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January 29, 2007

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Docket No. AB-878
City Of Peoria and The Village of Peoria Heights, IL — Adverse
Discontinuance—Pioneer Industrial Railway Company

Dear Secretary Williams:

On January 17, 2007, Pioneer Industrial Railway Co. (“PIRY”) filed a Revised Motion to Compel Discovery (“Revised Motion”)¹ in accordance with the Board’s decision served January 12, 2007 (“January 12 Decision”) in the above-captioned proceeding. PIRY’s Revised Motion contained revised and narrowed discovery requests directed to Central Illinois Railroad Company (“CIRY”), the City of Peoria, Illinois, and the Village of Peoria Heights, Illinois (collectively, “the Cities”), and The Pleasure Driveway and Park District of Peoria, Illinois (“Park District”).² Based on CIRY’s limited reply to the Revised Motion, PIRY hereby requests that the Board take prompt action in accordance with Revised Motion and compel CIRY to provide full and complete responses to all discovery. In furtherance of this request and upon CIRY’s suggestion, PIRY is enclosing a Motion for Protective Order to facilitate discovery.

As noted above, PIRY has revised its discovery requests and has served such discovery upon the Parties as part of its Revised Motion. Of course, as is the case with any motion to compel, PIRY explained in the Revised Motion why its discovery requests were highly relevant to this proceeding and why the Parties should therefore be compelled to respond substantively and in full to each request if they do not do so voluntarily. It appears that the Park District has

¹ The title page of the Revised Motion was corrected pursuant to a supplemental filing on January 19, 2007.

² Collectively, CIRY, the Cities, and the Park District will be referred to as “the Parties.”

responded in full to the revised discovery requests.³ Likewise, its general objections notwithstanding, the Cities also claim to have responded in full, although they produced absolutely no information related to the adequacy of rail service over the line. Indeed, the Cities' assert that they have *no information* (including documents) concerning CIRY's service to Kellar Branch customers, excepting certain documents memorializing Carver's struggles to obtain essential rail service. See the Cities' Reply to Revised Motion (responses to Discovery Request Nos. 4, 5, 10 and 12).⁴ While this is hard to believe, PIRY will take the Cities at their word -- that the Cities really have no such information. PIRY supposes that the Cities' lack of such information reflects the Cities' position that the issue to be resolved on reopening is "whether PIRY rail service should be discontinue[d] *without regard to CIRY and the service CIRY has provided and can provide.*" *Id.* (emphasis added).

CIRY, on the other hand, has responded substantively to some of the discovery requests and has objected to, and has refused to respond at all, to the rest. Where CIRY now objects to specific discovery, it raises the usual general objections contesting, among other things, the relevance of the information sought. But CIRY offers no narrative reply to PIRY's Revised Motion, and thus CIRY does not explain why it should not be compelled to respond to the discovery requests to which it objects. Having failed to file a reply that articulates with specificity why it should not be compelled to respond to certain of PIRY's revised discovery requests, CIRY's refusals are unjustified and must not be permitted to stand. For the reasons set forth in its Revised Motion, the Board should compel CIRY to respond to the following discovery requests:

- Discovery Request No. 3, to the extent that CIRY has any information not available from the Federal Railroad Administration or from other state or federal agencies.
- Discovery Request No. 5. CIRY should be directed to supply the information that CIRY indicates is in its possession directly to PIRY's counsel, rather than requiring that PIRY's counsel examine responsive materials at CIRY's Granville, IL, offices. As mentioned above, PIRY is filing herewith a Motion for Protective Order. If materials responsive to this request need to be designated as "highly confidential," as CIRY's reply suggests is the case, then it would be far more efficient and less costly for such materials to be copied and sent to PIRY's outside counsel, along with all other responsive information, rather than require that PIRY's outside counsel to travel to Illinois to inspect such materials.

³ The Park District's reply to the Revised Motion, which it has styled as a "Response to Modified First Discovery Requests," appears not to have been filed with the Board and does not on its face purport to reply to the revised motion to compel, presumably because the Park District appears to have endeavored to respond in full to PIRY's revised discovery requests.

⁴ What is more, the Cities rather blandly state, as if it were unimportant or irrelevant to the reopened proceeding, that they no longer have a current operating contract with CIRY. See *id.* at 3 (response to Discovery Request No. 4).

- Discovery Request No. 7. Among other things, this request is highly relevant to the issue of the “adequacy of CIRY’s current service” to Carver Lumber Company (“Carver”). See January 12 Decision at 8 n.16.
- Discovery Request No. 12. CIRY relies on the same objections here as it does in response to Discovery Request No. 5. Despite CIRY’s general objections, it has agreed to supply PIRY with responsive information, but subject to the condition (to which PIRY quite obviously objects) that PIRY obtain the requested information by traveling to CIRY’s offices to get it. As discussed in connection with Discovery Request No. 5, above, CIRY should be directed to supply the information that CIRY indicates is in its possession directly to PIRY’s counsel, rather than requiring that PIRY’s counsel examine responsive materials at CIRY’s Granville, IL, offices.
- Discovery Request No. 14. Here again, CIRY reiterates its objection to Discovery Request No. 5. PIRY’s response concerning the production of this information is the same as it is in connection with Discovery Request Nos. 5 and 12.

