

STB F.D. 34797 New England Transrail, LLC

Thank you Chairman Nottingham. Good morning and welcome to our panelists and other interested parties. I'd like to acknowledge and thank our staff, who've spent a great deal of time wrestling with the record here, and who have assisted me in preparing for today's argument. I'm glad we've convened this proceeding to get answers to questions we still have – after numerous evidentiary filings -- about the proposal before us.

I come to this argument with two views that I must reconcile. First, I have always been a strong supporter of preemption. Congress and the courts have long recognized the need to regulate railroad operations at the federal level to avoid a patchwork quilt of state and local regulations. The Interstate Commerce Act is one of the “most pervasive and comprehensive regulatory schemes” among all of our laws. The ability to preempt local laws is one of the prized benefits of receiving Board authority to build and run a railroad. But because we are empowered to interpret and apply the Act, we are responsible for ensuring that preemption is warranted as a consequence of our decisions.

Second, I recognize that preemption can jeopardize protection of the public interest. I am concerned about the regulatory gap that can result from preemption. Indeed, I have been concerned about it since I dissented on one of the first cases to come before me after I joined the Board. Who looks out for the public interest when federal preemption deprives state and local governments from doing so?

I view this argument, and this case, as pivotal. What this case comes down to is the need to distinguish between rail transportation and other activities that would occur even absent rail transportation. There are a number of proposals similar to that of New England Transrail in various stages of development across the country. So, the answer to this question will impact our citizens and communities in a direct and visceral manner. It is imperative that we get the answer right and that we get it right quickly.

I urge the parties to focus today on the distinction between rail transportation and other activities, as well as on the questions we posed in preparation for this argument. I am eager to take part in today's debate among the parties. Thank you.