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July 18, 2024

ENTERED
Office of Proceedings
July 18, 2024
Part of
Public Record

VIA US CERTIFIED MAIL & EMAIL MILSS@STB.GOV

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
U.S. Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: Petition for Declaratory Order
Docket No.: FD 36770
Township of Pilesgrove in re SMS Rail Service, Inc.

Dear Ms. Brown:

Kindly accept this correspondence in follow up to a Petition for a Declaratory Order filed by the Township of Pilesgrove on or about May 1, 2024. Subsequently, as your office may be aware, Mannington Township filed a Petition for Leave to Intervene in the proceeding against SMS Rail Service, Inc.

To date, we have neither received a briefing schedule nor any follow up correspondence regarding status. The issues raised in the Petition are outstanding.

Most recently, on July 16, 2024, SMS' legal counsel submitted to my office correspondence requesting that I withdraw complaints issued against SMS by Mannington Township. *See attached Exhibit "A"*. As my Township did not charge the violations, I cannot act to withdraw same. These violation citations have been filed in the municipal court against SMS by Mannington Township and will likely be held in abeyance pending a determination by the STB. As I am the municipal prosecutor for the Mid-Salem Municipal Court, I immediately notified the court clerk of a conflict and these matters were to be transferred to another municipal court.

It is pertinent to note that Salem County's counsel joined in on SMS' request to withdraw the violation complaints as filed by Mannington Township. *See attached Exhibit "B"*.

It is unclear what actions, if any, SMS counsel and/or County counsel have taken to contact the STB board to address the Petitions submitted by the Township of Pilesgrove or Mannington Township yet the issues that brought us before this board remain the same. At this time, kindly advise as to status regarding the matters filed with the STB and when we might expect to hear from the STB board in connection with the Petitions submitted.

Thank you for your attention and assistance in this regard.

Respectfully,

/s/ Ekaterine N. Eleftheriou

Ekaterine N. Eleftheriou
Attorney for the Township of Pilesgrove

Enclosures

cc: Frank Hoerst, Esq. (Attorney for SMS Rail Line, Inc.)
David Avedissian, Esq. (Attorney for SMS Rail Line, Inc.)
William L. Horner, Esq. (Solicitor, Mannington Township)
Karin Wood, Esq., (Salem County Counsel)

CERTIFICATION OF SERVICE

I certify that I have this day served copies of this document upon all parties of record (and as noted above) in this proceeding by U.S. Regular Mail and Email which is consistent with 49 CFR 1104.12(a).

/s/ Donna Manzo

Donna Manzo

July 18, 2024

Exhibit A

BERKOWITZ · KLEIN, LLP
ATTORNEYS AT LAW
433 WEST MARKET STREET, SUITE 100
WEST CHESTER, PENNSYLVANIA 19382

Robert A. Klein

Telephone 215-880-6913

rak@berklein.com

July 16, 2024

Via Email: kat@thevigilantelawfirm.com

Ekaterine N. Eleftheriou, Esquire
The Vigilante Law Firm
99 North Main Street
Mullica Hill, NJ 08062

Re: State of New Jersey v. SMS Rail Service, Inc. et al.
NJ Municipal Court, Complaint Nos. 1715-SC-007161, 007162, 007163,
007164, 007165, 007166, 007167, 007168, 007169

Dear Ms. Eleftheriou:

I represent SMS Rail Service, Inc. ("SMS"), a Class III rail carrier under federal law, which since 2022 has been the authorized operator of the rail line known as the Salem Branch in Salem and Gloucester Counties.

I am writing regarding the above-referenced complaints initiated by Mannington Township ("Mannington") against SMS, Woodstown Central Railroad (a fictitious name owned by SMS), and Salem County which you are prosecuting as Municipal Prosecutor, scheduled for appearance before the Mid-Salem County Municipal Court on July 25, 2024, at 9:30 a.m. SMS hereby requests that the complaints be withdrawn immediately for the reasons set forth below. Should you not be amenable to doing so, SMS will be forced to seek dismissal of the complaints and to take such further action as warranted.

The record of the Surface Transportation Board ("STB") indicates that on May 1, 2024, you, in your capacity as Solicitor of Pilesgrove Township ("Pilesgrove"), filed on behalf of Pilesgrove a Petition for Declaratory Relief before the STB ("Petition") at Docket No. FD 36770. The Petition requests that the STB issue a declaratory order regarding whether SMS's activities in relation to similar permitting, zoning, and site plan requirements to those raised by Mannington in the above complaints "fall under the umbrella of federal preemption." The Petition on behalf of Pilesgrove acknowledges the STB's ruling would likely determine subject matter jurisdiction relative to the issues in this case. As you know, Mannington has filed with the STB a Petition for Leave to Intervene in the proceedings regarding Pilesgrove's Petition, likewise raising such jurisdictional

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issues. Both Pilesgrove's and Mannington's Petitions are pending, which in and of itself shows that the prosecution of the complaints is premature at best.

Therefore, I request your response by close of business tomorrow, July 17, 2024, to this request to withdraw the instant complaints.

Sincerely,

/s/ Robert A. Klein
Robert A. Klein

cc (via email):

William L. Horner, Esq. (wlh@hornerlaw.net)
Karin M. Wood, Esq. (attorneywood@comcast.net)
Frank J. Hoerst, III, Esq. (fhoerstlaw@comcast.net)

Exhibit B



KARIN M. WOOD, ESQ.
County Counsel
E-Mail: Counsel@salemcountynj.gov

110 Fifth Street, Suite 400
Salem, NJ 08079
Telephone: (856) 935-7510
Fax: (856) 339-4190

July 17, 2024

Ekaterine N. Eleftheriou, Esq.
The Vigilante Law Firm
99 North Main Street
Mullica Hill, New Jersey 08602

RE: State v. Salem County
Mid-Salem Municipal Court
SC-007167, SC-007168, SC-007169

Dear Ms. Eleftheriou:

As you file will reflect, I represent the County of Salem in the above-referenced matters currently scheduled to be heard in Mid-Salem Municipal Court on Thursday, June 25, 2024.

It is my understanding that counsel for co-defendant, SMS Rail Service, Inc., through its attorney Robert A. Klein, Esquire, submitted a letter to you requesting that the matter be administratively dismissed at this time, based upon the Petition for Declaratory Relief you filed before the Surface Transportation Board (STB) on behalf of the Township of Pilesgrove. The Complainant in this matter, Mannington Township, has also filed a Petition to be joined in the STB matter, given the same set of circumstances exist in both municipalities.

As such, I am writing to join in Mr. Klein's request that the matter be dismissed without prejudice at this time, pending the outcome of the Surface Transportation Board matter.

Thank you for your consideration in this regard. Should you have any questions or wish to discuss this in more detail, please do not hesitate to contact me.

Very truly yours,

Karin M Wood
KARIN M. WOOD
Salem County Counsel

KMW/

cc: Robert A. Klein, Esq. (via email only)
Frank Hoerst, Esq. (via email only)
William Horner, Esq. (Via email only)