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February 26, 2024

VIA ELECTRONIC FILING

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

Re: FD 36744 – *Canadian National Railway Company – Control – Iowa Northern Railway Company.*

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are redacted and public versions of a Comment on Proposed Classification of Transaction as “Minor” filed by Canadian Pacific Kansas City Limited (“CPKC”) to ensure adequate evaluation of the proposed transaction by classifying it as “Significant” given the potential loss of competition that would result from it.

We have filed the public versions of these documents electronically for review by the public and served a copy on counsel for Canadian National Railway Company and the service list.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "John M. Scheib". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

John M. Scheib

Attachments

cc: Service List

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET No. FD 36744

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION**

—CONTROL—

IOWA NORTHERN RAILWAY COMPANY

COMMENT ON PROPOSED CLASSIFICATION OF TRANSACTION AS “MINOR”

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Dated: February 26, 2024

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Canadian Pacific Kansas City Limited, on behalf of its U.S. rail carrier subsidiaries,¹ submits that the proposed control (the “Transaction”) by Canadian National Railway Company (and its affiliates) (collectively “CN”) of the Iowa Northern Railway Company (“Iowa Northern”) should be classified by the Board as a “Significant” rather than “Minor” transaction, allowing the Board and interested parties to undertake a more thorough review of the significant competitive issues posed by CN’s proposal.²

This proceeding raises issues of regional significance and potentially national significance. Despite CN’s attempt at an innocuous description of the proposed Transaction and its request that the Board treat it as a “Minor” one, CN fails to account for the significance of the region served by Iowa Northern and the over-sized competitive role that Iowa Northern plays in that region – including as a significant head-to-head competitor of CN. Iowa Northern is no small shortline: it handles *more traffic* than Pan Am Rail System did when it was acquired by CSXT in 2019 (in a transaction that the Board reclassified as “Significant”).³ The region of central Iowa served by Iowa Northern is an agricultural powerhouse, with Cedar Rapids often described as the World’s (not Iowa’s, not the Midwest’s, not North America’s, but the World’s) largest center of corn processing. The proposed Transaction would eliminate all competition

¹ The U.S. operating rail carrier subsidiaries of CPKC Limited include Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; Delaware & Hudson Railway Company, Inc.; The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company

² CPKC takes no position at this time as to whether the Board should approve or disapprove the proposed Transaction, or what conditions may be appropriate to address adverse impacts of the Transaction. CPKC reserves the right to address such issues in accord with the procedural schedule established by the Board for its review of the Transaction.

³ The Pan Am Railway System handled approximately 50,000 carloads in 2019. *See CSX/Pan Am* (STB Decision No. 3, served May 26, 2021), at 8. Iowa Northern handled almost *20 percent more traffic* – about 59,822 carloads – in 2022. Application, Verified Statement of David T. Hunt at 10 (Application, Hunt V.S.”).

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between CN and Iowa Northern, transforming a locally-owned Class III carrier that has been intensely focused on providing high quality service linking shippers with all the Class 1 carriers with which it connects, into an appendage (and in large part a parallel and potentially redundant one) of CN's Class 1 network. The Transaction will thereby permanently alter the competitive landscape for significant flows of traffic, especially in the agricultural and agricultural products sectors. And there is no exigency requiring the disregard of potential competitive issues so as to hasten CN's control of IANR, especially given that IANR resides in a CN Voting Trust.

The Board's standard for assessing whether a proposed Transaction is "Significant" or "Minor" is well established. Under the Board's regulations and precedents, a Transaction is appropriately considered "Minor" *only* if it is clear that there are no adverse impacts on competition, or that any such impacts would clearly be outweighed by benefits of the transaction. *See CSX Corp. & CSX Trans., Inc., et al. —Control & Merger— Pan Am Systems, Inc.*, Finance Docket No. 36472 (STB served Mar. 25, 2021) ("*CSX/Pan Am Classification*"), at 11.

As we demonstrate below, the record does not permit such a finding at this stage of the proceeding. Accordingly, the Board should determine that the Transaction must be classified as "Significant" so that the Board and interested members of the public can undertake a more deliberate and thorough exploration of the competitive and other issues the Transaction raises.

I. UNDER THE GOVERNING LEGAL STANDARD, "SIGNIFICANT" IS THE DEFAULT CLASSIFICATION FOR NON-MAJOR TRANSACTIONS

When a transaction does not involve the merger or control of two or more Class I railroads, its classification will differ depending upon whether the transaction would have "regional or national transportation significance." 49 U.S.C. § 11325. Under the Board's regulations, a transaction is to be classified as "Minor" – and thus not having regional or national transportation significance – *only if* a determination can be made that: (1) the transaction clearly

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will not have any anticompetitive effects; or (2) any anticompetitive effects will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. The regulation states unequivocally that "[a] transaction not involving the control or merger of two or more class I railroads is 'Significant' if neither such determination can clearly be made." 49 C.F.R. § 1180.2(b).

The default classification for a non-Major transaction accordingly is "Significant," unless a clear showing is made that the transaction is "Minor." The Board has applied this regulation to classify transactions as "Significant" when "the record currently before the Board does not clearly establish that the transaction would not have any anticompetitive effects." *See CSX/Pan Am Classification* at 11.

The proper classification of this transaction is vital to assuring that the Board processes deployed to evaluate it are robust enough to meet the task. The statutory time limit for Board review allows for a more deliberate and thorough review of "Significant" transactions, and a 2-to-4 month prefiling notification is required, giving interested parties additional time to conduct their own analyses. 49 U.S.C. § 11325(d); 49 C.F.R. § 1180.4(e). The Board's regulations also give effect to the need to undertake a full evaluation of competitive issues by requiring Applicants seeking approval of Significant transactions to submit more detailed information regarding those effects – along with related details concerning operational and other issues. *See* 49 C.F.R. §§ 1180.6(c), 1180.7(a) & (c); 1180.8(b). Responsive applications – which may entail the best means to remedy a potential competitive issue – are permitted for "Significant" transactions but not allowed in "Minor" cases. 49 C.F.R. § 1180.4(d).

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II. THE PROPOSED TRANSACTION IS “SIGNIFICANT”

The record in this proceeding does not support the findings the Board must make to determine that this Transaction is “Minor,” and thus should be treated as “Significant.”

First, as we address in Section A, there can be no doubt that CN and Iowa Northern are head-to-head competitors operating parallel lines across a region of overlap in east-central Iowa that is vitally important to U.S. agriculture. The Transaction, if approved, will eliminate that competition by bringing Iowa Northern under CN’s control.

CN’s lines are broadly parallel to Iowa Northern’s network, and intersect at several points to serve numerous important shipper facilities that CN’s Application acknowledges are at best “3-to-2” facilities. This is not an “end-to-end” transaction of the sort that raises issues that merely warrant conditions keeping gateways open. Instead, the Board and interested parties must contend with the elimination of *horizontal competition*. Against this backdrop, the Board cannot presume – much less conclude on this record – that the proposed Transaction on its face is procompetitive – or in the words of the regulation, “clearly” would not have anticompetitive effects.

Second, as we show in Section B, CN’s efforts to wave away the issues by pointing to the presence of other carriers at some of the discrete shipper facilities where CN and Iowa Northern compete or emphasizing CN’s pledge to keep gateways open are insufficient. These assertions may be potentially relevant to some of the issues posed by the Transaction, but they do not eliminate the serious competitive concerns. They do not take account of the relative competitive significance of other carriers that may have access to particular shippers’ facilities. They do not take account at all of impacts on geographic competition between CN and Iowa Northern in the area where their networks broadly overlap. And CN’s gateway pledge is not a substitute for the

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competitive discipline engendered by the head-to-head competition between the two merging carriers.

Third, as we demonstrate in Section C, the record does not permit any determination regarding the relative weights of the anticompetitive harms caused by the Transaction and the putative benefits that CN asserts will flow from it. There is in fact substantial reason to be skeptical of the magnitude of the benefits CN identifies, and the weighing of costs and benefits thus calls for a more thorough examination of the issues in an appropriately thorough proceeding. The Board certainly cannot find on this record that the benefits “clearly” outweigh potential harms.

A. Competitive Concerns of Significant Magnitude and Regional Importance Rule Out a Finding that the Transaction “Clearly” Will Have No Anticompetitive Effects

1. Rail Traffic in the Region Served by Iowa Northern Is of National Importance

The area served by Iowa Northern is of critical importance to U.S. agriculture. Cedar Rapids ranks as the “[t]he largest corn-processing city in the world,” hosting manufacturing plants for many familiar names, including General Mills, Quaker Oats, Cargill and Archer Daniels Midland.⁴ The Quaker Oats plant at Cedar Rapids is the largest cereal mill in the world.⁵ Movement of commodities like corn, soybeans and oats to processing facilities, and the movement of processed commodities like DDGs, soybean oil, ethanol, and biofuels to market, is

⁴ Ewing Marion Kauffman Foundation, Kauffman.org, “*Exploring the Renewal of the Heartland - Cedar Rapids, Iowa*,” available at <https://www.kauffman.org/eship-city/cedar-rapids/#:~:text=The%20largest%20corn%2Dprocessing%20city,Cargill%20and%20Archer%20Daniels%20Midland>.

⁵ “*World’s Largest Cereal Plant: World Record in Cedar Rapids, Iowa*,” available at <https://www.worldrecordacademy.org/2023/6/worlds-largest-cereal-plant-world-record-in-cedar-rapids-iowa-423252>.

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enabled by the availability of efficient and competitive rail transportation. This area of Iowa has, among other things, played a significant role in the massive growth in ethanol production and its transportation to refineries across the United States. *See* Verified Statement of Jon Harman (“Harman V.S.”) at ¶ 11.

Applicants themselves tout the importance of rail transportation – and of Iowa Northern’s independent competitive role – in this region:

“Iowa Northern is a critical freight rail transportation provider in Iowa, serving more than 100 customers and handling approximately 60,000 cars per year. Much of that traffic is interchanged to other railroads for delivery across the country, and some is transported between points on the Iowa Northern system. Iowa Northern serves 20 grain elevators, two ethanol plants, two mineral processing facilities, and transports other commodities such as fertilizer, farm machinery, food, chemicals, and lumber. Iowa Northern is also the serving carrier to a liquids storage and transloading facility that serves biofuel production industries handling fuels, chemicals, and co-products.”

Application at 3.

The regional and national significance of this area is unmistakable.

2. The Proposed Transaction Will Eliminate Head-to-Head Horizontal Competition Between CN and Iowa Northern

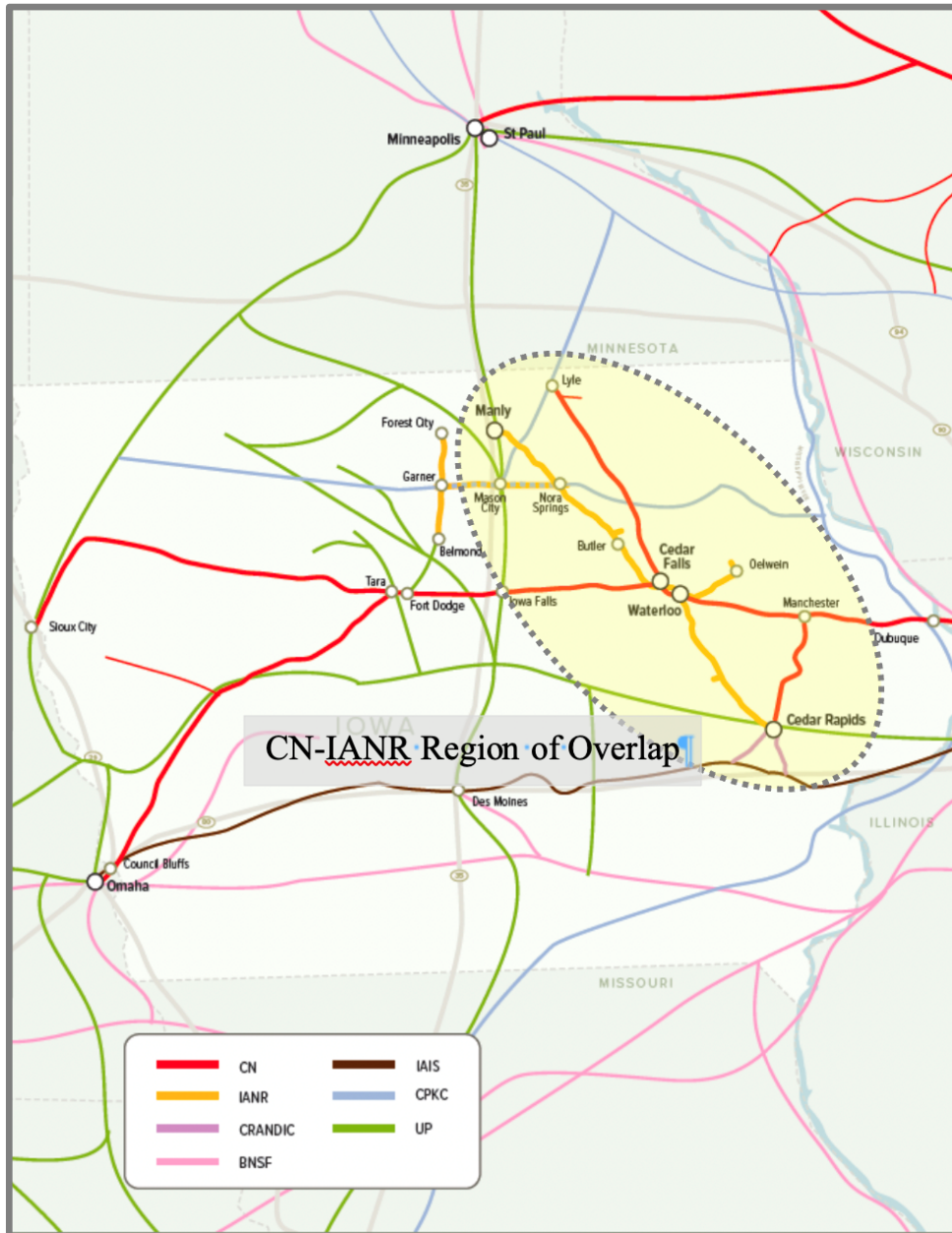
A casual glance at either the rail map or the Application itself establishes that there is meaningful head-to-head competition between CN and Iowa Northern in the region where their lines overlap.

Begin with the obvious fact that there is substantial overlap of the territories served by CN and Iowa Northern. CN and Iowa Northern lines are only about 20 miles apart at Manly and Osage, and draw continually closer together to converge at Cedar Falls and Waterloo, then separate by 45 miles but immediately begin drawing closer together again to converge in Cedar Rapids. A combined CN and Iowa Northern would consolidate control over all of these parallel

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lines through east-central Iowa. Figure 1 below is a detailed map of Iowa Northern’s network submitted with the Application, showing the extent of the overlap with CN’s own lines.

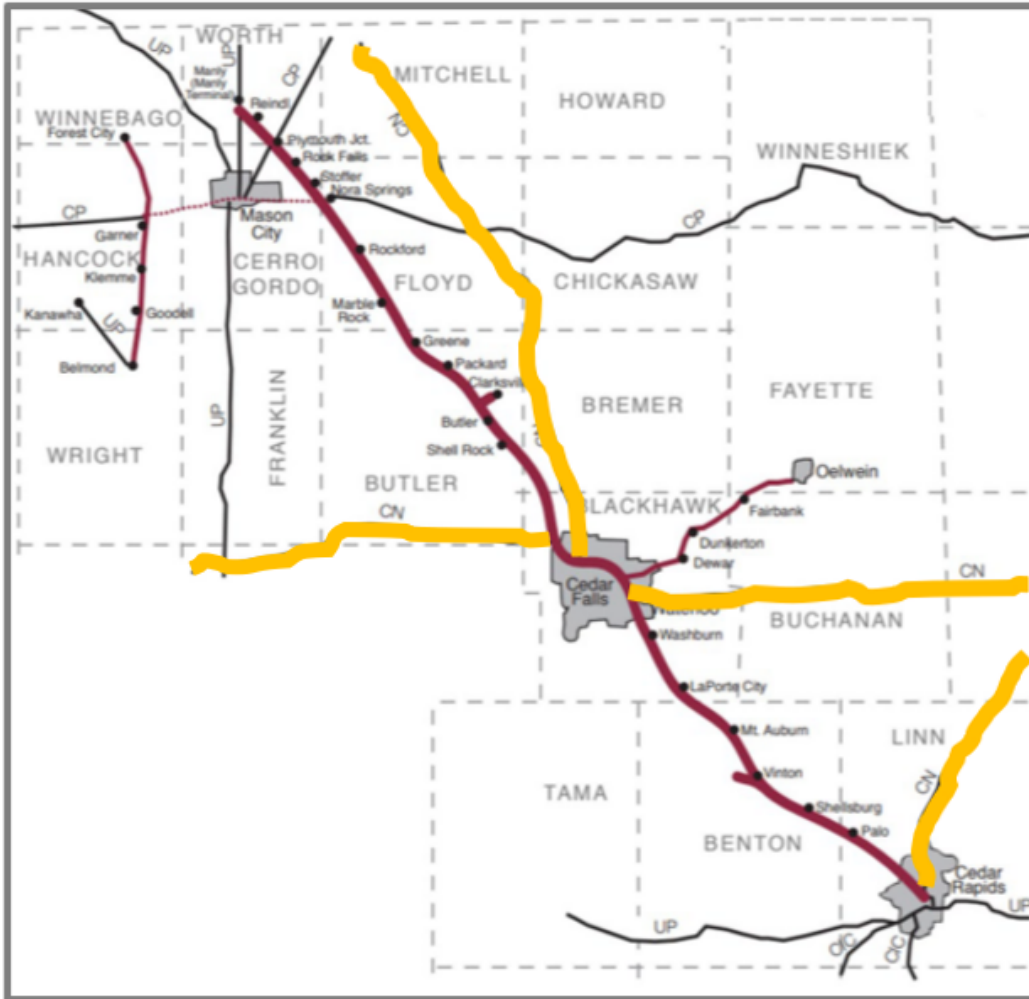
**FIGURE 1
MAP OF CN AND IOWA NORTHERN RAIL LINES IN IOWA**



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In the 19-county region of east-central Iowa that CN's expert refers to as Iowa Northern's "catchment area," the two railroads overlap almost completely, as shown in Figure 2 below (drawn from the Application at 3, Exhibit 3-1). CN lines are highlighted in yellow.

FIGURE 2⁶
MAP OF IOWA NORTHERN LINES



The Application acknowledges this overlap. CN's own expert identified at least 21 shipper facilities in Cedar Rapids, Waterloo, and other points that are accessed by both CN and Iowa Northern. See Application, Hunt V.S. at 14, Exhibit 6-1. For these shippers, there is a

⁶ See Application, Hunt V.S. at 3, Exhibit 3-1 (yellow lines added to highlight CN lines).

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clear loss of competition between an independent Iowa Northern that connects to CPKC, to Union Pacific Railroad Company (“UP”) and to Iowa Interstate Railroad, LLC (“IAIS”) via Cedar Rapids & Iowa City Railway Company (“CRANDIC”), in addition to CN, versus being served only by CN post-Transaction.

The Application itself is not the only evidence of the head-to-head competition between Iowa Northern and CN that would be eliminated were the Transaction approved. There is significant overlap in both regions and commodities served. Verified Statement of Nathaniel Zebrowski (“Zebrowski V.S.”) at ¶¶ 11-16. Based on a preliminary examination of Carload Waybill Sample data augmented by certain summary information about IANR traffic disclosed in Applicants’ workpapers, Mr. Zebrowski notes preliminarily the risk of a substantial loss of horizontal competition that merits further study. Zebrowski V.S. at ¶ 21.⁷

In his verified statement, Mr. Jon Harman discusses one specific illustrative example of the loss of horizontal competition that would result from the Transaction: the sourcing of oats from Canadian origins moving to Quaker Oats’ Cedar Rapids mill. Harman V.S. at ¶¶ 15-17. Pre-Transaction, the shippers’ competitive rail option to a CP-IANR move is a CN-direct single-line move of oats from CN-served origins in Saskatchewan and Manitoba to Cedar Rapids, which CN reaches via Chicago and Dubuque, IA. The presence of that option provides a competitive discipline for both CP and IANR, since both carriers would lose out were they to offer price/service terms that are viewed by the customer as inferior to those available from CN. After the Transaction, however, this competition will no longer be viable, as CN will control IANR. This will eliminate the competitive discipline that results from an option independent of

⁷ Mr. Zebrowski notes that although his preliminary “observations suggest that further examination of the potential competitive effects of the proposed Transaction is warranted,” he also notes that “further information is required to perform sufficient analysis.” Zebrowski V.S. at ¶ 5

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CN and would allow CN to drive up IANR's rates (or reduce its service levels), knowing that doing so would risk nothing, since the traffic would end up on CN's direct route if the CP-IANR option were no longer attractive. All viable routes to Cedar Rapids from Canada would be controlled by CN in the future, whereas today IANR is fully independent of CN. *Id.* at ¶ 17; *see also* Zebrowski V.S. at ¶ 18.

Considering the obvious and acknowledged overlap between CN and Iowa Northern alone, the Board cannot on the current record conclude that there are no anticompetitive effects of the proposed Transaction. As the Board recently observed, combinations involving railroads operating parallel or overlapping lines pose a risk of competitive harm, threatening the benefits of competition because "competition drives firms to offer lower prices and better service to customers in an attempt to win business." *Canadian National Ry., Grand Trunk Corp., & CN's Rail Operating Subsidiaries – Control – Kansas City Southern, The Kansas City Southern Ry., Gateway Eastern Ry., & The Texas Mexican Ry.*, Finance Docket No. 36514 (STB Decision No. 5, served Aug. 31, 2021) ("*CN/KCS Voting Trust Decision*") at 29.⁸

This sort of overlap was among the reasons why the Board reclassified the CSX/Pan Am transaction as "Significant" in 2021. The Board expressed a need for a more thorough review in that case because Pan Am Southern owned a route that was roughly parallel to an existing CSXT route from upstate New York to the Boston area and CSXT's joint control of PAS and its acquisition of Springfield Terminal could give CSXT some influence over competition for movements into New England.⁹ The Board decided that –

⁸ CPKC does not currently take any position regarding the appropriateness of the voting trust pursuant to which CN holds its interest in Iowa Northern.

⁹ The distances from Manly to Cedar Rapids and from Albany to Boston are about the same (roughly 120 vs. 140 miles), while CN's and Iowa Northern's lines between Manly and Cedar Rapids are on average probably at least as close, if not closer, than the Pan Am Southern and CSXT lines at issue in

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“[w]hile Applicants have taken steps to attempt to address these potential competitive concerns, such as entering into the agreements with NSR and GWI and making various price, interchange, and other commitments (and requesting that the Board impose the terms of the NSR Settlement Agreement and various commitments as conditions of its approval of the Proposed Transaction), classifying this transaction as ‘significant’ would provide the Board with the additional information and time needed to develop a more comprehensive record so that the Board may analyze the competitive concerns identified here.”

See *CSX/Pan Am Classification* at 10. The proposed CN/Iowa Northern Transaction presents a starker and more compelling case for treatment as “Significant” – CN will not merely become a joint venture participant with respect to Iowa Northern (as CSXT did with respect to Pan Am Southern in *CSX/Pan Am*), it will control it outright and completely.

By contrast, when the Board has declined to treat transactions as “Significant,” it has emphasized the complete lack of horizontal overlap. In the Massena Line case, for example, the Board was able to conclude that the transaction was entirely end-to-end and, from the standpoint of shippers’ access to competing railroads, would merely “maintain the competitive status quo.” See *Bessemer & Lake Erie – Acquisition & Operation – CSX Trans., Inc.*, Finance Docket No. 36347 (STB served Nov. 8, 2019) (“*Massena Line Case*”) at 6 (citing *Norfolk S. Ry. – Joint Control & Operating/Pooling Agreements – Pan Am S. LLC*, Finance Docket No. 35147 (STB served Mar. 10, 2009) at 5). The Board there applied the well-established and longstanding principle that “end-to-end transactions are unlikely to raise competitive concerns.” *Id.*

CN does not contend that this Transaction is an end-to-end transaction, and the horizontal competitive overlap would rule out any such contention. The competitive “status quo” will not be maintained. Shipper competitive options will be reduced everywhere that both CN and Iowa

the CSX/Pan Am case. While population density between Albany and Boston may be greater, the density of rail shippers needing service in east-central Iowa appears greater. For example, in 2021 Iowa originated approximately four times as many carloads of freight as Massachusetts (517,100 vs. 130,400), while terminating about 15 percent more (257,300 vs. 222,700). See AAR-State-Rankings-2021, State Rankings 2021 at <https://www.aar.org/data-center/railroads-states/>.

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Northern have access, and more broadly Iowa Northern will be removed as an independent competitive force across the entire east-central Iowa region that it and CN both serve.

3. The Consequences of Iowa Northern’s Elimination as an Independent Competitor Would Be Contrary to the Public Interest

The Board’s regulations and precedents do not require a probing assessment at the outset of a proceeding into the adverse consequences for the public interest of the elimination of competition resulting from a combination of railroads that have parallel lines and compete head-to-head. Instead, when there are horizontal competitive issues warranting further analysis, a “Significant” classification is ordained.

But the appropriateness of a “Significant” classification is strongly reinforced by the potentially serious consequences in this case of Iowa Northern’s elimination as an independent competitor.

- As the Board has repeatedly and consistently recognized, “competition drives firms to offer lower prices and better service to customers in an attempt to win business.” *CN/KCS Voting Trust Decision* at 29. Removing direct competition between CN and Iowa Northern thus threatens to lead to lower levels of service and higher rates. In this context, it is noteworthy that Iowa Northern is known for its superior service. *See, e.g., Harman V.S.* at ¶ 20; Exhibit 15 – Operating Plan Minor at 7 (describing “typically daily, one train in each direction on its mainline (Manly–Waterloo–Cedar Rapids) and one local train in each direction on the Oelwein Subdivision”). This is not a case where investment by a Class 1 railroad is necessary to bring needed investment or operational acumen.
- There would be a substantial loss of market optionality. Facilities served by both CN and Iowa Northern at Cedar Rapids and other points can source agricultural

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products from multiple origins. Harman V.S. at ¶¶ 12-13. These facilities can ship to multiple destinations – some toward the West and some toward the East. This optionality is important to a well-functioning market for millers like Quaker Oats and refiners producing ethanol and other bio-fuels. Likewise, shippers locating in the region can choose between locations on CN and locations on Iowa Northern (such as its Shell Rock and Manly facilities). They can use IANR's Manly ethanol transload facility as an alternative to being captive to the Class I railroad that serves them directly. Harman V.S. at ¶ 14. Through this proposed Transaction, however, both sets of lines would be put under CN control.

- The potential adverse impact of CN acquiring control of one of its horizontal competitors will arguably be magnified in this case, where it would be taking over a privately-owned regional railroad that is highly regarded for its attention to customer service, investment to support growth, and explicit neutrality as between all of the line-haul options enabled by its connections with multiple Class 1 railroads. Harman V.S. at ¶ 20. There is no doubt that IANR's lines will be operated by an entity with very different incentives and approaches once they are assimilated into CN's controlled network. For example, there would also be a loss of optionality occasioned by the transformation of IANR from a neutral switch carrier into an appendage of CN's network. See Harman V.S. at ¶¶ 13-14.
- Combinations of railroads operating parallel lines also pose the risk that the combined carrier will be motivated to eliminate (or reduce service levels on) redundant lines. *E.g., Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. – Control – Missouri-Kansas-Texas R.R.*, 4 I.C.C.2d 409, 485 (1988)

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(“Applicants have proposed 12 abandonments of lines assertedly made redundant by more efficient post-merger routing of overhead traffic.”). The Application currently proposes no such steps, but the potential bears closer examination given the Minor Operating Plan’s acknowledgement that CN’s and Iowa Northern’s routes to/from Cedar Rapids are alternatives to one another. *See* Exhibit 15 – Operating Plan Minor at 3 & 8-9 (comparing each railroad’s operations in Iowa).

4. CN’s Assertions Cannot Overcome the Seriousness of the Competitive Issues that Warrant Examination in this Proceeding

The Application gives short shrift to the horizontal competitive issues posed by its proposed Transaction. Some issues, like the elimination of geographic competition, it ignores entirely. Others it seeks to sidestep by pointing to either the presence of more than two competing railroads or the gateway preservation pledge that CN has made in this case. Neither contention is remotely sufficient to rule out potentially serious harms to competition.

First, CN’s analysis of shipper facilities to which both CN and Iowa Northern have access blithely assumes that the presence of a third railroad with access to a facility will obviate any competitive concern. CN fails to address, however, whether that “other carrier” plays the same competitive role as Iowa Northern and/or CN. There is strong reason to doubt that it does.

As Mr. Harman explains, CPKC participates with Iowa Northern in the movement of substantial volumes of oats grown in Canada to a major processing customer located in Cedar Rapids. CN serves the same oats-growing region of Manitoba and Saskatchewan that CP serves, and CN’s single-line route to Cedar Rapids is a direct competitive alternative for the movement of this oats traffic. The Transaction would put both routes under CN’s control for the first time. Harman V.S. at ¶¶ 15-17; *see also* Zebrowski V.S. at ¶ 18. CN would no doubt contend that UP’s ability to access the processing plant in Cedar Rapids obviates any competitive concern

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here. But this conclusion would be too facile. It would not take into account that UP has not shown any interest – and certainly none that is comparable to that of Iowa Northern – in participating in relatively short haul movements to Cedar Rapids from a CP-UP interchange in St. Paul, MN or Clinton, IA. Harman V.S. at ¶ 18; *see also* Zebrowski V.S. at ¶ 22. A thorough competitive analysis would need to consider evidence like this bearing on the relative competitive strengths of available shipper options.

