

Surface Transportation Board
Washington, D.C. 20423-0001

Office of Economics

302964
ENTERED
Office of Proceedings
AUGUST 31, 2021
Part of
Public Record

August 27, 2021

Mr. Peter W. Denton
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, DC 20036-1795

Re: Waybill Request WB21-60 & FD 32760

Dear Mr. Denton:

The Surface Transportation Board (STB or Board) has received your request under 49 C.F.R. § 1244.9(b)(4) dated August 26, 2021 for permission for continued access to the confidential Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD 32760, BNSF Railway Company – Terminal Trackage Rights – Kansas City Southern Railway Company and Union Pacific Railroad Company, on behalf of BNSF Railway Company. Specifically, you request that your access to data granted pursuant to WB15-45 and WB20-45 be renewed. WB15-45 granted you access to the 1994-2013 unmasked costed waybill samples for UP, SP, BNSF, ATSF, and KCSR for all terminations and originations in Lake Charles (1995 BEA #86). WB20-45 granted you access to the 2017-2019 unmasked costed waybill samples for all traffic pertaining to UP, KCSR, and BNSF. Also, you were granted access to a limited subset of 2017-2019 data for the entire waybill sample as shown in Attachment A to your letter and the 1996-2016 unmasked costed waybill samples for all terminations and originations in Lake Charles (1995 BEA #86). You state the data in your request is needed to prepare verified statements for this proceeding.

Based on the explanations and justifications contained in your request, you will be authorized to access the requested data. Specifically, I will grant you, in accordance with 49 C.F.R. § 1244.9(b)(4), continued access to the data already in your possession under WB15-45 and WB20-45. These datasets may only be used for purposes of this proceeding. ***This approval becomes effective when signed agreements from the individuals listed below are received by the STB:***

- a) *Adrian Steel – Mayer Brown*
- b) *Peter Denton – Steptoe & Johnson*
- c) *Tara Woods – Steptoe & Johnson*
- d) *Michael Baranowski – FTI Consulting*
- e) *Benton Fisher – FTI Consulting*
- f) *Nathan Zebrowski – FTI Consulting*
- g) *Jude Ponnuthurai – FTI Consulting*
- h) *Naga Sai Achyuth Kundeti – FTI Consulting*

Waybill Agreement WB21-60

The expiration date for this agreement is September 30, 2022. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy copies of the data as described in item 7 of the agreement.

Several aspects of the CCWS limit the conclusions that may be drawn from analysis of the CCWS: 1) the CCWS is a sample, and 2) the CCWS is based on terminating shipments from relatively large carriers. Only those railroads with more than 4,500 annual terminating carloads are included in the sample. The limited sampling of small railroads may have a substantial effect on studies covering areas served predominately by non-sampled railroads. For additional information on the CCWS, *see Reference Guide* @ <https://prod.stb.gov/reports-data/waybill/> on the Board's website.

The rules for release of waybill data are codified at 49 C.F.R. § 1244.9. The CCWS contains confidential shipper and railroad data. As a result, the CCWS is commercially sensitive and has the potential to cause competitive harm to shippers and railroads if disclosed. Therefore, the following agreement must be signed, and a copy of the signature pages returned to the STB, before any waybill data can be used.

Your signature acknowledges your agreement to comply with the following:

1. You will use the CCWS data released to you solely for purposes of the proceeding identified above. Such purposes include any judicial review arising from that proceeding.
2. Absent permission from the STB, you shall make the information contained in the CCWS (including work product and analyses derived from the CCWS) available only to the individuals identified above. The STB may approve access for additional individuals for purposes of the proceeding. In general, such individuals must be outside counsel in this proceeding, transportation practitioners, and those individuals working with or assisting such counsel or practitioners who are not regular employees of the party represented, who have a need to know, review, or handle the CCWS for purposes of the proceeding, including testifying and consulting experts. Each such additional individual must review and sign this agreement and return a copy of the signature page to the STB.
3. Pleadings and evidence filed with the Board in the proceeding may contain CCWS data (including work product and analyses derived from the CCWS). Unless data in the pleadings and evidence are aggregated to the level of at least three shippers and will prevent the identification of an individual railroad, the pleadings and evidence must be filed with the Board under confidential filing procedures (both in e-filing and paper submissions). Such pleadings and evidence

Waybill Agreement WB21-60

should be appropriately marked to indicate that they contain confidential Waybill data and, if submitted in paper or on physical media, be in a package clearly marked on the outside “Highly Confidential Material: Contains Waybill Data.” Such pleadings will not be posted in the publicly available docket. A public version of the pleading and evidence that redacts unaggregated CCWS data should also be filed for posting in the public docket.

4. Pleadings and evidence (and underlying workpapers) containing CCWS data (including work product and analyses derived from the CCWS) may be disclosed only to outside counsel or other independent representatives for other parties to the proceeding who have signed an agreement with the Board that grants them access to the underlying CCWS data.
5. CCWS data may be disclosed to the reviewing court in briefs filed or oral argument made in connection with judicial review arising from the proceeding, but the party making such disclosure must take adequate steps to maintain the confidentiality of the data by filing pleadings under seal and seeking confidential treatment of the data at oral argument (and in any transcripts). Counsel who wish to access CCWS data for purposes of participating in judicial review arising from the proceeding must have signed an agreement with the Board that grants access to the data, and may be added pursuant to paragraph 2 above.
6. Except as provided in paragraph 4 above, you will refer any requests for CCWS data in your possession (including work product and analyses derived from the CCWS) to the STB for processing and will inform the requesting party of such referral to the STB. If you are compelled by law or order of a governmental or judicial body to release CCWS data, you shall notify the Board in writing within three days of any determination that CCWS data must be released, and in no event later than five days before the CCWS data is scheduled to be released.
7. In order to retain access to the CCWS beyond the expiration date specified above, you must submit a written request for an annual extension of the agreement no later than thirty days prior to the expiration date and the renewal request must be approved by the Office of Economics. **If an annual agreement is not signed and approved, you must certify by no later than the expiration date that all CCWS data (including all work product and analyses derived from the CCWS) obtained under this agreement has been destroyed or returned to the STB.** Notwithstanding the foregoing, outside counsel (but not outside consultants or transportation practitioners) for each party may retain file copies of all pleadings and evidence filed with the Board and file copies of all work product. The non-disclosure requirements of this agreement shall continue to apply to such file copies for as long as they are retained.

Waybill Agreement WB21-60

8. Failure to request an extension (if necessary), or destroy or return CCWS data when required, may prevent any future release of CCWS data to you. Violations of this agreement may subject you to sanctions by the Board.

After all parties have signed and returned this agreement, the extension is granted.

Sincerely,

William Brennan

William Brennan, PhD
Chief Economist & Director
Office of Economics

Waybill Agreement WB21-60

I have read and understand the conditions for release of the CCWS data. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. No later than thirty days before the agreement expires, I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy all CCWS data and certify that I have done so. I have the authority to sign this agreement.

By: Adrian Steel

/s/ Adrian Steel

Signature

Waybill Agreement WB21-60

I have read and understand the conditions for release of the CCWS data. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. No later than thirty days before the agreement expires, I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy all CCWS data and certify that I have done so. I have the authority to sign this agreement.

By: Peter Denton

/s/ Peter Denton

Signature

Waybill Agreement WB21-60

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By: Tara Woods

/s/ Tara Woods

Signature

Waybill Agreement WB21-60

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By: Michael Baranowski

/s/ Michael Baranowski

Signature

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By: Benton Fisher

/s/ Benton Fisher

Signature

Waybill Agreement WB21-60

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By: Nathan Zebrowski

/s/ Nathan Zebrowski

Signature

Waybill Agreement WB21-60

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By: Jude Ponnuthurai

/s/ Jude Ponnuthurai

Signature

Waybill Agreement WB21-60

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By: Naga Sai Achyuth Kundeti

/s/ Naga Sai Achyuth Kundeti

Signature

Peter W. Denton
202 429 6445
pdenton@steptoe.com

Steptoe

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

August 26, 2021

Via Email

Director William Brennan
Office of Economics
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: **Finance Docket No. 32760 (Sub-No. 46)**
BNSF Railway Company – Terminal Trackage Rights – Kansas City
Southern Railway Company and Union Pacific Railroad Company
Waybill Data Access WB20-45 and WB15-45 Annual Extension
Request

Dear Director Brennan:

Pursuant to 49 C.F.R. § 1244.9(b)(4), Steptoe & Johnson LLP (“Steptoe”), along with Mayer Brown LLP (“Mayer Brown”), both of which are outside counsel for BNSF Railway Company (“BNSF”) in the above-referenced proceeding, respectfully request an extension of its access to the confidential Carload Waybill Sample (“CCWS”) data under WB20-45 and WB15-45.

WB20-45 consists of (1) the 100% carload waybill data for Union Pacific Railroad Company (“UP”), The Kansas City Southern Railway Company (“KCSR”), and BNSF for 2014-19, (2) the limited subset of data for the entire waybill sample as shown in Attachment A for 2017-19, and (3) the 1996-2016 unmasked costed waybill samples for all terminations and originations in Lake Charles (1995 BEA #86). BNSF also respectfully requests an extension of WB15-45, granting approval of BNSF’s request to access certain carload waybill data for UP, Southern Pacific (“SP”), and KCSR for the years 1994 through 2013. No additional data is being requested at this time.

Access to WB20-45 and WB15-45 was previously approved until September 30, 2021 pursuant to the enclosed STB authorization letter dated September 11, 2020 (Attachment B). BNSF's counsel and consultants are thus timely requesting an extension of access to this data.

The purpose of this request is to allow BNSF's counsel and its consultants to evaluate relevant issues as the proceeding is still pending. Access to the above-described CCWS data is the only practicable way for BNSF's counsel and consultants to evaluate certain issues relevant to this proceeding. Obtaining traffic data from other sources would be burdensome, costly, and impractical.

Continuation of access is being requested for the following outside counsel and consultants (please note that these are the same individuals listed in the September 11, 2020 STB authorization letter):

Adrian Steel (Mayer Brown)
Peter Denton (Steptoe)
Tara Woods (Steptoe)
Michael Baranowski (FTI Consulting)
Benton Fisher (FTI Consulting)
Nathan Zebrowski (FTI Consulting)
Jude Ponnuthurai (FTI Consulting)
Naga Sai Achyuth Kundeti (FTI Consulting)
Alex Ledoux (FTI Consulting)

If additional outside counsel or consultants are retained, we will amend our request to add such individuals. Any reports generated by outside counsel or consultants will not be disclosed to any party unless aggregated to at least the three FSAC rule in accordance with 49 C.F.R. § 1244.9(f).

We understand the limitations of the CCWS files regarding revenues and accuracy. We also understand that the data includes confidential shipper and carrier information. We will treat this data as highly confidential, and we will make the data available only to certain of our attorneys and members of our staff in accordance with 49 C.F.R. § 1244.9(b)(4). Any Waybill data disclosed to any other party not specifically covered herein, however, will be aggregated to the three FSAC rule according to 49 C.F.R. § 1244.9(f).

We will undertake all efforts to ensure that all those with access to the Waybill data will comply with the confidentiality requirements established in the

Director William Brennan
August 26, 2021
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Steptoe

regulations. We understand that we may be required to sign an agreement before continuing to utilize the requested CCWS data. We will comply with the Board's confidentiality requirements, and no person, other than those listed here, will be entitled to access and review the raw data contained within the Waybill sample.

Your prompt attention to this request is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter W. Denton', with a long horizontal flourish extending to the right.

Peter W. Denton

Enclosures

cc: Adrian L. Steel, Jr., Mayer Brown LLP

Attachment A

Waybill Sample Fields Required

Variable Number	Variable Name	Number of Positions		Columns	Required For All Records	Required Only for Records in Which UP, BNSF or KCS Appear
1	Unique Serial Number	6	N	1–6	Y	
2	Waybill Number	6	N	7–12	Y	
3	Waybill Date (mmddccyy)	8	N	13–20	Y	
4	Accounting Period (mmccyy)	6	N	21–26	Y	
5	Number of Carloads	4	N	27–30	Y	
6	Car Initial	4	A	31–34	Y	
7	Car Number	6	N	35–40	Y	
8	Intermodal TOFC/COFC Service Code	3	A/N	41–43	Y	
9	Number of TOFC/COFCs	4	N	44–47	Y	
10	TOFC/COFC Initial	4	A	48–51	Y	
11	TOFC/COFC Number	6	N	52–57	Y	
12	Commodity Code (STCC)	7	N	58–64	Y	
13	Billed Weight	9	N	65–73	Y	
14	Actual Weight	9	N	74–82	Y	
15	Freight Revenue	9	N	83–91		Y
16	Transit Charges	9	N	92–100		Y
17	Miscellaneous Charges	9	N	101–109		Y
18	Inter/Intra State Code	1	N	110	Y	
19	Transit Code	1	N	111	Y	
20	All Rail/Intermodal Code	1	N	112	Y	
21	Type Move (import/export)	1	N	113	Y	
22	Type Move Via Water	1	N	114	Y	
23	Substituted Truck for Rail	1	N	115	Y	
24	Shortline Miles	4	N	116–119	Y	
25	Rebill Code	1	N	120	Y	
26	Stratum Identification	1	N	121	Y	
27	Subsample Code	1	N	122	Y	
28	Intermodal Equipment Flag	1	N	123	Y	
29	Calculated Rate Flag	1	N	124	Y	
30	Waybill Identifier (MRI only)	25	A/N	125–149		
31	Reporting Railroad	3	N	150–152	Y	
32	Origin FSAC	5	N	153–157	Y	
33	Origin Railroad	3	N	158–160	Y	
34	Interchange #1 Rule 260	5	A	161–165	Y	
35	First Bridge RR	3	N	166–168	Y	
36	Interchange #2 Rule 260	5	A	169–173	Y	

Variable Number	Variable Name	Number of Positions		Columns	Required For All Records	Required Only for Records in Which UP, BNSF or KCS Appear
38	Interchange #3 Rule 260	5	A	177–181	Y	
39	Third Bridge RR	3	N	182–184	Y	
40	Interchange #4 Rule 260	5	A	185–189	Y	
41	Fourth Bridge RR	3	N	190–192	Y	
42	Interchange #5 Rule 260	5	A	193–197	Y	
43	Fifth Bridge RR	3	N	198–200	Y	
44	Interchange #6 Rule 260	5	A	201–205	Y	
45	Sixth Bridge RR	3	N	206–208	Y	
46	Interchange #7 Rule 260	5	A	209–213	Y	
47	Termination Railroad	3	N	214–216	Y	
48	Termination FSAC	5	N	217–221	Y	
49	Population Count	8	N	222–229	Y	
50	Stratum Count	6	N	230–235	Y	
51	Reporting Period Length	1	N	236		
52	Car Owner's Mark	4	A	237–240		
53	Car Lessee's Mark	4	A	241–244		
54	Car Capacity	5	N	245–249	Y	
55	Nominal Car Capacity - Expired	3	N	250–252	Y	
56	Tare Weight of Car	4	N	253–256	Y	
57	Outside Length	5	N	257–261		
58	Outside Width	4	N	262–265		
59	Outside Height	4	N	266–269		
60	Extreme Outside Height	4	N	270–273		
61	Type of Wheel Bearings and Brakes	1	A	274		
62	Number of Axles	1	A/N	275		
63	Draft Gear	2	N	276–277		
64	Number of Articulated Units	1	N	278		
65	Pool Code Number	7	N	279–285		
66	AAR Equipment Type Code	4	A/N	286–289	Y	
67	Mechanical Designation Code	4	A	290–293	Y	
68	Licensing State (TOFC)	2	A	294–295		
69	Maximum Weight on Rail	3	N	296–298		
70	Origin SPLC	6	N	299–304	Y	
71	Destination SPLC	6	N	305–310	Y	
72	STCC w/o Hazardous (49) Codes	7	N	311–317	Y	
73	Origin Railroad Alpha	4	A	318–321	Y	
74	First Interchange RR Alpha	4	A	322–325	Y	
75	Second Interchange RR Alpha	4	A	326–329	Y	
76	Third Interchange RR Alpha	4	A	330–333	Y	
77	Fourth Interchange RR Alpha	4	A	334–337	Y	
78	Fifth Interchange RR Alpha	4	A	338–341	Y	
79	Sixth Interchange RR Alpha	4	A	342–345	Y	

Variable Number	Variable Name	Number of Positions		Columns	Required For All Records	Required Only for Records in Which UP, BNSF or KCS Appear
81	Junction Frequency	1	N	350	Y	
82	Theoretical Expansion Factor	3	N	351–353	Y	
83	Routing Error Flag	1	A	354	Y	
84	STB Car Type	2	N	355–356	Y	
85	AAR/RAILINC Error Codes	6	N	357–362	Y	
86	Car Ownership Category	1	A	363		
87	AAR Trailer/Container Equipment Type Code	4	A/N	364–367		
88	Deregulation Date (ccyymmdd)	8	N	368–375		
89	Deregulation Flag	1	A	376		
90	Service Type	1	N	377		
91	Expanded Carloads	6	N	378–383	Y	
92	Billed Weight in Tons	7	N	384–390	Y	
93	Expanded Tons	8	N	391–398	Y	
94	Expanded Trailer/Container Count	6	N	399–404	Y	
95	Expanded Total Revenue	10	N	405–414		Y
96	Origin Railroad Split Revenue	10	N	415–424		Y
97	First Interchange RR Split Revenue	10	N	425–434		Y
98	Second Interchange RR Split Revenue	10	N	435–444		Y
99	Third Interchange RR Split Revenue	10	N	445–454		Y
100	Fourth Interchange RR Split Revenue	10	N	455–464		Y
101	Fifth Interchange RR Split Revenue	10	N	465–474		Y
102	Sixth Interchange RR Split Revenue	10	N	475–484		Y
103	Termination Railroad Split Revenue	10	N	485–494		Y
104	First Railroad Distance	5	N	495–499	Y	
105	Second Railroad Distance	5	N	500–504	Y	
106	Third Railroad Distance	5	N	505–509	Y	
107	Fourth Railroad Distance	5	N	510–514	Y	
108	Fifth Railroad Distance	5	N	515–519	Y	
109	Sixth Railroad Distance	5	N	520–524	Y	
110	Seventh Railroad Distance	5	N	525–529	Y	
111	Termination Railroad Distance	5	N	530–534	Y	
112	Total Distance	5	N	535–539	Y	
113	Origin State Alpha	2	A	540–541	Y	
114	First Junction State Alpha	2	A	542–543	Y	
115	Second Junction State Alpha	2	A	544–545	Y	
116	Third Junction State Alpha	2	A	546–547	Y	
117	Fourth Junction State Alpha	2	A	548–549	Y	
118	Fifth Junction State Alpha	2	A	550–551	Y	
119	Sixth Junction State Alpha	2	A	552–553	Y	
120	Seventh Junction State Alpha	2	A	554–555	Y	
121	Termination State Alpha	2	A	556–557	Y	
122	Origin BEA Area	3	N	558–560	Y	

