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BY E-MAILING

December 3, 2007

Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

**RE: STB DOCKET NO. AB-878, CITY OF PEORIA AND
THE VILLAGE OF PEORIA HEIGHTS, IL ADVERSE
DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY
COMPANY**

Dear Mr. Williams:

On behalf of the Central Illinois Railroad Company ("CIRY") I am submitting in the above-captioned proceeding a Petition To Modify and Hold Proceeding in Abeyance. Inasmuch as this document may not be received and processed until tomorrow morning, you may reconsider it as filed on December 4, 2007.

Because I am unclear whether or not there is a filing fee and the amount of that fee, I am submitting this filing without a fee. Upon being advised as to the correct fee, I will immediately furnish that fee.

Sincerely yours,

John D. Heffner

Enclosure

Cc: all parties

**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**

**PETITION TO MODIFY AND HOLD PROCEEDING IN ABEYANCE
OF
CENTRAL ILLINOIS RAILROAD COMPANY**

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Counsel for Central Illinois
Railroad Company

Dated: December 3, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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INTRODUCTION

By decision served November 19, 2007, the Board¹ denied an adverse discontinuance application filed by the City of Peoria, IL, seeking to terminate the common carrier operations of the Pioneer Industrial Railway Company ("PIRY") over a line of railroad owned by the City of Peoria and the Town of Peoria Heights, IL (collectively "Peoria"). For the reasons stated below, Central Illinois Railroad Company ("CIRY") asks the Board to modify and hold this decision in abeyance so that the parties can resolve issues relating to the rehabilitation of a deteriorated and out of service rail line and Peoria can determine which carrier should operate over its railroad line.

¹ Vice Chairman Buttrey dissenting

BACKGROUND

By now, the Board is well familiar with this long running proceeding so CIRY will only repeat the facts to the extent necessary for the Board's consideration of this Petition.

CIRY is a short line railroad originally established in 1997. Pursuant to an interim agreement executed with Peoria, it has been operating the Kelliar Branch ("the Line") since August 2005. Current management acquired the company through a stock purchase on August 18, 2006, and is currently negotiating a long term lease for the Line.

As relevant here, Peoria acquired the Line, from the bankrupt Chicago, Rock Island & Pacific Railroad back in the 1980's. The Line extends 10 miles in a southeasterly direction from a junction (Pioneer Junction at MP 10.0) with a north-south line of the Union Pacific Railroad ("UP") on the west side of the City to downtown Peoria (ending at MP 0.0) where it connects with the Tazewell & Peoria Railroad ("T&P"). Initially, the City leased the Line to a long established class III short line railroad, the Peoria & Pekin Union Railroad ("P&PU"), under a 1984 agreement that was to last for 20 years or "until sooner terminated." Before the expiration of that agreement, PIRY

or a corporate affiliate acquired P&O's leasehold interest and continued to provide service over the line. In 2004 the 1984 lease expired by its own terms and Peoria replaced PIPY with CIPY. Desirous of converting the center five miles of right of way into a trail, Peoria arranged for the construction of a line known as the "Western Connection" between the Line and the UP mainline along the west side of Peoria. After PIPY refused to vacate the premises upon the expiration of the 1984 lease, the City filed this adverse discontinuance application.

Currently, the Kellar Branch serves but two customers, Carver Barber Company located on the north end near the UP interchange and O'Brien Steel located on the south end in downtown Peoria near the T&P interchange. The amount of local traffic generated by the Line has been low as the undisputed evidence of record indicates. There has been no overhead traffic over the Line for years. The center portion of the Line is in very poor physical condition and is out of service.

THE NOVEMBER 19 DECISION

In denying Peoria's adverse discontinuance application, the Board reasoned that Peoria has not met its burden of establishing that the public convenience and necessity requires or permits the adverse discontinuance of

PIRY's operations. It wrongly found that Peoria has not shown that the benefits of removing the Board's primary jurisdiction over the rail line (to permit a state court eviction proceeding to take place) would outweigh the harm to Carver Lumber, PIRY, and interstate commerce in general. Instead in a classic "cut the baby in half" decision, the Board ruled that both CIRY and PIRY should remain authorized carriers able to serve shippers on the Line, that operations of the two carriers should not interfere with one another, and the two carriers should negotiate joint operating protocols. Decision at 10.

In making that decision, the Board relied on half-truths and misperceptions from PIRY and ignored evidence submitted by Peoria and CIRY. The Board should modify and hold its decision in abeyance insofar as it is impractical for the parties to implement this decision as it currently stands.

ARGUMENT

Pursuant to 49 CFR 1117.1 CIRY requests that the Board modify and hold in abeyance the decision served November 19, 2007. Section 1117.1 of the Board's Rules of Practice provides that a party seeking relief not provided for in any other rule may file a petition for such relief. The rule requires that the petition contain a short statement

of the grounds on which the Board's jurisdiction is based, a short plain statement of the claim showing that the petitioner is entitled to relief and a demand for the relief that the petitioner believes it appropriate.

The Board's jurisdiction here is based upon 49 U.S.C. 10903 in connection with its authority over the adverse application for discontinuance of rail service filed by Peoria and denied in the November 19 Decision as well as its jurisdiction over both CTRY and PIRY as railroad common carriers licensed by the Board to operate over the Line. CTRY is entitled to a modification and a delay in the effective date of the November 19 Decision, in two respects. First, the presence of two railroads operating on a deteriorated piece of unsignalled track without even a plan and commitment for how to share the cost of repairs could have a serious impact on railroad and community safety. Second, PIRY currently has no valid contract right to operate over the Line and the contiguous Western Connection and a determination of such rights will require the commencement of litigation by Peoria in the Illinois courts. Absent modification and a delay in the effective date of the November 19 decision, Peoria will be unable to ensure that it, as the Line's owner, decides which carrier is the proper one to operate the Line. Accordingly, CTRY

requests that the Board modify its decision to make clear that PIRY cannot occupy the Line until the parties determine the level of rehabilitation appropriate to ensure safe operations, the parties reach an agreement on the sharing of that cost as well as the coordination of operations, and the necessary rehabilitation is completed. Moreover, CIRY asks that the Board delay the effectiveness of its November 19 decision until a court or arbitration panel resolves PIRY's claim that it has a contractual right to occupy the Line.

CIRY submits with this Petition the affidavit of its Chief Operating Officer Jack Stolarczyk on the dual issues of the Line's physical condition and discussions with Carver Lumber about its rail service needs. As the Board will recall from prior filings in this proceeding, the middle five miles of the Line are seriously deteriorated, out of service, and incapable of handling any rail traffic. Earlier this year CIRY made the decision to take the first steps to restore this segment to service. To do so, it has spent approximately \$100,000 of its own funds in track maintenance, brush cutting, gauging, tie replacement, and associated track work just to be able to operate a hi-rail vehicle over the Line. The money expended vastly exceeds

the gross amount of freight revenues that CIRY would likely earn from Carver Lumber or any other shipper to handle traffic moving from the vicinity of Pioneer Park on the north end to the T&P interchange in downtown Peoria.

The funds spent to date represent only a portion of the track and right of way work required' to bring the Line up to a safe FRA class I condition. Any decision by the Board that has the practical effective of allowing two carriers to share the modest amount of traffic moving over the Line potentially jeopardizes the ability of CIRY to obtain or even justify funds for rehabilitation. According to Mr. Stolarczyk, there is no way that a locomotive could traverse the Line in its current condition without creating an imminent danger to the public, the railroad, and surrounding areas. Moreover, additional funds would have to be spent to restore the five grade crossing signals to a safe, reliable operating condition. Stolarczyk Affidavit at 3.

PIRY has suggested that the Line needs only about \$9,000 worth of track repairs to be made operational. PIRY's estimate is suspect because it contradicts

¹ CIRY estimates that \$100,000 would have to be spent to put the Line in a safe excepted track condition. Stolarczyk Affidavit.

rehabilitation estimates based upon a 2006 FRA track inspection. CIRY realizes that it is difficult for the Board to resolve such disparate, conflicting claims when it has no personnel on staff with the requisite track engineering expertise. Accordingly, the effective date of the November 19 decision should be delayed to allow the matter to be referred to the FRA or an arbitrator with the requisite expertise selected by the parties to this proceeding.

The statement submitted by CIRY witness Stolarczyk documents the harm it will suffer as a result of the Board's November 19 decision. Paramount of course is safety. Stolarczyk at 4. PIRY seems to be taking a "shool first ask questions later" position with regard to start up of operations. PIRY announced that it would begin a relationship with CIRY by placing an engine on the Line at 8AM Monday following the Thanksgiving Holiday.¹ Mr. , Stolarczyk has amply demonstrated his concerns over track and right of way condition and inoperable signals and PIRY's cavalier belief that only minimal work is required to restore the Line to service. He has also stated his

¹ According to a conversation between PIRY's General Counsel and CIRY's STB counsel.

concern over the fact that CIRY is currently storing 75 cars of hazardous materials on the Western Connection that PIRY would need to use to serve Carver Lumber from the UP connection and that uncoordinated operations could increase the likelihood of a disaster. Stolarczyk at 3-4. Finally, CIRY notes that it is working with community leaders to accommodate both a pedestrian trail and an active railroad on the middle five mile segment. The operation of two railroads over this piece of unsignalled track likewise presents a much greater risk for both the railroads and the public.

The Board appears to base its decision on the impact of the proposed discontinuance upon Carver Lumber and some possible new, unidentified shippers. November 19 decision at 7-10. Although the Board is right to base its decision on the needs of shippers, its decision does not reflect the current status of Carver Lumber's transportation plans.

According to Mr. Stolarczyk, the Line served 16 customers 6 years ago when PIRY was the exclusive operator. Today it serves just two, Carver Lumber and O'Brien Steel. Stolarczyk at 4. While Carver Lumber's previous management expressed support for PIRY, that situation has changed.

Mr. Stolarczyk details in his statement CTRY's numerous efforts to call upon Carver Lumber to get their business. For example, CTRY approached Carver Lumber at least 12 times since January 2007 with no return phone call until May 2007 and then no response confirming Carver Lumber's intention to ship with CTRY. CTRY renewed those efforts in October 2007 with 35 car loadings offered and a potential for 50 car loads as achievable for a year but no acceptance of CTRY's service or other response. Stolarczyk at 1-2. Aside from the fact that CTRY previously presented evidence that Carver Lumber's consignors, rather than Carver Lumber itself, routes the traffic and pays the rate, CTRY has worked diligently with UP to provide this customer with competitive rates over Pioneer Junction. Id. at 2.

Most recently, Carver Lumber has had a change in management including a new transportation manager. Id. CTRY officials met with Carver Lumber representatives just this morning to discuss that company's transportation needs. Carver Lumber's new transportation manager told CTRY that Carver Lumber has never requested rail service from CTRY, that Carver Lumber has not been refused service by CTRY, and that Carver Lumber is not, in his opinion,

dissatisfied with CIRY. Carver Lumber's transportation manager further stated that he is unaware of any service experience problems that would prevent the two companies from doing business together, adding that it is strictly a business issue that will decide the outcome of service.

Id. at 2-3.

On the other hand, O'Brien Steel has been vociferous in its criticism of PIRY's service in years past. The fact that 14 customers ceased to use PIRY's service during PIRY's stewardship of the Line speaks volumes and the Board would be wise to utilize the time afforded by the postponement requested here to ask its enforcement arm to interview these former customers as to the reasons why they stopped using rail service and when.

Assuming that CIRY commences the requisite track work promptly, Mr. Stolarczyk has testified that the Line could be restored to through service within 10 weeks provided that the necessary capital for track maintenance can be negotiated with Peoria. Id. at 3.

The simple fact is that Carver Lumber will not be harmed by any delay in the effective date of this decision. It has been using a rail transload facility for the past

several years to meet its transportation needs. It is currently reevaluating whether to go back to using rail service. Id. at 2-3. Continuing that status quo a little longer will not in any way hurt Carver Lumber.

CIRY believes that the Board's November 19 decision contains material error, specifically the fact that PIRY holds no rights granted by Peoria to occupy, use, or operate over the Kellar Line as those rights expired as a matter of law. Furthermore, the Board's decision ignores the fact that the middle segment of the Line is in a seriously deteriorated condition unable to support rail service without substantial track and signal rehabilitation, that PIRY appears unwilling to share in the expense of that rehabilitation, and that the uncoordinated operation of two railroads on this unsignalled track presents serious safety issues for Peoria as well as CIRY and PIRY.

As a general rule of law, the Board will grant an adverse discontinuance application where the tenant's contract right to use a rail line has expired or been terminated. Cf., Thompson v. Texas Mexican Railway, 328 U.S. 134 (1945). The Board erred by failing to apply this most basic Supreme Court ruling.

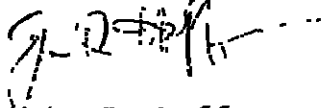
PIRY's contractual access rights terminated under its own terms in 2004. As the Board has observed numerous times, issues involving contract interpretation are matters outside its jurisdiction and are for courts or arbitration panels to decide. See Tacoma Eastern Railway Company--Adverse Discontinuance of Operations Application--A Line of City of Tacoma, in Pierce, Thurston and Lewis Counties, WA, STB Docket No. AB-548, slip op. at 4 (STB served Mar. 3, 1999). The CTRY has asked the City of Peoria as the Line's owner to seek a court ruling on the efficacy of PIRY's claim that the 2004 lease agreement did not expire. For the Board to encourage PIRY to resume operations before that matter has been resolved would frustrate the legal process and deny Peoria the right to select the exclusive operator for its own rail line. The Board must modify the November 19 decision to allow Peoria to obtain a ruling on PIRY's contract claim.

Aside from any claims it might have to occupy the Line under the 1984 lease, PIRY also has no contract right to use the Western Connection built by Peoria. It needs this connection if it is to provide Carver Lumber with a connection to the UP, the only railroad connection on the northern segment of the Line.

CONCLUSION

Common sense as well as the applicable law requires that the Board modify as well as hold in abeyance, the November 19 decision denying this adverse discontinuance decision pending further action.

Respectfully submitted,



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Counsel for Central Illinois
Railroad Company

Dated: December 3, 2007

AFFIDAVIT OF JOHN STOLARCZYK

John Stolarczyk, being duly sworn, deposes and states as follows:

My name is John Stolarczyk. I serve as Chief Operating Officer for the Central Illinois Railroad Company ("CIRY"). My office address is 1500 West Lincoln Ave., Rochelle, IL 61068. I have approximately 35 years of experience in the railroad industry, having begun my career with Penn Central Railroad, then Consolidated Rail Corporation, and finally with Genesee & Wyoming Railroad in engineering, operations, and hazardous materials transportation, among other areas. I have been employed by CIRY since its September 2006. I am familiar with the facts alleged herein and am authorized to testify on the company's behalf.

I have reviewed the numerous statements and filings in the proceedings before the Surface Transportation Board involving Pioneer Industrial Railway Company ("PIRY") and service on the Keller Branch. Simply stated, the recitation of facts by PIRY in its pleadings to the Board is misleading and contains false and inaccurate information concerning the CIRY, Carver Lumber and service on the Keller Branch. I shall use this statement to set the record straight.

At no time in 2007 until just now has Carver Lumber requested information regarding resuming service on the Keller Branch. Carver Lumber stopped utilizing railroad service in November of 2006. It has been relayed through various parties other than Carver Lumber that the reason for stopping service was the inordinately high rate charged by the Union Pacific and the Monday, Wednesday service offered by the Union Pacific via the western connection. Carver Lumber has been approached on many occasions by the CIRY management since January 2007 with no return call until May of

2007 and then with no response confirming Carver Lumber's intention to ship with the CIRY Up until now, CIRY's efforts to establish renewed service have met with little if any positive responses or commitments from Carver Lumber. CIRY sales & marketing has had discussions in October of 2007 relative to the possibilities for renewed service with Carver Lumber. Again no positive comments until now with respect to service although a potential of 35 car loadings were offered to date for the record with car loads of 50 cars given as achievable for a year.

Until now Carver Lumber still has not offered to accept CIRY's service. Again, there has been no response until now on this issue. Our General Manager of Operations and I have both had discussions with the former two Presidents of Carver Lumber. CIRY offered service in these conversations and offered a competitive rate. CIRY went so far to solicit rates from the Union Pacific on Carver Lumber's behalf to no avail for a cheaper rate from the UP.

Most recently, Carver Lumber has responded to us through its new transportation manager and has stated its possible interest in resuming rail business. Their new transportation manager has been on the job since early 2007. CIRY officials met this morning with Carver Lumber representatives. They advised us that Carver Lumber has never requested rail service from CIRY, that Carver Lumber has not been refused service by CIRY, and that Carver Lumber is not, in their opinion, dissatisfied with CIRY. Carver Lumber's new transportation manager has advised us that any difficulties in the past between Carver Lumber and CIRY represent views of his company's former management. He has told us that he is unaware of any service experience problems that

would prevent us from doing business together. It's strictly business issues that will decide the outcome of service. CIRY has emphasized that it wants his business

CIRY is working through the city of Peoria and Peoria Heights to formalize the interim operating agreement over the Western connection and obtain the exclusive operating agreement over the Keller Branch. These negotiations have been ongoing.

CIRY has spent approximately \$100,000 in 2007 in a first step to reopen the Keller Branch. This money has been expended upon track maintenance, brush cutting, gauging, tie replacement and associated track work cribbing on a washout. Based upon an FRA track inspection of the Keller Branch performed in 2006, CIRY estimates that a substantial amount of work will be needed to bring the Keller Branch up to a good state of repair.¹ Track work on the Keller Branch can be completed within 12 weeks provided that the necessary capital for track maintenance is negotiated with the city. I should also add that any decision that has the effect of sharing the modest amount of traffic on this line between two carriers potentially jeopardizes the ability of CIRY to obtain financing for or even justify the funds needed for track rehabilitation. In no way, shape or manner can a locomotive transverse the Keller Branch in its existing condition without creating an imminent danger to the public, the railroad and the surrounding areas of the railroad.

There are no operating crossing signals on the entire Keller Branch. Moreover, the Keller Branch lacks any sort of block signals.

Currently CIRY is storing 75 cars of hazmat - for BP Amoco on the western connection. Security inspections are routinely conducted and monitoring future service over the Keller is a high priority for the safety of the public. I am very concerned that the

¹ CIRY estimates that \$100,000 would have to be spent to put the line in a safe excepted track condition.

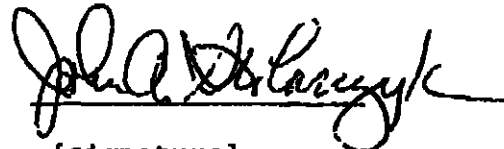
presence of two railroads operating simultaneously on the Keller Branch without any sort of signals will increase the likelihood of an accident. CIRY must control the operational aspects of the railroad in the interest of safety.

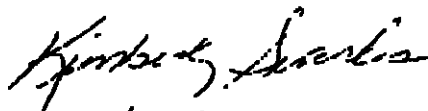
I want the Board to know that CIRY has not turned away *any* business for the Keller Branch. CIRY is committed to provide safe, quality and timely service to any and all customers on the Keller Branch. PIRY has flagrantly mislead the city, the Board and the public about CIRY's operation and capabilities. I would also like to note that as recently as 6 years ago there were at least 16 different customers on the Keller Branch. Today there are two active customers. All that business disappeared under PIRY's stewardship of the line. I believe that those customers stopped using rail because of the hostile environment by PIRY.

"Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 11/29/07.




[signature]


11/29/07

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the foregoing Petition to Modify and Hold Proceeding in Abeyance of Central Illinois Railroad Company was served on December 1, 2007 to the following:

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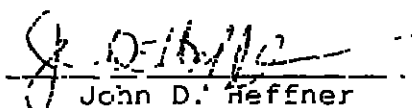
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