

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36398

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

Decided: September 23, 2020

On June 25, 2020, Brookhaven Rail LLC (Brookhaven Rail) filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 for Brookhaven Rail to construct and operate approximately 23,680 feet of new rail line to be located on Parcel D of the Brookhaven Rail Terminal (Terminal) in the Town of Brookhaven, Suffolk County, N.Y. (Pet. 1, 4, 5.)¹ Brookhaven Rail states that, while its long-term plan for the proposed line is to establish transloading and other rail-served activities similar to those it now provides on Parcel A of the Terminal, the immediate purpose of the proposed line is to serve a planned solid waste rail transfer facility that it would own and potentially operate. (*Id.* at 5.)² According to Brookhaven Rail, a local landfill will close in 2024, and its planned rail line and related facility are intended to provide replacement capacity. (Pet. 17-18.)

Brookhaven Rail argues that regulation of the construction and operation of the proposed line under 49 U.S.C. § 10901 is not needed to carry out the rail transportation policy (RTP) at 49 U.S.C. § 10101, that the transaction is limited in scope, and that regulation is not needed to protect shippers from an abuse of market power. (*Id.* at 13-17.) Brookhaven Rail asks that the Board, in considering its petition, follow a two-step approach, addressing the transportation aspects of the project in advance of the environmental issues. (*Id.* at 17-18.)

Sills Road Realty LLC (Sills Road), Brookhaven Terminal Operations LLC (BTO), and Brookhaven Rail Freight Services LLC (BRFS) (collectively, the Sills Parties)³ filed in

¹ The Terminal includes four parcels of land, totaling 355 acres, which historically have been referred to as Parcels A, B, C, and D. (Pet. 2.)

² In a related petition filed on July 27, 2020, in Docket No. FD 36399, Brookhaven Rail seeks an exemption from the full requirements of 49 U.S.C. § 10909 and 49 C.F.R. part 1155 for obtaining a land-use-exemption permit for the proposed solid waste transfer facility. Pet. 1, Brookhaven Rail, LLC—Pet. for Exemption from Requirements of 49 U.S.C. § 10909, Docket No. FD 36399.

³ According to the Sills Parties, Sills Road is the majority controlling owner of BTO, which in turn owns BRFS. The Sills Parties state that Sills Road owns Parcel A (and the tracks

opposition to the petition on July 15, 2020, arguing that the Board should reject the petition as premature, incomplete, and materially misleading, or, in the alternative, hold the proceeding in abeyance subject to supplementation of the record by Brookhaven Rail. (Sills Parties Reply 2-3.) Brookhaven Rail responded in opposition to the Sills Parties on August 4, 2020, and on September 11, 2020, the Town of Brookhaven filed a reply to the petition and a supplement to an earlier submission to the Board's Office of Environmental Analysis. On September 22, 2020, the Citizens Campaign for the Environment (CCE) submitted a letter asking that the reply it filed in opposition to the petition for exemption in Docket No. FD 36399 be included here as well, arguing that the issues in both dockets are "inextricably connected," (CCE Letter 1); CCE further asks that the petition in this docket be denied or this proceeding held in abeyance pending resolution of the issues in Docket No. FD 36399, (id. at 3). Brookhaven Rail replied to the letter on September 23, 2020.

By this decision, the Board is instituting a proceeding under 49 U.S.C. § 10502(b). The Board will issue a subsequent decision concerning the parties' requests and procedural matters.

It is ordered:

1. A proceeding is instituted under 49 U.S.C. § 10502(b).
2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

on it) and Parcel C and has a long-term lease for Parcel B, and Brookhaven Rail operates within the Terminal pursuant to an operating agreement with BRFS. (Sills Parties Reply 4, July 15, 2020.)