

51719
DO

SERVICE DATE – MAY 11, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36695

THE WENGER GROUP, INC., AND ESBENSHADE, INC.
—PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF—
RAIL SERVICE TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES

Decided: May 11, 2023

On April 24, 2023, The Wenger Group, Inc., and Esbensshade, Inc. (collectively, Petitioners), filed a petition under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, requesting certain declaratory and injunctive/emergency service relief related to rail service to their facilities provided by Norfolk Southern Railway Company (NSR) over a rail line owned by the National Railroad Passenger Corporation (Amtrak) between Rheems, Pa., and Lancaster, Pa. (Pet. 3.)

By decision served April 26, 2023, Amtrak and NSR were directed to reply to Petitioners' requests for injunctive relief and a directed service order by May 1, 2023, and to Petitioners' request for declaratory relief by May 15, 2023. In its May 1, 2023 reply, Amtrak indicated that its counsel was scheduled to speak with Petitioners' counsel on May 2, 2023, to address the concerns raised in the petition. Pursuant to a Board order served May 2, 2023,¹ Petitioners filed a status report on May 3, 2023, stating that discussions between Petitioners and Amtrak were expected to continue.

In a letter jointly filed May 10, 2023, Petitioners, Amtrak, and NSR indicate that Petitioners and Amtrak have reached a confidential settlement in principle and request that the Board place the proceeding in abeyance, pending confirmation from Petitioners and Amtrak that the settlement has been finalized. Petitioners and Amtrak also request that the May 15, 2023 deadline for replies to the petition for declaratory relief be extended to May 30, 2023.

The request to place the proceeding in abeyance will be granted, and all deadlines (including the May 15 reply deadline) will be tolled until further order of the Board. Petitioners

¹ See Wenger Grp., Inc.—Pet. for Declaratory Ord. & Injunctive Relief—Rail Serv. to Pa. Feed Mills & Other Facilities, FD 36695, slip op. at 2 (STB served May 2, 2023).

and Amtrak will be directed to notify the Board (jointly, if possible), by no later than May 30, 2023, as to the progress of their settlement negotiations.

It is ordered:

1. This proceeding is held in abeyance, and all deadlines are tolled until further order of the Board.

2. Petitioners and Amtrak shall file a status report (jointly, if possible) by no later than May 30, 2023, as to the progress of their settlement negotiations.

3. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.