

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36518

ENTERED
Office of Proceedings
May 27, 2021
Part of
Public Record

GRAFTON AND UPTON RAILROAD COMPANY --
PETITION FOR DECLARATORY ORDER

**REPLY OF GRAFTON AND UPTON RAILROAD
COMPANY TO "MOTION OF HOPEDALE
PROPERTIES, LLC, TO EXTEND TIME TO RESPOND"**

James E. Howard
57 Via Buena Vista
Monterey, CA 93940
831-324-0233
jim@jehowardlaw.com

Attorney for Grafton and
Upton Railroad Company

Dated: May 27, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36518

GRAFTON AND UPTON RAILROAD COMPANY --
PETITION FOR DECLARATORY ORDER

**REPLY OF GRAFTON AND UPTON RAILROAD
COMPANY TO “MOTION OF HOPEDALE
PROPERTIES, LLC, TO EXTEND TIME TO RESPOND”**

Grafton and Upton Railroad Company (“GU”) submits this Reply to the “Motion of Hopedale Properties, LLC, to Extend Time to Respond” dated May 26, 2021 (the “Motion”) in which Hopedale Properties, LLC (“Properties”) requests the Board for an extension of 45 days, or until July 19, 2021, to reply to the “Petition of Grafton and Upton Railroad Company for Declaratory Order” dated May 13, 2021 (the “Petition”). In the Petition, GU has requested the Board to issue a declaratory order to the effect that state and local statutes and regulations are preempted pursuant to 49 U.S.C. § 10501 in connection with the efforts of Properties to rely on state and local law to attempt to prevent GU from closing two private grade crossings in the Town of Hopedale, Massachusetts. As explained in the Petition, closing of the crossings is necessary and appropriate in order to prevent unreasonable interference with GU’s existing and future rail operations and to ensure the continued safe operation of rail service by GU. The threat by Properties to use state and local statutes and regulations to attempt to preclude the closing of the crossings or to require their reopening is preempted by Section 10501.

In the Motion, Properties improperly asserts that GU has engaged in an effort to impair Properties’ use of its property. This is simply not true. Rather, as described in the Petition, GU

has taken reasonable steps to improve the safety of its operations and to make improvements necessary in order to provide efficient rail service to shippers. In the Motion, Properties has failed to acknowledge the fact that the filing of the Petition by GU was necessitated by the demand on behalf of Properties, as set forth in a letter dated May 6, 2021 from counsel for Properties, that GU cease and desist from obstructing the use of the grade crossings and the threat that Properties was reserving all of its rights and remedies, including the right to seek injunctive relief.

In any event, GU does not object to a reasonable extension for Properties and any other interested parties to respond to the Petition, but GU has no knowledge and takes no position as to whether 45 days or some shorter period of time might be appropriate. Presumably, however, Properties will use whatever extension the Board may grant to prepare a reply to the Petition, rather than to fulfill its threat to seek injunctive relief against GU.

Respectfully,

/s/James E. Howard

James E. Howard
57 Via Buena Vista
Monterey, CA 93940
831-324-0233
jim@jehowardlaw.com

Attorney for Grafton and
Upton Railroad Company

Dated: May 27, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have as of May 27, 2021 caused a copy of the foregoing Reply of Grafton and Upton Railroad Company to “Motion of Hopedale Properties, LLC, to Extend Time to Respond” to be served by electronic mail on the following:

David Lurie
Harley Racer
Lurie Friedman LLP
One McKinley Square
Boston, MA 02109
dlurie@luriefriedman.com
hracer@luriefriedman.com

Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1634 I Street, N.W.
Washington, DC 20006
afultz@kaplankirsch.com