



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

ROBERT D. ROSENBERG

307818

January 19, 2024

ENTERED
Office of Proceedings
January 19, 2024
Part of
Public Record

Via E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, D.C. 2006

Re: FD 36398, *Brookhaven Rail LLC – Constr. & Op. Exemption – Suffolk County, NY*; FD 36399, *Application for a Land-Use Exemption Under 49 U.S.C. § 10909*; FD 35141, *U S Rail Corp. – Constr. & Op. Exemption – Brookhaven Rail Terminal*; FD 35819, *Brookhaven Rail Terminal & Brookhaven Rail, LLC – Pet. for Decl. Order*; FD 36376, *Spectrum R.R. Holdings, LLC – Operation Exemption – R.R. Line in the Town of Brookhaven, NY*; FD 36384, *Sills Road Realty LLC – Acquisition Exemption – R.R. Line in the Town of Brookhaven, NY*; FD 36385, *Spectrum R.R. Holdings, LLC – Acquisition & Op. Exemption – Line of Sills Road Realty LLC, in the Town of Brookhaven*;

Dear Ms. Brown,

Citizens Campaign for the Environment (“CCE”) requests leave for good cause shown to respond to the surreply letter from Sills Road Realty LLC (“Sills”) to the Surface Transportation Board (“Board” or “STB”) in the above-captioned proceedings dated January 5, 2024.

Sills chastises CCE for repeated filings. But the Board’s show cause order served September 27, 2023, directed the Brookhaven Terminal participants (Sills, BHR, and BLC) to file and gave the public, including CCE, the right to reply. The fact that the Brookhaven Terminal participants continue to submit additional information or responses to CCE’s submissions should not consign CCE to silence, especially when the additional submissions conflict with prior statements or raise new issues.

Such is the case with Sills' latest filing. With BLC's recent admission that it "has not assumed any of BRFS's rights and obligations under the Sublicense Agreement" (BLC Dec. 2, 2023 Surreply at 3), Sills is finally forced to disclose that its independent and sole control over BRFS is ongoing, and that BRFS continues to participate in the operation of the Brookhaven Terminal via the existence a "Cooperation and Transition Services Agreement" ("Transition Agreement") with BLC, an agreement that neither had acknowledged previously. Sills' ongoing involvement is contrary to the impression Sills conveyed in its October 24, 2023 response to the show cause order that it had ended all ties. *Id.* at 1 ("past ownership" and "divestiture"), 5 (Sills "owned the Lines until it sold them on May 4, 2022"), and 6 ("divestiture of the lines"). The actual extent of its continuing involvement is unclear, particularly as Sills submits its self-serving characterization of the arrangement, but not the Transition Agreement itself. Furthermore, Sills' anticipated termination of BRFS's involvement begs questions as to whether BLC will succeed to BRFS's rights and obligations vis-à-vis BHR under the Sublicense Agreement when the transition is completed.

The fact that the relative roles of Sills/BRFS, BLC, and BHR remain in flux, along with their relative rights, obligations, and control over rail lines that still do not appear to have been fully disclosed, despite a show cause order from the Board as to violations of 49 U.S.C. § 10901, is no reason to cast dispersions upon CCE.

Respectfully submitted,

Peter A. Pfohl
/s/ Robert D. Rosenberg

*Counsel for Citizens Campaign
for the Environment*

cc: Service List