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VIA ELECTRONIC FILING

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

January 11, 2012

Re: SMS Rail Service, Inc. –
Adverse Discontinuance of Service Exemption
– Gloucester County, NJ
STB Docket No. AB 1095X
Reply to SMS request for rejection of Petition

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Dear Ms. Brown:

Yesterday Paulsboro Refining Company LLC (“PRC”) filed a Petition for Adverse Discontinuance of Service Exemption (the “Petition”). Shortly thereafter, Fritz Kahn, presumably as counsel for and on behalf of SMS Rail Service, Inc. (“SMS”), filed a letter requesting rejection of the Petition for alleged failures to comply with the Board’s regulations. (Mr. Kahn has represented SMS in prior Board proceedings, and in negotiations with PRC which preceded the filing of the Petition.) However, as set forth below, PRC has complied with applicable regulations and the Board should proceed with the processing of the Petition.

(1) SMS also asserts that PRC did not send out notices 10 days in advance of the filing as required under 49 CFR §1152.50(d). However, Section 1152.50(d) is a requirement only of notices of exempt abandonments/discontinuances, and not of individual petitions for exemption. As noted on page 12 of the Petition, with individual petitions for exemption, the petitioner is only required under 49 CFR §1152.60(d) to send copies of the petition to the agencies identified in Section 1152.50(d). There is no requirement of advance notice. As noted in the certificate of service attached to the Petition, the proper agencies were mailed copies of the Petition.

(2) The final issue raised by SMS is the alleged failure of PRC to publish a notice of the proposed discontinuance in a newspaper of general circulation in Gloucester County under 49 CFR 1105.12. The referenced notice is part of 49 CFR Part 1150 which relates to procedures for implementation of environmental laws, including the preparation of environmental and historic reports. Since environmental and historic reports are not required in discontinuance proceedings (*see* Petition at 11), no newspaper publication under Section 1105.12 should be required. Further, PRC has requested exemption from the provisions of offer of financial assistance, trail use / rail banking and public use conditions. Grant of the exemption would also negate the need to provide the newspaper notice. PRC has given notice to all potentially affected parties including

Pittsburgh

Philadelphia

Princeton

Wheeling

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One Commerce Square
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SMS, the only other shipper and connecting railroads. If the Board determines that additional public notice in the form of a newspaper advertisement is required, then the Board should hold the Petition until the notice is published and PRC provides a certificate of publication. *See* 49 CFR 1104.10(b).

Originally SMS also alleged that SMS and its president did not receive a copy of the Petition by overnight delivery. However, by letter filed earlier today, Mr. Kahn acknowledged that in fact SMS did receive an overnight delivery and that service was properly made. Although neither letter acknowledges as such, the Board should also note that PRC, to ensure that SMS would have sufficient notice, also served a courtesy copy of the Petition by overnight delivery on Mr. Kahn although such service was not required.

For all of the foregoing reasons, the Board should not reject the Petition but should promptly move forward with the processing of the Petition.

Respectfully,



Eric M. Hocky
*Counsel for Paulsboro Refining
Company/LLC*

EMH/e
Enclosure

cc (by email): Fritz Kahn

cc (by mail): All persons on the attached list

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