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June 9, 2014

236160

Ms. Cynthia T. Brown  
Chief, Section of Administration (PSA)  
Surface Transportation Board  
Office of Proceedings (PD)  
395 E Street, S.W.  
Room 1034  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings  
June 9, 2014  
Part of  
Public Record

Re: **Finance Docket No. 35819, Brookhaven Rail Terminal And  
Brookhaven Rail, LLC – Motion To Close The Record And  
Enter Decision**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket, please find Brookhaven Rail Terminal's and Brookhaven Rail, LLC's Motion to Close the Record and Enter Decision.

Respectfully submitted,

David T. Ralston, Jr.

Counsel for Petitioners Brookhaven Rail Terminal  
and Brookhaven Rail, LLC

Enclosures  
cc: Parties of Record

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT

JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI

MILWAUKEE  
NEW YORK  
ORLANDO  
SACRAMENTO

SAN DIEGO  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY

TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35819

BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN RAIL, LLC –  
PETITION FOR DECLARATORY ORDER

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**MOTION TO CLOSE THE RECORD AND ENTER DECISION**

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***Counsel for Brookhaven Rail Terminal  
and Brookhaven Rail, LLC***

Dated: June 9, 2014

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35819

BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN RAIL, LLC –  
PETITION FOR DECLARATORY ORDER

---

**MOTION TO CLOSE THE RECORD AND ENTER DECISION**

Brookhaven Rail Terminal and Brookhaven Rail, LLC (collectively, “Petitioners”) respectfully move the Surface Transportation Board (“Board”) to close the record and enter a decision with respect to STB Finance Docket No. 35819, based upon the pleadings and the record as of this date, June 9, 2014. The Board should do so because:

(1) No rail carrier has filed a reply or otherwise entered the case, demonstrating that Petitioners’ track meets the requirements for a spur under 49 U.S.C. § 10906, Petition for Declaratory Order, at 17-27, as the track does not invade another rail carrier’s territory, poach another rail carrier’s customers, or divert revenue from another rail carrier; and

(2) The reply by the Town of Brookhaven (“Town”), the only entity to file a reply, does not focus on, and presents little “evidence” addressing, whether the track at issue in these proceedings is an exempt spur under 49 U.S.C. § 10906, and in any event, the Town lacks standing to raise the rail carrier competitive issues that are at the core of the spur determination under 49 U.S.C. § 10906.

**DISCUSSION**

1. Petitioners filed the Petition for Declaratory Order on April 28, 2014 (Document No. 235971) (“Petition”). Replies from interested parties were due by May 19, 2014. The Petition demonstrated that Petitioners’ track at issue meets the standards for a spur under 49

U.S.C. § 10906 and applicable precedent, as it will be used to expand, improve, and increase the Petitioners' existing, and Board-authorized, railroad facilities and services, and will be limited to switching, transloading, and terminal services that the Petitioners currently provide to customers in the *same* Long Island regional market served by the Petitioners since 2011. Petition, at 19-27.

2. Petitioners served the Long Island Railroad ("LIRR") and the New York & Atlantic Railway Company ("NY&A"), the only two rail carriers operating in the Long Island rail market, and only NY&A provides freight rail service (under an exclusive franchise from the LIRR). The Petition advised those carriers as to the Petitioners' construction of a spur on the adjoining parcels to the Brookhaven Rail Terminal on Long Island. Petition, at 9-12, 19-27. The LIRR and NY&A are the only two rail carriers that could feasibly object to the Petitioners' track construction as an invasion of their territories. If either rail carrier believed that the Petitioners' spur would invade their territory, steal their customers, or divert revenue from them, they would have filed a reply and objected to the Petitioners' track construction.

3. No rail carrier filed a reply or entered the case.

4. That no rail carrier filed a reply demonstrates that the Petitioners' track does not invade another rail carrier's territory, poach another rail carrier's customers, or divert revenue from another rail carrier, thereby meeting the standard for a spur under 49 U.S.C. § 10906 and applicable precedent, Petition, at 17-27.

5. The Town filed a reply to the Petition (deemed an "Answer") on May 19, 2014, (Document No. 236066), and it was the only entity to reply. In its Answer, the Town did not question Petitioners' legal arguments regarding the various standards to determine if a track was a spur, Answer, at 7, but presented little "evidence" addressing those standards. Answer, at 7-15. Instead, Petitioners focused on making allegations that the Petitioners are not engaged in

“railroad activities” or the construction of “railroad facilities.” Answer, at 7-15. Consequently, the Town added little new evidence of record regarding whether Petitioners’ track constitutes a spur under the applicable standards.

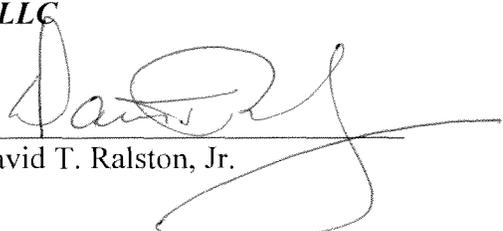
6. Moreover, as the Town is not a rail carrier, it would lack standing to raise the rail competition issues that are at the core of the determination of whether a track is or is not a spur, Petition, at 17-27. To the extent the Town’s Answer presents matters of relevance, the record is sufficiently mature that they can be addressed by the Board without further filings.

7. The Board now has a sufficient record before it, and the matter is therefore ripe for decision.

Wherefore, Petitioners move the Board to close the record and enter a decision on the pleadings.

Respectfully submitted,

***Brookhaven Rail Terminal and Brookhaven Rail, LLC***

By: 

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***Counsel for Brookhaven Rail Terminal and Brookhaven Rail, LLC***

Dated: June 9, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2014, I caused to be served Brookhaven Rail Terminal's and Brookhaven Rail's Motion to Close the Record and Enter Decision, by first-class mail, postage prepaid, upon the following Parties of Record in this proceeding:

TO: Judah Serfaty, Esq.  
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New York Natural Heritage Program  
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Brookhaven, NY 11719  
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Jamaica, NY 11435-4380  
Attn: Helena E. Williams

New York & Atlantic Railway  
68-01 Otto Road  
Glendale, NY 11385  
Attn: Paul Victor

A handwritten signature in black ink, appearing to read "David T. Ralston, Jr.", written over a horizontal line.

David T. Ralston, Jr.  
*Counsel for Brookhaven Rail Terminal  
and Brookhaven Rail, LLC*