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October 10, 2014

VIA ELECTRONIC FILING

236803

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

ENTERED
Office of Proceedings
October 10, 2014
Part of
Public Record

Re: Docket No. AB 1095 (Sub-No. 1), Paulsboro Refining Company LLC --
Adverse Abandonment – SMS Rail Service, Inc. in Gloucester County, N.J.

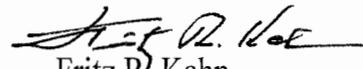
Dear Ms. Brown:

Enclosed for filing in the subject proceeding is the Reply of SMS Rail Service, Inc. to the letter filed by Paulsboro Refining Company LLC on September 22, 2014.

Copies of this letter and its enclosure this day have been served by email upon each of the parties of record.

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

Sincerely yours,


Fritz R. Kahn

Cc: Eric M. Hocky, Esq.
David L. Coleman, Esq.
Paul R. Hitchcock, Esq.
David C. Ziccardi, Esq.

SURFACE TRANSPORTATION BOARD

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

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

REPLY
OF
SMS RAIL SERVICE, INC.

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

Attorney for

SMS RAIL SERVICE, INC.

Dated: October 10, 2010

SURFACE TRANSPORTATION BOARD

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

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

REPLY
OF
SMS RAIL SERVICE, INC.

Protestant, SMS Rail Service, Inc. ("SMS"), pursuant to 49 C.F.R. § 1104.13, replies to the letter filed by Paulsboro Refining Company LLC ("PRC") on September 22, 2014, as follows:

Having found no ground for justifying the Board's adverse abandonment of SMS' operations as a rail carrier on the approximately eight miles of railroad lines within PRC's Paulsboro, NJ, refinery, PRC insinuates that SMS' presence poses a safety threat.

In support of its hypothesis, PRC attaches to its letter two Incident Reports which it received from SMS. The two reports were of minor derailments which occurred in September that PRC itself acknowledges occasioned minimal damage. PRC contends in its letter, as it did in its letter of July 15, 2014, that SMS' continued operation within PRC's refinery poses great risks of significant damage. The refinery, PRC notes, operates 24 hours per day, seven days per week producing hazardous materials, such as gasoline, heating oil and aviation jet fuel. PRC states that it relies exclusively on SMS to provide a safe and efficient rail operation inside the refinery. The attached Verified

Statement of Mr. James R. Pfeiffer, SMS' Superintendent of Operating Practices, details that SMS completely meets PRC's expectation.

PRC's letters reflect its desperation to find a ground for persuading the Board to grant its adverse abandonment application so that it can be rid of SMS and replace it with a noncarrier contract switcher, Savage Services Group¹. PRC maintained that the Rail Line Service Agreement between its predecessor, Valero Refining Company – New Jersey, and SMS allowed PRC unilaterally to terminate the Agreement and oblige SMS to seek the Board's authorization to abandon its operations within the refinery². When PRC finally got around to filing its application for the adverse abandonment of SMS³, it advanced the same grounds as had been previously articulated by PRC:

“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.”

* * *

Since common carrier services are no longer required or being requested, public convenience and necessity do not require that the Line remain as part of the national railroad system, and the Line should be abandoned as a line of railroad.

In its application, however, as in all of its other filings, PRC did not cite – and it cannot cite -- a single adverse abandonment proceeding in which the Board found that the present or future public convenience and necessity would be served by requiring the

¹ See, email from Mr. James O'Malley of PBF Energy to Mr. Ray Bucko of SMS, dated September 22, 2011.

² See, letter from Mr. James Fedena of PRC to Mr. Jeffrey L.Sutch of SMS, dated October 27, 2011.

³ See, PRC's Application for Adverse Abandonment, filed January 9, 2014.

abandonment of a rail carrier so as to permit the railroad lines to become industrial plant tracks to be operated by a noncarrier contract switcher.

The suggestion that SMS' departure from the refinery is required to avoid the safety risk that its continued operation poses at best is an afterthought for it does not appear in PRC's adverse abandonment application or in any of its other pleadings, and it is a proposition that was not very well thought out and is completely flawed. As a rail carrier, SMS must operate locomotives and other equipment compliant with the regulations of the Federal Railroad Administration ("FRA") manned by engineers and conductors who have been certified in accordance with the FRA's regulations. In sharp contrast, the noncarrier contract switcher that PRC seeks to install in SMS' stead, Savage Services Group, need not operate locomotives and other equipment that are FRA compliant and need not engage FRA certified engineers and conductors.

