



FILED

MAR 26 2012

**SURFACE
TRANSPORTATION BOARD**

Eric M. Hocky
Direct Dial 215 640 8523
Email ehocky@thorpreed.com

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MANAGEMENT
STB

ATTORNEYS AT LAW SINCE 1895

VIA OVERNIGHT DELIVERY

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

March 23, 2012

ENTERED
Office of Proceedings

MAR 26 2012

Part of
Public Record

Re: STB Docket No. AB-1095 (Sub-No. 1)
Paulsboro Refining Company LLC
- Adverse Abandonment -
SMS Rail Service, Inc. in Gloucester County, NJ
Petition of Paulsboro Refining Company LLC for Waivers and Exemptions

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Petition for Waivers and Exemptions being filed on behalf of Paulsboro Refining Company LLC. Also enclosed is a check in the amount of \$1800 representing the filing fee.

Please time stamp the extra copy of the Petition to indicate receipt, and return it to me in the stamped, self-addressed envelope provided for your convenience.

Please let me know if there are any questions regarding this filing.

Respectfully,

Eric M. Hocky

*Counsel for Paulsboro Refining
Company LLC*

FEE RECEIVED

MAR 26 2012

**SURFACE
TRANSPORTATION BOARD**

Pittsburgh

Philadelphia

Wheeling

Wilmington

Princeton

EMH/e
Enclosures

cc: All persons shown on the certificate of service

Thorpe Reed & Armstrong, LLP
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103-7041
215 640 8500
215 640 8501 Fax

Before the
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 OF PAULSBORO REFINING COMPANY LLC
FOR WAIVERS AND EXEMPTIONS**

Eric M. Hocky
Thorp Reed & Armstrong, LLP
One Commerce Square
2005 Market St., Suite 1000
Philadelphia, PA 19103
(215) 640-8500
(215) 640-8501 (fax)
ehocky@thorpreed.com

Dated: March 23, 2012

Attorneys for
Paulsboro Refining Company LLC

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SURFACE TRANSPORTATION BOARD Before the **SURFACE TRANSPORTATION BOARD**

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

PETITION OF PAULSBORO REFINING COMPANY LLC
FOR WAIVERS AND EXEMPTIONS

Paulsboro Refining Company LLC ("PRC") hereby petitions pursuant to 49 CFR 1152.1, *et seq.*, for waivers of certain of the Board's regulations governing abandonment and discontinuance of rail lines, and pursuant to 49 USC 10502(a) for exemptions from certain related provisions of Subtitle IV of Title 49. In support of these requests, PRC states as follows:

Background

PRC intends to file an adverse or third party abandonment application to enable SMS Rail Service, Inc. ("SMS") to abandon the approximately 5.8 miles of railroad tracks (the "Line") currently operated by SMS within the 970-acre Paulsboro, New Jersey refinery (the "Refinery").¹ A map of the railroad tracks is attached hereto as Exhibit A.

SMS has been operating the railroad tracks pursuant to a contract between SMS and Valero (the then-owner of the Refinery) dated August 31, 2000, as amended (the "Operating

¹ PRC previously filed a petition for exemption for adverse discontinuance which was dismissed by the Board without prejudice. *SMS Rail Service, Inc.—Adverse Discontinuance of Service Exemption—Gloucester County, NJ*, STB Docket No. AB 1095X (served March 2, 2012). The March 2 decision indicated that PRC should seek abandonment and not discontinuance authority. *Id.*, at 4, n.9. On the other hand, the Board's decision in *Cerro Gordo County, Iowa – Adverse Discontinuance – Iowa Traction Railroad Company ("Cerro Gordo")*, STB Docket No. AB 1063 (served March 16, 2011), suggests that discontinuance would be the appropriate relief where as in this matter the tracks are owned by a non-carrier. PRC would seek the same waivers and exemptions regardless of which relief the Board determines is appropriate.

Before the
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**

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FOR WAIVERS AND EXEMPTIONS**

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Agreement”). PRC is the current owner of the Refinery and the Line.² Under the Operating Agreement, SMS provided both common carrier services (interchanging traffic with the connecting Class I railroads Norfolk Southern Railway Company (“NS”) and CSX Transportation, Inc. (“CSXT”), or their agent Conrail), and plant switching services. (Currently, SMS serves only PRC and to a minor extent, ExxonMobil.³) After PBF acquired PRC and the Refinery in December 2010, PRC reevaluated its rail service needs at the Refinery, and determined that it no longer needed SMS to provide common carrier service, and that it preferred to do its own intra-plant switching through the services of a private non-carrier switching contractor (as it does at other refinery locations). Accordingly, PRC gave SMS a notice of termination as permitted under the Operating Agreement.

PRC or its contractor can continue to deliver / pick up interline traffic with its connecting carriers without operating on any lines of railroad or obtaining any operating rights from the Board.⁴ Thus, traffic to and from the Line and the Refinery can continue to flow uninterrupted as it always has, assuming SMS yields up the tracks in an orderly transition. Since SMS’s common carrier services are no longer required, there should be no barrier to allowing SMS to abandon its service at the Refinery, and to vacate the property.

² At the time SMS was authorized to operate the tracks as a common carrier, the tracks were owned by Valero Refining Company – New Jersey (“Valero”). *See SMS Rail Service, Inc. – Acquisition and Operation Exemption – Valero Refining Company-New Jersey*, STB Finance Docket No. 33927 (served September 22, 2000). On December 13, 2010, Valero changed its name to Paulsboro Refining Company LLC (“PRC”). On December 17, 2010, PBF Holding Company LLC (“PBF”) acquired all of the ownership interests of PRC.

³ PRC currently ships or receives approximately 5900 - 6000 car loads of freight per year, and ExxonMobil ships or receives less than ten car loads of freight per year.

⁴ The only other customer served from tracks within the Refinery, Exxon Mobil, can also be served by PRC’s contract switching operator, and it has indicated that it is satisfied that it no longer will need SMS’s common carrier services.

Despite receiving the notice of termination, SMS has failed and refused to file for authority, or an exemption, to abandon. Accordingly, PRC intends to file an application seeking to obtain such authority adversely. PRC seeks waivers and exemptions from various regulatory and statutory requirements that would otherwise apply to an abandonment application and proceeding.

Discussion

Pursuant to 49 U.S.C. §10903, a rail carrier cannot cease operating unless it receives authority from the Board to discontinue or abandon its operation. Persons other than rail carriers who have a proper interest in the matter may file an application for adverse abandonment or discontinuance. *Thomas v. Texas Mexican Ry.*, 328 U.S. 134, 145 (1946); *Atchison, T. & S.F. Ry. Co. v. Railroad Commission*, 283 U.S. 380, 393-94, (1931). A line owner dissatisfied with the carrier operating over its line and seeking to replace the existing carrier with a substitute has such an interest. *See City of Rochelle, Illinois – Adverse Discontinuance – Rochelle Railroad Company*, Docket No. AB-549 (decision served May 27, 1999).

As the Board and its predecessor the Interstate Commerce Commission have consistently found, much of the information that the Board's regulations require in an abandonment proceeding is inapplicable or irrelevant to an application for adverse discontinuance or abandonment, especially where service to customers by a substitute operator is being proposed. Furthermore, PRC is not in possession of much of the information otherwise required by the regulations since it has not ever directly operated the tracks. The Board has routinely granted waiver and/or exemption of certain of the its regulations and requirements in adverse abandonment and discontinuance proceedings. *See City of Rochelle, Illinois – Adverse Discontinuance – Rochelle Railroad Company*, STB Docket No. AB-549 (decision served June

5, 1998); *Chelsea Property Owners – Abandonment Portion of Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub. No. 1094) (decision served July 19, 1989); *Grand Trunk Western Railroad Incorporated – Adverse Discontinuance of Trackage Rights Application – A line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH*, Docket No. AB-31 (Sub. No. 30) (decision served February 12, 1989); *City of Peoria and Village of Peoria Heights, IL – Adverse Discontinuance – Pioneer Industrial Railway Company*, Docket No. AB-878-0 (decision served September 10, 2004). Consistent with decisions in previous proceedings, PRC requests waivers from the requirements of the following regulations, and exemptions from related statutory requirements as noted:

System Diagram Map. PRC requests and exemption from the system diagram map (“SDM”) requirements of 49 USC 10903(c), and a waiver of 49 CFR §1152.22(a)(5) which requires inclusion of the rail line subject to abandonment request on the carrier’s SDM. Because PRC is not the carrier and does not maintain or have access to an SDM, these requirements are inapplicable.⁵ Exemption and waiver of the SDM requirements are customary in adverse proceedings. *Palmer Ranch Holdings, Ltd., et al – Adverse Abandonment – Seminole Gulf Railway, L.P. in Sarasota County (“Palmer Ranch”)*, STB Docket No. AB 400 (Sub-No. 5), served September 21, 2011, at 5; *Cerro Gordo, supra* at 6; *Stewartstown Railroad Company – Adverse Abandonment – in York County, PA (“Stewartstown Railroad”)*, STB Docket No. AB 1071 (served March 10, 2011), at 4.

Notice. PRC requests a waiver of the requirements of 49 CFR §1152.21 to allow for deviation from the prescribed form of notice as set forth in the regulations. The form of notice is

⁵ PRC will file with its application the detailed map of the line attached hereto as Exhibit A as required under 49 CFR §1152.22(a)(4).

inappropriate for adverse abandonment proceedings, particularly in light of the exemptions and waivers requested herein. PRC requests that the Board approve the form of notice attached hereto as Exhibit B (which includes both a “clean” version and one which has been marked to show the proposed changes from the form of notice set forth in the regulations), and which PRC believes are reasonable in the context of PRC’s proposed application. The Board has approved changes in the form of notice in other adverse abandonment cases. *Palmer Ranch, supra*, at 3; *Cerro Gordo, supra* at 3; *Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN (“NS- St. Joseph Co.”)*, STB Docket No. AB-290 (Sub-No. 286) (served October 26, 2006), at 3. PRC also requests that the service requirements of 49 USC §10903(a)(3) and 49 CFR 1152.20(a) be partially exempted and waived, respectively, as follows:

(a) Under 49 CFR 1152(a)(2)(i), copies of the notice are to be served on significant users of the line. The only current shippers serviced by the line are believed to PRC and ExxonMobil. PRC, of course, should not have to serve itself with a copy of the notice. It will serve ExxonMobil. Additionally, although not required, PRC will serve a copy of the notice on SMS, and on the connecting Class I carriers Conrail, NS and CSXT.

(b) Amtrak does not operate on the line, so service on Amtrak is not required under 49 CFR 1152.20(a)(2)(x).

(c) PRC believes that SMS’s employees are not represented by labor organizations, and accordingly, service on the headquarters of labor organizations should not be required under 49 CFR 1152.20(a)(2)(xii).

(d) PRC does not believe that there are any agency stations or terminals on the line to be abandoned, and accordingly posting should not be required under 49 USC §10903(a)(3). As noted above, SMS, all shippers and connecting carriers will receive copies of the notice.

(e) The statute and Board regulations (49 CFR §1152.20(a)(4)) provide that the notice be published at least once during each of 3 consecutive weeks. Since the application must certify that the requirements have been satisfied, this publication requirement will necessarily delay the filing of the application beyond the minimum 15 days PRC must already wait to file its application. Because all interested parties will already be receiving notice, PRC requests that the publication requirements be reduced to a single publication.

The changes in the notice requirements are similar to changes approved by the Board in other adverse abandonment cases. *See Palmer Ranch, supra*, at 3-5; *Cerro Gordo, supra* at 5; *Stewartstown Railroad, supra*, at 2-3.

Content of Application. PRC seeks a waiver from 49 CFR §1152.22(b) –(e) as PRC lacks sufficient information adequately to provide the information required by those sections. Section 1152.22(b) would require a detailed description of the present physical condition of the line, estimated deferred maintenance and rehabilitation costs. Under the Operating Agreement, SMS is required to maintain the tracks in “good order and condition.” While PRC can visually observe the condition of the tracks, it does not have a detailed knowledge of the present physical condition which is solely within SMS’s knowledge.⁶ The condition of the line is not the basis for PRC’s notice of termination of the operating agreement, and is not expected to be used to support the abandonment application. Accordingly, PRC should not be required to provide a detailed description of the physical condition of the line. *See Cerro Gordo, supra* at 6; *NS - St. Joseph Co., supra*, at 5. *Cf. Palmer Ranch, supra*, at 5 (requiring condition of the line where it is being used to support the application).

⁶ Under the Operating Agreement, SMS is required on termination to leave the tracks in same condition as required during the term of the agreement. PRC intends to hold SMS to its contractual commitment.

Section 1152.22(c) would require a detailed description of the service provided by the carrier, information which is held by the carrier alone. Accordingly, the Board should waive the requirement that requirement for the proposed adverse application, as it has done in other proceedings. *See Cerro Gordo, supra* at 6; *Stewartstown Railroad, supra*, at 4; *NS- St. Joseph Co., supra*, at 5.

Additionally, PRC requests a waiver of the regulations in Section 1152.22(d) requiring the railroad's revenue and cost data as it is not in the possession of this information. The Board has granted waivers of this requirement in other adverse abandonment proceedings. *Palmer Ranch, supra*, at 6; *Cerro Gordo, supra* at 6; *NS- St. Joseph Co., supra*, at 5.

PRC also seeks a waiver from the requirements of Section 1152.22(e) (and an exemption from 49 USC §10903(d)) which would require information not in PRC's possession. Additionally, because there will be no loss or disruption of rail service there is little likelihood of adverse effects on rural or community development. *Cf. East St. Louis Junction Railroad Company – Adverse Abandonment – In St. Clair County, IL (“East St. Louis”)*, STB Docket No. AB-838 (served June 30, 2003), at 6 (information is relevant where the abandonment could result in the loss of rail competition and disruption of service).

Federal Register Notice. PRC requests a waiver from 49 CFR §1152.22(i) which prescribes the wording for the draft Federal Register notice. PRC proposes to use the alternative language set forth in Exhibit C (which includes both a “clean” version and one which has been marked to show the proposed changes from the form of notice set forth in the regulations), and which PRC believes are reasonable in the context of PRC's proposed application. The proposed changes are consistent with changes approved in other adverse abandonment proceedings. *Palmer Ranch, supra*, at 7-8; *Stewartstown Railroad, supra*, at 4; *NS- St. Joseph Co., supra*, at 5.

Offers of Financial Assistance. PRC also requests waiver and/or exemption from the offer of financial assistance (“OFA”) requirements of 49 U.S.C. §10904 and the related regulations at 49 CFR §1152.27. The effect of granting an adverse abandonment is that the Board’s primary jurisdiction is withdrawn, thus permitting state, local and other federal law to apply where there is no overriding federal interest in interstate commerce. *NS - St. Joseph Co., supra*, at 6. As the Board has found in previous adverse abandonment proceedings, it would be inconsistent with the rationale underlying the grant of adverse abandonment authority for the Board to consider an OFA. *Palmer Ranch, supra*, at 6; *Cerro Gordo, supra* at 6-7; *Stewartstown Railroad, supra*, at 5.

Public Use and Trail Use. PRC requests an exemption from 49 USC §10905 and waivers under 49 CFR §1152.28 and §1152.29. The Board has in the past granted exemptions from the public use procedures on the same basis that it finds the OFA procedures inappropriate. *See The City of Chicago, Illinois – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, STB Docket No. AB-1036 (served July 10, 2009), at 7-8; *East St. Louis, supra* at 4. PRC acknowledges that often the Board defers a decision on whether to waive the trail use procedures. However, where, as here, the carrier is not the owner of the tracks or property and cannot agree to transfer the property, trail use (as well as public use) is inappropriate. This is particularly true in this instance where the tracks are located in the middle of an operating refinery, and where the tracks will continue to be used for rail service. PRC has no intention of transferring the tracks or property. Allowing public use or trail use conditions would merely delay PRC in transferring service over the tracks which it owns to a private contractor.⁷

⁷ Were the Board to determine that this proceeding is properly one for discontinuance, then the Board should find that public use and trail use conditions are not generally permitted in discontinuance proceedings. *See Norfolk Southern Railway Company – Discontinuance of*
{P0144338}

Environmental and Historic Regulations. In most abandonment proceedings, the applicant is required to prepare and submit an environmental and historic report pursuant to 49 CFR §1105.7, §1105.8, §1152.20(c) and §1152.22(f). However, in this instance, where there will be no transfer of the ownership of the tracks, where the operations at the Refinery will continue at the same level as currently provided by SMS (albeit by a private switching contractor), where the tracks will be left in place and will not be salvaged, and where there are no bridges or other structures that are a part of the Line, an environmental and historic report should not be required, and PRC seeks a waiver of the applicable requirements.

Under 49 CFR 1105.6(c)(2), no environmental documentation is normally required for an action such as the substitution of service providers proposed here that will not result in significant changes in carrier operations, salvage of the tracks or diversions of rail traffic to truck. *Salt Lake City Railroad Company, inc. – Adverse Abandonment – Line of Utah Transit Authority in Salt Lake City, UT*, STB Docket No. AB-520 (served August 26, 1999), at 3 (since rail service will continue, environmental documentation is not required). *See also City of Rochelle, supra*, at 2; *Indiana Business Railroad, Inc. – Adverse discontinuance of Rail Service – Portion of Norfolk Southern Railway Company’s Rockport Branch*, STB Docket No. AB-1044 (served November 30, 2009), at 4; *The Kansas City Southern Railway Company – Adverse Discontinuance Application – A Line of Arkansas and Missouri Railroad Company*, STB Docket No. AB-103 (Sub. No. 14) (decision served November 24, 1998) at p. 2, n.3. Additionally, since

Service Exemption – In St. Joseph and LaPorte Counties, IN, STB Docket No. AB-290 (Sub-No. 307X) (served June 18, 2008); *Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA*, STB Docket No. AB-721X (served November 16, 2007); *Columbus and Greenville Railway Company – Discontinuance of Service Exemption – In Greenwood, MS*, STB Docket No. AB-297 (Sub-No. 103X) (served July 2, 2007).

there will be no transfer of the tracks, or any salvage or affect on any structures, no historic report should be required. *See* 49 CFR §1105.8(b).

Exemption Criteria. None of the requirements from which PRC seeks exemptions are necessary to carry out the rail transportation policy of 49 USC 10101. The exemptions requested will provide PRC with a reasonable opportunity to make its case that there is no overriding present or future public need for the Line to remain part of the national rail system, will promote Federal transportation policy by eliminating unnecessary procedures, and thus will reduce Federal regulatory control over the Line in accordance with 49 USC §10101(2), and help to expedite regulatory decisions in accordance with 49 USC §10101(15). Other aspects of the rail transportation policy will not be adversely affected. Additionally, shippers do not need to be protected from an abuse of market power, since (1) PRC is the major shipper and the party one seeking relief, (2) the only other shipper does not oppose the change, and (3) both shippers will continue to receive rail service.

Handling of this Petition

PRC acknowledges that the Board will not generally reduce the time periods for responses. However, PRC requests that the Board expeditiously rule on this Petition after SMS (and any other interested party) has had its opportunity to respond within 20 days. Under the Operating Agreement, ¶10, upon termination, SMS was to promptly surrender the Line. SMS's clear intent in not cooperating with abandonment and transition as required under the Operating Agreement is to stretch these proceedings out as long as possible. As the Board has noted, carriers should not be permitted to use the Board's jurisdiction as a shield to protect them from the process of state law where there is no overriding Federal interest in interstate commerce. *Jacksonville Port Authority – Adverse Discontinuance – In Duval County, FL*, STB Docket No.

AB-469 (served July 17, 1996), at 5-6; *Modern Handcraft Inc. – Abandonment*, 363 ICC 969, 972 (1981).

Conclusion

For the foregoing reasons, PRC requests that the Board, grant the waivers and exemptions requested herein.

Respectfully submitted,



Eric M. Hocky
Thorp Reed & Armstrong, LLP
One Commerce Square
2005 Market St, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
(215) 640-8501 (fax)
ehocky@thorpreed.com

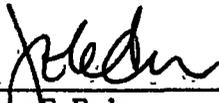
Dated: March 23, 2012

Attorneys for
Paulsboro Refining Company LLC

Verification

I hereby verify on behalf of Paulsboro Refining Company, LLC, under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on March 23, 2012.



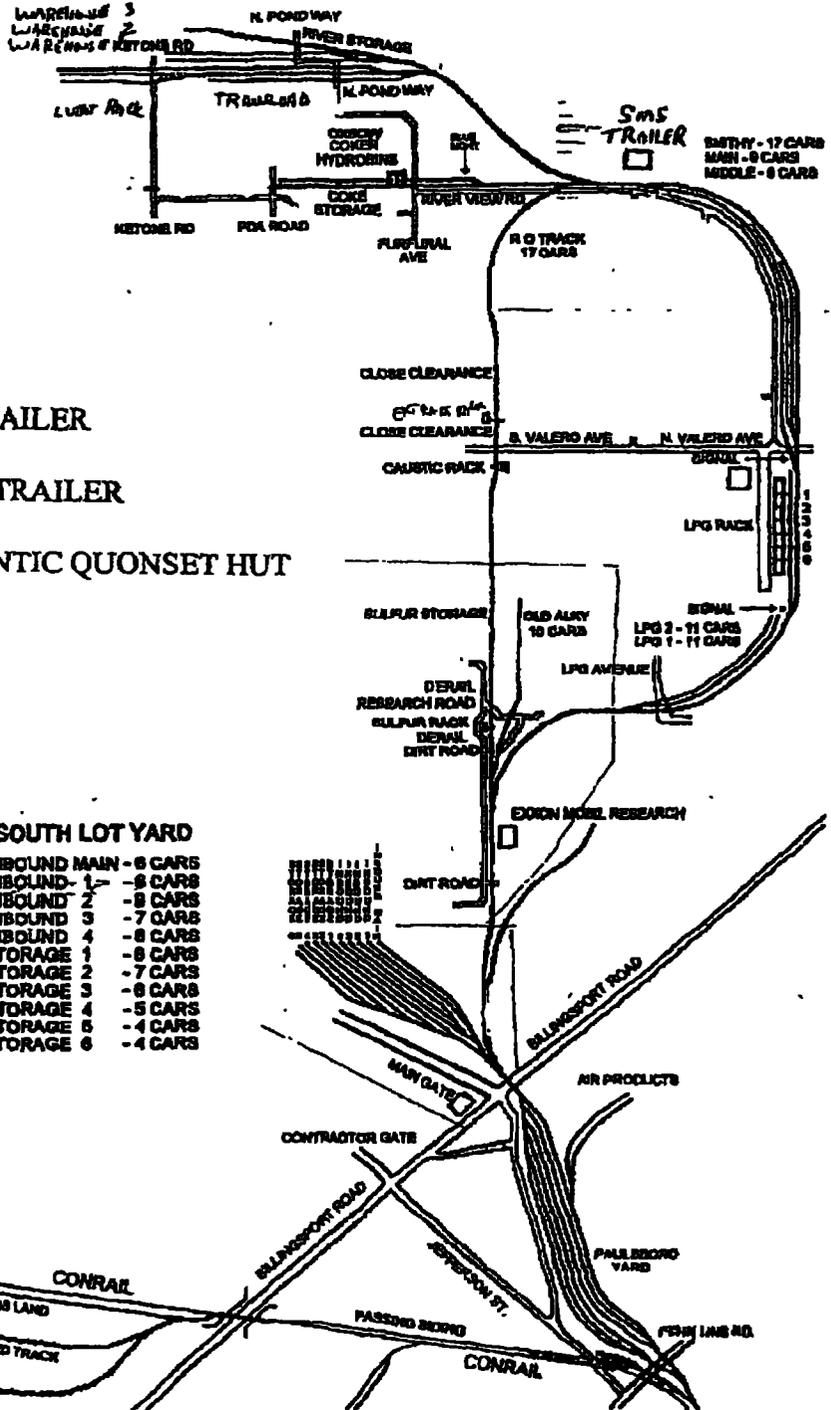
James E. Fedena
Senior Vice President

EXHIBIT A

MAP

MUSTER LOCATION MAP

**SMS RAIL LINES
PAULSBORO DIVISION
PAULSBORO, NJ**



- AREA 1 - SMS CREW TRAILER
- AREA 2 - LPG LOADER TRAILER
- AREA 3 - KENNY ATLANTIC QUONSET HUT
- AREA 4 - MAIN GATE

SOUTH LOT YARD

INBOUND MAIN	- 8 CARS
INBOUND 1	- 8 CARS
INBOUND 2	- 8 CARS
INBOUND 3	- 7 CARS
INBOUND 4	- 8 CARS
STORAGE 1	- 8 CARS
STORAGE 2	- 7 CARS
STORAGE 3	- 8 CARS
STORAGE 4	- 5 CARS
STORAGE 5	- 4 CARS
STORAGE 6	- 4 CARS

EXHIBIT B

DRAFT FORM OF NOTICE OF INTENT

STB No. AB 1095 (Sub-No. 2)

Notice of Intent To File Adverse Abandonment

Paulsboro Refining Company LLC (“Applicant”) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, Washington, DC 20423, an application seeking the adverse abandonment of the approximately 5.8 miles of railroad tracks (the “line”) currently operated by SMS Rail Service, Inc. (“SMS”) within the 970-acre Paulsboro, New Jersey refinery (the “Refinery”), which traverses through United States Postal Service ZIP Code 08066, in Gloucester County, New Jersey. There are no mileposts or stations associated with the Line. The reason for the proposed adverse abandonment is that Applicant, as the owner of the Refinery, has terminated SMS’s operating agreement in accordance with its terms. Applicant determined that it no longer needed SMS to provide common carrier service, and that it preferred to do its own intra-plant switching through the services of a private non-carrier switching contractor. SMS has refused to seek abandonment on its own. Applicant is seeking adverse abandonment authority so that it can proceed to evict SMS under New Jersey state law. Based on information in our possession, the line does not contain federally granted rights-of-way. Any documentation in the Applicant’s possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by Oregon Short Line Railroad Co.-- Abandonment--Goshen, 360 ICC 91 (1979). The application will include the Applicant's entire case for adverse abandonment.. Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the proposed adverse abandonment or protests to it. These filings are due 45 days from the date of filing of the application. Based on waivers and exemptions granted by the Surface Transportation Board, this proposed abandonment will not be subject to a request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) or a request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules). Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following:

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the line;
 - (ii) If protestant does not use the line, information concerning the group or public interest it represents; and
 - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].
- (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding recommended provisions for protection of the interests of employees.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests should indicate the proceeding designation STB No. AB 1095 (Sub-No. 2) and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Philadelphia, PA 19103. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

In this adverse abandonment, the line sought to be abandoned will not be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

Applicant shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

In this adverse abandonment, no environmental documentation will be required.

