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SEC

SERVICE DATE – FEBRUARY 13, 2007

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

Decided: February 12, 2007

On January 17, 2007, Pioneer Industrial Railway Company (PIRY) filed a revised motion to compel discovery in accordance with the Board's decision served January 12, 2007, in this proceeding. On January 22, 2007, the City of Peoria and the Village of Peoria Heights (collectively, the Cities) and Central Illinois Railroad Company (CIRY) filed replies in which they responded to some of the discovery requests and raised objections to others. On January 29, 2007, PIRY filed a letter updating the Board regarding its discovery requests directed at the Cities and The Pleasure Driveway and Park District of Peoria, IL (Park District). PIRY also requested that the Board promptly compel CIRY to provide full and complete responses to all discovery. In furtherance of this request and at CIRY's suggestion, PIRY attached a motion for protective order pursuant to 49 CFR 1104.14(b) to facilitate discovery. The request for a protective order will be addressed in a separate decision.

In its January 29 filing, PIRY states that, although the Park District did not file a reply with the Board, it has responded in full to the revised discovery requests. PIRY also states that, its general objections notwithstanding, the Cities have likewise responded in full with all information they have in their possession. CIRY is therefore the only remaining party against whom PIRY seeks to compel discovery.

In its revised motion to compel, PIRY seeks from CIRY information related to CIRY's operations over the Kellar Branch, the line at issue in this proceeding. CIRY has responded to Discovery Request Nos. 4, 6, and 15 and PIRY appears to be satisfied with those responses. PIRY asks the Board to compel CIRY to respond to Discovery Request Nos. 3, 5, 7, 12, and 14. Discovery Request No. 3 seeks information concerning any accidents, safety violations, or accidental release of lading involving shipments moving over the Kellar Branch since August 9, 2005. Discovery Request No. 5 seeks information regarding rates, service schedules, levels of service, carloads, types, contracts and other agreements and negotiations relating to CIRY's service to Carver Lumber and any other shipper on the Kellar Branch. Discovery Request No. 7 seeks information concerning discussions, contracts, negotiations, and other documents regarding past, future, or existing service to any shipper over the Kellar Branch and related lines. Discovery Request No. 12 seeks information concerning interchange of traffic on the Kellar

Branch by CIRY and other connecting carriers. Discovery Request No. 14 seeks information relating to the use by shippers and potential shippers of rail service on the Kellar Branch. CIRY objects to each of these requests as overly broad and irrelevant to the issues in the adverse discontinuance, and also objects to some of the requests as either ambiguous or burdensome.

However, as to Discovery Request Nos. 5 and 12, CIRY has agreed, upon execution of an appropriate confidentiality agreement, to make available to PIRY at CIRY's office in Granville, IL, any information in its possession in the form of paper and/or electronic traffic records. In its January 29 filing, PIRY suggests that it would be far more efficient and less costly for responsive materials to be copied and sent directly to PIRY's counsel, rather than requiring PIRY's counsel to travel to Illinois to inspect such materials.

PIRY's motion to compel will be granted. PIRY seeks information regarding the quality of CIRY's service on the Kellar Branch in general and to Carver Lumber in particular, and argues that this information is relevant to the adverse discontinuance proceeding. As the Board stated in its January 12, 2007 decision, it will be undertaking a balancing test, pursuant to which it will evaluate 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. Without prejudging the weight such information would be given, CIRY is the current operator on the Kellar Branch, and information regarding the quality of CIRY's service arguably could be relevant to the balancing test when weighing the implication of cessation of PIRY's service.

Accordingly, we will allow PIRY to seek discovery of this information. CIRY will be directed to respond in full to Discovery Request Nos. 3, 5, 7, 12, and 14. Additionally, CIRY is directed to provide to PIRY copies of the responsive information that it has offered to make available at its Granville office. If any relevant information is of a confidential nature, CIRY may require execution of the confidentiality undertaking pursuant to the protective order in effect in this proceeding. Thus, there appears to be no need to require PIRY's counsel to travel to Illinois to inspect these records. CIRY will have until February 23, 2007, to respond to PIRY's discovery requests.

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

It is ordered:

1. PIRY's motion to compel discovery is granted as to Discovery Request Nos. 3, 5, 7, 12, and 14.
2. CIRY shall respond in full to all of the above discovery requests by February 23, 2007.

3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary