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BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-878

CITY OF PEORIA, ILLINOIS AND VILLAGE OF PEORIA HEIGHTS, ILLINOIS

ADVERSE DISCONTINUANCE
PIONEER INDUSTRIAL RAILWAY CO.

RESPONSE TO PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS

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Dated: July 22, 2004.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-878

ADVERSE ABANDONMENT OF A LINE OF RAILROAD
IN PEORIA COUNTY, ILLINOIS

RESPONSE TO PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS

Pioneer Industrial Railway Co. ("PIRY") respectfully requests that the Board deny the Petition for Partial Waiver of Abandonment Regulations filed by the City of Peoria and the Village of Peoria Heights, Illinois, with reference to a line of railroad operated by PIRY in Peoria County, Illinois.

Any waiver of the abandonment regulations is inappropriate in this proceeding, for the following reasons:

1. The Petitioners' statement that "The Agreement between the Municipalities [Petitioners] and Pioneer [PIRY] for the latter's operation of the Kellar Branch will expire on July 10, 2004" is false. The agreement does not contain any expiration date. PIRY has the equivalent of a railroad easement and is the primary carrier on the line. Petitioners are non-carriers and mere landowners at best, although the true nature of Petitioners' ownership interest is uncertain.

2. The Petitioner's statement that Central Illinois Railroad Company ("CIRY") is merely a replacement operator and that rail service "to shippers on the Kellar Branch would not cease," is materially misleading. It is not the intention of the Petitioner's that CIRY operate the Kellar Branch. It is their intention, as described to the Board in Finance Docket No. 34395, and admitted in the footnote to the Petition, to fully abandon almost all of the Kellar Branch, and sever the connection between the Kellar Branch shippers in Pioneer Park with the Peoria & Pekin Union Railway, the terminal switch carrier that switch cars from all seven line haul railroads coming into Peoria. Under the petitioners' plan, shippers in Pioneer Park would be left with only a Union Pacific connection, severely undermining their competitive position. The Petitioners, in the footnote, further advance the theory that they can accomplish this without Board authority. This flies in the face of the Board's recent decision in City of Venice – Abandonment Exemption – in Venice, IL and St. Louis, MO, Docket No. AB-863X, which reaffirms the Maine DOT – Acq. Exemption, Me. Central R. Co., line of decisions holding that PIRY has an interest "comparable to permanent easement", and is thus the primary carrier on this line. This proceeding should be filed as an adverse "*abandonment*," not an adverse "*discontinuance*." Under the *City of Venice* decision, "The City has no authority to consent to trail use on the line."

3. PIRY sent a Freedom of Information Act request to the City of Peoria on July 6, 2004, asking for a copy of CIRY's agreement as to the Kellar Branch. Although it was statutorily required to respond within seven working days (5 ILCS §140/3, et. seq.), the City has not yet responded. PIRY, however, reasonably believes that the agreement with CIRY provides for only temporary operation of the Kellar Branch, not continuing service.

4. This proceeding is in no significant respect comparable to the *City of Rochelle, Illinois* proceeding which Petitioners cite (Docket No. AB-549, decision served June 5, 1998). That proceeding was factually very different than this proceeding. In the *City of Rochelle* proceeding, the agreement between the City and Rochelle Railroad Co. was, in fact, terminated; the City was a carrier; and the City fully intended to continue (and did continue) service to the line. It was a change of operator situation, and the proceeding was ultimately uncontested. This proceeding could not be more different. The change of operator argument in this proceeding is an obvious ruse. PIRY's agreement has not been terminated, and PIRY intends to vigorously oppose this discontinuance/abandonment, and intends to file an Offer of Financial Assistance to purchase the entire line, if the proceeding goes forward.

Conclusion

Since this proceeding is in fact an adverse abandonment filed by a non-carrier, not an adverse discontinuance attendant to a mere change of operators, as the Petitioners would have the Board believe, no waivers should be granted. The Petitioners' insidious plan to abandon this rail line to the great disadvantage of the shippers, should be fully scrutinized by the Board, and soundly rejected. As the Board stated in 1411 Corporation – Abandonment Exemption – In Lancaster County, PA; Middletown & Hummelstown Railroad Company – Abandonment Exemption – In Lancaster County, PA, STB Docket No. AB-581X and AB-529X (served September 6, 2001), It is "well settled that an OFA should take priority over a trail use proposal because of the strong Congressional intent to preserve rail service wherever possible." The Board should not allow itself to become an accomplice to the destruction of an active rail line that has a lawful operator providing common carrier service to shippers.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served on July 22, 2004, by e-mail on:

Thomas F. McFarland
Mcfarland@aol.com

And by United States Mail, first class, postage fully pre-paid, on July 22, 2004 upon:

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 S. LaSalle St., Suite 1890
Chicago, Illinois 60604

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, Texas 76761

Iowa Interstate Railroad Company
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

/s/ Daniel LaKemper

Formal Filing

Docket #:

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(person who signed doc.)	
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