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November 13, 2020

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Office of Proceedings
November 13, 2020
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Public Record

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:

As attorneys for the Town of Brookhaven (“Town”) in these proceedings, we respectfully respond to the November 9, 2020 letter of counsel for the Citizens Campaign for the Environment (“CCE”), Slover & Loftus LLP, objecting to the joint Mediation request on behalf of the Town and Petitioner, Brookhaven Rail LLC (“BHR”), already granted by the Board’s October 23, 2020 Decision, or alternatively requesting that “*any interested party (or consulting party) be allowed to participate*”.

CCE’s request should be rejected as it is likely to frustrate the goal recognized in the STB Decision “*that the docket raises a number of complex issues and questions*” and that “[*the Town and BHR*] *hope Mediation would help provide clarity and mutual agreement on some of these matters*”.

The Mediation procedures in 49 CFR §1109 are express in providing that: (a) the “*Board favors the resolution of disputes through the use of Mediation and Arbitration procedures, in lieu of formal Board proceedings whenever possible*” (*id.*, Section 1109.1); (b) Mediation will be authorized by “*Board order issued in response to a written request of one or more parties to a matter*”; (c) “*Mediation is a confidential process*” and “*evidence of conduct or statements during Mediation is not admissible in any Board proceeding*”, (*id.*, Section 1109.3); and (d) in the event only a “*partial resolution*” of a dispute is reached (all that is achievable here since only the Town and BHR are participating), “*the parties shall file any stipulations they have mutually reached*”.

and ask the Board to reactivate the procedural schedule in the underlying proceeding to decide the remaining issues”.

Here, the CCE, while a prominent civic and environmental organization, is at most an “*amicus*” and not a “*party*” in any legal sense. More than that, it has repeatedly issued public “Press Releases” concerning this proceeding such that it is not a suitable candidate for Board-authorized participation in a “*partial Mediation*” between the Town and BHR.

Further, CCE’s concerns about some “*secret arrangement*” being reached between the Town and BHR is unmerited. It ignores the express requirements of New York statutory law including the Town Law, the Brookhaven Town Code, and the Open Meetings Law (Public Officers Law Section 103) that the Town Board must publicly consider, before approving any “*partial resolution*” resulting from a “*partial Mediation*” between the Town and BHR, if any.

It is also to be remembered that the Town, as the STB Decision recognizes, principally seeks “*clarity*” of “*a number of complex questions and issues*” and that even if any “*partial agreement*” is reached, the case continues and the Sills Road Parties, the CCE and any others will continue to litigate their vigorous objections to the undecided Petitions that are currently pending before the Board.

For these reasons, it is respectfully requested that the CCE’s request for “*rejection*” of the already approved Mediation between the Town and BHR and its alternative request to “*participate*” in a “*partial Mediation*” without the required “*consent*” of the Town and BHR be denied.

Very truly yours,

ROSENBERG CALICA & BIRNEY LLP

By: 

Robert M. Calica

RMC:ds

cc: Counsel and Parties of Record

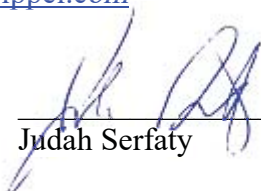
CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of November, 2020, I served copies of the foregoing Letter and enclosures electronically (via email) upon each the following parties of record:

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