

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

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September 13, 2012
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Public Record

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

**MOTION OF GRAFTON & UPTON RAILROAD
COMPANY TO STRIKE "RESPONSE OF THE
PETITIONERS" TO OPPOSITION OF GRAFTON & UPTON
RAILROAD COMPANY TO PETITION FOR DECLARATORY ORDER**

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Upton Railroad Co.

Dated: September 13, 2012

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On September 10, 2012, the Petitioners in this proceeding filed a document entitled "Response of the Petitioners" (the "Response") to the "Reply of Grafton & Upton Railroad Co. in Opposition to Petition for Declaratory Order" dated August 20, 2012 (the "Reply in Opposition"). For the reasons stated below, the Board should strike the Response from the record in this proceeding.

As a basic proposition that is wholly dispositive of this Motion, the Response must be dismissed pursuant to the Board's regulation that provides that a "reply to a reply is not permitted." 49 C.F.R. 1104.13(c). The Petitioners have not even filed a motion for leave to file a reply, nor have they suggested any reasons in their Response that would justify the filing of a reply to a reply. All of the additional facts and arguments raised by

the Petitioners were known to them at the time the Petition was filed and should have been included in the Petition.

It should be noted that the arguments set forth in the Response support the points that Grafton & Upton Railroad Co. ("G&U") made in its Reply in Opposition--that institution of a declaratory order proceeding is not necessary and the Board should enter a declaratory order to the effect that local regulation by the Town of Upton of the G&U yard is preempted. For example, the Petitioners have attempted to demonstrate that they have standing by submitting identical affidavits from each of the 7 Petitioners acknowledging that their houses are located in a "Commercial & Industrial zoning district" and alleging in general terms that they have suffered "actual harm" based upon "zoning related concerns". Response at 2-3. What the affidavits actually demonstrate, however, is that the Petitioners have fundamental disagreements with their elected representatives, who have concluded that preemption applies and, at the same time, who have worked with G&U to ensure compliance with local regulations concerning safety and public health. The Response also provides excellent examples of options that are available under state and local law, as G&U pointed out in its Reply in Opposition. In fact, one of the Petitioners is apparently in the process of pursuing such a course of action in accordance with Massachusetts statutory provisions. Response at 5-6.

If the Board were to accept the Response it should also then permit G&U to file a further reply in order to address the new and incorrect "facts" and arguments put forth in the Response. For example, the Response refers to various unidentified tariffs that the Petitioners believe were evidence in a preemption case involving Norfolk Southern and the City of Alexandria, Virginia and are somehow relevant to this proceeding. Response

at 8-10. In addition, the Petitioners have continued to rely on various websites, promotional materials and newsletters for many of their arguments, including the new argument that the relationship between G&U and Grafton Upton Railcare is a "sham" transaction. If the Board accepts the Reply containing these new arguments and additional "facts", then G&U should have an opportunity to respond.

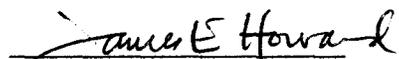
Acceptance of the Reply and affording G&U an opportunity to respond to the Reply would potentially create a never ending series of replies, which is wholly unnecessary. The record that the Board needs to decide how to dispose of the Petition was complete with the filing of the Reply in Opposition by G&U, and permitting the filing of the Response and a further reply by G&U, potentially followed by a series of requests for additional, replies would be a waste of time and resources of both the Board and the parties.

In the event that the Board decides, contrary to the arguments advanced by G&U, to institute a declaratory order proceeding, the Petitioners would have a full opportunity to supplement the record, as would G&U. The Petitioners should not be permitted, however, to supplement the record by means of the Response in contravention of the Board's rules and without having made any attempt to explain why they chose to flout those rules. This is particularly the case where, as here, the Petitioners have could have-- indeed, should have--made their additional arguments in their initial filing.

For the reasons set forth above, therefore, the Board should grant this Motion and strike the Response of the Petitioners.

Respectfully submitted,

GRAFTON & UPTON
RAILROAD CO.

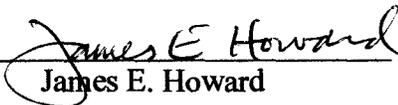

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Certificate of Service

I hereby certify that I have served the foregoing Motion as of this 13th day of September, 2012 by causing a copy to be sent via e-mail and first class mail to Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, 9 Damonmill Square, Suite 4A4, Concord, Massachusetts 01742 and to Eric M. Hocky, Thorp, Reed & Armstrong, 1 Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, Pennsylvania 19103.


James E. Howard