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SERVICE DATE – APRIL 29, 2014

SURFACE TRANSPORTATION BOARD

DECISION

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

PAULSBORO REFINING COMPANY LLC—ADVERSE ABANDONMENT—IN
GLOUCESTER COUNTY, N.J.

Decided: April 29, 2014

On January 10, 2014, Paulsboro Refining Company LLC (PRC) filed an application under 49 U.S.C. § 10903, requesting that the Board authorize the adverse abandonment of approximately 5.8 miles of rail line (the Line) owned by PRC and currently operated by SMS Rail Service, Inc. (SMS).¹

The Board published notice of PRC's application in the Federal Register on January 30, 2014. Norfolk Southern Railway Company (NSR), CSX Transportation, Inc. (CSXT), and Consolidated Rail Corporation (Conrail) (collectively, Carriers) jointly filed comments on February 20, 2014. Although the Carriers take no position on whether the Board should grant the application, they ask that the Board, inter alia: (1) require PRC to clarify whether it expects that Conrail, on behalf of CSXT and NSR, would physically deliver rail traffic into PRC's facility or whether PRC intends to have its switching contractor perform operations similar to SMS's current operations; and (2) afford the Carriers an additional opportunity to comment on the application once that clarification has been provided. SMS filed a reply opposing PRC's application on February 24, 2014. As part of that opposition, SMS questions whether PRC's proposed noncarrier switching contractor, Savage Services Group (Savage), has the expertise to safely handle hazardous materials. SMS further argues that, as a noncarrier, Savage is not subject to federal regulation.

On March 10, 2014, PRC filed a reply clarifying for the Carriers the nature of operations if SMS were removed from the Line and responding to SMS. As part of its reply, PRC questions SMS's own safety record and includes a verified statement from PRC's Operations Manager, Steven Krynski, and two exhibits containing a list of alleged incidents and a disciplinary report concerning SMS's operations. Both exhibits are designated "Highly Confidential" and are redacted from the public version of PRC's March 10 filing.

¹ More background can be found in two decisions served in this subdocket on July 26, 2012.

On March 11, 2014, SMS petitioned the Board to redesignate the Krynski statement and the two exhibits as “Confidential.” SMS explains that the redesignation would permit it to examine its alleged infractions and respond. On March 19, 2014, PRC replied to SMS’s petition, and stated that it does not oppose the redesignation. However, PRC does oppose allowing SMS to file an additional statement after SMS’s review of the redesignated material.

On April 4, 2014, SMS responded to PRC’s March 10 filing by submitting a verified statement from James R. Pfeiffer, SMS’s Superintendent of Operating Practices, in which, having reviewed the redesignated exhibits, he seeks to defend SMS’s safety record. SMS asks that the Board accept this filing into the Board’s record. On April 17, 2014, PRC replied and argued that the Board should not accept the April 4 filing because it does not benefit the record.

Given that SMS’s April 4 witness has obtained access to the material that had been designated “Highly Confidential,” it appears that the parties have resolved the issue regarding the designation of the material. To ensure that there is no dispute, however, SMS’s redesignation request will be granted.²

Because SMS could not respond fully to the statements concerning its safety record until the material was redesignated, SMS’s April 4 filing addressing issues raised by that redesignated material will be accepted, as will PRC’s reply to SMS’s April 4 filing. In addition, now that PRC has clarified for the Carriers the nature of operations if SMS were removed from the Line, the Carriers’ request to submit a response will be granted. The Carriers’ reply will be due by May 19, 2014.

It is ordered:

1. SMS’s March 11, 2014 petition is granted to the extent discussed, and the two exhibits attached to the Krynski statement are redesignated as “Confidential.”
2. SMS’s April 4 filing and PRC’s April 17 reply to that filing are accepted into the record.
3. As discussed above, the Carriers may file a reply by May 19, 2014.
4. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

² Because the Krynski statement itself was part of the public version of PRC’s March 10 filing, the Board will only redesignate the two exhibits as “Confidential.”