More importantly, since SMS' operations within PRC's refinery are those of a rail carrier, the approximately eight miles of railroad lines within the facility are a part of the general railroad system of transportation. If, as PRC seeks, the refinery becomes a mere industrial plant following SMS' eviction, virtually none of the FRA's safety regulations will apply. *See*, 49 C.F.R. § 213.3, pertaining to track safety standards; 49 C.F.R. § 214.3, pertaining to railroad workplace safety; 49 C.F.R. § 215.3, pertaining to railroad freight car safety standards; 49 C.F.R. § 217.3, pertaining to railroad operating rules; 49 C.F.R. § 218.3, pertaining to railroad operating practices; 49 C.F.R. § 225.3, pertaining to railroad accident/incidents: reports classification, and investigation; 49 C.F.R. §229.3, pertaining to railroad locomotive safety standards; 49 C.F.R. § 231.0, pertaining to railroad safety appliance standards; 49 C.F.R. § 234.3, pertaining to grade crossing signal

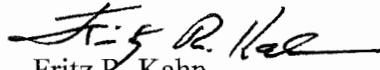
system safety; 49 C.F.R. § 240.3, pertaining to qualification and certification of locomotive engineers, and 49 C.F.R. § 242.2, pertaining to qualification and certification of conductors.

It is altogether evident that PRC's request for the adverse abandonment of SMS from operating as a rail carrier on the railroad lines within PRC's refinery and for the replacement of SMS with the noncarrier contract switcher, Savage Services Group, for the purpose of allowing Savage Services Group to operate within a facility that PRC wants to remove from the general railroad system of transportation, poses serious potential risks to the safety of operations within the facility. PRC's plea for the expedited disposition of its adverse abandonment application, therefore, should be denied.

Respectfully submitted,

SMS RAIL SERVICE, INC.

By its attorney,



Fritz R. Kahn

Fritz R. Kahn, P.C.

1919 M Street, NW (7th fl.)

Washington, DC 20036

Tel.: (202) 263-4152

Dated: October 10, 2014

SURFACE TRANSPORTATION BOARD

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

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

VERIFIED STATEMENT OF
JAMES R. PFEIFFER

Dated: October 2, 2014

**VERIFIED STATEMENT
OF JAMES R. PFEIFFER**

I, James R. Pfeiffer, hereby state as follows:

1. Since 2009 I have been employed by SMS Rail Service, Inc., having held various positions within the operations department including but not limited to engineer and conductor, and, since that time, have served on the SMS Safety Committee, a committee of peers holding monthly meetings during which we examine and discuss safety topics both locally and industry-wide. Prior to my employment with SMS I have, since 1992, been involved in the railroad industry in assorted functions.
2. I am currently the Superintendent of Operating Practices for SMS Rail, a position in which I have served since September of 2012. In this position I am a Designated Supervisor of Locomotive Engineers charged with overseeing the federally mandated Engineer and Conductor training and licensing programs, annual training programs (SMS' training requirements are voluntarily more stringent than the federal requirements) and the federally mandated Efficiency Testing program, whereby each operating employee is spot-checked several times per year to ensure rules compliance and operational competency and ability.
3. As SMS' Superintendent of Operating Practices I am a qualified (within the meaning of 49 CFR §217.4) engineer and conductor, pursuant to 49 CFR §240.223 and 49 CFR §242.207, respectively, on all of the properties over which SMS operates trains, including PRC's refinery in Paulsboro, New Jersey (the "Refinery").
4. On the 22nd day of September 2014, PRC filed with the Board a letter in which it "request[s] that the Board promptly issue a decision" on PRC's Application for Adverse Abandonment.
5. PRC attached to its letter SMS's incident reports describing the minor nature of two recent incidents, their causes and the remedial action SMS has taken to combat the likelihood of events such as these happening in the future, which included reexamining and revising its track

construction and rehabilitation practices that had previously been based on industry standards. Neither occurrence was a reportable incident and, accordingly, was not reported to the FRA. As part of SMS's exercise of extreme caution, all incidents regardless of whether they are federally reportable, are reported to PRC. The incident reports attached to PRC's letter were provided to PRC by SMS.

6. PRC alleges that SMS was negligent when it allowed a train to pass, at walking speed (the second incident), over an area in which SMS was in the process of replacing crossties that were not yet spiked. The track work was being performed at the location where several wheels of a train were found to have derailed due to the combination of a wide gauge and a sharp curve (the first incident). SMS believes that it was in no way negligent in allowing the train to pass, at walking speed, over an area in which crossties were in the process of being replaced and were not yet spiked. As noted in SMS's incident report, "It is common practice in the industry to allow trains to pass over un-spiked ties, usually at restricted speed and under the authority of the Track Foreman in charge of the work area."
7. PRC "acknowledges that there was minimal damage" resulting from the incidents. SMS denies that any damage occurred.
8. PRC discusses in its letter the commodities contained in the railcars affected by the second incident noting that, "One car contained butane, a highly combustible product, and the other was an empty LPG rail car." SMS is fully aware of the risks associated with the handling of all types of hazardous materials and the care and attention to detail that is required of a carrier transporting such commodities. Despite the federal requirement for recurrent training every three (3) years (see 49 CFR §172.704(c)(2)), SMS conducts annual hazardous materials general awareness training, hazardous materials function specific training, hazardous materials safety training and hazardous materials security awareness training. This training is conducted together

with annual training on the System Timetable and safety rules and instructions, air brake and train handling rules and instructions, NORAC rules, 49 CFR §220 training and 49 CFR §218 training, among other things. Please note that contract switching operators are exempted from federal training requirements and thus are held to no official standard at all on the initial or recurrent training of their workforce.

9. PRC states “that if the Board continues to delay its decision on the adverse abandonment application, additional rail-related incidents could occur at the refinery,” suggesting that if any other operator, common carrier or otherwise, were operating in the refinery there would be no additional rail-related incidents occurring in the refinery. This is simply untrue. One of SMS’s paramount objectives is to operate each and every day without even one accident or incident and we continuously strive to meet that goal, as shown by SMS’s exemplary safety record. SMS has demonstrated its exceptional ability to mitigate risks and service interruptions from even these minor incidents, which in this case resulted in no additional cost to PRC.
10. PRC states that it “originally filed for adverse abandonment... because it felt the need to replace SMS with a safety conscious, responsible operator, and SMS failed to voluntarily seek [sic] authority to abandon when its contract was terminated.” In fact, PRC’s original filing speaks nothing of safety concerns or the irresponsibility of SMS and cites only that PRC “...preferred to do its own intra-plant switching through the services of a private non-carrier switching contractor.” Please refer to page 2 of PRC’s Application for Adverse Abandonment.
11. PRC further states that “Should a significant rail event occur at PRC due to SMS’ inadequate and unsafe performance, recognizing all of the scrutiny and adverse attention [that] rail movements of hydrocarbons are receiving, such an event will undoubtedly receive significant media attention”, suggesting that such attention would only be brought on by SMS’s performance. This is also untrue. Any carrier having a “significant rail event” within the confines of the refinery, or

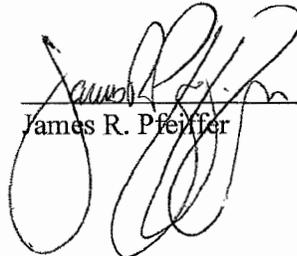
anywhere else for that matter, would be subject to the same scrutiny and media attention. SMS is confident in its ability to handle safely all types of commodities and denies PRC's allegation that it would "improve its situation quickly" by replacing SMS as its carrier.

12. SMS continues to provide the highest level of service possible within the refinery, as well as everywhere else it does business. As evidenced by these most recent occurrences and SMS's voluntary submission of its incident reports to PRC, SMS is committed to establishing open and honest lines of communications with its customers, together with continuous operational improvements by examining its rules, policies and standards and implementing changes that will improve upon the high level of service it already provides.

VERIFICATION

I, James R. Pfeiffer, verify that the statements contained herein are true and correct to the best of my knowledge, information and belief. I understand that false statements contained herein are made subject to the penalties of 28 USC §1746 relating to unsworn declarations under penalty of perjury.

Dated: October 2, 2014

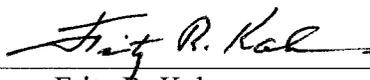


James R. Pfeiffer

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Reply on the Paulsboro Refining Company, Norfolk Southern Railway Company, CSX Transportation, Inc. and Consolidated Rail Corporation by e-mailing copies to their attorneys, Eric M. Hocky, Esq., at ehocky@clarkhill.com, David L. Coleman, Esq., at david.coleman@nscorp.com, Paul R. Hitchcock, Esq. at Paul_Hitchcock@CSX.com, and David C. Ziccardi, Esq. at David.Ziccardi@Conrail.com.

Dated at Washington, DC, this 10th day of October, 2014.


Fritz R. Kahn