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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Docket No. FD 36696

**GRAFTON AND UPTON RAILROAD COMPANY –
PETITION FOR DECLARATORY ORDER**

**COMMENTS FROM
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

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I. Introduction

The American Short Line and Regional Railroad Association (“ASLRRA”) submits these comments in support of Grafton and Upton Railroad Company (“GURR”)’s petition to issue a declaratory order, pursuant to 5 U.S.C. § 544(e) and 49 U.S.C. § 1321, to the effect that the ongoing efforts permanently to preclude or to otherwise impede the use of GURR’s property for rail transportation purposes are preempted pursuant to 49 U.S.C. § 10501. Specifically preempted are (1) the attempt of the Town of Hopedale, Massachusetts to take by eminent domain GURR’s real property at 364 West Street that GURR is currently developing as a transload facility and other rail transportation facilities and (2) efforts by the Hopedale Conservation Commission to attempt to enforce a cease and desist order that would prohibit GURR from developing and operating the rail transportation facilities without preclearance from the Commission.

ASLRRA is an incorporated, nonprofit trade association representing the owners and operators of short line and regional freight railroads throughout North America. These approximately 600 small businesses play a vital role in the transportation network, often providing

the first-mile or last-mile connection between farmers, energy producers, manufacturers and the ultimate consumer. They operate in nearly every U.S. state, literally serving every region of the country, playing a particularly large role in connecting rural America to the larger freight transportation network.

As a Class III short line railroad, GURR is part of the national U.S. freight rail network.¹ Made up of over 630 individual railroads, this network facilitates transportation over 135,000 freight miles. Railroads are the most efficient way to move freight over land, as on average, railroads move one ton of freight nearly 500 miles on one gallon of fuel. Additionally, one train can carry as much freight as several hundred trucks. In fact, the Association of American Railroads (“AAR”) estimates that it would have taken approximately 242,000 additional trucks to handle the 4.3 million tons of freight that moved by rail in Massachusetts in 2021.²

ASLRRA supports GURR’s petition for a declaratory order and opposes the taking of GURR’s real property by eminent domain and the attempt to use preclearance and permitting to thwart a legitimate rail project. Due to the interconnected nature of the U.S. freight rail network, a disruption to one railroad by such an action would have a cascading effect to rail transportation in the state, region, and nation. ASLRRA urges the STB to grant GURR’s request.

ARGUMENT

A. Short Line Railroads.

¹ See 49 C.F.R. part 1201, General Instructions § 1-1(a). The Surface Transportation Board groups railroads into one of three classes for purposes of accounting and reporting. The class to which any rail carrier belongs is determined by its annual operating revenues after application of a revenue deflator adjustment. 49 C.F.R. pt. 1201, § 1-1(b)(1). Currently, Class I carriers have annual operating revenues of over \$900 million, Class II railroads have annual operating revenues of less than \$900 million but in excess of \$40.4 million, and Class III railroads have annual operating revenues of \$40.4 million or less.

² Association of American Railroads, *Freight Rail in Your State*. www.aar.org/data-center/railroads-states/ (last visited April 24, 2023).

Short line freight is a critical part of the U.S. freight network. The nation's approximately 600 short line carriers provide the first and last mile service for one in every five cars moving each year.³ Operating 47,500 route miles, or twenty-nine (29) percent of freight rail in the U.S., they play a vital role in the transportation network.⁴ Short line rail service provides safe, efficient, competitive, and environmentally responsible access to transportation for nearly 10,000 rail customers.⁵

While all are considered small businesses, short line railroads come in many shapes and sizes.⁶ Some short lines are members of rail holding companies, some are large regional entities, and many are small, independent family-owned businesses. Together they represent a diverse, dynamic and entrepreneurial collection of small businesses that make wise use of resources available to them. These small businesses operate the most vulnerable segments of the railroad system and, in many cases, are the only connection for rural businesses to the domestic and global marketplace. They succeed by competing aggressively for business and investing significant revenues in rail infrastructure. They frequently partner with their customers to offer rail transportation alternatives that would otherwise be unavailable to those customers. Most short line railroads must invest a minimum of twenty-five (25) percent of their annual revenue in rehabilitating their infrastructure, which is a percentage far higher than almost any other industry in the country.⁷ The majority of railroads operating across America's rail network are privately

³ Short Line and Regional Railroad Facts and Figures. American Short Line and Regional Railroad Association, 2017; reprint Dec. 2019. Page 1.

⁴ *Id.*

⁵ *See Id.*; and Webber, Michael. *Freight trains are our future*. Popular Science, May 9, 2019. <https://www.popsoci.com/power-trip-excerpt/> (last visited April 24, 2023).

⁶ *See* 13 C.F.R. § 121.201 and North American Industry Classification System code 482112, "Short Line Railroad."

⁷ Facts and Figures, *supra*, at 3.

owned and pay for their own infrastructure – a point of departure from other transportation modes that utilize publicly funded roads and waterways.⁸

B. Transloading and Railroad Facilities.

Short line railroads are small businesses that ship modest volumes of freight. They compete aggressively for business to achieve the kind of carload volumes necessary to succeed. They do so by providing flexible local service, by utilizing their real estate assets to attract new customers to the line, and by competing aggressively with truck transportation.⁹ Due to the differences inherent in moving commodities, especially bulk commodities, between one mode of transportation and another, it is frequently necessary to repackage materials during transit. Transloading is the process of moving freight from one transportation mode to a second. It reduces shipping costs and shortens the total trip in transportation, benefiting the customer and ultimately the consumer. Without transloading, businesses sacrifice profitability and operational efficiency.¹⁰ A common practice is for short line railroads to offer transloading services (either itself or through subcontractors) for the benefit of the customer.

A railroad consists of not only its track, but also the land and structures that support its operations, or its facilities. “Railroad facilities” is defined as all property either real, personal, or mixed which is used or useful in the conduct of railroad services.¹¹ In other words, a railroad is not just the track that trains run on, but all the railroad facilities that support its current and planned

⁸ McGurk, Russ. *Five Reasons Freight Rail is an Infrastructure Leader*. GoRail, May 14, 2018. <https://gorail.org/infrastructure/five-reasons-freight-rail-is-an-infrastructure-leader> (last visited April 24, 2023).

⁹ Facts and Figures, *supra*, at 3.

¹⁰ Carroll Trucking, *What Is Transloading and What Are Its Benefits?* <https://www.carroll-trucking.com/what-is-transloading-and-what-are-its-benefits/> (last visited April 24, 2023).

¹¹ Law Insider, “Railroad facilities definition.” [lawinsider.com/dictionary/railroad-facilities](https://www.lawinsider.com/dictionary/railroad-facilities) (last retrieved April 24, 2023).

work. The GURR land around the existing track and transloading operations can be considered railroad facilities supporting the entirety of the railroad's operations, both rail and transloading services.

C. Preclearance and Permitting of Railroad Transportation.

Preclearance and permitting projects are costly and burdensome to railroads. They are used as a pretext to prevent rail projects. Thus, these local regulations are preempted where they interfere with rail operations.¹² Here the attempt to assert preclearance and permitting violations are clearly a pretextual attempt to interfere with the development of the rail transportation facilities and are preempted.

D. The Interconnected Nature of the U.S. Freight Rail Network

Short line railroads, like GURR, are the business partners of Class I railroads. They interchange with Class I railroads to enable their customers' goods to flow through the national freight rail system to their ultimate destination, which is often another short line that delivers the goods on the other end. In fact, forty-eight (48) percent of short line freight rail traffic is transferred from a Class I to a short line for final delivery.¹³ Thirty-three (33) percent of all short line freight rail traffic is originated on a short line and is then shipped to its final destination by another transportation mode, typically by truck after transloading operations.

A disruption of one of the railroads to the U.S. freight rail network, like GURR, can have a negative cascading effect on the entire supply chain. The global freight supply chain is a complex system composed of steamship lines, trucks, railroads, ports, drayage providers, owners of truck chassis, shipping containers and warehouses, manufacturers, wholesalers, and retailers of goods.

¹² Grafton and Upton R.R. Co – Petition for Dec. Order, FD 35752, slip at 8 (STB served Sept. 19, 2014).

¹³ Facts and Figures, *supra*, at 10.

All stakeholders count on each other to maintain the consistent flow of freight at every step of the process to avoid bottlenecks and to ensure that freight is delivered safely, efficiently, and when expected. The lack of trucking and warehouse facilities has been recently cited as a major contributor to chain reactions leading to less efficient rail operations system-wide.¹⁴

In this instance, the 130 acres that the Town of Hopedale seeks to acquire by eminent domain are essential for the planned development of a rail transportation facility. The town's continuing efforts to take GURR's real property or to impose preclearance requirements through the Hopedale Conservation Commission are specifically targeted and intended to thwart the project and preempted by 49 U.S.C. § 10501(b). This type of action could prevent the entrepreneurial work of the country's short line railroads to move more freight by rail.

CONCLUSION

Unreasonable interference with GURR's operations by a taking of its property through eminent domain and local preclearance and permitting requirements would have a negative cascading effect on the U.S. rail network and global supply chain. For these reasons, ASLRRA urges the STB to grant GURR's petition for a declaratory order.

Respectfully submitted,



Sarah Yurasko
General Counsel
American Short Line and
Regional Railroad Association

¹⁴ Association of American Railroads, *Freight Railroads: A 24/7 Link in the U.S. Supply Chain*, www.aar.org/supply-chain. (last retrieved April 24, 2023)

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CC: Parties of Record

Certificate of Service

I, Sarah G. Yurasko, hereby certify that a true and correct copy of the letter of the American Short Line and Regional Railroad Association was served on all Parties of Record in Finance Docket No. 36696 by email.

A handwritten signature in cursive script that reads "Sarah Yurasko". The signature is written in black ink and is positioned above a horizontal line.

Sarah G. Yurasko