

**White Paper:  
PRINCIPLES FOR A LONG TERM LEASE  
AGREEMENT WITH THE C&OR FOR THE PANHANDLE RAIL LINE**

November 13, 2007

**Purpose:** At its September 13, 2007 meeting, the Ohio Rail Development Commission (ORDC) established an ad hoc subcommittee to undertake the development of a long term lease of the ORDC owned Columbus to Mingo Junction "Panhandle" rail line to the Columbus & Ohio River Railroad (C&OR). Subsequently, the Chair of the subcommittee, Tom McOwen, asked ORDC Staff at the October 31, 2007 subcommittee meeting to develop a set of principles that the subcommittee and full Commission could adopt to serve as guidelines for establishing a long term lease. Presented herein are the staff recommendations for these principles.

**BACKGROUND**

**History:** The C&OR has been the contract operator on the Panhandle line since the State of Ohio acquired it in a complex financing transaction in 1992. Since that time, the C&OR has built up the traffic base to more than double what it was in 1992 and has invested over \$26 million in Panhandle track maintenance and capital improvements, about \$6 million more than had been mandated by ORDC through its operating agreements with the C&OR. In addition, the C&OR has been paying off the \$8.6 million in State debt which resulted from the State acquisition of the line.

ORDC has renewed its operating agreement with the C&OR every five years. The term of the current operating agreement is from July 1, 2007 until June 30, 2012. By the end of this operating agreement, the C&OR will have retired the full State acquisition debt. Since 1997, the C&OR has had to meet standards for fiscal performance, track maintenance, shipper satisfaction, operational safety, and other such standards as a prerequisite for ORDC renewing the operating agreement. The C&OR has consistently met and exceeded these requirements.

In 2006, ORDC considered selling the Panhandle to the C&OR. After deliberations, ORDC decided to put any sale of the Panhandle on hold indefinitely. Earlier this year, the C&OR requested that ORDC consider a long term lease for the line.

**Reasons for a Long Term Lease:** Over the course of deliberations over the past year, ORDC Commissioners and Staff have provided the following reasons why a long term lease would be beneficial to the State of Ohio:

- **A Long Term Lease Makes Business Sense for Any Railroad Operation:** Railroading is among the most capital intensive businesses in the world. The C&OR has identified select capital projects totalling many millions of dollars for bridge, tunnel, and track improvements. The C&OR would have difficulty obtaining financing for major, long

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term improvements with only a 5 year operating agreement. A long term lease would better enable the C&OR to make high cost investments in the Panhandle.

- ***A Long Term Lease is Important for Business Development:*** Companies making major investments in new rail-dependent plants often look for stability in rail operations. In the past, ORDC has put out to a competitive selection process the rights to be the designated operator for the Panhandle. With a history of the State going out for a new operator, and only a five year term for the current operating agreement, it would be beneficial for the economic development of the area that the C&OR has a long term agreement to operate the line.
- ***RRIF Loan/COPs Buy Out:*** The State used Certificates of Participation (COPs), a special type of bond financing, to acquire the Panhandle. There are several layers of collateral to support this financing including a \$760,000 reserve in ORDC's "Revolving Loan Fund" which cannot be used for rail projects; ORDC General Revenue Fund budget and an ODOT pledge to buy out the Panhandle with trail funds in the event all other reserves are exhausted. ORDC would like to get eliminate these financial constraints by defeasing the existing \$3.7 million in COPs debt. One very effective way to retire this COPs debt would be to work with the C&OR to obtain a Federal Railroad Administration (FRA) Railroad Rehabilitation & Improvement (RRIF) loan. RRIF loans are very low interest (Treasury bill rates) and long term (25 years). ORDC staff and the C&OR have been investigating obtaining a RRIF loan to pay off the COPs debt. Because the C&OR would be paying off any RRIF loan, the FRA will not provide financing until and unless the operator has a lease longer than five years. In addition to paying off the COPs debt, a RRIF loan could be used to pay for capital projects on the Panhandle line, public improvements which also would require the long term lease to ensure that the loan would be repaid.
- ***The C&OR Has a Very Good Track Record:*** In 1992, when the State acquired the Panhandle, the Columbus & Ohio River Railroad was a "mom & pop" type of operation. Since that time, the C&OR, and its parent company, the Ohio Central System of Railroads, has grown into a strong, sophisticated regional railroad system in Ohio and Pennsylvania. The C&OR has proven its ability to operate the Panhandle through 15 years of operations and a competitive selection process. In 1992, close oversight of the C&OR and a short term operating agreement made sense. In 2007, a longer term can be considered due to the successful past performance of the C&OR.

