

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35141

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

Decided: March 23, 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 a decision served on December 22, 2008, the Board granted U S Rail an extension of time to reply to Brookhaven’s motion to compel until January 15, 2009, and Brookhaven’s request to extend the time for filing its reply to U S Rail’s supplemental petition until January 29, 2009.

In decisions served on January 15 and February 17, 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 and Brookhavens reply to U S Rail’s supplemental petition due April 1, 2009.

On March 16, 2009, U S Rail and Brookhaven filed a joint request seeking another 30-day 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 April 16, 2009 and Brookhaven seeks to extend the deadline for its reply to U S Rail’s supplemental petition until May 1, 2009. The parties state that they are continuing to actively negotiate with respect to settlement of this matter and each party consent to the other’s extension request.

The parties' requests are reasonable and will be granted. U S Rail's reply to Brookhaven's motion to compel will be due April 16, 2009, and Brookhaven's reply to U S Rail's supplemental petition will be due May 1, 2009.

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

It is ordered:

1. U S Rail's reply to the motion to compel is due April 16, 2009.
2. Brookhaven's reply to the supplemental petition is due May 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