Variable Number	Variable Name	Number of Positions		Columns	Required For All Records	Required Only for Records in Which UP, BNSF or KCS Appear
123	Termination BEA Area	3	N	561–563	Y	
124	Origin FIPS Code	5	N	564–568		
125	Termination FIPS Code	5	N	569–573		
126	Origin Freight Area	2	N	574–575		
127	Termination Freight Area	2	N	576–577		
128	Origin Freight Territory	1	N	578		
129	Termination Freight Territory	1	N	579		
130	Origin SMSA	4	N	580–583		
131	Termination SMSA	4	N	584–587		
132	Origin NET3 Number	5	N	588–592		
133	First Junction NET3 Number	5	N	593–597		
134	Second Junction NET3 Number	5	N	598–602		
135	Third Junction NET3 Number	5	N	603–607		
136	Fourth Junction NET3 Number	5	N	608–612		
137	Fifth Junction NET3 Number	5	N	613–617		
138	Sixth Junction NET3 Number	5	N	618–622		
139	Seventh Junction NET3 Number	5	N	623–627		
140	Termination NET3 Number	5	N	628–632		
141	State Through Indicators (1 = State Used in Waybill Routing)	52	N	633–684	Y	
142	International Harmonized Code	12	A	685–696		
143	Standard Industrial Classification	4	A	697–700		
144	International S. I. C.	4	A	701–704		
145	Dominion of Canada Code	3	A	705–707	Y	
146	CS54 Group Code	2	A	708–709		
147	Origin Freight Station Type	4	A	710–713	Y	
148	Destination Freight Station Type	4	A	714–717	Y	
149	Origin Freight Station Rating ZIP	9	N	718–726	Y	
150	Dest. Freight Station Rating ZIP	9	N	727–735	Y	
151	Origin Rate Base SPLC	9	A	736–744	Y	
152	Destination Rate Base SPLC	9	A	745–753	Y	
153	Origin Switch Limit SPLC	9	A	754–762	Y	
154	Destination Switch Limit SPLC	9	A	763–771	Y	
155	Origin Customs Flag	1	A	772		
156	Destination Customs Flag	1	A	773		
157	Origin Grain Flag	1	A	774		
158	Destination Grain Flag	1	A	775		
159	Origin Automobile Ramp Facility Code	1	A	776		
160	Dest. Automobile Ramp Facility Code	1	A	777		
161	Origin Intermodal Flag	1	A	778		
162	Destination Intermodal Flag	1	A	779		
163	Transborder Flag	1	N	780	Y	

Variable Number	Variable Name	Number of Positions		Columns	Required For All Records	Required Only for Records in Which UP, BNSF or KCS Appear
164	Origin Railroad Country Code	2	A	781-782		
165	First Interchange Railroad Country Code	2	A	783-784		
166	Second Interchange Railroad Country Code	2	A	785-786		
167	Third Interchange Railroad Country Code	2	A	787-788		
168	Fourth Interchange Railroad Country Code	2	A	789-790		
169	Fifth Interchange Railroad Country Code	2	A	791-792		
170	Sixth Interchange Railroad Country Code	2	A	793-794		
171	Termination Railroad Country Code	2	A	795-796		
172	Fuel Surcharge	9	N	797-805		Y
173	Blank (Space reserved for future changes)	13	A/N	806-818		
174	Origin Census Region	4	A	819-822		
175	Termination Census Region	4	A	823-826		
176	Exact Expansion Factor	7	N	827-833		Y
177	Total Variable Cost	8	N	834-841		Y
178	Railroad 1 Variable Cost	8	N	842-849		Y
179	Railroad 2 Variable Cost	8	N	850-857		Y
180	Railroad 3 Variable Cost	8	N	858-865		Y
181	Railroad 4 Variable Cost	7	N	866-872		Y
182	Railroad 5 Variable Cost	7	N	873-879		Y
183	Railroad 6 Variable Cost	7	N	880-886		Y
184	Railroad 7 Variable Cost	7	N	887-893		Y
185	Railroad 8 Variable Cost	7	N	894-900		Y

Attachment B

Surface Transportation Board ***Washington, D.C. 20423-0001***

Office of Economics

September 11, 2020

Mr. Peter W. Denton
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, DC 20036-1795

Re: Waybill Request WB20-45 & FD 32760

Dear Mr. Denton:

The Surface Transportation Board (STB or Board) has received your request under 49 C.F.R. § 1244.9(b)(4) dated September 10, 2020 for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD 32760, BNSF Railway Company – Terminal Trackage Rights – Kansas City Southern Railway Company and Union Pacific Railroad Company, on behalf of BNSF Railway Company. Specifically, you request that your access to data granted pursuant to WB15-45 be renewed and expanded to include access to the 2014-2019 unmasked costed waybill samples for all traffic pertaining to UP, KCSR, and BNSF. In addition, you requested a limited subset of 2017-2019 data for the entire waybill sample as shown in Attachment A to your letter. Also, you request the 1996-2016 unmasked costed waybill samples for all terminations and originations in Lake Charles (1995 BEA #86). WB15-45 granted you access to the 1994-2013 unmasked costed waybill samples for UP, SP, BNSF, ATSF, and KCSR for all terminations and originations in Lake Charles (1995 BEA #86). You state the data in your request is needed to prepare verified statements for this proceeding.

Based on the explanations and justifications contained in your request, you will be authorized to access the requested data. Specifically, I will grant you, in accordance with 49 C.F.R. § 1244.9(b)(4), continued access to the data already in your possession under WB15-45. In addition, you will be granted access to the 2014-2019 unmasked costed waybill samples for all traffic pertaining to UP, KCSR, and BNSF. Also, you are granted access to a limited subset of 2017-2019 data for the entire waybill sample as shown in Attachment A to your letter and the 1996-2016 unmasked costed waybill samples for all terminations and originations in Lake Charles (1995 BEA #86). The 2019 unmasked costed waybill sample will be released once it becomes available. These datasets may only be used for purposes of this proceeding. ***This approval becomes effective when signed agreements from the individuals listed below are received by the STB:***

- a) *Adrian Steel – Mayer Brown*
- b) *Peter Denton – Steptoe & Johnson*
- c) *Tara Woods – Steptoe & Johnson*

- d) Michael Baranowski – FTI Consulting
- e) Benton Fisher – FTI Consulting
- f) Nathan Zebrowski – FTI Consulting
- g) Jude Ponnuthurai – FTI Consulting
- h) Naga Sai Achyuth Kundeti – FTI Consulting
- i) Alex Ledoux – FTI Consulting

The expiration date for this agreement is September 30, 2021. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy copies of the data as described in item 7 of the agreement.

Several aspects of the CCWS limit the conclusions that may be drawn from analysis of the CCWS: 1) the CCWS is a sample, and 2) the CCWS is based on terminating shipments from relatively large carriers. Only those railroads with more than 4,500 annual terminating carloads are included in the sample. The limited sampling of small railroads may have a substantial effect on studies covering areas served predominately by non-sampled railroads. For additional information on the CCWS, see *Reference Guide* @ <https://prod.stb.gov/reports-data/waybill/> on the Board's website.

The rules for release of waybill data are codified at 49 C.F.R. § 1244.9. The CCWS contains confidential shipper and railroad data. As a result, the CCWS is commercially sensitive and has the potential to cause competitive harm to shippers and railroads if disclosed. Therefore, the following agreement must be signed, and a copy of the signature pages returned to the STB, before any waybill data can be used.

Your signature acknowledges your agreement to comply with the following:

1. You will use the CCWS data released to you solely for purposes of the proceeding identified above. Such purposes include any judicial review arising from that proceeding.
2. Absent permission from the STB, you shall make the information contained in the CCWS (including work product and analyses derived from the CCWS) available only to the individuals identified above. The STB may approve access for additional individuals for purposes of the proceeding. In general, such individuals must be outside counsel in this proceeding, transportation practitioners, and those individuals working with or assisting such counsel or practitioners who are not regular employees of the party represented, who have a need to know, review, or handle the CCWS for purposes of the proceeding, including testifying and consulting experts. Each such additional individual must review and sign this agreement and return a copy of the signature page to the STB.

