

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34391

NEW ENGLAND TRANSRAIL, LLC, d/b/a
WILMINGTON AND WOBURN TERMINAL RAILROAD CO.
— CONSTRUCTION, ACQUISITION, AND OPERATION EXEMPTION —
IN WILMINGTON AND WOBURN, MA

Decided: March 2, 2004

By petition filed on December 3, 2004, New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railroad Co. (W&WTR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct 2,700 feet of new line, to acquire 1,300 feet of existing track, and to operate the entire approximately 4,000 feet of track located on and adjacent to a parcel of land owned by Olin Corp. (Olin).¹ The Olin-owned parcel is located in Wilmington, MA, but a portion of the line to be constructed and operated by W&WTR also would be located in Woburn, MA. W&WTR requests that the Board conditionally grant the exemption, subject to the agency's later consideration of the environmental impacts. The Board finds that, from a transportation perspective, the proposed construction meets the standards for the grant of an exemption; however, the Board will issue a final decision as to whether the exemption should be allowed to go into effect after completion of the environmental review process.

BACKGROUND

W&WTR has entered into an option agreement to purchase a parcel of industrial land in Wilmington, known as 51 Eames Street, which is currently owned by Olin. The property consists of approximately 53 acres of land, upon which Olin had in the past operated a chemical plant. According to petitioner, Olin's plant included certain industrial tracks (about 1,300 feet of which are still in place) that supported Olin's operations. W&WTR states that ongoing

¹ Petitioner initially filed a notice of exemption to acquire and operate a portion of the subject trackage in STB Finance Docket No. 34365, New England Transrail, LLC — Acquisition and Operation Exemption — Lines of Boston and Maine Railroad Company. Citing errors in its notice of exemption, petitioner subsequently requested and obtained permission, in a decision served on August 5, 2003, to withdraw it.

environmental remediation activity on the subject parcel would remain Olin's obligation, and that petitioner would be bound by contract not to impede that work in any way.

W&WTR proposes to acquire the subject property, restore to operating condition the 1,300 feet of extant trackage located on the property, construct approximately 2,700 feet of new trackage, and, once construction is completed, provide rail common carrier service over both the newly-built and rebuilt trackage. According to W&WTR, the trackage to be restored and constructed (the line) would be approximately 4,000 feet in total length. As part of the proposed project, W&WTR plans to construct on-site improvements to facilitate the transload of various commodities between truck trailers and rail cars.

W&WTR states that the line would connect to a Boston and Maine Corporation (B&M) line that it describes as the Wilmington-Woburn-West Medford Branch at approximately milepost 14. The line would extend from a connection with the branch in an easterly and southeasterly direction across the 51 Eames Street property. W&WTR also proposes to connect the line with a rail line owned by the Massachusetts Bay Transportation Authority (MBTA), which extends between Boston and Concord, MA. (Freight rail service over MBTA's Boston-Concord line is provided by B&M.)

W&WTR anticipates that, upon commencement of operations over the line, it would handle a variety of commodities, including aggregates, sand, gravel, stone, construction debris, non-hazardous solid wastes, liquids and dry chemicals, lumber, plastics, steel, scrap steel, recycled paper and plastic, newsprint, paper products, clay, and brick. While W&WTR would provide transload, consolidation, and transportation services, it would not take title to any of the products handled over the line. Petitioner anticipates that initially it would handle about 20 cars daily over the line. W&WTR asserts that, by constructing the subject trackage and providing the proposed transload services, it would afford to shippers new and efficient transportation options, including rail transportation currently unavailable to certain area shippers because of an alleged lack of local system capacity in the region or because the shippers in question lack rail sidings.

W&WTR requests that, pursuant to agency practice, the Board issue a preliminary decision addressing the transportation merits of the petition prior to completion of the environmental review. The Board would issue a final decision once the environmental review process is completed.

DISCUSSION AND CONCLUSIONS

The construction, acquisition, and operation of railroad lines require prior Board approval. The Board's authorization may take the form of a "certificate of public convenience and necessity" issued under 49 U.S.C. 10901, or, as W&WTR has requested here, an exemption under 49 U.S.C. 10502 from the formal application procedures of section 10901. Under section 10502, the Board must exempt a transaction or service from all or part of a rail provision of the

Interstate Commerce Act (including the formal application procedures of section 10901) when it finds that: (1) application of that statutory provision is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) application of that statutory provision is not necessary to protect shippers from the abuse of market power.

Based on the information provided, the Board concludes that, from a transportation perspective, detailed scrutiny of the proposed construction, acquisition, and operation under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. The requested exemption would promote that policy by providing a rail service option to shippers, ensuring the development of a sound rail transportation system with effective competition among rail carriers and with other modes, fostering sound economic conditions in transportation, and reducing regulatory barriers to entry [49 U.S.C. 10101(4), (5), and (7)]. Nothing in the current record indicates that other aspects of the rail transportation policy would be adversely affected.

There is no need here to protect shippers from the abuse of market power. Rather, the proposed transaction would enhance competition by providing shippers in the greater Boston area with a new intermodal transportation option. Given the Board's finding regarding the probable effect of the transaction on market power, the Board need not determine whether the transaction is limited in scope.

W&WTR has consulted with the Board's Section of Environmental Analysis (SEA) regarding the environmental review process. W&WTR has requested and received a waiver of the 6-month pre-filing notice normally required by 49 CFR 1105.10(a) for a proposed line construction project. SEA is currently preparing an Environmental Assessment (EA) in this case. See 49 CFR 1105.6(b)(1). After comments on the EA are received, SEA will prepare final environmental documentation. The Board will then issue a further decision addressing the environmental aspects of the proposal and deciding whether to allow the exemption to become effective. See Mid States Coalition for Progress v. STB, 345 F.3d 520 (8th Cir. 2003); Missouri Mining, Inc. v. ICC, 33 F.3d 980 (8th Cir. 1994). No construction may begin unless and until the Board decides to allow this exemption to become effective.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board conditionally exempts W&WTR's construction, acquisition, and operation of the above-described line from the prior approval requirements of 49 U.S.C. 10901, subject to the Board's further consideration of the anticipated environmental impacts of the proposal.

2. On completion of the environmental review, the Board will issue a further decision addressing environmental matters and determining whether to allow the exemption to become effective.

3. Notice will be published in the Federal Register on March 5, 2004.

4. Petitions to reopen must be filed by March 25, 2004.

5. This decision is effective April 4, 2004.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary