

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34365

NEW ENGLAND TRANSRAIL, LLC—ACQUISITION AND OPERATION  
EXEMPTION—LINES OF BOSTON AND MAINE RAILROAD COMPANY

PETITIONS FOR STAY

Decided: July 10, 2003

By notice filed on June 19, 2003, as clarified on July 2, 2003, New England Transrail, LLC, d/b/a the Wilmington and Woburn Terminal Railroad Co. (New England Transrail), a noncarrier, invoked the class exemption at 49 CFR 1150.31<sup>1</sup> to allow it to acquire and operate, pursuant to contract rights from Boston and Maine Railroad Company (B&M), segments of a line of railroad extending from milepost 13.25 on the Massachusetts Bay Metropolitan Transportation Authority (MBTA) Boston-Concord main line in Woburn, MA (on which B&M retains the right to conduct freight service), to a junction with B&M at about milepost 14 on B&M's Wilmington-Woburn-West Medford branch located at a junction south of Eames Street in Wilmington, MA.<sup>2</sup> New England Transrail states in the verified notice of exemption that it also proposes to construct a half-mile of new track to connect the Wilmington-Woburn-West Medford branch at a point just south of Eames Street to the MBTA main line in Woburn.

On June 26, 2003, the Town of Wilmington (the Town) filed a petition to stay the effective date of the exemption.<sup>3</sup> Also, on June 26, 2003, the Board served a decision granting New England Transrail's request to delay the effective date of the exemption from June 26, 2003, until July 11, 2003.

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<sup>1</sup> See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C. 810 (1985), aff'd, Illinois Commerce Comm'n v. ICC, 817 F.2d 145 (D.C. Cir. 1987).

<sup>2</sup> Specifically, the line segments are: (1) from milepost 13.25 extending approximately two-tenths of a mile in a northerly direction; (2) from about milepost 14 extending approximately two-tenths of a mile in an easterly direction (including the restoration of a previously removed switch and related track); and (3) from a point near the western end of the track described in (2) above and extending one-tenth of a mile in a southerly direction (including a switch).

<sup>3</sup> The Concerned Citizens Network, a network of citizens in the Town, supports the request for a stay.

New England Transrail replied to the stay petition on July 10, 2003. On July 10, 2003, the City of Woburn (Woburn) also filed a petition to stay the effective date of the exemption. As discussed below, no need for a stay of the effective date of the notice of exemption has been shown. Therefore, the petitions for stay will be denied.

## DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm'n. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).

As articulated in its petition for stay, the Town is concerned about the adverse impact on adjacent dwellings and the downstream municipal water supply that would result from the possible construction and operation of a truck/rail reload facility on a site in the Town which is currently undergoing state environmental investigation and remediation. Although the Town has addressed the applicable stay criteria, a stay of the effective date of the exemption is unnecessary. The exemption allows New England Transrail only to acquire and operate the above-described existing rail segments. The exemption at 49 CFR 1150.31 does not permit the proposed construction of the new half-mile line that would be needed to link the B&M line segments and serve the planned reload facility.

In order for New England Transrail to construct and operate the proposed new rail line, it must seek construction authority from the Board in a separate filing, under 49 U.S.C. 10901 and 49 CFR 1150.1 et seq., or an exemption under 49 U.S.C. 10502 and 49 CFR 1121.1 et seq. At that time, the Board's Section of Environmental Analysis (SEA) will conduct the appropriate level of environmental review of the proposed new rail line construction and operation pursuant to the National Environmental Policy Act (NEPA) and the Board's rules implementing NEPA at 49 CFR part 1105. The environmental review will assess the relevant environmental issues and include an appropriate analysis of planned actions that would not occur but for the proposed new rail line, i.e., the proposed truck/rail reload facility. Environmental documentation will be prepared and an Environmental Assessment or a full Environmental Impact Statement will be issued for public review and comment. See 49 CFR 1105.6(a), (b), and 1105.10. At that time, the Town will have an opportunity to address the impact of New England Transrail's proposal on, among other things, land use, water, and safety, and to request appropriate environmental mitigation conditions. Following completion of the environmental review, the Board will issue a decision addressing the environmental issues, and impose any necessary environmental mitigation conditions, before any construction may begin.

In short, because the class exemption at 49 CFR 1150.31 invoked by New England Transrail applies to the acquisition and operation of existing rail lines, not to the construction of new rail lines, allowing the notice of exemption for the existing line segments described above to become effective at this time will have no immediate adverse effect on the Town. Therefore, a stay of the notice of exemption is not warranted.

Woburn, which incorporates the Town's stay request by reference, also raises environmental concerns in its stay request. In addition, Woburn favors a stay to permit it to file a petition to reject the notice and/or to file a petition for revocation of the exemption. For the same reasons cited for denial of the Town's stay request, Woburn's petition for stay will be denied. Woburn may file a petition to revoke the exemption at any time. See 49 U.S.C. 10502(d).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petitions for stay are denied.
2. This decision is effective on its date of service.

By the Board, Roger Nober, Chairman.

Vernon A. Williams  
Secretary