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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 1056 (SUB-NO. 1X)

PIONEER INDUSTRIAL RAILWAY CO. LLC — DISCONTINUANCE OF
TRACKAGE RIGHTS EXEMPTION — IN PEORIA COUNTY, ILL.

**TRACKAGE RIGHTS DISCONTINUANCE
NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. PART 1152, SUBPART F**

Robert A. Wimbish
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**ATTORNEY FOR
PIONEER INDUSTRIAL RAILWAY CO. LLC**

Dated: February 15, 2023

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Pursuant the Board’s class exemption procedures at 49 C.F.R. part 1152, subpart F, Pioneer Industrial Railway Co. LLC (“PIRY”),¹ a Class III rail carrier, files this notice of exemption (the “Notice”) to authorize PIRY to terminate its trackage rights over approximately 1.07 miles of railroad line (a portion of the Kellar Branch) located between milepost 1.71 and 2.78 (the “Line”) in the City of Peoria, Peoria County, Illinois. A map depicting the Line is attached hereto as Exhibit A.

SUMMARY

This transaction serves to advance the strategic plans of the City of Peoria, Illinois (the “City”) to restore rail service to a customer over certain City-owned rail lines that have been out of service since 2010. Part one of the City’s plan was recently effectuated through a transaction authorized pursuant to *Pioneer Industrial Railway Co. – Change in Operator*

¹ As of January 1, 2023, the entity formerly known as “Pioneer Industrial Railway Co.” was legally reconstituted as a limited liability company – a change undertaken at the direction of PIRY’s relatively new corporate parent (*see Patriot Rail Company, et al. – Control Exemption – Pioneer Lines, Inc., et al.*, FD 36635 (STB served Aug. 26, 2022)) – hence the modest name change to “Pioneer Industrial Railway Co. LLC”.

Exemption – in Peoria County, IL, FD 36638 (served Oct. 19, 2022), whereby PIRY was authorized to replace the dissolved Central Illinois Railroad Company (“CIRY”) as the lessee and exclusive common carrier operator over approximately 3.74 route miles of City-owned railroad line, including roughly 1.5 route miles of another segment of the Kellar Branch extending between mileposts 8.50 and 10.0. The City originally purchased the Kellar Branch from the Trustee of the Chicago, Rock Island & Pacific Railroad Company (the “Rock Island”) in 1984 after the Rock Island Trustee secured authority to abandon it in 1980.² All common carrier service over the 5.72-mile middle portion of the Kellar Branch (between mileposts 2.78 and 8.50) ended in 2010 pursuant to *Pioneer Industrial Ry. Co. – Discontinuance of Service Exemption – Line in Peoria County, IL*, AB 1066 (Sub-No. 1X) (STB served Apr. 16, 2010); *Central Illinois R.R. – Discontinuance of Service Exemption – Line in Peoria County, IL.*, (AB 1066 (Sub-No. 1X) (STB served Apr. 16, 2010).

As part of the next phase of the City’s railroad service plan, which PIRY intends to advance through the present Notice, PIRY will discontinue its long-out-of-service trackage rights over the Line. Relatedly, and also as part of the City’s strategic railroad service plan, the City will separately seek authorization to discontinue the common carrier operations of the moribund CIRY, a past leasehold operator over the Line pursuant to the contemporaneously-filed *City of Peoria, IL – Discontinuance of Service Exemption – in Peoria County, IL*, AB 1066 (Sub-No. 3X) (“*City Petition*”), a discontinuance petition for exemption pursuant to 49 C.F.R. part

² The history of the Kellar Branch is discussed in *City of Peoria and the Village of Peoria Heights, IL – Adverse Discontinuance – Pioneer Indus. Ry. Co.*, AB 878 (STB served Nov. 19, 2007) at 1-2. See also *City of Peoria, IL, d/b/a/ Peoria, Peoria Heights & W. R.R. – Constr. of Connecting Track Exemption – in Peoria Cnty., IL*, FD 34395 (STB served Feb. 23, 2004).

1152, subpart G. Further details surrounding the City's railroad plans and its efforts to secure the termination of all common carrier operations on the Line are set forth in *City Petition*.

In accordance with the requirements of 49 C.F.R. § 1152.50(d)(2), PIRY submits the following information:

General Corporate Information: 49 C.F.R. § 1152.22(a)(1)-(2)

PIRY is a common carrier by rail which operates over certain trackage in Illinois, and which possesses long-unexercised trackage rights over the subject Line. PIRY is among 32 Class III railroads commonly controlled by Mitsubishi UFJ Financial Group, Inc., through the short line holding company Patriot Rail Company LLC.³

The complete name and address of PIRY is:

Pioneer Industrial Railway Co. LLC
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111

Relief Sought: 49 C.F.R. § 1152.22(a)(3)

Pursuant to the Board's class exemption set forth at 49 C.F.R. § 1152.50(b), PIRY seeks authority to discontinue its trackage rights over the Line extending from milepost 1.71 to milepost 2.78, a distance of about 1.07 miles, in the City of Peoria, Peoria County, Illinois.

As discussed in PIRY's October 2, 2022 notice of exemption in FD 36638 (at 5 n.10), although PIRY long held local trackage rights on the Kellar Branch, CIRY (as the leasehold operator on that line) was responsible for dispatching and track upkeep upon which PIRY's service depended. CIRY has not maintained or provided service over the Line for over a

³ See *Patriot Rail Company LLC, et al. – Control Exemption – Delta Southern Railroad, Inc.*, FD 36642 (STB served Dec. 23, 2022).

decade. With CIRY's involuntary dissolution in 2011, service along the lines ended, including PIRY's trackage rights operations.

Favorable action on the Notice and *City Petition* would facilitate the City's plans to convey about 550 feet of right of way and track comprising a portion of the Line to a shipper on the line segment, O'Brien Steel Service Co. ("O'Brien Steel"), who would use the track to connect to the Tazewell & Peoria Railroad ("TZPR"). In turn, TZPR has connecting rail lines a few hundred feet away from O'Brien Steel's rail siding, and PIRY understands that TZPR has agreed to provide rail service per materials included with *City Petition*.

Map: 49 C.F.R. § 1152.22(a)(4)

A map showing the location of the Line is attached hereto as Exhibit A.

PIRY's Representative: 49 C.F.R. § 1152.22(a)(7)

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Zip Codes Traversed: 49 C.F.R. § 1152.22(a)(8)

The Line is located entirely within United States Postal Service ZIP Code 61603.

Suitability for Other Public Purposes: 49 C.F.R. § 1152.22(e)(4)

As stated above, upon effectuation of the discontinuance of PIRY's trackage rights operations pursuant to this Notice, and the formal cession of CIRY's common carrier status with respect to the Line pursuant to *City Petition*, a portion of the Line will be transferred to O'Brien Steel to continue to be used as a private, industrial spur for continuing rail and other industry use purposes. Moreover, the proposed trackage rights discontinuance (unlike an

abandonment of a line, which is neither the subject of this proceeding or of *City Petition*) does not lend itself to alternative uses of the line segment in question, and, as such does not trigger interim trails use arrangements under the National Trails System Act, 16 U.S.C. 1247(d).

Qualification for Class Exemption: 49 C.F.R. § 1152.50(b)

PIRY has moved no local traffic over the Line for more than two years, and, to the best of PIRY's knowledge, *no railroad traffic of any sort* (local or overhead) has moved over the Line for at least two years. Because this is a stub-ended track, there is no overhead traffic to be diverted to other routes. No formal complaint against PIRY (by a shipper or a state or local governmental entity acting on behalf of such a shipper) regarding PIRY cessation of service on the line either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two years. See Certification and Verification of Bradley S. Gordon, Secretary and General Counsel of PIRY, attached as Exhibit B.

Public Use/Trail Conditions/OFAs Non-Applicability or Waiver

Because this proceeding involves only the cessation of trackage rights operations, and does not entail abandonment of a railroad line, interim trails use and public use arrangements are categorically inapplicable. *See, e.g., Boston and Maine Corporation – Abandonment Exemption – in Hillsboro County, NH*, AB 32- (Sub-No. 50X), et al. (ICC served Aug. 4, 1993), slip op. at 1, n. 1.

