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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

**Re: FD 35141, *US Rail Corp. – Construction and Operation Exemption –
Brookhaven Rail Terminal***

**FD 35819, *Brookhaven Rail Terminal and Brookhaven Rail, LLC – Petition for
Declaratory Order***

**FD 36376, *Spectrum RR Holdings, LLC – Operation Exemption – Railroad
Line in the Town of Brookhaven, NY***

**FD 36384, *Sills Road Realty LLC – Acquisition Exemption – Railroad Line in
the Town of Brookhaven, N.Y.***

**FD 36385, *Spectrum RR Holdings, LLC – Acquisition and Operation
Exemption – Line of Sills Road Realty LLC, In the Town of Brookhaven, N.Y.***

**FD 36398, *Brookhaven Rail LLC – Construction and Operation Exemption –
In Suffolk County, N.Y.***

**FD 36399, *Brookhaven Rail LLC – Petition for Exemption from Requirements
of 49 U.S.C. § 10909***

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Reply of the SRR Parties to the Citizens Campaign for the Environment’s Petition for a Declaratory Order and/or for an Order to Show Cause and Suspend

Dear Ms. Brown:

The SRR Parties¹ hereby respond to the Petition for a Declaratory Order and/or for an Order to Show Cause and Suspend (the “Petition”) filed by Citizens Campaign for the Environment (“CCE”) as that Petition bears on the FD 35141, FD 35819, FD 36376, FD 36384, and FD 36385 proceedings. Sills Road urges that, whatever action the Surface Transportation Board (the “Board”) may take in response to this Petition – which predominantly focuses upon Brookhaven Railroad, LLC and Winters Bros. (“BHR/Winters”) and the plans to develop so-called Parcels B, C and D – such Board action must not disrupt ongoing, and longstanding, railroad common carrier operations on Parcel A (the “Brookhaven Rail Terminal”).

As the record in the various proceedings that are ostensibly the subject of CCE’s Petition reflect, certain of the SRR Parties had been engaged in years of litigation, in federal and state court, with BHR/Winters and with the Town of Brookhaven, NY. However, that litigation has ended under the terms of settlement agreements in each case. Consequently, and under the terms of those settlement agreements, the SRR Parties, as applicable, have asked on October 22, 2021 to withdraw with prejudice their respective past filings in the FD 36376, FD 36384, FD 36385, FD 36398, and FD 36399 proceedings. The SRR Parties believe that the aforementioned October 22 filing, as a general matter, was a welcome development.

CCE’s Petition appears to relate or refer to proceedings that, except for FD 36398 and FD 36399, ended anywhere from a year-and-a-half to a decade ago. It does not appear that CCE is seeking any relief from the Board concerning the SRR Parties, nor could it. For example, neither Sills Road, nor any entity affiliated with Sills Road any longer has an ownership or other possessory interest in, or claim to, Parcels B, C and D. Sills Road owns Parcel A (as the Board has long been aware), it funded the construction of the Brookhaven Rail Terminal, and it holds title to the Brookhaven Rail Terminal assets (as Sills Road explained in the course of the FD 36376, FD 36384, and FD 36385 proceedings). Furthermore, Sills Road also has acknowledged that it may have erred by relying exclusively on regulatory counsel for US Rail Corp., who did not at the time of the FD 35141 proceeding disclose Sills Road’s role in the construction and ownership of the Brookhaven Rail Terminal.

¹ The SRR Parties are, collectively, Sills Road Realty LLC (“Sills Road”), Brookhaven Terminal Operations LLC, Brookhaven Rail Freight Services LLC, and Spectrum RR Holdings, LLC (“Spectrum”).

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Sills Road disputes CCE's characterization of Sills Road as among the "developers," in that Sills Road is no longer developing, or seeking to develop, any facilities on Parcels A, B, C, or D. Neither Sills Road nor any Sills Road affiliate has any plans for additional railroad line construction on Parcel A (the only Parcel of the four in which Sills Road still has an interest). Sills Road acknowledges, however, that any hypothetical new railroad line construction on Parcel A would be subject to applicable Board processes, but, again, no new railroad line construction is planned for the Brookhaven Rail Terminal (Parcel A).

As is also relevant here, in a consolidated decision served on June 16, 2020 (roughly a year-and-a-half-ago), the Board permitted Spectrum to withdraw its notice of exemption in FD 36376, and rejected the FD 36384 and FD 36385 notices. The SRR Parties understood those proceedings to have been terminated as of the decision date. None of the information set forth in those nearly-two-year-old notices could be considered "new evidence" for purposes of reopening now, and CCE has not pointed to any material Board error or substantially changed circumstances related to any of the three.

CCE has not identified any reason why FD 36376, FD 36384, and FD 36385 should be reopened or what reopening those dockets would accomplish in connection with the current applications concerning the development of Parcel D. Sills Road further notes that, while CCE does not appear to be seeking any relief directly against the Sills Road Parties, there is no basis now or in the future to take the extraordinary and highly damaging step of stopping or otherwise disrupting long-ongoing common carrier operations provided by Brookhaven Rail, LLC within the Brookhaven Rail Terminal.

Respectfully submitted,

/s/ *R. A. Wimbish*

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Attorney for Sills Road Realty LLC, Brookhaven Terminal
Operations LLC, Brookhaven Rail Freight Services LLC,
and Spectrum RR Holdings, LLC

cc: All parties of record