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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36487

**KATAHDIN RAILCAR SERVICES LLC --
—EXEMPTION FOR CHANGE OF OPERATORS—
OHIO TERMINAL RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

**Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000**

Attorneys for Katahdin Railcar Services LLC

Dated: March 8, 2021

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March 8, 2021
SURFACE
TRANSPORTATION BOARD**

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Finance Docket No. 36487

**KATAHDIN RAILCAR SERVICES LLC --
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OHIO TERMINAL RAILWAY COMPANY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41(c)**

Pursuant to 49 U.S.C. §10902 and the Board’s regulations at 49 C.F.R. §1150.41(c), Katahdin Railcar Services LLC (“KRS”) files this Verified Notice of Exemption for a change of operators with respect to certain rail services currently provided by Ohio Terminal Railway Company (“OTRC”) in Monroe County, Ohio.

KRS is a Class III rail carrier that operates over a 12.2-mile rail line between Milepost 60.5 near Powhatan Point, Ohio and Milepost 72.7 near Hannibal, Ohio (the “Omal Line”) pursuant to a lease transaction with Ohio River Partners Shareholder LLC (“ORPS”).¹ Under the Lease Agreement between KRS and ORPS (the “Omal Line Lease”), KRS assumed the

¹ See *Fortress Investment Group LLC – Exemption for Intra-Corporate Family Transaction -- Ohio River Partners Shareholder LLC & Katahdin Railcar Services LLC*, Finance Docket No. 36402 (STB served May 15, 2020). KRS and ORPS are affiliates of Fortress Transportation and Infrastructure Investors LLC (“FTAI”), which is managed by an affiliate of Fortress Investment Group LLC.

exclusive right and common carrier obligation to provide freight rail service on and along the Omal Line, with one exception.² Specifically, the Omal Line Lease provided that:

“Lessee [KRS] shall not provide rail services to industries located within that certain industrial park owned by Hannibal Real Estate, LLC (“HRE”) in the vicinity of Omal, Ohio (the “HRE Industrial Park”) unless Lessee is notified in writing by Lessor that it is authorized to serve customers in the HRE Industrial Park.”³

ORPS’s predecessor, Ohio River Partners LLC (“ORP”), was authorized to acquire and operate the Omal Line in *Ohio River Partners LLC – Exemption for Acquisition and Operation of a Rail Line -- Hannibal Development, LLC in Monroe County, Ohio*, Finance Docket No. 35984 (STB served April 1, 2016) (“*Omal Line Acquisition*”).⁴ ORPS initially satisfied its common carrier obligation by engaging its affiliate Central Maine & Quebec Railway US, Inc. (“CMQR”) to operate the Omal Line on a contract carrier basis. CMQR was subsequently sold to Soo Line Corporation (an affiliate of Canadian Pacific Railway Company) and the operating agreement between ORPS and CMQR was terminated.⁵ The lease transaction with KRS ensured uninterrupted operation of the Omal Line upon expiration of the ORPS-CMQR operating agreement.

As the Board’s decision in *Omal Line Acquisition* (at 2-3) observed, there existed a dispute between ORPS and OTRC regarding whether an Easement to use the Omal Line granted

² See Finance Docket No. 36402, Verified Notice of Exemption, Exhibit B, Lease Agreement dated as of April 30, 2020, Sections 2.03, 3.01.

³ *Id.* Section 2.03(a).

⁴ ORP subsequently merged with and into ORPS pursuant to authority granted in *Ohio Partners Shareholder LLC – Exemption for Intra-Corporate Family Transaction – Ohio River Partners, LLC* Finance Docket No. 36152 (STB served November 1, 2017 and December 22, 2017).

⁵ See *Soo Line Corp. – Control – Central Maine & Quebec Railway US Inc.*, STB Docket No. 36368.

to HRE by ORP's predecessor (the "HRE Easement") and a subsequent Operating Agreement between HRE and OTRC (the "HRE-OTRC Operating Agreement") gave OTRC the exclusive right to provide freight rail service on and along the Omal Line.⁶ The Board declined to address that issue, stating that "[w]here, as here, there is a dispute about whether an entity can exercise its operating authority by obtaining the property and/or contractual rights in a line of railroad, the dispute generally should be decided by a court, applying state law, and not by the Board."⁷

On June 5, 2019, the Court of Common Pleas for Monroe, County, Ohio resolved the dispute regarding the respective rights of OTRC and ORPS to use the Omal Line. The court determined, *inter alia*, that the HRE Easement "does not permit HRE or [OTRC], as operator for HRE, to use the [Omal] Line to provide rail service to any destination other than the HRE property," and that "[ORPS] has the right, as fee simple owner of the [Omal] Line to use the [Omal] Line and any connecting track on its property for any purpose"⁸ As a result of the court's ruling, OTRC's rights with respect to the Omal Line are limited to the exclusive right to provide rail service to the HRE Industrial Park.

ORPS, OTRC and HRE have entered into a settlement agreement to resolve the remaining issues in the *OTRC v. HDL* litigation. Pursuant to the settlement agreement, OTRC will assign to ORPS (i) its exclusive right under the HRE-OTRC Operating Agreement to

⁶ OTRC was authorized to operate over the Omal Line pursuant to the HRE-OTRC Operating Agreement in *Ohio Terminal Railway Company – Operation Exemption – Hannibal Real Estate LLC*, Finance Docket No. 35703 (STB served January 11, 2013). OTRC is a Class III rail carrier and a subsidiary of Carload Express, Inc. See *Carload Express, Inc. – Continuance in Control Exemption – Ohio Terminal Railway Company*, Finance Docket No. 35704 (STB served January 11, 2013).

⁷ See *Omal Line Acquisition* at 3.

⁸ See Exhibit B, *Ohio Terminal Railway Co. v. Hannibal Development, LLC et al.*, (Case No. 2017-247, Ohio Ct. of Common Pleas) ("*OTRC v. HDL*"), Order Granting Defendant Ohio River Partners Shareholder LLC's Motion for Summary Judgment (June 5, 2019).

provide rail service over the Omal Line to the HRE Industrial Park and (ii) certain ancillary agreements between OTRC and third parties (including HRE) related to that service. ORPS, in turn, will provide to KRS the notice required by Section 2.03 of the Omal Line Lease, and KRS will thereafter assume the right and common carrier obligation to provide service to the HRE Industrial Park.

The transaction that is the subject of this Verified Notice of Exemption is the resulting change in operators, from OTRC to KRS, with respect to rail service on the Omal Line to and from the HRE Industrial Park.

SPECIFIC INFORMATION REQUIRED BY THE REGULATIONS

49 C.F.R. §1150.43 specifies certain information that must be included in a Verified Notice of Exemption filed pursuant to 49 C.F.R. §1150.41. The required information is presented below, preceded by the subsection of the Board's regulations to which it is responsive.

1150.43(a) *The full name and address of the Class III rail carrier applicant.*

Katahdin Railcar Services, LLC
c/o FIG LLC
1345 Avenue of the Americas, 45th Floor
New York, NY 10105
Attn: Ken Nicholson

1150.43(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence:*

Correspondence with respect to this Verified Notice of Exemption should be addressed to:

Terence M. Hynes
Sidley Austin LLP
1501 K St N.W.
Washington, DC 20005
(202) 736-8198

1150.43(c) *A statement that an agreement has been reached or details about when an agreement will be reached:*

ORPS, OTRC and HRE have entered into a settlement agreement in connection with the *OTRC v HDL* litigation, pursuant to which OTRC and ORPS have also entered into an Assignment Agreement providing for the assignment to ORPS of OTRC's exclusive right to provide rail service to the HRE Industrial Park. The Assignment Agreement will become effective upon the effective date of this Verified Notice of Exemption.

1150.43(d) *The operator of the property.*

OTRC is currently the exclusive operator of freight rail service to customers located within the HRE Industrial Park. OTRC moves rail cars for those customers between the HRE Industrial Park and Omal Yard. Pursuant to a haulage agreement, KRS handles rail cars moving for OTRC's account between Omal Yard and the point of interchange with Norfolk Southern Railway Company ("NS") at Clarington, Ohio. Upon consummation of the transaction that is the subject of this Notice of Exemption, KRS will provide direct common carrier rail service to all customers on the Omal Line, including customer facilities located within the HRE Industrial Park.

1150.43(e) *Brief summary of the proposed transaction.*

(1) *The name and address of the railroad transferring the subject property to the Class III rail carrier applicant:*

Ohio Terminal Railroad Company
c/o Carload Express, Inc.
519 Cedar Way, Building 1, Suite 100
Oakmont, PA 15139

(2) *The proposed time schedule for consummation of the transaction.*

The Parties intend to consummate the proposed transaction as soon as practicable after the effective date of this Verified Notice of Exemption.

(3) *The mileposts of the subject property, including any branch lines.*

The Omal Line, over which OTRC currently holds the exclusive right to provide rail service for movements to and from the HRE Industrial Park, extends from Milepost 60.5 at or near Powhatan Point, Ohio to Milepost 72.7 at or near Hannibal, Ohio, a distance of approximately 12.2 miles.

(4) *The total route miles being acquired.*

KRS currently holds a leasehold interest in the 12.2-mile Omal Line. Upon consummation of the transaction that is the subject of this Notice of Exemption, ORPS will acquire (and KRS will exercise as lessee) OTRC's exclusive right and common carrier obligation to operate over the Omal Line for the purpose of providing rail service to customers at the HRE Industrial Park.

1150.43(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states.*

A map depicting the Omal Line and the location of the HRE Industrial Park is attached to this Verified Notice of Exemption as Exhibit A.

1150.43(g) *A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45.*

The required Certificate is attached to this Verified Notice of Exemption as Exhibit C.

1150.43(h) Transactions Imposing Interchange Commitments.

The change in operators that is the subject of this Verified Notice of Exemption does not involve any provision or agreement that may limit future interchange with a third party connecting carrier, nor is the Omal Line currently subject to any agreement that imposes such an interchange commitment. The transaction will not result in any adverse change in service levels or significant operational changes. KRS will provide the same level of rail service to customers located at the HRE Industrial Park (including frequency of interchange with NS) as OTRC does today.

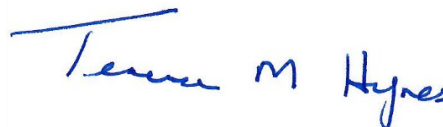
1150.42(d) Historic Preservation.

The transaction that is the subject of this Verified Notice of Exemption will not result in the disposal or alteration of any sites and structures that are 50 years old or older. Accordingly, the requirements set forth at 49 C.F.R. § 1150.42(d) are not applicable.

1150.42(b) Notice to Shippers

A copy of the Notice of the proposed change in operators provided to all customers located within the HRE Industrial Park, to HRE and to OTRC is attached as Exhibit D.

Respectfully submitted,



Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Attorneys for Katahdin Railcar Services LLC

Dated: March 8, 2021

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 36487

**KATAHDIN RAILCAR SERVICES LLC --
—EXEMPTION FOR CHANGE OF OPERATORS—
OHIO TERMINAL RAILWAY COMPANY**

Katahdin Railcar Services LLC has filed a Notice of Exemption for a change of operators with respect to certain rail services currently provided by Ohio Terminal Railway Company on a 12.2-mile rail line between Milepost 60.5 near Powhatan Point, Ohio and Milepost 72.7 near Hannibal, in Monroe County, Ohio. Comments must be filed with the Board and served on Terence M. Hynes, Sidley Austin LLP, 1501 K. Street, N.W., Washington, DC 20007.

The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

VERIFICATION

I, Joseph P. Adams Jr., President of Katahdin Railcar Services LLC, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption.

Executed on: March 8, 2021.



Joseph P. Adams Jr.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**EXHIBIT A
SYSTEM MAP**

ORPS Railroad Map



Note: Railroad map drawn by hand and is an approximation.

LONG RIDGE
ENERGY TERMINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36487

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EXHIBIT B

***Ohio Terminal Railway Co. v. Hannibal Development, LLC et al.*, (Case No. 2017-247, Ohio Ct. of Common Pleas), Order Granting Defendant Ohio River Partners Shareholder LLC's Motion for Summary Judgment (June 5, 2019)**

IN THE COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

COURT OF COMMON PLEAS
MONROE COUNTY OHIO
FILED

2019 JUN -5 AM 11:37

OHIO TERMINAL RAILWAY
COMPANY,

Plaintiff,

v.

HANNIBAL DEVELOPMENT, LLC
dba HANNIBAL DEVELOPMENT
PARTNERS, LLC, et al,

Defendants

JUDGE JULIE R. SELMON

CASE NO. 2017-247

DELL ANN ROSE
CLERK OF COURTS

**PROPOSED ORDER GRANTING DEFENDANT OHIO RIVER PARTNERS
SHAREHOLDER LLC'S MOTION FOR SUMMARY JUDGMENT**

Defendant Ohio River Partners Shareholder LLC's Motion for Summary Judgment pursuant to Rule 56 of the Ohio Rules of Civil Procedure is hereby GRANTED.

Judgment is hereby entered for Ohio River Partners Shareholder LLC ("ORPS") on the sole count in plaintiff Ohio Terminal Railway Company's First Amended Complaint, which is dismissed with prejudice, and on Count I of Ohio River Partners Shareholder's Counterclaims.

It is hereby **DECLARED** that:

1. The July 5, 2007 Easement for Use of Railway between Ormer Railroad Corporation and Hannibal Real Estate, LLC (the "Easement") granted to Hannibal Real Estate LLC ("HRE") a non-exclusive right to use the main line of the Ormer Running Track (the "Railway Line") to provide rail service only to the HRE property, by way of the spur line that connects the Railway Line to HRE's property.
2. The Easement does not permit HRE or Ohio Terminal Railway Company, as operator for HRE, to use the Railway Line to provide rail service to any destination other than

the HRE property, or to use any other track connected to the Railway Line (such as the tracks referred to in ORPS's Counterclaims as Spur Track 1 and Spur Track 2) except the spur line into HRE's property, absent the consent of the owner of the Railway Line (currently, ORPS) and/or the connecting track.

3. Ohio River Partners Shareholder LLC has the right, as the fee simple owner of the Railway Line, to use the Railway Line and any connecting track on its property for any purpose, including to provide rail service to any destination on the Railway Line, so long as said use does not unreasonably interfere with the right of HRE to use the Railway Line to provide rail service to the HRE property.

This action shall proceed to discovery on Phase Two, relating to Counts II through IV of Ohio River Partners Shareholder's Counterclaims.

IT IS SO ORDERED.

Dated: 6/5/2019



Judge Julie R. Schuman

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PURSUANT TO 49 C.F.R. § 1150.41(c)**

EXHIBIT C

Certificate Required by 49 CFR 1150.43(g)

CERTIFICATE

I, Joseph P. Adams Jr., President of Katahdin Railcar Services LLC (“KRS”), hereby certify pursuant to 49 CFR § 1150.43(g) that the transaction that is the subject of this Verified Notice of Exemption will not result in the creation of a Class II or Class I rail carrier. Following consummation of the transaction, KRS will continue to be a Class III rail carrier.

A handwritten signature in black ink, appearing to read "J. P. Adams Jr.", is positioned above a horizontal line.

Joseph P. Adams Jr.

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PURSUANT TO 49 C.F.R. § 1150.41(c)**

EXHIBIT D

Notice Required by 49 CFR 1150.42(b)

SURFACE TRANSPORTATION BOARD

Notice of Exemption

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Comments must be filed with the Board and served on Terence M. Hynes, Sidley Austin LLP, 1501 K. Street, N.W., Washington, DC 20007. The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.