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LAW OFFICES
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1919 M Street, NW (7th fl.)
Washington, DC 20036

September 17, 2013

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

Re: Docket No. FD 35752, Grafton & Upton Railroad Company
Petition for Declaratory Order

Dear Ms. Brown:

Attached for filing in the subject proceeding is the Reply of the Town of Grafton and Robert S. Berger, Zoning Enforcement Officer, in opposition to the Motion of the Grafton & Upton Railroad Company For Leave to File Supplement to Petition for Declaratory Order.

If you have any question concerning the pleading or if I otherwise can be of assistance, please let me know.

I certify that copies of this letter and its attachment have been served upon each party of record.

Sincerely yours,


Fritz R. Kahn

att:

cc: James E. Howard, Esq.
Keith T. Gorman, Esq.
Mary J. Pigsley, Esq.
Steven P. Rourke, Esq.

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35752

**GRAFTON & UPTON RAILROAD COMPANY--
PETITION FOR DECLARATORY ORDER**

**REPLY OF
THE TOWN OF GRAFTON, MASSACHUSETTS, and
ROBERT S. BERGER, ZONING ENFORCEMENT OFFICER**

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Attorneys for:

TOWN OF GRAFTON and
ROBERT S. BERGER, ZONING
ENFORCEMENT OFFICER

Dated: September 17, 2013

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35752

**REPLY OF THE TOWN OF GRAFTON, MASSACHUSETTS, and
ROBERT S. BERGER, ZONING ENFORCEMENT OFFICER**

Respondents, the Town of Grafton, Massachusetts, and Robert S. Berger, its Zoning Enforcement Officer (together "Grafton"), pursuant to 49 C.F.R. § 1104.13(a), reply in opposition to the Motion of the Grafton & Upton Railroad Company ("G&U") For Leave to File Supplement to Petition for Declaratory Order, filed September 9, 2013, and in support thereof state, as follows:

In compliance with the Order of the Superior Court for Worcester County, Massachusetts, entered June 12, 2013, which had directed G&U within 45 days' time to seek a determination by the Board to resolve the disagreement and dispute between the parties, G&U, on July 24, 2013, filed its Petition for Declaratory Order. Grafton replied by its filing on August 19, 2013, agreeing that the Board needed to institute a declaratory order proceeding.

In its Petition for Declaratory Order, G&U announced that about a week earlier it suddenly had completely changed the long-planned arrangement for the financing, construction, and operation of its proposed propane transloading facility in North Grafton, purporting to have unilaterally terminated the agreements it had negotiated with two companies, NGL Terminals Co. and Spicer Advanced Gas, and the subsidiary companies they had organized over several months to facilitate the undertaking.

In its Reply, Grafton pointed out that G&U's new claims lacked credibility for many reasons, the foremost of which being that G&U and its owner and CEO, Mr. Jon Delli Priscoli, themselves would be able to finance the approximately \$2.5 million cost of constructing and operating the propane transloading facility without, however, producing any tax returns, balance sheets or income statements of G&U or any company owned or controlled by Mr. Priscoli. This was a startling omission, given that Mr. Priscoli's optimistic projections that he suddenly is able to raise the approximately \$2.5 million required to construct and operate the facility were in direct contradiction of his recent testimony, under oath, in federal court that the facility could not be financed by his companies or with any conventional financing. *See* Town's Reply at pp. 12-16. Far from filling this gaping void, the several documents which G&U now seeks to file as part of the "Supplement" to its Petition for Declaratory Order serve only to confirm that G&U and Mr. Priscoli intend to go forward with the construction and operation of the largest liquefied natural gas storage facility in Massachusetts, without having the means to do so. None of the tendered documents lend any credence to the claims of G&U and Mr. Priscoli that they have the ability to finance the construction and operation of the propane transloading facility, and, to the contrary, they raise the likelihood that G&U and Mr. Priscoli will continue to look to NGL and Spicer for the financing and additional aid they always had planned to secure from them.

Additionally, none of the tendered documents of the "Supplement" establish that G&U or Mr. Delli Priscoli has the knowledge and/or experience--or, for that matter, the personnel--to handle hazardous materials in compliance with the regulations of the Pipeline and Hazardous Materials Safety Administration, which hazardous materials include propane, classified as a flammable hazardous material.

Furthermore, given the G&U's past course of conduct and its sudden change of plans on the eve of the Board's evaluation of its claim to federal preemption, it is imperative that each assertion it puts forth be thoroughly scrutinized. Although G&U has claimed that it has unilaterally terminated its contracts with the "Propane Companies", relieving them from their central role in the financing, construction, and operation of the proposed propane transloading facility, on careful inspection of the pleadings and exhibits, it is clear that G&U has not actually "terminated" its involvement with NGL Terminals Co. Specifically, in its Petition for Declaratory Order, G&U had identified NGL Terminals Co. as a principal source for funding the facility under its original scheme. However, none of the letters which G&U sent out unilaterally to "terminate" the arrangements with the "Propane Companies" (*see* Exhibits B through E of the G&U's Petition, reprinted as Exhibit E to the Supplement), was sent to NGL Terminals Co. Therefore, based on the papers filed thus far, including those in the "Supplement", nothing actually may prevent G&U from relying upon the resources of that international propane corporation to fund the construction and operation of the propane transloading facility or for the railroad to continue to be its proxy, calling into question whether the transloading facility will actually be controlled and supervised by G&U. Thus, it remains crucial to ascertain whether NGL still will be playing a role and, if so, whether it will be NGL or G&U that will have the ultimate control and supervision of the facility's construction and operation.

Additionally, by seeking leave to file certain selected documents while continuing to request some variety of "streamlined" review by the Board, the G&U seeks to retain complete control of the documents that comprise the record, and it is obviously free to keep to itself any documents not in support of its claims.¹ Should the Board institute a broad declaratory order

¹ G&U has proven itself to be less than transparent in this chain of proceedings. For example,

proceeding, however, as Grafton has requested, all relevant documents sooner or later will need too be produced, whether they support G&U's claims or discredit them.

In conclusion, in light of the continued lack of any evidence that G&U has the financial ability, knowledge, expertise or personnel to construct and operate the proposed propane transloading facility, Grafton requests that the Board deny G&U's Motion for Leave to Supplement its Petition, and again urges the Board to institute a full and complete declaratory order proceeding.

Respectfully submitted,

THE TOWN OF GRAFTON and
ROBERT S. BERGER, ZONING ENFORCEMENT OFFICER

By their attorneys,

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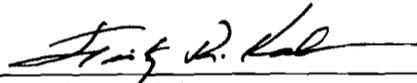
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even though the Town legitimately requested pursuant to an order of the Federal Court "all documents relating to the leasing, licensing, operation, financing or use of the Tanks at the Propane Facility" and all draft and final transloading agreements, G&U did not produce its Letter of Intent dated April 6, 2012, directly responsive to the that January 2013 request, until it filed the Supplemental Materials with this Board.

CERTIFICATE OF SERVICE

I certify that I this day served the foregoing Reply upon the Grafton & Upton Railway Company by e-mailing a copy to its counsel, James E. Howard, Esq., at jim@jehowardlaw.com, upon ASLRRRA by e-mailing a copy to its counsel, Keith T. Borman, Esq. at kborman@aslrra.org., upon the Massachusetts Department of Environmental Protection and the Massachusetts Department of Fire Services by mailing copies by prepaid, first-class mail to their counsel, Mary J. Pigsley, Esq., and Steven P. Rourke, Esq., respectively.

Dated at Washington, DC, this 17th day of September, 2013.



Fritz R. Kahn