

SERVICE DATE – JANUARY 10, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. WB 21-53

REQUEST FOR WAYBILL DATA

Digest:¹ This decision grants in part and denies in part a request for access to the Confidential Carload Waybill Sample.

Decided: January 9, 2023

Trinity Industries, Inc. (Trinity), filed a request for access to the Confidential Carload Waybill Sample (CCWS), as an “other user” under 49 C.F.R. § 1244.9(c), on August 10, 2021. The Board will grant Trinity’s request, in part, by making available on the Board’s website certain additional aggregated data derived from the CCWS in a modified 7-Digit STCC² Expanded Stratification Report. The modified Stratification Report includes more detailed car-type information of the type sought by Trinity.³ The Board otherwise denies Trinity’s request for access to the CCWS.

BACKGROUND

Trinity is a railcar manufacturer that also “provides comprehensive railcar fleet management services, including railcar leasing and financing, administration, regulatory compliance, tax preparation, and maintenance and repairs.” (Trinity Req. 1 n.1.) Prior to 2020, Trinity had requested and received access to certain fields of the CCWS for a number of years. In 2020, however, the Director of the Office of Economics (Director) denied Trinity’s request in Docket No. WB 20-50 (Trinity 2020 Req.) for access to selected fields from the 2019 CCWS and an annual extension for continuing access to CCWS data for 2003-2018. The Director found that Trinity had sought access for private, commercial use of the type that the Board had recently confirmed was not permissible. See Request for Waybill Data, WB 20-50, slip op. at 1 (STB served Dec. 4, 2020) (citing Request for Waybill Data (U.S. Wheat), WB 20-40 (STB served

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² Standard Transportation Commodity Code.

³ See <https://www.stb.gov/reports-data/economic-data/> under “Revenues and Earnings” tab. The 7-Digit STCC Expanded Stratification Report for 2020 already contains the more detailed car-type information. Modified reports for the years 2016 through 2019 will be added to the Board’s website following this decision.

Nov. 20, 2020)). Trinity appealed the Director's decision under 49 C.F.R. §§ 1011.6(b), 1244.9(d)(4)(iii). The Board affirmed the Director's decision, finding that "there was no 'clear error of judgment' or 'manifest injustice' in the Director's denial of Trinity's request to access the CCWS for the purpose of preparing private, commercial analyses for use in its own business." Request for Waybill Data (Trinity 2021 Denial), WB 20-50, slip op. at 6 (STB served June 17, 2021). Trinity did not seek reconsideration of the Board's decision or appeal that decision in court.

Trinity's current request seeks access to the 2019 CCWS to permit Trinity's consultant "to prepare analyses of (1) trends in the uses of and handling of various combinations of rail-hauled commodities by equipment types, particularly tank car traffic; and (2) the effects of various regulatory changes affecting equipment standards and uses that have been or may be proposed." (Trinity Req. 9.) According to the request, the proposed analyses will permit Trinity to "enhance its understanding of the numerous types of railcars in use in the rail system as well as the range of specific uses to which this equipment is applied" and "its ability to design equipment and services that address the needs of the shipping and carrier communities more efficiently and directly." (*Id.*) The stated purpose of Trinity's current request is identical to that of its 2020 request. (*See* Trinity 2020 Req. 2.)

As it did in 2020, Trinity seeks 2019 CCWS data, but now asserts that it "has excluded numerous data fields in order to address the concerns" raised by the Director and the Board when rejecting Trinity's 2020 request. (Trinity Req. 1.) For example, Trinity has eliminated from its most recent request fields that explicitly permit identification of individual railcars and railroads as well as certain geographic routing information (including the highly specific origin and termination Freight Station Accounting Code (FSAC)). Trinity continues, however, to request other geographic routing information, including origin and termination Business Economic Area (BEA), total distance, and the states through which each shipment was routed. Trinity also retains a core aspect of its request, the 7-digit STCC data for each waybill record.

