

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

+ + + + +

ORAL ARGUMENT

+ + + + +

OPEN SESSION

-----x
 IN THE MATTER OF: :
 :
 AG PROCESSING INC A COOPERATIVE, : Finance
 : Docket
 : No.35387
 :
 VS. :
 :
 NORFOLK SOUTHERN RAILWAY. :
 -----x

Tuesday,
October 25, 2011

Surface Transportation Board
Suite 120
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on
for hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

| | |
|------------------------|---------------|
| Daniel R. Elliott, III | Chairman |
| Ann D. Begeman | Vice Chairman |
| Francis P. Mulvey | Commissioner |

APPEARANCES:

On behalf of Ag Processing, Inc. A

Cooperative:

ANDREW P. GOLDSTEIN, ESQ.

Of: McCarthy, Sweeney & Harkaway, P.C.

1825 K Street, NW

Suite 700

Washington, D.C. 20006

(202)775-5560

On behalf of Norfolk Southern Railway:

ROBERT A. WIMBISH, ESQ.

Of: Baker & Miller, PLLC

2401 Pennsylvania Ave, NW

Suite 300

Washington, DC 20037

(202)663-7820

C-O-N-T-E-N-T-S

Procedural Matters

Chairman Daniel Elliott4

Statement of Andrew Goldstein, Esquire, on
behalf of Ag Processing, Inc A Cooperative. . .7

Statement of Robert Wimbish, Esquire, on
behalf of Norfolk Southern Railway. 22

Rebuttal by Andrew Goldstein, Esquire, on
behalf of Ag Processing, Inc
A Cooperative 50

1 P-R-O-C-E-E-D-I-N-G-S

2 9:31 a.m.

3 CHAIRMAN ELLIOTT: Good morning,
4 and welcome. Today we'll hear oral argument
5 in the case of Ag Processing, Inc. A
6 Cooperative petition for declaratory order.

7 This case involves a petition for
8 declaratory order filed by Ag Processing
9 challenging the reasonableness of a Norfolk
10 Southern tariff.

11 Subsequently, Bunge North America,
12 Archer Daniels Midland, Louis Dreyfus, and
13 Perdue Agribusiness joined the petition.

14 At issue is the tariff's
15 imposition of charges and penalties on loaded
16 cars that exceed an individual car's weight
17 limit because of weather conditions
18 encountered after the cars are delivered to
19 NS.

20 In an effort to move things along,
21 the board members will not be making opening
22 remarks this morning, but I wanted to cover a

1 few procedural matters before we begin.

2 We have asked each party to make a
3 short statement of its argument, but Counsel
4 should be prepared to answer questions from
5 the board at any time during your allotted
6 time.

7 I assure you that we have read all
8 of your pleadings, and there's no reason to
9 repeat every argument.

10 I should point out that due to a
11 different camera configuration in the hearing
12 room today, we have relocated the podium for
13 speakers to the side of the front room, but
14 otherwise, are following our usual procedures.

15 Any party making a PowerPoint
16 presentation or using similar hard copy aids
17 utilizing materials previously placed in the
18 record should have provided these materials in
19 hard copy eight and a half by eleven size to
20 opposing Counsel and the board. We will have
21 any pages used today in such presentations
22 bound in the transcript of this proceeding.

1 Each side has been allotted a
2 total of 25 minutes, including an in camera
3 session at the close of the public portion of
4 this argument.

5 Each party will first have 20
6 minutes in open session to the public. At the
7 conclusion of that portion, we will take a
8 brief recess of approximately five minutes.

9 The board hearing room will be
10 cleared, and the legal representatives arguing
11 on behalf of the parties will conduct an
12 additional five minutes each of oral argument
13 on matters that refer to confidential
14 information.

15 This portion will not be
16 broadcast, and the transcript of those remarks
17 will be retained in the board's confidential
18 records, but will not be posted on the board's
19 website.

20 As the party filing the request
21 for declaratory order, Ag Processing will open
22 with the allotted 20 minutes. Ag Processing

1 has reserved seven minutes for rebuttal.

2 So, we'll begin with Ag Processing
3 with their 13 minutes.

4 Mr. Goldstein, you've argued here
5 before. You're familiar with the red, yellow,
6 and green lights?

7 MR. GOLDSTEIN: Very well, sir.

8 CHAIRMAN ELLIOTT: Okay.

9 STATEMENT OF ANDREW GOLDSTEIN, ESQUIRE
10 ON BEHALF OF AG PROCESSING, INC A
11 COOPERATIVE

12 MR. GOLDSTEIN: Good morning,
13 Chairman Elliot, Vice Chairman Begeman, and
14 Commissioner Mulvey. I'm Andrew Goldstein,
15 and I represent the petitioners.

16 Sitting to my right today are Greg
17 Twist of Ag Processing, Darrell Wallace of
18 Bunge, Lorraine Hawley of ADM, and Sue Lyons
19 of Louis Dreyfus Corporation. And at Counsel
20 table is my partner, John Cutler.

21 The issue of whether a railroad
22 can compel a shipper to remove snow and ice

1 that accumulates on a car while in carrier
2 possession is an important one. Some of the
3 petitioner's representatives sitting here
4 today have traveled halfway across the country
5 because of the potential implications of this
6 case to their businesses and to practices
7 throughout the railroad industry.

8 You may well hear shortly from NS
9 a claim that its tariffs have always provided
10 for the assessment of overload charges and
11 penalties due to snow and ice. We dispute
12 that for the obvious reason that NS would not
13 have had to amend its tariff to add the words,
14 attributable to weather conditions, as part of
15 the definition of overloaded, and to add a new
16 section D, explaining that rain, snow, and ice
17 are the weather conditions that would make a
18 car overloaded.

19 CHAIRMAN ELLIOTT: Mr. Goldstein,
20 couldn't, as NS explained in their brief,
21 couldn't that creation of this tariff that's
22 at dispute here or provision in the tariff

1 have been created as a safe harbor due to the
2 harsh weather conditions that were expected
3 that winter? Wouldn't that make certain
4 sense?

5 MR. GOLDSTEIN: Well, I don't know
6 that it really is a safe harbor. If you read
7 it closely, read the first edition of the
8 tariff that came out, the safe harbor was
9 there for five days, and the possible
10 penalties could be alleviated if snow and ice
11 were melted by natural events.

12 When you look at the current
13 version of the tariff, that language has been
14 removed, and instead, the tariff says that you
15 have to, within five days, remove the lading,
16 or otherwise clear the car, and at your own
17 expense.

18 Now, I assume that if we're going
19 to rely on warm sunshine, that's not at our
20 own expense. So, I think that the current
21 tariff doesn't really provide a safe harbor
22 that is really worth anything if you consider

1 the costs of having to go into a car and clean
2 out lading that is in there. And then, what
3 do you do? You have a contract with your
4 customer. You're supposed to ship a carload
5 of stuff. You can't anymore. You have to get
6 it there some other way. You're facing a
7 claim for breach of contract. So we don't
8 really look upon this as a safe harbor.

9 COMMISSIONER MULVEY: Could the
10 tariff be considered, the language spoken just
11 about a moment ago, a clarification?

12 I mean, Norfolk Southern has
13 always had in its tariffs, like for coal and
14 coke, a provision for any overweight
15 regardless of the cause bearing a penalty.

16 This could be interpreted, as the
17 way you said it, as a clarification. When we
18 talk about overweight, we don't just mean
19 overloaded, but also, any extra weight caused
20 by weather conditions.

21 Would that be a possible
22 interpretation of what they were doing in

1 their tariff?

2 MR. GOLDSTEIN: Well, I think
3 that's what they are doing. I think they are
4 saying that snow and ice have to be added to
5 the weight of the car.

6 COMMISSIONER MULVEY: Yes.

7 MR. GOLDSTEIN: But our position,
8 of course, is different.

9 COMMISSIONER MULVEY: Well, I'm
10 saying that was always their intent, but
11 they're just doing a clarification now,
12 because maybe snow and ice were not considered
13 the same as just overloading the car, but
14 since snow and ice do add to the weight of the
15 car, that therefore should be known by
16 shippers as something that needs to be
17 considered in determining a car's weight.

18 MR. GOLDSTEIN: Well, I don't see
19 why, if snow and ice in their opinion was
20 always to be included, it was necessary for
21 them to amend their tariff to specifically put
22 it in.

1 I think the fact that they did
2 specifically put it in suggests that this is
3 a new item for the shippers to worry about.

4 COMMISSIONER MULVEY: As opposed
5 to just a clarification of the existing rule?

6 MR. GOLDSTEIN: Right. We think
7 the existing rule didn't include snow and ice.
8 Yes, sir.

9 COMMISSIONER MULVEY: Thank you.

10 CHAIRMAN ELLIOTT: Did you ever,
11 Mr. Goldstein, do any, I guess, research with
12 some of your clients, maybe some that have
13 open cars, that may have been affected by
14 weather, if they had ever had cars pulled out
15 of service because of weather?

16 MR. GOLDSTEIN: Well, we are aware
17 of the fact that open cars are susceptible to
18 snow dropping in, and as you know, it will
19 then seep into that lading, and it will
20 freeze. And once it freezes, it's not going
21 to thaw out for a while. You can't handle it
22 manually.

1 And we are very much aware of
2 that, even though very few of our cars are
3 open. In fact, maybe, of the petitioners
4 here, none. I believe they all operate tank
5 cars and covered hopper cars.

6 CHAIRMAN ELLIOTT: But are you
7 aware of any situations where an open car's
8 been pulled out due to weather, because it was
9 overloaded?

10 MR. GOLDSTEIN: No. No, sir.

11 And that, of course, gets to the
12 next point we were going to make, than an
13 overload can only occur when a shipper loads
14 the car.

15 And the NS interpretation of the
16 term overload, we think, is a misuse of the
17 word, because the car can't be overloaded
18 unless it's loaded first. And loading requires
19 the shipper to place goods in the car.

20 So snow and ice that descends from
21 the heavens, and is not placed in the car as
22 a load, cannot rationally be viewed as a

1 shipper overload.

2 I just want to briefly point out
3 that there are some serious consequences that
4 attach to the NS position, which I mentioned
5 a moment ago, in terms of the shipper not
6 being able to meet his contract of sale to a
7 customer if a car is parked due to a
8 snowstorm.

9 Now, the second question, I think
10 we've covered the first one, the second
11 question you have is how frequently closed
12 covered hopper cars and tank cars are made
13 overweight by snow and ice, and how those cars
14 have been brought into compliance in the past.

15 It's extremely appropriate that
16 the board has recognized the distinction
17 between closed tanked cars and covered hopper
18 cars on one hand, and all other types of car,
19 which are essentially open cars, with respect
20 to snow and ice.

21 NS itself asserts at page 8 of its
22 motion to dismiss that weather overloads are

1 not typically experienced by tank cars and
2 covered hopper cars, and petitioners have no
3 way of determining how often covered hopper
4 cars are made overweight by snow and ice while
5 in the position of NS or other carriers.

6 And the reason for that is two-
7 fold. Carriers don't report those events
8 publicly, and NS has certain relevant policies
9 that it treats as highly confidential, and
10 which I understand we'll discuss at a closed
11 session.

12 This question actually raises a
13 very interesting issue, which is that the
14 problem of overweight cars does not involve
15 tank cars and covered hopper cars, and this
16 conclusion is supported by a statement at page
17 10 of the NS motion to dismiss, where NS
18 asserts, quote, "petitioners know their
19 commodities, and the commodities' properties
20 for absorbing moisture," close quote.

21 Of course, there's never been any
22 indication that snow or ice is absorbed by the

1 properties of lading in a fully enclosed tank
2 or covered hopper car. Lading with absorption
3 property, as you noted, is that which is in
4 open cars.

5 So we feel that if NS is having
6 problems with those types of cars, it should
7 have directed this tariff in that direction
8 and not to covered hopper cars and tank cars.

9 COMMISSIONER MULVEY: Have any
10 shippers been underloading their cars in
11 response to this tariff that you're aware of?

12 Have the shippers been responding
13 saying that, well, we have to be careful now,
14 so we're going to put 6,000 pounds less in a
15 car in case the car has two inches of ice over
16 it?

17 MR. GOLDSTEIN: Yes, sir. Yes,
18 sir. The answer to your question is yes.

19 Many shippers have scales at their
20 facilities.

21 COMMISSIONER MULVEY: Yes.

22 MR. GOLDSTEIN: And when a car

1 comes in to be loaded, the gross permissible
2 weight is stenciled on the side of the car.

3 The car is put on the scale empty.
4 The result of that tells the shipper how much
5 snow and ice is on top of the car, in terms of
6 weight, because that's the difference between
7 the tare weight and what the scale weight
8 shows. And then the shippers subtract that
9 amount from the lading that they put in the
10 car.

11 COMMISSIONER MULVEY: And they
12 have been doing that, then?

13 MR. GOLDSTEIN: They have. They
14 have.

15 CHAIRMAN ELLIOTT: And you're
16 saying that occurs when you're presented with
17 a car with snow and ice on it?

18 MR. GOLDSTEIN: That's right.
19 That's right. Now, I mean there are some
20 small elevators that don't have these scales,
21 but we're -- for the most part, for the most
22 part, the elevators do.

1 And what they do when they load a
2 car is they use a matrix, which tells them, in
3 essence, how high in the car they can load
4 before running into an overweight problem.

5 VICE CHAIRMAN BEGEMAN: Could you
6 clarify something for me? I guess I'm a bit
7 confused on how they know to underload by,
8 say, the 5,000 pounds, because if it's a huge
9 snowstorm, you know, ultimately, there could
10 be 8,000 pounds of snow on the car. Is the
11 shipper not penalized for that?

12 MR. GOLDSTEIN: Well --

13 VICE CHAIRMAN BEGEMAN: It's
14 overweight.

15 MR. GOLDSTEIN: Yes. If the
16 shipper can only deal with what is on the car
17 when the car is at his facility for loading.

18 VICE CHAIRMAN BEGEMAN: So you --

19 MR. GOLDSTEIN: Once that car goes
20 and more snow and ice is added, we don't feel
21 that that is a load or an overload or our
22 problem.

1 VICE CHAIRMAN BEGEMAN: But the
2 tariff seems to imply that it is.

3 MR. GOLDSTEIN: Yes, ma'am. It
4 does.

5 COMMISSIONER MULVEY: So you're
6 saying that in anticipation, the shippers are
7 not anticipating problems. In other words, the
8 weather forecast calls for snow in Iowa and
9 the car is going through Iowa, and maybe go
10 through a yard in Iowa, and the shipper might
11 know that there's a snowstorm heading there,
12 and that would add weight.

13 But my question was, the shippers
14 are not anticipating that there will be an
15 accumulation of more snow and ice after the
16 car has been loaded, and therefore, under-
17 loading it to account for the possibility that
18 ultimately it will get heavier.

19 MR. GOLDSTEIN: Yes. That was
20 actually an issue I was going to address, and
21 let me skip over to it now.

22 The problem is that the shippers

1 can't predict where their cars will be and
2 when they will be there, and aside from the
3 fact that all of us know just how reliable
4 weather forecasts are on the radio. But the
5 shippers have no way of telling when their car
6 is going to hit some point where there might
7 be a snowstorm.

8 They don't want to just shut down
9 loading cars because there's some prediction
10 of what's going on. If they had the power,
11 which they don't, to determine what route on
12 the NS system the cars would follow, you know,
13 they might be able to route the cars around
14 the storm. We don't have that power. NS does.

15 And I'd just like to read a short
16 quotation from the board in docket 42068,
17 upholding an argument made by NS. Quote,
18 "Given the many variables outside a railroad's
19 control that may affect delivery, a railroad
20 generally cannot be expected to deliver cars
21 at the same time every day," close quote.

22 In other words, the board

1 concluded, at NS's urging, that rail service
2 is inherently unreliable, and in docket 42060
3 -- can I just intrude on my own --

4 CHAIRMAN ELLIOTT: Certainly.

5 MR. GOLDSTEIN: Thank you. In
6 docket 42060, sub 1, another Class 1 railroad
7 successfully asserted that quote, "Service
8 variability is a necessary part of rail
9 service to and from many shipper locations,"
10 close quote, citing the NS argument in docket
11 42068.

12 So, we think that NS itself has
13 clearly established that there's no way that
14 we can predict when our cars are going to be
15 someplace where snow is going to fall. And
16 with that, I'd like to reserve the rest of my
17 time.

18 CHAIRMAN ELLIOTT: Thank you, Mr.
19 Goldstein.

20 Now we'll hear from Norfolk
21 Southern.

22 Mr. Wimbish, you have 20 minutes.

1 STATEMENT OF ROBERT WIMBISH, ESQUIRE
2 ON BEHALF OF NORFOLK SOUTHERN RAILWAY

3 MR. WIMBISH: Chairman Elliott,
4 Vice Chairman Begeman, and Commissioner
5 Mulvey, good morning. I am Rob Wimbish, and
6 here with me today from Norfolk Southern at
7 the table, General Solicitor, Greg Summy,
8 Assistant Vice President of Customer Service,
9 Rush Bailey, and at the seats behind, attorney
10 Christie Friedman.

11 At issue here today is whether
12 Norfolk Southern's tariff governing overloaded
13 rail cars is reasonable. The record in our
14 presentation today will show that the tariff
15 is eminently reasonable, and that the
16 agricultural shippers involved in this
17 proceeding have not proven, and indeed, cannot
18 prove, that the tariff is unreasonable.

19 Now, there are four points I would
20 like to express this morning that are very
21 important for the board's consideration.

22 The first one is that the

1 Complainants are responsible for proving that
2 the complained-of tariff is unreasonable.

3 The second is that the
4 Complainants have not met their burden of
5 proof here.

6 The third, that overloaded cars
7 are unsafe, costly to the railroad, and
8 interfere with normal operations.

9 And finally, that it is reasonable
10 to expect a shipper to exercise due diligence
11 and prudent foresight to avoid an unsafe
12 situation, including unsafe car loading.

13 In the process, I hope to address
14 the four questions that were presented in the
15 board's order establishing oral argument.

16 I would like first to address the
17 appropriate legal standard. First, as a
18 threshold matter, this matter was presented as
19 a petition for a declaratory order. A
20 declaratory order proceeding is appropriate
21 where a genuine case or controversy exists,
22 and because the Complainants here have not

1 provided facts to demonstrate an injury or
2 even the likelihood of injury under the
3 revised tariff, we believe that they have not
4 adequately provided a basis for board-issuance
5 of a declaratory order.

6 That said, the Complainants
7 alleging an unreasonable practice must prove
8 on the basis of case-specific facts that the
9 complained-of practice is unreasonable. This
10 is fundamental.

11 The Complainants must prove, based
12 on facts, that the complained-of practice does
13 not comport with the board's standards for
14 unreasonable practices.

15 In that regard, another very
16 important consideration, it is important for
17 the board to remember that under the
18 unreasonable practice standards, Norfolk
19 Southern's tariff need not be perfect or even
20 better than other alternatives. The standard
21 is only whether or not the complained-of
22 tariff is actually reasonable.

1 And in that regard, I would like
2 to point out that roughly six months ago, the
3 board pointed out in another rate
4 unreasonableness challenge that the board
5 stated that its role in such cases, and under
6 the interstate Commerce Act, is not to
7 micromanage the railroad industry.

8 Now, in light of the applicable
9 legal standard, Complainants simply have not
10 proven here that the tariff is unreasonable,
11 and they offer no facts to show that they
12 incur an unfair burden or any burden under the
13 tariff.

14 Let's consider three important
15 facts.

16 VICE CHAIRMAN BEGEMAN: Can I ask
17 a question?

18 MR. WIMBISH: Sure.

19 VICE CHAIRMAN BEGEMAN: How does a
20 shipper get to the overweight car that is now
21 pulled aside because of the weight in snow?

22 Let's say it's 400 miles away from

1 where they first gave you the car. There's a
2 huge snowstorm. How do they get there within
3 the five days to take care of this problem?

4 And I also would like you to
5 clarify, I think in your first sentence, you
6 said that this is a tariff governing
7 overloaded rail cars.

8 Now, I didn't get a sense from Mr.
9 Goldstein that they believe that they should
10 be able to overload their cars. I don't think
11 there's any dispute that they shouldn't go
12 over the allowable limit. So maybe you could
13 help clarify overloading versus perhaps what
14 happens after it has been loaded.

15 MR. WIMBISH: Sure, Vice Chairman.

16 There were two questions. I think
17 the first question was, what does a shipper do
18 when it is alerted to the existence of an
19 overloaded car.

20 VICE CHAIRMAN BEGEMAN: Well, how
21 practically do they get there to shovel off
22 the car or remove the excess load --

1 MR. WIMBISH: Right. Okay.

2 VICE CHAIRMAN BEGEMAN: -- when
3 it's a huge snowstorm, and you have five days?

4 MR. WIMBISH: Normally, if a car
5 is detected as being overloaded in transit, I
6 think I'd like to stress, first of all, that
7 the record so far here has reflected, and the
8 board had asked a question during the initial
9 presentation, of how often agricultural cars
10 become overloaded.

11 And I think it's important, and I
12 will get to this again in a moment, that that
13 simply is not happening.

14 But that said, to the practice of
15 it, where a car is detected en route as being
16 overloaded, the shipper will be alerted.

17 In most cases, in my
18 understanding, what happens is the shipper
19 invariably contracts with a contractor who is
20 experienced with offloading them out of that
21 commodity that is inside the car.

22 The portion of the load that may

1 be in excess of the weight is either
2 transferred to a truck and then shipped off to
3 another location, or it may be loaded into
4 another rail car.

5 VICE CHAIRMAN BEGEMAN: What was
6 the practice prior to this new tariff? Was it
7 --

8 MR. WIMBISH: Same.

9 VICE CHAIRMAN BEGEMAN: -- in
10 essence the shipper's responsibility?

11 MR. WIMBISH: No, it was the same.
12 It was the exact same.

13 VICE CHAIRMAN BEGEMAN: So it was
14 exactly the same?

15 MR. WIMBISH: Yes.

16 VICE CHAIRMAN BEGEMAN: So then
17 what's the difference between the old tariff
18 and the new tariff, if it's exactly the same?

19 MR. WIMBISH: The difference
20 between the old tariff and the new tariff is
21 that, as Mr. Goldstein pointed out --

22 VICE CHAIRMAN BEGEMAN: I don't

1 mean the amended one, but the terms from many
2 years ago.

3 MR. WIMBISH: Okay. Between the
4 old tariff and tariffs before that?

5 VICE CHAIRMAN BEGEMAN: Well, you
6 know, not the tariff that was originally the
7 subject of this declaratory order that was
8 then subsequently amended about a month later,
9 but prior to July of 2010, or June, when the
10 new tariff was issued.

11 MR. WIMBISH: Right. Under the
12 original tariff, before any of these changes
13 from the summer of 2010.

14 VICE CHAIRMAN BEGEMAN: Yes.

15 MR. WIMBISH: In that case, the
16 practice would have been exactly the same.
17 The car had been detected as overweight -- and
18 this gets to the second part of your question
19 of how we define overloaded, whether or not
20 that's a verb, an adjective, a noun, for us,
21 any car that exceeds the maximum weight limits
22 is an overloaded car, by our definitions.

1 Those shippers who have
2 encountered overloaded cars are aware of that
3 definition.

4 Now, the agricultural shippers
5 would claim that this is something brand new,
6 and it may be because in their experience,
7 they do not encounter overloaded cars, and
8 therefore, have not been aware of this
9 longstanding definition of ours. Our record
10 establishes that this has been the
11 longstanding Norfolk Southern policy.

12 Those handful of shippers that
13 have experienced weather-related overloads are
14 aware of that situation, and comport
15 themselves appropriately. They take
16 appropriate steps, where necessary. The fact
17 that they weren't aware of it doesn't mean
18 it's not new. It may be new to them. But it
19 isn't new to affected shippers.

20 VICE CHAIRMAN BEGEMAN: And is
21 this portion of the tariff concerning the
22 overload similar to how you treat coal?

1 MR. WIMBISH: No, actually, the
2 coal and coke provisions are actually much
3 more stringent. So, I mean, they're not --
4 obviously, not at issue here, but --

5 VICE CHAIRMAN BEGEMAN: Is it the
6 shipper's responsibility to unload and to
7 shovel?

8 MR. WIMBISH: If appropriate, but
9 again, there, I think that you'd have to look
10 at whether or not, under the circumstances,
11 the tariff is imposing unfair restrictions or
12 conditions on shippers, including coal
13 shippers.

14 They're not here complaining about
15 their provisions, and I think that they work
16 adequately under the circumstances.

17 So it would be tough for me to
18 presume that, in light of a more strict
19 condition or circumstance, that the coal or
20 coke shippers are subjected to an unreasonable
21 practice themselves.

22 COMMISSIONER MULVEY: The problem

1 with overloaded cars, in part, is a safety
2 one. Now, the cars today are able to handle
3 143 tons, 286,000 pounds, and that's usually
4 considered to be what the right of way can
5 support.

6 But is there any leeway? Is there
7 any variance in that? In other words, is the
8 infrastructure really capable of handling cars
9 that -- 286 plus or minus some amount, or is
10 286 the maximum threshold that the
11 infrastructure can handle?

12 In other words, do overloaded cars
13 really do damage if the overload is only, say,
14 3 or 4 percent of what the track is classified
15 to handle?

16 MR. WIMBISH: Well, the answer is,
17 in some cases, tracks are capable of
18 withstanding additional weights above and
19 beyond the maximum you've listed.

20 But you've also hit on an
21 important point that the most significant
22 element -- there are really two significant

1 elements to the overload provisions, and I
2 don't want them to be lost on the board today.

3 One of them is that it is
4 inherently a safety issue. An overloaded car
5 places considerable stresses, additional
6 stresses, on track.

7 But as you've said, there are
8 instances where Norfolk Southern, as has been
9 admitted in this record, provides for internal
10 tolerances.

11 But that reach leads to the other
12 point for why the overload condition is so
13 important, and why we have provided for a
14 certain amount of latitude.

15 An overloaded car that has to be
16 pulled from a through-movement is extremely
17 disruptive to the NS operations.

18 That car has to be removed from
19 the train. It may be moving on, it must be
20 set aside, it requires the use of additional
21 Norfolk Southern infrastructure and effort,
22 simply to relocate that car.

1 It is incumbent upon the railroad
2 to make decisions as best it can to ensure
3 fluidity. So in that regard, the internal
4 tolerances that the agricultural shippers have
5 complained about are yet an additional
6 safeguard, both for us and for them.

7 It allows us, in certain
8 circumstances, to evaluate the physical plant
9 characteristics of our line, and decide
10 whether or not we are in a position to
11 continue to move that car, regardless of the
12 fact that the shipper may have not exercised
13 appropriate due diligence in loading the car
14 in the first place.

15 VICE CHAIRMAN BEGEMAN: Could you
16 explain, I guess, from a business standpoint,
17 why it makes more sense from your perspective
18 to pull the car out of service, not just for
19 the 24 hours to determine whether or not it
20 was loaded properly or at the correct weight
21 originally, but once that's determined, why
22 doesn't it make sense for the carrier to take

1 care of the snow and ice, just as they are
2 taking care of their track?

3 I mean, how is it -- you know, it
4 seems like there's a lot of administrative
5 expense and delay in getting the car back into
6 service, if you're going to wait for at least
7 five days.

8 MR. WIMBISH: Well, the two parts
9 to that answer is, well, the first one is, in
10 many cases, shippers do not provide a
11 certificate of loading, so we don't know when
12 a car is presented to us and we detect that
13 it's overloaded whether or not the shipper has
14 undertaken due diligence in loading the car or
15 not. And we're not forensic scientists.

16 VICE CHAIRMAN BEGEMAN: And that's
17 where the 24 hour clock kicks in that you give
18 them the opportunity to provide that?

19 MR. WIMBISH: Well, once we've
20 detected the overload and the car has been
21 placed, and the shipper has been alerted that
22 the car has been detected as overloaded, now,

1 what we've provided for is a carve out where
2 they can actually establish that the car was
3 loaded within established parameters.

4 But in the vast majority of cases
5 where we encounter this, it just so turns out
6 that the shipper does not have a certificate
7 of loading, and as a result, cannot prove that
8 the car was not overloaded in the first case.

9 In our experience, most overloaded
10 cars that Norfolk Southern encounters are ones
11 that in all likelihood were overloaded at
12 origin to begin with.

13 COMMISSIONER MULVEY: You talked
14 about the inefficiencies associated with
15 pulling out a car and having to reload the
16 car, and taking care of the overload problem.

17 Has Norfolk Southern studied the
18 costs it incurs when it has to deal with an
19 overloaded car and is looking for a tariff
20 that would just cover those costs, as opposed
21 to a tariff that was, say, punitive, or tried
22 to encourage the shippers not to overload the

1 car to begin with?

2 MR. WIMBISH: No, I'm not aware
3 that they have. I thin that would be a very
4 difficult and I think very circumstance-
5 dependent situation.

6 I think in many respects, the
7 overload conditions here are akin to
8 liquidated damages, because it is impossible,
9 under the circumstances, to state with
10 particularity in every circumstance when a
11 car, what kinds of costs a car is subjected
12 to, or the railroad's subjected to, rather,
13 when it incurs an overload.

14 We don't want overloaded cars on
15 our railroad. That's not our objective here.
16 We don't see this as a revenue opportunity by
17 imposing these charges against shippers.
18 That's not the purpose at all.

19 The purpose is to encourage
20 shippers to engage in responsible behavior
21 when they load a car. Some of these shippers
22 use cars that they know have a tendency to

1 become overweight in certain circumstances.

2 Once that car becomes overweight,
3 to an extent where it exceeds our internal
4 tolerances, that car simply cannot move. The
5 car has to be removed, and it has to sit
6 somewhere until the shipper takes appropriate
7 steps.

8 The tariff is basically designed
9 to address those kinds of situations, and, in
10 certain circumstances, now is even more
11 accommodating than it was before.

12 COMMISSIONER MULVEY: But isn't
13 this all somewhat speculative, as you haven't
14 identified any of the petitioner's cars
15 actually being pulled out of service for being
16 overweight here, in this case, as I understand
17 it?

18 How many times, for example, have
19 these tariff provisions actually been applied
20 to the shippers? Or is this something that's
21 prospective?

22 MR. WIMBISH: Well, I'm glad you

1 asked that, because one of the things that we
2 looked at in response to this inquiry was how
3 often agricultural shippers' cars are actually
4 becoming overweight.

5 Now, they -- I think they answered
6 the very same question for you, and the answer
7 was, they could find no times where it had.

8 Our conclusion was, why are these
9 agricultural shippers so upset, and are they
10 really engaging in any different behavior now
11 under the new rules than they were before?

12 When they load a car, they have to
13 remove snow from it, because these are top-
14 loading cars that they're using in the first
15 place, both tank cars and covered hoppers.

16 VICE CHAIRMAN BEGEMAN: But can't
17 one assume that since the tariff has been in
18 effect, even though they have not been given
19 the call that their car is overweight due to
20 snow and ice, some shippers probably
21 proactively had tried to figure out, "What am
22 I going to do and who am I going to contract

1 with", to avoid all of these additional costs
2 and fees?

3 And so they've had to proactively
4 probably contract with certain vendors. I
5 think that's what one of you said.

6 MR. WIMBISH: Right. They have,
7 and they do, and that's not new under the new
8 tariff provisions.

9 This is something that shippers
10 that encounter overloads have been doing for
11 years. This is not -- in other words, the
12 implication that the new tariff is imposing
13 new responsibilities on shippers that have
14 experienced overloads is simply not the case.

15 Under the old tariff, the way that
16 Norfolk Southern had interpreted that and
17 shippers that had encountered overloads have
18 understood that, is that once an overload is
19 detected, they have affirmative
20 responsibilities to arrange for its
21 overloading. That was the case before August
22 10th, 2010, and after, as well.

1 CHAIRMAN ELLIOTT: Quick question.
2 It goes to the Vice Chairman's question.

3 There's obviously a big difference
4 of opinion here about what the tariff meant
5 prior to the new tariff coming in, or the new
6 provision.

7 And your statement is that weather
8 has always been considered when there's an
9 overload, so if you go through a snowstorm,
10 they'll pull the car out, if it's overloaded,
11 weather, or whatever the reason is.

12 So is there any way that we can at
13 least firm that up here today? Especially not
14 just with respect to you, but with respect to
15 all the other carriers you supplied in the
16 record, various tariffs? And you made the
17 statements that those all take weather into
18 account.

19 So, I think it would be helpful if
20 we could somehow firm that up today, that
21 maybe either one party doesn't understand, or
22 I'm looking for a little bit more confirmation

1 that your interpretation of the tariff is the
2 way it's always been applied.

3 Is there documentation of cars
4 being pulled out of service due to weather?

5 MR. WIMBISH: Yes. There is, and
6 that's what I'm saying, is that we are able,
7 on the basis of our experience, to say that
8 yes, when a weather-related overload has
9 occurred, that is exactly how we have carried
10 things forward.

11 The shipper has been notified, the
12 shipper has made arrangements within a certain
13 time frame to unload the excess lading in the
14 car, or do whatever was necessary to bring the
15 car back into compliance. That has always
16 been the case.

17 The issue here is that the
18 agricultural shippers that are coming here
19 saying no, that wasn't the case before, they
20 don't know that, because they never had any
21 experience under the old tariff of
22 encountering any overloads.

1 CHAIRMAN ELLIOTT: I guess that's
2 my biggest concern, is, if they haven't had
3 any experience, maybe they aren't following
4 what the tariff did in the past, because it
5 never occurred to them.

6 I just want to get it nailed down
7 here that both sides are on the same page with
8 respect to that.

9 MR. WIMBISH: They may be of the
10 opinion that it doesn't mean that. They may
11 be of the opinion that it doesn't mean that,
12 but they aren't in a position here to say that
13 we haven't interpreted our tariff provisions
14 that way in the past.

15 All they can say is that they
16 didn't have any experience with them. Other
17 shippers have, and incidentally, those
18 shippers are not here today.

19 COMMISSIONER MULVEY: Those
20 shippers who have experienced the overloading
21 are primarily coal and coke shippers, or open
22 hopper car shippers?

1 MR. WIMBISH: No, the shippers, as
2 our record indicated here, the shippers that
3 tend to have issues with this are the shippers
4 that are using open-top containers, like
5 gondolas or hoppers, in which snow, ice, and
6 water can accumulate, can percolate in in some
7 cases, when it's chips or wood chips or
8 whatever, and cause the car to become
9 overloaded.

10 Now, those shippers can exercise
11 due diligence in a number of different ways,
12 but they know when they use that kind of car
13 that during certain types of conditions,
14 simply loading the car to maximum is not an
15 assurance that that car might not later become
16 overloaded due to weather conditions. And I
17 don't think it's fair to say --

18 COMMISSIONER MULVEY: Have they
19 complained about that?

20 MR. WIMBISH: -- that they, that
21 we alone bear the responsibility, when they
22 use a car and load it in a way that might

1 ultimately expose it to an overload.

2 COMMISSIONER MULVEY: Have they
3 complained about that practice, when they have
4 a car pulled? Do they say, "When we loaded
5 this car, it was well below the maximum
6 weight, and now because of rain and absorption
7 of water, they're now overweight, and we can't
8 control the weather?" Have they complained
9 about that, too, to you?

10 MR. WIMBISH: Well, I don't know
11 about complaint, but I do understand that
12 there were some misgivings, and that was the
13 intention behind providing for additional
14 leeway under the revised tariff.

15 We already incur costs and risks
16 associated with these overloaded cars, and I
17 think in some respects, this case is an
18 example of no good deed going unpunished,
19 these particular shippers saying, we have an
20 issue with this, us saying, we don't want to
21 be obstinate, we would like to be flexible in
22 your case, because you're shippers that

1 experience this, we will provide for
2 additional accommodation, five days.

3 COMMISSIONER MULVEY: Following up
4 on the accommodation issue and the flexibility
5 issue, wouldn't it make more sense for Norfolk
6 Southern to say, look, this car is overweight,
7 and we have it at this yard, and then have a
8 crew -- because you have people right there
9 who could clean the car, get rid of the ice,
10 bring it back to a reasonable legal weight,
11 the prescribed weight, and then bill the
12 shipper for that service, as opposed to
13 requiring the shipper to come down and unload
14 it or contract with somebody?

15 That seems to be less efficient
16 than having your personnel, who are right
17 there, get rid of the extra snow and ice.

18 MR. WIMBISH: Well, that depends.
19 I mean, certainly, under the circumstances,
20 there might be issues where there was an
21 extraordinary event, in the interest of
22 keeping an entire train or entire yard moving,

1 that may, indeed happen.

2 Part of the problem of course is
3 when we're talking about overloads, we're
4 talking about many overloads where the
5 situation may have been caused by a -- you
6 know, overloading of the lading to begin with,
7 and it would not be appropriate for us to
8 simply go into a car and start pulling the
9 contents out for the purpose of rectifying the
10 situation.

11 But I will add one other thing,
12 and that is that under your standard,
13 remember, it's whether or not our tariff is
14 reasonable, not whether or not it's the most
15 perfect, or the preferred, or that you
16 couldn't find other more efficient solutions
17 to the problem.

18 COMMISSIONER MULVEY: Yes. Okay.

19 CHAIRMAN ELLIOTT: One more
20 question. It just seems -- it's possible here
21 that there's a misunderstanding. And the way
22 I've looked at it, I went back and looked at

1 old ICC cases, and it always seems like
2 there's been these internal tolerances or some
3 form of tolerance in place to deal with
4 weather, and that's the way shippers and
5 railroads have dealt with it over time.

6 And is it your understanding that
7 all of the railroads have such tolerances in
8 place to deal with this weather issue?

9 MR. WIMBISH: We do not have
10 complete understanding of what other
11 railroads' tolerances are. We do know that
12 with respect to interline moves, that, as is
13 reflected in the documents that were produced
14 --

15 CHAIRMAN ELLIOTT: Yes.

16 MR. WIMBISH: -- that there are
17 internal tolerances, that these are pretty
18 much network-wide.

19 CHAIRMAN ELLIOTT: Sure.

20 MR. WIMBISH: And we know that the
21 principal reason for these tolerances really
22 is two-fold, but the primary reason for them

1 is to ensure fluidity of the system.

2 If we simply eliminated these
3 tolerances, I believe the railroad system
4 would come to a screeching halt, because we're
5 talking about heavily-loaded bulk commodities,
6 and loading these cars is an inexact and
7 imprecise science, even if you have scales
8 available to you.

9 So without these tolerances, you
10 have a much less efficient and much more
11 overburdened railroad system.

12 CHAIRMAN ELLIOTT: In fact, one of
13 the staff pulled a case from 1909 where there
14 was a tolerance involved, and the tolerance
15 was in place because the scales back then were
16 so inaccurate, so you needed to have a little
17 leeway.

18 And also, weather was mentioned in
19 that case, so it seems like this has been
20 going on for quite some time.

21 So, thank you very much.

22 Mr. Goldstein, you have seven

1 minutes, I believe, on rebuttal.

2 REBUTTAL BY ANDREW GOLDSTEIN, ESQUIRE

3 ON BEHALF OF AG PROCESSING, INC

4 A COOPERATIVE

5 MR. GOLDSTEIN: Thank you, Mr.

6 Chairman.

7 There were a couple of points
8 raised in Mr. Wimbish's presentation that I'd
9 like to just mention briefly.

10 First, he was talking about the
11 burden of proof being upon the petitioners.
12 This is a declaratory order proceeding. It's
13 not a complaint, and my understanding is that
14 in a declaratory order proceeding, what the
15 board normally does is balance the positions
16 of the parties.

17 I'm not aware that there is the
18 same strict burden of proof here that we
19 normally see. But if there is any ambiguity
20 involved in the tariff, and there's some
21 suggestion that there is, then ambiguities
22 normally are construed against the maker of

1 the tariff.

2 And if there's a problem here
3 because there is something unclear about the
4 tariff, it should be, I guess, debited to the
5 NS position, not ours.

6 There was a discussion about
7 safety, and this being an important safety
8 issue, and I guess moving an overloaded car
9 can be. Of course, we have a basic difference
10 when asked about the definition of overload.

11 We don't think that if a car is
12 loaded within limits and then somewhere along
13 the line of movement for operating convenience
14 is parked someplace, and now it snows, and the
15 car now acquires 6,000 or 7,000 pounds of
16 additional weight that puts it over the top,
17 we don't think that's our fault, but the
18 tariff makes it our fault. And that's one of
19 our primary problems.

20 VICE CHAIRMAN BEGEMAN: But do you
21 have any objection to the first part of the
22 tariff, which requires you to certify within

1 24 hours that it was not overloaded?

2 MR. GOLDSTEIN: We have no
3 objection to being required to stay within the
4 stenciled limits. If we are not within the
5 stenciled limits when we load out the car and
6 tender it, it's our problem.

7 VICE CHAIRMAN BEGEMAN: And is the
8 24-hour clock a problem? Or are you able to
9 get -- are there enough, I guess, are the
10 smaller shippers, do they have access to that
11 information readily if they need --

12 MR. GOLDSTEIN: I think that's one
13 of the reasons why Mr. Wimbish said that they
14 don't have the certifications is that there's
15 probably a break in the link of communication.

16 The car is deemed overloaded
17 someplace in the middle of Illinois, and it
18 was loaded someplace in Iowa, and how does the
19 information get back to the shipper? We don't
20 know.

21 I -- there was some discussion,
22 also, of these internal tolerances. I had

1 thought, frankly, that that would be the
2 subject of our closed session, so I haven't
3 mentioned them up until now. But they --

4 CHAIRMAN ELLIOTT: I think the
5 highly confidential matters were the actual
6 numbers, not the concept.

7 MR. GOLDSTEIN: Well, I thought it
8 was both, but whatever. I think when we get
9 to the actual numbers, later on, you'll see
10 that it's not an insignificant issue. These
11 are not -- you know, the ICC used to have
12 tolerances of a quarter of a percent, if you
13 read some of those old cases, to deal with
14 weights. We're not going to be talking about
15 that. We're going to be talking about
16 altogether different numbers.

17 CHAIRMAN ELLIOTT: Let me ask you
18 something with regard to that.
19 Hypothetically, if what NS is saying is
20 correct, that weather has always been taken
21 into account prior to this, and then they have
22 these tolerances in place, which are supposed

1 to deal with weather, now if those numbers,
2 those tolerances, are hypothetically a
3 reasonable number and would take care of 98
4 percent of all weather-related issues,
5 wouldn't that change the picture here and make
6 their tariff seem reasonable?

7 MR. GOLDSTEIN: Well, I don't know
8 if it would make it seem reasonable. It
9 certainly would change things. They're called
10 internal tolerances, and that's because the
11 shippers don't know what they are.

12 And so I don't know, if the
13 shippers don't know what they are, I don't
14 know how it can affect the shippers' behavior.

15 CHAIRMAN ELLIOTT: Okay. But I
16 guess, it seems to me like this situation --
17 I'm not sure because I'm not a historian on
18 railroads -- has been going on for many years.
19 Weather has always been out there.

20 And what I'm concerned about here
21 is that there's been a process in place with
22 tolerances to deal with weather, and that

1 right now, you're asking us basically to
2 overturn a process that might have been in
3 place for 100 years of dealing with weather,
4 which is tolerances, and that makes me
5 nervous. So I just want to make sure that
6 we're clear that that's not an effective
7 process.

8 MR. GOLDSTEIN: I don't think it
9 is, and I think the tolerances you're talking
10 about, you said you read in some old
11 decisions, that means they were public. That
12 means shippers knew what they were. That's
13 not the situation we're dealing with.

14 CHAIRMAN ELLIOTT: But why would
15 that be different, if they were public or
16 private? If they were public, I mean, the
17 number, the weather, if it still affects it,
18 the tolerance would still be applied the same.

19 MR. GOLDSTEIN: Well, if they were
20 public, then shippers could know how much over
21 the stenciled gross weight they could load a
22 car and not run into a problem.

1 Let me just say, before the red
2 light goes on, please, that other railroads
3 don't follow the practice that NS does. We
4 don't see any other railroad publishing a
5 tariff that uses the words snow or ice.

6 We don't see any other railroad
7 telling a shipper that if they have to park
8 the car, even a covered hopper car, nice flat
9 top, have to park that car someplace, and then
10 it snows on the car, that that's going to be
11 considered an overload, under any
12 circumstances.

13 CHAIRMAN ELLIOTT: Prior to
14 bringing this case, did you talk with any
15 other railroads with respect to this issue?
16 Have you asked them whether or not weather
17 could result in an overload, pursuant to the
18 tariffs that were presented to us in the
19 record?

20 MR. GOLDSTEIN: We spoke at length
21 with NS, and we spoke, to my knowledge, with
22 one other railroad.

1 CHAIRMAN ELLIOTT: And did that
2 railroad say weather was not an issue?

3 MR. GOLDSTEIN: What that railroad
4 does is when it sees snow accumulate on a car,
5 after the car has been shipped in good order,
6 that railroad delivers the car or knocks the
7 snow off the top, we don't know which, but
8 they don't make a point of it.

9 CHAIRMAN ELLIOTT: That's what --
10 those are closed cars, right, because you
11 wouldn't be able to knock it off the top of an
12 open car?

13 MR. GOLDSTEIN: Absolutely,
14 absolutely not.

15 CHAIRMAN ELLIOTT: And what do they
16 do in the situation where it's an open car?

17 MR. GOLDSTEIN: I don't know.

18 CHAIRMAN ELLIOTT: Okay.

19 MR. GOLDSTEIN: I suppose they
20 just penalize the shipper. I don't know how
21 you can offload frozen lading.

22 Maybe NS thinks there's a way, but

1 we don't know of a way to offload frozen
2 lading. When it occurs in a covered hopper
3 car, it has to wait until it thaws.

4 CHAIRMAN ELLIOTT: So it's
5 possible, in that situation, that they would
6 pull the car out and penalize them?

7 MR. GOLDSTEIN: I would think so,
8 but I don't know their tariffs that apply to
9 the open cars.

10 CHAIRMAN ELLIOTT: All right.

11 COMMISSIONER MULVEY: Well, I have
12 seen one NS operation, where they're unloading
13 coal cars that are overturned. Those cars are
14 open cars, and it's frozen, and they actually
15 have a guy there with a sledgehammer breaking
16 some of that coal loose, so they can get the
17 coal out, especially coal on the bottom. Coal
18 does freeze to the bottom, and you can't send
19 the car back with all that coal still in it.

20 It's a dangerous job, but they
21 actually sometimes use sledgehammers to break
22 the coal loose.

1 So, I was going to ask you one
2 other question. Wouldn't it be reasonable
3 because, you know what the maximum the car can
4 hold -- is supposed to hold, as I said,
5 283,000 pounds, then, if a car came in that
6 was, say, 291,000 pounds, and there was snow,
7 the car's overloaded, and it should be
8 corrected.

9 If there is snow, you can make a
10 judgment as to how thick the snow is and what
11 the weight would be, and that would be a case
12 where snow and ice were the cause.

13 Could you distinguish between cars
14 that are overloaded because they were
15 overloaded, and ones that have become
16 overloaded because of snow and ice, simply by
17 observation?

18 MR. GOLDSTEIN: Well, yes, because
19 the latter category are those cars that are
20 shipped out clean, and then somewhere along
21 the route of movement, they accumulate snow
22 and ice.

1 And so I think it's a perfectly
2 logical assumption that the snow and ice has
3 nothing to do with the load in the car.

4 COMMISSIONER MULVEY: And
5 therefore, it's an act of God, and not the
6 shipper's fault?

7 MR. GOLDSTEIN: Not the shipper's
8 fault. That's correct.

9 COMMISSIONER MULVEY: Okay. So
10 the railroad would have to charge God somehow
11 or other to pay for the extra costs.

12 MR. GOLDSTEIN: Well, we are
13 always paying God for extra costs, so maybe
14 that works out.

15 CHAIRMAN ELLIOTT: Thank you, Mr.
16 Goldstein.

17 We'll now take a five-minute
18 recess, and proceed to an in camera session.

19 The broadcast portion of this
20 argument will end now.

21 (Whereupon, the above-entitled
22 matter was concluded at 10:19.)

| | | | | | | |
|----------|---|---|----------|--|---|--|
| A | <p>ago 10:11 14:5 25:2 29:2</p> <p>Agribusiness 4:13</p> <p>agricultural 22:16 27:9 30:4 34:4 39:3,9 42:18</p> <p>aids 5:16</p> <p>akin 37:7</p> <p>alerted 26:18 27:16 35:21</p> <p>alleging 24:7</p> <p>alleviated 9:10</p> <p>allotted 5:5 6:1,22</p> <p>allowable 26:12</p> <p>allows 34:7</p> <p>alternatives 24:20</p> <p>altogether 53:16</p> <p>ambiguities 50:21</p> <p>ambiguity 50:19</p> <p>amend 8:13 11:21</p> <p>amended 29:1,8</p> <p>America 1:1 4:11</p> <p>amount 17:9 32:9 33:14</p> <p>Andrew 2:4 3:13 3:19 7:9,14 50:2</p> <p>Ann 1:23</p> <p>answer 5:4 16:18 32:16 35:9 39:6</p> <p>answered 39:5</p> <p>anticipating 19:7 19:14</p> <p>anticipation 19:6</p> <p>anymore 10:5</p> <p>APPEARANCES 2:1</p> <p>applicable 25:8</p> <p>applied 38:19 42:2 55:18</p> <p>apply 58:8</p> <p>appropriate 14:15 23:17,20 30:16 31:8 34:13 38:6 47:7</p> <p>appropriately 30:15</p> <p>approximately 6:8</p> | <p>Archer 4:12</p> <p>argued 7:4</p> <p>arguing 6:10</p> <p>argument 1:4 4:4 5:3,9 6:4,12 20:17 21:10 23:15 60:20</p> <p>arrange 40:20</p> <p>arrangements 42:12</p> <p>aside 20:2 25:21 33:20</p> <p>asked 5:2 27:8 39:1 51:10 56:16</p> <p>asking 55:1</p> <p>asserted 21:7</p> <p>asserts 14:21 15:18</p> <p>assessment 8:10</p> <p>Assistant 22:8</p> <p>associated 36:14 45:16</p> <p>assume 9:18 39:17</p> <p>assumption 60:2</p> <p>assurance 44:15</p> <p>assure 5:7</p> <p>attach 14:4</p> <p>attorney 22:9</p> <p>attributable 8:14</p> <p>August 40:21</p> <p>available 49:8</p> <p>Ave 2:18</p> <p>avoid 23:11 40:1</p> <p>aware 12:16 13:1,7 16:11 30:2,8,14 30:17 37:2 50:17</p> <p>a.m 1:21 4:2</p> | B | <p>back 35:5 42:15 46:10 47:22 49:15 52:19 58:19</p> <p>Bailey 22:9</p> <p>Baker 2:17</p> <p>balance 50:15</p> <p>based 24:11</p> <p>basic 51:9</p> <p>basically 38:8 55:1</p> <p>basis 24:4,8 42:7</p> | <p>bear 44:21</p> <p>bearing 10:15</p> <p>becoming 39:4</p> <p>Begeman 1:23 7:13 18:5,13,18 19:1 22:4 25:16,19 26:20 27:2 28:5,9 28:13,16,22 29:5 29:14 30:20 31:5 34:15 35:16 39:16 51:20 52:7</p> <p>behalf 2:2,14 3:14 3:17,21 6:11 7:10 22:2 50:3</p> <p>behavior 37:20 39:10 54:14</p> <p>believe 13:4 24:3 26:9 49:3 50:1</p> <p>best 34:2</p> <p>better 24:20</p> <p>beyond 32:19</p> <p>big 41:3</p> <p>biggest 43:2</p> <p>bill 46:11</p> <p>bit 18:6 41:22</p> <p>board 1:2,17 4:21 5:5,20 6:9 14:16 20:16,22 24:17 25:3,4 27:8 33:2 50:15</p> <p>board's 6:17,18 22:21 23:15 24:13</p> <p>board-issuance 24:4</p> <p>bottom 58:17,18</p> <p>bound 5:22</p> <p>brand 30:5</p> <p>breach 10:7</p> <p>break 52:15 58:21</p> <p>breaking 58:15</p> <p>brief 6:8 8:20</p> <p>briefly 14:2 50:9</p> <p>bring 42:14 46:10</p> <p>bringing 56:14</p> <p>broadcast 6:16 60:19</p> <p>brought 14:14</p> | <p>bulk 49:5</p> <p>Bunge 4:11 7:18</p> <p>burden 23:4 25:12 25:12 50:11,18</p> <p>business 34:16</p> <p>businesses 8:6</p> |
| | | | C | <p>call 39:19</p> <p>called 54:9</p> <p>calls 19:8</p> <p>camera 5:11 6:2 60:18</p> <p>capable 32:8,17</p> <p>car 8:1,18 9:16 10:1 11:5,13,15 13:14,17,19,21 14:7,18 16:2,15 16:15,22 17:2,3,5 17:10,17 18:2,3 18:10,16,17,19 19:9,16 20:5 23:12 25:20 26:1 26:19,22 27:4,15 27:21 28:4 29:17 29:21,22 33:4,15 33:18,22 34:11,13 34:18 35:5,12,14 35:20,22 36:2,8 36:15,16,19 37:1 37:11,11,21 38:2 38:4,5 39:12,19 41:10 42:14,15 43:22 44:8,12,14 44:15,22 45:4,5 46:6,9 47:8 51:8 51:11,15 52:5,16 55:22 56:8,8,9,10 57:4,5,6,12,16 58:3,6,19 59:3,5 60:3</p> <p>care 26:3 35:1,2 36:16 54:3</p> <p>careful 16:13</p> <p>carload 10:4</p> <p>carried 42:9</p> <p>carrier 8:1 34:22</p> | | |

| | | | | |
|--|--|---|---|--|
| carriers 15:5,7 41:15 | 17:15 18:5,13,18 19:1 21:4,18 22:3 22:4 25:16,19 26:15,20 27:2 28:5,9,13,16,22 29:5,14 30:20 31:5 34:15 35:16 39:16 41:1 43:1 47:19 48:15,19 49:12 50:6 51:20 52:7 53:4,17 54:15 55:14 56:13 57:1,9,15,18 58:4 58:10 60:15 | 20:21 21:10 closed 14:11,17 15:10 53:2 57:10 closely 9:7 coal 10:13 30:22 31:2,12,19 43:21 58:13,16,17,17,17 58:19,22 coke 10:14 31:2,20 43:21 come 46:13 49:4 comes 17:1 coming 41:5 42:18 Commerce 25:6 Commissioner 1:24 7:14 10:9 11:6,9 12:4,9 16:9 16:21 17:11 19:5 22:4 31:22 36:13 38:12 43:19 44:18 45:2 46:3 47:18 58:11 60:4,9 | concluded 21:1 60:22 conclusion 6:7 15:16 39:8 condition 31:19 33:12 conditions 4:17 8:14,17 9:2 10:20 31:12 37:7 44:13 44:16 conduct 6:11 confidential 6:13 6:17 15:9 53:5 configuration 5:11 confirmation 41:22 confused 18:7 consequences 14:3 consider 9:22 25:14 considerable 33:5 consideration 22:21 24:16 considered 10:10 11:12,17 32:4 41:8 56:11 construed 50:22 containers 44:4 contents 47:9 continue 34:11 contract 10:3,7 14:6 39:22 40:4 46:14 contractor 27:19 contracts 27:19 control 20:19 45:8 controversy 23:21 convenience 51:13 Cooperative 1:9 2:2 3:14,22 4:6 7:11 50:4 copy 5:16,19 Corporation 7:19 correct 34:20 53:20 60:8 corrected 59:8 costly 23:7 costs 10:1 36:18,20 | 37:11 40:1 45:15 60:11,13 Counsel 5:3,20 7:19 country 8:4 couple 50:7 course 11:8 13:11 15:21 47:2 51:9 cover 4:22 36:20 covered 13:5 14:10 14:12,17 15:2,3 15:15 16:2,8 39:15 56:8 58:2 created 9:1 creation 8:21 crew 46:8 current 9:12,20 customer 10:4 14:7 22:8 Cutler 7:20 C-O-N-T-E-N-T-S 3:7 |
| case 4:5,7 8:6 16:15 23:21 29:15 36:8 38:16 40:14,21 42:16,19 45:17,22 49:13,19 56:14 59:11 cases 25:5 27:17 32:17 35:10 36:4 44:7 48:1 53:13 case-specific 24:8 category 59:19 cause 10:15 44:8 59:12 caused 10:19 47:5 certain 9:3 15:8 33:14 34:7 38:1 38:10 40:4 42:12 44:13 certainly 21:4 46:19 54:9 certificate 35:11 36:6 certifications 52:14 certify 51:22 Chairman 1:23,23 3:10 4:3 7:8,13,13 8:19 12:10 13:6 | Chairman's 41:2 challenge 25:4 challenging 4:9 change 54:5,9 changes 29:12 characteristics 34:9 charge 60:10 charges 4:15 8:10 37:17 chips 44:7,7 Christie 22:10 circumstance 31:19 37:4,10 circumstances 31:10,16 34:8 37:9 38:1,10 46:19 56:12 citing 21:10 claim 8:9 10:7 30:5 clarification 10:11 10:17 11:11 12:5 clarify 18:6 26:5,13 Class 21:6 classified 32:14 clean 10:1 46:9 59:20 clear 9:16 55:6 cleared 6:10 clearly 21:13 clients 12:12 clock 35:17 52:8 close 6:3 15:20 | commodities 15:19 15:19 49:5 commodity 27:21 communication 52:15 compel 7:22 Complainants 23:1 23:4,22 24:6,11 25:9 complained 34:5 44:19 45:3,8 complained-of 23:2 24:9,12,21 complaining 31:14 complaint 45:11 50:13 complete 48:10 compliance 14:14 42:15 comport 24:13 30:14 concept 53:6 concern 43:2 concerned 54:20 concerning 30:21 | <hr/> D <hr/> D 1:23 8:16 damage 32:13 damages 37:8 dangerous 58:20 Daniel 1:23 3:10 Daniels 4:12 Darrell 7:17 day 20:21 days 9:9,15 26:3 27:3 35:7 46:2 DC 2:21 deal 18:16 36:18 48:3,8 53:13 54:1 54:22 dealing 55:3,13 dealt 48:5 debited 51:4 decide 34:9 decisions 34:2 55:11 declaratory 4:6,8 6:21 23:19,20 24:5 29:7 50:12 | |

| | | | | |
|--|---|---|--|--|
| 50:14 | docket 1:10 20:16 21:2,6,10 | encountered 4:18 30:2 40:17 | experienced 15:1 27:20 30:13 40:14 43:20 | 26:3 27:3 35:7 46:2 |
| deed 45:18 | documentation 42:3 | encountering 42:22 | explain 34:16 | five-minute 60:17 |
| deemed 52:16 | documents 48:13 | encounters 36:10 | explained 8:20 | flat 56:8 |
| define 29:19 | doing 10:22 11:3 11:11 17:12 40:10 | encourage 36:22 37:19 | explaining 8:16 | flexibility 46:4 |
| definition 8:15 30:3,9 51:10 | Dreyfus 4:12 7:19 | engage 37:20 | expose 45:1 | flexible 45:21 |
| definitions 29:22 | dropping 12:18 | engaging 39:10 | express 22:20 | fluidity 34:3 49:1 |
| delay 35:5 | due 5:10 8:11 9:1 13:8 14:7 23:10 34:13 35:14 39:19 | ensure 34:2 49:1 | extent 38:3 | fold 15:7 |
| deliver 20:20 | D.C 1:18 2:8 | entire 46:22,22 | extra 10:19 46:17 60:11,13 | follow 20:12 56:3 |
| delivered 4:18 | E | especially 41:13 58:17 | extraordinary 46:21 | following 5:14 43:3 46:3 |
| delivers 57:6 | E 1:18 | ESQ 2:4,16 | extremely 14:15 33:16 | forecast 19:8 |
| delivery 20:19 | edition 9:7 | Esquire 3:13,16,19 7:9 22:1 50:2 | F | forecasts 20:4 |
| demonstrate 24:1 | effect 39:18 | essence 18:3 28:10 | facilities 16:20 | forensic 35:15 |
| dependent 37:5 | effective 55:6 | essentially 14:19 | facility 18:17 | foresight 23:11 |
| depends 46:18 | efficient 46:15 47:16 49:10 | establish 36:2 | facing 10:6 | form 48:3 |
| descends 13:20 | effort 4:20 33:21 | established 21:13 36:3 | fact 12:1,17 13:3 20:3 30:16 34:12 49:12 | forward 42:10 |
| designed 38:8 | eight 5:19 | establishes 30:10 | facts 24:1,8,12 25:11,15 | four 22:19 23:14 |
| detect 35:12 | either 28:1 41:21 | establishing 23:15 | fair 44:17 | frame 42:13 |
| detected 27:5,15 29:17 35:20,22 40:19 | element 32:22 | evaluate 34:8 | fall 21:15 | Francis 1:24 |
| determine 20:11 34:19 | elements 33:1 | event 46:21 | familiar 7:5 | frankly 53:1 |
| determined 34:21 | elevators 17:20,22 | events 9:11 15:7 | far 27:7 | freeze 12:20 58:18 |
| determining 11:17 15:3 | eleven 5:19 | exact 28:12 | fault 51:17,18 60:6 60:8 | freezes 12:20 |
| difference 17:6 28:17,19 41:3 51:9 | eliminated 49:2 | exactly 28:14,18 29:16 42:9 | feel 16:5 18:20 | frequently 14:11 |
| different 5:11 11:8 39:10 44:11 53:16 55:15 | Elliot 7:13 | example 38:18 45:18 | fees 40:2 | Friedman 22:10 |
| difficult 37:4 | Elliott 1:23 3:10 4:3 7:8 8:19 12:10 13:6 17:15 21:4,18 22:3 41:1 43:1 47:19 48:15 48:19 49:12 53:4 53:17 54:15 55:14 56:13 57:1,9,15 57:18 58:4,10 60:15 | exceed 4:16 | figure 39:21 | front 5:13 |
| diligence 23:10 34:13 35:14 44:11 | eminently 22:15 | exceeds 29:21 38:3 42:13 | filed 4:8 | frozen 57:21 58:1 58:14 |
| directed 16:7 | empty 17:3 | excess 26:22 28:1 42:13 | filing 6:20 | fully 16:1 |
| direction 16:7 | en 27:15 | exercise 23:10 44:10 | finally 23:9 | fundamental 24:10 |
| discuss 15:10 | enclosed 16:1 | exercised 34:12 | Finance 1:9 | G |
| discussion 51:6 52:21 | encounter 30:7 36:5 40:10 | existence 26:18 | find 39:7 47:16 | General 22:7 |
| dismiss 14:22 15:17 | | existing 12:5,7 | firm 41:13,20 | generally 20:20 |
| dispute 8:11,22 26:11 | | exists 23:21 | first 6:5 9:7 13:18 14:10 22:22 23:16 23:17 26:1,5,17 27:6 34:14 35:9 36:8 39:14 50:10 51:21 | genuine 23:21 |
| disruptive 33:17 | | expect 23:10 | five 6:8,12 9:9,15 | getting 35:5 |
| distinction 14:16 | | expected 9:2 20:20 | | give 35:17 |
| distinguish 59:13 | | expense 9:17,20 35:5 | | given 20:18 39:18 |
| | | experience 30:6 36:9 42:7,21 43:3 43:16 46:1 | | glad 38:22 |
| | | | | go 10:1 19:9 26:11 41:9 47:8 |
| | | | | God 60:5,10,13 |
| | | | | goes 18:19 41:2 56:2 |
| | | | | going 9:18 12:20 13:12 16:14 19:9 19:20 20:6,10 |

| | | | | |
|--|--|--|--|---|
| 21:14,15 35:6 39:22,22 45:18 49:20 53:14,15 54:18 56:10 59:1 Goldstein 2:4 3:13 3:19 7:4,7,9,12,14 8:19 9:5 11:2,7,18 12:6,11,16 13:10 16:17,22 17:13,18 18:12,15,19 19:3 19:19 21:5,19 26:9 28:21 49:22 50:2,5 52:2,12 53:7 54:7 55:8,19 56:20 57:3,13,17 57:19 58:7 59:18 60:7,12,16 gondolas 44:5 good 4:3 7:12 22:5 45:18 57:5 goods 13:19 governing 22:12 26:6 green 7:6 Greg 7:16 22:7 gross 17:1 55:21 guess 12:11 18:6 34:16 43:1 51:4,8 52:9 54:16 guy 58:15 | Harkaway 2:5 harsh 9:2 Hawley 7:18 heading 19:11 hear 4:4 8:8 21:20 hearing 1:21 5:11 6:9 heavens 13:21 heavier 19:18 heavily-loaded 49:5 help 26:13 helpful 41:19 high 18:3 highly 15:9 53:5 historian 54:17 hit 20:6 32:20 hold 59:4,4 hope 23:13 hopper 13:5 14:12 14:17 15:2,3,15 16:2,8 43:22 56:8 58:2 hoppers 39:15 44:5 hour 35:17 hours 34:19 52:1 huge 18:8 26:2 27:3 hypothetically 53:19 54:2 | important 8:2 22:21 24:16,16 25:14 27:11 32:21 33:13 51:7 imposing 31:11 37:17 40:12 imposition 4:15 impossible 37:8 imprecise 49:7 inaccurate 49:16 inches 16:15 incidentally 43:17 include 12:7 included 11:20 including 6:2 23:12 31:12 incumbent 34:1 incur 25:12 45:15 incurs 36:18 37:13 indicated 44:2 indication 15:22 individual 4:16 industry 8:7 25:7 inefficiencies 36:14 inexact 49:6 information 6:14 52:11,19 infrastructure 32:8 32:11 33:21 inherently 21:2 33:4 initial 27:8 injury 24:1,2 inquiry 39:2 inside 27:21 insignificant 53:10 instances 33:8 intent 11:10 intention 45:13 interest 46:21 interesting 15:13 interfere 23:8 interline 48:12 internal 33:9 34:3 38:3 48:2,17 52:22 54:10 interpretation | 10:22 13:15 42:1 interpreted 10:16 40:16 43:13 interstate 25:6 intrude 21:3 invariably 27:19 involve 15:14 involved 22:16 49:14 50:20 involves 4:7 Iowa 19:8,9,10 52:18 issue 4:14 7:21 15:13 19:20 22:11 31:4 33:4 42:17 45:20 46:4,5 48:8 51:8 53:10 56:15 57:2 issued 29:10 issues 44:3 46:20 54:4 item 12:3 | 55:20 57:7,17,20 58:1,8 59:3 knowledge 56:21 known 11:15 |
| <hr/> H <hr/> | <hr/> I <hr/> | <hr/> J <hr/> | <hr/> K <hr/> | <hr/> L <hr/> |
| half 5:19 halfway 8:4 halt 49:4 hand 14:18 handful 30:12 handle 12:21 32:2 32:11,15 handling 32:8 happen 47:1 happening 27:13 happens 26:14 27:18 harbor 9:1,6,8,21 10:8 hard 5:16,19 | ICC 48:1 53:11 ice 7:22 8:11,16 9:10 11:4,12,14 11:19 12:7 13:20 14:13,20 15:4,22 16:15 17:5,17 18:20 19:15 35:1 39:20 44:5 46:9 46:17 56:5 59:12 59:16,22 60:2 identified 38:14 III 1:23 Illinois 52:17 implication 40:12 implications 8:5 imply 19:2 | job 58:20 John 7:20 joined 4:13 judgment 59:10 July 29:9 June 29:9 | keeping 46:22 kicks 35:17 kind 44:12 kinds 37:11 38:9 knew 55:12 knock 57:11 knocks 57:6 know 9:5 12:18 15:18 18:7,9 19:11 20:3,12 29:6 35:3,11 37:22 42:20 44:12 45:10 47:6 48:11 48:20 52:20 53:11 54:7,11,12,13,14 | lading 9:15 10:2 12:19 16:1,2 17:9 42:13 47:6 57:21 58:2 language 9:13 10:10 latitude 33:14 leads 33:11 leeway 32:6 45:14 49:17 legal 6:10 23:17 25:9 46:10 length 56:20 Let's 25:14,22 light 25:8 31:18 56:2 lights 7:6 likelihood 24:2 36:11 limit 4:17 26:12 limits 29:21 51:12 52:4,5 line 34:9 51:13 link 52:15 liquidated 37:8 listed 32:19 little 41:22 49:16 load 13:22 18:1,3 18:21 26:22 27:22 37:21 39:12 44:22 52:5 55:21 60:3 loaded 4:15 13:18 17:1 19:16 26:14 28:3 34:20 36:3 45:4 51:12 52:18 loading 13:18 18:17 19:17 20:9 23:12 34:13 35:11 35:14 36:7 39:14 44:14 49:6 loads 13:13 |

location 28:3
locations 21:9
logical 60:2
longstanding 30:9
 30:11
look 9:12 10:8 31:9
 46:6
looked 39:2 47:22
 47:22
looking 36:19
 41:22
loose 58:16,22
Lorraine 7:18
lost 33:2
lot 35:4
Louis 4:12 7:19
Lyons 7:18

M

majority 36:4
maker 50:22
making 4:21 5:15
manually 12:22
materials 5:17,18
matrix 18:2
matter 1:8,20
 23:18,18 60:22
matters 3:9 5:1
 6:13 53:5
maximum 29:21
 32:10,19 44:14
 45:5 59:3
ma'am 19:3
McCarthy 2:5
mean 10:12,18
 17:19 29:1 30:17
 31:3 35:3 43:10
 43:11 46:19 55:16
means 55:11,12
meant 41:4
meet 14:6
melted 9:11
members 4:21
mention 50:9
mentioned 14:4
 49:18 53:3
met 23:4

micromanage 25:7
middle 52:17
Midland 4:12
miles 25:22
Miller 2:17
minus 32:9
minutes 6:2,6,8,12
 6:22 7:1,3 21:22
 50:1
misgivings 45:12
misunderstanding
 47:21
misuse 13:16
moisture 15:20
moment 10:11 14:5
 27:12
month 29:8
months 25:2
morning 4:3,22
 7:12 22:5,20
motion 14:22 15:17
move 4:20 34:11
 38:4
movement 51:13
 59:21
moves 48:12
moving 33:19
 46:22 51:8
Mulvey 1:24 7:14
 10:9 11:6,9 12:4,9
 16:9,21 17:11
 19:5 22:5 31:22
 36:13 38:12 43:19
 44:18 45:2 46:3
 47:18 58:11 60:4
 60:9

N

nailed 43:6
natural 9:11
necessary 11:20
 21:8 30:16 42:14
need 24:19 52:11
needed 49:16
needs 11:16
nervous 55:5
network-wide

48:18
never 15:21 42:20
 43:5
new 8:15 12:3 28:6
 28:18,20 29:10
 30:5,18,18,19
 39:11 40:7,7,12
 40:13 41:5,5
nice 56:8
Norfolk 1:13 2:14
 3:17 4:9 10:12
 21:20 22:2,6,12
 24:18 30:11 33:8
 33:21 36:10,17
 40:16 46:5
normal 23:8
normally 27:4
 50:15,19,22
North 4:11
noted 16:3
notice 1:21
notified 42:11
noun 29:20
No.35387 1:10
NS 4:19 8:8,12,20
 13:15 14:4,21
 15:5,8,17,17 16:5
 20:12,14,17 21:10
 21:12 33:17 51:5
 53:19 56:3,21
 57:22 58:12
NS's 21:1
number 44:11 54:3
 55:17
numbers 53:6,9,16
 54:1
NW 2:6,18

O

objection 51:21
 52:3
objective 37:15
observation 59:17
obstinate 45:21
obvious 8:12
obviously 31:4 41:3
occur 13:13

occurred 42:9 43:5
occurs 17:16 58:2
October 1:15
offer 25:11
offload 57:21 58:1
offloading 27:20
Okay 7:8 27:1 29:3
 47:18 54:15 57:18
 60:9
old 28:17,20 29:4
 40:15 42:21 48:1
 53:13 55:10
once 12:20 18:19
 34:21 35:19 38:2
 40:18
ones 36:10 59:15
open 1:6 6:6,21
 12:13,17 13:3,7
 14:19 16:4 43:21
 57:12,16 58:9,14
opening 4:21
open-top 44:4
operate 13:4
operating 51:13
operation 58:12
operations 23:8
 33:17
opinion 11:19 41:4
 43:10,11
opportunity 35:18
 37:16
opposed 12:4 36:20
 46:12
opposing 5:20
oral 1:4 4:4 6:12
 23:15
order 4:6,8 6:21
 23:15,19,20 24:5
 29:7 50:12,14
 57:5
origin 36:12
original 29:12
originally 29:6
 34:21
outside 20:18
overburdened
 49:11

overload 8:10
 13:13,16 14:1
 18:21 26:10 30:22
 32:13 33:1,12
 35:20 36:16,22
 37:7,13 40:18
 41:9 42:8 45:1
 51:10 56:11,17
overloaded 8:15,18
 10:19 13:9,17
 22:12 23:6 26:7
 26:19 27:5,10,16
 29:19,22 30:2,7
 32:1,12 33:4,15
 35:13,22 36:8,9
 36:11,19 37:14
 41:10 44:9,16
 45:16 51:8 52:1
 52:16 59:7,14,15
 59:16
overloading 11:13
 26:13 40:21 43:20
 47:6
overloads 14:22
 30:13 40:10,14,17
 42:22 47:3,4
overturn 55:2
overturned 58:13
overweight 10:14
 10:18 14:13 15:4
 15:14 18:4,14
 25:20 29:17 38:1
 38:2,16 39:4,19
 45:7 46:6

P

P 1:24 2:4
page 14:21 15:16
 43:7
pages 5:21
parameters 36:3
park 56:7,9
parked 14:7 51:14
part 8:14 17:21,22
 21:8 29:18 32:1
 47:2 51:21
particular 45:19

| | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| particularity 37:10 | 14:2 20:6 25:2 | principal 48:21 | 33:1 38:19 40:8 | 49:3,11 56:4,6,22 |
| parties 6:11 50:16 | 32:21 33:12 57:8 | prior 28:6 29:9 | 43:13 | 57:2,3,6 60:10 |
| partner 7:20 | pointed 25:3 28:21 | 41:5 53:21 56:13 | prudent 23:11 | railroads 48:5,7,11 |
| parts 35:8 | points 22:19 50:7 | private 55:16 | public 6:3,6 55:11 | 54:18 56:2,15 |
| party 5:2,15 6:5,20 | policies 15:8 | proactively 39:21 | 55:15,16,20 | railroad's 20:18 |
| 41:21 | policy 30:11 | 40:3 | publicly 15:8 | 37:12 |
| pay 60:11 | portion 6:3,7,15 | probably 39:20 | publishing 56:4 | Railway 1:13 2:14 |
| paying 60:13 | 27:22 30:21 60:19 | 40:4 52:15 | pull 34:18 41:10 | 3:17 22:2 |
| penalize 57:20 58:6 | position 11:7 14:4 | problem 15:14 | 58:6 | rain 8:16 45:6 |
| penalized 18:11 | 15:5 34:10 43:12 | 18:4,22 19:22 | pulled 12:14 13:8 | raised 50:8 |
| penalties 4:15 8:11 | 51:5 | 26:3 31:22 36:16 | 25:21 33:16 38:15 | raises 15:12 |
| 9:10 | positions 50:15 | 47:2,17 51:2 52:6 | 42:4 45:4 49:13 | rate 25:3 |
| penalty 10:15 | possession 8:2 | 52:8 55:22 | pulling 36:15 47:8 | rationality 13:22 |
| Pennsylvania 2:18 | possibility 19:17 | problems 16:6 19:7 | punitive 36:21 | reach 33:11 |
| people 46:8 | possible 9:9 10:21 | 51:19 | purpose 37:18,19 | read 5:7 9:6,7 |
| percent 32:14 | 47:20 58:5 | procedural 3:9 5:1 | 47:9 | 20:15 53:13 55:10 |
| 53:12 54:4 | posted 6:18 | procedures 5:14 | pursuant 1:21 | readily 52:11 |
| percolate 44:6 | potential 8:5 | proceed 60:18 | 56:17 | really 9:6,21,22 |
| Perdue 4:13 | pounds 16:14 18:8 | proceeding 5:22 | put 11:21 12:2 | 10:8 32:8,13,22 |
| perfect 24:19 47:15 | 18:10 32:3 51:15 | 22:17 23:20 50:12 | 16:14 17:3,9 | 39:10 48:21 |
| perfectly 60:1 | 59:5,6 | 50:14 | puts 51:16 | reason 5:8 8:12 |
| permissible 17:1 | power 20:10,14 | process 23:13 | P-R-O-C-E-E-D-... | 15:6 41:11 48:21 |
| personnel 46:16 | PowerPoint 5:15 | 54:21 55:2,7 | 4:1 | 48:22 |
| perspective 34:17 | practically 26:21 | Processing 1:9 2:2 | P.C 2:5 | reasonable 22:13 |
| petition 4:6,7,13 | practice 24:7,9,12 | 3:14,21 4:5,8 6:21 | | 22:15 23:9 24:22 |
| 23:19 | 24:18 27:14 28:6 | 6:22 7:2,10,17 | Q | 46:10 47:14 54:3 |
| petitioners 7:15 | 29:16 31:21 45:3 | 50:3 | quarter 53:12 | 54:6,8 59:2 |
| 13:3 15:2,18 | 56:3 | produced 48:13 | question 14:9,11 | reasonableness 4:9 |
| 50:11 | practices 8:6 24:14 | proof 23:5 50:11,18 | 15:12 16:18 19:13 | reasons 52:13 |
| petitioner's 8:3 | predict 20:1 21:14 | properly 34:20 | 25:17 26:17 27:8 | rebuttal 3:19 7:1 |
| 38:14 | prediction 20:9 | properties 15:19 | 29:18 39:6 41:1,2 | 50:1,2 |
| physical 34:8 | preferred 47:15 | 16:1 | 47:20 59:2 | recess 6:8 60:18 |
| picture 54:5 | prepared 5:4 | property 16:3 | questions 5:4 23:14 | recognized 14:16 |
| place 13:19 34:14 | prescribed 46:11 | prospective 38:21 | 26:16 | record 5:18 22:13 |
| 39:15 48:3,8 | presentation 5:16 | prove 22:18 24:7 | Quick 41:1 | 27:7 30:9 33:9 |
| 49:15 53:22 54:21 | 22:14 27:9 50:8 | 24:11 36:7 | quite 49:20 | 41:16 44:2 56:19 |
| 55:3 | presentations 5:21 | proven 22:17 25:10 | quotation 20:16 | records 6:18 |
| placed 5:17 13:21 | presented 17:16 | provide 9:21 35:10 | quote 15:18,20 | rectifying 47:9 |
| 35:21 | 23:14,18 35:12 | 35:18 46:1 | 20:17,21 21:7,10 | red 7:5 56:1 |
| places 33:5 | 56:18 | provided 5:18 8:9 | | refer 6:13 |
| plant 34:8 | President 22:8 | 24:1,4 33:13 36:1 | R | reflected 27:7 |
| pleadings 5:8 | presume 31:18 | provides 33:9 | R 1:23 | 48:13 |
| please 56:2 | pretty 48:17 | providing 45:13 | radio 20:4 | regard 24:15 25:1 |
| PLLC 2:17 | previously 5:17 | proving 23:1 | rail 21:1,8 22:13 | 34:3 53:18 |
| plus 32:9 | primarily 43:21 | provision 8:22 | 26:7 28:4 | regardless 10:15 |
| podium 5:12 | primary 48:22 | 10:14 41:6 | railroad 7:21 8:7 | 34:11 |
| point 5:10 13:12 | 51:19 | provisions 31:2,15 | 20:19 21:6 23:7 | relevant 15:8 |
| | | | 25:7 34:1 37:15 | |

