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

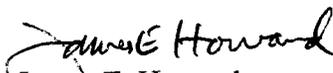
Re: Diana Del Grosso, et al.--Petition for Declaratory Order
Finance Docket No. 35652

Dear Ms. Brown:

Transmitted here with for filing on behalf of Grafton & Upton Railroad Co. in the above-captioned matter are the "Supplemental Reply of Grafton & Upton Railroad Company in Opposition to Petition for Declaratory Order" and verified statements of Jon Delli Priscoli, Stanley Gordon, Eric Moffett, Ronald Dana, Michael Polselli, and Gordon Murray.

Please contact me if you have questions or need additional information. Thank you very much for your attention to this request.

Very truly yours,


James E. Howard

cc: Mark Bobrowski
Fritz Kahn

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**SUPPLEMENTAL REPLY OF GRAFTON & UPTON
RAILROAD COMPANY IN OPPOSITION TO
PETITION FOR DECLARATORY ORDER**

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Attorney for Grafton &
Upton Railroad Co.

Dated: February 25, 2013

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INTRODUCTION

By decision served on January 24, 2013 in the above-captioned proceedings (the "January 24 Decision"), the Board instituted a declaratory order proceeding in response to the "Petition for Declaratory Order" filed on behalf of the Petitioners on August 1, 2012 (the "Petition"). Grafton & Upton Railroad Co. ("G&U") filed a reply to the Petition on August 21, 2012 (the "2012 Reply"), and on September 10, 2012 the Petitioners filed a "Response of the Petitioners" responding to the 2012 Reply ("Petitioners' Response"). In the January 24 Decision, the Board accepted the Petitioners' Response and provided that the Petition would serve as the Petitioners' opening statement. G&U hereby submits its reply in accordance with the January 24 Decision.

The Petitioners contend that the preemption provisions of 49 U.S.C. 10501 do not apply to the transloading activities conducted by G&U at its yard in Upton,

Massachusetts. More specifically, the Petitioners make 2 arguments. First, they suggest that the transloading of wood pellets that are moved to the yard in bulk in rail hopper cars, transferred into silos, placed in bags and eventually loaded onto trucks for further distribution does not constitute "transportation", but rather is "processing" or "manufacturing". Second, the Petitioners argue that the transloading, which is performed by Grafton Upton Rail Care under the auspices and control of G&U, is not conducted by a rail carrier.

As demonstrated in the 2012 Reply, which G&U hereby incorporates by reference (including the Verified Statements filed with the 2012 Reply), and below in this Supplemental Reply and the verified statements filed herewith, neither of these arguments is persuasive. The Board should determine that all of the transloading activities at G&U's Upton yard, including the transfer and bagging of wood pellets, constitute rail transportation performed by or under the auspices of a rail carrier.¹ As a consequence, state and local regulations are preempted.

ARGUMENT

While the Petitioners have advanced the 2 arguments referred to above, it is important to note that there are a number of activities and services provided by G&U at its yard in Upton that the Petitioners agree constitute "transportation" by a rail carrier. As the Board is well aware, "transportation" is defined quite broadly in 49 U.S.C. 10102(9) and includes a "yard, property, facility, instrumentality, or equipment of any kind related to movement of . . . property . . . by rail, regardless of ownership or agreement concerning use" and "services related to that movement, including receipt, delivery . . .

¹ As discussed more fully in the 2012 Reply and in Section III below, the Town of Upton has determined that the activities at the Upton yard are not subject to local regulation by reason of preemption.

storage, handling and interchange" The Petitioners do not challenge the lease of the property in Upton by G&U for use as a rail yard or the installation of tracks at the yard. The Petitioners acknowledge that, in general, intermodal transloading operations and activities, including temporary storage, constitute rail transportation that is within the Board's exclusive jurisdiction. Petition at 13. See also, New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway--Construction, Acquisition and Operation Exemption--in Wilmington and Woburn, MA, STB Finance Docket No. 34797, decision served July 10, 2007 ("New England Transrail") at 2. Thus, there is no dispute that the movement and temporary storage of rail cars in the yard, the transloading of bulk liquids between rail cars and trucks and even the unloading of wood pellets into silos constitute rail transportation.

I. The Transloading of Wood Pellets Constitutes Transportation.

The Petitioners have continued to advance the position that the transloading of wood pellets does not constitute "transportation", but rather is "manufacturing" or "processing". Petitioners' Response at 7-8. The arguments of the Petitioners on this issue are based entirely on a website promotion by Viridis, which is a wood pellet manufacturer and a transportation customer of G&U.² As clearly described in the Verified Statement of Douglas Middleton of Viridis, which was filed with the 2012 Reply, however, the wood pellet manufacturing process ends with the formation of the pellets, at which time the transportation of manufactured pellets begins. Whether pellets are placed in bags at the manufacturing plant and shipped from there or shipped in bulk in

² The Petitioners' "evidence" in this case has consisted largely of citations to websites, media articles and advertisements, together with speculation, which has often been misplaced and incorrect, rather than any direct testimony. By comparison, G&U has supported its arguments on the basis of verified statements of knowledgeable witnesses, who have explained why the conclusions that the Petitioners would have the Board draw from the websites, media articles and advertisements are unfounded.

rail cars for bagging at another location does not change the fundamental fact that the manufacturing has been completed and the nature and constitution of the pellets does not change no matter how they are transported.

It is clear that transportation includes more than just the movement of rail cars. In Borough of Riverdale--Petition for Declaratory Order, STB Finance Docket No. 35299, decision served August 5, 2010 ("Riverdale"), the Board noted that the courts had determined that earlier development of the railroad yard for the transloading of corn syrup, including the installation of water lines to heat the syrup to facilitate the transfer to trucks, was preempted. Riverdale at 2-3, n.9. Additionally, as noted by the Board and pointed out by the American Association of Railroads ("AAR") in New England Transrail, there are a number of processes and services provided at transload facilities that can also be performed at other facilities, but that are part of the transportation move when performed by or for a railroad. These activities include sampling, testing for quality and moisture content, weighing, mixing of coal, blending of petroleum-coke, spot repairs of vehicles, and installation of tires or batteries. See New England Transrail, at 5, n.8; Initial Comments of AAR in New England Transrail dated July 13, 2006. What is not preempted is manufacturing and independent commercial transactions. New England Transrail at 10.

The demarcation line between the manufacturing of wood pellets and transportation is confirmed by a knowledgeable representative of the wood pellet industry. As explained in the accompanying Verified Statement of Gordon Murray ("Murray VS"), who is the Executive Director of the Wood Pellet Association of Canada, the manufacturing process is complete when the pellets have been rolled and squeezed

through a die. Murray VS at ¶ 5. At that point, the pellets can be shipped by truck, rail or boat, or by a combination of modes, either in bulk form or in bags. Murray VS at ¶ 5.

The Petitioners have used the phrase "adding value" in describing various steps that occur after the pellets have been manufactured, such as vacuuming dust, placing the pellets in bags, loading the bags on pallets and shrink wrapping the pallets. G&U has explained why these various steps are part of the handling, storage and transfer in transit, i.e. transportation, of the pellets and do not add any value to the pellets. 2012 Reply at 19-21. The Petitioners, however, claim that the alleged "value added" steps mean that the manufacturing process is continuing even after the pellets have been formed.³

The Petitioners have cited no decisions in support of their proposition that somehow "adding value" means that manufacturing, rather than transportation, is occurring. The term is used by the Board in one of its decisions concerning New England Transrail. While the Board determined in that case that baling and wrapping solid waste were integral steps in the transportation of solid waste, the Board also concluded that the process by which solid waste was shredded in order to remove valuable wood and metal, which could be recycled and sold separately from the waste, was not part of transportation.

New England Transrail, however, presented a very different situation than does the transportation of wood pellets. As the Board is well aware, the transloading of solid waste involved certain unique issues, due in large part to the fact that solid waste transfer and recycling stations operated by waste disposal companies are a heavily regulated activity. Furthermore, the solid waste trade association participated in the New England

³ The Petitioners do not argue that transferring pellets from railcars to silos for temporary storage prior to bagging or storage after bagging is part of the manufacturing process or that those steps allegedly add value.

Transrail matter and opposed the application of preemption. The discussion by the Board in New England Transrail concerning activities that might not be considered part of transportation was limited exclusively to solid waste and did not apply to other commodities, including products shipped in bulk, to be transloaded at the yard. The reference to "adding value" was strictly in the context of the operators of solid waste transfer facilities being able to extract wood and metal, which could be recycled or resold separately from the solid waste being transloaded into rail cars.

The Board determined that baling and wrapping solid waste was an efficient, integrally related step in the transportation of the solid waste that had no value for any other purpose, because on delivery the wrapping was removed and the bales were broken up. This is similar to the situation with respect to bagging pellets, placing the bags on pallets and shrink wrapping the pallets for the transportation of wood pellets. At destination, the wrapping is removed and the pallets are discarded and of no further use. Ultimately, when customers use the pellets, the bags are thrown out. There is no value added to the pellets, and there is no valuable byproduct to sell.

The bagging of wood pellets, and stacking and wrapping the bags on pallets, is merely part of the "handling", "storage" and "transfer in transit" of the pellets, as they are moved from rail cars into silos and then into temporary storage prior to further delivery by truck. All of these steps, including bagging, are part of "transportation". Bagging is simply not the type of manufacturing that the Board has found to be outside the scope of transportation, such as the shredding and associated recycling activity in New England Transrail or the fabrication work (cutting and welding of steel) that was the subject of Town of Milford, MA--Petition for Declaratory Order, STB Finance Docket No. 34444,

decision served August 12, 2004. In this case, bagging is, as described below, part of the logistics and transportation decision of shippers, which pay for the bagging as part of the transportation and storage charges assessed by G&U pursuant to its tariff.

Placing wood pellets in bags at the Upton yard prior to loading them on trucks is, therefore, an integral part of the transportation of the pellets, not manufacturing or processing. Furthermore, bagging at locations other than where the pellets are manufactured is driven by the transportation decisions of the pellet manufacturers and their customers as a more efficient and less costly means to move the pellets from the manufacturing location to the market. Middleton VS at ¶¶ 5-6; Verified Statement of Eric Moffett ("Moffett VS") at ¶¶ 5-9. As noted by Mr. Murray, "the decision whether or not, or when, to bag is part of the transportation logistics decision of the manufacturer and the requirements of the ultimate customers." Murray VS at ¶ 5.⁴

II. The Transloading is Performed Under the Direction and Control of G&U.

A. This Case is Similar to Alexandria.

In recent years, the Board has analyzed the question whether transloading by a contractor is being performed by or under the auspices of a rail carrier by application of the criteria largely established in 2 seminal decisions--City of Alexandria, VA--Petition for Declaratory Order, STB Finance Docket No. 35157, decision served February 17, 2009 ("Alexandria"), and Town of Babylon and Pinelawn Cemetery--Petition for Declaratory Order--STB Finance Docket No. 35057, decisions served February 1, 2008 and September 26, 2008 ("Babylon"). In addition, the Board's more recent decision in Riverdale provides a comparative analysis of the factors taken into account in Alexandria

⁴ Indeed, G&U anticipates having a new pellet customer that intends to have the pellets transferred in bulk from the storage silos directly into trucks, rather than to use the bagging option. Supplemental Verified Statement of Michael Polselli ("Polselli Supplemental VS") at ¶ 7.

and Babylon. See also, Texas Central Business Lines Corp. v. City of Midlothian, 669 F.3d 525 (5th Cir. 2012) (finding the installation of roads and silos and the transloading of sand by a contractor to be a preempted activity under the Alexandria and Babylon criteria).

A review of the facts of this matter demonstrates that the transloading by Grafton Upton Rail Care is similar to the arrangement in the Alexandria case and that, as a consequence, the transloading is in fact being performed "under the auspices and control" of G&U. The Upton yard is a G&U rail facility, not a Dana facility.

The similarities between this case and Alexandria, and the dissimilarities compared to the situation and Babylon, include the following:

1. G&U has a long-term lease of the Upton transloading facility with an option to purchase, which is tantamount to railroad ownership similar to the situation in Alexandria. Lease Agreement between Upton Development Group, LLC and Grafton & Upton Railroad Co. ("Lease"), a public version of which was filed with the Board on January 31, 2013.

2. As in Alexandria, G&U has undertaken the construction of the track and other transloading facilities at the yard, and G&U is responsible for maintenance of the track and switches. Verified Statement of Jon Delli Priscoli ("Delli Priscoli VS") at ¶ 9; Supplemental Verified Statement of Jon Delli Priscoli ("Delli Priscoli Supplemental VS") at ¶ 10. In Babylon, the contractor built the transloading facilities and was responsible for all of the maintenance.

3. Similar to the agreement in Alexandria, the Terminal Transloading Agreement does not have any of the characteristics of a lease, license or other possessory interest that

would indicate that Grafton Upton Rail Care was conducting an independent business at the yard. Supplemental Verified Statement of Stanley Gordon ("Gordon Supplemental VS") at ¶ 5; Verified Statement of Ronald Dana ("Dana VS") at ¶ 7. In fact, Grafton Upton Rail Care is prohibited by the Terminal Transloading Agreement dated as of December 30, 2010 (the "Agreement" or the "Terminal Transloading Agreement"), a public version of which was filed with the Board as of January 31, 2013, from conducting any such independent business, and G&U has the right to use the yard for its own purposes. Agreement at Sections 1.C. and 6.

4. Similar to the situation in Alexandria, G&U pays Grafton Upton Rail Care a fee for providing the transloading services, and Grafton Upton Rail Care does not pay any rental fee to G&U for the use of the facility. Agreement at Section 2; Gordon Supplemental VS at ¶ 5; Dana VS at ¶¶ 6-7; Supplemental Verified Statement of Ronald Dana ("Dana Supplemental VS") at ¶ 11. In Babylon, the transloading contractor paid fees in the nature of rent to the rail carrier.

5. The Terminal Transloading Agreement has a term of 2 years, and, significantly, G&U has the right to cancel the agreement for any reason on short notice. Agreement at Section 5. In Babylon, the transloading contractor had a long-term lease.

6. Just as Norfolk Southern Railway ("Norfolk Southern") did in the Alexandria case, G&U holds itself out as offering transloading services as an integral part of its line haul, common carrier service. Moffett VS at ¶¶ 3-4; Supplemental Verified Statement of Eric Moffett ("Moffett Supplemental VS") at ¶¶ 2-5. G&U's Tariff 5000-A, which is discussed in more detail below, demonstrates that the transloading is part of G&U's transportation service.

7. As in Alexandria, none of the customers using the transloading services at Upton is affiliated with Grafton Upton Rail Care or any of the other Dana Companies. Dana Supplemental VS at ¶ 10. Affiliates of Grafton Upton Rail Care may provide trucking service to G&U transloading customers or may lease rail cars to such customers, but the Terminal Transloading Agreement prohibits Grafton Upton Rail Care from marketing the transloading services for its own account or from providing transloading services except to customers of G&U that are using line haul services to or from the yard. Agreement at Section 1.C.; Dana VS at ¶¶ 6-7; Verified Statement of Michael Polselli ("Polselli VS") at ¶¶ 6-7. Grafton Upton Rail Care does not advertise or promote its services at the yard. Polselli VS at ¶ 11. In Babylon, in contrast, the transloader had the right to conduct an independent business, promoted its services directly to customers and had direct contractual relationships with such customers.

8. Although Grafton Upton Rail Care bills and collects transloading fees from customers, it does so only on behalf of and as agent for G&U. Moffett VS at ¶ 15; Moffett Supplemental VS at ¶¶ 6-7; Agreement at Section 1.J.; Tariff 5000-A, attached as an exhibit to Moffett Supplemental VS, at Item 120; Polselli VS at ¶ 10. In Alexandria, the contractor billed and collected the Norfolk Southern tariff track occupancy charges on behalf of Norfolk Southern. The rates for transloading are established by G&U in its tariff, and ultimately any decision to adjust the rates is made by G&U. Id.; Polselli VS at ¶ 9. In Babylon, on the other hand, the third-party transloading contractor established its own rates and negotiated directly with customers.

9. As in Alexandria, Grafton Upton Rail Care's transloading services are directly related to the physical transloading and are entirely consistent with the provision of a

contract service that is part of G&U's transportation business and that might otherwise be provided directly by G&U. Agreement at Sections 1.A.-1.C.

10. Although indemnification of the railroad by the contractor was raised as an issue in Babylon, indemnification by the contractor was also part of the agreement approved by the Board in Alexandria. Because the transload services are provided under G&U Tariff 5000-A, G&U remains liable to its customers. The possibility that Grafton Upton Rail Care will protect G&U, through indemnification and insurance, if Grafton Upton Rail Care were to cause a loss is customary in principal-agent relationships. Gordon Supplemental VS at ¶ 6; Moffett VS at ¶ 13.

11. Grafton Upton Rail Care, like the contractor in Alexandria, does not become involved in the delivery of rail cars at their point of origin or destination. G&U is responsible for the movement of railcars within the yard. Delli Priscoli Supplemental VS at ¶ 10; Polselli VS at ¶ 6.

In Riverdale, the Board considered a transloading arrangement between the rail carrier and its contractor and compared and contrasted the relationship to the facts in Alexandria and Babylon. The Board concluded that the agreement between the rail carrier and the transloading contractor, as it was modified, put control in the hands of the rail carrier and that, as a consequence, preemption would apply. Specific factors deemed by the Board to be important to its decision were that the railroad made the improvements to the facility, the rates for transloading were set by the railroad, the customer was responsible for compensating the railroad for the transloading services, the agreement gave the railroad control of operating procedures at the facility and the transloading contractor was independent from the only customer.

Significantly, in Riverdale the only customer for the transloading services was the same entity that originally was proposed as the transloader. The Board recognized that the customer had "a presence at the facility", but that the transloading operation was conducted under the auspices of the rail carrier as part of its transportation services at its own facility. By contrast, neither Grafton Upton Rail Care nor any of its affiliates is a customer served by G&U; rather, Grafton Upton Rail Care's role is limited to providing transloading services. Dana VS at ¶¶ 6-7, 9; Dana Supplemental VS at ¶ 10.

B. G&U's Tariff Confirms the Control of Transloading and Pricing by G&U.

In their Response, the Petitioners offered an additional argument against preemption based upon G&U's Tariff 5000. Petitioners' Response at 8-11.⁵ Apparently, the Petitioners were of the view that G&U was basing its position on the issue whether transportation is being provided under the auspices of G&U on the contention--which is not correct--that the G&U tariff is similar to an unidentified Norfolk Southern tariff. As explained below, G&U is not relying on any Norfolk Southern tariff to support the fact that G&U is providing transloading services through a contractor operating under the auspices and control of G&U. The fact that transloading is performed by Grafton Upton Rail Care under the direction of G&U is established primarily by the Terminal Transloading Agreement, which defines the relationship between G&U and Grafton Upton Rail Care. The control by G&U is supported by Tariff 5000-A, which defines the relationship between G&U and its customers, and the actions of G&U and Grafton Upton Rail Care in the implementation of the Terminal Transloading Agreement and the provision of transloading services. Tariff 5000-A also clearly demonstrates that the rates for transloading have been established by G&U.

⁵ Tariff 5000 was amended as of December 1, 2012 and replaced on the G&U website by Tariff 5000-A.

G&U noted in the 2012 Reply that the Terminal Transloading Agreement was based on an agreement between Norfolk Southern and its contractor, which was reviewed by the Board in Alexandria, that was determined by the Board to be the basis of transloading services that came within the scope of preemption. G&U and Grafton Upton Rail Care wanted to create a transloading relationship that was within the parameters that the Board had already determined to be entitled to preemption, and they have done so by means of the Terminal Transloading Agreement, not by means of any tariff. As described in the 2012 Reply and above, the Terminal Transloading Agreement includes various provisions that establish that the transloading services are performed by Grafton Upton Rail Care under the direction and control of G&U.

To the extent that the G&U tariff, to which the Petitioners refer, is relevant, it confirms the provisions of the Terminal Transloading Agreement. In Item 110, Tariff 5000-A provides that each of the G&U transloading yards is operated by G&U, in some cases through a subcontract with a terminal operator "that will be performing transloading services for and under the auspices of GU". The transloading services are available only for shipments "which move in GU line haul service to or from" the terminal, and customers must notify G&U's marketing department before initiating any rail shipment to the yard. Tariff 5000-A, Item 110. In other words, transloading services are available only in connection with line haul service, which is precisely the way G&U has marketed its transportation and transloading services. Moffett VS at ¶ 2; Moffett Supplemental VS at ¶¶ 2-5.

Quoting a provision of the tariff that has been amended, the Petitioners argue that Grafton Upton Rail Care determines the transloading rate.⁶ To the contrary, Tariff 5000-A provides that transloading charges will be billed and collected by the terminal operator "as agent for and on behalf of GU, and will not except as otherwise agreed upon by GU and the shipper, exceed the rates set forth" in the tariff. Tariff 5000-A, Item 115C. As explained in the 2012 Reply, G&U does not bill its line haul services itself. Rather, CSX, as G&U's Class I interchange partner, handles invoicing and collection of G&U's line haul charges and then remits the line haul revenue to G&U. Moffett VS at ¶ 15; Moffett Supplemental VS at ¶ 6. As a matter of convenience and a recognition of G&U's minimal administrative staff, both the Terminal Transloading Agreement and Tariff 5000-A provide for the contractor to bill and collect transloading fees as the agent of G&U.

Tariff 5000-A establishes the maximum rate for G&U's transloading services. As contemplated both in the tariff and in the Terminal Transloading Agreement, a customer may obtain lower rates if "agreed upon by GU". As a practical matter, customers understand that tariffs always establish maximum, default rates and that a rail carrier will generally have flexibility, and in most cases expect, to negotiate a lower rate. Moffett VS at ¶ 14; Moffett Supplemental VS at ¶¶ 8-9. As Grafton Upton Rail Care recognizes, G&U has the final word as to whether or how much to change the rate. Moffett VS at ¶ 14; Moffett Supplemental VS at ¶¶ 8-9; Polselli VS at ¶ 9.

C. Grafton Upton Rail Care is Not a "Sham" as Contended by Petitioners.

The Petitioners speculate as to whether Grafton Upton Rail Care was established for "legitimate business reasons" or, rather, was set up solely to qualify the transloading

⁶ The original Tariff 5000 was filed by the Petitioners as their Exhibit 24.

activities for preemption. Petitioners' Response and 11-15. As a threshold matter, structuring a contract to meet the preemption criteria established by the Board does not mean that there are not legitimate business reasons. In fact, such structuring is a legitimate purpose. See n.7 below. Additionally, the Petitioners' speculation relies on a decision by the Board that is, as explained below, inapplicable and "facts" that are not correct.

In GWI Switching Services, LP--Operation Exemption--Lines of Southern Pacific Transportation Co., STB Finance Docket No. 32481, decision served August 7, 2001, several labor unions raised the question whether Genesee and Wyoming Industries had created a new rail carrier subsidiary solely in order to avoid labor protection. The issue before the Board in that case, and other similar cases, was whether a noncarrier filing a notice of exemption with the Board in order to become a carrier was sufficiently independent of its carrier affiliates to bring the transaction within the scope of 49 U.S.C. 10901. More specifically, the issue in those cases was whether the transaction would be subject to labor protection. With the enactment of 49 U.S.C. 10902, and the provision that line acquisitions by Class III railroads would not be subject to labor protection, this issue has, as a practical matter, disappeared. More to the point, in this case there is no basis to inquire as to the independence of Grafton Upton Rail Care or any of the Dana Companies, because none of them is or purports to be a rail carrier. Dana VS at ¶ 5.

In the preemption context, the Board has looked at the question whether a transload contractor is sufficiently independent of shippers or receivers using the transload services to support the conclusion that the transload contractor is operating under the auspices of the rail carrier and is not subject to the control, or is not the alter

ego, of shippers or receivers using the transloading services. In this case, the real issue is whether Grafton Upton Rail Care is sufficiently independent from shippers and receivers using the Upton yard transloading services, not whether Grafton Upton Rail Care is independent of the other Dana Companies. See Canadian Nation Railway Co. v. City of Rockwwod, 2005 U.S. Dist. LEXIS 40131 (Eastern District of Mich., Southern Div. 2005) at *4 (distinguishing factor being whether the customer is doing the transloading and operating the yard).

There is no relationship between Grafton Upton Rail Care and any of the customers using the transload services at the Upton yard, and the Petitioners have advanced no allegations to the contrary. Neither Grafton Upton Rail Care, nor any of the Dana Companies, is a shipper or receiver of freight, and none of the Dana Companies is the owner of any of the freight that is being transloaded at Upton or is responsible for payment of any transportation or transloading charges. Dana Supplemental VS at ¶ 10. It is clear that Grafton Upton Rail Care and the other Dana Companies are separate and apart from the shippers and receivers of the bulk commodities, including the pellets, handled at the Upton yard.

Furthermore, the Board has long recognized that a legitimate business reason for establishing a new company is to insulate corporate affiliates from the financial risk of a startup enterprise. Protection against financial risk motivated the Dana Companies to create Grafton Upton Rail Care and was consistent with the practice of the Dana Companies to use separate entities for different lines of business. Dana Supplemental VS at ¶ 4. Furthermore, it was the preference of G&U to deal with a new entity, which

would be affiliated with the other Dana Companies, as the transloading contractor. Delli Priscoli Supplemental VS at ¶ 6.

There is nothing mysterious, as the Petitioners have implied, about the timeline of the involvement of the Dana Companies in the activities at the Upton yard and the establishment of Grafton Upton Rail Care. The development of the concept and plans for the expansion of the G&U yard in Upton began in 2009, when Jon Delli Priscoli, the owner of G&U, began discussing with Ronald Dana, the owner of several companies with extensive experience in the transloading of bulk commodities, the possibility that a Dana company might provide transloading services as the subcontractor of G&U, which at that time had limited experience with transloading. Delli Priscoli Supplemental VS at ¶ 3; Dana Supplemental VS at ¶ 3. Mr. Dana and Mr. Delli Priscoli discussed the construction of a G&U yard that would be open to any rail customers and that would be able to handle the transloading of a variety of bulk commodities. Delli Priscoli Supplemental VS at ¶¶ 3-4. Site work and the installation of 2 yard tracks occurred in 2009, and the construction of a wood pellet transloading facility and 2 additional tracks began in 2010 and was completed in 2011. Delli Priscoli VS Supplemental at ¶ 5.

Concurrently with the construction of the yard, G&U and Mr. Dana's representatives discussed the terms and conditions under which the transloading services would be provided. Delli Priscoli Supplemental VS at ¶ 6; Dana Supplemental VS at ¶¶ 5-7. The Terminal Transloading Agreement was the result of these discussions, and it was executed in May, 2011 and dated as of December 30, 2010. Delli Priscoli Supplemental VS at ¶ 7; Dana Supplemental VS at ¶ 7. There were approximately 90 rail cars that were transloaded prior to the execution of the Terminal Transloading

Agreement. Dana Supplemental VS at ¶ 8. The physical transloading work to transload those cars was done by Dana Container, which is one of the Dana Companies, pursuant to an informal understanding between the parties and on the assumption that the Terminal Transloading Agreement would soon be finalized. Dana Supplemental VS at ¶ 5; Delli Priscoli Supplemental VS at ¶ 8. The "delay" between the commencement of transloading operations and the formal execution of the Agreement was attributable to inadvertence and preoccupation with other matters and does not warrant any adverse inferences, as suggested by the Petitioners. Delli Priscoli Supplemental VS at ¶¶ 7-8.⁷

D. The New Arguments by the Petitioners Do Not Support Their Conclusion.

In a "Petition to Reconsider Request for Discovery" filed on February 13, 2013 ("Motion for Reconsideration"), the Petitioners have foreshadowed several arguments that they will undoubtedly advance in their reply despite not having raised them in their opening statement (the Petition and the Petitioners' Response). In particular, they have suggested that the public versions of the Terminal Transloading Agreement and Lease Agreement raise unanswered questions bearing on the issue whether the transloading at Upton is being performed under the auspices and control of G&U. In addition, they have filed several documents and a pleading that are part of the record in litigation brought by the Town of Grafton against G&U in the Federal District Court for the District of Massachusetts. As demonstrated below, however, none of these anticipated arguments

⁷ In any event, the evolution of the relationship between G&U and Grafton Upton Rail Care is irrelevant. As the Board observed in the Alexandria matter, "[p]arties are free to enter into whatever arrangements will suit their needs at a particular facility." Furthermore, the Board has recognized that structuring a relationship in order to meet the requirements of preemption is not an improper motivation and should not preclude a decision based upon the facts. Riverdale.

alters the conclusion that the transloading at Upton is transportation provided by a rail carrier.⁸

Although both counsel for the Petitioners were provided unredacted versions of the Terminal Transloading Agreement and Lease Agreement on February 12, 2013, the date on which they forwarded the appropriate confidentiality undertakings, the Petitioners imply that the public versions of the Agreement and the Lease raise doubts whether G&U is really in control of the transloading operations. The simple response is that the questions are fully answered by the unredacted agreements that have been provided to the Petitioners' counsel and that should be the basis for the Board's determination in this case. Furthermore, as explained below, the "facts" asserted by the Petitioners do not warrant the inferences that the Petitioners would have the Board draw.

For example, the Petitioners ask whether it is "normal practice" for G&U or any other short line to have a wood pellet transloading facility. Motion for Reconsideration at 6. G&U believes that it may be the first or one of the first railroads to have its own wood pellet transloading facility, but this demonstrates entrepreneurial initiative, not control by Grafton Upton Rail Care. Moffett VS at ¶ 5. The Petitioners ask how the transloading charges are set by G&U and how much does "Dana pay G&U for the use of its property to perform the transloading operations?" Motion for Reconsideration at 6. As explained in detail both in the 2012 Reply and in this Reply, the transloading charges are set by G&U in its tariff, and Grafton Upton Rail Care pays G&U nothing; rather, G&U pays Grafton Upton Rail Care to perform the transloading services. Moffett VS at ¶ 14; Polselli VS at ¶ 9; Moffett Supplemental VS at ¶¶ 8-9. In addition, the Petitioners

⁸ G&U intends to reply separately and fully to the Motion for Reconsideration and to demonstrate why the Board's January 24 Decision to deny discovery was correct.

question the terms of the insurance coverage that Grafton Upton Rail Care is obligated to provide pursuant to the Terminal Transloading Agreement. The insurance coverage, which is set forth in detail in the unredacted version of the Agreement, is typical for situations in which an agent is providing services for a principal. Gordon Supplemental VS at ¶ 6.

In another attempt to have the Board draw negative inferences, the Petitioners have seized upon 2 instances of brochures appearing on websites--one published by G&U and one by the Dana Companies--that do not support any such inferences. Motion for Reconsideration at 4 and 7. The brochure of the Dana Companies referred to the Upton yard as their "latest endeavor". The brochure was strictly promotional, did not refer to Grafton Upton Rail Care and was "not intended to mean or imply that any of the Dana Companies owned or controlled the G&U yard in Upton." Dana Supplemental VS at ¶ 9. G&U has noted on its website that it will assist new rail transportation customers by providing "build to suit" assistance. This marketing effort does not involve the Upton yard, because the transloading facilities are already constructed and available. Instead, G&U is offering to help potential new customers that want to develop new industrial, rail served facilities of their own along the G&U right-of-way. This is simply the type of industrial development assistance that many rail carriers offer. Moffett Supplemental VS at ¶ 3.

The Petitioners will undoubtedly contend that the documents from the Grafton federal court litigation have some relevance in this proceeding. It may be anticipated, for example, that the Petitioners will argue that in the Grafton litigation there were several related entities that made investments in and guaranteed the success of the G&U

transloading yard, thereby allegedly giving the related entities control of the transloading operations. Such an argument totally ignores the fact that G&U submitted evidence in the Grafton litigation rebutting the evidence presented and the conclusions urged by the plaintiff. Furthermore, the court has not decided the matter.⁹

More fundamentally, whatever the outcome of the Grafton litigation, it is not relevant to the issues in this case. Grafton involves a proposed transloading facility that has not been completed or put into operation, while the yard in Upton has been operating for several years. The transloading contractor retained by G&U to operate the facility in Grafton is unrelated to any of the Dana Companies. Furthermore, in Grafton the town itself is the plaintiff, but, as described in the 2012 Reply and below, the Town of Upton has concluded, after extensive evaluation, that local regulation is preempted. Thus, the facts and issues in the Grafton case have no probative value for purposes of resolving the matter before the Board in this case.

What is relevant in this case--whether the transloading is being performed under the auspices and control of G&U in accordance with the various factors that the Board reviews in order to determine whether preemption applies--are the Terminal Transloading Agreement and the Lease Agreement. These documents demonstrate beyond any doubt that the Upton facility is owned by and under the control of G&U, that G&U fixes the rates for transloading, that G&U pays Grafton Upton Rail Care for its services, not the other way around, that neither Grafton Upton Rail Care nor any of the other Dana Companies is a customer of the facility and that Grafton Upton Rail Care cannot do

⁹ Perhaps not surprisingly, the Petitioners have cherry picked the record in the Grafton litigation in order to submit a few documents that they believe are helpful to them in this case. In a 4 day trial, there were 10 witnesses and 30 exhibits totaling approximately 600 pages. G&U submitted 153 proposed findings of fact, separate proposed conclusions of law and approximately 100 pages of post trial briefing.

anything at the yard other than transloading for the account of G&U. The governing documents and the facts relating to the operation of the yard meet the criteria of the Alexandria case, and the implications and innuendos that the Petitioners suggest are simply attempts to distract from the reality that G&U is offering and performing transloading as an integral part of its transportation services at the yard.

Ultimately, the Petitioners would apparently have the Board conclude that a small short line like G&U could not possibly have expanded the yard at Upton and developed a significant transloading facility unless the Dana Companies had somehow obtained control and converted the facility into an extension of their existing operations in which G&U had no financial stake. As explained by both Mr. Delli Priscoli and Mr. Dana, however, Grafton Upton Rail Care is not guaranteeing the success of the G&U yard at Upton. Rather, both G&U and Grafton Upton Rail Care have potential risks and rewards, which happen to be measured by the volume of rail traffic using the yard, but Grafton Upton Rail Care is not guaranteeing the level of carloadings or income of G&U. Dana Supplemental VS at ¶ 11; Delli Priscoli Supplemental VS at ¶ 11. Neither Grafton Upton Rail Care nor any other Dana Company is providing a safety net for G&U that would transform the yard from a G&U transloading facility to a Dana controlled operation.

In any event, G&U's ability to finance the Upton yard or any other project is beside the point. As demonstrated in the 2012 Reply and above, the arrangements at the Upton facility meet the vast preponderance, if not all, of the criteria established in Alexandria. Consequently, whether or not G&U obtained financing for the yard does not tip the balance against a finding that the transloading operations constitute rail

transportation provided by or under the auspices of a rail carrier, thereby requiring the application of preemption.

III. The Petitioners Lack Standing to Prosecute the Petition.

As described by G&U in the 2012 Reply, the Board of Selectmen of Upton undertook a long and detailed analysis of the operations at the Upton yard and the principles of preemption and concluded that preemption applied. 2012 Reply at 10-11; Delli Priscoli VS at ¶¶ 5-8, 13, 15 and Exhibits B and C attached to Delli Priscoli VS. As a result, the duly elected representatives of the Town decided not to require any permitting or to institute any legal proceedings against G&U's operations at the yard. The Petitioners, who are residents of the town, filed their Petition allegedly in order to vindicate rights that their duly elected representatives had allegedly failed to pursue.¹⁰

In the 2012 Reply, G&U argued that the Petitioners lacked standing to file their Petition, given the decision of the Board of Selectmen, and that the Petitioners had failed to exhaust state law remedies that were available. The Petitioners disputed these arguments, but the Board did not address either the standing issue or the availability of a state law remedy issue in its decision served on January 24, 2013.

In an attempt to show that they are "aggrieved", each of the Petitioners has submitted an identical verified statement, as part of the Petitioners' Response, alleging that operations at the yard have produced odors, noise and dust and have exposed them to hazardous materials. G&U believes that the yard has been operated in a fashion that is not a threat to the health or safety of the Petitioners or any other residents of Upton. In fact, the Board of Health of Upton agrees. In a letter dated February 13, 2013, a copy of

¹⁰ The Petitioners now claim that they were attempting to vindicate the town's rights only in order to support their request to waive the filing fee in this case. Petitioner's Reply at 2.

which is attached to this Reply as Exhibit A, the Board of Health notes that G&U has been "cooperative and accommodating" and has worked to "correct and mitigate any issues that might affect the health and wellbeing of Upton's residents." The Board of Health has monitored G&U's operations at the yard in the same fashion as the Board of Health supervises any other industrial facility. Significantly, the Board of Health supports the decision of the Town not to pursue any action before the Board and to permit G&U to continue its transportation activities at the yard.

Similarly, as part of their attempt to show that they were suffering harm due to an activity that the Petitioners claim would be locally regulated if preemption did not apply, the Petitioners allege that there were 2 tank cars loaded with methyl cyanide stored for an extended period of time near the Petitioners' property. These allegations are without foundation--the cars posed no threat to the health or safety of anyone. The cars in question were subject to a long-term lease to a customer of the transloading yard, and they contained acetronitrile, an inert liquid, not methyl cyanide, which has never been handled at the yard. The cars were emptied on March 21, 2012 and moved by G&U to a storage track near Depot Street while awaiting directions from the customer. Polselli Supplemental VS at ¶ 9. In any event, the Petitioners do not argue that the handling and storage of bulk liquid rail cars in this manner by G&U is anything other than "transportation" by a rail carrier to which preemption applies.

The Petitioners' houses are located in the same industrial zone as the Upton yard. It seems clear from the Petition that their real issue is that, after 20 years of living near a sleepy railroad, G&U in general and the Upton yard in particular have been revitalized. Petition at 5. Preemption is designed to allow railroads to grow their businesses free

from unnecessary regulation, and the Town of Upton has agreed that the development here is appropriate and does not require local permitting or preapproval regulation.

G&U hereby renews its request that the Board explicitly address the standing and state law remedy issues. More specifically, the Board should determine whether a few citizens of the Town should be permitted to use the processes of the Board in order to usurp--indeed, ignore and attempt to countermand--the decisions and responsibilities of their duly elected representatives, who were acting for and in the best interests of all of the residents of the Town. The Petitioners have cited no other declaratory order proceeding presenting a similar factual situation--a local regulatory authority declining to bring a declaratory order proceeding while citizens are permitted to do so--and G&U is aware of no such precedent. More importantly, there is no basis for the Board to create such a precedent in this case.

CONCLUSION

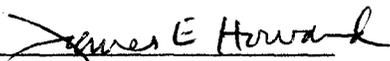
This case presents a quintessential example of the reason that Congress provided for the preemption of local regulation. Transloading services are critically important to short line railroads and to rail customers, and the development of such services should not be frustrated by pretextual attempts to impose state and local preclearance regulations. This is particularly true in this case, where the Town of Upton has determined that preemption does apply and where several citizens of the Town are nonetheless attempting to use state and local regulations to shut down a transloading operation that meets the criteria for preemption established by the Board.

G&U respectfully requests the Board to deny the Petition for Declaratory Order. The record before the Board demonstrates that G&U is performing rail transportation

service, both with respect to the bagging of wood pellets as well as through the use of Grafton Upton Rail Care as a transloading contractor under the auspices and control of G&U. As a consequence, the preemption principles of 49 U.S.C. 10501 are applicable.

Respectfully submitted,

GRAFTON & UPTON
RAILROAD CO.


James E. Howard
70 Rancho Road
Carmel Valley, CA 93924
831-659-4112

Dated: February 25, 2013

VERIFICATION

I, Stanley Gordon, Vice President of Grafton & Upton Railroad Company, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 25th 2013.

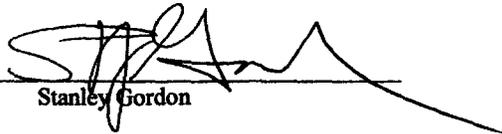

Stanley Gordon

EXHIBIT A

BOARD OF HEALTH

TOWN OF UPTON

MASSACHUSETTS

Tel. - 508-529-6813 Fax - 508-529-0010
email: dtierman@upton.ma.us

Mailing address: 1 Main Street, Box 3
Upton, MA 01568

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

February 13, 2013

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

Dear Ms. Brown:

We are writing on behalf of the Board of Health of the Town of Upton, Massachusetts in regards to Grafton & Upton Railroad Co. ("G&U") in the above-captioned proceedings.

The Petitioners in this case are residents of the Town of Upton. On several occasions, one of the Petitioners has contacted the Board of Health to complain about conditions or activities at the railroad yard operated by G&U in Upton. These complaints have related to dust and noise, the presence of railroad cars containing hazardous materials and odors. In every instance, The Board of Health has investigated the said complaints, in a careful and practical manner, and worked with G&U to determine the best course of action to correct and mitigate any issues that might affect the health and wellbeing of Upton's residents.

Furthermore, G&U has been cooperative and accommodating in permitting the Board to conduct inspections and has engaged in an open and constructive dialogue with the Board in order to take appropriate actions when requested by the Board.

The Board of Health agrees with and supports the decision of the Board of Selectmen of the Town of Upton not to pursue any action before the Surface Transportation Board and to allow G&U to continue its transportation activities at the yard.

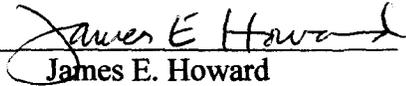
Sincerely,

Upton Board of Health
Sherry Berger, Chairman
Al Holman, Member
Richard Desjardins, Member



Certificate of Service

I hereby certify that I have served the foregoing Supplemental Reply and the accompanying Verified Statements as of this 25th day of February, 2013 by causing a copy to be sent electronically to Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, 9 Damonmill Square, Suite 4A4, Concord, Massachusetts 01742 and to Fritz Kahn, 1919 M Street, 7th Floor, Washington, DC 20036.


James E. Howard

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**SUPPLEMENTAL VERIFIED STATEMENT OF
JON DELLI PRISCOLI**

1. My name is Jon Delli Priscoli, and I am the owner and chief executive officer of Grafton & Upton Railroad Co. ("G&U"). I am familiar with the petition for a declaratory order filed in the proceedings captioned above and with the Response of the Petitioners dated September 10, 2012. I submitted a Verified Statement in August, 2012 in these proceedings.

2. In my earlier Verified Statement, I stated that G&U became interested in acquiring a 33 acre parcel of real estate, which is now part of the G&U yard in Upton, in 2009. The interest began in 2008, rather than 2009. In fact, the Lease Agreement pursuant to which G&U leases and has an option to purchase the 33 acre site was entered into as of June 15, 2008. As described in my earlier Verified Statement, for many years G&U had a small yard, located between the main line and the 33 acre parcel, that had been used in the past for transloading salt and coal. A substantial portion of the 33 acres had been used by the Town of Upton as a landfill, and this portion is currently being remediated in order to meet requirements of the Massachusetts Department of

Environmental Protection. The other portion of the 33 acres was used in the past for various industrial purposes. In other words, the entire Upton yard site has been used for many years for rail transportation and other industrial purposes.

3. In 2009, with control of the property pursuant to the Lease Agreement, G&U began developing conceptual plans for the expansion of the transloading yard in Upton. We performed site work in order to prepare the area, and I entered into discussions with Ronald Dana concerning the possibility that a company controlled by him would provide transloading services as G&U's agent at the yard. I understood that companies owned by Mr. Dana had extensive experience transloading bulk commodities, including both hazardous and nonhazardous liquids, from railcars to trucks. I also recognized that at that time G&U did not have experience in such transloading operations.

4. In my discussions with Mr. Dana, it was always understood that a Dana company would provide transloading services as the agent of G&U and that the yard would be a G&U facility that would be open to any rail customers. There was never any contemplation that any Dana company would become a transportation customer at the yard or that the yard would be a private Dana company facility. As a result, no Dana company is a rail receiver or shipper at the yard, and no Dana company has any subleasehold interest in the yard.

5. When the site work had been completed, G&U began construction of 2 of 4 contemplated new yard tracks, which were completed in mid-2009. In June, 2010, installation of the equipment and facilities needed to transload wood pellets commenced. The wood pellet transloading facilities were substantially completed in April, 2011, and the other 2 new tracks were installed by the fall of 2011.

6. During the period beginning with my first conversations with Mr. Dana in 2009 through the first few months of 2011, we discussed the concepts and subsequently the terms and conditions that would govern the relationship between G&U as the provider of rail services and a Dana company that would provide transloading services under the direction of G&U. I always understood that Mr. Dana contemplated creating a new company to provide the transloading and that transloading for G&U at Upton would be the only business activity of the new company. G&U preferred the idea of dealing with a newly created, sole purpose entity for purposes of performing the transloading services.

7. Our conversations eventually led to the Terminal Transloading Agreement that has been filed in this proceeding. While negotiations began in 2010, the Agreement was not executed by the parties until May 9, 2011, but was dated as of December 30, 2010, which was the time around which the negotiations were substantially completed. The delay in execution of the Terminal Transloading Agreement was inadvertent and caused in large part due to the preoccupation of G&U management with other issues, including the continuing construction in the yard.

8. There were a few railcars of bulk liquids that were transloaded at the yard prior to the execution of the Agreement, and it is my understanding that the transloading work was performed by Dana Container, which is one of the Dana companies, on behalf of and under the supervision and control of G&U. This transloading work was performed on the basis of an informal understanding between Mr. Dana and me and on the assumption, which proved to be correct, that the formation of the new Dana company and the Agreement would soon be finalized. The work was performed in a manner that was

consistent with the terms and conditions of the Terminal Transloading Agreement as executed.

9. The first bulk liquid cars were transloaded at the Upton yard in September, 2010, and the total number of cars for 2010 was 19. In 2011, G&U transloaded 276 railcars at Upton. The shipment of wood pellet cars for customers did not begin until December, 2011. Approximately 90 cars were transloaded prior to the execution of the Terminal Transloading Agreement. In 2012, G&U handled 895 railcars at Upton, 44 of which contained wood pellets.

10. G&U maintains and repairs all of the tracks, switches and other rail infrastructure at the Upton yard. G&U trains and crews move cars into and out of the yard, and place cars within the yard, so that Grafton Upton Rail Care is able to perform the transloading operations.

11. The G&U yard at Upton is a transloading facility that is open to any G&U customer. G&U benefits by earning line haul revenues for each car load moved into or out of the yard. As G&U's transloading agent, Grafton Upton Rail Care earns a transloading fee for each carload. Both G&U and Grafton Upton Rail Care have potential risks and rewards depending upon the level of rail traffic. While both companies' revenues are related to the volume of rail traffic, neither company has in any way guaranteed the success of the other.

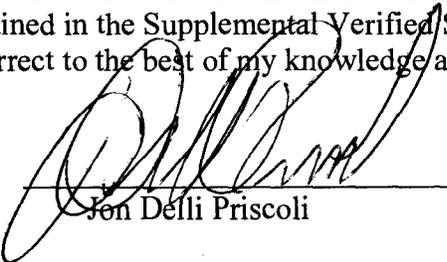
VERIFICATION

Commonwealth of Massachusetts

ss:

County of Middlesex

I, Jon Delli Priscoli, being duly sworn, depose and state that I am President and Chief Executive Officer of Grafton & Upton Railroad Company ("G&U"), that I am authorized to sign the foregoing Supplemental Verified Statement on behalf of G&U, that I have examined all of the statements contained in the Supplemental Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.



Jon Delli Priscoli

Subscribed and sworn to
before me this 5 day of
February, 2013



Notary Public



Arthur A. Andersen
Notary Public
Commonwealth of Massachusetts
Commission Expires April 5, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**SUPPLEMENTAL VERIFIED STATEMENT OF
STANLEY GORDON**

1. My name is Stanley Gordon, and I am Vice President of Grafton & Upton Railroad Co. ("G&U"). I am familiar with G&U, its legal relationships and contracts and its operations generally. I have reviewed the Petition filed in the above-captioned proceedings and the Response of the Petitioners dated September 10, 2012. I submitted a Verified Statement in August, 2012.

3. As explained in my earlier Verified Statement, G&U has leased approximately 33 acres of property, constituting part of the yard in Upton, from the Upton Development Group, LLC ("UDG") pursuant to a Lease Agreement dated as of June 15, 2008. A copy of the public version of the Lease Agreement, including a first amendment dated December 30, 2010 and a second amendment dated February 15, 2012 (together referred to as the "Lease") was filed with the Board on January 31, 2013.

3. The initial term of the Lease is 20 years, and G&U has an option to purchase the property. G&U has exercised the option, but has not yet elected to close on the purchase transaction and take title to the property, because certain environmental

remediation work required of UDG by the Massachusetts Department of Environmental Protection ("DEP") has not been completed to the satisfaction of DEP. The Lease has been amended to permit G&U to complete the exercise of its purchase option and close on the transaction after DEP is satisfied with the completion of the remediation work.

4. As noted in my earlier Verified Statement, I was involved in the negotiation and drafting of the Terminal Transloading Agreement between G&U and Grafton Upton Rail Care, LLC. The public version of the Agreement was filed with the Board on January 31, 2013.

5. The Terminal Transloading Agreement does not require Grafton Upton Rail Care or any other Dana company to pay rent, to G&U. Rather, G&U pays Grafton Upton Rail Care for the transloading services. Furthermore, neither Grafton Upton Rail Care nor any other Dana company has any leasehold interest in the Upton yard facility.

6. The Terminal Transloading Agreement requires Grafton Upton Rail Care to indemnify G&U for liability arising from Grafton Upton Rail Care's activities at the yard and to maintain certain insurance coverage. The Agreement also requires G&U to maintain insurance. The indemnification and insurance provisions are not intended to, and do not, insulate G&U from liability to customers in the event of the loss or damage of lading or from liability to other third parties in the normal course of business. The purpose of the indemnification and insurance provisions is to allocate responsibility for the transloading services between G&U and Grafton Upton Rail Care in the event of a customer or third-party claim. In my experience, provisions like these are typical in a principal-agent relationship such as the relationship between G&U and Grafton Upton Rail Care.

VERIFICATION

Commonwealth of Massachusetts

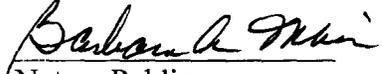
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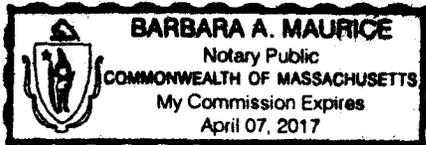
County of Middlesex

I, Stanley Gordon, being duly sworn, depose and state that I am Vice President of Grafton & Upton Railroad Company ("G&U"), that I am authorized to sign the foregoing Supplemental Verified Statement on behalf of G&U, that I have examined all of the statements contained in the Supplemental Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.


Stanley Gordon

Subscribed and sworn to
before me this 20th day of
February, 2013


Notary Public
BARBARA A. MAURICE
M.Y. COMMISSION EXPIRES 4-7-2017



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**SUPPLEMENTAL VERIFIED STATEMENT
OF ERIC MOFFETT**

1. My name is Eric Moffett, and I am responsible for marketing the transportation services of G&U. In particular, I have spent a considerable amount of time over the last few years trying to develop new rail business for G&U at its expanded transloading yard in Upton, Massachusetts. I am familiar with the transloading business that G&U currently conducts at the Upton yard and with the relationships with our transloading customers and our transloading subcontractor, Grafton Upton Rail Care. I have also reviewed the Petition filed by certain residents of the town of Upton in the above-captioned proceeding and the Response of the Petitioners dated September 10, 2012.

2. As a short line with only 16 miles of track, G&U has always recognized that it would be able to maximize the carload business it would be able to handle only by emphasizing transloading. The alternative to a transloading yard that would be accessible by any customer is attempting to induce customers that use rail service to locate a private facility along the G&U line. There are a limited number of locations for such facilities,

and potential customers would be required in most cases to make substantial capital investments in order to build such facilities. G&U is able to reach a much broader market by establishing its own transloading yards that are open facilities that can be accessed by any customer in a broad geographic area around the transloading facility.

3. In an effort to attract new customers, G&U has indicated on its website and in brochures that it will assist new rail transportation customers by providing "build to suit" services and assistance with necessary approvals. G&U has not marketed the Upton yard as a "build to suit" facility available for development by customers; the transloading facilities there are already constructed and available for use by any qualifying customer. Instead, G&U is offering to help potential new customers develop new industrial facilities on property along the right of way through sidetrack and rail service design. This is no different than the industrial development opportunities advertised by many railroads on their websites. For example, the following appears on the CSX website:

<http://www.csx.com/index.cfm/customers/new-to-csx-or-rail/regional-development/build-or-expand-a-rail-served-facility/build-a-rail-served-facility>

Build a Rail-Served Facility

These are the steps you can take to get started:

1. **Contact the Regional Development Manager in your area**
Once you speak to one of our experts about your project, we'll develop a list of potential locations based on your needs from our inventory of more than 3,000 available sites, including everything from industrial parks and buildings to open acreage.
2. **Narrowing your search**
We will provide you with topographic maps, navigation charts and aerial photographs, saving you days of field work. We also have additional information on critical site characteristics, like:
 - Utility availability
 - Land ownership
 - Local contactsWhen you're ready, we'll take you to visit as many sites as you choose.
3. **Zeroing in**
To help you make your final decision, we can provide preliminary site engineering and layout. Once your site is chosen, the CSX team will work with your design and construction team to ensure project timetables are met.

4. G&U has always held itself out to the public as a provider of transloading services at the yard in Upton as part of its overall transportation services. Even before

the expansion of the Upton yard over the last several years, G&U provided transloading services for salt and other commodities in Upton. The G&U website makes it clear that we provide transloading as part and parcel of our service, and CSX, G&U's interchange partner, has promoted Upton as a transloading site for its customers. I have conversations almost daily with CSX personnel in order to identify and follow up on leads for business that would involve transloading at Upton. The CSX intermodal department has been especially helpful. As a result of the success of this close cooperation with CSX to promote the transloading services of G&U, we were named by CSX as its short line connection of the year for 2012

5. The Petitioners apparently argue that G&U has not promoted its transloading and line haul services as a "bundled" service. This is simply not true, as explained above and in my earlier Verified Statement. Furthermore, in order to provide transloading at Upton, it is absolutely essential for G&U to provide line haul service between Upton and the interchange with CSX at North Grafton, Massachusetts.

6. The reasons why G&U itself does not invoice or collect from customers for transloading or line haul services were explained in my earlier Verified Statement. As G&U's interchange partner, CSX has responsibility for invoicing and collecting, on behalf of G&U, for line haul services. G&U negotiates its share of the line haul through rate with CSX and line haul customers, and CSX remits G&U's share to us after CSX bills and collects from the customers. Due in part to the fact that CSX handles line haul billing and collection for G&U and the fact that G&U is a small short line, we do not have the personnel or systems in place to efficiently bill and collect for the transloading

services.. We determined that it would be more convenient and efficient to have Grafton Upton Rail Care bill and collect transloading charges as G&U's agent.

7. G&U Tariff 5000 was originally published in May, 2012 and covers the rules and pricing for transloading services at Upton and other G&U transloading yards. I am the person at G&U responsible for publishing tariffs. A copy of Tariff 5000 in its original form was submitted as the Petitioners' Exhibit 24. In December, 2012, Tariff 5000 was amended and replaced with Tariff 5000-A, a copy of which is attached to this Supplemental Verified Statement. G&U, like other railroads, retains the unilateral right to amend its tariffs from time to time as it sees fit in accordance with the regulations at 49 CFR 1300 regarding notice to customers.

8. Tariff 5000-A establishes the maximum charges for the transloading services at the Upton yard. Any customer wishing to use the transloading services can do so by paying the charges published in the tariff. Most customers understand, however, that any tariff rate is, in effect, a default rate and that a rail carrier will usually be willing to discount the tariff rate if, for example, the customer is willing to make volume commitments. I typically have conversations with new customers about transloading charges and sometimes agree to reduce the charge below the rate set forth in the tariff.

9. In certain circumstances, Grafton Upton Rail Care may want to assess transloading charges that are lower than the tariff rates in order to meet competition, and in those situations Grafton Upton Rail Care is required to confer with me. If it makes sense to reduce the charge in order to accommodate a customer and retain or gain the business, G&U makes the ultimate decision whether to do so. Tariff 5000-A provides that the transloading charges "will not except as otherwise agreed upon by GU and the

shipper, exceed the rates set forth" in the tariff. There has been no instance as of this time were Grafton Upton Rail Care has requested a reduction of the transloading charge below the tariff rate. In any event, it is G&U, not Grafton Upton Rail Care, that ultimately determines the transloading rate.

10. At the present time, G&U has approximately 16 transload customers using the transportation services at Upton. None of these customers has entered into a transportation contract with G&U. Rather, all of these customers pay transloading fees established by Tariff 5000-A and line haul charges that are invoiced and collected by CSX, as described above.

VERIFICATION

~~State of Connecticut~~
~~Commonwealth of Massachusetts~~

TR

ss: East Windsor

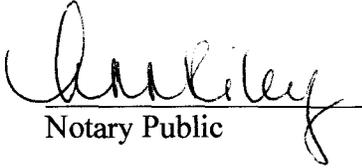
~~County of Middlesex~~
Hartford TR

I, Eric Moffett, being duly sworn, depose and state that I am Vice President of Business Development of Grafton & Upton Railroad Company ("G&U"), that I am authorized to sign the foregoing Supplemental Verified Statement on behalf of G&U, that I have examined all of the statements contained in the Supplemental Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.



Eric Moffett

Subscribed and sworn to
before me this 12 day of
February, 2013


Notary Public

ANN RILEY
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 30, 2015

Grafton and Upton Railroad

**TARIFF 5000-A
CANCELS
TARIFF 5000**

**BULK TRANSFER TARIFF
PROVIDING SERVICE
ON
DRY AND LIQUID COMMODITIES
AT STATIONS NAMED IN ITEM 110
Located on**

Grafton and Upton Railroad

BULK RAIL-TRUCK TARIFF

ISSUED: December 1, 2012

EFFECTIVE: January 1, 2013

ISSUED BY:
Grafton and Upton Railroad Company
929 Boston Post Road East
Marlborough, MA 01752

TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS

ITEM 5

GOVERNING CLASSIFICATION AND EXCEPTIONS

Governed by the provisions of UFC 6000 Series, Uniform Classification Committee (When shipments are made in Tank Cars, they will be subject to Rule 35 of the UFC except as to minimum weight, which will be shown in individual rate items.)

ITEM 15

EXPLOSIVES, DANGEROUS ARTICLES

For rules and regulations governing the transportation of Explosives and other Dangerous Articles by freight, also specifications for shipper's containers and restrictions governing the acceptance and transportation of Explosives and other Dangerous Articles, see Bureau of Explosives Tariff BOE 6000 Series.

ITEM 20

REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC.

(A) Where reference is made in this tariff to tariffs, circulars, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.

(B) Where reference is made in this tariff to another tariff by number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic.

ITEM 60

NATIONAL SERVICE ORDER

This Tariff is subject to provisions of various Surface Transportation Board Service Orders and General Permits.

ITEM 75

METHOD OF CANCELLING ITEMS

As this tariff is supplemented, numbered items with letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels Item 445 and Item 365-B cancels Item 365-A in a prior supplement, which in turn cancelled Item 365.

ITEM 100

METHOD OF DENOTING REISSUED MATTER IN SUPPLEMENTS

Matter brought forward without change from one supplement to another will not be designated as "Reissued" by a reference mark. To determine its original effective date, consult the supplement in which the reissued matter first became effective.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 110

APPLICATION

The provisions of this tariff will apply on Dry and Liquid commodities, in bulk, at designated GU Bulk Transfer (GUBT) facilities at the following locations:

Massachusetts	West Upton
Massachusetts	North Grafton (self unloading only)
Massachusetts	North Grafton LPG terminal
Massachusetts	Hopedale (self unloading only)

Each GUBT listed above is operated by GU, in some cases through a subcontract with a terminal operator (the "Terminal Operator") that will be performing transloading services for and under the auspices of GU. The purpose of this tariff is to advise GU shippers of the services they may expect when utilizing a GUBT and the services of a Terminal Operator. Upon request of the shipper, the terminal services named herein will be performed on carload shipments in bulk as described herein (See Note 1), which move in GU line haul service to or from the above terminals, subject to the charges, rules and regulations published herein.

To arrange for terminal services specified in Item 115 at locations specified above, Shipper must notify GU's Marketing Department at 860-627-8924 before actual shipment of product is made, advising the terminal of the commodity and the car number to be shipped.

NOTE 1: GUBT facilities will handle Dry and Liquid Commodities in bulk when appropriate infrastructure and equipment for handling such Commodities are available. The Terminals will require shipper to provide Material Safety Data Sheets (MSDS) and will keep same on file at the terminal; product Handling Protocol for hazardous materials and such other information as may be required, including the need for special transfer equipment, personal protective equipment (PPE), pollution control, etc., prior to shipment of the commodity. GU reserves the right to refuse any commodity at its GUBT facilities.

ITEM 112

MOTOR CARRIER ACCESS

A shipper must retain a motor carrier to load or unload Commodity at GUBT. In order to load or unload Commodity at a GUBT, a motor carrier must execute an Indemnity and Hold Harmless Agreement

among the motor carrier, GU and the Terminal Operator, covering the motor carrier's activities while at the GUBT. When this agreement is fully executed, a motor carrier is "preapproved". Carriers and their employees operating at GUBT site are required to conform to all such rules and procedures. A motor carrier must execute a separate Indemnity and Hold Harmless Agreement for each GUBT location.

All pre-approved motor carriers may deliver to or pull loads from a Grafton and Upton Railroad Bulk Transfer Terminal. Motor carriers may be required to assist in the connection and loading or unloading of the trailer. The motor carrier will be responsible for its equipment at all times and the driver must remain with the vehicle while loading or unloading. The

motor carrier will comply with all required safety procedures, which will include the removal of vehicle keys while loading Hazmat products. Authorized terminal personnel, not drivers or personnel of any motor carrier,

will load or unload all hazardous materials.

A motor carrier that is not pre-approved will not be allowed to enter a GUBT, and the motor carrier driver must have a valid CDL (Commercial Driver's License) in his/her possession while conducting activities at the GUBT. Motor Carrier driver must have a DOT hazardous materials endorsement if transporting hazardous materials.

If a shipper arranges for self-loading, an administration charge of \$75 per trailer will be assessed to the shipper. This charge applies to the self-loading of dry and non-hazardous liquid products. Self-loading of hazardous materials is prohibited. (See Note 1)

NOTE 1: For the purposes stated herein, "self loading" shall be defined as a motor carrier using equipment affixed to its equipment to perform the physical transfer of Commodity. Self-loaders must also supply all hoses, fittings, etc. in addition to Appropriate spill containment for the transfer of Commodity.

GENERAL RULES AND REGULATIONS

ITEM 115

A. BASIC SERVICES INCLUDED IN A TRANSFER

Unless otherwise agreed upon by GU and the customer, a transfer conducted at a GUBT will include the following at no additional cost:

1. Weigh empty trailer.
2. Inspection of terminal transfer equipment for cleanliness. This does not include self-load equipment.
3. Verification of motor carrier's shipment documentation.
4. Seal loaded trailer and railcar from which product was removed.
5. Weigh loaded trailer.
6. Provide driver with scale ticket and product sample only if requested by the shipper or beneficial owner.

The Shipper and GU may agree upon the performance of services in addition to those listed above, at rates to be negotiated.

B. APPLICATION OF TERMINAL SERVICES

1. Prior to acquiring terminal services at a GUBT facility listed in Item 110, shipper or beneficial owner must provide GU and the terminal operator a MSDS covering the commodity to be handled, and, for hazardous materials, a Handling Protocol outlining hazards and procedures for safe handling. All hazardous materials require pre-authorization by the terminal operator, on behalf of GU prior to billing any shipments to the terminal.
2. Grafton and Upton, through the Terminal Operator, will perform the services named herein on carload shipments of Commodity in bulk, subject to charges, rules and regulations published herein. Grafton and Upton reserves the right to refuse to handle any Commodity at its sole discretion.
3. All commodities must have MSDS sheet and on file at the terminal prior to arriving for terminal services. For shipments of hazardous materials a Handling Protocol must be on file at the terminal prior to arriving for terminal services, Commodity(s) arriving at a terminal before receipt of an MSDS and Handling Protocol (as applicable) will be held subject to Track Occupancy Charges as specified in Item 140 and no transfers will be accomplished until this information arrives.
4. Commodity(s) that Grafton and Upton declines to handle under the charges, rules and regulations published herein may, at Grafton and Upton's sole discretion, be handled under a separately negotiated contract.
5. Terminal services are restricted to carloads received or forwarded in Grafton and Upton line haul service. None of the facilities listed in Item 110 are open to any type of switching.

(Continued on next page)

GENERAL RULES AND REGULATIONS

ITEM 115 (Continued)

C. UNLOADING OF RAIL CARS

Charges for unloading of railcars to trucks and unloading trucks to railcars at a GUBT will be billed and collected by the Terminal Operator, as agent for and on behalf of GU, and will not, except as otherwise agreed upon by GU and the shipper, exceed the rates set forth in item 120.

The handling characteristics of the commodity, manpower requirements and the transfer equipment required will be taken into account in order to determine whether the actual rates charged will be lower than the rates set forth in Item 120. Any truck detention charges incurred during the loading or unloading process and any overtime charges (Item 150) will be the responsibility of the shipper. However, charges for the services listed below shall be no greater than that set forth below, except as otherwise agreed upon by GU and shipper..

For safety reasons, GUBT procedures require that at least two (2) qualified people be present during the transfer of any non-self load products. A truck driver on site qualifies as one of these people only if they have the necessary training and qualifications confirmed by their parent company. For self-load products only one (1) terminal operator employee, or one (1) qualified truck driver, will satisfy the safety requirement. Transfer rates may not be included or bundled with any charges for accessorial equipment or capital improvements that may be required in order to enable GU to handle the transfer of a commodity. GU retains sole discretion whether to make any such capital improvements or acquire any such accessorial equipment that may be requested by a shipper and, if GU does proceed, to establish charges and rates, in addition to the rates established by this Tariff for services related to the transfer of the commodity, for such improvements or equipment.

ITEM 120

A. BULK TRANSFER CHARGES

Applicable on shipments transferred from rail car to truck at the facilities listed in Item 110. On commodities transferred in bulk, the following charges, subject to a minimum weight of 45,000 pounds per truckload per transfer, will be assessed for transfer at all Grafton and Upton Bulk Transfer facilities.

<u>DRY BULK</u>	
	<u>Per 100 pounds</u>
Mechanical Conveyor or Auger Transfers	\$0.35
Plastics (STCC 28-211-XX)Transfers	\$0.40
Pressure Differential Transfers	\$0.35
Other dry Bulk Products	\$0.40
Hazardous Solids (Other than flammables)	\$0.47
Self- Loading [Non-hazardous products only]	\$75.00 per trailer

<u>LIQUID BULK (OTHER THAN LPG)</u>	
	<u>Per 100 pounds</u>
Non-hazardous Liquids	\$0.38
Hazardous Liquids (Other than flammables)	\$0.47
Flammables	(Individually Priced)

(Continued on next page)

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 120 (continued)

SPECIAL SERVICES

Additional scale weights	\$25.00 per weight
*first set of weights (inbound/outbound) included in transfer	
Tank Car Heating Charge	(Individually Priced)
Recirculation Charge	\$35.00 per hour
Inert Gas supplied by shipper or beneficial owner	\$60.00 per application
Replenishment Loading	\$500.00 per Trailer
Load Samples	\$18 per sample

NOTE 1: The 49 Code of Federal Regulations, Table 172.101 (Hazardous Material Table), as may be revised from time to time, will be used to determine if a product is hazardous. GU reserves the right to refuse to handle ANY commodity at a GUBT. Only authorized Terminal Operator personnel may transfer hazardous commodities. No fully or partially loaded tank trailers of hazardous materials are allowed on GUBT property while the facility is closed, unless authorized by Operator and GU in writing.

NOTE 2: Multiple commodities may be loaded in a compartmentalized trailer for a charge of \$60.00 for each additional commodity or compartment loaded.

B. PELLET TRANSFER/BAGGING

Applicable on dry products transferred from rail and bagged at the Grafton Upton transfer/bagging facility in West Upton, MA.

On commodities transferred in bulk and bagged, the following charges, subject to a minimum weight of 180,000 pounds per transfer, will be assessed for transfer:

Transfer and Bagging	\$30.00 per ton
----------------------	-----------------

NOTE 1: Per Ton Charge includes product transfer from Railcar to transfer silos, product handling from silos to bagging, shipping pallets, bag stacking on pallets, plastic protective pallet storage cover, shipping shrink wrap, loading finished pallets onto trucks.

(continued on next page)

ITEM 120 (concluded)

Product holding for Loading:	
Inbound	\$3.50 per pallet
Outbound	\$3.50 per pallet
Shipping Dock Occupancy Charge	\$3.50 per pallet

C. LPG

	<u>Per gallon</u>
Transfer from railcar to truck	\$.0575

D. BILLING OF CHARGES

Unless arrangements to the contrary are made prior to shipment, charges for terminal services described herein will be billed to the shipper or beneficial owner by the Terminal Operator, as the agent for GU, except that Track Occupancy Charges (Item 140) will be charged, established and billed by GU through its third party billing agents.

If credit privileges are granted (a determination made on an individual basis), terms for the payment of Track Occupancy Charges will be 15 days from the invoice date.

ITEM 125

TERMINAL SERVICES

I. COMMODITY SAMPLING and INSPECTION

Transfer charges in Item 115 include the visual inspection of the exterior of the railcar, and the exterior of the trailer.

GU reserves the right to take samples of any commodity transferred at GUBT facilities for its own purposes.

Top sampling of railcars must be agreed upon in advance. Sample containers must be provided by Shipper at its cost. If a sample is requested, it must be taken at time of transfer; any samples that are requested to be taken at another time will be performed at a charge of \$50 per car.

II. SPECIAL SERVICES

Services beyond the scope of those customarily provided by a terminal will be priced on an individual basis.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 130

TERMINAL LIABILITY

I. LOSS OF WEIGHT

Allowable transfer losses will be one percent (1%) of the weight of the commodity on a six-month (January-June, and July-December) cumulative basis per shipper, per GUBT, and such loss will be considered standard operating loss not assessable against GU (See note)

NOTE 1: Greater loss allowances may be required as a condition of acceptance for specific products when handling characteristics preclude complete unloading of the trailer or the railcar.

III. LIABILITY LIMITS

The liability of GU with respect to activities and services at GUBTs shall be limited to the negligence of GU in the performance of the services described in this tariff. Furthermore, neither GU nor the Terminal Operator shall be liable for consequential, indirect, special or punitive damages, interest, attorneys fees, or any amount in excess of product or car owner's actual loss concerning the commodity shipped or the equipment utilized.

IV. CLAIMS

Only one claim for loss, damage and/or injury may be filed for each rail car handled under this tariff. No claim will be paid which is filed more than nine (9) months after product delivery or release of car from the terminal, whichever occurs first.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 140

TRACK OCCUPANCY CHARGES, DEMURRAGE, AND RELATED CHARGES

A. PRIVATE CAR TRACK OCCUPANCY CHARGES

This item will apply on private cars (See Notes 1 and 2) constructively placed or actually placed at a GUBT in lieu of demurrage provisions in Tariff GU 3000- series. Track occupancy charges will be billed to and collected from shipper or beneficial owner of the Commodity on behalf of GU by the Terminal Operator.

Once a rail car is constructively or actually placed (See Note 2), "free time" (Including Saturdays, Sundays and Holidays) will be allowed as follows:

<u>Car Type</u>	<u>Free Days</u>	<u>Days 11 through 40</u>	<u>All Subsequent Days</u>
Covered Hopper Cars	10	\$50 per day	\$90 per day
Tank Cars	10	\$50 per day	\$90 per day

B. RAILROAD CAR DEMURRAGE

All railroad owned or controlled cars (See Notes 1 and 2) will be subject to demurrage under the provisions of Tariff GU 3000-Series. Demurrage charges will be billed to and collected from the shipper or beneficial owner of the Commodity.

C. NOTES AND OTHER CHARGES

NOTE 1: A private car is a railcar bearing other than railroad reporting marks

NOTE 2: Constructive placement is the date the railcar is available to be switched into the GUBT Terminal. Actual placement is the date the railcar was physically placed in the GUBT Terminal.

NOTE 3: When a railcar is constructively or actually placed at a GUBT and subsequently reshipped without any transfers having been made, a facility charge of \$500 will be assessed to the party issuing the reshipping instructions, in addition to all other applicable charges.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 141 -

GRAFTON & UPOTN RAIROAD BULK TERMINAL: LPG TERMINAL

The Grafton and Upton Railroad Bulk Terminal LPG Terminal located in North Grafton, Massachusetts is not a self-unloading facility, All terminal handling will be performed by the Grafton and Upton Railroad by a Terminal Operator acting under the direction and control of GU. The following guidelines are applicable when shipping to the GUBT LPG Terminal:

A. PRODUCT SPECIFICATIONS

All railroad tank cars received by the Grafton & Upton Railroad's GUBT North Grafton LPG Transfer Terminal (LPG Terminal) shall meet GPA Publication # 2140 specifications for HD-5 propane. Additionally the vapor pressure at 60 degrees F shall be within the range of 50 psi to 80 psi for the product to be accepted at the Terminal. All product delivered to the LPG Terminal shall be ODORIZED and meet or exceed the minimum level of odorization as stated in the Department of Transportation Code of Federal Regulations, 49 CFR 173.315(b)(1).

B. NON-COMPATIBLE PRODUCT

Shipper will be responsible for any Product that is delivered to LPG Terminal that does not meet the Terminal specifications set forth in Item # 141. LPG Terminal will provide Shipper with one of two options to handle the non-compatible Product: (1) The Terminal will return the product to origin, freight collect or pre-paid by Shipper or (2) Shipper will pay the LPG Terminal the actual cost for disposal plus handling and maintenance charges associated with the disposal of the non-compatible Product.

C. PROJECTED VOLUME REQUIREMENTS

During the first week of each calendar month, shippers must advise GU and the Terminal Operator of their projected volume to be delivered to the Terminal during the following calendar month. A shipper may deliver volume in excess of any such projected volume only with the prior consent of GU and the Terminal Operator.

D. TRANSFER CHARGES

The Terminal Operator, as the agent for GU, shall invoice the Shipper at the time of the receipt of the Shipper's LPG tank cars on the GU railroad property. A transload fee (as listed in ITEM # 120) on a cents per gallon basis to perform the off-loading and transfer operations will be billed. Such fee will include the truck loading fee and operations performed by the Terminal operator.

E. WINTER PERIOD CHARGES

If, during a single calendar month in the period of November through February, the Terminal receives in excess of the average monthly volume delivered to the Terminal by the same Shipper during the preceding period of May through August , a charge of eight (8) cents per gallon in addition to all other charges shall apply to such excess volume.

(continued on next page)

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

(concluded)

F. MEASUREMENT AND DEDUCTIONS

All product received at the LPG Terminal is subject to a 1% loss allowance deducted from the listed gallons on the bill of lading. Should the measured gallons be less than the net gallons (bol gallons minus the 1 % shrink) an adjustment in the Shipper's inventory will be made

G. PRODUCT AVAILABILITY AND OVER LIFT OF PRODUCT

The Terminal Operator shall maintain records showing the volume of LPG delivered to and removed from the Terminal by each shipper so that at any given time the Terminal Operator and shipper will know the volume of LPG credited to each shipper's inventory account. Product shall be credited to Shippers Terminal account when Shippers tank cars arrive on the GU property after the interchange with the CSX Railroad. All LPG received at the Terminal from any shipper shall be commingled and treated as a fungible commodity for purposes of transfer operations at the Terminal. No truck shall be loaded from any Shipper's inventory account if the volume remaining in the Shipper's account is less than 8,500 gallons without prior approval of GU.

ITEM 150

HOURS OF SERVICE & OVERTIME CHARGES

Normal working hours at the GUBT Terminals are from 7:00 A.M. to 6:00 P.M., exclusive of Saturdays, Sundays and Holidays (See Item 185).

All loading, unloading, & service must be ordered before 5 p.m. the day prior to the day that loading, unloading, & service is needed. Every attempt will be made to accommodate emergencies and requested times, but loading spots and other circumstances may require occasional modifications of requested times.

When service is required prior to 7:00 A.M. or after 6:00 P.M., arrangements must be made with the Terminal Operator in advance. When loading, unloading, & services are to begin after 5 p.m., written authorization for overtime to complete the process (if required) must be submitted before the process begins. The charge for services before or after normal working hours will be at a rate of \$60 per person per hour or fraction thereof, in addition to all other applicable charges (See Exception).

When service is requested at the GUBT on Saturdays, Sundays or Holidays (See Item 185), or when terminal personnel are required to make an extra trip to the terminal rather than performing continuous service, arrangements must be made in advance with the Terminal Operator. The charge for this service will be \$60 per hour per person subject to a four (4) hour minimum per person, in addition to all other applicable charges for service provided.

Authorization for overtime must be received in writing from the party responsible for paying terminal service charges.

EXCEPTION: No additional charges will be assessed if the motor carrier is at the GUBT and ready for loading before 4:30 P.M., and the delay causing the overtime is the fault of the Terminal Operator.

TARIFF GU5000 RULES AND OTHER GOVERNING PROVISIONS GENERAL RULES AND REGULATIONS

ITEM 160

ORDER PLACING

The shipper or beneficial owner will be responsible for providing GUBT with the name of the motor carrier authorized to transport the product, along with product transfer instructions. Such instructions may be initiated verbally but must be confirmed via facsimile, written communication, or through electronic means. Neither GU nor the Terminal Operator will be responsible for any problems concerning the shipment and performance of terminal services when the Terminal Operator has not received facsimile confirmation, or electronic communication covering each separate trailer from or to which Commodity is transferred.

ITEM 165

RAIL CAR ARRIVING AT TERMINAL WITHOUT FULL WRITTEN DESCRIPTION OF LADING

Any railcar arriving at a GUBT without full written description of lading will be held at shipper's expense awaiting adequate and proper description or further instructions on disposition of lading. If such written description shows that the commodity is not one approved for transfer, that railcar will be released to shipper for disposition, subject to all applicable terminal charges, along with any other charges to which GU might be entitled.

ITEM 185

HOLIDAYS

Wherever in this tariff reference is made to "Holidays" it means the following:

New Years Day
Thanksgiving Day
President's Day
Thanksgiving Friday
Good Friday
Christmas Eve
Memorial Day
Christmas Day
Independence Day
New Years Eve
Labor Day
(See Note)

NOTE: In the event one of the above Holidays occurs on a Sunday, the following Monday will be considered as the Holiday for the purpose of this tariff.

ITEM 190

EXPLANATION OF ABBREATIONS

ABBREVIATION	EXPLANATION
BOE	Bureau of Explosives
CDL	Commercial Driver's License
GU	Grafton and Upton Railroad
MSDS	Material Safety Data Sheet
NSO	National Service Order
PPE	Personal Protective Equipment
RER	Railway Equipment Register
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
GUBT	Grafton and Upton Bulk Transfer
UFC	Uniform Freight Classification Committee, Agent

THE END

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**SUPPLEMENTAL VERIFIED STATEMENT OF
RONALD DANA**

1. My name is Ronald Dana and I am a principal and executive officer of a group of companies referred to as "the Dana Companies." As an officer of the various Dana Companies, I am familiar with their operations generally, and more specifically with their operations as they may relate to the business conducted by the Grafton & Upton Railroad Co. ("G&U") at its railyard in the town of Upton. I have reviewed the Petition filed in the above-captioned proceeding by certain residents of the town of Upton, and the Response of the Petitioners dated September 10, 2012. I submitted a Verified Statement in support of the Reply of Grafton and Upton Railroad dated August 20, 2012. I am providing this Supplemental Verified Statement in support of the Supplemental Reply being filed by G&U.

2. Upon re-reading my original Verified Statement, I found errors that should be corrected so that the record is accurate:

(a) The names of a couple of the Dana Companies identified in paragraph 4 were incorrect. "Liquid Transport Corp." is actually "Liquid Transport,

LLC,” and “International Equipment Leasing, Inc.” is actually “International Equipment Logistics, Inc.”

(b) The facility in Grafton, Massachusetts, identified in paragraph 8, is not owned by, but is operated by Dana Transport.

3. In 2009, I was approached by Jon Delli Priscolli of G&U with respect to the G&U’s plans for expansion of its yard in Upton, Massachusetts. G&U had leased a 33 acre parcel adjacent to its existing yard, and was developing plans to expand its bulk liquid transloading business, and to handle the transloading of other commodities including wood pellets. The development would require the construction of additional tracks as well as silos and other facilities to handle the various types of commodities. Because G&U had limited experience in transloading, it was looking for a company to act as its agent in operating the expanded yard. I believe Mr. Delli Priscolli approached me because of the experience of the Dana Companies in the transloading of bulk liquids – both hazardous and nonhazardous.

4. Early in the discussions with G&U, I made it clear that I would form a new entity to enter into the contract with G&U. It has been my practice to have different companies for different types of operations and for different locations. This serves to help insulate existing successful businesses from the risks of new businesses. Ultimately, I formed Grafton Upton Rail Care, LLC (“GU Rail Care”) to be the agent of G&U at the Upton Yard.

5. G&U was developing the yard as our discussions progressed. When some bulk liquid cars began to arrive in September 2010, G&U and I agreed that one our existing companies, Dana Container, Inc. would temporarily handle the transloading on

behalf of G&U. G&U and Dana Container proceeded under an informal arrangement while the terms of a formal agreement were being negotiated.

6. G&U continued to develop the Upton yard and expand its facilities. The construction of facilities extended into the Fall of 2011.

7. Eventually, the terms of our arrangements with G&U were set forth in the Terminal Transloading Agreement (the "Transloading Agreement") that has been produced in this proceeding. GU Rail Care was formally registered with the Commonwealth of Massachusetts on April 27, 2011, and the Transloading Agreement was signed by the parties in early May, 2011, effective as of December 31, 2010. GU Rail Care remains in good standing with the Commonwealth of Massachusetts.

8. Prior to the execution of the Transloading Agreement, there were approximately 89 rail cars of bulk liquids transloaded for customers at the Upton railyard – 19 in 2010, and 70 in 2011.

9. Petitioners have referenced an on-line brochure of the Dana Companies which references the Upton yard as our "latest endeavor." The brochure is a promotional piece to describe the range of our experience, and was not drafted as a legal document. It does not specifically mention GU Rail Care or advertise its services. It does not accurately portray the legal relationship between G&U and GU Rail Care under which GU Rail Care operates the transloading services at the yard as the agent for G&U. The brochure was not intended to mean or imply that any of the Dana Companies owned or controlled the G&U yard in Upton.

10. None of the Dana Companies is a shipper or receiver of freight at the Upton yard, they are not the title holder of the freight, nor are they responsible for payment of the transportation or transload charges.

11. None of the Dana Companies, including GU Rail Care, pays G&U for the use of the yard, nor have they guaranteed G&U any level or amount of carloadings or income.

VERIFICATION

I, Ronald Dana, verify under penalty of perjury under the laws of the United States that
the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this
Supplemental Verified Statement.

Executed on February 22, 2013.

A handwritten signature in black ink, appearing to read 'Ronald Dana', written over a horizontal line.

Ronald Dana

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**SUPPLEMENTAL VERIFIED STATEMENT OF
MICHAEL J. POLSELLI**

1. My name is Michael J. Polselli, and I am the New England Regional Manager for the Dana Companies. In my capacity as New England Regional Manager, I am responsible for the management and operation of Grafton Upton Rail Care, LLC ("GU Rail Care"), and the transloading activities at the Upton railyard of Grafton & Upton Railroad ("G&U"). I have reviewed the Petition filed in the above-captioned proceeding by certain residents of the town of Upton, and the Response of the Petitioners dated September 10, 2012. I submitted a Verified Statement in support of the Reply of Grafton and Upton Railroad dated August 20, 2012. I am providing this Supplemental Verified Statement in support of the Supplemental Reply being filed by G&U.

2. In this Supplemental Verified Statement, I wanted to provide additional information regarding the transloading activities at G&U's Upton railyard.

3. Currently there are approximately 16 customers utilizing G&U transloading services at the Upton railyard. During calendar year 2012, there were 895 railcars transloaded in the railyard – 701 of those cars were inbound tank cars of bulk

liquids of various types that were unloaded, 44 of those cars were inbound covered hoppers of wood pellets that were unloaded, and 150 of those cars were outbound tank cars that were loaded with bulk liquids. Twenty different bulk liquids are transloaded in Upton.

4. G&U has been handling the transloading of wood pellets since December 2011. It current handles transloading of wood pellets for two customers who ship pellets to Upton from seven different manufacturing plants across North America. Discussions are underway with three additional wood pellet customers who would ship for the 2013-2014 heating season.

5. As previously described, the transloading of wood pellets involves the use of a hose to remove them from the rail cars. GU Rail Care attaches a vacuum hose to the bottom of the cars which sucks the wood pellets through a system that removes dust, and then into silos which provide temporary storage of the wood pellets until they are ready to be loaded onto trucks. Since December 2012, broken pellets (sometimes referred to as "fines"), are separated by screens from unbroken pellets as the pellets are moved by conveyor to the silo, pressed together, and moved into the silos. Additional dust is removed from the wood pellets before they are bagged. Any dust that is collected is disposed of as waste. There is no cleaning or washing or processing of the pellets. There is no "manufacturing" involved in the transloading process – the structure and content of the pellets are not changed from when they left the factory.

6. Currently, all of the wood pellets are moved from the silos by a conveyor, automatically bagged in 40 pound bags and stacked 50 to a pallet. The pallets are shrink-wrapped so that they will be ready for truck transportation, and then moved to a staging

area to be stored until they are loaded in trucks for final delivery by the customer. The bagging and shrink-wrapping are merely part of the unloading and temporary storage provided by G&U for the customers.

7. Some of the potential new customers will be shipping the pellets out in bulk and will not require bagging. The pellets will still be placed into the silos for temporary storage, but then will be loaded directly into trucks.

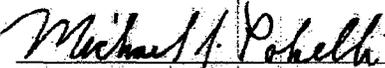
8. Dana Transport continues to handle approximately 25% of the truck loads at the yard, with other carriers or customers handling the other 75%.

9. The Petitioners (in particular Ms. Del Grosso) allege that there were two Dana tank cars (DNAX 130007 and DNAX 130014) loaded with methyl cyanide stored for an extended period of time on yard tracks near her property, and that the storage would have violated local ordinances if they applied. These allegations are wrong in a number of ways. The tank cars are owned by Dana Container, Inc., but are under a long term lease to an unaffiliated customer Purification Technologies, Inc. of Chester, CT. The tank cars never were loaded with methyl cyanide, but rather were used to ship acetronitrile which is a high purity inert liquid. The cars arrived loaded in Upton on March 14, 2012, and were transloaded into outbound tanker trucks by March 21, 2012. They were moved as empty cars from the active liquid transloading tracks onto G&U's Upton storage track near Depot Street on March 21, 2012. They were stored empty by G&U until January 30, 2013, while waiting for customer directions as to where to send the cars. As with all liquid tank cars in the yard, these cars were handled in accordance with FRA requirements.

VERIFICATION

I, Michael J. Polselli, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Supplemental Verified Statement.

Executed on February 22, 2012.


Michael J. Polselli

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**VERIFIED STATEMENT OF
GORDON MURRAY**

1. My name is Gordon Murray, and I am the Executive Director of the Wood Pellet Association of Canada ("WPAC"). WPAC is an association of Canadian wood pellet producers, as well as suppliers and partners. Our goal is to help members grow through promoting the role of wood pellets in the Canadian, United States and global markets, supporting market and technical research, and encouraging fair and open energy trade. In my capacity as Executive Director, I am responsible for development and maintenance of global markets; supply chain and logistics; product quality standards and certification; standard trading contracts; product safety; manufacturing process improvement; and for providing marketing and manufacturing advisory services to members, customers, and stakeholders. I have am a regular contributor to Canadian Biomass Magazine and Bioenergy International Magazine, and I have given expert presentations on the Canadian wood pellet industry at numerous conferences world-wide. In addition to my 31 years of experience, I was trained in forest products manufacturing

at the University of British Columbia where I obtained my Bachelor of Science in Forestry Degree in 1982.

2. G&U requested that WPAC provide this statement in connection with a proceeding at the United States Surface Transportation Board ("STB") which I understand involves, in part, the transloading of wood pellets that are being transported by rail from points in Canada and in the United States, to Upton, Massachusetts, in order to provide information on the process involved in the manufacturing of wood pellets.

3. Wood pellets are a safe, reliable modern fuel. But they are still a fuel, requiring care in producing, shipping and storing. With its members, WPAC continuously strives to find better processes to manufacture and ship the pellets. Consequently, WPAC is familiar with all aspects of the manufacture and shipping of wood pellets.

4. Wood pellets are a renewable, clean-burning (carbon neutral) and cost stable home heating and energy alternative currently used throughout North America and Europe. They are a biomass product made of renewable substances such as recycled wood waste, including sawdust and other waste from sawmills. Pellet manufacturers take the wood by-products and refine them into pencil-sized pellets that are uniform in size, shape, moisture, density and energy content. The pellets are produced by passing the wood material through a "hammer mill" to produce a uniform dough-like fiber mass which is then kiln or air dried. When the moisture content is at the desired level, the fiber mass is rolled and squeezed through a die to produce the size pellets required.

5. After rolling and squeezing, the manufacturing process is complete, and the pellets can be shipped by truck, by rail, by boat, or by a combination of modes. Often

they are transported loose in bulk; at other times they may be transported in bags.

Bagging is not part of the manufacturing process, but rather, the decision whether or not, or when, to bag is part of the transportation logistics decision of the manufacturer and the requirements of the ultimate customers.

6. I have reviewed the Verified Statements of Douglas Middleton and Eric Moffett, which were filed in this proceeding, and I agree with their descriptions of the distinction between manufacturing and transportation of wood pellets.

VERIFICATION

I, Gordon Murray, Executive Director of the Wood Pellet Association of Canada, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on February 19, 2013



Gordon Murray