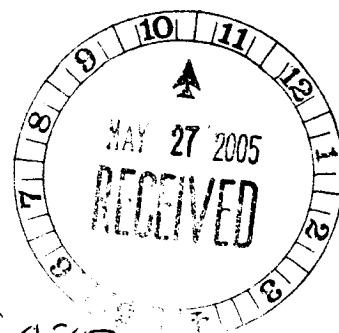


LAW OFFICE  
**THOMAS F. MCFARLAND, PC.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND



May 26, 2005

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

ENTERED  
Office of Proceedings

MAY 27 2005

Part of  
Public Record

Re: Docket No. AB-878, *City of Peoria, Illinois and Village of Peoria Heights, Illinois -- Adverse Discontinuance -- Pioneer Industrial Railway Co.*

Dear Mr. Williams:

Hereby transmitted for filing in the above proceeding are the original and 10 copies of Reply In Opposition To (1) Supplement To Request For Reconsideration Of OFA; (2) Request For Mediation; and (3) Comment Of Small Railroad Business Owners Of America.

Very truly yours,

*Tom McFarland*

Thomas F. McFarland  
*Attorney for Municipalities*

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214083

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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CITY OF PEORIA, ILLINOIS AND )  
VILLAGE OF PEORIA HEIGHTS, )  
ILLINOIS -- ADVERSE ) DOCKET NO. AB-878  
DISCONTINUANCE -- PIONEER )  
INDUSTRIAL RAILWAY CO. )

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ENTERED  
Office of Proceedings

MAY 27 2005

REPLY IN OPPOSITION TO (1) SUPPLEMENT TO REQUEST  
FOR RECONSIDERATION OF OFA; (2) REQUEST FOR  
MEDIATION; AND (3) COMMENT OF SMALL RAILROAD  
BUSINESS OWNERS OF AMERICA

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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

Applicants

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204

Attorney for Applicants

DATE FILED: May 27, 2005

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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|                              |   |                   |
|------------------------------|---|-------------------|
| CITY OF PEORIA, ILLINOIS AND | ) |                   |
| VILLAGE OF PEORIA HEIGHTS,   | ) |                   |
| ILLINOIS -- ADVERSE          | ) | DOCKET NO. AB-878 |
| DISCONTINUANCE -- PIONEER    | ) |                   |
| INDUSTRIAL RAILWAY CO.       | ) |                   |

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**REPLY IN OPPOSITION TO (1) SUPPLEMENT TO REQUEST  
FOR RECONSIDERATION OF OFA; (2) REQUEST FOR  
MEDIATION; AND (3) COMMENT OF SMALL RAILROAD  
BUSINESS OWNERS OF AMERICA**

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Pursuant to 49 C.F.R. § 1104.13(a), the CITY OF PEORIA, ILLINOIS and the VILLAGE OF PEORIA HEIGHTS, ILLINOIS (the Municipalities) hereby reply in opposition to the following pleadings recently filed in this proceeding:

- (1) a Supplement to Request for Reconsideration of OFA filed by Pioneer Industrial Railway Co. (PIRY) on May 11, 2005;<sup>1/</sup>
- (2) a Request for Mediation filed by PIRY on May 23, 2005; and
- (3) a Comment filed by the Small Railroad Business Owners Association of America (SRBOA) on May 23, 2005.

**I. Reply to Supplement to Request for Reconsideration of OFA**

The Supplement contains an article from the May 6, 2005 issue of the Peoria Journal Star to the effect that after the Board's decision in this proceeding a segment of the Kellar Branch that will not be used or required for the provision of rail service to shippers will be railbanked and

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<sup>1/</sup> The Municipalities filed their Reply in Opposition to PIRY's Request for Reconsideration of OFA on May 11, 2005.

converted into a recreational trail. (Supplement at 2-3). That fact has never been denied. As the Municipalities have pointed out on several occasions, that railbanking and conversion to trail use will not require Board authorization under 49 U.S.C. § 10903 because the Kellar Branch was already an abandoned rail line when the City of Peoria acquired the Branch from the Rock Island Trustee in 1984. PIRY has never attempted to refute that principle of law, which is not refutable.

The remainder of the Supplement consists of argument inviting the Board to construe the term provision of the operating agreement between PIRY and the Municipalities. (Supplement at 3-4). As the Municipalities have pointed out on several occasions, the Board does not have jurisdiction to interpret or enforce that agreement. It follows that PIRY's argument does not bear on the appropriate issue of whether discontinuance of PIRY's rail service over the Branch is permitted by public convenience and necessity.

## **II. Reply to Request for Mediation**

In yet another unauthorized pleading, PIRY has requested the Board to designate a mediator to explore the possibility of joint use of the Kellar Branch as a rail line and recreational trail.

PIRY's request for mediation is not to be taken seriously. As PIRY undoubtedly knows, by virtue of 49 C.F.R. § 1109.1 the Board cannot require mediation unless all parties indicate their written consent to mediation. PIRY did not request that the Municipalities consent to mediation before filing its Request. The Municipalities do not agree to mediation. The Municipalities want to install a rail operator of the Branch other than PIRY, and the Municipalities do not want the right-of-way to be used jointly as a rail line and trail. In the

absence of the Municipalities' consent, the Board does not have authority to grant PIRY's request for mediation.

PIRY is simply using its request for mediation as a means to challenge the qualifications of Cental Illinois Railroad Company (CIRY) as operator of the Branch. The Municipalities have selected CIRY as replacement operator. PIRY's challenge is based on criminal charges that have been brought against Mr. Don Gibson, a Vice President and minority stockholder of CIRY.

Attached to this Reply as Appendix A is a copy of a letter from Mrs. Paula Mudge-Gibson, President of CIRY, to Mr. Steve Van Winkle, Public Works Director of the City of Peoria, dated May 18, 2005, in which Mrs. Mudge-Gibson provides assurance that CIRY is willing and able to operate the Kellar Branch. Attached to this Reply as Appendix B is a copy of a letter from Mrs Mudge-Gibson to counsel for the Municipalities, dated May 24, 2005, in which Mrs. Mudge-Gibson provides further evidence of CIRY's qualifications to operate the Kellar Branch notwithstanding the legal troubles encountered by Mr. Gibson. It is noteworthy that Mrs. Mudge-Gibson owns clearly-controlling percentages of stock of both CIRY and of its major affiliate, DOT Rail Service, Inc. It is respectfully submitted that no credible evidence has been provided to show that CIRY is not qualified to act as replacement rail operator of the Kellar Branch.

The Municipalities are committed to contracting with an operator other than PIRY to provide rail service to all shippers on the Branch. Therefore, even in the unlikely event that CIRY were to be unable to provide that service, the Municipalities would contract with another operator (other than PIRY) to operate the Branch. The 7-day class exemption for operation of rail lines would enable the Municipalities to do so without undue delay. One way or another, a replacement operator will be available if PIRY's operation is discontinued as requested.

PIRY has submitted a letter from the President of Carver Lumber Company, a shipper on the Branch, to the effect that Carver Lumber would favor joint use of the Branch as a rail line and trail. However, there is no such proposal before the Board. As pertinent in regard to the application for adverse discontinuance of service that is before the Board, Carver Lumber has not changed its stance of neutrality in regard to the proposal to replace PIRY with CIRY as rail operator of the Branch.

### **III. Reply to SRBOA Comment**

The upshot of the SRBOA Comment, as we understand it, is that by virtue of the Municipalities' intent to railbank and convert much of the Kellar Branch into a recreational trail, the proposal before the Board is in essence an abandonment, which requires more thorough investigation than a discontinuance of service with a replacement operator, as characterized by the Municipalities.

It can be conceded that the portion of the Branch to be railbanked and converted to trail use will be abandoned for rail service, but as we have demonstrated on several occasions it will be an abandonment over which the Board does not have jurisdiction under 49 U.S.C. § 10903. That is so because the Branch already had been abandoned by the Rock Island Trustee when the City of Peoria acquired it in 1984. It is worth citing again the decisions in which it has been so determined: *Southern Pacific Transp. Co. - Aban. - in LA County, CA*, 9 I.C.C.2d 385, 390 (1993); *Consolidated Rail Corp. - Petition for Declaratory Order*, 1 I.C.C.2d 284, 285 (1984); and *SSW Ry. Co. - Aban. - in Smith and Cherokee Counties, TX*, 9 I.C.C.2d 406, 410 (1992).

However, that does not mean that the Municipalities are abandoning shippers on the Kellar Branch. There are no shippers on the portion of the Branch proposed for railbanking.

While opponents have claimed that there are potential shippers on that segment, no such shipper has come forward, and if one or more shippers were to materialize in the future the trackage could be relayed and rail service could be reinstituted. Opponents have also claimed that railbanking will result in a lesser quality of rail service for shippers on the active segments of the Branch, but the shippers themselves have not made any such claim. Opposition to the Municipalities' proposal has no substance.

**CONCLUSION AND REQUESTED RELIEF**

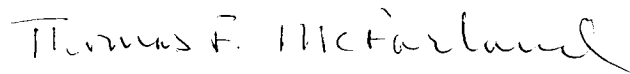
WHEREFORE, for the reasons stated, PIRY's Requests for Reconsideration and for Mediation should be denied.

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.  
Peoria Heights, IL 61616

*Applicants*



THOMAS F. McFARLAND  
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(312) 236-0204

*Attorney for Applicants*

DATE FILED: May 27, 2005

## *Central Illinois Railroad Company*

P.O. Box 361, LaSalle, Illinois 61301  
Telephone: (815) 339-6839  
Fax: (815) 339-6400

May 18, 2005

Mr. Steve Vanwinkle  
Public Works Director  
City of Peoria  
419 Fulton Street  
Peoria, IL 61602

### **RE: KELLAR BRANCH / UP CONNECTION OPERATION**

Dear Mr. Vanwinkle:

I wanted to write today and provide you with my assurance that Central Illinois Railroad Company (CIRY) remains committed to the City of Peoria regarding the short-term agreement to operate the Kellar Branch and the long-term agreement to operate the industrial part served by the new UP connection. CIRY has had a locomotive positioned nearby since last July so that operational control could take place within hours. CIRY has its start-up and implementation plan ready to begin upon notice that Pioneer has been removed and that the City desires CIRY to commence operations. We have been working closely with the Park District and together CIRY and DOT will ensure that the City's and Park District's objectives are achieved. The recent event involving Don Gibson has not affected the Company's ability to continue serving its customers or conduct its business. As information, Don has been a minority shareholder in both DOT and CIRY since their inception and had served as its Vice President until recently.

I retained industry veteran B. Allen Brown as Manager-Field Operations for both D.O.T. Rail Service, Inc. and Central Illinois Railroad Company. He has been the lead man on this project with both the City and the Park District during the last eight months and will be responsible for both the commencement of operations and the removal of the Kellar Branch.

Mr. Vanwinkle, while this has been extremely embarrassing for the Company, it has provided DOT and CIRY with the opportunity to demonstrate to our customers that the Company is made up of many industry professionals and one of the safest work forces, combining each and every day to provide rail services with the reliability and workmanship second to none. DOT and CIRY wants its

reputation to be based upon the collective talents of all of its employees and the reliability and workmanship that goes into each job. We earn the trust of our customers and their repeat business based on nothing else and on no single employee.

Please call me should you have any questions. DOT and CIRY appreciates your continued business and we look forward to commencing this project soon.

Sincerely,



Paula Mudge-Gibson  
President

# **Central Illinois Railroad Company**

P.O. Box 361, LaSalle, Illinois 61301  
Telephone: (815) 339-6839  
Fax: (815) 339-6400

May 24, 2005

Attorney Thomas F. McFarland  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112

VIA FAX TRANSMISSION ALSO  
Fax: (312) 201-9695

**RE: Docket No. AB-878, City of Peoria, Illinois and Village of Peoria Heights, Illinois – Adverse Discontinuance – Pioneer Industrial Railway Co. and Your Letter Dated May 24, 2005**

Dear Tom:

Pursuant to your request please be advised that I own 80% of Central Illinois Railroad Company, Inc. (CIRY) and 75% of D.O.T. Rail Service, Inc. (DOT).

In addition, as I have been informing our customers, I am very confident that while the recent events relative to Don are devastating, personally, I do not anticipate any great impact on the business, for various reasons. First, I have always been active in our business, joining the companies on a full-time basis in 1993. I run our office on a daily basis, reporting for work at 6:45 a.m. and leaving at 4:00 p.m., Monday through Friday. I have been working this schedule since 1993. Second, I am majority shareholder and President of both CIRY and DOT. Third, I have qualified, hard-working and dedicated people – from advisors to the field staff.

Many people do not realize that we have had the services of a dedicated attorney since February, 2002. In addition to law, Mindy holds a degree in Accounting from University of Illinois – Urbana, and oversees all accounting, financial and legal matters.

Given that Don acted primarily as Salesman and Manager – Field Operations (assigning labor and equipment resources and scheduling jobs), we retained industry veteran, B. Allen Brown, to act as Manager – Field Operations effective last week. Allen comes to the companies bringing over 25 years of experience in this industry. Allen has been working with Don since January, so is very familiar with our operations.

Attorney Thomas F. McFarland  
May 24, 2005  
Page 2 of 2

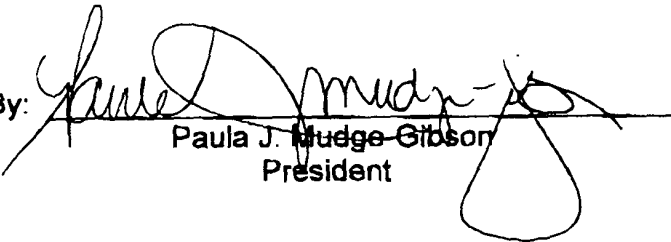
In addition, our field staff is tremendous. I have always known that they are highly qualified and hard-working, but until recently I did not know the extent of their loyalty to the companies. They have not missed a step since the events transpired with Don. We are truly lucky to have them.

Finally, Tom, I can affirmatively state, as 75% shareholder and President of DOT and 60% shareholder and President of CIRY, that the companies are not sold.

I am hopeful that this information will be helpful to you as you address issues before the Surface Transportation Board. Should you need additional information or believe that I can assist you further, please feel free to contact me or Mindy.

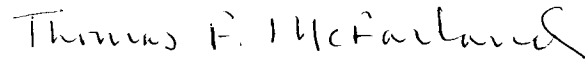
Very truly yours,

CENTRAL ILLINOIS RAILROAD COMPANY, INC.

By:   
Paula J. Hudge-Gibson  
President

**CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2005, I served the foregoing document, Reply In Opposition To (1) Supplement To Request For Reconsideration Of OFA; (2) Request For Mediation; and (3) Comment Of Small Railroad Business Owners Of America, by UPS overnight mail on Daniel LaKemper, Esq., Pioneer Industrial Railway Co., 1318 South Johanson Road, Peoria, IL 60617, and on John W. Gohmann, President, Small Railroad Business Owners Association of America, 14047 Petronella Drive, Suite 201, Libertyville, IL 60048.



\_\_\_\_\_  
Thomas F. McFarland