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SERVICE DATE - DECEMBER 4, 1997

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33514]

Buffalo & Pittsburgh Railroad, Inc.--Trackage Rights Exemption--Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant bridge trackage rights to Buffalo & Pittsburgh Railroad, Inc. (B&P), described as follows: (1) Conrail's Olean Secondary between the B&P/Conrail connection at milepost 408.8± at Carrollton, NY, and milepost 395.0± at Olean, NY, the connection with Conrail's Buffalo Line, including that portion of Conrail's track known as the North West Connection Track (connection between Conrail's Olean Secondary and its Buffalo Line), a distance of approximately 13.8 miles; (2) Conrail's Buffalo Line between milepost 69.4± at CP North Olean, and milepost 5.7± CP-GJ, a distance of approximately 63.7 miles; (3) Conrail's Ebenezer Secondary between milepost 5.7± (connection with Conrail's Buffalo Line) and milepost 0.4± (connection with Conrail's Chicago Line, within CP-Draw), a distance of approximately 5.3 miles; (4) Conrail's Chicago Line between milepost 1.7± (connection with Conrail's Ebenezer Secondary) and milepost 1.77± (connection with B&P), a distance of approximately 0.07 of a mile; and (5) Conrail's Transco Wye in Buffalo, NY, between milepost 1.9± (Erie) on Conrail's

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Ebenezer Secondary and the end

of Conrail's Transco Wye (connection with Conrail's Bison Runner), a distance of approximately 0.6 of a mile.<sup>1</sup> The total combined distance of the trackage rights is approximately 83.47 miles.<sup>2</sup>

B&P was expected to commence operations on or after the November 24, 1997 effective date.<sup>3</sup>

The purpose of the proposed trackage rights is to allow B&P to shift overhead traffic from a roughly parallel line that is in need of rehabilitation.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

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<sup>1</sup> B&P states that at this point it has existing rights over Conrail's line of railroad to conduct interchange between its Buffalo Creek Yard and "SK" Yard of the Delaware and Hudson Railway (CP Rail system) Buffalo, NY, subject to a separate agreement it has with Conrail, dated February 1, 1980.

<sup>2</sup> The trackage rights are granted for the sole purpose of B&P's use for bridge traffic only between B&P/Conrail connections. B&P shall not perform any local freight service at any point located on the subject trackage. The trackage rights also provide that B&P shall not have the right to permit or admit any third party to the use of all or any portion of the subject trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars of any third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of B&P; provided however, that the foregoing shall not prevent B&P, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under the trackage rights agreement.

<sup>3</sup> On November 20, 1997, Samuel J. Nasca, on behalf of United Transportation Union-New York State Legislative Board, filed a petition to reject the notice of exemption, or to revoke the exemption, and/or for stay of the effective date of the exemption pending disposition of the request for rejection or revocation. The petition will be addressed in a separate decision.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33514, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381-0796.

Decided: November 26, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary