BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. FD 35984



**EXPEDITED HANDLING REQUESTED**

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

PETITION TO REJECT NOTICE OF EXEMPTION AND REQUEST FOR STAY OF EFFECTIVE DATE OF EXEMPTION

Richard R. Wilson, Esq.
RICHARD R. WILSON, P.C.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152

Eric M. Hocky, Esq.
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Ste. 1000
Philadelphia, PA 19103
(215) 640-8500

COUNSEL FOR OHIO TERMINAL RAILWAY COMPANY

Date: January 7, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

STB DOCKET NO. FD 35984

---

**EXPEDITED HANDLING REQUESTED**

---

OHIO RIVERS PARTNERS, LLC – EXEMPTION FOR ACQUISITION AND OPERATION OF A RAIL LINE – HANNIBAL DEVELOPMENT, LLC[1] IN MONROE COUNTY, OHIO

---

PETITION TO REJECT NOTICE OF EXEMPTION AND REQUEST FOR STAY OF EFFECTIVE DATE OF EXEMPTION

Ohio Terminal Railway Company ("OTR") hereby petitions the Board to reject the Verified Notice of Exemption ("Notice") filed by Ohio Rivers Partners, LLC ("ORP") in this proceeding on December 18, 2015. OTR further requests that the Board stay the effective date of the exemption, if such a stay is needed, to afford the Board sufficient time to act on OTR's petition to reject the Notice[2] or to require ORP to file a petition for exemption or a full abandonment application.

ORP filed its Notice pursuant to 49 C.F.R. § 1150.31, *et seq*. The Board has held that the Section 1150.31 exemption procedure is "typically reserved for uncomplicated and noncontroversial cases." STB Finance Docket No. 34645, Burlington N. & Santa Fe Ry. Co. – Acquisition and Operation Exemption – South Dakota ("BNSF"), slip op. at 2 (STB

---

[1] All OTR contacts regarding line ownership addressed in this Petition have been with Hannibal Development Partners, LLC ("HDP"). OTR is unable to ascertain whether Hannibal Development, LLC is the same or a separate entity from HDP. In this Petition, OTR will refer to the rail line owners as HDP.

[2] As announced by the Board in the Federal Register and in its notice served December 31, 2015, the effective date of the exemption is January 17, 2016 (30 days after the exemption Notice was filed). Petitions for a stay may be filed no later than January 8, 2016. *Id.*

served Jan. 14, 2005). As OTR explains herein, this matter is by no means routine or non-controversial.

As acknowledged by ORP in the Notice, OTR has authority to operate as a common carrier using an easement over the Line (as defined in the Notice).[3] What ORP does not acknowledge in the Notice is the ongoing dispute between Hannibal Development, LLC ("HDP") (ORP's transferor) and Hannibal Real Estate, LLC ("HRE") (the owner of the easement operated by OTR) regarding the scope of the easement, the operational issues that would arise from having two operators sharing a 12.2-mile, single track rail line, or the impact that ORP's proposed operations would have on OTR's ability to provide service to its customers. The facts concerning the complex, disputed, and controversial issues presented by ORP's Notice of Exemption are set forth in detail in the attached Verified Statement of Russell Peterson, CEO of Carload Express, the parent corporation of OTR. Mr. Peterson has extensive personal knowledge regarding the physical characteristics of the Line and the rail operations provided by OTR on that Line under the operating authority granted to it by by the Board.

## ARGUMENT

### I. THE BOARD SHOULD REJECT ORP'S VERIFIED NOTICE OF EXEMPTION BECAUSE THE CLASS EXEMPTION PROCESS IS INAPPROPRIATE FOR THE TRANSACTION CONTEMPLATED BY ORP

"[T]he notice of exemption process is an expedited means of obtaining Board authority in certain classes of transactions, defined in the Board's regulations, that ordinarily do not require greater regulatory scrutiny. Thus, notices of exemption are intended to be used for routine and non-controversial cases." STB Finance Docket No. 35218, Winamac S. Ry. – Trackage Rights Exemption – A. & R. Line, Inc. ("Winimac

[3] See also Finance Docket No. 35703 Ohio Terminal Railway Company – Operation Exemption – Hannibal Real Estate, LLC (served January 11, 2013).

Southern"), slip op. at 2 (STB served Jan. 9, 2009). "[T]he class exemption process is not appropriate for controversial cases in which a more detailed record is required than what is produced through a notice invoking a class exemption." STB Finance Docket No. 34501, James Riffin d/b/a The N. Cent. R.R. – Acquisition & Operation Exemption – in York County, PA, slip op. at 6 (STB serviced Feb. 23, 2005). The Board has not hesitated to reject exemption notices brought under 49 C.F.R. §1150.31, like the one at issue here, when those cases present disputed or "complicated and controversial" issues with significant operational or safety issues.. See BNSF, slip op. at 2-3; see also STB Finance Docket No. 35705, James Riffin & Eric Strohmeyer – Acquisition & Operation Exemption – in Rio Grande & Mineral Cntys. Colo., slip op. at 2 (STB served Jan. 11, 2013) ("In general, the notice of exemption process is an expedited means of obtaining Board authorization in certain classes of transactions, as defined in the Board's regulations, that ordinarily do not require greater regulatory scrutiny. In cases that require information beyond that provided through simplified notice procedures, or that are controversial, the Board has rejected notices of exemption.") (internal footnote omitted)[4]

Here, as indicated in Mr. Peterson's statement, ORP's Notice presents non-routine, disputed and controversial issues relating to ORP's right and ability to provide rail service on the same track already operated by OTR. A mediation/arbitration proceeding is currently pending in Ohio between HRE and HDP regarding the scope of the easement

[4] The Board's authority to "reject" notices of exemption is well-established. In the Riffin/Strohmeyer case cited in the text above, the Board cited four cases decided since 2008 in which it rejected exemption notices. Other cases could be added to the Board's list. See, e.g. STB Finance Docket No. 35558, Utah S. R.R. Co., LLC – Change in Operators Exemption – Iron Bull R.R. Co. LLC, slip op. at 5 (STB served Sept. 21, 2012)(rejecting exemption notice as void *ab initio* on the basis of false and misleading information); STB Finance Docket No. 35559, Saratoga & N. Creek Ry., LLC – Operation Exemption – Tahawus Line, slip op. at 3 (STB served Nov. 23, 2011) ("Saratoga's notice of exemption will be rejected because the record indicates that this matter is not routine and non-controversial and because the short deadlines provided in the class exemption regulations do not provide sufficient time to enable the Board to address the issues raised here before the exemption takes effect.") The United States Court of Appeals for the District of Columbia Circuit has recently affirmed the Board's rejection of a notice of exemption (also filed by Messrs. Riffin and Strohmeyer), See Riffin v. STB, --F.3d--, 2013 WL 5762797 (D.C. Cir. Oct. 25, 2013).

under which OTR operates, and whether the easement includes the right for another carrier to use the Line. Mr. Peterson also describes the complex and constrained interchange and operational functions dictated by the limited capacity of the Line which would preclude dual operations by two carries on this Line. Indeed, the ORP Notice provides no information concerning proposed dual operations and how such operations might be coordinated which precludes any assessment by the Board as to whether dual operations on the Line would be consistent with the public interest and rail safety.[5] There is no discussion in the Notice of how ORP's proposed operations would, as described by Mr. Peterson, likely interfere with OTR's ability to meet the common carrier service needs of its customers. Moreover, although the Notice correctly notes that the Line connects with a line of Norfolk Southern Railway ("NSR"), it does not indicate where or how interchange would take place, or whether it has made arrangements with NSR for interchange.[6] Given the constrained nature of OTR's existing rail operations on the Line, OTR believes that an exemption should not be used to authorize ORP's proposed dual rail operations, and that any such authorization should only be granted after a full regulatory review including the development of a complete factual record.

The ORP Notice thus presents non-routine, disputed and controversial issues that require Board scrutiny which cannot be afforded within the time limits and confines of an exemption proceeding. For these reasons, the Notice should be rejected.

## II. THE BOARD SHOULD REJECT OPR'S VERIFIED NOTICE OF EXEMPTION BECAUSE OF ITS FAILURE TO DISCLOSE PERTIENT FACTS ABOUT THE LINE'S OPERATIONAL

[5] In an application proceeding, ORP would need to demonstrate that its proposed operations meet the "public convenience and necessity" test (49 C.F.R. §1150.4(c)), and provide an operating plan (49 C.F.R. §1150.5).
[6] As Mr. Peterson makes clear in his Verified Statement, there is no available room on the Line for interchange with NSR, and OTR had to lease additional property adjacent to the Line for construction of a yard track to make interchange possible. Mr. Peterson does not believe that there are any additional locations along the Line where OPR could construct interchange facilities.

## CONSTRAINTS AND DISPUTED USE OF THE LINE BY HDP WHICH RENDERS THE ORP NOTICE FALSE AND MISLEADING

There are a number of omissions in the Notice which have the effect of making the Notice false and misleading, and which justify rejection of the Notice. For example, ORP's Notice fails to mention the unresolved property dispute, currently in arbitration/mediation, between HRE and HDP concerning ORP's access to and use of the Line. The failure to mention that dispute conveys the erroneous impression that ORP's proposed transaction is routine and non-controversial without serious operational implications, rendering the Notice misleading and thus, void *ab initio.* [7]

Additionally on Page 4, the ORP Notice asserts that it will provide access to the national rail network via a connection to NSR at Powhatan Point, Ohio. However, ORP does not say how interchange might be accomplished or that it has made any arrangements for interchange with NSR. Given the existing constrained interchange operations described by Mr. Peterson, it is evident that ORP will not be able to meet its statutory interchange obligations under 49 U.S.C. §10742, and this lack of candor regarding interchange arrangements in the ORP Notice also renders it void *ab initio.*

Similarly, in Footnote 7 of the Notice, ORP represents that OTR will continue to serve HRE, but fails to address the impact which its dual operations will have on OTR service given the constrained capacity and facilities on the Line. Again as described by Mr. Peterson, it will be almost impossible for any operations by ORP not to adversely affect OTR's ability to provide service to its customers in the HRE industrial park. Here again, ORP's notice is misleading and thus void *ab initio.*

---

[7] The Board has often noted that an exemption notice that is found to contain false or misleading information is "treated as void *ab initio.*" STB Finance Docket No. 33950, Jefferson Terminal R.R. Co. – Acquisition & Operation Exemption – Crown Enters., slip op. at 4 (STB served Mar. 19, 2001).

Finally, on Page 5 of its notice, ORP makes the facile assertion that because there is no current traffic generated by the HDP industrial park, ORP has no obligation to assess the adverse impact of its proposed operations on the Line. Mr. Peterson's statement demonstrates the misleading character of that assertion which seeks to obscure from Board review the manifold problems presented to OTR's existing rail operations by ORP's proposed dual use of the Line. For that reason, the ORP Notice is highly misleading in its effort to portray this transaction as routine and noncontroversial, thus rendering its Notice void *ab initio*.

## III. THE BOARD SHOULD STAY THE EFFECTIVE DATE OF ORP'S VERIFIED NOTICE OF EXEMPTION UNTIL IT CAN ACT ON OTR'S PETITION TO REJECT THE NOTICE OR SUBJECT THIS TRANSACTION TO FULL REGULATORY REVIEW

If necessary, the Board should stay the effective date of ORP's Verified Notice of Exemption at least long enough to permit the Board to act on the instant petition to reject the Notice. A stay is appropriate and justified to protect the integrity and efficiency of the Board's regulatory processes. As noted above, the ORP Notice presents non-routine and complex operating and safety issues that are not appropriately addressed through the Board's exemption procedures. In such a circumstance, a stay is fully warranted.

At the very least, the Board should institute a housekeeping stay so that the exemption cannot take effect until the Board has sufficient information and time to deliberate fully upon the issues presented in this Petition. See BNSF (noting that the Board issued a stay of the effective date of BNSF's notice of exemption, to allow BNSF an opportunity to file a formal reply to the stay petition, and to allow time for the Board to consider, in a more orderly fashion, the issues presented in the stay petition).

A stay also is justified under the Board's traditional stay criteria. The Board will grant a stay when the proponent of the stay petition can establish that: (1) there is a strong likelihood that it will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) the public interest supports the granting of a stay. See NOR 41191, W. Tex. Utils. Co. v. Burlington N. R.R. Co., 1996 WL 347102, at 3-4 (STB served June 25, 1996); Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

### A. OTR Is Likely to Succeed on the Merits.

OTR is likely to succeed on the merits of its Petition to reject ORP's Notice. As discussed above, this case is not appropriate for the exemption process because, far from being routine and non-controversial, it raises complex operational and line capacity issues, and possible adverse effects on service currently being provided on the Line and that will continue to be provided on the Line. The Notice also fails to disclose the full context and possible implications of the proposed transaction. Given a full review of the issues, it is thus likely that the Board will reject OPR's Notice.

### B. OTR Will Suffer Irreparable Harm in the Absence of a Stay.

If the Board does not grant a stay, OTR rail service to its existing customers in the HRE industrial park will be disrupted and impeded by any attempts by ORP to initiate dual rail service or otherwise use the already capacity constrained rail line. Given the extremely tight operating windows to effect interchange with NS, dual operations will inevitably result in delays and disruption to all present and future rail shipments which will irreparably injure OTR's ability to provide its previously authorized and continuing common carrier rail service.

### C. No Other Interested Parties Will Be Substantially Harmed by a Stay.

A stay of the effective date of the exemption will not cause substantial harm to any interested party as there are currently no existing shippers in the HDP industrial park which, in any event, could be served by OTR and would also have continued alternative access to both motor carrier and water carrier transport.

Nor will a stay substantially harm ORP. ORP's Notice indicates that it is seeking prospective acquisition and operating authority, and that there is no current business. Thus, it has yet to commence rail operations, and in any event can only do so after resolution of the pending state mediation/arbitration proceeding and then only if ORP is able to coordinate its rail operations with OTR in a safe and operationally feasible manner. A stay, or rejection and requiring a full application, would afford the parties additional time to consider and address these issues, and to provide the Board with a complete record on which the Board can make an informed and reasoned determination of the feasibility of the dual operations proposed by ORP.

### D. A Stay Will Be in the Public Interest.

The public interest clearly warrants instituting a stay. First, the public interest supports full regulatory scrutiny of the safety and operational feasibility of ORP's proposed dual use along with OTR of the constrained Line.. As described by Mr. Peterson, the dual operations proposed by ORP are substantially likely to adversely impact current and future rail shippers warranting a full public interest review of the ORP proposed transaction.

## SERVICE

OTR does not know who might seek to participate in this proceeding as a party. Accordingly, in order to provide notice to persons who might be interested in this proceeding, OTR is serving a copy of this Petition on each of the persons who received a copy of the Notice,[8] as well as on NSR whose operations could be affected by the ORP's proposed operations as well as the Ohio Rail Development Commission.

## CONCLUSION

For all the foregoing reasons, the Board should reject ORP's Verified Notice of Exemption. If necessary, the Board should stay the effective date of the Notice until it has sufficient time to act on the instant petition to reject ORP's Notice or require ORP to commence a standard application proceeding.

Respectfully submitted,

Richard R. Wilson, Esq.
RICHARD R. WILSON, P.C.
518 N. Center Street, Ste. 1
Ebensburg, PA 15931
(814) 419-8152

Eric M. Hocky, Esq.
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Ste. 1000
Philadelphia, PA 19103
(215) 640-8500

Counsel for Ohio Terminal Railway Company

Dated: January 7, 2016

[8] OTR was not served with a copy of the Notice despite ORP's acknowledgement that OTR has operating authority over the Line.

BEFORE THE

SURFACE TRANSPORTATION BOARD

---

STB FINANCE DOCKET NO. 35984

---

OHIO RIVER PARTNERS, LLC - EXEMPTION FOR ACQUISITION AND OPERATION OF A RAIL LINE - HANNIBAL DEVELOPMENT, LLC

IN MONROE COUNTY, OHIO

---

VERIFIED STATEMENT OF RUSSELL PETERSON

---

## I. Introduction

My name is Russell Peterson and I serve as the Chief Executive Officer of Carload Express, Inc., a Pennsylvania corporation ("Carload Express"), and its three subsidiary shortline railroads, one of which is the Ohio Terminal Railway Company, an Ohio corporation ("OTR"). Although OTR was not served with the Exemption Notice in this proceeding, it has come to OTR's attention that Ohio River Partners LLC ("ORP") filed a Verified Notice of Exemption before the Surface Transportation Board ("STB") in Finance Docket No. 35984, seeking exemption for acquisition and operation of a 12.2-mile rail line known as the Omal Secondary Track between Milepost 60.5 near Powhatan Point, Ohio and Milepost 72.7 near Hannibal, Ohio (the "Line"). (Exhibit "A")

ORP's Notice of Exemption seeks to establish a second Class III rail carrier on the same 12.2-mile Line currently operated by OTR. By Surface Transportation Board decision served January 8, 2013, under Finance Docket No. 35703, OTR has authority to operate a 12.2-mile line, known as the Omal Secondary Track between Milepost 60.5 near Powhatan Point, Ohio and Milepost 72.7 near Hannibal, Ohio (the "Line").

