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Office of Proceedings
November 29, 2023
Part of
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November 29, 2023

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: Docket No. FD 36398, *Brookhaven Rail LLC – Constr. & Op. Exemption – Suffolk County, New York*; Docket No. FD 36399; *Application for a Land-Use Exemption Under 49 U.S.C. § 10909*; Docket No. FD 35141, *U S Rail Corp. – Constr. & Op. Exemption – Brookhaven Rail Terminal*; Docket No. FD 35819, *Brookhaven Rail Terminal & Brookhaven Rail, LLC – Pet. for Decl. Order*; Docket No. FD 36376, *Spectrum R.R. Holdings, LLC – Operation Exemption – R.R. Line in the Town of Brookhaven, NY*; Docket No. FD 36384, *Sills Road Realty LLC – Acquisition Exemption – R.R. Line in the Town of Brookhaven, NY*; Docket No. FD 36385, *Spectrum R.R. Holdings, LLC – Acquisition & Op. Exemption – Line of Sills Road Realty LLC, in the Town of Brookhaven*

Dear Ms. Brown:

This letter is filed on behalf of Brookhaven Rail LLC (“Brookhaven Rail”) in response to the Reply of Citizens Campaign for the Environment to Show Cause Filings of the Brookhaven Parties (“CCE Reply”). Brookhaven Rail respectfully requests that this brief response be accepted to ensure the Board has a more complete record for decision. *See City of Alexandria, Va.—Pet. for Declaratory Ord.*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”).

First, Brookhaven Rail objects to CCE’s persistent, disingenuous practice of falsely lumping the current owners of Brookhaven Rail with the entities that preceded them to support CCE’s preferred narrative. Statements by CCE such as “the evidence of record clearly shows that BHR did not construct the line,” and “[t]he reason BHR informed the Board in Docket No. FD

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35141 that it would construct the track,” and “the Board’s authorization decision that permitted only BHR, and not Sills, to construct the line,” *See, e.g.* CCE Reply at 5-6, are all knowingly false because U.S. Rail Corporation (“U.S. Rail”) filed the construction petition in Docket No. FD 35141 and received construction and operating authority, not Brookhaven Rail. Differentiating between the various entities involved over the 15-year overall timeline is critically important because, prior to May 20, 2020 when Shamrock Rail LLC purchased the shares of Brookhaven Rail, the principals of Shamrock Rail LLC had no involvement in any of the regulatory actions initiated by or involving U.S. Rail or Sills Road Realty (“Sills”). More importantly, the record demonstrates that the current principals of Brookhaven Rail, Brookhaven Logistics Center, and Sills are acting to respond to the Board’s apparent concerns with practical resolutions to any past regulatory issues. The Board should therefore reject CCE’s continued attempts to portray the situation as a multiparty conspiracy that began in 2007 and is being carried forward by the current parties.

Second, CCE’s allegation that Brookhaven Rail did not fully comply with the Board’s January 6, 2023 Decision in these cases is unfounded. That decision directed Brookhaven Rail and Sills to address certain issues raised by the Director of the Office of Proceedings in a Decision served in Docket No. FD 36376 on June 16, 2020. However, the Director’s concerns and questions in that Decision were specifically directed to Sills and its subsidiary Spectrum RR Holdings, LLC alone. Accordingly, nothing in that Decision required Brookhaven Rail to provide any information, let alone “agreements and related documents in its possession that reflect or address BHR’s possessory rights in Parcel A.”¹ In response to the Board’s January 6, 2023 Decision, Brookhaven Rail made a good faith attempt to provide full responses to the Director’s questions. However, Brookhaven Rail also informed the Board that neither it nor Shamrock Rail LLC possess any documents responsive to the Director’s specific requests.²

Sincerely,



Thomas W. Wilcox

Attorney for Brookhaven Rail LLC

¹ CCE Reply at 12.

² Brookhaven Rail Reply to Request for Information, filed in these unconsolidated dockets on February 15, 2023 at pages 7, 10, 11.

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of November, 2023, a copy of the foregoing Letter was served by email on all parties on the official Service Lists for Dockets No. FD 36398, Docket No. FD 36399, Docket No. FD 35141, Docket No. FD 35819, Docket No. FD 36384, Docket No. FD 36376, and Docket No. FD 36385.

/ss/ Thomas W. Wilcox