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SERVICE DATE – SEPTEMBER 22, 2025

SURFACE TRANSPORTATION BOARD

CORRECTED DECISION *

Docket No. FD 35141¹

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

Digest:² This decision permits Brookhaven Rail LLC and the Citizen Campaign for the Environment to withdraw various petitions concerning a rail terminal in Brookhaven, N.Y. The decision also directs Sills Road Realty LLC to file either an application or a petition for exemption for after-the-fact authority to acquire a rail line in the terminal.

Decided: September 22, 2025

In 2020, Brookhaven Rail LLC (Brookhaven Rail or BHR) filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a rail line to serve a solid waste transfer facility to be built in a rail terminal in Brookhaven, N.Y. Brookhaven Rail now seeks to withdraw that petition and no longer pursue the facility. The Citizens Campaign for the Environment (CCE) also seeks to withdraw its filings challenging Brookhaven Rail’s activities. The Board grants these requests below.

Additionally, the Board is directing Sills Road Realty LLC (Sills Road) to file either an application or a petition for exemption for after-the-fact authority to acquire a rail line in the

* This decision corrects the decision served on September 22, 2025. Among other things, the corrected decision directs Sills Road Realty LLC to file either an application or a petition for exemption for after-the-fact authority to acquire a rail line in the terminal.

¹ This decision embraces Brookhaven Rail Terminal & Brookhaven Rail, LLC—Petition for Declaratory Order, FD 35819; Spectrum RR Holdings, LLC—Operation Exemption—Railroad Line in the Town of Brookhaven, N.Y., FD 36376; Sills Road Realty LLC—Acquisition Exemption—Railroad Line in the Town of Brookhaven, N.Y., FD 36384; Spectrum RR Holdings, LLC—Acquisition & Operation Exemption—Line of Sills Road Realty, LLC, in the Town of Brookhaven, N.Y., FD 36385; Brookhaven Rail LLC—Construction & Operation Exemption—in Suffolk County, N.Y., FD 36398; and Brookhaven Rail LLC—Petition for Exemption From Requirements of 49 U.S.C. § 10909, FD 36399. These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

same terminal, which the Board authorized to be constructed and operated by U S Rail Corporation (U S Rail) in 2010 (the Line). Various filings before the Board include conflicting statements about both the nature and the timing of the interests that Sills Road has in the Line. But based on recent filings from Sills Road and Brookhaven Rail detailing the construction activities that took place, it appears that U S Rail, predecessor to Brookhaven Rail, was in fact the correct entity to seek construction and operation authority. However, Sills Road, which has already acknowledged owning the Line and its need for Board approval to correct its regulatory oversight, will be directed to file either an application or petition for exemption for authority after-the-fact to acquire the Line.

BACKGROUND

A fuller history of these proceedings can be found in U S Rail Corp.—Construction & Operation Exemption—Brookhaven Rail Terminal (January 2023 Decision), FD 35141 et al. (STB served Jan. 6, 2023). It suffices here to note that the Brookhaven Rail Terminal (Terminal or BRT) has historically been described as consisting of four sections, which are referred to as Parcels A, B, C, and D. U S Rail Corp.—Constr. & Operation Exemption—Brookhaven Rail Terminal (September 2023 Decision), FD 35141 et al., slip op. at 1 (STB served Sept. 27, 2023). A Long Island Rail Road Company rail line separates Parcels A, B, and C from Parcel D. Id.

Parcel A.

In 2010, the Board granted, in Docket No. FD 35141, an exemption from the provisions of § 10901 for U S Rail to construct and operate the Line on property owned by Sills Road, now known as Parcel A. See U S Rail Corp.—Constr. & Operation Exemption—Brookhaven Rail Terminal (2010 Decision), FD 35141 (STB served Sept. 9, 2010). U S Rail was succeeded by Brookhaven Rail,³ which was assigned the construction and operation authority involving Parcel A.⁴

Starting in late 2019, Sills Road and one of its affiliates submitted a series of pleadings that contained inconsistencies with the record upon which construction and operation authority was granted to U S Rail in 2010. These pleadings suggested, at a minimum, that Sills Road

³ U S Rail assigned its construction and operation authority involving Parcel A, together with a leasehold interest in the underlying property, to U.S. Rail-New York, LLC (U S Rail-NY), which was subsequently renamed Brookhaven Rail, LLC, by its equity-owner, Oakland Transportation Holdings LLC. See Gabriel D. Hall—Corp. Family Transaction Exemption—U S Rail N.Y., LLC, FD 35458 (STB served Jan. 7, 2011); Nev. 5, Inc.—Control Exemption—GTR Leasing LLC, FD 35635 (STB served June 15, 2012).

⁴ Brookhaven Rail later petitioned in Docket No. FD 35819 for the Board to find that track to be built on Parcels B and C would be excepted track not needing construction authority from the Board. The Board agreed and found, under 49 U.S.C. § 10906, the additional 12,500 feet of track to be ancillary “spur” track, statutorily excepted from the entry and exit licensing requirements of § 10901 and 49 U.S.C. § 10903 that apply to mainlines and branch lines. See Brookhaven Rail Terminal—Pet. for Declaratory Ord., FD 35819, slip op. at 1 & n.3, 3-4 (STB served Aug. 30, 2016).

should have been a co-petitioner, if not the sole petitioner, for the construction authority. Specifically, in December 2019, Spectrum RR Holdings, LLC (Spectrum), a Sills Road subsidiary, filed a verified notice of exemption in Docket No. FD 36376 seeking to operate the Line and acquire the common carrier obligation. Spectrum RR Holdings—Operation Exemption—R.R. Line in the Town of Brookhaven, N.Y., FD 36376, slip op. at 1 (STB served Jan. 17, 2020). Spectrum’s verified notice stated that Sills Road both owned the Line and was the common carrier on it. Id. at 2.

In light of this information, Spectrum was directed to explain why Sills Road did not need Board authority under § 10901 to own the Line. Spectrum RR Holdings, FD 36376, slip op. at 2. Subsequently, in February 2020, Sills Road filed a verified notice in Docket No. FD 36384 to “authorize its ownership of” the Line. (Verified Notice 1, FD 36384.) It claimed that it constructed the Line, that it had owned it since construction, and that “its ownership of the line warrants being recognized as a rail common carrier.” (Id. at 1, 4.)⁵ Brookhaven Rail opposed the verified notices and claimed, among other things, that U S Rail had a role in constructing the Line and that Sills Road was not the common carrier on the Line. (Brookhaven Rail Reply 3-4, Mar. 3, 2020, FD 36384 et al.)

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), the Director of the Office of Proceedings rejected the verified notices⁶ and sought clarification of the roles and responsibilities of each party in the construction of the Line on Parcel A and the legal and factual basis for any future request for remedial acquisition authority. Id. at 5-6. Neither Sills Road nor Spectrum returned to request any authorizations from the Board.

Parcel D.

On June 25, 2020, in Docket No. FD 36398, Brookhaven Rail filed a petition seeking an exemption from the prior approval requirements of § 10901 to construct and operate a 23,680-foot rail line (2020 Rail Construction Petition) that would serve a planned solid waste rail transfer facility to be located on Parcel D of the Terminal. Brookhaven Rail asked that the Board consider the transportation merits of the proposed rail construction before completion of the environmental review. Subsequently, on July 27, 2020, Brookhaven Rail filed, in Docket No. FD 36399, a petition for exemption from the full application requirements of 49 U.S.C. § 10909 and 49 C.F.R. part 1155 subpart C for a land-use-exemption permit for the planned facility (the Facility Petition).

On October 23, 2020, in a decision served in Docket Nos. FD 36398 and FD 36399, the Board rejected the Facility Petition, finding that a full application under § 10909 would be necessary for the proposed facility. The Board also deferred action on Brookhaven Rail’s

⁵ Simultaneously, Spectrum filed a verified notice of exemption in Docket No. FD 36385 under 49 C.F.R. § 1150.31 to acquire the track from Sills Road and operate it.

⁶ Specifically, the Sills Order rejected the verified notices in Docket Nos. FD 36384 and FD 36385 and granted Spectrum’s motion to withdraw its verified notice in Docket No. FD 36376.

request to consider the transportation merits of the 2020 Rail Construction Petition before examining the environmental impacts. See Brookhaven Rail—Constr. & Operation Exemption—in Suffolk Cnty., N.Y., FD 36398 et al., slip op. at 5 (STB served Oct. 23, 2020).⁷

CCE’s Petition for Declaratory Order and the January 2023 Decision.

On November 24, 2021, CCE filed a petition for a declaratory order and/or for an order to show cause and suspend. As relevant here, CCE asked the Board to find that earlier decisions granting construction and operating authority for some lines on the Parcels, and declaring that no authorization was needed for the construction and operation of other new lines on the Parcels, were based on misrepresentations by the rail carrier and/or made in error, and must be reopened, revoked, and rescinded.⁸ (CCE Pet. for Declaratory Ord. 1, FD 35141 et al.) As to this third point, CCE argued, in part and as relevant here, that the Board should reopen U S Rail’s 2010 construction and operation authorization proceeding because Sills Road constructed the track on Parcel A. (Id. at 6-7.)

In response to CCE’s petition, the Board held that the roles and responsibilities of the parties with respect to construction of the track on Parcel A were still unclear and directed the parties to provide additional information. See January 2023 Decision, FD 35141 et al., slip op. 10.⁹

The Board received replies to the request for information in the January 2023 Decision from Brookhaven Rail, Sills Road and its affiliates (collectively, the Sills Parties),¹⁰ and Brookhaven Logistics Center (BLC). (Brookhaven Rail, Reply to Req. for Info., Feb. 15, 2023, FD 35141 et al.; Sills Parties Reply to Req. for Info., Feb. 21, 2023, FD 35141 et al.; BLC Reply to Req. for Info., Feb. 21, 2023, FD 35141 et al.) BLC stated that it was an entity independent of

⁷ On October 20, 2021, the Board’s Office of Environmental Analysis (OEA) suspended the environmental review in Docket Nos. FD 36398 and FD 36399 until the Board issues a decision resolving CCE’s October 6, 2021 administrative appeal of a September 17, 2021 letter by the (then-Acting) Director of OEA.

⁸ CCE also asked the Board to find that (1) the track to be constructed on Parcels B and C is common carrier line under § 10901; and (2) initiatives to construct and do related work, such as tree cutting on Parcel D, are prohibited and should cease. The Board denied relief as to CCE’s first point, finding that CCE had not provided evidence to support a finding that the regulatory status of that track had changed. See January 2023 Decision, FD 35141 et al., slip op. at 7-8. The Board also denied relief as to CCE’s second point and declined to enjoin the tree cutting. See id. at 9-10.

⁹ CCE moved for partial reconsideration in January 2023, arguing that the regulatory status of the track on Parcels B and C and whether it can be spur would depend on the Board’s conclusion as to the ownership of the mainline track on Parcel A. (CCE Pet. for Recon. 5, FD 35141 et al.) Brookhaven Rail responded to CCE’s petition in February 2023. (Brookhaven Rail Reply to Pet. for Recons., Feb. 15, 2023, FD 35141 et al.)

¹⁰ The Sills Parties consist of Sills Road, Brookhaven Terminal Operations, LLC, Brookhaven Rail Freight Services LLC, and Spectrum.

both Sills Road and Brookhaven Rail and that on May 4, 2022, it acquired Parcel A and all the track there from affiliates of Sills Road. (BLC Reply to Req. for Info. 2-3, Feb. 21, 2023, FD 35141 et al.) As a result of that transaction, according to Brookhaven Rail, BLC owns all of Parcels A, B, and C, and 178 acres of Parcel D. (Brookhaven Rail Reply to Pet. for Recons. 4-5, Feb. 15, 2023, FD 35141 et al.)

September 2023 Decision and Subsequent Filings.

In light of the revelation that BLC was now owner of the Line on Parcel A, as well as Sills Road's previous ownership of the Line, the Board directed BLC and Sills Road to show cause why they should not be found to have violated § 10901, as neither had sought acquisition authority from the Board. See September 2023 Decision, FD 35141 et al., slip op. at 3.

Sills Road responded, among other things, that its inaction following the Sills Order was the product of regulatory uncertainty and confusion about what was required. (Sills Road Reply 8, Oct. 24, 2023, FD 35141 et al.) Sills Road explained that it would be willing to undertake remedial action and asked the Board to either provide guidance to Sills Road or, through the agency's own motion, authorize Sills Road's past ownership of the Line on Parcel A. (Id. at 8-9.) BLC replied to the September 2023 Decision, stating that its acquisition of the track on Parcel A did not require Board authority under Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad (State of Maine), 8 I.C.C.2d 835 (1991), because Brookhaven Rail retained the common carrier obligation. (BLC Reply 10-13, Oct. 24, 2023, FD 35141 et al.)

CCE responded to these filings on November 13, 2023. Among other things, CCE claims that BLC's ownership of the track on Parcel A does not qualify for the State of Maine exception and that BLC should not be granted an exemption authorizing its ownership of the Line on Parcel A. (CCE Reply 15-23, Nov. 13, 2023, FD 35141 et al.) It again raises concerns about Sills Road's unauthorized construction of the Line on Parcel A and asserts that BLC could not have acquired what Sills Road had no authority to possess. (Id. at 5-8.) CCE adds that there should be full disclosure of the extent to which the parties have benefited from their unauthorized actions before the issue of appropriate remedies can be addressed. (Id. at 23-25.)

Brookhaven Rail replied to CCE on November 29, 2023, and BLC responded to CCE on December 4, 2023. CCE replied to these filings on December 13, 2023. Sills Road filed a reply on January 5, 2024, and CCE responded to Sills Road on January 19, 2024.¹¹

On September 27, 2024, Brookhaven Rail filed a motion to withdraw the 2020 Rail Construction Petition. It also asked the Board to close Docket No. FD 36399 and terminate the proceeding. On the same date, CCE filed a motion to withdraw its various filings in all the

¹¹ As a general matter, to promote the orderly and efficient administration of cases, the Board is more strictly enforcing 49 C.F.R. § 1104.13(c), the rule prohibiting replies to replies. See, e.g., Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025). The filings submitted between November 29, 2023, and January 19, 2024, will therefore be struck from the record.

dockets, including its petition for declaratory order and its petition for reconsideration of the January 2023 Decision.¹²

DISCUSSION AND CONCLUSIONS

Parcel D.

As noted above, on September 27, 2024, Brookhaven Rail filed a motion to withdraw its 2020 Rail Construction Petition. It seeks withdrawal with prejudice because it no longer intends to pursue the proposed rail construction project. (Brookhaven Rail Mot. 1, Sept. 27, 2024, FD 36398, FD 36399.) Similarly, Brookhaven Rail states that it no longer intends to seek a land-use-exemption permit under § 10909 and therefore requests that the Board close Docket No. FD 36399 and terminate that proceeding with prejudice. (Id.)

On the same day, CCE filed a motion to withdraw with prejudice its filings in all the dockets, including its 2021 petition for declaratory order and its petition for reconsideration of the January 2023 Decision. (CCE Mot. 1, Sept. 27, 2024, FD 35141 et al.)¹³ CCE's motion is contingent upon: (a) Brookhaven Rail's filing a motion to withdraw its petition for exemption in Docket No. FD 36398 with prejudice and to terminate Docket No. FD 36399 with prejudice, and the Board granting the motion as filed; (b) no solid waste rail transfer facility being constructed on Parcels A, B, C, and/or D; and (c) BLC, its heirs, and assigns not shipping or receiving on the Parcels, or allowing any tenant or licensee on the Parcels to ship or receive, any solid waste by rail. (Id. at 1-2.)

The Board will grant the requests to withdraw and terminate. As to CCE, the Board interprets its (c) condition as being a limitation on BLC, the landowner, rather than on Brookhaven Rail, the rail carrier. The Board reminds the parties that, subject to 49 U.S.C. § 10908(c), Brookhaven Rail (or its potential successor, Sunrise) has a statutory common carrier obligation under 49 U.S.C. § 11101 to provide transportation for commodities that have not been exempted from regulation pursuant to § 10502. See Union Pac. R.R.—Pet. for Declaratory Ord., FD 35219, slip op. at 3-4 (STB served June 11, 2009).

¹² On September 4, 2025, Sunrise Industrial Rail, LLC (Sunrise), a noncarrier, filed a verified notice of exemption under 49 C.F.R. part 1150, subpart D, to lease from BLC and assume Brookhaven Rail's common carrier operations over the Line. See Sunrise Indus. Rail—Lease & Change in Operator Exemption—Rail Lines of Brookhaven Logistics Center in Suffolk Cnty., N.Y., FD 36883 (STB served Sept. 17, 2025). Also on September 4, 2025, OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc., both noncarriers, filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of Sunrise once it is authorized to commence common carrier operations. See OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—Sunrise Indus. Rail, FD 36882 (STB served Sept. 17, 2025).

¹³ CCE filed its motion “in connection with settlements intended to resolve disputes and presently pending litigation relating to the parcels of land that are the subject of” these embraced proceedings. (Id.)

Parcel A.

Sills Road's statements regarding its involvement with the Line on Parcel A have changed over the years, as have those of other parties to the various proceedings involving this Line. When U S Rail sought construction and operation authority for the Line, it submitted a verified statement from Sills Road's Chief Financial Officer and General Counsel, claiming that Sills Road had entered into an agreement for U S Rail to construct and operate the Line. (U S Rail Pet., Ex. D, Aug. 7, 2008, FD 35141.) As discussed above, in 2010, the Board granted U S Rail authority to construct and operate the Line and noted that Sills Road owned the underlying property. 2010 Decision, FD 35141, slip op. at 1-2.

In 2020, however, Sills Road claimed in its verified notice in Docket No. FD 36384 that U S Rail "did not construct the track on Parcel A pursuant to Board authorization," (Verified Notice 3, FD 36384), and that "the rail and track assets currently located within the BRT were constructed, and have been owned since construction, by Sills Road," (id. at 1). It added that it was filing its verified notice based on its "determination to properly acknowledge that its ownership of Board-regulated railroad assets (which were approved for construction pursuant to an individual exemption from the formal requirements of § 10901) warranted that it should assume a common carrier status in accordance with appropriate authorization procedures." (Id. at 6.)

Brookhaven Rail responded that Sills Road was involved in a "scheme to replace" it on the Line. (Brookhaven Rail Reply 2, Mar. 3, 2020, FD 36384 et al.) It disagreed "with Sills' assertion in its Notice that US Rail did not oversee or manage the construction of any of the track located on Parcel A." (Id. at 4.) It added that:

at no time in the process of US Rail obtaining authority to construct and operate the 18,000 feet of rail line on Parcel A did Sills request or assert that, as the underlying landowner or the potential owner of the track to be constructed on its property, Sills acquired or would acquire any status as common carrier by rail pursuant to 49 U.S.C. § 10901. Sills' attempt to imply in its Notice that this was merely a 'past regulatory oversight' is therefore not credible.

(Id. at 3.) In response, Sills Road urged the Board not to "take sides against the Line's owner" and argued that Brookhaven Rail should not be the only party permitted to possess a common carrier status on the Line. (Sills Road Reply 6, Mar. 23, 2020, FD 36384, FD 36385.) Sills Road stated that "the real questions here are why Sills [Road] shouldn't be expected – or required – to assume a common carrier status with respect to its ownership of the subject rail assets." (Id. at 6-7.)

In the January 2023 Decision, the Board requested additional information and documentation concerning the questions raised in the Sills Order. January 2023 Decision, FD 35141 et al, slip op. at 10. The Board noted that it was still not clear what role each party played in the construction of that Line, how or why Sills Road came to be involved in the construction given that construction authority was granted to Brookhaven Rail's predecessor

(U S Rail), and why no party sought to clarify these issues in Docket No. FD 35141 during the construction proceeding. Id.

Brookhaven Rail filed a reply that included a verified statement from James Newell, the Chief Operating Officer (COO) for U S Rail-NY, a successor to U S Rail. According to Brookhaven Rail, neither U S Rail-NY nor Newell concedes that Sills Road was the sole party that constructed the track covered by the authority granted in Docket No. FD 35141. (Brookhaven Rail Reply to Req. for Info. 9, Feb. 15, 2023, FD 35141 et al.) Nevertheless, U S Rail-NY and Newell both acknowledged that Sills Road did participate in the construction phase and stated for the first time that Sills Road had owned the track since it was constructed. (Id.) According to Newell, when he was hired as COO in 2011, the Line on Parcel A was 75% constructed. (Id., V.S. Newell 2-3.) He stated that the track had been constructed predominantly under the overall auspices of U S Rail and then U S Rail-NY, which had contracted with several subcontractors to conduct clearing, grading, and track construction. (Id., V.S. Newell 4.) According to Newell, W.J. Riegel Rail Solutions was a contractor involved in the track construction. (Id.) This contractor worked primarily with Sills Road, but Newell claimed that he would have been consulted as needed on design and operational issues. (Id.) He further recollected that, while U S Rail was the signatory to the contracts and oversaw the work, some of the costs of the construction were financed by Sills Road and other parties. (Id.) Newell stated that the understanding was that once the track construction was complete Sills Road would own the track and U S Rail-NY would be the sole and exclusive common carrier railroad operator of the newly constructed rail line. (Id., V.S. Newell 4-5.)

The Sills Parties agreed with Brookhaven Rail about the Sills Parties' role in the Docket No. FD 35141 construction proceeding, their involvement in the construction process “post-Board approval,” and their past ownership of Parcel A and the Line. (Sills Parties Reply to Req. for Information 2, Feb. 21, 2023, FD 35141 et al.) They added that Sills Road had intended from the outset to function as the developer of the facility—to fund the pursuit of Board construction authorization on U S Rail’s behalf, cover the rail facility construction costs post-Board authorization, and own the facility thereafter. (Id. at 3.)

The Sills Parties stated that, at the time that U S Rail was preparing to initiate the Docket No. FD 35141 proceeding, counsel for U S Rail had advised Sills Road that Sills Road did not need to be a co-petitioner because U S Rail would: (1) possess the exclusive contractual right under its intended agreement with Sills Road to provide common carrier service over the line to be built; (2) have, alone, the obligation to provide such common carrier service; (3) oversee development of the line; and (4) manage, operate, and maintain the line in its own name. (Id. at 4.) The Sills Parties added that Sills Road had no agency relationship with U S Rail or its successor, but Sills Road did take direction from U S Rail over facility design and matters within the Board’s jurisdiction. (Id.)

The Board then directed Sills Road and BLC to show cause why the transfers to Sills Road and then to BLC had not violated § 10901. September 2023 Decision, FD 35141 et al., slip op. at 3. In response, Sills Road states that it “funded the construction of the Lines and had owned them from the point of construction until Sills Road divested itself of the Brookhaven Terminal” in May 2022 and blames its prior lack of authorization on ignorance of the law. (Sills

Road Reply 3-5, Oct. 24, 2023, FD 35141 et al.) Sills Road further claims, contrary to its statements in 2020, that it does not seek and has never sought common carrier status and that it has been the owner of the Line since its construction. (*Id.* at 4 n.2.) For its part, BLC states that it purchased Parcel A (including the Line) in May 2022 in a transaction that involved first a transfer from Sills Road to “Sills Road Affiliates” and then a transfer from “Sills Road Affiliates” to BLC. (BLC Reply 6, n.4, Oct. 24, 2023, FD 35141 et al.)¹⁴ BLC goes on to assert that, because it never had a common carrier obligation, its acquisition did not require Board authority under State of Maine. (*Id.* at 10-13.)

It is not entirely clear from the record which entity or entities constructed the Line on Parcel A, given that some of the information presented in the recent filings contradicts Sills Road’s earlier representations in these proceedings. It appears that, at a minimum, Sills Road had some role in the construction of the BRT. Nonetheless, based on the information in recent filings, there is sufficient evidence to conclude that it was appropriate for U S Rail by itself to seek and receive construction authority. As noted above, Brookhaven Rail stated that construction was under the overall auspices of U S Rail. (Brookhaven Rail Reply to Req. for Information, V.S. Newell 4, Feb. 15, 2023, FD 35141 et al.) Additionally, Sills Road agreed with Brookhaven Rail’s characterization of events and added that, although it had no agency relationship with U S Rail or its successor, it did take direction from U S Rail over facility design and with respect to matters within the Board’s jurisdiction. (Sills Parties Reply to Req. for Info. 4, Feb. 21, 2023, FD 35141 et al.)

This means, however, that U S Rail (now Brookhaven Rail) was the only entity ever authorized by the Board to own the track and hold the accompanying common carrier obligation. Given that, there still remains a gap in required regulatory authority between the 2010 construction authorization and Sills Road’s later ownership of the Line, as well as BLC’s subsequent ownership. To resolve that issue, Sills Road will be directed to seek after-the-fact authority to acquire the Line in a new docket.¹⁵ Sills Road must file either an application under § 10901 or a petition for exemption under § 10502.¹⁶ The application must include the information required by 49 C.F.R. part 1150 subpart A. Whether an application or a petition for

¹⁴ BLC states without providing supporting documentation that, although the sale contract names Northpoint Development, LLC, as the purchaser, that entity assigned its rights under the contract to BLC and never acquired Parcel A. (BLC Reply 6, n.4, Oct. 24, 2023, FD 35141 et al.); see also September 2023 Decision, FD 35141 et al., slip op. at 2 n.5.

¹⁵ The Board’s determination that Sills Road needs only after-the-fact authority to acquire the Line (and not to construct it), is based on the information that has been presented in recent filings. If, however, evidence is later presented showing that the operative facts differ significantly from the Board’s current understanding of the record, the Board may find that Sills Road needs after-the-fact authority to construct the Line, either as a sole applicant or a co-applicant of U S Rail.

¹⁶ Based on the history of this proceeding, the Board finds that use of the agency’s class exemption process is not appropriate because Sills Road’s transaction requires additional scrutiny. See Riffin—Acquis. & Operation Exemption—in York Cnty., Pa. & Balt. Cnty., Md., FD 34484, slip op. at 3 (STB served Apr. 20, 2004).

exemption, Sills Road must provide evidence to support its narrative. The filing will be due November 21, 2025.

The Board must determine and address the nature of Sills Road's interests before, if appropriate, determining whether a common carrier obligation passed to BLC or whether it may qualify for the exception to obtaining § 10901 authority under State of Maine and its progeny.¹⁷

Because Brookhaven Rail is no longer planning to pursue construction on Parcel D, the Board will grant Brookhaven Rail's motion to withdraw the 2020 Rail Construction Petition and CCE's appeal of OEA's finding, petition for declaratory order, and petition for reconsideration of the January 2023 Decision. Accordingly, issues related to Parcel D do not require further adjudication by the Board. As such, Docket Nos. FD 36376, FD 36384, FD 36385, FD 36398, and FD 36399 will be closed and those proceedings terminated. The Board will also close Docket No. FD 35819. Although the Board has directed Sills Road to file for after-the-fact acquisition authority in a new docket, the Board will leave Docket No. FD 35141 open should operative facts indicate further action is necessary in that docket.

It is ordered:

1. All filings in the dockets embraced by this decision that were submitted between November 29, 2023, and January 19, 2024, are struck from the record.
2. Brookhaven Rail's motion to withdraw its petition for exemption in Docket No. FD 36398 with prejudice and to close Docket No. FD 36399 and terminate that proceeding with prejudice is granted.
3. CCE's motion to withdraw its filings in Docket Nos. FD 35141, FD 35819, FD 36376, FD 36384, FD 36385, FD 36398, and FD 36399 is granted.
4. Sills Road is directed to file either an application or a petition for exemption for after-the-fact authority to acquire the Line by November 21, 2025.
5. Docket Nos. FD 36376, FD 36384, FD 36385, FD 36398, FD 36399 are closed and those proceedings terminated on the effective date of this decision. Docket No. FD 35819 is closed on the effective date of this decision.
6. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

¹⁷ The Board notes that BLC might also need to obtain Board after-the-fact authority depending on whether it finds BLC acquired the Line.