Based upon the facts presented herein, it is unreasonable to conclude that the operation of two Class III rail carriers on the same 12.2-mile Line is feasible let alone in the best interest of the shipping public. Therefore, OTR presents certain factual issues for the Board's consideration pertaining to Finance Docket No. 35984 and the Omal Line. OTR requests a more thorough review of these factual issues by the STB and a rejection of the ORP Notice of Exemption.

The operation of two Class III rail carriers on the Omal Running Track is not operationally feasible and not economically beneficial to shippers as the result of very real constraints. Operational constraints include (i) unavailability of developable interchange facilities, (ii) limited capacity of the existing OTR interchange facility, (iii) limited capacity and congestion on the connecting Norfolk Southern ("NS") line involving NS's Powhatan Point unit coal train operations, and (iv) limited availability of yard and line-haul capacity on the Line.

Economic constraints include (i) OTR being *solely* responsible for the cost of maintaining, repairing and replacing the Line and *solely* responsible for all liability arising from operations on the Line to the pricing advantage of rail shippers on the Line using any Class III other than OTR and to the pricing disadvantage of rail shippers on the Line using OTR, (ii) the added cost and expenses arising from the duplication of crews, locomotives, equipment and facilities the cost of which will be borne by the shipping public, and (iii) the intrinsic inefficiency of having two Class III shortlines, each serving primarily one industrial park and both connecting with the only one connecting line, NS.

These constraints are amplified by the fact that OTR and NS have jointly marketed both the Hannibal Real Estate ("HRE") and the Hannibal Development Partners ("HDP") industrial parks to rail shippers that have expressed interest in locating within either industrial park. The location of just one of the larger interested shippers in the ORP affiliated HDP industrial park would, contrary to ORP's Verified Notice of Exemption, increase rail traffic by at least 200% and increase rail yard activities on the Line by more than 200%.

HRE litigation counsel Philip Hoffman of Pryor Cashman, LLC has advised that HRE's permanent rail easement is the subject of a pending mediation/arbitration proceeding between HRE and HDP in the State of Ohio. HRE has filed a complaint against HDP's assertion of operating rights on the Line despite HRE's permanent rail easement, which it acquired from Ormet Railroad Corporation in 2007. HRE, which negotiated the permanent rail easement with Ormet, verifies that the permanent easement conveyed was intended for the exclusive operation of one rail carrier on the Omal Line.

## II. Background

By Surface Transportation Board decision served May 17, 1996, under Finance Docket 32907, Ormet Railroad Corporation ("ORC") acquired the Omal Line from Consolidated Rail Corporation ("Conrail"). By Board decision served October 16, 1996, ORC was exempted from the requirements of 49 U.S.C. Subtitle IV pertaining to its ownership of the Line.

Between October 16, 1996, and approximately 1999, Ormet Corporation, owner of ORC and owner of the aluminum smelter and aluminum rolling mill in Hannibal, Ohio ("Ormet"), was privately served by Conrail over ORC's 12.2-mile private rail line. (Exhibit "B") In the 12-year period, between approximately 1999 and April 12, 2013, no trains operated over the Line.

A downturn in the economy led to poor business conditions in 1999, ushering in a period of business difficulties for Ormet. Thereafter Ormet discontinued using rail transportation in favor of procuring waterway and highway transportation and its subsidiary ORC discontinued maintaining the Line. Ormet elected in February 2004 to file for Chapter 11 bankruptcy protection. Ormet exited Chapter 11 bankruptcy protection in April 2005 and closed its aluminum rolling mill in November 2005.

In July 2007, Ormet divested its rolling mill and sold it to HRE which intended to use the rolling mill to roll steel plate. The steel rolling mill would require rail service, which ORC was not interested in providing. Therefore, as part of the Ormet transfer of the rolling mill to HRE, ORC granted the permanent rail easement, dated July 5, 2007 (the "Easement"), to HRE to use all of the Line to provide rail service, to be *solely* responsible for maintaining, repairing and replacing the Line and to be *solely* responsible for all liability arising out of use of the Line.

In 2012, HRE was preparing to purchase steel plate rolling equipment to reactivate the rolling mill. HRE contacted NS, and NS contacted Carload Express, seeking a Class III common carrier to operate the Line, which had not had any rail traffic in well over a decade. In addition to HRE's affiliate Artco Group's (www.artcosteel.com) interest in shipping inbound steel slabs and outbound steel plate, Ormet expressed interest in using OTR, and NS was getting inquiries regarding rail service to the Marcellus and Utica Shale gas field developments along the Line.

Carload Express inspected the Line, performed its due diligence, incorporated OTR, and entered into an operating agreement with HRE on December 12, 2012 (the "Agreement"). In the Agreement, OTR was granted exclusive access to and use of the railroad premises to provide common carrier rail service to all of the railroad premises and to all shippers along the Line, including but not limited to Ormet and shippers located within HRE's industrial park.

Our inspection of the line revealed that trees and brush had grown over and through the right-of-way and tracks, that nearly all of the crossties and switch timbers were defective, that portions of the roadbed had suffered rotational shear landslides into the Ohio River, that portions of the railroad had been washed out, that several bridges had rusted through, and that no interchange facilities existed to effectuate interchange with NS. OTR nonetheless committed in the Agreement to commence operations within 120 days.

OTR invested $3 million to repair the Line and construct an interchange as obligated in the Agreement to commence Class III common carrier rail service as follows:

- Cut brush and trees in track and right-of-way ground-to-sky: $196,000
- Replace 11,555 crossties with Grade 5 crossties and all defective switch timber: $1,100,000
- Repair landslide using soil nails, new culverts and new fill material: $394,000
- Repair washouts and install new concrete box culverts: $106,000
- Replace steel bridge structural components: $245,000
- Construct interchange track for NS interchange with OTR: $328,132
- Track repairs: $585,000

As obligated in the Agreement, OTR commenced operations within 120 days as an NS Handling Line on April 12, 2013. OTR adopted all of the stations on the Line and NS published all of the stations on the Line as NS stations. Since that time, NS and OTR have jointly marketed the Line to over fifty potential customers. Marketing efforts focused on five properties with development potential for rail shippers, including two brownfield sites owned by Consol

Energy, a brownfield site owned by American Electric Power, the Ormet site later acquired by HDP, and the industrial park owned by HRE.

As a result of aggressive marketing, competitive pricing, and excellent service, NS and OTR to-date have attracted seven new industries to the Line. Carload volume for partial year 2013, and years 2014 and 2015 were as follows:

| Year | Carloads | |
|---|---|---|
| 2012 | 0 | (Operating Agreement signed December 12, 2012) |
| 2013 | 508 | (Operations commenced April 13, 2013) |
| 2014 | 2,359 | |
| 2015 | 3,030 | |

The industries that NS and OTR jointly attracted to the Line are as follows:

| Industry | |
|---|---|
| Schlumberger | World's leading supplier to gas and oil industry |
| US Silica | Proppant sand supplier |
| Wildcat Minerals | Distributor of proppant sand |
| Natronx | Distributor of dry sorbent chemicals used in emission controls |
| Artco | Processor of steel plate |
| Franklin Surplus | Metals processor |
| MRI Enterprises | Distributor of proppant sand |

The increasing price of electric power to Ormet coupled with the declining price of aluminum resulted in Ormet once again filing for bankruptcy in February 2013, two months prior to OTR's commencement of operations. Ormet received $90 million of debtor-in-possession financing from Wayzata Investment Partners and Wells Fargo contingent upon electric power rate relief.

OTR was invited to make an offer on the Line by the Calibre Group LLC, a merchant bank that was appointed by the bankruptcy court to manage the sale of Ormet's assets. On March 4, 2014, OTR offered to purchase the assets of Ormet Railroad Corporation. The bankruptcy court however ultimately declined to separate the assets comprising the Line from the aluminum smelter assets.

OTR worked with debtor Ormet to improve its margins by proposing to convert 6,000 annual truckloads of carbon anodes moving from the Port of Baltimore to Ormet to 1,500 annual boxcars by rail. Ormet also discussed with OTR the movement of aluminum ingots by rail.

Electric power price relief failed to materialize and the bankruptcy court ordered an auction of Ormet's assets. The assets were auctioned of July 27, 2014, and the high bidder at $25.25 million was Niagara Worldwide. Niagara Worldwide liquidated Ormet's aluminum smelter assets and formed Hannibal Development Partners LLC ("HDP") to redevelop the property.

HDP was interested in receiving an offer for the Line from OTR. On October 30, 2014 OTR submitted a written offer to acquire the assets of the Line from HDP for $2.1 million. HDP eventually declined that offer and stated that they were marketing the Line for $3.5 million to other buyers. As OTR improved the Line and as NS and OTR jointly attracted rail shippers to the Line, the value of the Line continued to increase. Therefore, OTR stated that it would pay HDP the $3.5 million that it asked.

As HDP was scrapping the aluminum smelter, it notified OTR that it intended to remove the Omal freight yard tracks and scrap the ferrous track material. OTR informed HDP that the freight yard was part of a line of railroad, not part of the smelter property, and that the freight yard was indispensable to OTR's performance of its common carrier railroad duties. HDP then demanded that it collect "parking fees" for freight cars in the yard.

HDP also insisted that OTR use only the main track because HDP wanted to build non-railroad structures where the freight yard was located, specifically natural gas liquids storage tanks. Again, OTR informed HDP that the freight yard was indispensable to OTR's performance of its common carrier duties and that the permanent easement covered all of the right-of-way and switching apparatus of the Line. The removal of the freight yard would obstruct OTR's interstate rail operations.

Moreover, OTR pointed out that (i) there were no railroad yard tracks, run-around tracks, or other railroad auxiliary tracks within the HRE industrial park, (ii) there was no real property available within HRE to construct any such tracks, (iii) all of the tracks within HRE are single-ended industrial sidetracks, and (iv) that rail shippers within HRE ordered large blocks of cars, which required yard tracks to classify and constructively place cars for industry delivery.

HDP also claimed that the permanent easement did not survive the bankruptcy proceeding. This and other property rights issues between HDP and HRE led to HRE filing complaint in the Delaware Bankruptcy Court and then commencing the Ohio mediation proceeding. The permanent easement was confirmed by the Bankruptcy Court as "running with the land". Litigation between HRE and HDP continues. HRE maintains that the permanent easement was intended for the exclusive operation of one rail carrier.

## III. Operational Constraints

As stated above, the operation of two Class III rail carriers on the Omal Running Track is not operationally feasible as the result of very real constraints. Operational constraints include (i) unavailability of developable interchange facilities, (ii) limited capacity of the existing OTR interchange facility, (iii) congestion on the NS line near the interchange operations, and (iv) limited availability of yard and line-haul capacity on the Line.

These issues are more fully discussed as follows:

### III. A. Interchange Constraints

The potential for establishing an interchange for an additional Class III common carrier on the Omal Running Track is extremely constrained. Interchange between NS and an additional Class III common carrier on the Omal Running Track can only occur either (i) on NS property north of Powhatan Point via trackage rights over NS, or (ii) on the Omal Running Track south of Powhatan Point via NS trackage rights over the Omal Running Track.

When OTR prepared to commence its operations, NS advised OTR that interchange north of Powhatan Point was not feasible on account of NS's and Murray Energy's continuous unloading of unit coal trains on the main track of the NS River Line and on the NS and OTR portions of the Omal Running Track at Powhatan Point. Locating an interchange north of Powhatan Point was absolutely unacceptable to NS. The reason locating an interchange north of Powhatan Point was unacceptable to NS is more fully described under Powhatan Point Constraints below.

Interchange south of Powhatan Point was constrained to a location within close proximity to Powhatan Point as a result of operating constraints arising from NS's (i) Mingo Junction to

Powhatan Point operations and (ii) the above noted Murray Energy coal transload operations. Locating an interchange in proximity to Powhatan Point, however, was further constrained by the primary geophysical characteristic of the Omal Running Track: it was constructed within a narrow right-of-way tightly situated between Ohio State Route 7 and the Ohio River, a navigable waterway.

When establishing the OTR-NS interchange, OTR examined the right-of-way and geophysical features of the Omal Running Track and determined that there was no feasible location to establish an interchange track on the Omal Running Track within the first 7.8 miles south of Powhatan Point, a trackage rights distance that was absolutely unacceptable to NS. OTR then investigated private property adjacent to the Line. There was absolutely no useable land between the Omal Running Track and Ohio State Route 7. There were two properties however where there was land between the Omal Running Track and the Ohio River. Only one of those two properties offered any geophysically feasible location for an interchange track, but that land was limited in area.

OTR negotiated with that land owner and obtained permission for OTR to construct, own and operate an interchange track on their property adjacent to the Omal Running Track for NS to deliver and receive OTR interchange traffic. (Exhibit "C") This interchange track is located approximately 2.5 miles south of Powhatan Point. The limited land area provided for an interchange siding holding a maximum of approximately 22 cars. The method of operation that OTR and NS use to manage the limited interchange capacity is described more fully under Operational Constraints below. To the best of OTR's information and belief, there is no feasible interchange track location for an additional Class III common carrier interchange on the Omal

Running Track. Moreover, the OTR-NS Interchange Agreement precludes third party use of OTR's 22-car interchange siding.

These interchange constraints give rise to another barrier to the proposed operation of two Class III carriers on the Omal Running Track. NS would most certainly combine all traffic going to two Class III carriers on the Omal Running Track into one train. NS has suggested to OTR that even potential unit trains would be combined into the daily merchandise train to fully utilize the NS road train from Mingo Jct to the OTR interchange. One of the two Class III carriers would therefore be forced to classify the inbound train at the OTR interchange in order to take its traffic over the Line to Omal. This would unavoidably assign the cost and expenses attendant to classification and the time burden of classification onto one Class III to the advantage of the other. Moreover, such classification is not feasible given the limited facilities at the Powhatan Point interchange.

Classification for current volumes of traffic at the interchange would not be feasible because the interchange track, the only facility available to provide for such classification is limited as follows: (i) it has only of 22-car capacity, (ii) the inbound NS locomotives are tied down on that track until the following day's departure, and (iii) an at-grade crossing of the Line crosses both the main track and the interchange track at that location. Therefore, one Class III or the other will have to take the entire train of unclassified cars for both Class IIIs to Omal.

Moreover, there are no passing sidings between OTR's new interchange track near Powhatan Point and the Omal freight yard and no room to construct such sidings. It is therefor contrary to the public interest to have two Class III carriers operating line-haul service over the Line when the Line is physically constrained to only one operating railroad.

III. B. Powhatan Point Constraints

The NS's Captina Branch is a 16-mile line of railroad that connects with NS's Omal Running Track at Powhatan Point. (See Exhibit "A") NS continuously operates three (3) 75-car coal trains over this 16-mile line on a 24 hours-per-day seven days-per-week schedule. The NS coal trains transport coal from two of Murray Energy's mines, Ohio Valley Coal Powhatan #6 mine and American Energy Corporation's Century mine near Alledonia, Ohio, to Murray Energy's Ohio Valley Transloading facility in Powhatan Point, where the coal is transloaded to barges on the Ohio River. (Exhibit "D")

These coal trains continuously unload on the Omal Running Track at Powhatan Point. Typically one coal train is loading at the mine, one coal train is waiting on the Captina Secondary at Powhatan Point for its turn to unload, and one coal train is unloading on both NS's and OTR's portions of the Omal Running Track at Powhatan Point.

Murray Energy's total volume from the two mines to the transload facility already exceeds the capacity of NS's unit coal train service. Any delays to or interruptions of the coal train unloading operations adds more truck traffic to the existing steady convoy of trucks moving coal from the above two mines to the Ohio Valley Transloading facility at Powhatan Point. Clearing the Omal Running Track of unit coal trains for only one hour to allow for an interchange movement in only one direction of a second Class III railroad on the Omal Running Track would increase truck traffic by fifty (50) coal trucks for that hour contrary to ORP's Verified Notice of Exemption.

The continuous occupation of the River Line and the Omal Running Track at Powhatan Point by Murray Energy's NS coal trains is a major constraint which restricts operations on the

Omal Line to a single Class III railroad. The (i) continuous occupation of the River Line and the Omal Running Track at Powhatan Point by NS coal trains, and (ii) the daily movement through that operation by the NS interchange train established in 2013 to serve OTR, are serious factual constraints to the feasibility of a second Class III common carrier commencing operations on the Omal Running Track.

NS and OTR investigated adding additional trackage at the Powhatan Point transload facility, however both the River Line and the Omal Running Track are located within a narrow right-of-way tightly situated between Ohio State Route 7 and the Ohio River, and the construction of additional roadbed to support additional track at that location is not feasible.

III. C. <u>Operational Constraints</u>

NS operation to the OTR interchange is limited to one train in one direction daily. Transit time and train frequency is limited by: (i) the requirement that the NS-OTR interchange train stop and wait for the coal train that is unloading on the Omal Running Track (which takes 6 hours) to clear on the Captina Secondary (between the junction and the loaded coal train waiting on the Captina Secondary), (ii) NS's track speed on the River Line between NS's serving yard at Mingo Jct and Powhatan Point, (iii) the distance between Mingo Jct and Powhatan Point, and (iv) the interchange operation via trackage rights on OTR's Omal Running Track.

NS crews the southward OTR interchange train at Mingo Jct. The crew completes its daily duty at the OTR interchange track and is transported back to Mingo Jct in a taxi. The following day, the crew is transported in a taxi to the OTR interchange track and the train proceeds from the OTR interchange track to Mingo Jct subject to the Powhatan Point constraints described above.

The interchange trains vary in length up to in excess of 100 cars and we often receive interchange trains from NS which exceed 22 cars. The interchange track is of 22 car capacity. As discussed above, the interchange track capacity is constrained and there is no useable land to extend the track. Therefore, when more than twenty (20) cars are being interchanged, the operation on the Omal Running Track is as follows: (i) NS arrives with a southbound interchange train and secures the cars on the main track of the Omal Running Track north of the OTR interchange track, (ii) NS secures its locomotive(s) on the OTR interchange track clear of the at-grade crossing over the interchange track, (iii) the OTR crew goes on duty at Omal (near Hannibal, Ohio) and runs northward with only locomotives to the interchange where OTR picks up the inbound train on the main track, (iv) OTR pulls the inbound train southward to Omal and switches out the inbound cars in the freight yard, (v) OTR then pushes an outbound train 10 miles northward and secures the cars on the main track of the Omal Running Track south of the OTR interchange track, and (vi) an NS taxi arrives at OTR interchange track and NS crew and locomotives pull the interchange train northward to near Powhatan Point where they wait for a window between coal trains.

The related NS coal train operations on the Omal Running Track at Powhatan Point are as follows: (i) NS's coal train completes unloading on the Omal Running Track, NS's empty coal train moves north on the River Line, reverses direction and clears on the Captina Secondary, (iii) NS's OTR interchange train passes through Powhatan Point, (iv) the NS empty coal train moves back onto the River Line, (v) the NS loaded coal train moves off of the Captina Secondary onto the River Line and reverses direction to unload on the Omal Running Track, and (vi) the NS empty coal train reenters the Captina Secondary and runs to the mine.

In light of the OTR-NS constrained interchange facilities and coal train operations, it is contrary to the public interest to inject another Class III common carrier railroad operation into the constrained and congested high-volume rail and river transportation operations at Powhatan Point.

## III. D. Yard Capacity Constraints

Upon commencement of common carrier operations on the Omal Running Track, OTR was faced with limited yard capacity. More specifically (i) there was only one location on the Omal Running Track that had been constructed for the purpose of yard tracks and (ii) only two short yard tracks had survived to the time when OTR prepared to commence operations.

The one location available for yard tracks was situated adjacent to the industrial land upon which Ormet's aluminum smelter and aluminum rolling mill were located. The freight yard property was wholly within the line of railroad right-of-way owned by Ormet Railroad Corporation. The freight yard property was graded wide enough for three yard tracks and was 9,286 feet in length, being located between the at-grade road crossing the Line into the smelter on the north and the at-grade road crossing the Line into the rolling mill on the south.

The two surviving yard tracks were Yard Track 1 at 1,800 feet in length and Yard Track 2 at 2,000 feet in length. Combined, the yard capacity was only 76 cars (at 50' per car). Although OTR commenced operations with no customers, OTR quickly built the traffic base and by 2014, the yard was totally inadequate for the traffic. On some days, over 100 cars are being held at Mingo Jct waiting for available capacity on OTR.

OTR considered building one complete full length yard between the north and south at-grade crossings, however, switching the yard over the north crossing would block road access to

HDP and switching the yard over the south crossing would (i) block road access to HRE and (ii) be constrained by the very short (16 car lengths) distance between the south crossing and the end point of the Line. Therefore, OTR designed two freight yards that would be switched from mid-point of the freight yard centrally located between the at-grade crossings.

OTR awarded construction contracts to build an expansion of the north yard and to build the proposed south yard. The contract to build Phase I of the new north yard was awarded to Hennessey Co Inc. and Delta Railroad Construction ("Delta") for approximately $1 million. The contract to build the first Phase I of the new south yard was awarded to Hennessey Co Inc. and Amtrac of Maryland for approximately $2.1 million. The yard construction was required in order for OTR to meet its common carrier obligations.

After OTR signed the construction contracts, HDP notified OTR that it intended to scrap all of the existing yard tracks and build natural gas liquids storage tanks on the freight yard property of the Line. OTR notified HDP that the yard trackage was indispensable to common carrier rail operations on the Line. Then HDP demanded the right to collect "parking fees" for the freight cars in the yard. OTR explained that its freight cars in the freight yard were an intrinsic part of OTR's railroad operations, not a for-profit parking lot.

As a result of this controversy, OTR proceeded to have Hennessey Co Inc. and Delta build Phase 1 of the north yard, which already had all of its materials laid out including the new 136RE continuous welded rail, but negotiated a change order to redirect the work committed to Amtrac of Maryland to another Carload Express railroad in Pennsylvania to increase yard capacity there. (Exhibit "E")

OTR and NS have shown more than fifty (50) interested customers (i) the three brownfield sites located along the Line, (ii) the HDP site, and (iii) the HRE site. It is a virtual certainty that an increase in rail traffic of substantially more than 100% (if not multiples thereof) shall occur on the Line and that an increase of rail yard activities of substantially more than 100% (if not multiples thereof) shall occur at Omal freight yard.

### III. E. Permanent Easement Constraints

In 2007, HDP's predecessor, Ormet, in exchange for good and valuable consideration, sold the aluminum rolling mill and the permanent easement to use and maintain the Line for rail service. While performing its due diligence with respect to entering into the Operating Agreement with HRE, OTR verified with a principal negotiator of the Ormet-HRE transaction that the intent of the parties drafting the permanent easement was that there would be only one railroad operator on the Omal Line.

Under the rail easement, HRE would be *solely* responsible for the maintenance and liability of the Line once it elected to use the Line. The Line included the entire right-of-way of the Ormet Railroad Corporation and all switching apparatus of the Line, however, the permanent easement did not pertain to the substantial in-plant tracks of Ormet or HRE.

Ormet retained the in-plant industry tracks at the smelter and HRE acquired the in-plant industry tracks at the rolling mill. The in-plant industry tracks remained more or less intact in their then current position as an integrated in-plant track network. Each party was responsible for its own industry tracks and would cooperate so as not to interfere with the in-plant operations of the other.

The permanent easement was not drafted as a joint facility agreement supporting the operation of two Class III rail carriers on the Line. Ormet, HDP's predecessor, did not specifically reserve the right to use the Line. Missing from the permanent easement are all of the industry standard terms and conditions governing joint operations by two Class III operators on the Line as more fully described in Joint Facility Constraints below.

Moreover, the introduction of an additional Class III common carrier on the Line would require the negotiation of a maintenance, repair and replacement cost allocation arrangement between the two railroads. ORP has not approached OTR with any such proposal.

Without such an arrangement, dual operations would create an economic dislocation contrary to the public interest for both the existing common carrier and the rail shippers at HRE's industrial park.

### III. F. Joint Facility Constraints

Ormet sold the permanent railroad easement to use the Line to HRE in 2007, and the Bankruptcy Court sold the physical assets of the Line to HDP in 2013. HRE entered into the Agreement with OTR to be the exclusive common carrier shortline on the railroad serving HRE, Ormet and all future shippers on the Line. ORP's Verified Notice of Exemption, however, attempts to gain joint use of the physical assets of the Line by circumventing HRE's permanent rail easement, which was conveyed by HDP's predecessor Ormet to HRE, which holds the sole responsibility for the maintenance, repair, and replacement of the Line and which bears all liability for use of the Line.

The addition of a second Class III shortline on the Line compromises OTR's ability to serve freight customers on the Line and creates economic and operational dislocations adverse to

OTR's continued common carrier ability to serve freight customers on the Line. The adverse impacts of joint use of the Line are so extensive as to substantially impair OTR's use of the rail easement even if OTR was limited only to HRE. OTR freight shippers are now faced with economic and operational uncertainties created by ORP's proposed shared use.

The permanent easement has no provision for Ormet or its successor HDP as owner of the physical assets of the Line to grant operating rights or trackage rights to other freight carriers on the Line. Only OTR can do that and OTR granted trackage rights to NS to operate over the Omal Running Track controlled by OTR to effectuate interchange on OTR's interchange track.

The operating windows on the Line are so constrained that joint use with a second railroad will so restrict OTR's operations, that OTR's operations and OTR's ability to serve rail freight shippers will be obstructed and impaired.

Other provisions for shared use are not evidenced in the permanent rail easement. No provisions, for example, were contemplated for: (i) allocating capital improvements to the Line, (ii) allocation of management and operation, (iii) dispatching control of train movements, (iv) allocation of use of the Omal freight yard, (v) control of communications, (vi) training, qualification, testing and investigation of employees, (vii) reimbursements, (viii) assigning priority to train movements, (ix) allocating responsibilities attendant to stalled or disabled trains blocking the Line, (x) allocating responsibilities attendant to adjusting or transferring lading of defective cars, (xi) allocating responsibilities for sales and marketing to customers on the Line, (xii) clearing of wrecks, (xiii) allocation of and responsibility for commercial liability, injury, property damage and contamination of the environment, (xv) allocation of insurance coverage, or (xvi) the granting to only one carrier overhead trackage rights over the other.

All of these issues must be addressed and resolved in the pending Ohio mediation and arbitration proceeding.

## IV. Safety Issues

It is unclear how a second carrier would be able to provide safe rail service that would not damage OTR's service to existing customers. No information has been presented by ORP to assure safe integration of the operations of OTR and ORP. As such, it is appropriate to require ORP to demonstrate that it has undertaken the requisite planning for joint operations.

## V. Interference with Operations

ORP has made no attempt to contact OTR to demonstrate how operation would be conducted. No determination has been made to show that two operators can safely and efficiently share this Line. It would be unreasonable to place dispatch responsibilities in the hands of ORP when OTR is already operating the Line and is solely responsible for the Line's, maintenance repair and replacement. At this time, there are no guarantees that OTR would be provided the necessary time to perform track maintenance activities. Without additional information, it is impossible to determine whether trains would be dispatched without prejudice or partiality to either party. Given the Line's limited capacity, even the fair and coordinated dispatching of two Class III carriers would result in a degradation of freight service.

## VI. Economic Sub-Optimization

The operation of two Class III carriers on the Omal Running Track creates a host of service and rate discrimination issues between HDP shippers and other shippers on the Line. The option of having two Class III carriers does not create price competition because NS controls the line-haul movement of freight beyond its interchange with the Omal Running Track.

The end result of two Class III carriers operating on the Omal Running Track is higher rail transportation charges for all shippers on the Line because of the duplicate cost and expenses incurred by two serving carriers which will have to be recovered by each of them from less than all of the traffic generated on the Line in the absence of any real competition.

Moreover, with OTR solely responsible for the cost and expenses of maintaining, repairing and replacing the Line and with OTR solely bearing all liability for all operations the Line, the ultimate end result is that OTR may be unable to successfully compete with a second Class III carrier on the Line.

The reality is that the Omal Running Track is captive to one Class I railroad and the best way to provide efficient rail service at a reasonable price for all shippers on the Line is to provide exclusive rail access for all on-Line shippers to a single, low-cost Class III carrier that will focus exclusively on the needs of all on-Line shippers and will provide a single point of interface with the Class I for origination and delivery of freight.

## VII. OTR's Current Service is Abundantly Adequate

In 2014, Carload Express's four operating shortlines employed 56 railroaders and 26 locomotives to deliver 60,827 carloads of freight to 75 shippers on 170 route-miles of railroad without a single lost time injury. For the last three years, Carload Express has reinvested a very strong 43% of freight revenues into its rail infrastructure. Over the last five years, Carload Express's aggressive marketing, competitive pricing, and excellent customer service has resulted in an industry leading annual average rate of traffic growth of 37% per *each* year.

Together with NS, OTR has marketed all of the stations on the Omal Running Track to well over fifty (50) potential rail shippers. In 2013, Carload Express won the Norfolk Southern

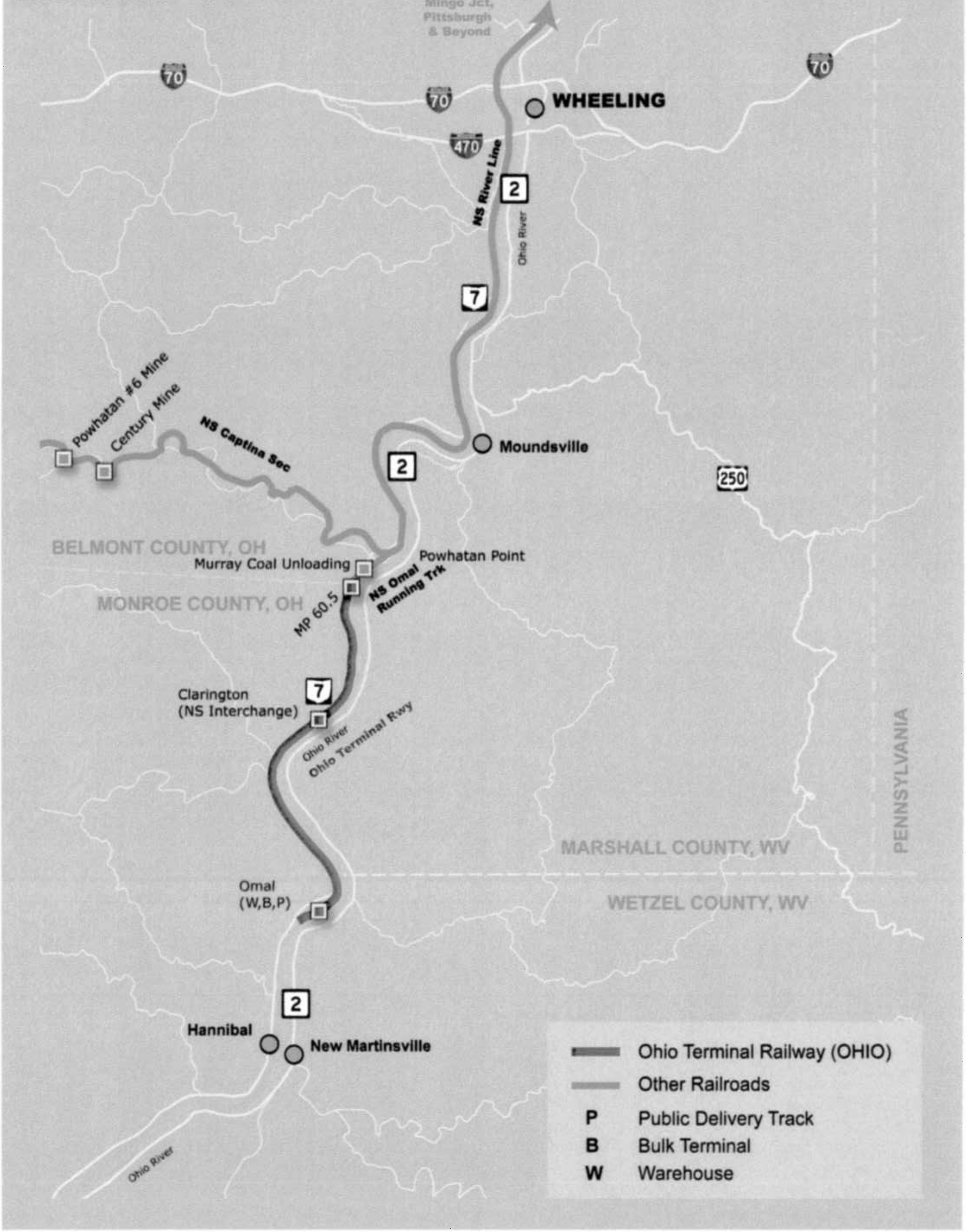
Shortline of the Year award in recognition of "pursuing numerous avenues to achieve growth, working with customers on new lanes of business, enticing old customers back to rail, partnering with industrial development to attract new facilities, and transloading to extend the company's ability to serve customers beyond its own trackage. These efforts have been in collaboration with Norfolk Southern, whether working to identify a new site for a new customer, or working to develop transload facilities to serve new markets. These business development efforts, combined with continual upgrades to track infrastructure and a customer-focused service product, have resulted in the success story that Carload Express is today."

## VIII. CONCLUSION

For all of the foregoing reasons, OTR asks that ORP's Notice of Exemption be rejected by the Board or in the alternative, that this proceeding be stayed pending an in-depth review of this proposed transaction by the Board.

