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ERIC M. HOCKY
DIRECT DIAL 215.320.3720
emhocky@ggelaw.com

209187
FILED

OCT 23 2003

GC&E GOLLATZ
GRIFFIN
& EWING
ATTORNEYS - AT - LAW



October 22, 2003
VIA UPS Overnight

TRANSPORTATION BOARD
Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 34410
Buffalo & Pittsburgh Railroad, Inc. --
Acquisition and Operation Exemption --
CSX Transportation, Inc.
Petition for Exemption

Dear Secretary Williams:

Enclosed please find for filing the original and ten (10) copies of the above-referenced Petition for Exemption being filed by Buffalo & Pittsburgh Railroad, Inc. A check in the amount of \$4,900 representing the filing fee is also enclosed.

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

Respectfully,

ENTERED
Office of Proceedings

OCT 23 2003

Part of
Public Record

ERIC M. HOCKY

Enclosures

cc: All persons on the attached service list.

RECEIVED

OCT 23

**SURFACE
TRANSPORTATION BOARD**

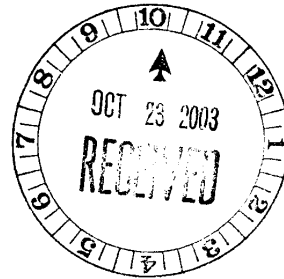
GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

269187



Before the
SURFACE TRANSPORTATION BOARD

**BUFFALO & PITTSBURGH RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
CSX TRANSPORTATION, INC.**

**ENTERED
Office of Proceedings**

OCT 23 2003

**Part of
Public Record**

STB Finance Docket No. 34410

PETITION FOR EXEMPTION

FEE RECEIVED

OCT 23 2003

**SURFACE
TRANSPORTATION BOARD**

Expedited Consideration Requested

FILED

OCT 23 2003

**SURFACE
TRANSPORTATION BOARD**

ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
Four Penn Center
1600 John F. Kennedy Blvd.
Suite 200
Philadelphia, PA 19103-2808
215-563-9400
Attorneys for Buffalo & Pittsburgh Railroad, Inc.

Dated: October 22, 2003

Before the
SURFACE TRANSPORTATION BOARD

BUFFALO & PITTSBURGH RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION
CSX TRANSPORTATION, INC.



STB Finance Docket No. 34410

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. §10902 to enable BPRR to acquire and operate approximately 16.82 miles of railroad located in Indiana County, Pennsylvania. In support of its request for exemption, BPRR represents as follows:

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 280 miles of rail lines in New York and Pennsylvania. As discussed below, BPRR proposes to acquire from CSX Transportation, Inc. ("CSXT"), the Homer City Branch between Creekside and Homer City, Pennsylvania. The rail line currently does not have common carrier service, discontinuance of such service having been authorized in 1993. In addition to acquiring the rail line, BPRR will be acquiring incidental trackage rights between Cloe and Creekside to enable it to reach the line.

Further, its acquisition of the Homer City Branch will be subject to trackage rights that CSXT is retaining over the line.

THE PROPOSED TRANSACTION

The Homer City Branch is currently owned by CSXT. Beginning in 1988, the line was leased to BPRR which provided the service. The line was actively used for the handling of various commodities through the early 1990s. However, traffic levels declined, and in 1993 the Interstate Commerce Commission authorized both CSXT and BPRR to discontinue operations over the line. *Buffalo & Pittsburgh Railroad, Inc. - Discontinuance and Abandonment Exemption*, ICC Docket No. Ab-369 (Sub-No. 2X) and *CSX Transportation, Inc. - Discontinuance of Service Exemption*, ICC Docket No. AB-55 (Sub-No. 457x) (jointly served November 17, 1993). No service has been provided since that time.

BPRR anticipates that it will begin supplying coal to the utility located at the end of the line in Homer City beginning after June 2004. Initially, BPRR expects to operate at the rate of 60 to 65 trains per year (one to two trains per week), with each train handling approximately 40 carloads. BPRR anticipates that it will hire four new employees when service begins.

Since the rail line has not been in service since 1993, BPRR will need to rehabilitate the line so that the traffic will be able to be handled safely and efficiently when service begins. BPRR's planned rehabilitation of the Homer City Branch will involve such items as rail and tie replacement, surfacing, brush control and crossing renewal. None of these items involve changing the character of the rail line. They are the types of work that would normally

be done on a periodic basis, but which are necessary due to the length of time the rail line has been out of service. BPRR needs to close as soon as possible so that it can complete the rehabilitation prior to the anticipated commencement of service.

BPRR's acquisition of the Homer City Branch will be subject to trackage rights that CSXT is retaining over the line.¹ However, CSXT has no immediate plans to operate over the line. Further, BPRR will be assigned trackage rights that CSXT currently has over a line of railroad leased by Norfolk Southern Railway between Cloe and Ridge Branch Junction, that will enable BPRR to reach the Homer City Branch.²

Additional Information.³ BPRR provides the following additional information about the transaction to enable the Board to process this Petition:

- (1) 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.
- (2) The name, address and telephone number of the representative of the petitioner who should receive correspondence is Eric M. Hocky, Gollatz, Griffin

¹ Because CSXT is retaining the trackage rights as part of the proposed transfer to BPRR, the parties do not believe that any separate trackage rights filing is required. *Compare Minnesota Northern Railroad, Inc. - Exemption*, STB Finance Docket Nos. 33315, et al (served August 14, 1997) (no filing required where the trackage rights were reserved as part of the agreement), and *The Burlington Northern and Santa Fe Railway Company - Trackage Rights Exemption*, STB Finance Docket No. 34304 (served February 3, 2003) (filing required where the acquiring carrier granted back trackage rights).

² As such, these trackage rights are "incidental" to the transaction and no separate filing is required.

³ The additional information presented here provides the information that the Board requires in 49 C.F.R. §1150.43 for Section 10902 transactions by Class III carriers.

& Ewing, P.C., Four Penn Center, 1600 John F. Kennedy Blvd., Suite 200,
Philadelphia, PA 19103-2808, phone no.: 215-563-9400.

(3) The name and address of the railroad transferring the rail line is CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202. It is a Class I carrier.

(4) The parties have entered into an agreement covering the proposed transaction.

(5) The parties propose to consummate the transaction as soon as the exemption requested in this Petition becomes effective.

(6) The rail line being acquired runs between MP BKC 26.75 near Creekside, PA and MP BKC 43.57 near Homer City, PA, a total of 16.82 miles.

Additionally, CSXT is assigning to BPRR incidental trackage rights it holds over a line of railroad currently leased by Norfolk Southern Railway between MP 2.0 near Cloe, PA and at or about MP BKC 26.75 at Ridge Branch Junction near Creekside, PA.⁴

(7) A map indicating the line being acquired and the incidental trackage rights is attached hereto as Exhibit A.

(8) After the transaction, BPRR will continue to be a Class II carrier.

⁴ The parties intend that the incidental trackage rights will connect with the line being acquired, and are confirming that the trackage rights and the line to be acquired are continuous. 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.

ACQUISITION AND OPERATION OF THE LINE SHOULD BE EXEMPTED

The acquisition and operation of the rail line by BPRR would require authorization pursuant to 49 U.S.C. §10902 unless the exemption requested herein is granted. Under Section 10902, a Class II carrier may acquire a line of railroad from another carrier unless the Board finds that the acquisition is inconsistent with the public convenience and necessity. However, 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 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.

An exemption from the requirements of Section 10902 for BPRR's proposed acquisition of this currently inactive 17 mile rail line would be fully consistent with the standards of Section 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 Board has adopted a class exemption for acquisitions by Class III railroads under 49 U.S.C. §10902. *Class Exemption for Acquisition or Operation under 49 U.S.C. 10902*, STB Ex Parte No. 529, 1 STB 95 (1996). In that decision, the Board noted that the criteria for approving transactions under Sections 10901 and 10902 were substantially the same and determined that it was appropriate to adopt a class exemption for acquisitions by Class III carriers that was similar to the class exemption adopted for non-carriers. *Id.* at 96-97; 100-101. In

examining the exemption criteria the Board found:

We find that the proposed class exemption meets the criteria of section 10502(a). A class exemption from the requirements of section 10902 will facilitate the acquisition of rail lines by Class III carriers and ensure the continuation of rail service on lines that may otherwise be abandoned if not for the sale. Detailed scrutiny of such transactions, which often are not controversial, through applications for review and approval under section 10902, is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. The exemption will thus promote the continuation of a sound rail system to meet the needs of the public and will enhance efficiency, coordination and competition among rail carriers. See 49 U.S.C. 10101 (4), (5) and (9).

The exemption will also minimize the need for Federal regulatory control over the rail transportation system and reduce the barriers to entry into and exit from the industry. By limiting the level of regulatory review of such transactions and by relying upon the more expeditious notice of exemption procedure, the Board's regulation of Class III acquisitions will be facilitated and reduced. 49 U.S.C. 10101 (2) and (7).

The acquisition and operation of rail lines by Class III carriers under the exemption will be limited in scope. Major changes in rail operations or competitive relationships between railroads are not likely to occur because, under the exemption, the purchasing carrier's operation will merely supplant the selling carrier's operation. Moreover, purchases by Class III railroads typically do not have the impact of acquisitions by large Class I or II carriers.

Regulation of Class III acquisitions is not necessary to protect shippers from the abuse of market power under 49 U.S.C. 10152 (a)(2)(B). Competition or transportation options for the shipping public typically will not be lessened. Rather, continued rail operations made possible by such acquisitions should improve service for shippers and decrease the cost of its provision.

Id. at 103. Since Section 10902 does not establish different criteria for acquisitions for Class II and Class III carriers, the same reasons given by the Board also justify the exemption sought in this proceeding. Here, the acquiring carrier is a small Class II carrier, and the line being acquired

is less than 20 miles long, is located all in one state, and is currently out of service. Further, by re-instituting service, the transaction will benefit potential shippers by providing them with new transportation alternatives. 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.

EMPLOYEE PROTECTION

Although no employees of CSXT are expected to be affected by the acquisition, BPRR recognizes that this acquisition will be made subject to the employee severance conditions described in 49 U.S.C. §10902(d) as set forth in *Wisconsin Central Ltd. - Acquisition Exemption - Union Pacific Railroad*, 2 STB 218 (1997), *rev'd in part sub nom. Association of American Railroads v. STB*, 162 F.3d 101 (DC Cir 1988).

ENVIRONMENTAL AND HISTORIC REPORTS

BPRR plans to re-institute service at the initial rate of 60 to 65 trains per year (one to two trains per week) over this currently out of service rail line. 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). Further, the proposed transaction is exempt from the historic preservation reporting requirements since the acquisition is for 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 old or older, and any future abandonment by BPRR would be subject to further Board approval.

CERTIFICATION OF NOTICES

Although additional notice is not required, BPRR hereby certifies that it is giving notice of its intent to enter into this transaction by serving copies of this Petition on the Governor of Pennsylvania, the Pennsylvania Department of Transportation and the Pennsylvania Public Utility Commission.⁵

BPRR further certifies that on October 16, 2003, a notice was posted at CSXT's Customer Service Center in Jacksonville, Florida. Copies were served on the national offices of unions with potentially affected employees, and a certification was filed with the Board on October 20, 2003. A copy of the certification together with the notice is attached as Exhibit B.

EXPEDITED CONSIDERATION

BPRR needs to acquire the line as expeditiously as possible so that it can qualify to receive funding through the Commonwealth of Pennsylvania and begin the rehabilitation of the line that will need to be completed before service is resumed (currently anticipated to begin in July 2004.) BPRR acknowledges that the Board's regulations (49 C.F.R. §1121.4(h)) require 60 days notice to labor before the acquisition exemption can be effective. BPRR is not seeking to reduce the notice period, but requests that the Board issue its decision on the requested exemption to be effective upon the completion of the notice period, *i.e.*, by December 19, 2003, the 60th day following the filing of the labor notice certification.

⁵ Since the line has been out of service there are no current local shippers on the rail line.

CONCLUSION

For the foregoing reasons, BPRR requests that the Board, under 49 U.S.C. §10502, exempt the acquisition and operation of the rail line which is the subject of this proceeding from regulation under 49 U.S.C. §10902, and that the exemption be made effective at the same time that the notice requirements of 49 C.F.R. §1121.4(h) have been satisfied.

Respectfully submitted,



ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
Four Penn Center
1600 John F. Kennedy Blvd.
Suite 200
Philadelphia, PA 19103-2808
215-563-9400

Attorneys for Buffalo & Pittsburgh Railroad, Inc.

Dated: October 22, 2003

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: October 22, 2003



David J. Collins

EXHIBIT A

MAP

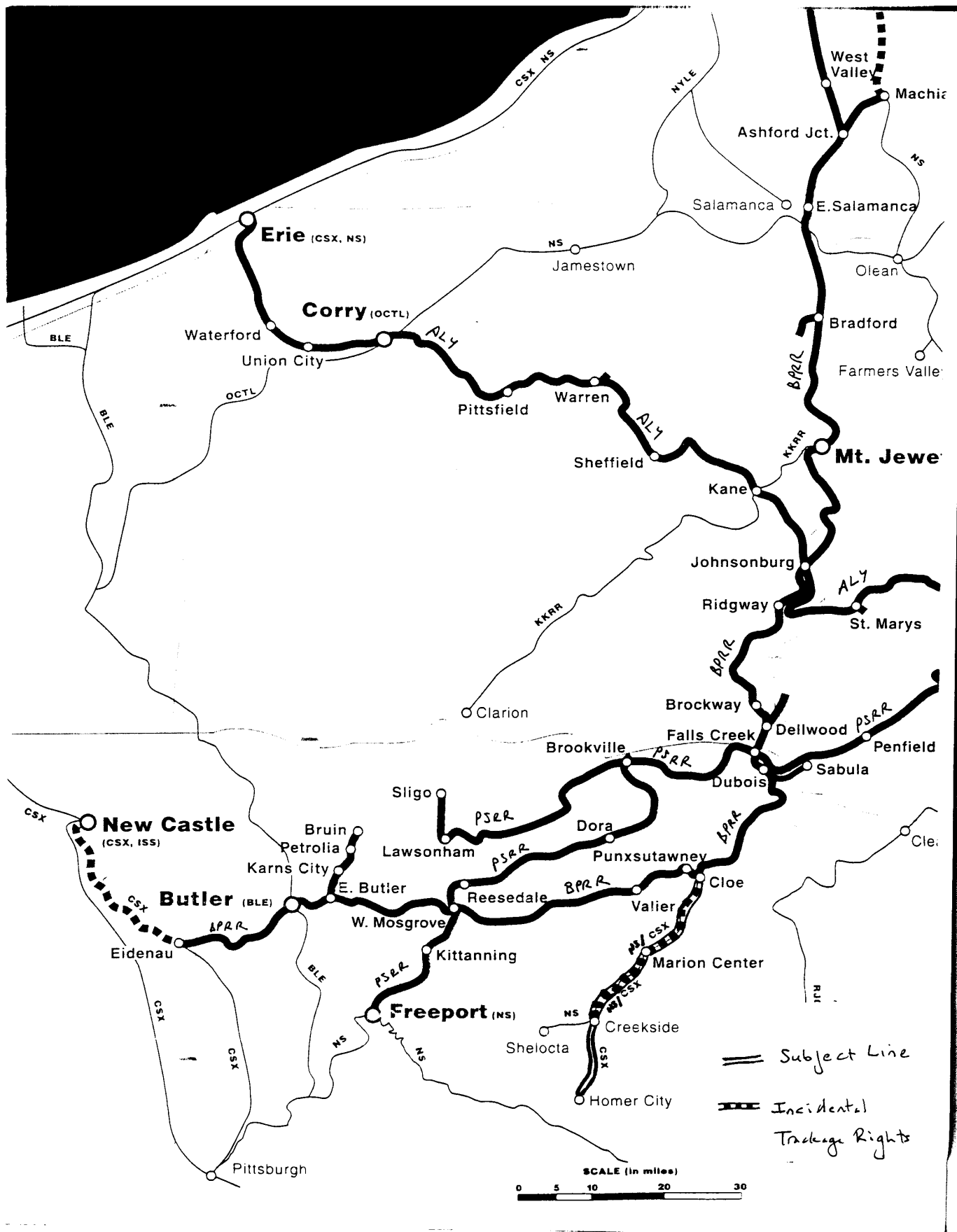


EXHIBIT B
LABOR NOTICE CERTIFICATION

FOUR PENN CENTER
SUITE 200
1600 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19103-2808
TELEPHONE 215.563.9400
FACSIMILE 215.665.9988
WWW.GGELAW.COM

GG&E GOLLATZ
GRIFFIN
& EWING
ATTORNEYS - AT - LAW

ERIC M. HOCKY
DIRECT DIAL 215.320.3720
emhocky@ggelaw.com

October 17, 2003
VIA: UPS Overnight

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building # 711
1925 K Street, N.W.
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 34410
Buffalo & Pittsburgh Railroad, Inc. --
Acquisition and Operation Exemption --
CSX Transportation, Inc.
Labor Notice Certification

Dear Secretary Williams:

Buffalo & Pittsburgh Railroad, Inc. ("BPRR") hereby certifies that on October 16, 2003, a copy of the enclosed Notice was posted at the Customer Service Center of CSX Transportation, Inc. ("CSXT"), in Jacksonville, Florida.¹ BPRR further certifies that it is serving by overnight delivery, a copy of this letter and the enclosed Notice on the national offices of the labor unions shown below.

¹ CSXT received authority to discontinue service over the line in 1993. *CSX Transportation, Inc. - Discontinuance of Service Exemption - In Jefferson and Indiana Counties, PA*, ICC Docket No. AB-55 (Sub - No. 457x) (served November 17, 1993). Because this line has been out of service for so long, CSXT has not been able to identify any field locations that are appropriate for posting.

Honorable Vernon A. Williams, Secretary
October 17, 2003
Page 2 of 3

Ten copies of this letter and Notice are enclosed for filing with the Board. Please time-stamp the enclosed extra copy of the letter and Notice 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: via UPS Overnight

Mr. Edward Dubroski
International President
**Brotherhood of Locomotive
Engineers**
Standard Building
1370 Ontario Street
Cleveland, OH 44113

Mr. Mac A. Fleming
President
**Brotherhood of Maintenance
of Way Employees**
Suite 200
26555 Evergreen Road
Southfield, MI 48076-4225

Mr. Byron A. Byrd, Jr.
International President
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

Mr. W.D. Pickett
President
**Brotherhood of Railroad
Signalmen**
601 West Golf Road, Box U
Mt. Prospect, IL 60056

OCT. -16' 03 (THU) 14:47

P. 001

OCT. -16' 03 (THU) 13:31 CSXT CSC-EXEC DEP

TEL: 904 279 6723

P. 002

Before the

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34410

**BUFFALO & PITTSBURGH RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
CSX TRANSPORTATION, INC.**

**CERTIFICATE OF
THE CSX TRANSPORTATION, INC.**

The attached Notice of Intent was posted at Customer Service Center, 6737
Southpoint Drive South, Bldg 1.

I, Teresa Edwards, Administrative Assistant of
CSX Transportation, Inc. certify under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on October 16, 2003.

Teresa Edwards
[Name]

OCT. -16' 03 (THU) 14:47

P. 002

OCT. -16' 03 (THU) 13:10 CSXT CSC:EXEC DEP

TEL:904 279 6723

P. 002

OCT. -16' 03 (THU) 12:49

P. 002

OCT-15-2283 18:12

ST. LAWRENCE ATLANTIC RR

207 782 5857 P. 02:05

Before the

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34410

**BUFFALO & PITTSBURGH RAILROAD, INC.
AN ACQUISITION AND OPERATION EXEMPTION IN
CSX TRANSPORTATION, INC.**

**NOTICE OF INTENT DIRECTED TO EMPLOYEES OF
CSX TRANSPORTATION, INC.**

Pursuant to the regulations of the Surface Transportation Board (the "Board") at 49 CFR §1121.4(h), Buffalo & Pittsburgh Railroad, Inc. ("BPRR") hereby gives notice of its intent to acquire from CSX Transportation, Inc. ("CSX"), the 16.82 mile line of railroad between milepost BKC 26.75 near Creekville, PA and milepost BKC 43.57 near Homer City, PA. BPRR is also being assigned approximately 24.6 miles of incidental trackage rights over the line between milepost 2.0 near Cloe, PA, and at or about milepost BKC 26.6 at Ridge Branch Junction near Creekville, PA.¹ The acquisition is intended to be effective as of the later of December 19, 2003, or 60 days after BPRR certifies to the Board that this notice has been posted.

After the acquisition, BPRR will have the line rehabilitated. BPRR anticipates that it will

¹ The parties intend that the incidental trackage rights will connect with the line being acquired.

OCT. -16' 03 (THU) 14:47

P. 005

OCT. -16' 03 (THU) 13:19 CSXT CSC-EXEC DEP

TEL-904 279 6723

P. 003

OCT. -16' 03 (THU) 12:49

P. 005

OCT-15-2003 18:13

ST LAWRENCE ATLANTIC RR

287 782 5857 P. 04/05

not begin to handle freight over the line until on or about July 1, 2004.

As a result of the transaction, BPRR preliminarily estimates that following jobs will be available when it begins freight service, at the starting hourly rates of pay indicated:

<u>Jobs²</u>	<u>Starting Rates of Pay³</u>
1 Locomotive Engineer	\$ 14.40
1 Conductor	\$ 13.77
1 Maintenance of Way Foreman	\$ 18.27
1 Maintenance of Way Laborers	\$ 15.03

Employees will be provided with railroad retirement, medical insurance, holidays, vacation and other benefits consistent with the benefits currently provided employees of BPRR with similar jobs.

BPRR is an equal opportunity employer. Employees will be selected based upon their experience and suitability for the jobs that may be offered. Successful applicants will be required to pass a pre-employment drug and alcohol screen, complete a medical questionnaire, and take a physical exam.

Applicants selected for positions as engineers and conductors will be required to be members of the union representing BPRR employees holding those jobs.

² Engineers and conductors on BPRR are represented by United Transportation Union.

³ Rates are current rates, and could be subject to change prior to the anticipated commencement of operations in July, 2004.

OCT. -16' 03 (THU) 14:47

P. 004

OCT. -16' 03 (THU) 13:10 CSXT CSC-EXEC DEP

TEL: 904 279 6723

P. 004

OCT. -16' 03 (THU) 12:49

P. 004

OCT-15-2003 18:13

ST LAWRENCE ATLANTIC RR

207 262 5657 PAGE 05

Applications for employment should be made by sending a letter and resume stating the applicant's experience, providing references for any employment held during the last five years and any rail industry employment held at any time. The applicant must be available to start work by the seventh day before the commencement of operations. The letter should be sent by regular mail to Buffalo & Pittsburgh Railroad, Inc. c/o Shayne L. Magdoff, Senior Vice President Administration and Human Resources, Genesee & Wyoming, Inc, 1200-C Scottsville Road, Suite 200, Rochester, NY 14624.

BUFFALO & PITTSBURGH RAILROAD, INC

Dated: October . 2003

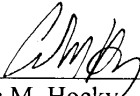
By:



Shayne L. Magdoff, Senior Vice President
Administration and Human Resources

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: October 22, 2003

Joanna Griffith
Director - Asset Management
CSX Transportation, Inc.
500 Water Street, J200
Jacksonville, FL 32202

Office of the Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, Pennsylvania 17120

Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Pennsylvania Department of Transportation
400 North Street
8th Floor
Harrisburg, PA 17120

Mr. Edward Dubroski
International President
Brotherhood of Locomotive Engineers
Standard Building
1370 Ontario Street
Cleveland, OH 44113

Mr. Byron A. Byrd, Jr.
International President
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employees
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26555 Evergreen Road
Southfield, MI 48076-4225

Mr. W.D. Pickett
President
Brotherhood of Railroad Signalman
601 West Golf Road, Box U
Mt. Prospect, IL 60056