

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

Office of Economics

ENTERED
Office of Proceedings
September 26, 2022
Part of
Public Record

September 22, 2022

Mr. Anthony J. LaRocca
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Re: Waybill Request WB22-51 & FD36500

Dear Mr. LaRocca:

The Surface Transportation Board (STB or Board) has received your September 19, 2022 extension request, filed on behalf of BNSF Railway Company (“BNSF”) for permission to retain access to the confidential Carload Waybill Sample (CCWS) data covered by your access letter in WB21-69. You seek approval for continued use of the data under 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 2015-2020 unmasked granted in WB21-69.

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 2015-2020 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) Mr. Anthony J. LaRocca – Steptoe & Johnson LLP*
- b) Mr. Peter W. Denton – Steptoe & Johnson LLP*
- c) Mr. John J. Kavanagh – Steptoe & Johnson LLP*
- d) Ms. Molly Bruder Fox – Steptoe & Johnson LLP*
- e) Ms. Onika K. Williams – Steptoe & Johnson LLP*
- f) Ms. Sally Mordi – Steptoe & Johnson LLP*
- g) Ms. Tara Woods – Steptoe & Johnson LLP*
- h) Ms. Lauren Goldschmidt – Steptoe & Johnson LLP*
- i) Mr. Adrian L. Steel Jr. – Mayer Brown LLP*
- j) Mr. Adam C. Sloane – Mayer Brown LLP*
- k) Mr. Richard E. Weicher – Richard E. Weicher PC*
- l) Dr. David Reishus – Compass Lexecon*
- m) Mr. Meade Atkeson – Compass Lexecon*

- n) Mr. Matias Escudero – Compass Lexecon*
- o) Ms. Yuxin Wang – Compass Lexecon*
- p) Mr. Philipp Eibl – Compass Lexecon*
- q) Ms. Natalie Bui – Compass Lexecon*
- r) Ms. Siyi Chen – Compass Lexecon*
- s) Mr. Benton Fisher – FTI Consulting*
- t) Ms. Naga Kundeti – FTI Consulting*
- u) Mr. Austin Ranz – Brigadier Consulting Group LLC*
- v) Mr. Darius Gaskins – Brigadier Consulting Group LLC*
- w) Dr. William W. Wilson – North Dakota State University*
- x) Dr. Aaron Dychter Poltolarek – ADHOC Consultores Asociados, S.C.*

The expiration date for this agreement is September 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://www.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

Waybill Agreement WB22-51

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. Prior payment of processing and mailing cost of **\$58** (\$58 per signature of a new confidentiality agreement – Siyi Chen) is required. Payment can be made through the Board's electronic payment system, Pay.gov. Your payment through Pay.gov will generate a unique Pay.gov transaction number, which you will need to provide with your signed agreement. Pay.gov accepts payment through bank accounts, credit cards, debit cards with a MasterCard or Visa logo, and digital wallet. Payment can also be made directly to the Board via check or money order.

Sincerely,

William Brennan

William Brennan, PhD
Chief Economist & Director
Office of Economics

Waybill Agreement WB22-51

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: Anthony J. LaRocca

/s/ Anthony J. LaRocca

Signature

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By: Peter W. Denton

/s/ Peter W. Denton

Signature

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By: John J. Kavanagh

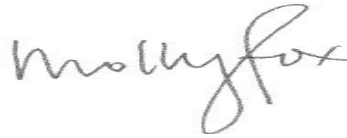
/s/ John J. Kavanagh

Signature

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By: Molly Bruder Fox

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

Signature

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By: Onika K. Williams

/s/ Onika K. Williams

Signature

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By: Sally Mordi

/s/ Sally Mordi

Signature

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By: Tara Woods

/s/ Tara Woods

Signature

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By: Lauren Goldschmidt

/s/ Lauren Goldschmidt

Signature

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By: Adrian L. Steel Jr.

/s/ Adrian L. Steel, Jr.

Signature

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By: Adam C. Sloane



Signature

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By: Richard E. Weicher

Richard E. Weicher
Signature

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By: David Reishus

/s/ David Reishus

Signature

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By: Meade Atkeson

/s/ Meade Atkeson

Signature

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By: Matias Escudero

MMEscudero

Signature

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By: Yuxin Wang

/s/ Yuxin Wang

Signature

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By: Philipp Eibl

/s/ Philipp Eibl

Signature

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By: Natalie Bui

/s/ Natalie Bui

Signature

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By: Siyi Chen

/s/ Siyi Chen

Signature

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By: Benton Fisher

/s/ Benton Fisher

Signature

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By: Naga Kundeti

/s/ Naga Kundeti

Signature

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By: Austin Ranz

/s/ Austin Ranz

Signature

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By: Darius Gaskins

/s/ Darius Gaskins

Signature

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By: William W. Wilson



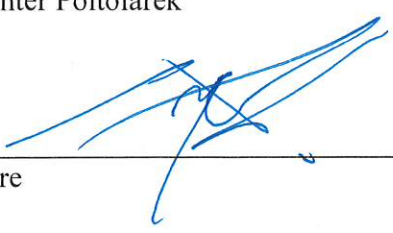
Signature

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By: Aaron Dychter Poltolarek

Signature

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, is written over a horizontal line.

Anthony J. LaRocca
202 429 8119
alarocca@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com



September 19, 2022

VIA-E-MAIL

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

Re: **STB Docket No. FD 36500, Canadian Pacific Railway Limited, et al.—Control—
Kansas City Southern, et al.**

Dear Director Brennan:

On September 24, 2021, we submitted a request, on behalf of BNSF Railway Company (“BNSF”), that BNSF’s outside counsel and consultants in the above-referenced proceeding be granted permission to access the 2015-2020 confidential Carload Waybill Sample (CCWS) with unmasked revenues in this proceeding (Waybill Request WB21-69). The request was granted on September 28, 2021.

Pursuant to 49 CFR § 1244.9(b)(4), we hereby request renewal of access to the 2015-2020 CCWS unmasked revenues for the following individuals, none of whom is a regular employee of BNSF, for the duration of the above-referenced proceeding:

Steptoe & Johnson LLP and its employees:

1. Anthony J. LaRocca
2. Peter W. Denton
3. John J. Kavanagh
4. Molly Bruder Fox
5. Onika K. Williams
6. Sally Mordi
7. Tara Woods
8. Lauren Goldschmidt

Mayer Brown LLP and its employees:

1. Adrian L. Steel, Jr.
2. Adam C. Sloane

Richard E. Weicher, PC:

1. Richard E. Weicher

Compass Lexecon:

1. Dr. David Reishus
2. Meade Atkeson
3. Matias Escudero
4. Yuxin Wang
5. Phillip Eibl
6. Natalie Bui

FTI Consulting:

1. Benton Fisher
2. Naga Kundeti

Brigadier Consulting Group LLC:

1. Austin Ranz
2. Darius Gaskins

North Dakota State University:

1. Dr. William W. Wilson

ADHOC Consultores Asociados, S.C.:

1. Dr. Aarón Dychter Poltolarek

Pursuant to 49 CFR § 1244.9(b)(4), we hereby request that the additional consultant, who is not a regular employee of BNSF, be granted permission to access the 2015-2020 CCWS unmasked revenues in this proceeding:

Compass Lexecon:

1. Siyi Chen

Once access is granted, the required fees will be paid through the STB's electronic payment system at pay.gov.

Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca

Peter W. Denton

John J. Kavanagh

Onika K. Williams

Attorneys for BNSF Railway Company