

LAW OFFICE OF THOMAS W. WILCOX, LLC

1629 K. STREET, NW SUITE 300

WASHINGTON, DC 20006

(202) 508-1065

TOM@TWILCOXLAW.COM

WWW.TWILCOXLAW.COM

303210

ENTERED

Office of Proceedings

November 15, 2021

Part of

Public Record

November 15, 2021

By E-Filing

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

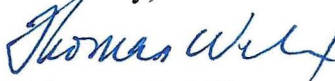
Re: STB FD No. 36399, *Brookhaven Rail, LLC – Petition for Exemption from the Requirements of 49 U.S.C. 10909*

Dear Ms. Brown:

Pursuant to our discussion, please accept the attached letter submitted on behalf of Brookhaven Rail LLC for filing in the referenced docket.

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

Sincerely,



Thomas W. Wilcox

Attorney for Brookhaven Rail LLC

LAW OFFICE OF THOMAS W. WILCOX, LLC

1629 K. STREET, NW SUITE 300

WASHINGTON, DC 20006

(202) 508-1065

TOM@TWILCOXLAW.COM

WWW.TWILCOXLAW.COM

November 12, 2021

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 – Suffolk County, New York*

Dear Ms. Brown:

This letter is submitted on behalf of The letter was also filed in Docket No. FD 36399, which is a docket the Surface Transportation Board (“STB” or “Board”) purportedly closed in November 2020 after rejecting Brookhaven Rail’s Petition for Exemption from Requirements of 49 U.S.C. 10909.¹

CCE has labelled its letter as a reply in opposition to a letter submitted by Brookhaven Rail to the Acting Director of the Office of Environmental Analysis (“OEA”) on November 3, 2021. CCE further states it has submitted its letter “directly to the Board” because of a statement made by the Acting Director to Brookhaven Rail’s counsel in response to Brookhaven Rail’s letter, which presented reasons for OEA to conclude that Brookhaven Rail’s request for a waiver of 49 C.F.R. §1105.10(a) that had been pending since April 23, 2021 was no longer necessary. The

— For reasons that have not been explained, the Board resumed accepting pleadings in closed Docket No. FD 36399 in April 2021. Also, the Acting Director issued a decision in that docket and Docket No. FD 36398 on October 20, 2021. On March 12, 2021, at Brookhaven Rail’s request, the Board’s Office of Proceedings created Docket No. FD 36399 (Sub No. 1) as the docket where Brookhaven Rail will file its full application for land use exemption permit in response to the Board’s directives in the decision rejecting the Petition for Exemption served on October 23, 2020 in Docket No. FD 36399.

Law Office of Thomas W. Wilcox, LLC

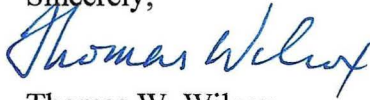
Letter to Cynthia T. Brown
November 12, 2021
Page 2

November 3, 2021 letter referenced by CCE and ensuing correspondence between Brookhaven Rail's counsel and the Acting Director are attached hereto.

Brookhaven Rail's November 3, 2021 letter to OEA was obviously not a formal pleading filed with the Board in any docket, and so CCE's filing cannot be considered a formal reply to a pleading submitted by Brookhaven Rail. Rather, it is a new pleading filing by CCE to which Brookhaven Rail will reply to the significant procedural and substantive errors contained therein in accordance with the Board's procedural rules. *See e.g.* 49 C.F.R. §1104.13(a).

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

Sincerely,



Thomas W. Wilcox
Attorney for Brookhaven Rail LLC

NOVEMBER 3, 2021 LETTER

LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. STREET, NW SUITE 300
WASHINGTON, DC 20006
(202) 508-1065
TOM@TWILCOXLAW.COM
WWW.TWILCOXLAW.COM

November 3, 2021

Via Email

Ms. Danielle Gosselin
Acting Director
Office of Environmental Assessment
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. FD 36399 (Sub No. 1), *Brookhaven Rail, LLC – Application for Land Use Exemption Permit*; Request for Waiver of Six-Month Pre-filing Notice Requirement under 49 C.F.R. §1105.10(a)(1)

Dear Ms. Gosselin:

On November 2, 2021, Brookhaven Rail LLC (“Brookhaven Rail”) complied with the attached Decision issued by the Surface Transportation Board (“Board”) in Dockets No. FD 36398 and 36399 and served a copy of that Decision on the relevant parties referenced in 49 C.F.R. §1115.20(a)(2) at least 10 days prior to when Brookhaven Rail intends to file an Application for Land-Use Exemption Permit (“Application”) in the captioned docket. Brookhaven Rail anticipates submitting that filing in the next 14 to 21 days. The proposed solid waste rail transfer facility (“Facility”) that is the subject of the Application has been the subject of numerous discussions between Brookhaven Rail and the Office of Environmental Analysis (“OEA”) since at least June of 2020.

