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THOMAS F. MCFARLAND

August 2, 2006

By UPS overnight mail

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

ENTERED
Office of Proceedings

AUG 2 2006

Part of
Public Record



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

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Reply In Opposition To Petition To Provide Alternative Rail Service, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Respondents

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ENTERED
Office of Proceedings

AUG 03 2006

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

PIONEER INDUSTRIAL RAILWAY CO.)
-- ALTERNATIVE RAIL SERVICE --) FINANCE DOCKET
CENTRAL ILLINOIS RAILROAD) NO. 34917
COMPANY)



**REPLY IN OPPOSITION TO PETITION TO
PROVIDE ALTERNATIVE RAIL SERVICE**

CITY OF PEORIA, ILLINOIS
CITY HALL
419 Fulton Street
Peoria, IL 61602

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

VILLAGE OF PEORIA HEIGHTS, ILLINOIS
VILLAGE HALL
4901 North Prospect Rd.
Peoria Heights, IL 61616

Respondents

THOMAS F. McFARLAND
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(312) 236-0204

Attorney for Respondents

DATE FILED: August 3, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

PIONEER INDUSTRIAL RAILWAY CO.	)	
-- ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
CENTRAL ILLINOIS RAILROAD	)	NO. 34917
COMPANY	)	

**REPLY IN OPPOSITION TO PETITION TO
PROVIDE ALTERNATIVE RAIL SERVICE**

Pursuant to 49 C.F.R. § 1146.1(b)(2), CENTRAL ILLINOIS RAILROAD COMPANY (CIRY), THE CITY OF PEORIA, ILLINOIS and THE VILLAGE OF PEORIA HEIGHTS, ILLINOIS (collectively referred to as “the Cities”) hereby reply in opposition to a Petition to Provide Alternative Rail Service (Petition) filed by PIONEER INDUSTRIAL RAILWAY CO. (PIRY) on July 27, 2006.

PRELIMINARY STATEMENT

The Cities own the Kellar Branch. CIRY is the Board-authorized operator of the Branch. All of those Respondents have an interest in the outcome of this proceeding.

PIRY refused to agree to Respondents’ request for an extension of the date for filing this Reply. Respondents are constrained in their ability to file a Reply by virtue of having only five business days to do so during the height of the summer vacation season.

REPLY

Quoting from the Petition itself (Ex. 2, Carver letter dated April 17, 2006 at third unnumbered page), here is what Carver Lumber Company thinks of the quality of rail service provided by CIRY:

To date we have found the CIRY to be a reliable partner, especially considering the fact that 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 UP (which we do not always get dated and times for) the CIRY crew seems to have made a very conscious effort to complete delivery to our yard within a reasonable time frame, all things considered.

That is direct testimony from the affected shipper. That testimony is entitled to infinitely more weight than the unsupported allegations of a disgruntled rail carrier whose contract to operate the rail line was not renewed. There is no way that Carver's testimony about CIRY's rail service can support a finding that CIRY "cannot transport the traffic offered to it in a manner that properly serves the public," which is essential for an order for alternative rail service under 49 U.S.C. § 11123(a).

The claim of Carver instead is directed to inadequate service being provided by CIRY's connection carrier, Union Pacific Railroad Company (UP), and to excessive charges being assessed by that carrier. But that cannot be a valid basis on which to deprive CIRY of the ability to serve Carver, when Carver itself says that CIRY is a "reliable partner."

PIRY has claimed that CIRY should have provided service to Carver from the east over the Kellar Branch, thereby avoiding inadequate UP service via the "western connection." CIRY's explanation is that defective track conditions on the Kellar Branch made it unsafe to do

so. PIRY has challenged the factual basis for that explanation. (Petition at 13-14). PIRY is wrong about that. Attached to this Reply as Appendix 1 is a copy of an FRA Inspection Report, dated July 28, 2006, covering track conditions on approximately 8 miles of the 8.3-mile Kellar Branch between Adams Street and Pioneer Parkway. The Report shows the following defects in relation to FRA Class 1 track safety standards:

- Item 2 334 defects of “no effective support ties within the prescribed distance from a joint”;
- Item 3 241 defects of “crossties not effectively distributed to support a 39-foot segment of track”;
- Item 4 2 defects of “4 inch bolt hole cracks broken out” (providing locations);
- Item 5 5 defects of “gage dimension exceeds allowable on tangent track” (providing locations);
- Item 6 2 defects of “insecure switch stand or switch machine due to defective switch ties” (providing locations);
- Item 7 1 defect of “vertical split head in joint” (providing location);
- Item 8 2 defects of “uncontrolled water undercutting track structure or embankment” (providing locations);
- Item 9 4 defects of “four inch head web separation in joint” (providing locations);
- Item 10 1 defect of “less than 1 bolt per rail at each joint for conventional jointed rail.”

Thus, it is beyond legitimate dispute that safety considerations prevented CIRY from providing rail service to Carver over the Kellar Branch. There is no rational basis for a finding that service can be provided safely over the Kellar Branch as is required under 49 C.F.R. § 1146.1(b)(1)(iii) to support an order of alternative rail service.

The estimated cost to repair those FRA track defects is \$50,000. If those defects were to be corrected, the cost to do so would be assessed against Carver because the track repair would

be for the sole benefit of Carver. Alternatively, the cost of that track repair would support discontinuance of direct rail service to Carver because such cost could not be recovered from revenues provided by Carver's modest traffic level. Thus, despite the shortcomings of service via the western connection, Carver is better off with that service than with the adverse effect on it that would result if service were to be provided from the east.

Indeed, the absence of significant rail traffic from Carver calls into serious question PIRY's motive for filing the Petition. Carver receives approximately 50 carloads per year. There are no other shippers on the portion of the Kellar Branch under consideration,^{1/} and no reasonable prospect for location of new shippers on that trackage. It simply does not make economic sense for PIRY to undertake the cost of track rehabilitation,^{2/} the cost of ongoing track maintenance for 8.3 miles, and the ongoing cost of a locomotive and train crew in order to provide service to a shipper who provides minimal freight revenues. That strongly suggests that PIRY has an ulterior motive for filing the Petition, such as to front for entities who are opposed to the creation of a recreational trail on an unused segment of the Kellar Branch. The Board should not permit the alternate rail service provisions to be misused in that manner. Attached to this Reply as Appendix 2 is "Testimony to the STB" that has been prepared by Mr. Steve Van Winkle, Director of Public Works, City of Peoria, Illinois.

For each of the foregoing reasons and for all of them, the Petition is required to be denied.

In the event that the Petition were to be granted notwithstanding the foregoing reasons for denial, approval of the Petition should be conditioned on rehabilitation of the Kellar Branch by

^{1/} The Petition does not seek authority to serve O'Brien Steel.

^{2/} PIRY has indicated a willingness to do so. (Petition at 14).

PIRY at its own expense to remove all track defects identified in the FRA Inspection Report attached hereto as Appendix 1. The Petition indicates that PIRY is willing to undertake the expense necessary to permit safe operations over the Kellar Branch (Petition at 14 -- “. . . an expense which PIRY is willing to incur out of its own pocket . . .”). The Board should hold PIRY to its own undertaking in that respect. Thus, if alternative rail service were to be ordered, the service should not commence until an FRA inspection confirms that all defects identified in Appendix 1 have been removed by PIRY at its own expense.

WHEREFORE, the Petition is required to be denied. If the Petition is granted, it should be conditioned as requested above.

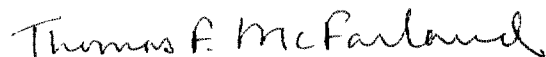
Respectfully submitted,

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Granville, IL 61326

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Peoria Heights, IL 61616

Respondents



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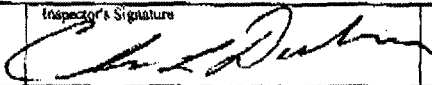
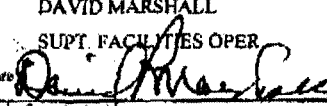
Attorney for Respondents

DATE FILED: August 3, 2006

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

OMB Approval No.: 2130-0509

Inspector's Name DASHNER, CHRIS		Inspector's Signature 		Inspector's ID No. 20710		Report No. 89		Date yy mm dd 2006 7 28		
Railroad/Company Name & Address PEORIA, PEORIA HEIGHTS & WESTERN RR PEORIA, IL				R/C R		Division SYSTEM		RR/Co. Representative (Receipt Acknowledged) Name DAVID MARSHALL Title SUPT. FACILITIES OPER Signature 		
From: City PEORIA		Codes 6850		Destination City & County		Codes 6850		From Latitude		
State IL		17		City PEORIA		6850		From Longitude		
County PEORIA		C143		County PEORIA		C143		To Latitude		
Mile Post: From		To		Inspection Point: OTHER THAN MAIN TRACK (KELLAR SPUR)				To Longitude		
Activity Code: YTW		TOY								
Units: 8		4								

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subnote	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
1										N	N	0	
Description ** Comment to Railroad/Company ** THIS INSPECTION MADE AT THE REQUEST OF THE CITY OF PEORIA AS OWNERS OF THE PEORIA, PEORIA, HEIGHTS AND WESTERN RAILROAD. THIS INSPECTION COVERED APPROXIMATELY 8 MILES OF THIS INDUSTRIAL SPUR TRACK BETWEEN ADAMS ST. AND PIONEER PARKWAY, WHICH HAS NOT BEEN OPERATED OVER FOR ONE YEAR. THE MAJORITY OF THIS TRACK HAD GRASS AND WEEDS FROM 18 INCHES TO 6 FEET TALL COVERING THE BALLAST SECTION MAKING IN VERY DIFFICULT TO INSPECT.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:													
Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													
2		BRA	I	213	0109	02	10	1		N	N	334	YTW
Description NO EFFECTIVE SUPPORT TIES WITHIN THE PRESCRIBED DISTANCE FROM A JOINT.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:													
Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													
3		BRA	I	213	0109	03	10	1		N	N	241	YTW
Description CROSSTIES NOT EFFECTIVELY DISTRIBUTED TO SUPPORT A 39-FOOT SEGMENT OF TRACK.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:													
Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													

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JUL 31 2006

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DEPARTMENT OF TRANSPORTATION

INSPECTION REPORT

FEDERAL RAILROAD ADMINISTRATION (FRA)

(Continuation)

OMB Approval No.: 2130-0509

Inspector's ID No.		Report No.		Report Date	
20710		89		7/28/2006	

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subnote	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
4		BRA	I	213	0113	07	10	1		N	N	2	YTW
Description TWO 4 INCH BOLT-HOLE CRACKS, BROKEN OUT, BETWEEN ADAMS ST. AND HWY 24 UNDERPASS.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude: Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													
5		BRA	I	213	0053	01	10	1		N	N	5	YTW
Description GAGE DIMENSION EXCEEDS ALLOWABLE ON TANGENT TRACK - FIVE LOCATIONS THAT MEASURE 58 1/8 INCHES; 1 AT JOINT IN CORNHILL RD. CROSSING, 1 IN LEFT HAND CURVE 1/2 MILE NORTH OF HWY 24, AND 3 LOCATION IN LEFT HAND CURVE WEST OF BISHOP ST.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude: Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													
6		BRA	I	213	0135	07	10	1		N	N	2	TOY
Description INSECURE SWITCH STAND OR SWITCH MACHINE DUE TO DEFECTIVE SWITCH TIES - SWITCH NORTH OF HWY 24 AND FIRST SWITCH WEST OF PROSPECT.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude: Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													
7		BRA	I	213	0113	04	10	1		N	N	1	YTW
Description VERTICAL SPLIT HEAD IN JOINT ON THE SOUTH RAIL 200 FT. NORTH OF HWY 24.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude: Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													

DEPARTMENT OF TRANSPORTATION

INSPECTION REPORT

FEDERAL RAILROAD ADMINISTRATION (FRA)

(Continuation)

OMB Approval No.: 2130-0509

Inspector's ID No.	Report No.	Report Date											
20710	89	7/28/2006											

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
8		BRA	I	213	0033	07	10	1		N	N	2	YTW
Description UNCONTROLLED WATER UNDERCUTTING TRACK STRUCTURE OR EMBANKMENT - TWO LOCATIONS ON THE NORTH SIDE, IN MIDDLE OF LEFT HAND CURVE, NORTH OF BISHOP ST.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:													
Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													
9		BRA	I	213	0113	08	10	1		N	N	4	YTW
Description FOUR INCH HEAD WEB SEPARATION IN JOINT - FOUR LOCATIONS NORTH OF GLEN AVE.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:													
Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													
10		BRA	I	213	0121	06	10	1		N	N	1	YTW
Description LESS THAN 1 BOLT PER RAIL AT EACH JOINT FOR CONVENTIONAL JOINTED RAIL IN CLASS 1 TRACK - NO BOLTS IN DUTCHMAN.													
Violation Recommended: Yes ☐ No ☒ Latitude: Longitude:													
Written Notification to FRA of Remedial Action is: Required ☐ Optional ☒ Railroad Action Code: Date (mm/dd/yyyy): Comments on back? ☐													

Testimony to the STB

This is in response to PRRY's filing before the STB requesting operational authority over portions of the Peoria/Peoria Heights & Western Railway in order to serve Carver Lumber Co. as an alternative to the service currently provided by Central Illinois Railway (CIRY) via a City of Peoria-owned spur that connects the UP mainline with Pioneer Park and Carver Lumber Company.

In providing the requested operating authority to PRRY, the STB must impose upon CIRY to agree to a shared use with PRRY to certain portions of the Peoria, Peoria Heights & Western railroad.

1. Is the role and purpose of the STB to facilitate and protect rail service to customers so that they have rail as an option to their transportation needs and so that the operator of said service can provide such service at a cost that will provide for the upkeep of the rail infrastructure, cover operational costs and make a reasonable return on its investment?
2. Or is it the role and purpose of the STB to allow its power to be advantaged by knowing railroad operators so that they can leverage an agenda that has nothing to do with providing rail service at a price that will allow them a reasonable return on investment?

My pleading today will make it very clear that no operator can make a reasonable return on investment when serving a customer with 50 cars a year over 8 miles of track that is in need of \$2.6 of reinvestment according to an IDOT audit conducted in 2000. A recent safety inspection conducted by the FRA has deemed the rail to be unsafe for service until certain deficiencies are corrected.

In 1996, the P&PU, as the operator of the Peoria, Peoria Heights & Western railroad, requested to sever its contractual arrangement with the City of Peoria to provide service over the railroad. At that time, they were averaging over 200 cars a year serving customers in Pioneer Park.

Central Illinois Railway (CIRY) is currently seeking STB approval to discontinue service over the portion of the Peoria, Peoria Heights & Western railroad that serves Pioneer Park.

The City of Peoria, Peoria Park District and the State of Illinois recently spent \$2 million to extend rail service trucking into Pioneer Park from the West and upgrading rail infrastructure within the park so customers in the park could have rail service without having to cover the cost of maintaining 8 miles of Peoria, Peoria Heights & Western rail infrastructure that includes a bridge over US Rt. 150. The spur connection from the west between the UP mainline and Pioneer Park is less than two miles.

The baseline used by Pioneer Rail when comparing service from the west with service over Peoria, Peoria Heights & Western is their price of reportedly \$850/car charged at their discretion. PRRY has "loss leader" the cost of service over Peoria, Peoria Heights & Western in order to leverage STB operations authority approval on the Peoria, Peoria Heights & Western Railway which will allow PRRY to achieve their "hidden" agenda which has nothing to do with providing rail service to Carver Lumber Co. at a price that would allow them a reasonable return on investment. What short haul carrier would agree to two year old rates for a period of ten years unless another motive existed?

The City of Peoria, owner of the to-be-abandoned Rock Island rail (known as the Keller Branch) since 1984, has expended, along with the State of Illinois, a large sum of money to facilitate rail service to Pioneer Park since 1984 when it would have otherwise been abandoned. The City of Peoria, Peoria Park District and State of Illinois have recently invested an additional \$2 million to allow rail service to Pioneer Park to continue into the future.

As such, the City of Peoria pleads with the STB to allow the City to railbank portions of the Peoria, Peoria Heights & Western rail spur that directly services no current customers so that said rail can be utilized for another public purpose. In doing so, the City of Peoria is continuing its intent and desire to facilitate direct rail service to Pioneer Industrial Park.

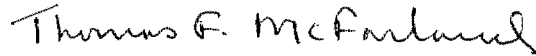
*Created by Stephen N. Van Winkle
City of Peoria Public Works Director
August 2, 2006*

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2006, I served the foregoing document, Reply In Opposition To Petition To Provide Alternative Rail Service, by UPS overnight mail, on the following:

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