

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

ENTERED  
Office of Proceedings  
February 26, 2024  
Part of  
Public Record

***Office of Economics***

February 22, 2024

Matthew J. Warren  
Sidley Austin LLP  
1501 K Street N.W.  
Washington, D.C. 20005

**Re: Waybill Request WB24-12 & FD36744**

Dear Mr. Warren:

The Surface Transportation Board (STB or Board) has received your request under 49 C.F.R. § 1244.9(b)(4) dated February 21, 2024 for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD36744 Canadian National Railway Company and Grand Trunk Corporation – Control – Iowa Northern Railway Company, on behalf of Canadian National Railway Company (CNR) and Grand Trunk Corporation (GTC), collectively (CN). Specifically, you request the unmasked 2012-2023 CCWSs for all records and fields and for traffic that touches the State of Iowa.

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 2012-2022 unmasked costed waybill samples for traffic that originated, terminated, interchanged in, or passed through the state of Iowa. The 2023 dataset is not ready to be requested at this time and may be requested on a later date. 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) *Matthew J. Warren – Sidley Austin LLP*
- b) *Allison C. Davis – Sidley Austin LLP*
- c) *Morgan B. Lindsay – Sidley Austin LLP*
- d) *Stephen S. Laudone – Sidley Austin LLP*
- e) *Rebekah Bartlett – Oliver Wyman*
- f) *David Hunt – Oliver Wyman*
- g) *Marc Meketon – Oliver Wyman*
- h) *William Rennie – Oliver Wyman*
- i) *Joseph Towers – Oliver Wyman*

**Waybill Agreement WB24-12**

The expiration date for this agreement is February 28, 2025. 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 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

**Waybill Agreement WB24-12**

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 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.

**Waybill Agreement WB24-12**

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.

Sincerely,

*Francis X. O'Connor*

Francis O'Connor  
Acting Director  
Office of Economics

**Waybill Agreement WB24-12**

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: Matthew Warren

*/s/ Matthew Warren*

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Signature

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By: Allison C. Davis

/s/ Allison C. Davis

Signature

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By: Morgan B. Lindsay

/s/ Morgan B. Lindsay

Signature

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By: Stephen S. Laudone

*/s/ Stephen S. Laudone*

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Signature

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By: Rebekah Bartlett

*Rebekah E. Bartlett*

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Signature

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By: David Hunt

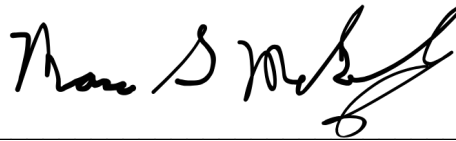
A handwritten signature in black ink, appearing to read "David Hunt", written over a horizontal line.

Signature

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By: Marc Meketon

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

Signature

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By: William Rennie

A handwritten signature in cursive script, appearing to read "William J. Rennie", written in dark ink.

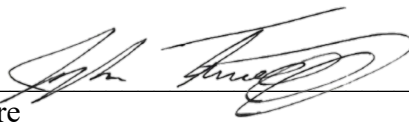
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Signature

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By: Joseph Towers

  
Signature



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February 21, 2024

**By Email**

Francis O'Connor  
Acting Director, Office of Economics  
Surface Transportation Board  
395 E Street S.W.  
Washington, D.C. 20423

Re: Docket No. FD 36744, Canadian National Railway Company and Grand Trunk Corporation—Control—Iowa Northern Railway Company

Dear Mr. O'Connor:

I write on behalf of Canadian National Railway Company (“CNR”) and Grand Trunk Corporation (“GTC”), applicants in the above-referenced proceeding.<sup>1</sup>

On February 20, 2024, the Board’s Office of Economics granted waybill access in WB24-10 to outside counsel and consultants for CPKC and its U.S. rail carrier subsidiaries (“CPKC”) to the 2012–2023 confidential Carload Waybill Sample (“CCWS”) (including all records and fields) for all traffic that touches the State of Iowa.

In order to allow CN to evaluate and respond to any use of the data made by CPKC or others in this proceeding, and pursuant to 49 C.F.R. § 1244.9(b)(4), CN is respectfully requesting access to the same data provided in WB24-10 for the following outside counsel and consultants: Rebekah Bartlett, David Hunt, Marc Meketon, William Rennie, and Joseph Towers of Oliver Wyman; and Matthew J. Warren, Allison C. Davis, Morgan B. Lindsay, and Stephen S. Laudone of Sidley Austin LLP.

CN’s outside counsel and consultants will scrupulously respect the confidentiality and commercially sensitive nature of the CCWS data and abide by the conditions placed on its use by the Board and by the terms of 49 C.F.R. § 1244.9.

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<sup>1</sup> GTC is a non-carrier holding company through which CNR controls its U.S. rail carrier subsidiaries. CNR and its U.S. rail operating subsidiaries are referred to collectively as “CN.”

# SIDLEY

February 21, 2024

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Thank you for your consideration and please do not hesitate to contact me at (202) 736-8996 if you have any questions regarding this request.

Best regards,

*/s/ Matthew J. Warren*

Matthew J. Warren