

September 24, 2004

Hon. David P. Ransburg, Mayor
Hon Randy Oliver, City Manager
Council Members
City Hall
419 Fulton Street
Peoria, Illinois 61602

Dear Mayor Ransburg, Manager Oliver and Council Members:

According to yesterday's newspaper, the City is \$350,000 short of the necessary funds it needs to build the "west connection" to the Kellar Branch. As you know, Pioneer has always supported this connection, as it could open up the west growth cell to competitive rail service, via the Kellar Branch.

As you also know, the legal proceedings continue at the Surface Transportation Board, and Pioneer intends to vigorously oppose any attempt to abandon the Kellar Branch.

At this point, it would seem that a resolution of this situation is long overdue.

Pioneer is prepared to start immediately to make the "west connection," with its own forces and material, for whatever money the City has available, and, at the option of the City, either honor our previous offer to purchase the Kellar Branch and former UP line for \$565,000 cash, or accept a long-term lease on the lines.

Pioneer is still willing to grant the Park District a 999-year lease to a portion of the ROW outside that portion of the ROW occupied by track and roadbed, as the parties may agree, for the use of a trail, and donate up to \$100,000 in in-kind services (railcar usage, train service, equipment use, flagging and other labor services) to the Park District to assist in the construction of said trail, and will work with the Park District to provide for the joint use of the ROW, including, if necessary, the joint use of existing bridges. Pioneer is willing to provide the labor, materials and equipment to construct a trestle for the trail to traverse the section behind Versailles Garden where the track elevation has caused the Park District the most concern.

As you know, Pioneer runs at 10 mph, or less, primarily during daylight, normally Monday-Friday, and does not foresee significant conflict with trail use, which will be concentrated during weekends/holidays.

This will enable Pioneer to offer competitive rail service to potential customers on the former UP spur (including the "growth cell"), through all seven line-haul carriers coming into Peoria. This is a huge advantage, as opposed to being captive to the Union Pacific, and its on-going capacity problems (see enclosed article from the *Wall Street Journal*). With direct access to virtually the entire North American rail system, it will give the growth cell a transportation advantage that few industrial sites have, and enable the City to market the property to users with world-wide markets.

Pioneer will upgrade the Kellar Branch track to FRA "Class I" standards, and aggressively seek new business, both in Pioneer Park, and in the adjacent "growth cell".

Pioneer will pursue the development of a "dinner train" which would be an important tourist attraction for the City. Pioneer successfully operates such a train on our Gettysburg & Northern Railroad, in cooperation with a local restaurant, and could do the same in Peoria.

Pioneer will also consider, in cooperation with the City, developing tourist/commuter service from downtown, if trackage rights can be secured from P&PU.

Pioneer will pursue, with Illinois Central College, and/or other appropriate partners, the establishment of a "railroad academy" to train students in train operations and maintenance, using the equipment and facilities of Pioneer. This project will bring out-of-town students to Peoria and create jobs and an increased demand for various materials and services in the Peoria-area, as well as providing local young people with valuable job skills. Recent news reports have attested to the rising demand for trained railroad crews, due to increasing traffic and the loss of many employees to retirement. It is estimated that 20,000 railroad jobs will need to be filled within the next few years industry-wide. This is an opportunity that should not be ignored.

Pioneer will also give the City a right-of-first refusal to repurchase the line, in the event Pioneer ever receives a bona fide purchase offer it intends to accept, from any unaffiliated entity.

I understand that there is some question about the possible need to refund money to the State or Federal government, in the event of a sale of the line. This should not be an issue, since virtually all of the value is rail and track material (personal property), not real estate. The land is held primarily by easement, which is extinguished, and valueless, upon the removal of the track. Nevertheless, if this issue cannot be promptly resolved, Pioneer is willing to accept a long-term, non-cancelable lease.

This will allow the City to exit the railroad business and remove future sources of expense, liability, and demands on City staff and Council Members (who have struggled with this issue for far too long already). It is totally consistent with the City's original purpose in purchasing this line to preserve rail service, and promote economic development.

It was to preserve rail service and promote economic development that the City first bought the Kellar Branch, not for a trail, as some have alleged. Pioneer assumed operation of the line six years ago, when the P&PU no longer wanted to operate it, because the customers who depended on the railroad, and the City, wanted to preserve rail service, and asked us to do that. By October, 1998, Steve Van Winkle was reporting to the City's Railroad Commission that Pioneer "has done everything they said they were going to do," that "interface with Pioneer has been excellent," and there were no problems to report. By the following year, the State's track inspector reported that the Line "is in far better condition now than it was when I started inspecting this line approximately 2 ½ years ago." Pioneer, he stated, "is making a conscientious effort to maintain the line in order for it to operate safely and to provide service for its customers in the Peoria area". More would have been done to enhance safety, but the City blocked the use of State funds to upgrade crossing signals, forcing Pioneer to maintain the existing antiquated systems.

As we have pointed out, a settlement has numerous advantages for the City:

1. It will allow the property on the former UP line (including the west growth cell), which has not developed, despite the availability of UP service, to receive competitive rail service via the Kellar Branch, thus bringing growth and jobs to Peoria.

2. It will avoid a long and costly abandonment legal battle, the outcome of which is uncertain. As you may know, the United States Court of Appeals for the District of Columbia recently reversed a Surface Transportation Board abandonment order in a similar case (See *New York Cross Harbor Railroad v. Surface Transportation Board*, decided July 13, 2004), holding that the Board neglected “its statutory duty to preserve and promote continued rail service.”
3. It will avoid the compensation claims of neighboring landowners and others, where the railroad has only an easement, which is extinguished when the track is removed. (see *State of Minnesota v. Hess*, 665 N.W.2d 560 (Minn. App. 2003)).
4. It will eliminate the question of how to deal with the abandoned parts of the right-of-way that the trail does not use, in particular south of War Memorial Drive.
5. It will benefit the trail project by reducing the maintenance responsibilities of the trail and lessening the security concerns of neighboring homeowners and businesses.
6. It will remove the uncertainty that has stifled growth in Pioneer Park (and led to the loss of Gateway Milling).
7. The tourist operation and railroad academy will bring people and new dollars into Peoria, and trains could even be used to enhance the trail by hauling bicycles up the hill, so users could make a round trip to or from the riverfront in a reasonable amount of time.
8. The consummation of the purchase and savings of \$350,000 in construction costs would be a net benefit to the City of \$915,000.

The best case alternative for the City, assuming success with litigation, is spending large sums of taxpayers’ money to build a connection that will see little or no use. The reality is, Union Pacific has no interest in the Pioneer Park business, and service will be cost prohibitive and unreliable.

We are fighting this battle because Pioneer is a Peoria company, dedicated to the betterment of this community. Abandonment of the Kellar Branch would be an incredibly short-sighted move, for which this City would suffer for decades to come. We are determined not to let that happen.

This City Council has been able to put petty politics aside and make some hard decisions for the long-term benefit of Peoria. It is time to do that again. While it may not be popular with a few newspaper editors, bringing the saga of the Kellar Branch to an end is the right thing to do for the City. It will return almost a million dollars to the City immediately, and bring dividends for many years to come. I am hopeful the Council will exercise the statesmanship to act on this opportunity.

Sincerely yours,

J. Michael Carr,
President