

BEFORE THE SURFACE TRANSPORTATION BOARD ENTERED
Office of Proceedings
October 11, 2023
Part of
Public Record

Docket No. FD 35141

U S RAIL CORPORATION—CONSTRUCTION AND OPERATION
EXEMPTION—BROOKHAVEN RAIL TERMINAL

Docket No. FD 35819

BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN RAIL, LLC—
PETITION FOR DECLARATORY ORDER

Docket No. FD 36376

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

Docket No. FD 36384

SILLS ROAD REALTY LLC—ACQUISITION EXEMPTION—RAILROAD LINE
IN THE TOWN OF BROOKHAVEN, N.Y.

Docket No. FD 36385

SPECTRUM RR HOLDINGS, LLC—ACQUISITION & OPERATION
EXEMPTION—LINE OF SILLS ROAD REALTY LLC, IN THE TOWN OF
BROOKHAVEN, N.Y.

Docket No. FD 36398

BROOKHAVEN RAIL LLC—CONSTRUCTION AND OPERATION
EXEMPTION—IN SUFFOLK COUNTY, N.Y.

Docket No. FD 36399

BROOKHAVEN RAIL LLC—PETITION FOR EXEMPTION FROM
REQUIREMENTS OF 49 U.S.C. § 10909

**Brookhaven Logistics Center LLC's
Motion for Extension**

 GRANTED Office of Proceedings	DECISION ID NO.: 51911
	DECIDED DATE: 10/12/2023
	SERVED DATE: 10/12/2023
	APPROVED:  Acting Director
	☐

Brookhaven Logistics Center LLC (BLC) respectfully requests a 7-day extension of the response periods concerning the Board's Order served September 27, 2023, in these proceedings (Order). The proposed due date for responses would be October 24, 2023; for replies to responses, November 13, 2023.

Expedited consideration of this motion is requested because responses are due in 6 days, on October 17, 2023.

Sills Road has authorized BLC counsel to represent that it supports this motion. Brookhaven Rail LLC and Citizens Campaign for the Environment have authorized BLC counsel to represent that they do not oppose this motion.

The Board's rules provide that the Board may grant extensions of time "in its discretion, upon request and for good cause." 49 C.F.R. § 1104.7(b). Here, there is good cause for the requested extension because it will facilitate a fuller evaluation of the issues for which the Order seeks a response. In addition, it will also help facilitate participation by BLC's counsel in another important Board proceeding.

BLC seeks this extension for two main reasons. First, these proceedings involve an extensive record dating back over a decade before BLC's recent acquisition of Parcel A, in 2022. Additional time is necessary to allow BLC's counsel to fully evaluate this record, especially given the important issues the Board raised in its Order, including a violation of 49 U.S.C. § 10901 and concerns about potential inconsistencies between facts in the record and publicly available information. Further, BLC only just retained its counsel this year to respond to a Board request for information *outside* the record.

Second, BLC's counsel is involved in representing multiple trade associations in Docket EP 711 (Sub-No. 2), *Reciprocal Switching for Service Inadequacy*, in which opening comments on a notice of proposed rulemaking (NPRM) are due November 7, 2023. Commenting on the service standards that the Board proposed in the NPRM requires extensive consultation with many members of those trade associations to gather and review data regarding rail-service performance and impacts on rail customers. Due to the overlapping procedural schedules in EP 711 (Sub-No. 2) and the above proceedings, the requested extension will facilitate the development of a more comprehensive and accurate record in all these dockets.

BLC understands that the Board's rules require extension requests to be filed not less than 10 days before the due date of the associated activity. Here, BLC and its counsel has been attempting to comply with the original deadline for responses. But as BLC's counsel has become more familiar with the record, BLC's counsel has identified more items for examination. Nevertheless, BLC's counsel regrets the late filing of this request.

For the foregoing reasons, BLC respectfully requests that the Board extend the deadline for responses to October 24, 2023, and the deadline for replies to November 13, 2023.

Respectfully submitted,

/s/ Jason D. Tutrone

Jason D. Tutrone
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
(202) 331-8800

Jason.Tutrone@ThompsonHine.com

*Counsel for Brookhaven Logistics Center
LLC*

Dated: October 11, 2023

CERTIFICATE OF SERVICE

I certify that I have this October 11, 2023, served copies of the foregoing Motion for Extension upon all parties of record in Docket Nos. FD 35141, FD 35819, FD 36376, FD 36384, FD 36385, FD 36398, and FD 36399 by email or first-class mail.

/s/ Jason D. Tutrone
Jason Tutrone