



LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. STREET, NW SUITE 300
WASHINGTON, DC 20006

(202) 508-1065 (O)

(202) 365-8409 (C)

TOM@TWILCOXLAW.COM

WWW.TWILCOXLAW.COM

May 26, 2023

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: *Docket No. FD 36695, Petition for Declaratory Order and Injunctive Relief – Rail Service to Pennsylvania Feed Mills and Other Facilities*

Dear Ms. Brown:

This letter is filed on behalf of Kellogg Company (“Kellogg”) in opposition to the letter filed today by counsel for Amtrak requesting an extension from May 30, 2023 to June 9, 2023 to for Amtrak to reply to (1) the requests for declaratory relief in the Petition for Declaratory and Injunctive Relief filed by the Petitioners,¹ and (2) to Kellogg’s request for injunctive relief and/or a directed service order. The Board initially directed Amtrak and Norfolk Southern Railway (“NSR”) to reply to the requests for declaratory relief by May 15, 2023 but extended that date to May 30 at the request of Amtrak. For the reasons set out below, no good cause exists for granting the requested extension, and indeed it would be detrimental to Kellogg and NSR.

First, the request violates 49 C.F.R. §1104.7(b) because it is sought within 10 days of the due date of the filing and Amtrak has asserted no grounds why this rule should be waived.

¹ The Wenger Group, Inc. and Esbenshade, Inc. Kellogg adopted the arguments of Petitioners by reference in its Petition for Leave to Intervene.

Letter to Cynthia T. Brown
May 26, 2023
Page 2

Second, leaving aside the fact that Amtrak's letter flirts with violating Board's strict rules prohibiting parties from disclosing any details of settlement discussions, the fact that parties to a case before the Board might be conferring about "*potential*"² commercial resolutions has never been grounds for extending a procedural deadline, and for good reason. If extensions of filing dates were granted just because one party says discussions are taking place, parties would be much less likely to freely engage in such discussions.

Third, Amtrak should need no additional time to prepare its response to Petitioner's/Kellogg's request for declaratory relief. As stated, Amtrak and NSR have had since April 26, 2023 to begin to prepare such responses.

Fourth, nor should Amtrak need additional time to respond to Kellogg's requests for injunctive relief and/or a directed service order under 49 U.S.C. §11123, which are largely based on adopting the arguments presented by the Petitioners. Amtrak submitted extensive legal arguments on these points in its Reply to the Petition, and Kellogg complied with the Board's request for supplemental argument on these issues (meeting the three-business day deadline set by the Board). Any further response on these issues by Amtrak as to Kellogg should therefore be mostly addressed to any factual arguments Amtrak might raise.

Most importantly, Amtrak's request that its reply be extended to June 9, 2023 should be rejected because it would prejudice Kellogg and NS and advantage Amtrak. A critical issue in this proceeding is whether there are better and more efficient ways for Amtrak to accomplish its track repair goals while preserving freight rail service to Kellogg. Extending the procedural schedule in this case to a date that is closer to the planned July 25, 2023 start date will delay a full record for decision being submitted to this Board. If that decision would entail Amtrak utilizing an alternative means to conduct its track work, then there must be sufficient time for Amtrak to implement that solution. Delaying the closing of the record in this case would therefore arguably restrict the Board's ability to craft a solution that involves an alternative. It therefore imperative for all parties that the evidentiary and legal record be submitted for decision on the current schedule.

For all the foregoing reasons, Amtrak's extension request must be denied.

Respectfully submitted,

/s/ Thomas W. Wilcox
Thomas W. Wilcox

Attorney for Kellogg Company.

² Amtrak Letter at 1.

CERTIFICATE OF SERVICE

I hereby certify that, on this 26th day of May 2023, a copy of the foregoing letter response of Kellogg Company was served by email on all parties on the official Service List for Docket No. 36695.

/ss/ Thomas W. Wilcox