Second, CN touts its commitment to keep gateways open on commercially reasonable terms as safeguarding competition. *See* Application at 7. To be sure, to the extent that some features of the Transaction may be *purely end-to-end*, a gateway commitment of the sort CN makes is a tried and true means of addressing the concern that CN might seek to force Iowa Northern traffic inefficiently onto the CN network in order to extend its haul. But the CN-Iowa Northern Transaction is not solely, or even predominantly, end-to-end, and a gateway commitment (or condition) is not a viable remedy for the elimination of horizontal competition. Harman V.S. at ¶ 19.

Instead, the Board's consistent approach to the elimination of horizontal competition has been structural relief, like trackage or haulage rights, and in extreme cases divestiture. The most recent example of this is found in the *CSX/Pan Am* case, where the Board found (after *reclassifying the transaction as Significant*) that the concerns raised by CSX's potential control over a parallel, competing line (Pan Am Southern) was appropriately remedied by *displacing CSX as the operator of that parallel line* and codifying as conditions the Norfolk Southern governance rights in Pan Am Southern LLC that Norfolk Southern assured the Board would suffice to preserve horizontal competition. *See CSX/Pan Am*, Finance Docket No. 36472 (STB Served Apr. 14, 2022) ("*CSX/Pan Am Approval*") at 6-7 & 14-15.

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To credit CN's gateway commitments as a remedy for the loss of competition at issue here would require the Board to *assume* that the transition from multiple-carrier competition to a state of monopoly would be salutary because the monopolist promises to charge "commercially reasonable rates." Such an assumption would be misguided. To the extent CN would gain market (or monopoly) power over competing shipper alternatives through its acquisition of Iowa Northern, its incentives would not align with those that Iowa Northern and CN face in a competitive environment. And where competitive conditions exist today, superimposing new "price regulation" cannot suffice to mimic the lost competition. That is why, for example, Congress instructed the Board that it is national policy to "allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail." 49 U.S.C. § 10101(1).

B. The Board Cannot Conclude that Benefits of the Transaction Would Clearly Outweigh Its Anticompetitive Effects

Given the unresolved competitive issues raised by the Transaction, a "Significant" classification can be avoided only if the Board finds that "any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs." 49 C.F.R. § 1180.2(b). The Board cannot make such a finding here.

First, there is no exigency or other compelling need here that would warrant accepting potential anticompetitive harms in service to some greater need of the rail network. There is no respect in which Iowa Northern needs CN to enable it to meet shipper needs (nor does CN need IANR). Iowa Northern has a sterling reputation for meeting shipper needs efficiently and economically. Deliberate and thorough evaluation of the competitive issues here – not an

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expedited handoff of control to CN based on a cursory review – would best serve the public interest.¹⁰

Second, there is no factual basis for conducting any “weighing” of the benefits and harms at this stage. Even if the Board somehow could know as a matter of established fact that compelling quantifiable benefits were likely to flow from the proposed Transaction, it would still have no basis for concluding that those benefits “outweighed” potential competitive harms without carrying out a detailed examination of those harms in this proceeding. That is why the Board has in recent years reserved its “Minor” classification for *end-to-end transactions* where meaningful horizontal concerns are entirely absent.

Third, and equally significant, it would be premature to reach any definitive conclusion here regarding the magnitude of the proffered benefits. Even if there may be some advantages for some shippers (or some shipments) from the elimination of a CN-Iowa Northern interchange, the magnitude of that benefit has not been tested in the context of Iowa Northern’s possibly-unique interline relationship with CN and other Class 1 carriers.

There is also significant reason for skepticism regarding Applicants’ benefits claims. In CPKC’s experience, Iowa Northern *already* provides quality service (and provides extra services)¹¹ on an economical basis. It is not clear how CN could provide the same shipper amenities at lower cost to create rail-to-rail diversions. For example, the diverted volumes are predicated on an assumed reduction in so-called “impedance” that is set equal to the cost equivalent of a 350-mile rail move for interchange at Waterloo and a 550-mile rail move for

¹⁰ In addition, because Iowa Northern is in trust, there is no threat to its ongoing independent operation that might be thought to “outweigh” potential anticompetitive effects.

¹¹ For example, Mr. Harman explains that IANR meters cars moving into the Quaker Oats facility to accommodate the shipper’s unloading capabilities. Harman V.S. at ¶ 16.

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interchange at Cedar Rapids, but CN's Minor Operating Plan does not provide any information indicating how such cost reductions would be achieved. Zebrowski V.S. at ¶ 25.

A centerpiece of Applicants' presentation about the Transaction's benefits is the 14,619 trucks they claim will be removed from the highways. Application at 16. As Mr. Zebrowski explains, the modeling undertaken to reach this conclusion is highly suspect. Zebrowski V.S. at ¶¶ 23-24. Mr. Hunt's model assumes a decrease in CN's system average intermodal cost for a rail move from eliminating the cost of an intermodal interchange, which will lead the model to predict an increase in the rail market share. However, CN's Minor Operating Plan does not provide for any new type of intermodal service to accommodate this significant amount of traffic, but instead relies on existing manifest operations. Zebrowski V.S. at ¶ 24.

More fundamentally, the Application fails to establish why the Board should treat any of these supposed diversions as the product of CN's acquisition of Iowa Northern. CN already reaches the part of Iowa that Iowa Northern serves. If CN's long-haul network opportunities are sufficiently attractive to shift tens of thousands of trucks to those routes, why can't CN do that today by investing in the transload or intermodal facilities necessary to achieve those traffic gains? Cf. 49 C.F.R. §1180.1(a) ("the Board does not favor consolidations that reduce the transportation alternatives available to shippers unless there are substantial and demonstrable public benefits to the transaction *that cannot otherwise be achieved*") (emphasis added).

It is perhaps telling that the Application contains no operational plan for handling this traffic that will supposedly shift from truck to rail. Mr. Hunt notes that "it is assumed that any commodity can be drayed to and from a rail terminal." Application, Hunt V.S. at Appendix B.1. He further assumes that the catchment areas are the BEA regions "where the major location in the BEA was less than 200 miles from a CN terminal on one end, and within a 19-county Iowa

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Northern catchment area on the other end of the movement.” *Id.* The Minor Operating Plan submitted by Applicants is disjointed from the truck diversion study and does not even address where or how CN would transload such freight. *See* Exhibit 15 – Operating Plan Minor at 22-23 (noting no changes at intermodal facility and no investment); *Zebrowski V.S.* at ¶ 24. As a result, on the present record it is not possible to ascertain what existing or new CN/Iowa Northern facilities would be used or how the traffic would flow through into increased rail and truck volumes at particular locations and increased train starts (all with potential environmental implications).

If this Transaction were considered as “Significant,” however, a more robust Operating Plan would be required and these assertions about benefits could be more effectively evaluated.

III. THE BOARD SHOULD CLASSIFY THE TRANSACTION AS “SIGNIFICANT” AND ESTABLISH A PROCEDURAL SCHEDULE THAT ENSURES ADEQUATE CONSIDERATION OF THE ISSUES

Given that the Board cannot at this time determine whether there are significant competitive effects nor the extent of any benefits of the proposed Transaction, the proper course would be to declare the Transaction to be “Significant.” Doing so will allow interested parties the opportunity needed to evaluate evidence relating to competitive and other issues – including that obtained through discovery – and to present that evidence to the Board in furtherance of a thorough review of the potential loss of competition that would result for the rail transportation of agricultural and other commodities in this critical region of the United States.

To move the matter forward, the Board could simply treat the Application filed by CN on January 30, 2024 to be the pre-filing notice required for a “Significant” transaction, just as it did when it classified *CSX/Pan Am* as “Significant.” *See CSX/Pan Am Classification* at 11. Such an approach would entitle CN to re-submit its Application (or one modified to meet “Significant” standards) as early as March 30, 2024. The Board could simultaneously ask CN to propose a

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new procedural schedule within two to three weeks after the date of the decision declaring the Transaction to be “Significant,” which should include time for interested parties to conduct adequate discovery. Other parties would of course be entitled to comment on Applicants’ proposed schedule. *Id.* And when they refile their Application, Applicants would be free to revise and supplement the Application submitted in January as they see fit, or not, to ensure that it complies with the requirements for a “Significant” transaction.

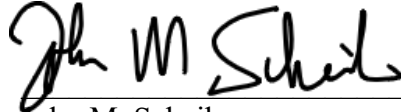
Even if the Board considers at this time the proposed Transaction to be “Minor,” the Board should allow greater time for the parties to conduct discovery, conduct analysis, and collect and present evidence on the meaningful loss of competition shippers in the region served by IANR would confront.

IV. CONCLUSION

There is a significant risk that the proposed Transaction will substantially diminish competition in a region that holds national and regional significance. The Board should be concerned about such loss of competition that will result from CN being in every route into and out of the vast majority of the rail-served facilities in the Cedar Rapids, Iowa, area. The Board should be concerned that despite claiming substantial truck-to-rail diversions, the Application does not explain why CN could not achieve many if not all of the putative benefits on its own, or how such traffic would be handled, calling into question whether the magnitude of the Transaction’s benefits could outweigh its anticompetitive downsides. Consistent with its precedent in cases in which similar concerns were presented, the Board should consider the Transaction to be a “Significant” one and take steps to gain a more thorough record that airs these competitive issues and provides remedies to address them – if the proposed Transaction can be approved at all.

REDACTED PUBLIC RECORD VERSION

Respectfully submitted,



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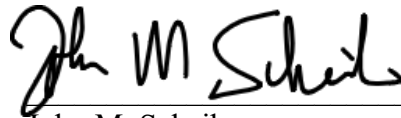
Dated: February 26, 2024

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CERTIFICATE OF SERVICE

I hereby certify that I have served by email a true and correct copy of the foregoing on all parties to this proceeding, or their attorney of record, as follows:

on this 26th day of February, 2024.

A handwritten signature in black ink that reads "John M. Scheib". The signature is written in a cursive style and is positioned above a horizontal line.

John M. Scheib
Gentry Locke Attorneys
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757-916-3511

Attorney for Canadian Pacific Kansas City

REDACTED PUBLIC RECORD VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET No. FD 36744

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION**

—CONTROL—

IOWA NORTHERN RAILWAY COMPANY

EXHIBIT 1

VERIFIED STATEMENT OF JON HARMAN

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36744

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
—CONTROL—**

IOWA NORTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF JON HARMAN

1. My name is Jon Harman, Director of Business Development for CPKC.
2. I moved to this position when CP acquired control of KCS to form CPKC, with the goal of supporting the company's delivery of merger-related synergies. Previously, I was responsible for CP's Bulk Franchise, which entailed all U.S. and Canadian strategy, pricing, product offerings and U.S. sales for grain, fertilizers, potash, coal, biofuels and sulfur.
3. I joined CP in 2019 after several years with Genesee & Wyoming Railway (G&W), the world's largest shortline railway with 16,000 miles of track worldwide, where I served as Vice President of Corporate Accounts, leading G&W's business development efforts with G&W's top customers across all of G&W's railroads in North America. Prior to joining G&W, I spent nine years with BNSF Railway in Fort Worth, where I held various Marketing and Sales roles of progressive responsibility in the areas of Business Development, Intermodal, Grain and Crude Oil.
4. I started my career with Kansas City Southern shortly prior to its acquisition of the Mexican carrier that became KCSM. At KCS, I held Marketing and Sales roles in the

Agriculture, Business Development and Intermodal groups. I have served on the National Grain Car Council for both G&W and CP, including as the Chairman in 2023/24. I am also an active member of the National Grain and Feed Association.

5. I have been asked to address the degree to which Canadian National Railway's ("CN") proposed acquisition of control of the Iowa Northern Railway ("IANR") would affect competition in rail transportation markets. I understand that the Surface Transportation Board ("Board") will be considering whether to classify the proposed Transaction as "Minor" or as "Significant," and that one of the factors in such a determination is whether "the transaction clearly will not have any anticompetitive effects." Based on my experience and knowledge of the role played by IANR in rail transportation, there is no doubt that the CN/IANR transaction raises serious competitive issues warranting careful consideration by the Board.

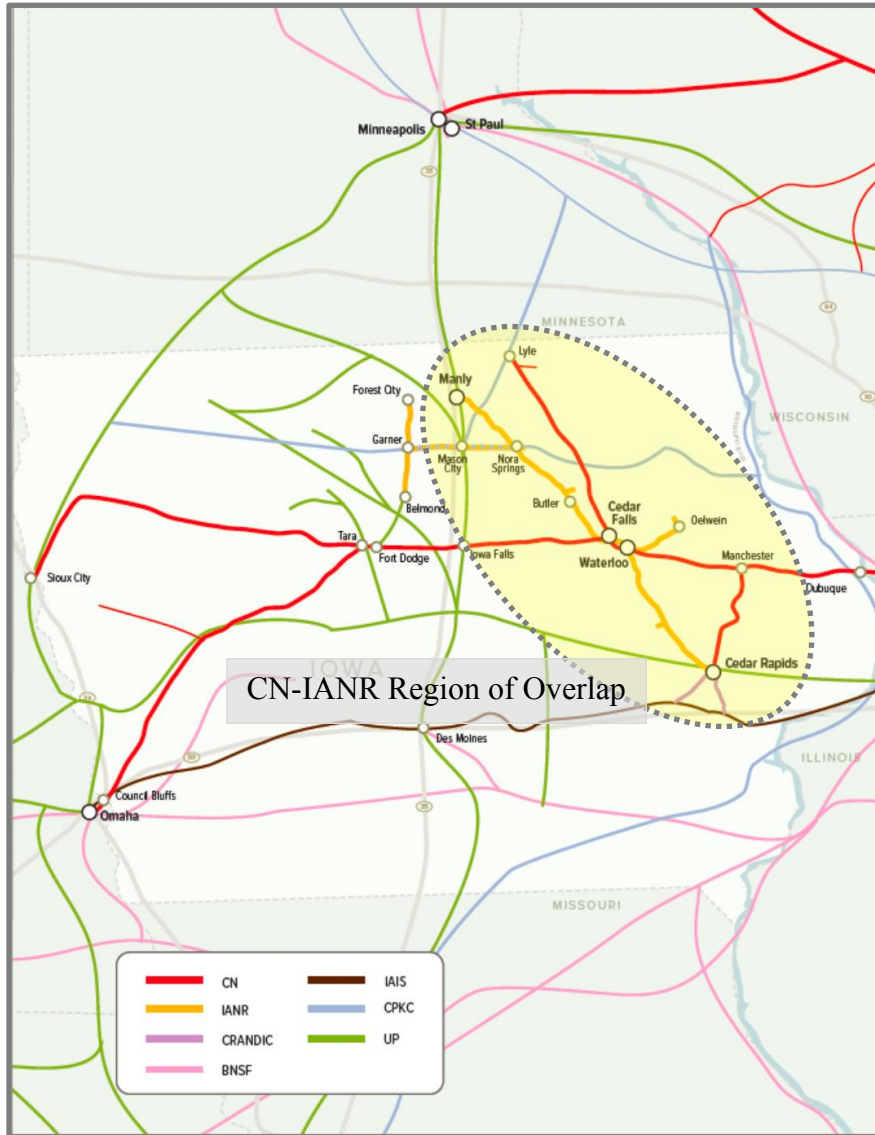
6. As is apparent from a review of an Iowa rail map, there is considerable overlap between IANR's service territory (spanning from Manly, IA, in the north to Cedar Rapids in the south) and CN's service territory in central Iowa. In addition to numerous shipping points to which both IANR and CN have access, the two serve a variety of shipping facilities that are substitutes for one another from the perspective of farmers and other participants in the agricultural ecosystem.

7. It is important to start by remembering IANR's substantial development over time. Looking back to 1994, IANR handled 15,000 revenue cars annually and its average track speed was under 10 mph. The railroad has invested millions in bringing its lines up to a state of good repair while increasing reliability and customer service. IANR now handles more than 60,000 cars per year, serving 20 grain elevators, two ethanol plants, two mineral processing

facilities, and handles other commodities such as fertilizer, farm machinery, food, chemicals, lumber, and more.

8. The map in Figure 1 below, drawn from one included in the Application, shows the extensive area of overlap between CN and IANR lines in central Iowa. CN and IANR operate parallel lines through Iowa, generally on an axis from Cedar Rapids to the north and west.

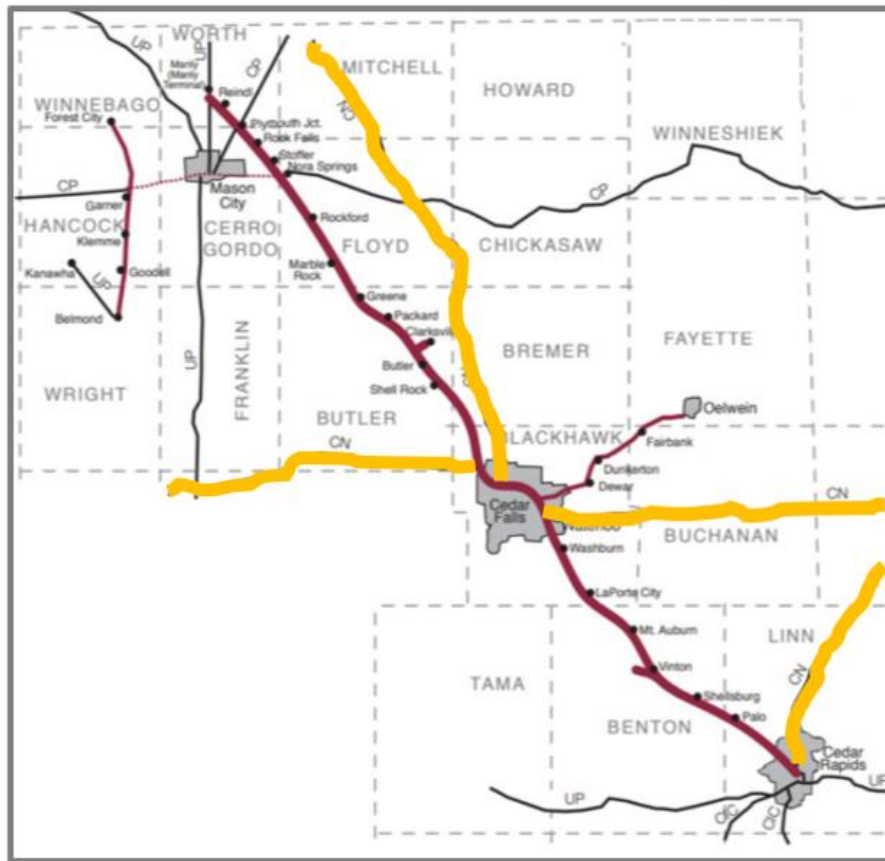
**FIGURE 1
MAP OF CN/IANR OVERLAP**



9. One of Applicants’ witnesses refers to this area of overlap as the 19-county IANR “Catchment Area,” which was portrayed in a map included in the testimony of Applicant witness Hunt and reproduced as Figure 2 below (with CN lines highlighted in yellow).¹ As is evident from this map, CN’s lines parallel IANR and criss-cross the IANR Catchment Area.

¹ Application, Hunt V.S., Exh. 3-1 & 18 (defining 19-county catchment area).

