

SERVICE DATE – JULY 20, 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: July 20, 2023

On April 24, 2023, The Wenger Group, Inc., and Esbensshade, Inc. (collectively, Petitioners),¹ 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. (Pet. 3.) On May 4, 2023, Kellogg Company (Kellogg), which owns and operates a facility on the subject line and is also served by NSR, filed a petition for leave to intervene for the purpose of becoming a party of record in this proceeding and requesting the same declaratory and injunctive relief as Petitioners. (Kellogg Pet. 1.)

In a letter jointly filed May 10, 2023, Petitioners, Amtrak, and NSR indicated that Petitioners and Amtrak have reached a confidential settlement in principle and requested that the Board place the proceeding in abeyance. By decision served May 11, 2023, the parties' abeyance request was granted, and all deadlines were tolled until further order of the Board. Petitioners subsequently filed a motion to dismiss their petition with prejudice on May 30, 2023, as they and Amtrak have finalized a settlement agreement. Petitioners state that Amtrak joins in the motion and stipulates to dismissal of the petition.

By decision served May 18, 2023, the Board granted the request of Kellogg for leave to intervene in this proceeding; granted the joint requests of Kellogg and NSR to lift the stay of proceedings as to Kellogg; and set forth deadlines for replies and supplemental information. In a letter filed June 22, 2023, Amtrak informed the Board that it and Kellogg had reached a confidential settlement in principle and requested that the Board place the proceeding with respect to Kellogg in abeyance. Amtrak's request for abeyance was granted by decision served June 23, 2023. On July 17, 2023, Kellogg filed a motion to dismiss the petition with prejudice, as it and Amtrak have finalized and executed a settlement agreement. Kellogg states that Amtrak joins in the motion and stipulates to the dismissal of the petition.

¹ Petitioners state that Esbensshade, Inc. is now known as Green Park HGE Inc. (Petitioners Mot. 1 n.1, May 30, 2023.)

In light of the settlement agreements reached with Amtrak, the motions to dismiss the petition will be granted. The petition will be dismissed with prejudice, and this proceeding will be discontinued.

It is ordered:

1. Petitioners' and Kellogg's motions to dismiss the petition with prejudice are granted, and this proceeding is discontinued.
2. This decision is effective on its service date.

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