

# Strasburger

ATTORNEYS AT LAW

July 16, 2013

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## **BY E-FILING**

Ms. Cynthia Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

**RE: FD 35749, Boston and Maine Corp. et al, v. Town of Winchester, et al.-  
Petition for Declaratory Order**

## **NOTICE OF INTENT TO PARTICIPATE AS *AMICUS CURIAE***

Dear Ms. Brown:

I am writing on behalf of a series of short line railroad and railroad-related parties (“the Concerned Parties”) for leave to participate as *amicus curiae* in the above-captioned declaratory order proceeding in support of Petitioner Boston and Maine Corp.

The issues presented here involving local efforts to constrain the provision of service to railroad customers is of great concern to the short line industry. Unlike class I railroads which generally own the track and rights of way over which they operate outside the customer facilities, short lines frequently lease and operate over track owned by nonrailroad third parties. These parties can include government agencies, commuter rail authorities, industrial or economic development entities, port authorities, and railroad customers themselves. The track owners may or may not be subject to Board jurisdiction. The question this petition poses is whether the right to claim federal preemption from state and local laws can depend upon the ownership and nature of the track over which service is provided to a rail customer.

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Acceptance of comments by the Concerned Parties will not unduly delay the proceeding or broaden the issues. Accordingly, I request that the Board accept comments to be tendered by the Concerned Parties later this week.

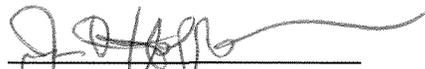
Respectfully submitted,



John D. Heffner

Certificate of service

I hereby certify that I mailed a copy of the above Notice of Intent to Participate as *Amicus Curiae* in the above-captioned proceeding to all parties of record by either email transmission or first class US Mail on July 16, 2013.



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John D. Heffner