

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 1066 (Sub-No. 3X)

CITY OF PEORIA, IL – DISCONTINUANCE OF SERVICE EXEMPTION –
IN PEORIA COUNTY, ILL.

**DISCONTINUANCE
PETITION FOR EXEMPTION PURSUANT TO 49 U.S.C. § 10502**

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Dated: February 15, 2023

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Pursuant to 49 U.S.C. § 10502 and corresponding regulations at 49 C.F.R. Parts 1121 and 1152, subpart G, the City of Peoria, Illinois (“City”) hereby files this Petition (the “Petition”) for an exemption from the prior formal approval requirements of 49 U.S.C. § 10903 permitting the City, on behalf of the no longer extant Central Illinois Railroad Company (“CIRY”),¹ to discontinue service over an approximately 1.1-mile portion of a railroad line known as the Kellar Branch, extending between mileposts 1.71 and 2.78 (the “South Line”), located in the City of Peoria, Peoria County, Illinois. The City, a non-carrier, owns South Line, but has never conducted operations over it.²

A map depicting the South Line is attached hereto as Exhibit A. A draft

¹ Under the circumstances of this proceeding, with a non-carrier, the City seeking to discontinue service over a line of the defunct railroad CIRY that no longer exists, the City is utilizing the Abandonment number previously assigned by the Office of Proceedings to CIRY, “AB 1066,” rather than seeking to obtain and utilize a new AB number for itself.

² As the Board has previously recognized, while “the Cities have used the ‘d/b/a’ name Peoria, Peoria Heights & Western Railroad in connection with the line[s], the Cities have not obtained any authority from us, nor do they perform rail operations.” *Cent. Ill. R.R. – Operation Exemption – Rail Line of the City of Peoria & the Vill. of Peoria Heights in Peoria & Peoria Heights, Peoria Cnty., IL*, FD 34518, et al. (STB served Feb. 23, 2005) at 2.

Federal Register notice adhering to the requirements of 49 C.F.R. § 1152.60(c) is attached as Exhibit B. In accordance with 49 C.F.R. § 1150.60(d), a copy of this Petition has been served on the parties designated in 49 C.F.R. § 1152.50(d).

I. BACKGROUND AND SUMMARY

This transaction constitutes the second and concluding part of a two-part strategic initiative by the City, in cooperation with Pioneer Industrial Railway (“PIRY”), to restore rail service to customers over certain City-owned rail lines that had been out of service since 2010. Part one of the City’s plan was recently effectuated through a transaction authorized pursuant to *Pioneer Industrial Railway Co. – Change in Operator Exemption – in Peoria County, IL*, FD 36638 (served Oct. 19, 2022) (“*PIRY-Operation*”), whereby PIRY was authorized to replace the dissolved CIRY as the lessee and exclusive common carrier operator of approximately 3.74 route miles of City-owned railroad line, including roughly 1.5 route miles of a non-contiguous segment of the Kellar Branch extending between mileposts 8.50 and 10.0.

Part Two of the City’s railroad service plan – which the City seeks to effectuate through the present Petition, and which PIRY (a trackage rights licensee on the South Line) seeks also to effectuate via its contemporaneously-filed discontinuance of trackage rights notice of exemption involving the same line segment³ – is to terminate

³ See *Pioneer Industrial Railway Co. – Discontinuance of Trackage Rights Exemption – in Peoria County, Ill.*, AB-1056 (Sub-No. 1X), notice of exemption filed on February 13, 2023 (“*PIRY-Notice*”).

CIRY's leasehold operator common carrier status on the South Line, and to have PIRY voluntarily discontinue its trackage rights over the 1.1 route miles constituting the South Line of the Kellar Branch. As described further below, under *Common Carrier Status of States, State Agencies & Instrumentalities & Political Subdivisions*, 363 I.C.C. 132 (1980) ("*Common Carrier Status of States*"), discontinuance of service rather than rail line abandonment is being sought here because the Kellar Branch, including the South Line, was previously authorized for abandonment, and because the City has never held itself out as a common carrier on the Line.

For these reasons, the City need not obtain authorization to dispose of the South Line itself as it sees fit and without the need for advance STB authorization following the granting of the service and trackage rights discontinuances sought through this proceeding.

As discussed in the verified statement by the City Manager, Patrick Urich ("Urich V.S."), attached hereto as Exhibit C, the intention and effect of the proposed actions encompassed by this Joint Notice are to facilitate alternative (and more efficient) rail service to the sole customer on the Line, O'Brien Steel Service Co. ("O'Brien Steel"), which has been without rail service since 2010 following the cessation of CIRY's operations. After discontinuance, the City will transfer approximately 550 feet of right of way and track located at the south end of the South Line to O'Brien Steel. This will enable O'Brien Steel to rehabilitate and use the track as a private industrial spur to connect to the Tazewell & Peoria Railroad ("TZPR"), which has a connecting rail line located a few hundred feet from O'Brien Steel's rail siding, and thereby restore rail service to O'Brien Steel. A letter of

support from O'Brien Steel is attached hereto as Exhibit D. Aside from O'Brien Steel, there are no other shippers on the South Line, and no traffic has moved over the Line in over a decade.

II. USE OF PETITION FOR EXEMPTION/ ELIGIBILITY OF CLASS EXEMPTION RULES

As discussed further below, the proposed discontinuance of CIRY's common carrier status on the South Line satisfies the exemption criteria of Section 10502, and, as such, this Petition should be granted. However, the City also believes that the discontinuance of service sought herein would qualify for the use of the more expedited class exemption notice procedures at 49 C.F.R. part 1152, subpart F. Consistent with the class exemption process that the City has opted to forego, the City nevertheless certifies, to the best of its knowledge, information, and belief, that (i) the dissolved common carrier, CIRY, has not operated or maintained the South Line for over a decade; (ii) it has had no communication with, and has been unable to find or contact anyone at CIRY for over a decade, since at least 2011; (iii) CIRY has failed to abide by its operating, maintenance, and other responsibilities under its prior operating lease with the City which has been terminated; and (iv) CIRY no longer exists as an ongoing legal entity. *Urich V.S.* at ¶¶ 9-14.

If the Board decides after review of this Petition that the class exemption rules are suitable and appropriate in this instance, and decides to treat this Petition as eligible for and in compliance with the class exemption rules, this will allow consummation of the discontinuance of the South Line trackage 50 days from the filing date under 49 C.F.R. § 1152.50(d)(3), and service to be restored to O'Brien Steel more expeditiously than under the

extended procedural time frame typical of discontinuances authorized under the individual petition for exemption processes. However, with the long-dissolved common carrier, CIRY, unavailable in this instance to file its own discontinuance notice under 49 C.F.R. part 1152, subpart F, the City recognizes that this is not a “standard” class exemption notice. Therefore, out of an abundance of caution, and in order to afford any interested member of the public an opportunity to comment prior to approval, the City has decided to file the subject Petition.

III.

DESCRIPTION OF LINE OVER WHICH SERVICE IS TO BE DISCONTINUED

The City, on behalf of the moribund CIRY, seeks authority to discontinue common carrier service over the stub-ended South Line, extending from milepost 1.71 to milepost 2.78, a distance of approximately 1.1 miles, in the City of Peoria, Peoria County, Illinois. The City originally purchased the Kellar Branch from the Trustee of the Chicago, Rock Island & Pacific Railroad Company (the “Rock Island”) in 1984 after the Rock Island Trustee secured authority to abandon it in 1980.⁴

Pursuant to *Common Carrier Status of States*, the City acquired the Kellar Branch without incurring any common carrier status or obligations, and its acquisition and further disposition of the line is not subject to the jurisdiction of the Board. *See* 49 C.F.R. § 1150.22. *See also Pioneer Indus. Ry. Co. – Discontinuance of Serv. Exemption – Line in*

⁴ *Chicago, Rock Island & Pac. R.R. Co., Debtor (William M. Gibbons, Trustee) – Abandonment – Entire System*, 363 I.C.C. 150 (1980). The history of the Kellar Branch is discussed in *City of Peoria and the Village of Peoria Heights, IL – Adverse Discontinuance – Pioneer Indus. Ry. Co.*, AB 878 (STB served Nov. 19, 2007) at 1-2. *See also City of Peoria, IL, d/b/a/ Peoria, Peoria Heights & W. R.R. – Constr. of Connecting Track Exemption – in Peoria Cnty., IL*, FD 34395 (STB served Feb. 23, 2004).

Peoria Cnty., Ill., AB 1056X (STB served Apr. 16, 2010) at 5 (and cases cited therein).

CIRY was authorized to operate over the entire Kellar Branch in *Cent. Ill. R.R. – Operation Exemption – Rail Line of the City of Peoria & the Vill. of Peoria Heights in Peoria & Peoria Heights, Peoria Cnty., IL*, FD 34518, *et al.* (STB served July 28, 2004).⁵ PIRY obtained non-exclusive local trackage rights over the South Line in a notice of exemption filed in *Pioneer Industrial Ry. Co. – Trackage Rights Exemption – Central Illinois R.R.*, FD 35341, effective January 28, 2010, and possesses long-unexercised trackage rights over the South Line that are the subject of *PIRY-Notice*.

All common carrier service over the 5.72-mile middle portion of the Kellar Branch ended in 2010 pursuant to *Pioneer Industrial Ry. Co. – Discontinuance of Service Exemption – Line in Peoria County, IL*, AB 1066 (Sub-No. 1X) (STB served Apr. 16, 2010); *Central Illinois R.R. – Discontinuance of Service Exemption – Line in Peoria County, IL.*, AB 1066 (Sub-No. 1X) (STB served Apr. 16, 2010) (“2010 Kellar Branch Discontinuance”).

To the extent it may be relevant to the subject proceeding, based on information in its possession, the City states that the South Line that it owns does not contain any known federally-granted rights-of-way to the best of its knowledge, information, and belief. Any relevant documentation on this subject in the City’s possession will be made available promptly to those requesting it. The South Line is located entirely within United

⁵ CIRY was eligible for and had the option of applying for a modified certificate of public convenience and necessity to operate under the Board’s exemption rules, at 49 C.F.R. part 1150, subpart C, but instead (for reasons unknown to the City) obtained an exemption to operate the line under the Board’s class exemption procedures at 49 C.F.R. part 1150, subpart E.

States Postal Service ZIP Code 61603.

IV. JURISDICTION AND STATUTORY STANDARDS

The Board has jurisdiction over the proposed discontinuance of South Line service pursuant to 49 U.S.C. § 10903. Generally, Section 10903 requires formal Board authority under an application procedure to discontinue service. However, 49 U.S.C. § 10502(a) requires the Board to exempt a person, transaction or service from the statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines – (1) application of those requirements is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the “RTP”); and (2) either (a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power.

A. The Exemption Serves the RTP

The RTP requires the Board to minimize the need for federal regulatory control over the rail transportation system, reduce barriers to exit, and expedite regulatory decisions. *See* 49 U.S.C. §§ 10101(2), (7), and (15). The Board previously – and repeatedly – has recognized that exempting certain discontinuances of service from the formal requirements of Section 10903 serves these three elements of the RTP in satisfaction of 49 U.S.C. § 10502(a)(1) exemption criteria.⁶

⁶ *E.g., Savage, Bingham & Garfield Railroad Company — Discontinuance of Trackage Rights Exemption — In Whiting, Ind.*, Docket No. AB 1271X (STB served Mar. 1, 2019), 2 (“An exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. § 10101(2), (7), and (15)”) (citation in original).

Granting City's Petition would be consistent with the goals articulated in the RTP. Specifically, favorable action would promote the policy objectives of the RTP because it would facilitate the City's plans to convey approximately 550 feet of right of way and track to O'Brien Steel to allow it to rehabilitate the segment and utilize it as private industrial track. *Urich V.S.* at 12-13. O'Brien Steel plans to use the track to connect to the TZPR, which has a connecting rail line a few hundred feet away from O'Brien Steel's rail siding, and TZPR has agreed to provide rail service. O'Brien Steel Letter at Exh. C. Board precedent supports granting a discontinuance for the purpose of converting a short stub-ended track that serves only one shipper to private industry track when the shipper supports the exemption proceeding. *See Wisconsin Rapids R.R. – Discontinuance of Service Exemption – In Wood Cnty., Wis., AB 1290X, et al.* (STB served Jan. 8, 2020) (abandonment to allow track conveyance to line's sole customer); *Wisconsin Central Ltd. – Abandonment Exemption – In Winnebago County, Wis., AB-303* (Sub-No. 41X) (STB served Nov. 20, 2013) (same). There are no other rail shippers or potential rail shippers on the South Line. *Urich V.S.* ¶ 12. The remaining portion of the Line is expected to be converted to trail and/or other productive use by the City at its discretion. *See Urich V.S.* ¶ 13.

The transaction will thus promote the development of an economically sound and efficient transportation system by permitting O'Brien to own, control and utilize the South Line for its own rail activities, and to allow the City to use the remainder of the Line for other productive use. 49 U.S.C. §§ 10101(3), (4), (5) and (9).

The RTP also provides that the Board should minimize federal regulation of the rail transportation system, and expedite regulatory decisions and reduce barriers to exit.

49 U.S.C. §§ 10101(2), (7), and (15). The statutory exemption procedure of Section 10502 obviates the need for the expensive and time-consuming processes attendant to a proceeding under Section 10903, including the costs of preparing an application. Reliance on the adequate and expeditious exemption procedure herein would minimize Board regulation of this transaction and reduce the regulatory burden on the City. None of the other rail transportation policy criteria will be adversely affected.

1. The RTP Favors the Ability of the City to Obtain an Exemption

As discussed in PIRY's October 2, 2022 change of operator notice of exemption in *PIRY-Operation* (at 5 n.10), although PIRY long held local trackage rights on the Kellar Branch, CIRY (as the leasehold operator) was responsible for dispatching and track upkeep, upon which PIRY's service depended. *See also* *Urich V.S.* ¶ 11. CIRY has not maintained or provided service over the South Line for over a decade. *Id.* ¶ 9. With CIRY's involuntary dissolution in 2011, service along the lines ended, including PIRY's trackage rights operations. *Id.* ¶¶ 9 and 14.

As also previously discussed in the class exemption filing in *PIRY-Operation* (at 3), Illinois Secretary of State records indicate that CIRY was dissolved involuntarily in 2011.⁷ CIRY's prior owners cannot be located. However, as discussed in the Verified Statement by the former Controller of CIRY, Christine Stanz, ("*Stantz V.S.*") included with the *PIRY-Operation* filing, and also included herein as Exhibit E, the Superior Court of

⁷ Office of the Ill. Secretary of State, *Corporation/LLC Search/Certificate of Good Standing* (accessed November 10, 2022) (search performed for "Central Illinois Railroad"), <https://apps.ilsos.gov/corporatellc/CorporateLlcController>.

Porter County, Indiana ordered CIRY's dissolution in 2010, with CIRY's tangible assets to be transferred to a CIRY secured creditor. Stanz V.S. at 3.

Anticipating dissolution, CIRY reportedly intended formally to discontinue common carrier service over all of the lines it operated, and to cease operations, as of August 31, 2010. Stantz V.S. at 2-3. CIRY notified the Railroad Retirement Board ("RRB") of CIRY's plans to terminate operations. *Id.* at 3. In response, the RRB found that, effective September 15, 2010, CIRY would cease to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.⁸ The RRB appears to have predicated its September 15, 2010 coverage ruling on the Board's AB 1066 (Sub-No. 2X) decision, which authorized CIRY to discontinue service over approximately 18.5 miles of BNSF Railway Company-owned rail lines.⁹ However, CIRY failed in the AB 1066 (Sub-No. 2X) proceeding to seek and secure the discontinuance authority for the South Line that is the subject of this proceeding (and all other City-owned line segments over which CIRY had previously obtained common carrier authorization), evidently due to a clerical error or oversight. Stanz V.S. at 2, 4.

⁸ *Employer Status Determination Central Illinois R.R.*, Board Coverage Decision 11-37 (Feb. 9, 2011), Board Coverage Decision 11-37 (rrb.gov).

⁹ *Cent. Ill. R.R. – Discontinuance of Serv. Exemption – In Cook Cnty., IL*, AB 1066 (Sub-No. 2X) (STB served Nov. 16, 2010).

The City's proposed discontinuance of inactive common carrier service in this docket and PIRY's contemporaneous invocation of the trackage rights discontinuance class exemption procedures in *PIRY-Notice* will, upon the effective date of each exemption, formally end all common carrier operations over the Line, ending Board jurisdiction over the South Line in keeping with *Common Carrier Status of States*. See also *Pioneer Indus. Ry. Co. – Discontinuance of Serv. Exemption – Line in Peoria Cnty., Ill.*, AB 1056X (STB served Apr. 16, 2010) at 5 (and cases cited therein).

In highly-analogous circumstances involving modified certificates of public convenience and necessity, the Board has allowed a state agency or other subdivision to step in to terminate a defunct railroad operator's authority to conduct modified certificate operations over a line owned by that state agency or subdivision. *S.D. Ry.—Notice of Interim Trail Use & Termination of Modified Rail Certificate*, FD 31874 (STB served July 17, 2007), at 2; *Chesapeake R.R.—Certificate of Interim Trail Use & Termination of Modified Certificate*, FD 32609 (STB served Jan. 9, 2006), at 1 n.2. Indeed, PIRY and CIRY operations over the Line would have been eligible to have been conducted pursuant to modified certificate authority at 49 C.F.R. Part 1150, subpart C, given the circumstances underlying the City's ownership, in which case the common carrier cessation proceedings in FD 32609 and FD 31874 would have been not only apt, but controlling as to each carrier.

Similarly, as discussed above, the Board recently allowed PIRY to effectuate a change of operator arrangement over other City owned lines where the operating carrier, CIRY, no longer existed to object to the arrangement, and the sole railroad customer located on the lines supported the operator change to be effectuated by the transaction. *PIRY-*

Operation, at 1-2.

B. The Transaction is of Limited Scope

The transaction for which exemption is sought consists solely of the discontinuance of service over a stub-ended spur track extending only 1.1 miles and serving a single customer who has been without service and which desires to acquire a portion of the trackage for private operation and fully supports the proposed action. There is no reasonable prospect of other future rail traffic. Under these circumstances, the proposed discontinuance is clearly of limited scope, and is of negligible impact (if any).

C. Regulation Is Not Necessary to Protect Shippers from Market Power Abuse

Since this transaction is of limited scope, the City need not demonstrate that regulation is necessary to protect shippers from market power abuse. 49 U.S.C. § 10502(a)(2). Even so, this transaction will not, and cannot, subject shippers to any market power abuse. Consistent with Board precedent, transfer of 550 feet of the South Line to the ownership and control of the willing sole customer on the line results in no abuse – or potential of abuse – of market power. *See HC Railroad, LLC – Abandonment Exemption – In Rush County, Ind.*, Docket No. AB-1250 (Sub-No. 1X) (STB served Jun. 20, 2017) (“*Honey Creek*”) at 3 (“We also find that regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. As discussed earlier, the only shipper on the Line does not object to HC Railroad’s petition.” (footnote omitted)). Again, no rail customer will lose rail service as a result of the proposed discontinuances. Instead, as explained, the sole remaining shipper O’Brien Steel will be able to expand its private track

ownership and operations to include the connecting lead to reach the TZPR, and will gain desired control and flexibility over switching, placement, and storage of railcars at its facilities. O'Brien Steel Letter at Exh. C. Rejection of the Petition or delay in the effective date of the discontinuance exemption for CIRY will merely prolong O'Brien Steel's present lack of access to rail service.

V. **LABOR PROTECTION**

To the extent that the proposed discontinuance might necessitate any labor protection for any employees, the Board established the appropriate level of labor protection in *Oregon Short Line R.R. – Abandonment – Goshen*, 360 I.C.C. 91 (1979). No railroad employees will be adversely affected by the proposed discontinuance.

VI. **ENVIRONMENTAL IMPACT/HISTORIC REVIEW**

As discussed above, this discontinuance proceeding does not entail the abandonment of the South Line, which was previously authorized for abandonment and thereafter acquired by the City. As a general rule, the Board does not require a carrier seeking to discontinue service over a rail line (as opposed to seeking to abandon it) to prepare and submit a combined environmental and historic report under 49 C.F.R. §§ 1105.6(c) and 1105.8(b), particularly where the line segment in question has long been out-of-service.¹⁰ The City submits that the Board's general rule applies to this discontinuance

¹⁰ See, e.g., *Norfolk Southern Ry. — Discontinuance of Service Exemption — in Isle of Wight, Southampton, Greensville, and Brunswick Counties, Va.*, AB 290 (Sub-No.

proceeding, and has dispensed with the preparation of a combined environmental and historic report. Also, no rail-to-truck diversions would result to trigger potential air quality (emissions) impacts.

VII. PUBLIC USE/TRAIL CONDITIONS/OFA WAIVER

The Board does not have jurisdiction over the City or the City's disposition of the South Line, particularly following favorable action on the Petition, and otherwise public use requirements do not apply to a discontinuance proceeding and should not be entertained. *See State of S. Dakota Acting by & Through Its Dep't of Transp. – Adverse Discontinuance of Operating Auth. – Napa Platte Reg'l R.R. Auth.*, AB 1253 (STB served May 31, 2017) at 6 (“*South Dakota*”) (and cases cited therein).

Also, because this is not an abandonment proceeding, interim trail use/rail banking does not apply and should not be entertained. *See City of Fishers, et al. – Petition for Partial Revocation of Exemption*, FD 36137 (STB served May 31, 2018) (“*City of Fishers*”). Because the City's acquisition of the Line falls under *Common Carrier Status of States*, it still has the ability to *voluntarily* pursue rail banking. *City of Fishers*. However, the City does not seek to implement interim use over any portion of the South Line at this time, especially because, as mentioned, it intends to convey a portion of the Line to O'Brien

359X) (STB served Dec. 16, 2013) at 2 (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required”); *Columbus and Greenville Ry. – Discontinuance of Service Exemption – in Greenwood, MS*, AB 297 (Sub-No. 103X) (STB served July 3, 2007) at 2 n.2 (same); *Chillicothe-Brunswick Rail Maintenance Authority – Discontinuance Exemption – in Livingston, Linn, and Chariton Counties, MO*, AB 1001X (STB served Feb 23, 2007) at 2 n.3 (same).

Steel to be used as private, industrial track to enable it to connect to the national rail system and restore its service. Accordingly, no third party trails use/railbanking requests under the Board's interim trail use and railbanking rules set forth at 49 C.F.R. § 1152.29 are appropriate here.

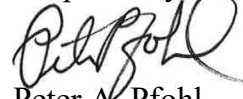
Additionally, the City requests that the Board exempt the discontinuance from offers of financial assistance ("OFA") requests under 49 U.S.C. § 10904 and the Board's rules set forth at 49 C.F.R. § 1152.27, for good cause shown.¹¹ First, as this transaction involves service discontinuance, as opposed to an abandonment, only the Board's one-year subsidy rules apply, and the Board does not consider OFA's to acquire the line for continued rail service. *See Iowa N.W. R.R. – Abandonment Exemption – in Osceola & Dickinson Counties, IA*, AB-1067 (Sub-No. 1X) (STB served Apr. 10, 2006) at 3. Since there has been no rail service on the South Line for over a decade, and the leasehold operator that is the subject of this proceeding, CIRY, is long dissolved, there is no active service which one might seek to subsidize. Second, the City seeks this discontinuance to facilitate future rail service on the South Line to the sole remaining shipper, O'Brien Steel, and this further obviates the need for the OFA process. Third, in *2010 Kellar Branch Discontinuance*, the Board granted the discontinuance of service over the adjacent, middle portion of the 5.72-mile middle portion of the Kellar Branch. As part of its decisions, the Board granted an exemption from the one-year OFA subsidy provisions because there were no shippers located

¹¹ For the same reasons, and to ensure an orderly disposition of the South Line in keeping with the City's plans, PIRY seeks the same exemption from the OFA statute in *PIRY-Notice*, and thus has endorsed the City's request for an exemption here.

on the line. Here, other than O'Brien Steel, whose service will be restored as a result of this transaction, even if a common carrier still existed and currently operated the South Line, there are no other shippers or potential shippers on the South Line of the Kellar Branch who might seek to subsidize service. Accordingly, the Board should exempt this proceeding (and the *PIRY-Notice* proceeding) from the application of the OFA statute, and, by extension, waive application of the corresponding OFA regulations at 49 C.F.R. § 1152.27.

WHEREFORE, the City respectfully requests that the Board grant an exemption from the prior approval requirements of 49 U.S.C. § 10903 to permit the City, on behalf of the no longer extant Central Illinois Railroad Company ("CIRY"), to discontinue service over an approximately 1.1-mile portion of a railroad line known as the Kellar Branch, extending between mileposts 1.71 and 2.78 (the "South Line"), located in the City of Peoria, Peoria County, Illinois.

Respectfully submitted,



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**AN ATTORNEY FOR
CITY OF PEORIA, ILLINOIS**

Dated: February 15, 2023

EXHIBIT A

Map of South Line

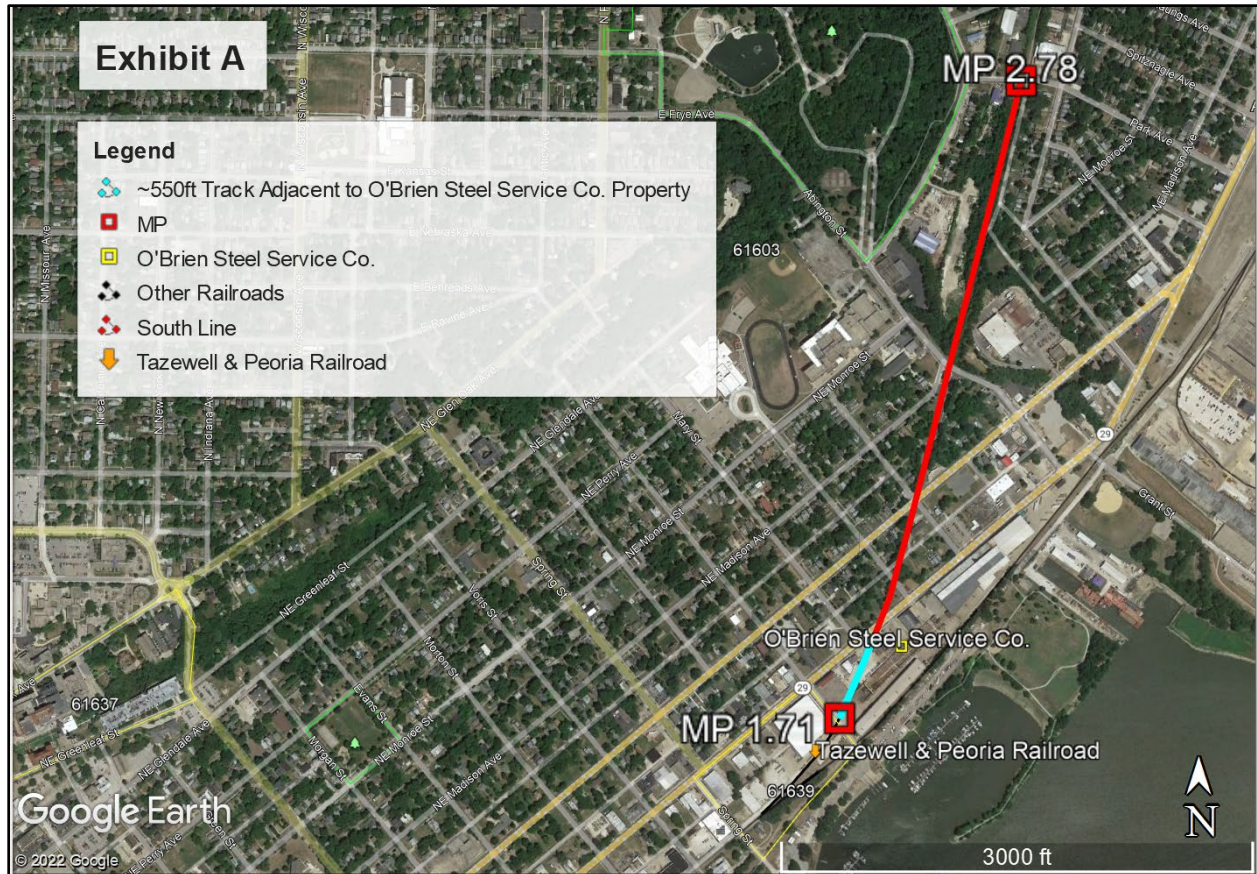


EXHIBIT B

Draft *Federal Register* Notice

SURFACE TRANSPORTATION BOARD

AB 1066 (Sub-No. 3X)

CITY OF PEORIA, IL – DISCONTINUANCE OF SERVICE EXEMPTION –
IN PEORIA COUNTY, ILL.

Notice of Petition for Exemption to Discontinue Service

On February 13, 2023, the City of Peoria, Illinois (“City”) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service on a 1.1-mile portion of a railroad line known as the Kellar Branch, extending between mileposts 1.71 and 2.78 (the “South Line”), located in the City of Peoria, Peoria County, Illinois. The South Line traverses through United States Postal Service ZIP Code 61603. The City, a non-carrier, owns South Line, but has never conducted operations over it and is filing on behalf of the no longer extant Central Illinois Railroad Company.

To the best of the City’s knowledge, the South Line does not contain federally granted rights-of-way. Documentation on federally-granted rights-of-way in the City’s possession, if any, will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b). A final decision will be issued by _____, 2023.

If an exemption from financial assistance provisions is not granted, any offer of financial assistance to subsidize railroad operations will be due no later than 10 days after service of a decision granting the petition for exemption.

Because this is a discontinuance proceeding and not an abandonment proceeding, interim trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 C.F.R. §§ 1105.6(c)(2) and 1105.8(b).

All filings in response to this notice must refer to Docket No. AB 1066 (Sub-No. 3X) and must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on the City's representative, Peter A. Pfohl, Slover & Loftus LLP, 1224 Seventeenth St., N.W., Washington, DC 20036. Replies to the petition are due on or before _____, 2023.

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.

Board decisions and notices are available at www.stb.gov.

Decided: _____, 2023

By the Board, _____, Office of Proceedings.

EXHIBIT C

Verified Statement of Patrick Urich

City Manager

City of Peoria,

VERIFIED STATEMENT OF PATRICK URICH

1. My name is Patrick Urich. I am the City Manager for the City of Peoria, Illinois (the “City”). My business address is 419 Fulton, Suite 207; Peoria, Illinois 61602.
2. The purpose of this verified statement is to provide factual information in support of the Joint Notice of Exemption by the City and Pioneer Industrial Railway Co. (“PIRY”) to discontinue service and trackage rights over approximately 1.1 route miles extending between mileposts 1.71 and 2.78 of the Kellar Branch (“South Line”) acquired by the City out of bankruptcy in 1984 after the Branch was abandoned in 1980.
3. I previously submitted a Verified Statement in support of the Pioneer Industrial Railway Co.’s (“PIRY’s”) Change in Operator Exemption in FD 36638, authorizing PIRY to replace the dissolved Central Illinois Railroad Company (“CIRY”) effective November 2, 2022. The City is pleased to now have the PIRY as its new common carrier operator over approximately 3.74 route miles, and it is interested in discontinuing common carrier service and trackage rights over the South Line as soon as possible, to enable rail service to be restored to the one shipper on the line, the O’Brien Steel Service Co. (“O’Brien Steel”).
4. Some of the information below is repetitive of my previous Statement in FD 36638, with relevant portions repeated here that are most relevant to the Joint Notice of Exemption.
5. As discussed in my previous Statement, I became the 18th City Manager for the City of Peoria on April 13, 2011, and have served in this position for over ten (10) years.
6. The City of Peoria, Illinois operates under the managerial form of municipal

government pursuant to 65 ILCS 5/5-1-1 *et. seq.* As the City Manager, I am responsible for overseeing the day-to-day activities of the City of Peoria, including the \$169 million budget, 14 departments, and approximately 660 full-time and part-time employees.

7. The City-owned rail lines include the South Line of the Kellar Branch.

8. The City entered into a Rail Operating and Trackage Rights Agreement (“ROTRA”) with the CIRY and the PIRY in May 2009, under which, as relevant here, CIRY assumed responsibility for operating and maintaining the South Line, and PIRY assumed trackage rights over the same.

9. To the best of my knowledge, information, and belief, CIRY has not operated or maintained the South Line for over a decade.

10. To the best of my knowledge, information, and belief, the City has had no communications with, and has not been able to find or contact anyone at CIRY for over a decade, since at least 2011.

11. CIRY failed to abide by its operating, maintenance, and other responsibilities under the ROTRA, and failed to provide the City with any notice of its bankruptcy or dissolution in 2011. The ROTRA is now terminated. While PIRY possessed trackage rights under the ROTRA, it had no authority to maintain or repair the tracks, and to the best of my knowledge, information, and belief, it was unable under the circumstances to exercise its rights to operate over the South Line as a trackage rights licensee.

12. The City has been seeking to restore service to the sole shipper on the South Line, O’Brien Steel, who has an active need for rail service. The purpose of this transaction is to formally discontinue rail service and trackage rights on the South Line to enable restoration of rail service to O’Brien Steel as soon as possible. To the best of my knowledge,

information, and belief, there are no other rail shippers or potential rail shippers on the South Line.

13. Provided the Surface Transportation Board (“STB”) approves this Joint Notice of Exemption such that the Board no longer has jurisdiction over the South Line, the City plans to sell a portion of the Line and adjacent property to O’Brien Steel (approximately 550 feet in length) as necessary in order for O’Brien Steel to assume control of the track to connect to the Tazewell & Peoria Railroad. This is the most efficient way to allow rail service to be restored to O’Brien as soon as possible. The remainder of the Line is likely to be used for an extension of existing trails and other productive purposes, although the City is not seeking interim trail use and railbanking under the National Trails System Act.

14. The City again observes that CIRY, which has no ability to effectuate this transaction, and in whose place the City seeks to stand under the unique circumstances of this proceeding, was involuntarily dissolved in 2011, and no longer exists as an ongoing legal entity to the best of my knowledge, information, and belief.¹

15. The City urges the STB to approve this transaction. As indicated, there has been no service over the South Line in over a decade, and the subject exemption proceeding is essential and necessary to allow O’Brien Steel to be able to restore its rail service.

¹ Office of the Ill. Secretary of State, *Corporation/LLC Search/Certificate of Good Standing* (search performed for “Central Illinois Railroad”), <https://apps.ilsos.gov/corporatellc/CorporateLlcController>.

VERIFICATION

I, Patrick Urich, in my capacity as the City Manager of the City of Peoria, verify under penalty of perjury that that I have read the foregoing Statement and know the contents thereof; and that the same are true as stated, except as to those statements made on information and belief, and as to those, I believe these to be true.



Patrick Urich
City Manager, City of Peoria
419 Fulton, Suite 207
Peoria, Illinois 61602
Phone: (309) 494-8524

Executed on: November 17, 2022

EXHIBIT D

O'Brien Steel Service Co.

Letter of Support



November 15, 2022

Hon. Martin J. Oberman, Chairman
Surface Transportation Board

Hon. Robert Primus, Vice Chairman
Surface Transportation Board

Hon. Patrick J. Fuchs, Member
Surface Transportation Board

Hon. Michelle Schultz, Member
Surface Transportation Board

Hon. Karen Hedlund, Member
Surface Transportation Board

**RE: Support of Discontinuance of Service and Trackage Rights Over the Kellar Branch
South Line, City of Peoria, IL**

Dear Chairman Oberman, Vice Chairman Primus, and Members, Fuchs, Schultz, and Hedlund:

O'Brien Steel Service Company (O'Brien Steel) writes in support of the City of Peoria (City) and Pioneer Industrial Railway Co. (PIRY) Joint Notice of Exemption for discontinuance of rail service and trackage rights over an approximately 1.1 mile segment of track in Peoria, IL, referred to as the South Line. O'Brien Steel's industry track is located within approximately 150 feet of the Tazewell & Peoria Railroad (TZPR), that connects at the end of the South Line, who has agreed to provide rail service to us following approval of the discontinuance.

O'Brien Steel is the sole shipper on the South Line and is interested in restoring rail service as soon as possible, as it has not received any service on the Line in over ten (10) years. The TZPR does not directly connect to O'Brien Steel, but has provided adequate assurance to O'Brien Steel that if service is discontinued on the Line to allow it to be conveyed by the City to O'Brien Steel to be used as connecting private industrial track, the TZPR will serve us. The City of Peoria has also agreed to sell the track and right-of-way to O'Brien Steel as soon as the discontinuance is granted and effectuated, and the Board no longer has jurisdiction over the line. Therefore, provided the Board authorizes discontinuance, there is a path forward for O'Brien Steel to restore rail service on the line. O'Brien Steel has immediate need for rail service, and it has been continually frustrated in its attempts to restore service over the last decade with the dissolution of the Central Illinois Railroad Company.

In summary, O'Brien Steel fully supports discontinuance of service over the South Line so that we can restore rail service to our facility as soon as possible. On behalf of O'Brien Steel, we greatly appreciate the Board's prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J.P. O'Brien", is written over a horizontal line.

J.P. O'Brien
President

EXHIBIT E

Verified Statement of Christine Stantz

**VERIFIED STATEMENT OF
CHRISTINE STANTZ**

I. Background

1. My name is Christine Stantz. I reside at 2512 W, Butternut Drive, LaPorte, Indiana. I served as the Controller for Central Illinois Railroad Company ("CIRY") from May 2008 until its dissolution in August 2010. I currently reside in La Porte, Indiana.

2. The purpose of this verified statement is to address CIRY's 2011 dissolution and to certify that to the best of my knowledge that it was CIRY's intent to cease all common carrier operations and to file for discontinuance over all lines that it operated subject to the Surface Transportation Board's ("Board" or "STB") jurisdiction, including all lines operated in Peoria, Illinois.

3. I graduated with a Bachelor of Science in Business Management & Administration from Indiana University in 1986.

4. I obtained my Indiana CPA license in 2007.

5. I joined CIRY in May 2008 as Controller and remained in that role until CIRY's dissolution on August 31, 2010.

6. In my role as Controller, I oversaw CIRY's business accounting, including accounts payable, accounts receivable, and payroll.

7. While I was not in charge of CIRY's railroad operations or regulatory compliance, I am aware that CIRY intended to formally discontinue service over all of the lines that it operated as a common carrier, and that it took actions to effectuate that discontinuance. This was the result of CIRY's business and financial troubles, as described further below.

8. CIRY filed a discontinuance of service exemption on July 29, 2010, with the Surface Transportation Board (“STB” or “Board”) pursuant to 49 U.S.C. § 10502.¹ CIRY proposed to discontinue its lease and all operations over approximately 5.9 miles of main line track and approximately 12.47 miles of sidetrack owned by the BNSF Railway Company (“BNSF”). CIRY was “in poor financial condition and [] operating the Lines at a financial loss.”²

9. The STB granted the exemption and allowed CIRY to discontinue its lease and service over the proposed BNSF lines.³

10. Despite CIRY’s intention to discontinue service over all lines that it operated, due to what was most likely an oversight or administrative error, I have become aware that service discontinuance was not ever sought for all lines operated by CIRY. Specifically, I have been made aware through discussions with counsel from Slover & Loftus LLP that no exemption filing was made to discontinue CIRY’s service on the rail line known as the Kellar Branch, between milepost (“MP”) 1.71 and MP 2.78 (“Southern Segment”) and between MP 8.50 and MP 10.0 (“Northern Segment”), and an approximately 1.9-mile rail line from a point of connection with the Peoria Subdivision of the Union Pacific Railroad Company (“UP”) at approximately MP 71.5 to a point a short distance west of University Avenue in Peoria, Illinois (“Western Connection”) (collectively, the “Lines”).

¹ *Cent. Ill. R.R. – Discontinuance of Serv. Exemption – In Cook Cnty., IL*, AB 1066 (Sub-No. 2X) (filed July 29, 2010).

² *Id.* at 6.

³ *Cent. Ill. R.R. – Discontinuance of Serv. Exemption – In Cook Cnty., IL*, AB 1066 (Sub-No. 2X) (STB served Nov. 16, 2010).

11. As indicated in CIRY's petition for discontinuance of operations on leased track,⁴ CIRY was operating at a financial loss and faced insolvency. Prior to ceasing operations, CIRY was subject to a civil proceeding, *Leaders Bank v. Central Illinois Railroad*, Cause: 64D01-0912-PL-12477 at the County of Porter Superior Court, Indiana. The Porter Superior Court in this proceeding issued an order denying receivership on July 20, 2010, denied CIRY's request to appoint a receiver and ordered CIRY to turn its assets over to a secured creditor.⁵ A copy of this order denying receivership is attached hereto as **Attachment A**. Subsequently, all remaining tangible assets were sold to R&R Contracting on July 23, 2010.⁶

12. On August 27, 2010, I wrote a letter to the Railroad Retirement Board ("RRB"), notifying the RRB that Central Illinois Railroad Holdings LLC and all of its subsidiaries, including CIRY, had sold virtually all of their assets. I notified the RRB that all operations were to cease August 31, 2010 and that I was consequently submitting for 2010 our Form BA-3, Annual Report of Creditable Compensation, and Form BA-9, Report of Separation Allowance. A copy of this letter is attached hereto as **Attachment B**.

13. CIRY employees were terminated August 10, 2010. My last day of employment was August 31, 2010, and the last payroll for CIRY was issued September 15, 2010.

14. The RRB on February 9, 2011, issued a decision establishing that CIRY no longer possessed the characteristics of a railroad employer. The RRB found that effective September

⁴ Pet. for Exemption, *Cent. Ill. R.R. – Discontinuance of Serv. Exemption – In Cook Cnty., IL*, AB 1066 (Sub-No. 2X) (filed July 29, 2010).

⁵ *Leaders Bank v. Cent. Ill. R.R. Holdings*, 64D01-0912-PL-12477, Porter Cnty. Ind. Sup. (July 20, 2010).

⁶ *Employer Status Determination Central Illinois R.R.*, Board Coverage Decision 11-37 (Feb. 9, 2011), [Board Coverage Decision 11-37 \(rrb.gov\)](http://rrb.gov).

15, 2010, Central Illinois Railroad Company ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.⁷

15. I have not attempted to contact anyone at CIRY after my last day of employment, on August 31, 2010. However, I am aware that after CIRY was dissolved that there was an investigation by the Federal Bureau of Investigation ("FBI"), as I was contacted and questioned by the FBI regarding CIRY's finances. I have not spoken with the officers and principals of CIRY since leaving the company.

16. To the best of my knowledge, CIRY was dissolved as a business and ceased providing rail service operations over a decade ago in 2010, and its business and contractual relations all ceased to continue at the same time, including all of its contractual relations with the City of Peoria to operate the Lines.

17. To the best of my knowledge, no actions were taken by a bankruptcy court or any trustee to discontinue service on the Line. While CIRY did seek service discontinuance over certain of its lines, it appears that it neglected to do so with the Lines it operated in the City of Peoria. The failure by CIRY to file for discontinuance over lines in the City of Peoria was an oversight or administrative error. CIRY's intent to discontinue service over all its common carrier lines, including the Lines in the City of Peoria, is evidenced by CIRY selling of all tangible assets including locomotives, machinery and equipment, and its previous filings at the STB and RRB.

⁷ *Id.*

VERIFICATION

I, Christine Stantz, verify under penalty of perjury that that I have read the foregoing Statement and know the contents thereof; and that the same are true as stated, except as to those statements made on information and belief, and as to those, I believe these to be true.



Christine Stantz

Executed on: June 17, 2022

ATTACHMENTS

ATTACHMENT A

RECORDS
FILE COPY

FILED
IN OPEN COURT

JUL 20 2010

Roger V. Bradford
JUDGE PORTER SUPERIOR COURT

STATE OF INDIANA)
COUNTY OF PORTER)

SS:

COUNTY OF PORTER

CONTINUOUS TERM, 2010

THE LEADERS BANK

VS.

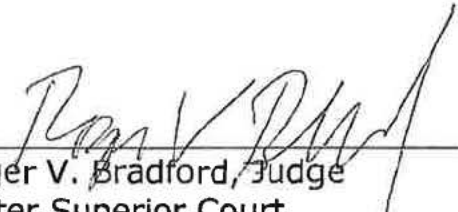
CENTRAL ILLINOIS RAILROAD

CAUSE: 64D01-0912-PL-12477

ORDER DENYING RECEIVERSHIP

Hearing on appointment of receiver concluded. Argument heard. The Court denies the appointment of a receiver. The current manager of Defendant businesses is ordered to turn over to Plaintiff all of the equipment and inventory in which Plaintiff has a security interest.

Ordered this 20th day of July, 2010.


Roger V. Bradford, Judge
Porter Superior Court

PC:
Thomas G. Burrows
KATZ & KORIN
334 N. Senate Avenue
Indianapolis, IN 46204

Henry A. Efroymsen
ICE MILLER
One American Square, Suite 2900
Indianapolis, IN 46282-0200

11-23-10
8

ATTACHMENT B



RAILROAD SERVICES GROUP

RECEIVED IN THE
BUREAU OF FISCAL
OPERATIONS

2010 SEP 13 P 3:43

RECEIVED
RRB MAILROOM

2010 SEP -2 A 10:42

August 27, 2010

US Railroad Retirement Board
844 N. Rush Street
Chicago, IL 60611-2092

Re: Central Illinois Railroad Company
Employer BA #4785

To Whom It May Concern:

Central Illinois Railroad Holdings LLC and all of its subsidiaries including Central Illinois Railroad have recently sold virtually all of their assets and will be closing. All operations will cease August 31st, 2010. Consequently, I am submitting our 2010 BA3 and BA9.

Please let me know if you need further information.

Sincerely,

Christine L. Stantz
Controller

RECEIVED
ASSESSMENT AND TRAINING
2010 SEP -3 P 3:39

EXHIBIT F

Certificate of Service and Publication

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2023, in accordance with the requirements of 49 C.F.R. § 1152.60(d) (to the extent applicable here), the foregoing Petition for Exemption was served via United States Mail or by more expedited means upon the following parties:

Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Illinois Department of Transportation
Office of Intermodal Project Implementation
2300 S. Dirksen Parkway
Springfield, IL 62764

Military Surface Deployment and Distribution Command
Transportation Engineering Agency
Attn: SDTE-SA (Railroads for National Defense)
1 Soldier Way
Bldg. 1900W
Scott AFB, IL 62225

Mr. Bob Ratcliffe
Division Chief, Conservation and Outdoor Recreation
National Park Service
1849 C Street NW
Washington, D.C. 20240
Email: Bob_Ratcliffe@nps.gov

Randy Moore
Chief, Forest Service
U.S. Department of Agriculture
Sidney R. Yates Federal Building
201 14th Street SW
Washington, D.C. 20024
Email: Randy.moore@usda.gov



Peter A. Pfohl
Attorney for City of Peoria, Illinois

Dated: February 15, 2023

CERTIFICATE OF PUBLICATION

I hereby certify that notice of proposed discontinuance, in the form prescribed by 49 C.F.R. § 1105.12, was published in the following newspaper of general circulation for the county in which the subject rail line in this proceeding is located:

Peoria County, IL

The Peoria Journal Star Inc.

One News Plaza

Peoria, IL 61643-0001

Publication date: February 10, 2023

A handwritten signature in black ink, appearing to read 'Peter A. Pfohl', is written over a horizontal line.

Peter A. Pfohl

Attorney for City of Peoria, Illinois

Dated: February 15, 2023