

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.	)	

**MOTION FOR REJECTION OF NOTICE OF
INTENT TO FILE OFFER OF FINANCIAL ASSISTANCE**

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
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Attorney for Petitioners

DATE FILED: July 23, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY OF PEORIA, ILLINOIS AND	)	
VILLAGE OF PEORIA HEIGHTS,	)	
ILLINOIS -- ADVERSE	)	DOCKET NO. AB-878
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Applicants CITY OF PEORIA, ILLINOIS and VILLAGE OF PEORIA HEIGHTS, ILLINOIS (“the Municipalities”) hereby move that the Board reject a “Notice of Intent to File Offer of Financial Assistance” filed in behalf of Pioneer Industrial Railway Co. (“PIRY”) on or about July 22, 2004.

PIRY’s Notice states an intent to file an offer of financial assistance (OFA) to purchase the subject rail line.

Rejection of PIRY’s Notice is warranted because OFAs are not entertained where, as here, rail service over the line would be continued by another carrier following the proposed discontinuance, and because OFAs for purchase of a rail line are not entertained where discontinuance of service rather than abandonment is authorized.

It is evident that the Board’s finding that the operating authority of PIRY should be discontinued would be frustrated if PIRY could immediately turn around and acquire the rail line through an OFA. For that reason, the Board does not entertain OFAs where the operating authority of a carrier is discontinued, but service over the line is to be continued by another rail carrier. The Board specifically so found in *Tacoma Eastern Ry. Co. -- Adv. Discon. -- Line of*

the City of Tacoma, 1998 STB LEXIS 790 (Docket No. AB-548, decision served Oct. 16, 1998), at *18-19, viz.:

Because considering an offer of financial assistance (OFA) to subsidize TE's continued operations would frustrate our findings that our jurisdiction should not be permitted to shield TE from the legitimate operation of state law, we will not entertain any OFAs, requests for trail use/rail banking, or requests for public use . . .

To the same effect are the Board's decision in *Jacksonville Port Authority -- Adv. Discon.* -- in *Duval County, FL*, 1996 STB LEXIS 200 (Docket No. AB-469, decision served July 17, 1996) at *17, viz.:

Because such matters as offers of financial assistance, public use conditions, and trail use requests are not pertinent here inasmuch as service will be continued by another carrier, a certificate authorizing the discontinuance of service by JTRC may be issued effective on the effective date of this decision.

and the Interstate Commerce Commission's decision in *Cheatham County Rail Authority "Applic. and Pet." for Adv. Discon.*, 1992 ICC LEXIS 224 (Docket No. AB-379X, decision served Nov. 4, 1992) at *18, viz.:

Since such things as offers of financial assistance, public use request conditions, and trail use requests are not pertinent here because service will continue by another operator, a certificate authorizing MACO to discontinue its operations can be issued effective on the effective date of this decision.

Even if an OFA could be entertained in an adverse discontinuance proceeding in which service would be continued by another rail carrier, an OFA for purchase of the line, such as filed by PIRY, cannot be entertained. In a discontinuance proceeding, an OFA is limited to subsidizing the carrier's losses for a period not to exceed one year. *See Grand Trunk Western R. Inc. -- Adv. Discon. of Tr. Rts. -- Line of Norfolk and Western Ry. Co.*, 1998 STB LEXIS 127 (Docket No. AB-31 [Sub-No. 30], decision served May 13, 1998), at *11-12, viz.:

Because this proceeding involves a discontinuance rather than an abandonment, relief under section 10904 is limited to subsidizing the carrier's losses for a period not to exceed one year; 49 U.S.C. 10904(f)(4)(B) . . .

WHEREFORE, PIRY's Notice of Intent to File an OFA to purchase the subject rail line should be rejected.

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.
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Petitioners

/s/

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Attorney for Petitioners

DATE FILED: July 23, 2004

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2004, I served the foregoing document, Motion For Rejection Of Notice Of Intent To File Offer Of Financial Assistance, by e-mail to Daniel LaKemper, Esq., lakemper@mtco.com, Pioneer Industrial Railway Co., 1318 South Johanson Road, Peoria, IL 60617.

/s/

Thomas F. McFarland