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SERVICE DATE – LATE RELEASE MAY 24, 2011

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: May 24, 2011

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 New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—Construction, Acquisition & Operation Exemption—In Wilmington & Woburn, Mass., FD 34797 (STB served July 10, 2007), the Board found that, under its 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, 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. 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) 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. But NET's proposal also included plans to handle commodities not affected by the 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.

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 no later than August 23, 2010. New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Ry.—Constr., Acquis. & Operation Exemption—In Wilmington & Woburn, Mass., FD 34797 (STB served July 23,

2010). On August 23, 2010, NET filed a status report stating that it plans to pursue its petition for exemption and that it will not transload solid waste at the facility unless it obtains all legally required approvals to do so in the future. NET continues to request that the Board complete its environmental review and approve its proposal.

The EPA filed a letter in response to NET's status report. In that letter, the EPA asserts that NET's conclusions are premature, that there are still data gaps that must be filled by the Olin Corporation, and that additional work must be completed before the EPA can issue remedial investigation and feasibility study reports. Accordingly, the EPA requests that the Board continue to defer its environmental analysis, as the Board indicated it would do in its July 10, 2007 decision, until relevant EPA reports have been issued and finalized.

The Town of Wilmington, Mass. (the Town), filed objections and comments in response to NET's status report. The Town alleges that NET has provided to the Board materials that are incomplete, contradictory, and misleading. The Town asks the Board to dismiss NET's petition and require NET to file a new petition with a new filing fee, and that a new environmental assessment be conducted.

Although the parties have submitted evidence on the transportation merits of this proposal, the Board has not addressed that issue and would need to do so before determining whether to approve this project. Also, as noted above, the Board stated that before it could address NET's petition, the EPA would need to complete its investigation and study, and the Board would need to complete its own environmental review. Neither of those conditions has been met; indeed, in response to NET's status report, the EPA has again asked the Board not to act until the EPA has finalized its processes. As a result, the Board will continue to defer its environmental analysis and decision on the petition until relevant reports have been issued by the EPA.

The relief sought by the Town – dismissal – is not an appropriate request in a comment on a status report. The Town may seek relief in an appropriate filing if it so desires.

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

It is ordered:

1. NET is directed to file a status report by August 23, 2011.
2. This decision is effective on its service date.

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