The purpose of this letter is to request that you expeditiously issue a ruling that the request of Brookhaven Rail to OEA for a waiver of the six-month pre-filing notice under 49 C.F.R. §1105.10(a) that would otherwise have applied to the Application is no longer necessary. OEA asked Brookhaven to submit the request and it has now been pending since April 23, 2021. The letter was supplemented at OEA’s request on May 10, 2021, and OEA did not seek any additional information relevant to the waiver request after that date.

Under the circumstances, while Brookhaven Rail presented numerous compelling grounds for waiving this requirement – an action which is usually routine - a waiver is no longer needed because Brookhaven Rail has complied with it in every respect and its limited purpose has been

LAW OFFICE OF THOMAS W. WILCOX, LLC

Letter to Danielle Gosselin
November 3, 2021
Page 2

fulfilled in any event. As summarized below, OEA received verbal notice that Brookhaven Rail was preparing the full Application on October 26, 2020, and OEA received written confirmation of this fact on January 22, 2021, at the latest. Moreover, OEA began preparing for the drafting of an Environmental Impact Statement (“EIS”) for the proposed Facility (and also the rail construction project that is covered by Docket No. FD 36398) in December 2020 and actually took initial steps toward preparation of the EIS between December 2020 and October 20, 2021, when you issued a decision suspending the environmental review. Thus, at a minimum, the six-month advance written notice period has now been exceeded by four months and the purpose of 49 C.F.R. §1105.10(a) has been fulfilled. *See Tongue River Railroad Company – Construction and Operation – Western Alignment* (served April 16, 1998) at 4 (emphasis in original) (“The six-month lead time is designed to allow SEA [now OEA] adequate time to *prepare* for the environmental review process.”). The more detailed reasons for this request are as follows:

On October 23, 2020, the Board issued a Decision that rejected the Petition for Exemption of Requirements of 10909 filed by Brookhaven Rail in Docket No. FD 36399. That Petition sought approval for the same Facility that will be covered by the forthcoming Application through the Board’s authority under 49 U.S.C. §10502. In that decision, the Board advised Brookhaven Rail to seek the relief it desired through a full application for land-use exemption permit. On October 26, 2020, the undersigned counsel for Brookhaven Rail orally informed Ms. Diana Wood of OEA’s staff via telephone that Brookhaven Rail would prepare a full application for land-use exemption permit. The next day, Brookhaven Rail filed a letter with the Board in Docket No. FD 36399 stating it had accepted the Board’s decision and asked for clarification of the regulations that would apply to providing parties advance notice of the Application prior to filing it.¹

Because Brookhaven Rail informed OEA that it was intending to prepare an Application for the Facility, discussions concerning the level of the environmental review of both projects that had begun in June 2020 continued after October 23, 2020. On January 12, 2021, Ms. Wood distributed a document dated December 9, 2020, that was a first draft of a “Scope of Work for an Environmental Impact Statement” for the combined projects. Page one of that document (attached) stated (emphasis added):

Pursuant to 49 U.S.C. §§ 10901 and 10909, Brookhaven Rail LLC (BHR) filed for approval from the Surface Transportation Board (Board) to construct and operate up to approximately 25,000 feet of new common carrier track (the Line) *and intends to file for a land-use exemption for a solid waste rail transfer facility (SWRTF) (together, the Proposed Project)* that would connect to the existing mainline in the Town of Brookhaven, Suffolk County, New York. The Board’s Office of Environmental Analysis (OEA) is responsible for preparing an environmental review of BHR’s proposed actions pursuant to the National Environmental Policy Act (NEPA). *Based on available information, OEA*

¹ Arguably, that filing provided OEA with sufficient written notice under §1105.10(a), which does not specify what form “written notice” should be provided.

LAW OFFICE OF THOMAS W. WILCOX, LLC

Letter to Danielle Gosselin
November 3, 2021
Page 3

plans on preparing an Environmental Impact Statement (EIS) that will examine the potential environmental effects of the Proposed Project.

On January 22, 2021, Brookhaven Rail asked Ms. Wood for examples of “purpose and need statements and/or project descriptions,” in conjunction with the commencement of the EIS process, and informed Ms. Wood and OEA that “[w]e are in the drafting process of the new application now,” to which Ms. Wood replied “[t]hanks for letting us know”² Despite having previously granted a waiver of the 6-month prefilings notice for the Petition for Exemption from the requirements of Section 10909, OEA nevertheless requested that Brookhaven Rail submit a request for a similar waiver for the Application, and Brookhaven Rail complied via the aforementioned letter dated April 23, 2021.

In summary, OEA has had actual notice of the proposed Facility for over 16 months. It has known that Brookhaven Rail intends to submit a full Application for around 12 months. OEA began preparing to undergo the process of preparing an EIS covering the Facility and the rail construction project around 11 months ago. The six-month period following the January 22, 2021 email to OEA informing it that drafting of the Application had begun and OEA’s confirmation of that notice ended around June 22, 2021, which was over four months ago.³ Moreover, the purpose of giving 6-months advance notice of the Application has clearly been fulfilled, since not only has OEA learned enough about the projects over the past 16 months to “prepare for the environmental review process,” it actually began as far back as December 2020 to implement the process that will eventually lead to an EIS for the Facility and the rail construction project. Finally, in more recent discussions concerning the environmental review of the project OEA staff have advised Brookhaven Rail that filing the Application will provide the basis for advancing the EIS process undertaken to date, including enabling the re-issuance of updated scoping documents, agency consultation letters, and other actions. As stated above, Brookhaven Rail intends to file the Application in the next few weeks.

Accordingly, even though ample grounds existed for waiving Section 1105.10(a) in April of this year, the regulation has now been complied with in every respect and so the pending request for waiver is moot. Brookhaven Rail requests that you indicate your concurrence with this conclusion in an appropriate manner at your earliest opportunity. If OEA maintains that action on the request is still required, Brookhaven Rail asks that you immediately grant the request for all the same reasons expressed above and those expressed in prior correspondence from Brookhaven Rail to OEA and Brookhaven Rail’s other submittals on this subject in Docket No. FD 36398.

² See Docket No. FD 36398, Environmental Comment No. EO-3537, *Monthly Email Exchanges with Outside Parties* at 17.

³ Brookhaven Rail also notes that the Docket Number FD 36399 (Sub- No. 1) was created by the STB for the full Application on March 12, 2021, over 7 months ago.

LAW OFFICE OF THOMAS W. WILCOX, LLC

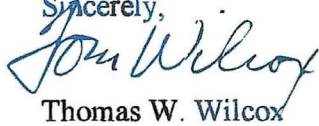
Letter to Danielle Gosselin

November 3, 2021

Page 4

Requiring Brookhaven Rail to provide OEA with any more advance notice about the Application or the Facility at this stage of the process would not only be superfluous, it would also be prejudicial to Brookhaven Rail and unnecessarily delay the Board's consideration of the merits of the Application.

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

Sincerely,

Thomas W. Wilcox
Attorney for Brookhaven Rail LLC

Enclosure

ATTACHMENTS

SERVICE DATE – NOVEMBER 19, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36398

BROOKHAVEN RAIL LLC—CONSTRUCTION AND OPERATION EXEMPTION—IN
SUFFOLK COUNTY, N.Y.

Docket No. FD 36399¹

BROOKHAVEN RAIL LLC—PETITION FOR EXEMPTION FROM REQUIREMENTS OF
49 U.S.C. § 10909

Digest:² The Board provides that, if Brookhaven Rail LLC submits a full application for a land-use-exemption permit, it need not comply with certain requirements under 49 C.F.R. § 1155.20(a) and (b) but in lieu thereof must serve this decision on the entities listed in § 1155.20(a)(2) at least 10 days before filing its application and certify in its application that it has done so.

