

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35984

OHIO RIVER PARTNERS LLC—ACQUISITION AND OPERATION EXEMPTION—
HANNIBAL DEVELOPMENT, LLC

Decided: January 15, 2016

On December 18, 2015, Ohio River Partners, LLC (ORP), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from Hannibal Development, LLC (Hannibal Development) and to operate 12.2 miles of rail line known as the Omal Secondary Track (the Line). The Line extends between milepost 60.5 at or near Powhatan Point and milepost 72.2 at or near Hannibal, in Monroe County, Ohio. In a concurrently filed verified notice of exemption in Fortress Investment Group LLC—Continuance in Control Exemption—Ohio River Partners, LLC, Docket No. FD 35985, Fortress Investment Group LLC (Fortress) seeks Board approval to continue in control of ORP and two other rail carriers currently controlled by other companies managed by affiliates of Fortress following consummation of the proposed transaction. The separate notices of exemption were served and published in the Federal Register, 80 Fed. Reg. 81,878-79, on December 31, 2015. The exemptions are scheduled to become effective on January 17, 2016.

On January 7, 2016, Ohio Terminal Railway Company (OTRC) filed a petition to reject the notice of exemption to acquire and operate the Line. OTRC further requests that the Board stay the effectiveness of that exemption if such a stay is needed to afford the Board sufficient time to act on OTRC's petition.¹ OTRC argues that the streamlined notice of exemption procedures under § 1150.31 are not appropriate for the transaction contemplated by ORP because the transaction presents non-routine and controversial issues. OTRC notes that it has an easement to operate over the Line,² and that the exemption would therefore permit dual operations over the Line. OTRC fears that dual operations would not be feasible based on the Line's limited capacity and constrained interchange with Norfolk Southern Railway Company (NSR). OTRC faults ORP for not addressing these issues in its verified notice and asserts that any such authorization should only be granted after a full regulatory review, including the development of a complete factual record.

¹ OTRC also filed a motion for protective order, which the Board granted on January 13, 2016.

² See Ohio Terminal Ry.—Operation Exemption—Hannibal Real Estate, FD 35703 (STB served Jan. 11, 2013).

OTRC also claims that ORP's notice is false and misleading. OTRC explains that, beyond not addressing the issues presented by dual operations, ORP did not disclose that there is an ongoing dispute between Hannibal Development (ORP's proposed transferor)³ and Hannibal Real Estate, LLC (the owner of the easement operated by OTRC) regarding the scope of the easement.

In a reply filed on January 12, 2016, ORP argues that the Board should deny OTRC's petition because its notice of exemption contains all of the information that is required by the Board's regulations and is not false or misleading. ORP asserts that it did not need to disclose the easement dispute and that, regardless, such a dispute is not grounds for rejecting its notice. Similarly, ORP argues that dual operations on a line are common and that its notice did not need to address OTRC's operational or interchange concerns, which, ORP contends, are exaggerated and premature at this point.

To provide sufficient time for the Board to fully consider the arguments presented, this proceeding will be put into abeyance and the effective date of the exemption will be postponed until further order of the Board.

It is ordered:

1. The effective date of the exemption is postponed until further order of the Board.
2. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ OTRC states that all contacts regarding ownership addressed in its petition have been with Hannibal Development Partners, LLC, but it is not certain whether Hannibal Development is the same or a separate entity.