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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34917

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

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: January 12, 2007

Pioneer Industrial Railway Company (PIRY) has filed a petition under 49 U.S.C. 11123 and 49 CFR part 1146,¹ for an order authorizing it to provide interim alternative rail service over a line in Peoria County, IL. PIRY has also requested that the Board reopen its August 2005 decision granting an application for adverse discontinuance of PIRY's operating authority over the same line. We will grant the petition to reopen, but deny PIRY's request to provide alternative service.

BACKGROUND

These proceedings relate to a line of railroad known as the Kellar Branch located in, and owned by, the City of Peoria (the City) and the Village of Peoria Heights (collectively, the Cities) in Peoria County, IL. The Kellar Branch is located between milepost 1.71, where it previously connected with the Peoria and Pekin Union Railway Company (P&PU) and now

¹ These rules were adopted in Expedited Relief for Service Inadequacies, 3 S.T.B. 968 (1998) (Service Inadequacies).

connects with Tazewell & Peoria Railroad, Inc.,² and milepost 10.00. The City acquired the branch after it had been abandoned³ and entered into an agreement with P&PU for the latter to provide service to the shippers on the line.⁴ P&PU assigned its rights under the agreement to PIRY in 1998, and PIRY obtained authority to operate the line.⁵ The Cities have never obtained any operating authority from the Board, nor have they held themselves out as a common carrier.

As relevant here, the Cities began efforts in 2001 to reconfigure rail service in the Peoria area and to convert a portion of the Kellar Branch right-of-way into a recreational trail. To this end, the City acquired track leading toward the Kellar Branch from the west from the Union Pacific Railroad Company (UP).⁶ The City also filed a notice of exemption under 49 CFR 1150.36 to construct a connecting track from the northwest end of the Kellar Branch to the former UP track.⁷ The Cities maintained that their operating agreement with PIRY had expired by its terms on July 10, 2004, and contracted with Central Illinois Railway Company (CIRY) to temporarily provide service over the existing Kellar Branch in lieu of PIRY until the completion of the connecting track authorized in Construction Exemption.⁸ The three existing shippers on the Kellar Branch would, according to the Cities, then be served either by the new “western

² 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).

³ The branch was abandoned by the bankrupt Chicago, Rock Island and Pacific Railroad Company in 1980. Chicago, RI & P.R. Co. Abandonment, 363 I.C.C. 150 (1980).

⁴ See Peoria and Pekin Union Railway Company—Exemption from 49 U.S.C. 10901, Finance Docket No. 30545 (ICC served Sept. 24, 1984).

⁵ See Pioneer Industrial Railway Company—Lease and Operation Exemption—Peoria, Peoria Heights & Western Railroad, STB Finance Docket No. 33549 (STB served Feb. 20, 1998).

⁶ See City of Peoria, IL—Acquisition and Operation Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34066 (STB served July 25, 2001).

⁷ 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).

⁸ CIRY invoked the notice of exemption procedures at 49 CFR 1150.41 to operate the Kellar Branch. See 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).

connection” or by other routings and a major portion of the Kellar Branch would be converted into a recreational trail.⁹

On November 16, 2004, the Cities filed an application in City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway, STB Docket No. AB-878 (Adverse Discontinuance), asking the Board to declare that the public convenience and necessity (PC&N) no longer required the operation of PIRY on the Kellar Branch. 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 (August 2005 Decision), the Board granted the Cities’ application, allowing the Cities to proceed with efforts to remove PIRY from the line under state law.¹⁰ See id. at 5-6.

By 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 Kellar Branch extending from milepost 8.5 to milepost 2.21. CIRY explained that the discontinuance authority was necessary to enable the Cities to convert the line into a recreational trail. CIRY also stated that it would not need to operate in the future over the subject segment because the existing shippers would receive service from the north or south of the segment. It noted that there had been no local traffic on the segment for more than 2 years and that overhead traffic could and would be rerouted. 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.¹¹ The exemption was scheduled to become effective on January 22, 2006.

But on January 4, 2006, Carver Lumber Company (Carver Lumber), the sole remaining shipper served over the Kellar Branch, filed a letter in CIRY Discontinuance. Carver Lumber asked the Board to reconsider the grant of discontinuance authority to CIRY, stating that it had

⁹ CIRY also invoked the notice of exemption procedures to operate the western connection. See Central Illinois Railroad Company—Operation Exemption—Rail Line of the City of Peoria, IL, STB Finance Docket No. 34753 (STB served Oct. 6, 2005).

¹⁰ Litigation regarding whether PIRY can be evicted from the line under the operating agreement it had entered into with the Cities evidently remains pending in a state court.

¹¹ The Board also rejected PIRY’s argument that CIRY should have been required to prepare environmental documentation.

not yet received service via the new western connection. On January 9, 2006, PIRY filed a 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.¹² On January 19, 2006, Carver Lumber also responded to the joint CIRY-City January 11, 2006 filing, requesting that CIRY's service to it over the new western connection be monitored for some reasonable amount of time to ensure that Carver Lumber would have adequate service in the future before allowing the discontinuance authority to become effective. CIRY replied on the same day.

By order entered 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 requests made by Carver Lumber.

On January 24, 2006, PIRY followed up on Carver Lumber's requests by filing a petition to reopen the August 2005 Decision. 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. 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.

In a decision served April 25, 2006, the Board, through the Director of the Office of Proceedings, found that the record at the time was insufficient to determine the adequacy of current and future rail service to Carver Lumber. Consequently, these proceedings were held in abeyance pending further development of the record, and the parties were given 90 days for

¹² 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).

CIRY to make good on its representation to provide adequate rail service to Carver Lumber and to allow that shipper to evaluate its rail service options. Both Carver Lumber and CIRY were directed to file comments regarding the adequacy of rail service by July 24, 2006, and PIRY was permitted until August 14, 2006, to file a reply.

SUBSEQUENT PLEADINGS

On July 21, 2006, Carver Lumber filed a letter in response to the Board's request for comments on the adequacy of rail service, stating that, while there is now a physical rail connection to Carver's facility over the new western connection, the service is inadequate compared to the service previously received from PIRY over the Kellar Branch. Carver Lumber states that its delivery time has increased by 400% (from 1-2 days to 4-8 days) and that its rates have increased by 121% (from \$872 per car to \$1,931 per car). Carver Lumber adds that it was forced to transload material for a period of nearly 5 months, resulting in costs of \$41,605.10, after CIRY's single attempt to serve it over the Kellar Branch resulted in runaway cars, a collision, and a derailment. Carver Lumber expresses concern that the western connection gives it access to only one line-haul carrier, UP, rather than to its previous eight line-haul carriers. The shipper claims that the loss of Kellar Branch service has put it at a significant competitive disadvantage and threatens the livelihood of its 50 employees.

On July 24, 2006, CIRY filed comments stating that rail service to Carver Lumber via the western connection began on March 20, 2006, and that 23 railcars have been delivered since then. According to CIRY, it has not received any complaint from Carver Lumber regarding the adequacy of rail service for those cars.

On July 27, 2006, PIRY filed a petition in the lead docket here seeking an order authorizing it to provide interim alternative rail service over the Kellar Branch pursuant to 49 U.S.C. 11123 and 49 CFR part 1146. PIRY argues that there has been a substantial, measurable deterioration in service to Carver Lumber since CIRY became the Cities' operator, and that Carver Lumber is at risk of going out of business unless it can receive adequate rail service. PIRY contends that it meets all of the requirements at 49 CFR 1146 for the relief sought, and it seeks an order permitting it to provide immediate localized service relief to Carver Lumber and any other shipper along the line.

On August 3, 2006, CIRY and the Cities filed a reply in opposition to PIRY's petition to provide alternative rail service. They cite an April 17, 2006 letter from Carver Lumber indicating that the shipper has found CIRY to be "a reliable partner," and that any problems involve CIRY's connecting carrier, UP. CIRY and the Cities also argue that defective track conditions have made it unsafe to operate over the Kellar Branch, citing in support a July 28, 2006 Federal Railroad Administration (FRA) Inspection Report.

PIRY filed a statement in rebuttal on August 8, 2006, arguing that Carver Lumber's April 17 letter clearly sets out the shipper's dissatisfaction with the service it is receiving. PIRY

maintains that, even if a substantial part of the problem with the new routing involves UP, UP's involvement was forced by CIRY and by its actions in ceasing service over the Kellar Branch and rerouting Carver Lumber's traffic over the western connection to UP. PIRY also states that the Kellar Branch can be operated profitably and safely without substantial rehabilitation costs because it need only be restored to "excepted" track status, as defined by FRA. PIRY offers to pay the cost of bringing the Kellar Branch track back to that level of service.

On August 14, 2006, PIRY filed a reply to the comments of Carver Lumber and CIRY. PIRY again argues that Carver Lumber is not receiving adequate service from CIRY and that CIRY's rates have put Carver Lumber at risk of going out of business. PIRY adds that CIRY's own statements regarding the limited revenue that the shipper would provide indicate that Carver Lumber could potentially lose CIRY's service via the western connection or face new rate increases, which would further threaten the shipper's business. PIRY states that it would be amenable to negotiate with the Cities for joint rail and trail use of the Kellar Branch.

On August 16, 2006, CIRY and the Cities filed a motion for leave to supplement the record with a rehabilitation cost estimate. They attach an estimate of \$546,705 to rehabilitate the Kellar Branch. PIRY filed a reply in opposition to this motion on August 21, 2006, arguing that the estimate is both untimely and unsubstantiated.¹³

On August 30, 2006, Carver Lumber filed a letter urging the Board to grant PIRY's alternative service request. On August 31, 2006, CIRY and the Cities filed shipment records kept by CIRY to show that CIRY is providing adequate and reliable rail service to Carver Lumber, because it has placed cars at the shipper's facility no more than 2 hours after receiving the cars from UP at Pioneer Junction. PIRY filed a letter on September 5, 2006, asking the Board to reject this evidence as untimely, unverified, and misleading because it shows notification times rather than delivery times.¹⁴ On September 6, 2006, CIRY and the Cities filed with the Board a copy of CIRY's General Order 06-01, effective August 21, 2006, indicating that the portion of the Kellar Branch between milepost 1.64 and milepost 8.32 has been taken out of service on account of poor track conditions. On September 25, 2006, Carver Lumber filed a letter in which it asserts retaliation by CIRY against it for its support of PIRY, a lack of communication between CIRY and UP on its shipments, and CIRY's general lack of interest in

¹³ The motion for leave to supplement the record with this rehabilitation estimate will be denied as moot. Our subsequent findings in this decision will be based on evidence and argument wholly unrelated to the subject matter of the motion. Our denial will, however, be without prejudice to CIRY and the Cities reintroducing this material in a future proceeding.

¹⁴ PIRY's request that we reject this information on notification times will be denied in the interest of ensuring a complete record. Also, PIRY's request goes more to the weight to be accorded the objected to information than to its admissibility.

serving Carver Lumber. The shipper also renews its request for immediate Board assistance in this matter. On October 3, 2006, CIRY filed a letter denying Carver Lumber's allegations of retaliation and again opposing the request for alternative service.

