

SERVICE DATE – APRIL 28, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36696

GRAFTON AND UPTON RAILROAD COMPANY—PETITION FOR DECLARATORY
ORDER

Decided: April 28, 2023

On April 14, 2023, Grafton & Upton Railroad Company (GU) filed a petition for declaratory order asking the Board to find that the attempts of the Town of Hopedale, Mass. (the Town) to take certain property owned by GU by eminent domain and to enforce a cease and desist order prohibiting the development of rail facilities on that property are preempted under 49 U.S.C. § 10501. GU states that the petition stems from an order of the United States District Court for the District of Massachusetts (District Court) directing GU to file a petition for declaratory order with Board regarding the Town’s proposed taking and cease and desist order. (GU Pet. 3.) Concurrent with the filing of the petition, GU filed a motion for expedited consideration.

On April 24, 2023, the Town filed a motion to extend the deadline to respond to GU’s petition from May 4, 2023, to May 26, 2023. The Town claims that it retained counsel for this proceeding shortly before GU filed its petition and, therefore, more time is needed to allow counsel to review the record and respond to GU’s petition. (Town Mot. 3.) The Town also argues that an extension is warranted because “the issues in this case are complex and require understanding of the state property law issues that remain unresolved, as well as the issues related to federal preemption and state condemnation law.” (Id.)

On April 26, 2023, GU filed a reply in opposition to the Town’s motion. GU argues that the Town should not need additional time to prepare a reply given the straightforward nature of the preemption issues here and the fact that the parties have already briefed the preemption issues before the District Court. (GU Reply 1-2.) GU also notes that it has been more than eight months since GU requested that the District Court issue an order directing GU to file a petition with the Board and that GU was able to submit its petition within 11 days of the District Court’s order. (Id. at 1.) In addition, GU states that there is no legitimate dispute regarding the ownership of the property and that the District Court issued a preliminary injunction to prevent the Town from proceeding with the taking or enforcing the cease and desist order to protect GU’s property interests. (Id. at 2.) GU also states that the dispute referred to the Board by the District Court is limited to the preemption issue and does not involve any issues regarding title to the property. (Id. at 2.)

Pursuant to 49 C.F.R. § 1104.13(a), the Town has 20 days after the filing of the petition to file a reply. The Town's motion requests an additional 22 days to file its reply. Under 49 C.F.R. § 1104.7(b), the Board has discretion to extend the time period for replies upon request and with good cause. For the reasons explained below, the Board will grant the Town a seven-day extension, until May 11, 2023, to file its reply.

The Town claims that it requires additional time to analyze and understand the complexities of unresolved state property law issues present in this case. However, the Board has no authority to resolve state property law issues. Moreover, the District Court's order granting the preliminary injunction states that GU owns the property and its analysis relies on that fact.¹ Grafton & Upton R.R., v. Town of Hopedale, Case No. 4:22-cv-40080-ADB, slip op. at 1, 23-24 (D. Mass. Apr. 3, 2023). Accordingly, the alleged state law property dispute relied on by the Town in its motion is not relevant to this proceeding.

The Board finds that the Town has not shown good cause for the sizeable extension it seeks. However, because counsel for the Town was only recently retained, the Board will grant the Town a seven-day extension to allow its counsel to more fully review the record and draft a reply.

It is ordered:

1. The Town's motion to extend the time for filing a reply is granted in part and denied in part, as described above.
2. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

¹ The District Court's order is attached as Exhibit 2 of GU's petition.