

PANHANDLE ADVISORY COMMITTEE MEETING NOVEMBER 28, 2007

Panhandle Committee members met on Wednesday, November 28, 2007 at the offices of the Ohio Rail Development Commission. Chairman McOwen called the meeting to order at 11:40 a.m. Members present were as follows: Commissioners Solomon Jackson and Kimberly Gibson; Commissioner and Committee Chairman Tom McOwen; ORDC Staff Matt Dietrich and Lou Jannazo, and ORDC Counsel Alan Klodell. Commissioner Jim Hartung was unable to attend the meeting. Several members of the public were in attendance as well.

Note: due to illness Matt Dietrich opened the meeting and spoke on behalf of Tom McOwen.

Matt Dietrich asked Lou Jannazo to recap the meeting he, Lou, Tom McOwen and Bill Strawn had on November 8th regarding the issues with a long term lease. Mr. Jannazo presented the following highlights/discussion points of the meeting: 1) the difficulties of negotiating a lease in public; 2) the fact the Ohio Central Railroad (OC) has invested beyond the required amount in the operating agreement (\$5-6 million) over the past 10 years; 3) the fact that the Columbus to Newark line (33 miles) is owned partially by the State and partially by the Ohio Central; 4) the fact that the Neilston line (a small section of track in Columbus) is very important to the Panhandle due to 1800 ft of the line, owned by the Ohio Central, stands between access to the Panhandle and the Columbus connection to the line and yards; 5) the issue of access of other freight railroads to the Panhandle should the long term lease be granted; 6) the issue of other railroads having direct access to new customers, not existing customers, along the line; 7) what to do about excursion operations on the Panhandle, specifically liability issues, and the concept that the operator should have protection of liability and that the commission would go to the General Assembly to work out the details; 8) the fact that passenger service should be a separate issue from excursion service and the inclusion of the issues with overhead rights; 9) property management issues and ORDC's right to do some property transactions; 10) track maintenance and ORDC's right to hold the OC responsible to maintain the Panhandle's track at Federal Railroad Administration standards that currently exist with the right of the OC to petition ORDC to revise the standards; 11) the fact that arbitration clauses should be added to the long term lease in the event the state has a dispute with any aspect of the lease, providing the state does not expend any monies that someone else has ordered the state to expend; and 12) the lease payment issue. The OC noted the Panhandle is very valuable to the entire OC system but as a stand-alone entity it is not self-sufficient. The OC hired a consultant who determined the payments should reflect the investment in the track but also take care of retiring the debt.

Mr. Jannazo noted that no final conclusions were obtained as a result of this meeting. This meeting was merely to identify issues which are likely to be raised in determining the potential for a long-term lease.

Director Dietrich stated Commissioners Jackson and Gibson had requested at the last committee meeting that they understand the rationale behind awarding a long term lease. The white paper, distributed by Mr. Dietrich, is a synopsis of the history of how the Panhandle came to be in the possession of the state and why a long term lease could make sense for the operator.

Director Dietrich reviewed the non-negotiable principles for the committee which were identified through the competitive selection process ten years ago:

- ORDC will reserve the right to allow other railroads on the Panhandle line for a reasonable trackage rights fee for the purpose of moving overhead traffic.
- ORDC will reserve the right to allow other railroads on the Panhandle line for a reasonable trackage rights fee for the purpose of serving new rail customers not currently using rail service.
- ORDC will reserve the right to allow passenger or excursion operations over the line provided that these operations properly insure and indemnify the contract operator.
- ORDC will require that ORDC, or its designee, be immediately provided trackage rights at a reasonable fee over any trackage now owned by the contract carrier (or purchased or otherwise acquired while the railroad is ORDC's contract carrier) which is in any way contiguous with the Panhandle line and needed for access to connecting railroads in and around the Columbus, Ohio area and the Mingo Junction/Steubenville/Weirton areas. In addition, ORDC will require that ORDC have the first right of refusal to purchase such connecting tracks in the event that ORDC terminates its relationship with the contract operator on the Panhandle.
- ORDC will require that the contract operator maintain track to existing FRA classifications and establish a maintenance plan acceptable to ORDC. (Generally, Panhandle branchlines are in Class I condition and mainlines in Class II and III conditions.)
- ORDC will require that the maintenance responsibilities of the contract operator include all railroad responsibilities inherited from previous rail operators and owners including such responsibilities for overhead highway bridges.
- ORDC will require that, on a confidential basis, the contract operator provide access to the books and records of the Panhandle operations as well as those of affiliated companies, railroad or non-railroad, which have an inter-relationship with the Panhandle operation. Further, ORDC will require that within 90 days after the end of its fiscal year, the contract operator will provide ORDC with an audited financial report, prepared by a Certified Public Accountant, of the financial status of the line, including profit-loss statements, balance sheet, and cash flow statements. ORDC will reserve the right to audit the Panhandle financial situation on a yearly basis.
- ORDC will require that carloading information from the Panhandle be supplied on a confidential basis which breaks down carloadings by customer, commodity, origin and destination, and interchange points.
- ORDC will require that ORDC approve any contract that ORDC's contract carrier enters into with rail shippers or railroads which goes beyond the time the term of the ORDC operating agreement.

