



SIDLEY AUSTIN LLP
 1501 K STREET, N.W.
 WASHINGTON, D.C. 20005
 (202) 736 8000
 (202) 736 8711 FAX

thyne@sidley.com
 (202) 736-8198

BEIJING	HONG KONG	SHANGHAI
BOSTON	HOUSTON	SINGAPORE
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 Office of Proceedings
 January 12, 2016
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January 12, 2016

E-FILING

Cynthia T. Brown
 Chief, Section of Administration
 Office of Proceedings
 Surface Transportation Board
 395 E Street, S.W.
 Washington, D.C. 20423

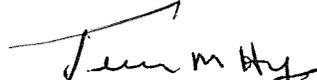
Re: Finance Docket No. 35984, Verified Notice of Exemption Pursuant to 49 C.F.R. § 1150.31, Ohio River Partners LLC – Exemption for Acquisition and Operation of a Rail Line – Hannibal Development, LLC in Monroe County, Ohio

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding are Confidential and Public versions of the Reply of Ohio River Partners LLC (“ORP”) to the Petition to Reject Notice of Exemption and Request for Stay of Effective Date of Exemption filed on January 7, 2016 by Ohio Terminal Railway Company (“OTRC”).

Exhibit B (Easement for Use of Railway) has been marked as a Confidential document. Therefore, ORP is designating Exhibit B as “Confidential” consistent with the terms of the pending Protective Order in this matter. See OTRC Motion for Protective Order (filed Jan. 7, 2016). ORP recognizes that the Board has not yet granted the Protective Order; however, given the sensitive timing of the Notice of Exemption, ORP believes it is necessary to submit Exhibit B at this time to assist the Board in ruling upon OTRC’s Motion. The filing of this document pursuant to the procedure set forth in the Protective Order in no way waives ORP’s right to object to discovery in the event that the Board institutes a proceeding regarding this matter.

Sincerely,



Terence M. Hynes

TMH:aat
 Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35984

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

REPLY OF OHIO RIVER PARTNERS LLC TO
PETITION TO REJECT NOTICE OF EXEMPTION AND
REQUEST FOR STAY OF EFFECTIVE DATE OF EXEMPTION

Terence M. Hynes
Hanna M. Chouest
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Attorneys for Ohio River Partners LLC

Dated: January 12, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35984

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

**REPLY OF OHIO RIVER PARTNERS LLC TO
PETITION TO REJECT NOTICE OF EXEMPTION AND
REQUEST FOR STAY OF EFFECTIVE DATE OF EXEMPTION**

Ohio River Partners LLC (“ORP”) submits this Reply to the Petition of Ohio Terminal Railway Company to Reject Notice of Exemption and Request for Stay of Effective Date of Exemption (the “OTRC Petition”) filed by Ohio Terminal Railway Company (“OTRC”) on January 7, 2016.

OTRC, a disappointed bidder in the sale of the Line (*see* OTRC Petition, V.S. Peterson at 7), seeks to preserve (what it erroneously claims is) its “exclusive” right to operate over the Line by asking the Board to reject the Notice of Exemption filed by ORP (the winning bidder) for authority to acquire and operate the Line (the “ORP Exemption Notice”). As ORP demonstrates below, OTRC’s allegation that the ORP Exemption Notice contains false or misleading information, and should be declared void *ab initio*, is specious. OTRC’s claim that the transaction contemplated by the ORP Exemption Notice—the straightforward acquisition and operation of a 12.2-mile secondary track—is too “complicated” or “controversial” to qualify for the Board’s class exemption procedure is likewise without merit. In any event, the OTRC Petition utterly fails to satisfy the Board’s well-established prerequisites for the issuance of a stay. Therefore, the Board should deny the OTRC Petition in its entirety.

I. THE ORP EXEMPTION NOTICE CONTAINS ALL OF THE INFORMATION REQUIRED BY THE BOARD’S REGULATIONS, AND DOES NOT CONTAIN FALSE OR MISLEADING INFORMATION.

OTRC alleges that “there are a number of omissions in the [ORP Exemption] Notice which have the effect of making the Notice false and misleading, and which justify rejection of the Notice.” OTRC Petition at 6. For example, OTRC asserts that the ORP Exemption Notice is “misleading” because it does not mention an “unresolved property dispute” between Hannibal Development, LLC (“Hannibal Development”) and Hannibal Real Estate, LLC (“HRE”) regarding the scope of an easement pursuant to which OTRC currently operates over the Line.¹ *Id.* According to OTRC, ORP’s failure to include a discussion of that dispute—which involves the nature of OTRC’s rights with respect the Line, rather than the proposed acquisition and operation of the Line by ORP that is the subject of the ORP Exemption Notice—“conveys the erroneous impression that ORP’s proposed transaction is routine and non-controversial without serious operational implications.” *Id.* OTRC’s claim is groundless.

The Board has repeatedly held that the existence of a contractual dispute regarding the right to operate over a rail line that is the subject of a class exemption does not provide a basis for rejecting a Notice of Exemption. Indeed, the Board has stated that its regulations at 49 C.F.R. § 1150.31 *et seq.* “do[] not require that a notice of exemption include information or references to the rights of other carriers on the Line.” *New Hampshire Central R. Inc. – Lease and Operation Exemption – Line of the New Hampshire Dept. of Transp.*, Fin. Docket No. 35022, at 3 (served December 11, 2007) (“*New Hampshire Central*”). See *Lackawanna County Railroad Authority – Acquisition Exemption – F&L Realty*, STB Fin. Docket No. 33905, at 5 (served October 22, 2001) (“*LCRA Acquisition*”) (same); *Indiana Northeastern R.R. Co. –*

¹ HRE and Hannibal Development are not affiliated companies.

Change in Operators – Branch and St. Joseph Counties Rail Users Assn., Inc. in Branch County, MI, STB Fin. Docket No. 33760, at 3-4 (served Sept. 1, 1999) (“*Indiana Northeastern*”) (same). In both *New Hampshire Central* and *LCRA Acquisition*, the Board denied a petition to reject or revoke a Notice of Exemption where an existing carrier alleged (as does OTRC here) that it had “exclusive” rights to operate over the rail line in question. As the Board explained in *New Hampshire Central* (at 4), because the authority granted pursuant to a Notice of Exemption is permissive in nature, it confers the right but not the obligation to exercise that authority, and does not affect property rights with respect to the line that is the subject of a Notice of Exemption.

Contrary to OTRC’s allegation, the ORP Exemption Notice contained more information than was required by the Board’s regulations. ORP explicitly mentioned the easement granted to HRE by Hannibal Development’s predecessor, Ormet Railroad Corporation. ORP likewise advised the Board that OTRC is currently operating over the Line pursuant to the HRE easement, and acknowledged that OTRC would continue to serve the HRE industrial park following consummation of the proposed transaction. Under 49 C.F.R. § 1150.31 *et seq.*, this information was not required, but was included to apprise the Board of the current status of operations on the Line.

OTRC’s assertion that the ORP Exemption Notice is “void *ab initio*” because it “does not say how interchange [with Norfolk Southern at Powhatan Point] might be accomplished or that [ORP] has made any arrangements for interchange with NSR” (OTRC Petition at 6) is nonsense. As an initial matter, the Board’s regulations at 49 C.F.R. § 1150.31 *et seq.* do not require that a Notice of Exemption describe the operational details of a prospective carrier’s interchange with connecting railroads, nor do they require that an interchange agreement be in place.² Moreover,

² Section 1150.33(h) does require that a Notice of Exemption identify any “interchange

as ORP explained, there are currently no rail shippers located in the industrial park that ORP proposes to acquire (along with the Line) from Hannibal Development. ORP plans to redevelop that site, and will commence operations when rail service is requested by new shippers who locate their facilities on the Line. ORP Exemption Notice at 4. At that time, ORP will make appropriate interchange arrangements with NS. OTRC's assertion that ORP's failure to provide details regarding its prospective interchange with NS renders the ORP Exemption Notice void *ab initio* is ironic, in light of the fact that OTRC itself provided no such information in the Notice of Exemption pursuant to which it acquired operating rights on the Line. OTRC's Notice of Exemption stated only that "OTRC will provide common carrier rail service on the Omal Secondary Track and interchange with Norfolk Southern Railway at or near Powhatan Point, Ohio." See Exhibit A, OTRC Verified Notice of Exemption, STB Fin. Docket 35703, at 3 (filed Dec. 18, 2012). If OTRC's claim in this proceeding had merit (and it does not), then OTRC's own Notice of Exemption would be void *ab initio*.³

OTRC's assertion that the ORP Exemption Notice is "misleading and thus void *ab initio*" because it "fails to address the impact which its dual operations will have on OTR service given the [allegedly] constrained capacity and facilities on the Line" (OTRC Petition at 6) is likewise without merit. The Board's regulations at 49 C.F.R. § 1150.31 *et seq.* do not require that a Notice of Exemption discuss the operational impacts of a transaction involving a line upon which another carrier already operates. Indeed, 49 C.F.R. § 1150.33(a)(4) explicitly exempts the

commitments" (*i.e.*, "paper barriers") imposed in connection with a line sale transaction. The ORP Exemption Notice (at 5) complied with that requirement by stating that "[t]he transaction does not impose any interchange commitment on ORP."

³ While OTRC's failure to describe its interchange arrangements with NS did not render its Notice of Exemption misleading, its representation to the Board in that Notice that HRE was "the owner of the subject property" was patently false. See OTRC Notice of Exemption at 3-4. As OTRC acknowledges, HRE holds only a limited easement to use the Line, and does not have (and never had) title to the Line. See OTRC Petition at 3, V.S. Peterson at 4.

acquisition of incidental trackage rights over other lines of the seller in connection with a line sale transaction. Such transactions, by definition, create “dual operations” over the trackage rights segments. Moreover, the Board has exempted as a class all transactions involving voluntary grants of trackage rights (*see* 49 C.F.R. § 1180.2(d)(7)), but does not require that the Notice of Exemption for such trackage rights transactions discuss the operational impact of increasing the number of carriers operating over the subject lines.

In *Indiana Northeastern*, the Board denied a petition to reject and/or revoke a class exemption where the petitioner (MSO) argued, *inter alia*, that “because MSO is still operating on the line, [the prospective purchaser’s (INE’s)] presence would cause operational problems.” *See Indiana Northeastern* at 4. In denying the petition, the Board observed that “MSO argues that the mere presence of INE on the line would cause operational problems, but multiple carriers routinely operate over the same rail lines . . .” *Id.* (emphasis added). As ORP demonstrates below, the potential operating issues raised by OTRC are both premature (in light of the fact that ORP will commence operations only when and if shippers require such service) and highly exaggerated. The fact that the ORP Exemption Notice did not raise, or identify solutions to, such hypothetical operating issues does not render that Notice false or misleading.

Contrary to OTRC’s assertions, the ORP Exemption Notice contains all of the information that is required by the Board’s regulations. None of the information set forth in the ORP Exemption Notice is false or misleading. Accordingly, the Board should reject OTRC’s claim that the ORP Exemption Notice is void *ab initio*.

II. THE TRANSACTION PROPOSED IN THE ORP NOTICE OF EXEMPTION QUALIFIES FOR THE CLASS EXEMPTION AT 49 C.F.R. § 1150.31 ET SEQ.

The transaction at issue in this proceeding is the acquisition of a 12.2-mile secondary rail line between Powhatan Point and Hannibal, Ohio. Section 10901 of ICCTA, and the Board’s

regulations at 49 C.F.R. § 1150.31 *et seq.*, require ORP (currently a non-carrier) to obtain Board authorization to acquire and operate the Line. Notwithstanding the straightforward nature and limited scope of the transaction, OTRC urges the Board to reject the ORP Exemption Notice on the grounds that it is too “complicated” and “controversial” to proceed under the Board’s class exemption procedures.

OTRC claims that “the class exemption process is inappropriate for the transaction contemplated by ORP” for two reasons. OTRC Petition at 3. First, OTRC asserts that the pending mediation/arbitration proceeding—which involves the nature and scope of OTRC’s right to operate over the Line pursuant to the HRE easement—disqualifies ORP from obtaining authority to acquire and operate the Line pursuant to the ORP Exemption Notice. *Id.* at 4-5. OTRC’s assertion is meritless.

The Board has repeatedly held that the existence of a dispute regarding the property rights of parties with respect to a rail line does not provide a basis for rejecting or revoking a Notice of Exemption filed pursuant to 49 C.F.R. § 1150.31 *et seq.* *See, e.g., New Hampshire Central; LCRA Acquisition; City of Alameda – Acquisition Exemption – Alameda Beltline Railroad*, STB Fin. Docket No. 34798 (served April 3, 2006) (“*Alameda Beltline*”). As the Board explained in *Alameda Beltline* (at 2), “[t]he contractual dispute in state court does not bring into question the appropriateness of the exemption process. . . .” *See also LCRA Acquisition* at 6 (same); *Indiana Northeastern, supra* at 4 (“We have consistently held that in exercising our licensing authority we look to compliance with the statutory standards, not to whether the applicant or petitioner will be able to exercise the authority sought.”). “Because the Board’s grant of authority [] is permissive in nature, *i.e.*, it confers only the right not the obligation to exercise the authority, it does not prohibit [OTRC] from seeking enforcement of [its

alleged] contractual rights in state court.” *New Hampshire Central* at 4. Questions relating to the nature and scope of the HRE easement are matters for the courts, rather than the Board, to decide. *See, e.g., New Hampshire Central* at 3-4; *LCRA Acquisition* at 6. But those questions do not render ORP’s acquisition and operation of the Line ineligible for the class exemption procedures set forth at 49 C.F.R. § 1150.31 *et seq.*

Moreover, OTRC’s claim that its operating agreement with HRE granted it “exclusive access to and use of” the Line is incorrect. OTRC Petition, V.S. Peterson at 4. In support of this claim, OTRC’s Mr. Peterson cites a conversation with “a principal negotiator” of the HRE easement in which OTRC allegedly was told that “the intent of the parties drafting the permanent easement was that there would be only one railroad operator on the Omal Line.” *Id.* at 17.

Mr. Peterson’s claim is fatally undermined by the plain language of the easement. Paragraph 1 (the granting provision) of the easement states that {

} *See Exhibit B, Easement for Use of Railway* at 1, Par. 1 (emphasis added).⁴ As this provision makes clear, the easement granted HRE the right to use the Line solely for the purpose of providing rail service to shippers located on HRE’s property. It did not give HRE either the exclusive right to operate over the Line, or the right to serve customers at other locations (including industries that might choose to locate at the Hannibal Development industrial park).

⁴ Exhibit B, while filed in the county public record, has been marked by the drafters as a Confidential document. Accordingly, ORP is filing Exhibit B pursuant to the procedure set forth in the pending Protective Order in this matter. *See* OTRC Motion for Protective Order (filed Jan. 7, 2016). ORP recognizes that the Board has not yet granted the Protective Order; however, given the sensitive timing of the Notice of Exemption, ORP believes it is necessary to file Exhibit B at this time to assist the Board in ruling upon OTRC’s Petition. The filing of this document pursuant to the Protective Order in no way waives ORP’s right to object to discovery in the event that the Board institutes a proceeding regarding this matter.

The non-exclusive nature of the easement is further demonstrated in {

} OTRC does not explain

(nor could it) why {

} As these provisions make

clear, OTRC’s right to operate over the Line cannot be “exclusive” because HRE does not possess “exclusive” rights that could be transferred to OTRC.

OTRC’s claim that the ORP Exemption Notice should be rejected because it “precludes any assessment by the Board as to whether dual operations on the Line would be consistent with the public interest and rail safety” (OTRC Petition at 5) is likewise incorrect. Based on its experience with transactions involving “dual operations,” the Board has exempted as a class both trackage rights transactions involving existing rail carriers (*see* 49 C.F.R. § 1180.2(d)(7)) and the grant of incidental trackage rights to a non-carrier over other lines of the seller in connection with a line sale transaction (*see* 49 C.F.R. § 1150.33(a)(4)). OTRC’s assertion that “an exemption should not be used to authorize ORP’s proposed dual rail operations” (OTRC Petition at 5) flies in the face of the Board’s experience with literally thousands of such transactions. Indeed, as the Board observed in *Indiana Northeastern* (at 4), “multiple carriers routinely operate over the same rail lines.”

Moreover, the operational concerns raised by OTRC are highly exaggerated. As an initial matter, no such issues could arise unless and until ORP commences operations over the Line in response to a request for rail service. OTRC’s claim that there is no suitable location for ORP to interchange traffic with NS is belied by the fact that such interchange can be performed on the Line itself—indeed, Mr. Peterson testifies that OTRC “often” interchanges cuts of more

than 20 cars with NS on the Line (rather than on the interchange track that OTRC constructed). OTRC Petition, V.S. Peterson at 14. The reality is that railroads can, and do, cooperate every day to conduct efficient and fluid interchange operations at many locations where track capacity is constrained. ORP will have a strong incentive to work with both NS and OTRC to determine the most efficient manner and location for interchanging traffic moving to and from shippers on the Line. In the (unlikely) event that service problems do arise, the Board would have jurisdiction to address them. But OTRC's premature and hypothetical operational concerns do not warrant rejection of the ORP Exemption Notice.

III. OTRC'S PETITION FOR STAY SHOULD BE DENIED.

In order to obtain a stay of the ORP Notice of Exemption, OTRC must satisfy the Board's well-established criteria for the issuance of such injunctive relief. Specifically, OTRC must demonstrate: (1) a strong likelihood of prevailing on the merits; (2) that OTRC will be irreparably harmed in the absence of a stay; (3) that issuance of a stay would not substantially harm other parties (including ORP); and (4) that issuance of a stay is in the public interest. *See, e.g., Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Portland & Western R.R. Inc. – Trackage Rights Exemption – Union Pac. R.R. Co.*, STB Fin. Docket No. 34883, at 2 (served July 13, 2006) ("*Portland & Western*"). The Board has noted that a stay constitutes "extraordinary relief" and that it is the movant's obligation to justify granting a stay. *Portland & Western* at 2. OTRC's Petition does not satisfy any of the Board's stay criteria.

A. OTRC Is Unlikely to Succeed on the Merits.

OTRC is unlikely to succeed on the merits of its Petition to reject the ORP Exemption Notice. The ORP Exemption Notice contains all of the information that is required by the Board's regulations, and none of that information is false or misleading. Accordingly, OTRC's

claim that the ORP Exemption Notice is void *ab initio* is meritless. Nor does the pendency of a contract dispute regarding the nature and scope of OTRC's operating rights provide a basis for rejecting the ORP Exemption Notice. Moreover, as ORP demonstrates above (at 7-8), OTRC's claim to "exclusive" operating rights over the Line is belied by the plain language of the easement pursuant to which it obtained those rights. In any event, issues relating to the nature and scope of OTRC's easement rights are for the courts, rather than the Board, to decide. *See, e.g., New Hampshire Central* at 3-4; *LCRA Acquisition* at 6.

Regardless of the merits of its contract claim, OTRC cannot demonstrate a likelihood that it will succeed in challenging the ORP Exemption Notice on the merits. "The question of whether a party (or parties) have regulatory authority to operate over a particular segment of track is different from the question of whether that party (or parties) have the necessary property interest or contractual right under applicable agreements to exercise that authority." *LCRA Acquisition* at 6. The Board has consistently held that a request for licensing authority must be evaluated on the basis of whether the applicant has complied with applicable statutory standards, not whether contractual or operational considerations may limit the applicant's ability to exercise that authority. *Indiana Northeastern* at 4. OTRC's Petition fails to articulate any basis to support a finding that ORP has not satisfied the Board's standards for obtaining a class exemption to own and operate the Line. Specifically, OTRC has not demonstrated any deficiency in the ORP Exemption Notice, nor has OTRC made a showing that the proposed transaction is anticompetitive or otherwise contrary to the national transportation policy.

In short, the transaction that is the subject of the ORP Exemption Notice is a simple and straightforward acquisition of 12.2 miles of track that raises no complicated or controversial

issues that would render it ineligible for the class exemption procedures set forth at 49 C.F.R. § 1150.31 *et seq.*

B. OTRC Will Not Be Irreparably Harmed In The Absence Of A Stay.

OTRC has not demonstrated that it will be irreparably harmed if the Board declines to stay the ORP Exemption Notice. OTRC’s assertion that “rail service to [OTRC’s] existing customers in the HRE industrial park will be disrupted and impeded by any attempts by ORP to initiate dual rail service” (OTRC Petition at 8) is highly dubious, for several reasons. First, no such harm could arise unless and until ORP commences operations over the Line. Second, ORP has made clear that it expects OTRC to “continue to serve the HRE industrial park pursuant to the easement and the exemption in Finance Docket No. 35703.” ORP Exemption Notice at 4, n.7. Because OTRC has the exclusive right to serve the HRE industrial park, ORP would not be performing any switching to/from customers located in that facility. Third, as discussed above, ORP will cooperate with OTRC and NS to ensure that operations on the Line are conducted safely and efficiently. The doomsday scenario posited by OTRC ignores the reality that railroads conduct “dual operations” on a daily basis across the country, including at many locations (like the Chicago area) where track capacity is constrained. OTRC has not persuasively demonstrated that the Line cannot accommodate both OTRC’s current switching operations—which, based on Mr. Peterson’s testimony, involve fewer than 60 cars per week (*see* OTRC Petition, V.S. Peterson at 6)—and the operations that ORP may perform in response to future requests from shippers who locate on the Line.

Finally, if service problems do arise and cannot be resolved by the parties, the Board possesses the authority to address them at that time. OTRC’s premature and hypothetical operational concerns do not warrant rejection of the ORP Exemption Notice.

C. ORP Will Be Substantially Harmed By A Stay.

Contrary to OTRC’s claims, ORP would be substantially harmed by a stay. First, a stay could threaten the closing of the entire sale transaction, including ORP’s acquisition of the Hannibal Development industrial park, which is predicated upon ORP’s ability to obtain STB authorization to own and operate the Line. Second, staying the effectiveness of the class exemption would prevent ORP from responding to requests for rail service by shippers who locate in the Hannibal Development industrial park. Third, granting the stay requested by OTRC, and denying ORP’s exemption request, would prejudice ORP in the pending mediation/arbitration proceeding regarding the nature and scope of OTRC’s operating rights. In order to initiate rail service, ORP must not only possess a property right to use the Line, but must also secure STB authority to do so. *V&S Railway, LLC – Pet. for Decl. Order – Railroad Operations in Hutchinson, Kan.*, STB Fin. Docket No. 35459, at 6 (served July 12, 2012). Granting the relief requested by OTRC’s Petition would effectively render “moot” a successful outcome for ORP in the mediation/arbitration proceeding—even if ORP prevailed in that proceeding (which it believes it will) ORP would be left without the requisite federal authority to operate over the Line. Indeed, OTRC’s Petition is transparently intended to prevent (or forestall) ORP from obtaining Board approval for the proposed transaction, in the hopes of rendering its desire to achieve “exclusive” operating rights *fait accompli*.

D. Issuance Of A Stay Is Not In The Public Interest

Granting OTRC’s petition for a stay would not be in the public interest. Staying the ORP Exemption Notice, and subjecting the proposed transaction to “full regulatory scrutiny” as OTRC requests (OTRC Petition at 9) could result in abandonment of the transaction. At a minimum, it would significantly delay closing the sale of the Hannibal Property and forestall the planned redevelopment of that industrial site. This would harm the local community by delaying

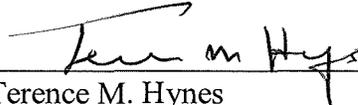
(or preventing) the creation of new jobs and the realization of new tax revenues generated by a revitalized Hannibal Development industrial park. Such a result could also deny rail service to new shippers who locate along the Line, because OTRC has not established any property right to provide service to such customers.

The public would be best served by denying OTRC's petition for stay, and permitting the ORP Exemption Notice to take effect as provided for by the Board's regulations.

CONCLUSION

For the reasons set forth above, ORP requests that the Board deny OTRC's Petition to Reject Notice of Exemption and Request for Stay of Effective Date of Exemption in its entirety.

Respectfully submitted,



Terence M. Hynes
Hanna M. Chouest
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Attorneys for Ohio River Partners LLC

Dated: January 12, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Reply of Ohio Rivers Partners, LLC to the Petition to Reject Notice of Exemption and Request for Stay of Effective Date of Exemption to be served by first class mail, postage pre-paid, this 12th day of January 2016 on all parties of record, including the following:

Richard R. Wilson
Richard R. Wilson, P.C.
518 N. Center Street, Suite 1
Ebensburg, PA 15931

Eric M. Hocky
Clark Hill, PLC
2005 Market Street, Suite 1000
Philadelphia, PA 19103

Secretary of US Department of Transportation
Docket Clerk, Office of Chief Counsel
Federal Railroad Administration
400 7th Street, S.W., Room 5101
Washington, D.C. 20590

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Federal Trade Commission
600 Pennsylvania Avenue, N.W., CRC-240
Washington, D.C. 20580

Governor John Kasich
77 South High Street
Columbus, OH 43215-6117

Chairman Andre T. Porter
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Jerry Wray, Director
Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223

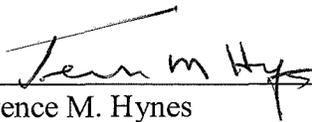

Terence M. Hynes

EXHIBIT A

To

**REPLY OF OHIO RIVER PARTNERS LLC TO
PETITION TO REJECT NOTICE OF EXEMPTION AND
REQUEST FOR STAY OF EFFECTIVE DATE OF EXEMPTION**

Finance Docket No. 35984

RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

518 N. Center Street, Ste. 1
Ebensburg, PA 15931

(814) 419-8152
888-454-3817 (Toll Free)
(814) 419-8156 FAX
rwilson@rrwilson.net - Email
www.rrwilsonesq.com - Website

851 Twelfth Street
Oakmont, PA 15139

Of Counsel to,
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

December 18, 2012



The Honorable Cynthua T. Brown, Chief
Section of Administration
Surface Transportation Board
395 E Street, S.W., Ste 1260
Washington, DC 20423-0001

Re: Finance Docket No. 35703; Ohio Terminal Railway Company - Operation
Exemption - Hannibal Real Estate, LLC, Monroe County, Ohio

Dear Ms. Brown:

Enclosed for filing please find the original and ten copies of a Verified Notice of
Exemption under 49 C.F.R. §1150.31 in the above captioned matter. Also enclosed is a check in
the amount of \$1,800.00 for the filing fee. This notice is related to the Continuance in Control
Exemption Notice in Finance Docket No. 35704.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter
and return it to the undersigned in the self-addressed, stamped envelope provided for that
purpose.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson, Esq.
Attorney for Ohio Terminal Railway Co.

FEE RECEIVED
DEC 28 2012

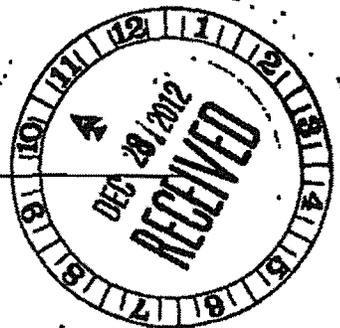
**SURFACE
TRANSPORTATION BOARD**
RRW/bab
Enclosures
cc: Ohio Terminal Railway Company

FILED
DEC 28 2012

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
DEC 28 2012
Part of
Public Record
Exhibit A
Page 1 of 9

Before the
SURFACE TRANSPORTATION BOARD



DOCKET NO. 35703

OHIO TERMINAL RAILWAY COMPANY
- OPERATION EXEMPTION -
HANNIBAL REAL ESTATE, LLC, MONROE COUNTY, OHIO

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §1150.31

OHIO TERMINAL RAILWAY COMPANY
519 Cedar Way, Bldg 1, Ste 100
Oakmont, PA 15139

RICHARD R. WILSON, ESQ
Attorney for Applicant
518 N. Center Street, Ste. 100
Ebensburg, PA 15931
(814) 419-8152- PHONE
(814) 419-8156- FAX

FILED
DEC 28 2012
SURFACE
TRANSPORTATION BOARD

December 18, 2012

ENTERED
Office of Proceedings

DEC 28 2012

Part of
Public Record

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SURFACE
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Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO. 35703

**OHIO TERMINAL RAILWAY COMPANY
- OPERATION EXEMPTION -
HANNIBAL REAL ESTATE, LLC, MONROE COUNTY, OHIO**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §1150.31**

INTRODUCTION

Pursuant to 49 C.F.R. §1150.31 et seq. and 49 U.S.C. §10502(a) Ohio Terminal Railway Company ("OTRC") a wholly owned corporate subsidiary of Carload Express, Inc ("CEI") hereby files this Verified Notice of Exemption from 49 U.S.C. §10901 for its operation of the deregulated Ormal Secondary Track extending between M.P. 60.5 at or near Powhatan Point, Ohio and M.P. 72.7 at or near Hannibal, Ohio, a distance of 12.2 miles in Monroe County, Ohio. In Finance Docket No. 35704, CEI has filed a Continuance in Control Exemption Notice related to this transaction.

This rail line was acquired from Conrail by ORMET Railroad Corporation in 1996 in Finance Docket No. 32907 and was subsequently exempted from 49 U.S.C. Subtitle IV in Finance Docket No. 32908. In 2007, ORMET Railroad Corporation granted an Easement for Use of Railway to Hannibal Real Estate, LLC in connection with the development of an industrial park for the provision of rail service to a steel service center and a plate rolling mill located in the industrial park and for other shippers on the line Hannibal Real Estate, LLC

has now entered into an Operating Agreement with OTRC under which OTRC will provide common carrier rail service on the Omal Secondary Track and interchange with Norfolk Southern Railway at or near Powhatan Point, Ohio

INFORMATION REQUIRED BY 49 C.F.R. §1150.33

In accordance with 49 C.F.R. §1150.33, OTRC submits the following in support of this Notice of Exemption:

(a) Full Name and Address of Applicant:

The full name and address of Applicant is Ohio Terminal Railway Company, 519 Cedar Way, Bldg. 1, Ste. 100, Oakmont, PA 15139.

(b) The name, address and telephone number of the representative of the Applicant who should receive correspondence:

Applicant's representative to receive correspondence is Richard R. Wilson, Esq., 518 N. Center Street, Ste. 100, Ebensburg, PA 15931, Telephone: 814-419-8152, Facsimile 814-419-8156; email. rwilson@rrwilson.net.

(c) A statement that an agreement has been reached or details about when an agreement will be reached.

An Agreement has been reached whereby OTRC will operate the line as a Class III common carrier railroad in interstate commerce

(d) The operator of the line will be

Ohio Terminal Railway Company, 519 Cedar Way, Bldg. 1, Ste. 100, Oakmont, PA 15139

(e) A brief summary of the proposed transaction including:

(1) the name of the owner of the subject property:

Hannibal Real Estate, LLC, 711 West Chester Avenue, White Plains, NY

10604;

(2) the proposed time schedule for consummation of the transaction:

The proposed operation of the subject rail line will commence on or after the effective date of this Notice of Exemption.

(3) The subject property includes no branch lines and extends from M.P. 60.5 at or near Powhatan Point, Ohio and M.P. 72.7 at or near Hannibal, Ohio in Monroe County, Ohio;

(4) The total route miles being operated.

A total of 12.2 route miles will be operated by OTRC

(f) A map that clearly indicates the area to be served including origins within the counties and states

The required map is attached at Appendix 1

(g) A certificate that Applicant's projected revenues as a result of the transaction will not result in the creation of a Class I or Class II rail carrier so as to require processing under §1150.35 OTRC so certifies. See Verification attached as Appendix 2

(h) Transaction imposing interchange commitments

Not applicable, the transaction does not impose any interchange commitments

(i) Verification

See Appendix 2.

(j) Environmental and historical considerations

The proposed transaction does not require environmental or historical reporting or assessment. See 49 C.F.R. §1150.6(c)(2)(i) and 49 C.F.R. §1105.8(b)(1)

(k) Notice under 49 C F R. §1150.32(c)

OTCR hereby certifies that its annual revenues will not exceed \$5 million

(l) Labor Protection:

Pursuant to 49 U S C §10901, labor protection requirements do not apply to
the proposed transaction

CAPTION SUMMARY

The caption summary required by 49 C F R. §1105.34 is attached hereto as Appendix

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CONCLUSION AND RELIEF REQUESTED

WHEREFORE, within sixty (60) days of filing this Notice it is respectfully requested
that the Director of the Office of Proceedings publish this Notice of Exemption in the Federal
Register See 49 C F R §1150.32(b)

