

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	)	

**REPLY IN OPPOSITION TO PETITION TO REJECT
OR REVOKE OR PETITION TO STAY**

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

Applicant

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Pursuant to 49 C.F.R. § 1104.13(a), CENTRAL ILLINOIS RAILROAD COMPANY (CIRY) hereby replies in opposition to a Petition to Reject or Revoke or Petition to Stay filed by Pioneer Industrial Railway Co. (PIRY) on June 30, 2004. The Petitions are directed at a Verified Notice of Exemption under 49 C.F.R. § 1150.41 filed in behalf of CIRY on June 28, 2004.

I. REPLY IN OPPOSITION TO PETITION TO REJECT OR REVOKE

The transaction covered by the Notice is operation by CIRY, a Class III rail carrier, over the Kellar Branch in Peoria and Peoria Heights, IL. Contrary to PIRY's contention at pages 5-6 of its Petition to Reject, that transaction is subject to 49 C.F.R. § 1150.41. ("...(T)his exemption applies to . . . operations by Class III rail carriers under Section 10902 . . ."). In fact, along with acquisition of rail lines by Class III rail carriers, the operation that is the subject of the Notice is the most common transaction filed under the class exemption of 49 C.F.R. § 1150.41.

The easement that PIRY has for operation over the Kellar Branch until July 10, 2004 has given it STB operating authority, but, contrary to PIRY's argument at pages 6-7 of its Petition to Reject, that operating authority is not exclusive. CIRY cited several instances in which a second

rail carrier obtained Board authority to operate over a line while the owner of the line was obtaining adverse discontinuance authority for the first rail carrier who refused to surrender its operating authority upon termination of its contractual or property right of operation. PIRY has not refuted those instances. Therefore, there is no merit to PIRY's contention that the Municipalities cannot agree with CIRY for CIRY's operation of the Branch while they seek adverse discontinuance authority for PIRY's operating authority.

The fact that the City of Rochelle operated its own rail line in Finance Docket No. 33587 while it sought adverse discontinuance authority for the operating authority of a PIRY affiliate, while here the Municipalities authorized operation by a second carrier while seeking adverse discontinuance authority for PIRY's operating authority, was explicitly stated in CIRY's Notice (at page 2). The distinction is not material to the legitimacy of CIRY's Notice.

At page 8 of its Petition, PIRY again claims that operation of the Branch by CIRY is not a transaction that meets the requirements of the class exemption. We have shown above that PIRY is mistaken in that respect.

II. REPLY IN OPPOSITION TO PETITION TO STAY

PIRY has not identified an argument against the proposed abandonment on which it would be likely to prevail on the merits. PIRY undoubtedly has a right to operate the Branch until its operating authority is extinguished, as PIRY argues at page 9, but that right is not exclusive. CIRY cited two instances in which additional operations were authorized while the first carrier's operating authority was being adversely discontinued (Notice at 2-3). PIRY has not

not provided rebuttal of that fact. There is a third such instance. *See Fore River RR Corp. - Discon. Exempt. - Norfolk County, MA*, 8 I.C.C.2d 307, 308-309, note 5 (1992).

PIRY will not suffer legal harm as a result of CIRY's operation. PIRY's operating authority will not be "taken" by CIRY's operation. PIRY's operating authority will remain in effect until it is extinguished in an adverse discontinuance proceeding.

CIRY and the public interest would be harmed by a stay. CIRY is ready, willing and able to institute service upon expiration of PIRY's contractual right to provide service. Neither CIRY nor the shippers that it would serve should be deprived of that service without adequate grounds.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, both Petitions filed by PIRY should be denied.

Respectfully submitted,

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Applicant

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DATE FILED: July 1, 2004

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2004, I served the foregoing document, Reply In Opposition To Petition To Reject Or Revoke Or Petition To Stay, by electronic mail on Daniel A. LaKemper, lakemper@mtco.com, Pioneer Industrial Railway Co., 1318 S. Johanson Rd., Peoria, IL 61607.

Thomas F. McFarland

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