

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

ENTERED
Office of Proceedings
July 19, 2022
Part of
Public Record

Office of Economics

July 11, 2022

Ms. Carrie C. Mahan
Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036

Re: Waybill Request WB22-40 & FD36500

Dear Ms. Mahan:

The Surface Transportation Board (STB or Board) has received your request under 49 C.F.R. § 1244.9(b)(4) dated July 8, 2022 for permission to access the confidential 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 Norfolk Southern Railway Company (“NSR”). Specifically, you request the unmasked 2000-2007 CCWSs for all records and fields.

Based on the explanations and justifications contained in your request, you will be authorized to access the requested data for use in the FD 36500 proceeding. Specifically, I will grant you, in accordance with 49 C.F.R. § 1244.9(b)(4), access to the 2000-2007 unmasked costed waybill samples. These datasets may only be used for purposes of this proceeding. See 49 C.F.R. § 1244.9(b)(4)(v).

The approval for FD36500 becomes effective when signed agreements from the individuals listed below are received by the STB:

- a) *Carrie Mahan – Weil, Gotshal & Manges LLP*
- b) *Brianne Kucerik – Weil, Gotshal & Manges LLP*
- c) *John Scribner – Weil, Gotshal & Manges LLP*
- d) *Charlotte McFaddin – Weil, Gotshal & Manges LLP*
- e) *Daniel Baquet – Weil, Gotshal & Manges LLP*
- f) *Louis Warchot – Outside Consultant*
- g) *John Mayo – Outside Consultant*
- h) *Jeffrey Macher – Analysis Group*
- i) *Christopher Borek – Analysis Group*
- j) *Peter Jones – Analysis Group*
- k) *Ivan Maryanchyk – Analysis Group*
- l) *Scott Overbey – Analysis Group*
- m) *Thuy Le – Analysis Group*
- n) *Angelique Bernabe – Analysis Group*

- o) Rachel Brown – Analysis Group*
- p) Yichu Huang – Analysis Group*
- q) Mwangangi Kalii – Analysis Group*
- r) Shushan Wang – Analysis Group*

The expiration date for this agreement is July 31, 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. 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.

Sincerely,

William Brennan

William Brennan, PhD
Chief Economist & Director
Office of Economics

Waybill Agreement WB22-40

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: Carrie Mahan

Carrie Mahan

Signature

Waybill Agreement WB22-40

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: Brianne Kucerik

Brianne Kucerik

Signature

Waybill Agreement WB22-40

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: John Scribner

John Scribner

Signature

Waybill Agreement WB22-40

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: Charlotte McFaddin

Charlotte McFaddin
Signature

Waybill Agreement WB22-40

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: Daniel Baquet

Daniel Baquet

Signature

Waybill Agreement WB22-40

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.

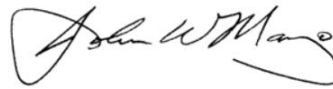
By: Louis Warchot


Signature

Waybill Agreement WB22-40

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: John Mayo

A handwritten signature in black ink, appearing to read "John W Mayo", is written above a horizontal line.

Signature

Waybill Agreement WB22-40

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: Jeffrey Macher

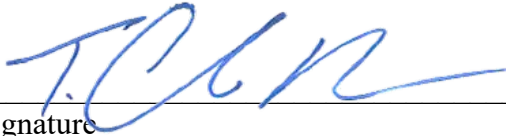


Signature

Waybill Agreement WB22-40

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: Christopher Borek



Signature

Waybill Agreement WB22-40

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 Jones

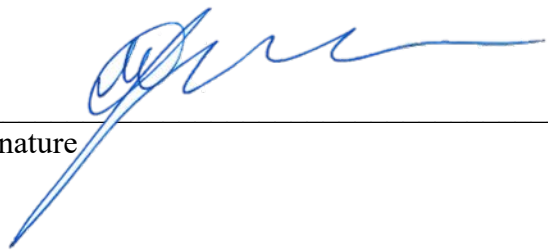
Peter Jones

Signature

Waybill Agreement WB22-40

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: Ivan Maryanchyk



Signature

Waybill Agreement WB22-40

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: Scott Overbey

Scott Overbey

Signature

Waybill Agreement WB22-40

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: Thuy Le



Signature

Waybill Agreement WB22-40

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: Angelique Bernabe

Angelique Bernabe

Signature

Waybill Agreement WB22-40

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: Rachel Brown

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

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: Yichu Huang

A handwritten signature in cursive script, reading "Yichu Huang", positioned above a horizontal line.

