

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35036

SUFFOLK & SOUTHERN RAIL ROAD LLC—LEASE AND OPERATION EXEMPTION—
SILLS ROAD REALTY, LLC

Decided: August 13, 2007

On May 18, 2007, Suffolk & Southern Rail Road LLC (Suffolk), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to lease from Sills Road Realty, LLC (Sills), a noncarrier, approximately 11,000 feet of track that Suffolk states Sills is currently constructing in Yaphank, Suffolk County, NY, and to operate over it.¹ Suffolk's notice stated that as a result of this transaction it would provide common carrier freight service to all potential customers and use the track and related facilities to handle up to 500,000 tons of construction aggregate per year. In a decision served on June 1, 2007 (June 1 decision), Suffolk's notice of exemption was found incomplete, and Suffolk was directed to file supplemental information describing in detail the construction of the trackage, which would appear to be a line of railroad subject to the Board's jurisdiction based on Suffolk's stated intention to provide for-hire service over it.² The June 1 decision noted that the additional information was necessary to make a definitive determination that the exemption authority sought was appropriate here and that, as a result, Suffolk's proposed exemption would not become effective, if at all, until further order of the Board.

On June 15, 2007, Suffolk filed a letter with the Board, stating that it has decided to withdraw its notice of exemption due to a "change in circumstances." Suffolk did not provide the supplemental information required by the June 1 decision. Nor did Suffolk provide the Board with a substantive reason for its attempted withdrawal.

In failing to explain the situation, Suffolk has left unrefuted its verified statement that for-hire service is intended for the trackage being constructed by Sills.³ If for-hire service is intended for the trackage underlying Suffolk's notice of exemption, then the construction that has

¹ On June 15, 2007, the New York State Department of Transportation filed reply comments in support of Suffolk's proposed lease and operation of the line.

² A notice of intent to participate was filed by New York and Atlantic Railway Company, Inc. (NYA), in which NYA stated that it would file a reply after Suffolk files the supplemental material required by the Board.

³ In a telephone conversation with Board staff, legal counsel for Suffolk indicated that Suffolk and Sills are affiliated parties.

either already occurred or will occur in the future is construction of a line of railroad subject to the Board's jurisdiction, and Board authorization for the construction is required under 49 U.S.C. 10901. The proposed construction of a line of railroad also requires that the Board conduct an environmental review under the National Environmental Policy Act. See 49 CFR 1105.6(a), (b)(1).

Given the concerns that have been raised in this exemption proceeding, it would be inappropriate to terminate the proceeding at this point. Suffolk is directed to file, by August 23, 2007, the information required by the June 1 decision. In addition, under the circumstances here, Suffolk must provide a substantive reason for its attempted withdrawal and explain in more detail whether it or Sills anticipates that for-hire service will be provided over the trackage being constructed. Suffolk is also directed to serve a copy of this decision on Sills and to certify to us that it has done so within 5 days of the service date of this decision.

The Board increasingly has grown concerned that persons using the notice of exemption procedures to obtain authority for the lease or other acquisition and operation of a railroad line may not be making a thorough review of their circumstances prior to filing a verified statement that a proposal should be exempted from environmental and historic reporting because the thresholds at 49 CFR 1105.7(e)(4) or (5) will not be met. See 49 CFR 1105.6(b)(4), (c)(2)(i). Suffolk filed such a statement, but failed to provide any explanation in its notice of exemption as to why the anticipated movements of intermodal containers and up to 500,000 tons of construction aggregates would not meet or exceed the Board's 3 train per day threshold for environmental documentation under 49 CFR 1105.7(e)(5)(ii)(A). Nor did Suffolk explain why the anticipated increase in truck traffic would not meet or exceed the Board's thresholds under 49 CFR 1105.7(e)(5)(ii)(C).

The Board's reliance on thresholds is intended to reduce regulatory burdens where a proposed transaction would not result in a significant increase in rail or truck traffic so as to warrant environmental and historic review. Parties are reminded that, when filing notices of exemption, they should carefully consider their circumstances before making any representations that the environmental thresholds will not be exceeded. Additionally, where, as here, a party concludes that the environmental thresholds will not be exceeded, the notice of exemption should explain why the transaction would not exceed the thresholds or otherwise warrant the preparation of environmental documentation.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Suffolk is directed to file, by August 23, 2007, the information required by the June 1 decision and this decision.

2. Suffolk is directed to serve a copy of this decision on Sills and to certify to the Board that it has done so within 5 days of the service date of this decision.
3. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary