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Surface Transportation Board
Washington, D.C. 20423-0001
Office of Economics

ENTERED
Office of Proceedings
February 28, 2014
Part of
Public Record

February 7, 2014

Mr. John M. Cutler, Jr.
Law Office
5335 Wisconsin Avenue, N.W., Suite 640
Washington, DC 20015

Dear Mr. Cutler:

You represent the Alliance for Rail Competition (ARC) in *Rail Transportation of Grain, Rate Regulation Review*, Docket No. EP 665 (Sub-No. 1). We are in receipt of your letter dated January 31, 2014 supplementing your initial request dated January 2, 2014 (which was denied by this office), seeking waybill access as part of your participation in this proceeding. This supplemental letter addresses our concerns. Your request for all Waybill Data for 2011 and 2012 (when that Waybill Data set becomes available), in all fields, moving under the STCC codes in the National Grain and Feed Arbitration Rules has been approved. I have attached a copy of that list of STCC codes. Use of the information provided is limited to this proceeding. ***This approval becomes effective when your signed agreement is received by the STB.***

The rules for release of Waybill Data 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 for competitive harm to shippers and railroads, including third-party railroads. This Waybill Data may be accessed only by employees of your firm as outside counsel of record in this proceeding, and to those individuals working with or assisting such counsel who are not regular employees of the party and have a need to know, review, or handle the confidential material for purposes of the proceeding, including testifying and consulting experts, provided each such person has been given and has read a copy of this letter, agrees to be bound by its terms, and executes the attached undertaking prior to receiving access to such materials.

Therefore, the following agreement must be signed before any Waybill Data can be released.

Your signature acknowledges your agreement to comply with the following:

1. Waybill Data may be disclosed only to outside counsel of record in this proceeding, and to those individuals working with or assisting such counsel who are not regular employees of the party and have a need to know, review, or handle the Waybill Data for purposes of the proceeding, including testifying and consulting experts, provided each such person has been given and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Waybill Data prior to receiving access to such materials.

2. Each Undertaking for Waybill Data executed by a person authorized to receive access to Waybill Data shall be kept for the duration of this proceeding and any related court litigation or judicial appeals by the party with which such person is affiliated or associated, and a copy of each such Undertaking shall be served to the STB's Office of Economics no later than 10 days after such Undertaking is executed.

3. Waybill Data shall be used by a receiving party solely for the purpose of this proceeding and any judicial review proceeding arising therefrom, and not for any other business, commercial, or competitive purpose.

4. All copies of the Waybill Data must be destroyed at the completion of this proceeding and any judicial review proceeding arising therefrom, except that outside counsel (but not outside consultants) for each party are permitted to retain file copies of all pleadings and evidence filed with the Board and file copies of all work products.

5. Waybill Data, if contained in any pleading or evidence filed with the Board, shall, in order to be kept confidential, be filed only in pleadings or evidence submitted in a package clearly marked on the outside "Highly Confidential Materials Containing Waybill Data Subject to Protective Order." See 49 C.F.R. § 1104.14.

6. If any party intends to use Waybill Data at hearings in this proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such Waybill Data to the Board, a court, or an Administrative Law Judge, with a written request that the Board, the court, or the Administrative Law Judge: (a) restrict attendance at the hearings during discussion of such Waybill Data; and (b) restrict access to the portion of the record or briefs reflecting discussion of such Waybill Data in accordance with the terms of this Protective Order.

7. If any party intends to use Waybill Data in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any such Waybill Data is used shall be restricted to persons who may review the material under this Protective Order and employees of the defendant carrier and its outside counsel and consultants. All portions of deposition transcripts and/or exhibits that consist of or disclose Waybill Data shall be kept under seal and treated as Highly Confidential Waybill Data in accordance with the terms of this Protective Order.

8. To the extent that material reflecting the terms of contracts, shipper-specific traffic data, other traffic data, or other proprietary information is produced or otherwise disclosed by a party in this or any related proceedings and is held and used by the receiving person in compliance with this Protective Order, such production, disclosure, and use of the material and of the data that the material contains will be deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904.

9. Except for this proceeding, the parties agree that if a party is required by law or order

of a governmental or judicial body to release Waybill Data, the party so required shall notify the Board in writing within 3 working days of the determination that the Waybill Data are to be released or within 3 working days prior to such release, whichever is soonest.

10. Failure to request an extension, return the data, or destroy the data may prevent any future release of Waybill Data from the STB.

11. Violations of this protective order are subject to sanctions by the Board under 49 C.F.R. § 1244.9(g).

12. Egregious violations of this protective order, as determined by the Board, may be subject to sanctions including, but not limited to, disbarment from representing or presenting evidence on behalf of any client in any Board proceeding or matter for a period of time determined by the Board.

13. Improper disclosure of Waybill Data is also subject to civil penalties under 49 U.S.C. § 11904.

We would appreciate your signing and returning this agreement as soon as possible.

Sincerely,



William F. Huneke
Director & Chief Economist

Agreed:

John M. Cutler, Jr., Law Office
Company



Signature

JOHN M CUTLER, JR
Name - Please Print

ATTORNEY FOR ARC
Title

2/19/2014

Date

<i>STCC</i>	<i>Description</i>	<i>STCC</i>	<i>Description</i>
01-131	Barley	20-471	Bird Food or Seed, Domestic
01-132	Corn	20-511	Bakery Products/Sweepings
01-133	Oats	20-61625	Molasses
01-135	Rye	20-619	Beet Pulp Pellets
01-136	Sorghum Grains	20-823	Spent Grains
01-137	Wheat	20-831	Malt
01-139	Grain, NEC	20-832	Malt Flour or Sprouts
01-141	Cottonseeds	20-839	Malt Products
01-142	Flaxseeds	20-859	Distillers By-Products
01-143	Peanuts Meal	20-914	Cottonseed Meal or By-Products
01-144	Soybeans	20-921	Soybean oil
01-149	Oil Kernals, nuts or seeds	20-923	Soybean meal and hulls
01-152	Popcorn	20-92336	Soapstock (for feed use only)
01-159	Seeds	20-933	Nut or Vegetable Oils
01-191	Fodder Hay or Roughage	20-939	Oil Seed Meals and
01-341	Beans, Dry Ripe	20-942	Fish Meal
01-342	Peas, Dry	20-144	Animal Protein Products
01-343	Cowpeas, Lentils or Lupines	01-134	Rough Rice
01-992	Alfalfa Meal	20-449	Milled Rice, Rice By-Products, etc.
20-111	Cottonseed Oil	20-442	Rice Flour
20-143	Grease/Inedible tallow	20-933	Rice Oil
20-411	Wheat Flour	20-442	Rice Bran
20-412	Wheat bran, middlings	37-422	Freight cars moving on own-wheels
20-413	Corn meal or flour	28-12630	Limestone (for feed use only)
20-414	Rye Flour	28-184	Biodiesel
20-415	Oat flour	28-184.45	Ethanol
20-418	Grain mill by-products	28-185	Glycerin
20-419	Flour or other grain mill products, NEC	28-19910	Dical and monocal phosphate
20-421	Prepared Feeds	28-99112	Salt (for feed use only)
20-461	Corn syrup	28-994	Distillate (fatty acids)
20-462	Corn starch	30-41290	Millrun
20-463	Corn sugar	20-469	Wet process corn milling or by-products
20-464	Dextrine, corn, tapioca or other		
20-465	Corn oil		
20-466	Other starch		