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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, *The Wenger Group, Inc., and Esbenshade, Inc.—Petition for Declaratory Order and Injunctive Relief—Rail Service to Pennsylvania Feed Mills and Other Facilities*

Dear Ms. Brown:

Norfolk Southern Railway Company (“NSR”) files this letter regarding the procedural schedule in the above-referenced docket. The Board previously established that replies would be due on May 30, 2023, and did not establish a further reply period.¹ NSR submitted its submission early, on May 23, 2023. In its May 30th submission, the National Railroad Passenger Corporation (“Amtrak”) states that it intends to respond to NSR’s submission by June 12, 2023.² However, in light of the urgency of the issues alleged in this case, and the fact that the Board has already set an expedited schedule to reflect that urgency (including denying Amtrak’s recent request for an extension of time³), any response should likewise be expedited. This urgency is reflected in not only the Board’s decisions, but also in NSR’s decision to file its reply early on

¹ See Decision, *Petition for Declaratory Order and Injunctive Relief – Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No. FD 36695 (STB served May 18, 2023) (“May 18 Decision”) (requiring supplemental information to be filed within five days of the order and replies to Kellogg’s requests for relief within 13 days of the order).

² Amtrak’s Reply to Intervenor Kellogg’s Request for Declaratory Order, Injunctive Relief, and Directed Service Order, *Petition for Declaratory Order and Injunctive Relief – Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No. FD 36695, at 5, n.2 (filed May 30, 2023) (citing 49 C.F.R. § 1104.13).

³ See Decision, *Petition for Declaratory Order and Injunctive Relief – Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No. FD 36695, at 1 (STB served May 26, 2023) (denying Amtrak’s request to extend the deadline for it to file its response to Kellogg’s requests for relief until June 9, 2023, because, *inter alia*, “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.”).

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Docket No. FD 36695

June 1, 2023

Page 2

May 23, along with its supplemental information, in order to ensure the Board had access to the information at the earliest possible date.

In sum, NSR does not object to Amtrak responding to NSR's May 23rd Reply, but Amtrak should not be afforded 20 days to do so in this proceeding. NSR respectfully requests that the Board order Amtrak to respond to NSR's May 23rd Reply by no later than June 6, 2023.

The undersigned counsel can represent that intervenor Kellogg Company concurs with this request.

Respectfully submitted,

/s/ Matthew J. Warren

Matthew J. Warren

Counsel for Norfolk Southern Railway Company

cc: Parties of Record



Docket No. FD 36695

June 1, 2023

Page 3

CERTIFICATE OF SERVICE

I certify that on this 1st day of June 2023, a copy of the foregoing Letter was served on all parties on the Service List for Docket No. FD 36695.

/s/ Matthew B. Cahill
Matthew B. Cahill