3. Pleadings and evidence filed with the Board in the proceeding may contain CCWS data (including work product and analyses derived from the CCWS). Unless data in the pleadings and evidence are aggregated to the level of at least three shippers and will prevent the identification of an individual railroad, the pleadings and evidence must be filed with the Board under confidential filing procedures (both in e-filing and paper submissions). Such pleadings and evidence should be appropriately marked to indicate that they contain confidential Waybill data and, if submitted in paper or on physical media, be in a package clearly marked on the outside “Highly Confidential Material: Contains Waybill Data.” Such pleadings will not be posted in the publicly available docket. A public version of the pleading and evidence that redacts unaggregated CCWS data should also be filed for posting in the public docket.
4. Pleadings and evidence (and underlying workpapers) containing CCWS data (including work product and analyses derived from the CCWS) may be disclosed only to outside counsel or other independent representatives for other parties to the proceeding who have signed an agreement with the Board that grants them access to the underlying CCWS data.
5. CCWS data may be disclosed to the reviewing court in briefs filed or oral argument made in connection with judicial review arising from the proceeding, but the party making such disclosure must take adequate steps to maintain the confidentiality of the data by filing pleadings under seal and seeking confidential treatment of the data at oral argument (and in any transcripts). Counsel who wish to access CCWS data for purposes of participating in judicial review arising from the proceeding must have signed an agreement with the Board that grants access to the data, and may be added pursuant to paragraph 2 above.
6. Except as provided in paragraph 4 above, you will refer any requests for CCWS data in your possession (including work product and analyses derived from the CCWS) to the STB for processing and will inform the requesting party of such referral to the STB. If you are compelled by law or order of a governmental or judicial body to release CCWS data, you shall notify the Board in writing within three days of any determination that CCWS data must be released, and in no event later than five days before the CCWS data is scheduled to be released.
7. In order to retain access to the CCWS beyond the expiration date specified above, you must submit a written request for an annual extension of the agreement no later than thirty days prior to the expiration date and the renewal request must be approved by the Office of Economics. **If an annual agreement is not signed and approved, you must certify by no later than the expiration date that all CCWS data (including all work product and analyses derived from the CCWS) obtained under this agreement has been destroyed or returned to the**

Waybill Agreement WB20-45

STB. Notwithstanding the foregoing, outside counsel (but not outside consultants or transportation practitioners) for each party may retain file copies of all pleadings and evidence filed with the Board and file copies of all work product. The non-disclosure requirements of this agreement shall continue to apply to such file copies for as long as they are retained.

8. Failure to request an extension (if necessary), or destroy or return CCWS data when required, may prevent any future release of CCWS data to you. Violations of this agreement may subject you to sanctions by the Board.

After all parties have signed and returned this agreement, please contact Mr. Dusenberry (202) 245-0319 to make the necessary arrangements to have a copy of the data sent to you. The STB will provide the data by email through file transfer protocol. Prior payment of processing and mailing cost of **\$749** (\$200 processing plus \$61 per signature) is required. Payment can be made through the Board's electronic payment system, Pay.gov. Your payment through Pay.gov will generate a unique Pay.gov transaction number, which you will need to provide with your signed agreement. Pay.gov accepts payment through bank accounts, credit cards, debit cards with a MasterCard or Visa logo, and digital wallet. Payment can also be made directly to the Board via check or money order.

Sincerely,

William Brennan

William Brennan
Director
Office of Economics

To: [Dusenberry, Alexander](#)
Cc: [Denton, Peter](#)
Subject: RE: FD 32760 (Sub-No. 46) - BNSF Waybill Data Access Extension Request Filing
Date: Tuesday, August 31, 2021 11:41:49 AM
Attachments: [WB21-60 Steptoe-BNSF Ext Approval Letter FD32760 SignedByDir-c2.pdf](#)

Hi Alex,

Following up on our phone call. The individual who needs to be removed from the approval letter is Alex Ledoux. Mr. Ledoux is no longer employed at FTI Consulting.

Thanks!

Tara

Tara Woods

Associate

twoods@steptoe.com

+1 508 901 1013 mobile | +1 202 429 8140 office

+1 202 429 3902 fax

Steptoe

Steptoe & Johnson LLP

1330 Connecticut Avenue, NW | Washington, DC 20036

www.steptoe.com