

37859
SEC

SERVICE DATE – LATE RELEASE MARCH 29, 2007

SURFACE TRANSPORTATION BOARD

NOTICE

STB Finance Docket No. 34797

NEW ENGLAND TRANSRAIL, LLC, d/b/a
WILMINGTON & WOBURN TERMINAL RAILWAY
– CONSTRUCTION, ACQUISITION AND OPERATION EXEMPTION –
IN WILMINGTON AND WOBURN, MA

AGENCY: Surface Transportation Board.

ACTION: Notice of Oral Argument.

SUMMARY: The Surface Transportation Board will hold an oral argument on Thursday, April 19, 2007, at 10 a.m., at its offices in Washington, DC. The argument will explore what planned activities by the above-referenced petitioner would be part of rail transportation subject to the Board's jurisdiction. All current parties of record may participate, and New England Transrail, LLC (NET), is directed to participate.

DATES: Any current party of record in STB Finance Docket No. 34797 wishing to speak at the oral argument should file with the Board a written notice of intent to participate, and should identify a requested time allotment as soon as possible, but no later than April 6, 2007. The Board will issue a decision allocating times to the participants. Each participant should submit a written statement of its position on April 16, 2007.

ADDRESSES: All notices of intent to participate may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with directions posted at the Board's "www.stb.dot.gov" website, at the "E-FILING" link. E-filers, please remember that formal filings must be submitted as a PDF document and, if available, in the original electronic document format (such as Word, Excel or WordPerfect). Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: STB Finance Docket No. 34797, 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION, CONTACT: Joseph Dettmar, (202) 245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339.]

SUPPLEMENTARY INFORMATION: On December 5, 2005, NET, a noncarrier, filed a petition for exemption to acquire, construct, and operate a rail line and related facilities in Wilmington and Woburn, MA. NET proposes to receive by truck at the site, and provide rail

transportation for, a variety of commodities, including sand and gravel, plastic resins, liquids, municipal solid waste (MSW) and construction and demolition debris (C&D). NET explains that it would sort, grind, crush, aggregate, segregate, and/or bale all of the C&D and some of the MSW it receives before loading the materials onto rail cars or containers for rail shipment. NET asserts that all of its proposed activities and operations at the site would either constitute rail transportation, or would be integrally related to such transportation, and would therefore be subject to the Board's jurisdiction. A number of parties disagree, maintaining that NET's proposed activities involving C&D and MSW would not be part of rail transportation.

The Board will conduct an oral argument to further explore some of the issues raised by NET and the other interested parties. NET is directed to participate and other parties of record are encouraged to participate. Participants are asked to be prepared to respond to questions from the Board based on the record in this case, and, in addition, to discuss the following issues:

- Is it premature to issue a preliminary decision given the pending appeal in the United States Court of Appeals for the Third Circuit in the New York, Susquehanna and Western case¹ and the ongoing Environmental Protection Agency remedial investigation and feasibility study under the Superfund laws on the property on which NET proposes to operate the business at issue in this matter?
- What federal statutes and regulations are applicable to facilities where C&D and MSW are handled and to what extent is their administration delegated to the states?
- Could the Board address the state environmental concerns associated with NET's proposal by conditioning any Board authorization of NET's proposal on NET permitting state officials to periodically inspect the facility? If so, could the Board provide for the suspension or revocation of NET's authorization on the recommendation of state officials based on an unsatisfactory inspection, provided that NET has some due process recourse to the Board?
- If the C&D and MSW activities proposed by NET are determined not to be part of rail transportation, what impact would such a decision have on this proposal and on the transloading of other commodities by railroads?
- In determining whether a facility is a rail transloading facility, must the activities that take place there be solely transportation activities?
- In determining whether NET's proposed activities would be part of rail transportation, would it be enough that an activity facilitates transportation, or must that activity be essential to the transportation?

¹ New York, Susquehanna and Western Railway Corp. v. Jackson, New Jersey Meadowlands Commission et al., No. 05-4010, 2007 WL 576431 (D.N.J. Feb. 21, 2007), appeal docketed, No. 07-1675 (3d Cir. Mar. 16, 2007).

- May a determination be based on the type of commodity involved? To what extent, if any, does it matter that the proposed facility would handle multiple commodities?
- Should C&D and MSW be considered differently from all other commodities and, if so, on what basis?
- What is the source of the materials other than C&D and MSW that NET proposes to transport? Where are those shipments destined? Would those commodities be segregated from C&D and MSW? How would they be segregated, loaded and unloaded?
- Would NET's proposed activities at the transload facility with respect to C&D and MSW add value to the materials, facilitate the disposal of the materials in a landfill or otherwise, or serve any purpose other than facilitating rail transport? If so, should that have an impact on our determination here?
- To what extent would NET's proposed handling of C&D and MSW be directed towards ensuring that the material would meet the requirements of the landfill, or other receiver, to which it would be transported?
- Does NET anticipate earning revenue as a result of any recycling activities, e.g., NET's proposed activities of inspection, sorting and reclaiming of reusable materials from the C&D and MSW at this facility?
- What is the background of each of the principals of NET? What is the extent of their prior and current involvement in (a) the railroad industry; (b) the trucking industry; (c) the MSW and C&D industries; and (d) environmental compliance issues? How was the NET project conceived?

Date of Oral argument. The oral argument will begin at 10:00 a.m. on Thursday, April 19, 2007, in the 1st floor hearing room at the Board's headquarters at 395 E Street, S.W., in Washington, DC, and will continue until every person scheduled to speak has been heard.

Notice of Intent to Participate. Any party of record wishing to speak at the oral argument should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible, but no later than April 6, 2007.

Board Releases and Live Audio Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's website at "www.stb.dot.gov." This oral argument will be available on the Board's website by live audio streaming. To access the oral argument, click on the "Live Audio" link under "Information Center" at the left side of the home page beginning at 10:00 a.m. on April 19, 2007.

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

Dated: March 29, 2007.

Vernon A. Williams
Secretary