

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

***Office of Economics***

April 17, 2018

Mr. Jeffrey O. Moreno  
Thompson Hine LLP  
1919 M. Street, N.W.  
Suite 700  
Washington, D.C. 20036-1600

**Re: Waybill Request WB17-44**

Dear Mr. Moreno:

The Surface Transportation Board (STB) has received your request under 49 C.F.R. § 1244.9(c) of October 20, 2017 for permission to access the confidential Carload Waybill Sample (CCWS) with unmasked revenues. Your request explained that the requested data would be used for facilitating the development, evaluation, and proposal of alternatives to SAC. Specifically, you requested the 2006-2016 CCWSs, all fields and records, and unmasked revenues. Your request explained that these particular data were required in order to demonstrate the functionality and feasibility of a rate benchmarking standard as an alternative to SAC.

In accordance with my December 27, 2017, letter decision, which was affirmed by the Board in *Request for Waybill Data*, Docket No. WB 17-44 (STB served Mar. 23, 2018), I will grant access to a more limited set of data. Specifically, you will have access to the CCWS, with masked revenues, for the period 2006-2013. This data may only be used for the purpose detailed in your request. ***This approval becomes effective when signed agreements from the individuals listed below are received by the STB:***

- a) Jeffrey O. Moreno – Thompson Hine
- b) Jason D. Tutrone – Thompson Hine
- c) Kevin W. Caves – Economists, Inc.
- d) Kathryn Karasek – Economists, Inc.
- e) ~~Angie Urshel~~ – Economists, Inc. Augustus Urschel
- f) Thomas D. Crowley – L.E. Peabody
- g) Timothy D. Crowley – L.E. Peabody
- h) Daniel L. Fapp – L.E. Peabody
- i) Ray H. Thibault – L.E. Peabody
- j) Christopher A. Gomez – L.E. Peabody
- k) Ian M. Anderson – L.E. Peabody

The expiration date for this agreement is April 30, 2019. Unless you seek and obtain a renewal from the STB, this agreement upon expiration obligates you to return or destroy all copies of the data (see item 6 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* @ [www.stb.gov/stb/industry/econ\\_waybill.html](http://www.stb.gov/stb/industry/econ_waybill.html) on the Board's website.

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:

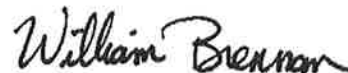
1. You will use the CCWS data released to you solely for the purpose requested.
2. Absent permission from the STB, you shall make the information contained in the CCWS (including work product and analyses derived from the CCWS) available only to the individuals identified above. The STB may approve access for additional individuals within your entity working on the particular project or study requiring the waybill data. Each such additional individual must review and sign this agreement, and return a copy of the signature page to the STB.
3. You will not release any CCWS data (including work product and analyses derived from the CCWS) to anyone who has not signed this agreement and been approved for access by the STB until the STB has had the opportunity to review the materials proposed for disclosure to ensure confidentiality.
4. You acknowledge that, in addition to the restrictions described in paragraphs 2 and 3 above, you are bound by the STB's rules governing use and disclosure of CCWS data. These include the confidentiality provisions of 49 C.F.R. §§ 1244.9(f)(1)-(3), which require that "[a]ny shipper data obtained from the Waybill Sample shall not be publicly released unless the data are aggregated to include at least three shippers." In addition, you agree not to disclose CCWS data that permits identification of an individual railroad.
5. 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.

6. 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.
7. 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.

After all parties have signed and returned this agreement, please contact Mr. Dusenberry (202) 245-0319 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 \$594 is required.

Sincerely,



William Brennan  
Acting Director

cc: Raymond A. Atkins (counsel to AAR)

**Waybill Agreement WB17-44**

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:

  
Signature  
Name - Please Print  
Title  
Date

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By:

  
SignatureKEVIN CAVES  
Name - Please PrintVice President  
Title4/17/2018  
Date

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By:

Kathryn Karasek

Signature

Kathryn Karasek

Name - Please Print

Analyst, Economists Inc.

Title

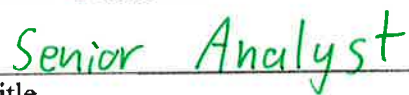
4/17/18

Date

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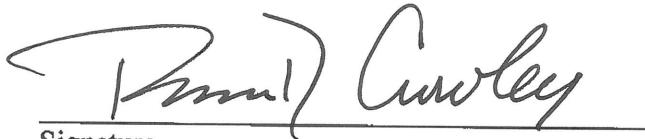
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Signature  
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Title  
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By:



Signature

THOMAS D. CROWLEY

Name - Please Print

PRESIDENT, L.E. PEABODY &amp; ASSOCIATES, INC

Title

4/17/18

Date

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By:

  
SignatureTIMOTHY D. CROWLEY  
Name - Please PrintExecutive Vice President,  
Title4/17/18  
DateL.E. Pardo  
& Associates,  
Inc.

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By:

Signature

Daniel L Fapp

Name - Please Print

Senior Vice President - L.E. Peabody &amp; Associates, Inc.

Title

4/17/18

Date

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By:

  
SignatureRAY H. THIBAUT  
Name - Please PrintPROJECT DIRECTOR  
L.E. PEABODY & ASSOCIATES, INC.  
Title4/18/2018  
Date

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By:

Christopher Gómez  
Signature

Christopher Gómez  
Name - Please Print

Economic Analyst L.E. Penbaly & Associates, Inc.  
Title

4/17/18  
Date

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By:

  
SignatureIan M. Anderson  
Name - Please PrintEconomic Analyst - L.E. Peabody + Associates, Inc  
Title4/17/2018  
Date

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By:

  
SignatureJason Turtrone  
Name - Please PrintAssociate  
Title4/17/2018  
Date