Respectfully submitted,

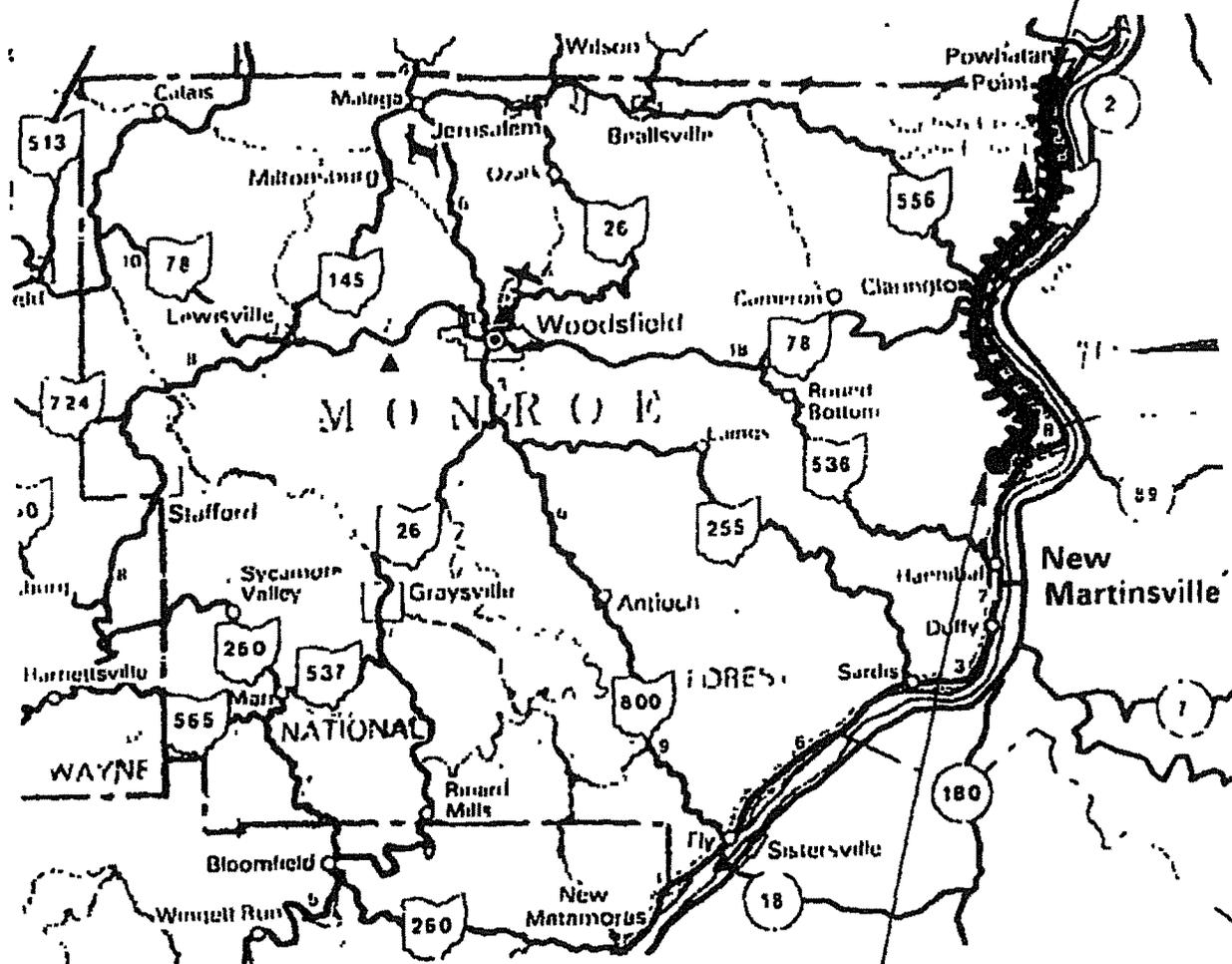
RICHARD R WILSON, P.C

By: 
Richard R Wilson, Esq,
Attorney for Ohio Terminal Railway Co

APPENDIX I

MAP

MP 60.5



MP 72.7

APPENDIX 2

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF ALLEGHENY)

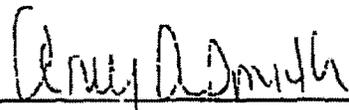
Russell A. Peterson, being duly sworn, states that he is an authorized representative of Ohio Terminal Railway Company, that he familiar with the facts asserted in the foregoing Notice of Exemption, that all of these facts are true and correct, that the proposed annual revenues of OTRC as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, that OTRC's projected annual revenues will not exceed \$5 million, and that OTRC is not required to post a notice required by 49 C F R. §1150.32(e)



Russell A. Peterson

Sworn to and subscribed before me

this 13th day of December, 2012



Notary Public

My Commission expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Army A. Smith, Notary Public
Oakmont Boro, Allegheny County
My Commission Expires April 15, 2015
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

APPENDIX 3

Before the
SURFACE TRANSPORTATION BOARD

DOCKET NO. 35703

**OHIO TERMINAL RAILWAY COMPANY
– OPERATION EXEMPTION –
HANNIBAL REAL ESTATE, LLC, MONROE COUNTY, OHIO**

**VERIFIED NOTICE OF EXEMPTION UNDER
49 C.F.R. §1150.31**

Ohio Terminal Railway Company ("OTRC") has filed a Notice of Exemption for its operation of a rail line between M.P. 60.5 at Powhatan Point, Ohio and M.P. 72.7 at or near Hannibal, Ohio a distance of 12.2 miles in Monroe County, Ohio. The rail line which will be operated constitutes OTRC's entire length of rail line.

Comments must be filed with the Board and served on OTRC's representative, Richard R. Wilson, Esq., 518 N. Center Street, Ste. 100, Ebensburg, PA 15931; Telephone 814-419-8152, Facsimile 814-419-8156, email: rwilson@rrwilson.net

This Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information, the Exemption is void ab initio. The filing of a Petition to Revoke will not automatically stay the transaction.

By the Board

EXHIBIT B

To

**REPLY OF OHIO RIVER PARTNERS LLC TO
PETITION TO REJECT NOTICE OF EXEMPTION AND
REQUEST FOR STAY OF EFFECTIVE DATE OF EXEMPTION**

Finance Docket No. 35984

REDACTED