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SEC

SERVICE DATE – NOVEMBER 21, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35141

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

Decided: November 21, 2008

By petition filed on August 7, 2008, U S Rail Corporation (U S Rail), a Class III short line rail carrier, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate “a new line of railroad and related rail facilities” at a new, yet-to-be-constructed 28-acre site to be known as the Brookhaven Rail Terminal in the Town of Brookhaven, Suffolk County, NY. By decision served November 5, 2008, the Board instituted a proceeding and requested additional information to determine the nature and scope of this project and the extent of the Board’s jurisdiction over it. U S Rail was directed to supplement its petition by December 5, 2008, with additional information clarifying in greater detail the proposed construction and operation. Replies are due December 29, 2008. Also, on November 3, 2008, the Board granted a request from U S Rail to extend until November 24, 2008, the time to reply to a motion to compel filed by the Town of Brookhaven (Brookhaven).

On November 17, 2008, Brookhaven filed a request that the Board hold in abeyance its decision on Brookhaven’s motion to compel, pending ongoing settlement negotiations between the parties. Brookhaven states that holding a decision on the motion to compel in abeyance pending further notice from the parties would help to maintain a non-adversarial environment and facilitate settlement discussions. On November 17, 2008, U S Rail also joined in Brookhaven’s request that the motion to compel be held in abeyance, stating that this would be mutually beneficial to the parties. U S Rail also requests that the Board extend the deadline for U S Rail to respond to Brookhaven’s motion to compel for an additional 20 days, until December 15, 2008.

The parties’ request is reasonable and will be granted. Granting the parties’ joint request to hold the Board’s decision on the motion to compel in abeyance will facilitate a privately negotiated resolution of the dispute between Brookhaven and U S Rail and will not prejudice any party. U S Rail’s request to extend the deadline for its reply to the motion to compel is also reasonable and will be granted. U S Rail’s supplement to its petition for exemption continues to be due December 5, 2008, and replies are due December 29, 2008.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Board's decision on Brookhaven's motion to compel is held in abeyance.
2. U S Rail's reply to the motion to compel is due December 15, 2008.
3. This decision is effective on its date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary