

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

August 8, 2006

VIA E-FILING

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Filed herein via electronic filing is the Rebuttal Of Pioneer Industrial Railway Co. ("PIRY") In Support Of Its Petition To Provide Alternative Rail Service. As can be seen from the certificate of service attached, copies of this Rebuttal are being served today on the Federal Railroad Administration and all parties of record in AB-878 and AB-1066X. If there are any questions concerning this filing, 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**

**REBUTTAL IN SUPPORT OF 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**

August 8, 2006

**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.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

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

**REBUTTAL IN SUPPORT OF PETITION
TO PROVIDE ALTERNATIVE RAIL SERVICE**

On July 27, 2006, Pioneer Industrial Railway Co. ("PIRY") filed a Petition To Provide Alternative Rail Service ("Petition") on the Kellar Branch pursuant to 49 U.S.C. § 11123(a) and 49 CFR Part 1146. The Kellar Branch (the "Line") is owned by the City of Peoria ("City") and the Village of Peoria Heights ("Village")(collectively, "Cities") and Central Illinois Railroad Company ("CIRY") is the authorized operator of the Line. CIRY and the Cities replied to Petition on August 3 ("Reply"). Pursuant to 49 U.S.C. § 11123(a) and 49 CFR §1146(d)(3), PIRY hereby files this rebuttal in support of its Petition.

ARGUMENT

As PIRY set forth in its Petition, since CIRY became the Cities' operator of the Kellar Branch, there has been a substantial, measurable deterioration in service to the major shipper on the Line, Carver Lumber Company ("Carver"), and that deterioration in service more than justifies issuance of an alternative service order ("ASO") granting PIRY authority to operate over the Kellar Branch. In fact, CIRY's first attempt to provide service resulted in a runaway railcar and a collision with a corresponding derailment. Subsequent to that effort, CIRY never again performed service over the Kellar Branch. Instead, CIRY and the Cities continually told

Carver that CIRY would provide the requested service over a newly built Western Connection, and soon filed and obtained authority to discontinue operations on most of the Line, although that decision remains stayed.

Although the Cities and CIRY told this Board that the Western Connection was almost completed and that service to Carver over that connection would begin shortly, those statements were misleading. It was almost five months after those statements were made before service over the Western Connection began. That "replacement" service has been a disaster. As set forth in Carver Lumber's July 24 filing in AB-878 and AB-1066X, service times available via the new Western Connection are 400% longer than those previously available via PIRY over the Kellar Branch and costs have more than doubled. Competitive options have been reduced from access 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 now threatens Carver Lumber's own viability due to poor service and increased costs.

In light of this poor service, PIRY filed the ASO request. Under the statute, 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." To implement this statute, the Board has established a four part test: 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 can provide service 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. PIRY's Petition set forth why PIRY's ASO request met those standards.

What was CIRY's reply? Instead of addressing the merits of the four part regulatory test and Carver's most recent statements regarding CIRY's service failures, CIRY takes statements out of context from an April 17 letter of a former Carver employee to try and show that CIRY's management has tried to work with Carver and that its service is not to blame and tries to blame the service problems on UP. It then claims that the Kellar Branch is in such poor shape that it needs substantial rehabilitation and is unsafe to operate. None of these proffered excuses should prevent the Board from issuing an ASO.

A. The Carver April 17 Letter Does Not Establish That Service Is Now Adequate

It is true that Carver's former employee did find that CIRY's Manager was "accessible" and attempted to work with Carver. It is also true that once CIRY was able to obtain cars at the Western Connection, it did attempt to deliver them within a reasonable time frame over the new Western Connection. That same letter relied upon by CIRY, however, clearly sets out Carver's dissatisfaction with the overall new routing, of which CIRY is just a part. With respect to CIRY itself, that same letter makes clear that, notwithstanding the fact that CIRY has not yet received discontinuance authority to stop service over the Kellar Branch and thus continues to have a common carrier obligation to provide service, CIRY simply refused to route cars or even price cars via the Kellar Branch when requested to do so by the shippers. This failure to even route cars over the Kellar Branch even when requested to do so shows that there has not only been a substantial measurable deterioration of service over the Kellar Branch so as to justify issuance of

an ASO, but there has been a total service failure, regardless of how “accessible” CIRY’s general manager may have once been.

In fact, neither CIRY nor the Cities make any effort in their Reply to refute that service to Carver Lumber now takes 400% longer and costs twice as much. Instead, they attempt to place blame on UP for the service failures. In CIRY’s logic, because CIRY’s service over the Western Connection is reasonable, as measured from the time they get the cars from UP to their delivery to Carver, then there has been no service failure. But this logic ignores the realities that it was CIRY’s and the Cities’ voluntary actions to close down the Kellar Branch, close off interchanges with the other carriers, and reroute traffic over UP.¹ It is also the Cities’ and CIRY’s decision to deliberately ignore shipper routing instructions and to shut down the Kellar Branch despite CIRY’s continuing common carrier obligation to operate it. Thus, but for the Cities’ plan, the service failure would not have occurred.

Furthermore, CIRY’s logic ignores the statute and the regulations. The statute simply requires the ASO petitioner to show that the incumbent carrier “cannot transport the traffic offered to it in a manner that properly serves the public.” It may be that a substantial part of the problem is the involvement of UP in the new routing, but that involvement was forced by CIRY and its failure to operate the entire Line. The statute focuses on whether service that CIRY makes available properly serves the public; regardless of how the carrier has chosen to implement its service. Because railroads are a network industry, a carrier’s service necessarily is affected by the operations of its connections. But the statute requires that CIRY operate the Line

¹ These are actions that UP itself has not wholeheartedly endorsed. UP in fact has repeatedly warned that its Line was congested, that operations to serve Carver via the Western Connection would not be efficient, and that it could not provide the same level of service that has previously been provided to Carver. Yet, notwithstanding these warnings, the Cities persisted in their goal to close down the Kellar Branch and implement what they knew would be an inefficient move.

it is authorized to serve, i.e. the Kellar Branch, in a manner that properly serves the public.

Applying that test to this case, it is clear that either CIRY must transport the traffic to Carver over the Kellar Branch in a manner that properly serves the public, which it is not doing as it has said it will not route traffic over that route, or, CIRY must show that the service over the replacement routing is being done in a manner that best serves the public. Certainly a 400% increase in service times at twice the cost does not meet that test. Because CIRY fails the test either way, an ASO in favor of PIRY is more than justified.

Finally, reference to the April 17 letter does nothing to rebut Carver's more recent July 19 letter, which was signed by all three members of Carver's Board of Directors. As that letter makes clear, Carver views service over the new Western Connection as "inadequate to the exemplary service we have received from PIRY for many via the Kellar Branch." Carver has now become a "captive shipper," having lost access to eight line-haul carriers, and despite the fact that it has tried to work with CIRY and the Cities, those efforts have been to "no avail."

Furthermore, while it should have been unnecessary given the existing record, Carver has provided PIRY with a verified statement by Mr. Lee Miller, President of Carver Lumber, attached hereto as Exhibit 1 ("V.S. Miller"), that fully rebuts the notion that Carver is satisfied with CIRY's service. Mr. Miller makes it clear that "CIRY service is not, and never has been adequate or satisfactory. Carver is absolutely not better off with the 'western connection.'" V.S. Miller ¶ 2. As Mr. Miller points out, Carver's concern has always been that it have dependable, efficient, and cost-effective rail service. Carver was willing to give CIRY a try and was willing to try the new Western Connection and would have been happy with CIRY if they had performed, but as Mr. Miller states, "CIRY has not so performed, and Carver should not be penalized for its patience and willingness to consider the City's proposals." V.S. Miller at ¶5. It

is thus clear that the substantial, measurable deterioration in service is the direct result of decisions made by CIRY, and that those decisions have resulted in worse service, not better; more than justifying issuance of an ASO.

B. The Kellar Branch Can Be Operated Safely And Without Substantial Rehabilitation Costs

Another major part of the Board's test in determining whether or not to issue an ASO is the requirement that the petitioning carrier show that the alternative service can be provided safely without hurting service to existing customers of the alternative carrier and without unreasonably interfering with the incumbent's service. Because CIRY does not operate over the Kellar Branch and would not operate over the Kellar Branch if the ASO were granted, there is not a safety issue with respect to two carriers operating over the same line. Likewise, other than Carver, PIRY serves no other shipper, ensuring that no existing customer of PIRY would suffer as a result of the ASO. Accordingly, the real issue is whether the Line's physical condition allows for safe operations. On this issue, CIRY and the Cities have no credibility, having oftentimes presented misleading and contradictory statements. The Line can easily be restored to operating status within five days and at a price substantially less than the \$50,000 quoted in the Reply.

As set forth in the Petition, CIRY 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 investigated CIRY's claims and determined CIRY's statements to be untrue. As of the time the Petition was filed, there was no embargo, there was no FRA report of a failed line inspection, and the FRA had not put the line out of service - a direct contradiction to what Carver had been told. In fact, we now know that there was no FRA inspection or report until

July 28, 2006 (see Appendix 1 to CIRY/Cities Reply), *after* PIRY had filed the ASO Petition and long after CIRY had told Carver that FRA had forbidden it to use the Line.

Now, based upon the July 28th FRA report, CIRY repeats the assertion that “defective track conditions on the Kellar Branch” make the Line unsafe for CIRY to operate. PIRY does not take issue with the merits of the FRA report and its conclusion that there are ten defects that need to be corrected before the Line could operate at FRA Class 1 track safety standards. What is deliberately misleading in the Reply is the notion that the Kellar Branch would need to be rehabilitated to Class 1 track standards in order for CIRY or PIRY to operate over it. In the past ten years or so, the Kellar Branch has never operated as Class 1 track. PIRY has always operated that track as “excepted track” and, to PIRY’s knowledge, P&PU did the same before PIRY took over the lease. See Verified Statement of Michael Carr, President of PIRY, ¶ 1, attached hereto as Exhibit 2 (“V.S. Carr”). Thus, it is deliberately misleading for CIRY to use a Class 1 track standard when that standard for many years has not been the applicable standard for providing service to Carver.

The applicable standard is restoring the Line to excepted track status. To determine exactly what it would take to bring the Line back up to the “excepted track” standard, and accepting the FRA report as accurate, Mr. Roger Stice, track foreman for Keokuk Junction Railway Co. (“KJRY”) and a qualified track inspector, reviewed the report and PIRY’s previous track inspection records up to late 2005, when PIRY was required to vacate the Line. See Verified Statement of Roger Stice, attached hereto as Exhibit 3 (“V.S. Stice”). Of the defects noted on the FRA report, only #1 (brush cutting), #5 (wide gauge), and #6 (switch stands) are needed to restore the track to operable condition as excepted track. V.S. Stice at ¶ 5. In Mr. Stice’s expert opinion, this work could be accomplished in five working days and the cost of

labor and material would be \$9,609.26. Id. As Mr. Stice states, "I consider the defects noted to be of a minor nature." V.S. Stice at ¶ 8. The remaining defects noted by FRA would in fact have to be corrected in order for the track to be upgraded to Class 1 track. Mr. Stice believes that such work could be accomplished in four or five days and at a cost of approximately \$9,496.11, V.S. Stice at ¶ 6-7, but as noted, Class 1 status is not what is required to safely operate over the track.

Of course, CIRY claims that it would cost \$50,000 to bring the track to Class 1 status while Mr. Stice puts that figure at slightly less than \$20,000. But the real cost is the lower cost of less than \$10,000 to bring the track to excepted track status. As PIRY has said before, if it is granted ASO authority, it is prepared to fund those amounts in order to quickly and easily bring service back.² PIRY can and will have the Line fully operational within days and at its own expense.

Thus, while CIRY and the Cities want this Board to believe that they have not been operating over the Line because of safety reasons and that restoring the track to safe operating condition would be prohibitively expensive, those are simply false assertions being thrown out to once again mislead the public and the Board. The simple truth of the matter is that the Cities don't want any railroad to operate over the Line regardless of what the law says. As a result, they have invented one misleading statement and excuse after another to delay, impede, hinder, and otherwise obstruct low cost and efficient service to Carver.³

²It is important to note that Mr. Stice and Mr. Carr both confirm that when PIRY was required to vacate the track, the track was completely operable, safe, and in full compliance with excepted track status. See V.S. Stice at ¶ 4 and V.S. Carr at ¶ 2. Thus any deterioration of the track condition since that time is solely the fault and responsibility of CIRY and/or the Cities.

³ As another example of its often contradictory and misleading statements, on July 24 in Docket Nos. AB-878 and AB-1066X, CIRY stated in its filing that, according to a 2000 estimate from Illinois Department of Transportation, it would cost approximately \$2,015,469 to rehabilitate just

Finally, in a last ditch effort to somehow show that Carver would be worse off under an ASO, CIRY and the Cities claim that the \$50,000 cost to rehabilitate the Line would be passed on to Carver in the form of higher rail rates. This is simply untrue. First, as previously noted, the \$50,000 figure is not the correct cost to restore the Line to operable safe conditions. The correct cost is slightly less than \$20,000, as set forth by Mr. Stice, and PIRY is willing to fund that amount. Second, those costs would not be passed on to Carver because PIRY has already agreed with Carver on a contract rate, which would cover the term of the ASO and could be extended for up to ten years if the Cities would sell the Line to PIRY as PIRY has consistently requested them to do.⁴ This contract rate is half the rate that Carver currently pays. PIRY is confident that if an ASO is granted and eventually extended, that PIRY can recoup the rehabilitation costs through increased business on the Line or through reimbursement of those costs from various government loan or grant programs or through other private or public entities. See V.S. Carr at ¶ 5-6. Carver will be much better off under an ASO than under the status quo, a

6.29 miles of the Kellar Branch rail line. Of course on August 3rd, this same counsel and party now claims that it would only take \$50,000 to rehabilitate 8 miles of the Kellar Branch rail line. That's a difference of about \$1,965,469.

⁴ The Cities' main goal is to establish a trail over the entire Kellar Branch, not just the "unused segment of the Kellar Branch" cite at pg. 5 of the Reply. To accomplish this, PIRY in fact proposed a joint rail/trail operation if the Cities would sell the Line to PIRY. The Cities have so far rejected this proposal notwithstanding the fact that such a plan would restore cost effective efficient service to Carver and implement a trail. Had the Cities accepted the offer when made, Carver would not have suffered its service disruptions and additional expense, the trail would already been in place, and Carver's service restored. Thus, it is the Cities that acted illogically and apparently have a vendetta against PIRY. PIRY is not opposed to a trail and is not acting as a "front for entities who are opposed to the creation of a recreational trail," as CIRY claims. See V.S. Carr at ¶ 6.

fact that Carver fully understands and which is why Carver fully supports issuance of an ASO in this proceeding.⁵

CONCLUSION

As demonstrated by the Petition and this Rebuttal, PIRY has met each of the Board's requirements pursuant to 49 U.S.C. § 11123 and 49 CFR Part 1146.1 for issuance of an ASO. 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, which has suffered long enough with the unresponsive, infrequent and expensive "service" that 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



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

August 8, 2006

Attorneys for Pioneer Industrial
Railway Co.

⁵ The Reply also attaches an unverified "testimony" by Mr. Stephen N. Van Winkle, Director, City of Peoria Public Works Director, in an attempt to establish that PIRY could not make money operating the Line, to declare the line unsafe, and to otherwise disparage PIRY's character and motives. As the Park Director, Mr. Van Winkle is hardly qualified to opine on railroad maintenance, operating, and financial issues and his "testimony" should be given no weight. Furthermore, the statement was not verified in accordance with the Board's rules at 49 CFR § 1104.5 or § 1112.9. As such, the Board is entitled to reject that testimony in accordance with 49 CFR § 1104.8 or 1104.10.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

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

**REBUTTAL IN SUPPORT OF PETITION
TO PROVIDE ALTERNATIVE RAIL SERVICE**

EXHIBIT 1

VERIFIED STATEMENT OF LEE MILLER

FINANCE DOCKET NO. 34917

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

**REBUTTAL IN SUPPORT OF PETITION
TO PROVIDE ALTERNATIVE RAIL SERVICE**

VERIFIED STATEMENT OF LEE MILLER

My name is Lee Miller, and I am the President of Carver Lumber Company ("Carver"). I have reviewed the Response of CIRY dated August 3, 2006, to Pioneer Industrial Railway Co.'s ("PIRY's") Request for Alternative Service over the Kellar Branch railroad line, which Carver supports.

The statement of Carver's former President, Rob Happach, which is cited in the response, is taken out of context. Mr. Happach was attempting to cooperate with the City and Central Illinois Railroad Co. ("CIRY"), and attempting to be conciliatory. Unfortunately, our willingness to cooperate and "wait and see" attitude, failed to produce satisfactory results. CIRY service is not, and never has been adequate or satisfactory. Carver is absolutely not better off with the "western connection", and renews its request that the Board order the restoration of service over the Kellar Branch.

CIRY continues to refuse to route cars over the Kellar Branch, despite the fact that it is still a common carrier railroad line. I am informed and believe that CIRY has no local presence, and CIRY does not seem to know when there is a car at interchange. Carver generally notifies CIRY that a car needs to be delivered. I have no reason to believe that service or rates will improve in the future, whereas PIRY and Carver Lumber Company have already entered into an Agreement as to rates, in the event that PIRY is permitted to resume service on the Kellar Branch. That agreement provides for the restoration of Carver's previous Kellar Branch rate structure, which is less than half what we are currently paying to get cars from the TZPR yard to our facility. It allows provides

for as-needed five day per week service. Carver has the option to keep this agreement in place for up to ten years if PIRY is able to permanently restore service over the Kellar Branch. I also reasonably believe that PIRY will and can attract additional business to the Kellar Branch, if the connection to the TZPR remains open, and it can market competitive service, as opposed to captive Union Pacific service.

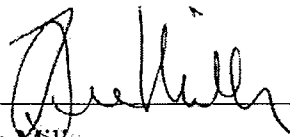
Carver believes that the restoration of service on the Kellar Branch is both feasible and necessary to its business. I have every reason to believe that PIRY is sincere in its desire to provide that service, and I believe that the suggestion that PIRY is a "front" for unnamed parties "opposed to the creation of a recreational trail" is pure fantasy.

Carver's concern is and always has been, dependable, efficient and cost-effective rail service. PIRY provided that to us for over nine years, but we were willing to accept another carrier, if they could so perform. CIRY has not so performed, and Carver should not be penalized for its patience and willingness to consider the City's proposals.

Carver respectfully requests that the Kellar Branch be immediately restored to operation by a willing carrier, PIRY.

VERIFICATION

I, Lee Miller, 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 8th day of August, 2006.



Lee Miller

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

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

**REBUTTAL IN SUPPORT OF PETITION
TO PROVIDE ALTERNATIVE RAIL SERVICE**

EXHIBIT 2

VERIFIED STATEMENT OF J. MICHAEL CARR

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

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

**REBUTTAL IN SUPPORT OF PETITION
TO PROVIDE ALTERNATIVE RAIL SERVICE**

VERIFIED STATEMENT OF J. MICHAEL CARR

My name is J. Michael Carr, and I am the President of Pioneer Industrial Railway Co. ("PIRY"). I have reviewed the Verified Statement of Roger Stice as to the costs of correcting the defects noted on the Federal Railroad Administration ("FRA") track inspection report dated July 28, 2006, on the line of railroad known as the "Kellar Branch" and I share his conclusions. As he notes, and based upon my knowledge, PIRY maintained and operated that track as "excepted track" since PIRY assumed operation of it in 1997, and I am informed and believe that it was operated as excepted track for many years prior thereto. At no time during recent history to my knowledge has the track been operated as Class 1 track nor does it need to be in order to operate safely and efficiently, as PIRY did when it operated the track.

Furthermore, PIRY always performed the required maintenance necessary to maintain the track at excepted track status. The "Kellar Branch" was in good operable condition up until CIRY assumed operation of the line in August 2005. Attached are copies of PIRY's weekly track inspection reports that verify that status. It appears that based upon what the FRA inspection reports show, CIRY did virtually no maintenance on the Kellar Branch since taking over operations, except perhaps for repairing the damage done by their runaway train. I am informed and believe that CIRY had a contractual obligation to the City of Peoria to maintain the line, as well as a continuing common carrier obligation to operate it, but it appears that CIRY is in violation of both of those

obligations. Unlike CIRY, PIRY is willing and able to immediately perform the work to make the track operable as excepted track, with its own forces, and, if directed, would correct the other defects noted on the FRA Report to bring the line up to Class 1 status.

Contrary to the statements made in the August 3 Reply filed by CIRY and the Cities, the cost of restoring the track to excepted track status will not be assessed to Carver Lumber Company. PIRY and Carver Lumber Company have already entered into an Agreement as to rates, in the event that PIRY is permitted to resume service on the Kellar Branch. That agreement provides for the restoration of Carver's previous Kellar Branch rate structure. Further, PIRY believes that the restoration of service on the Kellar Branch is both feasible and desirable.

The allegation that PIRY is a "front" for unnamed parties "opposed to the creation of a recreational trail" is absolutely false. PIRY can restore the track and can recoup the rehabilitation costs through increased business on the line or through reimbursement of those costs from various government loan or grant programs or through other private or public entities. In fact, Carver Lumber was not PIRY's only source of revenue on the Kellar Branch. Up until August, 2005, PIRY obtained revenue from car storage and trans-loading operations, and I believe such opportunities remain, and can be quickly reactivated.

PIRY has every reason to believe, and does believe, that in the event service is permanently restored on the Kellar Branch, PIRY can market its services to potential shippers, including those in the "west growth cell" where the new western connection has been built. If the Kellar Branch were reactivated, these shippers would have access to the Kellar Branch and to all eight line-haul railroads serving Peoria due to the construction of the western connection. Prior to said construction, this area had access only to the Union Pacific, and, being captive to one line-haul carrier, was unable to develop any traffic for many years. As such, the \$2 million allegedly spent to construct the "western connection" will not have been wasted as those expenditures will now allow for access to competitive rail service via the Kellar Branch, service that didn't exist before. On the other hand, if the Cities succeed in their plan to eliminate the Kellar Branch, Carver and potential other shippers will be forced to rely solely on the inadequate service provided by CIRY and UP via said "western connection." In addition, the uncertainty of rail

service to Pioneer Park has cost PIRY business and hampered its ability to attract customers. The major shipper in Pioneer Park (Gateway Milling) relocated a few years ago, in large part, PIRY believes, because of the uncertainty of rail service. If PIRY were once again allowed to operate over the Kellar Branch, even for the time period under the alternative rail service statute, I am convinced that PIRY can more than recoup its expense in restoring the track to excepted track status; this is especially so if PIRY can negotiate a permanent purchase of the line.

Indeed, PIRY desires to work with the Cities to find a permanent solution to both the desires of those who want a trail and those who need rail service. In that light, PIRY has previously offered to purchase the Kellar Branch and to work with the involved entities to establish a rail/trail operation. The Cities have so far rejected PIRY's proposal. It is our hope, however, that if PIRY's service is restored, the Cities will see that PIRY means what it says about working with them to find a permanent solution that would involve both a trail and rail service. In the meantime, I believe it is critical to the survival of Carver Lumber Company that service be restored immediately on the Kellar Branch, and PIRY is ready, willing, and able to do so.

TRACK INSPECTION REPORT
NO _____

DATE: 8-6-05 SIGNATURE: DJ Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 17.3

INSPECTION METHOD Eng ltr 102

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO _____

DATE: 7-29-05 SIGNATURE: D J Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 8.2

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO _____

DATE: 7-21-05 SIGNATURE: D J Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD via Rail Truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 26

DATE: 7-12-05 SIGNATURE: DJ Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Eng lite 102

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes
OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT

NO 29

DATE: 7-5-05 SIGNATURE: D J Henry

MAIN TRACK INSPECTED Yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Eng lite 102

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED Yes

OTHER TRACKS AND SWITCHES Yes

NO 24

MAIN TRACK INSPECTED Yes

INSPECTION METHOD Hi Rail Truck

LOCATION

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED Yes
OTHER TRACKS AND SWITCHES Yes

OTHER TRACKS AND SWITCHES Yes

TRACK INSPECTION REPORT
NO 23

DATE: 6-22-05 SIGNATURE: DZB King

MAIN TRACK INSPECTED Yes

FROM MP 0.1 TO MP 2.3

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

No Defects Found

MAIN TRACK SWITCHES WALKED Yes

OTHER TRACKS AND SWITCHES Yes

TRACK INSPECTION REPORT
NO 22

DATE: 6-16-05 SIGNATURE: D. J. Henry
MAIN TRACK INSPECTED Yes
FROM MP 0.1 TO MP 7.3
INSPECTION METHOD Eng 102 lite

LOCATION

RESULTS:

DEFECT

ACTION TAKEN/DATE

No New Defects

MAIN TRACK SWITCHES WALKED Yes
OTHER TRACKS AND SWITCHES Yes

NO 20

DATE: 6-8-09 SIGNATURE: A. J. Henry

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail truck

LOCATION

DEFECT

ACTION TAKEN/DATE

DEFECT	ACTION TAKEN/DATE
No New Defects	

MAIN TRACK SWITCHES WALKED 1105

OTHER TRACKS AND SWITCHES Yes

TRACK INSPECTION REPORT

NO 20

DATE: 5-26-05 SIGNATURE: A. J. Meier

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail Truck

RESULTS:-

LOCATION

DEFECT

ACTION TAKEN/DATE

	<u>ASPECT</u>	<u>ACTION TAKEN/DATE</u>
6.5	5 trees in a row	Needs 3 trees
Switch at Gateway Curve		

MAIN TRACK SWITCHES WALKED YES

OTHER TRACKS AND SWITCHES 1100

NO 19

SIGNATURE:

yes

Q.1

TO MP

7.3

Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE	
1	10/10/2010
2	10/10/2010
3	10/10/2010
4	10/10/2010
5	10/10/2010
6	10/10/2010
7	10/10/2010
8	10/10/2010
9	10/10/2010
10	10/10/2010
11	10/10/2010
12	10/10/2010
13	10/10/2010
14	10/10/2010
15	10/10/2010
16	10/10/2010
17	10/10/2010
18	10/10/2010
19	10/10/2010
20	10/10/2010
21	10/10/2010
22	10/10/2010
23	10/10/2010
24	10/10/2010
25	10/10/2010
26	10/10/2010
27	10/10/2010
28	10/10/2010
29	10/10/2010
30	10/10/2010
31	10/10/2010
32	10/10/2010
33	10/10/2010
34	10/10/2010
35	10/10/2010
36	10/10/2010
37	10/10/2010
38	10/10/2010
39	10/10/2010
40	10/10/2010
41	10/10/2010
42	10/10/2010
43	10/10/2010
44	10/10/2010
45	10/10/2010
46	10/10/2010
47	10/10/2010
48	10/10/2010
49	10/10/2010
50	10/10/2010
51	10/10/2010
52	10/10/2010
53	10/10/2010
54	10/10/2010
55	10/10/2010
56	10/10/2010
57	10/10/2010
58	10/10/2010
59	10/10/2010
60	10/10/2010
61	10/10/2010
62	10/10/2010
63	10/10/2010
64	10/10/2010
65	10/10/2010
66	10/10/2010
67	10/10/2010
68	10/10/2010
69	10/10/2010
70	10/10/2010
71	10/10/2010
72	10/10/2010
73	10/10/2010
74	10/10/2010
75	10/10/2010
76	10/10/2010
77	10/10/2010
78	10/10/2010
79	10/10/2010
80	10/10/2010
81	10/10/2010
82	10/10/2010
83	10/10/2010
84	10/10/2010
85	10/10/2010
86	10/10/2010
87	10/10/2010
88	10/10/2010
89	10/10/2010
90	10/10/2010
91	10/10/2010
92	10/10/2010
93	10/10/2010
94	10/10/2010
95	10/10/2010
96	10/10/2010
97	10/10/2010
98	10/10/2010
99	10/10/2010
100	10/10/2010

3.7

6 Ties in Row Bad

MAIN TRACK SWITCHES WALKED

OTHER TRACKS AND SWITCHES

TRACK INSPECTION REPORT
NO 18

DATE: 5-8-05 SIGNATURE: DJ Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

No New Defects found

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT

NO 17

DATE: 4-29-05 SIGNATURE: DJ Kenig

MAIN TRACK INSPECTED Yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

No New Defects Found

MAIN TRACK SWITCHES WALKED Yes

OTHER TRACKS AND SWITCHES Yes

TRACK INSPECTION REPORT
NO 16

DATE: 4-22-05 SIGNATURE: DJ Hering

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

None Found

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 15

DATE: 4-14-05 SIGNATURE: D. J. Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail track

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes
OTHER TRACKS AND SWITCHES yes

PRY TRACK INSPECTION REPORT
NO 14

DATE: 4-7-05 SIGNATURE: D J Henry
MAIN TRACK INSPECTED Yes
FROM MP 0.1 TO MP 7.3
INSPECTION METHOD Eng 102 Lite

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

No New Defects Found

MAIN TRACK SWITCHES WALKED Yes

OTHER TRACKS AND SWITCHES Yes

NO 13

SIGNATURE:

Yes

TO MR

Hi Rail truck

LOCATION

ACTION TAKEN/DATE

58 $\frac{3}{8}$ gage

1. Cage Rod

yes

yes

NO 12

MAIN TRACK INSPECTED Yes

INSPECTION METHOD Hi Rail Truck

ACTION TAKEN/DATE

OTHER TRACKS AND SWITCHES Yes

NO 11

SIGNATURE:

Yes

Q. 1

TO MP 7.3

Hi Rail Truck

LOCATION

ACTION TAKEN/DATE

42

Yes

TRACK INSPECTION REPORT
NO 10

DATE: 3-7-05 SIGNATURE: D. J. King

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes
OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 9

DATE: 3-1-05 SIGNATURE: D J Henry

MAIN TRACK INSPECTED D J Henry Yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail track

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 8

DATE: 2-23-05 SIGNATURE: DJ Henry

MAIN TRACK INSPECTED Yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail Truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 7

DATE: 2-17-05 SIGNATURE: D. Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail Truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 6

DATE: 2-12-05 SIGNATURE: D. Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail Truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 5

DATE: 2-3-05 SIGNATURE: D J Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.3

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

3.4

58 1/2" wide Gage

Put in Gage Rod

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 4

DATE: 1-26-05 SIGNATURE: D. J. King

MAIN TRACK INSPECTED Yes

FROM MP 0.1 TO MP 7.4

INSPECTION METHOD Hi Rail touch

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED Yes
OTHER TRACKS AND SWITCHES Yes

TRACK INSPECTION REPORT
NO 3

DATE: 1-20-05 SIGNATURE: DJ Henry

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.4

INSPECTION METHOD H-1 Rail Truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 2

DATE: 1-10-05 SIGNATURE: D. Menig

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.4

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

TRACK INSPECTION REPORT
NO 1

DATE: 1-4-05 SIGNATURE: D. J. Hennig

MAIN TRACK INSPECTED yes

FROM MP 0.1 TO MP 7.4

INSPECTION METHOD Hi Rail truck

RESULTS:

LOCATION

DEFECT

ACTION TAKEN/DATE

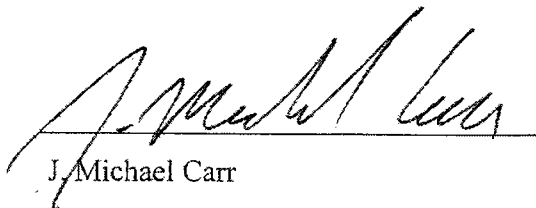
3.7 Broken Rail Head to be replaced

MAIN TRACK SWITCHES WALKED yes

OTHER TRACKS AND SWITCHES yes

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 8th day of August, 2006.



J. Michael Carr

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

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

**REBUTTAL IN SUPPORT OF PETITION
TO PROVIDE ALTERNATIVE RAIL SERVICE**

EXHIBIT 3

VERIFIED STATEMENT OF ROGER STICE

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34917

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

**REBUTTAL IN SUPPORT OF PETITION
TO PROVIDE ALTERNATIVE RAIL SERVICE**

VERIFIED STATEMENT OF ROGER STICE

My name is Roger Stice, and I am the track foreman of Keokuk Junction Railway Co. ("KJRY"), and a qualified track inspector.

I have been the track foreman of KJRY since 1986, and before that was a track laborer for Burlington Northern Railroad for eleven years. I am familiar with railroad maintenance, repair, rehabilitation and construction.

I reviewed the Federal Railroad Administration track inspection report dated July 28, 2006, on the line of railroad known as the "Kellar Branch", attached to CIRY's response of August 3, 2006. I also reviewed the track inspection reports of Pioneer Industrial Railway ("PIRY") for 2005.

I am informed and believe that the Kellar Branch was classified as excepted track when PIRY began operations over it in 1997, and for many years prior thereto. Based upon the inspection reports, it is my belief that the Kellar Branch was in good operable condition as excepted track when CIRY took over in August 2005.

Of the defects noted on the FRA report of July 28, 2006, only #1 (brush cutting) and #5 (wide gauge) and #6 (switch stands) are needed to restore the track to operable condition as excepted track. In addition, I am informed and believe that the switch north of Prospect Road is not needed to operate the railroad, but switch ties of both switches could be replaced and switches adjusted, along with the gauge repair and brush cutting, in

approximately five working days. I estimate the cost of labor and material to do this work at \$9,609.26.

The remaining defects would need to be corrected if the track were to be upgraded to Class I track. I have estimated that work as follows:

Item #2 – tie support – need to replace ties (1 working hour);

Item #3 – tie distribution – need to replace ties (1.5 working hours);

Item #4 – bolt holes - replace rails (4 working hours);

Item #7 – vertical split head – replace rail (2 working hours);

Item #8 – wash-outs – I am informed and believe that these wash-outs could be handled with placement of ballast/rip-rap and ditching (2 working days);

Item #9 – web separation – replace rail (2 working hours);

Item #10 – Less than 1 bolt per Rail – replace rail (2 working hours).

I estimate the cost of labor and material to complete the remaining work at \$9,496.11.

As a track professional, I consider the defects cited to all be of a minor nature. It is my opinion that, with normal maintenance, none of them should have prevented the safe operation of the railroad at any time in the past year.

VERIFICATION

I, Roger Stice, 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 8th day of August, 2006.



Roger Stice

CERTIFICATE OF SERVICE

This is to certify that on August 8, 2006, I caused the foregoing Rebuttal in support of Pioneer Industrial Railway Co.'s 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:



William A. Mullins

Attorney for Pioneer Industrial Railway Co.