BEFORE THE
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35752

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GRAFTON & UPTON RAILROAD COMPANY --
PETITION FOR DECLARATORY ORDER

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# ADDITIONAL INFORMATION AND ARGUMENT IN SUPPORT OF PETITION OF GRAFTON & UPTON RAILROAD COMPANY FOR DECLARATORY ORDER


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Upton Railroad Co.


Dated: February 28, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

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**ADDITIONAL INFORMATION AND ARGUMENT IN SUPPORT OF PETITION OF GRAFTON & UPTON RAILROAD COMPANY FOR DECLARATORY ORDER**

In accordance with the Board's decision served on January 27, 2014 in this proceeding (the "January 27 Decision"), Grafton & Upton Railroad Co. ("G&U") submits this additional information and argument in support of the "Petition of Grafton & Upton Railroad Company for Declaratory Order" filed on July 24, 2013 (the "Petition"). In the Petition, G&U explained why the Board should issue a declaratory order finding that 49 U.S.C. 10501(b) preempts certain state and local permitting and preclearance statutes and regulations that the Town of Grafton, Massachusetts (the "Town") seeks to enforce to prevent G&U's construction and operation of a liquefied petroleum gas (propane) transloading facility on G&U property in North Grafton, Massachusetts, which is part of the Town.

In the January 24 Decision, the Board instituted a declaratory order proceeding in order to determine "whether G&U would be the financier, owner, and operator of the proposed transload facility and whether the Town's enforcement of state and local permitting and preclearance statutes and regulations in connection with the facility is

preempted." The Board directed G&U to submit any additional information and argument by February 28, 2014. As demonstrated in the Petition, the Supplement submitted by G&U on September 9, 2013 and below, the record before the Board compels the conclusion that G&U will finance, construct and operate the transload facility with its own resources and employees in a manner that warrants the application of the doctrine of preemption to preclude the Town from enforcing its permitting and preclearance regulations.

## BACKGROUND AND PROCEDURAL HISTORY

### I. Original Arrangement.

As outlined in the Petition, G&U's original concept for the construction and operation of the propane transloading facility involved certain financing and operational assistance from several companies in the propane business. Petition at pages 6-8. Specifically, recognizing in early 2012 that it was unlikely that it could finance the entire $5 million cost of the facility, G&U entered into discussions with Spicer Plus, Inc. ("Spicer"), a propane retailer based in Connecticut, and eventually including NGL Supply Terminals Co. ("NGL"), a Canadian propane supplier and wholesaler. Petition at pages 7-8. The discussions led to an understanding in April, 2012, which was formalized with the execution of 3 agreements in October, 2012, pursuant to which 3 equally owned subsidiaries of NGL and Spicer--All American Terminals, GRT Financing and Patriot Gas Supply--would augment the resources of G&U for purposes of the financing, construction and operation of the transloading facility. Specifically, GRT would purchase tanks and other equipment needed for the facility and lease them to G&U, All American Terminals would perform transloading services as a subcontractor, but under

the direction and control of G&U, and Patriot Gas Supply would provide a guaranteed volume of rail cars containing propane that would be transloaded at the facility. Petition at pages 7-8.

II. Judicial Proceedings.

In December, 2012, 4 tanks that were to be installed as part of the transloading facility were scheduled to be delivered to North Grafton. Petition at page 10. The Town, relying upon its zoning and other permitting regulations, issued a cease and desist order and obtained an *ex parte* injunction in a Massachusetts state court, the effect of which were to prohibit further construction of the facility. Petition at page 10. The case was removed by G&U to the federal district court, which held a trial in January, 2013 to determine whether federal preemption precluded the Town from requiring compliance with its zoning and other permitting regulations. Petition at pages 10-11. The sole preemption issue in the trial was whether, given the involvement of the propane companies in the financing and operation of the facility, the resulting transportation would be provided by or under the auspices of a rail carrier. Petition at page 16.

In May, 2013, the federal court determined that it lacked jurisdiction and remanded the case to the state court without any decision on preemption. The state court directed G&U in June, 2013 to file a petition for a declaratory order with the Board in order to obtain a decision on the preemption issue. Petition at page 11.

III. Restructuring of Original Arrangement as Presented in the Petition and Supplement.

During the period between the time of the trial in the federal court in January, 2013 and the federal court remand decision in May, 2013, G&U discussed the situation with Spicer and NGL. Petition at page 12; Verified Statement of Jon Delli Priscoli filed

with the Petition ("2013 Delli Priscoli VS") at ¶ 17; Verified Statement of Lawrence Chesler ("Chesler VS"), attached hereto, at ¶¶ 8-10 . As a result of these discussions and for the reasons outlined in more detail below, G&U, Spicer and NGL decided not to proceed with the 3 agreements that had been signed in October, 2012. Petition at page 12; Chesler VS at ¶ 11. Rather, by letters dated July 15, 2013, all of the agreements were terminated so that Spicer, NGL and their 3 subsidiaries no longer had any involvement or role in the financing, construction or operation of the propane transloading facility. Petition at pages 12-13; 2013 Delli Priscoli VS at ¶ 18 and Exhibits B, C, D and E; Chesler VS at ¶¶ 12-13 .

G&U concluded that it had the ability to finance the facility, complete the construction and operate the transloading yard using its own employees. Petition at pages 12-13; 2013 Delli Priscoli VS at ¶ 19. This revised plan was set forth in some detail in the Petition, together with an explanation as to why preemption should be applied to a situation in which the only argument against preemption raised by the Town--that the involvement of the propane companies would mean that rail transportation at the facility would not be provided by or under the auspices of a rail carrier--would be eliminated. Petition at pages 12-13, 16-22. Rather than a structure that would involve financial assistance from propane companies and a subcontractor to operate the facility, the new structure involves a facility owned solely by G&U, constructed pursuant to a contract between G&U and LPG Ventures, the primary builder of the facility, and operated by employees of G&U. In other words, the new structure outlined in the Petition will entail rail transportation by a rail carrier without any facts or other basis for the Town to

suggest that any propane companies have any financial or operational interest in or control of the facility.

In its Reply filed on August 19, 2013, the Town contended that the restructured plan for the propane transloading facility was not credible or feasible. The Town claimed that G&U had provided insufficient information for a determination by the Board whether preemption applies. On September 9, 2013, G&U filed a verified "Supplement to Petition of Grafton & Upton Railroad Company for Declaratory Order" (the "Supplement") in order to provide certain new information and copies of agreements that had been finalized and executed by G&U and the propane companies after the filing of the Petition in order to complete the documentation of the termination of the relationship between G&U and the propane companies. G&U hereby incorporates the Supplement and its attachments by reference.[1]

As described in the Supplement, as of August 14, 2013 G&U, NGL, Spicer and the 3 subsidiaries of Spicer and NGL entered into several agreements and executed several documents in order to record more formally and to implement the earlier termination of the 3 original agreements. Supplement at pages 1-4. Specifically, pursuant to the Equipment Purchase Agreement, Assignment of Contracts & Termination Agreement (the "Termination of Agreement"), which was attached as Exhibit 1 to the Supplement, title to the tanks and other equipment was transferred to G&U pursuant to a Bill of Sale, a copy of which was attached as Exhibit A to the Termination Agreement. In consideration for the equipment, G&U issued an Equipment Note, a copy of which is

[1] The Board's decision January 24 Decision refers to the Supplement but does not explicitly find that the Supplement is part of the record in this proceeding. Therefore, G&U incorporates the Supplement by reference and also asks that the Board explicitly permit the filing and include the Supplement as part of the record.

attached as Exhibit C to the Termination Agreement, and executed a Security Agreement, a copy of which is attached as Exhibit D to the Termination Agreement. In addition, 3 contracts relating to the construction of the facility, including the contract with LPG Ventures, were assigned to G&U. Supplement at pages 1-4 and Exhibit 1. With these steps, the assumption of financing control and operating authority by G&U over the construction and operation of the facility was complete.

ARGUMENT

I. G&U Will Finance, Own and Operate the Transload Facility.

The agreements described above conclusively demonstrate that the propane companies no longer have any role in the financing, construction or operation of the propane transloading facility. This point is incontrovertibly stated in Section 8 of the Termination Agreement, which provides that the prior agreements "are hereby terminated and of no further force and effect" and "that there are no other agreements of any type or kind, either in writing or oral and that the Railroad is free to complete the construction of and to operate the LPG Transfer Facility on its own as it may choose to do so in its sole determination without the participation of the [propane companies]." Supplement at Exhibit 1. The facility will be exclusively and solely owned, financed, constructed and operated by G&U. The termination of any involvement of the propane companies is unequivocally confirmed by Lawrence Chesler, a Spicer executive, who has stated that "Spicer, NGL and their subsidiaries are no longer involved and have no expectation of having any involvement in the construction or operation of the transloading facility".[2]

[2] The Town may contend that the note issued by G&U to GRT Financing is a form of continuing involvement by the propane companies. The note, however, is simply akin to reimbursement of GRT for expenditures it made to acquire the tanks and other equipment and to pay for the construction work that has been completed thus far. Verified Statement of Jon Delli Priscoli ("2014 Delli Priscoli VS"), which is

Chesler VS at ¶¶ 12-13. As a result, G&U, a rail carrier, will provide rail transportation services at the facility, thereby triggering the applicability of preemption to preclude the Town from requiring compliance with state and local permitting and preclearance regulations. Petition at pages 15-22.

