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ENTERED
 Office of Proceedings
 April 14, 2016
 Part of
 Public Record
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April 14, 2016

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

Re: Finance Docket Nos. 35819: Withdrawal of Opposition to BRT in Finance
 Docket Nos. 35819

Dear Ms. Brown:

We represent the Town of Brookhaven, New York (the "Town"). We further wish to inform the Board that the Town and Brookhaven Rail Terminal (collectively "BRT") have resolved their dispute that had been pending in the United States District Court for the Eastern District of New York, styled as *Town of Brookhaven v. Sills Road Realty LLC et al.*, Case No. 2:14-cv-02286. In connection with that settlement, the District Court has issued an Order, enclosed herewith, referring to the Board pursuant to 28 U.S.C. § 1336(b) the question of whether BRT's proposed expansion track area onto Parcels B, C and/or D may be classified under 49 U.S.C. § 10906. With respect to that issue, the Town hereby *withdraws* its opposition to the Petition for Declaratory Order filed on April 28, 2014, by Brookhaven Rail, LLC and BRT in Finance Docket No. 35819. The Town specifically does not object to the 49 U.S.C. § 10906 classification of the track area of BRT's proposed expansion, and respectfully requests that the Board expeditiously address BRT's Petition.

Respectfully submitted,
 ROSENBERG CALICA & BIRNEY LLP
 By:


 Robert M. Calica
 Judah Serfaty

Encl.

ATTACHMENT

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
TOWN OF BROOKHAVEN,

Plaintiff,

-against-

ORDER
CV 14-2286 (GRB)

SILLS ROAD REALITY LLC, BROOKHAVEN
RAIL LLC f/k/a US RAIL NEW YORK LLC,
BROOKHAVEN TERMINAL OPERATIONS,
OAKLAND TRANSPORTATION HOLDINGS
LLC, SILLS EXPRESSWAY ASSOCIATES,
WATRAL BROTHERS, INC., and PRATT
BROTHERS, INC.,

Defendants.

-----X
GARY R. BROWN, United States Magistrate Judge:

WHEREAS, Brookhaven Rail Terminal, a party to this litigation, and Brookhaven Rail LLC (collectively “BRT”), a rail carrier operating under licensing authority granted by the Surface Transportation Board (the “STB”), initiated a proceeding at the STB seeking a declaratory order that the expansion railroad track area proposed to be constructed on Parcels B, C, and/or D may be classified under 49 U.S.C. § 10906. *Brookhaven Rail Terminal and Brookhaven Rail, LLC—Petition for Declaratory Order*, Petition for Declaratory Order, FD 35819 (filed April 28, 2014);

WHEREAS, the Town of Brookhaven (the “Town”) was provided notice of BRT’s declaratory order request, participated in the STB proceeding, and filed objections;

WHEREAS, by Order served August 28, 2014, the STB ruled as follows:

. . . [t]he Court is addressing the preemption issues that [BRT] ha[s] raised in this docket. . . the Court has not indicated that the matters in the petition before the Board should be addressed by the Board in order to facilitate proceedings before the Court. Nor has the Court referred the dispute before it to the Board under 28 U.S.C. § 1336(b) for the Board’s determination. Under these circumstances, we will hold our consideration of the petition in abeyance pending a ruling by the

Court.

Brookhaven Rail Terminal and Brookhaven Rail, LLC—Petition for Declaratory Order, FD 35819 (STB served August 28, 2014);

WHEREAS, the parties to this litigation have resolved their disputes by a proposed Stipulation of Settlement, and pursuant thereto, the Town has agreed to withdraw its objection in the STB proceeding to the designation of the proposed expansion track area on Parcels B, C and/or D may be classified under 49 U.S.C. § 10906;

WHEREAS, in view of the STB's decision to hold in abeyance its decision pending resolution of the litigation in this Court, and that the litigation has now been settled, BRT has moved this Court under 28 U.S.C. § 1336(b) to refer the question of whether BRT's proposed expansion track area on Parcels B, C and/or D may be classified under 49 U.S.C. § 10906, and the Town does not object to such referral;

NOW, THEREFORE, upon consideration of the foregoing, and good cause having been shown, it is hereby ORDERED as follows:

The determination of whether BRT's proposed expansion track area on Parcels B, C and/or D may be classified under 49 U.S.C. § 10906 is hereby respectfully referred to the STB pursuant to 28 U.S.C. § 1336(b). While the Court recognizes that the STB has many important matters before it, the speedy resolution of the instant issue would be of substantial assistance to this Court and the parties. Therefore, it is further requested that, to the extent practicable, the STB expedite the requested determination.

SO ORDERED.

Dated: Central Islip, New York
April 5, 2016

/s/ Gary R. Brown
GARY R. BROWN
United States Magistrate Judge

CERTIFICATE OF SERVICE

I, JUDAH SERFATY, hereby certify that on the 27th day of October, 2015, I caused to be served the within **LETTER OF APRIL 14, 2016** upon the attorneys/parties by E-mailing same to their email addresses:

TO: Yonaton Aronoff, Esq.
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Dated: April 14, 2016



JUDAH SERFATY