STB No. AB 1095 (Sub-No. 2)

Notice of Intent To ~~Abandon or To Discontinue Service~~ File Adverse Abandonment

~~(Name of Paulsboro Refining Company LLC ("Applicant"))~~ gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, Washington, DC 20423, an application for ~~permission for the seeking the adverse abandonment of (the discontinuance of service on), a line~~ approximately 5.8 miles of railroad known as _____ extending from railroad milepost near (station name) to tracks (the end of line or rail milepost) near (station name "line") currently operated by SMS Rail Service, Inc. ("SMS") within the 970-acre Paulsboro, New Jersey refinery (the "Refinery"), which traverses through United States Postal Service ZIP Codes (ZIP Codes), a distance of _____ miles Code 08066, in (Gloucester County(ies), State(s)). The line includes the stations of (list all stations on the line in order of milepost number, indicating milepost location). The reason(s) for the proposed abandonment (or discontinuance) is (are) _____ (explain briefly and clearly why the proposed action is being undertaken by the applicant), New Jersey. There are no mileposts or stations associated with the Line. The reason for the proposed adverse abandonment is that Applicant, as the owner of the Refinery, has terminated SMS's operating agreement in accordance with its terms. Applicant determined that it no longer needed SMS to provide common carrier service, and that it preferred to do its own intra-plant switching through the services of a private non-carrier switching contractor. SMS has refused to seek abandonment on its own. Applicant is seeking adverse abandonment authority so that it can proceed to evict SMS under New Jersey state law. Based on information in our possession, the line ~~(does)~~ (does not) contain federally granted rights-of-way. Any documentation in the ~~railroad's~~ Applicant's possession will be made available promptly to those requesting it. ~~This line of railroad has appeared on the system diagram map or included in the narrative in category 1 since (insert date).~~

The interest of railroad employees will be protected by ~~(specify the appropriate conditions)~~ Oregon Short Line Railroad Co.--Abandonment--Goshen, 360 ICC 91 (1979). The application will include the ~~applicant's~~ Applicant's entire case for adverse abandonment (or discontinuance) (ease in chief). Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the proposed adverse abandonment (or discontinuance) or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service Based on waivers and salvage of the line, the line may be suitable for other public use, including interim trail use. Any exemptions granted by the Surface Transportation Board, this proposed abandonment will not be subject to a request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any or a request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment or ~~discontinuance~~ but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. ~~Persons interested only in seeking public use or trail use conditions should also file comments.~~ Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition ~~(ease in chief)~~ including the following:

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the line;
 - (ii) If protestant does not use the line, information concerning the group or public interest it represents; and
 - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.
- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].
- (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

- ~~(i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;~~
- ~~(ii) Environmental impact;~~
- ~~(iii) Impact on rural and community development;~~
- ~~(iv) Recommended, recommended provisions for protection of the interests of employees;~~
- ~~(v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and~~
- ~~(vi) Prospective use of the right of way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.~~

~~A protest may demonstrate that: (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application; (3) the feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and (4) the feeder line application is pending before the Board.~~

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Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment ~~(or discontinuance)~~ should be prepared to participate actively either in an oral hearing or through the submission of their entire

opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, ~~including all requests for public use and trail use conditions,~~ should indicate the proceeding designation STB No. AB ~~1095~~ (Sub-No. ~~2~~) and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment ~~(or discontinuance)~~ proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant ~~(insert name, address, and phone number)~~. Applicant: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Philadelphia, PA 19103. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

~~The~~ In this adverse abandonment, the line sought to be abandoned ~~(or discontinued)~~ will not be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment ~~(or discontinuance)~~, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). ~~No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).~~ Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

~~A copy of the application will be available for public inspection on or after (insert date abandonment application is to be filed with Board) at each agency station or terminal on the line proposed to be abandoned or discontinued [if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded (insert name, address, location, and business hours)]. The carrier~~ Applicant shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

~~An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate. In this adverse abandonment, no environmental documentation will be required.~~

EXHIBIT C

DRAFT FEDERAL REGISTER NOTICE

STB No. AB-1095 (Sub-No.2)

Notice of Application for Adverse Abandonment

On (insert date application was filed with the Board), Paulsboro Refining Company LLC (“Applicant”) filed with the Surface Transportation Board, Washington, D.C. 20423, an application seeking the adverse abandonment of the approximately 5.8 miles of railroad tracks (the “line”) currently operated by SMS Rail Service, Inc. (“SMS”) within the 970-acre Paulsboro, New Jersey refinery (the “Refinery”), which traverses through United States Postal Service ZIP Code 08066, in Gloucester County, New Jersey.

The line does not contain federally granted rights-of-way. Any documentation in the Applicant’s possession will be made available promptly to those requesting it. The Applicant’s entire case for adverse abandonment was filed with the application.

The interest of railroad employees will be protected by Oregon Short Line Railroad Co.--Abandonment--Goshen, 360 ICC 91 (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests (including the protestant’s entire opposition case), within 45 days after the application is filed. Based on waivers and exemptions granted by the Surface Transportation Board, this proposed abandonment will not be subject to a request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board’s rules) or a request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board’s rules). Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding recommended provisions for protection of the interests of employees.

Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests should indicate the proceeding designation STB No. AB 1095 (Sub-No. 2) and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the Applicant: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Philadelphia, PA 19103. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each

document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

In this adverse abandonment, the line sought to be abandoned will not be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

Applicant shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

In this adverse abandonment, no environmental documentation will be required.

STB No. AB 1095 (Sub-No. 2)

Notice of Application to ~~Abandon or to Discontinue Service~~ for Adverse Abandonment

On (insert date application was filed with the Board) (~~name of applicant~~) Paulsboro Refining Company LLC ("Applicant") filed with the Surface Transportation Board, Washington, D.C. 20423, an application for ~~permission for the seeking the adverse~~ abandonment of ~~(the discontinuance of service on) a line~~ approximately 5.8 miles of railroad known as ~~_____ extending from railroad milepost near (station name) to tracks (the end of line or rail milepost) near (station name), a distance of _____ miles, in [County(ies), State(s)].~~ The line includes the stations of ~~(list all stations on the line in order of milepost number, indicating milepost location) and traverses through _____ (ZIP Codes) United States Postal Service ZIP Codes, ("line")~~ currently operated by SMS Rail Service, Inc. ("SMS") within the 970-acre Paulsboro, New Jersey refinery (the "Refinery"), which traverses through United States Postal Service ZIP Code 08066, in Gloucester County, New Jersey.

The line ~~(does)~~ (does not) contain federally granted rights-of-way. Any documentation in the railroad's ~~Applicant's~~ possession will be made available promptly to those requesting it. ~~The applicant's~~ The Applicant's entire case for adverse abandonment (~~or discontinuance~~) (~~ease in chief~~) was filed with the application.

~~This line of railroad has appeared on the applicant's system diagram map or has been included in its narrative in category 1 since (insert date).~~

The interest of railroad employees will be protected by ~~(specify the appropriate conditions)~~ Oregon Short Line Railroad Co.--Abandonment--Goshen, 360 [CC 9] (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment (~~or discontinuance~~) or protests (including the protestant's entire opposition case), within 45 days after the application is filed. ~~All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any~~ Based on waivers and exemptions granted by the Surface Transportation Board, this proposed abandonment will not be subject to a request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any or a request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must be filed within 45 days after the application is filed. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. ~~Persons interested only in seeking public use or trail use conditions should also file comments.~~ Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

~~(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);~~

~~(ii) Recommended a statement of position and evidence regarding recommended provisions for protection of the interests of employees;~~

~~(iii) A request for a public use condition under 49 U.S.C. 10905; and~~

~~(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and §1152.29.~~

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Parties seeking information concerning the filing of protests should refer to §1152.25.

~~Written comments and protests, including all requests for public use and trail use conditions, must should indicate the proceeding designation STB No. AB —1095 (Sub-No. —2) and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board (Board), Washington, DC 20423—0001, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). Applicant: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Philadelphia, PA 19103. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).~~

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~~The In this adverse abandonment, the line sought to be abandoned (or discontinued) will not be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).~~

~~Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.~~

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~~An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental~~

~~Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.~~

Applicant shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

In this adverse abandonment, no environmental documentation will be required.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following persons by overnight delivery or by U.S. first class mail, postage prepaid, as indicated:

via overnight delivery:

Jeffrey L. Sutch, President
SMS Rail Service, Inc.
510 Heron Drive, Suite 106
Bridgeport, NJ 08014

Fritz R. Kahn
Eighth Floor
1920 N Street, NW
Washington, DC 20036-1601

via U.S. first class mail, postage prepaid:

Jonathan Broder
Conrail
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

E.M. Fitzsimmons
Nathan Goldman
CSX Transportation, Inc.
Law Department
500 Water Street, J150
Jacksonville, FL 32202

James A. Hixon
William A. Galanko
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

Michael A. Carrocino
Facility Manager
ExxonMobil Research and Engineering Company
600 Billingsport Road
Paulsboro, NJ 08066



Eric M. Hocky

Dated: March 23, 2012