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April 9, 2012

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April 9, 2012
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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

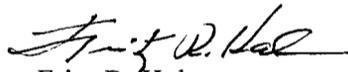
re: STB Docket No. AB-1-95 (Sub-No.1), Paulsboro Refining
Company LLC--Adverse Abandonment--
SMS Rail Service, Inc. in Gloucester County, NJ

Dear Ms. Brown:

Attached is the Petition and Response of SMS Rail Service, Inc. to Reply of Paulsboro Refining Company LLC to Motion for Protective Order.

If you have any questions concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

cc: Eric M. Hocky, Esq.

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1095 (Sub-No. 1)

PAULSBORO REFINING COMPANY LLC
-- ADVERSE ABANDONMENT --
SMS RAIL SERVICE, INC., IN GLOUCESTER COUNTY, NJ

PETITION AND RESPONSE OF SMS RAL SERVICE, INC.,
TO REPLY OF PAULSBORO REFINING COMPANY LLC
TO MOTION FOR PROTECTIVE ORDER

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Attorney for

SMS RAIL SERVICE, INC.

Dated: April 9, 2012

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1095 (Sub-No. 1)

PAULSBORO REFINING COMPANY LLC
-- ADVERSE ABANDONMENT --
SMS RAIL SERVICE, INC., IN GLOUCESTER COUNTY, NJ

PETITION AND RESPONSE OF SMS RAL SERVICE, INC.,
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TO MOTION FOR PROTECTIVE ORDER

SMS Rail Service, Inc. ("SMS"), pursuant to 49 C.F.R. §1117.1, petitions for leave to file a brief response to the April 5, 2012, Reply of Paulsboro Refining Company LLC ("PRC") to SMS' Motion for Protective Order, and as grounds therefor states, as follows

1. SMS is mindful that the Board's rules of practice, 49 C.F.R. §1104.13(c), do not permit the filing of a reply to a reply. *See* STB Finance Docket No. 34425, *City of Lincoln--Petition for Declaratory Order*, served August 12, 2004; Docket No. 41192, *The TJX Companies, Inc.--Petition for Declaratory Order--Certain Rates and Practices of Sweeney Transportation, Inc., and Knickerbocker East-West, Inc.*, served January 6, 1998. The Board, however, in the interest of compiling a complete and accurate record will accept and consider a response to a reply. *See* STB Finance Docket No. 34483, *SMS Rail Service, Inc.--Petition for Declaratory Order*, served January 24, 2005; STB Docket No. AB-33 (Sub-No. 132X), *Union Pacific Railroad Company--Abandonment Exemption-- in Rio Grande and Mineral Counties, CO*, served June 22, 2004; STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation Inc. Norfolk Southern Corporation*

*and Norfolk Southern Railway Company--Control and Operating Lease/Agreements--
Conrail Inc and Consolidated Rail Corporation, served May 20 1999*

2. PRC correctly notes, at page 1 of its Reply, that the proposed Protective Order was modeled after a Protective Order which the Board had issued in a rate proceeding, STB Docket NOR 42132, *Canexus Chemicals Canada, L.P.v. BNSF Railway Company*, served December 29, 2011. The very Protective Order, however, was promulgated most recently in Docket No. NOR 42133, *Sierra Railroad Company and Sierra Northern Railway v. Sacramento Valley Railroad Company, LLC, McClellan Business Park, LLC, and County of Sacramento*, served March 9, 2012, a proceeding having nothing whatever to do with rates.

3. PRC's Reply advances certain observations and recommendations which are unobjectionable. Others, however, are highly offensive and wholly inappropriate. PRC's obvious objective in seeking the requested modifications of the proposed Protective Order is to allow in-house personnel of PRC, rather than its outside counsel or consultants, to have access to the HIGHLY CONFIDENTIAL information and documents of SMS, revisions which would undermine the very purpose of the proposed Protective Order.

4. On page 2 of its Reply, PRC offers the following language to replace that of Section 7 of the proposed Protective Order:

To the extent that documents reflecting CONFIDENTIAL or HIGHLY CONFIDENTIAL material are produced by a party in this proceeding, and are held and/or used by the receiving person in compliance with the requirements of this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceeding and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

None of the corresponding paragraphs in the very Board decisions cited by PRC in support of it recommended revision Section 7 of the proposed Protective Order includes HIGHLY CONFIDENTIAL material. Section 14 of the Protective Order in STB Docket No. AB-400 (Sub-No. 5), *Palmer Ranch Holdings, Ltd., Palmer Ranch Holdings, Inc., Wynnstay Hunt, Inc. and Cheshire Hunt, Inc.--Adverse Abandonment--Seminole Gulf Railway, L.P., in Sarasota County, Fla.*, served January 9 2012 ("*Palmer Ranch*") and Section 13 of the Protective Order in Docket No. AB-1071, *Stewartstown Railroad Company--Adverse Abandonment--in York County, PA*, served June 30, 2011, ("*Stewartstown*") are identically worded, as follows:

To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with the terms of this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §11904 or of any other relevant provision of the ICC Termination Act of 1995.

See, also, Section 14 of the Protective Order in STB Docket No. AB-1043 (Sub-No. 1), *Montreal, Maine & Atlantic Railway, Ltd--Discontinuance of Service and Abandonment--in Aroostook and Penobscot Counties, ME*, served March 4, 2010 ("*MMA*"); Section 14 of the Protective Order in STB Docket No. AB-398 (Sub-No. 7X), *San Joaquin Valley Railroad Company--Abandonment Exemption--in Tulare County, CA*, served August 14, 2008; Section 17 of the Protective Order in STB Docket No. AB 515 (Sub-No. 2), *Central Oregon & Pacific Railroad, Inc.--Abandonment and Discontinuance of Service--in Coos, Douglas, and Lane Counties, OR*, served July 15, 2008. In none is HIGHLY

CONFIDENTIAL material included with CONFIDENTIAL material, as PRC seeks to effect by its recommended revision of Section 7 of the proposed Protective Order.

