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SERVICE DATE – FEBRUARY 6, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-369 (Sub-No. 7X)

BUFFALO & PITTSBURGH RAILROAD, INC.—ABANDONMENT EXEMPTION—IN
ERIE AND CATTARAUGUS COUNTIES, NY

Decided: February 5, 2009

Buffalo & Pittsburgh Railroad, Inc. (BPRR) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 27.6-mile line of railroad extending from milepost 8.4 in Orchard Park, in Erie County, NY, to milepost 36 in Ashford, in Cattaraugus County, NY. Notice of the exemption was served and published in the Federal Register on October 6, 2008 (73 FR 58297). The exemption became effective on November 5, 2008, subject to environmental, historic preservation, interim trail use/rail banking (NITU), and public use conditions¹ imposed by decision served on November 4, 2008 (November 2008 decision). In this decision, the Board is removing the historic preservation condition.²

Specifically, the historic preservation condition requires BPRR to: (a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or are listed in the National Register of Historic Places (National Register) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470F (NHPA), (b) report back to SEA regarding any consultations with the New York State Historic Preservation Office (SHPO) and the public, and (c) be prohibited from filing its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the section 106 process has been completed and the Board has removed this condition.

SEA has now advised that, in correspondence dated December 23, 2008, the SHPO concluded that the proposed abandonment would have no adverse effect on historic or cultural resources located within the Area of Potential Effect for the project. The SHPO also requested that BRPP continue conversations with the Village of Springville and the Western New York Railway Historical Society regarding the disposition of tracks near the Springville Station and

¹ The negotiating period under the NITU and the public use condition currently extends to May 4, 2009.

² The three environmental conditions remain in effect. By another decision served on November 4, 2008, the Board denied the Western New York Railway Historical Society, Inc.'s late-filed request asking that the notice of exemption be rejected or to delay the notice's November 5, 2008 effective date.

the Orchard Park Station buildings, respectively. On January 15, 2009, BPRR voluntarily agreed to abide by the SHPO's stipulation for a reasonable period of time.

Pursuant to the section 106 regulations of the NHPA at 36 CFR 800.5(b) and consultation with the SHPO and the public, SEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. Therefore, SEA recommends that the section 106 historic preservation condition imposed in the November 2008 decision be removed.

Accordingly, based on SEA's recommendation, the proceeding will be reopened and the previously imposed historic preservation condition will be removed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, the section 106 historic preservation condition imposed in the November 2008 decision is removed.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary