

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

Office of Economics

ENTERED
Office of Proceedings
January 11, 2023
Part of
Public Record

January 6, 2023

Mr. Benjamin J. Horwich
Munger, Tolles & Olson LLP
560 Mission Street
San Francisco, California 94105-2907

Re: Waybill Request WB23-02 & EP711 (Sub-No. 1)

Dear Mr. Horwich:

The Surface Transportation Board (STB or Board) has received your extension request under 49 C.F.R. § 1244.9(b)(4) dated January 4, 2023 for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues for 1992-2020 in connection with EP 711 (Sub-No. 1), Reciprocal Switching, on behalf of the Association of American Railroads (“AAR”). You state that you are continuing to evaluate issues relevant to this ongoing proceeding.

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) *Benjamin J. Horwich – Munger, Tolles & Olson LLP*
- b) *Henry Weissmann – Munger, Tolles & Olson LLP*
- c) *Erin J. Cox – Munger, Tolles & Olson LLP*
- d) *Giovanni S. Saarman Gonzalez – Munger, Tolles & Olson LLP*
- e) *Brianne Holland-Stergar – Munger, Tolles & Olson LLP*
- f) *Michael R. Baranowski – FTI*
- g) *Nathan S. Zebrowski – FTI*
- h) *Shane Vyskocil – FTI*
- i) *Prabaharan Ponnuthurai – FTI*

The expiration date for this agreement is January 31, 2024. 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.

Waybill Agreement WB23-02

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.

Waybill Agreement WB23-02

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.

Prior payment of processing and mailing cost of **\$60**(\$60 per signature of a new individual – Brianne Holland-Stergar) 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. After all parties have signed and returned this agreement, and the payment has been made, the extension is granted.

Waybill Agreement WB23-02

Sincerely,

William Brennan

William Brennan, PhD
Chief Economist & Director
Office of Economics

Waybill Agreement WB23-02

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: Benjamin J. Horwich

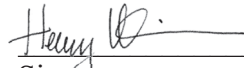
A handwritten signature in dark ink, consisting of a stylized 'B' followed by a horizontal line.

Signature

Waybill Agreement WB23-02

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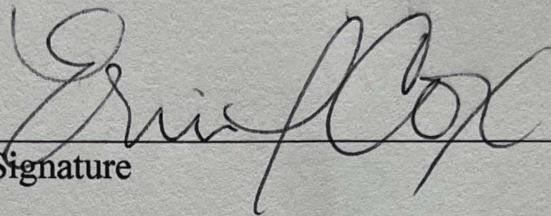
By: Henry Weissmann


Signature

Waybill Agreement WB23-02

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By: Erin J. Cox


Signature

Waybill Agreement WB23-02

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By: Giovanni S. Saarman Gonzalez



Signature

Waybill Agreement WB22-02

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 Holland-Stergar

A handwritten signature in black ink, appearing to read "Brian Holland-Stergar", 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: Michael R. Baranowski


Signature

Waybill Agreement WB23-02

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By: Nathan S. Zebrowski



Signature

Waybill Agreement WB23-02

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By: Shane Vyskocil

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

Signature

Waybill Agreement WB23-02

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By: Prabaharan Ponnuthurai

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

Signature

MUNGER, TOLLES & OLSON LLP

560 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105-2907
TELEPHONE (415) 512-4000
FACSIMILE (415) 512-4077

January 4, 2023

Writer's Direct Contact
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(415) 644-6966 FAX
Ben.Horwich@mto.com

VIA E-MAIL

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

Re: STB Docket No. EP 711 (Sub-No. 1), *Reciprocal Switching*

Dear Dr. Brennan:

I write to request an extension to waybill authorization WB 22-02 in connection with Docket No. EP 711 (Sub. No. 1) in light of the continued pendency of the proceeding. Specifically, I request authorization for the individuals listed below, with the new individual not currently authorized under WB 22-02 listed in *italics* with the corresponding signature page attached.

Munger, Tolles & Olson LLP and its employees:

1. Benjamin J. Horwich
2. Henry Weissmann
3. Erin J. Cox
4. Giovanni S. Saarman González
5. *Brianne Holland-Stergar*

FTI Consulting:

1. Michael R. Baranowski
2. Nathan S. Zebrowski
3. Shane Vyskocil
4. Prabaharan Ponnuthurai

Please note, in connection with this extension request access is no longer needed for Teresa A. Reed Dippo (MTO) and Naga Sai Achyuth Kundeti (FTI).

Please do not hesitate to contact me at (415) 512-4066 if you have any questions regarding this extension request.

William Brennan, PhD
January 4, 2023
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Respectfully submitted,

/s/ Benjamin J. Horwich

Benjamin J. Horwich

Counsel for the Association of American Railroads