FIGURE 2
IANR “CATCHMENT AREA” SHOWING OVERLAP WITH CN LINES



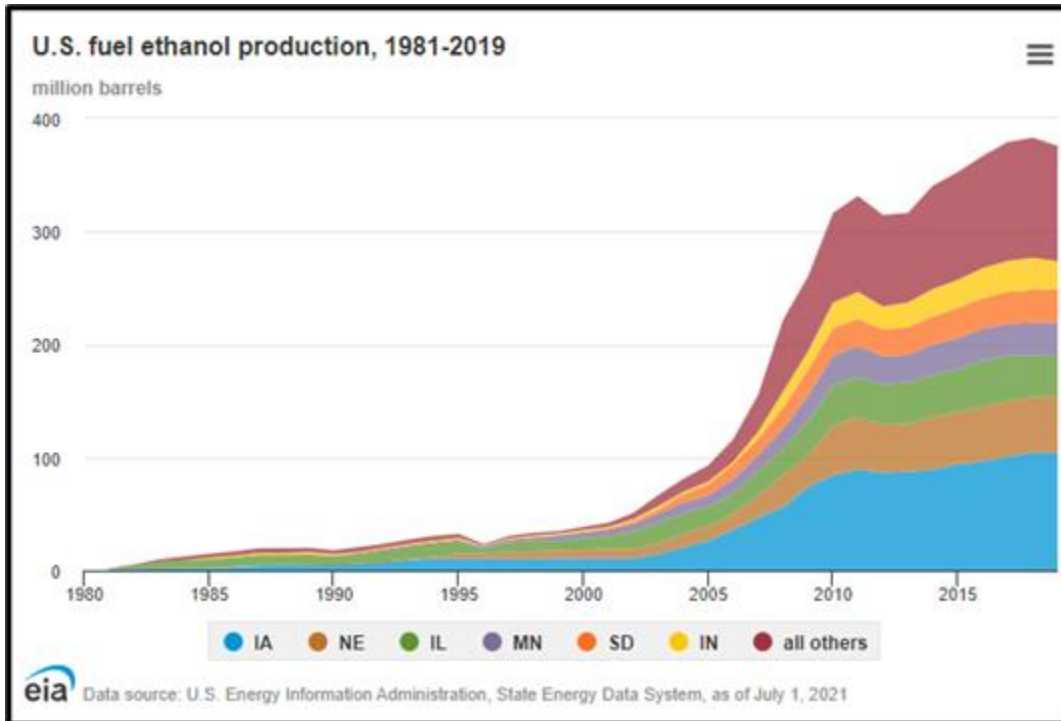
10. The CN-IANR area of overlap encompasses some of the most productive agricultural land in North America, for which rail transportation options are growing in importance with growing demand for both ethanol and biofuels, both of which are refined from agricultural products – corn and soybeans – farmed in central and eastern Iowa, as shown in the Verified Statement of David T. Hunt at 3, Exhibit 3-1.

11. This area is a critical component of the ethanol and bio-fuels revolution as shown in Figure 3 below, depicting data from the U.S. Energy Information Agency.² Indeed growth in

² U.S. Energy Information Administration (EIA), “Ethanol Explained,” available at <https://www.eia.gov/energyexplained/biofuels/ethanol-supply.php>.

Iowa alone is about 25% of all growth in ethanol production in the United States. Eight ethanol refineries are within the IANR Catchment Area.³

FIGURE 3
GROWTH IN ETHANOL PRODUCTION IN IOWA



12. The CN-IANR overlap region also encompasses Cedar Rapids, one of the world’s leading centers of agricultural processing. Cedar Rapids ranks as the “[t]he largest corn-processing city in the world,” hosting processing facilities for many familiar names, including

³ See Iowa Renewable Fuels Association, “Iowa Ethanol Plants,” available at <https://iowarfa.org/ethanol-center/ethanol-biorefineries/>.

General Mills, Quaker Oats, Cargill and Archer Daniels Midland.⁴ In fact, the Quaker Oats Plant is the largest cereal mill in the world.⁵

13. The competitive role of IANR in this region is significant, and CN's network provides the principal competitive option. IANR and CN both have access to numerous shipper facilities, they participate in traffic flows moving in the same corridors connecting U.S. and Canadian points with central Iowa. The parallel nature of IANR and CN's networks means that they are among the few key transportation options for comparable traffic flows and/or shippers and shipper facilities looking for a rail-served home in central Iowa.

14. In addition, in my experience working with customers in this region, many say they have located on IANR because it acts independently and, consistent with claims it makes publicly on its website, allows customers to ship via all of the railroads that connect to IANR. For example, IANR's facility at Manly, IA, is a transload facility that receives ethanol by trucks from surrounding corn-growing territories (including locations that are effectively served by only a single Class I) and then, through its neutrality, makes connecting Class I's compete for the customer's outbound movements. Were the Manly facility to become captive to CN, this would diminish the degree to which customers in this region have competitive alternatives for the rail transportation of agricultural products.

15. In the balance of my statement, I highlight as an illustration one specific flow of traffic to facilities in Cedar Rapids that are jointly served by CN and IANR for which

⁴ Ewing Marion Kauffman Foundation/Kauffman.org, "*Exploring the Renewal of the Heartland - Cedar Rapids, Iowa*," available at <https://www.kauffman.org/eship-city/cedar-rapids/#:~:text=The%20largest%20corn%2Dprocessing%20city,Cargill%20and%20Archer%20Daniels%20Midland.>

⁵ Worldrecordacademy.org, "*World's Largest Cereal Plant: World Record in Cedar Rapids, Iowa*," available at [https://www.worldrecordacademy.org/2023/6/worlds-largest-cereal-plant-world-record-in-cedar-rapids-iowa-423252.](https://www.worldrecordacademy.org/2023/6/worlds-largest-cereal-plant-world-record-in-cedar-rapids-iowa-423252)

competition would be adversely affected by CN control of IANR: oats moving from sources in Saskatchewan and Manitoba to the large Quaker Oats processing facility in Cedar Rapids.

16. In recent years, CP has worked with IANR successfully to move many hundreds of carloads of this traffic via an interline route with IANR, via a connection at Nora Springs, IA, with IANR moving the traffic the final approximately 125 miles to Cedar Rapids. Consistent with its record of service, Iowa Northern provides customer-friendly services to Quaker Oats, including that IANR takes larger shipments of oats and then holds the train and sends individual cars to Quaker Oats over several days. This reduces the cost to Quaker and makes CPKC competitive versus others that also have access. It is unknown whether services like this will continue under CN ownership, but if it did not, it would certainly price CPKC out of the market.

17. In today's pre-Transaction marketplace, the shipper's competitive rail option to a CP-IANR move is a CN-direct single-line move of oats from CN-served origins in Saskatchewan and Manitoba to Cedar Rapids, which CN reaches via Chicago and Dubuque, IA. The presence of that option provides a competitive discipline for both CP and IANR, since both carriers would lose out were they to offer price/service terms that are viewed by the customer as inferior to those available from CN. After the Transaction, however, this competition will no longer be viable, as CN will control IANR. This will allow CN to drive up IANR's rates (or reduce its service levels), knowing that doing so would risk nothing, since the traffic would end up on CN's direct route if the CP-IANR option were no longer attractive. IANR would no longer be independent of its direct competitive rival for delivering this oats traffic to destination in Cedar Rapids. All viable routes to Cedar Rapids from Canada would be controlled by CN in the future, whereas today IANR is fully independent of CN.

18. The Board will no doubt wish to examine whether CP-IANR routings could be replaced with CP-UP routings between Canada and Cedar Rapids, possibly preserving an option that is independent of CN. In my experience, that would not be likely because CP-UP routings to Cedar Rapids are unlikely to be attractive options for shippers. Such traffic would have to be interchanged to UP at either St. Paul, MN or Clinton, IA, and UP has not been interested in marketing its services for such short haul traffic agricultural traffic.

19. CN also may point to its commitment to keep gateways open on commercially reasonable terms, including the Nora Springs interchange between IANR and CP. While that sort of commitment does provide a meaningful backstop in *end-to-end* merger cases, where the only competitive issue is that the rail merger is extending one railroad's haul, this transaction is not end-to-end. In an end-to-end relationship – like that between CP and IANR for traffic from Canada to Cedar Rapids – the participants in the route necessarily must negotiate over their divisions of through revenue, against the backdrop of competition from other independent rail routings and other transportation modes. In that context the obligation for divisions to be “commercially reasonable” makes sense and protects the viability of the efficient interline routing. But in a case like this one, where CN would for the first time control both *its own* pre-existing single-line route *as well as* IANR's rates and service levels, such a requirement would not work to preserve competitive outcomes. “Commercially reasonable” rates and services are not the same as *competitive* rates and services, and CN's acquisition of IANR would remove the competition that makes IANR's rates and services competitive.

20. CN control of IANR should be of particular concern given that IANR is not a struggling carrier in need of capital or operational acumen. In CPKC's experience, IANR provides extraordinarily good service to its customers, running trains daily to serve customers

and providing extra levels of service like the handling of Quaker Oats cars described above. IANR has also said that it has consistently been scrupulously neutral with respect to the various Class 1 connections that link on-line customers with the broader rail network: in effect shifting the real competition to the various Class 1 carriers (where, for example CN's control of IANR will in very real terms give it control of the CP-IANR routings). IANR has stated that it equalizes its rate levels across IANR's various connections, regardless of the distance that IANR moves the traffic on its own system. It is CPKC's understanding, for example, for ethanol traffic from Manly, IA, IANR charges the same to move traffic to a CPKC connection at Nora Springs, a CN connection at Waterloo, or a CRANDIC connection Cedar Rapids. That likely would not continue if CN controls IANR.

* * *

21. I urge the Board to closely examine competitive issues like this one with the care that review as a "minor transaction" is not designed to accomplish.

VERIFICATION

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

Executed on this 26th day of February, 2024

Jon Harman

Jon Harman

REDACTED PUBLIC RECORD VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET No. FD 36744

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION**

—CONTROL—

IOWA NORTHERN RAILWAY COMPANY

EXHIBIT 2

**VERIFIED STATEMENT OF NATHANIEL S.
ZEBROWSKI**

REDACTED PUBLIC RECORD VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36744

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUCK CORPORATION—CONTROL—
IOWA NORTHERN RAILWAY COMPANY**

VERIFIED STATEMENT OF NATHANIEL S. ZEBROWSKI

February 26, 2024

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PART I INTRODUCTION

1. I am Nathaniel S. Zebrowski. I am a Senior Managing Director in the Network Industries Strategies Group of FTI Consulting, Inc.. Details of my credentials are provided in Appendix A.
2. I have been asked by counsel for Canadian Pacific Kansas City (CPKC) to perform an analysis of available data on rail movements to and from regions served by the Iowa Northern Railway Company (IANR), assess potential competitive effects of the proposed acquisition and control of IANR by Canadian National Railway (CN) (the “Transaction”), and ascertain the validity of the diversion estimates provided in CN’s Application.
3. My analysis is based on summarized IANR traffic data contained in the Application Verified Statement of David Hunt for 2022 and 2023 and Confidential Carload Waybill Sample (CCWS) data for shipments originating or terminating in Iowa for 2022.
4. I observe from the data that CN and IANR originate and terminate traffic of the same commodity groups within the same counties and that there are many cases where CN and IANR participate in alternative routes for movements to and from the same regions.
5. These observations suggest that further examination of the competitive effects of the proposed Transaction is warranted, and, indeed, further information is required to perform sufficient analysis. To date, I have only had access to limited highly confidential workpapers from Mr. Hunt and to the CCWS, which has only been available for two work days. The CCWS data does not cover switch and terminal movements that are critical to understanding the competitive features of rail traffic around Waterloo and Cedar Rapids, nor do the available IANR traffic summaries contained in Mr Hunt’s workpapers clearly identify for individual movements

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whether IANR participates as a switching or linehaul carrier. A proper evaluation of the competitive effects of the proposed Transaction would include examination of all linehaul and switching movements occurring in the Waterloo and Cedar Rapids areas.

