

Voting Conference, February 23, 2005
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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

Pioneer Industrial Railway Company
– Petition for Declaratory Order
STB Finance Docket No. 34636

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey. The draft decision before you addresses two proceedings that are being considered together for administrative convenience because they involve the same parties and interrelated issues.

Both proceedings concern an 8.29-mile rail line, known as the Kellar Branch, owned by the City of Peoria, IL, and the Village of Peoria Heights, IL. The City contracted with Peoria & Pekin Union Railway Company (P&PU) for operations to serve shippers. The City subsequently transferred to the Village a 25% ownership interest in the portion of the Kellar Branch located within the Village's corporate limits. P&PU assigned its operating rights under the agreement to Pioneer Industrial Railway Company (Pioneer) in 1998, and Pioneer obtained authority to operate the line.

By a notice served and published in the Federal Register on July 28, 2004, Central Illinois Railroad Company (Central Illinois) invoked the Board's class exemption at 49 CFR 1150.41 to operate the Kellar Branch at the request of the Cities. The Cities assert that their existing operating agreement with Pioneer terminated by its terms on July 10,

2004, but that Pioneer refuses voluntarily to relinquish its authority. In response, the Cities have filed an adverse application for discontinuance of service by Pioneer in STB Docket No. AB-878.

Pioneer has asked the Board to reject Central Illinois' notice of exemption or revoke its operation exemption because: (1) the notice does not describe a transaction that is covered by 49 CFR 1150.41; (2) the Cities lack the ability to enter into any agreement installing a new operator; and (3) the notice does not meet the criteria of 49 CFR 1150.41 and is false and misleading.

Separately, Pioneer filed a petition for declaratory order in Pioneer Industrial Railway Co.—Petition for Declaratory Order, STB Finance Docket No. 34636, asking the Board to institute another proceeding to determine Pioneer's status on the line and to construe the agreement between Pioneer and the Cities as conveying to Pioneer an interest comparable to a permanent easement.

With regard to the petition to reject or revoke, the draft decision finds that Pioneer has not demonstrated that Central Illinois' notice contains false or misleading information, or that regulation is necessary to carry out the transportation policy of 49 U.S.C. 10101. The decision would conclude that, contrary to petitioner's claim, the transaction at issue is contemplated by 49 CFR 1150.41, and that nothing forecloses the ability of the Cities to contract with Central Illinois.

The draft decision also finds that there is no reason to institute a declaratory order proceeding as the Board generally will defer in questions of contract interpretation to the courts, and that the draft decision already examines the arrangements between these parties to the extent that the Board would do so in another proceeding.

Both Central Illinois and Pioneer have the right to operate on the line until either of their rights is discontinued. Accordingly, the draft decision reminds Central Illinois that it cannot operate the Kellar Branch until coordination protocols with Pioneer are in place, and advises the parties that they should jointly certify that such protocols are in place.

This concludes my statement. We would be happy to answer any questions that you might have.