Notice of the request was published in the Federal Register on August 10, 2021 (86 Fed. Reg. 43,718). No objections were received. By letter dated September 7, 2021, the Director notified Trinity that its request had been referred to the Board for disposition.⁴

⁴ Trinity does not explicitly request renewed access to data for prior years. Rather, Trinity requests that the Board refrain from acting with respect to that data pending the outcome of the current request and indicates that, should the Board grant Trinity's current request, Trinity "would follow your instructions regarding the proper treatment of these prior years' data." (Trinity Req. 2.) Trinity's obligations under prior access agreements are outside the scope of this proceeding. The Board's Office of Economics will contact Trinity to coordinate Trinity's return or destruction of CCWS data and to determine what analyses or work product are sufficiently aggregated that they may be retained by Trinity.

DISCUSSION AND CONCLUSIONS

In recent years, the Board has further considered the highly confidential nature of the data contained in the CCWS and the limited circumstances in which its release might serve a legitimate need. See, e.g., Trinity 2021 Denial, WB 20-50; U.S. Wheat, WB 20-40; Request for Waybill Data (NC Soybean), WB 20-23 (STB served Sept. 24, 2020). As the Board explained when addressing Trinity’s prior request for access, the highly confidential nature of CCWS data is well-recognized. Trinity 2021 Denial, WB 20-50, slip op at 2-3; see also, e.g., Procs. on Release of Data from the ICC Waybill Sample (49 C.F.R. Part 1244), 4 I.C.C.2d 194, 197 (1987) (acknowledging that CCWS data is commercially sensitive for both shippers and railroads and “thus not subject to public release”); CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc. (Conrail), FD 33388, slip. op. at 6 (STB served Oct. 3, 1997) (CCWS data is available only in limited circumstances due to confidentiality). For each sampled rail shipment, the CCWS reports information concerning origin, destination, routing, transporting railroads, commodity, volume, number of carloads, equipment details, revenue, cost information, and more. Even though the Board does not regulate transportation provided under transportation contracts, the CCWS data also includes information related to confidential contract shipments in addition to data related to rail shipments that move under common carrier tariffs. As the Board noted in U.S. Wheat, “when shippers and railroads sign confidential contracts, they generally expect that contract information to remain confidential.” WB 20-40, slip op. at 2-3.

Taken in isolation, each data item is not necessarily confidential by itself. Both the Public Use Waybill Sample (PUWS) and the CCWS, for example, contain shipment dates and weights. In the CCWS, however, the combination of detailed, specific information and the linkage of that information to individual shipments means that the cumulative data is more likely to reveal confidential information. Moreover, although the CCWS does not contain the identity of shippers and consignees, the combination of information in the CCWS can effectively reveal the identity of shippers. As the Board has explained, origin/destination and commodity data may “permit identification of a shipper and consignee, and might thereby disclose a railroad’s significant customers and also the rate (including confidential contract rates) at which it transports the traffic.” Conrail, FD 33388, slip op. at 6; see also Procs. on Release of Data, 4 I.C.C.2d at 209, 213. This fact led the ICC, after careful consideration, to conclude that shipper confidentiality could best be protected by limiting public disclosure to 5-digit STCC and BEA origin and termination information. Procs. on Release of Data, 4 I.C.C.2d at 212-13.

The Board is guided in its policies concerning the propriety of the release of confidential information contained in the CCWS by the clear intent of its governing statute, which identifies as key concerns the release of confidential information that may be detrimental to shippers or improperly disclose shippers’ business transactions to competitors of those shippers. See 49 U.S.C. § 11904. Railroads are explicitly barred by statute from disclosing information of the type contained in the CCWS: “information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that rail carrier for transportation . . . or information about the contents of a contract authorized under section 10709 of [Title 49 of the U.S. Code], that may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee.” 49 U.S.C. § 11904(b).