***Guiding Principles Developed in 1997 for Competitive Selection Process:*** When ORDC conducted a competitive selection process in 1997, it laid out a series of "Non-Negotiable Principles" as part of the process. No railroad wishing to take part in the competitive selection process could do so without accepting the Non-Negotiable Principles up front without any changes or exceptions. Here are these Non-Negotiable Principles as listed in the Request for Proposal for the 1997 competitive selection process:

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**ORDC OPERATING AGREEMENT:**  
**NON-NEGOTIABLE PRINCIPLES**

February 7, 1997

*The Ohio Rail Development Commission (ORDC) places a very high value on using the Panhandle line for fostering economic development in Eastern Ohio and in knowing and understanding the economic status of our contract operator so that we can effectively administer the line. The principles below will be included in an operating agreement between ORDC and the selected operator. Any bidder who does not accept these principles will be eliminated from further consideration.*

- \* 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.*

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*\* 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.*

### **GUIDING PRINCIPLES REVISITED, 2007**

ORDC Staff has an additional ten years of experience with the C&OR and the Panhandle. Staff proposes the following be adopted as the ORDC "Guiding Principles" for any long term lease of the Panhandle rail line to the C&OR:

**Principle One: The Lease Must Enable the C&OR to Effectively Serve the Line:** If the C&OR is to be able to continue to retire debt, to maintain the track, to provide effective rail service to shippers, and be able to help promote economic development along the Panhandle line, the C&OR: 1) must have control of railroad operations; 2) must not be straddled with undue responsibilities which do not promote effective freight operations on the Panhandle; 3) must be shielded from unwarranted liabilities brought upon the C&OR by others operating on the Panhandle at ORDC's behest; and 4) must have exclusive rights to serve existing rail users as well as the right to serve new customers which may locate along 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:** On a few occasions over the last 15 years, companies have inquired whether ORDC could mandate direct rail access by railroads other than the C&OR if a new plant were to be built along the Panhandle. Although there have been no instances where ORDC has mandated such non-C&OR access, the fact that the option exists has enabled ORDC to provide a valuable potential service to encourage new development. ORDC must retain the right to bring in railroads other than the C&OR to serve potential new rail users wishing to locate along the Panhandle. Further, the State helped to preserve the Panhandle because of its unique access to Columbus and to eastern Ohio. If providing overhead rights to another railroad to access Columbus, or some other interchange point on the Panhandle, promotes Ohio business and industry, ORDC must be able to provide such overhead rights.

**Principle Three: The Lease Must Ensure that the Panhandle Remains Effectively**

**Connected to the Railroad Yards and Mainlines:** The C&OR owns about 1,800 feet of track in Columbus which separates the Panhandle from mainlines and yards in Columbus. Also, there is a possibility that the C&OR could purchase from Norfolk Southern the NS track from Gould Tunnel to Mingo Junction or some other location in eastern Ohio, potentially cutting off access of a Panhandle operator other than the C&OR from access to mainlines and yards on the east end of the line. Any long term lease with the C&OR must provide ORDC with the absolute ability to effectively traverse any track owned by the C&OR, or any railroad affiliated with the C&OR, to get from the Panhandle to mainlines and yards in Columbus and Mingo Junction.

**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:**

One of the reasons the State got involved in preserving the Panhandle was that it is the last direct east-west line in Ohio between Pittsburgh and Columbus. As such, it is a part of the Ohio Hub plan for future passenger rail in Ohio. ORDC must be able to mandate if need be that passenger services from Amtrak, or other intercity passenger carriers which might emerge, have access to select time slots over the Panhandle. ORDC must be careful that any intercity or commuter passenger service provider protects the C&OR with indemnification and ample insurance coverage and that passenger operations do not unduly interfere with C&OR freight operations or impose an extra maintenance cost upon the C&OR.

**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:**

While the promotion of tourist excursions has not been a driving force for the State to preserve rail lines like the Panhandle, ORDC understands that rail excursions positively impact Ohio tourism and the economic development which results from tourism. For intercity passenger services, the freight rail industry accepts Amtrak (along with its hefty insurance coverage and backing of the federal government) as an operator. There is not, however, a general rail freight industry acceptance of excursion services. ORDC needs to be able to facilitate a limited number of excursion trips on the Panhandle so long as the C&OR can be properly indemnified and the freight operations along the line are not unduly hindered.

**Principle Six: The Lease Must Require that the C&OR Meet Select Minimum Service, Safety, Maintenance, and Financial Requirements on a Periodic Basis:**

The State has 15 years of experience with the C&OR performance. Over these 15 years, the C&OR has had detailed reporting requirements. ORDC no longer needs such detailed reporting but must maintain select reporting requirements to ensure that the operations on the Panhandle are safe and effective. Reporting requirements should not be annual, but rather spread out over several years or on an as needed basis.

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**Principle Seven: 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:** The C&OR must be allowed to manage the Panhandle property and right-of-way but the C&OR must not be able to enact significant changes in the track, build new buildings on the right-of-way, or provide other railroads with trackage or operating rights without prior written consent of ORDC. Conversely, ORDC must be able to use the Panhandle right-of-way for the benefit of the public so long as the ORDC action on the right-of-way does not unduly compromise the C&OR's ability to operate freight services.

**Principle Eight: The C&OR Commitments to the Long Term Capital Needs Will be**

**Delineated:** As long term investment to the Panhandle Rail Line is one of the major issues driving the long term lease discussion, the specific long term capital investments that the railroad will make must be spelled out in the lease agreement.

**CHALLENGE IN COMPLYING WITH STATED PRINCIPLES**

The challenge for ORDC is to implement principles two through seven above which call for ORDC to use the Panhandle for the public good, without violating the first principle which calls on ORDC to protect the C&OR's ability to effectively run a freight railroad.

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