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April 25, 2025

Via E-filing

Kristen Monaco, PhD
Director, Office of Economics
U.S. Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

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Re: Waybill Data Request 25-18

Dear Dr. Monaco:

In a letter dated April 4, 2025, Thompson Hine, on behalf of itself and Escalation Consultants Inc., for their clients, American Chemistry Council (ACC), requested access to the “confidential carload waybill sample (CCWS) with unmasked revenues at the 5-digit STCC level for the year 2023.” Letter from Jason Tutrone, Thompson Hine, to Dr. Kristen Monaco, Director, Office of Economics, at 1 (April 4, 2025) (Request). Notice of the Request was served on April 11, 2025. The Request seeks access to waybill data to “understand how rail pricing influences the competitiveness of American products.” *Id.* The Request is should be denied as it seeks CCWS information for commercial purposes, including unmasked revenues, costs, contracts, and other confidential information.

By this letter, the Association of American Railroads (AAR), on behalf of its freight railroad members, strongly objects to the release of waybill data pursuant to the Request. Entities seeking access to CCWS under the “other users” provision have a demanding standard to meet. *Procedures on Release of Data from the ICC Waybill Sample (Waybill Procedures)*, 4 I.C.C.2d 194, 1987 ICC LEXIS 377 at 5 (1987) (noting “confidential waybill data generally will not be released to other users”). As explained in *Waybill Procedures*, other users must show that “a particular and legitimate need” for the data and, generally, then one must show that there are no reasonable alternatives to obtaining the data. *Waybill Procedures* at 6. Commercial purposes do not fulfill that need. See *Request for Waybill Access (U.S. Wheat)*, WB 20-40, at 5 (STB served Nov. 20, 2020) and *Request for Waybill Data (Trinity)*, WB-20-50, at 3 (STB served June 17, 2021).

As the Board’s prior decisions in *U.S. Wheat* and *Trinity* found, the release of the CCWS to “other users” for commercial purposes is not permissible. “Other user” requests must be properly scrutinized to ensure that the purposes for the request are consistent with Board policy. The Request clearly states its goals are to receive transportation cost information for

competitive purposes. *See Request* at 1. Specifically, ACC explains that it is “studying ways to facilitate growth of U.S. chemical production and U.S. manufacturing” and “seeks to understand whether certain movement characteristics, like access to competitive transportation options, affect competitiveness of American products,” including those produced by ACC members. *Id.* It also indicates that having accurate carload and pricing data will “reliably indicate the rail transportation costs for particular commodities. Since the very purpose of the analysis is to identify the rail transportation costs of U.S. and foreign goods, accurate carload and pricing data is critical.” *Request* at 3. Ultimately, ACC seeks CCWS data to conduct an analysis to improve its members’ competitiveness in domestic and foreign markets. This is simply inappropriate.

The Request is quite similar to *U.S. Wheat*, in which the entity sought CCWS data to develop, maintain, and expand international markets. There the Board affirmed it “will not make the CCWS available as a resource for private parties to mine the data and create commercial reports.” *U.S. Wheat*, at 5. That is exactly what ACC seeks to do. As was the case in *U.S. Wheat*, granting ACC access to actual unmasked contract rate information with location information would identify individual member companies or producers and would potentially benefit one entity at the expense of another. It is especially concerning because ACC admits it “plan[s] to use the CCWS origin and destination data to identify rail shipments of American and foreign goods” and “use carload and pricing data to identify aggregate rail transportation costs” for particular commodities. *Request* at 2. Given the sensitivity of the information, and in particular the rate and contract-related information, this does not rise to the level of a legitimate purpose. Similarly, the Board has explained that the CCWS data should not be used “as a mechanism for one set of competitors to gain detailed, shipment-specific, confidential market intelligence about another set of competitors.” *Request for Waybill Data*, WB 20-23, at 2 (STB served Sept. 24, 2020). Yet, that appears to be why the Request is being made. For these reasons, the Request should be denied.

Moreover, the CCWS is commercially sensitive data collected to further the Board’s regulatory mission, not to advance the private commercial interests of shippers *vis-à-vis* their competitors. *See Procedures on Release of Data from the ICC Waybill Sample (49 C.F.R. Part 1244)*, 4 I.C.C.2d 194, 197-98 (1987) (acknowledging that CCWS data is commercially sensitive for both shippers and railroads and should be protected from competitive harm). Especially when it comes to contract-related data, private entities should not be allowed to circumvent the confidential nature of contracts through the Board’s collection of that data. As the Board explained, its “collection of this information for regulatory purposes 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*, at 3. Indeed, the Board has a responsibility to maintain the confidentiality of the data it collects and “allowing any stakeholder to obtain confidential information merely to facilitate review of a general study would unduly expand access to protected information.” *Intervistas Study*, EP 736, at 3-4 (STB served June 28, 2018). In sum, just because the Board collects data that may be helpful to ACC’s members, it does not give ACC the right to obtain that data.

Dr. Kristen Monaco

April 25, 2025

Page 3

The Request should be denied. It provides no particular or legitimate need for the information contained in the CCWS, especially the unmasked revenues, costs, contract data, and other confidential information. The precedent is clear that commercial use does not meet that need. *See U.S. Wheat*, at 5 and *Trinity*, at 3.

I appreciate your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Frederick Miller Jr.", written over the printed name.

J. Frederick Miller Jr.
Counsel for the Association of American Railroads