

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

214967

THOMAS F. MCFARLAND



October 14, 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

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 Reply In Opposition To Motion For Clarification And Motion To Compel, for filing with the Board in the above referenced matter.

ENTERED
Office of Proceedings

OCT 17 2005

Part of
Public Record

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Petitioner

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BEFORE THE
SURFACE TRANSPORTATION BOARD



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

**REPLY IN OPPOSITION TO MOTION FOR
CLARIFICATION AND MOTION TO COMPEL**

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: October 17, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**REPLY IN OPPOSITION TO MOTION FOR
CLARIFICATION AND MOTION TO COMPEL**

Pursuant to 49 U.S.C. § 1114.13(a), Petitioner CENTRAL ILLINOIS RAILROAD COMPANY ("CIRY") hereby replies in opposition to a Motion for Clarification and Motion to Compel ("Motion") filed by Pioneer Industrial Railway Co. ("PIRY") on or about October 10, 2005.

BACKGROUND

On September 12, 2005, CIRY filed a Petition for Exemption from 49 U.S.C. § 10903-10905 for discontinuance of its rail service over a 6.29-mile rail line in Peoria and Peoria Heights, IL ("Petition"). On or about September 12, 2005, PIRY filed a Notice of Intent to File Offer of Financial Assistance to purchase that rail line ("Notice"). On September 15, 2005, CIRY filed a Motion to Reject that Notice on the ground that an exemption for discontinuance of service is sought, and offers of financial assistance are not entertained in discontinuance-of-service proceedings.

In a decision served September 30, 2005, the Board provided notice to the public of the filing of CIRY's Petition. In footnote 1 on page 2 of that decision, the Board acknowledged the

filing of PIRY's Notice and CIRY's Motion to Reject that Notice, and stated that those filings will be considered in the decision on the merits of the Petition.

PIRY's Motion for Clarification of the Board's decision is directed to the procedure for evaluating PIRY's Notice and CIRY's Motion to Reject on the merits. (Motion at 3). PIRY suggests that the Board reject CIRY's Motion to Reject on the ground that it is "duplicitous" to CIRY's "Request for Wavier" (*id.*). Alternatively, PIRY asks that the Board "consolidate the question," and permit PIRY a reasonable time to respond to the "Motion/Request" (*id.*).

PIRY's Motion to Compel seeks to force CIRY to provide valuation information in response to PIRY's Notice. (Motion at 3).

REPLY IN OPPOSITION

PIRY's Motion for Clarification should be denied. The Board's September 30 decision does not require clarification regarding the procedure for resolving PIRY's Notice and CIRY's Motion to Reject. That procedure is clearly stated in the decision: "those filings will be considered in the decision on the merits" (decision at 2, n. 1).

PIRY's Motion for Clarification instead seeks a change in that procedure -- a reopening of the decision to impose a different procedure for resolving those filings. There is no valid basis for the requested change. PIRY contends falsely that CIRY's Motion to Reject is "duplicitous to (CIRY's) Request for Wavier". (Motion at 3). Reference to a "request for waiver" apparently is to CIRY's petition for an exemption from the offer-of-financial-assistance (OFA) provisions of 49 U.S.C. § 10904. CIRY's Petition made it clear (at 5-6) that an exemption from 49 U.S.C. § 10904 is not required because OFAs are not entertained in discontinuance-of-service proceedings, but that an exemption from that statute was being sought in an abundance of

caution. The being the case, CIRY's Motion to Reject is in no way "duplicitous" of CIRY's petition for exemption from § 10904. There is absolutely no legal basis, therefore, for PIRY's request that CIRY's Motion to Reject itself be rejected.

Nor is there a legal basis for PIRY's alternative request in its Motion for Clarification that it be permitted to reply to CIRY's petition for exemption from § 10904 and CIRY's Motion to Reject. (Motion at 3). By virtue of the Board's decision served September 30, 2005, PIRY already has been given the opportunity to reply to CIRY's petition for exemption from § 10904 (at 2: "Replies to the petition are due on October 20, 2005"). Pursuant to Board regulations at 49 C.F.R. § 1114.13(a), PIRY had the opportunity to reply to CIRY's Motion to Reject on or before 20 days after that Motion was filed, i.e., on or before October 5, 2005. PIRY did not take advantage of that opportunity to file a reply to the Motion to Reject. However, as a practical matter, PIRY has made its reply in its Motion for Clarification. It needs no additional opportunity to reply.

PIRY's Motion to Compel CIRY to provide valuation information for an OFA also should be denied. PIRY's Motion to Compel assumes that OFAs would be entertained in this discontinuance-of-service proceeding. However, PIRY has specific first-hand knowledge that that is not so. PIRY was an active party of record in *City of Peoria, et al. -- Adv. Discon. -- Pioneer Industrial Ry. Co.*, 2005 STB LEXIS 360 (Docket No. AB-878, decision served Aug. 10, 2005), wherein the Board stated the following little more than 60 days ago (at *19):

Because this decision will authorize a discontinuance of service and not an abandonment, under our precedent OFAs to take over the line are not entertained . . . Therefore, the Cities' motion to reject PIRY's notice of intent to file an OFA will be granted . . .

Other decisions are in accord. *Norfolk Southern Ry. Co. -- Discon. of Serv. -- in Sumter County, SC*, 2005 STB LEXIS 382 (Docket No. AB-290 [Sub-No. 264X], notice served Aug. 30, 2005) at *2, n. 2.

Thus, PIRY's Notice of Intent to File an OFA was filed in knowing and intentional disregard of specific Board precedent that OFAs are not entertained in discontinuance-of-service proceedings. That hardly entitles PIRY to relief in furtherance of that wholly unauthorized filing.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, PIRY's Motion for Clarification and its Motion to Compel should be denied.

Respectfully submitted,

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

Petitioner

Thomas F. McFarland

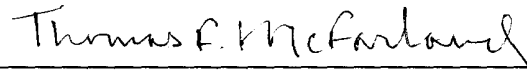
THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Petitioner

DATE FILED: October 17, 2005

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2005, I served the foregoing document, Reply In Opposition To Motion For Clarification And Motion To Compel, by UPS overnight mail, on Daniel LaKemper, Esq., Pioneer Industrial Railway Co., 1318 South Johanson Road, Peoria, IL 60617 and on James E. Konsky, Esq., Vonachen, Lawless, Trager & Slevin, 456 Fulton Street, Suite 425, Twin Towers Plaza, Peoria, IL 61602-1240.



Thomas F. McFarland