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SERVICE DATE – APRIL 25, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-878

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

STB Docket No. AB-1066X

CENTRAL ILLINOIS RAILROAD COMPANY
—DISCONTINUANCE OF SERVICE EXEMPTION—
IN PEORIA COUNTY, IL

Decided: April 24, 2006

These proceedings relate to a line of railroad known as the Kellar Branch located in, and owned by, the City of Peoria (City) and the Village of Peoria Heights (collectively, the Cities) in Peoria County, IL. The Kellar Branch is located between milepost 1.71 and milepost 10.00, where it previously connected with the Peoria and Pekin Union Railway Company (P&PU) and now connects with Tazewell & Peoria Railroad, Inc.¹ The City acquired the branch already abandoned and entered into an agreement with P&PU for the latter to provide service to the shippers on the line.² P&PU assigned its rights under the agreement to Pioneer Industrial Railway Company (PIRY) in 1998, and PIRY obtained authority to operate the line.³

As relevant here, the Cities began efforts in 2001 to reconfigure rail service in the Peoria area and to convert a portion of the right-of-way into a recreational trail. To this end, the City

¹ See Tazewell & Peoria Railroad, Inc.—Lease and Operation Exemption—Peoria and Pekin Union Railway Company, STB Finance Docket No. 34544 (STB served Sept. 28, 2004).

² See Peoria and Pekin Union Railway Company—Exemption from 49 U.S.C. 10901, Finance Docket No. 30545 (ICC served Sept. 24, 1984).

³ See Pioneer Industrial Railway Company—Lease and Operation Exemption—Peoria, Peoria Heights & Western Railroad, STB Finance Docket No. 33549 (STB served Feb. 20, 1998).

acquired track to the west of the Kellar Branch from the Union Pacific Railroad Company (UP)⁴ and also filed a notice of exemption to construct a connecting track from the northwest end of the Kellar Branch to the former UP track.⁵ The Cities contracted with a replacement operator for PIRY – Central Illinois Railway Company (CIRY) – to temporarily provide service over the existing Kellar Branch until the completion of the connecting track authorized in Construction Exemption.⁶ The three existing shippers on the Kellar Branch would, according to the Cities, then be served either by the new western connection or by other routings and a major portion of the Kellar Branch would be converted into a trail.

On November 16, 2004, the Cities filed an adverse application in City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway, STB Docket No. AB-878 (Adverse Discontinuance) for discontinuance of PIRY’s operating authority. Notice was served and published in the Federal Register on February 24, 2005 (70 FR 9125-26). PIRY opposed the application. By a decision served on August 10, 2005, the Board granted the Cities’ application, allowing the Cities to proceed with efforts to remove PIRY from the line (August 2005 Decision).

By a petition filed in Central Illinois Railroad Company—Discontinuance Exemption—in Peoria County, IL, STB Docket No. AB-1066X (CIRY Discontinuance) on September 12, 2005, CIRY sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 6.29-mile segment of the line extending from milepost 8.5 to milepost 2.21. CIRY also sought an exemption from the offer of financial assistance and public use provisions of 49 U.S.C. 10904 and 10905, respectively. Notice of the filing was served and published in the Federal Register on September 30, 2005 (70 FR 57365). In a decision served on December 23, 2005 (December 2005 Decision), the Board granted the requests, subject to the standard employee protective conditions. The exemption was scheduled to become effective on January 22, 2006.

On January 4, 2006, Carver Lumber Company (Carver Lumber), the sole remaining shipper served over the line segment, filed a letter in CIRY Discontinuance. Carver Lumber asked the Board to reconsider the grant of discontinuance authority to CIRY, stating that it had not yet received service via the new western connection. On January 9, 2006, PIRY filed a

⁴ See City of Peoria, IL—Acquisition and Operation Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34066 (STB served July 25, 2001).

⁵ See City of Peoria, IL, d/b/a Peoria Heights & Western Railroad—Construction of Connecting Track Exemption—in Peoria County, IL, STB Finance Docket No. 34395 (STB served Feb. 23, 2004, and Sept. 27, 2004) (Construction Exemption).

⁶ 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).

petition for stay pending reconsideration and/or appeal of the December 2005 Decision. CIRY and the City jointly filed a response to Carver Lumber's letter and PIRY's petition on January 11, 2006. PIRY filed a letter on January 12, 2006, disputing the assertions made by CIRY and the City in their January 11, 2006 filing.⁷ On January 19, 2006, Carver Lumber also responded to the joint CIRY-City January 11, 2006 filing, requesting testing of the new western connection for some reasonable amount of time to ensure that Carver will have adequate service in the future before allowing the discontinuance authority to become effective. CIRY replied on the same day.

By order of the Chairman on January 20, 2006, the effectiveness of the exemption in CIRY Discontinuance was stayed pending further order of the Board, to allow time for the parties to provide additional information and for the Board to consider the issues raised by Carver Lumber after issuance of the December 2005 Decision.

SUBSEQUENT PLEADINGS

On January 24, 2006, PIRY filed a petition to reopen the August 2005 Decision, alleging new evidence and changed circumstances. Specifically, PIRY alleges that the failure of CIRY to provide service to Carver Lumber has undermined the Board's conclusion that "granting the Cities' application will not result in a diminution of service that has a serious adverse impact on shippers or the community." August 2005 Decision at 7. PIRY further contends that it is the only carrier willing and able to serve Carver Lumber. The Cities replied in opposition on March 6, 2006, arguing that PIRY has not established grounds for reopening Adverse Discontinuance because the service issues identified by PIRY are not relevant to the discontinuance of PIRY's service in that docket and can be appropriately addressed in CIRY Discontinuance.

On March 7, 2006, PIRY filed a motion to compel discovery from CIRY in CIRY Discontinuance. On March 9, 2006, PIRY filed a similar motion to compel discovery from the Cities in Adverse Discontinuance. The Cities and CIRY replied separately to the respective motions on March 20, 2006.

On March 23, 2006, PIRY also filed a motion to compel discovery responses in CIRY Discontinuance from the Pleasure Driveway and Park District of Peoria, IL. On March 27, 2006, PIRY voluntarily withdrew that motion, but renewed it by motion filed on April 17, 2006.

DISCUSSION AND CONCLUSIONS

Central to the Board's decision to approve both the adverse application for discontinuance of PIRY's services and the exemption allowing CIRY to discontinue service over a portion of the Kellar branch was the representation that the existing shippers on the line would

⁷ PIRY has also filed a petition for judicial review of the Board's decision in CIRY Discontinuance. Pioneer Industrial Railway Company v. Surface Transportation Board, No. 06-1019 (D.C. Cir. filed Jan. 12, 2006).

continue to have adequate rail service. However, the recent pleadings filed in these cases raise the strong possibility that rail service was not available at the time of those decisions. In its most recent filings, CIRY has stated that it has successfully delivered freight to Carver Lumber and maintains that adequate rail service is now available. But other recent filings raise several issues that call into question the availability and practicability of rail service to Carver Lumber now and in the future.

The current record is insufficient for the Board to determine the adequacy of current and future rail service to Carver Lumber. Moreover, Carver Lumber's request for time to evaluate the service options that the shipper may now have is reasonable in the circumstances presented here. Consequently, these proceedings will be held in abeyance to permit additional assessment of the situation and for further development of the record. CIRY will be given 90 days to make good on its representation to provide adequate rail service to Carver Lumber and fulfill its common carrier obligation under 49 U.S.C. 11101. This time period should also afford Carver Lumber adequate time to evaluate its rail service options. Additionally, both Carver Lumber and CIRY are directed to file comments with the Board at the conclusion of the 90-day period regarding service via the new western connection. PIRY will have 20 days thereafter to reply. The pending motions to compel discovery will also be held in abeyance during this period.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. These proceedings are held in abeyance pending further development of the record and issuance of a subsequent Board decision.
2. Carver Lumber and CIRY shall file comments regarding the adequacy of rail service by July 24, 2006. PIRY will have until August 14, 2006, to file a reply.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary