

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

Office of Economics

June 23, 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 2000-2005 CCWSs for all records. These datasets may only be used for purposes of this proceeding. See 49 C.F.R. § 1244.9(b)(4)(v).

Francis X. O'Connor, Jr.

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June 22, 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 2000 through 2005 (including all records, all fields, and confidential unmasked revenues) for all traffic (“STB Waybill Sample”). 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 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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Attorneys for CSX Transportation Inc.,

Dated: June 22, 2022