

220707

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N W
SUITE 350
WASHINGTON, D C. 20006
PH (202) 296-3333
FAX (202) 296-3939

VIA ELECTRONIC FILING

November 13, 2007

Hon. Verros A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

RE: Suffolk & Southern Rail Road, LLC --
Lease and Operation Exemption --
Sills Road Realty, LLC
STB Finance Docket No. 35036

Dear Mr. Williams:

On behalf of Sills Road Realty, LLC and U S Rail Corporation, I am electronically filing this Motion to Strike portions of the Town of Brookhaven's Reply and to Strike the Verified Statement of Town of Brookhaven Attorney Robert F. Quinlan; as well as a Petition for Leave to file a Rebuttal to the Town's Reply to the Petition for Stay pending Reconsideration of the Board's October 12, 2007 decision in the above-captioned proceeding.

Sincerely,

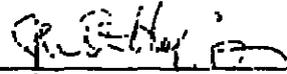
John D. Heffner

Enc.

cc: Mark A. Cuthbertson (w/enc. Via E-Mail)
Town of Brookhaven (w/enc. Via ordinary mail)

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the accompanying Motion to Strike and Petition for Leave to file a Rebuttal in behalf of Petitioners Sills Road Realty, LLC and U S Rail Corporation was served on November 13, 2007 upon all parties and the Town of Brookhaven.



John D. Heffner

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35036

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

MOTION TO STRIKE
&
PETITION FOR LEAVE TO FILE REBUTTAL TO THE TOWN OF
BROOKHAVEN'S REPLY TO PETITION TO STAY THE
DECISION SERVED OCTOBER 12, 2007

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

James H. M. Savage
1750 K Street, N.W.
Suite 350
Washington, DC 20006

Counsel for Petitioners
Sills Road Realty, LLC
and U S Rail Corporation

Dated: November 13, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35036

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

**MOTION TO STRIKE
&
PETITION FOR LEAVE TO FILE REBUTTAL TO THE TOWN OF
BROOKHAVEN'S REPLY TO PETITION TO STAY THE
DECISION SERVED OCTOBER 12, 2007**

This matter involves construction of the Brookhaven Rail Terminal ("BRT") on Long Island, New York. Pursuant to 49 CFR 1115.3, Sills Road Realty LLC ("Sills"), and U S Rail Corporation ("U S Rail") have petitioned the Surface Transportation Board ("STB" or "Board") for a stay of the decision issued October 12, 2007. Petitioners have separately petitioned for reconsideration of the October 12th decision.

On November 5, 2007 the Town of Brookhaven ("the Town" or "Brookhaven") replied to the Stay Petition. The reply contains objectionable material which Petitioners move to strike pursuant to 49 CFR 1104.8. The Reply also contains glaring inaccuracies and baseless assertions to which Petitioners seek leave to serve a rebuttal.

Petitioners further move pursuant to 49 CFR 1104.8 to strike the verified statement of Brookhaven Town Attorney Robert F. Quinlan as redundant, and pursuant to 49 CFR 1115.3(d) to strike the Quinlan verified statement as constituting an improper second Reply.

I

BROOKHAVEN'S ALLEGATION THAT PETITIONERS ARE PERPETRATING A "SHAM" UPON THIS BOARD IS SCANDALOUS AND SHOULD BE STRICKEN

Petitioners urge the Board to strike the accusation set forth at page nine (9) of Brookhaven's reply alleging that Petitioners are entities created for "sham purposes" to abuse the STB exemption procedure. This allegation is patently baseless and scandalous, and should consequently be stricken as scandalous pursuant to 49 CFR 1104.8.

Sills was formed by a producer and users of crushed stone in order to provide for the existing business needs of these entities. Sills and its members have been transporting stone by rail to an inadequate rail facility in Brookhaven for these very purposes since April 2005. Sills and its members have made significant investments in (1) land and (11) rolling stock designed to transport crushed stone to effectively provide for their anticipated business needs. Brookhaven persists in baseless accusations

that all these efforts by Sills and U S Rail are directed towards creating a disguised municipal waste transfer station. These knowingly-false, and potentially actionable, accusations persist despite an outstanding voluntary written offer to Brookhaven "to enter into an agreement with [Brookhaven] that would preclude [Sills Road], U S Rail and any other user of the Brookhaven Rail Terminal from conducting municipal solid waste operations thereon without first obtaining all required governmental approvals." Despite this unambiguous statement, Brookhaven continues in its efforts to knowingly mislead this Board about the intended use of the Brookhaven Rail Terminal. See November 9, 2007 affidavit statement of Gerard Drumm annexed hereto as Exhibit A.

U S Rail is an existing Class III common carrier railroad organized under the laws of the State of Ohio. See November 8, 2007 affidavit of Gabriel Hall, annexed hereto as Exhibit B and November 12, 2007 verified statement of Gabriel Hall, annexed hereto as Exhibit C.

Suffolk, which initially filed a petition for a lease and operation exemption, was permitted to withdraw by the STB in August 2007. Suffolk has not conducted any activities at the site and, as the Town well knows, is no

longer participating in this project.¹ Suffolk is clearly being used by the Town as a "straw man" to bolster the Town's feeble opposition to the project. The Town argues, fallaciously, there must be some hidden and nefarious purpose behind Suffolk's withdrawal, because all Petitioners' purposes are presumptively nefarious until proven otherwise. The Board should construe the Town's transparent resort to conjecture and innuendo as tacit admissions that Brookhaven utterly lacks any evidence of misconduct on Petitioners' part.

[I

PETITIONERS HAVE DEMONSTRATED A SUBSTANTIAL NEED TO
SUBMIT A REBUTTAL TO BROOKHAVEN'S REPLY

For the following reasons, the Board should accept Petitioners' rebuttal. There have been changes in the circumstances surrounding the use of the BRT site since work ceased at the end of September 2007. As the accompanying affidavits of Gerard Drumm and Gabriel Hall indicate, trespassers have been illegally accessing the

¹ Suffolk was issued certain Appearance Tickets arising out of their prior involvement in this project. Those Appearance Tickets are returnable on December 13, 2007 in the Suffolk County District Court and are being challenged as an improper action by the Town in a federal lawsuit pending in the United States District Court for the Eastern District of New York under civil action number 07 CV 4584 (TC2)

site, damaging Petitioners' property and engaging in dangerous recreational activities. See Exhibits A and B.

It is therefore appropriate for the Board to permit Petitioners the opportunity to supplement the record so as to include this new and additional information. By doing so, the Board, and any reviewing Court, will have available to it the fullest possible record.

Moreover, Petitioners seek leave to rebut certain procedural and factual misrepresentations contained in Brookhaven's reply. Those misrepresentations are corrected in the following section of this motion.

A. This Petition for Reconsideration is procedurally proper.

Brookhaven's objection to Petitioners' procedural basis for their stay request may be disposed of peremptorily. The stay petition is in the nature of a discretionary appeal of Board action. The Town's objection apparently arises out of their misperception that 49 CFR 1115.5 governs discretionary appeals of Board action, which it does not. Rather, 49 CFR 1115.3, governing reconsideration petitions, is applicable. That provision states, in pertinent part:

(a) A discretionary appeal of an entire Board action is permitted. Such an appeal should be designated a "petition for reconsideration."

The provision further states:

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Board may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for reconsideration[.]

(Emphasis supplied.)

Under Board rules, the stay petition was timely and properly filed. Therefore, the Town's challenge to the procedural legitimacy of Petitioners' actions must be summarily rejected.

B. This disconnected spur will not disturb "Competitive Balance".

Brookhaven's reply does not contest the well established precedent that a rail carrier may construct and operate a spur. Rather, Brookhaven argues that U S Rail's operator "invades" NY&A's territory and is therefore a line of railroad for which Board entry authority must be obtained. The Town, however, is wrong. As held by the ICC, the Board's predecessor, unless the penetration alters competitive balance, the new track is deemed a spur. See K&K Warehouse - Exemption from 49 U.S.C. 11104 and 10901(a),

I.C.C. Finance Docket No. 30858 (Served April 3, 1987) at notes 5 and 6. Accord, Illinois Commerce Com. v. United States, 779 F.2d 1270 (7th C. 1985).

Rather than altering competitive balance, which connotes taking business away from an existing carrier, U S Rail's operations will provide NY&A with new business, serving as a feeder spur into the NY&A, with whom all freight will be interchanged for the long haul.

For the record, Sills informed NY&A of its development plans and offered NY&A the opportunity to participate as the servicing carrier. Furthermore, upon information and belief, past and present officials of NY&A have participated in discussions with Brookhaven planning personnel regarding the Terminal, provided valuable input to the Terminal layout and track design and supported the Terminal in its efforts to receive New York State funding. See verified statement of Gerard Drumm, annexed hereto as Exhibit D.

The Town's "invasion" allegation simply has no merit and should be disregarded by the Board.

C. Petitioner's provided Brookhaven with actual notice of BRT development plans.

Likewise there is no merit to the Town's disingenuous argument that it was somehow 'surprised' to discover site preparation work underway on the property. The Town possessed detailed knowledge and information about the project well in advance of site preparation work commencing. Sills provided Town representatives site plans and elevations for the project at a meeting on January 23, 2007, eight months prior to any on-site work taking place. See "Meeting Chronology" annexed to Petitioners' October 9, 2007 letter to Melvin F. Clemens, attached to Stay Petition as Exhibit E. The project was discussed at Petitioners' meeting with Brookhaven Town Supervisor Brian Foley on July 20, 2007, also prior to any on-site work commencing. Ibid.

One false and continuing undercurrent to the Town's opposition is its unsubstantiated concern that the BRT is not being built to transload stone or other aggregate. Rather, the Town believes BRT is intended for use as a MSW transfer station. Sills has provided Brookhaven with a letter disavowing any intention of using the Terminal as a municipal solid waste (MSW) transfer station. See October 5, 2007 letter from Sills counsel annexed to Quinlan verified statement as Exhibit D. Despite receiving Petitioners' explicit representation, the Town persists in making spurious, irresponsible and alarmist charges about

MSW transfer operations. Attorney Quinlan's allegation that Sills has been soliciting MSW transfer business is completely baseless. Brookhaven, on its own initiative, issued a request for proposals (RFP) for the processing and disposal of its MSW. Tully Environmental ("Tully"), an MSW hauler, responded to the RFP. Tully proposed transporting containerized waste by rail from BRT. The August 9, 2007 letter from Sills President Andrew Kaufman to Tully (See Quinlan Exhibit A) contains no reference whatsoever to MSW transfer operations. Moreover, Tully, a project non-participant, has absolutely no standing to influence the use of the BRT.

U S Rail likewise disavows any intention of utilizing this facility as an MSW transfer station. See November 8, 2007 affidavit of U S Rail President Gabriel Hall, annexed hereto as Exhibit B.

D. A Stay would be in the Public Interest.

The public interest would be furthered by the stay in three respects: First, by removing freight traffic from congested Long Island highways. Second, by removing the risk to public health and safety posed by the present misuse of the site by trespassers engaging in dangerous activities (ATV riding and shooting). Third, by removing

the economic constraints on Long Island developers who are currently unable to keep pace with construction demands due to lack of sufficient quantities of stone and other construction materials. See Exhibits A and C.

There is no corresponding evidence before the Board of harm to the public interest. Brookhaven provides no evidence that a stay of the Board's October 12, 2001 decision would visit irreparable harm on its environment or on the Town's residents. In the absence of such a showing by the Town, the stay requested by Petitioners should issue.²

III

THE QUINLAN VERIFIED STATEMENT SHOULD BE STRICKEN AS REDUNDANT AND AS CONSTITUTING AN IMPROPER SECOND REPLY

The 12 page Verified Statement of Brookhaven Town Attorney Robert F. Quinlan contains an exhaustive recital of facts and procedural history. Most if not all of that material is already of record and, thus, largely redundant.

² Criminal charges in the form of Appearance Tickets brought against Petitioners by the Town have resulted in Petitioners filing a federal civil rights lawsuit against the Town for illegally interfering with this project. A federal district judge has granted Petitioners' request staying enforcement of criminal proceedings arising out of Petitioners' activities at the BRT site pending resolution of Petitioners' request for interim injunctive relief.

The statement is therefore objectionable pursuant to 49 CFR 1104.8 and should be stricken.

Additionally, this essentially procedural history more properly belongs in the Town's reply to the petition for stay. By transposing procedural history from the reply to the verified statement, the Town has effectively inflated its reply to 29 pages; nearly 50% longer than the 20 page limit permitted by 49 CFR 1115.3(d). As constituted, the Quinlan verified statement amounts to an improper second reply, which the Board should strike.

CONCLUSION

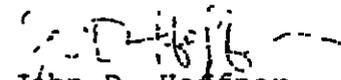
For the reasons expressed above, as well as the authority cited herein, Petitioners respectfully request the following relief:

(1) that the Board strike the portions of the Town of Brookhaven's reply containing objectionable material,

(2) that Petitioners be granted leave to serve this rebuttal to the Town of Brookhaven's reply to the Petition to Stay the Board decision served October 12, 2007 pending Reconsideration of that decision, and

(3) that the Board strike the Verified Statement of Brookhaven Town Attorney Robert F. Quinlan as redundant and as constituting an improper second reply.

Respectfully submitted,



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

James H. M. Savage
1750 K Street, N.W.
Suite 350
Washington, DC 20006
(202) 296-3335

Counsel for Petitioners
Sills Road Realty LLC,
and U S Rail Corporation

Dated: November 13, 2007

EXHIBIT A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X
SILLS ROAD REALTY, LLC, SUFFOLK & SOUTHERN
RAIL ROAD, LLC and U S RAIL CORPORATION,

Petitioners,

Docket No _____

v.

**AFFIDAVIT OF GERARD
T. DRUMM IN SUPPORT
OF PETITIONERS' ORDER
TO SHOW CAUSE**

SURFACE TRANSPORTATION BOARD, and THE
UNITED STATES OF AMERICA,

Respondents.

----- X
STATE OF NEW YORK)
) ss
COUNTY OF NASSAU)

Gerard T Drumm, being duly sworn, deposes and states the following, under penalty of perjury

1 I am the Chief Financial Officer and General Counsel of Sills Road Realty, LLC ("Sills Road") I am responsible for financial and legal matters with respect to Sills Road and its affiliated companies I am fully familiar with the facts and circumstances of this matter from my personal knowledge

2 I submit this affidavit in support of the application of Petitioners, Sills Road Realty, LLC ("Sills Road"), Suffolk & Southern Rail Road LLC ("Suffolk") and U S Rail, (collectively "Petitioners") to (i) temporarily restrain the enforcement of the STB's October 12, 2007 Decision (the "October 12th Decision") to the limited extent of allowing Petitioners to continue to clear and grade the property and to install utilities at the property, (ii) to preliminarily

enjoin enforcement of the October 12th Decision and allow construction activities to continue at the property, and (iii) grant such further relief as the Court deems just and proper

3 It is respectfully submitted that this injunctive relief is necessary because, absent the issuance of the requested interim relief, Petitioners will suffer irreparable harm without any corresponding injury to the Respondents or any other entity and in fact, absent the relief requested, a dangerous conditions will continue at the premises

Background of the Brookhaven Rail Terminal

4. Sills Road was formed by a producer and users of crushed stone ("Stone") to develop a rail transloading facility on Long Island that would economically meet the needs of its members for the offloading of Stone and other construction related materials (collectively "Commodities"), as well as to serve the broader Long Island market for such products

5 Rail shipment provides the most cost effective means for achieving these goals Rail transport also enhances the opportunity for timely deliveries of seasonal materials by reducing reliance on truck transportation over increasingly congested highways and bridges

6 Sills Road acquired a 28-acre tract of land in Yaphank, New York, which was ideally suited for this purpose, which is to be developed into the Brookhaven Rail Terminal

7 The intended purpose of the Brookhaven Rail Terminal is to facilitate the transloading of Stone between rail and truck The Brookhaven Rail Terminal will interchange freight cars upon a railroad siding connecting to the existing Long Island Rail Road ("LIRR") track adjoining the property's southern boundary as well as provide freight transfer areas This kind of track is called a "spur" under applicable federal law

8 The location of the Brookhaven Rail Terminal is ideally suited for this rail transloading facility because it is located in an industrially-zoned area in the Town of

Brookhaven's Empire Zone and borders the Long Island Expressway and an existing LIRR rail line. The site is not adjacent to any residences, schools or recreational facilities.

9 Preparatory to constructing the Brookhaven Rail Terminal, on May 18, 2007, Suffolk filed with the United States Surface Transportation Board (the "STB") a verified notice of exemption under 49 C.F.R. 1150.31 advising that it was negotiating to lease the site from Sills Road and construct and operate the facility.

10 Suffolk's application suffered from a technical defect which it attempted to cure.¹ Because it was unable to cure such defect and consummate its anticipated lease arrangement with Sills Road, on June 15, 2007, Suffolk filed a withdrawal notice with the STB. Suffolk's application was subsequently permitted to be withdrawn by the STB in August 2007.

11 Sills Road then entered into a thirty-year lease with U.S. Rail, an existing Class III short line railroad duly authorized to operate as a common carrier by the STB. U.S. Rail is constructing and will operate the Brookhaven Rail Terminal.

12 On or around August 13, 2007 – 30 days after communicating to local officials (including officials with the Town of Brookhaven (the "Town")) its intent to commence construction, as well as the Brookhaven Rail Terminal's status as a pre-empted rail facility² – U.S. Rail began the work of clearing the land, to be followed by construction of tracks and related facilities, so that rail transportation services could commence on or about March 1, 2008.

13 On or about October 1, 2007, a local newspaper, *Newday*, published an article questioning the construction activities taking place at the Brookhaven Rail Terminal site.

¹ This defect stemmed from a problem with the chain of title for the property that Suffolk was at that time leasing from another landlord.

² The 30-day notice to the Town was a culmination of numerous communications with local government officials regarding the Brookhaven Rail Terminal. These communications included multiple in person meetings and submission of both plans and legal authority demonstrating the STB's exclusive jurisdiction over the project. We later communicated our assurances to the Town that Petitioners have no intention of collecting municipal solid waste at the subject property (an alleged concern of the Town).

14 The next day, on October 2, 2007, the Town's attorney sent a letter to the STB inquiring, for the first time, into the status of the Brookhaven Rail Terminal

15 Thereafter, on October 4, 2007, Melvin F Clemens, Director of the STB Office of Compliance and Consumer Assistance wrote to U S Rail's counsel inquiring into the activities at the Brookhaven Rail Terminal, directing U S Rail to serve a response by October 9, 2007, and enjoining construction activities pending STB receipt and review of U S Rail's response (the "Clemens October 4th Letter") A copy of the Clements October 4th Letter is annexed hereto as Exhibit "A "

16 U S Rail filed its response to Mr Clemens' letter on October 9, 2007 (the "U S Rail October 9th Letter"), a copy of which is annexed hereto as Exhibit "B "

17 By decision dated October 12, 2007, the STB reopened the Suffolk application (the "October 12th Decision") A copy of the October 12th Decision is annexed hereto as Exhibit "C."

18 In the October 12th Decision, the STB ordered Sills Road and U S Rail to obtain either (i) authorization from the STB to construct and operate the Brookhaven Rail Terminal or (ii) an STB decision that the Brookhaven Rail Terminal does not require STB approval, as an exempt "spur "

19 The October 12th Decision also contains a cease and desist provision halting all construction activities pending further Order of the STB On October 18, 2007, Plaintiffs petitioned the STB to stay its October 12th Decision,³ pending a decision on a Petition for Reconsideration, which Plaintiffs filed on October 26, 2007 Copies of the Petition for a Stay and the Petition for Reconsideration are annexed here to as Exhibits "D" and "E," respectively

³ It is respectfully submitted, as set forth in the accompanying memorandum of law, that awaiting a decision from the STB on these applications would be futile, because the STB's past actions have shown a bias against Petitioners and an infringement of their due process rights

20. Thereafter, because of the October 12th Decision all construction work on the site stopped, including U S Rail's efforts to grade the property, which first involved the removal of trees from the property, and then the leveling of the property so as to bring it to the same level as the existing Long Island Rail Road trackage adjacent to the property.

Plaintiffs Will Suffer Irreparable Harm

I. The Property Needs to Be Graded and Have Utilities Installed In Order to Protect the Public

21 This work stoppage has left the property with large mounds and valleys of sand which, I am advised, are an attraction to local, albeit trespassing, all-terrain-vehicle ("ATV") riders. These mounds and valleys of sand did not exist prior to the grading efforts and the trees previously in place dissuaded most ATV use. However, because of the "terrain park" which was created by virtue of the October 12th Decision's requirement that U S Rail cease all construction activities, ATV riders have repeatedly broken through the fencing surrounding the property in order to ride up-and-down the mounds of sand. Absent the ability to complete the grading of the property, these mounds of sand will remain in place, continuing to attract these trespassers.

22 Moreover, prior to Sills Road's acquisition of the property, the site was perennially utilized by local residents for shooting shotguns. In fact, it is my understanding that, the property was called "Shotgun Alley" by local residents. The continued use of shotguns on the property is evident from the utility poles on the property which show evidence of recent shotgun blasts.

23 The construction work on the property was also stopped before telephone and electrical service and appropriate lighting installed. Without electrical and telephone service on the property, full lighting and other security services can not exist which would otherwise deter

trespassers Moreover, the grading issue discussed above is made the more dangerous by the lack of essential services.

24 Accordingly, without the property being brought to grade and the installation of utilities such as electric and telephone service, a dangerous condition exists at the property which Petitioners are unable to remedy because of the October 12th Decision (and in fact was created by the STB's order to cease construction mid-work with no notice or opportunity to finish existing tasks).

II. Absent This Relief Petitioners Will Suffer Indeterminate Losses

25 Moreover, Petitioners have suffered, and will continue to suffer, non-compensable irreparable harm Sills Road, and its members and affiliates, plan to use the Brookhaven Rail Terminal to transport Commodities to Long Island to service its members' needs and for third-party sales Rail shipment provides the most cost effective means for achieving these goals Rail transport also enhances the opportunity for timely deliveries of seasonal materials by reducing reliance on truck transportation over increasingly congested highways and bridges No other adequate rail transloading facilities are available to Sills Road in the Long Island market it will serve

26 The vast majority of the Long Island market to be served by the facility for Stone is currently supplied by a single vendor by either barge or truck. One of Sills Road and its affiliate's business plans is to use the rail transportation of Commodities, including Stone, to reduce costs, particularly with the increasing cost of fuel, the reduction in the allowable gross vehicular weight permissible on metropolitan New York area bridges, and the need to improve reliability of deliveries away from congested traffic arteries Unfortunately, no adequate rail transloading facilities are available to us in the Long Island market we hope to serve

27 Through an affiliated company, Sills Road has entered into a long-term agreement with an upstate quarry (one of its members) for the annual delivery by rail of up to 500,000 tons of Stone to serve the Long Island market

28 Currently, the Stone is shipped by rail to a small site in Yaphank capable of handling only approximately ten percent of the quantities of Stone contemplated by this agreement. This smaller site is under a lease which is expiring soon, at the end of November, without the possibility for extension. No other site is available to Sills Road or U S Rail to handle the Stone.

29 Aside from being a delivery point for the current shipments of Stone, the small site in Yaphank is also where Petitioners have stored ballast (small crushed rock) which they anticipated to be able to move to the Brookhaven Rail Terminal during its construction as part of the grading efforts. So long as the October 12th Decision's cease and desist order remains in place, Petitioners have no alternative location to store this ballast or the ability to move it to the site as part of the grading process.

30. Without the construction and operation of the Brookhaven Rail Terminal, Sills Road and its affiliate will be unable to fulfill the agreement with the quarry. Additionally, the quarry has made significant expenditures for the acquisition of over one hundred dedicated rail cars and other new rail infrastructure to meet its obligations under the long-term supply agreement.

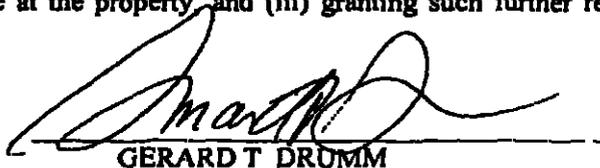
31 Moreover, members of Sills Road are engaged in the business of commercial contracting and manufacturing which requires the Brookhaven Rail Terminal to operate for them to meet their business obligations. The inability to receive rail deliveries of the Commodities at

the Brookhaven Rail Terminal will place them in potential breach of their respective contractual obligations, and likely face significant economic and non-economic loss in meeting them

32 Sills Road and its affiliates have also engaged in substantial marketing efforts to make potential customers aware of their entry into the Long Island Commodities market. Sills Road and its affiliates have made commitments to third-parties for the supply of Commodities commencing in March, 2008. There will be significant and permanent damage to their business reputation unless this motion for preliminary injunction is granted; since they will be seen as unable to meet commitments. Such damage, particularly to a new entrant into a significant market that relies heavily on time sensitive deliveries, would be incalculable and irreparable.

33 It is also respectfully submitted that the injury to the other customers of the Brookhaven Rail Terminal and to residents of Long Island in general is also irreparable. Because of new limitations on truck gross vehicular weight crossing bridges to Long Island, there is no economical way to move the volumes of Commodities contemplated by Sills Road other than by rail. Already congested highways and bridges would be further burdened by handling tens of thousands of additional truck trips, potentially inflicting considerable damage on area highways as well as unnecessary fuel consumption and air pollution. Moreover, there are no other rail transloading facilities on eastern Long Island that are available to Sills Road to handle the Commodities in the volumes contemplated.

WHEREFORE, Petitioners respectfully request that, pending a full review of the STB's October 12, 2007 Decision on the merits, the Court issue an Order (i) temporarily restraining the enforcement of the STB's October 12, 2007 Decision to the limited extent of allowing Petitioners to continue to clear and grade the property and to install utilities at the property, (ii) preliminarily enjoining enforcement of the STB's October 12, 2007 Decision and allowing construction activities to continue at the property and (iii) granting such further relief as the Court deems just and proper



GERARD T DRUMM

Sworn to before me this
9th day of November, 2007



Notary Public

AARON E. ZERYKIER
Notary Public, State of New York
No. 02ZE8088421
Qualified in Nassau County
Commission Expires March 03, 2011

FF-DOCS11774935 04

EXHIBIT B

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- x
SILLS ROAD REALTY, LLC, SUFFOLK & SOUTHERN
RAIL ROAD, LLC and U S RAIL CORPORATION,

Petitioners,

Docket No _____

v

SURFACE TRANSPORTATION BOARD and THE
UNITED STATES OF AMERICA,

Respondents

**AFFIDAVIT OF GABRIEL
HALL IN SUPPORT
OF PETITIONERS' ORDER
TO SHOW CAUSE**

----- x
STATE OF OHIO)
) ss.
COUNTY OF LUCAS)

GABRIEL HALL, being duly sworn, deposes and states the following, under penalty of perjury

1 I am the President of U S Rail Corporation ("U S Rail") and am responsible for all aspects of marketing, strategic planning, and corporate growth for US Rail

2 I submit this affidavit in support of the application of Petitioners, Sils Road Realty, LLC ("Sills Road"), Suffolk & Southern Rail Road LLC ("Suffolk") and U S Rail, (collectively "Petitioners") to (i) temporarily restrain the enforcement of the STB's October 12, 2007 Decision (the "October 12th Decision") to the limited extent of allowing Petitioners to continue to clear and grade the property and to install utilities at the property, (ii) to preliminarily enjoin enforcement of the October 12th Decision and allow construction activities to continue at the property, and (iii) grant such further relief as the Court deems just and proper

3 It is respectfully submitted that this preliminary injunctive relief is necessary because, absent the issuance of the requested interim relief, Petitioners will suffer irreparable harm without any corresponding injury to the Respondents or any other entity

History Of U S Rail

4 U S Rail began operations about six years ago when it acquired stock control of an existing Class III short line railroad operating about 100 miles of track in central Southern Ohio That company was called the Great Miami & Scioto Railroad and has since been renamed U S Rail Corporation

5 My goal since then has been to find other rail properties and facilities that are strategically located around the country where we can offer customers our expertise in railroad transportation.

6 U S Rail has leased from Sills Road the necessary land upon which to build the railroad facilities at the Brookhaven Rail Terminal and has begun the work of clearing the land for construction of tracks and related facilities so that service can commence in or about March 2008 These activities have been undertaken at great expense

7 Specifically, the length of track to be constructed is short, about 11,000 feet if laid out "end-to-end" on 28 acres of land

8 One principal customer, Sills Road Materials LLC, will be serviced by the Terminal

9 The facility will be a stub-ended network of tracks, with service to be provided on demand rather than on any scheduled basis

10 The weight of the rail will not exceed 115 pounds, a weight consistent with current standards for building new rail-served industrial facilities

11 The condition of the track will be good because it will be newly constructed to the currently applicable industry standards

12 The proposed use of the tracks will be for loading, unloading, switching, and storage of rail cars for a single principal user, all uses consistent with the character of exempt industrial or yard tracks.

13 The purpose of this transfer will be to bring Stone to Long Island by rail instead of by truck movement over congested highways. Traffic moving to or from the Terminal will be interchanged with the New York & Atlantic Railway ("NY&A"), and through it, with other railroads comprising the national rail system. There will be no "station" listed in a tariff through which traffic will be solicited.

14 Accordingly, U S Rail will be providing essential rail transloading services for compensation through the movement of materials, such as crushed stone and other construction materials ("Commodities"), to the Long Island market.

Plaintiffs Will Suffer Irreparable Harm

I. The Property Needs to Be Graded and Have Utilities Installed In Order to Protect the Public

15 Our construction activities were stopped in the middle of grading the property, because of the October 12th Decision. I am advised that this mid-work stoppage has left significant mounds and valleys of sand on the property. I am further advised that local all-terrain-vehicle ("ATV") riders have trespassed on the property in order to "joy-ride" on these mounds and valleys. Absent our ability to bring the property to grade, these conditions will persist.

16 Additionally, work was stopped on the site before we were able to install electric and telephone utility poles Without electrical and telephone service on the property, full lighting and other security services cannot exist which would otherwise deter trespassers

17. I am informed that this is a significant problem, because individuals also continue to trespass on the property in order to shoot shotguns. In fact, I am informed, that the utility poles recently delivered to the property show fresh shotgun blasts.

18 Without adequate lighting there persist dangerous conditions, which are compounded by the trespassers who come to utilize ATVs and shoot guns

19 It is respectfully submitted that work that Petitioners seek to do at the property is necessary in order to alleviate a dangerous situation escalating into a tragedy.

II. Absent This Relief Petitioners Will Suffer Indeterminate Losses

20. Moreover, U S Rail, along with Sills Road, negotiated arrangements for the initial traffic expected at the Brookhaven Rail Terminal, to wit, shipments of aggregate from a quarry in upstate New York served by CP Rail to the Brookhaven Rail Terminal for ultimate distribution to customers on Long Island

21 Those arrangements contemplate that CP Rail would be the originating carrier on its line and would handle this traffic using its "East of the Hudson" tracking rights over CSX Transportation's Hudson Division to the Bronx and thence to Fresh Pond, NY, for interchange with the New York & Atlantic Railway ("NY&A"). The NY&A will interchange the traffic to U S Rail at the Brookhaven Rail Terminal U S Rail will then break up the train, switching cars to the appropriate tracks, unload the cargo, turn and service the equipment, and ready inbound cars for outbound movements

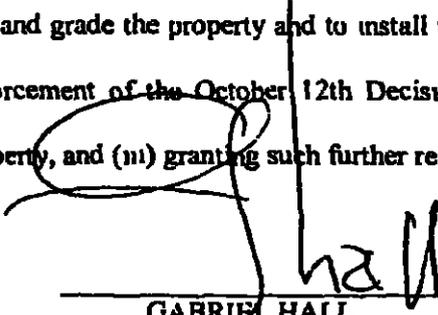
22 I have grave concerns that the October 12th Decision's requirement that all construction activities at the Brookhaven Rail Terminal be immediately stopped will cause U S Rail irreparable harm without any corresponding injury to either the STB or any other party

23. U S Rail has made contractual commitments to move inbound aggregate product for customers on Long Island. Aside from any economic loss occasioned by a breach of contract, U S Rail will face significant damage to our business reputation by being seen as unable to perform a contract. This will damage our ability to obtain other contracts in the future.

24 We will suffer great economic harm because of our reliance on developing the Brookhaven Rail Terminal traffic from our existing and future customers. By being delayed or denied this opportunity, U S Rail will lose a major source for future revenues and numerous customer opportunities. We are committed to opening the terminal by the first quarter of 2008, and have ordered two locomotives to be deployed at the Brookhaven Rail Terminal. This expense is significant.

25 It is my opinion that, other than by rail, there is no way for that traffic to move in the volumes expected under our agreements with Sills Road. Congested regional and local highways are incapable of handling that traffic. Moving this cargo by highway would require tens of thousands of truck roundtrips per year, potentially inflicting considerable damage on area highways as well as unnecessary fuel consumption and air pollution. Moreover, there are no other transloading facilities on eastern Long Island that are equipped or suitable for handling aggregate, or any volume of freight, by rail.

WHEREFORE, Petitioners respectfully request that, pending a full review of the STB's October 12, 2007 Decision on the merits, the Court issue an Order (i) temporarily restraining the enforcement of the STB's October 12, 2007 Decision to the limited extent of allowing Petitioners to continue to clear and grade the property and to install utilities at the property, (ii) to preliminarily enjoining enforcement of the October 12th Decision and allow construction activities to continue at the property, and (iii) granting such further relief as the Court deems just and proper


GABRIEL HALL

Sworn to before me this
8th day of November, 2007


Notary Public

CYNTHIA S. KERR
Notary Public, State of Ohio
My Commission Expires 09-06-2011

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Seal

EXHIBIT C

VERIFIED STATEMENT OF GABRIEL HALL

Gabriel Hall, of full age, being duly sworn, deposes and says

1 I am the President of U S Rail Corporation (U S Rail) My office address is 7846 Central Avenue, Toledo, Ohio

2 I make this verified statement in rebuttal to the reply of the Town of Brookhaven to the petition filed by U S Rail and Sills Road Realty Corp ("Sills") to Stay the Board's October 12, 2007 Decision in the matter bearing Finance Docket No 35036

3 This statement is based upon my personal knowledge as well as upon facts known to me in my capacity as officer of this corporation

3 U S Rail acknowledges that its general counsel had previously represented to the Board in a letter dated January 25, 2006 that a substantial amount of its traffic involved the transportation of solid waste matter While this statement was true at the time the letter was written, circumstances have changed. U S Rail has not engaged in the business of hauling solid waste since April 2006, and has no plans to perform municipal solid waste transloading operations at the proposed Brookhaven facility

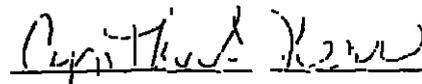
VERIFICATION

STATE OF OHIO)
) SS
CITY OF TOLEDO)

I, Gabriel Hall, being duly sworn according to law, hereby
depose and state that I am authorized to make this Verification, that
I have read the foregoing document, and that I know the facts asserted
therein are true and accurate as stated, to the best of my knowledge,
information and belief.

 _____

Subscribed and sworn to before me, a Notary Public, in and for the
City of Toledo, in the State of Ohio, this 12 day of November,
2007.



Notary Public

My Commission expires:
CYNTHIA S KERR
Notary Public, State of Ohio
My Commission Expires 09-06-2011

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EXHIBIT D

VERIFIED STATEMENT OF GERARD T. DRUMM

Gerard T. Drumm, being duly sworn, deposes and states the following, under penalty of perjury.

1 My name is Gerard T. Drumm. I am the Chief Financial Officer and General Counsel of Sills Road Realty, LLC ("Sills Road"). I am responsible for financial and legal matters with respect to Sills Road and its affiliated companies. I am fully familiar with the facts and circumstances of this matter from my personal knowledge.

2 I make this statement in support of the petition of Sills Road and U S Rail Corp ("U S Rail") for leave to file a Rebuttal to the Town of Brookhaven's Reply to the Petition to Stay the Board's October 12, 2007 Decision, Motion to Strike the Verified Statement of Town Attorney Robert F. Quinlan and portions of the Reply as containing objectionable material.

3 Upon information and belief, past and present officials of New York & Atlantic Rail Road ("NY&A") have participated in discussions with Brookhaven planning personnel regarding the Terminal, provided valuable input to the Terminal layout and track design and supported the Terminal in its efforts to receive New York State funding.