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THOMAS F. MCFARLAND



September 9, 2005

By UPS overnight mail
(Monday delivery)

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

Part of
Public Record

Re: Docket No. AB-1066X, *Central Illinois Railroad Company -- Discontinuance of Service Exemption -- in Peoria County, Illinois*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition For Exemption From 49 U.S.C. § 10903-10905 For Discontinuance Of Rail Service, for filing with the Board in the above referenced matter.

Also enclosed is a check for \$5,200 for the filing fee & a computer disk with the Petition formatted in Word Perfect 8.0 format.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Petitioner

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FILED

SEP 09 2005

CHICAGO
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



CENTRAL ILLINOIS RAILROAD)
COMPANY -- DISCONTINUANCE OF) DOCKET NO. AB-1066X
SERVICE EXEMPTION -- IN PEORIA)
COUNTY, ILLINOIS)

**PETITION FOR EXEMPTION FROM
49 U.S.C. 10903-10905 FOR
DISCONTINUANCE OF RAIL SERVICE**

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

Petitioner

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

Attorney for Petitioner

DATE FILED: September 12, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD



CENTRAL ILLINOIS RAILROAD)
COMPANY -- DISCONTINUANCE OF) DOCKET NO. AB-1066X
SERVICE EXEMPTION -- IN PEORIA)
COUNTY, ILLINOIS)

**PETITION FOR EXEMPTION FROM
49 U.S.C. 10903-10905 FOR
DISCONTINUANCE OF RAIL SERVICE**

Pursuant to 49 U.S.C. § 10502(a), 49 C.F.R. § 1152.60 and 49 C.F.R. § 1121.1, CENTRAL ILLINOIS RAILROAD COMPANY (CIRY) hereby petitions for issuance of an exemption from 49 U.S.C. § 10903, and from 49 U.S.C. § 10904 and 49 U.S.C. § 10905, if required, for its discontinuance of service over 6.29 miles of rail line in Peoria and Peoria Heights, Peoria County, Illinois (the Subject Rail Line). The Subject Rail Line is owned by the City of Peoria, Illinois and the Village of Peoria Heights, Illinois. It extends between the north line of Candletree Drive at approximately Milepost No. 8.50 in Peoria, IL and the north line of Jefferson Street at approximately Milepost No. 2.21 in Peoria, IL.

BACKGROUND

The exemption for discontinuance here sought is necessary to enable the owners of the Subject Rail Line -- the City of Peoria and the Village of Peoria Heights, Illinois -- to convert the Line into a recreational trail. *See* Docket No. AB-878, *City of Peoria, et al. -- Adv. Discon. -- Pioneer Industrial Ry. Co.*, decision served Aug. 10, 2005 (not printed) at 6 ("... CIRY retains an obligation to provide service over this line and it would have to be relieved of that obligation

prior to the Cities' planned reconfiguration . . ."). That conversion itself does not require Board authority or an exemption because the Kellar Branch, of which the Subject Rail Line is a part, is not subject to the Board's abandonment authority, having already been abandoned when the City of Peoria acquired it in 1984. *Id.* at 6 (" . . . (T)here would be no need for the Cities to obtain authorization from the Board to abandon any portion of the already-abandoned Kellar Branch . . ."). CIRY hereby seeks an exemption for its discontinuance of rail service over the Subject Rail Line because it will not need to operate over that Line to provide service to shippers on the Branch. In the cited proceeding, the rail service of Pioneer Industrial Railway Co. (PIRY) over the Subject Rail Line (over the entire Kellar Branch) was involuntarily (adversely) discontinued upon the application of the City of Peoria and the Village of Peoria Heights.

Discontinuance of rail service on the Subject Rail Line would qualify for the class exemption for abandonment or discontinuance of out-of-service rail lines at 49 C.F.R. § 1152.50, *et seq.* except that CIRY has not been providing service over the Line for the requisite two-year period.^{1/} There has been no originated or terminated traffic on the Subject Rail Line for more than two years from the date of filing of this petition. Traffic that originates or terminates elsewhere on the Kellar Branch and which has traversed the Subject Rail Line will be rerouted so that it will not traverse the Subject Rail Line. That traffic originates or terminates west of the

^{1/} An exemption for CIRY's operation of the Kellar Branch became effective on July 5, 2004. *See Central Illinois R. Co. -- Oper. Exempt. -- Rail Line of the City of Peoria, et al. in Peoria and Peoria Heights, Peoria County, IL*, Finance Docket No. 34518, decision served July 1, 2004 (not printed).

prior to the Cities' planned reconfiguration . . ."). That conversion itself does not require Board authority or an exemption because the Kellar Branch, of which the Subject Rail Line is a part, is not subject to the Board's abandonment authority, having already been abandoned when the City of Peoria acquired it in 1984. *Id.* at 6 (" . . . (T)here would be no need for the Cities to obtain authorization from the Board to abandon any portion of the already-abandoned Kellar Branch . . ."). CIRY hereby seeks an exemption for its discontinuance of rail service over the Subject Rail Line because it will not need to operate over that Line to provide service to shippers on the Branch. In the cited proceeding, the rail service of Pioneer Industrial Railway Co. (PIRY) over the Subject Rail Line (over the entire Kellar Branch) was involuntarily (adversely) discontinued upon the application of the City of Peoria and the Village of Peoria Heights.

Discontinuance of rail service on the Subject Rail Line would qualify for the class exemption for abandonment or discontinuance of out-of-service rail lines at 49 C.F.R. § 1152.50, *et seq.* except that CIRY has not been providing service over the Line for the requisite two-year period.^{1/} There has been no originated or terminated traffic on the Subject Rail Line for more than two years from the date of filing of this petition. Traffic that originates or terminates elsewhere on the Kellar Branch and which has traversed the Subject Rail Line will be rerouted so that it will not traverse the Subject Rail Line. That traffic originates or terminates west of the

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Subject Rail Line.^{2/} It will be rerouted to the west over a 1.9-mile rail line that the City of Peoria acquired in 2001. *See City of Peoria, IL -- Acq. & Oper. Exempt. -- Union Pacific R. Co.*, Finance Docket No. 34066, notice served July 25, 2001 (not printed). The Kellar Branch is in the process of being connected to that 1.9-mile rail line pursuant to an exemption issued by the Board in *City of Peoria -- Constr. of Connect. Track Exempt. -- in Peoria County, IL*, Finance Docket No. 34395, decision served Sept. 27, 2004 (not printed). There has been no formal complaint filed by a user of rail service on the Subject Rail Line regarding cessation of service over that Line that is either pending before the Board or a U.S. District Court, or that has been decided in favor of such a shipper within the past two years.

MAP

As required by 49 C.F.R. § 1152.60(b), a map of the Subject Rail Line is attached to this petition as Appendix 1.

DRAFT FEDERAL REGISTER NOTICE

As required by 49 C.F.R. § 1152.60(c), a draft *Federal Register* notice is attached to this petition as Appendix 2.

SERVICE OF PETITION

As required by 49 C.F.R. § 1152.60(d), a copy of this petition is being served on the agencies specified in 49 C.F.R. § 1152.50(d). Those agencies are identified in the Certificate of Service at the end of this petition.

^{2/} Traffic originates or terminates east of the Subject Rail Line, but such traffic has not traversed over the Subject Rail Line.

FEDERALLY-GRANTED RIGHT-OF-WAY

As required by 49 C.F.R. § 1152.60(d), Petitioner states that based on information in its possession, the Subject Rail Line does not contain federally-granted right-of-way. Any documentation in Petitioner's possession will be made available promptly to those requesting it.

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

Because this is a discontinuance of service proceeding and not an abandonment, no historic or environmental documentation is required under 49 C.F.R. § 1105.6(c)(6) and 49 C.F.R. § 1105.8. *See, e.g., Norfolk Southern Ry. Co. -- Discon. of Serv. -- in Sumter County, SC*, Docket No. AB-290 (Sub-No. 264X), notice served Aug. 30, 2005 (not printed) at 2, note 2.

TRAIL USE, PUBLIC USE AND OFFERS OF FINANCIAL ASSISTANCE

Because this is a discontinuance of service proceeding and not an abandonment, there is no occasion to provide an opportunity for trail use-rail banking or public use condition requests. *Norfolk Southern Ry. Co. -- Discon. of Serv. -- in Sumter County, SC, supra*, notice served Aug. 30, 2005 at 2, note 2. Because a discontinuance of service rather than an abandonment is proposed, OFAs to acquire the Subject Rail Line will not be entertained. *City of Peoria, et al. - Adv. Discon. -- Pioneer Industrial Ry. Co., supra*, decision served Aug. 10, 2005 at 7-8, citing *City of Rochelle, Illinois -- Adv. Discon. -- Rochelle R. Co.*, Docket No. AB-549, decision served May 27, 1999 (not printed).

Inasmuch as OFAs and public use requests are not to be entertained in discontinuance of service proceedings, an exemption from the statutes that provide for OFAs and public use conditions does not appear to be required. However, in an abundance of caution, CIRY also

seeks an exemption from the OFA provisions of 49 U.S.C. § 10904 and from the public use provisions of 49 U.S.C. § 10905, if required.

LABOR PROTECTION

The labor protective conditions in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979), are customarily imposed in abandonment and discontinuance cases, and should be imposed in this proceeding.

VERIFICATION

The factual allegations in this petition are verified by CIRY's counsel in Appendix 3.

THE PROPOSED DISCONTINUANCE MEETS THE STATUTORY STANDARDS FOR AN EXEMPTION

Discontinuance of rail service requires Board approval under 49 U.S.C. § 10903. However, on petition, the Board is to exempt a proposed discontinuance from the requirements of that statute if the Board finds under 49 U.S.C. § 10502(a) that (1) application of § 10903 to the proposed discontinuance is not required to carry out the national rail policy set forth in 49 U.S.C. § 10101, and (2) either that (a) the proposed discontinuance is of limited scope, or that (b) application of § 10903 to the proposed discontinuance is not necessary to protect shippers from abuse of market power.

In regard to the first standard of § 10502(a), the need for statutory application is to be tested against the provisions of the national rail policy that are implicated by the statute from which an exemption is sought. *Minnesota Comm. Ry., Inc. - Trackage Exempt. - BNRR Co.*, 8 I.C.C.2d 31, 36 (1991); *Village of Palestine v. ICC*, 936 F.2d 1335 (D.C. Cir. 1991). As to discontinuance of service under § 10903, the rail policy most directly implicated is 49 U.S.C. §

10101(4) in favor of continuation of a sound rail transportation system to meet the needs of the public and the national defense. The issue is whether a conventional abandonment application is required to determine whether the discontinuance should be approved, or whether it is so apparent that continued operation of the line is not required for an adequate rail transportation system that discontinuance can be authorized by exemption without the need for the filing of such an application.

It is evident that the case at hand fits into the latter category. That is clearly the case where, as here, the Subject Rail Line has not had any originated or terminated rail traffic in more than two years, and the Line would qualify for the class exemption for discontinuance over out-of-service rail lines except for the fact that the operator has not operated the line for the requisite two-year period. In *Burlington Northern R. Co. -- Exempt. -- Aband. in Washington County, MN*, 1987 ICC LEXIS 422 (Docket No. AB-6 [Sub-No. 288X]), decided Feb. 26, 1987), the rail line would have qualified for the class exemption for abandonment of out-of-service rail lines, but the regulations implementing that exemption were not yet in place. In granting the rail carrier's petition for exemption of abandonment in that case, the ICC said (at *4):

... (C)ompetition and the continuation of a sound rail transportation system are not affected, since there has been no local service over the line in recent years, and no shipper has complained ...

The ICC also found (*id.*) that an exemption for abandonment would expedite regulatory decisions (§ 10101[2]), reduce regulatory barriers to exit (§ 10101[7]), foster sound economic conditions (§ 10101[5]), and encourage efficient management (§ 10101[9]). All of the foregoing findings would be equally appropriate in the case at hand.

The ICC in the case cited above found that application of § 10903 to the proposed abandonment was not necessary to protect shippers from abuse of market power because the abandonment would not disrupt service to any existing shippers or communities. (1987 ICC LEXIS 422 at *6). The same finding is appropriate in the case at hand for the same reason.

In light of that finding of no potential for abuse of market power, the Board need not determine whether the proposed transaction is of limited scope. *See* 49 U.S.C. § 10502(a)(2). However, the proposed 6.29-mile discontinuance of rail service is of limited scope in light of the Board's finding in the case cited above that abandonment of a 7.4-mile rail line was of limited scope. (1987 ICC LEXIS 422 at *5). Thus, the proposed discontinuance satisfies both of the alternative criteria of 49 U.S.C. § 10502(a)(2)(A) and (B).

Inasmuch as the record in this proceeding permits the Board to make the findings set out in 49 U.S.C. § 10502(a)(1) and (2) in regard to the proposed discontinuance of rail service, the Board should issue a decision exempting such discontinuance from the requirements of 49 U.S.C. § 10903, and from 49 U.S.C. § 10904 and § 10905, if required.

REQUEST FOR EXPEDITED DISPOSITION

CIRY respectfully requests that on the 50th day after this petition is filed or as soon thereafter as possible, the Board issue a decision granting the requested exemption to be effective on the service date of the decision. Fifty days is the time frame for an effective exemption under the class exemption for abandonment or discontinuance of out-of-service rail lines. *See* 49 C.F.R. § 1152.50(c)(3). As noted, the proposed discontinuance would have qualified for that class exemption except that CIRY has not had operating authority over the Subject Rail Line for the requisite two-year period.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should issue a decision granting an exemption from 49 U.S.C. § 10903, and from 49 U.S.C. § 10904 and 49 U.S.C. § 10905, if required, for discontinuance of rail service over the Subject Rail Line.

Respectfully submitted,

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

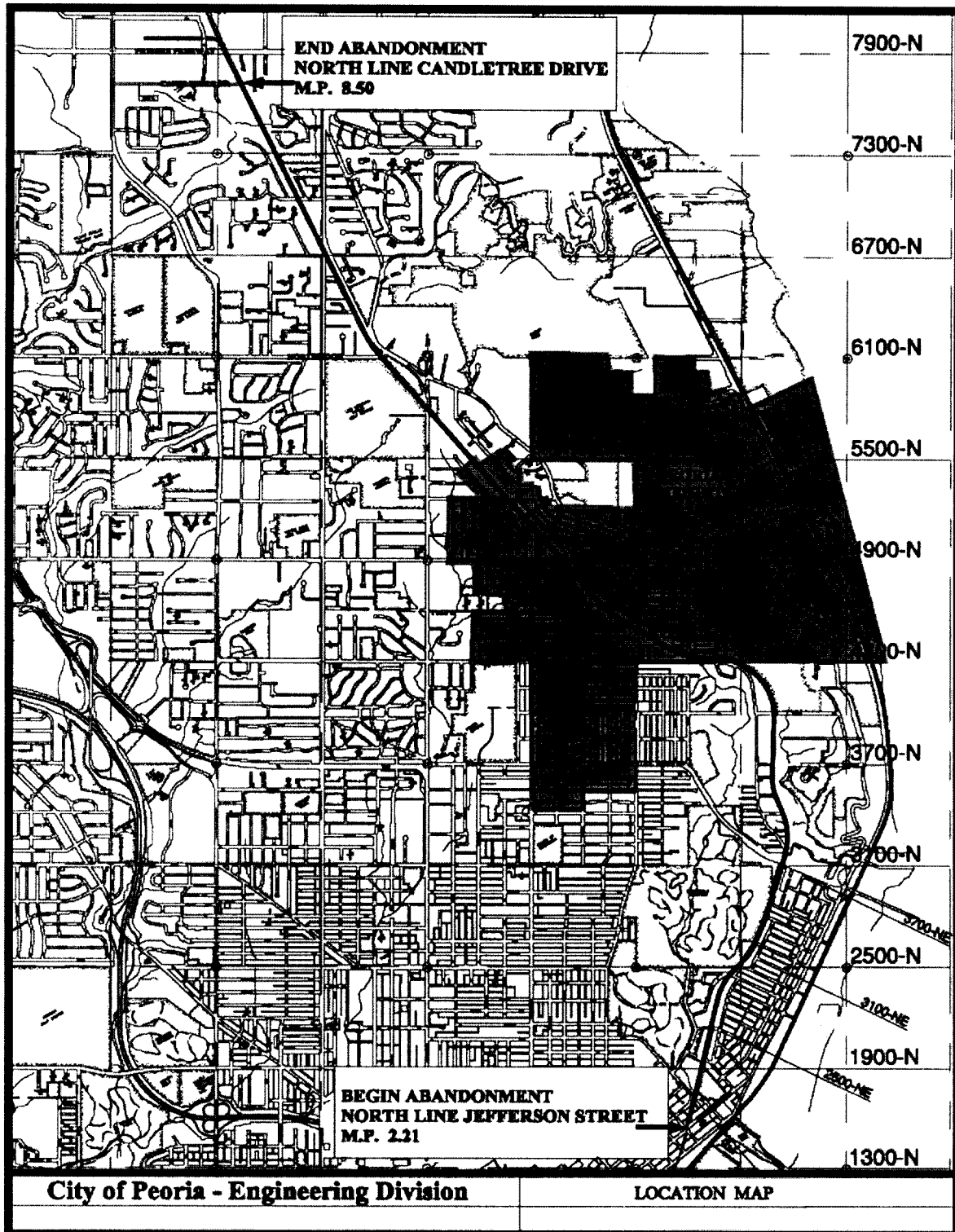
Petitioner



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

Attorney for Petitioner

DATE FILED: September 12, 2005



APPENDIX 2

DRAFT FEDERAL REGISTER NOTICE PER 49 C.F.R. 1152.60(c)

**STB Docket No. AB-1066X, *Central Illinois Railroad Company --
Discontinuance of Service Exemption -- in Peoria County, Illinois***

Notice of Petition for Exemption to Discontinue Service

On September 12, 2005, CENTRAL ILLINOIS RAILROAD COMPANY (CIRY) filed with the Surface Transportation Board, Washington, DC, a Petition for Exemption from 49 U.S.C. 10903-10905 for discontinuance of rail service over a segment of rail line in Peoria and Peoria Heights, Illinois owned by the City of Peoria and the Village of Peoria Heights. The rail line extends between the north line of Candletree Drive at approximately Milepost 8.50 in Peoria and the north line of Jefferson Street at approximately Milepost 2.21 in Peoria, a distance of approximately 6.29 miles in Peoria County, Illinois.

The rail line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees would be protected by imposition of conditions to approval of abandonment imposed in *Oregon Short Line R. Co. - Abandonment - Goshen*, 360 I.C.C. 91 (1979)

Because this is a discontinuance of service proceeding and not an abandonment, there is no occasion to provide an opportunity for offers of financial assistance, trail use-railbanking or public use condition requests.

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full discontinuance regulations at 49 C.F.R. part 1152.

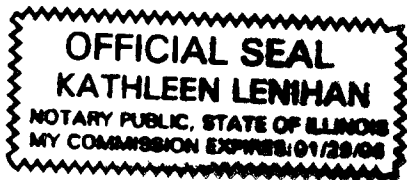
Because this is a discontinuance of service proceeding and not an abandonment, no historic or environmental documentation is required under 49 C.F.R. § 1105.6(c)(6) and 49 C.F.R. § 1105.8.

APPENDIX 3

VERIFICATION

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

THOMAS F. McFARLAND, being duly sworn on oath, deposes and states that he has read the foregoing notice, that he knows the contents thereof, and that the facts therein stated are true and correct.



Thomas F. McFarland
Thomas F. McFarland

SUBSCRIBED AND SWORN
to before me this 9th day
of September, 2005.

Kathleen Lenihan
Notary Public

My Commission Expires: 1/29/06

CERTIFICATE OF SERVICE

This is to certify that in accordance with the requirements of 49 C.F.R. § 1152.60(d) and 49 C.F.R. § 1152.50(d), on September 9, 2005, I served a copy of the foregoing Petition by first-class, U.S. mail, postage prepaid, on the following:

Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764

MTMCTEA
Attn: Railroads for National Defense
720 Thimble Shoals Blvd.
Suite 130
Newport News, VA 23606-2574

The National Park Service
Recreational Resources Assistance Division
1849 C Street, N.W.
Washington, DC 20240-0001

United States Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Auditor's Building
14th Street & Independence Avenue, S.W.
Washington, DC 20250



Thomas F. McFarland