Railroads provide this information to the Board, but the reason the Board collects waybill data is to further its regulatory mission. The CCWS provides the Board with a detailed understanding of the traffic that moves on the nation's railroads and is used to inform Board decisions in a variety of contexts. Indeed, it would be difficult for the Board to perform its regulatory function if it lacked access to the granular information that the CCWS contains. Absent regulation by the Board requiring the railroads to submit comprehensive shipment-by-shipment data on their traffic to further that regulatory function, the collection of data to which Trinity seeks access would not exist. But for the Board's collection, the original sources of that data—the shippers and the railroads—would make the ultimate decision about whether the data that they regard as proprietary and commercially sensitive would ever be released to other businesses or for public purposes and, as noted, railroads would be largely prohibited from doing so by 49 U.S.C. § 11904. As a general matter, businesses keep this type of detailed data private and could be expected to do so here, given the choice. As the Board has stated, the fact that the Board collects this sensitive data to further its regulatory mission does not establish a right for private parties to obtain and use the most confidential aspects of this data for commercial purposes. U.S. Wheat, WB 20-40, slip op. at 3.

Here, consistent with the policies discussed above, the Board has already resolved, in Trinity 2021 Denial, the identical question Trinity now seeks to relitigate. Although Trinity has made an effort to revise its CCWS request, the Board's core concerns remain. In 2020, Trinity submitted a request for access to the 2019 CCWS for a purpose identical to that of its current request, namely the private, commercial use of CCWS data for the same proposed analyses. The Board rejected Trinity's request because of its purpose and refused Trinity's invitation to modify its restriction on private, commercial use for Trinity's benefit. Trinity 2021 Denial, WB 20-50, slip op. at 3. The Board pointed to its U.S. Wheat decision, where the Board had addressed whether an "other user" should be allowed to access and use CCWS data for its own private, commercial purposes. In U.S. Wheat, the Board concluded that it would "not make the CCWS available as a resource for private parties to mine the data and create commercial reports" and reaffirmed "its policy that it will not permit CCWS data that is collected to further the Board's regulatory mission to be converted to private, commercial use." WB 20-40, slip op. at 5.

Trinity argues that it has addressed the concerns that led to the Trinity 2021 Denial by excluding additional data fields from the request at issue here. Trinity does not, however, address the fundamental concern identified by the Board, which is that it seeks to use for its own private, commercial purposes detailed confidential shipper and railroad information collected by the Board to further the Board's regulatory mission. Trinity 2021 Denial, WB 20-50, slip op. at 3. Accordingly, Trinity's request will be denied. However, as explained in more detail below, to increase transparency and benefit all potential users of the Board's waybill data, the Board has made publicly available additional aggregated shipment information in a modified 7-Digit STCC Expanded Stratification Report available on its website.

Detailed Justification Requirement. Under the Board's regulations, Trinity was required to provide a "detailed justification as to why the specified waybill data" it requested were needed. 49 C.F.R. § 1244.9(e)(1)(iii). While Trinity has described the purpose of its request, it did not explain why the analyses it wishes to perform require the type of detailed, shipment-by-

shipment information that is contained in the CCWS. Trinity did not indicate that its analyses require knowledge for each shipment, for example, of the shipment date, shipment volume, and number of cars in the shipment. Nor does Trinity explain why aggregated data would not be sufficient to permit Trinity to understand what types of railcars are used to transport particular commodities and at what aggregate volumes. Moreover, despite Trinity's assertions to the contrary, (Trinity Req. 7), Trinity is still requesting access to both BEA-level origin and termination information and 7-digit STCC commodity information. The Interstate Commerce Commission (ICC), the Board's predecessor, determined in Procedures on Release of Data, 4 I.C.C.2d at 212-14, that the best approach to protecting confidentiality of shipper information was to publicly disclose only 5-digit STCC commodity information at the BEA level.⁵ The Board has previously noted both this longstanding policy and Trinity's failure to offer any justification for its request for detailed routing information. See Trinity 2021 Denial, WB 20-50, slip op. at 4 n.4, 6 n.7.

Private, Commercial Use Prohibition. Trinity offers a variety of arguments why the Board should not prohibit Trinity's commercial use of the CCWS data. As an initial matter, Trinity is not entitled to use its new request to relitigate the issues already decided against it. In Trinity 2021 Denial, the Board ruled that Trinity would not be granted access to the CCWS to conduct analyses for private, commercial purposes. Trinity's current request states that it wishes to conduct the identical analyses described in its prior request for the identical private, commercial purpose. Because Trinity failed to seek administrative reconsideration under 49 C.F.R. § 1115.3 or judicial review, the Trinity 2021 Denial decision is final, and its holding remains binding upon Trinity.

The Board's regulations do permit petitions to reopen under 49 C.F.R. § 1115.4 alleging changed circumstances, new evidence or material error to be filed at any time. Trinity, however, has neither filed such a petition nor specified the grounds for it. Even if Trinity's most recent access request could be construed as seeking reopening based on material error, Trinity's arguments are unpersuasive and improperly presented.⁶

Trinity argues that the STB's regulations do not specify who may request CCWS access under 49 C.F.R. § 1244.9(c) and neither prohibit commercial use nor requests by commercial firms like Trinity. (Trinity Req. 2-3.) Trinity further asserts that firms like Trinity are not precluded from establishing a "need" that would support access and that passing reference to "freight car manufacturers" in footnotes to the ICC's Procedures on Release of Data decision

⁵ The CCWS contains commodity information at the 7-digit STCC level. The PUWS, which is available on the Board's website, has data at the more general 5-digit STCC level.

⁶ Since Trinity wants the Board to re-evaluate whether Trinity should be permitted to conduct the identical analyses for the identical private, commercial purpose, changed circumstances would not appear to apply and no evidence of any kind, as opposed to legal argument, has been offered.

demonstrate that Trinity is entitled to request access.⁷ (*Id.*) Although § 1244.9(c) does not impose limits on who may *request* CCWS access, the ability to request access does not translate into an entitlement to receive access. As the ICC noted, the “statutory authority for collection of data does not require that information so obtained be made public.” Procs. on Release of Data, 4 I.C.C.2d at 197. The regulations require requesting parties to explain in detail the purpose of their request and how the specific data requested will be used, 49 C.F.R. § 1244.9(e), thereby allowing the Board (typically through the Director of the Office of Economics) to evaluate that information as a critical factor in access decisions. Indeed, it was always anticipated that the decision about whether the stated purpose warrants access would be made on a case-by-case basis. *See, e.g., Procs. on Release of Data*, 4 I.C.C.2d at 200 (“[I]f after careful deliberation, the Director determines that a request lacks a legitimate purpose and/or release of data to a particular user could compromise competitively sensitive data, the Director will deny the request.”).

Trinity is simply incorrect that U.S. Wheat and Trinity 2021 Denial make substantive modifications to the Board’s existing rules by excluding entities like Trinity from the “other user” category. (Trinity Req. 4.) The codified rules establish the process through which applications for access are to be made and ensure that the Director, and ultimately the Board, will have an adequate record upon which to make access determinations in individual cases. But nothing in the applicable regulations suggests that mere compliance with the required form of the request guarantees access.

Trinity’s argument appears to be that, because the Board has a process that permits it to receive and evaluate requests for CCWS access from “other users,” unless disclosure would cause competitive harm to a shipper or railroad, the Board is required to grant access so long as the requestor has submitted the information required by § 1244.9(e) explaining why the data is needed and how it will be used. Trinity’s view that the Board’s regulation of CCWS access to other users must be broadly permissive is at odds with the statute, with Procedures on Release of Data, and with the access framework it established. As discussed above, the clear statutory intent of 49 U.S.C. § 11904(b) is to prevent disclosure of data that “may be used to the detriment of the shipper or consignee.” Procedures on Release of Data, which relied on the intent evident in § 11904 when it adopted the CCWS access regulations, repeatedly indicated that disclosure of CCWS data would be restrictive rather than permissive to protect shipper and railroad data. The ICC noted that “[a]n overriding concern registered by the commenters was the need for the Commission to exercise tighter controls over the release of waybill data to prevent unnecessary disclosures and potential abuses.” Procs. on Release of Data, 4 I.C.C.2d 199; *see also id.* at 194 (acknowledging “need for the Commission to establish tighter control over the release of waybill data”). The decision also emphasized that CCWS access is limited to “essential” uses, *id.* at 198, which is a narrow concept, not a broad one. Even practitioners, consultants, and outside counsel who seek CCWS access in connection with agency proceedings (49 C.F.R. § 1244.9(b)(4)) must “serve as a protective buffer between the confidential data and the rail or shipper clients they

⁷ The Board has previously rejected Trinity’s arguments concerning the import of the footnote references. Trinity 2021 Denial, WB 20-50, slip op. at 5-6. Trinity’s attempt to recast its argument by suggesting that, rather than establishing freight car manufacturers as a favored class, the references instead demonstrate that Trinity is entitled to access because the freight car manufacturer references show that such access was not prohibited, is unpersuasive.

represent,” 4 I.C.C.2d at 205, and their access is permitted “for the exclusive purpose of preparing verified statements,” *id.* It is not plausible, as Trinity’s argument implies, that the agency’s intention in establishing the current framework was that consultants seeking to use CCWS for private, commercial use would be granted more permissive access as “other users” under § 1244.9(c) than is available for use in Board proceedings under § 1244.9(b)(4).

Trinity’s suggestion that the CCWS should be more freely available for private, commercial use is also fundamentally at odds with the purpose for which the data is collected. Although the CCWS has other uses (including uses by state and federal agencies), as described above, the Board collects waybill data because the information is needed to enable the Board to perform many of its regulatory functions. Release of the CCWS for purely commercial purposes would be inconsistent with the purpose for which it is collected and could undermine public confidence, as shippers and railroads would see their expectations of confidential treatment frustrated. The Board reiterates that it will not, therefore, permit its necessary regulatory collection to be converted into a collection to be used for private, commercial purposes. *See U.S. Wheat*, WB 20-40, slip op. at 5.

Trinity also argues that the Board may not deny CCWS requests on the basis of an intended private, commercial use because the terms “commercial,” “commercial use,” and “private commercial use” are not defined in the Board’s decisions or regulations. (Trinity Req. 4.) It is well-established that an agency is not required to codify rules that “address every conceivable question” that might arise. *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 96 (1995). Here, the agency long ago elected to implement its CCWS access program by codifying procedural and information requirements but leaving assessments of individual requests to a case-by-case review. *See, e.g., Procs. on Release of Data*, 4 I.C.C.2d at 200. Thus, development of the Board’s policies regarding CCWS release have been made through its adjudicatory process, consistent with the APA. *See Guernsey Memorial*, 514 U.S. at 96 (“The APA does not require that all the specific applications of a rule evolve by further, more precise rules rather than by adjudication.”); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 295 (1974) (agency “is not precluded from announcing new principles in an adjudicative proceeding and . . . the choice between rulemaking and adjudication lies in the first instance within the [agency’s] discretion”); *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947) (“[A]gency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective”). Moreover, the meaning of the particular terms cited by Trinity—commercial, commercial use, and private commercial use—is fully established through the context provided in *U.S. Wheat* and *Trinity 2021 Denial*, which lay out how the requestors in each instance proposed to use the data. *See U.S. Wheat*, WB 20-40, slip op. at 1, 3, 5; *Trinity 2021 Denial*, WB 20-50, slip op. at 1-3. Developing through adjudication the principles concerning the intended purposes and uses of CCWS data for which access to that data will be permitted is firmly within the Board’s authority.

