



1745 Enterprise Boulevard
West Sacramento, CA 95691
Tel: 530-666-9646

309011

December 16, 2024

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
December 16, 2024
Part of
Public Record

Re: Township of Pilesgrove, N.J. – Petition for Declaratory Order, FD 36770

Dear Ms. Brown:

Enclosed is the Amicus Curiae Brief of Sierra Northern Railway's ("SNR") in response to the Surface Transportation Board instituting a proceeding in the above-stated matter. If there are any questions concerning this e-filing, please contact me by telephone at (530) 304-1044 or via email at tnilsson@sierraenergy.com.

Sincerely,

Torgny Nilsson
Vice President & General Counsel for
Sierra Northern Railway, a wholly owned
subsidiary of Sierra Railroad Company

Enclosure

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36770

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

***AMICUS CURIAE* BRIEF OF SIERRA NORTHERN RAILWAY**

**Torgny Nilsson
Sierra Northern Railway
1745 Enterprise Blvd
Sacramento, CA 95691
Tel: (530) 759-9827**

**Vice President & General Counsel for
Sierra Northern Railway, a wholly owned
subsidiary of Sierra Railroad Company**

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INTRODUCTION

On September 13, 2024, the Surface Transportation Board (the “STB” or “Board”) served a decision instituting a declaratory proceeding at the request of Petitioner, the Township of Pilesgrove, N.J. (“Pilesgrove”), to “whether and to what extent 49 U.S.C. 10501(b) preempts certain local and state laws regarding land use and land development by SMS Rail Service, Inc. (“SMS”).”^{1, 2} The Board on October 24, 2024, adopted a procedural schedule,³ which the Board modified by its subsequent December 6, 2024 decision.⁴ As an interested party, Sierra Northern Railway (“SNR”) hereby submits its *Amicus Curiae* Brief in support of SMS.

¹ See Township of Pilesgrove, N.J. – Petition for Declaratory Order, FD 36770 (STB served September 13, 2024) (“September 13, 2024 Decision”) (the Board’s decision also granted the petition to intervene of the Township of Mannington, N.J. (“Mannington”), which asserted that it had “similarly attempted to enforce its municipal land regulations on SMS”).

² SMS was awarded a lease for the maintenance and operation of the Salem County Railroad. The Rail Line Service Agreement (hereinafter “Agreement”) sets forth the terms and agreement between the parties and provided, to wit, that SMS would “maintain, market, and operate the rail line and to provide exclusive rail service at the property.” See Township of Pilesgrove’s Petition for Declaratory Order, p. 2, filed May 1, 2024, in Township of Pilesgrove, N.J. – Petition for Declaratory Order, FD 36770 (“Petition for Declaratory Order”).

³ See Township of Pilesgrove, N.J., FD 36780 (STB served October 24, 2024) (wherein the Board set the date for Pilesgrove and Mannington to file supplemental evidence and argument to November 8, 2024).

⁴ The Board’s December 6th decision, for good cause, extended the due date for SMS’s reply evidence and argument, and submissions by other interested parties, to December 16, 2024, and likewise extended the date for Pilesgrove and Mannington to file rebuttal statements to January 14, 2025.

STATEMENT OF INTEREST

Pilesgrove, the Petitioner, seeks Board clarification “as to what the Township of Pilesgrove can and/or cannot regulate and require in terms of compliance with local ordinances and regulations including zoning and/or planning requirements and where federal preemption applies.”⁵ Mannington petitioned for leave to intervene on the ground that SMS’s rail line also extends through its Township such that Mannington has also attempted to enforce its municipal land regulations on SMS.⁶

Pilesgrove has requested that the Board declare SMS—a common carrier providing both freight and excursion rail services over the same jurisdictional trackage—not entitled to preemption protections for its excursion activities. Despite SMS’s status as a common carrier using largely the same facilities for both services, Pilesgrove and Mannington seek to assume some of the Board’s regulatory authority over the economics and operations of jurisdictional rail carriers.⁷ They argue this should occur whenever they perceive a lack of sufficient nexus to interstate commerce.

This request disregards the integrated nature of SMS’s operations, where the same infrastructure—tracks, stations, and facilities—supports both freight and excursion services. For many small short-line carriers, revenue from excursion services is crucial to sustaining freight operations, thereby supporting interstate commerce. Legal precedents, such as CSX Transp., Inc. v. Georgia Public Serv. Com’n, 944 F. Supp. 1573 (N.D. Ga. 1996), and Quincy College & Sem. Corp. v. Burlington Northern, Inc., 328 F. Supp. 808 (N.D. Ill. 1971) establish that such

⁵ See Petition for Declaratory Order, at 10.

⁶ See September 13, 2024 Decision, slip. op. at 1.

⁷ The Board is an independent federal agency charged with the economic regulation of various modes of surface transportation, primarily freight rail.

integration satisfies the nexus requirement. Recognizing this nexus is consistent with national transportation policies and essential for preserving the economic benefits these operations provide.⁸

SNR, as a freight common carrier railroad under the Board's jurisdiction,⁹ presents its perspective as a Class III short-line railroad that, like SMS, exemplifies the integrated nature of Class III rail carriers, where freight and excursion services are interdependent. Both carriers use shared infrastructure, such as tracks and equipment, to efficiently manage operations. Integrating freight and passenger services generates needed revenue streams, ensures financial viability, and allows these carriers to revive and sustain freight railroads that might otherwise have been abandoned, thereby fulfilling their common carrier obligations and supporting interstate commerce. SNR's vested interest in this matter stems from the critical need to maintain a unified regulatory framework that prioritizes national rail interests over fragmented local agendas. Local

⁸ SNR has yet to see SMS's reply and thus cannot argue one way or another as to whether all of SMS's excursion operations should be entitled to preemption. But both Pilesgrove and Mannington appear from their submissions to be asking the Board to find that none of SMS's excursion rail activities are subject to the Board's jurisdiction, regardless of whether those railroad activities are integrally related to SMS's provision of its common carrier services. Such a decision by the Board would have devastating consequences for smaller common carriers regulated by the Board. These carriers rely on shared infrastructure—tracks, stations, offices, maintenance shops, and employees—to provide both freight and passenger services. Allowing local municipalities to impose regulations on these facilities, merely because they also support excursion services, would result in a complex web of conflicting regulations. This would unreasonably burden, interfere with, and discriminate against rail transportation nationwide, undermining the efficiency and viability of these essential services.

⁹ *For the original 1995 acquisition of SNR by Sierra Railroad Company ("SRC"), see Coast Enterprises, Inc. – Acquisition Exemption – Sierra Pacific Coast Railway, Inc.; Sierra Railroad, a Division of Coast Enterprises, Inc. – Operation Exemption – Coast Enterprises, Inc., FD 32818 (ICC served December 20, 1995). For Woodland Branch/Sierra Railroad Company ("SRC") Corporate family exemption (merger of Woodland Branch and Oakland Branch lines into newly created SRC corporate family), see Sierra Railroad Company—Acquisition of Control Exemption—Yolo Shortline Railroad Company, FD 34351 (STB Served June 11, 2003); For Santa Paula Branch, see Sierra Northern Railway – Lease and Operation Exemption – Ventura County Transportation Commission, FD 36570 (STB served December 17, 2021).*

municipalities, often focused solely on local concerns, risk undermining the foundational principle of federal preemption designed to ensure a cohesive national rail system.¹⁰

Allowing municipalities to regulate excursion services on jurisdictional trackage would create overlapping regulations, enabling indirect control over what they cannot directly regulate.¹¹ This interference threatens the efficient functioning of our national railroad system. The municipalities' proposed "workaround" would result in a patchwork of local and federal regulations, artificially separating freight and excursion operations despite their shared infrastructure. This would subject SNR and similar short-line railroads to conflicting ordinances, undermining their ability to provide essential rail services.

For railroads like SNR, every freight carload is crucial, yet their economic viability also relies on revenue from diverse services, including railcar storage and passenger excursions. Subjecting any of these operations to local regulation—often arbitrary and misaligned with

¹⁰ For a recent example, consider *AAR v. CARB*, 2:23-cv-01154-JAM-JDP (United States District Court, Eastern District of California) (targeting railroads and imposing requirements solely on locomotive operators irrespective of the fact that ICCTA preempts all state and local laws and regulations which unreasonably burden railroad activity).

¹¹ Per 49 U.S.C. § 10501(b), the Board has exclusive jurisdiction over: “**(1)** transportation by rail carriers, and the remedies provided in this part [49 U.S.C. §§ 10101 *et seq.*] with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and **(2)** the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, **even if the tracks are located, or intended to be located, entirely in one State.**”

The Board’s jurisdiction “is exclusive. Except as otherwise provided in this part [49 U.S.C. §§ 10101 *et seq.*], the remedies provided under this part [49 U.S.C. §§ 10101 *et seq.*] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b) applies to all tracks and facilities owned by a jurisdictional carrier, whether used in part or whole to provide freight services, and even if the same tracks and facilities are also used to provide excursion or other ancillary services typically provided by a freight carrier.

In interpreting the reach of preemption under § 10501(b), both the Board and the courts have found that § 10501(b) categorically prevents states and localities from intruding into matters that are directly regulated by the Board (e.g., rail carrier rates, services, construction, and abandonment). Other state actions may be preempted as applied, that is, only if they would have the effect of unreasonably burdening, interfering with, or discriminating against rail transportation, which is a fact-specific determination based on the circumstances of each case. See N.Y. Susquehanna & W. Ry. Corp. v. Jackson, 500 F.3d 238, 252-54 (3rd Cir. 2007); Boston & Maine Corp. & Town of Ayer, MA, 5 S.T.B. 500, 510-12 (2001); Borough of Riverdale—Pet. for Declaratory Order—N.Y. Susquehanna & W. Ry., FD 33466, slip op. at 2 (STB served Feb. 27, 2001); and Borough of Riverdale – Petition for Declaratory Order – The New York Susquehanna and Western Railway Corporation, 4 S.T.B. 380, 387 (1999).

national network efficiency—would jeopardize the ability of small common carriers to meet their communities' freight needs. To illustrate how local regulation would have thwarted SNR's achievements, a brief overview of SNR's history is essential.

SNR'S LEGACY: REVITALIZING DORMANT RAIL LINES THROUGH INTEGRATED FREIGHT AND EXCURSION SERVICES

As the Board may recall, SNR's President and CEO, Kennan H. Beard III, provided crucial testimony on September 16, 2024, during the Board's hearing on "Growth in the Freight Rail Industry [Docket No. EP 775]." Mr. Beard highlighted SNR's relentless dedication to revitalizing freight rail service on light-density lines facing potential abandonment. His testimony underscored that the success of Class III rail carriers such as SNR hinges on innovation, determination, investment, and the strategic use of freight infrastructure to generate essential revenue for line restoration and customer acquisition.

SNR's journey began in 1995 when Mike Hart, CEO and founder of Sierra Railroad Company ("SRC"), acquired 49 miles of neglected tracks (and equally neglected equipment) in Tuolumne and Stanislaus Counties, California. At that time, the line was down to a single moribund freight customer and just three employees. To help fund the work needed to restore full freight service to the line, Mr. Hart added excursion rail services. Those services not only helped generate the revenue needed to make freight infrastructure improvements but increased community awareness that the freight railroad was again active.

Similarly, in the early 1990s, David Magaw purchased 27 miles¹² of deteriorated tracks in Yolo County, California, from Union Pacific Railroad Company, establishing the Yolo Shortline Railroad ("YSL"). Initially, YSL anticipated only 100 carloads annually on its Clarksburg Branch and 400 carloads on its Woodland Branch. To help finance the necessary rehabilitation of

¹² The rail lines included the 11-miles Clarksburg Branch and the 16-mile Woodland Branch.

these tracks,¹³ YSL also added excursion services to its lines. This strategy proved successful, enabling YSL to expand its full freight service and, like SRC, reengage with local residents and businesses.

Building on their success, SRC and YSL merged in 2003, forming SNR as their freight rail operator. SNR has, since then, continued to offer excursion services as a means of generating a portion of the revenue needed to revive, and expand, freight services on new lines. For example, in 2021, SNR acquired the rights to the Santa Paula Branch line in Ventura County, California, intending to revive that line's freight services. While SNR had significant initial success, a catastrophic flood in January 2023—described as a “once in a 100-year event”—destroyed a critical rail bridge on the line, significantly the line's freight transport capabilities:



¹³ In the early 1990s, a small Class III railroad would have been lucky to receive more than \$300 per carload of freight. At those rates, even 500 carloads per year would not have generated enough revenue to enable the railroad to cover the costs to rehabilitate, much less to expand service on, a poorly maintained railroad line acquired from a Class I owner that would otherwise have abandoned the line.

While the bridge is under reconstruction (completion is anticipated by mid-2025), SNR has been forced to rely predominantly on passenger and excursion services,¹⁴ and railroad services to the film industry, in order to keep portions of the line open to freight service and prepare the line for the expanded freight services that are anticipated once the bridge has been repaired.

SNR's ability to conduct freight and excursion operations without local interference and a patchwork of overlapping regulations has been pivotal to its success, enabling SNR to leverage its jurisdictional trackage, equipment, and personnel to evolve into a leading Class III short-line railroad. Today, SNR boasts the largest private maintenance-of-way (MOW) fleet in California and conducts freight operations across five counties: Contra Costa, Stanislaus, Tuolumne, Ventura, and Yolo. SNR also today serves a diverse portfolio of over 400 freight customers—including farmers, ports, business parks, and the military—transporting more than 14,000 carloads annually. SNR has also established a major transload facility and inland port, pioneered the first zero-emission hydrogen switcher locomotive for domestic use, and secured both a Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant and a Railroad Rehabilitation and Improvement Financing (RRIF) loan. These achievements culminated in SNR receiving the prestigious Environmental Award from the American Short Line and Regional Railroad Association (ASLRRA) earlier this year.¹⁵

SNR's experience underscores the critical importance of allowing carriers to use their jurisdictional trackage to generate necessary revenues for sustaining freight common carrier

¹⁴ SNR's excursion operations have included rail bikes. While the public can rent these rail bikes, they are only permitted to operate them on SNR's jurisdictional trackage (maintained in accordance with federal requirements), subject track warrant control ("TWC") authority, and while accompanied by SNR railbike personnel (who are trained and held the same standards as SNR's covered service freight conductors). SNR's maintenance-of-way ("MOW") personnel also use these rail bikes to conduct track inspections and to assist with repairs to its jurisdictional trackage.

¹⁵ See, <https://www.prnewswire.com/news-releases/sierra-northern-railway-receives-prestigious-environmental-award-for-groundbreaking-sustainable-rail-initiatives-302104854.html>.

services.¹⁶ In SNR's case, freight and passenger/excursion railroad operations subsidized one another for over a decade and SNR continues to use rail excursion, rail bike, and rail services to the film industry to fund the revival of freight rail service over dormant lines. This approach has been vital in preventing the abandonment of these lines, ensuring continued, and expanded, freight service for the communities they serve. SNR's achievements, both current and future, hinge on its ability to leverage its rail lines and carrier status to provide both freight and passenger services.¹⁷

Like SMS, SNR has consistently operated its freight and excursion services on the same jurisdictional trackage, while adhering to federal regulations as to both services. For instance, RTP mandates that SNR operate its facilities and equipment without compromising public health and safety, as outlined in 49 U.S.C. §§ 10101 (8). The Federal Railroad Administration (FRA) also oversees the safety of all of SNR's operations over jurisdictional trackage.¹⁸ Together, the Board, FRA, and other federal agencies (e.g., for hazardous materials and matters that impact national security)¹⁹ regulate SNR's activities with the shared objective of promoting interstate

¹⁶ For an explanation of the Board's responsibility to ensure that rail carriers can earn adequate revenues, see § III *infra* discussing the Rail Transportation Policy ("RTP").

¹⁷ SNR continues to expand its freight services. In 2022, SNR began to advance the Freight Rail Triangle Project, an innovative triangular freight project designed to accommodate unit train and container traffic operations. In the case of container traffic, loaded containers are brought into the Port of Los Angeles and head for the southeastern United States. Once there, the containers are emptied, reloaded, and routed to SNR's Oakdale facility, where they are emptied and then reloaded with agricultural products which are then exported to Asia via the Port of Los Angeles. The Freight Rail Triangle is particularly innovative in that it involves three loaded movements that are almost entirely transported by rail. Container train traffic has grown so large that additional infrastructure is needed to support the operations and enhance the multi-modal connections for continued economic growth. SNR's Freight Rail Triangle will take trucks off the road over the entire route while also stimulating additional international trade, including additional foreign markets for businesses in the region of SNR's Oakdale facility. The Freight Rail Triangle Project advances more than half the goals set forth in RTP.

¹⁸ For an explanation of the extensive regulations that railroads must comply with to provide common carrier service (freight and services integrally related to freights), see § II, *infra*, discussing the FRA's regulation of railroad safety.

¹⁹ The STRACNET is an interconnected and continuous rail line network consisting of over 41,300 miles of track serving 141 defense sites, including those served by SNR. It is not intended to be a routing guide as military cargo may also travel over non-STRACNET lines.

commerce and economic productivity, efficiently and safely. Allowing state and local regulation of activities on trackage used by freight carriers, simply because the same facilities are also used for other rail services, would disrupt interstate commerce.

If local jurisdictions had been allowed to regulate SNR's excursion operations—which subsidize its freight services **and are operated on the very same trackage**—SNR would have faced bankruptcy, leaving the communities it serves without the freight services that SNR is able to provide today. Any decision by the Board to separate excursion from freight operations, exposing jurisdictional rail lines to conflicting local ordinances and regulations, would undermine the ability of smaller freight railroads to maintain their critical infrastructure and fulfill their common carrier obligations, ultimately forcing them to cease their freight operations and harming interstate commerce.²⁰

To clarify, SNR does not claim that all passenger/excursion rail operations should be preempted (e.g., circus trains). Instead, SNR asserts that freight common carrier railroads conducting passenger/excursion services on covered tracks, using covered equipment, and adhering to the same operational rules as freight services, should be preempted unless the carrier opts to be governed by state and local law through a notice to the STB.

