

STATEMENT OF CHRISTOPHER OEHRLE
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STB Finance Docket No. 34444

TOWN OF MILFORD, MA – PETITION FOR DECLARATORY ORDER

Chairman Nober, Vice Chairman Mulvey, Commissioner Buttrey, good morning.

The decision submitted for your consideration would deny a petition to institute a declaratory order proceeding because the law is clear as applied to the facts of this case. The Town of Milford seeks a Board determination on whether federal preemption under 49 U.S.C. 10501(b) would shield the planned activities of the Boston Railway Terminal Company in a rail yard that is owned by the Grafton and Upton Railroad Company, from state and local laws and regulations. The Grafton and Upton is a rail carrier. The Boston Terminal Railway Company, despite its name, does not have rail carrier authority. The proposed steel transloading and fabrication facility and related activities are part of a plan to move an existing transloading facility from Boston to a rail yard in Milford. Milford maintains that the proposed facility must comply with local environmental and zoning laws.

The proposed facility at the Milford yard would operate as follows: (1) the rail carrier would deliver cars loaded with steel to the transloading facility at the Milford yard; (2) the noncarrier would unload the steel and haul it by truck to customers throughout New England, sometimes first performing some fabrication work (e.g., cutting and welding) in a building to be constructed over at least one track at the Milford yard; and (3) the rail carrier would remove the empty cars and return them to an interchange point. The proposed activities would not be performed or controlled by, or held out to the public by, a rail carrier.

The statutory standard governing preemption requires that a particular facility or activity must constitute “transportation by rail carrier” to be exempt from local and state laws and regulations. Within this standard, the term “transportation” is defined broadly to include a facility related to the movement of property by rail. The term “rail carrier” refers to a person that provides common carrier railroad transportation for compensation. These are fact-specific determinations.

The record shows that the fabrication activities at the proposed facility would fall outside the broadest construction of the definition of “transportation” and, further, that the transloading activities at the facility, while they would constitute transportation, would not be provided by a rail carrier. Therefore, the draft decision finds that the planned noncarrier transloading and fabrication activities do not constitute “transportation by rail carrier,” are outside the Board’s jurisdiction, and are subject to state and local laws and regulations. Therefore, the draft decision before you would deny Milford’s petition.

We would be happy to address any questions you might have. Thank you.