

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35141

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

Decided: June 12, 2009

By petition filed on August 7, 2008, U S Rail Corporation (U S Rail) 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, and did, supplement its petition by December 5, 2008. Replies were 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 21, 2008, the Board granted a joint request from the parties that the Board hold in abeyance its decision on Brookhaven’s motion to compel, pending ongoing settlement negotiations between the parties. The Board also granted a request by U S Rail that the Board extend the deadline for it to respond to Brookhaven’s motion to compel until December 15, 2008.

In decisions served on December 22, 2008 and January 15, February 17, March 23, and April 20, 2009, the Board granted U S Rail and Brookhaven further extensions to file their respective replies, with the latest U S Rail reply to Brookhaven’s motion to compel due May 15, 2009, and Brookhaven’s reply to U S Rail’s supplemental petition due June 1, 2009.

On May 12, 2009, U S Rail and Brookhaven filed a joint request seeking another extension of time for filing their respective replies. U S Rail seeks to extend the deadline for its reply to Brookhaven’s pending motion to compel until June 15, 2009 and Brookhaven seeks to extend the deadline for its reply to U S Rail’s supplemental petition until July 1, 2009. The parties state that they are continuing to actively negotiate with respect to settlement of this matter and each party consents to the other’s extension request.

More time appears necessary here as the parties are still actively negotiating a settlement. However, due to the multiple limited extensions already sought and granted in this matter, rather than grant another such extension, the Board will hold this proceeding in abeyance, pending a

request by one or both parties to reinstate the procedural schedule. The parties will, however, be required to file monthly status reports, beginning on July 1, 2009, on the progress of their negotiations.

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

It is ordered:

1. This proceeding is held in abeyance pending further order of the Board.
2. The parties shall file monthly status reports with the Board beginning July 1, 2009.
3. This decision is effective on its date of service.

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

Anne K. Quinlan  
Acting Secretary