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April 10, 2007

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423-0001

Re: *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,
Finance Docket No. 34797*

Dear Secretary Williams:

Enclosed for electronic filing is the Opposition to NET's Request to Limit Oral
Argument of National Solid Wastes Management Association, Solid Waste Association of North
America, Massachusetts Municipal Association, Construction Materials Recycling Association,
Integrated Wastes Services Association, and New Bedford Waste Services, LLC.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen M. Richmond".

Stephen M. Richmond

SMR:mjg
Attachment

cc: Service List for STB Finance Docket No. 34797 (by mail with attachment)

20998v1 Boston 012346

Beveridge & Diamond, P.C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34797

**NEW ENGLAND TRANSRAIL, LLC, D/B/A WILMINGTON AND 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**

**OPPOSITION TO NET'S REQUEST TO LIMIT ORAL ARGUMENT OF
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION,
SOLID WASTE ASSOCIATION OF NORTH AMERICA,
MASSACHUSETTS MUNICIPAL ASSOCIATION,
CONSTRUCTION MATERIALS RECYCLING ASSOCIATION,
INTEGRATED WASTES SERVICES ASSOCIATION, AND
NEW BEDFORD WASTE SERVICES, LLC**

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Attorneys for the
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April 10, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34797

**NEW ENGLAND TRANSRAIL, LLC, D/B/A WILMINGTON AND WOBURN
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**OPPOSITION TO NET’S REQUEST TO LIMIT ORAL ARGUMENT OF
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INTEGRATED WASTES SERVICES ASSOCIATION, AND
NEW BEDFORD WASTE SERVICES, LLC**

In an effort to stifle debate on the critical issue of jurisdiction, New England Transrail, LLC (“NET”) requested on April 9, 2007 that the Surface Transportation Board (the “Board”) limit six parties to this proceeding to a single speaker for one hour at the oral argument before the Board scheduled for April 19, 2007. NET’s latest procedural maneuver follows what appears to be emerging as a pattern of conduct designed to limit input on NET filings. In addition to requesting a substantial reduction in the oral presentations, NET has also improperly labeled its pleading as a “reply” rather than as a motion. This appears to be an effort to prevent a response.¹

In a collective Notice of Intent, six parties to the proceedings (the so-called “Coalition Parties”) requested time to participate in the oral argument, with no individual party requesting

¹ It is ironic that NET attempts to silence these parties both at the oral argument and in responding to its filing. By terming its filing a “reply,” NET apparently seeks to invoke the “no reply to a reply” rule and avoid a response by NSWMA and the other parties it seeks to silence at the oral argument. The Board should treat NET’s filing as a motion rather than a reply. NET’s filing requests independent action by the Board and does not simply respond to or otherwise provide comment on a filing. As such, this response by NSWMA is not a prohibited reply to a reply but an opposition to NET’s motion.

more than 20 minutes. *See* Notice of Intent to Participate filed on April 6, 2007. In the interests of efficiency, the six parties requested the proposed presentation be organized into two panels, each with three speakers on particular topics, each panel lasting approximately 45 minutes. NET, which requested to speak both first and last at the hearing and for one full hour, finds the request of the Coalition Parties excessive.² It clearly is not.

Each of the parties seeking to speak at the oral argument is an independent party to the proceeding with the same rights to participate in the oral argument as NET. The fact that each party is represented by common counsel and that they have filed joint briefs has no bearing on this status. Each of these parties represents a different sector of the waste management industry or governmental interests, from solid, hazardous, and medical waste collection companies to municipalities that handle solid wastes and recycling, and from waste-to-energy companies to construction and demolition debris recycling entities:

- The National Solid Wastes Management Association (“NSWMA”) is a trade association representing companies in North America that provide solid, hazardous, and medical waste collection, recycling, and disposal services with members in all 50 states and the District of Columbia.
- The Solid Waste Association of North America (“SWANA”) is a national professional association representing individuals from municipalities and private sector businesses that provide solid waste and recyclables collection, processing, transfer, and disposal.
- The Massachusetts Municipal Association (“MMA”) is a non-profit, non-partisan association whose members include 347 of the 351 cities and towns in Massachusetts. MMA’s affiliated organizations include associations of mayors, selectmen, municipal managers, and human resource professionals.

² Although finding themselves defending their right to participate, the Coalition Parties will not resort to NET’s procedural tactics by challenging NET’s position that it should present oral argument two separate times, in the two prized positions (first and last), and for one full hour.

- The Construction Materials Recycling Association (“CMRA”) is a non-profit association that promotes the recycling and reuse of construction and demolition materials throughout North America.
- The Integrated Waste Services Association (“IWSA”) is a national trade group representing 67 of the 89 waste-to-energy facilities in 29 states around the country. IWSA members include both municipalities and private companies.
- New Bedford Waste Services, LLC is the operator of a permitted solid waste management facility in New Bedford, Massachusetts, and is a processor of construction and demolition debris.³

These parties cannot be painted with NET’s broad brush, and hearing from the diverse viewpoints they bring is, presumably, exactly the purpose of the oral argument. NET’s attempt to lump all these parties as one “opposing interest” pursuant to 49 CFR § 1116.2 is patently absurd and easily dismissed. NET’s effort to compact everyone with a different viewpoint from its own into a single presentation by one party for one hour reveals its lack of confidence in the merits of its position and its genuine concern about confronting a range of viewpoints.

The Board should not permit NET’s procedural maneuverings to undermine the key goal of the oral argument – “to explore what planned activities by [NET] would be part of rail transportation subject to the Board’s jurisdiction.” *See* Notice of Oral Argument dated March 29, 2007. Comparison of NET’s “planned activities” to the activities of the members of NSWMA, IWSA, CMRA, SWANA, MMA, and New Bedford Waste Services, LLC is at the core of that purpose.

³ A more complete description of each of the parties is included in the Reply of National Solid Wastes Management Association, et al. to New England Transrail, LLC’s Petition For Exemption from 49 U.S.C. § 10901 dated January 27, 2006.

CONCLUSION

For all of the foregoing reasons, the Coalition Parties respectfully request that the Board deny NET's request to limit the testimony of the Coalition Parties to a single representative for one hour. The proposed schedule for six parties to participate in two panels of approximately 45 minutes each is appropriate and reasonable.

DATED:
Wellesley, Massachusetts
April 10, 2007

Respectfully submitted,

NATIONAL SOLID WASTES MANAGEMENT
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and
SOLID WASTE ASSOCIATION OF NORTH AMERICA
and
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and
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By their attorneys,

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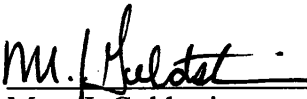
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2007, I served the foregoing Opposition by causing a copy to be delivered by first class mail, postage prepaid, to the parties listed below.


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