

WILLIAM C. HORNER
(RETIRED)
WILLIAM L. HORNER
wlh@hornerlaw.net

HORNER & HORNER, L.L.C.
ATTORNEYS AT LAW
67 MARKET STREET
P.O. BOX 66
SALEM, NJ 08079
—
TEL (856) 935-0958
FAX (856) 935-1708

ENTERED
Office of Proceedings
October 7, 2024
Part of
Public Record

October 7, 2024

Via Electronic Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
U.S. Surface Transportation Board
395 E Street SW
Washington, DC 20423

**Re: Proposed Procedural Schedule of Intervenor Mannington Township,
County of Salem, New Jersey, with respect to
Petition for Declaratory Order of Township of Pilesgrove, County of Salem,
New Jersey (In re SMS Rail Services, Inc.)
Docket No.: FD 36770**

Dear Ms. Brown:

I represent the Township of Mannington whose request to intervene in the above declaratory order proceeding was granted in the Board's September 13, 2024 decision. That decision directed Mannington and the Petitioner Township of Pilesgrove to confer with counsel for SMS Rail Services, Inc., about jointly submitting a procedural schedule to govern this proceeding. The decision further directed that, if the parties fail to agree on a procedural schedule, each must file its own proposed procedural schedule by October 8, 2024. Please accept this letter as Mannington's submission in that regard.

The attorneys for the other two parties in this proceeding are Ekaterine N. Eleftheriou, Esq., who represents Pilesgrove, and Robert A. Klein, Esq., who represents SMS. The three of us conferred by phone on October 1, 2024, but did not agree on a procedural schedule. Although Mr. Klein is experienced in representing clients before the Board, and I am not, his proposed procedural schedule seemed overly extended and complicated, similar to a court trial. I have subsequently spoken with Ms. Eleftheriou who shares this perception.

This proceeding involves application of the ICCTA, interpretive caselaw, and the Board's prior decisions, to the passenger-excursion-related component SMS's operations as observed by municipal officials. These operations, and their non-preempted status, have been fully described and explained in the petitions that Pilesgrove and Mannington have already filed. What remains to be done is for SMS to present whatever further factual explanations or clarifications might be necessary for Pilesgrove, Mannington, and the Board to understand the specific nature and scope of the operations in question, and for the parties to present their respective legal analyses in briefs.

For the above reasons I believe that no “discovery” is necessary in this proceeding, and that Pilesgrove’s and Mannington’s previously filed petitions sufficiently constitute “opening statements.” Accordingly, I propose the following simplified procedural schedule:

SMS Reply Brief due November 15, 2024; and

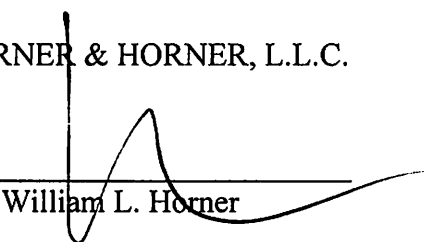
Pilesgrove and Mannington Rebuttal Briefs due December 20, 2024.

Based on my review of procedural schedules that have been issued by the Board in other declaratory order cases, the above procedural schedule seems appropriate for a proceeding of this type. I also believe it is more prudent to defer to the Board’s expertise and experience in these matters than to agree to SMS’s attorney’s scheduling proposal which I do not fully understand. Finally, I am confident that all parties’ interests will be appropriately served by whatever procedural schedule the Board determines is most appropriate in the context of this proceeding, including whether and to what extent further briefing or oral argument may be necessary.

The above dates presume that the Board will confirm the procedural schedule soon, within a week or so following October 8. If more time is required to confirm the schedule, I ask the Board to shift both dates forward as necessary to give all parties at least a month to prepare their respective briefs, with due consideration of the upcoming holiday season.

Cordially yours,

HORNER & HORNER, L.L.C.

By: 
William L. Horner

WLH:jcc

Cc: Amber Ayars, Acting Clerk (via email only)
Ekaterine N. Eleftheriou, Esq. (via email only)
Robert A. Klein, Esq. (via email only)
Frank J. Hoerst, III, Esq. (via email only)
David A. Avedissian, Esq. (via email only)
Karin M. Wood, Esq. (via email only)

[SEE ATTACHED CERTIFICATE OF FILING AND SERVICE]

CERTIFICATE OF FILING AND SERVICE

I hereby certify that, on October 7, 2024, I am filing Mannington's Proposed Procedural Schedule using the Surface Transportation Board's online filing portal, and that I am causing the following listed parties to be served with copies of same, by email only, at their email addresses as set forth on the following Service List.

William L. Horner, Esq.
Horner & Horner, L.L.C.
67 Market Street / P.O. Box 66
Salem, New Jersey 08079
Email: wlh@hornerlaw.net
Phone: (856) 935-0958

SERVICE LIST (Docket No. FD 36770)

Ekaterine N. Eleftheriou, Esq. (Attorney for Township of Pilesgrove)
The Vigilante Law Firm, P.C.
99 North Main Street
Mullica Hill, NJ 08062
Email: kat@thevigilantelawfirm.com
Phone: (856) 223-9990

Robert A. Klein, Esq. (Attorney for SMS Rail Service, Inc./Woodstown Central Railroad)
Berkowitz-Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
Email: rak@berklein.com
Phone: (215) 880-6913

Frank J. Hoerst, III, Esq. (Attorney for SMS Rail Service, Inc./Woodstown Central Railroad)
13 West Avenue
P.O. Box 217
Woodstown, NJ 08098
Email: fhoerstlaw@comcast.net
Phone: (856) 769-1700

David A. Avedissian, Esq. (Attorney for SMS Rail Service, Inc./Woodstown Central Railroad)
135 Kings Highway East
Haddonfield, NJ 08033
Email: david@avedissianlaw.com
Phone: (856) 857-1901

Karin M. Wood, Esq. (Attorney for County of Salem)
Salem County Counsel
110 Fifth Street, Suite 400
Salem, NJ 08079
Email: counsel@salemcountynj.gov
Phone: (856) 935-7510, ext. 8109 or 8109