

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 736

INTERVISTAS STUDY

Digest:¹ This decision grants in part and denies in part a request for workpapers.

Decided: February 28, 2018

BACKGROUND

On January 26, 2018, the Western Coal Traffic League (WCTL) renewed a request previously submitted on October 19, 2016, seeking certain workpapers underlying the study performed by InterVISTAS Consulting LLC (InterVISTAS Report).² Further background regarding the InterVISTAS Report, which is available on the Board’s website under “E-Library” and “Studies,” can be found in the decision served on October 12, 2016, in this docket.

Here, WCTL requests that the Board provide its counsel with “copies of the workpapers and data supporting, and sufficient to replicate” specified calculations in the InterVISTAS Report relating to the Board’s Three-Benchmark and Simplified Stand-Alone Cost tests. (WCTL Request 1-2.) According to WCTL, “[p]rovision of the requested workpapers and data will facilitate WCTL’s review of the [InterVISTAS] Report and is consistent with the Board’s stated desire to consider the [InterVISTAS] Report findings and analyses ‘in open and transparent fora.’” (Id. at 2 (citation omitted).)

DISCUSSION AND CONCLUSIONS

The Board will grant WCTL’s request in part. Workpapers in the Board’s possession responsive to the request will be provided, with exceptions due to the confidential data contained in certain of those workpapers and the nature of the Report, as discussed below.

¹ 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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Board acknowledges the unusual delay in responding to this request, which was due to an administrative oversight. The Board also reminds practitioners that they may contact the Board’s Rail Customer and Public Assistance (RCPA) office informally with procedural status questions relating to pending matters. RCPA can be reached at (202) 245-0238.

Workpapers underlying the InterVISTAS Report that do not contain confidential information will be released. These workpapers include, for example, URCS tables and formulas, road property investment and operating expense data from prior rate cases, and documents that list and describe the workpapers. Although some of the data and information in these workpapers refer to prior rate cases, the information in these files was either not designated as confidential by the parties to those cases or is apparent from the Board's decisions. These workpapers will be provided to WCTL by the Board's Office of Economics and can be obtained by other interested parties by sending a request to Economic.Data@stb.gov.

However, two of the workpapers subject to WCTL's request contain information that is subject to a protective order in another proceeding. Under that protective order, only parties and outside counsel or consultants who sign the undertakings are permitted to review information submitted to the Board that is designated confidential or highly confidential. See *W. Fuels Ass'n v. Burlington N. & Santa Fe Ry.*, NOR 42088, slip op. at 8-9 (STB served Nov. 10, 2004). Because WCTL was not a party to that proceeding, its request will be denied with regard to these documents.

To the extent the requested workpapers contain confidential waybill data, the Board will also deny WCTL's request. Because waybill data includes information that is highly sensitive for both carriers and shippers, the Board closely guards 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 against the strong policy in favor of protecting such sensitive information. See *Procedures on Release of Data from the ICC Waybill Sample*, 4 I.C.C.2d at 205, 211.

Here, that balancing weighs against providing WCTL with confidential waybill information in order to "facilitate WCTL's review of the [InterVISTAS] Report." Currently, there is no Board proposal (preliminary or otherwise) that relies upon the InterVISTAS Report or a request from the Board for specific data analysis based on the Report. WCTL has therefore not presented a compelling need for the confidential waybill data. Moreover, it is not uncommon for confidential waybill data to underlie studies (some conducted by the Board and some by third parties, such as other federal and state agencies), and allowing 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. See *Procedures on Release of Data from the ICC Waybill Sample*, 4 I.C.C.2d at 197-98.

It is ordered:

1. WCTL's request for workpapers is granted in part and denied in part, as discussed above.
2. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller.