

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35141¹

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

Digest:² This decision directs responses from Brookhaven Rail, LLC; Brookhaven Logistics Center, LLC; and Sills Road Realty LLC regarding the ownership of a rail line and other matters involving a terminal in Brookhaven, N.Y.

Decided: September 27, 2023

A fuller history of these proceedings can be found in the Board's most recent decision in these dockets, U S Rail Corp.—Construction & Operation Exemption—Brookhaven Rail Terminal (January Decision), FD 35141 et al. (STB served Jan. 6, 2023). It suffices here to note that the Brookhaven Rail Terminal (Terminal) in the Town of Brookhaven, N.Y. (Town), has historically been described as consisting of four sections, which are referred to as Parcels A, B, C, and D. Jan. Decision, FD 35141 et al., slip op. at 2. A Long Island Rail Road Company (LIRR) rail line separates Parcels A, B, and C from Parcel D. (Id.) Pending in Docket No. FD 36398 is a petition for exemption from Brookhaven Rail, LLC (Brookhaven Rail) to construct and operate a 23,680-foot rail line that would serve a planned solid waste rail transfer facility to be located on Parcel D. Brookhaven Rail also intends to seek, in Docket No. 36399, a land-use-exemption permit under 49 U.S.C. § 10909 for the planned facility. Jan. Decision, FD 35141 et al., slip op. at 3.

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).

The January Decision addressed a petition for declaratory order by the Citizens Campaign for the Environment (CCE) concerning various activities in the Terminal. While the Board denied the petition in part, it also directed Brookhaven Rail and the Sills Parties³ to respond to the Director's decision as it related to Parcel A in Spectrum RR Holdings—Operation Exemption—Railroad Line in the Town of Brookhaven, N.Y. (Sills Order), FD 36376 et al., slip op. at 5-6 (STB served June 16, 2020).⁴ In the Sills Order, the Director instructed the parties to provide information and supporting documentation with respect to several delineated topics in any future proceeding seeking authority from the Board in connection with Parcel A. (Id. at 5-6.) Those topics included clarifying 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 the time of the January Decision, and based on information previously provided, the Board understood that Sills Road owned Parcel A. Jan. Decision, FD 35141 et al., slip op. at 2; (Sills Parties Reply 2, Dec. 14, 2021, FD 35141 et al.).

On February 15, 2023, Brookhaven Rail responded to the January Decision, and on February 21, 2023, the Sills Parties and Brookhaven Logistics Center, LLC (BLC),⁵ filed separate responses.⁶ BLC states that on May 4, 2022, it acquired Parcel A and all the track there from affiliates of Sills Road. (BLC Reply 2-3.)⁷ 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.)⁸ Additional publicly available information indicates that the warehouses on Parcels B and C will be used to store, sort, and ship solid waste

³ The Sills Parties include Sills Road Realty LLC (Sills Road); Brookhaven Terminal Operations, LLC; Brookhaven Rail Services LLC; and Spectrum RR Holdings, LLC. See Jan. Decision, FD 35141 et al., slip op. at 4.

⁴ The Sills Order rejected two verified notices of exemption. In one, Sills Road sought remedial acquisition authority for the line on Parcel A. In the second, Sills Road and Spectrum RR Holdings sought authority for Spectrum RR Holdings to acquire that line from Sills Road. The Board determined that the exemption process was not the appropriate process to address the complicated, unresolved issues involved. Sills Ord., FD 36376 et al., slip op. at 5.

⁵ BLC was previously known as NP/Winters Long Island Industrial Development LLC (NP/Winters). (BLC Reply 2.) NP/Winters appears to be the same NP/Winters Long Island Industrial, LLC, referred to by Brookhaven Rail earlier in these proceedings as the owner of Parcels B and C and a portion of Parcel D. (See Brookhaven Rail Reply 3-4, Dec. 13, 2021, FD 35141 et al.)

⁶ On January 26, 2023, CCE filed a petition seeking partial reconsideration of the Board's January Decision, and on February 15, 2023, Brookhaven Rail responded in opposition. CCE's petition will be addressed in a subsequent decision.

⁷ Sills Road similarly states that it conveyed Parcel A to BLC but provides as an exhibit deeds appearing to show that Sills Road conveyed the property to six entities that have not previously been involved in this proceeding, and that it was these six entities that conveyed the property to BLC. (Sills Road Reply 2, unnumbered exhibit, Feb. 21, 2023, FD 35141 et al.)

⁸ The remaining 50 acres of Parcel D are owned by Winters Bros. Shamrock Realty LLC. Jan. Decision, FD 35141 et al., slip op. at 9.

from the proposed solid waste transfer facility, see “Brookhaven Finds Proposed Rail Terminal To Have No Significant Environmental Impact” by J. D. Allen, published April 4, 2023 at www.wshu.org/long-island-news/2023-04-04/brookhaven-finds-proposed-rail-terminal-to-have-no-significant-environmental-impact (last visited September 15, 2023), and that Brookhaven Rail now intends to connect directly to the LIRR line from Parcels B and C, (Town Adoption of SEQRA Negative Declaration 1, 5, Apr. 19, 2023, FD 35141 et al. (EI 32837)). The Town’s Adoption of the State Environmental Quality Review Act (SEQRA) Negative Declaration states that “the current proposed action will provide turnout from the LIRR rail line, which the applicant asserts is a more efficient means of access, and will result in significantly less material being removed from Parcels B and C.” (Town Adoption of SEQRA Negative Declaration 5.)

Under 49 U.S.C. § 10901(a)(4), a “person other than a rail carrier” may “acquire a railroad line” only with prior Board authorization. Based on the new information discussed above and the fact that Sills Road never obtained Board authority for its previous acquisition, it appears that Sills Road and BLC both acquired a rail line—the line on Parcel A—without the necessary authority. Therefore, Sills Road and BLC are directed to show cause why they should not be found to have violated 49 U.S.C. § 10901.

BLC and Brookhaven Rail are also directed to explain whether the warehouses on Parcels B and C are intended for use to store, sort, and ship solid waste from the proposed solid waste transfer facility. If so, Brookhaven Rail must explain whether it intends to include the warehouses on Parcels B and C in its application for a land-use-exemption permit under § 10909 and the rationale for that determination. See 49 C.F.R. § 1155.2(a)(10) (defining a “solid waste rail transfer facility” as including the portion of the facility where solid waste “is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers”). In addition, Brookhaven Rail is directed to explain whether it now intends to connect directly to the LIRR line from Parcels B and C, and whether it still plans to connect to Parcel A.

The responses from BLC, Brookhaven Rail, and Sills Road will be due by October 17, 2023. Replies to the responses may be filed by November 6, 2023.

It is ordered:

1. BLC, Brookhaven Rail, and Sills Road are directed to file responses to the inquiries discussed above by October 17, 2023. Replies may be filed by November 6, 2023.
2. This decision is effective on its date of service.

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