

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 761¹

HEARING ON REVENUE ADEQUACY

Docket No. EP 722

RAILROAD REVENUE ADEQUACY

Digest:² In this decision, the Board grants access to workpapers, subject to confidentiality agreements.

Decided: October 28, 2019

On September 12, 2019, the Board announced a public hearing, to take place on December 12, 2019, on revenue adequacy issues raised by the Board's Rate Reform Task Force (RRTF) in its report issued on April 25, 2019 (RRTF Report). The Board has invited interested persons to provide input on the RRTF's recommendations regarding revenue adequacy. See RRTF Report 12-13, 32-42, Apr. 25, 2019.

By letters dated October 9, 2019, from the Association of American Railroads, and October 16, 2019, from the American Chemistry Council, the Corn Refiners Association, and The Fertilizer Institute, those parties have requested access to the RRTF workpapers, which include data from the confidential Carload Waybill Sample (CCWS), used to generate tables 5, 6, and 7 in the RRTF Report. The tables illustrate a potential rate increase constraint as applied to a small set of commodities transported by three different carriers. See RRTF Report 37-38.

Because the RRTF workpapers at issue contain confidential waybill data, the Board must consider the highly sensitive nature of this information for both carriers and shippers and the Board's policy to closely guard access to this data. See Procedures on Release of Data from the ICC Waybill Sample, 4 I.C.C.2d 194, 197-212 (1987); see also 49 C.F.R. § 1244.9. In evaluating a request for waybill data, the Board balances the requesting party's need for the data

¹ These proceedings are not consolidated. A single decision is being issued for administrative purposes.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

against the strong policy in favor of protecting such sensitive information. See 4 I.C.C.2d at 205, 211.

Given the Board's request for comments on the RRTF's recommendations regarding revenue adequacy, the Board finds that access to the RRTF workpapers is appropriate. See 49 C.F.R. § 1244.9(b)(4) (permitting access to waybill data to prepare submissions in Board proceedings); cf. InterVISTAS Study, EP 736, slip op. at 2 (STB served Feb. 28, 2018) (denying a request for access to workpapers containing confidential waybill data where Board had not sought comments on the InterVISTAS study). Access to the RRTF workpapers would enable hearing participants and commenters to conduct a more thorough analysis of the revenue adequacy recommendations discussed by the RRTF. Therefore, the Board will make available the workpapers supporting tables 5, 6, and 7 of the RRTF Report, subject to confidentiality agreements to protect the confidential waybill data. Interested persons may obtain access to the workpapers by sending a request to Economic.Data@stb.gov and completing the confidentiality agreements provided by the Board's Office of Economics.

If written testimony or other written submissions contain confidential waybill data, such testimony or submissions must be filed under seal along with a public version from which confidential information has been redacted. See generally 49 C.F.R. §§ 1104.14, 1244.9. Because this will be a public hearing, oral testimony must not include references to confidential waybill data.

It is ordered:

1. The Board will make available the information as described above, subject to confidentiality agreements.
2. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.