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June 25, 2020

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: FD No. 36398, *Brookhaven Rail LLC – Construction and
Operation Exemption – In Suffolk County, New York*

Dear Ms. Brown:

Accompanying this letter is a Petition for Exemption filed in the referenced docket on behalf of Brookhaven Rail LLC, seeking an exemption from the prior approval requirements of 49 U.S.C. § 10901 for the construction and operation of new lines of railroad. Please note that required filing fee for this Petition is being paid electronically pursuant to the Board's procedures.

Please do not hesitate to call me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Thomas W. Wilcox". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Thomas W. Wilcox
Attorney for Brookhaven Rail LLC

FILED
June 25, 2020
SURFACE
TRANSPORTATION BOARD

Enclosures

FEE RECEIVED
June 25, 2020
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EXPEDITED CONSIDERATION REQUESTED
CONTAINS COLOR IMAGES

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36398

**BROOKHAVEN RAIL LLC – CONSTRUCTION AND OPERATION EXEMPTION
- IN SUFFOLK COUNTY, NEW YORK**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, Brookhaven Rail LLC (“BHR”), a Class III rail carrier, hereby petitions the Surface Transportation Board (“Board” or “STB”) for an exemption from the full requirements of 49 U.S.C. § 10901 and the Board’s regulations at 49 C.F.R. Part 1150 subparts A and B governing an application for the construction and operation of a new line of railroad to be located in Suffolk County, Town of Brookhaven, Hamlet of Yaphank, New York. As set forth hereinbelow, BHR asserts that an exemption from the full application requirements is warranted in this particular case because they are not necessary to carry out the rail transportation policy (“RTP”) set forth in 49 U.S.C. § 10101, the proposed construction is limited in scope, and Board regulation is not necessary to protect any shipper from an abuse of market power. BHR also requests that the Board expeditiously grant the authority sought by this Petition subject to the completion of the Board’s environmental review process. This Petition is supported by the attached Verified Statements of Mr. James Newell, former President of BHR (“Newell V.S.”), and of Mr. William Flower, Vice President for Corporate and Public Affairs for

Winters Brothers Waste Systems of Long Island (“Winters Bros.”), whose non-carrier affiliate Shamrock Rail, LLC purchased the membership shares of BHR in May 2020. (“Flower V.S.”).

I.
Description of Petitioner

BHR is a Class III rail carrier that provides common carrier freight service to shippers located at the Brookhaven Rail Terminal site (“BRT”) in Suffolk County, Town of Brookhaven, Hamlet of Yaphank, NY. The BRT includes four parcels of land totaling 355 acres which have been historically referred to as Parcels “A”, “B,” “C,” and “D.”¹ A Map showing the four parcels of the BRT is attached as Exhibit A to this Petition. The BRT parcels are adjacent to the mainline of the Long Island Rail Road (“LIRR”) which runs in a generally east-west direction from New York City to Greenport, Suffolk County New York. The New York & Atlantic Railway (“NY&A”) is LIRR’s designated operator of this line for freight rail services. Parcel A (approximately 28 acres in size) is located north of the LIRR main line. In 2010, the Board granted a petition for exemption from the requirements of 49 U.S.C. §10901 filed by a BHR predecessor-in-interest, U.S. Rail Corporation, seeking authorization to construct and operate 18,000 feet of railroad line on Parcel A for the purpose of providing common carrier rail service and transloading operations on that tract of the BRT.² Most of the authorized tracks were constructed in addition to a west-turning switch and interchange tracks connecting Parcel A to the LIRR main line.³ In January 2011 the Board approved a “corporate family transaction exemption” that involved the creation of U. S. Rail New York (“USR-NY”) and the acquisition by USR-NY of “the leasehold

¹ Newell V.S. at 1.

² STB Docket No. Finance Docket No. 35141, *US Rail Corporation – Construction and Operation Exemption – Brookhaven Rail Terminal* (Served September 9, 2010).

³ *Id.* at 2.

rights, and construction and operation rights of US Rail Corporation . . . related to the Brookhaven Rail Terminal.”⁴ USR-NY commenced providing common carrier rail service on Parcel A in September 2011. The membership interests of USR-NY were subsequently purchased by Oakland Transportation Holdings (“Oakland”) in early 2012, and in March 2012 the name of the railroad was changed from USR-NY to “Brookhaven Rail LLC.”⁵ BHR’s services to shippers on Parcel A have primarily consisted of interchanging empty and loaded railcars with NY&A via the switch connection and interchange.⁶ Under that arrangement, the NY&A interchanges approximately 2,800 inbound carloads annually with BHR, who delivers them to shippers located on Parcel A and then returns empty cars to the interchange point. NY&A pays BHR a switch charge for cars interchanged between the two carriers. BHR also provides rail carrier and transloading services on the BRT, and the marshalling and receipt of freight rolling stock on the BRT for transportation by NY&A over the rail lines of the LIRR.⁷

⁴ Docket No. FD 35458, *Gabriel D. Hall—Corporate Family Transaction Exemption—US Rail New York, LLC and US Rail Corporation* (served January 11, 2011).

⁵ On March 28, 2012, Oakland and USR-NY filed papers with the State of Michigan’s Department of Licensing and Regulatory Affairs to change the name of the railroad to “Brookhaven Rail LLC,” without a comma between “Rail” and “LLC.” See Exhibit B to this Petition. However, a letter subsequently filed by counsel for USR-NY in Docket No. FD 35458 on May 15, 2012 for the purpose of informing the Board of the name change erroneously stated that the new name was “Brookhaven Rail, LLC,” with a comma inserted. Consequently, all subsequent filings and decisions before this Board involving BHR have referred to “Brookhaven Rail, LLC.” See, e.g., Docket No. FD 35635, *Nevada 5, Inc. and Oakland Transportation Holdings LLC—Control Exemption—GTR Leasing LLC and US Rail Holdings LLC* (served June 5, 2012) and Docket No FD 35819, *Brookhaven Rail Terminal and Brookhaven Rail, LLC – Petition for Declaratory Order*, to name two such dockets. The error was discovered by Winters Bros. and Shamrock Rail, LLC during the process of the latter purchasing the membership shares of BHR on May 11, 2020. This Petition accordingly reflects the correct name of BHR as recorded with the State of Michigan in March 2012.

⁶ Newell V.S. at 2.

⁷ *Id.* As shown on Exhibit A, Parcels B (approximately 20 acres), and C (approximately 73 acres) are contiguous tracts that are also located north of the LIRR main line. Parcel A and Parcel B are separated by a tract of land owned by the Long Island Power Authority (“LIPA”). Approximately 90 linear feet of track extend from Parcel A over the LIPA land and approximately

Effective May 11, 2020, all of the membership shares of BHR were acquired from Oakland by Shamrock Rail, LLC, a non-carrier affiliate of Winters Bros.⁸ Winters Bros. is the premier solid waste and recycling company located on Long Island, New York. Winters Bros. and its predecessor family-owned and operated companies have provided waste disposal and recycling services on Long Island for over 60 years.⁹

II.

Description and Purpose of the Project and Planned Operations

A. Description of the Project

This Petition encompasses the proposed construction by BHR and its subsequent operation of approximately 23,680 feet of new rail line for the purpose of enabling BHR to provide common carrier service to shippers as Parcel D of the BRT is developed into a rail-served industrial park. A map and schematic of the proposed configuration of the new rail line are attached as Exhibit C to this Petition. As currently designed, the project will entail a combination of main line tracks and storage tracks constructed in three phases as Parcel D is developed. In general, over the three phases the tracks will consist of (1) an approximately 11,000 foot, stub ended rail line that will run south from a connection with the LIRR; (2) an approximately 4,000 foot line of rail that will run off of the main section of track to enable service to shippers locating on the eastern portion of Parcel D; and (3) approximately 9000 feet of track to be utilized for storage.¹⁰ In addition to

another 50 feet of track extend onto Parcel B. *Id.* at 2-3. There is currently no rail track on Parcel C. Parcel D (approximately 228 acres), which is discussed in greater detail in this Petition, is located south of the LIRR main line, which physically separates Parcel D from the other three parcels to the north. This section of the BRT includes a 65-acre Conservation Easement in favor of the Town of Brookhaven. *Id.* There is presently no rail infrastructure on Parcel D of the BRT.

⁸ Flower V.S. at 2.

⁹ *Id.*

¹⁰ Newell V.S. at 3-4; *See* Exhibit C.

purchasing the membership shares of BHR through Shamrock Rail, LLC, Winters Bros. has contracted with Oakland, the owner of Parcel D, for its Shamrock Rail affiliate to also acquire Parcel D, which sale is expected to be consummated later in 2020.¹¹

While the long-term plan for Parcel D is to establish transloading and other rail-served activities similar to those provided by BHR on Parcel A,¹² the immediate plan is for the construction and potential operation by BHR of a solid waste rail transfer facility on approximately 50 acres of Parcel D. This facility, which would handle and process for rail transportation construction and demolition debris (“C&D”) and municipal solid waste (MSW), is badly needed on Long Island to create additional transport and disposal capacity for the millions of tons of such waste generated by the communities of Long Island annually.¹³ To facilitate the construction of this facility co-extensively with the construction of necessary rail infrastructure, BHR is accompanying this Petition with a Petition for Exemption from the full requirements of 49 U.S.C. § 10909 and 49 C.F.R. Part 1155 in order to obtain an exemption from a local land use and zoning law that would otherwise prevent such a facility from being constructed on Parcel D.

BHR would oversee the construction of the rail line covered by this Petition, and it would own and operate the rail line and related tracks once constructed. As mentioned above and explained in Section III below, expansion of the BRT’s transloading operations through

¹¹ Flower V.S. at 2.

¹² The future development of Parcel D other than the solid waste transfer facility has generally been anticipated by BHR and the owners of the land comprising the BRT to consist of rail-to-truck and truck-to-rail transload operations similar to those that occur on Parcel A. To the extent that type of development occurs, it will be subject to the 2016 Stipulation of Settlement, VDEIS, and Negative Declaration, discussed in Section III *infra*. The 2016 Stipulation of Settlement would require development and land use activities other than for rail transportation to be subject to applicable federal, state, and local laws.

¹³ Flower V.S. at 3.

construction of new tracks on Parcel D has been under consideration for several years,¹⁴ and a “Parcel D Conceptual Track Plan” for such construction and potential development has already been the subject of extensive prior environmental, engineering, and other analysis. This configuration envisions a stub-ended line running essentially in a north-south direction from the LIRR main line and to the southern boundary of Parcel D. A diagram of the Parcel D Conceptual Track Plan is attached to this Petition as Exhibit D.¹⁵ The configuration of the track proposed by this Petition generally follows the Parcel D Conceptual Track Plan, with the exception that instead of the north end of the line connecting to tracks that were planned to be constructed on Parcel C through an underpass under the LIRR main line, the new line will connect to the LIRR through the installation of a new switch and southeast turning #10 turnout that will enable the NY&A to directly interchange traffic to and from on Parcel D with BHR.

A similar track connection configuration off the LIRR main line was approved by the STB in Docket No. 35141 and it is the means by which BHR presently provides rail service to Parcel A.¹⁶ BHR has developed very good working relationship with the NY&A through their coordinated provision of rail service to shippers on Parcel A.¹⁷ BHR and NY&A have discussed the proposed new switch and interchange for Parcel D and NY&A is supportive of the location as well as the proposed plans for the two railroads to coordinate service to shippers that locate on Parcel D and request freight rail service.¹⁸ On June 12, 2020 BHR received a letter from the

¹⁴ Construction of additional tracks on Parcels B and C has also been proposed and studied, but to date that construction has not taken place, nor is there any indication that such track or the originally planned underpass under the LIRR main line between Parcel C and Parcel D will be constructed in the foreseeable future.

¹⁵ This plan is discussed in more detail in the 2016 Settlement document discussed in Section III.

¹⁶ Newell V.S. at 4.

¹⁷ *Id.*

¹⁸ *Id.*

president of NY&A confirming that the proposed switch and interchange does not raise any concerns for the NY&A.¹⁹ A request has already been made on behalf of BHR through NY&A to the LIRR to provide an installation cost estimate and scheduling options for the proposed new switch²⁰

Finally, BHR, has retained HDR Engineering (“HDR”) to design and assist with the construction of the new rail line once it is approved by the Board. HDR will coordinate with Cameron Engineering & Associates, which has been engaged to provide site design and civil engineering services in connection with the development of Parcel D.

B. Purpose of the Project and Planned Operations

As stated, the purpose of the new construction is to establish common carrier freight rail access to Parcel D of the BRT and for BHR to hold out to provide common carrier freight service to facilitate Parcel D’s long-planned development as rail served industrial park as shippers locate on the property and request freight rail service. It is contemplated that such operations will largely consist of the truck-to-rail and rail-to-truck transload operations and other services that BHR has provided on Parcel A since rail operations began on the BRT in 2011. However, the immediate purpose for the new lines of railroad proposed herein will be to provide service to companies utilizing the aforementioned proposed solid waste rail transfer facility, the need for which and its planned operations are briefly summarized below.

Long Island, consisting of Nassau and Suffolk Counties, has a population of approximately 2.8 million people who generate around 7,100 tons of MSW and C&D *every day*. This amounts to

¹⁹ *Id.*, Exhibit 1.

²⁰ *Id.*, Exhibit 2.

approximately 2.6 million *tons* of MSW and C&D each year.²¹ There is presently a solid waste management crisis on Long Island, which is the acute lack of adequate solid waste transport and disposal capacity.²² As a result of law and regulations to protect Long Island's sole source aquifer drinking water supply, there are no landfills on Long Island that accept putrescible MSW (waste subject to putrefaction or decay) for disposal. Accordingly, all putrescible MSW generated on Long Island must either be incinerated or trucked off Long Island for disposal in landfills in New Jersey, Pennsylvania, Ohio, Virginia, West Virginia and upstate New York. Each day thousands of tons of waste are trucked off Long Island for disposal.²³

There are only two landfills on Long Island that accept C&D for disposal. One is the Town of Brookhaven's ("Town") municipal landfill in Yaphank, Suffolk County, NY. This landfill is scheduled to close in 2024 and a new landfill will not be created to replace it.²⁴ Each year, the Brookhaven Landfill accepts approximately 2,000 tons of dredge spoil, 24,000 tons of street-sweeping refuse, 370,000 tons of incinerator ash, and more than 800,000 tons of C&D waste generated throughout the region, from New York City to Montauk.²⁵ The imminent closure of the Brookhaven Landfill necessitates that the communities of Long Island must quickly develop a means to efficiently process and dispose of that waste. Trucking has been the primary mode of hauling waste off Long Island since the 1980s. However, hauling waste off of Long Island using single tractor trailers will not be a viable solution for the volume of waste which will need transport and disposal as a result of population growth and the closure of the Brookhaven Landfill. Trucking

²¹ Flower V.S. at 3.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 3-4; *See also* <https://www.lirecycling.org/news-updates/2019/3/21/brookhaven-landfills-closure-could-trigger-a-waste-crisis>.

is simply not an efficient and environmentally acceptable means of managing the large volume of Long Island's waste long term.²⁶ Moreover, the large numbers of trucks that are needed to haul waste off Long Island exacerbates existing highway congestion, accelerates the deterioration of already overburdened and aging road and bridge infrastructure, and severely impacts air quality in an already non-attainment region.

A single truck is only capable of hauling between 20 to 24 tons of waste at a time. On the other hand, a single railcar can carry 100 to 105 tons of waste at a time.²⁷ As a result, whereas it would take approximately 44,000 truckloads to transport one million tons of MSW and C&D waste, the same amount of waste could be transported in only 9,523 railcars.²⁸ Thus, the use of railroads to move waste off Long Island is more efficient, and environmentally friendly as it would reduce truck traffic and greenhouse gas emissions. The ability of Long Island to dispose of the approximately 2.6 million tons of MSW and C&D waste its inhabitants generate each year will soon disappear if new means to process, transport and dispose of that waste – particularly additional rail transport and disposal capacity alternatives - are not quickly developed and implemented.

The rail operations contemplated by BHR over the newly constructed track would be similar to those it conducts on Parcel A, namely interchanging loaded and empty cars of shippers and off of Parcel D with the NY&A pursuant to an interchange agreement and commercial agreement governing marketing and switching operations.²⁹ The expectation is that the solid waste rail transfer facility would operate to receive material from truck delivery 14 hours per day (4 am

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Newell V.S. at 4.

to 6 pm) during the week, and up to 8 hours on Saturdays.³⁰ The facility would not routinely operate on Sundays or holidays. The facility will have the capability to process and transload material 24 hours per day, as may be required by the tonnage of incoming material. However, the actual movement of railcars on-site will be determined by the tonnage of material processed and to be transloaded, and movement of railcars off-site will be determined by service provided by the NY&A.³¹ Current estimates are that in the first year of operations 133 trucks will deliver approximately 2,000 tons of waste and/or recyclables each day to be processed, and that this number will increase to 400 trucks per day delivering up to 6,000 tons of materials by the 5th year of operation.³² Loaded railcars would be assembled by BHR into 32-car blocks for delivery to the NY&A interchange. The expectation is for 1 to 2 trains per day in years 1 and 2, rising to a constant 2 trains per day by the end of year 2 of operations.³³ These numbers are all subject to change if the Town of Brookhaven landfill closes sooner than anticipated in 2024.

Operations for other rail shippers that locate on Parcel D in the future and request rail service are expected to be similar to those BHR provides to shippers on Parcel A, but numbers of carloads and commodity types cannot be estimated or predicted, respectively, at this time.

III.

Environmental Review

A. Prior Review of the Proposed Track by State and Local Entities

The Parcel D Conceptual Track Plan referenced above and potential development of Parcel D for freight rail service has been the subject of extensive prior environmental review, engineering design, and other analysis. This review was prompted by the settlement of litigation commenced

³⁰ *Id.* at 4-5.

³¹ *Id.*

³² *Id.*

³³ *Id.*

in 2014 by the Town in the United States District Court for the Eastern District of New York (“District Court”)³⁴ over a controversy relating to activities on Parcels B and C of the BRT by the owners of those parcels in connection with the planned expansion of the BRT. The litigation concluded with a So-Ordered Stipulation of Settlement entered by the District Court on March 17, 2016 (“2016 Settlement”), which incorporated the potential expansion plans for Parcel D. Pursuant to the settlement terms, in addition to resolving the controversy respecting the activities on Parcels B and C, the Town and its consultant were provided with the Parcel D Conceptual Track Plan and certain other “Additional Plans” and development criteria for their evaluation. Also included in the 2016 Settlement was the agreement of all parties that a Voluntary Draft Environmental Impact Statement (“VDEIS”) would be prepared pursuant to New York State law³⁵ by the Town’s consultant, while the Town served as the “lead agency” under that statute.

The VDEIS, which included an assessment of potential environmental impacts of development on Parcels B, C and D, was completed in August of 2017. The 2016 Settlement also requires the Town to apply and consider the expansion of rail infrastructure at the BRT pursuant to Section 85-894 of the Town Code, that is, as if it is for a municipal or governmental purpose. The VDEIS examined the potential environmental impacts of the Parcel D Conceptual Track Plan, Additional Plans, and certain other potential rail served development on Parcel D anticipated to occur during what was deemed “Phase 2” of the BRT expansion. In terms of rail traffic, the VDEIS assumed the expanded BRT including Parcel D would support two freight deliveries of up

³⁴ *Town of Brookhaven v. Sills Road Realty, LLC, Brookhaven Rail LLC f/k/a U.S. Rail New York, LLC, Brookhaven Terminal Operations, Oakland Transportation Holdings, LLC, Sills Expressway Associates, Watral Brothers, Inc. and Pratt Brothers, Inc.*, Docket No. 14-cv-02286, U.S. District Court for the Eastern District of New York.

³⁵ NYS Environmental Quality Review Act (“SEQR”), NYS ECL Article 8-0101; 6 NYCRR Part 617.

to 100 carloads per day, increasing to three freight deliveries of up to 150 carloads per day within five years.

The submission of the VDEIS to the Town as Lead Agency under SEQR was followed on September 14, 2017 by the issuance by the Town of a Negative Declaration and Notice of Determination of Significance Finding Declaration, (“Negative Declaration”) by which the Town determined that the proposed expansion of the BRT, including the potential development of Parcel D, “will not have a significant effect on the environment.”³⁶ The finding of no significant impact was supported by the extensive analysis in the VDEIS, and concluded that “[p]otential significant adverse impacts associated with implementation of the proposed action have been evaluated and mitigation measures have been provide for impacts identified and adverse and alternatives to the proposed action have been evaluated.”³⁷

B. Discussions with the Board’s Office of Environmental Analysis

Discussions with the Board’s staff and members of the Office of Environmental Analysis (“OEA”) about Winters Bros. or an affiliate’s potential purchase of the membership shares of BHR and Parcel D and the planned rail construction and development of Parcel D commenced in the Fall of 2019. An initial meeting was held on October 23, 2019 with the STB’s Office of Public Assistance, Governmental Affairs, and Compliance (“OPAGAC”) to discuss the proposed rail construction project. This meeting was followed by another meeting on January 24, 2020 with Director of the OEA and other members of OEA and OPAGAC to discuss both the rail construction project and the proposed solid waste rail transfer facility. Subsequently OEA staff was provided complete copies of the aforementioned 2016 Settlement, VDEIS, and Negative Declaration to

³⁶ Negative Declaration at 1.

³⁷ *Id.* at 3.

supplement the Board's required environmental review of both projects. On May 14, 2020 BHR submitted a letter to OEA requesting a waiver of the 6-month prefilings notice for rail construction petitions and waiver requests pursuant to 49 U.S.C. § 10909 required by 49 C.F.R. § 1105.10(a)(1). By letter dated May 26, 2020 OEA granted the waiver request. The environmental review of the proposed construction project commenced shortly thereafter, and BHR is coordinating with OEA as requested.³⁸

II. ARGUMENT

A. The Proposed Construction and Operation Meet the Criteria of §10502

Section 10901(c) directs the Board to grant rail construction proposals unless it finds the proposal "inconsistent with the public convenience and necessity."³⁹ "Thus, Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise."⁴⁰ Under 49 U.S.C. § 10502(a), the Board must exempt a proposed track construction from the detailed application process of 49 U.S.C. § 10901 when the Board finds (1) that the process is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the proposal is of limited scope, or (b) the application process is not necessary to protect shippers from the abuse of market power. The Board is to apply the exemption provisions broadly

³⁸ With the approval of the OEA BHR retained ICF to be the Third-Party Consultant to work with OEA to prepare the appropriate environmental review documents.

³⁹ Docket No. FD 36186, *Texas Railway Exchange – Construction and Operation Exemption – Galveston, TX* (served January 17, 2020); citing, *Alaska R.R.—Constr. & Operation Exemption—Rail Line Extension to Port MacKenzie, Alaska*, FD 35095, slip op. at 5 (STB served Nov. 21, 2011), *aff'd sub nom. Alaska Survival v. STB*, 705 F.3d 1073 (9th Cir. 2013).

⁴⁰ Docket No. FD 35544, *DesertXpress Enterprises, LLC and DestertXpress HSR Corporation—Construction and Operation Exemption – In Victorville, Cal. And Las Vegas, Nev.* (served October 25, 2011) at 3; citing *Mid States Coal. for Progress v. STB*, 345 F.3d 520, 557 (8th Cir. 2003); accord Docket No. FD 30186 (Sub-No. 3), *Tongue River Railroad Co., Inc.—Construction and Operation—Western Alignment* (served on Nov. 7, 2007).

in pursuing exemptions for transportation or service that comply with the standards of the exemption statute.⁴¹

As established more fully below, the goals of the RTP will be furthered by exempting the proposed project from the full application requirements under 49 U.S.C. § 10901 and 49 C.F.R. Part 1150 subparts A and B. Moreover, the transaction is clearly limited in scope and regulation by the Board is not necessary to protect shippers from the abuse of market power.

1. An Exemption Will Promote the Rail Transportation Policy

Regulation by the Board of the construction and operation of this approximately 23,680 feet of rail line is not necessary to carry out the RTP expressed in 49 U.S.C. § 10101, which states in pertinent part that: “it is the policy of the United States Government . . . (2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required. . . (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;” . . . (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes; . . . (7) to reduce regulatory barriers to entry into and exit from the industry;...(14) to encourage and promote energy conservation...[and] (15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought

⁴¹ See, e.g., *American Trucking Ass 'ns v. ICC*, 656 F. 2d 1115, 1119 (5th Cir, 1981) (where the court held the ICC was charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards); H.R. Rep. No. 96-1430, at 105 (1980) (the ICC is charged with removing “as many as possible of the Commission's restrictions...”).

under this part.” The Board has frequently applied the relevant provisions of the RTP to the statutory provisions for which the exemption is sought.⁴²

Granting the requested exemption will serve to promote the RTP through the creation of a rail line that will in the short term provide the communities of Long Island with a means to more efficiently transport their MSW and C&D waste off of the Island, but in the longer term will facilitate the planned expansion of rail transloading capacity and other freight rail service at the BRT. Moreover, establishing additional rail infrastructure and service will would reduce the current reliance on truck transportation for MSW and C&D transportation, thereby improving public health and safety by potentially replacing thousands of 24-ton truckloads of such waste and other commodities now hauled on and off of Long Island by truck. Due to the lower environmental and energy impact of utilizing rail to transport MSW and C&D waste, granting the requested exemption will also promote the RTP by permitting the construction and operation of a line of rail that will benefit public health and safety, and encourage and promote energy conservation. Further, granting an exemption would minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry.⁴³ This is particularly true because of the extensive prior environmental, engineering and other analysis of this proposed project, which is being supplemented by the environmental review process by OEA required for new rail construction. Thus, the Board does not need to apply §10901 to the project to implement the RTP.

2. The Transaction is Limited in Scope and Regulation is not Necessary to Protect Shippers from the Abuse of Market Power

⁴² *Alaska Survival v. STB*, 705 F.3d 1073 (9th Cir. 2013) (affirming that §§ 10101(2), (4), (5), (7), and (14) of the rail transportation policy are goals promoted by § 10901).

⁴³ 49 U.S.C. §§ 10101(2), (7).

The proposed construction and operation covered by this Petition easily satisfies the second prong of the statutory requirements of §10502 that “either (a) the proposal is of limited scope, or (b) the application process is not necessary to protect shippers from the abuse of market power.” First, the proposal is of limited scope. The total length of the rail line to be constructed is approximately 23,680 feet, and as stated previously the main section of the tracks is a stub ended track approximately 11,000 feet in length that runs north to south over the length of Parcel D. Another section is an approximately 4,000-foot stub end line that branches off the first to facilitate rail-served industrial development on that section of Parcel D. The remainder of the planned track construction will be used for car storage. The construction will entail a connection to the NY&A via a #10 turnout, the location and design of which are the subject of a request by NY&A on behalf of BHR for cost estimation and scheduling options by the LIRR. The proposed construction would not result in significant changes in operations and significant alterations in the competitive relationships between any railroads. The NY&A already serves Parcel A of the BRT in conjunction with BHR, and the LIRR is the only railroad line connected to the BRT. Moreover, in addition to granting BHR’s predecessor U.S. Rail Corporation exemption authority to construct and operate the tracks on Parcel A of the BRT the Board has routinely granted exemptions for construction of rail lines of similar or greater length.⁴⁴ Second, even though a showing of limited

⁴⁴ See *City of Davenport, Iowa—Construction and Operation Exemption—in Scott County, Iowa*, STB Docket No. FD 35237 (STB Served April 6, 2011) (2.8 miles); *Southwest Gulf Railroad Company—Construction and Operation Exemption—in Medina County, Texas*, STB Docket No. FD 34284, (STB Served May 19, 2003) (7 miles); *The Burlington Northern and Santa Fe Railway Company—Construction and Operation Exemption—Merced County, California*, STB Docket No. FD 34305 (STB Served March 28, 2003) (850 feet); *Public Service Co. of Colo. - Construction Exemption – Pueblo County, Co.* STB Docket No. FD 33862, (Served August 16, 2000 (1500 feet); *The Burlington Northern and Santa Fe Railway Co. – Construction and Operation Exemption – Seadrift and Kamey, TX, supra* (8.5 miles); *Southern Electric Generating Co. – Petition for Exemption – Construction of a Rail Line in Shelby County, AL*, STB Docket No. FD 31498 (STB Served Sept. 19, 1989) (7.5 miles) and *Louisville & Jefferson County Riverport Auth.*

scope is sufficient to meet the requirements of §10502, Board regulation is also not necessary here to protect any shippers from an abuse of market power. The proposed construction will have no adverse impact on rail competition nor would it cause any shippers to lose access to a rail option as a result of the proposed construction. On the contrary, the construction and operation of the railroad line would serve to enhance opportunities for shippers to transport commodities by railroad and provide a competitive, efficient and environmentally sound alternative to truck transportation.⁴⁵

B. The Board Should Conditionally Grant the Requested Exemption on an Expedited Basis, Subject to the Completion of the Board's Environmental Review Process

BHR requests that the Board conditionally approve this Petition for Exemption on an expedited basis subject to the completion of the OEA's environmental review process. Petitioner recognizes that the Board's general policy is to decide the transportation merits of a construction proposal based on a complete record that includes environmental review, absent "unique or compelling circumstances."⁴⁶ BHR submits such circumstances are present here. As explained above, while the overall purpose of the proposed construction project is to facilitate the development of rail-served industries Parcel D in general, and to attract businesses requiring freight rail service, the immediate use of the new tracks will be to serve a proposed solid waste rail transfer facility that must be constructed and operational prior to the Town of Brookhaven's

and CSX Transp. Inc. – In Jefferson City, KY, STB Docket No. FD 31136 (Dec. 22, 1987) (6.7 miles).

⁴⁵ See e.g. Docket No. FD 34391, *New England Transrail, LLC—Construction, Acquisition, and Operation Exemption-in Wilmington and Woburn, MA* (served on March 2, 2004) ("There is no need here to protect shippers from the abuse of market power. Rather, the proposed transaction would enhance competition by providing shippers in the greater Boston area with a new intermodal transportation operation.").

⁴⁶ *Alaska R.R.—Constr. & Operation Exemption—Rail Line Between Eielson Air Force Base (North Pole) and Fort Greely (Delta Junction), Alaska*, FD 34658 (STB served Oct. 4, 2007) at 3.

landfill's anticipated closure in 2024 in order to provide replacement capacity for some of the thousands of tons of waste each day that would otherwise be disposed of there. Given this deadline, consummating the acquisition of Parcel D, completing the design of the rail tracks to serve the proposed facility in compliance with various conditions on that design and construction contained in the 2016 Settlement, VDEIS, and Negative Declaration, and any additional mitigation measures that are an outcome of the Board's NEPA process within that finite timeframe, would be greatly aided by an expedited, conditional ruling on the merits of the Petition pending completion of that process.

Conditional approval of the project will help facilitate the discussions between NY&A, LIRR and BHR concerning the physical location of the required switch and turnout, and their plans for jointly conducting rail operations over the new lines and serving the solid waste rail transfer facility and other rail shippers locating on Parcel D. Finally, information developed during the environmental review process "is separate from the Board's consideration of comments on the transportation merits and proceeds under a separate schedule,"⁴⁷ which schedule is often longer than it takes to decide on the transportation merits.

Expedited conditional approval of this Petition would also be consistent with the "Executive Order on Regulatory Relief to Support Economic Recovery," issued on May 19, 2020. Under that order agencies are directed, in part, to address the economic emergency caused by the COVID-19 pandemic "by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable

⁴⁷ *Great Lakes Basin Transportation, Inc. – Rail Construction and Operation – In Rock County, Wisc., Winnebago, Ogle, Lee, LaSalle, Grundy, and Kankakee Counties, Ill., and Lake and Porter Counties, Ind.*, STB Docket No. FD 35952 (Served June 2, 2017) at 1, n.2.

law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility.”⁴⁸

III. **CONCLUSION**

For the foregoing reasons, BHR respectfully requests that the Board grant this Petition for Exemption to authorize BHR to construct and operate approximately 23,680 feet of new lines of railroad in the Town of Brookhaven, Suffolk County, Hamlet of Yaphank, New York without the need of a full application pursuant to 49 U.S.C. § 10901. BHR also respectfully requests that the Board conditionally grant this Petition on an expedited basis, subject to completion of the Board’s environmental review process.

Respectfully submitted,



Thomas W. Wilcox
Kristine O. Little
GKG Law, P.C.
1055 Thomas Jefferson Street NW
Suite 500
Washington, D.C. 20007
(202) 342-5248

Attorneys for Brookhaven Rail LLC

June 25, 2020

⁴⁸ <https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/>

EXHIBIT A



Line of Long Island Railroad



- Parcel A
- Parcel B
- Parcel C
- Parcel D

Site Location Map | Yaphank, NY

Brookhaven Rail Terminal Expansion
South Side of Expressway Drive South
and East Side of Sills Road

VHB Ref. 29771.00

Source: 2016 NYS Digital Ortho-imagery, NYSITS, 2016.

EXHIBIT B

Michigan Department of Licensing and Regulatory Affairs

Filing Endorsement

This is to Certify that the CERTIFICATE OF AMENDMENT TO THE ARTICLES OF ORG.

for

BROOKHAVEN RAIL LLC

ID NUMBER: D51793

received by facsimile transmission on March 28, 2012 is hereby endorsed

Filed on March 29, 2012 by the Administrator.

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.



In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 29TH day of March, 2012.

Director

Bureau of Commercial Services

BCS/CD-715 (Rev. 04/11)

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS BUREAU OF COMMERCIAL SERVICES	
Date Received	(FOR BUREAU USE ONLY)
This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.	
Name	
Address	
City	State Zip Code
EFFECTIVE DATE:	

Document will be returned to the name and address you enter above.
If left blank document will be mailed to the registered office.

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF ORGANIZATION For use by Limited Liability Companies

(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned limited liability company executes the following Certificate of Amendment:

1. The present name of the limited liability company is:

US RAIL NEW YORK LLC

The identification number assigned by the Bureau is:

D51793

3. The date of filing of its original Articles of Organization was: 12-3-2010

4. Article 1 of the Articles of Organization is hereby amended to read as follows:

The name of the limited liability company is: Brookhaven Rail LLC

5. ☐ The amendment was approved by a majority in interest if an operating agreement authorizes amendment of the articles of organization by majority vote.

☒ The amendment was approved by unanimous vote of all of the members entitled to vote.

This Certificate is hereby signed as required by Section 103 of the Act.

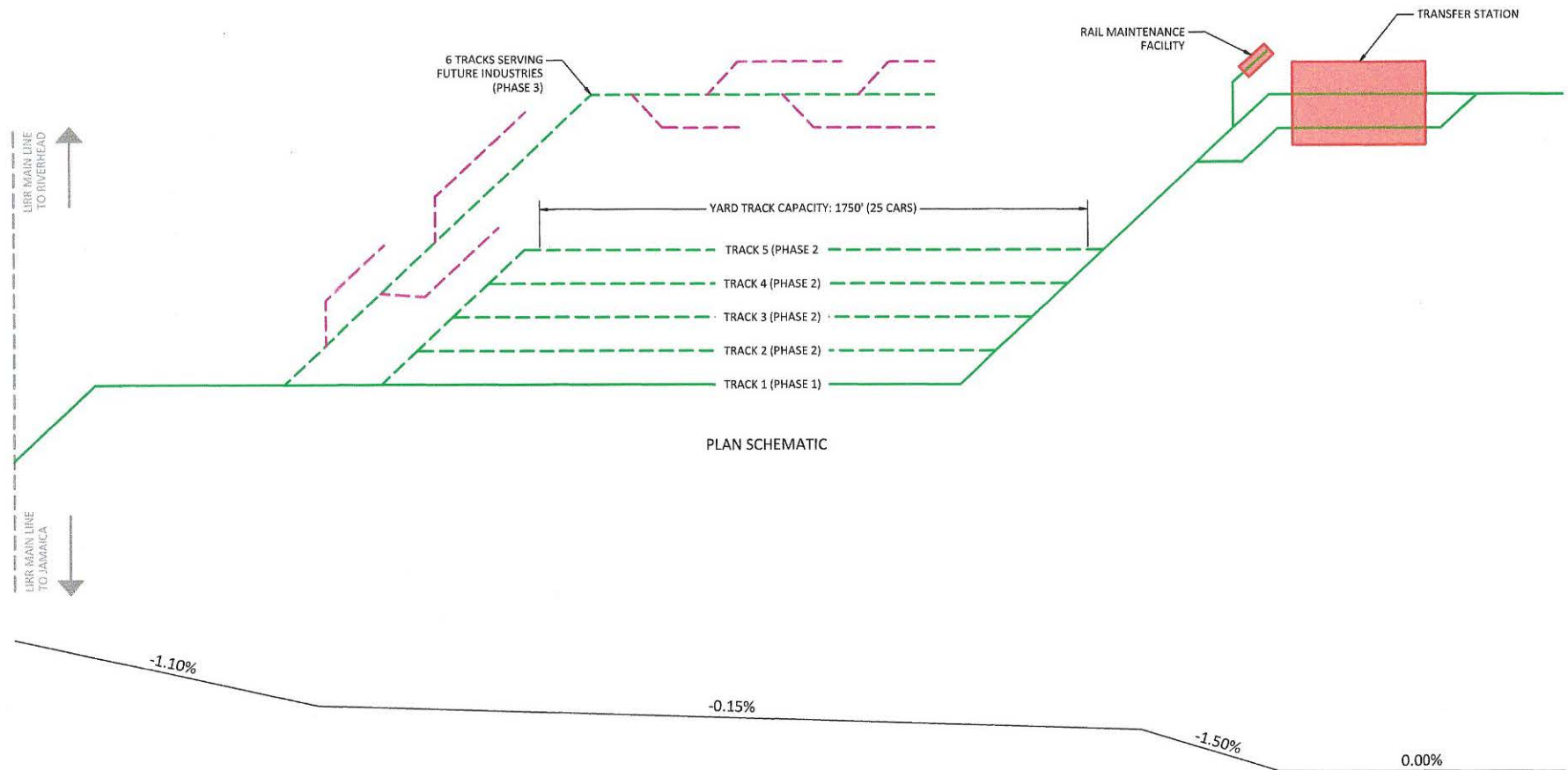
Signed this 28 day of March, 2012

By


(Signature of Member, Manager, or authorized agent)

Ted Mills, Manager
(Type or Print Name and capacity)

EXHIBIT C



IT IS A VIOLATION OF THE PROFESSIONAL LICENSE LAW FOR ANY PERSON TO ALTER THIS DOCUMENT IN ANY WAY UNLESS THAT PERSON IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL. THE LICENSED PROFESSIONAL SHALL AFFIX TO THIS DOCUMENT THE SEAL AND THE NOTATION "ALTERED BY", FOLLOWED BY THE AUTHORIZED SIGNATURE AND THE DATE OF THE ALTERATION.					PE:	DESIGNED BY:	 HEENINGSON, DURHAM & RICHARDSON ARCHITECTURE AND ENGINEERING, P.C.	DRAFT NOT FOR CONSTRUCTION	PROJECT: BROOKHAVEN ENVIRONMENTAL COMPLEX	SCALE: NTS	CONTRACT NUMBER: N/A
						DRAWN BY: D. BAGGOTT			DRAWING TITLE: TRACK SCHEMATIC WITH PHASING	REVISION NUMBER: -	DATE: 2/7/2020
						CHECKED BY:				DRAWING NUMBER: T001	SHEET NO: 01 OF N/A
						APPROVED BY:					

EXHIBIT D

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36398

**BROOKHAVEN RAIL LLC – CONSTRUCTION AND OPERATION
EXEMPTION - IN SUFFOLK COUNTY, NEW YORK**

VERIFIED STATEMENT OF JAMES NEWELL

My name is James Newell. I am the former President of Brookhaven Rail LLC (“BHR”), a Class III railroad. I held that position from 2012 to May 11, 2020, when I formally resigned as President of BHR and was re-hired by the railroad as a consultant, maintaining my prior duties under the new President of BHR. I have been employed in the railroad industry since 1965, including positions with CSX Transportation and its predecessors. A copy of my resume is attached to this Verified Statement. I first began working for BHR in May 2011 when it was named U.S. Rail – New York (“USR-NY”). USR-NY in turn was the successor to U.S. Rail Corporation, which in 2010 received authority from the Surface Transportation Board (“STB” or “Board”) to construct and operate 18,000 feet of track on “Parcel A” of the Brookhaven Rail Terminal site (“BRT”), a 355-acre site which includes four parcels of land in Suffolk County, Town of Brookhaven, Hamlet of Yaphank, New York denominated Parcels “A,” “B,” “C” and “D”. This Verified Statement is offered in support of the Petition for Exemption filed by BHR in

Docket No. FD 36398 for authority to construct and operate up to approximately 23,860 of new railroad line on "Parcel D" of the BRT.

USR-NY commenced common carrier rail service to shippers located on Parcel A of the BRT in September 2011. USR-NY subsequently legally changed its corporate name to Brookhaven Rail LLC in March 2012. BHR presently provides common carrier freight operations over the tracks on Parcel A pursuant to the authority granted by the STB, a Railroad Operating Agreement and Sublicense Agreement with Brookhaven Rail Freight Services ("BRFS"), an affiliate of the owner of Parcel A, and the terms and conditions of its published Tariff BHR 9200. These services have primarily consisted of interchanging empty and loaded railcars with the New York & Atlantic Railroad ("NY&A"), which is the designated provider of freight rail services for the Long Island Rail Road ("LIRR"). The LIRR main line is adjacent to the BRT and in fact separates Parcels A, B, and C from Parcel D, an approximately 228-acre parcel whose northern boundary runs along the LIRR right-of-way. The interchange of cars in and out of Parcel A with NY&A occurs via a switch connection and interchange that turns west from the LIRR track. BHR provides rail carrier services on Parcel A, to include the marshalling and receipt of freight rolling stock on the BRT for transportation by NY&A over the rail lines of the LIRR. Pursuant to an Interchange Agreement and a Joint Commercial and Marketing Agreement, the NY&A interchanges approximately 2,800 inbound carloads annually with BHR, who delivers them to shippers located on Parcel A and then returns empty cars to the interchange point. NY&A collects a switching charge as part of the interline freight rates it charges the shippers on Parcel A and reimburses BHR for its portion of the interline rate. BHR is also paid by BRFS for the marshalling and receipt of rolling stock of BRFS customer Home Depot on Parcel A.

BHR also has had contractual rights to conduct rail operations on Parcels B, C and D of the BRT in the event plans to expand the overall development of the BRT came to fruition. To date, however, the planned expansion has not occurred. Parcels A and B are separated by a tract of land owned by the Long Island Power Authority ("LIPA"). Approximately 90 linear feet of track extend from Parcel A over the LIPA land and approximately another 50 feet of track extend onto Parcel B. Parcel D includes a 65-acre Conservation Easement in favor of the Town of Brookhaven. There is currently no rail track on Parcels C or D.

On May 11, 2020, the membership shares of BHR were sold by Oakland Transportation Holdings LLC to Shamrock Rail, LLC, a non-carrier subsidiary affiliate of Winters Brothers Waste Systems of Long Island, LLC ("Winters"). Shamrock and Winters have also contracted to purchase from Oakland Parcel D of the BRT. Winters and Shamrock intend to work through BHR to construct railroad tracks and infrastructure to establish rail-served industries on Parcel D, with the addition of the construction and operation by BHR of a solid waste rail transfer facility. This facility is much needed by the Town of Brookhaven and Long Island generally due to the impending closure of the Town's landfill and the lack of adequate waste transport and disposal capacity on Long Island generally. BHR would hold out to provide common carrier rail service to all shippers who locate on Parcel D and request rail freight service.

The proposed plans for constructing the new railroad line on Parcel D include the installation of a new switch and #10 turnout on the tracks of the LIRR that will enable cars and trains to turn south onto a newly constructed railroad line that would extend southward approximately 11,000 feet and end near the southern boundary of Parcel D. Construction would be in three phases, with phases two and three contemplating the construction of approximately 4,000 foot line of rail running off of the main section of track to enable BHR to serve to shippers

locating on the eastern portion of Parcel D, and approximately 9000 feet of track to be utilized for storage. BHR has developed a very good working relationship with the NY&A through their coordinated provision of rail service to shippers on Parcel A. I have engaged in discussions with the NY&A on behalf of BHR regarding the placement and construction of the new switch and turnout, and on June 12, 2020 NY&A informed BHR that it does not object to BHR's planned switch connection and turnout. See Attachment 1. Previously, a request was made to LIRR on April 17, 2020 by NY&A on behalf of BHR to provide an installation cost estimate and scheduling options for the proposed new switch. See Attachment 2. My understanding is that NY&A and BHR also plan to enter into interchange and marketing agreements that are similar to the agreements the companies already have in place for the two railroads' combined provision of service to shippers on Parcel A.

BHR expects that the rail operations over the newly constructed track would be similar to those it conducts on Parcel A, namely interchanging loaded and empty cars of shippers and off of Parcel D with the NY&A pursuant to an interchange agreement and commercial agreement governing marketing and switching operations. However, BHR would also serve the solid waste rail transfer facility to be constructed at the southern end of Parcel D. This facility is expected to receive material from truck delivery 14 hours per day (4 am to 6 pm) during the week, and up to 8 hours on Saturdays. The facility will not routinely operate on Sundays or holidays. The facility will have the capability to process and transload material 24 hours per day, as may be required by the tonnage of incoming material. However, the actual movement of railcars on-site will be determined by the tonnage of material processed and to be transloaded, and movement of railcars off-site will be determined by service provided by the NY&A. Current estimates are that in the first year of operations 133 trucks will deliver approximately 2,000 tons of waste and/or

recyclables each day to be processed, and that this number will increase to 400 trucks per day delivering up to 6,000 tons of materials by the 5th year of operation. Loaded railcars would be assembled by the BHR into 32-car blocks for delivery to the NY&A interchange. The expectation is for 1 to 2 trains per day in years 1 and 2, rising to a constant 2 trains per day by the end of year 2 of operations. These numbers are all subject to change if the Town of Brookhaven landfill closes sooner than anticipated in 2024.

Operations for other rail shippers that locate on Parcel D in the future are expected to be similar, but carloads and commodities cannot be estimated or predicted, respectively, at this time. BHR would hold out to provide common carrier rail service to rail shippers who locate on Parcel D and request rail service.

James R. Newell
121 Kingfisher Drive
Ponte Vedra Beach, Fl. 32082

Cell Phone 646-302-1432

EMAIL: jnewell@oaklandtransportation.net

SUMMARY: Over 54 years of Transportation Operations including all phases of Budgets, Cost Analysis, Logistics, Asset Utilization, Supply Chain Management, Manpower, Safety, Engineering, Mechanical, Labor Relations, and Network train movements. Directed and maintained measurements to ensure all objectives and company goals were being attained. Has expert skill in crisis management, disaster recovery, and technical improvements of rail operations. Directed and managed reroutes of train operations interacting with all other Class 1's, Regional Railroad's and Short Line Railroads. Managed and developed new entity of Brookhaven Rail Terminal on Long Island New York including long term strategy, business development, Safety, and Operational issues. Owned and operated two other personal business entities.

EXCEPTIONAL ACOMPLISHMENTS: Transportation Manager for the first successful Business Unit on CSX Transportation. Designed and implemented two new divisions of CSX in Nashville, Tennessee and Cumberland, Maryland. Designed and implemented the operating plan that opened the traffic flows from the acquisition of Conrail by CSX and NS in 2000/2001. Designed the plan and implemented the "Engineering Jamboree" on CSX resulting in \$3,500,000.00 savings in the first year. Designed, directed, and implement train operations, security, and logistics in Atlanta, Georgia during the 1994 Olympic Games receiving high accolades from the President and CEO of CSX. Directed train operations during B&O Double track project. Owned and operated First Cartage Services bringing the company from the beginning of bankruptcy at 3% of business to handling 99% of the business in two years.

EXPERIENCE

05/20-Present	Rail Consltant to Winters Brothers Waste and Brookhaven Rail
2011-05/20	President, Brookhaven Rail, LLC and Chief Operating Officer, Oakland Transportation Holdings, LLC
2004-2011	President TLA Rail Logistics
2003-2004	General Mgr Network Operations CSX, Jacksonville, Florida
2002-2003	Division Manager Atlanta, Ga.
2001-2002	General Manager Network Operations, CSX, Jacksonville, Florida
2000-2001	General Manger Cumberland Division, CSX, Cumberland, Maryland
1998-2000	General Manager Network Operations, Jacksonville, Florida
1997-1998	Superintendent-Operations, B&O Double Track Project, Jacksonville, Florida
1996-1997	Superintendent-Transportation, Atlanta Service Lane, Jacksonville, Florida
1994-1996	Division Superintendent Nashville and Atlanta Divisions
1992-1994	Asst. Division Superintendent, Atlanta Division, Atlanta, Georgia
1991-1992	Superintendent Operations, Fertilizer Business Unit, Tampa, Florida
1990-1991	Terminal Superintendent, Tampa Division, Mulberry, Florida
1978-1990	Trainmaster, Tampa Division including Phosphate Territory of Bone Valley

EDUCATION

1997	Jacksonville University, Masters Business Administration
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EXHIBIT 1



June 12, 2020

Joseph M. Winters, President
Brookhaven Rail, LLC
120 Nancy Street
West Babylon, NY 11704

Re: Surface Transportation Board Petition for Construction and Operation Exemption – Parcel D

Dear Mr. Winters:

I am the President of New York & Atlantic Railway ("NYA"), which is a class III carrier that provides freight service in Long Island, NY on tracks and rail infrastructure owned by The Long Island Rail Road ("LIRR"). NYA understands Brookhaven Rail, LLC ("BHR") soon will be filing a Petition for Construction and Operation Exemption with the Surface Transportation Board (the "Petition"). NYA does not oppose the Petition.

NYA currently provides freight rail service to Parcel A of the Brookhaven Rail Terminal site ("BRT") in conjunction with BHR via a switch connection located at LIRR Main Line MP 57. NYA interchanges railcars (approximately 2,800 revenue carloads annually) with BHR to and from Parcel A over the switch connection.

We understand the Petition will seek authority for BHR to construct and operate a line of rail on what is known as Parcel D of the BRT in Yaphank, N.Y. BHR has advised NYA of its plan to access Parcel D via a new switch connection installed on the LIRR tracks and right-of-way approximately 2,500 feet east of the existing switch to Parcel A and turning south onto Parcel D. This plan does not raise any concerns for NYA.

NYA is following its procedure governing requests for the construction of new switches, and has submitted a letter to the LIRR requesting a cost estimate and scheduling options for the installation of the switch in the Yaphank area. NYA expects soon to send BHR a draft letter agreement governing the rights and obligations of the parties in connection with the construction of the switch.

We look forward to working with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "JB", with a stylized flourish at the end.

James Bonner, President
New York & Atlantic Railway

EXHIBIT 2



April 17, 2020

Long Island Rail Road
Mr. Glenn Greenberg, PE – Chief Engineer
93-59 183rd Street (Mail Code 3146)
Hollis, New York 11423

Re: Turnout Installation-Main Line Branch Mile Post 57.5 (Yaphank area)

Mr. Greenberg,

We are requesting a cost estimate and schedule options for the installation of a #10 right hand turnout (facing point move east) at approximately Mile Post 57.5 (Yaphank area) on the LIRR Main Line. The #10 switch panels will be pre-assembled by a private contractor, requiring placement on the LIRR Main Line by LIRR Force Account.

New York & Atlantic Railway has been in discussions with a potential client who intends to transfer freight from the referenced point via the services of New York & Atlantic Railway. Anticipated rail car volumes are as many as 10 cars per day with future opportunities for 20 or more rail cars per day.

Current plans are for the private entity to construct a rail yard facility south of the existing LIRR Right of Way. Attached is a location sketch identifying proposed installation.

Please contact me with questions or concerns.

Sincerely,

James Bonner
President New York & Atlantic Railway

Attachments: Yaphank Concept Layout

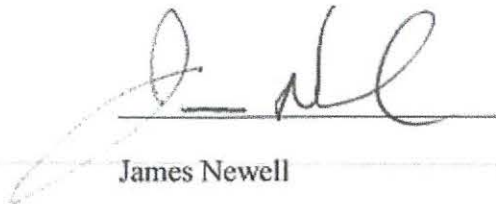
cc: Charles Samul – Director Sales and Marketing-New York & Atlantic Railway

Verification

I, James Newell, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed: June 23, 2020

A handwritten signature in black ink, appearing to read 'J. Newell', is written over a horizontal line. The signature is fluid and cursive.

James Newell

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36398

**BROOKHAVEN RAIL LLC – CONSTRUCTION AND OPERATION
EXEMPTION - IN SUFFOLK COUNTY, NEW YORK**

VERIFIED STATEMENT OF WILLIAM FLOWER

My name is William Flower. I am the Vice President for Corporate and Public Affairs for Winters Brothers Waste Systems of Long Island (“Winters Bros.”). Winters Bros. is a privately held family owned and operated premier solid waste management and recycling company based in West Babylon, New York. Winters Bros. and its predecessor family-owned and operated companies have been providing solid waste collection, recycling, transport and disposal services on Long Island since 1950. I have held this position since March 1, 2015. I have worked in the solid waste management industry for more than 36 years, which included holding various positions at national waste management companies. Prior to my work in the private sector, I served at the Illinois Environmental Protection Agency (“IEPA”). I worked at the IEPA for 7 years in the Director’s Office as a Public Information Officer. A copy of my resume is attached to this statement.

In addition to this work experience, I am a member of the Solid Waste Association of North America, and also represent Winters Bros. in the National Waste and Recycling Association, which provides me with the opportunity to follow developments in the industry as well as regulatory initiatives. Through this work and service experience I have become very familiar with solid waste management operations, regulations and policy.

This Verified Statement is offered in support of the Petition for Exemption of Brookhaven Rail LLC ("BHR") in Docket No. FD 36398 for the construction and operation of new railroad line to be located in Yaphank, New York. The proposed new line of rail will involve 23,360 feet of track to be constructed on an approximately 229-acre parcel of land, known as Parcel D of the Brookhaven Rail Terminal ("BTR"). BHR has been the Class III railroad providing freight services to Parcel A of the BTR since 2011. On May 11, 2020 the membership shares in BHR were acquired by Shamrock Rail, LLC, a non-railroad affiliate of Winters Bros. However, BHR's status as an independent Class III short line railroad was unchanged by the transfer of its membership shares to Shamrock Rail, LLC.

Winters Bros. has also contracted with the owner of Parcel D of the BRT for Shamrock Rail, LLC to acquire Parcel D for rail development. The completion of the purchase of Parcel D is expected to be completed later in 2020. The expansion of the BRT's railroad infrastructure and related services onto Parcel D has been under consideration for several years but to date no actual development has occurred. The plan of Winters Bros., Shamrock Rail, LLC and BHR is to for BHR to construct and operate the rail tracks and infrastructure generally contemplated by the previous owner of Parcel D and the owners of the other three parcels making up the BRT for the purpose of attracting industries who desire transloading and other rail freight service such as those currently provided by BHR on Parcel A of the BRT. In addition, Winters Bros., Shamrock Rail,

LLC and BHR contemplate that the proposed rail lines to be constructed and operated by BHR will provide freight service to a solid waste rail transfer facility to be constructed by, and possibly operated by BHR of on 50 acres of Parcel D. This facility is the subject of a separate Petition for Exemption to be filed with the Surface Transportation Board in a separate docket.

On this latter purpose of the proposed rail construction covered by the Petition, I am a founding member of the Long Island Solid Waste Leadership Council ("LISWLC"), which is now working under the direction Long Island Regional Planning Council to devise solutions to Long Island's solid waste management crisis, which is the acute lack of adequate solid waste transport and disposal capacity on Long Island. The goal of the LISWLC has been to identify the issues, present action items to address the issues, and take actions to implement solutions in a collaborative approach of industry and municipalities. Resolving the waste transport and capacity crisis is a top priority of the LISWLC.

Long Island, consisting of Nassau and Suffolk Counties, has a population of approximately 2.8 million people who generate around 7,100 tons of municipal solid waste ("MSW") and construction and demolition debris ("C&D") each day. This amounts to approximately 2.6 million tons of MSW and C&D each year. As a result of law and regulations to protect Long Island's sole source aquifer water supply, there are no landfills on Long Island that accept putrescible MSW (waste subject to putrefaction or decay) for disposal. This means that all putrescible MSW generated on Long Island must either be incinerated or trucked off Long Island for disposal in landfills in New Jersey, Pennsylvania, Ohio, Virginia, West Virginia, and upstate New York. Each day hundreds of 20-24 ton trucks haul thousands of tons of solid waste and other waste (C&D, recyclables, yard waste, etc...) off of Long Island for disposal.

There are only two landfills on Long Island that accept C&D for disposal. One is the Town of Brookhaven's municipal landfill which is also located approximately one mile from the BRT in Yaphank. The Town's landfill is scheduled to permanently close in 2024 and a new landfill will not be created to replace it. Each year, the Brookhaven Landfill accepts approximately 2,000 tons of dredge spoil, 24,000 tons of street-sweeping refuse, 370,000 tons of incinerator ash, and more than 800,000 tons of C&D waste generated throughout the region, from New York City to Montauk. The imminent closure of the Brookhaven Landfill necessitates that Long Island must quickly develop a means to efficiently process and dispose of that waste. Trucking has been the primary mode of hauling waste off Long Island since the 1980s. However, a single truck is only capable of hauling between 20 and 24 tons of waste at a time. The thousands of trucks that are needed to haul MSW and C&D waste off of Long Island make existing highway congestion worse, accelerate the deterioration of road and bridge infrastructure, and severely impact air quality in an already non-attainment region. Trucking alone is simply not an efficient and environmentally acceptable means of managing the huge volumes of Long Island's waste long term.

On the other hand, a single railcar can carry 100 to 105 tons of waste. As a result, whereas it would take approximately 44,000 truckloads to transport one million tons of MSW and C&D waste, the same amount of waste could be transported in only 9,523 railcars while freeing up highway infrastructure and capacity. Thus, the use of railroads to move waste off Long Island is more efficient, and environmentally friendly as it would reduce truck traffic and greenhouse gas emissions. The proposed solid waste rail transfer facility that would be served by the rail lines constructed and operated by BHR pursuant to the authority it seeks in this docket would therefore provide long overdue railroad transport and disposal capacity for the MSW, C&D, and other waste produced by the inhabitants of Long Island.

Will Flower

Career Summary

Executive leader with excellent leadership, managerial and communication skills. Expertise in operations, strategic business development including M&A, project management, marketing, crisis management, legislative affairs, internal and external communications, and administration.

Professional Experience

2015 - Current Winters Bros. Waste Systems

Vice President – Corporate and Public Affairs (2015 to current)

- Serve as a member of the senior management team that is focused on successfully growing the business by providing the highest quality of customer services and satisfaction.
- Create a culture of safety throughout the organization.
- Accountable for the image and reputation of the Company on Long Island with State and local governments, civic and environmental organizations, and the business community.
- Represent the company before large and high-profile customers to promote the positive image of the organization.
- Manage government and regulatory affairs for operations on Long Island including compliance within the waste collection, recycling and transfer station operations.
- Ensure proper policies are in place and maintain compliance with laws and regulations.
- Work to improve operational efficiency and provide leadership, direction and motivation to staff.

2013 - 2015 Green Stream Recycling, LLC.

President

- Develop the vision and growth strategy while being accountable for the overall financial management and the operating activities of the company.
- Establish and monitor key performance indicators against milestones and goals.
- Provide regular updates to the Board of Directors on company progress in executing the company's strategic plan.
- Ensure proper policies and programs are in place and maintain compliance with laws and regulations.
- Plan and budget for day-to-day operations and capital expenditures.

1999 - 2013 Republic Services, Inc.

Senior Vice President – Communication (2011-2012)

Executive Vice President – Communication (2008-2011)

Vice President – Communication (2000-2008)

- Serve as the chief communications officer at the Company's corporate office in Phoenix, Arizona.
- Managed special projects including the Annual Report, Annual Stockholders' Meeting, and quarterly earnings conference calls with analysts. Oversaw

development of sustainability reports and coordinated development projects including controversial landfill expansion efforts and Greenfield development projects.

- Managed external and internal communications, regulatory relations, image enhancement, crisis management, community relations and philanthropic programs. Required the use of a variety of communication tools including media relations, press releases, speech writing, letter writing and the development of message points, fact sheets and newsletters.
- Developed marketing strategies and produced printed and electronic material including marketing brochures, customer and employee newsletters, videos, informational kits, news releases, web sites, social media and print advertising.

General Manager - Republic Services of New York (1999-2000)

- Manage the overall operations and financial reporting for a transfer station generating approximately \$35 million in annual revenue.
- Oversee supervisor staff on a day-to-day basis operating a 24 hour per day, six day a week, transfer station with average throughput of 2,400 tons per day transfer station.
- Maintain compliance with all applicable rules, permits and regulations.
- Interact with local and state regulators including New York City Department of Sanitation, New York City Trade Waste Commission, New York City Department of Environmental Protection and New York State Department of Environmental Conservation.
- Manage labor relations including contract negotiations, arbitration and issue resolution.
- Review facility logistics including transportation issues (rail and truck), negotiate trucking agreements and review billing/invoices prior to payment.
- Review purchasing decisions.
- Oversee maintenance operations to ensure the cost effective and reliable operation of fixed equipment and rolling stock.
- Review daily reports on facility operations including volume, income, expenses and transportation costs.

Manager Business Development - Republic Services of New York

- Introduced Republic Services in the New York City marketplace using advertising, municipal marketing and select meetings with local and State officials, regulators and business people and organizations.
- Responded to requests for proposals and bids from potential customers and governmental entities including the New York City Department of Sanitation.
- Increased commercial waste volume at transfer station by 304 percent and successfully raised tip fees.
- Assisted with acquisition activities and company integration following acquisitions.
- Negotiated transportation via truck and rail to internalize the flow of waste to Company landfills.

1990 - 1998

Waste Management, Inc.

Division Manager - Waste Management of Long Island (1998)

- Selected to lead the acquisition and operation of one of the largest waste-hauling firms on Long Island with approximately \$20 million in annual revenue and 64 employees.
- Implemented controls and procedures at four facilities including a transfer station, construction and demolition facility, compost operation and wood

processing facility. Also implemented compliance program for OSHA regulations.

- Oversaw design, construction and permitting of a new \$2,000,000 transfer station and numerous site improvements including new scales, traffic flow and material processing. Project completed on time and within budget.
- Negotiated with local government officials to establish, permit and open a new 40-acre yard waste management facility in Riverhead, New York.

Vice President – Communications and Community Relations (1996–1998)

- Developed and managed the communication and business strategy for market entry and growth of the company in New York City. Implemented business plan that increased annual revenue from \$135 million to \$200 million during the first 12 months of operation.
- Testified before the New York City Council and at numerous public hearings regarding solid waste, recycling, business growth and other industry matters.
- Managed external and internal communications, regulatory relations, image enhancement, crisis management and philanthropic programs.
- Developed advertising and marketing strategies and produced printed material including business brochures, customer and employee newsletters, informational kits, news releases and print advertising.
- Represented the company at national, regional and local conferences, hearings and events presenting platform speaking, round table discussions and written and oral testimony.
- Worked on major business development projects involving the closure of the Fresh Kills Landfill resulting in the successful award of two contracts from the NYC-DOS valued at \$88 million and \$133 million.

Director of Community Relations – Midwest Group (1990 – 1996)

- Directed all community relations and public affairs activities for a ten-state region with annual revenue exceeding \$1.4 billion.
- Served as the region's chief communications officer working with national, regional and local news media.
- Conducted public meetings and hearings and testified on regulatory and business issues including the siting of landfills, transfer stations and compost facilities.
- Conducted training for managers on reputation issues in an effort to enhance and protect the company's image among customers and regulators.
- Oversaw the development of numerous publications including internal newsletters, external brochures, fact sheets and other printed material.

1983 – 1990 Illinois Environmental Protection Agency

Public Information Officer - Director's Office (1985-1990)

- Promoted statewide environmental program through the development of news media relations, writing news releases, scheduling and hosting press conferences and extensive public speaking.
- Assisted senior staff in developing, implementing and evaluating Illinois' air pollution control program. Monitored air quality and issued public advisories during periods of excessive air pollution.
- Acted as the media and community contact for emergency response and chemical safety. Responded to spills, train derailments and industrial accidents involving hazardous materials.
- Served as the State contact for the federal Community Right-to-Know program and other key regulatory initiatives including vehicle emission testing,

emergency response, legal enforcement, household hazardous waste collection projects and air pollution control.

Graduate Public Service Intern (1983-1985)

- Served as an intern at the IEPA working on a variety of programs and projects in the divisions of air, land and water and the departments of public information, emergency response and community involvement.

Education

1983 - 1987 University of Illinois at Springfield

Master of Public Administration

1979 - 1983 Bradley University, Peoria, IL

Bachelor of Science

**Professional &
Philanthropic**

Solid Waste Agency of North America

- Member of the International Board of Directors (2004 – 2018)
- Recipient Lifetime Membership Award (2018)

American Red Cross – Grand Canyon Chapter

- Board Member (2008 – 2012)
- Vice Chairman of the Board (2011-2012).

Keep Phoenix Beautiful

- Board Member (2008 to 2012)
- Chairman of the Board (2011 - 2012)

Waste Advantage Magazine

- Editorial Advisory Board (2011 – Current)
- Contributing writer (Safety Series) – Monthly article about safety in the solid waste and recycling industry.

Waste 360 – On line

- Contributing writer – Regular column entitled the Waste Advisor which provides insights on all aspects of recycling (2013 – 2016)

Bayville Fire Company

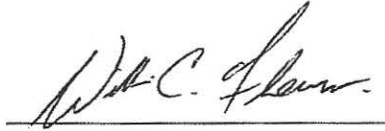
- Volunteer Firefighter – Certified Class A Interior Firefighter
- Lieutenant – Responsible for strategic response, execution of orders, and hands-on operations during emergencies. Also responsible for fire ground safety, crew training, emergency response preparation, and the readiness of fire apparatus.
- Trustee (2017 to 2019) – Served on the Board of Trustees, which oversees the administration, business and finances of the fire department.

Verification

I, William Flower, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed: June 22, 2020

A handwritten signature in cursive script, appearing to read "W.C. Flower", is written over a horizontal line.

William Flower