

SURFACE TRANSPORTATION BOARD

235611

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

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

ENTERED
Office of Proceedings
March 11, 2014
Part of
Public Record

PETITION
OF
SMS RAIL SERVICE, INC.

Fritz R. Kahn
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Attorney for

SMS RAIL SERVICE, INC.

Dated: March 11, 2014

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Protestant, SMS Rail Service, Inc. ("SMS"), pursuant to 49 C.F.R. § 1117.1, and Paragraph 1.(e) of the Protective Order entered by the Decision of the Board, served July 26, 2012, respectfully requests that the "Highly Confidential" designation of the Verified Statement of Steven Krynski and its attachment appended to the Reply of Paulsboro Refining Company ("PRC") on March 10, 2014, be changed to "Confidential", and in support thereof SMS states as follows:

1. In its Reply, PRC for the first time alleges that it was dissatisfied with SMS' service. On page 5 of its Reply, it claims, "[i]f it had been satisfied, it would not have terminated the operating agreement." As it acknowledged in the attachments to its Application, filed January 10, 2014, however, PRC is seeking to replace SMS, a rail carrier subject to the Board's jurisdiction, as well as that of the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration, with a non-carrier contract switcher, Savage Industries.

2. On page 7 of its Reply, PRC alleges that it “is aware of at least 23 safety incidents over the past five years” committed by SMS. PRC, however, refuses to permit SMS to see what they are.

3. PRC cleverly and deliberately has chosen to designate the Verified Statement of Mr. Steven Krynski and its attachment setting out the alleged 23 rail service related incidents involving SMS as “Highly Confidential”.

4. PRC offers no explanation why the alleged 23 safety incidents should be designated by PRC as “Highly Confidential” for in no way are they disparaging or detrimental to PRC.

5. PRC’s designation of the incidents as “Highly Confidential” was intended so that only SMS’ attorney and consultant, who have signed the Undertakings for “Highly Confidential Material”, are able review Mr. Krynski’s Verified Statement and its attachment, and obviously neither one has any knowledge of the alleged 23 safety incidents.

6. Pursuant to the provisions of the Protective Order, SMS’ attorney and consultant can’t even discuss the alleged 23 safety incidents with officers or employees of SMS who are familiar with them and learn what the alleged 23 incidents were, what caused them and what damage they occasioned.

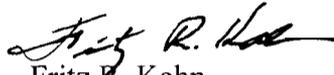
7. Changing Mr. Krynski’s verified Statement and its attachment to “Confidential” will permit SMS to learn what the alleged 23 safety incidents were, and, depending on what its own records show, SMS may seek the Board’s permission to file a reply to PRC’s Reply so that the Board will have a complete and unbiased record of what in fact transpired.

WHEREFORE, SMS Rail Service, Inc., respectfully requests that designation of the Verified Statement of Mr. Seven Krynski and its attachment be changed from “Highly Confidential” to “Confidential”.

Respectfully submitted,

SMS RAIL SERVICE, INC

By its attorney,



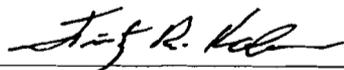
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Dated: March 11, 2014

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Petition 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. Hockey, 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 11th day of March, 2014.



Fritz R. Kahn