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December 5, 2003
VIA: Hand Delivery

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.
Reply to Petition for Stay

Dear Secretary Williams:

Enclosed please find for filing the original and ten (10) copies of the above-referenced Reply to Petition for Stay.

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
ERIC M. HOCKY
(204)

Enclosures

cc: Siegfried E. Manecke

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Office of Proceedings

DEC - 5 2003

Part of
Public Record

GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

ORIGINAL



Before the

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34410

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

**REPLY OF BUFFALO & PITTSBURGH RAILROAD, INC.
TO PETITION FOR STAY**

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Attorneys for Buffalo & Pittsburgh Railroad, Inc.

Dated: December 5, 2003

Before the
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34410

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

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**REPLY OF BUFFALO & PITTSBURGH RAILROAD, INC.
TO PETITION FOR STAY**

Buffalo & Pittsburgh Railroad, Inc. ("BPRR") commenced this proceeding by filing a petition with the Board on October 23, 2003, seeking an exemption to acquire a 16.82 mile rail line from CSX Transportation, Inc. The Board approved the petition and granted the exemption in a decision served November 19, 2003, finding that BPRR had satisfied the exemption criteria of 49 USC §10502. The exemption will become effective on December 19, 2003.

Now, one individual, Siegfried E. Manecke, who lives in the vicinity of the line, has filed a Petition to Stay and Revoke Exemption. Because of the Board's expedited requirements for responding to stay requests, BPRR is hereby responding only to the request for stay, and will respond to the merits of the request for revocation in due course.

THE BOARD SHOULD DENY MANECKE'S REQUEST TO STAY BPRR'S LEASE EXEMPTION.

BPRR filed its petition to exempt under 49 USC 10502 its acquisition of the Homer City Branch pursuant to 49 USC §10902. In general, the Board's predecessor, the

Interstate Commerce Commission ("ICC") held that with respect to (class) exemptions, revocation after the fact is a sufficient remedy, and that stays are not necessary. *See Class Exemption -- Acq. & Oper. of R. Lines Under 49 USC 10901*, 1 ICC 2d 801, 812 (1985).

Although Manecke gives a number of reasons why he opposes the transaction (presumably as a basis for revoking the exemption), he gives no reason why the transaction needs to be stayed.

In ruling on a stay, it is well settled that the Board will apply the standards set forth in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 Fed.2d 841 (D.C. Cir. 1977). Thus, to obtain a stay Manecke must demonstrate: (1) the likelihood that he will prevail on the merits; (2) that he will suffer irreparable injury in the absence of a stay; (3) that other interested parties will not be substantially harmed by the issuance of the stay; and (4) that the public interest favors granting a stay. *See, Minnesota Northern Railroad, Inc. -- trackage Rights Exemption -- Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33337 (served January 14, 1997); *Burlington Northern, Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, ICC Finance Docket No. 32549, Decision No. 41 (served September 21, 1995).

Manecke has not demonstrated why after the fact remedies are not sufficient in this case, nor has he met his burden to demonstrate the conditions required for issuance of a stay.

The criteria need only be looked at briefly:

A. Manecke Is Not Likely to Succeed on the Merits of Any Future Petition to Reject or Revoke the Lease Exemption

It is not likely that the exemption will be revoked. Although this issue will be addressed more fully in its subsequent response to the revocation request, it is sufficient for these purposes to note that Manecke has not addressed any of the criteria for an exemption or attempted to show in what way the criteria have not been satisfied. He has not demonstrated why either (1) regulation is necessary to carry out the rail transportation policy of 49 U.S.C. §10101, or (2) shippers need to be protected from the abuse of market power.¹ The closest Manecke comes to addressing anything relevant is his general claim that this transaction which will restore rail service to at least one shipper, and potentially others along the line, is not in the public interest. However, as is discussed more fully in Section D below, his views are misplaced. Since Manecke has not addressed why the Board's findings that the exemption criteria have been met, and particularly its findings that the transaction is consistent with the rail transportation policy, are wrong, there is little chance that Manecke's request for revocation will be granted.

B. Petitioner Will Not Suffer Any Irreparable Harm if the Lease Exemption Is Not Stayed

Manecke had not demonstrated irreparable harm, to himself or to others. Indeed, Manecke has not indicated any harm that he will suffer individually (irreparable or not).

¹ The Board did not reach the question of whether this transaction was of limited scope because it found no risk of abuse of market power. STB Decision at 2. However, given that this involves a rail line that is less than 20 miles long, located all in one county, and is currently out of service, the transaction clearly is of limited scope.

C. A Stay of the Exemption Would Be Harmful to BPRR, CSXT, and Potential Shippers on the Rail Line.

Manecke has not demonstrated that a stay would not be harmful to BPRR, CSXT or others. BPRR requested expedited consideration of its petition so that it could complete its acquisition as soon as possible, and begin the rehabilitation that will be required before it can begin to handle traffic over the line (which it hopes to begin after June 2004). The parties have already invested time and money in planning for, and documenting, the transfer and in planning for the rehabilitation. Any delay in the rehabilitation will jeopardize BPRR's ability to handle coal traffic for the power plant at the end of the line that will become available in June 2004, and jeopardize the ability of other shippers along the line to have once again a rail transportation service alternative. Further, the delay would jeopardize the four permanent new jobs on BPRR that the expansion of service is expected to create.

D. A Stay of the Lease Exemption Would Harm, Not Benefit, the Public Interest

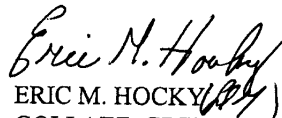
Lastly, Manecke does nothing to demonstrate that the public interest would be benefitted by a stay. The crux of his complaint seems to be that public funding should not be used on the rehabilitation of a line that has been out of service. However, it is up to the public funding agencies to determine if their respective criteria have been met, and if the project is in the public interest. To the extent public funds are provided to BPRR, then it has been determined that the public interest is benefitted from the project. Further, Manecke, as one individual cannot speak for the public interest. BPRR served notice of its petition on the Governor of

Pennsylvania, as well as the Pennsylvania Public Utilities Commission² and the Pennsylvania Department of Transportation, and none of them saw fit to raise any public interest concerns about this transaction. Further, as noted above, it will be in potential shippers' best interests for BPRR to be allowed to begin the rehabilitation that will restore rail service to the area served by the line.

CONCLUSION

For the foregoing reasons, BPRR requests that the Board deny the petition for stay.

Respectfully submitted,



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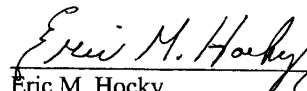
Dated: December 5, 2003

² The Public Utilities Commission has jurisdiction over the crossing issues referenced in Manecke's Petition.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Exemption was served by
first class mail, postage prepaid upon:

Siegfried E. Manecke
307 Forest Ridge Road
Indiana, PA 15701


Eric M. Hocky

Dated: December 5, 2003