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September 23, 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: Docket No. FD No. 36398, *Brookhaven Rail LLC – Construction
and Operation Exemption – Suffolk County, New York*

Dear Ms. Brown:

This letter is filed on behalf of Petitioner Brookhaven Rail LLP ("BHR") in response to the letter and accompanying 132-page attachment proffered by Citizens Campaign for the Environment ("CCE") for filing in this Docket yesterday. The Board should reject this pleading, which despite the half-hearted attempt of CCE to claim otherwise in footnote 1 to the letter, is a blatant attempt to submit a direct reply to the Petition for Exemption in this proceeding 89 days after its filing on June 25, 2020. Far from just submitting a filing CCE made in Docket No. FD 36399 (which barely refers to the construction project proposed in this docket in any event), the letter contains nearly three pages of single spaced argument replying in opposition to the Petition for Exemption, and it concludes with a request that the Petition for Exemption be denied or this proceeding held in abeyance. Permitting CCE to sit on its hands for nearly 90 days and then try to file a reply to the Petition for Exemption flaunts the Board's procedural rules, is highly prejudicial to BHR, and should not be permitted.

Moreover, CCE's proffered filing comes after it obtained on August 17, 2020 - the date timely replies were due in Docket No. FD 36399 - a 30-day extension to reply to the petition for

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exemption filed by BHR in that docket. This extraordinary extension was granted in large part because BHR consented to CCE's last minute request to BHR for the extension on August 14, 2020. At no time prior to that date had CCE contacted BHR about the rail construction project proposed in this Docket or expressed any interest whatsoever in participating in this proceeding, let alone ask BHR to consent to an extension of the period to submit a reply to the Petition for Exemption. Perhaps this is because CCE knew BHR would not have consented to such a request given the extensive time that had passed. Nor did CCE seek prior permission from the Board to file a late reply in this Docket. CCE's attempt to bootstrap its 11th hour arrival into Docket FD 36399 into retroactive participation in Docket FD 36398 for the purpose of opposing the Petition for Exemption is therefore highly improper and should not be countenanced.

Apart from the obvious procedural reasons for rejecting CCE's attempted filing, CCE wrongly attempts to argue that the construction proposal outlined in the Petition for Exemption is "inextricably connected and inescapably intertwined" with the petition for exemption filed in Docket No. FD 36399. Letter at 1. This is simply not the case, and why two petitions for exemption were filed in two separate proceedings. As the Petition for Exemption in this proceeding clearly establishes, the proposed rail construction project is to effectuate the long-planned development of all of Parcel D of the Brookhaven Rail Terminal as a rail-served industrial park that will ultimately serve a variety of industries and shippers. See Petition at 4, 5, 7, 9, 10, 15-18, Exhibit C, Verified Statement of James Newell at 3-5, and Verified Statement of William Flower at 2-3. The solid waste rail transfer facility that is the subject of Docket No. FD 36399 is only one potential user of the rail lines proposed to be constructed, and it would occupy only 50 acres of the entire 228-acre parcel. BHR fully expects that its solid waste rail transfer facility will eventually be constructed as planned. However, even if it is not, the rail lines constructed pursuant to the authority sought in this Docket will be in place to serve other industries and rail shippers locating on that acreage and/or a modified version of the solid waste rail transfer facility, depending on the outcome of Docket FD 36399.

Accordingly, CCE's strained efforts to argue that "the rail line is of no value unless it connects to and serves the Transfer Facility" and its self-serving attempt to try and conflate the two proposals into one mega-project that CCE has belatedly decided it opposes in its entirety have no basis in fact and should be rejected. The proposed construction project in this proceeding is the mechanism to bring rail service to the BHR solid waste rail transfer facility as well as other shippers locating on Parcel D, but it should continue to be evaluated by the Board as a separate rail construction project.

For all these reasons the letter and attachment proffered by CCE for filing in this docket should be rejected or stricken, as the case may be. To the extent the Board permits the filing of this extremely late reply, it should summarily deny CCE's request that the Petition for Exemption in this proceeding be denied or this proceeding held in abeyance.

GKG Law, P.C.

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The undersigned certifies that a copy of this letter was served on all parties of record.
Please do not hesitate to call me if you have any questions.

Sincerely,



Thomas W. Wilcox
Attorney for Brookhaven Rail LLC



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