

Voting Conference, January 19, 2005

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SMS Rail Service, Inc. –  
Petition for Declaratory Order

STB Finance Docket No. 34483

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

SMS Rail Service, Inc., is a railroad providing service at three separate industrial facilities in the northeastern United States. One of these facilities, located in Paulsboro, NJ, is owned by Valero Refining Company - New Jersey, and is leased to SMS pursuant to a notice of exemption filed by SMS in STB Finance Docket No. 33927. SMS's operations at Paulsboro connect with lines operated by Consolidated Rail Corporation as an agent for CSX Transportation, Inc., and Norfolk Southern Railway Company.

SMS maintains that it is a common carrier at Paulsboro by virtue of its notice of exemption and because it holds itself out to the public as such. In its petition, however, SMS states that NS has chosen not interact with SMS on a carrier-to-carrier basis at that location. Thus, SMS filed a petition for a declaratory order asking the Board to confirm that it is functioning as a rail common carrier at Paulsboro. SMS also asks the Board to find that NS has refused to include SMS in the through routing of shipments to and from Paulsboro, refused to interchange traffic with SMS at that location, failed to cooperate with SMS in the continuous movement of freight shipments, and treated SMS in an unfair, discriminatory, and unreasonable manner.

NS responds that it does not interact with SMS at Paulsboro on a carrier-to-carrier basis because SMS is a contract switching carrier at this facility, and because SMS has never exercised the authority it obtained by its notice of exemption. NS asserts that, even if the Board finds that SMS is functioning as a common carrier at Paulsboro, the Board need not issue any further findings or grant any affirmative relief to SMS.

The draft decision before you finds that SMS is functioning as a common carrier at Paulsboro, and it holds that NS should interact with SMS accordingly. Even if SMS currently is providing service to shippers at Paulsboro pursuant to contracts only, as NS contends, the record reflects that SMS is nonetheless holding itself out to serve the public as a common carrier and is fulfilling its common carrier obligations there. The decision, however, declines to issue any of the findings that SMS asks the Board to issue in connection with NS's alleged misconduct or to take any further action, and it encourages the parties to resolve any remaining differences through private negotiations.

We would be happy to address any questions you might have.