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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

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DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**REPLY OF GRAFTON & UPTON
RAILROAD COMPANY IN OPPOSITION TO
OPENING STATEMENT OF PETITIONERS**

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Dated: December 8, 2016

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INTRODUCTION

Grafton & Upton Railroad Company ("G&U") hereby submits this Reply in opposition to the Opening Statement of Petitioners Diana Del Grosso, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wilklund and Richard Kosiba (the "Petitioners"), which was filed on October 24, 2016. This proceeding was initiated by the Petitioners in August, 2012 by the filing of a Petition for Declaratory Order that requested that the Board find that the Town of Upton's local zoning and other regulations were not preempted with respect to certain activities related to the transloading of wood pellets performed at G&U's yard in Upton, Massachusetts. In a decision served on December 5, 2014 (the "2014 Board Decision"), the Board denied the request of the Petitioners, finding that preemption applied to the challenged activities, and the Petitioners then filed a petition for review in the United States Court of Appeals for the First Circuit. As discussed below, by a decision dated October 16, 2015 (the "Court

Decision")¹, the Court of Appeals remanded the matter to the Board to re-examine whether, applying a different test, the various activities undertaken by G&U at its Upton railroad yard to transfer wood pellets from railcars to trucks constitute rail transportation within the meaning of 49 U.S.C. §10501, thereby preempting state and local regulation of such activities. More precisely, the Court of Appeals directed the Board to determine whether the steps undertaken by G&U "facilitated the transloading of the pellets from the railcars to the trucks or was done solely for another, unrelated purpose." Court Decision at 18.

As demonstrated below, the challenged activities do in fact facilitate the transloading of pellets from railcars to trucks and are not done solely for another, unrelated purpose. As a consequence, the Board should confirm its prior determination that the transloading of pellets as performed by or on behalf of G&U at the Upton yard constitutes rail transportation and that state or local regulation of such activities is preempted.

FACTS

I. G&U History and Development

GU was incorporated in 1873, and it has been in continuous operation since that time. G&U is a typical short line railroad that owns a rail line approximately 16.5 miles in length extending between North Grafton, Massachusetts, where it connects and interchanges with CSX Transportation ("CSX"), and Milford, Massachusetts, where it connects with another line of CSX. In 2008, Jon Delli Priscoli purchased all of the outstanding stock of G&U and began to invest in the infrastructure of the railroad and to

¹ A copy of the Court Decision is attached to Petitioners' Opening Statement as Exhibit 3.

seek new business opportunities for G&U. Verified Statement of Jon Delli Priscoli ("Delli Priscoli VS") at ¶¶ 2-3.

Upton, Massachusetts is located on the G&U line approximately 7 miles south of North Grafton. The line between North Grafton and Upton has been substantially rebuilt, and the existing rail yard at Upton has been expanded by means of the acquisition of an adjacent 33 acre parcel. In addition, G&U constructed 4 new unloading tracks and a building, including two storage silos, that are used by G&U to transfer wood pellets from railcars to trucks for delivery in the New England area. Delli Priscoli VS at ¶ 4.

The expansion of the yard in Upton was part of a concentrated effort by G&U to promote and build its transloading services, both at Upton and other locations on the line. G&U recognized that there were significant opportunities to increase its business by concentrating on transloading bulk commodities from railcars to trucks for delivery in the Boston area and New England generally. The transloading services have been promoted as an integral part of the rail transportation provided by G&U in response to the needs and desires of its customers. Delli Priscoli VS at ¶ 3.

Currently, G&U serves approximately 20 transloading customers at Upton. The commodities that are transloaded at Upton include liquid asphalt, food products, such as soybean oils, biomass fuels, such as wood pellets, solvents, alcohols, nitric acid and phosphorous acid. The transloading business at Upton has grown steadily since the expansion of the yard and completion of the track work in 2011. Delli Priscoli VS at ¶ 5.

II. Wood Pellet Manufacturing

Currently, most of the pellets that are transloaded at Upton are manufactured in the Pacific Northwest or in Georgia. Pinnacle Renewable Energy operates 7 pellet

manufacturing mills in British Columbia, Canada, one of which sells to a customer that receives the pellets at the Upton yard. Verified Statement of Vaughan Bassett ("Bassett VS") at ¶¶ 2, 5-6. Pinnacle has the capacity to produce approximately 1.5 million metric tons of pellets per year, and each die, as discussed below, can make approximately 5 tons of pellets per hour. Bassett VS at ¶¶ 2-3. Georgia Biomass owns and operates the largest pellet manufacturing facility in the United States, which is located in Waycross, Georgia. Verified Statement of James Roecker ("Roecker VS") at ¶ 2. The Georgia Biomass plant was constructed at an investment cost of \$175 million and covers approximately 350 acres of land. Id. The plant has 22 dies, each of which can produce approximately 5 metric tons of pellets per hour, with a total capacity to manufacture approximately 750,000 metric tons of pellets per year. Roecker VS at ¶ 3. Together, these 2 producers manufacture approximately two-thirds of the pellets that are shipped to Upton for transloading. Verified Statement of Michael Polselli ("Polselli VS") at ¶ 4.

The pellet manufacturing process begins with raw materials, which consist of various forms of wood fiber, such as roundwood, bark, chips and sawdust from lumber mills. Bassett VS at ¶ 3; Roecker VS at ¶ 3. These raw materials are dried in large cylindrical drums and then are hammered, pulverized or pounded into a uniform fiber mass at a location within the manufacturing facility known as the hammer mill. Id. After processing at the hammer mill, the fiber mass is treated with steam in order to induce the production of lignins, which is a natural bonding material in the fiber, and allowed to dry. Roecker VS at ¶ 3. Next, the fiber is forced by pressure through dies in order to create pellets. Id.; Bassett VS at ¶ 3. The manufacturers do not mix any additives with the raw

materials in order to bind and harden the pellets; rather, the lignins in the raw materials act as a natural binding agent that holds the pellets together. Id.

The newly formed pellets are allowed to cool and harden, and then they are moved through a screening process that removes dust and pieces of pellets that have not been fully formed. Bassett VS at ¶ 3; Roecker VS at ¶ 3. The dust and small pieces are referred to as "fines" by the manufacturers. Id. The fines are recycled with fiber and sent through the manufacturing process again. Id. After the screening and recycling procedures, the pellets are fully manufactured and ready for shipment. Id. At the conclusion of this manufacturing process, less than 1% of the pellets that are shipped by Georgia Biomass or Pinnacle consist of less than fully formed pellets. Roecker VS ¶ 5; Bassett VS at ¶ 3.

Both Georgia Biomass and Pinnacle sell pellets for industrial, commercial and residential uses, but their largest market by far is for industrial pellets that are purchased by European or Asian power plants as a source of fuel for the production of electricity. Roecker VS at ¶ 6; Bassett VS at ¶ 4. These pellets are moved in rail hopper cars from the manufacturing facilities to ports for movement in ships in bulk form. Id.

Georgia Biomass and Pinnacle also sell pellets that are shipped to Upton for transloading and then distributed and sold in the retail market in New England. Roecker VS at ¶¶ 7-8; Bassett VS at ¶ 6. In all cases, these pellets are purchased FOB (referred to as EXW in Canada) the manufacturing plant by distributors that arrange and pay for rail transportation. Id. After manufacturing the pellets and loading them into railcars, the involvement of the manufacturers has ended. Id. Georgia Biomass does not have any facilities or ability to place pellets in bags, so all of the pellets leave the Waycross facility

in bulk by rail. Roecker VS at ¶ 5. One of the 7 Pinnacle plants has the ability to bag pellets, but they are shipped only short distances to destinations within British Columbia, Alaska or the Pacific Northwest of the United States. Bassett VS at ¶ 5. Sales of pellets in bags comprise only approximately 1% of Pinnacle's total sales. Id. The plant that produces pellets that are shipped to Upton does not have bagging capabilities. Id.

III. Transloading Pellets at Upton

The pellet customers of G&U are distributors that purchase the pellets from the manufacturers and sell the pellets either to retailers or directly to homeowners. As the owners of the pellets and the customers of G&U, the distributors are responsible for payment of the line haul freight charges from the manufacturer's facility to Upton and for the G&U transloading charges for the bagging and associated services provided at Upton. The distributors also arrange for the trucks, which are primarily flatbed trucks, along with some trailer vans, that pick up the pellets and that are used for deliveries to their customers. Polselli VS at ¶ 4.

All of the pellets that are transloaded at Upton are ultimately sold to residential customers that burn the pellets in stoves for home heating purposes. The distributors that use the transloading facilities in Upton do not have any industrial or commercial customers that are capable of receiving pellets in bulk form, such as the utility companies in Europe or Asia that use pellets for the production of electricity. As a consequence of the needs of these residential end-users in New England, the distributors require that the pellets be transloaded by placing them in bags and loaded on trucks for further distribution and sale. Polselli VS at ¶ 5.²

² G&U originally thought that some of the customers at Upton might take delivery in bulk; however this never materialized. Polselli VS at ¶ 3.

When the railcars loaded with pellets arrive at the G&U yard in Upton, the pellets are removed from the cars and placed in a storage silo. The pellets are then vacuumed in order to remove dust. The pellets are also screened in order to separate pieces of pellets that have been broken, which G&U refers to as "fines", as a result of the transportation.³ Even though the use of rail hopper cars results in far less breakage of pellets than long distance shipment by rail or truck in bags, there is still some breakage as a result of the normal cross-country movement of railcars, which includes handling in switching yards and interchange between line haul carriers in the routes between the manufacturing plants and Upton. When pellets are unloaded in Upton, approximately 5-10% are usually broken. Polselli VS at ¶ 6.

Unlike the plants of the pellet manufacturers, the G&U pellet transloading facility at Upton is not a manufacturing plant and does not have any ability to recycle the dust or broken pieces. Consequently, the dust is discarded as waste. Since December, 2012, G&U has operated a piece of machinery that has one die that is used to press the broken pieces back together in order to form full-size pellets. The die is capable of pressing together approximately one ton of pellets per hour. Pressing the broken pieces together is done without any additives or change in the chemical or inherent nature of the pellets. No heat or steam is applied. After the broken pieces have been pressed together, they are moved to a storage silo with the unbroken pellets. Polselli VS at ¶ 7. The work done at the Upton yard with the broken pellets is akin to "spot repairs" commonly done by railroads to touch up freight damaged in transit.

³ G&U understands that when pellet manufacturers use the term "fines" they are generally referring both to broken or undersized pellets and to dust; however, G&U uses the term to refer solely to broken pellets. Polselli VS at ¶ 6.

The pellet burning stoves used in homes work most efficiently when dust has been removed and the pellets are all of a uniform size. If the pellets contain dust or broken pieces, there can be a variety of problems, including uneven heating and damage to the stove. The distributors and end-users insist, therefore, that dust and broken pieces be removed prior to the bagging. Polselli VS at ¶ 8.

In order to facilitate the transloading of the pellets from the railcars to the customers' trucks, they need to be temporarily stored in a manner that will allow for loading. Accordingly, the pellets are moved from the silos and automatically loaded into 40 pound bags. The bags are placed on wood pallets, which are shrink-wrapped in order to keep out moisture. The pallets are held temporarily until the arrival of trucks arranged by the distributors, and then the pallets are loaded on or into the trucks for movement at the direction of the distributors to their final destinations. Polselli VS at ¶ 9.

IV. G&U Relations with the Town of Upton

The expansion of the transloading facility in Upton has proceeded with the full support of the Board of Selectmen of the Town. The Board of Selectmen retained counsel to review the question whether the planned construction and activities would be subject to local regulation or whether preemption would apply. Based on the analysis in the report from its counsel, the Board of Selectmen concluded that federal preemption precluded local review or approval of G&U's plans to expand its transloading yard. The Board of Selectmen created a railroad fact-finding committee in response to questions by town residents, including the Petitioners, but never deviated from the original conclusion that preemption applied. Delli Priscoli VS at ¶ 7.

The relationship between G&U and the Town and its various agencies has been and continues to be cooperative and constructive, and G&U has complied with applicable regulations governing health and safety. G&U has also been mindful of and responsive to the concerns of residents of Upton. For example, in response to complaints by the Petitioners concerning sound from the pellet bagging facility, G&U made expenditures of approximately \$100,000 to reduce the sound level. At this time, any identifiable increase in sound levels in the vicinity of the Petitioners' houses due to the operation of the bagging equipment is within acceptable ranges established by state regulations. G&U also voluntarily undertook to construct a berm and plant trees in order to provide a natural barrier between the rail yard and the houses in the immediate neighborhood. G&U has worked closely with the Upton Board of Health, Fire Department and Police Department to address any issues as they have arisen. Delli Priscoli VS at ¶¶ 6-11.

PRIOR PROCEEDINGS

In the 2014 Board Decision, the Board explained that intermodal transloading operations are part of rail transportation within the jurisdiction of the Board. The Board also noted that manufacturing or commercial transactions that are not part of or integral to the provision of rail service are not generally considered to be transportation.

"Activities constitute manufacturing or commercial transactions if they change the nature or physical composition of the commodity being transported." 2014 Board Decision at 5-6. Furthermore, "[a]n activity may be 'integrally related' to rail transportation if it facilitates rail transportation even if it is not absolutely essential." 2014 Board Decision at 6.

The Board recognized that using hopper cars instead of boxcars permitted the handling of greater volumes of pellets per carload and caused less damage to the pellets. On that basis, the Board concluded that bagging pellets⁴ at Upton facilitated rail transportation by permitting the more efficient use of railcars. Consequently, bagging pellets constituted a service integrally related to the movement of property by rail. 2014 Board Decision at 6-7.

The Court of Appeals agreed that transloading activities are generally considered to be integral to the physical movement of goods and are, therefore, rail transportation that preempts state and local regulation. Court Decision at 12-14. According to the Court, however, the Board, in making its preemption determination, incorrectly relied on its determination that the bagging constituted transportation because it permitted the more efficient use of railcars. Furthermore, the Court noted that the Board had made no finding that the steps in the bagging process facilitated the physical transfer of pellets from railcars to trucks. Court Decision at 15-18. Consequently, the Court concluded, that a remand was required in order to allow the Board to determine whether the bagging activities "facilitated the transloading of the pellets from the railcars to trucks or was done solely for another, unrelated purpose." Court Decision at 18 (emphasis added).

ARGUMENT

As framed by the Court of Appeals, the only issue before the Board at this time is whether the pellet bagging activities at G&U's yard in Upton--temporary storage, vacuuming, screening, repelletizing, bagging and palletizing the pellets--constitute rail transportation by facilitating the transloading of the pellets between the railcars in which

⁴ As used in this Reply, any references to "bagging" or "bagging activities" include all of the steps in the bagging process--temporary storage, vacuuming, screening, repelletizing, bagging and palletizing the pellets.

they arrive and trucks supplied by the customers, or whether these activities are undertaken solely for another unrelated purpose. There are several issues that were raised by the Petitioners and litigated earlier but that have been finally resolved. No longer at issue, for example, is whether the transloading operations at Upton are conducted by or under the auspices of G&U, a common carrier railroad subject to the jurisdiction of the Board. Furthermore, there is no question that the transloading at Upton of commodities other than pellets constitutes rail transportation. Finally, there is no doubt that any activity that constitutes rail transportation performed by or on behalf of a common carrier railroad cannot be subjected to local regulation due to preemption.

As demonstrated below, the bagging activities facilitate--indeed, make possible--the transfer of pellets from railcars to trucks, and the bagging is not done for any purpose unrelated to the transloading of the pellets. The record in this proceeding fully warrants express findings on these points and the Board's determination that the pellet bagging activities constitute transportation that preempts local regulation.

I. The Transfer of Pellets from Rail to Truck Is Transportation.

"Transportation" is broadly defined to include a "facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail", as well as "services related to that movement, including receipt, delivery, elevation, transfer in transit, . . . storage, handling, and interchange of passengers and property." 49 U.S.C. §10102(9). The transfer in transit--or interchange--of property involves the physical transfer of a commodity between 2 different modes of transportation, which for purposes of this proceeding are a railcar and a truck. Transportation also includes services related to the transfer between modes, such as storage and handling. As the

Board is well aware, there is a long line of court and Board decisions confirming that intermodal transfers, including related services such as temporary storage, constitute transportation. *Green Mountain Railroad Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005) ("*Green Mountain*"); *Texas Central Business Lines Corp. v. City of Midlothian*, 669 F.3d 525 (5th Cir. 2012) ("*Texas Central*"); *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway Co.--Construction, Acquisition and Operation Exemption--in Wilmington and Woburn, MA*, STB Finance Docket No. 34797, decision served July 10, 2007 ("*New England Transrail*"). As demonstrated below, the steps that are part of the bagging of pellets at Upton constitute transportation, because they are services that facilitate the physical movement of the pellets and are not being done solely for another unrelated purpose.

As explained above, the pellet distributors that are customers of G&U arrange for the movement of their pellets in bulk rail hopper cars from the facilities of the pellet manufacturers. The distributors' customers are retailers or residential users that can receive pellets only in bags. Consequently, the distributors arrange for flatbed trucks or trailer vans to pick up and deliver pallets of bagged pellets. The distributors do not arrange for bulk trucks to pick up the pellets, because none of the retailers or end-users are commercial or industrial facilities that can receive pellets in bulk form. Moreover, the pellets need to be temporarily stored by G&U until the distributors arrange for pick up. Shrink wrapping the bags on pallets protects the pellets from the elements while being stored and facilitates their loading directly onto or into the distributors' trucks.

Vacuuming and repelletizing are steps in the bagging process that are required by the customers in order to address the problem of pellet breakage and the creation of dust

caused by rail transportation. The broken pellets are restored to their original size, thereby enabling the rail carriers involved in the movement to avoid or minimize loss and damage claims. The repelletizing and dust removal can only be done after the rail portion of the movement and before the bagging. Thus, these steps constitute "handling", in the language of the statute, that promotes the physical transfer of the pellets. As the Board noted in its December 5, 2014 decision, "[a]n activity may be 'integrally related' to rail transportation if it facilitates rail transportation even if it is not absolutely essential for the cargo to be transported by rail."

G&U is simply responding to the needs of its customers by performing the bagging activities at Upton as part of the transloading of the pellets. Given the requirements of the customers, the bagging activities are services that are absolutely essential to the physical transfer of the pellets from rail hopper cars to the trucks provided by the distributors. Moreover, none of the activities in the bagging process is undertaken by G&U for a purpose (and certainly not solely for a purpose) that is unrelated to the process of the transfer of the pellets from railcars to trucks.

The Board and numerous courts have recognized that transportation includes more than simply the movement of railcars or transferring commodities from one mode to another. For example, in *Borough of Riverdale--Petition for Declaratory Order*, STB Finance Docket No. 33466, decision served September 9, 1999 ("*Riverdale*"), the railroad had constructed at its yard a truck terminal, a weigh station and a corn syrup processing plant, including the installation of water lines in order to heat corn syrup that was being transloaded from railcars to trucks. Prior to a decision by the Board, the parties entered into a settlement, which was consistent with a state court decision to the effect that state

and local regulations were preempted, permitting the railroad to continue the transloading activities at its yard. *Riverdale*, decision served February 23, 2001.

In *New England Transrail*, the Board cited information provided by the Association of American Railroads demonstrating that "transloading activities often include processes that could also occur at non-rail facilities," including sampling commodities, testing for quality and moisture content, weighing, mixing and blending coal and petroleum coke, spot repair of vehicles and installation of tires and batteries. In this proceeding, the American Short Line and Regional Railroad Association earlier submitted a statement to the effect that transloading, as an integral part of transportation, frequently requires the repackaging of bulk materials during transit.

The courts have reached similar results. In *Green Mountain*, for example, the rail carrier installed a truck scale and modified the roadway access to its transloading yard in order to facilitate the transloading of cement and salt from railcars to trucks. In *Texas Central*, the court found that the construction of facilities to accommodate the transloading of sand from rail to trucks, including the construction of storage silos, a sand pit, elevator mechanisms, a truck scale and new roads, were all part of rail transportation that could not be subjected to local regulation. Recently, the United States District Court for the District of Vermont found that preemption applies to the construction by a rail carrier on its property of two salt sheds, a truck scale, an office, a storm water pond and associated infrastructure for use in connection with the transloading of salt. *Vermont Railway, Inc. v. Town of Shelburne*, United States District Court for the District of Vermont, Case No. 2:16-CV-16, decision dated June 29, 2016.

In each of the decisions discussed above, activities related and incidental to the actual physical transfer of a commodity between rail and truck were considered to be part of the rail transportation. The Board and the various courts recognized, at least implicitly, that the activities supported and were integral parts of the transloading. In the 2014 Board Decision, at 6, the Board found that the bagging activities facilitated the movement of pellets by rail; the Board should extend that determination by making an explicit finding that the bagging activities also facilitate the transloading of the pellets from railcars to trucks, and thus are part of transportation.

In their Opening Statement, the Petitioners have advanced a curious new argument. Opening Statement at 5-7. The Petitioners allege that they have discovered a number of pellet manufacturing facilities that do not have direct rail service. On this basis, the Petitioners would have the Board conclude that "[r]ail transportation is not integral to the manufacturing of finished wood pellets at the Upton facility". Opening Statement at 5. This argument is unpersuasive for several reasons.

As a threshold matter, and as demonstrated below, there is no pellet manufacturing taking place at Upton. A major premise of the Petitioners' argument is, therefore, simply incorrect.

Furthermore, whether a pellet manufacturing facility does or does not have rail service is entirely beside the point. Even assuming that there are manufacturing facilities not served directly by rail, the issue is not, as the Petitioners frame it, whether rail transportation is integral to manufacturing pellets. Rather, the issue is whether the transloading activities at Upton facilitate the physical transfer of pellets. As

demonstrated above, the bagging activities facilitate and are integral to--indeed, make possible--the physical transfer of pellets from railcars to trucks.

While it is not clear, the Petitioners may have been trying to make an argument concerning a so-called "regulatory gap" suggested by the Court of Appeals. Court Decision at 16. The Court faulted the Board's efficiency rationale, i.e. that the bagging activities were transportation because they permitted the more efficient use of railcars, because it theoretically would lead, according to the Court, to the conclusion that a railroad could construct transloading facilities at a retail store that is remote from the railroad's property and have those facilities found to be transportation. There is, however, no need to consider such a hypothetical situation, because G&U's bagging facilities are located, and the bagging activities take place, at G&U's rail yard, not in a Home Depot parking lot.

This is simply not a situation, as argued by the Petitioners, in which it is convenient to locate a pellet "manufacturing" facility in a rail yard. As shown below, the bagging activities are not manufacturing. Even more significantly, the fact that the bagging activities occur at a railroad yard is not merely convenient, but rather it is necessary for purposes of transferring the pellets from railcars to trucks.

II. New England Transrail Does Not Support the Petitioners' Argument.

The *New England Transrail* decision relied upon by the Petitioners does not support, much less compel, the conclusion urged by the Petitioners--that the bagging activities at Upton are not part of transportation. Indeed, the decision, to the extent that it

continues to have relevance, supports the determination that the pellet bagging activities constitute transportation.⁵

In *New England Transrail*, it was anticipated that municipal solid waste would be brought to the railroad transloading yard in trucks and dumped temporarily on the floor. The unloaded bulk waste would be inspected in order to remove hazardous waste or other materials that could not be shipped by rail to and accepted by landfills. Next, the process contemplated baling and wrapping the municipal solid waste in order to facilitate the loading of the railcars. Some of the bales were also to be wrapped in plastic. The Board found that these baling and wrapping activities, including handling that would be required to prepare the municipal solid waste for baling and wrapping, such as the removal of materials that could not be sent to landfills, were integrally related to transportation.

The bagging activities at Upton are closely analogous to the baling and wrapping in *New England Transrail*. Upon arrival at Upton, the pellets are temporarily stored in silos. Next, the pellets are prepared for transfer to trucks by screening out broken pellets, which are pressed back together, and removing dust by vacuuming. *PolSELLI VS* at ¶ 6. The repelletizing and dust removal are "handling" that is similar to the extraction of hazardous wastes and other materials that could not be sent to landfills in *New England Transrail*. The pellets are then placed in bags, which, like the baling and wrapping material in *New England Transrail*, are removed and discarded upon delivery of the bags

⁵ In a decision in the *New England Transrail* matter served on September 30, 2016, the Board noted that in 2007 it had not decided the issue of the extent to which the handling of solid waste would come within the scope of the Board's jurisdiction, because the Board had deferred the environmental review. The enactment of the Solid Waste Disposal Act in 2008 represented a recognition by Congress of the unique characteristics of the solid waste disposal industry and a curtailment of the Board's jurisdiction over solid waste rail transfer facilities, such as the proposed New England Transrail facility. Consequently, the vitality and continuing relevance of the 2007 decision in *New England Transrail* may be questionable.

to residential users. The shrink wrapping of the bags of pellets on pallets facilitates their loading into trucks, just as the baling and wrapping in *New England Transrail* facilitated the loading of the waste into railcars.

The Court of Appeals recognized that in the *New England Transrail* decision the Board correctly found baling and wrapping to be "necessary" in order to transload the waste. Court Decision at 17-18. The Court faulted the Board in this proceeding, however, for not making a finding that the bagging activities facilitated the loading of pellets on trucks. The evidence presented earlier by G&U in these proceedings fully supported a finding that the bagging activities facilitated the transfer of the pellets to trucks. Additional evidence submitted with this Reply confirms without any doubt that the bagging activities facilitate the physical transfer of the pellets. The Board should now make explicit the finding that was implicit earlier.

III. The Bagging Activities, Including Repelletizing, Are Not Manufacturing.

The bagging activities clearly do not include or constitute manufacturing. As described above, the process of manufacturing pellets is complete at the plants of the manufacturers. Manufacturing is a complicated, capital-intensive process that includes collecting and processing raw materials, hammering and drying raw materials, forming pellets and recycling dust and pieces that are not fully formed. The manufacturing plants require an order of magnitude in terms of investment, equipment and physical size that make them clearly distinguishable from the bagging, including limited repelletizing, activities conducted at Upton. Bassett VS at ¶ 2; Roecker VS at ¶ 2.

As the representatives of Georgia Biomass and Pinnacle have unequivocally testified, pellets have been completely manufactured at the time they leave the respective

manufacturing plants in Georgia and British Columbia. Bassett VS at ¶ 6; Roecker VS at ¶ 7. An unbroken pellet that reaches Upton and is placed in a bag is no different physically or in composition than it was when it left the manufacturing facility. Pellets that are broken during the transportation from the manufacturing facilities to Upton are pressed together and restored to their original size, but the nature and inherent physical composition are the same before and after the restoration. Polselli VS at ¶ 7.

The Petitioners claim, without the benefit of any testimony or other factual support, that repelletizing is the process of taking incompletely manufactured fines that are gathered during the wood pellet manufacturing process and using the recovered material to manufacture “better pellets.” Opening Statement at 8. To the contrary, as explained below, this notion is flatly contradicted by the testimony of the pellet manufacturers.

Pellets that are not fully formed and are therefore under ideal size and dust are recycled through the manufacturing process along with unprocessed fiber material to manufacture additional (not better) pellets. Bassett VS at ¶ 3; Roecker VS at ¶ 4. Such recycling is indeed a standard step in manufacturing, but it is not the same as the reforming of broken pellets that occurs at Upton, which is in response to breakage caused by rail transportation after the pellets leave the manufacturers' facilities.⁶ The G&U bagging facility does not have any ability to recycle dust or broken pellets through the manufacturing process, and G&U's capacity for reforming broken pellets is only a fraction of the output of which the manufacturers are capable in the production of pellets.

⁶ The Petitioners apparently agree that recycling fines, including both dust and undersized pieces, is part of the manufacturing process. Although the article submitted as Exhibit 6 to the Petitioners' Opening Statement is not attributed to any particular author, it is relied upon by the Petitioners and describes the pellet manufacturing process (at pages 3 and 4), including recycling, in terms that are very similar to the testimony of Messrs. Bassett and Roecker.

G&U can only restore broken pellets to the size they were when the completed pellets left the manufacturer. G&U clearly does not have the equipment or ability to manufacture pellets from raw materials. G&U's work is similar to other types of spot repairs that might be made on freight that is delivered damaged. The repelletizing of broken pieces at Upton is, therefore, both qualitatively and quantitatively far different than the recycling of fines by the manufacturers.

Just as the *New England Transrail* decision is not helpful to the Petitioners' argument, neither does the Board's decision in *Town of Milford, MA--Petition for Declaratory Order*, STB Finance Docket No. 34444, decision served August 12, 2004 ("*Milford*"), which the Petitioners cited earlier, provide any support for the argument that pellet bagging is manufacturing. In that case, Boston Terminal Railway Co. ("BRT"), a non-rail carrier, proposed to build and operate a transloading and steel fabricating facility on the property of the railroad. The Board found that the railroad's involvement was limited to moving carloads of steel to the site, where BRT would offload the steel and deliver it to customers, sometimes performing fabrication work on the steel prior to delivery. The Board found that BRT was simply a rail customer located on railroad property and that BRT was not acting on behalf of the railroad for purposes of the transloading services. Consequently, even though the transloading activities were within the definition of "transportation" they were not performed by or on behalf of a rail carrier and therefore preemption did not apply.

At Upton, by contrast, the Board has already determined that the transloading is performed under the auspices of G&U, which holds itself out to the public to perform a variety of transloading services, including transloading pellets. Pursuant to G&U's tariff

and practices, the Upton transloading yard is available to any customer. Delli Priscoli VS at ¶¶ 3, 5. It is not a private distribution facility that is closed to the public. Furthermore, as demonstrated above, the bagging activities, including the repelletizing, do not change the nature of the pellets or the integral relationship of repelletizing with the entire transloading process such that the bagging process would be analogous to the steel fabrication activities in *Milford*.

IV. There Is No Added Value Test.

The Petitioners continue to make an argument based on what they characterize as the "added value" test. According to the Petitioners, bagging, and particularly repelletization, "add value", because broken pellets need not be discarded but can be reformed into marketable, more valuable pellets. Stated somewhat differently, the Petitioners contend that the bagging activities convert a bulk product that is inaccessible to the retail market into a different, marketable product. Opening Statement at 8-9. To the contrary, however, as demonstrated below, the bagging activities do not change the value of an individual pellet, and, in any event, there is no "added value" test.

The so-called "added value" test is a concept that has been created from whole cloth by the Petitioners. In the *New England Transrail* decision cited by Petitioners to support this test, the Board observed that baling and wrapping municipal solid waste was not the sort of activity that would have value for any purpose other than transporting the waste.⁷ The Board contrasted the baling and wrapping to the shredding of construction and demolition debris, noting that the cost of shredding equipment could be justified by the railroad only by extracting and selling metal and other valuable materials for its own

⁷ For the reasons outlined in footnote 6 above, reliance on the *New England Transrail* decision may be misplaced for purposes of supporting arguments by the Petitioners in this proceeding.

account. Such a practice, the Board found, was common in the waste management business.

The discussion by the Board of the difference between baling and wrapping municipal solid waste and shredding construction and demolition debris did not, contrary to the argument of the Petitioners, establish any test, much less one that should be applied to the bagging activities at Upton. Rather, the true test, as summarized by the Court, is whether the sole purpose of the challenged activity is unrelated to the transloading. Court Decision at 18. Unlike the situation in *New England Transrail*, where the railroad was expected to benefit directly by the removal and sale of metal and other valuable material (that in fact would not be transferred to railcars), bagging, including repelletizing, does not result in the recovery or sale of any valuable materials by G&U.

To be sure, it could be argued that the transloading of any commodity from one mode to another creates "value" in the sense that the shipper of the commodity is able to deliver or sell, and the receiver is able to obtain and make use of, the commodity at its final destination. Absent the transfer from rail to truck, final delivery is impossible. Arguably, therefore, bagging at Upton is beneficial to the distributors of pellets and their customers by enabling them to engage in the purchase and sale of pellets in the retail market in New England. Such an incidental benefit, however, does not mean that the bagging activities are not transportation and does not convert the transportation into manufacturing, as contended by the Petitioners. Making the pellets "marketable" by means of the bagging activities, in the words of the Petitioners, does not transform the transloading process from transportation to manufacturing. Rather, the shipper merely

realizes the benefit of the bargain provided by G&U's pellet transloading services--to facilitate the transfer of pellets from railcars to trucks.

By repelletizing broken pellets, the transloading activities also undeniably result in additional unbroken pellets that can be sold by the distributors. Repelletization, therefore, arguably benefits the distributors as well as G&U, which charges for bagging activities based upon the weight of the pellets actually placed in bags. *Delli Priscoli VS* at ¶ 5 and Tariff 5000-A. Any such benefit, however, is merely incidental to the transloading process, and it does not change the fact that the bagging activities are integral steps in the transloading of the pellets that arrive in railcars to the trucks that will deliver them. Indeed, as the Court of Appeals observed, adding value is, at best, a neutral factor in determining whether an activity constitutes transportation: "While the fact that the activity adds value to the consumer (or the railroad) does not bar it from being transportation, it is equally clear that merely adding value does not support a claim that the activity is transportation." Court of Appeals decision at 18, n. 5. Furthermore, the Petitioners have not asserted, much less established, that the bagging activities are undertaken solely for a purpose unrelated to transloading of pellets.

CONCLUSION

The record before the Board conclusively demonstrates that G&U meets the test established by the Court of Appeals. The bagging activities undertaken by G&U at its yard in Upton facilitate the physical transfer of the pellets from railcars to trucks, and such activities are not done solely for another, unrelated purpose. The temporary storage, vacuuming, repelletizing, bagging and palletizing respond to the needs of G&U's customers that require such services in order to accomplish the physical transfer of the

pellets from covered hopper cars to trucks. G&U respectfully requests that the Board (1) find expressly, based upon the facts and arguments offered above, that the bagging activities facilitate the physical transfer of the pellets and constitute transportation within the meaning of 49 U.S.C. §10501 and (2) based on such finding, confirm the 2014 Board Decision to the effect that state and local regulation of the pellet bagging facilities and activities are preempted.

Respectfully submitted,

GRAFTON & UPTON
RAILROAD COMPANY

/s/James E. Howard
James E. Howard
70 Rancho Road
Carmel Valley, CA 93924
831-659-4112

Dated: December 8, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Reply of Grafton & Upton Railroad Company in Opposition to Opening Statement of Petitioners and the accompanying Verified Statements to be served by sending copies by e-mail on December 8, 2016 to all parties on the service list.

/s/James E. Howard
James E. Howard

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**VERIFIED STATEMENT OF
JON DELLI PRISCOLI**

1. My name is Jon Delli Priscoli, and I am the owner and chief executive officer of Grafton & Upton Railroad Co. ("G&U"). I am familiar with the petition for a declaratory order filed in these proceedings in 2012 and with the decisions of the Board and the United States Court of Appeals subsequent to the filing of the petition. This Verified Statement is being submitted in support of G&U's response in opposition to the Petitioners' Opening Statement on remand from the Court of Appeals, which was filed on October 24, 2016.

2. G&U was formed in 1873, and it has been in continuous operation since then. The line of G&U extends a total of 16.5 miles between a connection at North Grafton, Massachusetts with the CSX main line through Massachusetts and a connection with another line of CSX in Milford, Massachusetts. I am familiar with all aspects of the business and operations of G&U, including the business and operations at the G&U transloading yard located in Upton, Massachusetts.

3. From the time I acquired ownership of G&U in 2008, G&U has concentrated on promoting and building its transloading services at Upton and other locations. We recognized that relatively few shippers or receivers are or could be located directly on our line, but we also understood that there were a significant number of opportunities to transload commodities between rail and truck in the Boston metropolitan area and New England generally. Consequently, we have actively promoted our transloading services as an integral part of the rail transportation provided by G&U. In doing so, we were responding to the needs and desires of shippers or receivers that want to use rail service, which is less expensive than trucks, for long-haul movements but that need trucks for the last or first portions of the movement.

4. G&U always had a small yard in Upton, which is located approximately 7 miles south of North Grafton. Beginning shortly after I acquired ownership of G&U, we substantially rehabilitated the line between North Grafton and Upton and expanded the rail yard at Upton by acquisition of approximately 33 acres of property, a portion of which was formerly used by the Town of Upton as a municipal waste landfill. We constructed 4 new unloading tracks at the expanded yard and a building, including 2 storage silos, which are an integral part of transloading wood pellets from railcars to trucks.

5. G&U's Tariff 5000-A, which was attached as an exhibit to the Verified Statement of Eric Moffett filed in February, 2013, describes the transloading services and rates offered at the rail yard in Upton, as well as other locations on the G&U line. At the present time, we serve approximately 20 transloading customers at Upton. The commodities that are transloaded at Upton include liquid asphalt, food products, such as

soybean oils, biomass fuels, such as wood pellets, solvents, alcohols, nitric acid and phosphorous acid. Currently, most of the commodities arrive by rail, are transloaded and leave for final destinations by truck.

6. Our operations at the Upton yard have been performed in a safe manner. G&U has no issues with the Federal Railroad Administration concerning the practices and procedures at Upton. We have a very strong and cooperative relationship with the Upton Fire Department, and we work closely with them to ensure that our operations are conducted safely and that appropriate communications are maintained.

7. G&U has always maintained a good relationship with the Board of Selectmen of Upton. The Board of Selectmen concluded, based upon a report of Town counsel and taking into account information developed by a railroad of fact-finding committee, that G&U's transportation activities at Upton were preempted from local regulation. In August, 2012, the Board of Selectmen voted unanimously to take no action to pursue a decision from the Board or any court concerning preemption and precluded the Planning Board from hiring counsel to do so. I believe that the Board of Selectmen is still of the view that their earlier decision was correct. The Town has benefited from the transloading operations in Upton as a result of the increased business and economic activity, not to mention the direct creation of 16 jobs at the yard.

8. G&U has assisted the Town and the Massachusetts Department of Environmental Protection in remediating the environmental pollution at the Town's former municipal waste landfill, which is located at the rear of the rail yard, all to the benefit of the Town and its citizens, including the Petitioners.

9. No issues have been raised in connection with any of the transloading business conducted at the Upton yard, except for the complaints of the Petitioners with respect to the repelletizing and bagging that occurs during the unloading, temporary storage and transloading of wood pellets onto the trucks of customers.

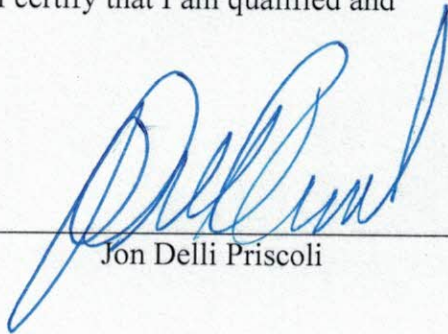
10. G&U has responded to the complaints of the Petitioners in a variety of constructive ways. During the construction of the transloading facilities at the yard, G&U installed fencing, built a berm and planted trees in order to provide a buffer between the neighbors and the yard. This was a significant improvement over the situation that existed when most of the area now occupied by the yard was a solid waste landfill operated by the Town. In addition, approximately \$100,000 has been spent in order to substantially diminish the sound from the operation of the pellet bagging machinery. At this time, any identifiable increase in sound levels in the vicinity of the Petitioners' houses due to operation of the pellet bagging machinery is within acceptable ranges established by state regulations.

11. G&U has maintained a very good relationship with the Board of Health of Upton, the local agency that deals with the various complaints that the Petitioners have made. G&U has been responsive and cooperative with the Board of Health whenever the Petitioners have raised any concerns, and to the best of my knowledge the Board of Health has been satisfied that G&U has acted appropriately. In fact, the Board of Health submitted a letter to the STB in 2013 stating that G&U had worked with the Board of Health to mitigate issues that might affect the health and well-being of the residents of the Town.

VERIFICATION

I, Jon Delli Priscoli, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on December 6, 2016.



Jon Delli Priscoli

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35652

**DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER**

**VERIFIED STATEMENT OF
MICHAEL J. POLSELLI**

1. My name is Michael J. Polselli. I am the Terminal Manager for Grafton Upton Rail Care, LLC ("GU Rail Care"), and as such I am responsible for the management and operation of the transloading activities that are performed by GU Rail Care for Grafton & Upton Railroad ("G&U") at G&U's rail yard in Upton, Massachusetts.

2. I have reviewed the Opening Statement on remand filed by the Petitioners on October 24, 2016, in the above-captioned proceeding by certain residents of the town of Upton who are the Petitioners in this proceeding. I previously submitted Verified Statements in support G&U in this proceeding, and I am providing this Verified Statement in support of the Reply to the Opening Statement being filed by G&U.

3. In this Verified Statement, I want to provide additional information regarding the transloading activities at G&U's Upton rail yard, in particular information regarding the transloading of wood pellets from rail cars to trucks (primarily flatbeds, but also some van trailers), provided by the wood pellet distributors/shippers. In an

earlier Verified Statement, I indicated that there could be some wood pellet customers that would take delivery of the pellets in bulk form (without bagging); however, no such customers have in fact materialized.

4. The wood pellets that arrive at the Upton yard in covered hopper cars have been ordered and purchased by distributors that sell pellets either to retail establishments that sell primarily to, or directly to, homeowners. Currently, approximately two-thirds of the pellets have been purchased are from either Georgia Biomass (in Georgia) or from Pinnacle (in British Columbia). The distributors arrange for trucks to pick up the wood pellets from G&U. The distributors are the customers of G&U in the sense that the distributors are responsible for payment of the line haul freight charges and transloading fees for movement of the pellets from the manufacturers facilities to retail establishments or directly to homeowners.

5. In order to pick up the wood pellets with their trucks (whether flatbed or trailer van), the distributors need the wood pellets to be bagged and shrink-wrapped on pallets. I understand from the distributors that they are having the wood pellets shipped loose in bulk in hopper cars because there is less damage to the wood pellets than if the wood pellets were shipped in bags on pallets in rail box cars or trucks. None of the customers of the distributors have the ability to receive pellets in bulk form, and neither the distributors nor their customers have any facilities in New England where pellets could be received by rail in bulk form and placed in bags and on pallets for distribution by truck. Installation of the pellet bagging equipment by G&U was a response to the requirements of the distributors and their customers to have a transloading service for the pellets.

6. As I have described in earlier Verified Statements, GU Rail Care attaches a vacuum hose to the bottom of the rail cars which sucks the wood pellets through a system that removes dust, and then into silos which provide temporary storage of the wood pellets. Any dust that is collected is disposed of as waste. Broken pellets are separated by screens from unbroken pellets as the pellets are moved by conveyor from the silos to the bagging machine. For purposes of our pellet transloading operations, we have referred to the broken pieces as "fines", and we have not considered dust, which is discarded, as part of the fines. (I understand that the pellet manufacturers that produce the pellets that are shipped to Upton refer to fines as including both less than full size pieces and dust, and that both the smaller pieces and dust are recycled at the manufacturing plants.) Our experience has been that between approximately 5 and 10% of the wood pellets (between 5 and 10 tons per rail car based on an average load of 105 tons per rail car) that arrive in Upton are broken, primarily as a result of the rail transportation. The normal handling of hopper cars in rail road switching yards and interchange and the vibration and pounding of hopper cars moving over thousands of miles of track inevitably cause some breakage of the pellets.

7. Since December, 2012, broken pellets have been run through one small die at Upton and pressed together (sometimes called "repelletization") to make proper-sized wood pellets. Installation of the die has enabled G&U to avoid discarding the broken pellets, which serves the requirements and interests of the distributors and their customers. The die can re-form approximately one ton of pellets per hour. There is no equipment or ability at Upton to recycle the broken pellets (or dust) or for hammering, steaming or drying the broken pellets. There is no cleaning or washing or processing of

the pellets. There is no “manufacturing” involved in any aspect of the transloading process – the structure and content of the pellets are not changed from when they left the manufacturers’ facilities. There is no processing done to or with the broken pellets, and no materials are added to the broken pellets. There is no new or different product created by the process. The repelletizing at Upton serves merely to restore the broken pellets to the size that they were when they left the manufacturers’ facilities. The re-formed pellets are then added to the unbroken wood pellets in the silos.

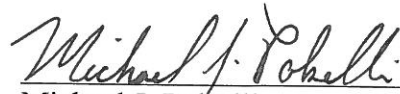
8. Broken pellets and wood dust cannot be bagged together with the unbroken wood pellets because they decrease the efficiency of the wood pellets for the ultimate residential users, and can cause problems with the home stoves.

9. The pellets in the silos are then placed into uniform-sized (40 pound) plastic bags, placed on pallets and shrink-wrapped. Bagging and shrink-wrapping are necessary to protect the wood pellets while they are being held in a staging area for pick up by the distributors. The pallets are loaded directly onto (or into) the trucks provided by the distributors to complete the transload process.

VERIFICATION

I, Michael J. Polselli, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on December 6th, 2016.



Michael J. Polselli

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**VERIFIED STATEMENT OF
VAUGHAN BASSETT**

1. My name is Vaughan Bassett, and I am employed by Pinnacle Renewable Energy, Inc. (Pinnacle) as Senior Vice President, Sales and Logistics. I am familiar with the manufacture and sale of wood pellets by Pinnacle.

2. Pinnacle owns and operates 7 pellet manufacturing facilities, all of which are located in British Columbia, Canada. We employ approximately 250 people at these plants, which have the capacity of producing approximately 1.5 million metric tons of pellets each year.

3. In order to manufacture pellets, we purchase raw materials in the form of sawmilling residuals, consisting of woodchips, shavings and sawdust from lumber mills, and harvesting residuals, which are primarily branches left behind after the harvesting of trees. Larger pieces are ground or chipped, and then sent through a hammer mill where the materials are pounded into a uniform fiber mass. Any "green" materials are dried so that all of the material is of a uniform moisture content of approximately 8-10%. The material is then moved through the pelletizing machines, where it is forced by pressure

through dies to create uniform-sized pellets. Each of our manufacturing facilities has between 2 and 7 dies for making pellets. We can produce approximately 5 metric tons of pellets per hour per pellet die at our facilities. No additives are mixed with the raw materials at any time during the manufacturing process. After cooling, the pellets are screened in order to remove dust, broken pieces and material not fully bound, all of which is referred to as “fines”. The screened out fines are then recycled through the process described above. Nevertheless, at the end of the manufacturing process, wood pellets loaded into railcars at the production site, in bulk form, typically contain less than 1% of fines. This is measured as the component passing through a sieve containing 3,15mm diameter round holes.

4. The markets for our pellets include both industrial and residential uses. The main portion of our pellets are placed in rail hopper cars and moved to ports in Canada for transportation in bulk form by ship to Europe, Asia and other places around the world for use in the generation of electricity.

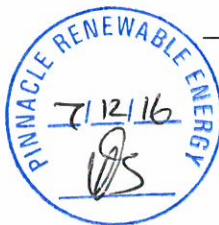
5. One of our 7 manufacturing facilities (not the one that has been selling pellets for shipment to New England as described in paragraph 6 below) has the capability of loading pellets into bags holding 40 pounds of pellets. These bags are placed on pallets and moved by rail boxcars or trucks for purchase in the retail and home use market. We bag pellets only for short trips within British Columbia or in some cases to Alaska and the United States Pacific Northwest. Pellets in bags are generally not shipped over long distances to prevent excessive break-up and fines production. Sales of pellets in bags constitute only approximately 1% of our total sales.

6. Since July, 2016, we have also been selling pellets to distributors that serve the retail market in New England. These pellets are sold EXW the Pinnacle plant in British Columbia, which means that the distributors take title to the pellets once loaded at our facilities in British Columbia. These pellets are transported in rail hopper cars to the Grafton & Upton Railroad transloading facility in Upton, Massachusetts. The journey from British Columbia to Upton, MA can generate up to 7% in fines due to transport related damage. Pinnacle does not provide or arrange for the rail hopper cars that are used or incur any costs for the transportation of the pellets to Upton. In fact, we have no further involvement with the pellets after they are loaded on the rail hopper cars at our plants in British Columbia.

VERIFICATION

I, Vaughan Bassett, verify under penalty of perjury under the laws of the United States, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on December 7th, 2016.



Vaughan Bassett

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER

**VERIFIED STATEMENT OF
JAMES ROECKER**

1. My name is James Roecker, and I am the Chief Executive Officer of Georgia Biomass, LLC, which is a manufacturer of wood pellets. I am familiar with all aspects of the operations and business activities of Georgia Biomass.

2. Georgia Biomass has its only manufacturing facility in Waycross, Georgia. The plant was completed and went into operation in 2011 at an investment cost of approximately \$175 million. The facility, which covers approximately 350 acres, is the largest in the United States, and it is capable of producing approximately 750,000 metric tons of pellets each year.

3. The manufacture of pellets begins with the processing of raw materials, or feedstocks, consisting of various forms of wood, such as roundwood, chips and sawdust, at what is known as the woodyard. After removing bark from the roundwood, it is chipped into small uniform pieces and combined with the other feedstocks for further processing. The combined feedstocks are then dried in large rotating cylindrical drums in order to reduce the moisture content to an acceptable level. Dried feedstock is then fed

to the hammermilling process, where it is pulverized to a sawdust-like material called fiber. Next, the fiber is sent to a series of conditioning chambers, where steam is applied in order to induce the lignin in the fiber to act as a natural binding agent that holds the pellets together during pelletizing. The conditioned fiber is then pressed through dies in order to form pellets. We have 22 dies that are capable of producing approximately 100 metric tons of pellets per hour. The pressure of squeezing the raw material through the dies is sufficient, without any additives, to form pellets. This extrusion process produces heat, so the newly formed pellets are then allowed to cool and harden, at which point the manufacturing process has been completed.

4. The newly formed pellets are then moved through a screening process that removes dust and pieces of pellets that have not been fully formed and are less than 5 millimeters in size. The dust and small pieces are referred to as "fines". These fines are recycled by mixing them with the fiber and running them through the dies again.

5. We only sell pellets in bulk by rail; our plant does not include any facilities for bagging, nor do we have any ability to ship pellets directly by truck. When the fully manufactured pellets are loaded into rail hopper cars for shipment, almost all of the fines have been removed, but approximately 0.1-0.2% of the pellets are fines as measured at the outlet of the screening process.

6. We sell pellets for industrial, commercial and residential use, but our biggest market by far is for industrial pellets that are purchased by European power plants as a fuel substitute for or for co-firing with coal for the production of electricity. Pellets sold to European buyers are moved in rail hopper cars from our plant in Waycross to

Savannah, Georgia, where the pellets are loaded in bulk form into ships for transportation to Europe.

7. Since 2013, Georgia Biomass has been selling a small percentage (less than 2%) of our production to distributors that serve the retail residential heating market in New England. Currently, the pellets are sold FOB Waycross, which means that the distributors take title to the pellets at our plant. Georgia Biomass does not arrange or pay for the railcars or for the transportation of the pellets. Our involvement ends when the fully manufactured pellets are loaded into rail hopper cars provided by the distributors.

8. I understand that some of the pellets that we manufacture are shipped to the Grafton & Upton Railroad facility in Upton, Massachusetts.

VERIFICATION

I, James Roecker, verify under penalty of perjury under the laws of the United States, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on November 29, 2016.



James Roecker