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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-878]

City of Peoria and Village of Peoria Heights, IL–Adverse Discontinuance–Pioneer Industrial  
Railway Company

On November 16, 2004, the City of Peoria and the Village of Peoria Heights, IL (Cities or applicants), filed an adverse application under 49 U.S.C. 10903, requesting that the Surface Transportation Board authorize the discontinuance of service by Pioneer Industrial Railway Company (PIRY) over a line of railroad known as the Kellar Branch. The Kellar Branch is located in Peoria Heights and Peoria and runs between milepost 1.71 and milepost 10.0. The line traverses United States Postal Service ZIP Codes 61602 and 61616 and includes no stations.

The Cities state that the Kellar Branch was fully abandoned by the Chicago, Rock Island & Pacific Railroad Company and that Peoria acquired the line from the Rock Island Trustee in 1984. According to the Cities, Peoria entered into an operating agreement with Peoria and Pekin Union Railway Company (P&PU) to serve shippers. P&PU obtained an exemption from 49 U.S.C. 10901 to operate the line. Peoria and Pekin Union Railway Co.–Exemption from 49 U.S.C. 10901, Finance Docket No. 30545 (ICC served Sept. 18, 1984). Peoria Heights later obtained a 25 percent ownership interest in the Kellar Branch. In

1998, PIRY became the sole operator of the line as assignee of P&PU's rights under the operating agreement with the Cities. Pioneer Industrial Railway Co.–Lease and Operation Exemption–Peoria, Peoria Heights & Western Railroad, STB Finance Docket No. 33549 (STB served Feb. 20, 1998).

Applicants assert that the operating agreement with PIRY expired on July 10, 2004, and that, prior to that date, they notified PIRY that they intended to contract with a different operator for continued rail service on the line. The Cities indicate that they have entered into an operating agreement with Central Illinois Railroad Company (CIRY), which has obtained an exemption from 49 U.S.C. 10901 to operate the line. Central Illinois Railroad Company–Operation Exemption–Rail Line of the City of Peoria and Village of Peoria Heights, in Peoria and Peoria Heights, Peoria County, IL, STB Finance Docket No. 34518 (STB served June 28, 2004).<sup>1</sup> According to the Cities, PIRY has indicated that it will not voluntarily relinquish its operating authority on the Kellar Branch, thus necessitating the filing of this application.

The Cities point out that the operating agreement between Peoria and CIRY is temporary until Peoria can complete construction of a connection between the Kellar Branch and a 1.9-mile rail line to the west acquired from Union Pacific Railroad Company in 2001. See City of Peoria, IL–Construction of Connecting Track Exemption–Peoria County, IL, STB

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<sup>1</sup> By a decision served on July 1, 2004, the Board denied a request by PIRY for stay of the effectiveness of the exemption.

Finance Docket No. 34395 (STB served Sept. 27, 2004). Applicants state that, after completion of the connecting track, CIRY will provide service from the west to the two shippers located on the western part of the Kellar Branch and the third shipper, located on the eastern part of the Branch, will be served from the east by CIRY or another rail carrier arranged for by Peoria. According to applicants, these shippers either support the discontinuance or are neutral on the matter. The Cities propose to turn the 6.29-mile segment of the line located in between the active shippers into a recreational trail. The Cities state that they seek discontinuance rather than abandonment authority here because the Kellar Branch had already been abandoned when Peoria acquired it without the need for Board acquisition authority.

In a decision served in this proceeding on September 10, 2004, the Cities were granted a waiver of filing requirements in 49 CFR 1152 and were given permission to file an adverse discontinuance application containing the following information: (1) the name and address of the applicant; (2) the name and address of counsel; (3) a detailed map of the facilities involved; (4) the total carloads broken out for each of the shippers currently using the line; (5) a summary of the principal commodities handled; (6) a summary operating plan for operations of the substitute carrier; (7) certification that the City's current or proposed operations comply, or will comply, with all federal and state safety requirements; (8) an opinion of counsel that the prior lease agreement with PIRY expired in accordance with its terms; (9) documentation from the Cities that authorizes the operations of the substituted service; (10) a statement on behalf of the

Cities of the reasons for the application and the benefits that will be obtained if the application is approved; and (11) supporting statements from shippers. The Cities were also granted a waiver of all notice and publication requirements, but were required to serve a copy of their application on the shippers on the line, PIRY, all connecting carriers, and the Illinois Commerce Commission.

There is no indication that the line contains any federally granted rights-of-way. Any documentation in the Cities' possession will be made available promptly to those requesting it. Applicants' entire case for discontinuance of service was filed with the application.

The interests of affected railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed discontinuance or protests (including the protestant's entire opposition case). Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking, and public use requests are not appropriate. Also, offers of financial assistance (OFA) will not be entertained in this proceeding.<sup>2</sup>

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<sup>2</sup> As noted in the waiver decision, on July 23, 2004, PIRY filed a notice of intent to file an OFA to purchase the Kellar Branch and requested certain information and data from the Cities. PIRY has characterized the Cities' application as seeking an adverse abandonment rather than a discontinuance, in light of applicants' trail use proposal. The Cities filed a motion to reject PIRY's filing, arguing that, under Board precedent, OFAs to purchase are not entertained in discontinuance proceedings. PIRY replied to the Cities' motion on August 12, 2004. This issue will be resolved in the decision on the merits in this proceeding.

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest by March 21, 2005. Person who may oppose the discontinuance, but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should also file comments by March 21, 2005. Parties seeking information concerning the filing of protests should refer to section 1152.25. The due date for applicants' reply is April 5, 2005.

All filings in response to this notice must refer to STB Docket No. AB-878 and must be sent to: (1) Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001; and (2) Thomas F. McFarland, Thomas F. McFarland, P.C. 208 South LaSalle Street, Suite 1890 Chicago, IL 60604-1112. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in section 1152, every document filed with the Board must be served on all parties to this proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment/discontinuance procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment/discontinuance regulations at 49 CFR part 1152. [Assistance for the

hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

The September 10 decision waived compliance with environmental and historic regulations because the Cities proposed their application as a request to substitute operators on the line. Accordingly, no environmental assessment will be prepared in this proceeding.<sup>3</sup>

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“WWW.STB.DOT.GOV.”

Decided: February 17, 2005.

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

Vernon A. Williams

Secretary

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<sup>3</sup> The Board there noted, however, that, in light of the issue raised regarding whether this filing should be for adverse abandonment or adverse discontinuance, the Cities should be aware that they run the risk of delaying a ruling on their application if the Board concludes that the application should be for abandonment, because compliance with the Board’s environmental and historic regulations might then be necessary.