Apparently recognizing that the restructured transaction meets the requirements for the application of preemption, the Town took another tack and argued in its Reply that the G&U plan is not credible or feasible. The Town suggests that G&U should be required to prove the feasibility of the plan as a prerequisite for the entry of the declaratory order sought by G&U. As demonstrated in the Petition and the Supplement and as further amplified below, G&U's plan to finance, construct and operate the transloading facility on its own is both credible and feasible.[3]

II. G&U Has the Ability to Finance the Project.

G&U acquired the real estate to be used for the transloading yard in January, 2012 and completed most of the site work shortly thereafter. Petition at pages 6-7. The initial expense of the acquisition and site work was approximately $1.8 million, while the total cost of the project was originally estimated to be in the range of $5 million. Petition at page 7. In early 2012 it became apparent to G&U that it was unlikely that G&U would be able to bear or readily finance the remaining cost of approximately $3.2 million. Petition at page 7. Consequently, the preliminary discussions that had been underway

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being submitted herewith, at ¶ 7. The note does not afford GRT any ability to have any role or input in, much less to control, the construction or operation of the facility; rather, it is a passive interest that will allow GRT to be reimbursed for expenditures that inure solely to the benefit of G&U.

[3] As directed by the Board, G&U is submitting detailed information concerning the financing and operation of the transloading facility, but G&U questions whether it should bear the burden of proof on these issues as part of its obligation to show that the transportation services that will be provided at the transloading facility will involve rail transportation by a rail carrier to which preemption applies. The Board should reject any implication by the Town that a rail carrier must prove the feasibility and success of a transloading facility as a prerequisite for the application of preemption.

with Spicer began to focus on financing assistance. These discussions resulted in the letter of intent in April, 2012. Petition at page 7.

Approximately one year later, in the second quarter of 2013, G&U, Spicer and NGL, which by that time had been brought into the picture by Spicer, were faced with uncertainty and the likelihood of further delay as a result of the litigation in the federal court and the prospect of appeals regardless of the awaited decision of the federal court. 2013 Delli Priscoli VS at ¶¶ 17, 18; Chesler VS at ¶¶ 6-9. For the reasons explained by Mr. Delli Priscoli and Mr. Chesler, the parties decided to terminate the existing agreements and go their separate ways. 2013 Delli Priscoli VS at ¶ 17; Chesler VS at ¶¶ 6-11.

Part of the reasoning of G&U was based upon the significant improvement in its financial condition and circumstances between April, 2012 and the second quarter of 2013, as explained below. 2014 Delli Priscoli VS at ¶¶ 6-10. Ironically, the longer the project has been delayed, the more favorable the financial picture for G&U has become. 2014 Delli Priscoli VS at ¶ 9.

In 2012 and 2013, the rail traffic handled by G&U increased substantially. G&U handled only 608 carloads in 2011, and in 2012 the volume increased to 1180 carloads. 2014 Delli Priscoli VS at ¶ 6. In 2013, G&U actually handled an even greater volume of carloads--1662. 2014 Delli Priscoli VS at ¶ 6. This upward trend in business has continued into 2014, and G&U anticipates that it will handle approximately 2500 carloads of traffic in 2014, even without any propane transloading business. 2014 Delli Priscoli VS at ¶ 6. These increases in traffic and corresponding growth in revenues have strengthened G&U's financial condition generally and have enhanced its ability to

complete the construction of the transloading facility without any propane company financing assistance or guarantees of propane traffic.

In addition to G&U's improving financial condition, G&U has access to additional financial resources through the common ownership of other companies by Mr. Delli Priscoli, who has substantial investments in other businesses. 2014 Delli Priscoli VS at ¶ 8. At any given time, the total amount of free cash on hand in all of the companies owned by Mr. Delli Priscoli is in the range of $2-3 million. 2014 Delli Priscoli VS at ¶ 8. Mr. Delli Priscoli is the owner of a number of real estate companies, including, for example, Mountaintop Corporation and Foothills Corporation. These 2 companies own fully tenanted commercial buildings totaling approximately 175,000 square feet with a total value of approximately $15 million. 2014 Delli Priscoli VS at ¶ 8 These companies have substantial equity and cash flow to enable them to provide funding, either on a short-term or long-term basis, to G&U for purposes of completing the construction and commencing the operation of the propane transloading yard. 2014 Delli Priscoli VS at ¶ 8. Furthermore, the common ownership of these companies by Mr. Delli Priscoli permits them to provide financial assistance quickly and on terms and conditions that are likely to be more favorable than arms' length commercial terms and conditions. 2014 Delli Priscoli VS at ¶ 8.

As described above, G&U's improving cash flow, together with the availability of financing assistance from other companies owned by Mr. Delli Priscoli, will enable G&U to meet its financial obligations for the completion of the construction of the transloading facility and payment of the note issued to GRT. G&U will be able to pay LPG Ventures and related expenses totaling approximately $1 million to complete the construction

work. In addition, G&U will have funding available to pay the note in the amount of approximately $2 million on schedule. 2014 Delli Priscoli VS at ¶ 10. In addition, as described below, commencement of operations at the propane transloading facility will further enhance the financial condition of G&U and its ability to obtain financing as necessary. 2014 Delli Priscoli VS at ¶ 11.

The demand for propane in New England remains strong. Recently, propane prices in New England have been relatively high as a result of transportation and distribution issues. The domestic production of propane is, however, adequate to supply the demands of the market. 2014 Delli Priscoli VS at ¶ 11; Chesler VS at ¶ 15. These factors support the conclusion that G&U will be able to realize the projected annual volume of 1500 to 2000 carloads of propane at the facility even without any guaranteed minimum contracts with propane suppliers or purchasers. Consequently, the current cash flow of G&U from its growing, non-propane business base, augmented by new revenues from the propane business, will be more than adequate to provide the basis for conventional, third-party account receivable financing. 2014 Delli Priscoli VS at ¶ 11.

Equally as important as the financial resources described above is the commitment of Mr. Delli Priscoli to the long-term growth and viability of G&U. He has invested substantial amounts already in the acquisition and improvement of the railroad. As he has stated, "I acquired G&U and have improved its infrastructure and developed its business in order to be in the railroad business for the long term. The propane transloading facility is a very important part of the growth and future of G&U. . . . Having taken the steps and made the investment necessary to get to this point, I intend to do what is necessary to complete the construction and operate the facility." 2014 Delli

Priscoli VS at ¶¶ 9, 14. As an experienced businessman with a long-term commitment to G&U, Mr. Delli Priscoli will find a way, relying upon the various options discussed above, to complete the construction and begin the operation of the transloading facility.

III. G&U Can Complete the Construction of the Facility.

As described above, the construction contracts, including the contract with the primary builder, LPG Ventures, have been assigned to G&U. Subject to the possibility of a temporary delay due to other projects or scheduling issues, LPG Ventures is ready, willing and able to complete the work that it started in 2012. 2014 Delli Priscoli VS at ¶ 10.

IV. G&U Will be Able to Hire Qualified Employees to Operate the Yard.

G&U will require 2 employees in order to provide transloading services in the yard in the summer months and 4 employees during the busier fall and winter seasons. 2014 Delli Priscoli VS at ¶ 13. G&U will identify and hire experienced employees who have been or will be trained to perform all of the functions necessary to transload propane from rail cars to trucks in a safe manner. 2014 Delli Priscoli VS at ¶ 13. G&U has been in contact with propane industry trade associations, which maintain lists of qualified employees, but the actual hiring of personnel is not feasible until the facility has been completed and is ready to commence operations. 2014 Delli Priscoli VS at ¶ 13. In addition, G&U will hire employees as necessary, or draw on resources available from other companies owned by Mr. Delli Priscoli, in order to perform billing and collection services and other clerical tasks. 2014 Delli Priscoli VS at ¶ 13.

## CONCLUSION

G&U's plan to finance, construct and operate the propane transloading facility in North Grafton is feasible and credible. More importantly, the plan will result in the provision of transportation services by a rail carrier to which preemption pursuant to 49 U.S.C. 10501(b) clearly applies. G&U respectfully requests that the Board grant the Petition and determine that neither the Town nor any other state or local agency may rely upon state or local preclearance or zoning regulations to block the implementation of the project.

It is significant that the effect of the entry of such a declaratory order will not be simply to enable G&U to build and operate the facility for its own benefit. In addition, a declaratory order will promote the public interest in having an efficient rail transportation network. The documented shortages of propane in New England are a result of transportation deficiencies. Operation of the new G&U transloading facility will be a

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step in adding to the capacity of the rail system for transportation of propane and furthering the public interest in being able to have access to adequate supplies of propane at reasonable prices.

Respectfully submitted,

GRAFTON & UPTON
RAILROAD CO.

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Dated: February 28, 2014

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Additional Information and Argument in Support of Petition of Grafton & Upton Railroad Co. for Declaratory Order and the accompanying Verified Statements of Jon Delli Priscoli and Lawrence Chesler to be served by sending copies by e-mail on February 28, 2014 to all parties on the service list.

