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ORIGINAL

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THOMAS F. McFARLAND

June 25, 2004

By UPS overnight mail
(Monday delivery)

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
JUN 28 2004
Part of
Public Record



Re: Finance Docket No. 34518, *Central Illinois Railroad Company -- Operation Exemption -- Rail Line of the City of Peoria and the Village of Peoria Heights in Peoria and Peoria Heights, Peoria County, IL*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Verified Notice of Exemption Under 49 C.F.R. § 1150.41, for filing with the Board in the above referenced matter.

Also enclosed is Central Illinois Railroad Company's ck #2021 in the amount of \$1,400 for the filing fee.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Applicant

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FEE RECEIVED

JUN 28 2004

**SURFACE
TRANSPORTATION BOARD**

FILED
JUN 28 2004
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

CENTRAL ILLINOIS RAILROAD)
COMPANY -- OPERATION)
EXEMPTION -- RAIL LINE OF THE)
CITY OF PEORIA AND THE VILLAGE) FINANCE DOCKET
OF PEORIA HEIGHTS IN PEORIA AND) NO. 34518
PEORIA HEIGHTS, PEORIA COUNTY,)
IL)



VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.41

FILED
JUN 28 2004
SURFACE
TRANSPORTATION BOARD

CENTRAL ILLINOIS RAILROAD COMPANY
P.O. Box 259
Granville, IL 61326

Applicant

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Office of Proceedings
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SURFACE
TRANSPORTATION BOARD

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Applicant

DATE FILED: June 28, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD



CENTRAL ILLINOIS RAILROAD)
COMPANY -- OPERATION)
EXEMPTION -- RAIL LINE OF THE)
CITY OF PEORIA AND THE VILLAGE) FINANCE DOCKET
OF PEORIA HEIGHTS IN PEORIA AND) NO. 34518
PEORIA HEIGHTS, PEORIA COUNTY,)
IL)

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.41**

Pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. § 1150.41, *et. seq.*, CENTRAL ILLINOIS RAILROAD COMPANY (CIRY), a Class III rail carrier, hereby files this notice of exemption for its operation of a rail line owned by the City of Peoria, Illinois and the Village of Peoria Heights, Illinois (the Cities), commonly known as the Kellar Branch, and also known as the Peoria, Peoria Heights & Western Railroad (PPHW), more particularly described as follows: extending from EPS 80+15 (Milepost No. 1.71) to EPS 516+21 (Milepost No. 10.0), a distance of 8.29 miles in Peoria and Peoria Heights, Peoria County, IL ("the Kellar Branch").

CONTEXT OF FILING OF THE NOTICE

This notice is being filed at the request of the owners of the rail line -- the City of Peoria and the Village of Peoria Heights, IL (the Cities) -- for CIRY to replace the current operator of the Kellar Branch -- Pioneer Industrial Railway Co. (Pioneer) -- upon expiration of the operating agreement between the Cities and Pioneer on July 10, 2004. Pioneer has made it known that it will refuse to voluntarily give up its authority to operate over the Branch on July 10, 2004. Consequently, it will be necessary for the Cities to file an application for adverse discontinuance

of Pioneer's operation over the Branch. As a result of this notice of exemption, therefore, as of consummation of CIRY's operation, there will be two authorized operators of the Branch until discontinuance of Pioneer's operating authority is granted.

There is Board precedent for such dual authority. One such case involved an affiliate of Pioneer, i.e., Rochelle Railroad Company. *See City of Rochelle, Illinois -- Notice of Exemption -- Commencement of Rail Common Carrier Operations*, 1998 STB LEXIS 299 (Finance Docket No. 33587, notice served June 2, 1998). In that case, Pioneer's affiliate, Rochelle Railroad Company (RRC) was operating over a 2.06-mile rail line in Rochelle, Illinois, owned by the City of Rochelle (the City). In January, 1998, the City terminated the agreement pursuant to which RRC had been operating and asked RRC to cease operations. When RRC refused to do so, the City filed an application for adverse discontinuance of RRC's operating authority. *See City of Rochelle, Illinois -- Adverse Discontinuance -- Rochelle Railroad Company*, 1999 STB LEXIS 322 (Docket No. AB-549, decision served May 27, 1999). The notice of exemption for the City's operation of the line in Finance Docket No. 33587, *supra*, was filed after RRC's refusal to vacate the line and prior to the filing of the application for adverse discontinuance, in order to ensure the provision of rail service by an entity having a valid property right to operate over the line. As reflected in the decision in Docket No. AB-549, *supra*, the City and RRC eventually settled their differences and the application for adverse discontinuance was approved without opposition. The notice of exemption in the current proceeding arises in the same context as Finance Docket No. 33587, *supra*, expect that there the City operated the line itself and here the City has agreed with a new company for such operation. Accord: *Cheatham County Rail Authority Application and Petition for Adverse Discontinuance; The Central of Tennessee Rwy.*

& Navig. Co., Inc. Modified Rail Certificate, 1992 ICC LEXIS 181 (Finance Docket No. 32049, decision served Aug. 31, 1992, "*Cheatham County*," in which the ICC authorized operation pursuant to a modified rail certificate in addition to operation by another entity whose operating authority would be the subject of an application for adverse discontinuance.)

The Board need not be concerned about the safety of train operations where CIRY and Pioneer are both authorized to operate over the City's single-track rail line. Such operations would require coordination if traffic were to be tendered for movement by both CIRY and Pioneer. CIRY hereby assures the Board that it would undertake the required coordination in that event. The Board can rely on that assurance. CIRY is an experienced rail operator familiar with operating requirements of the Board and the Federal Railroad Administration. *See Central Illinois Railroad Company -- Lease and Operation Exemption -- Lines of the Burlington Northern and Santa Fe Railway Company at Chicago, Cook County, IL*, 2000 STB LEXIS _____ (Finance Docket No. 33960, decision served Dec. 5, 2000), and *The Central Illinois Railroad Company -- Acquisition and Operation Exemption -- Rail Lines of Union Pacific Railroad Company and Canadian Pacific Rail System at Elk Grove Village, IL*, 2001 STB LEXIS 428 (Finance Docket No. 34035, decision served April 27, 2001). The ICC in the *Cheatham County* case expressed its requirement when two rail carriers are authorized to operate over the same track (1992 ICC LEXIS 181, at *5):

... MACO has the right and duty to provide service, if requested, over the line. Nevertheless, in view of the need for orderly operations over the line and in view of our conclusion that Centennrail is properly on the line by virtue of its modified certificate and with the support of the line's owner, CCRA, any operations by MACO must be conducted in coordination with those of Centennrail subject to Federal Railroad Administration standards to assure safety on the line.

The situation of two carriers authorized to operate over a single-track rail line is not unusual. It happens all the time in trackage rights situations. Especially comparable to the situation at hand is a situation where a rail carrier has local trackage rights over another rail carrier's single-track line, i.e., trackage rights with authority to originate and terminate traffic on the line. Such a situation requires operating coordination between the two rail carriers. The situation as a result of the notice of exemption at hand would be no different.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.43

In accordance with Board regulations at 49 C.F.R. § 1150.43, CIRY submits the following information in support of this notice of exemption.

(a) *The full name and address of the Class III rail carrier applicant;*

The full name and address of applicant is Central Illinois Railroad Company, P.O. Box 269, Granville, IL 61326.

(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

Applicant's representative to receive correspondence is Thomas F. McFarland, Thomas F. McFarland, P.C. 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, (312) 236-0204.

(c) *A statement that an agreement has been reached or details about when an agreement will be reached;*

An agreement has been reached for CIRY's operation of the Kellar Branch.

(d) *The operator of the property;*

CIRY will be the operator.

(e) *A brief summary of the proposed transaction, including:*

(1) *The name and address of the railroad transferring the subject property to the applicant;*

The owners of the Kellar Branch who have agreed to CIRY's operation are the City of Peoria, Illinois, City Hall Building, 419 Fulton Street, Peoria, IL 61602-1270, and the Village of Peoria Heights, IL, Village Hall, Peoria Heights, IL 61614.

(2) *The proposed time schedule for consummation of the transaction;*

Operation of the line by CIRY will commence no earlier than seven days after the filing of this notice of exemption.

(3) *The mileposts of the subject property, including any branch lines;*

The Kellar Branch extends between Milepost No. 1.71 and Milepost No. 10.0 in the City of Peoria, Illinois and the Village of Peoria Heights, Illinois.

(4) *The total route miles being acquired;*

There are a total of approximately 8.29 miles of rail line that would be operated (but not acquired).

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states;*

A map of the Kellar Branch is attached as Appendices 1.

(g) *A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45.*

CIRY so certifies. See verification attached as Appendix 2.

VERIFICATION

See Appendix 2.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

The proposed operation does not require environmental or historic reporting or assessment. See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10902(d), labor protection requirements do not apply to this transaction.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.44 is attached hereto as Appendix 3.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this notice, the Director of the Office of Proceedings should publish a notice in the Federal Register of the filing of this notice. *See* 49 C.F.R. § 1150.42(b).

Respectfully submitted,

CENTRAL ILLINOIS RAILROAD COMPANY
P.O. Box 269
Granville, IL 61326

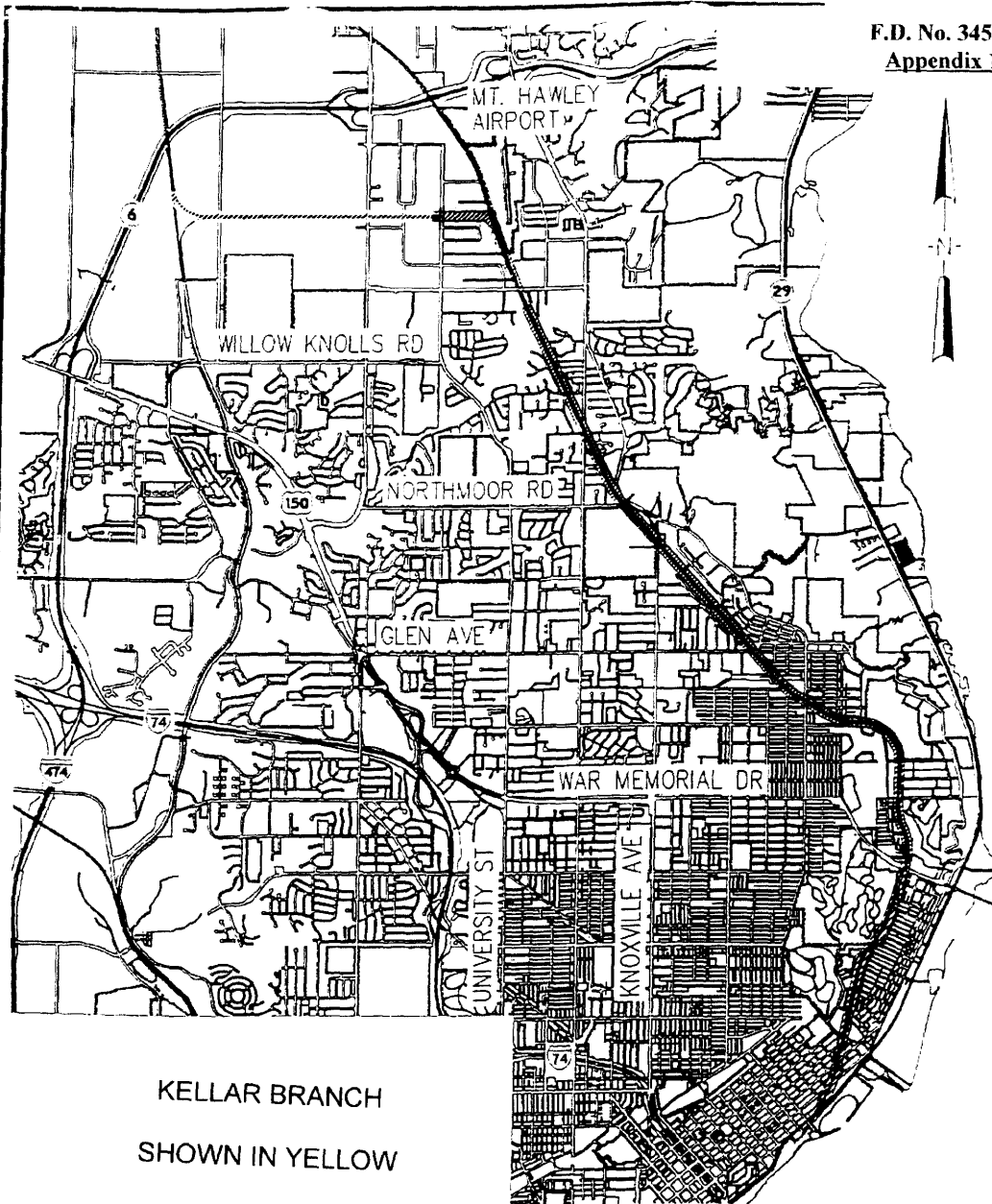
Applicant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Applicant

DATE FILED: June 28, 2004



KELLAR BRANCH
SHOWN IN YELLOW

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HANSON

Hanson Professional Services Inc.
2900 West Willow Knolls Road
Peoria, Illinois 61614-1129

PROJECT LOCATION MAP

KELLAR BRANCH

PEORIA, ILLINOIS

HANSON NO. 02P2007

FIGURE NO. 2

CAPTION SUMMARY

F.D. No. 34518

SURFACE TRANSPORTATION BOARD

Appendix 3

Notice of Exemption

STB Finance Docket No. 34518

*Central Illinois Railroad Company --
Operation Exemption -- Rail Line of the City of Peoria
and the Village of Peoria Heights in Peoria and
Peoria Heights, Peoria County, IL*

Central Illinois Railroad Company (CIRY), a Class III rail carrier, has filed a notice of exemption to operate the following rail line owned by the City of Peoria, Illinois and the Village of Peoria Heights, Illinois, commonly known as the Kellar Branch, and also known as the Peoria, Peoria Heights & Western Railroad, more particularly described as follows: extending from EPS 80+15 (Milepost No. 1.71) to EPS 516+21 (Milepost No. 10.0), a distance of 8.29 miles in Peoria and Peoria Heights, Peoria County, IL.

The above rail line to be operated totals approximately 8.29 miles.

Comments must be filed with the Board and served on CIRY's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, 312-236-0204.

The notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

By the Board
Vernon A. Williams, Secretary