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231646

JAN 10 2012

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

January 9, 2012

Re: SMS Rail Service, Inc. –
Adverse Discontinuance of Service Exemption
– Gloucester County, NJ
STB Docket No. AB 1095X
*Petition of Paulsboro Refining Company LLC for Adverse
Discontinuance of Service Exemption*

ENTERED
Office of Proceedings
JAN 10 2012
Part of
Public Record

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Petition for Adverse Discontinuance of Service Exemption being filed on behalf of Paulsboro Refining Company LLC. Also enclosed is a check in the amount of \$6300 representing the filing fee.

Please time stamp the extra copy of the Petition for Exemption 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*

Pittsburgh
Philadelphia
Princeton
Wheeling

FEE RECEIVED
JAN 10 2012
SURFACE
TRANSPORTATION BOARD

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

EMH/e
Enclosures
cc: All persons shown on the certificate of service

FILED
JAN 10 2012
SURFACE
TRANSPORTATION BOARD

231646



Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1095X

SMS RAIL SERVICE, INC.
-- ADVERSE DISCONTINUANCE OF SERVICE EXEMPTION --
GLOUCESTER COUNTY, NJ

PETITION OF PAULSBORO REFINING COMPANY LLC
FOR ADVERSE DISCONTINUANCE OF SERVICE EXEMPTION

ENTERED
Office of Proceedings

JAN 10 2012

Part of
Public Record

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Dated: January 9, 2012

Attorneys for
Paulsboro Refining Company LLC

FEE RECEIVED

JAN 10 2012

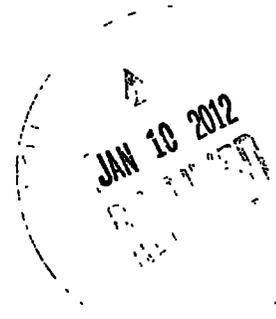
SURFACE
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FILED

JAN 10 2012

SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD



STB Docket No. AB-1095X

SMS RAIL SERVICE, INC.
-- ADVERSE DISCONTINUANCE OF SERVICE EXEMPTION --
GLOUCESTER COUNTY, NJ

PETITION OF PAULSBORO REFINING COMPANY LLC
FOR ADVERSE DISCONTINUANCE OF SERVICE EXEMPTION

Paulsboro Refining Company LLC (“PRC”) hereby petitions for an exemption under 49 U.S.C. §10502 from the provisions of 49 U.S.C. §10903 to enable SMS Rail Service, Inc. (“SMS”) to discontinue service over the approximately 5.8 miles of railroad tracks within the 970-acre Paulsboro, New Jersey refinery (the “Refinery”) currently operated by SMS and owned by PRC.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 SMA and Valero (the then-owner of the Refinery) dated August 31, 2000, as amended (the “Operating Agreement”). 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. After an extensive review, PRC determined that it no longer needs or wants to use the common carrier services of SMS, and that it wishes to perform its own plant switching through the use of a non-

¹ At the time SMS was authorized to operate the track as a common carrier it was 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.

carrier switching contractor (as it does at other locations). Accordingly, PRC gave SMS a notice of termination as required under the Operating Agreement. PRC is filing this Petition seeking an adverse discontinuance of service exemption because SMS has failed and refused to file for authority, or an exemption, to discontinue its services. In support of its request for exemption, PRC states as follows:

Background

PRC is the current owner of the Refinery and of the tracks within the Refinery. The tracks are located in United States Postal Service ZIP Code 08066. Based on information in PRC's possession the tracks (rail line) does not contain federally granted right-of-way. Any documentation in PRC's possession will be made available promptly to those requesting it.

SMS initially filed a notice of exemption to operate the tracks within the Refinery as a carrier. *See SMS Rail Service, Inc. – Acquisition and Operation Exemption – Valero Refining Company – New Jersey*, STB Finance Docket No. 33927 (served September 22, 2000). In August 2000, SMS and Valero entered into the original Operating Agreement which covered the services which SMS would be providing and other obligations between the parties. The initial term of the Operating Agreement was ten years, with a possible ten-year renewal upon mutual agreement of the parties. Subsequently, in response to a petition for declaratory order filed by SMS, the Board confirmed that SMS was operating as a common carrier at the Refinery. *SMS Rail Service, Inc. – Petition for Declaratory Order*, STB Finance Docket No. 34483 (served January 24, 2005) (“*Declaratory Order Decision*”).

Prior to SMS commencing operations, Conrail delivered traffic to the Refinery, and performed switching services within the Refinery. Valero chose to replace Conrail for the services to be provided at the Refinery, and contracted with SMS to do so. Valero was

indifferent as to whether SMS provided its services as a common carrier or as a contract switching operator. *Declaratory Order Decision*, at 5.

At the time of the *Declaratory Order Decision*, SMS was providing service to Valero and four other shippers that could be accessed from the Refinery tracks. Currently, SMS serves only PRC and to a minor extent, ExxonMobil.² During the term of SMS's operations, traffic has been interchanged between SMS and its interline connections at Conrail's adjacent yard across the street from the Refinery (*see* Exhibit A).

In May 2010, Valero and SMS entered into a Second Amendment to Rail Line Service Agreement which provided in relevant part:

1. SMA and Valero agree that on the date this Second Amendment is fully executed by the parties; [sic] (a) the business terms of the Current Agreement shall continue on an ongoing basis until such time as Valero provides SMS with ninety (90) days written notice of its intention to terminate both: (a) the Ten Year Renewal option, as it is defined at paragraph 2(b) of the Original Agreement [Rail Line Service Agreement dated August 31, 2000] and (b) the Current Agreement [the original Agreement and a First Amendment entered into in November 2002].

PBF acquired PRC and the Refinery Valero in December 2010. Subsequently, 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. After meeting with SMS, and reviewing proposals from SMS and others, PRC selected a contractor other than SMS. Accordingly, on September 22, 2011, PRC gave SMS an email notice under the Operating Agreement that PRC was terminating the Operating Agreement on 90 days notice. The notice, and the termination date of December 21, 2011, were confirmed in a letter dated October 27,

² 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.

2011. Copies of the September 22 notice and the October 27 letter are attached hereto as Exhibit

C. As noted in the October 27 letter, the Operating Agreement requires SMS to promptly vacate the Refinery on termination:

10. Surrender. Operator [SMS] agrees, at the expiration or earlier termination of the term hereof, promptly to yield up, clean and neat, and in the same condition, order and repair in which it is required to be kept throughout the term hereof, the Rail Line and to remove Operator's railcars and equipment. ...

In breach of the contract, SMS has so far failed and refused to do so, or to seek authority to do so.

As noted above, PRC has determined that it does not require SMS to perform common carrier services for it. 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. PRC's selected contractor has advised that it can be mobilized and ready to begin operating with 30 days advance notice.³ Thus, PRC's traffic can continue to flow uninterrupted as it always has, assuming SMS cooperates in the transition.

Additionally, 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. *See* letter from ExxonMobil attached hereto as Exhibit B.

Since SMS's common carrier services are no longer required, there should be no barrier to allowing it to discontinue its service at the Refinery, and to vacate the property. Because SMS has failed and refused to seek the authority itself, PRC has proceeded with this adverse petition.

³ Since the service will be private contract switching, no Board authorization will be required.

Discontinuance of Service Should Be Exempted

Because SMS has been authorized by the Board to operate as a carrier at the Refinery, the discontinuance of service by SMS would require authorization pursuant to 49 U.S.C. §10903 unless the exemption requested herein is granted. As the Board has long held:

[T]he Board may consider an “adverse” application – one brought by a party other than the rail carrier – to discontinue service. *See Cheatham County Rail Authority “Application and Petition” for Adverse Discontinuance*, Docket No. AB-379X (ICC served Nov. 4, 1992 (*Cheatham County*); *Fore River RR. Corp. – Discon. Exemption – Norfolk County, MA*, 8 ICC 2d 307 (1992) (*Fore River*); *Chelsea Property Owners – Aban. – The Consol. R. Corp.*, 8 ICC 2d 773 (1992) (*Chelsea*), *aff’d sub nom. Consolidated Rail Corp. v. ICC*, 29 F. 3d 706 (D.C. Cir. 1994); *Modern Handcraft, Inc. – Aband.*, 363 ICC 969 (1981) (*Modern Handcraft*); and *Thompson v. Texas-Mexican Ry. Co.*, 328 U.S. 134 (1946) (*Thompson*). Any person may initiate an abandonment or discontinuance proposal, subject to establishing a proper interest in the proceeding, and it is the noncarrier “third party” applicant that has the burden of establishing that the public convenience and necessity require or permit abandonment or discontinuance. *Chelsea, supra*, at 778. In implementing this statutory standard in an adverse proceeding, we consider the relative burdens that continuation of service on the one hand, and cessation of service on the other, would have on the involved carrier, on the owner-lessor of the line, and on the public.

A finding that the public convenience and necessity requires or permits abandonment or discontinuance does not, of itself, require a carrier to abandon or discontinue operations. Rather, our authorization permits a carrier to abandon or discontinue service and serves as evidence that the subject service is not required by the public and that this agency’s jurisdiction may not be cited to shield a carrier from the legitimate processes of state law. *See Chelsea, supra*, at 778, and *Fore River, supra*, at 310, citing *Kansas City Pub. Ser. Frgt Operation – Exempt. – Aban.*, 7 ICC 2d 216, 224-26 (1990) (*Kansas City*).

Jacksonville Port Authority – Adverse Discontinuance – In Duval County, FL, STB Docket No. AB-469 (served July 17, 1996) (*Jacksonville Port Authority*), slip op. at 5-6.

The general standard for determining whether discontinuance should be authorized is whether the present or future public convenience and necessity require or permit the proposed

action. In making the determination, the Board balances the competing benefits and burdens of the proposed discontinuance on all interested parties, including the owner of the tracks, the shippers and the railroad, and on interstate commerce generally. *See New York Cross Harbor Railroad v. STB*, 374 F. 3d 1177, 1180-1181 (D.C. Cir. 2004).

This is a simple straightforward situation just as in *Jacksonville Port Authority* – SMS’s Operating Agreement has been properly terminated, and PRC, as the track owner, needs the discontinuance authority granted so that it can proceed with its state court remedies to enforce the termination provisions of the Operating Agreement and remove SMS from the Refinery if SMS does not voluntarily do so. The discontinuance would not affect the provision of service by Conrail, NS or CSXT to or from the Refinery, and PRC has a contract switching operator standing by so that there should be no interruption in switching service to the current shippers, PRC and ExxonMobil (assuming SMS cooperates in the transition). Both current shippers support the shift to a contract switching operator. Thus there will be no adverse affect on interstate commerce or on shippers, and there is no public interest in requiring that SMS continue to provide unwanted, unneeded operations. *See Cheatham County Rail Authority – Application and Petition for Adverse Discontinuance*, ICC Finance Docket No. 32049 (renumbered ICC Docket No. AB-379X) (served November 4, 1992), at 7. SMS should not be permitted to use the Board’s jurisdiction as a shield to protect it from the legitimate termination of its contract by PRC, or such further actions as PRC would be required to take at state law to remove SMS from the Refinery (if SMS does not voluntarily cease operations). *See Jacksonville Port Authority, supra* at 6. *See also Fore River Railroad Corporation – Discontinuance of Service Exemption – Norfolk County, MA*, 8 ICC 2d 307 (1992).

PRC not only has established that the standard for an adverse discontinuance has been met, but it is clear that the standard for the exemption requested herein has also been met. The Board is directed by 49 U.S.C. §10502 to grant an exemption if it finds that (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power.

Under 49 U.S.C. §10502 and 49 C.F.R. §1152.60, there is no requirement for a carrier to submit all of the detailed financial data and other information that would be required if discontinuance authority were being sought under 49 U.S.C. §10903 and the regulations relating thereto. Indeed, there is no specific requirement that any specific information be submitted. Requirements to the contrary would run counter to the principal goals of an exemption proceeding. In situations such as the current instance, when the discontinuance is being requested by the owner of the tracks, and is based on the termination of contractual rights, the usual financial inquiries about the burden on the carrier are not relevant. *See also* discussion of adverse abandonment standards above.

As noted above, the SMS Operating Agreement has been terminated and SMS has no contractual rights to operate at the Refinery. After discontinuance of service by SMS, PRC intends to have the tracks operated as private plant tracks by a non-carrier switching contractor.⁴ There is no longer a need for common carrier service to be performed within the Refinery, and

⁴ PRC believes that as the owner of the tracks it has the authority to allow private switching on the tracks even while SMS has common carrier authority to operate over them. *See Hanson Natural Resources Company – Non-Common Carrier Status – Petition for a Declaratory Order*, ICC Finance Docket No. 32248 (served December 5, 1994), 1994 MCC LEXIS 111 at *48-*50. However, PRC has so far elected not to bring its private contractor onto the tracks while it attempts to have SMS voluntarily transition SMS's operations as required by the Operating Agreement.

service will continue in the same manner as before SMS began common carrier operations. Granting of the discontinuance will allow SMS to comply with the termination provisions of the Operating Agreement and stop operating the tracks within the Refinery, either voluntarily or through legal action that PRC would pursue. No shippers will lose any service.

This discontinuance of common carrier service over these tracks all of which are located within the a single shipper owned facility does not require detailed scrutiny to carry out the rail policies of 49 U.S.C. §10101, and is in keeping with the Board's overall policies as expressed in Section 10101. Approval of the requested exemption will allow SMS to stop providing common carrier service and to comply with the Operating Agreement by transitioning services to the new contract switching operator, and exiting the property of PRC. This will allow PRC as the shipper/owner of the tracks to transition them back to the status of private plant tracks without the further cost and expense, and delay, of a full discontinuance application and proceeding. Grant of the discontinuance will also allow SMS to use its rail resources elsewhere where it continues to operate. Further, granting the exemption is in keeping with the following rail policies described in 49 U.S.C. §10101:

* * *

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

* * *

(5) to foster sound economic conditions in transportation...

* * *

(7) to reduce regulatory barriers to entry into and exit from the industry...

* * *

(8) to operate transportation facilities and equipment without detriment of the public health and safety...

* * *

(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

Moreover, the grant of the exemption will not be inconsistent with any of the 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

The scope of the exemption requested is limited and will have no adverse impact on shippers – in fact it is the major shipper that is seeking the relief. There are only two active shippers at the Refinery being served by SMS – PRC the owner which accounts for over 99% of the traffic, and ExxonMobil who ships approximately 10 cars per year. Both have indicated that they do not require common carrier services from SMS, and can have their needs satisfied through private switching services, with Conrail, NS and CSXT providing the connecting common carrier service to and from the Refinery.

Since the proposed transaction is of limited scope, it is not necessary for the Board to consider whether shippers need to be protected from abuse of market power. However, even if the Board were to consider market power, it is clear that shippers do not need to be protected from its abuse. As noted above, there are only two active shippers and they can get connecting service over either NS or CSXT and do not need SMS as an intermediary common carrier. Since the shippers have existing transportation alternatives, regulation is not needed to protect shippers from abuse of market power. *See Delta Southern Railroad, Inc. – Abandonment Exemption – In Desha and Chicot Counties, Ark.* STB Docket No. AB-384 (Sub-No. 3X), served March 23, 2011, at 3; *Minnesota Northern Railroad, Inc. – Abandonment Exemption – Between Redland Jct. and Fertile, in Polk County, MN*, STB Docket No. AB-497 (Sub-No. 2x) (served November 14, 1997), 1997 STB LEXIS 294 at *24.

Employee Protection

The interests of employees in discontinuance proceedings will be protected by the employee protective conditions in *Oregon Short Line Railroad Co.--Abandonment--Goshen*, 360 ICC 91 (1979).

Exemption from Offer of Financial of Assistance, Trail Use / Rail Banking and Public Use Conditions

In adverse discontinuance proceedings, if the Board were to grant the requested relief it will have determined that there is no overriding federal interest in interstate commerce. Allowing an offer of financial assistance would be fundamentally inconsistent with that finding and would negate the Board's finding. *See Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286) (served October 26, 2006), at 6; *East St. Louis Junction Railroad Company – Adverse Abandonment – In St. Clair County, IL*, STB Docket No. AB-838 (served June 30, 2003), at 4. Accordingly, the Board should not permit an offer of financial assistance in connection with this proceeding.

Further, because this is a discontinuance of service over tracks owned by the shipper PRC and not by the carrier SMS, and because the tracks are located within an active refinery and will continue to be used for private rail service, trail use / rail banking and other public use conditions are not appropriate. *See Norfolk Southern Railway Company – Discontinuance of 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).

For the same reasons discussed above at pages 7-9, these requested exemptions meet the standards for exemptions under 49 U.S.C. §10502. *See Lake County, Oregon – Adverse Discontinuance of Rail Service – Modoc Railway and Land Company, LLC and Modoc Northern Railroad Company*, STB Docket No. AB-1035 (served June 15, 2009), at 4.

Environmental And Historic Reports

If the requested discontinuance is granted, rail service will continue and there will be no salvage of the tracks in the Refinery. There will be no diversion of rail traffic to truck as a result of the proposed discontinuance. Thus, no environmental and historic report is required for this discontinuance. *See Norfolk Southern Railway Company – Discontinuance of 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). *See also* 49 CFR §1105.6(b)(3). *See also Lake County, Oregon, supra* at 4 (environmental and historic review not required in adverse discontinuance proceeding).

Additional Information

The Board's regulations at 49 CFR 1152.60 contain special rules applicable to petitions for discontinuance. In accordance with the Board's regulations, PRC sets forth the information required by the referenced subparagraph of Section 1152.60:

- (b) A map of the railroad tracks is attached as Exhibit A.
- (c) A draft Federal Register notice is attached as Exhibit D. The draft varies from the sample included in the regulations in that it does not include (1) references to the

environmental and historic report as one is not required with a discontinuance, and (2) references to the offer of financial assistance, public use or trail use/rail banking provisions as such should not be applicable in this proceeding. *See* discussions above.

(d) A copy of this Petition is being served on the persons designated to receive service of notices of exemption set forth in 49 CFR 1152.50(d). *See* the Certificate of Service attached hereto. A copy of the Petition is also being served on SMS, ExxonMobil, Conrail, NSR and CSXT. Further, the Petition includes the required statement regarding title of the property. *See* page 2 above.

Transition of Operations

PRC believes that SMS is required under the terms of the Operating Agreement to cooperate in the transition of operations following termination of the Agreement, and that if SMS fails to do so it will be liable for damages. In addition, the Board has continuing jurisdiction over SMS until it stops operating as a carrier, and has the power, without ruling on the merits of any contract claims, to order SMS to cooperate with PRC's contract switching operator so that there can be a safe and orderly transition without any harm or interruption of service to shippers. *Cf. City of Peoria and the Village of Peoria Heights, IL – Adverse Discontinuance – Pioneer Industrial Railway Company*, STB Docket No. AB-878 (served November 19, 2007) (ordering two carriers to negotiate joint operating protocols to avoid interference with each other); *Cheatham County Rail Authority – Application and Petition for Adverse Discontinuance*, ICC Finance Docket No. 32049 (served August 31, 1992), at 2 (ordering coordination of operations in view of the need for orderly operations and to assure safety on the line). Accordingly as a condition of the grant of discontinuance authority, and any exercise thereof by SMS, the Board

should order SMS to cooperate with PRC and its private switching contractor in an orderly transition of operations.

Conclusion

For the foregoing reasons, PRC requests that the Board, under 49 U.S.C. §10502, exempt the discontinuance of service by SMS from regulation under 49 U.S.C. §10903. PRC also requests that the Board require SMS in discontinuing its authority as permitted hereunder to cooperate with PRC and its contract switching operator in providing an orderly and safe transition of operations.

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: January 9, 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 January 9, 2012.



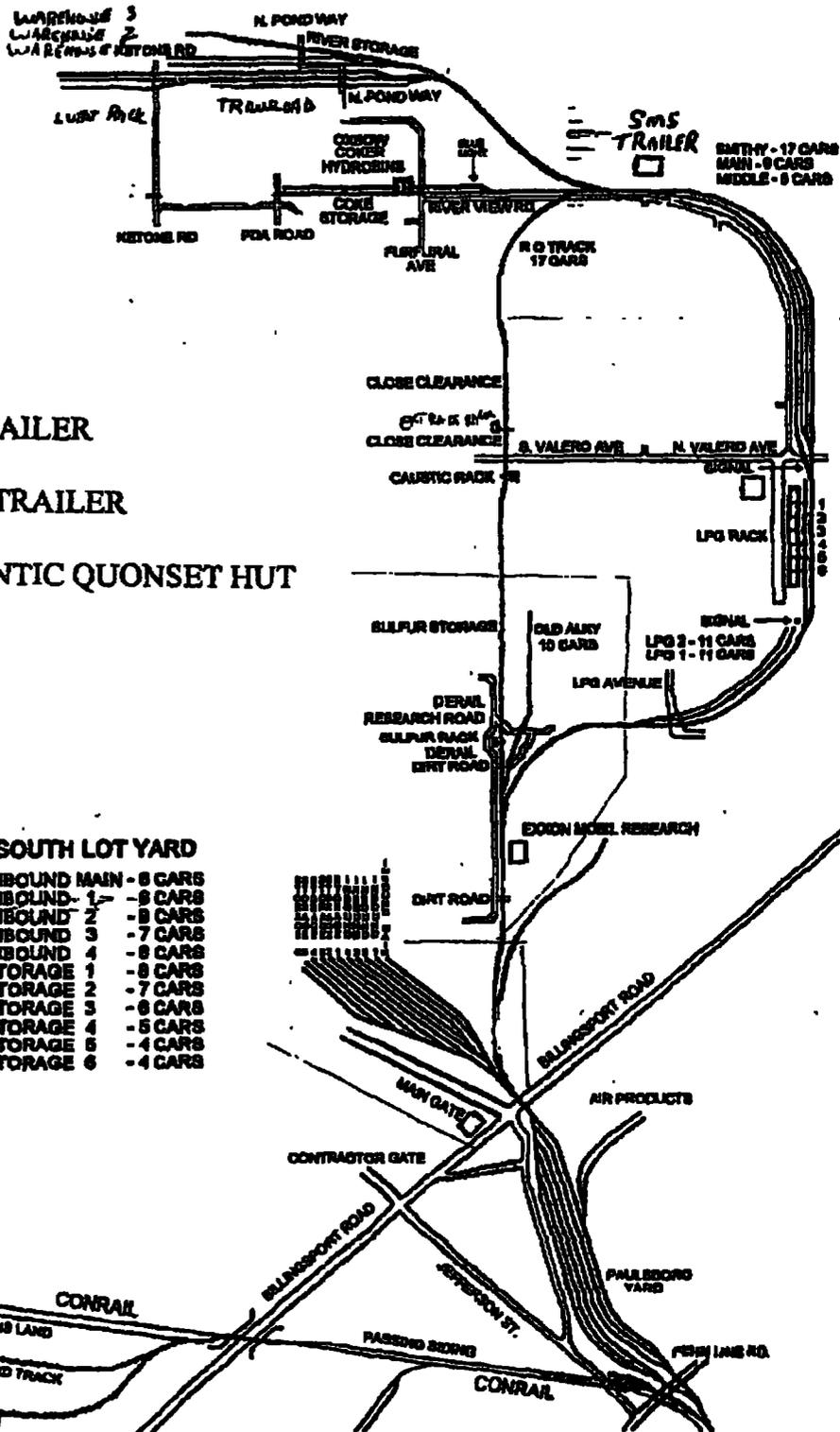
Name: James E. Fedena
Title: Senior Vice President

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	- 6 CARS
STORAGE 4	- 5 CARS
STORAGE 5	- 4 CARS
STORAGE 6	- 4 CARS

EXHIBIT B

LETTER FROM EXXONMOBIL

ExxonMobil Research and Engineering Company
600 Billingsport Road
Paulsboro, NJ 08066
856.224.2417 Telephone
856.224.2860 Facsimile

Michael A. Carrocino
Facility Manager

ExxonMobil
Research and Engineering

December 29, 2011

Kevin Fetchko, SHE Director
Paulsboro Refining Company
Paulsboro, New Jersey 08066

Kevin,

You have advised us that you are seeking to change your rail service from the existing common carrier SMS to a private switching contractor.

ExxonMobil currently receives and returns less than 10 carloads by rail per year to and from its facility in Paulsboro.

We take no exception with the change in the operator and how the switching will be handled. Similar to other PRC employees/contractors working at our site, we will need to ensure that the switching contractor employees are cleared under the Department of Homeland Security's Transportation Worker Identification Credentials (TWIC) program.

Sincerely,



Michael A. Carrocino
Facility Manager

EXHIBIT C

TERMINATION NOTICES



Paulsboro Refining Company LLC
1 Sylvan Way
Parsippany, NJ 07054

PH: 973-455-7500
FX: 973-455-7560
www.pbfenergy.com

October 27, 2011

**VIA E-MAIL; ORIGINAL VIA
US Registered Mail, Return Receipt Requested 7011 1570 0002 7288 1716**

SMS Rail Service, Inc.
PO Box 711
Bridgeport, NJ 08014
Attention: Jeffrey L. Sutch, President

Re: Termination of Rail Line Service Agreement

Dear Mr. Sutch:

As we have previously notified SMS by email dated September 22, 2011, Paulsboro Refining Company LLC ("PRC") has decided that it wishes to terminate the Rail Line Service Agreement, as amended (the "Agreement"), between SMS Rail Service, Inc. ("SMS") and PRC (as the successor to Valero Refining Company - New Jersey). As you know, the Second Amendment to Rail Line Service Agreement dated August 31, 2000, provides that the Agreement can be terminated on ninety (90) days written notice. Accordingly, based on September 22 notice, the Agreement will terminate as of December 21, 2011.

Pursuant to Section 10 of the Agreement, SMS agreed, upon termination, "promptly to yield up, clean and neat, and in the same condition, order and repair in which it is required to be kept throughout the term hereof, the Rail Line and to remove [SMS's] railcars and equipment." We understand that because of SMS's status as a common carrier by rail it cannot stop providing common carrier service until it receives authority from the Surface Transportation Board ("STB") to discontinue such service at Paulsboro. We expect SMS promptly to seek such authority, through an application or petition for exemption, as part of its duty under Section 10. If it fails to do so, and/or if PRC is forced to seek such authority, then PRC intends to hold SMS responsible for all costs PRC incurs as a result of SMS's breach.

Between now and the termination date, we expect SMS to fulfill its common carrier and other obligations under the Agreement.

PRC has made arrangements to be served by a switching contractor beginning immediately upon the termination of the Agreement, and thereafter PRC will no longer need or use SMS's carrier or switching services. We have been advised that there is no prohibition against a private or contract carrier operating over the same tracks that are also operated by a common carrier. PRC will ensure with its contractor that SMS is provided sufficient track space to store a locomotive, and that SMS will have sufficient operating windows and use of necessary tracks within the facility to fulfill its common carrier obligations to any other rail customer served at the Paulsboro facility (we understand that at this time, ExxonMobil is the only other active customer). The details can be worked out among you, us and our new contractor during the period between now and the termination date.

We have appreciated the service you provided to PRC during this transition period, but we have decided to move in a different direction for the handling of our switching needs.

We stand ready to discuss the transition with you, and how to facilitate your termination of services, including any reasonable shortening of the 90-day period that you might prefer.

Very truly yours,


James Fedena
Senior Vice President

cc (via US Registered Mail, Return Receipt Requested 7011 1570 0002 7288 1709):

Joseph J. Kalkbrenner, Jr., Esquire
Hughes, Kalkbrenner & Ozorowski, LLP
Suite 205, 1250 Germantown Pike
Plymouth Meeting, PA 19462

Cc (via email):

Arthur G. Warden, III
Fritz Kahn

From: OMalley, James [mailto:James.OMalley@pbfenergy.com]
Sent: Thursday, September 22, 2011 3:03 PM
To: rbucko@smsrail.com
Cc: Kennedy, Pat J; Eisenmann, Jack; Krynski, Steve; Sittmann, Robert; Lucey, Don; Warden, Art; Wujcik, Alexander; Keating, James; Lucey, Don; Jason Ray
Subject: Rail operations

After a careful review of the quotations provided to PBFenergy by your group and others we have decided to award a contract to manage all of our rail activities at DCR and Paulsboro to the Savage Services Group. We would like our transition team to begin discussions with your group early next week so that we can develop a comprehensive plan for an orderly transition to be completed by November 14, 2011, if possible. Also, we would appreciate you providing us with the name and contact information for the individual heading your team.

We would like to schedule a meeting (October 13) with your group to discuss all of the financial and operational issues that might arise during the initial transition period (September 26 to October 13). The Savage Group will act as our consultant during this period and will develop transition schedules with your group to allow us to meet the November deadline.

We appreciated the service your group has provided since December 17,2011 and we look forward to an orderly transition. If you have any questions, I am available at 561-901-4250.

1/6/2012

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EXHIBIT D

DRAFT FEDERAL REGISTER NOTICE

**SMS RAIL SERVICE, INC.
-- ADVERSE DISCONTINUANCE OF SERVICE EXEMPTION --
GLOUCESTER COUNTY, NJ**

Notice of Petition for Exemption for Adverse Discontinuance of Service

On January 10, 2012, Paulsboro Refining Company ("PRC") filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the adverse discontinuance of service by SMS Rail Service ("SMS") over the tracks owned by PRC and located at the Paulsboro Refinery (the "Tracks"). The Tracks are located in United States Postal Service ZIP Code 08066. The Tracks over which discontinuance is sought do not contain any stations. The Tracks do not contain federally granted rights-of-way. Any documentation in PRC'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 I.C.C. 91 (1979).

Because the proposed action entails the discontinuance, and not the abandonment, of service over the line, no environmental or historic documentation is required, and the STB will not prepare an environmental assessment.

Further., because this is a discontinuance proceeding, offers of financial assistance, trail use / rail banking and public use conditions are not appropriate.

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

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

New Jersey Department of Transportation
Bureau of Rail Services
1035 Parkway Avenue
Trenton, NJ 08625-0600

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-003

United States Department of the Army
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense Program)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225-5006

U.S. Department of the Interior -
National Park Service
RTCA Program (Org code 2240)
1849 C Street, NW
Washington, DC 20240


Eric M. Hocky

Dated: January 9, 2012