CIRY seems to believe that the request for “information” contained in Discovery Request Nos. 5, 7, and 12 involve only documents. That is not the case. If CIRY possesses *any* information (including awareness of facts based on information and belief), then that information should be supplied in response to the contested discovery requests, not just responsive documents. Thus, the Board should specify that CIRY should provide all responsive information that it has knowledge of, and not just documents in its possession.

An element CIRY’s responses to the Revised Motion warrants further comment. It is implausible that CIRY lacks corporate records predating its current ownership and management, which took over CIRY about five months ago. See CIRY’s Reply to Revised Motion at 3-4 (“CIRY notes that it does not possess and cannot find information collected by its former owners and management”). Either CIRY’s prior management absconded with such information (which suggests possible criminal activity or extreme negligence) or there were no such records to begin with (highly unlikely, even if it were true that CIRY’s previous management was irresponsible in general and lax in its records keeping).

For the foregoing reasons, CIRY should be compelled to respond in full to PIRY’s revised discovery requests.

Sincerely,



William A. Mullins

Enclosures

cc: Daniel A. LaKemper, Esq.
All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-878

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

MOTION FOR PROTECTIVE ORDER

**Daniel A. LaKemper
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Attorneys for Pioneer Industrial Railway Co.

January 29, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-878

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

MOTION FOR PROTECTIVE ORDER

Pursuant to 49 CFR 1104.14(b), Pioneer Industrial Railway Co. (“PIRY”) hereby requests that the Surface Transportation Board issue a Protective Order in the form attached hereto to permit the parties to the above-captioned proceeding to make available to the Board under seal certain highly confidential documents and other information that may be exchanged between the parties as a result of currently ongoing discovery. Such highly confidential documents may include, among other things, operating records, service contracts, service plans and/or schedules of service created by or in the possession of Central Illinois Railroad Company (“CIRY”).

A Protective Order would allow the parties to exchange such information, and any other commercially sensitive documents that might be produced in connection with this proceeding, to be made available to the outside counsel and consultants of interested parties. In particular, CIRY has stated that it would provide information responsive to certain discovery requests served upon it by PIRY, but only in the event that the Board issued an appropriate Protective Order. This motion is intended chiefly to facilitate such responses to discovery.

The proposed Protective Order is similar to others recently issued by the Board. See, e.g., Keokuk Junction Railway Company d/b/a Peoria And Western Railway-Lease and Operation Exemption-BNSF Railway Company, STB FD No. 34974 (served December 19, 2006); South Kansas & Oklahoma Railroad, Inc. – Trackage Rights Exemption – BNSF Railway Company, STB Finance Docket No. 34873 (STB served May 10, 2006).

Public disclosure of information subject to this Protective Order is not necessary for consideration or disposition of the underlying adverse discontinuance application.

Accordingly, PIRY requests that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted this 29th day of January, 2007,

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Attorneys for Pioneer Industrial Railway Co.

CERTIFICATE OF SERVICE

I, Robert A. Wimbish, hereby certify that on this 29th day of January, 2007, copies of the foregoing Motion for Protective Order have been served by first class mail, postage prepaid, or by more expeditious means of delivery upon all Parties of record in F.D. No. 34917, AB-878, and AB-1066X who are identified on the Surface Transportation Board's website. A copy has also been e-mailed to counsel for CIRY, the Cities, and the Park District.



Robert A. Wimbish
Attorney for Pioneer Industrial Railway Co.

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers); the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with shippers or carriers; confidential financial and cost data; divisions of rates, trackage rights compensation levels and other compensation between carriers; and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials.

(d) "Proceedings" means those before the Surface Transportation Board ("Board") concerning the transaction in STB Docket No. AB-878, and any related proceedings before the Board, and any judicial review proceedings arising from STB Docket No. AB-878 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated/stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

6. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party’s submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party’s in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party’s submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all “highly confidential” information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

7. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

8. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Docket No. AB-878, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Docket No. AB-878 and/or with any related proceedings.

9. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

10. No party may include Designated Material in any pleading, brief, discovery request, or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

12. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

13. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 10 of this Protective Order.

14. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

15. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by

the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

16. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

EXHIBIT A

UNDERTAKING-CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, governing the production and use of Confidential Information and Confidential Documents in STB Docket No. AB-878, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. AB-878, any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with STB Docket No. AB-878 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Pioneer Industrial Railway Co., Central Illinois Railroad Company, the City of Peoria, Illinois and the Village of Peoria Heights, Illinois, and The Pleasure Driveway and Park District of Peoria, Illinois, or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____

Dated: _____

Exhibit B

UNDERTAKING—HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2006, governing the production and use of Confidential Information and Confidential Documents in STB Docket No. AB-878, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. AB-878, any related proceedings before the Surface Transportation Board (“Board”), or any judicial review proceedings in connection with STB Docket No. 878 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me; that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners; and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Pioneer Industrial Railway Co., Central Illinois Railroad Company, the City of Peoria, Illinois and the Village of Peoria Heights, Illinois, and The Pleasure Driveway and Park District of Peoria, Illinois, or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____
OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____