

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: November 2, 2018

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. 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.

By petition filed July 13, 2018, NET requested that the Board substitute Wilmington Woburn Intermodal, LLC (WWI), for NET as the petitioner seeking the construction, acquisition, and operation exemption here. In support of the request, NET stated that it has obtained new financing from a real estate development company, GFI Partners (GFI), and that NET and GFI have established a new entity, WWI, that would “own and operate the facilities that were to be constructed and acquired by NET.” (NET Pet. 2, July 13, 2018.) WWI would be jointly owned by NET and Eames Street Member, LLC (Eames), an entity established by GFI, with NET and Eames each owning 50% of WWI. (*Id.*) The Town of Wilmington objected to the petition in a July 27, 2018 reply. On October 11, 2018, the Board denied NET’s petition, without prejudice, because WWI did not consent to or join NET’s petition. New Eng. Transrail, LLC—Constr., Acquis. & Operation Exemption—in Wilmington & Woburn, Mass., FD 34797 (Sub-No. 1) (STB served Oct. 11, 2018).

Later that same day, the Board received a letter from Robert W. Jones III and Steven Goodman, who both identify themselves as managers of WWI. (Jones & Goodman Letter 1.) Though signed by both Jones and Goodman in their capacities as managers of WWI, the letter states “on behalf of GFI Partners” that “GFI as the entity that established Eames acting on behalf of WWI consents to and joins in the petition by NET.” (*Id.*) The letter requests “a new decision authorizing this substitution.” (*Id.*)

First, there is no longer a petition to substitute pending before the Board. The Board has already denied NET’s previous request to substitute WWI, without prejudice to the refiling of a new petition that clearly demonstrates that WWI consents to such a request. In addition, if the

letter were construed to be either a new petition to substitute or a petition for reconsideration, the request still could not be granted because it is unclear whether Jones and Goodman, who are identified only as “managers” of WWI, are authorized to represent WWI. See 49 C.F.R. § 1104.4(b). And even if they are, their letter purports to speak for GFI, the parent of Eames (a 50% owner of WWI), when it is not apparent that Jones and Goodman have authority to do so. Accordingly, the October 11, 2018 letter does not remedy the deficiency that resulted in rejection of NET’s petition.

If WWI consents to the proposed substitution, WWI and NET should jointly file a new petition to substitute, clearly indicating that WWI itself consents to the substitution and submitted by a representative with the clear authority to speak for WWI.<sup>1</sup> It should be noted that petitions to substitute typically are signed by attorneys for both the original party and the substituted party.<sup>2</sup> A similar course would be appropriate here.

It is ordered:

1. Jones’s and Goodman’s October 11, 2018 request is denied.
2. This decision is effective on the date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

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<sup>1</sup> For example, an attorney’s signature on a petition certifies that the attorney is authorized to file the petition. See 49 C.F.R. § 1104.4(a); see also 49 C.F.R. § 1104.4(b).

<sup>2</sup> See, e.g., E.I. du Pont de Nemours and Company Mot. 2, July 14, 2015, E.I. DuPont de Nemours & Co. v. Norfolk S. Ry., NOR 42125; Tongue River Railroad Company Pet. 3, May 1, 2003, Tongue River R.R.—Constr. & Operation—W. Alignment, FD 30186 (Sub-No. 3); Maine Central Railroad Company Request 3, Jan. 17, 2003, Me. Cent. R.R.—Adverse Discontinuance—Line Between Whitefield, N.H. & St. Johnsbury, Vt., AB 848; Montreal, Maine & Atlantic Railway LLC Request 3, Dec. 12, 2002, Montreal, Me., & Atl. Ry.—Acquis. & Operation Exemption—Bangor & Aroostook R.R., FD 34110.