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VIA ELECTRONIC FILING

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423-0001

RE: U.S. Rail – Construction And Operation Exemption
STB Finance Docket No. 35141

Dear Ms. Brown:

Please accept this letter in response to the purported “status report” filed by Petitioner U.S. Rail Corporation (“U.S. Rail”) on December 30, 2009 in the above-captioned matter.

Respondent Town of Brookhaven (“Town”) objects to U.S. Rail’s filing of confidential settlement materials without the Town’s consent. As U.S. Rail readily admits, the parties have been attempting to negotiate a global settlement that would take place within the context of the related matter pending in the U.S. District Court for the Eastern District of New York (CV 07-4594). U.S. Rail and its counsel are aware that settlement discussions, proposals and related materials are protected from disclosure by Federal Rule of Evidence 408 and 49 C.F.R. §1114.1. In addition, the descriptions of confidential settlement conversations, proposals and other materials contained in U.S. Rail’s letter and Verified Statement of Gerald Drumm filed on December 30, 2009 are wholly irrelevant and immaterial to the matter pending before the Board in clear violation of 49 C.F.R. § 1104.8 (“The Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document.”) As such, the Town is preparing a motion to strike the contents of U.S. Rail’s December 30th letter and the Verified Statement of Gerald Drumm to file with the Board within the time permitted by the Board’s rules.

In the interim, the Town submits this letter as its status report pursuant to the Board’s June 12, 2009 Decision in the above-captioned matter. Notwithstanding U.S. Rail’s objectionable filing, the Town maintains that good faith attempts at settlement are still being

made and does not agree that an impasse has been reached. Therefore, the Town objects to U.S. Rail's request that the be matter restored to the docket and a briefing schedule set.

Thank you for your time and consideration.

Respectfully Submitted,

LAW OFFICES OF MARK A. CUTHBERTSON

A handwritten signature in black ink, appearing to read "Jessica P. Driscoll". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jessica P. Driscoll
Attorney for Respondent
Town of Brookhaven

CC: Karen M. Wilutis, Esq. (by email)
James H. M. Savage, Esq. (by email)
Robert A. Rybak, Esq. (by mail)