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June 22, 2016

VIA ELECTRONIC FILING

Surface Transportation Board
Ms. Victoria Rutson, Chief
Section of Environmental Analysis
Office of Proceedings
1925 K Street, N.W.
Washington, DC 20423

**RE: STB Finance Docket # 34797 – Sub Docket 1
New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal
Railway – Construction, Acquisition and Operation Exemption**

***Comment of Town of Wilmington on Waiver Request of
New England Transrail, LLC***

Dear Ms. Rutson:

On behalf of the Town of Wilmington, I write concerning the June 14, 2016 letter request of New England Transrail, LLC (“NET”) that the Board waive the six-month pre-filing notice requirement of 49 C.F.R. §1105.10(a). That request relates to NET’s forthcoming petition for approval to construct and operate a rail-based transloading facility on an active Superfund site in Wilmington.

In support of its request, NET claims that the “current updated petition relates to refinements to the lines and transloading facilities that were first described in a petition filed over ten years ago and that have been the subject of a partial environmental review and other proceedings since that time.” NET weakly suggests that “the project is well known to interested persons.”

A waiver of the notice requirement would be ill-advised in this case, given the checkered history of NET’s filings, the recent major change in project concept from solid waste to commodity transloading, and the project’s unique location atop an unresolved Superfund site of considerable public significance. As the Board is aware, NET first incorrectly filed a notice of exemption (*see* Docket FD 34391), then substituted a petition for exemption, withheld relevant

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environmental and technical information, and submitted self-contradictory and incomplete project descriptions. The forthcoming petition is not an "update," as NET suggests, but rather a new submittal with new project information. The "partial environmental review" NET now cites is immaterial because of NET's entirely new project concept, the evolving railroad regulatory environment, and the development of additional technical data concerning the Superfund site since that review was begun.

The nature, timing and location of the project make it publicly significant and, while Wilmington and certain other interested parties followed those developments and maintain party status, full public notice should be required to allow others to educate themselves. This Board already has declared that the complexity and substantial public interest in the proposed redevelopment of this site mandate preparation of an environmental impact statement, thus triggering the pre-filing notice requirement. In sum, however "routine" waiver requests may be in general, there is nothing routine about the history and circumstances of NET's filings and forthcoming petition.

Wilmington understands the Board will address all substantive issues on the basis of a new petition. Nonetheless, with respect to notice requirements, past performance is relevant – NET raises it – and, contrary to NET's assertions, that history does not justify a waiver.

Wilmington respectfully requests this Board to deny NET's request to waive the six-month pre-filing notice requirement of 49 C.F.R. §1105.10(a).

Very truly yours,



Daniel R. Deutsch

DRD:vea

cc: NET's representative:
Patrick J. Berry, Esq.
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1299 Pennsylvania Avenue, N.W.
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Service List

CERTIFICATE OF SERVICE

I, Daniel R. Deutsch, hereby certify that on June 22, 2016, I served the foregoing ***“Comments of Town of Wilmington on Waiver Request of New England Transrail, LLC dated June 14, 2016”*** by causing a copy thereof to be delivered via first class mail, postage prepaid, to:

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/s/ Daniel R. Deutsch
Daniel R. Deutsch

Dated: June 22, 2016