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June 15, 2021

By E-Filing

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

ENTERED
Office of Proceedings
June 15, 2021
Part of
Public Record

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

Dear Ms. Brown,

Brookhaven Rail LLC (“BHR”) hereby submits this reply to the letter submitted in this docket by NAACP NY¹ on June 2, 2021 (“Letter”). The Letter contains numerous misstatements of fact about BHR, the proposed rail construction project in this docket on a 228-acre parcel of land in the Town of Brookhaven, N.Y, and BHR’s proposal to construct a solid waste rail transfer facility (“SWRTF”) on 50 acres of that parcel.

First, NAACP NY’s allegations that BHR has engaged in a lack of transparency as to the proposed projects are surprising, and simply wrong. BHR’s separate petitions seeking approval from this Board for both the rail construction project and the SWRTF have been in the public record since the summer of 2020, and not only has a robust record of filings made by BHR and other parties been assembled in this docket and Docket No. FD 36399, the details of the proposed projects have been discussed in newspapers and other publications on Long Island, as well as in the community outreach efforts discussed below. Yet, prior to a May 21, 2021 press release where

¹ The Letter does not identify on whose behalf it is being filed. Instead, it states “[t]he NAACP President of the New York State, Hazel Dukes has joined with Town of Brookhaven NAACP Chair Dr. Georgette Grier-Key, NAACP Long Island Director Tracey Edwards, chapters across the region and other local organizations.” However, since the Letter references the “Petition/Request for Immediate Public Disclosure of Outcome of Mediation by and Between Brookhaven Rail LLC and Town of Brookhaven, NY,” (“Petition”) filed on behalf the NAACP New York State Conference (“NAACP NY”), BHR is assuming that the Letter was filed on behalf of NAACP NY, and that the references to “NAACP” in the Letter refer to this entity.

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NAACP NY suddenly announced, without any attempt to first contact BHR or its affiliates, that it now opposed the projects, NAACP NY publicly expressed no interest at all in the proposed projects to BHR, the Board, or anyone else, let alone voice any of the concerns set forth in its Letter.²

Second, the charge that BHR and its affiliated companies have “dismiss[ed] the need for grass roots community involvement” is also flatly contrary to the facts. BHR and its affiliated companies began a robust and transparent public outreach campaign for this project in October of 2020 that continues to this day. This outreach has included meeting with elected officials at every level of government, the media, environmental organizations, and civic leaders and special interest groups active on solid waste disposal issues in the community. BHR and its affiliate, Winters Brothers Waste Systems of Long Island, LLC also created a comprehensive website that launched in February of this year, which has been openly accessible and allows anyone to contact either company should they wish to do so. Yet, NAACP NY never seized upon the multiple opportunities available to it to learn about the projects and to engage with BHR and its affiliates to express any concerns or recommendations it may have respecting either of the projects. Moreover, after NAACP NY issued its May 21 press release, representatives of BHR immediately requested a meeting with representatives of NAACP NY but the invitation was declined. NAACP NY has continued to rebuff BHR’s efforts to meet and discuss NAACP NY’s apparent concerns and possibly constructive recommendations. It is therefore simply wrong for NAACP NY to represent to the Board that the details of the projects were somehow obscured from NAACP NY until May of 2021 and that BHR has not sought the input of NAACP NY now that it has voiced objections to the projects.

The remainder of NAACP NY’s letter is mostly a further demonstration of NAACP NY’s lack of knowledge and understanding of the Board’s mediation processes, the rail construction licensing process, and the environmental review conducted by the Board’s Office of Environmental Analysis (“OEA”) pursuant to the National Environmental Policy Act (“NEPA”). BHR has responded to these points in its Reply to NAACP NY’s Petition and so need not repeat those responses here. However, BHR states that it vigorously disputes NAACP’s allegations that the long-planned development of this parcel for rail-served industrial and logistics development will have “an extremely negative impact on the residents of this area” and that “the most likely to be impacted are the residents of color that live in close proximity to the proposed site, Parcel D.”

² BHR notes parenthetically that the development of this 228-acre parcel of land for expansive rail served industrial use has been in the works since prior to 2016, as evidenced by the March 2016 “So-Ordered” Stipulation of Settlement and related environmental impact review documents that have been discussed extensively in the record of this proceeding. There is no record of NAACP previously expressing any objections to such development. Why NAACP waited over five years to take an interest in the development of “Parcel D” is not known, since NAACP has not provided any such explanation, and NAACP has declined to meet with BHR.

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Letter at 2. Quite the contrary, BHR is confident that after a thorough analysis of the potential impacts of the proposed projects by OEA through its NEPA process, OEA, and ultimately the Board, will conclude that just the opposite of these sweeping statements is true.³

In conclusion, NAACP NY has had ample opportunities to learn about and voice any concerns or recommendations to BHR respecting the long-planned proposed development of this parcel of land for rail-served industry, the proposed rail construction by BHR, and its proposal to construct a SWRTF on 50 acres of the parcel. Prior to May 21, NAACP NY did not express any interest in the development of this parcel, let alone any objections. BHR hopes NAACP NY will accept BHR's invitation to meet and discuss in more detail NAACP NY's concerns and/or recommendations regarding the alleged impact of either project on "Brookhaven's poor and marginalized residents." In the meantime, it is BHR's understanding that NAACP NY's fears that such concerns and/or recommendations will not be fully considered in this proceeding are allayed by the fact that NAACP NY will have ample opportunities to provide input to OEA on the potential impacts NAACP NY sees through the Board's environmental review process under NEPA and/or any other opportunities the Board deems appropriate.

Respectfully submitted,



Thomas W. Wilcox

Attorney for Brookhaven Rail LLC

³ For example, NAACP NY laments that the projects will impact "residents in this area." However, the new line of rail, rail terminal and solid waste rail transfer facility proposed by BHR would not be near any residential community. The neighboring "community" of the proposed projects is industrial, and it includes: the Long Island Rail Road mainline and an existing rail terminal site; the County Police Headquarters; a County Correctional Facility; a County Sewage Treatment Plant; the Town of Brookhaven's landfill; a composting facility; and a rock crushing operation. The site is also proximate to the Caithness Power Plant and power substation. In short, the reason this 228-acre parcel was chosen for rail-served industrial use (subject to establishment of a 62-acre Open Space Conservation easement) more than five years ago is the *absence* of any sensitive residential receptors.

CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of June 2021, a copy of the foregoing Letter replying the Letter of NAACP NY filed June 2, 2021 was served by email on all parties on the official Service List for this Proceeding.



Thomas W. Wilcox