

SERVICE DATE – MAY 26, 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 26, 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/directed 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. (the Line). (Pet. 3.) By decision served May 11, 2023, this proceeding was placed in abeyance, and all deadlines were tolled until further order of the Board.¹

By decision served May 18, 2023, the Board granted the request of Kellogg Company (Kellogg) for leave to intervene in this proceeding. The Board also granted the joint requests of Kellogg and NSR to lift the stay of proceedings as to Kellogg and set a May 30, 2023 deadline for responses to the petition for declaratory relief and for responses to Kellogg's request for injunctive relief and a directed service order.

By letter filed May 26, 2023, Amtrak requests that the Board extend the deadline for Amtrak to respond to Kellogg's requests for declaratory and injunctive relief until June 9, 2023. Amtrak states that it has engaged in discussions with Kellogg regarding the potential to reach a mutually agreeable settlement and that additional time would allow for these discussions to continue. Amtrak states that NSR and Kellogg object to this request. Also on May 26, 2023, Kellogg filed a reply in opposition to Amtrak's request.

Because NSR and Kellogg oppose the extension and because the parties may continue discussions regarding potential settlement while the Board considers the issues raised in this proceeding, Amtrak's request for an extension will be denied. Moreover, an extension would affect the Board's ability to consider the record in a timely manner, particularly in light of when Amtrak's track work is projected to impact Kellogg's facility.

¹ Petitioners and Amtrak were 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. Amtrak's request for an extension is denied.
2. This decision is effective on its service date.

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