

BEFORE THE
SURFACE TRANSPORTATION BOARD

EXPEDITED HANDLING REQUESTED

STB FINANCE DOCKET NO. 35984

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

MOTION FOR PROTECTIVE ORDER

(Expedited Consideration Requested)



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ENTERED
Office of Proceedings
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Part of
Public Record

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

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SURFACE TRANSPORTATION BOARD

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Pursuant to 49 C.F.R. §1150.31, Ohio River Partners, LLC (“ORP”) filed a Notice of Exemption from 49 U.S.C. §10901 regarding a proposed acquisition and operation of a 12.2-mile rail line in Monroe County, Ohio (the “Line”). The Line is currently operated by Ohio Terminal Railway Company (“OTR”) under authority issued by the Board in a previous proceeding, Finance Docket No. 35703, Ohio Terminal Railway Company – Operation Exemption – Hannibal Real Estate, LLC, Monroe County, Ohio, (Served Jan. 11, 2013). As set forth in a contemporaneously filed Petition for Rejection and/or Stay of the ORP exemption notice, OTR has raised substantial issues concerning the operational and safety impacts which OPR’s proposed transaction would have on OTR’s current rail operations and the service being provided on the Line. As set forth in the Petition, OTR believes that the proposed ORP transaction is not a routine or non-controversial proceeding, and that the transaction requires more scrutiny by the Board than would normally be provided in an exemption proceeding.

In order to more fully understand the proposed ORP transaction, the proposed ORP operations and interchange, and the possible effects of the transaction on OTR’s existing

operations and interchange, OTR has requested that ORP produce certain documents pursuant to 49 C.F.R. §1114.30.¹ None of this information being requested is included in the ORP Notice of Exemption. Although OTR does not know whether ORP will assert that any of the documents requested are confidential, OTR is hereby requesting that the Board issue a protective order so as not to delay the production of documents.

The Board has the authority under 49 C.F.R. §1114.21(c) and §1104.14(b) to issue a protective order that will protect confidential information from unwarranted disclosure. Accordingly OTR requests that the Board issue a protective order consistent with orders issued in other proceedings. Issuance of the protective order will ensure that OTR, and ultimately the Board, will receive full disclosure of all relevant facts while ensuring that commercially sensitive information in the documents will be used only in connection with this proceeding and not for any other business or commercial use. A suggested form of protective order is attached as an Appendix to this Motion.

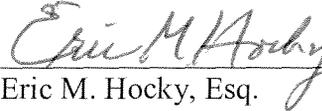
¹ OTR has requested documents pertaining to the proposed acquisition of the Line by ORP, the current or proposed interchange arrangements between ORP and Norfolk Southern Railway at Powhatan Point, Ohio, current or proposed operating plans, and proposed or planned modifications to the existing rail facilities comprising the Line.

Because this Motion is being filed at the same time as OTR is serving ORP with its request for production of documents, OTR requests expedited consideration of this request so as not to delay ORP's responses.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2016, I caused a copy of the foregoing Motion for Protective Order to be served by email and by first-class U.S. Mail on all parties listed below.

Terrance M. Hynes, Esq.
thynes@sidley.com
Hannah M. Chouest, Esq.
hchouest@sidley.com
Sidley Austin, LLP
1501 K Street, NW
Washington, DC 20005


Richard R. Wilson, Esq.

ATTACHEMENT A

PROTECTIVE ORDER

1. For purposes of this Protective Order:
 - (a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.
 - (b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, or carriers, confidential financial and cost data, and other confidential or proprietary business or personal information.
 - (c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with Paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.
 - (d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the Notice of Exemption filed in Docket No. FD 35984 and any related proceedings before the Board, and any judicial review proceedings arising from Docket No. FD 35984, or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.
3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, trackage rights compensation levels or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as “HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped shall be handled as provided hereinafter.
4. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a

confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this order.
6. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.
7. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in Docket No. FD 35984, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Docket No. FD 35984, and/or with any related proceedings.

8. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, remands.
9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” See 49 C.F.R. §1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of any administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.
10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and

not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

11. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.
12. If any party intends to use any Designated Material in the course of any disposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in Paragraph 9 of this Protective Order.

13. To the extent that materials reflecting Confidential Information are produced by a party in these proceedings, and are held and/or used by the receiving person in compliance with Paragraphs 1, 2 or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §11904 or of any other relevant provision of the ICC Termination Act of 1995.
14. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.
15. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.
16. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When Filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may

be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

Exhibit A
UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served _____, 2016, governing the production and use of Confidential Information and Confidential Documents in Docket No. FD 35984, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose, other than the preparation and presentation of evidence and argument in Docket No. FD 35984, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Docket No. FD 35984, and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL”, other than file copies, kept outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated:

Exhibit B
UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2016, governing the production and use of Confidential Information and Confidential Documents in Docket No. FD 35984, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Docket No. FD 35984, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Docket No. FD 35984, and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as ‘HIGHLY CONFIDENTIAL’, that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counselor outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL”, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this undertaking and that other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

[Party Name]

Dated: