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September 24, 2010

**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

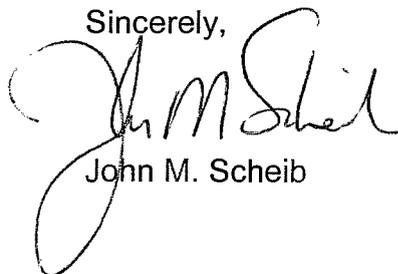
Re: STB Finance Docket No. 35387, Ag Processing Inc A Cooperative  
Petition for Declaratory Order

Dear Ms. Brown:

Enclosed is Norfolk Southern Railway Company's Answer to the Second Amended Petition ("Answer").

Thank you for your prompt assistance. If you have any questions, please feel free to contact me at 757-629-2831.

Sincerely,



John M. Scheib

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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**ANSWER OF  
NORFOLK SOUTHERN RAILWAY COMPANY TO SECOND AMENDED  
PETITION**

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**James A. Hixon  
John M. Scheib  
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Three Commercial Place  
Norfolk, VA 23510**

***Counsel to Norfolk Southern  
Railway Co.***

**Dated: September 24, 2010**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35387**

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**AG PROCESSING INC A COOPERATIVE –  
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**ANSWER OF  
NORFOLK SOUTHERN RAILWAY COMPANY TO SECOND AMENDED  
PETITION**

Pursuant to 49 C.F.R. 1111.4, Norfolk Southern Railway Company (“NS”) submits this Answer to the Surface Transportation Board (“STB”) in response to the Second Amended Petition of Ag Processing Inc A Cooperative (“Ag Processing”) in the above captioned proceeding as follows:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted.
6. Paragraph 6 is admitted.
7. Paragraph 7 is admitted
8. Paragraph 8 is admitted as to the dates of the filing. Otherwise, the filing speaks for itself.
9. Paragraph 9 is admitted.
10. Paragraph 10 is admitted.

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted.

13. The terms of NS Tariff 8002-A, Item 5000, effective July 14, 2010, the so-called "Initial Tariff", and NS Tariff 8002-A, Item 5000, effective August 4, 2010, the so-called "Amended Tariff", speak for themselves. To the extent paragraph 13 does more than quote language from the Amended Tariff and otherwise requires an answer, it is denied.

14. The terms of the Initial Tariff and the Amended Tariff speak for themselves. To the extent paragraph 14 does more than quote language from the Amended Tariff and otherwise requires an answer, it is denied.

15. NS admits that the Amended Tariff addressed overloaded railcars, except for cars loaded with coal, coke, or iron ore. NS otherwise states that the terms of the Amended Tariff speak for themselves. Otherwise, paragraph 15 is denied.

16. Paragraph 16 is admitted.

17. NS admits that Part D of the Tariff created an exception for rail cars that were overloaded due to a combination of the lading weight and weather. NS states that the terms of the Amended Tariff speak for themselves. Otherwise, paragraph 17 is denied.

18. NS denies that Part D of the Initial Tariff is relevant to this dispute. NS states that the terms of the Amended Tariff speak for themselves. Otherwise, paragraph 18 is denied.

19. NS is without knowledge or information sufficient to form a belief as to the weighing conducted by Petitioners. Otherwise, paragraph 19 is denied.

20. NS admits that its freight rates for Petitioners generally are assessed on a per car basis. NS states that the remainder of paragraph 20 is a hypothetical, which is not a factual allegation, that requires no response. To the extent a response is required, the remainder of paragraph 20 is denied.

21. NS is without knowledge or information sufficient to form a belief as to paragraph 21, except that NS admits that the loading of the rail car is completely within the individual and applicable Petitioner's control and not within NS's control.

22. NS admits that "snow or sleet" "fall or rain" during the winter months, including potentially on routes traversed by Petitioner's individual cars. NS admits that cars moving along its system are exposed to changing weather conditions along the route and that cars may be stopped and held along the route by NS or a connecting carrier for operating reasons, including switching. NS admits that neither NS nor Petitioners control the weather. Otherwise NS denies the remainder of paragraph 22.

23. NS is without knowledge or information sufficient to form a belief as to paragraph 23.

24. Paragraph 24 is denied to the extent it does not call for a legal conclusion to which no response is required.

25. Paragraph 25 is denied to the extent it does not call for a legal conclusion to which no response is required.

26. Paragraph 26 is denied to the extent it does not call for a legal conclusion to which no response is required.

27. Paragraph 27 is denied to the extent it does not call for a legal conclusion to which no response is required.

28. Paragraph 28 is denied to the extent it does not call for a legal conclusion to which no response is required.

29. Paragraph 29 is denied.

30. NS admits that overweight cars “pose a safety hazard”. NS is without knowledge or information sufficient to form a belief as to the remainder of paragraph 30 and otherwise denies the remainder of paragraph 30.

31. Paragraph 31 requires no response. To the extent a response is required, the paragraph is denied.

### **AFFIRMATIVE AND OTHER DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The complaint fails to state a claim that NS has engaged in an unreasonable practice in violation of 49 U.S.C. 10702.

#### **SECOND AFFIRMATIVE DEFENSE**

The complaint fails to state an action that is ripe for resolution through a declaratory order action because the subject of the complaint is neither a controversy nor is there any uncertainty to resolve.

Respectfully Submitted,



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James A. Hixon  
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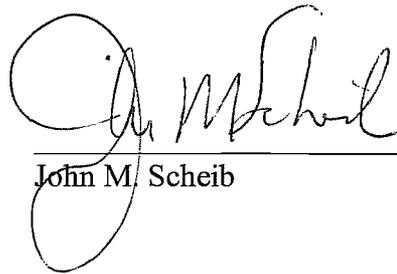
*Counsel to Norfolk Southern Railway Co.*

**Dated: September 24, 2010**

**CERTIFICATE OF SERVICE**

I, John M. Scheib, certify that on this date a copy of Norfolk Southern Railway Company's Answer to the Second Amended Petition for a Declaratory Order of Ag Processing Inc a Cooperative, filed on September 24, 2010, 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 NW  
Washington, D.C. 2006  
(202) 775-5560



John M. Scheib

Dated: September 24, 2010