

SERVICE DATE – SEPTEMBER 24, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. WB 20-23

REQUEST FOR WAYBILL DATA

Digest:¹ This decision denies an appeal of a ruling by the Director of the Office of Economics relating to access to the Confidential Carload Waybill Sample.

Decided: September 23, 2020

The North Carolina Soybean Producers Association (NC Soybean) appealed the ruling by the Director of the Board's Office of Economics (Director) denying NC Soybean's request for access to the Confidential Carload Waybill Sample (CCWS). For the reasons discussed below, the Board affirms the Director's ruling.

BACKGROUND

In a letter dated May 28, 2020, NC Soybean requested access to the "unmasked" CCWS data with Standard Transportation Commodity Codes (STCCs) beginning with 011 and 209 from the years 1990 to present, limited to movements terminating in Virginia, North Carolina, and South Carolina.² The request was processed as an "other user" request under 49 C.F.R. § 1244.9(c). NC Soybean stated that it intends to use the CCWS "[t]o accurately determine what grain basis in the state should look like" for soybeans. (Req. 1.) NC Soybean indicated that a better understanding of transportation costs to import soybeans by rail from other states would allow North Carolina soybean growers to determine whether "locally produced soybeans continue to represent [the] most cost-efficient option for local buyers." (*Id.*) Following publication of notice of the request in the Federal Register on June 3, 2020 (85 Fed. Reg. 34,274), the Association of American Railroads (AAR) timely filed an objection to release of the requested CCWS data, arguing that "[g]ranting NC Soybean access to the fundamental pricing structure of competitors so that their members can set prices is entirely inappropriate, especially when those figures are contained in private contracts." (AAR Objection 2.)

After considering the request and AAR's objections, the Director denied NC Soybean's request on June 24, 2020 (Director's Decision). The Director determined that the potential for

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Under the Board's regulations, railroads submitting waybill data are permitted to encrypt, or "mask," revenue associated with contract shipments to safeguard confidentiality. 49 C.F.R. § 1244.3(b).

competitive harm to soybean growers outside North Carolina from the disclosure of their confidential contract, rate, and other business information to competing North Carolina growers was significant and that disclosure could compromise competitively sensitive data. Director's Decision 1.

On June 25, 2020, NC Soybean timely appealed the Director's Decision. AAR filed a timely reply to the appeal in support of the Director's Decision on July 16, 2020.

DISCUSSION AND CONCLUSIONS

Parties appealing the Director's waybill determinations face a high burden. Pursuant to 49 C.F.R. § 1011.6(b), "[a]ppeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." The Board finds that NC Soybean has not demonstrated a clear error of judgment by the Director or manifest injustice flowing from his decision.

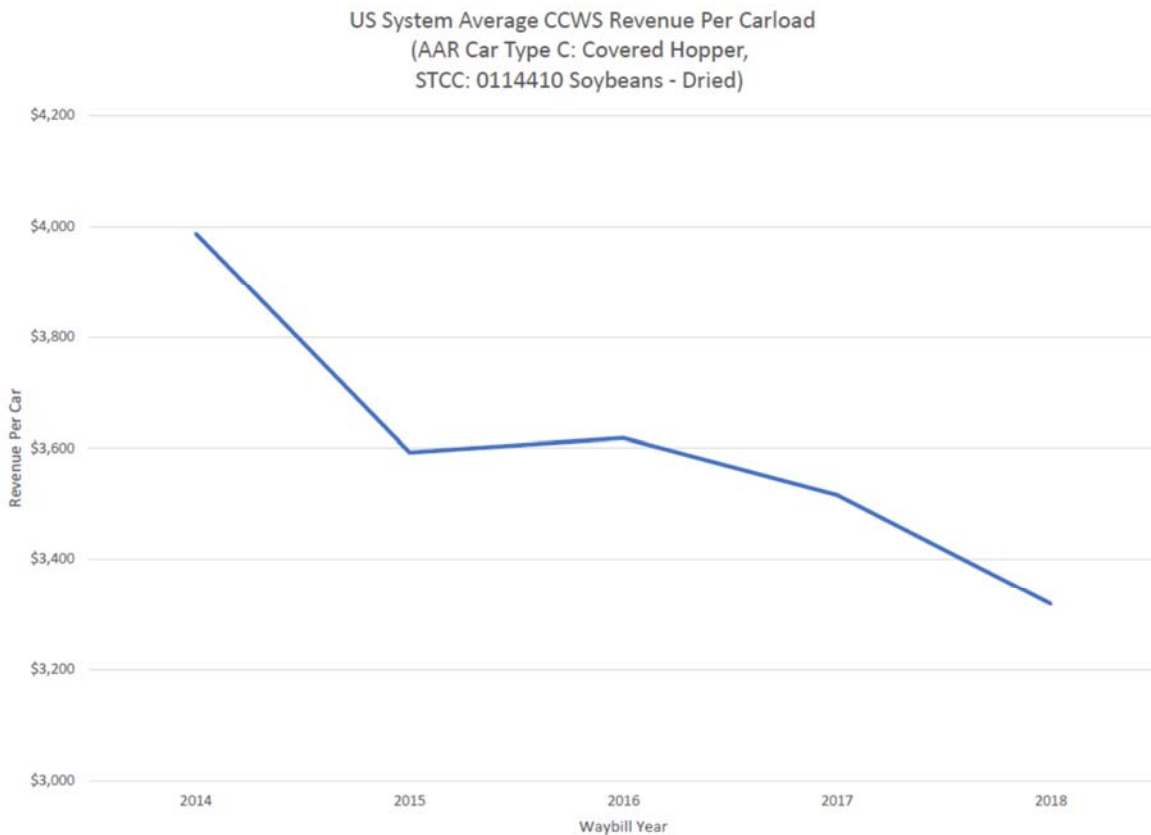
As the Director's Decision noted, the Board, and its predecessor, the Interstate Commerce Commission (ICC), have a long history of carefully protecting confidential information contained in the Waybill Sample. Indeed, the Board's governing statute clearly identifies the release of confidential information that may be detrimental to shippers or improperly disclose shipper business transactions to competitors of those shippers as a key concern. 49 U.S.C. § 11904. This type of data is exactly the information NC Soybean seeks in its waybill request: detailed confidential contract and shipment information from competing soybean growers located outside North Carolina. It was not a clear error in judgment or a manifest injustice for the Director to decline to permit the Waybill Sample to be used as a mechanism for one set of competitors to gain detailed, shipment-specific, confidential market intelligence about another set of competitors. Rather, the Director's Decision was consistent with Procedures on Release of Data from the ICC Waybill Sample, 4 I.C.C.2d 194, 198 (1987), where the ICC acknowledged that the type of data sought here is commercially sensitive for shippers.

NC Soybean argues that release of the confidential waybill information to NC Soybean would be appropriate because North Carolina growers could achieve "more favorable prices" but would not "undermine" competitor prices. (NC Soybean Appeal 1.) The Board cannot predict precisely how the data sought would be used or what its impact in the competitive market would be, including any impact on volumes demanded from different regions. It is clear, however, that NC Soybean believes that having such detailed data would enhance the competitive position of North Carolina growers. Such improvement for NC Soybean's members could certainly come at the expense of out-of-state growers. In any case, all shippers have an interest in the protection of their confidential business data from disclosure to competitors. See 49 U.S.C. § 11904.

NC Soybean also asserts that the Board has applied a discriminatory standard to NC Soybean because waybill access was previously granted to researchers at North Carolina State University who intended to conduct research concerning grain transportation that could benefit the livestock sector. (NC Soybean Appeal 1.) While academic researchers may, in appropriate circumstances, gain access to highly detailed information, they are not participants in the markets

they study, and they are prohibited from disclosing data unless it has been aggregated to protect confidential shipper and railroad information. Unlike NC Soybean, the researchers at North Carolina State University were not competitors of the growers whose data they sought nor would disclosure to such researchers result in the flow of highly detailed confidential business information from one group of competitors to another.

Although the Director's Decision denying access to the CCWS will be upheld, the Board wants to ensure that NC Soybean is aware of the broad range of economic data that the agency makes available to the public through its website. This economic data, which is not confidential, contains useful information about various rail markets, including agricultural commodities. For example, the Board publishes an annual Commodity Revenue Stratification Report, derived from the CCWS, that shows the revenues, variable costs, tons, and carloads by STCC, broken out at the two, five, and seven-digit STCC levels.³ The chart below illustrates one type of information available for soybeans at the seven-digit STCC level.



³ The Commodity Revenue Stratification Reports are available on the Board's website at www.stb.gov (under the "Reports & Data" tab, select "Economic Data," scroll down to "Data Submitted by Railroads," select the "Revenue & Earnings" tab, and scroll down to "Commodity Revenue Stratification Reports").

The Board also makes available on its website Quarterly and Annual Freight Commodity Statistics (QCS Reports) filed by the Class I railroads. These reports provide data by railroad for car loadings and total revenues by commodity code.⁴ NC Soybean is encouraged to contact the Board's Rail Customer and Public Assistance (RCPA) office for assistance in accessing and utilizing this information. RCPA may be reached at 202-245-0238 or rcpa@stb.gov.

It is ordered:

1. NC Soybean's appeal is denied.
2. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.

⁴ Freight Commodity Statistics are available on the Board's website (under the "Reports & Data" tab, select "Economic Data," scroll down to "Data Submitted by Railroads," select the "Carloads & Volumes" tab, and then, under the heading "Annual & Quarterly Freight Commodity Statistics," select the link to the reports).