

EXPEDITED CONSIDERATION REQUESTED
BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 34903

**BUFFALO SOUTHERN RAILROAD, INC. – LEASE AND OPERATION EXEMPTION
– LINE IN CROTON-ON-HUDSON, NEW YORK**

**PETITION OF THE VILLAGE OF CROTON-ON-HUDSON TO REJECT NOTICE OF
EXEMPTION OR, IN THE ALTERNATIVE, FOR STAY OF EFFECTIVENESS AND
FOR CONSOLIDATION**

Pursuant to the provisions of 49 C.F.R. §§ 1117.1 and 1150.32(c), the Village of Croton-on-Hudson, New York (the “Village”) requests that the Board reject the Notice of Exemption (“Notice”) filed in this docket by Buffalo Southern Railroad, Inc. (“BSOR”) before it becomes effective because the Notice contains false information and is otherwise defective. In the alternative, the Board should stay the effectiveness of the Notice, and consolidate it with a formal complaint, Docket No. FD-34905 (“Complaint”), that the Village filed on June 30, 2006 against BSOR and others with whom BSOR is associated. As set forth in the Complaint and its exhibits, the underlying facility has been the subject of multiple decisions by the federal and New York State courts and by this Board.

Relevant facts are presented in the Complaint and its exhibits. BSOR’s Notice seeks to circumvent the administrative process called for by the U.S. District Court for the Southern District of New York for determining whether BSOR’s alleged rail operation requires Board approval. If such approval is required, BSOR’s unauthorized operation would be subject to

statutory penalties. Unless rejected or stayed by the Board, the Notice of Exemption will become effective on July 6, 2006.¹

The Board recently granted a stay, under similar circumstances, to a Notice of Exemption pertaining to the same underlying facility. This August 2005 decision stayed a Notice of Exemption filed by NIR, a corporate affiliate of BSOR's landlord, RSA. There, the Board concluded that the Village had "raised issues that should be addressed by the Board before the exemption is allowed to become effective." Northeast Interchange Railway, LLC - Lease and Operation Exemption - Line in Croton-on-Hudson, NY, STB Finance Docket No. 34735 (August 5, 2005). The same reasoning applies in this proceeding.

I. The Notice Is Void *Ab Initio* Because It Contains False Information

The Notice is void *ab initio* because it contains false information. 49 C.F.R. § 1150.32(c). Under 49 C.F.R. §§ 1150.42(e), the applicant can be exempt from a 60-day notice requirement only if the projected revenues of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, will not exceed \$5,000,000. The Notice states on page 6 that "the annual revenues expected to be generated by the transaction" will not exceed \$5,000,000; certification of this statement is included as Exhibit B, pursuant to 49 C.F.R. §§ 1150.33(g). The Notice's careful wording avoids discussing BSOR's projected revenue apart from the transaction. Moreover, upon information and belief, the Notice's statement regarding revenue from the transaction itself is false, in view of the volumes of waste anticipated to be handled.

¹ The Board has recognized the problems created by the short time period for notices of exemption to become effective. On March 10, 2006, the STB opened a rulemaking (Ex Parte No. 659) in which it proposed extending the time for notices of exemption to become effective from 7 days to 30 days in order to create a more manageable process. BSOR's strategic filing, just before the holiday weekend, exemplifies that the short time period for effectiveness can greatly impede meaningful participation by affected parties.

Even if BSOR rectified this deficiency by providing its total projected annual revenue, the Notice would still be entirely inadequate. At a minimum, a projected revenue exceeding \$5,000,000 requires the applicant to comply with detailed 60-day notice procedures under 49 C.F.R. §§ 1150.42(e), which BSOR has not done.

II. The Board Should Stay the Effectiveness of the Notice and Consolidate With Complaint

The Village filed the Complaint on June 30, 2006. The Complaint raises important issues regarding a controversial facility in the Village. As set forth in the Complaint, the facility has been the subject of multiple decisions by the federal and New York State courts and by this Board. If the Board does not dismiss the Notice, the Board should stay the effectiveness of the Notice, and should consolidate consideration of the Notice with that of the Complaint.

III. Conclusion

Because the Notice contains false and misleading statements, it is void *ab initio* and should be dismissed. In the alternative, the Village requests that the Notice's effectiveness be stayed and it should be consolidated with the Village's complaint. This will allow the Board to squarely address the legality of BSOR's operations, as recommended by the District Court.

DATED: New York, New York
June 30, 2006

Respectfully Submitted,



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