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ENTERED
Office of Proceedings
March 6, 2025
Part of
Public Record
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Robert A. Klein

Telephone 215-880-6913

March 6, 2025

Via E-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: SMS Rail Service, Inc.
Petition for Declaratory Order of Township of Pilesgrove, Salem County, NJ; &
Petition for Leave to Intervene of Township of Mannington, Salem County, NJ
STB Finance Docket No. 36770

Dear Ms. Brown:

SMS Rail Service, Inc. hereby provides its Motion for Leave to File Sur Reply Regarding Recent Developments and Rebuttal Briefs of Pilesgrove Township and Mannington Township, with the proposed Sur Reply attached as Exhibit 1 thereto, in the above-referenced proceeding.

Please note that the verification required is contained in Exhibit AAA (paragraph 22) to the Motion and the proposed Sur Reply.

If there are any questions about this matter, please contact me by phone (215-880-6913) or email (rak@berklein.com).

Thank you.

Respectfully,

/s/ Robert A. Klein
Robert A. Klein

cc: All parties shown on the attached service list

Ms. Cynthia T. Brown
March 6, 2025
Page Two

FD 36770 Service List

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BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

**MOTION OF RESPONDENT SMS RAIL SERVICE, INC. FOR LEAVE TO FILE
SUR REPLY REGARDING RECENT DEVELOPMENTS AND REBUTTAL BRIEFS OF
PILESGROVE TOWNSHIP AND MANNINGTON TOWNSHIP**

SMS RAIL SERVICE, INC.
513 Sharptown Road
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Respondent

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Attorney for Respondent

DATE FILED: March 6, 2025

To Honorable Board Chairman Fuchs, and Board Members Primus, Schultz, and Hedlund:

Respondent SMS Rail Service, Inc. (“SMS”), through its undersigned counsel, respectfully requests leave of the Surface Transportation Board (“Board” or “STB”) to file a sur reply for the reasons stated below, in light of new and recent developments and to correct the record, and in the interest of a more complete record.

Preliminary Statement

In accordance with the Board’s Decision served December 6, 2024, SMS filed with the Board on December 16, 2024, SMS’s Reply Evidence and Argument to Pilesgrove Township’s (“Pilesgrove”) and Mannington Township’s (“Mannington”) Petitions for Declaratory Order and Supplemental Evidence and Argument (“SMS’s December 16, 2024 Reply”), and on January 14, 2025, SMS’s Response to Submissions of Other Interested Persons Regarding Pilesgrove Township’s and Mannington Township’s Petitions for Declaratory Order and Supplemental Evidence and Argument (“SMS’s January 14, 2025 Response to Interested Persons”).

In accordance with the same Board Decision, on January 14, 2025, Pilesgrove and Mannington (also referred to as the “Townships”) each filed Rebuttal Briefs (“Rebuttal(s)”) regarding SMS’s December 16, 2024 Reply.

As discussed below, other issues bearing on federal preemption have arisen since the filing of the Townships’ January 14, 2025 Rebuttals regarding SMS’s operations, services, and facilities along the Salem Branch (“Branch”), including Pilesgrove’s blocking electrical connections to SMS’s properties in Pilesgrove, and Mannington’s attempting to regulate SMS as a tenant in Building 90 located at and owned by Mannington Mills, Inc. in Salem, New Jersey (“Mannington Mills”), where SMS has been repairing and restoring containers transported by rail for its freight

customer, Environmental Rail Solutions, Inc. (“ERS”), discussed in SMS’s earlier submissions to the Board.¹

In its Rebuttal at page 21, Pilesgrove Township claimed that “the electric cut in” for SMS’s facilities on its railroad properties on and along the Salem Branch is not preempted. Not only is Pilesgrove continuing to fine SMS substantial amounts and subject SMS to stop work orders for allegedly violating local land use regulations requiring site plan approval, permits, and zoning variances, last week Pilesgrove, again, purposefully blocked Atlantic City Electric (“ACE”), the electric utility provider, from connecting its electrical system to SMS’s properties and facilities. As a result, SMS has incurred and continues to incur inconveniences to its operations and unnecessary expenses that interfere with rail transportation, such as having to use diesel fueled generators to run its facilities.

In its Rebuttal at page 6, footnote 1, Mannington Township indicated it will also exercise jurisdiction over SMS at Building 90 by imposing municipal permitting, variance, and other land use or site plan regulations to stop and/or regulate SMS’s rail operations, services, and facilities in that Building. Based on recent contact noted below that Mannington Township’s Solicitor reportedly has had with Mannington Mills, on the near horizon is more interference with rail transportation by Mannington Township that will impact operations, services, and facilities on the Branch and should not be permitted to occur in light of federal preemption. *See* the discussion of the unlawful interference by Mannington Township regarding the wye, discussed in SMS’s December 16, 2024 Reply at 14-21.

In light of these related issues similarly based on inaccurate allegations of fact and misstatements of law in the Townships’ Rebuttals, SMS requests that it be permitted to present

¹ SMS’s rail freight business with ERS is referenced in SMS’s December 16, 2024 Reply at 7-8, and SMS’s Response to Interested Persons, at **SMS Ex. ZZ** (Supplemental Verified Statement of James R. Pfeiffer ¶¶ 5-7).

the issues to the Board so that they may be considered and determined by the Board in this proceeding. Therefore, in the interest of fairness, allegiance to truth, and justice, and having a complete record before the Board, SMS hereby files this Motion for Leave to File Sur Reply to the Townships' Rebuttals Briefs ("Motion").

SMS submits that these are important issues warranting a sur reply to allow the Board to confirm that SMS's operations, services, and facilities on and along the Salem Branch are transportation by rail carrier covered by the federal preemption provisions contained in 49 U.S.C. § 10501, as broadened by the Interstate Commerce Commission Termination Act ("ICCTA").

Motion

In support of this Motion, SMS states as follows:

1. The Townships are requesting the Board to share with them regulation of the Salem Branch and SMS, including the rail line and SMS's facilities and operations on and along the Branch. As previously stated in SMS's filings herein and in the Interested Persons' Comments, this sort of patchwork or bifurcated regulation would effectively create new legal precedent for allowing the Townships and other municipalities throughout the country to decide when and how they will take regulatory power over our nation's railroad system away from the Board, which is unworkable and contrary to Congress' mandate in the ICCTA, as characterized by the courts, for the preemptive scope of 49 U.S.C. § 10501(b) to be "broad and sweeping." The relief these Townships are requesting would dilute and unravel Congress' mandate that places exclusive jurisdiction with the Board, including over this rail line and its common carrier SMS. The result would have wide application to rail carriers nationwide. For these reasons alone, it is critical that SMS be permitted to file a sur reply to set the record straight.

2. The Townships' Rebuttals contain numerous inaccurate allegations of fact and misstatements of law premised on their conjecture and innuendo.

3. Last week, after ACE indicated that the electrical connection to SMS's Property would be energized, Pilesgrove blocked ACE from doing so. This is interfering with the operation of SMS's facilities in Pilesgrove. At the same time, SMS is continuing to be fined substantial amounts and subject to stop work orders by Pilesgrove for operating the Branch allegedly in violation of local land use regulations requiring site plan approval, permits, and zoning variances. See Second Supplemental Verified Statement of James R. Pfeiffer, Chief Operating Officer of SMS ¶¶ 3-6 ("J. Pfeiffer 2nd Supp. Stmt.") and Supplemental Verified Statement of George Sutch, Roadmaster and Vice President of SMS ¶¶ 1-12 ("G. Sutch Supp. Stmt."), which are appended as **Exhibit "AAA"** and **"Exhibit BBB"**, respectively, to the proposed Sur Reply, attached hereto as **Exhibit "1"**.

4. Also, following its Rebuttal and as recently as last week, Mannington Township has been in contact with SMS's landlord, Mannington Mills, regarding alleged violations of local permitting, variance, and other land use regulations involving SMS's rail operations in a warehouse along the Branch at Building 90 of Mannington Mills in Mannington Township, which SMS submits are subject to federal preemption. SMS has learned that Mannington Township now aims to regulate, if not interrupt and stop, SMS's rail operations, services, and facilities in Building 90, where SMS has been repairing and restoring containers transported by rail for one of its freight customers ERS. See J. Pfeiffer 2nd Supp. Stmt. ¶¶ 7-11 (**Ex. "AAA"** to the proposed Sur Reply (**Ex. "1"** hereto)).

5. The Townships' position is that SMS's freight traffic, including regarding ERS, is not interstate, which is incorrect.

6. The Board will recall that the Townships expressly stated that they required “no discovery”.² Yet in their Rebuttals, the Townships criticize SMS for not including with its December 16, 2024 Reply specific documents that they never requested from or took the time to discuss with SMS’s counsel, who had offered many months ago to meet with Mannington’s Solicitor. Instead of doing so, the Townships, working together, pursued criminal charges against SMS, and issued against SMS stop work/cease and desist orders and numerous fines for alleged permitting and zoning violations that have been raised by the Townships in this proceeding.³

7. Pilesgrove’s blocking electricity to SMS’s railroad facilities and signs that Mannington is also about to take similar action to that already at issue before the Board in this proceeding, regarding SMS’s rail container repair and refurbishment operations, services, and facilities in Building 90, warrant a sur reply by SMS. *See* J. Pfeiffer 2nd Supp. Stmt. ¶¶ 3-11 (SMS Ex. AAA to the proposed Sur Reply (Ex. 1 hereto)). This interference by the Townships

² *See* Mannington’s Petition for Leave to Intervene at 8 (under item 4) (filed June 10, 2024); correspondence from Attorney Horner, Mannington’s Solicitor, to Ms. Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings of the STB, dated October 7, 2024, at p. 2 (filed October 7, 2024). *See also* Pilesgrove’s Petition for Declaratory Order (dated April 22, 2024, and filed May 1, 2024) (requesting expedited consideration but no discovery), and Pilesgrove’s Rebuttal (filed January 14, 2025) (requesting no discovery).

³ *See, e.g.,* SMS’s counsel, Frank Hoerst’s letters to Mannington’s Solicitor, Attorney Horner, dated January 17, 2024, at p. 2, February 27, 2024, at p. 2, and April 9, 2024, at p.2, included within Exhibit B to Mannington’s Petition to Intervene (filed June 10, 2024).

See also Pilesgrove’s Supplement, filed November 7, 2024, at 8 (representing to the Board that “Pilesgrove is in the process of reviewing the documentation and setting up inspections.”); Pilesgrove’s Petition for Declaratory Order, dated April 22, 2024, and filed May 1, 2024, at 5 (representing to the Board: “it is anticipated that an inspection will be forthcoming.”). As noted in SMS’s Response to Interested Persons’ Comments, “SMS is unaware of any inspections of its facilities by Pilesgrove and Mannington Townships since *SMS’s Reply*. No inquiries or requests for inspections have been received by SMS from these Townships. Also, no response to SMS’s communications advising of its availability to accommodate inspections (as shown in *SMS’s Reply*) has been received by SMS.” J. Pfeiffer Supp. Stmt. ¶ 9 (SMS Ex. ZZ). Rather, the Townships have made a point of stopping by railroad property unannounced simply to post notices of violations or stop work orders, or take photographs of SMS’s property from SMS’s owned or controlled property. *E.g.,* SMS’s Reply at 24-32, 36-38; Mannington’s Rebuttal, at Ex. TT (Second Certification of Zoning Officer Robert L. Schmid, and photographs attached thereto as Exs. UU-ZZ).

undermines SMS's obligations to and relationship with existing rail customers and impacts other existing and prospective freight business on and along the Branch. *Id.*

8. The Townships' positions are based on their misguided opinion that they have the right to enforce permitting, zoning, and other land use regulations against SMS based on their incorrect conclusion that SMS's freight is intrastate.

9. The kind of evidence that the Townships claim is determinative of establishing that SMS is "performing more than 'minimal' freight operation in interstate commerce," are things that SMS was not required or requested to include in this record, such as "letters of interest or agreement which would detail any interstate freight commerce by or between SMS, Conrail and/or any other freight carrier or customer." Piles Grove's Rebuttal at 7 (emphasis in original). Nor is that kind of evidence required or necessary for the Board to recognize that SMS is "performing more than 'minimal' freight operation in interstate commerce."

10. While requesting no discovery, the Townships inaccurately claim that SMS has failed to provide evidence of freight traffic "*by SMS between the Salem Branch and areas outside the State of New Jersey as part of the interstate rail network.*" *Id.* at 7 (emphasis in original); *see also* Mannington's Rebuttal at 4-10. The Townships apparently fail to understand that freight is interstate commerce. They also are not entitled to waybill data and information even if that information were requested (which it was not), as set forth in the attached sur reply.

11. While they claim in rebuttal that they filed their Petitions "for clarification as to SMS'[s] federal preemption status," (Piles Grove's Rebuttal at 19), as if attempting to now suggest that they did/do not know whether federal preemption applies, these Townships pursued the criminal charges, and have and continue to issue stop work/cease and desist orders and assess numerous fines regarding permitting and zoning against SMS. Now they hinge their request to the Board for the unprecedented right to bifurcate regulation of the railroad, on the contention that:

[T]he Board **should presume** that, if SMS could have provided evidence to support its current activity within the interstate rail system, it would have, and that the absence of such information indicates that SMS's 'freight carload numbers,' 'freight miles', and other submitted information per Mr. Pfeiffer's [(of SMS) Verified] Statement [submitted under the pains and penalties of perjury] do not reflect more-than-minimum interstate freight transportation.

Pilesgrove's Rebuttal, at 8 (emphasis added).

12. Adding to this misguided position, the Townships conclude, without stating how, that SMS's freight traffic is "intrastate."

13. Given the importance of this proceeding to the parties, Salem County, the Interested Persons, and conceivably other common carriers, SMS respectfully requests leave of the Board to file a sur reply in the form attached hereto as **Exhibit "1"**, to address the recent developments involving the blocked electrical connection to SMS's facilities and SMS's rail container repair and refurbishment operations, services, and facilities along the Branch. This will allow the Board to have a more complete record of the facts and confirm that SMS's operations, services, and facilities on and along the Salem Branch are transportation by rail carrier covered by the federal preemption provisions contained in 49 U.S.C. § 10501, as broadened by the ICCTA, and thus the Branch and SMS are under the Board's exclusive jurisdiction. SMS further respectfully reiterates its request that the Board confirm that site plan, zoning, and permit requirements are preempted and that local administrative delays, permits, fees, and stop work/cease and desist orders are not permitted.

14. SMS avers that these recent developments are also related to the Townships' positions in their Rebuttals, warranting the sur reply.

15. For the foregoing reasons, in light of the new and recent developments and to correct the record, and in the interest of a more complete record, SMS submits that good cause exists for allowing it to file the sur reply.

WHEREFORE, Respondent SMS Rail Service, Inc. respectfully requests that the Board grant this motion for leave to file a sur reply in the form attached.

Respectfully submitted,

/s/ Robert A. Klein
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Attorney for Respondent SMS Rail Service, Inc.

DATE FILED: March 6, 2025

EXHIBIT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

**SUR REPLY OF SMS RAIL SERVICE, INC.
REGARDING RECENT DEVELOPMENTS AND REBUTTAL STATEMENTS OF
PILESGROVE TOWNSHIP AND MANNINGTON TOWNSHIP
TO SMS's REPLY AND INTERESTED PERSONS' COMMENTS AND
AMICUS CURIAE BRIEFS TO THE TOWNSHIPS' PETITIONS FOR
DECLARATORY ORDER AND SUPPLEMENTAL EVIDENCE AND ARGUMENT**

SMS RAIL SERVICE, INC.
513 Sharptown Road
Logan Township, NJ 08085

Respondent

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Attorney for Respondent

DATE FILED: March 6, 2025

To Honorable Board Chairman Fuchs, and Board Members Primus, Schultz, and Hedlund:

This reply is warranted due to recent developments involving Pilesgrove Township's ("Pilesgrove") blocking electrical connections to properties along the subject Salem Branch in Salem, New Jersey ("Branch") owned by SMS Rail Service, Inc. ("SMS"), and Mannington Township's ("Mannington") attempt to regulate the rail container repair/refurbishment operations of SMS in a previously unutilized industrial warehouse along the Branch. These latest developments are also undermining and adversely impacting SMS's ability to maintain rail operations, services, and facilities on and along the Branch, including, but not limited to, involving its customer, Environmental Rail Solutions, Inc. ("ERS"), identified in SMS's submissions in this proceeding. In their January 14, 2025 Rebuttals, Pilesgrove claimed that "the electric cut in" for SMS's facilities on its railroad properties is not preempted, and Mannington alluded to its "investigation" of zoning, permitting and site plan regulations involving SMS's rail container repair/refurbishment operations. Recently, Pilesgrove has blocked electric supply to SMS's facilities, and Mannington has contacted SMS's landlord regarding the rail container/refurbishment operations at the afore-referenced warehouse regarding alleged zoning, permitting, and site plan violations. In light of Pilesgrove's and Mannington's (the "Townships") conduct, including these recent developments, which is impacting SMS's operations, services, and facilities on and along the Branch, SMS is constrained to raise these issues with the Board at this time.

At the core of the Township's misguided positions are inaccurate statements of fact and law in their Rebuttals filed on January 14, 2025 ("Rebuttal" or "Rebuttals"), that SMS's operations on and along the Branch, including involving ERS, do not constitute interstate transportation by rail carrier subject to federal preemption. As a matter of both fact and law, the Townships are incorrect.

A. Summary of the Townships' Positions and Reasons Why They are Incorrect.

Pilesgrove and Mannington have the temerity to suggest that they have a right to use local land use, permitting, and zoning regulation against SMS's efforts to revitalize freight traffic on the Branch until the Board issues a Decision confirming its jurisdiction over the Branch and SMS's operations, services, and facilities. For example, Pilesgrove states that it

“has made it clear through the filing of its Petition with the STB that Pilesgrove's position remains that SMS is not entitled to federal preemption until such time as the Board makes such a determination and elaborates to what extent such preemption may apply.”

Pilesgrove's Rebuttal at 3-4. In fact, as already shown, the Townships are continuing to pursue quasi-criminal charges against SMS, and issuing against SMS stop work/cease and desist orders and numerous fines that are accruing substantial sums the Townships claim SMS owes for alleged permitting and zoning violations. Evidently, more charges, orders and fines against SMS by these Townships are underway. The local regulation by the Townships is undermining and adversely impacting SMS's ability to maintain rail transportation on the Branch for SMS's current and prospective customers. See Second Supplemental Verified Statement of James R. Pfeiffer, Chief Operating Officer of SMS ¶¶ 3-11 (“J. Pfeiffer 2nd Supp. Stmt.”), which is appended as **Exhibit “AAA”**.

First, last week, Pilesgrove blocked Atlantic City Electric (“ACE”) from making the electrical connection to SMS's property along the Branch, after ACE advised SMS's electrical contractor Krise Services (“Krise”) last fall to proceed with construction and installation of necessary panels and subterranean conduits for the electrical lines to SMS's facilities and SMS invested over \$60,000 in additional monies for the work. See J. Pfeiffer 2nd Supp. Stmt. ¶¶ 3-6 (**Ex. AAA**); Supplemental Verified Statement of George Sutch, Roadmaster and Vice President of SMS ¶¶ 1-12, which is appended as **“Exhibit BBB”**; Verified Statement of John Heritage of Krise

Services ¶¶ 1-14, which is appended as **Exhibit “CCC”**.¹ At that time, ACE informed Krise that it was prepared to connect the electric service to the railroad facilities without local permits or approvals. *Id.* On February 25, 2025, just as the electrical connection was about to be energized by ACE, ACE announced that due to an objection it received from Pilesgrove that the connection is not authorized until such time as the Board renders its Decision regarding SMS’s operations on the Branch, ACE will not be completing the connection as it had previously stated it would. *Id.* As a result, and as previously noted, SMS has incurred and is continuing to incur inconveniences to its operations and unnecessary expenses that interfere with rail transportation, such as having to use diesel fueled generators to power its railroad facilities in Pilesgrove (for both its freight and seasonal passenger excursion service) and, at the same time, continuing to be improperly fined substantial amounts and subject to stop work orders by Pilesgrove for operating the Branch without site plan approval, permits, and zoning variances. *Id.*

Second, Mannington is incorrectly contending that permitting and variance requirements apply to the above-referenced industrial warehouse located along the Branch used by SMS. This is the warehouse that Mannington stated in its January 14, 2025 Rebuttal it would be investigating. Mannington’s Rebuttal at 6 n.1. The warehouse, known as Building 90, is leased by its owner, Mannington Mills, Inc. (“Mannington Mills”), to SMS, and is separate from the transloading operation at Mannington Mills that is anticipated to provide other freight traffic on the Branch of upwards of more than 100 freight cars this year carrying lumber from outside New Jersey. See J. Pfeiffer 2nd Supp. Stmt. ¶¶ 7-11, 19 (**Ex. AAA**); SMS’s Reply Evidence and Argument to the Townships’ Petitions for Declaratory Order and Supplemental Evidence and

¹ Exhibits AAA through DDD, attached hereto and cited herein, are the next consecutive lettered exhibits following those included with SMS’s December 16, 2024 Reply Evidence and Argument to the Townships’ Petitions for Declaratory Order and Supplemental Evidence and Argument (“SMS’s December 16, 2024 Reply”) and SMS’s January 14, 2025 Response to Interested Persons).

Argument (“SMS’s December 16, 2024 Reply”) at 3-4, 12, 38-39 n.30 & n.31. As previously shown, in addition to other freight traffic on the Branch listed in SMS’s December 16, 2024 Reply, the repair and refurbishment operations and services at Building 90 have already resulted in 34 railcars into and 10 railcars out of the Branch. *See* J. Pfeiffer 2nd Supp. Stmt. ¶ 10 (**Ex. AAA**); Supplemental Verified Statement of James R. Pfeiffer, Chief Operating Officer of SMS ¶ 5 (**Ex. ZZ** to SMS’s January 14, 2025 Response to Submissions of Other Interested Persons (“SMS’s January 14, 2025 Response to Interested Persons”)). Like other rail freight transportation on the Branch, the containers are used by an SMS customer, ERS, in interstate commerce. *See* Verified Statement of David A. Ardito, President and CEO of ERS (“D. Ardito Stmt.”), which is appended as **Exhibit “DDD”**. *See also* J. Pfeiffer 2nd Supp. Stmt. ¶¶ 18-21 (**Ex. AAA**).

For the reasons set forth in SMS’s December 16, 2024 Reply and January 14, 2025 Response to Interested Persons, SMS’s rail container repair and refurbishment operations, services, and facilities in Building 90 along the Branch are subject to federal preemption. *See* SMS’s December 16, 2024 Reply at 3-14. Therefore, SMS respectfully requests that the Board’s decision in this proceeding also include a determination that federal preemption applies to SMS’s rail container repair and refurbishment operations, services, and facilities.

Third, the Townships both inaccurately state that SMS and the Interested Persons who filed Comments and Amicus Curiae briefs on December 16, 2024, are contending federal preemption applies to the Branch and SMS’s operations, services, and facilities on and along the Branch based on theories that SMS’s 1) status as a Class III rail carrier “automatically entitle[s]” it to preemption from local land use regulations, “and/or” 2) “engage[ment] in any operation or activity as to which ICCTA preemption applies” (apparently anywhere, including at the Pureland Industrial Complex in nearby Logan Township, Gloucester County, the east coast’s largest

industrial park), in their words, creates “an associative or ‘bundled’ preemption,” making “*all of* [SMS’s] operations and activities [...] automatically entitled to ICCTA preemption.”

Mannington’s Rebuttal at 10; *see also* Pilesgrove’s Rebuttal at 8-9. That is not SMS’s or the Interested Persons’ position.

SMS’s position is that local regulation of the Branch² and SMS’s operations, services, and facilities on and along the Branch are federally preempted because SMS’s activities on the Branch currently exceed and will continue to exceed “‘minimal’ freight operation in interstate commerce.” *Denver & Rio Grande Railway Historical Foundation d/b/a Denver & Rio Grande Railroad, L.L.C.—Petition for Declaratory Order*, Docket FD 35496, at 7 (served March 24, 2015). Contrary to the Townships’ Rebuttals, under the facts and federal law set forth in SMS’s December 16, 2024 Reply to the Townships’ Petitions and Supplements, and addressed below, SMS’s rail freight on the Branch is transportation in interstate commerce and does not become intrastate simply by SMS only handling part of its journey while on the Branch. *See* 49 C.F.R. § 390.5T (defining “interstate commerce”).

Fourth, the Townships contend that SMS’s December 16, 2024 Reply and supporting Verifications of Mr. Pfeiffer and Mr. Harland, filed on behalf of SMS and submitted therewith, are “carefully worded” to hide, allegedly, that SMS’s freight traffic on the Branch “do[es] not reflect interstate transportation.” Mannington’s Rebuttal at 7; Pilesgrove’s Rebuttal at 8. These contentions are made based on an alleged “absence of” or “carefully omitted” statements by SMS that its freight train miles and “activities and facilities in Mannington or Pilesgrove are, or are conducted and used in support of, freight or passenger transportation by SMS *between the Salem Branch and areas outside the state of New Jersey as part of the interstate rail network.*”

² The Board granted SMS rail carrier authority to operate the Branch in its Decision served July 15, 2022 (STB FD 36529, 87 Fed. Reg. 42536).

Mannington’s Rebuttal at 7, 9 (*italics in original*); *see also* Mannington’s Rebuttal at 4-10, and Pilesgrove’s Rebuttal at 8.

Interestingly, Mannington takes the above position in its Rebuttal but states that it filed its Petition to Intervene “assum[ing] that SMS’s freight operations constitute ICCTA-preempted transportation between New Jersey and other states **as part of the interstate rail network.**” Mannington’s Rebuttal at 4 (*emphasis added*). The Board will recall that the Townships requested no discovery, and Mannington expressly stated that it required “no discovery” in this proceeding.³

Yet in their Rebuttals, the Townships criticize SMS for not including with its December 16, 2024 Reply more specific information about SMS’s freight traffic on the Branch that they never requested before, or took the time to discuss with SMS’s counsel, who had expressed their willingness to meet with the Townships long before they filed the instant Petitions.⁴ As shown in

³ See Mannington’s Petition for Leave to Intervene at 8 (under item 4) (filed June 10, 2024); correspondence from Attorney Horner, Mannington’s Solicitor, to Ms. Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings of the STB, dated October 7, 2024, at p. 2 (filed October 7, 2024). *See also* Pilesgrove’s Petition for Declaratory Order (dated April 22, 2024, and filed May 1, 2024) (requesting expedited consideration but no discovery), and Pilesgrove’s Rebuttal (filed January 14, 2025) (requesting no discovery).

⁴ See, e.g., SMS’s counsel, Frank Hoerst’s letters to Mannington’s Solicitor, Attorney Horner, dated January 17, 2024, at p. 2, February 27, 2024, at p. 2, and April 9, 2024, at p.2, included within Exhibit B to Mannington’s Petition to Intervene (filed June 10, 2024).

See also Pilesgrove’s Supplement, filed November 7, 2024, at 8 (representing to the Board that “Pilesgrove is in the process of reviewing the documentation and setting up inspections.”); Pilesgrove’s Petition for Declaratory Order, dated April 22, 2024, and filed May 1, 2024, at 5 (representing to the Board: “it is anticipated that an inspection will be forthcoming.”). As noted in SMS’s Response to Interested Persons’ Comments, “SMS is unaware of any inspections of its facilities by Pilesgrove and Mannington Townships since *SMS’s Reply*. No inquiries or requests for inspections have been received by SMS from these Townships. Also, no response to SMS’s communications advising of its availability to accommodate inspections (as shown in *SMS’s Reply*) has been received by SMS.” J. Pfeiffer Supp. Stmt. ¶ 9 (**SMS Ex. ZZ** to SMS’s January 14, 2025 Response to Interested Persons). Rather, the Townships have made a point of stopping by railroad property unannounced simply to post notices of violations or stop work orders, or take photographs of SMS’s property from SMS’s owned or controlled property. *E.g.*, SMS’s Reply at 24-32, 36-38; Mannington’s Rebuttal, at Ex. TT (Second Certification of Zoning Officer Robert L. Schmid, and photographs attached thereto as Exs. UU-ZZ).

SMS's Reply, instead of meeting with SMS's counsel, and despite indicating in this proceeding that they do not know or are unsure of the applicability of federal preemption (the Townships are asking the Board for "clarification" or "confirmation" of whether or not federal preemption applies—see Pilesgrove's Petition at 6, and Rebuttal at 3-4, 18-19, 21; Mannington's Petition at 1-2, and Rebuttal at 33, 36), the Townships, working together, pursued quasi-criminal charges against SMS, and issued against SMS stop work/cease and desist orders and numerous fines for alleged site plan, permitting, and zoning violations, all of which was improper.

Mannington's Solicitor's letter to Mannington's Zoning Officer, Mr. Schmid, dated April 10, 2024, at page 6 (contained in Exhibit B to Mannington's Petition), sent the day following SMS's third letter offering to meet,⁵ evidences Mannington's selective enforcement of its land use regulations. The Solicitor's letter states: "I am recommending the immediate issuance of notices and summonses in this situation rather than any preliminary warnings of the sort you might typically provide to alleged zoning violators because, in this case, the operator [SMS] and the land owner [(Salem County)] are sophisticated entities who are well-versed in the law, and also because SMS has already been put on notice of [Mannington] Township's concerns." (Emphasis in original). For some unknown reason, as noted in SMS's December 16, 2024 Reply at page 36, the Townships are under a false impression that SMS "was not allowing its attorney," Mr. Hoerst, to discuss with them the applicability of federal preemption to SMS's operations and facilities on and along the Branch.

Now in Pilesgrove's Rebuttal at page 6, without citation to any supporting evidence, Pilesgrove also falsely accuses SMS of "attempt[ing] to divert the Board's attention" to cover up "that there are no interstate freight operations" by having its "focus changed to marketing and

⁵ See SMS's counsel Mr. Hoerst's letter to Solicitor Horner, dated April 9, 2024, and Mr. Hoerst's prior letters to Solicitor Horner, dated January 17, 2024 and February 27, 2024, contained in Exhibit B to Mannington's Petition.

seeking freight opportunities for the Salem Branch.” Pilesgrove, in its Rebuttal at page 8, falsely accuses SMS of recently, “in 2025”, “chang[ing]” its website to feign marketing the Branch for freight. But, in fact, the website has remained substantively unchanged since 2023. *See* J. Pfeiffer 2nd Supp. Stmt. ¶¶ 12-16 (Ex. AAA). False allegations by Pilesgrove continue throughout their submissions.

In addition, Pilesgrove obtained copies of permits pulled, unbeknownst to SMS, several years ago by SMS’s contractors in connection with certain electrical work at the Pureland Industrial Complex in Logan Township, Gloucester County, and now suggests that SMS’s position in this proceeding is contradictory to Pureland (where there was no such proceeding) and less than forthright to the Board. *See* Pilesgrove’s Rebuttal at 17 n.8 and Ex. V. This is also false. *See* J. Pfeiffer 2nd Supp. Stmt. ¶ 17 (Ex. AAA). Casting spurious claims against the railroad, as both Townships are doing pending the Board’s decision on their request for clarification of the applicable law, is not productive.

Mannington continues: “Given the large number of documents filed with SMS’s Reply Evidence and Argument brief, and the comprehensiveness of the information contained therein, the Board should presume that, if Mr. Pfeiffer [of SMS] *could* have made such a statement [(that SMS’s ‘freight train miles’ on the Branch ‘reflect *transportation between New Jersey and other states as part of the interstate rail network*’)] truthfully and correctly, he *would* have.”

Mannington’s Rebuttal at 4 (italics in original). This contention is repeated by both Townships throughout their Rebuttals, and they hypothesize for the sake of their self-serving argument “that the *absence* of such a statement [by SMS] in the context of SMS’s voluminous filings indicates that SMS’s freight train miles *do not* reflect interstate transportation.” *Id.* at 4-10. *See also* Pilesgrove’s Rebuttal at 4-8. Mannington asks the Board to conclude, based on such hypotheses,

that “none of SMS’s operations on the Branch have been proven to be part of the interstate rail network.” Mannington’s Rebuttal at 10.

Pilesgrove postulates:

[T]he Board **should presume** that, if SMS could have provided evidence to support its current activity within the interstate rail system, it would have, and that the absence of such information indicates that SMS’s ‘freight carload numbers,’ ‘freight miles’, and other submitted information per Mr. Pfeiffer’s [Verified] Statement [sworn under oath] do not reflect more-than-minimum interstate freight transportation.

Pilesgrove’s Rebuttal at 8 (emphasis added).

Claiming they did not need discovery for their position regarding the interstate freight on the Branch (*see supra* n.3), and despite their unwillingness to meet with SMS’s counsel (*see supra* n.4 and n.5), the Townships seek to support their Petitions by inference or presumption that SMS’s freight is not interstate transportation. This sounds more like a gotcha tactic than a request for a declaration of law based on facts.

As also noted, contrary to the Townships, SMS and the Interested Persons are not contending that local regulation of the rail line of the Branch and SMS’s operations, services, and facilities on and along the Branch is federally preempted solely because of SMS’s status as a Class III common carrier and/or the fact that its rail operations on other rail lines are part of interstate commerce. Rather, SMS genuinely states, backed by Mr. Pfeiffer’s Verified Statement (“J. Pfeiffer Stmt.”) submitted as **Ex. C** to SMS’s December 16, 2024 Reply, that it is performing more than minimal freight operation in interstate commerce. Needless to say, this fact is ascertainable from waybill data available to the Board, should it require it, subject to procedures established to prevent release of such highly sensitive data. But, again, as noted above, the Townships failed to request any discovery, and Mannington expressly stated that it required “no discovery.” *See supra* n.3.

Moreover, based on their above inaccurate statements, the Townships argue that SMS is wrongly characterizing the Townships' position as "an attempt" to share in or supplant the Board's exclusive jurisdiction over the Branch and SMS's operations and facilities thereon. Their position is that SMS's freight traffic on the Branch is intrastate freight and therefore they have the right to regulate it, and that even if the freight is interstate and subject to the Board's exclusive jurisdiction, SMS's seasonal passenger excursion is intrastate and, thus, must be bifurcated from the Board's jurisdiction so that the Townships can regulate it. Mannington's Rebuttal at 10-12; Pilesgrove's Rebuttal at 12. They claim, without supporting citation, that federal law mandates "bifurcation" of the Board's jurisdiction between "trackage jurisdiction" to the extent any transportation on the Branch is "part of the interstate rail network" (which the Townships urge the Board to find that SMS has none on the Branch—which is false), and SMS's seasonal intrastate passenger excursion. Mannington's Rebuttal at 11-12. The Board should reject these arguments as contrary to the law cited by SMS in its December 16, 2024 Reply.

Even more, the Townships contend that SMS and the Interested Persons who filed Comments and Amicus Curiae Briefs, among whom is the American Short Line and Regional Railroad Association, are trying to mislead the Board to expand or improperly apply federal preemption to SMS's intrastate seasonal passenger excursion.

The Townships arguments are based on inaccurate factual allegations and incorrect statements of law.

As discussed below, the Townships know or should be aware that freight traffic on the Branch is interstate.

B. Contrary to the Townships' Presumptions, SMS's Salem Branch Operations Are Part of the Interstate Rail Network.

The Townships hypothesize that if SMS's seasonal passenger excursion train is without through ticketing or other connection to lines outside of New Jersey and therefore is intrastate

(which SMS does not dispute), the excursion cannot be “part of the interstate rail network” and subject to federal preemption. 49 U.S.C. § 10501(a)(2)(A). The hypothesis is contradicted by applicable law, including § 10501(a)(2)(A) and the Board’s Decisions in *Denver & Rio Grande Railway Historical Foundation d/b/a Denver & Rio Grande Railroad, L.L.C.—Petition for Declaratory Order*, Docket FD 35496, at 7 (“*Denver & Rio Grande Railway*”) (served March 24, 2015) and *DesertXpress Enterprises, LLC—Petition for Declaratory Order*, Docket FD 34914, at 9-10 (“*DesertXpress*”) (served May 7, 2010).

These Townships know that they are not entitled to the sort of evidence found in waybills that they claim SMS should have turned over with its December 16, 2024 Reply. In fact, long-established procedures under federal law govern and protect against the release of waybill information and data other than the rail car counts. *See* 49 C.F.R. 1244.1 *et seq.* Such data is protected for, *inter alia*, security and competitively sensitive reasons that require no further explanation. *Id.*

But here, the Townships, which have been investigating the railroad for well over a year, are likely also already aware that the freight traffic on the Branch is not simply moving rail cars back and forth between the Branch and the Pureland Industrial Complex in nearby Logan Township, as they suggest. *E.g.*, Pilesgrove’s Rebuttal at 7. Based on their investigations, or on any reasonable investigation, the Townships would be aware, for example, that the products in rail cars delivered by SMS to South Jersey Farmers Exchange are from out of state, and that ERS’s business involving use of rail containers serves its customers around the country. *See* D. Ardito Stmt. (**Ex. DDD**). It is simply wrong for these Townships to make the kind of allegations they have made, suggesting SMS is engaged in some sort of nefarious play before the Board to prevent local land use regulation of its railroad operations and facilities. Should the Board

require SMS to provide to it *in camera* any evidence it requires to base its decision, of course, SMS will comply subject to applicable procedures for doing so.

As SMS stated in its December 16, 2024 Reply, the key legal principle applicable to SMS in this case is:

[T]he Board’s jurisdiction does extend to rail carriers operating intrastate passenger excursion service, even if they earn the bulk of their revenue from that service, **as long as they are performing more than ‘minimal’ freight operation in interstate commerce.**

Denver & Rio Grande Railway, at 7 (served March 24, 2015) (emphasis added).

SMS has shown in its Reply and in Mr. Pfeiffer’s Second Supplemental Verified Statement ¶¶ 10-11, 18-19, 21 (**Ex. AAA**) that it conducts freight operations on the Branch as well as intrastate seasonal passenger excursions, and that those freight operations are “more than ‘minimal freight’ operation in interstate commerce.” *Id.* See also *DesertXpress*, at 9-10 (noting in 1995, in the ICCTA, Congress provided a “new, explicit statutory grant of jurisdiction to the [Board] over intrastate rail transportation”). Therefore, the Board’s jurisdiction applies to all of SMS’s operations on and along the Branch, including freight service as well as “to [SMS’s] operating intrastate passenger excursion service.” *Denver & Rio Grande Railway*, at 7 (served March 24, 2015). This includes the Board having exclusive jurisdiction over “**property and facilities related to the movement of passengers or property by rail,**” *Denver & Rio Grande Railway*, at 4 (served February 23, 2012) (emphasis added) (citing 49 U.S.C. § 10102(9)(A); *Green Mountain Railroad v. Vermont*, 404 F.3d 638, 642 (2d Cir. 2005)), including the wye and the shed at the wye, located in Mannington Township that is used for both freight and passenger excursion operations (including freight storage and transloading), the warehouse at Building 90 and separate transloading area at Mannington Mills in Mannington Township that is used for freight service, and the two sheds, engine house and transloading area in Pilesgrove Township that is used for both freight and passenger excursion operations. See J. Pfeiffer 2nd Supp. Stmt. ¶¶

10-11, 18-19, 21 (**Ex. AAA**); J. Pfeiffer Supp. Stmt. ¶ 5, 7-8, 10 (**Ex. ZZ** to SMS's January 14, 2025 Response to Interested Persons); J. Pfeiffer Stmt. ¶¶ 2, 5-7, 11 (**Ex. C** to SMS's December 16, 2024 Reply).

In sum, all local and state regulations of SMS's freight and passenger excursion service on the Branch, and its property and facilities on and along the Branch which are related to the movement of passengers and property by rail, are preempted.

C. Rail Bikes are Not a Ripe Issue.

As previously stated in SMS's December 16, 2024 Reply, while SMS had discussions with Pilesgrove's planning board in 2023 about the possibility of a rail bike facility, there are no current plans for rail bikes. The issue of rail bike jurisdiction has not been briefed by the Townships or SMS, nor are there any facts to consider in this regard. Thus, rail bikes are not ripe for decision by the Board in this proceeding.

D. Conclusion

In the interest of promoting revitalization of the Salem Branch and freight service on the Branch, SMS respectfully reiterates its request that the Board confirm that SMS's operations, services, and facilities on and along the Salem Branch are transportation by rail carrier covered by the federal preemption provisions contained in 49 U.S.C. § 10501, as broadened by the ICCTA, and thus the Branch and SMS are under the Board's exclusive jurisdiction. SMS further respectfully reiterates its request that the Board confirm that site plan, zoning, and permit requirements are preempted and that local administrative delays, permits, fees, and stop work/cease and desist orders are not permitted.

Respectfully submitted,

/s/ Robert A. Klein

Robert A. Klein, Esquire

Berkowitz Klein, LLP

433 West Market Street, Suite 100

West Chester, PA 19382

T: (215) 880-6913

E: rak@berklein.com

Attorney for Respondent SMS Rail Service, Inc.

DATE FILED: March 6, 2025

EXHIBIT AAA

State of New Jersey)
) SS:
County of Gloucester)

3. Regarding the electrical connections and structures referred to in paragraphs 6-7 of my *Initial Verified Statement*, there has been no cooperation by Pilesgrove Township to report

following *SMS's Reply* and *SMS's Response to Interested Persons' Submissions*. Rather, based on information, Pilesgrove has continued to block Atlantic City Electric ("ACE") from making the connection. See letter from Pilesgrove Township's Solicitor to ACE, dated February 5, 2025, attached as Exhibit "1", regarding my letter on behalf of SMS to ACE, dated February 3, 2025, attached as Exhibit "2", that was sent to ACE at its request and with its express representation to SMS's contractor, Krise Services ("Krise"), that the connection would be made following receipt of SMS's letter and a similar letter from Krise.

4. In about October 2024, Krise advised SMS that ACE was prepared to connect electric service at SMS's property in Pilesgrove without local governmental permits. On that basis, SMS authorized Krise to proceed with construction and installation of necessary panels and subterranean conduits. This resulted in SMS investing over \$60,000.00 in additional monies for that electric service work on its property.

5. On February 25, 2025, just as the electrical connections were about to be energized by ACE, SMS received notice that due to an objection ACE received from Pilesgrove that the connection is not authorized until such time as the Surface Transportation Board renders its Decision regarding SMS's operations on the Salem Branch, ACE will not be completing the connection as it had previously stated it would.

6. As a result of Pilesgrove's blocking electrical service to SMS's Property, SMS has incurred and is continuing to incur inconveniences to its operations and unnecessary expenses that interfere with rail transportation, such as having to use diesel fueled generators to power its railroad facilities in Pilesgrove (for both its freight and seasonal passenger excursion service) and, at the same time, continuing to be fined substantial amounts and subject to stop work orders by Pilesgrove for operating the Branch without site plan approval, permits, and zoning variances.

7. Also, in its Rebuttal (filed January 14, 2025) at page 6, footnote 1, Mannington Township indicated it will also exercise jurisdiction over SMS at a warehouse along the Salem Branch (referred to as Building 90) leased to SMS by Mannington Mills, Inc. in Salem, New Jersey (“Mannington Mills”) by imposing municipal permitting, variance, and other land use or site plan regulations to stop and/or regulate SMS’s operations, services, and facilities in Building 90. In Building 90, SMS repairs and restores containers transported by rail for its freight customer, Environmental Rail Solutions, Inc. (“ERS”).

8. I have learned from Mannington Mills that, following Mannington Township’s Rebuttal and as recently as last week, Mannington Township’s Solicitor, William Horner, Esquire, has been in contact with Mannington Mills investigating alleged violations of local permitting, variance, and other land use regulations involving SMS’s rail container repair and restoration operations, services, and facilities as a tenant in Building 90 along the Salem Branch.

9. Based on reports I have received from Mannington Mills, it appears that Mannington Township’s Solicitor may be preparing to take action on behalf of Mannington Township that will impact, if not interrupt and shut down, SMS’s rail container repair and refurbishment operations, services, and facilities in Building 90, as Mannington Township has attempted to do elsewhere on the Salem Branch. As shown in *SMS’s Reply*, which I verified, Mannington Township, working together with Pilesgrove Township’s Solicitor, previously pursued criminal charges against SMS, and both Mannington Township and Pilesgrove Township have issued against SMS various stop work/cease and desist orders and fines for alleged site plan, permitting and zoning violations elsewhere on the Branch. The local regulation by the Townships is undermining and adversely impacting SMS’s ability to maintain rail transportation on the Branch for SMS’s current and prospective customers.

10. The following updates paragraph 5 of my *Supplemental Verified Statement*, dated January 14, 2025, and shows the current freight carload numbers upon the Salem Branch from the date of the inception of the Rail Line Service Agreement, as of March 30, 2021 (attached as Exhibit G to *SMS's Reply*):

<u>Year</u>	<u>Customer</u>	<u>Carloads</u>
2021	N/A	0
2022	N/A	0
2023	South Jersey Farmers Exchange	3 in/3 out
	Toys for Tots	1 in/1 out
2024	South Jersey Farmers Exchange	14 in/14out
	Environmental Rail Solutions	27 in/4 out
2025	Environmental Rail Solutions	7 in/6 out

11. As shown above by the number of incoming and outgoing carloads involving ERS, SMS has existing and prospective opportunities for freight traffic on and along the Branch, including to conduct repair and refurbishment operations and services at Building 90. The Townships' interference with SMS's operations, services, and facilities on and along the Branch due to the Township's imposing regulations that are federally preempted, including due to stop work orders and/or citations or complaints to enforce local land use, zoning, and permitting regulations, is undermining and adversely impacting SMS's ability to maintain rail transportation on the Branch for SMS's current and prospective customers.

12. Also, Pilesgrove has made false allegations in its Rebuttal (filed January 14, 2025), at page 6, that SMS is "attempt[ing] to divert the Board's attention" to cover up "that there are no interstate freight operations" by having its "focus changed to marketing and seeking freight opportunities for the Salem Branch."

13. In addition, Pilesgrove has made false allegations in its Rebuttal, at page 8, that SMS recently, "in 2025", "changed" its website to feign marketing the Branch for freight.

14. In fact, SMS's website has remained substantively unchanged since 2023, and since before that time, SMS has been marketing and pursuing freight opportunities for the Branch. Any suggestion by the Townships to the contrary is fabrication and categorically denied and untrue.

15. Pilesgrove alleges that SMS "changed" the "description on the website as to the Salem Branch" from "[t]hrough its newest division, the Woodstown Central passenger excursion operation, it will showcase the beauty of Salem County, NJ, and hopes to make Salem County a destination for tourism and family fun" to "include reference to 'Class I connections: NS and CSX by virtue of CONRAIL Shared Assets', and to include language to note that in addition to the excursion rides 'SMS is actively marketing the line to freight and transloading customers, with the ultimate goal of reestablishing the Salem Branch as a reliable transportation connection. SMS also operates a large rail-served warehouse along the line.'" Pilesgrove's Rebuttal at 8.

16. I am the author of the above descriptions and hereby affirm that both of those descriptions have existed on SMS's website since its 2023 redesign and publication. Both of those passages remain on the website to this day in those exact forms, the former appearing at the bottom of the "Home" page and the latter appearing on the "Locations" page.

17. Likewise, Pilesgrove incorrectly suggests that SMS pulled permits several years ago in connection with certain electrical work at the Pureland Industrial Complex in Logan Township, Gloucester County. Pilesgrove intimates that because permits were pulled regarding that work, SMS has somehow submitted to the jurisdiction of Pilesgrove to comply with its permitting regulations. In fact, the records attached by Pilesgrove (Ex. V to its Rebuttal) show that SMS did not pull any such permits. Unbeknownst to SMS, the permits regarding certain electrical work at Pureland were not pulled by SMS but rather appear to have been pulled by SMS's contractors. Those permits were not necessary or required by SMS, and there was no proceeding

to the best of my knowledge that resulted in any determination that local permitting requirements applied to the work involved.

18. As I stated in my *Initial Verified Statement* and *Supplemental Verified Statement*, all of ERS's freight movements are made through both Pilesgrove and Mannington Townships. To date, and geographically, *all* freight that has been serviced on the Branch must travel and has travelled through Pilesgrove Township in order to reach its destination.

19. The additional anticipated freight cars for a new customer scheduled to begin manufacturing operations in a previously dormant part of the Mannington Mills plant in Mannington Township (referred to in *SMS's Reply* at 3-4) remains generally on course and is anticipated to result in upwards of more than 100 freight cars this year carrying lumber from outside New Jersey. Construction of the transloading area associated with this customer is nearing completion.

20. SMS is unaware of any inspections of its facilities by Pilesgrove and Mannington Townships since *SMS's Reply* and *SMS's Response to Interested Persons' Submissions*. No inquiries or requests for inspections have been received by SMS from these Townships. Also, no response to SMS's communications advising of its availability to accommodate inspections (as shown in *SMS's Reply*) has been received by SMS.

21. SMS's property, operations, services, and facilities on and along the Salem Branch relate to the movement of passengers or property by rail, including the wye and the shed at the wye located in Mannington Township that is used for both freight and passenger excursion operations (including freight storage and transloading), the warehouse at Building 90 and separate transloading area at Mannington Mills in Mannington Township that is for freight service, and the

two sheds, engine house and transloading area in Pilesgrove Township that is for both freight and passenger excursion operations.

22. I am an officer of SMS, duly designated and qualified to verify the facts as stated above, in the *Motion of Respondent SMS Rail Service, Inc. for Leave to File Sur Reply Regarding Recent Developments and Rebuttal Briefs of Pilesgrove Township and Mannington Township*, and in the *Sur Reply of SMS Rail Service, Inc. to Rebuttal Statements of Pilesgrove Township and Mannington Township to SMS's Reply and Interested Persons' Comments and Amicus Curiae Briefs to the Townships' Petitions for Declaratory Order and Supplemental Evidence and Argument*, which I have reviewed. The facts stated herein, and in the *Motion* and *Sur Reply* are true and correct to the best of my knowledge, information, and belief.

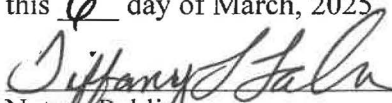
I declare that the foregoing statements are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: March 6, 2025


James R. Pfeiffer

State of New Jersey)
) SS:
County of Gloucester)

Subscribed and sworn to before me
this 6 day of March, 2025


Notary Public

My Commission expires: 10/31/2025



EXHIBIT 1



EKATERINE ELEFThERIOU, ESQUIRE

Phone: 856-223-9990

Email: kat@thevigilantelawfirm.com

February 5, 2025

Via Email and Regular Mail

Ryan Drebes, Field Engineer
Atlantic City Electric
428 Ellis Street
Glassboro, NJ 08028

***Re: SMS Rail Service, Inc.
Electrical Installation
650 Alloway Woodstown Road
Pilesgrove, NJ
Block 73, Lots 1 and 3***

Dear Mr. Drebes:

Kindly accept this correspondence which I offer to you in my capacity as Solicitor for the Township of Pilesgrove and in connection to recent correspondence from SMS Rail regarding electrical connection at the above-referenced location. You should be aware that the Township of Pilesgrove has filed with the Surface Transportation Board (STB), a federal board, to clarify **whether** SMS's operations and facilities are under the jurisdiction of the Board. The matter has been briefed by all parties and a decision to the Declaratory Judgment proceeding is anticipated in short order. Therefore, it is not clear that SMS' operations fall under the exclusive jurisdiction of the STB as alleged and represented by SMS. As such, you should be guided accordingly.

The Township of Pilesgrove, as it awaits the determination by the STB, reserves any and all rights and does not waive any defenses.

Thank you for your kind attention and anticipated cooperation in this matter.

Very truly yours,

THE VIGILANTE LAW FIRM, P.C.

By: Ekaterine Eleftheriou, Esq.

cc: John Heritage, Commercial Project Manager, Krise Services (via email
jheritage@kriseservices.com)

James Pfeffer, Chief Operating Officer, SMS Rail Service, Inc. (jppfeffer@smsrail.com)

Richard Saunders, Pilesgrove Township, Construction Official (via email,
conast@pilesgrovenj.org)

Melissa Fackler, Pilesgrove Township, Clerk (via email, clerk@pilesgrovenj.org)

EXHIBIT 2



SMS Rail Service, Inc.
Post Office Box 711
Bridgeport, NJ 08014
Phone: (856) 467-4800
Fax: (856) 467-2121
www.smsrail.com

February 3, 2025

Ryan Drebes, Field Engineer Technician
Atlantic City Electric
428 Ellis Street
Glassboro, NJ 08028

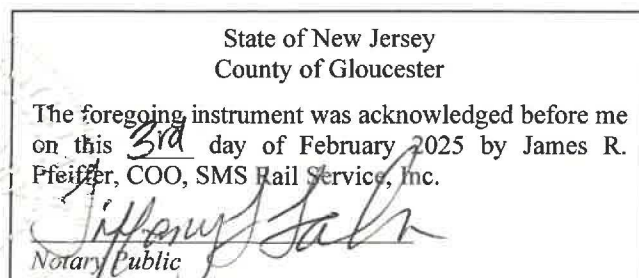
RE: SMS Rail Service, Inc. – Electrical Installation
650 Alloway-Woodstown Road, Pilesgrove, NJ
Block 73, Lots 1 & 3

Dear Mr. Drebes:

SMS Rail Service, Inc. is a Class III rail carrier under federal law¹ and the owner of properties located at 650 Alloway-Woodstown Road, Pilesgrove, NJ (Block 73, Lot 1) and East Lake Road (Block 73, Lot 3)(collectively referred to herein as the “Property”). Pursuant to 49 USC § 10501, SMS’s operations and facilities, including the electrical connection to the Property, are under the exclusive jurisdiction of the U.S. Surface Transportation Board, and local permitting and pre-clearance requirements are preempted by federal law. As such, SMS, through its contractor, Krise Services, will be performing a self-inspection of the electrical installation at the Property.

You should be aware, that in accordance with Village of Ridgely Park vs. New York, Susquehanna & Western Ry. Corp., 163 N.J. 446 (2000) and the New Jersey Department of Community Affairs Bulletin 01-1 (May 2001), SMS anticipates that Pilesgrove Township may wish to inspect the electrical work performed at the Property. SMS intends to cooperate fully with any such inspection(s) and has previously provided to the Township notice of the installation of the electrical service, which began on or about October 28, 2024.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or need any further information.



Kind regards,

Jim Pfeiffer
(856) 467-4800, ext. 303
jpfeiffer@smsrail.com

¹ In 1994, SMS was first authorized to become a rail carrier providing common carrier railroad carriage by authority of the Interstate Commerce Commission (predecessor of the STB) Finance Docket No. 32494, SMS Rail Service, Inc. – Lease and Operate Exemption – Pureland Associates, 59 Fed. Reg. 27298 (May 26, 1994).

Mr. Ryan Drebes
February 3, 2025
Page 2

c.c.: John Heritage, Commercial Project Engineer, Krise Services (via email – jheritage@kriseservices.com)
Richard Saunders, Pilesgrove Twp. Construction Official (via email – conast@pilesgrovenj.org)
Ekaterine N. Eleftheriou, Solicitor, Pilesgrove Township (via email – kat@thevigilantlawfirm.com)

EXHIBIT BBB

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

SUPPLEMENTAL VERIFIED STATEMENT OF GEORGE SUTCH

State of New Jersey	)	
	)	SS:
County of Gloucester	)	

I, George Sutch, Roadmaster and Vice President of SMS Rail Service, Inc., declare under penalty of perjury, under the laws of the United States of America, as follows:

1. I am the Roadmaster and Vice President of SMS Rail Service, Inc. (“SMS”), which maintains its business address at 513 Sharptown Road, Logan Township, New Jersey 08085. I previously provided a Verified Statement dated December 16, 2024, which is attached as Exhibit XX to the *Reply Evidence and Argument of SMS Rail Service, Inc. to Pilesgrove Township’s and Mannington Township’s Petitions for Declaratory Order and Supplemental Evidence and Argument*, filed December 16, 2024, in this matter (“*SMS’s Reply*”). The following facts are also based on my personal knowledge.

2. SMS hired Krise Services, based in Elmer, New Jersey, to perform electrical work at its property located at 650 Alloway-Woodstown Road, Pilesgrove Township, New Jersey, also referred to as Block 73, Lots 1 and 3 (“SMS’s Property”).

3. In November 2023, in connection with such electrical work, SMS caused Atlantic City Electric (“ACE”), the electric utility provider, to install five utility poles with main electrical service lines on Block 73, Lot 3 in anticipation of a permanent electrical connection from ACE to SMS’s Property. Krise was hired to wire the facilities on SMS’s Property necessary to operate the Salem Branch and maintain SMS’s locomotive fleet on the Branch, including for its engine house

and sheds, which need electrical service for power to use heaters, lighting, electrical outlets for operation of tools and machinery, and junctions and disconnects to power locomotive block heater systems. The facilities are used in providing both freight and seasonal passenger excursion service on the Branch.

4. Krise's work on SMS's Property and the connection of electricity by ACE had been delayed due to Pilesgrove's position that it is unsure whether federal preemption applies to SMS's Property. Even so, Pilesgrove has imposed local land use, permitting, and variance regulations, and issued various fines and stop work orders against SMS regarding its Property. Without electricity from ACE, SMS has been supporting its facilities on and along the Salem Branch using diesel fueled generator power.

5. Based on communications SMS received last fall from John Heritage, Commercial Project Manager of Krise, SMS has been operating with the understanding that ACE did not require permits or approval from Pilesgrove to energize the electrical connection to SMS's Property and that the connection would be made by ACE just as soon as Krise finished its work.

6. In about October 2024, SMS's contractor Krise proceeded to design and install all necessary electrical wiring at SMS's Property after receiving notice from ACE that it should do so because ACE was prepared to make the electrical connection. This work performed for SMS by Krise included construction and installation of necessary panels and subterranean conduits.

7. After Krise finished the electrical work at SMS's Property, on or about February 3, 2025, SMS was notified by Krise that ACE required a letter from SMS before energizing the electrical connection to SMS's Property, and that the letter from SMS should state that SMS is a federally regulated self-inspecting railroad and that SMS is foregoing an inspection by local authorities. Pilesgrove had not inspected the electrical work, although it was put on notice by SMS

that the work was proceeding and that it may inspect. SMS complied with ACE's requirement to provide a letter, as referenced below ("SMS's letter").

8. Previously, SMS advised Pilesgrove Township that it would cooperate fully with any inspections by Pilesgrove Township (see, for example, Exhibits Q, R, and S to *SMS's Reply*), and it continues to stand ready to do so. This was also communicated to ACE in SMS's letter, a copy of which was sent to Pilesgrove's Solicitor and Construction Official, as shown on SMS's letter.

9. True and correct copies of the SMS's letter and a similar letter from Krise to Mr. Drebes of ACE ("Krise's letter"), both dated February 3, 2025, are attached as Exhibits "1" and "2", respectively.

10. On February 3, 2025, SMS's letter to ACE was delivered by SMS to Krise. Based on information from Mr. Heritage of Krise, on that same date, I understand that Mr. Heritage personally hand delivered SMS's letter and Krise's letter to Mr. Drebes at ACE's office in Glassboro, New Jersey.

11. Subsequently, based on information from Mr. Heritage of Krise, SMS understood ACE was proceeding with energizing the electrical connection to SMS's Property.

12. On February 25, 2025, I was notified by Mr. Heritage that just as the electrical connection to SMS's Property was about to be energized by ACE, the connection was stopped and, as a result, further provision for diesel fueled generator power is necessary to operate SMS's facilities in Pilesgrove Township. The notification I received from Krise provided that Mr. Drebes had been just informed that due to an objection ACE's legal department received from Pilesgrove Township that the connection is not authorized until such time as the Surface Transportation Board renders a decision regarding SMS's operations on the Salem Branch, ACE must "hold off" making the connection. Thus, despite the work Krise completed for SMS (at SMS's considerable expense)

to enable the connection to be made by ACE, no electric power exists at SMS's Property other than through generators SMS is forced to use (also at SMS's considerable expense). Such generator power is not sufficient to power all facilities on the Property.

The above statements are true and correct to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this 6th day of March, 2025.


George Sutch

State of New Jersey)
) SS:
County of Gloucester)

Subscribed and sworn to before me
this 6 day of March, 2025.


Notary Public

My Commission expires: 10/2/2025

EXHIBIT 1



SMS Rail Service, Inc.
Post Office Box 711
Bridgeport, NJ 08014
Phone: (856) 467-4800
Fax: (856) 467-2121
www.smsrail.com

February 3, 2025

Ryan Drebes, Field Engineer Technician
Atlantic City Electric
428 Ellis Street
Glassboro, NJ 08028

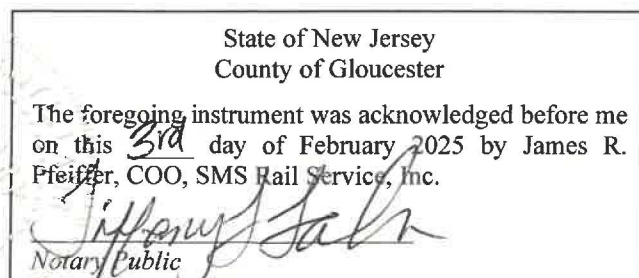
RE: SMS Rail Service, Inc. – Electrical Installation
650 Alloway-Woodstown Road, Pilesgrove, NJ
Block 73, Lots 1 & 3

Dear Mr. Drebes:

SMS Rail Service, Inc. is a Class III rail carrier under federal law¹ and the owner of properties located at 650 Alloway-Woodstown Road, Pilesgrove, NJ (Block 73, Lot 1) and East Lake Road (Block 73, Lot 3)(collectively referred to herein as the “Property”). Pursuant to 49 USC § 10501, SMS’s operations and facilities, including the electrical connection to the Property, are under the exclusive jurisdiction of the U.S. Surface Transportation Board, and local permitting and pre-clearance requirements are preempted by federal law. As such, SMS, through its contractor, Krise Services, will be performing a self-inspection of the electrical installation at the Property.

You should be aware, that in accordance with Village of Ridgefield Park vs. New York, Susquehanna & Western Ry. Corp., 163 N.J. 446 (2000) and the New Jersey Department of Community Affairs Bulletin 01-1 (May 2001), SMS anticipates that Pilesgrove Township may wish to inspect the electrical work performed at the Property. SMS intends to cooperate fully with any such inspection(s) and has previously provided to the Township notice of the installation of the electrical service, which began on or about October 28, 2024.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or need any further information.



Kind regards,


Jim Pfeiffer
(856) 467-4800, ext. 303
jpfeiffer@smsrail.com

¹ In 1994, SMS was first authorized to become a rail carrier providing common carrier railroad carriage by authority of the Interstate Commerce Commission (predecessor of the STB) Finance Docket No. 32494, SMS Rail Service, Inc. – Lease and Operate Exemption – Pureland Associates, 59 Fed. Reg. 27298 (May 26, 1994).

Mr. Ryan Drebes
February 3, 2025
Page 2

c.c.: John Heritage, Commercial Project Engineer, Krise Services (via email – jheritage@kriseservices.com)
Richard Saunders, Pilesgrove Twp. Construction Official (via email – conast@pilesgrovenj.org)
Ekaterine N. Eleftheriou, Solicitor, Pilesgrove Township (via email – kat@thevigilantlawfirm.com)

EXHIBIT 2

Krise Services

80 Broad Street
Elmer, NJ 08318
(856)-769-3932
info@kriseservices.com



2/3/2025

Mr Drebes,

The 800 amp 277/480v 3Ø service for Woodstown Central has been installed in accordance with the 2020 NEC. The service is installed for SMS Rail Service Inc. who is a federally regulated self inspected agency. The service was installed at 650 Woodstown Alloway Rd. Pilesgrove, NJ 08098, Block 73 Lot 1. The mailing address for the owner SMS Rail Services Inc. is PO Box 711 Bridgeport, NJ 08014.

The service install has been completed and is ready for the meter to be wired and to be energized.

Regards,

Jim Parks
General Manager

EXHIBIT CCC

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

VERIFIED STATEMENT OF JOHN HERITAGE

State of New Jersey	)	
	)	SS:
County of Salem	)	

I, John Heritage, Commercial Project Manager of Krise Services, declare under penalty of perjury, under the laws of the United States of America, as follows:

1. I am the Commercial Project Manager of Krise Services ("Krise"), which maintains its business address at 80 Broad Street, Elmer, New Jersey 08318. I am personally familiar with the facts as stated herein.

2. SMS Rail Service, Inc. ("SMS") hired Krise to perform electrical work at its property located at 650 Alloway-Woodstown Road, Pilesgrove Township, New Jersey, also referred to as Block 73, Lots 1 and 3 ("SMS's Property").

3. In reliance on notice I received on behalf of Krise in about October 2024 from Ryan Drebes, Senior Field Engineer Technician for Atlantic City Electric ("ACE"), that ACE was prepared to make the electrical connection for SMS's Property without local governmental approvals and that Krise should proceed to set up all necessary electrical wiring, Krise so notified SMS and proceeded to complete the electrical work at SMS's Property.

4. Based on the above notice from ACE, Krise's work at SMS's Property included construction and installation of necessary panels and subterranean conduits for the electrical connection to ACE.

5. Subsequently, on December 3, 2025, I was requested by Mr. Drebes of ACE to provide the following letters from Krise and SMS. I understood from ACE that these letters were required before ACE would connect its service to wiring Krise was in the process of installing through to and up several feet on the utility poles erected on SMS's Property:

(1) A letter from Krise stating that the electrical installation at SMS's Property was installed as per the National Electrical Code for SMS, a federally regulated self-inspecting railroad.

(2) A letter from SMS stating that they are a federally regulated self-inspecting railroad and that SMS is foregoing an inspection by local authorities.

6. By prior written notices to Pilesgrove Township, SMS advised Pilesgrove Township that it will cooperate fully with any inspections by Pilesgrove Township. This was also communicated by SMS in its letter to ACE, referenced below.

7. Before the letters from Krise and SMS, required by ACE, were signed and delivered to ACE, on February 3, 2025, I sent a draft of Krise's letter to ACE for its approval. I received approval of the draft of Krise's letter from ACE that same day ("Krise's letter").

8. On February 3, 2025, at my request based on ACE's requirement above, a letter from James Pfeiffer of SMS was delivered to me for my delivery of the same to ACE ("SMS's letter").

9. On February 3, 2025, I personally hand delivered SMS's letter and Krise's letter, as required by ACE, to Mr. Drebes of ACE at his office in Glassboro, New Jersey. True and correct copies of SMS's letter and Krise's letter, both dated February 3, 2024, which I hand delivered to Mr. Drebes on that date, are attached as Exhibits "1" and "2", respectively. I understood from Mr. Drebes that the electrical connection would be energized by ACE soon thereafter.

10. On February 5, 2025, I received a copy of letter from Pilesgrove Township's Solicitor of that same date, addressed to Mr. Drebes regarding the electrical connection at SMS's Property. A true and correct copy of Pilesgrove's Solicitor's letter to Mr. Drebes, dated February 5, 2025, is attached as Exhibit "3".

11. Thereafter, on February 12, 2025, Mr. Drebes contacted me and, at his request, I confirmed to him that the electrical installation at SMS's Property was completed and ready to be connected to ACE and "energized". I made that representation to Mr. Drebes because he requested confirmation and stated to me that he "wanted to make sure [the facilities] were wired before having [ACE] put out the order to energize." Mr. Drebes also indicated that the connection was not made sooner because he had been out sick. I anticipated from this communication with Mr. Drebes that the electrical connection would be made by ACE right away, and I so informed SMS.

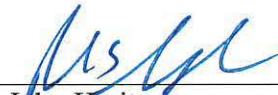
12. However, upon speaking with Mr. Drebes on February 25, 2025, I received notice from Mr. Drebes that he was just informed by ACE's legal department that ACE must "hold off" making the connection due to an objection ACE received from Pilesgrove Township that the connection is not authorized until such time as the Surface Transportation Board renders a decision regarding SMS's operations on the Salem Branch. Based on that notice, I informed SMS that the electrical connection was not being made by ACE due to Pilesgrove's objection and that Krise would takes steps to provide additional connections for the use of SMS's diesel fueled generator power needed at SMS's Property for its railroad operations.

13. As of this date, the electrical connection at SMS's Property has not been made by ACE despite the fact that Krise completed its work to enable the connection in reliance on the notice from ACE last fall that ACE was prepared to make the electrical connection for SMS's Property without local governmental approvals and that Krise should proceed to set up all necessary electrical wiring.

14. Mr. Drebes and ACE have provided me with no further information as to when ACE will energize the connection to SMS's Property.

The above statements are true and correct to the best of my knowledge, information and belief.

