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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

MITT ROMNEY
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KERRY HEALEY
Lieutenant Governor

STEPHEN R. PRITCHARD
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

December 15, 2005

By E-Filing and U.S. MAIL

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

**ENTERED
Office of Proceedings**

DEC 16 2005

**Part of
Public Record**

Re: Finance Docket No. 34797
*New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway – Petition
for an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and Operate as a Rail
Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts*

Dear Secretary Williams:

On December 5, 2005, New England Transrail, LLC (NET) filed a Petition for an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and Operate as a Rail Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts. The Massachusetts Department of Environmental Protection ("MassDEP") has a significant interest in the critical issues presented by NET's filing.

For the reasons set forth in the attached Motion, MassDEP requests that the Surface Transportation Board issue a Scheduling Order extending the period for response to NET's Petition to January 27, 2006.

Sincerely,

/s/

Susan P. Ruch, Esq.
MassDEP -NERO
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Formal Filing

Docket #:

☒ FD

-34797

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Filed For: *	Massachusetts Department of Environmental Protection
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Confidential Attachments:

Public Attachments:  - Public_PDF Extension cover letter 121505 efile.pdf

 - Public_PDF Extension request 121505 efile.pdf

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34797

**MOTION OF THE
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
("MassDEP")
TO EXTEND TIME TO RESPOND TO
NEW ENGLAND TRANSRAIL, LLC'S PETITION FOR EXEMPTION
FROM 49 U.S.C. § 10901**

Counsel for Massachusetts Department of Environmental Protection:

Susan P. Ruch, Esq.
MassDEP -Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887

Dated: December 15, 2005

**ENTERED
Office of Proceedings
DEC 16 2005
Part of
Public Record**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34797

**MOTION OF THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL
PROTECTION ("MassDEP") TO EXTEND TIME TO RESPOND TO
NEW ENGLAND TRANSRAIL, LLC'S PETITION FOR EXEMPTION
FROM 49 U.S.C. § 10901**

Pursuant to 49 CFR § 1104.7, the Massachusetts Department of Environmental Protection ("MassDEP") requests, on behalf of itself and the Office of the Attorney General of Massachusetts, that the Surface Transportation Board ("STB" or the "Board") enter a Scheduling Order to extend to January 27, 2006, the deadline for filing responses to New England Transrail, LLC's Petition for an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and Operate as a Rail Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts, which was filed on December 5, 2005. The Board's rules provide that, "[a]ny time period ... may be extended by the Board in its discretion, upon request and for good cause." 49 CFR § 1104.7(b).

In support hereof, MassDEP states that this 30-day extension is requested for good cause and is not interposed for purposes of delay. See 49 CFR § 1104.4(a)(4) and 1104.7. MassDEP needs this extension to provide adequate time to review and respond to NET's Petition. In order to respond, a team represented by several Bureaus and Programs within MassDEP must review the Petition as well as the extensive supporting documentation, and consult with one another and management to formulate MassDEP's response. At *any* time of year, it would be difficult for MassDEP to undertake such review and finalize its response within a 20-day timeframe. In this case, there is the additional challenge of coordinating such review and producing a useful and

coherent response for the Board's consideration, during the end-of-year holiday season. As one could anticipate, many of the Commonwealth's staff and management had already scheduled family and vacation time over the next month, making coordination and consultation incredibly challenging if not impossible.

As further cause for this extension request, MassDEP notes that the issues raised in this case are of interest to many other persons and entities, both within Massachusetts and throughout the country. Accordingly, MassDEP believes that the Board would benefit from allowing adequate time for such other persons and entities to review NET's petition and to file responses in this docket.

MassDEP notes that approximately seven months have passed since the dismissal of NET's prior filing, which issued in May 2005. MassDEP acknowledges that NET took time to meet with us this fall, which no doubt resulted in some delay in NET's filing its new Petition. Furthermore, MassDEP has no doubt that NET intended to file its Petition sooner, but apparently was delayed such that the filing unfortunately overlaps with the holiday season.

MassDEP approached NET earlier this week, to request NET's assent to this 30-day extension. NET did not agree to MassDEP's request, but did offer to agree to a 10-day extension. MassDEP appreciates NET's response, but unfortunately, the 10-day offer is inadequate to accommodate the MassDEP's scheduling conflicts. MassDEP therefore is forced to bring this scheduling issue to the Board for decision. MassDEP believes that its requested extension to January 27, 2006 is reasonable and warranted. While MassDEP understands that NET would like to keep its proposed project moving forward, MassDEP does not believe that the extension of time would unduly delay or prejudice NET. Rather, MassDEP believes it would be a benefit to all to afford interested persons adequate time to review and respond to the Petition.

WHEREFORE, MassDEP respectfully requests that the Board enter a Scheduling Order extending the date to respond to NET's Petition to January 27, 2006.

Dated: Wilmington, Massachusetts
December 15, 2005

Respectfully submitted,
MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By its Attorneys,

/s/

SUSAN P. RUCH, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2005, I served the foregoing Motion of Massachusetts Department of Environmental Protection to Extend Time to Respond to New England Transrail's Petition for Exemption from 49 U.S.C. § 10901 by causing a copy to be delivered by first class mail, postage prepaid, to:

Berry, J. Patrick
Baker Botts Llp
1299 Pennsylvania Avenue, Nw
Washington, DC 20004

Miceli, James R
Commonwealth Of Massachusetts
Room 167, State House
Boston, MA 02133-1054

Cane, Patrick John
Mercer County Improvement Authority
640 S Broad St
Trenton, NJ 08650

Siu Tip Lam, Esq.
Office of the Attorney General
One Ashburton Place
Boston, MA 02108-1598

I have also today e-mailed a copy and notice of this filing to the foregoing.

/s/
Susan P. Ruch

Other Submissions

In order to process your filing, please fill out the following information. If you do not know the docket number, please leave it blank and we will fill it out for you.

Please fill out the following information to help us complete your filing :

Docket #:	FD	-34797	- -
Subject: *	Motion for Extension of Time		
First Name: *	Susan		
Middle Name:	P.		
Last Name: *	Ruch		
Address: *	MassDEP --NERO 205B Lowell Street		
City: *	Wilmington		
State: *	MA		
Zip Code: *	01887-		
Email Address: *	susan.ruch@state.ma.us		
Group/Affiliation:	Massachusetts Department of Environmental Protection		
Message:	My apologies ... I filed this earlier today, but believe I did so under "formal filing" which may not have been the correct characterization. Since I do not see my filing yet listed on the STB web site, I am resubmitting. Sorry for any inconvenience this may have caused.		