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May 4, 2023
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Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36695

**PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF –
RAIL SERVICE TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES**

PETITION OF KELLOGG COMPANY FOR LEAVE TO INTERVENE

On April 24, 2023, The Wenger Group, Inc., and Esbenshade, Inc. (“Petitioners”), filed a petition under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 (the “Petition”), requesting declaratory and injunctive relief to prevent the cessation of rail service to their facilities by Norfolk Southern Railway (“NSR”) on a rail line owned by the National Railroad Passenger Corporation (“Amtrak”) that runs between Rheems, Pa., and Lancaster, Pa. (the “Subject Line”). Kellogg Company (“Kellogg”) owns and operates a facility in Lancaster, Pennsylvania that is on the Subject Line and is also served by NSR (the “Lancaster Facility”). Kellogg is filing this Petition for Leave to Intervene for the purpose of becoming a party of record in this proceeding and requesting the same declaratory and injunctive relief as Petitioners. Kellogg hereby adopts and incorporates by reference from the Petition the requested declaratory, injunctive and other relief in Sections III and IV of the Petition.

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Kellogg has a significant interest in the outcome of this dispute. As explained below and in the accompanying Verified Statement of Sherry Brice, Vice President of Global Quality at Kellogg Company (“Brice V.S.”), the impending cessation of all freight railroad service from the Amtrak project described in the Petition will substantially harm Kellogg’s Lancaster Facility. Kellogg estimates that failure to receive service from NSR over this period will result in approximately {{ [REDACTED] }} over the expected six-week period, despite the fact that Kellogg has taken numerous steps since January 2023 to try to mitigate the harm. Brice V.S. at 2-3.

The timing of the planned outage will also cause irreparable harm to Kellogg as a business entity for the reasons generally explained by Ms. Brice in paragraphs 10-13 of her Verified Statement. Kellogg is prepared to submit additional detailed evidence of this irreparable harm under seal should the Board require it as part of this proceeding.

The Surface Transportation Board allows interested parties to intervene in a matter if doing so will not unduly broaden the issues or delay proceedings. *See* 49 C.F.R. § 1112.4 and 49 C.F.R. § 1113.7. The intervention of Kellogg in this proceeding would not cause either outcome. Kellogg has the exact same issue as the Petitioners: the impending cessation of freight rail service from NSR as a result of Amtrak’s decision to undertake a track project using equipment and methods will cause significant and irreparable harm to Kellogg at this location. Adding Kellogg as a party of record will therefore not broaden the relevant factual and legal issues in any way.

Nor would Kellogg’s intervention unduly delay the proceedings. The Board is still considering the Petitioners’ request for injunctive relief under 49 U.S.C. §§ 554(c) and 1231 and/or an emergency service order under 49 U.S.C. §11123, and the evidentiary support for Kellogg’s

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participation and its specific need for such immediate relief is included with this petition for leave to intervene.

Respectfully submitted,



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VERIFIED STATEMENT OF SHERRY BRICE

1. My name is Sherry Brice. I am the Vice President of Global Quality at Kellogg Company (Kellogg). I have held this position since 2019. Before that I was the head of Supply Chain for Kellogg Canada, where I was responsible for every aspect of the Kellogg Canada supply chain, including procurement of materials, transportation and logistics, and manufacturing operations. Prior to my position in Canada, I was the plant director a Kellogg plant located in Zanesville, Ohio.
2. I am intimately familiar with Kellogg's operations in Lancaster, Pennsylvania (Lancaster Facility), including the transportation and logistics of in-bound ingredients by rail and the facility's manufacturing capacity.
3. I am submitting this Verified Statement in support of the Kellogg Company's Petition to for Leave to Intervene in Docket No. FD 36695.
4. Kellogg manufactures and sells various food products around the world, including but not limited to cereal, crackers, waffles, potato crisps and cereal bars. In North America, Kellogg operates six facilities that make cereal for the United States and Canada.

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5. The Lancaster Facility is {{[REDACTED]}}
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]}}.

6. The Lancaster Facility receives {{[REDACTED]}} in-bound ingredients by rail each day from Norfolk Southern Railroad (NSR), including {{[REDACTED]}}
[REDACTED]}}. Many of those ingredients come from across the United States. NSR provides rail service to this facility two to three days a week, delivering enough in-bound ingredients to produce food approximately {{[REDACTED]}} per year. The volume requirements at the Lancaster Facility require approximately {{[REDACTED]}} railcars per week.

7. The Lancaster Facility typically does not receive inbound raw materials by truck. On the other hand, the outbound cereal products are distributed by {{[REDACTED]}} trucks each day.

8. The rail line that leads directly to the Lancaster Facility is owned by Amtrak. In January 2023, NSR informed the Plant Director of the Lancaster Facility, David Wright, that Amtrak would begin a multi-month project to replace the existing rail and that the section of the main line that services the Lancaster Facility would be completely unavailable to NSR from late July through early September. Between January and March of this year, Mr. Wright and other Kellogg employees engaged in various discussions with NSR and the Surface Transportation Board's Office of Public Assistance, Government Affairs, and Compliance to attempt to continue to receive freight rail service from NSR during the Amtrak project.

8. Concurrently with those discussions, the Lancaster Facility started taking several steps to try to mitigate the significant harm that stopping freight rail service for six weeks will cause to Kellogg's operations at this location. These steps have included but are not limited to, pre-

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building inventory of {{[REDACTED]} raw ingredients that will be stored {{[REDACTED]} at the Lancaster Facility during the Amtrak Project, pre-building finished product inventory, rescheduling planned maintenance downtime to occur during the outage, and arranging for additional in-bound ingredients transportation via trucks. It takes 3.5 trucks to haul the equivalent of one railcar. More broadly, I started working with Kellogg's other manufacturing facilities to provide additional production to meet the shortfall at the Lancaster Facility that will be caused by the Amtrak project.

9. However, taking these and other efforts will only mitigate the damages we will suffer at this location. {{[REDACTED]}}

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]}}

10. {{[REDACTED]}}

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED] } }.

11. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] } }.

12. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] } }.

13. { [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] } }.

VERIFICATION

I, Sherry Brice, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.



Sherry Brice
Vice President, Global Quality

May 4, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of May, 2023, a copy of the foregoing Petition for Leave to Intervene was served by email on all parties on the official Service List for Docket No. FD 36695.

/ss/ Thomas W. Wilcox