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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
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December 22, 2015
Part of
Public Record

FINANCE DOCKET NO. 35141

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

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

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Dated: December 22, 2015

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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

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.

“Board”) grant Respondents an extension until December 16, 2015.³ The Board granted Respondents’ Motion for Extension of Time on December 14, 2015.⁴

As discussed in Respondents’ Motion for Extension of Time,⁵ the parties have been engaged in settlement discussions which possibly renders moot the need for Respondents to file the motion to strike as prepared. Those discussions are continuing and Respondents now believe they will be concluded during January 2016, or discontinued. Assuming that the parties reach a settlement (and that the Court approves the settlement outline and final agreement), the need for Respondents to move to strike that filing would be moot. Accordingly, as the parties need further time to continue their settlement discussions and reach a final settlement, 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 February 1, 2016.

³ *Id.* at 2.

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

⁵ See Motion for Extension of Time at 2.

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 February 1, 2016.

Dated: December 22, 2015

Respectfully submitted,

Brookhaven Rail Terminal and Brookhaven Rail, LLC

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2015, I caused to be served the foregoing *Second Motion for Extension of Time to File Motion to Strike or Otherwise Respond to Town's Objection to Town's Filing* by first-class mail, postage prepaid, upon the following Parties of Record in this proceeding:

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