

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36376

SPECTRUM RR HOLDINGS, LLC—OPERATION EXEMPTION—RAILROAD LINE IN
THE TOWN OF BROOKHAVEN, N.Y.

Decided: January 17, 2020

On December 20, 2019, Spectrum RR Holdings, LLC (SRHL), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate approximately 0.47 miles of rail line in the Brookhaven Rail Terminal (BRT) facility in Brookhaven, N.Y. According to SRHL, its corporate parent, Sills Road Realty LLC (Sills Road) has decided to install SRHL in the BRT to provide common carrier service in place of the current operator, Brookhaven Rail, LLC (Brookhaven Rail). (Verified Notice 2.) The verified notice states that Sills Road anticipates that Brookhaven Rail will “through appropriate Board processes, cease to be a rail common carrier within the BRT.” (*Id.* at 5.) SRHL’s verified notice raises questions that must be answered before the Board can take further action.

In 2010, the Board granted an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10901 for U S Rail Corporation (U S Rail) to construct and operate an approximately 18,000-foot rail line on Parcel A of the BRT. See U S Rail Corp.—Constr. & Operation Exemption—Brookhaven Rail Terminal, FD 35141 (STB served Sept. 9, 2010); see also U S Rail Corp.—Constr. & Operation Exemption—Brookhaven Rail Terminal, FD 35141, slip op. at 1 (STB served Jan. 12, 2018). In 2014, U S Rail’s successor, Brookhaven Rail, and Brookhaven Terminal Operations, LLC (BTO),¹ jointly petitioned the Board to find that BTO’s plan to construct, and Brookhaven Rail’s plan to operate, an additional 12,500 feet of track on Parcels B and C of the BRT did not require Board authority. (Pet. for Declaratory Order 1, 19, Apr. 28, 2014, Brookhaven Rail Terminal—Pet. for Declaratory Order, FD 35819.) The Board agreed and found the additional 12,500 feet of track to be excepted track under 49 U.S.C. § 10906. See Brookhaven Rail Terminal—Pet. for Declaratory Order, FD 35819 (STB served Aug. 29, 2016).

The present verified notice describes the BRT as “a combined total of roughly 16,850 feet of track,” (Verified Notice 2), and includes a map only of Parcel A.² SRHL states that, of the 16,850 feet of track, 14,328 feet comprises yard track excepted from Board licensing under

¹ BTO is now a subsidiary of Sills Road. (Verified Notice 4.)

² Compare to petition for declaratory order at Exhibit 1, Apr. 28, 2014, Brookhaven Rail Terminal—Pet. for Declaratory Order, FD 35819 (map depicting Parcels A, B, and C).

49 U.S.C. § 10906, while the remaining 0.47-mile portion (labeled on the map as 2,502 feet) is the rail line over which SRHL seeks an operation exemption. That description, however, is at odds with the Board's grant of the exemption in Docket No. FD 35141 authorizing the construction and operation of an 18,000-foot rail line on Parcel A.

The verified notice also does not explain the relationship between the track on Parcel A and the additional 12,500 feet of track on Parcels B and C at issue in Docket No. FD 35819. Although, as noted above, the verified notice at times seems to refer to the BRT as comprising only Parcel A, elsewhere it states that "Yard A" and "the adjacent trackage" collectively comprise the BRT, and that the "ancillary track that has since been constructed [is] within the confines of the BRT." (Verified Notice 4.)

Because it is not clear what SRHL intends to accomplish by this notice, SRHL will be directed to submit a supplement clarifying these issues. In its supplement, SRHL should also include a map reflecting its understanding of the location and status of all existing track on Parcels A, B, and C in the BRT. Specifically, the map should clearly identify, by appropriate color coding and by length in feet, (1) the rail line subject to § 10901 over which SRHL seeks operating authority here; (2) any other track in the BRT (including Parcels A, B, and C) that SRHL understands to be rail line subject to § 10901; and (3) all track in the BRT (including Parcels A, B, and C) that SRHL understands to be excepted track under § 10906. In its submission, SRHL should also describe the specific rail line subject to § 10901 over which SRHL anticipates Brookhaven Rail will discontinue service.³

Additionally, SRHL will be directed to address the following. First, if the roughly 16,850 feet of track it mentions correlates to Parcel A, SRHL should explain why and how it can unilaterally distinguish between § 10901 rail line and § 10906 excepted track on Parcel A when neither the authorized constructing entity, nor the Board, made such a distinction in Docket No. FD 35141. Furthermore, SRHL should address the impact, if any, that this distinction has on the track on Parcels B and C. Second, the verified notice states that "the BRT trackage is, and has been, owned by Sills Road." (Verified Notice 4.) In Docket No. FD 35141, however, Sills Road is described as owning "the underlying property." U S Rail Corp.—Constr. & Operation Exemption—Brookhaven Rail Terminal, FD 35141, slip op. at 1 (STB served Sept. 9, 2010). SRHL should explain why Sills Road has not needed and does not need Board authority to own a rail line under § 10901.⁴

³ Because the verified notice states that, at least for the time being, "SRHL expects that both it and Brookhaven Rail will possess Board-authorized common carrier rights and obligations within the BRT," a copy of this decision will be served on Brookhaven Rail.

⁴ Additionally, the verified notice states that SRHL's "purchase" of the Line is exempt from historic preservation reporting requirements. (Verified Notice 7.) SRHL should confirm whether that reference should instead be to "operation."

SRHL is directed to provide a supplement by February 6, 2020, addressing the above matters.

It is ordered:

1. The exemption sought in this proceeding will not become effective until further order of the Board.
2. SRHL is directed to file the supplement providing the information described above by February 6, 2020.
3. A copy of this decision will be served on Brookhaven Rail.
4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.