

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

ROBERT A. WIMBISH
(312) 252-1504
rwimbish@fletcher-sippel.com

December 20, 2019

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

300208

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

ENTERED
Office of Proceedings
December 20, 2019
Part of
Public Record

Re: **Docket No. FD 36376**
Spectrum RR Holdings, LLC – Operation Exemption – Railroad Line
in the Town of Brookhaven, New York

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Verified Notice of Exemption of Spectrum RR Holdings, LLC** pursuant to 49 C.F.R. part 1150, subpart D. Payment of the applicable filing fee of \$2,100.00 has been tendered electronically with this filing via Pay.gov.

If you have any questions regarding this filing, please contact me at either rwimbish@fletcher-sippel.com or (312) 252-1504. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Robert A. Wimbish
Attorney for Spectrum RR Holdings, LLC

Enclosures

FILED
December 20, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 20, 2019
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36376

SPECTRUM RR HOLDINGS, LLC
-- OPERATION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK

**VERIFIED NOTICE OF EXEMPTION OF
SPECTRUM RR HOLDINGS, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR SPECTRUM RR
HOLDINGS, LLC**

Dated: December 20, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36376

SPECTRUM RR HOLDINGS, LLC
-- OPERATION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK

**VERIFIED NOTICE OF EXEMPTION OF
SPECTRUM RR HOLDINGS, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Pursuant to 49 C.F.R. part 1150, subpart D, Spectrum RR Holdings, LLC (“SRHL”), a non-carrier, hereby files this Verified Notice of Exemption (the “Notice”) to operate under license an approximately 0.47-mile rail line (the “Line”) in Brookhaven, New York. Based upon projected annual revenues, SRHL expects to be a Class III rail carrier following consummation of the proposed transaction, and it anticipates that its annual operating revenues will be below \$5 million.

In accordance with the requirements of 49 C.F.R. § 1150.33, SRHL submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.33(a)

The full name and address of the rail carrier applicant herein is as follows:

Spectrum RR Holdings, LLC
205 Sills Road
Yaphank, NY 11980

Applicant's Representative: 49 C.F.R. § 1150.33(b)

SRHL's representative to whom correspondence regarding this transaction should be sent is as follows:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)

SRHL, a non-carrier, is a directly-controlled subsidiary of Brookhaven Rail Freight Services LLC ("BRFS"), which, in turn, is controlled, indirectly, by Sills Road Realty LLC ("Sills Road"). Sills Road owns certain railroad track assets in Brookhaven, New York, known as the Brookhaven Rail Terminal ("the BRT") that are currently operated by a third party, Brookhaven Rail, LLC ("Brookhaven Rail"), pursuant to a railroad operating and sublicense agreement with BRFS (the "BR Agreement"). The BRT consists of a combined total of roughly 16,850 linear feet of track, including roughly 0.47 miles of mainline track and another roughly 14,348 feet of ancillary (yard) track used for railroad car switching and terminal transloading.

As indicated above, Brookhaven Rail provides common carrier service within the BRT, but Sills Road has elected to install a corporate subsidiary on the BRT to provide common carrier service in place of Brookhaven Rail. To that end, Sills Road and SRHL have reached terms under which SRHL would provide common carrier service over the BRT, with the expectation that Brookhaven Rail will, in a separate proceeding, seek formally to discontinue its common carrier operations over the subject trackage.¹

¹ Although the anticipated sequence of events contemplates the future cessation of Brookhaven Rail operations and the commencement of SRHL operations, the Notice involves only the commencement of SRHL operations, not a formal "change of operators" pursuant to 49

Operator of the Property: 49 C.F.R. § 1150.33(d)

SRHL intends to provide common carrier service over the subject railroad assets, recognizing, however, that Brookhaven Rail currently possesses unextinguished common carrier rights and obligations of its own, such that, for an interim period of time, it is possible that, following the effective date of this Notice, the Line will host two railroad common carrier operators – Brookhaven Rail and SRHL.

Summary of the Transaction: 49 C.F.R. § 1150.33(e)

In 2010, U S Rail Corporation (“USRC”), a predecessor in interest to Brookhaven Rail, obtained Board authority to construct and operate approximately 18,000 feet of railroad track in a 28-acre facility known as the Brookhaven Rail Terminal (BRT).² The trackage that was the subject of the FD 35141 construction proceeding (“Yard A”) was described at the time USRC filed its exemption petition as a “railroad yard on a 28 acre parcel of land.”³ However, while USRC indicated that the construction involved the installation of a railroad yard, neither USRC’s Petition, nor subsequent filings in the FD 35141 proceeding, nor the Board’s September 9 Decision distinguished between that portion of the proposed construction that involved the installation of a regulated line of railroad triggering the need for Board-authorization under 49 U.S.C. § 10901, and the related construction of railroad yard track (falling under 49 U.S.C. §

C.F.R. § 1150.32(b). In any event, SRHL’s ultimate corporate parent, Sills Road, remains the primary user of rail service at the BRT, and Sills Road supports the transaction encompassed by this Notice.

² U S Rail Corporation – Construction and Operation Exemption – Brookhaven Rail Terminal, Docket No. FD 35141 (STB served Sep. 9, 2010) (“September 9 Decision”).

³ U S Rail Corporation – Construction and Operation Exemption – Brookhaven Rail Terminal, Docket No. FD 35141 (individual petition for exemption filed on August 7, 2008) (the “Petition”) at 5.

10906), the latter of which, in the absence of the contemporaneous construction of a line of railroad, ordinarily would not require Board oversight.

In 2014, Brookhaven Terminal Operations, LLC (“BTO”) – today, a subsidiary of Sills Road – and Brookhaven Rail (the successor to USRC)⁴ proposed to expand the scope of the BRT by adding roughly 12,500 feet of new yard tracks adjacent to those located within Yard A (which, again, was the subject of the FD 35141 proceeding). Facing local resistance to the proposed new track construction, BTO and Brookhaven Rail jointly petitioned the Board for a declaration that the proposed new trackage qualified as yard facilities (or “spur track”) that did not require advance Board authorization to construct in keeping with section 10906. And, in 2016, the Board confirmed that the proposed construction involved yard track for which Board-issued construction authority was not needed.⁵

Sills Road funded the construction of Yard A, and Brookhaven Rail operates as a common carrier within it (as authorized in FD 35141), as Brookhaven Rail does over additional trackage constructed thereafter pursuant to the Board’s guidance in FD 35819. Brookhaven Rail does not own Yard A, nor any of the adjacent trackage that, collectively, comprises the BRT. Rather, the BRT trackage is, and has been, owned by Sills Road. Brookhaven Rail is at this time the rail common carrier designated by BRFS (and authorized by the Board) to conduct common carrier operations over Yard A, and Brookhaven Rail also operates over ancillary track that has since been constructed within the confines of the BRT.

⁴ See Nevada 5, Inc. and Oakland Transportation Holdings LLC – Control Exemption – GTR Leasing LLC and US Rail Holdings LLC, Docket No. FD 35635 (STB served Jun. 15, 2012); and see, also, Gabriel D. Hall – Corporate Family Transaction Exemption – US Rail New York, LLC and US Rail Corporation, Docket No. FD 35458 (STB served Jan. 7, 2011).

⁵ Brookhaven Rail Terminal and Brookhaven Rail, LLC – Petition for Declaratory Order, Docket No. FD 35819 (STB served Aug. 30, 2016).

Sills Road recently has decided that it would prefer to bring the BRT common carrier operations in-house, and so has arranged through BRFS to establish SRHL (as BRFS's wholly-owned subsidiary), with the expectations that SRHL will assume a license interest in the BRT, and that SRHL will conduct common carrier operations pursuant to that license. Sills Road anticipates that, in turn, Brookhaven Rail will, through appropriate Board processes, cease to be a rail common carrier within the BRT, and that Brookhaven Rail's contractual arrangement with BRFS will end. Sills Road and SRHL expect that SRHL may commence common carrier service within the BRT (including the portion designated herein as the Line) at any point after the effective date of this Notice. As such, the commencement of SRHL common carrier operations is not dependent upon the corresponding formal discontinuance of Brookhaven Rail's common carrier status at the BRT.⁶ Under Sill Road's proposed arrangement with SRHL:

- SRHL will obtain an operating license interest in the entire BRT.
- SRHL will operate within the BRT as a rail common carrier.
- SRHL will distinguish between the portion of the BRT that is, and should be, regarded as a federally-regulated "railroad line" for purposes of SRHL's operations, and those portions of the BRT that should be regarded as ancillary track under section 10906. Specifically, SRHL will operate over a roughly 0.47-mile portion of the BRT (as shown on the map at Exhibit A) as a common carrier line of railroad, while the balance of the BRT trackage will be operated by SRHL as ancillary to its "main line" common carrier operations.

