

ORIGINAL
220127

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35036

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



**RESPONSE TO INFORMATION REQUESTED
BY THE SURFACE TRANSPORTATION BOARD**

Submitted by:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3334

Counsel for Petitioner

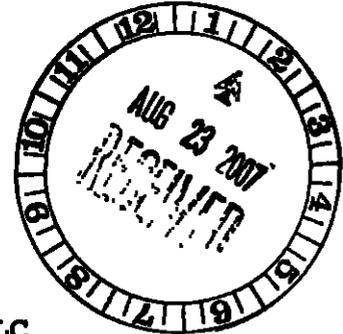
**ENTERED
Office of Proceedings
AUG 23 2007
Part of
Public Record**

Dated: August 23, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35036

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



**RESPONSE TO INFORMATION REQUESTED
BY THE SURFACE TRANSPORTATION BOARD**

INTRODUCTION AND BACKGROUND

On August 13, 2007, the Board served an order in the above-captioned proceeding directing Suffolk & Southern Rail Road LLC ("Suffolk") to provide the Board with certain information requested by this decision and previously sought in the Board's decision served June 1, 2007. Suffolk files this pleading in response to that request.

As background, Suffolk, a noncarrier, originally filed a verified notice of exemption with the Board on May 18, 2007, to lease from Sills Road Realty ("Sills"), another noncarrier, and operate a rail facility to be constructed at Yaphank, Suffolk County, NY. Suffolk represented that it would hold itself out to provide common carrier rail

service at the facility. By decision served June 1, 2007,¹ the Board found the notice of exemption incomplete. It stayed the effectiveness of the exemption and directed Suffolk to file supplemental information describing in detail the construction of the trackage. Subsequently, on June 15, 2007, Suffolk notified the Board in writing that it had decided to withdraw its notice of exemption due to a "change in circumstances."

The simple answer to the Board's inquiry is that Suffolk and Sills never concluded any agreement or other relationship with respect to the lease, construction or operation of the rail facility and, as a result, Suffolk has never undertaken any development, construction or other activity at the site.

SUFFOLK'S RESPONSES TO THE BOARD'S QUESTIONS

Simply stated, the Board's August 13, 2007, decision directs Suffolk to provide responses to the following underscored items:

1. The construction activities undertaken to date and any construction anticipated in the future. Sills never undertook any construction of rail facilities at the

¹ Hereafter "the June 1 decision."

Sills Road location for the simple reason that Suffolk and Sills never consummated their agreement for lease and operation. Therefore, this proceeding and Suffolk's answers are now moot. Because Suffolk is no longer involved in the construction and operation here, Suffolk has never undertaken any development, construction or other activity at that site.

2. The reason for Suffolk's attempted withdrawal of notice and whether for-hire rail service will be provided over the track once constructed. Suffolk attempted to withdraw its notice because the parties did not consummate any business transaction. As to the second part of the Board's question, Sills has never anticipated providing for-hire rail service. Had Suffolk consummated a transaction, it would have provided for-hire rail service. But it did not consummate the transaction.

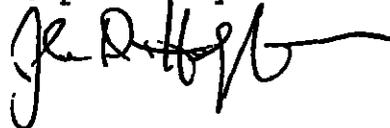
3. An explanation as to why the anticipated movements of intermodal containers and up to 500,000 tons of construction aggregates would not meet or exceed the Board's 3 train per day threshold for environmental documentation under 49 CFR 1105.7(e)(5)(ii)(A), why the anticipated increase in truck traffic would not meet or exceed the Board's thresholds under 49 CFR

1105.7(e)(5)(ii)(C) and why the transaction would not exceed the thresholds or otherwise warrant the preparation of environmental documentation. The last aspect of this inquiry is whether the Board's environmental review is implicated. Because Suffolk and Sills have not consummated their transaction, this answer is both moot and hypothetical. Had the transaction been consummated, the level of anticipated freight - one train per day - would not have been sufficient to trigger the Board's environmental thresholds. Additionally, Suffolk and Sills do not believe that any additional truck traffic would have been generated.

CONCLUSION

Accordingly, Suffolk requests that its exemption notice filed on May 18, 2007, be withdrawn as moot.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3334

Counsel for Petitioner

Dated: August 23, 2007

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of the foregoing "Response To Information Requested By the Surface Transportation Board" was served by fax transmission and first class United States Mail on all parties to this proceeding on August 24, 2007.



John D. Heffner