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January 27, 2011

**BY ELECTRONIC FILING**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

Re: STB Finance Docket No. 35387, Ag Processing Inc A Cooperative—Petition for Declaratory Order

228684

Dear Ms. Brown:

Enclosed for filing please find the Motion for Protective Order of Norfolk Southern Railway Company.

Thank you for your prompt assistance. If you have any questions, please feel free to contact me.

**ENTERED**  
**Office of Proceedings**

JAN 27 2011

**Part of**  
**Public Record**

Sincerely,

Greg E. Summy

Enclosure

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35387**

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**AG PROCESSING INC A COOPERATIVE –  
PETITION FOR DECLARATORY ORDER**

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**MOTION FOR PROTECTIVE ORDER OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

**James A. Hixon  
John M. Scheib  
Greg E. Summy  
Christine I. Friedman  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510**

*Counsel for Norfolk Southern Railway  
Company*

Dated: January 27, 2011

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35387**

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**AG PROCESSING INC A COOPERATIVE –  
PETITION FOR DECLARATORY ORDER**

---

**MOTION FOR PROTECTIVE ORDER OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

Pursuant to 49 C.F.R. § 1104.14(b), Norfolk Southern Railway Company (“Norfolk Southern”) hereby requests that the Board issue a protective order in the form set forth in Appendix A hereto. The proposed protective order is necessary to allow Norfolk Southern to submit to the Board certain documents that contain highly sensitive internal information and to make such documents available to outside counsel for interested parties solely for use in this proceeding.

Norfolk Southern is filing herewith a motion to dismiss the *Second Amended Petition for Declaratory Order* filed by Ag Processing Inc A Cooperative (“Ag Processing”), Bunge North America, Inc. (“Bunge”), Archer Daniels Midland Company (“ADM”), Louis Dreyfus Corporation (“LDC”), and Perdue Agribusiness, Inc. (“Perdue”) (collectively, “Petitioners”). Accompanying that motion, Norfolk Southern has attached the Verified Statement of Rush Bailey, the Assistant Vice President of Customer Service for Norfolk Southern. Paragraph three of that Verified Statement reads as follows:

3. Weight limits are stenciled on each railcar that indicate the maximum weight for the car when loaded. Customers generally want to load cars as efficiently as possible, and therefore many tend to cut it close to the stenciled amount. Based on review by its Mechanical and Engineering Departments, NS has, in some cases, set tolerances over and above the stenciled weight limits of the car. The difference between the stenciled amount and NS internal limits provides some

leeway to customers and decreases the chances of a car being stopped for an overload condition, if the car's weight is within NS's internal limits, based on the car and route. This system depends on the privacy of NS's internal weight restrictions, as customers would tend to cut it even closer or load in excess of the stenciled weight limit of the car if they were aware of these internal weight tolerances. For the Board's reference, NS has filed separately, along with a motion for protective order, its internal weight tolerances, which are incorporated herein as Exhibit B to this verified statement.

The internal weight tolerances mentioned in this paragraph represent highly sensitive commercial information, and public disclosure of such information would undermine and threaten the functionality of these internal tolerances, causing injury to Norfolk Southern. Moreover, public disclosure of this information is not necessary to the consideration or disposition of this proceeding.

Filed simultaneously with this motion, Norfolk Southern submits under seal a document containing these internal weight tolerances, which has been marked as "Exhibit B" and labeled as "Highly Confidential." Norfolk Southern requests that the Board accept this document under seal and adopt the proposed protective order contained in Appendix A.

Norfolk Southern prays that the Board grant its Motion for a Protective Order.

Respectfully submitted,



James A. Hixon  
John M. Scheib  
Greg E. Summy  
Christine I. Friedman  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510

*Counsel for Norfolk Southern Railway  
Company*

Dated: January 27, 2011

## APPENDIX A

### PROTECTIVE ORDER

#### 1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers); the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with shippers or carriers; confidential financial and cost data; divisions of rates, trackage rights compensation levels and other compensation between carriers; and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 4 or 5 of this Protective Order and any Confidential Information contained in such materials.

(d) "Proceedings" means those before the Surface Transportation Board ("Board") concerning the transaction in STB Finance Docket No. 35387, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 35387 or from any related proceedings before the Board.

2. Personnel of Ag Processing Inc A Cooperative ("Ag Processing"), Bunge North America, Inc. ("Bunge"), Archer Daniels Midland Company ("ADM"), Louis Dreyfus Corporation ("LDC"), and Perdue Agribusiness, Inc. ("Perdue") (collectively, "Petitioners"), the Norfolk Southern Railway Company ("NSR") and their affiliates, including outside consultants and attorneys for any of them (representatives), may exchange Confidential Information for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, until the conclusion of these Proceedings.

3. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of Petitioners, NSR or their affiliates are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such Proceedings and will not be deemed a violation of 49 U.S.C. §§11323 or 11904, or any other relevant provision of the ICC Termination Act of 1995 (ICCTA).

4. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents

as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraphs 2 and 3 of this Protective Order.

5. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraphs 2 and 3 of this Protective Order.

6. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

7. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

8. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version.

9. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

10. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35387, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 35387 and/or with any related proceedings.

11. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

12. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." *See* 49 CFR § 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

13. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

14. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

15. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 12 of this Protective Order.

16. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, 6 or 7 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §11904 or of any other relevant provision of the ICC Termination Act of 1995.

17. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

18. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Exhibit A

UNDERTAKING-CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, have read the Protective Order served on \_\_\_\_\_, 2011, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35387, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35387, any related proceedings before the Surface Transportation Board ("Board"), and/or any judicial review proceedings in connection with STB Finance Docket No. 35387 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Dated: \_\_\_\_\_

Exhibit B

UNDERTAKING-HIGHLY CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, am outside [counsel][consultant] for \_\_\_\_\_, for whom I am acting in this proceeding. I have read the Protective Order served on \_\_\_\_\_, 2011, governing the production and use of Highly Confidential Information in STB Finance Docket No. 35387, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Highly Confidential Information obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35387, any related proceedings before the Surface Transportation Board ("Board"), or any judicial review proceedings in connection with STB Finance Docket No. 35387 and/or with any related proceedings. I further agree not to disclose any Highly Confidential Information, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me; that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners; and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that any party producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: \_\_\_\_\_  
OUTSIDE [COUNSEL] [CONSULTANT]

Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Greg E. Summy, certify that on this date a copy of the Motion to Dismiss of Norfolk Southern Railway Company, filed on January 27, 2011, was served by email or by first-class mail, postage prepaid, on all parties of record, specifically:

Andrew P. Goldstein  
McCarthy Sweeney & Harkaway, PC  
Suite 700  
1825 K Street, N.W.  
Washington, D.C. 20006  
(202) 775-5560



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Greg E. Summy

Dated: January 27, 2011