

James E. Howard

Attorney at Law

70 Rancho Road
Carmel Valley, CA 93924
www.jehowardlaw.com

tel 831.659.4112
cell 617.905.6083
jim@jehowardlaw.com

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February 4, 2016

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings
February 4, 2016
Part of
Public Record

Re: Diana Del Grosso, et al.--Petition for Declaratory Order
Finance Docket No. 35652

Dear Ms. Brown:

I represent Grafton & Upton Railroad Co. ("G&U") in the above-captioned proceeding. The purpose of this letter is to respond to a letter dated January 25, 2016 from counsel for the Petitioners. As explained below, any consideration of the Petitioners' letter at this time would be premature and inappropriate. Furthermore, if and when this matter is once again before the Board, G&U will respond to and rebut the arguments being advanced by the Petitioners.

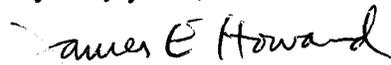
As noted in the Petitioners' letter, the United States Court of Appeals for the First Circuit vacated the Board's decision in this matter based upon the Court's determination that the Board had applied an incorrect test in finding that G&U's transloading of wood pellets from rail cars to trucks constituted transportation by rail carrier. Following the Court's decision, G&U filed with the Court a petition for rehearing, arguing that the Court had wrongly decided the case and that the Board's decision was correct. The petition for rehearing is still pending, and therefore, according to the Federal Rules of Appellate Procedure, the issuance of a mandate by the Court has been stayed.

In deciding the petition for rehearing, the Court could make a final disposition of the case, such as determining that the Board was in fact correct, set the matter for reargument or enter any other appropriate order. If the Court ultimately concludes that a remand is nonetheless appropriate, the issuance of a mandate is the necessary prerequisite for the transfer of this action from the jurisdiction of the Court back to the Board. Until such time as the mandate issues and the case is formally remanded to the Board, any consideration of the issues or the arguments raised by the Petitioners in the letter dated January 25, 2016, would be premature and beyond the Board's authority.

Many of the points raised in the Petitioners' letter are misleading or simply incorrect. If the case is remanded to the Board, G&U intends to submit evidence and argument rebutting the Petitioners and supporting the same conclusion that the Board reached initially--that the transloading of wood pellets constitutes transportation by a rail carrier.

In these circumstances, for the reasons set forth above, G&U believes that the only appropriate course of action for the Board is to defer any consideration of the matters raised by the Petitioners' letter and take no further action unless and until the Court returns jurisdiction over the case to the Board. If the Board eventually has this matter before it on remand, G&U respectfully requests that the Board establish a procedural schedule requiring the Petitioners to file their evidence and arguments and providing an opportunity for G&U and other interested parties to respond.

Very truly yours,



James E. Howard

cc: Parties on service list
Erik G. Light