

PIONEER INDUSTRIAL RAILWAY Co.

1318 SOUTH JOHANSON ROAD • PEORIA, ILLINOIS 61607 • (309) 697-1400

July 30, 2004

211722

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423



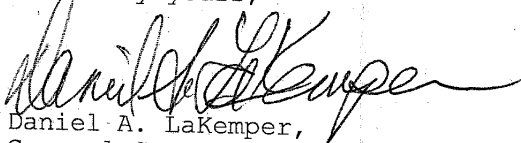
RE: Finance Docket No. 34518, Central Illinois Railroad Company -
Operation Exemption

Dear Secretary Williams:

Enclosed for filing is an original and ten copies of a Supplement to Petition to Reject or Revoke, in the above-captioned proceeding. An extra copy is also included, which I ask that you file-stamp and return.

Please call me if you have any questions.

Sincerely yours,


Daniel A. LaKemper,
General Counsel.

ENTERED
Office of Proceedings

AUG 03 2004

Part of
Public Record

Encs.

cc: Thomas F. McFarland, Esq.

211722

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Office of Proceedings

AUG 03 2004

Part of
Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34518

CENTRAL ILLINOIS RAILROAD COMPANY

-OPERATION EXEMPTION-

RAIL LINE OF THE CITY OF PEORIA AND THE
VILLAGE OF PEORIA HEIGHTS

SUPPLEMENT TO
PETITION TO REJECT OR REVOKE



ENTERED
Office of Proceedings

AUG 03 2004

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Public Record

PIONEER INDUSTRIAL RAILWAY CO.

Daniel A. LaKemper, Esq.
General Counsel
1318 S. Johanson Road
Peoria, Illinois 61607
Tel.: (309) 697-1400
Fax: (309) 697-8486

Dated: July 30, 2004.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34518

CENTRAL ILLINOIS RAILROAD COMPANY
-VERIFIED NOTICE OF EXEMPTION-
RAIL LINE OF THE CITY OF PEORIA
AND THE VILLAGE OF PEORIA HEIGHTS



SUPPLEMENT TO
PETITION TO REJECT OR REVOKE

Comes now PIONEER INDUSTRIAL RAILWAY CO. ("PIRY"), and respectfully requests that it be permitted to Supplement its Petition to Reject or revoke, *ab initio*, the Verified Notice of Exemption filed by Central Illinois Railroad Company in Finance Docket No. 34518.

On June 28, 2004, Central Illinois Railroad Company ("CIRY") filed a Verified Notice of Exemption with the Board seeking authority to operate a line of railroad commonly known as the "Kellar Branch", extending from an interchange with the Peoria & Pekin Union Railway in Peoria, Illinois (E.P.S. 80 + 15; MP 1.71), through Peoria, and Peoria Heights, to its terminus at E.P.S. 516 + 21 (MP 10.00), in Peoria, Peoria County, Illinois ("the Line"), currently operated by Pioneer Industrial Railway Co. ("PIRY"), pursuant to authority PIRY received from the Board in Finance Docket No. 33549, served February 20, 1998. CIRY alleges in its Notice that "An agreement has been reached for CIRY's operation of the Kellar Branch," but the agreement is not included in the filing.

PIRY made a Freedom of Information Act request for the CIRY's agreement on July 6, 2004, and received a copy of the agreement on July 26, 2004. That document (the "Agreement") is attached hereto.

A cursory examination of the Agreement reveals that it is fatally flawed in a number of ways. First, and most importantly, the Agreement states on its face (Article 8, page 7) that "This Agreement is intended to be temporary in nature and is intended to terminate within sixty (60) days after the CITY completes the connection...[between the Kellar Branch and the former UP-Pioneer Park Branch]."

The Agreement also leaves considerable doubt as to the actual identity of the operator. It represents to be with "CENTRAL ILLINOIS RAILROAD COMPANY (a common carrier), an Illinois corporation owned by the shareholders of DOT RAIL SERVICE, INC.,....hereinafter referred to as 'DOT'". Then it states that "DOT [DOT Rail Service, Inc.] have entered into an Agreement dated June 26, 2000 pertaining to service from the West...." At Article 1.2 it states "DOT shall have the exclusive right under the foregoing grant to serve...the Kellar Branch," and at Article 1.3 it states that "No other entity, railway company or person shall be permitted to operate at any time on Kellar Branch, except DOT or its subsidiary, or parent."

Who then is the operator? DOT Rail Service, Inc. or Central Illinois Railroad Company? Both appear to be legal entities. And, if, in fact, CIRY is owned by the shareholders of DOT, it is not even a subsidiary.

Finally, the Village of Peoria Heights, one of the alleged owners of the Line, is not a party to the Agreement. Presumably, CIRY or DOT's rights only extend to the portion of the Line allegedly owned by the City of Peoria.

While the Board is loathe to become involved in contract disputes, when the Agreement underlying a Petition for Exemption is so fatally flawed as to make the Notice materially misleading, the Board has not hesitated to revoke the exemption.

While the issues in this proceeding are numerous, leaving aside the issue of whether the City and the Village have the right to grant any new operating rights to the Line; leaving aside the issue of the Village not being a party to the Agreement, and finally, leaving aside the issue of whether CIRY or DOT is actually the putative operator, it is clear that the City of Peoria is not purporting to grant, and neither CIRY nor DOT has any intention of providing, continued common carrier service to the Kellar Branch.

The Congressional purpose in enacting the entry provisions of 49 U.S.C. §10101(7) was clear. It is “to promote the availability of rail service,” SF&L Railway, Inc. – Acquisition and Operation Exemption – Toledo, Peoria & Western Railway Corp. between LaHarpe and Peoria, IL, STB Finance Docket No. 33996, Decided October 15, 2002 (“SF&L”). The exemption process is intended “to facilitate the **continued operation** of marginal and failing rail lines by expediting and reducing the costs of entry [emphasis added],” SF&L.

The Board’s predecessor stated in Lone Star Railroad, Inc. – Abandonment and Discontinuance of Trackage Rights in Wichita, Archer, Baylor, Knox, Haskell and Jones Counties, TX, Docket No. AB-425, et. al., (Served June 9, 1995), that “we cannot allow the process to be abused by salvage operators seeking to take over lines for their salvage rather than their operational value, and we will take remedial action

(both with regard to the underlying line sale and any subsequent abandonment attempt) where the facts warrant it to maintain the integrity of our practices and procedures.”

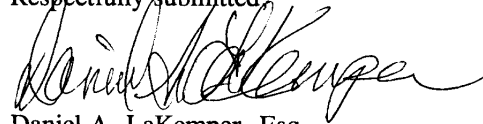
The facts in this case are crystal clear. As in the SF&L case, the actions taken by CIRY and the City of Peoria, and their stated intent, evidence “a scheme to use” the exemption process “to obtain active rail assets with a view toward dismantling and selling them.”

Neither party has made any attempt to hide their intentions. The City has put on record its intention to abandon most of the Kellar Branch (See FD No. 34395), DOT is primarily a construction company, and is primarily interested in constructing the City’s connection and salvaging the Kellar Branch; and the so-called operating Agreement, which is the basis of this Exemption, is in furtherance of that plan on its face. This is not about a mere change of operators, as Petitioner would have the Board believe. This exemption was filed for the purpose of ending service on the Kellar Branch, not continuing it.

The Board has the “responsibility to protect the public interest in the continuation of active rail lines and the intent of” CIRY and the City is “to thwart that statutory goal,” See SF&L at f8. The “exemption process is designed to facilitate continued service to shippers and continued maintenance of the transportation network,” SF&L. It is not designed to facilitate the degradation of shippers’ service and the conversion of active rail lines into trails. “The integrity of the process is undermined,” when the class exemption process is abused by granting authority over active rail lines to those “whose intent is to degrade, abandon, and salvage those lines,” SF&L. This exemption is an abuse of the Board’s procedures.

The Surface Transportation Board, and the Interstate Commerce Commission for several decades before, have steadfastly defended the national rail system against attacks by parochial interests, financial manipulators, and others, whose goal was not to preserve a competitive and efficient rail system for the national economic well-being and national defense. Where, as here, such an attack (however well-intentioned it may be in the minds of those making it) threatens an active rail line, the Board has an obligation to act to preserve the integrity of the process and the national rail system as a whole.

Respectfully submitted,



Daniel A. LaKemper, Esq.

General Counsel

Pioneer Industrial Railway Co.

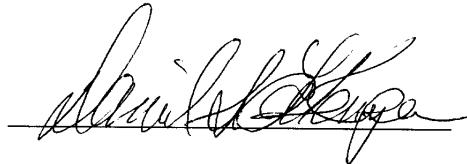
1318 S. Johanson Road

Peoria, Illinois 61607

Tel.: (309) 697-1400

VERIFICATION

I, Daniel A. LaKemper, General Counsel of Pioneer Industrial Railway Co., verify under penalty of perjury that I have read the above and foregoing Supplement to Petition to Reject or Revoke; that I have knowledge of the facts stated therein; and that those facts are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file the foregoing document.



AGREEMENT
(Kellar Branch Interim Trackage Rights)

This Agreement, by and between the CITY OF PEORIA, ILLINOIS, a Illinois municipal corporation with its principal offices at 419 Fulton Street, Peoria, Illinois 61602, hereinafter the "CITY"; and CENTRAL ILLINOIS RAILROAD COMPANY (a common carrier), an Illinois corporation owned by the shareholders of DOT RAIL SERVICE, INC., with its principal offices at P.O. Box 259, Granville, Illinois 61326, hereinafter referred to as "DOT", entered into this 27th day of April, 2004, WITNESSETH:

WHEREAS, the CITY has an ownership interest in a Rail Line known as the Peoria, Peoria Heights & Western Railroad, extending from E.P.S. 75 + 00 (M.P. 1.61) to E.P.S. 516 + 21 (M.P. 10.0), in Peoria County, Illinois, being the former "Kellar Branch" of the Chicago, Rock Island & Pacific Railroad Company (herein the "Rail Line"); and

WHEREAS, DOT and the CITY have entered into an Agreement dated June 26, 2000 pertaining to service from the West to be provided exclusively by DOT after it builds a connection from Pioneer Junction to Pioneer Park; and

WHEREAS, the CITY's current Agreement for trackage rights on the Kellar Branch terminates July 10, 2004; and

April 12, 2004

[Signature] *ced*

WHEREAS, the Parties deem it in their best interest that DOT provide exclusive service over the Kellar Branch during an interim period until the connection from the west is completed.

NOW, THEREFORE, in consideration for the joint and mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article 1. TRACKAGE RIGHTS

1.1 The CITY hereby grants unto DOT the exclusive right to operate its engines, cars and trains over the existing Kellar Branch, including sidetracks and industry tracks; provided, however, that the CITY shall not be in breach of this Agreement if the present operator fails to vacate the Rail Line.

1.2 DOT shall have the exclusive right under the foregoing grant to serve all existing industries now located on or adjacent to said track and industries and any industries which may, in the future, be served over the Kellar Branch or portions thereof.

1.3 No other entity, railway company or person shall be permitted to operate at any time on Kellar Branch, except DOT or its subsidiary, or parent.

Article 2. INTERCHANGE AGREEMENT

DOT shall use all commercially reasonable efforts to obtain an interchange agreement with the Peoria and Pekin Union Railroad under terms that will not materially increase the rates charged Kellar Branch customers or

significantly alter the service level presently provided over the Kellar Branch. Commercially reasonable efforts shall include, if necessary, the duty to pursue all available remedies through the Surface Transportation Board ("STB") or other regulatory agency having jurisdiction to order such interchange agreement.

Article 3. OWNERSHIP, OPERATION AND MAINTENANCE

3.1 DOT shall not be granted ownership rights to any track as a result of this Agreement.

3.2 The mode of operation over said track shall be under the exclusive control of DOT.

3.3 CITY shall be responsible for maintenance of roadways and street crossings (excluding rails, ties and signal devices on roadways and streets) under the jurisdiction of the CITY.

3.4 DOT shall assume the responsibility for all maintenance of tracks, crossing protection, and roadbed including weed, brush, snow and ice control thereon, all drainage control maintenance, and all weed and brush control on the remainder of the right-of-way, following the guidelines set forth by the Federal Railroad Administration (FRA).

3.5 The movement of engines, cars and trains of DOT on said tracks shall be performed pursuant to federal, state and local government laws and FRA regulations.

Article 4. STANDARD OF CARE, INDEMNIFICATION AND
HOLD HARMLESS

4.1 Nothing herein shall cause the CITY's standard of care for the rights-of-way to be different than as set forth in 745 ILCS 10/3-102. Anything herein to the contrary notwithstanding, DOT shall not by reason of any defect or by reason of the failure of the CITY to repair such defect, have or make against the CITY, its agents, employees or assigns, any claim or demand for any loss, damage, destruction injury or death whatsoever arising from such defect, neglect or failure, and DOT expressly releases the CITY, its agents, employees and assigns from any and all claims or demands on account of such loss, damage, destruction, injury or death suffered or incurred directly by DOT arising out of such defect, neglect or failure.

4.2 Anything herein to the contrary notwithstanding, DOT agrees to and does hereby assume the entire risk and responsibility for its trains, engines and cars and contents thereof, and for its officers, agents and employees at all times while on or about said tracks. DOT hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from any and all claims, demands, lawsuits and liability by reason of loss of or damage to DOT trains, engines and cars and cars in custody of DOT, and the contents thereof, and for injury to or death of DOT officers, agents and employees arising or growing out of the presence of any such property, or of any such persons, on or about said

tracks or out of the DOT's use of said tracks or operations of its trains, cars or engines thereof, from any cause whatsoever regardless of the negligence of the CITY, its agents, employees or assigns.

4.3 DOT hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from and against loss of or damage to property, and injury to or death of persons whomsoever, arising or growing out of any act or omission of the officers, agents or employees of DOT in its exclusive use of or operation on or over said tracks.

4.4 The DOT agrees to name the CITY as additional insured on all liability policies covering DOT's exclusive operation of said track. DOT shall provide the CITY with a Certificate of Insurance listing the CITY as additional insured and providing the CITY with a thirty (30) day notice of any cancellation of the policy. DOT shall maintain liability insurance with limits of Five Million dollars (\$5,000,000) per occurrence; in the event DOT institutes passenger service, then said insurance policy shall have limits of Ten Million dollars (\$10,000,000).

Article 5. FEE FOR TRACKAGE RIGHTS

For the use of said tracks by DOT pursuant to the provisions hereof, DOT shall pay to the CITY the sum of One Dollar (\$1.00) per annum. DOT shall make this payment to the CITY within fifteen (15) days after the effective date of this Agreement. Subsequent annual payments will be made within fifteen (15)

days after the anniversary date of this Agreement provided, however, that no such fee shall be due until operation from the west is ready to commence.

Article 6. REPORTS AND RECORDS

6.1 DOT agrees to submit a report to the CITY on a calendar month basis.

6.2 All records of DOT pertaining to the movement of cars over and upon any part of the said tracks shall be open and available to the inspection of any duly authorized representative of the CITY at any and all times during normal business hours for the purpose of checking and verifying statements furnished by DOT in accordance with the provisions hereof.

Article 7. DEFAULT

The rights herein granted to DOT are expressly conditioned upon the performance by DOT of all, and singular, the covenants and agreements herein set forth to be performed by DOT. In the event DOT shall default in the performance of any of its obligations hereunder, and such default shall continue for a period of sixty (60) business days after the receipt of written notice, at any time thereafter the CITY may terminate this Agreement forthwith, in addition to any other legal remedies which the CITY may have.

Article 8. TERM OF AGREEMENT

This Agreement is intended to be temporary in nature and is intended to terminate within sixty (60) days after the CITY completes the connection called for in the Agreement between these Parties dated June 25, 2000.

Article 9. NOTICES

All notices required pursuant to this Agreement to the CITY shall be addressed to the City Manager, City of Peoria, 419 Fulton, Room 207, Peoria, IL 61602. All notices to DOT shall be addressed to Central Illinois Railroad Company, P.O. Box 259, Granville, IL 61326.

Article 10. ASSIGNMENT

DOT shall not transfer, assign or convey the rights granted hereunder without the written consent of the CITY and only upon the condition that the assignee shall abide by all terms, conditions and agreements hereof.

Article 11. LEVEL OF SERVICE

DOT shall pick up and deliver cars within twenty-four (24) hours after being notified by the P&PU that the cars have been placed on the Kellar Branch.

Article 12. RESERVED RIGHT OF ABANDONMENT

This Agreement shall in no way be construed as requiring or obligating the CITY to continue its ownership, maintenance, improvement or operation of the Kellar Branch, or the appurtenances thereto, nor in any way limit the CITY from disposing of, encumbering, or abandoning all or any part hereof, at any

time it may see fit. The CITY has in fact found another governmental use for the Kellar Branch and it is anticipated that the line will be abandoned and railbanked for use as a trail. In consideration for the trackage rights granted in the Agreement dated June 26, 2000, DOT agrees that it will not oppose any such abandonment nor make an offer to purchase such parts of the Kellar Branch as lie between Pioneer Park and O'Brien Steel.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF PEORIA, ILLINOIS

By: Charles R. Oliver
Its City Manager

CITY OF PEORIA, ILLINOIS

Attested to by:

Mary J. Haynes
Its City Clerk

Approved as to form:

Randall Ray
Randall Ray, Corporation Counsel

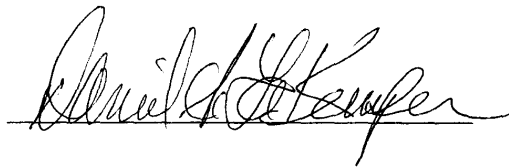
CENTRAL ILLINOIS RAILROAD COMPANY

Don L. Gibson
By: Don L. Gibson, Vice President

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served by sending it via UPS Next Day Air courier service, all charges paid, this 30th. Day of July, 2004, to the following:

Thomas F. McFarland, Esq.
Thomas F. McFarland, P.C.
208 South LaSalle Street,
Suite 1890
Chicago, Illinois 60604

A handwritten signature in cursive script, appearing to read "Daniel H. Kruger", is written over a horizontal line.