



July 19, 2006

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

RE: Docket No. AB-1066X (Kellar Branch Discontinuance of Service Exemption-
Peoria, IL)

STB Docket No. AB-878

Dear Mr. Williams:

This letter is in response to your order to Carver Lumber “to file comments with the Board at the conclusion of the 90-day period regarding service via the new western connection” as referenced in the Docket proceedings referenced above.

For brevity of this letter I have enclosed copies of previous pertinent documents which will document Carver Lumber Company’s concerns and position relevant to this issue.

In this letter I will focus exclusively on the current issues relevant to your findings and order on April 25, 2005 that “these proceedings will be held in abeyance to permit additional assessment of the situation and for further development of the record.”

Specifically, we reference the last sentence in paragraph 3 of our January 18, 2006 letter, attached, to you which states; “If it is found that such service and/or cost has been substantially compromised, we would expect our rights to access the full Kellar line to have somehow been preserved for the benefit of our company and any other shippers who may one day locate on the line.” Our findings and beliefs as of this date are as follows:

- While rail service to Carver is now available via the Western Connection our strong belief is that that service is inadequate to the exemplary service we have received from PIRY for many years via the Kellar Branch and that this view is supported by the actual tracking of cars arriving in Peoria and their subsequent delivery to Carver as summarized in the attached RAIL CAR ROUTING SCORECARD. As you can see the SCORECARD clearly shows in detail that after cars arrive in Peoria they take either another 4 or 8 days to arrive at our facility. Our understanding

is that this is the result of CIRY only providing service to Carver two days per week. For years our records show that delivery up the Kellar Branch Line took between 1 and 2 days to reach our facility. Thus the delivery time of cars via the Western Connection represents a **400% greater** delivery time than cars delivered via the Kellar Branch Line.

- The cost of cars delivered to Carver via the Western Connection (Union Pacific/CIRY), based upon the newly published UP rates dated May 31, 2006 of \$1100, attached, plus fuel surcharges of \$181.50 plus the CIRY charge of \$650 totals \$1,931.50. The cost of the same car delivered to Carver via the Kellar Branch (TZPR/CIRY) is \$940.00. The cost of the same car delivered to Carver via the Kellar Branch (TZPR/PIRY) is \$872.00. Thus, the delivery of cars via the Western Connection is approximately **105% greater** than the cost of the same car delivered via the Kellar Branch using CIRY and approximately **121% greater** than the cost of the same car delivered via the Kellar Line using PIRY.
- While this item is not specifically requested in your order “regarding the adequacy of rail service” we believe it is pertinent to the issue of Carver’s rights to “have a vested interest in making sure that delivery to our business over that line (Kellar) is made available (Carver’s letter to you of January 18, 2006). As I believe the STB knows, service to Carver via the Kellar Branch was interrupted due a CIRY runaway/derailment/collision during their first delivery attempt to Carver forcing us to transload material for a period of nearly 5 months (see our letter of February 6, 2006 to City of Peoria, attached) resulting in costs to date of \$41,605.10 which neither the City or CIRY have been willing to reimburse. We are currently seeking the aid of independent legal counsel in an effort to collect these costs. The federal court case of New York Cross Harbor Railroad v. Surface Transportation Board, 374 F.3d 1177 (D.C. Cir. Ct. App. 2004) also recognizes that the “Surface Transportation Board (has a) statutory duty to preserve and promote continued rail service, and that one of its functions is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service.” Given the regulations set forth above we believe the City of Peoria is obligated to provide Carver Lumber with sufficient rail service, and that the disruption in rail service experienced by Carver Lumber should be compensable.
- Carver has had direct access to eight line-haul carriers over the Kellar Branch Line via the TZPR (the local terminal switching carrier) for many years. The loss of service over the Kellar Branch will permanently deprive Carver Lumber of competitive service, by depriving us of direct access to CN, BNSF, ISIA, NS, I&M, KJRY and TP&W, and leaving us with only one line-haul carrier (UP), that will have ultimate control over our service and delivered cost of material. Currently, approximately 75% of our cars originate on CN, and 25% on BNSF. Forcing us to depend on the “western connection” will add another carrier to all of our shipments, which has resulted in, and will continue to result in, longer transit times,

less responsive service, and higher rates. We become a captive shipper. Depending on business conditions, we receive 50 or more cars per year. At a premium of approximately \$1,000 per car (see bullet 2 above) that results in at least a \$50,000 hit to our bottom line that for a company of our size is almost catastrophic. If the Keller Branch is abandoned, that premium can only be expected to increase, as there will no longer be any option to restrain rate increases, and, as a small shipper, we have no bargaining power.

- Carver Lumber Company is a local 100% employee owned business that is competing with much larger companies who have considerable purchasing power. Carver is heavily dependent upon rail service to remain cost competitive and the loss of the Keller Branch Line is clearly going to put Carver at a significant competitive disadvantage with its competitors and thus unduly threaten the livelihood of 50 employees.
- Carver Lumber has recently attempted to route two cars to our location using the Keller Branch via BNSF PEORIA TZPR PEORIA CIRY (car #NOKL 734824 B/L L-104859, attached) and CN PEORIA CIRY (car CN 598024 B/L 1175453, attached) both of which were delivered via the Western Connection via UP without our knowledge or consent. Information I received today from TZPR was that the CIRY “would not accept” the cars for Keller Branch Line delivery and told TZPR to hand the cars off to the UP. We do not understand why we are being denied rail service via the cheaper Keller Branch line and ask you for your assistance in this matter. It is our understanding that the Keller Branch Line is in full compliance with all relevant Federal regulations for this type of rail line. Please see our letter of April 17, 2006 to the City of Peoria, page 3 **DELIVERY RATE COMPARISONS**, attached.
- Carver Lumber has tried to work with both the City of Peoria (CIRY) and the Union Pacific to address the issue of guarantying minimum levels of service and rate stability to no avail. These are critical issues to a company of our size, especially as we have had a long established track record with PIRY on both of these issues. Under the Western Connection scenario we have neither. The PIRY has submitted a proposal to Carver Lumber whereby both the issue of levels of service and rates are being guaranteed for a period of 10 years which greatly surpass the service conditions and rates that we are currently experiencing over the Western Connection.

Carver Lumber Company needs and desires competitive and timely rail service to protect the livelihood of our employee/owners. The Western Connection is not, in our opinion, succeeding on either of those issues. In light of recent industry articles addressing the increased congestion on the UP mainline it would seem to us that maintaining the Keller Branch Line makes good sense. Trucking and/or transloading material is not only cost prohibitive for Carver Lumber, but seems to be contrary to public policy in general as the impact on the environment (fuel consumption, air pollution and deterioration of the infrastructure) to move goods by truck is significantly greater than that of moving goods

by rail. In light of the fact that Carver is a willing customer of rail service and there exists a willing carrier (PIRY) to provide that service, we cannot imagine how the public good will be served by forcing Carver Lumber Company to switch from affordable rail service which has satisfied our needs for many years to more expensive trucking service.

In conclusion, based upon the statements in the above bullet points we respectfully request the STB to consider the following course of action:

Given CIRY's demonstrated inability, and stated unwillingness, to provide service over the Kellar Branch, we believe the Board should reopen and deny the adverse discontinuance of PIRY service over the Kellar Branch (and grant CIRY's request to discontinue service), or, in the alternative, in order to preserve service on the Kellar Branch, deny the discontinuance of CIRY service over the Kellar Branch and order CIRY to comply with its common carrier obligations to provide such service. In the interim we request that the Board enter an alternative service order permitting PIRY to provide service to the Kellar Branch.

Carver appreciates the Board's consideration of this matter, and its prompt action to reopen this proceeding in response to our request. The Board's concern for the preservation of viable rail service has been very important to Carver Lumber, its employee/owners, suppliers and customers.

Sincerely,
Carver Lumber Company Board of Directors

/s/ Mark Booth

/s/ Debra Wolfe

/s/ Lee Miller

Mark Booth

Debra Wolfe

Lee Miller

Enclosures