



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

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MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

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ROBERT W

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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

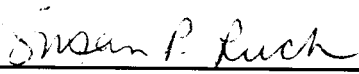
Re: Finance Docket No. 34797
*New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway – Petition
for an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and Operate as a Rail
Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts*

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,



Susan P. Ruch, Esq.
MassDEP –NERO
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Wilmington, MA 01887
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**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

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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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,

A handwritten signature in cursive script, reading "Susan P. Ruch", is written over a horizontal line.

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:

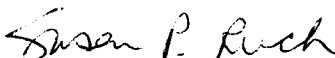
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I have also today e-mailed a copy and notice of this filing to the foregoing.



Susan P. Ruch