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March 9, 2006

VIA ELECTRONIC FILING

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

IMMEDIATE HANDLING REQUESTED

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:

Enclosed on behalf of Pioneer Industrial Railway Co., is a Motion To Compel Discovery ("Motion"). As can be seen from the certificate of service attached, copies of the Motion are being served today on all parties of record.

Please acknowledge filing of this Motion by return electronic receipt. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

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 TO COMPEL DISCOVERY

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March 9, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

**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 TO COMPEL DISCOVERY

Pursuant to 49 CFR § 1114.31, Pioneer Industrial Railway Co. (“PIRY”) requests the Surface Transportation Board (“STB” or the “Board”) to issue an order compelling the City of Peoria, IL, and the Village of Peoria Heights, IL, applicants in this proceeding (“Cities” or “Applicants”) to provide the information requested in PIRY’s February 24, 2006 First Discovery Requests (“Discovery Requests”) served on each of them. The Cities’ only response to the Discovery Requests has been a brief, two-paragraph blanket objection asserting that discovery is not appropriate (Exhibit 1 hereto).

Upon issuance of the Board’s decision on this motion, the Cities should each be required to answer immediately and in full each request in the Discovery Requests served by PIRY. PIRY has already filed a petition to reopen this proceeding in partial reliance on a reconsideration request filed by Carver Lumber Company (“Carver”) in STB Docket No. AB-1066X, Central Illinois Railroad Company – Discontinuance Of Service Exemption – In Peoria County, IL, as well as in this proceeding. The information obtained in response to the Discovery Requests will help provide the Board with a complete record on which to consider PIRY’s petition to reopen and Carver’s reconsideration request. In light of the Cities’ pattern

in this proceeding of failing to live up to their representations, at least until caught, PIRY submits that the Board should require the Cities to respond fully to PIRY's discovery to thoroughly explore the Cities' past and present allegations in this case.

PROCEDURAL HISTORY AND BACKGROUND

The procedural history and background of the line of railroad known as the Kellar Branch is well known by this Board, having been the subject of decisions issued in this proceeding and in STB Docket No. AB-1066X, Central Illinois Railroad Company – Discontinuance Of Service Exemption – In Peoria County, IL. As such, it need not be repeated in its entirety here. As relevant to this Motion, however, the Cities sought and obtained adverse discontinuance authority against PIRY in order to replace PIRY with Central Illinois Railroad Company ("CIRY") to facilitate removal of much of the Kellar Branch. In doing so, the Cities promised that CIRY would serve shippers that had used the Kellar Branch via the existing track until a new connection was installed between the northern end of the branch and a somewhat parallel former Union Pacific line owned by the Cities. The Cities promised that as soon as the connection was built, CIRY would serve shippers using the new connection. If CIRY failed to provide service, the Cities promised, CIRY would be replaced. Once the new connection was built and service was being provided via that connection, the Cities stated, CIRY would discontinue service over part of the Kellar Branch, but not until such time as service was being provided via the new connection.

Nearly a year after receiving authority to operate the Kellar Branch and because the new connection had not yet been built, CIRY made its first and only attempt to serve Carver over the existing Kellar Branch line. That attempt resulted in a runaway train and a derailment. Thereafter, according to Carver's letters filed January 4 and 19, CIRY abandoned

any further efforts to provide service, despite Carver's service requests. Meanwhile, despite Carver's requests to the Cities over several months' time for restoration of service, neither CIRY nor the Cities' provided service. In addition, the project to build the new connection sat inactive and incomplete, preventing service to Carver over the proposed replacement for the Kellar Branch service. As a result, Carver - a small local business - incurred more than \$25,000 in added transportation charges to compensate for CIRY's and the Cities' abdication of their common carrier responsibilities. Carver continues to incur damages as a result of CIRY's breach of its common carrier obligation to provide service over the Kellar Branch.

On January 24, PIRY petitioned the Board to reopen this proceeding in light of the Cities' breach of their responsibilities to Carver and of their representations to the Board. On February 6, the Cities' counsel sought a 20-day extension of the Cities' deadline to respond to PIRY's reopening petition, citing the press of counsel's other work. PIRY served discovery requests in support of its reopening petition on February 23 (see Exhibit 2), which the Cities rejected out of hand by letter dated March 2. Then, on March 6, the Cities replied to PIRY's reopening petition, stating that the new connection was completed during their 20-day extended reply period¹ and that arrangements were in place to deliver two shipments of freight to Carver via that new connection in the near future. PIRY now moves the Board to compel the Cities to be forthcoming with answers to PIRY's Discovery Requests, not merely with more, dubious promises.

¹ It is curious that the Cities' construction of a new connection to the Kellar Branch, authorized by the Board in September 2004 but on which no activity had occurred for months prior to Carver's letter filed January 4, 2006, allegedly was completed during the 20-day extension requested by the Cities to reply to PIRY's reopening petition.

DISCUSSION

The Cities' pattern of broken promises in this proceeding makes PIRY's discovery in connection with its reopening petition both necessary and appropriate. The Cities' terse rejection of discovery as being both too soon and too late in this instance is unconvincing. By refusing to supply any information requested in the Discovery Requests, CIRC has violated both the letter and spirit of the Board's discovery procedures contained in 49 CFR § 1114. Unequivocally, the scope of discovery in Board proceedings, such as this, is quite broad. The Board's modification to 49 CFR § 1114.21 (1997) of its Rules of Practice² provides in pertinent part:

- (a) When discovery is available.
 - (1) Parties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . .

These modifications eliminated "the requirement that Board approval be sought for discovery procedures other than written interrogatories and requests for admission." FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Docket No. 42022, at 3 (STB served Feb. 5, 1998) ("FMC"). In the FMC decision, the Board noted that the overall goal of the modifications was to expedite the discovery process, acknowledging that the prior discovery rules "had the potential to impede expeditious discovery and [] generated too much paperwork." Id. at n.8.

² These modifications were adopted by the Board in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527 (STB served Oct. 1 and Nov. 15, 1996) (Expedited Procedures), aff'd sub nom. United Transp. Union-III. Legis. Bd. v. STB, 132 F.3d 71 (D.C. Cir. 1998).

The scope of discovery authorized by the Board's Rules of Practice is modeled on the scope of discovery under the Federal Rules of Civil Procedure.³ The Federal Rules of Civil Procedure "allow broad scope to discovery and this has been well recognized by the courts." Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d, § 2007 (1994) (citations omitted). The federal rule, which applies to all forms of discovery, is the broad standard against which PIRY's discovery requests must be evaluated.

The discovery requested by PIRY falls well within the broad parameters of the Board's rules. PIRY notes that unlike the adjudication process before courts, in the instant proceeding, there will be no oral hearing with cross-examination of witnesses. Therefore, the discovery process is the sole means by which PIRY, Carver Lumber, and the Board will be able to obtain information relevant to whether or not the Board's initial decision in this proceeding was correct.

The Cities' one-page outright refusal to answer any discovery is allegedly based upon two reasons: (1) that discovery is not appropriate because the proceeding is already closed; and (2) discovery is not needed for any contemplated future filing. In effect, therefore, the Cities argue that PIRY's discovery is too late in the proceeding but too early because it

³ The Federal Rules of Civil Procedure, in language virtually identical to the Board's Rules of Practice, provide that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1).

precedes any other filing that PIRY might make. Neither of these rationales is correct, nor do they justify an outright refusal to respond.

The Board has pending before it a petition to reopen this proceeding. That petition seeks to change the Board's approval of the Cities' displacement of PIRY in favor of CIRY. In essence, the petition asserts that the Cities' representations to the Board that CIRY would serve shippers such as Carver has proven untrue. The Cities now rely upon statements in their reply filing, dated March 6, to support the Board's decision. In effect, that filing is saying that even though the Cities did not do what they previously told the Board, now they are prepared to do so. Unfortunately, the Board, Carver and PIRY have all heard this sort of statement from the Cities before, only to find later that the statements were not true.

Because the Cities have ignored their past representations to the Board until the falsity of those statements has been brought to the Board's attention, it is not adequate in this case for the Board to simply rely on the Cities' latest promises. At a minimum, the Board should allow the public to test the Cities latest promises by allowing for discovery and a full exploration of the record and of those promises. Indeed, there are many promises that require further exploration through discovery. As just one example, the Cities' March 6 filing states that Union Pacific "has stated that it will interchange those shipments to CIRY," that "CIRY has stated that it will deliver those shipments," and that "[i]t thus *appears* that alternative rail service for Carver is at hand." (Emphasis added.) March 6 Reply at 4. Other than the mere statements by counsel, there is no proof, no verified statements, no physical evidence, or any other evidence to establish that UP will, or even physically can, interchange shipments at the new location. Without further discovery and further supplementation of the record, the Board has no actual evidence to substantiate these claims.

In actual fact, staff of Railinc, publisher of the official Open and Prepay Stations List, informs PIRY that Pioneer Junction, the point at which UP is supposed to interchange Carver traffic with CIRY, is not listed in the current version of that publication. Thus, despite the Cities' tepid assertion that it "appears" service is available, service may in fact not be available. Thus, despite months of effort by PIRY and Carver to get at the truth, we do not fully know whether or not the Cities are telling the Board the whole story. This information vacuum necessitates that the Board compel the Cities to respond fully to PIRY's Discovery Requests.

A. DISCOVERY IS APPROPRIATE AT THIS STAGE OF THE PROCEEDING

The Cities rely upon IC Construction⁴ for the proposition that discovery is not appropriate here because the record has closed. Discovery was denied in IC Construction not principally because of the lateness of the requests, but rather because the discovery sought was in part beyond the scope of the issues before the Board and because the existing record was sufficient to resolve the issues central to the proceeding. The Board also commented that the timing of the discovery indicated that the party moving to compel responses did not really need the information sought in order to make its presentation to the Board.

IC Construction is simply inapplicable to the facts of this proceeding. The Board's grant of the Cities' adverse abandonment application was based on findings that CIRY would provide a complete and adequate substitute for PIRY:

The Cities have contracted with a replacement carrier. Contrary to the arguments of PIRY and SRBOA, the evidence of record does not demonstrate

⁴ Illinois Central R. Co. – Construction and Operation Exemption – In East Baton Rouge Parish, LA, Finance Docket No. 33877, 2001 STB LEXIS 510 (STB served May 25, 2001)(“IC Construction”).

that shippers will lose routing options or receive inferior service should PIRY's service be discontinued.

...

[T]he Cities' contract with CIRY and the need for CIRY to seek our authority before service on this line can cease assures that granting the Cities' application will not result in a diminution of service that has a serious adverse impact on shippers or the community.

...

If the court accepts the Cities' argument that the operating agreement has expired, PIRY may be evicted from the line. CIRY would then remain as an authorized carrier able to serve shippers.

...

CIRY has stated that it will be able to provide adequate rail service to shippers on the Kellar Branch and the Cities agree. We find no basis on this record to conclude that the company, CIRY, will not be able to provide the rail service it has already been authorized to provide on the Kellar Branch, regardless of Mr. Gibson's legal status

City Of Peoria and The Village of Peoria Heights, IL — Adverse Discontinuance — Pioneer

Industrial Railway Company, STB Docket No. AB-878 (served Aug. 10, 2005), slip op. at 7-

8. Despite all of these findings, Carver's letter shows that nearly five months after the Board made its findings, CIRY had not delivered a single car, despite repeated requests. Indeed, the Cities' March 6 filing indicates that is still true.

Nor is this issue settled even now. Although the Cities allege that the long-delayed track connection is now in place, the best they can say about the availability of service to Carver is that the prior service failures now "appear" to have been resolved. This is hardly a ringing endorsement of Carver's prospects for rail service, considering the string of broken promises and defaults in service by CIRY thus far. Accordingly, as even the Cities do not offer any reasonable assurance that service will be provided as promised, discovery is

appropriate to allow the Board sufficient information to reach a conclusion in this proceeding.⁵

The Cities conveniently ignore precedent going back over 20 years where the Board or the Commission has granted discovery to parties in the context of petitions for reconsideration and/or reopening or petitions to revoke previously granted exemptions. In the Buffalo & Pittsburgh Railroad⁶ case, the Commission stated that “[t]he Commission’s discovery rules embody a long standing policy of fostering the disclosure of information.” There, Buffalo & Pittsburgh Railroad, Inc., filed a Notice of Exemption pursuant to 49 CFR § 1150.31 for the purpose of acquiring and operating certain properties of CSX Transportation, Inc. Petitions for revocation and for reconsideration of the exemption were subsequently filed and discovery was granted.

There is a plethora of proceedings that have followed Buffalo & Pittsburgh Railroad and allowed discovery in the context of petitions for reconsideration or revocation. See Clyde S. and Sandra Forbes and CSF Acquisition, Inc. — Control Exemption — Lamoille Valley Railroad Company and Twin State Railroad Corporation; New Hampshire and Vermont Railroad Company — Lease, Operation and Acquisition Exemption — Boston and Maine Corporation, Finance Docket Nos. 31545 and 31547 (ICC served Oct. 1, 1991) (three labor

⁵ See, e.g., Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, And Darlington, PA, In Mahoning And Columbiana Counties, OH, And Beaver County, PA, STB Docket No. AB-556 (Sub-No. 2X) (served Dec. 13, 2004) (granted motion to compel production of information necessary to enforce Board’s earlier orders while denying a petition to reopen those orders).

⁶ Buffalo & Pittsburgh Railroad, Inc. — Exemption — Acquisition and Operation of Lines in New York and Pennsylvania; Genesee & Wyoming Industries, Inc., The Arthur J. Walker Estate Corporation and Dumaines and Buffalo & Pittsburgh Railroad, Inc. — Exemption Control, Finance Docket Nos. 31116 and 31117, at 2 (ICC served April 7, 1989).

groups filed a petition seeking revocation of an exemption; Commission issued its order only after discovery was complete); Rail Management and Consulting Corporation, Green Bay Packaging, Inc., and K. Earl Durden — Continuance in Control Exemption — Tomahawk Railway, L.P., Valdosta Railway, L.P.; Tomahawk Railway, L.P. — Acquisition and Operation Exemption — Marinette, Tomahawk & Western Railroad Company, Finance Docket No. 31996 (Sub-No. 1), 1992 ICC LEXIS 288 at *4 (ICC served Dec. 17, 1992) (discovery is appropriate upon the filing of a petition to revoke); Brotherhood of Locomotive Engineers, et al. v. ICC, 909 F.2d 909, 911 (6th Cir. 1990) (the parties engaged in seven months of discovery in a revocation proceeding); Wheeling Corporation — Continuance in Control Exemption — Akron Barberton Cluster Railway Company, Finance Docket No. 32538, 1994 ICC LEXIS 229 at *3 (ICC served Oct. 11, 1994) (discovery conducted regarding various petitions filed by labor groups); Rail General Exemption Authority — Miscellaneous Agricultural Commodities — Petition of G. & T. Terminal Packaging Co., Inc., et al. to Revoke Conrail Exemption, Ex Parte No. 346 (Issue B-No. 14A), 1989 ICC LEXIS 204 at *8-9 (ICC served Aug. 3, 1989) (parties to revocation proceeding “do not have to obtain prior Commission approval to conduct discovery through written interrogatories or requests for admission”). These precedents have also been consistently followed in more recent cases. See, e.g., Holrail LLC—Construction And Operation Exemption—In Orangeburg and Dorchester Counties, SC, STB Finance Docket No. 34421, et al. (served Oct. 20, 2004) (granting CSXT’s motion to compel petitioner to produce more detailed information regarding its proposal to allow assessment of the proposal’s feasibility); Illinois Railnet, Inc.—Acquisition And Operation Exemption—BNSF Railway Company, STB Finance

Docket No. 34549 (served April 15, 2005)(granting discovery in the context of a petition to revoke).

The above cases clearly establish that discovery is available at this stage of the proceeding. They establish that discovery becomes available upon the filing of a petition to reopen/revoke. Carver has asked for reconsideration of the Board's decision, and PIRY has sought reopening. Those filings are sufficient to trigger the rules and precedents allowing parties to take discovery. PIRY should be allowed to take that discovery and provide information to the Board. The Board should follow its long-standing precedents and grant PIRY's Motion at this stage of the proceeding and compel the Cities to respond in full to PIRY's Discovery Requests.

B. GRANTING THE MOTION IS ALSO NECESSARY TO ENSURE A COMPLETE RECORD

It is completely within the Board's powers to grant PIRY discovery as this stage in order to provide for a more complete record in light of the inaccuracies of prior statements to the Board by CIRY and the Cities. Indeed, doing so is consistent with the Board's well-established desire to ensure a complete record on which to base its decisions. E.g., North Carolina Railroad Co. – Petition to Set Trackage Compensation and other Terms and Conditions – Norfolk Southern Railway Co. et al., STB Finance Docket No. 33134 (STB served May 29, 1997); Respondek Railroad Corp. – Acquisition and Operation Exemption – Evansville Terminal Co., STB Finance Docket No. 33331 (STB served March 12, 1997); and Sault Ste. Marie Bridge Co. – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Co., STB Finance Docket No. 33290 (STB served Feb. 12, 1997). In this case, the Board has complete power to ensure it has a complete record. See, e.g., 49 CFR § 1121.4(c);

Railroad Ventures, Inc. – Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, In Mahoning And Columbiana Counties, OH, and Beaver County, PA, STB Docket No. AB-556 (Sub-No. 2X)(STB served Dec. 13, 2004)(granting motion to compel in order to ensure complete record). Thus, the Board should compel the Cities to respond to PIRY's discovery.

Finally, the Board should reject the Cities' argument that PIRY is not entitled to discovery because PIRY has already filed a petition to reopen. Had PIRY filed discovery before filing its petition to reopen, the Cities would doubtless have contended, as they do now, that the record is closed and that they had no responsibility to reply to discovery. Now that PIRY has sought discovery after petitioning to reopen, the Cities contend that it is too late to seek discovery because PIRY has already filed its petition. Thus, PIRY is trapped in the Cities' Catch 22 - filing discovery either before or after filing a petition to reopen is unacceptable, in the Cities' view.

In light of the discrepancies between the record put forth by CIRY and the Cities and what has actually happened to Carver, denial of discovery would be tantamount to closing the Board's eyes to the truth. Indeed, as the Cities have presented no evidence to support their assertions, recent Board precedent indicates that this agency should not deny PIRY the opportunity to obtain evidence through discovery.⁷ As a result, the Board should compel discovery responses from the Cities to shed light on what the Cities allege "appears" to be true.

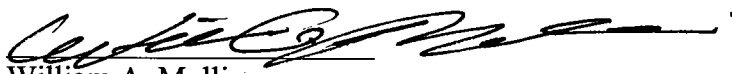
⁷ Cf. Michael H. Meyer, Trustee In Bankruptcy For California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad, STB Finance Docket No. 34337 (STB served Nov. 18, 2005)(Board reopened previous decision to allow discovery and filing of additional evidence).

CONCLUSION

PIRY has sought discovery in this proceeding to provide the Board with a more complete record. The Cities do not object to the substance of any part of PIRY's discovery, but simply to its timing. In light of the many erroneous "facts" that the Cities and CIRY have presented to the Board on which the Board has based its actions in this proceeding, discovery is clearly appropriate at this time to help assure that further factual inaccuracies are not the basis of subsequent Board actions. Therefore, the Cities should be compelled to respond in full to PIRY's Discovery Requests.

Respectfully submitted,

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March 2, 2006

By e-mail to wmullins@bakerandmiller.com

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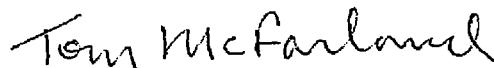
Re: Docket No. AB-878, *City of Peoria, Illinois and Village of Peoria Heights, Illinois -- Adverse Discontinuance -- Pioneer Industrial Railway Co.*

Dear Bill:

This is to notify you that the City of Peoria and the Village of Peoria Heights will not respond to the discovery requests of Pioneer Industrial Railway Co. that were forwarded with your letter to me of February 24.

Discovery is not appropriate when it is not initiated until long after the record in a proceeding is closed. *Illinois Central R. Co. -- Constr. & Oper. Exempt. -- in East Baton Rouge Parish, LA*, 2001 STB LEXIS 510 (Finance Docket No. 33877, decision served May 25, 2001) at *6-7. That principle applies with added force to the discovery submitted by Pioneer because here not only is the record closed, but the proceeding itself is closed. The Board's decision in this proceeding became final on August 10, 2005, over six months ago. There has been no showing that the discovery is needed for any Pioneer filing contemplated by Board rules. On the contrary, Pioneer's Petition to Reopen was filed nearly six weeks ago, well before the discovery was requested. Discovery under 49 C.F.R. § 1114.21(a) is appropriate "in a proceeding." Discovery is not appropriate before a proceeding is instituted or where, as here, a proceeding has been concluded.

Very truly yours,



Thomas F. McFarland

TMcf:kl:wp8.0\1021\ltrwam1

cc: Randall Ray, Esq., by e-mail to Rray@ci.peoria.il.us

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February 23, 2006

VIA OVERNIGHT DELIVERY

Thomas F. McFarland, P.C.
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208 South LaSalle Street – Suite 1890
Chicago, IL 60604-1112

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

Dear Tom:

I am enclosing herewith Pioneer Industrial Railway Co.'s ("PIRY") First Discovery Requests directed to your client the City of Peoria, IL in the above-captioned proceedings. This discovery is served pursuant to the Surface Transportation Board's regulations at 49 C.F.R. §1114.21, and related regulations.

Complete responses to these requests are due by March 10, 2006. Please feel free to contact me promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously. I can be reached by phone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

cc: Daniel A. LaKemper
The Honorable Vernon A. Williams

**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**

**FIRST DISCOVERY REQUESTS OF PIONEER INDUSTRIAL RAILWAY CO. TO
CITY OF PEORIA, IL**

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February 23, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

**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**

**FIRST DISCOVERY REQUESTS OF PIONEER INDUSTRIAL RAILWAY CO. TO
THE CITY OF PEORIA, IL**

Pursuant to 49 C.F.R. §1114.21 through 1114.31, Pioneer Industrial Railway Co., (“PIRY”) hereby directs the following discovery requests to the City of Peoria, IL (the “City”). Responses should be served as soon as possible, and in no event later than March 10, 2006. The City is requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously, to avoid unnecessary delay to the proceeding.

THE PARTIES

1. “City” means the City of Peoria, IL.
2. “Pioneer” or “PIRY” means the Pioneer Industrial Railway Co.
3. “You” and “Your” means the City.

DEFINITIONS

1. “AB-1066X” means STB Docket No. AB-1066X, Central Illinois Railroad Company—Discontinuance of Service Exemption—in Peoria County, IL.
2. “Board” or “STB” means the Surface Transportation Board and its predecessor agency, the Interstate Commerce Commission, if applicable.

3. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

4. "CIRY" means Central Illinois Railroad Company, its owners and affiliates, Including DOT Rail Services.

5. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from the original version, including notes.

6. "F.D. 34066" means STB Finance Docket No. 34066, City of Peoria, IL--Acquisition and Operation Exemption--Union Pacific Railroad Company.

7. "F.D. 34395" means STB Finance Docket No. 34395, City of Peoria, IL, d/b/a Peoria, Peoria

Heights & Western Railroad—Construction of Connecting Track Exemption—in Peoria County, IL.

8. “F.D. 34518” means STB Finance Docket No. 34518, 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.

9. “Identify,”

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business and its location relative to the track owned by the City;
- c. when used in relation to a document means to:
 - i. state the type of document (e.g., letter, memorandum, report, chart);
 - ii. identify the author, each addressee, and each recipient; and
 - iii. state the number of pages, title, and date of the document;
- d. when used in relation to an oral communication or statement means to:
 - i. identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - ii. state the date and place of the communication or statement;
 - iii. describe in detail the contents of the communication or statement; and
 - iv. identify all documents that refer to, relate to or evidence the communication

or statement;

e. when used in any other context means to describe or explain in detail.

10. "Including" means including without limitation.
11. "Kellar Branch" means the 8.29 miles of rail line owned by the City and the City of Peoria and located between milepost 1.71 and milepost 10.0.
12. "P&PU" means Peoria & Pekin Union Railway Co.
13. "Park District" means The Pleasure Driveway and Park District of Peoria, Illinois.
14. "Person" means an individual, company, partnership, or other entity of any kind.
15. "Petition" means the Petition To Reopen filed in This Proceeding by PIRY on January 24, 2006.
16. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.
17. "Produce" means to make available to the undersigned attorneys for copying and viewing.
18. "Relate to" or "relates to" a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.
19. "Request" means an interrogatory, request for admission or request for production of Documents or things.
20. "Shipper" means a consignor, a consignee, receiver or other user of rail services, including each of the following: Balfour Beatty; Carver Lumber Co.; Metroplex Corp.; and O'Brien Steel Services Co.
21. "Studies, analyses and reports" include studies, analyses, and reports in whatever form,

including letters, memoranda, tabulations, and computer printouts of data selected from a database.

22. "TZPR" means the Tazewell & Peoria Railroad, Inc., and its parent, subsidiaries, and affiliates.

23. "This Proceeding" means STB Docket No. AB-878, City Of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—Pioneer Industrial Railway Company.

24. "UP" means the Union Pacific Railroad Co., and its parent, subsidiaries, or affiliates.

INSTRUCTIONS

1. Any delay in production of requested documents or answers to Requests is certain to prejudice PIRY's ability to present evidence to the Board concerning the Petition. Accordingly, responsive documents should be produced to the undersigned counsel at Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, not later than March 10, 2006. Serial production of relevant documents and narrative responses during that period is encouraged and requested. Objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.

2. You should contact William A. Mullins at (202) 663-7823 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these Requests cover the period beginning January 2001 and ending with the date of the response.

4. If you object to any Request or any part thereof, please state the reasons for such objection, including all information forming the basis for such objection.

5. If You have information that would permit a partial answer to any Request, but You

would have to conduct a special study to obtain information necessary to provide a more complete response to that Request, and if the burden of conducting such special study would be greater for You than for PIRY:

- a. state that fact;
 - b. provide the partial answer that may be made with information available to You;
 - c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit PIRY to derive or ascertain a more complete answer; and
 - d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit PIRY to derive or ascertain a more complete answer.
6. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,
 - a. identify the information or document (in the manner provided in Definition 9 *supra*); and
 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
7. References to railroads, shippers, and other companies include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
8. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.
9. If You know or later learn that a response to any Request is incorrect, You are under a duty seasonably to correct that response.
10. Pursuant to 49 C.F.R. § 1114.29, You are under a duty seasonably to supplement Your

responses with respect to any question.

DISCOVERY REQUESTS

Request No. 1. Produce all information in Your possession concerning any communications with, and all documents provided to or received from, the STB's Section of Environmental Analysis in connection with This Proceeding or F.D. 34066, F.D. 34395, F.D. 34518, or AB-1066X.

Request No. 2. Produce all information in Your possession concerning derailments of railcars on the Kellar Branch since August 9, 2005.

Request No. 3. Produce all information in Your possession concerning any accidents, safety violations, or accidental release of lading involving rail shipments that have moved on the Kellar Branch since August 9, 2005.

Request No. 4. Produce all information in Your possession regarding the rates, service schedules, levels of service, carloads, types, and any other information that relates to CIRY's operations over the Kellar Branch, including any contract between the City and/or the Village of Peoria Heights and CIRY for CIRY to provide rail service over the Kellar Branch or any other rail line owned or operated by the City or the Village of Peoria Heights.

Request No. 5. Produce all information in Your possession concerning any discussions, contracts, negotiations, and any other document regarding rail service, either past, future, or existing, to any Shipper over any portion of the Kellar Branch or any portion of any other rail line owned or operated in whole or in part by the City or that connects with the Kellar Branch, whether or not it is owned or operated by the City.

Request No. 6. Produce all information in Your possession, including contracts, correspondence, and any other document, that relates to the City and/or the Village of Peoria

Heights and UP regarding rail service over, or to a connection with, the Kellar Branch or to/from any rail line (either existing or that has been approved for construction, even if construction has not been completed) that connects with the Kellar Branch or any portion of the Kellar Branch.

Request No. 7. Produce all information in Your possession, Including contracts, correspondence, and any other document, regarding rail service over, or to a connection with, the former UP track to the west of the Kellar Branch that was the subject of F.D. 34066.

Request No. 8. Produce all information in Your possession, Including contracts, correspondence, and any other document, regarding rail service over, or to a connection with, the track that is being constructed to connect the north end of the Kellar Branch to the former UP track, and that was the subject of F.D. 34395.

Request No. 9. Produce all information in Your possession, Including deeds, title search information, title opinions, contracts, correspondence, survey reports, valuation maps, and any other form of document, that relates to the City's ownership of the Kellar Branch, Including the tracks, switches, ties, and other track materials, and the ownership of, or the right to use, the underlying real estate to provide rail service.

Request No. 10. Produce all information in Your possession concerning interchange of traffic, moving to or from Shippers heretofore served using the Kellar Branch, to and from UP, TZPR, and P&PU.

Request No. 11. Produce all information in Your possession that relates to any contract between the City and/or the Village of Peoria Heights and any contractor for construction of the track authorized in F.D. 34395.

Request No. 12. Produce all information in Your possession that relates to the use by Shippers and potential Shippers of rail service on the Kellar Branch.

Request No. 13. Identify the person(s) providing the response to each of these Requests.

Respectfully submitted,



William A. Mullins

David C. Reeves

BAKER & MILLER PLLC

2401 Pennsylvania Ave., N.W.

Suite 300

Washington, DC 20037

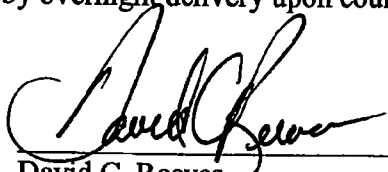
Phone: (202) 663-7820

Fax: (202) 663-7849

Attorneys for Pioneer Industrial Railway
Company

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 23rd day of February, 2006, copies of the foregoing Discovery Requests were served by overnight delivery upon counsel for the City of Peoria, IL.

A handwritten signature in black ink, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves
Attorney for Pioneer Industrial Railway Company

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

February 23, 2006

VIA OVERNIGHT DELIVERY

Thomas F. McFarland, P.C.
Law Offices of Thomas F. McFarland, P.C.
208 South LaSalle Street – Suite 1890
Chicago, IL 60604-1112

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

Dear Tom:

I am enclosing herewith Pioneer Industrial Railway Co.'s ("PIRY") First Discovery Requests directed to your client the Village of Peoria Heights, IL in the above-captioned proceedings. This discovery is served pursuant to the Surface Transportation Board's regulations at 49 C.F.R. §1114.21, and related regulations.

Complete responses to these requests are due by March 10, 2006. Please feel free to contact me promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously. I can be reached by phone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

cc: Daniel A. LaKemper
The Honorable Vernon A. Williams

**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**

**FIRST DISCOVERY REQUESTS OF PIONEER INDUSTRIAL RAILWAY CO. TO
THE VILLAGE OF PEORIA HEIGHTS, IL**

**Daniel A. LaKemper
General Counsel
Pioneer Industrial Railway Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400**

**William A. Mullins
David C. Reeves
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849**

February 23, 2006

**Attorneys for Pioneer Industrial
Railway Co.**

**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**

**FIRST DISCOVERY REQUESTS OF PIONEER INDUSTRIAL RAILWAY CO. TO
THE VILLAGE OF PEORIA HEIGHTS, IL**

Pursuant to 49 C.F.R. §1114.21 through 1114.31, Pioneer Industrial Railway Co., (“PIRY”) hereby directs the following discovery requests to the Village of Peoria Heights, IL (the “City”). Responses should be served as soon as possible, and in no event later than March 10, 2006. The City is requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously, to avoid unnecessary delay to the proceeding.

THE PARTIES

1. “City” means the Village of Peoria Heights, IL.
2. “Pioneer” or “PIRY” means the Pioneer Industrial Railway Co.
3. “You” and “Your” means the City.

DEFINITIONS

1. “AB-1066X” means STB Docket No. AB-1066X, Central Illinois Railroad Company—Discontinuance of Service Exemption—in Peoria County, IL.
2. “Board” or “STB” means the Surface Transportation Board and its predecessor agency, the Interstate Commerce Commission, if applicable.

3. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

4. "CIRY" means Central Illinois Railroad Company, its owners and affiliates, Including DOT Rail Services.

5. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from the original version, including notes.

6. "F.D. 34066" means STB Finance Docket No. 34066, City of Peoria, IL--Acquisition and Operation Exemption--Union Pacific Railroad Company.

7. "F.D. 34395" means STB Finance Docket No. 34395, City of Peoria, IL, d/b/a Peoria, Peoria

Heights & Western Railroad–Construction of Connecting Track Exemption–in Peoria County,
IL.

8. “F.D. 34518” means STB Finance Docket No. 34518, 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.

9. “Identify,”

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business and its location relative to the track owned by the City;
- c. when used in relation to a document means to:
 - i. state the type of document (*e.g.*, letter, memorandum, report, chart);
 - ii. identify the author, each addressee, and each recipient; and
 - iii. state the number of pages, title, and date of the document;
- d. when used in relation to an oral communication or statement means to:
 - i. identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
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- 10. "Including" means including without limitation.
- 11. "Kellar Branch" means the 8.29 miles of rail line owned by the City and the City of Peoria and located between milepost 1.71 and milepost 10.0.
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- 13. "Park District" means The Pleasure Driveway and Park District of Peoria, Illinois.
- 14. "Person" means an individual, company, partnership, or other entity of any kind.
- 15. "Petition" means the Petition To Reopen filed in This Proceeding by PIRY on January 24, 2006.
- 16. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.
- 17. "Produce" means to make available to the undersigned attorneys for copying and viewing.
- 18. "Relate to" or "relates to" a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.
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INSTRUCTIONS

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3. Unless otherwise specified, these Requests cover the period beginning January 2001 and ending with the date of the response.

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5. If You have information that would permit a partial answer to any Request, but You

would have to conduct a special study to obtain information necessary to provide a more complete response to that Request, and if the burden of conducting such special study would be greater for You than for PIRY:

- a. state that fact;
 - b. provide the partial answer that may be made with information available to You;
 - c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit PIRY to derive or ascertain a more complete answer; and
 - d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit PIRY to derive or ascertain a more complete answer.
6. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,
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 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
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Request No. 6. Produce all information in Your possession, including contracts, correspondence, and any other document, that relates to the City and/or the City of Peoria and

UP regarding rail service over, or to a connection with, the Kellar Branch or to/from any rail line (either existing or that has been approved for construction, even if construction has not been completed) that connects with the Kellar Branch or any portion of the Kellar Branch.

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Request No. 8. Produce all information in Your possession, Including contracts, correspondence, and any other document, regarding rail service over, or to a connection with, the track that is being constructed to connect the north end of the Kellar Branch to the former UP track, and that was the subject of F.D. 34395.

Request No. 9. Produce all information in Your possession, Including deeds, title search information, title opinions, contracts, correspondence, survey reports, valuation maps, and any other form of document, that relates to the City's ownership of the Kellar Branch, Including the tracks, switches, ties, and other track materials, and the ownership of, or the right to use, the underlying real estate to provide rail service.

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Request No. 12. Produce all information in Your possession that relates to the use by Shippers and potential Shippers of rail service on the Kellar Branch.

Request No. 13. Identify the person(s) providing the response to each of these Requests.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William A. Mullins", with a stylized flourish at the end.

William A. Mullins

David C. Reeves

BAKER & MILLER PLLC

2401 Pennsylvania Ave., N.W.

Suite 300

Washington, DC 20037

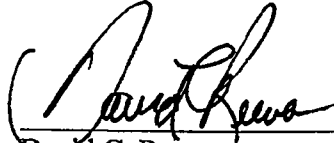
Phone: (202) 663-7820

Fax: (202) 663-7849

Attorneys for Pioneer Industrial Railway
Company

CERTIFICATE OF SERVICE

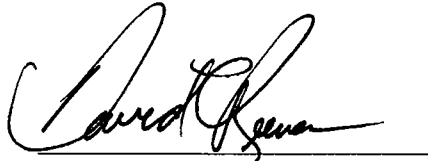
I, David C. Reeves, hereby certify that on this 23rd day of February, 2006, copies of the foregoing Discovery Requests were served by hand delivery upon counsel for the Village of Peoria Heights, IL.

A handwritten signature in black ink, appearing to read "David Reeves", is written over a horizontal line.

David C. Reeves
Attorney for Pioneer Industrial Railway Company

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 9th day of March, 2006, copies of the foregoing Motion To Compel Discovery have been served by first class mail, postage prepaid, or by more expeditious means of delivery upon all parties of record to this proceeding identified on the Surface Transportation Board's website. A copy has also been e-mailed to the Cities' counsel.

A handwritten signature in black ink, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves
Attorney for Pioneer Industrial Railway Co.