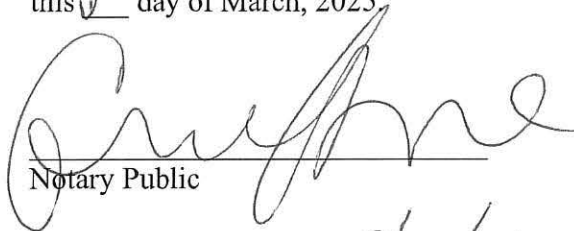
Signed under the pains and penalties of perjury this 6th day of March, 2025.



John Heritage

State of New Jersey)
) SS:
County of Salem)

Subscribed and sworn to before me
this 6th day of March, 2025.



Notary Public

My Commission expires: 9/22/2027

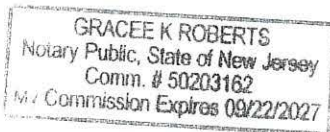


EXHIBIT 1



SMS Rail Service, Inc.
Post Office Box 711
Bridgeport, NJ 08014
Phone: (856) 467-4800
Fax: (856) 467-2121
www.smsrail.com

February 3, 2025

Ryan Drebes, Field Engineer Technician
Atlantic City Electric
428 Ellis Street
Glassboro, NJ 08028

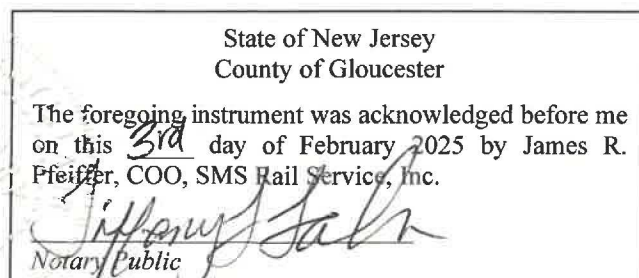
RE: SMS Rail Service, Inc. – Electrical Installation
650 Alloway-Woodstown Road, Pilesgrove, NJ
Block 73, Lots 1 & 3

Dear Mr. Drebes:

SMS Rail Service, Inc. is a Class III rail carrier under federal law¹ and the owner of properties located at 650 Alloway-Woodstown Road, Pilesgrove, NJ (Block 73, Lot 1) and East Lake Road (Block 73, Lot 3)(collectively referred to herein as the “Property”). Pursuant to 49 USC § 10501, SMS’s operations and facilities, including the electrical connection to the Property, are under the exclusive jurisdiction of the U.S. Surface Transportation Board, and local permitting and pre-clearance requirements are preempted by federal law. As such, SMS, through its contractor, Krise Services, will be performing a self-inspection of the electrical installation at the Property.

You should be aware, that in accordance with Village of Ridgefield Park vs. New York, Susquehanna & Western Ry. Corp., 163 N.J. 446 (2000) and the New Jersey Department of Community Affairs Bulletin 01-1 (May 2001), SMS anticipates that Pilesgrove Township may wish to inspect the electrical work performed at the Property. SMS intends to cooperate fully with any such inspection(s) and has previously provided to the Township notice of the installation of the electrical service, which began on or about October 28, 2024.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or need any further information.



Kind regards,

Jim Pfeiffer
(856) 467-4800, ext. 303
jpfeiffer@smsrail.com

¹ In 1994, SMS was first authorized to become a rail carrier providing common carrier railroad carriage by authority of the Interstate Commerce Commission (predecessor of the STB) Finance Docket No. 32494, SMS Rail Service, Inc. – Lease and Operate Exemption – Pureland Associates, 59 Fed. Reg. 27298 (May 26, 1994).

Mr. Ryan Drebes
February 3, 2025
Page 2

c.c.: John Heritage, Commercial Project Engineer, Krise Services (via email – jheritage@kriseservices.com)
Richard Saunders, Pilesgrove Twp. Construction Official (via email – conast@pilesgrovenj.org)
Ekaterine N. Eleftheriou, Solicitor, Pilesgrove Township (via email – kat@thevigilantlawfirm.com)

EXHIBIT 2

Krise Services

80 Broad Street
Elmer, NJ 08318
(856)-769-3932
info@kriseservices.com



2/3/2025

Mr Drebes,

The 800 amp 277/480v 3Ø service for Woodstown Central has been installed in accordance with the 2020 NEC. The service is installed for SMS Rail Service Inc. who is a federally regulated self inspected agency. The service was installed at 650 Woodstown Alloway Rd. Pilesgrove, NJ 08098, Block 73 Lot 1. The mailing address for the owner SMS Rail Services Inc. is PO Box 711 Bridgeport, NJ 08014.

The service install has been completed and is ready for the meter to be wired and to be energized.

Regards,

Jim Parks
General Manager

EXHIBIT 3



EKATERINE ELEFThERIOU, ESQUIRE

Phone: 856-223-9990

Email: kat@thevigilantelawfirm.com

February 5, 2025

Via Email and Regular Mail

Ryan Drebes, Field Engineer
Atlantic City Electric
428 Ellis Street
Glassboro, NJ 08028

***Re: SMS Rail Service, Inc.
Electrical Installation
650 Alloway Woodstown Road
Pilesgrove, NJ
Block 73, Lots 1 and 3***

Dear Mr. Drebes:

Kindly accept this correspondence which I offer to you in my capacity as Solicitor for the Township of Pilesgrove and in connection to recent correspondence from SMS Rail regarding electrical connection at the above-referenced location. You should be aware that the Township of Pilesgrove has filed with the Surface Transportation Board (STB), a federal board, to clarify **whether** SMS's operations and facilities are under the jurisdiction of the Board. The matter has been briefed by all parties and a decision to the Declaratory Judgment proceeding is anticipated in short order. Therefore, it is not clear that SMS' operations fall under the exclusive jurisdiction of the STB as alleged and represented by SMS. As such, you should be guided accordingly.

The Township of Pilesgrove, as it awaits the determination by the STB, reserves any and all rights and does not waive any defenses.

Thank you for your kind attention and anticipated cooperation in this matter.

Very truly yours,

THE VIGILANTE LAW FIRM, P.C.

By: Ekaterine Eleftheriou, Esq.

cc: John Heritage, Commercial Project Manager, Krise Services (via email
jheritage@kriseservices.com)

James Pfeiffer, Chief Operating Officer, SMS Rail Service, Inc. (jpfieffer@smsrail.com)

Richard Saunders, Pilesgrove Township, Construction Official (via email,
conast@pilesgrovenj.org)

Melissa Fackler, Pilesgrove Township, Clerk (via email, clerk@pilesgrovenj.org)

EXHIBIT DDD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**TOWNSHIP OF PILESGROVE, N.J.
PETITION FOR DECLARATORY ORDER**

**FINANCE DOCKET
NO. 36770**

VERIFIED STATEMENT OF DAVID A. ARDITO

State of Florida

County of Saint Lucie

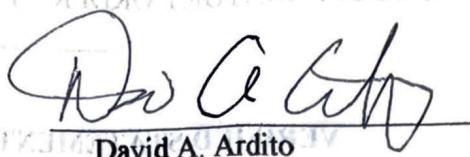
)
) SS:
)

I, David A. Ardito, President and Chief Executive Officer of Environmental Rail Solutions, Inc. declare under penalty of perjury, under the laws of the United States of America, as follows:

1. I am the President and Chief Executive Officer of Environmental Rail Solutions, Inc. ("ERS"), which maintains its business address at 511 NW Chipshot Lane, Port Saint Lucie, Florida 34986.
2. As an officer of ERS, I am duly designated and qualified to verify the facts as stated herein.
3. Presently, ERS is a customer of SMS Rail Service, Inc.
4. ERS relies upon SMS to provide railcar switching, movement, and storage services as well as storage, repair, and refurbishment services for its intermodal containers, all of which it uses to ship materials for customers of ERS in interstate commerce throughout the continental United States. These intermodal containers are shipped clean to SMS for storage and/or repair or refurbishment before they are ordered back into service by ERS for use by ERS's customers throughout the country.

The above statements are true and correct to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this 28 day of February, 2025.

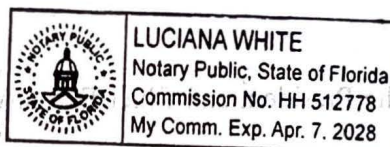

David A. Ardito

State of Florida)

) SS:

County of Saint Lucie)

Subscribed and sworn to before me
this 28 day of February, 2025.





Notary Public

My Commission expires: 04/07/2028

CERTIFICATION OF SERVICE

It is hereby certified that on this 6th day of March, 2025, I served a true and correct copy of the foregoing Motion of Respondent SMS Rail Service, Inc. for Leave to File Sur Reply Regarding Recent Developments and Rebuttal Briefs of Pilesgrove Township and Mannington Township, with exhibits, by email upon the following counsel for the parties and interested persons:

Jacqueline M. Vigilante, Esquire
Solicitor of Pilesgrove Township
99 North Main Street
Mullica Hill, NJ 08062
jacci@thevigilantelawfirm.com

William L. Horner, Esquire
Solicitor of Mannington Township
67 Market Street
P.O. Box 66
Salem, NJ 08079
wlh@hornerlaw.net

Karin M. Wood, Esquire
Solicitor of Salem County
110 Fifth Street, Suite 400
Salem, NJ 08079
attorneywood@comcast.net
counsel@salemcountynj.gov

Sarah Yurasko, Esquire
Senior Vice President – Law & General Counsel
American Short Line and Regional Railroad Association
50 F Street, NW, Suite 500
Washington, DC 20001-1537
syurasko@aslrta.org

Mr. Donald G. Norton
Executive Director
California Short Line Railroad Association
executivedirector@csra.org

Torgny Nilsson, Esquire
Vice President & General Counsel
Sierra Northern Railway
1745 Enterprise Boulevard
West Sacramento, CA 95691
tnilsson@sierraenergy.com

Torgny Nilsson, Esquire
Vice President & General Counsel
Mendocino Railway
100 West Laurel Street
Fort Bragg, CA 95437
tnilsson@sierraenergy.com

Date: March 6, 2025

/s/ Robert A. Klein
Robert A. Klein, Esquire