

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

Office of Economics

ENTERED
Office of Proceedings
December 21, 2023
Part of
Public Record

December 15, 2023

David Rifkind
Partner
Stinson LLP
1775 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006

Re: Waybill Request WB23-70 & FD36732

Dear Mr. Rifkind:

The Surface Transportation Board (STB or Board) has received your request under 49 C.F.R. § 1244.9(b)(4) dated December 14, 2023 for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD36732 on behalf of The Kansas City Southern Railway Company (“CPKC”). Specifically, you request the unmasked 2004-2022 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 above proceeding. Specifically, I will grant you, in accordance with 49 C.F.R. § 1244.9(b)(4), access to the 2004-2022 unmasked costed waybill samples. The 2022 waybill sample will be released to you once it becomes available. These datasets may only be used for purposes of this proceeding. See 49 C.F.R. § 1244.9(b)(4)(v).

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

- a) David Rifkind – Stinson LLP*
- b) W. Robert Majure – Cornerstone Research*
- c) Lorenzo Michelozzi – Cornerstone Research*
- d) Miguel Morales-Mosquera – Cornerstone Research*
- e) Jingyi Cui – Cornerstone Research*
- f) Chad Qian – Cornerstone Research*
- g) Maxwell Pilloff – Cornerstone Research*
- h) Ashley B. Vissing – Cornerstone Research*
- i) Charis Katsiardis – Cornerstone Research*

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The expiration date for this agreement is December 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://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 proceedings identified above. Such purposes include any judicial review arising from that proceedings.
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

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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.

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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 **\$758** (\$200 for processing plus \$62 per signature) 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,

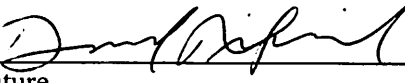
Francis X. O'Connor

Francis O'Connor
Acting Director
Office of Economics

Waybill Agreement WB23-70

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: David Rifkind



Signature

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By: W. Robert Majure

A handwritten signature in cursive script, appearing to read "WR Majure", is written over a horizontal line.

Signature

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By: Lorenzo Michelozzi

A handwritten signature in cursive script, reading "Lorenzo Michelozzi".

Signature

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By: Miguel Morales-Mosquera

Miguel Morales-Mosquera

Signature

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By: Jingyi Cui

Signature Jingyi Cui

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: Chad Qian

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

Signature

Waybill Agreement WB23-70

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By: Maxwell Pilloff

A handwritten signature in cursive script that reads "Maxwell Pilloff".

Signature

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By: Ashley B. Vissing

Ashley Vissing

Signature

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By: Charis Katsiardis

Charis Katsiardis

Signature

December 14, 2023

Francis O'Connor
Acting Director
Office of Economics
U.S. Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423
E-Mail: Francis.O'Connor@stb.gov

Re: Finance Docket 36732, *Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC—Acquisition and Operation—Certain Rail Line of Meridian & Bigbee Railroad, L.L.C. in Lauderdale County, Miss., and Choctaw and Marengo Counties, ALA.*

Dear Acting Director O'Connor:

I am writing on behalf of Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company (collectively "CPKC"), Applicants in FD 36732.

On November 8, 2023, the Board's Office of Economics issued waybill access letter WB23-61 granting outside counsel and consultants for Norfolk Southern Railway Company and Norfolk Southern Corporation (collectively "NS") access to the 2004-2022 unmasked costed waybill samples for purposes of the above referenced proceeding and related proceedings. NS's November 6, 2023 letter requesting such access asserted that NS needs the data in order to review "the various analyses and evidence required by 49 C.F.R. Part 1180 in support of the ... CPKC application[]" and to prepare and submit any evidence in response thereto."

In order to allow CPKC to evaluate and respond to any use of these data made by NS or others in this proceeding and pursuant to 49 CFR § 1244.9(b)(4), CPKC requests that access to the same data addressed in WB23-61 be granted to the following outside counsel and consultants for Applicants:

1. David Rifkind, Stinson LLP
2. W. Robert Majure, Cornerstone Research
3. Lorenzo Michelozzi, Cornerstone Research
4. Miguel Morales-Mosquera, Cornerstone Research
5. Jingyi Cui, Cornerstone Research
6. Chad Qian, Cornerstone Research
7. Maxwell Pilloff, Cornerstone Research
8. Ashley B. Vissing, Cornerstone Research
9. Charis Katsiardis, Cornerstone Research

1775 Pennsylvania Avenue N.W., Suite 800, Washington D.C. 20006

Francis O'Connor
December 14, 2023
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Please let me know if you have any questions.

Respectfully Submitted,

/s/ David Rifkind

*Counsel for Canadian Pacific Kansas City
Limited and The Kansas City Southern Railway
Company*

cc: Pedro Ramirez (Pedro.Ramirez@stb.gov)
Michael H. Higgins (Michael.Higgins@stb.gov)
W. Robert Majure (rmajure@cornerstone.com)