Carver Lumber filed a letter on October 17, 2006, reiterating its argument that it is not receiving adequate service, alleging that CIRY is allowing cars to sit for several days after receiving delivery notification from UP, and stating that CIRY has closed the western connection for an unspecified time for a crossing project. On November 6, 2006, CIRY filed a response to Carver Lumber's October 17 letter. CIRY states that the closure of the western connection to which Carver Lumber refers was only between October 9, 2006 and October 12, 2006, Carver Lumber was advised well in advance of this closure, and no cars were delivered to, or picked up, from the UP interchange during the period of closure. CIRY maintains that the western connection has been open for service continuously since October 12, 2006. On November 24, 2006, PIRY filed a motion to strike CIRY's November 6, 2006 filing, to which CIRY replied on November 28, 2006. No basis has been shown for striking the November 6 filing.¹⁵

On November 28, 2006, PIRY filed a petition to reject or revoke as materially false and misleading CIRY's exemption to operate the western connection in STB Finance Docket No. 34753. Finally, on December 5, 2006, CIRY requested permission to withdraw its petition for exemption to discontinue service over the Kellar Branch in CIRY Discontinuance, citing new potential business opportunities on the line.

DISCUSSION AND CONCLUSIONS

Petition to Reopen Adverse Discontinuance

Under 49 CFR 1152.25(e)(4), a petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. The Board will grant a petition to reopen only upon a showing that the challenged action would be materially affected by one or more of those criteria. 49 CFR 1152.25(e)(2)(ii). In its petition and in subsequent pleadings in these proceedings, PIRY argues that Carver Lumber's letters to the Board show that the fundamental premises of the August 2005 Decision granting an adverse discontinuance of PIRY's service are no longer true, and that

¹⁵ On October 23, 2006, O'Brien Steel Service Co. (O'Brien), a shipper located on the Kellar Branch, but not on the segment at issue here, filed a letter expressing satisfaction with CIRY's service and opposition to the prospect of PIRY's possible resumption of its service along the Kellar Branch. PIRY filed a reply on October 26, 2006, disputing O'Brien's assertions about PIRY's service and emphasizing CIRY's service shortcomings as to Carver Lumber. CIRY responded on October 31, 2006, and included a statement from O'Brien in response to PIRY's filing.

circumstances have changed dramatically from what the Board believed them to be at the time of that decision. As new evidence and changed circumstances, PIRY argues that there is now a shipper, Carver Lumber, who opposes the Cities' plans and seeks the restoration of PIRY's service over the Kellar Branch. PIRY further argues that CIRY has failed to provide the adequate service that it promised—a promise the Board heavily relied upon in the August 2005 Decision.¹⁶

We will grant PIRY's petition to reopen the August 2005 Decision. The statutory standard governing discontinuance of service is whether the present or future PC&N require or permit the proposed action. 49 U.S.C. 10903. In implementing this statutory standard in adverse proceedings, we consider the relative burdens that continuation of service on the one hand, and cessation of service on the other, would have on the involved carrier, on the owner-lessor of the line, and on the public. In conducting that balancing test in the August 2005 Decision, the Board relied on the Cities' representations that the Cities' plan would maintain "the existing level of rail service to the satisfaction of the users of that service." August 2005 Decision, slip op. at 7. Central to that analysis was the fact that the evidence of record at that time did not demonstrate that shippers would lose routing options or receive inferior service should PIRY's service be discontinued. Id. The Board relied upon the fact that no shippers had objected to the discontinuance of PIRY's service, the substitution of CIRY as the operator, or the plans for recreational trail use. Id.

Circumstances have changed. We now have evidence that Carver Lumber objects to the Cities' plans and is dissatisfied with the service it is receiving from CIRY. According to Carver Lumber, the service is slower and more expensive, and has been subject to delays and interruptions. In granting PIRY's petition to reopen, we are not suggesting that rail service must always continue at the same level as in the past. Here, however, the Board specifically predicated its August 2005 Decision on the Cities' statement that they would maintain the existing level of service to the satisfaction of the users of that service. In these circumstances, it is appropriate to reconsider our August 2005 Decision now that Carver Lumber's evidence has cast doubt on the representation we had previously relied on.

Because we find that the new evidence and changed circumstances presented by PIRY may materially affect our analysis in the August 2005 Decision, we will grant the petition to reopen. Upon reopening, we will conduct the balancing test as we customarily would in any other adverse discontinuance proceeding.

¹⁶ We note that, as part of its argument in its petition to reopen, PIRY relied on the fact that Carver Lumber was "completely cut off from rail service." PIRY Petition to Provide Alternative Rail Service at 12. Because Carver Lumber is now receiving service via the western connection, that allegation is no longer true and we will now focus strictly on the adequacy of CIRY's current service.

Accordingly, to allow us properly to implement the statutory PC&N standard in Adverse Discontinuance, we instruct the parties to supplement the existing record by submitting additional evidence to the Board regarding the relative benefits and burdens that continuation of PIRY's service on the Kellar Branch, on the one hand, and the cessation of PIRY's service on the other, would have on the involved carrier, on the owner-lessor of the line, and on the public. We will require this evidence on an expedited basis so as to resolve these issues as quickly as possible. The Cities' and CIRY's evidence is due on February 12, 2007. PIRY's and Carver Lumber's replies are due on March 5, 2007.

Alternative Service Request

Under 49 U.S.C. 11123 and 49 CFR 1146.1, we have established procedures pursuant to which a shipper or railroad may petition the Board for an order prescribing alternative rail service. A petition seeking such relief must: (1) show 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 time period; and (3) contain a commitment from an alternative carrier to meet current transportation needs, and show that this service can be performed safely without hurting service to existing customers of the alternative carrier and without unreasonably interfering with the incumbent's service.¹⁷ 49 CFR 1146.1. These procedures are for localized immediate service relief. Service Inadequacies, 3 S.T.B. at 972 n.11.

PIRY argues that, since CIRY became the Cities' operator, there has been a substantial, measurable deterioration in Carver Lumber's service. As support, PIRY relies on the letter from Carver Lumber filed July 21, 2006, in which the shipper describes its dissatisfaction with its current service, particularly increased delivery times and increased rates, the 5-month period before the western connection became operational during which CIRY provided no service (forcing Carver Lumber to transload material), and the loss of competitive options with line haul carriers other than UP.

We do not believe that PIRY has shown, as to Carver Lumber, "a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent rail carrier." 49 CFR 1146.1(a). PIRY relies on the increased cost to Carver for service, noting that the rates for delivery of cars via the western connection (\$1931 per car) are 121% greater than the rates had been for delivery via the Kellar Branch (\$872 per car).¹⁸ However, rates or charges

¹⁷ The petition must be served, by hand or overnight delivery, on the incumbent and proposed alternative carriers and FRA. PIRY has certified that it served its petition on the required parties by first class mail.

¹⁸ See Carver Lumber Letter filed July 21, 2006, at 2.

that shippers believe are too high are not a basis to order alternative, interim rail service. See Keokuk Junction Railway Company—Alternative Rail Service—Line of Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 34397, slip op. at 6 (STB served Oct. 31, 2003) (denying a request for an alternative service order because “[r]ate disputes do not constitute service disruptions or inadequacies within the meaning of 49 U.S.C. 11123”).

The fact that delivery via the western connection takes somewhat longer than the 1-2 days PIRY required for delivery via the Kellar Branch¹⁹ also does not necessarily show that CIRY’s service is inadequate within the meaning of 49 CFR 1146.1. Unlike other cases where we have authorized interim alternative rail service, no compelling evidence has been presented here to show that Carver Lumber ships materials that are especially time sensitive in nature, making the additional time the cause of an emergency situation. Compare PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co., STB Finance Docket No. 34802 (STB served Jan. 26, 2006) (granting an alternative service request where the shipper demonstrated through ample, credible evidence that, as a consequence of service inadequacies, it would soon run out of storage capacity for its cottonseed oil and related products, and would be forced to curtail or close operations). Nor, since activation of the western connection, is the shipper here faced with a situation where no rail service is being provided. Compare Denver Rock Island Railroad—Alternative Rail Service—Lines of Kansas Southwestern Railway, L.L.C., STB Finance Docket No. 33762 (STB served June 16, 1999). Indeed, it now appears that CIRY may be planning to offer service over both the western connection and the Kellar Branch.

Congress made it clear in the statute that the alternative interim rail service provisions were designed to address emergency situations or situations requiring immediate action to allow the carrier to transport the traffic offered to it in a manner that properly serves the public. 49 U.S.C. 11123(a). Carver Lumber’s dissatisfaction with the overall new routing, of which CIRY is just a part, and PIRY’s desire to provide service to Carver Lumber over the Kellar Branch, are insufficient justification for a grant of alternative service relief. We cannot conclude that PIRY has shown a “demonstrated inadequacy in rail service.” 49 CFR 1146.1(a).

The allegations in Carver Lumber’s October 17, 2006 letter do not alter this finding. Carver Lumber’s assertions regarding CIRY’s recent failure to provide service upon delivery notification and the shutdown of the western connection for a crossing project do indicate that there may be problems with the western connection attributable to CIRY rather than UP. While these allegations are troubling, they do not rise to the level necessary to justify granting the request for alternative rail service, particularly in light of the short duration of the shutdown. However, we remind CIRY of its common carrier obligation to provide service to Carver and to resolve any issues regarding necessary notification of cars placed for delivery.

¹⁹ PIRY Petition to Provide Alternative Rail Service at 8; Carver Lumber Letter filed July 21, 2006, at 1-2.

Because we find that PIRY has not met the first criterion under 49 CFR 1146.1, we need not address the other three criteria under that section. PIRY's petition for alternative service authorization will be denied. Carver Lumber's alleged service issues can be more appropriately dealt with in Adverse Discontinuance, as discussed above.

Motions to Compel Discovery Responses

Still pending in these proceedings are three motions to compel discovery responses filed by PIRY in March-April 2006 against the Cities, CIRY, and the Pleasure Driveway and Park District of Peoria, IL. These motions were held in abeyance by the April 25, 2006 decision. In light of this decision and the expedited procedural schedule intended to resolve these issues quickly, we believe that narrower discovery requests, if any, would be more appropriate, as some of the requests appear to address very broad issues. Therefore, rather than ruling on the motions in this decision, we will give PIRY the opportunity to refine its discovery requests to more closely address the remaining issues. To the extent PIRY still seeks discovery of information that is essential to the balancing of relative burdens under the PC&N standard, it will be given 5 days to refine its discovery requests. Replies will be due 5 days after the filing of any refined motions to compel.

CIRY Discontinuance

We will grant CIRY's request for permission to withdraw its petition for exemption in CIRY Discontinuance.

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

It is ordered:

1. The motion by CIRY and the Cities for leave to supplement the record with a rehabilitation cost estimate is denied as moot.
2. PIRY's request that we reject shipment records submitted by CIRY and the Cities is denied.
3. PIRY's motion, filed on November 24, 2006, to strike CIRY's November 6, 2006 filing is denied.
4. PIRY's petition to reopen the August 2005 Decision is granted. The parties are directed to submit additional evidence regarding the balancing of the relative benefits and

burdens under the PC&N standard, as discussed above. The Cities' and CIRY's evidence is due on February 12, 2007. PIRY's and Carver Lumber's replies are due on March 5, 2007.

5. PIRY's petition to provide alternative rail service is denied.

6. PIRY has until January 17, 2007 to tailor the discovery requests contained in its earlier motions to compel more closely to the issue at hand. Replies will be due 5 days after the filing of any refined motions to compel.

7. CIRY's request for permission to withdraw its petition for discontinuance in CIRY Discontinuance is granted and the proceeding is discontinued.

8. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary