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August 17, 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

Re: Finance Docket No. 34518, *Central Illinois Railroad Company -- Operation Exemption -- Rail Line of the City of Peoria and the Village of Peoria Heights in Peoria and Peoria Heights, Peoria County, IL*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Reply In Opposition To Supplement To Petition To Reject Or Revoke, for filing with the Board in the above referenced matter.

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 Applicant

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ORIGINAL

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 SUPPLEMENT
TO PETITION TO REJECT OR REVOKE

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

Applicant

THOMAS F. McFARLAND
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Attorney for Applicant

DATE FILED: August 18, 2004

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 SUPPLEMENT
TO PETITION TO REJECT OR REVOKE**

Pursuant to 49 C.F.R. § 1104.13(a), CENTRAL ILLINOIS RAILROAD COMPANY (CIRY) hereby replies in opposition to a Supplement to Petition to Reject or Revoke filed in behalf of Pioneer Industrial Railway Co. (PIRY) on August 2, 2004.

BACKGROUND

In 1998, PIRY began to operate the Kellar Branch in Peoria and Peoria Heights, IL pursuant to an operating agreement with the City of Peoria and Village of Peoria Heights. That agreement expired by its terms on July 10, 2004. The City and Village instituted adverse discontinuance proceedings against PIRY when PIRY refused to voluntarily surrender its operating authority as of that date. Docket No. AB-878, *City of Peoria, et al. -- Adv. Discon. -- Pioneer Industrial Railway Co.*, Petition for Partial Waiver of Abandonment Regulations filed June 29, 2004.

The City has selected CIRY to succeed PIRY as operator of the Kellar Branch. On June 28, 2004, CIRY filed a verified notice of exemption in the instant proceeding for its operation of the Branch. On June 30, 2004, PIRY filed a Petition to Reject or Revoke and Petition to Stay the

exemption for CIRY's operation of the Branch. On July 1, 2004, CIRY replied in opposition to that Petition. In a decision served July 1, 2004, the Board denied PIRY's Petition to Stay. The Board stated in that decision that it would address the Petition to Reject or Revoke in a subsequent decision.

PIRY recently obtained a copy of the Agreement for CIRY's operation of the Kellar Branch. PIRY's Supplement to its Petition to Reject or Revoke is allegedly based on the content of that Agreement.

In a number of pleadings filed in this docket and in a related proceeding involving adverse discontinuance of PIRY's operating authority over the Kellar Branch, PIRY has distorted the history of the Branch and has misstated the City's proposal in regard to the Branch. In order to clarify that matter, CIRY has provided an accurate description of the history of the Kellar Branch and the City's proposal in regard to the Branch, which appears as the Appendix to this Reply.

REPLY IN OPPOSITION

The Agreement is temporary. It is to terminate within 60 days after the City completes a track connection between the Kellar Branch and a 1.9-mile rail line west of that Branch that the City acquired in 2001. (Agreement, Article 8).

PIRY has argued that the Agreement is "fatally flawed" because it is temporary. (Supplement at 3). There is nothing that is inherently unlawful about an agreement that is temporary. PIRY does not attempt to explain why a temporary agreement is allegedly "fatally flawed." PIRY's argument is thus wholly unsupported.

PIRY has argued that the Agreement leaves doubt about whether the operator of the Branch will be CIRY or DOT RAIL SERVICE, INC. (DOT), a company under common control with CIRY. (Supplement at 3). That argument is without merit. PIRY acknowledges that the Agreement is expressly between the City and CIRY. That clearly provides that CIRY will be the operator. While Articles 1.1 and 1.2 cause some confusion in stating that DOT has the right to operate the Kellar Branch, Article 1.3 clarifies that DOT "or its subsidiary or parent" is to operate the Branch. At bottom, the Agreement is with CIRY, and CIRY filed the notice of exemption for operation of the Branch. PIRY is well aware that CIRY will operate the Branch.

PIRY argues that the Village of Peoria Heights is not a party to the Agreement, so that CIRY's operating right presumably extends only to the portion of the Branch owned by the City of Peoria. (Supplement at 3). As a technical matter, the Village probably should have been a party to the Agreement. The temporary agreement covers the entire Branch, including the portion located in the Village of Peoria Heights. However, the City is the majority owner of the Branch. The City acted in behalf of the Village in temporarily agreeing with CIRY for operation of the entire Branch. Moreover, this point raised by PIRY does not bear on any issue properly before the Board. It is CIRY that requires an exemption from the Board for operation of the Branch, not the Village or the City. The propriety of that exemption does not depend on whether the Village joined the City as a party to the Agreement for operation of the Branch.

PIRY's final argument is that the City and CIRY are misusing the class exemption for operation of rail lines because they intend to end service on the Kellar Branch, not continue it. (Supplement at 4-6). That argument has nothing to do with the Agreement for operation of the Branch. That argument should have been raised in PIRY's Petition. It is not properly raised in PIRY's Supplement.

That argument is based on an utter distortion of the City's proposal in any event. Contrary to the inference sought to be created by PIRY, no shipper would lose rail service as a result of the City's proposal. The two shippers located near the west end of the Kellar Branch, who are presently served from the east, would be served from the west following completion of the track construction. The shipper located near the east end of the Kellar Branch would continue to be served from the east. The trackage in between those shippers, which would no longer be used nor required for the provision of rail service to those shippers, would be converted to a recreational trail.^{1/} The City's proposal is thus fully consistent with the goal of the class exemption for operation of rail lines, i.e., continued rail service to shippers.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, PIRY's Petition to Reject or Revoke, as supplemented, should be denied.

Respectfully submitted,

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

Applicant

^{1/} Inasmuch as the Kellar Branch had been abandoned pursuant to ICC authority when the City acquired the Branch in 1984, Board authority will not be required for abandonment of a segment of the Branch in conjunction with conversion of that segment into a recreational trail. See the Appendix for more detail.

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APPENDIX

HISTORY OF THE KELLAR BRANCH AND DESCRIPTION OF THE CITY'S PROPOSAL

Prior to July, 1984, the Trustee of the bankrupt Rock Island Railroad obtained authority from the Interstate Commerce Commission (ICC) for abandonment of the Kellar Branch. That authority became effective according to its terms. The City of Peoria (the City) acquired the abandoned Branch from the Trustee. Because the Branch was abandoned when acquired, acquisition of the Branch was not subject to ICC jurisdiction, and the City did not become a rail carrier subject to ICC jurisdiction by virtue of that acquisition.

As of July 10, 1984, the City entered into an agreement with Peoria & Pekin Union Railway (P&PU) for operation of the Branch. That operation was subject to ICC jurisdiction. P&PU obtained an exemption from the ICC for its operation of the Branch.

Thereafter, the Village of Peoria Heights (the Village) obtained a minority ownership interest in the Branch. Inasmuch as acquisition of the Branch had not been subject to ICC jurisdiction, neither was the Village's acquisition of a part ownership of the Branch subject to ICC jurisdiction.

In 1998, PIRY succeeded P&PU as operator of the Branch. The City and the Village agreed to assignment of P&PU's rights under the operating agreement to PIRY for the remainder of the term of the agreement. Inasmuch as P&PU's operation of the Branch had been subject to ICC jurisdiction, so, too, was PIRY's operation subject to Board jurisdiction. PIRY obtained an exemption from the Board for its operation of the Branch.

In 2001, the City acquired a 1.9-mile rail line in Peoria from Union Pacific Railroad. Because that was an active rail line when it was acquired, its acquisition was subject to Board jurisdiction. The City obtained an exemption from the Board for its acquisition and operation of that line.

The east end of the line that the City acquired from Union Pacific is within approximately 1,800 feet of the west end of the Kellar Branch. The City has obtained an exemption from the Board for construction of trackage to connect the newly-acquired line with the Kellar Branch.

When those lines are connected, it is proposed that shippers on the west end of the Kellar Branch will be served from the west, and the shipper on the east end of the Kellar Branch will be served from the east. It is proposed that a segment of the Kellar Branch located between those shippers, which no longer would be used nor required for the provision of service to those shippers, will be converted from a rail line to a recreational trail. Inasmuch as the City's acquisition of that segment was not subject to ICC jurisdiction, neither will the City's abandonment of that segment for use as a trail be subject to Board jurisdiction.

The term of the agreement for operation of the Kellar Branch is "a minimum period of 20 years." The City treated the agreement as expired as of its 20th anniversary on July 10, 2004 because "a minimum period of 20 years" means "no less than 20 years" or "at least 20 years." That provision does not entitle either party unilaterally to extend the agreement beyond 20 years. However, PIRY nevertheless contends that the operating agreement remains in effect. PIRY has not provided a rationale in support of that contention.

When it became apparent that PIRY did not intend to voluntarily surrender its Board authority to operate the Kellar Branch at the expiration of the operating agreement, the City and

the Village instituted proceedings for adverse discontinuance of PIRY's operating authority.

At the same time, the City entered into an agreement with Central Illinois Railroad Company (CIRY) for operation of the Kellar Branch upon expiration of the PIRY operating agreement. CIRY has applied for a Board exemption for that operation.

PIRY has argued that the City's intent to abandon a segment of the Kellar Branch is not consistent with the intent of the class exemption for acquisition and operation of rail lines, i.e., to provide for continued rail service. As can be seen from the foregoing, however, the proposed abandonment would not adversely affect rail service to any shipper on the Kellar Branch. In contrast to adverse discontinuance of PIRY's authority to operate over the Kellar Branch, the City does not require Board approval for the proposed abandonment of a segment of the Branch because its acquisition of that segment was not subject to ICC jurisdiction.

PIRY has contended that its operating agreement for the Kellar Branch has not expired, but it has not offered any plausible argument in support of that contention. There is no rational basis for any argument that the term of the operating agreement exceeds 20 years.

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2004, I served the foregoing document, Reply In Opposition To Supplement To Petition To Reject Or Revoke, by UPS overnight mail on Daniel A. LaKemper, Pioneer Industrial Railway Co., 1318 S. Johanson Rd., Peoria, IL 61607.

Thomas F. McFarland

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