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AUG 19 2005

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August 19, 2005

BY HAND DELIVERY

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

FILED

AUG 19 2005

**SURFACE
TRANSPORTATION BOARD**

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Office of Proceedings

AUG 19 2005

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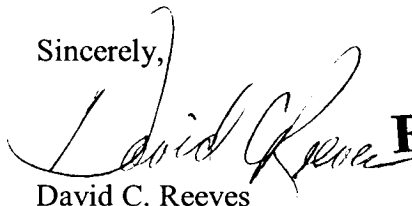
Re: STB Docket No. AB-878
*City Of Peoria and The Village of Peoria Heights, IL — Adverse
Discontinuance—Pioneer Industrial Railway Company*

Dear Secretary Williams:

Enclosed on behalf of Pioneer Industrial Railway Co., are an original and 11 copies of a Petition to Reopen for Immediate Modification or Clarification of the Board's decision served in the above-captioned proceeding on August 10, 2005. Also enclosed is a check for the \$200.00 filing fee for this petition to reopen. As can be seen from the certificate of service attached, copies of this reply are being served today on all parties of record.

Please file stamp the 11th copy of this filing and return it to the person delivering the filing for return to me. If there are any questions concerning this proposal, please contact me by telephone at (202) 663-7824 or by e-mail at dreeves@bakerandmiller.com.

Sincerely,


David C. Reeves

FEE RECEIVED

AUG 19 2005

**SURFACE
TRANSPORTATION BOARD**

Enclosures

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

214565

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

PETITION TO REOPEN FOR IMMEDIATE MODIFICATION OR CLARIFICATION

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August 19, 2005

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**

PETITION TO REOPEN FOR IMMEDIATE MODIFICATION OR CLARIFICATION

Comes now Pioneer Industrial Railway Company (“PIRY”), defendant in this adverse discontinuance proceeding, and requests that the Surface Transportation Board (“Board” or “STB”) immediately reopen its August 10, 2005 decision (“Decision”) in this matter. PIRY further requests that on reopening, the Board modify or, perhaps more exactly, clarify its Decision by specifying that the Cities of Peoria and Peoria Heights, IL (the “Cities”), may not remove the existing Kellar Branch line (“Line”) over which PIRY has operated for many years without (1) obtaining a court order adjudicating whether PIRY’s contractual rights to operate the Line have expired and (2) Central Illinois Railway Company (“CIRY”) obtaining authority from the Board to discontinue its authorized operation of the Line.

NEED FOR IMMEDIATE RELIEF

The requested relief is required to prevent the Cities from carrying out their planned imminent removal of most of the Line once construction of the connection to the former Union Pacific Railroad Company (“UP”) spur in Pioneer Park is completed. PIRY anticipates completion of that connection within days.

While the record in this proceeding¹ showed that the Cities wished to remove three-quarters of the existing Line soon after the connection to the former UP spur at Pioneer Park was completed, the record also showed and the Board found that the Cities intended to pursue relief in court to eject PIRY from the Line. Now, it has become apparent that the Cities intend to move forward with removing the Line without a judicial determination of PIRY's rights under its agreement. *See* letter from Thomas F. McFarland attached as Exhibit 1, demanding that PIRY vacate the Line as of midnight this coming Sunday, August 21. Accordingly, PIRY has been forced to initiate its own action to obtain a legal determination of its rights under its agreement.² If the Line is removed in the meantime, however, PIRY would be irreparably harmed by being unable to restore its operations even if it prevails in its pending court action for a declaration that its agreement to operate the Line remains valid. Two current shippers, as well as potential shippers on the Line, also would irretrievably lose connection to seven linehaul carriers by losing their connection via the Line and PIRY to the Tazewell & Peoria Railroad, Inc. ("TZPR"), the local switching carrier. Three existing PIRY stations on the part of the Line the Cities wish to remove – Averyville, Peoria Heights and Keller - would also be permanently abandoned. Accordingly, PIRY requests that the Board clarify the Decision to clearly state that the Board expects the Cities not to remove the Line until state court proceedings on PIRY's right to operate under the agreement are concluded and until PIRY obtains authority to discontinue operation of or to abandon the Line.

ARGUMENT

The Board's Decision granted the Cities' adverse abandonment application based on the representations made by the Cities. At the Cities' insistence, the Board made the Decision

¹ *See* November 16, 2004 application at 4 and Exhibit 1 to PIRY's filing dated May 10, 2005.

² A copy of PIRY's suit, filed August 18, 2005, is attached as Exhibit 2.

effective immediately upon service. Now, the Cities are set to violate their representations. The immediate effectiveness of the Decision has thus created a situation where the Cities can destroy the Line without further resort to the Board, contrary to their representations to the Board and to the explicit language of the Decision. Accordingly, the Decision should be reopened immediately to clarify that the Board expects the Cities to abide by their representations before removing any part of the Line.

Standards for Reopening. Because the Decision was effective upon service, it is administratively final. In seeking to reopen that administratively final order, PIRY must show that the Decision involves material error, or must show changed circumstances or new evidence supporting a change in the Decision. *See* 49 C.F.R. 1115.4 (2004).

PIRY's Petition Meets the Reopening Standards. The emergence of the Cities' plan for the imminent removal of the Line upon completion of the new connection to the former UP spur in Pioneer Park, and the Cities' plan to proceed without resort to the courts or to the Board, constitute both new evidence and changed circumstances justifying reopening. While the record in this proceeding showed that the Cities wished to move forward promptly with creation of a trail, the record also showed that the Cities intended (1) to follow legal means to reach a determination of PIRY's rights under the agreement and (2) for CIRY to obtain discontinuance authority over the existing Line. Now, it is apparent that the Cities intend no further filings with the courts or with the Board, and intend to force PIRY off the Line immediately, *see* Exhibit 1, in order to remove the Line. *See also* Exhibit 3, a local Peoria newspaper article published the day after the Decision, citing City authorities and stating that PIRY had to vacate the Line immediately because the Decision allows the Cities "to uproot the track and replace it with a hiking and biking trail."

PIRY's request for clarification seeks to prevent the Cities from evading the clear language of the Board's order. The Cities plan to begin removing most of the Line heretofore operated by PIRY as soon as they complete the connection to the new track. PIRY anticipates that, in conjunction with the Cities' plan, the Cities and CIRY will claim that the new connection to the former UP spur at Pioneer Park is a relocation of the existing Line, so that CIRY's cessation of operation on the existing Line and the Line's removal require no permission from the Board.

Allowing the Cities and CIRY to pursue this course of action would circumvent the Board's clear direction in the Decision. Specifically, the Board relied on "the need for CIRY to seek our authority before service on this line can cease" as assuring that granting the Cities' application would not seriously impact shippers. *See* Decision at 7. This finding was appropriate because the Cities pursued their application herein as a change of operators application, not a change of line application. Indeed, the Cities said on page 4 of their filing dated May 10, 2005:

If the application for adverse discontinuance is approved, [CIRY] will be authorized to operate, and will operate, the full length of the Branch. It is contemplated in this proceeding, therefore, that there will be a replacement operator for the entire length of the Branch.

And, as stated in Footnote 1 of the Cities' reply to protests filed April 5, 2005, "Discontinuance of rail operations over the Branch is subject to the Board's jurisdiction." The Decision was premised on these representations, shown by the statement in the Decision that, "The Cities point out, however, that [if they were required to seek abandonment authority] the time to do so would be when CIRY . . . seeks authority to discontinue service, not in this proceeding." Decision at 5. However, the Cities' current plan - to complete the connection to the former UP spur and to

remove the Line without CIRY seeking abandonment or discontinuance authorization - would circumvent this protection of the public on which the Decision rests.

Also, the Decision contemplates that “If, however, the court holds in favor of PIRY and finds that the contract still entitles it to provide service on the Line, our action here does not preclude PIRY from continuing to provide that service as a second carrier.” Decision at 7. The Board clearly understood that the Cities intended to pursue court proceedings to remove PIRY from the Line, not simply resort to self help. “The Cities seek to have the Board remove its primary jurisdiction . . . so that they may attempt to have PIRY evicted from the Kellar Branch under any applicable state law.” Decision at 6. However, if the Cities are allowed to rip out the existing Line, leaving only remnants of the Line plus a new connection and the former UP spur that PIRY has no agreement to operate, the Cities will have nullified this additional protection contemplated by the Board’s Decision.

By seeking to prevent the Cities from ripping out the existing Line without obtaining a court order adjudging the expiration of PIRY’s agreement and without CIRY obtaining Board authority to discontinue operations on and/or abandon the existing Line, PIRY’s instant petition seeks to enforce the terms of the Decision. Absent the requested clarification, it is likely that the Cities will proceed with their plan to remove most of the Line in the near term, without further Court or Board proceedings. Such action would irreparably harm PIRY and members of the public that the Board’s decision sought to protect.

PIRY will be irreparably harmed if the Cities’ removal of the existing Line, without any further Board authorization, deprives PIRY of its contractual rights. To PIRY’s knowledge, the Cities have taken no legal action to determine the status of PIRY’s agreement covering the existing Line. Rather, the Cities appear poised to complete the connection to the former UP spur

and to tear out much of the existing track as soon as possible, without further proceedings in court or before this Board. If the Board allows that to occur, PIRY will be deprived of the only line that it has an agreement to operate. Rebuilding the Line once it is removed would be financially infeasible. Therefore, if the Board does not grant PIRY's instant petition, PIRY will be irreparably harmed. While PIRY has initiated its own action to obtain a judicial determination of its rights, that action alone will not protect PIRY against the Cities' plans.

PIRY is not the only party that would be irreparably harmed if the Cities proceed unchecked toward near-term removal of most of the Line. The Decision contemplated that the public interest would be protected in this case by the Cities having to establish in court that PIRY's agreement to operate the Line has expired and by CIRY having to come before the Board to discontinue service over the existing track. The Cities' plan would eliminate both of these protections forever.

Moreover, two current shippers, as well as potential shippers on the portion of the Line that would be removed, also would be irreparably harmed by removal of the Line. Two current shippers, who currently have access via PIRY and TZPR to 8 linehaul railroads will, if the Line is removed, have access only to UP. As the Board has recognized in merger proceedings, the loss of even a second carrier is a competitive harm requiring a remedy. The loss of access to 8 competing carriers is likewise clearly harmful. Similarly, potential shippers on the portion of the Line that will be removed, as discussed in Exhibit 1 to PIRY's filing herein dated April 29, 2005, will irretrievably lose all direct rail access if the Line is removed. These irreparable public harms will occur if the Cities are allowed to circumvent the procedures set forth in the Decision. Therefore, granting PIRY's petition by clarifying that the Cities must adhere to their

representations about steps to be taken before removal of the Line will protect the public, as the Decision specifically contemplates. *See* Decision at 7.

The Cities cannot justifiably complain that holding them to their representations is in any respect a hardship to them. In the first place, PIRY is simply asking that the Board make clear to the Cities that they cannot tell the Board one thing and then do another. As shown above, what PIRY is asking the Board to make clear is based directly on what the Cities told the Board. The Cities should not be able to avoid the effect of their own words. Furthermore, there is no emergency need for creation of the trail that the Cities plan for the right of way once they rip out the Line. While the Cities have hinted that they might lose a grant that would pay a portion of the cost of creation of the trail, that grant's availability has been extended previously, and the Cities have lost other grants without diminishing their interest in the trail. Moreover, as shown in Exhibit 3, the Cities believe that additional monies may be available in the recently-enacted highway bill. Because creation of a trail is the purpose of the Cities' application in this proceeding and there is no critical need to create such a trail immediately, other parties will not be substantially adversely affected by reopening and clarification of the Board's Decision. The balance of the public interest therefore favors the relief PIRY has requested.

CONCLUSION

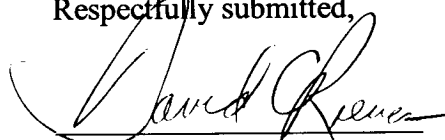
Without the requested relief, PIRY will be immediately and irreparably harmed. Removal of the existing Line would nullify PIRY's rights under its existing agreement without the court proceedings contemplated by the Decision. Moreover, the 'relocation' theory would allow the Cities and CIRY to avoid the discontinuance proceeding specifically called for by the Decision while obliterating existing PIRY stations and eliminating two shippers' access to TZPR. In short, PIRY and the public would be deprived of their rights without any of the

proceedings that the Decision contemplated would protect the public interest. While PIRY has filed suit to vindicate its rights under its agreement, that suit alone cannot effectuate the protections that the Board's Decision contemplates.

PIRY is doing exactly what the Board's order calls for – letting the state court decide PIRY's rights under the operating agreement. But, as the Board said in the Decision, "If . . . the court holds in favor of PIRY and finds that the contract still entitles it to provide service on the line, our decision here does not preclude PIRY from continuing to provide that service." For that part of the Decision is to have any meaning, the Line must still be in place when the court decides PIRY's rights.

Accordingly, PIRY requests that the Board immediately reopen the Decision and clearly specify that the Cities may not remove the existing Line without establishing in court that PIRY's agreement has expired and without CIRY obtaining specific Board approval to discontinue operation on the existing Line. Without such an order, PIRY and the public will be irreparably deprived of the protections specifically accorded by the Board's order.

Respectfully submitted,



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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**

PETITION TO REOPEN FOR IMMEDIATE MODIFICATION OR CLARIFICATION

EXHIBIT 1

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

August 15, 2005

By certified mail,
(return receipt requested)

Daniel A. LaKemper
Pioneer Railcorp
1318 S. Johanson Rd.
Peoria, IL 61607

Re: Operation of the Kellar Branch at Peoria-Peoria Heights, IL

Dear Dan:

This confirms verbal advice today that Central Illinois Railroad Company (CIRY) will commence operation of the Kellar Branch at Peoria-Peoria Heights, IL, effective at 12:01 a.m., Monday, August 22, 2005. That operation will be in furtherance of an agreement between CIRY and the City of Peoria, Illinois and the Village of Peoria Heights, Illinois. That operation is in accordance with Surface Transportation Board (STB) decisions in its Finance Docket No. 34518, *Central Illinois R. Co. -- Oper. Exempt. -- Rail Line of the City of Peoria, et al. in Peoria and Peoria Heights, Peoria County, IL*, served July 28, 2004 and Feb. 23, 2005 (not printed), and its Docket No. AB-878, *City of Peoria and the Village of Peoria Heights, IL -- Adverse Discon. -- Pioneer Industrial Ry. Co.*, served Aug. 10, 2005 (not printed).

This is to advise correspondingly that Pioneer Industrial Railway Co. (PIRY) should cease rail operations and vacate the Kellar Branch at Peoria-Peoria Heights, IL, no later than 11:59 p.m., Sunday, August 21, 2005.

Very truly yours,

Tom McFarland

Thomas F. McFarland
*Attorney for the City of Peoria, Illinois
and the Village of Peoria Heights, Illinois*

TMCF:kl:wp8.0\1021;1025\lrdal3

cc: Randy Ray, Esq., by fax to 309-494-8559
Melinda Sammons, by fax to 815-339-6400

**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**

PETITION TO REOPEN FOR IMMEDIATE MODIFICATION OR CLARIFICATION

EXHIBIT 2

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF ILLINOIS
LaSALLE COUNTY

PIONEER INDUSTRIAL RAILWAY CO.

Plaintiff,

vs.

D.O.T. RAIL SERVICE, INC.,
CENTRAL ILLINOIS RAILROAD COMPANY,
THE CITY OF PEORIA, ILLINOIS, and
THE VILLAGE OF PEORIA HEIGHTS,

Defendants.

FILED

AUG 18 2005

No. 05-L-

146

LA SALLE COUNTY CIRCUIT CLERK
THIRTEENTH JUDICIAL CIRCUIT OF ILLINOIS

COMPLAINT

NOW COMES THE PLAINTIFF, PIONEER INDUSTRIAL RAILWAY CO., and for its Complaint against the Defendants, D.O.T. RAIL SERVICE, INCORPORATED, CENTRAL ILLINOIS RAILROAD COMPANY, THE CITY OF PEORIA, ILLINOIS, and THE VILLAGE OF PEORIA HEIGHTS, ILLINOIS, hereby states as follows:

COUNT I
TORT

1. On information and belief, DEFENDANT D.O.T. RAIL SERVICE, INCORPORATED ("DOT") is a corporation organized and existing by virtue of the laws of the State of Illinois, and doing business in LaSalle County, Illinois.
2. On information and belief, DEFENDANT CENTRAL ILLINOIS RAILROAD COMPANY ("CIRY") is a corporation organized and existing by virtue of the laws of the State of Illinois, and is a subsidiary of DOT, or under joint ownership with DOT.
3. DEFENDANT CITY OF PEORIA, ILLINOIS ("Peoria") is a municipal corporation organized and existing under the laws of the State of Illinois.
4. DEFENDANT VILLAGE OF PEORIA HEIGHTS, ILLINOIS ("Peoria Heights") is a municipal corporation organized and existing under the laws of the State of Illinois.
5. PLAINTIFF PIONEER INDUSTRIAL RAILWAY CO. ("PIRY") is a corporation authorized to do business and doing business in the State of Illinois.
6. On or about July 10, 1984, Defendant Peoria entered into an Agreement with the Peoria &

Pekin Union Railway Company (the "Agreement," a copy of which is attached as "Exhibit 1").

7. At some time after July 10, 1984 Defendant Peoria Heights acquired an interest in the Agreement.

8. On or about February 19, 1998, the Peoria & Pekin Union Railway Company (P&PU), with the consent of Defendants Peoria and Peoria Heights, assigned its interest in the Agreement to Plaintiff PIRY.

9. Said Agreement gives PIRY the right to operate, as a railroad, a certain segment of track extending approximately 8.9 miles through Peoria and Peoria Heights, known commonly as the "Kellar Branch."

10. Said Agreement had no expiration date, and thus, under the laws of the State of Illinois, and the decisions of the Surface Transportation Board (*See City of Venice – Abandonment Exemption – in Venice, IL and St. Louis, MO*, S.T.B. Docket No. AB-863X, Decided June 22, 2004) and the Interstate Commerce Commission (*See State of Maine, Dept. of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company*, 8 I.C.C.2d 835 (1991)), granted P&PU (and thus, PIRY as its successor in interest), a permanent railroad easement over the Kellar Branch.

11. Defendants Peoria and Peoria Heights have taken the position that that the Agreement expired, and they entered into contracts with Defendants DOT and CIRY on or about June 26, 2000 and April 27, 2004, respectively (copies of said contracts are attached hereto as Exhibits "2" and "3", respectively).

12. Under Illinois law, a landowner cannot grant another railroad, nor can another railroad acquire, an interest in property to which an existing railroad has a railroad easement.

13. Said contracts, therefore, constitute tortuous interference with Plaintiff's business.

14. As a direct and proximate result of such conduct, PIRY has suffered, and will suffer, costs, expenses, lost business, lost business opportunity, lost revenues and lost profits, due to the Defendants' tortuous interference with Plaintiff's business.

15. Said contracts were entered into by the Defendants willingly and with knowledge of the Plaintiffs' rights.

WHEREFORE, PIRY prays for judgment against the Defendants in an amount in excess of \$50,000, plus costs and attorney fees, and for such other and further relief and the Court deems just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

COUNT II
CONTRACT

1-12. PIRY realleges Counts 1-11 of Count I.

13. On or about August 10, 2004, Defendants Peoria and Peoria Heights obtained an Order from the Surface Transportation Board, permitting "a court of competent jurisdiction to adjudicate the rights and obligations of the parties to the agreement" (See *City of Peoria and the Village of Peoria Heights, IL – Adverse Discontinuance – Pioneer Industrial Railway Company*, S.T.B. Docket No. AB-878, Served August 10, 2005).

14. Instead of seeking judicial determination, as directed by the Surface Transportation Board, Peoria and Peoria Heights sent PIRY a letter, a copy of which is attached hereto as "Exhibit 4," demanding that PIRY cease rail operations and vacate the Kellar Branch.

15. On information and belief, Defendant Peoria has caused CIRY and/or DOT to put one or more locomotives on the Kellar Branch, with the intent of operating same, to the exclusion of PIRY.

16. The actions of Defendants Peoria and Peoria Heights in entering into contracts with DOT and CIRY, pursuing adverse discontinuance, demanding that PIRY cease rail operations and vacate the Kellar Branch, and causing DOT and/or CIRY to place locomotives on the Kellar Branch and begin operating same, constitute a breach of their easement Agreement.

17. Plaintiff has suffered and will continue to suffer damages as a result of said breaches of contract by Peoria and Peoria Heights, including, but not limited to increased costs and expenses, lost business, lost business opportunity, lost revenues and profits, and other incidental and consequential damages.

WHEREFORE, Plaintiff respectfully requests the following relief against the Defendants:

I. For a Declaratory Judgment, pursuant to 735 ILCS §5/2-701, that the Agreement granted PIRY a permanent railroad easement over the Kellar Branch.

II. For a Declaratory Judgment, pursuant to 736 ILCS §5/2-701, that the contracts between DOT and CIRY and Peoria and Peoria Heights are invalid, as a matter of law.

III. For judgment, in an amount sufficient to fairly compensate PIRY for the breaches of contract, including increased costs and expenses, lost business, business opportunity, lost revenue and profits, and such other, incidental, and consequential damages as Plaintiff may suffer and be entitled to recover.

IV. For costs and attorney fees

V. For such other and further relief as the Court deems just.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES OF FACT.

COUNT III
INTERSTATE COMMERCE ACT

1-14. PIRY realleges paragraphs 1-14 of Count II.

15. On or about July 1, 2004 CIRY obtained regulatory authority from the Surface Transportation Board, to operate the Kellar Branch as a common carrier railroad (See *Central Illinois Railroad Company – Operation Exemption – Rail Line of the City of Peoria and the Village of Peoria Heights*, S.T.B. Docket No. 34518, Served July 1, 2004).

16. PIRY is informed and believes that the Defendant CIRY intends, in the immediate future, to cease service upon, abandon and scrap approximately 75% of the Kellar Branch, so that it can be converted into a bike trail.

17. Pursuant to the Interstate Commerce Act, as amended, 49 U.S.C. §10903(a)(1), provides that:

A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to –

- (A) abandon any part of its railroad lines; or
- (B) discontinue the operation of all rail transportation over any part of its railroad lines,

must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.

18. CIRY has not filed, and PIRY is informed and believes that CIRY does not intend to file, an application with the Board to abandon or cease service on any part of the Kellar Branch.

19. If CIRY abandons and ceases service upon the majority of the Kellar Branch, without first obtaining authority from the Surface Transportation Board, such action would constitute a violation of 49 U.S.C. §10903.

20. This Court has the authority, under 735 ILCS §5/2-701, to declare that the unauthorized cessation of service and/or abandonment of the Kellar Branch would be a violation of the Interstate Commerce Act.

21. PIRY will suffer irreparable harm if the Kellar Branch is abandoned and/or scrapped

without authorization from the Board, in both of the following ways:

- (A) If PIRY prevails on Count II of this Complaint, its railroad easement would be rendered useless; and
- (B) Even if PIRY does not prevail on Count II of this Complaint, the filing of Abandonment Petition with the Surface Transportation Board would enable PIRY to file an Offer of Financial Assistance to purchase the line, pursuant to 49 U.S.C. §10904.

WHEREFORE, PIRY respectfully requests the following relief:

I. A Declaratory Judgment that CIRY may not cease service upon or abandon any part of the Kellar Branch, without first seeking authority from the Surface Transportation Board, pursuant to 49 U.S.C. §10903.

II. A permanent injunction barring CIRY from ceasing service, abandoning, or scrapping any part of the Kellar Branch, unless and until authorized to do so by the Surface Transportation Board.

III. For costs and attorney fees.

IV. For such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES OF FACT.

Respectfully submitted,

PIONEER INDUSTRIAL RAILWAY CO.

One of its Attorneys

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(309) 697-1400

Joseph C. Self
Self Law Firm
8501 S. 28th. Street
Fort Smith, Arkansas 72908
(479) 649-0050

AGREEMENT

This Agreement entered into this 10th day of July, 1984, by and between the CITY OF PEORIA, an Illinois Municipal Corporation, hereinafter referred to as "CITY", and the PEORIA AND PEKIN UNION RAILWAY COMPANY, an Illinois Corporation, hereinafter referred to as the "P&PU".

W I T N E S S E T H:

WHEREAS, the CITY has purchased the segment of track (8.9 miles plus industrial tracks) formerly known as the Kellar Branch line of the now bankrupt Chicago, Rock Island and Pacific Railroad, as shown on the map attached hereto as Exhibit "A" and legal description attached hereto as Exhibit "B" both incorporated herein; and,

WHEREAS, the CITY is not a railroad operator; and,

WHEREAS, industries now located on and adjacent to the Keller Branch track desire railroad service; and,

WHEREAS, the P&PU desires to provide railroad services to industries located on said track; and,

WHEREAS, the CITY is willing to enter into an agreement to grant trackage rights to the P&PU upon, and subject to, the terms and conditions herein set forth;

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND THE MUTUAL AND DEPENDENT COVENANTS HEREINAFTER SET FORTH, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS.

Whenever used in this Agreement, the following words shall have the following meanings:

- (a) "Right-of-Way" shall mean all that property owned by the CITY as described in Exhibit "B";
- (b) "Roadbed" shall mean all that property and appurtenances located within ten (10) feet of the center line of the track;

2. PUBLIC AUTHORITY APPROVAL.

The parties, or either as may be appropriate, shall make application to the Interstate Commerce Commission and any other public body for any necessary authority to carry out the transaction hereinafter described and the agreements herein are contingent upon the procurement of such public authority.

3. GRANT OF TRACKAGE RIGHTS.

- (a) The CITY hereby grants unto the P&PU the right to

operate its engines, cars and trains over said Kellar Branch, side tracks, and industry tracks.

(b) The P&PU shall have the right under the foregoing grant to serve all existing industries now located on or adjacent to said track and industries and any industries which may in the future be located adjacent to or connected to the track.

4. OWNERSHIP, OPERATION AND MAINTENANCE.

(a) Ownership of said track shall remain in the CITY. However, the CITY may transfer ownership of the track located within the corporate limits of the Village of Peoria Heights to said Village subject to the Village agreeing to abide by all terms and conditions of this Agreement for the track transferred to it.

(b) The P&PU agrees for the term of this Agreement to serve the industries on an "as needed" basis up to three (3) times per week.

(c) The mode of operation over said track shall be under the sole control of the P&PU.

(d) The CITY shall assume the responsibility for maintenance of highway and street crossings (excluding rails, ties and signal devices), and financial responsibility for maintenance of the right-of-way (including weed and brush control) except for the roadbed and track as set forth in Paragraph 4(e) below. The CITY also assumes responsibility for structural maintenance of the bridges over War Memorial Drive at Harvard Street.

(e) The CITY shall be responsible, at its discretion, for performance of weed and brush control not on the roadbed which does not affect rail operations or safety. Unexpected and abnormal maintenance after January 1, 1986 which is over and beyond expected problems which would be rectified by normal preventive maintenance, and which is caused by unforeseen casualty other than railroad accidents, shall be repaired by the P&PU at the cost of the City not to exceed \$10,000 in any calendar year. Prior to repairing any such damage, the P&PU shall consult with the CITY as to its plan to remedy the situation and the cost thereof.

(f) The P&PU shall assume the responsibility for all maintenance of tracks, crossing protection, and roadbed including weed, brush, snow and ice control thereon, and normal yearly drainage control maintenance.

(g) The movement of engines, cars and trains of the P&PU on said tracks shall be performed pursuant to federal, state and local government laws and regulations.

(h) Any and all cars handled by the P&PU over said tracks will remain in the account of the P&PU.

5. STANDARD OF CARE, INDEMNIFICATION AND HOLD HARMLESS.

(a) In maintaining the right-of-ways outlined above, the CITY shall be bound only to the standard of care as set forth in Section 3-102 of Chapter 85 of the Illinois Revised Statutes (1983). Anything herein to the contrary notwithstanding, the P&PU shall not, by reason of any defect or by reason of the failure of the CITY to repair such defect, have or make against the CITY its agents,

employees or assigns, any claim or demand for any loss, damage, destruction, injury or death whatsoever, arising from such defect, neglect or failure; and the P&PU expressly releases the CITY, its agents, employees and assigns, from any and all claims or demands on account of such loss, damage, destruction, injury or death suffered or incurred directly by the P&PU arising out of such defect, neglect or failure.

(b) Anything here to the contrary notwithstanding, the P&PU agrees to and does hereby assume the entire risk and responsibility for its trains, engines and cars and contents thereof and for its officers, agents and employees at all times while on or about said tracks. The P&PU hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from any and all claims, demands, lawsuits and liability by reason of loss of or damage to P&PU trains, engines and cars and cars in custody of the P&PU, and the contents thereof, and for injury to or death of P&PU officers, agents and employees arising or growing out of the presence of any such property, or of any such persons, on or about said tracks or out of the P&PU's use of said tracks or operations of its trains, cars or engines thereof, from any cause whatsoever regardless of the negligence of the CITY, its agents, employees or assigns.

(c) The P&PU hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from and against loss of or damage to property, and injury to or death of persons whomsoever, arising or growing out of any act or omission of the officers, agents or employees of the P&PU in its use of or operation on or over said tracks.

(d) The P&PU agrees to name the CITY (and if partial ownership is transferred to the Village of Peoria Heights, the Village also) as additional insured(s) on all liability policies covering the P&PU's operation of said track.

(e) The P&PU agrees to indemnify and hold the City harmless for any claims arising out of Section 7.D. and Section 9 of the "Rehabilitation Assistance Grant Agreement between the State of Illinois, the City of Peoria and the Peoria and Pekin Union Railroad", including costs and attorney fees.

6. CHARGE FOR TRACKAGE RIGHTS.

(a) For the use of said tracks by the P&PU pursuant to the provisions hereof, the P&PU shall pay to the CITY the sum of One Dollar (\$1.00) per annum. The P&PU shall make this payment to the CITY within fifteen (15) days after the effective date of this agreement. Subsequent annual payments will be made within fifteen (15) days after the anniversary date of this agreement.

(b) It is understood and agreed that the amount set forth in paragraph 6(a), above, does not include any cost or expense which the CITY, its agents, employees or assigns may incur on account of loss of or damage to property or injury to or death of persons, arising out of or in connection with the operation of any engines, trains, cars or equipment of the P&PU upon said tracks.

(c) The P&PU agrees for a period of thirteen (13) years from the effective date of this agreement, not to impose a per car surcharge against shippers and receivers located on or adjacent to said track, including team tracks, for any and all cars handled over said tracks pursuant to this agreement.

7. REPORTS AND RECORDS.

(a) The P&PU agrees to submit a report to the CITY on a calendar month basis, listing the car number and initials,

the shipper or receiver thereof, and the date of shipment, receipt, of all revenue cars shipped or received by industries located on or adjacent to said tracks, including team tracks. Such reports shall be submitted to the Department of Finance of the City by the tenth (10th) day of the month following the month in which the car was handled.

(b) All records of the P&PU pertaining to the movement of cars over and upon any part of the said tracks shall be open and available to the inspection of any duly authorized representative of the CITY at any and all times during normal business hours for the purpose of checking and verifying statements furnished by the P&PU in accordance with the provisions hereof.

8. DEFAULT.

The rights herein granted to the P&PU are expressly conditioned upon the performance by the P&PU of all and singular the covenants and agreements herein set forth to be performed by the P&PU. In the event the P&PU shall default in the performance of any of its obligations hereunder, and such default shall continue for a period of sixty (60) days after the receipt of written notice thereof by certified mail, return receipt requested, from the CITY, the CITY shall have the right at any time thereafter to terminate this agreement forthwith.

9. TERM OF AGREEMENT.

(a) This agreement shall remain in full force and effect for a minimum period of twenty (20) years unless and until terminated for cause as set forth above or by mutual consent.

(b) The P&PU shall, however, have the right to renegotiate the maintenance clause of this agreement after thirteen (13) years from the date hereof by serving written notice upon the CITY (and the Village of Peoria Heights if a portion of said tracks is transferred to the Village) of its desire to renegotiate said portion of the agreement.

10. RESERVED RIGHT OF ABANDONMENT.

This agreement shall in no way be construed as requiring or obligating the CITY to continue its ownership, maintenance, improvement or operation of said tracks, or the appurtenances thereto, nor in any way limit the CITY from disposing of, encumbering, or abandoning all or any part thereof, at any time it may see fit; provided, however, that in case the CITY shall desire to abandon all or any part thereof, it shall give the P&PU written notice at least ninety (90) days prior to such abandonment, and the P&PU shall have the right during such time to purchase any or all of the part to be abandoned, if and only if, the CITY does not plan to devote such part to another governmental use. Should the P&PU desire to purchase the right-of-way upon abandonment, the purchase price shall be equal to the salvage value of the material in said tracks, structures and appurtenances plus the fair market value of the right-of-way thereof.

11. NOTICE.

All notices required pursuant to this agreement to the City shall be addressed to the City Manager, City of Peoria, 419 Fulton, Room 207, Peoria, IL 61602. All notices to the P&PU shall be addressed to C.E. Hellums, Peoria & Pekin Union Railway, 101 Wesley Road, Creve Coeur, IL, 61611.

12. ASSIGNMENT.

The P&PU shall not transfer, assign or convey the rights granted hereunder without the written consent of the CITY, and only upon the condition that the assignee shall abide

by all terms, conditions and agreements hereof.

IN WITNESS WHEREOF, the parties have executed this agreement,
the year and date first above written.

CITY OF PEORIA

By *[Signature]*
City Manager

January 1, 1901

ATTEST:

Mary L. Haynes
City Clerk

PEORIA AND PEKIN UNION RAILWAY COMPANY,

By *[Signature]*
President

ATTEST:

Paul D. Feberstein
Secretary

APPROVED

LEGAL DEPT.

By *[Signature]*

AGREEMENT

This Agreement, by and between the CITY OF PEORIA, ILLINOIS, an Illinois municipal corporation with its principal offices at 419 Fulton St., Peoria, Illinois 61602 (the "CITY"); and DOT RAIL SERVICE, an Illinois corporation with its principal offices at P.O. Box 361, LaSalle, Illinois 61301 ("DOT"), entered into this 26 day of June, 2000; WITNESSETH:

WHEREAS, the CITY has an ownership interest in a Rail Line known as the Peoria, Peoria Heights & Western Railroad, extending from E.P.S. 75 + 00 (M.P. 1.61) to E.P.S. 516 + 21 (M.P. 10.0), in Peoria County, Illinois, being the former "Kellar Branch" of the Chicago, Rock Island & Pacific Railroad Company (herein the "Rail Line"); and

WHEREAS, DOT and the CITY desire to provide for the long-term future of rail service to customers at the end of said Rail Line; and

WHEREAS, DOT and the CITY desire to set forth the terms and conditions under which DOT would operate rail service in the event that the CITY acquires and constructs an alternative route to service said customers from the west.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Article 1. PRECONDITIONS

1.1 The CITY shall acquire the Union Pacific ("UP") spur line ("Peoria Pioneer Spur") running from junction with the UP mainline west of Pioneer Park ("Pioneer Junction"), to the end of track in said Pioneer Park, (being just west of University St.), and as extended to serve Pioneer Park.

1.2 The CITY shall acquire (at its expense) the property between the end of the UP Spur (referred to in Section 1.1 above) and the western terminus of the Rail Line, make modifications thereto as deemed necessary by the UP, and shall construct a connection between the two lines so that, after the discontinuance provided for in Section 3.2, railcars to/from Rail Line customers (except O'Brien Steel) can be moved over the connection to the UP mainline. Prior to constructing such connection, the CITY shall submit the plans for the connecting track to DOT's Roadmaster for review and approval, so as to assure that the connection, when constructed, will be able to handle the type and number of railcars and at the service level anticipated. DOT will respond promptly to CITY's requests for approval, and shall otherwise cooperate with CITY's efforts to acquire and construct such connection.

Article 2. SERVICE FROM THE WEST

2.1 DOT shall use all commercially reasonable efforts to an interchange agreement with UP under terms that will not materially increase the rates charged the Rail Line's customers or significantly alter the service level presently provided over the Kellar Branch. Commercially reasonable efforts shall include, if necessary, the duty to pursue all available remedies through

the Surface Transportation Board ("STB") (or other regulatory agency or body having jurisdiction) to obtain such interchange agreement.

2.2 In the event that UP ever attempts to abandon or discontinue service over all or any portion of its lines with which DOT has obtained an interchange agreement, the CITY shall oppose such abandonment and shall join in and cooperate with any effort by DOT to gain possession or operational rights over that portion of the UP tracks subject to such discontinuance or abandonment needed to serve the Peoria Pioneer Spur, provided, however, that nothing herein shall be construed to obligate the CITY to contribute money to buy such track.

Article 3. LIMITS OF LIABILITY

3.1 If the aforementioned connection is not completed on or before December 31, 2002, the CITY shall have the option to terminate this Agreement and it shall then be null and void. If CITY does not exercise such option and completes the connection at a later date, CITY's option to terminate shall expire. DOT shall not be entitled to any damages or injunctive relief from the CITY for the failure of the CITY to complete the connection. Completion of the connection shall be at the sole discretion of the CITY.

Article 4. GRANT OF TRACKAGE RIGHTS

4.1 The CITY hereby grants unto DOT the right to operate its engines, cars and trains over such tracks as the CITY shall gain rights to from Pioneer Junction to Pioneer Park and those parts of the Kellar Branch needed to serve customers located in Pioneer Park. Any grant of trackage rights by the CITY is subject to the CITY acquiring or leasing yard trackage currently owned by the UP.

4.2 The DOT shall have the right under the foregoing grant to serve all existing industries now located on or adjacent to said track and industries and any industries which may in the future be served over the Peoria Pioneer Junction track or portions thereof.

Article 5. OWNERSHIP, OPERATION AND MAINTENANCE

5.1 DOT shall not be granted ownership rights to any track as a result of this Agreement. In the event that the UP-owned tracks are offered for sale, DOT agrees that the CITY shall have the first right to purchase said track and that DOT will only purchase said track if the CITY declines to do so.

5.2 The mode of operation over said track shall be under the sole control of the DOT.

5.3 The CITY shall be responsible for maintenance of roadways and street crossings (excluding rails, ties and signal devices on roadways and streets) under the jurisdiction of the CITY.

5.4 The DOT shall assume the responsibility for all maintenance of tracks, crossing protection, and roadbed including weed, brush, snow and ice control thereon, all drainage control maintenance, and all weed and brush control on the remainder of the right-of-way.

5.5 The movement of engines, cars and trains of the DOT on said tracks shall be performed pursuant to federal, state and local government laws and regulations.

Article 6. STANDARD OF CARE, INDEMNIFICATION AND HOLD HARMLESS

6.1 Nothing herein shall cause the CITY's standard of care for the rights-of-way to be different than as set forth in 745 ILCS 10/3-102. Anything herein to the contrary notwithstanding, the DOT shall not by reason of any defect or by reason of the failure of the CITY to repair such defect, have or make against the CITY, its agents, employees or assigns, any claim or demand for any loss, damage, destruction injury or death whatsoever arising from such defect, neglect or failure and the DOT expressly releases the CITY, its agents, employees and assigns from any and all claims or demands on account of such loss, damage, destruction, injury or death suffered or incurred directly by the DOT arising out of such defect, neglect or failure.

6.2 Anything herein to the contrary notwithstanding, DOT agrees to and does hereby assume the entire risk and responsibility for its trains, engines and cars and contents thereof and for its officers, agents and employees at all times while on or about said tracks. The DOT hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from any and all claims, demands, lawsuits and liability by reason of loss of or damage to DOT trains, engines and cars and cars in custody of the DOT, and the contents thereof, and for injury to or death of DOT officers, agents and employees arising or growing out of the presence of any such property, or of any such persons, on or about said tracks or out of the DOT's use of said tracks or operations of its trains, cars or engines thereof, from any cause whatsoever regardless of the negligence of the CITY, its agents, employees or assigns.

6.3 The DOT hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from and against loss of or damage to property, and injury to or death of persons whomsoever, arising or growing out of any act or omission of the officers, agents or employees of the DOT in its use of or operation on or over said tracks.

6.4 The DOT agrees to name the CITY as additional insured on all liability policies covering DOT's operation of said track. DOT shall provide the CITY with a Certificate of Insurance listing the CITY as additional insured and providing the CITY with a thirty (30) day notice of any cancellation of the policy. DOT shall maintain liability insurance with limits of \$5,000,000 per occurrence; in the event DOT institutes passenger service, then said insurance policy shall have limits of \$10,000,000.

Article 7. CHARGE FOR TRACKAGE RIGHTS

7.1 For the use of said tracks by the DOT pursuant to the provisions hereof, the DOT shall pay to the CITY the sum of One Dollar (\$1.00) per annum. The DOT shall make this payment to the CITY within fifteen (15) days after the effective date of this Agreement. Subsequent annual payments will be made within fifteen (15) days after the anniversary date of this Agreement provided, however, that no such fee shall be due until operation from the west is ready to commence.

Article 8. REPORTS AND RECORDS

8.1 The DOT agrees to submit a report to the CITY on a calendar month basis.

8.2 All records of the DOT pertaining to the movement of cars over and upon any part of the said tracks shall be open and available to the inspection of any duly authorized representative of the CITY at any and all times during normal business hours for the purpose of checking and verifying statements furnished by DOT in accordance with the provisions hereof.

Article 9. DEFAULT

The rights herein granted to DOT are expressly conditioned upon the performance by the DOT of all and singular the covenants and agreements herein set forth to be performed by DOT. In the event DOT shall default in the performance of any of its obligations hereunder, and such default shall continue for a period of sixty (60) days after the receipt of written notice thereof by certified mail, return receipt requested, from the CITY, the CITY shall have the right at any time thereafter to terminate this Agreement forthwith, in addition to any other legal remedies which the City may have.

Article 10. TERM OF AGREEMENT

This Agreement shall remain in full force and effect for a period of twenty (20) years from the date on which service from the west becomes authorized by the STB or upon the date on which service from the west actually commences, whichever is earlier.

Article 11. NOTICES

All notices required pursuant to this Agreement to the CITY shall be addressed to the City Manager, City of Peoria, 419 Fulton, Room 207, Peoria, IL 61602. All notices to DOT shall be addressed to DOT Rail Service, P.O. Box 361, LaSalle, Illinois 61301.

Article 12. ASSIGNMENT

The DOT shall not transfer, assign or convey the rights granted hereunder without the written consent of the CITY and only upon the condition that the assignee shall abide by all terms, conditions and agreements hereof.

Article 13. RULES OF CONSTRUCTION

13.1 The entities described herein with the terms "UP" and "DOT" shall be construed to mean and include the respective successors (but not assigns) of those corporations.

13.2 When used herein, terms importing the plural number shall mean and include the singular and vice versa, unless the context otherwise requires.

13.3 No amendment, modification or waiver of this agreement shall be of any force or effect unless it shall be in writing, and signed by the parties hereto.

13.4 Neither party may assign any right or obligation hereunder, except with the prior written consent of the other party. Subject to this restriction on assignment, this agreement shall inure to the benefit of and be binding upon the parties' respective successors and assigns.

13.5 This Agreement was negotiated by the parties, and should not be construed in favor of or against either of them by virtue of the fact that one or the other may have drafted any part or all of the final document.

13.6 This Agreement is entered into by the parties for the benefit of the parties hereto and should not be construed as a third party beneficiary contract for the benefit of any third party.

Article 14. LEVEL OF SERVICE

DOT shall pick up and deliver cars within twenty-four (24) hours after being notified by the UP that the cars have been placed on the Peoria Pioneer Spur.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

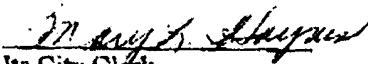
CITY OF PEORIA, ILLINOIS

By: 

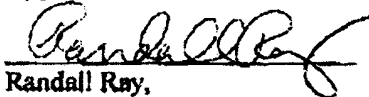
Its City Manager

CITY OF PEORIA, ILLINOIS

Attested to by:


Its City Clerk

Approved as to form:


Randall Ray,
Corporation Counsel

DOT RAIL SERVICE

By: [Signature]
Its President

DOT RAIL SERVICE

Attested to by:

[Signature]
Its VICE PRESIDENT

Approved as to form:

[Signature]
Its General Counsel

(6.25.01)

AGREEMENT
(Kellar Branch Interim Trackage Rights)

This Agreement, by and between the CITY OF PEORIA, ILLINOIS, a Illinois municipal corporation with its principal offices at 419 Fulton Street, Peoria, Illinois 61602, hereinafter the "CITY"; and CENTRAL ILLINOIS RAILROAD COMPANY (a common carrier), an Illinois corporation owned by the shareholders of DOT RAIL SERVICE, INC., with its principal offices at P.O. Box 259, Granville, Illinois 61326, hereinafter referred to as "DOT", entered into this 27th day of April, 2004, WITNESSETH:

WHEREAS, the CITY has an ownership interest in a Rail Line known as the Peoria, Peoria Heights & Western Railroad, extending from E.P.S. 75 + 00 (M.P. 1.61) to E.P.S. 516 + 21 (M.P. 10.0), in Peoria County, Illinois, being the former "Kellar Branch" of the Chicago, Rock Island & Pacific Railroad Company (herein the "Rail Line"); and

WHEREAS, DOT and the CITY have entered into an Agreement dated June 26, 2000 pertaining to service from the West to be provided exclusively by DOT after it builds a connection from Pioneer Junction to Pioneer Park; and

WHEREAS, the CITY's current Agreement for trackage rights on the Kellar Branch terminates July 10, 2004; and

April 12, 2004

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WHEREAS, the Parties deem it in their best interest that DOT provide exclusive service over the Kellar Branch during an interim period until the connection from the west is completed.

NOW, THEREFORE, in consideration for the joint and mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article 1. TRACKAGE RIGHTS

1.1 The CITY hereby grants unto DOT the exclusive right to operate its engines, cars and trains over the existing Kellar Branch, including sidetracks and industry tracks; provided, however, that the CITY shall not be in breach of this Agreement if the present operator fails to vacate the Rail Line.

1.2 DOT shall have the exclusive right under the foregoing grant to serve all existing industries now located on or adjacent to said track and industries and any industries which may, in the future, be served over the Kellar Branch or portions thereof.

1.3 No other entity, railway company or person shall be permitted to operate at any time on Kellar Branch, except DOT or its subsidiary, or parent.

Article 2. INTERCHANGE AGREEMENT

DOT shall use all commercially reasonable efforts to obtain an interchange agreement with the Peoria and Pekin Union Railroad under terms that will not materially increase the rates charged Kellar Branch customers or

significantly alter the service level presently provided over the Kellar Branch. Commercially reasonable efforts shall include, if necessary, the duty to pursue all available remedies through the Surface Transportation Board ("STB") or other regulatory agency having jurisdiction to order such interchange agreement.

Article 3. OWNERSHIP, OPERATION AND MAINTENANCE

3.1 DOT shall not be granted ownership rights to any track as a result of this Agreement.

3.2 The mode of operation over said track shall be under the exclusive control of DOT.

3.3 CITY shall be responsible for maintenance of roadways and street crossings (excluding rails, ties and signal devices on roadways and streets) under the jurisdiction of the CITY.

3.4 DOT shall assume the responsibility for all maintenance of tracks, crossing protection, and roadbed including weed, brush, snow and ice control thereon, all drainage control maintenance, and all weed and brush control on the remainder of the right-of-way, following the guidelines set forth by the Federal Railroad Administration (FRA).

3.5 The movement of engines, cars and trains of DOT on said tracks shall be performed pursuant to federal, state and local government laws and FRA regulations.

April 12, 2004

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Article 4. STANDARD OF CARE, INDEMNIFICATION AND
HOLD HARMLESS

4.1 Nothing herein shall cause the CITY's standard of care for the rights-of-way to be different than as set forth in 745 ILCS 10/3-102. Anything herein to the contrary notwithstanding, DOT shall not by reason of any defect or by reason of the failure of the CITY to repair such defect, have or make against the CITY, its agents, employees or assigns, any claim or demand for any loss, damage, destruction injury or death whatsoever arising from such defect, neglect or failure, and DOT expressly releases the CITY, its agents, employees and assigns from any and all claims or demands on account of such loss, damage, destruction, injury or death suffered or incurred directly by DOT arising out of such defect, neglect or failure.

4.2 Anything herein to the contrary notwithstanding, DOT agrees to and does hereby assume the entire risk and responsibility for its trains, engines and cars and contents thereof, and for its officers, agents and employees at all times while on or about said tracks. DOT hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from any and all claims, demands, lawsuits and liability by reason of loss of or damage to DOT trains, engines and cars and cars in custody of DOT, and the contents thereof, and for injury to or death of DOT officers, agents and employees arising or growing out of the presence of any such property, or of any such persons, on or about said

April 12, 2004

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tracks or out of the DOT's use of said tracks or operations of its trains, cars or engines thereof, from any cause whatsoever regardless of the negligence of the CITY, its agents, employees or assigns.

4.3 DOT hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from and against loss of or damage to property, and injury to or death of persons whomsoever, arising or growing out of any act or omission of the officers, agents or employees of DOT in its exclusive use of or operation on or over said tracks.

4.4 The DOT agrees to name the CITY as additional insured on all liability policies covering DOT's exclusive operation of said track. DOT shall provide the CITY with a Certificate of Insurance listing the CITY as additional insured and providing the CITY with a thirty (30) day notice of any cancellation of the policy. DOT shall maintain liability insurance with limits of Five Million dollars (\$5,000,000) per occurrence; in the event DOT institutes passenger service, then said insurance policy shall have limits of Ten Million dollars (\$10,000,000).

Article 5. FEE FOR TRACKAGE RIGHTS

For the use of said tracks by DOT pursuant to the provisions hereof, DOT shall pay to the CITY the sum of One Dollar (\$1.00) per annum. DOT shall make this payment to the CITY within fifteen (15) days after the effective date of this Agreement. Subsequent annual payments will be made within fifteen (15)

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days after the anniversary date of this Agreement provided, however, that no such fee shall be due until operation from the west is ready to commence.

Article 6. REPORTS AND RECORDS

6.1 DOT agrees to submit a report to the CITY on a calendar month basis.

6.2 All records of DOT pertaining to the movement of cars over and upon any part of the said tracks shall be open and available to the inspection of any duly authorized representative of the CITY at any and all times during normal business hours for the purpose of checking and verifying statements furnished by DOT in accordance with the provisions hereof.

Article 7. DEFAULT

The rights herein granted to DOT are expressly conditioned upon the performance by DOT of all, and singular, the covenants and agreements herein set forth to be performed by DOT. In the event DOT shall default in the performance of any of its obligations hereunder, and such default shall continue for a period of sixty (60) business days after the receipt of written notice, at any time thereafter the CITY may terminate this Agreement forthwith, in addition to any other legal remedies which the CITY may have.

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April 12, 2004 *HP*

Article 8. TERM OF AGREEMENT

This Agreement is intended to be temporary in nature and is intended to terminate within sixty (60) days after the CITY completes the connection called for in the Agreement between these Parties dated June 25, 2000.

Article 9. NOTICES

All notices required pursuant to this Agreement to the CITY shall be addressed to the City Manager, City of Peoria, 419 Fulton, Room 207, Peoria, IL 61602. All notices to DOT shall be addressed to Central Illinois Railroad Company, P.O. Box 259, Granville, IL 61326.

Article 10. ASSIGNMENT

DOT shall not transfer, assign or convey the rights granted hereunder without the written consent of the CITY and only upon the condition that the assignee shall abide by all terms, conditions and agreements hereof.

Article 11. LEVEL OF SERVICE

DOT shall pick up and deliver cars within twenty-four (24) hours after being notified by the P&PU that the cars have been placed on the Kellar Branch.

Article 12. RESERVED RIGHT OF ABANDONMENT

This Agreement shall in no way be construed as requiring or obligating the CITY to continue its ownership, maintenance, improvement or operation of the Kellar Branch, or the appurtenances thereto, nor in any way limit the CITY from disposing of, encumbering, or abandoning all or any part hereof, at any

time it may see fit. The CITY has in fact found another governmental use for the Kellar Branch and it is anticipated that the line will be abandoned and railbanked for use as a trail. In consideration for the trackage rights granted in the Agreement dated June 26, 2000, DOT agrees that it will not oppose any such abandonment nor make an offer to purchase such parts of the Kellar Branch as lie between Pioneer Park and O'Brien Steel.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF PEORIA, ILLINOIS

By: Charles R. Oliver
Its City Manager

CITY OF PEORIA, ILLINOIS

Attested to by:

Mary E. Hayes
Its City Clerk

Approved as to form:

Randall Ray
Randall Ray, Corporation Counsel

CENTRAL ILLINOIS RAILROAD COMPANY

Don L. Gibson
By: Don L. Gibson, Vice President

April 12, 2004

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

August 15, 2005

By certified mail.
(return receipt requested)

Daniel A. LaKemper
Pioneer Railcorp
1318 S. Johanson Rd.
Peoria, IL 61607

Re: Operation of the Kellar Branch at Peoria-Peoria Heights, IL

Dear Dan:

This confirms verbal advice today that Central Illinois Railroad Company (CIRY) will commence operation of the Kellar Branch at Peoria-Peoria Heights, IL, effective at 12:01 a.m., Monday, August 22, 2005. That operation will be in furtherance of an agreement between CIRY and the City of Peoria, Illinois and the Village of Peoria Heights, Illinois. That operation is in accordance with Surface Transportation Board (STB) decisions in its Finance Docket No. 34518, *Central Illinois R. Co. -- Oper. Exempt. -- Rail Line of the City of Peoria, et al. in Peoria and Peoria Heights, Peoria County, IL*, served July 28, 2004 and Feb. 23, 2005 (not printed), and its Docket No. AB-878, *City of Peoria and the Village of Peoria Heights, IL -- Adverse Discon. -- Pioneer Industrial Ry. Co.*, served Aug. 10, 2005 (not printed).

This is to advise correspondingly that Pioneer Industrial Railway Co. (PIRY) should cease rail operations and vacate the Kellar Branch at Peoria-Peoria Heights, IL, no later than 11:59 p.m., Sunday, August 21, 2005.

Very truly yours,

Tom McFarland

Thomas F. McFarland
*Attorney for the City of Peoria, Illinois
and the Village of Peoria Heights, Illinois*

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cc: Randy Ray, Esq., *by fax to 309-494-8559*
Melinda Sammons, *by fax to 815-339-6400*

**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**

PETITION TO REOPEN FOR IMMEDIATE MODIFICATION OR CLARIFICATION

EXHIBIT 3



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FRONT PAGE

Park District receives OK to extend trail

Pioneer Railcorp hints that it will comply with board's ruling

Thursday, August 11, 2005

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BY MOLLY PARKER
OF THE JOURNAL STAR

PEORIA - A federal board Wednesday approved the city's decades-long initiative to extend the Rock Island Trail by ordering Pioneer Railcorp to vacate the line on which it had been operating.

After years of haggling between the city and Pioneer officials, the Surface Transportation Board said the company has to immediately stop running rail cars on the Kellar Branch line, which extends from just north of Pioneer Parkway to War Memorial Drive.

The ruling will allow the Peoria Park District to uproot the track and replace it with a hiking and biking trail. That will create a continuous recreational path extending from Toulon to the Bob Michel Bridge in Downtown Peoria, via the existing Rock Island and Pimiteoui trails.

"We've been waiting so long, I think it's wonderful," said Bonnie Noble, executive director of the Peoria Park District. "It's like a gift. My birthday is (today) ... I just hope we now can move forward. There are a lot of people who are very anxious who would like to see this trail in place."

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Edit the Editors

Nobody's perfect, right? Well, the Journal Star strives to be. Do you see misspelled words, incorrect grammar, things that don't make sense? Do you have questions

Pioneer officials, who can appeal the decision, did not return phone calls seeking comment. But City Manager Randy Oliver said Pioneer officials called the city Wednesday to report "they will transition the track to the new operator in the next few weeks."

"They indicated they've reviewed the ruling and will cooperate," Oliver said.

If Pioneer officials do not act in accordance with the ruling, the city can take legal action in state court to eject them, said City Attorney Randy Ray. But "we're looking for an orderly transition," he added.

The board's ruling comes on the heels of an agreement signed Tuesday between Pioneer and Metroplex Corp. It was supposed to have been signed by Aug. 1 but was agreed to only after the city threatened legal action this week if the two companies did not sign the waiver.

That agreement requires Pioneer to move its box cars and locomotive from the area of the track where Metroplex is to complete construction of a rail spur extension per its contract with the city. Once completed, businesses that use rail to ship products from the area will have access, through the spur, to the Union Pacific Railroad to the west.

Ray said the park district will be allowed to start uprooting the rail line for the recreational trail after the spur project is finished. That should be completed within a few months, he said.

Noble said the ruling comes in time to save a roughly \$4 million grant awarded for the project nearly a decade ago that the federal government threatened to take away without movement on the trail. Other grants that had been awarded over the years are no longer available because of the time lapse, but the park district may be able to tap into money set aside for trails in the federal transportation bill signed by President Bush.

The city's fight to gain access to the rail line, which also runs through Peoria Heights, has been years in the making. Pioneer had a contract with the city that expired about a year ago, but the company refused to cease its operation, claiming the STB had to make the final determination, an assertion city officials did not dispute.

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The city petitioned the board, which has exclusive domain over all railroads, for a ruling around that time, but it was ignored for months. U.S. Rep. Ray LaHood, R-Peoria, said he contacted STB staff several times to encourage the board to consider the case, but he was told members were hoping Pioneer officials and the city would reach an agreement without their interference.

"A couple of times when I talked to them, they said they were hoping the city could resolve this issue with Pioneer on its own," LaHood said. "When I talked to them a couple weeks ago, I said, 'Hey, it's not going to happen.' It was apparent to me they were at loggerheads."

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CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 19th day of August, 2005, copies of the foregoing Petition to Reopen for Immediate Modification or Clarification have been served by first class mail, postage prepaid, upon all parties of record to this proceeding identified on the Surface Transportation Board's website.

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

David C. Reeves
Attorney for Pioneer Industrial Railway Co.