

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35387

AG PROCESSING INC A COOPERATIVE—PETITION FOR DECLARATORY ORDER

Decided: October 19, 2011

On July 20, 2010, Ag Processing Inc A Cooperative (Ag Processing) filed a petition for declaratory order challenging the reasonableness of a Norfolk Southern Railway Company (NSR) tariff insofar as it imposes charges and penalties on loaded rail cars that exceed the car's weight limit as a result of weather conditions encountered after the car is delivered to the railroad. The petition was amended to add other shippers¹ and to continue the challenge after NSR revised the tariff. At Petitioners' request, the Board ordered the parties to mediate the dispute, but mediation was unsuccessful, and NSR filed a motion to dismiss the petition on January 27, 2011, along with confidential materials subject to a protective order. The Petitioners filed their reply on March 8, 2011.

In a decision served on September 22, 2011, the Board instituted a declaratory order proceeding regarding this matter and announced that the agency would hold an oral argument on October 25, 2011. The Board stated that the argument will be broadcast and open to the public, but that only counsel for both sides will be allowed to present argument. Both sides were given 20 minutes to present argument, and Petitioners were given the option to reserve time for rebuttal. The Petitioners have provided notice that they will be represented by Andrew P. Goldstein, and NSR has provided notice that it will be represented by Robert A. Wimbish.

On October 14, 2011, Petitioners submitted a filing noting that part of the record consists of highly confidential material. They ask that the Board add time at the end of the public session where both sides can present argument concerning this sensitive material. Petitioners represent that NSR agrees to the proposal. Petitioners ask for five minutes of additional time to present argument concerning highly confidential material, five minutes for NSR's response, and time for rebuttal if the Petitioners saved any of their five minutes.

The request to close from the public a portion of the oral argument to present highly confidential material and the request for additional time will both be granted because they are reasonable and agreed to by both sides. After the end of the public session, the video broadcast

¹ The amended petition added Bunge North America, Inc., Archer Daniels Midland Company, Louis Dreyfus Corporation, and Perdue Agribusiness, Inc. as petitioners (collectively, Petitioners).

will be terminated. The hearing room will be cleared except for Board staff and those who have complied with the protective order to access highly confidential material for this proceeding.

It is ordered:

1. The Petitioners' request is granted as discussed above.
2. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.