ARGUMENT

I. The Board has Exclusive Jurisdiction Over Rail Transportation Provided by a Board-Licensed Common Carrier.

Congress defined “transportation” in the Interstate Commerce Commission Termination Act (“ICCTA”) more broadly than the term’s ordinary meaning. Pursuant to the ICCTA, transportation includes a yard, property, facility, instrumentality, or equipment of any kind

²⁰ If a railroad facility, infrastructure, or equipment is used to offer or provide freight service, it needs to be preempted or else the whole system breaks down and this allows local jurisdictions to indirectly interfere with the railroad’s ability to provide freight service.

related to the movement of passengers or property, or both, by rail and services related to that movement, including receipt, delivery transfer in transit handling, and interchange of passengers and property. 49 U.S.C. § 10102(9)(A)-(B).²¹ In defining transportation, Congress excluded certain activities (street, suburban, or interurban electric railways not operated as part of the general system of rail transportation system), but did not exclude excursion services provided by freight railroads from the definition of “transportation” by a “rail carrier” over the interstate rail system. Congress could easily have done so had it wanted to. But it did not do so.

The preemptive scope of 49 U.S.C. § 10501(b) has been characterized by the courts as broad and sweeping.²² Similarly, in 2013, in a passenger rail case, the Board explained “[u]nder 49 U.S.C. § 10501(a)(2)(A), the Board has jurisdiction over transportation by rail carrier between a place in a state and a place in the same state, as long as that intrastate transportation is carried out ‘**as part of the interstate rail network.**’” See California High-Speed Rail Authority – Construction Exemption – In Merced, Madera, and Fresno Counties, CAL., FD 35724 (STB served June 13, 2013) (“CHSRA-I”) (citing DesertXpress Enters., LLC—Pet. for Declaratory Order, FD 34914 (DesertXpress), slip op. at 9 (STB served May 7, 2010)). Likewise, in CHSRA-I, the Board found the California High-Speed Rail Authority (the “Authority”) to be a carrier because the HST Passenger System/Project would be constructed as part of the interstate rail

²¹ 49 U.S.C. § 10102 (5) defines a “rail carrier” as “a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation. All board-licensed carriers are part of the general system of rail transportation (interstate rail network) either directly or indirectly.

²² See San Pedro Peninsula Homeowner’s United Inc., John Tommy Rosas Tribal Administrator, Tongva Ancestral Territorial Tribal Nation – Petition for Declaratory Order, FD 36065, slip op. at 3-4 (STB served March 6, 2017) (“San Pedro”) (“The primary purpose of § 10501(b)’s broad preemption provision is to prevent a patchwork of state and local regulation from interfering with interstate commerce.”); see also H.R. Rep. No. 104-311, at 95-96 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 807-08 (noting the need for “uniformity” of federal standards for railroads and the risk of “balkanization” from state and local regulation); CSX Transp., Inc. v. Ga. Pub. Serv. Comm’n, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996)) (in referring to the broad and sweeping effect of § 10501 (b), the district court stated, “[i]t is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.”

network; therefore, the Board has jurisdiction under § 10501(a)(2)(A). *Id.* at 14. Notwithstanding the Authority’s assertions that the HST System involves purely intrastate operations, the Board found the HST System would have extensive interconnectivity with Amtrak, which has long provided interstate passenger rail service and is therefore part of the interstate rail network. *Id.*²³

Viewed collectively, precedent strongly suggests that Congress intended—to the maximum extent possible—for the Board’s jurisdiction to apply to any activity conducted by a Board-jurisdictional carrier over jurisdictional track, particularly when the activity is integrally related to the provision of freight service.²⁴

II. Excursion Operations By Board-Authorized Freight Common Carriers Over Jurisdictional Track Are Integrally Related to Freight And Should Be Preempted.

As stated in FN 23, SNR understands that the Board—the guardian of railroad entry/exit—decides who becomes a “rail carrier,”²⁵ who provides “rail transportation,”²⁶ and when 49 U.S.C. § 10501(b) preempts state, local, and municipal attempts to regulate rail transportation. In exercising its jurisdiction, the Board has made clear that newly created railroads, railroads acquired pursuant to an Offer of Financial Assistance, and entities seeking to

²³ The CHSRA-I decision highlights certain facets of the Board’s jurisdiction. Under 49 U.S.C. § 10901 mainline track requires STB authority to construct, acquire, operate, discontinue (cease operations), and abandon under 49 U.S.C. § 10903 (permanently remove from the interstate rail network). See Allied Indus. Dev. Corp. – Petition for Declaratory Order, FD 35477, slip op. 2, n. 5 (S.T.B. served Sept. 17, 2015) (explaining that under the Interstate Commerce Act, the STB “has exclusive jurisdiction over rail lines over which railroads provide point-to-point ‘common carrier’ line-haul service to shippers (i.e., mainlines).”); citing Suffolk & S. R.R. LLC – Lease & Operation Exemption – Sills Road Realty, FD 35036, slip op. 1 (S.T.B. served Nov. 16, 2007) (explaining that “[t]he federal government has licensed rail carrier entry and exit since 1920. Thus, the Board and its predecessor agency, the Interstate Commerce Commission (“ICC”), have long had exclusive jurisdiction and plenary authority over the construction, operation, and abandonment of mainlines. 49 U.S.C. §§ 10901, 10903.”).

²⁴ Of course, as explained herein, SNR understands that while ICCTA’s preemption language is unquestionably broad, it does not encompass everything touching on railroads. For example, ICCTA preemption would likely not apply to a rail line acquired by an entity solely for excursion service or to an entity that did not hold itself out to be a common carrier or did not undertake to market and provide freight operations over its rail line.

²⁵ See FN 11.

²⁶ See § I.

become carriers for the **sole purpose** of providing intrastate excursion operations would *generally* not be jurisdictional carriers for Board purposes or entitled to preemption.²⁷ But see the Board’s decision in Magner–O’Hara Scenic Ry.—Operation—in the State of Michigan (not printed), served May 12, 1981, *aff’d sub nom. Magner–O’Hara Scenic Ry. v. ICC*, 692 F.2d 441 (6th Cir.1982), noting in dicta that the Board would have jurisdiction over a railroad lying wholly within one state if it participated in the movement of passengers or freight from one state to another under common arrangements with connecting carriers, i.e., by means of through-ticketing or the movement of interstate freight.

Denver & Rio Grande, Wine Train, and Fun Train are not representative of the operations of SNR or of similarly situated traditional Class III freight common carriers (“Class III Freight Carriers”) that publish tariffs, hold themselves out to all freight customers interested in service upon reasonable demand, market and promote and grow freight business,²⁸ and are subject to full

²⁷ See Denver & Rio Grande Ry. Hist. Found.--Pet. for Declaratory Order, FD 35496, slip op. at 9-10 (STB served Aug. 18, 2014) (“Denver & Rio Grande”) (finding that for 14 years the railroad, which was acquired pursuant to an OFA, was only used to provide seasonal entirely intrastate movement of passengers and recreational rafts (freight movement on the Creede Branch was limited to the transportation of river rafts and other gear for excursion passengers; moreover, river rafts and other gear moved with the passengers as a package; and there was no separate compensation for movement of freight) was outside the Board’s jurisdiction), recons. denied Denver & Rio Grande Ry. Hist. Found., FD 35496 (STB served Mar. 24, 2015); see also Napa Valley Wine Train, Inc.— Pet. for Declaratory Order, 7 I.C.C. 2d 954, 965-68 (1991) (“Wine Train”) (finding an excursion entity that utilized a line acquired pursuant to an OFA to handle less than one carload of freight a month for certain wineries, with no regularly scheduled freight service, or marketing for freight, and limited ability to connect to Amtrak (nearest connection 30 miles away and bus service would be required for passengers to move between Wine Train and Amtrak) was not providing transportation subject to the Board’s jurisdiction; see also Fun Trains, Inc.--Operation Exemption--Lines of CSX Transp., FD 33472 (STB served March 5, 1998) (“Fun Train”) (finding the Board did not have jurisdiction over an excursion passenger train in Florida that operated pursuant to trackage rights granted by CSX Transportation, Inc., which was marketed primarily to tourists and did not connect to Amtrak directly); but cf. Yakima Interurban Lines Association – Abandonment Exemption – In Yakima County, WA, AB 600 (Sub-No. 1x) (STB served October 27, 20006) (finding YILA a carrier subject to the Board’s jurisdiction even though the Railroad Retirement Board found YILA to be an excursion railroad as YILA became a carrier to the Board’s jurisdiction when it acquired the rail line in 1999 by invoking the Board’s authority).

²⁸ SNR understands that in 2022 SMS first acquired the rail line in question. In the past two years, SNR further understands that freight numbers have doubled, despite there currently being a sole shipper on the rail line. Lastly, SNR understands that SMS purchased an additional 93 acres to develop transloading and bring manufacturing back to the region.

FRA regulation.²⁹ This is demonstrated by the fact that SNR has, over less than three decades, grown its carloads from fewer than 100 per year (in 1995) to over 14,000 per year (in 2024). As stated, SNR’s present and future success is integrally related to the fact that SNR was able, as a rail carrier, to supplement its freight service with excursion/passenger services, which enabled SNR to survive periods when it had *de minimis* freight traffic.³⁰

Traditional Class III Freight Carriers (such as SNR) provide transportation over covered tracks, using covered service equipment, and operate subject to covered service rules of operation (e.g., hours of service limitations).³¹ Moreover, as explained further herein, light-density Class III Freight Carriers (also such as SNR) are continuously trying to expand the railroad services they offer so they remain financially viable and can continue to meet the (perhaps minimal, but still vital) freight rail service needs of their communities. These expanded services involve not only efforts to expand freight service, but also transloading railcar storage services, passenger rail services, excursion rail services, and more. All of the rail services provided by such Class III Freight Carriers, be it freight, excursion, passenger commuter, car storage, or rail bike services,³² are integrally related and cannot, and should not, be artificially bifurcated and subjected to overlapping and far more arbitrary local municipal regulation.

²⁹ See expanded discussion *infra*.

³⁰ See also discussion *supra* at 11-12 regarding SNR currently offering passenger/excursion service, and rail service to the makers of films and commercials, over SNR’s Santa Paula Branch to sustain adequate revenues due to the temporary reduction in SNR’s ability to provide freight services on the line.

³¹ See Roanoke Southern, LLC—Acquisition and Operation Exemption—Norfolk Southern Railway Company, FD 35976 (STB served December 31, 2015) (granting an acquisition and operation exemption to Roanoke Southern, LLC (“RSRL”), wherein RSRL acquired a 2.42-mile segment of a rail line from Norfolk Southern Railway Company for excursion operations and RSRL assumed the status and obligations of a common carrier to provide freight service upon a reasonable demand).

³² As stated previously, while rail bikes are used in its excursion operations, SNR’s maintenance-of-way (“MOW”) employees also use them to conduct track inspections and make maintenance repairs.

SMS's operations appear closer to those of SNR than to those of the excursion operations that have been found not to be subject to Board jurisdiction.³³ For example, not only has SMS made an effort to grow its freight service, it has succeeded in doing so: increasing its carloads from 0 (in the fall of 2022) to 52 (in 2024). SMS currently serves two shippers and is working to increase its transloading operations.³⁴ After commencing freight operations, SMS added excursion services, generating additional revenue to use to rehabilitate and better operate its rail lines.³⁵ Notwithstanding its excursion services, SMS has amply demonstrated its involvement in more than "minimal" freight operations in interstate commerce. Based on SNR's experience, the fact that SMS has begun using its railroad assets to provide excursion service makes it all the more likely that SMS will be able to continue to meet its common carrier obligations (by ensuring that it has sufficient revenue to maintain its tracks and other rail facilities for freight service).

One of the reasons the Board, and its predecessor, the Interstate Commerce Commission ("ICC"), was created was to eliminate an inconsistent patchwork of state and local regulations that would unreasonably burdened, interfered with, and discriminated against rail transportation.³⁶ Subjecting Class III Freight Carriers to the overlapping and inconsistent regulatory schemes that would be created if their freight and excursion operations were bifurcated—despite being conducted by STB jurisdictional rail carriers using the same jurisdictional trackage, using the same equipment, facilities, and employees—would not only

³³ See Denver & Rio Grande, Wine Train, and Fun Train

³⁴ SMS purchased 93 acres of land to develop transloading, intending to restore manufacturing and freight rail service on its rail line. SNR recognizes that transloading can generate controversy within certain local communities and it seems likely that it's SMS's transloading efforts, and not its excursion service, that is driving the municipalities to try to regulate SMS's rail activities.

³⁵ See Petition for Declaratory Order at p. 5

³⁶ The Board evaluates preemption in such circumstances as applied, versus being categorically preempted.

allow municipalities to indirectly regulate what they cannot directly regulate, but would subject SNR and other similarly situated short-line railroads to local ordinances and regulations (including zoning and planning requirements) that would, and might even be designed to, undermine their financial ability to continue to operate altogether.

As to Class III Freight Carriers, 49 U.S.C. § 10501(b), either categorically or as applied, preempts many state, local, and municipal ordinances and laws. See Denver & Rio Grande, FD 35496, slip op. at 9; citing Green Mountain R.R. v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005) (“[S]tate or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements, are categorically preempted as to any facilities that are an integral part of rail transportation.”). In this proceeding, Pilesgrove and Mannington want the Board to transfer to them some of the Board’s regulatory authority over the economics and operations of jurisdictional rail carriers operating over jurisdictional trackage, whenever either municipality decides that a given railroad activity by such rail carrier lacks a sufficient nexus to interstate commerce. Neither Pilesgrove nor Mannington proposes a method for doing so. Nor do they appear to appreciate the integrated nature of SMS’s operations (with SMS using the same jurisdictional trackage, equipment and personnel for its freight and its excursion services) or the fact that, for many small carriers, revenue from excursion services underpins the viability of freight operations, ensuring continued support for interstate commerce and the needs of the communities these carriers serve.

For smaller Class III Freight Carriers, there is simply no way to bifurcate their railcar transportation services from the other railroad services they offer using the same trackage, the same facilities, the same equipment, and the same personnel, especially when the revenues from all of their various rail services underwrite their continued provision of freight rail service and

the trackage and facilities used to provide that service. Allowing a local municipality to impose its own chosen regulations on a Class III Freight Carrier's railroad facilities, maintenance operations, operating requirements, locomotives and other railroad equipment, safety requirements, and employee regulations simply because the rail carrier is also using the same property, equipment, and employees to provide commuter passenger or excursion rail services would wreak havoc with the rail carrier's ability to fulfill its common carrier obligations. See, e.g., Green Mountain, 404 F.3d at 643 (concluding that the ICCTA preempted state environmental law that "unduly interfere[d] with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations.").

In addition to being regulated by the Board, freight rail carriers such as SMS and SNR are subject to full FRA regulation. Since 1970, the FRA has regulated the safety of the rail lines that comprise the interstate rail system. In that regard, the Federal Rail Safety Act of 1970 (the "FRSA"), 49 U.S.C. § 20101, et. seq., preempts the application of the vast majority³⁷ of state laws, regulations, or orders related to railroad safety and railroad security.³⁸ Under 49 U.S.C. § 20101, the purpose of FRSA "is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents" and to accomplish this, the FRSA envisioned national uniformity to the "extent practicable" of laws, regulations, and orders related to railroad safety.³⁹

³⁷ Pursuant to 49 U.S.C. § 20106(2), there are limited circumstances where a State, subject to a multi-factor test, "may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security, when the law, regulation, order – (A) is necessary to eliminate or reduce an essentially local safety or security hazard; (B) is not incompatible with a law, regulation, or order of the United States government; and (C) does not unreasonably burden interstate commerce."

³⁸ See 49 U.S.C. § 20106(1) ("Laws, regulations, and order related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable."); see also 49 U.S.C. § 20106 (2) (A "State may only adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security) prescribes a regulation or issues an order covering the subject matter of the State requirement."),

³⁹ See 49 U.S.C. § 20106(1).

So, for railroad safety matters, the applicable law, regulations, and orders primarily come from the Secretary of Transportation, which has delegated such authority to the FRA.

Thus, all common carriers—whether conducting freight or excursion operations—are subject to the FRA’s safety regulations to achieve the above-stated purpose of the FRSA, and this is accomplished through creating national uniformity in laws, regulations, and orders. For example, 49 C.F.R. § 213, et. seq., “prescribes minimum safety requirements for railroad track that is part of the general railroad system of transportation.”⁴⁰ Section 213 fully applies to light density Class III rail carriers that offer both excursion and freight services over the same trackage, as such trackage, and both such activities, are without a doubt part of the general railroad system of transportation.⁴¹ Similarly, the extensive regulations related to FRA safety standards (e.g., locomotives,⁴² maintenance (railroad workplace safety),⁴³ communications,⁴⁴ operating practices,⁴⁵ signals/grade crossings,⁴⁶ reporting,⁴⁷ etc.) apply to common carriers regardless of whether they are conducting freight or passenger/excursion rail service. To put it simply: state and local laws, regulations, and orders should not unreasonably burden the operations of light density Class III rail carriers as RTP, and the FRSA, both of which apply federal regulation, do not exclude freight common carrier railroads who also conduct passenger/excursion rail service.

⁴⁰ See 49 C.F.R. 213.1.

⁴¹ See § I, *infra*.

⁴² See Title 49, Chapter II – Federal Railroad Administration, Department of Transportation (“49 C.F.R”), Part 229 – Railroad Locomotive Safety Standards.

⁴³ See 49 C.F.R. Part 214.

⁴⁴ See 49 C.F.R. Part 220.

⁴⁵ See 49 C.F.R. Parts 217, 218.

⁴⁶ See 49 C.F.R. Parts 233, 234.

⁴⁷ See 49 C.F.R. Parts 225, 228, and 233.

SNR has reviewed Pilesgrove’s Petition for Declaratory Order and believes that Pilesgrove’s intentional interference with SMS’s operations (blocking electrical supply to the properties in question and placing stop work orders)⁴⁸ should be either categorically preempted or preempted as applied, as such interferences have the effect of unreasonably burdening, interfering with, and discriminating against rail transportation in general. SNR understands that the municipalities’ conduct has not only interfered with SMS’s right—as a rail carrier under the Board’s jurisdiction—to construct and maintain essential rail facilities (such as SMS’s locomotive maintenance shop/storage facility, the “SMS Facility”), but have interfered with SMS’s use of its own railroad facilities through numerous claims of zoning violations and at least one attempt to enjoin SMS from accessing its own rail facilities. SNR presumes that the SMS Facility is used to support all of SMS’s freight and excursion operations.⁴⁹ In fact, based on SNR’s review of the record, the buildings erected on Block 73, Lot 1, appear to be an “integral part of rail transportation” for SMS. As a similarly-situated common carrier, SNR knows that constructing and maintaining locomotive maintenance/storage facilities is an indispensable part of providing rail service of any kind, including freight rail service.

Similarly to SMS, SNR also uses rail bikes as part of the rail excursion services it offers.⁵⁰ As such, SNR wholeheartedly agrees with SMS that Pilesgrove is preempted from regulating SMS’s rail bike tour facilities because—as with locomotives or hi-rail vehicles—

⁴⁸ See Supplemental Evidence and Argument of Petition, Pilesgrove Township, Exhibit J, p. 13, filed November 7, 2024, in Township of Pilesgrove, N.J. – Petition for Declaratory Order, FD 36770 (“Pilesgrove Supplemental Evidence”).

⁴⁹ See Pilesgrove Supplemental Evidence at p. 3.

⁵⁰ See Petition for Declaratory Order at p. 3. (“Additionally, and for a complete factual background, an application was filed by SMS Rail Service, Inc., [o]n or about December 2023, for a Use Variance for the operation of a rail bike tour facility along with accessory structures and a Use Variance for multiple principle uses on one lot located on property known as Block 73, Lots 1.”)

small freight railroads do not use rail bikes exclusively to provide excursion services. In SNR's case, its rail bikes—which are electrically powered—operate on the same jurisdictional trackage as its freight trains, operate subject track warrant control (“TWC”) authority, and have always been accompanied by SNR's railroad personnel (who are not only trained and held to the same standards as SNR's covered service freight train conductors, but who are full covered service employees subject to the authority of the Railroad Retirement Board). As SNR's rail bikes are electrically powered, they also supplement SNR's hi-rail maintenance vehicles and are used by SNR's maintenance-of-way (“MOW”) personnel as a more environmentally-friendly way to conduct track inspections and make repairs to SNR's covered trackage. SNR's rail bikes are thus a crucial part of SNR's efforts to ensure the safety, efficiency, and reliability of its trackage and overall railroad operations (including its freight operations), constituting an “integral part of [the] rail transportation” SNR provides.

The fact that SMS, like SNR, has dedicated excess rail capacity in its railroad operations to provide excursion operations⁵¹ does not have any negative impact on its common carrier obligations. In fact, their use of railroad assets to provide excursion and commuter passenger service makes it more likely that a carrier will be able to continue to meet its common carrier obligations, ensuring it has sufficient revenue to maintain its tracks and other rail facilities for freight service. The provision of excursion and commuter passenger service in addition to freight service should not subject the railroad's freight operations (or its track, equipment, or facilities) to overlapping state or local ordinances or regulations that would not otherwise be sustainable against a freight common carrier. In short, a decision by the Board that Pilesgrove or

⁵¹ See Petition for Declaratory Order at p. 5 (“SMS has remained steadfast in conveying to the Township that all of its activities are regulated under the Interstate Commerce Commission's (ICC) [Termination] Act even though SMS Rail Lines, Inc., has expanded its use from a freight rail line to offering fun/entertainment rides intrastate with no direct connection to interstate commerce.”).

Mannington can regulate the track, facilities, or equipment (such as that of SMS) that is used for both freight and excursion operations could lay the groundwork for local governments to use such regulations to undermine—or even end—the ability of many smaller Class III Freight Carriers to provide freight rail service to shippers.

III. Low-Density Short-Line Railroads Often Must Supplement Freight Revenues to Continue to Provide and Grow Freight Rail Service.

Neither SNR’s story, nor SMS’s, is an outlier. SNR knows firsthand that there are many other small light density railroads seeking any and all business opportunities that will allow them to “keep the doors open.” Several short line railroads at the “Growth in the Freight Rail Industry [Docket No. EP 775]” hearing told the Board story after story about how low-density short-line freight railroads regularly explore all available opportunities to maintain and grow freight transportation within their communities. Short lines understand all too well that sometimes there is not enough freight to cover the high costs of operating a railroad. Consistent with this recognition of the determination of short lines to “keep the doors open,” the Board has stated its commitment to RTP, specifically by “promot[ing] a safe and efficient rail transportation system by allowing rail carriers to earn **adequate revenue**, as determined by the Board.”⁵² See Midwest Rail d/b/a Toledo, Lake Erie and Western Railway—Lease and Operation Exemption—Toledo, Lake Erie and Western Railway and Museum, Inc., FD 35555 (STB Served October 14, 2021) (“Midwest Rail”) (in granting a lease and operation exemption, the Board demonstrated its commitment to the ability of a freight carrier, who was entering the market, to earn adequate revenue as at the time of the decision, while the railroad had solicited potential freight customers and held itself out to be a provider of common carrier rail service over the line, only excursion

⁵² See 49 U.S.C. § 10101(3) (*Emphasis supplied*).

rail services were being provided by the railroad).⁵³ The fact that the Board considers passenger operations as part of abandonment proceedings—to ascertain whether “sufficient traffic” exists for the carrier to support the continued operation of a line—suggests that the Board’s jurisdiction extends to non-freight rail operations provided by a “rail carrier” providing “transportation” subject to the Board’s jurisdiction.⁵⁴ Moreover, one mission of the Board is to ensure that railroad operations are not burdened by patchwork regulation and can adapt and thrive is consistent with Rail Transportation Policy (“RTP”), which states in 49 U.S.C. § 10101 (3) that one goal of the Board is to “promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board.”

The good news is short lines are adaptable. For example, it is widely known in the railroad community that when freight rail services are down, car storage demand is often up, or vice versa. At the end of the day, Class III Freight Carriers must find ways to cover their operating costs during periods when there isn’t sufficient freight, alone, to pay for all of the facilities, maintenance, insurance, and other costs they have to incur in order to offer freight service and fulfill their common carrier obligations. And one thing is certain: allowing local municipalities to regulate Class III Freight Carriers in a patchwork manner by artificially bifurcating freight and passenger operations, particularly when such operations are integrally related (and use the same tracks, equipment, and personnel) would increase the cost and

⁵³ See also Trinidad, AB-573X, et al., slip op. at 10 (stating “[i]n determining whether there are sufficient traffic prospects to enable the [carrier] to operate the line . . . , we consider all potential income resulting from the operation of the line, . . . includ[ing] income from passenger operations.... This statement reflects an understanding by the Board that to ensure rail service remains financially, freight rail need not provide all the income that a railroad would need to cover the cost of owning, maintaining, and operating the line....”).

⁵⁴ See also American Orient Express Railway Company LL – Petition for Declaratory Order, FD 34502 (STB served December 27, 2005) (the STB held that AOERC was a rail carrier subject to the STB’s jurisdiction as it held itself out to the general public as engaged in the business of transporting persons or property from place to place in interstate movements for compensation.).

complexities of continued railroad operation and could force many small local railroads, which are often teetering on the brink of insolvency, to close, cutting their communities off from freight rail service.

Such a situation would go against RTP, which aims to promote safe and efficient rail transportation while allowing carriers to earn adequate revenue. Requiring small Class III Freight Carriers to try to abide by two conflicting sets of regulations as to their integrated operations that use the same tracks, equipment, and personnel would create such operational inefficiencies and financial burdens that it would likely drive these carriers—which are often the only freight rail links their communities have—out of business, negatively impacting interstate commerce. This result not only inherently goes against RTP as ensured by the Board, but also goes against the Board’s acknowledgements in Midwest Rail and Trinidad Railway that regulation promotes a system that allows rail carriers to earn adequate revenue, something that is especially important for small Class III Freight Carriers such as SNR and SMS.

Pilesgrove’s intentional interference with SMS’s rail operations (trying to regulate certain rail operations of a Board-jurisdictional carrier) not only jeopardizes SMS’s ability to provide excursion services but unreasonably burdens, interferes with, discriminates against, and jeopardizes SMS’s transportation services in general, including its freight services. SMS has actively doubled its freight operations and is working to establish transloading to benefit local industry. SMS’s expansion of its operations to include rail excursion services will only be beneficial in ensuring that SMS has sufficient revenue to support its continued freight operations and the expansion thereof over its Board-jurisdictional trackage.⁵⁵

⁵⁵ See Petition for Declaratory Order on p. 5 states “SMS Rail Lines, Inc. has **expanded** its use from a freight rail line to offering fun/entertainment rides intrastate with no direct connection to interstate commerce.”) (*Emphasis Supplied*).

In trying to apply local zoning ordinances and other regulations to SMS that the Board and its predecessor have found to be preempted as to railroad transportation broadly, the municipalities here seem to undermine SMS's continued financial viability and its ability to continue to provide, and to grow, its freight and other railroad transportation services.

If the Board decides to bifurcate commuter passenger and excursion operations from freight operations, and to expose Class III Freight Carriers—and the jurisdictional tracks, facilities, and equipment they use to provide freight service to their communities—to local ordinances and regulations, including zoning and planning requirements, simply because the Class III Freight Carrier provide both freight and excursion service, it would destroy the ability of smaller freight railroads to fulfill their common carrier obligations, the end result of which would be a cessation of freight operations by a number of smaller freight railroads, greatly to the detriment of interstate commerce.

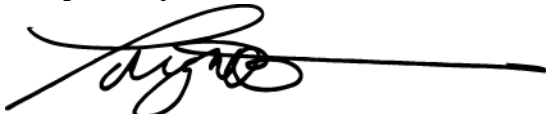
CONCLUSION

The financial viability of smaller Class III Freight Carriers hinges on the integrated nature of their railroad operations—freight, commuter passenger, excursion, and transloading services—all working in concert to enable them to fulfill their common carrier obligations to the communities they serve. These carriers often operate on tight margins and the ability to leverage shared infrastructure, equipment, and personnel across different service types is essential for their economic survival. The revenue generated from passenger and excursion services, for instance, directly supports the maintenance and upkeep of the very tracks and facilities used for essential freight transport. This integrated model is not merely a matter of convenience; it is often the lifeblood of these smaller carriers, allowing them to remain operational and continue providing vital freight services to often underserved areas.

The Municipalities' Petition, if granted, would have disastrous consequences, not only for these Class III Freight Carriers but for interstate commerce as a whole. Bifurcating freight and passenger operations, as the Municipalities propose, would impose an artificial and unsustainable division on a business model that relies on integration. This forced separation would introduce unnecessary complexities, increase operational costs, and ultimately undermine the financial stability of these carriers. The likely outcome would be a decline in freight service, jeopardizing the flow of goods and impacting the economic well-being of the communities that depend on these rail lines. The ripple effects of such a decision would be felt across the broader transportation network, hindering interstate commerce and undermining the very purpose of the Board's regulatory oversight.

The Board must reject the Municipalities' misguided attempt to dismantle this integrated model and instead affirm the importance of operational flexibility for smaller carriers. A decision in favor of the Municipalities would not only be detrimental to the carriers themselves but would also have far-reaching negative consequences for interstate commerce and the communities that rely on a robust and efficient rail transportation system. The Board must act decisively to protect these vital transportation links and ensure the continued flow of goods and services across the nation.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Torgny Nilsson', followed by a long horizontal line extending to the right.

Torgny Nilsson
Vice President & General Counsel for
Sierra Northern Railway, a wholly owned
subsidiary of Sierra Railroad Company