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SERVICE DATE – LATE RELEASE JUNE 1, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35036

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

Decided: June 1, 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. As a result of this transaction, Suffolk states that it will provide common carrier freight service to all potential customers over the trackage. Based on its intent to provide for hire service over the trackage, it appears that Sills is constructing a line of railroad subject to the Board's jurisdiction. Under 49 U.S.C. 10901, Board authority is required to construct a line of railroad. However, Sills has not sought Board authority for this construction.

If the Board were to accept Suffolk's verified notice as sufficient and complete at this time and publish notice of the proposed exemption in the Federal Register, this Board action might be seen by interested persons as tacit approval of Suffolk's lease of and operation over a line of railroad that has been constructed without Board authority. Because the notice of exemption does not provide sufficient information to make a definitive determination that exemption authority is appropriate here, additional information is necessary for Suffolk's notice of exemption to be considered complete. As a result, Suffolk's proposed exemption will not become effective, if at all, until further order of the Board.

Suffolk is directed to file, by June 21, 2007, supplemental information describing, in detail, the construction activities on the trackage to date and any construction anticipated in the future. Further, 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.

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

It is ordered:

1. The exemption that was the subject of the notice in this proceeding will not become effective until further order of the Board.
2. Suffolk is directed to file, by June 21, 2007, supplemental information describing, in detail, the construction activities on the trackage to date and any construction anticipated in the future.
3. 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.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary