

Surface Transportation Board
Washington, D.C. 20423-0001
Office of Economics

ENTERED
Office of Chief Counsel
August 12, 2025
Part of
Public Record

August 8, 2025

Shawn Johnson
Crowell & Moring LLP
1001 Pennsylvania Ave, NW
Washington, DC 20004

Re: Waybill Request WB25-45 & FD 36873

Dear Mr. Johnson:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(b)(4) of August 6, 2025, for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues in connection with FD 36873, Union Pacific Corporation, et al. – Control – Norfolk Southern Corporation, et al. on behalf of CSX Transportation (CSXT). Specifically, you requested unmasked 2019 through 2023 (including all records, all fields, and confidential unmasked revenues) for all traffic. You also requested access to comparable data for 2024 when it becomes available. Your request will allow CSXT's counsel and consultants to accurately assess claims regarding the market and traffic impacts and effect on the public interest of the proposed transaction, and to prepare analyses and develop evidence and Verified Statements in support of any comments or other participation by CSXT in the Proceedings. Your request explained that the CCWS is the only single source of the requested data and the access CSXT seeks is the same as the access granted to other parties in this proceeding.

Based on the complete and sufficiently detailed explanations and justifications contained in your request, I will grant access to 2019 through 2024 CCWS data for use in the FD 36873 proceeding. The 2024 CCWS is not yet available, and those data will be provided to you at a later date. Specifically, you will have access to unmasked 2019 through 2024 unmasked CCWS including all records and all fields for all traffic allowing counsel and consultants to accurately analyze the impacts of the transaction proposed in FD 36873, including traffic patterns, and to prepare verified statements in formal proceedings before the Board on behalf of CSXT. These data may only be used for purposes of this proceeding.

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

- a. *Kent Gardiner – Crowell & Moring*
 - b. *Shawn Johnson – Crowell & Moring*
- continued*

- c. *Luke van Houwelingen – Crowell & Moring*
- d. *Wm. Randolph Smith – Crowell & Moring*
- e. *Connor Ahearn – Crowell & Moring*
- f. *Drake Morgan – Crowell & Moring*
- g. *John M. Scheib – Gentry Locke*
- h. *Louis E. Gitomer – Louis Gitomer*
- i. *Julie Carey – NERA*
- j. *Ramsey Shehadeh – NERA*
- k. *Edward Lannan – NERA*
- l. *Heiner Lindenlaub – NERA*
- m. *Mark Ponder – NERA*
- n. *Ibrahim Ouf – NERA*
- o. *Madeline Baker – NERA*
- p. *Julie Chen – NERA*
- q. *Armaan Sharma – NERA*
- r. *Sara Schuster – NERA*
- s. *Jaime Trope – NERA*
- t. *Kristen Monaco – Monaco Economic Consulting*

The expiration date for this agreement is August 31, 2026. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy 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/>.

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.
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

Waybill Agreement WB25-45

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.

After all parties have signed and returned this agreement, please contact waybill@stb.gov 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 **\$1580** (\$200 for processing plus \$69 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
O'CONNOR

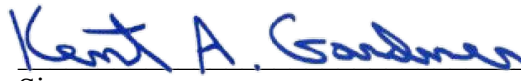
Digitally signed by
FRANCIS O'CONNOR
Date: 2025.08.08
12:23:22 -04'00'

Francis X. O'Connor
Acting Director
Office of Economics

Waybill Agreement WB25-45

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: Kent Gardiner

A handwritten signature in blue ink that reads "Kent A. Gardiner". The signature is written in a cursive, flowing style. The first name "Kent" is written with a large, stylized 'K'. The middle initial "A." is written in a smaller, simpler font. The last name "Gardiner" is written in a cursive style with a trailing flourish.

Signature

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By: Shawn Johnson



Signature

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By: Luke van Houwelingen

Signature

A handwritten signature in blue ink, appearing to be 'LH', is written over a horizontal line.

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By: Wm. Randolph Smith

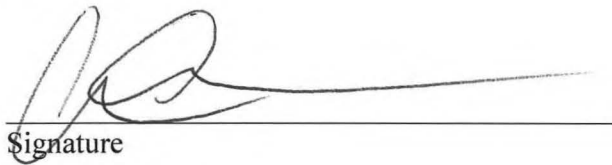


Signature

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By: Connor Ahearn



Signature

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By: Drake Morgan

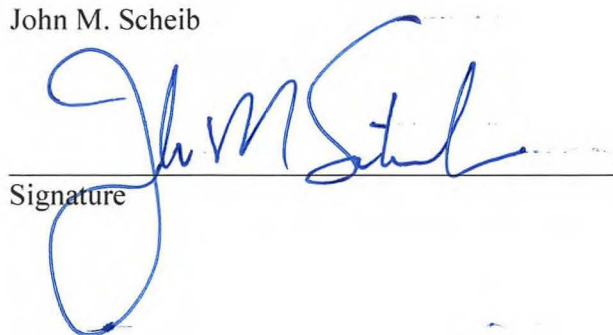

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By: John M. Scheib

Signature



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By: Louis E. Gitomer

A handwritten signature in black ink, appearing to read "Louis E. Gitomer", is written over a horizontal line. The signature is fluid and cursive.

Signature

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By: Julie Carey

/s/ Julie Carey

Signature

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By: Ramsey Shehadeh

/s/ Ramsey Shehadeh

Signature

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By: Edward Lannan

/s/ Edward Lannan

Signature

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By: Heiner Lindenlaub

/s/ Heiner Lindenlaub

Signature

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By: Mark Ponder

/s/ Mark Ponder

Signature

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By: Ibrahim Ouf

/s/ Ibrahim Ouf

Signature

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By: Madeline Baker

/s/ Madeline Baker

Signature

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By: Julie Chen

/s/ Julie Chen

Signature

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By: Armaan Sharma

/s/ Armaan Sharma

Signature

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By: Sara Schuster

/s/ Sara Schuster

Signature

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By: Jaime Trope

/s/ Jaime Trope

Signature

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By: Kristen Monaco

Kristen Monaco

Digitally signed by Kristen
Monaco
Date: 2025.08.08 16:11:41
-05'00'

Signature

Shawn Johnson
srjohnson@crowell.com
+1.202.624.2624 direct

Crowell & Moring LLP
1001 Pennsylvania Ave NW
Washington, DC 20004
+1.202.624-2500 main
+1.202.628.5116 fax

By Email

August 6, 2025

Dr. Francis O'Connor
Acting Director, Office of Economics
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Francis.o'connor@stb.gov

**Re: Request for Waybill Data, Finance Docket No. 36873, Union Pacific Corp., et al.
– Control – Norfolk Southern Corp., et al.**

Dear Dr. O'Connor:

I write on behalf of CSX Transportation, Inc. ("CSXT"). Pursuant to 49 C.F.R. § 1244.9(b)(4), we hereby request that CSXT's outside counsel and consultants in the above-referenced proceeding be authorized to obtain and use certain confidential STB Waybill Sample data. Those outside counsel and consultants, none of whom is a regular employee of CSXT, are the following:

1. Selected employees of Crowell & Moring LLP (See Attachment A);
2. Selected employees of Gentry Locke Attorneys (See Attachment B);
3. Selected employees of the Law Offices of Louis E. Gitomer, LLC (See Attachment C);
4. Selected employees of National Economic Research Associates, Inc. (See Attachment D);
and
5. Selected Employees of Monaco Economic Consulting (See Attachment E).

We request access to carload waybill data covering the period 2019 through 2023 (including all records, all fields, and confidential unmasked revenues) for all traffic. We also request access to comparable data for 2024 when it becomes available. We understand that access to these data will be granted pursuant to the terms of a protective order, solely for the purposes of this proceeding and any related litigation, and only after execution of appropriate confidentiality undertakings. In accordance with 49 C.F.R. § 1244.9(b)(1), any evidence drawn from the STB Waybill Sample will remain confidential and will be submitted only to the Board

unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad.

The purpose of this request is to allow CSXT's counsel and consultants to accurately assess claims made in the above-captioned proceeding and any sub-dockets and related proceedings (collectively, the "Proceedings"), including (without limitation) with respect to the market and traffic impacts and effect on the public interest of the proposed transaction, and to prepare analyses and develop evidence and Verified Statements in support of any comments or other participation by CSXT in the Proceedings. As the only single source of the data permitting a complete analysis of these issues, the STB Waybill Sample is essential for CSXT, through its outside counsel and consultants, to verify propositions in and analyses supporting the Applicants' Application, participants' comments, any responsive applications, and the validity and methodology of and assumptions used in such analyses; and to ensure full review of the potential competitive impacts of the transaction(s) proposed by Applicants¹ and any responsive applicants.

CSXT notes that the scope of its request is identical to that requested by and granted to the Applicants in the above-referenced proceeding.²

At this time, access is being requested for the parties listed above and in the corresponding Attachments. If additional consultants or counsel are retained, we will amend our request to add such individuals. Any strategic reports generated by outside counsel or consultants will not be disclosed to any party unless aggregated to at least the three FSAC rule in accordance with 49 C.F.R. § 1244.9(f).

We understand the limitations of the waybill files regarding revenues and accuracy. We also understand that the data includes confidential shipper and carrier information. We will treat this data as highly confidential, and we will make the data available only to certain of our attorneys and members of our staff in accordance with 49 C.F.R. § 1244.9(b)(4). Any waybill data disclosed to any other party not specifically covered herein will be aggregated to the three FSAC rule according to 49 C.F.R. § 1244.9(f).

We will undertake all efforts to ensure that those with access to the STB Waybill Sample will comply with the confidentiality requirements established in the regulations. We understand that we will be required to sign an agreement before any waybill data may be used. We will comply with the Board's confidentiality requirements, and no person, other than those listed here, will be entitled to access and review the raw data contained within the STB Waybill Sample.

¹ Union Pacific Corporation and Union Pacific Railroad Company (collectively, "Union Pacific"), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Norfolk Southern").

² See STB Docket No. FD 36873, *Union Pac. Corp. et al. – Control – Norfolk So. Corp. et al.*, Misc. Filing ID 309879 (STB Filed Aug. 5, 2025).

Please let me know the appropriate fee, calculated pursuant to 49 C.F.R. § 1002.2(f)(98), and how it can be paid. Your prompt attention to this request is appreciated.

Sincerely,



Shawn R. Johnson
Luke van Houwelingen

Crowell & Moring LLP
1001 Pennsylvania Ave. NW
Washington, DC 20004
srjohnson@crowell.com

Counsel for CSX Transportation, Inc.

ATTACHMENT A – CROWELL & MORING

1. Kent Gardiner
2. Shawn Johnson
3. Luke van Houwelingen
4. Wm. Randolph Smith
5. Connor Ahearn
6. Drake Morgan

ATTACHMENT B – GENTRY LOCKE

1. John M. Scheib

ATTACHMENT C – LOUIS E. GITOMER

1. Louis E. Gitomer

ATTACHMENT D – NERA

1. Julie Carey
2. Ramsey Shehadeh
3. Edward Lannan
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5. Mark Ponder
6. Ibrahim Ouf
7. Madeline Baker
8. Julie Chen
9. Armaan Sharma
10. Sara Schuster
11. Jaime Trope

ATTACHMENT E – MONACO ECONOMIC CONSULTING

1. Kristen Monaco