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February 3, 2005



BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: STB Finance Docket No. 34659, South Buffalo Railway Company -- Trackage Rights Exemption -- Buffalo & Pittsburgh Railroad, Inc.

Dear Secretary Williams:

On January 31, 2005, South Buffalo Railway Company ("SB") filed with the Surface Transportation Board (the "Board") a verified notice of exemption in the above-referenced proceeding. Pursuant to 49 C.F.R. § 1180.6(a)(7)(ii), attached are 11 copies of the trackage rights agreement between SB and Buffalo & Pittsburgh Railroad, Inc. ("BPRR")¹

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Rose-Michele Weinryb".

Rose-Michele Weinryb

Enclosure

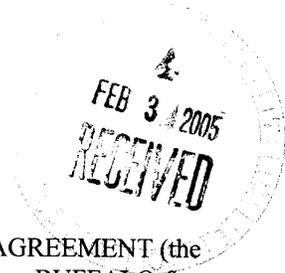
¹ SB and BPRR had entered into a prior trackage rights agreement, which by its terms did not become effective until SB's receipt of any necessary regulatory approval from the Board. When the verified notice of exemption was filed with the Board on January 31, 2005, SB and BPRR were in the process of entering into an amended and restated trackage rights agreement. Attached is a signed copy of the Amended and Restated Trackage Rights Agreement between SB and BPRR.

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**AMENDED AND RESTATED
TRACKAGE RIGHTS AGREEMENT**



THIS AMENDED AND RESTATED TRACKAGE RIGHTS AGREEMENT (the "Agreement") made as of the 30th day of December 2004, by and between BUFFALO & PITTSBURGH RAILROAD, INC. (hereinafter "B&P") and SOUTH BUFFALO RAILWAY COMPANY (hereinafter "SB");

WITNESSETH:

WHEREAS, pursuant to that Amended and Restated Agreement for Lease of Track and Land between SB and B&P of even date herewith (the "Lease Agreement"), SB leased to B&P a rail line from or near the Buffalo City line up to (but not including) the Control Point Draw Bridge, in the City of Buffalo, Erie County, New York, and the adjacent yard tracks commonly referred to as Station C, as more particularly described in the Lease Agreement (the "Leased Line"); and

WHEREAS, B&P wishes to grant, and SB wishes to receive, trackage rights over the Leased Line, on the terms and conditions hereafter set forth; and

WHEREAS, this Agreement supercedes the Trackage Rights Agreement by and between B&P and SB, dated December 30, 2004 ("Prior Agreement"), and the Prior Agreement shall be of no further force or effect.

NOW, THEREFORE, in consideration of the premises, the Lease Agreement and the mutual undertakings set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, B&P and SB agree as follows:

SECTION 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions of this Agreement, B&P hereby grants to SB the right to operate its trains, locomotives, cars and equipment with its own crews over the Leased Line ("Trackage Rights") for the sole purpose of interchanging traffic with B&P and/or with other carriers.

SECTION 2. USE OF LEASED LINE

(A) SB's use of Leased Line shall be in common with B&P and B&P's right to use the Leased Line shall not be diminished by this Agreement.

(B) SB shall not have any rights pursuant to this Agreement to use any part of the Leased Line for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein, upon prior approval of B&P, precludes the emergency use by SB of such auxiliary trackage as may be

designated by B&P for such purposes.

(C) Except to the extent otherwise set forth in the Lease Agreement, (i) B&P shall have exclusive control of the management and operation of the Leased Line, and (ii) the use of the Lease Line by SB pursuant to this Agreement shall be subject to the approval (which shall not be unreasonably withheld) of B&P's representative or his designee. Nothing in this Agreement shall prohibit B&P, at its discretion, from admitting other parties to the Leased Line. If the use of the Leased Line shall at any time be interrupted or traffic thereon or thereafter be delayed for any cause, neither party hereto shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay. Each party hereto agrees that it will take reasonable steps to ensure that any interruptions will be kept to a minimum and will use its best efforts to avoid such interruptions.

(D) SB shall have the right to operate in either direction over the Leased Line.

SECTION 3. RESTRICTION ON USE

The Trackage Rights granted under this Agreement are for the sole purpose of SB using the Leased Line for overhead movements for interchange with B&P and/or with other carriers. Nothing in this Agreement permits SB to perform any local freight service whatsoever at any point located on the Leased Line.

SECTION 4. MISCELLANEOUS SPECIAL PROVISIONS

(A) When operating over the Leased Line, SB's locomotives and crews must be equipped to communicate with B&P on radio frequencies normally used by B&P in directing train movements on the Leased Line.

(B) Nothing in this Agreement is intended to change the current practices of the parties hereto with respect to the interchange of traffic on or along the Leased Line.

SECTION 5. COMPENSATION

The Trackage Rights granted by this Agreement shall be at no charge to SB.

SECTION 6. PAYMENT OF BILLS

All payments called for under this Agreement shall be made within sixty (60) days after the receipt of the bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

SECTION 7. MAINTENANCE OBLIGATIONS

B&P shall be responsible for the maintenance of the Leased Line. B&P shall keep and maintain the Leased Line in reasonably good condition for the use herein contemplated, but, except to the extent set forth in the Lease Agreement, B&P is not obligated to maintain the Leased Line to a specific condition and does not guarantee that operations thereover will not be interrupted.

SECTION 8. MANAGEMENT AND OPERATIONS

(A) Each party shall comply with all statutes, ordinances, regulations or orders of any governmental authority respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment, while such trains, locomotives, cars and equipment are being operated over the Leased Line. SB shall make arrangements with B&P, to the extent necessary, to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Leased Line qualified, on the same bases as B&P employees, for operations thereover.

(B) The operations by SB on the Leased Line pursuant to this Agreement shall at all times be in accordance with the rules, instructions and restrictions of B&P (which rules, instructions and restrictions shall be reasonable), and the movement of SB's trains, locomotives, cars, and equipment over the Leased Line shall at all times be subject to the orders of the transportation officers of B&P. The trains, locomotives, cars and equipment of SB and B&P on the Leased Line shall be operated without prejudice or partiality to either party hereto and in such manner as will afford the most economical and efficient movement of all traffic.

(C) If any employee of SB shall neglect, refuse or fail to abide by B&P's rules, instructions and restrictions governing the operation on or along B&P's property, such employee shall, upon written request of B&P, be prohibited by B&P from working on B&P's property; provided, that if either party hereto shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of SB, then upon notice presented in writing to the other party, SB shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigation to SB's employees shall be given by SB's officers, and such investigation shall be conducted in accordance with the terms and conditions of any schedule agreements between SB and its employees. If the result of such investigation warrants, such employee shall, upon written request by B&P, be withdrawn by SB from service on B&P's property, and SB shall release and indemnify B&P from and against any and all claims and expenses because of such withdrawal.

(D) In the event that a train of SB shall be forced to stop on the Leased Line, due to mechanical failure of SB's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of SB fails to

maintain the speed required by B&P on the Leased Line, or if in emergencies, crippled or otherwise defective cars are set out of SB's trains on the Leased Line, B&P shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Leased Line, and SB shall reimburse B&P for the full cost of rendering any such assistance.

(E) If it becomes necessary to make repairs to or adjust or transfer the lading of crippled or defective cars in a train of a party hereto in order to move them off the Leased Line, such work shall be done by that party or its agents or contractors.

SECTION 9. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in SB's trains on the Leased Line shall be assumed by SB and reported and paid by it directly.

SECTION 10. CLEARING OF WRECKS

Whenever SB's use of the Trackage Rights requires rerailing, wrecking service or wrecking train service, B&P shall be responsible to provide such service, including the repair and restoration of roadbed, trackage and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 11 of this Agreement. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is of or in the account of a party hereto at the time of such wreck, shall be promptly delivered to that party.

SECTION 11. LIABILITY

(A) General.

1. Except to the extent caused by B&P (or B&P's employees, agents or contractors), SB shall indemnify, hold harmless and defend B&P from and against, any and all costs, expenses (including reasonable counsels' fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind (together "Losses") asserted by or on behalf of any third party (including without limitation, any governmental authority), arising out of or in any way connected with, and B&P shall not be liable to SB on account of, (i) any failure by SB to comply with any of the agreements, terms, covenants or conditions of this Agreement required to be performed by SB, (ii) any failure by SB to comply with any statutes, ordinances, regulations or orders of any governmental authority ("Laws") relating to the Leased Line (including without limitation, Laws relating to SB's trains, locomotives, cars and equipment, while such trains, locomotives, cars and equipment are being operated over the Leased Line), and (iii) any accident, death or

personal injury, or damage to or loss or theft of property, to the extent caused by the negligence or willful misconduct of SB, its guests, contractors, agents, employees, licensees or invitees, which shall occur on or about the Leased Line during the term of this Agreement.

2. Except to the extent caused by SB (or SB's employees, agents or contractors), BP shall indemnify, hold harmless and defend SB from and against, any and all Losses asserted by or on behalf of any third party (including without limitation, any governmental authority), arising out of or in any way connected with, and SB shall not be liable to B&P on account of, (i) any failure by B&P to comply with any of the agreements, terms, covenants or conditions of this Agreement required to be performed by B&P, (ii) any failure by B&P to comply with any Laws relating to the Leased Line (including without limitation, Laws relating to BP's trains, locomotives, cars and equipment, while such trains, locomotives, cars and equipment are being operated over the Leased Line), and (iii) any accident, death or personal injury, or damage to or loss or theft of property, to the extent caused by the negligence or willful misconduct of B&P, its guests, contractors, agents, employees, licensees or invitees, which shall occur on or about the Leased Line during the term of this Agreement.

3. Except as otherwise expressly provided for in this Agreement (including without limitation Section 11(B) of this Agreement), responsibility for liabilities in connection with this Agreement shall be allocated in accordance with applicable law.

(B) Environmental

1. SB shall not create or permit to be created or to exist on the Leased Line during the term of this Agreement, any nuisance, use, storage (except for such activities directly related to SB's railroad operations or maintenance and the lawful storage and handling of materials between rail cars and other modes of transportation) or disposal of hazardous substances, hazardous waste, toxic materials or waste materials, public or private ("Hazardous Wastes"), during the term of this Agreement. In no event shall SB store, treat or dispose of any Hazardous Wastes on the Leased Line that would require a hazardous waste treatment, storage or disposal permit. SB shall install and bear the expense of any and all pollution control structures, devices and equipment which are required during the term of this Agreement under any applicable laws, ordinances or governmental regulations as a result of SB's use of the Leased Line pursuant to this Agreement; provided, that, SB shall not bear the expense of such structures, devices and equipment (i) to the extent the requirement for same arises out of or in connection with an act or omission of B&P, its officers, employees or agents, or (ii) if such structures, devices and equipment are so required as a result of B&P's use of the Leased Line.

2. SB shall be responsible to B&P, and shall defend, indemnify and hold harmless B&P (and its shareholders, officers, employees and agents), for any Losses arising out of or in connection with (i) contamination of all or part of the Leased Line to

the extent caused by SB (or by SB's officers, employees, agents, contractors, or invitees) occurring during the term of this Agreement, and (ii) violation of laws, ordinances and governmental regulations controlling air, water, noise, solid waste and other pollution ("Environmental Laws") with respect to the Leased Line, during the term of the Agreement, by SB, its officers, employees, agents, contractors or invitees.

3. B&P shall be responsible to SB, and shall defend, indemnify and hold harmless SB (and its shareholders, officers, employees and agents), for any Losses arising (i) out of contamination of all or part of the Leased Line to the extent caused by B&P (or by B&P's officers, employees, agents, contractors or invitees) occurring during the term of this Agreement, and (ii) violation of Environmental Laws with respect to the Leased Line, during the term of the Agreement, by B&P, its officers, employees, agents, contractors or invitees.

4. The statute of limitations does not begin to run until the indemnitee receives written notice of any contamination that is the basis of an indemnification claim hereunder.

5. As to the provisions of this Section 11(B) only, the parties hereto waive any statute of limitations defense, provided, however, that if one party gives the other party written notice of contamination of the Leased Line, the waiver of the statute of limitations shall cease, but only as to the contamination which is subject of the written notice, and as to such contamination, the parties shall then be subject from the date of receipt of such written notice to the then applicable statute of limitations. The waiver of statute of limitations for any matter not covered in said written notice shall continue.

6. Nothing in this Section 11(B) shall preclude any party hereto from seeking cost recovery under any Environmental Law or otherwise for contamination on the Leased Line caused by a third party.

SECTION 12. EMPLOYEE CLAIMS

Each party hereto shall indemnify and hold harmless the other party against any and all costs, expenses and liability, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of, or lawsuits brought by or on behalf of, its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement or operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party hereto shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of claims, grievances or lawsuits filed by or on behalf of its own employees arising under its collective bargaining agreements with its employees.

SECTION 13. INDEMNIFICATION PROCEDURE

(A) If a suit or claim is made against one party hereto, the Losses of which under this Agreement are allocated solely to the other party, the first party (the "Indemnitee") shall notify promptly in writing the other party to whom the Losses are allocated under this Agreement (the "Indemnitor"), and the Indemnitor shall bear all Losses in connection with such claim or suit; provided, that, the Indemnitee shall have the right to participate in the defense of the claim or suit at its sole expense. If the Indemnitor fails to acknowledge in writing its indemnification obligations (including its obligation to defend) with respect to a claim or suit within thirty (30) days after the Indemnitee has delivered notice of such claim or suit, the Indemnitee shall have the right to undertake the defense, settlement or compromise of such claim or suit on behalf of, and at the sole expense of, the Indemnitor.

(B) If a claim or suit is made against one party hereto the Losses of which under the Agreement are allocated to both of the parties hereto, the party against which such claim or suit is made shall give prompt notice thereof to the other party, which other party shall have the opportunity to share or join in the defense of the claim or suit. In cases involving joint liability of the parties in which both parties share or join in the defense of the claim or suit, each party shall bear its own legal fees and other expenses in connection with the defense of such claim or suit.

(C) Absent prior, written consent by Indemnitee, the Indemnitor shall not compromise or settle a claim or suit brought against the Indemnitee or consent to the entry of judgment, if such compromise, settlement or consent (i) does not include as an unconditional term thereof a release by the claimant or plaintiff of all liability of the Indemnitee related to such claim or suit, or (ii) obligates the Indemnitee to prospectively take certain actions or to refrain from taking certain actions.

(D) If a judgment is recovered against and satisfied by one party hereto, but involves Losses that should under this Agreement be borne entirely by the other party hereto or jointly by both parties hereto, then all Losses connected with such judgment and with the prosecution of the suit or other proceeding upon which it was based, shall be settled between the parties hereto in strict accordance with the provisions of this Agreement, and the party against which such judgment is recovered shall be promptly reimbursed by the other party to the extent set forth in this Agreement.

SECTION 14. TERM AND TERMINATION

(A) This Agreement shall become effective (hereinafter "Commencement Date") as of the later of (i) the date on which this Agreement is signed by both B&P and SB, and (ii) the date on which SB obtains all regulatory approvals, if any, necessary for the consummation of this Agreement. Following the Consummation Date, this Agreement shall remain in full force and effect until terminated pursuant to this Section 14(B).

(B) This Agreement shall terminate upon the earlier of (i) the termination of the Lease Agreement, (ii) the transfer by a party hereto of control of or ownership interest in all or substantially all of its business (whether by stock sale, merger, consolidation, or otherwise) to a third party without the prior written consent of the other party hereto, and (iii) the receipt by a party hereto of written notice of termination by the other party based on a material breach by the receiving party; provided, that such breach has continued for 60 days after the receiving party first received written notice of the breach from the other party.

(C) Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed by, or from any liability imposed on, such party under the terms of this Agreement prior to termination thereof.

SECTION 15. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto; provided, however, that neither party hereto shall assign or in any manner transfer this Agreement, or any of its rights, interests, or obligations hereunder, to any third party without obtaining the prior written consent of the other party hereto, unless the assignee is an affiliate and/or subsidiary of assignor.

SECTION 16. NOTICE

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by mail (certified or registered mail, return receipt requested), by national overnight delivery service or by a facsimile transmission (receipt of which is confirmed by transaction report or equivalent thereof):

If to SB, to:

President
SOUTH BUFFALO RAILWAY COMPANY
1200-C Scottsville Road, Suite 200
Rochester, NY 14624

If to B&P, to:

President
BUFFALO & PITTSBURGH RAILROAD, INC.
1200-C Scottsville Road, Suite 200
Rochester, NY 14624

or to such other person or address as a party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and other communications shall be

deemed to have been received on the date on which so hand-delivered, on the third business day following the date on which so mailed, on the first business day following the date on which sent by a national overnight delivery service and on the date on which faxed and confirmed, except for a notice of change of address, which shall be effective only upon actual receipt thereof.

SECTION 17. GENERAL PROVISIONS

(A) This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the parties hereto and their respective successors and permitted assigns, any right pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

(B) No provision of this Agreement shall be modified without the written concurrence of the parties hereto. This Agreement represents the entire understanding of the parties hereto with respect to the subject matter of this Agreement, and to that extent supercedes any prior understandings, written or oral.

(C) The headings of the sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

(D) This Agreement will be construed in accordance with the laws of New York.

(E) This Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

(F) If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

(G) The language used in this Agreement should be deemed the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

(H) No waiver of any breach of any provision of this Agreement shall be construed to be a waiver of any other or any subsequent breach of the same or any other provision of this Agreement.

SECTION 18. REGULATORY APPROVAL

Should implementation of this Agreement require the prior approval of the Surface Transportation Board or other regulatory authority, SB at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition or notice to secure such approval or exemption.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

SOUTH BUFFALO RAILWAY COMPANY

By _____

Title _____

BUFFALO & PITTSBURGH RAILROAD,
INC.

By *J. Allen*

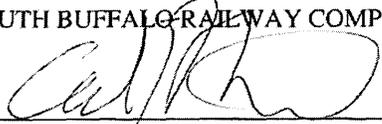
Title *President*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

SOUTH BUFFALO RAILWAY COMPANY

By



Title

Secretary

BUFFALO & PITTSBURGH RAILROAD,
INC.

By _____

Title _____

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