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July 13, 2006

HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



ENTERED
Office of Proceedings

JUL 13 2006

Re: STB FD Docket No. 34797, *New England Transrail, LLC*
d/b/a Wilmington & Woburn Terminal Railway-Construction
Acquisition and Operation Exemption-in Wilmington and
Woburn, MA Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and twenty copies of the Comments The New York, Susquehanna and Western Railway Corporation ("NYSW"). A diskette containing an electronic version of the Comments is also enclosed.

Please acknowledge receipt of the enclosed Comments for filing by date-stamping the enclosed extra copies and returning them via our messenger. If you have any questions, please contact the undersigned counsel.

Sincerely,

Terence M. Hynes

Counsel for The New York,
Susquehanna and Western
Railway Corporation

TMH:aat
Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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**

**COMMENTS OF THE NEW YORK, SUSQUEHANNA, AND
WESTERN RAILWAY CORPORATION**

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Attorneys for The New York, Susquehanna and
Western Railway Corporation

Dated: July 13, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 34797

**NEW ENGLAND TRANSRAIL, LLC, d/b/a
WILMINGTON & WOBURN TERMINAL RAILWAY
-CONSTRUCTION, ACQUISITION AND OPERATION EXEMPTION-
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**COMMENTS OF NEW YORK, SUSQUEHANNA, AND
WESTERN RAILWAY CORPORATION**

Pursuant to the Board's Decision served in the above-captioned proceeding on June 12, 2006, The New York, Susquehanna, and Western Railway Corporation ("NYS&W") submits these initial comments. NYS&W takes no position with respect to the issue whether the petition filed by New England Transrail, LLC ("NET") for authority to acquire in part, construct in part and to operate certain rail facilities in Wilmington and Woburn, Massachusetts should be granted. Rather, NYS&W submits these brief initial comments to address certain statements made by the New Jersey Department of Environmental Protection and New Jersey Meadowlands Commission (referred to collectively hereinafter as "NJDEP") in Comments filed by those parties on January 27, 2006, relating to NJDEP's regulation of C&D truck-rail transfer facilities in New Jersey and the nature of C&D transloading operations conducted by NYS&W in the State ("January 27 Comments"). As NYS&W's comments demonstrate, NJDEP's statements are both factually inaccurate and legally irrelevant.

The January 27 Comments discuss certain "Intermodal Regulations" promulgated by NJDEP in November 2004. According to NJDEP, the Intermodal Regulations were "designed to relieve rail carriers of regulatory burdens that are preempted by Section 10501(b)" and address

“the storage, processing and handling of solid waste” (January 27 Comments at 4, n.3).

However, those regulations also impose stringent requirements on the design, construction and operation of railroad transload facilities that handle C&D material. Far from “reliev[ing] rail carriers of regulatory burdens,” the Intermodal Regulations constitute a burdensome attempt by NJDEP to regulate railroad operations conducted in the State. NJDEP’s January 27 Comments also fail to mention that enforcement of the Intermodal Regulations has been temporarily enjoined by the United States District Court for the District of New Jersey in *New York, Susquehanna and Western Ry. Corp. v. Bradley M. Campbell, et al.* (Civil Action No. 05-4010 (D.N.J.)).

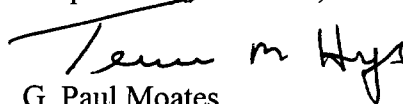
Further, NJDEP’s January 27 Comments portray NYS&W’s New Jersey C&D transloading operations in terms that are patently inaccurate and highly misleading. NJDEP witness Castner describes, and provides photographs that purport to represent, the conditions at three C&D transload facilities located on NYS&W’s rail lines at 16th Street, Secaucus Road and 43rd Street in North Bergen, NJ. However, each of those open-air transload facilities was permanently closed prior to the end of 2005. NYS&W currently transloads C&D materials only at enclosed facilities that substantially comply with the requirements of the Intermodal Regulations, a situation of which NJDEP was well aware at the time it filed its January 27 Comments in this proceeding.

In any event, NJDEP’s inaccurate representations concerning the purported state of operations at NYS&W’s transload facilities in New Jersey are not relevant to the issues in this proceeding. As the Board has frequently stated, whether particular activities constitute “rail transportation” subject to the STB’s exclusive jurisdiction (and therefore are not subject to state and local regulation) must be determined on the basis of the particular facts in each case:

Of course, whether a particular Federal environmental statute, local land use restriction, or other local regulation is being applied so as to not unduly restrict the railroad from conducting its operations, or unreasonably burden interstate commerce, is a fact-bound question. Accordingly, individual situations need to be reviewed individually to determine the impact of the contemplated action on interstate commerce and whether the statute or regulation is being applied in a discriminatory manner, or being used as a pretext for frustrating or preventing a particular activity, in which case the application of the statute or regulation would be preempted.

STB Finance Docket No. 33971, *Joint Pet. for Decl. Order--Boston & Maine Corp. & Town of Ayer, MA* (served April 30, 2001) at 9-10. *See also* STB Finance Docket No. 33466, *Borough of Riverdale--Pet. for Decl. Order--The New York Susquehanna and Western Ry. Corp.* (served Feb. 23, 2001) at 2 (“[I]ndividual situations need to be reviewed individually to determine the impact of the contemplated action on interstate commerce.”) Accordingly, in determining whether to grant NET’s petition in this proceeding, the Board should consider the particular facts relating to NET’s proposed operations, and should not make sweeping findings of general applicability that might have the effect of prejudging future cases involving the preemptive scope of Section 10501(b).

Respectfully submitted,



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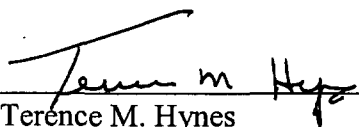
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Attorneys for The New York, Susquehanna and
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Dated: July 13, 2006

CERTIFICATE OF SERVICE

I hereby certify this 13th day of July 2006 that I have served all parties of record in this proceeding by first class mail, postage prepaid.


Terence M. Hynes