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December 11, 2003
VIA: UPS Overnight

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Public Record

Hon. Vernon Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K. Street, N.W.
Washington, D.C. 20423-001

Re: STB Finance Docket No. 34410
Buffalo & Pittsburgh Railroad, Inc. --
Acquisition and Operation Exemption --
CSX Transportation, Inc.
**Reply to Petition to Revoke Exemption and
to Petition to Reopen**



Dear Secretary Williams:

In a decision served November 19, 2003, the Board approved the petition for exemption filed by Buffalo & Pittsburgh Railroad, Inc. ("BPRR") giving BPRR the authority to acquire from CSX Transportation, Inc. ("CSXT"), and operate, a 16.82 mile rail line in Pennsylvania known as the Homer City Branch. The exemption will become effective on December 19, 2003.

On December 1, 2003, an individual Siegfried Manecke filed a Petition to Stay and Revoke Exemption. BPRR filed a Reply to the stay request on December 5, 2003. In its Reply, BPRR indicated that it would be responding separately to the request for revocation. Now, before the Board has had the opportunity to act on his first two requests, Manecke has served on BPRR a copy of Petition to Reopen.¹ For administrative convenience, and to expedite the resolution of all of the filings made by Manecke, BPRR is filing this letter as its Reply to both the request for revocation and the request to reopen.

¹ The Board's web site does not show that the Petition to Reopen has yet been filed with the Board.

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Revocation Request.

Under 49 U.S.C. 10502(d), the Board may revoke an exemption only if it finds that regulation is necessary to carry out the rail transportation policies of 49 U.S.C. 10101. As the petitioner, Manecke has the burden of demonstrating reasonable, specific concerns showing that reconsideration is warranted, and that the revocation criteria have been met. *See* 49 C.F.R. 1121.4(f). Manecke has clearly failed to meet this burden.

BPRR is seeking to acquire the line so that it will be able to provide coal service to the utility at the end of the line. Such service would serve to take a number of trucks off local roads and reduce the utility's transportation costs which should ultimately benefit the public through lower energy rates. Manecke has questioned the existence of a contract to provide coal service,² but not the benefits or the need for such service.

Indeed, the Board in its November 19 decision, found that the operation of the line by BPRR will further several goals of the rail transportation policy. Manecke's petition does not dispute these findings, nor does he demonstrate how requiring BPRR to file a full application would promote any of those policies. Rather, the focus of the petition is Manecke's view that public monies should not be provided to BPRR for the rehabilitation of the Homer City Branch. However, the Board is not the source of these funds. The determination of whether funding is appropriate is not within the Board's jurisdiction, and is outside the scope of this proceeding. Since Manecke has clearly not satisfied his burden, the request for revocation should be denied.

Petition to Reopen.

In his newly filed Petition to Reopen, Manecke tries a new tact focusing now on the safety of the crossings along the line. A petition to reopen must state in detail how the proceeding involves material error, new evidence or substantially changed circumstances. Manecke's petition does none of these. Instead, he asks the Board to reopen its decision solely because he is worried about the safety of crossings.³

BPRR is also safety conscious. It is in BPRR's best interests to operate a safe and efficient railroad. As Manecke acknowledges, the crossings have remained open despite the fact that the line has not seen active service in some time, and local residents like Manecke are surely aware of them. Although the crossings will see some resumption of use, that use will not be substantial. As noted in its Petition for Exemption, BPRR only expects one to two trains

² BPRR did not claim in the Petition for Exemption that it had a contract in place. While ultimately, BPRR expects that a contract will be in place, as the Board is well aware, coal moved over railroads for over a century without contracts between the railroad and the utility.

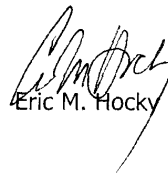
³ The condition and existence of the crossings are the same today as they were when the Petition for Exemption was filed.

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per week, and the trains are expected to be only 40 cars long. Thus, local residents will not be substantially affected. Further, BPRR has stated that as part of the rehabilitation of the line it will be doing brush removal and crossing renewal. Both of these actions will actually improve the safety of the crossings. Not only has Manecke not raised any points that would justify reopening, but his safety concerns are misplaced. For all of the reasons set forth above, the request to reopen should be denied.

Enclosed are an additional 10 copies of this letter so that it can be filed of record in this proceeding. Please time stamp the extra copy to indicate receipt and return it to me in the stamped, self-addressed envelope provided for your convenience.

Very truly yours,



Eric M. Hocky

Enclosures

cc: Siegfried Manecke
Paul Nishimoto, STB (by fax 202-565-9002)

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