

SURFACE TRANSPORTATION BOARD

CORRECTED DECISION*

Docket No. FD 35652

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

Decided: August 22, 2016

On December 5, 2014 (December 2014 Decision), the Board ruled on the Petition for Declaratory Order filed by Diana Del Grosso, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wilklund, and Richard Kosiba (Petitioners), seven residents of the town of Upton, Mass. Petitioners subsequently appealed the Board's December 2014 Decision to the U.S. Court of Appeals for the First Circuit. The First Circuit affirmed the Board's decision in part, but vacated and remanded a portion of the decision back to the Board for further consideration. Del Grosso v. STB, 804 F.3d 110 (1st Cir. 2015), reh'g denied, 811 F.3d 83 (2016).

In a decision served on June 21, 2016, the Board directed Petitioners and Grafton and Upton Railroad (G&U), the Class III rail carrier whose services were the subject of the declaratory order, to confer and jointly submit a suitable procedural schedule to govern the proceeding before the Board on remand. On July 15, 2016, the parties filed a joint proposed schedule under which: (1) Petitioners would file and serve their opening statement within 60 days from the service date of the Board's decision establishing the procedural schedule; (2) G&U would file and serve its response within 45 days thereafter; and (3) Petitioners would file a rebuttal statement within 30 days after G&U's response. The Board finds the parties' joint proposal to be reasonable and consistent with Board practice. Thus, the following procedural schedule will be adopted:

October 24, 2016 Petitioners' opening statement

December 8, 2016 G&U's reply

* This decision corrects the decision served by late release on August 23, 2016. The August 23 decision incorrectly stated the due dates for reply and rebuttal. As set forth in this decision, reply is due December 8, 2016, and rebuttal is due January 9, 2017. The term "defendant" has been changed to G&U.

January 9, 2017 Petitioners' rebuttal

It is ordered:

1. The procedural schedule described above is adopted.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.