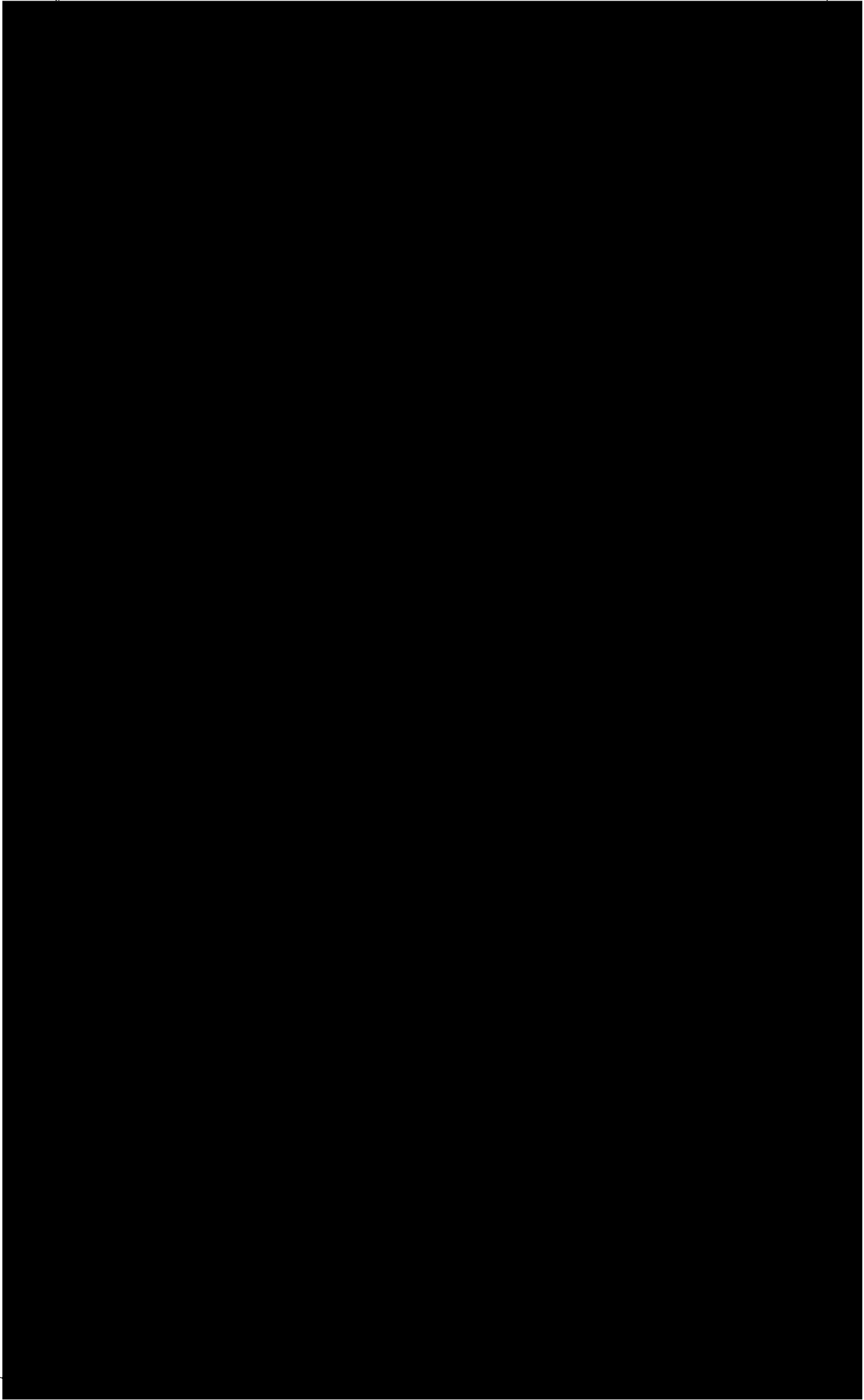


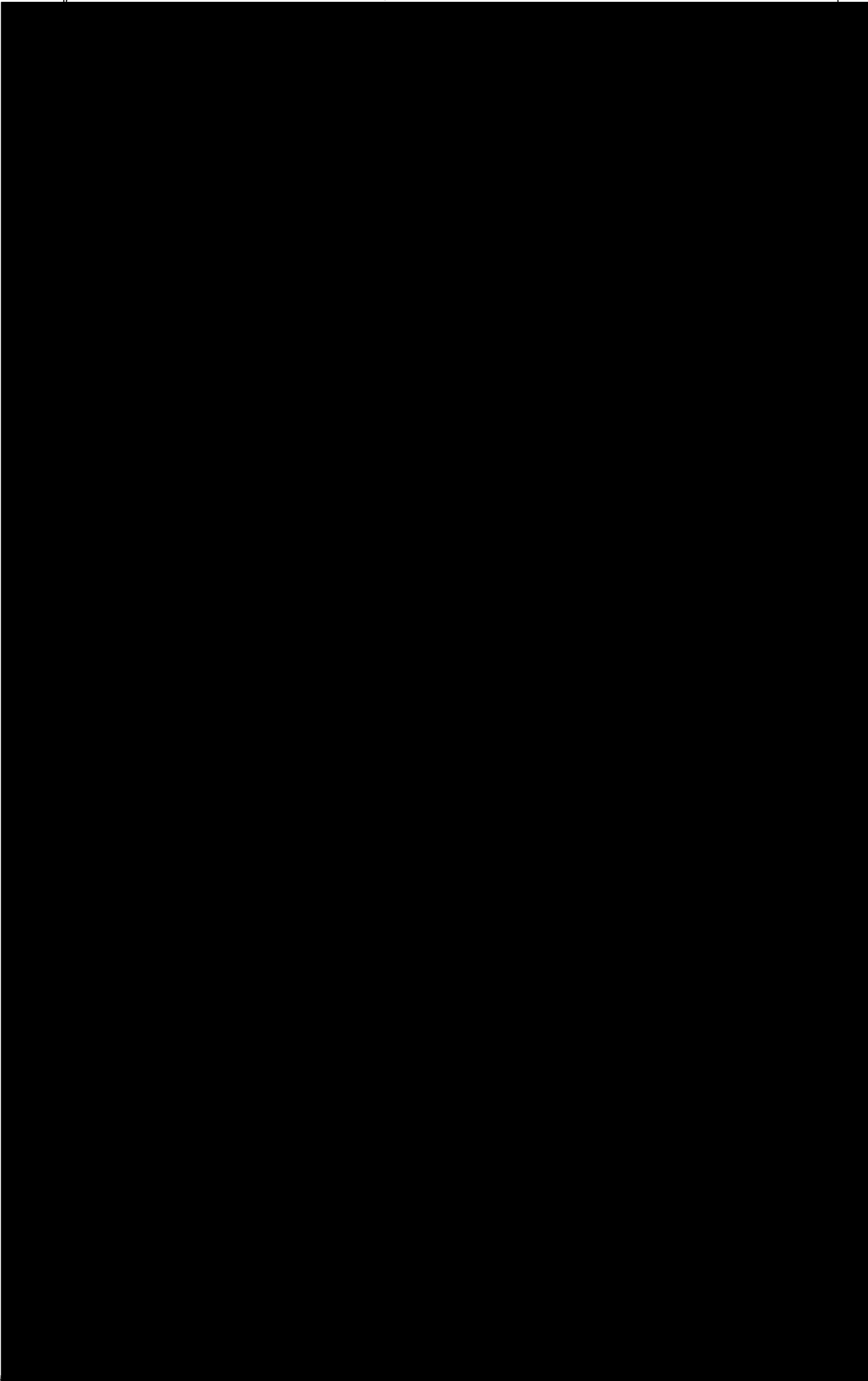


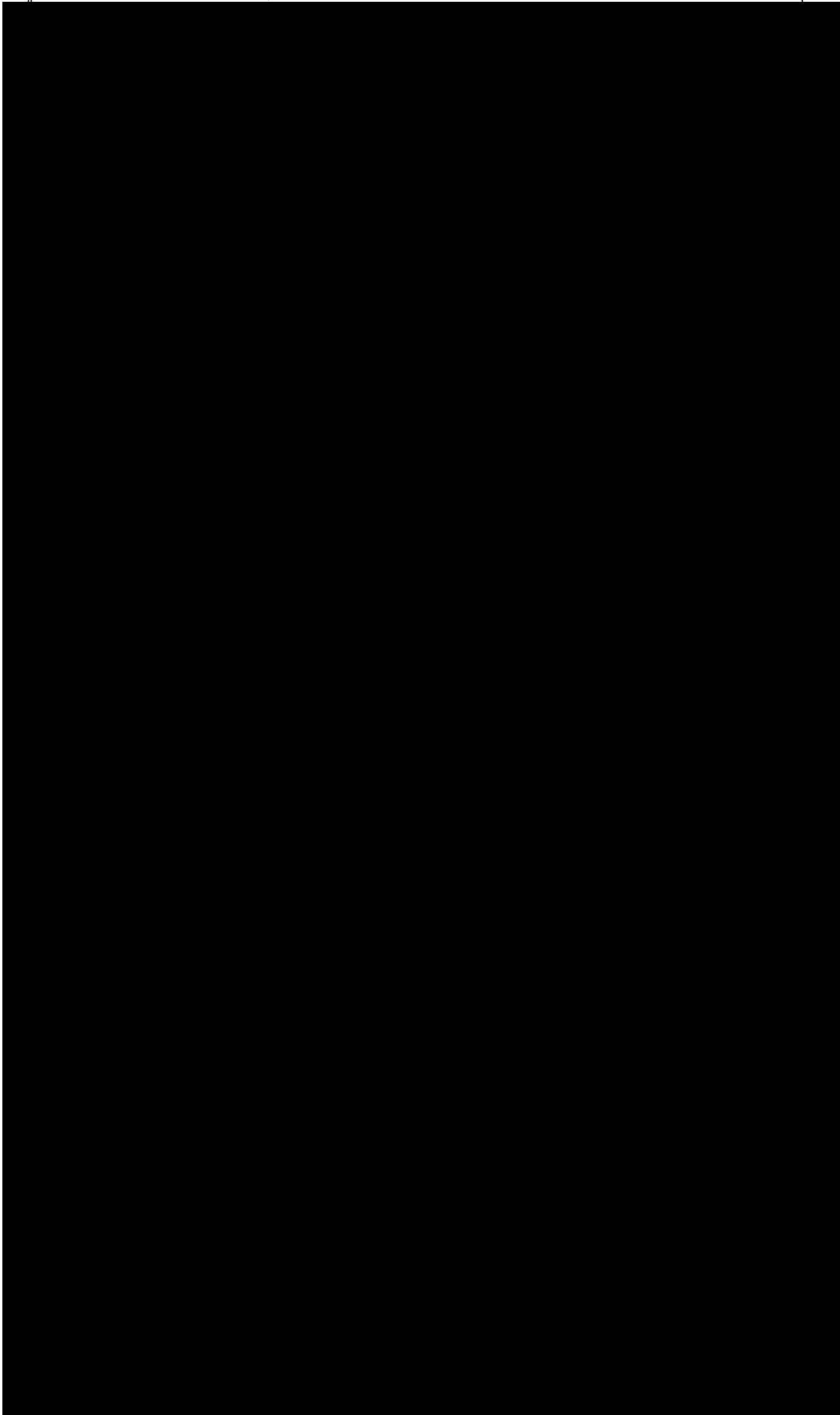
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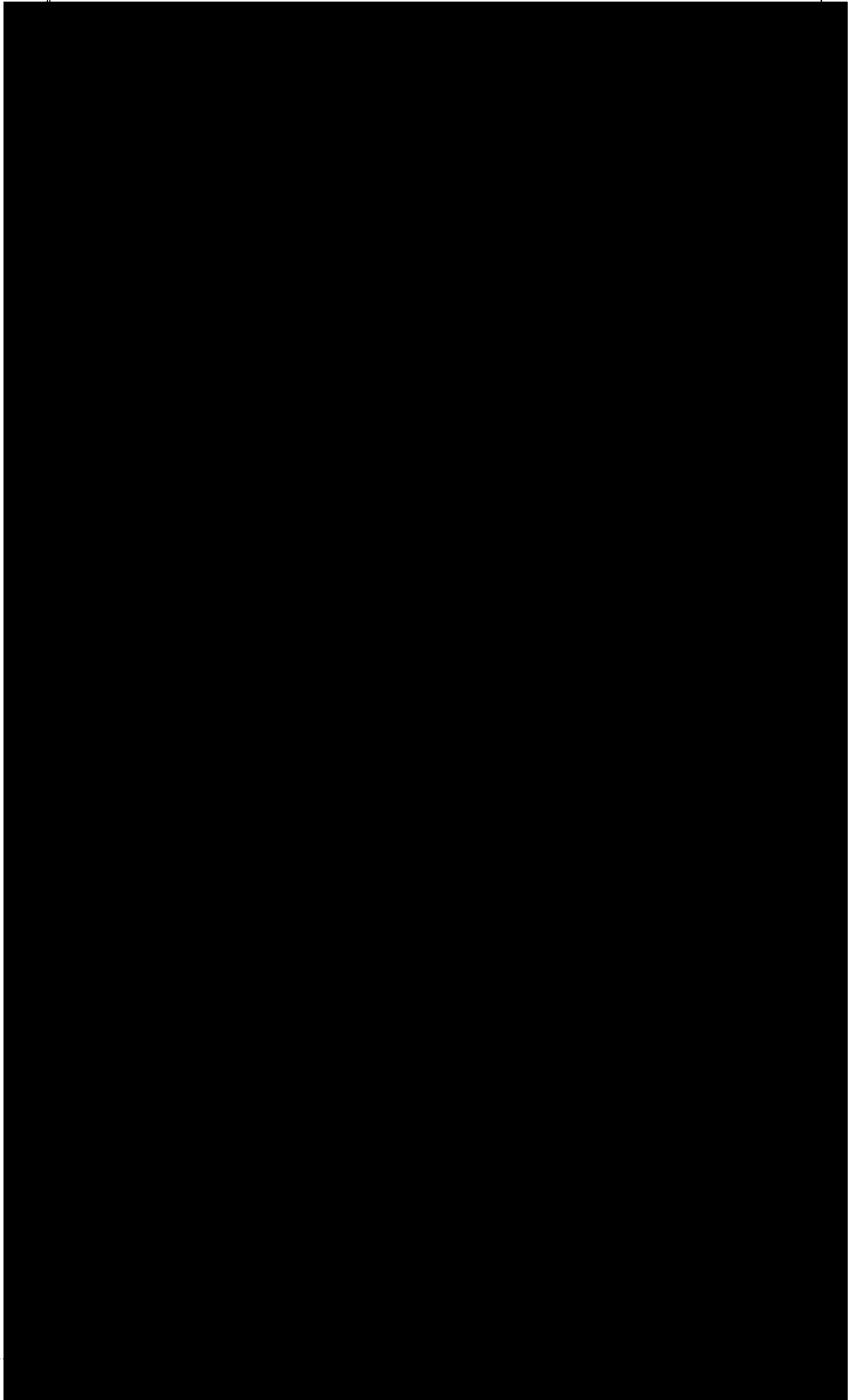
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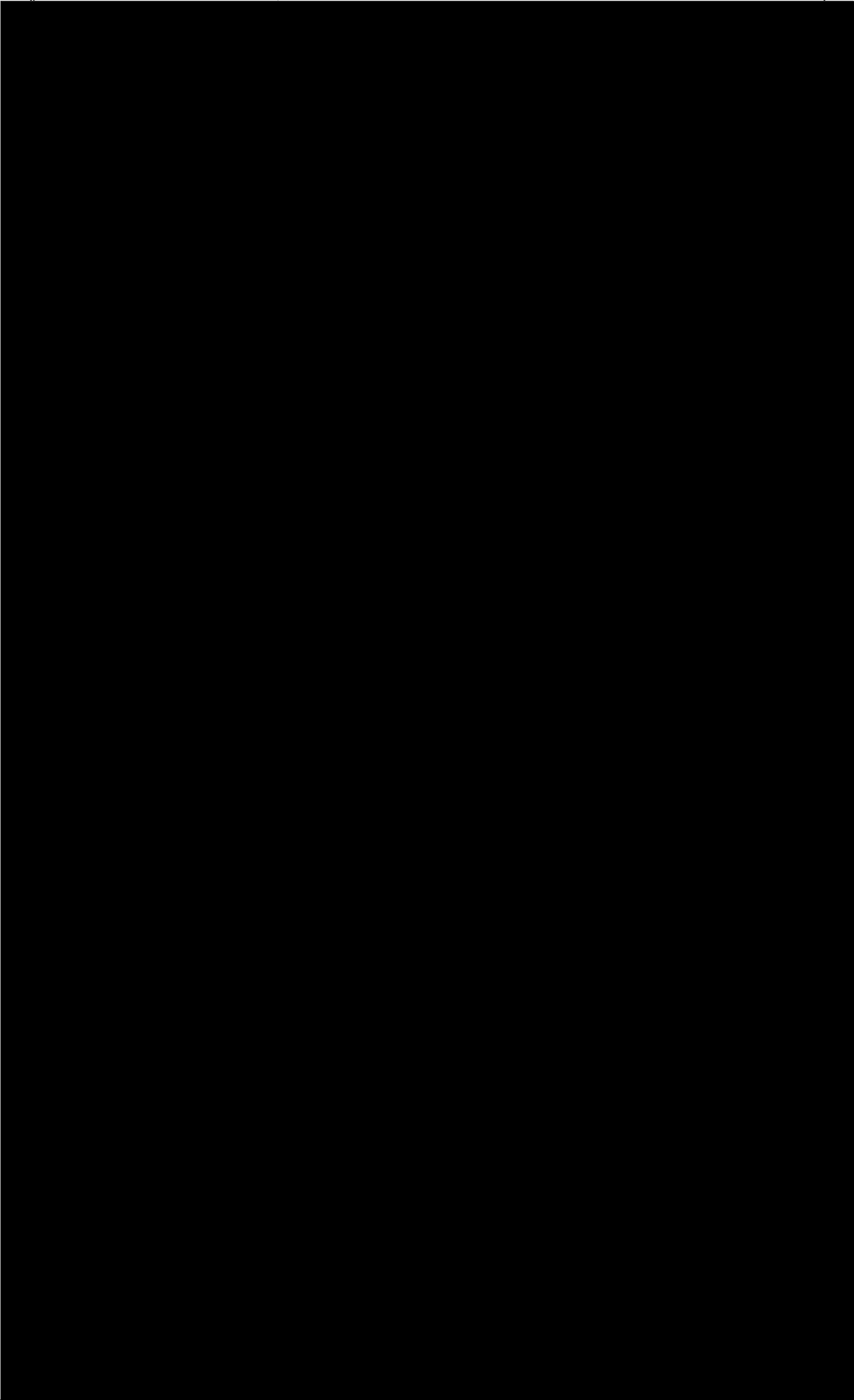
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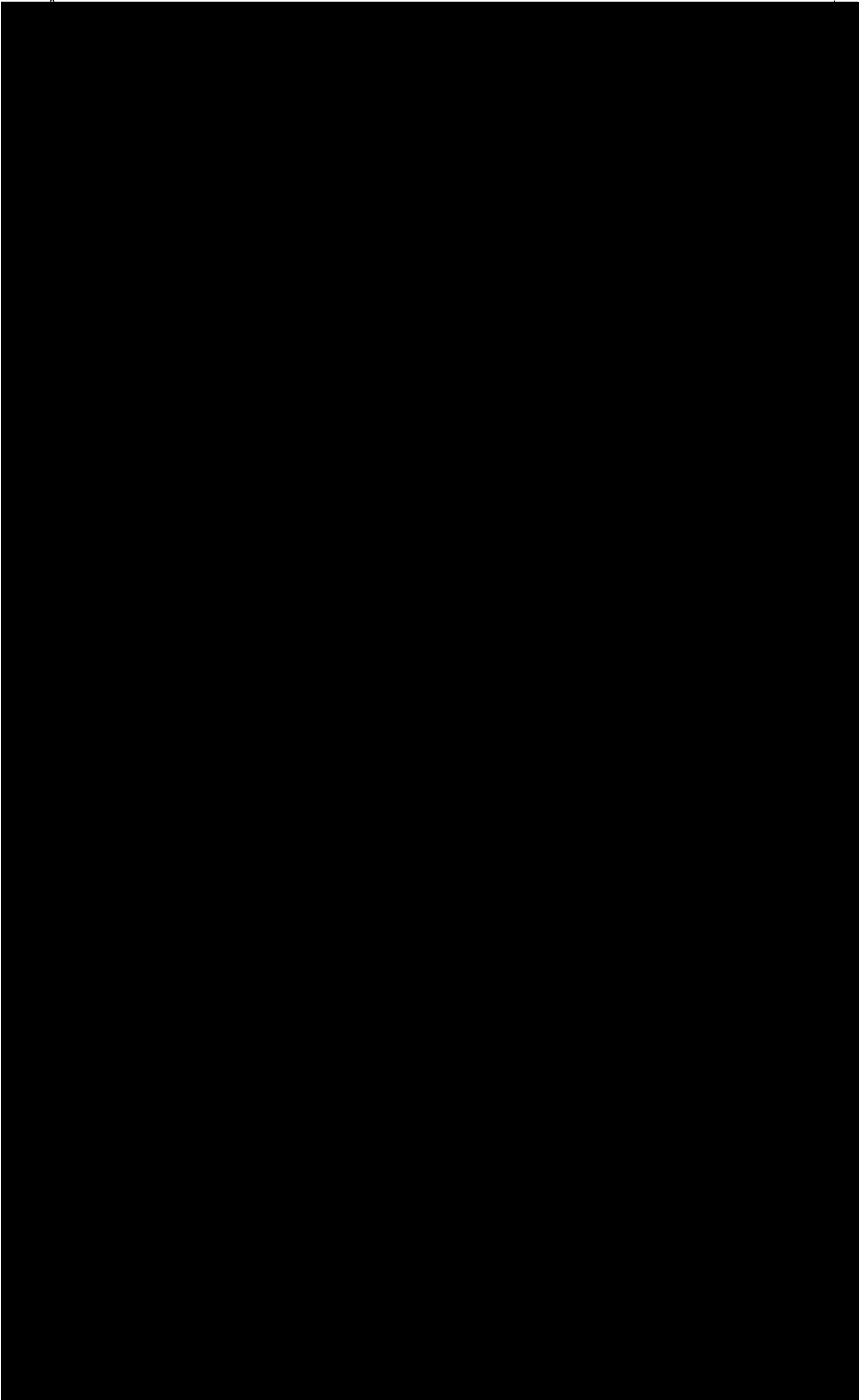


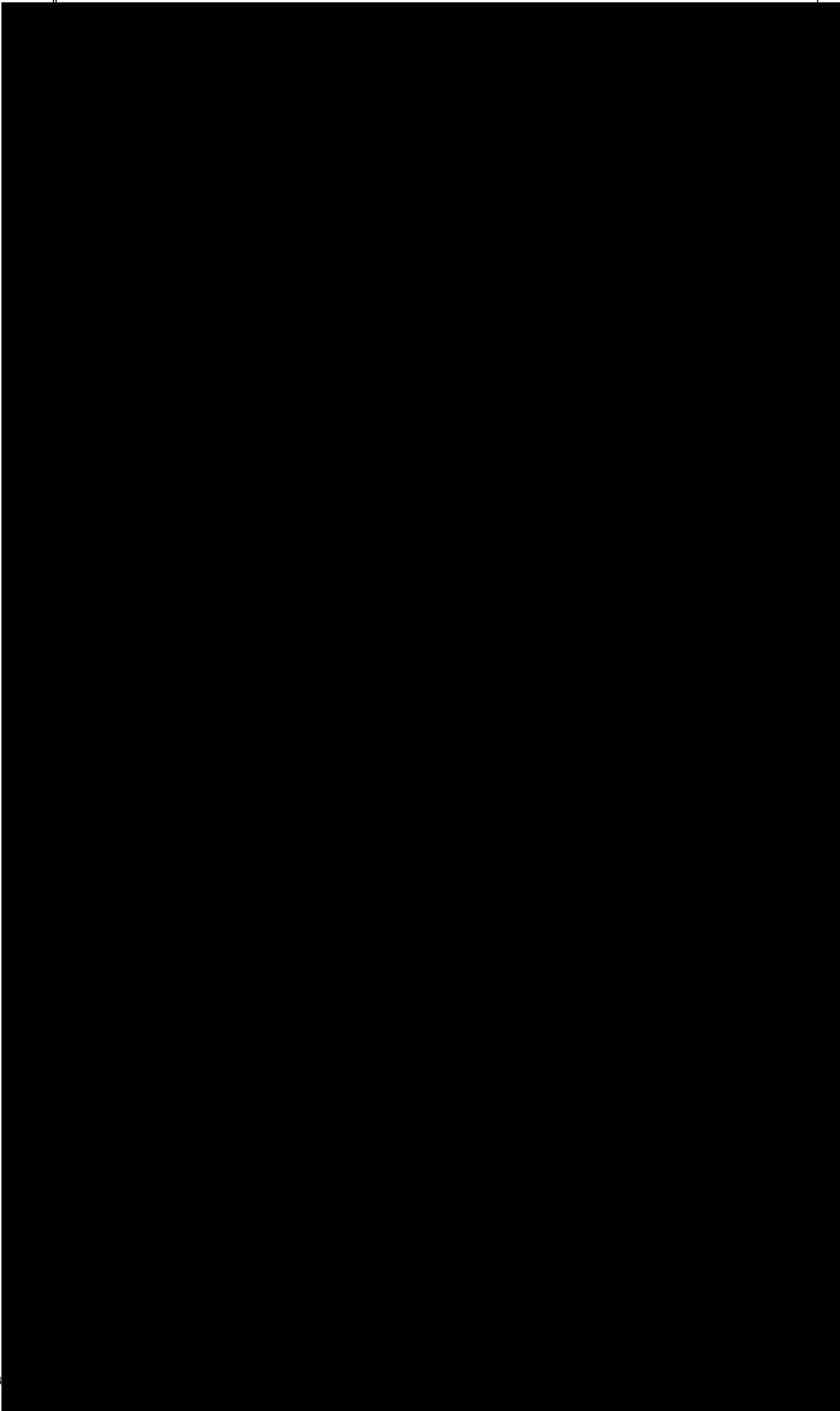


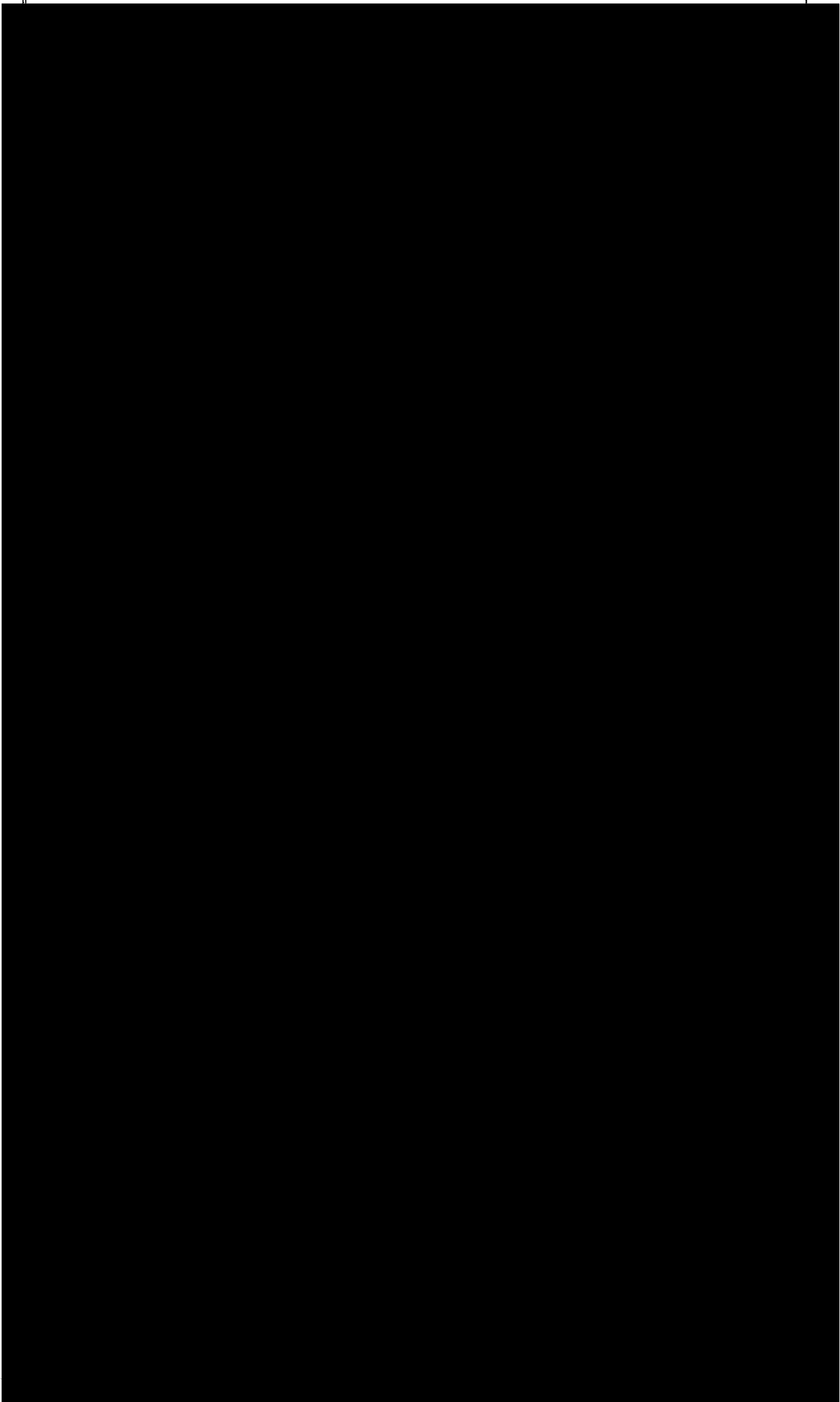


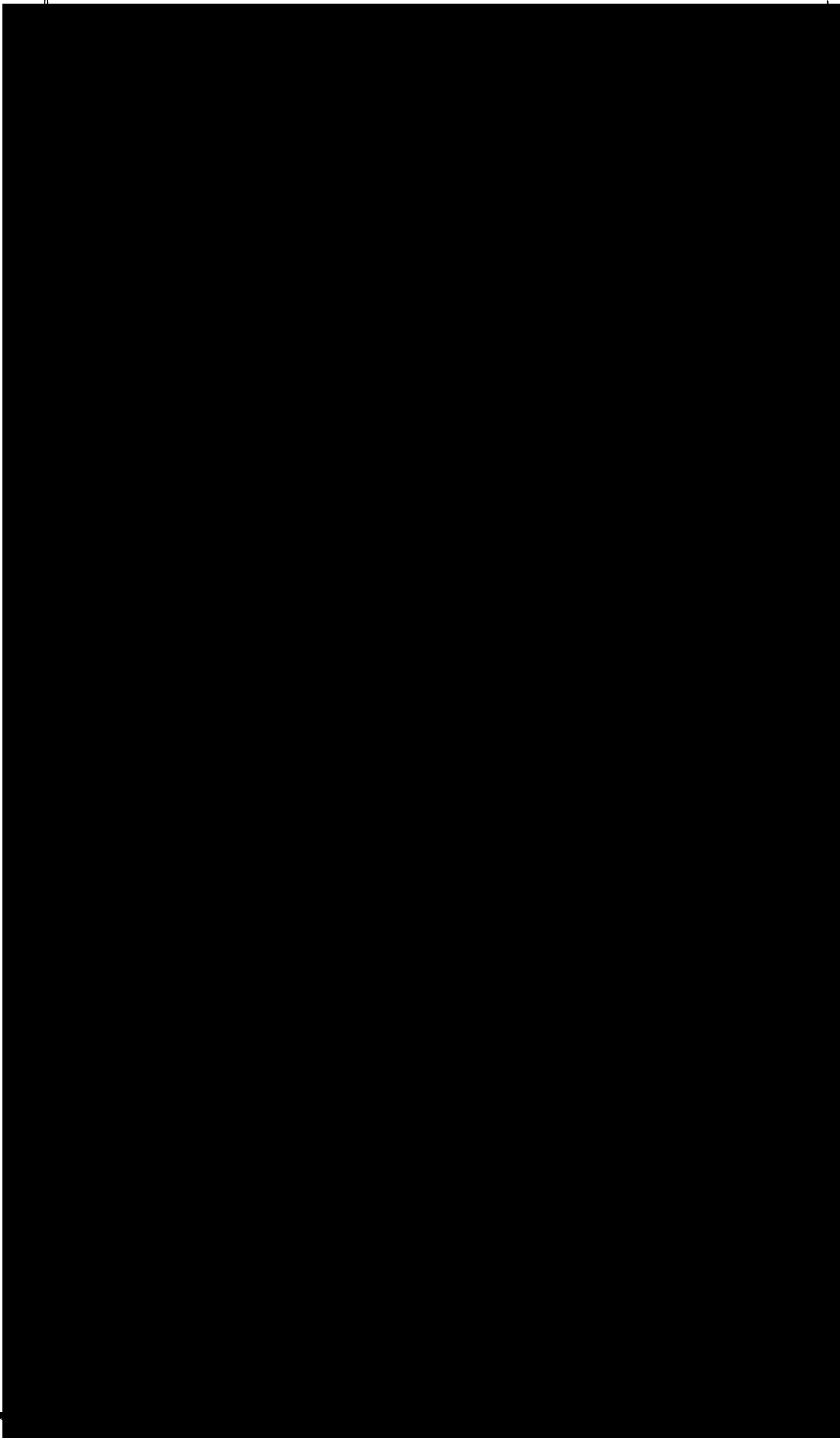


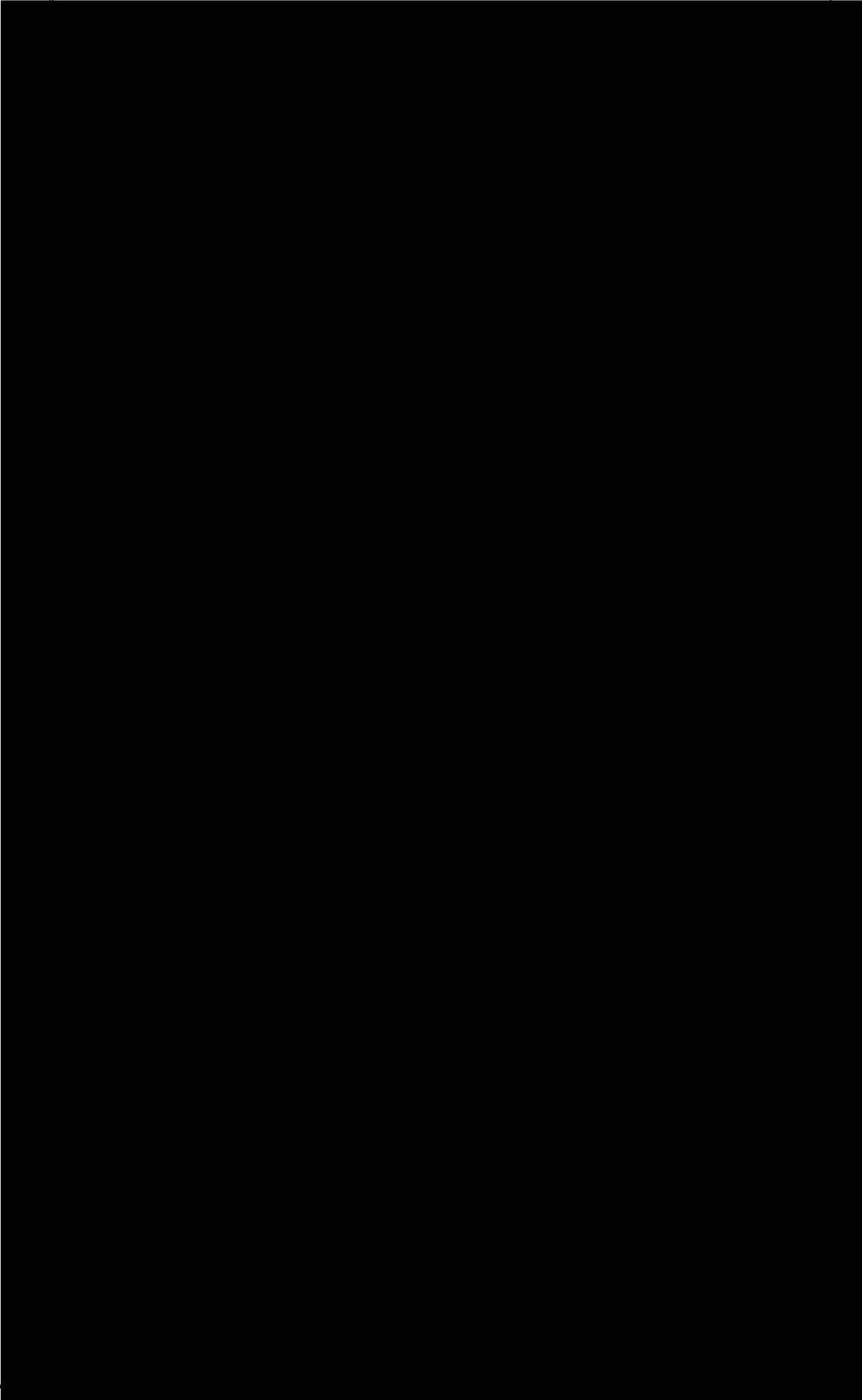


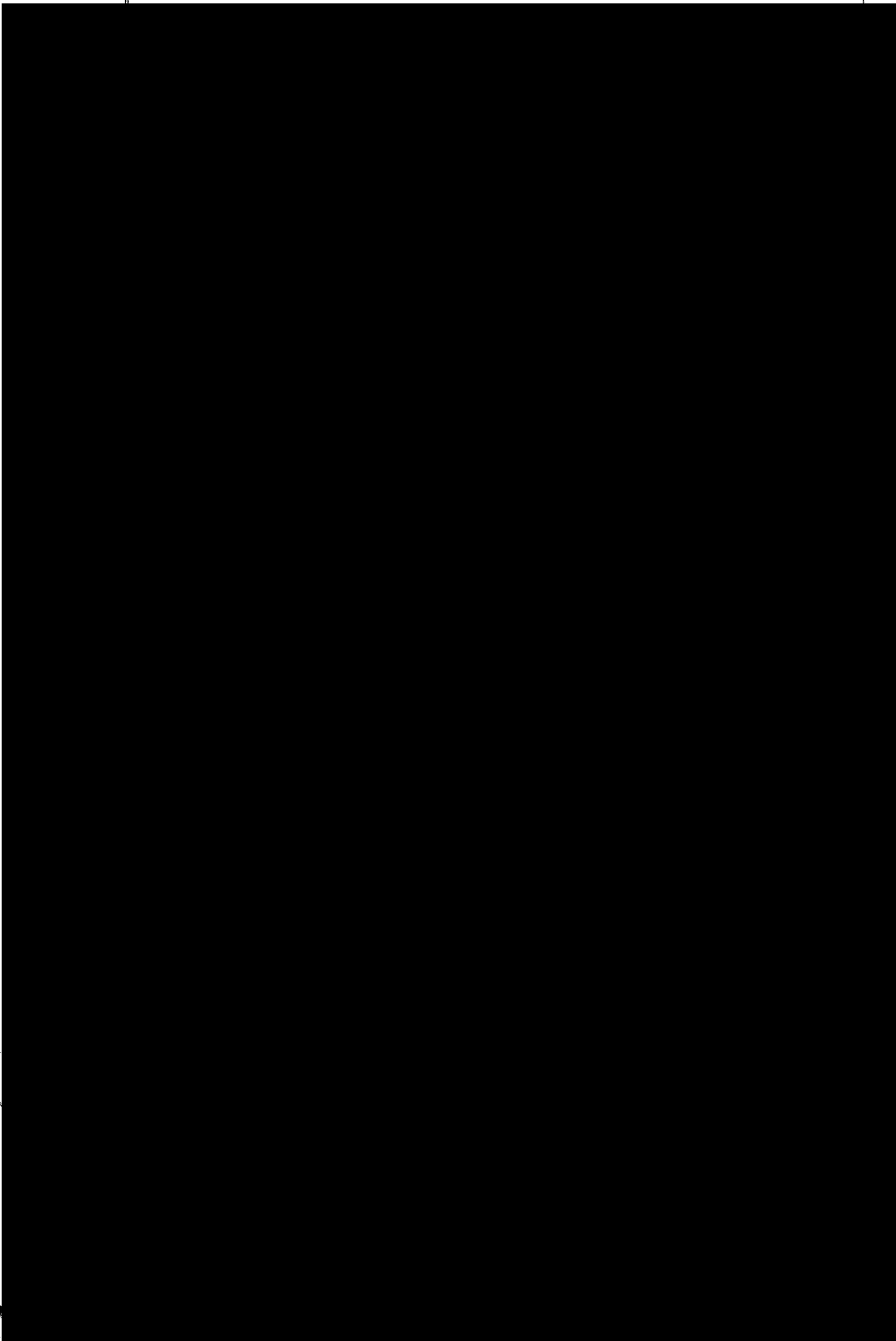


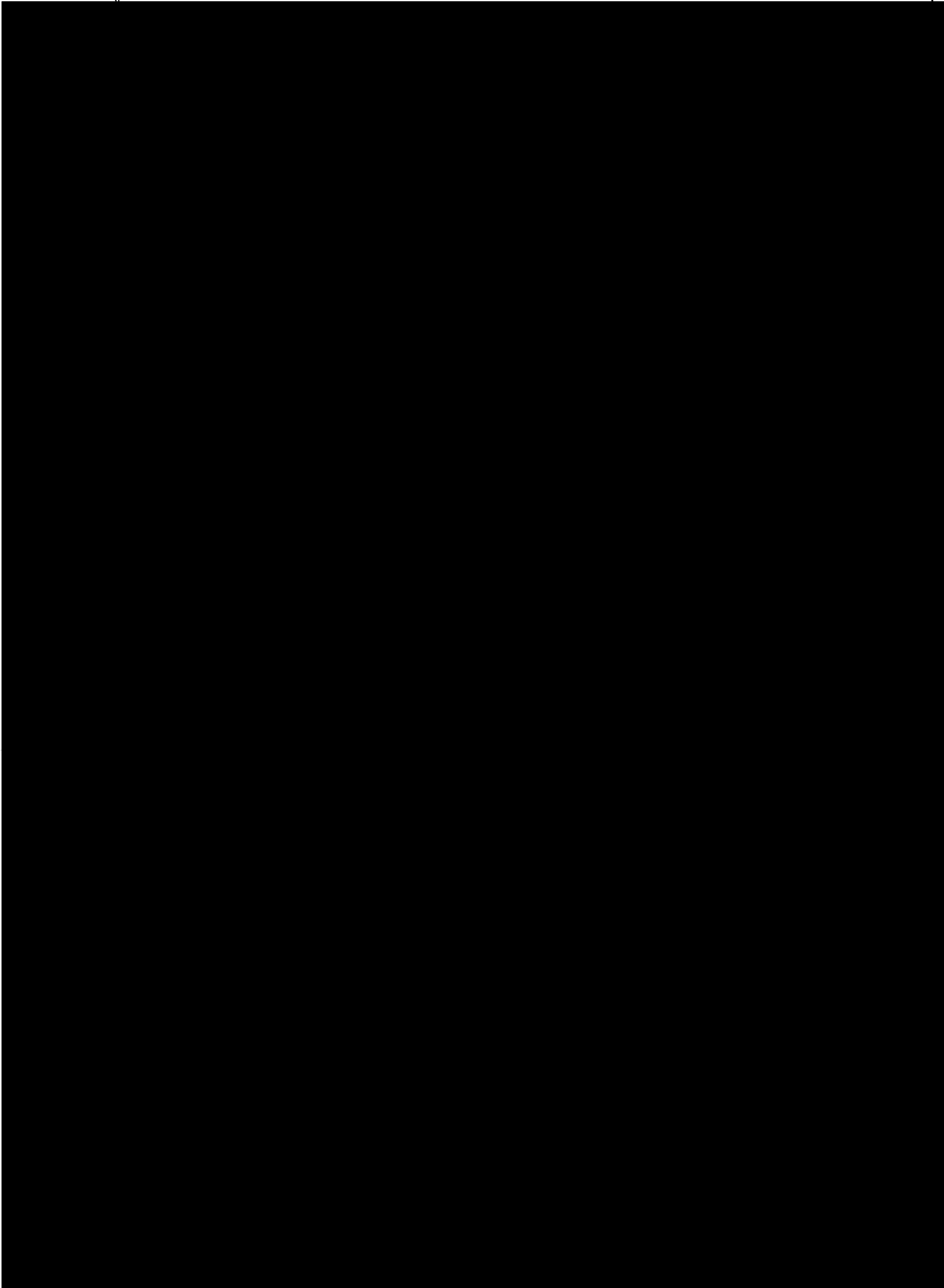












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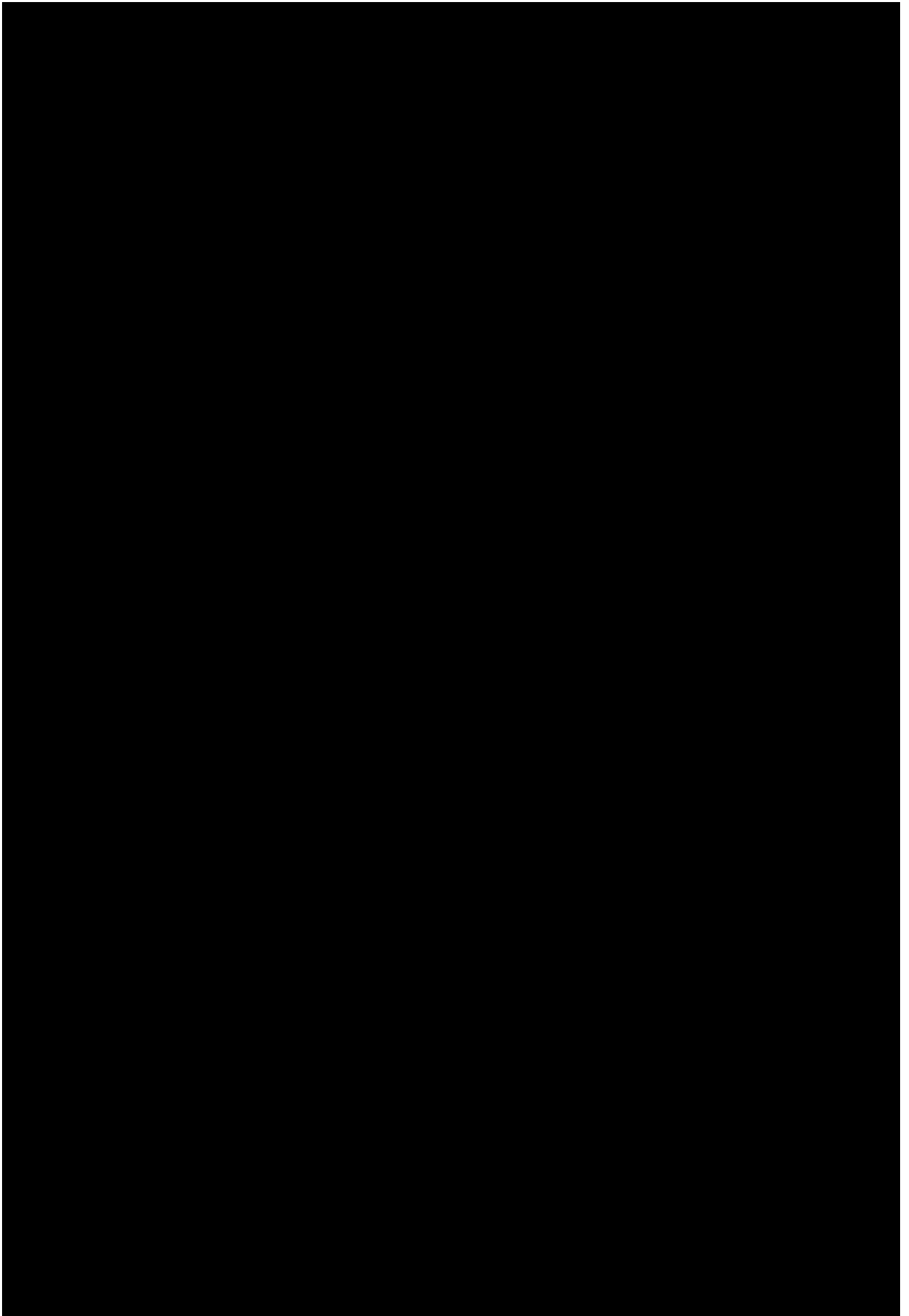
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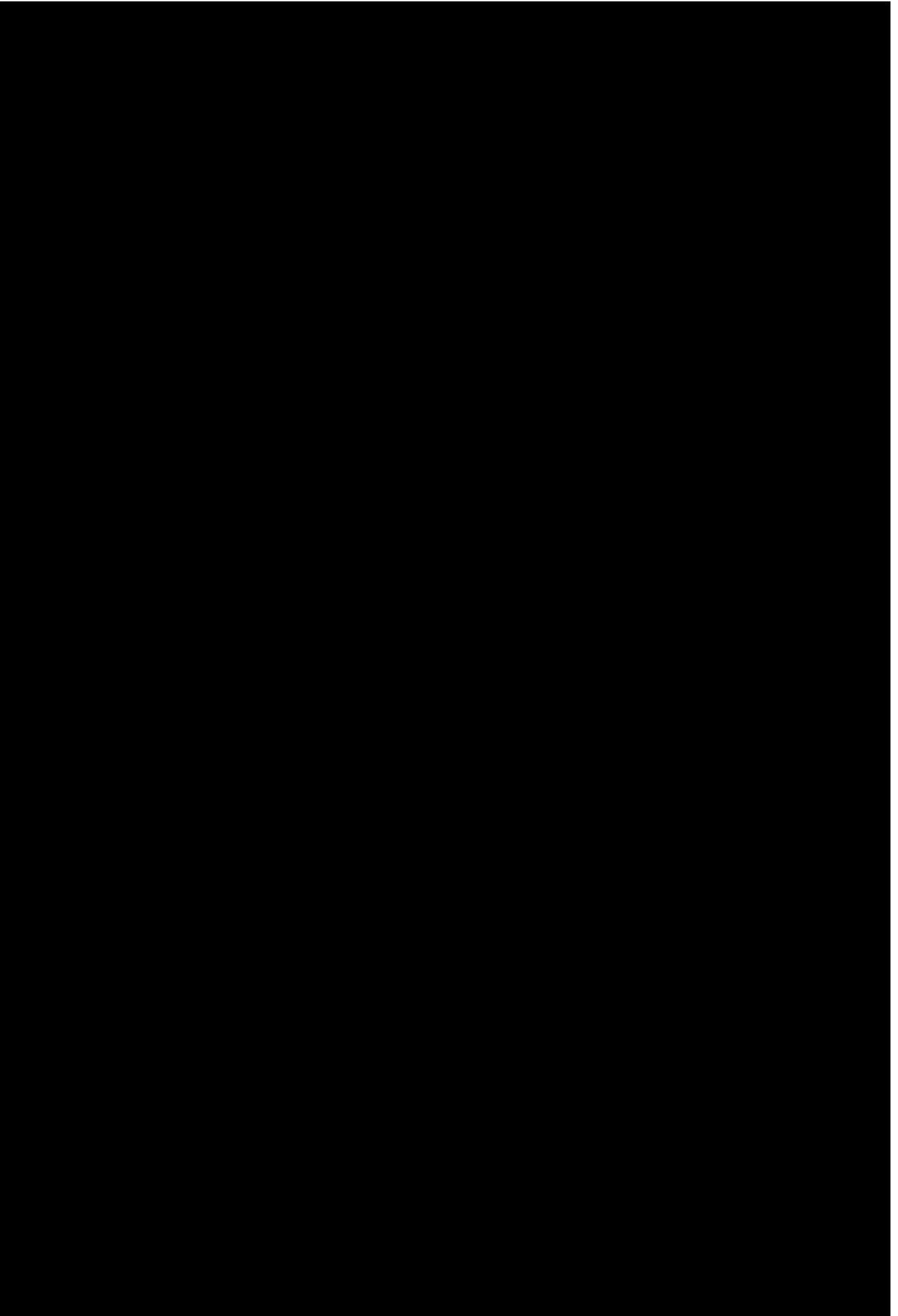
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NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 3

EXCERPTS FROM TRANSCRIPT OF AUGUST 6, 2025
DEPOSITION OF THOMAS E. ZOELLER

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BEFORE THE
SURFACE TRANSPORTATION BOARD

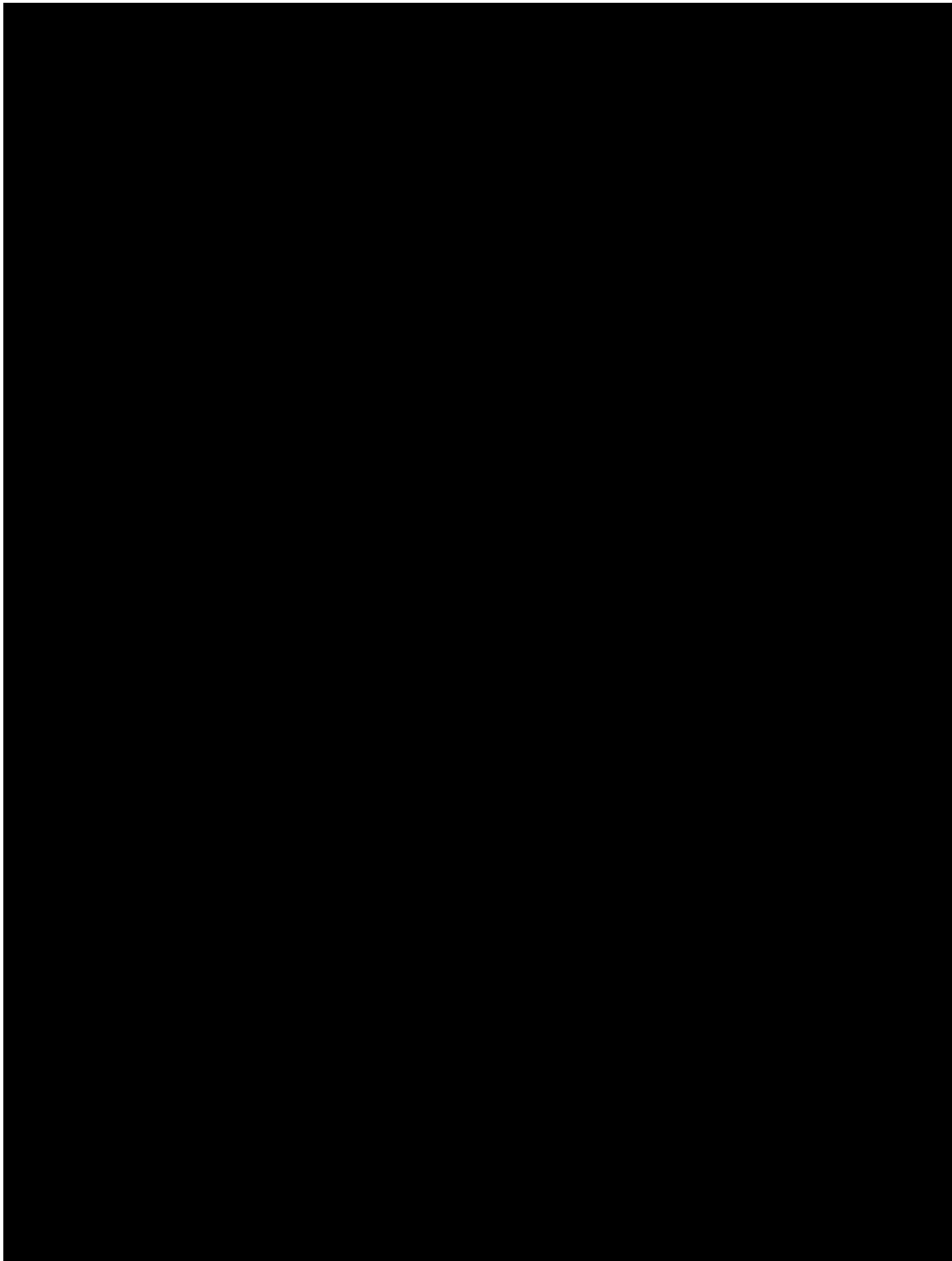
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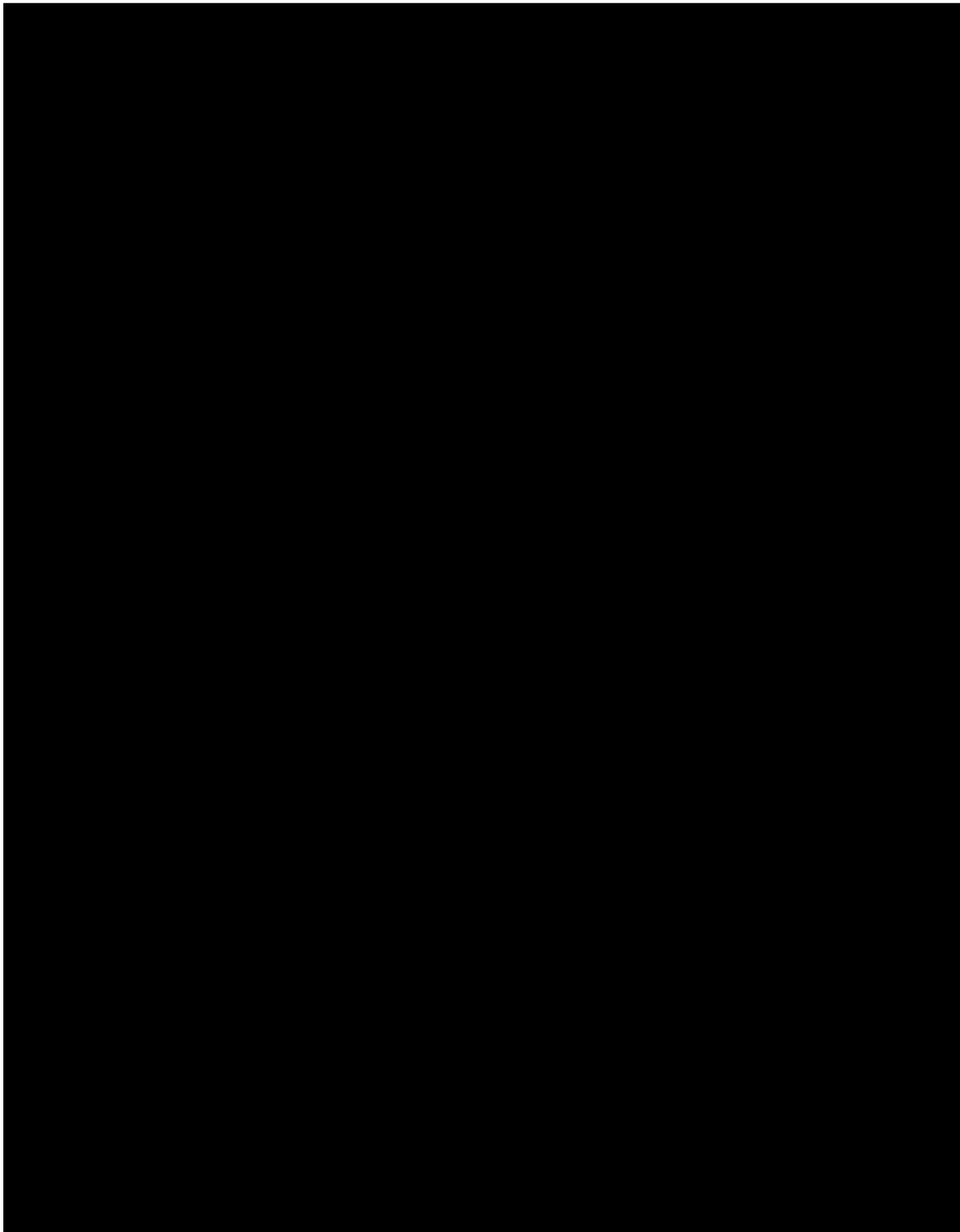
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NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

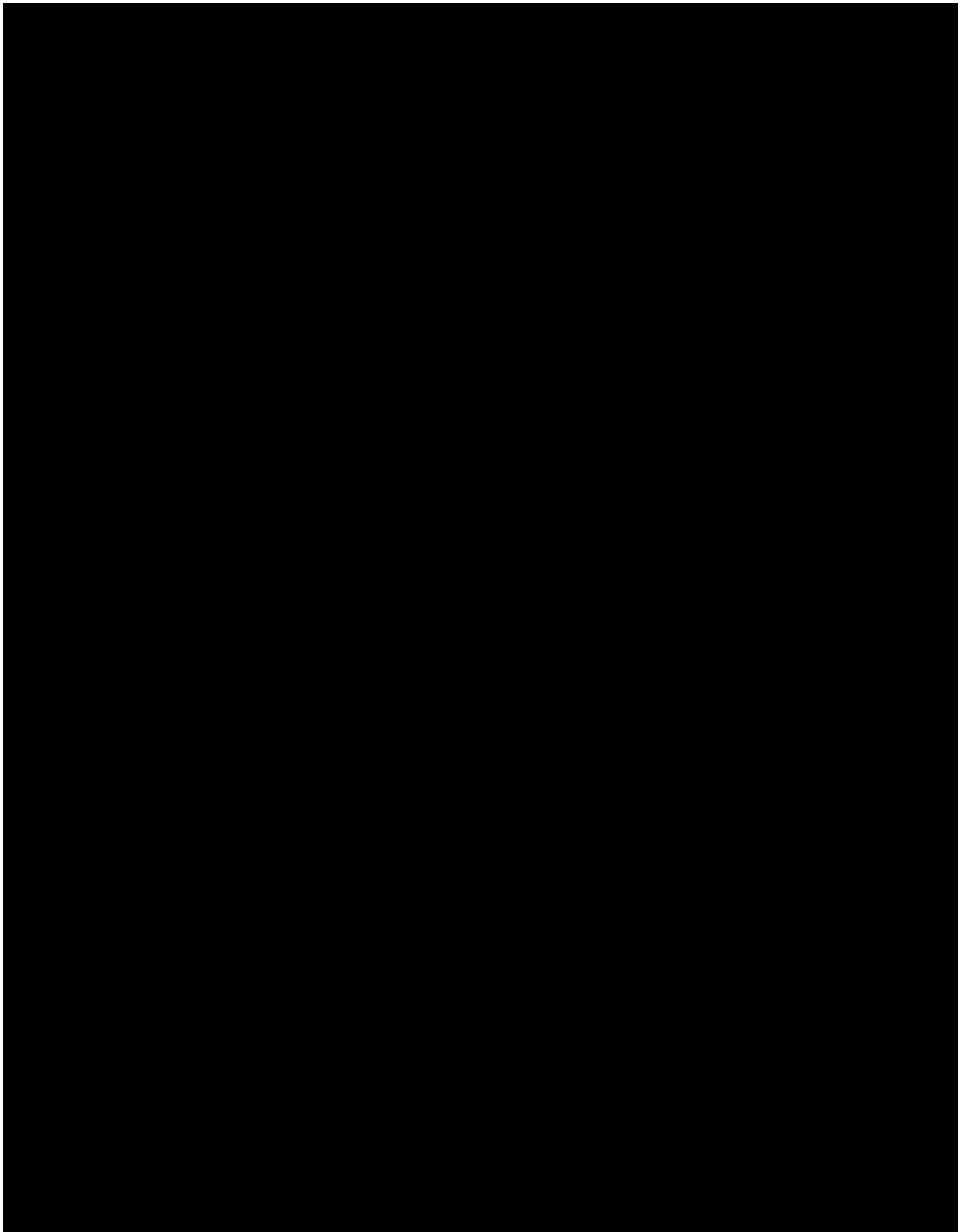
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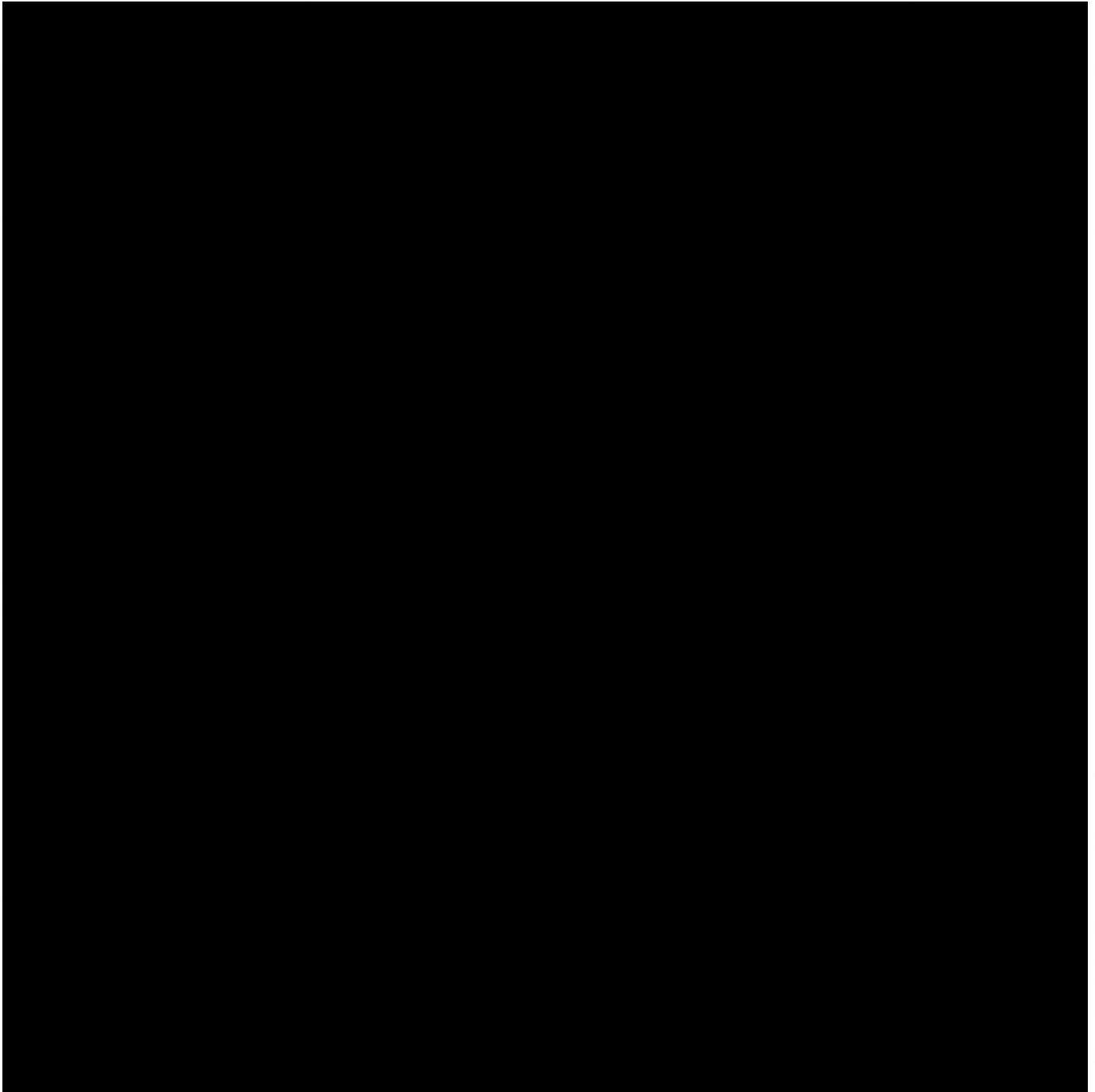
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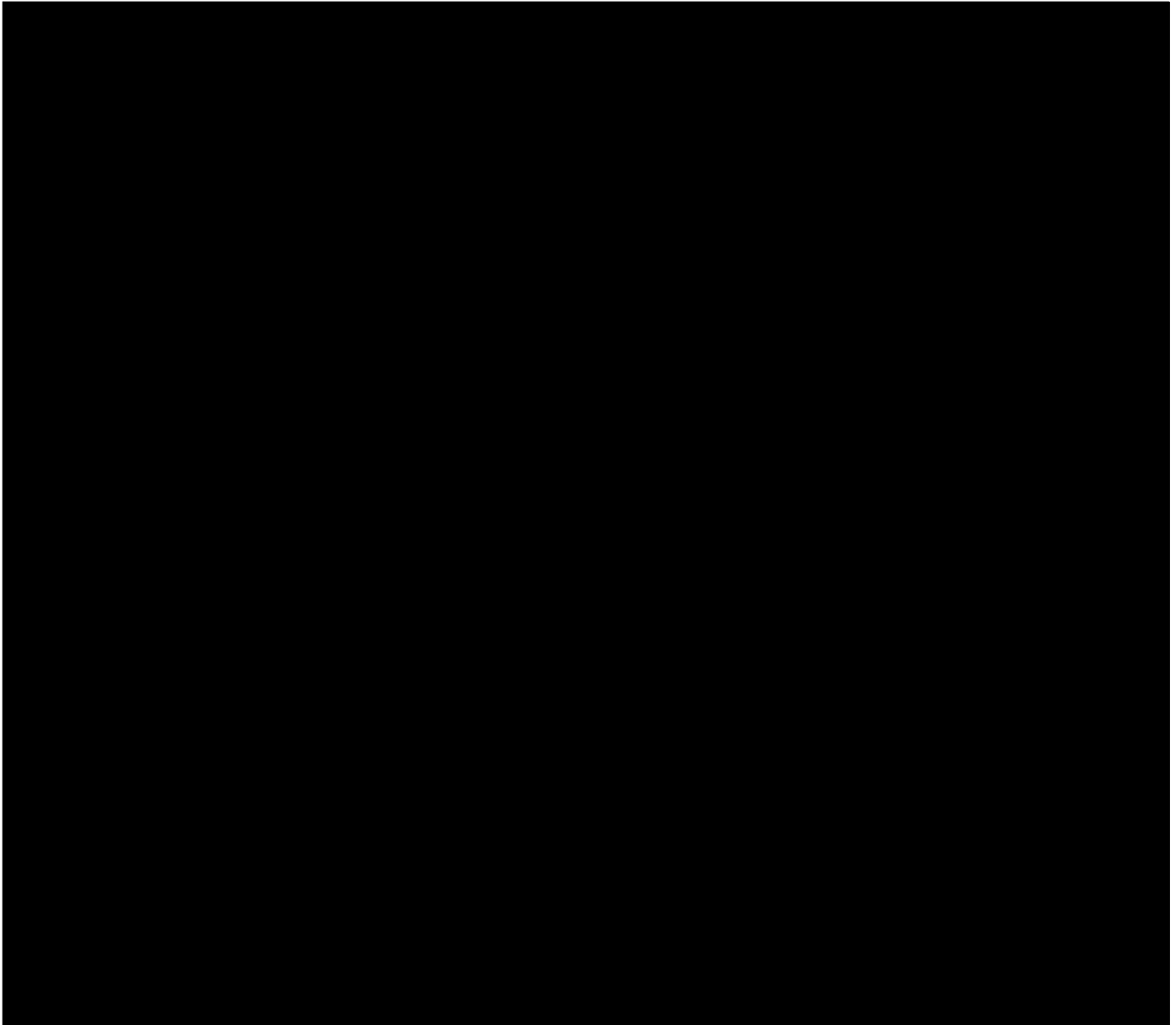


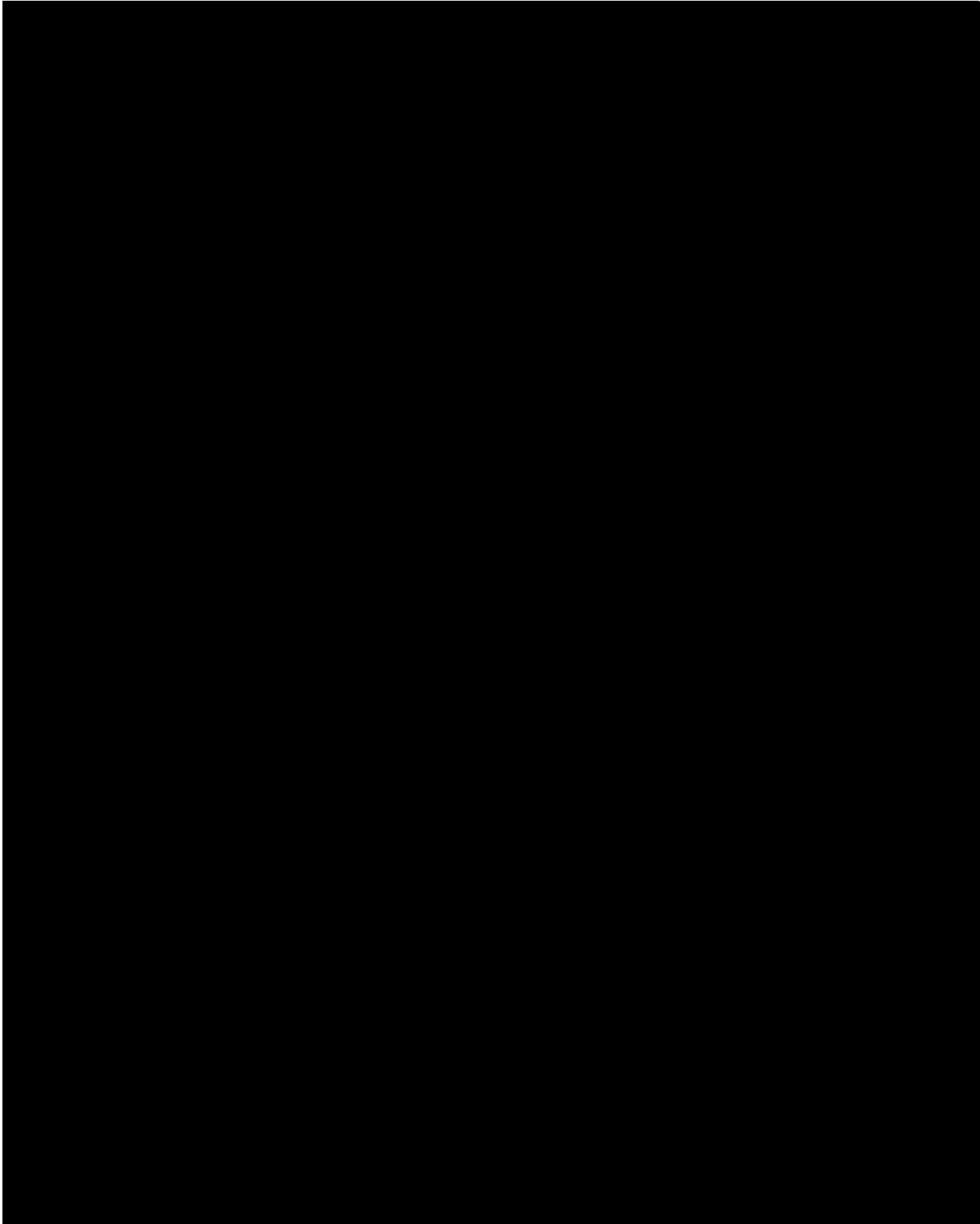


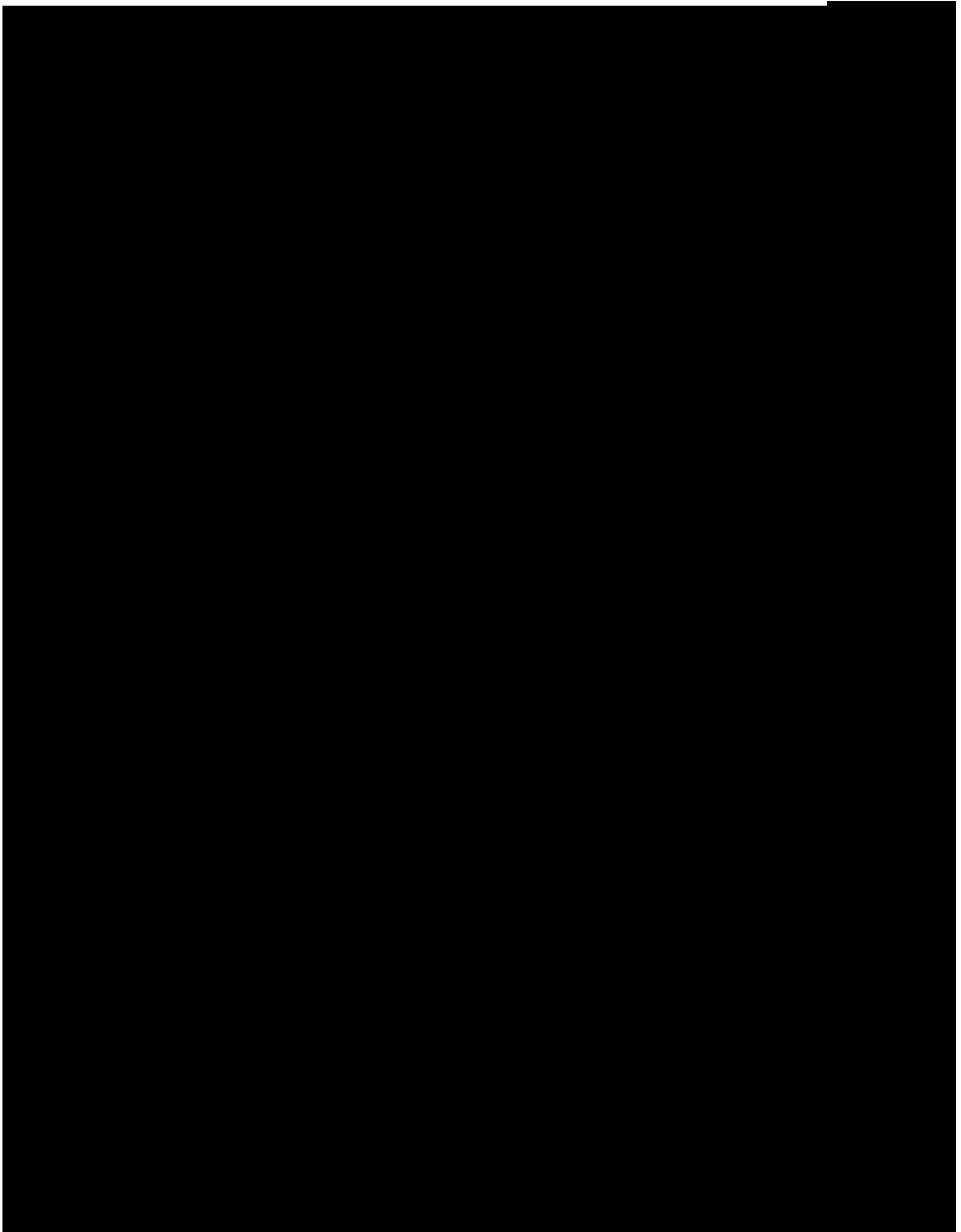












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BEFORE THE
SURFACE TRANSPORTATION BOARD

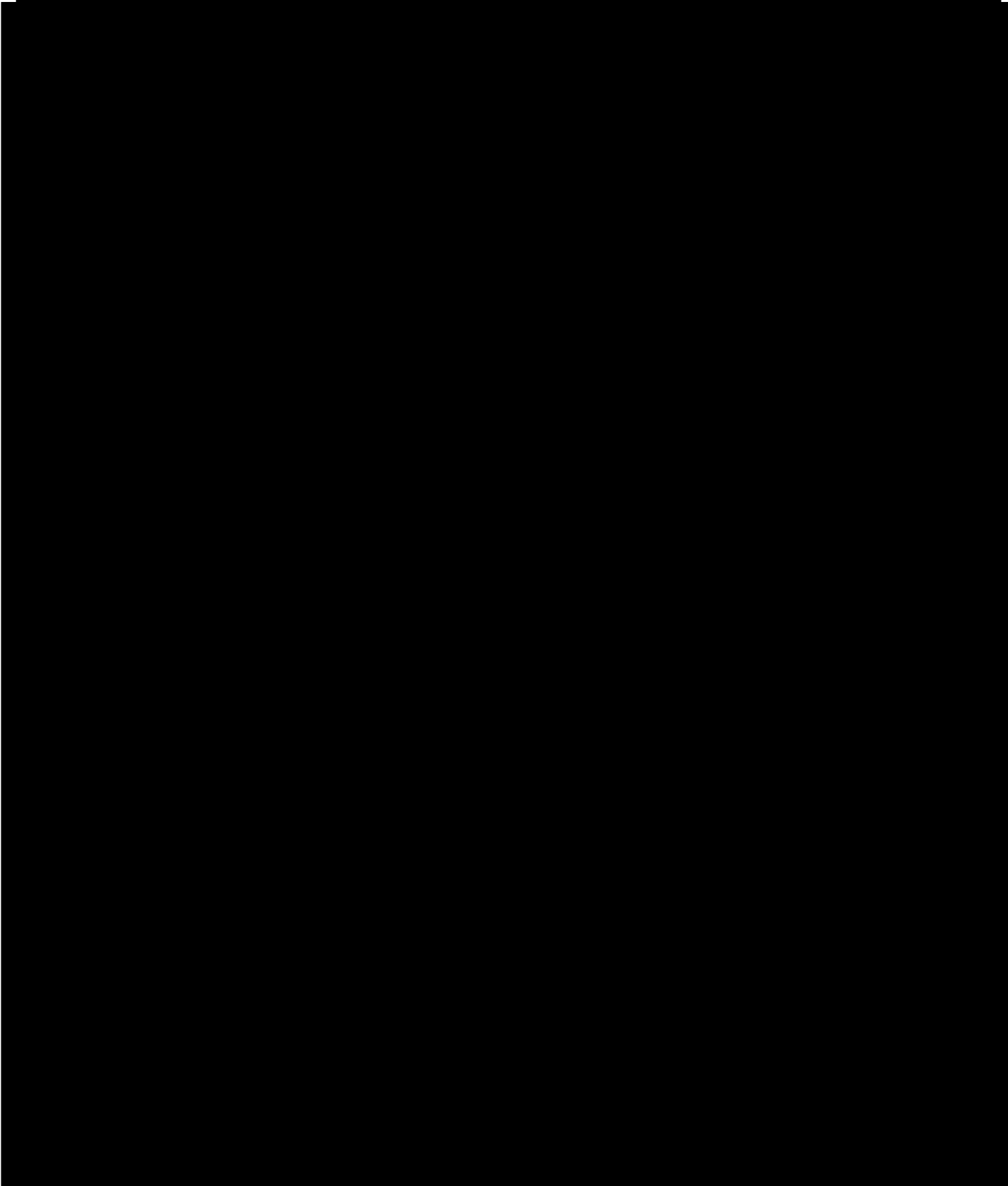
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NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 5

OCTOBER 10, 2019 EMAIL CONTAINING MINUTES OF A
JANUARY 30, 2018 MEETING BETWEEN NS AND CSXT (STB-NS-0005804)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

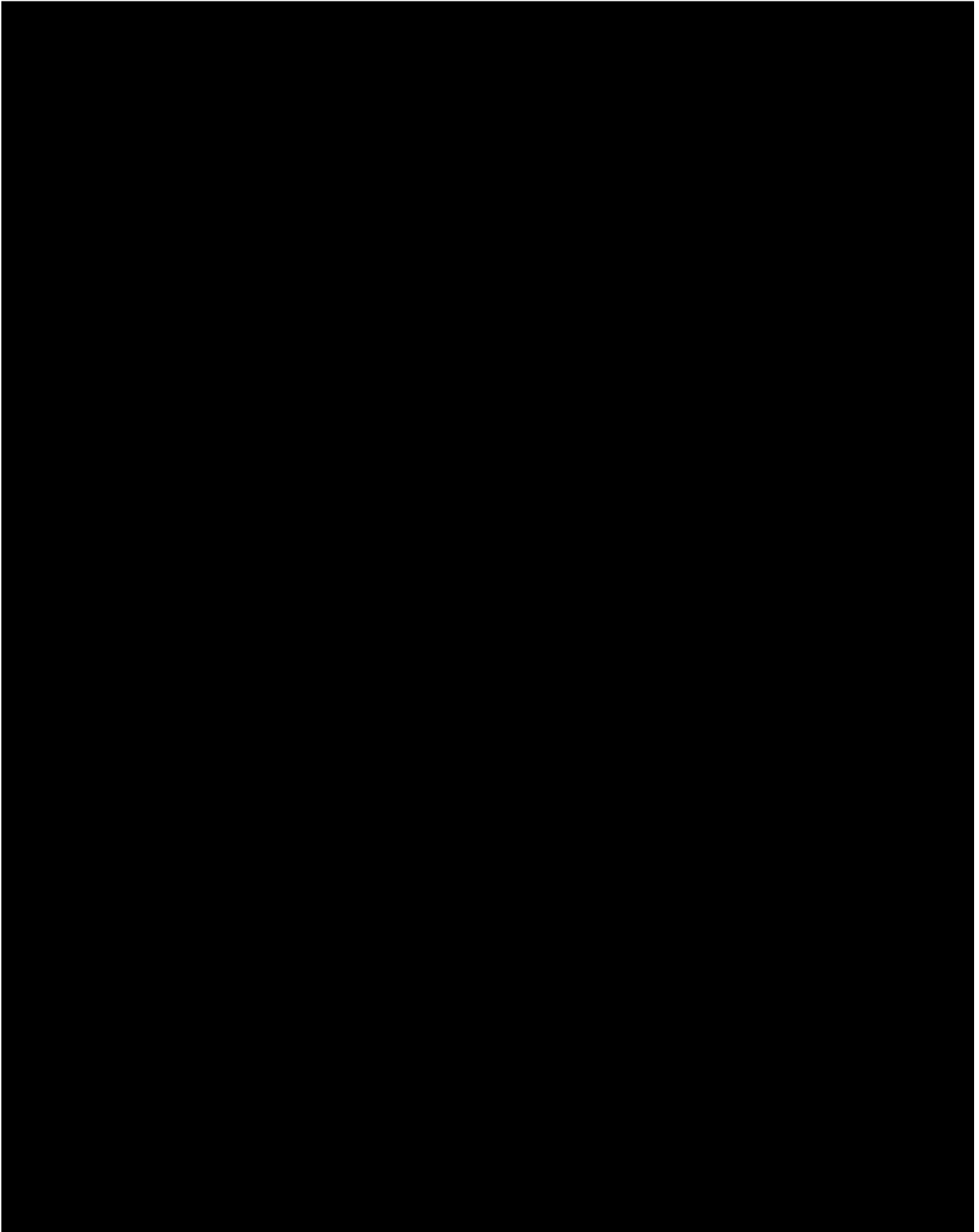
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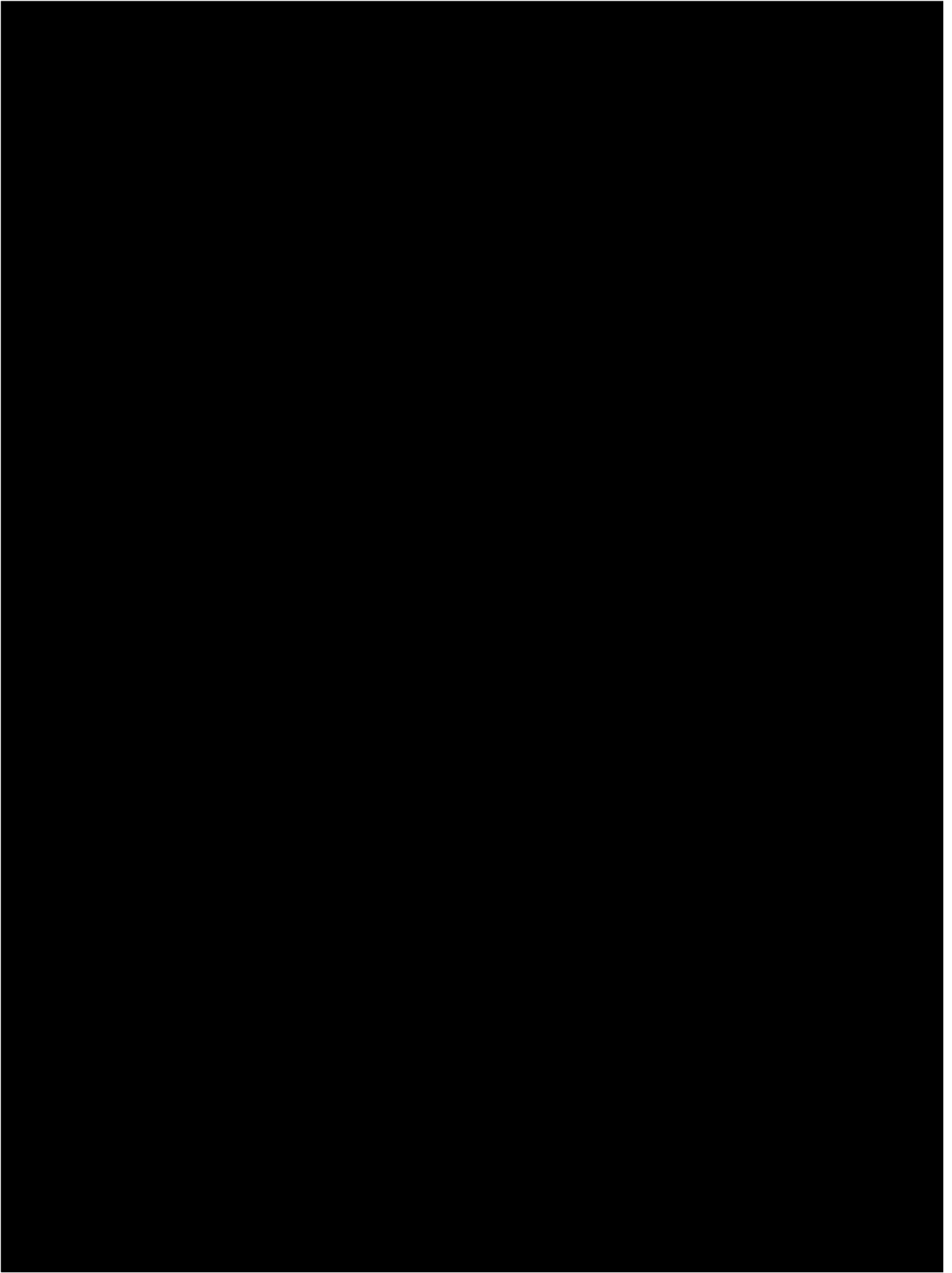
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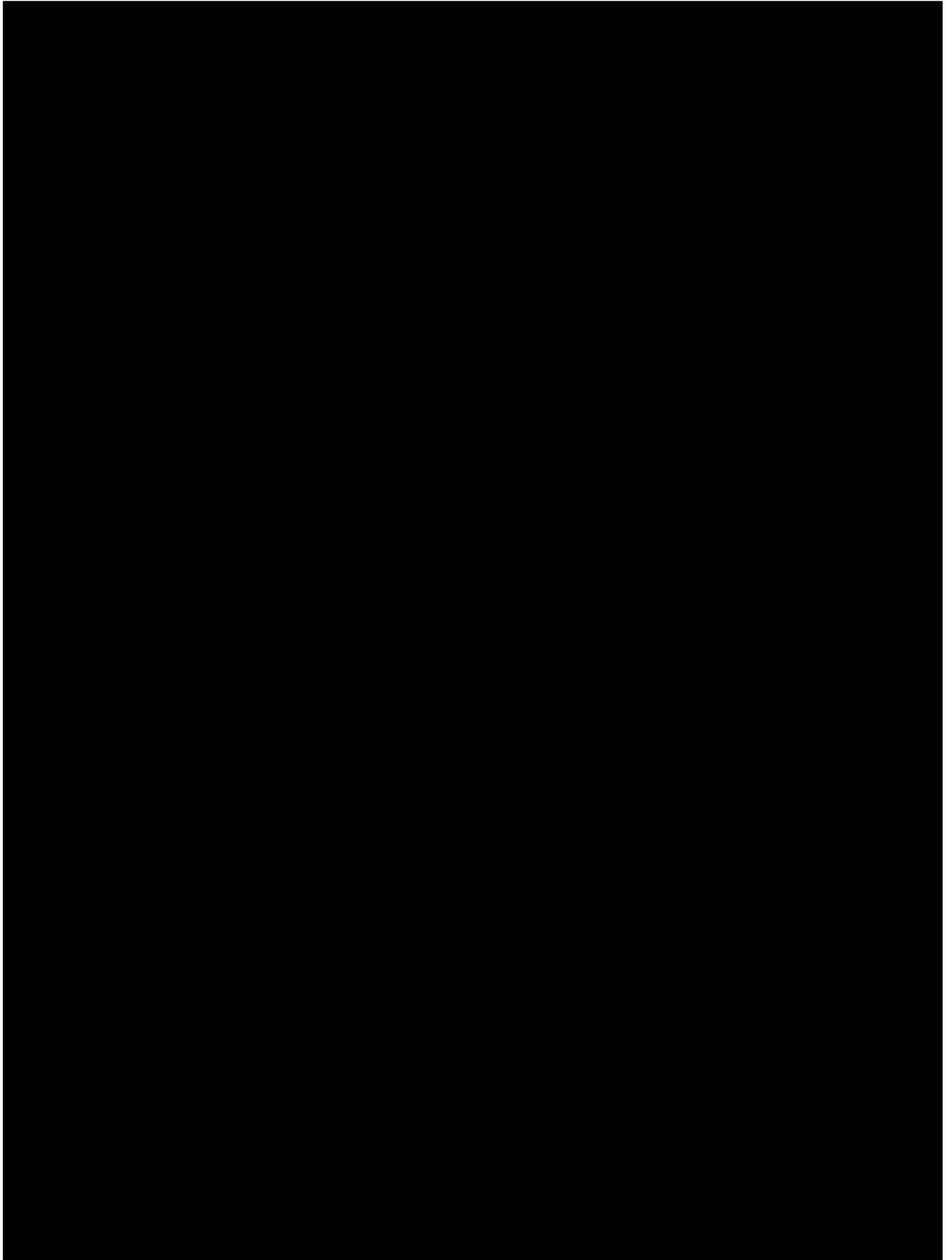
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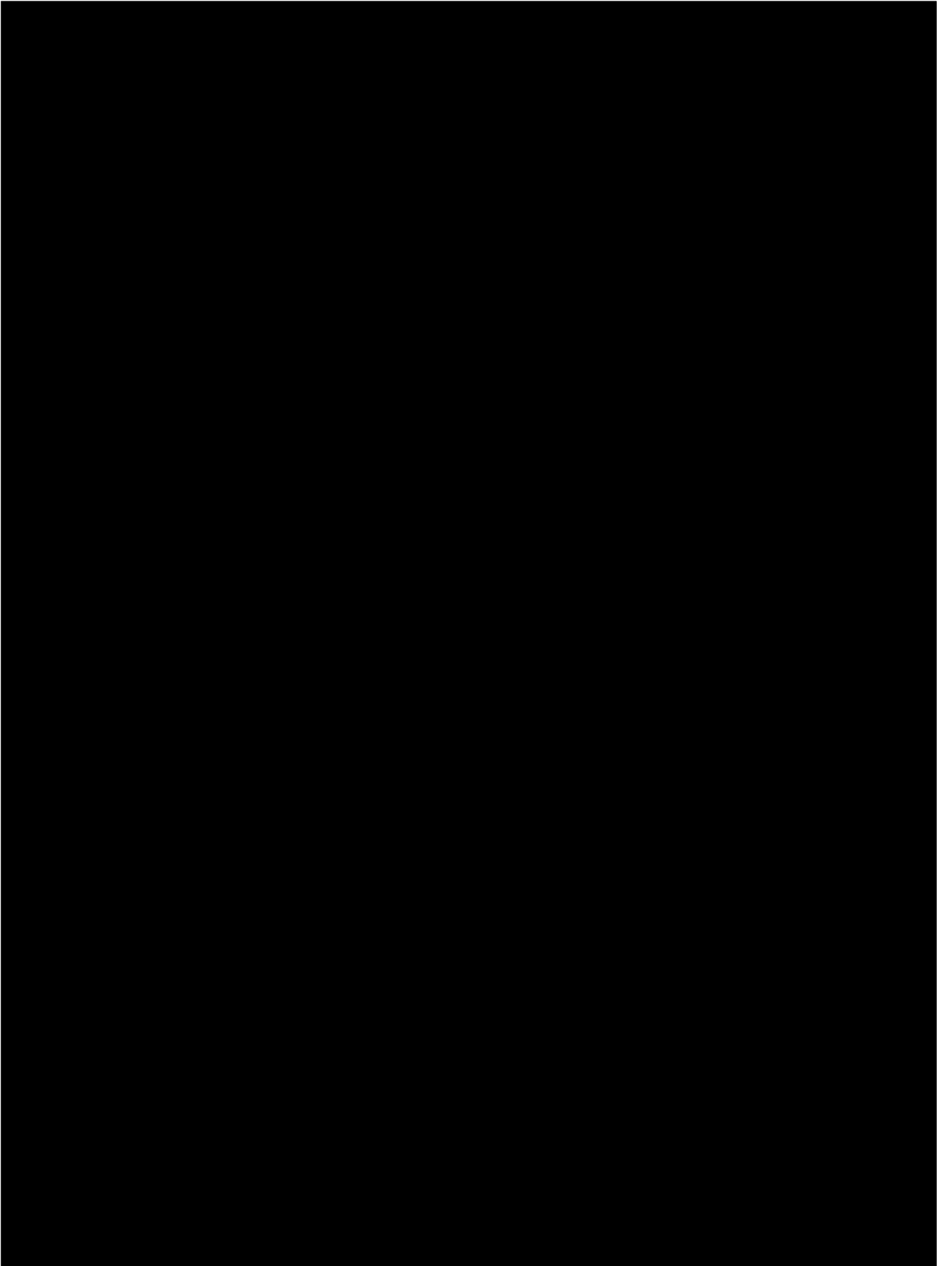
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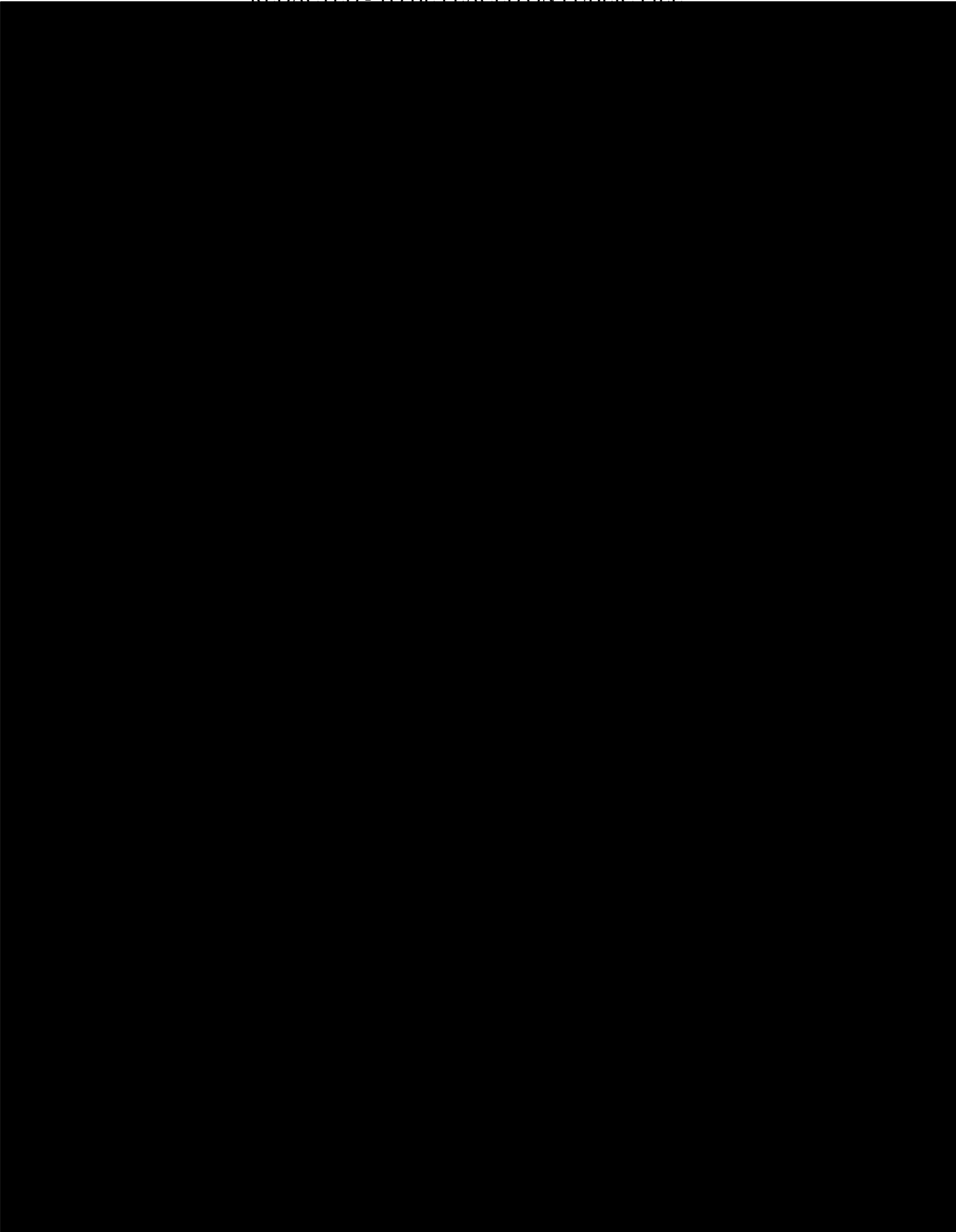
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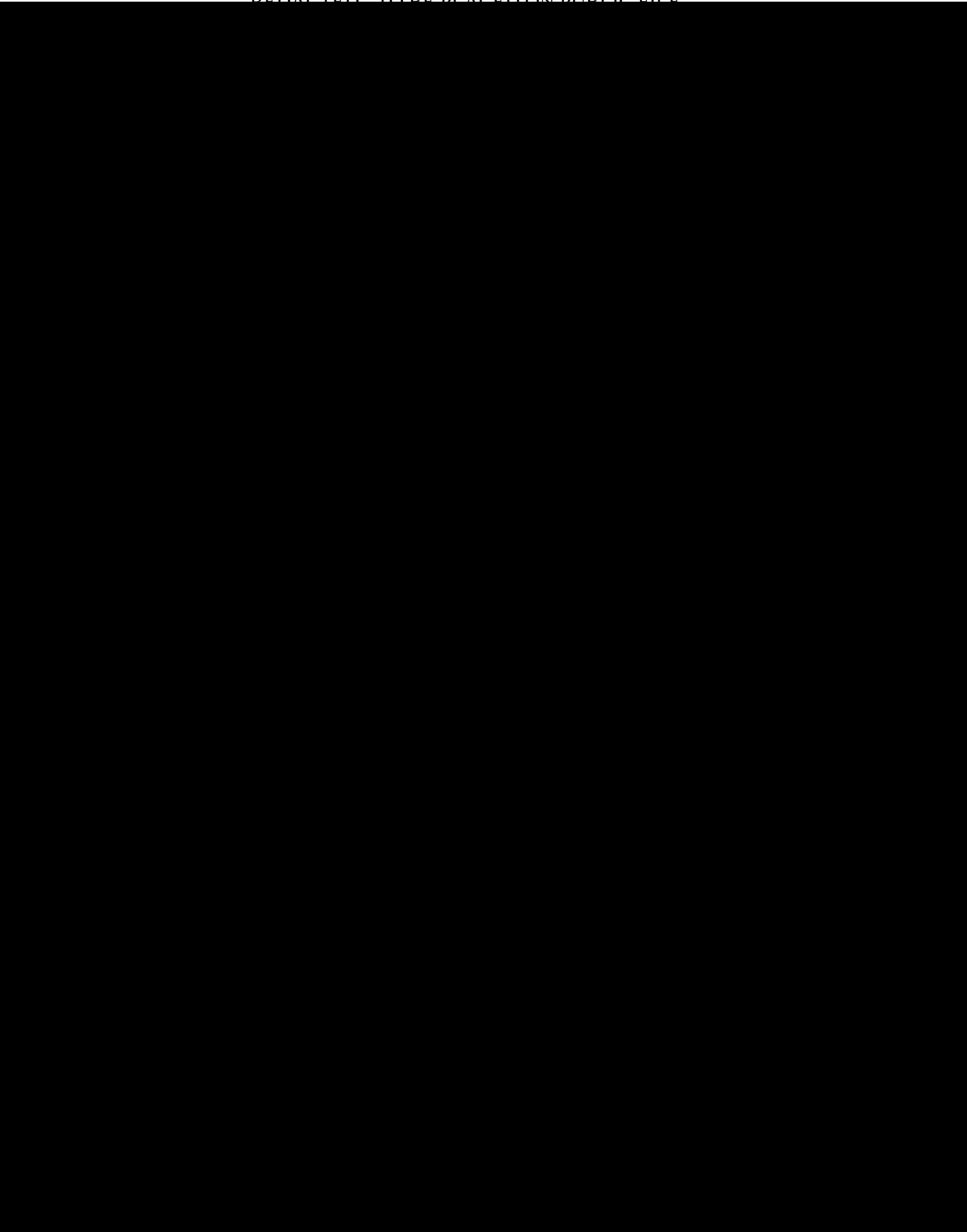


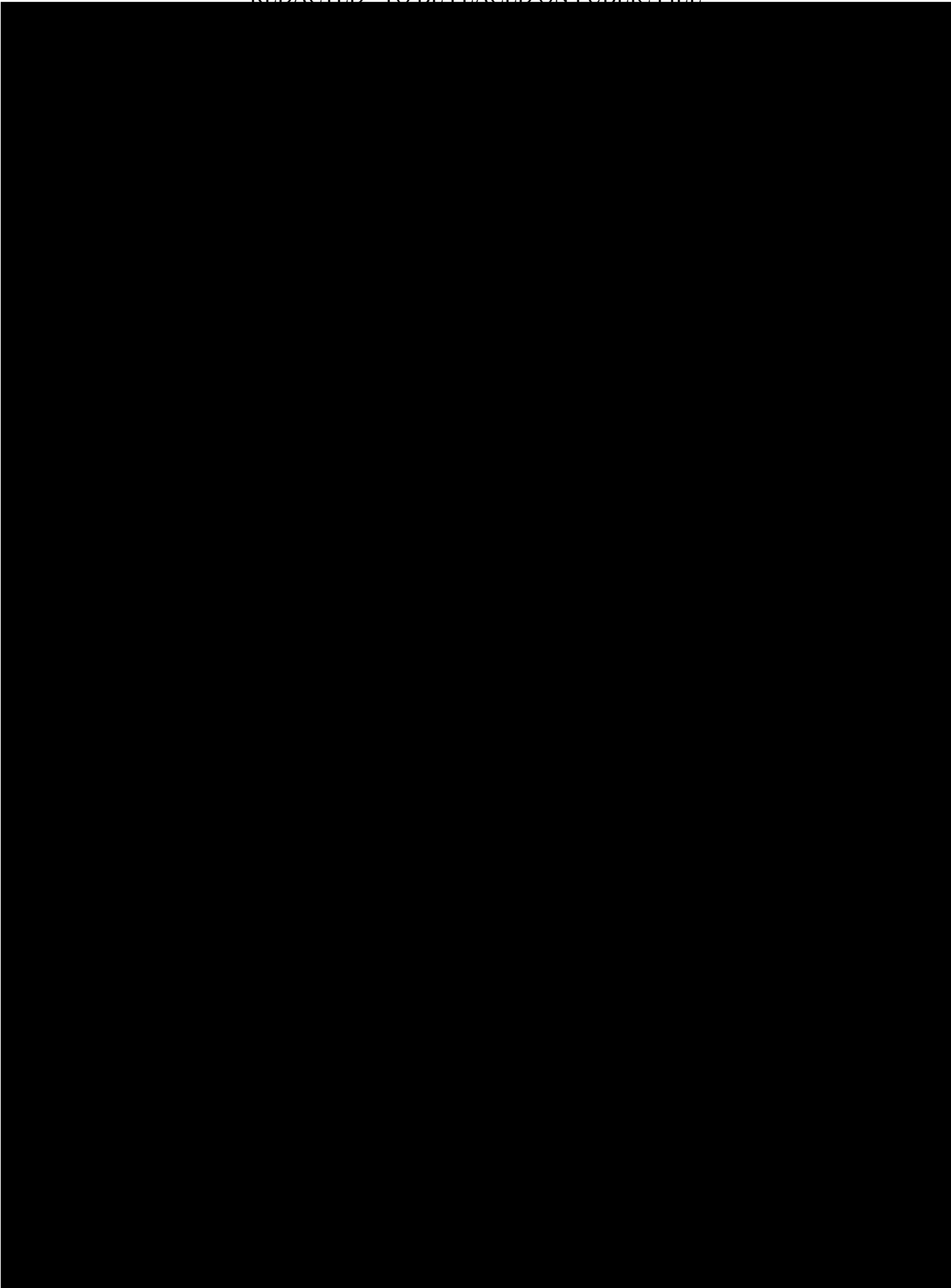












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EXHIBIT 7

AUGUST 27, 2018 EMAIL FROM NS'S ROBERT MARTINEZ
REGARDING CANNON MOSS (STB-NS-0023792)

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EXHIBIT 8

APRIL 3, 2018 EMAIL FROM NS'S ADAM WRIGHT
REGARDING A PRIOR MEETING WITH NPBL (STB-NS-0003607)

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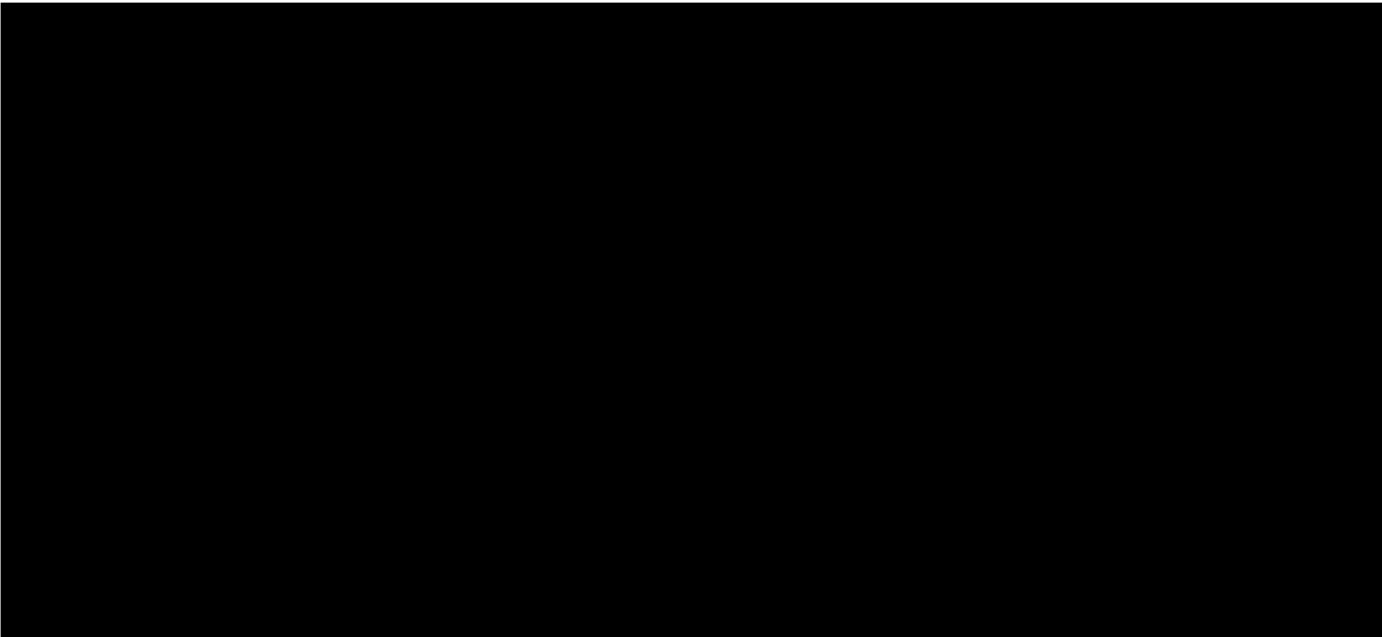
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EXHIBIT 9

MARCH 29, 2018 EMAIL FROM NS'S SCOTT PLUM
REGARDING A PRIOR MEETING (STB-NS-0008826)

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—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 10

EXCERPT FROM NS WEBSITE (EXHIBIT 14 IN THE
FEBRUARY 19, 2020 DEPOSITION OF KENNETH JOYNER)



SHIP WITH NS GET TO KNOW NS WORK AT NS INVEST IN NS

SERVICE ALERT: Derrillment update and bridge washout + 1 MORE ALERT

Shipping Options / Intermodal / NS Services

SHARE f t e

International Business Group

NS' International Business Group ships from port to door.

International Business Group

Domestic Business Group

Premium Business Group

As globalization of the world's economies continues, more businesses are involved in international trade, and intermodal containers now are predominant in global shipping.

In general, international containers are 20', 40', or 45', standardized to allow containers easy movement overseas by ship, over the road by truck, and stacked on an intermodal rail car for rail transport.

Norfolk Southern operates an extensive and reliable double-stack rail network, serving more major eastern US markets than any other rail carrier. In addition, NS offers connections to carriers in the western US and Canada. Transcontinental moves are interchanged between railroads at major gateways, including Chicago, Kansas City, Memphis, Tenn., and Shreveport, La.

With a strong portfolio of rail services from East Coast ports, NS serves vessels sailing to and from Europe, the Far East, and South America and provides service excellence to ocean carriers. With a tradition of strong partnerships with all major East Coast container ports, NS works to continuously improve the process of transferring containers between ship and rail.

On-dock rail is offered at the ports of Savannah, Ga., Norfolk, New York, and Jacksonville, Fla. On-dock facilities offer reduced drayage cost and more efficient transportation for intermodal customers.

Recognizing the growth in Atlantic port services over the last several years, NS also serves near-dock facilities at Baltimore, Charleston, S.C., and Miami.



Getting started using NS Intermodal is easy, check out our [Getting Started page](#) to see how easy it is to get going.

GET STARTED

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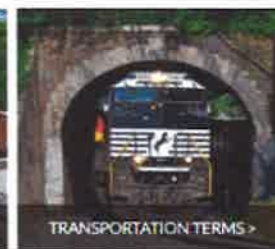
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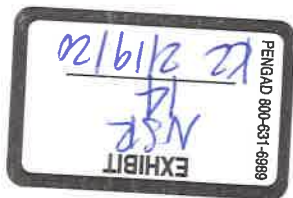


Exhibit 10



NS Police Emergency: 800-453-2530

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—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 11

ROBERT E. MARTINEZ, OP-ED, *STATE RAIL PLAN ESSENTIAL
TO PORT'S SUCCESS*, THE STATE, JAN. 20, 2011

Editorial - Opinion Extra
Thursday, Jan. 20, 2011

Martinez: State rail plan essential to port's success

By ROBERT E. MARTINEZ - Guest Columnist



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State and regional leaders today find themselves at a critical decision point: Get it wrong, and the negative consequences will ripple across the state for generations; get it right, and the economy will thrive. The danger is that a decision driven by short-sighted considerations in the interest of a few would put the region at a long-term competitive disadvantage from which it may not be able to recover.

The question is where to locate an intermodal container transfer facility that would serve the Port of Charleston. Two plans have been proposed: one in a memorandum of understanding among the city of North Charleston, CSX and Shipyard Creek Associates at the Macalloy site, and the other most recently by the state Department of Commerce at the Clemson property. The two are starkly different — as would be the consequences of their implementation.

The key factor is equivalent dual rail access. Nearly all port expansions in recent times have included it — including the two East Coast ports that have recently surpassed Charleston in container business. To forgo it in Charleston would be a grave mistake, because ocean carriers now expect it. It's more than a question of quality of service and competitive pricing; it's market access. The two railroads that serve Charleston — CSX and Norfolk Southern — each provide the port with direct access to cities that the other does not. Those served by Norfolk Southern but not CSX include Dallas, St. Louis, Cincinnati, Kansas City, Louisville and Huntsville, Ala.; in addition, only Norfolk Southern's route from Charleston can offer the Upstate the efficient connectivity needed to one day move containers by rail from the port to the Upstate. CSX serves markets that Norfolk Southern does not. The port needs service from both railroads to be competitive with other ports.

The Macalloy plan would effectively exclude direct rail access to those markets served exclusively by my company, Norfolk Southern. The plan claims to give Norfolk Southern access to the transfer facility, but it's a hollow claim, because operationally it will not work. Simply by the nature of geography and the location of existing rail lines, Norfolk Southern trains inevitably would be subject to too many CSX control points to make competitive service practical. In effect, CSX would have exclusive access to the facility, thus limiting direct inland rail access to only those markets served by CSX — a factor that weighs heavily in ocean carriers' decision which port to call on.

The state's plan for an intermodal facility on the Clemson property would give Norfolk Southern access from the north and CSX access from the south, giving both equivalent operational flexibility, with neither having an advantage over the other. Proposed mitigation measures such as crossing improvements, sound barriers and a quiet zone would significantly minimize the impact of rail traffic on the quality of life in North Charleston.

With the widening of the Panama Canal, ocean carriers will be shopping around for East Coast ports with the best facilities and the best market access as more and bigger ships come from Asia. Truly competitive, near-dock rail access by both carriers will be critical. The state's plan would place the Port of Charleston in a powerful position to claim a significant share of international container traffic. That, in turn, will spur regional growth in warehouse, distribution and manufacturing facilities. In short, it will allow the region and state to compete for a type of investment it cannot attract absent the competitive rail market access. The Department of Commerce's plan is the only one that promises this future. It is the one that deserves the public's support.

Mr. Martinez is vice president for business development for Norfolk Southern Corp. He is a former secretary of transportation for the commonwealth of Virginia.



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BEFORE THE
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FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 12

AUGUST 1, 2018 EMAIL FROM NS'S ROBERT MARTINEZ
REGARDING CSXT ACCESS INTO NIT (NSR_00067467)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 13

ARI ASHE, *VIRGINIA PORT SERVICE SHUFFLE PROMISES
FASTER RAIL FLOW*, J. OF COMMERCE, AUG. 23, 2019

Virginia port service shuffle promises faster rail flow



The Port of Virginia will shift more weekly services into Virginia International Gateway with the new rail yard (upper right) now complete. Photo credit: Virginia Port Authority.

Ari Ashe, Senior Editor, Intermodal Rail | Aug 23, 2019, 2:57 PM EDT

The Port of Virginia hopes to provide faster transit times to cargo owners by routing more containers into a newly renovated intermodal yard.

The port will reshuffle which terminals each vessel calls on based on the alliances between ocean carrier and either CSX Transportation or Norfolk Southern Railway, which should result in fewer time-consuming drays between terminals.

It could also propel the Port of Virginia toward its goal of moving 40 percent of containers inland via rail. The number has fluctuated between 34 and 37 percent in the last few years.

REDACTED - TO BE PLACED ON PUBLIC FILE

The port has three container terminals — Virginia International Gateway (VIG), Norfolk Intermodal Terminals (NIT), and Portsmouth Marine Terminal (PMT). NIT provides on-dock rail only to Norfolk Southern. PMT provides limited CSX on-dock rail and none to NS. VIG, recently expanded to build 10,000-foot trains, serves both CSX and NS. Thirteen weekly services discharge in NIT, 10 in VIG, and four in PMT, the Virginia Port Authority said.

Some vessel strings were moved out of VIG during construction, which began in 2017. The result was that containers were trucked between terminals to be loaded onto a train, a time-consuming dray. With the VIG project complete, the port will now reshuffle the strings to increase terminal flow.

“One of the advantages of shifting these vessels to more modern terminals is to eliminate all the unnecessary drayage and do it more seamlessly on dock,” said Tom Capozzi, VPA’s chief sales officer.

The most important consideration, he said, is honoring the alliances between ocean carriers and railroads. Carriers aligned with CSX, for example, should be going into VIG rather than NIT.

Recent shifts of vessel calls

Within the last month, the 2M Alliance’s TP-12 Asian service through the Panama Canal was moved from VIG to NIT because it doesn't have much rail freight.

The Indamex (India America Express) service, a CMA CGM, Ocean Network Express (ONE), OOCL, and Hapag-Lloyd service, was shifted from NIT to VIG because the string has a mixture of CSX and NS-bound cargo. Previously, the NS-bound containers would stay at NIT and the CSX boxes would be trucked to VIG. Now, all the containers can remain within VIG.

The East Coast-South America service, operated by Mediterranean Shipping Co., was moved from PMT to VIG because MSC is aligned with CSX. Previously, the MSC containers bound for Chicago would remain in PMT, but all other destinations would require a dray to a CSX facility in Portsmouth. Now, all the containers can remain within VIG.

In both cases, eliminating the dray should result in quicker transfers from vessel to train.

Future plans to shift

REDACTED - TO BE PLACED ON PUBLIC FILE

The long-term plan includes moving some of the four PMT weekly strings into NIT or VIG once the NIT expansion project is complete in late 2020.

Although no decisions have been made, Capozzi said 2M's ATL-2 string currently calling PMT would be a prime candidate to shift to VIG because the vessels are between 7,500 and 9,000 TEU and there are a lot of CSX rail-bound containers on the vessels.

The vision for PMT is combination roll-on, roll-off (ro-ro), breakbulk, and container terminal. Strings, such as Atlantic Container Lines, with a mixture of different cargo will remain in PMT. Strings with smaller vessels, such as 2M's SAE service (less than 2,000 TEU), will likely remain at PMT.

"We have made the changes we'll make for this peak season. But as phases of the NIT project are completed, we will have additional capacity and look at which services are the best to move," Capozzi said. "Our goal is to have as many containers as possible using on-dock rail, eliminating as many unnecessary drays as possible."

The goal is to always keep rail alliances in mind when making these shifts, but it's not possible to completely avoid situations where CSX containers arrive in NIT and have to be trucked to VIG.

"When the berth a vessel needs isn't available in VIG and we send it over to NIT, it could be an ocean carrier aligned with CSX," Capozzi said.

There are also alliances, such as the OCEAN Alliance, in which some members are aligned with NS and others with CSX, so a vessel could have a mixture of containers going to each railroad. Capozzi said it may not always be possible to route vessels into VIG, so drayage between terminals will never be completely eliminated.

Limiting the number of drays, though, should provide better rail connections, providing beneficial cargo owners (BCOs) shorter dwell times and faster service inland.

Contact Ari Ashe at ari.ashe@ihsmarket.com and follow him on Twitter: [@arijashe](https://twitter.com/arijashe).

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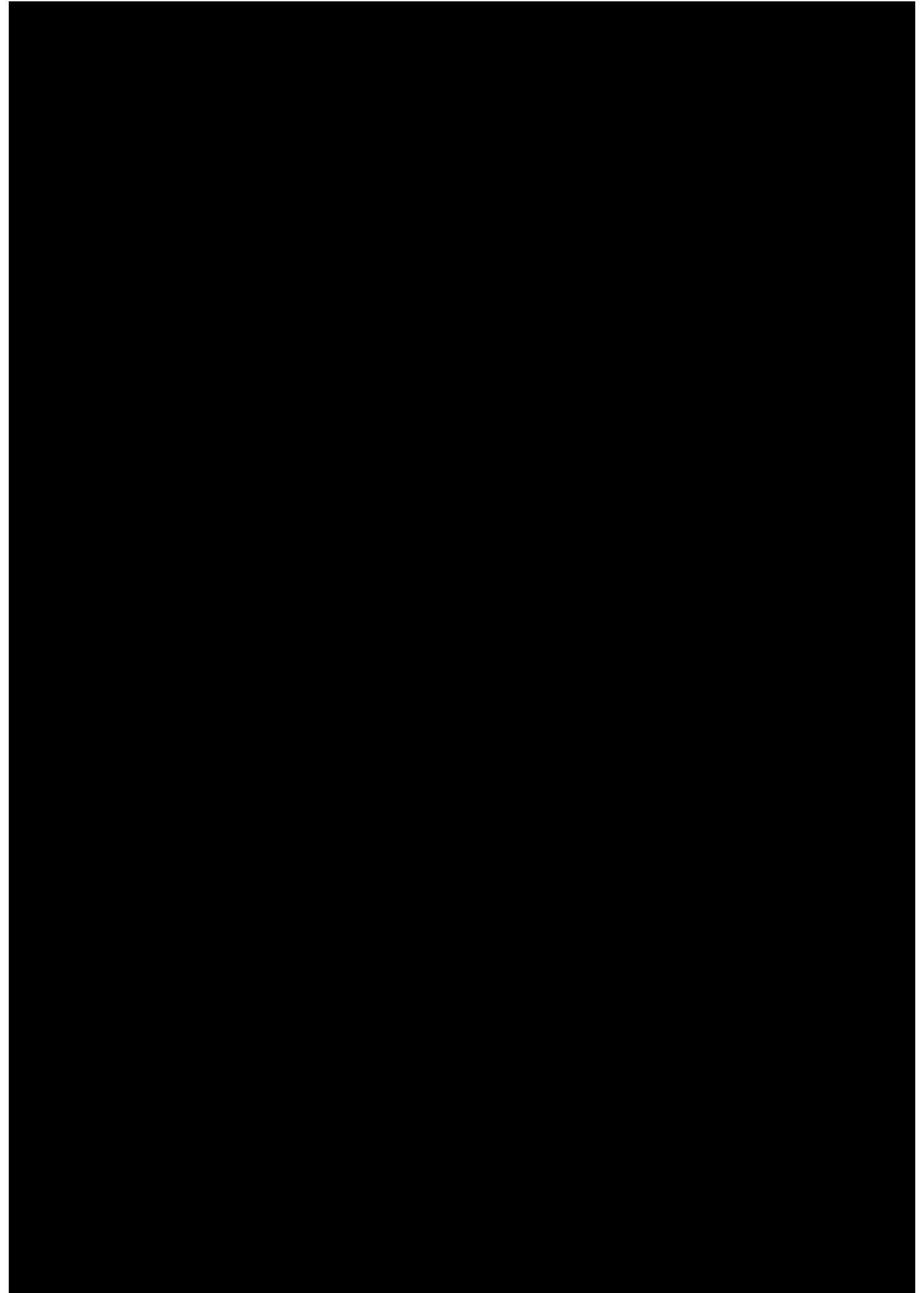
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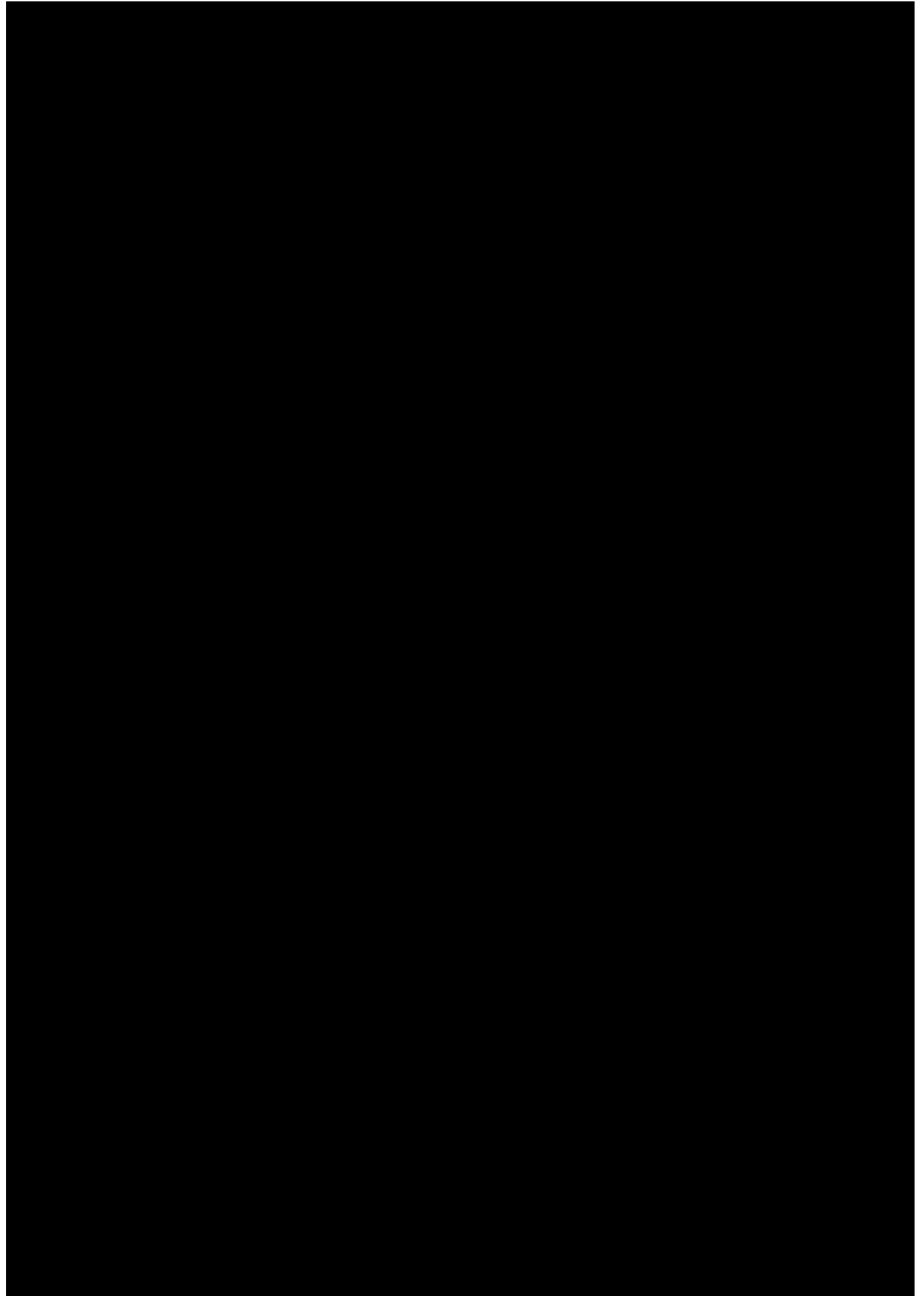
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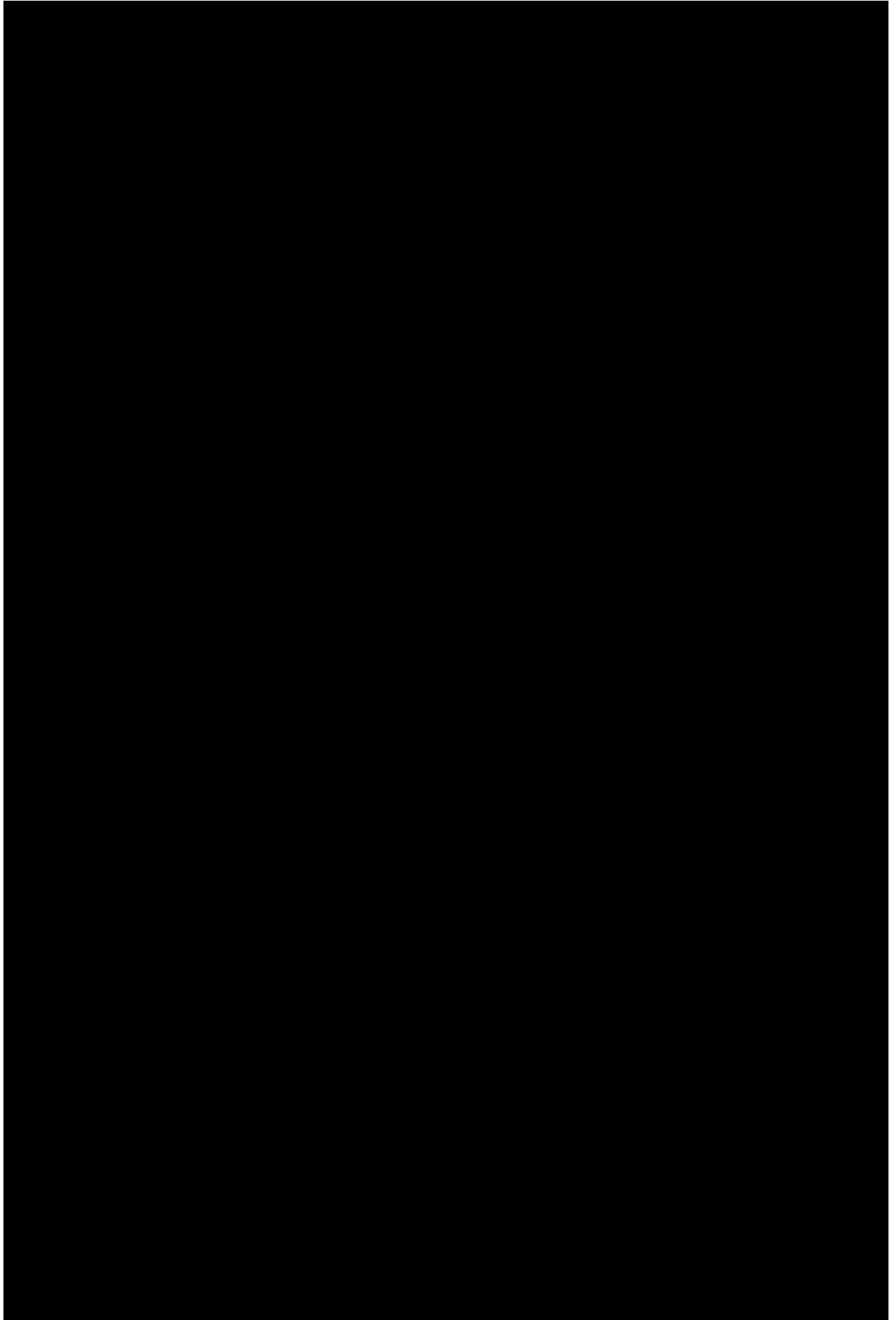
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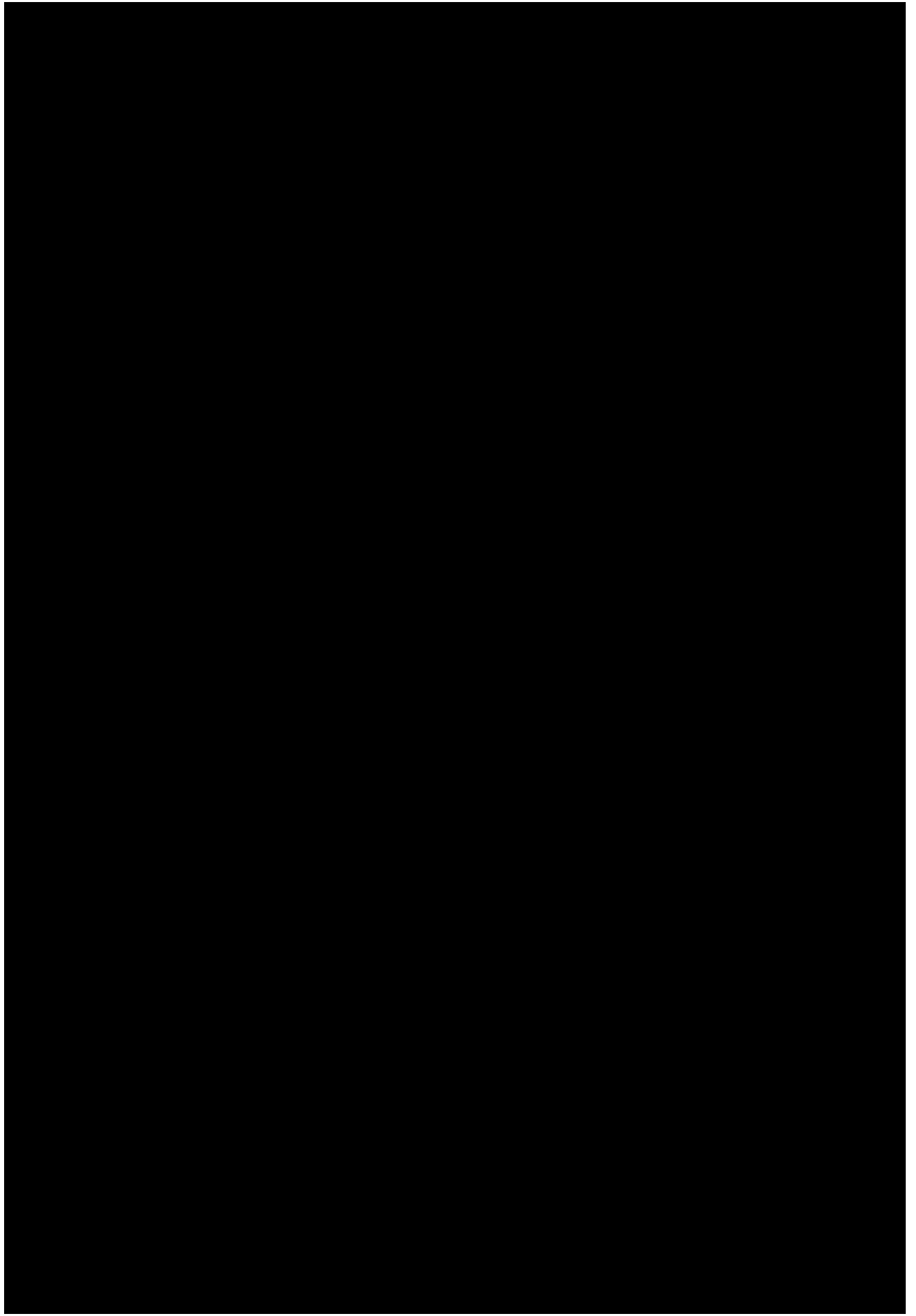
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DEPOSITION OF MICHAEL R. MCCLELLAN

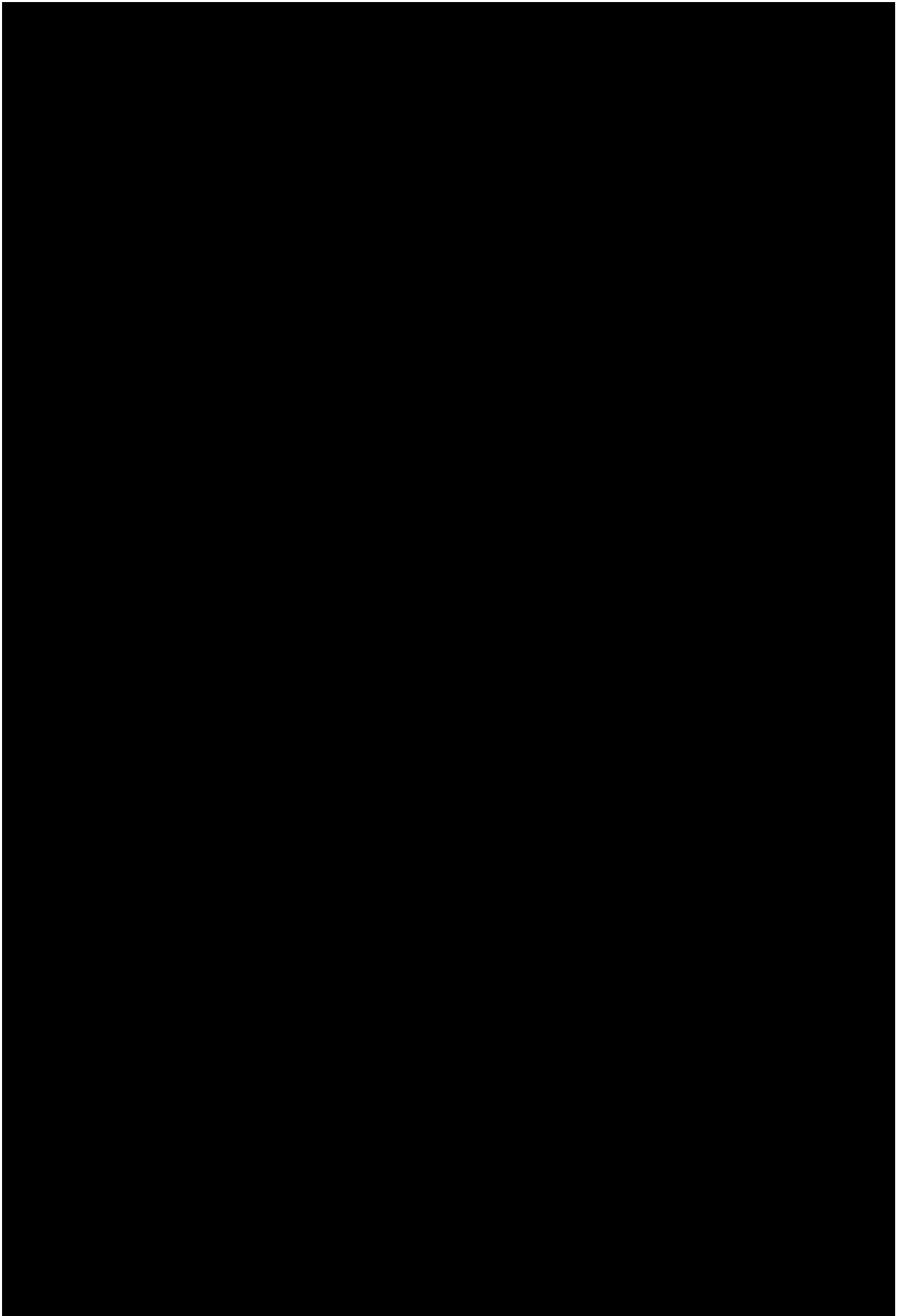
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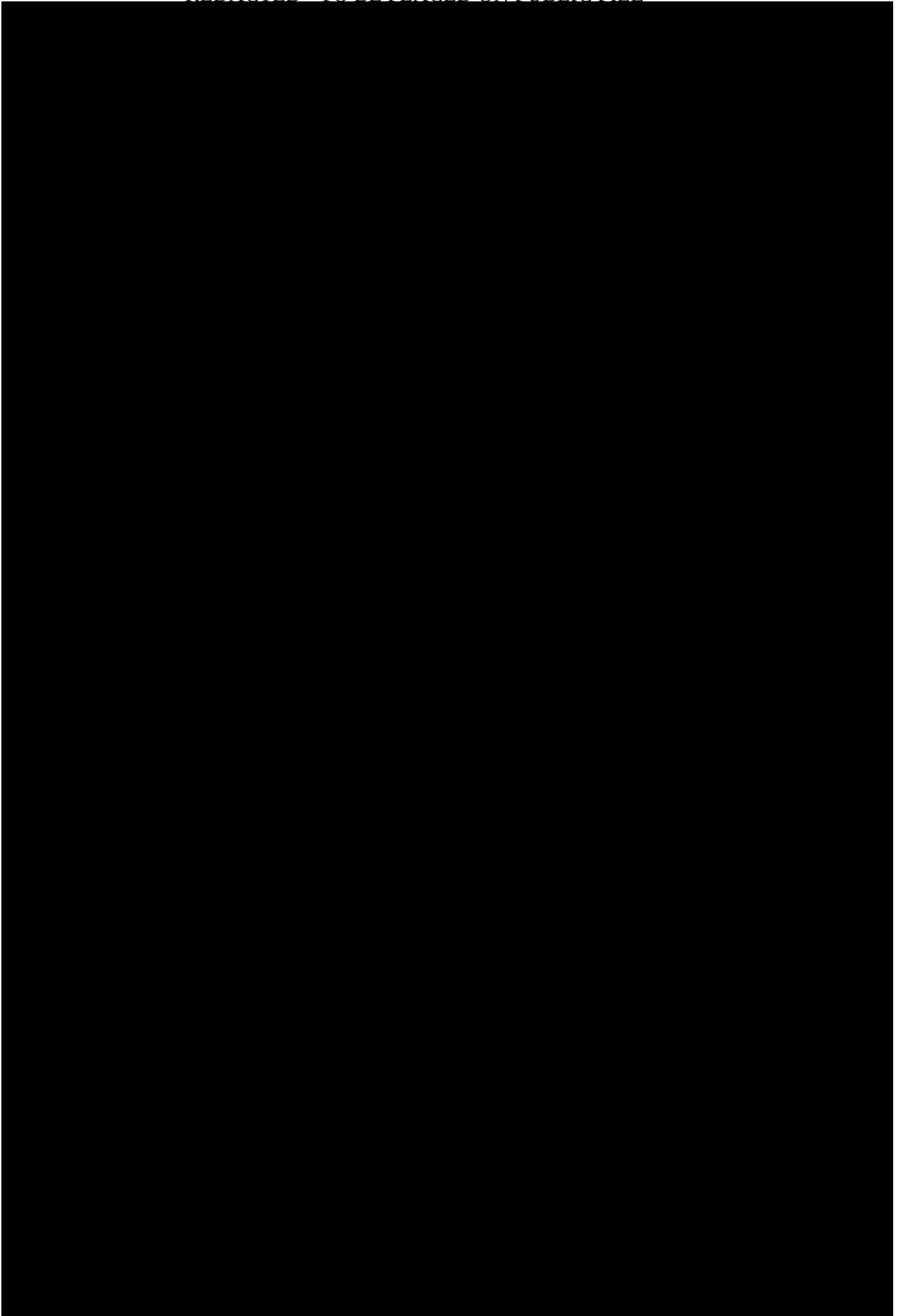












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NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 15

EXCERPTS FROM TRANSCRIPT OF AUGUST 13, 2025
DEPOSITION OF DANIEL L. FAPP

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

Norfolk Southern Corporation &
Norfolk Southern Railway Company
-Acquisition of Control-
Norfolk & Portsmouth Belt Line Railroad Company

*** CONTAINS HIGHLY CONFIDENTIAL PORTIONS ***

Deposition of DANIEL FAPP

Washington, D.C.

Wednesday, August 13, 2025

9:02 a.m.

Reported by: Matthew Goldstein, RMR, CRR

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, DC 20036
202.232.0646

1 MR. MULLINS: Yeah, before you move to
2 the next stuff, yeah, that would be great.

3 MR. KAVANAGH: All right.

4 (Recess from the record.)

5 BY MR. KAVANAGH:

6 Q. Okay. We're back on the record.
7 Welcome back.

8 All right. So we're going to take a
9 look at the verified statements. You already have
10 the February verified statement that's been marked
11 as Exhibit 2; correct?

12 A. Correct.

13 Q. Okay. And who prepared that statement?

14 A. I prepared that.

15 Q. Do you recall how many drafts you went
16 through?

17 A. No, I don't.

18 Q. Did counsel give comment?

19 A. Yes.

20 Q. As to what?

21 A. Making sure I addressed the issues he
22 asked me to.

1 Q. Did counsel change anything?

2 MR. MULLINS: Objection, attorney-client
3 privilege.

4 BY MR. KAVANAGH:

5 Q. Is there anything that isn't in your own
6 words?

7 A. No.

8 Q. Anything you'd like to change?

9 A. Not that I recall.

10 Q. Okay. Is there anything missing?

11 A. I think that the -- one thing was that
12 we inadvertently did not include one rate in the
13 rate comparison.

14 Q. Do you know where that is?

15 A. Table 2.

16 Q. What page is that, 6?

17 A. 6 or 88.

18 Q. All right. Where would it be?

19 A. Anywhere in there. We inadvertently
20 through a scrivener's error removed the
21 Commonwealth Railway from the list of railroads.

22 Q. Do you have the data now that you'd like

1 to add to it or is that something that you'd like
2 to do after the deposition?

3 A. Well, the information is contained in my
4 supplemental verified statement.

5 Q. Which one of your supplemental verified
6 statements? That would be the June 13th one?

7 A. I believe so.

8 Q. All right. We'll pick that up in a
9 minute.

10 So the question was anything missing.
11 Next question, is there any mistakes that you'd
12 like to correct?

13 A. Not that I know of.

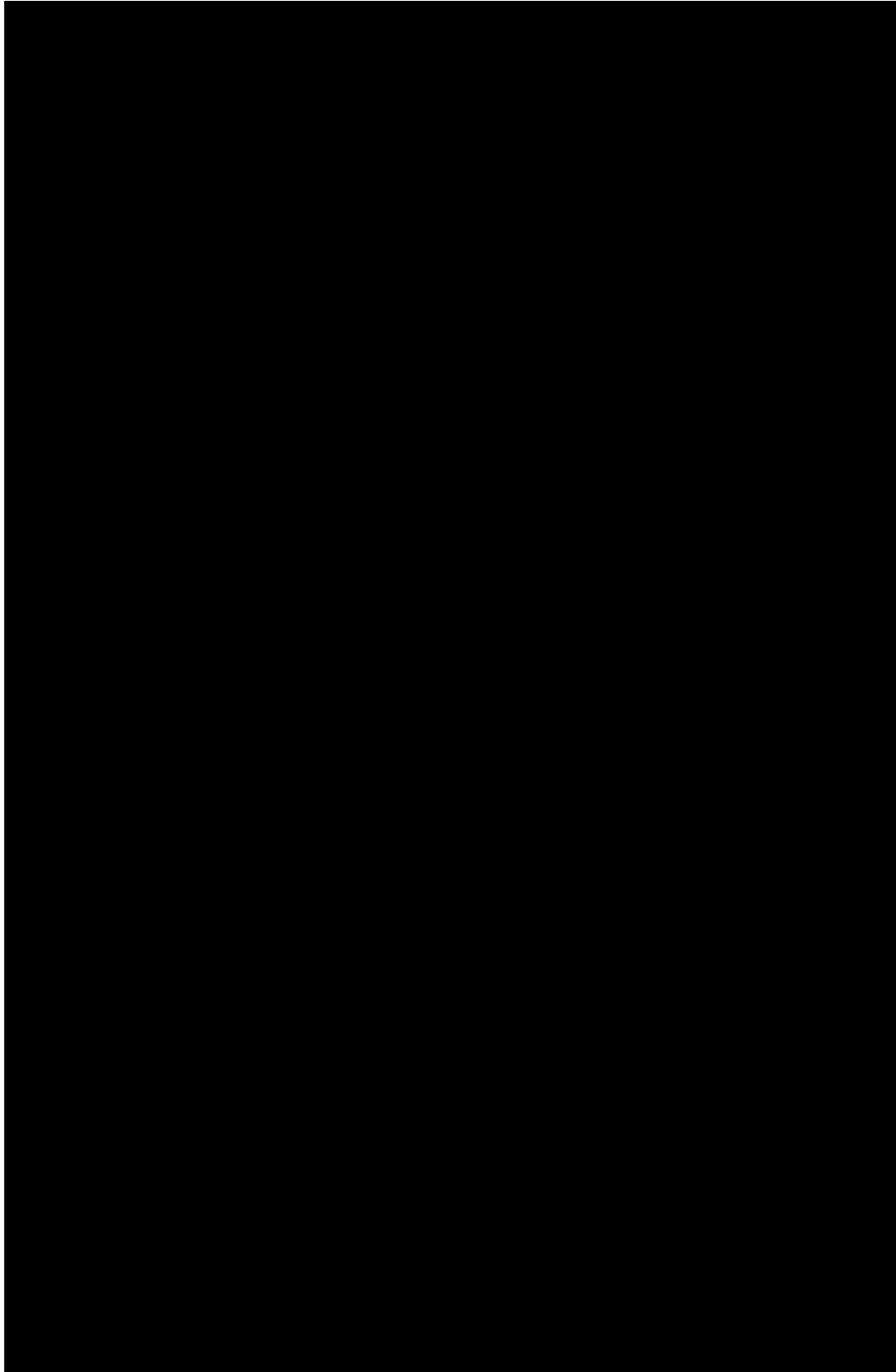
14 Q. We're going to go through the same list
15 of questions for the next two reports. So let me
16 hand to you what's been marked as Exhibit 3 --

17 (Fapp Deposition Exhibit 3 was marked
18 for identification and attached to the
19 transcript.)

20 BY MR. KAVANAGH:

21 Q. -- which is your June 13th supplemental
22 verified statement.

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1 [REDACTED]
2 [REDACTED] }}

3 Q. Well, each of the other 12 railroads
4 that you're comparing NPBL to in Table 2 are
5 different railroads, but you're using them as a
6 comparison.

7 So you must believe that Commonwealth is
8 comparable to NPBL; right?

9 A. It's a railroad that's moving containers
10 in a switching capacity, yes, it's comparable in
11 that sense.

12 Q. And among all of the railroads that
13 you're comparing NPBL to here, Commonwealth is
14 geographically the closest, right, to NPBL?

15 A. That is correct.

16 Q. And it's serving one of the sister ports
17 of the Port of Virginia; right?

18 A. It's serving another terminal within the
19 port, correct.

20 Q. Right. Not different ports, the same
21 port, different terminal.

22 So would you agree that Commonwealth is

1 the most comparable to NPBL?

2 A. I don't know if I would say it's the
3 most comparable. I would say it's comparable.

4 Q. All right. Let's take a look at page 32
5 of the June 13th report.

6 MR. KAVANAGH: This also has a highly
7 confidential figure in it.

8 HIGHLY CONFIDENTIAL:

9 BY MR. KAVANAGH:

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1 International Terminal?

2 A. I have not.

3 Q. Page 31 of your June 13th report. It
4 says, Earlier in this supplemental verified
5 statement, I outline the charges for rail and dray
6 services associated with moving containerized
7 freight by rail versus truck in and out of POVs,
8 NIT, and VIG terminals. These analyses
9 demonstrate the charges realized by -- I'm
10 skipping -- CSX and Norfolk Southern over 20-plus
11 years. Additionally, these analyses, the
12 competitive -- additionally, these analyses
13 demonstrate the competitive environment for
14 container traffic moving in and out of POV.

15 You analyzed the charges, but not the
16 share of NIT and POV traffic by truck on corridors
17 into the Midwest; right?

18 A. That is correct.

19 Q. Is there any reason you did not analyze
20 the traffic?

21 A. It was not something I was requested to
22 do.

1 Q. Do you have an understanding of the
2 percentage of trucking moves from NIT to and from
3 the inland Midwestern locations served by CSX and
4 Norfolk Southern, such as Chicago, Detroit,
5 Columbus, Cleveland, Louisville?

6 A. I don't recall seeing those statistics.

7 Q. Do you agree that intermodal trucking is
8 typically competition for rail over shorter
9 distances rather than longer distances?

10 A. I guess, can you define "shorter"?

11 Q. Well, do you have a position on up to
12 what hundred miles trucking is competitive with
13 rail for intermodal service?

14 A. Well, based on my experience, you know,
15 in the market it can range anywhere from 5- to
16 700 miles.

17 Q. And how do you reach that conclusion?
18 Your experience?

19 A. Yeah, my experience.

20 Q. You said that your analysis for charges
21 for rail and truck in and out of POV demonstrate
22 the competitive environment for container traffic,

1 but your analysis didn't include the operational
2 or feasibility issues of dray through the streets
3 of Norfolk; right?

4 A. I'm sorry, can you rephrase that, or can
5 I hear the question again?

6 MR. KAVANAGH: Can you read it?
7 (Record read.)

8 THE WITNESS: Well, I did include it in
9 the sense we showed the transit times that are
10 publicly reported, as well as the restrictions and
11 the amount of traffic that's currently moving over
12 the roads.

13 BY MR. KAVANAGH:

14 Q. If some method of transportation such as
15 dray to rail through Norfolk becomes unfeasible,
16 CSX's ability to compete would be compromised;
17 right?

18 A. Well, if for some reason they -- you
19 know --

20 MR. MULLINS: Object to the form of the
21 question. Can you -- ability to compete where?

22 MR. KAVANAGH: For traffic from NIT.

1 DISTRICT OF COLUMBIA)

2

3 I, Matthew Goldstein, RMR, CRR, Notary
4 Public within and for the District of Columbia, do
5 hereby certify:

6

7 That I reported the proceedings in the
8 within entitled matter, and that the within
9 transcript is a true record of said proceedings.

10

11 I further certify that I am not related
12 to any of the parties to the action by blood or
13 marriage, and that I am in no way interested in
14 the outcome of this matter.

15

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand this 18th day of August, 2025.

18

19



20

Matthew Goldstein, RMR, CRR

21

22

1 Digital Evidence Group, L.L.C.
2 1730 M Street, NW, Suite 812
3 Washington, D.C. 20036
4 (202) 232-0646
5

6 SIGNATURE PAGE

7 Case: Norfolk Southern Corporation and Norfolk Southern Railway Company,
Acquisition of Control, Norfolk & Portsmouth Belt Line Railroad Company

8 Witness Name: Daniel Fapp
9 Deposition Date: August 13, 2025
10

11 I do hereby acknowledge that I have read
12 and examined the foregoing pages
13 of the transcript of my deposition and that:

14 (Check appropriate box):
15 () The same is a true, correct and
16 complete transcription of the answers given by
17 me to the questions therein recorded.
18 (☒) Except for the changes noted in the
19 attached Errata Sheet, the same is a true,
20 correct and complete transcription of the
21 answers given by me to the questions therein
22 recorded.

8/28/25

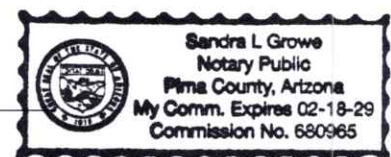
DATE

WITNESS SIGNATURE

8-28-25

DATE

NOTARY



1 Digital Evidence Group, LLC
2 1730 M Street, NW, Suite 812
3 Washington, D.C. 20036
4 (202)232-0646

5

6 ERRATA SHEET

7

8 Case: Norfolk Southern Corporation and Norfolk Southern Railway Company,
Acquisition of Control, Norfolk & Portsmouth Belt Line Railroad Company

9 Witness Name: Daniel Fapp

10 Deposition Date: August 13, 2025

11	Page No.	Line No.	Change
12	106	8	"when" to "which"
13	136	10	"perspect" to "perspective"

14

15

16

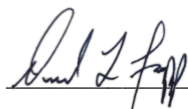
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8/28/2025

22

Signature

Date

BEFORE THE
SURFACE TRANSPORTATION BOARD

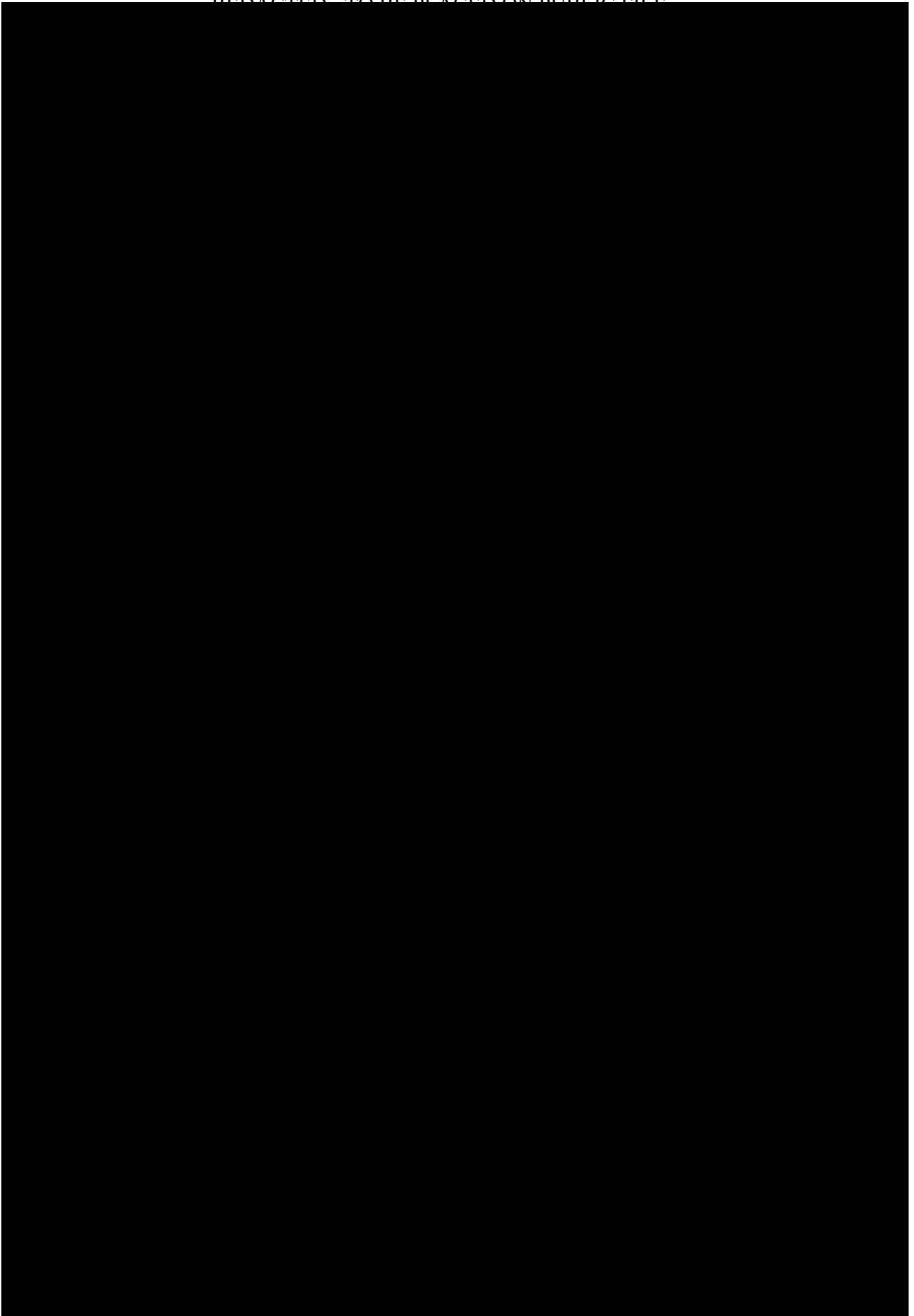
FINANCE DOCKET NO. 36836

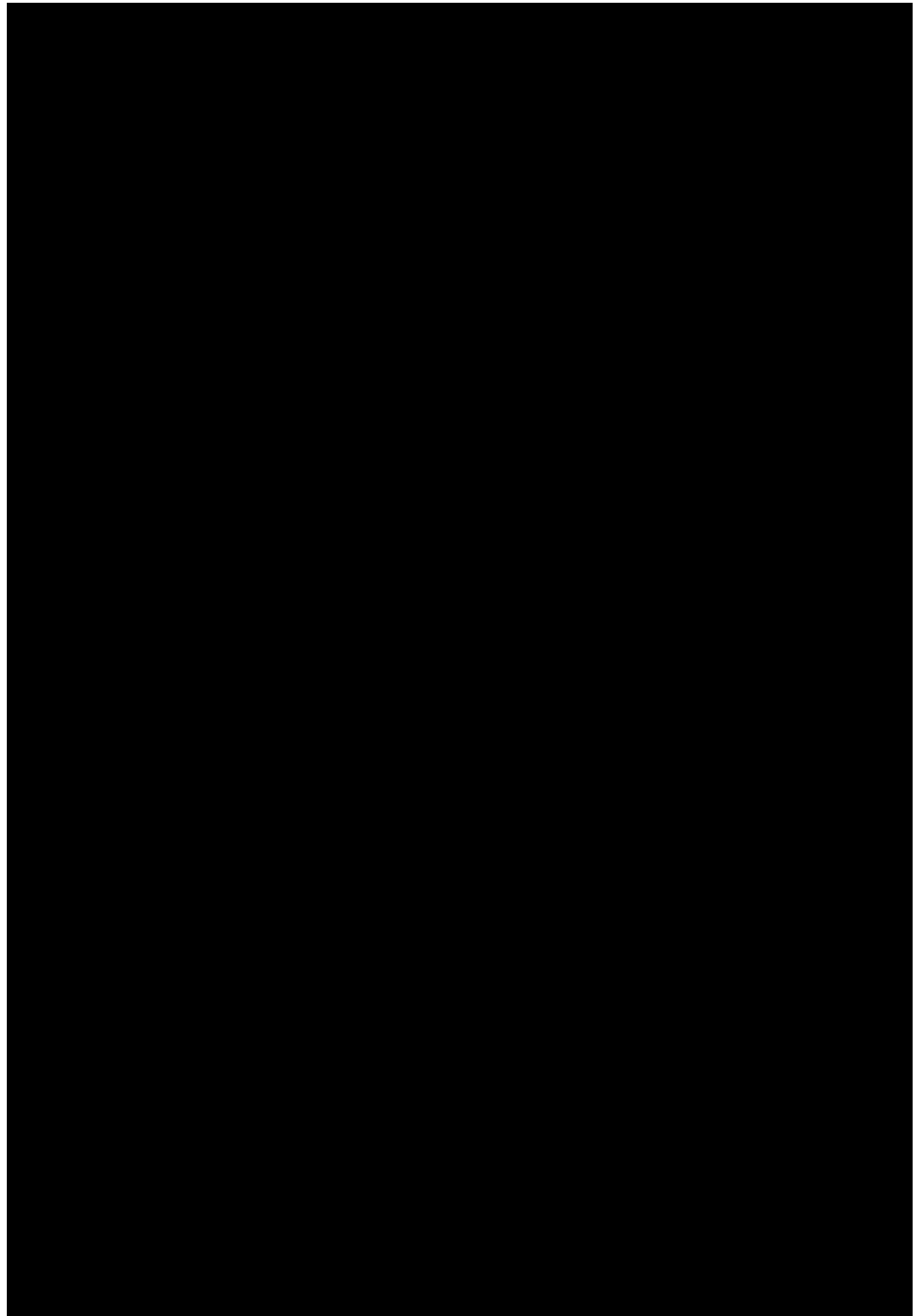
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

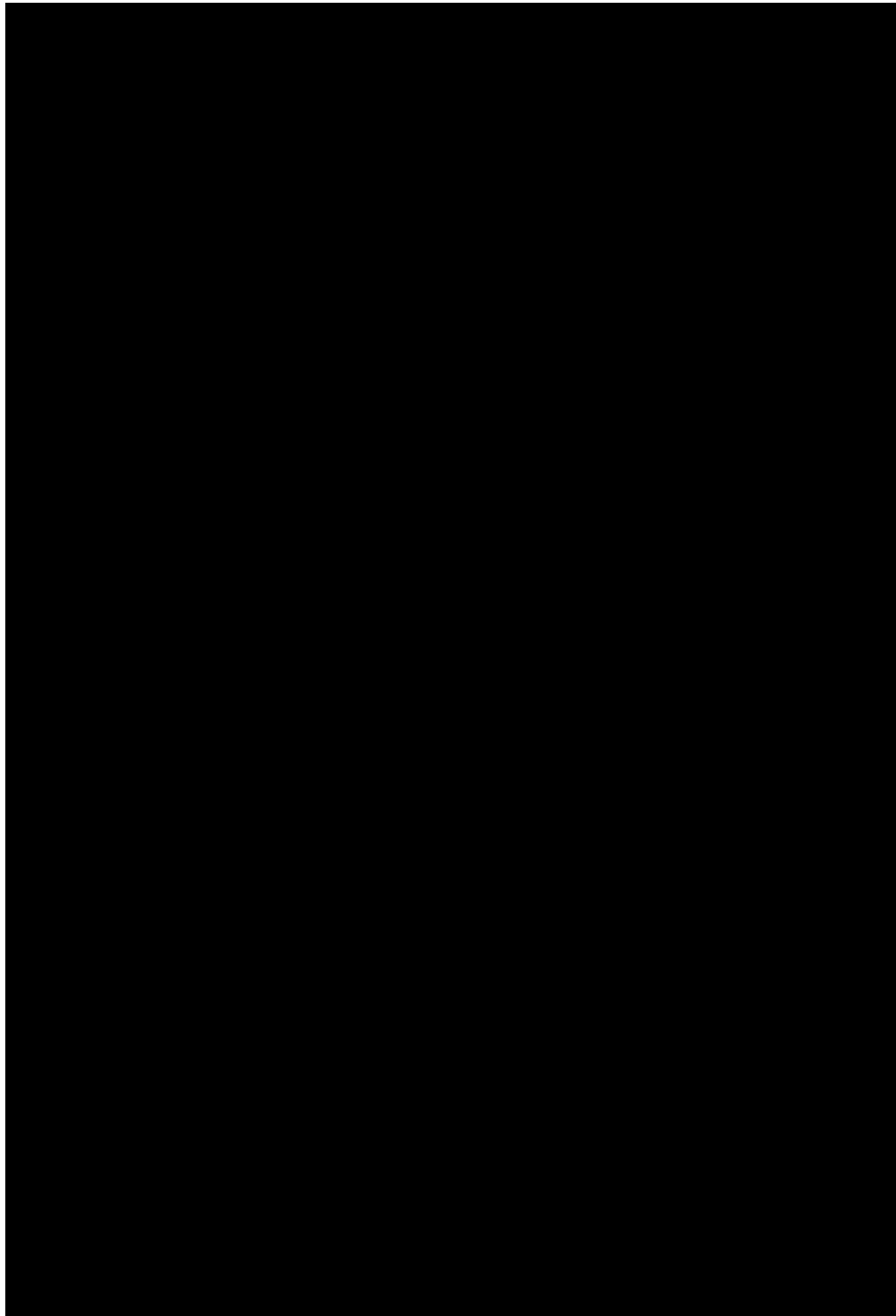
EXHIBIT 16

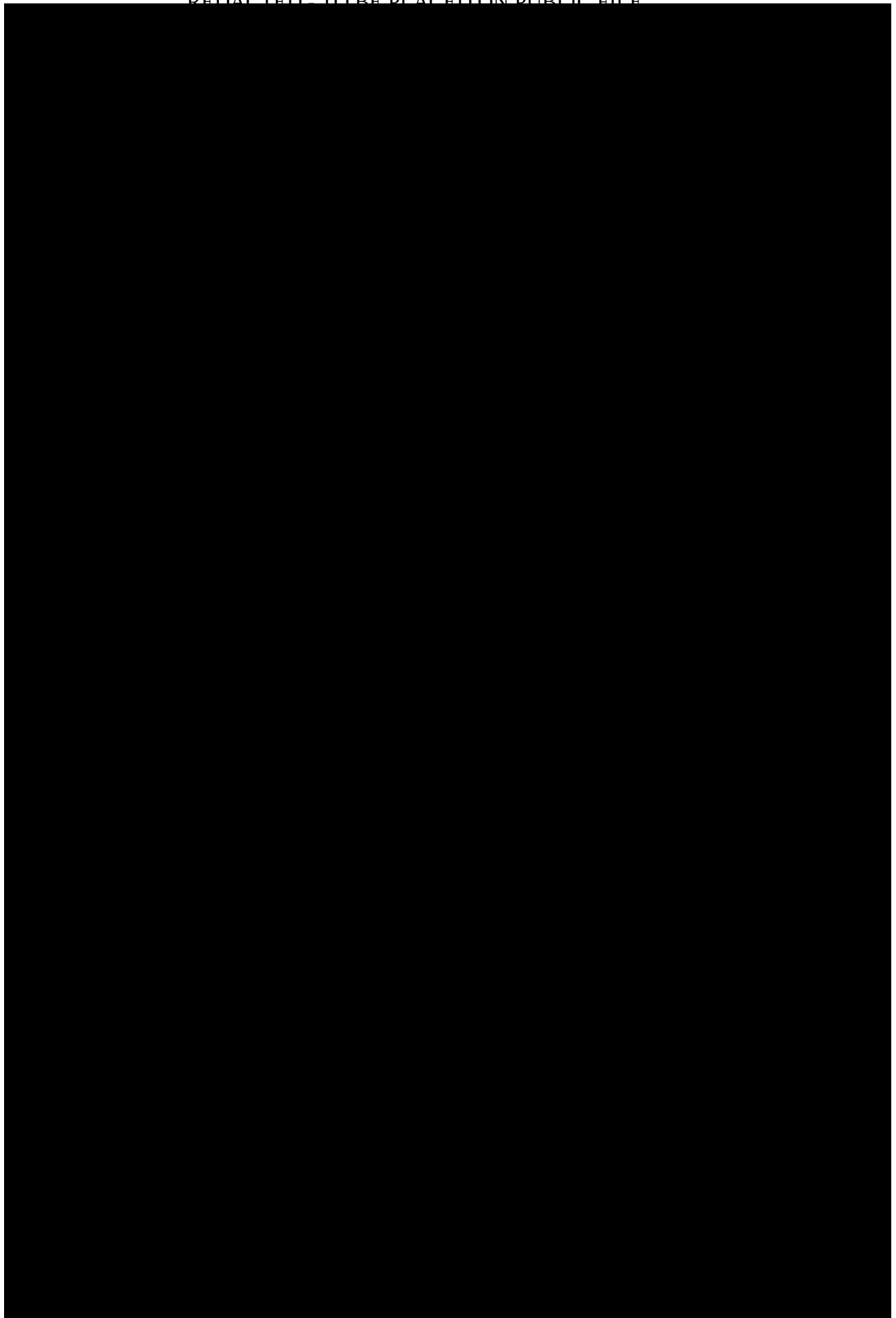
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DEPOSITION OF CANNON MOSS

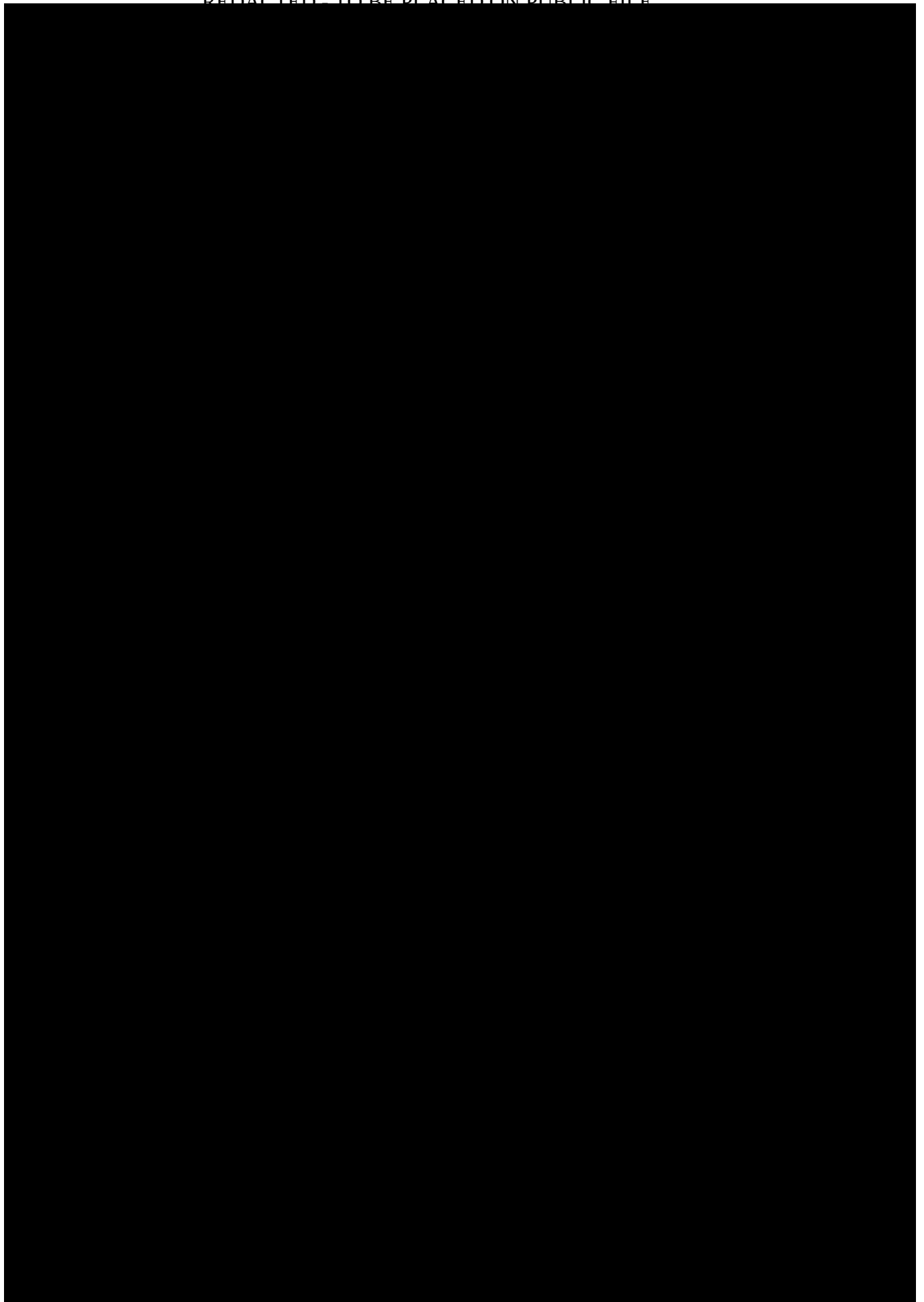
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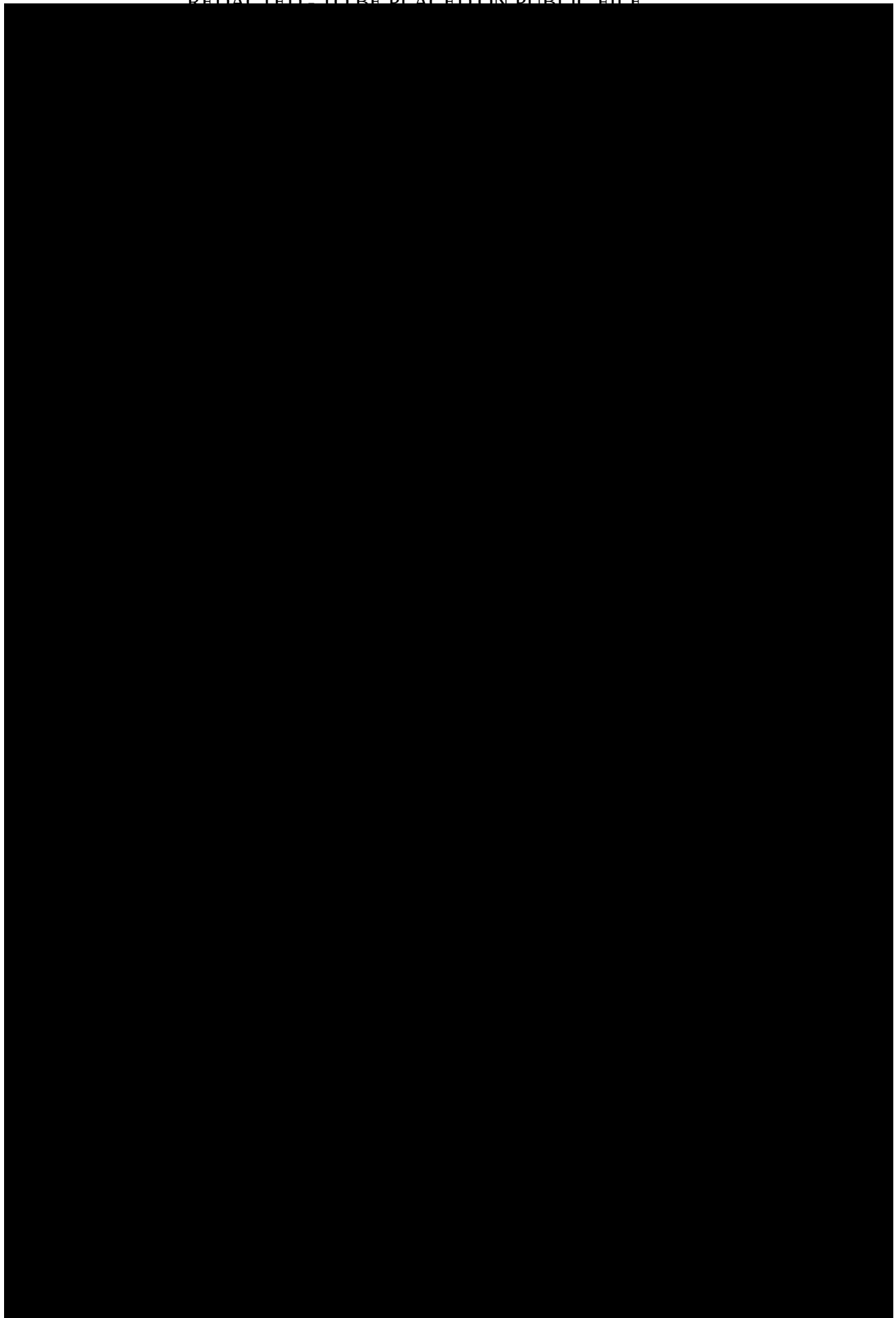


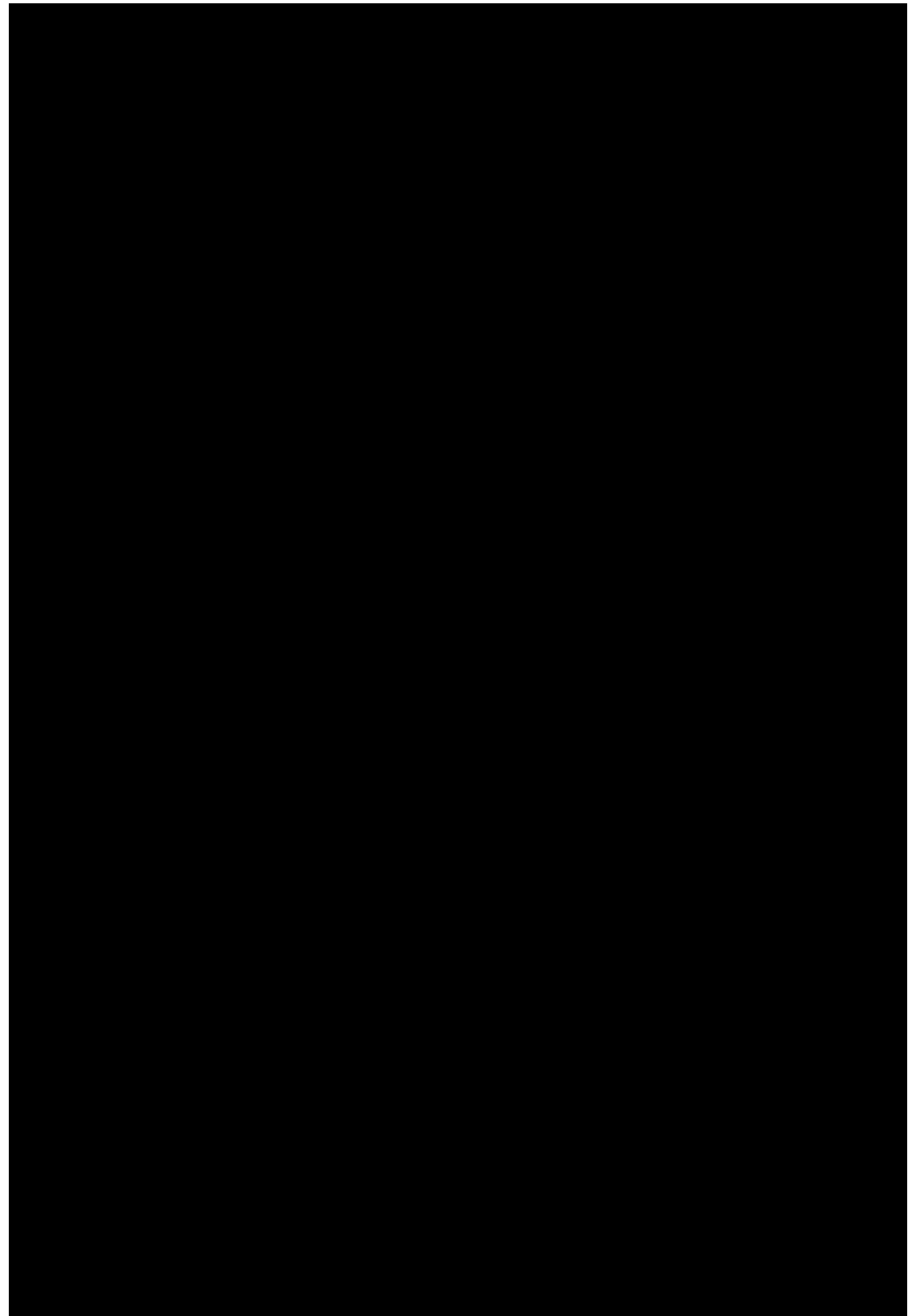


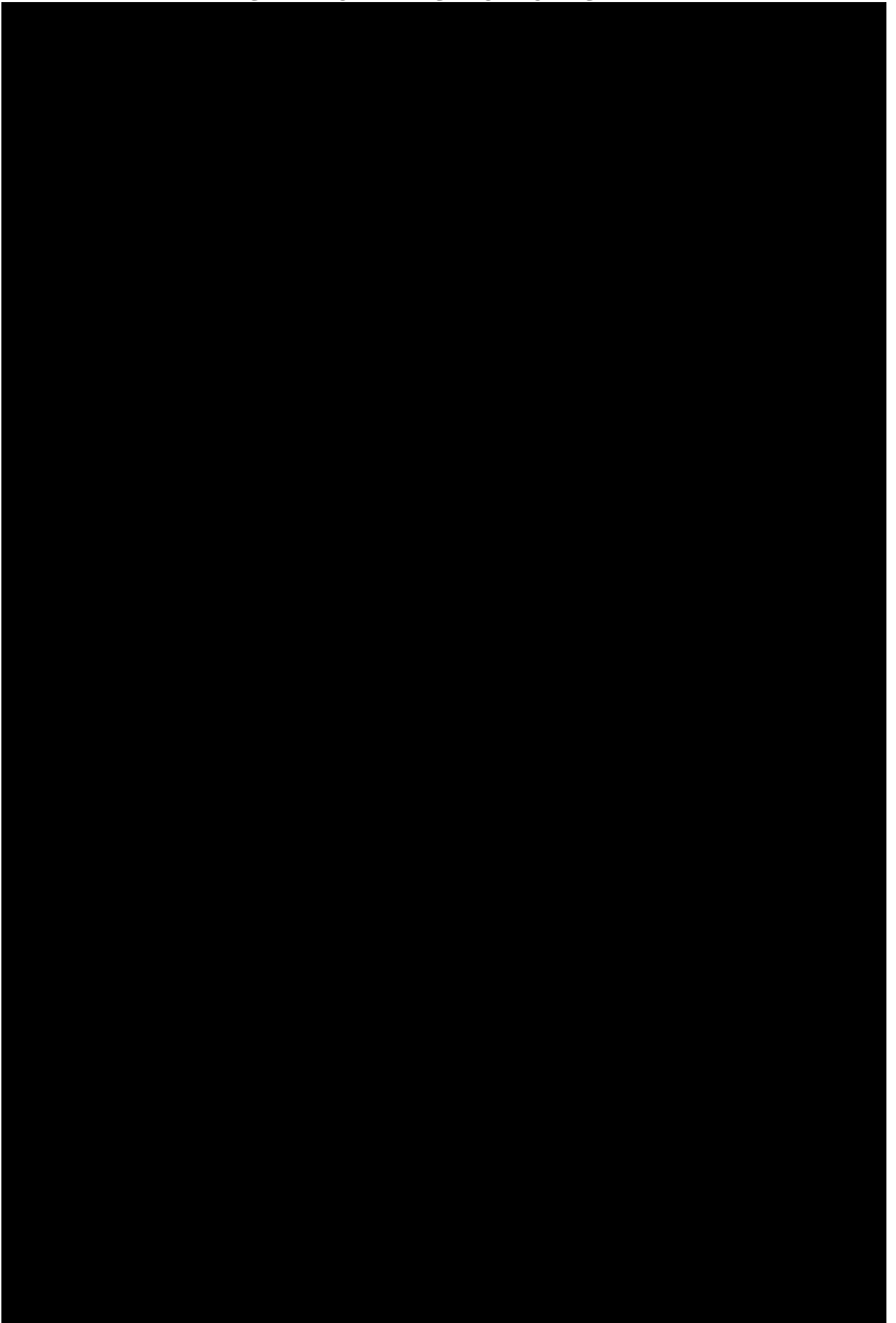


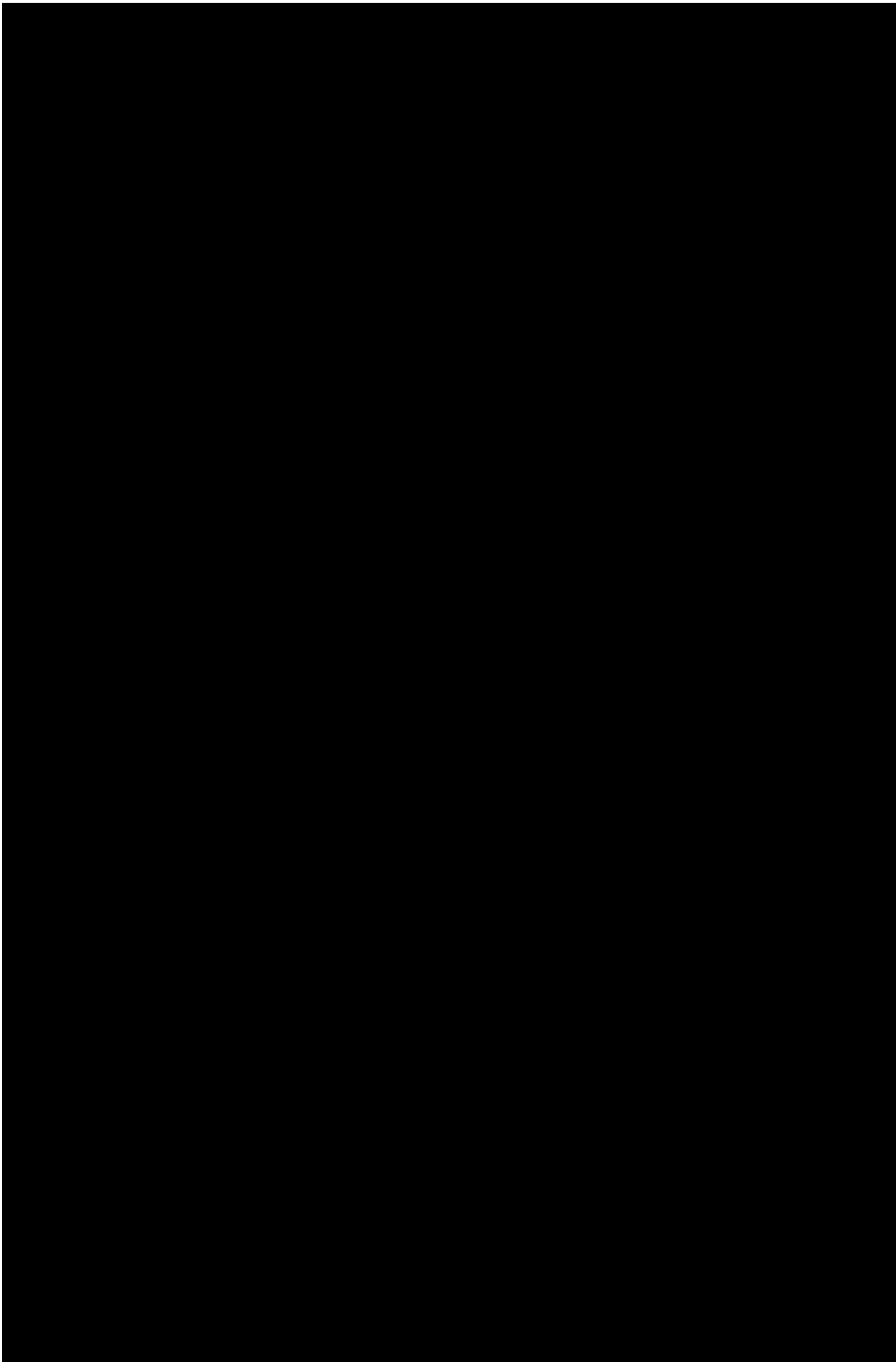


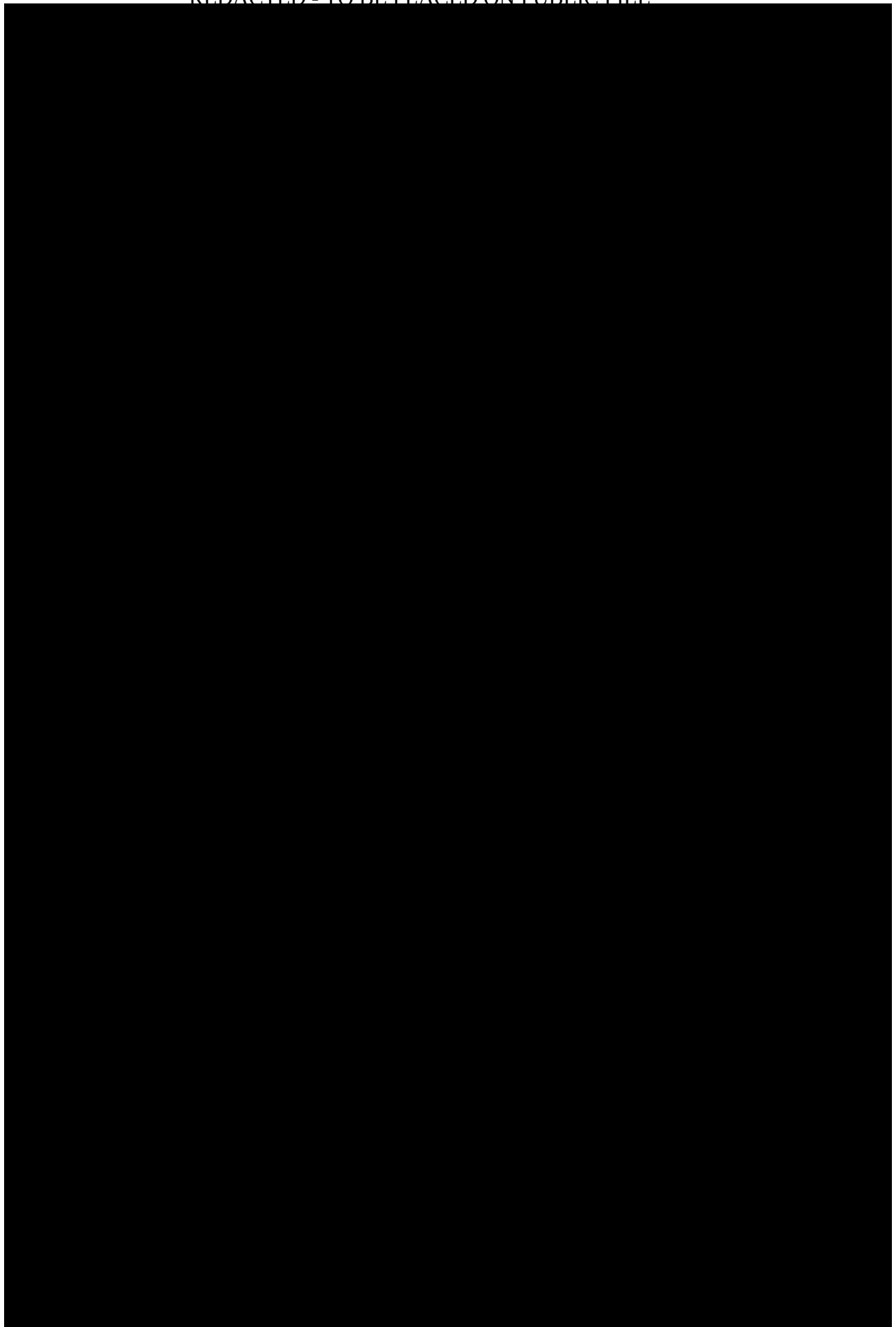


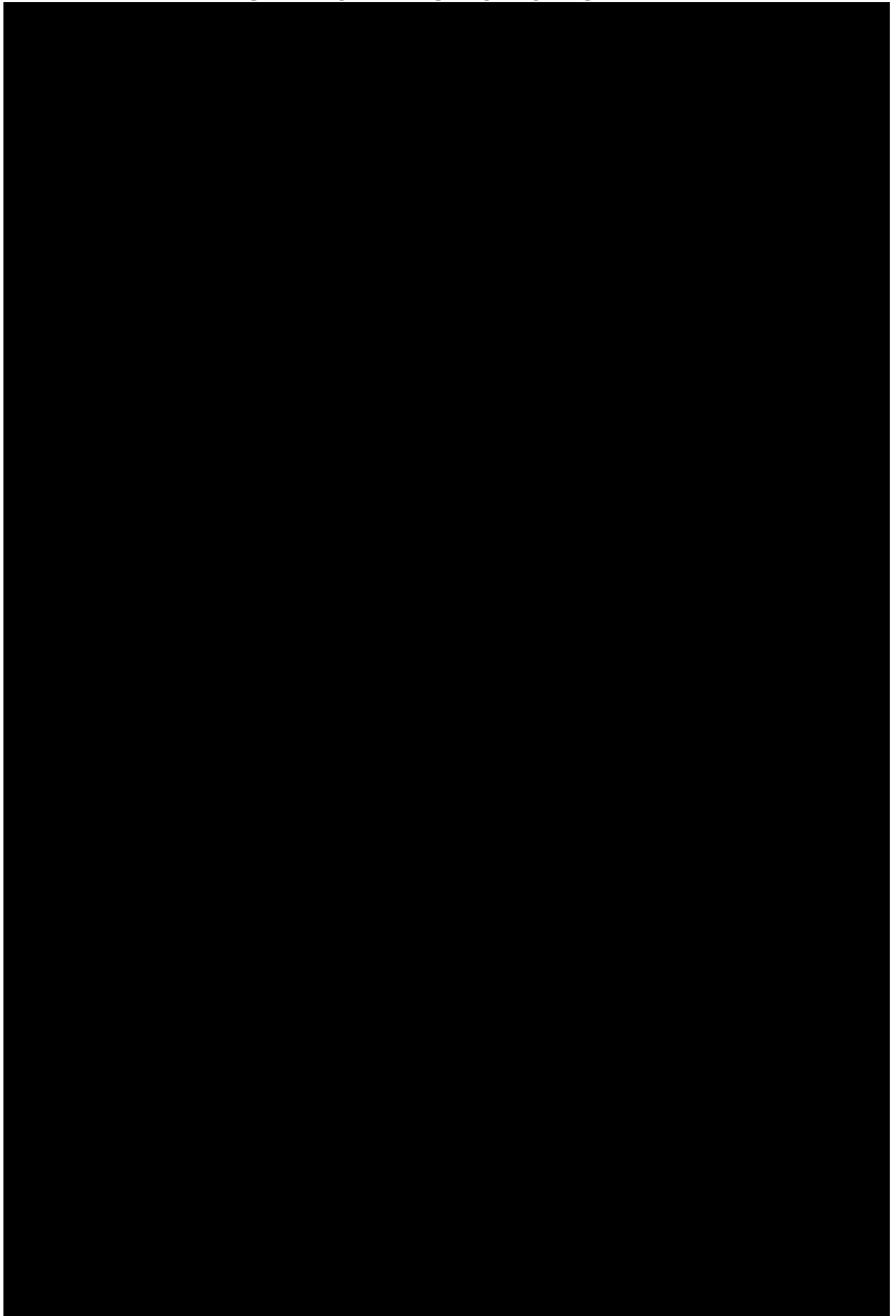












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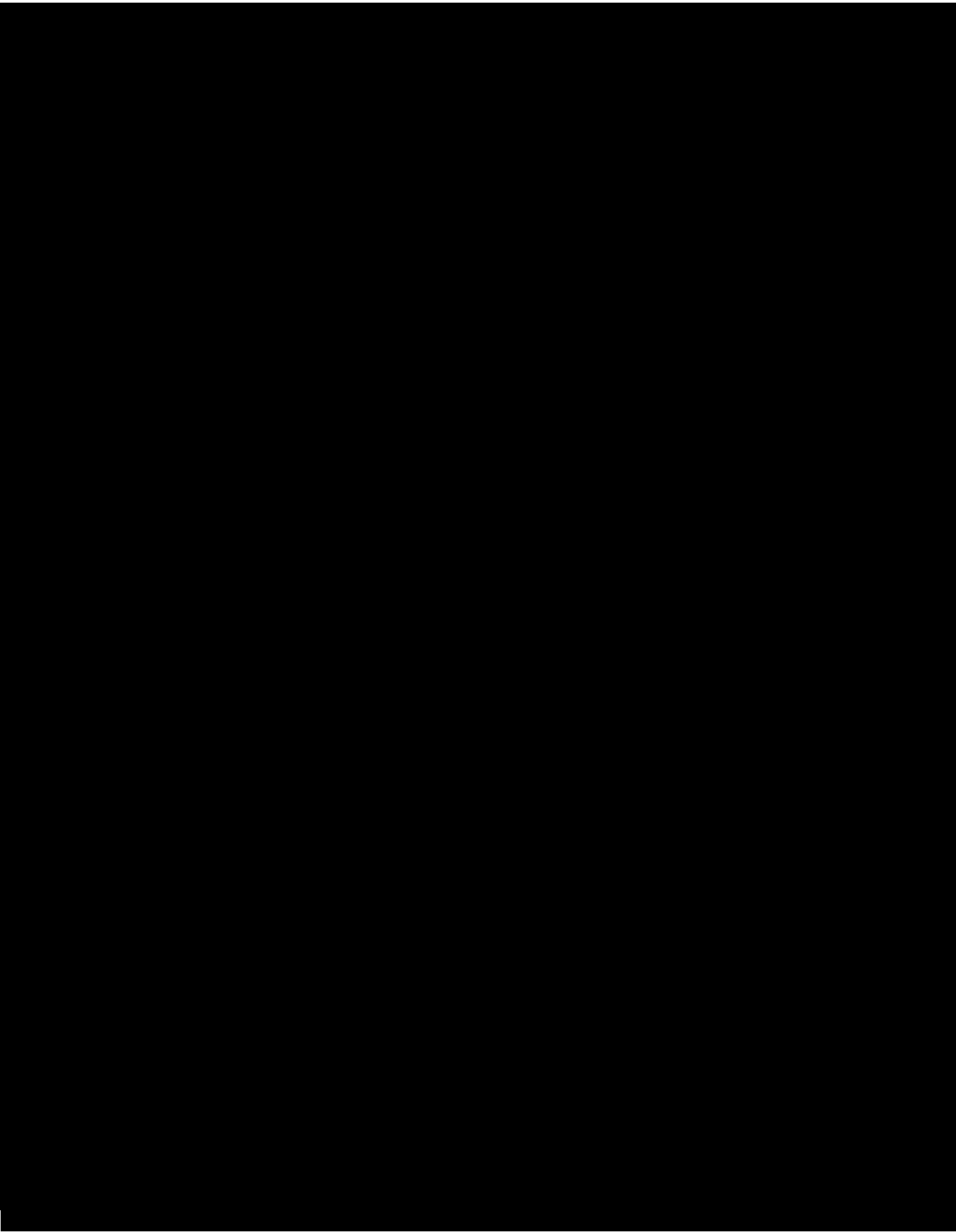
FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 17

APRIL 5, 2018 EMAIL FROM NPBL'S CANNON MOSS
REGARDING CSXT'S RATE PROPOSAL (STB-NS-0008749)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 18

NPBL TARRIFF 8100-J, ISSUED DECEMBER 10, 2014

NPB 8100-J
Cancels
NPB 8100-I

**NORFOLK AND PORTSMOUTH BELT LINE
RAILROAD COMPANY**

TARIFF NPB 8100-J

CANCELS

TARIFF NPB 8100-I

**SWITCHING CHARGES
ALSO
CHARGES FOR MOVEMENT INVOLVING
WEIGHING AND RE-WEIGHING LIGHT OR LOADED CARS
AND
CHARGES FOR SPECIAL SERVICE OF ENGINE AND TRAIN CREW
AT
CHESAPEAKE, NORFOLK AND PORTSMOUTH, VA
AND VICINITY**

ISSUED December 10, 2014

EFFECTIVE February 1, 2015

**ISSUED BY
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY
1340 Truxton St
Chesapeake, VA 23324**

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

RULE 1 -- Following is list of Railroads connecting with Norfolk and Portsmouth Belt Line Railroad Company:

CSX Transportation, Inc.
Norfolk Southern Railway Company
Bay Coast Railroad

RULE 2 -- Switching charges named herein will include the placement of an empty car to be loaded, and return of the same car loaded, or the placement of a loaded car and the return of the same car empty.

RULE 3 -- Except as otherwise provided in this Tariff, the rates per loaded car published in this Tariff will also apply on empty cars, new or old, moving on revenue billing.

RULE 4 -- Settlement for detoured trains will be made in accordance with rules of Detour Agreement adopted by the Association of American Railroads for Detouring Trains.

RULE 5 -- If an empty car is ordered for loading and if the service of switching or placing it has been performed and the car is not loaded for movement over this railroad, the switching charge for a loaded car as shown in Item 60, will be collected from the person, firm or corporation ordering such car. Not applicable in connection with empty cars refused or rejected by shipper account defective or unfit for loading.

RULE 6 -- Charges published herein apply to or from sidings and industries served directly by the rails of the Norfolk and Portsmouth Belt Line Railroad Company, also to or from sidings and industries reached by the Norfolk and Portsmouth Belt Line Railroad Company under operating agreements with other railroads.

RULE 7 -- DEMURRAGE RATES AND REGULATIONS -- All cars handled under this Tariff will be subject to the established car demurrage rules and charges as published in Tariff NPB 6004 Series or successive issues thereof.

RULE 8 -- APPLICATION OF SHIPMENTS LOADED IN ARTICULATED CARS -- When shipments are loaded in so-called articulated cars (two or more car units permanently or temporarily joined together), the switching charges published in this Tariff will apply separately to each unit of the articulated equipment.

RULES AND OTHER GOVERNING PROVISIONS

GENERAL RULES AND REGULATIONS

ITEM 10	REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC.
---------	---

(A) Where reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.

ITEM 20 CONSECUTIVE NUMBERS

Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" or a hyphen they will be understood to include both of the numbers shown. If the first number only bears a reference mark, such reference mark also applies to the last number shown and to all numbers between the first and last numbers.

ITEM 30 METHOD OF CANCELLING ITEMS

As this tariff is supplemented, numbered items with letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels Item 445, and Item 365-B cancels Item 365-A in a prior supplement, which in turn cancelled Item 365.

ITEM 40 **CHARGE FOR UNAUTHORIZED APPROPRIATION OF
RAILROAD-OWNED CARS FOR NON-REVENUE MOVEMENTS**

When a railroad-owned car is appropriated for the non-revenue movement of freight without a specific prior authorization from NPB, a charge of \$430.00 per car per movement will be assessed against the party appropriating such car. Such charge will be in addition to all other charges applicable to such car (See Note 1).

The payment of demurrage, detention, car storage or switching charges does not permit the unauthorized use or additional loading of empty or loaded cars which have been placed by this railroad for loading or unloading (See Note 2).

NOTE 1. This charge does not apply to intraplant movements by other than railroad-owned power which are necessary to facilitate the loading or unloading of railroad-owned cars in connection with immediately prior or subsequent revenue movements, either switching or line-haul.

NOTE 2. Unauthorized use of a railroad-owned car refers to the unauthorized movement of a car by other than railroad-owned power beyond the confines of the industry where car was originally placed by this railroad for loading or unloading.

ITEM 50 CARS MOVED FROM LOADING TRACKS WITHOUT BILLING AND HELD ON CARRIER'S HOLD TRACKS AWAITING BILLING INSTRUCTIONS

Except as otherwise provided for in this tariff, when on shipper's order, cars are moved by carrier from industry or team tracks without billing and held on carrier's tracks awaiting forwarding instructions as defined in Item 200, Part 11. Tariff NPB 6004-Series, a charge of \$52.00 per car will be assessed against the party responsible for furnishing such forwarding directions and the cars will remain on continuous demurrage or detention (See Note) in the demurrage account of the party in whose name the car was ordered until such forwarding directions are received by carrier's agent. (See Exception).

On car or cars removed from industry or team tracks on shipper's order and held awaiting billing instructions on carrier tracks and such car or cars are ordered back to the original industry or team tracks, the hold for disposition charge of \$52.00 per car will be assessed for switch movement to the hold point on NPBL and a switching charge of \$220.00 per car will be assessed for movement from hold point on NPBL back to original industry or team tracks. Provided that such move is inter-terminal, the applicable inter-terminal switching charge will apply in each direction in addition to the holding charge of \$52.00. In all cases of hold for disposition, cars will remain on continuous demurrage.

EXCEPTION -- The charge of \$52.00 per car will not apply when carrier's agent receives forwarding directions by noon

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TARIFF NPB 8100-J

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

of the day following performance of the service excluding Saturdays, Sundays and Holidays as defined in Item 200, Part 11, Tariff NPB 6004-Series.

ITEM 60	INTRA-TERMINAL SWITCHING	<u>CHARGE PER CAR</u>
A.	Except as provided in Paragraph B, between industries, sidings or tracks located on or served by Norfolk and Portsmouth Belt Line Railroad Company	\$331.00
B.	Cars switched between private sidings and leased storage tracks served by Norfolk and Portsmouth Belt Line Railroad	\$295.00

ITEM 70	LINE HAUL SWITCHING	<u>CHARGE PER CAR</u>
	Between industries or sidings located on or served by Norfolk and Portsmouth Belt Line Railroad Company and interchange tracks with connecting lines on Shipments originating at or destined to points located beyond yard or switching limits of connecting lines	\$210.00

ITEM 80	INTER-TERMINAL SWITCHING	<u>CHARGE PER CAR</u>
	Between industries or sidings located on or served by Norfolk and Portsmouth Belt Line Railroad Company and interchange tracks with connecting lines within yard or Switching limits of connecting lines	\$262.00

ITEM 90	INTERMEDIATE SWITCHING	<u>CHARGE PER CAR</u>
	Between interchange tracks with connecting lines:	
	(a) <u>Applicable on all commodities</u>	\$155.00

**SWITCHING CHARGES, ALSO
CHARGES FOR WEIGHING AND RE-WEIGHING LIGHT AND LOADED CARS
CHARGES FOR SPECIAL SERVICE OF ENGINE AND TRAIN CREW
NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY**

ITEM 100	MOVEMENT INVOLVING WEIGHING (See Note A below)	<u>CHARGE PER CAR</u>
	(A) <u>Weighing cars on private scales located at the industry:</u>	
	When weighed before or after placement, or outbound cars before removal from Industry track	\$50.00
	(B) <u>Weighing cars on other private scales (See Note B below):</u>	
	For weighing inbound or outbound loaded cars, when so requested before Actual placement or interchange, ...	\$100.00

NOTE A -- Charges shown in this item are for handling of car incidental to weighing and are in addition to switching charges herein for the required handling.

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TARIFF NPB 8100-J

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

Norfolk and Portsmouth Belt Line Railroad Company does not own or operate track scales.

NOTE B -- Those desiring the weighing on private scales must make their own arrangements with the owners of the scales for their use.

ITEM 110

**SWITCHING CHARGE ON CARS RECEIVED IN ERROR
OR NO FORWARDING DIRECTIONS**

CHARGE PER CAR

Cars received by Norfolk and Portsmouth Belt Line Railroad Company, in error or without necessary forwarding directions, will be handled in accordance with AAR Car Service Rule 7.

If cars are returned to the tendering carrier, forwarded to the proper carrier, or require holding, Norfolk and Portsmouth Belt Line Railroad Company may assess the tendering carrier \$262.00

ITEM 120

**LOCOMOTIVES, STEAM SHOVELS, BONDING CARS, DERRICKS
ON CRANES, DEAD ON OWN WHEELS
LOCOMOTIVES, ON OWN WHEELS, UNDER STEAM IN CHARGE
OF PILOT. (See Note)**

CHARGE PER CAR

When handled between interchange tracks and/or industries or sidings located on or served by the Norfolk & Portsmouth Belt Line Company..... \$264.00

NOTE -- Cost of Pilot when furnished by Norfolk and Portsmouth Belt Line Railroad Company will be in addition to the switching charge.

**SWITCHING CHARGES, ALSO
CHARGES FOR WEIGHING AND RE-WEIGHING LIGHT AND LOADED CARS
CHARGES FOR SPECIAL SERVICE OF ENGINE AND TRAIN CREW
NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY**

ITEM 130

INTRA-PLANT SWITCHING

CHARGE PER CAR

(A). Except as provided in Paragraph B, for switching car between two points on same track or from one track to another track entirely within the confines of the same (single) plant or industry (1) \$133.00

(B). For switching car between two points on same track or from one track to another track entirely within the confines of the same (single) plant or industry when use of carrier rails is involved (1) \$223.00

ITEM 140

SPECIAL SWITCHING SERVICE/SPECIAL TRAIN SERVICE

A. For special switching service of engine and train crew, on request of industry, when regularly assigned on duty switch crew is requested(See Notes..... \$350.00 (per hr)

Note 1. Special Switching service is defined as switching other than required by ordinary operating convenience.

Note 2. Special switching service will be provided subject to the availability of engine and crews and will be provided at the sole discretion of the NPBL.

Note 3. The charge for special service is per hour with a minimum of 2 hours and will be

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

in addition to published tariff charges for cars switched.

- B. For Special Train Service of engine and train crew, outside regular assigned duty, furnished an industry for its use. \$3,500.00

Note 1. Charge will apply for a minimum of 8 hours or fraction thereof.

Note 2. An additional charge of \$440.00 per hour or fraction thereof will apply for assignment of engine and crew beyond eight (8) hours, with a maximum of twelve (12) hours for each assignment.

Note 3. Charge will be computed from the time the crew starts duty at its home terminal until the crew ends duty at its home terminal.

Note 4. Special Train service will be provided subject to the availability of engine and crews and will be provided at the sole discretion and option of the NPBL.

Note 5. This charge will be in addition to published tariff charges for cars switched.

ITEM 150

**SWITCHING - TURNING OF CARS TO PERMIT LOADING AT STOP-OFF
POINTS OR UNLOADING AT STOP-OFF POINTS OR DESTINATIONS:**

1. In instances where it is desired that freight in carloads be placed on delivery tracks for loading at stop-off points or unloading at stop-off points or destinations from one particular side or end of car, cars must be properly placarded on both sides and notation made on bill of lading and waybill substantially as follows:

NOTICE TO CARRIER

Deliver Car for loading or unloading from door or end specified by placard.

2. On freight in carloads, not properly placarded on both sides of car to load or unload from one particular side or end of car, which shipper or consignee, after initial placement of car directs carrier to turn and return to the same track for loading or unloading from opposite side or end of car, the following shall apply:

CHARGES

(A) If the car is turned at a "Y" or a turntable within the confines of an industry apply the intra-plant switching charge published in Item 130.

(B) If the car is turned at a "Y" or a turntable outside the confines of the industry, apply intra-terminal switching charge published in Item 60.

NOTE I -- If Bill of Lading carries notation that car has been placarded, and placard has disappeared before placement, the charge named herein will not apply.

-THE END-

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

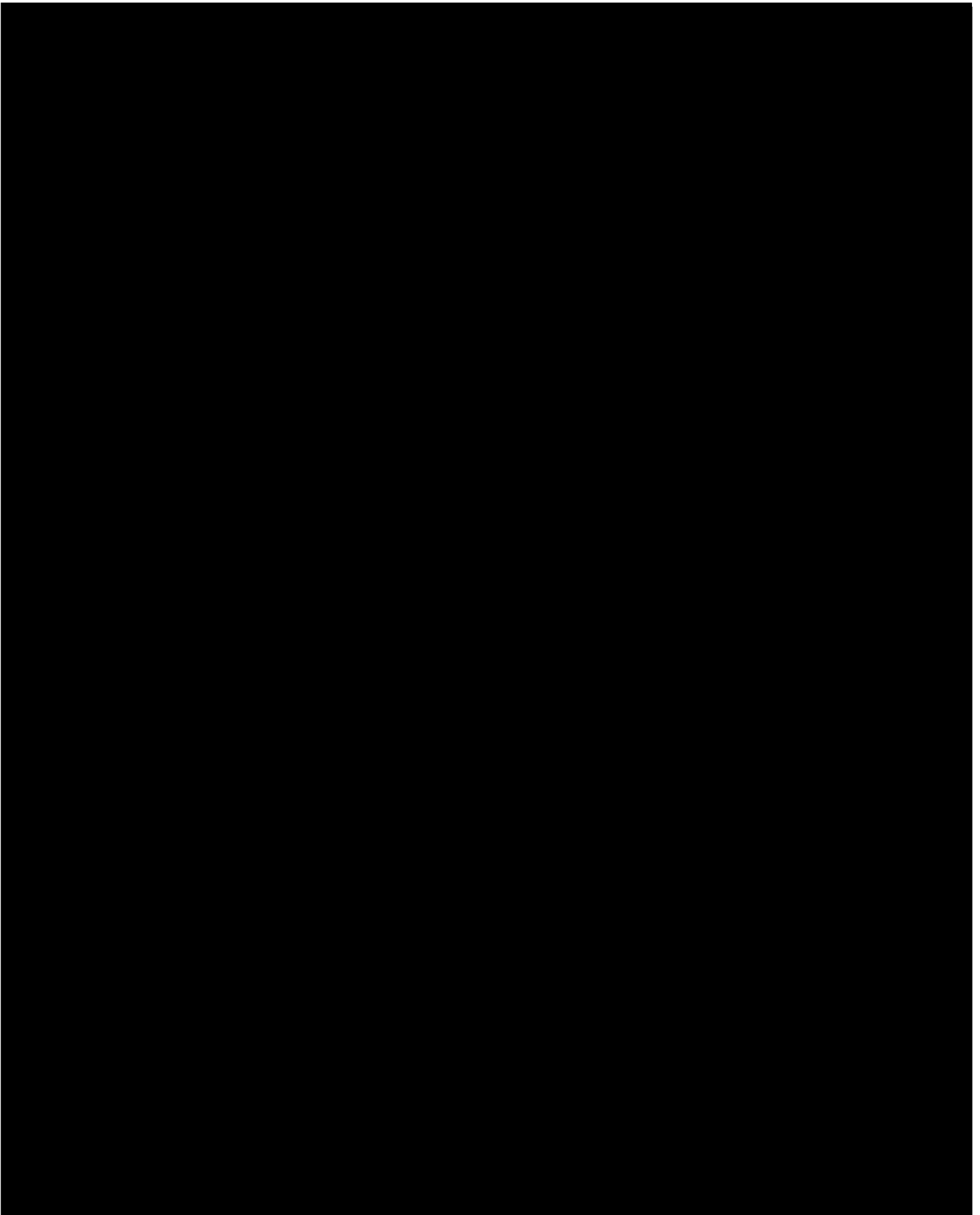
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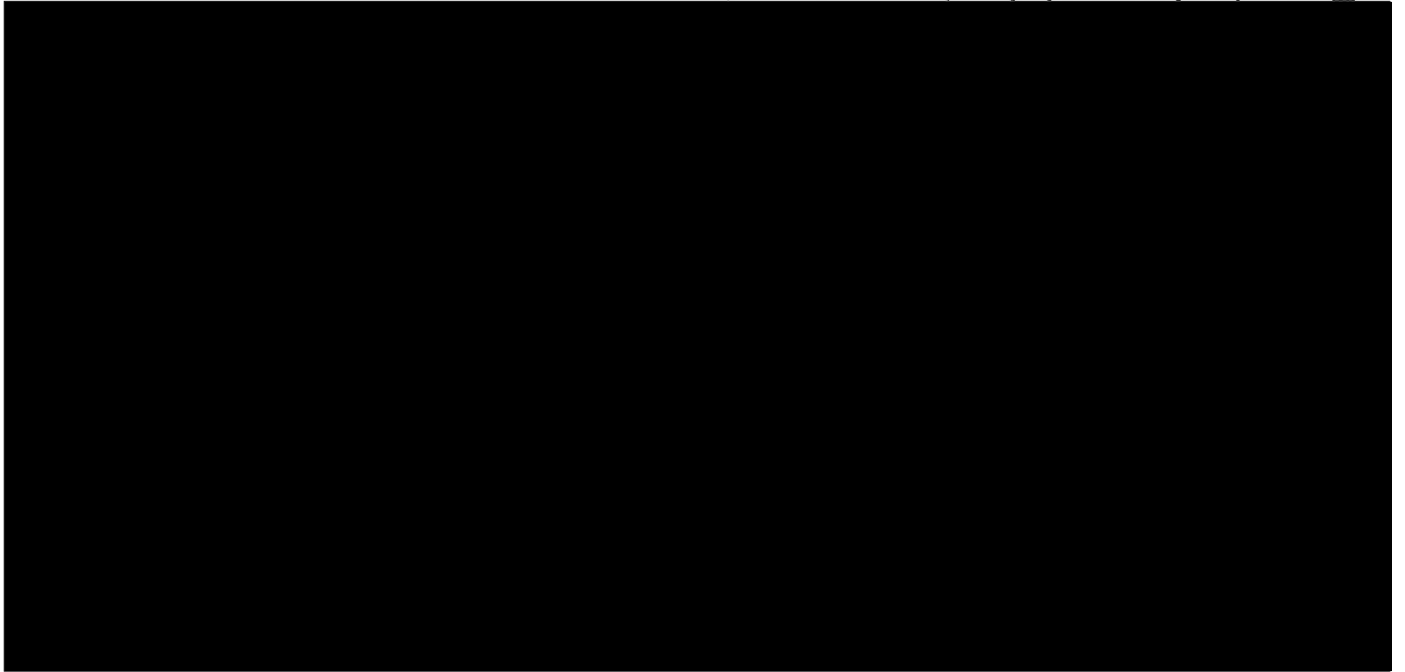
APRIL 2, 2013 EMAIL CONTAINING STATEMENT OF
GOVERNOR MCDONNELL (NSR_00081982)

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SURFACE TRANSPORTATION BOARD

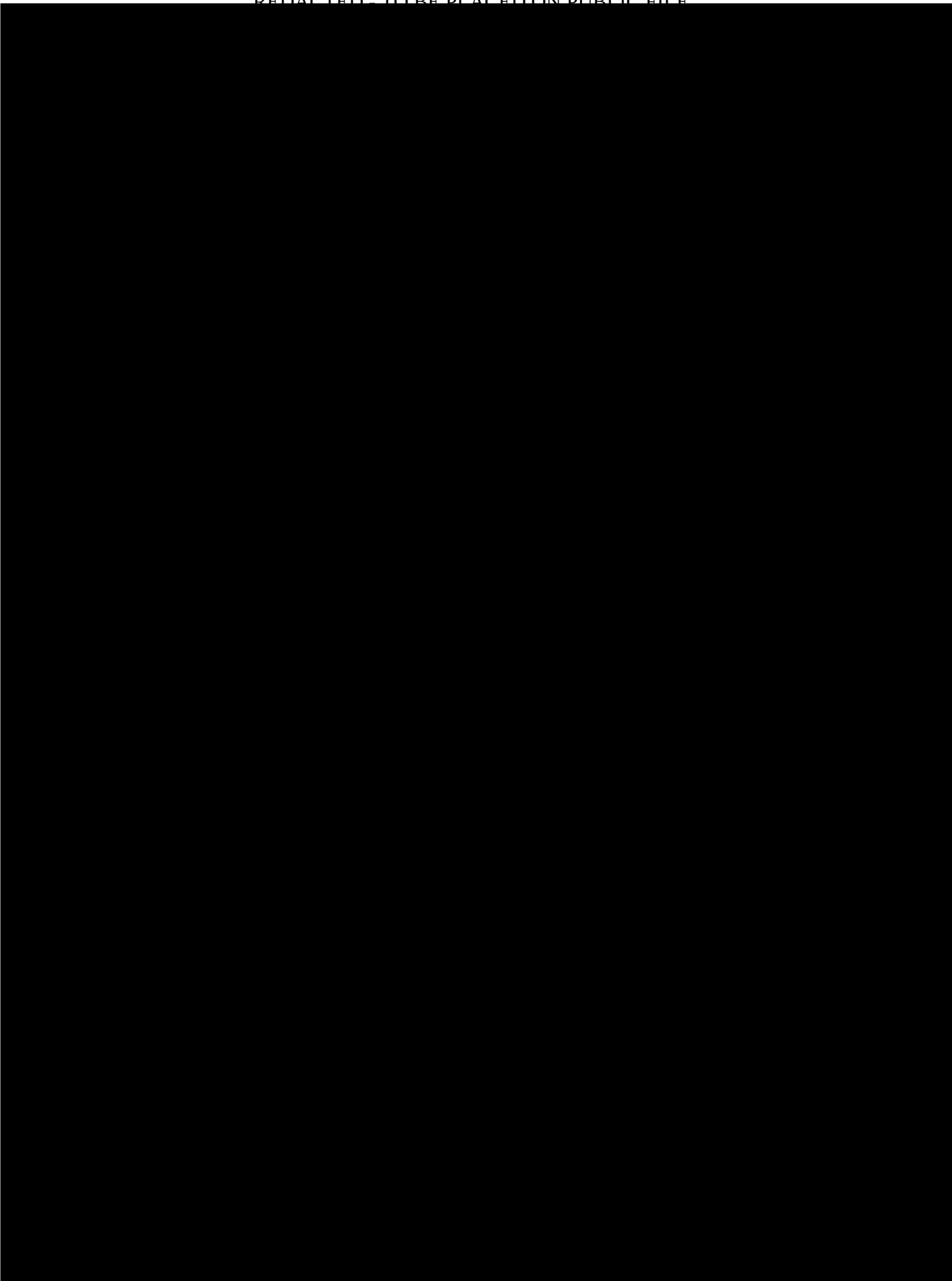
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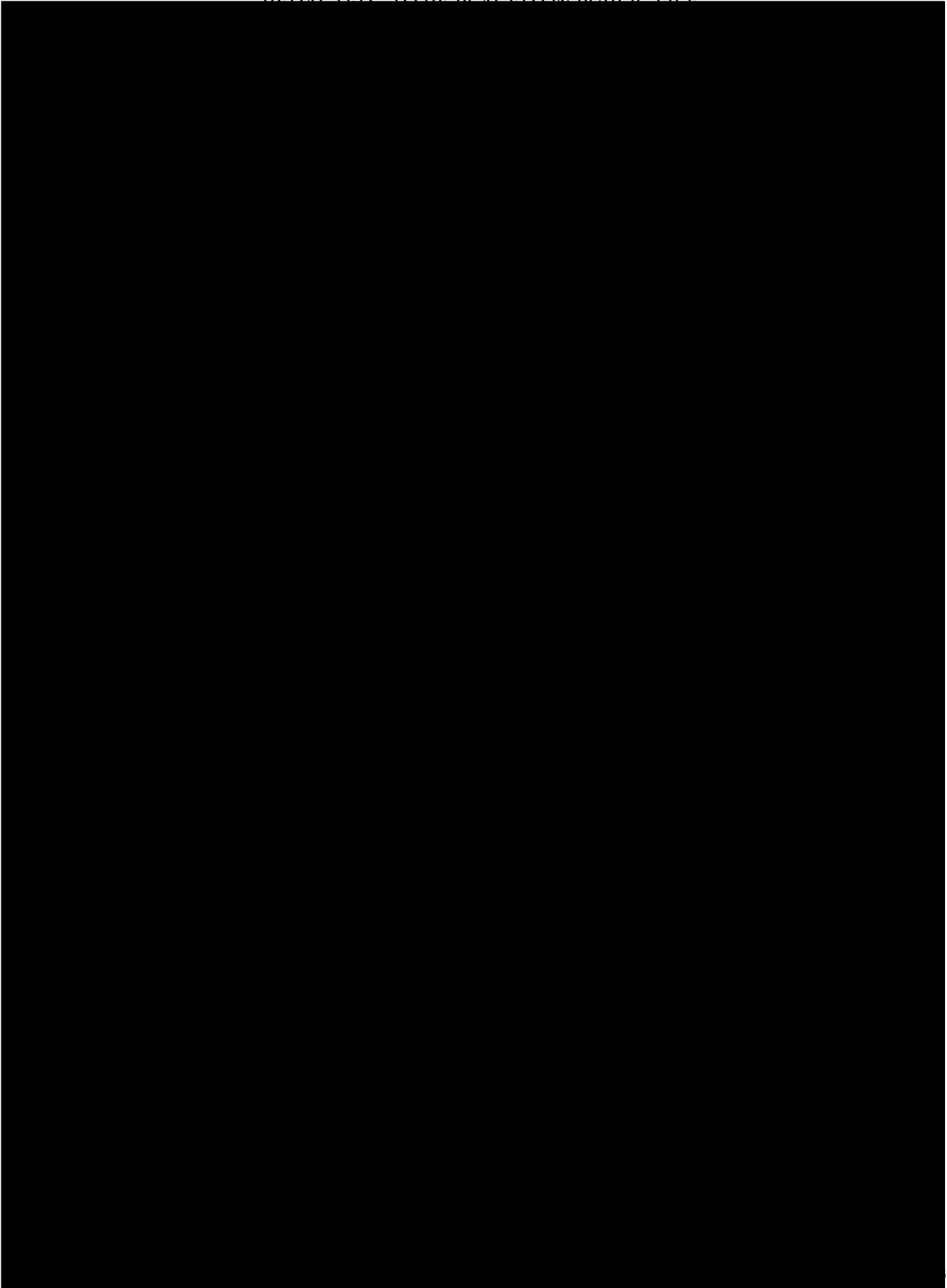
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 20

DANIEL BROCK, *WHAT'S AT STAKE IN NORTH CHARLESTON RAIL
DEBATE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN*,
JULY 19, 2010 (EXHIBIT 15 IN THE FEBRUARY 19, 2020 DEPOSITION OF
KENNETH JOYNER)







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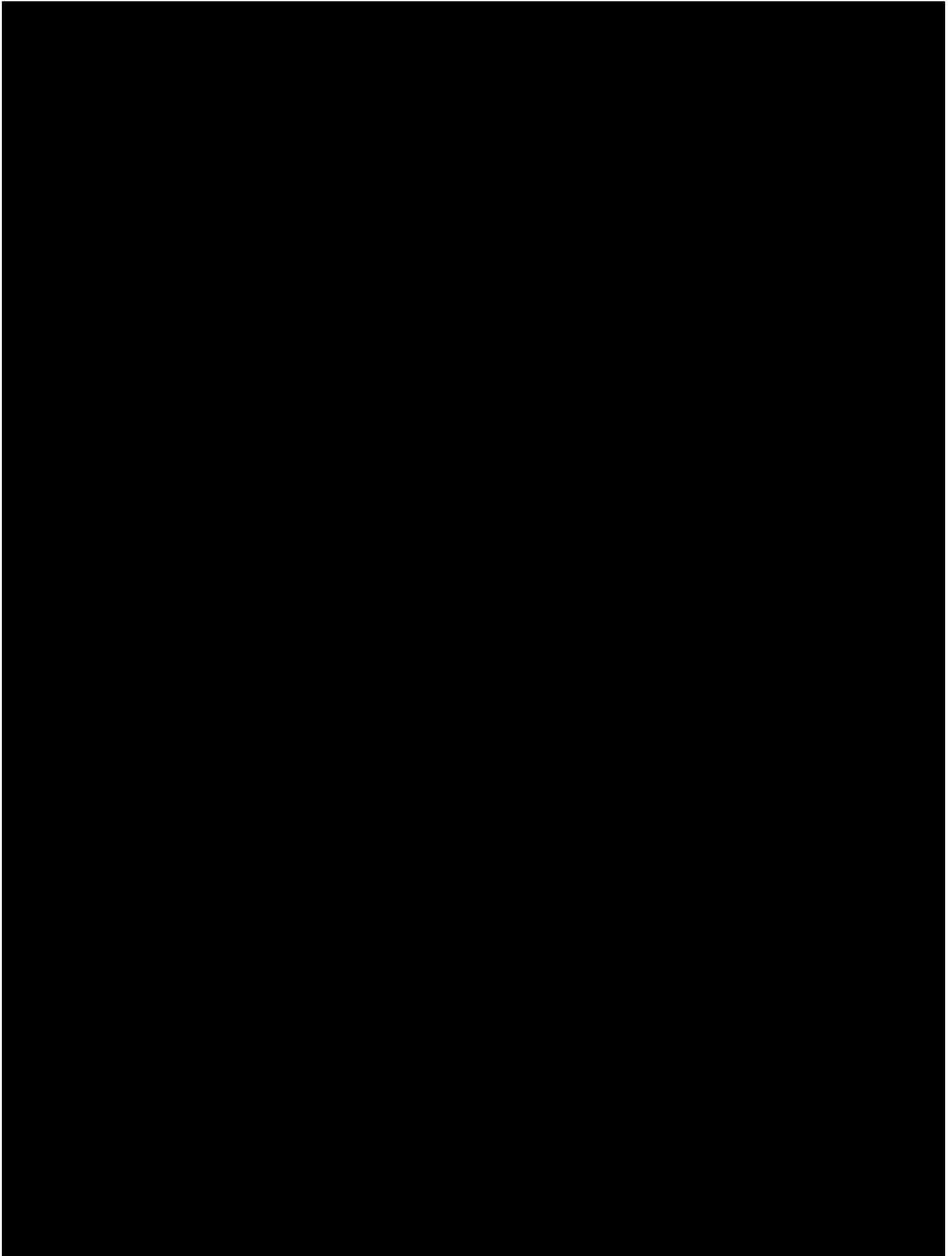
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SURFACE TRANSPORTATION BOARD

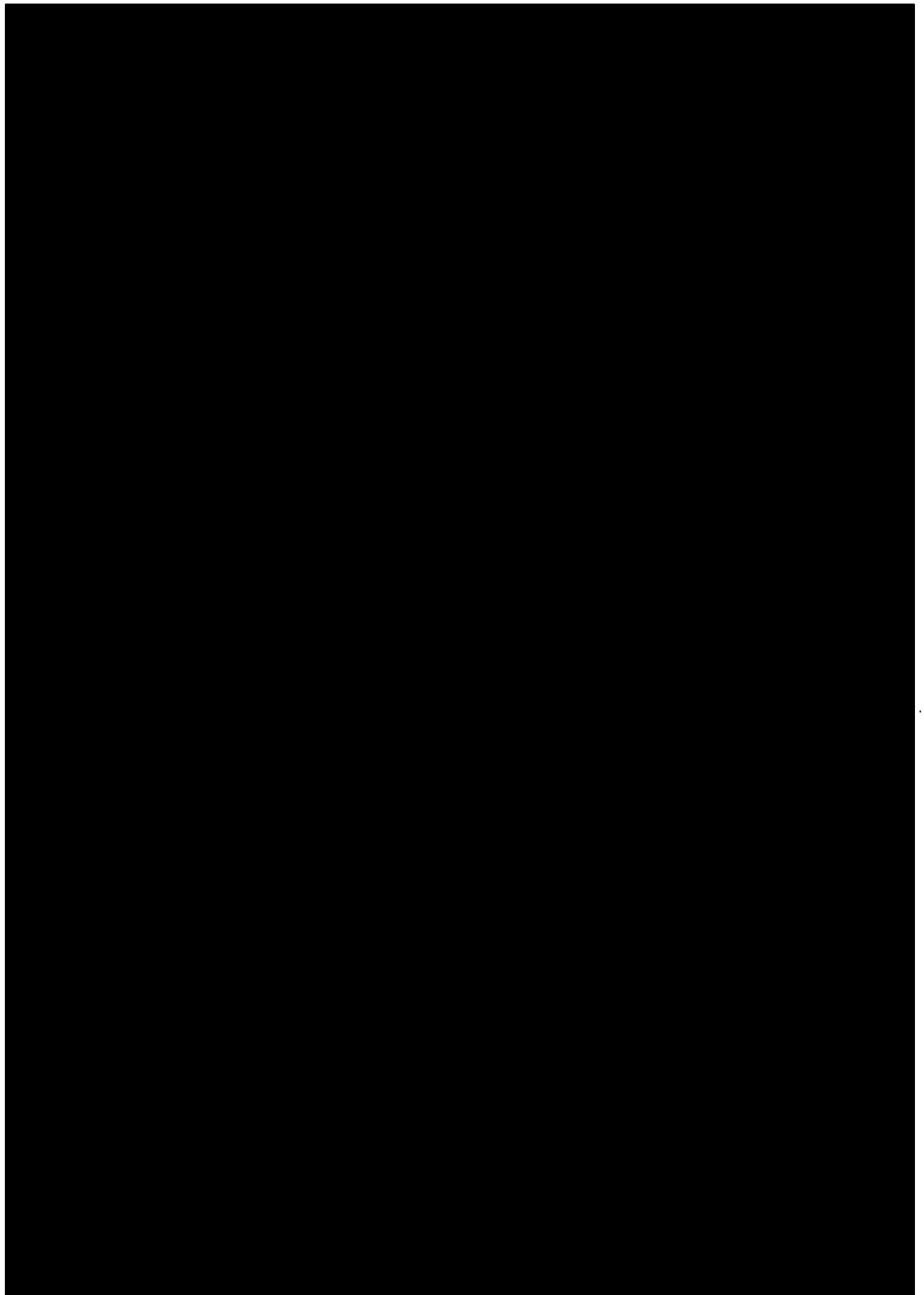
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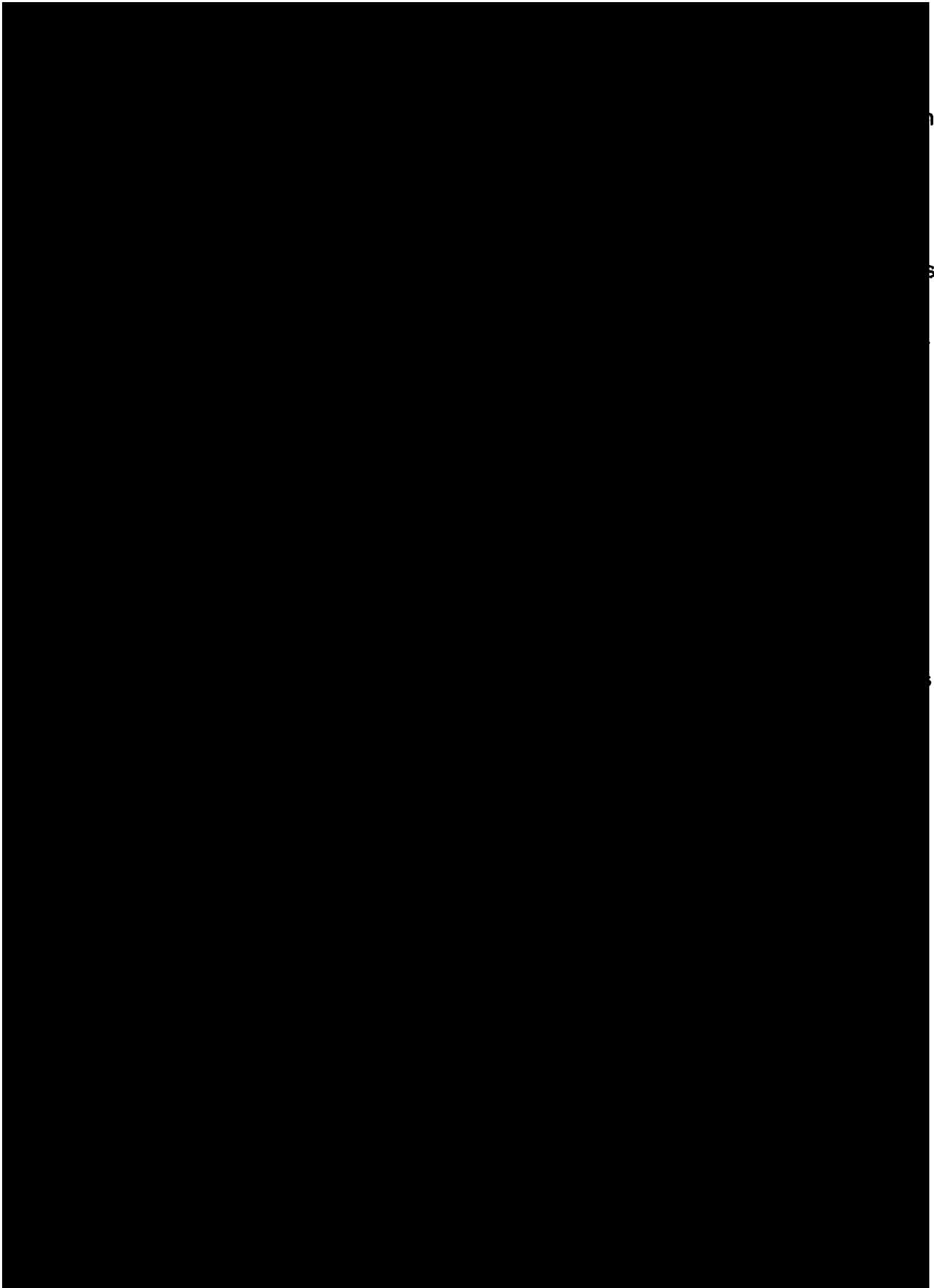
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

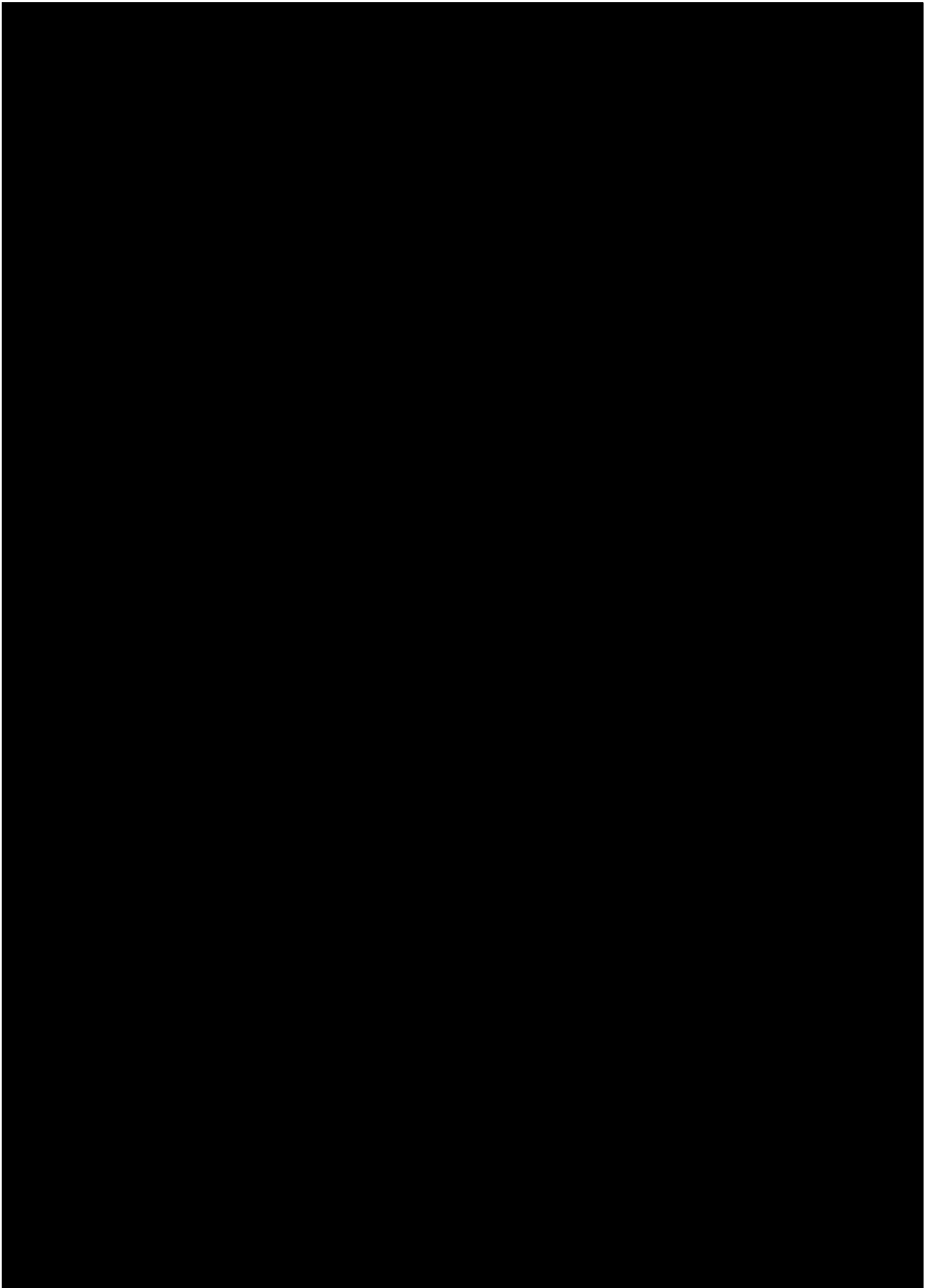
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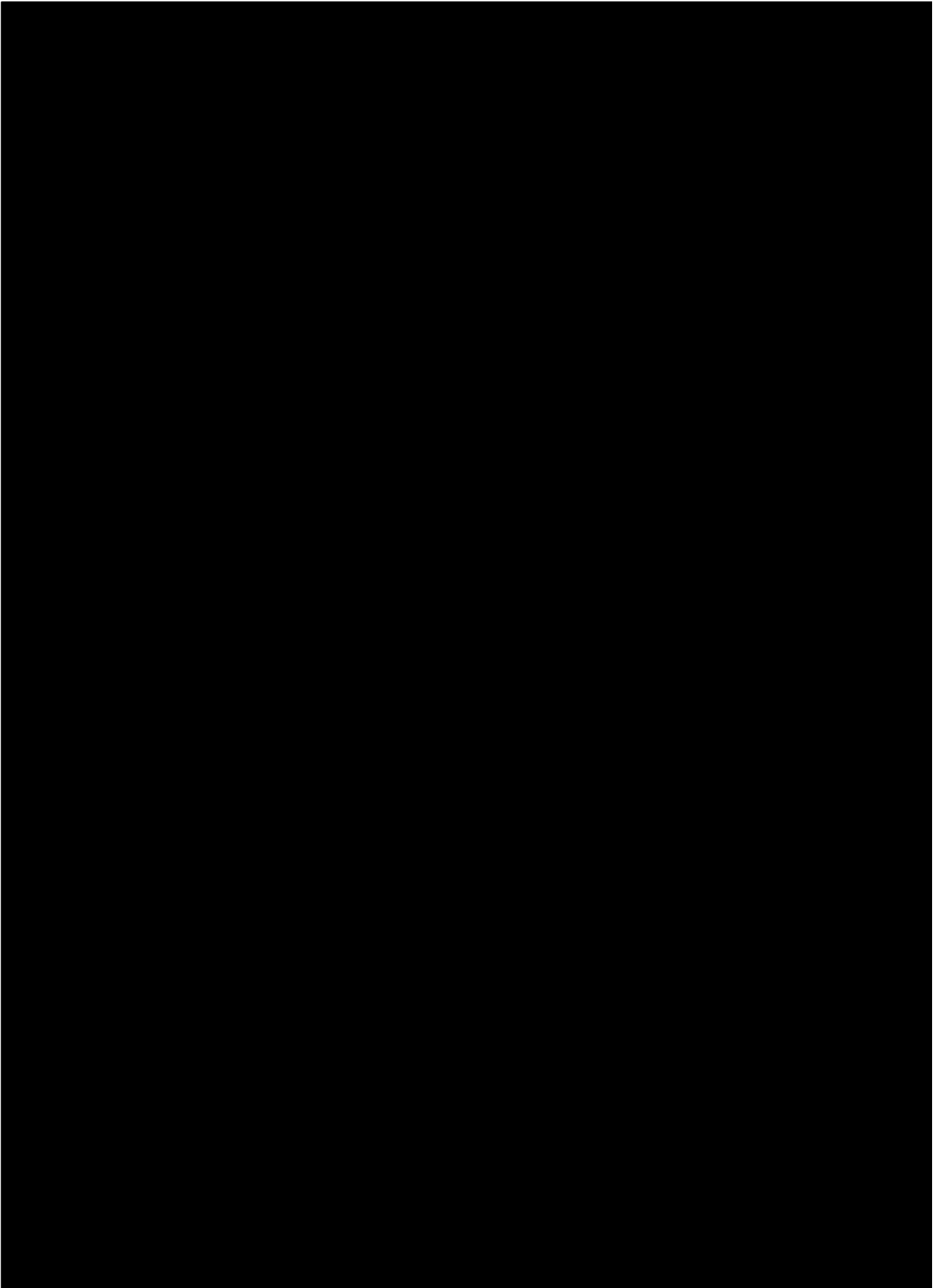
JULY 23, 2010 EMAIL FROM NS'S DAVID STINSON
CONTAINING CSXT'S 2010 PROPOSAL (EDVA NPBL007430)

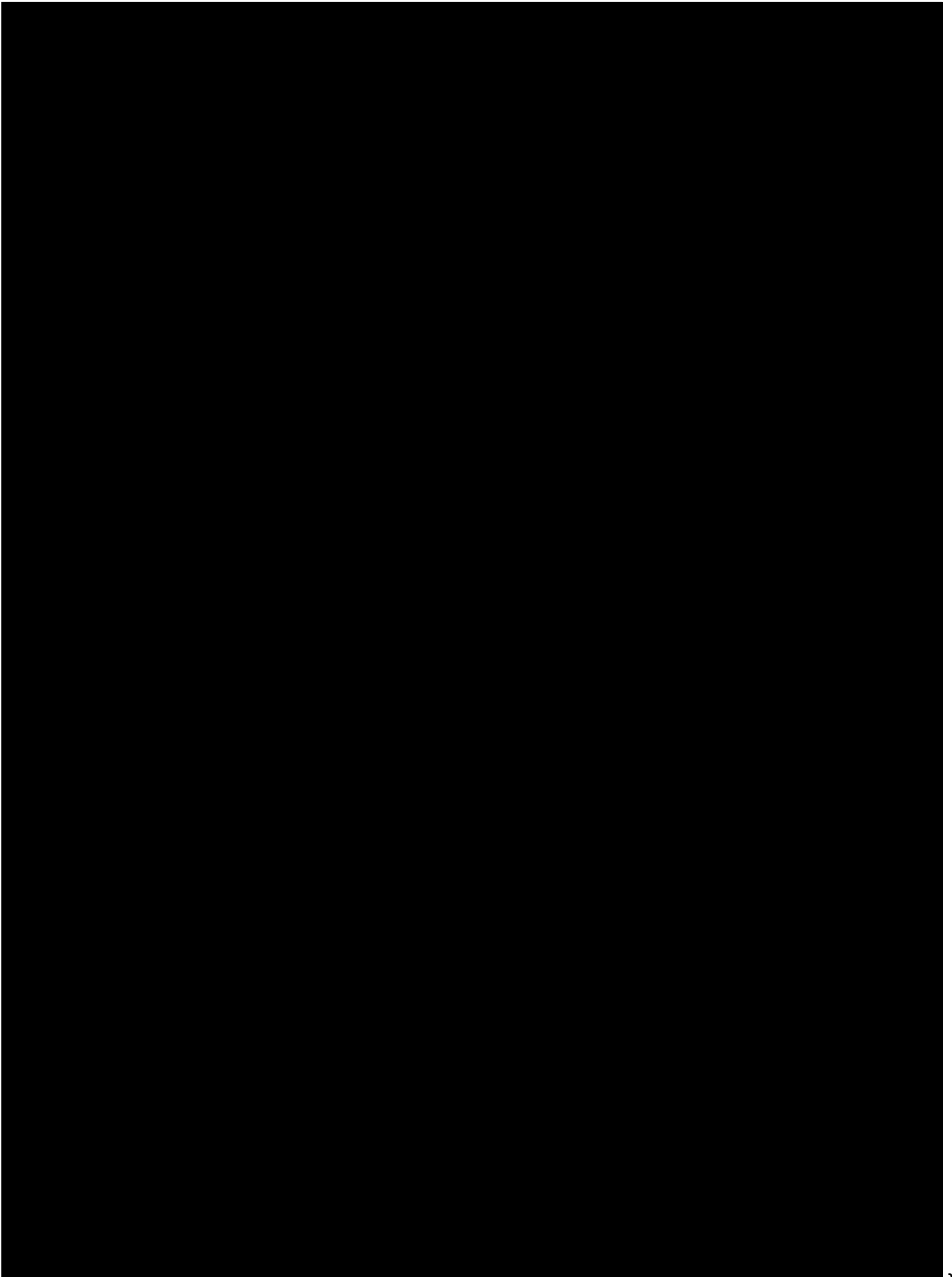












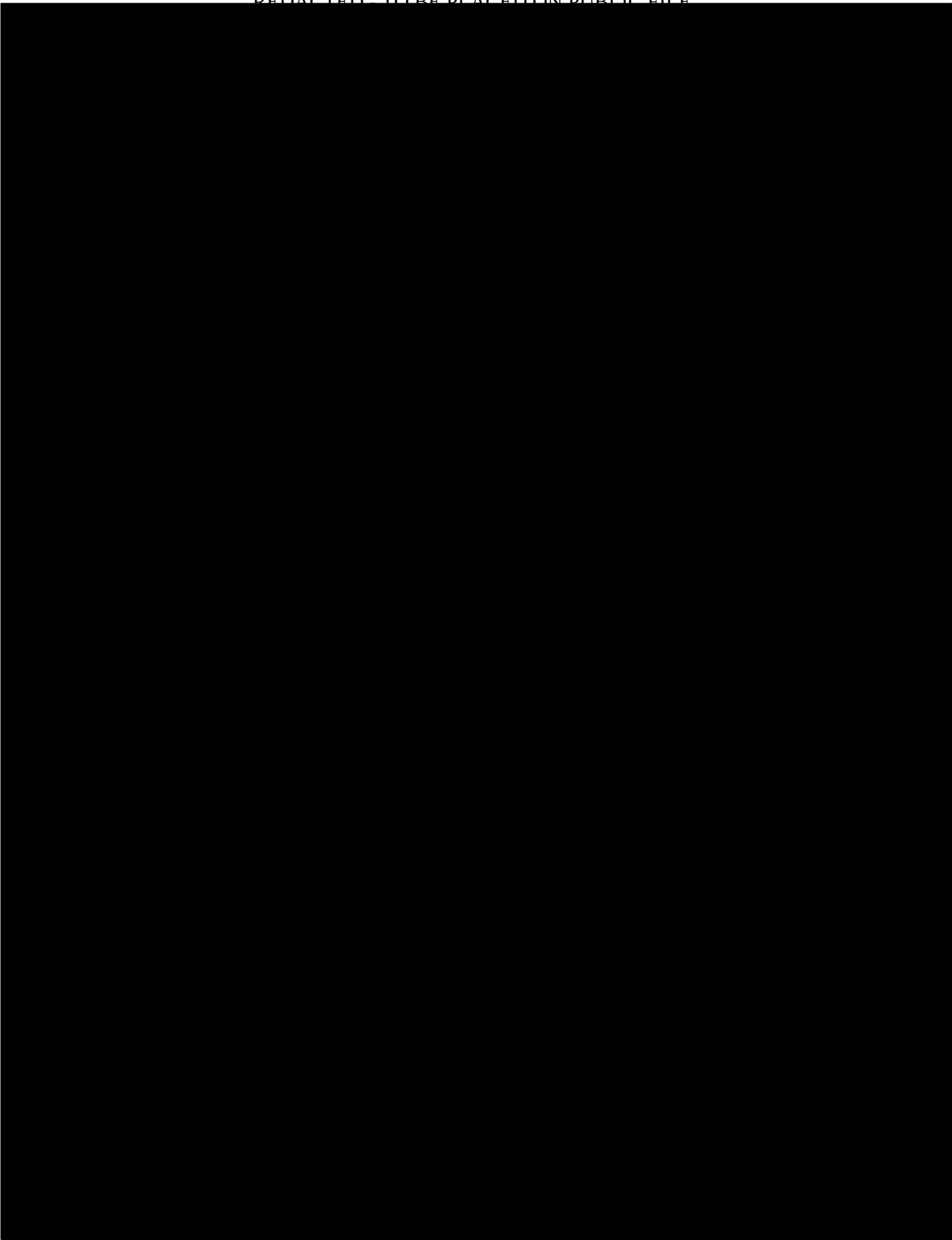
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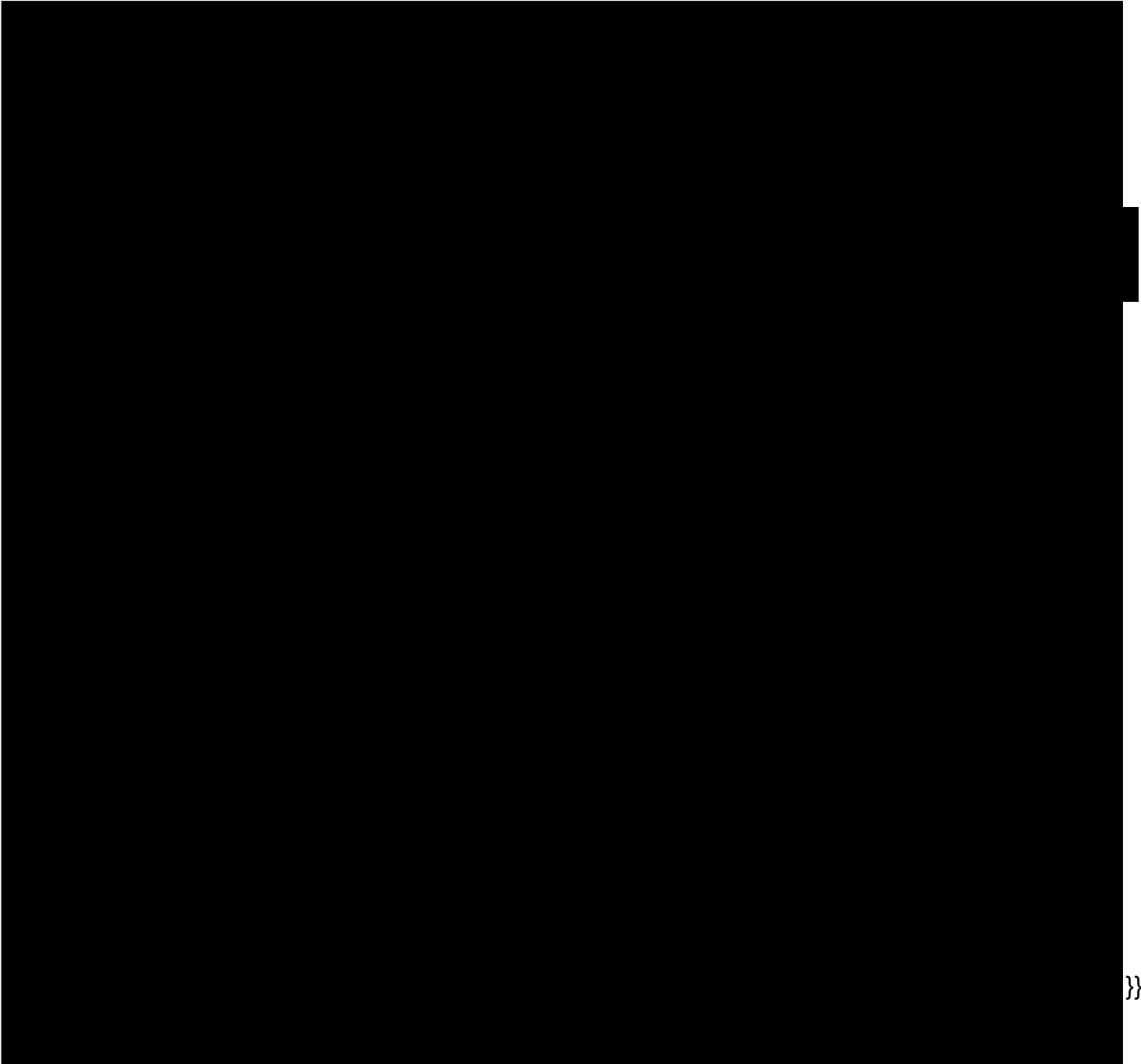
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 22

FEBRUARY 2, 2018 EMAIL FROM NS'S CARROLL NEVILLE
REGARDING ON-DOCK (STB-NS-0025131)



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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 23

MAY 23, 2019 EMAIL FROM NS'S KEITH AUTREY
REGARDING ON-DOCK (STB-NS-0026620)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

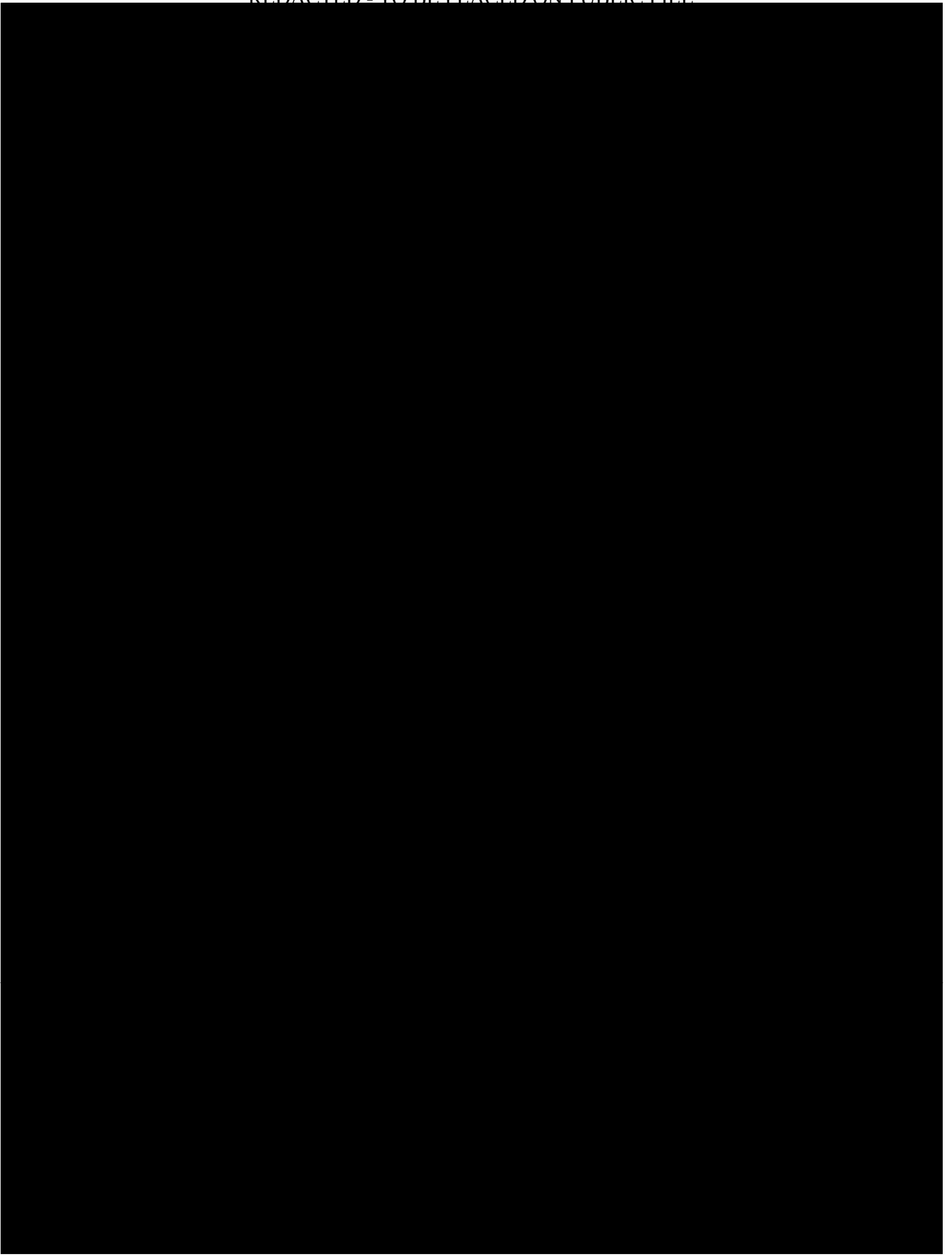
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

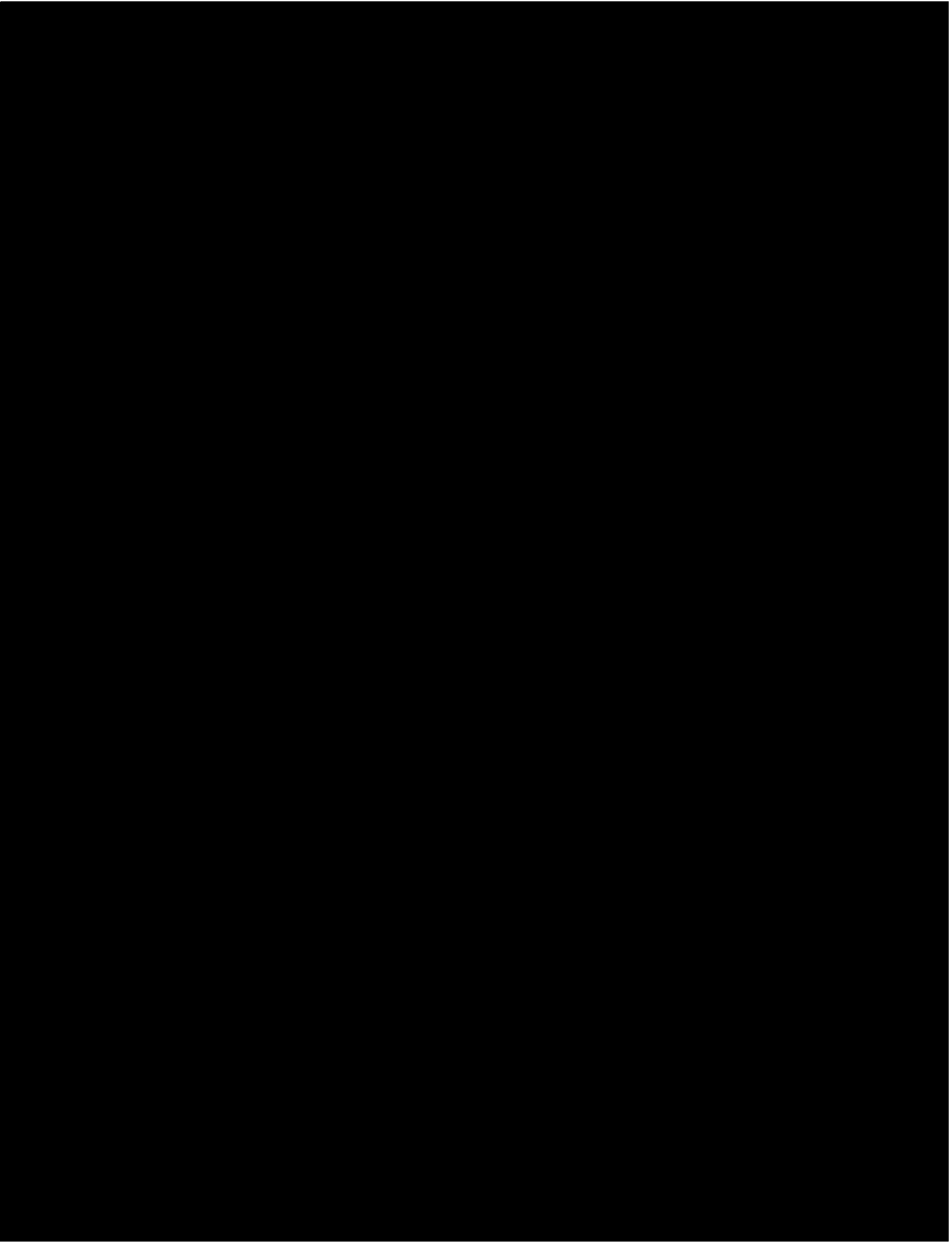
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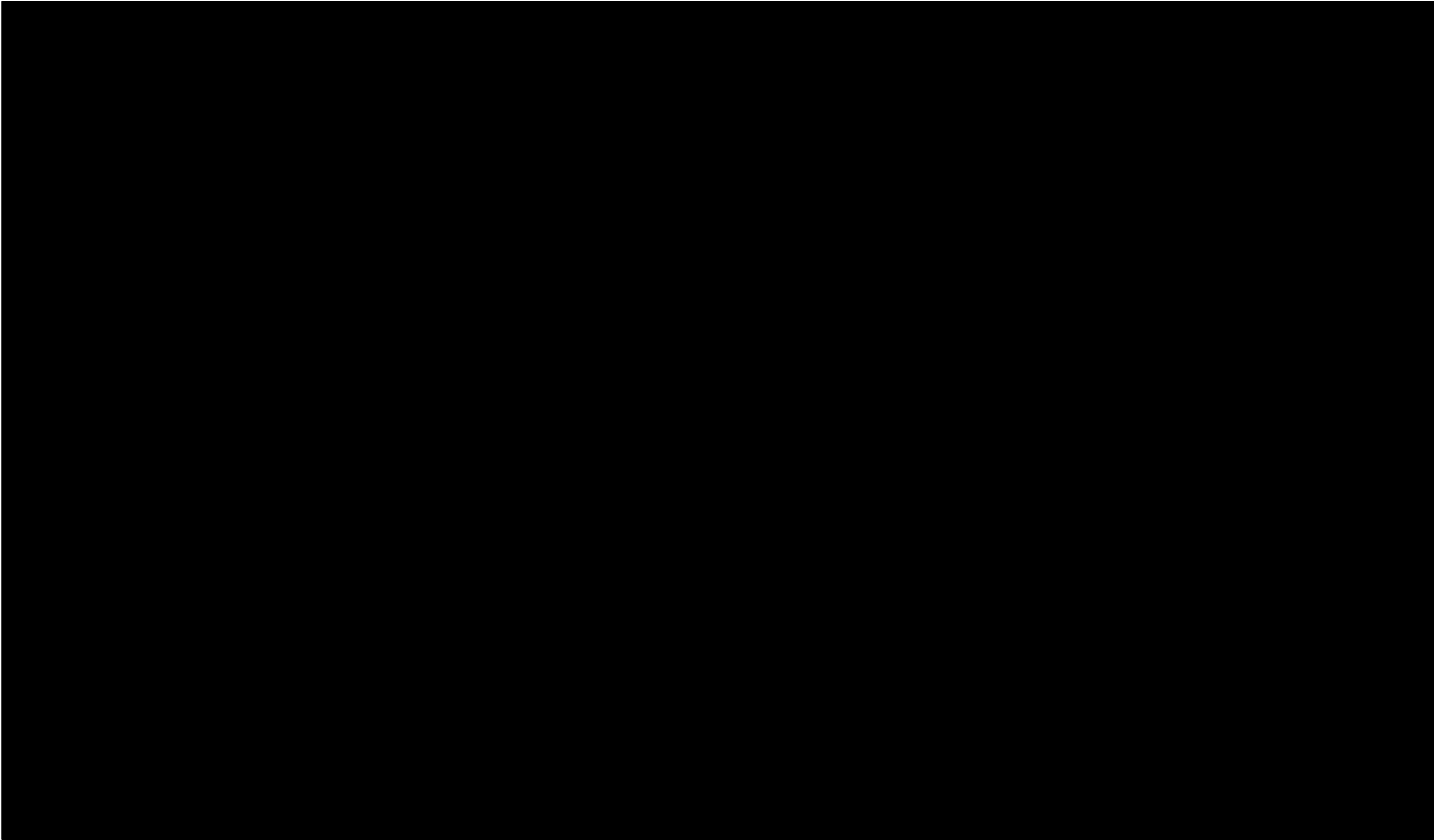
MAY 22, 2019 EMAIL FROM NS'S KENNETH JOYNER
REGARDING ON-DOCK (STB-NS-0027642)

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REDACTED - TO BE PLACED ON PUBLIC FILE







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SURFACE TRANSPORTATION BOARD

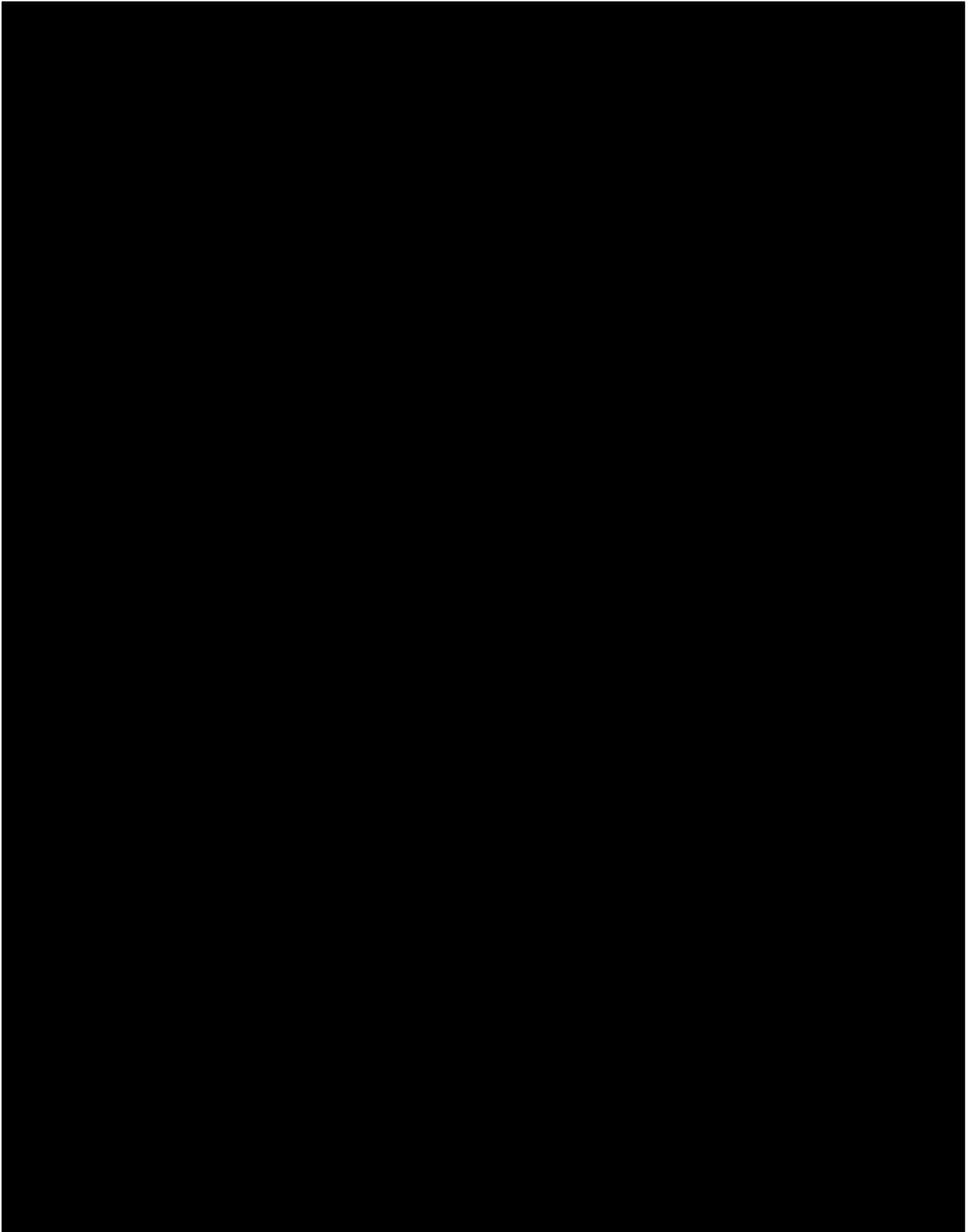
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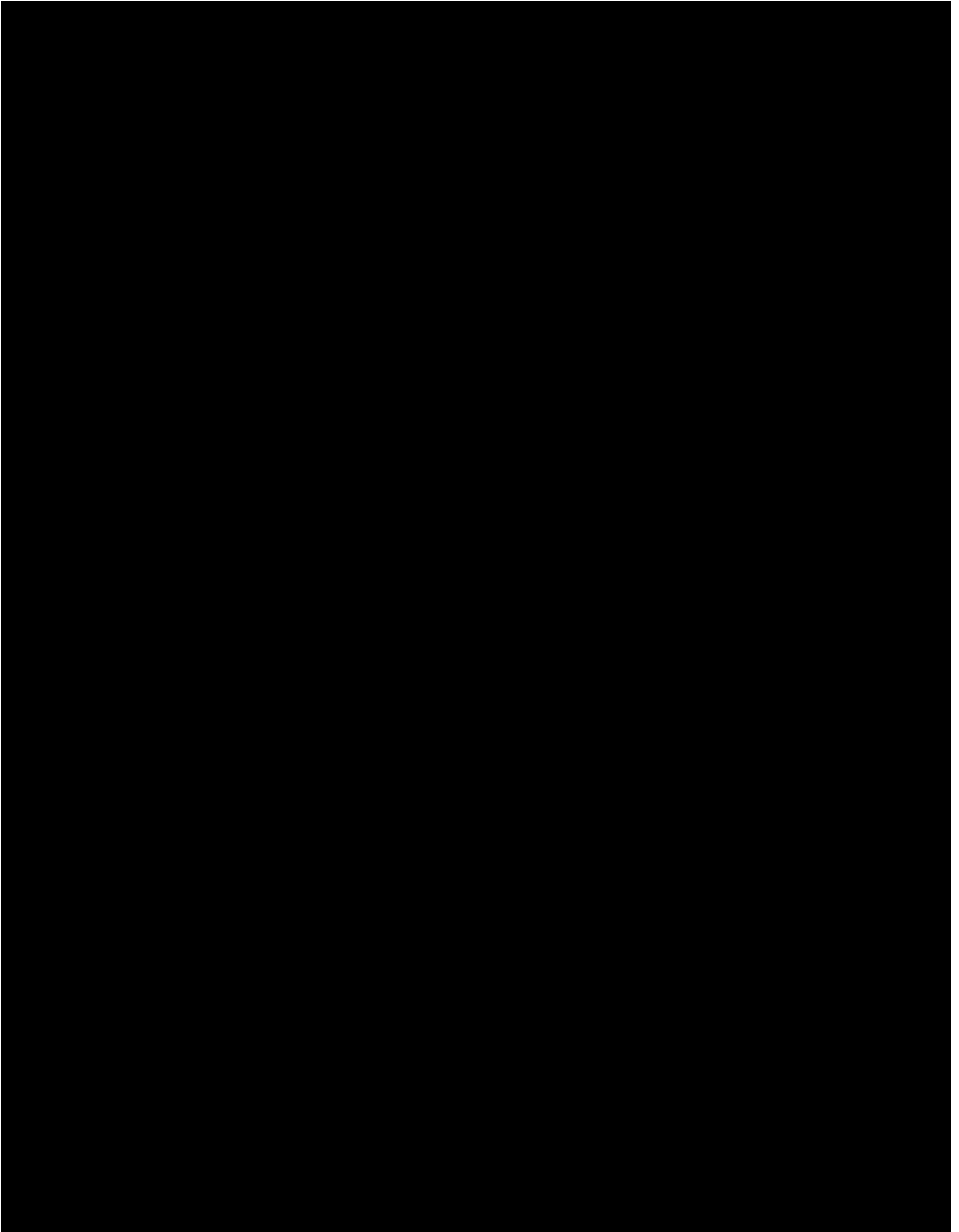
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

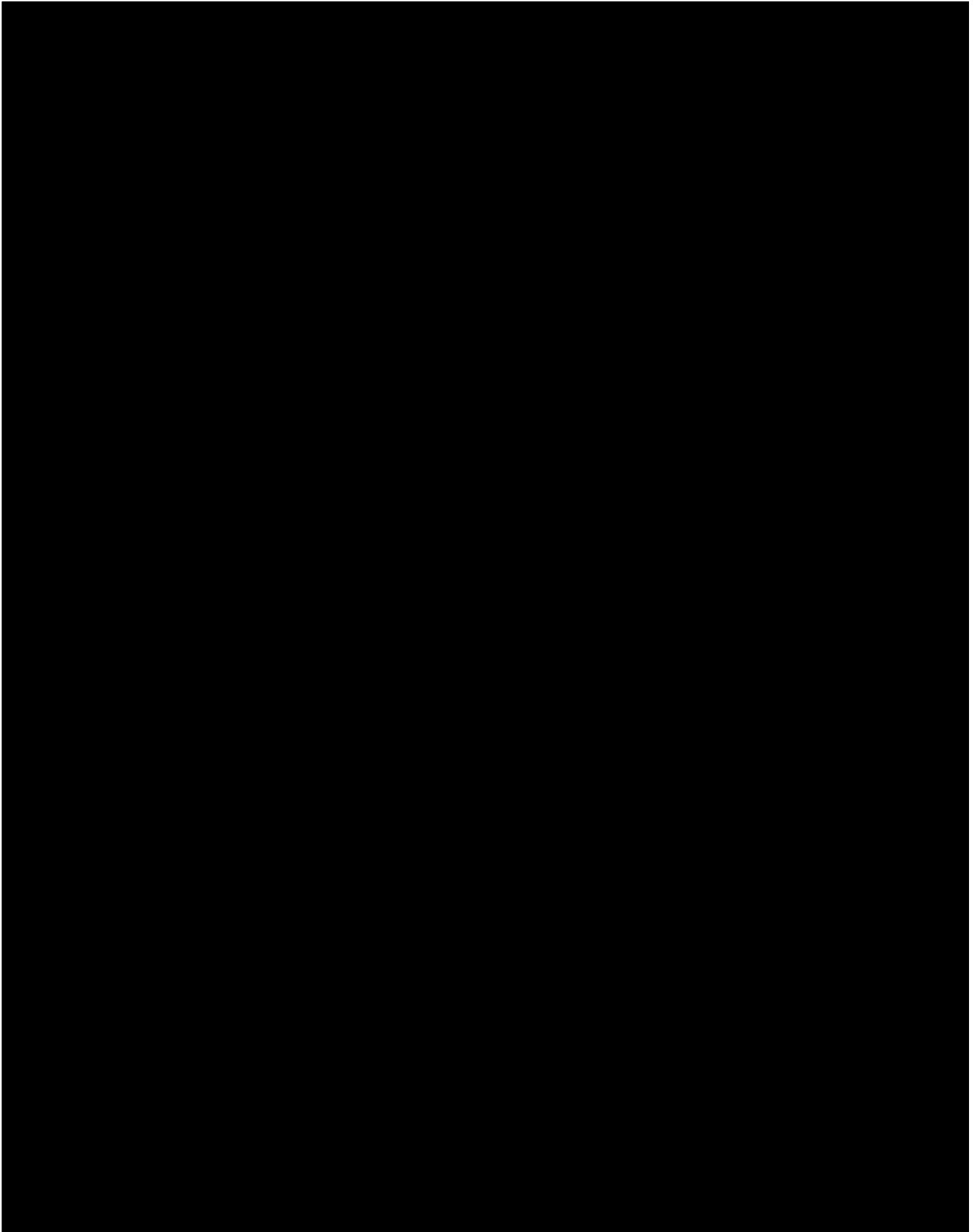
EXHIBIT 25

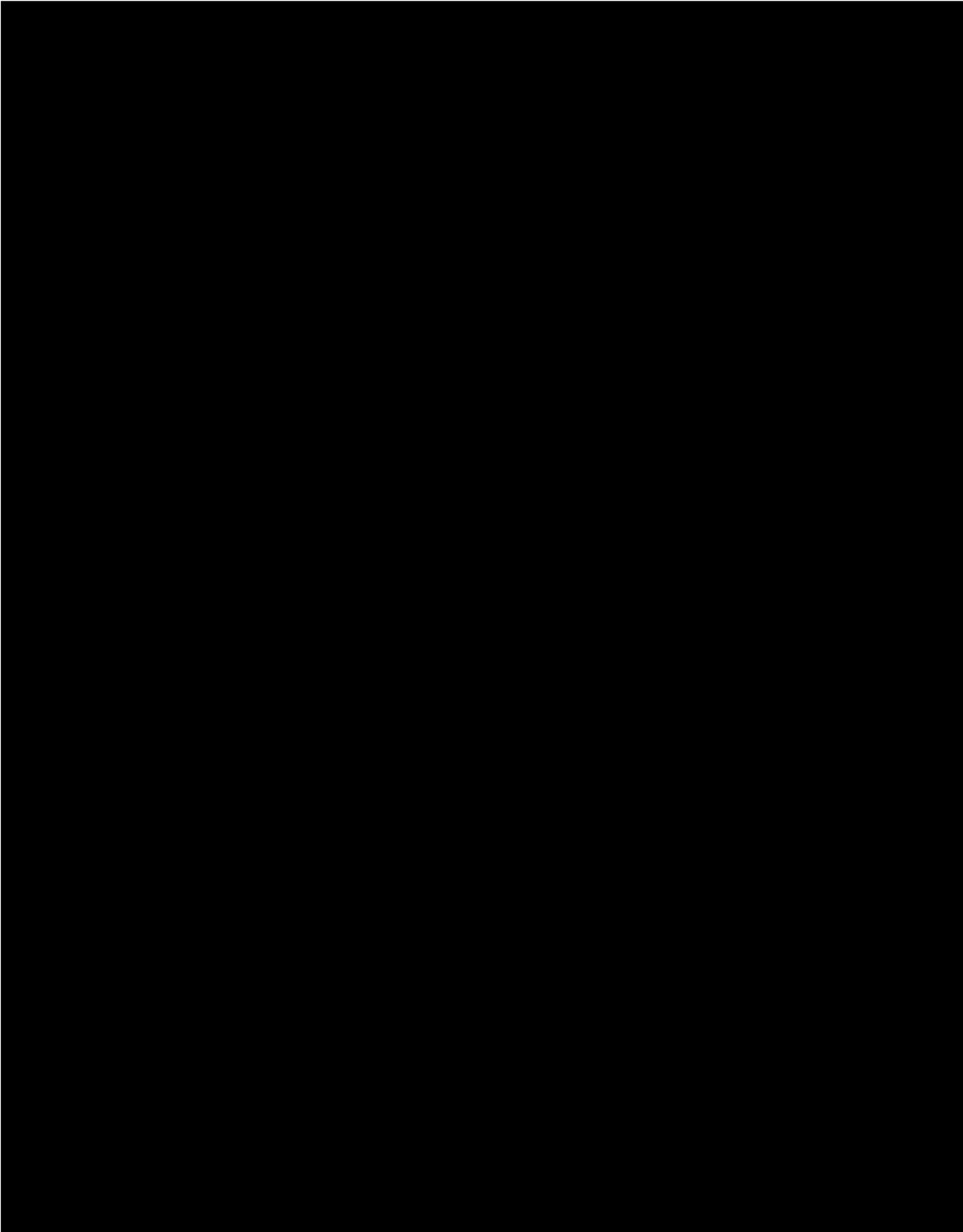
ARI ASHE, *NS BULLISH ON INTERMODAL DESPITE TRUCK
PRESSURE*, J. OF COMMERCE, APRIL 24, 2019 (STB-NS-0026771)

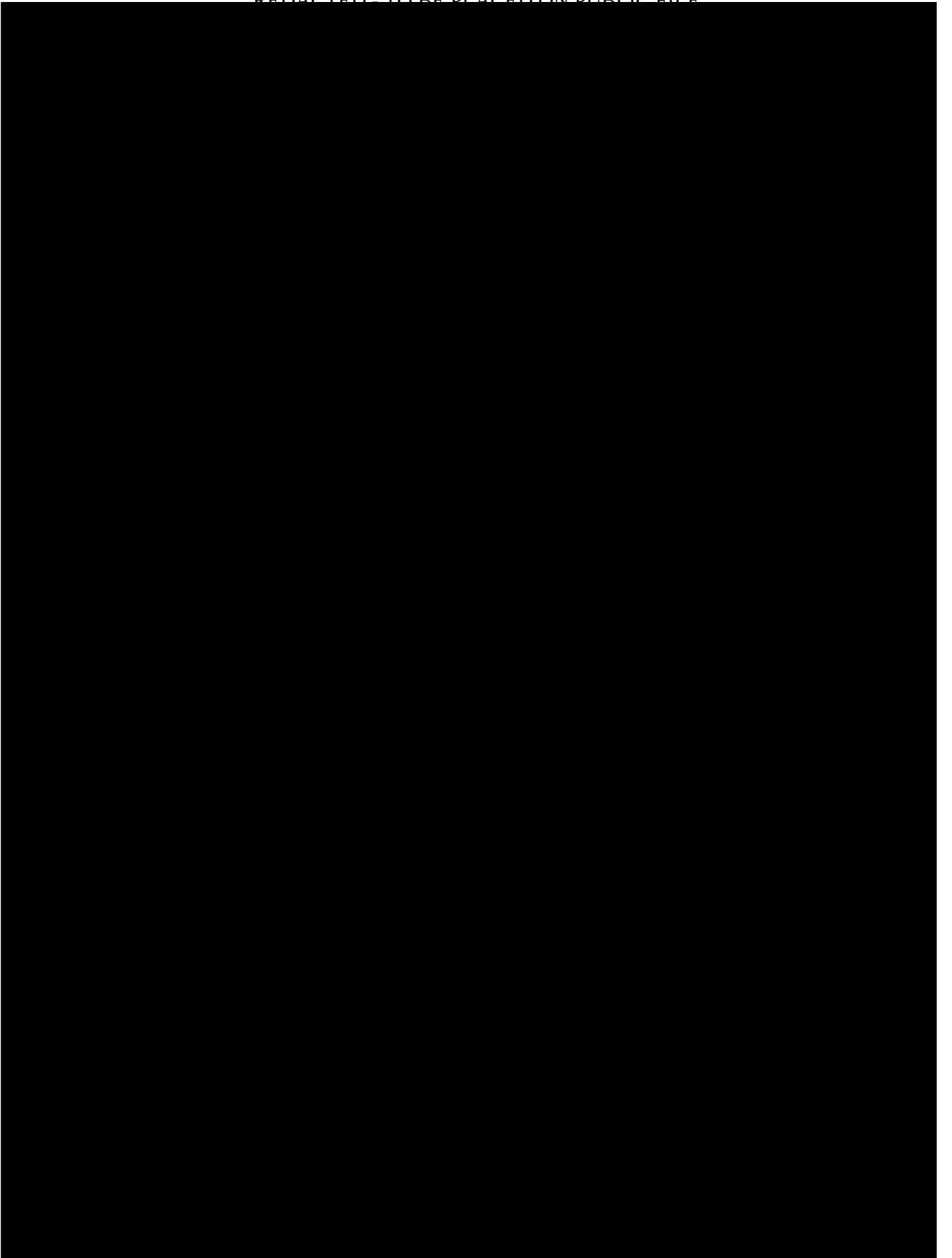
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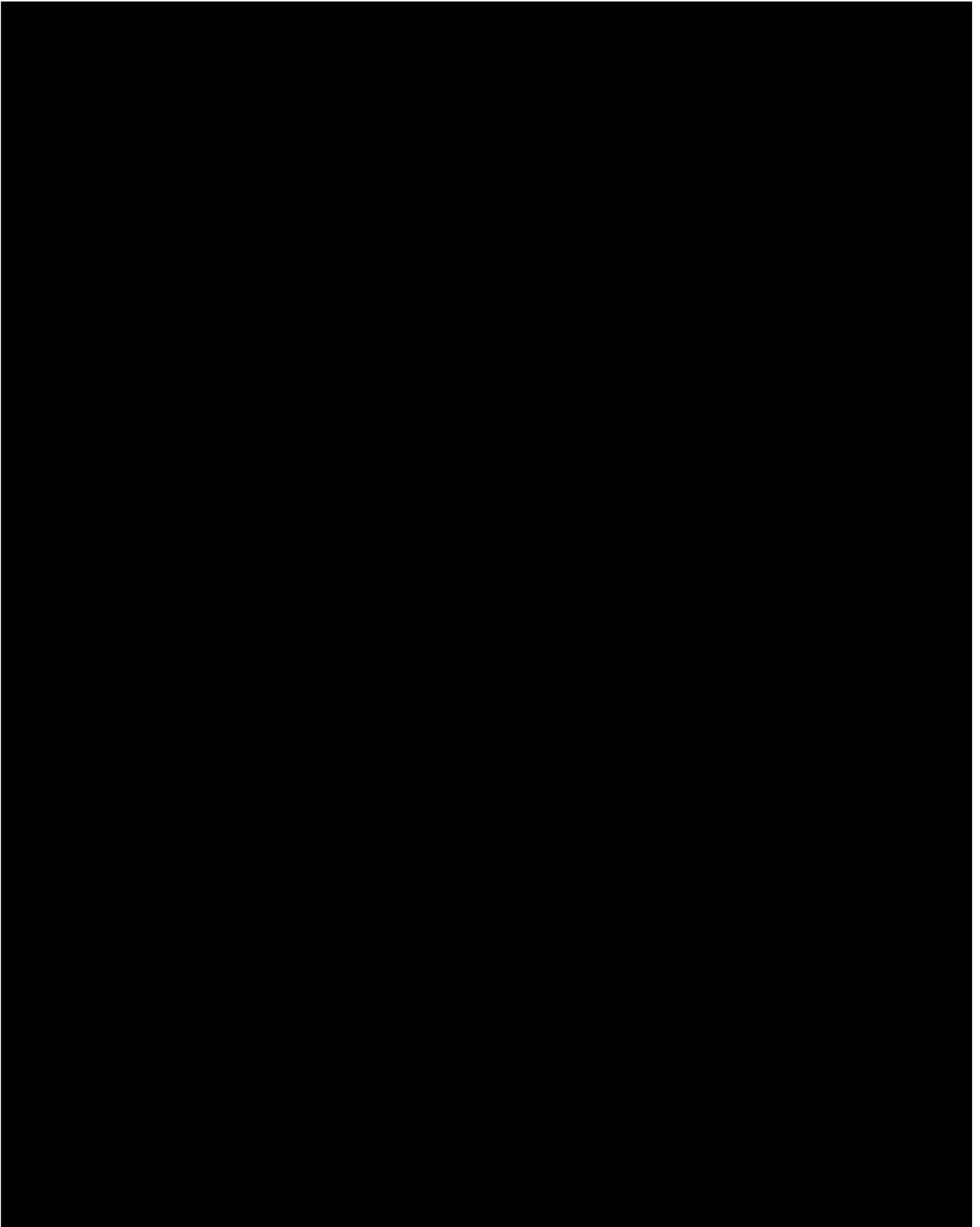


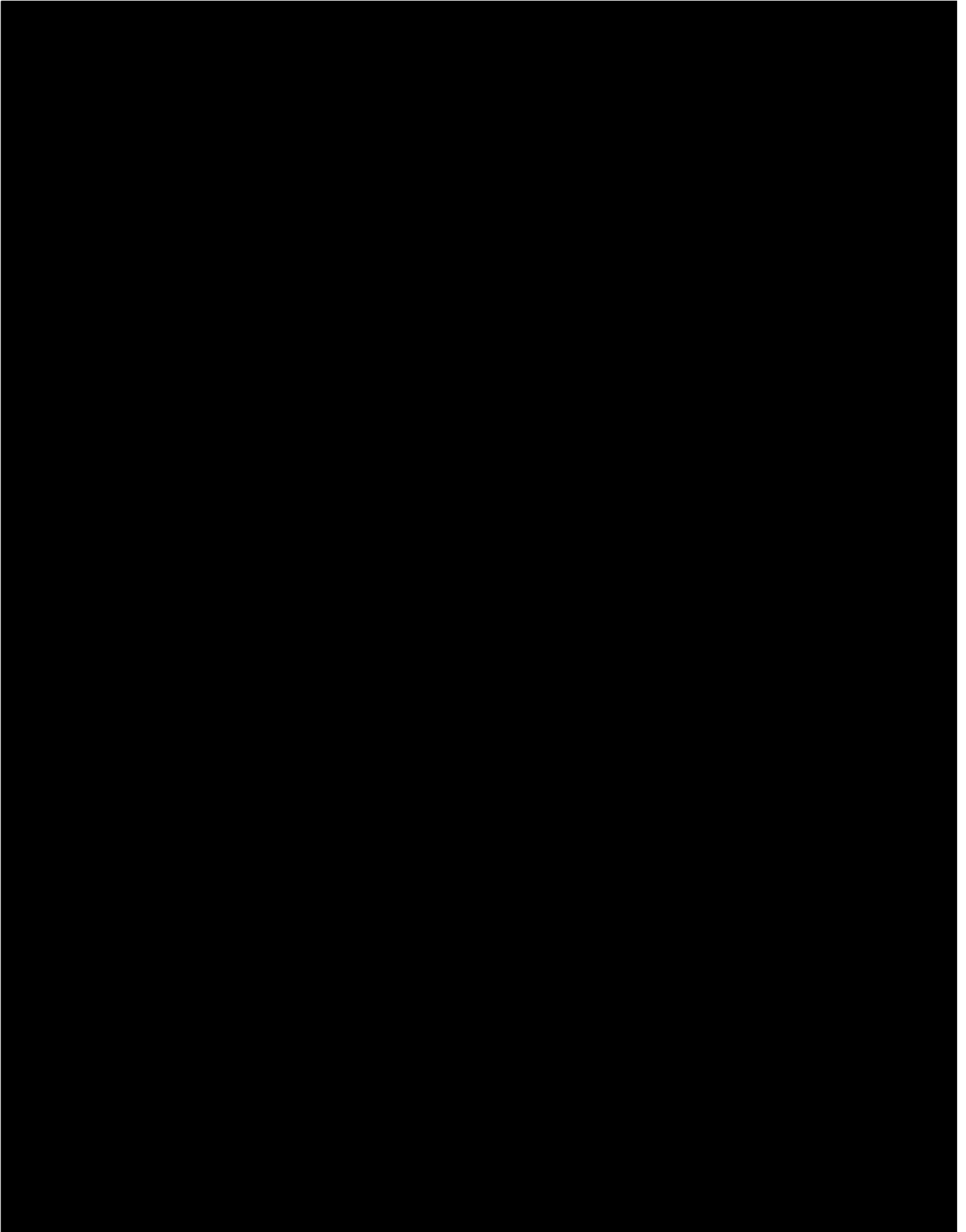


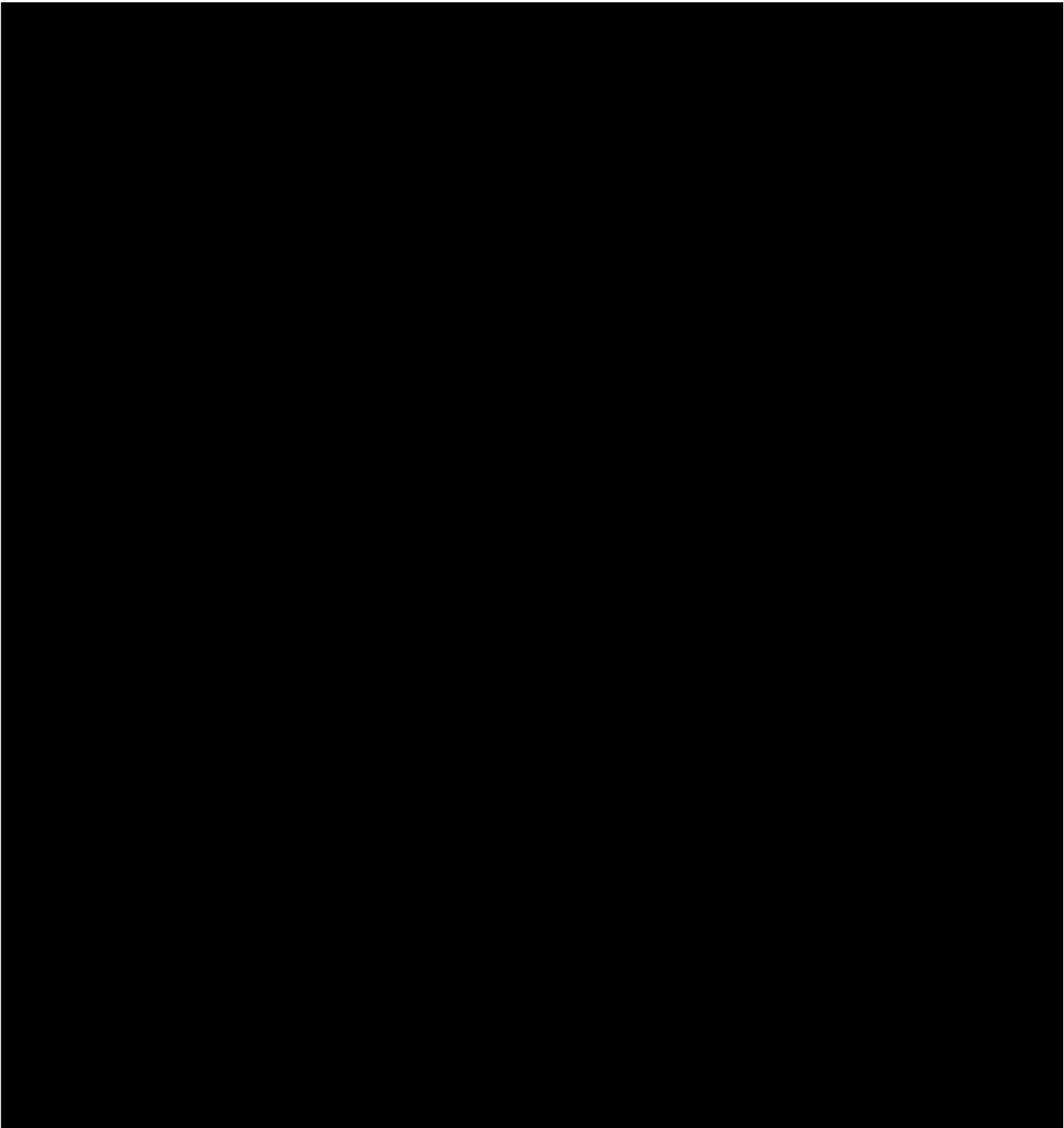












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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 26

APRIL 6, 2022 EMAIL FROM NS'S JASON ZAMPI
REGARDING NPBL BOARD MEETING (STB-NS-0017144)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

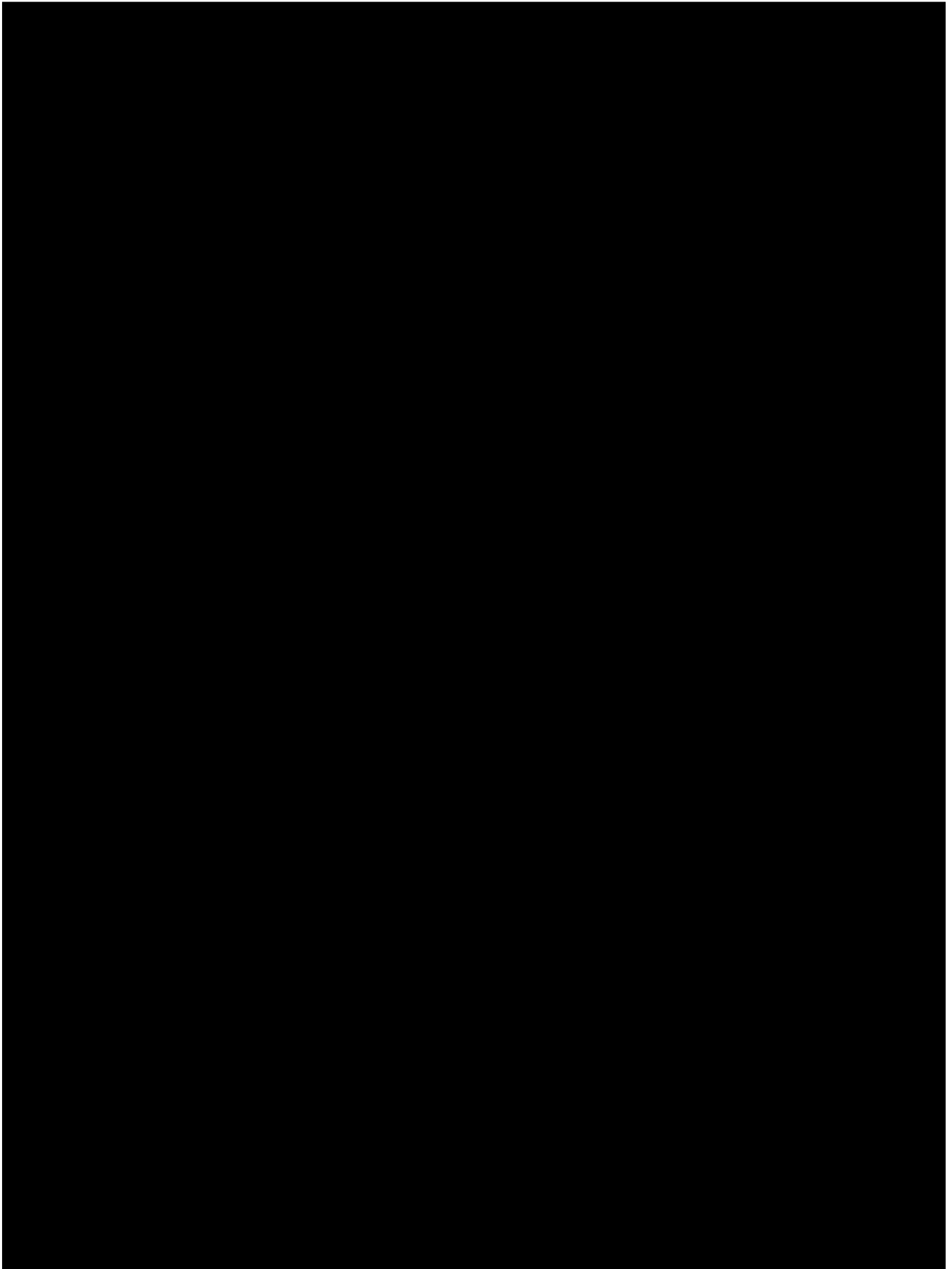
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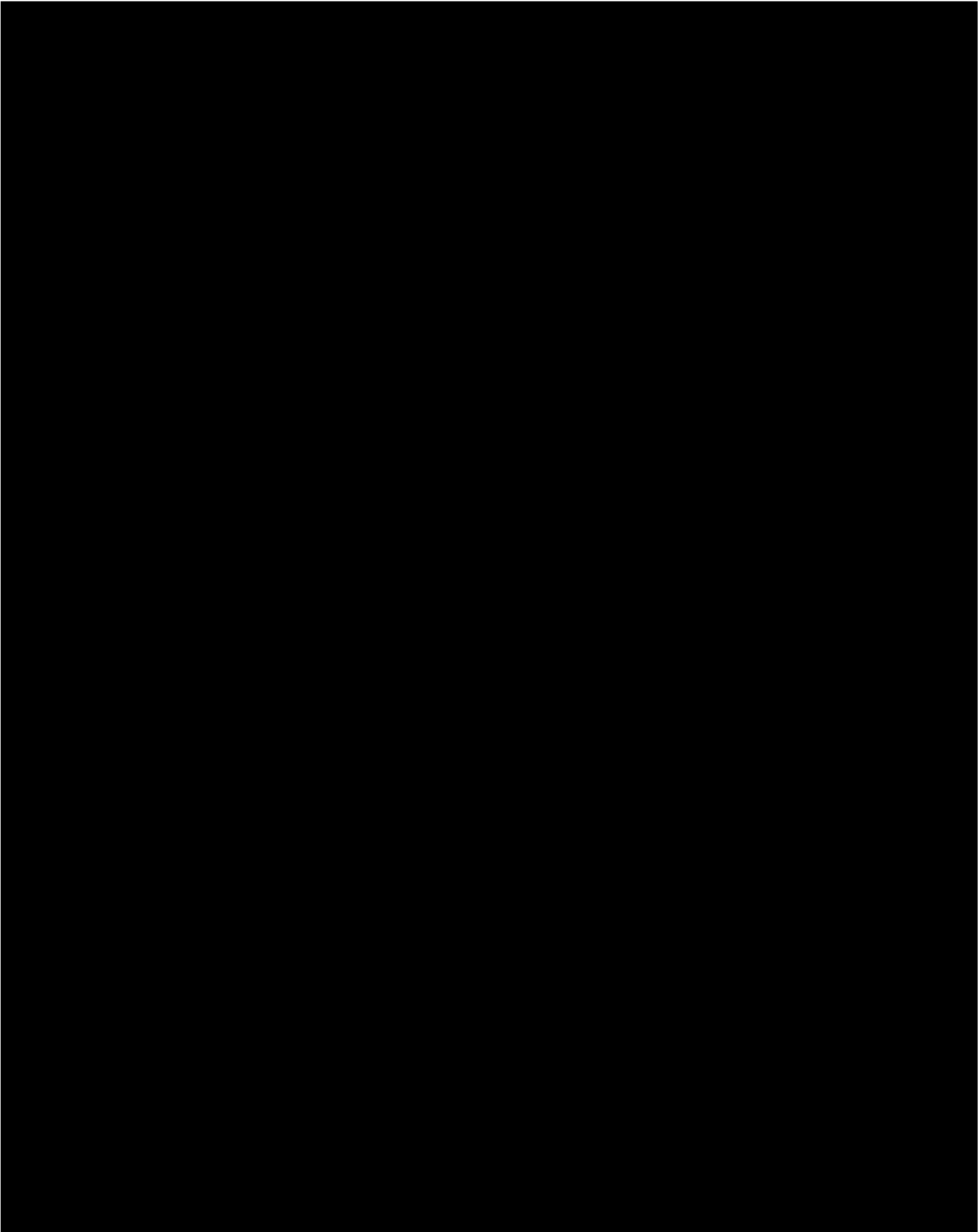
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

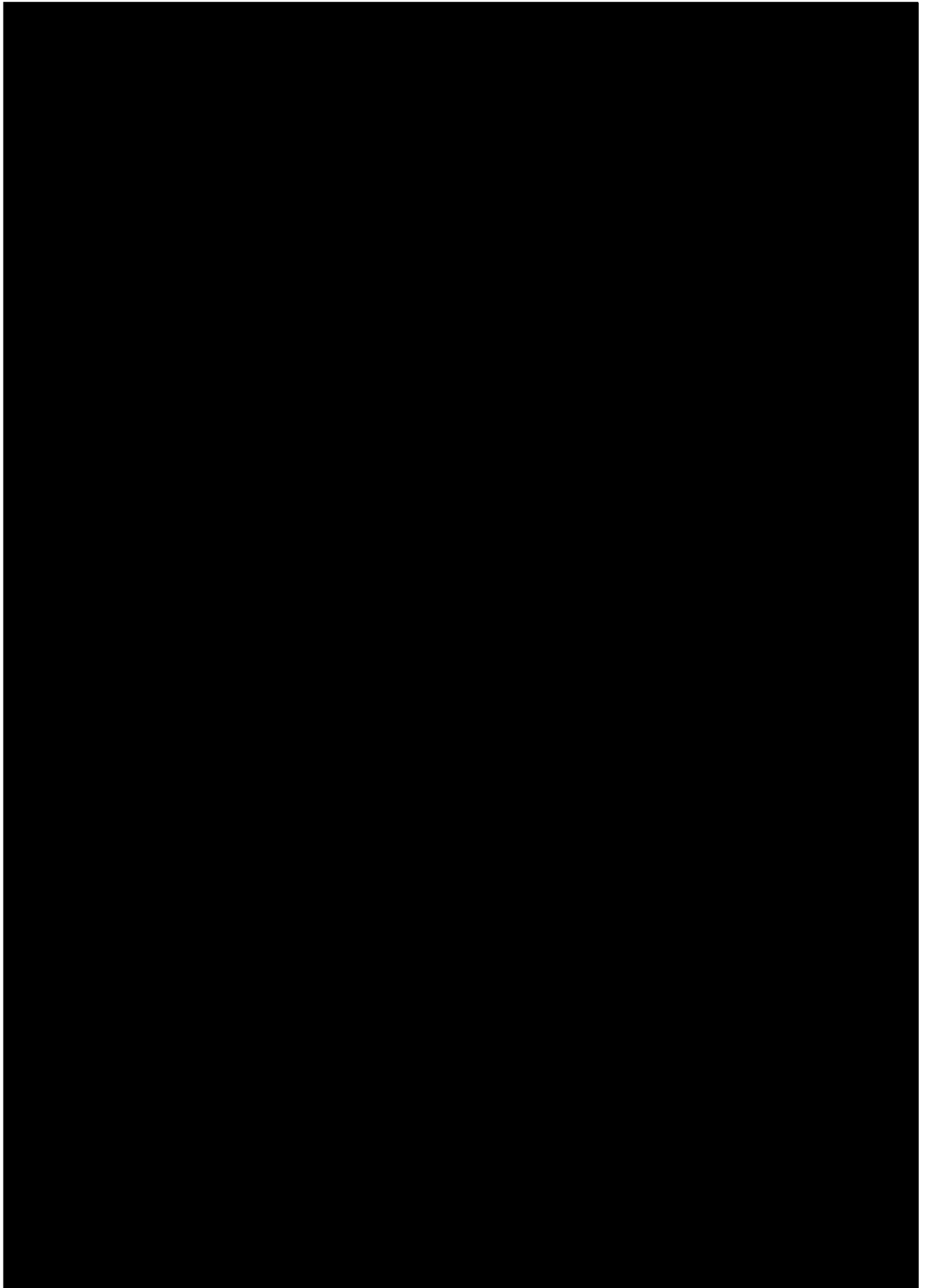
EXHIBIT 27

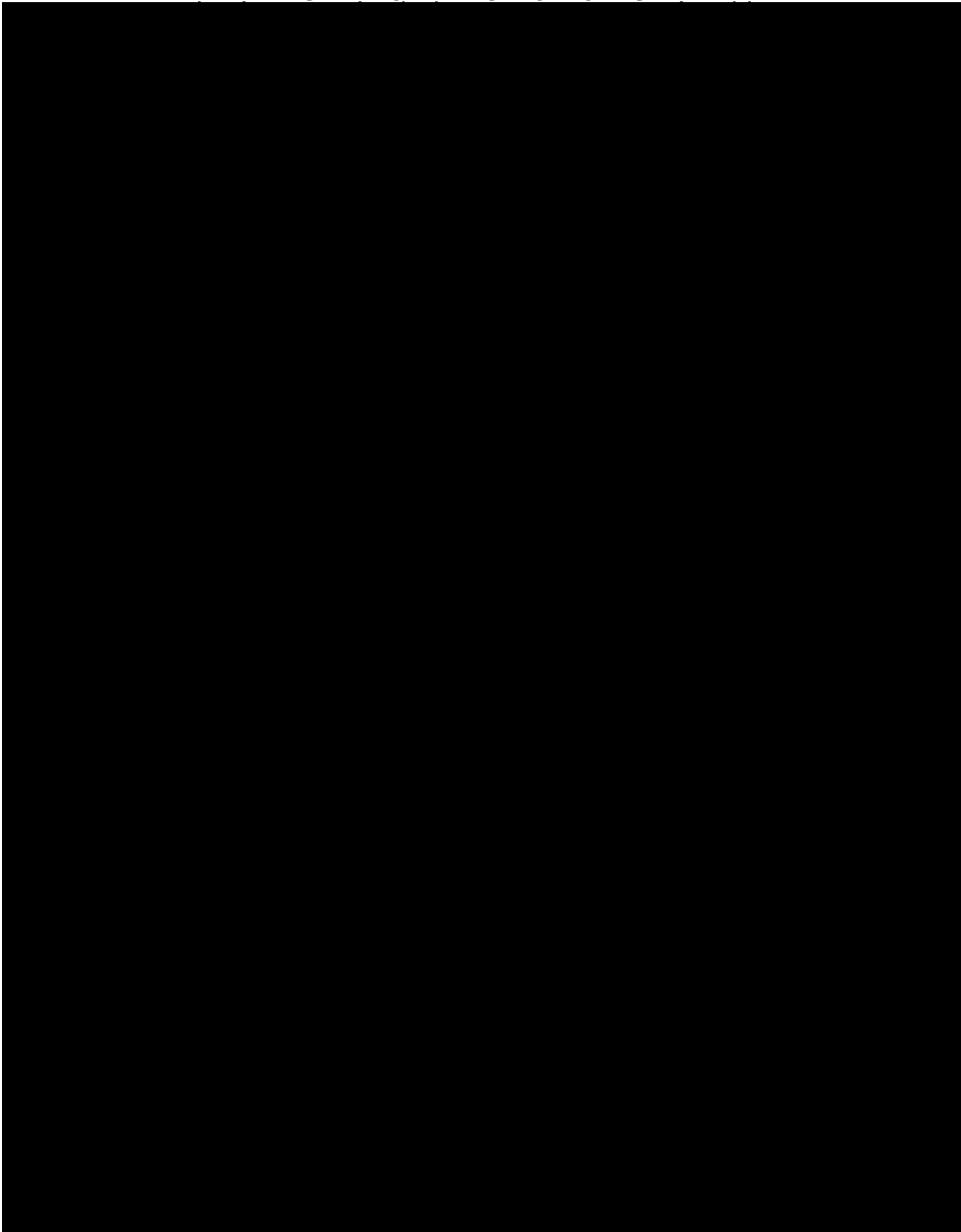
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NPBL BOARD MEETING (EDVA NPBL007302)

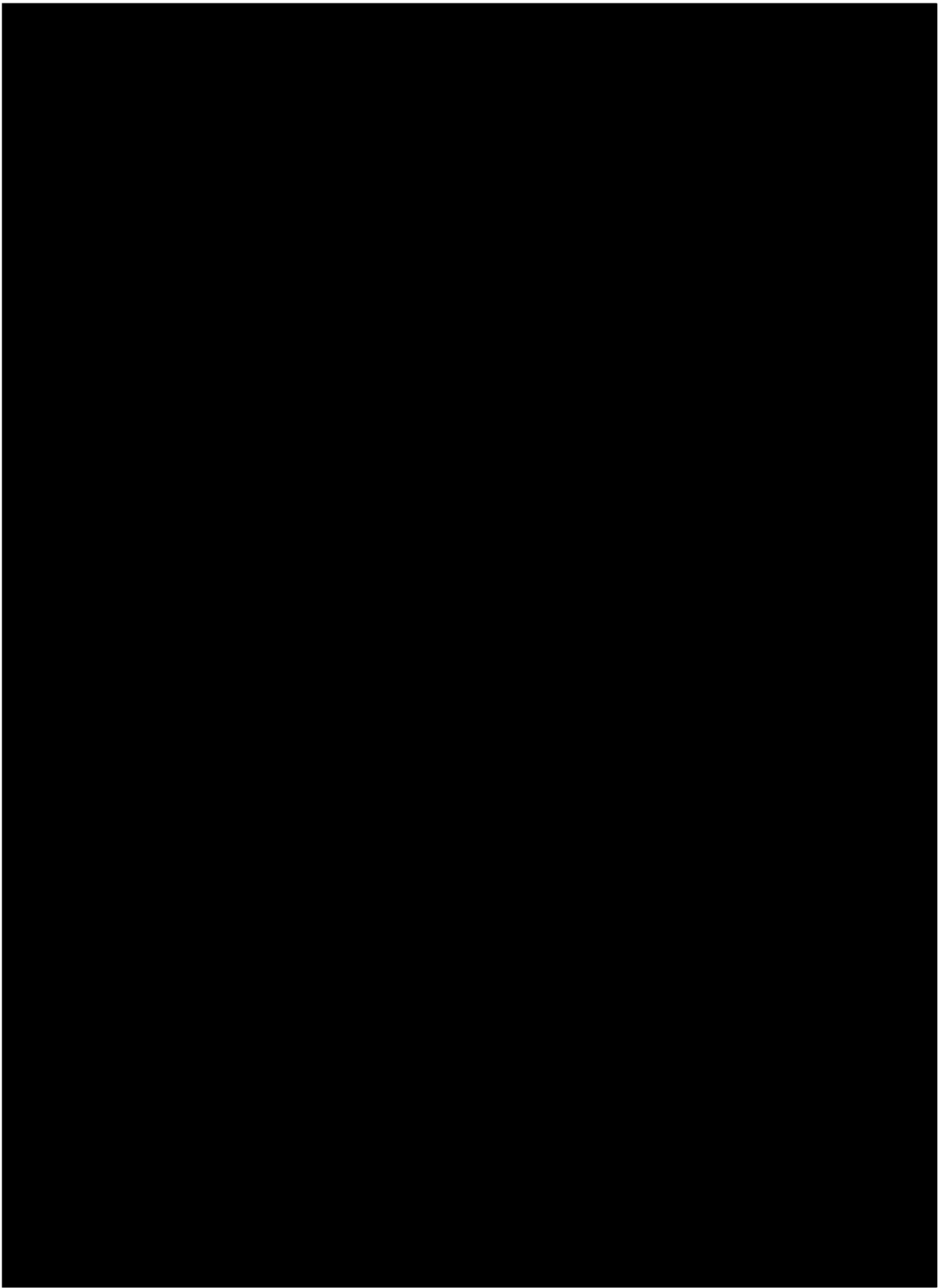
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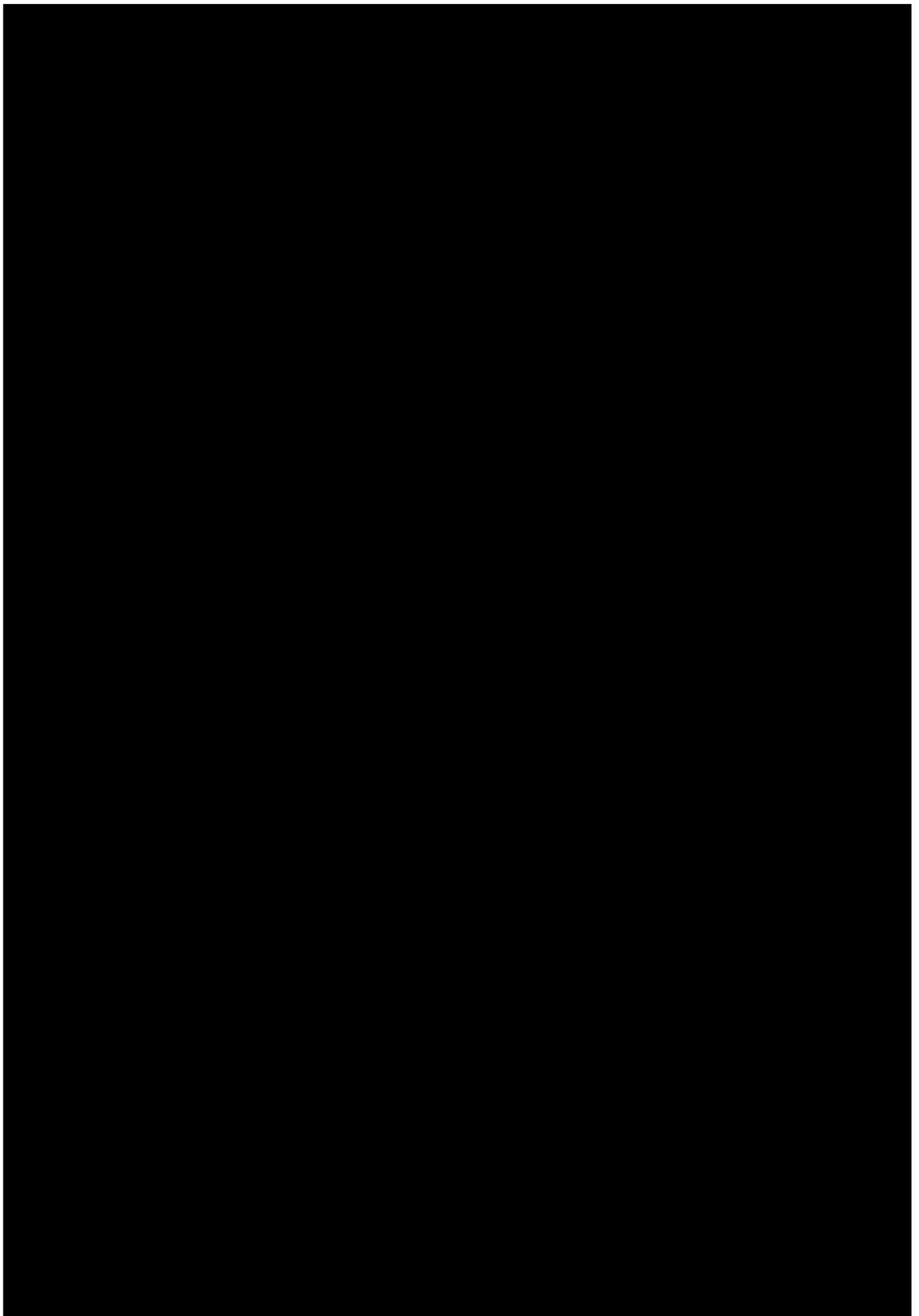


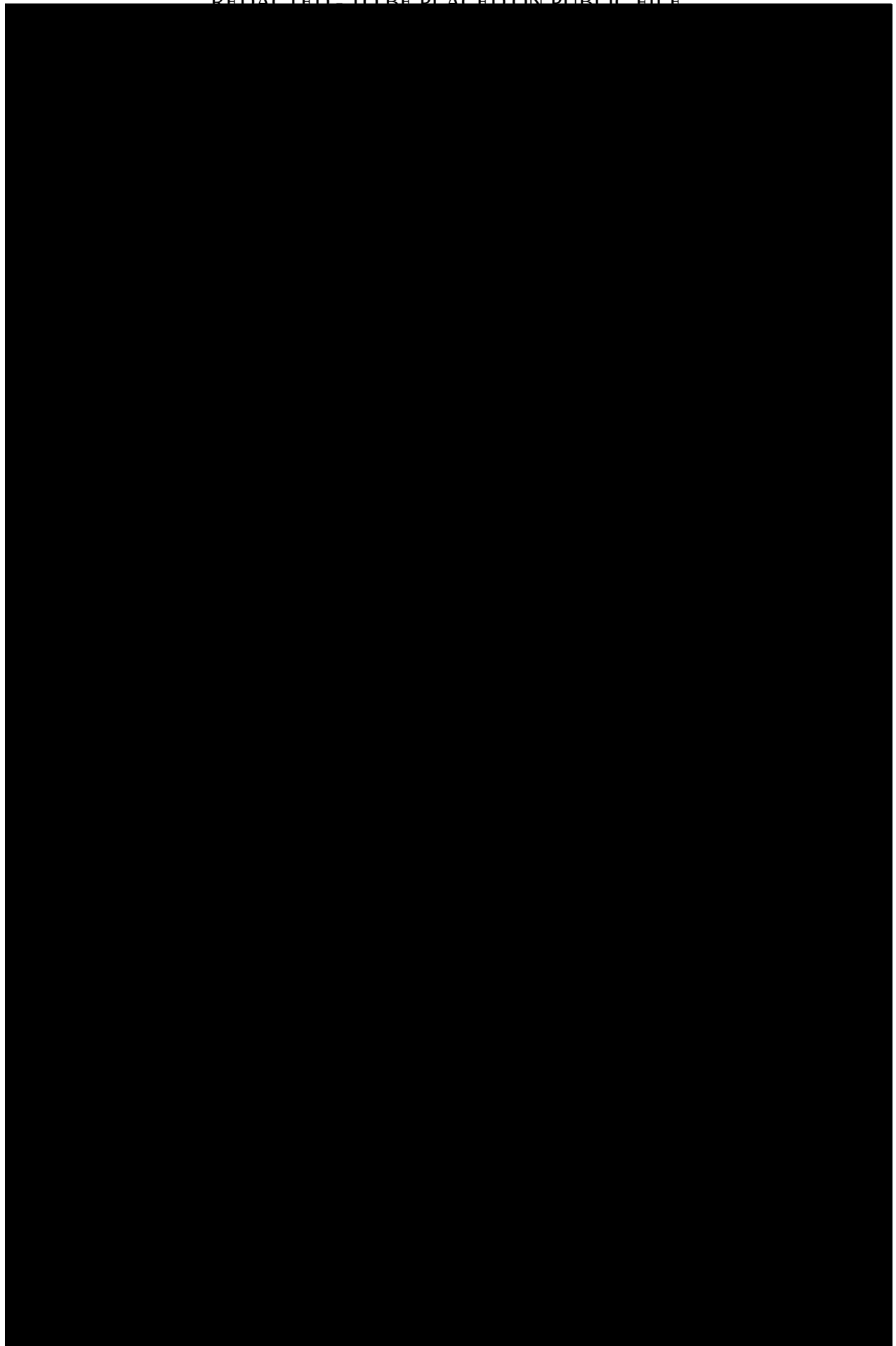


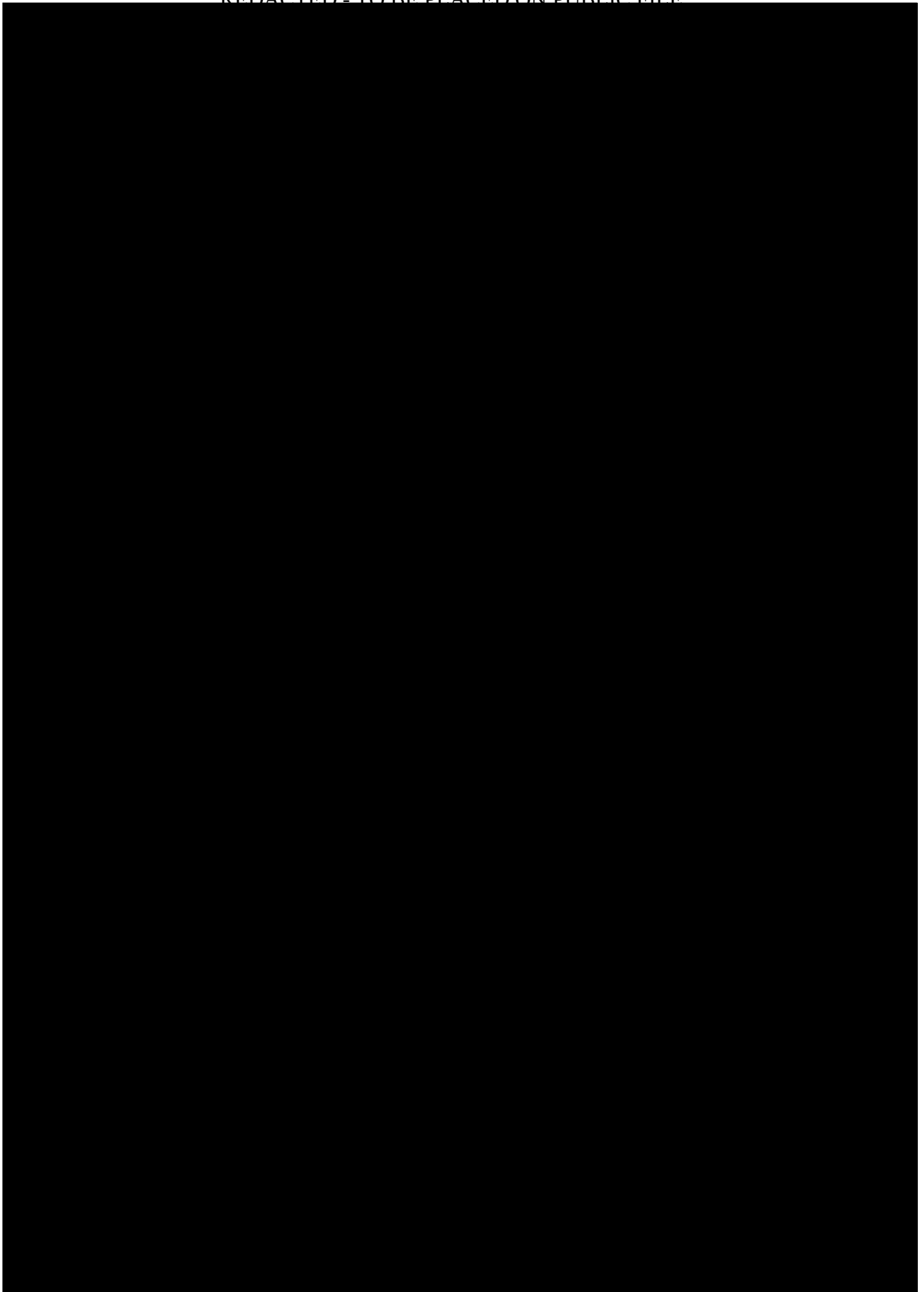


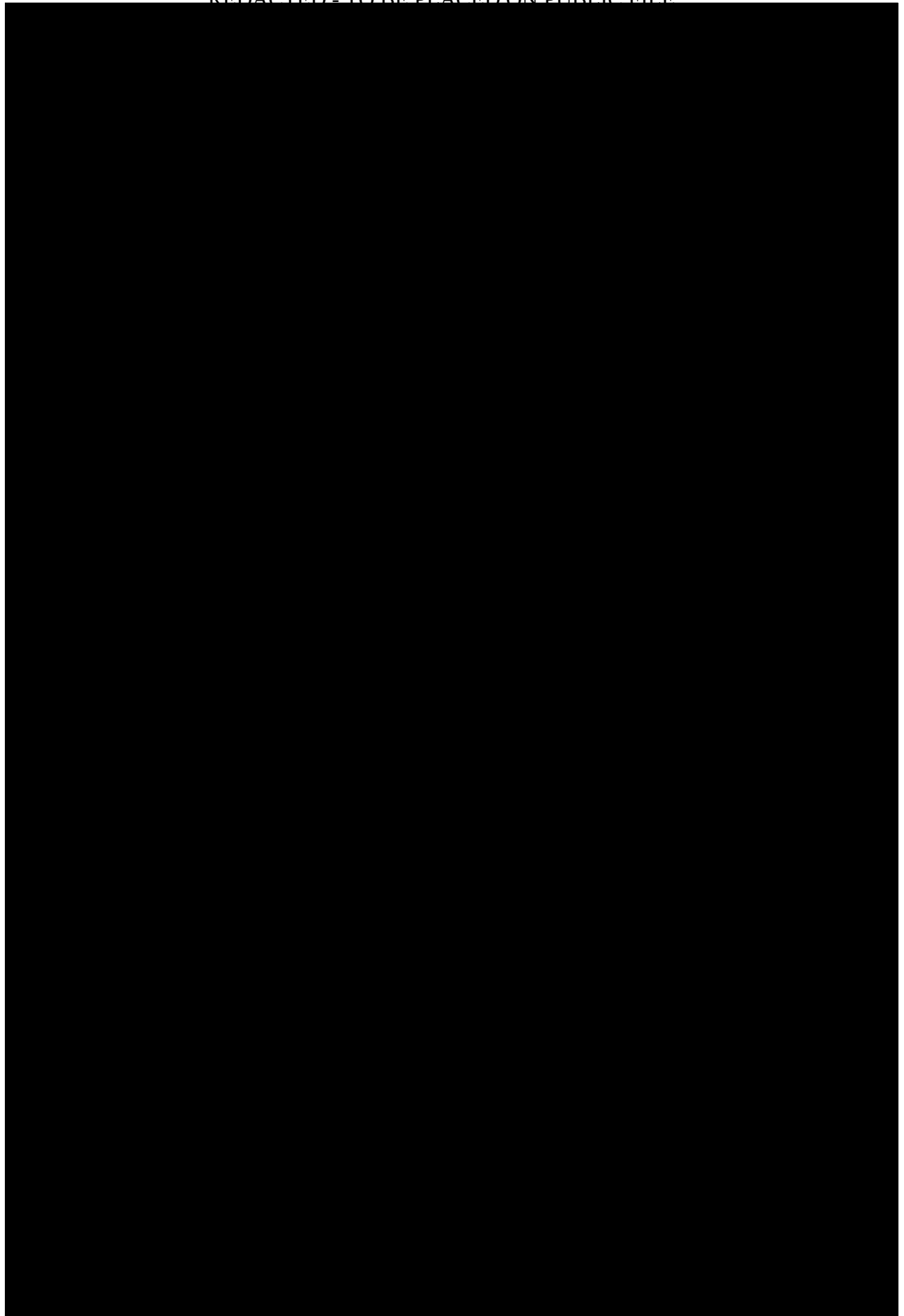


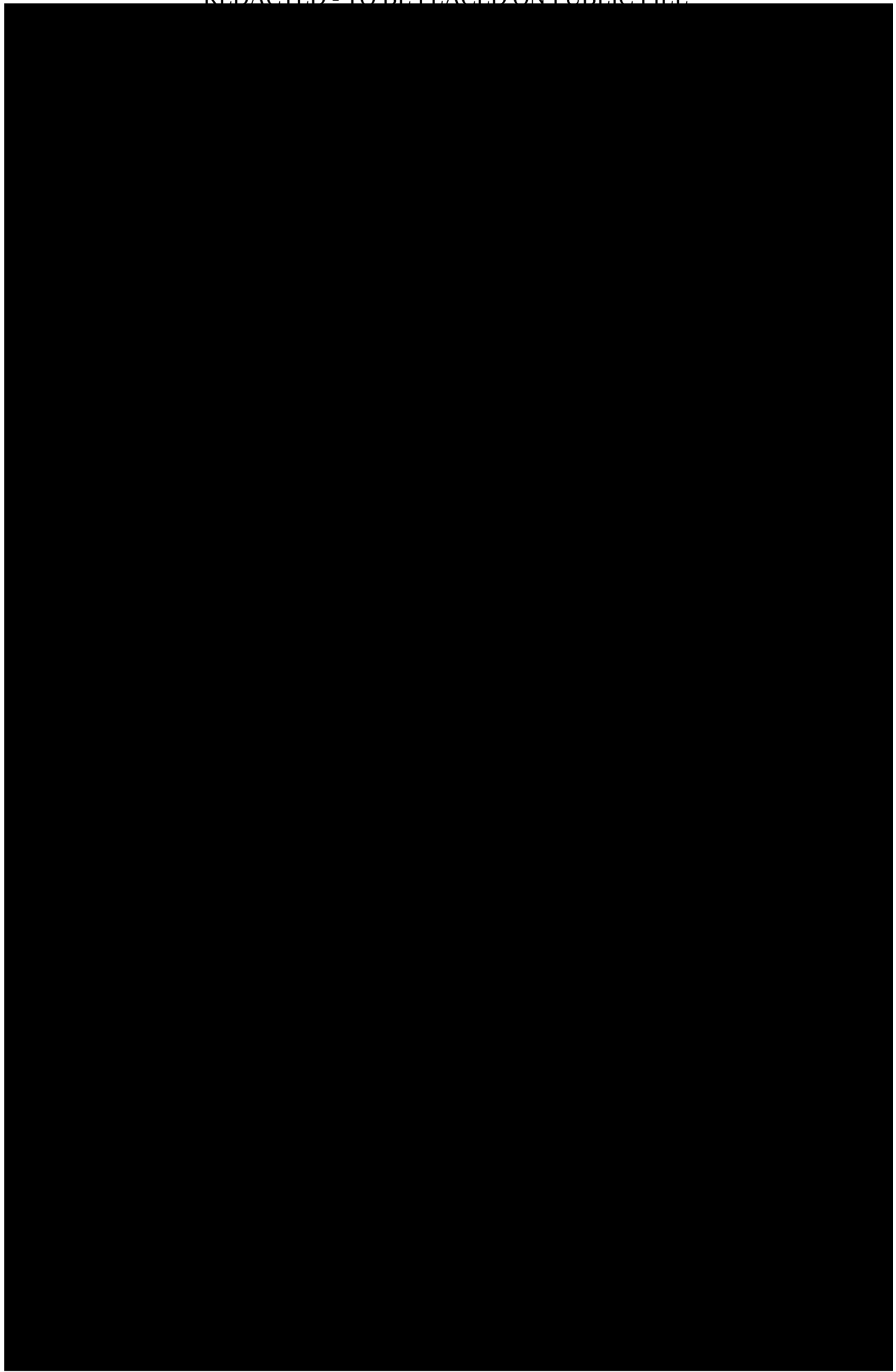


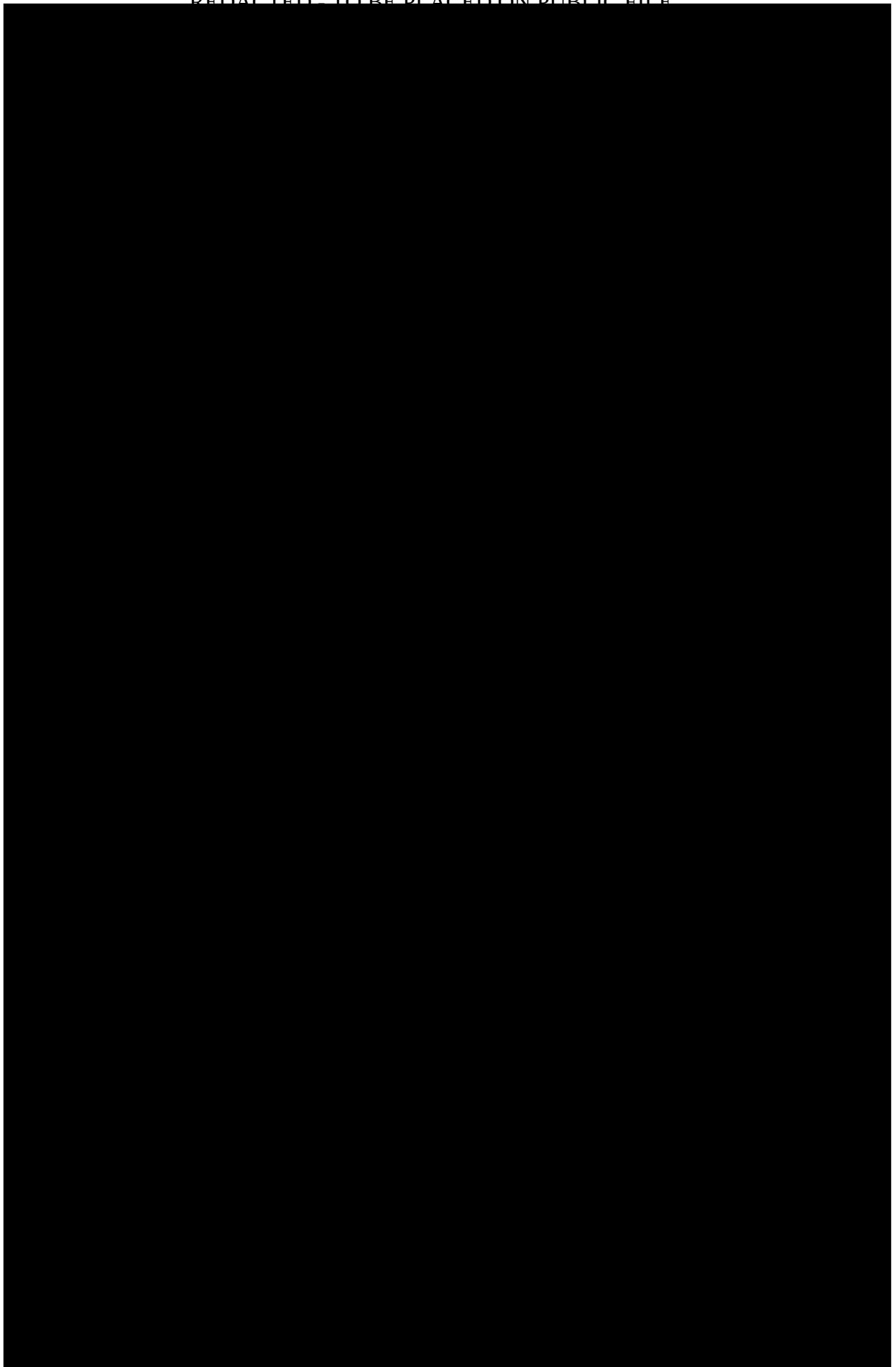


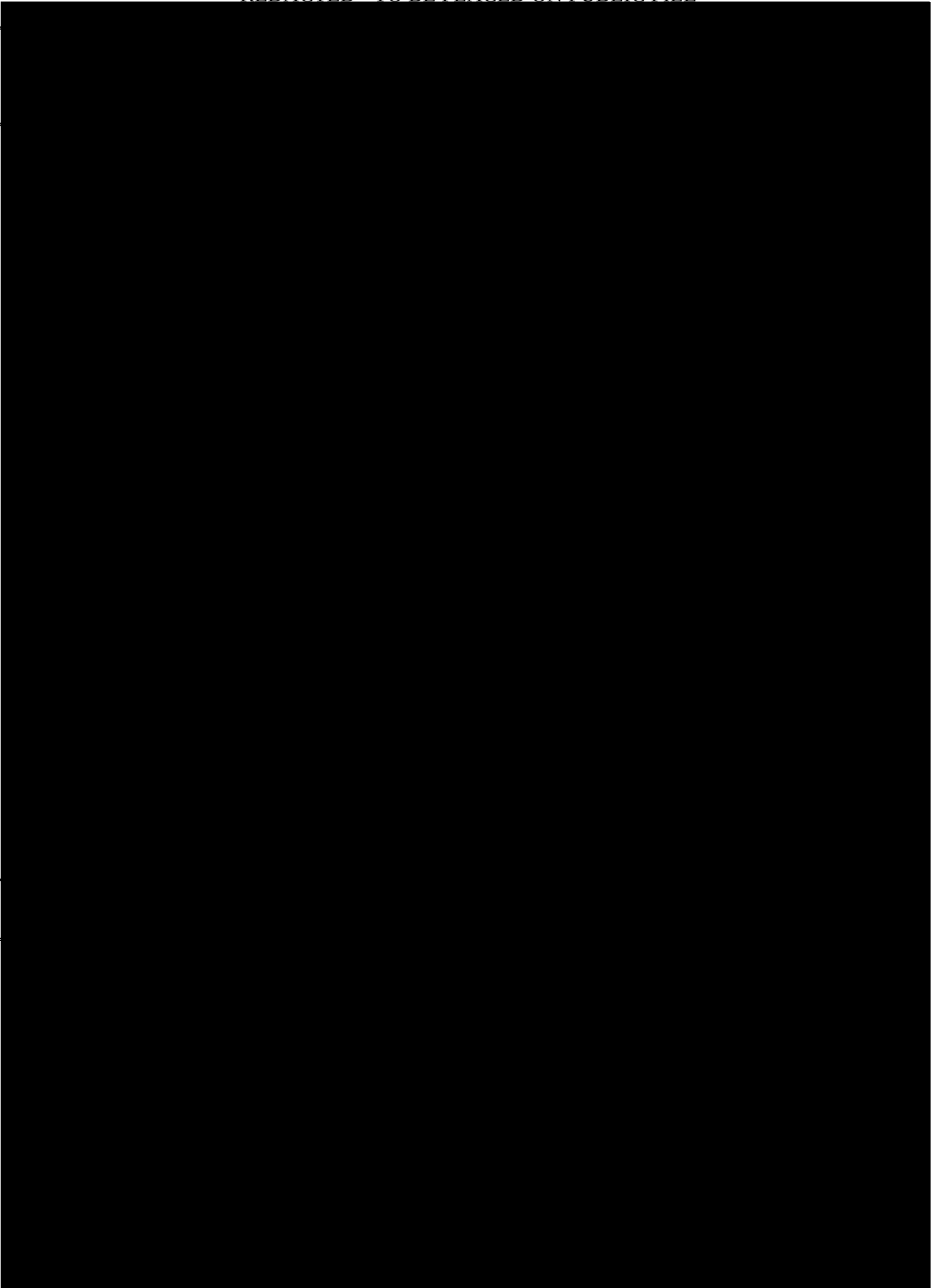


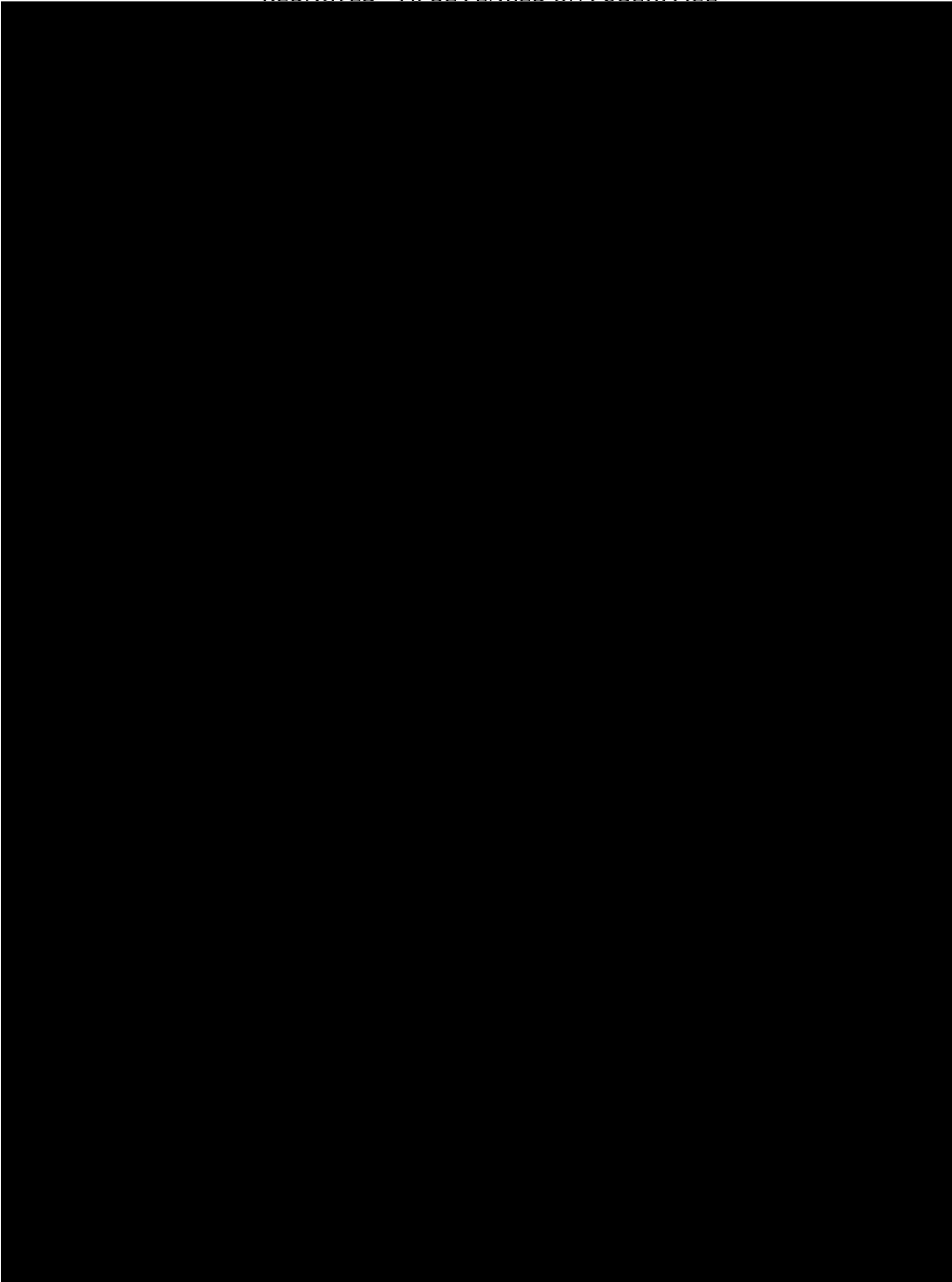


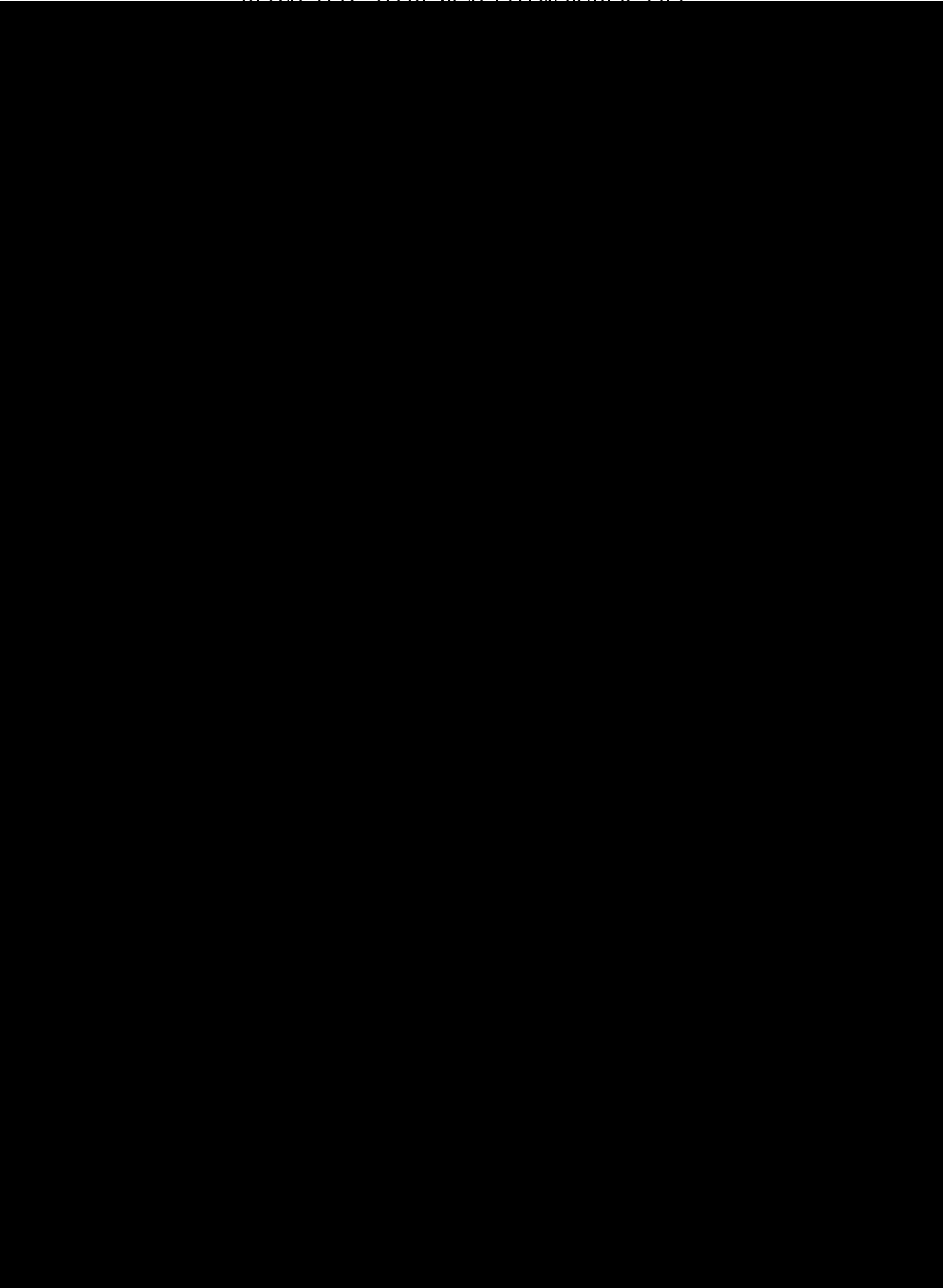


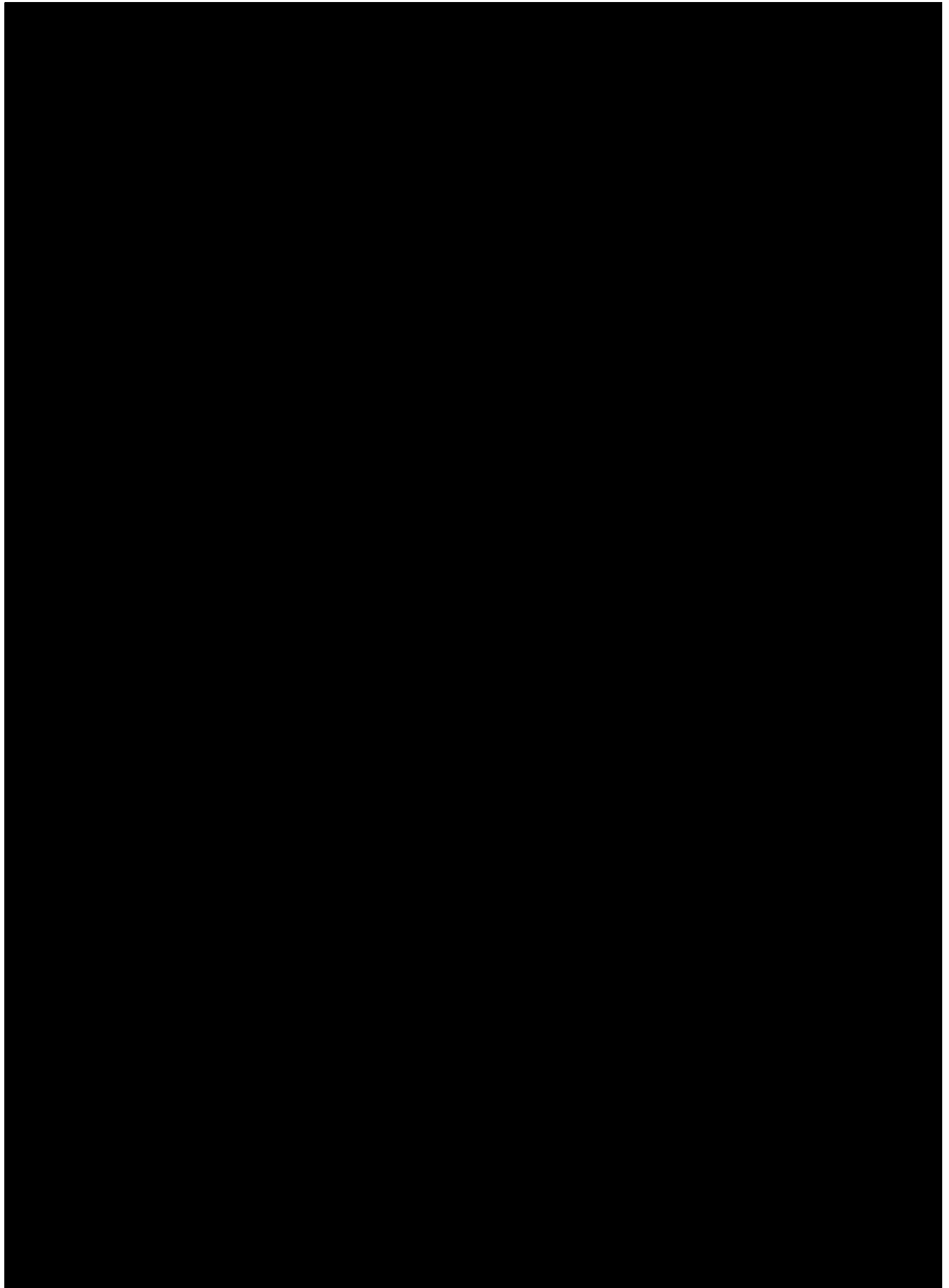


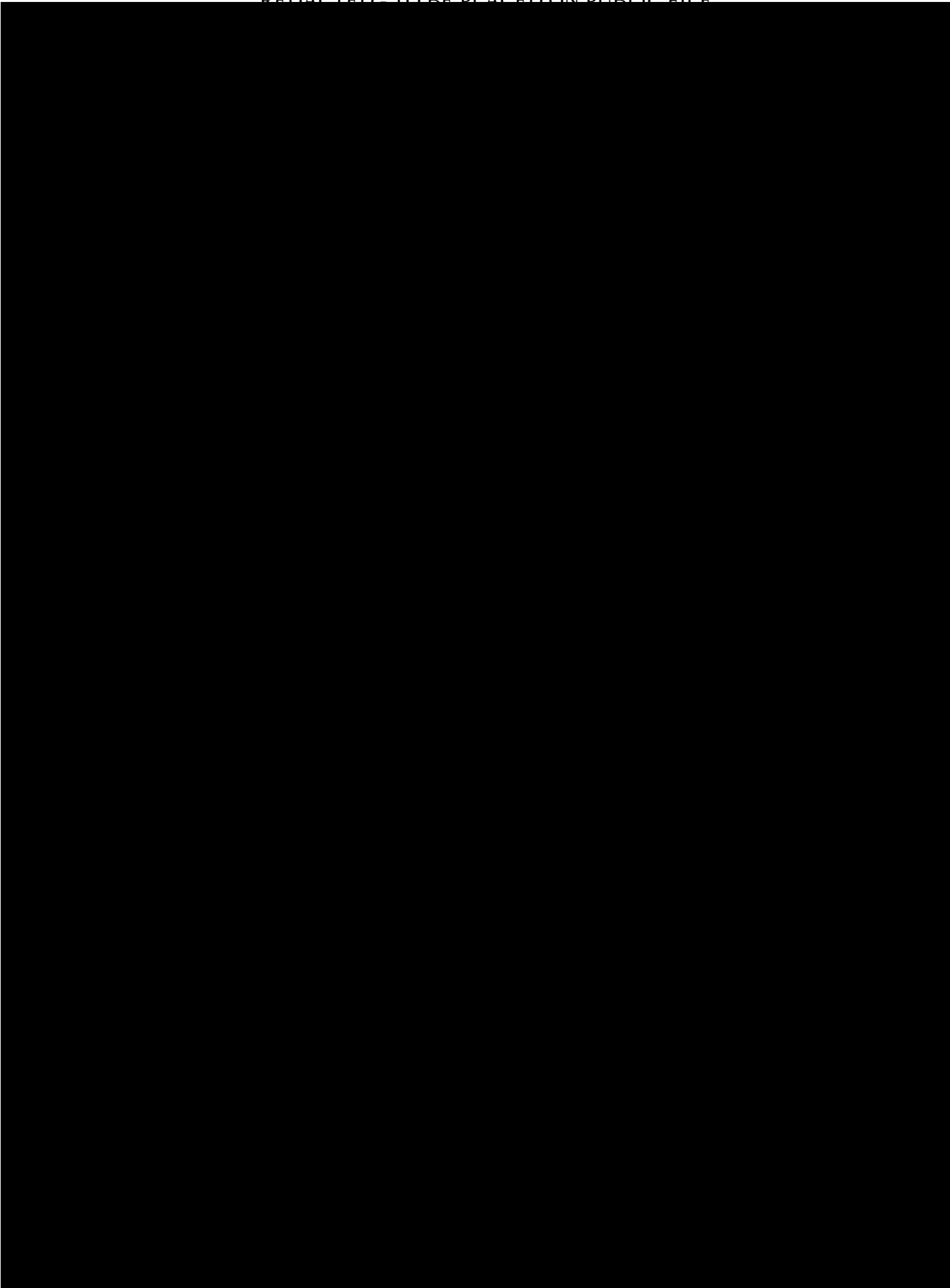


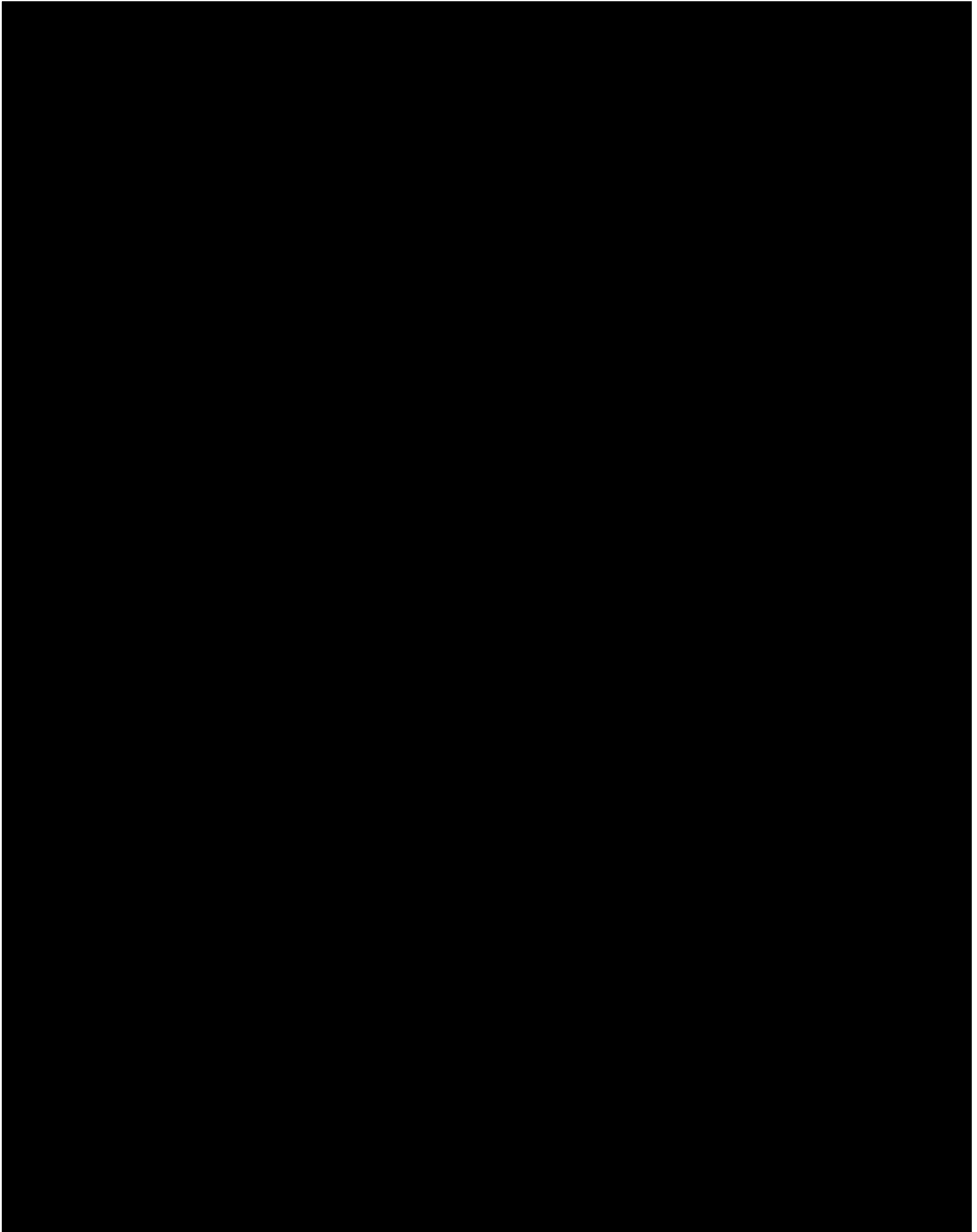


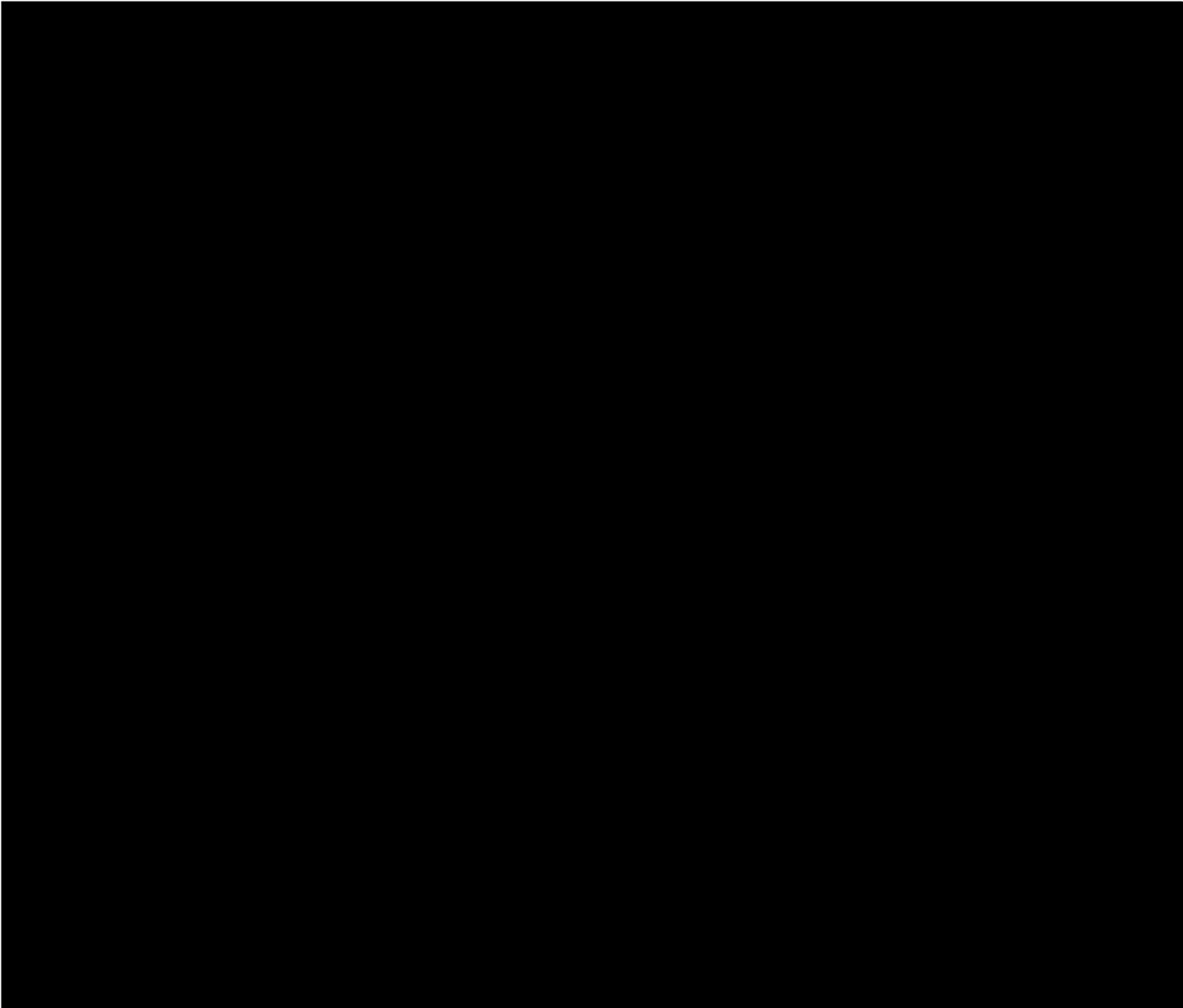












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BEFORE THE
SURFACE TRANSPORTATION BOARD

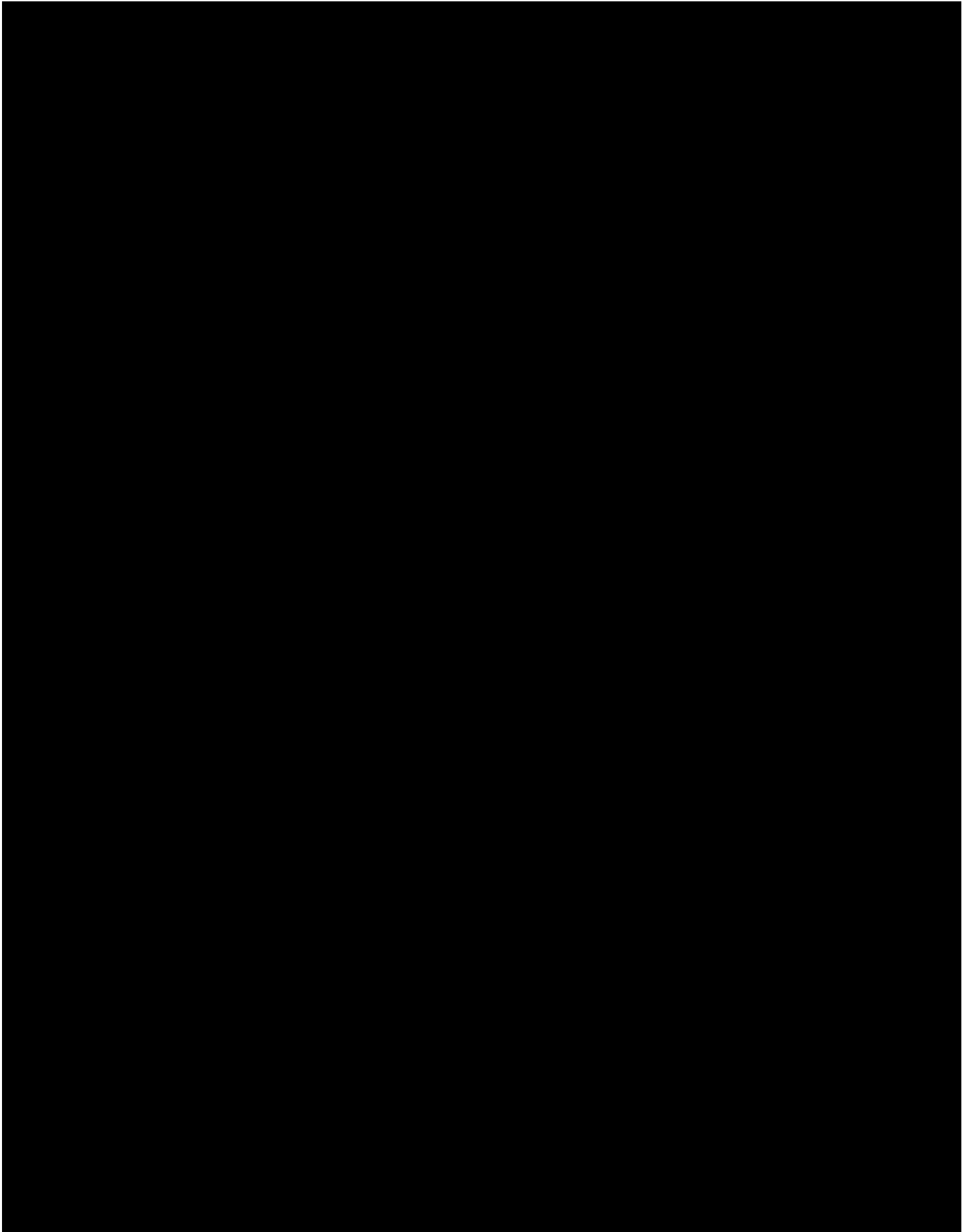
FINANCE DOCKET NO. 36836

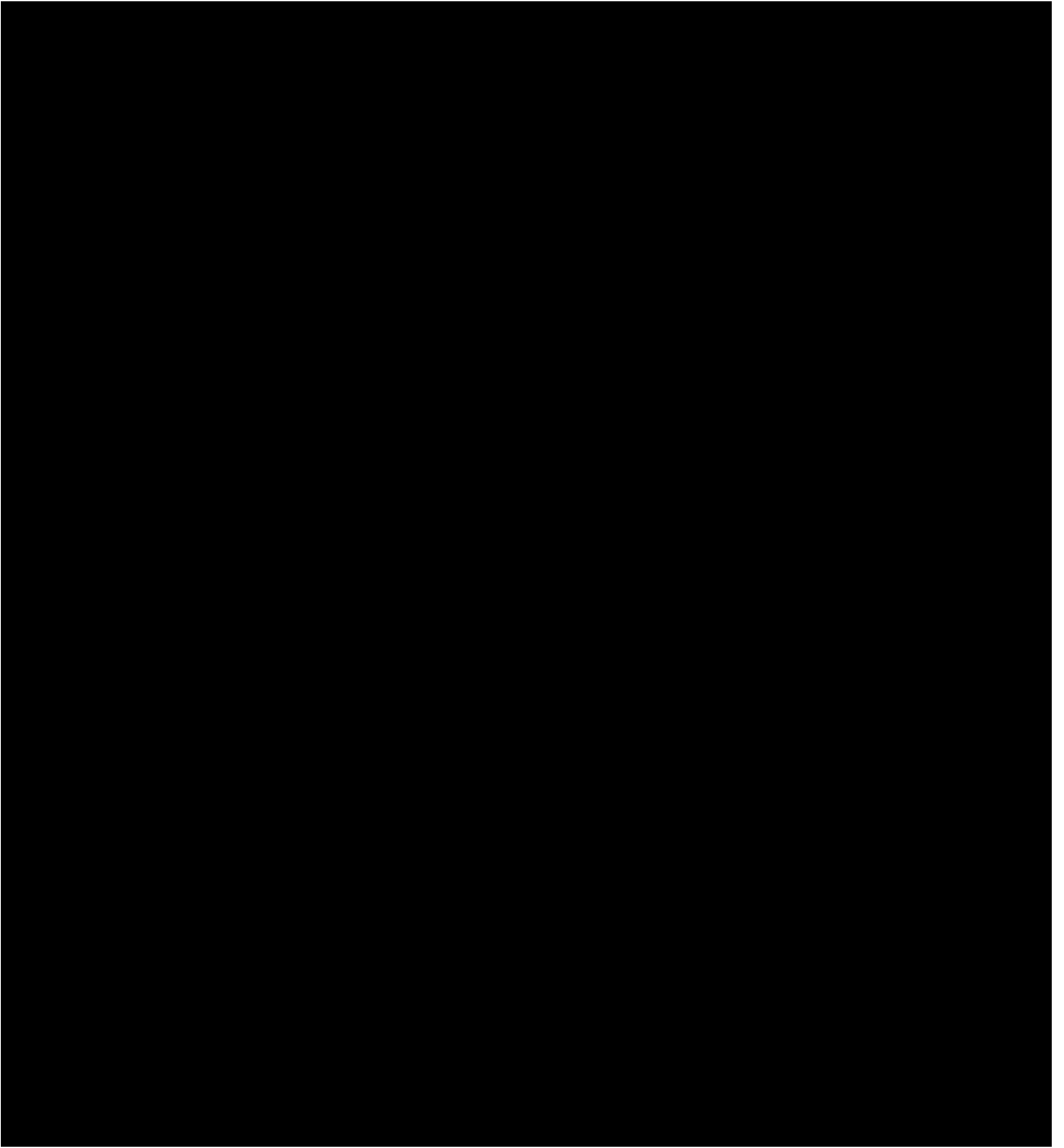
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 28

DRAFT MINUTES OF A DECEMBER 4, 2024
NPBL BOARD MEETING (NPBL000588)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

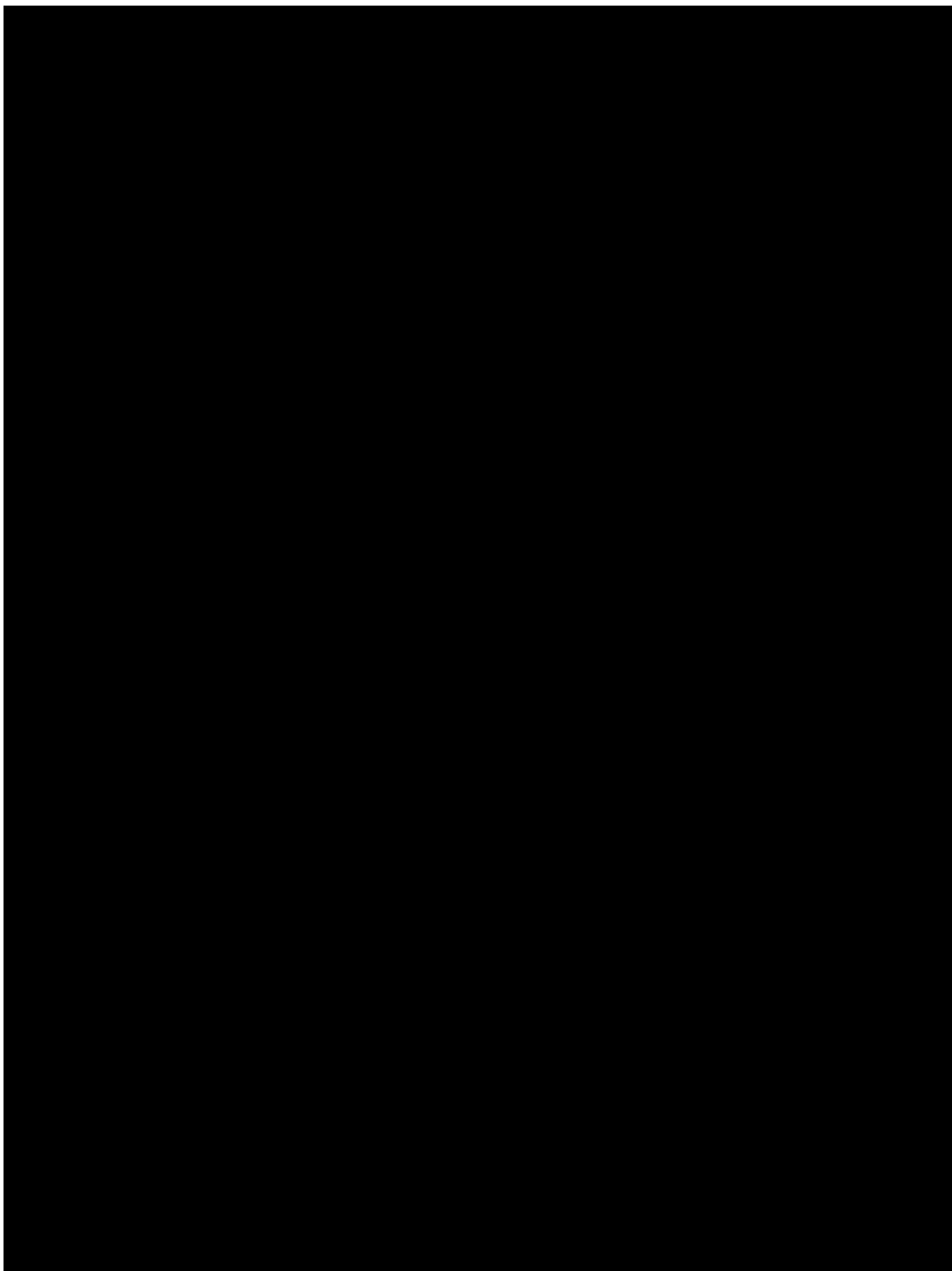
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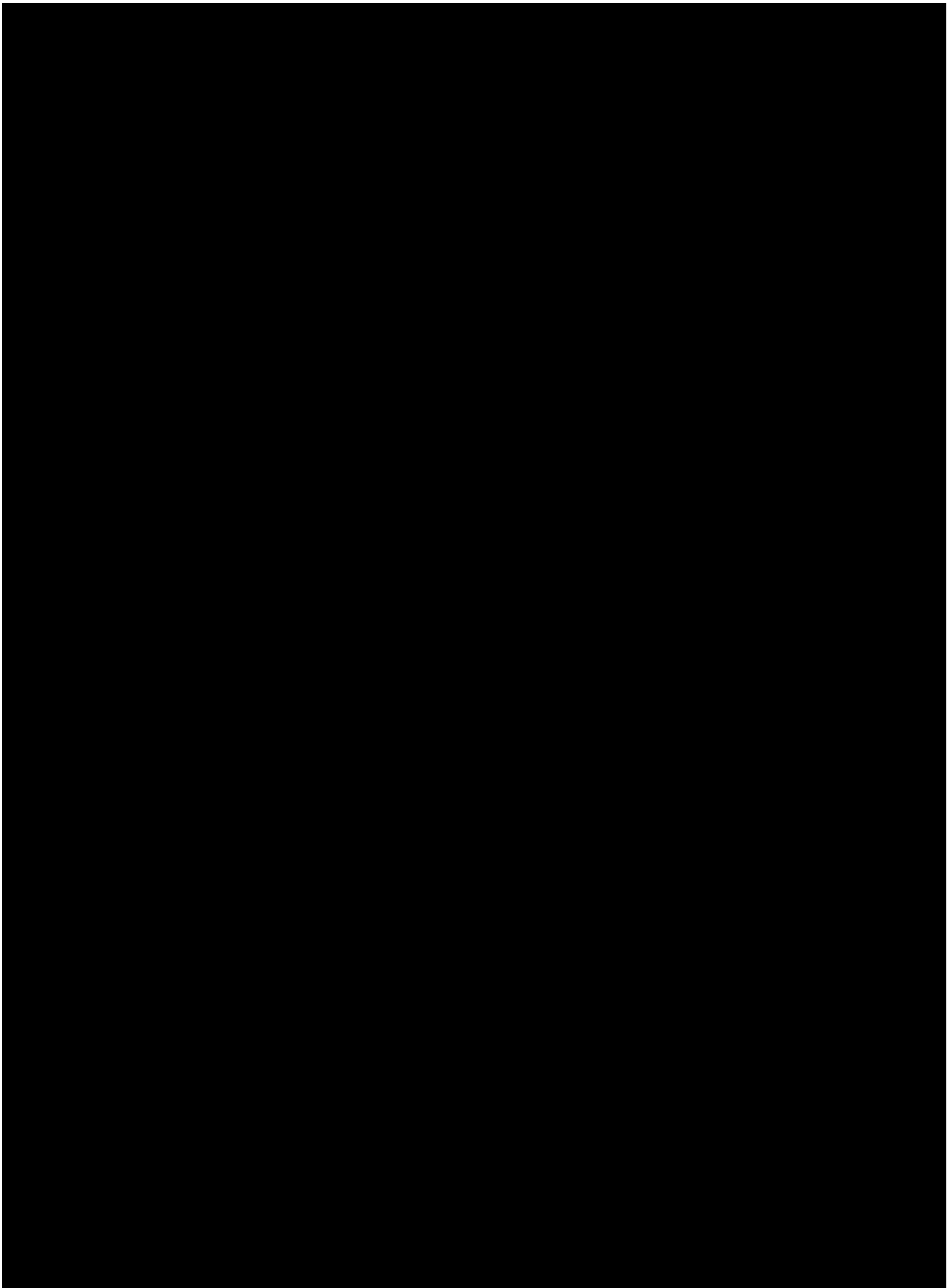
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 29

DECEMBER 4, 2024 LETTER FROM MEMBERS OF THE NPBL BOARD
REGARDING CSXT'S NOVEMBER 26, 2024 PROPOSALS (NPBL001499)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

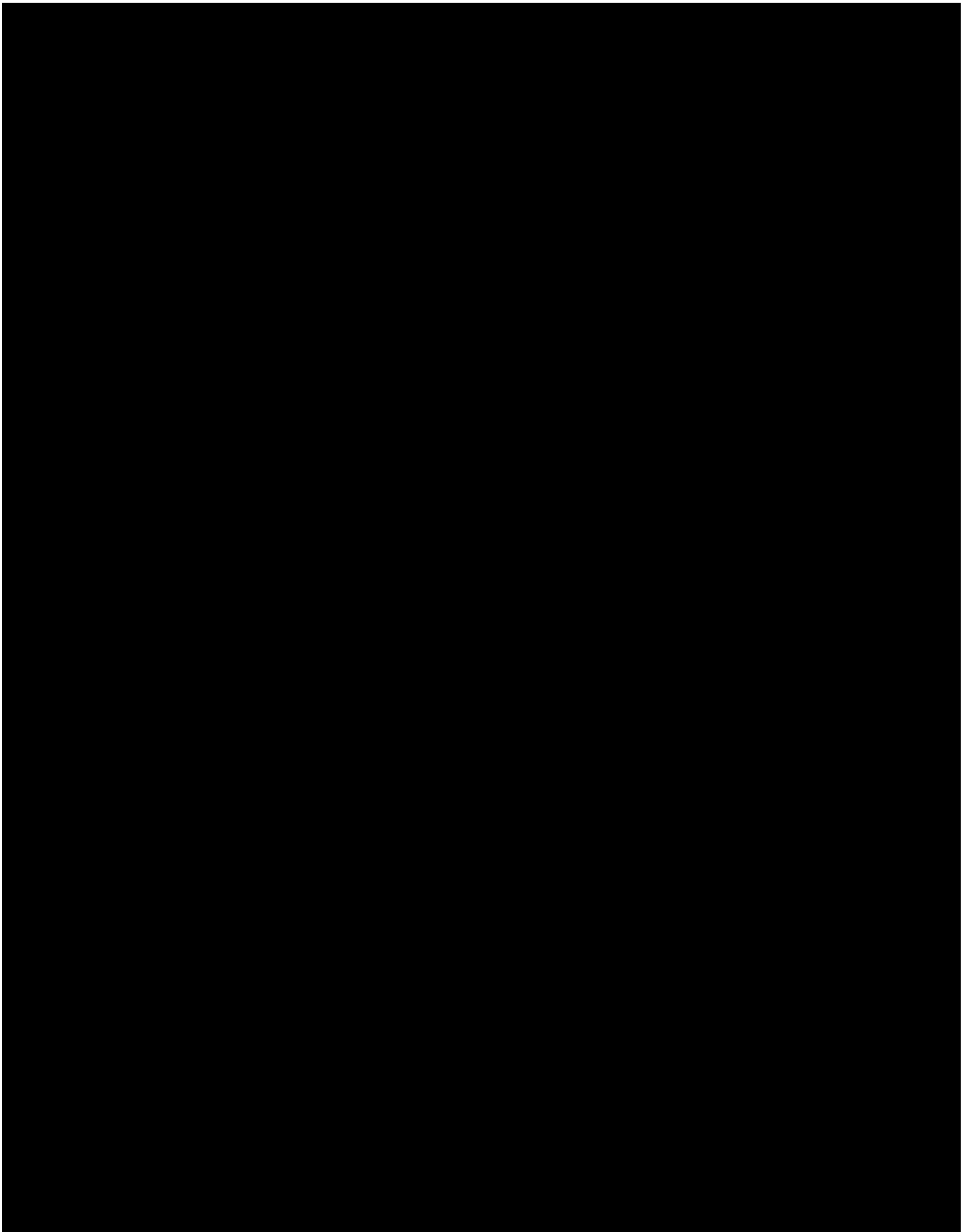
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

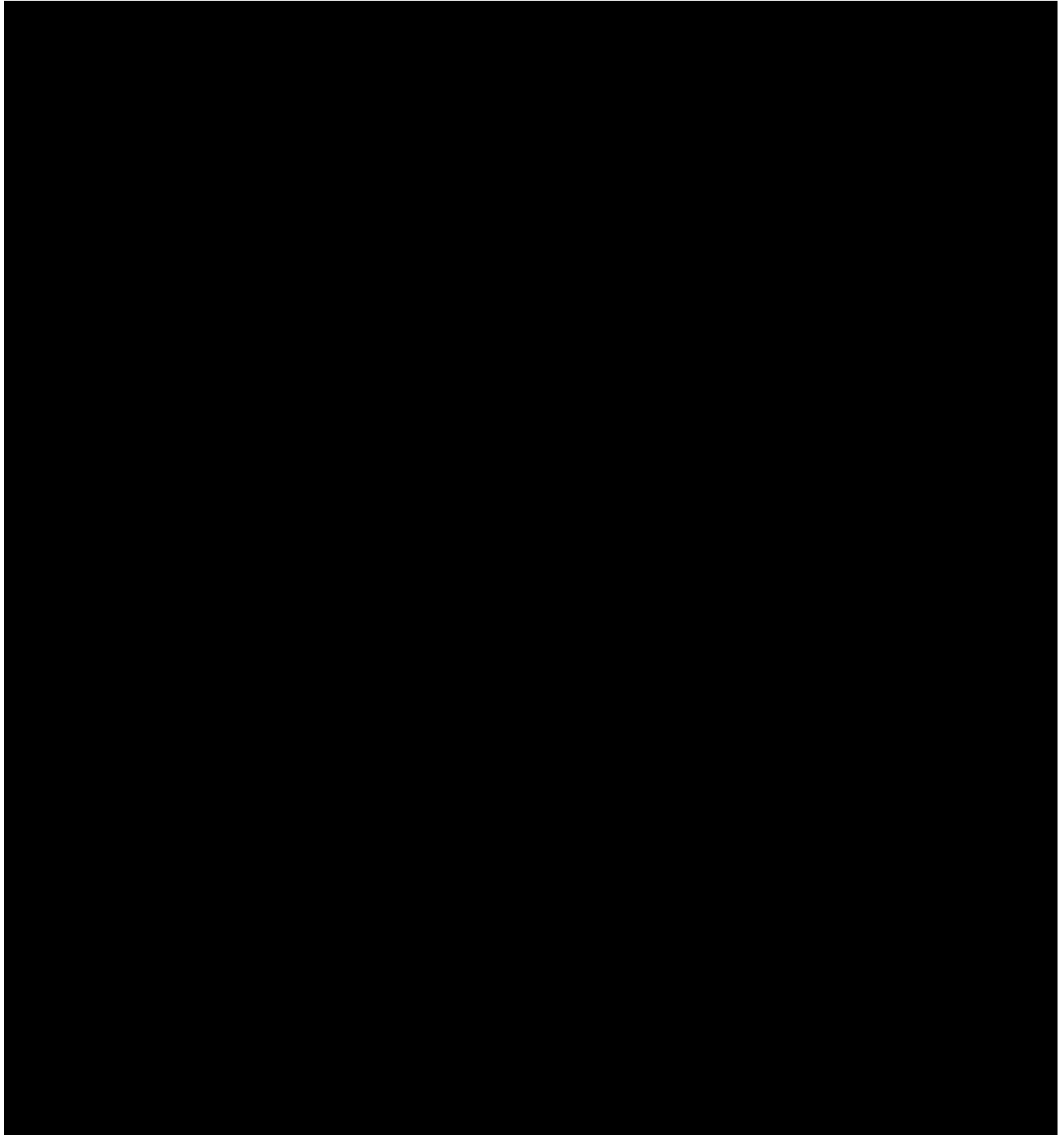
EXHIBIT 30

FEBRUARY 27, 2025 LETTER FROM MEMBERS OF THE
NPBL BOARD IN RESPONSE TO A CSXT LETTER (NPBL001475)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 31

APRIL 9, 2015 EMAIL FROM CSXT'S BILL CLEMENT
REGARDING NIT ACCESS (CSXT0112576)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

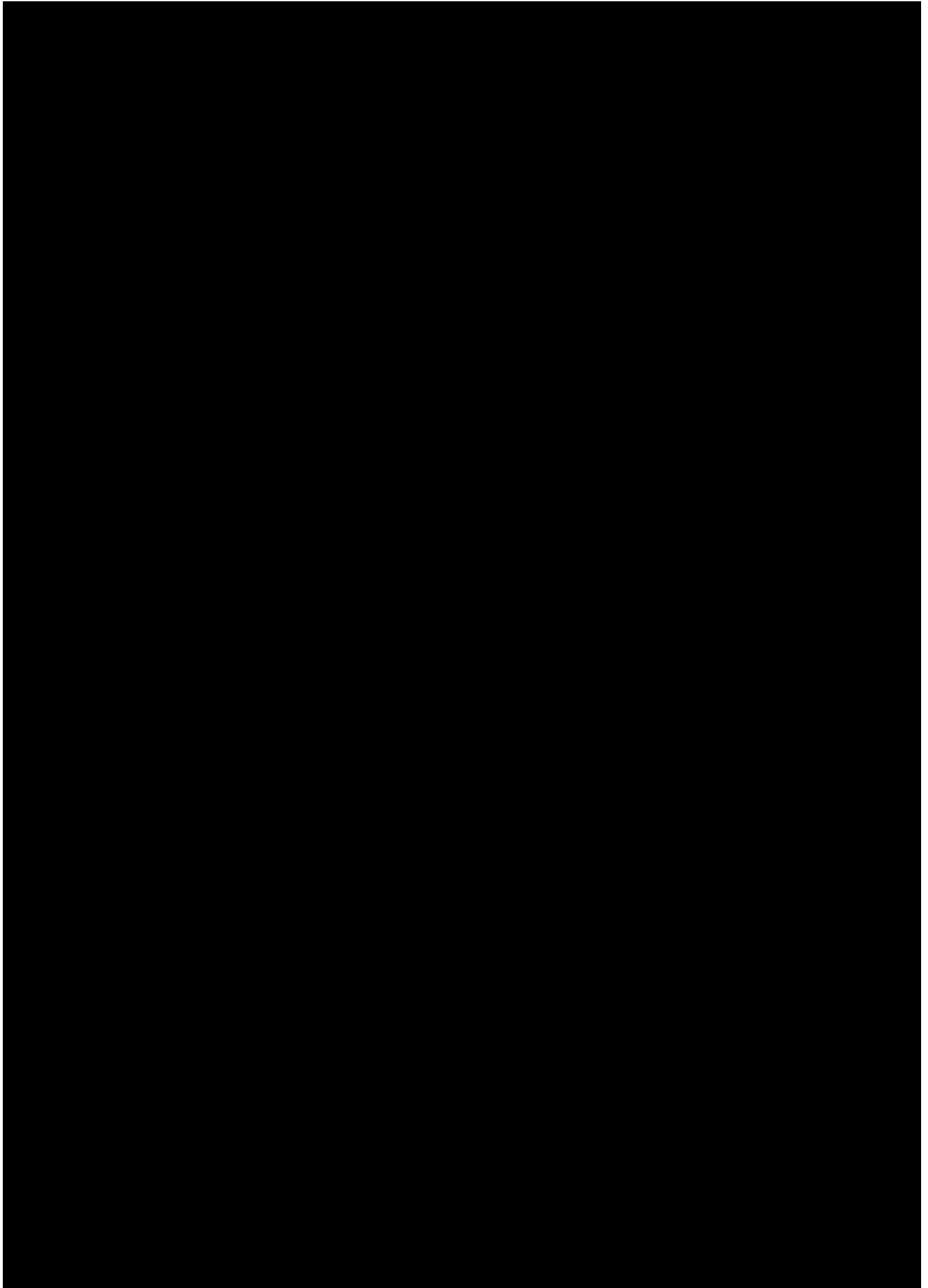
FINANCE DOCKET NO. 36836

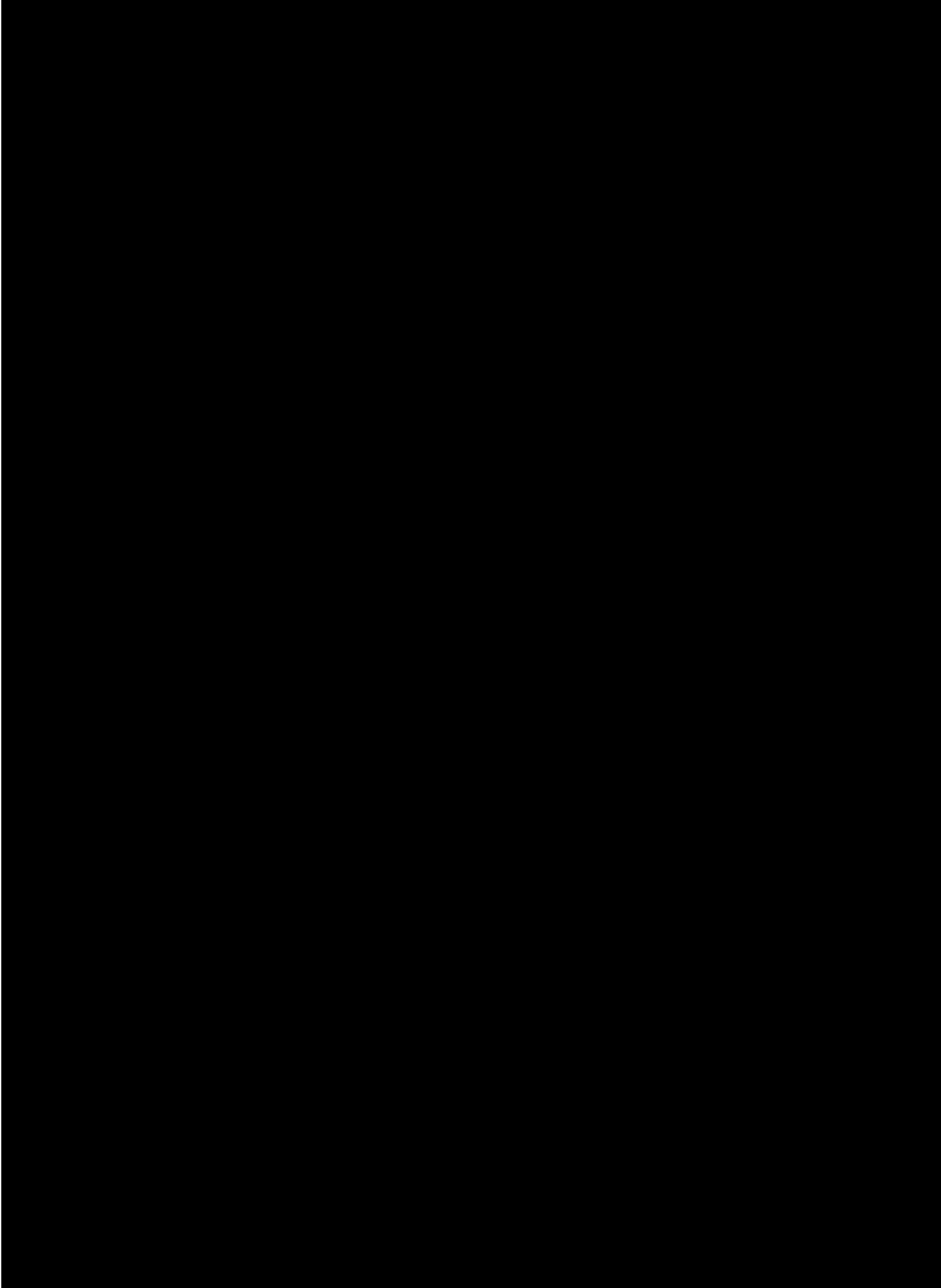
NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

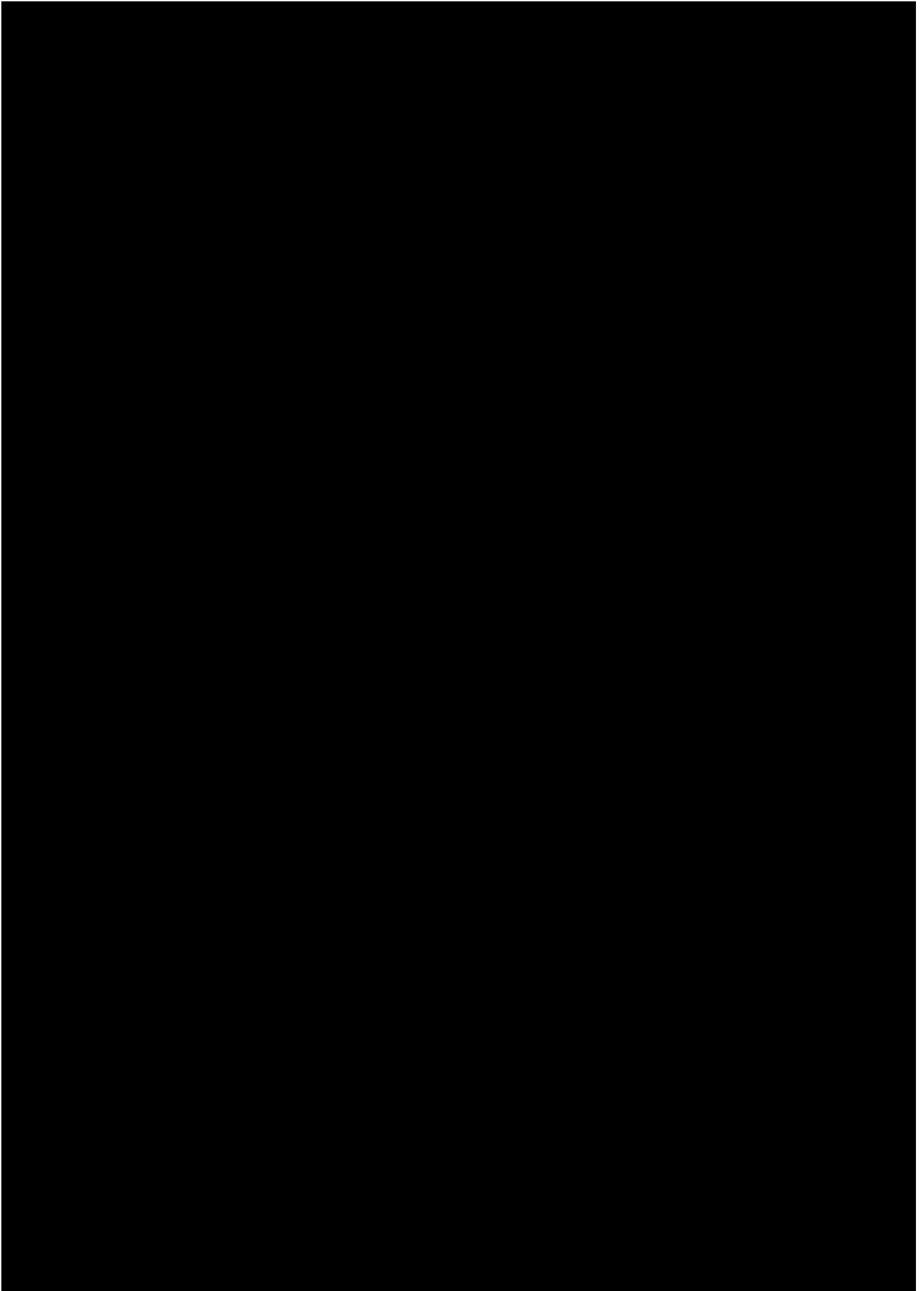
EXHIBIT 32

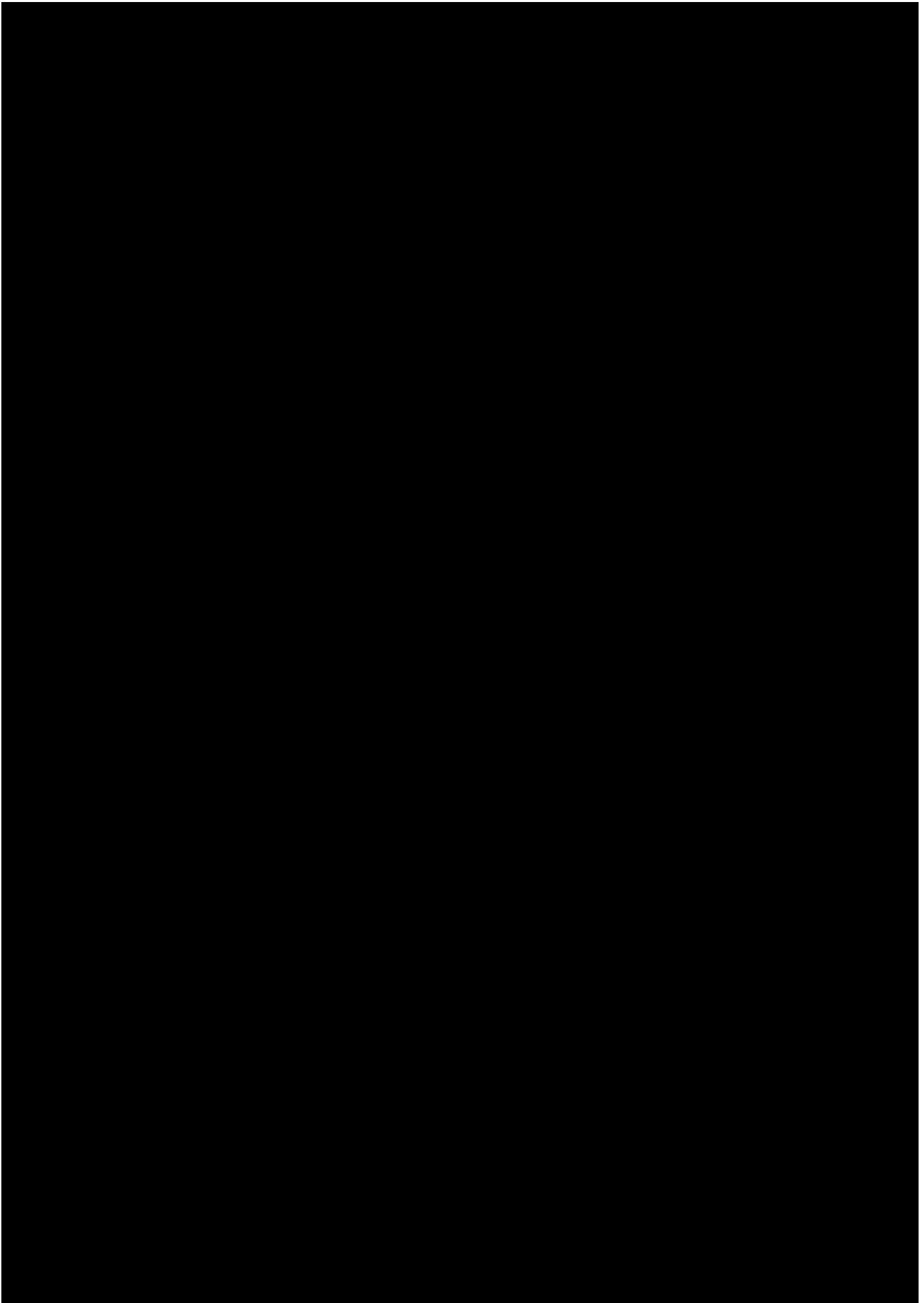
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DEPOSITION OF STEVEN ARMBRUST

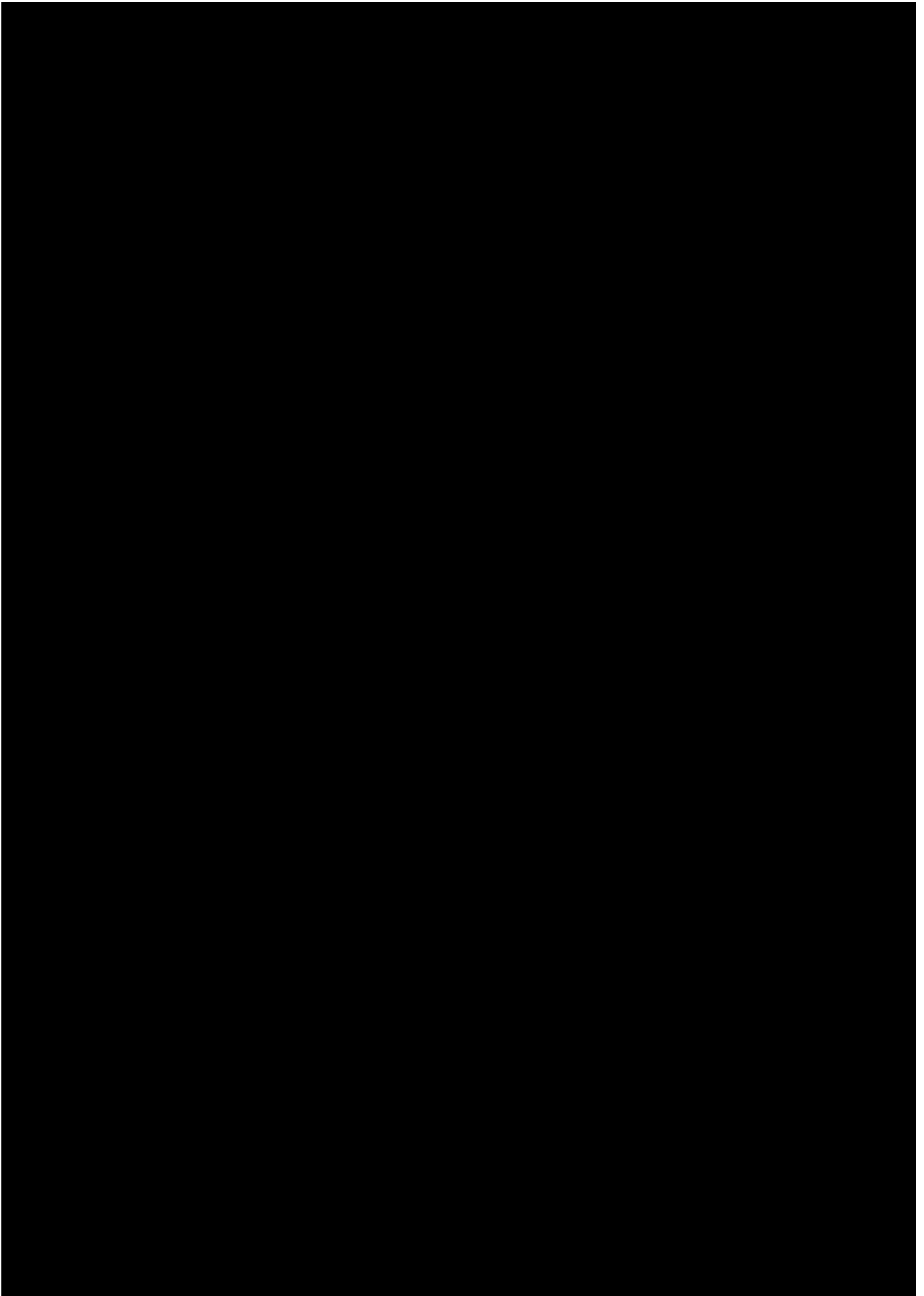
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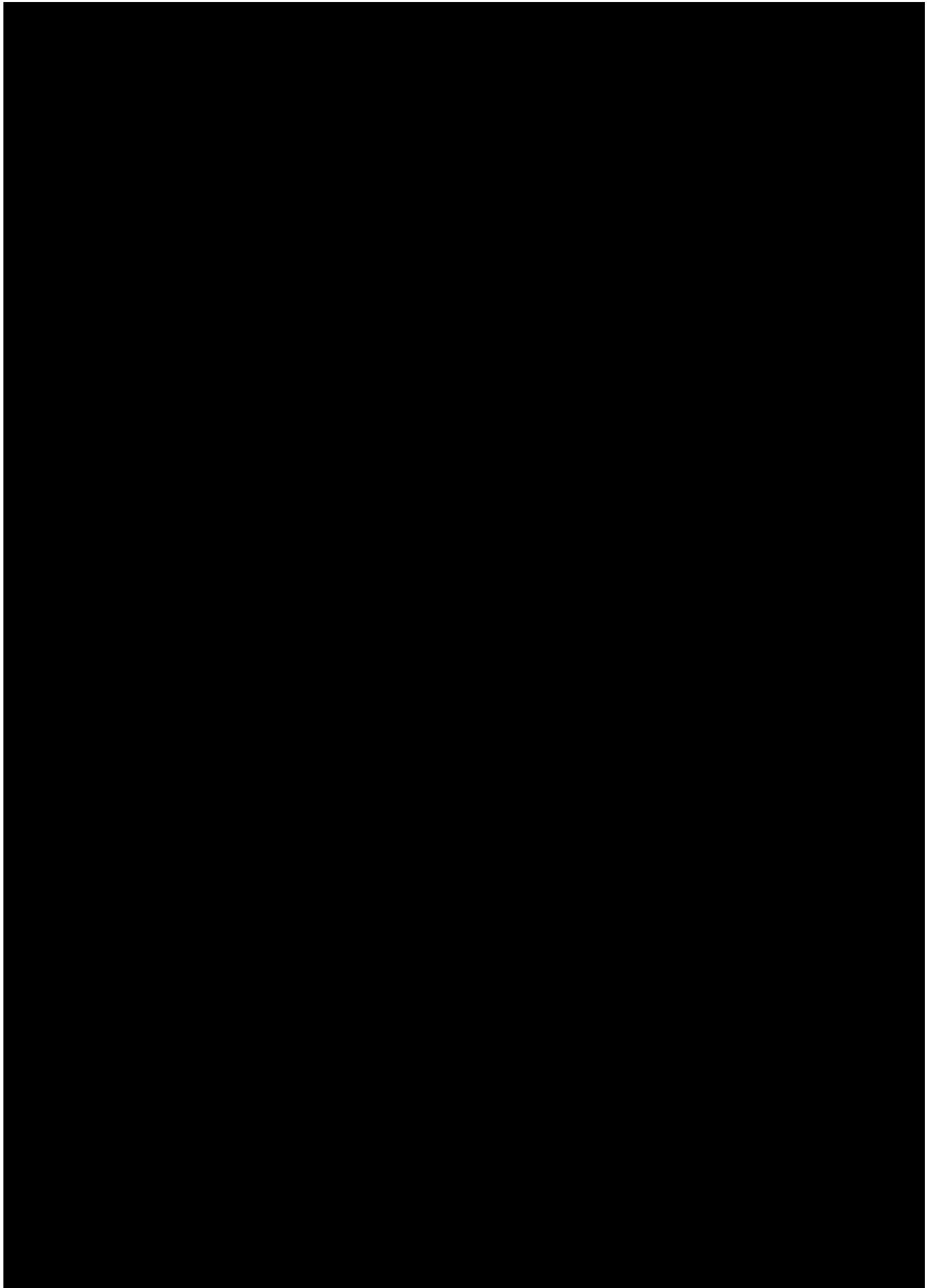


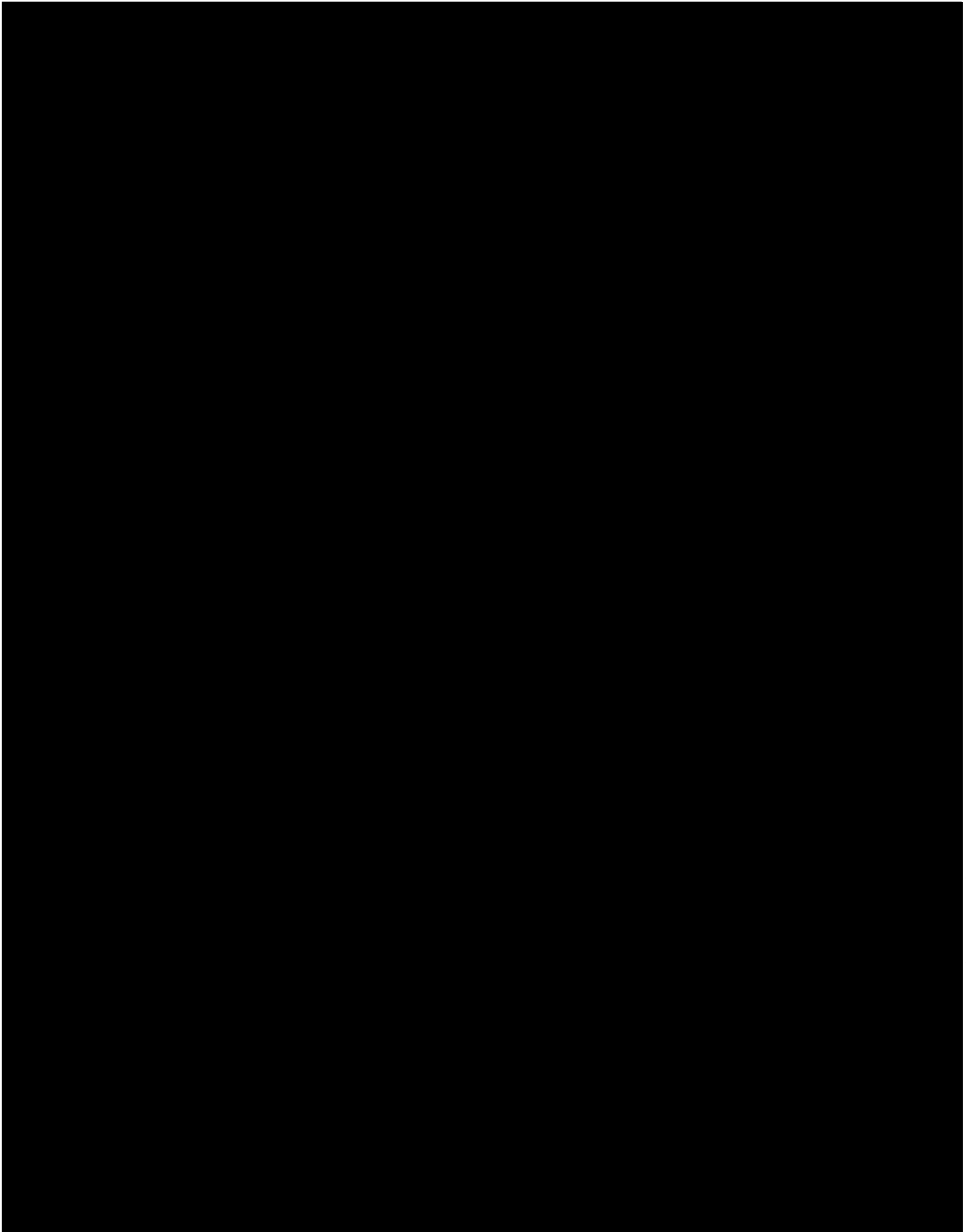


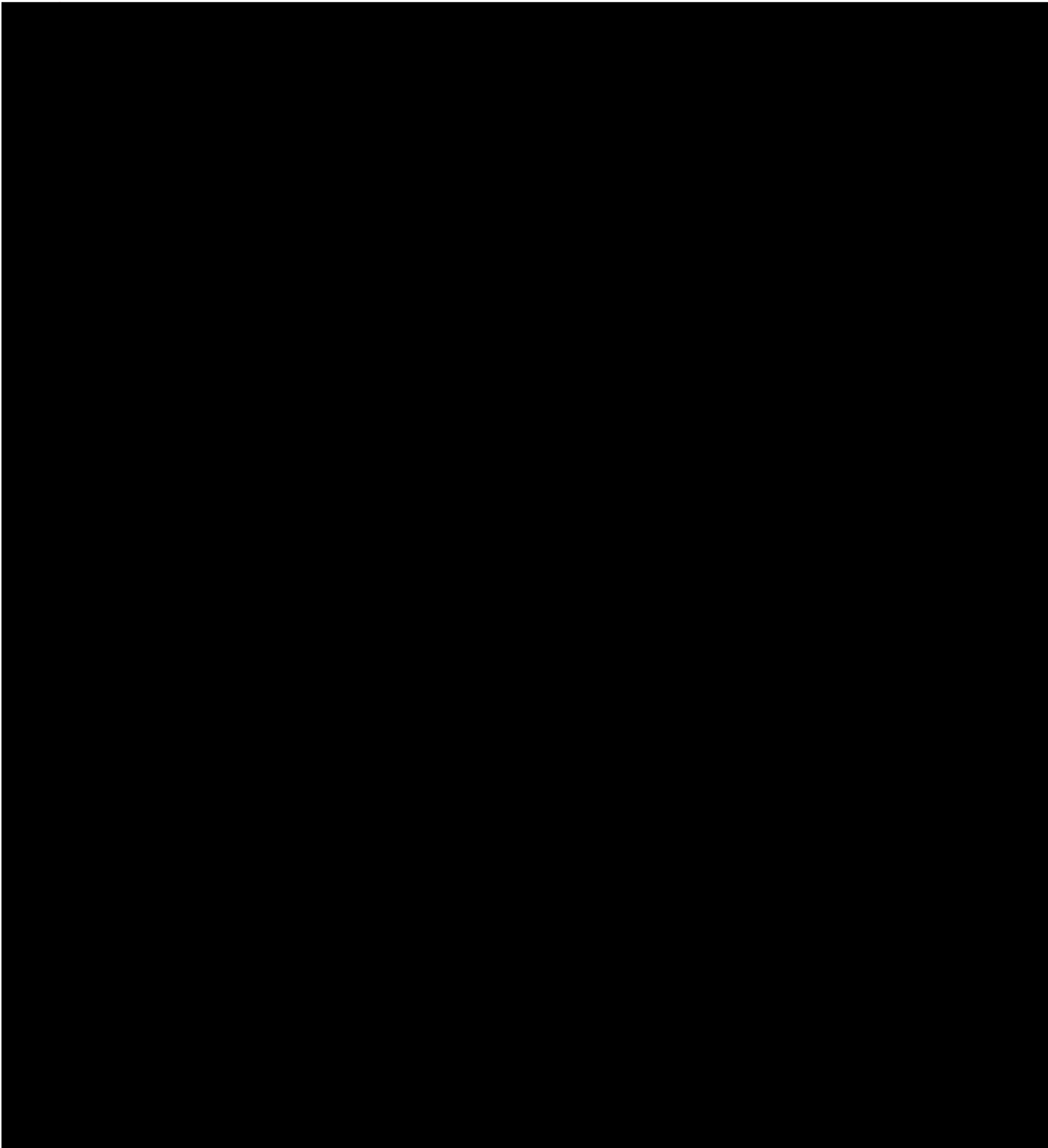












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SURFACE TRANSPORTATION BOARD

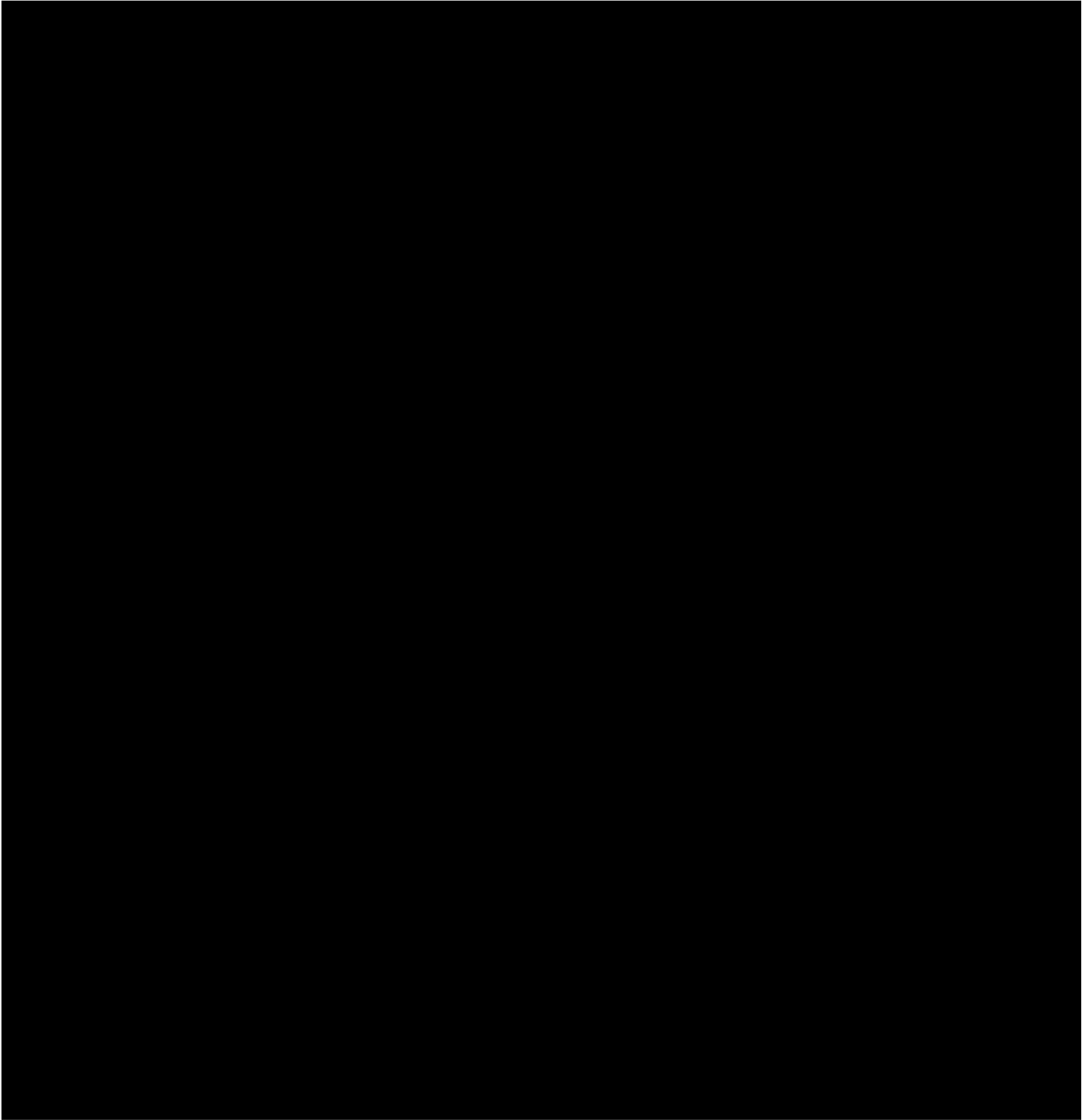
FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

EXHIBIT 33

JULY 17, 2009 LETTER FROM NPBL'S DAVID STINSON REGARDING CSXT'S
PROPOSED PURCHASE OF NPBL PROPERTY (EDVA NPBL007213)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

ATTACHMENT 1

VERIFIED STATEMENT OF MARYCLARE KENNEY

VERIFIED STATEMENT OF MARYCLARE KENNEY

My name is Maryclare Kenney. I am Vice President of Merchandise – Sales and Marketing for CSX Transportation, Inc. (“CSXT”).

My role as Vice President of Merchandise – Sales and Marketing includes responsibility for overseeing CSXT’s merchandise sales and marketing functions, and sales and marketing functions in service to customers producing and transporting finished vehicles and auto parts domestically and internationally.

I was previously Vice President of Intermodal and Automotive for CSXT. My role as Vice President of Intermodal and Automotive included responsibility for overseeing CSXT’s sales and marketing functions in service to intermodal customers and automotive customers. I joined CSXT in 2011 and have held roles of increasing responsibility, which includes approximately twelve years in intermodal.

I am familiar with the operations at all of CSXT’s intermodal terminals, including Norfolk International Terminals (“NIT”), one of the most important port terminals on the Eastern Seaboard and the Gulf Coast, and one of the top five individual marine terminals on the East Coast and Gulf Coast in terms of rail container throughput. I am also familiar with the ongoing efforts by Norfolk Southern Railway Company (“NS”) and Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) to exclude CSXT from accessing NIT for on-dock rail service, and the adverse impacts of that conduct. I participated in CSXT’s due diligence and analysis related to its antitrust lawsuit in federal district court regarding the anticompetitive conduct by NS and NPBL, and I have helped shape CSXT’s strategy to achieve competitive access to on-dock rail at NIT.

I previously submitted a Verified Statement in this proceeding, in connection with CSXT's Petition to Reject Norfolk Southern's Minor Application, filed on February 27, 2025.

In this Verified Statement, I provide an overview of the international intermodal transportation market and explain the circumstances at NIT and the Port of Virginia ("POV"). I also describe the conduct that NS and NPBL have been engaged in for years to exclude CSXT from on-dock rail access at NIT – enabled by NS's control of NPBL – and the effects of that conduct on competition.

1. Overview of the international intermodal transportation market.

CSXT and NS compete for international and domestic intermodal shipping contracts. The competitive dynamic is different for international and domestic intermodal traffic. International intermodal shipping typically arrives or leaves the United States on a ship, whereas domestic intermodal shipping in North America typically starts *and* ends on a truck. In international intermodal transportation, large shipping companies are dominant. Also, scale is very important in international intermodal shipping given the large size of ships and high volume of containers in particular ships.

As explained further below, in the international intermodal transportation market, ocean carriers shipping containers of goods to and from the United States generally enter into multi-year contracts with railroads. Under such contracts, the railroads typically handle the vast majority of rail movements for the ocean carrier across a geographic portfolio (e.g., all containers moving by rail to and from East Coast ports). In some cases, ocean carriers prefer to contract with a single Class I railroad for the vast majority of their traffic in the Eastern United States. They may have various reasons for favoring a particular rail carrier, such as simplifying their operations. In other cases, ocean carriers prefer to contract with multiple railroads in the

Eastern United States. For example, an ocean carrier may choose to contract with two railroads if the railroads serve different markets or to retain flexibility on rail transport.

In order for CSXT to be competitive for contracts with ocean carriers, CSXT must offer competitive service at all major ports in a geographic region. It is important to ocean carriers that a railroad supplier of transportation is able to provide service to and from multiple ports. CSXT would be at a competitive disadvantage if it could not assure ocean carriers that CSXT can provide transportation service from all major ports in a region.

In the contracting process, ocean carriers typically issue Requests for Proposals (“RFPs”) to railroads, generally identifying a volume of international intermodal containers to be moved by rail in particular “lanes” (i.e., port to destination pairs). Railroads generally contract with ocean carriers for services over a large set of lanes that include many inland destinations and that are over several ports. A critical factor for ocean carriers in assessing railroad bids is whether a railroad has effective service to the key ports, terminals, and routes that an ocean carrier requires.

Railroads do not control at which port or which port facility an ocean carrier’s vessel will call, therefore railroads need to be able to provide service from all important ports and facilities in a region. Even ocean carriers do not have the final say in the terminal at which a vessel calls. A number of factors determine vessel routing, including ocean carrier alliances, where multiple carriers will share space on a particular ship. At POV, Virginia International Terminals (“VIT”), the commercial entity that operates POV’s marine terminals, decides where to route vessels within the POV.

Trucks are not a viable competitor to rail for the majority of international intermodal traffic moving to inland destinations beyond the regional port area. This is due to various factors, including the distance between ports and inland markets and the scale of the movement.

Trucks can generally provide transportation of international containers to and from port facilities over shorter lengths of haul. However, the international intermodal traffic typically moves longer distances between ports and major inland markets beyond the regional port area where rail transportation is much more efficient and strongly favored by ocean carriers.

As discussed below, barges also do not compete with rail for international intermodal freight.

2. NS's control of NPBL has had, and is continuing to have, adverse effects on competition.

NS states plainly that “[t]he critical point to bear in mind is that NSC and/or NS have had effective control over NPBL for more than 42 years.” (NS Minor Appl. 7-8, Feb. 14, 2025.) While that may be true, it is also the heart of the problem. CSXT (the joint owner of NPBL) has theoretical rail access to NIT through NPBL, which was created to ensure that its owners would have access to facilities in the Norfolk area, but NS has used its control over NPBL to exclude CSXT from accessing NIT by rail.

NS also asserts that it “does not currently exercise control over the NPBL board, as only 3 of 6 of those board members represent NS’s interests.” (NS Supplement 22, June 13, 2025.) This is not correct. NS, in fact, controls and has appointed four members of the NPBL board, including its president, who serves as chairman. CSXT controls only two members of the NPBL board. NS has appointed current and former NS employees as NPBL directors and officers, thereby exercising complete control of the NPBL board and the management and operation of NPBL. NS also has a majority ownership of NPBL, giving it control of shareholder votes.

NS’s control over NPBL has prevented CSXT from being able to use NPBL to access NIT. Even though NPBL was created to facilitate access by its owners to facilities, like NIT, served by NPBL, NPBL has been unwilling to work with CSXT with respect to CSXT’s efforts

to move traffic to NIT. As discussed further below, NPBL has refused to consider operational arrangements and rate and service proposals that would permit CSXT to compete for on-dock rail access at NIT, even though CSXT's proposals would be beneficial for NPBL.

The evidence of the adverse effects of NS's long-running conduct is clear. NIT is one of the most important intermodal terminals on the Eastern Seaboard and the Gulf Coast, but CSXT has *zero* on-dock rail traffic at NIT. In fact, in the last couple of decades, CSXT was only able to provide *de minimis* service to NIT via rail, and that was during a period of extraordinary circumstances and demand caused by the February 2015 West Coast port labor strike. During that extraordinary period, the cargo surge at NIT created demand for drayage to CSXT's rail terminal that could not be supported by truck drayage capacity. In response to concerns of CSXT's customers and NIT due to the buildup of large numbers of CSXT-destined containers at NIT, CSXT attempted to utilize NPBL to meet shippers' demand for service from NIT despite the \$210/car cost-prohibitive rate. But NS used its control over the line and NPBL to impede the movement of CSXT's traffic, and CSXT was able to move only a small number of trains and containers.

Since 2015, CSXT has been unable to move any intermodal traffic by rail to or from NIT. NS has successfully stifled competition by foreclosing CSXT's access to NIT via NPBL's cost-prohibitive switching rate and refusal to consider operational arrangements that would permit CSXT to effectively reach NIT with a reliable operation with sufficient and predictable daily capacity. I believe that, unless NS is ordered to provide operational assent to NPBL or CSXT movements to NIT, NS's continued control of NPBL will result in further interference with those movements.

As I noted previously, NPBL was established for the mutual benefit of all of its owners. But instead of working with CSXT to implement mutually beneficial operations, NS has used its control of NPBL to ensure that NPBL thwarts CSXT's ability to access NIT at every opportunity. In contrast, the independent Commonwealth Railway ("CWRV") provides effective terminal switching services to both CSXT and NS at Virginia International Gateway ("VIG"), the terminal just across the Elizabeth River from NIT. As I discuss further below, CSXT has been able to work with CWRV to effectively access its switching services in order to access VIG, unlike the NS-controlled NPBL.

3. Unlike other port facilities where CSXT and NS have dual access, CSXT has zero on-dock rail traffic at NIT.

NS's efforts to exclude CSXT from access to NIT have been very effective. At port facilities along the East Coast where CSXT and NS have dual access, the amount of rail traffic tends to be relatively evenly split between CSXT and NS for inland locations that can be served by both railroads. CSXT has rights to access NIT through NPBL, yet CSXT has *zero* on-dock rail traffic at NIT. This is the result of NS's control of NPBL.

Contrast the NPBL situation with that of another switching and terminal railroad, Conrail. CSXT and NS jointly own and control Conrail, and neither railroad dominates Conrail's management and operations. This joint ownership and control works well with respect to Conrail because both CSXT and NS need Conrail in order to access shippers in areas where Conrail operates. Generally, neither CSXT nor NS can serve such shippers directly, so each railroad is incentivized to ensure the viability of Conrail.

Here, NS does not need NPBL in order to serve NIT – NS can access NIT directly. Additionally, NS is the only railroad that controls NPBL, notwithstanding CSXT's minority

interest in NPBL. NS is clearly incentivized to wield its control of NPBL as a shield to keep CSXT from accessing NIT and it has used that control to exclude CSXT from access to NIT.

4. Drayage is not an effective competitive alternative to on-dock rail access at NIT.

Contrary to NS's claims, drayage of intermodal containers from NIT to VIG approximately nine miles through city streets for eventual movement to CSXT by rail is not an effective competitive alternative to NIT on-dock rail access. In general, drayage is an expensive, inefficient, and inferior alternative to on-dock rail due to capacity constraints and the additional time required as containers have to be moved one by one. Additionally, ocean carriers express a strong preference for on-dock rail and view drayage as an inferior option.

Drayage is particularly problematic at NIT. It is not a substitute for on-dock rail access at NIT. The dray movement from NIT to VIG, on urban streets not intended for industrial activity, bisects the Old Dominion University campus and multiple residential areas. Movement of rail containers by drayage at NIT is limited. The gates at NIT are open from 6:00 am to 6:00 pm Monday through Friday for truck access. However, for drayage between NIT and VIG, traffic along Hampton Blvd is restricted to the hours of 6:00 am to 4:00 pm. Throughput via rail operates seven days/week, 24 hours per day. The efficiency and reliability of drayage is further limited by street congestion, gate delays, and the limited availability of gate appointments, truckers and chassis.

Under the current system, NIT containers are drayed to and from VIG for subsequent rail transfer by CWRV to interchange with CSXT at a point between Portsmouth and Kilby. Specifically, import containers at NIT are discharged from ships at NIT. The VIT drayage program trucks the containers from the NIT Marine Container Stack out the gate at NIT, in the gate at VIG, and then loads to a railcar at VIG. From VIG, CWRV moves the NIT containers on

the outbound/import train, combined with the VIG import containers to the CWRV interchange track about nine miles from VIG on the CWRV line (CWRV Milepost 9).

At the interchange track, the CSXT crew gets down from the VIG export train, leaving the CSXT locomotives on the inbound/export train. The CWRV crew gets off the VIG import train and boards the CSXT inbound/export VIG train, complete with the CSXT locomotives. The CSXT train crew boards the import/VIG train, complete with CSXT locomotives from the previous day's export train and departs from the interchange track and heads across CWRV trackage (about 6.5 miles) between the CWRV interchange track (Milepost 9.9) and the CSXT connection at Suffolk, VA (Milepost 16.5), where the CSXT train enters CSXT trackage, at CSXT Milepost ~SA 17.

Shortly beyond the Suffolk, VA CSXT/CWRV connection, the CSXT crew passes the Kilby, VA support yard at CSXT Milepost SA 23, where they may drop off surplus empty cars released from VIG, for future use, or where they may pick up overage import cars from a previous day. The CSXT crew then continues on to Richmond, VA and beyond via CSXT trackage. Export trains, inbound to VIT, are opposite to the above description.

CSXT's drayage operation at NIT is capacity constrained. Drayage peaked in 2021 at approximately 53,700 containers but dropped to approximately 31,200 containers in 2023 because VIG was expanded and POV could route more CSXT-aligned ships to VIG. It is generally reasonable to assume two containers per well car in the normal course of business. Not every car is completely utilized for various reasons. For example, on some days, CSXT moves more containers in and less containers out, and vice versa. POV's 2024 expansion of the Central Rail Yard at NIT will accommodate 455,000 additional rail twenty-foot equivalent units

(“TEUs”) annually.¹ If CSXT does not have on-dock rail access at NIT, CSXT will be impeded in its ability to service the new traffic at NIT. If, for example, CSXT services 200,000 of the additional 455,000 TEUs, or approximately 120,000 containers, that would require approximately four times more drayage on Norfolk streets than in 2023.

Again, the proof that drayage is not competitive is in the numbers. In the Virginia Port Authority’s (“VPA”) fiscal year 2024, CSXT moved approximately 26,000 containers via NIT by truck. While CSXT does not possess the actual volume data for non-CSXT traffic at NIT, statistics published by VPA, coupled with our data, indicate that NIT handled more than 300,000 rail containers in fiscal year 2024 and that NIT has capacity to handle as many as 400,000 rail containers each year. I understand that VPA provided the Board with additional figures in VPA’s March 5, 2025 filing in this proceeding, although I have not seen them because VPA filed them under seal. Such an imbalance is compelling evidence that drayage traffic does not provide an effective competitive alternative.

NS also claims that barge service through Richmond, Virginia is another option for access to NIT. However, as NS points out, Richmond Marine Terminal (“RMT”) “is linked to the Port of Virginia for barge traffic and CSXT has direct service to the RMT.” (NS Minor Appl. 34.) This means that, like drayage and unlike the on-dock rail service that CSXT should have at NIT, barge service to Richmond would require an extra movement from ship to barge to rail, rather than just from ship to rail. Furthermore, barges only move a negligible amount of traffic from POV (approximately 5%). Barge service requires an approximately 12-hour trip from POV to Richmond, in addition to the time required for loading and unloading. The barge

¹ POV, Gateway Investment Program, <https://www.portofvirginia.com/the-future/gateway-investment-program/>.

service at POV is offered by the port. It is generally used for moving traffic to Richmond or to locations within approximately 25 miles of Richmond. Barges are not a practical or attractive solution for CSXT or shippers.

5. Other terminals are not adequate substitutes for on-dock rail at NIT.

Marine on-dock rail terminals in other regions, such as New York, are not an adequate substitute for on-dock rail access at NIT in Virginia. As noted above, numerous factors, including complex ocean shipper alliances, determine where a particular vessel will land or load. Railroads do not control the terminals where a ship will dock. Railroads must have the flexibility to provide service at all on-dock rail terminals at all major ports, such as New York and Virginia. CSXT's ability to provide service in New York is not a substitute for its ability to provide service in Virginia. CSXT must be able to provide service in both areas.

Furthermore, other terminals at POV are not an adequate substitute for on-dock rail access at NIT. NIT is the largest and most important terminal at POV. It is a critical entry point through which almost all major ocean carriers move international intermodal traffic. NIT is accessible by a 50-foot navigation channel, and it can accommodate the largest modern Post-Panamax class vessels.

A second terminal, VIG, is located across the Elizabeth River from NIT. VIG has fewer berths and less on-dock rail capacity than NIT. Although a recent expansion increased VIG's annual throughput capacity, I understand that VIG has reached capacity and cannot be expanded further. Both CSXT and NS have access to on-dock rail at VIG via CWRV switching services. As I discussed above, CWRV is an independent railroad that is incentivized to work directly with both CSXT and NS to implement efficient switching services.

A third terminal, Portsmouth Marine Terminal ("PMT"), was smaller and could not accommodate the largest modern container ships. Both CSXT and NS had access to on-dock rail

at PMT. PMT was closed from 2010 to 2013, but reopened in 2014 to handle “overflow” traffic while expansion efforts were underway at VIG and NIT. (See CSXT MSJ Opposition 36-37, Aug. 19, 2025.) I understand that PMT was closed again in approximately 2020, and VIT has no plans to re-open it for container cargo. PMT is being transformed from a container terminal to an offshore wind energy hub.²

As noted, VIG has reached capacity, and PMT has closed, so growth at POV will only come from NIT. On-dock rail access to NIT is therefore only going to become more and more important in the future.

6. As a result of NS’s conduct, NPBL and CSXT cannot make efficient movements to NIT.

NS’s efforts to exclude CSXT from effective access to NIT via control of NPBL have included NS’s discontinuance of rail service, and NPBL’s discontinuance of trackage rights, over a line segment between NS Junction at MP 1.40 and Carolina Junction at MP 2.30 in 2008 (the “Connecting Line”). See *Norfolk S. Ry. Co.—Discontinuance of Service Exemption—in Chesapeake, VA*, AB 290 (Sub-No. 299X) (STB served May 15, 2008); *Norfolk & Portsmouth Belt Line R.R. Co.—Discontinuance of Trackage Rights Exemption—in Chesapeake, VA*, AB 1024X (STB served May 15, 2008). The Connecting Line allowed efficient movement of traffic between NPBL’s Berkley Yard and the tracks leading to NIT without having to use other routes, such as entering and exiting NS’s Portlock Yard.

After obtaining this discontinuance authority, I understand that NS removed certain track assets associated with the Connecting Line, including a double diamond at NS Junction and a connection at Carolina Junction, which rendered the Connecting Line unusable.

² POV, Portsmouth Marine Terminal (2025), https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-PMT.pdf.

As a result of NS's removal of track assets associated with the Connecting Line, NPBL and CSXT cannot efficiently move traffic to NIT. For example, if CSXT wanted to utilize NPBL's switching service to move a 10,000-foot train of export freight to NIT, the movement would require two stops with two train dis-assemblies and re-assemblies. Specifically, for exports, the CSXT train would have to pull into NPBL's Berkley Yard from the west, where it would be disassembled into several different sidings and parked. Then, the locomotive would have to be removed and replaced with an NPBL locomotive, and then reassembled. This process would take several hours. The CSX/NPBL train would then have to pull into NS's Portlock Yard and be dis-assembled in sidings. The locomotive would have to do a runaround, and finally, the train would have to be re-assembled and then pulled out onto NS-owned track for the trip to NIT. This process would likely take several hours.

In addition to the \$210/car rate, CSXT would incur extra costs to move traffic to and from NIT because of the requirement by NS-controlled NPBL that CSXT deliver and receive traffic at NPBL's Berkley Yard. Because of this unnecessary requirement, CSXT would have to incur additional costs to move the traffic between Berkely Yard and CSXT's Kilby Yard. In 2024, CSXT estimated that the cost to move traffic between CSXT's Kilby Yard and NPBL's Berkley Yard would be {{ [REDACTED] }} for a two-person crew and {{ [REDACTED] }} for two six-axle locomotives.

These costs are not necessary. And when added to the excessive \$210/car rate, they make the movement cost-prohibitive. CSXT's recent service proposal to NPBL (discussed further below) would enable an NPBL train to interchange with CSXT at Kilby in Suffolk without incurring any additional costs to NPBL. With the restoration of the Connecting Line, that train

could travel non-stop to/from NIT and Kilby. However, NS has used its control of NPBL to prevent NPBL from acting on CSXT's mutually beneficial proposal.

This situation with NPBL is extraordinary. Other terminal railroads work with CSXT to make operational accommodations to ensure that they benefit from incremental switch traffic provided by CSXT. The industry standard is to keep trains intact and to switch operators, and CSXT routinely works with other terminal railroads to find an efficient way of switching. For example, at Jacksonville, a terminal railroad pulls cars in at JAXPORT. Trains that are too long for the port are exchanged at a mutually convenient point, and CSXT switches locomotives with the terminal railway. At Wilmington, CSXT switches with a terminal railway that brings the train to a yard. These terminal railways are incentivized to serve their connecting railroads and to add incremental traffic, unlike NPBL which is incentivized to block CSXT given that NPBL's controlling owner has its own route into NIT. {{ [REDACTED]

[REDACTED] }}

7. NS prevents NPBL from considering new CSXT proposals for access to NIT.

NS has managed to exclude CSXT for many years from access to NIT through its control of NPBL. NS has repeatedly used its control of NPBL to prevent NPBL from considering rate and service proposals that would permit CSXT to compete for on-dock rail access at NIT. In 2009, and again in 2018, CSXT presented NPBL with commercial proposals that would have given CSXT a chance to compete for rail traffic at NIT while allowing NPBL to make additional profits. However, NS used its control of NPBL to keep CSXT's proposals from ever being adopted.

Yet again, in 2024, after the STB had ruled that NS was not authorized to control NPBL, CSXT made new commercial proposals to NPBL that would have given CSXT an ability to

compete for NIT traffic while providing NPBL with the ability to gain new traffic. (Attach. A, CSXT Letter, Nov. 26, 2024.) NS again used its control over NPBL to prevent NPBL from considering the proposal. Specifically, on November 26, 2024, CSXT made a proposal to the NPBL board regarding rates and contractual terms for NPBL to provide switching services to CSXT for movement of intermodal traffic to and from NIT. (*See id.*) I have attached to my statement correspondence between CSXT, NPBL, and NS related to CSXT's rate and service proposal.

CSXT ensured that this rate and service proposal would yield pure profit for NPBL. CSXT would cover all of NPBL's costs, would provide all equipment and fuel, and would pay for NPBL labor. When NPBL raised concerns about the amount of trackage rights compensation that NPBL must pay NS to access NIT, CSXT ensured that NPBL would have no exposure should that amount increase. However, NPBL still refused to accept the proposal.

I believe that an independent NPBL no longer controlled by NS would be properly incentivized to provide cost-effective and efficient switching services to both NS and CSXT. I expect that an independent NPBL not controlled by NS would act like other independent terminal and switching railroads. For example, I expect that an independent NPBL would work with CSXT to come up with a detailed plan for effective access, rather than look for excuses not to engage with CSXT.

8. CSXT's customers and other stakeholders would benefit from competition between NS and CSXT for on-dock rail access at NIT.

As a result of CSXT's lack of on-dock rail access at NIT, CSXT cannot efficiently handle its customers' loads at NIT. The ability to handle customers' loads is valuable because, as noted above, NIT is a critical entry point through which almost all major ocean carriers move or will need to be able to move international intermodal traffic.

CSXT's customers and other stakeholders would benefit from CSXT having on-dock rail access at NIT. Additionally, CSXT access to NIT would enable CSXT to bid more aggressively for contracts with shipping lines. Furthermore, if CSXT has access to NIT, NS would have an incentive to meet that competition.

9. Dual access will become even more critical in the future.

Publicly-available materials from VPA, which owns and operates NIT, indicate that NIT capacity is going to expand substantially. In fiscal year 2024, approximately 1.9 million containers (3.5 million twenty-foot equivalent units) moved through POV's terminal properties.³ Additionally, POV is implementing its \$1.4 billion Capital Gateway Program. For example, in 2024, POV completed its \$83 million Central Rail Yard expansion at NIT, which will open for business in 2025 and will provide additional capacity at NIT.⁴ Furthermore, VPA has announced plans to renovate, expand and modernize the North Terminal at NIT. The project is expected to be completed in 2027.⁵ Clearly, it would not be in the public interest to have NPBL and NS artificially restrict CSXT from being able to serve that additional capacity. Thus, effective dual rail access to NIT is going to become even more critical.

CSXT's lack of on-dock rail access at NIT will interfere with CSXT's ability to win intermodal business as NIT expands. As noted above, VIG has reached capacity and cannot be expanded further, and PMT has closed, so growth at POV will only come from NIT.

³ POV, Annual Comprehensive Financial Report for the Fiscal Year ended June 30, 2024 at 17 (2024), <https://www.portofvirginia.com/wp-content/uploads/2024/09/Virginia-Port-Authority-06-30-2024-Annual-Comprehensive-Financial-Report-as-Issued.pdf>.

⁴ See *id.* at 8; POV, Norfolk International Terminals (NIT) (2024), <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-NIT-1-Pager.pdf>.

⁵ See *id.*

Additionally, the ability to move additional traffic that will come from the growth at NIT by drayage is limited.

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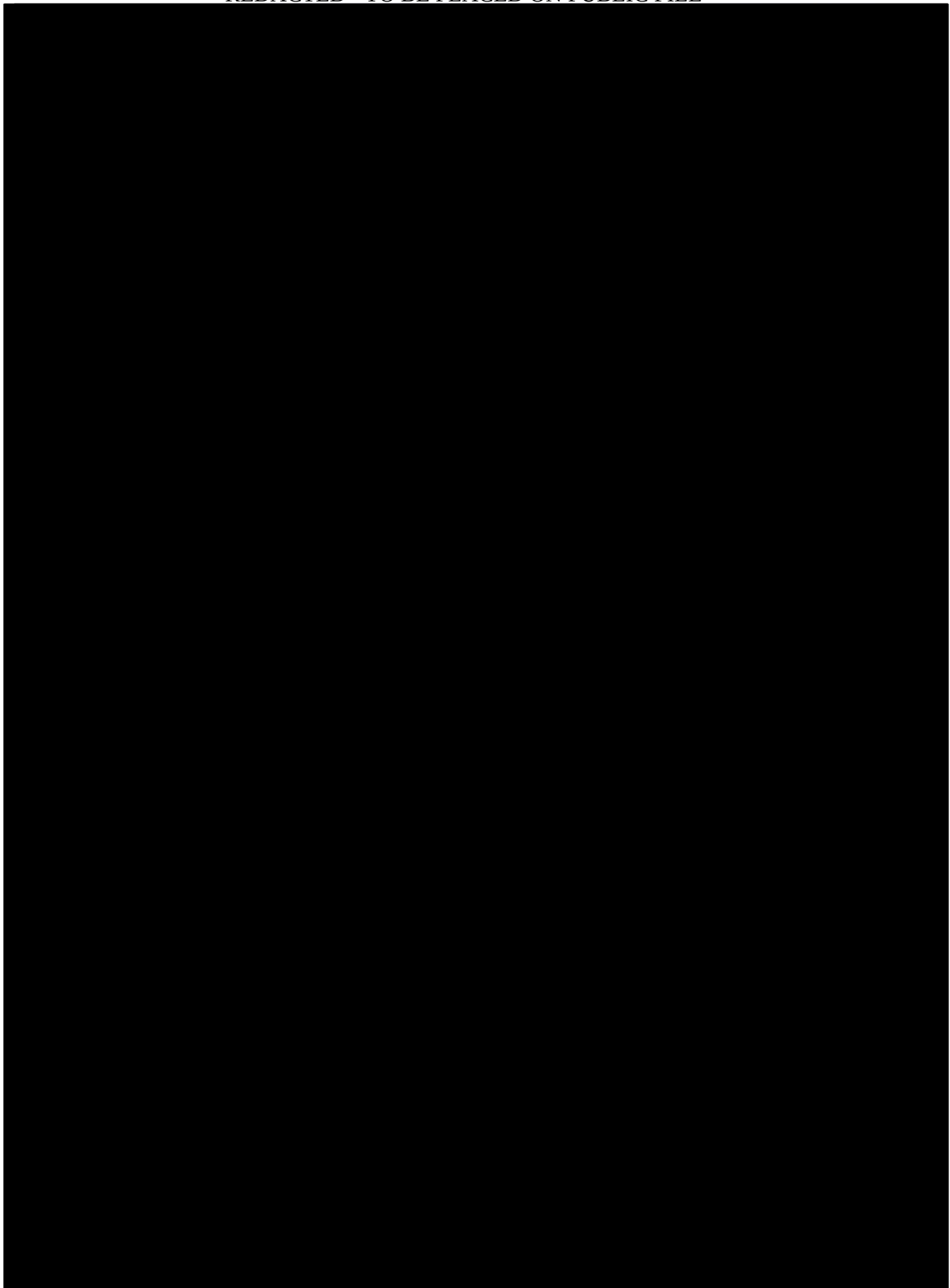
It is clear that NS's ongoing control of NPBL has had, and is continuing to have, adverse effects on competition. Therefore, the Board should carefully consider the competitive issues raised by NS's application and, if the Board allows NS to control NPBL, the Board should ensure that CSXT has effective on-dock rail access at NIT.

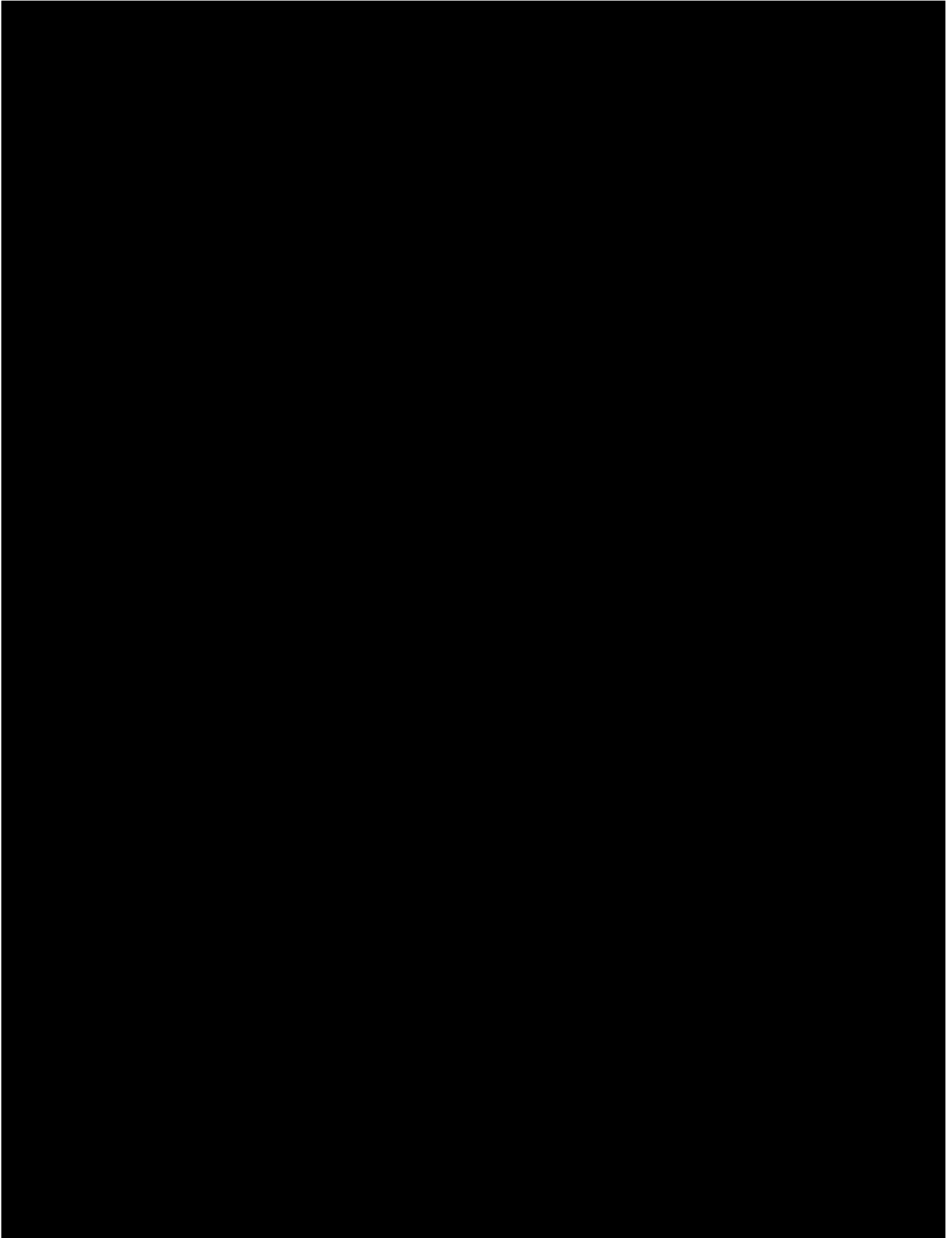
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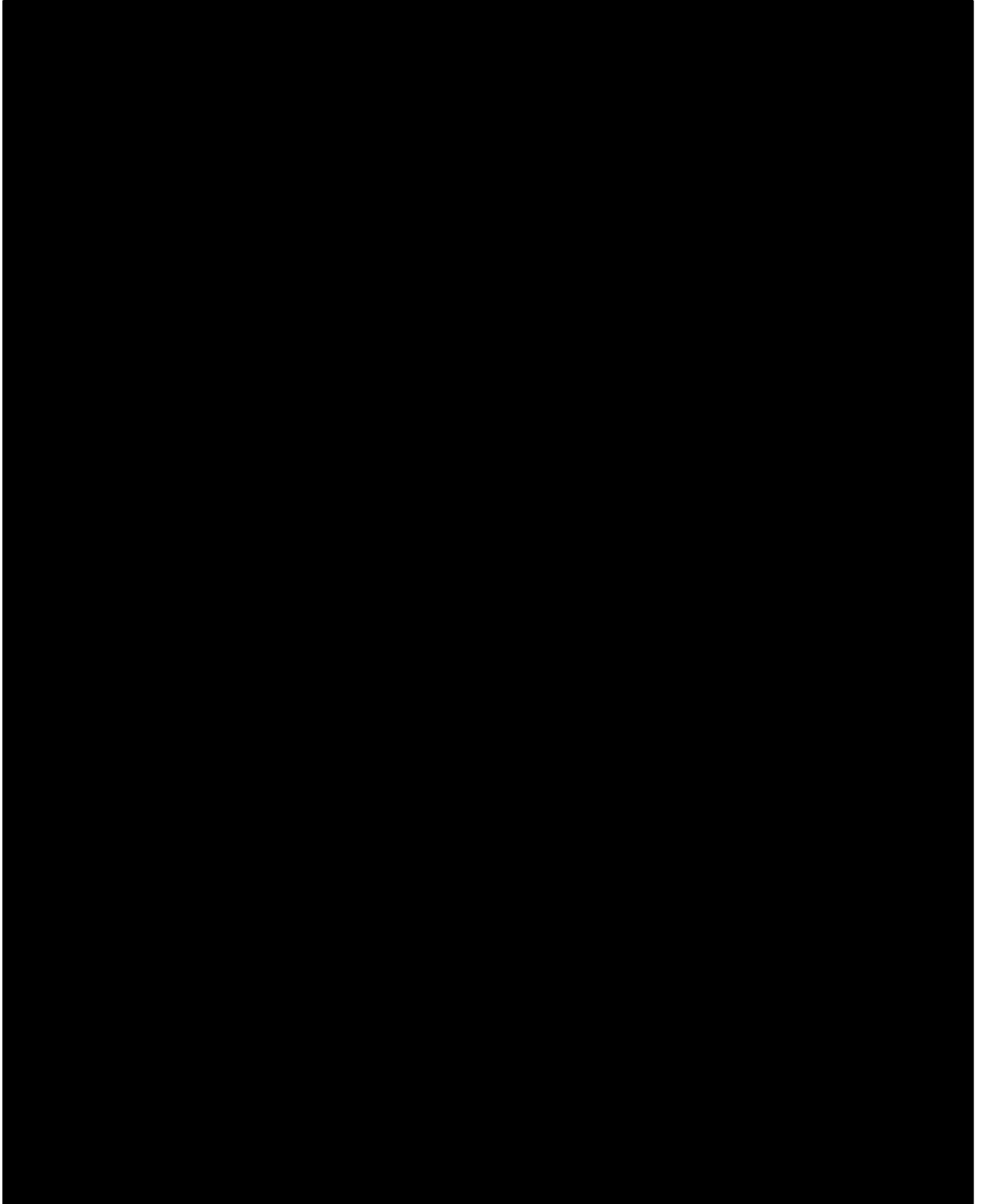
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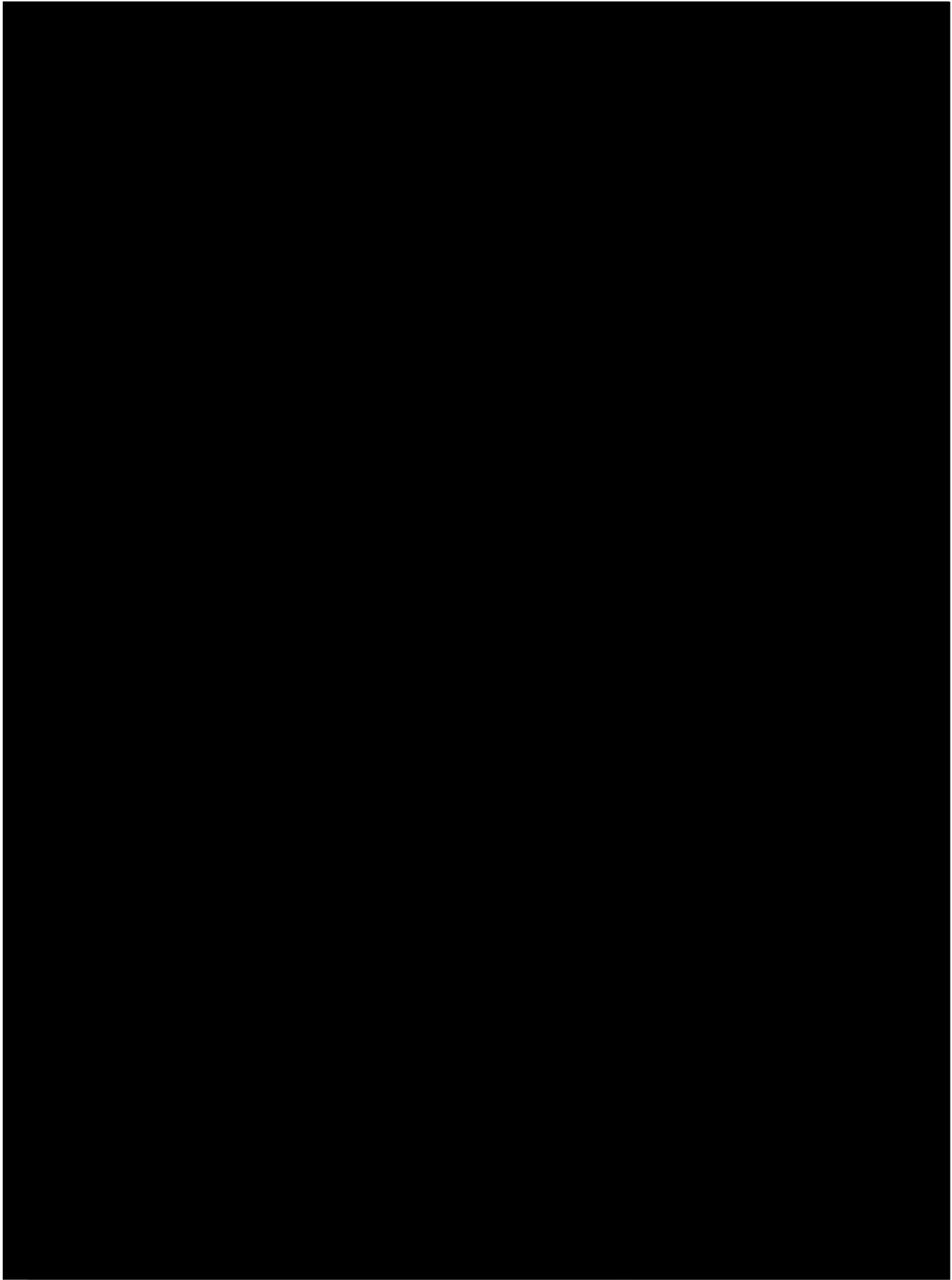
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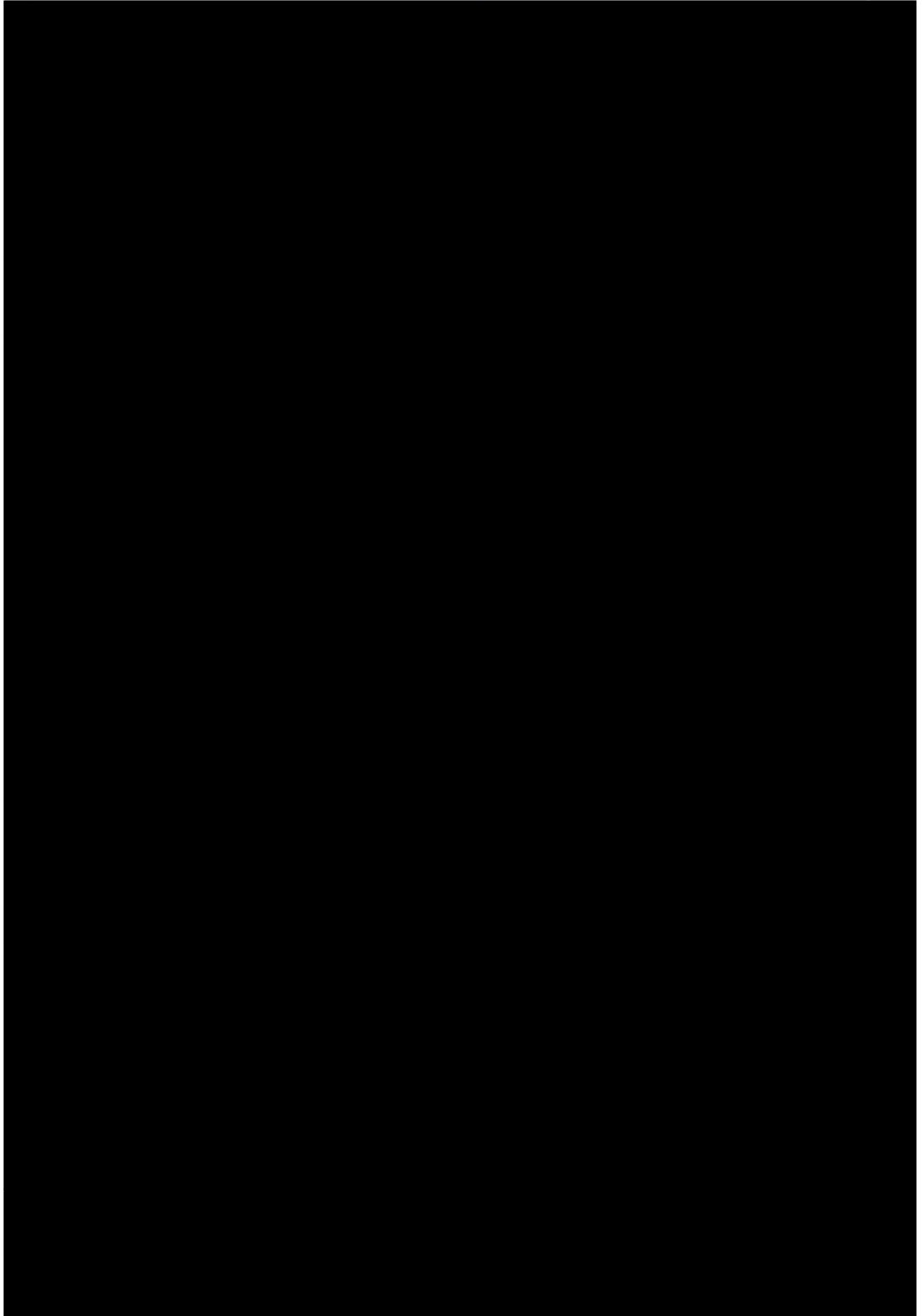
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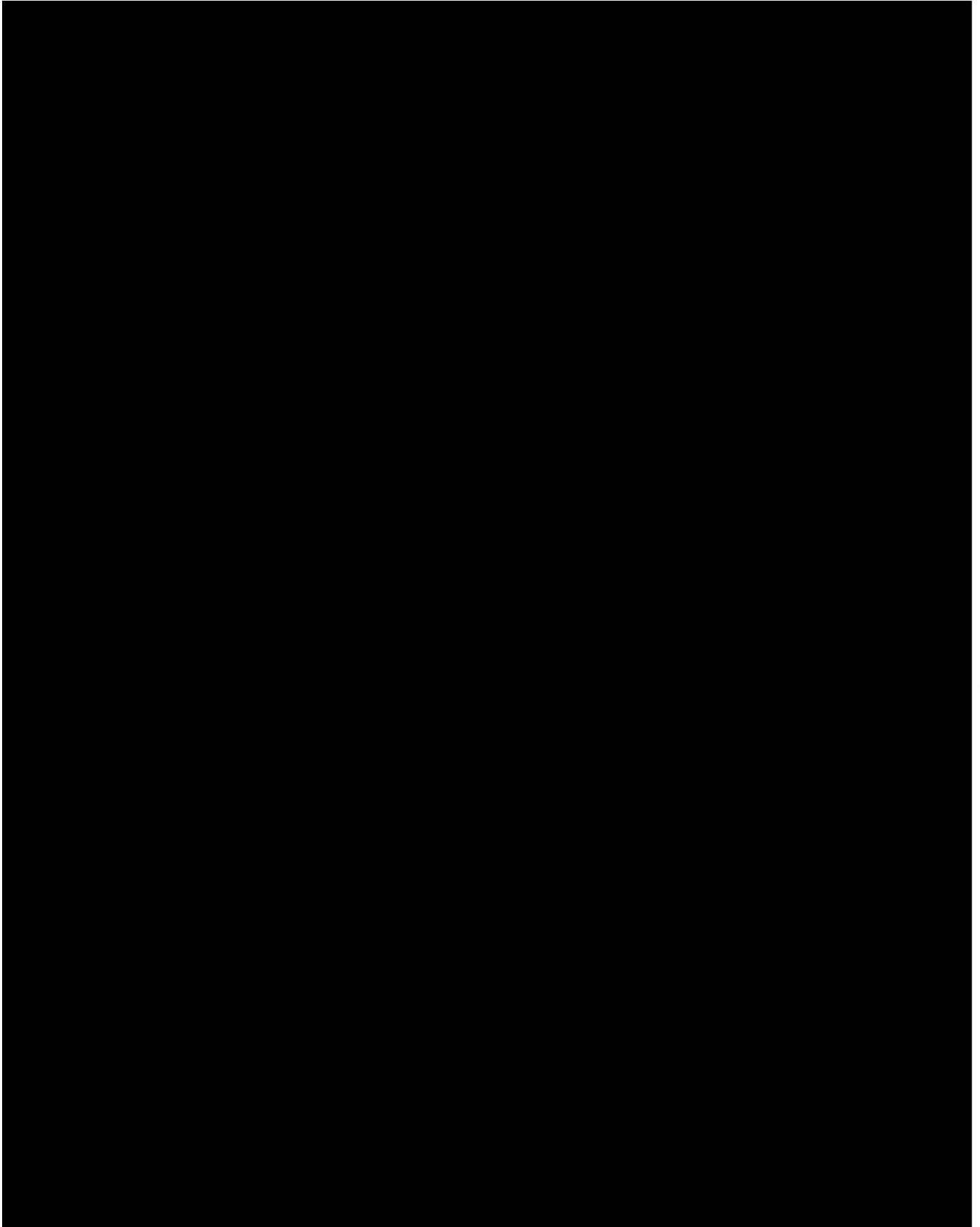
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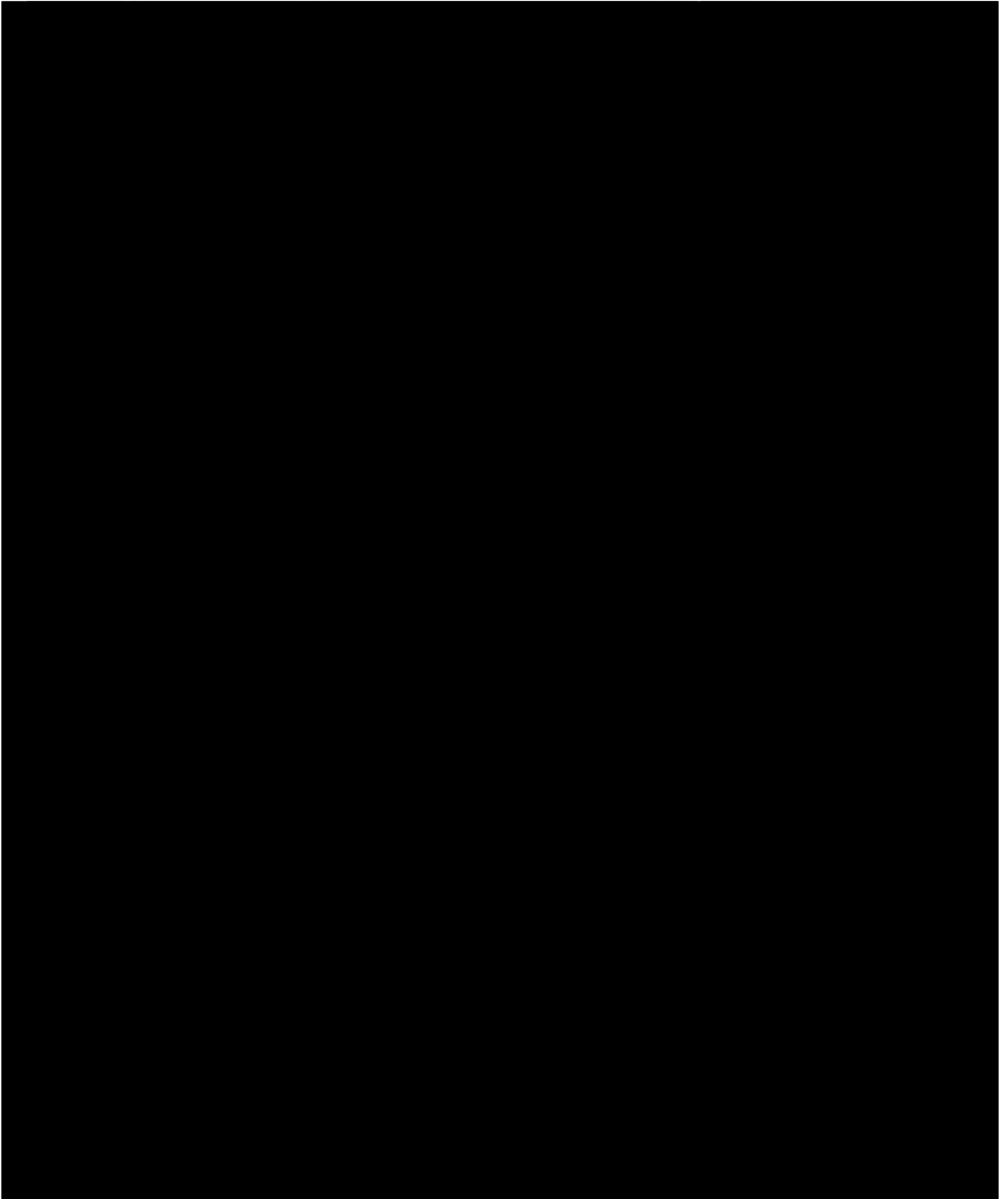
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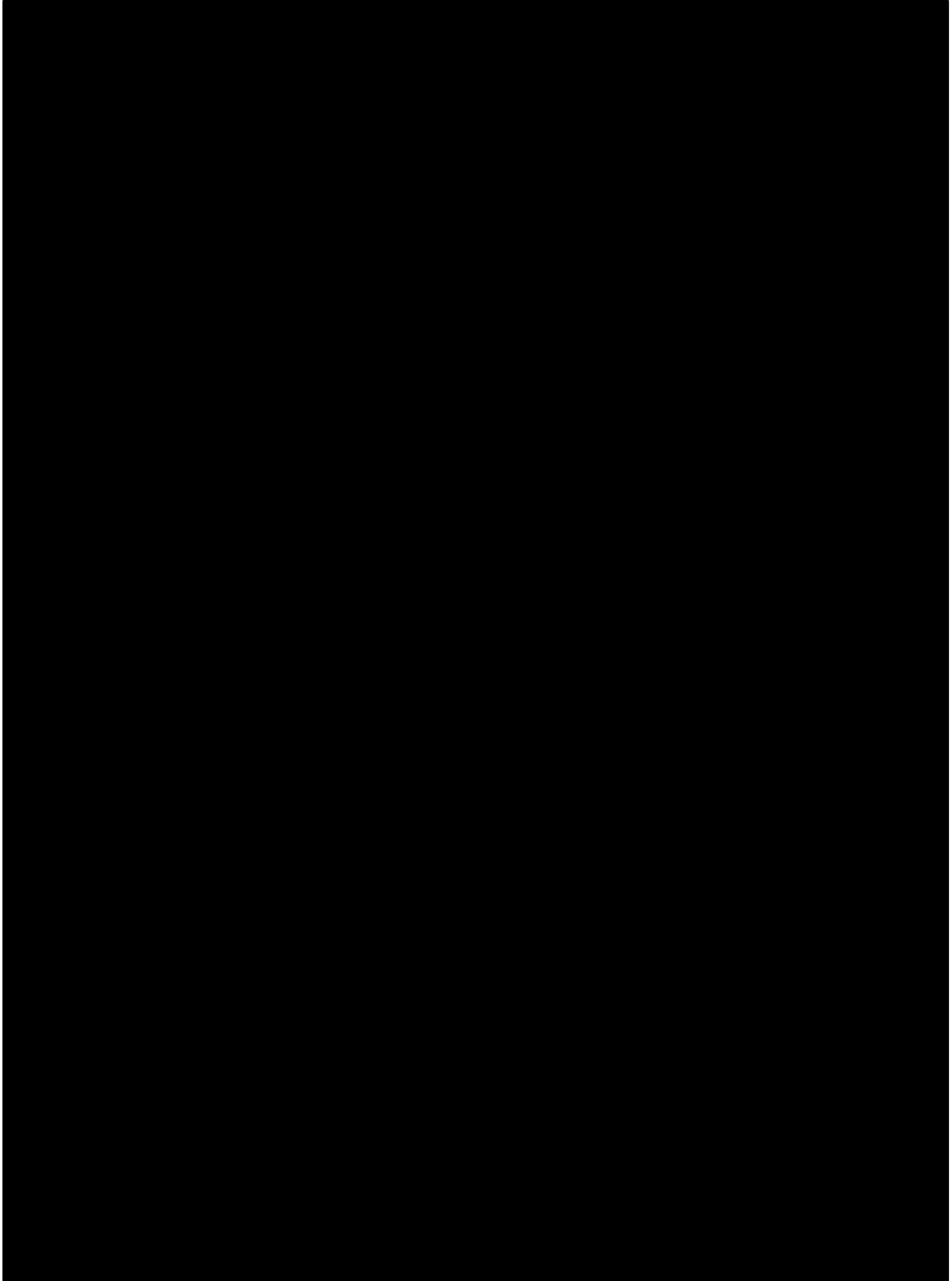
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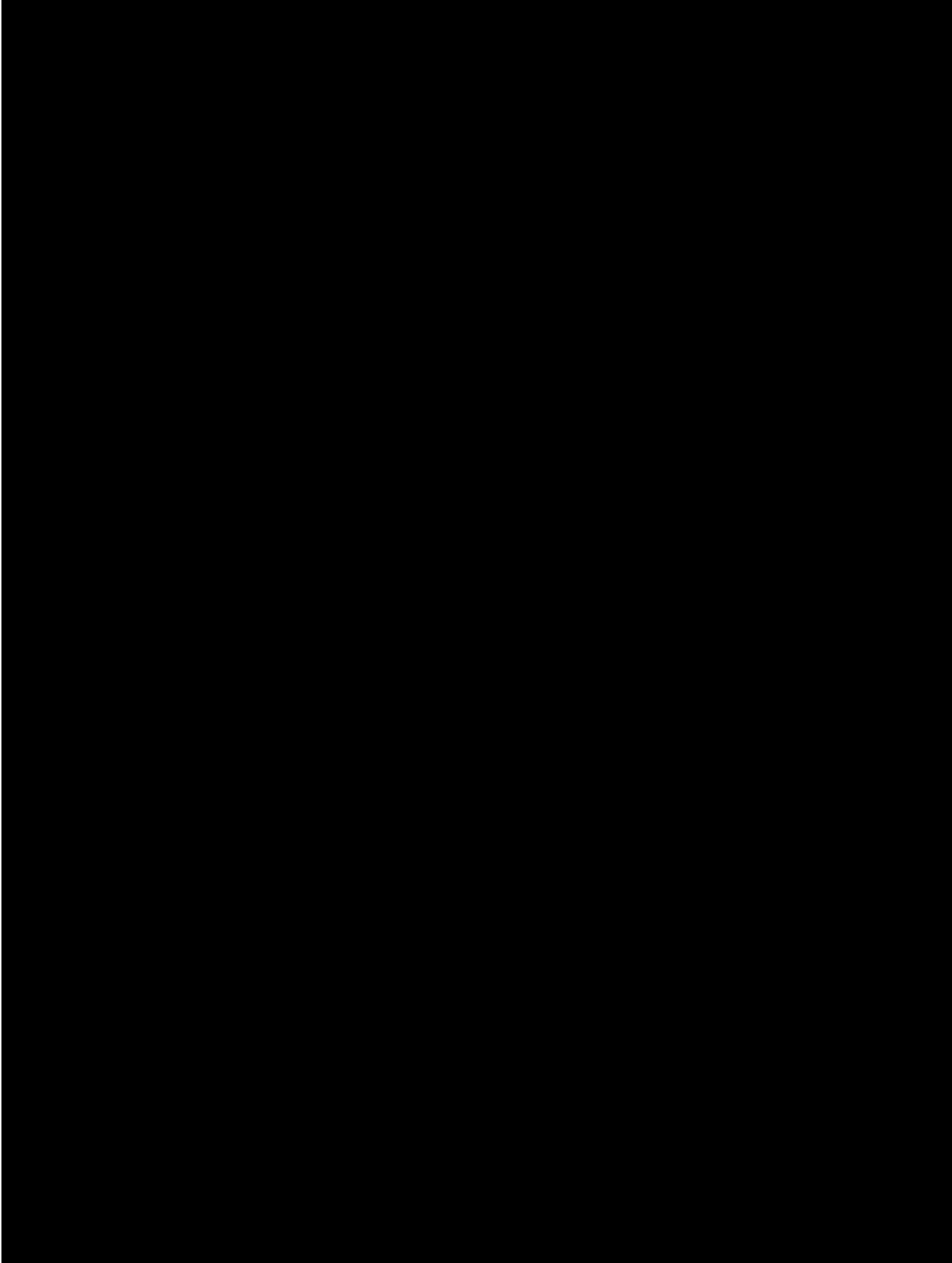


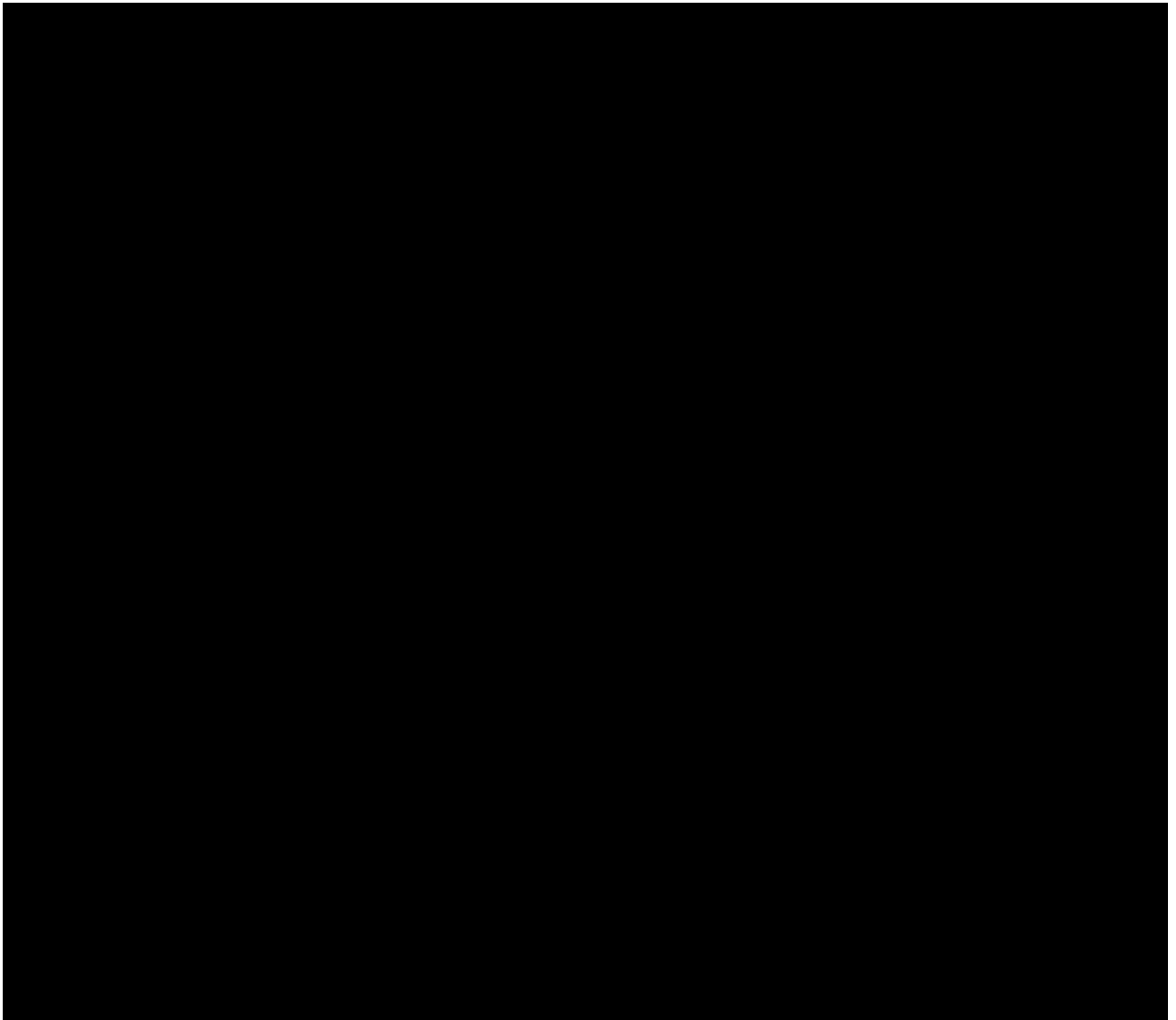
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ATTACHMENT C

NS LETTER TO NPBL & CSXT, DEC. 4, 2024

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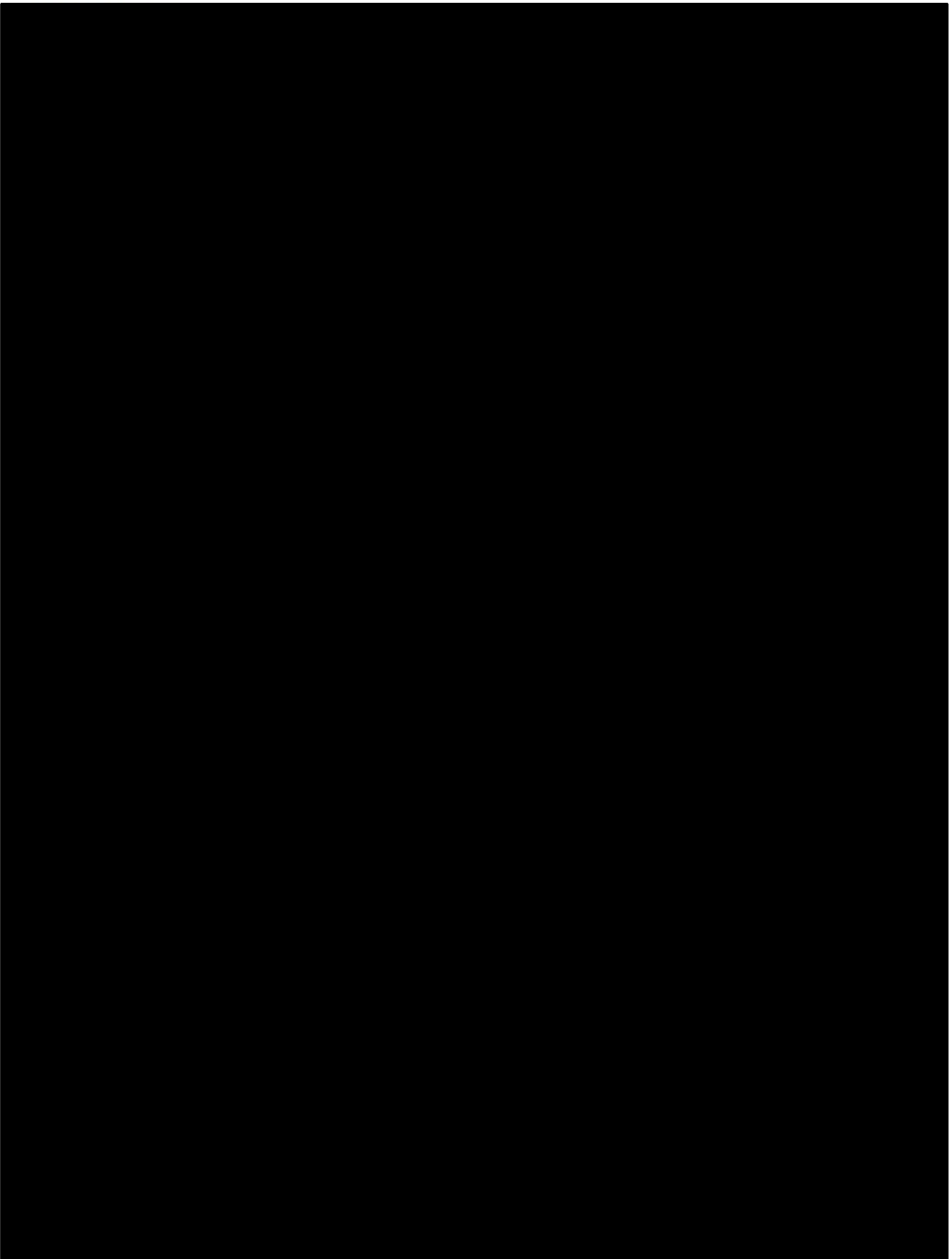


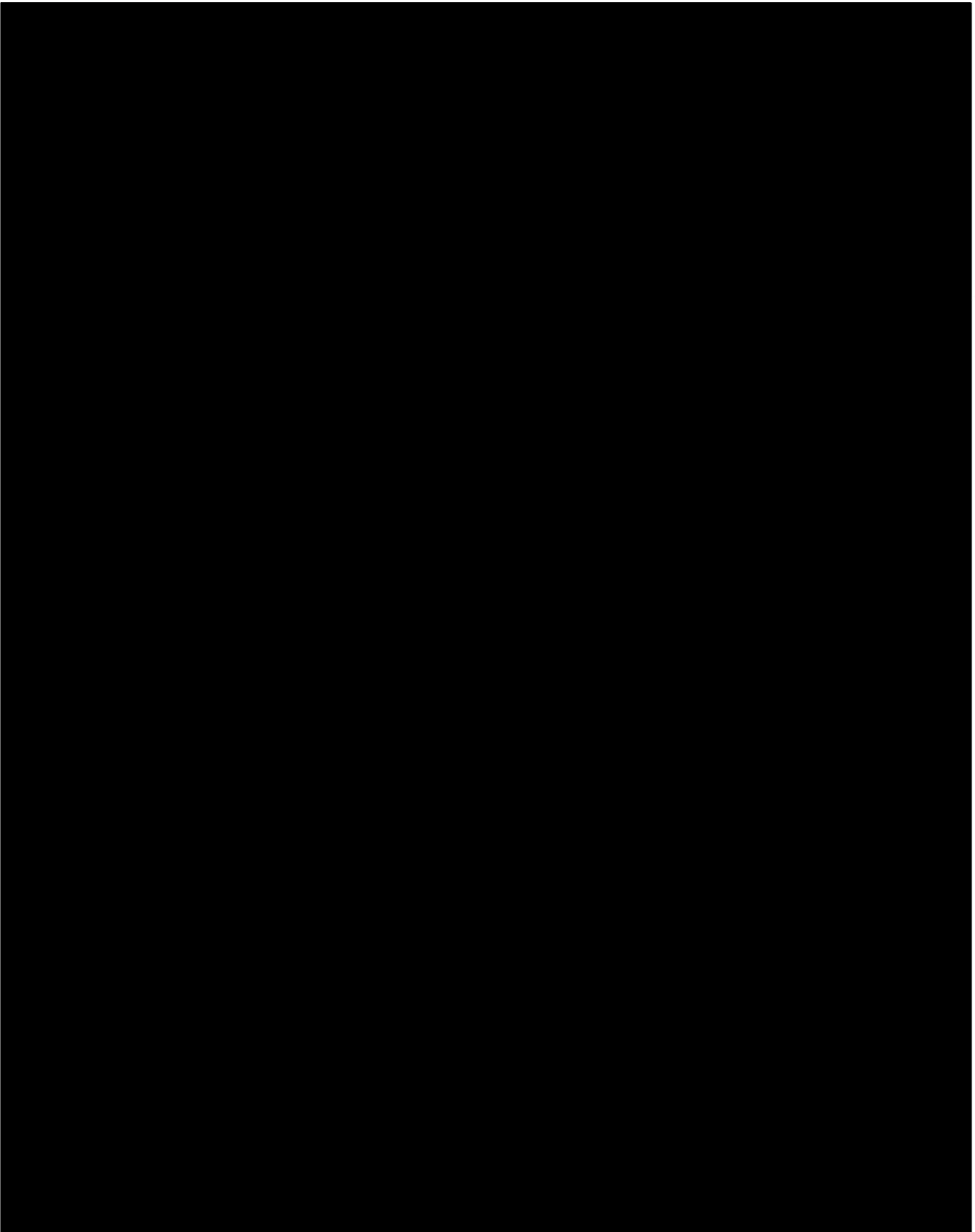
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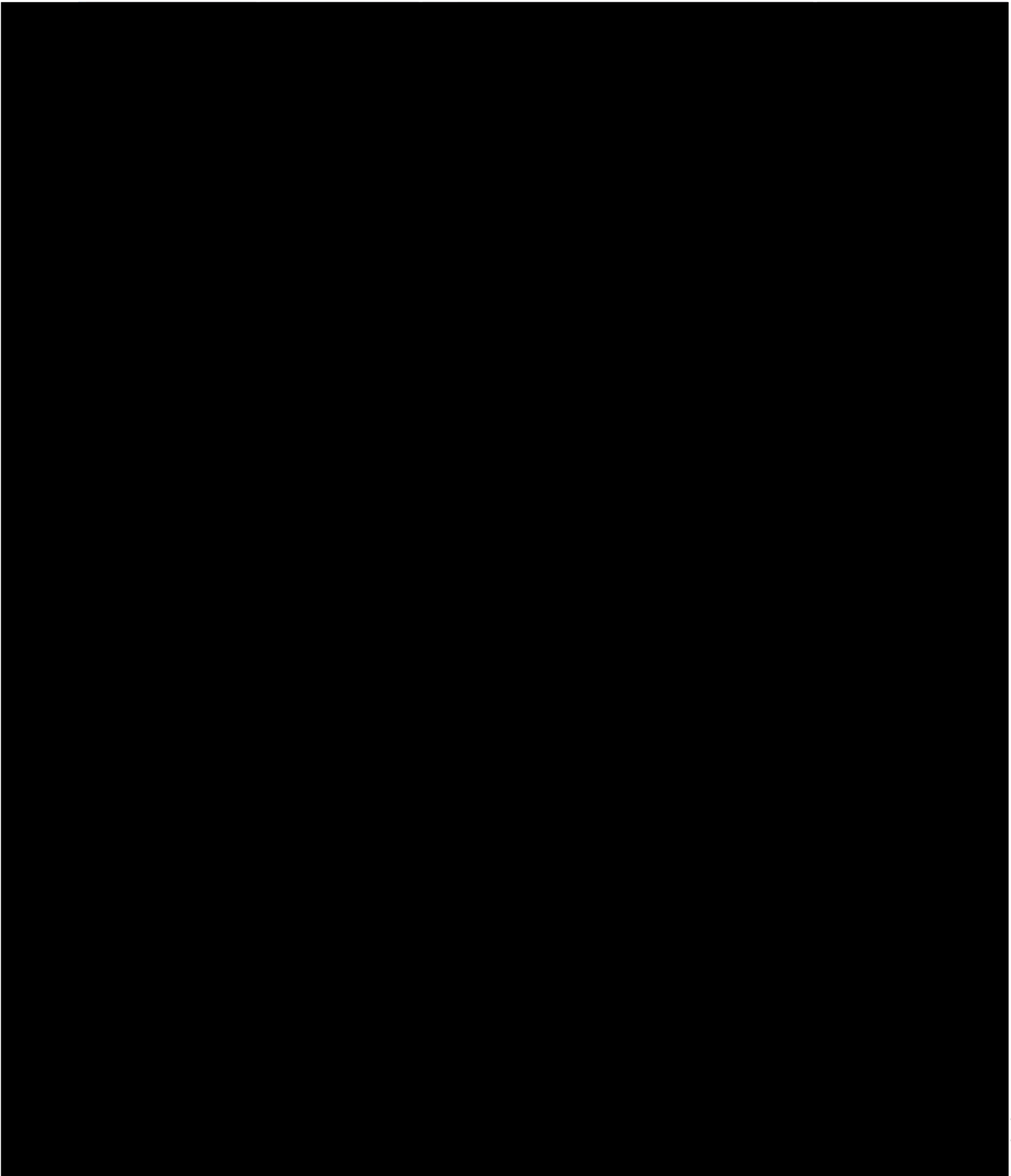
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CSXT LETTER TO NPBL & NS, FEB. 12, 2025

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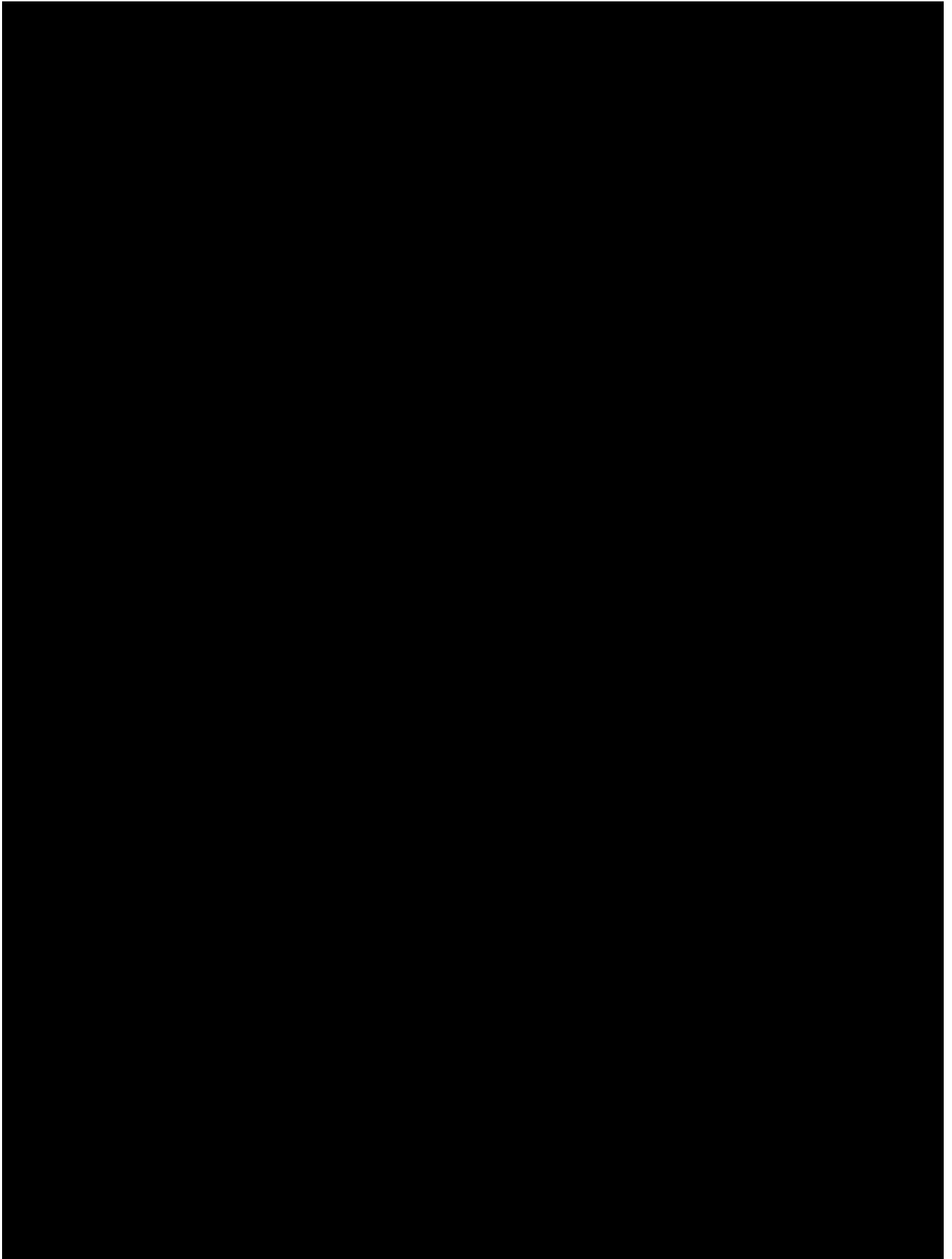


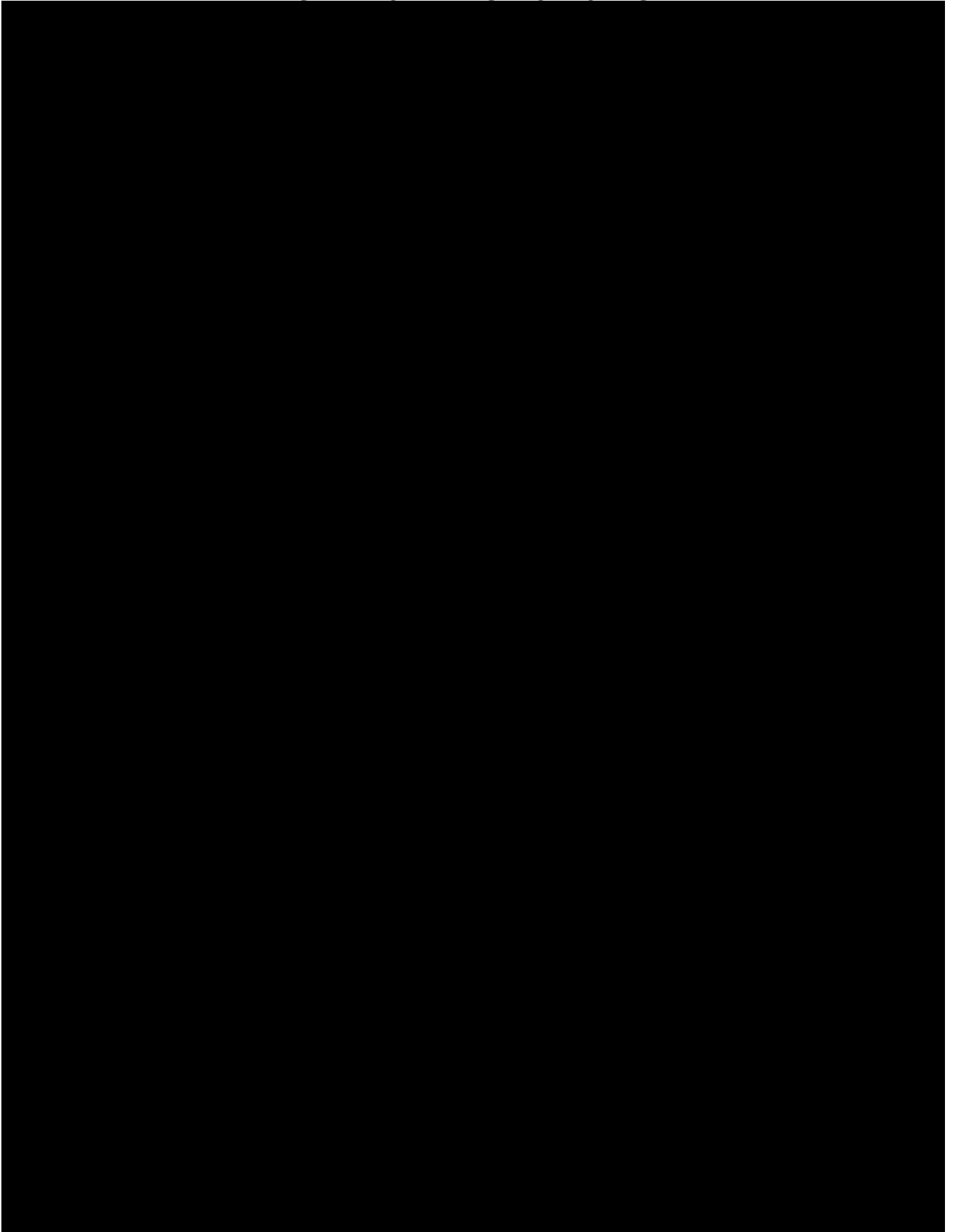
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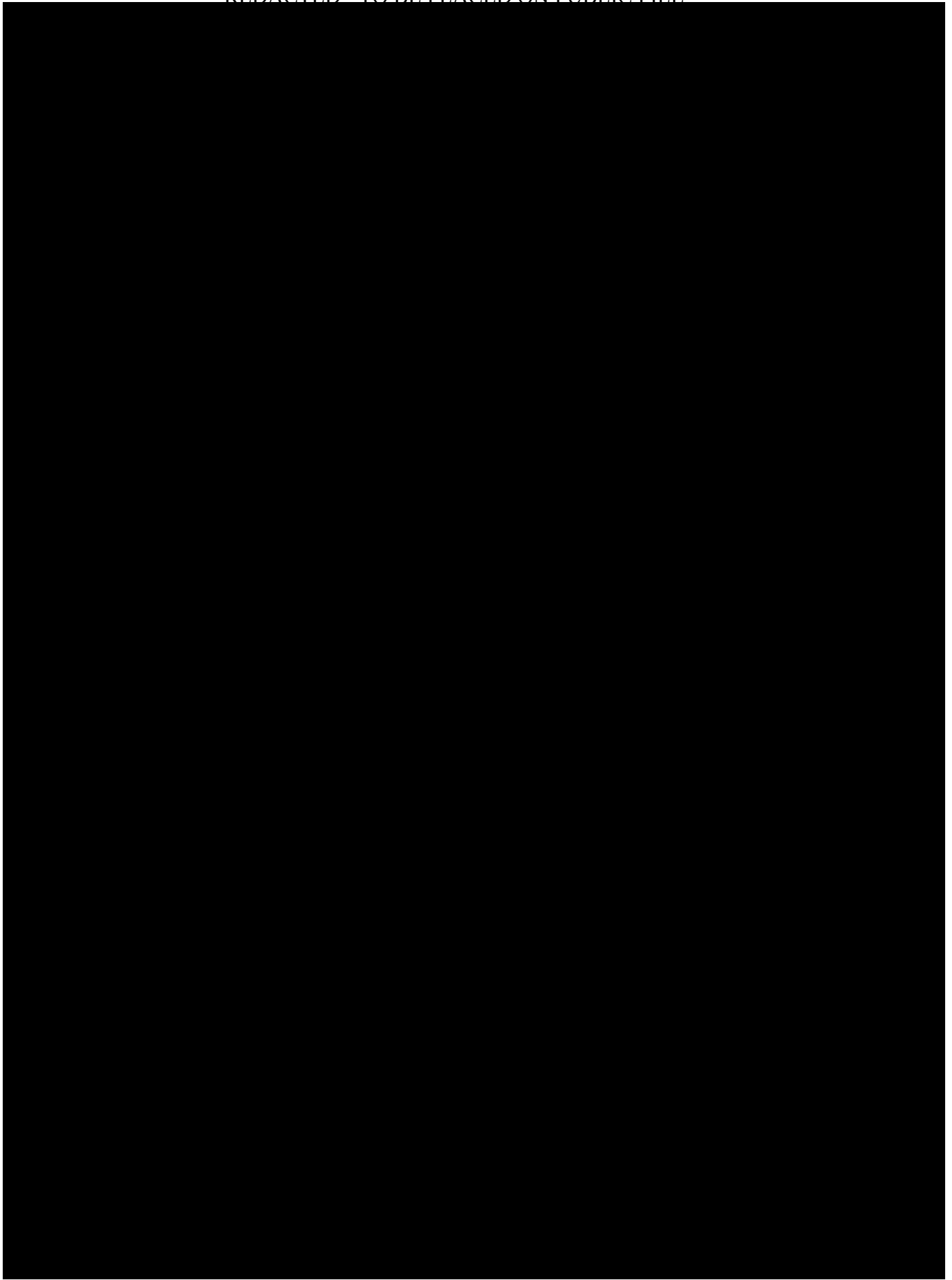
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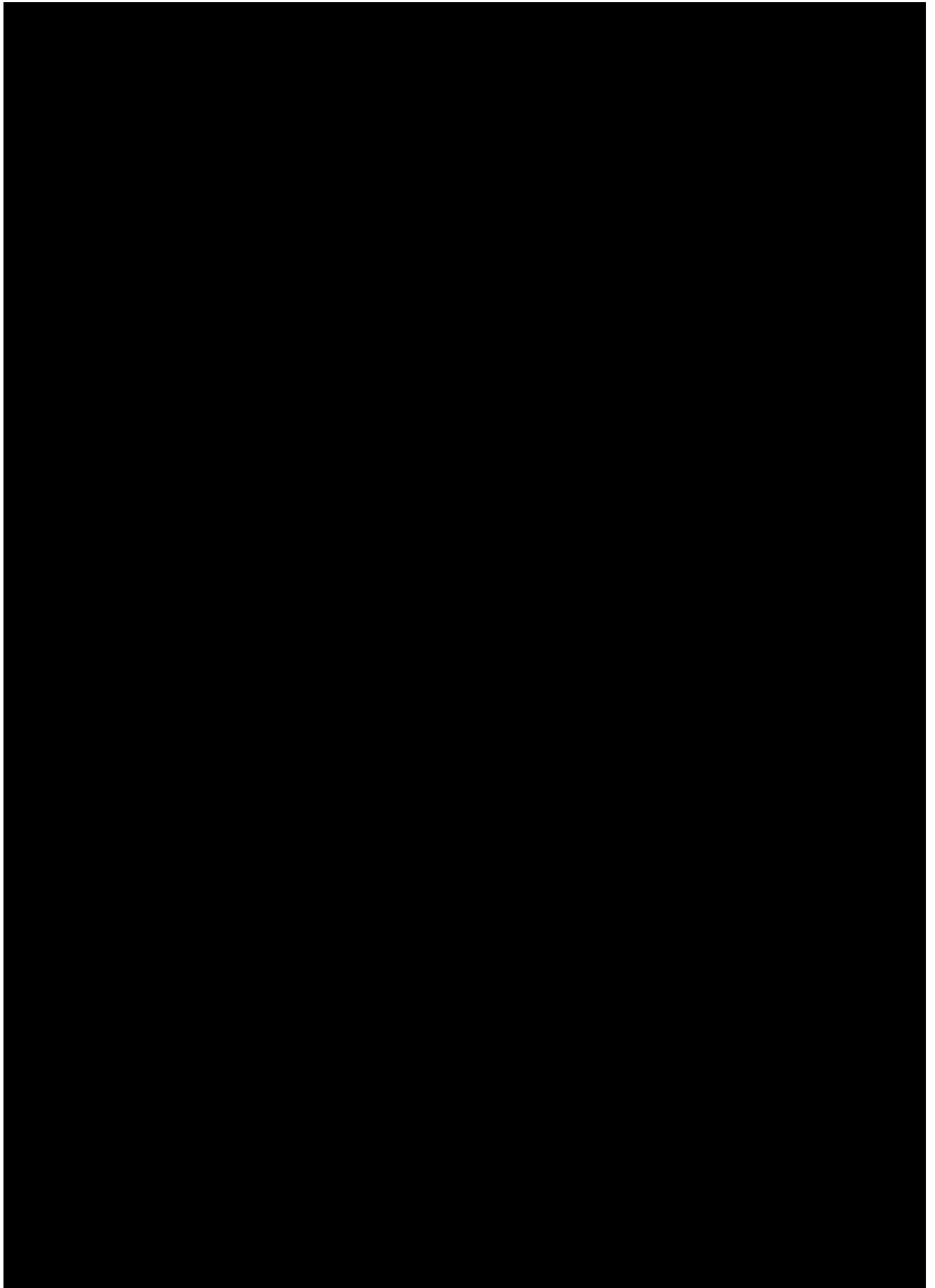
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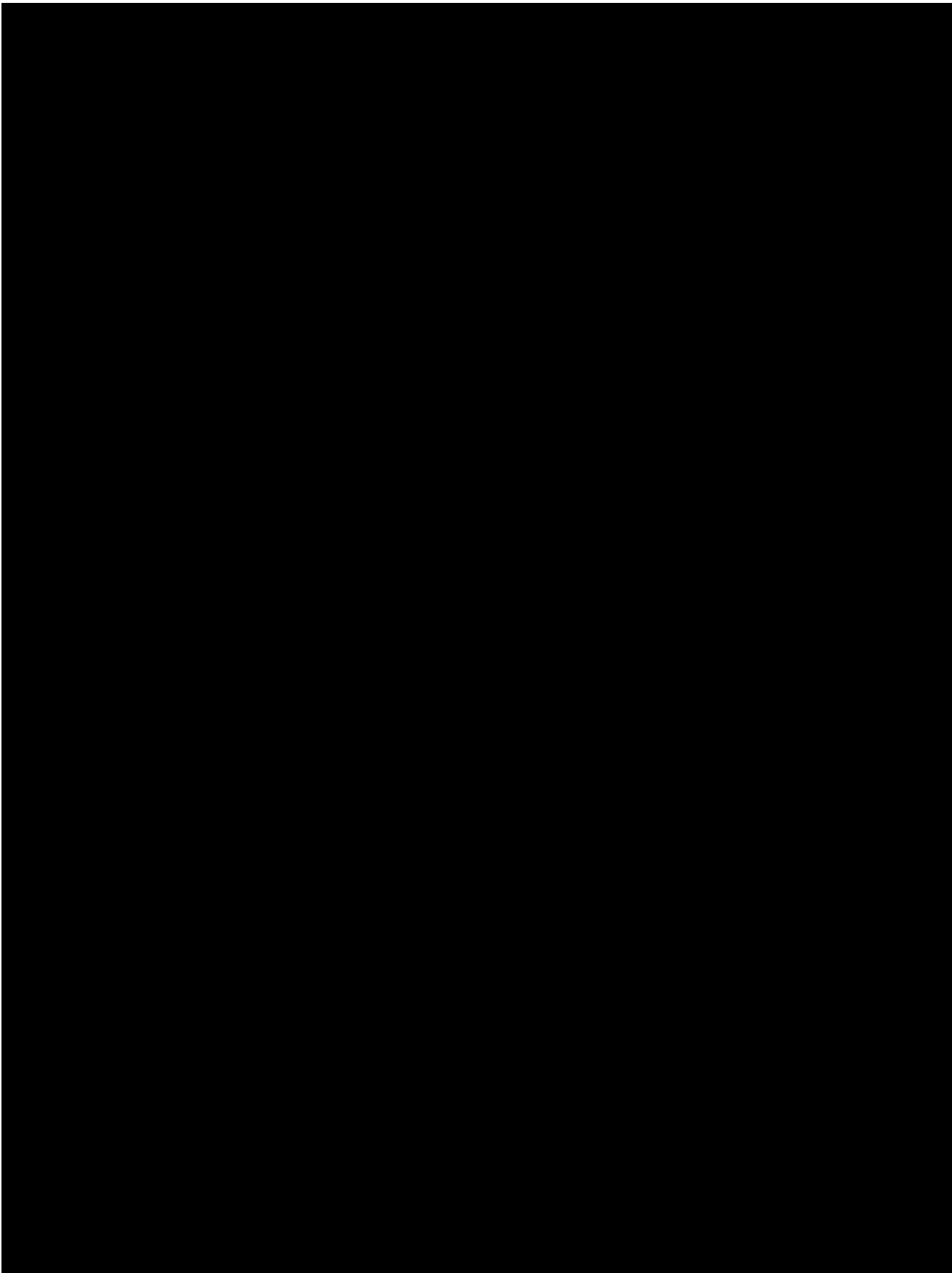
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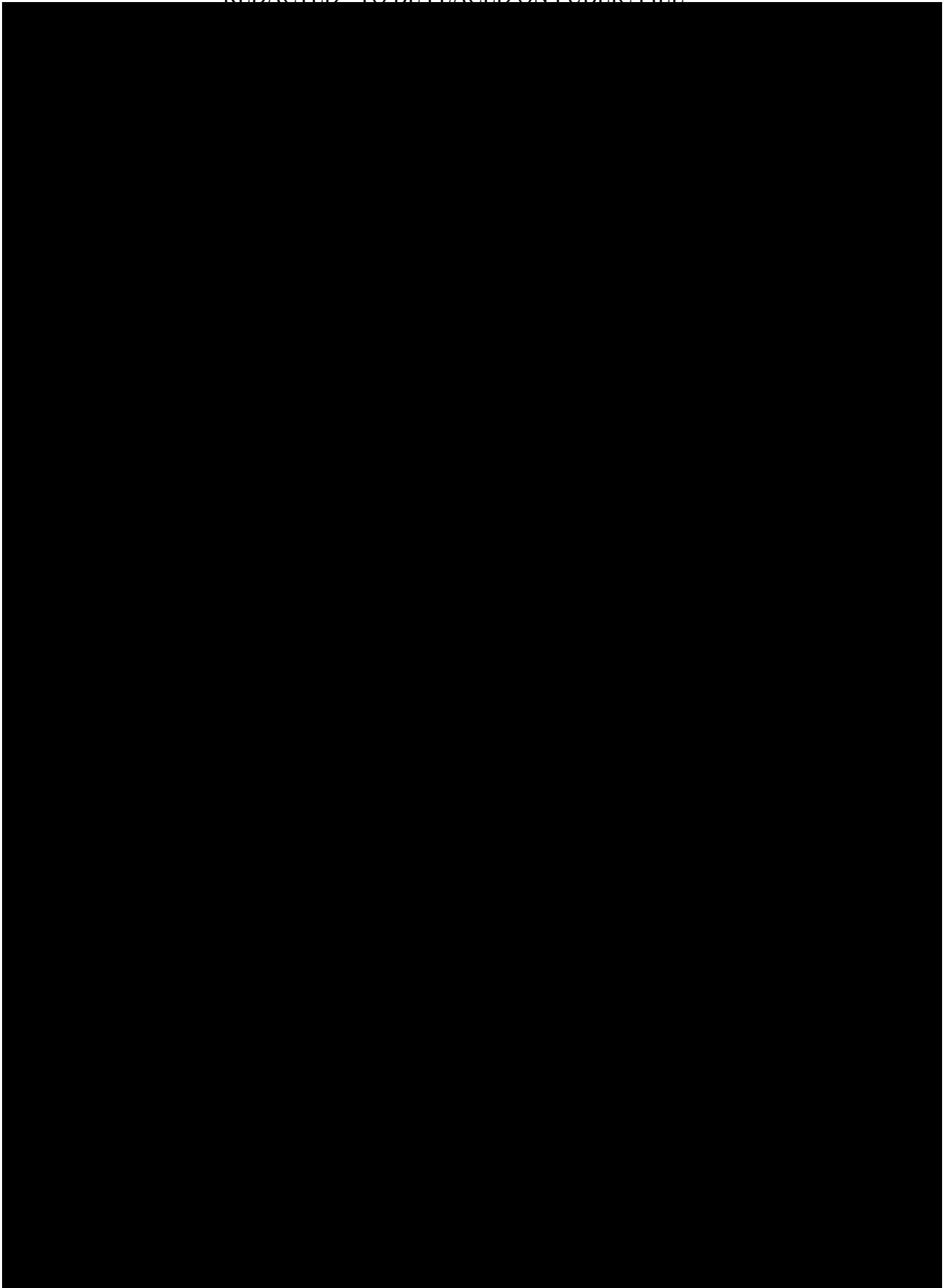


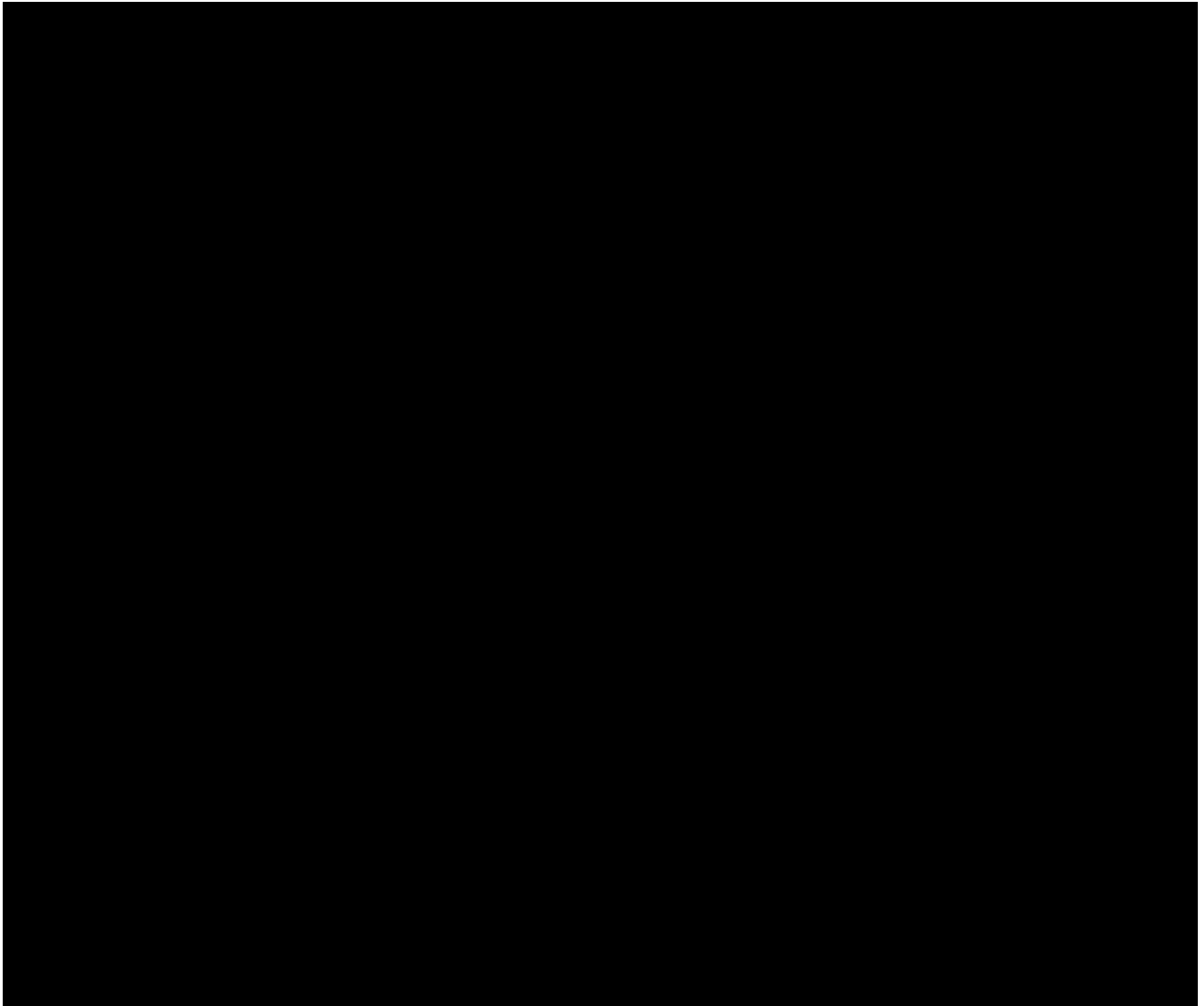










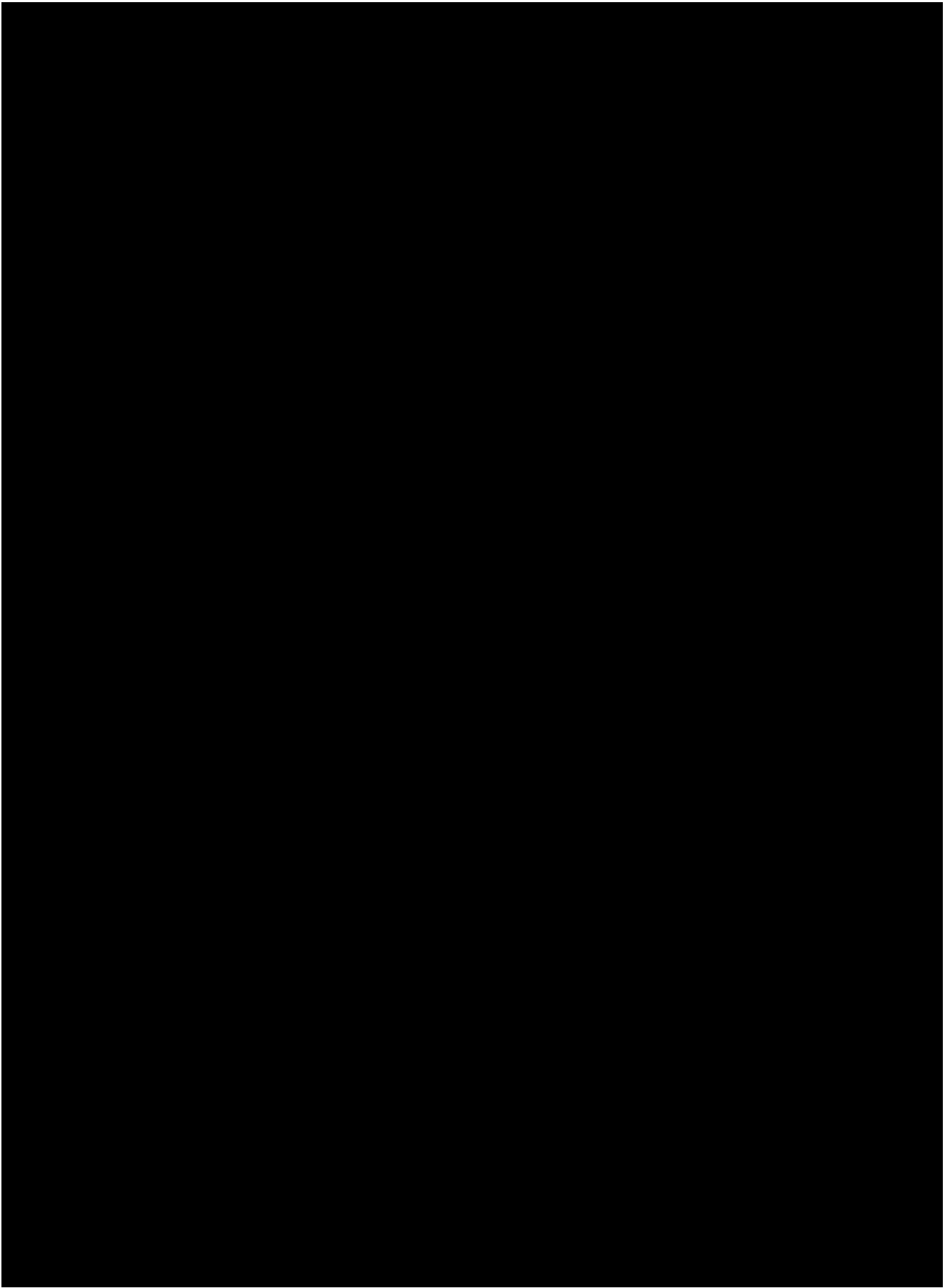


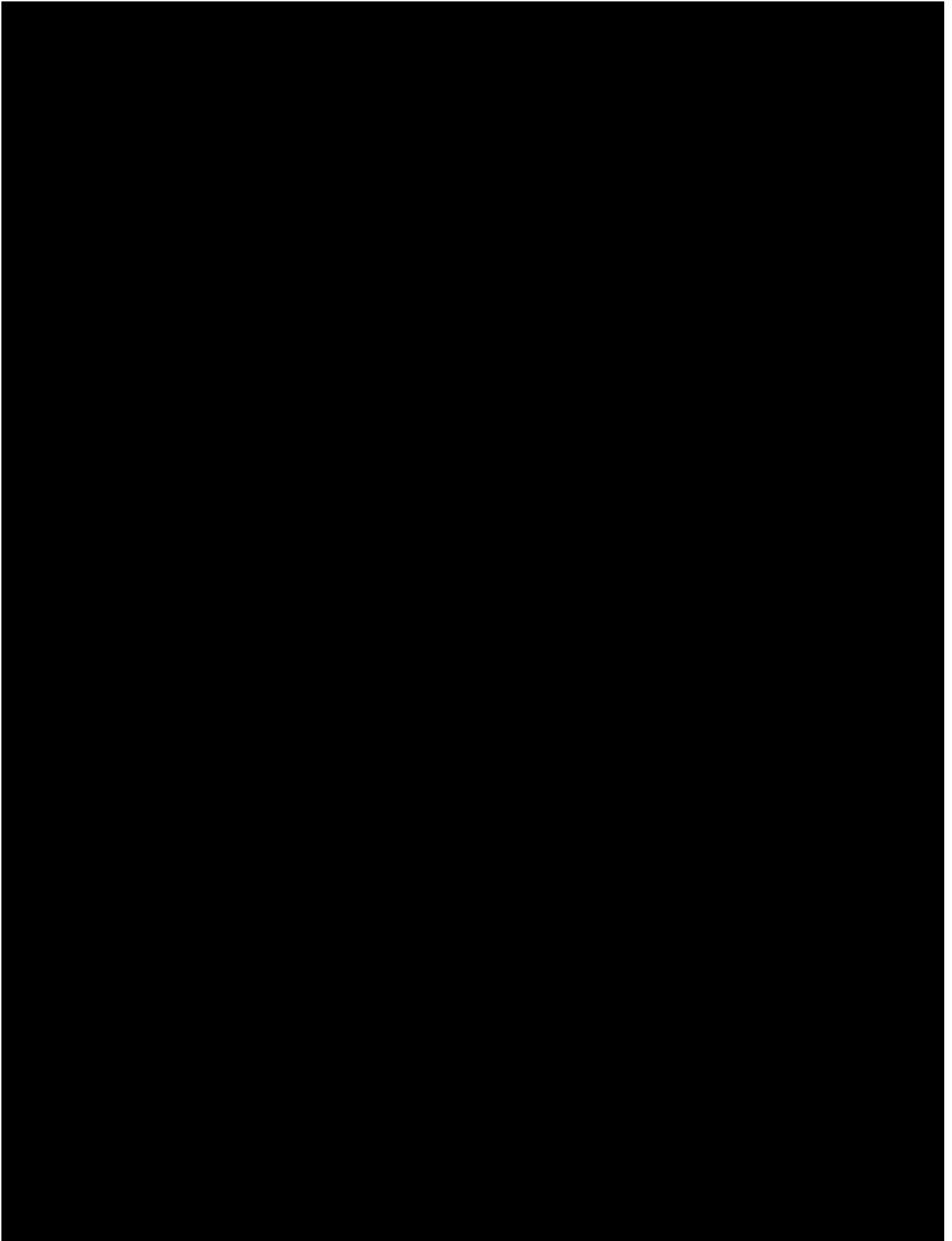
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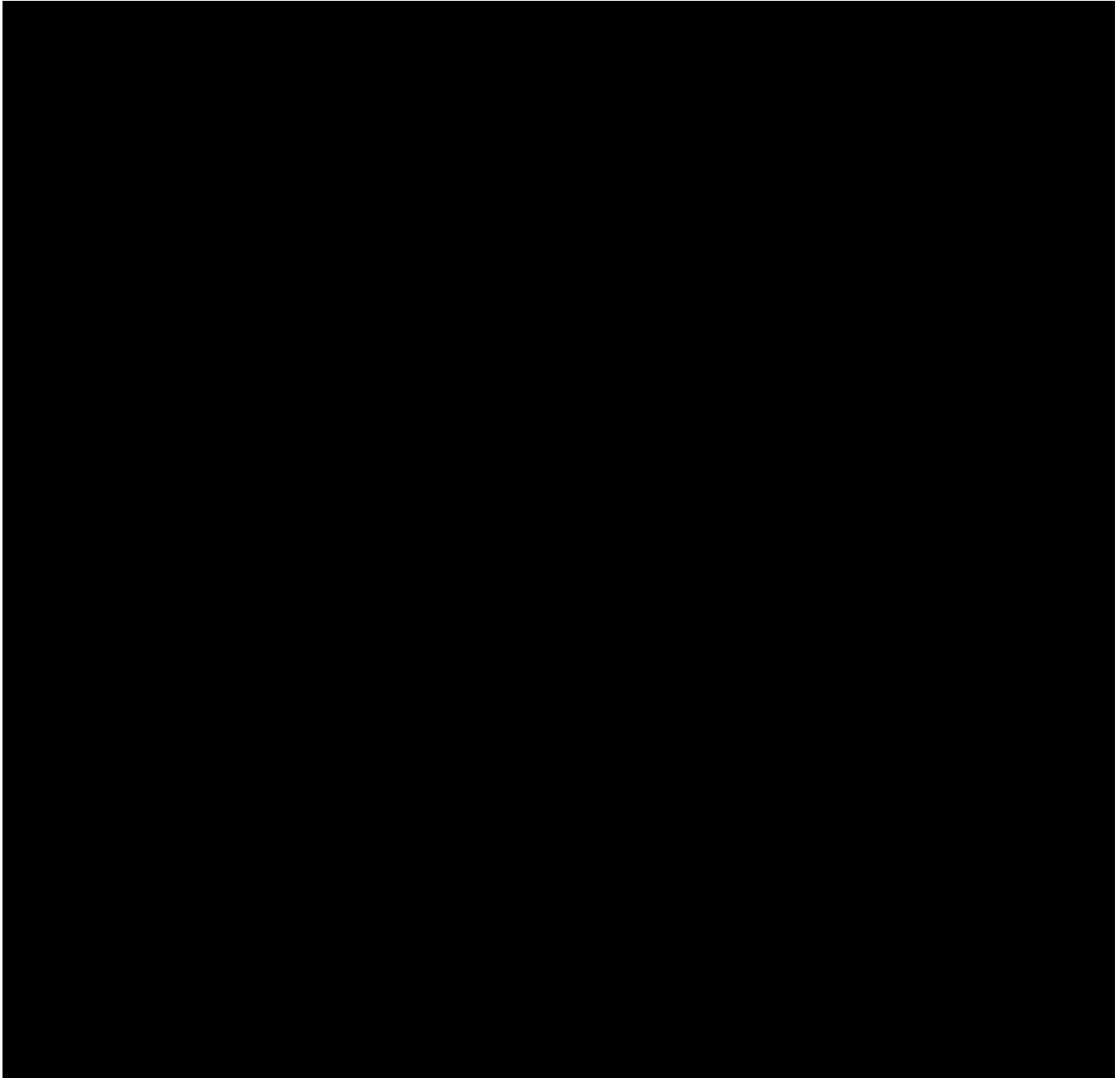
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NS LETTER TO CSXT, FEB. 28, 2025

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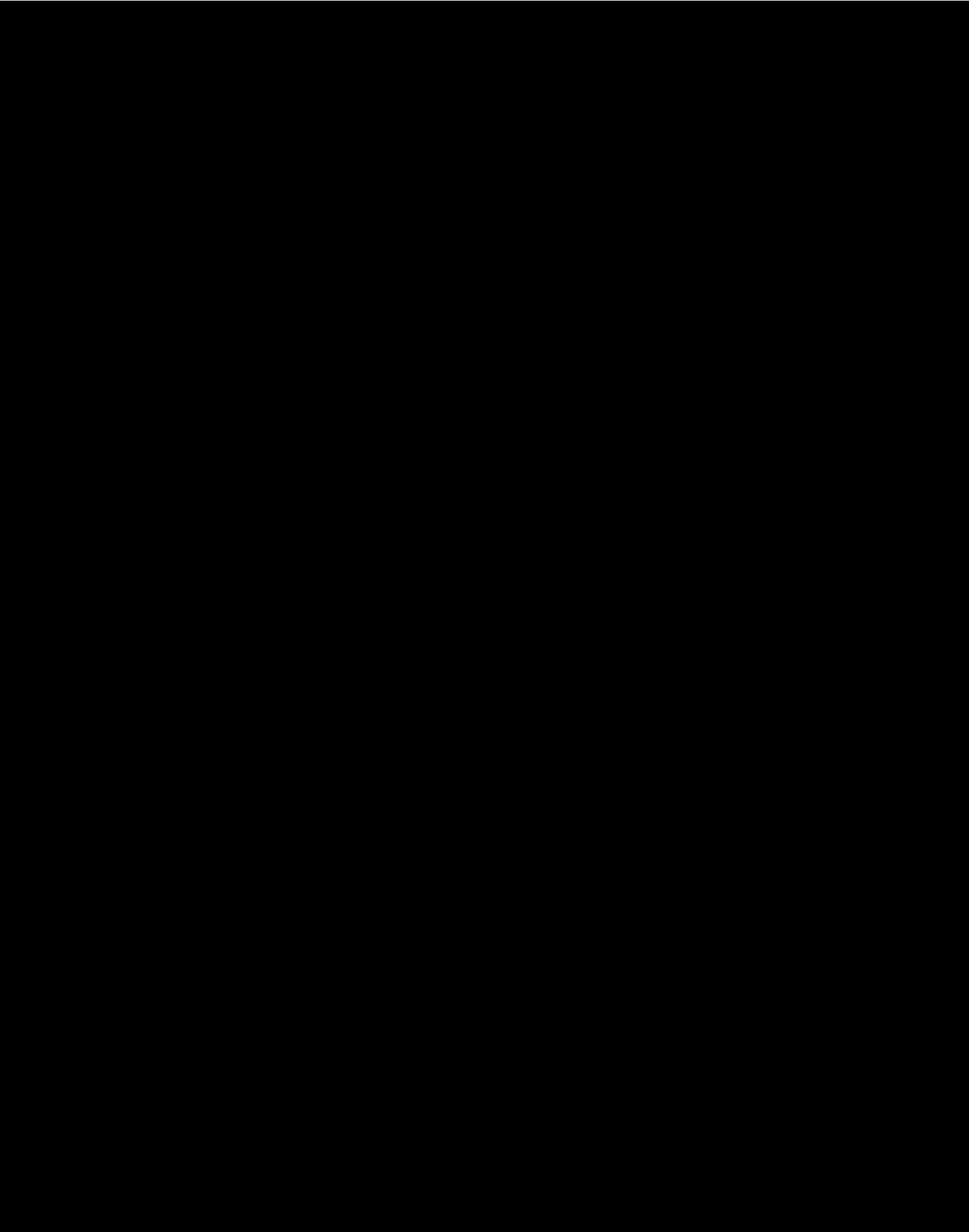


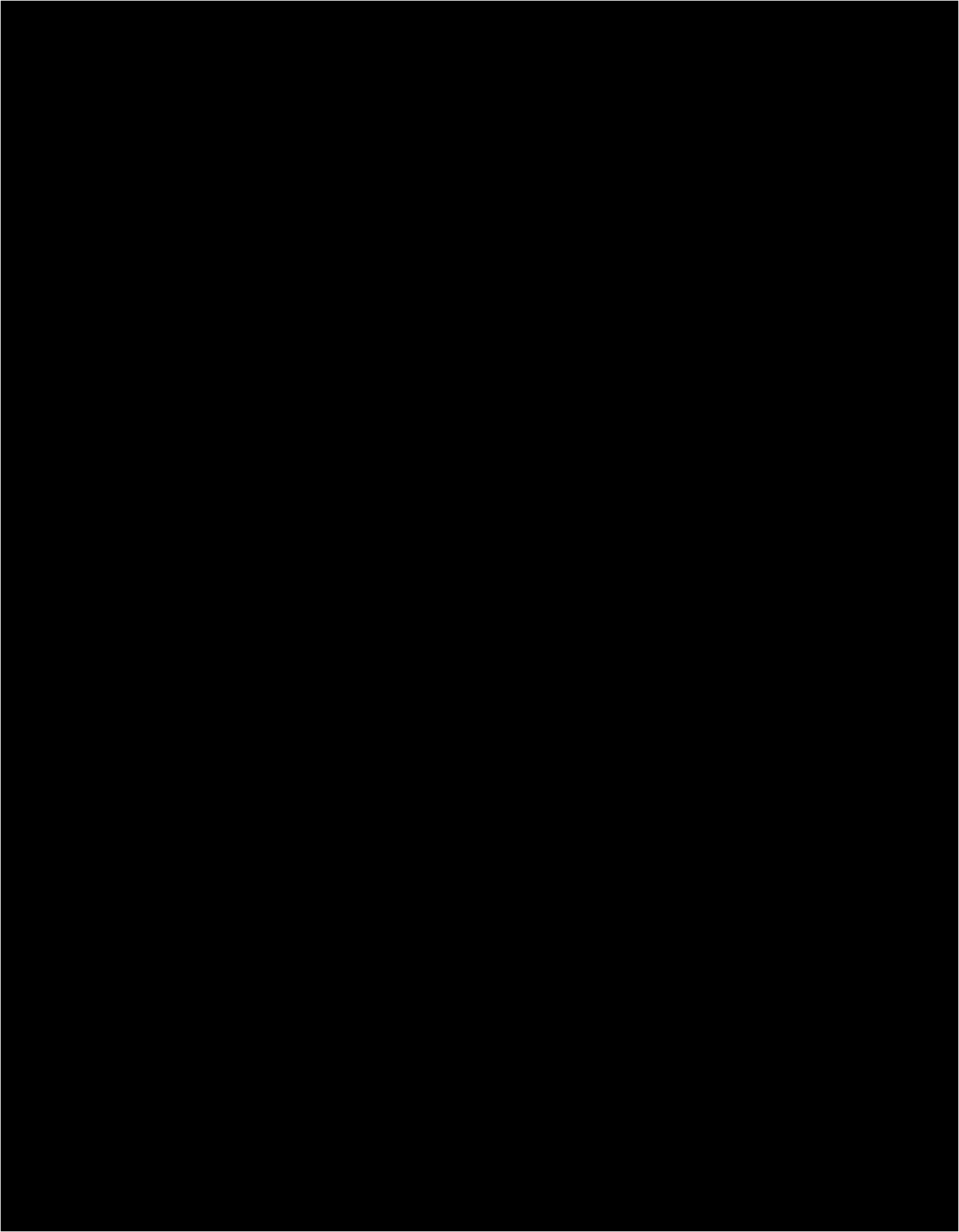
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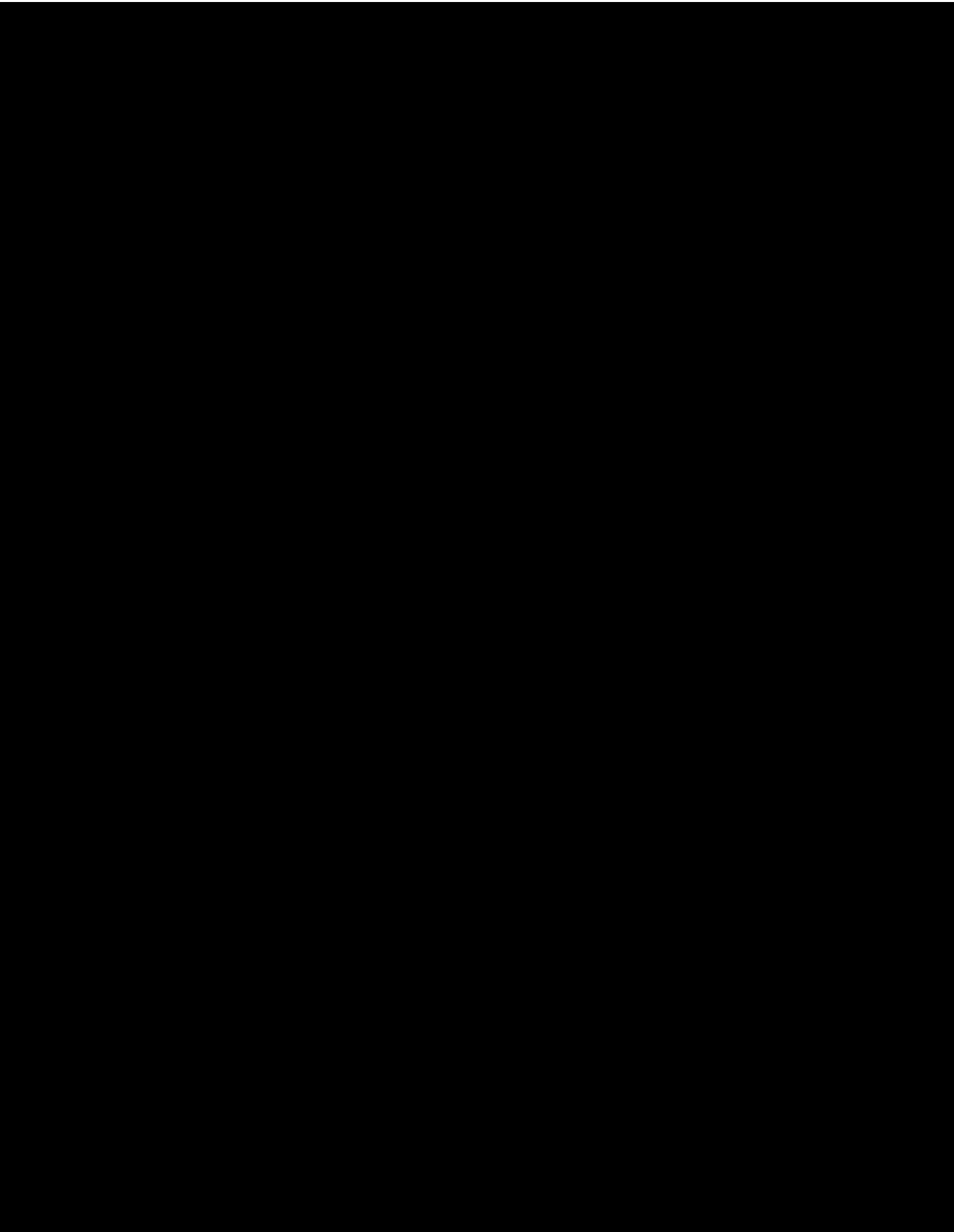
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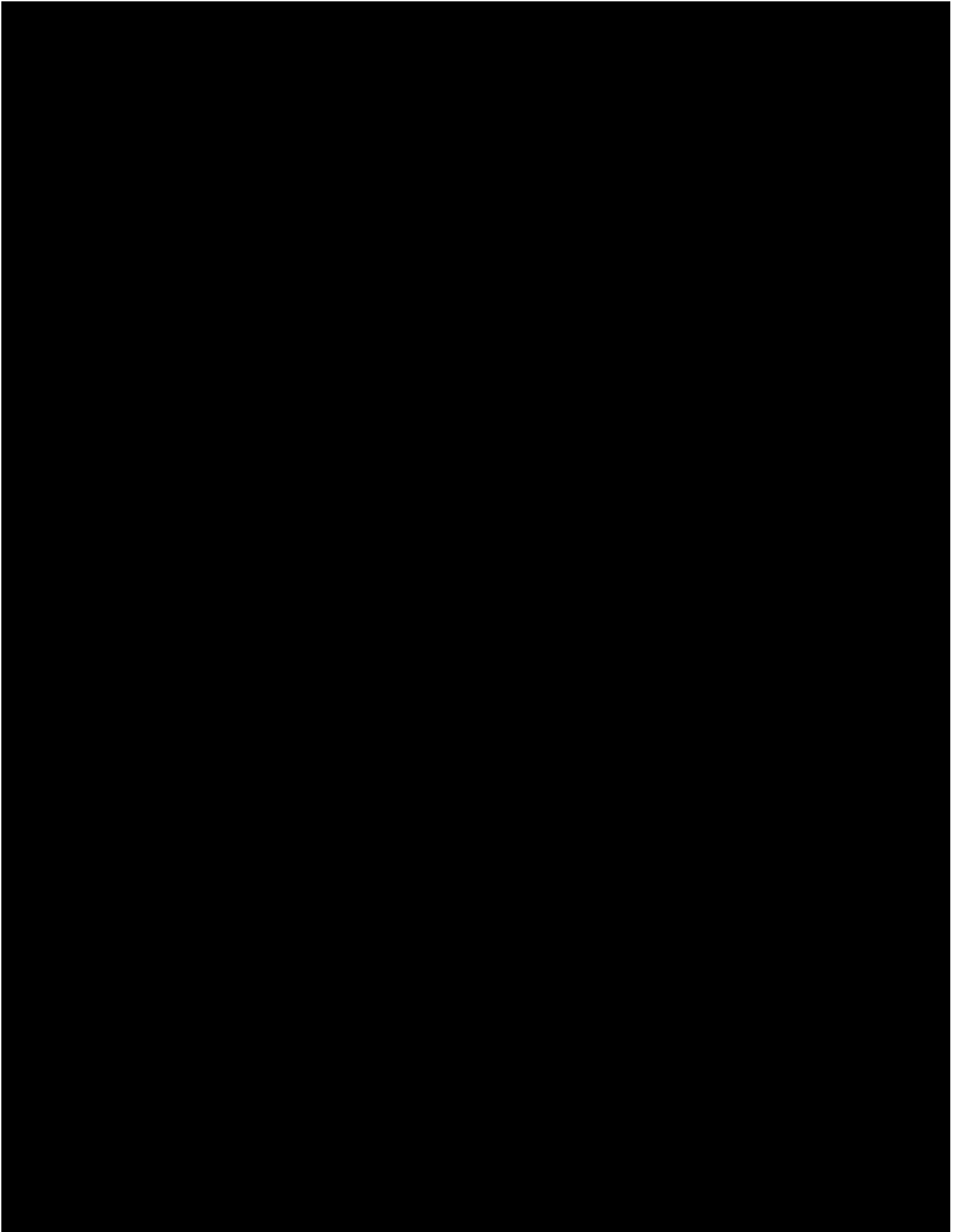
CSXT LETTER TO NPBL, MAR. 21, 2025

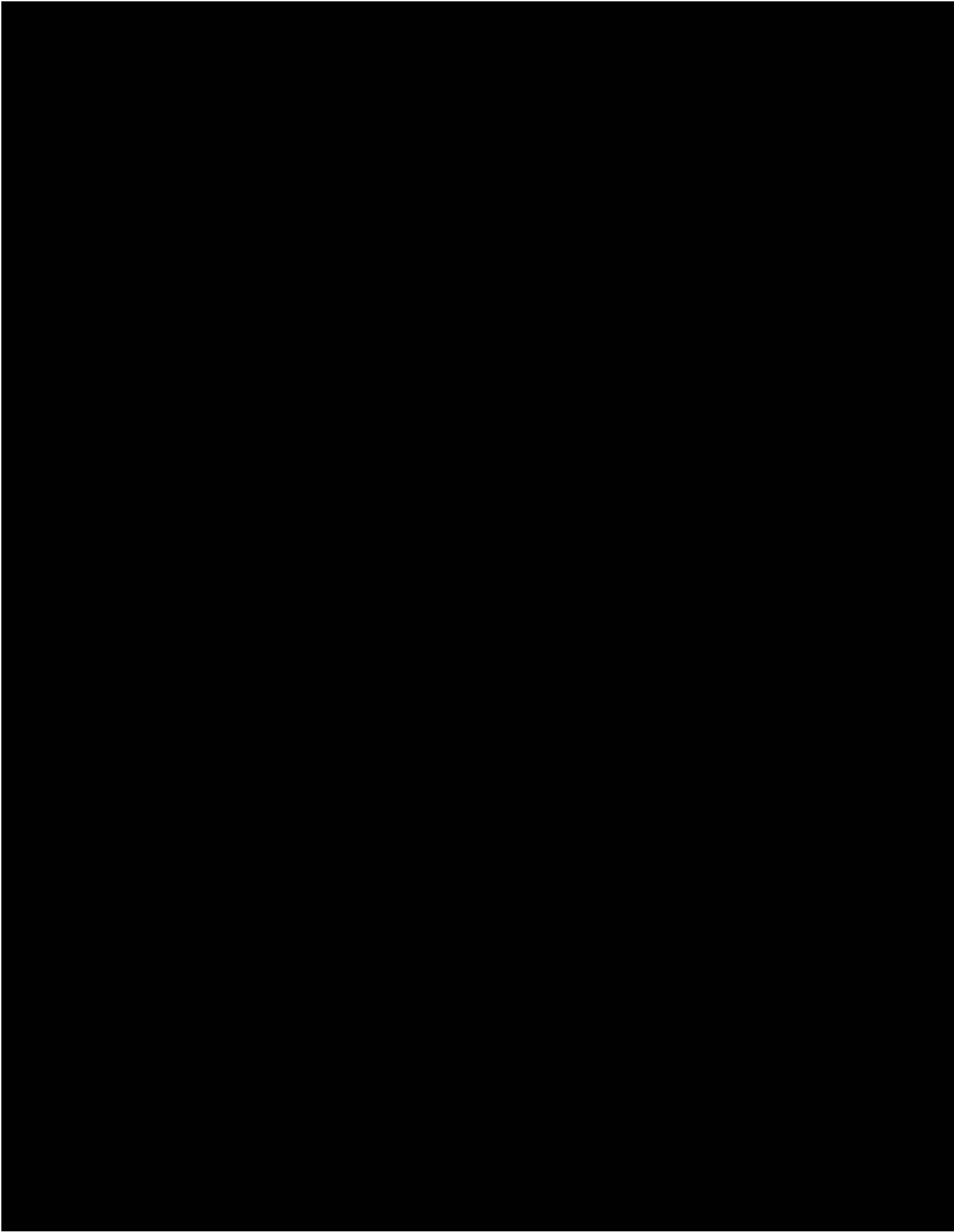
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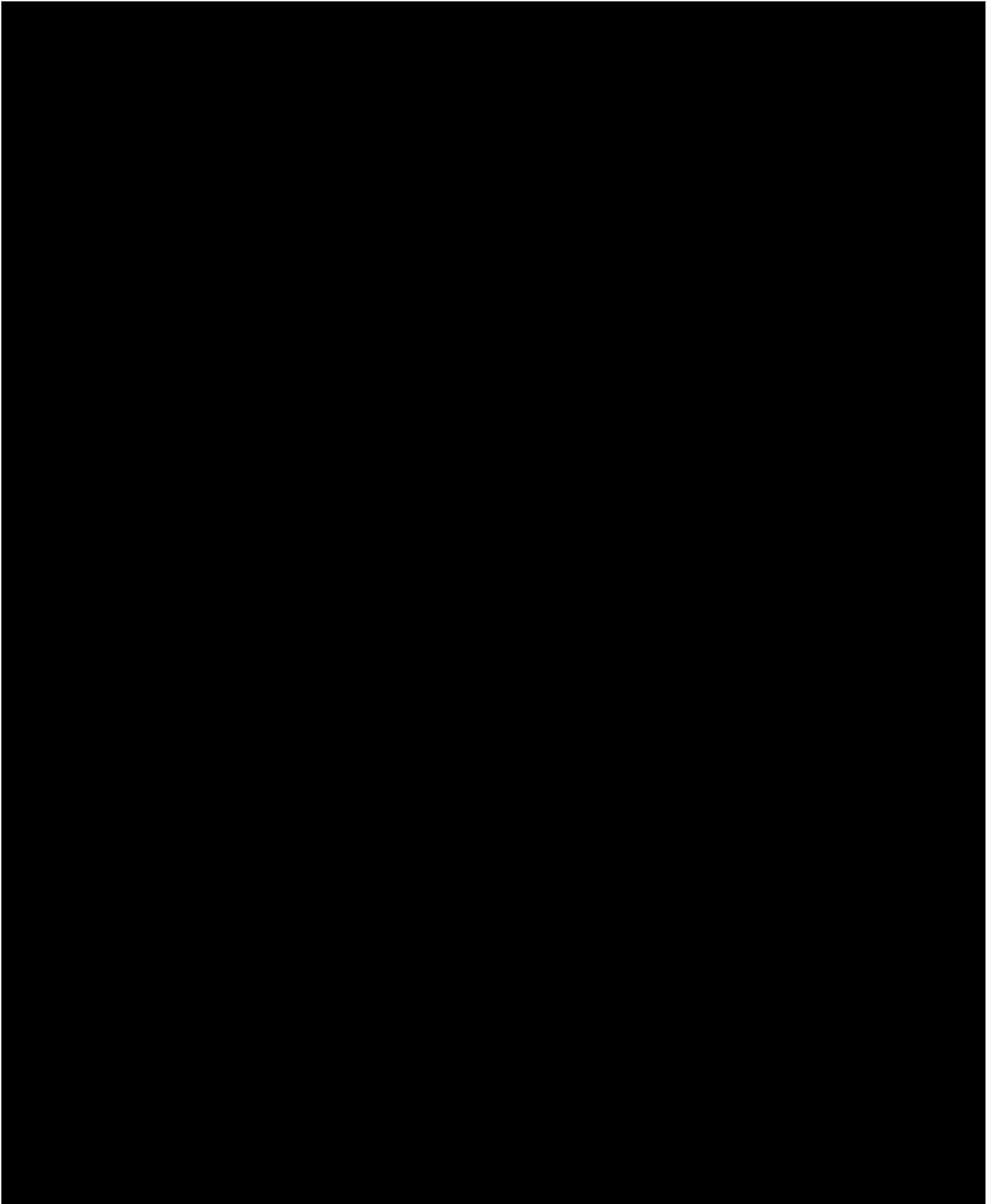


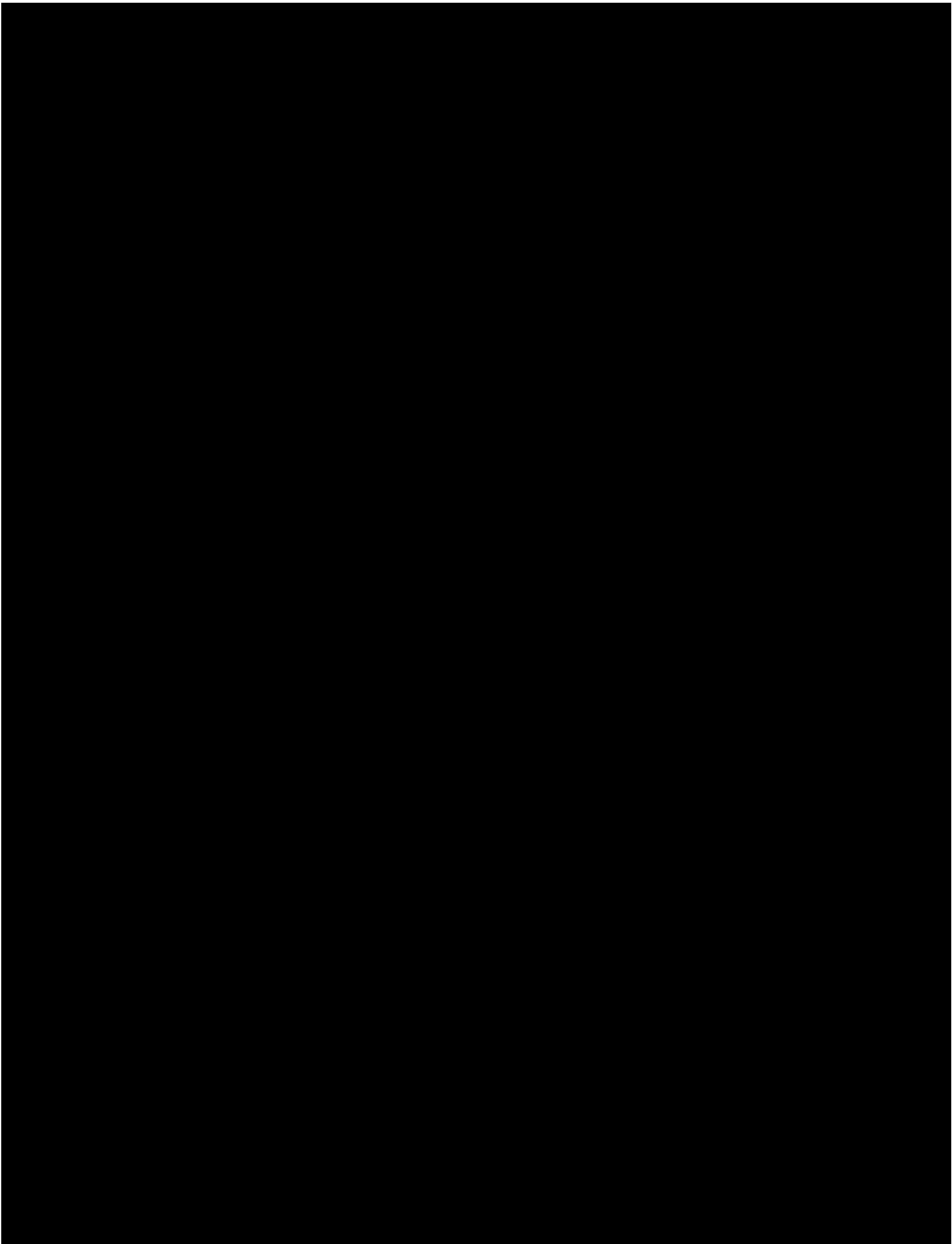










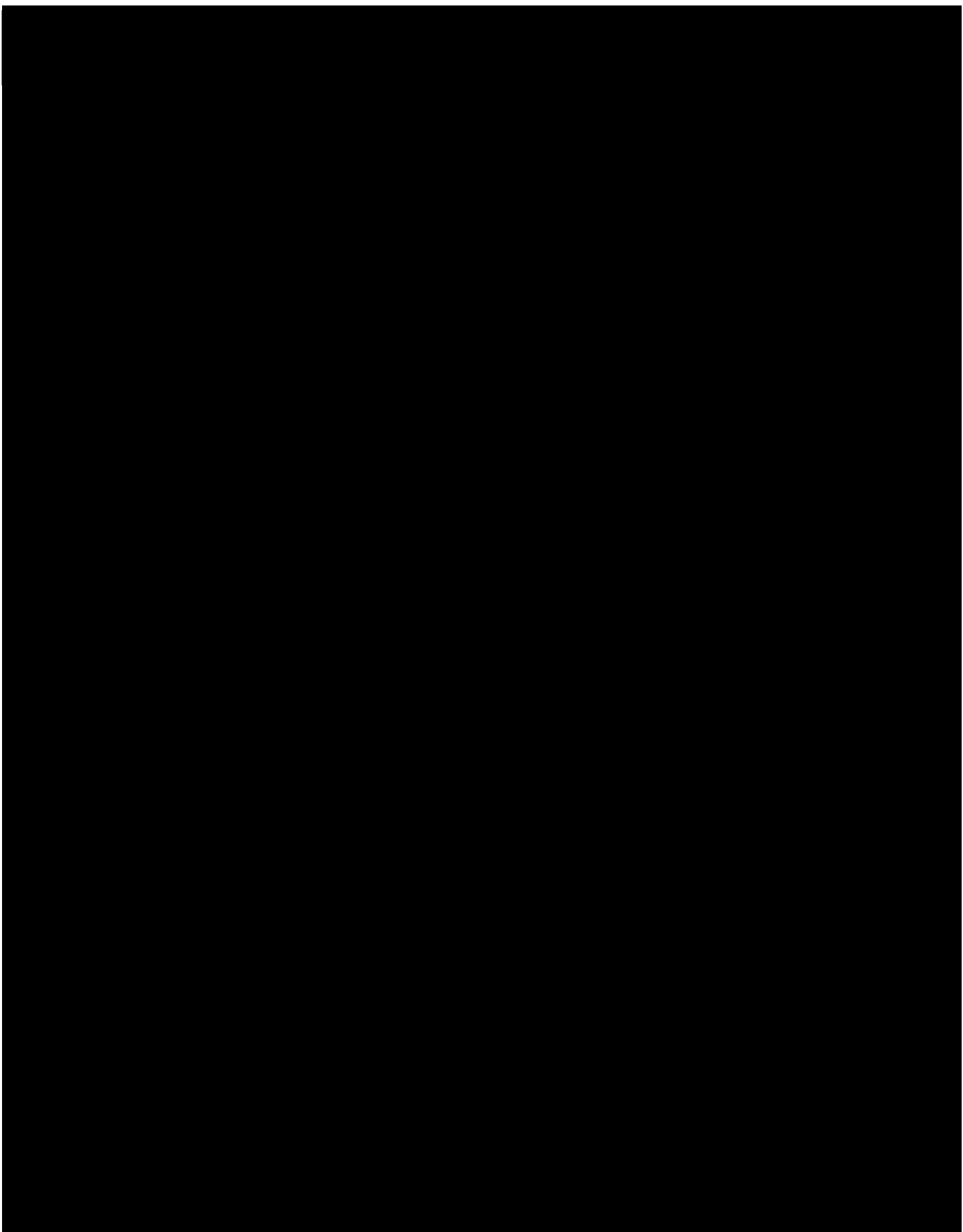


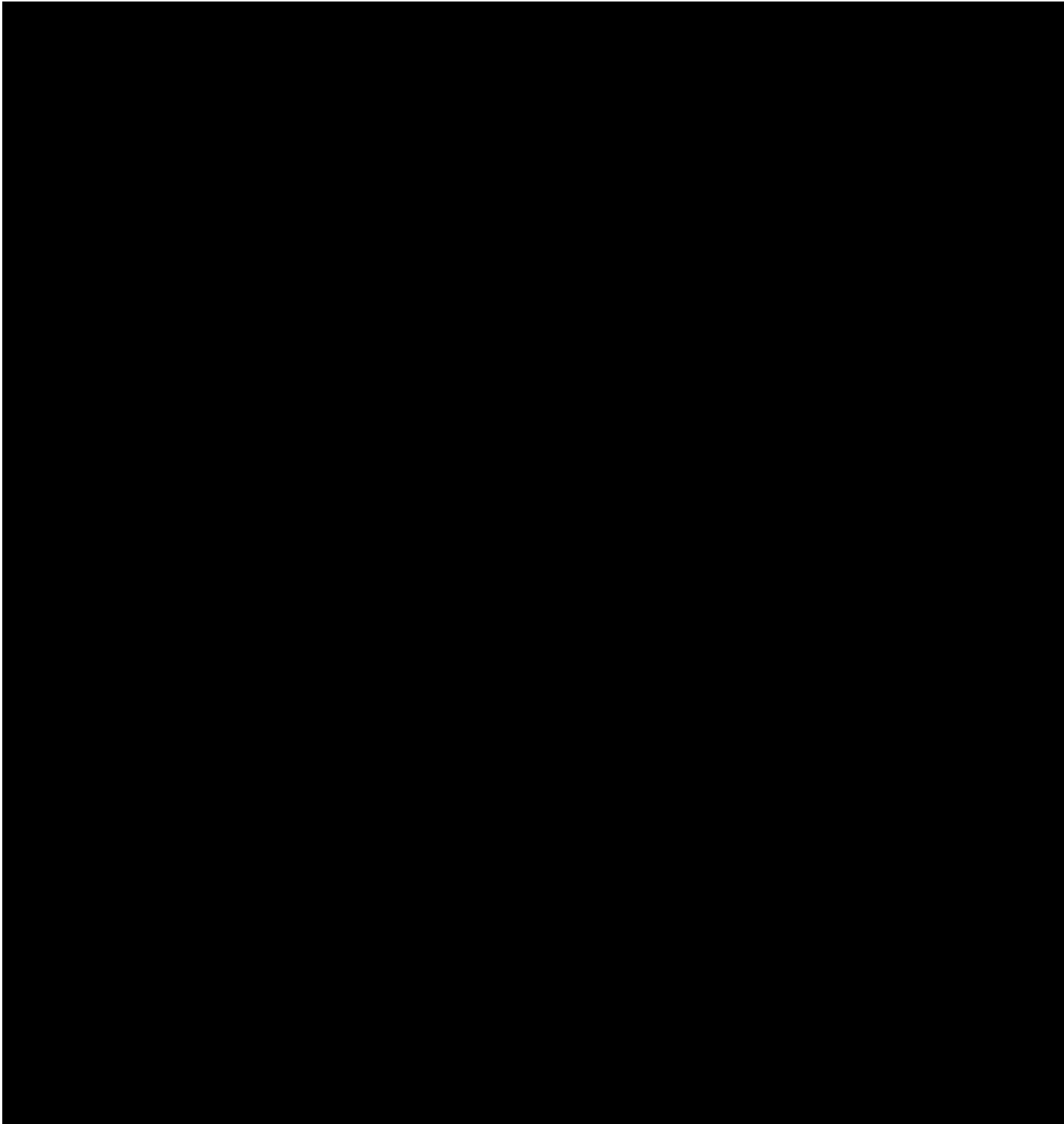
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ATTACHMENT H

CSXT LETTER TO NPBL, MAY 1, 2025

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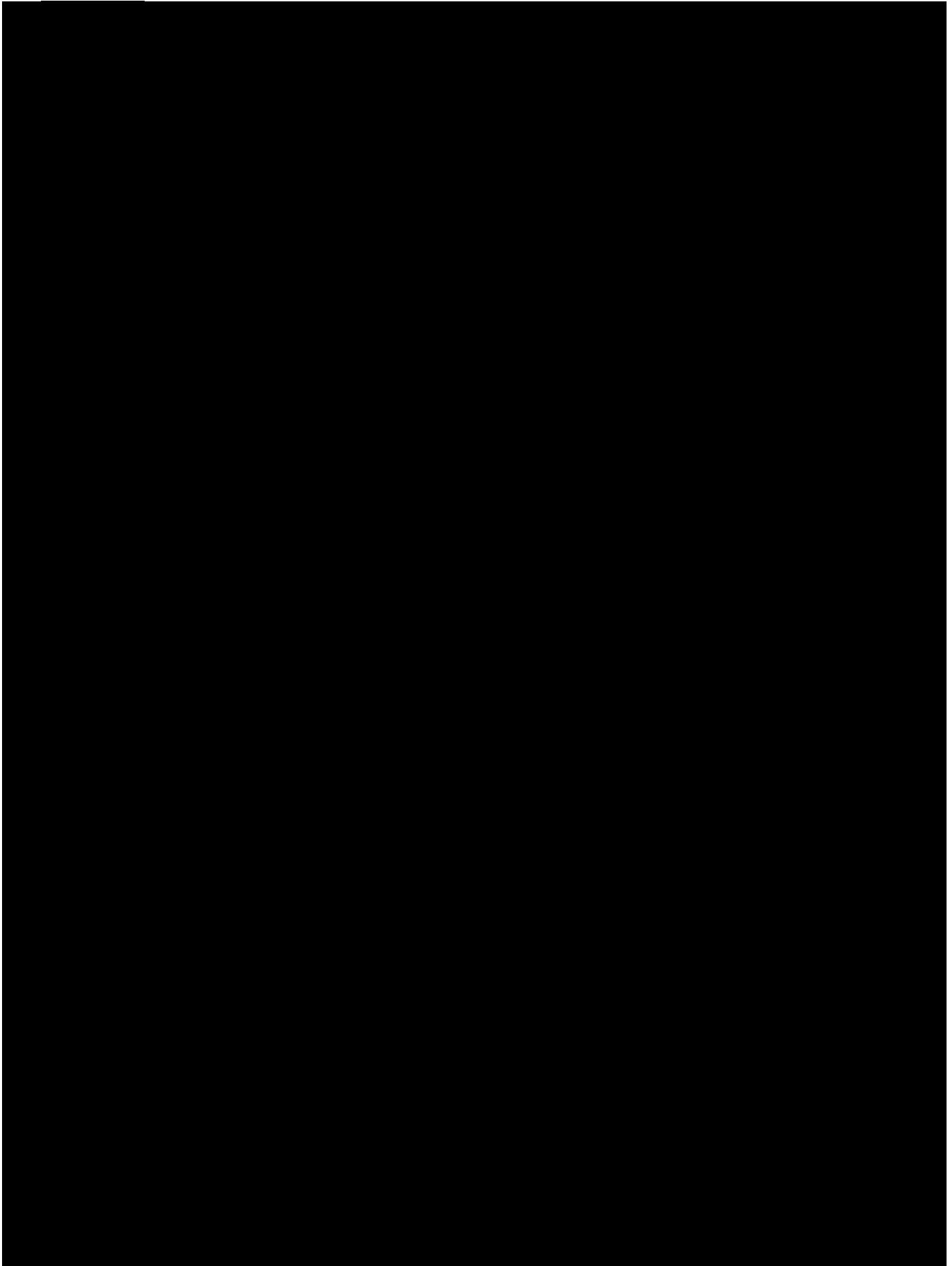


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ATTACHMENT I

NPBL LETTER TO CSXT, MAY 12, 2025

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VERIFICATION

I, Maryclare Kenney, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on September 18, 2025.

/s/ Maryclare Kenney

Maryclare Kenney

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

ATTACHMENT 2

VERIFIED STATEMENT OF DR. NATHAN MILLER

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

VERIFIED STATEMENT OF NATHAN MILLER
SEPTEMBER 18, 2025

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I. INTRODUCTION AND SUMMARY

A. Qualifications

1. My name is Nathan Miller. I am Professor at the McDonough School of Business and the Department of Economics at Georgetown University. I am also a Founding Partner at Econic Partners, an international economics consulting firm.
2. I previously served as Chief Economist of the U.S. Department of Justice Antitrust Division. As Chief Economist, I oversaw the work of more than fifty economists, statisticians, and data scientists. My portfolio covered nearly all matters in front of the Antitrust Division, including cases regarding monopolization, conduct, and mergers across a number of industries.
3. I have consulted and testified on issues of competition and antitrust in the context of mergers, including on behalf of competition authorities in the U.S. and Canada. I served as the government expert in cases challenging mergers, for example, in transportation and energy services industries.
4. My research covers topics in industrial organization and antitrust economics, including oligopoly price-setting, procurement, competition with transportation costs, and strategic investment decisions. It has won numerous awards, including the Robert L. Lanzilotti Prize for Best Paper in Antitrust Economics (2015 and 2022) and Jerry S. Cohen Award for Best Antitrust Article on Merger Retrospectives (2022). I teach graduate courses on industrial organization, microeconomics, econometrics, and strategy at Georgetown.
5. I am also an editor at the Journal of Law and Economics, an associate editor at the International Journal of Industrial Organization, and a Research Associate at the National Bureau of Economic Research. I earned a Ph.D. in economics from the University of California, Berkeley, and a B.A. from the University of Virginia. My curriculum vitae is attached as Appendix A.
6. In this proceeding, I previously submitted a verified statement that was filed with CSXT-10.

B. Purpose

7. I have been asked by CSX Transportation (“CSXT”) to analyze the likely competitive effects if Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “NS”) obtains authorization to control Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”). Unlike the typical case of a proposed merger transaction, NS already has had de facto control of NPBL for decades. As such, the current marketplace conditions reflect NS’s control of NPBL. The analysis, therefore, requires evaluating the likely conditions were NPBL not controlled by NS.¹
8. In particular, I have been requested to:
- Describe the appropriate framework for evaluating the effects of NS control of NPBL
 - Identify the potential competitive harm, if any, to shippers and ports arising from NS control of NPBL
 - Analyze market(s) and competitive alternatives for rail transportation of international intermodal (“IM”) traffic from the Port of Virginia (“POV”) and Norfolk International Terminal (“NIT”)
 - Analyze the incentives arising from NS’s control of NPBL regarding potential competition from CSXT
 - Respond to certain economic claims of NS in its application and the analysis provided by Mr. McClellan and Mr. Fapp²

C. Summary

9. I find that, relative to circumstances in which NS did not control NPBL, NS’s control of NPBL reduces shippers’ (i.e., ocean carriers) independent options for on-dock rail service

¹ I have attached a list of materials relied upon as Appendix B.

² *NSR Supplement and Perfection of Application for Acquisition of NPBL*, Docket No. FD 36836, June 13, 2025 (hereinafter “Revised Application”), Exhibit B, Verified Statement of Daniel L. Fapp (hereinafter “Fapp VS 2”); *NSR Minor Application for Acquisition of NPBL*, Docket No. FD 36836, February 14, 2025 (hereinafter “Minor Application”), Exhibit A, Verified Statement of Michael R. McClellan (hereinafter “McClellan VS”), and Exhibit B, Verified Statement of Daniel L. Fapp (hereinafter “Fapp VS 1”).

at NIT from two to one, namely by foreclosing competition from NPBL-CSXT service. Market conditions are such that this foreclosure likely harms both the POV and shippers using NIT.

10. The economic analysis of mergers required in this proceeding is not typical because NS seeks authorization for control of NPBL after decades of unauthorized, de facto control of NPBL. Current market conditions already reflect NS's effective control of NPBL. They cannot be used as a benchmark for market conditions absent NS control of NPBL to which the effects resulting from NS obtaining authorized control can be compared. Instead, relevant economic analysis would examine how market conditions and firms' capabilities and incentives would differ with and without NS control of NPBL. NS does not assess this question and only assumes that authorized control of NPBL would lead to no reduction in competition based on a comparison to current market conditions in which NS already has control.
11. NS and NPBL are the only two railroads that serve NIT with on-dock access. NPBL, as a switching carrier, may interchange traffic with CSXT to serve IM shippers utilizing NIT in competition with NS. When multiple railroads serving a shipper come under common control, those railroads no longer have the incentive to compete against each other. It has been consistent rail merger policy to implement remedies to avoid a loss of an independent rail competitor and preserve rail-on-rail competition. This has occurred even when non-rail alternatives may exist.
12. Contrary to NS's arguments, competition from other alternatives is insufficient to prevent competitive harm to shippers at NIT resulting from NS control of NPBL and foreclosure of an NPBL-CSXT competitive option. Economic analysis of market conditions demonstrates that other competitive options do not eliminate NS's incentive to use control of NPBL to foreclose NPBL-CSXT from competing for traffic at NIT.
13. CSXT's use of drayage to access NIT is regarded by both ocean carriers and POV as an inferior competitive option to on-dock rail at NIT. Drayage suffers from concerns regarding service reliability, capacity, and timing. CSXT's access to on-dock rail at Virginia International Gateway ("VIG") is not an adequate constraint on NS's ability to exercise market power at NIT. Reasons include Virginia International Terminals ("VIT")

control of vessel berthing among POV terminals (meaning that an arriving ship may dock at VIG or NIT), multiple ocean carriers sharing capacity and transporting containers on the same vessel due to ocean carrier alliances, and constraints on the ability for ocean carriers to react to marine terminal congestion. NS's incentive to exercise market power at NIT only grows as NIT continues to expand its capacity and vessel handling capabilities, both in absolute terms and relative to VIG.

14. For the transportation of containers from NIT to inland regions in and near the Midwest, other U.S. East Coast ("EC") ports do not serve as adequate substitutes to constrain NS's ability to exercise market power at NIT. Ocean carriers tend to align with a single eastern railroad and move most of their traffic with that railroad across a wide bundle of marine terminals, ports and inland locations. This results in ocean carriers tending to use their "aligned" rail partner across multiple ports. In addition, I show that other EC ports such as Savannah and Charleston do not frequently serve by rail the same inland Bureau of Economic Analysis Economic Areas ("BEAs") as POV and the Port of New York and New Jersey ("PONYNJ"). Moreover, when ocean carriers demand rail service to regions within and near the Midwest of the U.S., they make use of rail service over both POV and PONYNJ despite differences in the relative prices of rail transportation between the ports. The price of rail transportation is only one component of the ocean carrier's choice of port used for moving containers to and from even the same inland locations. The availability of alternative EC port options to access inland locations within and near the Midwest is insufficient to preclude NS's exercise of market power at NIT.
15. I conclude that the provision of land transportation for IM containers between NIT and the inland BEAs located within or near the Midwest are relevant markets, where in aggregate NS has a {{[REDACTED]}} share, CSXT has a {{[REDACTED]}} share, and trucks have a collective share of {{[REDACTED]}} in 2024. These shares indicate limited competition from trucking companies, which moreover are focused on time-sensitive portions of the traffic. The market shares are consistent with there being scope for greater competition at NIT from effective NPBL-CSXT routings that would benefit both POV and shippers.
16. If CSXT had the ability to compete for on-dock rail at NIT (via interchange with NPBL) then POV, ocean carriers, and the ultimate originator or receiver of the contents of the

containers would likely benefit from increased competition. I find that NS's control of NPBL creates the incentive for NS to foreclose CSXT from competing for on-dock rail access at NIT through interchange with NPBL. Through its control of NPBL, NS has engaged in actions consistent with its economic incentives to preclude CSXT from competing at NIT with use of NPBL's on-dock rail. NPBL, as controlled by NS, has incentives that are inconsistent with the economic incentives of a neutral, uncontrolled switching railroad, which are to attract volumes that provide rates above variable cost and therefore contributions to fixed costs. For example, intermodal traffic at VIG that CSXT and NS interchange with Commonwealth Railway ("CWRY") moves at {{ [REDACTED] [REDACTED] }}. Rates and service by NPBL sufficient to attract IM traffic at NIT via a NPBL-CSXT routing, at a level above NPBL's variable cost for that traffic, could provide a greater competitive alternative to NS, enhance economic efficiency, and benefit shippers at NIT and POV.

II. BACKGROUND

17. The primary competitive issue in this proceeding involves CSXT's ability to compete for traffic at NIT through switching with NPBL's on-dock access. In this section, I provide background information on POV, NPBL, and the intermodal marine shipping industry that are customers of POV and of railroads that serve the port.

A. Port of Virginia IM Terminals

18. The Hampton Roads area of eastern Virginia encompasses one of the largest ports on the U.S. East Coast with numerous public and private terminals handling IM containers, coal, grain, other commodities, and types of marine traffic. The Virginia Port Authority ("VPA") owns or leases multiple terminals at Hampton Roads, including the two currently operating IM terminals, VIG and NIT.³ Prior to 2021, Portsmouth Marine Terminal

³ See Port of Virginia, *Capabilities*, last date accessed August 19, 2025, <https://www.portofvirginia.com/gateway/capabilities/> (hereinafter "POV Capabilities"). VPA also owns two inland "ports" capable of handling IM containers, Virginia Inland Port at Front Royal, Virginia, and the Port of Richmond which is also served by barge. VPA leased VIG in 2010, see "Port of Virginia inks 50-

(“PMT”) also served as a smaller IM terminal, but has since been converted to serve the off-shore wind industry.⁴ The Newport News Marine Terminal (“NNMT”) serves as the port’s primary roll-on/roll-off and breakbulk terminal.⁵ VIT operates the terminals on behalf of VPA.⁶ Figure 1 shows the locations of the POV IM terminals and the corresponding regional rail connections.

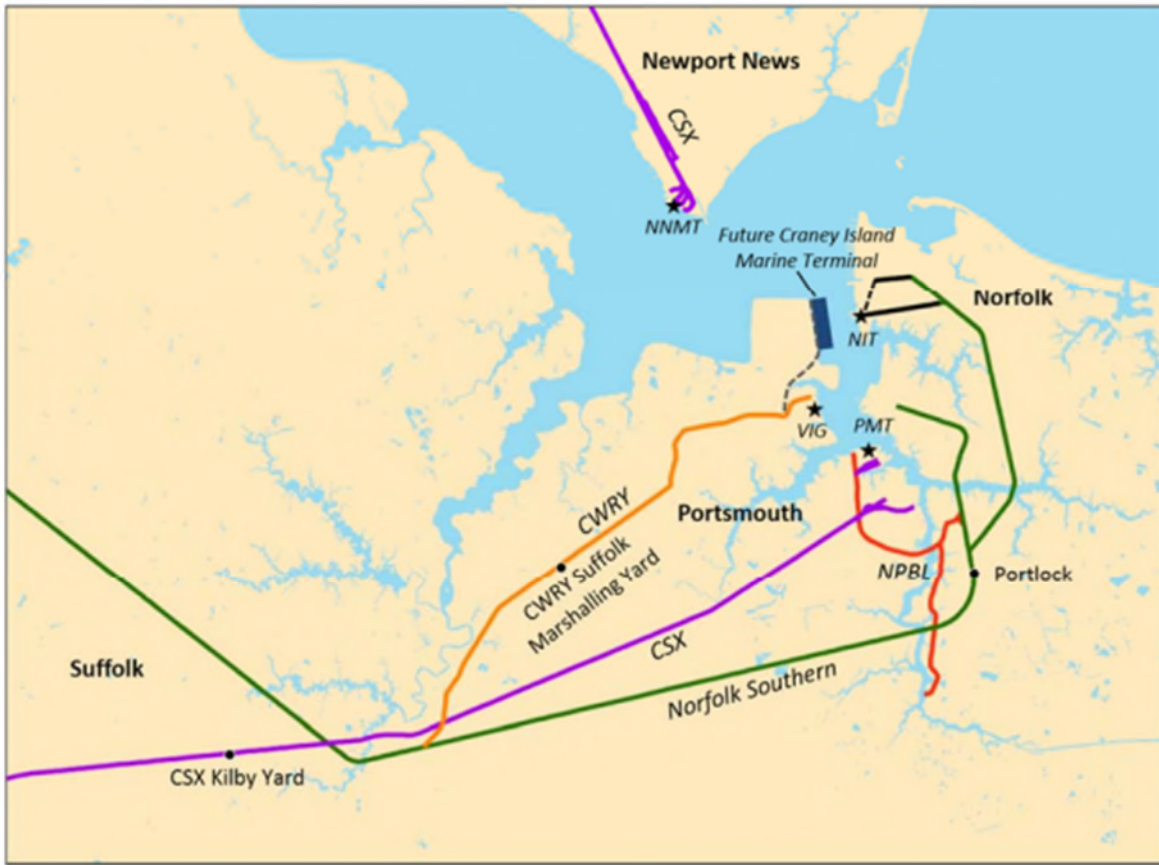
year lease extension for container terminal,” *FreightWaves*, September 22, 2016, <https://www.freightwaves.com/news/port-of-virginia-inks-50-year-lease-extension-for-container-terminal>.

⁴ See Port of Virginia, *Portsmouth Marine Terminal (PMT)*, last date accessed August 19, 2025, https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-PMT.pdf. See also Chris Barnett, “Big wind projects blow through the US East Coast,” *Journal of Commerce*, October 2, 2020.

⁵ See Port of Virginia, *Newport News Marine Terminal (NNMT)*, last date accessed August 19, 2025, https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-NNMT.pdf.

⁶ See Port of Virginia, *About*, last date accessed August 19, 2025, <https://operations.portofvirginia.com/about/>.

Figure 1
Port of Virginia Terminals and Major Rail Lines at Hampton Roads



Source: Office of Intermodal Planning and Investment, “Master Rail Plan for The Port of Virginia (SJR 69, 2014),” The Governor and the General Assembly of Virginia Senate, Document no. 12, 2015, Figure 1.

19. In recent years, the Port has invested in expanding both facilities to accommodate future growth. At VIG, a \$312 million expansion completed in 2019 delivered an 800-foot berth extension (increasing the terminal’s ability to handle additional Ultra Large Container Vessels (“ULCV”)), 26 additional rail-mounted gantry cranes, 13 container stacks, and four ship-to-shore cranes, which resulted in doubling VIG's total capacity to 2.2 million TEUs (approximately 1.2 million containers) per year and rail capacity to 480 thousand containers per year.⁷ (Statistics on international container shipping are often reported in

⁷ See Port of Virginia, *Virginia International Gateway*, last date accessed August 19, 2025, <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-VIG-1-Pager.pdf> (hereinafter “VIG Fact Sheet”). See also Chris Dupin, “Port of Virginia Finishes Terminal Expansion,” *FreightWaves*, July 24, 2019, <https://www.freightwaves.com/news/port-of-virginia-finishes-terminal-expansion>; “Expansion

TEUs—twenty-foot equivalent units—as international containers are standardized to either a 20-foot or 40-foot length.⁸⁾

20. At NIT, a larger (\$650 million) series of upgrades and expansions are underway.⁹ Scheduled for completion in 2027, NIT will feature a 6,630-foot continuous berth (which will allow the terminal to accommodate more ULCVs), and add 19 Super Post-Panamax cranes.¹⁰ These investments will raise NIT’s total capacity by 1.4 million TEUs (approximately 800 thousand containers) to 3.6 million TEUs (approximately 2 million containers) annually.¹¹ In 2024, the completion of an \$83 million Central Rail Yard addition increased NIT’s rail capacity, adding approximately 260 thousand containers of annual on-dock rail capacity for a total of 610 thousand containers per year.¹²
21. Rail service is an important factor for the success of IM port terminals. CWRV, a Class III railroad owned by Genesee and Wyoming Inc., is the sole provider of on-dock rail service

Completed At Virginia International Gateway,” *AP News*, July 24, 2019
<https://apnews.com/dfa0f94c578b4c89b44718949f676d9a>.

⁸ 40-foot containers are more common than 20-foot containers, but the more commonly used unit of measure is TEU rather than FEU (forty-foot equivalent). One FEU equals two TEUs. 45-foot containers are also sometimes used but are much less common. See United States Department of Transportation, Bureau of Transportation Statistics, *Port Performance Freight Statistics: 2025 Annual Report*, January 15, 2025 (hereinafter “BTS Port Freight Report 2025”), p. 55. Because forty-foot containers are more common than twenty-foot containers, figures reported in TEUs and containers are not directly comparable and require a conversion factor. In 2024, POV reported handling approximately 3.523 million TEUs across 1.948 million containers, for an approximate ratio of 1.81 TEUs per container. See Port of Virginia, *Port-of-Virginia-Website-Statistics 2024.xlsx*, last date accessed August 19, 2025, <https://wp.portofvirginia.com/wp-content/uploads/2025/01/Port-of-Virginia-Website-Statistics.xlsx>.

⁹ See Port of Virginia, *Norfolk International Terminals (NIT)*, last accessed date August 19, 2025, https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-NIT-2.pdf (hereinafter “NIT Fact Sheet”).

¹⁰ See NIT Fact Sheet. The largest container ships today can be approximately 1,300 feet in length, see BTS Port Freight Report 2025, p. 58. See also Jasmina Mandra, “Port of Virginia commissions new STS cranes, welcomes first ASC for NIT North Berth,” *World Cargo News*, April 17, 2025, <https://www.worldcargonews.com/cargo-handling-equipment/2025/04/port-of-virginia-commissions-new-sts-cranes-welcomes-first-asc-for-nit-north-berth/>.

¹¹ NIT Fact Sheet and POV Capabilities.

¹² See “Record Setting Volumes, No Congestion and a New Round of Strategic Investments Close Port’s 2021,” *Port of Virginia*, January 11, 2022, <https://www.portofvirginia.com/who-we-are/newsroom/record-setting-volumes-no-congestion-and-a-new-round-of-strategic-investments-close-ports-2021/> and also Brenda Silva, “Expanded Rail Yard Enhances Efficiency, Decreases Delays,” *American Journal of Transportation*, November 25, 2024, <https://www.ajot.com/premium/ajot-expanded-rail-yard-enhances-efficiency-decreases-delays>.

at VIG.¹³ CWRV, as an independent railroad, provides switching service of traffic at VIG with both CSXT and NS.

22. At NIT, the other IM terminal, NS provides on-dock rail service. NS lines connect with the NIT on-dock rail infrastructure. NPBL has trackage rights over an NS line that serves NIT. NPBL, using this trackage, also has rights to provide on-dock service at NIT. As a terminal railroad, it can switch this NIT traffic with CSXT. Apart from a small number of cars in 2015, no NIT IM traffic has moved using an NPBL-CSXT routing.¹⁴

B. NPBL

23. NPBL is a terminal switching railroad located in the Norfolk, Virginia area. It was formed by eight railroads in the 19th-century as a terminal railroad to serve shippers on its line and provide efficient interchange service to the connecting carriers. NPBL was established “for the mutual benefit of each” owning railroad.¹⁵ It was structured to operate to generate revenue sufficient to cover its costs including a modest return of capital to its owners. In 1917, NPBL was granted trackage rights over the line that now connects to the NIT IM terminal.¹⁶ (See Figure 2 showing NPBL system and connections.)

¹³ See *Letter Re: STB Docket No. FD 36836 – Norfolk Southern Railway Company – Control Acquisition – Norfolk & Portsmouth Belt Railroad Company from Virginia Port Authority to Ms. Brown and Board Members (Public)*, March 5, 2025, (hereinafter “POV Comments”) (Public), p. 5.

¹⁴ See POV Comments (HC), Figure 2.

¹⁵ *CSX Transportation, Inc.’s Petition to Reject Norfolk Southern’s Minor Application*, Docket No. FD 36836, February 27, 2025 (hereinafter “CSXT Reply (Public)”), Exhibit A (hereinafter “1897 Agreement”), at CSXT-1-76.

¹⁶ *Minor Application (Public)*, p. 13.

Figure 2
NPBL Lines and Associated Trackage Rights



Source: CSX Transportation, Inc.'s Evidence and Argument in Opposition to the NS Control Application, Docket No. FD 36836, September 18, 2025, Exhibit 1, Map H, with an addition identifying the "Connecting Line."

Note: The 'Connecting Line' identifies track discontinued by NS in 2008.

24. Separate from the connection at NIT, NPBL serves a number of {{ [REDACTED] }} shippers located on its lines.¹⁷ As a terminal railroad, it switches this traffic with CSXT and NS.¹⁸ NPBL can also interchange with two connecting short-line railroads.¹⁹ In 2024, NPBL switched {{ [REDACTED] }} carloads of traffic.²⁰ {{ [REDACTED] }} was IM traffic to or from NIT.²¹
25. NS has had effective control of the NPBL for over 40 years.²² As a result of numerous historical mergers, NS became the majority shareholder following its 1982 transaction, with CSXT the remaining minority shareholder.²³ With the determination in 2022 that NS had not received authorization for control of NPBL, NS now seeks control authorization in this proceeding.²⁴

C. International IM Shipping

26. Maritime container shipping is the core of U.S. physical merchandise trade. Containerized shipping involves the use of standardized containers that can be handled interchangeably across transportation modes—trucks, trains, barges, and ocean-going vessels.²⁵ Almost any dry commodity can be packed and transported in containers, but higher-valued and manufactured goods are typically shipped in IM containers.²⁶ Containerized cargo

¹⁷ Fapp VS 2, Exhibit DLF-8.

¹⁸ NPBL Annual Report 2024 (STB-NS-0000001 - STB-NS-0000128 at STB-NS-0000118).

¹⁹ NPBL also interconnects with other Class III railroads, see NPBL, *About Us*, last date accessed September 12, 2025, <https://www.npblrr.com/about-us.html>. Very little traffic is interchanged with these railroads, see NPBL Annual Report 2018 (STB-NS-0000129 - STB-NS-0000150 at STB-NS-0000140).

²⁰ NPBL Annual Report 2024 (STB-NS-0000001 - STB-NS-0000128 at STB-NS-0000114).

²¹ POV Comments (HC), Figure 2.

²² Minor Application (Public), pp. 7-8.

²³ Minor Application (Public), p. 10.

²⁴ Minor Application (Public), pp. 10-11.

²⁵ United States Department of Transportation, Bureau of Transportation Statistics, *Port Performance Freight Statistics: 2017 Annual Report to Congress*, February 13, 2018 (hereinafter “BTS Port Freight Report 2017”), pp. 2-5.

²⁶ BTS Port Freight Report 2017, pp. 2-5.

shipping accounts for 90% of the international trade of dry, non-bulk, manufactured goods.²⁷ Over two-thirds of the value of U.S. maritime imports arrive in containers.²⁸

27. The international IM transportation business involves multiple stages. It is centered around ocean carriers with multiple, large, specialized container ships. These are loaded and unloaded at multiple ports, which then connect with land transportation involving rail and/or trucking at both origin and destination.²⁹ The ultimate originator or receiver typically contracts with a logistics company that then contracts with the international ocean carrier.³⁰ In the U.S., it is the ocean carrier that typically contracts with the railroad for inland transportation.³¹

1. Ocean Carriers

28. Scale matters in the international IM shipping industry. Large vessel-operating common carrier companies (“VOCC”) that own or operate hundreds of ships dominate the industry. (See Figure 3 below.) I generally refer to these companies as “ocean carriers” in this report. Economies of scale are important in marine container operations because larger ships have lower per-container costs.³² With the expansion of the Panama Canal in 2016, Neo-Panamax ships, designed to just fit the expanded Panama Canal, can carry over 12,000 TEUs, and much larger ULCVs with up to 25,000 TEU capacity are entering service.³³

²⁷ BTS Port Freight Report 2017, pp. 2-5.

²⁸ United States Government Accountability Office, *Report to Congressional Requesters, Maritime Cargo Security*, June 2022, p. 1.

²⁹ Jan C. Fransoo and Chung-Yee Lee, “The Critical Role of Ocean Container Transport,” *Production and Operations Management*, vol. 22, no. 2, 2013, pp. 253-268 (hereinafter “Fransoo and Lee 2013”), at p. 255.

³⁰ Fransoo and Lee 2013, pp. 254-255. Larger, more frequent importers or exporters may contract directly with the ocean carrier.

³¹ Verified Statement of Maryclare Kenney, September 18, 2025 (hereinafter “Kenney VS”), p. 2.

³² Fransoo and Lee 2013, p. 256.

³³ BTS Port Freight Report 2025, p. 58.

29. Frequency and service quality are also important. Ocean carriers establish schedules of sailings and port calls involving strings of multiple ships to provide reliable and frequent service to shippers and avoid delays in the handling of containers.³⁴
30. Ocean carriers have established alliances under which vessels and vessel capacity are shared among members of the alliance.³⁵ (See Figure 3 below.) Vessel sharing arrangements can take multiple forms, but the end result is that a vessel operating within an alliance is devised to hold containers of multiple, separate members of the alliance.³⁶ Although containers may be moving on the same ship, each ocean carrier competes for customers and is responsible for its own marketing, pricing, and contracting with U.S. railroads.³⁷ In addition, there are non-vessel operating common carriers (“NVOCC”) that lease space from the VOCCs and compete for business from shippers in a manner similar to that of the VOCCs.³⁸

³⁴ See, e.g., Theo E. Notteboom, “The Time Factor in Liner Shipping Services,” *Maritime Economics & Logistics*, vol. 8, 2006, pp. 19-39, at pp. 19-20. See also César Ducruet and Theo E. Notteboom. “Chapter 6: Developing Liner Service Networks in Container Shipping,” in Dong-Wook Song and Photis Panayides, *Maritime Logistics: a Guide to Contemporary Shipping and Port Management*, 3rd ed. London: KoganPage, 2021, p. 3.

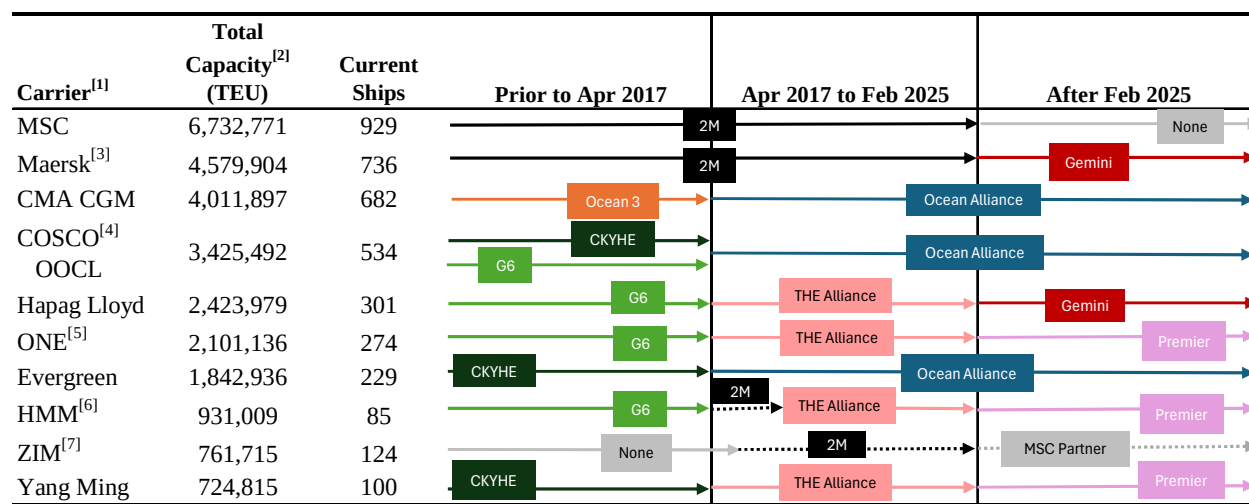
³⁵ International Transport Forum, “The Impact of Alliances on Container Shipping,” *International Transportation Forum Policy Papers*, no. 62, 2018, (hereinafter “Impact of Alliances on Container Shipping Report”), p. 10.

³⁶ Impact of Alliances on Container Shipping Report, pp. 10-11, 34. See also Bill Mongelluzzo, “Changing shipping alliances to further challenge port productivity,” *Journal of Commerce*, May 2, 2016.

³⁷ Impact of Alliances on Container Shipping Report, p. 10. See also Federal Maritime Commission, *Vessel-Operating Common Carriers*, last date accessed August 19, 2025, <https://www.fmc.gov/licensing-and-certification/vessel-operating-common-carriers/>.

³⁸ See Fransoo and Lee 2013, pp. 254-255. NVOCCs can also contract directly with railroads for rail transportation, see footnote 108 below.

Figure 3
Recent Alliance History of Largest Ocean Carriers



Sources: Alphaliner, *Top 100*, last date accessed July 28, 2015, <https://alphaliner.axsmarine.com/PublicTop100/>; Zahra Ahmed, “Top 5 Shipping Alliances,” *Marine Insight*, January 17, 2025, <https://www.marineinsight.com/know-more/top-5-shipping-alliances/>; Nerijus Poskus, “Ocean Alliances: Everything You Need to Know,” *Flexport*, December 7, 2022, <https://www.flexport.com/blog/ocean-alliances-everything-you-need-to-know/>; Brandon Richardson, “Ports Are Ready For The ‘Era of Big Ships And Alliances,’” *Long Beach Business Journal*, April 24, 2017, <https://lbbusinessjournal.com/ports/ports-are-ready-for-the-era-of-big-ships-and-alliances/>; Ocean Network Express, *Inauguration of Ocean Network Express*, last date accessed September 15, 2025, <https://www.one-line.com/en/standard-page/ocean-network-express>; “ZIM and the 2M Alliance Announce a Major Expansion of Their Strategic Operational Cooperation in Two Additional Trades,” *ZIM*, January 10, 2019, available at <https://investors.zim.com/news/news-details/2019/ZIM-and-the-2M-Alliance-Announce-a-Major-Expansion-of-Their-Strategic-Operational-Cooperation-in-Two-Additional-Trades/default.aspx>.

Notes:

- 1) Dotted lines represent strategic partnerships, whereas full lines represent alliances. Strategic partnerships are less binding than alliances, involve slot sharing, and typically limit the financial risk exposure. See Edwin Lopez and Jennifer McKevitt, “HMM falls short of 2M Alliance, but negotiates slot exchange,” *Supply Chain Dive*, December 12, 2016, <https://www.supplychaindive.com/news/2M-alliance-Hyundai-HMM-restructuring/432105/>; and Matt Leonard, “Report: HMM seeks full membership in 2M alliance,” *Supply Chain Dive*, April 25, 2019, <https://www.supplychaindive.com/news/hmm-full-membership-2m-ocean-alliance/553357/>.
- 2) Total Capacity and Current Ships include owned and chartered TEU and Ships, respectively.
- 3) Maersk owns Hamburg Sud and Sealand.
- 4) COSCO acquired OOCL in 2018, but they continue to operate as separate carriers. Prior to April 2017, COSCO was a member of CKYHE while OOCL was a member of G6.
- 5) Ocean Network Express (ONE) was established on July 7, 2017, by the integration of 'K' Line, MOL, and NYK.
- 6) HMM moved from being a strategic partner of the 2M alliance to a full member of THE Alliance in 2020.
- 7) ZIM is now a strategic partner with MSC and was a strategic partner with the 2M alliance from July 2018.
- 8) The G6 Alliance was formed in 2011. Ocean 3 and CKYHE were formed in 2014. 2M was formed in 2015.
- 9) Total Capacity and Current Ships data was collected on July 28th, 2025.

31. Vessel sharing within an alliance can allow for broader geographic scope, economies of scale through use of larger ships, more frequent service, increased utilization, and lower

cost.³⁹ These benefits can involve trade-offs or conflicts among ocean carriers, with ports, and with inland transportation.⁴⁰ The ocean carriers within an alliance will normally have separate arrangements with their customers and with land-based transportation service providers, including with U.S. railroads, across their geographic service range.⁴¹ (See Figure 8 below.)

32. Ocean carrier alliances are not permanent. Figure 3 above shows that major changes in alliance alignment and strategic relationships have occurred.⁴² After a period of relative stability starting in 2017, in 2025 two of the three alliances dissolved and were replaced with two new alliances with different rosters of members. Changes in alliances can alter individual ocean carriers' relationships with ports and land transportation partners.⁴³ Given the global nature of container trade, the economic forces that drive alliance re-alignment transcend regional U.S. factors.

2. Ports

33. Ocean carriers load and discharge containers at specialized port facilities. Large ports, such as at Hampton Roads, may consist of multiple marine terminals that handle different types of traffic. These marine terminals can be owned and operated privately, publicly, or through some private-public partnership. At POV, VIG is publicly operated but leased

³⁹ Impact of Alliances on Container Shipping Report, pp. 12-13.

⁴⁰ Bill Mongelluzzo, "Changing Shipping Alliances to Further Challenge Port Productivity," *Journal of Commerce*, May 2, 2016.

⁴¹ Bill Mongelluzzo, "Changing Shipping Alliances to Further Challenge Port Productivity," *Journal of Commerce*, May 2, 2016.

⁴² There were additional changes in alliances prior to those shown in Figure 3, see Impact of Alliances on Container Shipping Report, pp. 14-15.

⁴³ For example, in 2020, HMM purportedly switched alignment of its western railroad partner to better align with other carriers in THE Alliance. See Ari Ashe, "HMM changes western US rail partner to gain alliance efficiencies," *Journal of Commerce*, June 19, 2020.

from a private owner, and NIT is publicly owned and operated.⁴⁴ It is common at large ports for there to be multiple IM terminals.⁴⁵

34. Major IM marine terminals are large and have expensive infrastructure. Ports and marine terminals capabilities vary with respect to the size of ship that can be accommodated, berth space, cranes and dock space, and ground transportation infrastructure and linkages.⁴⁶ Terminal operators strive to provide service, speed of loading and unloading, and costs that are attractive to ocean carriers.⁴⁷
35. U.S. West Coast ports historically handled more IM traffic than the U.S. East Coast, but that has now flipped.⁴⁸ Figure 4 shows the container throughput at the top 10 EC ports in 2022.⁴⁹ Port of New York/New Jersey (“PONYNJ”) is now the largest IM port in the U.S. The top four EC ports, PONYNJ, POV, Savannah and Charleston, account for about 80% of EC container traffic.

⁴⁴ See Virginia Maritime Association, *Port Facilities: Virginia International Gateway*, last date accessed August 19, 2025, <https://vamaritime.com/VirginiaPortsAnnual/VirginiaPortsAnnual/Port-Facilities/Facilities.aspx>; and Ports America, *Norfolk International Terminal (NIT)*, last date accessed August 19, 2025, <https://www.portsamerica.com/our-locations/norfolk-va?terminal=norfolk-international-terminal-nit>.

⁴⁵ BTS Port Freight Report 2025, p. 34.

⁴⁶ BTS Port Freight Report 2025, pp. 56-58.

⁴⁷ Robert Stahlbock and Stefan Voß, “Operations research at container terminals: a literature update,” *OR Spectrum*, vol. 30, 2008, pp. 1-52 (hereinafter “Stahlbock & Voß 2008”), at pp. 1-2.

⁴⁸ See United States Department of Transportation, Maritime Administration, *U.S. Waterborne Foreign Container Trade by U.S. Customs Ports 2000 – 2017*, <https://www.maritime.dot.gov/data-reports/data-statistics/us-waterborne-foreign-container-trade-us-customs-ports-2000-%E2%80%93-2017> and contained in my workpapers. See also BTS Port Freight Report 2025, Figure 7.

⁴⁹ 2022 is the last year currently available from the U.S. Bureau of Transportation Statistics.

Figure 4
Container Throughput by Top 10 East Coast Port by TEUs, 2022

Port	Domestic	Imports	Exports	Total Imports/Exports
Port of New York/New Jersey	65,534	5,352,134	1,252,065	6,604,199
Port of Savannah	0	3,012,685	1,317,230	4,329,915
Port of Virginia	79,040	1,809,971	983,373	2,793,344
Port of Charleston	0	1,491,989	634,282	2,126,271
Port of Miami	0	578,156	310,807	888,963
Port Everglades	0	406,970	351,521	758,490
Port of Baltimore	66,173	521,729	210,044	731,773
Port of Philadelphia	70,305	535,820	137,708	673,528
Port of Jacksonville	726,840	212,193	98,003	310,196
Port of Wilmington, NC	0	120,996	116,187	237,183
Other East Coast Ports	110,519	407,295	150,647	557,943
Total	1,118,411	14,449,938	5,561,868	20,011,806

Sources: U.S. Army Corps of Engineers Digital Library, *Waterborne Container Traffic Data*, last date accessed September 15, 2025, <https://usace.contentdm.oclc.org/digital/collection/p16021coll2/id/1445>; Maritime Safety Information, *World Port Index Data*, last date accessed September 15, 2025, <https://msi.nga.mil/Publications/WPI>.

Notes:

- 1) Domestic data includes both loaded and empty TEUs. Domestic represents trade with the 50 U.S. states, Puerto Rico, and USVI. By definition it also includes minor Pacific US territories.
- 2) Foreign Imports and Exports data is reported only for loaded TEUs.
- 3) Fort Lauderdale is synonymous to Port Everglades.

36. Ports and marine terminals, to some degree, compete to attract traffic. Ports differ in their capacity, capabilities, and efficiency. They also differ substantially, however, based on the magnitude of the local demand for container shipping and access to inland points. Traffic originating or terminating in proximity to a port will usually transfer through that port. As a result, capable ports located near large local markets, such as the PONYNJ, tend to attract large IM volumes.⁵⁰ Efficient and cost-effective transportation alternatives to and from inland markets will also tend to attract traffic to or from those markets to a port or terminal.

37. Large container ships often visit multiple ports on their sailings. For example, as I discuss further below at Figure 10, there is {{ [REDACTED] }}

⁵⁰ See “Port of New York and New Jersey well-positioned to get shipped goods quickly to St. Louis region business and consumers,” *American Journal of Transportation*, May 30, 2023, <https://www.ajot.com/news/port-of-new-york-and-new-jersey-well-positioned-to-get-shipped-goods-quickly-to-st-louis-region-business-and-consumers>.

by rail between POV and PONYNJ. Using data on IM vessel calls to EC port in 2023 and 2024, I classify each vessel's visits by whether they call on (i) PONYNJ but not POV, (ii) POV but not PONYNJ, (iii) both PONYNJ and POV, or (iv) if the vessel calls on neither PONYNJ nor POV. Figure 5 shows that one-third (33.3%) of container ship visits to the EC over 2023-2024 called at both PONYNJ and POV. Excluding EC visits that did not call at either PONYNJ or POV, nearly half (47.5%) of EC visits by container ships that visited either PONYNJ or POV called at both ports. In addition, even among the vessels calling at both PONYNJ and POV there is a variety of other EC port calls being made. Vessels calling at PONYNJ and POV also call at varying combinations of Savannah, Charleston, and other EC ports.⁵¹

Figure 5
Share of EC Visits that Call on PONYNJ and/or POV (2023 - 2024)

EC Visit Category	Count	Share of Total Visits	Share of PONYNJ or POV Visits
Both PONYNJ and POV	2,426	33.3%	47.5%
PONYNJ but not POV	1,832	25.1%	35.9%
POV but not PONYNJ	848	11.6%	16.6%
Neither PONYNJ Nor POV	2,187	30.0%	N/A
Total Visits	7,293	100%	100%

Sources: Vessel Finder, "Port Calls Data" for Vessels Visiting New York, Norfolk, Savannah, and Charleston in 2023-2024, last date accessed September 15, 2025, vesselfinder.com; Maritime Safety Information, *World Port Index Data*, last date accessed September 15, 2025, <https://msi.nga.mil/Publications/WPI>.

Notes:

- 1) A vessel is uniquely identified using its International Maritime Organization (IMO) number.
- 2) An EC visit represents an unbroken chain of East Coast port calls by a single vessel.
- 3) The combinations of EC visits presented are mutually exclusive.

3. Land Transportation

38. Ocean carriers require land transportation to reach the ultimate origin or destination of the IM container. At EC ports, the majority of container traffic travels by truck between the port and origin or destination, reflecting the importance of local demand for ocean container shipping. As shown in Figure 6 below, however, a significant minority of

⁵¹ See my workpapers.

containers routed through the big four EC ports utilize rail for movement between the port and inland locations.⁵²

Figure 6
Share of Traffic Moved by Rail at Each Top East Coast Ports

East Coast Port	Share of Container Trade Moved by Rail
Port of Virginia	41%
South Carolina Ports	24%
Port of Georgia	19%
Port of NY/NJ	19%

Sources: “Virginia Completes FY 2024 with Growth in Cargo Volumes and Progress on Infrastructure Projects,” *Port of Virginia*, July 30, 2024, <https://www.portofvirginia.com/who-we-are/newsroom/virginia-completes-fy-2024-with-growth-in-cargo-volumes-and-progress-on-infrastructure-projects/>; South Carolina Ports, *Rail Move, Pier Container & TEU History - 08/12/2025*, last date accessed August 25, 2025, <https://scspa.com/wp-content/uploads/gl078-pc-teu-history.pdf>; Glen Weiss, “Georgia Ports make inroads on inland transport,” *American Journal of Transportation*, March 18, 2024, <https://www.ajot.com/premium/ajot-georgia-ports-makes-inroads-on-inland-transport>; Brenda Silva, “State of the Port Address details lengthy to-do list for PANYNJ,” *American Journal of Transportation*, February 11, 2025, <https://www.ajot.com/insights/full/ai-state-of-the-port-address-details-lengthy-to-do-list-for-panynj>.

Notes:

- 1) South Carolina Ports include Port of Charleston, Inland Port Greer, and Inland Port Dillon. Port of Georgia includes Port of Savannah, Port of Brunswick, and other inland terminals.
- 2) Shares are taken as containers moved by rail / total containers moved at each port.
- 3) The data used is the most recent publicly available information on rail transport at each port.
- 4) Port of Virginia’s share reflects container movements from FY 2024.
- 5) South Carolina Ports’ share reflects container movements from July 2024 – June 2025.
- 6) Port of Georgia shares reflect container movements from February 2024.
- 7) Port of NY/NJ shares reflect container movements from 2024.

i. Trucking

39. The major role of trucking for international IM traffic reflects the importance of local and transload markets for IM shipments. Trucking is more successful at short distances and for

⁵² In some situations, and for certain origins and destinations, containers can move by barge. These do not tend to be a significant portion of traffic on the EC for IM containers. For example, POV operates a barge facility up the James River near Richmond designed to handle IM containers. In FY24, barge accounted for 3% of POV traffic compared to 41% for rail and 56% for truck. See “Virginia Completes FY 2024 with Growth in Cargo Volumes and Progress on Infrastructure Projects,” *Port of Virginia*, July 30, 2024, <https://www.portofvirginia.com/who-we-are/newsroom/virginia-completes-fy-2024-with-growth-in-cargo-volumes-and-progress-on-infrastructure-projects/>. The Port of Charleston is planning an inter-terminal barge operation. See David Wren, “SC Ports still sees a future in barges, but rail yard getting first focus,” *South Carolina Daily Gazette*, July 15, 2025, <https://scdailygazette.com/2025/07/15/sc-ports-still-sees-a-future-in-barges-but-rail-yard-getting-first-focus/>.

higher-value, time-sensitive shipments; rail dominates for longer movements.⁵³ This difference reflects the relative costs between trucking and rail as distance grows longer. Thus, containers originating from or destined to locations in the metropolitan and surrounding areas of the port will usually move by truck.

40. There are important distinctions between international and U.S. domestic IM traffic that affect the relative roles of truck and rail in international and domestic IM transportation. First, the standard containers used in international shipping are 20 or 40 feet long.⁵⁴ A 40-foot container is equal to two TEUs or one FEU—a forty-foot equivalent. Forty-foot containers are much more common than 20-foot containers for international trade with the U.S.⁵⁵ Containers used in domestic U.S. commerce, by contrast, are typically 53 feet long and are not interchangeable with international IM containers.⁵⁶ They can carry substantially more volume than an international container.⁵⁷ Second, international marine IM shipping starts or ends its U.S. land movement on a ship, whereas most domestic containerized freight start and end on a truck.⁵⁸ For domestic U.S. IM shippers using rail, a truck typically obtains a load at a warehouse or factory, drives to an IM ramp where the load is transferred between truck and rail at both the origin and destination railroads' intermodal ramps, and finally is delivered to its ultimate destination by truck. Alternatively, the domestic shipper can use a single truck between origin and delivery and

⁵³ See Kenney VS, pp. 3-4; EDVA Deposition of Dean Piacente, CSXT, (hereinafter “Piacente EDVA Deposition”), 64:2-16; EDVA Deposition of Maryclare Kenney, CSXT, December 11, 2020 (hereinafter “Kenney EDVA Deposition”), 47:13-48:14, 49:3-20, 60:2-11; EDVA Deposition of Tom Capozzi, VIT, January 22, 2021 (hereinafter “Capozzi EDVA Deposition”), 164:25-165:15; Verified Statement of Julie M. Carey, September 18, 2025 (hereinafter “Carey VS”), p. 18-19.

⁵⁴ See BTS Port Freight Report 2025, p. 55. Forty-five foot containers are also used to a lesser degree in international IM trade.

⁵⁵ See BTS Port Freight Report 2025, p. 55.

⁵⁶ See BNSF, *Containers*, last date accessed August 19, 2025, <https://www.bnsf.com/ship-with-bnsf/ways-of-shipping/equipment/containers.html>. See also EDVA Deposition of Kenneth Joyner, NS, February 19, 2020 (hereinafter “Joyner EDVA Deposition”), 56:8-19.

⁵⁷ There has developed a transload industry in the U.S. near some ports, such as in Southern California, in which international IM containers are unloaded and contents repacked into 53-foot U.S. containers. See “Shippers seeking transload options for containerized imports,” *FreightWaves*, July 19, 2019, <https://www.freightwaves.com/news/shippers-seeking-transload-options-for-containerized-imports>.

⁵⁸ See Kenney VS, p. 2.

avoid any other mode. Third, since international IM shipments entail land transportation at both import and export locations, plus intervening marine transportation, they are often less time-sensitive than domestic intermodal shipments. International IM shipments typically benefit less from the higher speed, higher cost service that truck provides relative to rail than do domestic IM shipments.⁵⁹ Fourth, large vessels can load and discharge thousands of containers during a port call. This provides volumes of traffic that can benefit from the scale economies of rail relative to trucking.

ii. *Rail and drayage*

41. Rail is commonly used to transport international IM shipments between port and inland locations. It is typical that at the inland point, the container is loaded or unloaded at a railroad's IM ramp and transferred to or from a truck for local delivery or pickup. In some large volume cases, deliveries may be made by rail directly to the end-user facility.
42. Ocean carriers frequently enter into long-term contracts ({[REDACTED] [REDACTED]}) with U.S. railroads to move containers between inland regions and the country's ports.⁶⁰ On the EC, CSXT and NS compete for this traffic. Ocean carriers typically contract with a primary railroad to serve a large majority of their rail-borne traffic moving to or from EC ports.⁶¹ This propensity to bundle rail traffic is often described as an ocean carrier being "aligned" with a railroad.⁶² The long-term contracts between the ocean carriers and the railroads often contain {[REDACTED] [REDACTED]}

⁵⁹ See Piacente EDVA Deposition, 64:2-16 and Kenney EDVA Deposition, 47:13-48:14, 49:3-20, 60:2-11.

60 See e.g., {{ [REDACTED] }}, (STB-NS-0004054) ({{ [REDACTED] }}) and {{ [REDACTED] }} ({{ [REDACTED] }}). See also Kenney VS, p. 2.

⁶¹ See Kenney VS, p. 2 and also EDVA NPBL001007 at NPBL001023, listing the {{[REDACTED]}}.

⁶² See EDVA CSXT0013901, {{[REDACTED]}}

}}. ⁶³ Ocean carriers choose to align with a railroad for several reasons, among them, {{

}}. ⁶⁴

43. International IM traffic at marine terminals is often served through on-dock rail facilities. ⁶⁵ On-dock rail facilities provide for containers to move on and off railcars without the need to leave the gates of the terminal. ⁶⁶ With on-dock rail, containers are lifted on and off rail cars using the terminal’s facilities. The terminal operator typically places containers on a carriage and wheels them between the stack of containers in the yard to the railcar loading areas. ⁶⁷
44. In other cases, containers must be drayed between the marine terminal and a rail transfer facility located off-dock. ⁶⁸ Drayage involves loading a container onto an on-road truck and transporting it between the marine terminal and a rail transfer facility. Drayage service is usually performed by independent trucking companies rather than using terminal or rail employees and equipment. ⁶⁹

⁶³ See e.g., {{ (STB-NS-0004054 at STB-NS-0004058) and {{ }}; See e.g., {{ (STB-NS-0028693) and {{ }}

⁶⁴ See EDVA NPBL001007 at NPBL001025 and Kenney VS, pp. 2-3.

⁶⁵ See BTS Port Freight Report 2025, Table 8.

⁶⁶ The on-dock rail facility need not be literally on the dock adjacent to ship berths, but directly accessible within “marine terminal boundaries”, see U.S. Department of Transportation Bureau of Transportation Statistics, *Rail & Road Connections*, last accessed date September 2, 2025, <https://data.bts.gov/stories/s/Rail-Road-Connections/j4yu-qgj6/> (hereinafter “BTS Rail & Road Connections”).

⁶⁷ Preeti Rathi and Amit Upadhyay, “Container retrieval and wagon assignment planning at container rail terminals,” *Computer & Industrial Engineering*, vol. 172, 2022, pp. 1-19, at pp. 1-2.

⁶⁸ BTS Rail & Road Connections.

⁶⁹ See Federal Maritime Commission, *U.S. Container Port Congestion & Related International Supply Chain Issues: Causes, Consequences & Challenges*, July 2015, p. 51.

45. Off-dock rail and the required drayage is disfavored by ocean carriers relative to on-dock rail.⁷⁰ Drayage introduces additional costs, potential service reliability issues, and possible capacity limitations, as it requires one-truck per container compared to the hundreds of containers that can be loaded directly onto a train at an on-dock rail facility.⁷¹ Costs tend to increase with the length of the dray. Furthermore, longer drays require more capital and capabilities because more trucks and drivers are needed to maintain a given throughput capacity.

D. Rail Service at POV

46. As described above, VIG is served by on-dock rail provided by CWRV which provides switching services to NS and CSXT. NIT has a large on-dock rail terminal that both NS and NPBL have rights to access. Apart from a brief period in 2015, however, NS is the only railroad that has provided on-dock rail services at NIT.⁷²
47. At NIT, import containers that CSXT is contracted to service are drayed from NIT to VIG.⁷³ This entails loading each container on an on-road IM chassis, exiting the gates at NIT, entering onto the public road system and driving to VIG, where the truck enters the gates, the container removed from the truck and ultimately loaded on a CWRV train at VIG. CSXT-served containers loaded on CWRV trains at VIG are interchanged with CSXT at an interchange point on CWRV track.⁷⁴ Export containers are handled similarly, but in reverse. Drayage for CSXT at NIT is performed by independent trucking companies that contract with VIT.⁷⁵

⁷⁰ See Section V.A.

⁷¹ {{ [REDACTED] }}, see Deposition of Michael McClellan, NS, August 18, 2025 (hereinafter "McClellan Deposition") 50:13-53:21.

⁷² See Kenney VS, pp. 4-5 and POV Comments (HC), Figure 2.

⁷³ See Kenney VS, pp. 7-8 and {{ [REDACTED] }}.

⁷⁴ See Kenney VS, pp. 7-8 and {{ [REDACTED] }} and also {{ [REDACTED] }}.

⁷⁵ {{ [REDACTED] }}.

48. VIT, the port operator, pays half of the cost of drayage between NIT and VIG, with CSXT paying the rest.⁷⁶ CSXT used to dray NIT containers to and from CSXT's Portsmouth yard.⁷⁷ CSXT ended operations at that location in 2021 after POV began conversion of PMT to service the offshore wind energy industry.⁷⁸ Since then, CSXT has leased its IM yard at PMT to a grain export operation.⁷⁹
49. The shortest route for CSXT's current drayage route is approximately 9 miles. The route is shown in Figure 7 below. Approximately half of the distance of the route is on Hampton Boulevard, which is a road that passes through urban commercial and residential areas, as well as Old Dominion University, and has many stop lights.⁸⁰ The city of Norfolk does not permit commercial truck activity on Hampton Boulevard between 4:00 pm and 6:00 am, unless the drayage company applies for a "Hauling Exception" with the City of Norfolk.⁸¹
50. CSXT's drayage capabilities at NIT have several limitations beyond the restrictions on the use of public roads. First, trucks are only permitted to access the port from 6:00AM to 6:00PM on weekdays. The terminal is closed to truck traffic on weekends.⁸² By contrast, NS trains can access the port at any time.⁸³ Second, as discussed by Ms. Carey, the

⁷⁶ See Fapp VS 2, p. 24, citing Plaintiff CSX Transportation, Inc.'s Motion for Injunctive Relief and Proposed Findings of Fact and Conclusions of Law, Civil Action No. 2:18-cv-530-MSD-RJK, January 12, 2023. The current rate that VIT charges CSXT is {{[REDACTED]}} (i.e., the full rate split by CSXT and VIT is {{[REDACTED]}}), see {{[REDACTED]}}

⁷⁷ {{[REDACTED]}}

⁷⁸ See "Creation of the Mid-Atlantic's Offshore Wind Logistics Hub Moves Forward at The Port of Virginia," *Port of Virginia*, October 27, 2023, <https://www.portofvirginia.com/who-we-are/newsroom/creation-of-the-mid-atlantics-offshore-wind-logistics-hub-moves-forward-at-the-port-of-virginia/>.

⁷⁹ See "DeLong Breaks Ground on New Grain Export Hub," *The Poultry Site*, June 16, 2025, <https://www.thepoultrysite.com/news/2025/06/delong-breaks-ground-on-new-grain-export-hub>.

⁸⁰ Google Maps, see also Fapp VS 2, pp. 16-17 and Kenney VS, p. 7.

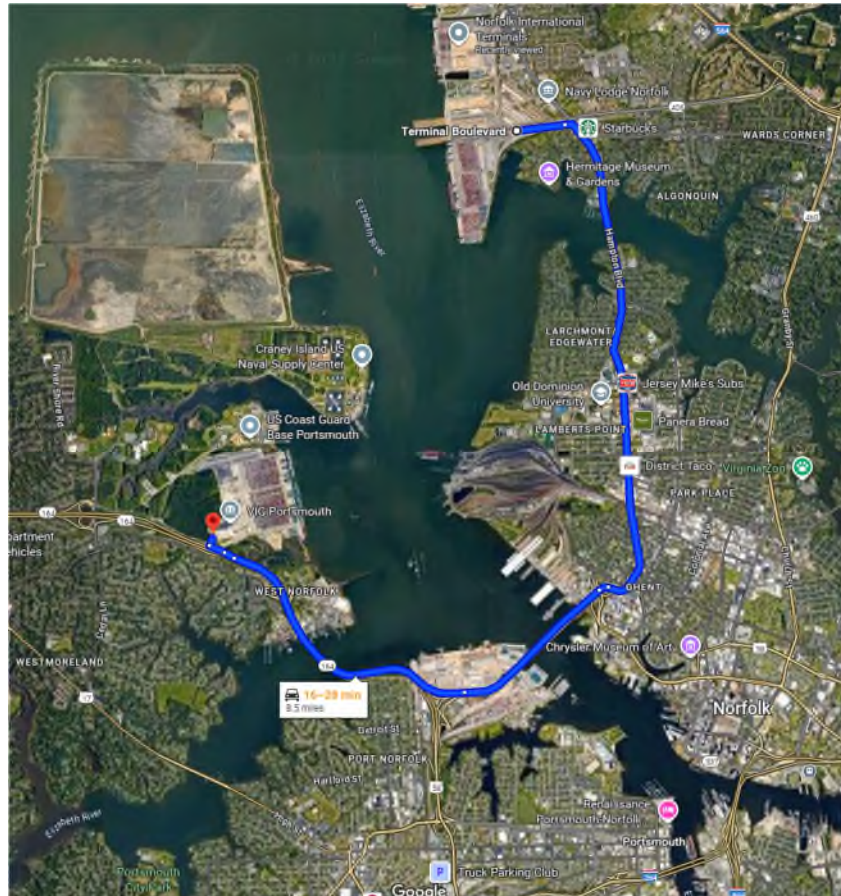
⁸¹ See Fapp VS 2, p. 17. Drayage companies may also use a more circuitous route to avoid Hampton Boulevard, see Fapp VS 2, pp. 17-18.

⁸² See Port of Virginia, *Terminal Gate Hours: Norfolk International Terminal (NIT)*, last date accessed August 19, 2025, <https://operations.portofvirginia.com/terminal-gate-hours/>.

⁸³ See Kenney VS, p. 7 and McClellan Deposition, 115:7-14.

capacity of CSXT's drayage operation is limited.⁸⁴ CSXT can only reliably move {{[REDACTED]}} containers per day by drayage, with the potential to move {{[REDACTED]}} in peak periods.⁸⁵ This is much less than NS's on-dock capacity.⁸⁶

Figure 7
Map of CSXT's Drayage Route from NIT to VIG



Source: Google Maps

⁸⁴ See Carey VS, pp. 14-16.

⁸⁵ See EDVA Declaration of Chris Wagel, CSXT, ¶ 3.

⁸⁶ See Carey VS, pp. 21-22.

III. FRAMEWORK FOR EVALUATING POTENTIAL HARMS TO SHIPPERS AND PORTS

A. The Status Quo is Not a Valid Basis for Evaluating the Competitive Effects of NS's Control Application

1. Current Market Conditions Reflect NS Control of NPBL

51. Companies seeking regulatory or antitrust approval of a merger or control transaction typically do so before they operate under common control. Potential competitive effects of the proposed transaction are then evaluated by considering how common control would alter existing competition in the market. The existing conditions typically provide a basis for identifying the competitive (i.e., pre-merger) benchmark against which changes arising from the proposed common control are evaluated.⁸⁷
52. The use of existing market conditions as the competitive benchmark is also standard practice in the evaluation of proposed rail mergers or control transactions. Existing data on rail traffic are normally used to analyze the likely competitive changes that would occur if the two merging railroads were under common control.⁸⁸ Rail traffic serving markets, lanes, or even individual shipper locations is reviewed to identify existing overlap between the proposed merging parties. This information is used in a market analysis to evaluate the potential competitive harm that may result.
53. This case is not typical because NS seeks authorization for control of NPBL after decades of unauthorized, de facto control of NPBL.⁸⁹ Thus, current market conditions already reflect NS's effective control of NPBL. Any anticompetitive effects and competitive harm

⁸⁷ Current market conditions may be adjusted for known or anticipated future changes due to, for example, entry, exit, or other exogenous trends that may result in important alterations in the market. See, for example, Federal Trade Commission and U.S. Department of Justice, *Merger Guidelines*, December 18, 2023, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf> (hereinafter “2023 Merger Guidelines”), p. 42.

⁸⁸ See *Canadian Pacific Rail Way Ltd. et al.—Control—Dakota, Minnesota, and Eastern Railroad Corp. et al.*, STB Finance Docket No. FD 35081, Decision no. 11, September 29, 2008, pp. 9-11 and footnote 15, “In their December 5 supplement, applicants performed a market analysis often used in previous rail merger cases, referred to as a 50/10 screen, based on BEA to BEA movements and the 2005 waybill sample.” See also, *CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., et al.*, STB Finance Docket No. 36472, Decision No. 9, April 14, 2022 (hereinafter “CSX-Pan Am Decision”), pp. 17-19, where applicants “performed an analysis to identify potential 2-to-1 shippers on the Conn River Line.”

⁸⁹ See Minor Application (Public), pp. 7-8.

resulting from NS's control of NPBL are already reflected in the marketplace. The existing marketplace conditions cannot be used as the benchmark for market conditions in which NS lacks control of NPBL.

54. Therefore, the relevant economic analysis would examine how firms' capabilities and incentives would differ if NS did not control NPBL. Doing so would allow for a consideration of the competitive harm caused by NS's control of NPBL. In contrast, simply assuming that current market conditions would be unchanged if NS receives control authorization, as NS does, provides no meaningful economic guidance to the ultimate economic question of the competitive harm that has or will result from NS's control.

2. Existing Competition at NIT Reflects NS's Control of NPBL and NS Transporting All On-Dock Rail Traffic at NIT

55. The primary competitive issue in this proceeding is how competition between NS and CSXT, made possible by NPBL providing on-dock rail access for CSXT at NIT, would differ if NPBL were not controlled by NS. NIT is the largest volume rail shipment location that is served by NPBL.⁹⁰ Yet NPBL has none of this IM rail traffic while NS has all of it.
56. NS contends that competition from other sources—drayage by CSXT at NIT, use of VIG, and competition from other East Coast ports—is sufficient to prevent competitive harm at NIT from NS control of NPBL.⁹¹ (I address these specific claims below.) However, the commercial realities in today's marketplace are not representative of how competition would play out were CSXT competing with NS for traffic at NIT utilizing switching from an NPBL (uncontrolled by NS) with on-dock rail access at NIT. Firms that can raise their rivals' cost and reduce their rivals' quality of service, or foreclose competition from a rival, have the incentive to obtain and exercise market power. If acted on, affected consumers facing this exercise of market power are likely to switch to worse alternatives that they would not otherwise select. This gives rise to the so-called 'cellophane fallacy' in which relatively weak substitutes appear more relevant than they would under competitive

⁹⁰ See paragraph 121 below.

⁹¹ Minor Application (Public), pp. 28-34 and Fapp VS 1, pp. 11-13.

conditions.⁹² In this proceeding, it is therefore improper to infer competition in the current marketplace based on the use of inferior alternatives to on-dock rail at NIT. Specifically, CSXT’s drayage-to-rail service would not likely be a relevant competitive alternative if NPBL were not controlled by NS. If CSXT had actual on-dock rail access to NIT through NPBL, it is likely that there would be little to no remaining demand for drayage from NIT.

B. Control of NPBL by NS Reduces Intramodal Rail Service at NIT from Two to One

1. NS and NPBL Are the Only Two Rail Carriers that Serve NIT

57. Control of NPBL by NS represents a reduction of two independent rail options at NIT down to one. NS and NPBL are the only two rail carriers directly serving NIT. NPBL currently serves no shippers at NIT.⁹³ However, as a switching carrier, NPBL interchanges with both NS and CSXT. An NPBL-CSXT routing represents a potential alternative to NS routings for rail shippers at NIT. If NPBL were not controlled by NS, then NPBL-CSXT would be a second, independent rail option at NIT. With NS control of NPBL, the NS and NPBL-CSXT rail options are both controlled by the same entity and intramodal rail competition—competition between independent rail options—is lost.
58. Competition between railroads benefits shippers. When two or more railroads compete to provide transportation service, a shipper can choose its preferred price-service bundle among those offered. The risk of losing railroad business to its competitor encourages each railroad to offer a price and service bundle, consistent with its own economics, that is preferred by the shipper relative to the offer(s) from other railroad(s).
59. When all railroads serving a shipper come under common control, those railroads no longer have the incentive to compete against each other. To the extent that competition between railroads serving a shipper or shipper location limit the exercise of market power,

⁹² “In the entrenchment context, if the inquiry is being conducted after market or monopoly power has already been exercised, using prevailing prices can lead to defining markets too broadly and thus inferring that dominance does not exist when, in fact, it does. The problem with using prevailing prices to define the market when a firm is already dominant is known as the ‘Cellophane Fallacy.’” 2023 Merger Guidelines, pp. 42-43, footnote 83. See also Louis Kaplow and Carl Shapiro. “Chapter 15: Antitrust,” in *Handbook of Law and Economics Volume 2*, 1st ed., North Holland, 2007, p. 1190.

⁹³ POV Comments (Public), pp. 3-4.

common control of the railroads removes that limitation. In that case, shippers suffer in that the price-service bundle available will be less preferred.

60. An NPBL-CSXT routing is the only other option to NS for rail service at the dock at NIT. Common control by NS eliminates this routing as an independent competing intramodal option for on-dock service. As I show below, NS has the incentive to preclude rail-on-rail competition at NIT from an uncontrolled NPBL and to foreclose CSXT, utilizing a NPBL-CSXT routing, from competing with NS for traffic at NIT.⁹⁴

2. Rail Merger Policy Has Consistently Preserved Intramodal Rail Competition

61. Mergers and acquisitions present the potential loss of direct horizontal competition when two previously independent railroads come under common control for the purpose of setting prices available to a shipper. Depending on the remaining available competitive options, price setting among the railroads under common control that previously competed may result in the greater exercise of market power and competitive harm to shippers. It is not necessary that there be two separate sets of tracks serving a particular shipper, merely that competitive railroads with independent price setting authority can provide service to a shipper through direct access or through terminal switching, haulage, or trackage rights. When there is no other rail alternative that can provide competitive discipline, alternative conditions are provided to preserve the potential benefits that would otherwise be lost at these “2-to-1” locations a result of the merger.
62. Preservation of two independent rail options for locations and shippers that would otherwise suffer a reduction from 2-to-1 independent rail options is a long-standing principle of U.S. rail merger policy. As summarized by the STB: “Since 1980 at least, we have consistently imposed merger conditions to preserve two-railroad service where it existed, and we have imposed remedies to preserve competition where the number of carriers serving a shipper has gone from three to two in limited circumstances on a case-

⁹⁴ In this proceeding, the U.S. Department of Justice points out “Norfolk Southern’s application to acquire single-firm control of NPBL presents the possibility that it may lessen competition by creating or increasing the ‘ability and incentive to foreclose rivals from sources of supply or distribution.’” *Comment of the United States Department of Justice*, Docket. No. FD 36836, August 27, 2025, p. 3.

by-case basis.”⁹⁵ This has been the case regardless of other, non-rail sources of competitive discipline.

63. Preservation of intramodal rail competition in rail control proceedings where control has been approved has taken multiple forms. These include trackage rights⁹⁶ and other techniques.⁹⁷ The particular mechanism used is tailored to the circumstances based on what is possible and what is likely to be most effective. Trackage rights have been imposed in major mergers to prevent the loss of intramodal rail competition.⁹⁸ In other instances, switching service, at rates in effect *prior* to common control that may eliminate intramodal rail competition, are imposed as conditions.⁹⁹
64. With risk of significant competitive harm and little or no public benefits, policy may call for denial of control authority. In other cases, constraints on the governance rights of a co-owner of some rail assets have been imposed in control transactions, when that ownership interest risks actions that could harm competition. In the recent CSX-Pan Am control transaction, CSXT’s governance rights as new half-owner with NS of Pan Am Southern (“PAS”) are restricted. CSXT is required to recuse itself on issues that relate to competition between CSXT and PAS, agree to arbitration on disputes, and provide rights for NS to force CSXT to sell to NS or a third-party.¹⁰⁰ These are in place to prevent CSXT from impeding competition between PAS and CSXT.

⁹⁵ Surface Transportation Board, *Major Rail Consolidation Procedures*, 66 FR 32582, June 7, 2001, pp. 548-549.

⁹⁶ See *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company*, STB Finance Docket No. 32549, Decision No. 38, August 16, 1995 (hereinafter “BNSF Decision”), pp. 745, 764-765; *Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corporation, et al.*, STB Finance Docket No. 32760, Decision No. 44, August 6, 1996 (hereinafter “UPSP Decision”), p. 403; *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89, July 20, 1998, pp. 215-216; and CSX-Pan Am Decision, pp. 18-19.

⁹⁷ See UPSP Decision, pp. 252-254; BNSF Decision, pp. 764-765; CSX-Pan Am Decision, pp. 18-19.

⁹⁸ See, e.g., BNSF Decision, pp. 739, 764-765.

⁹⁹ CSX-Pan Am Decision, pp. 17-18.

¹⁰⁰ CSX-Pan Am Decision, pp. 11-13. These conditions satisfied STB concerns so that the offer to have a fiduciary serve in CSXT’s stead was deemed unnecessary.

65. The consistent principle of preserving intramodal rail competition—maintaining competition between two independent rail alternatives when a transaction would otherwise reduce it to one—reflects sound economics. Even if, as discussed below, non-rail alternatives may provide some competitive discipline, the most comparable competitive alternative to rail transportation typically is that provided by a second independent railroad.

3. Merger Policy and STB Traffic Exemptions Serve Different Goals

66. NS points out that the STB has ‘exempted’ intermodal traffic under the Board’s regulations.¹⁰¹ This exemption reflects that, under the rail regulatory regime, competition is sufficient to ‘exempt’ this traffic from continued rate regulation. From this, NS concludes that “even if NPBL’s switch rate had an anticompetitive impact on CSXT, it would not have an impact on competition.”¹⁰² While this proceeding is not limited to “NPBL’s switch rate” but rather the competitive effects of NS’s control of NPBL, I show below that this conclusion is unjustified and nonsensical.
67. Merger policy is concerned with preserving competition and preventing transactions that may have the effect of substantially lessening competition. Consistent with this, the STB must consider whether “there is likely to be substantial lessening of competition, creation of monopoly, or restraint of trade” in rail freight transportation as a result of a control transaction.¹⁰³
68. NS basically argues that because IM traffic has been found to be exempt from STB rate regulation, that merger policy is irrelevant and competition cannot be harmed. Merger policy is concerned with the extent to which a specific transaction may harm competition in some market. Nearly all merger analysis is performed on sectors not subject to rate regulation and which rely on competition in free markets. The public policy determination that a sector or line of commerce is not in need of economic rate regulation does not mean that a merger cannot harm competition or consumers of the relevant product. In either case, the competitive effect of a merger or control transaction turns on the analysis of the

¹⁰¹ Revised Application (Public), p. 23.

¹⁰² Revised Application (Public), p. 24.

¹⁰³ 49 U.S.C. § 11324(d)(1).

market(s) in which the companies operate and the potential impact on competition in those market(s). Analysis of the competitive impact of a merger is a different analysis from the determination of whether a certain commodity or line of commerce is subject to or exempt from rate regulation. The latter involves the tradeoff between the potential exercise of market power and the efficiency costs of imposing a rate regulatory regime on some line of economic activity. Indeed, as I show below, NS has the incentive and ability to harm competition to the detriment of POV and international IM shippers utilizing NIT.

C. NS's Application Fails to Preserve Intramodal Competition Between Two Independent Rail Options

69. NS's application for control of NPBL offers no conditions to preserve two independent rail alternatives to NIT. Since the Burlington Northern-Santa Fe merger in the 1990s, it has been standard for applicants in significant control and merger transactions to offer conditions that preserve independent rail options for current and future shippers at locations that would lose a second independent rail alternative.¹⁰⁴ These offered conditions are imposed and often broadened by the STB as part of the approval proceeding. The failure of NS to provide any similar conditions to mitigate the loss of independent rail alternatives serving NIT risks significant harm due to the loss of intramodal rail competition.
70. NS contends that the loss of competing independent rail service at NIT to that provided by NS poses no competitive harm. Rather, NS contends that competition among ports, between terminals at POV, and the ability to dray containers to and from NIT makes elimination of a second independent rail alternative competitively irrelevant.¹⁰⁵ Moreover, NS suggests that the NS-controlled NPBL, by having applied a uniform switching rate, has and will provide no worse a competitive alternative than what an uncontrolled NPBL would provide.¹⁰⁶ I show below that with more thorough examination these claims are not substantiated.

¹⁰⁴ See, e.g., UPSP Decision pp. 243, 253-254 and CSX-Pan Am Decision, pp. 17-18.

¹⁰⁵ Revised Application (Public), p. 8 and Fapp VS 1, pp. 10-13.

¹⁰⁶ Minor Application (Public), pp. 7-8 and Revised Application (Public), pp. 18, 29-30, and footnote 50.

IV. CSXT AND NS COMPETE FOR INTERNATIONAL IM BUSINESS BY OFFERING SERVICE AND RATES ACROSS A BUNDLE OF EC PORTS

A. Ocean Carriers and Railroad Contracting

71. Ocean carriers tend to align rail shipments on the EC with a single carrier—CSXT or NS. Figure 8 shows the share of containers moved by CSXT and NS and thus the alignment of major ocean carriers using NS and CSXT waybill data from 2024.¹⁰⁷ As shown, most major ocean carriers move more than {{[REDACTED]}} of containers with a single railroad, and often this share can be {{[REDACTED]}} or more.¹⁰⁸ {{[REDACTED]}} are exceptions to this pattern and split their business between CSXT and NS in varying proportions.

¹⁰⁷ I include versions of Figure 8 through Figure 12, and Figure 14 using 2018 data in Appendix C, the oldest year of data available for both CSXT and NS. I also include a version of Figure 8 using data from 2018 through 2024 in Appendix C.

¹⁰⁸ CSXT and NS also move international IM shipments for NVOCCs, freight forwarders, and other logistics companies such as {{[REDACTED]}}, which show similar patterns of railroad alignment. CSXT and NS also move international IM shipments for specific large end-shippers, such as {{[REDACTED]}}. These shippers also show patterns of railroad alignment, but the movements tend to involve a more limited number of inland points. CSXT and NS also move shipments directly for the {{[REDACTED]}} in relation to rail moves of containers to and from inland ports associated with the port authorities. See my workpapers.

Figure 8
Alignment of Major Ocean Carriers with East Coast Railroads, 2024



Source: CSXT and NS Traffic Tapes, 2024.

Notes:

- 1) Limited to major VOCCs.
- 2) I consider an ocean carrier to be “aligned” with a railroad if more than {{[REDACTED]}} of its containers are moved with that railroad.
- 3) I group the ocean carriers by their shipping alliance as of 2024, since that is the latest year for which I have container volumes. Some of the alliance memberships have changed as of February 2025. See Figure 3 and associated notes regarding shipping alliances.

72. Figure 8 also demonstrates the relationship between participation in an ocean carrier alliance and alignment with railroads. Apart from {{[REDACTED]}}, all members of an alliance were aligned with the same eastern railroad in 2024. While the other members of {{[REDACTED]}} collectively used {{[REDACTED]}} of its EC IM rail traffic, {{[REDACTED]}} used {{[REDACTED]}} of its traffic in 2024, which falls below the threshold used here for alignment. In 2024, there were no instances in which an alliance member was aligned with an eastern railroad (i.e., moved the large majority of its traffic) that was

different than that used by other members of its alliance. Some of the alliance memberships have shifted as of February 2025, as discussed in Section II.C.1.

73. The contracts between railroads and ocean carriers tend to be multi-year contracts that are often anywhere from {{ [REDACTED] }} in length.¹⁰⁹ Therefore, the opportunity to win business in response to a request for proposal (“RFP”) from ocean carriers {{ [REDACTED] }}. In addition, {{ [REDACTED] }}.¹¹⁰
74. Ocean carriers purchase bundled EC rail service across many lanes and multiple ports.¹¹¹ During the proposal and negotiating process ocean carriers {{ [REDACTED] }}.¹¹² Dozens or hundreds of rates are offered, varying across lanes connecting different ports and inland points, direction, container size, and whether loaded or empty. Ocean carriers select between the railroads based on the array of rates, service, and other aspects of the contractual relationship. The resulting contracts between the ocean carriers and the

¹⁰⁹ See e.g., {{ [REDACTED] }} (STB-NS-0004054) {{ [REDACTED] }} and {{ [REDACTED] }}. See also Kenney VS, p. 2 and Joyner EDVA Deposition, 39:2-3.

¹¹⁰ See e.g., {{ [REDACTED] }}

¹¹¹ Certain large end-shippers, such as {{ [REDACTED] }}, may contract directly for a much narrower set of options. These volumes are {{ [REDACTED] }}. See my workpapers.

¹¹² Kenney VS, p. 3. See also {{ [REDACTED] }} See also {{ [REDACTED] }} See also Joyner EDVA Deposition, 39:16-25.

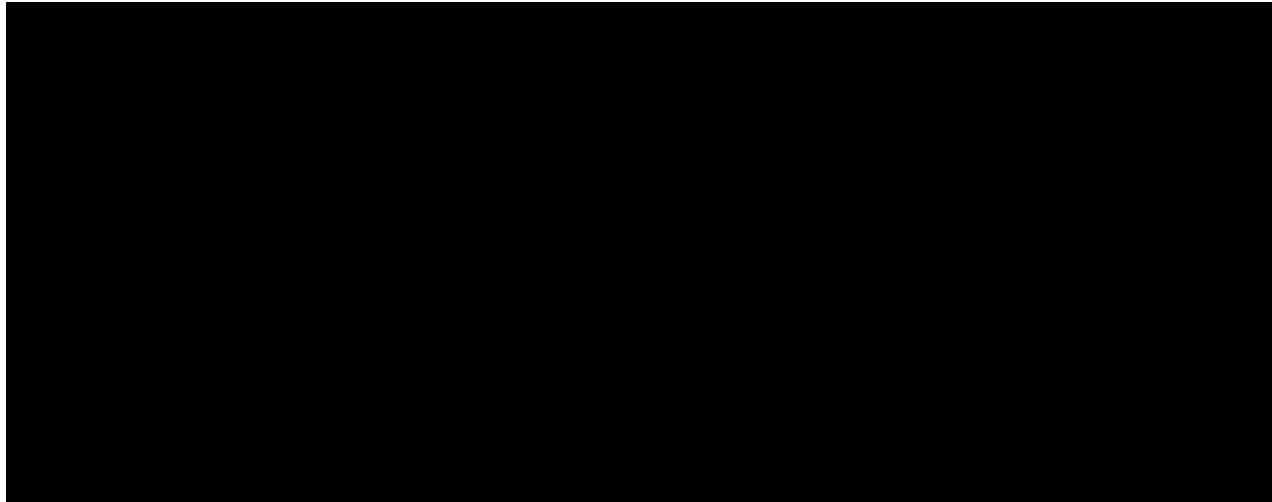
railroads include {{[REDACTED]}}.¹¹³

75. Ultimately, ocean carriers {{[REDACTED]}}. As a result, {{[REDACTED]}}.¹¹⁴ This is borne out in the rail shipping data from NS and CSXT. Figure 9 shows the total volume of containers moving by rail between inland points and each of the big four EC ports by major ocean carrier, along with CSXT's share of that traffic. All of the ocean carriers in Figure 9 {{[REDACTED]}}. And the largest ocean carriers, which account for the overwhelming bulk of the containers, use rail transportation at {{[REDACTED]}}. The ocean carriers usually, but not always, {{[REDACTED]}}.

¹¹³ See, e.g., {{[REDACTED]}}

¹¹⁴ See, e.g., EDVA NPBL001007 at NPBL001025 {{[REDACTED]}} See also Kenney VS, pp. 2-3.

Figure 9
Ocean Carriers' Share of Traffic with CSXT by Big Four EC Port, 2024



}}

Source: CSXT and NS Traffic Tapes, 2024

Notes:

- 1) Limited to major VOCCs. These ocean carriers represent {{[REDACTED]}} of CSXT and NS movements at the big four EC ports.
- 2) Only containers routed through the big four EC ports are shown.
- 3) I consider an ocean carrier to be “aligned” with a railroad based on Figure 8.

B. Ports Compete but Are Inadequate Substitutes to Constrain the Exercise of Market Power by NS at NIT

76. The ocean carriers seek to provide a combination of cost, service, and reliability that satisfies the demand for shipping services in the marketplace. Alliances help take advantage of the economies of scale provided by large container ships and put together schedules of ships serving multiple ports.¹¹⁵ But the choice of ports, port order, ship size, speed and schedule depend on the economics of shipping, inland transportation, and the patterns of demand for container transportation.¹¹⁶ All of these decisions are made in the face of competition from other shipping lines.

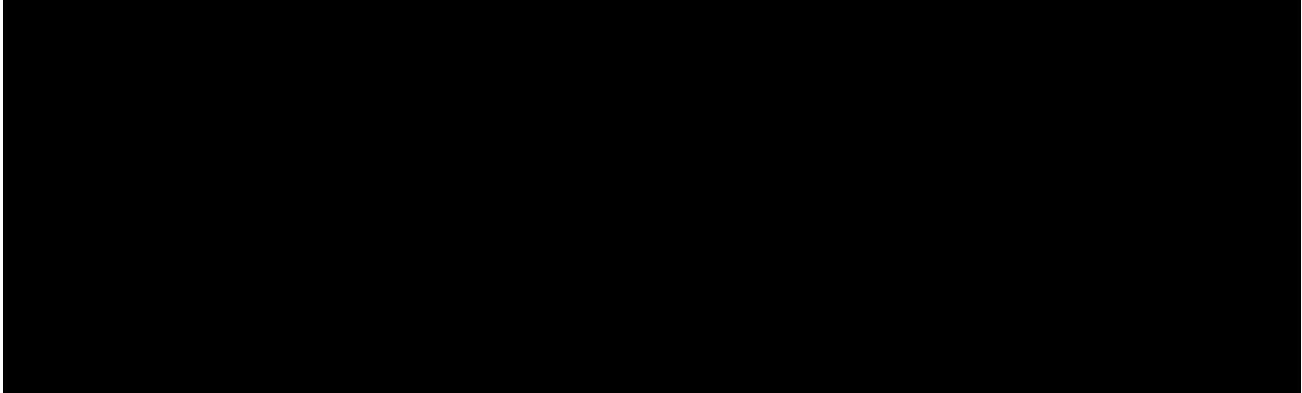
¹¹⁵ Impact of Alliances on Container Shipping Report, pp. 12-13.

¹¹⁶ See Fransoo and Lee 2013, p. 258 (“Moving containers from source to destination requires many operational coordination decisions to be taken, especially addressing the moment of handover of the container from one player to the next. To do this, decision makers have a lot of decision variables to take into account, such as the sailing speed, the stacking sequence in the ocean vessel, the handling of containers in the ocean terminal, the routing of the ships, and the mode selection of the hinterland transportation.”)

77. One consideration among many in the choice of port is the ability of the port to connect efficiently to inland locations. Multiple ports may be capable of economically reaching common inland locations. But the evidence below shows that this ability does not induce ocean carriers to fully substitute one port for another for this traffic.
78. An examination of NS and CSXT waybill data demonstrates how multiple ports are utilized to reach inland locations. Figure 10 shows the count of containers moving between inland BEAs and respective EC ports, by railroad.¹¹⁷ The first notable observation from the table is that the PONYNJ and POV have {{[REDACTED]}} with the other two large EC ports of Savannah and Charleston in terms of the inland regions that are served by rail. The BEAs of {{[REDACTED]}}
[REDACTED]
[REDACTED]}}, whereas rail service to other BEAs such as {{[REDACTED]}}
[REDACTED]
[REDACTED]}}. This pattern of traffic demonstrates that for many inland regions, all East Coast ports do not serve as substitutes.

¹¹⁷ BEAs define “relevant regional markets surrounding metropolitan or micropolitan statistical areas.” See “New BEA Economic Areas for 2004,” *Bureau of Economic Analysis*, November 17, 2004, <https://www.bea.gov/sites/default/files/newsreleases/general/2004/pdf/rea1104.pdf>.

Figure 10
Rail Container Traffic by Inland BEA, Big Four EC Port, and Railroad, 2024{{



}}

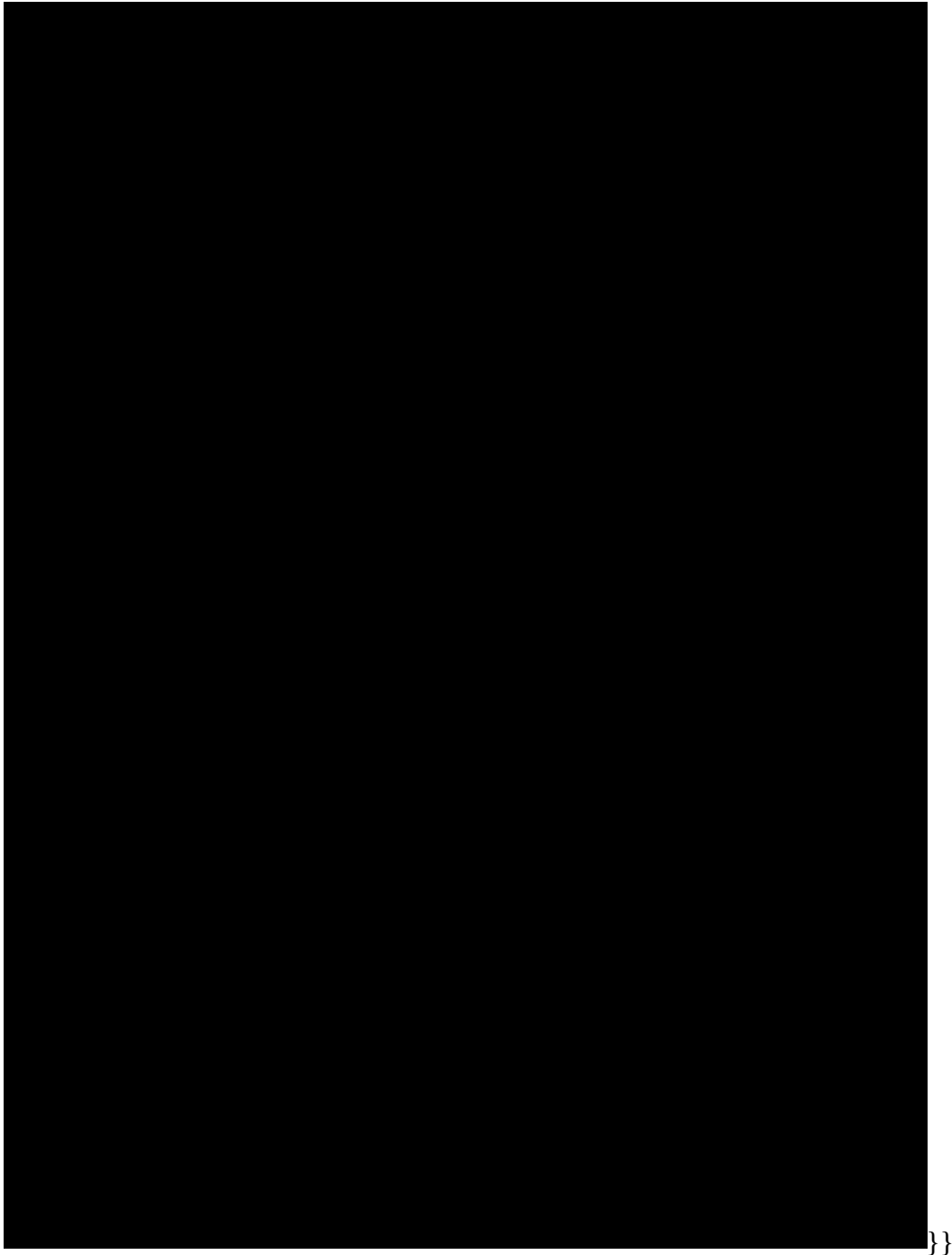
Source: CSXT and NS Traffic Tapes, 2024

Notes:

1) Only BEAs with more than {{ [REDACTED] }} containers across the big four EC ports are shown. “All BEAs” total includes BEAs not shown.

79. The largest ocean carriers use {{ [REDACTED] }}
[REDACTED] }}. Figure 11 shows rail container volumes moved on behalf of major ocean carriers to the ocean carrier’s largest four stations, and whether those containers moved via POV or PONYNJ. As an example, the table shows {{ [REDACTED] }}
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

Figure 11
Ocean Carriers Serve Inland Stations over both POV and PONYNJ, 2024{{



Source: CSXT and NS Traffic Tapes, 2024

Notes:

- 1) An ocean carrier is considered “aligned” with a railroad if more than {{[REDACTED]}} of containers are moved with that railroad.
- 2) Limited to major VOCCs with greater than {{[REDACTED]}} POV/PONYNJ containers. Each of the ocean carrier’s four largest inland stations over POV and PONYNJ are shown.

80. The pattern above is observed consistently across the remainder of inland stations. Figure 12 below shows that {{[REDACTED]}} of containers that are routed over POV and PONYNJ are going to and from inland stations where shippers choose to {{[REDACTED]}}. The table also shows that most major ocean carriers {{[REDACTED]}}.

¹¹⁸ I consider an ocean carrier to route traffic over both POV and PONYNJ for a given inland station when it routes {{[REDACTED]}} to and from an inland station over both ports. If the threshold to route traffic over POV or PONYNJ is increased to {{[REDACTED]}}, the overall share is {{[REDACTED]}}. See my workpapers.

Figure 12

The {{[REDACTED]}} of POV/PONYNJ Rail Containers Move to Inland Stations where Ocean Carriers Route Traffic over both POV and PONYNJ, 2024{{[REDACTED]}}



Source: CSXT and NS Traffic Tapes, 2024

Notes:

- 1) Limited to major VOCCs moving traffic over POV or PONYNJ.
- 2) An ocean carrier is considered “aligned” with a railroad if more than {{[REDACTED]}} of containers are moved with that railroad.
- 3) I consider an ocean carrier to route traffic over both POV and PONYNJ for a given inland station when it routes at least 10% of its POV/PONYNJ containers to and from an inland station over each of POV/PONYNJ.

81. The patterns of ocean carrier behavior shown above arise despite railroads {{[REDACTED]}}
[REDACTED]
[REDACTED]}}. As an example, Figure 13 below shows {{[REDACTED]}}
[REDACTED]
[REDACTED]
[REDACTED]}} along with imported container counts from 2024 to illustrate which

railroad and route combinations are being used by ocean carriers.¹¹⁹ The differences in base line haul rates shown are {{ [REDACTED] }} for a given ocean carrier to ship a container to an inland location by rail from POV compared to PONYNJ.¹²⁰ Base line haul rates for rail service to the same inland location from POV and PONYNJ have not equalized in response to competitive forces. Additionally, despite the differences in base line haul rates for a rail movement to the same inland location from POV and PONYNJ, ocean carriers still use rail services over multiple ports for movements to the same inland location.

¹¹⁹ The base line haul rates reflect rates stated in the contract, but typically exclude adders (e.g., fuel-surcharges) and annual escalations that may be assessed. These adjustments are typically done as a proportion of the base rate. Additionally, the line haul rates shown are not directly comparable across shippers due to the varying time period from which the listed base line haul rates are available. The container counts are for all imported containers (i.e., including loaded and empty, and 40-foot and 20-foot, as I am unable to distinguish between these in both the CSXT and NS data). The container counts shown in the figure are not intended to represent the number of containers that paid the associated base line haul rate.

{{ [REDACTED] }}

¹²⁰ {{ [REDACTED] }}

Figure 13
Ocean Carriers Demand Rail Services Across East Coast Ports
Despite Differences in Rates}}



Source:}}

}}

}} CSXT and NS

Traffic Tapes, 2024.

Notes:

1) The ocean carriers shown are the two largest aligned carriers for CSXT and NS, respectively. The three metropolitan areas are the Midwest areas with the most rail containers served through POV and PONYNJ; see Figure 10. The container counts shown are for all import rail containers, as I am unable to distinguish between loaded and empty, and 20- and 40-foot containers in both the CSXT and NS waybill data. The container counts in the figure are not intended to represent the number of containers that paid the associated base line haul rate.

2) Rates shown are base line-haul rates for 40-foot (and 45 foot) loaded containers (these make up the majority of EC port to inland destination traffic). The base line haul rates are those stated in the contract, which typically exclude adders (e.g., fuel-surcharges) and annual escalations that may be assessed. These adjustments are typically done as a proportion of the base rate. The line haul rates shown are not directly comparable across shippers due to the varying time period from which the line haul rates are available. }}

3) In 2024, }}

See Figure 9 above. The most recent contract (and therefore rates) with }}

82. The analyses above demonstrate that ocean carriers exhibit demand preferences that cause them to request rail services across EC ports. Given that the rail transportation component

is a small piece of the logistical planning involved for ocean carriers, railroads do not attempt to push ocean carriers to use specific ports but rather work to offer ocean carriers a bundle of services that meets the ocean carriers' needs across the various ports, marine terminals, and inland regions.¹²¹ In most cases, ocean carriers utilize {{ [REDACTED] [REDACTED] }} across EC ports where feasible.

83. Internal documents from NS {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] }}¹²² In addition, another NS document describes one of the {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] }}¹²³ The document goes on to describe how ocean carriers {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] }}, and that in order to {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] }}¹²⁴ NS personnel have further confirmed {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] }}¹²⁵

84. Not only do railroads {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] }}¹²⁶ Rate sheets provided by both CSXT and NS to ocean carriers that I have reviewed {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] }}¹²⁷ In

¹²¹ Kenney VS, pp. 2-3.

¹²² See EDVA NPBL003180 at NPBL003192.

¹²³ See EDVA NPBL002611 at NPBL002620.

¹²⁴ See EDVA NPBL002611 at NPBL002622.

¹²⁵ Joyner EDVA Deposition, 35:19-36:11, 142:12-21.

¹²⁶ Kenney VS, p. 3 and Joyner EDVA Deposition, 35:19-36:11.

¹²⁷ See {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] }} See also {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] }}

particular, CSXT rates for {{[REDACTED]}}
 [REDACTED]}}¹²⁸

85. As I have shown, alternative EC ports are inadequate substitutes to constrain NS's ability to exercise of market power at NIT for many of the inland IM locations served by rail. Ocean carriers making decisions regarding ports to access inland locations weigh and balance a multitude of factors beyond the final price or route of the rail service. With multiple ocean carriers sharing space on large container ships and the logistics of loading and unloading ships efficiently with thousands of containers across multiple ports, it is not surprising that inland freight can be routed through multiple ports.¹²⁹ This is consistent with the findings in Figure 5, which showed that container ships frequently call at both PONYNJ and POV when serving the East Coast. Ocean carriers also operate various routes that call at different sets of ports, necessitating contracting for and routing traffic over multiple ports.¹³⁰ Additionally, ocean carriers may make use of service over multiple ports due to a desire for flexibility in dealing with port congestion.¹³¹ If East Coast ports (or even PONYNJ and POV) were adequate substitutes for serving an inland region, then ocean carriers could choose to route all of their traffic for that inland region over the port with best price-service combination. In the face of differential relative prices, ocean carriers choose to use multiple ports. There is no indication that relative rail rates are set to just equalize the value of using PONYNJ and POV. Instead, the patterns of ocean carrier traffic shown above indicate that the decisions made by ocean carriers about how and where to route traffic destined to Midwestern rail-served locations are based on competing considerations beyond the relative cost of rail transportation at different ports. Ocean

[REDACTED]}} See also Joyner EDVA Deposition, 36:12-20.

¹²⁸ See {{[REDACTED]}}

¹²⁹ There is substantial literature on the efficiency and optimization of marine terminal operations. See, e.g., Stahlbock & Voß 2008, pp. 3-6.

¹³⁰ See, e.g., Port of Virginia, *Ocean Services Guide: May 2025*, last date accessed August 19, 2025, <https://operations.portofvirginia.com/wp-content/uploads/2025/05/Ocean-Services-Guide-May-2025.xlsx>.

¹³¹ See, e.g., Theo E. Notteboom, "The Time Factor in Liner Shipping Services," *Maritime Economics & Logistics*, vol. 8, 2006, pp. 19-39, at p. 35.

carriers cannot simply avoid the harm to competition from the loss of an independent NPBL-CSXT on-dock rail option at NIT by substituting to another EC port.

86. Mr. Fapp discusses competition among ports and claims the flexibility of ocean carriers to call on other ports “puts competitive pressure on NS and NPBL” at NIT and POV.¹³² He focuses on the costs of using ports but acknowledges that the selection of a port by a carrier “can be greatly impacted by other factors” such as trade patterns and geography.¹³³ In tension with the role of these “other factors,” Mr. Fapp quantifies the elasticity of port volumes with respect to “port and transportation costs” and finds it to be large, relying on results contained in two studies.¹³⁴ I have concerns about the reliability of these studies.¹³⁵ However, even taking them as given, Mr. Fapp misinterprets their implications for purposes of this proceeding and draws erroneous conclusions.
87. First, the elasticity that Mr. Fapp seeks to calculate is irrelevant to understanding the competition among railroads. The costs he considers are those at the port and are compared to the calculated costs for the shipping of containers from origin to destination. As the cost to shippers of U.S. rail transportation between ports and inland locations is a fraction of the total transportation cost from ultimate origin to ultimate destination, the

¹³² Fapp VS 1, pp. 11-13, quote at p. 13.

¹³³ Fapp VS 1, p. 12.

¹³⁴ One study he claims shows a one percent price increase in transportation costs through PONYNJ would lead to a 13 percent decline in inland volumes. See Fapp VS 1, p. 12; Meifeng Luo and Thanas A. Grigalunas, “A spatial-economic multimodal transportation simulation model for US coastal container ports,” *Maritime Economics & Logistics*, vol. 5, no. 2, pp.158-178 (“Multimodal Simulation”). The second result claims to show a one percent increase in transportation costs through Los Angeles/Long Beach would lead to 15 percent decline in inland volumes. See “Final Report – Port and Modal Elasticity Study, Phase II for Southern California Association of Governments,” *Leachman & Associates LLC*, September 7, 2010, at p. 9 (“SCAG Final Report”), and cited in Federal Maritime Commission, *Study of U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports*, July 2012 (“U.S. Inland Cargo”), at p. 55. The results in U.S. Inland Cargo are obtained from the SCAG Final Report.

¹³⁵ One study assumes that the port through which container traffic travels is determined solely by the total cost of transportation between foreign port and U.S. location and therefore does not account for the “other factors” that affect port selection. This assumption is inconsistent with the observed behavior discussed above in this section. The other study incorporates impacts of port congestion but is otherwise similar.

same percentage change in rail rates would, according to the simulation studies, produce a change in port traffic that is a fraction of that obtained by Mr. Fapp.¹³⁶

88. Second, Mr. Fapp's use of elasticities to argue for the competitiveness of EC ports to constrain NS's exercise of market power at NIT does not account for the likelihood that the railroad would continue to serve any traffic diverted from the port in response to an increase in rail rates. Consider an increase in NS's rail rates at NIT that causes some traffic to shift to another marine terminal or port. At NIT, NS would obtain higher rates and lower volumes. However, for an NS-aligned ocean carrier those containers would, with high likelihood, travel on NS at another port or marine terminal. Even if NS did not keep all of the diverted traffic, it would obtain enhanced profits from higher rates at NIT and obtain some contribution from the containers moved at the other port. The net effect on NS's profits depend on the margins earned and the volume of traffic recaptured at the other port. Thus, some degree of substitutability between ports and marine terminals does not eliminate NS's incentive to foreclose NPBL and CSXT from providing on-dock service at NIT or eliminate the risk of harm to POV and ocean carriers at NIT.
89. Mr. Fapp concludes that, as a result port-to-port competition, "NS and NPBL have an economic incentive to ensure that NPBL's switching rates remain competitive."¹³⁷ This is a non-sequitur, as NS has no incentive for NPBL's switching rate to be "competitive" to serve NIT.¹³⁸ Regardless of the existence or degree of competition among ports, NS gains nothing by NPBL having a switching rate that permits on-dock rail competition at NIT.

¹³⁶ A published article by the author of the SCAG Final report utilizing the same model emphasizes the importance of other non-price factors, including capacity and quality of rail service, in determinants of port choice. "...imports are highly sensitive to congestion relief, more specifically, highly sensitive to compression of the distributions of lead times for container movement. When juxtaposed with container fees of \$100 per TEU or less, a major program of infrastructure improvements in Southern California featuring dedicated truck lanes from ports to trans-load warehouse districts plus increased rail and rail terminal capacities would result in a major increase in trans-loaded traffic handled through the San Pedro Bay ports, with only minor loss in total import volume." See Robert C. Leachman, "Port and modal allocation of waterborne containerized imports from Asia to the United States," *Transportation Research Part E: Logistics and Transportation Review*, vol. 44, no. 2, 2008, pp. 313-331, at p. 329.

¹³⁷ Fapp VS 1, p.13.

¹³⁸ As NPBL is not switching international IM traffic, it has no role with respect to container port competition.

An NPBL-CSXT routing could only threaten NS's {{[REDACTED]}} share of on-dock rail traffic at NIT, upon which NS would lose traffic, be forced to lower rates, or both.

90. Mr. Fapp also states that railroads face intense intermodal competition from truck carriers.¹³⁹ Though Mr. Fapp notes that this competition is most acutely felt for movements less than 500 miles, he does not differentiate between domestic and international intermodal shipments and includes local traffic when discussing the share of POV traffic served by trucks.¹⁴⁰ Rail shipments account for the {{[REDACTED]}} of traffic moving between POV and the inland BEAs identified in Figure 10.¹⁴¹ In addition, truck freight rates for service between POV and many inland BEAs in the Midwest shown in Figure 10 are {{[REDACTED]}} higher than corresponding rail rates,¹⁴² thereby reducing their ability to act as a competitive constraint on the railroads. The evidence indicates that trucks would not be an adequate constraint on NS's ability to exercise market power for transportation of containers from NIT to inland regions in and near the Midwest.

V. POV AND SHIPPERS SUFFER FROM LACK OF EFFECTIVE ON-DOCK RAIL SERVICE BY NPBL-CSXT

A. Drayage is an Inferior Option to On-Dock Rail Due to Levels of Service, Reliability, and Capacity

91. NS asserts that drayage provides shippers with an "effective competitive alternative" for accessing rail service on CSXT at NIT.¹⁴³ This conclusion is inconsistent with statements by railroads, shippers, ports, and other industry participants that drayage tends to be

¹³⁹ Fapp VS 1, p. 15.

¹⁴⁰ Fapp VS 1, p. 8, p. 15. In deposition Mr. Fapp stated a range of {{[REDACTED]}}, based on his experience. See Fapp Depo 123:7-19. CSXT personnel have testified that {{[REDACTED]}}, see Piacente EDVA Deposition, 62:12-64:16.

¹⁴¹ See my workpapers.

¹⁴² Carey VS, p. 19.

¹⁴³ See Minor Application (Public), pp. 33-34 and Fapp VS 1, p. 8. For purposes of this analysis, I focus on drayage as the movement by truck of a container between port and IM railyard or terminal, rather than general use of trucking between a port and final destination.

inferior in terms of service quality and reliability compared to on-dock rail access for international IM. As explained in Section II above, drayage to an off-dock rail terminal introduces extra logistical steps as well as subjecting the movement to potential capacity constraints. This results in drayage being seen as an inferior competitive option to on-dock rail by customers.

92. NS testimony and documents confirm that drayage is usually an inferior competitive option versus on-dock rail. Kenneth Joyner, NS's head of international intermodal in 2018, testified that drayage {{[REDACTED]}}, and that {{[REDACTED]}}¹⁴⁴ In an NS email chain from 2015, personnel describe how {{[REDACTED]}}¹⁴⁵ In another NS email chain from 2018 relating to {{[REDACTED]}}¹⁴⁶ Finally, an internal NS weekly intermodal report from March 2, 2018 mentions {{[REDACTED]}}¹⁴⁷
93. Capacity issues with drayage service can arise at both ports and inland terminals that raise questions about service reliability and capability. An email chain from 2018 between NS personnel discusses {{[REDACTED]}}

¹⁴⁴ See Joyner EDVA Deposition, 33:1-12. Mr. Fapp also testified at deposition that if a shipper was interested in minimizing the number of lifts for a shipment, that shipper would have a preference for on-dock rail, Deposition of Daniel Fapp, August 13, 2025, 111:10-112:10.

¹⁴⁵ EDVA NSR_00122610.

¹⁴⁶ STB-NS-0025131-STB-NS-0025132.

¹⁴⁷ STB-NS-0005353 at STB-NS-0005354.

{}¹⁴⁸ An NS marketing presentation to {{
 {}
 {}¹⁴⁹

94. There are numerous examples of industry participants and trade press discussing the disadvantages of drayage relative to on-dock rail for both ports and shippers. Government agencies, including the U.S. Department of Transportation and its Bureau of Transportation Statistics (BTS), have regularly emphasized the efficiency benefits of on-dock rail. According to BTS, “on-dock rail eliminates the need for drayage trucks” and thereby reduces port congestion and improves operational efficiency at container terminals.¹⁵⁰
95. Substantial resources are devoted to creating near or on-dock rail service where it had not previously existed. The South Carolina Ports Authority recognized that inefficient rail access was a disadvantage for the Port of Charleston because it created a reliance on truck movements. It has touted the development of the Navy Base ICTF near-dock rail project, stating that “The Port of Charleston is currently the only port on the East Coast without on-dock or near-dock rail... The Navy Base Intermodal Facility will make SC Ports more competitive.”¹⁵¹ The facility will have a dedicated access road between the port and rail facility. As the facility was being planned there was a question, due to the proposed route, as to whether CSXT and NS would both have direct rail access to the near-dock facility.¹⁵² In one scenario, NS would not have had direct rail access except through CSXT-owned track. In response to the suggestion that NS could dray containers four miles to its existing Charleston IM facility to avoid the costs and operational issues of rail access over CSXT,

¹⁴⁸ See STB-NS-0001814 at STB-NS-0001815.

¹⁴⁹ See EDVA NSR_00006130 at NSR_00006140-41.

¹⁵⁰ See BTS Port Freight Report 2025, pp. 33-34.

¹⁵¹ “SC Ports Developing Near-Dock Rail at the Port of Charleston,” *South Carolina Ports*, October 17, 2022, <https://scspa.com/news/sc-ports-developing-near-dock-rail-at-the-port-of-charleston/>. The Navy Yard ICTF will feature a one-mile dedicated highway for drayage trucks between the marine terminal and the rail yard.

¹⁵² See Daniel Brock, “Norfolk Southern Says Charleston Rail Plan ‘Hollow’,” *BLET*, July 16, 2010, <https://ble-t.org/news/norfolk-southern-says-charleston-rail-plan-hollow/>.

NS stated that it “would be a considerable disadvantage to not have direct rail access when our competitor does.”¹⁵³

96. Other industry participants note the delays in intermodal service that the drayage component of a movement can cause. Intermodal service can suffer due to reliance on drayage, attributed to causes such as driver shortages, congested terminals, and the limitations of truck gate times.¹⁵⁴ Other ports and railroads have also recognized the advantages that on-dock rail can provide compared to drayage; the Port of Long Beach in California expanded on-dock capacity in order to “reduce drayage,” “improve intermodal freight velocity,” and “handle that additional freight.”¹⁵⁵
97. The contracts that ocean carriers negotiate with CSXT and NS {{[REDACTED]}}. During CSXT’s latest negotiations with {{[REDACTED]}}. Language was added to the contract such that if {{[REDACTED]}}¹⁵⁶ Similarly, {{[REDACTED]}}¹⁵⁷ Ocean carrier preference for on-dock rail results in decisions on how and which railroad will handle its rail container traffic.¹⁵⁸

¹⁵³ Daniel Brock, “Norfolk Southern Says Charleston Rail Plan ‘Hollow’,” *BLET*, July 16, 2010, <https://ble-t.org/news/norfolk-southern-says-charleston-rail-plan-hollow/>.

¹⁵⁴ See William B. Cassidy, “Truck driver shortage threatens intermodal growth,” *Journal of Commerce*, April 15, 2015.

¹⁵⁵ See “Port of Long Beach Gets Funding for On-dock Rail to Lighten Load from Drayage Fleet,” *FreightWaves*, November 20, 2018, <https://www.freightwaves.com/news/rail-long-beach-on-dock-rail-project>.

¹⁵⁶ See {{[REDACTED]}}

¹⁵⁷ See {{[REDACTED]}}

¹⁵⁸ See {{[REDACTED]}}

B. Drayage at NIT is an Inferior Competitive Option to On-Dock Rail

98. As discussed in Section II.D, CSXT currently uses drayage to and from VIG to serve ocean carriers at NIT. The inferiority of drayage-to-VIG relative to on-dock rail access at NIT is demonstrated in CSXT’s interactions with customers and POV.
99. In this proceeding, POV filed comments stating that CSXT’s drayage program at NIT is “inefficient, and unnecessarily congests local roads.”¹⁵⁹ Additionally, an email between VIT and CSXT summarizes the issues that CSXT’s drayage operation can face, as VIT, POV’s port operator, told CSXT in 2018, {{[REDACTED]}}.¹⁶⁰ As reported in 2019, POV has expressed the desire to prioritize on-dock rail access, aiming to “eliminat[e] as many unnecessary drays as possible,” thereby quickening transfers from vessel to train. The port has taken steps to reduce “time-consuming drays between terminals,” such as reassigning which marine terminal each vessel calls at based on its alliance.¹⁶¹
100. CSXT’s own experience with serving ocean carriers at POV demonstrates that its current drayage service for NIT traffic is viewed as inferior to on-dock rail. A 2016 email between CSXT personnel discussed an opportunity for new business from {{[REDACTED]}} that would require CSXT to serve {{[REDACTED]}} CSXT personnel outlined that this would {{[REDACTED]}} due to {{[REDACTED]}}
{{[REDACTED]}}
{{[REDACTED]}}.¹⁶³
101. Similarly, {{[REDACTED]}} contacted CSXT in 2017 about providing on-dock rail service to vessels docking at NIT, indicating that it was {{[REDACTED]}}

¹⁵⁹ See POV Comments (Public), p. 4.

¹⁶⁰ See EDVA CSXT0066199.

¹⁶¹ See Ari Ashe, “Virginia port service shuffle promises faster rail flow,” *Journal of Commerce*, August 23, 2019.

¹⁶² See EDVA CSXT0049331.

¹⁶³ See EDVA CSXT0049331.

{}¹⁶⁴ When advised that CSXT service would require drayage, {} responded that its {}¹⁶⁵

102. In 2015 especially, CSXT faced many issues adequately servicing customers via drayage at NIT.¹⁶⁶ In a 2015 email chain between {} and CSXT personnel, {} indicated that due to delays in service it was considering switching to NS given that NS {}¹⁶⁷ {}
{}
{}
{}¹⁶⁸ In the same email CSXT personnel also noted {}
{}¹⁶⁹

103. Lack of effective on-dock rail access at NIT also reduces CSXT’s competitive offering to ocean carriers more broadly. In 2018, CSXT personnel reported that {}
{}
{}¹⁷⁰ The business across multiple EC ports {}
{}
{}¹⁷¹

104. CMA CGM has stated in comments to the Board that it desires “rail competition at the terminals that [CMA CGM] serves” and that it is concerned that NS control of NPBL

¹⁶⁴ See EDVA CSXT0136053.

¹⁶⁵ See EDVA CSXT0136053.

¹⁶⁶ See Kenney VS, p. 5.

¹⁶⁷ See EDVA CSXT0036816.

¹⁶⁸ See EDVA CSXT0001288 and EDVA CSXT0090235.

¹⁶⁹ See EDVA CSXT0090235.

¹⁷⁰ See EDVA CSXT0067122.

¹⁷¹ See also {}
{} (STB-NS-0004071 - STB-NS-0004073).

might prevent CSXT from becoming “an effective rail competitor at [NIT]”.¹⁷² CMA CGM considers CSXT an inferior competitor at NIT due to CSXT’s lack of on-dock service.

105. CSXT’s experience shows that its customers consider drayage an inferior competitive option to on-dock rail at NIT. Drayage by CSXT does not provide an adequate competitive constraint on NS’s ability to exert market power at NIT. Ocean carriers likely suffer competitive harm to due to a lack of independent intermodal on-dock rail options at NIT.

C. POV Incurs Costs Due to Lack of On-Dock Rail Service for CSXT at NIT

106. The POV also suffers from the inability of CSXT to effectively access NIT through NPBL. Acting under its goal of increasing available options and service for shippers using POV, VIT (as the port operator) agreed to a contract with CSXT to absorb half the cost of the required drayage to service CSXT customers at NIT, absent an independent and cooperative NPBL.¹⁷³ As of October 2024, POV’s portion was approximately {{[REDACTED]}} per container.¹⁷⁴ POV’s subsidy for the drayage cost for CSXT containers drayed to and from NIT is a cost that POV does not incur for containers that move through on-dock rail at either VIG or with NS at NIT. POV agrees and has filed comments stating that the due to the CSXT drayage program, “POV and its customers are impacted by the operational and cost consequences of the costly work-around.”¹⁷⁵ Economically practical on-dock rail access to NIT via an independent and cooperative NPBL would relieve POV of this additional expense.

107. As described in more detail in the following section, on-dock rail at VIG for CSXT does not offset the absence of on-dock rail at NIT. Comments filed by POV describe how, due

¹⁷² Letter Re: STB Docket No. FD 36836 from Djordje Tubic to Cynthia T. Brown, March 12, 2025.

¹⁷³ See {{[REDACTED]}}

¹⁷⁴ See {{[REDACTED]}}

¹⁷⁵ POV Comments (Public), p. 5.

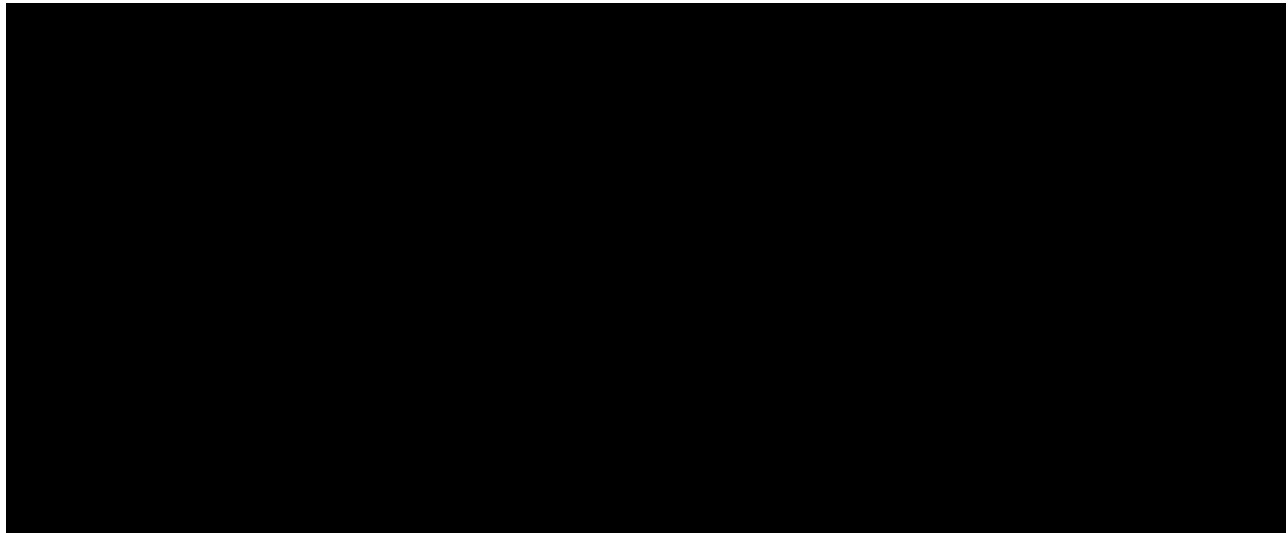
to the dynamics of shipping alliances and railroad alignment, its efficient operation “is compromised when a shipping line calling NIT has boxes bound for CSXT rail.”¹⁷⁶ VIT’s decision to subsidize the cost of CSXT’s drayage offering makes one thing clear; ocean carriers do not view drayage as an adequate competitive alternative to on-dock rail. If they did, VIT would have no incentive or need to subsidize drayage at NIT. Rather, VIT has determined it is in its best interest to incur additional costs to ensure CSXT can move rail containers that land at NIT.

D. On-Dock Rail Service at VIG is not an Adequate Competitive Alternative to On-Dock Rail Service at NIT

- [illegible]

176 POV Comments (Public), p. 4.

Figure 14
Ocean Carriers' Use of POV Terminals NIT and VIG, 2024



}}

Source: CSXT and NS Traffic Tapes, 2024

Notes:

- 1) Limited to major VOCCs moving traffic over POV.
- 2) Total includes containers moved for other entities not shown (i.e., NVOCCS, Freight Forwarders, and Ports, see footnote 108 above). The VOCCs shown represent {{ [REDACTED] }} of POV traffic in 2024.
- 3) “On-Dock” and “Via Drayage” describes the railroads’ predominant methods of access to the terminal.

109. The observation from Figure 14 that ocean carriers often require access to both NIT and VIG is in part because ocean carriers do not ultimately control the terminal at which their vessel docks; VIT does.¹⁷⁷ While VIT has historically attempted to send vessels for CSXT-aligned ocean carriers to VIG and NS-aligned ocean carriers to NIT, this is not always feasible.¹⁷⁸ The primary consideration for marine terminal choice that constrains VIT’s operation is whether an appropriate berth for the vessel is available, and during prior

¹⁷⁷ See Joyner EDVA Deposition, 36:21-37:5 and Kenney VS, p. 3.

¹⁷⁸ Ari Ashe, “Virginia port service shuffle promises faster rail flow,” *Journal of Commerce*, August 23, 2019 (“Carriers aligned with CSX, for example, should be going into VIG rather than NIT... The goal is to always keep rail alliances in mind when making these shifts, but it’s not possible to completely avoid situations where CSX containers arrive in NIT and have to be trucked to VIG.”)

periods of construction or congestion VIT has had to alter the marine terminal at which certain vessels dock.¹⁷⁹

110. Additional complications arise where not all ocean carriers in an alliance are fully aligned by railroad, resulting in a vessel carrying containers that are contracted for service with both CSXT and NS.¹⁸⁰ This is likely to continue to be a complicating factor in the future as a recent reshuffling of ocean carrier alliances has produced the {{ [REDACTED] }} which is comprised of {{ [REDACTED] }} and {{ [REDACTED] }}.¹⁸¹ For efficiency's sake, alliances prefer to dock at a single marine terminal in a port.¹⁸² Changes in alliances can place pressure on ocean carriers to align their railroad partner with the partner used by the other members of the alliance.¹⁸³
111. Misalignment of preferred rail partners within an alliance creates different incentives on uses of ports and marine terminals within the alliance. Today, VIT's guide to "Ocean Services" (dated May 2025) identifies a terminal for each "service" calling at POV. The {{ [REDACTED] }}, are listed as calling at both VIT and NIT, depending on the "service".

¹⁷⁹ Ari Ashe, "Virginia port service shuffle promises faster rail flow," *Journal of Commerce*, August 23, 2019 ("When the berth a vessel needs isn't available in VIG and we send it over to NIT it could be an ocean carrier aligned with CSX"). See also, Capozzi EDVA Deposition 91:14-93:7 ({{ [REDACTED] }}).

¹⁸⁰ Ari Ashe, "Virginia port service shuffle promises faster rail flow," *Journal of Commerce*, August 23, 2019. ("There are also alliances, such as the OCEAN Alliance, in which some members are aligned with NS and others with CSX, so a vessel could have a mixture of containers going to each railroad. Capozzi said it may not always be possible to route vessels into VIG, so drayage between terminals will never be completely eliminated.")

¹⁸¹ Given the nature of the long term and asynchronous nature of the contracts between railroads and ocean carriers (see Paragraph 73 above), it would be difficult for an ocean carrier in an alliance that is predominantly NS-aligned and using NIT to choose to align with CSXT and divert dockings to VIG. In fact, in 2020, HMM purportedly switched alignment of its western railroad partner to better align with other carriers in THE Alliance. See Ari Ashe, "HMM changes western US rail partner to gain alliance efficiencies," *Journal of Commerce*, June 19, 2020.

¹⁸² Impact of Alliances on Container Shipping Report, p. 80.

¹⁸³ Ari Ashe, "HMM changes western US rail partner to gain alliance efficiencies," *Journal of Commerce*, June 19, 2020.

112. VIT's Ocean Carrier Services points out that a service's designated terminal is "subject to change."¹⁸⁴ Communications between railroads and ocean carriers confirm that scheduled terminals do change for a variety of reasons and that both ocean carriers and railroads have to work to adjust to maintain expected service levels.¹⁸⁵
113. More broadly, shippers would benefit from contracting with a railroad that provides on-dock access at both POV terminals in order to be able to respond to unforeseen occurrences such as terminal congestion. An internal NS email from 2015 describes how {{ [REDACTED] }}
 [REDACTED]
 [REDACTED]
 [REDACTED] }}¹⁸⁶ {{ [REDACTED] }}
 [REDACTED]
 [REDACTED] }}
114. Another NS document reporting on negotiations with {{ [REDACTED] }} for a new contract in 2017 acknowledges that on-dock rail service at VIG is not a substitute for on-dock rail service at NIT. The presentation notes that NS will {{ [REDACTED] }}
 [REDACTED]
 [REDACTED] }}¹⁸⁷ This is consistent with the conclusion that ocean carriers could have benefited from reduced rates had CSXT-NPBL had effective on-dock access at NIT with which NS would have to compete. Due to CSXT's lack of on-dock access at NIT, {{ [REDACTED] }} does not appear to have benefitted from competition between CSXT and NS. Because ocean carriers cannot completely control their designated marine terminal at POV and may desire a rail partner

¹⁸⁴ See Port of Virginia, *Ocean Services Guide: May 2025*, last date accessed August 19, 2025, <https://operations.portofvirginia.com/wp-content/uploads/2025/05/Ocean-Services-Guide-May-2025.xlsx>.

¹⁸⁵ See EDVA CSXT0136053 {{ [REDACTED] }}; STB-NS-0003891 at STB-NS-0003892 {{ [REDACTED] }} STB-NS-0002393
 {{ [REDACTED] }}
 [REDACTED] }}

¹⁸⁶ See EDVA NSR_00128765.

¹⁸⁷ See EDVA NSR_00005081.

with on-dock rail access to both marine terminals they will continue to evaluate CSXT's overall service offering (and at POV in particular) based on CSXT's access to both NIT and VIG.

115. As discussed above in Section II.A, NIT is undergoing a large expansion. VIG, however, has already expanded as much as possible.¹⁸⁸ This means that CSXT's competitive disadvantage due to lack of NIT on-dock rail access will only get worse in the future. Figure 14 shows that NIT handled {{[REDACTED]}} of rail containers at POV in 2024. As container volumes grow and VIG becomes capacity constrained, a greater share of POV container traffic will be required to use NIT.¹⁸⁹ This is a function not only of growing capacity and volumes of containers but of other crucial port infrastructure as well.¹⁹⁰ As mentioned above, {{[REDACTED]}}. This will give NIT more flexibility to handle a greater number of and larger vessels, which is especially important in times of congestion. All of these factors will likely cause the harm to competition to increase over time.

E. An Analysis of Market Shares Supports that Shippers Could Gain from More Competition

116. Market shares in a relevant market can inform the competitive conditions in the market. For the purposes of this control proceeding, the provision of land transportation for IM containers between NIT and the inland BEAs located in or near the Midwest of the U.S. constitute a relevant market. An ocean carrier cannot access these inland BEAs without land transportation.¹⁹² As any given container is to be delivered to a specified location, the

¹⁸⁸ Kenney VS, p. 10.

¹⁸⁹ "FY2022-2065 2065 Master Plan: Executive Summary," *Port of Virginia*, October 31, 2021, <https://www.portofvirginia.com/wp-content/uploads/2023/09/2021-Master-Plan-Executive-Summary-2.pdf>, p. 6.

¹⁹⁰ NIT's future capacity will be 3.6 million TEUs, 64% larger than VIG's current capacity of 2.2 million TEUs. NIT will have a 6,630 foot wharf, nearly 66% larger than VIG's current 4,000 foot wharf. NIT will also have 19 ship-to-shore cranes compared to VIG's 12, and 96 stacking cranes to VIG's 56. See Section II.A and also NIT Fact Sheet and VIG Fact Sheet.

¹⁹¹ Capozzi EDVA Deposition, 91:14-93:7.

¹⁹² The Illinois International Port District handles a de minimis amount of foreign container traffic annually, according to BTS. See BTS Port Freight Report 2025, Table 13.

shipper cannot substitute between inland BEAs. Although ocean carriers have some ability to direct traffic across ports and marine terminals, the evidence presented in Section IV and Section V indicate that their incentive to do so in response to marginal changes in railroad rates is limited. Therefore, I conclude that the provision of land transportation for IM containers between NIT and the inland BEAs located in or near the Midwest of the U.S. are relevant markets.

117. Figure 15 shows the market shares of NS and CSXT in these markets. As shares are similar for the different BEAs, I aggregate them for the purposes of this exercise, but a full list is included as Appendix Figure C-8. The precise delineation of inland areas does not affect my conclusions from the analysis, but in the table below I focus on BEAs in the Midwest and adjacent regions as the competitive conditions are broadly similar and these are the areas where there is the most concern that NS control of NPBL could negatively impact the competitive conditions.¹⁹³ This is because, as discussed previously, trucking grows increasingly uneconomical for international intermodal shipments starting around 500 miles.¹⁹⁴ As shown, NS has a share of {{[REDACTED]}} and CSXT has a share of {{[REDACTED]}}. The remainder is accounted for by independent trucking companies.¹⁹⁵ The market shares

¹⁹³ I include the following BEAs: Chicago-IL, Columbus-OH, Louisville-KY, Cincinnati-OH, Detroit-MI, Cleveland-OH, Kansas City-MO, St. Louis-MO, Minneapolis-MN, Champaign-IL. A complete list of BEAs for which there is rail traffic to and from NIT is included as Appendix C-8. The inland BEAs included in my analysis represent {{[REDACTED]}} of rail containers routed through NIT in 2024. See my workpapers.

¹⁹⁴ See EDVA Declaration of Carl Warren, CSXT ¶ 2; Piacente EDVA Deposition, 64:2-16; Kenney EDVA Deposition, 47:13-48:14, 49:3-20, 60:2-11. Mr. McClellan (NS) testified that, for competition between rail and trucks, “the break-even point is along the lines of a route stretching at least 500 miles,” McClellan VS, p. 14. Mr. Fapp similarly identifies 500 miles or less as the threshold for when a hypothetical rail movement “faces intense intermodal competition from trucking companies,” Fapp VS 1, p.15. As shown in Appendix Figure C-8, all the BEAs included in my analysis above are more than 500 miles by truck from NIT.

¹⁹⁵ I estimate the number of trucking containers in the analysis by calculating the share of truck tonnage moving between Norfolk, VA and the Midwestern BEAs described above out of the total truck tonnage moving in and out of Norfolk, VA, according to the BTS Freight-Analysis-Framework County-to-County level estimates for 2022 (the latest year for which the data are available), available at <https://www.bts.gov/faf/county>. I multiply those shares by the number of NIT gate transactions in 2024 (obtained from POV’s weekly metrics) to obtain the estimated number of containers. I am unable to distinguish between international IM truck tonnage and domestic truck tonnage.

The market share of trucks may overstate the degree to which trucks represent a competitive alternative for this rail traffic if the market is differentiated. Truck freight rates for service between POV and many of

are consistent with there being scope for greater competition that would benefit ports and shippers.

Figure 15
Market Share for Land Transportation
for IM Containers to/from NIT, 2024{{



Source: CSXT and NS Traffic Tapes, 2024; BTS Freight-Analysis-Framework County-to-County, 2022.

Notes:

1) I include the following BEAs: Chicago-IL, Columbus-OH, Louisville-KY, Cincinnati-OH, Detroit-MI, Cleveland-OH, Kansas City-MO, St. Louis-MO, Minneapolis-MN, Champaign-IL. I align Freight Analysis Framework Zones to BEAs based on the description of the metropolitan area.

F. CSXT’s Ability to Compete for Business with Ocean Carriers is Hampered by Lack of Effective On-Dock Access at NIT

118. As discussed in Section IV.A, CSXT and NS compete to serve ocean carriers across a network of lanes and ports (i.e., a bundle of services). Lack of effective on-dock access to NIT means CSXT relies on drayage at NIT, which therefore hampers CSXT’s competitive position not only at NIT, but at POV and EC ports more broadly.¹⁹⁶ Ocean carriers and POV likely suffer significant harm due to the loss of competition from CSXT’s lack of effective on-dock access at NIT. In addition, ultimate shippers making use of ocean carrier services (either directly or through an NVOCC or other freight forwarder) are likely to suffer from inferior service and the pass-through of elevated rail rates. As discussed in the following section, NS, through its control of NPBL, has engaged in actions consistent with its economic incentives to preclude CSXT from competing at NIT with use of NPBL’s on-dock rail.

these inland BEAs in the Midwest are significantly higher than corresponding rail rates, thereby reducing their ability to act as a competitive constraint on the railroads, see Carey VS, p. 19.

¹⁹⁶ See Section V.B.

VI. CONTROL OF NPBL HAS PROVIDED NS THE INCENTIVE AND ABILITY TO PRECLUDE ON-DOCK RAIL COMPETITION AT NIT

A. NS Has the Incentive to Preclude NPBL from Providing On-Dock Rail Service at NIT

119. NS has the incentive to prevent NPBL from providing on-dock service at NIT and thereby foreclose a competing NPBL-CSXT rail alternative. NPBL is the only railroad besides NS with rights to serve traffic on-dock at NIT. An effective NPBL-CSXT service to and from NIT would provide direct rail competition with NS. As explained above, the possibility of an ocean carrier using alternative terminals, ports, and drayage at NIT does not provide the same degree of competition that direct on-dock rail provides. As such, NS has the incentive to prevent NPBL, and by extension an NPBL-CSXT routing, from serving NIT directly. In the face of limited competition, NS can obtain more traffic—it served {{REDACTED}} of containers moving by rail at NIT in 2016 through 2024—and has more leeway to raise price than it would in the face of competition from NPBL.¹⁹⁷
120. NS’s incentive to preclude NBPL-CSXT routings is a form of foreclosure referred to as “raising rivals’ costs.”¹⁹⁸ Actions that keep switching rates by NPBL for on-dock IM traffic at NIT artificially high and actions that impede NPBL and CSXT from engaging in efficient interchange raise costs and lower the quality of a competitive alternative to on-dock rail service by NS. Absent effective on-dock access, CSXT is reduced to competing at NIT with lower-quality drayage, the cost of which VIT deems to require a subsidy to CSXT to support.
121. I note that the same incentives NS has at NIT do not apply to the carload traffic that NPBL currently switches on behalf of NS and CSXT. First, the current NPBL shippers are those that, for the most part, can be served by NPBL but not by NS or CSXT.¹⁹⁹ NPBL must participate in those movements; NS has no incentive to keep NPBL from serving that

¹⁹⁷ POV Comments (HC), Figure 2.

¹⁹⁸ See Thomas G. Krattenmaker and Steven C. Salop, “Anticompetitive Exclusion: Raising Rivals’ Costs to Achieve Power over Price,” *Yale Law Journal*, vol. 96, no. 2, 1986, pp. 209-293. Foreclosure can be accomplished through price increases or other mechanisms that prevent use of the complementary good (i.e., NPBL switching service.)

¹⁹⁹ Carey VS, Appendix C.

traffic as it is not in direct competition with NS. If NBPL doesn't serve its existing customers, then NS would lose out on the opportunity to move that traffic. Second, the existing traffic is of a different sort. NPBL's current traffic is predominantly bulk, carload traffic, not IM.²⁰⁰ NPBL switched {{[REDACTED]}} revenue carloads in 2024, interchanging with both NS and CSXT.²⁰¹ Third, the volume of existing traffic is a fraction of that potentially available at NIT. Including containers drayed to CSXT, there were approximately {{[REDACTED]}} NIT containers shipped by rail.²⁰² Assuming two containers per car,²⁰³ this amounts to over {{[REDACTED]}} railcars annually that NPBL has not attempted to serve.²⁰⁴ Although there is no reason to believe that NPBL-CSXT would move all of this traffic, the IM traffic at NIT is nearly {{[REDACTED]}} more than the carload traffic NPBL is currently moving.

122. As the volumes and economic activity at NIT grows, the incentive for NS to preclude an NPBL-CSXT on-dock rail option only increases. The volume of traffic at NIT has grown substantially²⁰⁵, and is anticipated to grow further given the capacity limitations at VIG and investments (e.g., marine terminal and rail upgrades) and expansions at NIT. (See Section II.A) After the planned investments are completed in 2027, NIT's capacity will be 3.6 million TEUs, 64% larger than VIG's capacity, with a berth that is 66% larger than VIG, allowing for more vessels.²⁰⁶ With the larger volumes to be available at NIT and NIT's larger share of capacity at POV, NS's incentive to preclude NPBL-CSXT access and maintain its {{[REDACTED]}} share of on-dock rail service at NIT gets stronger.

200 NPBL Annual Report 2024 (STB-NS-0000001 - STB-NS-0000128 at STB-NS-0000119).

201 NPBL Annual Report 2024 (STB-NS-0000001 - STB-NS-0000128 at STB-NS-0000114 and STB-NS-0000118).

202 See Figure 14.

203 See Carey VS, footnote 131.

204 Following the term's use in discussion of NPBL rates, an IM double-stack "well" is treated as car even if part of a multi-well, articulated railcar.

205 Over {{[REDACTED]}} from 2007 to 2023, see Fapp VS 2, Exhibit DLF-4.

206 See Section II.A.

B. NS and NS-Controlled NPBL Have Undertaken Actions Consistent with Incentives to Preclude NPBL-CSXT Service at NIT

123. NS, through its control of NPBL, has engaged in actions consistent with its economic incentives to preclude effective on-dock rail service at NIT by CSXT (through interchange with NPBL).
124. First, NS requested and the NPBL board approved discontinuation of trackage rights over the “Connecting Line” that is required for NPBL to move an intermodal train between NIT and Berkeley yard (the proposed interchange point with CSX) without entering NS’s Portlock Yard, which causes the movement to be more logistically challenging.²⁰⁷ The loss of this preferred operational routing raises the cost and lowers the service quality of NPBL-CSXT on-dock rail service at NIT.
125. Second, CSXT’s experience attempting to serve NIT customers using on-dock rail via an NPBL-CSXT routing in 2015 is consistent with NS’s incentives to restrict CSXT’s ability to use NPBL trackage rights to serve NIT. During a time of extreme port congestion in 2015, CSXT tried to use NPBL to switch traffic at NIT.²⁰⁸ I understand that in the face of NS resistance, NPBL moved less than {{ [REDACTED] }} containers for CSXT.²⁰⁹
126. Third, NPBL (under NS’s control) failed to adopt or successfully negotiate with CSXT on multiple proposals to develop consistent on-dock rail service at NIT. In 2009, 2018, and 2024 CSXT made requests or proposals to NPBL for developing regular NPBL-CSXT service at NIT.²¹⁰ I understand that in these proposals CSXT has offered {{ [REDACTED] }}
[REDACTED]
[REDACTED]¹}} I understand that {{ [REDACTED] }}

207 See Figure 2. See also EDVA CSXT0026548 at CSXT0026548, EDVA CSXT0000001 at p. 5, and EDVA
NSR 00011108.

208 See EDVA NPBL010915, EDVA NSR 00001399, and EDVA NSR 00001401.

209 See Kenney VS, pp. 4-6 and POV Comments (HC), Figure 2.

²¹⁰ See Kenney VS, p. 13-14. CSXT followed the 2009 request with a more detailed proposal in 2010. See CSXT Reply (Public) Exhibit E at CSXT-1-105.

211 See Kenney VS, p. 13-14; Carey VS, p. 30-32; CSXT Reply (Public) Exhibits E and F (2010 and 2018 proposals); Letter Re: Rate and Service Proposal from Michael S. Burns to Members of the NPBL Board, November 26, 2024 (NPBL001450).

[REDACTED]
[REDACTED]
[REDACTED]}}

Despite CSXT's interest in working with NPBL to substantially expand the volume of traffic NPBL carries at rates that would provide revenues above NPBL's variable costs, the NS-controlled NPBL did not reach agreement and moved no traffic under any of these proposals.

127. Fourth, following CSXT's 2009 proposal and as part of an update to tariff rates, NPBL adopted a single \$210 per carload switching rate.²¹³ I understand this rate was purportedly designed to cover NPBL's costs of providing switching for its existing carload customers.²¹⁴ The rate does not allow for rate differences based on lower costs of switching intermodal traffic or blocks of cars. Prior to the 2010 change, however, NPBL had switching rates that varied in some fashion by whether the traffic was domestic or import/export, whether in blocks of certain size (i.e., 15 or more cars), and by commodity.²¹⁵ It is my understanding that NS now takes the position that public benefits derive from a single uniform cost-based rate applied to all switching traffic, regardless of cost or demand differences, and to all customers using NPBL.²¹⁶ This position does not allow for additional public benefits that can arise from cost-based rates that differ based on factors that affect costs (but applied uniformly across interchange railroads), such as the difference between manifest and unit-train operations or carload and IM traffic.

C. A Neutral Terminal Railroad Would Have Different Incentives

128. The economic incentives of a neutral terminal railroad, or an independent short-line, are different from that of an NS-controlled NPBL. Both neutral terminal and independent short-line railroads have the incentive to attract additional traffic at rates in excess of

²¹² See CSXT Reply (Public) Exhibits E and F (2010 and 2018 proposals) and Letter Re: Rate and Service Proposal from Michael S. Burns to Members of the NPBL Board, November 26, 2024 (NPBL001450). See also Carey VS, pp. 30-32.

²¹³ See Fapp VS 1, p. 5.

²¹⁴ See EDVA NSR_00011118.

²¹⁵ See NPBL Tariff NPB 8100-H, Effective May 1, 2008, p. 5 (EDVA NPBL021718 at NPBL021722) and NPBL Tariff NPB 8100-F, Effective February 1, 2003, p. 5.

²¹⁶ Revised Application (Public), pp. 25-26.

variable costs in order to offset fixed costs. For major categories of traffic that differ in costs or their willingness-to-pay, offering different rates for different categories of traffic can increase traffic, revenue, and contributions above variable cost. These incentives are consistent with the historical purpose of terminal railroads.²¹⁷ The incentive for a neutral terminal railroad (such as NPBL) to expand output is greater than that of an independent short line as it would not seek to exercise market power to generate revenue in excess of its total economic costs.

129. What are the incentives of a neutral NPBL or, hypothetically, an NS-controlled NPBL where NS did not compete with NPBL? NIT represents the largest potential shipper location served by NPBL. I understand that the variable cost of switching IM traffic is generally less than that for carload.²¹⁸ IM traffic also tends to be more price-sensitive than carload traffic.²¹⁹ The economic incentive is to set lower rates for unit train traffic serving the IM port, and higher rates for more costly carload traffic. This will result in more traffic moving, which benefits shippers and the interchange partners/owners. The neutral terminal railroad can set differential, cost-based rates that are uniform across interchange partners so as not to benefit one owner at the expense of the other.²²⁰
130. The Commonwealth Railway (“CWRV”) demonstrates the incentives of a terminal railroad at POV. The rate per container NPBL would charge CSXT to switch NIT containers ({{[REDACTED]}}) the rates per container that CWRV charges for interchanges of IM traffic at VIG—({{[REDACTED]}}) to CSXT and ({{[REDACTED]}}) to NS for containers that are routed over the VIG marine terminal and ({{[REDACTED]}}) for containers that CSXT drays between NIT

²¹⁷ See Verified Statement of Dr. William Huneke, September 18, 2025, p 3. The incentive for a neutral terminal railroad (such as NPBL) is greater than that of an independent short line as it would not seek to exercise market power in order to enhance profits above costs.

²¹⁸ See Carey VS, pp. 27-29.

²¹⁹ Carey VS, pp. 27-30.

²²⁰ A policy of setting overall rates to cover total costs implies that incremental traffic with rates greater than that traffic’s variable cost will reduce rates for other shippers as some of the fixed costs are covered by the incremental traffic.

²²¹ This assumes two containers per well based on existing traffic patterns at POV.

and VIG.²²² In addition, CWRV's tariff rates for carload traffic are substantially higher than its tariff rates for IM traffic.²²³ CWRV is an independent railroad with an incentive to maximize profits; there is no reason to believe any of these rates fail to cover CWRV's marginal costs of providing this traffic. The differential rates result in more traffic, more profits to CWRV, and enhanced efficiency.

D. Mr. McClellan's Conclusions Based on Investments in Port Infrastructure are Flawed

131. Mr. McClellan argues that the history of railroad and POV investments at POV demonstrates that NS cannot be utilizing its control of NPBL to reduce competition. He correctly identifies that POV, NS, and CSXT have all made substantial investments to increase capacity and improve service for shippers at POV, including expansions of on-dock rail capacity at NIT. He incorrectly concludes that: "If NS were using its control of NPBL to reduce competitive options at POV, these investments would not have occurred."²²⁴ This conclusion is without merit.
132. It is entirely consistent with the incentives of POV, NS, and CSXT to make investments to serve shippers at POV regardless of whether NS has used NPBL to reduce competitive options or not. Ports, and railroads that serve ports, make investments that they believe will provide them future returns.²²⁵ The investments reflect anticipated changes in demand—growing container volumes, technology—changes in ship size and associated infrastructure, and other changes in the marketplace. Ports that are served by a single railroad—with no other rail option—make substantial investments. For example, Wilmington, NC, solely served by CSXT, continues to invest to upgrade and expand the

²²² See Carey VS, pp. 49-50.

²²³ See CWRV 7006-16, Switching and Accessorial Services, Effective January 1, 2022, "Line Haul Switching Rates".

²²⁴ See McClellan VS, p.16.

²²⁵ Profit-seeking entities like railroads will do these investments for anticipated financial returns. While financial returns are crucial for long-run sustainability, public entities may have other considerations.

port, including its intermodal rail yard.²²⁶ On a grander scale, the Prince Rupert Port Authority (British Columbia), which is solely served by Canadian National Railway, opened and began operating a new container port in 2007.²²⁷ After multiple rounds of expansions and investments, the dedicated ship-to-rail facility now has a capacity of 1.6 million TEUs with further expansions planned.²²⁸ Competition among railroads at a container port does not determine whether investment occurs by either a port or railroads.

133. The relevant question raised by Mr. McClellan’s argument is how much additional investment would have been made by POV, NS and/or CSXT, if the NS-controlled NPBL had been providing on-dock rail service. Improved service and additional rail competition arising from NPBL-CSXT on-dock service may have attracted additional traffic and more investment to the port, but Mr. McClellan has not attempted to identify the difference in investments that would have occurred if the competitive options at NIT would have been different.

²²⁶ Jeff Stagl, “NC Ports advances three projects to bolster rail infrastructure in Wilmington”, RailPrime, last date accessed September 2, 2025, <https://www.progressiverailroading.com/railPrime/details/NC-Ports-advances-three-projects-to-bolster-rail-infrastructure-in-Wilmington--72239>.

²²⁷ See “CN improves rail line to booming Prince Rupert”, *FreightWaves*, July 6, 2012, <https://www.freightwaves.com/news/cn-improves-rail-line-to-booming-prince-rupert>.

²²⁸ See Prince Rupert Port Authority, *Building National Resiliency*, last date accessed August 27, 2025, <https://www.rupertport.com/building-national-resiliency/>.

VERIFICATION

I, Nathan Miller, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on September 18, 2025

/s/ Nathan Miller

Nathan Miller

APPENDIX A

Nathan H. Miller

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Updated September 2025

POSITIONS

Current Positions

Professor, Georgetown University, 2022–
McDonough School of Business (primary)
Department of Economics (secondary)
Senior Policy Scholar, Georgetown Center for Business and Public Policy, 2017–
NBER, Research Associate, 2024–
Founding Partner, Econic Partners, 2025–

Previous Positions

Georgetown University

Provost's Distinguished Associate Professor, 2021-2022
Saleh Romeih Associate Professor, McDonough School of Business, 2019-2022
Affiliated Professor, Economics Department, 2019-2022
Associate Professor, McDonough School of Business, 2017-2022
Assistant Professor, McDonough School of Business, 2013-2017

Other Positions

Chief Economist, U.S. Department of Justice, Antitrust Division, 2024
Visiting Professor, Toulouse School of Economics, 2019-2020
Economist, U.S. Department of Justice, Antitrust Division, 2008-2013

Degrees

Ph.D., Economics, University of California at Berkeley, 2008
B.A., Economics and History, University of Virginia, 2000

PUBLICATIONS AND RESEARCH PROJECTS

Refereed Publications

"Mergers, Entry, and Consumer Welfare" (with Peter Caradonna and Gloria Sheu), *American Economic Journal: Microeconomics*, Vol. 17, No. 3, 103-130 (2025).
"Rising Markups and the Role of Consumer Preferences" (with Hendrik Döpper, Alexander MacKay, and Joel Stiebale), *Journal of Political Economy*, Vol. 133, No. 8, 2462-2505 (2025).
"Estimating Models of Supply and Demand: Instruments and Covariance Restrictions" (with Alexander MacKay), *American Economic Journal: Microeconomics*, Vol. 17, No. 1, 238-281 (2025).
"Industrial Organization and *The Rise of Market Power*," *International Journal of Industrial Organization*, Vol. 98, 103131 (2025).
"A Price Leadership Model for Merger Analysis" (with Ryan Mansley, Gloria Sheu and Matthew Weinberg), *International Journal of Industrial Organization*, Vol. 89 (2023).

- “Oligopolistic Price Leadership and Mergers: The United States Beer Industry” (with Gloria Sheu and Matthew Weinberg), *American Economic Review*, Vol. 111, No. 10, 3123-3159 (2021).
- “Finding Mr. Schumpeter: Technology Adoption in the Cement Industry” (with Jeffrey Macher and Matthew Osborne), *RAND Journal of Economics*, Vol 52, No. 1, 78-99 (2021).
- “Forward Contracts, Market Structure, and the Welfare Effects of Mergers” (with Joseph Podwol), *Journal of Industrial Economics*, Vol. 68, No. 2, 364-407 (2020).
- “Understanding the Price Effects of the MillerCoors Joint Venture” (with Matthew Weinberg), *Econometrica*, Vol. 85, No. 6, 1763-1791 (2017).
- “Pass-Through in a Concentrated Industry: Empirical Evidence and Regulatory Implications” (with Matthew Osborne and Gloria Sheu), *RAND Journal of Economics*, Vol. 48, No. 1, 69-93 (2017).
- “Upward Pricing Pressure as a Predictor of Merger Price Effects” (with Marc Remer, Conor Ryan and Gloria Sheu), *International Journal of Industrial Organization*, Vol. 52, 216-247 (2017).
- “Pass-Through and the Prediction of Merger Price Effects” (with Marc Remer, Conor Ryan and Gloria Sheu), *Journal of Industrial Economics*, Vol. 64, December, 684-709 (2016).
- “Spatial Differentiation and Price Discrimination in the Cement Industry: Evidence from a Structural Model” (with Matthew Osborne), *RAND Journal of Economics*, Vol. 45, No. 2, 221-247 (2014).
- “Modeling the Effects of Mergers in Procurement,” *International Journal of Industrial Organization*, Vol. 37, November, 201-208 (2014).
- “Automakers’ Short-Run Responses to Changing Gasoline Prices” (with Ashley Langer), *Review of Economics and Statistics*, Vol. 95, No. 4, 1198-1211 (2013).
- “Why Do Borrowers Pledge Collateral? New Empirical Evidence on the Role of Asymmetric Information” (with Allen Berger, Marco Espinosa-Vega, and Scott Frame), *Journal of Financial Intermediation*, Vol. 20, No. 1, 55-70 (2011).
- “Strategic Leniency and Cartel Enforcement,” *American Economic Review*, Vol. 99, No. 3, 750-768 (2009).
- “Debt Maturity, Risk, and Asymmetric Information” (with Allen Berger, Marco Espinosa-Vega, and Scott Frame), *Journal of Finance*, Vol. 60, No. 6, 2895-2923 (2005).
- “Does Functional Form Follow Organizational Form? Evidence from the Lending Practices of Large and Small Banks” (with Allen Berger, Mitchell Petersen, Raghuram Rajan, and Jeremy Stein), *Journal of Financial Economics*, Vol. 76, No. 2, 237-269 (2005).
- “Credit Scoring and the Availability, Price, and Risk of Small Business Credit” (with Allen Berger and Scott Frame), *Journal of Money, Banking, and Credit*, Vol 37, No. 2, 191-222 (2005).

Shorter Refereed Publications

- “On the Misuse of Regressions of Price on the HHI in Merger Review” (with Steven Berry, Fiona Scott Morton, Jonathan Baker, Timothy Bresnahan, Martin Gaynor, Richard Gilbert, George Hay, Ginger Jin, Bruce Kobayashi, Francine Lafontaine, James Levinsohn, Leslie Marx, John Mayo, Aviv Nevo, Ariel Pakes, Nancy Rose, Daniel Rubinfeld, Steven Salop, Marius Schwartz, Katja Seim, Carl Shapiro, Howard Shelanski, David Sibley, and Andrew Sweeting), *Journal of Antitrust Enforcement*, Vol. 10, No. 2, 249-259 (2022).
- “Bias in Reduced-Form Estimates of Pass-Through” (with Alexander MacKay, Marc Remer and Gloria Sheu), *Economics Letters*, Vol. 123, No. 2, 200-202 (2014).

- “Consistency and Asymptotic Normality for Equilibrium Models with Partially Observed Outcome Variables” (with Matthew Osborne), *Economics Letters*, Vol. 123, No. 1, 70-74 (2014).
- “Using Cost Pass-Through to Calibrate Demand” (with Marc Remer and Gloria Sheu), *Economics Letters*, Vol. 118, No. 3, 451-454 (2013).
- “The Entry Incentives of Complementary Producers: A Simple Model with Implications for Antitrust Policy” (with Juan Lleras), *Economics Letters*, Vol. 110, No. 2, 147-150 (2011).

Book Chapters and Non-Refereed Publications

- “Rising Market Power: Evidence from Industry Studies” *National Law Network* (2025).
- “Rising Markups, Rising Prices?” (with Chris Conlon, Tsolmon Otgon, and Yi Yao), *AEA: Papers and Proceedings*, Vol. 113, 279-283 (2023).
- “Recent Advances in Economic Methodology for Coordinated Effects” (with Jamie Daubenspeck, Kate Maxwell Koegel, and Joseph Podwol), *Antitrust Chronicle* (2023).
- “Price-Fixing Allegations in the Canned Tuna Industry: A Look at the Data” (with Minhae Kim, Ryan Mansley, Marc Remer, and Matthew Weinberg), *Antitrust Bulletin*, Vol. 68, No. 1, 154-163 (2023).
- “Mergers – Countervailing Effects” (with Gloria Sheu), *The Elgar Encyclopedia on the Economics of Competition, Regulation and Antitrust*, Michael D. Noel (editor). Cheltenham, UK: Edward Elgar Publishing (2024).
- “Quantitative Methods for Evaluating the Unilateral Effects of Mergers” (with Gloria Sheu), *Review of Industrial Organization*, Vol. 58, No. 1, 143-177 (2021). Special Issue: The 2010 Horizontal Merger Guidelines after Ten Years.
- “How the MillerCoors Joint Venture Changed Competition in U.S. Brewing” (with Matthew Weinberg), *Microeconomic Insights*, 2017.
- “Ex Post Merger Evaluation: How Does It Help Ex Ante?” (with Daniel Hosken and Matthew Weinberg), *Journal of European Competition Law & Practice*, 2016.
- “Choosing Appropriate Control Groups in Merger Evaluations” (with Aditi Mehta), in *More Pros and Cons of Merger Control*, Konkurrensverket 2012.

Working Papers and Research Projects

- “Technology and Market Power: The United States Cement Industry, 1974-2019” (with Matthew Osborne, Gloria Sheu and Gretchen Sileo), 2025, resubmitted to *American Economic Review*.
- “Phoning Home: The Procurement of Telecommunications Services for Prison Systems in the United States” (with Marleen Marra and Gretchen Sileo), 2025.
- “The Dynamics of Emissions Pricing and Technology Adoption” (with Sarah Armitage, Matthew Osborne, and Gretchen Sileo), in progress.
- “Can Divestitures Lessen Competition? Analyzing the Reynolds/Lorillard Merger and Divestitures” (with Aviv Nevo, Kenneth Rios, Ted Rosenbaum), in progress.
- “New Frontiers in Research on Industrial Decarbonization” (with Kenneth Gillingham, Lint Barrage, Sarah Armitage, Dallas Burtraw, Jonathan Colmer, Laure de Preux, Jonathan Hawkins-Pierot, Charles Holt, Valerie J. Karplus, Asa Lofgren, Mirabelle Muûls, Matthew Osborne, Edson Severnini, William Shobe, Gretchen Sileo, Vladimir Smirnyagin, Thomas Stoerk, Aleh Tsyvinski, Katherine Wagner, Ulrich Wagner, and Xi Wu), in progress.
- “Modeling the Effects of Mergers in Procurement: Addendum,” Working Paper, 2017.

“Cumulative Innovation and Competition Policy” (with Alexander Raskovich), EAG Discussion Paper 10-5, 2010.

“Competition when Consumers Value Firm Scope,” EAG Discussion Paper 8-7, 2008.

Grants and Awards

Robert F. Lanzillotti Prize for Best Paper in Antitrust Economics, 2022

Rising Markups and the Role of Consumer Preferences

Jerry S. Cohen Award for Best Antitrust Article on Merger Retrospectives, 2022

Oligopolistic Price Leadership and Mergers: The United States Beer Industry

Washington Center for Equitable Growth Grant, AWD-7774872, \$75,278, 2021-2022

Buyer Power in the Beef Packing Industry

Concurrences Antitrust Award: Best Academic Economics Article, 2021

Mergers, Entry, and Consumer Welfare

National Science Foundation Grant, SES 2117197, \$59,436, 2021-2022

An Empirical Study of Inmate Telecommunication Services

Washington Center for Equitable Growth Grant, AWD-7774249, \$51,750, 2020-2021

The Evolution of Market Power in the Cement Industry

National Science Foundation Grant, SES 1824318, \$88,635, 2018-2020

Market Power in Differentiated Products Industries

Association of Competition Economics Best Paper Award, 2017

Understanding the Price Effects of the MillerCoors Joint Venture

Robert F. Lanzillotti Prize for Best Paper in Antitrust Economics, 2015

Understanding the Price Effects of the MillerCoors Joint Venture

Assistant Attorney General’s Award of Distinction, AT&T/T-Mobile merger, 2013

Jerry S. Cohen Award for Antitrust Scholarship, Honorary Mention, 2009

Strategic Leniency and Cartel Enforcement

COMPASS Prize for Best Paper in Antitrust Economics by Graduate Students, 2007

Strategic Leniency and Cartel Enforcement

UC Berkeley Dean’s Normative Time Fellowship, 2006-2007

UC Berkeley Competition Policy Center Dissertation Award, 2006

UC Berkeley Institute of Business and Economic Research Mini-Grant, 2006

ACADEMIC PRESENTATIONS

Invited Seminar Presentations

2008-2013: Bureau of Economic Analysis, Bureau of Labor Statistics, DOJ (×3), College of William and Mary, Drexel University, Duke University, FTC, Georgetown University (×2), George Washington University, Johns Hopkins University, Michigan State University, Stony Brook University, University of British Columbia, University of Iowa, University of North Carolina (Chapel Hill), University of Virginia

2014: DOJ; University of California, Berkeley; UCLA; University of Virginia

2015: Clemson; FTC; Indiana University; University of Colorado, Boulder; Yale

2016: Boston College; Columbia University; Federal Reserve Board; Harvard University; London School of Economics; University of British Columbia; University of Texas, Austin; University of Toronto

2017: FTC; University of Kentucky; University of Pennsylvania; University of Wisconsin–Madison

2018: FTC; MIT; Texas A&M; Penn State University; University of Maryland

2019: Harvard University; Toulouse School of Economics; MINES ParisTech; KU Leuven; University of Mannheim; Berlin Applied Economics
2020: Research Institute of Industrial Economics (RIFN); Sciences Po; University of Düsseldorf (DICE); Directorate-General for Competition of the European Commission (DG COMP); Hong Kong University of Science and Technology
2021: CBO, Washington University at St. Louis; George Mason University; Joint DOJ/FTC; West Virginia University; FTC; University of Maryland
2022: University of California, Berkeley; University of Pennsylvania; University of Virginia; Iowa State University; Indiana University; University of Delaware; University of Michigan; University of North Carolina; University of Connecticut
2023: University of Rochester; University of Massachusetts Amherst; Pomona College; UCLA
2025: Yale, Chicago Fed (scheduled)
2026: Arizona State University (scheduled), University of British Columbia (scheduled), University of Florida (scheduled)

Conference Presentations

AEA (2023); APIOS (2018, 2022); Association of Competition Economics (2018); Barcelona GSE Summer Forum (2018); DC IO Day (2020); EARIE (2019); ESEM (2019); FTC Microeconomics (2010, 2014, 2021); Georgetown Railroad Conference (2017); Hal White Antitrust (2013, 2014, 2017, 2019); HEC Montreal–RIIB Conference on IO (2025); IEF Applied Microeconomics (2016); IOOC (2008, 2009, 2013, 2015, 2016, 2018, 2022); MaCCI Summer Institute (2024); NASMES (2019); NBER IO (2023); Northwestern Antitrust (2013, 2015, 2022); SEA (2013, 2018, 2023); SITE (2025); Triangle Microeconomics (2016)

Conference Discussions

AEA (2015); Cowles Foundation (2024); DC IO Day (2015); Toulouse Digital Economics Conference (2020); HEC Montreal–RIIB Conference on IO (2018); IOOC (2008, 2009, 2013, 2015, 2016, 2018, 2021, 2022, 2025); NY IO Day (2020); RIDGE IO (2021); SEA (2013, 2018, 2023); Northwestern Antitrust (2018, 2023); WCEG (2020)

Keynotes

University of Zurich Workshop on Market Power and the Economy, 2023
Association of Competition Economics (ACE) Conference, 2023
Applied Economics Workshop (AEW), 2024
RIDGE Industrial Organization Forum, 2024
Competition & Regulation European Summer School and Conference (CRESSE), 2025

Panels and Other Invited Talks

“Upward Pricing Pressure and Simulation in Merger Review,” Economists’ Roundtable with the Canadian Competition Bureau, 2017
“Institutional Shareholdings: Is There an Antitrust Issue?” Concurrences Global Antitrust Conference, 2018
“Digital Mergers: Need for Reform?” Concurrences International Mergers Conference, 2020
“Making Competition Work: Promoting Competition in Labor Markets,” Joint Hearings of the Department of Justice and Federal Trade Commission, 2021
“Reforming America’s Food Retail Markets,” Yale University, 2022
“Amendments to the Competition Act,” Canadian Economic Association Meetings, 2022

“Buyer Power in the Beef Packing Industry,” R-Calf National Convention, 2022
“Coordinated Effects of Mergers,” ICN Chief Economist Workshop, 2023
“Evolving Approaches to Mergers Between Rivals,” DOJ/FTC Merger Guidelines Workshop, 2023
“Recent Advances in Conduct Estimation,” University of Düsseldorf (DICE), 2023
“Agency Economists Roundtable,” Fordham Conference on Antitrust Law and Policy, 2024
“Overseeing Big Tech: Antitrust vs. Regulation,” Northwestern Conference on Antitrust Economics and Competition Policy, 2024
“The Use of Structural Presumptions in Antitrust,” OECD Best Practice Roundtable on Competition, 2024
“Regaining Competitiveness—Boom or Bust for Competition Policy?” Annual CRA Brussels Conference, 2024
“Making Sense of the Monopoly Broth,” University of Southern California, 2025
“Antitrust Policy Discussion,” Triangle Microeconomics Conference, 2025
“Inflation and Antitrust,” ABA Panel, 2025
“Merger Remedies: What Works Best and How Can We Improve?” ABA Panel, 2025
“Market Power in EU and US: What Does the Empirical Evidence Show?” CRESSE Panel, 2025

TEACHING, ADVISING, AND SERVICE

Courses

Firm Analysis and Strategy, MBA Core Curriculum
Industrial Organization, PhD Economics
Strategic Pricing, MBA Elective
Microeconomics, Executive Education
Causal Inference, MSBA Core Curriculum

Ph.D Advising and Dissertation Committees

Francisco Garrido (co-advisor), 2020, ITAM
Yanyang Wang (committee), 2021, Amazon Web Services
Peter Caradonna (committee), 2022, California Institute of Technology
Ryan Mansley (co-advisor), 2023, Department of Justice Antitrust Division
Gretchen Sileo (co-advisor), 2023, Temple University
Kyle Monk (committee), 2024, Meta
Tianshi Mu (co-advisor), 2024, Tsinghua University
Pedro Roje-Larrebourg (co-advisor), 2024, Banco Central de Chile
Yidi Wu (committee), 2024, Cornerstone Research
Chengjun Zhang (committee), 2024, Morgan Stanley
Cam Healy (advisor), 2025, Congressional Joint Economic Committee
Yi Yao (advisor), 2025, CRA

Service

Editor, *Journal of Law and Economics*, 2021-2024, 2025–
Associate Editor, *International Journal of Industrial Organization*, 2022–
Editorial Board, *Review of Industrial Organization*, 2019-2024, 2025–
Co-organizer, NBER Winter Meetings, 2026, scheduled
Organizer, DC IO Day, 2017
Program Committee, DC IO Day, 2015-2016 and 2018-2019
Program Committee, International Industrial Organization Conference, 2019-2021

Referee Reports

American Economic Journal; American Economic Review; Econometrica; European Economic Review; International Journal of Industrial Organization; Journal of Economics & Management Strategy; Journal of the European Economics Association; Journal of Finance; Journal of Industrial Economics; Journal of Law and Economics; Journal of Political Economy; Management Science; National Science Foundation; The RAND Journal of Economics; Review of Economic Studies; Review of Economics and Statistics; Review of Industrial Organization; Quarterly Journal of Economics, others.

CONSULTING AND TESTIMONY

Live Testimonial Experience

Testified on behalf of U.S. Department of Justice, *United States et al. v. American Airlines Group Inc. and JetBlue Airways Corporation*, U.S District Court, Eastern District of New York, Case No. 1:22-cv-07374-AMD-TAM; 2021-2024

Testified on behalf of Competition Bureau Canada, *Canada (Commissioner of Competition) v. Secure Energy Services Inc. of Tervita Corporation*, Canadian Competition Tribunal, Case No. CT-2021-002, 2023

Testified on behalf of Competition Bureau Canada, *Canada (Commissioner of Competition) v. Rogers Communications Inc. and Shaw Communications Inc.*, Canadian Competition Tribunal, Case No. CT-2022-002, 2022

Testified on behalf of Competition Bureau Canada, *Canada (Commissioner of Competition) v. Parrish & Heimbecker, Limited*, Canadian Competition Tribunal, Case No. CT-2019-005, 2022

Selected Other Experience

Consulted on the acquisition of Hawaiian Airlines by Alaska Airlines for the merging parties, 2024

Consulted for the FTC on the abandoned acquisition of Harry's by Edgewell Personal Care , 2019-2020

Consulted for the FTC on the abandoned acquisition of TriZir by Tronox, 2020

Consulted for the FTC on the acquisition of Services Group of America by US Foods, 2019

Consulted on the acquisition of Express Scripts by Cigna for the merging parties, 2018

APPENDIX B

Materials Relied Upon

NS Data/Documents – This Proceeding

- {{ [REDACTED] }}, (STB-NS-0004054).
- {{ [REDACTED] }}, (STB-NS-0010324).
- {{ [REDACTED] }}, (STB-NS-0010607).
- Letter Re: Rate and Service Proposal from Michael S. Burns to Members of the NPBL Board, November 26, 2024 (NPBL001450).
- NPBL Annual Report 2018 (STB-NS-0000129 - STB-NS-0000150).
- NPBL Annual Report 2024 (STB-NS-0000001 - STB-NS-0000128).
- NS Traffic Tapes, 2024.
- STB-NS-0000560.
- STB-NS-0001814.
- STB-NS-0002393.
- STB-NS-0003891.
- STB-NS-0005353.
- STB-NS-0005681.
- STB-NS-0005682.
- STB-NS-0005684.
- STB-NS-0025131.

CSXT Data/Documents – This proceeding

- {{[REDACTED]}}
- {{[REDACTED]}}
- {{[REDACTED]}}
(CSX_STB_0000132).
- {{[REDACTED]}}, (CSX_STB_0000148).
- {{[REDACTED]}}
- CSXT Traffic Tapes, 2024.
- {{[REDACTED]
[REDACTED]}}
- {{[REDACTED]}}
(CSX_STB_0000706).
- {{[REDACTED]
[REDACTED]}}
- {{[REDACTED]
[REDACTED]}}
- {{[REDACTED]
[REDACTED]}} (CSX_STB_0000805).
- {{[REDACTED]}}
(CSX_STB_0000113).
- {{[REDACTED]}}
(CSX_STB_0000301).
- {{[REDACTED]}}
(CSX_STB_0001078).

EDVA Documents

- *CSX Transportation, Inc. 's Motion for Injunctive Relief and Proposed Findings of Fact and Conclusions of Law*, Civil Action No. 2:18-cv-530-MSD-RJK, January 12, 2023.
- EDVA Declaration of Carl Warren, CSXT.
- EDVA Declaration of Chris Wagel, CSXT.
- EDVA Deposition of Dean Piacente, CSXT.
- EDVA Deposition of Kenneth Joyner, NS.
- EDVA Deposition of Maryclare Kenney, CSXT.
- EDVA Deposition of Tom Capozzi, VIT.
- EDVA CSXT0000001.
- EDVA CSXT0001288.
- EDVA CSXT0013901.
- EDVA CSXT0026548.
- EDVA CSXT0036816.
- EDVA CSXT0049331.
- EDVA CSXT0066199.
- EDVA CSXT0067122.
- EDVA CSXT0090235.
- EDVA CSXT0136053.
- EDVA NPBL001007.
- EDVA NPBL002611.
- EDVA NPBL003180.
- EDVA NPBL010915.
- EDVA NPBL021718.

- EDVA NSR_00001399.
- EDVA NSR_00001401.
- EDVA NSR_00005081.
- EDVA NSR_00006130.
- EDVA NSR_00011108.
- EDVA NSR_00011118.
- EDVA NSR_00122610.
- EDVA NSR_00128765.

Public Documents

- “CN improves rail line to booming Prince Rupert”, *FreightWaves*, July 6, 2012, <https://www.freightwaves.com/news/cn-improves-rail-line-to-booming-prince-rupert>.
- “Creation of the Mid-Atlantic's Offshore Wind Logistics Hub Moves Forward at The Port of Virginia,” *Port of Virginia*, October 27, 2023, <https://www.portofvirginia.com/who-we-are/newsroom/creation-of-the-mid-atlantics-offshore-wind-logistics-hub-moves-forward-at-the-port-of-virginia/>.
- “DeLong Breaks Ground on New Grain Export Hub,” *The Poultry Site*, June 16, 2025, <https://www.thepoultrysite.com/news/2025/06/delong-breaks-ground-on-new-grain-export-hub>.
- “Expansion Completed At Virginia International Gateway,” *AP News*, July 24, 2019 <https://apnews.com/dfa0f94c578b4c89b44718949f676d9a>.
- “Final Report – Port and Modal Elasticity Study, Phase II for Southern California Association of Governments,” *Leachman & Associates LLC*, September 7, 2010.
- “FY2022-2065 2065 Master Plan: Executive Summary,” *Port of Virginia*, October 31, 2021, <https://www.portofvirginia.com/wp-content/uploads/2023/09/2021-Master-Plan-Executive-Summary-2.pdf>.

- “New BEA Economic Areas for 2004,” *Bureau of Economic Analysis*, November 17, 2004, <https://www.bea.gov/sites/default/files/newsreleases/general/2004/pdf/real1104.pdf>.
- “Port of Long Beach Gets Funding for On-dock Rail to Lighten Load from Drayage Fleet,” *FreightWaves*, November 20, 2018, <https://www.freightwaves.com/news/rail-long-beach-on-dock-rail-project>.
- “Port of New York and New Jersey well-positioned to get shipped goods quickly to St. Louis region business and consumers,” *American Journal of Transportation*, May 30, 2023, <https://www.ajot.com/news/port-of-new-york-and-new-jersey-well-positioned-to-get-shipped-goods-quickly-to-st-louis-region-business-and-consumers>.
- “Port of Virginia inks 50-year lease extension for container terminal,” *FreightWaves*, September 22, 2016, <https://www.freightwaves.com/news/port-of-virginia-inks-50-year-lease-extension-for-container-terminal>.
- “Record Setting Volumes, No Congestion and a New Round of Strategic Investments Close Port's 2021,” *Port of Virginia*, January 11, 2022, <https://www.portofvirginia.com/who-we-are/newsroom/record-setting-volumes-no-congestion-and-a-new-round-of-strategic-investments-close-ports-2021/>.
- “SC Ports Developing Near-Dock Rail at the Port of Charleston,” *South Carolina Ports*, October 17, 2022, <https://scspa.com/news/sc-ports-developing-near-dock-rail-at-the-port-of-charleston/>.
- “Shippers seeking transload options for containerized imports,” *FreightWaves*, July 19, 2019, <https://www.freightwaves.com/news/shippers-seeking-transload-options-for-containerized-imports>.
- “Virginia Completes FY 2024 with Growth in Cargo Volumes and Progress on Infrastructure Projects,” *Port of Virginia*, July 30, 2024, <https://www.portofvirginia.com/who-we-are/newsroom/virginia-completes-fy-2024-with-growth-in-cargo-volumes-and-progress-on-infrastructure-projects/>.
- “ZIM and the 2M Alliance Announce a Major Expansion of Their Strategic Operational Cooperation in Two Additional Trades,” *ZIM*, January 10, 2019,

<https://investors.zim.com/news/news-details/2019/ZIM-and-the-2M-Alliance-Announce-a-Major-Expansion-of-Their-Strategic-Operational-Cooperation-in-Two-Additional-Trades/default.aspx>.

- 49 U.S.C. § 11324(d)(1).
- Alphaliner, *Top 100*, last date accessed July 28, 2015, <https://alphaliner.axsmarine.com/PublicTop100/>.
- Ari Ashe, “HMM changes western US rail partner to gain alliance efficiencies,” *Journal of Commerce*, June 19, 2020.
- Ari Ashe, “Virginia port service shuffle promises faster rail flow,” *Journal of Commerce*, August 23, 2019.
- Bill Mongelluzo, “Changing shipping alliances to further challenge port productivity,” *Journal of Commerce*, May 2, 2016.
- BNSF, *Containers*, last date accessed August 19, 2025, <https://www.bnsf.com/ship-with-bnsf/ways-of-shipping/equipment/containers.html>.
- Brandon Richardson, “Ports Are Ready For The ‘Era of Big Ships And Alliances,’” *Long Beach Business Journal*, April 24, 2017, <https://lbbusinessjournal.com/ports/ports-are-ready-for-the-era-of-big-ships-and-alliances/>.
- Brenda Silva, “Expanded Rail Yard Enhances Efficiency, Decreases Delays,” *American Journal of Transportation*, November 25, 2024, <https://www.ajot.com/premium/ajot-expanded-rail-yard-enhances-efficiency-decreases-delays>.
- Brenda Silva, “State of the Port Address details lengthy to-do list for PANYNJ,” *American Journal of Transportation*, February 11, 2025, <https://www.ajot.com/insights/full/ai-state-of-the-port-address-details-lengthy-to-do-list-for-panynj>.
- BTS Freight-Analysis-Framework County-to-County, 2022, <https://www.bts.gov/faf/county>.

- César Ducruet and Theo E. Notteboom. “Chapter 6: Developing Liner Service Networks in Container Shipping,” in Dong-Wook Song and Photis Panayides, *Maritime Logistics: a Guide to Contemporary Shipping and Port Management*, 3rd ed. London: KoganPage, 2021.
- Chris Barnett, “Big wind projects blow through the US East Coast,” *Journal of Commerce*, October 2, 2020.
- Chris Dupin, “Port of Virginia Finishes Terminal Expansion,” *FreightWaves*, July 24, 2019, <https://www.freightwaves.com/news/port-of-virginia-finishes-terminal-expansion>.
- CWRV 7006-16 Switching and Accessorial Services, Effective January 1, 2022.
- Daniel Brock, “Norfolk Southern Says Charleston Rail Plan ‘Hollow’,” *BLET*, July 16, 2010, <https://ble-t.org/news/norfolk-southern-says-charleston-rail-plan-hollow/>.
- David Wren, “SC Ports still sees a future in barges, but rail yard getting first focus,” *South Carolina Daily Gazette*, July 15, 2025, <https://scdailygazette.com/2025/07/15/sc-ports-still-sees-a-future-in-barges-but-rail-yard-getting-first-focus/>.
- Edwin Lopez and Jennifer McKevitt, “HMM falls short of 2M Alliance, but negotiates slot exchange,” *Supply Chain Dive*, December 12, 2016, <https://www.supplychaindive.com/news/2M-alliance-Hyundai-HMM-restructuring/432105/>.
- Federal Maritime Commission, Study of U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports, July 2012.
- Federal Maritime Commission, *U.S. Container Port Congestion & Related International Supply Chain Issues: Causes, Consequences & Challenges*, July 2015.
- Federal Maritime Commission, *Vessel-Operating Common Carriers*, last date accessed August 19, 2025, <https://www.fmc.gov/licensing-and-certification/vessel-operating-common-carriers/>.
- Federal Trade Commission and U.S. Department of Justice, *Merger Guidelines*, December 18, 2023, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

- Glen Weiss, “Georgia Ports make inroads on inland transport,” *American Journal of Transportation*, March 18, 2024, <https://www.ajot.com/premium/ajot-georgia-ports-makes-inroads-on-inland-transport>.
- Google Maps
- International Transport Forum, “The Impact of Alliances on Container Shipping,” *International Transportation Forum Policy Papers*, no. 62, 2018.
- Jan C. Fransoo and Chung-Yee Lee, “The Critical Role of Ocean Container Transport,” *Production and Operations Management*, vol. 22, no. 2, 2013.
- Jasmina Mandra, “Port of Virginia commissions new STS cranes, welcomes first ASC for NIT North Berth,” *World Cargo News*, April 17, 2025, <https://www.worldcargonews.com/cargo-handling-equipment/2025/04/port-of-virginia-commissions-new-sts-cranes-welcomes-first-asc-for-nit-north-berth/>.
- Jeff Stagl, “NC Ports advances three projects to bolster rail infrastructure in Wilmington”, *RailPrime*, last date accessed September 2, 2025, <https://www.progressiverailroading.com/railPrime/details/NC-Ports-advances-three-projects-to-bolster-rail-infrastructure-in-Wilmington--72239>.
- Louis Kaplow and Carl Shapiro. “Chapter 15: Antitrust,” in *Handbook of Law and Economics Volume 2*, 1st ed., North Holland, 2007.
- Maritime Safety Information, *World Port Index Data*, last date accessed September 15, 2025, <https://msi.nga.mil/Publications/WPI>.
- Matt Leonard, “Report: HMM seeks full membership in 2M alliance,” *Supply Chain Dive*, April 25, 2019, <https://www.supplychaindive.com/news/hmm-full-membership-2m-ocean-alliance/553357/>.
- Meifeng Luo and Thanasis A. Grigalunas, “A spatial-economic multimodal transportation simulation model for US coastal container ports,” *Maritime Economics & Logistics*, vol. 5, no. 2.
- Nerijus Poskus, “Ocean Alliances: Everything You Need to Know,” *Flexport*, December 7, 2022, <https://www.flexport.com/blog/ocean-alliances-everything-you-need-to-know/>.

- NPBL Tariff NPB 8100-F, Effective February 1, 2003.
- NPBL, *About Us*, last date accessed September 12, 2025, <https://www.npblrr.com/about-us.html>.
- Ocean Network Express, *Inauguration of Ocean Network Express*, last date accessed September 15, 2025, <https://www.one-line.com/en/standard-page/ocean-network-express>.
- Office of Intermodal Planning and Investment, “Master Rail Plan for The Port of Virginia (SJR 69, 2014),” *The Governor and the General Assembly of Virginia Senate*, Document no. 12, 2015.
- Port of Virginia, *Capabilities*, last date accessed August 19, 2025, <https://www.portofvirginia.com/gateway/capabilities/>.
- Port of Virginia, *Newport News Marine Terminal (NNMT)*, last date accessed August 19, 2025, https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-NNMT.pdf.
- Port of Virginia, *Norfolk International Terminals (NIT)*, last accessed date August 19, 2025, https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-NIT-2.pdf.
- Port of Virginia, *Ocean Services Guide: May 2025*, last date accessed August 19, 2025, <https://operations.portofvirginia.com/wp-content/uploads/2025/05/Ocean-Services-Guide-May-2025.xlsx>.
- Port of Virginia, *Port-of-Virginia-Website-Statistics 2024.xlsx*, last date accessed August 19, 2025, <https://wp.portofvirginia.com/wp-content/uploads/2025/01/Port-of-Virginia-Website-Statistics.xlsx>.
- Port of Virginia, *Portsmouth Marine Terminal (PMT)*, last date accessed August 19, 2025, https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-PMT.pdf.
- Port of Virginia, *Terminal Gate Hours: Norfolk International Terminal (NIT)*, last date accessed August 19, 2025, <https://operations.portofvirginia.com/terminal-gate-hours/>.

- Port of Virginia, *Virginia International Gateway*, last date accessed August 19, 2025, <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-VIG-1-Pager.pdf>.
- Port of Virginia, *About*, last date accessed August 19, 2025, <https://operations.portofvirginia.com/about/>.
- Ports America, *Norfolk International Terminal (NIT)*, last date accessed August 19, 2025, <https://www.portsamerica.com/our-locations/norfolk-va?terminal=norfolk-international-terminal-nit>.
- Preeti Rathi and Amit Upadhyay, “Container retrieval and wagon assignment planning at container rail terminals,” *Computer & Industrial Engineering*, vol. 172, 2022.
- Prince Rupert Port Authority, *Building National Resiliency*, last date accessed August 27, 2025, <https://www.rupertport.com/building-national-resiliency/>.
- Robert C. Leachman, “Port and modal allocation of waterborne containerized imports from Asia to the United States,” *Transportation Research Part E: Logistics and Transportation Review*, vol. 44, no. 2, 2008.
- Robert Stahlbock and Stefan Voß, “Operations research at container terminals: a literature update,” *OR Spectrum*, vol. 30, 2008.
- South Carolina Ports, *Rail Move, Pier Container & TEU History - 08/12/2025*, last date accessed August 25, 2025, <https://scspa.com/wp-content/uploads/gl078-pc-teu-history.pdf>.
- Theo E. Notteboom, “The Time Factor in Liner Shipping Services,” *Maritime Economics & Logistics*, vol. 8, 2006.
- Thomas G. Krattenmaker and Steven C. Salop, “Anticompetitive Exclusion: Raising Rivals’ Costs to Achieve Power over Price,” *Yale Law Journal*, vol. 96, no. 2, 1986.
- U.S. Army Corps of Engineers Digital Library, *Waterborne Container Traffic Data*, last date accessed September 15, 2025, <https://usace.contentdm.oclc.org/digital/collection/p16021coll2/id/1445>.

- U.S. Department of Transportation Bureau of Transportation Statistics, *Rail & Road Connections*, last accessed date September 2, 2025, <https://data.bts.gov/stories/s/Rail-Road-Connections/j4yu-qgj6/>.
- United States Department of Transportation, Bureau of Transportation Statistics, *Port Performance Freight Statistics: 2017 Annual Report to Congress*, February 13, 2018.
- United States Department of Transportation, Bureau of Transportation Statistics, *Port Performance Freight Statistics: 2025 Annual Report*, January 15, 2025.
- United States Department of Transportation, Maritime Administration, *U.S. Waterborne Foreign Container Trade by U.S. Customs Ports 2000 – 2017*, <https://www.maritime.dot.gov/data-reports/data-statistics/us-waterborne-foreign-container-trade-us-customs-ports-2000-%E2%80%93-2017>.
- United States Government Accountability Office, *Report to Congressional Requesters, Maritime Cargo Security*, June 2022.
- Vessel Finder, “Port Calls Data” for Vessels Visiting New York, Norfolk, Savannah, and Charleston in 2023-2024, last date accessed September 15, 2025, vesselfinder.com.
- Virginia Maritime Association, *Port Facilities: Virginia International Gateway*, last date accessed August 19, 2025, <https://vamaritime.com/VirginiaPortsAnnual/VirginiaPortsAnnual/Port-Facilities/Facilities.aspx>.
- William B. Cassidy, “Truck driver shortage threatens intermodal growth,” *Journal of Commerce*, April 15, 2015.
- Zahra Ahmed, “Top 5 Shipping Alliances,” *Marine Insight*, January 17, 2025, <https://www.marineinsight.com/know-more/top-5-shipping-alliances/>.

Depositions – This proceeding

- Deposition of Daniel Fapp, August 13, 2025.
- Deposition of Michael McClellan, NS, August 18, 2025.

Legal Filings – This proceeding

- *Comment of the United States Department of Justice*, Docket No. FD 36836, August 27, 2025.
- *CSX Transportation, Inc. 's Evidence and Argument in Opposition to the NS Control Application*, Docket No. FD 36836, September 18, 2025.
- *CSX Transportation, Inc. 's Petition to Reject Norfolk Southern's Minor Application*, Docket No. FD 36836, February 27, 2025.
- *Letter Re: STB Docket No. FD 36836 – Norfolk Southern Railway Company – Control Acquisition – Norfolk & Portsmouth Belt Railroad Company from Virginia Port Authority to Ms. Brown and Board Members*, March 5, 2025.
- *Letter Re: STB Docket No. FD 36836 from Djordje Tubic to Cynthia T. Brown*, March 12, 2025.
- *NSR Minor Application for Acquisition of NPBL*, Docket No. FD 36836, February 14, 2025.
- *NSR Supplement and Perfection of Application for Acquisition of NPBL*, Docket No. FD 36836, June 13, 2025.

STB Decisions

- *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company*, STB Finance Docket No. 32549, Decision No. 38, August 16, 1995.
- *Canadian Pacific Rail Way Ltd. et al.—Control—Dakota, Minnesota, and Eastern Railroad Corp. et al.*, STB Finance Docket No. FD 35081, Decision no. 11, September 29, 2008.
- *CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., et al.*, STB Finance Docket No. 36472, Decision No. 9, April 14, 2022.
- *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—*

Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89, July 20, 1998.

- Surface Transportation Board, *Major Rail Consolidation Procedures*, 66 FR 32582, June 7, 2001.
- *Union Pacific Corporation, et al.—Control and Merger—Southern Pacific Rail Corporation, et al.*, STB Finance Docket No. 32760, Decision No. 44, August 6, 1996.

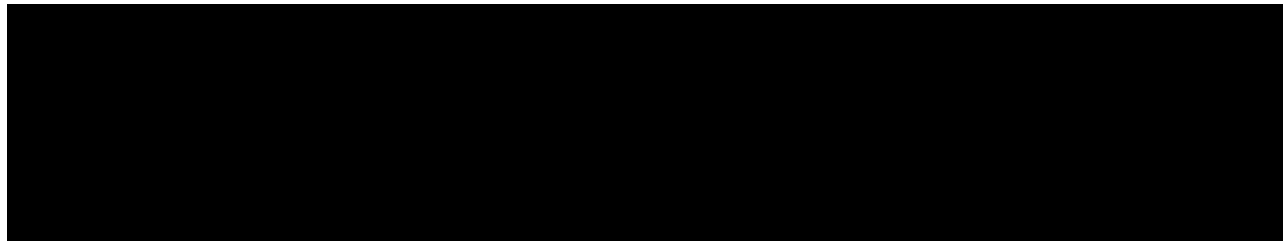
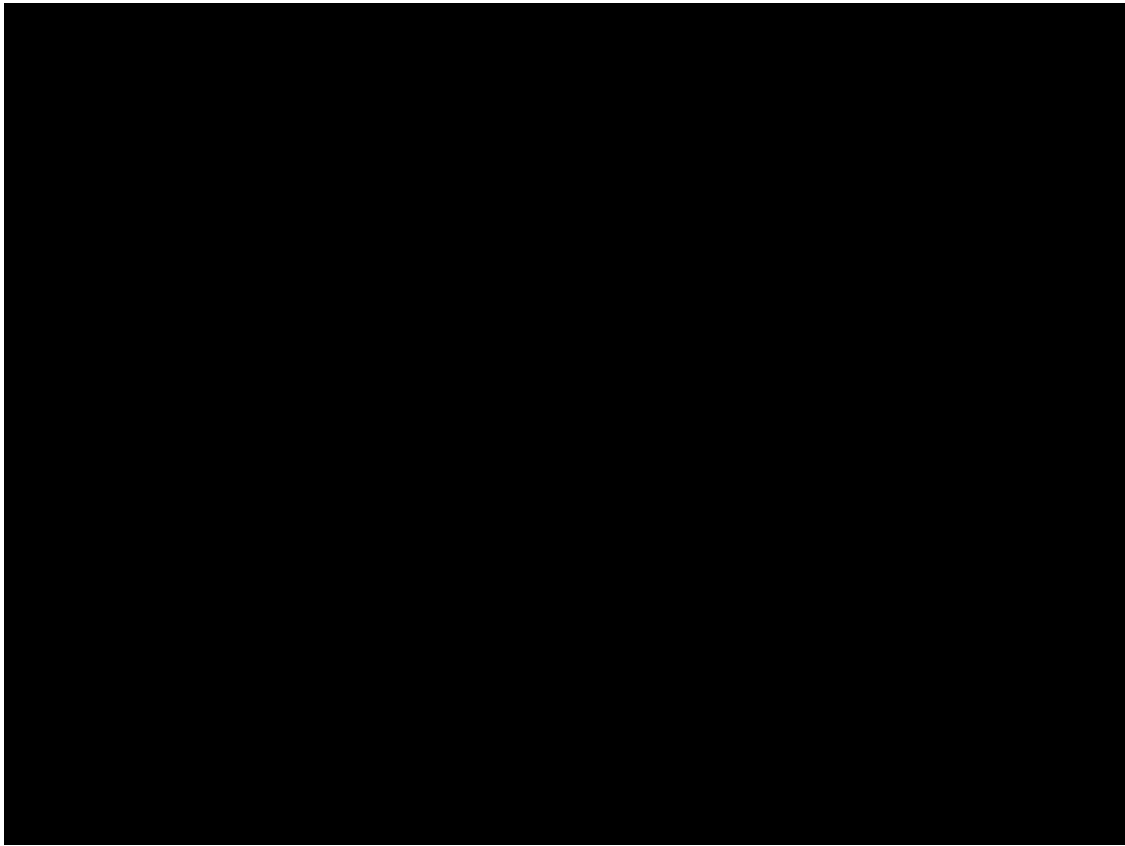
Verified Statements – This proceeding

- *NSR Minor Application for Acquisition of NPBL*, Docket No. FD 36836, February 14, 2025, Exhibit A, Verified Statement of Michael R. McClellan.
- *NSR Minor Application for Acquisition of NPBL*, Docket No. FD 36836, February 14, 2025, Exhibit B, Verified Statement of Daniel L. Fapp.
- *NSR Supplement and Perfection of Application for Acquisition of NPBL*, Docket No. FD 36836, June 13, 2025, Exhibit B, Verified Statement of Daniel L. Fapp.
- Verified Statement of Dr. William Huneke, September 18, 2025.
- Verified Statement of Julie M. Carey, September 18, 2025.
- Verified Statement of Maryclare Kenney, September 18, 2025.

All materials cited and provided in the workpapers of the Verified Statement of Nathan Miller, September 18, 2025.

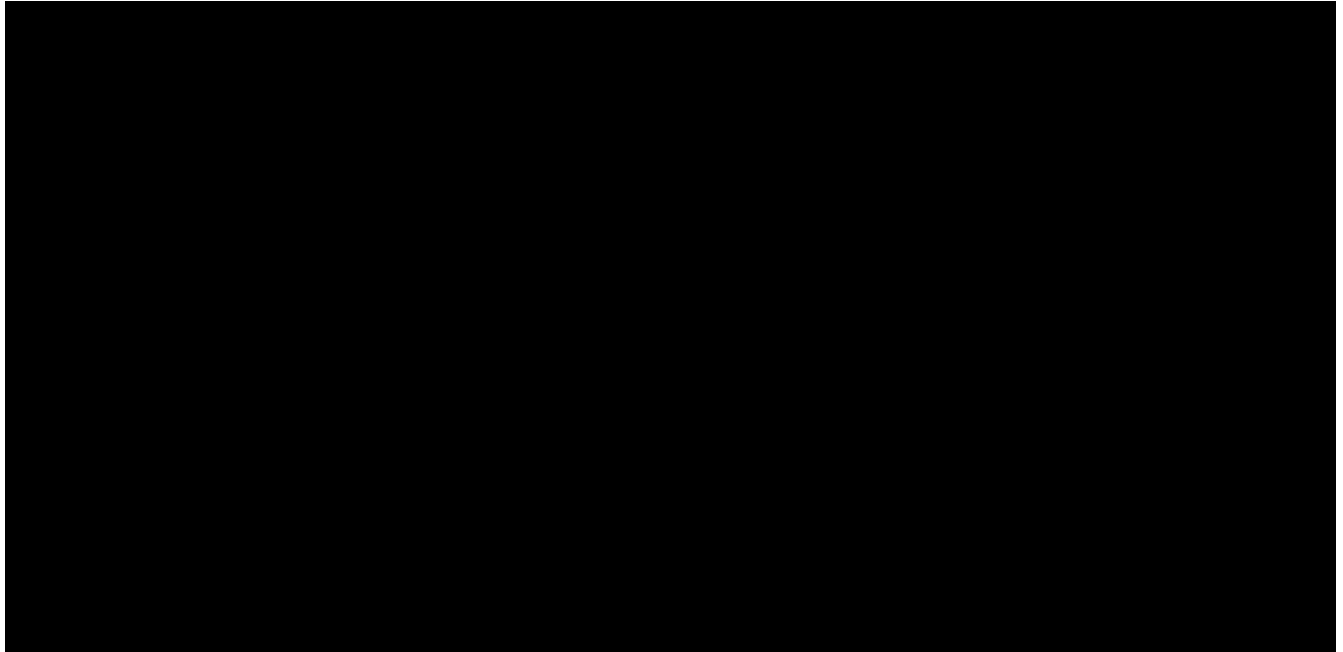
APPENDIX C

Figure C-1
Alignment of Major Ocean Carriers with East Coast Railroads, 2018}}



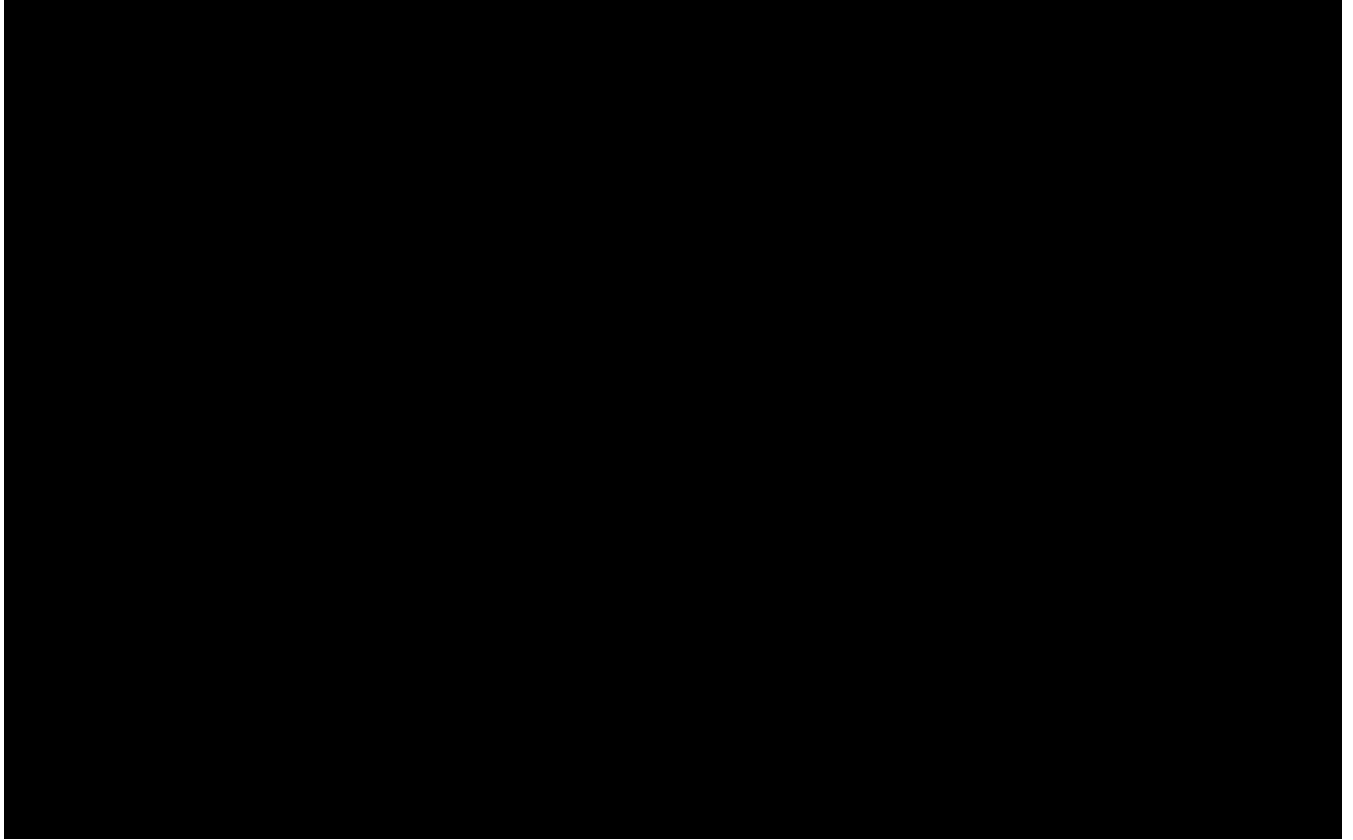
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Figure C-2
Alignment of Major Ocean Carriers with East Coast Railroads, 2018-2024}}



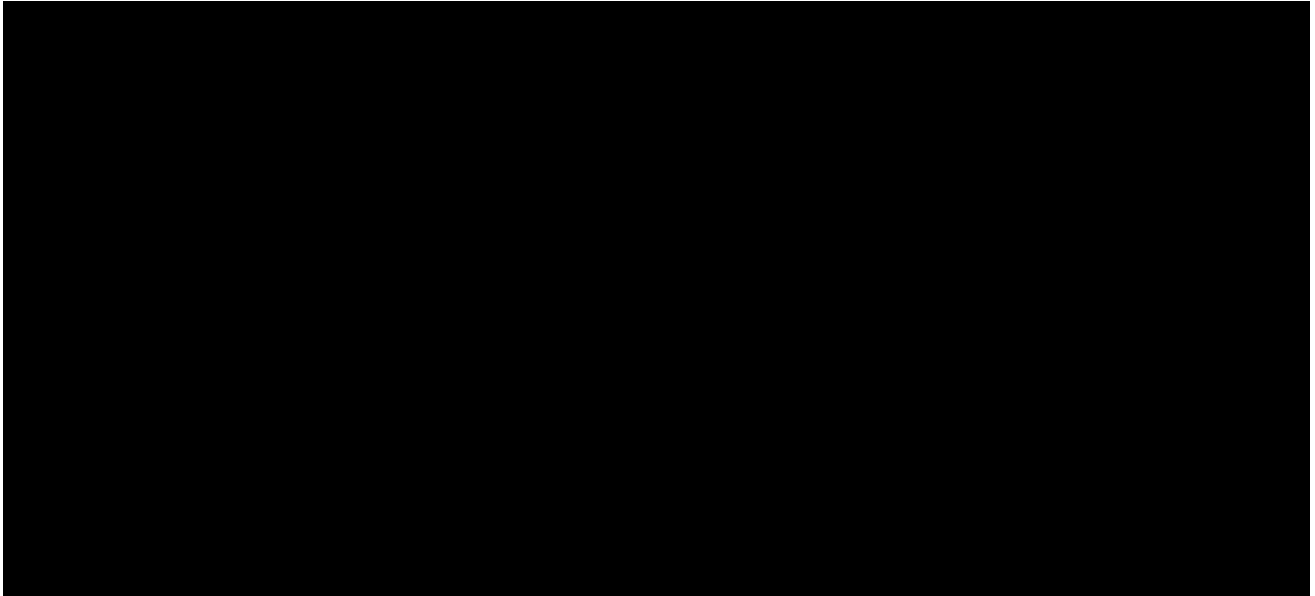
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Figure C-3
Ocean Carriers' Share of Traffic with CSXT by Big Four EC Port, 2018}}



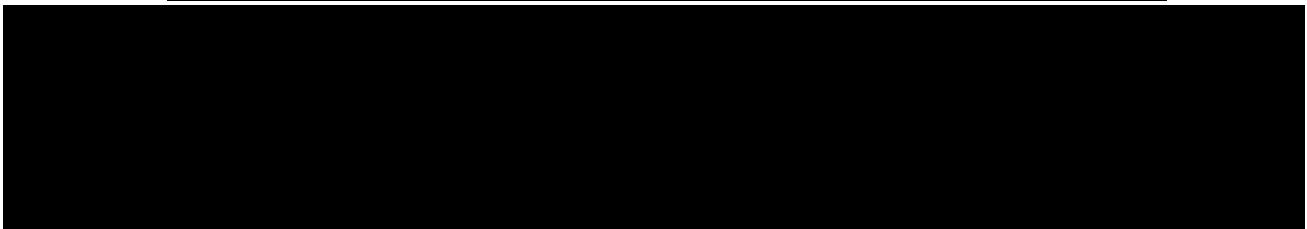
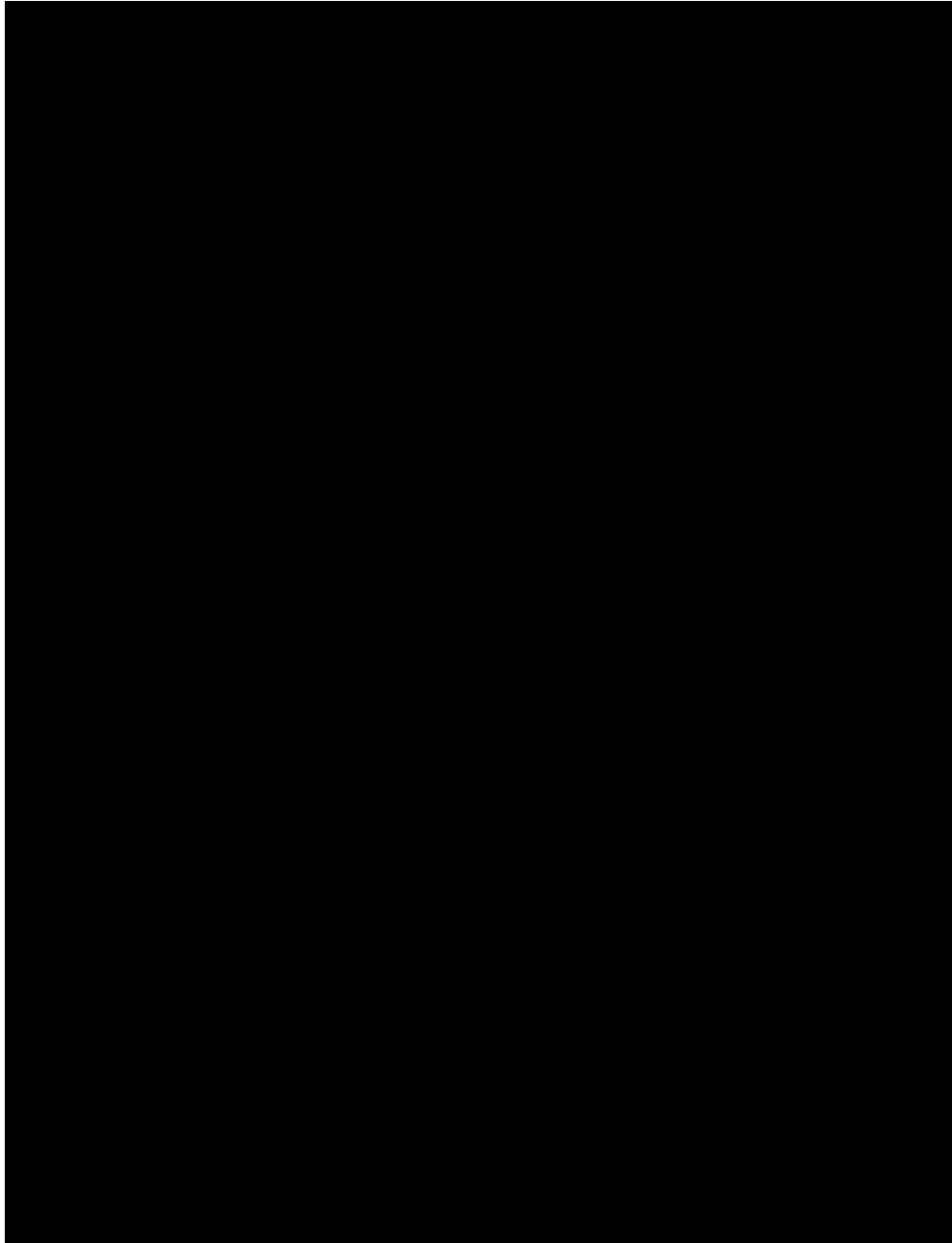
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Figure C-4
Rail Container Traffic by Inland BEA, Big Four EC Port, and Railroad, 2018}}



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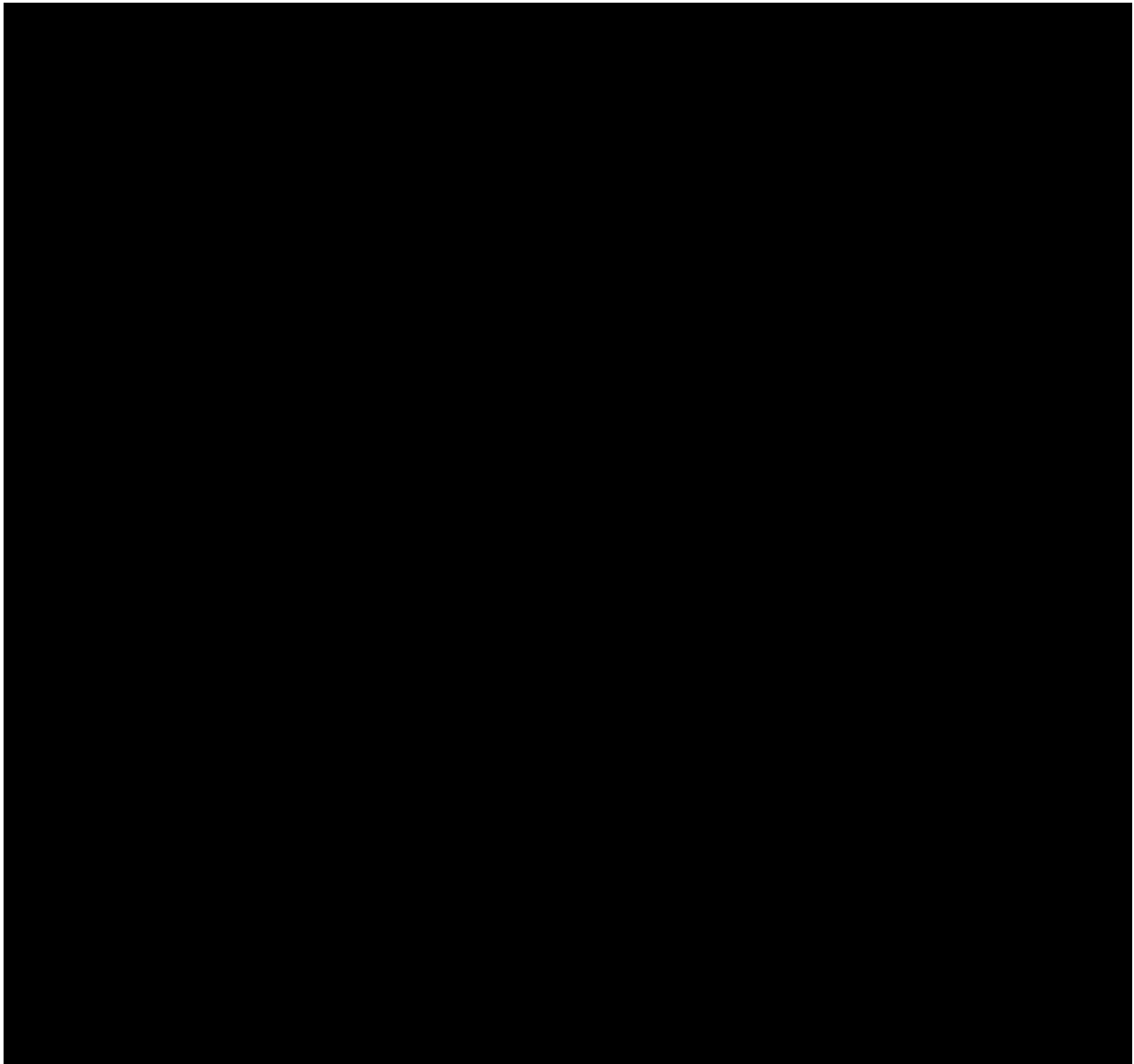
Figure C-5
Ocean Carriers Serve Inland Stations over both POV and PONYNJ, 2018}}



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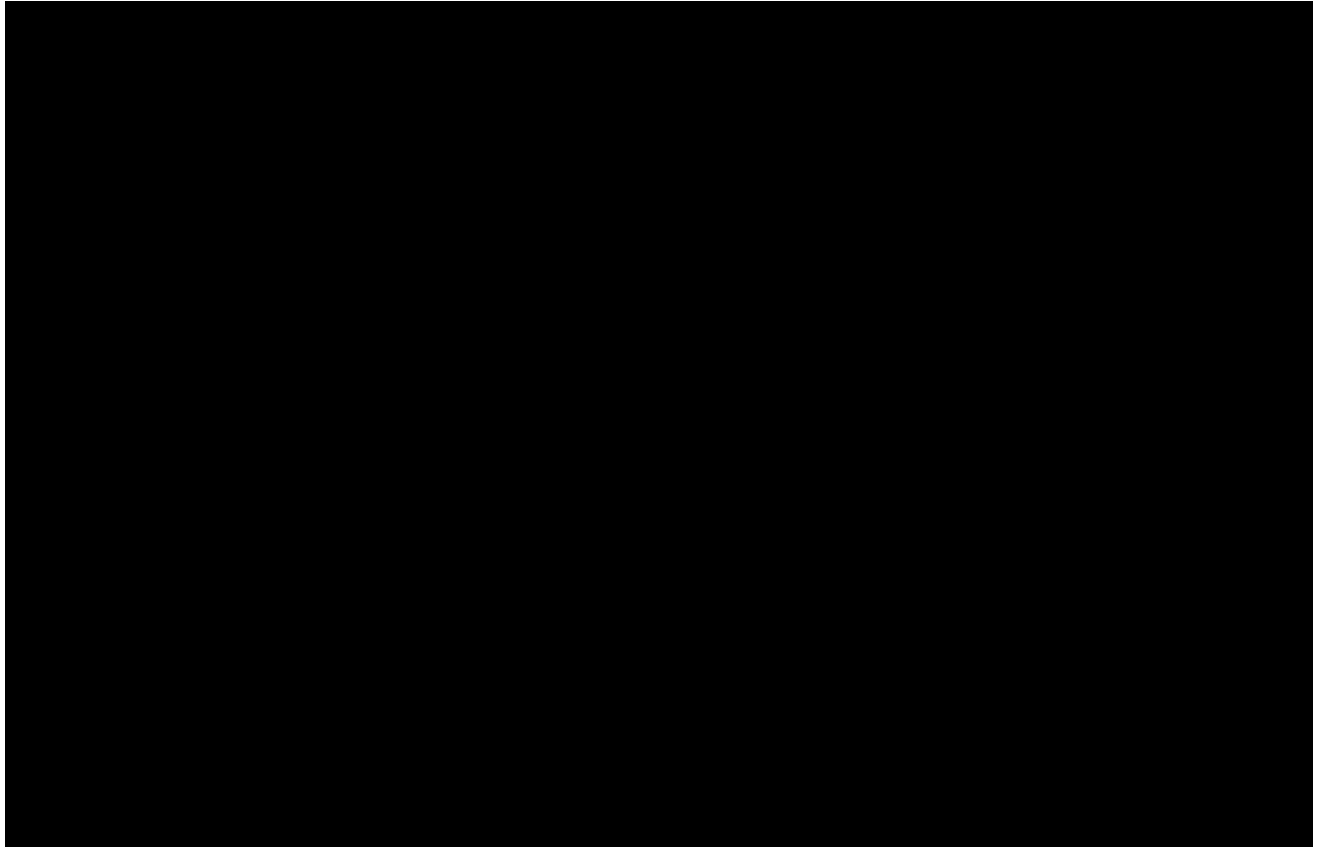
Figure C-6

The {{[REDACTED]}} of POV/PONYNJ Rail Containers Move to Inland Stations where Ocean Carriers Route Traffic over both POV and PONYNJ, 2018{{



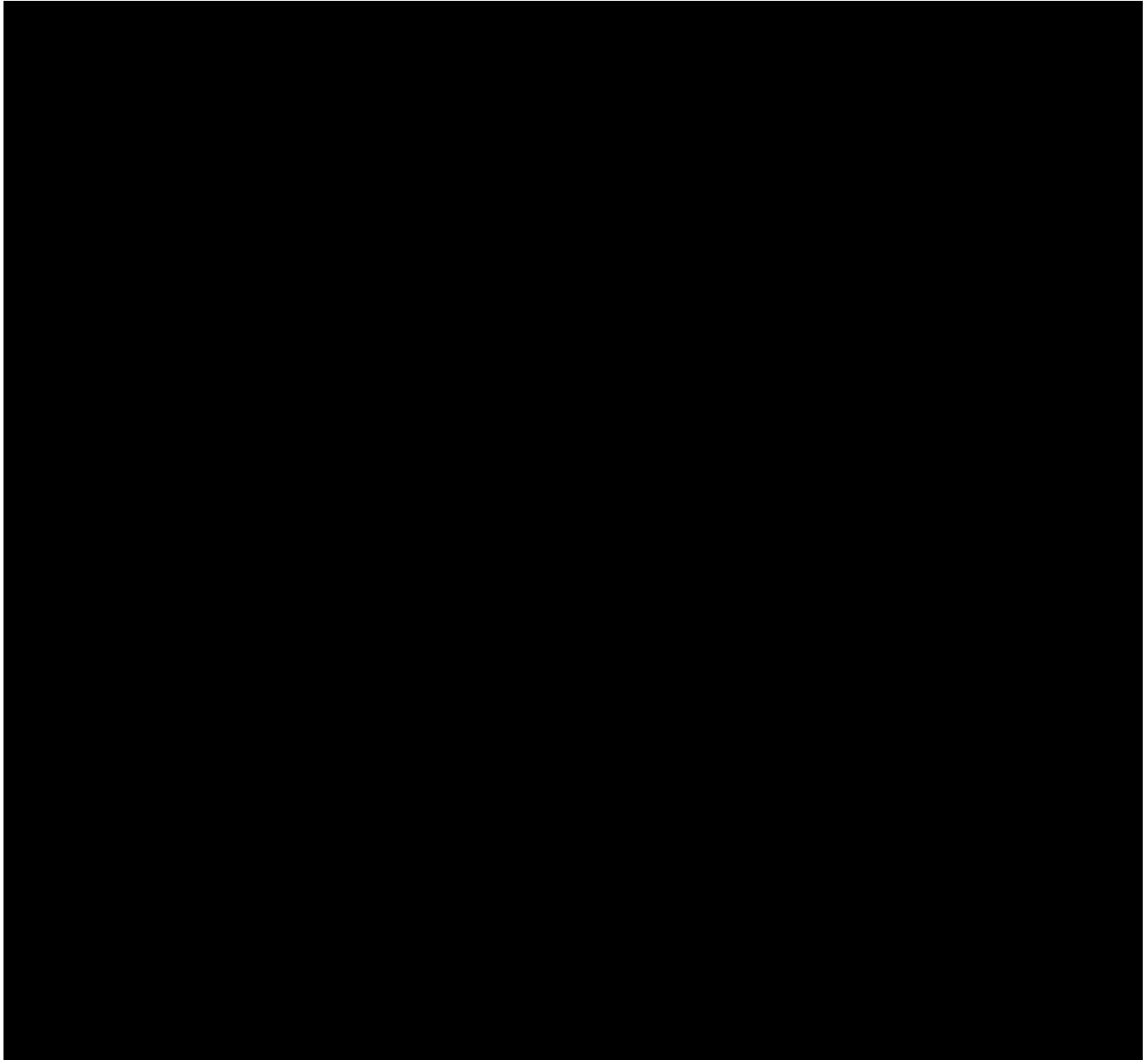
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Figure C-7
Ocean Carriers' Use of POV Terminals NIT and VIG, 2018}}



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Figure C-8
Shares for Land Transportation for IM Containers to/from NIT, All BEAs, 2024}}



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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

ATTACHMENT 3

VERIFIED STATEMENT OF JULIE M. CAREY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. FD 36836
NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

CSX TRANSPORTATION, INC.

**VERIFIED STATEMENT OF JULIE M. CAREY
NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.
(NERA)**

SEPTEMBER 18, 2025

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I. INTRODUCTION AND SUMMARY OF OPINIONS

My name is Julie M. Carey. I am an economist and Senior Managing Director with National Economic Research Associates, Inc. (“NERA”). I have previously submitted two verified statements in this proceeding, which appear as Exhibits in CSXT-1 and CSXT-13.

The Revised Application argues that there is no competitive concern arising from Norfolk Southern’s (“NS”) control of Norfolk and Portsmouth Belt Line Railroad Company (“NPBL”).¹ In part, NS suggests this is because it has controlled the NPBL for a long time, so the status quo will continue if the Board grants NS’ application. However, importantly, NS fails to empirically demonstrate that NS’ existing unauthorized control of NPBL has not enabled the exertion of market power and harm to consumers.

NS acknowledges its ongoing control of NPBL in its request to the STB for a declaratory order.² In addition, in that same proceeding, NPBL also indicates that it understood and acted under NS control.³ Furthermore, as discussed below, NS has exclusivity at the highly demanded port terminal, Norfolk International Terminal (“NIT”).⁴ Therefore, NS’ high shares of corridor routes to/from the inland Midwestern market areas served by that terminal can be substantially attributed to its exclusionary scheme. NS’ exclusionary actions take the form of both physical and economic obstruction, leading to a lessening of competition.

With that context, the current situation reflects NS’ control of NPBL. The central issue in this case is whether, in a scenario where NPBL was untethered to NS and its exclusionary control, CSXT would be expected to have reasonable, economic and efficient access to the highly valuable NIT port terminal to which it is entitled through its joint ownership of NPBL. NPBL’s legal access to NIT through a trackage rights agreement with NS is not disputed by NS. These are the two ways to access the NIT terminal by direct railroad service: (1) NS has its own line to directly access NIT, and (2) NS also controls the NPBL, which can access NIT through trackage rights over the NS line.

To evaluate the impact on competition from the transaction, one must compare the world with NS control of NPBL and the world absent NS control. However, NS conducts no analysis of competition absent NS control of NPBL; instead, NS assumes a static transaction that results in unchanged circumstances. With NS control of NPBL, NS has a {{[REDACTED]}} share of rail-only traffic

¹ STB Decision, NS-Supplement and Perfection of Application, Docket No. FD 36836, June 13, 2025, at pp. 10-14.

² STB Decision, NS-Petition for Declaratory Order, Docket No. FD 36522, June 17, 2022, p.1. Stating “[t]he ICC, did not authorize NSC to control NPBL.”

³ Ibid, p.8. NPBL argues it has been under the control of NS.

⁴ Norfolk International Terminal (NIT).

movements for international intermodal container traffic (“IM Traffic”) on the NIT corridor. In 2023, NS also had approximately {{[REDACTED]}} of volumes for IM Traffic when including CSXT drayage combined with rail serving NIT corridors to and from Midwestern locations.⁵ NS is silent on the relevant question of what the shares and competitive impact would be absent NS control of NPBL.

The concerning NS exclusivity and accompanying NS shares at NIT observed today are set to profoundly increase in the near future because NIT is in the process of substantially expanding its capabilities. Under continued NS control, higher NS shares at the larger and more important NIT terminal can be expected. A forward-looking analysis of the competitive effects of NS’ proposed control of NPBL requires evaluation of the increased importance of NIT and therefore the potentially larger future competitive impact of NS’s control of NPBL. The NS Revised Application failed to conduct a forward-looking analysis of those competitive effects.

To support its assumption of no effect on competition from a 2-to-1 at NIT⁶, NS’ Revised Application points to trucking competitors—both drayage to rail and long-haul truck moves on NIT/Port of Virginia (“POV”) corridors. NS fails to adequately support these claims. Drayage to rail and long-haul trucking are not feasible economic alternatives for the majority of traffic on NIT/POV corridors with distant Midwestern locations and they are unable to act as sufficient competitive constraints on NS at NIT.

Further, NS does not provide any economic analysis to explain that its {{[REDACTED]}} shares at NIT/POV arise from any natural competitive advantages. It lacks support for the static view of no changes resulting from its control of NPBL. For the corridors between NIT/POV and Midwestern locations, NS fails to show cost, service quality or other economic factors that lead to the high NS share relative to otherwise comparable economic circumstances for two large, sophisticated Class 1 railroads. I observe no significant factor that would explain why the existing {{[REDACTED]}} NS shares would exist absent NS control of NPBL.

NS’ exclusionary scheme effectuated through its control of NPBL uses physical and economic means to impede CSXT’s access to NIT and maintain exclusive on-dock rail access to the highly valuable NIT port terminal. The evidence of exclusion is borne out by CSXT being unable to achieve the volumes it would otherwise be expected to achieve absent NS control of NPBL on the

⁵ {{[REDACTED]}} See Fapp Exhibit __DLF-7. NS has a {{[REDACTED]}} share of the broader POV area including VIG and NIT. See Fapp Exhibit DLF-5.

⁶ NS claims that the transaction will not reduce competitive options at NIT because it continues to have a uniform cost based NPBL switch rate which CSXT can access. My report addresses this claim’s lack of merit.

NIT – Midwestern corridors. This has caused a lessening of competition at NIT which harms customers who have fewer options and face higher prices from NS, and harming POV which has also incurred costs to subsidize the CSXT drayage to rail from NIT, which is a less attractive option to on dock rail at NIT from a customer perspective.

NS experts did not examine NS’ economic, operational and business decisions related to the NPBL system to consider whether those past actions were unilaterally driven by NS’ control of NPBL or if they would be reasonably expected to have been taken in the absence of NS’ control of NPBL (i.e. they were actions taken in the best interest of an NPBL untethered to NS).⁷ Substantial exclusionary conduct has occurred in recent years and as far back as 2009/2010 and has had lasting effects. NS’ actions have an exclusionary effect and have taken a multitude of forms including physical and economic obstruction, as well as preferential treatment to NS (undue competitive advantages), and the combination of these acts have distorted competition. The exclusionary scheme would not be reasonably expected to occur if NS did not control NPBL, or if it maintained arm’s-length relationships and other requirements routinely used by industry regulators when addressing concerns for affiliated companies interacting with competitors in a position to harm competition.

The single \$210 NPBL switch rate has an exclusionary effect and is inconsistent with railroad industry practices that are anchored by differential pricing.⁸ The single \$210 rate is unreasonably high when compared to most similar short lines switching rates. The \$210 rate and the additional operational costs created by NS’ control of NPBL are economically exclusionary and foreclose CSXT’s ability to economically serve a large portion of price sensitive customers. The \$210 rate also is discriminatory and distortive as a cost-based rate (which NS claims is the basis for using the single \$210 rate) because it forces lower variable cost per unit international IM customers to pay a larger amount of fixed railroad costs than other more costly traffic types with a higher variable cost per unit. NS acted preferentially (conferring an undue competitive advantage) and with an exclusionary effect on CSXT and shippers in its role denying economically reasonable CSXT rate offers to expand NPBL traffic which would be economically desirable for typical short line railroads. NS also spurred large exclusionary operational impediments such as adding multiple cumbersome interchange requirements (e.g. disassembly and reassembly of trains) and other risks due to its control of dispatch. In contrast, elsewhere, where it is unable to tilt the scales to its advantage, NS has worked

⁷ Instead, NS witness McClellan state that “CSXT has been, and remains, the predominate user of NPBL services” suggesting that therefore this is evidence that NPBL with NS control has not acted in an exclusionary manner. NS – 1, McClellan VS, p. 12. See also NS-13, Fapp VS, p. 11.

⁸ NPBL itself adhered to such differential pricing practices before CSXT expressed interest in having on dock rail access at NIT in 2009/2010. Section V.A and V.B below.

with railroads to reduce the number of interchanges and related operational inefficiencies, including with other short lines.⁹ Furthermore, the documentary evidence is replete with examples of NS' harm to competition through the denial of CSXT on-dock rail access to NIT.

I have also reviewed NS' analysis presented by NS's expert Mr. Fapp. Correcting the unreliable and flawed cost analyses presented by Mr. Fapp shows that NPBL could cover its total costs when serving international IM customers at NIT with a rate that covers variable cost of the IM traffic moves and contributes an appropriate amount of fixed cost of the railroad.¹⁰ Absent NS control of NPBL, NPBL has the same economic incentive as a typical short line railroad to serve more traffic, providing economic benefits to its system and shippers through robust competition.

The Board has broad authority to impose conditions on mergers to "promote interstate transportation in the interest of the public and commerce of the people," as explained by the ICC in the BN Frisco decision.¹¹ Here, increased competition would result from providing CSXT the unfettered on-dock rail access to NIT that an independent NPBL would have reasonably been expected to provide for a joint owner in NPBL. The resulting effect can be expected to yield substantial benefits that are in the public interest by removing NS' historical control of NPBL.

In my opinion, the Board must ensure that NPBL is operated in a manner that does not distort competition, which is consistent with the mutual benefit of both co-owners set forth in the 1987 Operating Agreement.¹² NS' control of NPBL has had substantial anticompetitive effects, and its continued control will exacerbate the effect on competition because of the expansion at NIT.

In sum, commercially reasonable access which enables competitive options and rates should have been in effect on NPBL long ago, yet they continue to be absent now and will continue to be absent if the Board grants NS's control application.

⁹ See Section III.B.6.

¹⁰ NPBL's 1897 Operating Agreement states it shall { [REDACTED] } See Agreement between New York, Philadelphia & Norfolk R.R. Co., Seaboard and Roanoke R.R. Co., Norfolk and Southern R.R. Co., Norfolk and Western Ry. Co., Atlantic and Danville Ry. Co., Southern Ry. Co., Norfolk and Carolina R.R. Co., and Chesapeake and Ohio Ry Co., July 7, 1897, p. 4, NSR_00104139-00104145 at NSR_00104142.

¹¹ See 360 I.C.C. 788, 950. ("We have broad authority to impose conditions on railroad unifications. In the past we have imposed conditions to promote interstate transportation in the interest of the public and commerce of the people, to enhance competition, to improve the position of a carrier, to open new gateways, to establish new single-line service, to preserve the integrity of an important switching carrier, to preclude diversion of traffic, to compensate partially a railroad for its anticipated traffic losses, to protect railroads even though they will not suffer serious anticompetitive harm, and to aid railroads not likely to be harmed by the transaction. This has been our policy in the past. However, the overriding factor governing the imposition of all conditions in the past has been the public interest.")

¹² NPBL Operating Agreement, July 7, 1897, p. 1, NSR_00104139.

II. NS' HIGH SHARES ON NIT/POV CORRIDORS RESULT FROM NS' CONTROL OF NPBL

A. NS Fails to Analyze the Full Extent of Harm to Competition on the NIT/POV Corridor Routes Arising from NS' Control of NPBL Today

In this section, I conduct a corridor analysis to evaluate competitors' shares on the independent options available for an origin-destination combination. This well-established screening process has been used in railroad mergers brought before the Board to evaluate potential competitive effects.¹³ Evaluating traffic volumes and shares on the specific corridors used by shippers today is an important first step in evaluating potential competitive concerns.

With NIT as a unique and highly in demand port terminal, I conduct an analysis of the traffic volumes and shares on NIT-specific corridors with Midwestern locations, which are the primary corridors at issue.¹⁴ I also conduct an analysis of traffic volumes and shares on the corridors for the broader POV area (NIT and Virginia International Gateway "VIG") with Midwestern locations.¹⁵

NS' Revised Application inadequately addresses the impact to competition of NS' control of NPBL on these corridors. While Mr. Fapp identifies the corridors' current traffic,¹⁶ he presents no analysis of shares or evaluation of the competitive dynamic in the world with and without NS control of NPBL. With NS control of NPBL, NS has a {{[REDACTED]}} share of rail-only traffic movements for international intermodal ("IM") container traffic on NIT corridors with Midwestern locations.¹⁷ With NS control of NPBL, NS has {{[REDACTED]}}¹⁸ of traffic volumes for IM container traffic where CSXT uses drayage in combination with rail on NIT corridors. See Figure 1. These NIT corridors include: Chicago, IL, Columbus, OH, Detroit, MI, Cleveland, OH, Louisville, KY, Cincinnati, OH, St. Louis, MO, Kansas City, MO, and for interchange to Western Locations (primarily through Chicago). NS shares exceed {{[REDACTED]}}

[REDACTED]

¹³ Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc., Application for Minor Transaction, Finance Docket No. 35873, November 17, 2014, Curtis Grimm VS; Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, Et al., W. Robert Majure VS October 28, 2021, Finance Docket 36500.

¹⁴ Origin and destination pairs between the NIT and Midwest regions (BEAs).

¹⁵ Origin and destination pairs between the NIT or Virginia International Gateway ("VIG") and Midwest regions (BEAs).

¹⁶ Fapp Exhibit DLF-5.

¹⁷ In this section, I present 2023 shares, which is the same data year analyzed by Mr. Fapp. I also present certain 2024 shares in Appendix A - Traffic Analyses.

¹⁸ {{[REDACTED]}}
See Fapp Exhibit __DLF-7.

^{19}}} See Figure 1 below.

Figure 1: Shares for Rail/Drayage to Rail International IM Traffic Movements NIT Corridors to/from Inland Midwestern Markets, 2023²⁰ {{



These current high NS shares on corridors between NIT and Midwestern locations are a starting point to evaluate the competitive effects that would result from NS control of NPBL. As I discuss further below, NS presents no analysis to determine what shares would reasonably be expected to exist absent NS' control of NPBL,²¹ nor does NS provide analysis or evidence to explain the high shares at NIT in terms of natural competitive advantages. NS presents no cost data²² or service quality data²³ for the specific corridor routes between NIT and the Midwestern locations.

Absent NS control of NPBL, CSXT would be expected to be highly competitive and achieve higher volumes at NIT than with NS control of NPBL. Thus, with the absence of economic evidence to support the high shares at the important NIT port terminal, NS' {{ [REDACTED] }} shares on the NIT corridor routes to/from the inland Midwestern market areas can be substantially attributed to its exclusionary conduct.

¹⁹ NS share in 2024 is approximately {{ [REDACTED] }}. 2024 NS shares exceed {{ [REDACTED] }} See

Carey HC-WP-Traffic Tapes Analysis 2024_CSXT_NS and Appendix A - Traffic Analyses.

²⁰ Carey HC-WP-Traffic Tapes Analysis 2023_CSXT_NS.

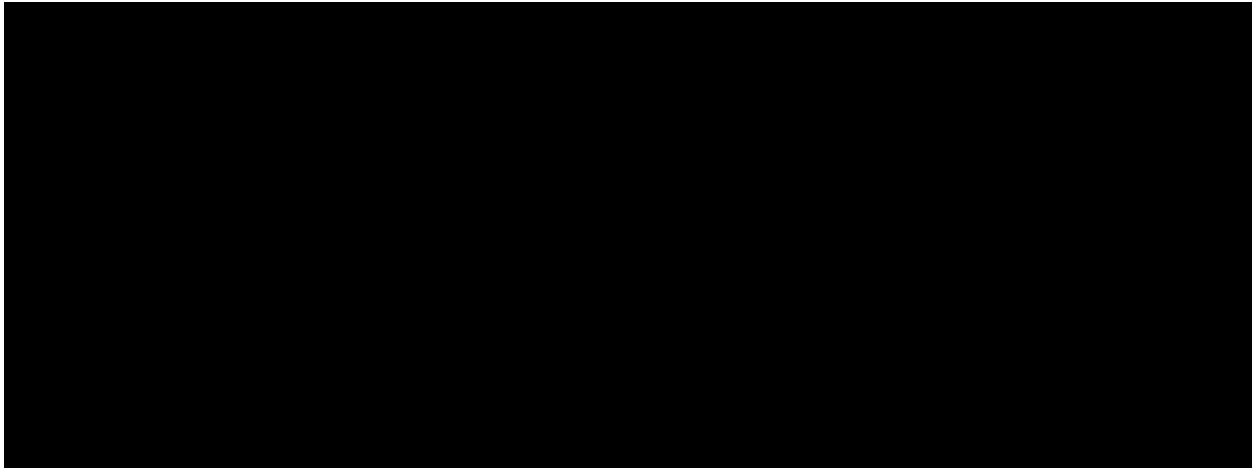
²¹ See Sections II.D and II.F.

²² NS only provided total NPBL system cost data. Fapp VS, p 7.

²³ Mr. Fapp discusses NS' lead with double stack service as compared to CSXT's single-stack service in the 2010-2015 period. Fapp VS, p. 7.

In contrast to a {{[REDACTED]}} share at NIT (with drayage to rail), CSXT has a {{[REDACTED]}} share at VIG as shown below in Figure 2 which illustrates the benefits of real access to on-dock rail (from a short line terminal railroad).²⁴

Figure 2: CSXT Shares for On-Dock Rail at VIG vs NIT (via) Dray to Rail, 2023²⁵{{[REDACTED]}}



}}

For the broader area combining the distinct and separately accessed and operated Virginia port terminals (NIT and VIG), with NS control of NPBL effectively blocking CSXT on-dock rail access to NIT, NS has achieved an approximately {{[REDACTED]}}²⁶ share of the combined corridors from all POV port terminals.²⁷ Mr. Fapp presents no analysis of shares, nor does he evaluate the competitive dynamic in the world absent NS control of the NPBL.²⁸ As a result of NS' control of NPBL, NS has kept CSXT from achieving the volume that it would otherwise achieve absent NS control of NPBL.

B. Higher Future Impact of NS' Control of NPBL with Expanded NIT Terminal

The concerning NS exclusivity and shares at NIT observed today is set to profoundly increase in the near future because NIT is in the process of substantially expanding its capacity and capability. With continued NS control of NPBL, high NS shares at an even larger NIT terminal can

²⁴ CSXT has a {{[REDACTED]}} share at VIG in 2024 of {{[REDACTED]}}, see Appendix A at Figure 2.

²⁵ Carey HC-WP-Traffic Tapes Analysis 2023_CSXT_NS.

²⁶ {{[REDACTED]}}. Fapp VS, Fapp Exhibit DLF-5.

²⁷ Origin and destination pairs between the NIT or VIG. Mr. Fapp presents the traffic volumes by corridor (Exhibit DLF-5) but did not calculate shares or discuss findings. See Appendix A and Carey HC-WP-Traffic Tapes Analysis 2023_CSXT_NS.

²⁸ Mr. Fapp identifies the current traffic volumes moving on these POV corridors. Fapp VS, Fapp Exhibit DLF-5.

be expected.²⁹ A forward-looking analysis of the competitive effects of NS' proposed control of NPBL requires evaluating NIT's dramatically growing relative importance and its potentially even larger competitive impact. The NS Revised Application failed to conduct a forward-looking analysis of those competitive effects.

The ongoing and very costly³⁰ capacity expansion will enable the NIT terminal to handle 3.6 million Twenty-foot Equivalent Units ("TEUs")³¹, which is more than 64% growth from its 2023 capacity level of 2.2 million TEUs.³² With expansion, NIT will be able to handle over 50% more than VIG's 2.2 million TEUs.³³ In 2023, NIT handled a total of {{[REDACTED]}} containers, most of which were transported by NS for railroad movements to/from inland Midwestern locations.³⁴ If these container volumes increase in proportion to the NIT expansion, container quantities can be reasonably expected to grow to {{[REDACTED]}}³⁵ rail containers.

With expansion, NIT will have 19 super Most Panamax ship-to-shore cranes and 96 semi-automated stacking cranes that will enable efficient container ship loading and unloading at NIT at a higher rate than at VIG. Also, the expansion to 6,630 feet of berth space will give NIT substantially more footage of berth for vessels to dock than VIG (approximately 65% more).^{36,37} This berth space expansion will widen the gap between NIT and VIG because, even in the recent past, VIG has more

²⁹ NIT has recently completed an expansion of 455,000 TEUs (30% increase), however ongoing work will expand capacity by 1.4 million TEUs by 2027. See Port of Virginia, Norfolk International Terminals, available at https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-NIT-2.pdf.

³⁰ POV anticipates spending more than \$1 billion on various NIT related construction, including \$650 million NIT semi-automated systems, \$450 million dredging for north and south NIT, as well as \$83 million yard expansion. See Port of Virginia, Sustainability Report 2023, The Future of America's Most Modern Gateway, p. 21, available at <https://www.portofvirginia.com/wp-content/uploads/2024/04/2023-POV-Sustainability-Report-3.pdf>.

See also US Army Corp Notice: AO-2010-00404 (Norfolk International Terminals (North and South) Dredging, Norfolk, Virginia), October 28, 2024, available at <https://www.nao.usace.army.mil/Media/Public-Notices/Article/3947622/nao-2010-00404-norfolk-international-terminals-north-and-south-dredging-norfolk/>

³¹ Port of Virginia, "Capabilities," available at <https://www.portofvirginia.com/gateway/capabilities/>.

³² 64% = (1- 3.6 / 2.2). Currently NIT reports an annual throughput capacity of 2.2 million TEUs. Port of Virginia, "Norfolk International Terminals (NIT)," obtained August 8, 2025, available at <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-NIT-1-Pager.pdf>.

³³ Port of Virginia, "Capabilities," available at <https://www.portofvirginia.com/gateway/capabilities/>.

³⁴ See HC-WP-Traffic Tapes Analysis 2023_CSXT_NS.

³⁵ {{[REDACTED]}} = {{[REDACTED]}} * (3.6/2.2)

³⁶ See Port of Virginia, "Capabilities" and Port of Virginia, "Norfolk International Terminals (NIT)."

³⁷ 1.6575 = 6,630 (NIT) / 4,000 (VIG) The dredging expansion project will enable two-way Ultra Large Container Vessel ("ULCV") traffic and will give POV (NIT and VIG) the deepest and widest channel on the US East Coast when complete in 2025 (55-foot channel depth) with zero overhead air draft restrictions (ships do not have to pass under any bridges). Virginia Business, "Port of Virginia nears finish of \$450M dredging project", July 29, 2025, available at <https://virginiabusiness.com/port-of-virginia-nears-finish-of-450m-dredging-project/>. VIG has 12 super Post Panamax ship-to-shore cranes and 56 semi-automated stacking cranes and the capability to support three ULCVs simultaneously from an approximately 4,000-foot berth. See Port of Virginia, "Capabilities," available at <https://www.portofvirginia.com/gateway/capabilities/>; Port of Virginia, "Virginia International Gateway (VIG)," available at <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-VIG-1-Pager.pdf>.

limitations on the number of berths than NIT.³⁸

According to Thomas Capozzi, Chief Sales Officer at Virginia International Terminals, the most important factor in determining vessel assignments is {{[REDACTED]}}³⁹ While NIT is expanding, VIG was built out to its limits in its 2019 expansion and will permanently be the smaller terminal at POV. VIG's 2023 performance appears to have been at a level approaching its reported capacity, with slightly higher volumes in preceding years.⁴⁰ As VIG operates at or near capacity, growth in volumes through POV by international IM shipping customers will necessarily be directed to NIT.⁴¹

Therefore, NS' exclusive on-dock rail service at the NIT terminal and its exclusionary conduct (both physical and economic obstruction) will have an even larger competitive effect in the future period with the dramatically growing relative importance of NIT. NS's exclusionary conduct will therefore affect both current shippers and also the additional volumes through POV that are directed to NIT. This traffic at NIT will not have access to two on-dock railroads if NS is granted control of NPBL.

Large ocean carriers often stop at multiple ports along the east coast to unload shipments.⁴² Origins and destinations in the Midwestern corridors most heavily rely on both POV and New York/New Jersey (NY/NJ),⁴³ two of the largest and most sophisticated east coast container ports. It would be difficult for ocean carriers serving Midwestern locations to avoid Norfolk by shifting to NY/NJ because vessel operation limitations result in the need for the use of multiple ports as well as

³⁸ The Port of Virginia, "FY2022-2065 2065 Master Plan, Executive Summary, FY 2022 Base," p. 7, available at <https://www.portofvirginia.com/wp-content/uploads/2023/09/2021-Master-Plan-Executive-Summary-2.pdf>.

³⁹ EDVA Antitrust Litigation, CSX Exhibit 13, Capozzi Deposition, pp. 91:25-93:07.

⁴⁰ Carey HC-WP-VIG Utilization.

⁴¹ Kenney VS, pp. 3 "At POV, Virginia International Terminals ("VIT"), the commercial entity that operates POV's marine terminals, decides where to route vessels within the POV."

⁴² Shipping vessel tracking data indicates that {{[REDACTED]}} See Carey HC-WP Vessel Tracking and Appendix A at Figure 14. This is not surprising because large vessels use multiple ports to logistically handle large loads with complicated loading and unloading processes. See Kenney VS, pp. 2-3. In addition, around {{[REDACTED]}} See Carey HC-WP-Vessel Tracking. Ocean carriers use multiple ports to facilitate distribution and collection of IM traffic across a diverse geography and provide service at lower overall cost. "Multi-port calling is superior in terms of total cost..." Transportation Research Part E: Logistics and Transportation Review, "Multi-port vs. Hub-and-Spoke port calls by containerships," September 2009, available at <https://www.sciencedirect.com/science/article/pii/S1366554509000052>.

⁴³ Today POV has the largest share of volumes on container corridors to the Midwestern locations with approximately {{[REDACTED]}} With NIT expansion that share will likely grow. NYNJ has approximately {{[REDACTED]}}. See Appendix A at Figure 10 and Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS.

other limiting factors in NY/NJ such as insufficient spare capacity.⁴⁴ This limits the ability of the other ports serving the Midwestern locations to act as a competitive constraint on NS at NIT.

Similarly, drayage to rail moves have not been competitive with rail only service on NIT corridors in the past and there is no evidence that will change in the future. Furthermore, if CSXT was able to somehow gain half of the expected new business at the expanded NIT, it would require {{[REDACTED]}} times the 2023 drayage to rail volumes to move this traffic.⁴⁵ This substantially limits trucking drayage compared to rail's ability to act as a competitive constraint on NS at an expanded NIT. Lastly, trucking does not offer a competitive option because trucks are a premium price service for individual container movements that typically compete with rail for movements under 550 miles, which is less than the mileage along NIT corridors for Midwestern locations. (See Section II.E)

C. NS' Strong Economic Incentive (and Ability) to Exclude CSXT from NPBL

The Revised Application fails to empirically demonstrate that NS' control of NPBL has not enabled the exertion of market power and harm to consumers by NS, particularly in terms of price and quantity effects. NS has failed to explain its {{[REDACTED]}} percentages of traffic volumes between NIT/POV and Midwestern locations,⁴⁶ with its control of NPBL as compared to a competitive dynamic that would be expected absent NS control, in terms of costs, service quality or other economic factors.

Well-understood economics teaches that in circumstances such as these, where NS controls the line providing access for a competing railroad to reach an important port terminal, that NS is incentivized to exclude CSXT from the market. The U.S. Department of Justice agrees, stating that NS' application "presents the possibility that it may lessen competition by creating or increasing the 'ability and incentive to foreclose rivals from sources of supply or distribution.'"⁴⁷ NS also appears to understand the economic value and competitive importance of direct rail access to ports. An NS executive acknowledged the importance of dual serve rail access to a port (Charleston, SC) to be

⁴⁴ Total NIT capacity will be 3.6 million TEUs after expansion, while the Port of NY/NJ is approaching capacity limits. Port of New York and New Jersey has capacity to handle about 9 million TEUs annually. In 2023 and 2024 it moved 7.8 and 8.7 million TEUs, respectively, which is 86-97% of estimated port capacity according to the U.S. Army Corps of Engineers). See Appendix A - Traffic Analyses at Figure 13. Port Master Plan 2050, p. 14, available at <https://www.panynj.gov/port/en/our-port/port-development/port-master-plan.html> See also Port of New York, 2024 Port at a Glance, available at <https://www.panynj.gov/port/en/our-port/facts-and-figures.html>

⁴⁵ NIT's capacity is expanding by 1.4 million TEUS, or 700,000 40ft containers. 700,000 * 50% share = 350,000 containers / {{[REDACTED]}} See Port of Virginia, "Capabilities," available at https://www.portofvirginia.com/wp-content/uploads/2025/03/POV_2025-NIT-2.pdf/.

⁴⁶ Origin and destination pairs between the Norfolk International Terminal (NIT) or the Port of Virginia (both VIG and NIT) and inland IM locations in the Midwest region.

⁴⁷ FD 36836, Comment of the United States Department of Justice, August 27, 2025, p. 3.

competitive with international IM customers and explained that if one of the railroads had too many operational control points, dual rail access does not actually exist.

“The key factor is equivalent dual rail access....

...[O]cean carriers now expect it. It's more than a question of quality of service and competitive pricing; it's market access. The two railroads that serve Charleston - CSX and Norfolk Southern - each provide the port with direct access to cities that the other does not.⁴⁸

The port needs service from both railroads to be competitive with other ports. The plan claims to give Norfolk Southern access to the transfer facility, but it's a hollow claim, because operationally it will not work. Simply by the nature of the geography and the location of existing rail lines, Norfolk Southern trains would be subject to too many CSX control points to make competitive service practical...

The state's plan for an intermodal facility on the Clemson property would give ... both equivalent operational flexibility, with neither having an advantage over the other.”⁴⁹

The exclusion by NS of CSXT from on-dock rail access via NPBL to NIT would reasonably be expected to alter the quantities and prices that would otherwise exist. In other words, it is implausible that NS' control of NPBL would have no negative competitive effect on CSXT – a strong competitor to NS – as implicitly suggested by NS which presented no analysis or evidence of NPBL with or without control by NS.⁵⁰

D. Mr. Fapp's Corridor Competitor Analysis is Flawed and Incomplete

The NS Revised Application does not empirically show that NS, with control of NPBL, has no effect on otherwise prevailing competitive dynamics, i.e., NPBL without NS control would have differing competitive dynamics. Instead, NS suggests that CSXT transporting any container volumes to/from NIT or POV on a route – however few – is sufficient competition. Mr. Fapp points to traffic corridors served (regardless of the volumes or the share) stating that over {{[REDACTED]}} of the containers are on lanes served by both railroads.⁵¹ He provides no economic analysis of the specific competitive factors impacting NIT. Importantly, Mr. Fapp's summaries reflect NS' control of NPBL and are not an analysis of the competitive dynamic in the world without NS control of NPBL.

⁴⁸ “Those served by Norfolk Southern but not CSX include Dallas, St. Louis, Cincinnati, Kansas City, Louisville and Huntsville, Ala.; in addition, only Norfolk Southern's route from Charleston can offer the Upstate the efficient connectivity needed to one day move containers by rail from the port to the Upstate. CSX serves markets that Norfolk Southern does not.” Martinez, Robert, “Martinez: State rail plan essential to port's success,” Columbia State, January 20, 2011.

⁴⁹ Martinez, Robert, “Martinez: State rail plan essential to port's success,” Columbia State, January 20, 2011.

⁵⁰ Indeed, in the normal course of business, an NS executive acknowledged the economic effect of “dual rail access” and the importance of ensuring that that both railroads receive “...equivalent operational flexibility, with neither having an advantage over the other.” Martinez, Robert, “Martinez: State rail plan essential to port's success,” Columbia State, January 20, 2011.

⁵¹ “Most of the intermodal traffic moving to and from the POV terminals is originating or terminating in traffic lanes served by both CSXT and NS. Fapp Exhibit DLF-5 shows that, on average, over {{[REDACTED]}} percent of the containers moving in and out of POV during the 2017-2023 time period moved on traffic lanes served by both CSXT and NS.” Fapp VS, p. 5.

For the corridors that Mr. Fapp claims to have sufficient competition, Mr. Fapp's own data reports a trivial {{[REDACTED]}} share for the drayage to CSXT rail service as compared to NS direct rail access for NIT traffic moves. This is aligned with the share that I calculated and discussed in the prior section. CSXT serves a low share of traffic moves on collective NIT lanes (despite Mr. Fapp's claims that it is *participating* on {{[REDACTED]}} of the lanes) (emphasis added).⁵² NS' {{[REDACTED]}} shares undermine Mr. Fapp's claims.

On most of the NIT corridors, only {{[REDACTED]}} volumes are observed for CSXT. For example, {{[REDACTED]}}. The majority of the NIT to/from Midwestern corridors show virtually no container movements by CSXT.⁵³ The largest volumes from NIT go to Chicago and Columbus. For Chicago CSXT has {{[REDACTED]}} share.⁵⁴ For Columbus, CSXT achieved about {{[REDACTED]}} share.⁵⁵ In addition, NS' analysis solely reflects the world where NS controls NPBL.

E. The NS Application Lacks Economic Evidence of Trucking Competitors

NS' Revised Application points to trucking as sufficient competition both in terms of access to NIT (drayage to rail) as well as long-haul trucking moves on NIT/POV corridors. NS fails to present economic analysis to support these claims. Drayage to rail and long-haul trucking are not feasible economic alternatives for on-dock rail access for the NIT/POV–Midwestern corridor routes.

1. Drayage to Rail is Limited and an Infeasible Competitive Alternative at the Scale Necessary to Compete with On-Dock Rail

The NS Revised Application claims that CSXT's drayage from NIT to rail service was a competitive response to NPBL's rate increase in 2010⁵⁶ and suggests it is a feasible economic competitor today and tomorrow,⁵⁷ stating "...drayage is an effective alternative to an-all rail

⁵² Mr. Fapp notes that CSXT has achieved higher shares at NIT with dray service, as high as {{[REDACTED]}} in 2021; however, this is primarily due to decreasing NS on-dock volumes at NIT during the COVID-19 pandemic. See Fapp Exhibits DFL-4, 5 and NS-13, Fapp V.S., p. 18.

⁵³ For the broader market area, Mr. Fapp argues that CSXT and NS compete on {{[REDACTED]}} of the corridors. As shown in Figure 4 below, CSXT only has {{[REDACTED]}} share on collective POV corridors. While CSXT competes on these corridors, the issue is whether two comparable Class 1 railroads would be expected to have a closer competitive balance absent NS' control of NPBL. Mr. Fapp has not completed any economic analysis that shippers at NIT can choose VIG and use CSXT instead of NS. In addition, Mr. Fapp's analysis reflects NS' control of NPBL, and it does not depict the competitive dynamic in the world without NS control of the NPBL.

⁵⁴ {{[REDACTED]}} Carey HC-WP-Traffic Tapes Analysis 2023_CSXT_NS.

⁵⁵ {{[REDACTED]}} Carey HC-WP-Traffic Tapes Analysis 2023_CSXT_NS.

⁵⁶ Fapp VS, pp. 4-5, 16-18.

⁵⁷ Fapp VS, pp. 18 and 25.

movement using NPBL.”⁵⁸ NS uses this discussion to imply that CSXT’s drayage to rail service constrains any attempt by NS to raise prices through its control of NPBL.⁵⁹

Currently, CSXT and the POV operate a dray program which moves containers to and from NIT to VIG, where it is consolidated with the rest of CSXT’s intermodal traffic. POV facilitates the dray movement of the international intermodal container from NIT to rail at VIG. At VIG, the container is loaded onto a train by Commonwealth Railway (“CWRV”) and then transported to be interchanged with CSXT.⁶⁰ The same process is operated in reverse for a container moved to NIT for export. CSXT pays both POV and CWRV separate additional fees for this service.⁶¹ This operation has been in place since 2021 following the closing of the Pinners Point IM facility that was previously the rail starting or end point for the CSXT drayage to rail service from/to NIT.⁶²

The Port of Virginia itself has stated that drayage access is not equivalent to on dock rail access and set a goal to “eliminate as many unnecessary drays as possible.”⁶³ The Port has described the process as inefficient, claiming that the method “compromise[s]” the port and is “costly” and “unnecessarily congests local roads.”⁶⁴ The Governor of Virginia agrees, stating that the drayage program leads to “congestion,” “delays,” “decreases safety,” and is operationally less efficient.⁶⁵

NS provides no analysis to support its claim that truck drayage to rail achieves sufficient economic scale to compete with long-haul, on-dock rail service for large international IM shippers on the relevant corridor routes. The drayage to rail service cannot attain the sufficient volumes required to be an effective economic competitor to NS with comparable service quality.⁶⁶ Between 2019 to 2023, CSXT only moved a maximum of {{ [REDACTED] }} containers at NIT per year through

⁵⁸ Fapp VS, p. 25.

⁵⁹ Fapp VS, pp. 15-25

⁶⁰ VIT CSXT Life and Drayage Agreement CSX Executed Copy, June 28, 2021, p. 1 (CSXT0000005124_0001).

⁶¹ {{ [REDACTED] }} See CWRV CSXT Intermodal Switch Carrier Services Fully Executed, April 1, 2021, p. 2 (CSXT0000005120).

⁶² VIT CSXT Lift and Drayage Agreement CSX Executed Copy, June 28, 2021, p. 3 (CSXT0000005124_0001). See also Kenney V.S. pp. 7-8

⁶³ “Our goal is to have as many containers as possible using on-dock rail, *eliminating as many unnecessary drays as possible* [...] Limiting the number of drays [...] should provide better rail connections, providing beneficial cargo owners (BCOs) shorter dwell times and faster service inland.” Journal of Commerce, “Virginia Port Service Shuffle Promises Faster Rail Flow,” August 23, 2019, available at <https://www.joc.com/article/virginia-port-service-shuffle-promises-faster-rail-flow-5235619>.

⁶⁴ VPA Comments regarding transaction classification, Highly Confidential, March 5, 2025, p. 4.

⁶⁵ FD 36836, Governor Glenn Youngkin, Office of the Governor, Letter to the Surface Transportation Board, August 26, 2025, p. 2.

⁶⁶ The Port of Virginia also operates a barge service to Richmond, VA. However, international container volumes do not move by rail from the Richmond inland location. See Carey HC-WP-Traffic Tapes Analysis 2023_CSXT_NS

dray to rail service which, even at this maximum number, is a small percentage of total NIT traffic.⁶⁷ While year to year volumes vary, in the last two years, CSXT drayage volumes at NIT were {{[REDACTED]}} and {{[REDACTED]}} for 2023 and 2024, respectively.⁶⁸ CSXT, in conjunction with the POV, have made extraordinary efforts to provide this service; in the past, the dray program has been unable to handle even the small capacity required.⁶⁹ Further, drayage capacity expansion is limited at best.

Drayage to rail includes a truck portion of the move between NIT and VIG and must traverse a busy Hampton Boulevard that does not allow truck traffic between 4 p.m. and 6 p.m. and is further limited by the gates at NIT only being open to drayage Monday - Friday.⁷⁰ Without considering road congestion, a 40-foot container affixed to a chassis would need to be dispatched every 3 minutes to move {{[REDACTED]}} containers in a day (during the 10-hour window), to reach the {{[REDACTED]}} maximum dray moves seen in 2021.⁷¹ Indeed, CSXT drayage's paltry shares of total traffic in 2023 —{{[REDACTED]}} at NIT and {{[REDACTED]}} for POV—are a resounding indicator that truck drayage to rail is unable to compete with NS's on-dock rail on NIT corridors.⁷² This will be exacerbated by expanded NIT capacity, which is growing to accommodate 50% more volume over the next few years.⁷³ NS does not provide any analysis to show how CSXT could overcome the logistical challenges and compete with drayage to rail at the necessary scale with NS for the NIT/POV corridors. NS Senior Vice President and Chief Strategy Officer Michael McClellan {{[REDACTED]}}

}}⁷⁴

Additionally, these drayage movements take substantial time to move locations. At NIT, truck turn time averages 43.6 minutes to retrieve a container when accounting for both the wait before and after entering the terminal.⁷⁵ Up to 8 additional queue hours can be added⁷⁶ due to trucker

⁶⁷ Per Fapp, NIT served {{[REDACTED]}} rail carloads in 2023. Fapp VS, Fapp Exhibit DFL-4.

⁶⁸ Fapp VS, Fapp Exhibit DFL-4. *See* Figure 2 above and Appendix A at Figure 1. *See also* Carey HC-WP-Traffic Tapes Analysis 2023_CSXT_NS and Carey HC-WP-Traffic Tapes Analysis 2024_CSXT_NS.

⁶⁹ EDVA Litigation, CSXT0066199, p. 1.

⁷⁰ See Kenney VS, p. 7.

71 { { [REDACTED]
[REDACTED] } }

⁷² Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS

⁷³ By 2028, NIT will be capable of handling 3.6 million TEUs, which is substantially larger (more than 50%) than VIG's 2.2 million TEUs. See Port of Virginia, "Capabilities," available at <https://www.portofvirginia.com/gateway/capabilities/>.

⁷⁴ Deposition of Michael McClellan, NS, August 18, 2025, pp. 52-54.

⁷⁵ See Fapp Exhibit DLF-9.

⁷⁶ Freight Waves, “Congestion flares up again at Port of Virginia,” March 13, 2015, available at <https://www.freightwaves.com/news/congestion-flares-up-again-at-port-of-virginia?>

delays resulting from longshoremen having to move multiple containers to reach ones at the bottom.⁷⁷ Delays to time-sensitive IM traffic are not desirable.

Generally, where possible, short lines have worked to minimize reliance on drayage to rail moves. As example, Florida East Coast Rail expanded its IM offerings, with a rail-to-rail interchange (rather than with dray) with NS at Jacksonville, touting the benefits of fewer dray to rail moves and helping customers deliver traffic closer to market areas.⁷⁸

Many international IM shippers have expressed a lack of willingness to use the drayage to rail alternative as a substitute for on-dock NIT service.⁷⁹ For example, representatives from {{ [REDACTED] }} have said that {{ [REDACTED] }},⁸⁰ while NIT access has been cited as a necessity to win the business of other shippers like {{ [REDACTED] }}.^{81,82} NS itself states that the {{ [REDACTED] }}⁸³ Meanwhile, it is the experience of CSXT that {{ [REDACTED] }}⁸⁴ Further, an NS market manager expressed customer preference for {{ [REDACTED] }}⁸⁵ NS employees and executives have noted {{ [REDACTED] }}

⁷⁷ Freight Waves, "Port of Virginia moves to alleviate dray congestion," April 6, 2014, available at <https://www.freightwaves.com/news/port-of-virginia-moves-to-alleviate-dray-congestion?>

⁷⁸ Freight Waves, Norfolk Southern and Florida East Coast Railway expand intermodal offerings," September 27, 2023, available at <https://www.freightwaves.com/news/norfolk-southern-and-florida-east-coast-railway-expand-intermodal-offerings>.

⁷⁹ Deposition of Robert Girardot, CSXT, January 12, 2021, pp. 233-235.

⁸⁰ Routing Containers over Norfolk to Columbus Email Chain, July 2008, EDVA Litigation, NSR_00157631, p. 1.

⁸¹ EDVA Litigation, VIT Lift Fee Proposal Email Chain, Deposition of Ryan Houfek, Exhibit 8, CSXT0085628-CSXT0085629 at CSXT0085628.

⁸² Further, large ocean shippers are also often terminal owners and seek to operate terminals which have access to on dock rail facilities. For example, Maersk owns APM terminals at the Port of New York and the Port of Los Angeles, each of which has access to on dock rail facilities. CMA CGM and Mediterranean Shipping Company (MSC) also maintain terminal facilities, at the Port of New York and the Port of Long Beach respectively, which feature on-dock rail access. See APM Terminals, "Our Terminal" at <https://www.apmterminals.com/en/los-angeles/about/our-terminal>, <https://www.apmterminals.com/en/port-elizabeth/about/our-terminal>, See Port Liberty Bayonne at <https://portlibertybayonne.com/>, and Port of Long Beach, Total Terminals International at <https://tilgroup.com/our-terminals/long-beach.html>

⁸³ EDVA Litigation, East Coast Ports Review, Deposition of David Luebbbers, Exhibit 2, NSR_00064063-00064095 at NSR_00064069.

⁸⁴ EDVA Litigation, Deposition of Carl Warren, 134:22-24.

⁸⁵ NS, Email regarding {{ [REDACTED] }}, February 2018, STB-NS-0025131.

2. Trucking is Not an Economic Competitor to Rail for Most Traffic on NIT/POV Corridors

The NS Revised Application presents no economic analysis of shares or price competitiveness of trucking as compared to railroads on the specific NIT/POV corridors to/from the Midwestern locations. Nor does NS provide other evidence of customer demand for other service quality attributes of trucking, like speed, that would be an overriding factor for international IM shippers. Such analysis would be necessary to demonstrate that today's trucking competitors act as a competitive constraint despite NS' control of NPBL on the specific corridors for which traffic movements by rail have been used by international IM shippers at NIT/POV.

86 {{{[REDACTED]}}} STB-NS-0027642; {{{[REDACTED]}}}
 {{{[REDACTED]}}} STB-NS-0026620.

⁸⁸ For example, {{

90 {{REDACTED}} “Also, more than twice the number of NIT containers moved via truck over the 2021-2023 time period (2.1 million via truck and 1.0 million via rail).” Fapp VS, pp. 5, 23. Mr. Fapp’s analysis combines both long-haul truck and dray volumes. Dray volumes account for approximately {{REDACTED}} of the total figure in this period. {{REDACTED}} See Fapp Exhibit DLF-4.

CSXT-22-592

does not acknowledge that truck movements substantially serve areas in close proximity to NIT/POV. Specifically, the majority of reported POV truck volumes involve much shorter distances. Trucking data for the POV shows that a significant volume of trucks leaving the POV are destined for locations between Richmond, VA and Southeast, VA which are less than 100 miles from the POV.⁹²

The relevant truck competition is long haul truck movements on NIT/POV corridors with the Midwestern locations (Chicago, Detroit, St Louis). These rail route distances range from 700 – 1,300 and are somewhat longer than the corresponding trucking movements to those destinations,⁹³ however they exceed the well documented 500-mile range for which trucks can most effectively compete with rail.⁹⁴ As NS witness McClellan explains, traffic movements generally less than 500 miles are more susceptible to truck diversions.⁹⁵

Trucks only compete for a small percentage -- time sensitive traffic and higher value items -- of movements of the international IM traffic volumes between NIT/POV and inland IM terminals in the Midwestern U.S. Trucks lack sufficient economic scale to compete for long-haul on-dock rail services. and thus, are not an economic competitor to railroads for the majority of the international IM customers on NIT corridors to the Midwest.

Trucking competitors have a {{[REDACTED]}} share of the combined Midwestern corridors for all NIT traffic and a {{[REDACTED]}} share for all POV (both VIG and NIT) traffic.⁹⁶ This translates to long-haul truck container traffic on Midwestern corridors of only {{[REDACTED]}} containers compared to rail traffic of {{[REDACTED]}} containers to/from NIT and only {{[REDACTED]}} containers compared to rail traffic of {{[REDACTED]}} containers all POV traffic.⁹⁷

⁹² Streetlight Data, “Detailed Truck Data for Virginia’s Port,” available at <https://learn.streetlightdata.com/hubfs/Case%20Studies/Detailed%20Truck%20Data%20VA%20Port/Detailed%20Truck%20Data%20for%20Virginia%20Port.pdf>. See also Streetlight Data, “Trucks and the Port of Virginia: Understanding freight Patterns with Big Data,” April 9, available at <https://onlinepubs.trb.org/onlinepubs/Conferences/2019/FreightData/PortTrucksRouteCase.pdf>.

⁹³ See HC-WP Maps and Carey HC WP Truck vs Rail Rate per Container Mile.

⁹⁴ Bernstein, North American Transportation, “Game of Rails: The addressable market for rail is growing +14%, making it easier to underwrite growth in 2022 & beyond,” December 1, 2021, p.1, Exhibit 5.

⁹⁵ NS estimates that the truck and rail competition: “break-even point is along the lines of a route stretching at least 500 miles.” See NS-1, McClellan V.S., p. 14. In deposition, Mr. Fapp stated that the range is anywhere from 500-700 miles. See HC Deposition of Daniel L. Fapp, Wednesday, August 13, 2025, p. 123.

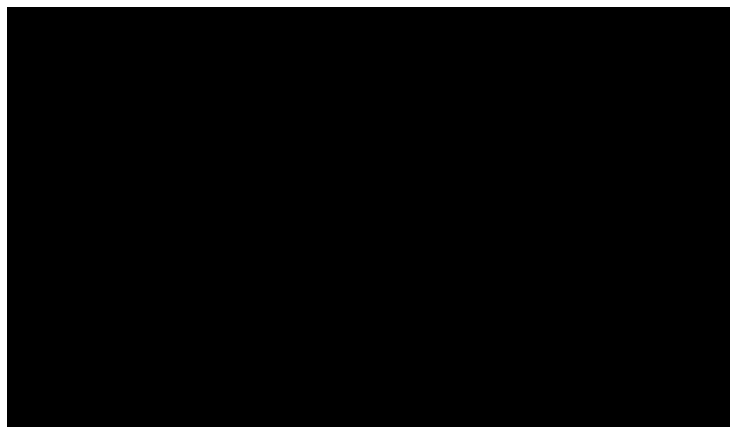
⁹⁶ Carey HC-WP-Truck vs Rail Container Volume.

⁹⁷ Carey HC-WP-Truck vs Rail Container Volume. Based on data from the Bureau of Transportation Statistics’ Freight Analysis Framework county-level data for 2022. I start with 2023 port terminal truck volumes for international IM shippers reported for NIT and VIG by Mr. Fapp in Fapp Exhibits_DLF-9,10,11, and I apportion these volumes to each port/Midwestern location corridor based on the 2022 percentage weight share of the total domestic and international truck weights on the corridor from FAF county-level data. The adjustment accounts for the FAF data’s inclusion of domestic IM terminals that reside in the city boundaries of the port terminal location.

Trucks have much higher rates than the average railroad rate on the combined corridors from all NIT/POV port terminals. NS CEO James Squires has also noted rail's lower costs, stating { [REDACTED] }⁹⁸ As shown in

Figure 3 below, even when accounting for the somewhat longer length of hauls for rail to/from those same cities, average truck rates are between { [REDACTED] } than average railroad rates for the same corridor from NIT/POV port terminals; on average, truck rates are at least { [REDACTED] } than equivalent corridor railroad rates of railroad competitors for the specific NIT/POV long haul corridors with Midwestern locations and are not an economic alternative.)

Figure 3: Trucking v Railroad Rates for International IM Traffic Moves on NIT/POV Corridors, 2023⁹⁹{ [REDACTED] }



In fact, the idea that trainload transportation is far more efficient than truck drayage has been expressed by NS in its promotional materials: "...rail transport can carry the equivalent of several hundred truckloads of freight, maximizing the amount of goods transported. This capability ensures that shippers can move large quantities efficiently."¹⁰⁰

FAF county data "excludes flows with other, unknown, or no domestic mode." See Bureau of Transportation Statistics (BTS), "Freight Analysis Framework Version 5 (FAF5) Experimental County-Level Estimates Technical Report," July 2025, available at <https://www.bts.gov/sites/bts.dot.gov/files/2025-07/FAF5-County-Level-Estimates-Technical-Report.pdf>, p. 3. See BTS, "FAF V 5 User's Guide for Release 5.0," January 20, 2021, available at <https://www.bts.gov/sites/bts.dot.gov/files/2021-02/FAF5-User-Guide.pdf>, p. 7 for definitions of modes including "Other and Unknown."

⁹⁸ Journal of Commerce, "NS bullish on intermodal despite truck pressures," April 24, 2019, STB-NS-0026771

⁹⁹ Carey HC-WP-Truck vs Rail Rate Per Container Mile. "[Sp]ot rates tend to average lower than contract rates in most lanes as most of the volume tends to lean toward third-party providers or brokerages scouring the nation for relatively inexpensive capacity and carriers trying to find backhaul loads or freight that moves their trucks into an area where contract customers have freight," then using truck contract rates would lead to an even higher percentage difference to rail. Freight Waves, "What can we learn from the truckload spot to contract rate spread?" February 3, 2024, available at <https://www.freightwaves.com/news/what-can-we-learn-from-the-truckload-spot-to-contract-rate-spread>.

¹⁰⁰ Norfolk Southern, "5 Benefits of Intermodal Shipping," available at <https://www.norfolksouthern.com/en/ship-by-rail/industry/intermodal/5-benefits-of-intermodal-shipping---norfolk-southern>.

In addition, to the extent that some long-haul truck moves may compete with rail under NS control of NPBL, a more competitive NIT with two railroads instead of NS on-dock rail exclusivity could result in greater competition and more rail moves (i.e. take trucks off the road.)

F. No Large Cost or Service Advantages on NIT/POV Corridors Is Reasonably Expected Absent NS Control of NPBL

NS does not provide sufficient economic analysis to explain its high shares on NIT/POV corridors in terms of competitive advantages. For the corridor lanes between NIT/POV and Midwestern locations, NS fails to show cost, service quality, or other economic factors which lead to the existing NS shares at NIT/POV as compared to shares between two large sophisticated and highly competitive Class 1 railroads that could be expected in other comparable economic circumstances. Thus, absent sufficiently superior quality, one would expect (absent NS control of NPBL) that CSXT and NS would have a closer competitive balance and CSXT would have higher shares than is currently observed.

a) CSXT and NS have Reasonably Comparable IM Service Quality

The NS Application only anecdotally discusses service quality¹⁰¹ and presents no service quality data for international IM traffic moves on NIT/POV corridor routes. Absent NS control of NPBL, there is no evidence to support a claim that NS service quality is better than that of CSXT. Further, CSXT service quality could likely be improved by increased traffic due to on-dock access to NIT corridors after the removal of NS's exclusionary behavior.

Mr. Fapp claims that CSXT's low historical share "was due to structural deficiencies in its own routings," specifically CSXT's previous inability to double-stack intermodal trains.¹⁰² He also claims that the past deficiencies demonstrate that no "anticompetitive action by NS and NPBL or by the 2010 NPBL switching rate" impacted market outcomes.¹⁰³ However, double-stacked intermodal has been used by both railroads since 2018 for IM traffic on NIT/POV corridors with Midwestern locations and no such service quality difference exists today.¹⁰⁴ NS' expert presents no analysis quantifying the extent, if any, that the slight delay in CSXT achieving double-stack intermodal capability would have on competition today in 2025.

Currently, CSXT service is hindered because it cannot operate on-dock rail service to NIT and must use the inferior drayage to rail service, which leads to delays and lost time. Additionally,

¹⁰¹ Fapp VS, p. 7.

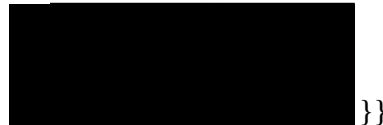
¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

the increased handling necessary to move containers between trucks and rail cars could lead to increased loss and damage to the product shipments.¹⁰⁵ As such, current traffic patterns are not comparable to a world in which CSXT has access to on-dock rail at NIT. However, if CSXT were able to operate with competitive, on-dock service, CSXT's service quality would reasonably be expected to be similar to that of NS. Indeed, when using the entire system-wide IM service, train speeds across the entire network, CSXT reports faster average IM train service than NS.¹⁰⁶ This suggests that, based on this system wide metric, CSXT could achieve faster train speeds between NIT and Midwestern locations if it had on-dock rail at NIT, which would benefit ocean shippers, their customers, and consumers.

Figure 4: Whole System Average Intermodal Train Speed by Carrier and Year (MPH)¹⁰⁷ {{



For example, using average system train speeds, a move from {{ [REDACTED] }} on CSXT than on NS, while moves to {{ [REDACTED] }} and moves to {{ [REDACTED] }}.¹⁰⁸ Furthermore, an independent and competitively operated NPBL could be able to perform a switch with CSXT without undue operational disruptions and therefore expect to reach approximate system average train speeds.

Mr. Fapp incorrectly asserts that drayage allows for faster movement of containers as compared to on-dock rail service. Mr. Fapp compares his stated dray time of between 17.4 minutes and 29.9 minutes to a 3-to-11-hour rail movement from NIT to Berkley Yard.¹⁰⁹ However, Mr. Fapp's estimate does not consider the turn time of 43.6 minutes he analyzes in his own report.¹¹⁰ Mr. Fapp also does not account for capacity per unit of drayage moves as compared to intermodal unit

¹⁰⁵ In deposition, Mr. Fapp stated that on-dock rail reduces "the amount of handling" and that therefore it may be preferred by shippers who wish to reduce handling. Deposition of Daniel L. Fapp, August 13, 2025, p. 112.

¹⁰⁶ Further, to the extent that there is any difference today between CSXT and NS offerings with regard to service, it can be expected that in the future without NS control, CSXT would be expected to have more volumes, and therefore more scale and efficiency on existing routings.

¹⁰⁷ Carey HC-WP-IM Delivery Time.

¹⁰⁸ Routes use PC Miler to determine shortest intermodal route. CSXT moves use distance from NPBL interchange point at Berkley. See Carey HC-WP-IM Delivery Time.

¹⁰⁹ NS-13, Fapp V.S., p. 17. Mr. Fapp mischaracterized the dray move utilized by POV and CSXT. The move is not between NIT and Pinners Point, but rather NIT and VIG. See {{ [REDACTED] }} (CSXT0000005124_0001). However, correcting this routing does not meaningfully change the estimated travel time. Further, Mr. Fapp's estimated 3-to-11 hour rail move between NIT and Berkley Yard is tainted by existing anti-competitive operating procedures which require CSXT to be routed through NS' Portlock Yard due to NS' removal of the diamond track.

¹¹⁰ See Fapp V.S., Fapp Exhibit DFL-9.

trains. If one assumes that an intermodal unit train moves about 300 containers, it takes two days to move the number of containers in one train when moving the containers one by one by dray.¹¹¹

In short, there are small differences in service quality for intermodal traffic (both railroads providing double stacked container traffic movements on NIT/POV corridors as well as comparable train speeds). Absent NS control of NPBL, CSXT would reasonably be expected to be highly competitive and achieve higher volumes at NIT than today. Shippers will benefit from additional competition.

b) CSXT and NS have Reasonably Comparable IM Costs

The NS Application does not analyze cost data for the specific corridor routes between NIT/POV and the inland Midwestern markets. Absent NS control of NPBL, there is no evidence to support that NS costs on the corridors from NIT to Midwestern locations are sufficiently lower than CSXT's costs to enable NS to capture its {{REDACTED}} shares. Currently, CSXT is hindered because it cannot operate on-dock rail service to/from NIT and faces increased costs due to NPBL's \$210 switch rate and an inefficient interchange at Berkely Yard (with additional CSXT locomotives and crew costs). However, absent NS control of NPBL, CSXT and NS costs could reasonably be expected to be similar for the entire long-haul movement, along with more competition on the NIT corridors with the removal of NS's exclusionary behavior.

As explained below, when considering a system wide URCS-average cost for intermodal traffic movements, there is no significant cost-related difference between CSXT and NS on the corridor routes to/from NIT/POV that would explain the {{REDACTED}} NS share. Rather, on average, CSXT has a somewhat {{REDACTED}} using the system-wide URCS calculation. This analysis is useful to compare potential costs if both CSXT and NS operated with on-dock rail access to NIT.

For my analysis, I applied the URCS system-wide average costs for intermodal traffic movements to the NIT corridors with Midwestern locations. This structure considers the railroads' performance absent NS control of NPBL.¹¹² The results show that the CSXT and NS costs are closely aligned, with CSXT costs {{REDACTED}} on a per mile basis across the corridors, and {{REDACTED}} lower on a per container basis. For example, CSXT costs are approximately {{REDACTED}} than NS'

¹¹¹ As described above, 1 container every 3 minutes during the 10-hour window is 212 containers per day, which is {{REDACTED}}.

¹¹² Costs in the carload waybill sample (CWS) also use URCS, however the costs for those moves depend on the characteristics of the specific move being evaluated and are therefore not directly comparable. Surface Transportation Board, "2023 Surface Transportation Board Carload Waybill Sample Reference Guide," March 05, 2025, p. 78, available at <https://www.stb.gov/wp-content/uploads/2023-STB-Waybill-Reference-Guide.pdf>.

costs on {{[REDACTED]}}.¹¹³ For the combination of all corridors, CSXT costs are on average {{[REDACTED]}} on a per mile basis and {{[REDACTED]}} on a container basis than NS' costs.¹¹⁴

Thus, with reasonably similar system-wide-average costs for intermodal traffic movements, absent NS control of NPBL, CSXT can reasonably be expected to be highly competitive and achieve higher volumes at NIT than today. Shippers will benefit from additional competition.

III. NS' EXCLUSIONARY CONDUCT THROUGH NPBL

A. A Robust Short Line Business is Reasonably Expected with No NS Control of NPBL

NS' expert did not examine other economic, operational and business decisions related to the NPBL system to consider whether past actions were driven by NS' control of NPBL and would be reasonably expected not to exist in the absence of NS' control of NPBL.¹¹⁵ This is concerning because the key issue is whether, absent NS control of NPBL, CSXT would be expected to have reasonable economic and efficient on-dock rail access to a highly valuable port terminal that it is entitled to access as a joint owner of NPBL.

Exclusionary conduct can take the form of preferential behavior, where one railroad inappropriately advantages itself over a competitor. An additional concern is for discriminatory behavior associated with the cost-based rate that NS claims is the basis for the single \$210 rate, where one railroad acts in a manner that harms certain customers or a competing railroad (i.e. without an economically appropriate underpinning).

Regulatory and competition economics principles both seek to avoid such inappropriate

¹¹³ See Carey HC – WP URCS Cost. The URCS analysis developed the railroad specific system average variable cost for IM containers for Freight of All Kinds. In URCS, this is labeled as “46 All Misc. Mixed Shipments. which is consistent with the traffic type that CSXT and NS transport on NIT/POV corridor. I have assumed consistent economic attributes for the IM containers, including the weight and ownership of the car and container. The weight controls for differences in the length of IM containers. The analysis uses PC Miler intermodal routing as a comparison of typical routes which accurately conveys the potential competition between the two carriers. Actual route miles may differ due to routing decisions that do not reflect the nature of the competitive networks. This is an economically comparable analysis because it compares the average costs of each carrier for an equivalent move.

¹¹⁴ Carey HP-WP URCS Cost.

¹¹⁵ Instead, NS witness McClellan states that “CSXT has been, and remains, the predominate user of NPBL services,” suggesting that this is evidence that NPBL with NS control has not acted in an exclusionary manner because CSXT uses NPBL for carload switching in the Norfolk area. NS – 1, McClellan VS, p. 12. This is not relevant to whether NS has the economic incentive and ability to exclude CSXT from on-dock rail access at the NIT port terminal for IM traffic.

behavior because it distorts competitive outcomes and harms customers.¹¹⁶ This is true for purely competitive markets with market-based rates. It is also true for cost-based rates, which NS claims is the basis for NPBL's use of a \$210 single rate. Traditional cost-based rate regulation addresses undue discrimination to ensure no distortive or economically inefficient outcomes to customers.¹¹⁷ In light-handed regulatory regimes that include a mix of firms that use either cost-based or market-based rates, in firms with affiliated companies under control of the same parent that are in a unique position to cause harm to competitors (similar to this case), best practices to address such issues include measures to ensure arm's length relationships or to require other specific behavioral rules¹¹⁸ to ensure entities do not act in their self-interests that would distort competition¹¹⁹ and apply to rates, services, operations, facilities, and other aspects of the business.¹²⁰

With NS' control of the jointly owned NPBL, NS is in a unique position to harm CSXT and benefit NS. There are no guardrails to constrain NS from acting in self-interest (i.e., preferentially helping NS maintain exclusivity of on-dock rail access at NIT at the expense of NPBL, impeding CSXT and shippers seeking competitive options of two railroads at NIT. NS should not be able to distort competition in the downstream or upstream services, benefiting only itself at the expense of

¹¹⁶ With competition as the policy tool to regulate rates, as long as no market power exists, the rates are deemed just and reasonable. Deloitte, "Regulated Utilities Manual, A Service for Regulated Utilities," 2012, p. 7, available at <https://ipu.msu.edu/wp-content/uploads/2016/12/Deloitte-Regulated-Utilities-Manual-2012-2.pdf>.

¹¹⁷ Bonbright, James C., *Principles of Public Utility Rates*, Chapter XIX "Discrimination, Due and Undue," 1961, pp. 369-385. Regulation of interstate pipeline transportation prohibits pipelines from granting any person, entity or type of traffic any undue or unreasonable preference or advantage. (See Interstate Commerce Act at Section 3(1)). For example, the prohibition of undue preference has been used to ensure the pipeline owner is not conferring a benefit to an affiliated shipper through transportation rate or access preferences. (See Magellan Midstream Partners, L.P., Order on Petition for Declaratory Order, 161 FERC ¶ 61,219, Docket No. OR17-2-000, 11/22/17, and Magellan Midstream Partners, L.P., Order on Rehearing and Clarification, 181 FERC ¶ 61,207, Docket No. OR17-2-000, 12/16/22.)

¹¹⁸ Behavioral elements may include internal controls to ensure the treatment of confidential information, exclusion of information sharing, maintenance of appropriate recordkeeping to limit or remove the ability to advantage itself. See Canada Liquids Pipelines, "Canadian Affiliate Relationship Code: Section 5 (No Preferential Treatment), Section 6 (Confidential Shipper and Pipeline Information), Section 7 (Independent Functioning) .p. 3, at <https://www.enbridge.com/~media/Enb/Documents/Governance/Canadian-Affiliate-Relationship-Code-2025.pdf?rev=dfca641da99e44a79b27e8a97e94911e&hash=75157B61E4361C26704D12F38560AA47>.

¹¹⁹ For example, a Texas regulator requires affiliated companies in a position to influence competitors and competition to ensure arm's length transactions. "The standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to related parties, a transaction is at arm's length if the transaction could have been made on the same terms to a disinterested third party in a bargained transaction." See Code of Conduct for Electric Utilities and Their Affiliates, Chapter 25, "Substantive rules applicable to electric service providers. Subchapter k. Relationships with affiliates," §25.272--1 effective 6/26/14 (P 41616) §25.272, available at <https://ftp.puc.texas.gov/public/puct-info/agency/rulesnlaws/subrules/electric/25.272/25.272.pdf>.

¹²⁰ Violations may include disgorgement of all profits, monetary penalties, among others. Carey, Hamal, Ullman, "Enforcement Shifts Energy-Trading Strategies," *Energy Litigation*, vol. 13, no. 2, Winter 2014, pp. 19-22, available at <https://heinonline.org/HOL/Page?handle=hein.aba/enelit0013&collection=aba&id=42&startid=42&end=45>.

companies and other railroads through its exclusionary behavior.¹²¹

Without NS' control of NPBL, CSXT and NS would be joint owners of a short line railroad.¹²² NPBL is required to act with a mandate to operate as a "separate organization" for the "mutual benefit of each [railroad owner] in the interchange of business."¹²³ As such, NS would not be expected to tilt the scales to provide an undue advantage to itself or harm a competitor in such a way that would impact competitors' activities as well as products and services, rates, volumes and other factors that ultimately impact competition. Indeed, doing so would undermine the economic purpose of the NPBL operating agreement to establish and provide interchange for all railroad owners and expand business.¹²⁴ It was not created to help NS advantage itself at the expense of CSXT and shippers.

Absent NS control of NPBL, NPBL can be expected to operate reasonably similar to an independent short line business (such as Commonwealth Railway). An independent short line business may offer rates that reflect different economic circumstances, but it has no economic incentive to tilt the scales and advance the interests of one railroad (e.g. NS) at the exclusion or detriment of another railroad. In that way, it is similar to the economic incentive to serve each railroad owner to their mutual benefit as would exist for NPBL in the absence of NS control.¹²⁵ Neither a typical short line nor an NPBL absent NS control is positioned to prefer one railroad over the other, which is consistent with the NPBL operating agreement that requires the mutual benefit of interchange with its railroad owners.¹²⁶

B. Preferential Economic and Operational Conduct Favoring NS Is Not Reasonably Expected Absent NS Control of NPBL

Based on my review, I identified numerous preferential one-sided economic, operational and business decisions that occurred under NS' control of NPBL. These actions collectively impede

¹²¹ See Viscusi, Vernon, and Harrington, Jr., *Economics of Regulation and Antitrust* (The MIT Press, 1995), p. 234-235. Exclusionary conduct may also be characterized as "constructive refusal" which refers to situations where a dominant firm does not outright refuse to deal with a rival, but instead offers terms that are so unreasonable, impractical, or unfair that they amount to an effective denial of access. This can include practices such as charging extremely high prices, providing degraded service, imposing unworkable technical requirements, unduly delaying supply, or making demands that competitors cannot reasonably meet. See Dunne, "Dispensing with Indispensability," *Journal of Competition Law and Economics*, 16(1), available at <https://research.ebsco.com/c/roawfc/viewer/pdf/lkhqq2ep5b>.

¹²² NPBL Agreement, July 7, 1897, p. 1, NSR_00104139.

¹²³ Ibid.

¹²⁴ The parties agreed to cooperate to encourage the business of the short line. NPBL Agreement, July 7, 1897, p. 4 (Tenth), NSR_00104139.

¹²⁵ Even considering NS's claim of cost-based rates as the basis for the single \$210, cost-based rates do not allow for discriminatory conduct.

¹²⁶ NPBL Agreement, July 7, 1897, p. 1, NSR_00104139.

CSXT's ability to access the NIT terminal via NPBL and therefore are exclusionary.

1. The Single \$210 Rate Has an Exclusionary Effect By Forcing IM to Pay More Fixed Costs than Other More Costly Traffic Types

Under NS' control, NPBL charges a single \$210 switch rate for all service types, which has the effect of excluding CSXT. NS implemented a single rate at the exact time CSXT sought an economically appropriate lower switch rate for IM traffic, despite NPBL's history of charging different rates in the past, consistent with the standard railroad industry practice of differential pricing.¹²⁷

When compared to the other higher cost traffic types, charging the \$210 switch rate for relatively low-cost international IM traffic movements has an exclusionary effect as a market-based rate because it distorts competition. It also has a discriminatory effect when considering its use as a cost-based rate (which NS states is the basis of its approach). This is because, with a single rate, the IM traffic is paying more than an appropriate share of fixed costs, thereby conferring an undue preference for non-IM traffic.¹²⁸ It also has a distortion effect on the relative use of IM traffic by decreasing the volumes of IM traffic relative to the amount of traffic which would move under an economically appropriate lower rate.^{129,130} A single rate is not reasonably expected when NPBL is untethered to NS.

International IM traffic has lower variable costs than other types of carload traffic on NPBL and even lower costs with double stacked containers on rail cars moving over port terminal traffic

¹²⁷ Discussed in Section V.A and V.B below.

¹²⁸ In a cost-based ratemaking approach, common costs may be distributed based a proportion of the directly assigned costs or quantities or usage. Viscusi, Vernon, and Harrington, Jr., *Economics of Regulation and Antitrust* (The MIT Press, 1995), page 392. Alfred Kahn, *The Economics of Regulation*, page 150-152.

¹²⁹ Cost based rates that NS states is the basis of the \$210 require rates and services to be made to be non-discriminatory and just and reasonable. The just and reasonable rate mandate requires a determination that a rate for a particular service is not unreasonable, is appropriately economically derived and provides the lowest possible cost to the consumer, within a zone of reasonableness. *Principles of Public Utilities*, James C. Bonbright, 1961, Chapter XIX and IV, available at <https://www.raponline.org/wp-content/uploads/2016/05/powellgoldstein-bonbright-principlesofpublicutilityrates-1960-10-10.pdf>. See also *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).

¹³⁰ Distortions can lead to inappropriate price signals not reflective of the actual cost of service among customer classes and are undesirable. Jamison, *Industry Structure and Pricing*, "Chapter 4: Theory and Application of Subsidy-Free Price," p.111. Distortions reduce economic efficiency. As an example, rate approaches that distort costs and confers benefits to one set of customers over another, lead to ineffective price signals and thereby reducing allocative efficiency. Allocative efficiency involves consideration of whether the marginal cost of production equals the marginal benefits it provides to customers, which is also impacted by where distortions in costs are adopted. Productive efficiency centers on whether the most efficient resources are used to meet demand. It is reduced when cost causation principles are not followed because improper costs impact whether the most efficient resources are being used. Dynamic efficiency involves consideration of the outcomes over time, and in particular with respect to how the market will respond to the various alternatives.

corridors (which spreads the fixed costs of the single car across multiple containers).¹³¹ As such, I sought to understand the relative order of magnitude difference between the variable costs of merchandise carload traffic and the variable cost for IM traffic moves at a port terminal and, further, how each of those costs relate to the \$210 line haul switch fee charged by NPBL.¹³² To do so, I estimate the generic system average variable costs using URCS for the different traffic types.¹³³ I compare variable costs for carload traffic for the types of carload traffic traversing NPBL (industrial chemicals, other stone products, grains¹³⁴, metallic ores) to double stacked flat cars for IM traffic (excluding the IM rail lift fee cost paid to the port for the service it provides).¹³⁵ On average, the IM traffic movements have a much lower level of variable cost --{{ [REDACTED] }}as compared to the carload traffic types transported by NPBL.¹³⁶

Due to the significantly lower average variable cost of IM traffic movements, a single \$210 rate results in a much larger and disproportionate markup for IM traffic as compared to the other types of carload traffic. Figure 5 below shows the large disparity in markups from the variable cost for each type of freight and the \$210 rate. At the single \$210 rate, IM traffic has the highest mark-up.

¹³¹ Based on my analysis, international IM traffic on corridors to and from the POV utilize 2 containers per carload on average. CSXT and NS both use double-stacked containers for the POV international IM traffic movements. See Carey HC-WP-2023 POV Double Stack Analysis_CWS at tab "Double Stack Analysis" for the 2 containers per carload.

¹³² The traffic mix for customers located on the NPBL lines is carload merchandise traffic of cement, grains, chemicals, aggregates, among others. NPBL reports customers including: {{ [REDACTED] }} See Appendix-C NPBL Customers

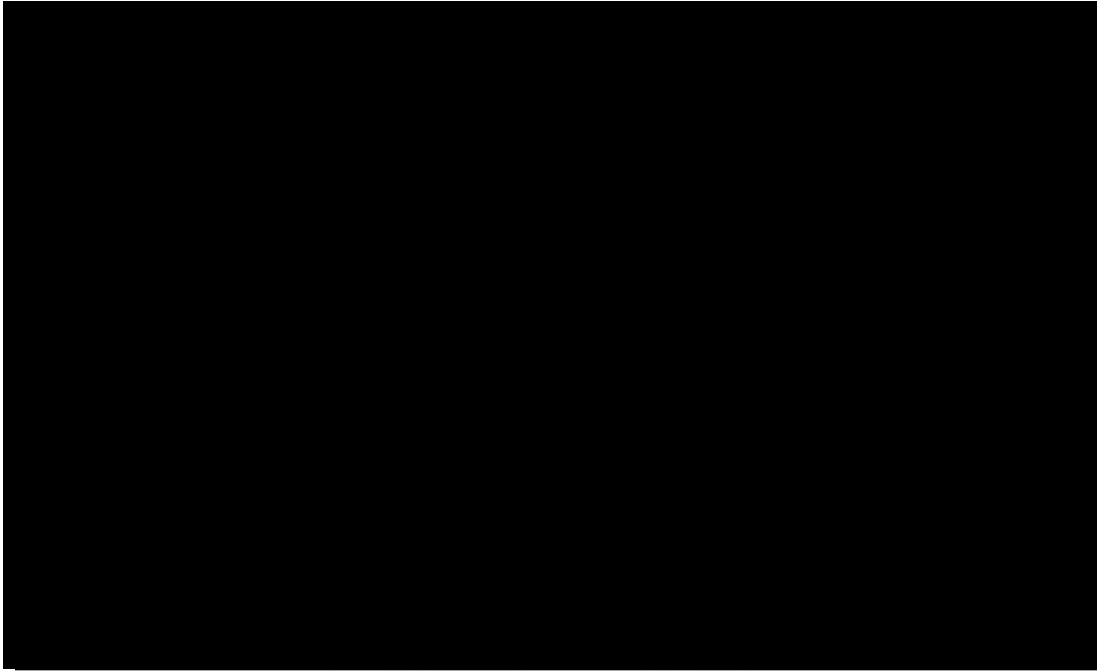
¹³³ The analysis of URCS variable costs is informative of the variation in costs between product types. It is not NPBL's actual variable costs, which I understand they do not report. See Fapp Exhibit DFL-8.

¹³⁴ I assume unit trains for the large grain customer.

¹³⁵ The IM traffic NPBL handles is modeled as "receive and deliver" in URCS which is a similar function as NPBL performs for the \$210/car switch rate that would apply as a linehaul switching service for any international IM traffic movements to and from NIT. The NIT charges separate loading and unloading fees for rail containers (separate from the port side). Therefore, the linehaul switching service does not include such cost. See NIT Schedule of Rates No. 1, Effective 10-1-2024.pdf, pp. 36, 44. Similarly, VIT and CSXT have an agreement for charges associated with loading and unloading containers separate from the linehaul switching rate. That charge is {{ [REDACTED] }} See VIT and CSXT Service Agreement, June 28, 2021, p. 2 (CSXT0000005124_0001).

¹³⁶ Move measured from largest NPBL shipper of displayed commodity to interchange with CSXT at Berkley for merchandise movements. For IM movements, measurement from NIT to Berkley Yard for interchange with CSXT. Weight is based on average tons in NPBL traffic tapes for merchandise and CSXT data for IM. Weight includes two containers for each carload of IM traffic. All moves evaluated as received and deliver. Shipments are determined to be received to exclude terminal lift costs, which is performed by the POV and not NPBL for IM. NPBL would interchange intermodal moves with CSXT or NS for final delivery; the non-NPBL railroads would perform any lifts at the Midwestern locations. The URCS handling costs are not included in the cost. See Carey HC-WP-URCS Interchange.

Figure 5: Markups Above URCS Generic Variable Cost for the \$210 Rate for NPBL Traffic Types and IM Traffic, 2024¹³⁷ {{



}}

Mr. Fapp argues that if NPBL were to somehow accept a lower IM rate it would be “preferential pricing to CSXT.”¹³⁸ Setting a different rate for international IM traffic is not preferential to CSXT from a regulatory economics perspective as long as NS and its customers are able to receive the same rate for the same product.¹³⁹ In this case, while NS did not use NPBL for international IM traffic at NIT (due to its direct rail line to NIT), to the extent it desired to do so, it would pay the same rate as CSXT. Therefore, it is not preferential to CSXT.

2. **The Single \$210 Rate is Exclusionary for Price Sensitive Customers**

The \$210 switch rate is also exclusionary because it forecloses CSXT from competing for substantial amounts of price sensitive IM traffic on the NIT corridors for Midwestern locations.¹⁴⁰

I evaluated the potential economically exclusionary nature of NPBL’s \$210 switch rate and

¹³⁷ Carey HC-WP-URCS Interchange.

¹³⁸ Fapp June VS, p.1.

¹³⁹ Principles of Public Utilities, James C. Bonbright, 1961, Chapter XIX, available at <https://www.raponline.org/knowledge-center/principles-of-public-utility-rates/>; U.S. Interstate Commerce Act, Title 48, p. 523, available at <https://www.ferc.gov/sites/default/files/2020-06/interstate-commerce-act-ica.pdf>. When deeming reasonable a pipeline’s rate structure that charges different rates to shippers, the FERC has recognized that a committed shipper is not similarly situated with respect to other shippers that “were unwilling or unable” to sign Transportation Service Agreements. Explorer Pipeline Co., 140 FERC ¶ 61,098, at PP 17, 21 (2012)

¹⁴⁰ NS has no need to use NPBL to move international IM traffic to or from NIT due to its own direct access.

the price level effect on the business requirements for CSXT as of 2023.¹⁴¹ The analysis is conservative because, as the NPBL \$210 switch rate has been unchanged in more than a decade, the rate likely had a larger impact in the past due to inflation. To analyze the impact of the NPBL's \$210 switch, I evaluated the revenues, costs and contribution margin for CSXT's 2023 international IM traffic movements on corridors between VIG and inland Midwestern locations. I made additional cost adjustments to reflect the economic circumstances of CSXT's use of NPBL to access NIT, therefore simulating the total costs that would be associated with on-dock service to and from NIT to the inland Midwestern locations that are also served from the VIG port terminal.

Based on my analysis, with NPBL under NS control charging a \$210 switch rate and other additional operational costs that would be incurred by CSXT if it used NPBL to access NIT on dock rail, approximately {{[REDACTED]}} of the international IM traffic volumes on the corridors from NIT to Midwestern locations and {{[REDACTED]}} of the international IM traffic volumes moving to the NIT terminal from Midwestern locations would be deemed uneconomic to CSXT due to substantial elimination of the contribution margin.¹⁴² Given the way ocean carriers contract and conduct business with railroads, CSXT is unable to target and limit its IM business to only the most profitable traffic between NIT and Midwestern locations (e.g. single containers or particular lanes), so the \$210 rate effectively blocks CSXT from competing for on-dock rail at NIT. Furthermore, the impact on CSXT's competitiveness is only one of the exclusionary aspects. One must also consider the other types of exclusionary conduct by NS (discussed in the subsections below) materially impeding CSXT's ability to be competitive at NIT.

The costs foreclose price-sensitive customers, limiting the total volumes CSXT could economically serve on the corridors and the frequency of service that could be provided. This exclusionary cost impact is not reasonably expected absent NS control of NPBL as NPBL and CSXT would be expected to reach a competitively negotiated switch rate and efficient operational procedure analogous to similarly situated short lines.

3. NS' Role in Denying Economically Reasonable CSXT Offers That Would Expand NPBL Traffic is Exclusionary

NS control of NPBL resulted in the denial of numerous economically reasonable CSXT offers to expand NPBL's IM business which harmed competition and benefited NS. Since all

¹⁴¹ My analysis is limited to economic aspects; it does not consider operational limitations that are exclusionary.

¹⁴² See Appendix B - Exclusionary Conduct for a discussion of the assumptions in the analysis. In this evaluation, any international IM traffic movement with less than a [5%] contribution margin is deemed uneconomic. The analysis suggests that {{[REDACTED]}}. See Carey HC-WP-Switch Rate Move by Move.

railroads seek to expand business, including NPBL specifically which has a mandate to expand usage,¹⁴³ an unwillingness to engage in negotiations to expand traffic should receive great scrutiny. CSXT made specific rate proposals to NPBL in 2010¹⁴⁴, 2018¹⁴⁵ and again in 2024.¹⁴⁶ Each of these offers would provide NPBL with the ability to recover all of the incremental costs and contribute to the fixed system costs.¹⁴⁷ In other words, in each of these CSXT proposals, NS influenced NPBL's decision to decline a strong financial business opportunity that would grow the NPBL traffic volumes and revenue, contributing to the fixed system costs of the railroad. (Section V.A.) These actions are economically inconsistent with competitive market behavior as well as cost-based regulation and give NS an advantage with continued exclusive on-dock rail access to NIT. Based on my experience, these are economically attractive offers that could reasonably be expected to be accepted by a typical terminal short line but for NS preferential and exclusionary conduct.

In each of these CSXT offers, there existed some common features that CSXT pays for certain of the costs that NPBL would otherwise pay for to expand the international IM traffic movements to and from NIT using NPBL. Figure 6 below reports the rates offered by CSXT and the cost categories that CSXT committed to absorb.

Figure 6: CSXT International IM Rate Offers to NPBL¹⁴⁸ {{



Because all of CSXT's rate offers propose that CSXT absorbs certain costs that would otherwise be incurred by NPBL, the CSXT rate offers are not mathematically comparable to the

¹⁴³ {{ [REDACTED] }} NPBL Agreement, July 7, 1897, p. 4 (Tenth), NSR_00104139.

¹⁴⁴ EDVA Antitrust Litigation, Exhibit 105, CSXT0100336-42, 2010 proposal. EDVA Antitrust Litigation, Exhibit 32, CSXT0082145, 2009 proposal.

¹⁴⁵ EDVA Antitrust Litigation, Exhibit 105, CSXT0100329-34, 2018 proposal.

¹⁴⁶ NS-1, Minor Application, FD 36836, February 14, 2025, p. 11.

¹⁴⁷ See Section V.D. below.

¹⁴⁸ {{ [REDACTED] }} EDVA Antitrust Litigation Exhibit 105 (CSXT0100329-42 at CSXT0100336) (2010 and 2018 proposal). EDVA Antitrust Litigation, Exhibit 32, CSXT0082145, 2009 proposal. EDVA Antitrust Litigation Exhibit 105 (CSXT0100329-34) (2018 proposal), p. 4. See CSX, Rate and Service Proposal, November 26, 2024 (CSXT0000005144) (2024 proposal).

NPBL \$210 rate. Therefore, NPBL must consider its economic position after the reduced costs CSXT has proposed to absorb and not simply based on how its current costs compare to the proposed rate.

For the 2010 CSXT rate offer, NPBL management concluded that the {{ [REDACTED] }}. ¹⁴⁹ In 2018, the CSXT offer of {{ [REDACTED] }}, ¹⁵⁰ {{ [REDACTED] }} NS and NPBL {{ [REDACTED] }}. ¹⁵² In 2024, the CSXT rate offer of {{ [REDACTED] }} per loaded car moved in each direction to and from NIT for international IM traffic, also includes {{ [REDACTED] }}. ¹⁵³

4. NS' efforts to impede CSXT access to NIT is Exclusionary to CSXT and Preferential to NS

In the late 2009-2010 time period, when NS representatives were recommending the change to a single NPBL switching rate regardless of commodity type (which was initially stated to be just to address additional cost in 2010):¹⁵⁴

- {{ [REDACTED] }}

¹⁴⁹ EDVA Antitrust Litigation, Exhibit 105, CSXT0100336-42, 2010 proposal. EDVA Antitrust Litigation, Exhibit 32, CSXT0082145, 2009 proposal. Additionally, in the 2010 period, NPBL's \$210 rate was {{ [REDACTED] }} See Carey HC-WP-CSXT NS Switch Agreements.

¹⁵⁰ {{ [REDACTED] }} EDVA Antitrust Litigation, Exhibit 105, CSXT0100329-34 at CSXT0100331, 2018 proposal.

¹⁵¹ Approximately {{ [REDACTED] }} EDVA Antitrust Litigation, Exhibit 105, CSXT0100329-34, 2018 proposal, pp. 2, 5-6.

¹⁵² {{ [REDACTED] }} CSXT Motion for Summary Judgment, Exhibit 31, EDVA Antitrust Litigation, NSR_00000845, April 18, 2018, pp. 7-8.

¹⁵³ See CSX, Rate and Service Proposal, November 26, 2024 (CSXT0000005144).

¹⁵⁴ {{ [REDACTED] }} Exhibit 14, Stinson (President, NPBL) Deposition, February 26, 2020; NS representatives to NPBL rate committee recommendations re Tariff 8100-I: EDVA Antitrust Litigation NPBL006574). In late 2009, concern was raised about whether {{ [REDACTED] }}

{{ [REDACTED] }} CSXT Board Members of NPBL to NPBL Board Members, December 27, 2010; EDVA Antitrust Litigation, Exhibit 44, CSX 044 - NSR_00000704-NSR_00000745 at NSR_00000721.

¹⁵⁵ Exhibit 14, Stinson (President, NPBL), NS representatives to NPBL rate committee recommendations re: Tariff 8100-I: {{ [REDACTED] }}

- NS expressed its intent to {{ [REDACTED] }}
- NS also recognized {{ [REDACTED] }}

In the 2016 to 2018 period, NS' statements demonstrate an ability to impede CSXT's access to NIT through a combination of economic and physical obstruction via its control of NPBL. For example:

- In [2017] an NS Vice President Jeffrey Heller stated that {{ [REDACTED] }}¹⁵⁸
- In March 29, 2018, an NS employee stated that a {{ [REDACTED] }}¹⁵⁹
- In 2016, NS employee Cheryl Jenkins stated {{ [REDACTED] }}¹⁶⁰

In response to the 2024 CSXT rate offer, which included similar aspects to the prior CSXT rate offers, among other factors, NPBL points to challenges accepting the offer that arise due to the related STB trackage rate proceeding.¹⁶¹ However, CSXT's proposal offers full protection to NPBL from any trackage fee increase imposed by the STB, whether prospective or (highly unlikely) retrospective."¹⁶²

5. CSXT's Rate Offers were Consistent with the Short line Market and Practices to Expand Business (including NS Experience with Other Short lines.)

In strong contrast to NS' efforts to curtail business expansion on the NPBL short line to NIT, NS frequently works with short lines and has successful examples of large increases in traffic

EDVA Antitrust Litigation NSR_00035903-NSR_00035906 at NSR_0003595.

¹⁵⁶ Plaintiff CSX Transportation, Inc.'s Opposition to Defendants' Motions for Summary Judgment, Exhibit 28, EDVA Antitrust Litigation NSR_00084730, p. 1.

¹⁵⁷ EDVA Antitrust Litigation, July 27, 2009. Email from Chris Luebbers (NS) to Jeffery Heller (NS). Draft Edited letter to Mark Manion (NS) from Mike McClellan (NS). Luebbers Exhibit 7, NSR_00305952-4.

¹⁵⁸ EDVA Antitrust Litigation NSR_00005066, p. 2.

¹⁵⁹ EDVA Antitrust Litigation, Email regarding "Rate Proposal for Long Term Rail Service to NIT", March 29, 2018, STB-NS-0008826.

¹⁶⁰ NPBL Term Sheet emails, April 2016, EDVA Antitrust Litigation NSR_00008141.

¹⁶¹ {{ [REDACTED] }} NPBL Letter, Response to CSX Transportation, Inc.'s November 26, 2024 Proposals December 4, 2024. NPBL001460-001498 at NPBL001460-1463.

¹⁶² CSXT Letter to NPBL dated May 1, 2025. See Kenney VS, Attach. H, filed Sept. 18, 2025.

volumes on these short lines. The common economic factor in NS' other short line business endeavors is that they are arm's-length business dealings where NS cannot tilt the competitive outcome. Here are some examples of NS's dealings with other short lines:

- In 2010, NS and Commonwealth Railway (CWRV) commercially negotiated access to VIG and agreed to an NS switching rate which is a {{ [REDACTED] }} of the existing NPBL rate --only {{ [REDACTED] }}.¹⁶³
- In 2018 and 2024, NS maintained attractive commercially negotiated switching rates with Commonwealth Railway {{ [REDACTED] }} the \$210 NPBL rate. (Section V.C. infra.)
- "Norfolk Southern has expanded its interchange improvement program to all of its short line connections in a bid to boost carload volume growth. NS sought to improve interchange consistency and reliability when it launched its Short Line Performance Project with 40 short lines last year. "It led to just absolutely above normal growth for us," says Stefan Loeb, the railroad's vice president of business development and first and final mile markets."¹⁶⁴ "[A]s an example, those 40 interchanges through 2024 grew at 4.85% volume. It outperformed our general business in those same markets."¹⁶⁵
- NS Vice President Stefan Loeb has commented on the ability of operational interchange improvements leading to increased traffic, including "Alabama & Tennessee River Railway (ATN), which doubled interchange volume with NS in one year of leveraging the [NS] program"¹⁶⁶

6. NS Has Created Many Impediments to Operating an Efficient Short Line and That Would Not be Expected Absent NS Control

There are many instances of operational and other impediments and concerning conduct with NS control of NPBL that have occurred that would not reasonably be expected absent NS control. These operational impediments collectively make it substantially more difficult to efficiently operate a time-sensitive intermodal traffic business, therefore strongly contribute to CSXT's inability to compete for business at NIT and are thus exclusionary.¹⁶⁷

Numerous documents identify operational concerns as the reason why CSXT rate offers were rejected, including instances of preferential behavior to NS and exclusionary behavior.

- Disassembly and Reassembly in NPBL's Berkley Yard: The NPBL process also requires that any CSXT IM trains be disassembled and reassembled in Berkley yard to remove the CSXT locomotive and add the NPBL locomotive.¹⁶⁸ Thereafter NPBL moves the trains to NS's

¹⁶³ Additionally, the CWRV switching rate has a {{ [REDACTED] }}. See 2007 Norfolk Southern CWRV Switching Agreement - Appendix B Schedule of Charges. See also Carey HC-WP-CSXT NS Switch Agreements

¹⁶⁴ Last year NS' overall merchandise business was up 1%. Trains, "NS expands interchange improvement program to all short line connections," May 22, 2025, available at <https://www.trains.com/pro/freight/class-i/ns-expands-interchange-improvement-program-to-all-short-line-connections/>.

¹⁶⁵ Ibid.

¹⁶⁶ Trains, "NS: Short Lines 'Play a Crucial Role,'" May 23, 2025, available at <https://www.railwayage.com/freight/short-lines-regionals/ns-short-lines-play-a-crucial-role/>.

¹⁶⁷ In his deposition, Mr. Fapp stated "you know, one rail may rip up track or something . . . from that aspect, they could physically preclude service." See HC Deposition of Daniel L. Fapp, August 13, 2025, p. 135.

¹⁶⁸ NS-13 Fapp VS, p. 12.

Portlock yard where disassembly may be required to do so in order to wait for NS dispatch instructions.

- Removal of Diamond and Connecting Track: In 2008, NS discontinued service on a section of track near NIT called the “Diamond” which allowed NPBL to access the terminal in an efficient manner. Without the Diamond, CSXT’s international IM traffic to and from NIT faced logistical and operational challenges accessing NIT.¹⁶⁹ It was required to travel a longer more circuitous route at a higher operational cost to access NIT.¹⁷⁰ It also involved CSXT giving the carloads to NPBL at Berkley Yard where, after being transported to NS’s Portlock Yard, the locomotives are uncoupled.¹⁷¹ On April 3, 2018, Cannon Moss was approached by CSX who asked for quotes for traffic to NIT. NS representative Adam Wright wrote: {{ [REDACTED] [REDACTED] }}
- Routing into NS’s Portlock Yard: Then, subject to availability and dispatch discretion by NS, when NS trains were not running, the locomotives were transferred to the end of the Portlock Yard terminal and engaged in lengthy brake testing before they were returned to the beginning of Portlock Yard to traverse the NPBL trackage rights segment to ultimately arrive at NIT. Multi-day or week-long delays occurred before NS would grant permission for the protracted operation to commence.¹⁷³
- Operating Windows at NS’s Mercy: In 2018, Scott Plum from NS wrote: {{ [REDACTED] [REDACTED] }}¹⁷⁴
- Additional Movement by CSXT: CSXT’s movement of IM traffic via NPBL to or from NIT would require CSXT to use its own locomotives and crews to move the IM containers from the NPBL Berkley Yard¹⁷⁵ to Kilby for onward movements on CSXT’s system.

These operational and dispatch features result in a substantial economic disadvantage to NS’ competitor, CSXT. These features confer a preference to NS because they result in many choke points and layers of additional functions, which lead to extra costs and delays that CSXT must overcome in order to move traffic. Even then the dispatch of trains to NIT would ultimately be under control of NS.¹⁷⁶

This is distinct from NS’ own efficient process, which does not appear to entail any required disassembly of its trains at NS’ Portlock Yard.¹⁷⁷ While NS’ actions have made it uneconomic and

¹⁶⁹ It is my understanding that, in a separate proceeding, CSXT seeks trackage rights over separate lines which would alleviate the need to use Portlock Yard. However, this operation was not considered by NPBL at the time. See STB Docket No. FD 36859, CSX Transportation, Inc.—Terminal Trackage Rights—Norfolk Southern Railway Company and Norfolk & Portsmouth Belt Line Railroad Company, May 20, 2025.

¹⁷⁰ CSX Transportation, Inc. (CSX) v. Norfolk Southern Railway Company, Plaintiff CSX’s Consolidated Opposition to Defendants’ Motions for Summary Judgement, Civil Action No. 2:18-cv-530-MSD, p.43.

¹⁷¹ Declaration of Robert Girardot, February 21, 2020, p. 4.

¹⁷² CSX Opposition to Motion for Summary Judgment, CSX 083 – 328-15 (EDVA Antitrust Litigation NSR_00006321).

¹⁷³ Id. See also EDVA Antitrust Litigation Exhibit 55, Deposition Transcript of Robert Girardot, January 12, 2021, 93:05-95:20.

¹⁷⁴ EDVA Antitrust Litigation, Email regarding “Rate Proposal for Long Term Rail Service to NIT”, March 29, 2018, STB-NS-0008826.

¹⁷⁵ NS-13 Fapp VS, p. 11, CSXT grain traffic switches at Berkley yard.

¹⁷⁶ Dispatch control is well understood in competition analyses in other sectors to have the ability to effectuate anticompetitive behavior. As an example, this is routinely considered in competition analyses of wholesale power markets and the economic control assigned to the owner who makes the decisions related to dispatching the electricity from the power plant(s) in the wholesale market.

¹⁷⁷ NS trains pass through Portlock Yard where they may add additional carload traffic before continuing to Crewe, VA. See NS-13 Fapp VS, p. 10.

infeasible for CSXT to access NIT through NPBL, NS retains its exclusivity at NIT through direct access to NIT. NS does not require the Diamond and Connecting Track (that NS has removed) for its traffic movements to and from NIT or other maneuvers through other yards, plus it maintains dispatch control on the tracks that it owns from its Portlock Yard to NIT.

NS understands the current operational challenges regarding the CSXT-NPBL interchange. In a different context, an NS Vice President acknowledged that if NS faces too many CSXT control points, that it would make “**competitive service [im]practical.**”¹⁷⁸ As described above in Section II.C, the NS Vice President stated the importance at other port terminals of ensuring that NS and CSXT have “**...equivalent operational flexibility, with neither having an advantage over the other.**”¹⁷⁹

The railroad industry, including short lines, heavily focuses on seeking operational efficiency, particularly with time and price-sensitive IM customers. For example, NS has sought to reduce the number of interchanges and to improve the efficiency of interchanges that remain. These typical railroad endeavors to promote efficiency and smooth operations are absent for NPBL under NS control. Employees of NS and other short lines have expressed this.

- Florida East Coast Rail stated: “The partnership relies on a steel wheel interchange in Jacksonville, operating in both directions and expanding services for customers accessing global markets through South Florida. ‘For us in [Florida East Coast Rail], reaching additional markets and providing customers with options to ship into the primary markets in Florida is key to our development,’ said Luis Hernandez, VP Intermodal for FEC. ‘We are committed to providing a fast, reliable and top of class service into the ports and partnering with Norfolk Southern provides a consistent and most efficient solution.’”¹⁸⁰
- NS highlighted improvements with BNSF: NS and BNSF will deliver all interchange traffic to one location (NS-Ashland), for a single crew swap, then move toward inland markets in Ohio, Pennsylvania and more. “At Norfolk Southern, we’re focused on delivering smart, customer-centric solutions—and this enhanced service from the Pacific Northwest to the Midwest is exactly that,” per Shawn Tureman, Vice President Intermodal Automotive Commercial.¹⁸¹
- Genesee and Wyoming Commented: “Track speed is key to all our infrastructure capital expenditures. For example, our \$17 million Arizona Eastern project is raising track speed, resulting in a redesigned, improved and more reliable service plan, in turn

¹⁷⁸ “[S]imply by the nature of geography and the location of existing rail lines; Norfolk Southern trains inevitably would be subject to too many CSX control points to make competitive service practical.” Columbia State, “Martinez: State rail plan essential to port’s success,” January 20, 2011.

¹⁷⁹ Columbia State, “Martinez: State rail plan essential to port’s success,” January 20, 2011.

¹⁸⁰ Norfolk Southern, “Florida East Coast Railway further expand intermodal service for customers,” March 25, 2024, available at <https://norfolksouthern.mediaroom.com/2024-03-05-Norfolk-Southern,-Florida-East-Coast-Railway-further-expand-intermodal-service-for-customers>.

¹⁸¹ “By collaborating with BNSF and the Northwest Seaport Alliance, we’re offering a faster, more reliable rail option that helps shippers reduce transit time, cut costs, and streamline supply chains heading into 2025 and beyond.” BNSF News Press, “BNSF, NS, NWSA redesign faster service from PNW to Chicago and beyond,” April 2, 2025, available at <https://www.bnsf.com/news-media/news-releases/newsrelease.page?relId=bnsf-ns-nwsa-redesign-faster-service-from-pnw-to-chicago-and-beyond>.

resulting in higher traffic levels as the improved service encourages our principal customer to put more business on the rails. It's a classic case study of how the short line industry has matured: better track, improved locomotive reliability, faster transit times and lowered supply chain expense for the beneficial owners of what's in the cars" per David Brown, GWI chief operating officer.¹⁸²

See Appendix B - Exclusionary Conduct for additional evidence of NS' exclusionary conduct.

IV. SUBSTANTIAL ECONOMIC HARM ARISING FROM NS' CONTROL OF NPBL

The STB has historically imposed conditions to address 2-to-1 transactions like this due to the competitive harm that arises from the loss of a direct competitor. As discussed below, the NS control of NPBL and the exclusionary conduct (both physical and economic obstruction) removes a direct competitor to NS (through NS single line and NPBL/CSXT joint line traffic movements).

Direct economic harm is observable. The lack of an effective drayage to CSXT rail competitive alternative results in NS' having a {{[REDACTED]}} share of the rail traffic volumes on the NIT corridors with the Midwestern locations with NS controlling NPBL. The lack of any material drayage to rail volumes transported by CSXT to and from NIT is evidence of direct economic harm.¹⁸³

Further direct economic harm is observable from resounding customer preference for on dock rail service at NIT (Section II.E.1 above) coupled with the exclusionary conduct, resulting in CSXT loss of customers and traffic volumes at NIT that would have not occurred absent NS control of NPBL

Consequently, the effect of NS' control of NPBL today substantially increases NS' share and results in a substantial lessening of competition as compared to the absence of NS control of NPBL. As stated by the Department of Justice's August 27 filing in this proceeding, the decrease in competition "can drive up transportation costs for businesses, making it harder for them to offer affordable products and services..."¹⁸⁴ NS' control of NPBL results in NS' exclusivity at the NIT terminal and its exclusionary conduct (both physical and economic obstruction). Removing NS' exclusivity at the NIT terminal will enhance the benefits of competition, including lower rates for ocean carriers.

¹⁸² "Reliable infrastructure and locomotives give us the means to run to plan. Even on a short line, time is money and doing things the same way every day is crucial to the success of the organization. On-time is on-time, not on-time plus two hours because if that's your measure, trains will run to that. We're taking down the interval between interchange-on and interchange-off and have even developed our own report card to keep our connecting Class 1's apprised of our progress." Railway Age, "Genesee & Wyoming doubles down," September 16, 2013, available at <https://www.rtands.com/freight/shortline-regional/genesee-wyoming-doubles-down/>.

¹⁸³ The average dray volume for the years from 2007-2023 provided by Mr. Fapp is about {{[REDACTED]}}. See Fapp Exhibit DL-4.

¹⁸⁴ FS 36836, Comment of the United States Department of Justice, August 27, 2025, p. 2.

A. Loss of a Direct Railroad Competitor (2-to-1)

With NS' control of NPBL, NS' exclusivity on NIT corridor routes to/from the inland Midwestern locations can be reasonably understood to be substantially attributed to its exclusionary conduct (both physical and economic obstruction) at NIT. NS has its own line to access the NIT terminal and also controls the NPBL (to exclude CSXT from NIT via NPBL) which are the only two ways to access NIT by rail. As discussed above, the NS Revised Application lacks economic evidence to support a claim that high NS shares would continue absent NS control of NPBL. Therefore, from a competition economics perspective, the current NS' control of NPBL as compared to the world absent NS' control represents a 2-to-1 transaction. Looking at it another way, if NS and NPBL both serve NIT now and NIT gains control of NPBL, one railway will serve NIT.

The STB has recognized there is a competitive impact resulting from the removal of a direct railroad competitor; it reduces a shipper's ability to negotiate for more competitive prices and service. There are numerous examples in historical transactions (and mergers) before the STB where the economic assessment of horizontal competition was based on whether the merger or transaction would result in a reduction from two independent railroads to one at a specific location. As an example, the CN and Bessemer transaction¹⁸⁵ evaluated 2-to-1 stations^{186, 187} In addition, in an NS-specific transaction, the STB expressed the strong desire to preserve two railroad competitors.¹⁸⁸ Lessening of competition results from the loss of the competitive negotiations dynamic. Economic literature is thorough regarding competitive alternatives enabling robust negotiations and competitive market price outcomes.¹⁸⁹ Simply put, the ability to walk away from a negotiation (and turn down to a competing offer) and other economic conditions substantially facilitate a fair market value negotiated price. It is well understood in economics that increased competition leads to lower

¹⁸⁵ "CN further explains that there are no 2-to-1 shippers (i.e., there is no shipper now capable of receiving rail service from more than one independent railroad that will be reduced to having only one independent railroad available to it), and that, although there is arguably one 3-to-2 shipper (i.e., a shipper now capable of receiving rail service from three independent railroads that, as a result of the Transaction, will have only two independent railroads available), that shipper will not be adversely affected by the nominal reduction in horizontal competition." Decision No. 7, *Canadian Nat'l Ry., et al.—Duluth, Missabe and Iron Range Ry., et al. ("CN/CMIR")*, Docket No. FD 34424 (STB served Apr. 9, 2004), at pp. 7-8.

¹⁸⁶ The DOJ also undertook this analysis to evaluate the competitive situation. *Id.* at p. 44.

¹⁸⁷ The STB has historically imposed conditions to address 2-to-1 stations, while only considering conditions for unusual 3-to-2 circumstances where there is specific competitive harm. For 3-to-2 traffic in the UP-SP Transaction, the STB concluded that the traffic "present[ed] little potential for significant, merger-related competitive harm." Decision No. 44, *Union Pac. Corp., et al.—Control and Merger—S. Pac. Rail Corp., et al. ("UP/SP")*, 1 S.T.B. 233, 387 (1996).

¹⁸⁸ NS/D&H, Docket No. FD 35873, Decision No. 6, p. 17. "[F]ocu[s] usually on preserving two-railroad competition, not on preserving three-railroad competition."

¹⁸⁹ Avinash Dixit and Susan Skeath, *Games of Strategy*, 596-626 (W.W. Norton & Company, 2004), 2nd Edition; Robert Cooter and Thomas Ulen, *Law & Economics*, (Pearson-Addison-Wesley, 2008), Fifth Edition, at 33-36 and 196-199; and Kenneth Binmore, Ariel Rubinstein & Asher Wolinsky, "The Nash Bargaining Solution in Economic Modeling," *Rand Journal of Economics*, Vol 17(2), p. 176-188 (1986).

prices.¹⁹⁰

In other instances, customers have noted that the presence of two on-dock railroad providers has led to increased competition from railroads. For example, NS understands that {{ [REDACTED] }}
[REDACTED]
[REDACTED] }}.¹⁹¹

B. Customer Preferences for On-dock Rail Service led to Lost Business for CSXT

Absent NS control of NPBL, there is much evidence to support the conclusion that there will be a direct economic impact with substantial quantities of traffic volumes for international IM shippers on NIT/POV corridors moving to CSXT. In contrast, the net effect of NS control of NPBL is harming customers who lack competitive alternatives.

