

RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

518 N. Center Street, Ste. 1

Ebensburg, PA 15931

(814) 419-8152

888-454-3817 (Toll Free)

(814) 419-8156 FAX

rwilson@rrwilson.net – Email

www.rrwilsonesq.com - Website

851 Twelfth Street

Oakmont, PA 15139

Ms. Cynthia T. Brown, Chief

Section of Administration

Office of Proceedings

Surface Transportation Board

395 E Street, SW, Rm. 1034

Washington, DC 20423-0001

Of Counsel to:

Vuono & Gray LLC

2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

244454

October 2, 2017



ENTERED
Office of Proceedings
October 4, 2017
Part of
Public Record

EXPEDITED CONSIDERATION REQUESTED

Re: Finance Docket No. FD 35984, Ohio Rivers Partners, LLC –
Acquisition and Operation Exemption – Hannibal Development, LLC

Dear Ms. Brown:

Enclosed for filing in the above captioned proceeding is a Motion for Leave to File Rebuttal and a separate Rebuttal of Ohio Terminal Railway Company (“OTRC”) to the September 22, 2017 Reply of Ohio River Partners Shareholder, LLC (“ORPS”) both dated October 2, 2017.

As previously set forth, OTRC seeks expedited Board consideration of its Petition in this proceeding.

Should any questions arise regarding these filings, please free to contact me. Please time stamp a copy of this letter as proof of filing and return it in the enclosed, self addressed stamped envelope provided for that purpose. Thank you for your assistance in this matter.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson, Esq.

Attorney for Ohio Terminal Railway Company

RRW/bab

Enclosures

xc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35984

EXPEDITED HANDLING REQUESTED

OHIO RIVER PARTNERS, LLC – ACQUISITION AND OPERATION EXEMPTION
– HANNIBAL DEVELOPMENT, LLC

REBUTTAL OF OHIO TERMINAL RAILWAY COMPANY TO
SEPTEMBER 22, 2017 REPLY OF
OHIO RIVER PARTNERS SHAREHOLDER, LLC



Richard R. Wilson, Esq.
RICHARD R. WILSON, P.C.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152
Counsel for Ohio Terminal Railway Company

Date: October 2, 2017

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35984

EXPEDITED HANDLING REQUESTED

OHIO RIVER PARTNERS, LLC – ACQUISITION AND OPERATION EXEMPTION –
HANNIBAL DEVELOPMENT, LLC

REBUTTAL OF OHIO TERMINAL RAILWAY COMPANY TO
SEPTEMBER 22, 2017 REPLY OF
OHIO RIVER PARTNERS SHAREHOLDER, LLC

Under the provisions of 49 U.S.C. §10901, an applicant railroad must obtain from the Surface Transportation Board (“STB”), a Certificate of Public Convenience and Necessity to offer common carrier rail service to the public. The Reply of Ohio River Partners Shareholder, LLC (“ORPS”)¹ is based on an invalid premise which assumes that it can commence common carrier rail operations before there has been a judicial determination that Ohio River Partners, LLC (“ORP”) has acquired an appropriate legal interest by means of which it can offer common carrier rail service to the public. As the Board stated in its March 30, 2016 Order and Decision:

“however the Board’s grant of authority to operate under a Notice of Exemption is permissive only, and in order to exercise that authority and commence operations, a carrier must still obtain the necessary rights under state property and/or contract law. Where, 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 should be decided by a court, applying state law, and not by the Board. N.H. Cent. R.R., slip op. at 3 (“ the issue of whether the lease agreement grants exclusive rights to twin state [incumbent operator seeking rejection] lies within the purview of the courts, not this agency.”)...

¹ The Reply was actually filed by Ohio River Partners Shareholder, LLC (“ORPS” – a separate legal entity from ORP). ORPSLLC was not granted acquisition and operating authority in STB Docket No. 35984. However, Monroe County property records indicate that ORPS, not ORP, was the entity which acquired title to the OMAL line from HDLLC. See Exhibit A

Accordingly, this order permitting ORP's Notice of Exemption to become effective should not affect the ongoing proceeding in Ohio involving whether HRE's rail freight operating easement is exclusive, as a grant of permissive operating authority to ORP does not constitute a ruling on any of the parties contract or property claims or purported rights. *Id.* at Page 3.²

Thus, ORPS' effort to impose joint operating and interchange agreements on OTRC is an attempt by ORPS to avoid the required state law judicial proceeding which must first be completed in order to confirm whether that ORP possesses one of the indispensable property rights of rail common carriage i.e. "an operating railroad right of way impressed with the public interest".

OTRC has negotiated with ORP in good faith, but the terms proposed by ORPS do not adequately address OTRC's present rail switching operations, traffic volumes, and the operational constraints imposed by the physical limitations of the OMAL line.³ In effect, ORPS' proposed terms are nothing more than an attempt to take over OTRC's rail service on the OMAL Line. For example, at present, there is virtually no traffic generated by shippers which ORPS claims the right to serve on the line. The proposals advanced by ORPS do not adequately address existing traffic levels and how those levels might change

² On March 30, 2016, the STB in Finance Docket 35984 Ohio River Partners, LLC – Acquisition and Operation Exemption – Hannibal Development, LLC granted ORP acquisition and operation exemption for the OMAL Line but ruled that "before ORP may commence any operations on the line, NSR, ORP, and OTRC must negotiate and agree on interchange and operating protocols, and jointly certify to the Board that these protocols are in place. However, it now appears that as of June 22, 2017 a 59 page general warranty deed was recorded in Monroe County, Ohio, which lists Ohio River Partners Shareholder LLC ("ORPS") as the grantee of the OMAL Line instead of ORP. ORPS is a parent corporation and part owner of ORP, but ORPS was never authorized by the Board to acquire any real property interest in the OMAL Line. Moreover, in the Reply filed by ORPS on September 22, 2017, CMQ's Mr. Ratledge states that it was Fortress which acquired the OMAL Line and that CMQ is going to operate the OMAL Line, not ORP. Thus, it appears that different corporate entities from those authorized by the Board have acquired the OMAL Line and plan to operate it. In effect, Fortress appears to be treating ORP and ORPS as if they are a single entity. The confusion created by the multiple corporate entities and the representations by Mr. Ratledge require clarification consistent with the Board's existing exemption order. See Exhibit A. If ORPS acquired the OMAL Line and it is CMQ that is going to operate on the line, then ORP has not "obtain[ed] the necessary rights under the state property and/or contract law..." to exercise its operating authority permitted by the Board in its March 30, 2016 Decision.

³ On September 27, 2017, OTR was required to countermand an attempt by CMQR to appropriate OTRC's station list to start rail operations on October 1, 2017. See Exhibit B.

over the next several years. Details regarding interchange operations and interchange track capacities have not been adequately addressed by the ORPS proposals. Train movements by both carriers on the OMAL Line have not been adequately coordinated for on line movements nor have necessary switching operations and switching yard capacity issues been adequately coordinated between the two carriers under the ORPS proposals. Finally, OTRC's plant operations for Hannibal Real Estate have not been coordinated with ORP's proposed use of the service yards with which HRE traffic is currently handled. Moreover, the parties have yet to determine a fair and equitable means for allocating track maintenance operations and/or track maintenance expenses. Rather than work through these complex and difficult issues, ORPS simply seeks to dictate how it chooses to operate the OMAL Line in future years in a manner unacceptable to OTRC. See Exhibit B.

Notwithstanding the rail operational challenges as presented by the OMAL Line, the state property issues now pending in Monroe County Common Pleas Court must first be resolved in order to determine which property rights will support each railroad's operational and interchange functions on the OMAL Line. Accordingly, OTR believes that the parties should follow the negotiational directives set forth by the Board in its Decision of March 30, 2016 rather than have the Board assume the judicial functions of the Monroe County Court.

In addition, under §10901 the Board must find that the public convenience and necessity requires or permits the proposed acquisition and operation of the subject rail line by ORP. Unless ORP can demonstrate that the proposed acquisition and operation of the rail line has a sound legal basis, then the Board cannot make a public convenience and necessity finding. In this proceeding, the acquisition by ORP of adequate state property interest for a common carrier railroad right of way has not been rendered by the state court.

Therefore, no certificate of public convenience and necessity finding can be rendered by the Board on behalf of ORP.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard R. Wilson", is written over a horizontal line.

Richard R. Wilson, Esq.
RICHARD R. WILSON, P.C.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152
Counsel for Ohio Terminal Railway Company

[Print Search Results](#)

Search Results for Monroe County

Office Type: **Recorded Land**

Name Search

* Business/Last Name:

ohio river partners

First Name:

Name Type:

Both

Registry Types:

Search all Registry Types

PLATS

MISCELLANEOUS

PARTNERSHIPS

POWER OF ATTY

As:

Both

Recorded Date:

From: 11/01/1993

To: 08/25/2017

25 Results Per Page

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Real Property Official Records Search

Details

Result For: (OHIO RIVER PARTNERS SHAREHOLDER LLC)

Number	File Date	Inst. Date	
201700095404	6/22/2017 11:33:00AM	6/15/2017	
Type	Volume	Page	# of Pages
(WRNTY DEED)	000363	0378	59

Series	Name
Grantor	HANNIBAL DEVELOPMENT LLC
Grantee	OHIO RIVER PARTNERS SHAREHOLDER LLC

Free Form

OHIO,SALEM,SWITZERLAND TWP

Remarks S9.10.11,12,14,15,16,17,19,20.

Remarks 23,24 T2&3 R3 215.134 ACRES

Instrument 301700095484 DR Book Page 363 378

201700095484
Filed for Record in
MONROE COUNTY, MISSISSIPPI
ON 04/14/2014
RECORDED AT 11:44:00 AM
UNIT DEED 343 Page 378 .. 431

Recorded in 1587
Book 363 Page 378
Official Public Records
Mississippi
2014 APR 14 PM 11:44



LIMITED WARRANTY DEED

HANNIBAL DEVELOPMENT, L.L.C., a Delaware limited liability company ("Grantor"), for valuable consideration paid, grants, bargains, sells and conveys, with limited warranty covenants, to OHIO RIVER PARTNERS SHAREHOLDER, L.L.C., a Delaware limited liability company ("Grantee"), whose tax mailing address is: c/o FPG LLC, 1345 Avenue of the Americas, 47th Floor, New York, NY 10105, the following real property:

See legal description attached as Exhibit A and made a part hereof ("Real Property").
Prior Deed Reference: Official Record Book 284, Page 755 in the Monroe County, Ohio records.

Notwithstanding the foregoing, the following is excluded from the conveyance herein: all of Grantor's right, title, and interest in and to all mineral fee interests with respect to oil, gas, and other minerals (including methane, gob gas, occluded methane/natural gas and all associated natural gases) and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, located in or under and that may be produced in any depth from the Real Property.

The Real Property conveyed by Grantor to Grantee hereunder is subject to and encumbered from such limited warranty covenants are: (i) all real estate taxes and assessments, both general and special, not yet due and payable; (ii) all easements, conditions, restrictions, and other matters of record; (iii) zoning and building ordinances; and (iv) those matters which would be disclosed by an accurate survey of the Real Property.

[Signature Page Follows]



519 Cedar Way
Building 1, Suite 100
Oakmont, PA 15139

October 2, 2017

To: Ohio Terminal Railway Customers

Notice to Customers Regarding Communications from CMQ Railway

Dear Ohio Terminal Customers:

It has come to our attention that you may be, or may have been contacted by another entity representing itself as a provider of rail service to the Omal (ie Hannibal) and Clarington areas of Ohio. Please be aware that Ohio Terminal Railway is the only rail carrier with legal authority as granted by the Surface Transportation board to provide common-carrier rail service to these locations, specifically, between the connection with Norfolk Southern (near Powhatan Point) and the former Ormet properties in Omal (which includes the Hannibal Industrial Park and the Center Port Terminal).

When the former Ormet properties were purchased out of bankruptcy in 2014, the new owners asserted that they would have the right to establish their own railroad operations on the property on which Ohio Terminal Railway operates. Their perceived right to establish such operations is presently in litigation. Recently, parties representing the new owners, most notably, the Central Maine & Quebec Railway ("CMQ"), wrongfully published industry notices asserting that it is assuming rail operations effective October 1, which may have had the result of creating confusion regarding the status of the line. CMQ has no operating authority from the U.S. Surface Transportation Board to establish rail service on this line.

Most importantly, we would like to assure you that Ohio Terminal Railway has no plans to terminate service over this line. We remain grateful for your continued business and committed to continued growth on this property. If any party contacts you concerning this matter, or if you have any questions or concerns, please contact us.

Sincerely,

Michael L Filoni

Michael L Filoni
Chief Marketing Officer
Carload Express, Inc
Ohio Terminal Railway Company

6/9/2017 Operating Protocol Meeting In Oakmont, PA - John Ashbridge, Russell Peterson, Ryan Ratledge, James Streett

- Ryan Ratledge stated that he did not disagree with our STB statements regarding all of the operating difficulties that would be experienced by both railroads
- Ryan state that he was comfortable working out a maintenance arrangement that is equitable. He proposed that ORP would take over all maintenance responsibilities, including bridges, sub surfaces, track etc. He proposed that the Ohio Terminal Railroad could pay ORP a fixed trackage fee per car due to ORP taking responsibility for the maintenance.
- When asked to provide guidance on future traffic volumes, he was unable to provide any estimates concerning mixed merchandise volumes. However Ryan stated very clearly that he expected approximately 1-2 unit trains per day within several years.
- Ryan believes that the ORP facility will originate product that will be destined for a facility in Philadelphia (uncertain of the spelling of the specific facility, it sounded like "Ripano".
- CMQ currently uses CORA. Ryan proposed either using GCOR or CORA.
- Ryan proposed that the track be controlled using Track Warrant Control. Ryan said that he was willing to have his dispatch center dispatch the line.
- When asked about how the two railroads would share usage of the line. Ryan proposed that the ORP railroad would be given a time slot to operate.
- Ryan stated that he spoke with John Friedmann, Friedmann asked Ratledge to speak with Chip Meador. Chip was insistent that NSR would not block the merchandise traffic. Instead the traffic will come totally mixed.
- When we asked Ryan how the parties would switch a 140 car train that was all mixed up he was not sure. He initially proposed that one railroad would go to the interchange on one day, and bring the cars back and switch it out for the other railroad in Omal one day, and then on the other day, the other railroad would do the same. When asked whether either railroad would need to pay the other, he was not sure. Instead he then proposed that ORP could perform Haulage for OTRC, whereby ORP would get the cars at interchange, take the cars to the yard tracks, switch them out, and place them on tracks for Ohio Terminal Railroad. Ryan asked us to consider an amount that we would be comfortable with paying for haulage. Ryan has never been able to explain how interchange of merchandise would occur with the existence of unit train traffic.
- I asked Ryan whether he intended to restrict our access to any of the yard tracks. He said that he expected both railroads would cooperate. Ryan asked that we specify exactly how much yard trackage that we thought we needed. Asked us to include in the operating agreement anything that we thought that we would need.
- I asked him how each railroad would know where each others cars are on the railroad. He thought that it made sense to do so, CMQ/ORP uses RMI. He liked the idea, and suggested that the two railroads work together to share this information.
- We informed Ryan Ratledge that our EBITA annualized for 2017 was [REDACTED]. Ryan stated that he has seen EBITA multipliers as high as 9X (he did say this was on the higher end). He state he would get back to us regarding Fortress appetite for purchase
- Ryan stated that Fortress was interested in acquiring rail operations and inquired as to the possibility of Carload Express, Inc. in potentially considering Fortress as a future buyer.
- Ryan asked about the interchange track in the parking lot, he asked what was the deal with it. I informed him that it was unclear.

8/11/2017 9:30 AM Conference Call - John Ashbridge, Ryan Ratledge, Jim Streett

- Ryan Ratledge noted that he floated the concept of a share purchase to Fortress internally. Although he did not speak to any true decision makers, or advocate for the concept, he mentioned that his response was very cool. He went on to explain that Fortress, has spent a considerable amount to close on ORP, and was likely reluctant to spend more capital. He did not discuss the level of consideration with Fortress
- 1st Alternative proposed by Ratledge. Ryan Ratledge recommended that CMQ be the sole interchange partner with Norfolk Southern. CMQ would then provide haulage to OTRC. Ryan suggested that the charge for this service would reflect the cost to perform the service plus the cost of maintenance. They do all of the switching, they give us a block, we come out of HRE to Omal and then back into HRE to service the customers there.
- 2nd Alternative proposed by Ratledge. CMQ performs switching for the entire line. OTRC would not have a field presence. Instead we would receive a per car royalty from CMQ. OTRC is not interested.
- CMQ was not interested in OTRC providing switching services on behalf of CMQ.
- Ryan Ratledge offered to get started on a draft haulage agreement that he was willing to send us in the near future. I informed him that it was premature. We were still considering whether it would be best for our customers if we performed interchange directly. At this time, it is our desire to provide direct service to the customers located on the line. Furthermore, on the topic of haulage we had concerns over the quality and price of such a Haulage Agreement. With one railroad, we know how difficult it is to provide a quality service. We also had concerns about goal alignment, from a commercial perspective ORP is a competitor that receives commodities by rail and by barge that competes directly with HRE. We stated our concern, that diminished service due to haulage, could have a deleterious effect on HRE traffic. I explained that we would expect protection, should the quality of the haulage service or price become diminished, OTRC would be able to exercise its rights to use the entire line to serve its customers. Ryan stated the price would be agreed too, and then escalated using a standard RCAF index. He recognized our concern, over CMQ attempting to dramatically raise rates in the future.

Phone Call Ryan Ratledge / 8/18/2017 4:05PM

August 18th. Called to ask whether we had given additional thought to haulage.

I told him that haulage was an options, however we still had serious reservations relating to service. Should service deteriorate we would need the ability to interchange directly with NSR. Given that we would continue to reserve this ability we would need to also plan how this would work. Ryan proposed each party would have the railroad for 12 hours. I asked him what would happen if a unit train came in for the other party and it was secured on the main, how would the other railroad operate? Also, how would we address each railroad switching cars from the interchange for the other railroad? He could not answer, but said he would give it some thought. Ryan mentioned that he intended to send a draft operating agreement to us this weekend for us to begin looking at.

Sunday August 20, 2017 Email

Ratledge forwards a haulage agreement without reaching consensus about whether haulage, trackage rights or some other form of alternating use would be the desired arrangement.

Notwithstanding the service concerns, the haulage agreement that was forwarded by ORP on 8/20/2017 would have required OTRC to pay \$400 per loaded non hazardous car. Such an extraordinary amount is not financially feasible, as it would represent an overwhelming percentage of the total line haul revenue received by OTRC (specifically over 65%).



Sun 8/20/2017 2:04 PM

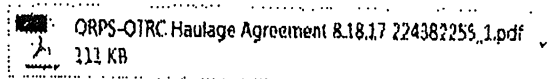
Ryan Ratledge <ryan.ratledge@cmqrailway.com>

Haulage Agreement

To: John Ashbridge

Cc: Ryan Ratledge; Russell Peterson; Jim Strout

1 You replied to this message on 8/21/2017 1:04 PM.



ORPS-OTRC Haulage Agreement 8.18.17 224382255_1.pdf

111 KB

Hi John -

As follow up to our conversation on Friday afternoon, I have attached a haulage agreement that we think should address all the topics that we discussed in Oakmont on the 9th, on the phone with you and Mr. Street on the 11th and again on previous Friday, August 18th.

I will follow up with you early next week.

Respectfully,
Ryan

Ryan Ratledge
Central Maine & Quebec Railway
207.659.3053 Business Cell
ryan.ratledge@cmqrailway.com
www.cmqrailway.com

8/6/2017 Ryan Ratledge John - John Ashbridge Phone Call

Ryan and I came to the conclusion that haulage is unlikely to be successful. Ryan proposed that every month, the two railroads alternate service to and from the interchange. The railroad going to interchange would switch the traffic for the other party. Ryan proposed that there would be no switch fee for this kind of service. Instead it would be a quid pro quo. I raised the concern that this may become unfair to one party or the other depending upon the distribution of traffic.

As another option, although less desirable to Ryan Ratledge. He proposed just splitting the railroad in half temporally. One carrier operates the railroad for 12 hours, the other railroad operates for the remaining 12 hours.

Ryan mentioned that Fortress was eager to avoid legal fees associated with the dispute. He explained that if OTRC would cease its action in the Court of Common Pleas of Monroe County that Fortress would concede that OTRC was not solely responsible for maintenance. I explained to him that the easement did not specify that OTRC was solely responsible for maintenance. I informed him that it was my opinion that OTRC was only responsible for the maintenance associated with making the line useable to serve HRE as the line was overgrown with trees at the time that the easement between ORMET and HRE was executed. I explained to Ryan that this was contrary to our discussions during the meeting on August 9, 2017 when both parties had already committed to reaching an equitable arrangement concerning the maintenance of the line. During the August 9, 2017 meeting, it was Ryan that had proposed that ORP would take over all maintenance responsibilities, including bridges, subsurface, track, etc. Further stating that the OTRC could pay ORP a fixed trackage fee per car due to ORP taking responsibility for the maintenance.

Furthermore, Ryan stated that if OTRC agreed to drop the action in the Court of Common Pleas of Monroe County, that ORP would concede all right of way income to OTRC. I informed Ryan at this time that to my knowledge there was no right of way income to my knowledge.

I proposed a situation where OTRC would have the ability to serve third party customers along the line, OTRC would concede service to the former HDP property (Ormet facility), and OTRC would have exclusive access to HRE. I then informed him that I wanted to confer internally, before giving him the go ahead to inquire whether there was interest in this arrangement with his counterparts at Fortress.

9/7/17 Phone Call - Ryan Ratledge - John Ashbridge

I informed him that we would be willing to concede that ORPS has exclusive rights to serve the former ormet facility if ORPS would acknowledge that OTRC has the exclusive right to serve HRE and also has the non-exclusive right to serve any other customers on the line. Ryan stated that he would bring this offer to his counterparts at Fortress and would respond if there was interest.

Ryan stated that he would begin on a revised operating agreement and would forward it when complete.

Ryan mentioned that he would be willing to entertain either 12 hour increments or every other month increments. I pressed him to explain how an arrangement where each railroad would alternate months was commercially sound if the volumes of traffic each railroad handled were grossly different. He contended that even if the distribution was 90% vs. 10% each railroad would be doing the same amount of switching. I told Ryan that he was missing the point, the issue is not whether each railroad is performing 50% of all switching activity and delivery of cars to Omal yard, it is the fact that this agreement fails to consider the likely scenario of one railroad handling only a small percentage of the overall business, but being required to perform 50 % of all switching. Ryan either did not understand this simple concept or was unwilling to attempt to address it.

On the maintenance topic, Ryan reiterated that OTRC was solely responsible for maintenance.

I requested that Ryan consider OTRC dispatch of the line. He rebuffed the offer, stating that it was his preference to dispatch the line.

attached

CMQR-OTRC Operating and interchange Agreement 9.11.2017 224931866_2.doc
113 KB

From: Ryan Ratledge [mailto:ryan.ratledge@cmqrailway.com]
Sent: Tuesday, September 12, 2017 10:36 AM
To: John Ashbridge <johnashbridge@carloadexpress.com>
Cc: Ryan Ratledge <ryan.ratledge@cmqrailway.com>
Subject: Operating Agreement
Importance: High

Hi John -

I will follow up with a call to you later today to discuss.

Thanks,
Ryan

Ryan Ratledge
Central Maine & Quebec Railway
207.659.3053 Business Cell
ryan.ratledge@cmqrailway.com
www.cmqrailway.com

Ryan Ratledge - John Ashbridge - Call 9/13/2017

Ryan stated that he proposed the OTRC concession to his counterparts at Fortress. He explained that they were unwilling to accept that OTRC would have the ability to serve customers along the line of railroad.

Ratledge Stated that they intend to follow-up with the STB with a more elaborate response. Ratledge reiterated that the feel that HRE and OTRC is 100% responsible for maintenance of the line.

Ryan reiterated that ORP feels it is already making a considerable concession by not demanding OTRC be responsible for 100% of the maintenance. From my discussions, I believe the root of this conviction comes from the terms of the Operating Agreement between HRE and OTRC (note this agreement also grants exclusivity to OTRC). I informed Ryan that I did not agree with his interpretation, however I did not call to attention that the easement required both parties to indemnify the other for maintenance performed by either party. A reasonable person could interpret that the easement did not anticipate that either party would be solely responsible for maintenance. Ryan implied that unless OTRC drop its proceedings in Monroe county, ORP would insist that OTRC was responsible for 100% of maintenance.

I interpreted Ryan's latter comments as posturing in hopes of getting us sign an operating agreement Today, it is still unclear how the two parties could operate jointly on the line. In response to the unsolicited Operating Agreement that ORPS forwarded on September 12th, I intend to ask Ryan in writing how he anticipates how the interchange of OPRS unit trains will work. During our August 11th meeting with Ryan, he stated that OPRS expected to receive 1-2 unit trains per day within a couple years. What ORPS is proposing is not feasible operationally or commercially. Based upon his September

12th email, during odd-numbered months OTRC would be responsible for transporting all merchandise and unit trains from the interchange to designated yard tracks without compensation. Setting aside the grave commercial harm that this would cause OTRC, there isn't sufficient track in Omal Yard that would even allow OTRC to deliver unit trains to ORPS in Omal Yard.

Sent Ryan the following email message on 9/15/2017

From: John Ashbridge
Sent: Friday, September 15, 2017 9:57 AM
To: 'Ryan Ratledge' <ryan.ratledge@cmqrailway.com>
Subject: Ohio Operating Protocol

Hi Ryan,

During our August 9th meeting you stated that you anticipated CMQ would operate 1-2 unit trains per day within a few years. Relating to the concept of alternating months, I wanted to make sure that I understood your expectations. Can you detail how the interchange will function with 1-2 trains unit trains per day in addition to the merchandise traffic?

Referring to the latest plan, during odd-months, OTRC would be required to move all traffic received from interchange to designated tracks in Omal Yard including the 1-2 unit trains per day. Can you specify the tracks in Omal Yard that would be designated for this purpose?

Thank you,

John Ashbridge
412 977 9888

Missed call from Ryan Ratledge on Friday 9/15/17 at 12:55 PM.

SURFACE TRANSPORTATION BOARD FILING DOCUMENT

Docket Number: **FD_35984_0**

Case Title: **OHIO RIVER PARTNERS LLC--ACQUISITION AND OPERATION EXEMPTION--
HANNIBAL DEVELOPMENT, LLC**

General Filing Type: **Reply**

Filed On: **09/22/2017**

Filed For: **Ohio River Partners Llc**

PDF Attachment:

There are no attachments for this document

The fact that Ryan Ratledge never even responded to the email on Friday, September 15, 2017 9:57 AM inquiring about the expectation of ORP of OTRC to move all traffic from interchange to Omal, including 1-2 unit trains per day demonstrates ORP intent to negotiate protocols in bad faith. This important inquiry was made within three days of receiving ORP's draft agreement. Choosing to ignore this request for understanding, ORP files its reply with the STB one week later on September 22, 2017.

I raised the issue of developing a commercially viable means of addressing the likelihood of each railroad handling dramatically different quantities of traffic on September 7, 2017. The document ORP forwarded on September 12th did not even recognize this critical concern.

During the August 9, 2017, Oakmont, PA meeting, in the presence of Russell Peterson, James Streett, and John Ashbridge, Ryan Ratledge stated clearly that he expected 1-2 unit trains per day originating on the line and terminating at a facility in Philadelphia, PA.

Considering the projections made by Ratledge, the concept of the alternating responsibility of transporting railcars from the NS interchange to Omal Yard does not make any sense. After several years and the development of unit train traffic, this agreement would require OTRC to perform 50% of the line haul transportation and switching, with only 14% of the traffic belonging to the customers served by OTRC. The following assumptions were used to perform this projection. 1). The proportion and number of carloads originating and terminating between the Hannibal Development industrial park and Hannibal Real Estate Industrial Park remain constant based on actual traffic on the line during the first eight months of 2017. 2). One unit train of 80 cars per day (less than the one-two projected by Ratledge), equivalent to an annual ORP unit train volume of of 29,200 carloads. Assuming 1.5 unit trains per day, the disparity increases to 90% of the traffic belonging to ORP with only 10% of of the traffic belonging to OTRC. The ten year term gives OTRC no relief, this proposed agreement would cause irreparable harm to OTRC. This arrangement is no way reciprocal.

VERIFICATION

I, James Streett, President, Ohio Terminal Railway Company,
swear or affirm and verify that the statements made in the foregoing Petition are
true and accurate to the best of my knowledge, information and belief.

10-2-17
Date

James Streett
James Streett

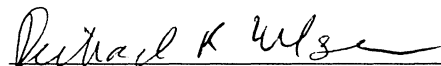
CERTIFICATE OF SERVICE

I hereby state that on this 2nd day of October, 2017, I caused a copy of the foregoing Petition for Deferment of Rail Operations to be served by first-class U.S. Mail on the following persons:

Terrance M. Hynes
Sidley Austin, LLC
1501 K Street, NW
Washington, DC 20005

Philip R. Hoffman, Esq.
Prior Cashman, LLP
7 Times Square
New York, NY 10036-6569

William A. Mullins, Esq.
Baker & Miller, PLLC
2401 Pennsylvania Avenue, NW
Ste. 300
Washington, DC 20037


Richard R. Wilson, Esq.