Trinity also suggests that the Board is not permitted to consider whether access would give Trinity an inappropriate competitive advantage because that criterion is not mentioned in the Board’s regulations and, in Trinity’s reading, *Procedures on Release of Data* says that confidentiality procedures are not intended to prevent harm to anyone but railroads and shippers. (Trinity Req. 7 n.21.) Contrary to Trinity’s argument, the Board’s regulations do not limit the criteria that the Board may consider in CCWS access determinations. While the regulations do spell out the informational requirements for requests, the provisions regarding Board

determinations merely require that the agency consider all objections in determining whether to release CCWS, make clear that the Board may deny release even when no objections are filed, and detail the appellate procedures when the Director makes the initial determination. See 49 C.F.R. § 1244.9(d)(4). Nor is there any basis for Trinity’s exceedingly narrow construction of the harms the Board is entitled to consider when making access decisions. Both the statute and Procedures on Release of Data recognize the need to protect the interests of consignees as well as shippers and railroads. See, e.g., 49 U.S.C. § 11904(b); Procs. on Release of Data, 4 I.C.C.2d at 198 (noting confidentiality implications for both consignees and manufacturers). More fundamentally, as the Board indicated in Trinity 2021 Denial, the Board has a more general interest in protecting the confidentiality of the shipper and railroad data contained in the CCWS. Trinity 2021 Denial, WB 20-50, slip op. at 3 (noting that “shippers and railroads are entitled to expect that this confidential data will not be turned over in the ordinary course to other business enterprises that wish to use the data for their own commercial purposes”). Trinity’s arguments do not demonstrate why it would be appropriate for the Board to collect detailed confidential shipper and railroad information that otherwise would not be voluntarily shared outside their own organizations, and to then turn the collected data over to an unrelated third-party business for commercial use.

Accordingly, even if Trinity had submitted a reopening request, Trinity’s arguments would not support a finding of material error. Trinity’s presentation of these arguments in the guise of a new access request is also an improper attempt to relitigate issues that have already been resolved against Trinity. Specifically, Trinity waived the new arguments presented for the first time here (e.g., assertions that the Board’s prior decision was infirm due to missing language in the regulations or failure to follow proper administrative procedures) because Trinity failed to raise them in a timely manner. Board precedent clearly establishes that “[t]he Board generally does not consider new issues raised for the first time on reconsideration where those issues could have and should have been presented in the earlier stages of the proceeding.” New England Central Railroad, Inc.—Trackage Rights Order—Pan Am Southern LLC, Docket No. FD 35842, slip op. at 4 (STB served Apr. 26, 2018); Tex. Mun. Power Agency v. Burlington N. & Santa Fe Ry., 7 S.T.B. 803, 805 (2004) (Board is not required to “rethink its decisions whenever a party wishes to try out a new theory or finds new information at a late stage in the process”). When such arguments are raised for the first time at what is effectively a reopening stage, they are procedurally forfeited. New England Central, FD 35842, slip op. at 5. Likewise, Trinity cannot establish material error by simply reiterating or recasting arguments already rejected by the Board (e.g., that references in a footnote conferred special status on railcar manufacturers). See, e.g., New England Central, FD 35842, slip op. at 12 (repeating the conclusion of prior arguments does not establish material error); Big Stone-Grant Indus. Dev. & Transp.—Constr. Exemption—Ortonville, Minn. & Big Stone City, S.D., et al., FD 32645, slip op. at 4 (STB served May 30, 2000) (purpose of reopening is not to “afford a petitioner a second bite at the apple” where Board has already “considered and rejected the same basic arguments” in administratively final decision).

