

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

245228

Office of Economics

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February 26, 2018
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Public Record

February 22, 2018

Mr. William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037

In Response Refer To Waybill Request WB18-07

Dear Mr. Mullins:

Re: Finance Docket No.32760 (Sub-No.46)

The Surface Transportation Board (STB) has approved Baker & Miller's (B&M) request, on behalf of The Kansas City Southern Railway Company (KCSR), of February 16, 2018 for permission to access selected fields from the 2016 carload waybill sample (with unmasked revenues) for KCSR, UP, and BNSF for the purpose of submitting testimony in the above-referenced case. ***This approval becomes effective when the signed agreements from the parties listed below are received by the STB:***

- a) *B&M*
- b) *Dr. Curtis Grimm*
- c) *Dr. Kevin Neels*

The new expiration date for this agreement is February 28, 2019. Failure to renew this agreement upon expiration obligates you to return or destroy all copies of the data (see item 4 of the agreement).

Any information or reports developed from the waybill data may be disclosed to the public only if all data items are aggregated to a level that guarantees the presence of at least three shippers. The three FSAC-rule (Ex Parte 385, Sub No. 2) will be accepted as guaranteeing the presence of at least three shippers. *See*, 49 C.F.R. § 1244.9(f).

When using the data the parties must recognize several aspects which limit drawing general conclusions from any potential findings: 1) The waybill data are sample data, and 2) the data are based on terminating shipments from relatively large carriers. Only those railroads with more than 4,500 annual terminating carloads were included in the sample. This limited sampling of very small railroads may have a substantial effect on studies covering small areas served predominately by a non-sampled railroad.

The revenue field of the waybill sample may not represent the true revenue for contract movements. There are often end-of-year adjustments provided for in contract rates, typically calling for rebates or discounts once minimum volume commitments are met, that may not always be included in the actual waybill revenue figures. You should not use revenue data from the Carload Waybill Sample in any type of comparison which may lead to wrong or misleading results.

The rules for release of waybill data (Ex Parte No. 385 (Sub-No. 2)) are codified at 49 C.F.R. § 1244.9. The waybill data contain confidential shipper and railroad data. As a result, waybill data are commercially sensitive and have the potential to cause competitive harm to shippers and railroads if disclosed. Therefore, the following agreement must be signed before any waybill data can be used.

Your signature acknowledges your organization's agreement to comply with the following:

1. The information contained in the released waybill data shall be made available only to members of your firm participating in the analysis, and to the individuals acting as independent consultants identified above. In addition, that data may be disclosed to counsel or other independent representatives for other parties to the proceeding subject to the usual and customary protective order issued in this proceeding. *See*, 49 C.F.R. § 1244.9(b)(4)(iv).
2. The waybill data released shall be used solely for the purpose requested.
3. Failure to return or destroy the data as required at the conclusion of the proceeding may prevent any future release of the waybill data from the STB.
4. The organization (and each independent consultant identified above) must sign an agreement annually with the STB agreeing to these restrictions. **If an annual agreement is not signed, all waybill materials (including all copies) obtained under this agreement must be returned to the STB or the organization must certify that the data has been destroyed.**

After you sign and return 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 Surface Transportation Board will provide the organization the data electronically by email. The STB requests that you pay processing and mailing cost in the amount of \$312.

Sincerely,

A handwritten signature in black ink that reads "William Brennan". The script is cursive and fluid, with the first name and last name clearly distinguishable.

William Brennan
Acting Director

Each approved person must sign a copy of this agreement.

I have read and understand the conditions for release of the waybill data. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. Thirty days before the agreement expires, I will request an extension of this agreement, if necessary. If no extension is requested, then I will return or destroy all waybill data and certify that I have no copies of the data. I understand that failure to request an extension or to return or destroy the data may prevent me from receiving any future waybill data from the STB.

Baker and Miller

By:


Signature

William A. Miller
Name - Please Print

PARTNER
Title

2/22/18
Date

For STB use only:

Signed Agreement Returned: WB18-07 _____

Expiration Date: 2/28/19

Each approved person must sign a copy of this agreement.

I have read and understand the conditions for release of the waybill data. I agree to comply fully with these conditions and the provisions of this confidentiality agreement. Thirty days before the agreement expires, I will request an extension of this agreement, if necessary. If no extension is requested, then I will return or destroy all waybill data and certify that I have no copies of the data. I understand that failure to request an extension or to return or destroy the data may prevent me from receiving any future waybill data from the STB.

Dr. Curtis Grimm

By:

Curt Grimm
Signature

Curtis M. Grimm
Name - Please Print

Professor
Title

2/22/18
Date

For STB use only:

Signed Agreement Returned: WB18-07 _____

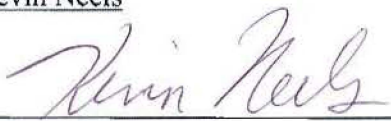
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Dr. Kevin Neels

By:


Signature

Kevin Neels
Name - Please Print

Principal
Title

2/25/18
Date

For STB use only:

Signed Agreement Returned: WB18-07 _____

Expiration Date: 2/28/19