

ENTERED
Office of Proceedings
April 17, 2014
Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

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

**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.
FOR LEAVE TO FILE TO REPLY TO REPLY**

Eric M. Hocky
CLARK HILL THORP REED
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103-7041
(215) 640-8500

Attorneys for
Paulsboro Refining Company LLC

Dated: April 17, 2014

Before the
SURFACE TRANSPORTATION BOARD

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

**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.
FOR LEAVE TO FILE TO REPLY TO REPLY**

Paulsboro Refining Company LLC (“PRC”) filed its application for adverse abandonment on January 10, 2013. In accordance with the schedule established by the Board in its Notice served January 30, 2014, SMS Rail Service, Inc. (“SMS”) filed a Protest on February 24, 2014. PRC timely filed its Reply on March 10, 2014. SMS now has filed a Petition seeking leave to file a reply to the PRC Reply. For the reasons set forth herein, SMS’s Petition should be denied.

Discussion

SMS’s Petition acknowledges that under the Board’s regulations a “reply to a reply is not permitted.” SMS Petition at ¶ 6; 49 CFR §1104.13(c). Accordingly, it has filed a Petition to allow the filing of an otherwise impermissible reply. The Petition includes a verified statement of an SMS employee James R. Pfeiffer (the “Pfeiffer V.S.”) which SMS seeks to have made part of the record. The Board’s regulations are meant to control its docket, and to establish an end to filings so that a decision can be issued. *Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine*, STB Docket No. AB-124 (Sub-No. 2) (served May 6, 2003), slip op. at 3 (“the pleading

process ends with the reply, and replies to replies are not permitted”). While the Board will allow additional replies, and sur-replies if necessary, for “good cause” or when additional information is necessary to provide a complete factual record, *id.*, SMS’s proposed reply adds nothing of substance to the record.

In its Protest, SMS extolled its safety record, and indicated that it had not had a Federal Railroad Administration (“FRA”) reportable incident in the past eight years. Protest at 13. In response, PRC submitted a list of 23 rail service related incidents that it contended had occurred in the past five years, and about which it contended SMS, as the operator, was aware. The proposed Pfeiffer V.S. would address each of the incidents and provide his view of each. While Pfeiffer would dispute whether SMS had knowledge of one of the incidents, and whether SMS was responsible in the case of five or six others, he would acknowledge that there were at least 16 rail service incidents for which SMS was responsible (including two that he tries to avoid because it involved switching operations and not common carrier operations). Moreover, the Petition acknowledges that there was one incident that required reporting to the FRA. Petition at 4.

PRC introduced the list of incidents to call into question SMS’s claims as to its safety record. The Pfeiffer V.S. does not contradict that there were a number of safety issues, and it and the Petition confirm that the Protest was not correct when it indicated that there have been no reportable FRA incidents. Accordingly, the Pfeiffer V.S. is not necessary to provide a complete factual record, nor has SMS shown good cause for allowing a reply to a reply in this instance.

Conclusion

Because the proposed reply to reply would not dispute PRC's contention that SMS is not as safe as SMS contended in its Protest, the admission of the proposed verified statement would not serve to create a more complete record. Accordingly, SMS's Petition should be denied, and its proposed reply to PRC's Reply to Protest should not be admitted into the record.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL THORP REED
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

Attorneys for
Paulsboro Refining Company LLC

Dated: April 17, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2014, I served a copy of the foregoing

Reply on the persons listed below by the method shown:

By email:

Fritz R. Kahn
1919 M Street, NW
7th Floor
Washington, DC 20036

David Ziccardi
Conrail
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103

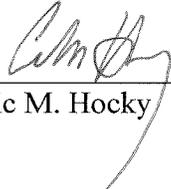
David Coleman
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

Paul Hitchcock
CSX Transportation, Inc.
Law Department
500 Water Street, J150
Jacksonville, FL 32202

By US First Class Mail, postage prepaid:

Michael A. Carrocino, Facility Manager
Exxon Mobil Research and Engineering
Company
600 Billingsport Road
Paulsboro, NJ 08066

By:


Eric M. Hocky