

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1066X

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

Decided: November 21, 2005

On September 12, 2005, Central Illinois Railroad Company (CIRY) filed a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903-05 to discontinue service over a segment of a rail line known as the Kellar Branch owned by the City of Peoria and the Village of Peoria Heights, IL (jointly, the Cities).<sup>1</sup> The segment extends between the north line of Candletree Drive at approximately milepost 8.50 in Peoria, IL, and the north line of Jefferson Street at approximately milepost 2.21 in Peoria, IL, a distance of 6.29 miles in Peoria County, IL.

Also on September 12, 2005, Pioneer Industrial Railway Company (PIRY) filed a notice of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 to purchase all 8.29 miles of the Kellar Branch from approximately milepost 1.71 to milepost 10.0. In connection with its notice, PIRY requests that CIRY provide the information set forth in 49 CFR 1152.27(a), including the minimum purchase price, and all data and supporting evidence necessary to determine an estimate of the net liquidation value of the line.

On September 15, 2005, CIRY filed a motion to reject PIRY's notice of intent to file an OFA. CIRY argues that the notice should be rejected because OFAs to purchase a line are not entertained in discontinuance-of-service proceedings, citing Adverse Discontinuance and City of Rochelle, IL—Adverse Discontinuance—Rochelle Railroad Company, STB Docket No. AB-549 (STB served May 27, 1999). Further, CIRY argues that PIRY has provided no justification for allowing an OFA to acquire more trackage than service is being discontinued over in this proceeding. According to CIRY, the case

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<sup>1</sup> The Cities' plans for the Kellar Branch are the subject of a series of decisions in several proceedings before the Board. A procedural history of these decisions can be found in City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company, STB Docket No. AB-878 (STB served Aug. 10, 2005) (Adverse Discontinuance), in which the Board, *inter alia*, granted the Cities' adverse application to discontinue service by Peoria Industrial Railway Company over all 8.29 miles of the Kellar Branch.

PIRY cites in support, Caddo Antoine et al.—Feeder Li. Acq.—Arkansas Midland RR, 4 S.T.B. 610 (2000) (Caddo Antoine), is inapposite because it is a feeder line application case under 49 U.S.C. 10907, not one related to an OFA under 49 U.S.C. 10904.

On September 30, 2005, CIRY's notice to discontinue service was served and published in the Federal Register (70 FR 57365). In the notice, the Board stated that any filings related to OFAs (and public use provisions) would be considered in the decision on the merits.

On October 11, 2005, PIRY filed a motion seeking clarification of the notice and an order compelling CIRY to turn over information related to PIRY's contemplated OFA. PIRY characterizes CIRY's petition for exemption from 49 U.S.C. 10904 as a request for waiver of the OFA rules and asks the Board to clarify the September 30 notice by rejecting CIRY's motion to reject and by setting a procedural schedule to consider the OFA waiver request. Alternatively, PIRY seeks a reasonable time to reply to CIRY's motion to reject/waiver request. PIRY also seeks an order from the Board compelling CIRY to turn over the requested information related to its OFA.

CIRY replied to PIRY's motion for clarification and to compel on October 17, 2005. CIRY argues that PIRY's clarification request should be denied as unnecessary and because PIRY has already had an opportunity to reply to CIRY's petition for exemption from section 10904 and its motion to reject. CIRY also argues that PIRY's motion to compel should be denied as an unauthorized filing because OFAs to purchase a line are not entertained in discontinuance proceedings.

It is not apparent that the Board has jurisdiction to grant PIRY the relief that its notice of intent to file an OFA contemplates seeking. Therefore, CIRY's motion to reject the notice will be granted.

Specifically, it does not appear that the Board has jurisdiction over the abandonment of any portion of the Kellar Branch. The line was fully abandoned when the Cities acquired it. See Chicago, R. I. & P. R. Co. Abandonment, 363 I.C.C. 150 (1980). Moreover, the Cities have never held themselves out as a common carrier. Therefore, in Adverse Discontinuance, slip op. at 5-6, the Board stated that it had jurisdiction only over CIRY's discontinuance of service. OFAs to purchase a line, like the one that PIRY states it will file, are not authorized in discontinuance proceedings; OFAs are limited to subsidies to provide continued rail service.<sup>2</sup> PIRY has provided no

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<sup>2</sup> See, e.g., Delaware and Hudson Railway Company, Inc.—Discontinuance of Trackage Rights Exemption—in Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie and Genesee Counties, NY, STB Docket No. AB-156 (Sub-No. 25X) (STB served Mar. 30, 2005); CSX Transportation Inc.—Discontinuance Exemption—in Knox County, TN, STB Docket No. AB-55 (Sub-No. 641X) (STB served Jan. 2, 2004); CSX Transportation, Inc.—Discontinuance Exemption—(Between East of Memphis and Cordova) in Shelby County, TN, STB Docket No. AB-55 (Sub-No. 615X) (STB served July 17, 2002).

evidence or argument that the Board has authority under 49 U.S.C. 10904 to force the sale of the line in circumstances where it lacks authority to license an abandonment. Further, the only case PIRY cites to support its claim that an OFA can be sought for trackage greater than that sought to be abandoned or discontinued, Caddo Antoine, did not involve a discontinuance.

CIRY's motion to reject PIRY's notice of intent to file an OFA will be granted and PIRY's motion for clarification and to compel will be denied as moot.

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

It is ordered:

1. CIRY's motion to reject PIRY's notice of intent to file an OFA is granted.
2. PIRY's motion for clarification and to compel is denied as moot.
3. This decision is effective on the date of service.

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

Vernon A. Williams  
Secretary