6. The diversion estimates provided in CN's Application require further examination and should not be taken at face value. The diversion models used by Mr. Hunt to estimate truck-to-rail and rail-to-rail diversions are driven by assumptions about reduced costs and reduced so-called "impedance" for single-line service that is posited to attract more traffic relative to the costs and impedance of current operations. However, based on the information provided in CN's Minor Operating Plan, it appears that the relevant post-Transaction operations are substantially the same as current operations, so it is unclear where the reduced costs and impedance driving the estimated diversions would come from.

7. My conclusions from this review are preliminary and subject to change upon further evaluation of the data and information now available and evaluation of additional data and information that becomes available in the course of this proceeding.

PART II DATA AND METHODOLOGY

8. I began my analysis by building a combined set of data for IANR and other carriers' traffic movements in regions served by IANR. This combined dataset is based on 2022 CCWS data, 2022 IANR traffic summaries, and 2023 IANR traffic summaries for the {{ [REDACTED] [REDACTED] }} which opened in 2023 and thus is not included in the 2022 data. IANR traffic summary data contains revenue units aggregated by lane, which I assume includes all rail movements for the covered time periods, and CCWS data contains a sample of individual loaded

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shipments.¹ First, I identified all stations in the IANR data where traffic was originated or terminated. Next, I created a list of the counties associated with these stations, and pulled all records in the CCWS for shipments originating or terminating in these same counties. I removed records where IANR was in the route. I further removed rebill forwarded moves terminating at relevant IANR interchange locations (e.g., UP forwarded moves terminating at Manly) and rebill received moves originating at relevant IANR interchange locations (e.g., CN received moves originating at Waterloo). This was done to prevent duplicates on the assumption these moves would already be present in the IANR traffic summaries. I merged the remaining CCWS and IANR traffic records with fields aligned containing origin station and railroad, destination station and railroad, railroad and junction route information, 7-digit STCC, and total units.

9. The IANR traffic summary records do not clearly and consistently identify whether IANR participates as a linehaul or switching carrier in the route. This is important because the competitive implications of the proposed Transaction may depend on whether the traffic moves under a linehaul price authority or a switching arrangement (and if a switching arrangement, what the terms of that particular arrangement are, and what the status of that particular arrangement would be under the proposed Transaction).

10. I made refinements to route information where possible. Specifically, {{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].}} Because the information available at this time does not allow me to make such determinations for all IANR

¹ I refer to these combined totals as “units” in the remainder of my statement.

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traffic summary records, I also ran a version of my analysis that applied comparable adjustments to all records. I did this by assuming the second rather than first carrier on the route is the originating carrier where the origin location and first junction location are the same (and I made an equivalent adjustment on the terminating end). As discussed below, my relevant conclusions are the same under both approaches. Also, because the exact terms of traffic moving under the IANR’s haulage arrangement with UP are not known (e.g., whether IANR participates as a linehaul carrier for some or all of these moves), for present purposes I treat UP haulage shipments as originating and terminating on IANR, not UP, where applicable.

**PART III
CN AND IANR SERVE MANY OF THE SAME COMMODITY GROUPS IN THE SAME AREAS**

11. Using the combined dataset, I determined that CN and IANR both originate and terminate traffic for customers in Black Hawk County (containing Waterloo, IA) and Linn County (containing Cedar Rapids, IA).² Table 1 below summarizes combined originating and terminating units in these counties by carrier for interstate movements.

**TABLE 1
ORIGINATING AND TERMINATING UNITS FOR COUNTIES SERVED BY BOTH CN AND IANR FOR INTERSTATE MOVEMENTS**

{{{

Black Hawk County				
Linn County				

}}}

² A few other counties look to have both CN and IANR traffic, but this is due to inaccuracies in the reported routing information for a very few moves and, accordingly, I do not include these counties.

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**TABLE 3
OUTBOUND INTERSTATE UNITS BY 2-DIGIT STCC AND ORIGINATING CARRIER FOR COUNTIES
SERVED BY BOTH CN AND IANR⁶**

{{{

2-Digit STCC	CN	IANR	UP	CRANDIC

}}}

14. To focus on the flows of traffic most likely to be affected under the proposed Transaction, I isolated the portion of traffic moving to or from states and provinces accessed by CN’s network. Table 4 below summarizes inbound units by terminating carrier for 2-digit STCC commodities in the two counties that CN and IANR both serve that originate in states and provinces reached by CN’s network.

**TABLE 4
INBOUND UNITS BY 2-DIGIT STCC AND TERMINATING CARRIER FOR COUNTIES SERVED BY
BOTH CN AND IANR FROM CN-SERVED STATES AND PROVINCES⁷**

{{{

2-Digit STCC	CN	IANR	UP	CRANDIC

}}}

15. Similarly, Table 5 below isolates just the portion of originating traffic moving to states and provinces reached by CN’s network.

⁶ *Id.*

⁷ *Id.*

TABLE 5
OUTBOUND UNITS BY 2-DIGIT STCC AND ORIGINATING CARRIER FOR COUNTIES SERVED BY BOTH CN AND IANR TO CN-SERVED STATES AND PROVINCES⁸

{{{

2-Digit STCC	CN	IANR	UP	CRANDIC

}}}

16. The above tables, as well as the corresponding versions of these tables in Appendix B that make adjustments controlling for what may be switching carriers shown in the route, show significant overlap between CN and IANR both with respect to regions and commodities served.

PART IV

CN AND IANR CURRENTLY PROVIDE ALTERNATIVE ROUTE OPTIONS TO AND FROM MANY OF THE SAME REGIONS AND FOR MANY OF THE SAME COMMODITY GROUPS

17. CN and IANR’s overlap in regions and commodities served provides ample occasion for the two carriers to offer shippers alternative rail transportation options for the same commodities moving between the same regions. The data show that there are alternative CN and IANR route options that are actively used by shipments to and from many of the same regions and often of the same types of commodities.

18. One example of alternative CN and IANR routes that are both actively used by shippers is for {{{ [REDACTED]

⁸ *Id.*

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}}}} the choice between two routes, but under the proposed Transaction, CN would participate in movements on both routes.

19. Another example involves {{{

.}}}} Again, under the proposed Transaction, CN would participate in movements on both routes.

20. In addition to the above examples involving transportation to regions north and south of the IANR lines, there are also alternative CN and IANR route options to the east that may be affected by the proposed Transaction. For instance, {{{

[REDACTED]

[REDACTED]

[REDACTED]}}}}

21. In my preliminary review of the IANR traffic summary data in conjunction with the CCWS data, which has only been available for two work days, I have observed many other examples of alternative CN and IANR route options that are both actively used. These cases involve shipments across regions spanning from {{{

[REDACTED]

[REDACTED]

[REDACTED]}}}} That such traffic flows have recently used both CN and

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IANR route options across many different geographies speaks to the larger universe of possible routes that have competed in the past or could compete in the future, as to which competition could be negatively impacted by the proposed Transaction.

22. Accordingly, my review finds that CN and IANR provide alternative transportation options in many instances and indicates that further investigation is warranted to determine which options would remain available under the proposed Transaction. One aspect that requires additional inquiry is to determine where UP would be expected to provide meaningful alternatives to a combined IANR/CN. {{{

.}}}

**PART V
APPLICANTS' TRUCK-TO-RAIL AND RAIL-TO-RAIL DIVERSION ESTIMATES ARE BASED ON
ARBITRARY MODELLING EXERCISES AND UNREALISTICALLY HIGH**

23. Mr. Hunt's estimated truck-to-rail and rail-to-rail diversion figures appear unrealistically high in light of the at-best limited cost savings and operational changes outlined in the Application. Mr. Hunt estimates over {{{ [REDACTED] }} annual trucks diverting to CN under the proposed Transaction, which would all come from lanes over which {{{ [REDACTED] [REDACTED] }}}. Application, Verified Statement of David T. Hunt at 2 ("Application, Hunt V.S."). In Mr. Hunt's words, the truck-to-rail model "predicts how truck-rail market share will change based on changes in the cost differential between truck and rail." Application, Hunt V.S. at Appendix B.3. In the present application, this means Mr. Hunt's model

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assumes a decrease in CN's system average intermodal cost for a rail move due to eliminating the cost of an intermodal interchange post-Transaction, which will lead the model to predict an increase in the rail market share compared to the share modelled using the assumed pre-Transaction rail costs.

24. However, it is not clear how these assumed cost reductions will be achieved. CN's Minor Operating Plan does not provide for any new type of intermodal service to accommodate these volumes, but instead relies on existing manifest operations. Specifically, based on the limited details provided in CN's Minor Operating Plan, post-Transaction intermodal service for diverted truck volumes will entail putting single-stack intermodal flat cars onto the same manifest trains that will continue to run once per day from where they originate on IANR's lines (which presumably would be from the intermodal facilities at Butler and Manly) to Waterloo Yard, where they would then be switched onto the same manifest trains that will continue to run once per day to Chicago (or in the reverse order for inbound movements). Application, Exhibit 15 at 9-15. This operation is not at all reflective of typical intermodal service involving dedicated intermodal trains moving between dedicated intermodal facilities that would be captured in the system-average costs on which Mr. Hunt's model is based. Nor is it realistic to believe that any of the minor changes in manifest train operations under the Proposed Transaction would achieve cost savings that are equivalent to eliminating the costs of a typical intermodal interchange. Accordingly, both the base rail intermodal costs and the assumed post-Transaction cost reductions used in Mr. Hunt's model are unrealistic and thus the diversion volumes predicted by this model are unfounded and arbitrary.

25. Mr. Hunt also estimates over {{ [REDACTED] }} annual rail-to-rail diversions using a model that suffers from similar flaws. Application, Hunt V.S. at Appendix 2. Specifically,

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diverted volumes are predicated on an assumed reduction in so-called “impedance” that is set equal to the cost and service equivalent of a 350-mile rail move for interchange at Waterloo and a 550-mile rail move for interchange at Cedar Rapids. This is then added together with the rail distance of the move to determine total impedance, and qualifying moves where the post-Transaction CN-IANR route has lower impedance than the existing route are diverted.

Application, Hunt V.S. at Appendix C.2. For example, this means a qualifying move on a current non-CN route of 500-miles interchanged to IANR at Cedar Rapids would be diverted to a post-Transaction CN-IANR route that is 1,149-miles long.⁹ To put this in some perspective, GTC’s 2022 R-1 report shows that CN’s average operating expenses per loaded car mile is \$3.45.¹⁰ Even supposing only half of this amount is for the costs per mile of a rail move, this suggests that the basis for the volumes diverting is an assumed cost reduction between approximately \$600 and \$950 per carload all else equal. CN’s Minor Operating Plan, however, does not provide any information indicating how such cost reductions would be achieved. Instead, as described above for the diverted truck traffic, the diverted rail traffic would travel under similar operations post-Transaction as it does today, namely, on the same manifest trains between Chicago and Waterloo, and the same manifest trains between Waterloo or Cedar Rapids and the given origin or termination location on IANR.

⁹ 500 miles in rail distance + 650 miles in junction impedance = 1,150 current route impedance.
1,149 miles in rail distance + 0 miles in junction impedance = 1,149 post-Transaction CN-IARN route impedance.

¹⁰ See GTC 2022 R-1 Annual Report at Schedule 210 and Schedule 755.

VERIFICATION

I, Nathaniel S. Zebrowski, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 26th day of February, 2024.

A handwritten signature in black ink, appearing to be 'N. S. Zebrowski', written in a cursive style.

Nathaniel S. Zebrowski

APPENDIX A

CURRICULUM VITAE OF NATHANIEL S. ZEBROWSKI

Nathaniel S. Zebrowski

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Education

B.A. in Economics,
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Graduate Certificate in
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Economics, George Mason
University

Nathan Zebrowski is a Managing Director in the Network Industries Strategies group of the Economic Consulting segment, located in McLean, VA. He provides financial and economic consulting services to the transportation and energy industries.

Mr. Zebrowski's work combines economic and statistical training with deep industry expertise and project experience. His work includes freight transportation market analysis; competitive assessments and valuations for transportation assets, services, and systems; contract evaluation, negotiation support, regulatory risk assessment, and damages determinations; litigation and expert witness testimony; rate reasonableness inquiries including application of regulatory tests; M&A related analysis and support; and operational, capital investment, and cost studies.

In Mr. Zebrowski's work evaluating network enterprises, he is informed by an intimate knowledge of the fundamental economics related to long-lived network assets, the unique realities affecting network operations and the highly individualized nature of the regional and commodity markets in which transportation businesses participate. He has special expertise in developing complex computer models assessing traffic flows over railroad networks and conducting detailed studies on costs, operations, and pricing of freight transportation services.

Representative Engagements:

Testimony

March 7, 2016	United States Surface Transportation Board, Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
October 29, 2021	United States Surface Transportation Board, Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Verified Statement of Nathaniel S. Zebrowski and Richard W. Brown
February 14, 2022	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching, Verified Statement of Nathaniel S. Zebrowski and Michael R. Baraowski
July 12, 2022	United States Surface Transportation Board, Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Reply Verified Statement of Nathaniel S. Zebrowski and Richard W. Brown
January 19, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Expert Report of Nathaniel S. Zebrowski
February 14, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Supplemental Expert Report of Nathaniel S. Zebrowski
April 15, 2023	Private Party Arbitration, Kansas City Southern Railway Company vs. Vicksburg Bridge Commission, Hearing Testimony of Nathaniel S. Zebrowski
September 25, 2023	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski
December 20, 2023	United States Surface Transportation Board, Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Reply Verified Statement of Nathaniel S. Zebrowski and Michael R. Baranowski

Preparation of Evidence and Testimony Sponsored by Others

Surface Transportation Board

November 30, 2012	Docket No. 42125 E.I. DuPont De Nemours & Company v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company
December 7, 2012	Docket No. Ex Parte 715, Rate Regulation Reforms, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski
January 7, 2013	Docket No. 42130 SunBelt Chlor Alkali Partnership v. Norfolk Southern Railway Company, Reply Evidence of Norfolk Southern Railway Company

March 1, 2013	Ex Parte No. 711 Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Richard W. Brown
April 12, 2013	Docket No. 42136 Intermountain Power Agency v. Union Pacific Railroad Company, Reply Evidence of Union Pacific Railroad Company
April 30, 2013	Ex Parte No. 711 Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Richard W. Brown
June 20, 2013	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
September 5, 2013	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Joint Verified Statement of Michael R. Baranowski and Benton V. Fisher
July 21, 2014	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply Evidence of CSX Transportation, Inc.
September 5, 2014	Ex Parte No. 722 Railroad Revenue Adequacy, Opening Comments of Norfolk Southern Railway Company, Verified Statement of Michael R. Baranowski
November 4, 2014	Ex Parte No. 722 Railroad Revenue Adequacy, Reply Comments of Norfolk Southern Railway Company, Verified Statement of Michael R. Baranowski
October 7, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Supplemental and Compliance Evidence of CSX Transportation, Inc.
October 23, 2015	Docket No. FD 33760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement, Verified Statement of Michael R. Baranowski
November 20, 2015	Docket No. 42121 Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., Reply to Supplemental and Compliance Evidence
July 18, 2016	Docket No. FD 35842 New England Central Railroad, Inc. -- Trackage Rights Order -- Pan Am Southern LLC, Pan Am Southern Reply Evidence, Verified Statement of Michael R. Baranowski
October 11, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comment of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
October 26, 2016	Ex Parte No. 711 (Sub-No. 1) Reciprocal Switching, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski
November 7, 2016	Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher

March 6, 2017	Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Supplemental Reply Evidence of CSX Transportation, Inc.
January 12, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Petition to Establish Conditions of Use and Compensation, Verified Statement of Michael R. Baranowski
July 16, 2018	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal, Verified Statement of Michael R. Baranowski
April 26, 2019	Docket No. 42144 North American Freight Car Association, et al v. Union Pacific Railroad Company, Verified Statement of Michael R. Baranowski
January 26, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Opening Statement on Compensation, Verified Statement of Michael R. Baranowski
January 29, 2021	Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher
April 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Reply Statement on Compensation, Verified Statement of Michael R. Baranowski
May 12, 2021	Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement on Compensation, Verified Statement of Michael R. Baranowski

Federal Courts

November 7, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Expert Report of Michael R. Baranowski
November 22, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Reply Expert Report of Michael R. Baranowski
December 21, 2017	Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Rebuttal Expert Report of Michael R. Baranowski

Arbitrations and Mediations

September 6, 2013	IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, Expert Report of Michael R. Baranowski
October 25, 2013	IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, Expert Reply Report of Michael R. Baranowski
January 1, 2014	IN JAMS ARBITRATION, Case No. 1220044715, Union Pacific Railroad Company v. BNSF Railway Company, BNSF Post-Argument Submission, Affidavit of Michael R. Baranowski

- April 14, 2017 American Arbitration Association Case No. 01-15-0004-4830 and 01-15-0004-4931, Arbitration Between FirstEnergy Generation LLC and CSX Transportation, Inc. & BNSF Railway Company, Expert Report of Michael R. Baranowski
- November 22, 2017 American Arbitration Association Case No. No. 01-16-0003-6208, CSXT Transportation, Inc. v. JEA and Florida Power & Light Co., Expert Report of Michael R. Baranowski
- January 26, 2018 American Arbitration Association Case No. No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Expert Report of Michael R. Baranowski
- February 16, 2018 American Arbitration Association Case No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Rebuttal Expert Report of Michael R. Baranowski
- February 23, 2018 American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski
- April 17, 2018 American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski
- June 22, 2018 JAMS REF #1100088262, BNSF Railway Company v. Union Pacific Railroad Company, Expert Report of Michael R. Baranowski
- March 25, 2019 American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski
- April 26, 2019 American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski
- January 18, 2021 American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Report of Michael R. Baranowski on Behalf of BNSF & NS
- February 5, 2021 American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Reply Report of Michael R. Baranowski on Behalf of BNSF & NS

Federal Energy Regulatory Commission

- November 20, 2019 Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony of Michael R. Baranowski on behalf of Colonial Pipeline
- March 20, 2020 Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony to Trial Staff of Michael R. Baranowski on behalf of Colonial Pipeline

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APPENDIX B

TABLE 1B
ORIGINATING AND TERMINATING UNITS FOR COUNTIES SERVED BY BOTH CN AND IANR

{{{

	CN	IANR	UP	CRANDIC
Black Hawk County				
Linn County				

}}}

TABLE 2B
INBOUND UNITS BY 2-DIGIT STCC AND TERMINATING CARRIER FOR COUNTIES SERVED BY BOTH CN AND IANR

{{{

2Digit STCC	CN	IANR	UP	CRANDIC

}}}

TABLE 3B
OUTBOUND UNITS BY 2-DIGIT STCC AND ORIGINATING CARRIER FOR COUNTIES SERVED BY BOTH CN AND IANR

{{{

2-Digit STCC	CN	IANR	UP	CRANDIC

}}}

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**TABLE 4B
INBOUND UNITS BY 2-DIGIT STCC AND TERMINATING CARRIER FOR COUNTIES SERVED BY
BOTH CN AND IANR FROM CN-SERVED STATES AND PROVINCES**

{{{

2-Digit STCC	CN	IANR	UP	CRANDIC

}}}

**TABLE 5B
OUTBOUND UNITS BY 2-DIGIT STCC AND ORIGINATING CARRIER FOR COUNTIES SERVED BY
BOTH CN AND IANR TO CN-SERVED STATES AND PROVINCES**

{{{

2Digit STCC	CN	IANR	UP	CRANDIC

}}}