Decided: November 18, 2020

On October 23, 2020, the Board rejected a petition filed by Brookhaven Rail LLC (Brookhaven Rail) in Docket No. FD 36399 seeking exemption from the full requirements of 49 U.S.C. § 10909 and 49 C.F.R. part 1155 subpart C for a “land-use-exemption permit” in conjunction with the construction, ownership, and operation of a “solid waste rail transfer facility.”³ The Board stated that “[i]f Brookhaven Rail wishes to seek approval from the Board, it must file an application under 49 C.F.R. part 1155 and provide all the information required under the statute and the Board’s regulations.” Brookhaven Rail—Constr. & Operation

¹ These proceedings are not consolidated. A single decision is being issued for administrative purposes.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

³ The Clean Railroads Act of 2008 (CRA), Pub. L. No. 110-432, 122 Stat. 4848, amended 49 U.S.C. § 10501(c)(2)(B) to restrict the Board’s jurisdiction over solid waste rail transfer facilities. The CRA also added three new statutory provisions—49 U.S.C. §§ 10908-10910—that address the Board’s regulation of such facilities, which is now limited to the issuance of “land-use-exemption permits” in certain circumstances. See 49 U.S.C. §§ 10908-10; Solid Waste Rail Transfer Facilities, EP 684, slip op. at 1 (STB served Nov. 20, 2012).

Exemption—in Suffolk Cnty., N.Y. (October 23 Decision), FD 36398 et al., slip op. at 6 (STB served Oct. 23, 2020).

On October 27, 2020, Brookhaven Rail submitted a letter seeking confirmation that it need not comply with 49 C.F.R. § 1155.20(a) and (b) before filing its application. (Brookhaven Rail Letter 1, Oct. 27, 2020, FD 36399.) Those sections require an applicant, among other things, to serve various entities with a “notice of intent” between 15 and 30 days before the application is filed. 49 C.F.R. § 1155.20(a)(2), (b)(1). The notice of intent explains filing procedures, including when comments on the application are due. The regulations also require that an applicant publish the notice of intent in a local newspaper once a week for three consecutive weeks within 30 days before filing the application. 49 C.F.R. § 1155.20(a)(3), (b)(2). Brookhaven Rail argues that the October 23 Decision did not mention the notice of intent requirements and that an extensive record has already been compiled. (Brookhaven Rail Letter 2, Oct. 27, 2020, FD 36399.) It adds that in July it served the now-rejected petition for exemption on state and local offices that would receive a notice of intent under § 1155.20(a)(2). (*Id.*) Finally, it asserts that newspaper publication is not necessary because the proposal to build the solid waste transfer facility is public knowledge and was already discussed in a local newspaper article, which Brookhaven Rail attaches to its letter. (*Id.*)

The Citizens Campaign for the Environment (CCE) filed in opposition to Brookhaven Rail’s letter on October 28, 2020. CCE argues, among other things, that Brookhaven Rail’s October 27 letter, the rejected petition, and the newspaper article relied upon by Brookhaven Rail have not alerted interested officials or the public of commenting procedures and deadlines for the application. (CCE Reply 2, Oct. 28, 2020, FD 36399.)

Under the circumstances here, Brookhaven Rail need not follow the agency’s notice of intent procedures and timetables set forth at § 1155.20(a) and (b) before it files its application. State and local entities are aware that Brookhaven Rail has sought to invoke the Board’s authority under the CRA concerning the proposed solid waste transfer facility. CCE’s involvement, as well as the newspaper article Brookhaven Rail includes with its letter, also suggest public awareness of the project. The Board will, however, require Brookhaven Rail to serve this decision on the entities that would receive a notice of intent under § 1155.20(a)(2) at least 10 days before filing its application and certify, in its application, that it has done so. This service will provide sufficient notice of the commenting procedures and deadlines set forth at 49 C.F.R. § 1155.23, including that comments on the application would be due 45 days from the filing date, should Brookhaven Rail choose to proceed with an application.

It is ordered:

1. If Brookhaven Rail intends to file an application seeking a land-use-exemption permit under 49 U.S.C. § 10909, it must serve a copy of this decision on the entities listed at § 1155.20(a)(2) at least 10 days before filing and certify in its application that it has done so.
2. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Brookhaven Rail Environmental Impact Statement

Draft Scope of Work for the Construction and Operation of a Proposed Rail Line and Solid Waste Rail Transfer Facility

December 9, 2020

Pursuant to 49 U.S.C. §§ 10901 and 10909, Brookhaven Rail LLC (BHR) filed for approval from the Surface Transportation Board (Board) to construct and operate up to approximately 25,000 feet of new common carrier track (the Line) and intends to file for a land-use exemption for a solid waste rail transfer facility (SWRTF) (together, the Proposed Project) that would connect to the existing mainline in the Town of Brookhaven, Suffolk County, New York. The Board's Office of Environmental Analysis (OEA) is responsible for preparing an environmental review of BHR's proposed actions pursuant to the National Environmental Policy Act (NEPA). Based on available information, OEA plans on preparing an Environmental Impact Statement (EIS) that will examine the potential environmental effects of the Proposed Project.

ICF prepared this draft Scope of Work to describe the tasks that would need to be performed to support OEA through the environmental review process. Under each task is a description of ICF's proposed approach and assumptions for completing the work. This Scope of Work is based upon ICF's understanding of the proposed action, review of the New York State Voluntary Draft EIS (VDEIS), review of the initial agency consultation letters, and ICF's experience performing similar types of work. The Scope of Work forms the basis for ICF's cost estimate. This Scope of Work reflects ICF's understanding of the level of effort required to support OEA through the EIS process. However, there are unknowns that could affect scope and budget, such as the outcome of the scoping process, changes to or additional information about the Proposed Project, comments on the Draft EIS, and other variables, such as but not limited to the scope of the analysis for climate change, traffic, air quality and cultural resources that may warrant further assessment. This Scope of Work is therefore subject to change. The Scope of Work incorporates the following general assumptions (additional assumptions are included under the individual tasks):

1. The EIS will be prepared pursuant to the Council on Environmental Quality's final NEPA rule. The EIS will be 150 pages or less and will be completed within 2 years.
2. The period of performance will be through January 2023.

This Scope of Work also serves as a preliminary scoping document that identifies the draft scope of resource issues to be analyzed in the EIS. Task 5, Draft EIS, Table 1 identifies the resource issues proposed for detailed analysis in the EIS and the issues that would not be carried forward for detailed analysis. Each resource topic under Task 5, *Draft EIS* includes a detailed description of ICF's proposed approach, methods for those resources to be analyzed in detail, and the rationale for dismissing certain issues from detailed analysis. With input from OEA, this preliminary list of issues would be used in the NOI to notify the public of the resource issues OEA intends to analyze. The list may change if additional resources/issues are identified during agency consultation.

NOVEMBER 5, 2021 LETTER



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

November 5, 2021

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
1629 K Street, NW, Suite 300
Washington, DC 20006

**Re: Docket Nos. FD 36398, Brookhaven Rail LLC – Construction and Operation
Exemption – In Suffolk County, New York; and FD 36399 (Sub-No. 1),
Brookhaven Rail LLC – Land Use Exemption Permit Application under 49
U.S.C. § 10909**

Dear Mr. Wilcox:

Your November 3, 2021 letter requests that the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) find that your pending request for waiver of the six-month prefiling notice for projects typically requiring the preparation of an Environmental Impact Statement is no longer necessary. Your letter also indicates that you intend to file an application for a land-use exemption permit soon. Because objections to your waiver request are already before the Board in the formal docket, this issue will be addressed by the Board, not OEA. You can, of course, argue that your waiver request is now moot in your forthcoming application.

If you have any questions, please contact Diana Wood of my staff at 202-245-0302 or by email at diana.wood@stb.gov.

Sincerely,

Danielle Gosselin
Acting Director
Office of Environmental Analysis

EMAIL CORRESPONDENCE

Tom Wilcox

From: Gosselin, Danielle <Danielle.Gosselin@stb.gov>
Sent: Monday, November 8, 2021 12:37 PM
To: Tom Wilcox
Cc: Wood, Diana
Subject: RE: BHR - Reply to your 11-3-2021 request Letter

Tom,

As stated in my letter, you may file an application for a land-use-exemption permit at any time and include arguments regarding the 6-month waiver in the application if and when you file.

Regards,
Danielle

Danielle Gosselin
Acting Director
Office of Environmental Analysis
Surface Transportation Board
danielle.gosselin@stb.gov
(202) 245-0300

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Friday, November 5, 2021 2:16 PM
To: Gosselin, Danielle <Danielle.Gosselin@stb.gov>
Cc: Wood, Diana <Diana.Wood@stb.gov>
Subject: RE: BHR - Reply to your 11-3-2021 request Letter

Danielle – OK. Thank you. According to this clarification the sole “objection” (not “objections” as your letter states) to the waiver request that could conceivably be before the STB is this generic statement by NAACP. However, NAACP’s objection is based entirely on its misunderstanding of the waiver to be for the purpose of getting the STB to “consider this project sooner.” This is obviously wrong. The waiver of the 6-month notice relates to OEA’s preparation to perform its NEPA duties. The regulation has nothing to do with the Board’s consideration of the merits of an application. Finally, NAACP wrongly believes the 6-month notice is provided to the public rather than just OEA as the regulation explicitly states, but even so, NAACP’s filing was made over 5 months ago, and NAACP has had knowledge of the project for at least 6 months now. Consequently, even though NAACP is not entitled to 6 months prior notice under section 1105.10(a)(1), any alleged harm to NAACP that might have been caused by granting the waiver request has vanished and its “objection” is moot.

In short, Brookhaven Rail respectfully disagrees that this single, very generic “objection,” which is obviously wrong, prevents OEA from performing its delegated duties and determining that the waiver request is no longer needed as set forth in my letter. On behalf of Brookhaven Rail, I request that you reconsider your conclusion that the NAACP’s objection, such as it is, prevents you from acting, and that you indicate your concurrence that the request is no longer necessary. If you still think that action is required on the request, we ask that you grant it.

Regards,
Tom

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC

Office: 202.508.1065
Mobile: 202.365.8409
1629 K. Street, NW Suite 300
Washington, DC 20006
tom@twilcoxlaw.com | www.twilcoxlaw.com

This message contains information that may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail and delete the message.

From: Gosselin, Danielle <Danielle.Gosselin@stb.gov>
Sent: Friday, November 5, 2021 10:59 AM
To: Tom Wilcox <tom@twilcoxlaw.com>
Cc: Wood, Diana <Diana.Wood@stb.gov>
Subject: RE: BHR - Reply to your 11-3-2021 request Letter

Hi Tom,

The letter dated June 2, 2021 from NAACP-NY is addressed to the Commissioners of the Surface Transportation Board and was filed in the formal docket. If you read page 2, you will find a paragraph objecting to the 6-month waiver request.

Thanks,
Danielle

Danielle Gosselin
Acting Director
Office of Environmental Analysis
Surface Transportation Board
danielle.gosselin@stb.gov
(202) 245-0300

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Friday, November 5, 2021 10:40 AM
To: Gosselin, Danielle <Danielle.Gosselin@stb.gov>
Cc: Wood, Diana <Diana.Wood@stb.gov>
Subject: RE: BHR - Reply to your 11-3-2021 request Letter

Danielle – In response to your letter, I did a quick review of the submissions in dockets FD 36398 and FD 36399 and did not find any formal objection to Brookhaven Rail's request for waiver of 49 C.F.R. 1105.10(a)(1) for the Application. I did locate a reference to the 6-month notice requirement in a June 2 NAACP NY filing but no mention of Brookhaven Rail's waiver request. Will you please direct me to the sources for your letter's statement that "objections to your waiver request are already before the Board," as opposed to being mentioned in letters to OEA? Thanks in advance.

Regards,
Tom

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
Office: 202.508.1065
Mobile: 202.365.8409
1629 K. Street, NW Suite 300
Washington, DC 20006

tom@twilcoxlaw.com | www.twilcoxlaw.com

This message contains information that may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail and delete the message.

From: Wood, Diana <Diana.Wood@stb.gov>
Sent: Friday, November 5, 2021 7:49 AM
To: Tom Wilcox <tom@twilcoxlaw.com>
Cc: Gosselin, Danielle <Danielle.Gosselin@stb.gov>
Subject: BHR - Reply to your 11-3-2021 request Letter

Tom,

Please see the attached reply.

Thanks,
Diana

Diana F. Wood
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington DC 20423
202-245-0302
Diana.Wood@stb.gov

CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of November 2021, a copy of the foregoing Letter was served by email on all parties on the official Service List for Docket No. FD 36399.

/ss/ Thomas W. Wilcox