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June 30, 2025

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June 30, 2025
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Kristen Monaco, PhD
Director, Office of Economics
U.S. Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: Waybill Data Request 25-33

Dear Dr. Monaco:

In a letter dated June 9, 2025, Thompson Hine, on behalf of itself and Escalation Consultants Inc., for their clients, American Chemistry Council (ACC), requested access to the “2023 confidential Carload Waybill Sample (CCWS) with unmasked revenues at the 5-digit STCC level.” Letter from Jason Tutrone, Thompson Hine, to Dr. Kristen Monaco, Director, Office of Economics, at 1 (June 9, 2025) (Request). Notice of the Request was served on June 16, 2025. The Request seeks access to waybill data to “to prepare a report quantifying, by 2-digit STCC, the total aggregated rail cost advantage or disadvantage for rail shipments of American products compared to products originating at import terminals.” *Id.* The Request is similar to one made in April 2025, that was denied on May 5, 2025, because of its private, commercial nature. Letter from Dr. Kristen Monaco, Director, Office of Economics, to Jason Tutrone, Thompson Hine, at 1 (May 5, 2025) (May denial). As with the prior request, this Request 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.¹

¹ See *Request for Waybill Access*, WB 20-40, at 5 (STB served Nov. 20, 2020) (*U.S. Wheat*) and *Request for Waybill*

As the Board's prior decisions in *U.S. Wheat*, *Trinity*, and the May denial 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 of comparing domestically produced products to those produced abroad, i.e., "products originating at import terminals." *Request* at 1. Specifically, ACC admits that its proposed report will "identify[] rail cost disadvantages for American products." *Id.* at 3. ACC also explains the report will cover "all commodities with shipments originating both at import terminals and U.S. production facilities." *Id.* Clearly, not only does ACC have a predetermined outcome for its report, but it is seeking to use the CCWS to compare prices among different markets, which is a commercial purpose.

ACC attempts to distinguish this request from others by claiming it is solely for policy and regulatory purposes, because they will use the CCWS for developing information on "ongoing policy and regulatory initiatives." *Id.* at 4. ACC is vague about which initiatives they need the data for. If there were a specific Board proceeding, ACC should request access in that docket.² Indeed, the matter they cite to support their Request is distinguishable.³ First, that matter was prior to the Board's more recent decisions articulating the principle regarding commercial purposes. Since that case was decided, the Board has taken a closer look at waybill confidentiality and whether it should release data for private, commercial purposes.⁴ Even so, in that 2018 matter, the requester specified a narrow STB-policy reason for the data, namely development of alternatives to Stand-Alone Cost rate case reviews. *See* WB 17-44, at 1. The instant Request is vague, identifying a link to general "regulatory reform efforts" and "supporting ongoing efforts ... to unleash competition." *Request* at 3. Instead of identifying concrete policies to propose, this Request is a fishing expedition designed to help ACC prove a point that appears predetermined, namely that domestic rail movements pay higher rail costs than international ones.

This Request is similar to one denied in *Intervistas Study* where the requester asked for workpapers containing CCWS so the entity could review the third-party report and its analyses. *See Intervistas Study*, EP 736 (STB served Feb. 28, 2018). The Board denied that request, because "[c]urrently, there is no Board proposal (preliminary or otherwise) that relies upon the

Data, WB 20-50, at 3 (STB served June 17, 2021) (*Trinity*).

² *See Intervistas Study*, EP 736, at 3 (STB served June 28, 2018) (*June Intervistas Study*) ("[I]t is not the Board's standard operating procedure to distribute confidential information in the absence of a Board proposal or request for analysis.").

³ *See Request* at 4 (citing *Request for Waybill Data*, WB 17-44 (STB served Mar. 23, 2018)).

⁴ *See Request for Waybill Data*, WB 20-50, at 3 (STB served June 17, 2021) ("Over the last several years, the Board has taken a close look at waybill confidentiality issues in several cases. Most pertinently, in the recent *U.S. Wheat* decision, the Board addressed whether private parties should be allowed to access and use CCWS data for their own private, commercial purposes. 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.'" (citations omitted)).

InterVISTAS Report... [so the requester] therefore [has] not presented a compelling need for the confidential waybill data.” *Id.* at 2. The Board was concerned releasing the data for the purpose of reviewing a report would “allow any interested stakeholder to access this confidential information merely because it believes that the information might facilitate review of those studies could create a precedent that unduly expands access to confidential waybill data.” *Id.* The same issue arises here, as granting access to CCWS based on generalized claims to assist in policy evaluation would expand access to the most competitively sensitive data the Board holds.

ACC claims it is not competitively harmful in nature to grant the Request, because their report will be aggregated at the 2-digit STCC level and will not “provide any single shipper or subset of shippers with a competitive information advantage.” *Request* at 4. This sleight-of-hand to focus on the report that is the outcome of the Request and not the Request itself is telling. ACC tries to claim that since *its report* will use only 2-digit STCC codes, there will be no harm, yet that ignores the fact that releasing the 5-digit STCC is where the harm could occur. Again, if this request is granted, it would set a precedent of expanding access to CCWS for any requestor that claims that their ultimate report will not reveal any identifiable information. As the Board explained previously, agreeing to keep the data confidential per the Board’s regulations is “not a justification for release of the data in the first place.” *U.S. Wheat*, at 3.

ACC also makes the argument that it should receive the data because it is only for one year and only its outside counsel and consultants would have access. As ACC admits, though, just because counsels and consultants will see the CCWS, does not justify a request that is illegitimate. *See Request* at 5, fn 2 (*citing U.S. Wheat* at 3). Limiting the Request to one year of data, however, does not overcome the commercially sensitive nature of the data itself. The risk of competitive harm still exists. As noted with ACC’s first request, given the sensitivity of the information, and in particular the rate and contract-related information, the Request does not rise to the level of a legitimate purpose. As the Board has explained, the CCWS data should not be used “as a mechanism for one set of competitors [i.e., domestic shippers] to gain detailed, shipment-specific, confidential market intelligence about another set of competitors [i.e., international shippers].” *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.

Finally, the agency has consistently recognized that 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.⁵ 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

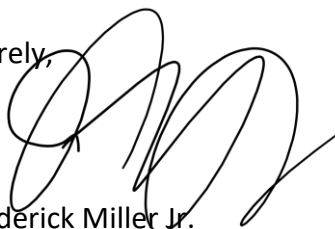
⁵ *See Procedures on Release of Data from the ICC Waybill Sample (49 C.F.R. Part 1244)*, 4 I.C.C.2d 194, 197-98 (1987) (acknowledging that CCWS data is commercially sensitive for both shippers and railroads and should be protected from competitive harm).

“allowing any stakeholder to obtain confidential information merely to facilitate review of a general study would unduly expand access to protected information.” *June Intervistas Study*, at 3-4. In sum, just because the Board collects data that may be helpful to certain domestic shippers, it does not give ACC, or anyone else, the right to obtain that data.

Ultimately, ACC seeks CCWS data to conduct an analysis to improve its members’ and other domestic shippers’ competitive position against international shippers. This is simply inappropriate and is not a “particular and legitimate need.” The Request should be denied.

I appreciate your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Frederick Miller Jr.', written over the word 'Sincerely,'.

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