

BAKER BOTTS LLP

219047

THE SMITHSONIAN INSTITUTION
1225 MICHIGAN AVE. N.W.
WASHINGTON, D.C. 20004
202-638-1200

TEL: 202-638-1200
FAX: 202-638-1200
www.bakerbotts.com

202-638-1200
202-638-1200
202-638-1200
202-638-1200
202-638-1200
202-638-1200
WASHINGTON

April 9, 2007

Jeffrey Bauer
TEL: +1 (202) 639-7721
FAX: +1 (202) 585-4076
jeffrey.bauer@bakerbotts.com

Via Hand Delivery

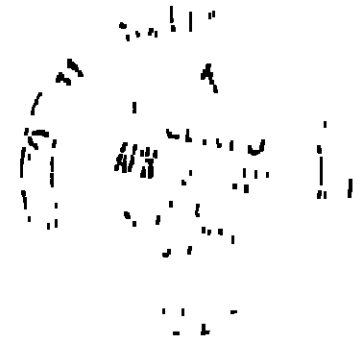
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 L Street, SW
Washington, D.C. 20423

RE: New England Transrail, LLC
FD-34797

ENTERED
Office of Proceedings

APR 9 - 2007

Part of
Public Record

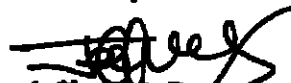


Dear Secretary Williams:

Enclosed for filing in Finance Docket Number 34797 are an original and ten (10) copies each of NEI's Response to NSWMA's Notice of Intent to Participate and NEI's Response to NSWMA's Motion to Strike. Please time-stamp the extra copies and return it to our messenger.

Thank you in advance for your consideration.

Sincerely,


Jeffrey M. Bauer

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

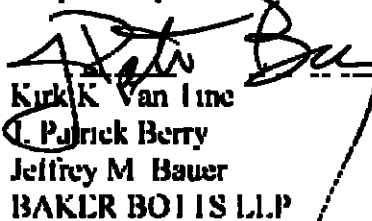
**RESPONSE TO NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION'S
NOTICE OF INTENT TO PARTICIPATE**

On March 29, 2007, the Board issued a Notice of Oral Argument in the above-referenced proceeding. On April 6, 2007, counsel for the National Solid Wastes Management Association (NSWMA) filed a Notice of Intent to Participate on behalf of the "Coalition Parties," consisting of NSWMA, the Solid Waste Management Association of North America, the Massachusetts Municipal Association, the Construction Materials Recycling Association, Integrated Wastes Services Association, and the New Bedford Waste Services, LLC. NSWMA requested a total time of 95 minutes for six different speakers arranged in two separate panels.

NSWMA's request is excessive. The Board's rule governing oral argument before the Board, 49 C.F.R. § 1116.2, states that "*one counsel only* will usually be heard for each of the opposing interests" (emphasis added). The "Coalition Parties" collectively represent an opposing interest. Beveridge & Diamond, PC ("B&D") has represented the "Coalition Parties" throughout this proceeding and has made every filing in this proceeding (except for the initial request for an extension of time) on behalf of the entire Coalition. Therefore, *one counsel only* should be permitted to represent the "Coalition Parties" in the oral argument.

Accordingly, NEJ respectfully requests that NSWMA's request to present six speakers in two panels, for a total of 95 minutes be denied, and that the argument for the "Coalition Parties" be presented by one speaker and be limited to one hour

Respectfully submitted,


Kirk K. Van Line
C. Patrick Berry
Jeffrey M. Bauer
BAKER BOITIS LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 639-7700

Attorneys for New England Transrail, LLC
Date April 9, 2007

CERTIFICATE OF SERVICE

I do hereby certify that on this April 9, 2007, I served a copy of the foregoing by causing a copy to be delivered by first class mail, postage prepaid, to each person listed on the SIB Service list for Finance Docket No 34797



Jeffrey M. Hauer

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

- - - - -
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**

OPPOSITION TO MOTION TO STRIKE

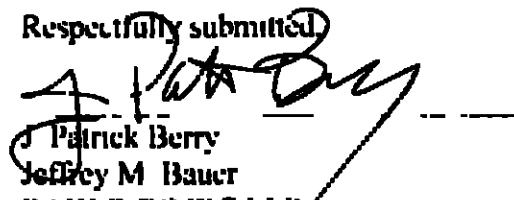
On March 20, 2007, the National Solid Wastes Management Association ("NSWMA") filed a Motion to Strike in the above-referenced proceeding. In its motion, NSWMA asks the Board to strike the Supplemental Filing of New York, Susquehanna and Western Railway Corporation ("NYS&W"), the joint Supplemental Comments of the New Jersey Department of Environmental Protection and the New Jersey Meadowlands Commission ("NJDEP"), the Response to Supplemental Comments filed by NYS&W, and the Comments of New England Transrail, LLC ("NET") There is no basis to exclude any of the filings that NSWMA wishes to preclude the Board from considering, and NSWMA's motion should be denied.

First, the filings by NYS&W and NJDEP both parties to this proceeding address the impact of a recent decision of the U.S. District Court for the District of New Jersey, NYS&W v. Jackson, No. 05-4010, 2007 WL 57643 (February 20, 2007) on the issues presently under consideration by the Board. Because the holding in Jackson contradicts NSWMA's position, NSWMA argues that it is irrelevant. To the contrary, however, Jackson provides additional judicial support for a finding that NET's proposed operations constitute "transportation by rail carrier" subject to the exclusive jurisdiction of the Board.

Second, for the same reasons, the Board should not strike NLET's filing, which also points out the relevance of Jackson. On March 29, 2007, the Board issued a Notice of Oral Argument, directing NLET to appear before the Board to address thirteen specific issues in this proceeding. The first issue specifically identified in the Board's Notice is the potential impact of Jackson. There is no legitimate reason to strike NLET's filing.

Accordingly, NLET respectfully requests the Board to deny NSWMA's Motion to Strike.

Respectfully submitted,



Patrick Berry
Jeffrey M. Bauer
BAKER BOTTS LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 639-7700

Attorneys for New England Transrail, LLC
Date: April 9, 2007

CERTIFICATE OF SERVICE

I do hereby certify that on this April 9, 2007, I served a copy of the foregoing by causing a copy to be delivered by first class mail, postage prepaid, to each person listed on the SIB Service list for Finance Docket No. 34797

A handwritten signature in black ink, appearing to read 'Jeffrey M. Bauer', enclosed within a large, loopy oval shape.

Jeffrey M. Bauer