| | | | | |
|----------------------------|-----------------------------|---------------------------|---------------------------|----------------------------|
| reliable 20:3 | 17:18,19 27:1 | 34:17,22 46:5 | significant 32:21 | somewhat 38:13 |
| reload 36:15 | 29:11 32:4 40:6 | sentence 26:5 | 32:22 | Southern 1:13 2:14 |
| relocate 33:22 | 46:8,16 55:1 | serious 14:3 | similar 5:16 30:22 | 3:17 4:10 10:12 |
| relocated 5:12 | 57:10 58:10 | service 12:15 21:1 | simply 25:9 27:13 | 21:21 22:2,6 |
| rely 9:19 | risks 45:15 | 21:7,9 22:8 34:18 | 33:22 38:4 40:14 | 30:11 33:8,21 |
| remarks 4:22 6:16 | Rob 22:5 | 35:6 38:15 42:4 | 44:14 47:8 49:2 | 36:10,17 40:16 |
| remember 24:17 | Robert 2:16 3:16 | 46:12 | 59:16 | 46:6 |
| 47:13 | 22:1 | session 1:6 6:3,6 | sir 7:7 12:8 13:10 | Southern's 22:12 |
| remove 7:22 9:15 | role 25:5 | 15:11 53:2 60:18 | 16:17,18 | 24:19 |
| 26:22 39:13 | room 5:12,13 6:9 | set 33:20 | sit 38:5 | speakers 5:13 |
| removed 9:14 | roughly 25:2 | seven 7:1 49:22 | sitting 7:16 8:3 | specifically 11:21 |
| 33:18 38:5 | route 20:11,13 | ship 10:4 | situation 23:12 | 12:2 |
| repeat 5:9 | 27:15 59:21 | shipped 28:2 57:5 | 30:14 37:5 47:5 | speculative 38:13 |
| report 15:7 | rule 12:5,7 | 59:20 | 47:10 54:16 55:13 | spoke 56:20,21 |
| represent 7:15 | rules 39:11 | shipper 7:22 13:13 | 57:16 58:5 | spoken 10:10 |
| representatives | run 55:22 | 13:19 14:1,5 17:4 | situations 13:7 | staff 49:13 |
| 6:10 8:3 | running 18:4 | 18:11,16 19:10 | 38:9 | standard 23:17 |
| request 6:20 | Rush 22:9 | 21:9 23:10 25:20 | six 25:2 | 24:20 25:9 47:12 |
| required 52:3 | S | 26:17 27:16,18 | size 5:19 | standards 24:13,18 |
| requires 13:18 | safe 9:1,6,8,21 10:8 | 34:12 35:13,21 | skip 19:21 | standpoint 34:16 |
| 33:20 51:22 | safeguard 34:6 | 36:6 38:6 42:11 | sledgehammer | start 47:8 |
| requiring 46:13 | safety 32:1 33:4 | 42:12 46:12,13 | 58:15 | state 37:9 |
| research 12:11 | 51:7,7 | 52:19 56:7 57:20 | sledgehammers | stated 25:5 |
| reserve 21:16 | sale 14:6 | shippers 11:16 | 58:21 | statement 3:13,16 |
| reserved 7:1 | saying 11:4,10 | 12:3 16:10,12,19 | small 17:20 | 5:3 7:9 15:16 |
| respect 14:19 41:14 | 16:13 17:16 19:6 | 17:8 19:6,13,22 | smaller 52:10 | 22:1 41:7 |
| 41:14 43:8 48:12 | 42:6,19 45:19,20 | 20:5 22:16 30:1,4 | snow 7:22 8:11,16 | statements 41:17 |
| 56:15 | 53:19 | 30:12,19 31:12,13 | 9:10 11:4,12,14 | STATES 1:1 |
| respects 37:6 45:17 | says 9:14 | 31:20 34:4 35:10 | 11:19 12:7,18 | stay 52:3 |
| responding 16:12 | scale 17:3,7 | 36:22 37:17,20,21 | 13:20 14:13,20 | stenciled 17:2 52:4 |
| response 16:11 | scales 16:19 17:20 | 38:20 39:3,9,20 | 15:4,22 17:5,17 | 52:5 55:21 |
| 39:2 | 49:7,15 | 40:9,13,17 42:18 | 18:10,20 19:8,15 | steps 30:16 38:7 |
| responsibilities | science 49:7 | 43:17,18,20,21,22 | 21:15 25:21 35:1 | storm 20:14 |
| 40:13,20 | scientists 35:15 | 44:1,2,3,10 45:19 | 39:13,20 44:5 | Street 1:18 2:6 |
| responsibility | screeching 49:4 | 45:22 48:4 52:10 | 46:17 56:5 57:4,7 | stress 27:6 |
| 28:10 31:6 44:21 | seats 22:9 | 54:11,13,14 55:12 | 59:6,9,10,12,16 | stresses 33:5,6 |
| responsible 23:1 | second 14:9,10 | 55:20 | 59:21 60:2 | strict 31:18 50:18 |
| 37:20 | 23:3 29:18 | shipper's 28:10 | snows 51:14 56:10 | stringent 31:3 |
| rest 21:16 | section 8:16 | 31:6 60:6,7 | snowstorm 14:8 | studied 36:17 |
| restrictions 31:11 | see 11:18 37:16 | short 5:3 20:15 | 18:9 19:11 20:7 | stuff 10:5 |
| result 17:4 36:7 | 50:19 53:9 56:4,6 | shortly 8:8 | 26:2 27:3 41:9 | sub 21:6 |
| 56:17 | seen 58:12 | shovel 26:21 31:7 | Solicitor 22:7 | subject 29:7 53:2 |
| retained 6:17 | seep 12:19 | show 22:14 25:11 | solutions 47:16 | subjected 31:20 |
| revenue 37:16 | sees 57:4 | shows 17:8 | somebody 46:14 | 37:11,12 |
| revised 24:3 45:14 | send 58:18 | shut 20:8 | someplace 21:15 | subsequently 4:11 |
| rid 46:9,17 | sense 9:4 26:8 | side 5:13 6:1 17:2 | 51:14 52:17,18 | 29:8 |
| right 7:16 12:6 | | sides 43:7 | 56:9 | subtract 17:8 |

successfully 21:7
Sue 7:18
suggestion 50:21
suggests 12:2
Suite 1:17 2:7,20
summer 29:13
Summy 22:7
sunshine 9:19
supplied 41:15
support 32:5
supported 15:16
suppose 57:19
supposed 10:4
 53:22 59:4
sure 25:18 26:15
 48:19 54:17 55:5
Surface 1:2,17
susceptible 12:17
Sweeney 2:5
system 20:12 49:1
 49:3,11
S.W 1:18

T

table 7:20 22:7
take 6:7 26:3 30:15
 34:22 41:17 54:3
 60:17
taken 53:20
takes 38:6
talk 10:18 56:14
talked 36:13
talking 47:3,4 49:5
 50:10 53:14,15
 55:9
tank 13:4 14:12
 15:1,15 16:1,8
 39:15
tanked 14:17
tare 17:7
tariff 4:10 8:13,21
 8:22 9:8,13,14,21
 10:10 11:1,21
 16:7,11 19:2
 22:12,14,18 23:2
 24:3,19,22 25:10
 25:13 26:6 28:6

28:17,18,20,20
 29:4,6,10,12
 30:21 31:11 36:19
 36:21 38:8,19
 39:17 40:8,12,15
 41:4,5 42:1,21
 43:4,13 45:14
 47:13 50:20 51:1
 51:4,18,22 54:6
 56:5
tariffs 8:9 10:13
 29:4 41:16 56:18
 58:8
tariff's 4:14
telling 20:5 56:7
tells 17:4 18:2
tend 44:3
tendency 37:22
tender 52:6
term 13:16
terms 14:5 17:5
 29:1
thank 12:9 21:5,18
 49:21 50:5 60:15
thaw 12:21
thaws 58:3
thick 59:10
thin 37:3
thing 47:11
things 4:20 39:1
 42:10 54:9
think 9:20 11:2,3
 12:1,6 13:16 14:9
 21:12 26:5,10,16
 27:6,11 31:9,15
 37:4,6 39:5 40:5
 41:19 44:17 45:17
 51:11,17 52:12
 53:4,8 55:8,9 58:7
 60:1
thinks 57:22
third 23:6
thought 53:1,7
three 25:14
threshold 23:18
 32:10
through-moveme...

33:16
time 5:5,6 20:21
 21:17 42:13 48:5
 49:20
times 38:18 39:7
today 4:4 5:12,21
 7:16 8:4 22:6,11
 22:14 32:2 33:2
 41:13,20 43:18
tolerance 48:3
 49:14,14 55:18
tolerances 33:10
 34:4 38:4 48:2,7
 48:11,17,21 49:3
 49:9 52:22 53:12
 53:22 54:2,10,22
 55:4,9
tons 32:3
top 17:5 39:13
 51:16 56:9 57:7
 57:11
total 6:2
tough 31:17
track 32:14 33:6
 35:2
tracks 32:17
train 33:19 46:22
transcript 5:22
 6:16
transferred 28:2
transit 27:5
Transportation 1:2
 1:17
traveled 8:4
treat 30:22
treats 15:9
tried 36:21 39:21
truck 28:2
Tuesday 1:15
turns 36:5
Twist 7:17
two 15:6 16:15
 26:16 32:22 35:8
two-fold 48:22
types 14:18 16:6
 44:13
typically 15:1

U

ultimately 18:9
 19:18 45:1
unclear 51:3
underload 18:7
underloading
 16:10
understand 15:10
 38:16 41:21 45:11
understanding
 27:18 48:6,10
 50:13
understood 40:18
undertaken 35:14
unfair 25:12 31:11
UNITED 1:1
unload 31:6 42:13
 46:13
unloading 58:12
unpunished 45:18
unreasonable
 22:18 23:2 24:7,9
 24:14,18 25:10
 31:20
unreasonableness
 25:4
unreliable 21:2
unsafe 23:7,11,12
upholding 20:17
upset 39:9
urging 21:1
use 18:2 33:20
 37:22 44:12,22
 58:21
uses 56:5
usual 5:14
usually 32:3
utilizing 5:17

V

variability 21:8
variables 20:18
variance 32:7
various 41:16
vast 36:4
vendors 40:4
verb 29:20

version 9:13
versus 26:13
Vice 1:23 7:13 18:5
 18:13,18 19:1
 22:4,8 25:16,19
 26:15,20 27:2
 28:5,9,13,16,22
 29:5,14 30:20
 31:5 34:15 35:16
 39:16 41:2 51:20
 52:7
viewed 13:22
VS 1:12

W

wait 35:6 58:3
Wallace 7:17
want 14:2 20:8
 33:2 37:14 43:6
 45:20 55:5
wanted 4:22
warm 9:19
Washington 1:18
 2:8,21
wasn't 42:19
water 44:6 45:7
way 10:6,17 15:3
 20:5 21:13 32:4
 40:15 41:12 42:2
 43:14 44:22 47:21
 48:4 57:22 58:1
ways 44:11
weather 4:17 8:14
 8:17 9:2 10:20
 12:14,15 13:8
 14:22 19:8 20:4
 41:7,11,17 42:4
 44:16 45:8 48:4,8
 49:18 53:20 54:1
 54:19,22 55:3,17
 56:16 57:2
weather-related
 30:13 42:8 54:4
website 6:19
weight 4:16 10:19
 11:5,14,17 17:2,6
 17:7,7 19:12

| | | | | |
|--|---------------------------------------|--------------------------|--|--|
| 25:21 28:1 29:21 34:20 45:6 46:10 46:11 51:16 55:21 59:11 | years 29:2 40:11 54:18 55:3 | <hr/> 6 <hr/> | | |
| weights 32:18 53:14 | yellow 7:5 | 6,000 16:14 51:15 | | |
| welcome 4:4 | | <hr/> 7 <hr/> | | |
| went 47:22 | <hr/> 1 <hr/> | 7 3:14 | | |
| weren't 30:17 | 1 21:6,6 | 7,000 51:15 | | |
| we'll 4:4 7:2 15:10 21:20 60:17 | 10 15:17 | 700 2:7 | | |
| we're 9:18 16:14 17:21 35:15 47:3 47:3 49:4 53:14 53:15 55:6,13 | 10th 40:22 | <hr/> 8 <hr/> | | |
| we've 14:10 35:19 36:1 | 10:19 60:22 | 8 14:21 | | |
| Wimbish 2:16 3:16 21:22 22:1,3,5 25:18 26:15 27:1 27:4 28:8,11,15 28:19 29:3,11,15 31:1,8 32:16 35:8 35:19 37:2 38:22 40:6 42:5 43:9 44:1,20 45:10 46:18 48:9,16,20 52:13 | 100 55:3 | 8,000 18:10 | | |
| Wimbish's 50:8 | 120 1:17 | <hr/> 9 <hr/> | | |
| winter 9:3 | 13 7:3 | 9:30 1:21 | | |
| withstanding 32:18 | 143 32:3 | 9:31 4:2 | | |
| wood 44:7 | 1825 2:6 | 98 54:3 | | |
| word 13:17 | 1909 49:13 | | | |
| words 8:13 19:7 20:22 32:7,12 40:11 56:5 | <hr/> 2 <hr/> | | | |
| work 31:15 | 20 6:5,22 21:22 | | | |
| works 60:14 | 20006 2:8 | | | |
| worry 12:3 | 20037 2:21 | | | |
| worth 9:22 | 2010 29:9,13 40:22 | | | |
| wouldn't 9:3 46:5 54:5 57:11 59:2 | 2011 1:15 | | | |
| <hr/> X <hr/> | 202)663-7820 2:22 | | | |
| x 1:8,13 | 202)775-5560 2:9 | | | |
| <hr/> Y <hr/> | 22 3:17 | | | |
| yard 19:10 46:7,22 | 24 34:19 35:17 52:1 | | | |
| | 24-hour 52:8 | | | |
| | 2401 2:18 | | | |
| | 25 1:15 6:2 | | | |
| | 283,000 59:5 | | | |
| | 286 32:9,10 | | | |
| | 286,000 32:3 | | | |
| | 291,000 59:6 | | | |
| | <hr/> 3 <hr/> | | | |
| | 3 32:14 | | | |
| | 300 2:20 | | | |
| | 395 1:18 | | | |
| | <hr/> 4 <hr/> | | | |
| | 4 3:10 32:14 | | | |
| | 400 25:22 | | | |
| | 42060 21:2,6 | | | |
| | 42068 20:16 21:11 | | | |
| | <hr/> 5 <hr/> | | | |
| | 5,000 18:8 | | | |
| | 50 3:22 | | | |

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: AG Processing v Norfolk Southern

Before: STB

Date: 10-25-11

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701