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THOMAS F. MCFARLAND

July 21, 2006

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

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Office of Proceedings

JUL 24 2006

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 Comments Regarding Adequacy Of Rail Service In Response To Decision Served April 25, 2006, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Commentor

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY OF PEORIA AND THE VILLAGE	)	
OF PEORIA HEIGHTS, IL -- ADVERSE	)	DOCKET NO. AB-878
DISCONTINUANCE -- PEORIA	)	
INDUSTRIAL RAILWAY COMPANY	)	
	)	
CENTRAL ILLINOIS RAILROAD	)	
COMPANY -- DISCONTINUANCE OF	)	DOCKET NO. AB-1066X
SERVICE EXEMPTION -- IN PEORIA	)	
COUNTY, ILLINOIS	)	

**COMMENTS REGARDING ADEQUACY OF RAIL SERVICE
IN RESPONSE TO DECISION SERVED APRIL 25, 2006**

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

Commentor

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

Attorney for Commentor

DUE DATE: July 24, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

CITY OF PEORIA AND THE VILLAGE	)	
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SERVICE EXEMPTION -- IN PEORIA	)	
COUNTY, ILLINOIS	)	

**COMMENTS REGARDING ADEQUACY OF RAIL SERVICE
IN RESPONSE TO DECISION SERVED APRIL 25, 2006**

Pursuant to Ordering Paragraph 2 on page 4 of the Board's decision in these proceedings served April 25, 2006, CENTRAL ILLINOIS RAILROAD COMPANY (CIRY) hereby files comments regarding the adequacy of rail service to CARVER LUMBER COMPANY (Carver).

BACKGROUND

The Board's decision served April 25, 2006 contains a complete and accurate description of the background and history of these proceedings.

As an aid to understanding the issue regarding the adequacy of rail service to Carver, there is attached to these Comments as Appendix 1 a map on which the following are highlighted:

- (1) the trackage over which CIRY proposes to discontinue rail service, after which such trackage would be removed and the right-of-way would be converted to a recreational trail (shown shaded in yellow);

- (2) the location of Carver;
- (3) the trackage that is used to provide rail service to Carver from the west, i.e., the trackage between Pioneer Junction and Carver's facility (shaded in pink);
- (4) the location of O'Brien Steel Company; and
- (5) the trackage south and east of O'Brien Steel Company that would be retained if the CIRY discontinuance were to be consummated, i.e., the trackage between Tazewell & Peoria Railway Company and O'Brien Steel Company's facility (shaded in green).

Also attached to these Comments as Appendix 2 is the verified statement of Ray Fuchs, General Manager of CIRY ("VS Fuchs").

COMMENTS

1. Adequate Service

Rail service to Carver from the west began on March 20, 2006, shortly after connection of the former UP rail line to the Kellar Branch was completed. Since that date, CIRY has delivered 23 railcars to Carver from the west, to and including July 11, 2006. CIRY has not received any complaint from Carver regarding the adequacy of the rail service provided to Carver in regard to those cars. The record reflects prompt delivery of all of those cars by CIRY to Carver. (VS Fuchs and Appendix RF-1).

Mr. Rob Happach of Carver communicated to Mr. Ray Fuchs of CIRY Mr. Happach's satisfaction with the entire rail service, origin to destination, on railcars delivered to Carver from the west (VS Fuchs). Mr. Happach stated to Mr. Steve Van Winkle, Public Works Director of the City of Peoria that Carver could live with the transit time experienced on shipments to Carver

delivered from the west (Mr. Oliver's verification is attached to these Comments as Appendix 3). Mr. Happach is in a good position to testify as to the adequacy of rail service to Carver from the west inasmuch as he was Carver's representative on rail transportation matters during periods when Carver was served from the east, as well as when service was provided from the west. Mr. Happach is no longer employed by Carver. The current Carver representative on rail transportation was not in that position when rail service was provided to Carver from the east.

According to Carver's own testimony, therefore, the rail service currently being provided from the west is adequate. The Board should so find and, based on that finding, the Board should vacate the stays that have been entered in these proceedings.

2. Rates

Carver has complained about the freight charges on its shipments from the west. It is anticipated that Carver will repeat that complaint in its Comments in these proceedings.

Carver's complaint does not relate to the charge being assessed by CIRY for local delivery. Instead, the complaint relates to total freight charges that apply when shipments are interchanged from Union Pacific Railroad Company (UP) to CIRY at Pioneer Junction, compared to freight charges that would apply if shipments were to be interchanged from Tazewell & Peoria Railway (T&P) to CIRY at the east end of the Kellar Branch. UP is assessing an additional charge for transportation between its Peoria Yard and Pioneer Junction that is not assessed on shipments handled by T&P. CIRY has sought to eliminate that additional charge by requesting that UP grant it trackage rights between the UP Yard and Pioneer Junction so that UP would avoid the cost for which it is assessing the charge. UP has refused CIRY's request for trackage rights.

The additional freight charges are not relevant in these proceedings for several reasons. First, the freight charges on shipments to Carver are paid by Carver's lumber suppliers, not by Carver. (VS Fuchs). There has been no complaint about freight charges on any of the 23 shipments from the west by any of the lumber shippers who pay those freight charges. There is no evidence that such freight charges are either paid or borne by Carver. That being the case, the freight charges are not a legitimate concern of Carver.^{1/}

Secondly, even if Carver were responsible for freight charges, it could avoid higher freight charges from the west by means of rail-truck transloading without regard to the outcome of CIRY's request to discontinue service over trackage to the east of Carver's facility. In a letter to the City of Peoria in April of this year, Mr. Rob Happach of Carver provided a comparison of delivered freight charges for Carver via (1) direct rail service from the west; (2) direct rail service from the east; (3) rail-truck service with transloading at Amerhart Yard; and (4) rail-truck service with transloading at a point on the Tazewell & Peoria Railroad. Both of the rail-truck transloading services had a lower delivered cost than either means of direct rail service.

Thirdly, the matter of rates is not of controlling interest in abandonment proceedings. See *Burlington Northern RR Co. - Abandonment*, 7 I.C.C.2d 308, 315-319 (1990). In that case, the Board's predecessor said (at 316-317):

'(T)he question of rates is not of controlling interest in abandonment proceedings, and maintenance of unprofitable lines should not be required for the

^{1/} It is likely that Pioneer Industrial Railway Company (PIRY) encouraged Carver to complain about freight charges. For unknown reasons, PIRY is playing a role of "spoiler" in CIRY's discontinuance proceeding. PIRY would not be entitled to operate the rail line at issue in that proceeding if an exemption for CIRY's discontinuance of service were to be denied. PIRY's federal right to operate all or any part of the Kellar Branch was lawfully extinguished in Docket No. AB-878.

purpose of insuring lower rates.’ *Denver & R.G.W.R. Co. Trustees Abandonment*, 247 I.C.C. 381, 388 (1941). ‘(R)aising rates to a level where local shippers stop shipping is not necessarily improper.’ *State of W. Va. Ex Rel. Manchin v. ICC*, 841 F.2d 1162, 1164 (DC Cir. 1988) . . .

Fourthly, denial of discontinuance authority for CIRY would not solve the problem of freight charges for Carver. If discontinuance authority were to be denied, CIRY would still be free to provide service to Carver from the west. In that event, additional UP freight charges would continue to apply.

Fifthly, Carver would be likely to be worse off if CIRY were to be required to provide service to Carver from the east via T&P. While the additional UP freight charges would not apply in that circumstance, very extensive track rehabilitation would be required on the segment of the Kellar Branch for which discontinued authority has been sought in order to permit service to be safely provided in that manner. Attached to these Comments as Appendix 4 is an estimate of the cost required to rehabilitate the Kellar Branch that was made by Illinois Department of Transportation (IDOT) in 2000. That cost undoubtedly would be considerably more at the present time. Based on the \$2,658,930 cost, the cost to rehabilitate the “discontinuance segment” would be \$2,015,469 on a mileage-prorated basis. $(6.29 \text{ miles} \div 8.3 \text{ miles} = .758 \times \$2,658,930 = \$2,015,469)$.

The City of Peoria, as owner of that line segment, would be required to pay for that track rehabilitation, but the City would recover that cost from CIRY. CIRY, in turn, would recover that cost in its charges to Carver inasmuch as that cost would be incurred solely to provide service to Carver. At Carver’s usual rail traffic volume of about 50 carloads per year, that cost would be much greater than the additional freight charges on traffic to Carver from the west. If

Carver were to divert its rail traffic to rail-truck transloading in order to avoid the added charge associated with the rehabilitation charge, direct rail service to Carver's facility undoubtedly would be successfully discontinued. In that event, CIRY would provide rail service only over the short distance between T&P and O'Brien Steel Company.

In recent years, Gateway Milling and Peoria Plastics have ceased shipping by rail over the Kellar Branch for reasons unrelated to the quality of rail service provided by the rail operator. Carver and O'Brien Steel are the remaining two users of the Branch. As a result, rail shipments over the Branch have declined dramatically, as shown below:

<u>YEAR</u>	<u>CARLOADS</u>
1999	272
2000	325
2001	291
2002	148
2003	146

The 50 rail carloads per year currently shipped to Carver does not provide sufficient revenue to make it economically viable for an operator to operate the Kellar Branch line from the east or west. The City of Peoria, as a Public Service, has arranged for CIRY to provide continued service to Carver. Consequently, it is unrealistic for Carver to insist on the continued existence of trackage from the east that is not used nor required for the provision of rail service to their facility.

For all of the foregoing reasons, the Board should find that the anticipated complaint by Carver about additional freight charges from the west does not warrant denial of an exemption for CIRY's discontinuance of service as proposed in Docket No. AB-1066X.

3. **PIRY's Vendetta**

If past is prologue, PIRY will continue its vendetta against the City of Peoria and CIRY by filing reply comments in opposition to lifting the stays. If so, the Board should pay little heed to PIRY's position. PIRY is an interloper in these proceedings. If CIRY fails in Docket No. AB-1066X, PIRY does not succeed, except in spite. CIRY would still provide service to Carver in that circumstance, not PIRY. The Board should keep in mind that PIRY's federal operating right as to all or any of the Kellar Branch was duly abandoned in an adverse proceeding. Thus, PIRY's interest in these proceedings is extremely tenuous at best. The Board should give little weight to a party who is so obviously acting as a "spoiler."

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should vacate the stays in these proceedings.

Respectfully submitted,

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

Commentor

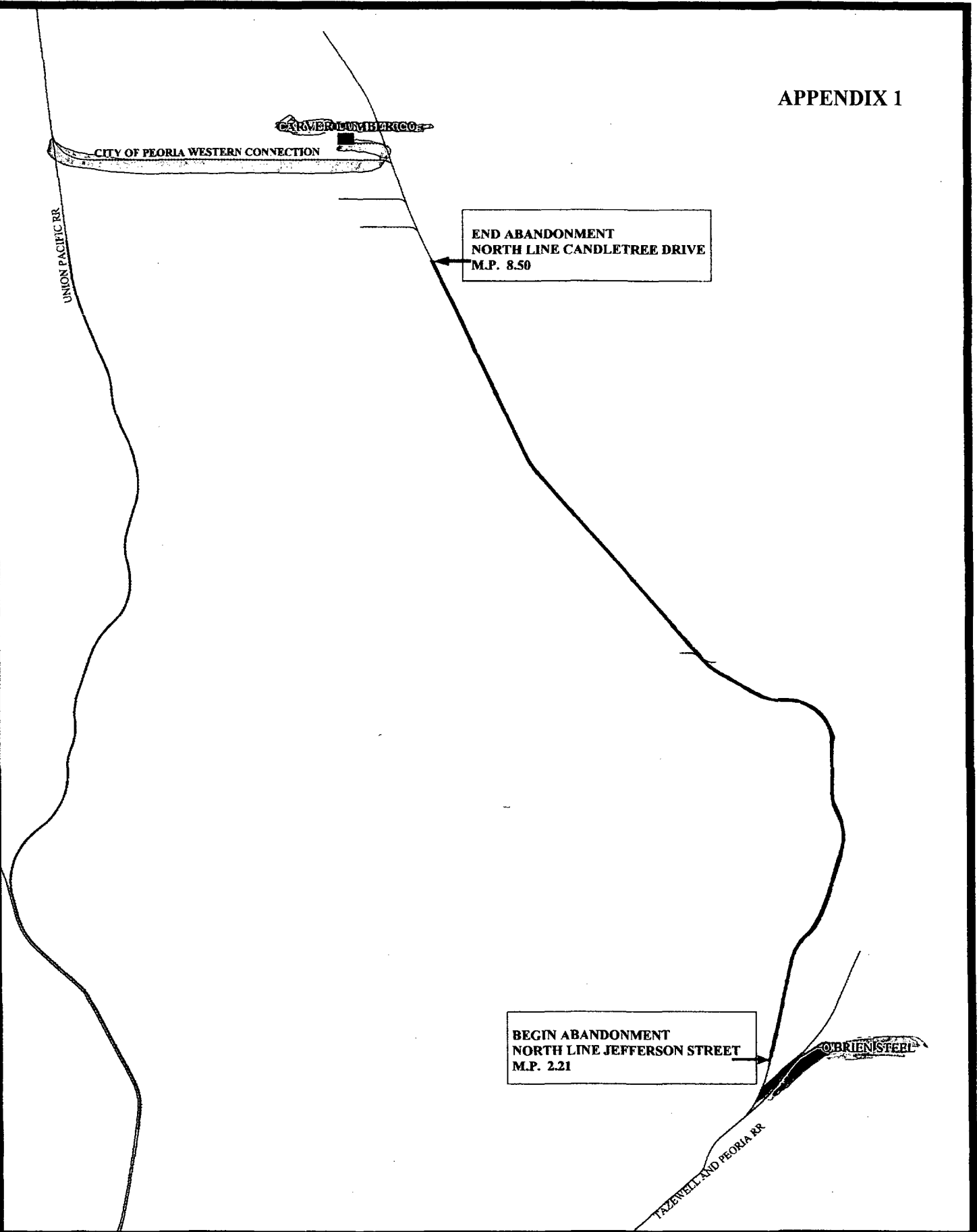
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Attorney for Commentor

DUE DATE: July 24, 2006

APPENDIX 1



APPENDIX 2

VERIFIED STATEMENT OF RAY FUCHS

My name is Ray Fuchs. I am General Manager of Central Illinois Railroad Company (CIRY). My business address is P.O. Box 259, Granville, IL 61326.

I have been employed by CIRY during the time that CIRY has been providing rail service to Carver Lumber Company (Carver) from a connection with Union Pacific Railroad Company (UP) at Pioneer Junction, IL. That is commonly referred to as service from the west, or service via the western connection. That rail service began on March 20, 2006, shortly after completion of the connection between the track from the west and the Kellar Branch on which Carver is located. That rail service is continuing to date.

Attached to this Statement as Appendix RF-1 is a copy of CIRY "Short Line Event Reporting" for the 23 railcars that CIRY has delivered from Pioneer Junction to Carver during the period between March 20, 2006 and July 11, 2006, inclusive. That appendix shows that CIRY has delivered all of those cars to Carver on a timely basis.

I have not received any complaints from Carver regarding the rail service provided on these 23 cars. On the contrary, Mr. Rob Happach of Carver stated to me that Carver is satisfied with the overall rail service, origin to destination, in regard to service from the west.

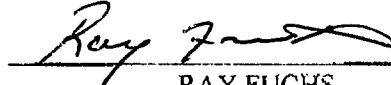
Carver does not pay the freight charges on rail shipments of lumber received at its facility.

If rail service were not to be provided to Carver from the west, the Kellar Branch trackage necessary to provide service to Carver from the east would have to be rehabilitated at very substantial cost.

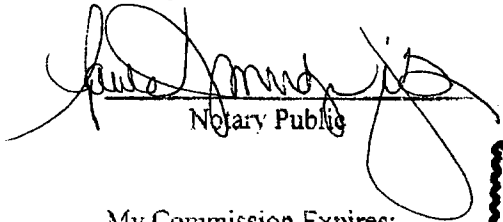
VERIFICATION

STATE OF ILLINOIS)
) SS:
COUNTY OF GRANVILLE)

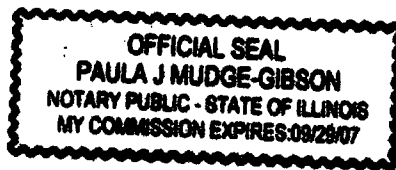
RAY FUCHS, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.


RAY FUCHS

SUBSCRIBED AND SWORN to
before me this 14th day
of July, 2006.


Notary Public

My Commission Expires:



APPENDIX RF-1

CENTRAL ILLINOIS RAILROAD COMPANY
Key for Interpreting "Shortline Event Reporting"
May 15, 2006

Column 1 - blank

Column 2 - car number

Column 3 - activity code

RE - car released by Carver Lumber back to Central Illinois Railroad

ID - interchange delivery of car by Central Illinois Railroad back to UP

IR - *interchange receipt of car by Central Illinois Railroad delivered by UP*

PL - car placed by Central Illinois Railroad at Carver Lumber

Column 4 - date of activity

Column 5 - time of activity

Column 6 - car status

E - empty car

L - loaded car

Column 7 - railroad recording the activity

Column 8 - destination railroad

Column 9 - track on which activity occurred

Column 10 - state in which track is located

Column 11 - indicates when a 418 message is sent (will only apply where activity code is "ID")

Y - yes

Column 12 - event code

Accepted - system accepted input of activity

Received by RR - message 418 received by railroad (a 418 message is an electronic message to destination railroad indicating that the car is delivered and available to that railroad)



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☐	BNSF562555	IR	05/11/2006	11:00	L	dry2000	UP	PIONR	IL		ACCEPTED
☐	BNSF562555	PL	05/11/2006	11:00	L	dry2000	-	PIOPK	IL		ACCEPTED

Column 1
 Column 2
 Column 3
 Column 4
 Column 5
 Column 6
 Column 7
 Column 8
 Column 9
 Column 10
 Column 11
 Column 12


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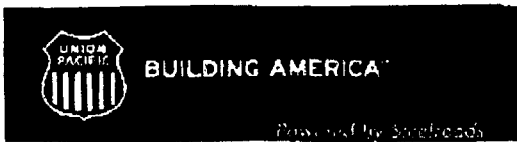
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Summary

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Aug '05 Sep '05 Oct '05 Nov '05 Dec '05 Jan '06 Feb '06 Mar '06 Apr '06 May '06 Jun '06 Equipment										Event Code	Event Date	Event Time
☐	CN598024	PL	07/07/2006	12:00	L	ciry2000	-	PIOPK	IL	ACCEPTED		
☐	CN598024	IR	07/07/2006	11:00	L	ciry2000	UP	PIONR	IL	ACCEPTED		
☐	CN625559	PL	07/11/2006	13:00	L	ciry2000	-	PIOPK	IL	submitted		
☐	CN625559	IR	07/11/2006	11:00	L	ciry2000	UP	PIONR	IL	submitted		
☐	NOKL734824	PL	07/11/2006	13:00	L	ciry2000	-	PIOPK	IL	submitted		
☐	NOKL734824	IR	07/11/2006	11:00	L	ciry2000	UP	PIONR	IL	submitted		

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VERIFICATION

APPENDIX 3

STATE OF ILLINOIS)
) SS:
COUNTY OF PEORIA)

RANDY OLIVER, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.

Charles R. Oliver

RANDY OLIVER

SUBSCRIBED AND SWORN TO
before me this 18 day of July,
2006.

Kristin C. Stash
Notary Public



APPROVED AS TO CONTENT:
Public Works Department

Stephen W. Van Winkle
Steve Van Winkle, Director

APPROVED:
Legal Department

Randall Ray
Randall Ray, Corporation Counsel



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

December 29, 2000

Dear Rail Plan Recipient:

This document represents an Amendment to the FY 2001 Rail Improvement program. This Amendment analyzes the potential use of state and/or federal funds as a share of the costs to retain railroad service in an area known as the Pioneer Industrial Park all in the City of Peoria, Illinois. The analysis presents the findings of the Illinois Department of Transportation on the benefits and costs associated with the potential project using the Standard Benefit-Cost Methodology of the Federal Railroad Administration.

I urge you to review this Amendment, and to provide any comments you might have. Comments may be made orally or in writing, and, as described more fully in the attached Offer of Public Hearing, a hearing may be held if sufficient interest warrants. Comments should be received no later than January 31, 2001. Send comments to:

Don Highley
Rail Freight Program Manager
Bureau of Railroads Room 302
Illinois Department of Transportation
2300 South Dirksen Parkway,
Springfield, Illinois 62764

If you have any questions, or desire additional information, please call Don Highley at (217) 782-6481.

Sincerely,

Merrill L. Travis
Chief, Bureau of Railroads

POTENTIAL OPTIONS TO RETAIN RAIL SERVICE

**Table 1
Estimated Project Costs**

**City of Peoria
Pioneer Park**

OPTION	UNITS/ QUANTITY	MATERIAL	LABOR	TOTAL
1. Rehabilitation	8.3 miles	\$1,590,163	\$1,068,767	\$2,658,930
2. Construction / Rehabilitation	2,600 T.F./ 4,400 T.F.	\$438,470	\$463,090	\$901,560

SALVAGE VALUE:

The facilities rehabilitated with an investment have an economic life extending beyond the 10-year FRA standard planning horizon used for this analysis. Therefore, this analysis includes as a project benefit an estimated salvage value, which approximates the remaining economic value of the improvement beyond the planning horizon. In this case, as detailed in Table 2, project alternative 1 has an estimated salvage value of \$304,197, which, discounted to its present worth (@ 4.5% discount rate), yields a benefit of \$195,872. Project alternative 2 yields a benefit of \$48,976.

The following, Figure 1, depicts the location of Investment Option 1 and Figure 2, depicts the location of Investment Option 2.

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2006, I served the foregoing document, Comments Regarding Adequacy Of Rail Service In Response To Decision Served April 25, 2006, by UPS overnight mail (Monday delivery), on the following:

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Thomas F. McFarland