James E Howard

James E. Howard

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**VERIFIED STATEMENT OF JON DELLI PRISCOLI**

1. My name is Jon Delli Priscoli, and I am the owner, Chief Executive Officer and President of Grafton & Upton Railroad Co. ("G&U"). I am familiar with the Petition for Declaratory Order filed by G&U in these proceedings, with the matters referred to in the Petition and with the business and operations of G&U.

2. In my Verified Statement filed with the Board on July 24, 2013, I explained that G&U had borne the expense of acquiring the real property for the propane transloading facility to be constructed in North Grafton, Massachusetts and performing the initial site work at a total cost of approximately $1.8 million.

3. I understood that in addition to the $1.8 million, it would require approximately $3.2 million to acquire the tanks and other equipment needed for the transloading facility and to finish the construction of the facility to make it operational. I also recognized that the expenditure of $1.8 million had put a strain on G&U's cash and operating revenues and that the ability of G&U to finance or bear the expenditure of an additional $3.2 million in the near term was unrealistic, particularly given other needs of G&U and the financial markets at the time. At the same time, we were rehabilitating the line between Upton and Hopedale in order to be in a position to serve customers at

Hopedale. Finally, it was clear to me, based upon my business experience generally and the financial markets at the time--in particular the general reluctance of banks to make loans of any kind--that reasonable conventional financing, such as asset-based financing or financing predicated on the income stream of a business, would not be available to G&U at that time.

4. In order to secure the additional funding needed to complete the transloading facility, G&U entered into discussions with representatives of Spicer Plus, Inc. ("Spicer"). As described in my earlier Verified Statement, we signed a letter of intent in April, 2012 and definitive agreements in October, 2012. At the time of the signing of the definitive agreements, it was anticipated that the remaining $3.2 million would have to be paid over the next 2 or 3 months as the work was completed. Construction was delayed, however, while we waited for 4 tanks, which were part of the equipment to be installed at the transloading facility, to be delivered to North Grafton. In December, 2012, the entire project was put on hold due to the actions of the Town of Grafton (the "Town") in issuing a cease and desist order and obtaining an ex parte temporary restraining order.

5. As described in my earlier Verified Statement, G&U discussed the situation with Spicer and NGL Supply Terminals Co. ("NGL"), which had been brought into the discussions by Spicer, and we all agreed to terminate the agreements in June, 2013. By that time, the financial situation of G&U had changed sufficiently that I was confident that G&U itself could provide the approximately $3 million (based on more current estimates, rather than the $3.2 million estimated earlier) required to complete the construction of the facility. My confidence was based upon several factors, which are

described below, that represented a change in circumstances from those existing in early 2012.

6. First, G&U's operating revenues had increased substantially. Our transloading operations in Upton had increased to the point that the yard was almost always at full capacity. In addition, the completion of the rehabilitation of the track as far as Hopedale permitted us to serve new customers there, which produced new revenue. G&U handled 608 carloads of business in 2011, but in 2012 the volume increased to 1180 carloads and in 2013 increased further to 1662 carloads. Business activity thus far in 2014 indicates that G&U will handle approximately 2500 carloads of traffic for the year, not including any propane business.

7. Second, except for a mortgage on the real estate comprising the site of the propane transloading facility in the principal amount slightly less than $200,000, G&U's balance sheet does not include any obligation that should properly be viewed as long-term, outside debt. The note issued to GRT Financing (the company created by Spicer and NGL to acquire and lease the tanks and other equipment needed for the transloading facility) is akin to a reimbursement arrangement of the costs incurred by GRT to acquire the tanks and other equipment and to pay LPG Ventures for the construction work that had been completed prior to the cease and desist order and temporary restraining order of the state court. While the note represents a debt, it is nonrecourse, and in the event of a default GRT may look solely to the equipment for payment. In view of G&U's improved financial picture, a default is highly unlikely. Given the balance sheet of G&U, combined with the increase in operating revenues from a growing business base, as

described above, G&U is now and will continue to be in a position to obtain third party financing.

8. Third, I own other businesses that are capable of providing financial assistance to G&U. For example, I am the sole owner of First Colony Development Corp., which is a successful real estate management company that has been in operation since 1981. In addition, I own a number of commercial real estate properties. After a period of depressed prices and vacant space during the recent recession, the real estate market and the properties that I own have flourished recently. For example, one of the companies I own, Mountaintop Corporation, owns a fully occupied commercial building, totaling approximately 106,000 square feet. Foothills Corp., another of my companies, owns a building that contains approximately 63,000 square feet of space with only one empty unit. These 2 buildings are valued at approximately $15.5 million and have substantial equity and cash flow that would enable them to provide funding, either on a short-term or long-term basis, to G&U. Significantly, due to the common ownership of these real estate companies and G&U, any such funding could be provided quickly and on terms and conditions that would be more favorable to G&U than ordinary third party financing.

9. Perhaps most importantly, I have invested substantial amounts in acquiring and improving G&U in order to be in the railroad business for the long term. As I have done in all of my other business endeavors, I will take whatever steps are necessary in order to protect the investment I have already made and to provide the financing to make the propane facility operational and ultimately successful. At any given time, the free cash on hand in all of the various companies that I own totals in the range of $2-3 million. By means of one source or some combination of the sources of funds and financing

described above, G&U will be able to complete the construction and be in a position to operate the transloading yard. Ironically, the passage of time as a result of the litigation initiated by the Town and the proceedings before the Surface Transportation Board has coincided with a change in circumstances that have improved G&U's ability to finance the transloading yard without assistance from the propane companies.

10. As I estimated earlier, the completion of the construction would require approximately 4 to 6 weeks once LPG Ventures resumes the work, during which time payments in the amount of approximately $1 million will be required to be made to LPG Ventures for the work remaining to be done under its contract with G&U and for completion of the site work. Subject to potential delays due to other projects they are working on at the time G&U is authorized to proceed, LPG Ventures has indicated to me that it is ready, willing and able to complete the construction of the yard. The note issued by G&U to GRT Financing will be due and payable within 90 days after a Board decision that preemption applies or the commencement of operations at the transloading yard, whichever is sooner. Based on the resources and financing described above, G&U will have the funds available to pay LPG Ventures and the note in the amount of approximately $2.1 million on schedule.

11. Once the propane transloading facility is completed and running at capacity, we estimate that it will handle 1500 to 2000 cars of propane annually. There continues to be a strong demand in New England for domestically produced propane. Even though domestic production has continued at previous levels, the demand in New England has not been satisfied due to transportation and distribution issues, resulting in higher prices and shortages, all of which has been widely reported by the news media and in other

public forums. The National Propane Gas Association wrote on January 15, 2014 to United States Secretary of Transportation Anthony Foxx to request that propane truck drivers be exempted from the hours of service regulations in order to address the propane transportation problems. The letter states that "[w]hile the overall supply of propane in the United States is more than adequate, what the propane industry is facing are challenges related to the fuel's distribution and transportation." In order to provide additional rail transportation for propane into New England, CSX and the Vermont Rail System have recently started to transload propane. Completion and operation of the G&U transloading facility would not only help to resolve the transportation issues and meet the public need for more, lower-cost propane in New England, but would also provide G&U with additional cash flow, which, together with other operating revenues of G&U, will be sufficient, in my estimation and based on my experience, to repay or refinance any loans or arrangements that G&U may have entered into in order to complete the construction of the transloading facility.

12. Based upon the factors and situation described above, I am confident that G&U can proceed with and successfully complete the construction and operation of the propane transloading facility on its own. It is not necessary to rely upon financing, operational assistance or guaranteed business from Spicer or NGL or any other propane industry entity.

13. It will require 2 to 4 employees to operate the transloading facility. In the summer months, only two employees would be required, while four will be needed in the fall and winter when demand and activity are higher. G&U expects to identify and hire experienced employees who are or will be trained to perform all of the functions

necessary to transload propane from railcars to trucks. When we are in a position to actually hire employees, we will consult with the propane industry trade groups, which maintain lists of qualified employees, to identify prospective hires. Until such time as we are in a position to begin operations, however, it is not feasible to actually hire employees. When G&U and the propane companies terminated the earlier agreements, G&U made an offer to directly employ the person that All American Transloading, the transloading subcontractor created by Spicer and NGL, had hired to supervise the North Grafton facility. He was highly experienced in the operation of rail to truck propane transloading facilities, but he took another job because he could not afford to wait for the completion of the G&U facility in North Grafton. In addition, G&U will hire personnel, or draw on resources from other companies that I own, in order to bill and collect revenues for the transloading and to perform other necessary clerical functions. We will be amending our Tariff 5000-A in order to reflect the fact that the propane transloading facility will be operated by G&U itself without the use of a subcontractor.

14. I acquired G&U and have improved its infrastructure and developed its business in order to be in the railroad business for the long term. The propane transloading facility is a very important part of the growth and future of G&U. We have restructured the plan for the financing and operation of the facility in order to eliminate any involvement by any propane companies and to ensure that G&U alone will own, finance, construct and operate the facility. Having taken the steps and made the investment necessary to get to this point, I intend to do what is necessary to complete the construction and operate the facility.

VERIFICATION

Commonwealth of Massachusetts

ss:

County of [redacted]x Plymouth

I, Jon Delli Priscoli, being duly sworn, depose and state that I am President and Chief Executive Officer of Grafton & Upton Railroad Company ("G&U"), that I am authorized to sign the foregoing Verified Statement on behalf of G&U, that I have examined all of the statements contained in the Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.

Jon Delli Priscoli

Subscribed and sworn to
before me this 25 day of
February, 2014

Nancy J. Magnussen
Notary Public

NANCY J. MAGNUSSEN
MY COMMISSION EXPIRES
AUG 14 2020
COMMONWEALTH OF MASSACHUSETTS
NOTARY PUBLIC

BEFORE THE
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GRAFTON & UPTON RAILROAD COMPANY --
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**VERIFIED STATEMENT OF LAWRENCE CHESLER**

1. I am the President of Spicer Plus, Inc., d/b/a Spicer Advanced Gas, which, through several affiliated companies, owns and operates a retail propane business in Connecticut. We bring propane to our facilities in Groton, Connecticut and Southwestern Rhode Island by rail and truck from various sources in the United States and, in some cases, from foreign sources. Our customers are residential, commercial and industrial customers in the Connecticut area. We transload propane from railcars to our storage tanks in Groton, Connecticut and have utilized other rail facilities to receive propane. Spicer has been in the propane business since 1957. I am familiar with the petition filed by Grafton & Upton Railroad Co. ("G&U") with the Surface Transportation Board in these proceedings seeking a declaratory order that would enable G&U to finish the construction of and operate its propane transloading facility in North Grafton, Massachusetts.

2. In late 2010 and early 2011, we began discussing the possibility of providing consulting services and assistance to G&U for purposes of the construction and operation by G&U of a railroad transloading facility for propane. Spicer was interested in the possibility of another transportation resource for moving propane into the New

England area, and G&U indicated to us that they wanted to get involved in the propane transloading business but lacked detailed knowledge of or experience in the transloading of propane.

3. As a result of these discussions, Spicer Advanced Gas and G&U entered into a letter of intent dated April 6, 2012. The letter of intent contemplated the drafting and execution of definitive agreements between G&U and All American Terminals, which was to be a new company that would be created to subcontract with G&U to provide the transloading services, and Patriot Gas Supply, which was a wholesale marketer of propane recently established by Spicer to market propane in New England and would ship propane in railcars to be transloaded at the new terminal to be constructed on G&U property in North Grafton, Massachusetts. At our suggestion, G&U agreed that LPG Ventures, a leading firm in the field of construction of propane facilities, would be retained to build the propane transloading facility in North Grafton.

4. The discussions with G&U progressed to the point that as of August 24, 2012, G&U entered into a memorandum of understanding with GRT Financing, LLC, All American Transloading, LLC, and Patriot Gas Supply, LLC The memorandum of understanding was also signed by Spicer Plus and NGL Supply Terminals Co. ("NGL"), which is a large propane supply and wholesale company that Spicer brought in to assist in the financing of the G&U facility and which had significant propane wholesale experience and a fleet of rail cars, as guarantors of certain obligations of GRT Financing, All American Transloading and Patriot Gas Supply. In the period between the letter of intent in April, 2012 and the memorandum of understanding in August, 2012, Spicer Plus had agreed with NGL to become 50% partners and owners of GRT Financing, All

American Transloading and Patriot Gas Supply and to use GRT Financing in order to provide certain financial assistance for the completion of the propane transloading facility.

5. In December, 2012, 4 storage tanks, which had been purchased by Spicer and which were to be part of the equipment of the transloading facility, had been loaded onto hired trailers by LPG Ventures in Fall River, Massachusetts to be delivered to the site in North Grafton. At that point, as described in the pleadings filed by G&U in this proceeding, the Town of Grafton obtained an injunction in the Massachusetts state court prohibiting the delivery of the tanks and putting in jeopardy the completion of the construction and operation of the facility. The case was removed by G&U to the Federal District Court in Massachusetts. The issues raised by the Town and G&U revolved around the question whether the Town could enforce local regulations in order to prohibit the construction and operation of the transloading facility or, as argued by G&U, federal preemption precluded the Town from interfering with such rail transportation activities.

6. When the federal court scheduled a trial to be held in January, 2013 on the preemption issues, Spicer and NGL anticipated that there would be a decision promptly after the trial permitting the construction of the propane facility to proceed to a conclusion. We were very disappointed that there was no decision until May, 2013, and, more significantly, that when the federal court finally issued a decision it merely remanded the case to the state court without any decision on the preemption issues.

7. The storage tanks at all times since the state court injunction were in Fall River, Massachusetts loaded on transport trailers at the expense of Spicer and NGL, which were

incurring demurrage charges. Further, the Town of Fall River Fire Marshall was continuously requesting that the tanks be moved, but we had no place to put them.

8. The remand decision continued our tank demurrage problem and the financial cost increased daily. Spicer and NGL began to reassess the situation. Based upon our own analysis and discussions with G&U, we recognized that a decision on preemption, whether by the state court or the STB, would likely not occur quickly. We believed that the process to reach a decision on preemption would probably be measured in months, rather than days or weeks. In addition, while we remained confident that preemption was applicable, we also recognized that, whatever the initial decision on preemption, it was highly likely that the losing side would appeal. We began to believe that there would be no final decision on preemption for many months or even more than a year.

9. We also recognized that litigation of the preemption issues and prosecuting or defending an appeal would be costly. Pursuant to the agreements with G&U, Spicer and NGL were responsible for 50% of the costs of the preemption litigation. In addition, after the Town obtained a restraining order stopping the delivery of the 4 storage tanks, we were incurring demurrage and other charges relating to the tanks that had exceeded $200,000 and were continuing to accrue. The combination of delay and the demurrage charges and legal expenses caused us to review the situation and evaluate whether it made sense to proceed as originally planned.

10. In these circumstances, we began discussing the issues with G&U. Both of us understood that the only issue between G&U and the Town with respect to preemption was based upon the Town's argument that the involvement of Spicer and NGL and the 3 subsidiary companies indicated, according to the Town, that the transloading would not

constitute rail transportation provided by or under the auspices and control of a rail carrier. We proposed that G&U take over the completion of the financing and purchase all equipment as well as undertake all propane transloading without any involvement or obligation, contractual or otherwise, of Spicer, NGL, GRT, All American Transloading, or Patriot.

11. The discussions with G&U eventually led to a mutually acceptable decision to terminate the agreements with GRT Financing, All American Transloading and Patriot Gas Supply. The termination was accomplished by means of 4 termination letters from G&U, each of which was dated July 17, 2013 and agreed to and acknowledged by the other parties.

12. Following the termination of the agreements, we continued to negotiate with G&U concerning the purchase of the transloading equipment and tanks by G&U from GRT Financing, which held title to the equipment, and the assignment of the construction contracts to G&U. These negotiations culminated with the signing as of August 14, 2013 of an Equipment Purchase Agreement, Assignment of Contracts & Termination Agreement. Spicer and NGL settled the demurrage claim and paid for the unloading of the tanks from the trailers in Fall River, resulting in an out-of-pocket loss of $239,500. Title to and possession of the tanks and other equipment was transferred to G&U at that time pursuant to a bill of sale, and 3 construction contracts, including the contract with LPG Ventures, were assigned to G&U. G&U issued a nonrecourse note to GRT Financing in the amount of $2,059,546 and granted a security interest in the tanks and equipment.

13. As a result of these agreements and documents, neither Spicer nor NGL, or any of their affiliates, including GRT Financing, All American Transloading and Patriot Gas Supply, have any further interest in the construction or operation of the propane transloading facility in North Grafton. As stated in section 8 of the Termination Agreement, after the termination of the agreements "there are no other agreements of any type or kind, either in writing or oral and that the Railroad is free to complete the construction of and to operate the LPG Transfer Facility on its own as it may choose to do so in its sole determination without the participation of the LPG Interests." In other words, Spicer, NGL and their subsidiaries are no longer involved and have no expectation of having any involvement in the construction or operation of the transloading facility. GRT will not be providing any financing, All American Transloading will not perform any services on behalf of G&U, and Patriot Gas has no obligation to ship any number of railcars of propane to the transloading facility.

14. Spicer and NGL expect to receive payment on the note, but, if G&U cannot pay the note we will be able to repossess or sell the tanks and other equipment. We believe that the resolution that we have negotiated and implemented with G&U is, under all the circumstances and taking into account the various considerations discussed above, the best that we could have achieved.

15. Connecticut, and New England in general, are currently suffering from a shortage of propane, which has, in turn, led to an increase in prices. The shortage is attributable primarily to the lack of adequate transportation from the propane producing areas in the Midwest. As described by Joe Rose, the President of the Propane Gas Association of New England (of which Spicer is a member), in an article that appeared in

the Valley News (Vermont) on January 25, 2014, "[w]hat customers are feeling are the results of a strained transportation and infrastructure system that is masquerading as a propane shortage." If G&U's proposed transloading facility in North Grafton were up and running, it would be in demand and fully utilized by propane sellers and purchasers in New England. Availability of the G&U facility would be a significant step in eliminating the transportation problems and, as a result, acting as a restraint on high prices for propane.

VERIFICATION

State of Connecticut

ss:

County of New London

I, Lawrence Chesler, being duly sworn, depose and state that I have examined all of the statements contained in the foregoing Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.

Lawrence Chesler

Subscribed and sworn to
before me this 24 day of
February, 2014

Carleen M. Lee
Notary Public

**CARLEEN M. LEE**
***NOTARY PUBLIC***
**MY COMMISSION EXPIRES OCT. 31, 2017**