The appropriate time for Trinity to fully present its arguments was in the proceeding in Docket No. WB 20-50 where the Board determined that Trinity would not be granted access for

private, commercial use. The Board will not reopen its prior determination.⁸

Expanded Stratification Report. Although Trinity’s CCWS request is appropriately denied, the Board has carefully considered whether Trinity’s core requirements could be satisfied with data that could be made public and that may be of use to other stakeholders. The essence of Trinity’s need appears to be determining how many cars of what type are required by commodity. Trinity states that “Trinity’s primary use of the CCWS data . . . is to match detailed equipment types (AAR 4-digit alpha numeric codes, Field 70) with detailed commodity type (7-digit STCC codes including hazardous commodities, Field 76).” (Trinity Req. 6.) Based on this description, it appears that Trinity’s objective can be accomplished with aggregated, non-confidential data that may also be of interest to the public. Accordingly, as noted above, the Board has begun publishing a modified 7-Digit STCC Expanded Stratification Report on its website.

These Stratification Reports historically have provided, by 7-digit STCC, the commodity description for that code (e.g., Barley), car type designated by a single letter code, the car type name associated with that single letter code, the number of records and cars, tons, revenue, and variable costs, and average miles per carload. The modified Stratification Report, beginning with the 2020 data year, will now contain more detailed car-type information: specifically, the letter designation followed by 3 digits (e.g., C113, C114). The effect of this enhanced car-type information can be seen by comparing the modified 2020 Stratification Report with the unmodified 2019 Stratification Report. For Barley (STCC 0113110), for example, the unmodified 2019 Stratification Report includes data on a single line for Barley transported in covered hopper cars (code C). The modified 2020 Stratification Report includes separate data for Barley transported in covered hopper car types C113 and C114.⁹ The modified Stratification Report will continue to be published annually on the Board’s website for future years. In addition, the Board will post modified Stratification Reports for the years 2016 through 2019 to its website.

The aggregated data contained in the modified Stratification Reports provide all the information that should be required for the analyses Trinity describes in its request. The only specific shortcoming of the existing public data that Trinity has identified, for its purposes, is that it does not permit Trinity to connect commodities at the 7-digit STCC level with detailed car-type information. (Trinity Req. 9-10.) The modified Stratification Reports contain this information. Providing the information through the modified Stratification Reports has the

⁸ The Supreme Court has held that agency determinations not to reopen on material error grounds are not reviewable. I.C.C. v. Brotherhood of Locomotive Engineers, 482 U.S. 270, 284 (1987) (“[A]gency’s refusal to go back over ploughed ground is nonreviewable”). The Court was concerned, in part, that a contrary conclusion would render the 60-day appeal period provided in the Hobbs Act meaningless by indefinitely extending the judicial review period in cases where material error was asserted. Id. at 280.

⁹ These two types of covered hopper cars are distinguished by capacity. Other commodities such as wheat flour and rice may be transported in other types of covered hopper cars that have different unloading mechanisms and other characteristics. These distinctions are now visible in the modified 2020 Stratification Report.

additional benefit that the information requested by Trinity will now be available to the public as a whole. Moreover, the reports as published do not contain confidential information because the STB redacts information for a limited number of shipments where the volume of a specific commodity in a specific type of railcar is sufficiently small that individual shippers or railroads might be identified.

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For the reasons stated above, the Board will partially accommodate Trinity's request to access CCWS data by making more information concerning car types publicly available through modified 7-Digit STCC Expanded Stratification Reports. Trinity's request for access to the CCWS is otherwise denied.¹⁰

It is ordered:

1. Trinity's request is granted in part and denied in part to the extent described in the decision.
2. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

¹⁰ The Board need not address Trinity's request that the Board modify its standard access letter as the Board will not be granting Trinity's request for access. The Board notes, however, that it determined in U.S. Wheat that limiting CCWS access to a consultant does not cure the underlying harm that would be caused by permitting access for private, commercial use. The Board further notes that, under its standard access letter, "public" release of CCWS data occurs whenever such data or non-aggregated work product is provided to someone who is not listed in the access letter.