

**MINUTES: PANHANDLE LONG TERM LEASE
SUBCOMMITTEE MEETING
OF SEPTEMBER 23, 2011**

The Panhandle Subcommittee of the Ohio Rail Development Commission (ORDC) met on September 23, 2011 in Columbus in an Ohio Department of Transportation conference room. The following people were in attendance:

ORDC Commissioner Tom McOwen
ORDC Commissioner Bill Lozier
Dave Collins, Columbus & Ohio River Railroad (CUOH)
Chuck McBride, CUOH
Marty Pohlod, CUOH
Len Wagner, CUOH
Denny Lahr, CUOH
Pat McCune, Wheeling & Lake Erie Railway
Rick Platt, Licking County-Newark-Heath Port Authority
Dan Van Epps, CICs in Tuscarawas County
Alan Klodell, Ohio Attorney General's Office
Matt Dietrich, ORDC
Tom Burns, ORDC
Lou Jannazo, ORDC

Chair McOwen commenced the meeting to discuss the proposed long term lease of the ORDC's Panhandle Rail Line to the Columbus & Ohio River Railroad (CUOH) at a few minutes past 11:00 AM. Commissioner Lozier asked for a status report on outstanding issues. ORDC Executive Director Matt Dietrich passed out the latest draft of the proposed ORDC – CUOH long term lease dated September 22, 2011.

Director Dietrich noted that one item that the Subcommittee should consider was language in Article 3 that defines an "Existing Panhandle Shipper" and a "New Shipper". He noted that businesses that used CUOH service in the past three years would be considered an Existing Shipper but that there was new draft language in the latest lease which states that if a facility is vacant for two years and then reopens under different ownership, that facility would be considered a New Shipper. As a New Shipper, a business would have the option to pursue another provision of Article 3 that allows ORDC to mandate that a railroad other than CUOH be allowed to serve a new shipper. Rick Platt warned that there could be unintended consequences of such language, e.g. a new shipper pushing to seek an additional rail operator in the first three years because if it did not it would be considered an Existing Shipper after three years. Mr. Platt emphasized that the language authorizing ORDC to mandate that another rail carrier be allowed to serve a New Shipper was critical to economic development efforts because the New Shipper provision is very attractive to site selection consultants. Dave Collins of CUOH noted that he did not like this provision because it had the potential to divert what could be a great increase in carloads for CUOH to another railroad but that CUOH could live with the language as a compromise for other considerations that ORDC included in the draft lease.

Director Dietrich noted that ORDC Staff had taken provisions out of the latest draft that would enable ORDC to mandate overhead trackage or usage rights on the Panhandle, i.e. rights of connecting carriers to traverse the Panhandle line to get to one end or the other but without the rights to serve rail users along the line. He noted that ORDC Staff could not at present discern any public purpose for allowing such overhead rights and that CUOH would provide overhead rights if there were a good business case made to do so that benefitted both the CUOH and the other railroad. Commission Lozier noted that ORDC mandating overhead rights without a public purpose would be like a landlord telling a tenant that he had to have a homeless person live in the rented house. Chair McOwen noted that as a former short line owner, he knew of a case where there were very good commercial reasons for a Class I railroad to allow his short line over a stretch of track but that the Class I denied the access for fear of setting a precedent. Pat McCune stated that there are situations where there is a need to push a railroad to provide overhead rights and that it is not enough for ORDC to merely “hope” that the overhead rights would be worked out privately by CUOH and another railroad.

Director Dietrich noted that the rent provisions of Article 5 need to be finalized. He noted that the rent provisions in the current draft would garner \$1 million in rent per year as a fixed rent payment but would also provide ORDC the opportunity to be paid \$200,000 to \$300,000 more in variable rent based on carload volumes on the Panhandle. Commissioner Lozier asked if the CUOH lease payments would be reinvested in the Panhandle. Director Dietrich noted that the latest lease language contained provisions that would enable the railroad to request and the ORDC to credit future payments of the variable rent payment for extraordinary investments and economic development opportunities on the Panhandle.

Director Dietrich discussed the Performance Measures in the current and the proposed future lease agreement. (Article 6 in the proposed draft.) He noted that recent ORDC Staff due diligence on the Performance Measures in the current ORDC – CUOH Operating Agreement was recently completed. He noted that CUOH scored lower than mandated for the Safety Performance Measures. The Safety Performance Measures state that CUOH needs to be better than the Class I railroad averages in select safety categories compiled by the Federal Railroad Administration. He noted that CUOH was not too far off, but did not better the Class I averages. Director Dietrich noted, however, that the CUOH safety record was better than the averages for Regional Railroad or Large Short Line Railroad and that these comparisons are more appropriate. He noted that the language in the current draft lease needs to be changed to compare CUOH to Regional Railroads or Large Short Lines, not Class I railroads. Mr. Collins explained that due to the limited miles CUOH operates, even one small incident like a bee sting to an employee who is allergic to bees can greatly skew the average score because it is magnified reflect a number that is based on a million miles of operation.

Director Dietrich also noted that the CUOH did not meet existing Performance Measures for Shipper Satisfaction in recent ORDC Staff due diligence. CUOH provided paper copies of a power point presentation to those in attendance and provided an explanation for the lack of shipper satisfaction. Mr. Collins explained that CUOH was hit with the recession that caused carloadings to plummet 42% which caused CUOH to reduce the size of its operations. Mr. Collins also explained that at the same time, new federal rules limited train crew hours of operation and their ability to use cell phones to contact customers, a common practice in

railroading for communicating with shippers. Mr. Collins explained that the combination of these factors caused hardships for CUOH which in turn resulted in reduced service to shippers. Mr. Collins noted that since the economy has improved, CUOH has taken great pains to get train crews trained and in service. He noted that CUOH now has 62 train and engine people, up from a low of 40 during the depths of the recession. Director Dietrich noted that the latest draft language contained provisions that CUOH use a professional survey company to survey all Panhandle shippers every two years and that CUOH and ORDC work together to remedy problems brought out in the surveys.

Director Dietrich noted that Article 9.04 contains language that would allow CUOH to retain ownership of infrastructure it built with its own funds if for some reason CUOH no longer operated the line so long as that infrastructure was not essential for operating the Panhandle Line.

Director Dietrich stated that it was imperative that ORDC and CUOH continue to negotiate the proposed lease so that a new lease will be in place on June 30, 2012 when the current operating agreement expires. He said that once a draft lease was agreed upon, ORDC would seek public input via two public meetings. Once any changes from the public input were made, ORDC would seek Panhandle Subcommittee approval, probably in early 2012 and if approved by the Subcommittee seek full Commission approval in March, 2012. Director Dietrich ended his comments by commending CUOH for its good faith negotiations.

Chair McOwen ended the meeting at approximately 1:00 PM.

Minutes Taken by Lou Jannazo, ORDC