

BEFORE THE
SURFACE TRANSPORTATION BOARD

235753

Finance Docket No. 35752

ENTERED
Office of Proceedings
April 1, 2014
Part of
Public Record

GRAFTON & UPTON RAILROAD COMPANY --
PETITION FOR DECLARATORY ORDER

**MOTION OF GRAFTON & UPTON RAILROAD
COMPANY FOR LEAVE TO FILE COMMENTS
ON REPLY OF TOWN OF GRAFTON**

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Dated: April 1, 2013

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On July 24, 2013 Grafton & Upton Railroad Co. ("G&U") filed a Petition for Declaratory Order (the "Petition") requesting the Board to determine that state and local permitting and preclearance statutes and regulations are preempted pursuant to 49 U.S.C. 10501 in connection with the transloading of propane from rail cars to trucks at G&U's yard located in the Town of Grafton, Massachusetts (the "Town"). The Town filed a reply in opposition to the Petition, and G&U submitted a Supplement to the Petition in September, 2014. By decision served on January 27, 2014, the Board instituted a declaratory order proceeding. Pursuant to that decision, G&U filed additional information and argument on February 28, 2014, and the Town filed a reply on March 20, 2014.

By this Motion, G&U requests leave of the Board to file the "Comments of Grafton & Upton Railroad Company on Reply of Town of Grafton". As demonstrated in the Comments, the Town's Reply is replete with "facts" that are wrong or incomplete, leading the Town to articulate conclusions and arguments that are erroneous or misleading. In order to provide the Board with an accurate record for purposes of this

proceeding, it is critical that G&U be able to file, and that the Board accept, the Comments.

Making the Comments part of the record will not expand the scope of the issues before the Board in this proceeding. Furthermore, acceptance of the Comments for filing will not prejudice the Town.

Respectfully submitted,

GRAFTON & UPTON
RAILROAD CO.

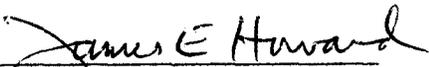

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Motion for Leave to File
Comments on Reply of Town of Grafton to be served by sending copies by e-mail on
April 1, 2013 to all parties on the service list.



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COMPANY ON REPLY OF TOWN OF GRAFTON**

Grafton & Upton Railroad Co. ("G&U") submits these Comments in order to correct certain erroneous or misleading statements in the Reply filed on behalf of the Town of Grafton, Massachusetts ("Town") on March 20, 2014. The Town has continued to contend that G&U has not submitted what the Town characterizes as "actual credible evidence" or "quantifiable and verifiable information" concerning the financing and operation of the propane transloading facility that G&U intends to build and operate, using its own resources and employees, on G&U property located within the Town.

The essence of the Town's argument is that G&U will be unable to finance the construction of the propane transloading facility on its own, because the assets of Jon Delli Priscoli, the owner of G&U and several other businesses, are allegedly "heavily leveraged". The Town has based its contentions upon information that it has apparently found on the Internet or through public document searches. As shown below, the information relating to G&U and Mr. Delli Priscoli's finances is incomplete and inaccurate, and the Town has either misunderstood or misinterpreted such information.

Consequently, the Town's conclusions and arguments based upon such incomplete and inaccurate information are simply wrong or misleading at best.

COMMENTS

Examples of such misunderstandings or misinterpretations include the following:

G&U Debt. In an attempt to controvert Mr. Delli Priscoli's sworn statement that "G&U's balance sheet does not include any obligation that should properly be viewed as long-term, outside debt", the Town has referred to a 2011 mortgage by G&U in favor of First Colony Development Co., Inc. (not "First Colony, LLC" as referred to in the Town's Reply). First Colony has advanced substantial amounts to G&U over the years during which Mr. Delli Priscoli has owned G&U. In order to protect those advances from an adverse event or catastrophic accident that G&U might incur, it was prudent to put the mortgage in place. Because Mr. Delli Priscoli owns both First Colony and G&U, there is no "outside", i.e. third party, debt. More importantly for purposes of these proceedings, the financial assistance already provided by First Colony to G&U is a good example of the financial assistance that Mr. Delli Priscoli can and will continue to provide to G&U through other companies that he owns in order to complete the construction of the propane transloading facility, just as he has done since purchasing G&U in 2008.

100 Crowley Drive. The Town has reviewed public land records relating to a property owned by one of Mr. Delli Priscoli's companies at 100 Crowley Drive in Marlborough, Massachusetts. Not surprisingly, the information in the public records is incomplete and does not provide a true picture of the financial condition of the property in question. Information that apparently did not come to the attention of the Town in its piecemeal Internet-based review included the fact that the building and the 6.57 acre

parcel on which the building is located secure a \$12.5 million construction loan, and that the funds available pursuant to the construction loan have not been fully drawn down, as substantial funds remain unadvanced for the payment of tenant build outs and commissions. The bank holding the mortgage appraised the property at a value that is substantially in excess of the assessed value for property tax purposes and of the amounts advanced pursuant to the construction loan. The Town failed even to mention the additional 19.74 acres of commercially zoned land on Crowley Drive that Mr. Delli Priscoli owns in a different entity. Consequently, the Town has significantly undervalued the holdings at 100 Crowley Drive.

Brigham Street Properties. The Town's analysis of the Brigham Street properties is similarly flawed. For example, the 2011 mortgage on 19 Brigham Street was refinanced and discharged by means of the 2013 mortgage. Rather than mortgages totaling approximately \$11.9 million on the Brigham Street properties, as the Town erroneously states in its Reply, the correct total balance of the mortgages is approximately \$8.2 million. Primarily due to the fact that the buildings on these properties were constructed between 10 and 20 years ago, the assessed values are considerably lower than the current market values, which were recently estimated by a nationally recognized commercial real estate brokerage firm to be approximately \$15 million. Consequently, the equity in these properties is substantial. Most significantly, the Brigham Street properties generate substantial cash flow over and above the amount needed to service the debt, thereby providing, together with the substantial equity in the property, a basis for financial assistance that might be needed by G&U in connection with the propane terminal.

Future G&U Profits. Although the Town's point is not absolutely clear, it seems to be questioning whether G&U will be able to attract 1500 to 2000 propane cars a year to the new facility without any minimum guarantee of the type that was in place when the propane companies were involved in the financing of the facility. The testimony of Mr. Delli Priscoli and Lawrence Chesler of Spicer Plus, as set forth in the Petition and the verified statements that were submitted with G&U's filing on February 28, 2014, described the strong demand for propane in the New England area and the absence of sufficient rail served transloading facilities. This testimony demonstrates the likelihood of achieving that level of business and is completely un rebutted by the Town.

Lack of Involvement by Both "NGL"s. As explained below, the Town has committed 2 separate errors involving propane companies with "NGL" in their names.

Regarding the first error, which pertains to the involvement of NGL Supply Co. ("NGL Canada"), and notwithstanding the uncontroverted information provided by G&U's previously, the Town continues to wonder whether NGL Canada is really no longer involved and might still have some ability to be involved in the financing or operation of the propane transloading facility. As explained in detail in the Petition, G&U's Supplement and G&U's most recent filing, Spicer Plus, Inc. and NGL Canada, a Canadian supplier and wholesaler of propane, created 3 new subsidiary companies--All American Terminals, GRT Financing and Patriot Gas Supply--each of which was owned on a 50-50 basis by Spicer and NGL Canada. The 3 subsidiaries entered into 3 agreements with G&U for the financing and operation of the transloading facility. Spicer and NGL were not parties to any of the 3 agreements except to the extent of guaranteeing

the performance of Patriot Gas Supply, which was required to supply a minimum of 800 carloads of propane to the facility each year.

The agreements were terminated by G&U, with the agreement of each of the 3 subsidiary companies, in July, 2013. Copies of the termination letters were sent to NGL Canada. The terminations were formalized in agreements executed by the parties in August, 2013. Neither Spicer nor NGL Canada was a party to any of the termination agreements, because they were not parties to the 3 operative agreements. Nonetheless, the roles and involvement of Spicer and NGL Canada were definitively ended in August, 2013. More specifically, the termination of the agreement between G&U and Patriot Gas Supply, which was guaranteed by NGL Canada, left NGL Canada with nothing to guarantee and therefore no further role. Mr. Delli Priscoli and Mr. Chesler have testified without qualification that the involvement of Spicer, NGL Canada and all 3 of their subsidiaries has ended.

While the Town should have understood that the propane companies were no longer involved, the even more egregious second error is the Town's assumption that NGL Energy Partners LP, a publicly traded propane company based in Tulsa, Oklahoma ("NGL Tulsa"), is the same entity as NGL Canada. In the trial in the federal court in January, 2013, Mr. Delli Priscoli made it clear, both upon direct examination and cross-examination by Ms. Kremer, counsel for the Town, that G&U was dealing with NGL Canada for purposes of the 3 agreements referred to above. He also explained that there was a different, completely separate company--NGL Tulsa--that was not part of the financing of the G&U propane facility, but that G&U was negotiating with NGL Tulsa to

persuade it to become a customer at the North Grafton transloading facility. See excerpts from trial testimony attached hereto as Exhibit A.

Other G&U Revenues. The Town has attempted to undercut the importance of G&U's substantial increase in traffic and revenues by asserting that the traffic is almost entirely attributable to the Upton yard transloading operations, where a subcontractor earns the transloading fees. The Town blithely overlooks, however, the new line haul revenues that G&U earns for each rail car that is transloaded at its yards in Upton and Hopedale.

Operational Capabilities. The Town has continued to question G&U's ability to operate the propane transloading facility safely and in accordance with Pipeline and Hazardous Materials Safety Administration ("PHMSA") regulations. G&U has previously explained in the Petition and the Supplement that it will construct a facility that exceeds applicable safety regulations and will operate strictly in accordance with applicable rules, including regulations promulgated by PHMSA, the Massachusetts Department of Environmental Protection and any other agency that might have jurisdiction. In support of its "concern", the Town has offered only questions or speculation (such as "two or four people seem like a paltry staff"), but no evidence.

CONCLUSION

Contrary to the contention of the Town, G&U has provided credible evidence in the form of verified statements that demonstrate its ability to finance and operate the propane transloading facility on its own. The information provided by G&U is not simply "bald assertions", as argued by the Town, but rather constitutes sufficient evidence of G&U's ability to pay for the completion of the construction of the facility and

to operate the facility with its own employees. As demonstrated in earlier filings in this proceeding, the financial health of G&U and Mr. Delli Priscoli's other businesses is strong and able to provide the financing necessary to construct and operate the propane transloading facility. In response, the Town has presented only questions and speculation, asking the Board to draw inferences that are simply not supported by any facts or logic.

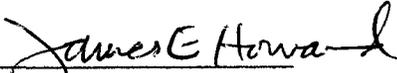
The applicability of preemption to the facts of record in this proceeding is not in doubt. G&U, a rail carrier, will be providing rail transportation services at the transloading yard. Given the clear applicability of preemption, the Town has attempted to create, and to have the Board impose, a new hurdle by requiring that G&U demonstrate its financial and operational capabilities. This is not a prerequisite to a finding that preemption applies, and G&U respectfully requests the Board to reject the Town's attempt to rewrite the law. The Board has sufficient information not only to determine that the Town's attempt to assert zoning and other preclearance regulations is preempted, but also to conclude that G&U's plan is credible and feasible.

G&U urges the Board to issue a decision at the earliest practicable date granting the request for a declaratory order to the effect that preemption applies to the construction and operation of the propane transloading facility. Further delay will make it difficult for

G&U to be ready to provide services for the 2014-2015 propane season, which will cause harm not only to G&U but also to propane consumers in New England.

Respectfully submitted,

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RAILROAD CO.


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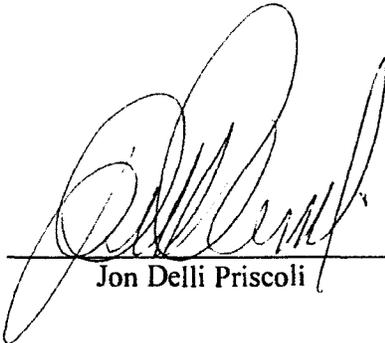
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202-887-1400

Dated: April 1, 2014

VERIFICATION

I, Jon Delli Priscoli, President and sole owner of Grafton & Upton Railroad Company, verify under penalty of perjury that the facts set forth in the foregoing Comments of Grafton & Upton Railroad Co. on Reply of Town of Grafton are true and correct. Further, I certify that I am qualified and authorized to verify the foregoing document and cause it to be filed.

Executed on March 31, 2014.



Jon Delli Priscoli

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16 on behalf of the Defendants
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1 minimum number of -- of railcars get put through
2 the -- through the facility.

3 Q. Okay. And I believe you testified yesterday that
4 Patriot Gas is also owned by NGL Canada and Spicer; is
5 that correct?

6 A. That is correct.

7 Q. And then the other two entities are NGL Supply
8 Terminals Company as guarantor; correct?

9 A. I'm not sure I understand your question.

10 Q. And the other two remaining entities that
11 are -- I'm sorry. There's three remaining entities that
12 are parties to the memorandum of understanding. One is
13 Spicer Plus, Incorporated. Do you see that?

14 A. I do.

15 Q. And then the second one is NGL Supply Terminals
16 Company.

17 Do you see that?

18 A. I do.

19 Q. And is that the same as NGL Canada that you were
20 talking about yesterday?

21 Are you using that NGL Canada as shorthand
22 for NGL Supply Terminals Company, or is it different?

23 A. I believe they're one in the same.

24 Q. Okay. Okay. So this agreement, if you go down
25 to paragraph -- sorry -- down to paragraph -- the first

1 Patriot, some from other shippers, the railroad will
2 still end up with the same amount of money it needs to
3 meet its nut?

4 A. Yes.

5 MR. MAVRICOS: Can I just have one moment,
6 your Honor?

7 Your Honor, it will be my intention to
8 highlight provisions of the rail transportation
9 contract, but rather than taking the time to do it here,
10 if -- I don't want the Court to think that there's
11 nothing I want to bring to its attention by not raising
12 it at this time.

13 THE COURT: Fair enough. Thank you.

14 Any clean up on that?

15 MS. KREMER: Yes, please, your Honor, just
16 very briefly.

17 RE-CROSS-EXAMINATION

18 BY MS. KREMER:

19 Q. The 800 cars minimum from Patriot is a minimum;
20 correct?

21 A. That's the -- that was the number determined to
22 cover the nut.

23 Q. But Patriot certainly is free to ship more than
24 800 cars?

25 A. They are.

1 Q. Okay. And with respect to the other agreement
2 that you've referred to, the 500 cars per year --

3 A. Yes.

4 Q. -- do you remember?

5 With whom is that agreement?

6 A. That agreement is not finalized, your Honor -- I
7 mean counsel. That agreement is in negotiation, and
8 that is with a company, a publicly traded company out of
9 Tulsa, Oklahoma.

10 Q. Okay. So you're not -- you're not free to say?

11 A. Oh, sure.

12 Q. Or you don't want to say who they are?

13 A. It's -- it is NGL Centennial, but that's
14 different -- once publicly traded, and that's a
15 privately owned company. It's completely unrelated
16 entities, even though they have that acronym.

17 Q. Okay. And that's not an executed agreement, it's
18 under negotiations?

19 A. Yes.

20 MS. KREMER: Okay. That's all, your Honor.

21 MR. MAVRICOS: Can I just clean up that NGL,
22 your Honor?

23 THE COURT: Sure.

24 FURTHER REDIRECT EXAMINATION

25 BY MR. MAVRICOS:

1 Q. Let's just be clear. There is a NGL Supply
2 Terminals that is involved in the -- in the memorandum
3 of understanding?

4 A. Yes.

5 Q. And is that NGL Supply Terminals company related
6 in any way, so far as you know, to the NGL Tulsa company
7 that you're negotiating to bring in propane railcars?

8 A. They are completely different entities,
9 ownership, everything. One is publicly traded. One is
10 privately owned by Canadians.

11 MR. MAVRICOS: Thank you, your Honor.

12 MS. KREMER: Nothing further, your Honor.

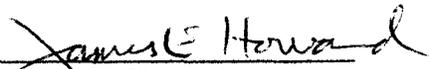
13 THE COURT: Thank you, Mr. Delli Priscoli.

14 You may step down.

15 ...end of excerpt.)
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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Comments of Grafton & Upton Railroad Company on Reply of Town to be served by sending copies by e-mail on April 1, 2014 to all parties on the service list.



James E. Howard