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SERVICE DATE – OCTOBER 6, 2008

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

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

Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—in Erie and Cattaraugus Counties, NY

Buffalo & Pittsburgh Railroad, Inc. (BPRR) has 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. The line traverses United States Postal Service Zip Codes 14127, 14025, 14033 and 14141.

BPRR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 5, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 16, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 2008, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.³

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Effective July 18, 2008, the filing fee for an OFA increased to \$1,500. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 update, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

³ On September 22, 2008, the New York State Office of Parks, Recreation and Historic Preservation filed a request for the issuance of a notice of interim trail use and for imposition of a public use condition for the 27.6-mile rail line. On September 26, 2008, BPRR agreed to negotiate for interim trail use/rail banking.

A copy of any petition filed with the Board should be sent to BPRR's representative: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1910, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void ab initio.

BPRR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 10, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BPRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BPRR's filing of a notice of consummation by October 6, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 29, 2008.

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

Anne K. Quinlan

Acting Secretary