

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

ENTERED
Office of Chief Counsel
September 30, 2025
Part of
Public Record

September 15, 2025

Re: Waybill Request WB25-44 FD 36873

I have approved the addition of the following individuals to the waybill access letter in WB25-42.

- Matthew Reilly – Kirkland & Ellis LLP
- Daniel Donovan – Kirkland & Ellis LLP
- Richard Cunningham – Kirkland & Ellis LLP
- Jeffrey Ayer – Kirkland & Ellis LLP
- Psalm Cheung – Kirkland & Ellis LLP
- T.J. McCarrick – Kirkland & Ellis LLP
- McClain Thompson – Kirkland & Ellis LLP
- Jamie DiMario – Kirkland & Ellis LLP
- John Smaltz – Kirkland & Ellis LLP
- Ron Laschever – Compass Lexecon
- Khuong Ba Thien Do – Compass Lexecon
- Jerry Wang – Compass Lexecon
- Brendan Casey – FTI Consulting
- Daniel Goodwin – FTI Consulting
- Alexander Yee – FTI Consulting
- Mitch DeRubis – FTI Consulting
- Maggie Hu – FTI Consulting
- Dr. William W. Wilson – North Dakota State University

Prior payment of processing and mailing cost of **\$1242** (\$69 per signature) is required and received.

Sincerely,

**FRANCIS
O'CONNOR**

Digitally signed by
FRANCIS O'CONNOR
Date: 2025.09.15
14:17:37 -04'00'

Francis X. O'Connor
Acting Director
Office of Economics

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 Reilly

/s/ Matthew Reilly

Signature

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By: Daniel Donovan

/s/ Daniel Donovan

Signature

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By: Richard Cunningham

/s/ Richard Cunningham
Signature

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By: Jeffrey Ayer

/s/ Jeffrey Ayer
Signature

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By: Psalm Cheung

/s/ Psalm Cheung

Signature

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By: T.J. McCarrick

/s/ T.J. McCarrick
Signature

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By: McClain Thompson

/s/ McClain Thompson
Signature

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By: Jamie DiMario

/s/ Jamie DiMario

Signature

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By: John Smaltz

/s/ John Smaltz

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By: Ron Laschever

A handwritten signature in black ink, appearing to read "Ron Laschever", written in a cursive style.

Signature

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By: Khuong Ba Thien Do

A handwritten signature in black ink, appearing to be 'Khuong Do', written over a horizontal line.

Signature

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By: Jerry Wang

A handwritten signature in black ink, appearing to read 'Jerry Wang', is written above a horizontal line.

Signature

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By: Brendan Casey

/s/ Brendan Casey

Signature

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By: Daniel Goodwin

/s/ Daniel Goodwin

Signature

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By: Alexander Yee

/s/ Alexander Yee
Signature

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By: Mitch DeRubis

/s/ Mitch DeRubis

Signature

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By: Maggie Hu

/s/ Maggie Hu
Signature

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By: Dr. William W. Wilson

A handwritten signature in black ink, appearing to read "William W. Wilson", written over a horizontal line.

Signature

Peter W. Denton
202 429 6445
pdenton@steptoe.com

Steptoe

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

September 12, 2025

VIA E-MAIL

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

Re: **Request for Waybill Data, STB Docket No. FD 36873, Union Pacific Corporation, et al.—Control—Norfolk Southern Corporation, et al.**

Dear Director O'Connor:

We write on behalf of BNSF Railway Company ("BNSF"), which filed Notices of Appearance in this proceeding on August 6, 2025 and September 10, 2025.

Pursuant to 49 C.F.R. § 1244.9(b)(4), we respectfully request that BNSF's outside counsel and consultants be authorized to obtain and use certain confidential Surface Transportation Board ("STB" or "Board") Waybill Sample data. Those outside counsel and consultants, none of whom is a regular employee of BNSF, are the following:

Steptoe LLP and its employees:

1. Peter W. Denton
2. Anthony J. LaRocca
3. Timothy J. Strafford
4. Onika K. Williams
5. Sally Mordi
6. Jensen Matsuda

Kirkland & Ellis LLP and its employees:

1. Matthew Reilly
2. Daniel Donovan
3. Richard Cunningham
4. Jeffrey Ayer
5. Psalm Cheung
6. T.J. McCarrick
7. McClain Thompson
8. Jamie DiMario

9. John Smaltz

Compass Lexecon and its employees:

1. Dennis W. Carlton
2. Matias Escudero
3. Benjamin A. Spulber
4. Ron Laschever
5. Khuong Ba Thien Do
6. Jerry Wang

FTI Consulting and its employees:

1. Michael Baranowski
2. Nathaniel Zebrowski
3. Shane Vyskocil
4. Ranna Okeil
5. Jude Prabakaran
6. Connor Rempe
7. Jonathan Tweedy
8. Chris Kaylor
9. Brendan Casey
10. Daniel Goodwin
11. Alexander Yee
12. Mitch DeRubis
13. Maggie Hu

North Dakota State University:

1. Dr. William W. Wilson

We respectfully request access to carload waybill data covering the period 1990 through 2018 (including all records, all fields, and confidential unmasked revenues) for all traffic. Access to carload waybill data covering the period 2019 through 2024 has already been granted pursuant to WB25-44 for BNSF's outside counsel and consultants from Steptoe LLP, Compass Lexecon, and FTI Consulting. BNSF's outside counsel from Kirkland & Ellis LLP, three additional consultants from Compass Lexecon, five additional consultants from FTI Consulting, and Dr. Wilson of North Dakota State University will need access for the period of 1990 through 2024.

The purpose of this request is to allow BNSF's 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 BNSF. The access BNSF seeks is the same as the access granted to other parties in this proceeding.

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

Director Francis O'Connor

September 12, 2025

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after the 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.

At this time, access is being requested for the parties listed above. 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).

The required fee of \$2,615.00, which includes a fixed fee of \$200.00 plus \$69.00 for each individual (a total of thirty-five (35) outside counsel and consultants) has been paid on pay.gov per 49 C.F.R. § 1002.2(f)(98)(i).

Separately, the required fee of \$1,242.00 (\$69.00 per nine (9) individuals from Kirkland & Ellis; three (3) individuals from Compass Lexecon; five (5) individuals from FTI Consulting; and Dr. Wilson) for WB25-44 has been paid on pay.gov per 49 C.F.R. § 1002.2(f)(98)(i).

Please contact me with any questions.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton

Attorney for BNSF Railway Company