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SERVICE DATE – FEBRUARY 3, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35141

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

Decided: February 3, 2010

U S Rail Corporation (U S Rail) filed a petition on August 7, 2008, seeking 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 (Brookhaven), Suffolk County, NY.

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 Brookhaven. 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. 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.

Subsequently, the Board granted five additional joint requests by the parties for extension of time before it served a decision on June 12, 2009 (June Decision), holding the proceeding in abeyance pending further Board action to allow the parties to negotiate. The Board also ordered that the parties file monthly status reports concerning the progress of their negotiations beginning July 1, 2009.

The parties filed joint status reports until December 30, 2009, when U S Rail requested that the Board lift the stay imposed in the June Decision, restore the matter to the active docket, and establish a new procedural schedule. According to U S Rail, “the parties are at an impasse and the Board’s intervention is necessary.” In response, Brookhaven filed a letter on January 4, 2010, objecting to lifting of the stay. Brookhaven maintains that good faith negotiations are continuing and disagrees that an impasse has been reached. Additionally, on January 19, 2010, Brookhaven filed a motion to strike U S Rail’s December 30, 2009 letter in its entirety, or in the alternative, to strike all portions of the letter relating to the content and conduct of the settlement negotiations between the parties. On January 26, 2010, U S Rail filed a response opposing Brookhaven’s motion to strike and renewing its request for relief.

The Board believes that a meeting between the parties, facilitated by Board staff, could be beneficial in this case. Therefore, the parties to this proceeding—U S Rail and Brookhaven—are directed to appear at the Board's offices at 395 E Street, S.W, Washington, DC, at 10:00 AM Eastern Standard Time on Thursday, February 25, 2010, to take part in such a meeting. The purpose of the meeting is to explore the possibility of resolving the parties' issues in this case. In addition to the parties' representatives, at least one principal of each party with authority to act on behalf of that party shall participate in the meeting.

In the interim, U S Rail's request to lift the stay imposed in the June Decision and Brookhaven's January 19, 2010 motion to strike will be held in abeyance.

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

It is ordered:

1. A meeting in this proceeding is scheduled for 10:00 AM Eastern Standard Time on February 25, 2010, as discussed above.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.