

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

September 24, 2025

310137

Peter Denton
Steptoe LLP
1300 Connecticut
Washington, DC 20036-1795

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

Re: Waybill Request WB25-56 & FD 36873

Dear Mr. Denton:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(b)(4) of September 12, 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 BNSF Railway Company (BNSF). Specifically, you requested unmasked 1990 - 2018 (including all records, all fields, and confidential unmasked revenues) for all traffic. Previously you had requested and been granted access to unmasked 2019 – 2024 (including all records, all fields, and confidential unmasked revenues) for all traffic. Your request will 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.

Based on the complete and sufficiently detailed explanations and justifications contained in your request, I will grant additional access to 1990 through 2018 CCWS data for use in the FD 36873 proceeding. 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 BNSF. 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. *Peter W. Denton – Steptoe LLP*
 - b. *Anthony J. LaRocca – Steptoe LLP*
 - c. *Timothy J. Strafford – Steptoe LLP*
 - d. *Onika K. Williams – Steptoe LLP*
- continued*

- e. Sally Mordi – Steptoe LLP*
- f. Jensen Matsuda – Steptoe LLP*
- g. Matthew Reilly*
- h. Daniel Donovan*
- i. Richard Cunningham*
- j. Jeffrey Ayer*
- k. Psalm Cheung*
- l. T.J. McCarrick*
- m. McClain Thompson*
- n. Jamie DiMario*
- o. John Smaltz*
- p. Dr. William W. Wilson*
- q. Dennis W. Carlton – Compass Lexecon*
- r. Matias Escudero – Compass Lexecon*
- s. Benjamin A. Spulber – Compass Lexecon*
- t. Ron Laschever*
- u. Khuong Ba Thien Do*
- v. Jerry Wang*
- w. Michael Baranowski – FTI Consulting*
- x. Nathaniel Zebrowski – FTI Consulting*
- y. Shane Vyskocil – FTI Consulting*
- z. Ranna Okeil – FTI Consulting*
- aa. Jude Prabakaran – FTI Consulting*
- bb. Connor Rempe – FTI Consulting*
- cc. Jonathan Tweedy – FTI Consulting*
- dd. Chris Kaylor – FTI Consulting*
- ee. Brendan Casey*
- ff. Daniel Goodwin*
- gg. Alexander Yee*
- hh. Mitch DeRubis*
- ii. Maggie Hu*

The expiration date for this agreement is September 30, 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/>.

Waybill Agreement WB25-56

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.

Waybill Agreement WB25-56

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 WB25-56

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 \$2615 (\$200 for processing plus \$69 per signature) is received.

Sincerely,

FRANCIS
O'CONNOR

Digitally signed by
FRANCIS O'CONNOR
Date: 2025.09.25
06:28:12 -04'00'

Francis X. O'Connor
Acting Director
Office of Economics

Waybill Agreement WB25-56

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: Peter W. Denton

/s/ Peter W. Denton

Signature

Waybill Agreement WB25-56

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By: Anthony J. LaRocca

/s/ Anthony J. LaRocca

Signature

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By: Timothy J. Strafford

/s/ Timothy J. Strafford

Signature

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By: Onika K. Williams

/s/ Onika K. Williams

Signature

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By: Sally Mordi

/s/ Sally Mordi

Signature

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By: Jensen Matsuda

/s/ Jensen Matsuda

Signature

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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

Signature

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By: Dennis W. Carlton

/s/ Dennis W. Carlton

Signature

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By: Matias Escudero

Matias Escudero

Signature

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By: Benjamin A. Spulber

/s/ Benjamin A. Spulber

Signature

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By: Ron Laschever



9/25/2025

Signature

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By: Khuong Ba Thien Do



Signature

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By: Jerry Wang

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

Signature

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By: Michael Baranowski

/s/ Michael Baranowski

Signature

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By: Nathaniel Zebrowski

/s/ Nathaniel Zebrowski

Signature

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By: Shane Vyskocil

/s/ Shane Vyskocil

Signature

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By: Ranna Okeil

/s/ Ranna Okeil

Signature

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By: Jude Prabaharan

/s/ Jude Prabaharan

Signature

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By: Connor Rempe

/s/ Connor Rempe

Signature

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By: Jonathan Tweedy

/s/ Jonathan Tweedy

Signature

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By: Chris Kaylor

/s/ Chris Kaylor

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

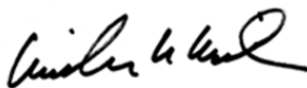
/s/ Maggie Hu

Signature

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By: Dr. William W. Wilson



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

Page 3

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