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Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, D.C. 20423-0001

Re: Finance Docket No. 35984, *Ohio River Partners LLC –
Exemption for Acquisition and Operation of a Rail Line –
Hannibal Development, LLC in Monroe County, Ohio*

Dear Ms. Brown:

This letter has reference to the Motion for Leave to File Rebuttal (and accompanying Rebuttal) filed in the above-captioned proceeding on October 2, 2017 by Ohio Terminal Railway Company (“OTRC”). OTRC’s Rebuttal is, in essence, a reply to Ohio River Partners Shareholder LLC’s September 22, 2017 Reply to OTRC’s Petition for Deferment of Rail Operations. While the Board’s regulations do not authorize OTRC’s Rebuttal (*see* 49 C.F.R. §1104.13(c)), ORPS does not object to the Board accepting it into the record. However, ORPS seeks leave to submit this letter, which addresses two new issues raised by OTRC in its Rebuttal.

First, OTRC asserts that ORPS’s Reply “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.” OTRC Rebuttal at 2. OTRC takes the position that the issues raised by OTRC’s recent complaint in Ohio state court “must first be resolved” (*id.* at 4) before OTRC is required to agree to operational and interchange protocols with ORPS (or the Board can impose such protocols).

The Board’s April 1, 2016 Decision in this proceeding (the “*Exemption Decision*”) did not condition the exemption upon judicial resolution of the claims raised by OTRC’s lawsuit.¹

¹ The pending state court action—which was not filed by OTRC until August 29, 2017— involves the scope of OTRC’s contractual right to operate over the Omal Line. As fee title owner

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To the contrary, the Board held that the existence of a contract dispute was not grounds for rejecting the exemption, and stated that the dispute should be decided by a court and not by the Board. *Exemption Decision* at 3. The only condition imposed by the Board was a requirement that ORP establish appropriate operating and interchange arrangements with OTRC and NS prior to commencing operations. *Id.* at 4. As ORPS's Reply (at 10-13) demonstrated, ORP has proposed to OTRC several alternative arrangements, any of which would provide for safe and efficient interchange operations on the Omal Line. However, OTRC has made clear that it will not voluntarily enter into any such agreement until it obtains a judicial ruling in its favor (or ORP agrees to grant it the right to jointly serve customers along the Omal Line). That is why ORPS returned to the Board to seek relief in the form of an order adopting its proposed operating and interchange agreement.

Second, OTRC's Rebuttal (at 1, n.1) observes that, while the *Exemption Decision* granted ORP authority to acquire and operate the Omal Line, Monroe County property records indicate that title to the Omal Line is held in the name of ORPS. The rail line acquisition that was the subject of the *Exemption Decision* was part of a broader real estate transaction pursuant to which ORPS acquired certain industrial property (including the land upon which the Omal Line is located) from Hannibal Development LLC. It was originally contemplated that ORP would acquire and operate the rail line, while ORPS would own the other real property acquired from Hannibal Development. However, as consummated, the sale transaction resulted in ORPS becoming the fee title owner of all of the property conveyed by Hannibal Development, including the Omal Line. In order to vest both fee title to the Omal Line and the authority to operate the line in a single entity, ORPS and ORP are concurrently filing a Notice of Exemption pursuant to the Board's class exemption for transactions within a corporate family (49 C.F.R. §1180.2(d)(3)) for the merger of ORP with and into its parent, ORPS.

Sincerely,



Terence M. Hynes
Hanna M. Chouest

cc: Parties of Record

of the Omal Line, ORPS possesses a more than sufficient property interest to enable it to conduct rail operations over the line.