Indeed, within large ocean carriers' proposals to solicit railroad services, the container companies communicated to CSXT that CSXT lost the traffic volumes because CSXT did not have on-dock rail access to NIT. In other words, there is specific NIT demand from international IM shippers and CSXT has lost such business in the past.

In fact, multiple ocean carriers chose not to use CSXT because of the lack of on-dock rail access at NIT.¹⁹² For example, Bill Clement of CSXT wrote to others at CSXT in 2015: {{ [REDACTED] }}
[REDACTED] }}.¹⁹³ In another example, Miguel Coles of CSXT wrote to others at CSXT in 2018: {{ [REDACTED] }}
[REDACTED] }}.¹⁹⁴

Also discussed above, NS exclusionary conduct denied CSXT access to NIT via NPBL. There are numerous ocean carriers that prefer NIT which, coupled with NS blocking CSXT access to the NIT terminal via NPBL, resulted in NS achieving large volumes at NIT. It is my understanding

¹⁹⁰ For a discussion of price and quantity as the number of firms enter and exit a market, see Greenlaw, Steven and Shapiro, David, *Principles of Microeconomics 2e*, Openstax, 2017, p. 205, available at <https://assets.openstax.org/oscms-prodcms/media/documents/Microeconomics2e-OP.pdf>.

¹⁹¹ See {{ [REDACTED] }}, NSR_00005081, p. 1.

¹⁹² CSX lost customers {{ [REDACTED] }}. See Plaintiff CSX Transportation, Inc.'s Consolidated Opposition to Defendants' Motions for Summary Judgment, page 36, paragraph 88. See also EDVA Antitrust Litigation CSX Exhibit 69 (Kenney Dep. 20:8-21:4, 31:6-11), EDVA Antitrust Litigation CSX Exhibit 94 (Warren Decl., paragraph 11), EDVA Antitrust Litigation CSX Ex. 99. (Warren Dep. 162:22-163:12), EDVA Antitrust Litigation CSX Exhibit 115 (CSXT0096961-63 at CSXT0096963), EDVA Antitrust Litigation CSX Ex. 53 (Girardot Decl., paragraph 8), EDVA Antitrust Litigation CSX Exhibit 55 (Girardot Dep. 233:24-234:18, 271:13-272:12), and EDVA Antitrust Litigation CSX Exhibit 116 (CSXT0013901).

¹⁹³ EDVA Antitrust Litigation, CSXT0112576.

¹⁹⁴ EDVA Antitrust Litigation, CSXT {{ [REDACTED] }} email chain, July 2018, CSXT0067122, p. 1.

that the ocean carriers, including {{[REDACTED]}} and {{[REDACTED]}}, did not want to use drayage as an option which impeded CSXT's from competing with NS at NIT.

As an example, CSXT's lost sales associated with {{[REDACTED]}}. In 2023, {{[REDACTED]}} exclusively used NIT at POV, with {{[REDACTED]}}¹⁹⁵ CSXT had {{[REDACTED]}} at NIT in 2023.¹⁹⁶ During {{[REDACTED]}}¹⁹⁷

In addition, in 2023 {{[REDACTED]}} exclusively used NIT and did not use VIG at all.¹⁹⁸ {{[REDACTED]}} 2023 volumes at NIT were approximately {{[REDACTED]}} containers – all with {{[REDACTED]}}.¹⁹⁹ NS' efforts to position itself at NIT with {{[REDACTED]}} are long standing. In 2010, NS set forth a contract strategy to get {{[REDACTED]}} business for NIT²⁰⁰ and continued with additional business garnered into 2015²⁰¹ that continues today. In fact, {{[REDACTED]}} has contracted {{[REDACTED]}}²⁰²

{{[REDACTED]}}²⁰³ In May 2020, Hapag-Lloyd announced the Chicago to Baltimore corridor becoming on-dock

¹⁹⁵ Appendix A - Traffic Analyses at Figures 19 and 21.

¹⁹⁶ Appendix A - Traffic Analyses at Figure 15.

¹⁹⁷ NS Competitive Lanes, January 20, 2018, STB-NS-0011666-0011679, at 0011671-79.

¹⁹⁸ Appendix A - Traffic Analyses at Figure 19 and 21.

¹⁹⁹ Appendix A - Traffic Analyses at Figures 15 through 22, {{[REDACTED]}} STB-NS-0010324.pdf.

²⁰⁰ {{[REDACTED]}} EDVA Antitrust Litigation Exhibit 48, NSR_00026305, p. 5.

²⁰¹ {{[REDACTED]}} EDVA Antitrust Litigation NSR_00128765, p. 1.

²⁰² Intermodal Transportation Agreement between NS and {{[REDACTED]}}, 2020, p. 5, STB-NS-0010324.

²⁰³ Intermodal Activity Report email chain, March 2018, EDVA Antitrust Litigation, STB-NS-0005345, p. 3.

and explicitly stated “[t]his change will make transport more efficient in this lane from Baltimore to/from Chicago because delays due to drays will be eliminated.”²⁰⁴ During railroad congestion at West Coast ports in 2022, Hapag Lloyd’s agreement with NS to use on-dock rail at NIT to Chicago and then the West Coast via UP rail cars garnered interest from cargo owners in California for the reliability and predictability.²⁰⁵

It is my understanding that CSXT had customers express a strong preference for on-dock railroad service and views drayage to rail as an inferior alternative.²⁰⁶ Meanwhile, I understand that other facilities like the Port of New York New Jersey, where on-dock access has been achieved on reasonable terms, CSXT has achieved relatively equal shares compared with NS.²⁰⁷ Furthermore, ocean carriers align with railroads rather than negotiating on a lane-by-lane basis.²⁰⁸ As noted by Mr. Warren a CSX Director, Business Development South, ocean carriers { { [REDACTED] } }²⁰⁹ Ocean carriers recognize that they need a portfolio approach to the business arrangement due to shifting needs.

The impact of NS control on NPBL substantially increases market concentration and leads to negative competitive impacts.²¹⁰ It is reasonable to assume such economic harm is substantial due to the direct economic impact to large volumes of traffic for customers having only a single railroad option at NIT, particularly in the future when VIG is at capacity and NIT expands.

C. CSXT’s Successful International IM Business at Other Ports Illustrates the Potentially Higher Volumes Achievable at NIT (absent NS exclusivity)

CSXT’s other port experience for international IM traffic moves illustrates that higher traffic volumes are achievable by CSXT absent NS control of NPBL and its exclusionary conduct.

In contrast to a { { [REDACTED] } } share at NIT (with drayage to rail), CSXT has a { { [REDACTED] } } share at other non- POV port terminals of international IM traffic moves to

²⁰⁴ Hapag-Lloyd, “Chicago to Baltimore (via Norfolk Southern Rail) – Transition to on-dock,” May 25, 2020, available at <https://www.hapag-lloyd.com/en/services-information/news/2020/05/chicago-to-baltimore--via-norfolk-southern-rail----transition-to.html>.

²⁰⁵ Hellenic Shipping News Worldwide, “Railroad bottleneck at nation’s busiest West Coast ports reaches inflection point,” November 7, 2022, available at <https://www.hellenicshippingnews.com/railroad-bottleneck-at-nations-busiest-west-coast-ports-reaches-inflection-point/>.

²⁰⁶ See Keeny VS, p. 7.

²⁰⁷ See Kenney VS, p. 6.

²⁰⁸ EDVA Antitrust Litigation CSX Exhibit 92, Deposition of Kenneth Joyner, p. 45.

²⁰⁹ EDVA Antitrust Litigation CSX Exhibit 94, Declaration of Carl Warren, paragraph 4.

²¹⁰ In terms of the impact on market concentration a { { [REDACTED] } }.

Midwestern locations. Specifically, at these other east coast ports serving the Midwestern locations, CSXT's weighted average share is {{[REDACTED]}}, which is {{[REDACTED]}}.{{[REDACTED]}}.²¹¹

In another example, for corridors involving international IM traffic moves at the Port of Savannah with other locations not served by NIT/POV ports, CSXT has achieved a {{[REDACTED]}} share in 2023.²¹² Lastly, in moves involving Florida ports with a short line railroad, {{[REDACTED]}} shares for CSXT were achieved.²¹³ CSXT's performance on other port corridors well exceeds that on NIT corridors (with NS' exclusionary conduct).²¹⁴

Based on CSXT's experience at other ports, it supports the reasonableness that CSXT would transport higher volumes at NIT absent NS control of NPBL.

V. NPBL'S \$210 SWITCH FEE APPLIED TO IM LACKS RAILROAD INDUSTRY AND ECONOMIC BASIS

NS claims that NPBL's use of a single rate equal to \$210 / carload (regardless of traffic type) is reasonable because it is cost-based and that it is required under the NPBL operating agreement.²¹⁵ NS claims the \$210 rate is reasonable because it covers the operating expenses of NPBL and uses a uniform rate for freight cars regardless of distance.²¹⁶ However, the standard railroad industry practice of differential pricing and NPBL's own history of charging differential rates is inconsistent with a single \$210 rate for all traffic types (Section V.B below). Further, NPBL's switch rate was unreasonably high in 2010 when compared to similar short line switching rates and remains unreasonably high today. Finally, Mr. Fapp's comparison of NPBL's \$210 per car switch fee to other

²¹¹ Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS. The average share was similarly {{[REDACTED]}} in 2024. See Appendix A – Traffic Analyses at Figures 5 and 6. These ports included where CSXT only has on-dock access. For example, in NY/NJ where certain ocean carriers own terminals in NY/NJ. For example, CMA CGM owns its own terminal and CSXT invested in a separate on dock rail facilities (that NS did not). Offshore Energy, CMA CGM assigns \$600 million for Port Liberty, Oct 13, 2023. Available at <https://www.offshore-energy.biz/cma-cgm-assigns-600-million-for-port-liberty>.

²¹² Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS. See Appendix A - Traffic Analyses. For Savannah to /from Louisville the shares achieved were {{[REDACTED]}} for NS.

²¹³ See Appendix A - Traffic Analyses at Figure 9. Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS

²¹⁴ At the Port of Savannah, NS and CSXT have on-dock rail access at Ocean Terminal and Garden City Terminal. At Ocean Terminal, CSXT and NS have on-dock rail access available at Berths 1, 2, 12, and 13, while at Garden City Terminal, CSXT and NS provide services to and from on-terminal Intermodal Container Transfer Facility (ICTF). See Georgia Ports, "Ocean Terminal - Rail Access", available at <https://gaports.com/facilities/port-of-savannah/ocean-terminal/> and Georgia Ports, "Garden City Terminal – Rail Access", available at <https://gaports.com/facilities/port-of-savannah/garden-city-terminal/>

²¹⁵ Fapp June VS, p. 32. The NS Application references section nine of the NPBL Agreement, July 7, 1897, p. 4, NSR_00104139.

²¹⁶ Fapp June VS, p. 32.

short line rates is flawed and unreliable.²¹⁷ My analysis of switching rates for comparable short lines demonstrates that NPBL's switch fee absent NS control would be expected to be much lower and the higher IM volumes that would be moving on CSXT via NPBL to/from NIT would also likely lower the NPBL rate.

A. A Single \$210 Rate for All Traffic Types is Inconsistent with Railroad Industry Practices

In my experience, charging different rates under different economic circumstances is commonplace across the railroad industry. The railroad industry practice of differential pricing is inconsistent with a single \$210 rate for all traffic types. Differential pricing for distinct products and services is economically efficient and preferable to a single rate.²¹⁸ NS' and Mr. Fapp's claim that NPBL's use of a single rate of \$210 per carload regardless of traffic type is reasonable because it is cost-based disregards this fact. Further, NS did not analyze whether, absent NS' control of NPBL, industry wide differential pricing would likely be used.

Railroads transport a diverse set of freight commodities ranging from agriculture products, manufactured goods, intermodal traffic, and more. These railroads face a wide range of demand and other economic conditions and the demand for railroad services can be impacted due to its linkages throughout the entire supply chain. The downstream market that each product moved by a railroad participates in varies from customer to customer, even within rail service of the same commodity.

As such, a high railroad rate will cause some price sensitive customers, such as IM shippers, to become less competitive in the downstream/upstream markets and sell lower quantities of the product or to shift to an alternative railroad or other transportation service. The specific impact may vary from customer to customer depending on the proximity of alternative transportation to a specific location and/or the proportion that railroad freight costs comprise of the total product costs. Reduced demand for the railroad services will result more quickly if the customer is located within closer physical proximity to alternative transportation and/or if railroad freight costs are a high share of total costs.

Certain less price-sensitive traffic can absorb more fixed railroad costs than other more price responsive traffic movements. Therefore, the less price-responsive traffic contributes a higher proportion to the railroad's system-wide fixed costs. This is consistent with what U.S. rail

²¹⁷ NS Major Application did not compare the NPBL switch rate to other port linehaul switch rates. However, in the NS Minor Application it did include such an analysis.

²¹⁸ Mr. Fapp acknowledges in his deposition that charging distinct prices for distinct products can be pro-competitive See Deposition of Daniel L. Fapp, Wednesday August 13, 2025, p. 75.

deregulation sought to do.²¹⁹ In the coal rate guidelines, the ICC stated:

“[i]f a carrier sought to apply the formula price to all its traffic, it would lose that traffic for which the demand could not support the price assigned.”²²⁰

Thus, absent NS control of NPBL, it is reasonable to expect differential pricing (similar to NPBL’s experience prior to the adoption of the \$210 rate at NS’s behest in 2010) just as the two Class 1 railroad owners use on their systems.

B. NPBL Used Differential Pricing in the Past and Uses Some Differing Rates Today

Mr. Fapp disregards the fact that a single rate was not used by NPBL for all types of traffic prior to 2010 (and even the existence of some differential pricing of services today).

Before 2010, NPBL charged different rates for different services depending on if they were absorbed or not by the linehaul carrier as well as if they were domestic or international traffic movements.²²¹ The NPBL tariff effective May 1, 2008 reports different rates for domestic commodities {{ [REDACTED] }} versus import/export (e.g. intermodal).²²² As far back as 2003, NPBL charged different rates for different services.²²³

NPBL reportedly changed the rate for financial reasons in 2010. On September 24, 2009, NS representatives {{ [REDACTED] }}. The NS recommendations stated that the {{ [REDACTED] }}
[REDACTED]
[REDACTED]}}

While adopting the single rate approach, Donna Coleman, a Vice President at NPBL, indicated NPBL could override the charter {{ [REDACTED] }}

²¹⁹ U.S. Government Accountability Office, “Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed” Report Number GAO-07-94, October 6, 2006, available at <https://www.govinfo.gov/content/pkg/GAOREPORTS-GAO-07-94/html/GAOREPORTS-GAO-07-94.htm>.

²²⁰ Coal Rate Guidelines, Nationwide, 1 I.C.C. 2d 520 (1985), aff’d sub nom. Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987), available at https://www.google.com/books/edition/Ex_Parte_No_347_sub_no_1_Coal_Rate_Guide/MDFHSo-UjAC?hl=en.

²²¹ EDVA Antitrust Litigation, NPBL Rate Structure Committee Meeting, October 24, 2006, CSX 025 (NSR_00306426), pp. 1-2.

²²² Rule 5 states when the switching charge will be applied. NPBL Tariff 8100-H, effective May 1, 2008. EDVA Antitrust Litigation, NPBL021718-26.

²²³ {{ [REDACTED] }} and other traffic types were charged different rates when absorbed in part or whole by line haul carrier. EDVA Antitrust Litigation, CSX 021 (NSR_00306377), NPBL Tariff NPB 8100-F, Effective February 1, 2003, Item 125.

²²⁴ Exhibit 14 Stinson (President, NPBL) Deposition, February 26, 2020. NS Representatives to NPBL rate committee recommendations re Tariff 8100-I. Stinson Deposition, Exhibit 14, February 26, 2020, NPBL006574, pp. 1-2. See Appendix B - Exclusionary Conduct.

{}²²⁵

Notably, as of today, NPBL has different rates for different services in its Tariff. For example, the NPBL tariff includes a different rate for intermediate switching, which is between interchange tracks and a connecting line.²²⁶ In this instance NPBL charges {} per car.²²⁷ NPBL also charges different rates for inter-terminal and intra-terminal switching as well as different charges for special services.²²⁸ About {{ {} }} of NPBL's revenues are associated with railroad services other than line-switching, (such as intermediate or intra-plant switching and loading and unloading services).²²⁹ It makes economic sense for NPBL to charge a different rate for these railroad services as compared to the \$210 switch rate. It also makes sense to charge a different line-haul switching rate for intermodal traffic.

Real World Examples of Differential Rates in the Railroad Industry

I provide a few examples of short line railroads using differential rates for different types of port terminal tariff rate schedules.²³⁰ Commonwealth Railway charges distinct rates for each of the different types of carload traffic (i.e. Chemicals or Allied Products, Petroleum or Coal Products, and Hazardous Waste and Materials) that move between the same origin and destination location. These linehaul switching rates (which range from \$370 - \$1,780 per carload) are all much higher than the negotiated line-haul switching rate for CSXT and NS for international IM movements {{ {} }}²³¹

In another example, Savannah Port Terminal Railroad (SAPT) provides distinct line-haul switching rates for different types of carload commodities (i.e. Lumber or Wood Products, Hazardous Waste and Materials, and Petroleum or Coal Products) ranging from (\$750 to \$1,286 per carload), which are all much higher than the public rate it charges for IM traffic movements (SAPT's

²²⁵ EDVA Antitrust Litigation Exhibit 72, NSR 00027071 – 00027075 at NSR 00027071. {{ {} }} See Appendix B - Exclusionary Conduct.

²²⁶ Tariff NPB 8100-J, NPBL, Effective February 1, 2015 (Fapp_000987-Fapp_000996).

²²⁷ Ibid.

²²⁸ Ibid. The other traffic types are fairly closely aligned in the range of similar cost characteristics so as to not be materially impacted by the same rate level. However, that is not the case for IM traffic that has drastically lower costs and requires a drastically lower rate to compete with highly competitive price sensitive IM traffic.

²²⁹ Carey HC-WP-NPBL CSXT and NS Traffic.

²³⁰ While customers often use confidential contracts to set pricing, these publicly reported tariffs for rates available show differential pricing, including lower rates for the IM traffic types.

²³¹ See Section V.D. See also GWRR, "CWRY 7006-16 Switching and Accessorial Services", January 1, 2024, available at <https://www.gwrr.com/cwry/wp-content/uploads/2023/12/CWRY-7006-16-Switching-and-Accessorial-Tariff-Effective-01-01-2024.pdf>. It is also higher than the publicly reported IM tariff rate.

reported tariff rate of { [REDACTED] } per carload).²³²

Lastly, Palmetto Railway at Charleston, SC, has a public tariff that reports different line-haul switching rates for different products ranging from \$520 to \$870 per carload and much lower rates for IM traffic movements equal to \$150 per carload.²³³

C. NPBL’s \$210 Switch Rate is Unreasonably High

NPBL’s switch rate is unreasonably high when contrasted with comparable short lines, such as Commonwealth Railway. NS and Mr. Fapp argue that the NPBL \$210 switch fee²³⁴ “has not hampered CSXT’s ability to effectively and intensely compete for POV traffic.”²³⁵ Mr. Fapp also claims that CSXT market share after 2010 at NIT “was due to structural deficiencies in its own routings” due to single-stack service as compared to NS’ already existing double-stack service, rather than anticompetitive actions taken by NS and NPBL in 2010 and later.²³⁶ Mr. Fapp’s claims lack analysis to support them. For example, he did not evaluate NPBL’s switch rate as compared to those of other short lines in 2010. Notably, while NS decided to set NPBL’s switch fee at \$210 per car (or \$105 per container) for CSXT to access to the NIT terminal via NPBL, { [REDACTED] }
[REDACTED]
[REDACTED] }²³⁷

In the NS Revised Application, Mr. Fapp continues to support the reasonableness of the NPBL switch fee with a flawed comparison of tariff linehaul switching rates from tariffs for certain East Coast Port Terminals. The analysis was also presented in his February VS.²³⁸ Similarly, Mr. McClellan’s statement that the { [REDACTED] }
[REDACTED] }²⁴⁰ NPBL’s switch rate remains unreasonably high today as compared to those of other short lines and can reasonably be expected to

²³² GWWR, “SAPT 7006-18 Switching and Accessorial Services”, January 1, 2025, available at <https://www.gwrr.com/sapt/wp-content/uploads/2024/12/SAPT-7006-18-Switching-and-Accessorial-Tariff-Effective-01-01-2025.pdf>

²³³ Palmetto Railways, “Freight Tariff PR 8001-N,” Effective January 1, 2025, Item 110, available at https://palmettorailways.com/application/files/1317/3679/9396/Freight_Demurrage_Tariff_2025.pdf

²³⁴ Tariff NPB 8100-I, NPBL, Effective February 1, 2010.

²³⁵ Fapp June VS, p.4.

²³⁶ Fapp June VS, p.7.

²³⁷ See Carey HC-WP-CSXT NS Switch Agreements and 2007 Norfolk Southern CWRV Switching Agreement - Appendix B Schedule of Charges. I use 2 containers per well based on my analysis of international IM traffic for both CSXT and NS. I use 2 containers per well based on my analysis of international IM traffic for both CSXT and NS.

²³⁸ Fapp June VS, page 32, { [REDACTED] }
[REDACTED] }

²³⁹ See NS-1, McClellan V.S., p. 21.

²⁴⁰ Deposition of Michal McClellan, August 18, 2025, pp. 155-156.

be lower absent NS control of NPBL.

Mr. Fapp disregards my prior critique in my February Verified Statement in which I demonstrated many inaccuracies and flawed assumptions with his comparisons. For example, Mr. Fapp did not consider that CSXT, NS and other railroads that use short lines for large volume traffic movements often have private agreements which use lower rates than those reported in public tariffs;²⁴¹ Mr. Fapp inappropriately compared a rate at POV to an inland container terminal which does not handle deepwater container vessels;²⁴² he inappropriately compared the high volume POV port to numerous ports with virtually no intermodal container volumes (for rail or truck) and that publish no container statistics;²⁴³ and he inappropriately included ports that do not handle intermodal traffic,²⁴⁴ among other issues.²⁴⁵ NS Senior Vice President and Chief Strategy Officer Michael McCellan agrees that {{ [REDACTED] [REDACTED] }}

The only new information that Mr. Fapp reports in the NS Revised Application is a reference to a commercially negotiated NS contract switching charge with Commonwealth Railway {{ [REDACTED] [REDACTED] }}, which is significantly lower than the NPBL's \$210 switching rate and the other public tariff switching rates relied on by Mr. Fapp.^{247, 248}

In the NS Revised Application, Mr. Fapp also emphasized his calculation of the switching

²⁴¹ "Regarding the first four port railroads listed on Mr. Fapp's Table 2 (Terminal Railway-Port of Mobile, AL, Wilmington NC Terminal, Savannah Port Terminal Railroad, and Jacksonville Port Terminal Railroad), I understand from discussions with CSXT personnel that all of CSXT's intermodal traffic volumes at these ports rely on private contracts and not the reported tariff rate. This implies that the tariff rate is not economically meaningful." Carey February VS, p. 11.

²⁴² Birmingham-Jefferson County Port Authority, available at <https://birmingport.org/>. Carey February VS, p. 12.

²⁴³ Galveston Railroad and the Brownsville & Rio Grande International Railroad. Carey February VS, p. 12.

²⁴⁴ The Port Jersey Rail Division only handles carload traffic (boxcars, hoppers, gondolas, etc.) and not intermodal containers for international movements through the Port of NY and NJ. See New York New Jersey Rail, LLC, available at <https://nynjr.com/>, Carey February VS, p. 12.

²⁴⁵ Carey February VS, p. 12. Mr. Fapp reported a lift charge instead of a linehaul charge. Alabama State Port Authority. See Fapp_000890, _Fapp_000966 at Fapp_000965, and Fapp_000966.

A rate for a railroad owned by the port and the switching services, at least in part, have been provided under private contract. "Business News of New Orleans, "CN Railway signs supply chain agreement with Port of New Orleans," September 2, 2015, available at <https://bizneworleans.com/cn-railway-signs-supply-chain-agreement-with-port-of-new-orleans/>.

Two ports with no non-inland on-dock rail intermodal. Palmetto Railroad's, Charleston and North Charleston subdivisions. Palmetto Railways, "Terminal Locations," available at <https://palmettorailways.com/economic-development>.

²⁴⁶ Deposition of Michal McClellan, August 18, 2025, pp. 157-158.

²⁴⁷ Fapp Jun VS, p. 30. See also "CWRY NS APRIL 2025 STATEMENT – INTERMODAL.xlsx".

²⁴⁸ Mr. Fapp also disregards commercial agreements for rail lifts and instead cites rail lift fees in public tariffs. The impact is significant. Fapp V.S. at pp. 15, 25, 30. He references a {{ [REDACTED] }} rail lift fee. Fapp VS, pp. 14, 15, 29, 30. However, as an example CSXT's commercially negotiated rail lift fee with VIT is {{ [REDACTED] }} (CSXT0000005124_0001).

fee reported on a per mile basis instead of a per container charge. As the majority of switching costs are associated with the switching function rather than the relatively short haul between the switch location and the terminal, a per mile rate is not economically meaningful because there is not a direct relationship between the length of the switch and the cost to provide the switch.

Based on my review of the economic circumstances of other port terminals on the east coast, I conclude that CWRV is a reasonable comparison to NPBL.²⁴⁹ Mr. Fapp did not include the CWRV in his switch rate analysis.²⁵⁰ The Commonwealth Railway operates in the Port of Virginia area serving the Virginia International Gateway (VIG) terminal. It heavily serves international IM traffic²⁵¹, which is similar to NIT. Further, the international shipper traffic volumes at each port terminal are both of reasonably similar economic scale²⁵² with not too dissimilar service distances.²⁵³ Finally, each short line railroad primarily serves to facilitate interchange traffic with CSXT and NS and should be incentivized to increase its traffic with these Class-1 carriers to the maximum extent feasible.

An additional economic factor is that Commonwealth Railway serves two sophisticated Class 1 railroads, CSXT and NS, and therefore the CWRV's business dynamics are influenced by the competitiveness of CSXT and NS. In that way Commonwealth is similar to NPBL, where CSXT and NS are joint owners of NPBL, and where NPBL has a mandate to operate for the mutual benefit of both railroads. As such, absent NS' control of NPBL, NPBL's role is to help both of the two sophisticated railroads to be successful in the market. The economic incentives of Commonwealth Railway and NPBL without NS control are fairly well aligned and a useful comparison.

Figure 7 below compares the 2025 switch fees for Commonwealth Railway with NS and CSXT from each of their private contractual agreements to the NPBL switch rate. Specifically, the

²⁴⁹ {{ [REDACTED] }} See Kenney VS, p. 13.

²⁵⁰ In deposition, Mr. Fapp attributed this to a "scrivener's error." See HC Deposition of Daniel L. Fapp, Wednesday August 13, 2025, p. 58.

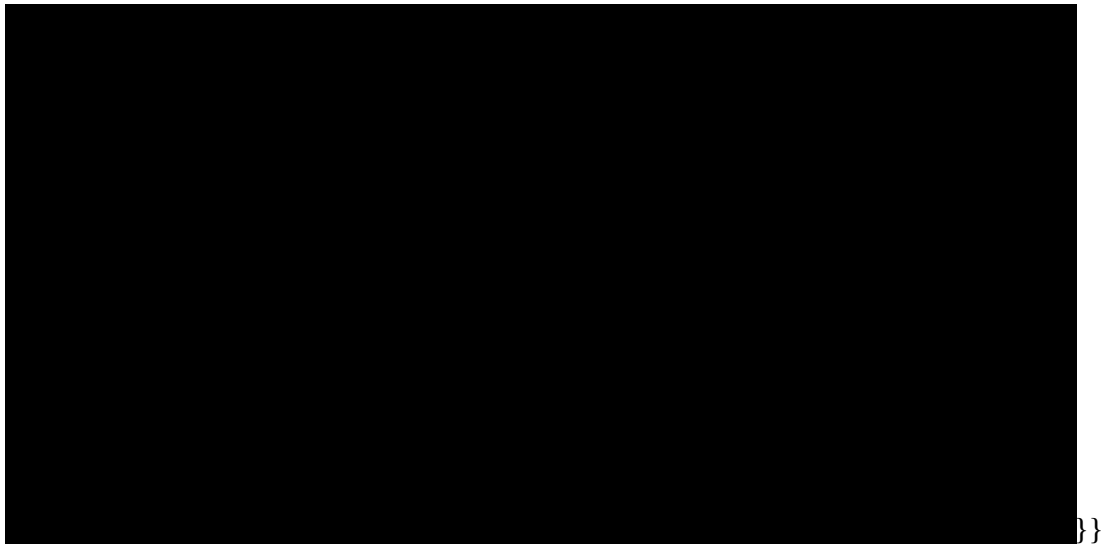
²⁵¹ In 2023, there were approximately {{ [REDACTED] }}. See Fapp VS, p. 27, Figure 2.

²⁵² In 2023, NIT observed approximately {{ [REDACTED] }} rail container moves at VIG. See Section II. A.

²⁵³ CWRV has a 16.5-mile-long railway system starting at VIG to Suffolk. See map in CWRV Trackage Rights Agreement, 2008. NPBL operates approximately 27 miles of trackage rights over NS track from NIT to Berkley Yard. See NS and NPBL, Decision No. 7 in Docket No. FD 36836; Notice of Acceptance of Application; Issuance of Procedural Schedule, available at <https://www.federalregister.gov/documents/2025/07/10/2025-12871/norfolk-southern-corporation-and-norfolk-southern-railway-company-acquisition-of-control-norfolk-and>.

CWRY agreement with NS charges a {{[REDACTED]}} per container rate²⁵⁴ for line-haul switching services and the CWRY agreement with CSXT charges a line-haul switching rate, that {{[REDACTED]}}²⁵⁶ per container. These rates are both commensurate with large volumes of traffic.²⁵⁷ These rates are substantially lower {{[REDACTED]}}²⁵⁸ of {{[REDACTED]}}.

Figure 7: Comparison of 2025 Per Container Switch Fees for NS/Commonwealth Railway, NPBL, and CSXT/Commonwealth Railway ²⁶¹ {{[REDACTED]}}



My analysis shows that when an economically comparable benchmark short line is selected, the NPBL switch rate is dramatically overpriced. Commonwealth Railway has no economic incentive to favor one railroad over another. This demonstrates that a terminal railroad serving a port can charge a low rate that covers the variable cost of IM service with contribution margin to the

²⁵⁴ Fapp VS, p. 30.

²⁵⁵ {{[REDACTED]}}

²⁵⁶ {{[REDACTED]}}

²⁵⁷ Ibid. {{[REDACTED]}}

²⁵⁸ {{[REDACTED]}}

²⁵⁹ Tariff NPB 8100-J, effective February 1, 2015, issued December 10, 2014.

²⁶⁰ It is my understanding that CSXT assumes two containers per car in the normal course of business. See Kenney VS p. 8. Additionally, CSXT {{[REDACTED]}}. CSXT, Rate and Service Proposal, November 26, 2024 (CSXT0000005144); CSXT, Rate Proposal for Long Term Rail Service to NIT, March 23, 2018, EDVA Antitrust Litigation Exhibit 105, CSXT0100329-CSXT0100334.

²⁶¹ Carey Workpaper - CSXT_NS Switch Agreements.

business.²⁶²

Thus, NPBL could reasonably be expected to achieve a much lower switching fee for international IM traffic service to and from NIT absent NS control of NPBL.

D. A Lower NPBL Switch Rate is Achievable with Higher Expected Volumes without NS' Control of NPBL Because Higher Expected Volumes Will Spread Fixed Costs

A typical short line railroad that is not under the control of NS would reasonably be expected to expand its business and increase densities on its lines enabling higher contribution to fixed costs while covering the variable cost of the movement. Higher achieved volumes spread the fixed railroad system costs across more units, lowering the cost per carload, and enabling lower rates. In his deposition, Mr. McClellan { [REDACTED] }²⁶³

Under NS' control, NPBL's traffic levels have been stagnant²⁶⁴ despite NPBL's valuable trackage rights that provide access to the highly demanded NIT port terminal for international IM shippers' traffic volumes. Mr. Fapp's static analysis disregards the strong economic incentive that an NPBL untethered to NS can be reasonably expected to capitalize on the economic opportunity of additional traffic volumes associated with the NIT port terminal. In fact, the NPBL Agreement specifically encourages the expansion of railroad traffic.²⁶⁵

All types of railroads have the economic incentive to expand use of a fixed cost asset, regardless of whether they operate as a profit maximizing firm or simply seek to recover the costs of their services.²⁶⁶ The railroad industry is highly capital-intensive and requires substantial ongoing capital outlays to operate and maintain safe and reliable transportation service, as well as to modernize networks for the benefit of all customers. Consequently, railroads are high fixed cost operations, including short lines and Class 1 railroads alike. Fixed costs for a railroad include cost

²⁶² Fapp VS, p. 30.

²⁶³ Deposition of Michael McClellan, August 18, 2025, p. 70.

²⁶⁴ NPBL Annual Reports 2019-2024, STB-NS-0000001–STB-NS-0000128.

²⁶⁵ { [REDACTED] } NPBL Agreement, July 7, 1897, p. 4 (Tenth), NSR_00104139.

²⁶⁶ The most prevalent source of scale economies is through increasing unit sales over fixed costs. See Train, Kenneth, *Optimal Regulation: The Economic Theory of Natural Monopoly*, Cambridge, MIT Press, 1991, pp. 5-12, available at <https://eml.berkeley.edu/books/regulation.html>. For a discussion of the cost-scale relationship and profitability, see Scherer and Ross, *Industrial Market Structure and Economic Performance*, Houghton Mifflin, Third Edition, 1990, pp. 111-118. See also Kahn, Alfred, *Economics of Regulation*, MIT Press, 1988, Volume II at pp. 119-123.

categories related to ongoing maintenance, inspections and replacement of trackage²⁶⁷ and general and administrative costs that are overhead costs of the company,²⁶⁸ among others.

The economic concept of scale economies for high fixed cost industries, such as railroads, entails the use of high quantities of traffic volumes that enables the company to spread its total fixed costs over more units and thus reduce the cost per unit of each and every carload. These “economies of scale” occur where the average production cost per unit decreases as the volume of output (or traffic, in this case) increases.^{269, 270}

Even accepting Mr. Fapp’s assumed fixed cost proportion (which I show in the next section is flawed and unreliable), a large reduction in the overall total cost per carload is achievable through the additional traffic volumes and scale economies of spreading fixed costs over more units.

To illustrate the impact of declining unit costs, if traffic volumes on NPBL increased to an estimated{{ [REDACTED] }} carloads today)²⁷¹ from additional IM traffic movements at NIT absent NS control of NPBL, the fixed cost per carload is reduced by {{ [REDACTED] }}²⁷² Fixed system costs are spread across more traffic volumes resulting in declining costs per unit.

Absent NS control of NPBL, NPBL can reasonably be expected to expand its traffic volumes to the highly demanded NIT port terminal for international IM shippers, reducing the overall unit costs and enabling lower rates to shippers.

VI. CORRECTING MR. FAPP’S FLAWED COST ANALYSIS SHOWS THAT NPBL CAN PROFITABLY SERVE IM CUSTOMERS AT NIT

The NS Application places strong emphasis on the NPBL switch rate being reasonable due to its claimed requirement of a cost-based mandate. NS claims its rate is reasonable because it covers

²⁶⁷ Ongoing maintenance activities keep railroad tracks clear from debris and are necessary to ensure the train wheels can safely engage with the rail trackage. Inspection of trackage evaluates the integrity of the tracks, railroad ties and the supporting roadbed along with the repair or replacement of deteriorated equipment necessary to maintain safety. UP, Engineering Track Maintenance Field Handbook, August 21, 2025, available at <https://www.up.com/emp/engineering/mapcontent/fieldhandbook/Complete%20Book/Redacted%20Track%20Maintenance%20Field%20Handbook.pdf>.

²⁶⁸ General and administrative expenses are overhead costs a company incurs related to the overall operations and functioning of the company such as human resources employees, corporate offices or bookkeeping software as well as a return on capital.

²⁶⁹ Carlton and Perloff, *Modern Industrial Organization*, 4th. Edition, 2005, Pearson/Addison Wesley, pp. 26-43.

²⁷⁰ Average Cost per Unit = Total Costs / Quantity, where Total Costs = Fixed Costs + Variable Costs

²⁷¹ Fapp VS, Fapp Exhibit DLF-2.

²⁷² Carey HC-WP-NPBL Fixed Cost. This illustration assumes and is based on Mr. Fapp’s calculations. {{ [REDACTED] }}

the operating expenses of NPBL and uses a uniform rate for freight cars regardless of distance.²⁷³ Mr. Fapp claims that NPBL would be financially devastated if it were to use the proposed CSXT switching fee of {{[REDACTED]}} per car.²⁷⁴ Similar claims are made in the {{[REDACTED]}}
{{[REDACTED]}}.²⁷⁵

A. Mr. Fapp's Assumed NPBL Variable Cost Is Overstated and Not Appropriate for IM Traffic

Mr. Fapp fails to conduct an NPBL-specific variable analysis cost for the traffic moving over the NPBL trackage segments.²⁷⁶ He also disregards the fact that the NPBL bulk carload traffic has much higher variable costs than the IM traffic for international shippers at NIT (Section III. B. above).²⁷⁷

Instead of using the actual variable costs for NPBL merchandise carload traffic, Mr. Fapp calculates an assumed variable cost for NPBL. Specifically, he estimates NPBL variable costs²⁷⁸ based on a variability percentage (of approximately {{[REDACTED]}})²⁷⁹ from the STB Eastern Region URCS data. This variability percentage represents the variable portion of the total costs incurred by all Class 1 railroads located in the eastern U.S. for the mix of traffic that they serve. Therefore, the statistic comprises all traffic types and attributes for the Class 1 railroads networks. It is not based on any NPBL-specific variable costs nor the traffic types used by NPBL customers.²⁸⁰ The Class 1 railroads have a different mix of traffic types than NPBL as well as vastly different networks.²⁸¹ Therefore, Mr. Fapp's variability assumption is not reliable.

Based on his assumption that NPBL's variable cost is {{[REDACTED]}} of total operating expenses,

²⁷³ Fapp June VS, p. 32.

²⁷⁴ Mr. Fapp's claim relates to CSXT's 2018 rate proposal, rather than the 2024 rate proposal of {{[REDACTED]}} per car. Fapp June VS, pp. 32-33; CSXT, Rate and Service Proposal, November 26, 2024 (CSXT0000005144); CSXT, Rate Proposal for Long Term Rail Service to NIT, March 23, 2018, EDVA Antitrust Litigation Exhibit 105, CSXT0100329 - CSXT0100334. See also, Figure 6 above.

²⁷⁵ {{[REDACTED]}} NS
NPBL Cost Calculation White Paper to the DOJ, NS- 13, pp. 5-6, Exhibit C.

²⁷⁶ Fapp VS, pp. 32-33.

²⁷⁷ In deposition Mr. Fapp acknowledges that IM costs can vary from the merchandise carload costs NPBL currently experiences and that IM rates reported by STB are generally lower than carload traffic. See HC Deposition of Daniel L. Fapp, Wednesday, August 13, 2025, p. 35 and 102.

²⁷⁸ Fapp VS, Fapp Exhibit DLF-2, note 2.

²⁷⁹ NS-1, Fapp February VS, p. 3, footnote 6 and p.4 Table 1. I raised this concern in my response to the NS Minor Application. Mr. Fapp did not respond to it. See also CSXT-1, Carey VS at p. 9. In deposition, Mr. Fapp stated that his past cost analyses have included "movement characteristics, unit train, multiple cars, single car movements, number of interchanges, that sort of thing. See HC Deposition of Daniel L. Fapp, Wednesday, August 13, 2025, p. 34. However, his current analysis does not consider these factors.

²⁸⁰ Appendix-C NPBL Customers

²⁸¹ Fapp VS, Fapp Exhibit DLF-2, p. 106. {{[REDACTED]}}

Mr. Fapp calculates NPBL variable cost equal to {{[REDACTED]}}/ carload (2010-2023, excluding 2015).²⁸² I analyzed NPBL's company records to develop a more detailed breakdown of the variable costs as a percentage of its total costs for handling the merchandise carload traffic on its lines.²⁸³ Based on my evaluation of NPBL's total costs, NPBL's fixed cost percentage is approximately {{[REDACTED]}} and the variable cost percentage is approximately {{[REDACTED]}}.²⁸⁴ Using the corrected variability percentages in Mr. Fapp's analysis results in an average variable cost of {{[REDACTED]}} vs {{[REDACTED]}} per carload.²⁸⁵

The correction of Mr. Fapp's percentage of variable cost for NPBL also changes the estimated fixed cost portion of the \$210 rate to approximately {{[REDACTED]}}/carload.²⁸⁶ Applying the same estimated expanded traffic volumes on NPBL ({{[REDACTED]}} carloads)²⁸⁷ as discussed above for the highly demand NIT port terminal for international IM shippers, absent NS exclusivity at NIT,²⁸⁸ reduces the fixed cost per carload from {{[REDACTED]}} per carload to about {{[REDACTED]}} / carload.²⁸⁹

Thus, with the variable cost correction, and the scale economies of the expanded volumes, the \$210 rate is reduced by approximately {{[REDACTED]}}²⁹⁰ to {{[REDACTED]}}²⁹¹ per car that can be reasonably expected absent NS control of NPBL. Importantly, this reduced variable cost estimate only considers the existing carload traffic on NPBL's network and does not consider further cost reductions, as discussed below, which are associated with IM traffic.

B. Lower Variable Costs for IM Traffic is Supported by Low Short Line Railroad Rates

A check on Mr. Fapp's cost assumptions reveals that much lower international IM variable costs are achievable. This is also observed by very low switch rates charged by other short line

²⁸² {{[REDACTED]}} / carload total operating expense. Fapp VS, Fapp Exhibit DLF-2.

²⁸³ I reviewed the railway operating expense categories on the NPBL income statement from the annual reports and information underlying these expense categories found within the 2023 NPBL Board minutes. I evaluated the operating expense categories' inherent fixed or variable nature, and I assigned variabilities to cost elements based on the variabilities reported in the 2023 URCS analyses for these operating expense categories. I applied the URCS variabilities reported for specific cost categories to the costs that NPBL reports for those categories.

²⁸⁴ Carey HC-WP-NPBL Fixed Cost.

²⁸⁵ Carey HC-WP-NPBL Fixed Cost. Further, this variable cost is {{[REDACTED]}}

²⁸⁶ {{[REDACTED]}}

²⁸⁷ From approximately {{[REDACTED]}} carloads today. Fapp VS, Fapp Exhibit DLF-2.

²⁸⁸ {{[REDACTED]}} See Section II.B for further discussion.

²⁸⁹ Carey HC-WP-NPBL Fixed Cost.

²⁹⁰ {{[REDACTED]}}

²⁹¹ Carey HC-WP NPBL Variable Cost.

railroads. Mr. Fapp disregards the lower achievable variable costs to reach his conclusion that the CSXT offer for a lower rate for IM traffic would be “financially devastating” to NPBL. Absent NS control, NPBL can reasonably achieve a lower average total cost per unit, and offer a lower switching rate which will attract more international IM customers to CSXT.²⁹² Figure 8 below shows the 2025 per container switch fees for Commonwealth Railway international IM traffic movements as compared to the NS Application’s claimed NPBL variable cost. The table shows that Commonwealth Railway offers much lower per container switch fees than NPBL per container variable cost {{[REDACTED]}} claimed in the NS Application.²⁹³

Specifically, Commonwealth Railway’s (CWRY) current agreement with NS for international IM traffic service to and from VIG includes a {{[REDACTED]}} per container rate²⁹⁴ for switching services. Similarly, the CSXT switching fee with the Commonwealth Railway for international IM traffic service to and from the VIG or NIT facilities {{[REDACTED]}}²⁹⁶ per container. Thus, real-world short line switching rates for international IM traffic movements as low as {{[REDACTED]}} are sufficient compensation for other short lines to cover the variable cost of the traffic movement and provide some level of contribution to the fixed costs of the railroad.

²⁹² Decreases in variable costs results in lower average total costs per unit.

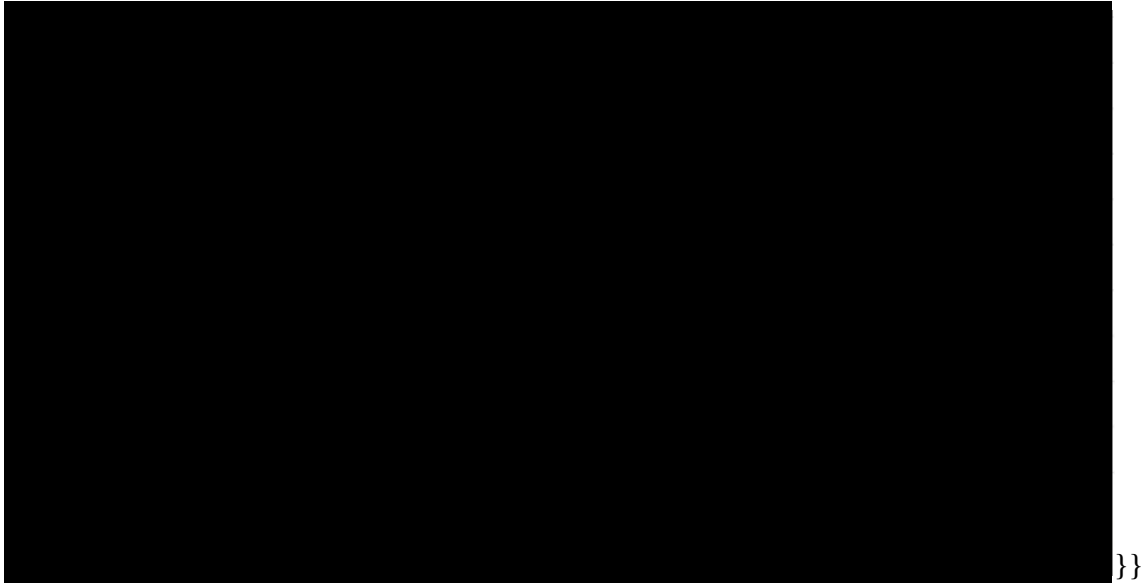
²⁹³ Fapp VS, p. 15.

²⁹⁴ Fapp VS, p. 30. {{[REDACTED]}}

²⁹⁵ {{[REDACTED]}} The 2025 rate was calculated based on a {{[REDACTED]}} per container rate in 2021 escalated by 3% annually. {{[REDACTED]}}

²⁹⁶ {{[REDACTED]}} The 2025 rate was calculated based on a {{[REDACTED]}} per container rate in 2021 escalated by 3% annually. {{[REDACTED]}}

Figure 8: Comparison of 2025 NS/Commonwealth Railway and CSXT/Commonwealth Railway Rate/Container vs Fapp Estimated 2023 Variable Cost per Container of NPBL²⁹⁷ {{



C. A Robust Profit Margin Is Achievable for NPBL to Serve International IM Shippers Customers at NIT

I evaluated NPBL's profit margin for the international IM traffic moves to NIT using incremental costs for the international IM traffic and lower fixed costs from expanded traffic volumes which NPBL can reasonably expect at the high demanded NIT port terminal absent NS control of NPBL.

I use the same previously described assumptions of {{ [REDACTED] }} [REDACTED] }} interchanged between NPBL and CSXT for service to and from NIT (Section VI. A.).²⁹⁸ Currently NIT has {{ [REDACTED] }} containers for 2023, and I assume that CSXT's share today would be {{ [REDACTED] }} absent NS control of NPBL.²⁹⁹ Considering the ongoing substantial NIT expansion to {{ [REDACTED] }}³⁰⁰ containers per year and assuming that CSXT still moves {{ [REDACTED] }} containers via NPBL, the result is a smaller share of roughly {{ [REDACTED] }} for CSXT at NIT {{ [REDACTED] }}. CSXT could potentially move a higher share of the expanded volumes, therefore making this assumption conservative.

²⁹⁷ Carey HC-WP-CSXT NS Switch Agreements.

²⁹⁸ Carey HC-WP-NPBL Variable Costs.

²⁹⁹ Carey HC-WP-Traffic Analysis 2023_CSXT_NS.

³⁰⁰ See Section II. B. supra.

For the incremental costs, I include NPBL-specific crew wages.³⁰¹ I assume that the current procedure for moving CSXT IM freight on NPBL to/from NIT would apply. The interchange between NPBL and CSXT requires a movement from the interchange location at Berkley Yard to the NS Portlock Yard where NPBL will perform the required repositioning for onward movement to NIT. Therefore, this analysis assumes that a maximum of {{ [REDACTED] }} requiring a daily move in each direction.³⁰² CSXT's understanding of the operations is consistent with this assumption.³⁰³ For other cost items, I use an NPBL-specific locomotive expense³⁰⁴, fuel costs³⁰⁵, maintenance of way³⁰⁶, and the trackage rights fee which NPBL currently and historically pays to use the NS line, and is therefore representative of the costs which NPBL would incur to move CSXT IM traffic to/from NIT if it had accepted previous CSXT offers.³⁰⁷

Based on my analysis, the incremental cost would be as low as {{ [REDACTED] }} per container for international IM traffic movements to and from NIT absent NS control of NPBL.³⁰⁸ Next, I use the fixed costs for the NPBL's system for the total volumes expected absent NS control of NPBL as discussed above, which amounts to {{ [REDACTED] }} per car for an additional estimated {{ [REDACTED] }} cars. As shown in Figure 9, the combined incremental cost of {{ [REDACTED] }} plus fixed cost of {{ [REDACTED] }}, which is approximately {{ [REDACTED] }} lower than \$210/car.³⁰⁹

³⁰¹ NPBL wages are reported in 2024 NPBL annual report states the Compensation and Benefits. See NPBL Annual Report, June 18, 2014

³⁰² See Carey HC-WP-NPBL Variable Cost. My analysis also assumes, that in the minimum value scenario, {{ [REDACTED] }}

³⁰³ See Kenney V.S. p. 12

³⁰⁴ I understand that {{ [REDACTED] }} STB-NS-0018324. See also NPBL001215-001254, at NPBL001239.

³⁰⁵ NPBL Railroad Company Annual Report 2024. NPBL.000544-000651, p. 16. 2024 NPBL Fuel Costs is adjusted for {{ [REDACTED] }}

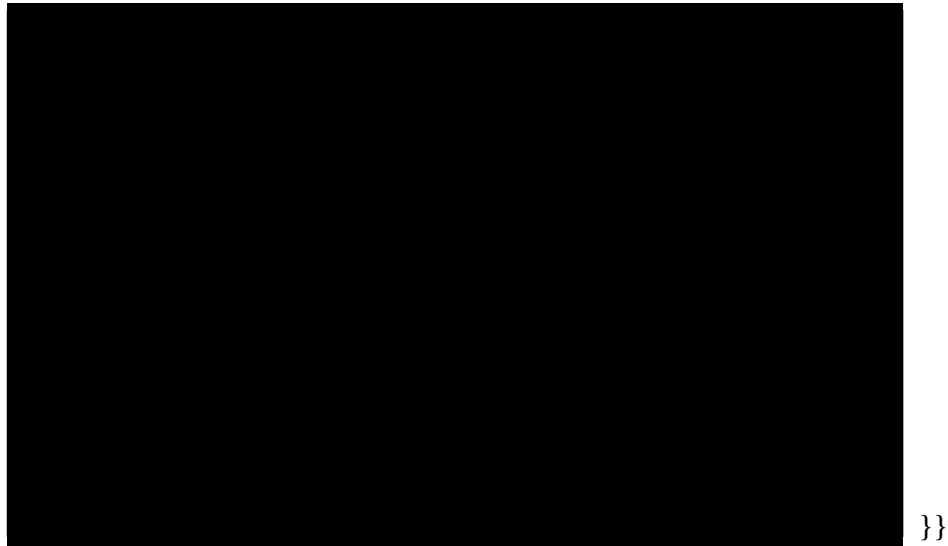
³⁰⁶ I started with NPBL's 2010 NPBL volume weighted rate and escalated it to 2024 using the RCAF. This rate is conservative because it assumes constant marginal cost increases per car. It is also similar to NS' overall maintenance expense rate per car mile reported in its R-1. See Email Re Rail Service Connection to NIT - Rate Proposal and Operating/Financial Plan, July 19, 2010, Table 2.

³⁰⁷ {{ [REDACTED] }}

³⁰⁸ Carey HC-WP-NPBL Variable Cost.

³⁰⁹ {{ [REDACTED] }}

Figure 9: Comparison of \$210 NPBL Rate and Variable Cost-plus Fixed Cost Contribution to NPBL for International IM Traffic to/From NIT (per Carload)³¹⁰{{



This analysis demonstrates the unreasonableness of the NPBL single rate of \$210 per car for international IM traffic movements to and from NIT. It also shows that a typical short line (including, likely, NPBL absent NS control of NPBL) could cover its costs in doing so and therefore reasonably be expected to do so.

VERIFICATION

I, Julie M. Carey, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified and authorized to submit this Verified Statement.

Executed on September 18, 2025

Julie M. Carey

³¹⁰ Carey HC-WP-NPBL Variable Cost at Tab “Incl and Alloc Fixed Cost”

Appendix A – Traffic Analyses

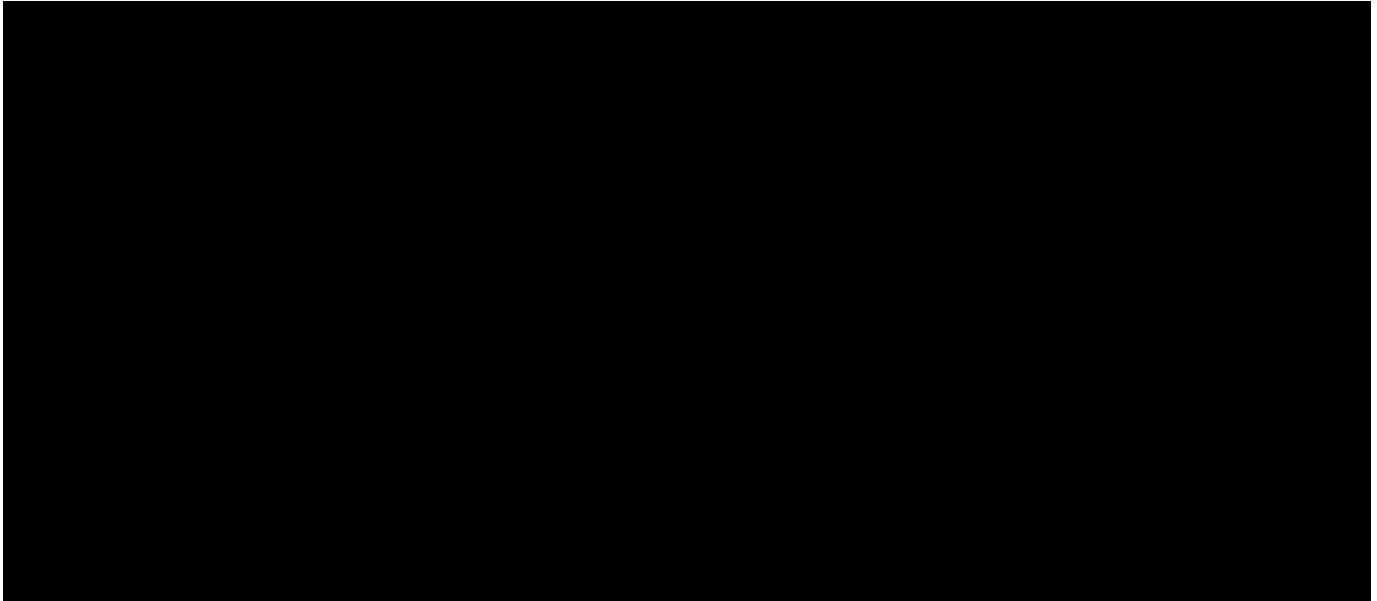
1. Traffic Volumes and Shares

Figure 1: Shares for Rail/Drayage International IM Traffic Movements NIT Corridors to/from Inland Midwestern Markets, 2024¹{



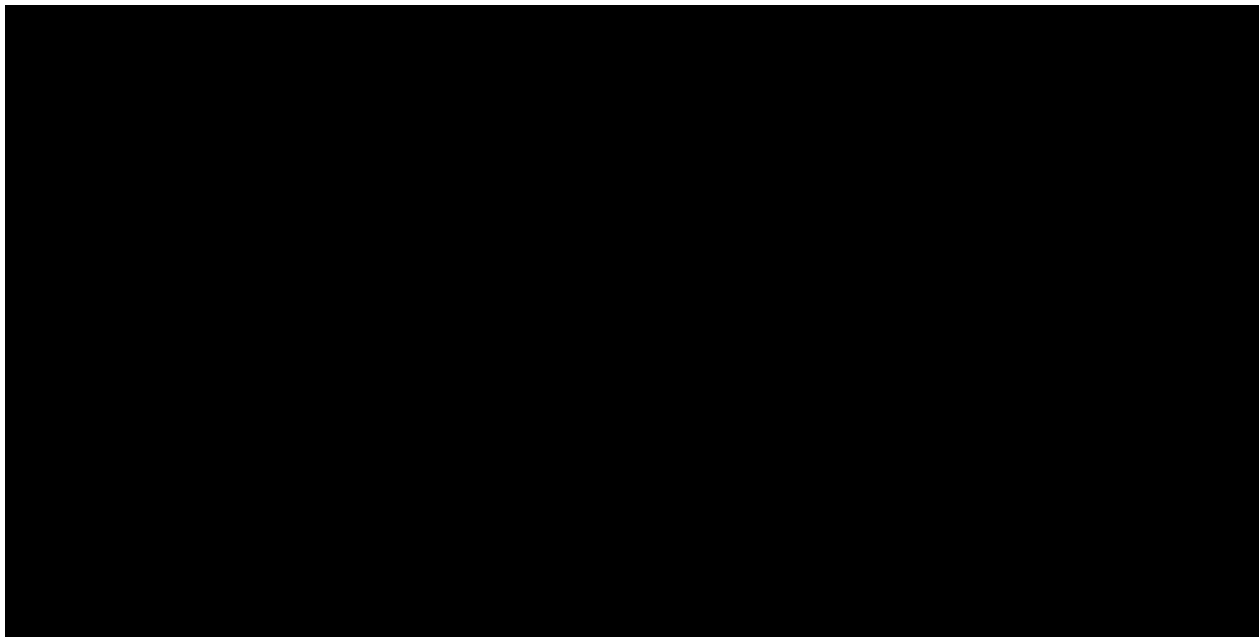
¹ See Carey HC-WP Traffic Tapes Analysis 2024_CSXT_NS.

Figure 2: Comparison of CSXT Shares for On-Dock Rail at VIG vs NIT (via) Dray, 2024²{{



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Figure 3: Containers and Shares for Rail Only and Rail/Drayage International IM Traffic Movements on POV Corridors to/from Inland Midwestern Markets, 2023³{{

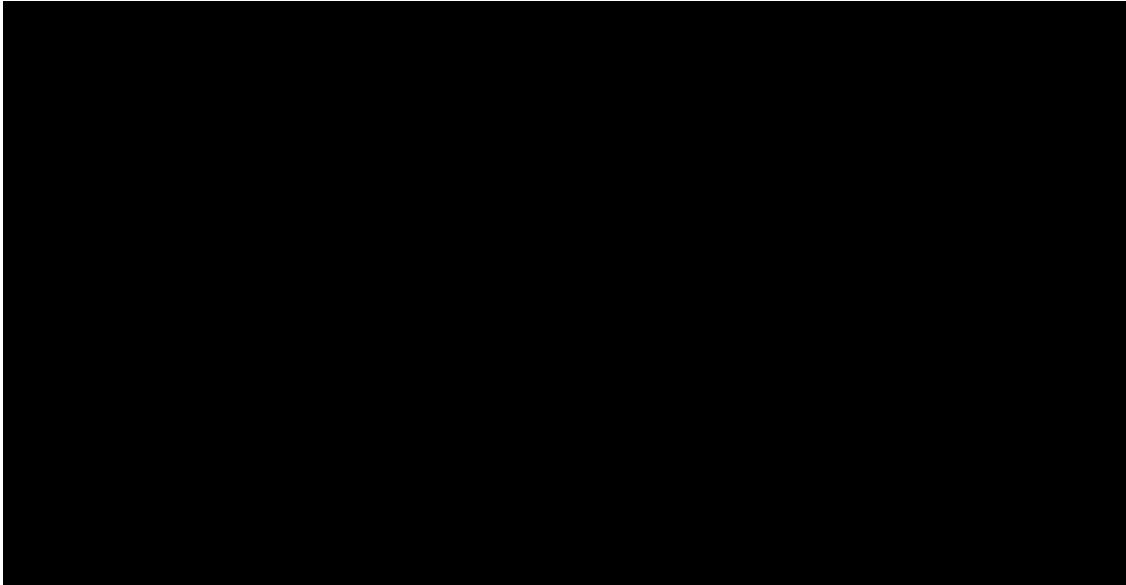


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² See Carey HC-WP Traffic Tapes Analysis 2024_CSXT_NS.

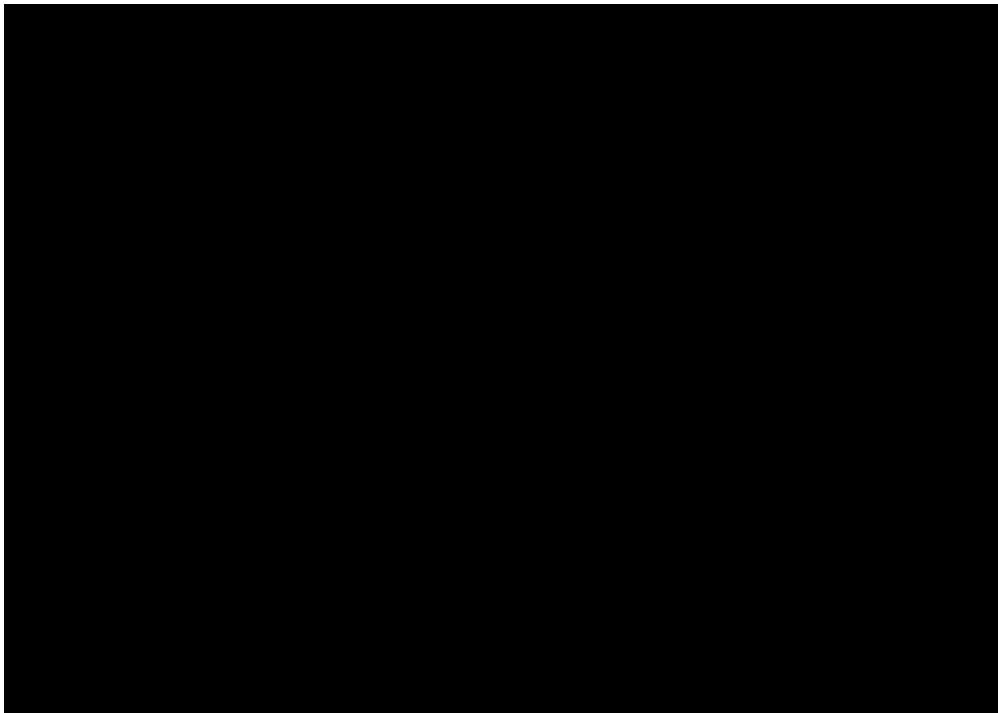
³ See Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS.

Figure 4: Containers and Shares for Rail Only and Rail/Drayage International IM Traffic Movements on POV Corridors to/from Inland Midwestern Markets, 2024⁴{{



}}

Figure 5: CSXT vs. NS Share – International IM Traffic Movements on East Coast Port Corridors with Midwestern Locations, Excluding POV, 2023⁵{{



}}

⁴ See Carey HC-WP Traffic Tapes Analysis 2024_CSXT_NS.

⁵ See Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS.

**Figure 6: CSXT vs. NS Share – International IM Traffic Movements on East Coast Port Corridors with
Midwestern Locations, Excluding POV 2024⁶{{**

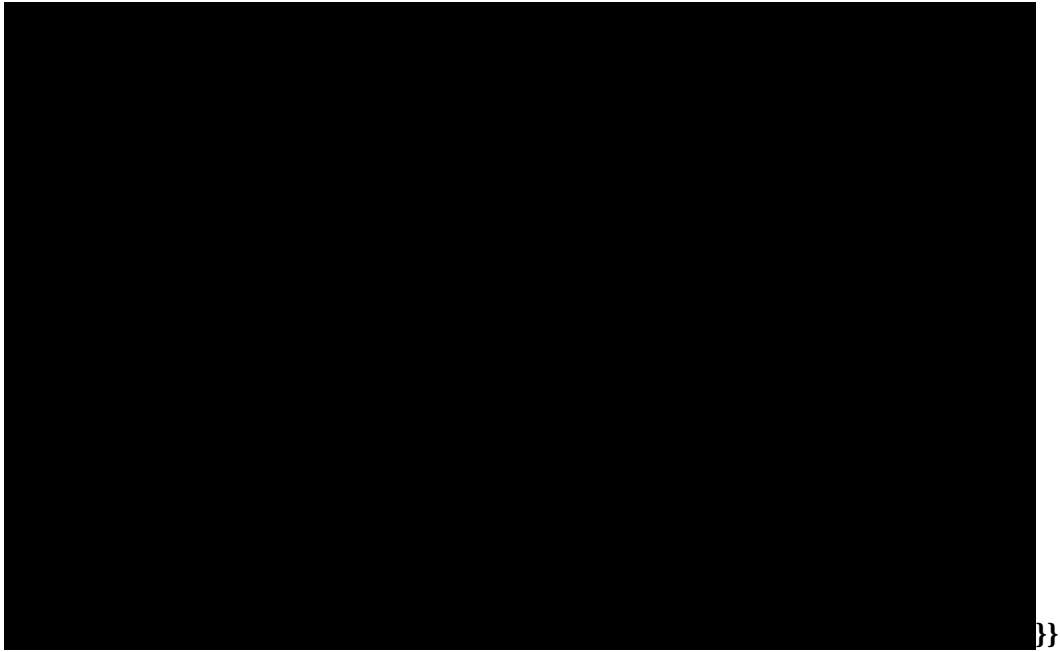
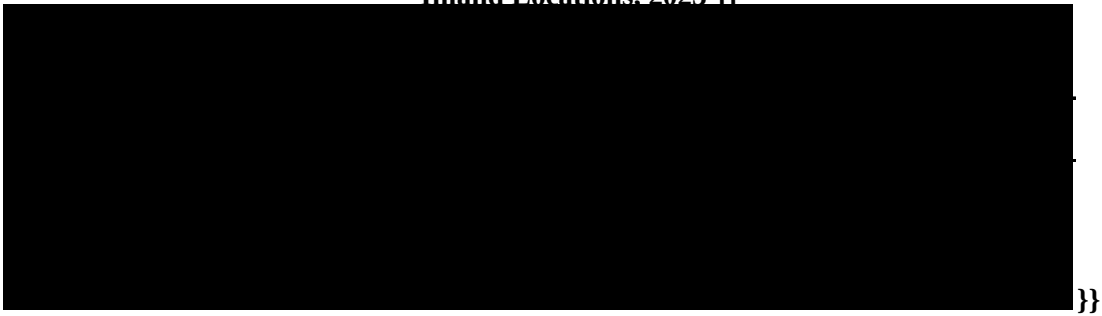


**Figure 7: Georgia Port Authority (Savannah) International Intermodal Containers at Non-POV/NIT
Inland Locations, 2023⁷{{**



⁶ See Carey HC-WP Traffic Tapes Analysis 2024_CSXT_NS.

⁷ See Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS.

Figure 8: Georgia Port Authority (Savannah) International Intermodal Containers at Louisville, KY, 2023⁸{{

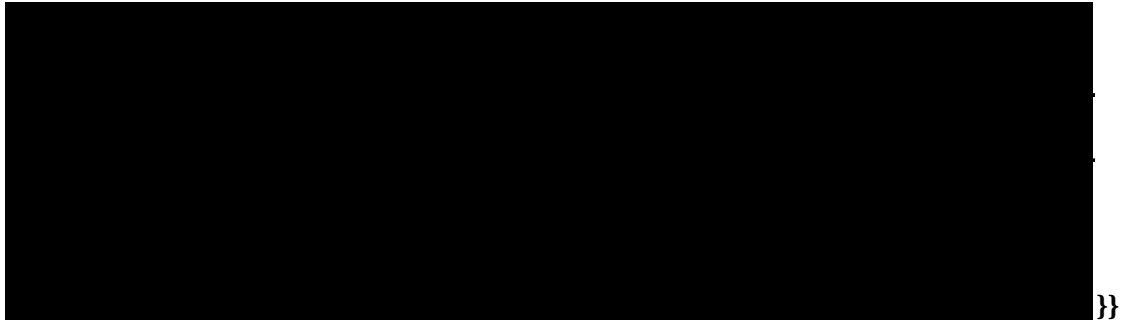


Figure 9: Miami International Intermodal Containers at Non-POV/NIT Inland Locations, 2023⁹{{

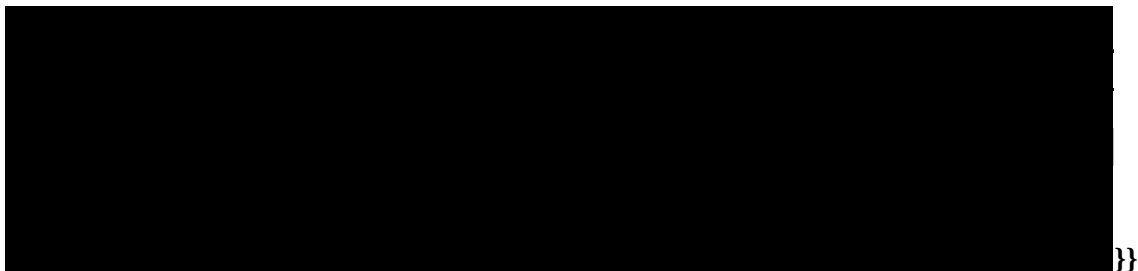


Figure 10: CSXT vs. NS Share – International IM Traffic Movements on East Coast Port Corridors for CSXT POV Lanes, 2023^{10,11}{{



⁸ See Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS.

⁹ 2023 Carey HC-WP Miami Traffic Analysis 2023_CWS.

¹⁰ See Carey HC-WP Traffic Tapes Analysis 2023_CSXT_NS.

¹¹ Port of Virginia capacity is 5,800,000 TEUs, which is NIT capacity + VIG terminal capacity, *see* Port of Virginia, available at <https://www.portofvirginia.com/gateway/capabilities/>. Port of NY/NJ capacity is estimated by the USACE in 2022 to be 9,000,000 TEUs. *See* USACE, New York and New Jersey Harbor Deepening Channel Improvements, Navigation Study, Appendix C at p. 4, available at https://www.nan.usace.army.mil/Portals/37/Appendix%20C%20-%20Economics_1.pdf.

Figure 11: CSXT vs. NS Share – International IM Traffic Movements on East Coast Port Corridors for CSXT POV Lanes, 2024¹²

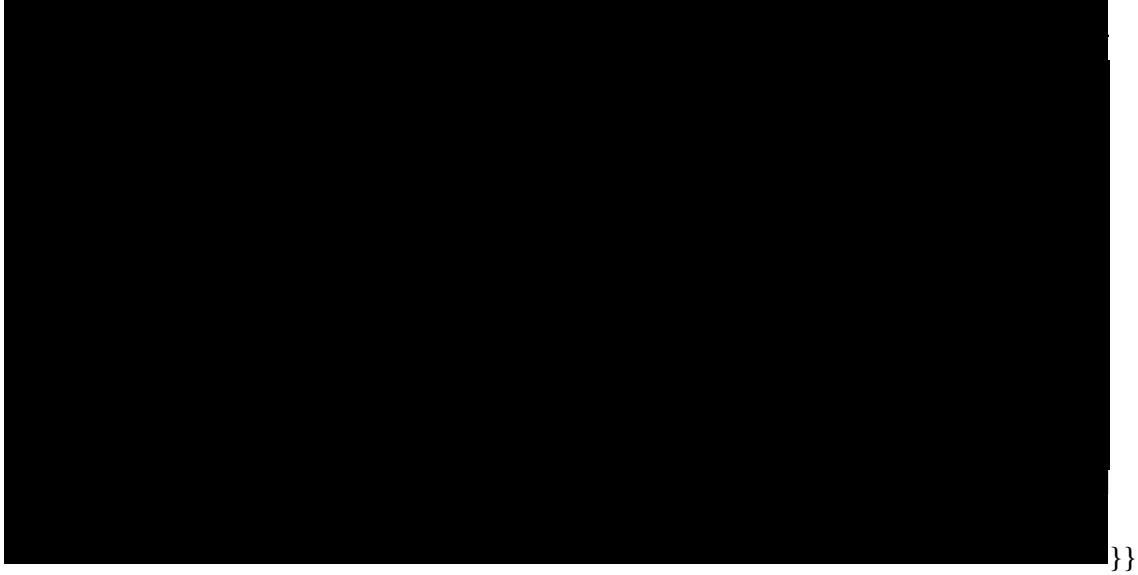


Figure 12: CSXT vs. NS Route Miles by Port – PC Miler

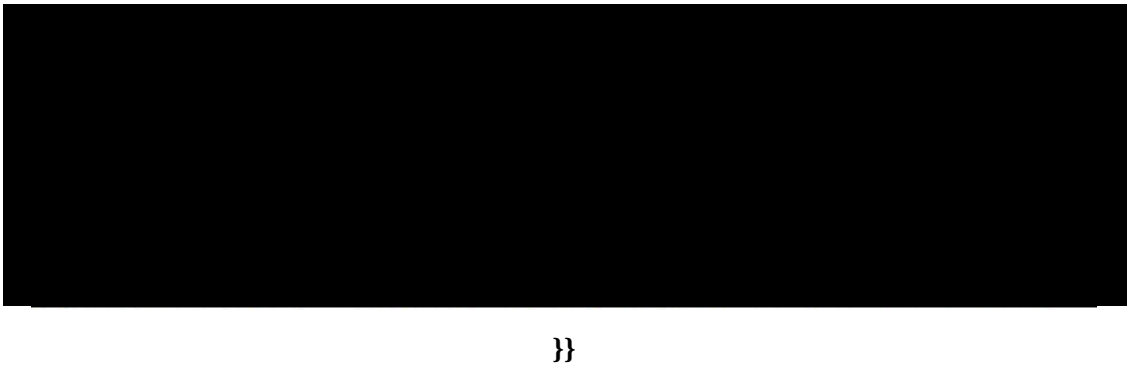


¹² See Carey HC-WP Traffic Tapes Analysis 2024_CSXT_NS.

Figure 13: NY/NJ & POV Trips, 2023^{13,14} {{



Figure 14: POV and East Coast Trips, 2023¹⁵{{



¹³ See Carey HC-WP Vessel Tracking.

¹⁴ The port of New York/New Jersey in 2023 and 2024 moved 7.8 and 8.7 million TEUs, respectively, which is 86-97% of estimated port capacity according to the U.S. Army Corps of Engineers. USACE estimated a capacity of approximately 9 million TEUs in 2022. 86% = 7.8 million / 9 million. 97% = 8.7 million / 9 million. See USACE, New York and New Jersey Harbor Deepening Channel Improvements, Navigation Study, Appendix C at p. 4, available at https://www.nan.usace.army.mil/Portals/37/Appendix%20C%20-%20Economics_1.pdf. See also Port Authority NY NJ, 2023 Port at a Glance and 2024 Port at a Glance, available at <https://www.panynj.gov/port/en/our-port/facts-and-figures.html>.

¹⁵ See Carey HC-WP Vessel Tracking.

2. Ocean Carrier Volumes

Figure 15: CSXT International IM Containers at NIT, by Ocean Carrier, 2023¹⁶{

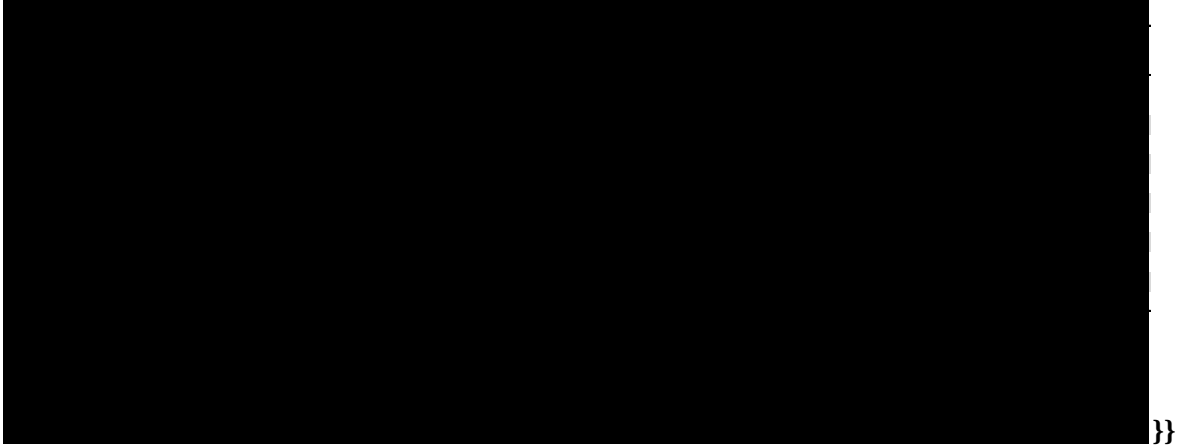


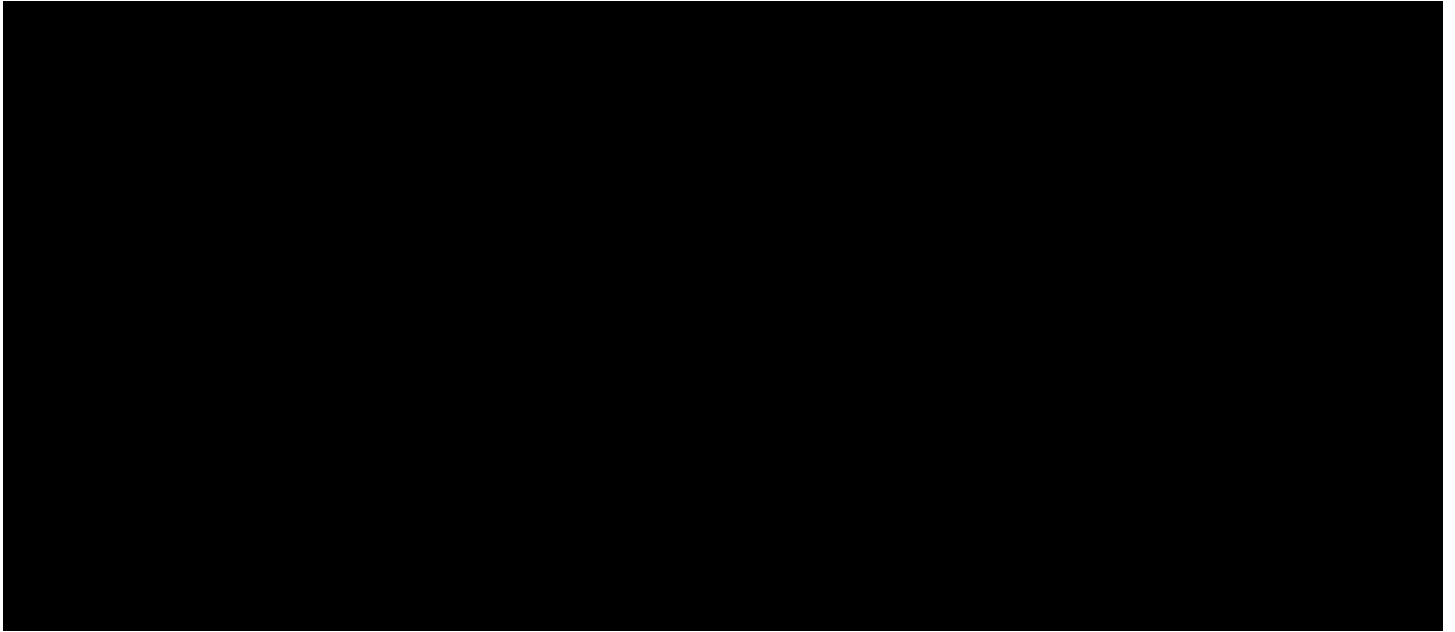
Figure 16: CSXT International IM Containers at VIG, by Ocean Carrier, 2023¹⁷{



¹⁶ See Carey HC-WP CSXT POV by Ocean Carrier.

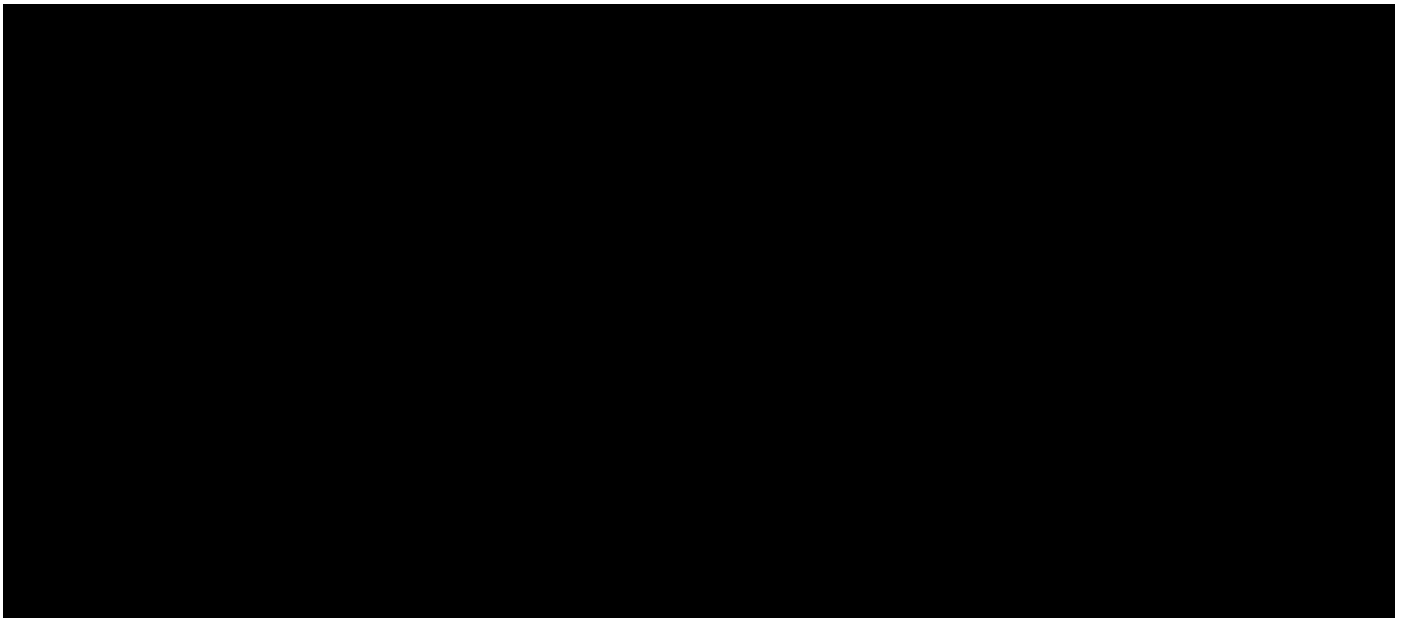
¹⁷ See Carey HC-WP CSXT POV Ocean Carrier.

Figure 17: CSXT International IM Containers at NIT, by Ocean Carrier, 2024¹⁸{



}

Figure 18: CSXT International IM Containers at VIG, by Ocean Carrier, 2024¹⁹{

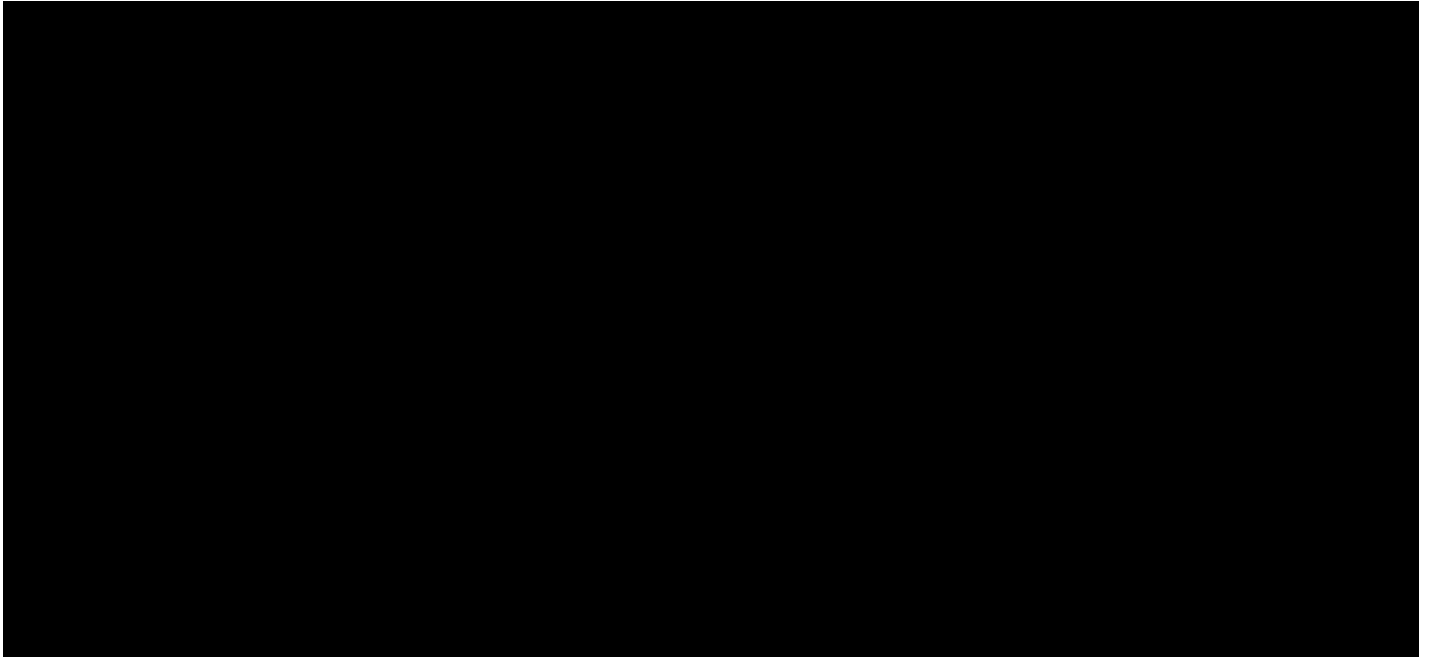


}

¹⁸ See Carey HC-WP CSXT POV by Ocean Carrier.

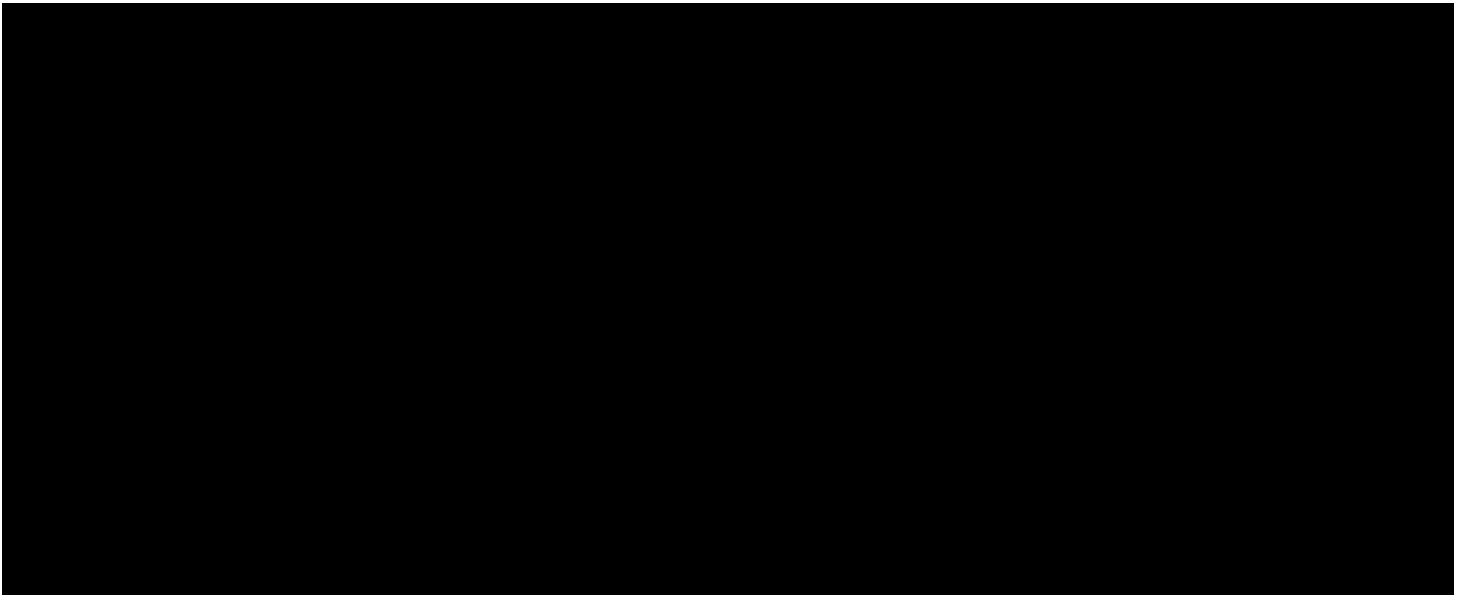
¹⁹ See Carey HC-WP CSXT POV Ocean Carrier.

Figure 19: NS International IM Containers at NIT, by Ocean Carrier, 2023²⁰}}



}}

Figure 20: NS International IM Containers at NIT, by Ocean Carrier, 2024²¹ {{

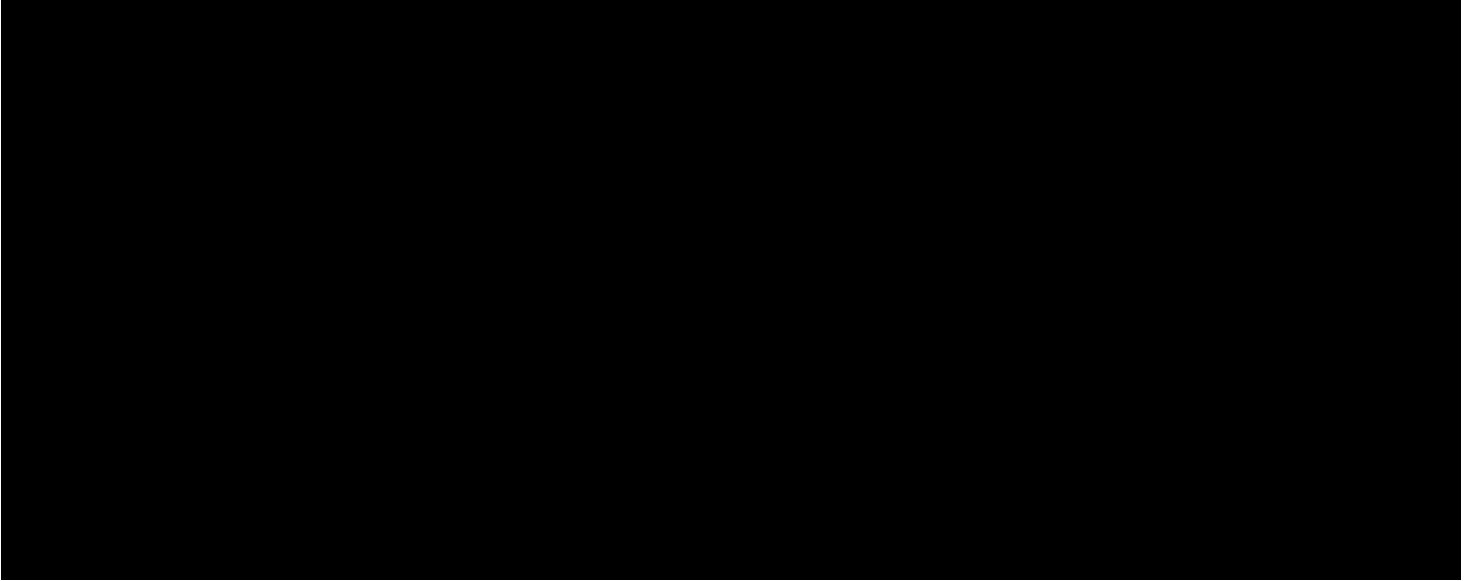


}}

²⁰ See Carey HC-WP NS POV by Ocean Carrier.

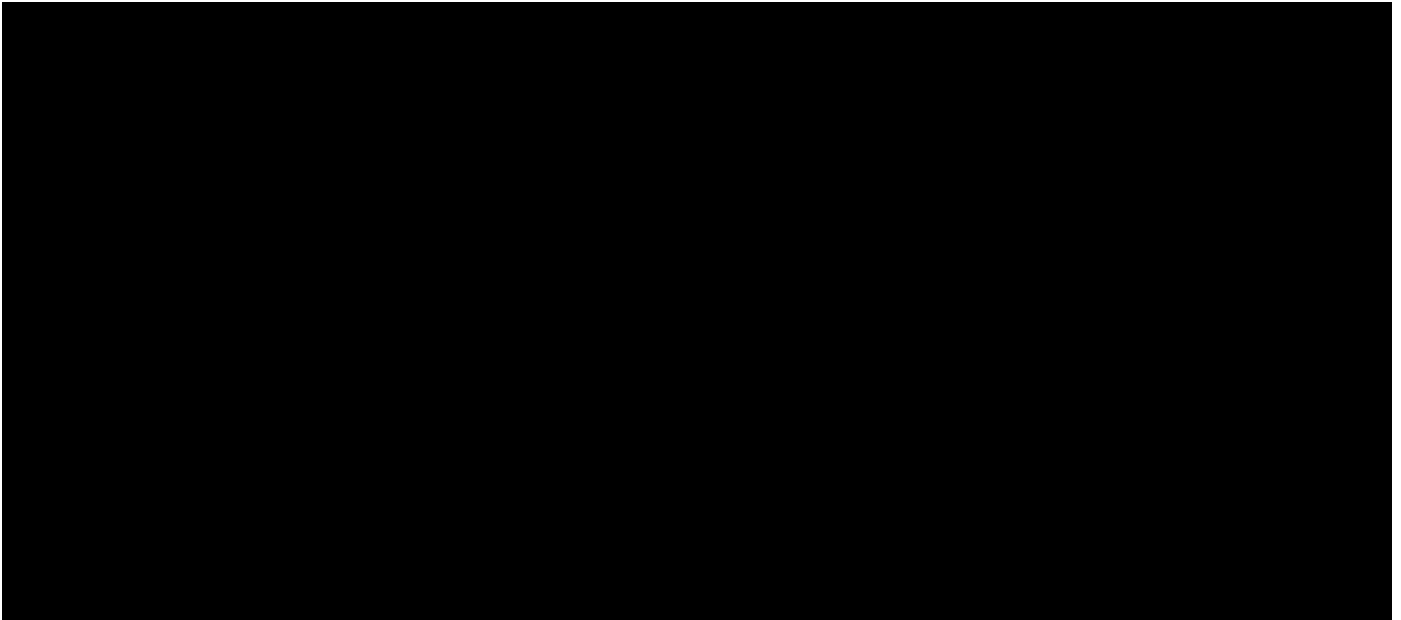
²¹ See Carey HC-WP NS POV by Ocean Carrier.

Figure 21: NS International IM Containers at VIG, by Ocean Carrier, 2023²²{{



}}

Figure 22: NS International IM Containers at VIG, by Ocean Carrier, 2024²³{{



}}

²² See Carey HC-WP NS POV by Ocean Carrier.

²³ See Carey HC-WP NS POV by Ocean Carrier.

Figure 23: Top 10 CSXT NY/NJ Ocean Carriers for International IM Containers on CSXT NIT/POV Lanes²⁴

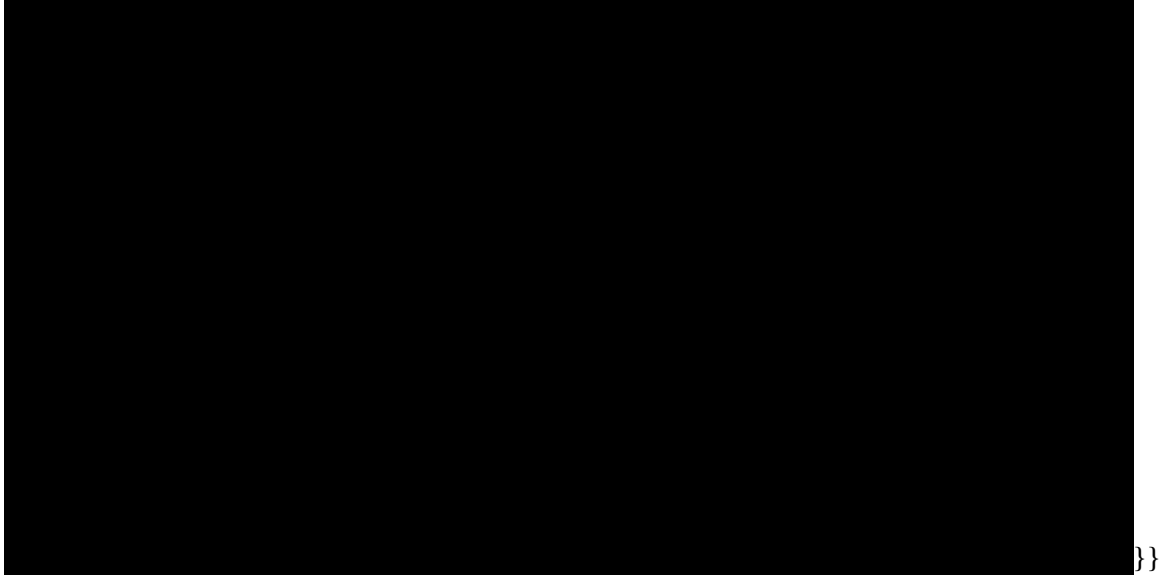
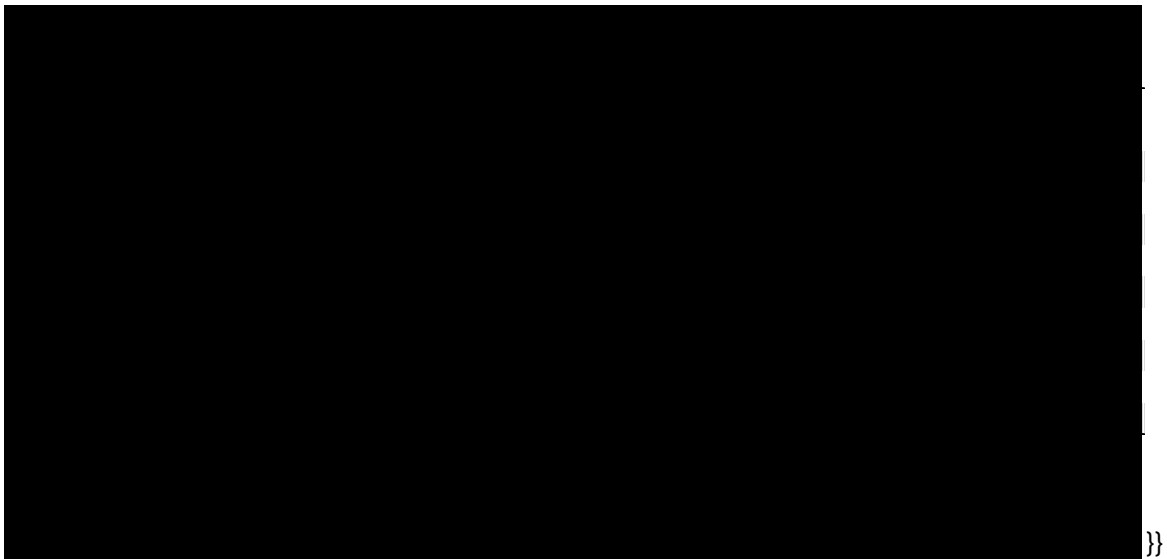


Figure 24: Top 10 NS NY/NJ Ocean Carriers for International IM Containers on CSXT NIT/POV Lanes²⁵



²⁴ See Carey HC-WP CSXT NYNJ by Ocean Carrier.

²⁵ See Carey HC-WP NS NYNJ by Ocean Carrier.

Appendix B – Exclusionary Conduct

- {{ [REDACTED] }}⁵ (emphasis added)⁶
- {{ [REDACTED] }}⁷ (emphasis added)
- {{ [REDACTED] }}⁸ (emphasis added)
- {{ [REDACTED] }}⁹ (emphasis added)
- {{ [REDACTED] }}¹⁰

Cannon Moss of NPBL April 9, 2015 email to Tony MacDonald of CSXT:¹¹

- {{ [REDACTED] }}
added) {{ (emphasis

⁵ Plaintiff CSX Transportation, Inc.’s Opposition to Defendants’ Motions for Summary Judgment, Exhibit 28, page 1 (EDVA Antitrust Litigation NSR_00084730, page 1).

⁶ Plaintiff CSX Transportation, Inc.’s Opposition to Defendants’ Motions for Summary Judgment, Exhibit 28, EDVA Antitrust Litigation NSR_00084730, email regarding “NPBL information,” p. 1.

⁷ EDVA Antitrust Litigation NSR_00012408, page 2.

⁸ EDVA Antitrust Litigation NSR_00011094, page 1.

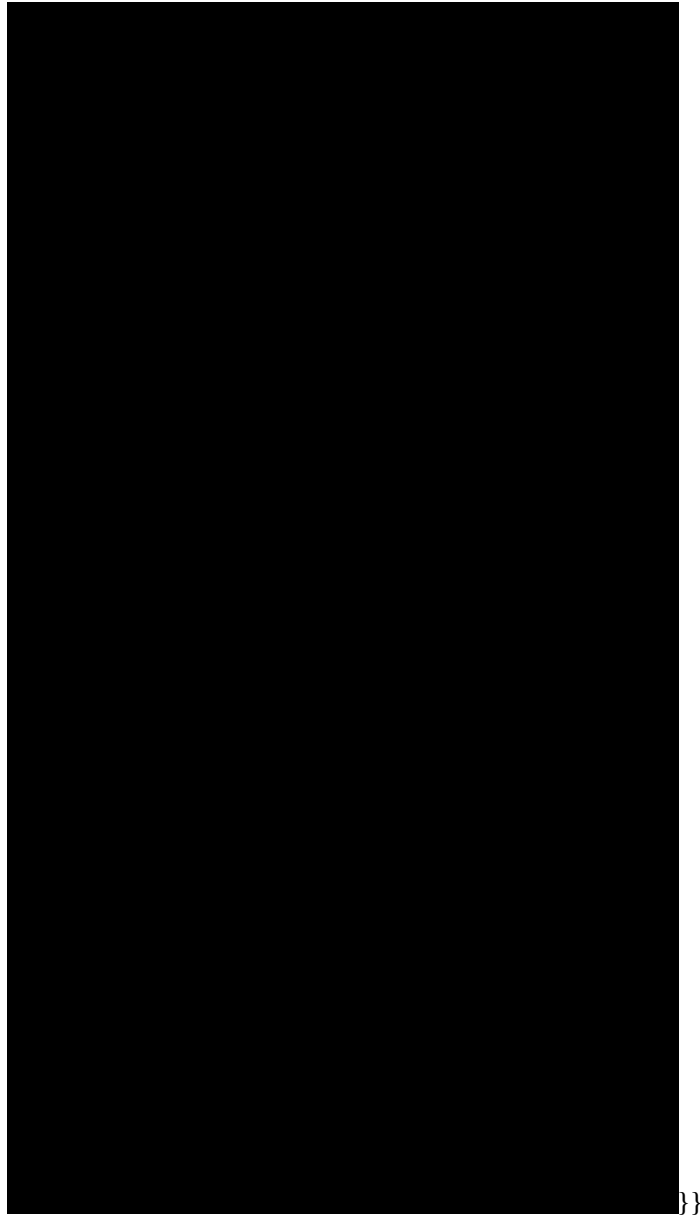
⁹ EDVA Antitrust Litigation NSR_00008141, page 1.

¹⁰ EDVA Antitrust Litigation NSR_00005066, page 2.

¹¹ EDVA Antitrust Litigation Exhibit 65 (NPBL005672-3 at NPBL005672)

Appendix C – NPBL Customers

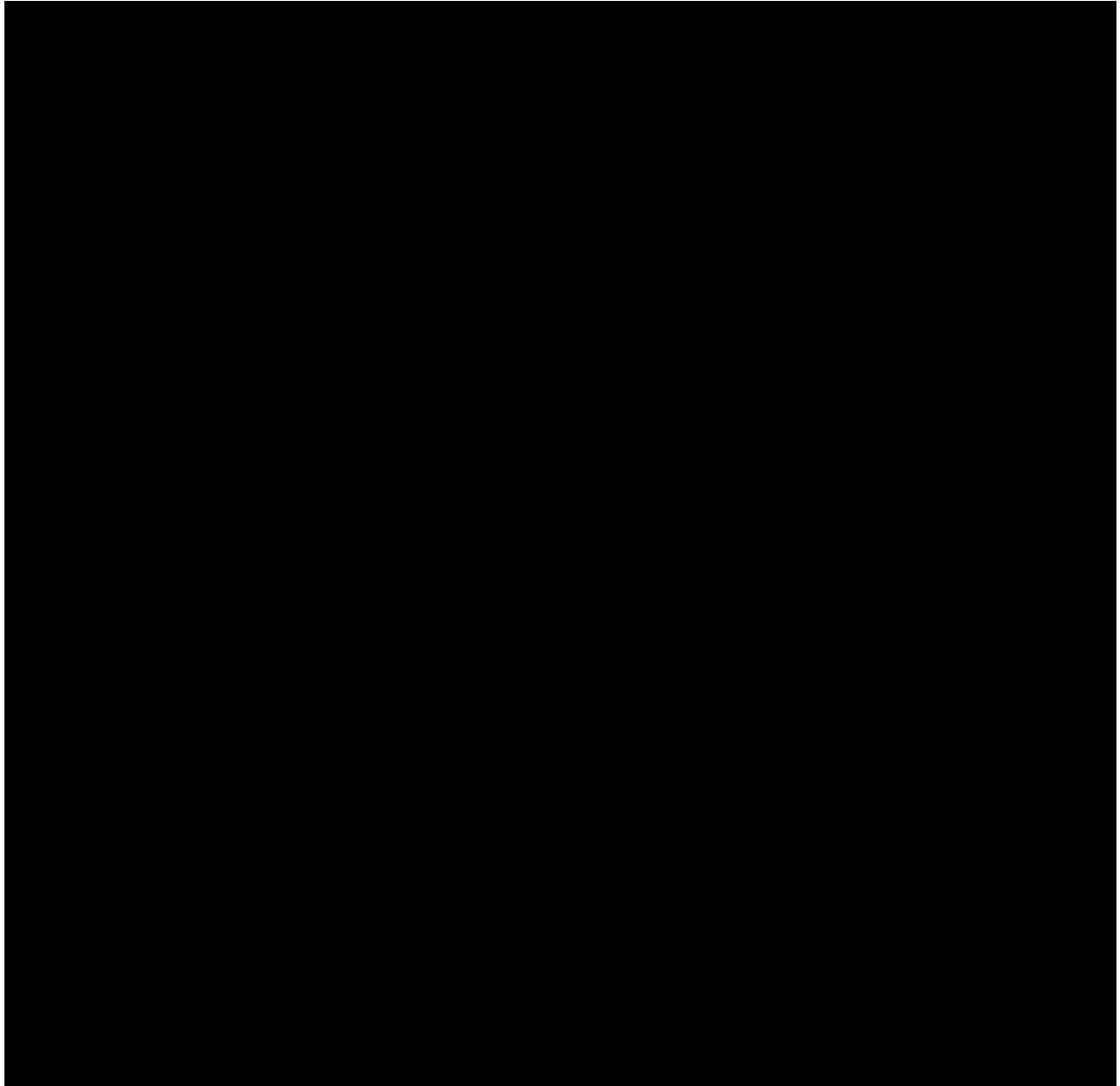
Figure 1: NPBL Customer Locations¹ {{



¹ Customer locations include the following: {{

[REDACTED]

Figure 2: Number of Cars for NPBL Customers, 2023²



}}

² See Carey HC-WP-NS Lines Usage.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

ATTACHMENT 4

VERIFIED STATEMENT OF DR. WILLIAM HUNEKE

**VERIFIED STATEMENT OF WILLIAM F. HUNEKE, Ph.D.
IN SUPPORT OF CSXT's SEPTEMBER 18, 2025 COMMENTS REGARDING
F.D. 36836 - NORFOLK SOUTHERN CORPORATION and NORFOLK SOUTHERN
RAILWAY COMPANY'S APPLICATION FOR CONTROL OF NORFOLK &
PORTSMOUTH BELTLINE RAILROAD COMPANY**

I am Dr. William Huneke. I previously submitted a verified statement to the STB in this proceeding on February 27, 2025, on the question whether the transaction proposed in F.D. 36836, Norfolk Southern Corporation, Norfolk Southern Railway Company –Acquisition of Control—Norfolk & Portsmouth Belt Line Railroad Company, filed February 14, 2025, was properly designated as a “minor” transaction. I explained that the serious competitive issues raised by NS’s application meant that the transaction could not conceivably be considered “minor.” The STB subsequently found that the proposed transaction should be treated as a “significant” transaction.

An analysis of competition and the effect of a proposed transaction on competition are important considerations in any analysis of a railroad merger, acquisition, or application for control. Healthy competition checks the unhealthy use of market power, and any rail consolidation may include the increase of market power through a decrease in competition. As a result, in evaluating the proposed acquisition of control of NPBL by NS, the STB should consider the current state of competition in Hampton Roads rail markets, including the possibility of competitive entry and the effect of the proposed transaction on competitive entry.

New entry is practically impossible in the railroad industry and possible entry should be protected because the threat of entry also provides a check on the unwarranted use of market power. In evaluating this proposed transaction, the STB should therefore consider whether Norfolk Southern’s control of the Norfolk & Portsmouth Belt Line (NPBL) would stymie or limit CSX’s ability to enter new lanes and compete for Hampton Roads traffic.

It is also important to note in this case that NS has been acting to restrict and constrain entry by CSX for years. In fact, NS has admitted to controlling NPBL for years without STB authority. NS has acted to restrain competition from CSX in other ways as well. CSX's witness Maryclare Kenney has explained in her Verified Statement that, with NS's removal of the "diamond," NPBL has to move trains into NS's Portlock Yard, where their further movement is controlled and constrained by NS and NS's own trains, and then reversing the NPBL trains out of that yard to move to or from Norfolk International Terminal.

NPBL was established as a neutral mechanism to serve all users. This case involves a terminal railroad that is supposed to provide non-discriminatory access to all of its owners. Granting control of such a railroad to only one of the owners makes no sense. And while NS has improperly controlled NPBL for decades and has used that control to block CSX from on-dock rail service at NIT, NS now seeks to have the STB approve NS's control of NPBL. The result would perpetuate the anticompetitive situation that exists now – NS will be able to effectively block CSX from providing on-dock rail service at NIT. Why would NS go to the trouble and expense of this proceeding for control of NPBL, a railroad that it does not need to access NIT, unless it is planning to use that control to continue to block CSX from NIT?

NS's application has provided a superficial and casual competitive analysis. Clearly, NS does not want to highlight in any way how it might use NPBL to solidify its dominance at NIT. There is little evidence that NS sought to work with any interested party to address the competitive concerns arising from this control application.

In this statement, I will discuss:

- The history of terminal railroads & how they provide equal access

- Competitive analysis of this transaction
- The history of NPBL
- Impact of NS's control of NPBL on competition

1. Beltline and Terminal Railways Were Established For the Mutual Benefit of Their Railway Owners

This case involves the unique situation where one owner of a terminal railroad seeks authority to dominate and control the terminal railroad that is used and needed by other owners. Terminal railroads were developed years ago to provide equal access to trunklines in a terminal area where multiple trunkline railroads met so the trunklines could interchange traffic. Usually, the trunklines would jointly own the terminal railroad. The terminal railroad would provide its trunkline owners equal access at reasonable rates because, for the owners, their service depended on efficient interchange. A competitive market required that no single trunkline railroad dominated access to the terminal area.

All over the country, there are examples of jointly owned beltline or terminal railways that have multiple owners and the railway operates in an area to provide switching services to benefit each of its owners. For example, the Belt Railway of Chicago (BRC) is the largest switching terminal railroad in the United States, which makes perfect sense because Chicago is the largest rail hub. The BRC employs 450 people and has more than 300 miles of switching tracks. It dispatches more than 8,400 rail cars daily. BRC began operations in 1882, serving five railroads. In 1910, it expanded and added seven more. Today, it serves its ownership, which consists of BNSF, Canadian National, CPKC, CSX, NS and Union Pacific.

The BRC's website emphasizes the mutually beneficial nature of its operations: "The Belt Railway has the ability to service, by rail, approximately 100 industries. It also offers unique industrial and intermodal facility development opportunities – reasonable land value, taxes, and

zoning requirements, planned especially for markets seeking a neutral locale with competitive access. A location on the Belt Railway is equivalent to having a location on each Chicago Railroad.”¹

Similar to Chicago, Kansas City is a major rail hub. Rapid traffic growth led twelve railroads to solve congestion issues in 1906 and form the Kansas City Terminal Railway (KCTR). KCTR operates the second largest rail hub in the United States. It owns and dispatches 95 miles of track for its four Class I owners: BNSF, CPKC, NS and Union Pacific.²

The Terminal Railroad Association of St. Louis (TRRA) has a unique history because it dates back to a Mississippi River ferry operation in 1797.³ Today, TRRA owns two Mississippi River bridges and operates a Madison, Illinois switching facility. On a monthly basis, 30,000 rail cars pass through its switching yard. It presently has five owners: BNSF, CN, NS, CSX and UP.

TRRA’s history includes a notorious case involving railroad baron Jay Gould’s attempt to use control of TRRA as a means to block access by competitors to the St. Louis, Mississippi River crossings, similar to what NS is attempting in this proceeding in seeking to use control of NPBL to block CSX from providing on-dock rail services at NIT.

In the 1880s, Gould identified St. Louis as a potential, key rail hub like Chicago, but with a key difference: Mississippi River crossings. He would use St. Louis as the headquarters for his rail system and use control of the river crossings to dominate rail access to the southwestern United States. In 1889, he formed TRRA with 15 railroads he controlled. Although twenty-four rail lines reached St. Louis, no single one passed through. The TRRA controlled the two

¹ [About | The Belt Railway Company of Chicago](#)

² [About Us – Kansas City Terminal Railway](#)

³ [History | Terminal Railroad Association of St. Louis](#)

Mississippi River bridges and ferry. Gould had his chokehold on traffic across the river and to the southwestern United States. With his chokehold, Gould could earn monopoly profits on railroad traffic to the southwestern United States.

President Theodore Roosevelt's invigorated Justice Department brought suit. The case went to the Supreme Court. The Court, in this case, unlike other antitrust cases brought at that time, such as *Standard Oil*, did not opt for break up and divestiture. The Court found the St. Louis railroad hub benefited from a terminal railroad if it was not an instrument of monopoly. So, the Court allowed the TRRA to continue if it acted neutrally in pricing and service to all railroads converging on St. Louis.⁴ A terminal railroad pricing neutrally and providing service neutrally facilitates competition rather than being an instrument of monopoly.

This should be the model for NPBL, but NS control of NPBL is completely inconsistent with this objective. That should be enough for the STB to deny control authority to NS over NPBL. NPBL was meant to be independent of control by any single railroad, and it should remain independent.

However, it is important for the STB to recognize that the risk here is heightened because NS owns the tracks that lead to NIT and has no need for NPBL's switching services at all for NIT traffic. To NS, any on-dock rail traffic from NIT for which NPBL provides service to CSX is traffic that may have gone to NS. Moreover, NS doesn't need NPBL to access NIT. This means that NS has the incentive to use any control over NPBL to make it difficult for CSX to access NIT by NPBL. Granting authority to control NPBL would give NS the power to act on

⁴ Frank N. Wilner, *Railroads & Economic Regulation*, Omaha (2023), p. 41; William Z. Ripley, *Railroads: Finance and Organization*, New York (1923), pp. 559-61; Maury Klein, *The Life and Legend of Jay Gould*, Baltimore (1986), pp. 264 and 373-74.

those incentives with an argument that it has STB-sanctioned cover from the antitrust laws. The experience of NS and NPBL shows that this risk has already become a reality. Why else would CSXT have zero share of on-dock rail intermodal service at one of the most important ports on the East Coast?

2. Historically STB Has Conducted A Rigorous Analysis of the Competition Landscape

Competitive analysis is a necessary and important component in the evaluation of NS's application to control NPBL. In the past, STB has required comprehensive competitive analysis in the evaluation of major and significant transactions. One important criterion for STB is identifying situations where shippers have their rail options reduced from two to one, so called, i.e., 2-1 situations. This means that the shipper will no longer have a second rail option; it faces a rail monopoly. STB has, historically, not allowed the creation of a 2-1 through control authorization.

This was an important consideration in the Union Pacific-Southern Pacific merger (UP-SP). Union Pacific and Southern Pacific were major competitors, but the SP was struggling financially and had lost \$24 million in 1995.⁵ The STB faced the question of how to form a financially healthy merged railroad without dramatically reducing railroad competition in the western United States. The question was how to limit the harm to shippers who lost competitive options, especially 2-1 situations.⁶

⁵ Surface Transportation Board; Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Corporation, Southern Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company; FD 32760; Decision No. 44; Decided August 6, 1996; Served August 12, 1996; p. 116, Footnote 121.

⁶ *Ibid.*, p.139

STB's solution was to mandate that UP grant BNSF extensive trackage rights across the merged system. BNSF would become a financially strong competitor to UP, something that SP was failing to be. STB concluded:

BNSF will gain a very efficient and much improved route in the Central Corridor and, along with the conditions we are imposing, should have incentive to compete vigorously with UP/SP. Moreover, BNSF's operations should have sufficient density to permit effective competition in the Central Corridor. ... A realistic view of markets at issue makes it apparent that BNSF will be able to bid for more than enough traffic to justify aggressive operations in the new corridors to which the BNSF agreement would give it access.⁷

In UP-SP, STB carefully analyzed the competitive issues and devised a solution that ensured that there would be adequate, if not improved, competitive markets after UP took control of SP.

Likewise, STB made a careful consideration of the competitive issues in CSX and NS's joint acquisition of Conrail. This case was significantly different from UP-SP. Before the joint acquisition, Conrail held a monopoly in many northeastern US railroad markets. STB oversaw the Conrail split between CSX and NS so that competitive conditions could be introduced into these markets: "[We] have used our broad conditioning authority to preserve or enhance service and competitive opportunities for areas in the Northeast that lost significant competitive alternatives in the railroad bankruptcies that led to the formation of Conrail in the 1970s. We have either preserved competition or provided competition to and from New York City, Buffalo, and Rochester, New York,"⁸

⁷ *Ibid.*, p.140

⁸ Surface Transportation Board; CSX Corporation and CSX Transportation, Inc., Norfolk Southern and Norfolk Southern Railway Company –Control and Operating Leases/Agreements – Conrail Inc., and Consolidated Rail Corporation; Decision No. 89; Decided July 20, 1998; p. 250.

Clearly, in that case, with both CSX and NS replacing Conrail, there would be a host of shippers, who would be gaining a competitive rail alternative. The STB noted that in the few situations where a shipper would lose a rail alternative, CSX and NS diligently worked to avoid any 2-1 situations by granting each other trackage or haulage rights.⁹ The STB studied the prospective Northeastern railroad market and concluded that competition would be enhanced.

When Canadian National (CN) proposed to buy the Elgin, Joliet and Eastern (EJE), CN was buying a railroad that circled Chicago. This was a “significant” transaction and, like the pending application, the STB reviewed the prospective competitive landscape after the transaction. The STB found that virtually no competitive impact: “After considering the application and the full record in this proceeding, the Board has determined that the proposed control transaction is unlikely to cause a substantial lessening of competition or to create a monopoly or restraint of trade. Currently, no shippers are jointly served by CN and EJ&E. [i.e., no 2 to 1 situations]”¹⁰

However, the question of potential future entry was important to the STB in considering competitive implications of the proposed transaction. The STB did find there was potential issue involving the possibility of future competitive entry from a competitive buildout:

The Board’s policy has been to preserve the competitive advantages made possible by build-outs. Despite applicants’ argument that construction of this build-out would not be feasible, the Board notes that the ultimate test of feasibility is whether the line is actually constructed, not whether the shipper has demonstrated that it is economically feasible. The evidence shows that CN’s line is in very close proximity to tracks owned by ACS. Should ACS build out to a CN connection, the Board will grant to NS or any third-party carrier the

⁹ *Ibid.*, p. 231.

¹⁰ Surface Transportation Board; Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company; Finance Docket No. 350871; Decided December 24, 2008; p. 13.

necessary trackage rights on CN to the build-out. With this condition, no shipper would suffer a direct merger-related loss of competitive rail service.¹¹

Not only did STB review existing 2-1 situations, but it considered the possibility of future competitive entry from, in this case, a buildout. In other words, the STB sought to ensure that future entry would be possible. The possibility that control of an entity may shut down future entry, as in this case with NS and NPBL, is a competitive concern that the STB takes seriously. Here, it should lead the STB to deny NS's application.

The most recent "significant" transaction that STB decided was CSX's acquisition of Pan Am Railways (Pan Am). In contrast to the application NS has presented in this proceeding, CSX presented a careful, competitive analysis in its application. It also worked with the interested parties to ameliorate any competitive concerns (one of those parties was NS) and presented a solution to the Board.

In addition to these commitments, CSX notes that there are provisions in the NSR Settlement Agreement that give NSR the ability to force CSX to sell its interest—either to NSR or a third party—at NSR's discretion, at any point over the next seven years, at a specific price Under the NSR Settlement Agreement, NSR would also have certain "change in control" rights that would allow NSR to take over majority control of the PAS Management Committee (which would normally be evenly divided between CSX and NSR representatives) if CSX initiates steps to sell its 50% interest in PAS to another entity....¹²

CSX even made the generous offer to NS to relinquish control if NS was dissatisfied. That is quite a contrast to NS's attitude in the pending proceeding, where NS has claimed "[a]uthorizing NS continued control changes nothing" and NS, therefore, has proposed no conditions to address loss of competition.

¹¹ *Ibid.*, p. 14.

¹² Surface Transportation Board, CSX Corporation and CSX Transportation, Inc., et al. – Control and Merger – Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company Springfield Terminal Railway, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company; Finance Docket No. 364721; p. 12.

In addition, in the Pan Am case, CSX identified three potential 2-1 situations for shippers located north of Boston. CSX committed to provide switching for these shippers to reach an alternative rail option. Moreover, CSX identified other shippers in Boston that it would offer switching services to even though these shippers did not have pre-merger service by both CSX and Pan Am.¹³

In its Pan Am application, CSX made a careful and diligent effort to address any competitive issues. Here, NS has taken a much different and unsatisfactory approach in its application in this proceeding.

3. Origin and Purpose of NPBL: “timely, inexpensive, and flexible interchange of freight cars” for its owners

This proceeding focuses on the future of NPBL – once a well-functioning beltline railway that served the interests of all eight of its owners. Alexander J. Cassatt, a Pennsylvania Railroad executive, formed the NPBL in 1897. His vision was to create a railroad line that would connect the eight trunklines that converged on Hampton Roads with the aim of reducing port congestion and contributing to the area’s development. “The Belt Line’s first purpose was to transfer this interline traffic. A second quickly appeared. Shippers learned of its advantageous rates and started locating businesses along its tracks.”¹⁴

Indeed, Cassatt’s plan for NPBL was achieved: “With direct connections where few had connected before, the line provided timely, inexpensive, and flexible interchange of freight cars between the eight Hampton Roads railroads, and in emergencies, of passenger trains. Regional rail operations were tremendously improved. This was how one of the best operating railroad

¹³ *Ibid.*, p. 17.

¹⁴ W. Hugh Moomaw, *Virginia’s Belt Line Railroad: the Norfolk & Portsmouth*, Hallmark Publishing Company, Gloucester Point, VA (1998), p. xii.

officials in America put a railroad together.”¹⁵ Cassatt’s achievement stimulated the economic growth of Hampton Roads and allowed the ports to provide critical support to US efforts in two World Wars.

In the latter half of the 20th century, railroads began consolidating through merger to meet intermodal competition. This caused NPBL to lose traffic because it reduced interchange traffic.¹⁶ Mergers ultimately reduced NPBL’s eight proprietors to two. NPBL continued on a downward spiral through the 1980s. “Three specific, major problems had clearly surfaced and confronted the Belt Line. Its safety program was breaking down; its productivity was steeply declining, and the *maintenance of its independent, corporate status* [italics added] was becoming a matter of concern [in 1987].”¹⁷ In 1988 NPBL began a restructuring program that aimed to streamline capital and operations and focus on safety improvements. By 1996 NPBL recorded success: “The restructured modern Belt line in 1996, therefore, almost doubled 1988 productivity even as traffic decreased by one-quarter, a really significant achievement.”¹⁸ Safety efforts have achieved similar improvements, but the problem of corporate structure was another matter. NS’s pending application proposes no improvement. Instead, it would use control of NPBL to continue to block CSX from effective on-dock rail service at NIT.

NS has positioned itself to dominate at NIT and to restrict CSX as a competitor at NIT. Why else would it remove the diamond track and force NPBL/CSX to use NS’s congested Portlock yard? NS does not need NPBL to serve its intermodal traffic. Therefore, NS does not need to maintain or invest in NPBL’s facilities to support high quality, efficient intermodal

¹⁵ *Ibid.*, p. 24.

¹⁶ *Ibid.*, pp. 117-19.

¹⁷ *Ibid.*, p. 142.

¹⁸ *Ibid.*, pp. 166-67

service. CSX could use NPBL to compete for intermodal traffic, but this requires NPBL to maintain a grade of facilities and operations that meet the demands of intermodal customers who demand high quality service.

As the STB has done in other merger and control cases, STB should do a careful competitive analysis here. Such an analysis should include the current situation and the possibility of future competition. If STB decides to approve this application – which it should not - it should consider what conditions it can order NS to take to enhance competition.

STB should consider the future financial health of NPBL and what measures might enhance its long-run viability. An independent NPBL would be incentivized to seek more business from its biggest potential customer for intermodal freight – CSX – and to seek out operational efficiencies that would allow freight to move swiftly on a reliable schedule. But, if NS is granted control of NIT, NS would have the means and motive to use its control to monopolize intermodal rail traffic at the terminal. A better outcome would be a financially healthy and independent. NPBL, providing equal and fair service and pricing to its proprietors just as it was designed to do when Alexander J. Cassatt established it in 1897.

VERIFICATION

I, William Huneke, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on
September 18, 2025.

A handwritten signature in blue ink, appearing to read 'William Huneke', is written over a horizontal line.

William Huneke, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc.'s Evidence and Argument in Opposition to the NS Control Application in Finance Docket No. 36836 to be served electronically or by first class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Administrative Law Judge Jenifer Soulikias, Applicants' representative, William Mullins, and all parties of record in this proceeding.

/s/ Sally Mordi
Sally Mordi
Attorney for CSX Transportation, Inc.

September 18, 2025