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November 19, 2007

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: **Finance Docket No. 35036**
Suffolk & Southern Rail Road LLC – Lease and
Operation Exemption – Sills Road Realty, LLC

Verified Statement of Bruce A. Lieberman

Dear Secretary Williams:

Please accept for filing in this matter on behalf of New York and Atlantic Railway Company the accompanying Verified Statement of Bruce A. Lieberman.

Respectfully submitted,

/s/ Ronald A. Lane

Ronald A. Lane
Attorney for New York and Atlantic Railway
Company, Inc.

RAL:dg

cc: John D. Heffner
Mark A. Cuthbertson

Finance Docket No. 35036
Suffolk & Southern Rail Road LLC – Lease and
Operation Exemption – Sills Road Realty, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2007, I have caused to be electronically filed with the Surface Transportation Board, Washington, D.C. the attached Verified Statement of Bruce A. Lieberman, and I further certify that I have caused a true and correct copy thereof to be served via electronic mail upon:

John D. Heffner, Esq.
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006

James H.M. Savage
1750 K Street, N.W.
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Attorneys for Suffolk & Southern Rail Road LLC

Mark A. Cuthbertson
Law Offices of Mark A. Cuthbertson
434 New York Avenue
Huntington, NY 11743
Attorney for the Town of Brookhaven

By: /s/ Ronald A. Lane
Ronald A. Lane

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35036

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

VERIFIED STATEMENT OF BRUCE A. LIEBERMAN

BRUCE A. LIEBERMAN, being first duly sworn, states and deposes as follows:

1. I am the Chairman of New York and Atlantic Railway Company ("NYA"). I have personal knowledge of the following facts:

2. NYA holds common carrier freight rights and provides freight service over portions of the Long Island Railroad ("LIRR") including that portion of the LIRR adjacent to the parcel (the "Site") owned by Sils Road Realty, LLC (the "Developer") that would encompass the proposed facility at issue in this proceeding. The track at this location is owned and dispatched by the Long Island Railroad, but NYA has the right to provide freight service over this line. Before any railroad service could occur at the Site, LIRR would have to install of a mainline switch to access the facility.

3. NYA favors the construction of a private facility to receive multiple carload quantities of stone and aggregate. NYA has supported the efforts of the Developer to design such a facility, including commenting on the layout and design of the proposed facility. I believe that such a private unloading facility could generate substantial throughput, could provide a significant amount of new traffic for NYA and could provide benefits to the general Long Island community. While the Long Island market is a large consumer of stone, a very small percentage of this stone is brought onto Long Island by rail. The introduction of a new, rail-served facility

would greatly enhance the ability of rail to compete for the movement of aggregates and other bulk commodities.

4. On the other hand, NYA has strongly opposed any effort by the Developer to become, create, or introduce another railroad carrier to operate the facility or to invoke federal preemption of local regulation. NYA stands ready, willing and able to provide rail service to the proposed facility. NYA has indicated its willingness to provide intra-plant switching service within the proposed facility

5. NYA has not and does not recognize the Developer or US Rail Corporation as its agent or operator. NYA has not and does not intend to hold itself out as providing aggregate unloading services to the shipping public at the Brookhaven site.

6. NYA has consistently indicated to the Developer that NYA would oppose any attempt to claim railroad status or privileges, including preemption, based on the activities undertaken at Brookhaven. Attached is a copy of a letter to NYA from the President of the Developer agreeing, at our insistence, to act only as, “a rail user (shipper), not a connecting rail carrier.” The Developer also represented that, “we would seek your [NYA’s] concurrence if we want to file to become a rail carrier.” The Developer has not sought to become a carrier in its own right, but instead leased its facility to US Rail Corporation and now claims that US Rail Corporation is a common carrier, even on this site hundreds of miles from its main line and already subject to rail service by NYA. In my view, the Developer’s actions renege on its commitment to, and breach its agreement with, NYA.

7. To clarify the record in this proceeding, NYA officials have provided input concerning the Terminal layout and track design. We actively encourage all our customers

contemplating track construction to contact us, and we gladly assist them in their planning so that the customer's engineers do not design a facility that NYA can not efficiently serve.

8. NYA did investigate available New York State rail financing programs at the Developer's request. I relayed to the Developer that funding was available for shippers to construct rail facilities and connections, and that the Developer did not need to be a railroad to apply for such funds.

9. NYA believes that a major aggregates unloading facility in Brookhaven at the Site would be consistent with the public convenience and necessity, and NYA strongly supports construction of such a facility. NYA does not support the introduction of another railroad simply to serve a facility that NYA is already capable of serving and quite willing to serve.

VERIFICATION

I have read the foregoing and it is true and correct to the best of my knowledge and belief.



Bruce A. Lieberman
November 19, 2007

Date

Signed and subscribed to before me
this 19 day of November, 2007

LAUREN MILGROM
Notary Public, State of New York
No. 31-4654062
Notary Qualified in New York County
Commission Expires March 30, 2011





July 27, 2007

Mr. Mark H. Westerfield
Acting President
New York & Atlantic Railway
68-01 Otto Road
Glendale, New York 11385

Dear Mr. Westerfield:

Sills Road Realty, LLC has acquired a 28 acre parcel in Yaphank, NY. Our plan is to have a rail served facility constructed on this site and to transload aggregates, other construction materials and other products from rail cars to trucks. You already deliver railcars filled with aggregates to us at another, much smaller site which we currently lease in Suffolk County. The new location, when complete, would allow us to transload significantly greater volumes of materials with an associated reduction in truck traffic into the Long Island market.

The facility will consist of approximately 11,000 feet of track and unloading facilities on the 28 acre parcel. We need to connect this new track to the Long Island Rail Road (LIRR) main line so that the New York & Atlantic can provide direct rail service. Accordingly, we are requesting that you ask LIRR to install a main line switch as expeditiously as possible. We understand the cost of installation of the switch and the monthly switch maintenance charged by LIRR will be borne by us. Furthermore, we acknowledge that you are advancing our request for the installation of a main line switch based on your understanding that we intend to be a rail user (shipper), not a connecting rail carrier. We do not intend to change this status and would seek your concurrence if we want to file to become a rail carrier.

Sincerely,

Andrew Kaufman
President