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ENTERED
Office of Proceedings
May 3, 2023
Part of
Public Record

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May 3, 2023

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: *Docket No. FD 36695, Petition for Declaratory Order and Injunctive Relief – Rail Service to Pennsylvania Feed Mills and Other Facilities*

Dear Ms. Brown:

Pursuant to the decision served in this proceeding on May 2, 2023 by the Director of the Office of Proceedings, Petitioners Wenger Group, Inc. and Esbenshade, Inc. provide this report on the status of the dispute following the conference between counsel for Amtrak and Petitioners referenced in Amtrak's reply to the Petition for Declaratory Order and Injunctive relief. The undersigned counsel is authorized to state that Amtrak and the Norfolk Southern Railway ("NSR") concur with this report.

Counsel for Petitioners and Amtrak conferred by videoconference on May 2 to discuss the dispute and the potential for the parties to reach a mutually agreeable commercial settlement. They also agreed to supply each other with certain additional factual information related to the dispute. Counsel for Amtrak provided certain information requested by counsel for Petitioners on May 2 and counsel for Petitioners anticipates providing certain information requested by counsel for Amtrak this week. These discussions are expected to continue.

Counsel for Petitioners also informed Amtrak's counsel that Petitioners would agree to NSR's suggestion in its reply to the Petition that the dispute could be the subject of Board-sponsored mediation, provided that freight service from NSR is permitted to continue to Petitioners' facilities during the mediation period. Counsel for Amtrak has represented that while Amtrak is not opposed to Board-sponsored mediation, Amtrak does not believe that it is necessary

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to order Board-sponsored mediation at this time given Amtrak's view of the progress of the discussions among the parties.

On May 3, 2023, Petitioners' counsel reached out to counsel for NSR to discuss the timing of its expert's report on reasonable alternatives to Amtrak's plan that would permit freight service to continue to Petitioners and other shippers on the line. Counsel for NSR confirmed that it intends to submit the report with NSR's filing on May 15, 2023. Also on May 3, 2023, counsel for Amtrak and counsel for NSR conferred by phone about the parties' mutual desire to reach an expeditious resolution of this matter.

Amtrak also suggested to Petitioners and NSR that the parties commit to provide another status report to the Board on Friday, May 5. Petitioners and NSR do not believe this is necessary since any party may submit another status report if it believes one is needed.

Please do not hesitate to contact the undersigned if you have any questions or desire additional information.

Sincerely,



Thomas W. Wilcox

*Attorney for the Wenger Group, Inc. and
Esbenshade, Inc.*

Cc: Counsel of Record for Amtrak
Counsel of Record for Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of May, 2023, a copy of the foregoing Letter was served by email on all parties on the official Service List for Docket No. 36695.

/ss/ Thomas W. Wilcox