

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: November 4, 2008

On September 16, 2008, 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 is scheduled to become effective on November 5, 2008, subject to environmental, historic preservation, interim trail use/rail banking, and public use conditions.

On October 31, 2008, Western New York Railway Historical Society, Inc. (WNYRHS) late-filed comments in opposition to the proposed abandonment. In its comments, WNYRHS claims that the verified notice of exemption contains sufficient technical deficiencies to render the filing void and to warrant rejection by the Board. In support, WNYRHS points out that BPRR indicated in the notice of exemption that it ceased through rail service over the 27.6-mile line in 1994. But, according to WNYRHS, BPRR did not actually cease operations over the line until late 1996, because WNYRHS participated in a special steam train excursion over the line and hosted a station stop at the Orchard Park station¹ on the line on June 15, 1996. WNYRHS also points out that, contrary to BPRR's certification that no local traffic has moved over the line for at least 2 years, BPRR moved an historic railroad sleeping car from the depot siding during the fall of 2007.² In addition, WNYRHS states that BPRR failed to include the mailing zip code (14170) of West Falls, in Erie County, NY, through which the line traverses, and that BPRR never formally notified it of the planned abandonment. WNYRHS also requests that the November 5, 2008 effective date of the exemption be extended to allow continued discussion and negotiation with BPRR over preserving rail service at the Orchard Park station. On November 3, 2008, BPRR filed a response.

¹ WNYRHS now owns the Orchard Park station.

² Without further explanation, WNYRHS notes that an historic baggage car on the siding at the station will become landlocked if the proposed abandonment is allowed.

DISCUSSION AND CONCLUSIONS

WNYRHS has failed to show that BPRR's notice of exemption should be rejected or its effectiveness delayed. The deficiencies alleged by WNYRHS do not constitute false and misleading information or otherwise warrant such action. As BPRR points out, regardless of whether freight service ended in 1994 or 1996, it has ended more than 10 years before the abandonment exemption was filed (the out-of-service exemption regulations only require 2 years), and the only example cited was a passenger excursion in June 1996, which was not freight service. While BPRR acknowledges that it did move a single sleeping car from the WYNRHS-owned station to Buffalo, NY, within the past 2 years, the movement does not constitute local freight traffic so as to preclude the use of the Board's 2-year out-of-service class exemption at this time, because BPRR did not charge WNYRHS for moving the car. As for the other alleged deficiencies, the Board's rules do not require BPRR to give WYNRHS actual notice of the proposed abandonment, and BPRR's failure to include one of five postal service zip codes does not warrant rejection of the notice, especially given that BPRR has complied with the Board's newspaper publication requirement at 49 CFR 1105.12.

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

It is ordered:

1. WNYRHS's request to reject the notice of exemption or to delay the notice's November 5, 2008 effective date is denied.
2. The exemption will become effective on November 5, 2008.
3. This decision is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary