

PUBLIC - REDACTED VERSION

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34483

SMS RAIL SERVICE, INC.
- PETITION FOR DECLARATORY ORDER -
STATUS OF RAIL CARRIER



210829

MOTION TO COMPEL
OF
SMS RAIL SERVICE, INC.

ENTERED
Office of Proceedings

MAY 10 2004

Part of
Public Record

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Attorney for

SMS RAIL SERVICE, INC.

Dated: May 10, 2004

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2/6829

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



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Petitioner, SMS Rail Service, Inc., of Bridgeport, New Jersey ("SMS"), pursuant to 49 C.F.R. 1114.31 and 49 C.F.R. 117.1, respectfully requests the Board to enter an order compelling Norfolk Southern Railway Company of Norfolk, Virginia ("NS"), to produce the requested documents.

SMS on March 4, 2004, filed its Petition for Declaratory Order to have the Board resolve a long simmering disagreement between it and NS concerning SMS' status as a rail carrier in the receipt, or tender for transportation, of shipments consigned to, or shipped from, the industries located within a complex at Paulsboro, New Jersey. The parties agreed that the proceeding should be held in abeyance for thirty days to permit NS's counsel to look into the allegations of the Petition and to explore whether an amicable resolution of their dispute might be arrived at.

addressing or relating to communications between NS and Valero Refining Company-New Jersey, Air Products and Chemicals, Inc., Exxon Mobil Corporation, Oxbow Carbon & Minerals, Inc., and/or Savage Industries, including, but not limited to, all rate agreements and documents relating thereto, on shipments to and from the Complex at Paulsboro. Although the Board approved a Protective Order, served March 15, 2004, NS produced only one rate agreement between it and Valero, a major refiner, from its Paulsboro facility to Kelly Springfield, NC, and Danville, VA, dated April 6, 2004, and no other rate agreement and no drafts or memoranda relating to any of the rate agreements governing movements to and from the Paulsboro Complex.

The third document production request asked NS to produce all documents to and from the Paulsboro Complex shipped by, or consigned to Valery Refining Company-New Jersey, Air Products and Chemicals, Inc., Exxon Mobil Corporation, Oxbow Carbon & Minerals, Inc., and/or Savage Industries, including, but not limited to all bills of lading, waybills and statements for rates and or charges assessed. Although NS has had since March 16, 2004, to locate these and NS said it will produce a representative sampling of these, it has no yet done so.

The fourth document production requests asked NS to produce all documents reflecting communications between it and Valero Refining Company-New Jersey, Air Products and Chemicals, Inc., Exxon Mobil Corporation, Oxbow Carbon & Minerals, Inc., and/or Savage Industries, addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard. NS produced no document in response, referring to the documents it produced in response to Document Production Request No. 1, which, however, was limited to documents internal to NS.

The fifth document production request asked NS to produce all documents reflecting

communications between it and CSXT addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard. In response, NS produced a letter from Jonathan M. Broder Esq., of Conrail, dated November 27, 2000, addressed to Mr. Kahn. It produced no communication between it and CSXT as was requested.

The sixth document production request asked NS to produce all documents reflecting communications between it and Conrail addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard. NS produced no document, simply referring to the one letter produced in response to Document Production Request No. 5.

The seventh document production requests asked NS to produce all documents reflecting communications between NS and the Board addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard. Produced were two copies Chairman Morgan's letter of July 9, 2002, addressed to NS' Chairman Goode. From the copy routed to HDL, it is apparent that the letter was routed to JAS, HDL, JWM, JFC, SCT, TLI, and KBM, but nevertheless NS did not produce the copies of these individuals or copies of their comments, recommendations or other responses. "Jim" was asked to prepare a draft reply before it was sent, but no copy of the draft was produced by NS. Moreover, produced by NS were copies of letters sent to Director Melvin F. Clemens, Jr., by Mr. Sutch on November 12, 2000, and by Mr. Kahn on November 15, 2000. Not produced by NS were copies of any memoranda or other documents relating to what the response to Mr. Clemens should be. Finally, SMS addressed additional letters to Chairman Morgan and Director Clemens, which SMS has every reason to believe were forwarded to NS for its reaction, and yet NS produced no document pertaining to these.

It is evident that the disdain in which NS holds SMS has clouded its obligation under the

Board's rules faithfully and fully to respond to discovery requests. The paltry production of documents is simply another demonstration of NS' arrogance.

WHEREFORE, SMS Rail Service, Inc., prays that the Board enter an order compelling NS to produce the requested documents and reimbursing for its attorney's fees and other costs in filing this pleading.

Respectfully submitted,

SMS RAIL SERVICE, INC.

By its attorney,



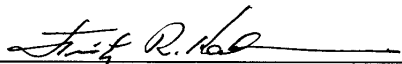
Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Dated: May 10, 2004

CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Compel was this day hand delivered to counsel for NS, Richard A. Allen, Esq.

Dated at Washington, DC, this 10th day of May 2004.



Fritz R. Kahn

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34483

PETITION FOR DECLARATORY ORDER
OF SMS RAIL SERVICE, INC.

**RESPONSE OF NORFOLK SOUTHERN RAILWAY COMPANY
TO SMS' FIRST SET OF DOCUMENT PRODUCTION REQUESTS**

Norfolk Southern Railway Company ("NS") hereby responds to SMS' First Set of Document Production Requests. The documents produced hereby are documents responsive to the requests that NS and its counsel have been able to collect in the exercise of due diligence the production of which is not objected to. NS will continue to search for documents responsive to the requests and will promptly provide to counsel for SMS any additional documents the production of which is not objected to. Pursuant to the protective order served by the Surface Transportation Board ("Board" or "STB") on March 15, 2004, documents produced that are deemed highly confidential by NS shall be marked "Highly Confidential" and documents deemed confidential shall be marked "Confidential," and NS expects that they will be treated as such in accordance with the protective order.

GENERAL OBJECTIONS

1. NS objects to the production of, and is not producing, documents that are publicly available, including but not limited to decisions and orders of public agencies, pleadings filed with public agencies.

2. NS objects to the production of, and is not producing, documents that would disclose information protected by the attorney-client privilege and the attorney work-product doctrine.

DOCUMENT PRODUCTION REQUESTS.

1. *Please produce all documents in your possession, including, but not limited to communications from, or between persons within NS, addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard.*

Response: See attached documents.

2. *Please produce all documents addressing or relating to communications between you and Valero Refining Company—New Jersey, Air Products and Chemicals, Inc., Exxon Mobil Corporation, Oxbow Carbon & Minerals, Inc., and/or Savage Industries, Inc., including, but not limited to all rate agreements and documents relating thereto. On shipments to and from the Complex at Paulsboro.*

Response: NS objects to this request as seeking documents not relevant to any issue in this case and not reasonably calculated to lead to any discoverable evidence. Subject to, and without waiving this objection, NS hereby produces the attached documents.

3. *Please produce all documents addressing or relating to shipment to and from the Complex at Paulsboro shipped by, or consigned to, Valero Refining Company—New Jersey, Air Products and Chemicals, Inc., Exxon Mobil Corporation, Oxbow Carbon & Minerals, Inc., and/or Savage Industries, Inc., including, but not limited to all bills of lading and statements for rates and/or charges assessed.*

Response: NS objects to this request as seeking documents not relevant to any issue in this case and not reasonably calculated to lead to any discoverable evidence. NS also objects to this request on the additional ground that it is unduly burdensome to the extent to seeks more than a representative sampling of the exceedingly voluminous documents requested. Subject to, and without waiving these objections, NS will produce a representative sampling of the requested document.

4. Please produce all documents reflecting communications between you and Valero Refining Company—New Jersey, Air Products and Chemicals, Inc., Exxon Mobil Corporation, Oxbow Carbon & Minerals, Inc., and/or Savage Industries, Inc., addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard.

Response: See documents produced in response to Request No. 1.

5. Please produce all documents reflecting communication between you and CSXT addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard.

Response: See attached document.

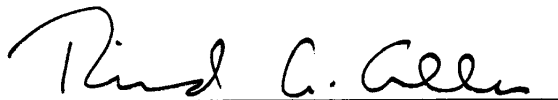
6. Please produce all documents reflecting communication between you and Conrail addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard.

Response: See document produced in response to Request No. 5.

7. Please produce all documents reflecting communication between you and the STB addressing or relating to SMS and its service at the Complex at Paulsboro and the Paulsboro Yard.

Response: See attached documents.

Respectfully submitted,



Maquiling B. Parkerson
NORFOLK SOUTHERN
CORPORATION
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2657

Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT &
RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 700
Washington, D.C. 20006
(202) 298-8660

April 30, 2004

DOCUMENT REQUEST NO. 1

 **VALERO
MARKETING AND SUPPLY COMPANY**

December 18, 2002

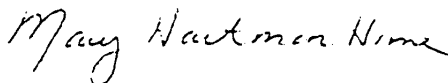
SMS/Penn-Jersey Rail Lines
Richard Petrone
Director, Finance & Administration
P.O. Box 711
510 Heron Drive, Suite 106
Bridgeport, NJ 08014

Dear Rich:

This is to confirm our phone conversation of this morning, December 18th, that Valero does not want Norfolk Southern to incorporate your contract switching rate into their rates. If, at some future date, Valero wishes to have your switching rates incorporated into our NS rates, we will initiate the directive to Norfolk Southern and advise you.

If you have any questions please call me.

Sincerely,



Mary Hartman Hime
Vice President Specialty Products

cc: Jim Liddell, National Account Manager - Chemical

000001

Quesenberry, Brenda

From: Richard Petrone [rpetrone@sms-pennjerseyrail.com]
Sent: Monday, December 16, 2002 10:13 AM
To: Osborne, Joe
Cc: dwseale@nscorp.com
Subject: Re: Valero Refining Company - NJ

Good morning.

In my last conversation with Don Seale, I was under the distinct impression that this issue had been reviewed and was given Don's seal of approval. It was my understanding that contacting you was the final step in formalizing and completing the process.

Please advise if there is any further information required from SMS to facilitate this process. We wish to begin invoicing in this new manner effective the first of the new year.

Thank you and best regards.

----- Original Message -----

From: "Osborne, Joe" <jcosbor2@nscorp.com>
To: "'Richard Petrone'" <rpetrone@sms-pennjerseyrail.com>
Sent: Thursday, December 05, 2002 8:21 AM
Subject: RE: Valero Refining Company - NJ

Richard:

I will respond after NS completes its review
Joe Osborne

-----Original Message-----

From: Richard Petrone
To: Osborne, Joe
Sent: 12/4/2002 12:30 PM
Subject: Re: Valero Refining Company - NJ

Good afternoon.

I hope you had a safe and enjoyable Thanksgiving holiday.

Just a reminder that I am still awaiting your guidance on the handling of the finances for our mutual Customer, Valero.

Thank you.

----- Original Message -----

From: Osborne, <mailto:jcosbor2@nscorp.com> Joe
To: 'Richard Petrone' <mailto:rpetrone@sms-pennjerseyrail.com>
Sent: Monday, November 11, 2002 12:30 PM
Subject: RE: Valero Refining Company - NJ

I received your earlier email, and I will respond after I catch up with some other folks at NS. Our travel schedules have been heavy, so it has been tough to meet.
Joe Osborne

Joe pls explain
DWS
12/16

and sent
12/18

000002

CONRAIL[®]



Jonathan M. Broder
Assistant Vice President-Law
(215) 209-5020
FAX (215) 209-4819

VIA FACSIMILE

December 1, 2000

Mr. Fritz Kahn, Esquire
Law Offices
Eighth Floor
1920 N Street, N.W.
Washington, D.C. 20036-1601

Re: SMS - Paulsboro

Dear Fritz:

This is in response to your letters dated November 29 and November 30, respectively, concerning the above. First, as to charges for storage, Conrail is not in a position to determine what charges would be assessed. As you know, after the consummation of the Conrail Transaction, Conrail became purely an operating agent for Norfolk Southern and CSX Transportation. Conrail no longer publishes tariffs or assesses commercial charges to customers or other railroads. To that end, and second, I am not aware of anyone at Conrail that would have stated that such a charge would be assessed. If that was said, it was a mistake for the reasons set forth above. The charges to be assessed would depend upon the linehaul account that any particular rail car would be in at Paulsboro. I have no knowledge of what assessorial tariffs CSX and NS individually maintain for locations within the Conrail shared assets territory.

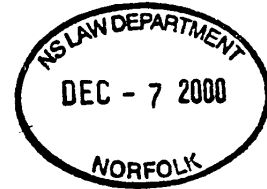
Third, we believe the interchange arrangements agreed to with SMS are reasonable and sufficient for the operation at issue. We do not believe additional tracks need to be designated at this time.

Finally, the trackage rights you refer to in northern New Jersey are not relevant; first, that arrangement has not been finalized, second, it does not involve a new interchange with Conrail, and third, it does not involve an interchange being established for switching purposes only.

We categorically take issue with your assertion that Conrail's actions are based upon some alleged "animus" it bears towards your client. Conrail and its customers have been put in a difficult operational position as a result of your client's arrangement with Valero, an arrangement we were not party to and which we were not consulted about before it suddenly became a fait accompli. We are responding in a reasonable, business like fashion. The customers involved

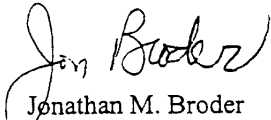
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Mr. Fritz Kahn
Page 2
December 1, 2000



are our mutual customers now, and we are working hard to assure that there are no disruptions to their operations as a result of SMS' unilateral interposition of itself between Conrail and these customers. My understanding is that the interchange operation has gone without a problem since it began on November 28, and we will work diligently to maintain this status. 

Sincerely,



Jonathan M. Broder
Assistant Vice President-Law

cc: Honorable Melvin F. Clemens, Jr.
T. T. O'Toole
Paul Deppen

bc: R. Batory
R. Dawson
J. Scullin

bbc: M. Mastro - CSX
P. Hitchcock - CSX

bbbc: G. Aspatore - NS
J. Edwards - NS
J. Osborne - NS

000004

Reclact notes to JH

** 10'3000 70101 **

DEC 17 2001

30 01 0

12-17-01

DOE
JWS
SVE

Phone (856) 4

Fax (856) 467-

Jim McClellan: Reference this attached letter from Jeff Sutch the misroutes have been corrected and were corrected at the time of his writing. We do not interchange cars with SMS at Paulsboro as an interline carrier per our corporate position on this subject and thus there is no car hire. In your letter of November 7, you asked Jeff Sutch NOT to remit payments for car hire. He continues to do so at his own choosing. We do not send bills for car hire and can not control if Jeff chooses to remit payments. Jeff wants to look like an interline carrier and thus wants to continue to make car hire payments. Cars are billed to the customers in the Valero complex and delivered via the Valero track 234 referenced in Jeff's letter to you. Jeff wants to come into the Paulsboro yard to effect interchange and we have refused. Thus, Jeff has not signed the interchange agreement.

Bottom line, Jeff is not satisfied that the misroutes have been corrected and that he is not responsible for car hire. He wants to be recognized as an interline common carrier at Paulsboro. If you need me to do anything further, please advise. JMK

CY: DW Seale
John Edwards
Joe Osborne

James W. McClellan
Senior Vice President, Planning
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191

November 30, 2001

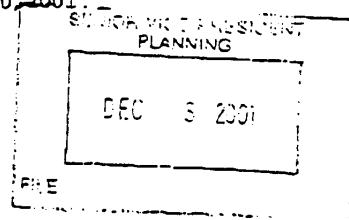
John Kraemer

985-4475 (fax)

- 4292

Our discussion

Sh 12/17



Dear Jim:

We are in receipt of your letter dated November 7, 2001 but regrettably do not share your optimism that we are anywhere near resolving the issue between our Companies.

To date, we have not been contacted by Mr. Kraemer with regard to either the car hire or the misrouting issues. While there has been no recurrence of the misrouting since our last correspondence, we fail to see how either situation can be resolved without NS' acknowledging that Paulsboro is a station for SMS where a viable interchange should be effected. Furthermore, the "standard" interchange agreement you mentioned was not executed for reasons already known to Mr. Broder, namely that it covers only the Valero-owned track number 234, which is insufficient to handle the traffic, and our concerns have not changed over the past year. Finally, we do not question the manner in which your line-haul contracts with Valero are structured, but we are concerned that SMS is denied the opportunity to participate in the initial and/or final portions of the handling of the shipments covered by those rates as requested by Valero and SMS. Consequently, and contrary to your final statement, we strongly believe that the aforementioned issues are merely symptoms of NS' refusal to recognize SMS as a duly franchised railroad, which in our view is the single overriding issue that exists between our Companies, which must be addressed.

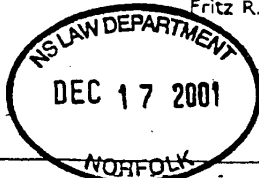
We reiterate our request for a face-to-face meeting at the time and location of your choosing to resolve this issue once and for all in an informal and amicable manner - no Counsel, no STB. Alternatively, we would need to turn the issue over to our Counsel and seek assistance from the STB directly. We hope that reasonability will prevail and that we can put this matter behind us by year-end.

Sincerely,

Jeffrey L. Sutch
President

[Privileged matter redacted]

cc: Melvin F. Clemens, Jr., STB
Fritz R. Kahn, Esquire



000006

Phone (856) 467-4800
Fax (856) 467-2121



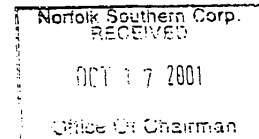
www.sms-pennjerseyrail.com

Post Office Box 711
Bridgeport, NJ 08014

October 17, 2001

JWM
Jm k
info
JHF
10/17

David R. Goode
Chairman, President and CEO
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191



Dear David:

I placed another call to your office today as a follow-up to our conversation last month with regard to Norfolk Southern's decision not to recognize our STB authority to operate as a Common Carrier in Paulsboro, NJ. (STB Finance Docket # 33927).

As you know, last year we were selected as the rail service provider at the Valero Energy plant in Paulsboro, NJ as a direct result of years of inadequate service and unsafe operation within the facility by Conrail/Shared Assets. While the STB approved our operating authority, the NS opted not to recognize our interchange and have since operated in direct contradiction to that ruling. Furthermore, the NS has refused to abide by AAR Accounting rules applicable to our services, but has insisted upon the enforcement of AAR Car Hire rules for those same services and chooses to deduct that amount from payments due to our Bridgeport, NJ operating division.

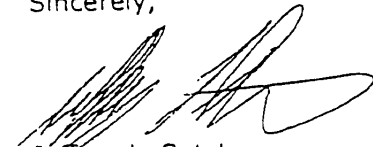
These actions have been carried out for nearly one year despite all our attempts to resolve this situation amicably. They have created an adversarial relationship between our two Companies and have left a very important joint Customer with a very bad taste in their mouth. Considering that NS handles the majority of the line haul moves originating at Valero in Paulsboro, NJ, it was our assumption that you would be as eager to resolve this situation as SMS. To the contrary however, the Customer's perception of this situation is one of utter dismay and that the handling of this situation is a definitive example of the level of responsiveness they have experienced for many years and that led them to change Carriers in the first place.

000007

Now, due to the tragic events of September 11 and the resulting edicts for increased security, a new light has been shed on the impact of these actions that significantly elevates the urgency of this matter above the current level of bruised egos and a fractured relationship. Over the past few days, seventeen (17) cars destined for Paulsboro, NJ were misrouted to our division in Bridgeport, NJ. These are obviously hazardous material cars traveling without their necessary paperwork at a time when our industry is operating under a level of heightened security and when we have all been advised to tighten the controls on movements of hazardous material.

While we have been patient and have exhausted every avenue to resolve this situation amongst ourselves, it is regrettable that we are now forced to take appropriate steps to ensure that this situation is resolved immediately and finally. Our offer to visit your office still stands as we are willing to meet face-to-face to resolve this situation, but we must interpret your continued failure to respond to our requests as your unwillingness to do so.

Sincerely,



Jeffrey L. Sutch
President

cc: Fritz R. Kahn, Esquire
Linda J. Morgan, US DOT/STB

000008

SMS Rail Lines, Inc. and Valero Refining Company Proposed Interchange Agreement

Norfolk, Virginia – November 21, 2000
Law Department – File CO58.S9-206

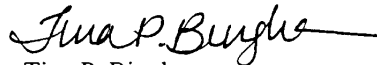
J. W. McClellan
Senior Vice President Planning

T. L. Ingram
Vice President Transportation – Operations

J. C. Osborne, Jr.
Group Vice President Chemicals

Attached you will find the letter to Jeff Sutch of SMS Rail Lines, Inc., with a copy to Mel Clemens of the Surface Transportation Board. The letter was faxed and mailed to Mr. Sutch and Mr. Clemens this afternoon.

Thank you for your help on this matter. Please let me know if you need any further information.


Tina P. Bingham

cc: G. A. Aspatore
J. V. Edwards

000009



**NORFOLK
SOUTHERN**

Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

T. L. Ingram
Vice President
Transportation Operations
Telephone: 757 629-2606
FAX: 757 629-2344

November 21, 2000

Mr. Jeffrey L. Sutch
President
SMS Rail Lines, Inc.
Post Office Box 711
Bridgeport, NJ 08014

Dear Mr. Sutch:

We recently received from the STB copies of your letter, the letter from Fritz Kahn, and the email from Marion Lewis. Norfolk Southern Railway Company, and we understand Consolidated Rail Corporation as well, stand ready to provide Valero Refining Company-New Jersey and SMS Rail Lines, Inc. with reasonable interchange services.

Norfolk Southern Railway Company has no objection to interchanging traffic with SMS on its facilities. However, we are not agreeable to interchanging traffic within Conrail's Paulsboro Yard. Although there are operational concerns with proposals for SMS to move and interchange traffic on Conrail's SAA lines, we also note that SMS has not offered to compensate Conrail for the use of the SAA property.

SMS has also requested that NS, CSX and Conrail absorb its switching charge. We are not required to absorb SMS's switching charge and chose not to do so.

It is our understanding that Consolidated Rail Corporation will send to SMS a proposed interchange agreement. Until an agreement is signed, we are prepared to provide interchange services to SMS, on its lines, based on those draft terms and conditions beginning on Tuesday, November 28, 2000, when we understand SMS will commence its services for Valero.

If you have any questions or need further information, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read "T. L. Ingram", followed by a horizontal line.

T. L. Ingram

cc: Mr. Melvin F. Clemens, Jr.
Mr. George A. Aspatore

000010

Wednesday, November 22, 2000 1:06 PM
NOV 21 '00 02:42PM TREASURY

8564672121

p.02

P.1/15

CONRAIL



November 21, 2000

Mr. Jeffrey L. Sutch
President
SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, NJ 08014

Transmission via fax: 856-467-2121

Dear Mr. Sutch:

Attached is the Interchange Agreement for Conrail to operate on Track 234 in Paulsboro Yard, New Jersey for the purpose of interchange.

It is Conrail's understanding that you desire to start this interchange service on November 28, 2000. After you have reviewed and agreed to the terms, Conrail is required to obtain Board of Directors' approval. However, Conrail is willing to provide this service on an interim basis, pursuant to the terms and conditions of the attached agreement. Should Conrail's Board of Directors approve the agreement, Conrail will then execute it. If it is not approved, we will renegotiate new terms and this agreement will be of no further effect.

Please acknowledge your concurrence on behalf of SMS Rail Service, Inc. in the space provided below, returning by fax (215-209-5346) this executed letter agreement for our records.

Very Truly Yours,

Paul J. Deppen, Jr.
Manager-Joint Facility Contracts

to memo

ACCEPTED ON BEHALF OF SMS RAIL SERVICE, INC.:

BY:

TITLE:

President

DATE:

11-22-00

Attachment

CONSOLIDATED RAIL CORPORATION 2001 MARKET STREET P. O. BOX 61410 PHILADELPHIA, PA 19101-1410

000011

AGREEMENT

Dated as of _____, 2000

between

CONSOLIDATED RAIL CORPORATION ("Conrail" or "User")

and

SMS Rail Service, Inc. ("SMS" or "Owner")

**Relating to Interchange Operations between
the parties hereto at Paulsboro, NJ
with Operating Rights on Track 234, Paulsboro Yard, NJ**

INTERCHANGE AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of _____, 2000, by and between CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Conrail" or "User") and SMS Rail Service, Inc. (hereinafter referred to as "SMS" or "Owner").

WHEREAS, the parties hereto desire to enter into an agreement to provide for the interchange of loaded and empty freight cars on Track 234, Paulsboro Yard, NJ; and

WHEREAS, to allow Conrail access to the interchange facilities, SMS is willing to grant Conrail Operating Rights subject to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. GRANT OF OPERATING RIGHTS

Subject to the terms and conditions herein provided, SMS hereby grants to Conrail the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Operating Rights") over the following segment of SMS's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

Track 234, Paulsboro Yard, NJ from point "B" off the Conrail Penns Grove Secondary to Billingsport Road Crossing.

SECTION 2. USE OF SUBJECT TRACKAGE

Operating Rights herein granted are granted for the sole purpose of Conrail using same for the delivery and receipt of interchange traffic between the parties hereto, and Conrail shall not perform any local freight service whatever at any point located on the Subject Trackage, nor is Conrail permitted to ingress or egress at any point other than the end points of the Subject Trackage as specified in Section 1 hereof. Additionally, SMS is not permitted to ingress or egress from track 234 onto Conrail's Penns Grove Secondary (Beyond Point "B" as indicated on Exhibit A).

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SECTION 3. INTERCHANGE PROVISIONS

(a) Conrail shall deliver and pull interchange cars to and from track 234, Paulsboro Yard, NJ (hereinafter referred to as "Interchange Track"). Conrail shall not be required or obligated to violate its labor agreement to satisfy a request on the part of SMS. In the event a Conrail train and engine crew is required to perform service at SMS's direction which is in violation of Conrail's Collective Bargaining Agreements, if any, any resultant penalties arising under Conrail's Collective Bargaining Agreements shall be assumed and borne solely by SMS, provided Conrail gave notice to SMS, in advance of any such event, that work action proposed would be in violation of such collective bargaining agreement.

SECTION 4. COMPENSATION

There shall be no charge for Conrail's use of the Subject Trackage as such use is granted for the sole purpose of accessing the Interchange Track.

SECTION 5. MAINTENANCE OF SUBJECT TRACKAGE AND INTERCHANGE TRACK

SMS shall maintain, repair and renew the Interchange Track at its own expense with its own supervision and labor. SMS shall keep and maintain the Subject Trackage and the Interchange Tracks(s) in reasonably good condition for the use herein contemplated, but SMS does not guarantee the condition of the Subject Trackage or the Interchange Track or that operation thereover will not be interrupted.

SECTION 6. MANAGEMENT AND OPERATION

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Interchange Track. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its directors, officers, agents, or

employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(b) User, in its use of the Subject Trackage and Interchange Track, will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars and equipment over the Subject Trackage and the Interchange Track shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Interchange Track as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior written consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

(c) User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage and the Interchange Track qualified for operation thereover, and User shall pay to Owner, promptly upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

(d) Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner will schedule the investigation and notify User's Local Transportation Officer in the territory thereof, who will, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

(e) If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage and Interchange Track any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

(f) In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

(g) If Owner conducts an investigation, its officer will conduct the investigation, but an officer of User may be present to assure compliance with the User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner will promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer will arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.

(h) It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

(i) The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Interchange Track or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(j) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Interchange Track, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Interchange Track, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage or the Interchange Track, and User shall reimburse Owner for the cost of rendering any such assistance.

(k) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars to move them off the Interchange Track such work shall be done by user and owner shall reimburse user for the cost thereof.

(l) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

SECTION 7. CLEARING OF WRECKS

Whenever User's use of the Interchange Track requires rerailling, wrecking service, or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track and structures. The cost and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 8 hereof. All locomotives, cars and equipment and salvage from same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

SECTION 8. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection

with the Operating Rights or the interchange operations set forth in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars or equipment of, or in the account of, User being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 7 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Owner or its directors, officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of, User being involved, Owner shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 7 hereof, and shall forever protect, defend, indemnify, and save harmless User and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars

(including without limitation land), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation the Subject Trackage and the Interchange Track) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including without limitation all cost and expense referred to in Section 7 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, and in the event such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 7 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either Owner or User, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either party under the provisions of this Agreement is required to pay said

compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) For purposes of this Section 8, pilots furnished by Owner to User pursuant to Section 6(c) of this Agreement shall be considered as the employees of User while such employees are on duty as pilots.

(g) For the purposes of this Section 8, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that at the time of an occurrence, are being operated on the Subject Trackage or the Interchange Track, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or the Interchange Track, or their rights-of-way, for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 9. INVESTIGATION

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contracts entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses

in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Twenty-Five Thousand Dollars (\$25,000).

(f) Nothing in this section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 8 hereof.

SECTION 10. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

SECTION 11. EMPLOYEE PROTECTION

SMS shall assure and hold Conrail harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits, or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the Surface Transportation Board or are predicated on the Railway Labor Act or collective bargaining agreements, provided Conrail gave notice to SMS, in advance of any such event, that work action proposed would be in violation of such collective bargaining agreement.

SECTION 12. INSURANCE

(a) During the term, and any continued term of this Agreement, SMS, at its own expense, shall procure and maintain in effect a policy of public liability insurance, with limits of not less than \$5 million single limit, bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to, or destruction of property, including the loss of use thereof, in any one occurrence, subject to a self-insured retention limit not to exceed Twenty-Five Thousand Dollars (\$25,000), including contractual liability insurance, which names Conrail as an additional insured and provides for a minimum of thirty (30) days' advance written notice to Conrail prior to any changes or cancellation. Failure to procure and maintain such insurance in force shall constitute a Breach of Contract hereunder.

(b) This insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility, which are rated "A" or better by either Best's Insurance Reports, Standard & Poor's Insurance Rating Service or Moody's Investors Service. Conrail reserves the right to reject as inadequate, coverage provided by an insurance company rated less than "A" by the aforementioned rating services.

(c) If the insurance provided under this section takes the form of a "Claims Made Policy", SMS shall purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least five (5) years following the termination of this Agreement. SMS shall immediately give Conrail written notice of any claim, or notice of incident, or notice of potential claim, that is required to be reported to SMS's liability insurance company.

(d) SMS shall provide annually, satisfactory evidence of coverage, written notice of any claim and any other correspondence dealing with insurance and insurance matters to:

Manager-Joint Facility Contracts
Consolidated Rail Corporation
2001 Market Street 16-A
P. O. Box 41416
Philadelphia, PA 19101-1416

SECTION 13. TERM

This Agreement shall take effect as of the date first above written and shall continue in force and effect until terminated by either party upon thirty (30) days' written notice to the other party. Termination of this Agreement shall not relieve, release or excuse either party from any liability which either party may have incurred or any obligation which may have accrued under any provisions of this Agreement prior to the effective date of termination.

SECTION 14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, provided, however, that User shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of Owner.

SECTION 15. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

- (a) If to Conrail:
c/o Manager-Joint Facility Contracts
Consolidated Rail Corporation
2001 Market Street - 16-A
P. O. Box 1416
Philadelphia, PA 19101-1416
- (b) If to SMS:
c/o Mr. Jeffrey L. Sutch
President
SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, NJ 08014

(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

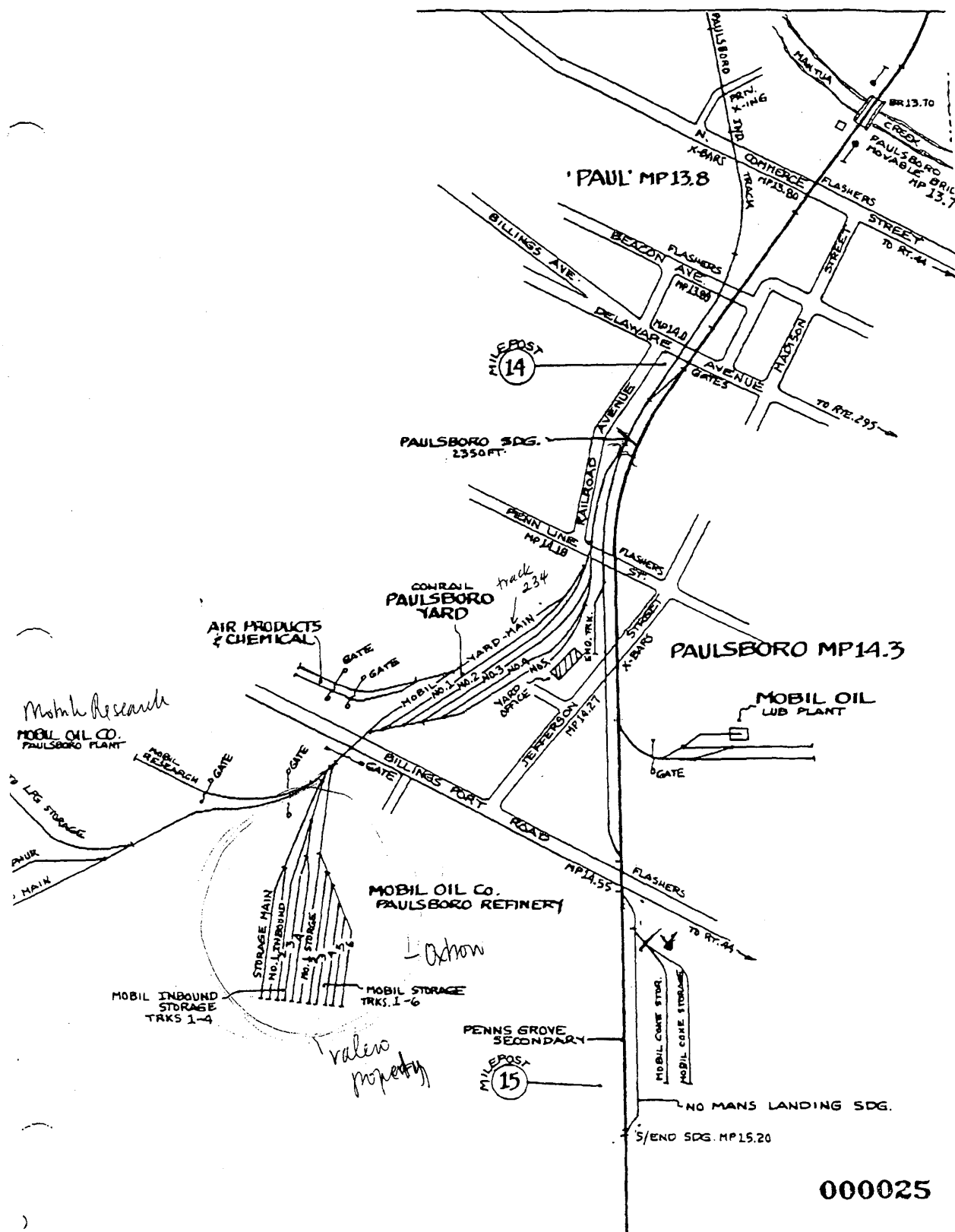
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS: **CONSOLIDATED RAIL CORPORATION**

_____ **By:** _____
President and CEO

WITNESS: **SMS RAIL SERVICES, INC.**

_____ **By:** _____
President



000025

Fax (856) 467-2121
Fax (610) 828-7481



Your Destination in Rail Freight

SMS

Post Office Box 711
Bridgeport, NJ 08014
NJ (856) 467-4800
PA (610) 828-1863

September 27, 2000

John M. Kraemer
Asst. VP Shortline Marketing
Norfolk Southern Corporation
Merchandise Marketing Department
110 Franklin Road, SE
Roanoke, VA 24042-0041

Norfolk Southern Corp.

OCT 9 2000

Strategic Planning

Dear John,

As per our conversation, SMS has entered into an agreement with Valero Refining Company, New Jersey. Our agreement is to maintain and operate approximately 5.8 miles of railroad located in Paulsboro, New Jersey. Within this facility we will be serving four customers with various commodities:

- Air Products
- Exxon Mobil Research and Development
- Oxbow Carbon and Minerals
- Valero Refining

SMS' revenue requirements will be \$225.00 per car using our Handling Line Agreement. As we now use at our Bridgeport, NJ facility. We will also require a workable interchange.

On Thursday, September 21, 2000 Dutch Tubman, Fran Hennessy and myself made an on-site visit and identified four to five locations for interchange. We all agreed the best place for interchange would be in the Coke yard area. Major Reason being, WPCA-11, which is the local out of Camden Pavonia yard, sets off and picks up in this area. Second Reason is on a daily average SMS will be interchanging approximately 30 to 40 cars per day and this area has the capacity to handle this traffic.

SMS will be looking to start operations on November 01, 2000. We will need to have 2 of our locomotives moved from Bridgeport to Paulsboro prior to this date.

I am enclosing a copy of SMS' verified notice of exemption with local and area maps and a commodity list with STCC codes.

SMS is looking forward in working with Norfolk Southern to provide a high quality seamless customer oriented service, which will in the long term benefit all parties, involved.

Thanks so much for your help,

Jeffrey L. Sutch
President
SMS/ Penn- Jersey
Rail Lines

000026



Norfolk Southern Corporation
Strategic Planning
Three Commercial Place
Norfolk, Virginia 23510-2191
757 629-2887

CO58.89-206

James W. McClellan
Senior Vice President
Planning
(757) 629-2665
(757) 533-4884 FAX

November 7, 2001

Jeffrey L. Sutch
President
SMS Rail Service, Inc.
P. O. Box 711
Bridgeport, NJ 08014

Dear Jeff:

David Goode asked me to look into the issues raised by your letter of October 17, 2001 as well as our subsequent telephone conversation. After a bit of investigation and prodding, I think that many of the issues should now be resolved.

John Kraemer of our Shortline Group assures me that he is on top of both the car hire issue and misrouting issue. These are issues that need to be – and will be – addressed, and John will be in touch with you to do so. Specifically with regard to the car hire issue, I ask that you cease sending to NS payments for car hire at Paulsboro. Please send to John an accounting of the car hire payments you have already sent, unsolicited, to us.

I understand that the interchange by all accounts appears to be working satisfactorily. I further understand that on November 21, 2000, Conrail sent to you a standard interchange agreement to govern the delivery of Valero traffic to Track 234 in Valero's Paulsboro Yard. Though you have not signed this agreement, its terms have governed operations at Valero's Paulsboro facility over the past year. We ask that you execute this agreement and return it to Jon Broder at Conrail. However, if you believe that changes need to be made to this agreement, please contact Mr. Broder.

We believe that with the resolution of the car hire and misrouting issues, and assuming that there are no significant issues regarding the interchange agreement, we should be well on our way to addressing all of the concerns that you have identified.

This summer NS and Valero entered into several single-line service transportation contracts. Although these are confidential contracts, I can state that they did not provide a role for SMS as part of the line-haul. Further, these contracts provided that NS would not be paying SMS for the in-plant switching services that Conrail used to provide to Valero. (Those in-plant switching services were provided to Valero under a single priced in-plant switching contract that was independent of any line-haul transportation contract.) Given this, it seems as if there is no need at this time to press the issue as to whether the

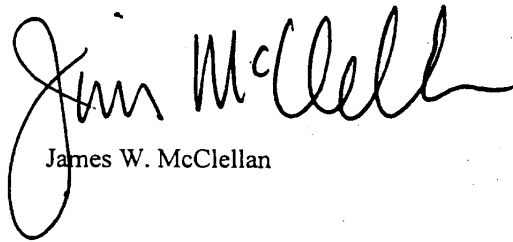
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Jeffrey L. Sutch
November 7, 2001
Page 2

lease of the in-plant tracks at Valero's facility and SMS's submission of the notice of exemption – and the Board's publishing of the notice of exemption in reliance on the SMS submission – creates a bona fide rail common carrier.

I hope that this addresses the issues you raised.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McClellan". The signature is fluid and cursive, with the first name "Jim" written in a more compact, stylized manner than the last name "McClellan".

James W. McClellan

cc: David Goode
Don Seale
Joe Osborne
Jon Broder (Conrail)

000028

[Privileged matter redacted]

-----Original Message-----

From: Kraemer, John
Sent: Friday, October 19, 2001 6:12 PM
To: Seale, Don
Cc: McClellan, Jim W.; Paschall, James, R.; Edwards, John, V
Subject: SMS Paulsboro

Don Seale:

This morning at 10 am Jim McClellan and I conferenced with Jeff Sutch, SMS RR, regarding his recent letter to the Chairman regarding the interchange of traffic at Paulsboro, NJ. Jeff outlined his frustration that NS has refused to recognize the SMS as an STB approved carrier at Paulsboro, NJ, and that this was causing erroneous deliveries of cars, confusion regarding car placement and car accounting issues, and all charges were being billed rule eleven with the switching charges billed separately by SMS to Valero.

Jeff defended his position by further explaining that his ultimate placement on the Valero /Mobile site was necessitated by numerous failures by the former CR that included irregular service and derailments of hazardous materials cars that Mobile/Valero could not get resolved with CR. He argued that his charges were more than reasonable (Currently \$225 car) and that he was providing a service at the request of the customer that was not previously being performed in a safe and acceptable manner by CR.

Jeff is requesting that we recognize him as an STB approved RR interchange carrier at Paulsboro, NJ. He believes by doing so the issues of mishandled cars and car accounting/placement will be corrected. Jeff did not seem to be concerned or object to going forward with the current rule eleven rate arrangement at this time. Jeff emphasized that he did not want to resolve this issue at the STB but would prefer to work this out directly with NS. He also reminded us that the CSX has recognized the SMS as an interchange carrier at this location. We advised Jeff we would discuss this issue further internally and get back to him.

[Privileged matter redacted]

000029

DOCUMENT REQUEST NO. 2

CONRAIL

Jonathan M. Broder
Assistant Vice President-Law
(215) 209-5020
FAX (215) 209-4819

VIA TELECOPIER

November 27, 2000

Mr. Fritz Kahn, Esquire
Law Offices
Eighth Floor
1920 N Street, N.W.
Washington, D.C. 20036-1601

Re: Paulsboro Interchange

Dear Fritz:

I have received a copy of a letter marked "draft", sent by your client, SMS/Penn-Jersey Rail Lines to Mr. Paul Deppen, Manager of Joint Facility Contracts at Conrail on November 22 concerning the above. I am responding because of the legal issues raised by the letter.

Conrail has provided to SMS a standard form of interchange agreement to implement the service the customers at the Valero Refining Company apparently have requested that your client perform in place of Conrail. I say apparently because it is not clear to us that all of the affected customers were ever informed about the change in operations. Nevertheless, we have had several conversations and meetings with your client and have mutually agreed to the proposed interchange operation, effective November 28, 2000.

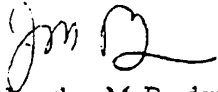
Your client's attempt to condition the acceptance of the interim agreement on the applicability of a Norfolk Southern tariff is not, of course acceptable. This was never discussed before. More importantly, Conrail is not a party to such a tariff and cannot bind the Norfolk Southern. You should direct your request to the appropriate parties at that company. Finally, your reference to other interchange arrangements with other parties at other locations is irrelevant. Each arrangement is made based upon the specific situation presented to our transportation department and our Company. Conrail has made reasonable interchange facilities available to SMS in compliance with applicable law. Whether that arrangement is to SMS's liking or is the optimal arrangement from SMS's perspective does not equate to a legal violation.

000028

Mr. Fritz Kahn
Page 2
November 27, 2000

We will work in good faith to meet our legal obligations and to meet our customers' needs.

Sincerely,



Jonathan M. Broder
Assistant Vice President-Law

cc: Honorable Melvin F. Clemens, Jr. - Surface Transportation Board
T. T. O'Toole
D. Nelson
R. Batory
Paul Deppen

bc: M. R. Mastro, CSXT - 26th Flr.
Paul Hitchcock, CSXT Jacksonville, via fax

bbc: G. Aspatore, Esquire, NS
J. Edwards, Esquire, NS
Both Via Fax

000039

DOCUMENT REQUEST NO. 7



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

July 9, 2002

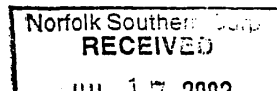
Mr. David Goode
Chairman, President and
Chief Executive Officer
Norfolk Southern Corporation
3 Commercial Place
Norfolk, Virginia 23510-2191

Re: Shared Assets Areas

David
Dear Mr. Goode:

This letter follows up on recent discussions regarding our mutual interest in the continued enhancement of rail service, particularly in connection with the Conrail transaction. As suggested by the recent decision to eliminate the STB-imposed requirement for weekly and monthly reporting by NS and CSX with respect to the Conrail transaction, we are very encouraged by the significant progress that NS has made in improving operations and service and restoring customer confidence. Nevertheless, I remain concerned about whether the Shared Assets Areas (SAAs) are producing the service opportunities for shippers and smaller railroads in and around those areas that were envisioned as part of the Conrail transaction.

In this regard, over the last several months, Mel Clemens and I have each visited the North and South Jersey SAAs at the request of shippers and participating short lines. Discussions in connection with those visits indicate that there have been service-related issues which shippers and short lines believe they have been unable to have adequately addressed by the SAA parent railroads. In this connection, concerns have been raised about comments made by representatives of the parent companies implying that, because of the costs associated with operating the SAAs, there is a reluctance to more fully develop commercial opportunities in those areas. As you know, the STB's decision approving the Conrail transaction discussed extensively the new competitive opportunities to be afforded shippers with the establishment of the SAAs. Thus, I am concerned when I hear that new service opportunities are possibly not being fully pursued.



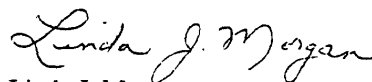
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In addition to those visits and other discussions, we have continued receiving periodic briefings on the operations of the SAAs, and as recently as June 28th, Mel and I met, as you may know, with Greg Weber, Ron Batory, Tony Ingram and Al Crown. It is clear from the meeting that operationally great progress has been made in the SAAs. I did take the opportunity at that meeting, however, to express my concerns about the commercial issues that had been brought to our attention. As examples, I raised issues involving Valero Refining at Paulsboro, New Jersey, and SMS Rail Services (SMS), the short line carrier hired by Valero to handle its terminal operation and interchange interface with Conrail, and in particular the concern that the Conrail parents have been unwilling to fully accommodate SMS services on behalf of Valero. I also raised questions about certain limitations being placed on the operations of the Morristown & Erie Railway (M&E) in connection with its efforts to grow its business by interchanging traffic with CSX at Kearny Yard. Those in the meeting agreed to revisit these matters. As further follow-up, I also indicated that I would be interested in receiving reports on situations where commercial opportunities in the SAAs were actively pursued to the benefit of those involved.

I know that a major focus of NS will continue to be rail service improvement and growth with a view toward fulfilling the promises of the Conrail transaction. I also know, in this regard, that NS has made a considerable effort to establish a more positive relationship with its connecting short lines and its customers throughout its network. While I recognize the marketing and operational complexities associated with the SAAs, I hope that this continued effort to seek and accommodate rail growth will include your short line partners and customers in the SAAs as well.

I appreciate your continuing commitment, and the commitment of those directly involved with the SAAs, to better rail service and to realizing the important objectives of the Conrail transaction. I look forward to continuing to work with you to that end.

Sincerely,


Linda J. Morgan

000041



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

CO58.59-206

July 9, 2002

Mr. David Goode
Chairman, President and
Chief Executive Officer
Norfolk Southern Corporation
3 Commercial Place
Norfolk, Virginia 23510-2191

Dear Mr. Goode:

This letter follows up on recent discussions regarding our mutual interest in the continued enhancement of rail service, particularly in connection with the Conrail transaction. As suggested by the recent decision to eliminate the STB-imposed requirement for weekly and monthly reporting by NS and CSX with respect to the Conrail transaction, we are very encouraged by the significant progress that NS has made in improving operations and service and restoring customer confidence. Nevertheless, I remain concerned about whether the Shared Assets Areas (SAAs) are producing the service opportunities for shippers and smaller railroads in and around those areas that were envisioned as part of the Conrail transaction.

In this regard, over the last several months, Mel Clemens and I have each visited the North and South Jersey SAAs at the request of shippers and participating short lines. Discussions in connection with those visits indicate that there have been service-related issues which shippers and short lines believe they have been unable to have adequately addressed by the SAA parent railroads. In this connection, concerns have been raised about comments made by representatives of the parent companies implying that, because of the costs associated with operating the SAAs, there is a reluctance to more fully develop commercial opportunities in those areas. As you know, the STB's decision approving the Conrail transaction discussed extensively the new competitive opportunities to be afforded shippers with the establishment of the SAAs. Thus, I am concerned when I hear that new service opportunities are possibly not being fully pursued.

Norfolk Southern Corp.
RECEIVED
JUL 17 2002
Office Of Chairman

Re: Shared Assets Areas

JAS - Linda Morgan
has requested a
joint rpt from
NS & CSX. Can
you arrange
coordination + drafting
of joint rpt?

JHF
7/17/02

cc: HDL
JWM
JFL
SCT
TLI
KBM

*Jim - Pls let me
see the draft of
this before it
goes out -
HJ
7/18*

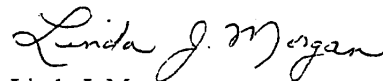
000042

In addition to those visits and other discussions, we have continued receiving periodic briefings on the operations of the SAAs, and as recently as June 28th, Mel and I met, as you may know, with Greg Weber, Ron Batory, Tony Ingram and Al Crown. It is clear from the meeting that operationally great progress has been made in the SAAs. I did take the opportunity at that meeting, however, to express my concerns about the commercial issues that had been brought to our attention. As examples, I raised issues involving Valero Refining at Paulsboro, New Jersey, and SMS Rail Services (SMS), the short line carrier hired by Valero to handle its terminal operation and interchange interface with Conrail, and in particular the concern that the Conrail parents have been unwilling to fully accommodate SMS services on behalf of Valero. I also raised questions about certain limitations being placed on the operations of the Morristown & Erie Railway (M&E) in connection with its efforts to grow its business by interchanging traffic with CSX at Kearny Yard. Those in the meeting agreed to revisit these matters. As further follow-up, I also indicated that I would be interested in receiving reports on situations where commercial opportunities in the SAAs were actively pursued to the benefit of those involved.

I know that a major focus of NS will continue to be rail service improvement and growth with a view toward fulfilling the promises of the Conrail transaction. I also know, in this regard, that NS has made a considerable effort to establish a more positive relationship with its connecting short lines and its customers throughout its network. While I recognize the marketing and operational complexities associated with the SAAs, I hope that this continued effort to seek and accommodate rail growth will include your short line partners and customers in the SAAs as well.

I appreciate your continuing commitment, and the commitment of those directly involved with the SAAs, to better rail service and to realizing the important objectives of the Conrail transaction. I look forward to continuing to work with you to that end.

Sincerely,



Linda J. Morgan

000043

11/17/00 FRI 08:27 FAX 202 565 9011

STB OCE WASH. DC

001

FAX COVER SHEET

SURFACE TRANSPORTATION BOARD OFFICE OF COMPLIANCE AND ENFORCEMENT

TO : Jim McClellan, Senior Vice President
Norfolk Southern Corporation

Tel. No. 757-629-2665
FAX No. 757-533-4884

FROM : Mel Clemens, Director

Tel. No. 202-565-1575
FAX No. 202-565-9011

DATE : 11/17/00

SUBJECT : SMS /VALERO COMPLAINT

Attached are copies of shipper/short line complaints. Also included is a letter from SMS's attorney, suggesting that by action of Conrail, etc., SMS is unable to fulfill its common carrier obligation, and an E-mail from Valero.

As discussed this week, I think this is something that you should take a look at, as it appears you are the primary line haul service provider for Valero. Also, there is no indication that either SMS or its attorney has made you aware of its complaint to the Board.

Attachments

Total number of pages including cover sheet 5.

000044

11/17/00 FRI 08:27 FAX 202 565 9011

STB OCE WASH..DC

0002



<lewism@valero.com

>

11/16/00 04:29 PM

To: railconsumer@stb.dot.gov

cc: bob_moody@csx.com, jbliddel@nscorp.com,

jeffs@sms-pennjerseyrail.com

Subject: Absorption of SMS Paulsboro switching fee by Norfolk Southern and CSXT

Re: Telephone conversation with Mr. Jim Green, STB on Wednesday, November 15, 2000

Valero Refining Company - New Jersey has entered into an agreement with SMS Rail Service, Inc. for the purpose of (i) SMS providing rail service to Valero inside the Valero Paulsboro, NJ refinery, and (ii) SMS providing switching service for revenue cars placed and withdrawn from the refinery. SMS has arranged with Norfolk Southern and CSXT for SMS to be paid by these railroads a \$225 per car switching fee to cover placement and withdrawal of revenue cars at the Valero refinery, as this service will no longer be provided to Valero by Conrail.

I have been advised by both Norfolk Southern and CSXT that each of these carriers will not absorb an SMS per car switching fee at Paulsboro. CSXT has notified me of their intention to charge Valero a \$225 per car "reciprocal switching" fee. As Norfolk Southern currently is serving as the invoicing authority for Conrail, I expect to be notified of this new charge by NS as well.

Both NS and CSXT have indicated to me that although Conrail will no longer perform the service of placement and withdrawal of revenue cars at the Valero refinery, Conrail will not enjoy sufficient cost savings which would support the absorption of the \$225 per car SMS fee. As the overwhelming volume of Conrail work in Paulsboro, NJ is with Valero, I find it difficult to believe that Conrail will not enjoy a significant cost savings at Paulsboro once SMS begins providing switching service for revenue cars placed and withdrawn from the refinery. This position taken by Norfolk Southern and CSXT will add an additional \$2,200,000 per year to Valero's rail transportation cost at the Paulsboro refinery, and equates to approximately 9,700 revenue loads. Hopefully the cost savings to Conrail will become clear once an agreement between Conrail and SMS has been achieved with regard to an adequate interchange area at Paulsboro, which is another situation currently being addressed by STB.

In my telephone conversation yesterday with Mr. Jim Green, he mentioned that absorption of the SMS \$225 per car fee by NS and CSXT would be outside the jurisdiction of the STB, although he suggested that I contact the STB in writing for their possible help in the matter. Thank you very much for your consideration.

Sincerely,

Marion L. Lewis
Manager, Rail Movements
Valero Energy Corporation
Tele 210-370-2869

000045

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1820 N STREET, N.W.
WASHINGTON, D.C. 20038-1801
(202) 283-4152
FAX (202) 331-8330
e-mail: xiccgc@worldnet.att.net

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

NOV 16 12 31 PM '00

RECEIVED
SURFACE TRANSPORTATION
BOARD

November 15, 2000

VIA MAIL AND FAX (202) 565-1573

Melvin F. Clemens, Jr., Esq.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423

Dear Director Clemens:

This refers to the letter to you from Mr. Jeffrey L. Sutch, President of this firm's client, SMS Rail Lines, Inc., dated November 13, 2000, referring to its inability to fulfil its common carrier obligation to provide service to, from and within the 970-acre refinery of Valero Refining Company-New Jersey as a result of the refusal of Consolidated Rail Corporation to designate adequate interchange tracks within its Paulsboro Yard.

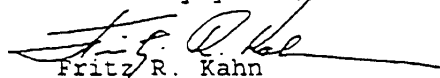
It was implicit in the letter and I now specifically request that you use your good offices to alleviate this emergency confronting the shipper and secure for SMS trackage rights on all of the tracks now used by Conrail in its servicing of the Valero facility, to, from and within the Paulsboro Yard, including the run-around track and Old Coke Storage Track.

SMS would use its locomotives in rendering service on the trackage rights and is prepared to have them inspected and maintained so as to satisfy Conrail's requirements.

SMS several times has postponed the start up date in an effort to resolve this matter directly with Conrail; however, it has been unsuccessful in doing so. It now hopes to be able to begin serving Valero on November 21, 2000.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

000046

Fax (856) 467-2121

Fax (610) 828-7481

*Your Destination in Rail Freight*

Post Office Box 711
Bridgeport, NJ 08014
NJ (856) 467-4800
PA (610) 828-1863

VIA MAIL AND FAX (202) 565-1573

Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

RECEIVED
SURFACE TRANSPORTATION
BOARD
NOV 13 12 04 PM '00
OFFICE OF COMPLIANCE
AND ENFORCEMENT
DIRECTOR'S OFFICE

Dear Mr. Clemens:

Pursuant to an agreement, dated August 31, 2000, Valero Refining Company- New Jersey, sought to replace consolidated Rail Corporation with SMS Rail Lines, Inc., to switch cars to, from and within its 970-acre refinery at Paulsboro, in the shared-assets area of New Jersey.

By its verified notice of exemption in STB Finance Docket No. 33297, SMS Rail Service- Acquisition and operation exemption- Valero Refining Company- New Jersey, served September 22, 2000, SMS secured the requisite authority to provide the requested service, effective September 12, 2000.

In the intervening time, SMS has had any number of meetings with representatives of Conrail and Norfolk Southern Railway Company, which together with CSX Transportation, Inc., is the line haul carrier over which the incoming and outbound cars are transported. SMS and NS have been parties to a handling agreement, similar to a joint marketing agreement.

The final meeting was held on October 27, 2000. SMS was prepared to start operations on November 01, 2000. It was agreed to extend the start up operation date until November 15, 2000, in hopes that the interchange issue could be resolved among all parties.

The final result of the meetings has been that NS, CSXT and Conrail have refused to designate interchange tracks in the coke yard area of the Paulsboro Yard adequate to permit the orderly interchange of traffic.

Moreover, NS, CSXT, Conrail have declined to absorb SMS' proposed switching charge or refused to reduce the rates to and from Valero to reflect the fact that neither one will continue to provide a service that heretofore has been rendered.

Finally, NS, CSXT, Conrail propose to assess Valero a \$225.00 per car storage charge for any cars consigned to or received from Valero that cannot be accommodated on the single interchange track they are prepared to make available to SMS.

000047

11/17/00 FRI 08:29 FAX 202 565 9011

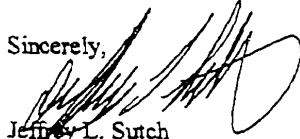
STB OCE WASH. DC

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Conrail and NS appear to be in violation of the letter and the spirit of 49 U.S.C. 10742 and 10744, for their actions are disruptive of the continuous carriage of freight and the free interchange of traffic that statutory provisions contemplate. Moreover, they appear to be violating the agreement between the Class I Railroads and the American Short Line and Regional Railroad Association, which the Board tacitly, if not directly, has approved.

Your assistance in this matter would be greatly appreciated with great optimism that SMS could start serving Valero on November 15, 2000.

Sincerely,



Jeffrey L. Sutch
President
SMS/ Penn- Jersey
Rail Lines

000048

SMS Rail

Eisenach, Steve D.

From: Liddell, Jim
Sent: Friday, November 17, 2000 9:49 AM
To: Osborne, Joe
Cc: Mason, Sam; Williams, Bill; McCarthy, Pat; Plain, Bob; Eisenach, Steve D.; Aspatore, George A.; Childers, Dave; Creekmore, Jani Marie; Tubman, Dutch; Summy, Greg, E.; Hennessy, Francis
Subject: HOT- Absorption of SMS Paulsboro switching fee by Norfolk Southern and CSXT
Importance: High

Joe Osborne, Roanoke

Joe, the attached note from Valero to STB is clear enough. It is now making a formal plea to the STB. I called early this morning to discuss with Valero as this note reflects a changed position by CSXT from what we were earlier advised by Valero. Mr Lewis is not in his office today for futher comment.

Jim Liddell
Houston Sales
cc: All shown on earlier correspondence

=====

-----Original Message-----

From: lewism@valero.com [mailto:lewism@valero.com]
Sent: Thursday, November 16, 2000 4:29 PM
To: railconsumer@stb.dot.gov
Cc: bob_moody@csx.com; jbliddell@nscorp.com; jeffs@sms-pennjerseyrail.com
Subject: Absorption of SMS Paulsboro switching fee by Norfolk Southern and CSXT

Re: Telephone conversation with Mr. Jim Green, STB on Wednesday, November 15, 2000

Valero Refining Company - New Jersey has entered into an agreement with SMS Rail Service, Inc. for the purpose of (i) SMS providing rail service to Valero inside the Valero Paulsboro, NJ refinery, and (ii) SMS providing switching service for revenue cars placed and withdrawn from the refinery.

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Sincerely,

Marion L. Lewis
Manager, Rail Movements
Valero Energy Corporation
Tele 210-370-2869