

JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129

TEL (617) 886-9322
FAX (617) 886-9324

July 6, 2006



VIA FEDERAL EXPRESS

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20006

ENTERED
Office of Proceedings
JUL 7 - 2006
Part of
Public Record

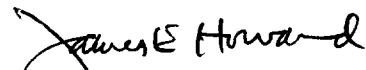
Re: Buffalo Southern Railroad, Inc.--Acquisition and Operation
Exemption--Line in Croton-on-Hudson, New York
Finance Docket No. 34903

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter are the original and 10 copies of the "Reply of Buffalo Southern Railroad, Inc. in Opposition to 'Petition of the Village of Croton-on-Hudson to Reject Notice of Exemption or, in the Alternative, for Stay of Effectiveness and for Consolidation'" and the original and 10 copies of the "Verified Statement of Albert Feasley". Could you please date stamp and return to me, in the enclosed, self-addressed, stamped envelope, the extra copies of the Reply and Verified Statement?

If you have any questions or need additional information, please contact me.
Thank you very much for your attention to this matter.

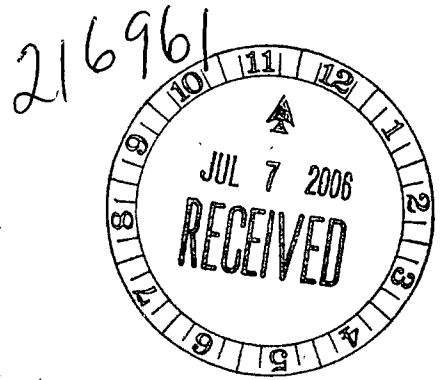
Very truly yours,


James E. Howard

Enclosures
cc: Michael B. Gerrard

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34903



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

ENTERED
Office of Proceedings

JUL 7 - 2006

Part of
Public Record

REPLY OF BUFFALO SOUTHERN RAILROAD, INC. IN OPPOSITION
TO "PETITION OF THE VILLAGE OF CROTON-ON-HUDSON TO
REJECT NOTICE OF EXEMPTION OR, IN THE ALTERNATIVE, FOR
STAY OF EFFECTIVENESS AND FOR CONSOLIDATION" AND
PROPOSAL CONCERNING PROCEDURE

James E. Howard
One Thompson Square
Suite 201
Charlestown, MA 02129
Telephone 617-886-9322

John T. McManus
Crane, Parente, Cherubin & Murray
90 State Street
Albany, NY 12207
Telephone 518-432-8000

Attorneys for Buffalo Southern
Railroad, Inc.

Dated: July 6, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34903

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

REPLY OF BUFFALO SOUTHERN RAILROAD, INC. IN OPPOSITION TO
"PETITION OF THE VILLAGE OF CROTON-ON-HUDSON TO REJECT
NOTICE OF EXEMPTION OR, IN THE ALTERNATIVE, FOR STAY OF
EFFECTIVENESS AND FOR CONSOLIDATION" AND
PROPOSAL CONCERNING PROCEDURE

On June 30, 2006, the Village of Croton-on-Hudson (the "Village") filed a "Petition of the Village of Croton-on-Hudson to Reject Notice of Exemption or, in the Alternative, for Stay of Effectiveness and for Consolidation" (the "Petition") in which it asked the Board to reject the Verified Notice of Exempt Transaction (the "Notice") filed by Buffalo Southern Railroad, Inc. ("BSOR") on June 29, 2006 pertaining to the operation of a track located in Croton-on-Hudson, New York (the "Croton Track"). By decision served on July 3, 2006, the Board entered a "housekeeping stay" of the effective date of the Notice in order to provide sufficient time for the Board to consider the issues presented by BSOR and the Village. For the reasons stated below, there is no basis to reject the Notice or to stay further its effectiveness. The Board should permit the Notice to become effective while it resolves the issues raised in BSOR's Motion to Dismiss the

Notice (the "Motion") and, if necessary, the Village's Formal Complaint (the "Complaint") in Finance Docket No. 34905, both of which were filed on June 30, 2006.

PROCEDURAL PROPOSAL

The Board has before it BSOR's Notice and Motion to Dismiss and the Village's Petition and Complaint. These pleadings frame the following core issues:

1. Is the Croton Track a line of railroad subject to the Board's licensing authority, or is the Croton Track an excepted track within the meaning of 49 U.S.C. 10906? If the Croton Track is excepted track, the Board lacks authority. No further proceedings would be required or appropriate, and the Notice, the Petition and the Complaint could all be dismissed as moot.

2. If the Croton Track is a line, should BSOR be authorized by the Board to operate the Croton Track? If a "certificate" from the Board is required, it can be issued by permitting the Notice to become effective.

3. If the Croton Track is a line and if BSOR is not authorized by the Board to operate on the Croton Track, should fines be imposed against BSOR or any of the other defendants named in the Complaint?

BSOR has already provided its analysis and argument on the first issue. Specifically, in the Motion, BSOR has set forth the reasons that the Croton Track should be considered an excepted track outside the scope of the Board's licensing authority. In order to complete the record for a decision on the first issue, the Board should require the Village to respond with any verified statements and arguments that it chooses to submit and should permit BSOR to file verified statements and argument in reply. Given the attention that the parties have devoted to this issue already in the District Court, the

Village should be able to submit its case within 3 weeks, and BSOR would be able to reply within 2 weeks thereafter.

As noted above, if the Board decides the first issue by concluding, as BSOR contends, that the Croton Track is excepted track within the meaning of section 10906, decisions on the second and third issues would not be necessary. BSOR suggests, therefore, that any briefing or consideration of the second and third issues be deferred unless and until necessary by reason of the decision on the first issue. In this manner, the parties will be able to conserve and focus their legal resources, and the Board will not be required to adjudicate issues that are not relevant or necessary to a final disposition of these cases.

The Village has asked that its complaint be consolidated with the Notice. As described above, the effect of the procedure suggested by BSOR would be to treat the matters together for purposes of administrative ease and efficiently and quickly developing a record for decision. Formal consolidation would not be necessary or appropriate. In any event, for the reasons outlined above, any pleadings responsive to the Complaint should be deferred until after the Board's resolution of the first issue.

ARGUMENT

I. BSOR is Furthering Resolution of, Not "Circumventing", Issues Raised by the Court.

The Village disingenuously claims that the 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." To the contrary, however, as described above, the Notice and the Motion to squarely raise the issues that the Court noted in its Decision (attached as Exhibit A to the

Motion) and that the Village articulates in the Reply and its Complaint--whether BSOR's operations on the Croton Track require authorization by the Board because it is a line of railroad or, alternatively, whether the Board lacks authority over the Croton Track because it is an excepted track within the meaning of 49 U.S.C. 10906. Rather than complaining about the Notice, the Village should be applauding BSOR for taking the initiative to clarify the issues, especially in light of the fact that the District Court did not specifically refer any issues to the Board or create any "administrative process" that could possibly be circumvented. In any event, even if there were a circumvention of an alleged Court-imposed administrative process, it provides absolutely no basis to reject or stay the Notice.

II. The BSOR Notice is Not Similar to the Northeast Interchange Railway Situation.

The Village contends that the Board granted a stay of a notice of exemption pertaining to the Croton Track "under similar circumstances", referring to the decision in August, 2005 in Northeast Interchange Railway, LLC--Lease and Operation Exemption--Line In Croton-on-Hudson, New York, STB Finance Docket No. 34735. Under any analysis, the circumstances of the Northeast Interchange Railway ("NIR") notice and the BSOR Notice are readily distinguishable. NIR is a noncarrier that has state and local regulatory licenses to operate a construction and demolition debris processing facility on the property adjacent to the Croton Track and that sought authority to become a rail carrier and to provide switching and transloading services by means of the lease and operation of the Croton Track. BSOR, on the other hand, is an existing Class III rail common carrier, both on the Croton Track, as recognized by the Court, and elsewhere. BSOR and NIR are not corporate affiliates. Furthermore, as a condition of the

preliminary injunction issued by the Court, BSOR is not handling solid waste on the Croton Track, thereby eliminating any "controversy" that the Village alludes to in its Petition. Although it is convenient for the Village to blur the line between BSOR and NIR, the distinctions are real and must be respected.

III. There are No Legitimate Reasons to Revoke or Stay the Effectiveness of the Notice.

The Village has alleged no legitimate reasons that would justify the Board in revoking the Notice, much less rejecting the Notice or staying its effectiveness. The Village has made an attempt--that is discredited above--to portray some type of controversy relating to the Notice. The Village has not, however, raised other traditional arguments used to support petitions to revoke, reject or stay notices of exemption.

The underlying premise of the class exemption and seven-day notice for the acquisition and operation of lines by Class III rail carriers is that detailed scrutiny of such transactions is not necessary in order to carry out the rail transportation policy of 49 U.S.C. 10101. To the contrary, the Board has found that the class exemption procedure "promote[s] the continuation of a sound rail system to meet the needs of the public and will enhance efficiency, coordination and competition among rail carriers." Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers Under 49 U.S.C. 10902, 1 S.T.B. 95 (1996). While the Board may revoke an exemption if it determines that greater regulatory scrutiny is required in order to carry out the rail transportation policy, a "party seeking revocation must express reasonable, specific concerns to demonstrate that revocation of the exemption is warranted." Illinois Railnet, Inc.--Acquisition and Operation Exemption--BNSF Railway Company, STB Finance Docket No. 34549, decision served February 1, 2006. Moreover, section 10902(c)

requires the Board to issue a certificate of public convenience and necessity unless the Board makes an affirmative determination that such a certificate would be "inconsistent with the public convenience and necessity." 49 U.S.C. 10902(c). Consequently, revocation of an exemption requires the Board to find that operations pursuant to the exemption "would be inconsistent with the provisions of the rail transportation policy that relate to the public convenience and necessity" Bulkmatic Railroad Corp.-- Acquisition and Operation Exemption--Bulkmatic Transport Company, STB Finance Docket No. 34145, decision served November 19, 2002.

Within this framework of statutory provisions and Board decisions, the Village has not articulated any reasonable, specific concerns that would support the conclusion that the effectiveness of the Notice will be inconsistent with the rail transportation policy. For example, the Village has not contended, nor could it in good faith, that the transaction is a sham or does not serve any legitimate business goals. Furthermore, there is no basis for the Village to contend, and they have not, that the Notice is an abuse of the Board's procedures. In fact, as explained above, the Notice furthers the goal of the Village to have a decision on the question whether the Board has licensing authority over the Croton Track. The Notice and Motion represent a proper use of the class exemption procedures in an effort to resolve the line-excepted track issue and clarify that BSOR has been proceeding in good faith on the reasonable assumption that the Croton Track is an excepted track within the meaning of 49 U.S.C. 10906 while recognizing that the Village has disagreed.

IV. The Notice is Not False or Misleading.

The Village attempts to argue that the Notice is void because it allegedly contains false information, but the basis for this argument is unclear. The Village apparently contends that the Notice is false because the total annual revenues of BSOR, including revenues from operation of the Croton Track, will exceed \$5,000,000 and BSOR has not provided 60 days' notice of the transaction to employees working on the Croton Track. If this is the argument, it is wrong for several reasons and does not support the request to reject the Notice.

In the Notice, BSOR certified, as required by 49 CFR 1150.43(g), that the annual revenues from acquisition and operation of the Croton Track would be less than \$5,000,000 annually and that the total revenues of BSOR, including revenues from the Croton Track, would not result in BSOR becoming a Class II carrier. The Village apparently contends that BSOR should have submitted a certification pursuant to 49 CFR 1150.42(e) to the effect that the projected annual revenue of the Croton Track and all other projected annual revenue of BSOR will not exceed \$5,000,000 and that, failing to submit such a certification, BSOR should have provided notice to employees on the line and their unions.

Contrary to the inference that the Village would have the Board draw, BSOR has complied fully with the applicable regulations. BSOR concluded that its total projected annual revenues, including revenues from the Croton Track, would be well under the \$5 million level. Consequently, notice was not provided to employees "working on" the Croton Track or their unions. Significantly, 49 CFR 1150.42(e) does not require any certification that projected total annual revenues will be under \$5,000,000. Rather, it

requires a certification that notice has been given. Clearly, notice and the attendant certification need not be given if the rail carrier has determined that it will not exceed the \$5,000,000 revenue threshold in the first place.

In order, however, to alleviate any confusion with respect to the projected annual revenues, BSOR is submitting herewith the Verified Statement of Albert Feasley. As described in the Verified Statement, the projected annual revenues of BSOR from all sources, including operation of the Croton Track, are expected to be in the range of approximately \$ 650,000-\$700,000. As a result, there is no basis to second-guess the decision not to attempt to provide notice to employees. Furthermore, in view of the Verified Statement and the condition of the preliminary injunction precluding the handling of solid waste, there is absolutely no basis for the contention of the Village that the "Notice's statement regarding revenue from the transaction itself is false, in view of the volumes of waste anticipated to be handled."

Finally, as the Board is well aware, the requirement of 60 days' notice to employees working on the line to be acquired and their union representatives is intended to facilitate the employees' ability to seek jobs with the new operator of the line.

Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of Proposed Transactions, 2 S.T.B. 592 (1997). Stated somewhat differently, the regulation is designed to protect the employment opportunities of railroad employees who might lose their jobs with the prior operator of the line as a result of the transaction in which the ownership or operation of the line is transferred. In this case, there are no such railroad employees or unions, and any attempt to provide notice would have been pointless. The Board has waived the requirements of 49 CFR 1150.42(e) in certain situations,

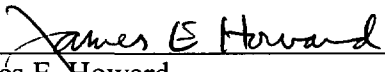
recognizing that strict enforcement of a 60 day notice provision is sometimes unnecessary or not feasible, and the principle of those cases would apply here. Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of Proposed Transactions, 2 S.T.B. at 601 ("We recognize that exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision and we will consider such requests at the appropriate time."); Kansas & Oklahoma Railroad, Inc.--Acquisition Exemption--Rail Line of Union Pacific Railroad Company, STB Finance Docket No. 34746, decision served September 15, 2005; Wisconsin & Southern Railroad Company--Acquisition Exemption--Iowa, Chicago & Eastern Railroad Corp., STB Finance Docket No. 34464, decision served July 30, 2004 (waiver granted under analogous provision of 49 CFR 1121.4(h) because employees on the line would be unaffected by the transaction).

CONCLUSION

As demonstrated above, there is no basis for the Board to reject or stay the effectiveness of the Notice. The Notice should be permitted to become and should remain effective pending a decision on the Motion.

Respectfully submitted,

BUFFALO SOUTHERN RAILROAD, INC.


James E. Howard
One Thompson Square
Suite 201
Charlestown, MA 02129
Telephone 617-886-9322

John T. McManus
Crane, Parente, Cherubin & Murray
90 State Street
Albany, NY 12207
Telephone 518-432-8000

Attorneys for Buffalo Southern Railroad, Inc.

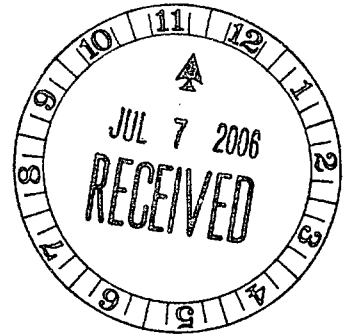
Dated: July 6, 2006

Certificate of Service

I hereby certify that I have served the foregoing pleading and the accompanying Verified Statement of Albert Feasley by sending copies via Federal Express on July 6, 2006 to Michael B. Gerrard, Arnold & Porter LLP, 399 Park Ave., New York, NY 10022-4690.


James E. Howard

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34903

ENTERED
Office of Proceedings

JUL 7 - 2006

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

Part of
Public Record

VERIFIED STATEMENT OF ALBERT FEASLEY

1. My name is Albert Feasley, and I am the Vice President of Operations of Buffalo Southern Railroad, Inc. ("BSOR"). I am familiar with the Verified Notice of Exempt Transaction filed by BSOR on June 29, 2006, which I verified. I am also familiar with the operations, business and financial statements of BSOR.
2. I have reviewed the "Petition of the Village of Croton-on-Hudson to Reject Notice of Exemption or, in the Alternative, for Stay of Effectiveness and for Consolidation".
3. I have estimated the annual revenues of BSOR from operation of the line in Croton-on-Hudson, New York (the "Croton Track") which was the subject of the Verified Notice. I have projected that BSOR will handle 10 cars a day on the Croton Track, consisting primarily of building materials and other commodities that are subject to being transloaded between rail and truck, and will be able to charge rates that are customary in the industry for such operations. If we operate 5 days a week, the total

annual revenue from operations of the Croton Track will be approximately \$200,000. In view of the current inability to interchange cars with CSX, this estimate may be too optimistic.

4. The annual revenues of BSOR, not taking into account any revenues from the Croton Track, have averaged approximately \$450,000 for the last several years. It is anticipated that the annual revenues from sources other than the Croton Track will continue at approximately the same level for the foreseeable future.

5. On the basis of the information outlined above, the annual projected revenues of BSOR, including revenues from the Croton Track and all other sources, are expected to be in the range of approximately \$650,000 to \$700,000.

6. Prior to the lease of the Croton Track by BSOR in March, 2006, the Croton Track and related property had not been used for a number of months. It is my understanding that a prior tenant of the Croton Track and related property operated a construction and demolition debris transfer facility and performed certain switching operations on its own. The prior tenant was not a rail carrier and, so far as I know, never sought Board authorization to perform such switching operations. The prior tenant had rail service to and from the Croton Track from CSX. The operations of the prior tenant ceased at some time in 2005.

7. If the projected annual revenues of BSOR, including the Croton Track, had exceeded \$5,000,000, contrary to the projections described above, there would have been no employees on the Croton Track, or unions representing them, to whom a notice of

BSOR's intent to acquire and operate the Croton track could have been given in order to comply with 49 CFR 1150.43 (e).

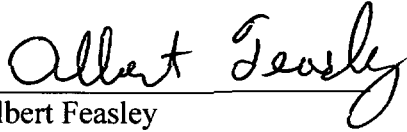
VERIFICATION

State of New York :

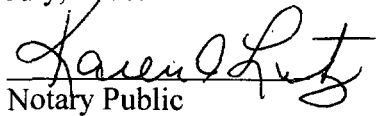
SS

County of Erie :

Albert Feasley, being duly sworn, deposes and states that he has read the foregoing Verified Statement, knows the facts asserted there are true and the same are true as stated.


Albert Feasley

Sworn and subscribed to
before me this 5th day of
July, 2006.


Notary Public

KAREN A. LUTZ No. 01LU4980073
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Apr. 8, 2007