

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: July 23, 2010

In a petition for exemption filed December 5, 2005, New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway (NET or petitioner) 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 (July 2007 Decision), the Board found that, under its proposal, NET would, if authorized, become a rail carrier subject to the Board's jurisdiction, and 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, and the Board would need to complete its own environmental review.

In July 2007, the State 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. NET filed a reply. In August 2007, NET filed supplemental information on the transportation merits of its proposal. Massachusetts and others filed replies.

Before the issues raised on reconsideration could be adjudicated, 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) in October 2008. The CRA largely removed from the Board's jurisdiction the regulation of solid waste rail transfer facilities such as the one planned by NET.<sup>1</sup> But NET's proposal also includes plans to handle commodities not affected by the

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<sup>1</sup> The Board's authority is now limited to the issuance of land-use-exemption permits under 49 U.S.C. § 10909(f). In January 2009, the Board proposed rules governing the submission and review of applications for such permits. See Solid Waste Rail Transfer

CRA, and the CRA did not change the Board's jurisdiction over those aspects of the proposal. NET did not amend its petition to reflect passage of the CRA.

As the law has changed since the Board's July 2007 Decision and in an effort to update the progress of matters in this docket, the Board will require NET to file a status update no later than August 23, 2010. NET should inform the Board whether it plans to pursue its petition for exemption and of the status of any matters that will affect NET's readiness to proceed. If NET still plans to pursue its petition for exemption, its status report should, in particular: (1) discuss the status of the EPA's site investigation, (2) discuss whether NET still plans to transload solid waste at the proposed facility, and if so, (3) explain whether that transloading would be done in such a way as to render the facility a "solid waste transfer facility" under the CRA, 49 U.S.C. § 10908.

It is ordered:

1. NET is directed to file a status update no later than August 23, 2010.
2. This decision will be effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

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Facilities, EP 684 (STB served Jan. 14, 2009). Those proposed rules serve as the current interim rules.