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October 22, 2020

ENTERED
Office of Proceedings
October 22, 2020
Part of

Public Record

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VIA 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 36399, Brookhaven Rail LLC – Petition for
Exemption from Requirements of 49 U.S.C. §10909*

Dear Ms. Brown:

We are attorneys for the Town of Brookhaven, New York in this proceeding (“Town”) as Special Counsel to Brookhaven Town Attorney, Annette Eaderesto, Esq. This joint letter is respectfully filed on behalf of both the Town and Petitioner Brookhaven Rail LLC (“BHR”) for the purpose of requesting the Surface Transportation Board (“Board”) to schedule a Mediation session with these parties and Board staff to address certain issues that have arisen in this proceeding that the Town and BHR have been unable to resolve between them. Any discussions should be centered on how these proposed projects on Parcel D of the Brookhaven Rail Terminal should be analyzed and considered by the Board, and developed and operated by BHR, while fully taking into account the Town’s prior extensive review of the potential environmental and other impacts of the long-planned development of Parcel D into a rail-served industrial park.

As BHR and the Town have noted in their respective filings in this proceeding, the prior review was conducted under the leadership of the Town as lead agency pursuant to New York law. However, as BHR has noted, while this prior review and resulting mitigation and other measures covered significant new rail construction on Parcel D and truck-to-rail transloading operations – for which the review concluded there would be no significant impact if the mitigation measures are implemented – it did not consider the potential impacts of a SWRTF. The Petition for exemption in this Docket has in particular raised a number of new and complex issues and questions concerning the respective roles of the Town and the Board in analyzing, evaluating, and overseeing the implementation of BHR’s proposals, from both environmental and legal standpoints.

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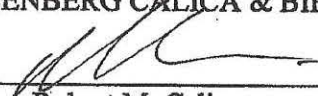
Both parties believe that a meeting of representatives of the Town and BHR and Board staff through the Board's Mediation procedures would help provide clarity and, hopefully, mutual agreement on some of the complex matters that concern the Town. BHR supports this request and has agreed to participate in such a Mediation proceeding if one was held.

Accordingly, the Town and BHR jointly request that the Board schedule a Mediation session on this matter with representatives of the Town, BHR and Board staff appointed for this purpose.

The undersigned hereby certify that a true and correct copy of this letter is being served by email on all parties on the official Service List for this proceeding.

Very truly yours,

ROSENBERG CALICA & BIRNEY LLP

By: 

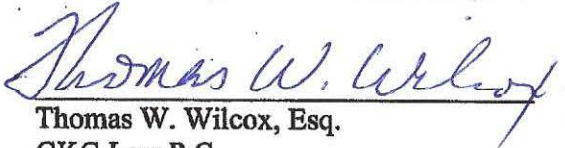
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cc: Counsel and Parties of Record


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