

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-878

CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS, IL
ADVERSE DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY COMPANY

APR 4 2007
RECEIVED

JOINT PETITION OF
CENTRAL ILLINOIS RAILROAD COMPANY
AND THE CITY OF PEORIA
FOR LEAVE TO FILE A REPLY TO A REPLY

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Respectfully Submitted

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Railroad Company

Dated: April 4, 2007

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INTRODUCTION

Pursuant to sections 1100.3 and 1117 of the Board's Rules of Practice, 49 CFR 1100 et seq., Central Illinois Railroad Company and the City of Peoria¹ jointly petition the Board for leave to reply to the replies submitted in these proceedings by Pioneer Industrial Railway ("PIRY") and Carver Lumber company ("Carver") on March 15, 2007.

BACKGROUND

On January 12, 2007,² the Board granted PIRY's request to reopen its decision served in August 2005³ approving the

¹ Hereafter referred to individually as CIRY and Peoria, respectively, and collectively as the Joint Parties.

² Hereafter cited as the January 2007 Decision.

³ Hereafter cited as the August 2005 Decision.

adverse discontinuance application filed by the City of Peoria and the Village of Peoria Heights, IL. That decision ordered the parties to submit additional comments and evidence regarding the "balancing of the relative benefits and burdens under the PC&N standard." Id. at 9. A subsequent decision served on February 1, 2007, extended the deadline until February 22, 2007 and March 15, 2007, respectively, as the due dates for CIRY and Peoria (and also the Village of Peoria Heights) and PIRY and Carver to submit any additional evidence. The Joint Parties submitted their presentations as scheduled. PIRY and Carver both responded on March 15.

ARGUMENT

Generally, the Board's rules do not contemplate the filing of replies to replies. 49 CFR 1104.13(c). However, the Board's rules specifically provide for the liberal interpretation of its rules. 49 CFR 1100.3. Board practice has allowed parties to submit a reply to a reply where a reply would be useful or essential to a full development of the record, no one would be prejudiced, and the proceedings would not be substantially delayed.

To give the Board some perspective, this proceeding was originally initiated by the filing of an adverse discontinuance application by the City of Peoria and the

Town of Peoria Heights back on June 29, 2004. PIRY, the former operator of the subject line, is fighting the adverse discontinuance for the purpose of serving a customer that generates only about 50 car loads of business per year. The current management of the carrier selected by Peoria [emphasis supplied], CIRY, has only been in possession of the railroad since August 2006, a little more than 6 months.

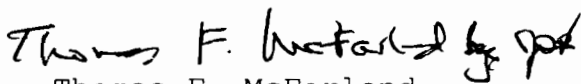
In support of their Petition, the Joint Parties note that PIRY's rambling 26 page "Reply" contains numerous half truths and distortions of fact that neither of the Joint Parties could have anticipated. The Board's order reopening these proceedings had merely "directed the parties to submit additional evidence regarding the balancing of the relative benefits and burdens under the public convenience and necessity standard." Cite. Because CIRY was not really a party to the adverse discontinuance action, it could not have anticipated that it would need to respond to the numerous attacks on and inaccurate depictions of *its* service. Accordingly, and in the interest of a complete and accurate record, the Joint Parties seek leave to correct these assertions. The Joint Parties do not believe that any party will be prejudiced by a truthful presentation. Moreover, considering the fact

that this proceeding is soon reaching its third birthday, the marginal amount of time required to consider these comments will not perceptibly lengthen this already long proceeding.

Finally, there is another reason to grant the Joint Parties' request. PIRY's counsel would have the Board believe that he is an expert on adverse abandonment/discontinuance law generally and the New York Cross Harbor case in particular. Nothing could be further from the truth. CTRY's counsel represented New York Cross Harbor Railroad throughout that entire proceeding and briefed and argued the case in front of the United States Court of Appeals for the District of Columbia. Peoria's counsel represented the shippers opposed to the adverse abandonment application and assisted with the preparation of the appellate briefs. It is the undersigned counsel that is the counsel most qualified to opine as to the meaning of that case.

Accordingly, in the interest of a complete record, the Joint Parties request that the Board accept into the record their Joint Reply.

Respectfully submitted,


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