

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35141

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

**THIRD MOTION FOR EXTENSION OF TIME TO FILE MOTION TO STRIKE OR
OTHERWISE RESPOND TO TOWN'S FILING**

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and Brookhaven Rail, LLC*

Dated: January 28, 2016

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Brookhaven Rail Terminal (“BRT”) and Brookhaven Rail, LLC (“Brookhaven Rail”) (collectively, “Respondents”), respectfully move pursuant to 49 C.F.R. § 1104.7 for additional time to move to strike or otherwise respond to the filing of the Town of Brookhaven (“Town”) dated October 27, 2015.¹ On November 16, 2015, Respondents submitted a motion for extension of time to file a motion to strike or otherwise respond to the Town’s October 27th Filing.² Respondents’ Motion for Extension of Time requested that the Surface Transportation Board (the “Board”) grant Respondents an extension until December 16, 2015.³ The Board granted

¹ *Objections of Town of Brookhaven, New York*, dated October 27, 2015 (“Town’s October 27th Filing”).

² *See Motion for Extension of Time to Move to Strike Town’s October 27th Filing*, dated November 16, 2015 (“Motion for Extension of Time”). Therein, Respondents’ stated that they had prepared a motion to strike the Town’s Objections that demonstrated that the Town’s Objection: (1) is not authorized by the Board’s July 8, 2015 decision (“Board July 8th Decision”), which solely directed Respondents to notify the Board’s Office of Environmental Analysis (“OEA”) that Respondents’ spill prevention, control, and countermeasures plan (“SPCC Plan”) satisfied Article 12 of the Suffolk County Sanitary Code (hereinafter referred to as “SCSC Article 12”); (2) raises an alleged SCSC Article 12 compliance matter altogether collateral to the Board July 8th Decision and Respondents’ Notification of Compliance filed in response thereto; and (3) represents an untimely petition for reconsideration of the Board July 8th Decision under 49 C.F.R. § 1115.3. *Id.* at 1-2.

³ *Id.* at 2.

Respondents' Motion for Extension of Time on December 14, 2015.⁴ Respondents subsequently submitted a Second Motion for Extension of Time on December 22, 2015.⁵ The Board granted Respondents' Second Motion for Extension of Time on January 22, 2016.⁶

Respondents again request additional time because, while the parties continue to be actively engaged in settlement discussions, they have not yet reached a final agreement. The settlement discussions have significantly progressed since Respondents Second Motion for Extension of Time and Respondents are reasonably confident that a settlement will be finalized within the next two months. Thus, assuming that the parties reach a settlement (and that the District Court approves the settlement outline and final agreement), the need for Respondents to move to strike the filing would be moot. Accordingly, as the parties need further time to continue and finalize their settlement discussions, Respondents move the Board for an extension of time to move to strike or otherwise respond to the Town's October 27th Filing to a date certain of April 1, 2016.

⁴ See Board's Grant of Extension of Time to Respondents, dated December 14, 2015.

⁵ See *Second Motion for Extension of Time to Move to Strike Town's October 27th Filing*, dated December 22, 2015 ("Second Motion for Extension of Time").

⁶ See Board's Grant of Extension of Time to Respondents, dated January 22, 2016.

CONCLUSION

For all the foregoing reasons, Respondents respectfully request to extend the time for Respondents to move to strike or otherwise respond to the Town's October 27th Filing until a date certain of April 1, 2016.

Dated: January 28, 2016

Respectfully submitted,

Brookhaven Rail Terminal and Brookhaven Rail, LLC

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2016, I caused to be served the foregoing *Third Motion for Extension of Time to File Motion to Strike or Otherwise Respond to Town's Filing* by first-class mail, postage prepaid, upon the following Parties of Record in this proceeding:

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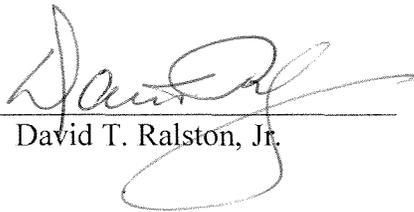
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