

52163
EB

SERVICE DATE – SEPTEMBER 13, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36770

TOWNSHIP OF PILESGROVE, N.J.—PETITION FOR DECLARATORY ORDER

Digest:¹ This decision grants the Township of Mannington, N.J.’s petition to intervene, institutes a proceeding, and orders that the parties file a proposed procedural schedule to develop the record before the Board.

Decided: September 13, 2024

On May 1, 2024, the Township of Pilesgrove, N.J. (Pilesgrove), filed a petition for a declaratory order asking the Board to determine 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). The petition was accompanied by a certificate of service stating that attorneys for SMS had been served with a copy of the petition. No reply has been filed with the Board on behalf of SMS, and the deadline for such a reply under 49 C.F.R. § 1104.13 has passed.

On June 10, 2024, the Township of Mannington, N.J. (Mannington), filed a petition for leave to intervene, asserting that it has a legitimate interest in the proceeding because SMS’s rail line also extends through Mannington, and Mannington has similarly attempted to enforce its municipal land regulations on SMS and its apparent operational affiliate Woodstown Central Railroad (WCR). Mannington served its petition on SMS and WCR, as well as their counsel. Neither SMS nor WCR has replied, and the deadline for doing so under 49 C.F.R. § 1104.13 has passed.

On July 18, 2024, Pilesgrove filed a letter requesting an update on the status of its petition and enclosing a letter it had received from an attorney on behalf of SMS. The letter from SMS’s counsel requested that Pilesgrove withdraw complaints in certain enforcement cases brought by Pilesgrove and Mannington in the Mid-Salem County (N.J.) Municipal Court that are related to the issues sought to be determined by a declaratory order in this case. Based on this letter, it appears that SMS is represented by counsel other than the attorneys served with Mannington’s and Pilesgrove’s petitions.

Service on SMS by Pilesgrove. Although the certificate of service accompanying Pilesgrove’s petition states that it was served on counsel for SMS, it does not appear that either

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

of the attorneys identified by Pilesgrove has represented SMS before the Board,² nor is there any indication in the petition or its attachments that they represent SMS in this proceeding. And although Mannington did serve its petition to intervene on corporate officers of SMS, its submission did not include Pilesgrove's petition for declaratory order. While it appears that SMS has some knowledge of this proceeding, to remove any doubt about whether it has properly been served the pending petition, Pilesgrove will be directed to serve a copy of its petition for declaratory order and this decision on both a corporate officer of SMS at SMS's home office or principal place of business and the attorney who wrote to Pilesgrove on SMS's behalf on July 16, 2024, by September 18, 2024, and contemporaneously certify to the Board that it has done so.

Intervention. Mannington satisfies the standard for intervention. Its participation will not disrupt the filing schedule and will not unduly broaden the issues raised in this proceeding. See 49 C.F.R. § 1112.4. Mannington, like Pilesgrove, is a municipal corporation in which SMS operates its passenger excursion rail operations through WCR. Further, Mannington's petition raises the same legal issues as those presented by Pilesgrove's petition for declaratory order. Mannington's unopposed petition to intervene therefore will be granted.

Institution of Declaratory Order. The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. The petition raises questions that should be addressed by SMS to facilitate development of a more complete record. To date, SMS has not participated in this proceeding, and the apparent controversy surrounding the scope of preemption over activities performed by SMS in both Pilesgrove and Mannington has implications for how the townships can regulate those activities.

Accordingly, a declaratory order proceeding will be instituted. Pilesgrove and Mannington are directed to confer with the SMS counsel who sent the July 16, 2024 letter and jointly submit, by October 8, 2024, a proposed procedural schedule to govern the proceeding. Should the current parties and SMS fail to agree on a procedural schedule, each shall file its own proposed schedule by that same date.

It is ordered:

1. Pilesgrove is directed to serve a copy of its petition for declaratory order and this decision on a corporate officer of SMS at SMS' home office or principal place of business and on the attorney representing SMS in the July 16, 2024 letter by September 18, 2024, and contemporaneously certify to the Board that it has done so.
2. Mannington's request to intervene is granted.

² The attachments to the petition indicate that the attorneys who were served represented SMS in certain proceedings before Pilesgrove. However, SMS was represented by different counsel in the Board proceeding in which it received operating authority over the line at issue in this proceeding. See Verified Notice of Exemption, June 10, 2022, SMS Rail Serv.—Change in Operator Exemption Including Acquis. by Lease—Salem Branch Line in Salem & Gloucester Cntys., N.J., FD 36529.

3. A declaratory order proceeding is instituted.

4. Pilesgrove and Mannington are directed to confer with the SMS counsel who sent the July 16, 2024 letter and jointly submit, by October 8, 2024, a proposed procedural schedule to govern this proceeding. Should the current parties and SMS fail to agree on a procedural schedule, each shall file its own proposed schedule by that date.

5. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.