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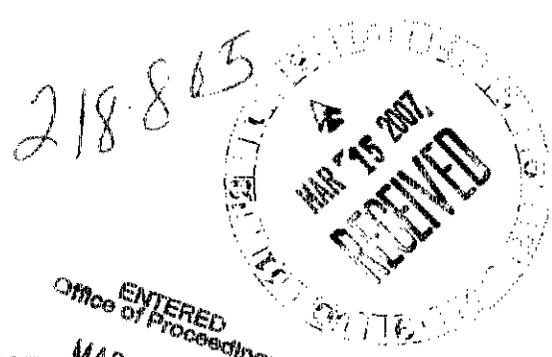
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March 15, 2007

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington DC 20423



RE: New England Transrail (FD 34797)

Dear Secretary Williams:

On behalf of New England Transrail ("NET"), this letter responds to the March 13, 2007 filing submitted by the New York Susquehanna and Western Railway Corporation ("NYS&W") in response to the March 6, 2007 filing by the New Jersey Department of Environmental Protection ("NJDEP"). Both filings address the February 20 Opinion of Judge Hayden of the U.S. District Court for the District of New Jersey in *NYS&W v. Jackson, et al.*, No. 05-4010 (KSH), which is directly relevant to the jurisdictional issue currently pending before the Board.

Before addressing their comments on Judge Hayden's decision, NET believes that it is important to address the political pressures that are being exerted on the Board in an attempt to stop this project. The Board is obviously aware of the legislation introduced in the Senate that threatens to curtail the Board's statutory authority, and of public statements of a number of Members of Congress threatening similar action. NET respectfully suggests that the Board should not consider those threats in reaching its decision in this case. Instead, in reaching its decision, the Board should only consider information that is a part of the Record in this case.

The Record in this case amply demonstrates that NET's Facility will not be limited to the transloading and transportation of waste. Indeed, the Record demonstrates that NET projects that 50% or more of NET's business will ultimately involve the transportation of commodities other than waste. See the Verified Statement of Robert W. Jones, III, at ¶ 4. Those commodities would include bulk materials, such as lumber, salt, sand, gravel, aggregates and woodchips. *Id.* at ¶ 12. In addition, NET would handle pumpable commodities, such as corn sweeteners, vegetable oil, plastic pellets and soda ash. *Id.* at ¶ 11. During the time that this proceeding has been pending, NET has continued to meet with shippers of those and other commodities. Not a single commenter has offered any verified statement to rebut Mr. Jones' statement. Nor has any commenter cited any legal authority to support the Board's denial of NET's status as a rail carrier.

In short, the Record before the Board makes it clear that NET is seeking authority to operate as a common carrier by rail and to transload and transport a wide variety of commodities at the NET Facility. The Board recognized those facts when it conditionally granted NET rail carrier status for a substantially similar project in Finance Docket Number 34391.

In *NYS&W*, Judge Hayden determined that the handling operations and practices used by NYS&W at a transloading facility that shipped waste materials constituted “transportation by rail carrier” and were therefore subject to the exclusive jurisdiction of the Board. Upon making that determination, the Court permanently enjoined New Jersey from enforcing its waste disposal and waste management regulations against the transloading facility, because state law was preempted by the Board’s jurisdiction under the ICCTA. That decision, coupled with another recent decision of the U.S. Court of Appeals for the Second Circuit, *Coastal Distribution, LLC et al. v. Town of Babylon, et al.*, No. 06-0981-CV (2d Cir. February 7, 2007), affirms the breadth of the Board’s jurisdiction over transloading operations used to facilitate the transportation of waste by rail.

NJDEP argues that Judge Hayden’s decision will lead to irresponsible rail carriers’ establishing and operating open-air dumps with little or no regard for public health and safety. NYS&W explains why this need not occur. NET agrees with NYS&W that the Board has the authority to prevent such dumps from being created by conditioning its approval of a particular project on its compliance with applicable health and safety requirements. Those conditions can be assessed and imposed during the environmental review.

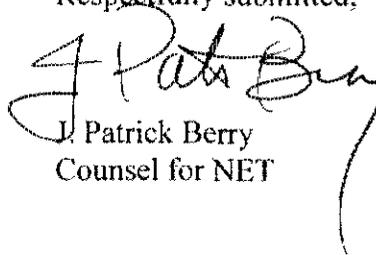
In the instant case, NET filed verified statements in support of its petition which explain how the construction of the NET Facility and the handling techniques to be employed there represent “best management practices” in the transportation of solid waste and how they would create a marked improvement over current transloading practices. See the verified statements of Thomas Egan, John Ryan and Robert Jones. As a result, the Record demonstrates that (1) NET’s waste transloading operations will occur in an enclosed structure, (2) NET will use ramps and concrete floors, and (3) NET will use state-of-the-art equipment to shred and/or bale solid waste to prevent litter and fugitive odors and to facilitate safe and efficient rail transportation. Those enhancements—among others—will ensure that waste materials will be transloaded and shipped to or from the NET Facility in the safest, most efficient means possible.

It has now been more than nine months since the Board instituted its jurisdictional inquiry and directed the Section of Environmental Analysis to suspend further environmental review of the NET Facility pending the Board’s decision on the jurisdictional issue. The jurisdictional issue before the Board is the same issue that was thoroughly analyzed by Judge Hayden in the *NYS&W* case. That inquiry is this: do the activities to be undertaken by NET constitute “transportation” that is subject to the Board’s exclusive jurisdiction? The ample Record before the Board, supported by longstanding judicial and Board precedent, requires an answer in the affirmative.

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The Board should be aware that its extended delay in resolving the jurisdictional issue is causing uncertainty and disruption in the rail industry, the solid waste industry, the trucking industry, and the investment community. All of those groups, along with environmental groups and minority public interest groups, are awaiting the Board's determination. In the meantime, economically viable projects—like the NET Facility—that would create jobs, ease traffic congestion, and reduce air pollution from truck traffic are being delayed, and in some cases, are being cancelled. The public interest requires that this issue be resolved as quickly as possible, based solely on the evidence in the Record, and without regard to political pressure.

Respectfully submitted,

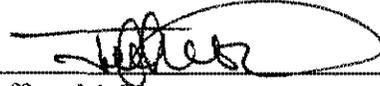


J. Patrick Berry
Counsel for NET

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2007, a copy of the foregoing was served on each person listed in the STB service list for this matter by first-class mail:

A handwritten signature in black ink, appearing to read 'Jeffrey M. Bauer', is written over a horizontal line.

Jeffrey M. Bauer