

Before the

235653

SURFACE TRANSPORTATION BOARD

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

ENTERED
Office of Proceedings
March 19, 2014
Part of
Public Record

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

REPLY OF PAULSBORO REFINING COMPANY LLC
TO PETITION OF SMS RAIL SERVICE, INC.
TO RE-DESIGNATE CONFIDENTIALITY

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Attorneys for
Paulsboro Refining Company LLC

Dated: March 19, 2014

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On March 11, 2014, SMS Rail Service, Inc. (“SMS”) filed a Petition seeking to re-designate the Verified Statement of Steven Krynski¹ from “Highly Confidential” to “Confidential” so that the information contained in the exhibits to the Verified Statement can be shared with the officers and employees of SMS. SMS claims that the Highly Confidential designation was made to keep the information from the officers and employees of SMS; however, that is not the case. The designation was made to protect the confidentiality of the SMS operations and the privacy of SMS employees named in the disciplinary report. As set forth in the Krynski Verified Statement, all of the incidents included in Exhibit A were discussed with SMS, and indeed Exhibit B is an SMS disciplinary report. Each incident involved SMS and its employees, and while SMS may not know which specific incidents show on the report, they certainly are aware of all of them. There was no need to, or intent to keep any information from SMS. Accordingly, PRC does not oppose the request of SMS to re-designate the Krynski Verified Statement,

¹ The Verified Statement was filed as part of the Reply of Paulsboro Refining Company LLC (“PRC”).

and in particular the Exhibits thereto, from “Highly Confidential” to “Confidential” in accordance with the Protective Order entered by the Board in this proceeding.²

Although PRC is agreeing to the re-designation, it is not agreeing that SMS can or should be permitted to file a reply to the PRC Reply (SMS Petition, ¶ 7) in contravention to the Board’s rules prohibiting replies to a reply. 49 CFR §1104.13(c). SMS was required to set forth all of its evidence and argument in its Protest. 49 CFR §1152.25(a). It was SMS in its Protest filed on February 24, 2014 (at pp. 13-14) that made the safety of SMS’s operations an issue, and the PRC Reply merely responded to the SMS assertions. The record is now complete, and SMS should not be permitted to make any further reply or to delay the Board’s decision in this proceeding.

Respectfully submitted,



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Dated: March 19, 2014

² PRC notes that none of the officers or employees of SMS have signed the required Confidential Undertaking, and pursuant to the Protective Order they cannot review any re-designated documents until they do so.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2014, I served a copy of the foregoing Reply on the persons listed below by the method shown:

By email:

Fritz R. Kahn
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