As such, SRHL hereby invokes the Board's class exemption procedures to operate as a common carrier line of railroad roughly 0.47 miles of trackage (the "Line") located in Brookhaven, New York, and owned by Sills Road extending eastward and then northward from a connection with the tracks of the Long Island Railroad (and a corresponding connection to the

⁶ Brookhaven Rail's common carrier status at the BRT is likely to remain for the time being, but BRFS intends to pursue an arrangement with Brookhaven Rail under which the BR Agreement would terminate. In the meantime, SRHL expects that both it and Brookhaven Rail will possess Board-authorized common carrier rights and obligations within the BRT.

New York & Atlantic Railway Company, which possesses freight common carrier operating rights over the Long Island Railroad). The Line, which does not have mileposts, connects to a network of roughly 14,348 feet of yard trackage, as is depicted in the map attached hereto as Exhibit A, which SRHL will operate as ancillary to SRHL's regulated common carrier service over the Line under its agreement with Sills Road.

The complete name and address of the owner of the BRT, including the roughly 0.47-mile stretch of trackage that constitutes the Line is as follows:

Sills Road Realty LLC
205 Sills Road
Yaphank, NY 11980

SRHL anticipates consummating the subject transaction at such time as this Notice takes effect (presumably, 30 days from the date of the filing of this Notice) or as soon thereafter as is possible.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line and the Balance of the BRT is attached as Exhibit A.

Certificate of Compliance: 49 C.F.R. § 1150.33(g)

The appropriate certification of eligibility to invoke the subject class exemption procedures is attached as Exhibit B.

Interchange Commitments: 49 C.F.R. § 1150.33(h)

The proposed transaction does not involve, and the agreement between SRHL and Sills Road will not include, any provision or agreement that would limit future interchange with a third-party connecting carrier.

Advance Notice: 49 C.F.R. § 1150.32(e)

The projected annual revenue of SRHL is not expected to exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are inapplicable. See Exhibit B.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(1) (i), SRHL's proposed operation of the Line is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), SRHL's purchase of the Line also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continued rail service. Additional Surface Transportation Board approval would be required to abandon the Line or discontinue railroad service over it, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.47

A caption summary in appropriate form is attached as Exhibit C to this Notice.

Respectfully submitted,

By: R. A. Wimbish

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR SPECTRUM RR
HOLDINGS, LLC**

Dated: December 20, 2019

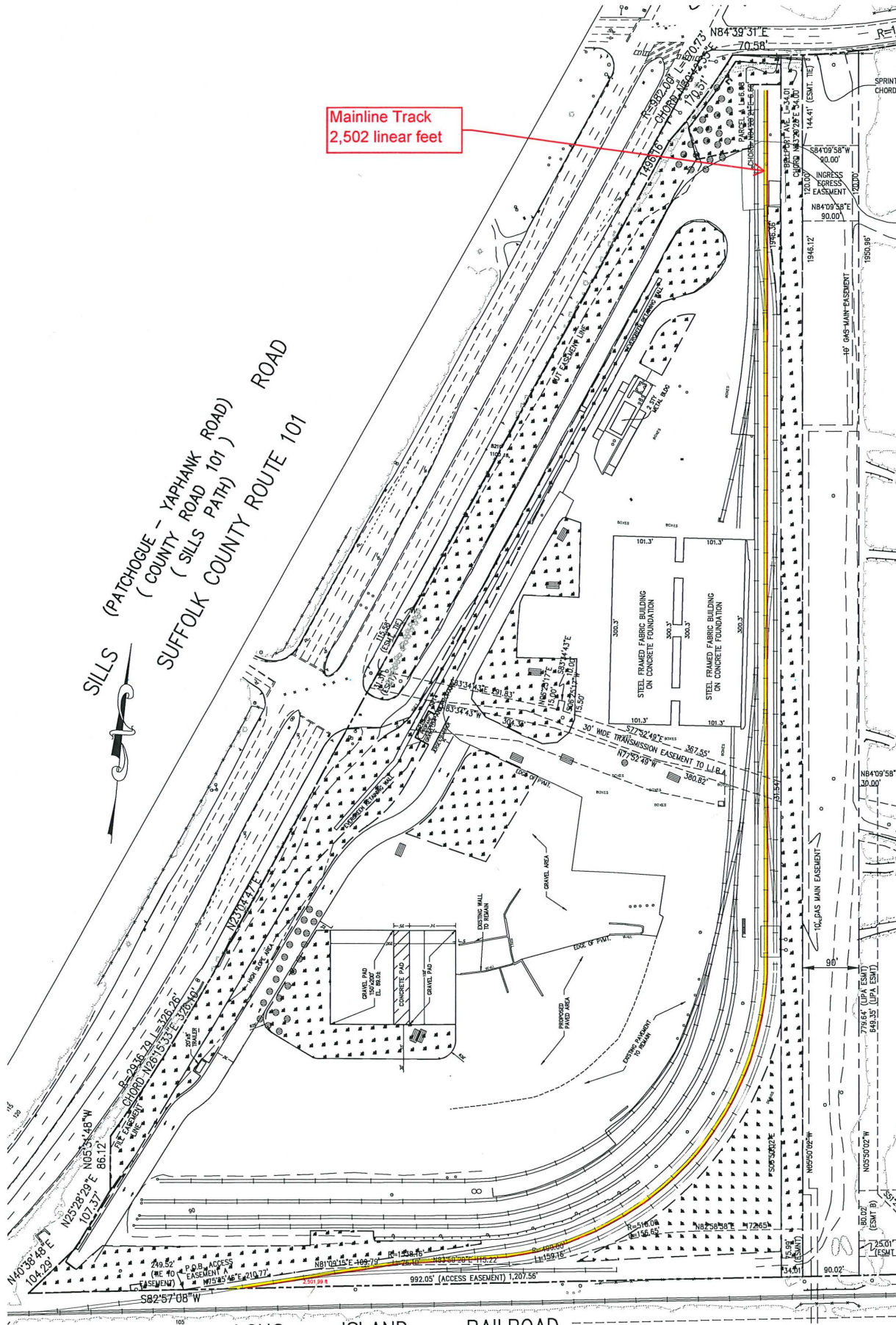
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36376

**SPECTRUM RR HOLDINGS, LLC
-- OPERATION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK**

EXHIBIT A

MAP



Mainline Track
2,502 linear feet



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-- OPERATION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK**

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36376

SPECTRUM RR HOLDINGS, LLC
-- OPERATION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK

Spectrum RR Holdings, Inc. ("SRHL"), a non-carrier, has filed a Verified Notice of Exemption to operate an approximately 0.47-mile railroad line (the "Line") located in Brookhaven, New York, and owned by Sills Road Realty LLC ("Sills Road"), extending eastward and then northward from a connection with the tracks of the Long Island Railroad (and a corresponding connection to the New York & Atlantic Railway Company, which possesses freight common carrier operating rights over the Long Island Railroad).⁷

SRHL expects to consummate the subject transaction on or after January 19, 2019, or as soon thereafter as possible.

Comments must be filed with the Board and served on:

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under

⁷ The Line does not have mileposts. Also, strictly for purposes of information, SRHL will also operate under its agreement with Sills Road roughly 14,348 feet of yard track that is ancillary to the Line that, together with the Line, comprises a facility known as the Brookhaven Rail Terminal.

49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: January __, 2020

By the Board

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings

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STB DOCKET NO. FD 36376

**SPECTRUM RR HOLDINGS, LLC
-- OPERATION EXEMPTION --
RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NEW YORK**

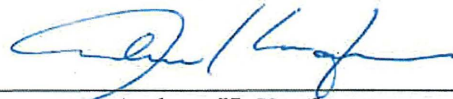
CERTIFICATION AND VERIFICATION

CERTIFICATION AND VERIFICATION

I, Andrew H. Kaufman, hereby certify and verify under penalty of perjury as follows:

1. I am the president of Spectrum RR Holdings, LLC ("SRHL"), and, accordingly, I am qualified and authorized to make the subject "Certification and Verification" on behalf SRHL.
2. The annual rail revenues of SRHL are not expected to exceed \$5 million, and SRHL's anticipated revenues will not result in SRHL becoming Class I or II rail carrier under the thresholds set forth at 49 C.F.R. § 1201 (11).
3. I have read the foregoing Notice of Exemption, verify that the facts stated therein are true and correct.

Executed on: December 18, 2019.



Andrew H. Kaufman