As explained in the foregoing discussion, PIRY is pursuing this trackage rights discontinuance voluntarily in the furtherance of the City's larger railroad transportation plans, which plans clearly conflict with the preservation of PIRY trackage rights operations under a hypothetical one-year subsidy arrangement pursuant to the Board's offer of financial assistance

(“OFA”) provisions at 49 C.F.R. § 1152.27. (In fact, it is practically impossible to envision a scenario where any third party, lacking the support of the City or O’Brien Steel, could articulate a plausible subsidy arrangement to justify the wholly unnecessary continuation of PIRY trackage rights for up to one year.)⁴

For these reasons, PIRY fully supports the City’s request, contained in *City Petition*, that the Board exempt both proceedings from the OFA provisions at 49 U.S.C. § 10904, and, consistent with such an OFA exemption, to waive the application of the Board’s corresponding OFA regulations at 49 C.F.R. § 1152.27. To that end, and to ensure uniform application of the requested exemption, PIRY hereby incorporates herein by reference the City’s case for OFA relief set forth at numbered pages 14-16 of the *City Petition*.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

PIRY intends to effectuate the subject discontinuance immediately upon the exemption’s effective date, expected to be April 6, 2023 (50 days from the Notice filing date).

Notice Requirements: 49 C.F.R. §§ 1152.50(d)(2), 1105.11, 1105.12

A certification that the agencies designated in 49 C.F.R. § 1152.50(d)(1) have been served with written prefiling notice of the proposed discontinuance of service and trackage rights is attached as Exhibit C. PIRY also certifies that, pursuant to 49 C.F.R. § 1105.12, it has

⁴ *Manufacturers Railway Company – Discontinuance Exemption – in St. Louis County, Mo.*, AB 1075X (STB served Feb. 6, 2013), 6 n. 8 (reversed in part on other grounds by *Central Texas & Colorado River Railway, LLC – Discontinuance Exemption – in McCulloch, San Saba, Mills, and Lampasas Counties, Tex.*, AB 1272X (STB served Apr. 27, 2022)) (“In a discontinuance proceeding, an OFA offeror is permitted only to offer to subsidize the discontinuing carrier’s service for one year, not to purchase the line. *See Pioneer Indus. Ry.—Discontinuance of Service Exemption—Line in Peoria Cnty., Ill.*, AB 1056X *et al.*, slip op. at 4 (STB served Apr. 16, 2010).”).

published notice of the proposed discontinuance in a newspaper of general circulation in Peoria County, the only county through which the Line passes. See Exhibit D. Because preparation of an Environmental/Historic Report is not required for PIRY's proposed discontinuance, the notice requirements of 49 C.F.R. §§ 1105.7(b) and 1105.11 are not applicable.

Labor Protection: 49 C.F.R. § 1152.50(d)(2)

The appropriate level of labor protection for the transaction proposed herein is that set forth in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979). However, no PIRY railroad employees would be adversely affected by the proposed discontinuance.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Because this proceeding entails the discontinuance of common carrier operation over a line via trackage rights, as opposed to an abandonment of that line, no environmental or historical reporting is required pursuant to 49 C.F.R. §§ 1105.6(c) and 1105.8(b).⁵

Respectfully submitted,

/s/ *R. A. Wimbish*

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Chicago, Illinois 60606-3208
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rwimbish@fletcher-sippel.com

**ATTORNEY FOR PIONEER INDUSTRIAL
RAILWAY CO. LLC**

Dated: February 15, 2023

⁵ *Columbus & Greenville Ry. Co. – Discontinuance of Service Exemption – in Greenwood, MS*, AB-297 (Sub-No. 103X) (STB served July 3, 2007) at 2 n.2.

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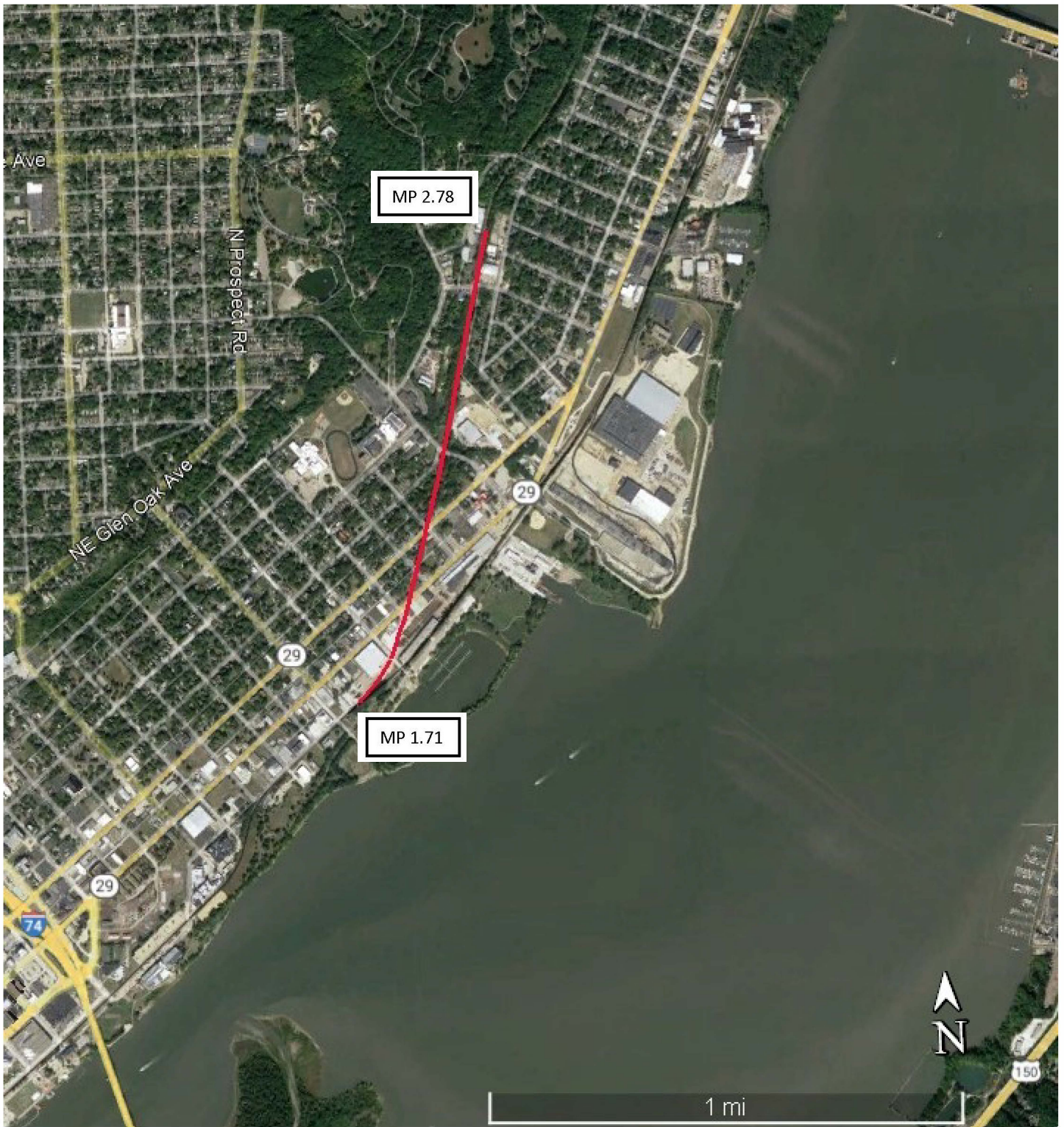
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**TRACKAGE RIGHTS DISCONTINUANCE
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EXHIBIT A

MAP

AB 1056 (Sub-No.1X)
Pioneer Industrial Railway Co. LLC -
Discontinuance of Service Exemption - in Peoria County, Illinois



**BEFORE THE
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EXHIBIT B

**CERTIFICATION PURSUANT TO
49 C.F.R. § 1152.50(b) AND
VERIFICATION**

CERTIFICATION AND VERIFICATION

I, Bradley S. Gordon, hereby certify and verify under penalty of perjury that I am Secretary and General Counsel of Pioneer Industrial Railway Co. ("PIRY"), and that:

1. No local traffic has moved for at least two years via PIRY's trackage rights over the Line between milepost 1.71 and 2.78 in the City of Peoria, Illinois; there has been, to the best of my knowledge and belief, no railroad traffic of any sort over the aforementioned line during the last two years; there has been no overhead traffic on this stub-ended line; and no formal complaint filed by a user of PIRY rail service on the Line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two years; and
2. I have read the foregoing Notice of Exemption, know the facts asserted therein, and the same are true as stated.



Bradley S. Gordon

Dated: February 15, 2023

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EXHIBIT C

**CERTIFICATE OF
SERVICE/PUBLICATION**

CERTIFICATE OF NOTIFICATION

I hereby certify that on February 3, 2023, written notice in the form attached hereto and containing the information specified in 49 C.F.R. § 1152.50(d)(1) was served by first class mail, postage prepaid, or by electronic mail, upon the following agencies designated in that subsection:

Mr. Randy Moore
Chief, Forest Service
U.S. Department of Agriculture
Email: randy.moore@usda.gov

Military Surface Deployment and Distribution Command
Transportation Engineering Agency
Attn: SDTE-SA (Railroads for National Defense)
1 Soldier Way
Bldg. 1900W
Scott AFB, IL 62225

Mr. Bob Ratcliffe
Division Chief, Conservation and Outdoor Recreation
National Park Service
Email: Bob_Ratcliffe@nps.gov

Illinois Department of Transportation
Office of Intermodal Project Implementation
2300 S. Dirksen Parkway
Springfield, IL 62764

Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

/s/ *R. A. Wimbish*
Robert A. Wimbish

Dated: February 15, 2023

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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ROBERT A. WIMBISH
(312) 252-1504
rwimbish@fletcher-sippel.com

February 3, 2023

Mr. Randy Moore
Chief, Forest Service
U.S. Department of Agriculture
Email: randy.moore@usda.gov

Re: **AB 1056 (Sub-No. 1X), Pioneer Industrial Railway Co. – Discontinuance of Service Exemption – in Peoria County, Illinois**

Dear Chief Moore:

On or after February 13, 2023, Pioneer Industrial Railway Co. (“PIRY”) intends to file with the Surface Transportation Board (“STB”) a notice of exemption pursuant to 49 C.F.R. part 1152, subpart F – *Exempt Abandonments and Discontinuances of Service and Trackage Rights*, to discontinue common carrier service over approximately 1.07 miles of railroad line (a portion of the Kellar Branch) located between milepost 1.71 and 2.78 (the “Line”) in the City of Peoria, Peoria County, Illinois. The Line traverses United States Postal Service ZIP Code 61603. The proceeding will be docketed as STB Docket No. AB 1056 (Sub-No. 1X). A map depicting the Line is enclosed.

This proceeding involves PIRY’s discontinuance of common carrier service over the Line, which is owned by the City of Peoria. Because PIRY does not own the Line, it cannot seek (and is not seeking) authorization to abandon the Line. PIRY understands that the question of whether the Line contains federally-granted rights-of-way (an issue relevant in abandonment proceedings) is inapplicable under the circumstances. The Line is not suited at this time for alternative public uses. Any documentation in the railroad’s possession relevant to the subject discontinuance notice of exemption (if any) will be made available promptly to those requesting it.

If you have any questions about the notice of exemption that PIRY plans soon to file, please review the applicable regulations or contact me at 312-252-1504, or contact the Surface Transportation Board, 395 E Street SW Washington, DC 20423-0001; TEL: (202) 245-0230.

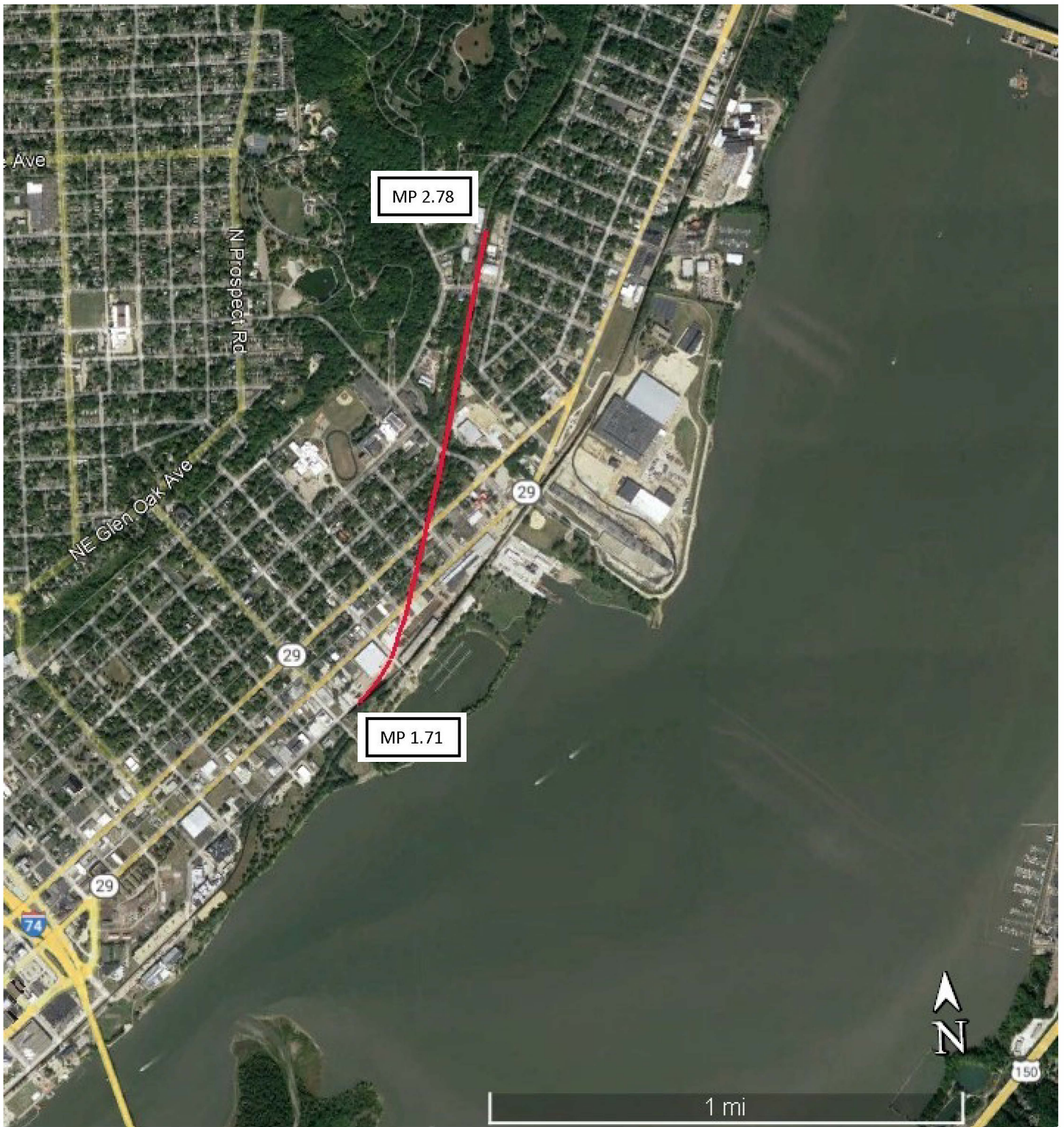
Very truly yours,

R. A. Wimbish

Robert A. Wimbish
Attorney for Pioneer Industrial Railway Co.

RAW/eg
Enclosure

AB 1056 (Sub-No.1X)
Pioneer Industrial Railway Co. -
Discontinuance of Service Exemption - in Peoria County, Illinois



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EXHIBIT D

**CERTIFICATE OF
SERVICE/PUBLICATION**

CERTIFICATE OF NEWSPAPER PUBLICATION

I hereby certify that a “Notice of Intent to Discontinue Trackage Rights” was published in the *Peoria Journal Star* in the form prescribed by 49 C.F.R. § 1105.12 on February 10, 2023, a newspaper of general circulation in Peoria County, where the subject rail line is located.

/s/ *R. A. Wimbish*
Robert A. Wimbish

Dated: February 15, 2023