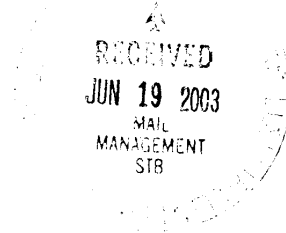


Before the
Surface Transportation Board

Docket No. 42079

Ag Processing Inc
v.
Norfolk Southern Railway Company



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**Norfolk Southern Railway Company's
Opposition To AGP's Motion For Leave To File**

Norfolk Southern Railway Company ("NSR") hereby opposes Ag Processing Inc's "Motion For Leave To File Reply To Norfolk Southern Opposition," filed June 12, 2003.

The Board's rules prohibit replies to replies. 49 C.F.R. 1104.13(c). Rather, the Board's regulatory scheme provides that a movant is to present its case in its motion, and the opponent is entitled to the last word in responding to that motion. Here, AGP has failed to show any good cause for waiving that rule.

AGP's "reply to a reply" provides no new evidence, but instead only additional argument built, like its initial motion for injunctive relief, on nothing but speculation upon speculation. Indeed, the document is little more than a collection of further unproven assertions about what "may" occur, or what "might" happen, or what results "could" follow "if" certain hypothetical events take place – events that AGP fails to show have any likelihood of actually happening. Indeed, despite taking for itself an unauthorized opportunity to do so, AGP's reply to a

reply does not even purport to offer any evidence whatsoever to rebut NSR's observation in its Opposition that AGP had failed to offer any evidence whatsoever to support the assertion that the *single customer* AGP professes concern about has ever failed or refused to pay for a shipment, or ever would. In short, AGP's reply to a reply is simply an unwarranted effort by AGP to get in the last word, contrary to the regulatory scheme that gives that right to NSR. The Board has rejected such attempts in the past, and should similarly reject it here. See, e.g., *Potomac Electric Power Co. v. CSX Transportation, Inc.*, Docket No. 41989 (decision served June 27, 1997) (rejecting a tendered reply to a reply that was "merely an attempt to have the last word in an argument, which contravenes the intent of our prohibition of replies to replies.").

Additionally, contrary to AGP's assertion, accepting AGP's reply to a reply would indeed add to the already significant procedural prejudice against NSR. Recall that AGP acknowledged having actual notice on May 10, 2003 of NSR's intent to promulgate the challenged rule on June 1, giving AGP some three weeks to prepare and file its complaint and motion for injunction. Because AGP waited to do so until May 29, the next-to-last business day before the Rule's effective date, and given the possibility that the Board would act on the petition the next day, Friday, May 30, before the challenged rule took effect on Sunday, June 1, NSR effectively had but one day to prepare an opposition to the petition for injunction. Not content with that procedural advantage, however, AGP has now taken upon itself the opportunity to spend nearly an additional 2 weeks crafting a further reply to NSR's reply in order to get in the last word (while

asserting, remarkably, that its doing so actually *benefits* NSR – see AGP's motion for leave to file at p. 3). NSR submits that the resulting procedural prejudice to it is both obvious and significant.

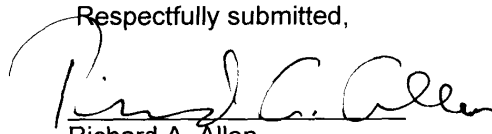
In sum, AGP has offered no basis for the Board to depart from its “no reply to a reply” rule, and its unauthorized reply to a reply should be rejected. However, if—and only if—the Board disagrees and decides to accept AGP's reply, NSR submits that it should be permitted to file the accompanying Surreply as well. Permitting NSR to do so is necessary to preserve NSR's right, as enshrined in the Board's regulations, to respond to all of the moving party's allegations and close the argument on AGP's motion for injunctive relief.

CONCLUSION

NSR respectfully requests that the Board deny AGP's motion for leave to file, and accordingly reject AGP's unauthorized reply to a reply. If, however, the Board accepts AGP's reply to a reply, NSR requests that it also accept the accompanying Surreply by NSR.

Greg E. Summy
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Respectfully submitted,



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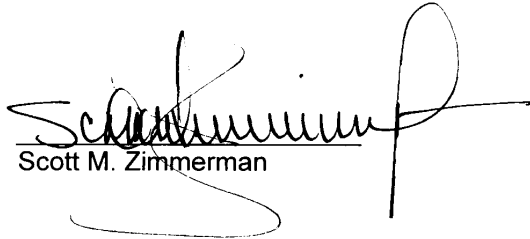
Attorneys for Norfolk Southern Railway Company

June 19, 2003

CERTIFICATE OF SERVICE

I certify that on June 19, 2003 a true copy of Norfolk Southern Railway Company's Opposition To AGP's Motion For Leave To File was served by hand delivery upon:

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