

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

300481

March 13, 2020

ENTERED
Office of Proceedings
March 13, 2020
Part of
Public Record

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Docket No. FD 36385, *Spectrum RR Holdings, LLC – Acquisition and Operation
Exemption – Railroad Line in the Town of Brookhaven, New York*

Dear Ms. Brown:

Attached for filing in the above-referenced proceeding are the Comments and Petition to Intervene of New York & Atlantic Railway Company. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7820 or by e-mail at rnardi@bakerandmiller.com.

Sincerely,


Rose-Michele Nardi

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36385, *Spectrum RR Holdings, LLC*
– *Acquisition and Operation Exemption* –
Railroad Line in the Town of Brookhaven, New York

COMMENTS AND PETITION TO INTERVENE
OF NEW YORK & ATLANTIC RAILWAY COMPANY

New York & Atlantic Railway Company (“NYA”) hereby submits comments in the above-referenced proceeding. It also seeks, pursuant to 49 CFR 1112.4, to intervene in this proceeding.

A. Background

NYA, a class III carrier, provides freight service in Long Island, NY on tracks and rail infrastructure owned by The Long Island Rail Road (“LIRR”), pursuant to a Transfer Agreement, dated November 18, 1996, as amended, between LIRR and NYA.¹ NYA handles approximately 30,000 carloads of traffic annually, including such commodities as lumber, building materials, aggregates, food products, and recyclables.

NYA connects to and interchanges traffic with Brookhaven Rail, LLC (“BHR”) in Brookhaven, NY. BHR is the common carrier railroad operating at Brookhaven Rail Terminal (the “Terminal”). The traffic includes approximately 2,800 inbound carloads annually. The customers for this traffic are tenants of the Terminal. NYA pays BHR a switch charge on each car interchanged between the two carriers.

The rail facilities in the Terminal over which BHR operates are extremely limited. Due to the lack of track space, NYA can deliver no more than twenty-five cars at a time. Consequently, NYA must break up inbound trains to the Terminal at a siding located at Yaphank. This presents operational challenges for both NYA and BHR, and adversely impacts the efficiency of service to the Terminal’s customers. In addition, NYA shares its track with LIRR passenger operations, and NYA has a small operating window to provide freight service to the Terminal. Therefore, it is imperative that the common carrier operations at the Terminal are performed with precision and efficiency. The failure to do so not only could adversely affect the service received by customers at the Terminal and degrade safety, but also could adversely affect service along NYA’s entire rail network.

¹ See STB Finance Docket No. 33300, *New York & Atlantic Railway Company -- Operation Exemption -- The Long Island Rail Road Company*, served January 10, 1997.

B. Verified Notices of Exemption in Docket Numbers 36376 and 36384

On December 20, 2019, Spectrum RR Holdings, LLC (“Spectrum”) initially filed a verified notice of exemption seeking authority from the Surface Transportation Board (the “Board”) to operate over the rail lines that are currently operated solely by BHR at the Terminal.² In that initial filing, Spectrum noted that Sills Road Realty LLC had elected to replace BHR with Spectrum as the common carrier provider at the Terminal, and that BHR was expected to seek Board authority to discontinue its common carrier operations at the Terminal. BHR filed a reply in that proceeding, stating it had been unaware of Spectrum’s intention to replace it as the common carrier operator at the Terminal, and BHR had no intention of filing for discontinuance authority. Subsequently, on February 6, 2020, Spectrum requested the Board withdraw its notice of exemption in that proceeding.

On February 13, 2020, Spectrum filed a new verified notice of exemption, again seeking Board authority to operate over the rail lines at the Terminal currently being operated by BHR.³ In this filing, Spectrum does not assert BHR will file for discontinuance authority, but acknowledges Spectrum would have the “right and obligation to provide common carrier service” at the Terminal. As a result, upon the effective date of this notice of exemption, both BHR and Spectrum would now have Board authority to simultaneously perform common carrier operations at the Terminal.

In the most recent notice of exemption, Spectrum states it “has no immediate plans to commence rail operations [at the Terminal], either in place or, or alongside, [BHR]”. However, Spectrum provides no further discussion of timelines, operational plans, or facility improvements related to the addition of another common carrier at the Terminal. And, Spectrum has not reached out to NYA to discuss the operational challenges and any potential solutions arising from Spectrum seeking Board authority to operate at the Terminal.

As noted above in Section A, NYA already faces significant operational challenges in connection with its freight service to the Terminal. These operational challenges would be greatly exacerbated by the addition of another rail operator at the Terminal. Therefore, NYA echoes the concerns of BHR regarding the operational feasibility of an additional railroad at the Terminal. Prior to granting Spectrum operating authority at the Terminal, a determination should be made as to whether such operations can be managed in a manner that would minimize the adverse effects on NYA’s operations and on the service received both by the Terminal’s customers and all other customers that rely on NYA’s rail network.

² See Docket No. 36376, *Spectrum RR Holdings, LLC – Operation Exemption – Railroad Line In The Town Of Brookhaven, New York*, filed Dec. 20, 2019.

³ Docket No. FD 36385, *Spectrum RR Holdings, LLC – Acquisition and Operation Exemption – Line of Sills Road Realty LLC, In The Town Of Brookhaven, New York*, filed February 13, 2020.

NYA also agrees with BHR that the notice of exemption procedure is not appropriate for this action, because such a procedure is intended for routine and noncontroversial proceedings.⁴ Given the significant operational concerns raised by both NYA and BHR, the failure of Spectrum to address such concerns, and BHR's strong opposition, NYA submits this proceeding is not appropriate for the notice of exemption procedure. Instead, Spectrum's filing for operating authority should be subject to a proceeding in which interested parties have sufficient time to understand and address the impacts of the filing, so the Board can make a fully informed decision.

C. Petition to Intervene

Pursuant to 49 C.F.R. 1112.4, NYA hereby petitions to intervene in the above-referenced proceeding. Sections A and B, above, establish the substantive requirements in section 1112.4(b) for such petitions. In addition, granting the petition (a) "[w]ill not unduly disrupt the schedule for filing verified statements", and (b) "[w]ould not unduly broaden the issues raised in the proceeding".

Sincerely,



Rose-Michele Nardi

Baker & Miller PLLC

2401 Pennsylvania Ave., N.W., Ste 300

Washington, DC 20037

(202)663-7820

Counsel for: New York & Atlantic Railway Company

Dated: March 13, 2020

⁴ The Board has stated "[n]otices of exemption are intended to be used for routine and non-controversial cases", and "[a] notice that raises unresolved issues or questions that require considerable scrutiny may be rejected". See Docket Nos. FD 36182 and 36224, *North Central Mississippi Regional Railroad Authority – Acquisition and Operation Exemption – Mississippi Department of Transportation; North Central Mississippi Regional Railroad Authority and Grenada Railway, LLC – Corporate Family Transaction Exemption*, served Oct. 12, 2018.

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2020, the foregoing Comments and Petition to Intervene of New York & Atlantic Railway Company was served by first-class mail, postage prepaid on the following parties:

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

Thomas W. Wilcox
GKG Law, P.C.
1055 Thomas Jefferson Street NW
Suite 500
Washington, D.C. 20007



Rose-Michele Nardi
Baker & Miller, PLLC

Counsel for New York & Atlantic Railway Company