

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
September 4, 2025
Part of
Public Record

FD 36883

SUNRISE INDUSTRIAL RAIL, LLC — LEASE AND CHANGE OF OPERATOR
EXEMPTION — RAILROAD LINES OF BROOKHAVEN LOGISTICS CENTER, LLC IN
SUFFOLK COUNTY, NY

**VERIFIED NOTICE OF EXEMPTION OF SUNRISE INDUSTRIAL RAIL, LLC
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Daniel R. Elliott
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ATTORNEY FOR SUNRISE INDUSTRIAL RAIL

Dated: September 4, 2025

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EXEMPTION — RAILROAD LINES OF BROOKHAVEN LOGISTICS CENTER, LLC IN
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PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Sunrise Industrial Rail, LLC (“Sunrise”), a non-carrier controlled by short line holding company OmniTRAX Holdings Combined, Inc. (“OmniTRAX”),¹ hereby respectfully files this notice of exemption (the “Notice”) at the Surface Transportation Board (“STB” or “Board”) under 49 C.F.R. part 1150, subpart D to lease and to assume common carrier operations over an approximately 0.47-mile rail line (“Main Stem”) and approximately 14,348 feet of additional track attached thereto (“Additional Track”) (collectively, the “Line”) owned by Brookhaven Logistics Center, LLC (“BLC”) located in Suffolk County, New York as detailed below. At such time as Sunrise consummates the transaction that is the subject of this proceeding, Sunrise will replace Brookhaven Rail, LLC (“Brookhaven Rail”)² as the common carrier service provider on the Line, thereby terminating Brookhaven Rail’s common carrier status.

¹ Concurrently with the present lease and change of operator exemption filing, OmniTRAX and HGS Railway Holdings, Inc. (“HGS”) have invoked the Board’s class exemption procedures at 49 C.F.R. § 1180.2(d)(2) to continue in control of Sunrise (along with all of the existing railroad common carriers currently controlled in common by OmniTRAX and HGS) once Sunrise consummates the transaction to be authorized via the present proceeding. *See OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc. – Continuance in Control Exemption – Sunrise Industrial Rail, LLC*, FD 36882.

² On September 27, 2023, the Board issued a decision in FD 35141, directing responses from Brookhaven Rail (all concerns with this present operator appear to be resolved), BLC; and Sills Road Realty LLC (“Sills Road”) regarding the ownership of the Line and other matters involving this property in Brookhaven, N.Y. All parties responded, and no further action has been taken by the Board to date. Sunrise was not involved with the Line at this time. Sunrise respectfully asks the Board to not delay its transaction here to lease and operate the Line in this proceeding as it was not part of any of these concerns raised by the Board. Not delaying this Notice of Exemption would benefit the shippers

In accordance with the requirements of 49 C.F.R. § 1150.33, Sunrise submits the following information³:

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

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

Sunrise Industrial Rail, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206

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

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

Daniel R. Elliott
GKG Law, PC
1055 Thomas Jefferson Street, NW, Suite 620
Washington, DC 20007
delliott@gkglaw.com
(703) 863-9670

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

BLC 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, pursuant to a railroad operating and sublicense agreement with BLC. The BRT consists of a

on the Line now and going forward by providing them with rail service from a highly respected rail transportation provider in OmniTRAX. Moreover, providing this improved and possibly expanded rail service to this area as expeditiously as possible certainly supports the US rail transportation policy. *See* 49 U.S.C. § 10101.

³ On August 29, 2025, the Board rejected two notices of exemption filed by Sunrise, OmniTRAX, and HGS involving the same lease and track on two grounds. This notice of exemption here addresses those two issues in accordance with that decision. *OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc. – Continuance in Control Exemption – Sunrise Industrial Rail, LLC*, FD 36787; *Sunrise Industrial Rail, LLC – Lease and Change of Operator Exemption – Brookhaven Logistics Center, LLC, in Suffolk County, NY*, FD 36876 (STB served August 29, 2025).

combined total of roughly 16,850 linear feet of track, including roughly 0.47 miles of mainline track referred to as the Main Stem and another roughly 14,348 feet of track adjacent thereto referred to as Additional Track. **Brookhaven Rail does not object to the proposed change in operator.**

Sunrise and BLC are completing agreement terms under which – (1) Sunrise will lease the Line, among other assets, owned by BLC; and (2) Sunrise, by virtue of its lease of the Line, will replace Brookhaven Rail as the common carrier service provider on the Line, thereby relieving Brookhaven Rail of any further common carrier status and attendant obligations with respect to the Line. Sunrise anticipates consummating the subject transaction pursuant to said agreement at such time as this Notice takes effect (presumably, 30 days from the date of the filing of this Notice) or as soon as is possible.⁴

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

Sunrise will offer common carrier service over the Line in place of Brookhaven Rail upon the effective date of the exemption (expected to be October 4, 2025) and, in turn, will consummate the transaction encompassed by this notice. **Brookhaven Rail does not object to this change of operators here.**

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

⁴ Sunrise respectfully asks the Board to further expedite the notice process here if at all possible, It would be a benefit to the parties involved in this transaction and would expedite the provision of rail service from a highly respected rail transportation provider in Sunrise/OmniTRAX. Moreover, providing this improved and possibly expanded rail service to this area as expeditiously as possible certainly supports the US rail transportation policy. *See* 49 U.S.C. § 10101.

In 2010, US 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 now known as BRT, owned at that time by Sills Road.⁵ The trackage that was the subject of the FD 35141 construction proceeding was described at the time USRC filed its exemption petition as a "railroad yard on a 28 acre parcel of land."⁶

In 2014, Brookhaven Terminal Operations, LLC ("BTO"), a subsidiary of Sills Road, and Brookhaven Rail (the successor to USRC as noted)⁷ 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 in FD 35189. And, in 2016, the Board confirmed that the proposed construction involved yard track for which Board issued construction authority was not needed.⁸

Sills Road funded the construction of the Line, and Brookhaven Rail operates as a common carrier on 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

⁵ *US Rail Corporation- Construction and Operation Exemption- Brookhaven Rail Terminal*, Docket No. FD 35141 (STB served Sep. 9, 2010) ("September 9 Decision").

⁶ *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.

⁷ *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).

⁸ *Brookhaven Rail Terminal and Brookhaven Rail, LLC - Petition for Declaratory Order*, Docket No. FD 35819 (STB served Aug. 30, 2016).

own the Line, nor any of the adjacent trackage that, collectively, comprise the BRT. Rather, the BRT trackage presently is owned by BLC. Brookhaven Rail is at this time the rail common carrier authorized by the Board to conduct common carrier operations over the Line, and Brookhaven Rail also operates over track that has since been constructed within the confines of the BRT.

Sunrise initially filed a notice of exemption in FD No. 36876 involving the same track and lease but only sought authority to operate as a common carrier over the Main Stem, the 0.47-mile rail line and not the Additional Track, the 14,348 feet of track described in that filing as “yard trackage.” The STB rejected this notice of exemption on two grounds including the characterization of these 14,348 feet of trackage as exempt under 49 U.S.C. § 10906. The STB in so ruling stated as follows:

Second, Sunrise states that the Line “connects to a network of roughly 14,348 feet of yard trackage . . . which Sunrise will lease and operate as ancillary to Sunrise’s regulated common carrier service over the Line under its lease agreement with BLC.” (Sunrise Verified Notice 6.) This track, however, appears to be the same track the Board addressed in *Spectrum RR Holdings—Operation Exemption—Railroad Line in the Town of Brookhaven, N.Y.* (Sills Order), FD 36376 et al. (STB served June 16, 2020). There, an argument was raised that 14,210 feet of track in the BRT was ancillary track under 49 U.S.C. § 10906, leaving the remaining 0.47-mile of track (called the Main Stem) as regulated rail line. The Board rejected the verified notices of exemption on other grounds, but noted: [t]o the extent that any subsequent filing asks the Board to find that the portion of the Line [16,710 feet operated by Brookhaven Rail in the BRT] other than the Main Stem is excepted track under 49 U.S.C. § 10906, the filing should explain the legal basis for such a determination in light of the fact that the Board previously granted construction and operation authority under 49 U.S.C. § 10901 for the entire Line and should include any agreements, documents, or other records relevant to such a request. Sills Ord., FD 36376 et al., slip op. at 6. Assuming the 14,348 feet of track that Sunrise refers to in its verified notice is the same track discussed in the Sills Order, Sunrise has not sufficiently addressed the Board’s question on whether this track is in fact ancillary track subject to § 10906. Sunrise only notes, without additional support, that the ancillary track part of its transaction is “used for railroad car switching and terminal transloading.” (Sunrise Verified Notice 3.) Moreover, in a 2023 filing, Brookhaven Rail stated that it does not consider the track addressed in the Sills Order to be ancillary track. (See Brookhaven Rail Reply 11-12, Feb. 15, 2023, *U S Rail Corp.—Constr. & Operation Exemption—Brookhaven Rail*

Terminal, FD 35141 et al. (Filing ID 306156) (stating that Brookhaven Rail “has no present intention of seeking any determinations that any of the tracks on Parcel A for which its US Rail received construction and operating authority are excepted track under 49 U.S.C. §10906” and that it objected to previously raised assertions that it was ancillary track).) Therefore, if this is the same track, it is currently approved as § 10901 track and remains as such until abandonment of it under 49 U.S.C. § 10903 is sought, approved, and consummated. *See e.g., City of Creede, Colo.—Pet. for Declaratory Ord.*, FD 34376, slip op. at 8 (STB served May 3, 2005); *Atchison, Topeka & Santa Fe Ry.—Aban. Exemption—in Lyon Cnty., Kan.*, AB 52 (Sub-No. 71X), slip op. at 4 (ICC served June 17, 1991). Sunrise provided no explanation for why it would not need Board authority to acquire and operate this track (in addition to the 0.47 miles of line), nor has it sought such authority.

Upon further review of these past related decisions cited by the STB in this quoted decision, STB precedent, and Sunrise’s proposed operations here, it has been determined by Sunrise that the Main Stem and Additional Track are regulated track as the Board originally authorized in FD No. 35141 in the September 9 Decision.⁹ Accordingly, Sunrise intends to hold itself out as a common carrier to provide rail service on all the track involved here, therefore, the Line requires authorization in this proceeding for the Main Stem and Additional Track based on the September 9 Decision, which as noted by the STB above found the Additional Track to be regulated track, and STB precedent.

The Board has jurisdiction over the Main Stem and Additional Track because Sunrise will hold out as a common carrier to any shipper requesting service thereon. For example, in a construction case, *Midwest Generation, LLC – Exemption from 49 U.S.C. 10901 – For Construction in Will County, IL*, STB Finance Docket No. 34060, (served Mar. 21, 2002) (“*Midwest*”), the Board found that it had jurisdiction over a proposed 4007-foot rail line because

⁹ While there appear to be some small differences in the exact measurement of the Additional Track, Sunrise’s intent here is to operate as a common carrier on the trackage approved for construction and as regulated track by the STB in 2010 in FD 35141 in the September 9 Decision and subsequently built. That appears to be the 16,710 feet of track in total as US Rail only built this much track even though it had authorization to build 18,000 feet of track in the September 9 Decision as noted in the Sills Order. The Additional Track is the same track discussed in the Sills Order.

the petitioner proposed to build a rail line and “*provide common carriage to other shippers who could be served by the proposed project.*” (Emphasis added). In *Midwest*, the Illinois Central argued that the Board did not have jurisdiction over the proposed line.¹⁰ The Board explained that the “determinative factor” whether a proposed line of railroad falls within its jurisdiction is whether the operator “would make the line available as a common carrier line to any shippers that might request service.”¹¹ Here, as in *Midwest*, Sunrise intends to make the Additional Track, as well as the Main Stem, available as a common carrier to any shippers that might request service. Sunrise will be operating on the Additional Track and Main Stem to serve any existing and all potential customers shipping any commodities to and from this location. These customers will have access to Sunrise and the Additional Trackage through the Main Stem which directly connects to the Long Island Railroad and the New York & Atlantic Railway Company which possesses freight common carrier operating rights over the Long Island Railroad. Further, Sunrise is willing to accept a common carrier obligation and to hold out to provide rail service to the public at large on the entire Line.

Sunrise’s proposed service to hold itself out as a common carrier is also consistent with other Board precedent finding the trackage to be regulated. In *Effingham RR Co. -- Pet. For Declaratory Order*, 2 S.T.B. 606 (1997), the railroad, “Effingham”, sought to build and operate less than 10,000 feet of new track to serve present and future customers in a recently established industrial park at the junction of two Class I railroads.¹² Although Effingham had argued that its proposal was exempt from the Board’s licensing jurisdiction as a “spur track”, the Board disagreed.

¹⁰ *Midwest*, STB Finance Docket No. 34060, slip op. at 6. 43 Id at 4 n. 7.

¹¹ *Id.* at 4 n. 7.

¹² *Effingham RR Co.—Pet. For Declaratory Order*, 2 S.T.B. 606, 607 (1997).

The Board found that “the larger purpose and effect of [Effingham’s] proposal is to construct what will constitute [its] entire line of railroad to serve a new rail shipper.”¹³ Further, the Board found that Effingham proposed “to construct and operate in territory it has not previously served.”¹⁴ Here, Sunrise is proposing to operate on the Main Stem and Additional Track and hold out as a common carrier in territory not currently served by any rail carrier. Its operations, like those in *Effingham*, clearly fall within the jurisdiction of the Board.

As such, Sunrise hereby invokes the Board's class exemption procedures to operate as a common carrier on the Line of railroad owned by BLC, including roughly 0.47 miles called the Main Stem (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)) and the Additional Track consisting of roughly 14,348 feet of adjacent trackage as designated on the attached map, collectively the Line, located in Brookhaven, New York. The Line, which does not have mileposts, is depicted in the map attached hereto as Exhibit A, which Sunrise will lease and operate under its lease agreement with BLC.

The complete name and address of the owner of the BRT, including the trackage that constitutes the Line is as follows:

¹³ *Id.*

¹⁴ *Id.* Consistent with the Board’s decision in *Effingham*, other entities have utilized the Board proceedings under 49 U.S.C. § 10901 and 49 C.F.R. 1150 Subpart D to acquire authority to become common carriers subject to Board jurisdiction even over existing industrial track rather than to be “private carriers” outside that jurisdiction. *See e.g., KS Railroad, A Division of Kinkisharyo International, L.L.C. – Operation Exemption Line in Piscataway, NJ*, STB Finance Docket No. 36618 (served Aug. 12, 2022); *Western Nevada Railroad, LLC – Lease and Operation Exemption – Line in Churchill County, NV*, STB Finance Docket No. 36573 (served Jan. 7, 2022); *Toledo Industrial Railroad LLC – Operation Exemption – Line in Lucas County, OH*, STB Finance Docket No. 36381 (served Feb. 20, 2020).

Brookhaven Logistics Center, LLC
3315 North Oak Trafficway
Kansas City, MO 64116

Sunrise 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 as is possible.

As noted, BLC owns the above-referenced Line in the Town of Brookhaven, Suffolk County, New York as described in detail in Exhibit A. Sunrise is finalizing agreement terms with BLC under which Sunrise would lease the Line, and, in so doing, replace Brookhaven Rail as the common carrier service provider on the Line. In all, upon consummation of the overall transaction presented in this notice, Sunrise would become the exclusive common carrier service provider on the Line in place of Brookhaven Rail (thereby terminating Brookhaven Rail's current common carrier status with respect to the Line). Again, Brookhaven Rail does not object to the change in operators.

Map: 49 C.F.R. § 1150.33(f)

A map showing the Line and area served is attached as Exhibit A. The yellow highlighted portion is the Main Stem, and the red highlighted portion is the Additional Track.

Certification: 49 C.F.R. § 1150.33(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B.

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

Sunrise will not be contractually limited in its ability to interchange traffic with any third-party connecting carrier. See Exhibit B. As matters currently stand, Sunrise's only interline

connection would be to 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).

Shipper Notice: 49 C.F.R. § 1150.32(b)

Sunrise hereby certifies through the undersigned counsel that it has provided a copy of the present Notice to all customers on the Line in accordance with the Board's above-referenced change of operator rules.

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

Sunrise's projected annual revenue is not expected to exceed \$5 million, and, accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable to this transaction. See Exhibit B.

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

Under 49 C.F.R. § 1105.6(c)(2), the proposed operation of the Line is exempt from environmental reporting requirements. Sunrise's proposed common carrier operations 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), Sunrise's proposed operation of the Line also is exempt from historic preservation reporting requirements, as the proposed transaction is not expected to impact historic structures along the Line that are 50 years old or older.

Caption Summary: 49 C.F.R. § 1150.34

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

Respectfully submitted,

By: /s/ Daniel R. Elliott
Daniel R. Elliott
GKG Law, PC
1055 Thomas Jefferson Street, NW, Suite 620
Washington, DC 20007
delliott@gkglaw.com
(703) 863-9670
ATTORNEY FOR SUNRISE INDUSTRIAL RAIL

Dated: September 4, 2025

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EXHIBIT A

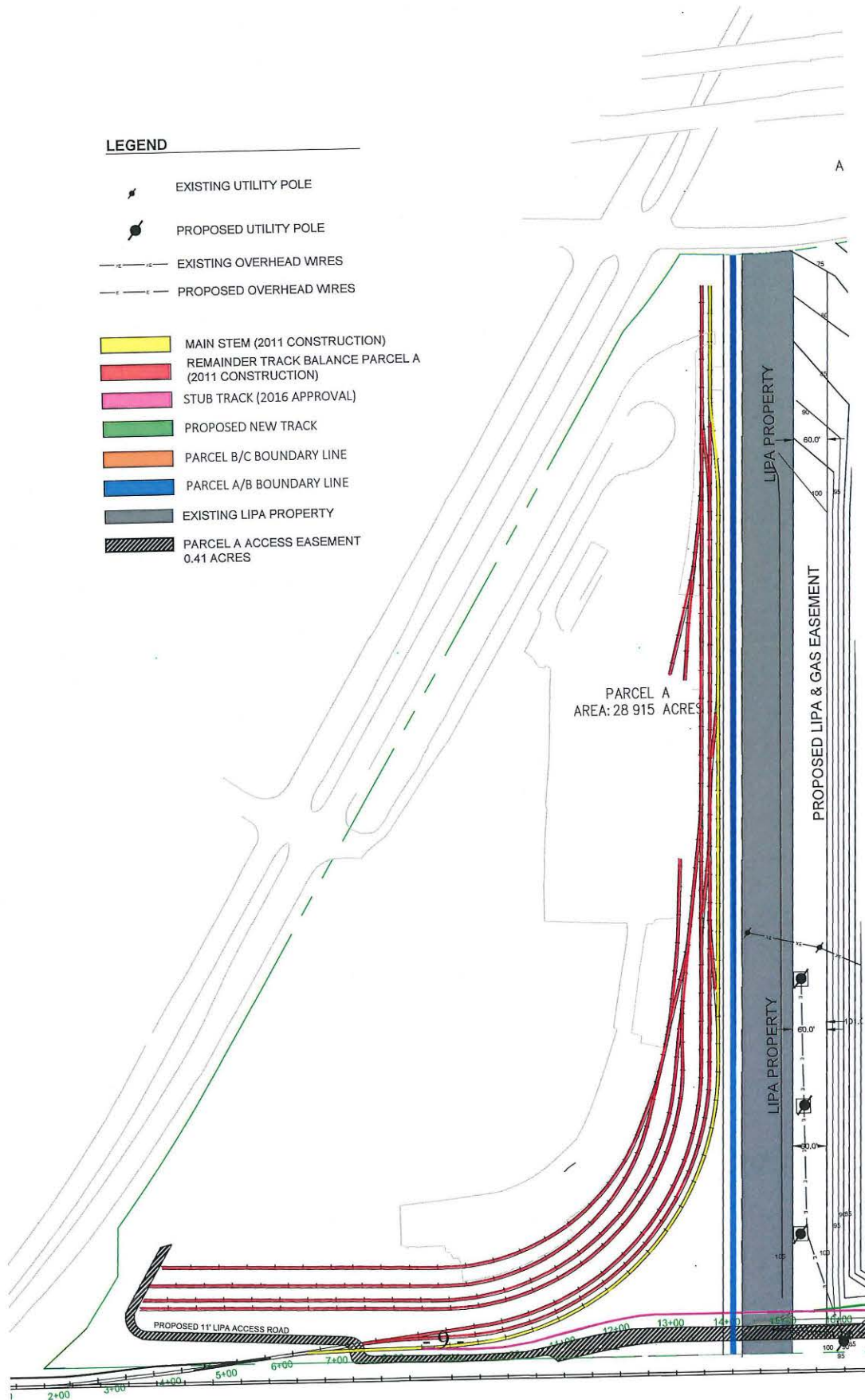
MAP





LEGEND

- EXISTING UTILITY POLE
- PROPOSED UTILITY POLE
- EXISTING OVERHEAD WIRES
- PROPOSED OVERHEAD WIRES
- MAIN STEM (2011 CONSTRUCTION)
- REMAINDER TRACK BALANCE PARCEL A (2011 CONSTRUCTION)
- STUB TRACK (2016 APPROVAL)
- PROPOSED NEW TRACK
- PARCEL B/C BOUNDARY LINE
- PARCEL A/B BOUNDARY LINE
- EXISTING LIPA PROPERTY
- PARCEL A ACCESS EASEMENT 0.41 ACRES



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EXHIBIT B

CERTIFICATION AND VERIFICATION

I, Bob Rentz, am Vice President and Deputy General Counsel of OmniTRAX Holdings Combined, parent company of Sunrise Industrial Rail, LLC (“SIR”). I hereby certify as follows:

1. The annual operating revenue of SIR (following consummation of the transaction that is the subject of this class exemption proceeding) is not projected to exceed \$5 million, and, in turn, will not result in the creation of a Class II or Class I rail carrier under the provisions of 49 C.F.R. § 1201 (1-1).

2. SIR would not be contractually limited in its ability to interchange traffic with any third-party connecting carrier.

In addition, I hereby verify under penalty of perjury as follows:

1. I have read the foregoing Notice of Exemption, know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information, and belief.

2. I am authorized to make this verification on behalf of SIR.

/s/ Bob Rentz

Bob Rentz

Vice President and Deputy General Counsel of OmniTRAX
Holdings Combined on behalf of Sunrise Industrial Rail,
LLC

Dated: September 4, 2025

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EXHIBIT C

Sunrise Industrial Rail, LLC (“Sunrise”), a non-carrier, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31, et seq., to – (1) lease from Brookhaven Logistics Center, LLC (“BLC”) a line of railroad (the “Line”) 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), as well as a connected network of roughly 14,348 feet of additional regulated trackage at a location known as the Brookhaven Rail Terminal. The Line does not have mileposts; and (2) replace Brookhaven Rail, LLC (“Brookhaven Rail”) as the common carrier service provider on the Line, thereby terminating Brookhaven Rail’s current common carrier status with respect to the Line.

Sunrise expects to commence common carrier operations over the Line on or after the effective date of this exemption.

Comments must be filed with the Board and served on:

Daniel R. Elliott
GKG Law, PC
1055 Thomas Jefferson Street, NW, Suite 620
Washington, DC 20007
(703) 863-9670.

This Notice is filed under 49 C.F.R. § 1150.31. If this Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke -----the exemption under 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: October __, 2025

By the Board