

Surface Transportation Board
Washington, D.C. 20423-0001

Office of Economics

November 1, 2019

Jason D. Tutrone,
Thompson Hine
1919 M. Street, N.W.
Washington, D.C. 20036-3537

Re: Workpaper Request EP 722 & EP 761

Dear Mr. Tutrone:

The Surface Transportation Board (STB or Board) has received your request for permission to access the workpapers supporting tables 5, 6, and 7 of the Rate Reform Task Force's (RRTF) report (RRTF Workpapers) in connection with EP 722 Railroad Revenue Adequacy and EP 761 Hearing on Revenue Adequacy on behalf of The American Chemistry Counsel, Corn Refiners Association, and The Fertilizer Institute (the Associations). Pursuant to the Board's decision in these proceedings served October 29, 2019, your request for the RRTF Workpapers will be granted. As discussed below, the data in the RRTF Workpapers 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) *Jason Tutrone – Thompson Hine*
- b) *Jeffrey Moreno – Thompson Hine*
- c) *Thomas D. Crowley – L.E. Peabody & Associates*
- d) *Timothy D. Crowley – L.E. Peabody & Associates*
- e) *Daniel L. Fapp – L.E. Peabody & Associates*
- f) *Robert D. Mulholland – L.E. Peabody & Associates*
- g) *Amy M. Spelke – L.E. Peabody & Associates*
- h) *Allison C. Reid – L.E. Peabody & Associates*

The expiration date for this agreement is December 12, 2019.

The RRTF Workpapers includes data from the confidential Carload Waybill Sample (CCWS). 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 the workpapers can be released.

Your signature acknowledges your agreement to comply with the following:

1. You will use the RRTF Workpapers 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 RRTF Workpapers (including work product and analyses derived from the RRTF Workpapers) available only to individuals who have signed an agreement. 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 workpapers 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 agreement to the STB.
3. If written testimony or other written submission contain confidential waybill data, including data from the RRTF Workpapers, such testimony or submission must be filed under seal along with a public version from which confidential information has been redacted.
4. Pleadings and evidence (and underlying workpapers) containing CCWS data, including data from the RRTF Workpapers (such as work product and analyses derived from the RRTF Workpapers), 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 RRTF Workpapers.
5. The RRTF Workpapers 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. You will refer any requests for the RRTF Workpapers in your possession (including work product and analyses derived from the RRTF Workpapers) 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 the workpapers, you shall notify the Board in writing within three days of any determination that the workpapers must be released, and in no event later than five days before the workpapers is scheduled to be released.

7. In order to retain access to the RRTF Workpapers beyond the expiration date specified above, you must submit a written request for an extension of the agreement 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 the workpapers (including all work product and analyses derived from the workpapers) 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 the RRTF Workpapers when required, may prevent any future release of CCWS data to you. Violations of this agreement may subject you to sanctions by the Board.

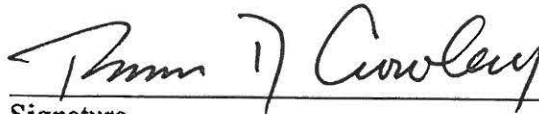
Sincerely,

A handwritten signature in black ink that reads "William Brennan". The signature is written in a cursive, flowing style.

William Brennan
Director
Office of Economics

I have read and understand the conditions for release of the workpapers. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy the workpapers and certify that I have done so. I have the authority to sign this agreement.

By:


Signature

THOMAS D CROWLEY
Name - Please Print

PRESIDENT, L.E. PEARBODY & ASSOCIATES, INC
Title

11/1/19
Date

I have read and understand the conditions for release of the workpapers. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy the workpapers and certify that I have done so. I have the authority to sign this agreement.

By:



Signature

TIMOTHY D CROWLEY

Name - Please Print

Executive Vice President

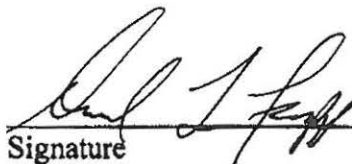
Title

11/4/19

Date

I have read and understand the conditions for release of the workpapers. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy the workpapers and certify that I have done so. I have the authority to sign this agreement.

By:


Signature

Daniel L. Fapp
Name - Please Print

Senior Vice President
Title

11/1/19
Date

I have read and understand the conditions for release of the workpapers. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy the workpapers and certify that I have done so. I have the authority to sign this agreement.

By:


Signature

Robert D. Mulholland
Name - Please Print

Senior Vice President (LE Peabody)
Title

11/4/2019
Date

I have read and understand the conditions for release of the workpapers. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy the workpapers and certify that I have done so. I have the authority to sign this agreement.

By:

Amy M Speake
Signature

Amy M Speake
Name - Please Print

Project Manager
Title

November 4, 2019
Date

I have read and understand the conditions for release of the workpapers. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy the workpapers and certify that I have done so. I have the authority to sign this agreement.

By:

Allison Reid
Signature

Allison Reid
Name - Please Print

Project Manager
Title

11/1/19
Date

I have read and understand the conditions for release of the workpapers. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy the workpapers and certify that I have done so. I have the authority to sign this agreement.

By:



Signature

Jason Tutrone

Name - Please Print

Associate

Title

11/04/2019

Date

I have read and understand the conditions for release of the workpapers. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. I will request an extension of this agreement, if necessary. If no extension is requested, I will return or destroy the workpapers and certify that I have done so. I have the authority to sign this agreement.

By:



Signature

Jeffrey Moreno

Name - Please Print

Partner

Title

11-2-19

Date