

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

304890

Office of Economics

ENTERED
Office of Proceedings
June 30, 2022
Part of
Public Record

June 24, 2022

Ms. Samantha Hynes
Sullivan & Cromwell LLP
1700 New York Avenue, N.W.
Washington, DC 20006

Re: Waybill Request WB22-34 & FD36500

Dear Ms. Samantha Hynes:

The Surface Transportation Board (STB or Board) has received your June 23, 2022 extension request, filed on behalf of Applicants Canadian Pacific and Kansas City Southern for permission to retain access to the confidential Carload Waybill Sample (CCWS) data covered by your access letter in WB21-24. You seek approval for continued use of the data under 49 C.F.R. § 1244.9(b)(4) in connection with FD 36500, Canadian Pacific Railway Limited, Et al. – Control – Kansas City Southern, et al, Specifically, you request extended access to the unmasked 2015-2020 and 2004-2006 CCWSs for all records and fields.

Your extension is granted for continued access to the data in connection with the above proceedings. ***This approval becomes effective when signed agreements from the individuals listed below are received by the STB:***

- a) *Law Office of David L. Meyer*
- b) *Sullivan & Cromwell LLP*
- c) *Baker & Miller PLLC*
- d) *Mr. W. Robert Majure – Cornerstone Research*
- e) *Mr. Brad T. Howells – Cornerstone Research*
- f) *Mr. Charis Katsiardis – Cornerstone Research*
- g) *Mr. Lorenzo Michelozzi – Cornerstone Research*
- h) *Ms. Ashley B. Vissing – Cornerstone Research*
- i) *Mr. Joseph Young – Cornerstone Research*
- j) *Mr. Michael Baranowski – FTI Consulting*
- k) *Mr. Prabakaran Ponnuthurai – FTI Consulting*
- l) *Mr. Shane Vyskocil – FTI Consulting*
- m) *Mr. Nathan Zebrowski – FTI Consulting*
- n) *Mr. Mitesh Vaidya – FTI Consulting*
- o) *Mr. Noah Yosif – FTI Consulting*
- p) *Mr. Bengt Muten – IHS Markit*
- q) *Mr. Paul Bingham – IHS Markit*
- r) *Mr. Jing K. Goh – Cornerstone Research*

- s) *Ms. Yanping Liu – Cornerstone Research*
- t) *Ms. Jingyi Cui – Cornerstone Research*
- u) *Mr. Yixin (Ethan) Chen – Cornerstone Research*
- v) *Mr. Matthew Malir – Cornerstone Research*
- w) *Ms. Helena Bauer-Mitterlehner – Cornerstone Research*

The expiration date for this agreement is June 30, 2023. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy all 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 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.

Waybill Agreement WB22-34

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 the extension is granted

Sincerely,

Francis X. O'Connor, Jr.

Francis O'Connor
Acting Director
Office of Economics

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: Law Office of David L. Meyer


Signature

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: Sullivan & Cromwell LLP

A handwritten signature in black ink, consisting of a stylized 'A' followed by a series of loops and a long horizontal stroke.

Signature

Waybill Agreement WB22-34

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: Baker & Miller PLLC

William A. Mullins, Partner

Signature

Waybill Agreement WB22-34

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: W. Robert Majure

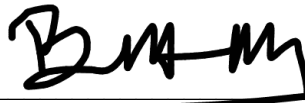
A handwritten signature in black ink, appearing to read 'W. Robert Majure', written over a horizontal line.

Signature

Waybill Agreement WB22-34

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: Brad T. Howells

A handwritten signature in black ink, appearing to read 'B. Howells', written over a horizontal line.

Signature

Waybill Agreement WB22-34

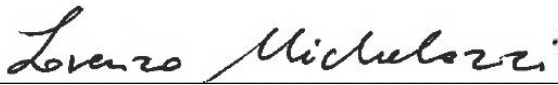
I have read and understand the conditions for release of the CCWS data. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. No later than thirty days before the agreement expires, I will request an extension of this agreement, if necessary. If no extension 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: ~~Chris~~ Katsiardis
Charalampos

Charalampos Katsiardis
Signature

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: Lorenzo Michelozzi

A handwritten signature in cursive script, reading "Lorenzo Michelozzi", written in black ink on a white background.

Signature

Waybill Agreement WB22-34

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: Ashley B. Vissing

Ashley Vissing

Signature

Waybill Agreement WB22-34

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: Joseph Young



Signature

Waybill Agreement WB22-34

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: Michael Baranowski

A handwritten signature in cursive script that reads "Michael Baranowski". The signature is written in black ink and is positioned above a horizontal line.

Signature

Waybill Agreement WB22-34

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: Prabaharan Ponnuthurai



Signature

Waybill Agreement WB22-34

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: Shane Vyskocil

A handwritten signature in dark ink, appearing to read 'Shane Vyskocil', written over a horizontal line.

Signature

Waybill Agreement WB22-34

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: Nathan Zebrowski



Signature

Waybill Agreement WB22-34

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: Mitesh Vaidya

Mitesh D. Vaidya

Signature

Waybill Agreement WB22-34

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.

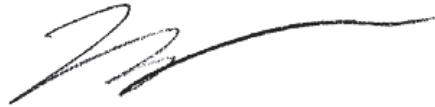
By: Noah Yosif

Signature Noah Yosif

Waybill Agreement WB22-34

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: Bengt Muten

A handwritten signature in black ink, appearing to be 'Bengt Muten', written over a horizontal line.

Signature

Waybill Agreement WB22-34

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: Paul Bingham

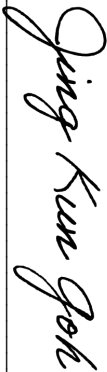


Signature

Waybill Agreement WB22-34

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: Jing K. Goh



Signature

Waybill Agreement WB22-34

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: Yangping Liu



Signature

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: Jingyi Cui

A handwritten signature in cursive script, reading "Jingyi Cui".

Signature

Waybill Agreement WB22-34

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: Yixin (Ethan) Chen

A handwritten signature in cursive script, appearing to read "Yixin Chen", is positioned above a horizontal line.

Signature

Waybill Agreement WB22-34

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: Matthew Malir

Matthew J. Malir

Signature

Waybill Agreement WB22-34

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: Helena Bauer-Mitterlehner

Helena Bauer-Mitterlehner
Signature

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-202-956-7500
FACSIMILE: 1-202-956-7676
WWW.SULLCROM.COM

*1700 New York Avenue, N.W.
Suite 700
Washington, D.C. 20006-5215*

NEW YORK • LOS ANGELES • PALO ALTO
BRUSSELS • FRANKFURT • LONDON • PARIS
BEIJING • HONG KONG • TOKYO
MELBOURNE • SYDNEY

June 23, 2022

Via E-mail

Alexander Dusenberry,
Office of Economics
Surface Transportation Board
395 E Street S.W.,
Washington, D.C., 20423.

Re: *Finance Docket No. 36500, Canadian Pacific Ry., et al. – Control
– Kansas City Southern, et. al.*

Dear Mr. Dusenberry:

This letter is to confirm the need for access to confidential Carload Waybill Sample (“CCWS”) with unmasked revenues in connection with FD 36500 through the duration of this proceeding. On March 31, 2021, in Waybill Request WB21-24, the Board’s Office of Economics approved Applicants’¹ request for permission to access the CCWS for years 2015-2020. On November 18, 2021, the Board’s Office of Economics approved Applicants’ additional request to access the 2004-2006 CCWS. Applicants are accordingly requesting a renewal of that access and extension of that access through the duration of this proceeding.

¹ Applicants are Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, Delaware and Hudson Railway Company, Inc. Kansas City Southern Applicants are Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company.

Sincerely,

/s/ Samantha Hynes
Samantha F. Hynes

cc: David L. Meyer, William A. Mullins, and All Parties of Record