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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
wmullins@bakerandmiller.com

Direct Dial: 202-663-7823
Fax: 202-663-7849

July 27, 2006

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20004-2134

ENTERED
Office of Proceedings
JUL 27 2006
Part of
Public Record



RE: Finance Docket No. 34917
*Pioneer Industrial Railway Co. -- Alternative Rail Service — Central Illinois
Railroad Company*

Dear Secretary Williams:

Enclosed herewith are an original and 11 copies of the Petition To Provide Alternative Rail Service filed by the Pioneer Industrial Railway Co. ("PIRY") pursuant to 49 CFR part 1146. Also enclosed is a check for the \$200.00 filing fee pursuant to 49 CFR 1002.2(63)(i). As can be seen from the certificate of service attached, copies of this petition are being served today on the Federal Railroad Administration and all parties of record in AB-878 and AB-1066X.

Please file stamp the 11th copy of this petition and return it to the person making this filing for return to me. If there are any questions concerning this proposal, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,


William A. Mullins

Enclosure

cc: All parties of record in AB-878 and AB-1066X
Federal Railroad Administration

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917



**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

PETITION TO PROVIDE ALTERNATIVE RAIL SERVICE

**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**

July 27, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

PETITION TO PROVIDE ALTERNATIVE RAIL SERVICE

SUMMARY OF PETITION

Pursuant to 49 U.S.C. § 11123(a) and 49 CFR part 1146, Pioneer Industrial Railway Co. ("PIRY") hereby petitions the Board for an order to provide alternative rail service on the Kellar Branch, a 8.29-mile rail line between milepost 1.71 and the connection with the Tazewell & Peoria Railway Company ("TZ&P")(formerly the Peoria and Pekin Union Railway Company)("P&PU") at milepost 10.00, located in Peoria, IL and Peoria Heights, Peoria County, IL ("Line"). The Kellar Branch is owned by the City of Peoria ("City") and the Village of Peoria Heights ("Village")(collectively, "Cities"). PIRY had provided service over the Line for approximately seven years, until the Cities terminated the operating contract with PIRY¹ and obtained adverse discontinuance authority from the Surface Transportation Board ("STB" or "Board"), substituting Central Illinois Railroad Company ("CIRY") as the authorized operator of the Line.²

¹ PIRY contends that the contract was not lawfully terminated and remains in effect. That issue is before the state court in Pioneer Industrial Railway Co. v. D.O.T. Rail Services, Inc., et al., Tazewell County, Illinois Circuit Court No. 06-L-27.

² The Board's decision is currently the subject of a petition to reopen filed by PIRY on January 24, 2006. See AB-878, City Of Peoria and The Village of Peoria Heights, IL — Adverse

Since CIRY became the Cities' operator, there has been a substantial, measurable deterioration in service. Indeed, CIRY failed to provide any service to Carver Lumber Company ("Carver") for many months. In fact, CIRY's first attempt – and for many months its only attempt - to provide service resulted in a runaway railcar and a collision with a corresponding derailment. Confirming PIRY's contentions that CIRY never intended to truly provide service over the Kellar Branch, CIRY soon filed and obtained authority to discontinue operations on most of the Line.³ That decision was stayed. The Board later directed CIRY and Carver Lumber to file further information in order to determine the "adequacy of current and future rail service to Carver Lumber." See PIRY Adverse Discontinuance and CIRY Discontinuance, April 24, 2006 decision, slip. op at 4. CIRY and Carver Lumber were directed to file such information on July 24 and have done so.

PIRY will respond to the merits of CIRY's and Carver Lumber's statements on August 14th as provided for in the Board's April 24 decision; however, a review of Carver Lumber's July 24 statement clearly establishes that Carver Lumber is not receiving adequate rail service and is at risk of going out of business, with a loss of 50 employees, unless it can receive adequate rail service. Even though the so-called Western Connection has finally been completed – long after it was promised by the Cities – CIRY's purported service to Carver over the connection remains measurably worse than the responsive, reasonably-priced 24/7 service that PIRY previously

Discontinuance—Pioneer Industrial Railway ("PIRY Adverse Discontinuance"). PIRY's Petition establishes that the rationale for the Board's decision is no longer valid. As the Petition contains an excellent discussion of the background of the Line and why CIRY is unable and incapable of providing service to Carver, it is directly relevant to the issues in this proceeding and is attached and incorporated herein as Exhibit 1.

³ See Central Illinois Railroad Company – Discontinuance Of Service Exemption – In Peoria County, IL, STB Docket No. AB-1066X (STB decisions served Dec. 23, 2005, January 20, 2006, and April 24, 2006)("CIRY Discontinuance").

provided Carver. In short, the Western Connection is not the efficient, cost effective, means of maintaining service to Carver Lumber that the City and CIRY promised it would be. Carver Lumber therefore supports reinstitution of PIRY's service over the Kellar Branch. As CIRY refuses to provide adequate service, has shown its unwillingness to restore adequate service, and Carver Lumber is currently suffering significant and substantial economic hardship due to CIRY's failure to provide adequate service, PIRY hereby requests issuance of an alternative service order ("ASO") consistent with the Board's regulations and precedent under 49 U.S.C. §11123⁴ as necessary to restore service immediately.

FACTUAL BACKGROUND

As the Board is fully aware of the procedural and substantive history of the Kellar Branch, PIRY will only briefly address that history here as necessary to complete the record in this proceeding, although PIRY requests, pursuant to 49 CFR Parts 1114.4 and 1114.5, that the Board take judicial notice of the filings and decisions in AB-878 and AB-1066X and other related proceedings and as necessary incorporate those filings into the record of this proceeding.

Briefly and to refresh the Board, the Kellar Branch was abandoned in the bankruptcy of the Chicago, Rock Island and Pacific Railroad Company (Rock Island) in 1980. See Chicago, R.I.& P.R. Co. Abandonment, 363 I.C.C. 150 (1980). In 1984, the City acquired the Line from the Rock Island Trustee and entered into an agreement with P&PU for P&PU to provide service to the shippers on the Line. See Peoria and Pekin Union Railway Company—Exemption from 49 U.S.C. 10901, Finance Docket No. 30545 (ICC served Sept. 24, 1984). The City subsequently transferred to the Village an ownership interest in the portion of the Line located within the

⁴ Expedited Relief for Service Inadequacies, 3 S.T.B. 968 (1998)(“Expedited Relief”); Pyco Industries, Inc. – Alternative Rail Service – South Plains Switching, Ltd. Co., STB Finance Docket No. 34802 (STB served Jan. 25, 2006)(“Pyco Industries”).

Village's corporate limits. In 1998, PIRY acquired by assignment P&PU's interest in, and obtained authority to operate, the Line. See Pioneer Industrial Railway Company—Lease and Operation Exemption—Peoria, Peoria Heights & Western Railroad, STB Finance Docket No. 33549 (STB served Feb. 20, 1998). PIRY operated the Line from that time until the Board granted the adverse discontinuance. The Board's primary basis for the grant of the adverse discontinuance was the Board's belief that the active shippers on the Line would continue to receive service over the Line via CIRY and then via the soon to be built Western Connection. City Of Peoria and The Village of Peoria Heights, IL — Adverse Discontinuance—Pioneer Industrial Railway, STB Docket No. AB-878 (STB served Aug. 9, 2005).⁵

CIRY obtained authority to operate over the Line in 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, STB Finance Docket No. 34518 (STB served July 28, 2004), but did not provide service until the adverse discontinuance proceeding was decided. Upon issuance of the Board's decision in AB-878 and notwithstanding PIRY's contention that it still had a valid contract right to operate over the Line, PIRY voluntarily vacated the Line in order to allow CIRY to provide service and to prevent any safety problems that could occur with two carriers operating over the Line.

As is set forth in detail in Exhibit 1, PIRY's petition to reopen the Adverse Discontinuance proceeding, CIRY never provided service over the Line through and including the time of the filing of the petition to reopen, with CIRY's one attempt to provide service at that time having resulted in a runaway car and a derailment. CIRY then filed for authority to discontinue operations over the Kellar Branch, again promising the Board that the Western

⁵ The Board's decision in AB-878 is currently the subject of a Petition To Reopen filed on January 24, 2006 by PIRY.

Connection would be built and that such a connection would preserve efficient and cost effective service to shippers served via the Kellar Branch. Following months of CIRY's abdication of its service responsibilities to Carver, and in light of CIRY's apparent intention to allow removal of most of the Kellar Branch without having an alternative means to reach Carver's facility, Carver petitioned the Board to revoke CIRY's authorization to discontinue service over most of the Kellar Branch. Carver's petition made the Board aware for the first time that the owners of the Kellar Branch and CIRY had not completed the promised alternative route for serving Carver and that CIRY was not providing service. Based on Carver's new evidence, the Board stayed its prior order authorizing CIRY to discontinue operations on most of the Kellar Branch. That stay remains in effect today.

Approximately six weeks after the Board stayed CIRY's discontinuance exemption, CIRY and the owners of the Kellar Branch told the Board that the long-promised alternative access to Carver's portion of the Kellar Branch was ready, and that a shipment was en route to Carver. In short, it was only after Carver showed the Board that CIRY had not provided and could not provide service that the "Western Connection" was completed. Nothing further concerning possible service on the line was filed with the Board by CIRY or the owners of the Kellar Branch since March 6, 2006, until earlier this week.

As set forth in Carver Lumber's July 24 filing in AB-878 and AB-1066X, attached hereto as Exhibit 2, even though there is now a physical rail connection to Carver's facility via the newly built Western Connection, adequate rail service remains unavailable. Service times now available via the new Western Connection are 400% longer than that previously available via PIRY. Costs have more than doubled. Competitive options have been reduced from access via the TZ&P (a neutral terminal switching carrier) to eight line-haul carriers to inserting a new

carrier into the routing, UP, which has given UP substantial market power over shipments to Carver Lumber, market power that UP did not have prior to the switch to the Western Connection.⁶ In fact, the switch to rail service via the Western Connection now threatens Carver Lumber's own viability due to poor service and increased costs. In short, service to Carver Lumber is now sporadic, less reliable, more costly, and less responsive. As a result, there has been a substantial, measurable deterioration in service due to the use of the Western Connection and neither the City nor CIRY have shown either the willingness or the ability to correct that service problem. The City simply refuses to allow service to be restored over the most efficient and cost effective route, which is restoration of service over the Kellar Branch. As such, PIRY now requests issuance of an ASO as necessary to restore service.

ARGUMENT

According to 49 U.S.C. § 11123, in order "to promote commerce and service to the public," the Board may issue an order directing a rail carrier to provide alternative rail service when another rail carrier providing transportation subject to the jurisdiction of the Board... "cannot transport the traffic offered to it in a manner that properly serves the public." This statutory provision allows the Board to require an unwilling railroad to permit another railroad to operate over the incumbent railroad's tracks and facilities for an initial 30-day period, which can be extended for another 240 days, not to exceed 270 days altogether.

To implement this statute, the Board has established procedures whereby rail carriers can relieve shippers receiving poor service by obtaining an order to provide "localized immediate

⁶ Carver was getting 75% of its line-haul traffic from CN and 25% from BNSF, traffic which was then interchanged to the neutral terminal carrier. Adding UP into the line-haul move has given UP authority to control both the pricing and the service of the line-haul movements.

service relief.”⁷ See Expedited Relief; Pyco Industries; and Denver Rock Island Railroad--Alternative Rail Service--Lines of Kansas Southwestern Railway, L.L.C., Finance Docket No. 33762 (STB served June 16, 1999)(“DRI”). Specifically, under the regulations as applied by this Board in Pyco Industries and DRI, a party petitioning for relief must (1) show that there has been a substantial, measurable service deterioration or service inadequacy; (2) summarize discussions with the incumbent carrier and show why the incumbent is unlikely to restore adequate rail service within a reasonable period of time; (3) explain how the alternative carrier can meet current transportation needs, and show that this service can be provided safely without hurting service to existing customers of the alternative carrier and without unreasonably interfering with the incumbent’s service; and (4) be served, by hand or overnight delivery, on the incumbent and the Federal Railroad Administration. Accord, American Plant Food Corporation--Alternative Rail Service--Line of Texas Northeastern Railroad, Finance Docket No. 33795 (STB served Dec. 7, 1999).

As will be shown below, PIRY meets each of these requirements. Accordingly, the Board should grant PIRY’s petition for alternative rail service to provide immediate localized service relief to Carver Lumber and any other shipper along the Line.

A. There Has Been A Substantial And Measurable Deterioration Of Service To Carver Lumber

According to the first requirement in 49 CFR part 1146.1, a rail carrier seeking to provide alternative rail service under 49 U.S.C. § 11123 must demonstrate that “over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier.” Since the time when CIRY replaced PIRY as

⁷ Neither 49 U.S.C. § 11123 nor 49 CFR part 1146 places any limit on who can file a petition for prescription of alternative service. In fact, 49 CFR explicitly provides for cases in which the petitioner is a railroad. (“Affected shippers or railroads may seek the relief described...”)

the authorized operator of the Line, there has been such a marked deterioration of rail service, and the construction and operation of the new Western Connection has not alleviated that service inadequacy, but rather exacerbated the problem.

Prior to PIRY's withdrawal from service on the Kellar Branch to avoid safety conflicts with CIRY, PIRY offered service to Carver as needed on a seven day per week basis. Carver's comments in the CIRY discontinuance proceeding and the PIRY adverse discontinuance show that Carver was well satisfied with PIRY's service. The same cannot be said of CIRY's service.

First, as Carver told the Board in January 2006, CIRY has failed to provide Carver any service over the Kellar Branch since replacing PIRY. As noted in its July 24 comments, the lack of service over the Kellar Branch had cost Carver approximately \$41,605.10 in additional transportation charges to that point. Neither the Cities nor CIRY have reimbursed Carver for any of these added costs. These costs were incurred despite Carver's continuing discussions with CIRY and the Cities over Carver's needs for rail service. Bluntly, Carver's needs were ignored.

Once CIRY's abdication of service was exposed by Carver, the Cities finally completed the Western Connection in March, long after its completion had been promised. Even though the physical link necessary for rail service was thus established and service has actually occurred via the Western Connection, Carver's July 24 comments have now made it clear that when compared to the prior service over the Kellar Branch, the new service represents a 400% increase in transit times and a 121% increase in rates.⁸

⁸ CIRY's arguments regarding the adequacy of service are based in part on statements from Mr. Rob Happach, the former President of Carver Lumber. Mr. Happach no longer works for Carver Lumber. The current Carver statement is signed by all three members of the Board of Directors and is based upon their review of service times and costs over the Western Connection when compared to service via the Kellar Branch.

Cars interchanged from one of eight line-haul carriers to the P&PU (later, the TZ&P) were then interchanged to the PIRY, who then delivered those cars over the Kellar Branch. This process took at most one or two days. Now these same cars are first interchanged to the TZ&P, who then must interchange them to UP, who then takes them over its tracks from Peoria Yard to Pioneer Junction, where they are then interchanged to CIRY via the new Western Connection, and then CIRY finally delivers those cars to Carver Lumber. This process adds an additional carrier to the routing (UP), takes 4 to 8 days longer than the previous route, and costs more than twice as much as it did before. Furthermore, with the addition of UP into the routing, UP appears to be pricing its services in such a way that Carver notes that it is becoming captive to UP as the only line-haul carrier and that UP now has ultimate control over its service and costs. Carver July 24 Comments at 2. In short, service to Carver Lumber is now sporadic, less reliable, more costly, and less responsive. As a result, there has been a substantial, measurable deterioration in service due to the use of the Western Connection.⁹

This inadequate service has imposed real and substantial costs on Carver. To date, transportation costs alone account for some more than \$60,000 in additional expense. Carver has

⁹ Likewise, as CIRY has never provided service over the Kellar Branch to Carver and as the Western Connection is a new service route, CIRY may be inclined to argue that there has not “technically” been deterioration in its service over the Western Connection. Perhaps anticipating such arguments, the Board’s rulemaking proceeding dealt precisely with this issue when the Board said:

[T]here may be an equally compelling need for relief in instances where there has been no deterioration from prior service levels because service has been continuously inadequate or because there are new rail transportation needs ... To address such situations, we are also providing for relief from “other demonstrated inadequacy in rail service provided by the incumbent carrier.”

See Expedited Relief, 3 S.T.B. 968, 1998 STB LEXIS 1004, *16 (1998). Given the totality of the factual circumstances surrounding CIRY’s service to Carver, certainly a 400% increase in transit times vis-à-vis the prior routing constitutes a demonstrated service inadequacy for which relief is available.

also suffered lost sales, lost profits, increased employee and other inventory costs due to the inability to efficiently process product in and out of their facility, and are at risk of having to shut down its entire operation. As Carver states, the situation “unduly threaten[s] the livelihood of 50 employees.” Carver July 24 Statement at 3. As such, this is not just a dispute over rates, but involves the entire efficiency of the supply-chain process. Rail service must be restored.

B. PIRY And Carver Have Discussed The Service Inadequacy With CIRY And The Cities But Those Parties Have Refused To Restore Adequate Rail Service

Under the second requirement in 49 CFR 1146.1, a railroad petitioning to provide alternative rail service must provide evidence of “discussions with the incumbent carrier of the service problems and the reasons why the incumbent carrier is unlikely to restore adequate rail service consistent with current transportation needs within a reasonable period of time.” Despite repeated complaints by PIRY, as well as Carver, CIRY has refused to reinstitute service over the Kellar Branch and appears to admit that it has no power to improve the service via the Western Connection due to UP’ s involvement in the routing.

Throughout these proceedings and despite its preference for the Kellar Branch, Carver has shown nothing but a desire to work with the Cities and CIRY to make the Western Connection work. Carver has consistently told this Board that it was willing to see if the Western Connection would work. As CIRY notes, once the Western Connection was finally completed, service over that connection did begin and Carver accepted numerous shipments via that routing. Unfortunately, the process over the Western Connection simply doesn’t work and has shown itself to be a failure.

Perhaps indicative of the problem is the fact that when Carver attempted to switch back to the Kellar Branch routing, CIRY ignored those routing instructions, notwithstanding the fact

that CIRY has a continuing common carrier obligation over the Kellar Branch, as its discontinuance has not been granted. As Carver sets out, it recently attempted to route two cars via the Kellar Branch. Carver ordered the cars and selected the routings, directed the cars to be interchanged to the TZ&P in Peoria and then to CIRY for delivery to Carver via the Kellar Branch. That did not happen. TZ&P told Carver that CIRY refused to take the cars for delivery over the Kellar Branch and instead ordered TZ&P to interchange those cars with UP. UP then took those cars and interchanged them with CIRY via the Western Connection. This was done without Carver's consent and in direct violation of the routing instructions on the bill of lading. Thus, even though CIRY has a continuing common carrier obligation over the Kellar Branch, it refuses to restore adequate service over the line.

Indeed, CIRY appears to admit that it cannot improve its service over the Western Connection due to the involvement of the UP. As CIRY says, it has requested UP to grant CIRY trackage rights between UP's Yard and Pioneer Junction so that UP could be eliminated from the routing and Carver could avoid UP's additional transportation charge. However, UP has refused CIRY's request. As such, CIRY claims it is powerless to improve both the efficiency and the cost of the new Western Connection. This is indeed true as the UP line used to connect with the Western Connection is heavily congested and UP has no interest in working with CIRY to preserve service to Carver. See April 17 Letter from Robert Happach to Steve Van Winkle at pp. 1-2, attached to Carver Lumber's July 24 Comments. Accordingly, as long as CIRY continues to insist on using the Western Connection, service will never improve. Of course the real solution is for CIRY to restore service over the Kellar Branch, which it failed to do.

PIRY has also tried to discuss methods by which adequate service could be restored. PIRY's President and CEO, Mike Carr, has made dozens of phone calls to Mr. Fuchs, CIRY's

General Manager, to try and resolve these issues and work with them to improve service to Carver. Mr. Fuchs has not even returned one of those calls. PIRY has told the Cities and others that it would act as CIRY's "agent" or "contract carrier" to carry out CIRY's continuing common carrier obligation over the line. CIRY and the Cities have done nothing but rebuff these overtures. PIRY has been told that CIRY claims, without any legal or evidentiary support, that it no longer has any contract rights to use the Cities' property nor can it give such a right to PIRY.¹⁰ Moreover, CIRY claims that it has no authority to allow PIRY onto the Western Connection track. Thus, CIRY claims to be helpless to allow PIRY to restore the quality service that Carver desperately needs.

Taken together, the failure to route via the instructions on the bill of lading, the refusal of UP to grant trackage rights, and the absolute refusal by both CIRY and the Cities to allow PIRY to operate over the Kellar Branch, even as a contract agent for CIRY, it is clear that CIRY cannot, or will not, restore service over the Kellar Branch. It is also clear that service via the Western Connection is wholly inadequate. As such, Carver and PIRY have met the regulatory requirement to summarize its efforts to discuss the restoration of service and to set forth the reasons by CIRY is unlikely to restore adequate rail service within a reasonable period to time.

¹⁰ Of course as CIRY and the Cities should be aware, especially given that they are represented by the same counsel, that a carrier continues to have a common carrier obligation to provide service over a line until abandonment or discontinuance authority is granted. They should also be aware that the owner of line cannot "kick-off" a tenant railroad until such authority is obtained, whether voluntarily or via an adverse proceeding, and this is so even if the contract has expired. Thompson v. Texas Mexican R. Co., 328 U.S. 134 (1946). Thus, even though CIRY's contract to operate over the line may have expired, the Cities have a continuing legal obligation to allow CIRY to continue to operate over the line.

C. PIRY Can Meet Current Transportation Needs Safely In A Manner That Does Not Interfere With CIRY Operations.

According to the third requirement in 49 CFR part 1146.1, a railroad petitioning for alternative rail service must supply an explanation for why it does not have “an agreement from the alternative carrier...and an explanation of how the alternative service would be provided safely without degrading service to the existing customers of the alternative carrier and without unreasonably interfering with the incumbent's overall ability to provide service.” PIRY has already explained that it has attempted to get CIRY’s and the Cities’ consent to its operating over the Kellar Branch but those parties refused to grant such consent. Correspondingly, as CIRY no longer operates over the Kellar Branch to serve Carver, PIRY’s operations would not interfere with CIRY’s ability to provide service to Carver. CIRY’s service to Carver via the Western Connection would be unhindered by CIRY’s use of the Kellar Branch. Likewise, as Carver Lumber would be the only customer served by PIRY, PIRY’s service would not degrade service to any existing PIRY customers. Therefore, the only remaining issue is whether or not the alternative service can be provided safely.

As noted, because CIRY does not operate over the Kellar Branch, there is not a safety issue with respect to two carriers operating over the same line.¹¹ The real issue is whether or not the line’s physical condition allows for safe operations. CIRY has told Carver that the “line had recently failed a government track inspection” and it “was illegal for CIRY to be out on the line.” See April 17 Letter from Robert Happach to Steve Van Winkle at pg. 3, attached to Carver Lumber’s July 24 Comments. PIRY has investigated CIRY’s claims and consistent with Mr.

¹¹ CIRY does use a small portion of the southern Kellar Branch to serve O’Brien Steel. As is discussed in the Verified Statement of Mr. Michael Carr, President and CEO of PIRY and its parent corporation, attached hereto as Exhibit 3, PIRY’s operations to serve Carver Lumber will not interfere with CIRY’s service to O’Brien Steel.

Happach's conclusions, has determined CIRY's statements to be untrue. There is no embargo, there is no FRA report of a failed line inspection, the FRA has not put the line out of service, and the line is open and usable.

To confirm that the line could be safely operated, PIRY has inspected the line to the best of its ability. Based upon PIRY's inspection, it is PIRY's conclusion that with some minimal maintenance expense, an expense which PIRY is willing to incur out of its own pocket, the line could be safely operated. V.S. Carr at 1. Mr. Carr has also confirmed that PIRY's interchange operations with TZ&P and its service to Carver Lumber would not interfere with CIRY's service to O'Brien Steel. V.S. Carr at 2. PIRY can and will have the line fully operational within days and at its own expense.

Finally and importantly, PIRY will make service available to Carver more often than once a week. PIRY previously provided continuous service availability to meet Carver's needs. PIRY will reinstitute such service if the Board grants this petition. PIRY has also offered Carver long-term price stability at rates lower than those imposed by CIRY. PIRY has already reached an understanding with Carver about PIRY's rates to serve Carver should the Board grant this petition, and Carver supports the granting of an ASO to PIRY.

D. Copies Of This Petition Have Been Served On
The Appropriate Parties In The Prescribed Manner.

According to the fourth requirement in 49 CFR 1146.1, a party seeking alternative rail service must provide the Board with "a certification of service of the petition, by hand or overnight delivery, on the incumbent carrier...and the Federal Railroad Administration." PIRY has certified that it has served the Cities, CIRY and the Federal Railroad Administration with copies of this petition.

CONCLUSION

As demonstrated by this petition, PIRY has met each of the Board's requirements pursuant to 49 U.S.C. § 11123 and 49 CFR part 1146.1. Unless and until the Board rules on the underlying merits of CIRY's discontinuance request and PIRY's petition to reopen the Adverse Discontinuance decision, Carver, who has suffered long enough with the unresponsive, infrequent and expensive "service" CIRY provides and has lost tens of thousands of dollars as a result, is certainly entitled to localized immediate service relief. Thus, the Board should grant PIRY's request to provide alternative rail service to Carver Lumber.

Respectfully submitted,

Daniel A. LaKemper
General Counsel
Pioneer Industrial Railway Co.
1318 S. Johanson Road
Peoria, IL 61607

July 27, 2006



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

Attorneys for Pioneer Industrial
Railway Co.

CERTIFICATE OF SERVICE

This is to certify that on July 27, 2006, I caused the foregoing Pioneer Industrial Railway Co. Petition to Provide Alternative Rail Service to be served upon Central Illinois Railroad Company, the City of Peoria, IL, the Village of Peoria Heights, IL, and the Federal Railroad Administration by hand or overnight delivery, pursuant to the Board's regulations at 49 CFR part 1146.1. In addition, I served copies on each party of record in the related proceedings, AB-878 and AB-1066X, by first-class mail or a more expeditious method:

A handwritten signature in black ink, appearing to read 'William A. Mullins', is written over the printed name.

William A. Mullins
Attorney for Pioneer Industrial Railway Co.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

PETITION TO PROVIDE ALTERNATIVE RAIL SERVICE

EXHIBIT 1

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

January 24, 2006

BY HAND DELIVERY

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-878
*City Of Peoria and The Village of Peoria Heights, IL — Adverse
Discontinuance—Pioneer Industrial Railway Company*

Dear Secretary Williams:

Enclosed on behalf of Pioneer Industrial Railway Co., are an original and 11 copies of a petition to reopen the Board's August 10, 2005, decision in the matter, based on new evidence. Also enclosed is a check for the \$200.00 filing fee for this petition to reopen. As can be seen from the certificate of service attached, copies of this petition are being served today on all parties of record.

Please file stamp the 11th copy of this petition and return it to the person making this filing for return to me. If there are any questions concerning this proposal, 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-878



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

PETITION TO REOPEN

**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**

January 24, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

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

STB DOCKET NO. AB-878

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

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PREFACE AND SUMMARY OF ARGUMENT

Comes now Pioneer Industrial Railway Company (“PIRY”), defendant in this adverse discontinuance proceeding, and requests that the Surface Transportation Board (“Board” or “STB”) immediately reopen and reverse its August 10, 2005 decision (“Decision”) in this matter in order to provide a means by which Carver Lumber Company (“Carver”) can be provided rail service over the Kellar Branch. The Board’s Decision enabled the Cities to force PIRY off the Kellar Branch (the “Line”) in Peoria, IL on the basis that PIRY’s contract with the City of Peoria (“City”) to operate the Kellar Branch might have expired, that the new operator, Central Illinois Railroad Company (“CIRY”), would provide adequate service to the shippers on the Line until such time as a new connection on the north and west of the Line could be established to provide the shippers on the Line with an alternative route, and that no shipper had expressed opposition to the City’s plans. We now know that none of the assumptions underlying the Board’s Decision have borne true. Reversing the Decision will enable PIRY to restore rail service; service that CIRY will not, and does not possess the physical means to, provide.

PIRY's instant petition is based on the new evidence presented in Carver Lumber's ("Carver") statement filed January 4, 2006 in this docket and its January 18, 2006 statement filed in Docket No. AB-1066X, *Central Illinois Railroad Company – Discontinuance of Service Exemption – in Peoria County, Illinois* (a true and correct copy pursuant to 49 CFR 1112.7 is attached hereto as Exhibit 1). Carver's filings show that the fundamental premises of the Decision are no longer true and that the circumstances have changed dramatically from what the Board believed them to be at the time of the Decision. There is now a shipper who has expressed opposition to the City's current plans and has requested that its service over the Kellar Branch be restored, including having PIRY provide that service if necessary. That shipper has now made clear that CIRY in fact has completely failed to provide the service that it had promised and that such service failures have cost the shipper over \$25,000 in added transportation charges in just four months, with no end in sight. The proposed new connection, which was to provide Carver with an alternative service route, remains unbuilt with no work having occurred for many weeks. Even when completed, Carver now expresses doubt that CIRY or the alternative route will provide the usable service that PIRY had previously provided. As a result of this new evidence and the fact that the circumstances have changed since the Board's Decision, the Board should reopen its Decision, reverse its findings, and provide PIRY with the opportunity to provide Carver Lumber with service.

BACKGROUND

In this proceeding, the Cities of Peoria and Peoria Heights, IL (the "Cities") obtained adverse discontinuance authority from the Board to remove PIRY from the Kellar Branch, a rail line PIRY had been serving for about seven years. In so doing, the Cities promised that all shippers served by the Line would continue to be served, initially by CIRY over the

existing Kellar Branch, and subsequently via an “alternative route” over a former Union Pacific line that was to be connected to the northern end of the Kellar Branch, where Carver Lumber was located, via construction of a new connection of about 1800 feet. In convincing the active shippers¹ on the Kellar Branch not oppose its plans the Cities made many representations and promises, including -

- “After completion of that track connection, CIRY will provide service from the west to the two shippers who are located on the western part of the Kellar Branch. The third shipper [Carver], who is located on the eastern part of the Kellar Branch, will be served from the east by CIRY or by another rail carrier arranged for by the City.” [Application at 4.]
- “[N]o shipper in Peoria would lose rail service as a result of the track construction, service alteration and trail conversion. In substance, therefore, this is an adverse discontinuance proceeding incidental to a change of rail operators.” [Application at 5.]
- “The benefit that will be obtained if this application is approved is continued rail service by an operator selected by the owner of the rail line.” [Application at 7.]
- “[H]ere, the owners of the rail line have arranged for continuation of rail service by a new rail operator.” [Application at 8.]
- “There is no evidence in this record that CIRY’s rail service would be inadequate in any respect.” [Application at 11. See also Application at 12 (“There is no evidence that CIRY’s rail service on the Branch would be inadequate in any respect.”)]
- “That action [adverse discontinuance of PIRY’s service] would not result in loss of rail service for any current shipper on the Branch.” [Application at 12.]

At the time, the Cities also attached a letter from Carver, which stated:

¹ At the time the City filed its adverse discontinuance against PIRY, there were three active shippers on the Line. Due in part to the Cities efforts to destroy the Kellar Branch, two of those shippers no longer ship by rail. Carver Lumber remains the only active shipper utilizing a very expensive transload operation as a temporary measure pending restoration of direct rail service.

For the past several years Pioneer Rail Corporation (PRY) has provided us with excellent service. . . . If continued operation by PRY on the line is not possible for some set of reasons, we do not object to working with a replacement carrier, provided that the City of Peoria can assure us of continued good service.

[Application, Appendix 6 at 4.] Carver went on to note the types of services being provided by PIRY and what would be required of the replacement operator to retain those services, specifying that “An engine be kept on the line at all times, ready to be pressed into service as needed, and crews are available on short notice to operate the equipment.” Id. Moreover, Carver asked for “some reasonable [written] assurances that any change in delivering carriers or future construction plans will not result in problems for our company,” including -

- “Assuring that the City will not allow any interruption of rail service to occur during the planned construction of the Western connection.”
- “That the City will not allow discontinuation of service over the Kellar line until the Western connection is fully operational.”

Application, Appendix 6 at 5.

“The City has responded to the concerns that were expressed by Carver Lumber Company,” the Application stated. Application at 8. In support of that assertion, the City attached a letter to Carver from Peoria’s Public Works Director, Mr. Van Winkle (who also verified that the facts stated in the Application were “true and correct”). The letter stated in part, “[T]he City assures you that . . . there is no interruption in your rail service.”

Application, Appendix 6, page 6.

An attached letter from CIRY’s vice president² made still more promises to Carver: “I hereby commit to providing service to all existing and future customers, commensurate with

² The then-vice president of CIRY, Don Gibson, also certified that CIRY’s operations would comply with all federal safety requirements. Later, Mr. Gibson was indicted in a murder-for-

their rail transportation needs,” it said. “[W]e will keep an engine on the line at all times ready to be pressed into service as needed,” it said. “Our railroad will honor our contract with the City, which provides that we will pick up an[d] deliver cars within 24 hours after being notified by the Union Pacific that the cars have been placed.” Application, Appendix 6 at 8.

PIRY protested the Cities’ application, asserting that it had a continuing contractual right to operate the Line. PIRY Protest at 3-4. Moreover, PIRY challenged the Cities’ assertion that CIRY could adequately substitute for PIRY’s service. PIRY Protest at 5-6. The Cities replied, stating, “[T]he owner of a rail line should be permitted to replace the operator of the line unless shippers on the line and/or the community would be harmed as a result of the replacement.” Applicants’ Reply at 1. “Thus, the focus in an ‘operator replacement’ adverse discontinuance case is whether shippers would be adversely affected by a change in rail line operators.” Id., at 2. “As a result of acquisition of another rail line and construction of a track connecting that line to the Branch, rail service will be able to be provided to all shippers on the Branch,” the Cities reiterated. Id., at 3.

In a series of subsequent filings, the Cities made similar representations:

- “If the application for adverse discontinuance is approved, Central Illinois Railroad Company (CIRY) will be authorized to operate, and will operate, the full length of the Branch.” Applicants’ filing of May 11, 2005, at 4.
- Responding to notices from PIRY and the Small Railroad Business Owners Association that CIRY’s Vice President and witness before the Board had been jailed in lieu of a \$5 million bond for soliciting a hit man to kill a female acquaintance, the Cities stated that letters from that witness’ wife/CIRY’s president “provide assurances of CIRY’s qualifications to operate the Branch . . . Those assurances are satisfactory to the Municipalities.” Applicants’ letter filed May 27, 2005 at 1. Appended was a letter from CIRY’s new witness, stating that CIRY had stationed a locomotive near the line and was ready to

hire plot, while CIRY’s first and only attempt to provide service resulted in runaway railcars careening across public streets until they finally derailed.

conduct operations as soon as notified by the Cities that PIRY had been removed from the line.

- In a separate May 27 filing, the Cities stated “[I]n the unlikely event that CIRY were to be unable to provide that service, the Municipalities would contract with another operator (other than PIRY) to operate the Branch. One way or another, a replacement operator will be available if PIRY’s operation is discontinued as requested.” Applicants’ May 27 Reply at 3.

Based upon all of the foregoing, the Board issued its Decision granting the Cities’ adverse discontinuance application. Stating that its task was to “consider the relative burdens that continuation of service on the one hand, and cessation of service on the other, would have on the involved carrier, on the owner-lessor of the line, and on the public,” Decision at 7, the Board found:

- “Contrary to the arguments of PIRY and SRBOA, the evidence of record does not demonstrate that shippers will lose routing options or receive inferior service should PIRY’s service be discontinued.” Id.
- “The Cities’ contract with CIRY and the need for CIRY to seek our authority before service on this line can cease assures that granting the Cities’ application will not result in a diminution of service that has a serious adverse impact on shippers or the community.” Id.
- “Although we do not reach the question of whether the Cities’ interpretation of the agreement is correct, the shippers on the line will have rail service no matter which way a state court would hold. If the court accepts the Cities’ argument . . . CIRY would then remain as an authorized carrier able to serve shippers.” Id.
- “CIRY has stated that it will be able to provide adequate rail service to shippers on the Kellar Branch and the Cities agree. We find no basis on this record to conclude that the company, CIRY, will not be able to provide the rail service it has already been authorized to provide on the Kellar Branch.” Id. at 8.

PIRY moved the Board to reopen and clarify its Decision. Subsequently, PIRY informed the Board that, after it vacated the line under protest to avoid unsafe conditions that could arise from jointly occupying the line with CIRY, CIRY attempted, and failed

spectacularly, to deliver a two loaded cars to Carver Lumber using a trackmobile rather than the promised locomotive. The attempt resulted in runaway cars rolling unimpeded through at-grade crossings, colliding with parked railcars, and derailling. Nevertheless, on November 21, the Board chose not to reopen or clarify its Decision.

On January 4, 2006, Carver advised the Board that CIRY had never provided any service to Carver, despite being in sole possession of the line since August and despite Carver's requests to CIRY for service and Carver's meetings with the Cities' personnel. Carver also cited the fact that the so-called western connection, which was the focus of the Cities' supposed alternative route, had yet to be completed, that work on the connection had not occurred for many weeks, and that in the process of working on that trackage, the Cities' contractor had damaged the existing Kellar Branch, cutting Carver off from rail service entirely. Carver's transportation expenses had increased by more than \$25,000 for the period of August - December, with no restoration of service in sight. Carver again, as in its letter included in the Application, lauded the quality of service that it had received from PIRY, before PIRY was forced off the line. Finally, Carver reiterated that its willingness to accept service via the supposed western connection had always been conditioned on leaving the existing Kellar Branch in place until Carver could be assured that adequate service was actually available via the "western connection" route. See Exhibit 2.

The Cities responded in the CIRY discontinuance docket with yet another "assurance." See Exhibit 3. The Cities promised that CIRY would not consummate the discontinuance authority nor would the Cities remove the existing Kellar Branch "until the City certifies to the Board and to Carver that the track connection is complete and alternate rail service is available." No mention was made of the Cities' earlier assurances to hire

another operator if CIRY proved incapable of serving the line, nor did the Cities acknowledge that they had already removed a portion of the Kellar Branch or that CIRY had never provided any service to Carver.

By this time understandably skeptical of the Cities' and CIRY's assurances, Carver on January 18 reiterated its longstanding position that the mere promise of establishing a track connection did not satisfy the Cities' promises or commitment to Carver and the public to assure that workable and cost-effective transportation such as PIRY had previously provided was available via the "western connection." (See Exhibit 1.) The Cities answered Carver on January 19 (see Exhibit 4), stating that there was no justification for delaying discontinuance and removal of most of the Kellar Branch once the mere physical connections were established for the "western connection."

ARGUMENT

As set forth above, the Cities have made promise after promise after promise that no shipper would be harmed by the adverse discontinuance of PIRY's service in this docket. The new evidence contained in Carver's letters in Exhibits 1 and 2, however, shows all of those promises to have been entirely, utterly, grievously empty. Rather than continuing to accept more worthless promises from the Cities, the Board should now reverse the Decision and allow PIRY - the only carrier that has shown itself to actually be capable of and willing to provide service to Carver and other Kellar Branch shippers - to continue to do so.

Standards for Reopening.

Because the Decision is already effective, PIRY must seek reopening. In seeking to reopen that administratively final order, PIRY must show that the Decision involves material error, or must show changed circumstances or new evidence supporting a change in the

Decision. *See* 49 C.F.R. 1115.4 (2004). Yakima Interurban Lines Association-- Adverse Abandonment--In Yakima County, WA, STB Docket No. AB-600, 2005 STB LEXIS 405 (served Sept. 15, 2005) at *5 (“A petition to reopen will be granted only upon a showing that the action would be materially affected by new evidence, changed circumstances, or material error. 49 U.S.C. 722(c); 49 CFR 1152.25(e)(2)(ii) and (4).”).

PIRY's Petition Meets the Reopening Standards. Carver's new evidence shows that the circumstances have dramatically changed since the Board's original decision and that the premises on which the Board's findings were based did not come true. Relying on the Cities' and CIRY's representations, the Board made the following findings which have since been shown to be completely erroneous:

- “We find no basis on this record to conclude that the company, CIRY, will not be able to provide the rail service it has already been authorized to provide on the Kellar Branch.” Decision at 8.

To the contrary, however, PIRY's September 2 letter since the Decision has shown that CIRY's first attempt to operate the Kellar Branch resulted in runaway rail cars racing through multiple at-grade crossings, ending in a derailment about which Carver charitably states “evidence points to possible negligence on CIRY's part.” Exhibit 2 at 2. Moreover, Carver's letter shows that failed attempt at service to have been CIRY's one and only attempt at service. Thus, the only evidence of actual operation by CIRY conclusively demonstrates that CIRY is not capable of providing rail service on the Kellar Branch.

- “Contrary to the arguments of PIRY and SRBOA, the evidence of record does not demonstrate that shippers will lose routing options or receive inferior service should PIRY's service be discontinued.” Decision at 7.

Contrary to this finding, Carver's letter shows that Carver has received no service, despite multiple requests and multiple promises by the Cities and by CIRY. The one attempt at

service that CIRY made resulted in a disaster. It is indeed fortunate that no one was killed.

And, of course, Carver's products appear likely to have been damaged in the derailment. The evidence shows, as PIRY has often contended, that Carver has received vastly inferior service - indeed that it has been completely cut off from rail service - for months by CIRY's and the Cities' failure to meet their promises on which the Board relied.

- "The Cities' contract with CIRY and the need for CIRY to seek our authority before service on this line can cease assures that granting the Cities' application will not result in a diminution of service that has a serious adverse impact on shippers or the community." Decision at 7.

To the contrary, however, Carver's letters show that CIRY ceased service after its one disastrously-failed attempt at operations, and did so without notifying the Board, even though it was simultaneously before the Board in AB-1066X seeking discontinuance authority.

Moreover, Carver's letters show that this cessation of service has cost Carver in excess of \$25,000 in four months, with no end in sight as the feasibility and cost of the "western connection" remain a mystery. Carver's evidence thus shows that the Board's finding is no longer accurate.

The Decision stated that the Board's determination of the Cities' adverse abandonment application would be based upon "the relative burdens that continuation of service on the one hand, and cessation of service on the other, would have on the involved carrier, on the owner- lessor of the line, and on the public." Even the Cities agreed, stating, "[T]he owner of a rail line should be permitted to replace the operator of the line unless shippers on the line and/or the community would be harmed as a result of the replacement." Applicants' Reply at 1 (emphasis added). "Thus, the focus in an 'operator replacement' adverse discontinuance case

is whether shippers would be adversely affected by a change in rail line operators.” Id., at 2
(emphasis added).

Clearly, the Cities’ and CIRY’s empty promises led the Board to findings which vastly misstated the negative impact on the shipping public of cutting off PIRY’s service. While PIRY provided excellent service to Carver and others, CIRY has provided no service to Carver, has damaged the only shipment of Carver’s products that it attempted to handle, and in the process caused a tremendous menace to public safety. Moreover, contrary to the Board’s findings that service to shippers would continue, CIRY has cut off service and the Cities have cut Carver off from service by severing the Kellar Branch without completing its supposed replacement, letting that situation continue for months. As a result, Carver lost over \$25,000 while it waited patiently for CIRY or the City to come through on their promises. Only after months of broken promises did Carver finally bring its concerns to the Board directly.

CONCLUSION

It is patently clear that the public has been strongly adversely impacted by the string of empty, broken promises by the Cities and CIRY. These promises led the Board to allow the Cities to replace PIRY’s excellent service with no service, no connection, and no alternative route. That certainly was not the Board’s intent when it relied upon the Cities’ and CIRY’s promises when it granted the adverse discontinuance, but the circumstances have changed.

It is now clear that the shippers have been harmed by the replacement of PIRY with CIRY. It is now clear that the promises by the Cities and CIRY were empty promises. As a result, the original findings are no longer valid and the Board’s Decision should be reopened and reversed. See South Central Florida Express, Inc.--Trackage Rights Exemption--Florida

East Coast Railway Company, STB Finance Docket No. 33562, 1998 STB LEXIS 853 (served Nov. 6, 1998)(reopening decision because of erroneous findings based on misinformation in the exemption petition); The New York, Susquehanna And Western Railway Corporation -- Abandonment Exemption -- Portion Of The Edgewater Branch In Bergen County, NJ, Docket No. AB-286 (Sub-No. 2X), 1990 ICC LEXIS 243 (July 30, 1990) at *10 (evidence of new embargo and new evidence of deteriorated line condition sufficient to reopen denial of abandonment). Doing so would allow PIRY to restore service over the Kellar Branch to provide service to Carver Lumber and possibly to rebuild rail service to other shippers. Quite simply, the public interest would best be served by reopening and reversing the previous Decision.

Respectfully submitted,

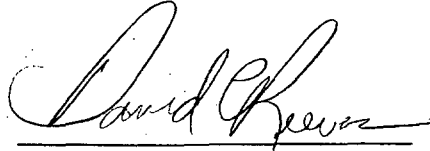
Daniel A. LaKemper
General Counsel
Pioneer Industrial Railway Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400


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.

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 24th day of January, 2006, copies of the foregoing Petition to Reopen 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 cursive script, appearing to read "David C. Reeves", written over a horizontal line.

David C. Reeves
Attorney for Pioneer Industrial Railway Co.

215602

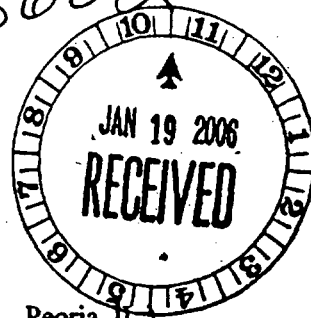
January 18, 2006

Vernon A. Williams, Secretary
 Surface Transportation Board
 Case Control Unit, Suite 713
 1925 K Street, N.W.
 Washington, DC 20423-0001



**CARVER
LUMBER**

8700 N. UNIVERSITY AVE.
 PEORIA, ILLINOIS 61615
 (309) 692-2000 • FAX (309) 693-7919



RE: Docket No. AB-1066X (Kellar Branch Discontinuance of Service Exemption - Peoria, IL.)

Dear Mr. Williams:

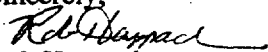
I am in receipt of a copy of Mr. Thomas McFarland's letter to you of January 11, 2006. Carver Lumber Company appreciates the City's restatement of their promise not to remove any trackage from the Kellar Line "...until the City certifies to completion of the track connection" (from the West). We also appreciate CIRY's willingness to delay any consummation of its discontinuance authority until the City is successful in having their contractor complete the new Western connection with the Union Pacific Railroad's secondary line.

Mr. McFarland's same letter makes reference to his objection to PRY's January 9, 2006 "Petition for Stay" regarding the original STB decision of December 23, 2005. While there are reasons why it is not prudent for us to inject ourselves into any dispute between parties regarding PRY's claim of authority to operate over the Kellar Line, we do have a vested interest in making sure that delivery to our business over that line is made available to our company *until such time as the proposed alternate service from the West has been tested and found to meet our business needs*. While it is noteworthy that Mr. McFarland's letter does offer assurances regarding the positive intentions of both the City and CIRY, it also seems to imply that so long as the connection to the West is made and "...alternative rail service is available", the City has fulfilled its obligation to our company. If that indeed is Mr. McFarland's understanding of the situation, we respectfully disagree. In our letter to you of January 3, 2006 we stated our concerns about logistical challenges associated with proposed service from the West. We do not see that by simply connecting two tracks and making it possible for train operation across a new line assures that meaningful and/or affordable service will automatically follow, at least not without additional agreements I understand the City desires from the U.P.

Therefore, we reiterate to you and all interested parties that our position on this matter remains essentially unchanged from several years ago when the notion of turning a portion of the Kellar Line into a hiking/biking trail began to be discussed in earnest. We strongly support a new connection to the West but have always felt it should be *tested* over a reasonable amount of time to insure that service in the manner we have come to depend on in the past is not somehow compromised. If it is found that such service and/or cost has been substantially compromised, we would expect our rights to access the full Kellar Line to have somehow been preserved for the benefit of our company and any other shippers who may one day locate on the line.

We are not knowledgeable regarding all of the intricacies associated with PRY's "Petition for Stay", nor are we familiar with what options the STB might have at its disposal as an alternative that might help us attain our stated goals. Absent any such alternative options from the STB, or absent a strong written agreement with the City regarding a commitment to allow any new service from the West to be thoroughly tested prior to proceeding with a discontinuance, it would seem logical for a "Petition for Stay" to be given consideration if the Board feels it provides the best and strongest form of insurance that the full Kellar Line will remain available to us (open and operational, once repaired) while the new connection is given a fair test. We leave this matter in your capable hands and thank you for your time.

Sincerely,


 Rob Happach
 President / CEO

CC: Randall Ray; Thomas McFarland; Melinda Sammons (all via fax)

January 3, 2006

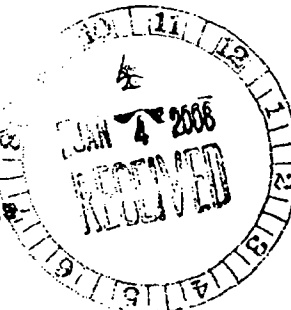

**CARVER
LUMBER**

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit
Suite 713
1925 K Street N.W.
Washington, D.C. 20423

8700 N. UNIVERSITY AVE.
PEORIA, ILLINOIS 61615
(309) 692-2000 • FAX (309) 693-7919

RE: STB Docket No. AB-1066X
STB Docket No. AB-878

ENTERED
Office of Proceedings



Dear Secretary Williams:

I would like to thank the Board for sending me a copy of the recent decision to discontinue service over the Kellar Line effective 1/22/06. As I understand the ruling, on that date the Cities will be entitled to begin removing the rails and ties from that portion of the line that is planned for a hiking/biking trail. The purpose of this letter is to kindly request that the Board reconsider that decision of 12/22/05 and allow for restoration of continued operation over the Kellar Line. We make this request for several reasons:

I. THE "WESTERN CONNECTION" TO THE UNION PACIFIC IS UNFINISHED:

At this writing, construction on the new connection to the UP from the West is not yet 100% complete, as things have not gone well in the later stages of the project between the City of Peoria and their contractor of choice (Metroplex). In late Summer 2005, a relatively short portion of the northern end of the Kellar Line was taken down for repairs (with this section being down, no cars can be delivered, either from the east side via the old Kellar Line or from a new Western connection). At this writing the project sits uncompleted and idle with virtually no substantial work having been done for at least three months or more. In fact, Metroplex appears to have abandoned the project. This past September we were given a completion date for a new UP connection of October 2005 by former acting president of the CIRY (Allen Brown). With no progress being made, I met with officials from the City of Peoria on 11/21/05 and was given assurances that work on the Kellar Line would be completed within 2-3 weeks (or by early December). Our letter of 11/22/05 to the City confirmed our conversations of the day before and informed them that after 12/30/05 if no progress had been made, it was our intention to seek assistance from the STB in order to hopefully help force the process forward towards restoring direct service to our business as soon as possible. Since we have had no response from the City or any requests for an extension of that date, we now have no choice but to ask for your help.

II: SIMPLY CONNECTING TWO SECTIONS OF TRACK DOES NOT EQUAL SERVICE:

We have been advised by several, informed, interested parties over the years that viable, affordable rail service is not necessarily accomplished by virtue of simply making a physical connection to the UP line from the West. It seems to be much more involved than that. I believe I am accurate in saying that the logistics surrounding making successful deliveries over the new line are far from being thoroughly worked out. A commonly-mentioned solution has been that the UP grant trackage rights over their line so that a CIRY could go directly to the switch yard, pick up our cars and deliver them back to us all in one move.

Page 2

**RE: STB Docket # AB-1066X
STB Docket # AB- 878**

I understand that the UP has so far declined to allow that, and the City of Peoria plans to make an appeal to the highest levels in order to try and make it happen. I've further been informed by the City that they have "mothballed" plans to construct a "wye" at the junction serving our industrial park (so cars could be switched out from either northbound or southbound UP trains) in favor of a less costly "J", which will allow only for switching out from northbound trains. Considering most of our freight comes from the North, the UP will need to bypass the junction, proceed to their yard downtown, and switch our car(s) to a northbound train for the trip back to Pioneer Junction, where arrangements will need to be made for the CIRY to send a crew from out of town to make the final move to our yard. With all of that in mind, it would be inaccurate to say that we do not have concerns about how well we will be served (and for how long), and what the eventual cost will be. Absent the City's ability to secure trackage rights from the UP for others to operate over their line, we expect potential significant delays in the delivery of our cars, not to mention the extra cost to us for all of this handling.

III. FINANCIAL HARDSHIP / FINANCIAL ISSUES:

It is my recollection that it was then-acting president Allen Brown of the CIRY who made the decision to voluntarily abandon service to the line this past September after a CIRY derailment during their very first delivery attempt to us (evidence points to possible negligence on CIRY's part). Up to that point we had been serviced quite well by Pioneer Industrial Railway Company (PIRY) over a track that seemed to present no major problems in terms of proper, low-speed operation. CIRY's action to abandon service to the line seems to have caused the City to forge ahead with plans to have Metroplex repair the section of the Kellar Line that remains unfinished today. Since we were assured on two different occasions that the interruption of direct rail service to our business would only last a few weeks, we went ahead and made arrangements to have our cars unloaded elsewhere and the material trucked in. We actually expected this arrangement to result in a near "break even" situation for our company, due to having less carriers involved in the delivery/switching chain. But in time I came to learn that there is in fact no savings to us for this arrangement (see attached letter from PAL, our buying group). As a result, our small business has already incurred over \$25,000 in additional cost to have our material unloaded elsewhere and trucked to our facility, with no end in sight. Since it's quite possible that our company will be unable to recoup all or even any of these additional costs, we were prompted to meet with the City on 11/21/05 in order to see if we could facilitate re-establishment of direct rail service. We wish to make you aware of this situation in hopes that it might expedite your process and shorten the time frame that adds to our financial risk.

On page 4 of the STB report of 12/23/05 it was mentioned that "Regulation is not necessary to protect shippers from abuse of market power." However, The Union Pacific has sole rights to the secondary main line that will serve the new connection from the West, a virtual monopoly due to the fact that they are the ultimate "gate" through which our rail traffic will flow. Likewise, I understand that our options to efficiently tie into other main-line railroads will be more restrictive with a "new connection" versus the options via a complete Kellar Line. And I understand, to date the UP has not shown a great deal of enthusiasm for a situation where they will be obliged to handle small lots of cars (even single cars), perhaps multiple times, when they have more important business to conduct. Is there some safeguard in place to prevent them from pricing themselves out of their obligation? If not, service to our business would surely be threatened if such a thing were to happen. Without significant new business to the line in the form of

Page 3

RE: STB Docket # AB-1066X
STB Docket # AB - 878

large-volume shippers I doubt we can garner proper attention and/or cost structure from the UP. I am unaware of any potential prospects for such new business whatsoever at this time, although I understand that in the past the UP has offered to assist the City in marketing the line. (Also, to correct the record, there are no longer three shippers on the line - only our company, and we take about 50 cars per year). We are not sure what regulations are available to insure that "abuse of market power" does not occur, but we urge the STB not to overlook certain realities regarding the UP's role in the upcoming "new connection".

IV. PAST ASSURANCES MADE TO THE SHIPPERS:

I have personally attended many meetings over the past several years regarding the City's plan to abandon the Kellar Line to the Park District in favor of a new connection from the West. Multiple times the shippers were assured that service over the Kellar Line would not be discontinued until viable service from the West was established and running smoothly. In fact, our early support of the Kellar Line conversion was tied by a letter from the shipper's group to just such an understanding with the City, along with the strong suggestion that new service from the UP/west endure a 24-month trial period before the Kellar Line was taken out of operation. That way, the different theories about how cars will actually be routed, handled, delivered and priced could be tested to be sure the system will in fact allow for fairly efficient operation and cost structure. Since we are largely still operating in the "realm of the theoretical" in terms of the new connection, we still feel that such a trial period would help prevent possible mistakes associated with removing a well-connected, time-honored line from operation. Just as soon as the logistical problems are resolved and a viable connection to the UP line from the West is successfully completed and considered fully operational at a reasonable cost, we will gladly abide by our promise to use that connection. Until such time, we ask that you order service restored over the Kellar Branch Line, as it still seems to offer us the best option in terms of service and cost structure to our company at this time.

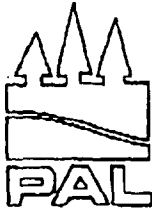
In closing we wish to acknowledge the past efforts of the City of Peoria in attempting to provide a long-term solution to the issue of direct rail service to our business, and to the STB for its work in attempting to reach some sort of balance point on some difficult issues. This letter is not meant to be critical of anyone's individual efforts. We only wish to protect our business from any and all of the elements of concern brought to light by this letter.

We look forward to your timely response. If you have questions or comments I can be reached at 309.692.2004 during regular business hours.

Most Respectfully,



Rob Happach
President / CEO
Carver Lumber Company



November 23, 2005

To: Rob Happach

From: Jeff Parish

Hello Rob,

As you know, PAL is your buying agent, and is a non-profit organization that works in your best interest. Keeping this in mind, I am very concerned about your rail freight situation, as it is negatively affecting your profitability.

I have investigated some freight rates for the main high volume products that you use, OSB, SPF dimension lumber, and Douglas Fir dimension lumber. I have determined that the delivered cost is the same, whether the carloads are delivered to Amerhart on the UP rail, or to Carver Lumber on the CIRY. The reason is that short line rail companies often contract with the large carriers to handle their local deliveries. The short line carriers are paid by the long haul companies to provide this service. This is part of the total freight charge, and does not represent an additional charge to the shipper or to the buyer.

Therefore, it is extremely financially beneficial to you if the cars are delivered to your yard, and not to another location. When the cars are delivered to another location, it adds handling charges, as well as another freight bill to get the material hauled to your yard. Truck freight rates have risen dramatically this year, and will continue to do so, as some trucking companies have been forced out of business by rising fuel costs. Additionally, there are sometimes freight rebates available for multiple rail deliveries to a single location. If these cars aren't delivered to your yard, it will make you ineligible for any of these rebates.

In conclusion, as your agent, I hope that your local rail delivery can be back on line soon, as Carver Lumber is spending a lot of extra money on freight and handling, and in our competitive industry, no one can afford any unnecessary expenses.

Sincerely,

Jeff Parish

Forest Products Trader

Progressive Affiliated Lumbermen

PROGRESSIVE AFFILIATED LUMBERMEN

P.O. Box 823, Grand Rapids, Michigan 49518-0823 (616) 281-2826, Fax (616) 281-6823

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

THOMAS F. MCFARLAND

January 11, 2006

By electronic mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Mr. Williams:

This responds to a pleading filed by Carver Lumber (Carver) on January 4, 2006 that is in the nature of a request for stay of the Board's decision served December 23, 2005, and to a Petition for Stay filed by Pioneer Industrial Railway Co. (PIRY) on January 9, 2006.

The PIRY Petition should be denied for failure to establish irreparable injury. PIRY would not suffer any injury if Central Illinois Railroad Company (CIRY) were to consummate its discontinuance authority on January 22, let alone irreparable injury. PIRY's right to provide service over the Kellar Branch was lawfully terminated months ago. PIRY thus lacks standing to seek a stay. PIRY's persistent filing of numerous pleadings since that time suggests an irrational vendetta against the City of Peoria (the City) and CIRY. The Board should have no part of that.

Carver is correct that the City promised not to remove the trackage involved in this proceeding (which would be permissible upon consummation of CIRY's discontinuance authority) until the City had arranged for alternative rail service to Carver by connecting another City-owned track to the Kellar Branch at a point west of Carver's facility. Carver is also correct that the track connection is not completed, so that alternative service could not be provided to Carver if the trackage involved in this proceeding were to be removed.

The City hereby reiterates its promise to Carver. As a result of that promise, CIRY hereby undertakes not to consummate the discontinuance authority (and the City undertakes not to remove the trackage) until the City certifies to the Board and to Carver that the track connection is complete and alternate rail service is available. If that certification were to occur prior to the January 22 effective date of the discontinuance, the discontinuance would not be

THOMAS F. MCFARLAND

Vernon A. Williams, Secretary

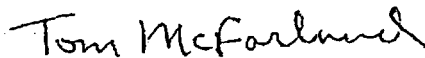
January 11, 2006

Page 2

consummated prior to that effective date. In other words, CIRY will not consummate the discontinuance authority and the City will not remove the trackage (1) until the City certifies to completion of the track connection; or (2) until January 22, whichever is later. CIRY would be agreeable to a condition to that effect in relation to its discontinuance authority.

CIRY will respond to arguments seeking reopening of the Board's decision in due course.

Very truly yours,



Thomas F. McFarland
*Attorney for Central Illinois
Railroad Company and The City
of Peoria, Illinois*

TMCF:kl:wp8.0\1114e-files\bl

cc: Mr. Rob Happach, Carver Lumber, *by fax to 309-693-7919*
David C. Reeves, Esq., *by fax to 202-663-7849*
Daniel A. LaKemper, Esq., *by fax to 309-697-8486*
Randall Ray, Esq., *by fax to 309-494-8559*
Melinda Sammons, Esq., *by fax to 815-339-6400*

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

THOMAS F. MCFARLAND

January 19, 2006

By electronic mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Mr. Williams:

This refers to the letter to you from Mr. Rob Happach of Carver Lumber dated January 18, 2006.

It will be recalled that Central Illinois Railroad Company (CIRY) has undertaken not to consummate the discontinuance of service exempted in the decision served December 23, 2005 until a track connection is completed and alternative rail service is available from the west, or until January 22, 2006, whichever is later. The City of Peoria has also undertaken not to remove trackage in the portion of rail line for which discontinuance has been exempted under the same circumstances.

Mr. Happach contends that that is not enough. He wants the Board to stay the effectiveness of the discontinuance exemption until service from the west has been tested and found to be adequate.

That would not be appropriate. Mr. Happach's contention bears on the merits of discontinuance of service over a portion of the Kellar Branch, not on the timing of the effectiveness of that discontinuance. There was no contention in the record of the discontinuance proceeding that discontinuance should not be allowed unless and until service from the west was tested and found to be adequate. Mr. Happach states that such has been Carver Lumber's position "from several years ago," but that position was not expressed in the record of the discontinuance proceeding so that the parties could comment on it and the Board could consider it. It would not be appropriate to stay the Board's decision for an indefinite time while the adequacy of service from the west is tested, and perhaps to overturn the Board's decision if

THOMAS F. MCFARLAND

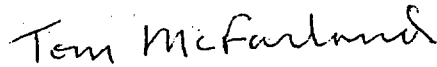
Vernon A. Williams, Secretary

January 19, 2006

Page 2

Carver Lumber deems that service to be inadequate. If that was Carver Lumber's position, it should have been expressed in the proceeding on the merits of the discontinuance.

Very truly yours,



Thomas F. McFarland
Attorney for Petitioner

TMcF:kl:wp8.0\1114e-filestb2

cc: Mr. Rob Happach, *by fax to 309-693-7919*
David Reeves, Esq., *by fax to 202-663-7849*
Daniel A. LaKemper, Esq., *by fax to 309-697-8486*
Randall Ray, Esq., *by fax to 309-494-8559*
Ms. Melinda Sammons, *by fax to 815-339-6400*

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

PETITION TO PROVIDE ALTERNATIVE RAIL SERVICE

EXHIBIT 2



**CARVER
LUMBER**

8700 N. UNIVERSITY AVE.
PEORIA, ILLINOIS 61615
(309) 692-2000 • FAX (309) 693-7919



July 19, 2006

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

RE: Docket No. AB-1066X (Kellar Branch Discontinuance of Service Exemption-
Peoria, IL)

STB Docket No. AB-878

Dear Mr. Williams:

This letter is in response to your order to Carver Lumber "to file comments with the Board at the conclusion of the 90-day period regarding service via the new western connection" as referenced in the Docket proceedings referenced above.

For brevity of this letter I have enclosed copies of previous pertinent documents which will document Carver Lumber Company's concerns and position relevant to this issue.

In this letter I will focus exclusively on the current issues relevant to your findings and order on April 25, 2005 that "these proceedings will be held in abeyance to permit additional assessment of the situation and for further development of the record."

Specifically, we reference the last sentence in paragraph 3 of our January 18, 2006 letter, attached, to you which states; "If it is found that such service and/or cost has been substantially compromised, we would expect our rights to access the full Kellar line to have somehow been preserved for the benefit of our company and any other shippers who may one day locate on the line." Our findings and beliefs as of this date are as follows:

- While rail service to Carver is now available via the Western Connection our strong belief is that that service is inadequate to the exemplary service we have received from PIRY for many years via the Kellar Branch and that this view is supported by the actual tracking of cars arriving in Peoria and their subsequent delivery to Carver as summarized in the attached RAIL CAR ROUTING SCORECARD. As you can see the SCORECARD clearly shows in detail that after cars arrive in Peoria they take either another 4 or 8 days to arrive at our facility. Our understanding

is that this is the result of CIRY only providing service to Carver two days per week. For years our records show that delivery up the Kellar Branch Line took between 1 and 2 days to reach our facility. Thus the delivery time of cars via the Western Connection represents a **400% greater** delivery time than cars delivered via the Kellar Branch Line.

- The cost of cars delivered to Carver via the Western Connection (Union Pacific/CIRY), based upon the newly published UP rates dated May 31, 2006 of \$1100, attached, plus fuel surcharges of \$181.50 plus the CIRY charge of \$650 totals \$1,931.50. The cost of the same car delivered to Carver via the Kellar Branch (TZPR/CIRY) is \$940.00. The cost of the same car delivered to Carver via the Kellar Branch (TZPR/PIRY) is \$872.00. Thus, the delivery of cars via the Western Connection is approximately **105% greater** than the cost of the same car delivered via the Kellar Branch using CIRY and approximately **121% greater** than the cost of the same car delivered via the Kellar Line using PIRY.
- While this item is not specifically requested in your order “regarding the adequacy of rail service” we believe it is pertinent to the issue of Carver’s rights to “have a vested interest in making sure that delivery to our business over that line (Kellar) is made available (Carver’s letter to you of January 18, 2006). As I believe the STB knows, service to Carver via the Kellar Branch was interrupted due a CIRY runaway/derailment/collision during their first delivery attempt to Carver forcing us to transload material for a period of nearly 5 months (see our letter of February 6, 2006 to City of Peoria, attached) resulting in costs to date of \$41,605.10 which neither the City or CIRY have been willing to reimburse. We are currently seeking the aid of independent legal counsel in an effort to collect these costs. The federal court case of New York Cross Harbor Railroad v. Surface Transportation Board, 374 F.3d 1177 (D.C. Cir. Ct. App. 2004) also recognizes that the “Surface Transportation Board (has a) statutory duty to preserve and promote continued rail service, and that one of its functions is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service.” Given the regulations set forth above we believe the City of Peoria is obligated to provide Carver Lumber with sufficient rail service, and that the disruption in rail service experienced by Carver Lumber should be compensable.
- Carver has had direct access to eight line-haul carriers over the Kellar Branch Line via the TZPR (the local terminal switching carrier) for many years. The loss of service over the Kellar Branch will permanently deprive Carver Lumber of competitive service, by depriving us of direct access to CN, BNSF, ISIA, NS, I&M, KJRY and TP&W, and leaving us with only one line-haul carrier (UP), that will have ultimate control over our service and delivered cost of material. Currently, approximately 75% of our cars originate on CN, and 25% on BNSF. Forcing us to depend on the “western connection” will add another carrier to all of our shipments, which has resulted in, and will continue to result in, longer transit times,

less responsive service, and higher rates. We become a captive shipper. Depending on business conditions, we receive 50 or more cars per year. At a premium of approximately \$1,000 per car (see bullet 2 above) that results in at least a \$50,000 hit to our bottom line that for a company of our size is almost catastrophic. If the Kellar Branch is abandoned, that premium can only be expected to increase, as there will no longer be any option to restrain rate increases, and, as a small shipper, we have no bargaining power.

- Carver Lumber Company is a local 100% employee owned business that is competing with much larger companies who have considerable purchasing power. Carver is heavily dependent upon rail service to remain cost competitive and the loss of the Kellar Branch Line is clearly going to put Carver at a significant competitive disadvantage with its competitors and thus unduly threaten the livelihood of 50 employees.
- Carver Lumber has recently attempted to route two cars to our location using the Kellar Branch via BNSF PEORIA TZPR PEORIA CIRY (car #NOKL 734824 B/L L-104859, attached) and CN PEORIA CIRY (car CN 598024 B/L 1175453, attached) both of which were delivered via the Western Connection via UP without our knowledge or consent. Information I received today from TZPR was that the CIRY "would not accept" the cars for Kellar Branch Line delivery and told TZPR to hand the cars off to the UP. We do not understand why we are being denied rail service via the cheaper Kellar Branch line and ask you for your assistance in this matter. It is our understanding that the Kellar Branch Line is in full compliance with all relevant Federal regulations for this type of rail line. Please see our letter of April 17, 2006 to the City of Peoria, page 3 **DELIVERY RATE COMPARISONS**, attached.
- Carver Lumber has tried to work with both the City of Peoria (CIRY) and the Union Pacific to address the issue of guarantying minimum levels of service and rate stability to no avail. These are critical issues to a company of our size, especially as we have had a long established track record with PIRY on both of these issues. Under the Western Connection scenario we have neither. The PIRY has submitted a proposal to Carver Lumber whereby both the issue of levels of service and rates are being guaranteed for a period of 10 years which greatly surpass the service conditions and rates that we are currently experiencing over the Western Connection.

Carver Lumber Company needs and desires competitive and timely rail service to protect the livelihood of our employee/owners. The Western Connection is not, in our opinion, succeeding on either of those issues. In light of recent industry articles addressing the increased congestion on the UP mainline it would seem to us that maintaining the Kellar Branch Line makes good sense. Trucking and/or transloading material is not only cost prohibitive for Carver Lumber, but seems to be contrary to public policy in general as the impact on the environment (fuel consumption, air pollution and deterioration of the infrastructure) to move goods by truck is significantly greater than that of moving goods

by rail. In light of the fact that Carver is a willing customer of rail service and there exists a willing carrier (PIRY) to provide that service, we cannot imagine how the public good will be served by forcing Carver Lumber Company to switch from affordable rail service which has satisfied our needs for many years to more expensive trucking service.

In conclusion, based upon the statements in the above bullet points we respectfully request the STB to consider the following course of action:

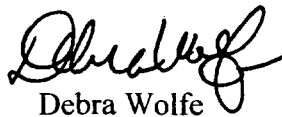
Given CIRY's demonstrated inability, and stated unwillingness, to provide service over the Kellar Branch, we believe the Board should reopen and deny the adverse discontinuance of PIRY service over the Kellar Branch (and grant CIRY's request to discontinue service), or, in the alternative, in order to preserve service on the Kellar Branch, deny the discontinuance of CIRY service over the Kellar Branch and order CIRY to comply with its common carrier obligations to provide such service. In the interim we request that the Board enter an alternative service order permitting PIRY to provide service to the Kellar Branch.

Carver appreciates the Board's consideration of this matter, and its prompt action to reopen this proceeding in response to our request. The Board's concern for the preservation of viable rail service has been very important to Carver Lumber, its employee/owners, suppliers and customers.

Sincerely,
Carver Lumber Company Board of Directors



Mark Booth



Debra Wolfe



Lee Miller

Enclosures

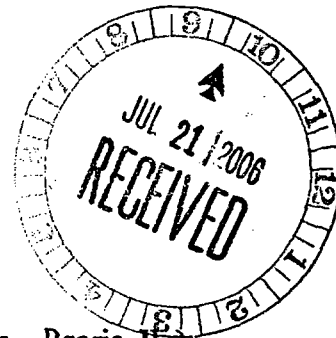
January 18, 2006

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001



**CARVER
LUMBER**

8700 N. UNIVERSITY AVE.
PEORIA, ILLINOIS 61615
(309) 692-2000 • FAX (309) 693-7919



RE: Docket No. AB-1066X (Kellar Branch Discontinuance of Service Exemption – Peoria, IL.)

Dear Mr. Williams:

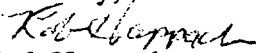
I am in receipt of a copy of Mr. Thomas McFarland's letter to you of January 11, 2006. Carver Lumber Company appreciates the City's restatement of their promise not to remove any trackage from the Kellar Line "...until the City certifies to completion of the track connection" (from the West). We also appreciate CIRY's willingness to delay any consummation of its discontinuance authority until the City is successful in having their contractor complete the new Western connection with the Union Pacific Railroad's secondary line.

Mr. McFarland's same letter makes reference to his objection to PRY's January 9, 2006 "Petition for Stay" regarding the original STB decision of December 23, 2005. While there are reasons why it is not prudent for us to inject ourselves into any dispute between parties regarding PRY's claim of authority to operate over the Kellar Line, we do have a vested interest in making sure that delivery to our business over that line is made available to our company *until such time as the proposed alternate service from the West has been tested and found to meet our business needs*. While it is noteworthy that Mr. McFarland's letter does offer assurances regarding the positive intentions of both the City and CIRY, it also seems to imply that so long as the connection to the West is made and "...alternative rail service is available", the City has fulfilled its obligation to our company. If that indeed is Mr. McFarland's understanding of the situation, we respectfully disagree. In our letter to you of January 3, 2006 we stated our concerns about logistical challenges associated with proposed service from the West. We do not see that by simply connecting two tracks and making it possible for train operation across a new line assures that meaningful and/or affordable service will automatically follow, at least not without additional agreements I understand the City desires from the U.P.

Therefore, we reiterate to you and all interested parties that our position on this matter remains essentially unchanged from several years ago when the notion of turning a portion of the Kellar Line into a hiking/biking trail began to be discussed in earnest. We strongly support a new connection to the West but have always felt it should be *tested* over a reasonable amount of time to insure that service in the manner we have come to depend on in the past is not somehow compromised. If it is found that such service and/or cost has been substantially compromised, we would expect our rights to access the full Kellar Line to have somehow been preserved for the benefit of our company and any other shippers who may one day locate on the line.

We are not knowledgeable regarding all of the intricacies associated with PRY's "Petition for Stay", nor are we familiar with what options the STB might have at its disposal as an alternative that might help us attain our stated goals. Absent any such alternative options from the STB, or absent a strong written agreement with the City regarding a commitment to allow any new service from the West to be thoroughly tested prior to proceeding with a discontinuance, it would seem logical for a "Petition for Stay" to be given consideration if the Board feels it provides the best and strongest form of insurance that the full Kellar Line will remain available to us (open and operational, once repaired) while the new connection is given a fair test. We leave this matter in your capable hands and thank you for your time.

Sincerely,


Rob Happach
President / CEO

CC: Randall Ray; Thomas McFarland; Melinda Sammons (all via fax)

Rob Happach

From: <PRPRICE@UP.COM>
To: <rhappach@carverlumber.com>
Cc: "Lee Miller" <lmiller@carverlumber.com>; "Richard E Carver" <richardecarver@aol.com>; "Steve Van Winkle" <SVanWinkle@ci.peoria.il.us>
Sent: Wednesday, May 31, 2006 4:38 PM
Attach: pic18467.jpg
Subject: Tariff change

Rob,

We have completed your request to publish a rate for your Peoria to Peoria move via the UP. You can refer to the rate change below and if you have any questions please feel free to contact me.

(Embedded image moved to file: pic18467.jpg)

-Thank you and have Great Day!

Paul R. Price

Marketing and Sales | Lumber Account Representative

Phone 402.544.5908 | Fax 800.544.4162 | Customer Service 800.272.8777

PRPrice@up.com | www.uprr.com

Union Pacific Railroad | 1400 Douglas St. STOP 1320 | Omaha, NE 68179

Register for UPRR | Price Inquiry | Fuel Surcharge | Service Information |
Car Trace

If the links above are not active you may find the same pages through the exact addresses below:

Register for UPRR

<http://c02.my.uprr.com/crr/crrServlet.jas>

Price Inquiry

http://www.uprr.com/customers/price_inquiry.shtml

Fuel Surcharge

<http://www.uprr.com/customers/surcharge/index.shtml>

Service Information

<http://www.uprr.com/customers/updates/index.shtml>

Car Trace

<https://c01.my.uprr.com/wet/secure/TraceForm.jas?trace=trace>

UP 24 Item 2059

Current Peoria,IL to Peoria, IL Grp Rates

Rate	Car type
\$2,144	Equipment length between 40' and 53'
\$2,454	Equipment length up to 67'
\$1,829	STD CTB
\$1,975	HC CTB

CHANGE TO:

UP 24 Item 2059

Revised Peoria,IL to Peoria, IL Grp Rates

Rate	Car type
\$900	Equipment length between 40' and 53'
\$1,100	Equipment length up to 67'
\$1,100	STD CTB
\$1,250	HC CTB

April 17, 2006



**CARVER
LUMBER**

8700 N. UNIVERSITY AVE.
PEORIA, ILLINOIS 61615
(309) 692-2000 • FAX (309) 693-7919



To: Steve Van Winkle
Director of Public Works
City of Peoria

From: Robert Happach, Pres/CEO
Carver Lumber Company
Peoria, IL.

RE: Conclusions on rail service to our company
Pricing and Service Issues
Possible remedies for Improvement

Dear Steve:

Thanks once again for your patience. I realize that the status of that section of the Kellar Line earmarked for a trail brings with it a sense of urgency to issues concerning future action. I know you realize the complexity of this situation and how extraordinarily difficult it has been to obtain solid information on rates due to the confidential nature of freight contracts. Realizing that everyone is anxious to know how the new system is working out for our company, I am offering my very best effort regarding the situation as I see it today. Please also see the attachments that will provide some additional support to parts of this document: (1) a railcar delivery "scorecard" for shipments since the Western Connection was officially opened; (2) a comparative schedule on rate options for Carver Lumber with facts as of this writing; (3) Copy of a U.P. freight bill to our supplier (PAL).

I believe in general that this report supports the notion that the Western Connection project is a "work in progress", rather than being considered "completed" by virtue of two sets of rails being connected. Towards that end our company is prepared to continue operating as a good-faith partner in an effort to see if this project can be completed to the satisfaction of all interested parties.

THE UNION PACIFIC RAILROAD (U.P.):

- Throughout the U.S. and Canada, our suppliers tell us that the U.P. in general appears to have a well-earned reputation at the mill level for being difficult to work with and apparently disinterested in moving forest products through their system in line-haul fashion. How this affects the attitudes of local U.P. management and/or the rates that are being tossed about for local "car moves" is unknown to me. I'm told U.P. rates for the line haul are often not competitive against a BN or a CN haul (oddly in my pricing from PAL for Riley Creek stock, the UP and BN rates are the same....must be Riley's particular contract).
- Locally, they appear to have been very consistent for several years in their attitude regarding their role in servicing a Western connection. They would apparently rather not do it for several reasons: (1) It's low volume and more trouble than it's worth; (2) The "J" track arrangement at the Pioneer Junction (instead of the "wye" that was planned for originally) is not very compatible with the equipment they use locally (it takes two U.P. locomotives to make a "car drop"); (3) The track radius works well enough for moving boxcars, but not well for moving the larger center-beam lumber cars, which make up a significant part of our car traffic (over 50% since the opening of the Western Connection).
- They have been highly resistant to offering "trackage rights" over their local line. Such rights as given to a CIRC, for example, would allow the U.P. to stay uninvolved in the actual car handling, much to their liking. However, I am told that access to this local U.P. line is "spotty" (eg: sometimes train crews "time out", and by law must simply stop wherever that occurs) and that having reliable access to their tracks would be

difficult to accomplish. I'm told it would require extensive communication and coordination, all for moving one or two cars per trip. While I'm sure there are also safety and liability issues to consider, another big sticking point with them is the traffic that would need to pass through their own yard in order to make it out to the Pioneer Junction. As I understand it, the CIRY would need to do just that in order to get to the TZPR yard for non-U.P. cars, or to pick up U.P. direct cars out of their yard. I will comment on "trackage rights" later in my report.

- **The U.P. is not legally required to "publish a rate"** for their portion of the handling from downtown out to the Pioneer Junction. Supposedly they are required to disclose the rates, but no one I've been working with has been able to make much meaningful progress on that. It has been suggested that if they were to go ahead and publish their rates, suppliers and freight logistic companies would have little trouble putting a final "hard number" cost to Carver shipments. Absent a published rate for a specific haul, I am told that one must rely on the general tariff rates as shown on their website, which shows four categories of rates for lumber products (under Item 2059-A of UP 24-C): These rates range from a low of \$1,829 to a high of \$2,454. Obviously this kind of per-car rate structure for moving freight the last 10 miles to the Pioneer Junction is unworkable for our situation. A professional logistics firm (Raven Logistics) that was consulting to PAL (our buying group), on this issue indeed came back to them with a rate "in the range of \$2,000" for moving a car from downtown Peoria to the Pioneer Junction. Additionally, PAL received and paid a freight bill from the U.P. for bringing a Carver car from Chicago to Peoria this past January (see attachment to this E-mail). The bill was for \$1,693, roughly three times (on a per mile basis) what it has historically cost us to move cars from the Pacific Northwest to our door. Thus this extra cost ends up being a 100% "adder" to what we have paid in the past.
- The U.P. intends to make car handoffs at the Pioneer Junction only twice per week (Mondays and Wednesdays) compared to five (5) day per week service we had been getting from the PRY over the old Kellar Line, even when we were the only customer left on the line. We do understand the reasons for the U.P.'s decision, given the low volume involved and the physical difficulties they have trying to make handoffs at the Pioneer Junction as it is currently designed. Additionally, it is not as easy for the CIRY to send a crew in from Granville, IL. compared to past short-line operators having local people available. We are not totally happy about receiving deliveries only twice a week, but we're willing to make the adjustment in the hopes that the other "kinks" in this new connection will somehow offset the reduced service issue.

In Conclusion on the Union Pacific: Disappointingly, but not surprisingly, until there are some changes forced on the U.P., or unless new evidence is produced to the contrary, it is hard to view the U.P. as anything more than a very reluctant partner in the Western Connection project. I'm sure you can appreciate our concern about the long term viability of the U.P. regarding service, and especially cost. It seems that the easy way out of a business arrangement that they have little use for would be to simply price themselves out of contention, which absent a reasonable published rate, they seem to be doing. In fairness to the U.P. I will say that I've been told that at least some of their rate people in Omaha are not even aware of our local situation or what it takes to develop a rate. As a result, they may be having difficulty providing reliable rates and could simply be falling back on the published general tariffs I mentioned earlier. In any case, resolving all of these important issues with the U.P. seems very crucial to the overall success of this new connection. It is our hope that the City of Peoria can accomplish what needs to be done to make it work and to meet the expectations that we have all long held as important to the process.

THE CENTRAL ILLINOIS RAILROAD COMPANY (CIRY):

To date we have found the CIRY to be a reliable partner, especially considering the fact they do not have much of a local presence. Ray Fuchs, their Manager of Railroad Operations, has made a real effort to be accessible to me by cell phone, to answer our questions and to delve into matters in order to help us better understand the challenges we face with this new connection. When cars are finally dropped at the Pioneer Junction by the U.P., (which we do not always get dates and times for) the CIRY crew seems to have made a very conscious effort to complete the delivery to our yard within a reasonable time frame, all things considered.

As you know, there is a significant remaining issue that may or may not involve the CIRY: After a derailment on the old Kellar Line during their very first delivery attempt to us (likely caused not by the condition of the track, but by their use of an under-powered TrackMobile), the CIRY refused to deliver cars over that line, preferring to wait for the completion of the new Western Connection. In part, this was due to the fact their adequately powered locomotive was essentially "trapped" on the Western side where it had been placed in anticipation of a quick completion of the Western Connection. At any rate, Carver Lumber was told that there would be about a 3-4 week delay in direct rail service while construction of the Western Connection was completed. It turned out to be 22 weeks before service was restored via the Western Connection. The delay was not really due to the work being done on the new track, but to delays associated with the City's project to upgrade remaining parts of the old line. One could argue it was no fault of the CIRY that the City's project rendered the line inaccessible, or one could argue that the CIRY had no authority to abandon service to us over the old Kellar Line in the first place. The result thus far has been over \$60,000 of additional expense to Carver Lumber through no fault of its own. This issue must be fully resolved so as not to delay the progress we hope to make in completing the overall project. We encourage the City to take the lead in establishing a dialogue between interested parties.

DELIVERY RATE COMPARISONS:

I would like to start by saying that we regarded the most potent test of rates to come as a result of having PAL price out some cars of lumber to us comparing total delivered cost via the Western Connection with total delivered cost over the old Kellar Line (via TZPR switch to CIRY). However, our suppliers were unable to price cars over the old Kellar Line. First, we were told by Ray Fuchs of CIRY that the line had recently failed a government track inspection and it was illegal for CIRY to be out on the line (I took this to mean that the government had taken the line out of service). Later, the TZPR reported to us that the line was "down" because PRY had apparently filed an "Embargo" on the line when they left (I have been told this is a common practice among railroads when they leave a line in order to protect them from car-hire and/or re-routing charges). I have asked both the CIRY and the PRY for explanations. I have yet to receive a reply from the CIRY but PRY has checked with the FRA in Washington, D.C. and they show the line as "open" and not in any way unusable by the CIRY. They have no record of a failed track inspection report and the embargo was limited to PRY deliveries only. We intend to further understand the reasons for not being able to obtain a rate, correct them, and then in the interest of fairness, test the pricing up both sides once and for all.

Please see the rate spreadsheet attachment, which shows that rates via the Western Connection (under conditions as they stand today) fall far short of being able to fulfill the assurances that were originally given to us, or of meeting the goals or expectations of the City of Peoria, I'm sure. Obviously this area is in need of some major work. While we can understand why some people look at this spreadsheet and feel that our company should go ahead and trans-load our product through the TZPR (the best rate as shown), some important facts need to be addressed:

- The City has already spent well over \$2,000,000 of taxpayer funds to build the Western Connection. How will that sit with the public if the line is basically abandoned without ever really getting off the ground? Most people will likely ask why some of the “deal-breaker” issues were not resolved prior to spending the funds.
- Direct rail service is very important to our company. It is a highly desirable component of any high-volume lumber yard and the loss of it would reduce our options for delivery (trans-loading being the only remaining option). It would also lower the prestige of our company in the eyes of our customers and competitors, and also could lower the value of our property. Being located in an industrial park and being designed and built as a single-use facility (material distribution) demands viable direct rail service be maintained.
- Our company was given assurances of having reliable, *affordable* direct rail service from the West in order to garner our support for rail-banking our only alternative (the Kellar Line), so a trail could be built in its place. We are not asking for one thing that we were not promised. In fact, we are accepting a 60% reduction in delivery frequency (5 days to 2) that was never discussed originally and certainly not anticipated by our company.
- The TZPR price includes a third-party handler, who may or may not be interested in trans-loading later.

DELIVERY PERFORMANCE:

- Please see the attached spreadsheet (“scorecard”), which details the movements of 8 cars that have been received by our business since the opening of the Western Connection. When you look at column “D” (Routing) you will notice that 5 of the cars were delivered over the new connection while 3 others were delivered to Amerhart without using the new connection. The first Amerhart delivery occurred because the car was unable to be re-routed over the Western Connection. The other two Amerhart deliveries were intentional as a way to compare service and because our buying group (PAL) received rates over the Western Connection that added \$1,475 to the delivered cost of each car, net of Amerhart’s trans-loading charges. These added costs were attributed by PAL to the Union Pacific’s short haul rate out to the Pioneer Junction.
- If we do not count the first delivery attempt (which had some problems getting off the ground), on average cars that were routed via the U.P.- Ciry Western Connection sat idle in Peoria for 50% longer than cars being delivered to Amerhart by the U.P. (see column “I” of the spreadsheet, which I believe is the critical number). Some of this delay can be attributed to the 2-day per week U.P. delivery schedule service for Carver Lumber versus unbroken service by the U.P. to Amerhart. But in the end, it still took 2.5 days longer, on average, to receive our material over the Western Connection.
- As you can see from column “G” of the spreadsheet, the time it takes for a railcar to arrive in Peoria from the various mill locations can vary widely, even when the shipments come from the same mill. Taking 15-18 days to arrive Peoria makes the short-line service all the more critical from a time standpoint.

IDEAS TO GENERATE BETTER SERVICE AND RATES OVER THE WESTERN CONNECTION:

While we commend the Ciry for their service to us to date, and understand that a contract does exist between the City and the Ciry, it is impossible to ignore another, possibly better, long-term solution to the service (logistical) issues, and more importantly, the rate issues. Obviously these ideas have been floated by others for a while now:

- The Keokuk Railroad has a local railyard just South of Bartonville. They already have trackage rights in place that allow them to go directly to the TZPR switching yard to pick up cars. If the Union Pacific can be persuaded to give the Keokuk trackage rights over their line, then the Keokuk could conceivably pick up ALL of our cars at the TZPR, take them a short distance to their yard for further switching and deliver them directly to our door without any further need to enter the U.P. yard or use the problematic "J" at the Pioneer Junction. The fact that the Keokuk is owned by the PRY is certain to raise the ire of some, but it should be communicated to them that President/CEO Guy Brenkman has retired from the PRY and moved from the area. PRY's new president, Michael Carr, seems very capable, entirely reasonable and desirous of mending fences as needed. How this option is viewed in light of the contract the City has with the CIRY is unknown to us.
- Send a contingent of high-ranking City officials, along with Ray LaHood, to the Union Pacific headquarters in Omaha with the goal of:
 - (1) Obtaining a commitment to allow trackage rights over their line for short-line delivery use by others
 - (2) Absent that being possible, secure an agreement to provide timely service at a reasonable rate
 - (3) Then get them to agree to publish the rate in order to take the guesswork out of it for everyone
 - (4) Reaffirm their commitment to help the City of Peoria market Growth Cell II to high-volume rail users

When back home, further coordinate that marketing effort with a re-energized City Economic Development Department. Then when a high-volume user is secured, use that substantially increased car traffic as a lever to lower the rail rates to the benefit of all who might use the Western Connection.

Steve, I hope you find this report to be helpful. I will continue to try different strategies as they are developed regarding rates and will also continue my "scorecard" in terms of tracking delivery times. Our company remains committed to doing our part on improving the situation over the Western Connection. We also appreciate the opportunity to share our views on this project from the business perspective, with all due respect to those who would very much like to see the regional hiking-biking trail finally completed.

Thanks again for all your hard work. Please let us know how we can help further and please let me know how much, if any, of this report you would consider releasing to other parties who have an interest. For example, I know that the Recreational Trail Advocates are aware of my promise to generate a report to the City, but I will make it clear to them that out of courtesy to you, the decision to share part or all of it is yours to make as you see fit.

Sincerely,

Robert E. Happach
President/CEO

RAIL CAR ROUTING SCORECARD

CAR# - TYPE	SHIPPER	ROUTING	date	ARRIVAL DATE PEORIA	days car in transit	Delivery Date	addn'l days car in town	Total days
Bold-face cars #s		() indicates "intermediate" carrier	car		to Peoria	CARVER	until final system delivery	
Indicate those sent via Western connection:		whose initials will not show up in the routing from the originator:	left mill	2				
1) TT2XB4700 - c-beam	Riley Creek- Chilco, ID	supposed to have been changed to UP - CIRY for carver delivery from original routing of UP for Amerhart delivery.	16-Feb 3/2 UP Peoria 3/3 TZPR 3/10 UP 4:30 AM (7 days lost unnecessarily)	15		15-Mar	14	29
2) HS 3185 - boxcar	Grant - Ontario, CAN	CN(TZPR)-UP carver	27-Feb TZPR 3/7 8:30 PM UP - 3/10 4:30 AM	9		17-Mar	10	19
3) BCOL-60384 - boxcar	Grant - Ontario, CAN	CN(TZPR)-UP carver	18-Feb TZPR 3/8 9:08 PM UP - 3/10 4:30 AM	18		16-Mar	8	26
4) DWC-626787 - c-beam	Abtibi - B.C. CAN	BN(TZPR)-UP Amerhart	8-Mar UP - 3/20	12	3/24 Amerhart		4	16
5) CN-598221 -boxcar	Grant - Ontario, CAN	CN(TZPR)-UP(CIRY)-carver	12-Mar to TZPR 3/22 10:40 PM to UP 3/23 11:00 PM	10		30-Mar	8	18
6) CN 558361 - boxcar	Tolco	CN (UP)- CIRY -carver(no TZPR?)	16-Mar TZPR showed no record	estim 10		3-Apr estim. 8		16
7) CN 624553 -center bm	Abtibi	CN (TZPR)-UP Amerhart	27-Mar at TZPR 4/3 (bad ordered) on repair track at TZPR rel. to UP 4/9 PM	7		11-Apr (via Amerhart)	8	15
8) BNSF- 561769 - c. bm	Abtibi	BN(TZPR)-UP Amerhart	23-Mar to TZPR 3/28 10:55 AM to UP 3/28 6:55 PM	5	3/31 Amerhart		3	8

4/11/2006

HOW TO POSSIBLY CIRCUMVENT UP FREIGHT ADDERS TO MOVES ASSOCIATED WITH THE PIONEER JUNCTION.

AT THIS POINT IT WAS DECIDED THAT POSSIBLY BY LEAVING THE UP OUT OF THE ROUTING AND JUST SHOWING THE LINE-HAUL CARRIER AND THE CIRY, THE LINE-HAUL CARRIERS JUST MIGHT ABSORB ANY REASONABLE CHARGES FROM THE U.P. FOR THEIR PORTION. HOWEVER, THERE IS THE CHANCE THAT THE LINE-HAUL CARRIERS WILL ATTEMPT TO COLLECT ON THE UP CHARGES FROM THE BUYER (CARVER THROUGH THE PAL BUYING GROUP), OR WILL SIMPLY ADJUST THE OLD RATES UPWARD TO TAKE THE UP CHARGES INTO ACCOUNT. THE HIGHER THE UP CHARGES, THE MORE LIKELY THAT CARVER WILL END UP PAYING THAT EXTRA FREIGHT COST IN SOME FORM OR ANOTHER. ONE VERY GOOD EXAMPLE OF THIS WAS A CN SHIPMENT THAT REQUIRED THE UP TO BRING THE CAR THE LAST 160 MILES FROM CHICAGO TO PEORIA. THIS "MOVE" BY THE UP HAD BEEN DONE MANY TIMES IN THE PAST WITH THE CN APPARENTLY ABSORBING THE COST. HOWEVER, LATE THIS PAST JANUARY PAL RECEIVED A \$1,700 INVOICE FROM THE UP FOR THAT SAME MOVE. PAL PAID THE BILL WITHOUT PROTEST, FEARING THAT PROTESTING MIGHT CAUSE THE UP TO LOOK BACK ON PAST MOVES AND TRY AND COLLECT FOR THOSE ALSO. THE POINT IS THIS: THIS BILL MAY HAVE FOUND ITS WAY BACK TO PAL BECAUSE THE CN REFUSED TO ABSORB IT, PERHAPS DUE TO THE LARGE AMOUNT FOR SUCH A SHORT HAUL. IF THE UP ENDS UP SENDING BIG BILLS BACK TO THE LINE-HAUL CARRIERS FOR SHORT MOVES, EVENTUALLY THOSE BILLS ARE GOING TO FIND THEIR WAY BACK TO CARVER, EITHER DIRECTLY OR MORE LIKELY, BY

VIRTUE OF THE LINE-HAUL CARRIERS SIMPLY MAKING THE ADJUSTMENT IN THEIR FREIGHT RATES TO CARVER IF INDEED THEY PLAN TO PAY THE UP DIRECTLY FOR THEIR SERVICES. SINCE THIS JANUARY BILL TO PAL (I HAVE ATTACHED A COPY FROM PAL TO THE E-MAIL ACCOMPANYING THIS REPORT) COULD BE A PRECURSOR TO HOW THE U.P. INTENDS TO HANDLE THIS SITUATION IN THE FUTURE, THERE IS CAUSE FOR CONCERN HERE. IT IS OUR UNDERSTANDING FROM PAL THAT OUR VARIOUS SUPPLIERS WILL INFORM THEM IF THERE ARE ANY RATE INCREASES AS A RESULT OF THE UP "PILING ON". UNFORTUNATELY, THESE THINGS TAKE TIME TO WORK THEIR WAY THROUGH THE VARIOUS SYSTEMS AND TRAFFIC DEPARTMENTS INVOLVED. BILLS FOR ADDITIONAL SERVICES CAN JUST "POP UP" HERE AND THERE ALONG THE WAY AND IT MAY TAKE THE PLACEMENT OF ADDITIONAL ORDERS WITH THE SUPPLIERS INVOLVED UNTIL SUCH TIME AS THE TRUE FREIGHT COSTS ARE REALIZED BY ALL CONCERNED AND WORKED INTO THE OVERALL MIX.

4/18/06 - Carver report on effects of the new western connection, including this scorecard and a rate comparison, were delivered to Steve Van Winkle

9)	CN-598024 - boxcar	Grant - Ontario, CAN	CN (TZPR - UP) CIRY for Carver	25-Mar to TZPR 4/1 at 5:00 PM to UP 4/2 11:30 PM	8	4/6/2006 2:00	4	12
10)	CN 598036-boxcar	Grant - Ontario, CAN	CN (TZPR - UP) CIRY for Carver	11-Apr 4/20 1:45 AM @ TZPR 4/24 AM to UP 4/27 to CIRY	9	28-Apr	8	17
11)	CN 625967-center bm	Abilbi - BC, CAN	CN (TZPR - UP) CIRY for Carver	12-Apr to TZPR 4/24 PM to UP 4/25 PM	12	4/28 to Amerhart U.P. ERROR!	4	16

Regarding these next 3 carloads, which were all purchased on the same day, and all with BN origin, the BN priced the freight the same for delivery to Amerhart (for reloading at about \$1,000 additional cost) as for delivery to Carver via the CIRY (with UP doing the handoff). We'll have to wait and see if the UP sends an additional charge to someone for their involvement.

NOTE: New information 4/20/06 per PAL: ICC regs allow railroads to bill for services up to 24 months after those services have been rendered. PAL is currently disputing a CX freight bill just received (\$1,200) for a car movement that took place 19 months ago.

Correction: I have now learned that RR have up to 36 months to back-bill for services - and often wait until the last minute to do so.

12)	(car numbers pending) NOKL 733971 - cnt r	Abilbi	BN (TZPR - UP) CIRY for Carver	26-Apr				
13)	CNA 623677 - center b	Abilbi	BN (TZPR - UP) CIRY for Carver	14-Apr to TZPR 4/24 11 PM to UP 4/26				
14)	BNSF 562555 - cnt r	Riley Creek	BN (TZPR - UP) CIRY for Carver	26-Apr	10	28-Apr	4	14
15)	HS 3247	Grant	CN (TZPR-UP) CIRY for Carver	20-Apr to TZPR 4/27 to UP 4/28 to CIRY 5/1	7	5-May	8	15

06/26/2006 RILEY CREEK LUMBER B/L # L-104859

Shipper RILEY CREEK LUMBER LACLEDE ID
Consignee P A L CO-OP INC GRAND RAPIDS MI 49518
PO BOX 823
Care of M.S. CARVER LUMBER PEORIA IL
Third Party Pay RILEY CREEK LUMBER LACLEDE ID 83941
PO BOX 220
Rule 11 P.A.L. CO-OP GRAND RAPIDS MI 49518
PO BOX 823

Origin: LACLEDE ID Prepared by: CARRIE KING
Destination: PEORIA IL Phone Number: 208-265-6524
Sec 7 (Y/N): No
Freight Charges: "To Be Prepaid" Patron Code:

Route: BNSF PEORI TZPR PEORI CRIY
Origin Switch Road: BOVA Junction Delivery Switch Road:
Rule 11 (Y/N): Yes
Contract (s) #: BNSF-BNSFQ105355
LBR TIMBER, DRID 2421184 Loaded 1 Carload Agreement Weights
LOGS Permit: LP52152

Net Weights
196,300 Pounds

LOADED 6-26-06

INIT NUMBER WEIGHT SEALS DUNNAGE REFERENCE
NOXL 734824 196300 0

FAXED
JUN 26 2006
By _____

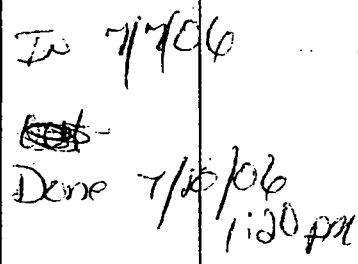
STATUS: Accepted w/Errors-824 Date: 06/26/2006 Time: 15:29 CST WAYBILL #: 819356



Grant Forest Products Sales Inc.
2233 Argentia Road, Suite 104
Mississauga, Ontario L5N 2X7

Page 1 of 1

SHIPPER/ORIGIN GRANT FOREST PRODUCTS SALES INC. HIGHWAY 11 NORTH P.O. BOX 960 Englehart ON P0J 1H0	SHIPPING DATE	GFPC ORDER NUMBER	
	06/06/24	1175453	
	CUSTOMER ORDER NUMBER	BILL OF LADING NUMBER	
	F8106	1175453	
	CUSTOMS BROKER	CAR/TRUCK NUMBER	
SOLD TO Progressive Affiliated Lumbermen Co-op I 2480-44th St. S.E., P.O. Box 823 Vendor Code: 7943GRT IRS# 38-0285365 Grand Rapids MI 49518-0823 United States	TRANS AMERICAN	CN598024	
	ROUTE		
	ONT NBAY CN (PEORI-CIRY DELY) CN24401		
	CARRIER	GROSS WEIGHT	
	RAIL	80782.746 KG 178,093.6420 LBS	
CONSIGNEE & DESTINATION MS Carver Lumber Co -CIRY Del PHYSICAL ADDRESS: 8700 N. Universit RailHead: Peoria IL 61605 United States	PREPAID FREIGHT		SEAL NOS:
	FREIGHT TO POINT OF ENTRY	U.S. DOLLARS	502508,502507
	TOTAL FREIGHT TO DESTINATION	U.S. DOLLARS	VOLUME 150.464 M3

NO OF PACKAGES	DESCRIPTION OF SHIPMENT	QUANTITY MSF/FT	UNIT PRICE	AMOUNT
22	112 7/16" OSB Rtd. Shtg.24/16 90 Panels per Bundle 4x8	63.3600		
23	132 1/2" OSB Rtd. Shtg. 32/16 78 Panels per Bundle 4x8	57.4080		
				

DELIVERY INSTRUCTIONS PREPAID FREIGHT
REBILL OVER Rail
PROVINCE OF ORIGIN - ONTARIO
MADE IN CANADA O S B - ORIENTED STRANDED BOARD
HST: 4410.21.0000

SHOW PO# 9272-4
UNLOAD FROM PLACARDED SIDE

THE ABOVE PRICE INCLUDES FREIGHT AND ALL U.S. CUSTOMS RELATED CHARGES. TERMS 1 % 10 DAYS A.D.I

CONFIRMED / LOADED BY

SHIPMENTS TO US DESTINATIONS ALL AMOUNTS IN US \$

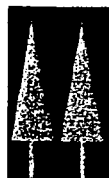
SIGNATURE SHIPPER _____

CARRIER / DRIVER _____

RECEIVER _____

(905) 858 3200

February 6, 2006



**CARVER
LUMBER**

8700 N. UNIVERSITY AVE.
PEORIA, ILLINOIS 61615
(309) 692-2000 • FAX (309) 693-7919

City of Peoria

419 Fulton

Suite 200

Attn. Mr. Randall Ray

Peoria, IL. 61602



RE: Rail-to-Truck Reloading

Dear Randy:

Last November when we met in Steve Van Winkle's office, one topic of discussion was the fact that our company, due to an interruption of direct rail service, was forced to reroute our railcars to Amerhart, Ltd. for reloading and delivery to our yard by truck. You might recall that this interruption was initiated as a result of CIRY's derailment during their first delivery attempt, likely caused by using an under-powered "Trackmobile" instead of a standard locomotive to haul two cars up a rather steep grade near the Vine Street hill area. During the derailment "cleanup process" I had several discussions with CIRY's Allen Brown, who attempted to blame the derailment on bad track conditions (simply not true), and as such, was unwilling to risk further attempts to use the line. He decided that the best course of action for CIRY would be to wait for the completion of the Western connection, which he stated would be done "within 2-3 weeks". Mr. Brown admitted that CIRY created a problem for themselves (and us) by temporarily placing their locomotive on the West side of University St. in anticipation of a quick connection to the UP. He went on to say that to reverse that move and put the locomotive to the Kellar side would be very costly and time-consuming, and also impractical if needed for only a couple of weeks. Therefore, Carver Lumber agreed to make other arrangements (with Amerhart as a re-load) that were anticipated to be very temporary in nature, lasting only until early October when service from the West would be available. As we know, the City was unable to make the connection to the West within the expected time frame, but does now appear to be close to finishing the needed work. We have recently assisted in expediting this process by allowing the City's contractor to use our yard and rail spur at no charge to funnel their equipment to those sections still needing attention. We have, and will remain, supportive of the City's efforts to complete a quality rail connection to the West, so that the hiking/biking trail project can finally be launched for the anticipated betterment of our community.

That leaves us with an unresolved and significant financial issue: The extra cost that our company continues to incur for having our rail cars re-loaded at Amerhart. What was supposed to be a 3-week delay has stretched to nearly 5 months and has cost our company over \$34,000 to date. When I brought this subject up at our November meeting at City Hall, both you and Steve suggested that we should look to CIRY for reimbursement, so I called them shortly thereafter. Their position is that they were prevented from rendering us service for most of the time period in question because the City had their contractor tear out a critical section of the line and the repair portion of the project subsequently experienced a lengthy and unexpected delay. While it seems their point is well taken, they did abandon their responsibilities in the early weeks by refusing to use the Kellar line any longer. In any case, I feel that is for CIRY and the City to work out, and I would prefer that reimbursement to our company not be held hostage to a long, drawn out legal battle between you two parties, if it comes to that. I fairness to the City, I did mention to Steve early on in the reload process that things were going smoothly with Amerhart and that I expected some offsets in rail freight costs as a result of having no short-line carrier in the chain. Had that been true, in theory we could have allowed the reload process to go on almost indefinitely. But as my past correspondence to you indicated (substantiated by a letter from Jeff Parish of the PAL buying group), due to the way rail rates are constructed and paid, there is an extra cost to Carver Lumber for bypassing a short-line delivering carrier and trucking it off the UP line from Amerhart's yard. We finally were able to piece that fact together after about the second or third delivery to Amerhart. Once we realized the true facts, encouraging CIRY to restore direct service to us became a big priority. Unfortunately for all of us, the significant delay in completing the construction work for the connection (Metroplex contract)

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significant delay in completing the construction work for the connection (Metroplex contract) has brought us to this point today. In closing, your assistance on helping resolve this issue will be greatly appreciated, as these reloading fees are having a large impact on our bottom line. We are more than anxious to realize complete financial recovery for our shareholders, as well as seeing our direct rail service re-established as soon as possible, and we are willing to assist in any way we can.

Thanks in advance for your help and advice. Please feel free to call me at 692-2004 if you would like to discuss this further. Otherwise I will look for a timely and thoughtful written response. Please feel free to e-mail that response to rhappach@carverlumber.com if you prefer.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Happach". The signature is fluid and cursive, with the first name "Rob" being more prominent than the last name "Happach".

Rob Happach
President / CEO

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

PETITION TO PROVIDE ALTERNATIVE RAIL SERVICE

VERIFIED STATEMENT OF J. MICHAEL CARR

EXHIBIT 3

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

**PIONEER INDUSTRIAL RAILWAY CO.
--ALTERNATIVE RAIL SERVICE--
CENTRAL ILLINOIS RAILROAD COMPANY**

PETITION TO PROVIDE ALTERNATIVE RAIL SERVICE

VERIFIED STATEMENT OF J. MICHAEL CARR

My name is J. Michael Carr, and I am the President and Chief Executive Officer of Pioneer Industrial Railway Co. ("PIRY").

PIRY is ready, willing, and able to assume the operation of the Kellar Branch (the "Line"), and provide alternative service to Carver Lumber Company ("Carver"). PIRY has a locomotive that can be interchanged immediately to Tazewell & Peoria Railroad ("TZPR") at its Creve Coeur yard, for movement to the Line, all of which could be accomplished within approximately 24 hours.

PIRY has inspected the Line to the best of its ability and, while I am informed and believe that CIRY has done absolutely no maintenance on the segment of the Line slated for abandonment, and probably not performed its required weekly track inspections either, the Line was in good operable condition when PIRY suspended service in August, 2005. I am further informed and believe that, with minimal repair (which PIRY is willing and able to perform with its forces and at its own expense), that the Line could be operated safely in the very near future.

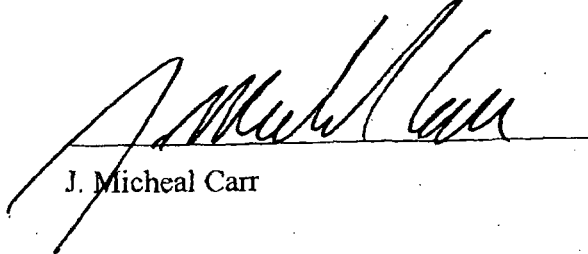
I am further informed and believe that PIRY can serve Carver without unreasonable interference with CIRY's current service to O'Brien Steel, or CIRY's operation of the "western connection." I am informed and believe that CIRY serves O'Brien with a trackmobile-type vehicle that is generally stored within the O'Brien facility, just off the TZPR connecting track. PIRY, with its own forces and material, constructed a run-around track near the TZPR interchange, which I believe is still intact. PIRY could store its locomotive on that track, so that the connecting track to TZPR remains open for interchange. Both CIRY and PIRY operations are low-volume, and since CIRY has no reason to move any traffic up the Kellar Branch mainline to Pioneer Park, the only segment in which both PIRY and CIRY would be jointly operating over would be the very short segment of the Line that connects to TZPR. This small amount of joint operation could be done safely and without interfering with CIRY's service to O'Brien Steel. PIRY has a several years of experience safely and efficiently operating the Kellar Branch. PIRY crews are very familiar with the Line, and I do not anticipate any serious problems.

PIRY has attempted to reach an agreement with CIRY regarding temporary service to Carver via the Kellar Branch. PIRY's counsel has discussed it with CIRY's counsel, to no avail, and I have left numerous voice mail messages, over many weeks, with Mr. Ray Fuchs, of CIRY, none of which have been returned.

PIRY has reached an agreement with Carver that guarantees acceptable service and rate levels for the entire period that any Alternative Service Order may be in effect. PIRY is willing to enter into similar agreements with other potential shippers on the Line.

VERIFICATION

I, J. Michael Carr, declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 26th day of July, 2006.



J. Micheal Carr