



DECISION ID NO.: 51363
DECIDED DATE: 7/25/2022
SERVED DATE: 7/25/2022
APPROVED: *medail*
Director

GRANTED
Office of
Proceedings ☐

EXPEDITED CONSIDERATION REQUESTED

305030

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
July 21, 2022
Part of
Public Record

Ex Parte No. 768

PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS

JOINT MOTION OF PETITIONERS AND AAR FOR EXTENSION OF TIME AND ACCESS
BY CERTAIN AAR PERSONNEL TO HIGHLY CONFIDENTIAL MATERIALS

Petitioners¹ and the Association of American Railroads (“AAR”) submit this joint motion for two requests for procedural relief occasioned by AAR’s request to Petitioners for access to the workpapers and data underlying the analysis included with the Verified Statement of Matthew Johnson of AllTranstek, submitted with Petitioners’ Opening Comments in this matter on June 30, 2022.

1. First, the data underlying Mr. Johnson’s analysis contains information that Petitioners have designated as Highly Confidential under the Protective Order. AAR has requested access to that data to support AAR’s preparation of its reply to Petitioners’ Opening Comments. Petitioners are willing to provide such access to certain employees of AAR (specifically, Kathryn Kirmayer, AAR General Counsel; Fred Miller, AAR Associate General Counsel and Government Affairs Liaison; John Gray, AAR Senior Vice President, Policy & Economics; and Rapik Saat,

¹ The North America Freight Car Association, The National Grain and Feed Association, The Chlorine Institute, and The National Oilseed Processors Association.

AAR Director – Operations Analysis), provided that each executes an Undertaking associated with Highly Confidential Material, and the data remains subject to the restrictions on further disclosure provided by the Protective Order for material designated as Highly Confidential (such as to employees of AAR member railroads). AAR has agreed to abide by such restrictions.

As the Board has recently confirmed in Finance Docket No. 36500, STB protective orders may be modified to allow certain internal personnel of parties to access “Highly Confidential” information. There, the Board modified a protective order to allow certain in-house personnel of one railroad to access certain information produced by another railroad in discovery in a merger proceeding, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 (STB Decision No. 21, served July 13, 2022). The Board also recently modified a “protective order to allow certain Amtrak personnel to access select materials designated as ‘highly confidential,’ provided those Amtrak personnel sign the undertaking for ‘highly confidential’ material,”” see *Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc.*, Finance Docket No. 36496 (STB served June 10, 2022); see also *CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. Co. – Control and Operating Leases/Agreements*, Finance Docket No. 33388 (STB served Oct. 17, 1997) at 1.

Second, in light of (a) the passage of time since Petitioners’ submission of Mr. Johnson’s Verified Statement accompanying Petitioners’ Opening Comments, (b) the very brief remaining period before reply comments are due (currently August 1 under the Board’s schedule), (c) the time necessary for Petitioners to prepare the underlying workpapers/data for production to AAR, and (d) the time necessary for AAR to digest and analyze the data, AAR and Petitioners acknowledge the need for additional time to enable a full and fair assessment by AAR of the

evidence offered by Petitioners and any response thereto that AAR may deem warranted. Accordingly, AAR and the Petitioners jointly request that the Board revise the procedural schedule in this case to make Reply Comments due on September 8, 2022, rather than August 1, 2022.

Respectfully submitted,

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Dated: July 21, 2022

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of July, 2022, a copy of the foregoing Joint Motion of Petitioners and AAR for Extension of Time and Access by Certain AAR Personnel to Highly Confidential Materials was served on all persons on the official service list FOR EP 768.

/ss/ Thomas W. Wilcox