

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

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Office of Economics

June 15, 2022

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Re: Waybill Request WB22-29

I have approved expanded access to the Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD 36500, Canadian Pacific Railway Limited, Et al. – Control – Kansas City Southern, et al, on behalf of CSX Transportation (CSXT). Specifically, you are granted access, in accordance with 49 C.F.R. § 1244.9(b)(4), to the 2006-2014 and 2021 CCWSs for all records. The 2021 costed waybill sample will be released to you once it becomes available. These datasets may only be used for purposes of this proceeding. See 49 C.F.R. § 1244.9(b)(4)(v).

Also, I have approved the addition of Ruben Brown of Harkins Cunningham to the waybill access letter in WB22-29.

- Ruben Brown – Harkins Cunningham

William Brennan

William Brennan, PhD
Chief Economist & Director
Office of Economics

Waybill Agreement WB22-29

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: Ruben Brown

Ruben Brown

Signature

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June 9, 2022

VIA-E-MAIL

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

Re: *Finance Docket No. 36500, Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc. – Control – Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company*

Dear Director Brennan:

I write on behalf of CSX Transportation (“CSXT”), which is a participant in the above-captioned proceeding.

Pursuant to 49 CFR § 1244.9(b)(4), we hereby request that CSXT’s outside counsel and consultants in the above-referenced proceeding be authorized to obtain and use certain confidential STB Waybill Sample data. Those outside counsel and consultants, none of whom is a regular employee of CSXT, are the following:

1. Paul A. Cunningham of Harkins Cunningham LLP (“HC”);
2. Neill Kling of HC;
3. Anne Sullivan of HC;
4. Jill Collins of HC;
5. Brett Chapdelaine of HC;
6. Eitan Ezra of HC;
7. Ruben Brown of HC;
8. Kent A. Gardiner of Crowell and Moring LLP (“Crowell”);
9. Ryan Tisch of Crowell;
10. Luke Van Houwelingen of Crowell;

11. Drake Morgan of Crowell;
12. Connor Ahearn of Crowell;
13. Louis E. Gitomer of the Law Offices of Louis E. Gitomer, LLC;
14. Dr. Julie Carey of NERA Economic Consulting (“NERA”);
15. Edward Lannan of NERA;
16. Al Bremser of NERA;
17. Ethan Caspi of NERA;
18. Julia Williams of NERA;
19. Ramsey Shehadeh of NERA;
20. Robert Lauer of NERA;
21. Johannes Mattke of NERA;
22. Wilson Gubernick of NERA;
23. Bharat Ramkrishnan of NERA;
24. Heiner Lindenlaub of NERA;
25. Yejin Ko of NERA; and
26. Jacob Carrasco of NERA.

In addition to the data already provided in connection with WB22-29, we respectfully request access to the confidential carload waybill sample data for the period 2006 through 2014 (including all records, all fields, and confidential unmasked revenues) for all traffic (“STB Waybill Sample”). We also request access to comparable data for 2021 for both railroads when it becomes available. We understand that access to these data will be granted pursuant to the terms of a protective order, solely for the purposes of this proceeding and any related litigation, and only after execution of appropriate confidentiality undertakings. In accordance with 49 CFR § 1244.9(b)(1), any evidence drawn from the STB Waybill Sample will remain confidential and will be submitted only to the Board unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad.

The purpose of this request is to allow CSXT’s counsel and consultants to accurately assess claims made in the ongoing Canadian Pacific and Kansas City Southern (“KCS”) transaction proceeding¹ and associated sub-dockets. As the only single source of the data permitting a complete analysis of these issues, the STB Waybill Sample is essential for CSXT, through its outside counsel and consultants, to verify propositions in the market and traffic

¹ STB Finance Docket No. 36500, *Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc. – Control – Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company*.

impact analyses made by Canadian Pacific/KCS (“Applicants”) in their Application² and by Norfolk Southern (“NS”) in its February 28, 2022, Comments and Responsive Application,³ and the validity of the methodology and assumptions used in those analyses; and to ensure full review of the potential competitive impacts of the transactions proposed by Applicants and NS.

This type of waybill access is routinely granted in proceedings such as this one.

At this time, access is being requested for the parties listed above. If additional consultants or counsel are retained, we will amend our request to add such individuals. Any strategic reports generated by HC or other counsel, Professor Carey, or NERA will not be disclosed to any party unless aggregated to at least the three FSAC rule in accordance with 49 CFR § 1244.9(f).

We understand the limitations of the waybill 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 CFR § 1244.9(f). Any waybill data disclosed to any other party not specifically covered herein, however, will be aggregated to the three FSAC rule according to 49 CFR § 1244.9(f).

We will undertake all efforts to ensure that those with access to the STB Waybill Sample will comply with the confidentiality requirements established in the regulations. We understand that we will be required to sign an agreement before any waybill data may be used. 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 STB Waybill Sample.

Please let me know the appropriate fee, calculated pursuant to 49 CFR § 1002.2(f)(98), and how it can be paid. Your prompt attention to this request is appreciated.

² Finance Docket no. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern*, CP-25/KCS-13 (Application), October 29, 2021.

³ Finance Docket no. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern*, NS-8/NS-9 (Responsive Application of Norfolk Southern Railway Company/Comments of Norfolk Southern Railway Company and Request for Conditions), February 28, 2022; and Finance Docket no. 36500_5, NS-9 (Responsive Application of Norfolk Southern Railway Company), February 28, 2022.

Respectfully submitted,

/s/ Paul A. Cunningham

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Dated: June 9, 2022