

PANHANDLE ADVISORY COMMITTEE MEETING FEBRUARY 28, 2008

Panhandle Committee members met on Thursday, February 28, 2008 at the offices of the Ohio Rail Development Commission. Chairman McOwen called the meeting to order at 11:05 a.m. Members present were as follows: Committee Chairman Tom McOwen; Commissioners Solomon Jackson and Kimberly Gibson; ORDC Staff Matt Dietrich, Lou Jannazo, Megan McClory, Stu Nicholson and ORDC Counsel Alan Klodell. Commissioner Jim Hartung was unable to attend the meeting. Several members of the public were in attendance as well including Bill Strawn, President of Ohio Central Railroad Systems and Representative Allan Sayre.

Approval of the Minutes of the February 21, 2008 Panhandle Committee Meeting

Chairman McOwen asked for a motion to approve the minutes of the February 21, 2008 meeting. Commissioner Gibson moved to approve the minutes and Commissioner Jackson seconded the motion. The minutes are approved as presented.

Review of “RENT – Guiding Principle” Handout

Director Dietrich asked Megan McClory, ORDC Secretary-Treasurer, to review the Guiding Principle she prepared for Principle Eight (Rent) of the draft lease (pg. 14). Ms. McClory explained this principle was broad enough to determine specific terms but also defined what ORDC is looking for in a rent payment. She indicated the main goals, based on the discussions of the committee at the previous meeting, were to pay off the remaining debt on the line; continue to maintain and invest in the line; and ensure that ORDC is receiving adequate payment to administer the agreement.

Commissioner Gibson added she would like to see the following concept included in Principle Eight: “this asset is to be utilized to achieve the broader mission of the ORDC.” Chairman McOwen asked Commissioner Gibson to further elaborate on this concept. Commissioner Gibson specified this asset is one that the state took a risk on several years ago and is an asset that has been preserved and is a resource for the state. She indicated this asset is only one piece of our portfolio which allows us to achieve our mission. Commissioner Jackson echoed Commissioner Gibson’s comments. He further stated that we need to figure out what the value is of the line because the value determines the rent. The methodology of how the committee arrived at the rent (cost) should be included in the guiding principle.

Continued Review and Discussion of Proposed Rent Language

Director Dietrich asked Megan McClory to review the two options as identified in the “Rent” handout. Both of these options could be used to determine the monthly rent amount. Ms. McClory reported Option One is a *Fixed Dollar Amount with Deductions for other Payments*. This option starts with a fixed amount and incorporates deductions based upon different variables such as whether the COPS are still outstanding; if a loan is obtained by the operator and capital improvements are made along the line; and/or if ORDC and the operator together determine a schedule of improvements and those improvements are approved by ORDC then the amount of the improvements may be deducted from the rent amount until the operator recuperates such costs.

Ms. McClory spoke about the second option which she identified as a “blended approach” that uses the volume of carloadings on the line as a factor in determining the rent. Option Two, *Fixed Base Payment plus Per-Carload Amount*, utilizes a fixed amount as the base rent but charges per carload based on the previous year’s reporting schedule. There are two ways of using the carloading schedule either through a breakdown of commodity or flat volume of cars. Ms. McClory indicated both Option One and Option Two contain the ORDC administrative fee which is consistent with what is in place in the current operating agreement.

Discussion took place with Chairman McOwen reporting the asset (Panhandle) is in a much better condition than when the state first acquired it due to the efforts of the operator. All agreed.

Director Dietrich pointed out that the debt service is number one in determining the rent amount because that debt payment must be covered. He spoke about the long-term infrastructure improvements that still need to be addressed along the line which a long-term lease (a lease beyond the current five-year structure) will allow the operator to take care of. Director Dietrich spoke about the administrative fees that come to the state and indicated those fees can be adjusted if necessary.

Commissioner Jackson reminded everyone there are only 4 ½ years until the COPS are paid off. He reported we will have a flexibility and freedom that we don’t have at this point. We need to be mindful of this fact; preserve for the future.

Additional discussion took place. Option One will be slightly revised for the committee to review at the next meeting to include rate of return, debt service, capital investment and carloadings.

Review of Proposed Term Language - Article Six; Twenty-Five Year Term

Director Dietrich guided everyone to Page 12 of the draft lease and reported that Alan Klodell had prepared the language in Article 6 – Twenty-Five Year Term. Director Dietrich indicated this language incorporates the comments and concerns raised by Commissioner Jackson at the previous meeting. Chairman McOwen indicated additional discussion will take place on this section but not at this time.

Review of Proposed Excursion Service Language

Director Dietrich indicated Representative Allan Sayre’s office submitted a draft for excursion service on behalf of himself and Representative Okey. Chairman McOwen requested Representative Sayre provide a synopsis of his draft. Brief discussion followed.

Review of Article 27 – Excursion Service

Extensive discussion regarding the issue of excursion service took place (pg. 26). Excursion service ultimately comes down to the issue of liability on the operator. Wendy Zucal, Director of Dennison Depot Railroad Museum, posed the question to the committee regarding if the Depot was able to obtain the level of coverage currently required by state law, would the Depot be able to access the line to run enough excursions to recoup their costs for the insurance? Director Dietrich reported this issue is not going to be easily resolved. Stu Nicholson echoed Director Dietrich's comments and went on to report on the liability meeting that had just taken place the day prior.

Report of the Feb. 27, 2008 Panhandle Advisory Committee on Liability Issues Meeting

Stu Nicholson, ORDC's Public Information Officer, reported on the meeting on Liability Issues which took place on February 27th at 9:30 a.m. at ORDC. Mr. Nicholson reported that reaching a solution on the issue of liability for non-freight uses of the Panhandle Line is proving to be more of a difficult task. Both Mr. Nicholson and Director Dietrich recounted how noted railroad insurance expert Robert McCarthy reported to the Liability Task Force meeting that it is not only a national issue but one that has, thus far, defied a "bullet-proof" answer. Mr. McCarthy told those in attendance at the meeting that even if a legislative solution is found that would enable special excursion trains or recreational trail uses along the Panhandle, all of that could be bypassed by a lawsuit in a federal court and rendered ineffective.

Mr. McCarthy did say that he felt the Task Force was approaching the issue correctly, especially by involving as many of the stakeholders as possible. He brought several examples to the table of what other states are doing to address the issue, but stressed that each had either been challenged in the courts or was otherwise limited in its impact. To the suggestion of having tourist railroads and other interests "pool" the cost of liability insurance, Mr. McCarthy stated this is not a bad idea, but the advantage in doing so falls apart if one member of the pool either drops out to seek a better rate or is forced to file a claim: the net effect being that the other "pool" member are left without adequate insurance coverage.

Mr. Nicholson reported the next Liability Issues meeting has not been scheduled and the matter of liability insurance for non-freight uses has yet to be resolved.

Representative Sayre suggested that ORDC be present in negotiations to make sure all parties are negotiating in good faith; taking a more proactive role.

Next Steps

Chairman McOwen suggested ORDC staff prepare draft language for the next meeting that would allow for excursion service in the lease but does not address the liability issue beyond what is currently in the Revised Code.

Next Meeting

Chairman McOwen announced that the next meeting of the Panhandle Committee meeting will take place on Wednesday, March 12, 2008 beginning at 11:00 a.m. at the offices of the Ohio Rail Development Commission.

Adjournment

Chairman McOwen called the meeting adjourned at 1:55 p.m.