EXHIBIT A

# EXHIBIT "A"



NS to Mingo Jct, Pittsburgh & Beyond
70
70
70
470
WHEELING
2
NS River Line
Ohio River
7
Powhatan #6 Mine
Century Mine
NS Captina Sec
Moundsville
2
250
BELMONT COUNTY, OH
Murray Coal Unloading
Powhatan Point
MONROE COUNTY, OH
MP 60.5
NS Omal Running Trk
Clarington
(NS Interchange)
7
Ohio River
Ohio Terminal Rwy
PENNSYLVANIA
MARSHALL COUNTY, WV
WETZEL COUNTY, WV
Omal
(W,B,P)
2
Hannibal
New Martinsville
Ohio River
Ohio Terminal Railway (OHIO)
Other Railroads
P Public Delivery Track
B Bulk Terminal
W Warehouse

EXHIBIT B

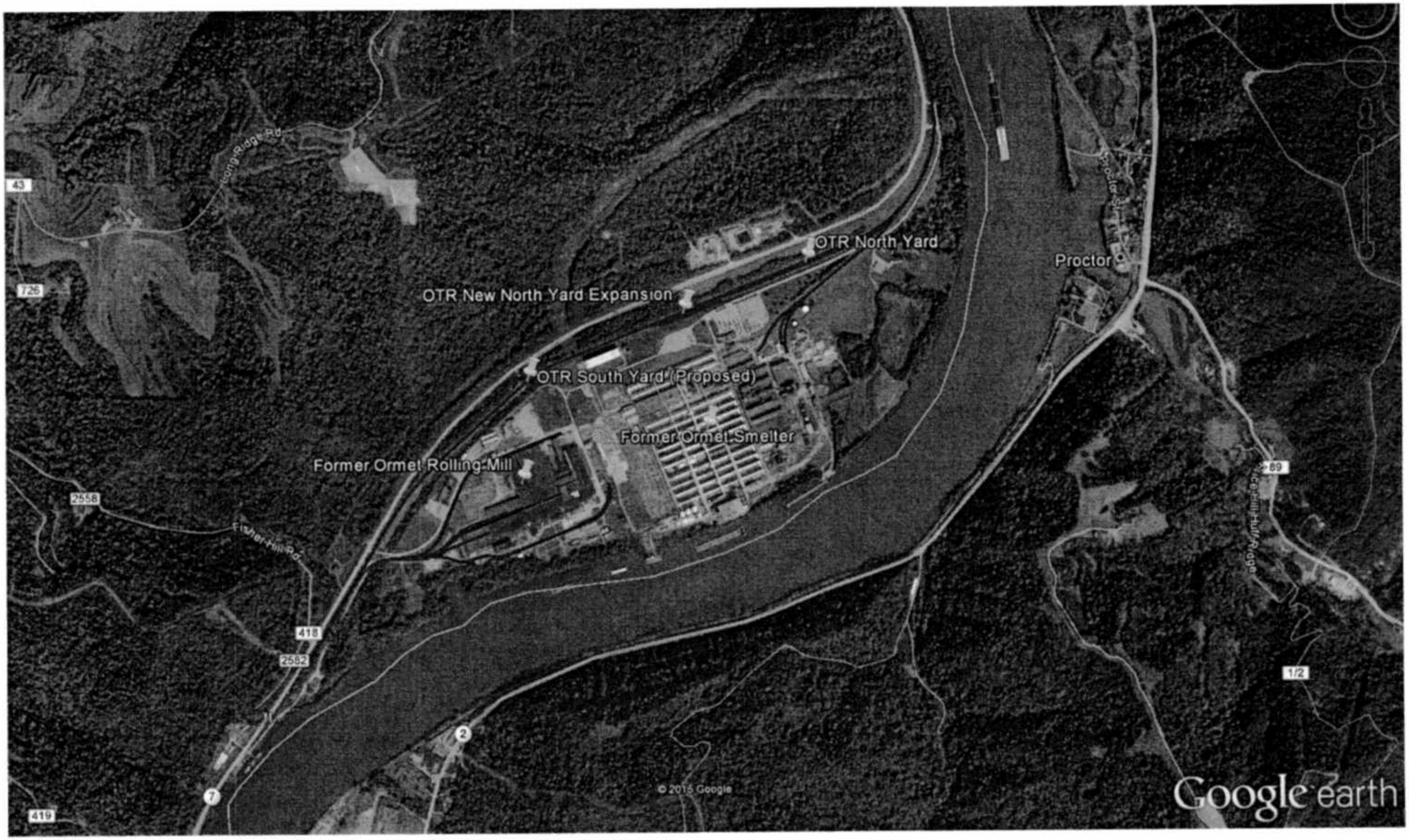
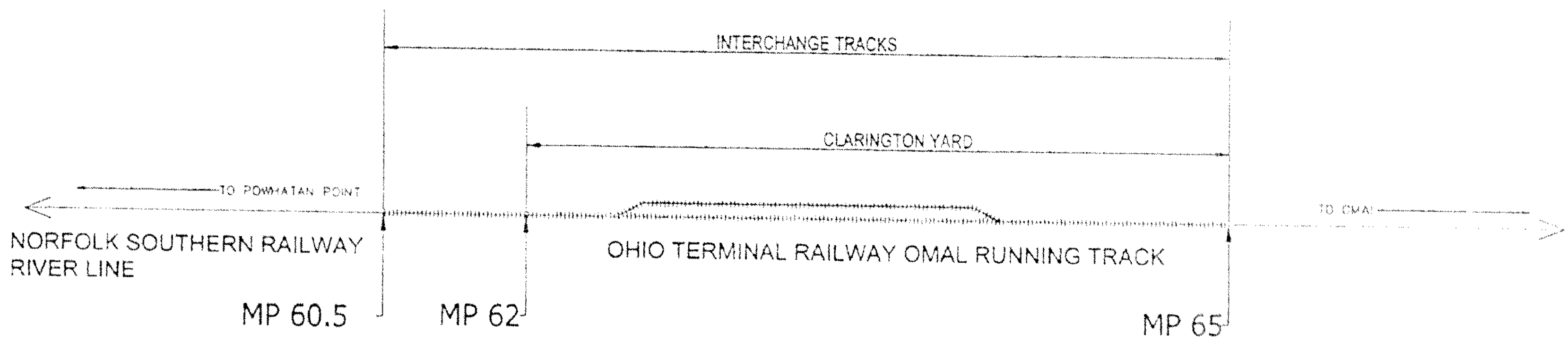

OTR North Yard
Proctor
OTR New North Yard Expansion
OTR South Yard (Proposed)
Former Ormet Smelter
Former Ormet Rolling Mill
Long Ridge Rd
Fisher Hill Rd
Rice Hill Huff Ridge
Proctor St
43
726
2558
418
2582
419
89
1/2
2
7
© 2015 Google
Google earth

EXHIBIT C




= NORFOLK SOUTHERN RAILWAY OPERATING RIGHTS ON OHIO TERMINAL RAILWAY

INTERCHANGE AGREEMENT EXHIBIT A, CLARINGTON, OHIO

N.T.S

EXHIBIT TO INTERCHANGE AGREEMENT
BETWEEN OHIO TERMINAL RAILWAY COMPANY
AND NORFOLK SOUTHERN RAILWAY COMPANY
CLARINGTON, OHIO

CARLOAD EXPRESS
Bldg 1, Suite 100
519 Cedar Way
Oakmont, PA 15139
P:(412)426-4400
F:(412)426-4000

| NO | DATE | BY | REVISIONS |
|---|---|---|---|

DATE
DRAWN BY
SCALE NTS
PROJECT
SHEET NO.

# EXHIBIT D

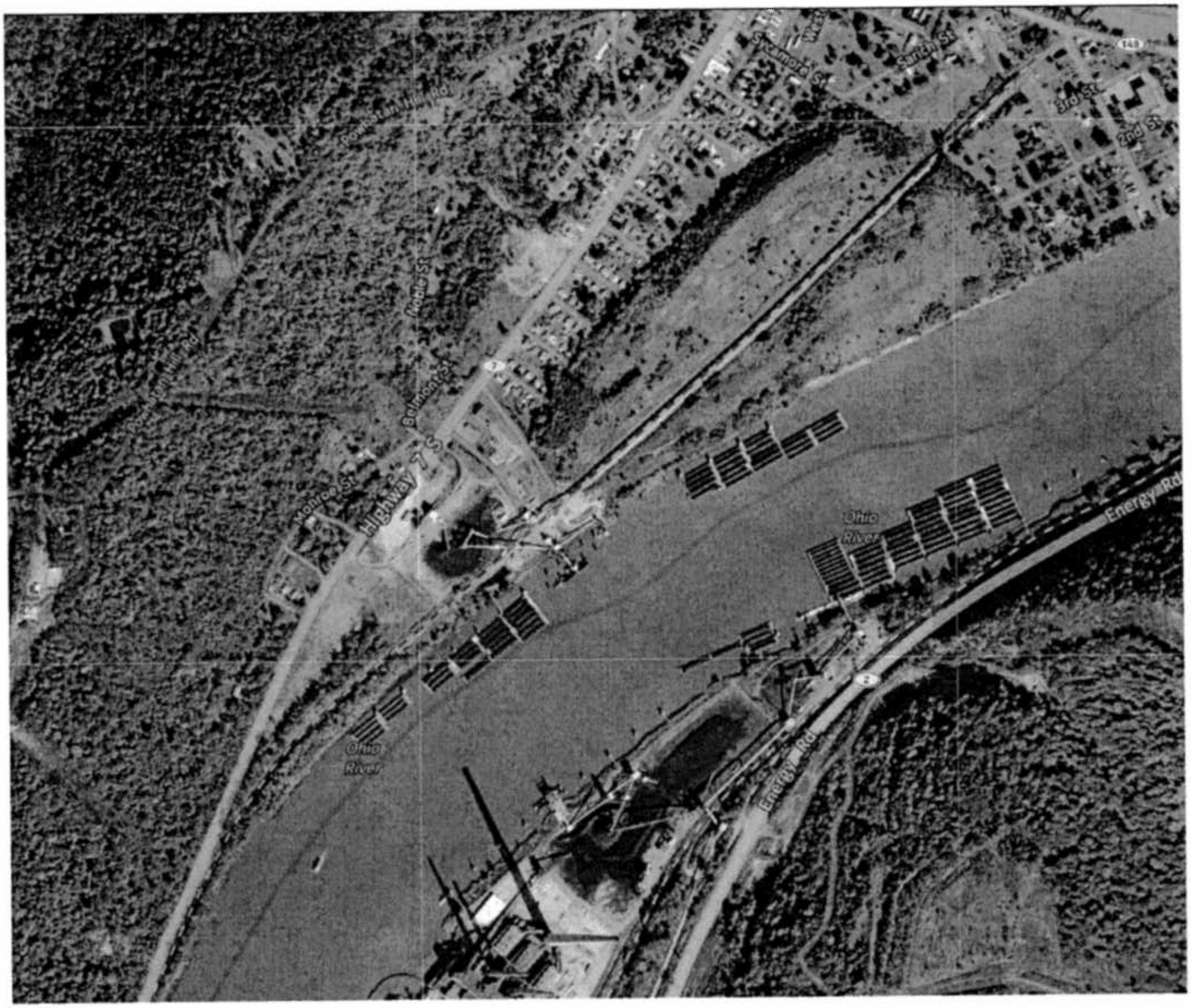
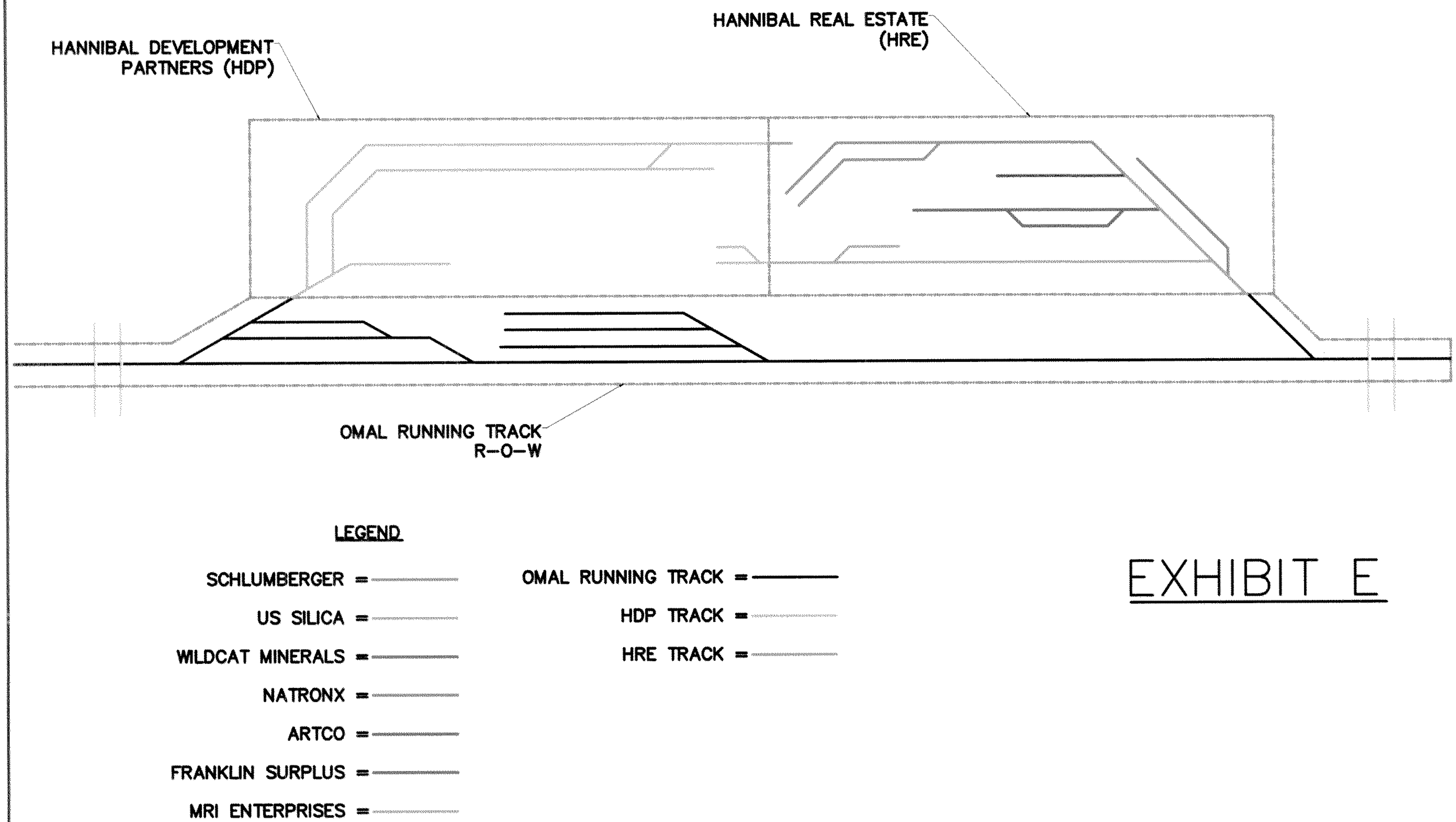

Highway 7 S
Monroe St
Belmont St
Noble St
Sycamore St
3rd St
2nd St
Ohio River
Ohio River
Energy Rd
Energy Rd

EXHIBIT E

# HDP AND HRE INDUSTRIAL PARKS




# EXHIBIT E

REVISIONS

| NO. | DATE | BY | DESCRIPTION |
|---|---|---|---|

CARLOAD EXPRESS
Allegheny Valley • Southwest Pennsylvania • Camp Chase Railroad
Bldg 1, Suite 100 P:(412)426-2800
519 Cedar Way F:(412)426-4000
Oakmont, PA 15139

CARLOAD EXPRESS, INC.
SURFACE TRANSPORTATION BOARD
EXHIBIT "E"

SEAL

BY:
CHK: DATE:
SCALE HORZ.: NTS VERT.:
FILE:
JOB NO.:
SHEET: OF

## VERIFICATION

COMMONWEALTH OF PENNSYLVANIA )

)

COUNTY OF ALLEGHENY )

I, Russell A. Peterson, Chief Executive Officer, Allegheny Valley Railroad Company, swear or affirm and verify that the statements made in the foregoing Verified Statement are true and accurate to the best of my knowledge, information and belief.

Jan 6 2016
Date

Russell A. Peterson
Russell A. Peterson

CERTIFICATE OF SERVICE

I hereby state that on this 7th day of January, 2016, I caused a copy of the foregoing Petition to Reject Notice of Exemption and Request for a Stay of Effective Date of Exemption to be served by first-class U.S. Mail on the following persons:

Secretary of US Dept. of Transportation
Docket Clerk, Office of Chief Counsel
Federal Railroad Administration
400 7th Street, SW, Room 5101
Washington, DC 20590

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

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

Terrance N. Hynes, Esq.
Hannah M. Chouest, Esq.
Sidley Austin, LLP
1501 K Street, NW
Washington, DC 20005

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
Governor John Kasich
77 South High Street
Columbus, OH 43215-6117

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

William A. Galanko, Vice President - Law
Norfolk Southern Railway Corporation
Three Commercial Place
Norfolk, VA 23510

Mr. Matthew Dietrich, Ex. Dir.
Mr. Lou Janazzo
Ohio Rail Development Commission
1980 West Broad Street
Columbus, OH 43223

Richard R. Wilson

Richard R. Wilson, Esq.