- ORDC will require that ORDC approve any significant change in the railroad track structure or to the rail property.
- ORDC will require that ORDC approve any and all property leases, easements, permits or other property related contractual agreements which the contract operator desires to enter into.

Director Dietrich spoke on what ORDC staff developed as guiding principles in the consideration of a long term lease and identified the following:

- **Principle One: The Lease Must Enable the C&OR to Effectively Serve the Line**
- **Principle Two: The Lease Must Enable the State of Ohio to Promote Rail Freight Related Economic Development along the Panhandle by Mandating for Other Freight Railroads Overhead Trackage or Operating Rights as well as Rights to Serve New Customers**
- **Principle Three: The Lease Must Ensure that the Panhandle Remains Effectively Connected to the Railroad Yards and Mainlines**
- **Principle Four: The Lease Must Ensure that ORDC Has the Rights to Run or Facilitate Intercity or Commuter Passenger Services on the Panhandle as Long as the C&OR is Properly Indemnified and Freight Service is Not Unduly Compromised**
- *Principle Five: The Lease Must Allow ORDC to Run or Facilitate Excursion Operations on the Panhandle so long as the C&OR is Properly Indemnified and Freight Service is Not Unduly Compromised. (removed after discussion with committee)*
- **Principle Five: The Lease Must Require that the C&OR Meet Select Minimum Service, Safety, Maintenance, and Financial Requirements on a Periodic Basis**
- **Principle Six: The C&OR Use of the Property Shall Not Compromise Future Public Benefits & ORDC's Use of the Property Shall Not Compromise the C&OR's Ability to Provide Freight Services**
- **Principle Seven: The C&OR Commitments to the Long Term Capital Needs Will be Delineated**

Commissioner Gibson commented on the principles and highlighted Principle Two saying she believes it is the framework for the lease and from that one principle everything else will flow. "Economic development is the reason the state purchased the line in the first place."

Chairman McOwen requested a change be made in the language to "the line is a *railroad asset* owned by the state" versus "the line is a *public asset* owned by the state." Some discussion followed with Commissioner Jackson echoing Chairman McOwen's request. Bill Strawn, President of the Ohio Central, concurred as well.

Pat McCune, Representative for the Wheeling & Lake Erie Railway, raised the concern of an arbitration system and how one might be fair and impartial to all interested parties. Mr. McCune also inquired about a Successorship Clause and whether one might/should be added to the lease should, after the term of the lease comes to conclusion, the Ohio Central decide not to remain the operator. Alan Klodell identified a similar clause already exists in the current lease and will remain in any new document.

Commissioner Gibson spoke about her concerns of assuring the economic development aspects of the lease are protected. Discussion took place regarding excursion service which led to the issue of liability and how one might measure reward versus risk. Mr. Jannazo reported this is definitely the challenge for this sub-committee. Chairman McOwen recommended that language be developed which would go before the legislature that addresses this very issue.

Commissioner Gibson extended her full support of this endeavor. The suggestion was made to form a sub-committee for the purpose of crafting the language which provides liability relief for public excursions. This sub-committee should include members of The Ohio Rail Tourism Association; CVBs; Ohio Department of Development, Division of Travel & Tourism; Ohio Railroad Association and Rails to Trails Conservancy.

Director Dietrich recapped the conversation for the benefit of all and surmised it is the desire of the committee "to strike Principle Five to allow excursions on the Panhandle as one of the non-negotiable principles in moving forward." Further, Director Dietrich identified the entities who should be involved in the meeting to prepare such language on the liability issue.

Director Dietrich inquired if the committee members accepted the white paper as policy but for Principle Five? There were no objections from the committee members. An amended white paper will be sent to all members.

Mr. Jannazo raised two additional issues which included access to the line (trackage rights) and access to new customers (overhead rights). Discussion took place regarding providing the right of a new customer to petition the commission for approval to seek outside rail service. Director Dietrich respectfully cautioned the members about entering into that realm of the contract because it would make ORDC more of a regulatory agency. Additional discussion followed with Mr. Strawn reiterating his company's position to be allowed right of first refusal. He indicated no mechanism currently exists that allows the Ohio Central this right.

Mr. Jannazo raised two issues he felt should be discussed prior to adjourning the meeting: lease payments (i.e., how much should the operator pay?) and reporting requirements (i.e., shipper surveys). Chairman McOwen announced the issue of lease payments was not something he would like to address at this time. Discussion followed regarding the reporting requirements, as outlined in the current operating agreement, with all agreeing that the timeline could be revised from the current annual reporting requirement. In regard to the lease issue, Chairman McOwen did request a number be derived from proposed improvements to be made along the line and the amount of revenue the line has to potentially generate over the next 25 years and divide that number over the term to obtain a baseline for a potential lease payment. Discussion followed with ORDC staff agreeing to investigate this request.

The next meeting of the committee was scheduled for Thursday, January 3, 2008 at 11:00 a.m. at ORDC Offices. A report from the committee should be ready for presentation to the full commission at its meeting scheduled for January 16, 2008.

Approval of the Minutes of the October 31, 2008 committee meeting took place with Commissioner Gibson moving to approve the minutes and Commissioner Jackson seconding the motion. The minutes are approved as presented and will be posted to ORDC's website for public review.

The meeting adjourned at 2:20 p.m.