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August 14, 2008

VIA ELECTRONIC FILING

Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E. Street Southwest
Washington, DC 20024

223278

RE: US Rail – Construction and Operation Exemption – Brookhaven Rail Terminal
STB Finance Docket No.: 35141

Dear Ms. Quinlan:

This law firm represents the Town of Brookhaven, New York ("Brookhaven"). I am in receipt of the "Petition for Exemption" filed by U.S. Rail Corporation ("U.S. Rail") on August 7, 2008 in the above-captioned matter. Brookhaven intends to file a reply to the Petition pursuant to § 1104.13 and respectfully requests an extension of 20 days – from August 27, 2008 to September 18, 2008 – to file such reply.

As reason for the extension, counsel for Brookhaven states that this law firm also represents Brookhaven in related litigation pending in the U.S. District Court for the Eastern District of New York. Plaintiffs in that litigation include Sills Road Realty and U.S. Rail. On July 18, 2008, U.S. Magistrate Judge E. Thomas Boyle issued a report and recommendation denying plaintiffs' request for a preliminary injunction against the enforcement of appearance tickets related to construction activities occurring at the proposed Brookhaven rail site. Pursuant to the briefing schedule negotiated between the parties, plaintiffs filed objections on August 11, 2008 and Brookhaven's reply to U.S. Rail's objections is due on September 3, 2008.

Although U.S. Rail is represented by separate counsel in the federal court litigation, this law firm represents Brookhaven before the federal court, in the above-captioned matter, and in another matter currently pending before the Board (STB FD 35036), all of which arise out of the proposed Brookhaven rail site. As such, the requested 20-day extension to reply to the Petition for Exemption is necessary for counsel to adequately address the arguments raised in the federal court and before the Board. In addition, undersigned counsel has long-scheduled vacation plans during the last few weeks of summer, which add to the difficulty of completing briefing without the requested extension.

Brookhaven sought U.S. Rail's consent to the requested 20-day extension. U.S. Rail offered "conditional" consent, contingent upon Brookhaven's waiving any objection to the timeliness of U.S. Rail's Petition. Brookhaven was not willing to waive such objections, and therefore seeks this extension of time without U.S. Rail's consent.

Ann Quinlan, Acting Secretary
Surface Transportation Board
August 14, 2008
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Thank you for your consideration of this request.

Very truly yours,



Jessica P. Driscoll

Cc. James Savage, Esq.

CERTIFICATION OF SERVICE

I, Jessica P. Driscoll, certify that on this 14th day of August, 2008, a copy of this document, as submitted to the Board via electronic filing, was sent via email to James Savage, (counsel for U.S. Rail Corporation).

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By: 

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