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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

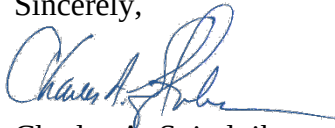
Re: *Grafton and Upton Railroad Company – Petition for Declaratory Order*
STB Finance Docket No. 36696

Dear Ms. Brown:

I am attaching for e-filing in the above-captioned proceeding the Town of Hopedale, Massachusetts' (1) Motion for Leave to File a Reply to a Response and (2) Reply to a Response in Further Support of the Petition of the Town of Hopedale, Massachusetts to Supplement the Record.

Please do not hesitate to contact me with any questions.

Sincerely,


Charles A. Spitulnik

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36696

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

**TOWN OF HOPEDALE’S MOTION FOR LEAVE TO FILE A REPLY TO A
RESPONSE**

Communications with respect to this pleading
should be addressed to:

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Counsel for the Town of Hopedale, Massachusetts

Dated: August 25, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36696

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

**TOWN OF HOPEDALE’S MOTION FOR LEAVE TO FILE A REPLY TO A
RESPONSE**

The Town of Hopedale, Massachusetts, (“Hopedale”), moves for leave to file a Reply to the Grafton & Upton Railroad Company’s Response to Hopedale’s Petition to Supplement the Record filed by the Grafton & Upton Railroad Company (“GURR”) in the above-captioned proceeding on August 4, 2023. GURR’s Response presents new evidence in the form of two new affidavits and a new drawing purporting to show a new plan to develop the Forestland property at issue in this proceeding. GURR’s Response further misstates the applicable law. In the interest of a clear and complete record, Hopedale requests leave to file a concurrently filed Reply to GURR’s Response.

ARGUMENT

Although the Board’s regulations generally prohibit filing a reply to a reply, 49 C.F.R. § 1104.13, it is the Board’s longstanding practice to waive this prohibition for good cause. *See Sierra R.R. Co. v. Sacramento Valley R.R. Co., LLC*, NOR 42133, slip op. at 1, n. 1 (STB served Mar. 9, 2012); *Cross Oil Ref & Mktg., Inc. v. Union Pac. R.R. Co.*, FD 33582, slip op. at 1 (STB served Oct. 27, 1998). 49 C.F.R. § 1100.3 (“The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.”). In deciding whether to grant

leave to file a reply to a reply, the Board considers whether granting permission will contribute to compiling a full record. *City of Alexandria – Pet. for Declaratory Order*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”). The Board will also consider whether the filing will prejudice another party or broaden the issues raised in the proceeding. *BNSF Railway Company — Abandonment Exemption — In Kootenai County, ID*, AB-6, slip op. at 1 (STB served Nov. 27, 2009) (It is “within the Board’s discretion to permit otherwise impermissible filings” and “because it provides a more complete record, clarifies the arguments, will not prejudice any party . . . it is appropriate to do so here.”).

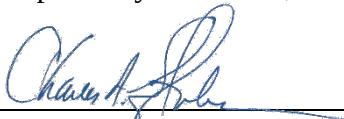
Here, there is good cause to grant Hopedale permission to file its Reply to GURR’s Response. GURR’s Response raises new factual issues regarding GURR’s purported plans for the Forestland based on affidavits and a drawing not previously provided to Hopedale or the Board. Allowing Hopedale to reply to those assertions will assure that the Board has a complete record before it. Further, GURR seeks to minimize the importance of the ongoing state court litigation over whether GURR owns or controls the Forestland and GURR asserts a new interpretation of the legal standard for when a purported plan for future railroad development is sufficiently feasible or workable to prevent the exercise of eminent domain authority. Again, allowing Hopedale to respond to those legal points will provide the Board with a complete record.

Hopedale’s Reply will not prejudice GURR or broaden the issues raised in the proceeding. To the contrary, Hopedale’s Reply refocuses these proceedings on the question presented without introducing any additional evidence. Finally, counsel for Hopedale have been on vacation between August 5, the day after GURR filed its Response, and August 19, and have endeavored to file this Motion and the Reply as quickly as possible given those previously scheduled vacations.

CONCLUSION

For the foregoing reasons, Hopedale respectfully requests that this Board grant its Motion for Leave to File a Reply to a Response.

Respectfully submitted,



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Dated: August 25, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have on the 25th of August 2023, caused to be served a copy of the foregoing TOWN OF HOPEDALE'S MOTION FOR LEAVE TO FILE A REPLY TO A RESPONSE, upon the following parties of record in this proceeding by email:

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Dated: August 25, 2023