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AUG 1 2007
RECEIVED
July 31, 2007
VIA: UPS overnight

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

RE: STB Finance Docket No. 34955
Buffalo & Pittsburgh Railroad, Inc. -
Lease and Operation Exemption -
Norfolk Southern Railway Company and
CAS Transportation, Inc.
Petition for Exemption (Expedited Consideration)

FILED
AUG - 1 2007
SURFACE
TRANSPORTATION BOARD

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Petition for Exemption of Buffalo & Pittsburgh Railroad, Inc., together with a check in the amount of \$5,700 representing the filing fee.

Please time-stamp the extra copy of this letter and the Petition to indicate receipt, and return them to me in the stamped, self-addressed envelope provided for your convenience.

Respectfully submitted,



Eric M. Hocky
Attorney for
Buffalo & Pittsburgh Railroad, Inc.

Enclosures

cc (w/ encl.): All parties on the service list

GOLLATZ, GRIFFIN & EWING, P C

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PHILADELPHIA

WILMINGTON

219898



Before the
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34955

FILED

AUG - 1 2007

BUFFALO & PITTSBURGH RAILROAD, INC. SURFACE TRANSPORTATION BOARD
- LEASE AND OPERATION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY
AND CSX TRANSPORTATION, INC.

PETITION FOR EXEMPTION

ENTERED
Office of Proceedings
AUG - 1 2007
Part of
Public Record

Expedited Consideration Requested

FILE RECEIVED

AUG - 1 2007

SURFACE TRANSPORTATION BOARD

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Attorneys for Buffalo & Pittsburgh Railroad, Inc.

Dated: July 31, 2007



Before the
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34955

**BUFFALO & PITTSBURGH RAILROAD, INC.
– LEASE AND OPERATION EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY
AND CSX TRANSPORTATION, INC.**

PETITION FOR EXEMPTION

Buffalo & Pittsburgh Railroad, Inc. (“BPRR”), a Class II carrier, petitions for an exemption under 49 U.S.C. §10502 and 49 C.F.R. §1121 from the provisions of 49 U.S.C. §§11323-11324 to enable BPRR to acquire from Norfolk Southern Railway Company (“NSR”), by assignment, NSR’s lease of the approximately 24.6 mile rail line (the “Subject Line” or “Cloe to Creekside Line”) between milepost BKC 2.0 near Cloe, Pennsylvania, and milepost BKC 26.6 at Ridge Branch Junction near Creekside, Pennsylvania.¹ A map of the Subject Line is attached hereto as Exhibit A. Currently, NSR leases the Subject Line from CSX Transportation, Inc. (“CSXT”), and BPRR currently operates over the Subject Line via overhead trackage rights. If the exemption were granted, BPRR would become the lessee of CSXT. In support of its request for exemption, BPRR represents as follows:

¹ The parties intend that the leased line will connect with the Homer City Branch which BPRR acquired from CSXT in 2004. *See Buffalo & Pittsburgh Railroad, Inc – Acquisition and Operation Exemption – CSX Transportation, Inc*, STB Finance Docket No. 34410 (served November 19, 2003). *See also* footnote 4 hereafter.

SUMMARY OF TRANSACTION

BPRR is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

BPRR is a Class II carrier that currently owns or operates approximately 540 miles of rail lines in New York and Pennsylvania. As discussed below, BPRR proposes to assume the NSR lease of the Cloe to Creekside line. BPRR already operates over the Subject Line as CSXT's operator of overhead trackage rights, and uses the Subject Line to connect to and provide rail service to the Homer City Branch between Creekside and Homer City, Pennsylvania, that BPRR acquired in January 2004. NSR no longer has use for the Subject Line, having constructed an alternative line to serve its generating plant customer on the Ridge Branch in Shelocta, Pennsylvania. *See Norfolk Southern Corporation and Norfolk Southern Railway Company – Construction and Operation – In Indiana County, PA*, STB Finance Docket No. 33928 (served May 16, 2003). After the assignment to BPRR, BPRR will operate the Cloe to Creekside Line under a lease with CSXT instead of under the overhead trackage rights agreement.² The transaction will allow BPRR, the only carrier currently actively using the Subject Line, to acquire operating control of the Subject Line and will justify BPRR's investment in capital improvements to the Subject Line.

THE PROPOSED TRANSACTION

The Cloe to Creekside Line is currently owned by CSXT. In 1994, as part of a series of transactions between the parties, Conrail leased the Subject Line from CSXT, and granted back

² The Subject Line will continue to be subject to CSXT's existing trackage rights

to CSXT overhead trackage rights. Conrail also acquired the adjacent Ridge Branch from Ridge Branch Junction (Creekside) to Shelocta, Pennsylvania, and the Ridge Subdivision from Shelocta to Clarksburg, Pennsylvania. *See generally Consolidated Rail Corporation - Purchase, Lease and Operation - CSX Transportation, Inc*, ICC Finance Docket No. 32544 (served December 5, 1994) NSR succeeded to Conrail's rights as part of the acquisition and division of Conrail. Conrail, and subsequently NSR, have used the Cloe to Creekside Line to provide service to a generating plant located at Shelocta.

In 2003, NSR received approval to construct a line of railroad (the "Saltsburg Connection") to connect its existing Conemaugh line to the Ridge Subdivision. This new line was completed in August, 2006, and NSR has shifted its Shelocta traffic from the Cloe to Creekside Line to the Saltsburg Connection. BPRR has continued to operate over the Subject Line, having begun its overhead service when it re-opened the Homer City Branch in July, 2005.

Currently, there are no active local shippers on the Cloe to Creekside Line. BPRR is willing to make substantial improvements to the Subject Line for its overhead service to Homer City, but it is willing to do so only if it becomes the lessee and acquires operating control. The involved railroads, CSXT, NSR and BPRR will enter into an Assignment of Lease, Assumption and Consent Agreement ("Assignment") that provides for the assignment of the lease by NSR, the assumption of the lease obligations by BPRR, and the consent to the transaction by CSXT. CSXT will retain its existing trackage rights over the Subject Line for possible future use.³

³ Pursuant to the Assignment, BPRR will also grant CSXT trackage rights over the BPRR lines (leased and owned) between New Castle, Pennsylvania and Cloe, Pennsylvania to enable CSXT to connect to its retained trackage rights. CSXT has no immediate need for the trackage

Additional Information. Based generally on 49 C.F.R. 1180.4(g)(1)(i), BPRR provides the following additional descriptive information about the transaction to facilitate the Board's review of this Petition:

1180 6(a)(1)

(i) The proposed transaction, as more fully described above, involves the assignment to BPRR of NSR's lease of the line of railroad that runs approximately 24.6 miles between milepost BKC 2.0 near Cloe, Pennsylvania, and milepost BKC 26.6 at Ridge Branch Junction near Creekside, Pennsylvania.⁴

The full name and address of the petitioner is Buffalo & Pittsburgh Railroad, Inc., 1200-C Scottsville Rd., Ste. 200, Rochester, NY 14624. It is currently a Class II carrier. After the transaction, BPRR will continue to be a Class II carrier.

The name and address of the railroad assigning the lease of the Subject Line is Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23520. The name and address of the railroad that owns the Subject Line is CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202. NSR and CSXT are Class I carriers.

rights. Before the trackage rights would become effective, CSXT would file a separate notice of exemption.

⁴ As noted in footnote 1, the parties intend that the Subject Line will connect with Homer City Branch previously acquired from CSXT by BPRR. There has been a milepost discrepancy in the record since the original lease and trackage rights transactions between CSXT and Conrail. *See generally Consolidated Rail Corporation - Purchase, Lease and Operation - CSX Transportation, Inc*, ICC Finance Docket No. 32544 (served August 19, 1994), slip op. 2, fn 3.

The name, address and telephone number of counsel to whom questions regarding the transaction can be addressed is Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F Kennedy Blvd., Philadelphia, PA 19103-2808; 215-563-9400.

(ii) As noted below, Petitioner would like to consummate the transaction on an expedited basis as soon as the exemption is granted in order to permit improvements to the Subject Line to be made as soon as possible.

(iii) The purpose of the transaction is to give BPRR, as the primary user, operating control of the Subject Line. This will justify BPRR's maintenance and improvement of the Subject Line, and will relieve NSR of its lease obligations for a line that it no longer requires to serve its customers.

1180 6(a)(5)

BPRR operates in the State of New York and the Commonwealth of Pennsylvania. The Subject Line is located entirely in the Commonwealth of Pennsylvania.

1180 6(a)(6)

A map showing the Subject Line is attached hereto as Exhibit A.

Employee protection

The appropriate level of employee protection is discussed more fully below.

LEASE AND OPERATION OF THE LINE SHOULD BE EXEMPTED

A lease by one carrier to operate the lines of another carrier is subject to the prior approval and authorization of the Board under 49 U.S.C. §11323(a)(2). Thus, unless the exemption requested herein is granted, the proposed assignment of the NSR lease to BPRR would require that BPRR file an application under 49 C.F.R. §1180. Since the transaction does not involve the merger of two Class I railroads, however, the Board would be required to approve the application *unless* it were to find *both*:

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. §11324(d).

The Board is directed by 49 U.S.C. §10502 to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy (“RTP”) of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. The Interstate Commerce Commission has held:

In determining whether regulation of a transaction proposed for exemption under § 10505 [now 10502] is necessary to carry out the RTP, our analysis generally focuses on the criteria relating to the underlying statute from which exemption is sought. We need not extend our analysis beyond what we would address in an application proceeding itself. See Finance Docket No. 31493, Blackstone Cap. Partners -- Cont. Exempt. -- CNW Corp., Et Al. (not printed), served July 5, 1989, at 2. Section 10505 provides a shortcut analysis to see if regulation -- in this case under § 11344(d)[now 11324(d)] -- is necessary. If § 11344(d) does not require review of particular issues, neither does the § 10505 process.

Indiana R. Co. – Acq. & Oper – Illinois Central R Co , 6 ICC 2d 1004, 1006 (1990),
aff'd sub nom . Village of Palestine v ICC. 936 F. 2d 1335 (D.C. Cir 1991).

As noted above the inquiry under Section 11324(d) focuses on the lessening of competition and anticompetitive effects. Here, no such effects will be likely. There are no shippers on the Subject Line, and there will be no changes in service to shippers off the line – NSR has already shifted the service that it was providing over the Subject Line to the new line that it constructed, and BPRR will continue to serve customers on the Homer City Branch. Further, CSXT is retaining its trackage rights over the Subject Line so that it can continue to offer service over the Subject Line if required.

Grant of an exemption would also be fully consistent with the standards of 49 U.S. C. §10502. Detailed scrutiny of a full application is not required to carry out the transportation policy of 49 U.S.C. §10101; the transaction is clearly limited in scope, and will not result in any abuse of market power.

The grant of an exemption to BPRR will minimize the need for Federal regulatory control (49 U.S.C. §10101(2)), foster sound economic conditions in transportation (49 U.S.C. §10101(5)), reduce regulatory barriers to entry into and exit from the rail industry (49 U.S.C.

§10101(7)), and encourage efficient management of railroads (49 U.S.C. §10101(9)). Moreover, the grant of the exemption will not adversely affect any of the other 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

Additionally, the transaction is clearly limited in scope. The petitioner, BPRR is a small Class II carrier, and the Subject Line is less than 25 miles long and is located all in one state. Further, in this proceeding, the acquiring carrier is already operating over the Subject Line. Although the exemption analysis does not require further inquiry, it is also clear in this proceeding that the transaction will not result in any abuse of market power. As noted above, no competitive harm will result and there is no threat of abuse of shippers. By allowing BPRR to take over the lease of the Subject Line, shippers will benefit in that BPRR will be better able to control the service it is providing to the Homer City Branch. Further, BPRR will be in a position to justify and implement improvements to the Subject Line to make its service faster and more efficient. As a locally based carrier, BPRR may also be in a better position to develop local business on the Subject Line. The Board has granted exemptions in similar circumstances. *See Union Pacific Railroad Company – Lease and Operation Exemption – The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34504 (served August 26, 2004) (granting exemption for conversion of trackage rights to lease to allow the primary user UP to control the level of maintenance of the line).

EMPLOYEE PROTECTION

No employees of NSR are expected to be affected by the acquisition since NSR has already shifted its operations to the new Saltsburg Connection and did not abolish any maintenance of way or signaller positions.⁵ However, BPRR recognizes that this transaction will be made subject to the conditions for the protection of railroad employees set forth in *Mendocino Coast Ry., Inc – Lease and Operate*, 354 ICC 732 (1978), as modified in *Mendocino Coast Ry. Inc. – Lease and Operate*, 360 ICC 653 (1980), as clarified in *Wilmington Term. R.R. Inc – Purchase and Lease – CSX Transportation, Inc.*, 6 ICC 2d 799, 814-826 (1990).

ENVIRONMENTAL AND HISTORIC REPORTS

BPRR will continue to operate the same number of trains over the Subject Line when it assumes the lease. As such, the proposed transaction should be exempt from the Board's environmental reporting requirements pursuant to 49 C.F.R. §1105.6(c)(2)(i). Further, the proposed transaction is exempt from the historic preservation reporting requirements since the assignment of the lease is for continued rail operations, there are no plans in connection with the transaction to dispose of or alter properties subject to the Board's jurisdiction that are 50 years

⁵ Although CSXT is the owner of the Subject Line, it has not operated over the Subject Line since at least 1994. Accordingly, it does not have any employees that were working on the Subject Line.

old or older, and any future abandonment by BPRR would be subject to further Board approval.

See 49 C.F.R. §1105.8(b)(1).

NOTICE OF PETITION

Although no specific parties are required to be served with this Petition, BPRR is voluntarily serving copies of this Petition on the national and Pennsylvania parties specified in 49 C.F.R. §1180.4(c)(5), as shown on the Certificate of Service attached to this Petition.

EXPEDITED CONSIDERATION

BPRR wants to take over the assignment of the lease as soon as possible so that it can begin making improvements on the Subject Line. (BPRR has applied for state and federal grants to support the improvements and needs to control the Subject Line in order to be eligible to receive the funds). If the exemption can become effective within 60 days, then BPRR will be undertake some initial improvement projects during the current construction season.

CONCLUSION

For the foregoing reasons, BPRR requests that the Board, under 49 U.S.C. §10502, exempt its proposed lease and operation of the rail line which is the subject of this proceeding from regulation under 49 U.S.C. §§11323-11324, and that the exemption be made effective within 60 days.

Respectfully submitted,



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1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
215-563-9400

Attorneys for Buffalo & Pittsburgh Railroad, Inc.

Dated: July 31, 2007

VERIFICATION

I, David J Collins, President of Buffalo & Pittsburgh Railroad, Inc , verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Dated: July 31, 2007


David J Collins

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Exemption was served by first class mail. postage prepaid upon the persons shown on the attached list.



Eric M. Hocky

Dated: July 31, 2007

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EXHIBIT A

MAP

(Not to Scale)

