

45469
OEA

SERVICE DATE — SEPTEMBER 30, 2016

SURFACE TRANSPORTATION BOARD

NOTICE

Docket No. FD 34797 (Sub-No. 1)

NEW ENGLAND TRANSRAIL, LLC, d/b/a
WILMINGTON & WOBURN TERMINAL RAILWAY
—CONSTRUCTION, ACQUISITION AND OPERATION EXEMPTION—
IN WILMINGTON AND WOBURN, MASS.

Decided: September 27, 2016

AGENCY: Surface Transportation Board.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement; Notice of Availability of the Draft Scope of Study for the Environmental Impact Statement; Notice of Scoping Meeting; and Request for Comments on Draft Scope.

SUMMARY: On June 24, 2016, New England Transrail, LLC (NET) filed a petition for exemption with the Surface Transportation Board (Board) pursuant to 49 U.S.C. §§ 10502 and 10901 in Docket No. FD 34797 (Sub-No. 1). NET intends to acquire, construct and operate various rail lines and construct and operate transloading facilities, where goods and materials are transferred from rail to truck, in the towns of Wilmington and Woburn, Massachusetts. NET proposes to acquire 5,727 feet of existing track, to rehabilitate or construct a combined 10,838 feet of track, and to operate as a rail carrier over the total 16,565 feet of track on and adjacent to property currently owned by the Olin Corporation at 51 Eames Street in Wilmington.¹ NET anticipates moving goods and materials (e.g. bricks, newspaper, steel, glycols, biofuels, liquid natural gas, vegetable oils, wood chips, sand, and gravel) and transloading them from rail cars directly onto trucks, into holding tanks, or into a warehouse on site for temporary storage.

Because this project has the potential to result in significant environmental impacts, the Board's Office of Environmental Analysis (OEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. §§ 4321 *et seq.*).² The purpose of this

¹ Generally, Board authorization is not required for proposals by existing carriers to acquire or construct rail facilities and "excepted" ancillary track (spur, industrial or side tracks used to support line-haul services). 49 U.S.C. § 10906; Nicholson v. ICC, 711 F.2d 364, 367-8 (D.C. Cir. 1983); but see Effingham R.R.—Pet. for Declaratory Order—Constr. at Effingham, Ill., 2 S.T.B. 606, 609-10 (1997) (Board has licensing authority over proposal by new carrier to construct and operate over § 10906 track that would constitute its entire operation).

² See New Eng. Transrail, LLC—Constr., Acquis., & Operation Exemption—in Wilmington & Woburn, Mass., (2016 Decision) FD 34797, slip op. at 5 (STB served May 17,

Notice of Intent is to inform stakeholders—including members of the public; Tribes; federal, state, and local agencies; environmental groups; potential shippers and other parties—interested in or potentially affected by the proposed project of the decision to prepare an EIS. OEA will hold a public scoping meeting as part of the NEPA process. Oral and written comments submitted during scoping will assist OEA in issuing a Final Scope of Study that defines the range of actions, alternatives, and impacts to be considered in the EIS. The date and location for the public meeting, along with the Draft Scope of Study for review and comment, are provided below.

BACKGROUND:

I. The Prior Proceedings. In December 2003, NET filed its original petition for exemption for authority to acquire, construct and operate track to use in conjunction with a reload facility at the Olin site in Docket No. FD 34391. OEA³ conducted an environmental review and issued an Environmental Assessment (EA) in August 2004 and a Post-EA in December 2004. After issuance of the Post-EA, a number of parties informed the Board that NET had modified its proposed project to include, among other changes, the processing of municipal solid waste (MSW) at the facility without notifying OEA and that therefore, the environmental review was incomplete.

In May 2005, the Board issued a decision dismissing the case without prejudice to NET filing a new petition or application based on its current project plans. The Board concluded that the project had changed significantly from the proposal presented in the petition and that NET had not informed OEA of the changes until after the environmental review had been completed. Because the petition was modified to the point that analysis already performed by the Board became substantially deficient and required extensive revision, the Board found that it was appropriate to terminate the proceeding.⁴

In December 2005, NET filed its petition for exemption in a new docket, Docket No. FD 34797, for acquisition, construction, and operation authority. NET outlined its plans to rehabilitate the existing track on the property and to construct new sections of track to support a facility to handle construction and demolition debris (C&D) and MSW. Following NET's filing, opposing parties argued that some or all of NET's planned activities would not constitute "rail transportation," and in 2006, a coalition of parties asked the Board to address the threshold issue of the extent of this agency's jurisdiction over the proposed project. Additionally, in 2006, the U.S. Environmental Protection Agency (EPA) added the project site to the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). EPA suggested that, in order to fully address the proposal's effect on potentially contaminated soil and groundwater, the Board defer issuing even a preliminary analysis under NEPA of the potential environmental impacts of NET's proposal until EPA had completed the relevant portion of its Remedial Investigation and Feasibility Study (RI/FS) of the site.

2016).

³ OEA was formerly known as the Board's Section of Environmental Analysis (SEA).

⁴ See New Eng. Transrail, LLC—Constr., Acquis., & Operation Exemption—in Wilmington & Woburn, Mass., FD 34391 (STB served May 3, 2005).

In July 2007, the Board issued a decision finding that NET would, if authorized, become a rail carrier subject to the Board's jurisdiction and thus would need authority to acquire, construct and operate the track. The Board also addressed the extent to which the handling of C&D and MSW would come within the scope of the Board's jurisdiction, but the issue was not decided because the Board deferred environmental review until EPA had completed the relevant portion of its RI/FS Study at the site.⁵ In May 2016, the Board lifted the deferral after EPA submitted a letter stating that the facts no longer supported continuing to defer the Board's environmental review in the case.⁶ The Board also directed NET to file an updated petition for exemption in a new sub-docket detailing its current plans for the site.⁷

II. The Instant Proceeding. On June 24, 2016, NET filed an updated petition for exemption outlining its current proposal with the Board in Docket No. FD 34797 (Sub-No. 1).⁸ As stated above, NET proposes to acquire, construct and operate track and to construct and operate transloading facilities on and adjacent to the Olin site. NET plans to move goods and materials, including bricks, newspaper, steel, glycols, biofuels, liquid natural gas, vegetable oils, wood chips, sand, and gravel and transload them from rail cars directly onto trucks, into holding tanks, or into a warehouse on site for temporary storage. This Notice of Intent initiates the EIS process and scoping for this proceeding.

Date and Location of Public Scoping Meeting: The public scoping meeting will be held at the following location on the date listed:

- October 25, 2016; 5:30-8:00 p.m. at Wilmington Middle School, 25 Carter Lane, Wilmington, MA 01887

The scoping meeting will be held in an open house format for the first half hour followed by a brief presentation by OEA. After the presentation, interested parties will be provided an opportunity for public comment at an open microphone for the balance of the scoping meeting. A court reporter will transcribe the public comments.

The meeting location complies with the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*). Persons that need special accommodations should telephone OEA's toll-free number for this project at 877-573-8930.

OEA invites written public comments on all aspects of the Draft Scope of Study and is providing a 60-day public comment period which begins on September 30, 2016. These written comments may be submitted (1) during the scoping meetings, or (2) by mailing or submitting comments electronically using the filing instructions below. Comments should be submitted by November 29, 2016 to assure full consideration during the scoping process.

⁵ See New Eng. Transrail, LLC—Constr., Acquis., & Operation Exemption—in Wilmington & Woburn, Mass., FD 34797 (STB served July 10, 2007).

⁶ See Letter from EPA (Nov. 6, 2015).

⁷ See 2016 Decision.

⁸ NET's current plans do not include operating a municipal solid waste transfer station at the facility.

OEA will issue a Final Scope of Study after the close of the scoping comment period

Summary of the Board's Environmental Review Process: The NEPA process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on the proposed action is made. OEA is responsible for ensuring that the Board complies with NEPA and related environmental statutes. The first stage of the EIS process is scoping. Scoping is an open process for determining the range of actions, alternatives and the potential scope of environmental issues to be addressed in the EIS. As part of the scoping process, OEA has developed, and has made available for public comment in this notice, a Draft Scope of Study for the EIS. A scoping meeting will be held in the project area to provide further opportunities for public involvement and input during the scoping process at the time and location set out above. In addition to comments on the Draft Scope of Study, interested parties are encouraged to comment on potential alternatives for the proposed project, including the no-action alternative.

To assist OEA in identifying a range of reasonable and feasible alternatives that could meet the purpose and need for the proposed project, OEA requested detailed information from NET on the alternative sites that were examined as part of project site selection in a letter dated August 29, 2016. NET states in its response, dated September 7, 2016, that it examined alternative sites in Tewksbury, MA, and another in North Billerica, MA. NET determined that the Tewksbury site would be too small for the development of a multi-commodity freight facility. NET also found the North Billerica site unsuitable because of its location away from the center of the region and concerns regarding highway accessibility. OEA invites the public to comment on any potential, reasonable and feasible alternatives that could meet the purpose and need for NET's proposed project.

At the conclusion of the scoping comment period, OEA will issue a Final Scope of Study for the EIS. After issuing the Final Scope of Study, OEA will prepare a Draft EIS for the project. The Draft EIS will address the environmental issues and concerns identified during the scoping process and assess all reasonable and feasible alternatives, including the no-action alternative. The Draft EIS will also contain OEA's preliminary recommendations for environmental mitigation measures. Upon completion, the Draft EIS will be made available for review and comment by the public, government agencies, and other interested parties. OEA will prepare a Final EIS that considers and responds to comments on the Draft EIS. In reaching its decision in this case, the Board will consider the Draft EIS, the Final EIS, all environmental comments received, and OEA's final recommendations regarding environmental mitigation measures.

EPA is participating as a cooperating agency in this EIS based on its special expertise of environmental matters at the site and jurisdiction by law consistent with 40 C.F.R. §1501.6. Throughout the development of the EIS, OEA will coordinate with EPA as the CERCLA process progresses for the project site. In addition, OEA will be consulting with various federal, state and local agencies with specific knowledge of the potential environmental impacts that may be associated with the proposed project. OEA is also initiating government-to-government consultation with potentially affected tribes, including but not limited to: Narragansett Indian Tribe, Mashpee Wampanoag Tribe, and Wampanoag Tribe of Gay Head (Aquinnah).

Filing Environmental Comments: Scoping comments submitted by mail should be addressed to: Danielle Gosselin, Office of Environmental Analysis, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, Attention: Docket No. FD 34797 (Sub-No. 1).

Comments may also be submitted electronically via email through the project e-mail address, NewEnglandTransraileIS@icf.com

Please refer to **Docket No. FD 34797 (Sub-No. 1)** in all correspondence, including e-mails regarding this project.

Scoping Comments are due by November 29, 2016.

FOR FURTHER INFORMATION CONTACT: Danielle Gosselin by mail at Office of Environmental Analysis, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001, or call OEA's toll-free number for the project at 877-573-8930. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. The website for the Board is www.stb.gov. For further information about the proposed project, the Board's environmental review process, or this EIS, you may also visit the Board-sponsored project website at www.newenglandtransraileis.com. The project website includes a map of the project area including NET's proposed project.

DRAFT SCOPE OF STUDY FOR THE EIS

Purpose and Need

According to NET, the principal purpose of the proposed project is to add rail transloading capacity close to the center of the Boston metropolitan area. Further, NET states that the proposed facility would allow for lower rail rates and improved service scheduling for customers.

The proposed project involves a request by NET for a license or approval from the Board. The proposed project is not a federal government-proposed or sponsored project. Thus, the project's purpose and need should be informed by both the applicant's goals and the agency's enabling statute, here, 49 U.S.C. § 10901. Section 10901 provides that the Board must approve a construction request unless it finds that the construction is "inconsistent with the public convenience and necessity." Therefore, the statute creates a presumption that rail construction is in the public interest and will be approved.

Proposed Action and Alternatives

NET's proposed project involves the acquisition of 5,727 feet of existing track, the rehabilitation and construction of a combined 10,838 feet of new track, and operation as a rail carrier over the total 16,565 feet of track. Other major elements of the proposed project would include demolishing existing buildings, constructing transloading facilities and warehouses, and moving goods and materials and transloading them from rail cars directly onto trucks, into holding tanks, or into a warehouse on site for temporary storage.

NET estimates that it would operate two round trip trains per day with approximately 30 rail cars. NET also estimates that approximately 400 round trip vehicle trips per day (365 truck trips per day and 35 employee vehicle trips) could be generated at the height of operations. Train operations are expected to occur between 11:00 pm and 6:00 am, and truck deliveries are expected to occur outside weekday morning and evening commuter peak hours.

The EIS will analyze and compare the potential impacts of (1) acquisition, construction and operation for the proposed project, (2) any reasonable and feasible alternatives that could allow NET to meet its purpose and need, and (3) the no-action alternative (denial of the application).

Environmental Impact Analysis

Proposed Acquisition, Construction and Operation

Analyses in the EIS will address the proposed activities associated with the acquisition, construction and operation of the project and their potential environmental impacts, as appropriate.

Impact Categories

The EIS will analyze potential direct, indirect, and cumulative impacts⁹ of NET's proposed acquisition, construction and operation activities, or in the case of the no-action alternative, the absence of these activities.

Impact areas addressed will include an analysis of transportation systems, safety, land use, recreation, biological resources, water resources, including wetlands and other waters of the U.S., geology and soils, air quality and climate, noise and vibration, energy resources, socioeconomics as they relate to physical changes in the environment, cultural and historic resources, aesthetics and environmental justice. Other categories of potential impacts may also be included as a result of comments received during the scoping process or on the Draft EIS. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential direct, indirect, and cumulative impacts of each alternative being studied in detail on each category, as described below:

1. Transportation Systems

The EIS will:

- a. Evaluate the potential impacts resulting from the proposed project on the existing transportation network in the project area.
- b. Propose mitigation measures to avoid, minimize or eliminate potential project

⁹ NEPA requires the Board to consider direct, indirect, and cumulative impacts. Direct and indirect impacts are both caused by the action. 40 C.F.R. §§ 1508.8(a)–(b). A cumulative impact is the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non- federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7.

impacts to transportation systems, as appropriate.

2. Safety

The EIS will:

- a. Describe existing road/rail grade crossing safety and analyze the potential for an increase in accidents related to the proposed operation, as appropriate.
- b. Describe existing rail operations and analyze the potential for increased probability of train accidents, as appropriate.
- c. Evaluate the potential for disruption and delays to the movement of emergency vehicles.
- d. Propose mitigation measures to avoid, minimize or eliminate potential project impacts to safety, as appropriate.

3. Land Use

The EIS will:

- a. Evaluate the potential impacts of each alternative on existing land use patterns within the project area and identify those land uses that would be potentially impacted by the proposed project.
- b. Analyze the potential impacts associated with each alternative to land uses identified within the project area.
- c. Evaluate consistency with Coastal Zone Management Program, as applicable.
- d. Propose mitigation measures to avoid, minimize or eliminate potential impacts to land use, as appropriate.

4. Recreation

The EIS will:

- a. Evaluate existing conditions and the potential impacts of the proposed project on recreational areas and opportunities for recreational activities provided in the project area.
- b. Propose mitigation measures to avoid, minimize or eliminate potential project impacts on recreational areas and opportunities for recreational activities, as appropriate.

5. Biological Resources

The EIS will:

- a. Evaluate the existing biological resources within the project area, including vegetative communities, wildlife, fisheries, wetlands, and federal and state threatened or endangered species, and the potential impacts to these resources resulting from the proposed project.
- b. Propose mitigation measures to avoid, minimize, eliminate, or compensate for potential impacts to biological resources, as appropriate.

6. Water Resources

The EIS will:

- a. Describe the existing surface water and groundwater resources within the project area, including lakes, rivers, streams, ponds, wetlands, and floodplains and analyze

the potential impacts on these resources.

- b. Describe the permitting requirements with regard to wetlands, river crossings, water quality, floodplains, and erosion control.
- c. Propose mitigation measures to avoid, minimize, eliminate, or compensate for potential project impacts to water resources, as appropriate.
- d. Describe EPA's CERCLA process as it relates to on and off-site water resources.

7. Geology and Soils

The EIS will:

- a. Describe the geology, soils, and seismic conditions found within the project area, including unique or problematic geologic formations or soils, prime farmland, and hydric soils, and analyze the potential impacts on these resources resulting from each alternative.
- b. Evaluate any potential measures to avoid or construct through unique or problematic geologic formations or soils.
- c. Propose mitigation measures to avoid, minimize or eliminate potential project impacts to geology and soils, as appropriate.
- d. Describe EPA's CERCLA process as it relates to geology and soils.

8. Air Quality and Climate

The EIS will:

- a. Evaluate the air emissions from the potential operation of the proposed project including potential greenhouse gas emissions, as appropriate.
- b. Evaluate the potential air quality impacts resulting from the proposed project construction activities.
- c. Evaluate the potential impacts of the proposed project on global climate change and the potential impacts of global climate change on the proposed project.
- d. Propose mitigation measures to avoid, minimize or eliminate potential project impacts, as appropriate.

9. Noise and Vibration

The EIS will:

- a. Describe the potential noise and vibration impacts during the proposed project construction.
- b. Describe the potential noise and vibration impacts of the proposed project operation.
- c. Propose mitigation measures to avoid, minimize or eliminate potential project impacts to sensitive noise receptors, as appropriate.

10. Energy Resources

The EIS will:

- a. Describe and evaluate the potential impact of the proposed project on the distribution of energy resources in the project area.
- b. Propose mitigation measures to avoid, minimize or eliminate potential project impacts to energy resources, as appropriate.

11. Socioeconomics

The EIS will:

- a. Analyze the effects of the potential temporary influx of construction workers and creation of permanent rail facilities jobs to the project area.
- b. Propose mitigation measures to avoid, minimize or eliminate potential project-related adverse impacts to social and economic resources, as appropriate.

12. Cultural and Historic Resources

The EIS will:

- a. Identify historic buildings, structures, sites, objects, or districts eligible for listing on or listed on the National Register of Historic Places (historic properties) within the area of potential effects for each alternative. The cultural resources identified will be categorized into three major groups: tribal resources, archaeological resources, and built resources.
- b. Consult with federally recognized Native American tribes to identify properties with religious and cultural significance to the tribes within the area of potential effects for each alternative (tribal resources), and analyze potential project impacts to them.
- c. Identify prehistoric-era and historic-era archaeological resources by using professionals who meet the Secretary of the Interior Professional Qualifications Standards (SOIPQS) in the discipline of archaeology, and analyze potential project impacts to them.
- d. Identify built resources by using professionals who meet the SOIPQS in the disciplines of history or architectural history, and analyze potential project impacts to them.
- e. Propose measures to avoid, minimize, or mitigate potentially adverse project impacts to tribal resources, built resources, and archaeological resources that are historic properties, as appropriate.

13. Aesthetics

The EIS will:

- a. Describe the potential impacts of the proposed project on any areas identified or determined to be of high visual quality.
- b. Propose mitigation measures to avoid, minimize or eliminate potential project impacts on aesthetics, as appropriate.

14. Environmental Justice

The EIS will:

- a. Evaluate the potential impacts resulting from the proposed project on local and regional minority and low-income populations.
- b. Propose mitigation measures to avoid, minimize or eliminate potential project impacts on environmental justice populations, as appropriate.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis