

**Vice Chairman Buttrey's Opening Remarks**  
**Oral Argument, April 19, 2007**  
**New England Transrail, LLC, STB Finance Docket No. 34797**

I am hopeful that today's oral argument will shed some light on the very important question of just how far this Board's regulatory powers do, and do not, extend.

On the one hand, the Constitution of the United States, in Article I Section 8, specifies that it is the Federal government that has the power "to regulate Commerce. . . among the several States. . ." Accordingly, Congress has given the Board **exclusive jurisdiction over "transportation by rail carriers."** This preempts State and local authorities from regulating in that area.

On the other hand, the Tenth Amendment makes clear that all "powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people." This preserves the police powers of States and localities, and their authority over matters relating to the health and welfare of their citizens, so long as they do not intrude on matters that fall under exclusive Federal jurisdiction.

So the question here is whether New England Transrail's proposed activities — all of them, some of them, or none of them — will be found to be “transportation by rail carrier” that is subject to the Board's exclusive jurisdiction and shielded by Federal preemption as part of interstate commerce; or whether all, some or none of these proposed activities will fall under State and local regulation. This distinction will have significant repercussions, thus the high level of interest in this proceeding.

The interstate commerce clause is an essential part of our Constitutional framework of government. Federal preemption protects the *bona fide* elements of our national rail network from a patchwork of local regulation that would hamper its efficient functioning. The question we must address is just how far that protection extends.

The issues raised here will require our careful analysis of the facts of this case. I hope and trust that the parties have come prepared to discuss in detail the questions that were set out in the Board's decision of March 29th, and any other questions that my fellow Board members and I will have for them today. I look forward to hearing the statements. Thank you.