

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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ENTERED  
Office of Proceedings  
November 13, 2023  
Part of  
Public Record

DOCKET NO. FD 36398  
BROOKHAVEN RAIL LLC – CONSTRUCTION AND OPERATION EXEMPTION - IN SUFFOLK  
COUNTY, NEW YORK

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DOCKET NO. FD 36399  
BROOKHAVEN RAIL LLC - PETITION FOR EXEMPTION FROM  
REQUIREMENTS OF 49 U.S.C. §10909

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DOCKET NO. FD 35141  
U.S. RAIL CORP. - LLC – CONSTRUCTION AND OPERATION EXEMPTION -BROOKHAVEN  
RAIL TERMINAL

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DOCKET NO. FD 36376  
SPECTRUM RAILROAD HOLDINGS, LLC – OPERATION EXEMPTION – RAILROAD LINE IN  
THE TOWN OF BROOKHAVEN, NY

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DOCKET NO. FD 36384  
SILLS ROAD REALTY LLC – ACQUISITION EXEMPTION  
- RAILROAD LINE IN THE TOWN OF BROOKHAVEN, NY

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DOCKET NO. FD 36385  
SPECTRUM RAILROAD HOLDINGS, LLC – ACQUISITION AND OPERATION EXEMPTION –  
LINE OF SILLS ROAD REALTY LLC, IN THE TOWN OF  
BROOKHAVEN, NY

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DOCKET NO. FD 35819  
BROOKHAVEN RAIL TERMINAL & BROOKHAVEN RAIL, LLC –  
PET. FOR DECLARATORY ORDER

**REPLY**

Pursuant to the Decision served in these non-consolidated dockets on September 27, 2023 (the “Decision”), Brookhaven Rail LLC, (“Brookhaven Rail”) hereby submits this reply to the opening submissions of Sils Road Realty, LLC (“Sills”) and Brookhaven Logistics Center, LLC (“BLC”) in response to the Decision.

Brookhaven Rail does not take issue with the factual assertions and discussion of applicable legal principles in the opening submissions of Sills and BLC (“Sills Opening” and “BLC Opening”). Brookhaven Rail also confirms BLC’s statement that the two parties have been pursuing a lease and operating agreement between them by which Brookhaven Rail would continue to exclusively provide common carrier service on Parcel A, as BLC and Brookhaven Rail informed the Board in February 2023. BLC Opening at 6-7. BLC has accurately described the main points of the agreement and the status of the negotiations. *Id.*

Regarding the “show cause” directive to Sills and BLC contained in the Decision, for the reasons Brookhaven Rail has expressed in past filings in several of the captioned dockets and which are summarized in Sills Opening, it does not believe Sills violated 49 U.S.C. §10901(a)(4) by owning the track assets on Parcel A while Brookhaven Rail possessed the exclusive authority to provide, and did so provide, common carrier service over them since the day construction of the track was completed. Brookhaven Rail concurs with BLC’s arguments in its Opening that it, too, did not violate §10901(a)(4) when it acquired the tracks on Parcel A in May 2022.

However, to the extent the Board’s “show cause” directive indicates the Board believes violations of §10901(a)(4) occurred, Brookhaven Rail concurs with Sills’ view that the resolution of the issues underlying the show cause directive should be made in the context of “the agency’s longstanding commitment to address and resolve regulatory oversights pragmatically, and without resorting to punitive action.” Sills Opening at 7 (citation omitted). Brookhaven Rail concurs with Sills and BLC that the Board should resolve any past regulatory oversights as to ownership of the tracks on Parcel A by (1) allowing BLC to continue to own the tracks without obtaining §10901(a)(4) authority provided BLC and Brookhaven Rail execute the lease and operating agreement amended as necessary to ensure such authority is not needed for BLC to continue to

own the tracks, and/or (2) issuing, on its own motion, exemption authority to Sills for its past ownership and to BLC for its present ownership of the tracks, or (3) providing Sills, BLC, and Brookhaven Rail with specific guidance on the process or processes, if any, each should pursue to resolve outstanding regulatory issues to the Board's satisfaction. As to the latter suggestion of the Board providing specific guidance to the parties, Brookhaven Rail concurs with the suggestion made by Sills and BLC that specific guidance on the appropriate remedial measures could be provided in a technical conference led by Board staff. Sills Opening at 11; BLC Opening at 10.

In summary, Brookhaven Rail supports the requests of BLC and Sills for pragmatic, final resolution of any outstanding regulatory issues related to the ownership of the tracks on Parcel A. Brookhaven Rail believes that no violations of §10901(a)(4) occurred in these circumstances. However, to the extent the Board concludes otherwise, and it declines to grant BLC's request regarding the lease and operating agreement or issue on its own motion the exemption authority requested by Sills and BLC, the Board is respectfully requested to provide specific guidance to the parties on the further actions they should take, if any, to satisfy the Board's concerns so the regulatory finality all three parties desire can be achieved.

Respectfully submitted,



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November 13, 2023

### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 13<sup>th</sup> day of November, 2023, a copy of the foregoing Reply was served by email on all parties on the official Service Lists for Dockets No. FD 36398, Docket No. FD 36399, Docket No. FD 35141, Docket No. FD 35819, Docket No. FD 36384, Docket No. FD 36376, and Docket No. FD 36385.

/ss/ Thomas W. Wilcox