

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

April 17, 2006

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

IMMEDIATE HANDLING REQUESTED

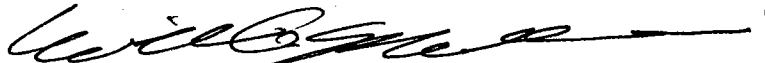
Re: STB Docket No. AB-1066X
Central Illinois Railroad Company – Discontinuance Of Service Exemption –
In Peoria County, IL

Dear Secretary Williams:

Enclosed on behalf of Pioneer Industrial Railway Co., is a Renewed Motion To Compel Discovery Responses from The Pleasure Driveway and Park District of Peoria, Illinois ("Motion"). As can be seen from the certificate of service attached, copies of the Motion are being served today on all parties of record.

Please acknowledge filing of this Motion by return electronic receipt. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: Daniel A. LaKemper, Esq.
All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1066X

**CENTRAL ILLINOIS RAILROAD COMPANY-- DISCONTINUANCE OF SERVICE
EXEMPTION - IN PEORIA COUNTY, IL**

**RENEWED MOTION TO COMPEL DISCOVERY RESPONSES FROM THE
PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS**

**Daniel A. LaKemper
General Counsel
Pioneer Industrial Railway Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400**

**William A. Mullins
David C. Reeves
Baker & Miller PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849**

April 17, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1066X

**CENTRAL ILLINOIS RAILROAD COMPANY-- DISCONTINUANCE OF SERVICE
EXEMPTION - IN PEORIA COUNTY, IL**

**RENEWED MOTION TO COMPEL DISCOVERY RESPONSES FROM THE
PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS**

Pursuant to 49 CFR § 1114.31, Pioneer Industrial Railway Co. ("PIRY") hereby renews its request that the Surface Transportation Board ("STB" or the "Board") issue an order compelling The Pleasure Driveway And Park District Of Peoria, Illinois ("Park District") to provide the information requested in PIRY's First Discovery Requests ("Discovery Requests"), originally served February 24, and which were served again on March 23. Responses and objections to the re-served Discovery Requests were due April 7. On April 7, the Park District simply sent a letter refusing to respond to the requests, adopting the Central Illinois Railroad Company ("CIRY") March 20 opposition to PIRY's motion to compel discovery responses from CIRY as the Park District's rationale for refusing to respond.

Upon issuance of the Board's decision on this motion, the Park District should be required to answer immediately and in full each request in the Discovery Requests served by PIRY (copy attached as Exhibit 1). The Park District's desire to create a trail from the Kellar Branch right of way is the underlying cause of this proceeding. In support of that interest, the Park District submitted a verified statement supporting CIRY's discontinuance plan, stating that

alternative rail service was already available to Kellar Branch shippers. As shown by the petition for reconsideration filed by Carver Lumber Company ("Carver Lumber"), the Park District's assertion that alternative rail service was available to shippers such as Carver was false.

Inasmuch as the Board has stayed the effect of its decision in this proceeding to obtain additional information and the Park District is in possession of information regarding whether or not there is alternative service over the Kellar Branch to Carver Lumber, the Park District should be compelled to provide that information in order to aid Carver Lumber's effort to seek reconsideration and PIRY's effort to provide the Board with a complete record.

PROCEDURAL HISTORY AND BACKGROUND

The procedural history and background of the line of railroad known as the Kellar Branch is well known by this Board. It has been the subject of several decisions issued in this proceeding, as well as in AB-878, City of Peoria and The Village of Peoria Heights, IL – Adverse Discontinuance – Pioneer Industrial Railway Company. As such, it need not be repeated in its entirety here. As relevant to the procedural posture underlying this motion, slightly more than a year after receiving authority to operate the Kellar Branch, and having failed to provide any service over the line (the one attempt at service resulted in a runaway train and a derailment), CIRY sought discontinuance of its common carrier service obligations over most of the Branch. Because the Board had been told by CIRY and the Park District that any shippers who would be adversely affected by the CIRY discontinuance would continue to receive service via an alternative route and because no shipper objected to the CIRY discontinuance, the Board granted CIRY's discontinuance request in a December 23, 2005 decision ("Decision"). The Decision was to take effect on January 22, 2006.

On January 4, 2006, Carver Lumber filed a letter seeking reconsideration of the Decision and of the Board's action in Adverse Discontinuance.¹ On January 9, 2006, PIRY filed a Petition for Stay seeking a stay of the effective date of the Decision. PIRY also filed an appeal of the Board's Decision in the D.C. Circuit, United States Court of Appeals. See No. 06-1019, Pioneer Industrial Railway Company v. Surface Transportation Board.² PIRY's petition for stay also noted that if the Decision was not stayed, PIRY would likely file a petition to reopen and revoke the exemption. On January 20, 2006, the Board stayed the effective date of its prior Decision until further order of the Board.

Given the stay decision, the pendency of Carver Lumber's petition for reconsideration, the pendency of PIRY's stay petition, the belief that the D.C. Circuit case will likely be held in abeyance, and the fact that PIRY could file a petition to reopen and/or revoke, PIRY sought discovery from the Park District to gather further information that would be helpful to the Board in deciding the various pending petitions. On February 24, 2006, PIRY served its Discovery Requests, consisting of written interrogatories and requests for production. The Park District tendered no response or objection whatsoever, so PIRY moved to compel responses. The Park District's attorney then phoned PIRY's counsel, stating that he had not received the original copy of the discovery served by PIRY. PIRY therefore withdrew its motion to compel and gave the Park District 15 days from the service date of that motion to respond to the discovery, a copy of which was appended to the motion. On April 7, the Park District's counsel mailed a letter, dated

¹ See City Of Peoria and The Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company, STB Docket No. AB-878 (served August 10, 2005), petition to reopen denied Nov. 18, 2005 (“Adverse Discontinuance”).

² The Board has requested the D.C. Circuit to hold that appeal in abeyance pending a Board ruling on the Petition for Reconsideration filed by Carver Lumber and the Petition for Stay filed by PIRY. PIRY supported the Board's request. The request is pending.

April 6 (copy attached as Exhibit 2) refusing to answer PIRY's discovery. Accordingly, PIRY moves the Board to compel the Park District to respond fully to PIRY's discovery.

DISCUSSION

By refusing to supply any information requested in the Discovery Requests, the Park District has violated both the letter and spirit of the Board's discovery procedures contained in 49 CFR § 1114. Unequivocally, the scope of discovery in Board proceedings, such as this, is quite broad. The Board's modification to 49 CFR § 1114.21 (1997) of its Rules of Practice³ provides in pertinent part:

(a) When discovery is available.

(1) Parties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . .

These modifications eliminated "the requirement that Board approval be sought for discovery procedures other than written interrogatories and requests for admission." FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Docket No. 42022, at 3 (STB served Feb. 5, 1998) ("FMC"). In the FMC decision, the Board noted that the overall goal of the modifications was to expedite the discovery process, acknowledging that the prior discovery rules "had the potential to impede expeditious discovery and [] generated too much paperwork." Id. at n.8.

³ These modifications were adopted by the Board in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527 (STB served Oct. 1 and Nov. 15, 1996) (Expedited Procedures), aff'd sub nom. United Transp. Union-Ill. Legis. Bd. v. STB, 132 F.3d 71 (D.C. Cir. 1998).

The scope of discovery authorized by the Board's Rules of Practice is modeled on the scope of discovery under the Federal Rules of Civil Procedure.⁴ The Federal Rules of Civil Procedure "allow broad scope to discovery and this has been well recognized by the courts." Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d, § 2007 (1994) (citations omitted). The federal rule, which applies to all forms of discovery, is the broad standard against which PIRY's discovery requests must be evaluated.

The discovery requested by PIRY falls well within the broad parameters of the Board's rules. PIRY notes that unlike the adjudication process before courts, in the instant proceeding, there will be no oral hearing with cross-examination of witnesses. Therefore, the discovery process is the sole means by which PIRY, Carver Lumber, and the Board will be able to obtain information on whether or not CIRY should be allowed to discontinue operations or whether or not the Board's initial decision in Adverse Discontinuance was correct. Such discovery is particularly important in this instance where the Park District submitted a verified statement that "[A]lternative rail service [to shippers on the Kellar Branch] *was provided* when the City acquired track to the west of the Kellar Branch from Union Pacific Railroad Company *and constructed track from the northwest end of the Kellar Branch to the former Union Pacific tracks.*" (Emphases added.) While the Park District's counsel swore that "he knows the contents

⁴ The Federal Rules of Civil Procedure, in language virtually identical to the Board's Rules of Practice, provide that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1).

of [the foregoing] and that the facts therein stated are true and correct,” Carver Lumber’s subsequent submissions and even the City of Peoria’s filings in AB-878 show those assertions were not correct.⁵ Because the incorrectness of the Park District’s assertions goes to the heart of the issues before the Board and the Park District is obviously in possession of information related to the feasibility of alternative rail service, PIRY’s discovery requests to the Park District are particularly crucial.

CIRY’s response to PIRY’s motion to compel, which the Park District has adopted in toto as the basis of its refusal to respond to PIRY’s discovery, alleges that (1) PIRY has no cognizable interest in this proceeding, (2) that PIRY’s discovery is untimely, and (3) that, in any event, the alternative service that the Park District swore on September 22 was available actually became available March 16. Thus, since the Park District has adopted, in total, CIRY’s arguments in opposition to PIRY’s motion to compel discovery against CIRY, PIRY responds to those arguments as if filed by CIRY.

I. PIRY DOES HAVE A COGNIZABLE INTEREST IN THIS MATTER.

CIRY’s contention that PIRY has no cognizable interest in this matter is easily disposed of. CIRY admits that PIRY sought to acquire the line at issue through an offer of financial assistance (“OFA”). However, CIRY treats that interest as finally concluded by the Board’s November 21 interim decision granting CIRY’s motion to reject PIRY’s OFA. PIRY submits, however, that decision was not administratively final or appealable and was, in fact, subsumed in the December 23 final order, which PIRY has petitioned the D.C. Circuit to review. PIRY

⁵ The Park District’s false statements may subject it to penalties as provided at 49 CFR § 1104.5. Discovery will aid the Board in determining whether or not the Park District’s false statements were in fact “knowing and willful.”

continues to pursue its rights to purchase the line at issue through an OFA, and will challenge that portion of the Decision in court if the Decision is not vacated by the Board.⁶

Furthermore, it is PIRY's position that the Decision is the final regulatory step in improperly dispossessing PIRY of its contractual right to operate the line at issue. The City of Peoria and Village of Peoria Heights (together, the "Cities") sought and obtained adverse discontinuance authority against PIRY, based on repeated promises that CIRY, the Cities' designated substitute for PIRY, would serve the shippers PIRY had served or would be replaced with another operator. The Board granted the Cities' adverse discontinuance request and told PIRY that if it wanted to vindicate its contractual rights to operate the Kellar Branch, it must do so in court.

Once the Cities obtained the adverse discontinuance order, they ordered PIRY to vacate the line, stating that CIRY would begin operating the property on a specified date. Notwithstanding PIRY's belief that it continued to have a contractual right to operate over the line, out of concern about the safety of being on the line at the same time as CIRY, PIRY removed its equipment under protest. In light of CIRY's runaway train incident and derailment shortly thereafter, PIRY's judgment to remove its equipment from the line was obviously prudent.

PIRY has been endeavoring since that time to vindicate its rights in court, as the Board suggested.⁷ However, it has been stymied by a number of procedural motions by the Cities.

⁶ Contrary to CIRY's contention in footnote two of its reply to the motion to compel, PIRY has not merely appealed the December 23, 2005 denial of its Request To Hold In Abeyance Pending Compliance with the National Environmental Policy Act of 1969, but has appealed all rulings and decisions by the Board.

⁷ CIRY's footnote one in its reply to the motion to compel is misleading. It is true that "[n]o court has determined that PIRY has a right to operate the segment by virtue of a contractual or

Meanwhile, the Cities, the Park District and CIRY have put on an all-out effort to get the Board's final approval for complete cessation of operations on most of the Kellar Branch so that track could be removed immediately. Indeed, urging the Board to act immediately was a principal focus of the Park District's filing herein.

CIRY's exemption petition in this case seeks to eliminate the last common carrier obligation applicable to most of the Kellar Branch so that track can be removed and converted to a trail. If that occurs without PIRY having the opportunity to vindicate its contractual rights in court, as the Board suggested, PIRY's rights may be mooted because there will be no line left to operate. For this reason as well, PIRY has a very real interest in this proceeding.

Finally, PIRY has available to it the option to petition to reopen this proceeding and to revoke CIRY's exemption. In AB-878, where PIRY filed its petition to reopen before it filed discovery, the Cities contended that PIRY's discovery was too late. In this instance, where PIRY filed discovery prior to filing a petition to reopen, CIRY has contended that PIRY's discovery against it is also untimely. CIRY wants to have it both ways, but the Board should reject this approach. As in AB-878, which involves a petition to reopen filed by PIRY, discovery is timely here because Carver Lumber has filed a petition for reconsideration. The actions by PIRY in AB-878 and by Carver Lumber in this proceeding automatically entitle all parties to take discovery and provide the Board with a complete record. Likewise, PIRY submits that it also retains an interest in this proceeding because it too has the option to petition to reopen or to seek revocation, similar to Carver Lumber.

property interest," but neither has any court determined that PIRY does not have such a right. The courts have simply not reached the merits of PIRY's contractual claims because of the numerous procedural issues and change of venue issues. Unless and until a court has ruled on PIRY's contractual claims, to state that "[n]either does PIRY have a contractual or property interest that authorizes such operation" is simply CIRY's opinion.

II. PIRY'S DISCOVERY IS NOT UNTIMELY AS RECONSIDERATION AND PIRY'S STAY REQUEST REMAIN PENDING.

Even a cursory review of PIRY's Discovery Requests shows that they are relevant to the issues raised in the petition for stay and Carver Lumber's petition for reconsideration and any future petition to be filed by PIRY. Indeed, the Park District's answers would facilitate the Board's decision-making process. Therefore, the Park District should be compelled to respond to PIRY's Discovery Requests.

A. Discovery Is Appropriate At This Stage Of The Proceeding

CIRY relies upon IC Construction⁸ for the proposition that discovery is not appropriate here because the record has closed. Discovery was denied in IC Construction not principally because of the timing of the requests, but rather because the discovery sought was not relevant and because it could not be used in any future filings. Those holdings are simply inapplicable to the facts of this proceeding. Here, the record on the underlying request for discontinuance is far from closed. There is one petition for reconsideration pending, one petition for stay pending, a court appeal that is likely to be held in abeyance pending further decisions by the Board, and the potential that PIRY will file a petition to reopen and/or revoke in the event the Decision does become effective. Indeed, the Board itself has stayed the effective date of its own Decision "in order to allow time for the parties to provide additional information." Thus, unlike IC Construction, even the Board's order in this proceeding contemplates filing additional information. PIRY cannot provide such "additional information" unless the Park District (and CIRY) is compelled to respond to the discovery so that it can be provided to the Board.

⁸ Illinois Central R. Co. – Construction and Operation Exemption – In East Baton Rouge Parish, LA, Finance Docket No. 33877, 2001 STB LEXIS 510 (STB served May 25, 2001)(“IC Construction”).

There is long-standing precedent granting discovery to parties in exemption proceedings and in the context of petitions for reconsideration and/or reopening or petitions to revoke previously granted exemptions, whether by notice of exemption or petition for exemption. This precedent goes back over twenty years. In the Buffalo & Pittsburgh Railroad⁹ case, the Commission stated that “[t]he Commission’s discovery rules embody a long standing policy of fostering the disclosure of information.” There, Buffalo & Pittsburgh Railroad, Inc., filed a Notice of Exemption pursuant to 49 CFR § 1150.31 for the purpose of acquiring and operating certain properties of CSX Transportation, Inc. Petitions for revocation and for reconsideration of the exemption were subsequently filed and discovery was granted.

There is a plethora of exemption proceedings that have followed Buffalo & Pittsburgh Railroad and allowed discovery in the context of petitions for reconsideration or revocation. See Clyde S. and Sandra Forbes and CSF Acquisition, Inc. — Control Exemption — Lamoille Valley Railroad Company and Twin State Railroad Corporation; New Hampshire and Vermont Railroad Company — Lease, Operation and Acquisition Exemption — Boston and Maine Corporation, Finance Docket Nos. 31545 and 31547 (ICC served Oct. 1, 1991) (three labor groups filed a petition seeking revocation of an exemption; Commission issued its order only after discovery was complete); Rail Management and Consulting Corporation, Green Bay Packaging, Inc., and K. Earl Durden — Continuance in Control Exemption — Tomahawk Railway, L.P., Valdosta Railway, L.P.; Tomahawk Railway, L.P. — Acquisition and Operation Exemption — Marinette, Tomahawk & Western Railroad Company, Finance Docket No. 31996

⁹ Buffalo & Pittsburgh Railroad, Inc. — Exemption — Acquisition and Operation of Lines in New York and Pennsylvania; Genesee & Wyoming Industries, Inc., The Arthur J. Walker Estate Corporation and Dumaines and Buffalo & Pittsburgh Railroad, Inc. — Exemption Control, Finance Docket Nos. 31116 and 31117, at 2 (ICC served April 7, 1989).

(Sub-No. 1), 1992 ICC LEXIS 288 at *4 (ICC served Dec. 17, 1992) (discovery is appropriate upon the filing of a petition to revoke); Brotherhood of Locomotive Engineers, et al. v. ICC, 909 F.2d 909, 911 (6th Cir. 1990) (the parties engaged in seven months of discovery in a revocation proceeding); Wheeling Corporation — Continuance in Control Exemption — Akron Barberton Cluster Railway Company, Finance Docket No. 32538, 1994 ICC LEXIS 229 at *3 (ICC served Oct. 11, 1994) (discovery conducted regarding various petitions filed by labor groups); Rail General Exemption Authority — Miscellaneous Agricultural Commodities — Petition of G. & T. Terminal Packaging Co., Inc., et al. to Revoke Conrail Exemption, Ex Parte No. 346 (Issue B-No. 14A), 1989 ICC LEXIS 204 at *8-9 (ICC served Aug. 3, 1989) (parties to revocation proceeding “do not have to obtain prior Commission approval to conduct discovery through written interrogatories or requests for admission”). These precedents have also been consistently followed in more recent cases. See, e.g., Holrail LLC—Construction And Operation Exemption—In Orangeburg and Dorchester Counties, SC, STB Finance Docket No. 34421, et al. (served Oct. 20, 2004) (granting CSXT’s motion to compel petitioner to produce more detailed information regarding its proposal to allow assessment of the proposal’s feasibility); Illinois Railnet, Inc.—Acquisition And Operation Exemption—BNSF Railway Company, STB Finance Docket No. 34549 (served April 15, 2005)(granting discovery in the context of a petition to revoke).

The above cases clearly establish that discovery is available at this stage of the proceeding. They establish that discovery becomes available either immediately following the filing of a petition for exemption or immediately upon the filing of a petition to reopen/revoke an exemption. Carver Lumber has filed a petition for reconsideration of the Board’s decision. That filing alone triggers the rules and precedents allowing parties to take discovery. PIRY should be

allowed to take that discovery and provide information to the Board. Likewise, the Board has issued a stay in order to allow time for consideration of additional information. PIRY desires to provide that information. As such, the Board should follow its long-standing precedents and grant PIRY's motion at this stage of the proceeding and compel the Park District to respond in full to PIRY's Discovery Requests.

B. Granting The Motion Is Also Necessary To Ensure A Complete Record

As noted, the Board has already requested additional information in order to develop a complete record. PIRY seeks discovery in order to provide that information. Carver Lumber has also filed its own petition for reconsideration. PIRY seeks discovery to aid Carver Lumber in its currently pending petition, as well as, perhaps, to support a petition by PIRY to reopen and revoke the exemption. As such, it is completely within the Board's powers to grant PIRY discovery at this stage in order to provide for such a complete record. Indeed, doing so is consistent with the Board's well-established desire to ensure a complete record on which to base its decisions. E.g., North Carolina Railroad Co. – Petition to Set Trackage Compensation and other Terms and Conditions – Norfolk Southern Railway Co. et al., STB Finance Docket No. 33134 (STB served May 29, 1997); Respondek Railroad Corp. – Acquisition and Operation Exemption – Evansville Terminal Co., STB Finance Docket No. 33331 (STB served March 12, 1997); and Sault Ste. Marie Bridge Co. – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Co., STB Finance Docket No. 33290 (STB served Feb. 12, 1997). In this case, the Board has complete power to ensure it has a complete record. See, e.g., 49 CFR § 1121.4(c); Railroad Ventures, Inc. – Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, In Mahoning And Columbiana Counties, OH, and Beaver County, PA, STB Docket No. AB-556 (Sub-No. 2X)(STB served Dec. 13, 2004)(granting motion to compel in

order to ensure complete record). Thus, consistent with its well-established precedent that discovery is available in exemption proceedings where parties have filed petitions for reconsideration or petitions to revoke an exemption and in order to provide for a complete record in this proceeding, the Board should compel the Park District to respond to PIRY's discovery.

Finally, the Board should reject any argument that PIRY also is not entitled to discovery because PIRY cannot subsequently use any of the Park District's discovery responses. This is in error. PIRY has not yet filed a petition to reopen or to revoke the exemption in this proceeding, although it can do so at any time, and if such a petition were filed, PIRY would be automatically entitled to discovery at that stage per the precedents cited above. Thus, the Board can order the Park District to provide the information now or later, but precedent clearly indicates that PIRY is entitled to such information and discovery.¹⁰ Furthermore, any information gained now would likely have a bearing on the issues presented by PIRY's stay petition. Thus, because PIRY does have a subsequent opportunity to submit any information gained from discovery and such discovery is relevant to the issues now under consideration by the Board, the Board should grant PIRY's motion to compel.

¹⁰ Because the Board's decision has not yet taken effect, PIRY itself has not yet filed a petition to reopen or revoke the exemption. If and when the Board allows the exemption to take effect, PIRY may file its own petition to revoke or reopen, which will automatically grant it the right to take discovery. See 49 CFR § 1121.2 which states in part, "Discovery shall be completed 30 days after the petition to revoke is filed. The party seeking discovery may supplement its petition to revoke 45 days after the petition is filed." The Board can either grant the discovery now in an effort to develop a complete record or later in the context of a petition to revoke. PIRY submits that administrative economy is best served by compelling discovery at this stage of the proceeding.

III. IN LIGHT OF PAST FALSE CLAIMS ABOUT ALTERNATIVE SERVICE BEING AVAILABLE, CIRY'S CURRENT CLAIM THAT SUCH SERVICE HAS BEEN PROVIDED ONCE IS NOT SUFFICIENT OR CONVINCING PROOF.

CIRY's final challenge to PIRY's discovery against it is that the long-promised service to Carver Lumber is finally available, so the Board should consider this matter concluded. Unfortunately, the Board has heard this sort of thing before from the Park District, CIRY and the Cities, and it has turned out not to be accurate. Of course CIRY's statement is not documented, not supported by a witness, nor supported by any evidence whatsoever. The Board thus has no basis on which to conclude that the connection has been built and that service to Carver Lumber has been provided.

Nonetheless, even if a single shipment was delivered to Carver Lumber, that does not constitute an effective replacement for PIRY's previously reliable service. There is more to having adequate service than simply being able to receive one shipment. Issues such as rates, terms of service, car availability, and others are all relevant as to whether or not CIRY is providing adequate service to Carver Lumber. Indeed, given that such alternative service has allegedly been available to Carver Lumber since March 15 and Carver Lumber has not withdrawn its stay request or petition for reconsideration appears to indicate that Carver Lumber is not satisfied with CIRY service and such service has not replaced PIRY's previously provided service. Compelling the Park District to provide such information will aid the Board's review of this issue.¹¹

¹¹ In fact, indications are that CIRY is not providing alternative service and is no longer performing any common carrier obligations over the Keller Branch, notwithstanding the fact that it has a legal obligation to do so. Yet, the adequacy of this alternative service was the sole basis for the Board's previous decisions, and as Carver Lumber itself has made clear, if such service proves inadequate, it would not have supported the discontinuance and would prefer that service continue over the Keller Branch through other means, including allowing PIRY to continue to

Finally, there are also important issues that discovery would help resolve of whether or not CIRY's alternative service is being done in a safe manner. PIRY has asked in its discovery directed to the Park District and to CIRY for information concerning safety violations on the Kellar Branch since PIRY was forced to vacate the track. By this request, PIRY intends not only to ascertain whether CIRY is continuing the type of operations which led to CIRY's derailment on its first attempt at service, but also whether CIRY is carrying out its operating responsibilities in a manner that will allow for continued service to shippers - as, for example, in inspecting and maintaining the track as required by FRA regulations. It is important for the Board to know whether CIRY is cutting corners on track maintenance and other work needed for long-term operation, and discovery is the only means by which the Board can gain the information necessary to scrutinize CIRY's claims and whether or not the Board should lift its stay.

CONCLUSION

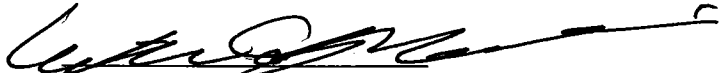
PIRY has sought discovery in this proceeding to supplement Carver Lumber's petition for reconsideration and to provide the Board with a more complete record. Although a party to this proceeding, having submitted a verified statement and having been represented by counsel, the Park District has refused to answer PIRY's Discovery Requests. The Park District's refusal to respond to discovery and CIRY's rationale put forth by the Park District for its similar decision not to respond is not consistent with Board precedent or Board regulations. The record is not closed as the Board has motions pending before it for which information gained from discovery would be relevant, and the Board has indicated that it wants more information from the

operate the line. As such, CIRY's claim on pg. 4 of the reply to the motion to compel that "Carver's participating in this proceeding thus cannot aid PIRY," is simply not true. Discovery by PIRY will aid Carver Lumber in its petition for reconsideration, aid the Board, and aid Carver Lumber in discerning the adequacy of the planned new service from the new connection.

parties. The Park District's answers would facilitate the Board's decision making process.

Therefore, the Park District should be compelled to respond in full to PIRY's Discovery Requests.

Respectfully submitted,



Daniel A. LaKemper
General Counsel
Pioneer Industrial Railway Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400

William A. Mullins
David C. Reeves
Baker & Miller PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849
Attorneys for Pioneer Industrial Railway Co.

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

February 24, 2006

VIA OVERNIGHT DELIVERY

James E. Konsky, Esq.
Vonachen, Lawless, Trager & Slevin
456 Fulton Street, Suite 425
Twin Towers Plaza
Peoria, IL 61602-1240

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

Dear Tom:

I am enclosing herewith Pioneer Industrial Railway Co.'s ("PIRY") First Discovery Requests directed to your client The Pleasure Driveway and Park District of Peoria, Illinois in the above-captioned proceedings. This discovery is served pursuant to the Surface Transportation Board's regulations at 49 C.F.R. §1114.21, and related regulations.

Complete responses to these requests are due by March 13, 2006. Please feel free to contact me promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously. I can be reached by phone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

cc: Daniel A. LaKemper

**BEFORE THE
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WASHINGTON, DC**

STB DOCKET NO. AB-1066X

**CENTRAL ILLINOIS RAILROAD COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN PEORIA COUNTY, IL**

**FIRST DISCOVERY REQUESTS OF PIONEER INDUSTRIAL RAILWAY CO. TO
THE PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS**

**Daniel A. LaKemper
General Counsel
Pioneer Industrial Railway Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400**

**William A. Mullins
David C. Reeves
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849**

February 24, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-1066X

**CENTRAL ILLINOIS RAILROAD COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN PEORIA COUNTY, IL**

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THE PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS**

Pursuant to 49 C.F.R. §1114.21 through 1114.31, Pioneer Industrial Railway Co., (“PIRY”) hereby directs the following discovery requests to The Pleasure Driveway and Park District of Peoria, Illinois (“Park District”). Responses should be served as soon as possible, and in no event later than March 13, 2006. The Park District is requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously, to avoid unnecessary delay to the proceeding.

THE PARTIES

1. “Park District” means The Pleasure Driveway and Park District of Peoria, Illinois.
2. “Pioneer” or “PIRY” means the Pioneer Industrial Railway Co.
3. “You” and “Your” means the Park District.

DEFINITIONS

1. “AB-878” means STB Docket No. AB-878, City Of Peoria and The Village of Peoria Heights, IL — Adverse Discontinuance—Pioneer Industrial Railway Company.
2. “Board” or “STB” means the Surface Transportation Board and its predecessor agency, the

Interstate Commerce Commission, if applicable.

3. "CIRY" means Central Illinois Railroad Company.

4. "Cities" means the City of Peoria and the Village of Peoria Heights, individually or collectively.

5. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

6. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from the original version, including notes.

7. "F.D. 34066" means STB Finance Docket No. 34066, City of Peoria, IL--Acquisition and

Operation Exemption--Union Pacific Railroad Company.

8. "F.D. 34395" means STB Finance Docket No. 34395, City of Peoria, IL, d/b/a Peoria, Peoria Heights & Western Railroad--Construction of Connecting Track Exemption--in Peoria County, IL.

9. "F.D. 34518" means STB 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.

10. "Identify,"

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business and its location relative to the track owned by the Cities;
- c. when used in relation to a document means to:
 - i. state the type of document (e.g., letter, memorandum, report, chart);
 - ii. identify the author, each addressee, and each recipient; and
 - iii. state the number of pages, title, and date of the document;
- d. when used in relation to an oral communication or statement means to:
 - i. identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - ii. state the date and place of the communication or statement;

- iii. describe in detail the contents of the communication or statement; and
- iv. identify all documents that refer to, relate to or evidence the communication or statement;

e. when used in any other context means to describe or explain in detail.

11. "Including" means including without limitation.

12. "Kellar Branch" means the 8.29 miles of rail line owned by the Cities and located between milepost 1.71 and milepost 10.0.

13. "P&PU" means Peoria & Pekin Union Railway Co.

14. "Person" means an individual, company, partnership, or other entity of any kind.

15. "Petition" means the request for reconsideration filed in This Proceeding by Carver Lumber Co., on January 4, 2006.

16. "Produce" means to make available to the undersigned attorneys for copying and viewing.

17. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.

18. "Relate to" or "relates to" a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.

19. "Request" means an interrogatory, request for admission or request for production of Documents or things.

20. "Shipper" means a consignor, a consignee, receiver or other user of rail services, Including each of the following: Balfour Beatty; Carver Lumber Co.; Metroplex Corp.; and O'Brien Steel Services Co.

21. "Studies, analyses and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.
22. "TZPR" means the Tazewell & Peoria Railroad, Inc., and its parent, subsidiaries, and affiliates.
23. "This Proceeding" means STB Docket No. AB-1066X, Central Illinois Railroad Company—Discontinuance of Service Exemption—in Peoria County, IL.
24. "UP" means the Union Pacific Railroad Co., and its parent, subsidiaries, or affiliates.

INSTRUCTIONS

1. Any delay in production of requested documents or answers to Requests is certain to prejudice PIRY's ability to present evidence to the Board concerning the Petition. Accordingly, responsive documents should be produced to the undersigned counsel at Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, not later than March 13, 2006. Serial production of relevant documents and narrative responses during that period is encouraged and requested. Objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.
2. You should contact William A. Mullins at (202) 663-7823 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.
3. Unless otherwise specified, these Requests cover the period beginning January 2001 and ending with the date of the response.
4. If you object to any Request or any part thereof, please state the reasons for such objection, including all information forming the basis for such objection.

5. If You have information that would permit a partial answer to any Request, but You would have to conduct a special study to obtain information necessary to provide a more complete response to that Request, and if the burden of conducting such special study would be greater for You than for PIRY:

- a. state that fact;
- b. provide the partial answer that may be made with information available to You;
- c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit PIRY to derive or ascertain a more complete answer; and
- d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit PIRY to derive or ascertain a more complete answer.

6. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,

- a. identify the information or document (in the manner provided in Definition 10 *supra*); and
- b. state the basis for the claim that it is privileged or otherwise not discoverable.

7. References to companies include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

8. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

9. If You know or later learn that a response to any Request is incorrect, You are under a duty seasonably to correct that response.

10. Pursuant to 49 C.F.R. § 1114.29, You are under a duty seasonably to supplement Your responses with respect to any question.

DISCOVERY REQUESTS

Request No. 1. Produce all information in Your possession concerning any communications with, and all documents provided to or received from, the STB's Section of Environmental Analysis in connection with This Proceeding or F.D. 34066, F.D. 34395, F.D. 34518, or AB-878.

Request No. 2. Produce all information in Your possession concerning derailments of railcars on the Kellar Branch since August 9, 2005.

Request No. 3. Produce all information in Your possession concerning any accidents, safety violations, or accidental release of lading involving rail shipments that have moved on the Kellar Branch since August 9, 2005.

Request No. 4. Produce all written and electronic communications, and describe all oral communications, between the Park District and any Shipper that relate to the Kellar Branch.

Request No. 5. Produce all information in Your possession that relates to the planned removal of any portion of the Kellar Branch.

Request No. 6. Produce all information in Your possession concerning any discussions, contracts, negotiations, and any other document regarding rail service, either past, future, or existing, to any Shipper over any portion of the Kellar Branch or any portion of any other rail line owned or operated in whole or in part by the Cities or that connects with the Kellar Branch, whether or not it is owned or operated by the Cities.

Request No. 7. Produce all information in Your possession, including contracts, correspondence, and any other document, that relates to the Cities and UP regarding rail service over, or to a connection with, the Kellar Branch or to/from any rail line (either existing or that

has been approved for construction, even if construction has not been completed) that connects with the Kellar Branch or any portion of the Kellar Branch.

Request No. 8. Produce all information in Your possession, Including contracts, correspondence, and any other document, regarding rail service over, or to a connection with, the former UP track to the west of the Kellar Branch that was the subject of F.D. 34066.

Request No. 9. Produce all information in Your possession, Including contracts, correspondence, and any other document, regarding rail service over, or to a connection with, the track that is being constructed to connect the north end of the Kellar Branch to the former UP track, and that was the subject of F.D. 34395.

Request No. 10. Produce all information in Your possession, Including deeds, title search information, title opinions, contracts, correspondence, survey reports, valuation maps, and any other form of document, that relates to the Cities' ownership of the Kellar Branch, Including the tracks, switches, ties, and other track materials, and the ownership of, or the right to use, the underlying real estate to provide rail service.

Request No. 11. Produce all information in Your possession concerning interchange of traffic, moving to or from Shippers heretofore served using the Kellar Branch, to and from UP, TZPR, and P&PU.

Request No. 12. Produce all information in Your possession that relates to any contract between the Cities and any contractor for construction of the track authorized in F.D. 34395.

Request No. 13. Produce all information in Your possession that relates to the use by Shippers and potential Shippers of rail service on the Kellar Branch.

Request No. 14. Identify the person(s) providing the response to each of these Requests.

Respectfully submitted,



William A. Mullins

David C. Reeves
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849

Attorneys for Pioneer Industrial Railway
Company

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 24th day of February, 2006, copies of the foregoing Discovery Requests were served by express delivery service upon counsel for The Pleasure Driveway and Park District of Peoria, Illinois.

A handwritten signature in black ink, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves

Attorney for Pioneer Industrial Railway Company

VONACHEN, LAWLESS, TRAGER & SLEVIN

Attorneys at Law

John A. Slevin
John R. Pusey
Lawrence E. Schwenger, Jr.
John C. Brady
James E. Konsky
M. Michael Waters
Mark E. Wertz
S. Linn Perkins
Katrina M. Taraska
Mary A. Corrigan
Jennifer L. Morris

456 Fulton Street, Suite 425
Twin Towers Plaza
Peoria, Illinois 61602-1240

April 6, 2006

Of Counsel:
J. Martin Lawless
Thomas H. Trager
John T. Brady
Richard N. Gentry, Jr.

Donald F. Vonachen
(1925-2005)

Telephone:
(309) 676-8986
Facsimile:
(309) 676-4130
E-Mail:
vltts@vlttslaw.com

Mr. William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, D.C. 20037

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

Dear Mr. Mullins:

For the reasons stated in the attached "Reply in Opposition to Motion to Compel" filed herein by the Central Illinois Railroad Company ("CIRY") on March 20, 2006 regarding a similar discovery request directed to CIRY, the Pleasure Driveway and Park District of Peoria, Illinois will not respond to the discovery requests of Pioneer Industrial Railroad Company, which I first received as an attachment to your Motion to Compel dated March 23, 2006.

Very truly yours,

VONACHEN, LAWLESS, TRAGER & SLEVIN

By: _____



JAMES E. KONSKY

JEK/jks

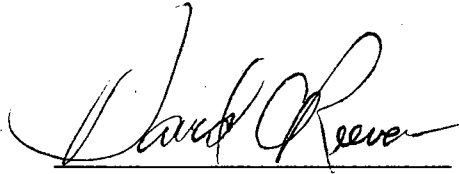
Enclosure

cc: Bonnie Noble

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CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 17th day of April, 2006, copies of the foregoing Motion To Compel Discovery Responses From The Pleasure Driveway And Park District Of Peoria, Illinois have been served by first class mail, postage prepaid, or by more expeditious means of delivery upon all parties of record to this proceeding identified on the Surface Transportation Board's website.

A handwritten signature in black ink, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves
Attorney for Pioneer Industrial Railway Co.