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ATTORNEYS AT LAW

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Dr. William Brennan
Director, Office of Economics
Surface Transportation Board
395 E St., SW
Washington, DC 20423

Re: Waybill Request 21-89

Dear Dr. Brennan:

The Western Coal Traffic League (“WCTL”) writes to convey its concerns regarding the request that Dr. Dennis Carlton submitted for access to the unmasked carload waybill sample for the years from 1984 to the present.

Dr. Carlton represents that the “research project ... is not being supported by or performed on behalf of any sponsor or client.” However, Dr. Carlton has performed work for railroad interests in the past and in the present. For example, he is included among the individuals that have or had access under Waybill Request 21-30 for use of the sample for 2015-2020 on behalf of Canadian National in the then-proposed CN-KCS merger. Dr. Carlton is also serving as an expert witness on behalf of the Union Pacific Railroad in the pending railroad fuel surcharge antitrust litigation, in which capacity he may also have access to the confidential waybill sample or similar data.

These other activities at least raise the possibility that the request relates to a focus that is not purely academic and that may instead be aligned with those that have retained Dr. Carlton and also Compass Lexecon to further their commercial interests, regardless of whether they have retained Dr. Carlton and his colleagues for this particular review. Accordingly, WCTL respectfully submits that the request should not be granted until Dr. Carlton provides further clarification regarding the separation of his academic and other professional activities.

In addition, WCTL notes that there appears to be a gap in the request. The last sentences of the request states that: The names of the researchers who will need access to the CWS are below.” However, no such individuals are identified.

Dr. William Brennan
December 29, 2021
Page 2

WCTL respectfully requests that access to the waybill not be granted until these matters are properly resolved. WCTL also seeks to reserve the right to reply should any further information be submitted.

Respectfully submitted,

William L. Slover
Peter A. Pfohl
/s/ Robert D. Rosenberg
Attorneys for the Western Coal Traffic
League