

BEFORE THE SURFACE TRANSPORTATION BOARD

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Office of Proceedings
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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
Response to Request for Information**

Brookhaven Logistics Center, LLC (BLC) files this response to the Board's request in its January 6, 2023, decision in these proceedings that the Sills Parties and Brookhaven Rail respond to certain questions in the June 16, 2021, decision in Docket No. FD 36376 by the Director of the Office of Proceedings ("Director's Decision") and provide all materials sought therein concerning Docket No. FD 35141, which relates to past construction of track on Parcel A of the Brookhaven Rail Terminal.

In this response, BLC explains that it is independent of the Sills Parties and Brookhaven Rail; it acquired Parcel A on May 4, 2022, subject to Brookhaven Rail's existing rights to provide common-carrier rail service on Parcel A; and Brookhaven Rail is the sole provider of rail service on Parcel A track. BLC also explains that it does not have direct knowledge of the information that the Director's Decision seeks, or have associated records, because the information relates to construction of Parcel A track, which long preceded BLC's ownership of Parcel A.

Identity of Brookhaven Logistics Center, LLC

BLC is the owner of Parcel A.¹ Its former name is NP/Winters Long Island Industrial Development LLC, which changed to BLC on March 24, 2022.²

BLC's Interest in Parcel A

BLC acquired Parcel A, and all the track on it, from affiliates of Sills Road Realty, LLC ("Sills Road") that then owned Parcel A (these affiliates, the "Sills Road

¹ Hagedorn V.S. ¶ 4.

² *Id.* ¶ 3.

Affiliates”) on May 4, 2022.³ When BLC acquired Parcel A, it understood that Sills Road and the Sills Road Affiliates did not have any authority to provide common-carrier operations over the track on Parcel A.⁴ It also understood that Brookhaven Rail held STB authority to operate the track on Parcel A, was the sole holder of a common-carrier obligation to provide rail service over the track, and was the sole entity providing rail service on Parcel A.⁵ Consistent with this understanding, BLC’s acquisition of Parcel A was subject to Brookhaven Rail’s existing rights to occupy Parcel A and provide common-carrier service over Parcel A tracks.⁶ At all times since purchasing Parcel A, BLC has intended to maintain this status quo under which Brookhaven Rail continues as the sole provider of rail service on Parcel A and the sole holder of the common-carrier obligation to provide the service.⁷

Rail Operations on Parcel A

Since BLC acquired full ownership of Parcel A, Brookhaven Rail has been the sole provider of rail service on Parcel A track.⁸ BLC has not attempted to provide rail service on Parcel A track, either on its own or through an affiliate, and has had no intention to provide such service.⁹ BLC also has not participated in providing that service other than by providing Brookhaven Rail with access to

³ *Id.* ¶ 4.

⁴ *Id.* ¶ 5.

⁵ *Id.* ¶ 6.

⁶ *Id.* ¶ 4.

⁷ *Id.* ¶¶ 5-7.

⁸ *Id.* ¶ 7.

⁹ *Id.* ¶ 8.

Parcel A.¹⁰ In sum, Brookhaven Rail provides rail service on Parcel A without BLC's involvement and as the exclusive provider of the service.

Responses to Director's Questions

Topic 1: Responsibilities of each party in construction of the line.

Director's Request:

[E]xplain in detail the role of Sills Road, U S Rail/Brookhaven Rail, and any other entity or entities that may have been involved with the construction of the Line, including providing information on which entity or entities paid for the construction and in what proportions and what specific construction-related activities each entity performed and at what point in time. With respect to each of these activities, . . . explain whether the entity performing the activity was acting as an agent of another entity or otherwise taking direction from or acting under the supervision or oversight of another entity. Sills Road should provide any agreements, documents, or other records relevant to its explanations.¹¹

BLC's Response:

BLC does not have direct knowledge of the role of any entities in the construction of the line on Parcel A.¹² It also does not have any records relevant to the Director's request.¹³ This construction took place before BLC acquired Parcel A in 2022.¹⁴

¹⁰ *Id.* ¶ 8.

¹¹ *Spectrum RR Holdings, LLC—Operation Exemption—R.R. Line in Brookhaven, N.Y.*, FD 36376 et al., slip op. at 5 (STB served June 16, 2020).

¹² *See* Hagedorn V.S. ¶ 10.

¹³ *Id.* ¶ 11.

¹⁴ *Id.* ¶ 9.

Topic 2: Roles of the Parties in Prior Board Proceeding.

Director's Request:

[E]xplain why the parties decided that U S Rail would seek construction authority rather than Sills Road. If Sills Road initially intended that U S Rail would construct the Line, Sills Road should explain why and when Sills Road changed its plans and why it did not inform the Board at any point during the construction proceeding, which was ongoing through January 2018, that Sills Road, rather than U S Rail, was constructing or had constructed the Line. Sills Road should provide any agreements, documents or other records relevant to its explanations.¹⁵

BLC's Response:

BLC does not have direct knowledge of these matters and does not have the requested records.¹⁶ Decisions about construction of the line and obtaining STB authority for the construction occurred before BLC purchased Parcel A in 2022.

Topic 3: Legal and Factual Basis for Authority Sought.

Director's Request:

If Sills Road believes that remedial authorization to own the Line is needed, in any future proceeding it should explain the legal and factual basis for the authority it seeks. . . . In any future proceeding seeking remedial authorization, it should therefore explain why its approach is appropriate in light of the fact that Brookhaven Rail's predecessor, U S Rail, is the party that sought and obtained construction authority, claims to have been involved in overseeing and supervising construction of the Line, and has been the only operator on the Line to date. Sills Road should provide any

¹⁵ *Spectrum RR Holdings, LLC*, FD 36376 et al., slip op. at 5-6.

¹⁶ See Hagedorn V.S. ¶¶ 9, 11.

agreements, documents, or other records relevant to its explanations.¹⁷

BLC's Response:

BLC does not have direct knowledge of Sills Road's belief about remedial authorization.¹⁸ Nevertheless, because Sills Road and the Sills Road Affiliates no longer own Parcel A, Sills Road's past attempt to seek remedial authorization to "own the Line" is moot.

Topic 4: Classification of Track as Excepted Track Under 49 U.S.C. § 10906.

Director's Request:

To the extent that any subsequent filing asks the Board to find that the portion of the Line 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.¹⁹

BLC's Response:

BLC takes no position on whether any portion of the Parcel A line is excepted track.

¹⁷ *Spectrum RR Holdings, LLC*, FD 36376 et al., slip op. at 6.

¹⁸ *See Hagedorn V.S.* ¶ 10.

¹⁹ *Spectrum RR Holdings, LLC*, FD 36376 et al., slip op. at 6.

Respectfully submitted,

/s/Jason D. Tutrone

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Dated: February 21, 2023

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**Verified Statement of Nathaniel Hagedorn
Manager of NPD Management, LLC, the Administrative Manager
of Brookhaven Logistics Center, LLC**

1. I, Nathaniel Hagedorn, submit this verified statement in support of Brookhaven Logistics Center, LLC's ("BLC") response to the request for information in the January 6, 2023 decision in the above-captioned proceedings.
2. I am the Manager of NPD Management, LLC, a Missouri limited liability company ("NPD"), the Administrative Manager of BLC. NPD, as the Administrative Manager of BLC, has the legal duty and authority to manage the operations, development, and leasing of the real property holdings of BLC. I, as Manager of NPD, have the legal authority to manage the affairs of that entity.
3. BLC changed its name from NP/Winters Long Island Industrial Development, LLC on March 24, 2022.
4. On May 4, 2022, BLC acquired Parcel A, including the track on it, from affiliates of Sills Road Realty, LLC that then owned Parcel A (these affiliates, the "Sills Road Affiliates") subject to Brookhaven Rail LLC's existing rights to occupy Parcel A and its Surface Transportation Board (STB or "Board") authority to provide common-carrier service on Parcel A tracks.
5. When BLC purchased Parcel A, I understood from Sills Road Realty LLC ("Sills Road") and the Sills Road Affiliates that they did not have STB authority to operate on the Parcel A track or a common-carrier obligation to provide rail service on Parcel A.

6. When BLC purchased Parcel A, Brookhaven Rail was the sole provider of rail service on the Parcel A track, and I understood that it had the sole STB authority to provide this service and was the exclusive holder of a common-carrier obligation to provide rail service on Parcel A track.

7. Since purchasing Parcel A, BLC has intended that Brookhaven Rail be the exclusive provider of common-carrier rail service on Parcel A, and Brookhaven Rail has been the sole provider of rail service on Parcel A. BLC and Brookhaven Rail have been taking steps to enter a new long-term agreement for Brookhaven Rail to continue to provide rail service on Parcel A.

8. BLC has not provided rail service or intended to provide rail service, on its own or through any affiliate, on the Parcel A track. BLC also has not participated in the rail service that Brookhaven Rail provides on Parcel A, other than by providing access to Parcel A.

9. Because BLC purchased Parcel A in 2022, after the track on Parcel A had been constructed, I was not involved in the construction of the track on Parcel A or the discussions between U S Rail and Sills Road about seeking authority from the STB for construction of the track.

10. I do not have direct knowledge of the bases for Sills Road's claims that it needed remedial authorization from the Board.

11. BLC does not have records concerning the construction of the track on Parcel A, discussions between U S Rail and Sills Road about seeking STB authority for the construction, or Sills Road's rationale for seeking remedial authorization from the Board concerning Parcel A.

VERIFICATION

I, Nathaniel Hagedorn, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I, as Manager of NPD Management, LLC, the Administrative Manager of Brookhaven Logistics Center, LLC, am qualified and authorized to file this statement.

Executed on February 21, 2023



Nathaniel Hagedorn

CERTIFICATE OF SERVICE

I certify that I have this February 21, 2023, served copies of the foregoing Response to Request for Information 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 D. Tutrone