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February 8, 2021

Via E-mail

Dr. William Brennan
Director
Office of Economics
U.S. Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: Waybill Data Request 21-7

Dear Dr. Brennan:

In a letter entered January 25, 2021, the Utah Inland Port Authority (UIPA) requested "to gain access to the confidential rail carload waybill sample for California and Utah as a part of the business case study being conducted by our independent consulting group" for the years 2017-2018. Letter from UIPA, to Dr. William Brennan, Director, Office of Economics, at 1 (Jan. 25, 2021) (UIPA Letter). Notice of this request was served on January 25, 2021. The request seeks access to waybill data "to analyze US rail traffic required for the following tasks: synthesizing rail-based commodity flows, understanding rail transloading characteristics, and modeling logistics costs of specific rail routes" which will help UIPA "look at or validate specific routes, costs, lines, and to compare with information that railroads provide." *Id.* Aside from the identifying states and years, the request is broad and would include cost, revenue, and other confidential information.

By this letter, the Association of American Railroads (AAR), on behalf of its freight railroad members, strongly objects to the release of waybill data pursuant to the current request. Entities seeking access to confidential carload waybill sample (CCWS) under the other users provision have a demanding standard to meet. *Procedures on Release of Data from the ICC Waybill Sample (Waybill Procedures)*, 4 I.C.C.2d 194, 1987 ICC LEXIS 377 at 5 (1987) (noting "confidential waybill data generally will not be released to other users."). As explained in *Waybill Procedures*, other users must show that "a particular and legitimate need" for the data and, generally, then one must show that there are no reasonable alternatives to obtaining the data. *Waybill Procedures* at 6.

UIPA states they need the waybill data because it is developing a "business case/feasibility assessment for an intermodal transloading facility in Utah, along with analysis on other logistics facilities (satellite ports) statewide to support improved reliability, efficiency, and

cost reduction in the statewide logistics system.” UIPA Letter at 1. The information will help UIPA with “modeling logistics costs of specific rail routes ... [and] will enable [UIPA] to look at or validate specific routes, costs, lines, and to compare with information that railroads provide.” *Id.* Stated another way, UIPA is requesting confidential rail pricing information to determine the business case or feasibility of attracting shippers to an intermodal transloading facility.

There is no particular and legitimate need for this information, especially revenue-related information, to be released. While UIPA is a state entity, it is requesting the information for a business purpose, namely development of an intermodal transloading facility. *Id.* Development of such a facility is undoubtedly intended to attract shippers who would be transporting its goods by rail or other mode from or to such facility, and the requested CCWS would help UIPA do so. UIPA states it wants access to the data to know the “costs of specific rail routes” and the “routes, costs, lines” of railroads in California and Utah, which is exactly the type of confidential information that should be protected by the Board. *Id.* The Board has upheld denials of release of such confidential data for similar commercial research purposes. *See Request for Waybill Data*, Docket No. WB 20-40, slip op. at 5 (STB served Nov. 20, 2020) (denying the appeal by a wheat association for confidential waybill data stating “[t]he Board will not make the CCWS available as a resource for private parties to mine the data and create commercial reports.”); *Request for Waybill Data*, Docket No. WB 20-23, slip op. at 2 (STB served Sept. 24, 2020) (denying an appeal from a state soybean association because “it is clear, however, that NC Soybean believes that having such detailed data would enhance the competitive position of North Carolina growers. Such improvement for NC Soybean’s members could certainly come at the expense of out-of-state growers.”). UIPA’s request is no different than a nonprofit association requesting such information for the commercial benefit of its members or shippers in a particular region. In general, individuals should not be able to circumvent the private nature of contractual relationships through a government entity’s collection of data. *See WB 20-40*, slip op. at 3 (“the Board’s collection of this information for regulatory purposes does not establish a right for private parties to obtain and use the most confidential aspects of this data for commercial purposes.”). Given the commercially sensitive nature of the unmasked waybill data, including shipper and revenue data, it would be particularly inappropriate to release the CCWS information based on the business-related purpose of this request.

UIPA does, however, explain that it is a state entity. As such, it should either avail itself of the Board’s procedures for states pursuant to 49 C.F.R. § 1244.9(b)(3), or the Board should limit the release to traffic that originated, terminated, interchanged in, or that passed through Utah and not include any revenue information. *See Letter from Dr. William Brennan, Director, Office of Economics, to Scott Strelecki, Regional Planner, Southern California Association of Governments*, Docket No. WB 20-48 (Nov. 5, 2020) (limiting the release of data to a state entity to masked carload waybill sample for traffic that originated, terminated, passed through, or interchanged in the state of California).

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For these reasons, UIPA's request should be denied. If the overall request is nonetheless granted, the Board should not release any revenue information, especially unmasked contract revenues, and should limit the release to traffic that originated, terminated, interchanged in, or passed through Utah.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JFM', with a stylized, cursive flourish.

J. Frederick Miller Jr.

(admitted in Maryland)

Counsel for the Association of American Railroads