

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND



June 28, 2004

By UPS overnight mail

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 30 2004

Part of
Public Record

Re: Docket No. AB-878, *City of Peoria, Illinois and Village of Peoria Heights, Illinois -- Adverse Discontinuance -- Pioneer Industrial Railway Co.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition For Partial Waiver Of Abandonment Regulations, for filing with the Board in the above referenced matter.

A filing fee for the petition is not required under 49 C.F.R. § 1002.2(e)(1) inasmuch as the petitioners are local governmental agencies.

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 Petitioners

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FILED

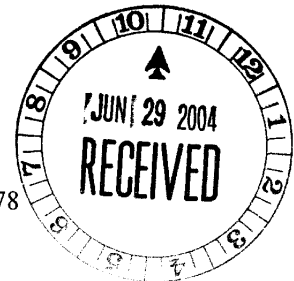
JUN 29 2004

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY OF PEORIA, ILLINOIS AND)
VILLAGE OF PEORIA HEIGHTS,)
ILLINOIS -- ADVERSE)
DISCONTINUANCE -- PIONEER)
INDUSTRIAL RAILWAY CO.)

DOCKET NO. AB-878



PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS

CITY OF PEORIA, ILLINOIS
CITY HALL
419 Fulton Street
Peoria, IL 61602

VILLAGE OF PEORIA HEIGHTS, ILLINOIS
VILLAGE HALL
4901 North Prospect Rd.
Peoria Heights, IL 61616

Petitioners

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

Attorney for Petitioners

DATE FILED: June 29, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY OF PEORIA, ILLINOIS AND	)	
VILLAGE OF PEORIA HEIGHTS,	)	
ILLINOIS -- ADVERSE	)	DOCKET NO. AB-878
DISCONTINUANCE -- PIONEER	)	
INDUSTRIAL RAILWAY CO.	)	

**PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS**

The City of Peoria, Illinois and the Village of Peoria Heights, Illinois (the Municipalities) soon will file an application for adverse discontinuance of the operating authority of Pioneer Industrial Railway Co. (Pioneer) over the Kellar Branch, which extends between Milepost No. 1.71 and Milepost No. 10.0, a distance of 8.29 miles in Peoria and Peoria Heights, Peoria County, Illinois. The agreement between the Municipalities and Pioneer for the latter's operation of the Kellar Branch will expire on July 10, 2004. Pioneer has made it known that it will not voluntarily relinquish its operating authority over the Kellar Branch as of that date. Consequently, an adverse discontinuance application will be necessary.

Rail service to shippers on the Kellar Branch would not cease as a result of the proposed adverse discontinuance of Pioneer's operating authority. The Municipalities have agreed with Central Illinois Railroad Company (CIRY) for the latter to provide rail service to shippers on the Branch upon expiration of the agreement for Pioneer's operation.^{1/} CIRY has filed a notice of

^{1/} At a later time, a segment of the Branch on which no shippers are located is likely to be converted to a recreational trail. As a result of the City of Peoria's acquisition of trackage west of the Kellar Branch from Union Pacific Railroad Company (*City of Peoria, IL -- Acq. & Oper. Exempt. -- Union Pacific Railroad Company*, 2001 STB LEXIS 624 [Finance Docket No. (continued...)]

exemption under 49 C.F.R. § 1150.41 for its operation of the Kellar Branch. *See* Finance Docket No. 34517, *Central Illinois Railroad Company -- Operation Exemption -- Rail Line of the City of Peoria, Illinois and the Village of Peoria Heights, Illinois in Peoria and Peoria Heights, Peoria County, IL*, filed June 28, 2004. Consequently, this would have been a simple exemption for change of operators on the Branch if Pioneer had not refused to voluntarily surrender its operating authority upon expiration of its operating agreement with the Municipalities.

The Municipalities are filing this Petition for a partial waiver of the Board's regulations at 49 C.F.R. § 1152.22 governing the content of abandonment applications. Consistent with the Board's decision in *City of Rochelle, Illinois -- Adverse Discontinuance -- Rochelle Railroad Company*, 1998 STB LEXIS 280 (Docket No. AB-549, decision served June 5, 1998), the Municipalities seek Board permission to file an adverse discontinuance application that would contain only the following information:

- (1) the name and address of the applicant;
- (2) the name and address of counsel;
- (3) a detailed map of the facilities involved;
- (4) total carloads broken out for each of the shippers currently using the line;

^{1/}(...continued)

34066, notice of exemption served July 25, 2001]), and its authorized construction of track connecting that trackage to the Kellar Branch (*City of Peoria, IL -- Constr. of Connect. Track Exempt. -- Peoria County, IL*, 2004 STB LEXIS 153 [Finance Docket No. 34395, notice of exemption served March 9, 2004]), the trackage that is likely to be converted to a trail would not be required for the provision of rail service to shippers. Conversion of that trackage to a trail would not require Board authority or an exemption because that trackage had been abandoned when the City of Peoria acquired it.

- (5) summary of the principal commodities handled;
- (6) summary operating plan for operations of the substitute carrier;
- (7) certification that CIRY's current, or proposed, operations comply, or will comply, with all federal and state safety requirements;
- (8) opinion of counsel that the prior agreement with Pioneer for operation of the Branch expired in accordance with its terms;
- (9) documentation from the Municipalities that authorizes the operations of the substituted service;
- (10) a statement in behalf of the Municipalities of the reasons for the application and the benefits that will be obtained if the application is approved; and
- (11) supporting statements from shippers.

Consistent with the decision in the *Rochelle* case, *supra*, the Municipalities also request waiver of all notice and publication requirements except the following:

- (1) The instant petition for waiver would be served on the shippers on the line, Pioneer and all connecting rail carriers. This petition for waiver is requested to serve as the notice of intent to discontinue service required under 49 C.F.R. § 1152.20.
- (2) A copy of the application would be served on each of the aforementioned "relevant parties" and on the Illinois Department of Transportation.

Consistent with the decision in the *Rochelle* case, *supra*, the Municipalities also request waiver of the Board's environmental and historic regulations inasmuch as the Municipalities are merely proposing to substitute operators.

WHEREFORE, the Board should grant waivers from its regulations at 49 C.F.R. § 1152.22 (contents of application); 49 C.F.R. § 1152.20 and 49 C.F.R. § 1152.24 (notice of intent and filing and service of application; and 49 C.F.R. § 1105.6(b)(3), 49 C.F.R. § 1105.7 and 49 C.F.R. § 1105.8, to the extent consistent with the foregoing.

Respectfully submitted,

CITY OF PEORIA, ILLINOIS
CITY HALL
419 Fulton Street
Peoria, IL 61602

VILLAGE OF PEORIA HEIGHTS, ILLINOIS
VILLAGE HALL
4901 North Prospect Rd.
Peoria Heights, IL 61616

Petitioners

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 Petitioners

DATE FILED: June 29, 2004

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2004, I served the foregoing document, Petition For Partial Waiver Of Abandonment Regulations, by first-class, U.S. mail, postage prepaid on the following:

Daniel LaKemper, Esq.
Pioneer Industrial Railway Co.
1318 South Johanson Road
Peoria, IL 60617

Mr. Rob Happach
Carver Lumber Company
8700 North University
Peoria, IL 61615

Mr. Wayne Kessler
Peoria Plastics
9000 North University
Peoria, IL 61615

Mr. J.P. O'Brien
O'Brien Steel Co.
1700 Northeast Adams
Peoria, IL 61603

Burlington Northern & Santa Fe Rwy. Co.
2650 Lou Menk Drive, 2nd fl.
P.O. Box 96157
Fort Worth, TX 76161

Iowa Interstate Railroad Ltd.
800 Webster Street
Iowa City, IA 52240

Canadian National Railway Company
935 de La Gauchetiere St. West
Montreal, QC H3B 2M9

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

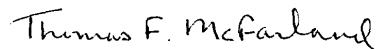
Peoria & Pekin Union Railway Company
301 Wesley Road
Creve Coeur, IL 61610

Toledo, Peoria & Western Railway Corp.
1990 East Washington Street
East Peoria, IL 61611

Union Pacific Railroad Company
Union Pacific Bldg.
1416 Dodge Street
Omaha, NE 68179

Illinois & Midland Railroad, Inc.
1500 North Grand Ave.
P.O. Box 139
Springfield, IL 62705

Director, Bureau of Railroads
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764


Thomas F. McFarland