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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
November 2, 2017
Part of
Public Record

STB DOCKET NO. FD 36152

**OHIO RIVER PARTNERS SHAREHOLDERS, LLC – EXEMPTION FOR INTRA-
CORPORATE FAMILY TRANSACTION – OHIO RIVER PARTNERS, LLC**

STB DOCKET NO. FD 35984

**OHIO RIVER PARTNERS, LLC – EXEMPTION FOR ACQUISITION AND
OPERATION OF A RAIL LINE– HANNIBAL DEVELOPMENT, LLC IN
MONROE COUNTY, OHIO**

**PETITION FOR PARTIAL REVOCATION FOR IMPOSITION OF CONDITIONS
AND FOR CLARIFICATION**

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Date: November 2, 2017

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SURFACE TRANSPORTATION BOARD

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On October 16, 2017, Ohio River Partners Shareholders, LLC (“ORPS”) filed a notice of exemption in Docket No. FD 36152 (the “ORPS Corporate Family Proceeding”) for an intra-corporate family transaction to merge Ohio River Partners LLC (“ORP”) with and into ORPS. According to ORPS, the result of the transaction, if authorized, would result in ORPS ending up as both the owner of certain interests in the Omal Line, and of ORP’s operating rights with respect to the Omal Line. On November 1, 2017, the Board issued a notice of the exemption filing indicating that the exemption will be effective on November 15, 2017. The Board’s notice indicates that petitions to revoke can be filed at any time.

Ohio Terminal Railroad Company (“OTRC”) does not oppose the proposed intra-corporate family transaction, provided that the Board, as requested below, imposes on ORPS the conditions imposed on ORP’s operating rights by the Board in the April 1, 2016 decision (the “ORP 2016 Decision”) issued in Docket No. FD 35984 (the “ORP Authorization Proceeding”). This Petition seeks partial revocation under 49 USC §10502(d) solely for the purpose of allowing

the Board to impose the requested conditions on ORPS's exemption authority. Because the conditions imposed in the ORP 2016 Decision are the subject of open litigation between ORP and OTRC, OTRC is filing this Petition in both the Corporate Family Proceeding and the ORP Authorization Proceeding.

A. Request for Conditions in the Corporate Family Proceeding

ORPS has filed a notice of exemption in the ORPS Corporate Family Proceeding to authorize the merger of ORP with and into ORPS.¹ The filing in this docket was required in order to properly identify and authorize ORPS's acquisition and potential future operation of the Omal Line, rather than ORP which had previously been identified in the ORP Authorization Proceeding as the acquirer and operator. OTRC does not oppose the exemption provided that the Board makes clear that ORPS, as the successor to ORP, will have only the conditional operating authority that ORP has obtained in the ORP Authorization Proceeding, and that ORPS will be substituted for ORP in that proceeding for all purposes. Moreover, the Board should make clear that, upon any consummation of the intra-corporate family transaction, ORPS will be the only member of the Fortress corporate family that has any authorization to operate on the Omal Line, and that any transfer of that operating authority will need to be the subject of a separate proceeding. The conditions are needed because it appears, as discussed more fully below in connection with the ORP Authorization Proceeding, that ORPS (and the Fortress corporate family) may be using the intra-corporate family transaction to avoid the conditions established in the ORP Authorization Proceeding. Partial revocation, and the requested conditions, are

¹ Although not objecting to the exemption filing, OTRC raises the question of whether Fortress Investment Group LLC ("Fortress") needs authority to control ORPS when it becomes a carrier in common with the other carrier(s) in its corporate family – either as a party to this filing, or in a separate filing - since the result of the transaction would be a change in the carriers controlled by Fortress. *See* STB Docket No. FD 35985, Fortress Investment Group LLC – Continuance in Control Exemption – Ohio River Partners LLC (served December 31, 2015).

consistent with the following elements of the transportation policy as set forth in 49 USC §10101

(emphasis added):

- (2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

* * *

- (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

* * *

- (8) to operate transportation facilities and equipment without detriment to the public health and safety;

- (9) to encourage honest and efficient management of railroads;

* * *

- (15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

Accordingly, OTRC requests that the Board partially revoke the exemption and promptly impose the following conditions on the exemption requested by ORPS in the Corporate Family

Transaction:

- (1) Upon consummation of the intra-corporate family transaction, ORPS will succeed to the operating authority of ORP as authorized and conditioned in Docket No. FD 35984.
- (2) Upon consummation of the intra-corporate family transaction, ORPS will be substituted in all respects for ORP in Docket No. FD 35984.
- (3) Upon consummation of the intra-corporate family transaction, ORPS will be the only member of the Fortress corporate family that has any authorization to operate on the Omal Line, and that any transfer of that operating authority must be the subject of a separate proceeding

B. Request for Clarification of Open Issues in the ORP Authorization Proceeding

In the ORP Authorization Proceeding, ORP was granted permissive authority to operate over the Omal Line subject to certain conditions. See ORP 2016 Decision. One of the conditions was the acquisition of a property interest in the Omal Line. Id., at 3. As acknowledged by ORPS and ORP, ORP did not end up acquiring any interest in the Omal Line. Accordingly, at the current time, no Fortress entity can operate on the Omal Line. ORP has permissive authority to operate, but no property interest; ORPS has a property interest, but no authority to operate the rail line. Once the intra-corporate family becomes effective and the transaction is consummated, ORPS will have whatever authority ORP has under the ORP 2016 Decision. OTRC requests that the Board clarify that its prior orders in the ORP Authorization Proceeding will be applicable and binding on ORPS effective with any merger of ORP with and into ORPS. Additionally, the Board should clarify that ORPS is bound by the representations and filings made by ORP in the ORP Authorization Proceeding.

ORP's permissive authority granted in the ORP 2016 Decision is not unqualified. There are still open issues regarding the scope of the conditions in the ORP Authorization that need to be resolved. OTRC's Petition for Deferment raises the question of whether ORP should be permitted to commence dual operations on the Omal Line before there is a resolution of OTRC's claim that it has an exclusive easement to use the line. If OTRC does, then it would be impossible for OPR to have acquired a sufficient property interest in the line to operate over it. As noted in the ORP 2016 Decision, the Board's grant of authority was permissive, "and in order to exercise that authority and commence operations, [ORP] must still obtain the necessary rights under state property and/or contract law." ORP 2016 Decision, at 3. ORP disputes whether it

needs to demonstrate that it has the necessary property rights in the line to begin operations.

That is an open question that the Board needs to clarify for the parties.

Not in dispute is the condition that the NSR, ORP and OTRC must negotiate and agree on interchange and operating protocols before ORP may commence any operations on the line. ORP 2016 Decision, at 4. In a letter filed with the Board on September 7, 2016, ORP reiterated to the Board that it would not begin dual operations on the line until such agreements had been reached. No such agreements have yet been agreed upon.

Notwithstanding ORP's representation that it would not operate before agreements were in place, and notwithstanding that neither ORP nor ORPS has both the ownership and authority to operate, a Fortress affiliate, Central Maine & Quebec Railway ("CMQ") with no ownership interest in or authority to operate on, the Omal Line, on September 26 issued an "adoption notice," and filed with Railinc, to take over the Omal Line stations and all of OTRC's tariffs as of October 1, 2017. See CMQ Adoption Notice attached hereto as Exhibit A. The notice purports to have CMQ take over the Omal Line stations from OTRC which would prevent OTRC from receiving any traffic.² The ORP 2016 Decision at best allows for dual operations; it in no way provides for the acquisition of OTRC's acknowledged authority by ORP (much less CMQ); and it in no way affected or discontinued OTRC's operating authority. OTRC has since been able to have Railinc restore its listing of the impacted station effective back to October 1, 2017. OTRC worries that this action by CMQ is an indication of the Fortress family railroads' apparent intent to begin operations without waiting to comply with conditions established in the ORP 2016 Decision.

² Each station has a single SPLC (standard point location code), but each railroad serving a station has its own CSM FSAC code used to identify the same station.

NS, ORP and OTRC have not had any joint discussions or negotiations regarding a joint interchange agreement. Nor does OTRC believe that ORP has entered into a separate interchange agreement with NS.

OTRC does not agree with ORP's description of the status of the negotiations of a joint operating agreement. OTRC remains committed to negotiating agreements with ORPS notwithstanding OTRC's pending state court litigation regarding the scope of OTRC's use of the Hannibal Real Estate rail easement on the Omal Line. It is true that OTRC has not agreed to the operating agreement that was proposed to it by ORP³, but OTRC did not refuse to continue negotiations. Rather, OTRC asked questions regarding how certain projected unit train traffic would be handled, how maintenance expenses would be allocated, and how each railroad would be compensated for the handling of cars of the other railroad. The negotiations were cut off by ORP including in its September 22, 2017 Reply to Petition for Deferment, a request for the Board to unilaterally impose a form of agreement that is blatantly unreasonable and that does not address the operational or cost allocation issues that OTRC was attempting to discuss / negotiate. Nonetheless, OTRC believes that progress can still be made on a joint operating agreement through negotiations if ORP is willing to continue to discuss the issues raised by OTRC. If there is truly an impasse, then OTRC believes that the Board, as suggested in the ORP 2016 Decision, at 4, facilitate discussions / negotiations by referring those discussions to mediation under 49 C.F.R. Part 1109. Finally, if mediation cannot resolve the joint operating agreement issues between the parties, the Board could institute a proceeding (sub-docket) to take evidence and proposals from the parties, and reach a reasoned determination regarding the terms and conditions that should govern the dual operations on the Omal Line, and the interchange with

³ OTRC notes for the Board's benefit that the agreement submitted by ORP is even more onerous than the draft that was presented by ORP to OTRC for negotiation.

NS. In making such a determination, the Board can weigh and balance how best to establish dual operating procedures so as not to unreasonably interfere with OTRC's use of the Hannibal Real Estate rail easement while at the same time affording ORPS a reasonable use of the Omal Line to serve future rail traffic not presently in existence.

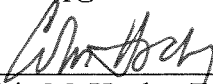
C. Conclusion

For all of the foregoing reasons, OTRC requests that the Board condition any approval of the exemption in Docket No. FD 36152 as requested above, and that the Board clarify in Docket No. FD 35984, the conditions that would apply to ORPS's proposed operations upon consummation of the proposed intra-corporate family transaction.

Respectfully submitted,



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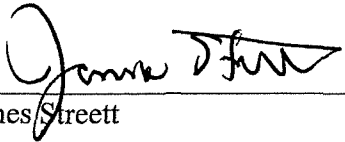
Attorneys for Ohio Terminal
Railway Company

Dated: November 2, 2017

VERIFICATION

I, James Streett, being duly sworn state that I am President of Ohio Terminal Railroad Company and that I am duly authorized to execute, verify and file this Verification on behalf of OTRC. I have knowledge of the matters contained herein and the statements made are true and correct to the best of my knowledge, information and belief.

Executed on November 2, 2017.



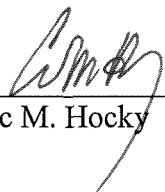
James Streett

CERTIFICATE OF SERVICE

I hereby state that on this 2nd day of November, 2017, I caused a copy of the foregoing Petition for Partial Revocation for Imposition of Conditions and for Clarification to be served by email on the following persons:

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Eric M. Hocky

EXHIBIT A

CMQ ADOPTION NOTICE

CENTRAL MAINE & QUEBEC RAILWAY**FREIGHT TARIFF CMQ 9002****ADOPTION NOTICE**

The Central Maine & Quebec Railway (CMQ), hereby adopts, ratifies and makes its own, in every respect as if the same had been originally issued by it, all freight tariffs, classifications, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, including supplements or amendments thereto whether or not filed with the Surface Transportation Board or former Interstate Commerce Commission by the Ohio Terminal Railway Company (OHIO) prior to October 1, 2017, insofar as said instruments apply from, to, at or via the stations of the Ohio Terminal Railway Company (OHIO) as set forth in the attached Exhibit:

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary.

Issued under authority of STB Finance Docket 35984

ISSUED: September 26, 2017

EFFECTIVE: October 1, 2017

ISSUED BY:

Lynne Labonte
Manager Customer Service and Non-Freight Revenue
Central Maine & Quebec Railway
700 Main Street Suite 3
Bangor, ME 04401

(Add)
OPSL-6000 SERIES
CENTRAL MAINE & QUEBEC RAILWAY (CMQ - 622)

STATION		COUNTY	RULE 260	OPSL	FSAC	SPLC	NRB	ZIP
CLARINGTON (1 - 3100)	OH	MONROE	CLRGT	04120	04120	351615	CLARINGTON, OH	43915
OMAL (1 - 3100)	OH	MONROE		04140	04140	351616	NATRIUM, WV	43915

I - Explanation of Notes: Notes 1 and 3100 - As explained in OPSL 6000-series.

(a) - Amend Note 3100 by changing the address, etc. for the Central Maine & Quebec Railway as follows:

<u>Column 1</u>	<u>Column 2</u>
Central Maine & Quebec Railway (CMQ)	700 Main Street, Suite 3 Bangor, ME 04401 Phone: (207) 848-4208 Fax: (207) 848-4211

II - Interchange: Clarington, OH between the CMQ and NS.