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SERVICE DATE – DECEMBER 14, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34797

NEW ENGLAND TRANSRAIL, LLC, d/b/a
WILMINGTON & WOBURN TERMINAL RAILWAY
—CONSTRUCTION, ACQUISITION AND OPERATION EXEMPTION—
IN WILMINGTON AND WOBURN, MASS.

Decided: December 14, 2015

In a petition for exemption filed December 5, 2005, New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway (NET) sought authority from the Board to acquire 1,300 feet of existing track, construct 6,200 feet of new track, and operate as a rail carrier over the combined 7,500 feet of track on and adjacent to a parcel of land owned by the Olin Corporation and located in Wilmington and Woburn, Mass. In a decision served July 10, 2007, the Board found that, under the proposal, NET would, if authorized, become a rail carrier subject to the Board's jurisdiction. The Board also addressed the extent to which NET's planned activities relating to the handling of construction and demolition debris and municipal solid waste would come within the scope of the Board's jurisdiction. The Board noted that, before it could address whether to authorize NET's proposal, the parties would need to submit evidence on the transportation merits of the proposal, the Environmental Protection Agency (EPA) would need to complete its Remedial Investigation and Feasibility Study,¹ and the Board would need to complete its own environmental review.

In July 2007, the Commonwealth of Massachusetts, through its Department of Environmental Protection and Attorney General's Office, filed a petition for reconsideration asking the Board to reconsider or clarify a portion of its ruling. Before the issues raised on reconsideration could be adjudicated, however, Congress enacted the Clean Railroads Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 (codified at 49 U.S.C. §§ 10501(c)(2), 10908-10910) (CRA), which largely removed from the Board's jurisdiction the regulation of solid waste rail transfer facilities such as the one planned by NET.

Because of the enactment of the CRA and to update the progress of matters in this docket, the Board directed NET to file a status update in a decision served on July 23, 2010. On

¹ By letter dated May 11, 2006, EPA informed the Board that the Olin site, including the portion on which NET would operate, had been formally added to the "National Priorities List" under the Comprehensive Environmental Response, Compensation, and Liability Act.

August 23, 2010, NET filed a status report stating that it planned to pursue its petition for exemption and that it would not transload solid waste at the facility unless it obtained all legally required approvals to do so in the future. NET continued to request that the Board complete its environmental review and approve its proposal. The EPA and the Town of Wilmington, Mass. (the Town), filed responses in opposition to NET's request. In a decision served May 24, 2011, the Board concluded that, as the EPA had not completed its investigation and study, the Board would continue to defer its environmental analysis and decision on the petition until relevant reports had been issued by the EPA. NET was directed to file another status report in 90 days.

After NET filed its status report, comments were submitted by the Town and EPA. The Town argued that the Board should not yet take action on NET's petition, while the EPA requested that the Board continue to defer its environmental analysis until the relevant EPA reports had been issued and finalized, which it anticipated would occur in 2012. The Board then served a decision on June 20, 2012, stating that it would wait to address NET's petition until the EPA's investigation and study had progressed further.

On August 18, 2015, NET filed a status report and request for clarification, asking the Board to lift the deferral referenced in the June 2012 decision. NET explained that significant additional work had been undertaken by the Olin Corporation and the EPA since EPA's original request for deferral and that, based on certain EPA actions, EPA no longer believes deferral of the Board's environmental review is necessary.

In response to NET's status report and request for clarification, the Town and the Wilmington Environmental Restoration Committee separately filed comments on September 8, 2015, and October 7, 2015, respectively, asking the Board to deny NET's request to lift the deferral in this docket.

Additionally, although not filed on the record, the EPA has submitted correspondence to the Board's Office of Environmental Analysis (OEA) during the course of this proceeding.² As relevant here, on November 6, 2015, the EPA submitted an environmental comment with OEA, stating that, given its investigatory findings to date and the fact that a Record of Decision will not be issued until 2017, the facts no longer support continuing to defer the Board's environmental review process. EPA further states that it has no objection to the Board lifting its deferral and re-opening the proceeding provided NET's plans do not involve redevelopment of certain areas identified as not suitable for redevelopment.

The Board will accept EPA's November 6, 2015 environmental comment into the record. The Board will provide a 20-day comment period so that the public will have an opportunity to

² Environmental correspondence is available on the Board's website at www.stb.dot.gov, under "Environmental Matters."

comment on EPA's November 6, 2015 letter. Comments are due by January 4, 2016. The Board will issue a separate decision on the merits of NET's request to lift the deferral of the Board's environmental review at a later date.

It is ordered:

1. The EPA's November 6, 2015 environmental comment is accepted into the record. Comments in response to EPA's submission are due by January 4, 2016.

2. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.