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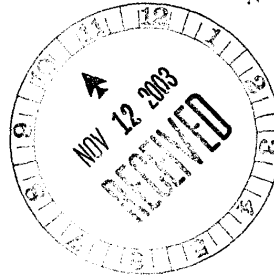
GC&E GOLLATZ
GRIFFIN
& EWING
ATTORNEYS - AT - LAW

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

ENTERED
Office of Proceedings

NOV 12 2003

Part of
Public Record



November 10, 2003
VIA: UPS Overnight

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. 34427
Buffalo & Pittsburgh Railroad, Inc. --
Acquisition and Operation Exemption --
CSX Transportation, Inc.
Petition for Exemption

FEE RECEIVED

NOV 12 2003

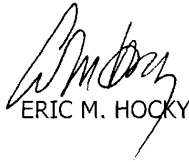
**SURFACE
TRANSPORTATION BOARD**

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,


ERIC M. HOCKY

Enclosures

cc: All persons on the attached service list.

FILED
NOV 12 2003
**SURFACE
TRANSPORTATION BOARD**

GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON



Before the

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34427

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

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PETITION FOR EXEMPTION

Expedited Consideration Requested

FEE RECEIVED

NOV 12 2003

SURFACE
TRANSPORTATION BOARD

FILED
NOV 12 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: November 11, 2003

Before the
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34427

BUFFALO & PITTSBURGH RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION -
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. §10902 to enable BPRR to lease and operate approximately 40.6 miles of rail line owned by CSX Transportation, Inc. ("CSXT") between Glenshaw (M.P. 10.4) and P&W Junction (New Castle) (M.P. 51.0) (the "Line"), all of which is located in Allegheny County, Pennsylvania. BPRR also respectfully requests expedited handling to permit closing by December 22, 2003.

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 lease from CSXT, a portion of the P&W subdivision between Glenshaw and P&W Junction (New Castle), Pennsylvania. BPRR currently operates over a portion of the Line between Eidenau and P&W Junction for interchanging traffic with CSXT in New Castle, PA. Another portion of the Line

(between Glenshaw and Bakerstown) has not had local service for over two years and is the subject of a CSXT notice of exemption to discontinue service. *See CSX Transportation, Inc. – Discontinuance of Service Exemption in Allegheny County, PA*, STB Docket No. AB-55 (Sub-No. 644X).¹

THE PROPOSED TRANSACTION

The Line being leased only handled approximately 1,200 local carloads during 2002, and 750 local carloads during the first ten months of 2003. In addition, BPRR uses a portion of the Line to handle over 20,000 carloads per year which it interchanges with CSXT in New Castle, PA. The Line is currently in need of rehabilitation. Because of the low level of CSXT local traffic and the high level of BPRR interchange traffic, BPRR has a greater economic incentive to invest in the rehabilitation of the Line. Additionally, because it is a locally based operation, BPRR believes it can develop additional local traffic for the Line. However, BPRR is willing to invest in the Line only if it becomes the exclusive operator of the Line under the proposed lease with CSXT. Because of the low level of local traffic on the Line, BPRR expects that it will need to seek state assistance for the rehabilitation, and it has agreed to seek such assistance. CSXT has requested as a condition of the lease that the lease begin by December 22, 2003.

Additional Information.² BPRR provides the following additional information about the transaction to enable the Board to process this Petition:

¹ CSXT notified the Board on November 3, 2003, that it would withdraw the discontinuance upon consummation of the lease with BPRR.

² 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.

- (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 & 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 will enter a lease agreement covering the proposed transaction prior to the commencement of operations by BPRR.
- (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 Glenshaw (M.P. 10.4) and P&W Junction (New Castle) (M.P. 51.0), a total of 40.6 miles.³ The Line is all located in Allegheny County, Pennsylvania.
- (7) A map indicating the Line is attached hereto as Exhibit A.
- (8) After the transaction, BPRR will continue to be a Class II carrier.

³ BPRR currently operates over a portion of the Line between Eidenau and New Castle.

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 40.6 mile rail line, 25 miles of which BPRR already operates over for interchange with CSXT, 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 leasing carrier is a small Class II carrier, and the Line being leased is less than 41 miles long, is located all in one state, and has had only 750 carloads of local traffic

in the first 10 months of this year. Additionally, a portion of the Line has been inactive for over two years, and CSXT was seeking to discontinue service over that portion of the Line. The lease will provide potential customers on the Line with service alternatives. Further, BPRR, as a locally based operator that already operates over a portion of the Line, believes it will be able to provide as good as or better service to the existing local shippers along the Line. 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

The parties recognize 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 1998). Each party will bear its own employee protection costs.

ENVIRONMENTAL AND HISTORIC REPORTS

BPRR is leasing the Line for continued rail operations and does not expect initially that traffic levels will be different from current levels. 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 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 old or older, and any future abandonment by BPRR would be subject to further Board approval.

CERTIFICATION OF NOTICES

BPRR certifies that on October 22, 2003, a notice to CSXT employees was posted at the CSXT Customer Service Center in Jacksonville, Florida, and at CSXT's New Castle Yard and Glenwood Yard in Pennsylvania. Copies were served on the national offices of unions with potentially affected employees, and a certification was filed with the Board on October 23, 2003. A copy of the certification together with the notice is attached as Exhibit B.

Further, 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, and to local shippers on the Line.

EXPEDITED CONSIDERATION

BPRR has agreed with CSXT to have the proposed lease commence by December 22, 2003. 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 22, 2003, the 60th day following the filing of the labor notice certification.

CSXT is seeking to coordinate this lease with the proposed lease to Allegheny Valley Railroad Company of a contiguous line.⁴ If CSXT cannot coordinate the closing of these transactions, it will be faced with a operational difficulties including a circular move to handle traffic and problems with marshaling crews. In addition, if BPRR can close the lease of this Line with its acquisition of the Homer City Branch⁵ from CSXT it will save transaction costs. Moreover, BPRR is, or has, provided substantial notice of the transaction to potentially affected parties including labor and shippers, and not expect any opposition to the lease of the 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: November 11, 2003

⁴ See *Allegheny Valley Railroad Company - Lease, Operation and Trackage Rights Exemption - Lines of CSX Transportation, Inc.*, STB Finance Docket No. 34431.

⁵ See *Buffalo & Pittsburgh Railroad, Inc. - Acquisition and Operation Exemption - CSX Transportation, Inc.*, STB Finance Docket No. 34410.

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: November 11, 2003


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: November 11, 2003

Bobbie League
CSX Transportation, Inc.
500 Water Street, J200
Jacksonville, FL 32202

Louis E. Gitomer, Esq.
Ball Janik LLP
1455 F. Street, N.W., Suite 225
Washington, D.C. 20005

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
Suite 200
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

Austin James
115 Downieville Road
Mars, PA 16046
Attn: Harry Austin, President
Frank Bjalobok, Purchasing

84 Lumber Company
243 Mars-Valencia Road
Mars, PA 16046
Attn: Jason Yamamoto

HP Starr Lumber
Route 68
RD 2, Box 179A
Zelienople, PA 16063
Attn: Russ Ganter

Quality Wood Treating Co. Inc.
115 West Road
RD 2, Box 791
Fombell, PA 16123

Veka, Inc.
100 Veka Drive
Fombell, PA 16123
Attn: Laura Thomas

Ondeo Nalco
125 Ondeo Drive
P. O. Box 391
Ellwood City, PA 16117
Attn: Kathleen Genova

Ellwood City Forge
800 Commercial Street
Ellwood City, PA 16117
Attn: Scott Lesko

Finance Docket No. 34427

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

**40.6 Miles of Line between
a point near Glenshaw (Milepost BG-10.4) and a point near New Castle (Milepost 51.0)
Allegheny County, Pennsylvania**

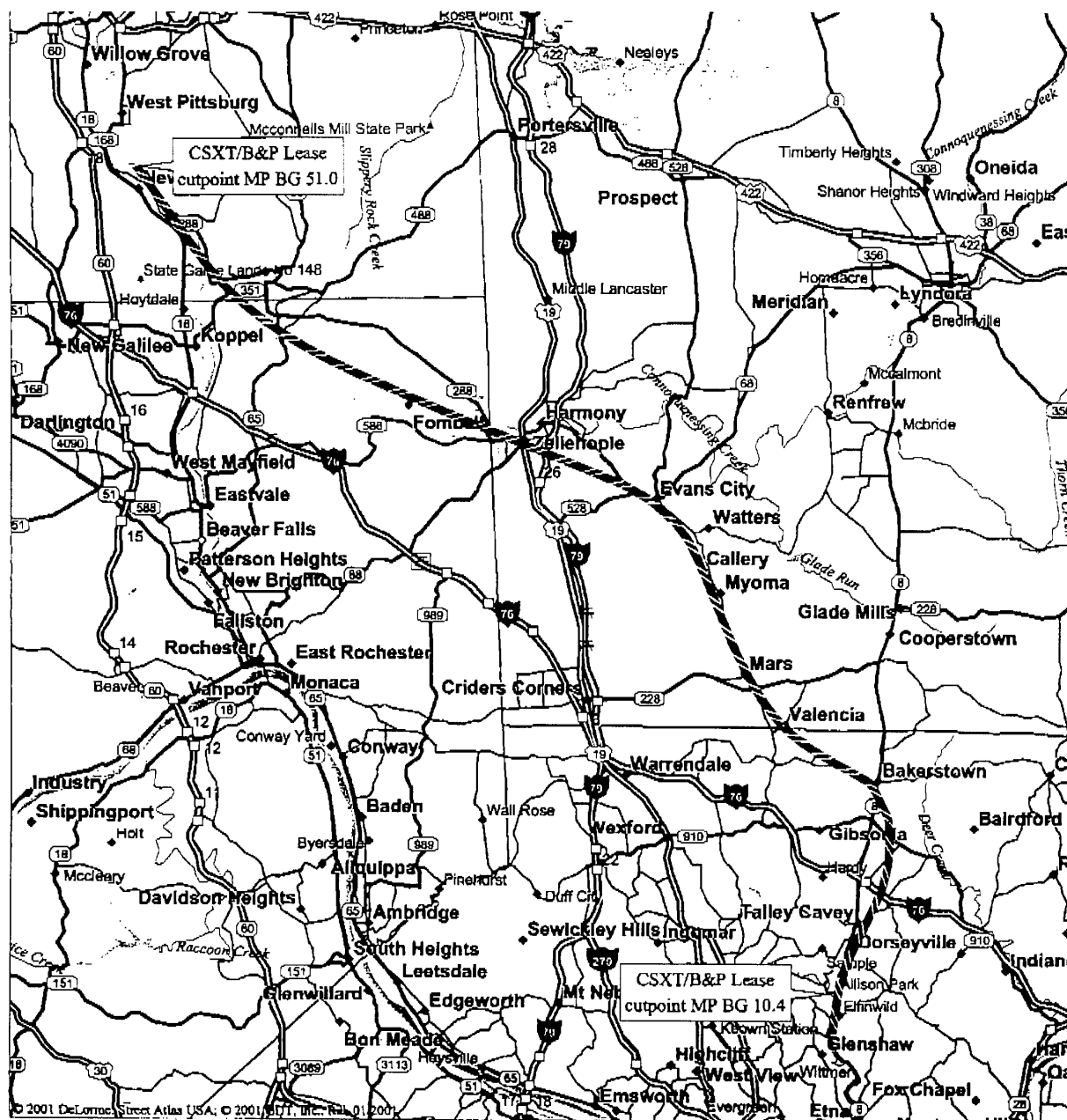


EXHIBIT A

MAP

EXHIBIT B
LABOR NOTICE CERTIFICATION

CT. -23' 03 (THU) 06:23

CT. -22' 03 (WED) 14:18 CSXT CSC:EXEC DEP

CT. -22' 03 (WED) 14:29

P. 003

P. 001

P. 001

TEL: 904 279 6723

Before the
SURFACE TRANSPORTATION BOARD
STB Finance Docket No. 34427

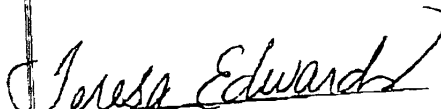
BUFFALO & PITTSBURGH RAILROAD, INC.
- ACQUISITION AND OPERATION EXEMPTION -
CSX TRANSPORTATION, INC.

CERTIFICATE OF
THE CSX TRANSPORTATION, INC.

The attached Notice of Intent was posted at CSXT Customer Service Center, Jacksonville, Florida.

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 22, 2003.


Signature

OCT. -23' 03 (THU) 06:23

OCT-22-2003 15:18 FROM: CSX NEW CASTLE

724 656 9636

TO: 617003221111

P. 002

P. 1-1

P. 001

OCT. -12' 03 (WED) 14:24

Before the

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34427

**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 CSXT New Castle Yard, New Castle, Pennsylvania.

I, Dave Heron, Trainmaster 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 22, 2003.



Signature

CT. -23' 03 (THU) 06:23

OCT 22 '03 20:43 FROM CSX GLENWOOD
OCT. -22' 03 (WED) 15:26

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Before the
SURFACE TRANSPORTATION BOARD
STB Finance Docket No. 34427

**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 CSXT Glenwood Yard, Glenwood, Pennsylvania.

I, John Harr, Trainmaster 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 22, 2003.


Signature

OCT 22 '03 16:16

PAGE. 003

** TOTAL PAGE 001 **

Before the
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34427

BUFFALO & PITTSBURGH RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION -
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 lease from CSX Transportation, Inc. ("CSX"), the 43.8 mile line of railroad between approximately milepost BG-7.2 ± at Glenshaw, PA and approximately milepost BG-51.0 ± at New Castle, PA. The lease is intended to be effective as of the later of December 23, 2003, or 60 days after BPRR certifies to the Board that this notice has been posted.

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>Jobs¹</u>	<u>Starting Rates of Pay</u>
1 Locomotive Engineer	\$ 14.40
1 Conductor	\$ 13.77
1 Maintenance of Way Foreman	\$ 18.27
1 Maintenance of Way Laborer	\$ 15.03
1 Signal Maintainer	\$ 18.27

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.

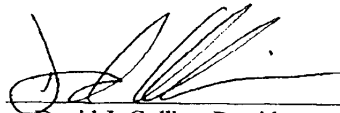
¹ Engineers and conductors on BPRR are represented by United Transportation Union.

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 22, 2003

By:


David J. Collins, President