5. A second effort by PRC to modify the proposed Protective Order to afford the in-house personnel of PRC, as distinguished from its outside counsel or consultants, access to the HIGHLY CONFIDENTIAL information and documents of SMS is how it recommends that Section 10 be revised. Section 10 of the proposed Protective Order currently reads, as follows;

Each party has a right to view its own data, information, and documentation (i.e., information originally generated or compiled by or for that party), even if that data, information, and documentation has been designated as "HIGHLY CONFIDENTIAL" by a producing party, without securing the prior permission from the producing party, If a party (the "filing party") files and serves upon the other party (the "reviewing party") a pleading or evidence containing "HIGHLY CONFIDENTIAL" material of the filing party, the filling party shall also contemporaneously provide to outside counsel for the reviewing party a list of the "HGHL Y CONFIDENTIAL" information of the filing party contained in the pleading that must be redacted from the "HIGHLY CONFIDENTIAL" version prior to review by the in-house personnel of the reviewing party.

At page 2 of its Reply, PRC urges, "Section 10 should be modified to ensure that PRC (and not just its outside counsel or consultant) should be able to review information produced by SMS that relates to services (including without limitation common carrier, switching, maintenance) provided by SMS for PRC at Paulson under their Rail Line Service Agreement, as amended, even if such information might be HIGHLY CONFIDENTIAL as to other parties, participants or the general public." In furtherance of its objective, PRC requests that Section 10 of the proposed Protective Order should be amended to read, as follows:

Each party has a right to view its own data, information, and documentation (i.e., information originally generated or compiled by or for that party), as well as data, information and documentation of

another party related to services provided by SMS to PRC at or related to the Paulsboro facility even if that data, information, and documentation has been designated as "HIGHLY CONFIDENTIAL" by a producing party, without securing prior permission from the producing party. If a party (the "filing party") files and serves upon the other party (the "reviewing party") a pleading or evidence containing "HIGHLY CONFIDENTIAL" material of the filing party, the filing party shall also contemporaneously provide to outside counsel for the reviewing party a list of the "HIGHLY CONFIDENTIAL" information of the filing party contained in the pleading that must be redacted from the "HIGHLY CONFIDENTIAL" version prior to review by the in-house personnel of the reviewing party.

PRC cites no authority for such complete distortion of the proposed Protective Order. In fact, the Protective Orders of the Board's decisions upon which PRC primarily relies expressly prohibit the disclosure of HIGHLY CONFIDENTIAL information and documents to the in-house personnel of the opposing party. Section 5 of the Protective Order of *Palmer Ranch*, Section 5 of the Protective Order of *Stewartstown* and Section 5 of the Protective Order of *MMA* are identically worded, as follows;

Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings or to any other person or entity except to outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth in Exhibit B to this Protective Order.

See, also, Section 5 of the Protective Order in STB Docket No. AB 398 (Sub-No. 7X), *San Joaquin Valley Railroad Company--Abandonment Exemption--in Tulare County, CA*, served August 14, 2008, and Section 8 of the Protective Order in STB Docket No. AB-515 (Sub-No. 2), *Central Oregon & Pacific Railroad, Inc.--Abandonment and Discontinuance of Service--in Coos, Douglas, and Lane Counties, OR*, served July 15,

2008. In none are HIGHLY CONFIDENTIAL information or documents allowed to be reviewed by the in-house personnel of the recipient party; only its outside attorneys or consultants may have access to the other party's HIGHLY CONFIDENTIAL information or documents.

6. At page 2 of its Reply, PRC contends that it is entitled to receive the HIGHLY CONFIDENTIAL information and documents of SMS because the Rail Service Agreement of August 31, 2000, between SMS and Valero Refining Company -- New Jersey allows PRC, as the successor company, to audit SMS' information "that relates to services (including without limitation common carrier, switching, maintenance) provided by SMS for PRC at Paulsboro". That is a self-serving misrepresentation of what the Agreement in fact provided. The only audit which PRC was authorized to perform by the Agreement was limited to the "operation and servicing of the Rail Line", defined in the Agreement as the approximately 5.8 miles of track within the refinery. In any event, whatever records of SMS that PRC might have been able to audit pursuant to the Agreement by its own contention are no longer available to PRC. PRC's claimed right to receive HIGHLY CONFIDENTIAL and CONFIDENTIAL information and documents from SMS pursuant to the Agreement no longer exists, because according to PRC its e-mail of September 22, 2011, and letter of October 27, 2011, terminated the Agreement as of December 21, 2011, more that three months ago.

WHEREFORE, SMS Rail Service , Inc., respectfully asks that Paulson Refining Company LLC's requested modifications of Sections 7 and 10 of the proposed Protective Order be denied.

Respectfully submitted,

SMS RAIL SERVICE, INC.

By its attorney:



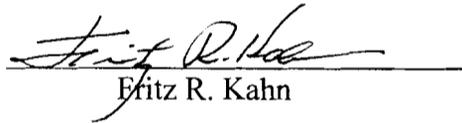
Fritz R. Kahn
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Tel.: (202) 263-4152

Dated: April 9, 2012

CERTIFICATE OF SERVICE

I certify that I this day served a copy of the foregoing Reply on Paulsboro Refining Company LLC by e-mailing a copy to its attorney, Eric M. Hocky, Esq., at ehocky@thorpreed.com. An additional copy was mailed to him by prepaid first-class mail.

Dated at Washington, DC, this 9th day of April, 2012.



Fritz R. Kahn