

SERVICE DATE – JANUARY 20, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34797 (Sub-No. 1)

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

Decided: January 20, 2023

On June 24, 2016, New England Transrail, LLC (NET), filed a petition seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct or rehabilitate 10,838 feet of track, acquire 5,727 feet of existing track, and operate as a rail carrier over the combined 16,565 feet of track located in Wilmington and Woburn, Mass. NET's proposed project would be located on land that is currently owned by Olin Corporation (Olin). NET has an option to purchase the land, as well as an adjacent parcel. (NET Pet. 4.) The Olin property includes a Superfund site, (*id.* at 12), which is the subject of ongoing negotiations between Olin and the Environmental Protection Agency (EPA), (*see, e.g.*, NET Status Report 2, Jan. 28, 2022). The Board instituted a proceeding on September 20, 2016, and the Board's Office of Environmental Analysis issued a Notice of Availability of Final Scope of Study for the Environmental Impact Statement on November 2, 2017.

On December 11, 2018, NET and the Town of Wilmington, Mass. (the Town), filed a joint motion to hold this proceeding in abeyance, which was granted on December 14, 2018. That order directed the parties to file a status report by March 14, 2019, and every 90 days thereafter.¹

In those status reports, the parties explain that they have continued discussions regarding NET's plans for property development while the environmental process between Olin and EPA has continued and that Olin and EPA are negotiating a consent agreement regarding remediation of the Olin property. (*See, e.g.*, NET Status Update 2, Oct. 27, 2022; Town Status Update 2, Nov. 2, 2022.) According to NET, the consent agreement will be sent to the Department of Justice for approval, and remediation of the Olin property will commence after the consent agreement is lodged in federal court. (NET Status Update 2, Oct. 27, 2022; *see also* Town Status Update 2, Nov. 2, 2022.)

In its October 27, 2022 status report, NET requests that the Board suspend the requirement that the parties submit status reports until after Olin and EPA negotiate the final

¹ The schedule for filing status reports was modified in decisions served on April 14, 2019, and October 24, 2019, but status reports continued to be due every 90 days.

consent agreement. In its November 2, 2022 status report, the Town states that it supports NET's request. Given the pace of recent developments in this proceeding, suspension of status reports is appropriate. The parties should file status reports within 60 days after the final consent agreement between Olin and EPA is lodged in federal court or within 60 days of when NET and the Town learn that Olin and EPA are unable to reach a consent agreement. In those status reports, the parties may suggest, according to their expectations for significant developments in the proceeding, a schedule for any future status reports the Board may order. If the parties wish, they may consult and file a joint status report.

It is ordered:

1. The reporting requirement imposed in the December 14, 2018 decision as modified in decisions served on April 14, 2019, and October 24, 2019, in this proceeding is suspended. NET and the Town should file a status report or reports within 60 days after a consent agreement between Olin and EPA is lodged in federal court or within 60 days of when NET and the Town learn that Olin and EPA are unable to reach a consent agreement.

2. This decision is effective on the date of service.

By the Board, Mai T. Dinh, Director, Office of Proceedings.