



CALIFORNIA SHORT LINE RAILROAD ASSOCIATION

309018

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

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

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

Dear Ms. Brown:

The California Short Line Railroad Association (“CSLRA”) respectfully submits these comments in response to the Decision served by the Surface Transportation Board (the “STB” or “Board”) on September 13, 2024, instituting a declaratory order proceeding in the above-captioned matter as 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

Two of CSLRA’s short line railroad members,² Sierra Northern Railway (“SNR”) and Mendocino Railway (“MRY”),³ have concurrently filed *Amicus Curiae* Briefs in support of SMS in the above-stated matter, which outline pivotal issues for the Board to consider as it evaluates the Township of Pilesgrove, N.J. (“Petitioner” or “Pilesgrove”) Petition for Declaratory Order. CSLRA submits its comment simultaneously and supports the positions of SNR and MRY as CSLRA knows that SNR, MRY, and other freight carriers have in the past supplemented their operational revenue with passenger excursion services, as SMS does in FD 36770. As such, CSLRA shares and supports the primary position of SNR and MRY that freight and excursion

¹ See Township of Pilesgrove, N.J. – Petition for Declaratory Order, FD 36770 (STB served Sept. 13, 2024)

² CSLRA’s members are comprised of short line railroads that play an important role in the overall transportation picture and economy in California. From San Diego to Shasta, from San Francisco Bay to the Sierra Foothills, short line railroads haul a wide variety of products: everything from imported goods in containers to agricultural products, lumber to petroleum products. The importance to the California economy of short line railroads cannot be understated; however, short lines face many obstacles in maintaining “adequate revenue” while sustaining safe and efficient operations.

³ SNR and MRY are wholly owned subsidiaries of Sierra Railroad Company.

operations should not be bifurcated as this would unnecessarily subject freight operations to local ordinances and regulations when Congress sought federal regulation over common carrier operations generally. Accordingly, CSLRA urges the Board to preempt the attempted interference with SMS's integrally related freight and excursion operations by the Petitioner.

As SNR and MRY state throughout their Briefs, railroads have in the past offered passenger services to help cover the high costs of operating a short line railroad and “keep the doors open.”⁴ This is consistent with the Surface Transportation Board's (the “Board” or “STB”) commitment to Rail Transportation Policy (“RTP”). Specifically, the Board promotes RTP by “promot[ing] a safe and efficient rail transportation system by allowing rail carriers to earn **adequate revenue**, as determined by the Board.”⁵ 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 rail services were being provided by the railroad).⁶ The Interstate Commerce Commission (“ICC”) Termination Act of 1996 (“ICCTA” or the “Act”), 49 U.S.C. § 10501 *et seq.* also vests this Board with exclusive and plenary jurisdiction over rail operations involved in interstate commerce and preempts state and local regulations and remedies implicated in said rail operations.⁷

As CSLRA's two members (SNR and MRY) have pointed out, the vitality of short line operations often depends on using the same infrastructure for both freight and excursion services, and these services are integrally related (same tracks, same equipment, and same personnel). Indeed, the success today, and the future success, of SNR, MRY, and other short line railroads, including CSLRA's other members, would not have been possible but for the ability of those carriers to use their rail lines and their rail carrier status to provide both freight and

⁴ For many short line carriers, revenue from excursion services is crucial to sustaining freight operations, which in turn supports interstate commerce. See CXS Transp., Inc. v. Georgia Public Serv. Com'n, 944 F. Supp. 1573 (N.D. Ga. 1996); see also Quincy College & Sem. Corp. v. Burlington Northern, Inc., 328 F. Supp. 808 (N.D. Ill. 1971) (establishing that the integrated nature of operations satisfies the nexus requirement needed for involvement in interstate commerce).

⁵ See 49 U.S.C. § 10101(3) (*Emphasis Supplied*).

⁶ See also Trinidad Railway, Inc. – Abandonment Exemption – In Las Animas County, CO, AB-573X, slip op. at 10 (STB served August 31, 2001) (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....”).

⁷ In addition to the broad application of the Act's preemption provisions, Congress also broadly defined the term “transportation” to include “a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use.” 49 U.S.C. § 10102(9). The broadness of §10501(b) and § 10102(9) is intentional and intended to prevent a patchwork of local regulations from unreasonably interfering with interstate commerce. See Tubbs – Petition for Declaratory Order FD 35792, slip op. at 5 (STB Served Oct. 31, 2014), aff'd 812 F.3d 1141 (8th Cir. 2015).

passenger/excursion service over their jurisdictional rail lines. For that reason, allowing local municipalities, like Piles Grove, to regulate tracks and facilities simply because they are also used for excursion services would have the effect of unreasonably burdening, interfering with, or discriminating against rail transportation.

Accordingly, CSLRA supports the contentions of SNR and MRY that the Board should find all transportation conducted by a rail carrier subject to the Board's jurisdiction to be preempted when the activities being conducted are integrally related to the rail carrier's provision of common carrier service, meaning the rail carrier utilizes the same tracks, stations, offices, maintenance shops, and employees to provide both freight and passenger commuter/excursion service. Indeed, longstanding precedent has held that the Board's preemption authority is broadly applicable with "respect to regulation of rail transportation." See 49 U.S.C. § 10501(b); see also N.Y. Susquehanna & W. Ry. v. Jackson, 500 F.3d 238, 252 (3d Cir. 2007) (laws are preempted if they have the effect of managing or governing rail transportation); City of Auburn v. U.S., 154 F.3d 1025, 1029-30 (9th Cir. 1998) (emphasizing Congress' intent to preempt state and local regulation of railroad transportation as broad and sweeping).

Furthermore, as SNR points out, all common carriers are subject to the Federal Railroad Administration's ("FRA") safety regulations. This again shows the intention of Congress for common carriers, including short lines, to be federally regulated and for local ordinances and regulations including zoning and/or planning requirements to not apply to common carriers, even if they offer both freight and excursion services. CSLRA supports SNR's and MRY's contention that if the Board were to bifurcate operations, then this would also circumvent nationally uniform safety standards as envisioned by the Federal Rail Safety Act of 1970 ("FRSA"), 49 U.S.C. § 20101, et. seq., which authorizes the Secretary of Transportation to regulate the safety of the rail lines that comprise the interstate rail system.⁸

Like SNR and MRY in their Briefs, CSLRA recognizes the purpose of the FRSA cannot be achieved without uniformity in law and regulation,⁹ and the applicability of state and local regulations would undermine FRSA and the duties delegated to the FRA to ensure safe rail operations throughout the nation. Thus, "to promote safety in every area of railroad operations,"¹⁰ the FRA safety standards should apply regardless of whether the carrier is conducting freight or passenger/excursion rail service.¹¹ Therefore, CSLRA agrees that Petitioner's request directly contradicts the longstanding precedent that federal law governs such a heavily regulated industry to ensure that there is not a patchwork of competing regulations. This is important for CSLRA's members for both safety and economic vitality.

⁸ This authority is delegated to the FRA by the Secretary.

⁹ 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.").

¹⁰ See 49 U.S.C. § 20106(1).

¹¹ See 49 C.F.R. 213 § 1.

CSLRA appreciates the opportunity to provide comments on this proceeding and urges the Board to evaluate the input from all stakeholders, including SNR and MRY. Federal preemption is imperative for the economic growth and efficiency of the interstate rail network. Subjecting some users to state and local regulations while holding others to federal standards would severely undermine rail operations across the nation as it would create a patchwork of conflicting standards, thus bogging down the Board and state courts. As such, CSLRA submits this letter in support of the comments made in SNR and MRY's *Amicus Curiae* Briefs and requests that this Board gives them the utmost consideration in deciding this proceeding. If you have any questions about this letter, please feel free to contact me via email at: ExecutiveDirector@CSLRA.org or via telephone at: (310) 863-4573.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Don G. Norton", with a stylized flourish at the end.

Donald (Don) G. Norton
Executive Director
California Short Line Railroad
Association

cc: Parties of Record