

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36695

ENTERED
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May 1, 2023
Part of
Public Record

**THE WENGER GROUP, INC., AND ESBENSHADE, INC.—PETITION FOR
DECLARATORY ORDER AND INJUNCTIVE RELIEF—RAIL SERVICE TO
PENNSYLVANIA FEED MILLS AND OTHER FACILITIES**

**NORFOLK SOUTHERN RAILWAY COMPANY'S REPLY TO PETITIONERS'
REQUESTS FOR INJUNCTIVE RELIEF AND DIRECTED SERVICE
ORDER**

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Dated: May 1, 2023

On April 24, 2023, The Wenger Group, Inc. and Esbensshade, Inc. (collectively, “Petitioners”) filed a petition for declaratory order and injunctive relief relating to the National Railroad Passenger Corporation (“Amtrak”)’s maintenance work that will prohibit Norfolk Southern Railway Company (“NSR”) from providing freight rail service to Petitioners and other customers for over a month.¹ The Petition also suggests that an alternative to injunctive relief would be an order preserving the status quo through a directed service order.

Pursuant to the Board’s April 26, 2023 order in this proceeding,² NSR submits these reply comments to Petitioners’ requests for injunctive relief and a directed service order.³ As explained below, NSR supports preserving the status quo so as to provide all parties time to explore alternative options that will enable NSR to provide service to its customers while accommodating Amtrak’s need to perform track maintenance. NSR also supports Board-sponsored mediation to help bring the parties together to craft a plan that can accommodate both Amtrak’s desire to improve the line along with the interests of the customers and the general public to minimize disruption to local freight service.

* * *

Petitioners are customers located on a rail line that is owned by Amtrak (the “Line”). The Line was originally operated by Consolidated Rail Corporation (“Conrail”) pursuant to an easement and operating agreement. Following the

¹ Petition for Declaratory Order and Injunctive Relief, *The Wenger Group, Inc., and Esbensshade, Inc.—Petition for Declaratory Order and Injunctive Relief—Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No. FD 36695 (filed Apr. 24, 2023) (“Petition”).

² Decision, *The Wenger Group, Inc., and Esbensshade, Inc.—Petition for Declaratory Order and Injunctive Relief—Rail Service to Pennsylvania Feed Mills and Other Facilities*, Docket No. FD 36695 (STB served Apr. 26, 2023) (“April 26 Decision”).

³ NSR will respond to Petitioners’ request for declaratory relief by May 15, 2023, as directed in the April 26 Decision.

Board's approval of the acquisition of control of Conrail,⁴ NSR took over freight operations on the Line. NSR's operations on the Line are currently governed by a freight operating agreement.⁵

NSR first learned of Amtrak's planned track work to replace ties, rail, and ballast in late 2022. NSR was surprised to learn that the work contemplated extended outages which would prevent NSR from serving its customers for over a month. Track work on rail lines is not unusual, and, in NSR's experience, does not require track outages for such an extended period of time. For example, when NSR conducts track replacements or maintenance of way, NSR generally conducts that work within certain windows to accommodate both the maintenance work and service to customers.

In January 2023, Amtrak provided NSR with firm dates for its planned outages, which NSR promptly communicated to its customers. Those dates have since changed, and the latest information provided by Amtrak to NSR indicates that the first of two planned outages will begin to impact customers on or around May 17, 2023,⁶ and that the first of these outages will last for over a month.

Since first learning of Amtrak's unusual plans for extended outages, NSR has communicated directly with Amtrak regarding alternative options that can accommodate the needs of the customers on the Line. In addition to communicating

⁴ *CSX Corp. & CSX Transp., Inc., Norfolk S. Corp. & Norfolk S. Ry.—Control & Operating Leases/Agreements—Conrail Inc. & Consol. Rail Corp.*, 3 S.T.B. 196 (1998).

⁵ NSR notes that it does not believe that the outage, as currently planned, is permissible under the agreement. NSR will elaborate in its May 15 response to the request for declaratory action.

⁶ Amtrak removed Track 1 of the Line from service and work commenced on the project on April 28, 2023. Though NSR will be permitted to service customers on the out-of-service track until May 17, the work is now well underway and the maintenance equipment is slowly approaching the customer locations.

directly with Amtrak, NSR also engaged with the Board's Office of Public Assistance, Governmental Affairs, and Compliance ("OPAGAC"). Unfortunately, these efforts have not been successful to date.

NSR recently learned that Amtrak's planned maintenance involves replacing wooden ties on the Line with concrete ties. Because NSR does not have recent experience with concrete ties, NSR has retained consultants with expertise in maintenance of way utilizing concrete ties to better understand the reasonable alternatives to Amtrak's plan that would also accommodate the needs of the customers on the Line. Due to the expedited briefing schedule in this proceeding, NSR is not in a position to provide recommendations from these experts with today's submission, but plans to do so in its May 15 submission. NSR hopes that the testimony of these experts will provide valuable information to the Board and the parties with regard to alternative options relevant to Petitioners' requests for relief.

NSR strongly supports working collaboratively to find a superior way to permit Amtrak to complete its track project while minimizing the harm to local freight customers. NSR is confident that time and open communications—facilitated by the Board—will allow the parties to strike a better balance moving forward. As such, NSR supports maintaining the status quo to allow the parties time to explore reasonable alternatives and to engage in Board-sponsored mediation.

Respectfully submitted,

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Dated: May 1, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May 2023, I caused a copy of the foregoing document to be served by U.S. Postal Service or more expeditious means upon the service list for Docket No. FD 36695.

/s/ Morgan B. Lindsay
Morgan B. Lindsay