Signature

Waybill Agreement WB22-40

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: Mwangangi Kalii



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: Shushan Wang

Shushan Wang

Signature

Weil, Gotshal & Manges LLP

2001 M Street, NW Suite 600
Washington, DC 20036
+1 202 682 7000 tel
+1 202 857 0940 fax

Carrie C. Mahan
+1 (202) 682-7231
Carrie.Mahan@weil.com

July 8, 2022

William Brennan, PhD
Chief Economist and Director
Office of Economics
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

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

Dear Director Brennan:

I write on behalf of Norfolk Southern Railway Company (“NS”), which is a participant to the above-captioned proceeding and associated sub-dockets.

Pursuant to 49 CFR §1244.9(b)(4), NS’s outside counsel and consultants respectfully request access to the confidential Carload Waybill Sample with unmasked revenues for 2000 through 2007, inclusive, in connection with the above-referenced proceeding. Those outside counsel and consultants, none of whom is a regular employee of NS, are the following:

1. Carrie Mahan (Weil, Gotshal & Manges LLP (“Weil”))
2. Brianne Kucerik (Weil)
3. John Scribner (Weil)
4. Charlotte McFaddin (Weil)
5. Daniel Baquet (Weil)
6. Louis Warchot (Outside counsel)
7. John Mayo (Outside consultant)
8. Jeffrey Macher (Outside consultant)

9. Christopher Borek (Analysis Group (“AG”))
10. Peter Jones (AG)
11. Ivan Maryanchyk (AG)
12. Scott Overbey (AG)
13. Thuy Le (AG)
14. Angelique Bernabe (AG)
15. Rachel Brown (AG)
16. Yichu Huang (AG)
17. Mwangangi Kalii (AG)
18. Shushan Wang (AG)

Access to the Waybill Sample is necessary for these parties to accurately assess claims made in the ongoing Canadian Pacific and Kansas City Southern transaction and associated sub-dockets. In particular, the Waybill Sample is necessary for NS, through its outside counsel and consultants, to assess the validity of claims being made in this proceeding about traffic flows during the early 2000’s. The Waybill Sample, for all records and fields, is the single source of data permitting a comprehensive analysis of these issues. Moreover, this type of Waybill access is routinely granted in proceedings such as this.

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 this data available only to certain of our attorneys, outside counsel, and members of our staff in accordance with 49 CFR §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 CFR § 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 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 established in the regulations, and no person, other than those listed here, will be entitled to access and review data contained within the Waybill Sample.

July 8, 2022
Page 3

Weil, Gotshal & Manges LLP

We understand that access to the Waybill Sample requires a fee pursuant to 49 CFR § 1002.2(f)(98). A payment of \$1,244 (reflecting the set cost portion of \$200 plus \$58 per-person for 18 people) was submitted through pay.gov. The Agency Tracking ID is [REDACTED].

Respectfully submitted,

/s/ Carrie C. Mahan

Nabanita C. Nag
Thomas E. Zoeller
Hanna M. Chouest
Norfolk Southern Corporation
650 W Peachtree St NW
Atlanta, GA 30308
Tel: (470) 463-6314

Carrie Mahan
John Scribner
Brianne Kucerik
Daniel Baquet
Weil, Gotshal & Manges LLP
2001 M Street NW
Suite 600
Washington, DC 20036
Tel: (202) 682-7000

*Attorneys for Norfolk Southern Railway
Company*

July 8, 2022