

## **PANHANDLE ADVISORY COMMITTEE MEETING MARCH 12, 2008**

Panhandle Committee members met on Wednesday, March 12, 2008 at the offices of the Ohio Rail Development Commission. Chairman McOwen called the meeting to order at 11:15 a.m. Members present were as follows: Committee Chairman Tom McOwen; Commissioners Solomon Jackson and Kimberly Gibson; ORDC Staff Matt Dietrich, Lou Jannazo, Megan McClory, Stu Nicholson and ORDC Counsel Alan Klodell. Commissioner Jim Hartung was unable to attend the meeting.

### **Approval of the Minutes of the February 28, 2008 Panhandle Committee Meeting**

Chairman McOwen inquired about the portion of the minutes under "Next Steps" that indicates "Chairman McOwen suggested ORDC staff prepare draft language for the next meeting that would allow for excursion service in the lease but does not address the liability issue beyond what is currently in the Revised Code." He asked for clarification on this statement. Director Dietrich reported this statement was in response to the committee's request to add excursion service to the passenger rail portion of the lease but identify that excursion service is permissible but not required. Chairman McOwen agreed with that statement and asked for a motion to approve the minutes. Commissioner Gibson was not prepared to vote on a motion yet and requested a few moments to review the minutes again.

### **Status Update of Liability Meetings**

Chairman McOwen asked Stu Nicholson to present a brief status update of the Liability Committee Meetings. Mr. Nicholson responded that the committee met the day prior on March 11<sup>th</sup> and that Mr. Bob McCarthy of McCarthy Rail Insurance Managers was present at the meeting. Mr. Nicholson reported Mr. McCarthy's presentation ended up being the majority of the meeting and discussion. He distributed a synopsis of Mr. McCarthy's comments and reviewed those comments with all present. Mr. Nicholson reported a "bullet-proof" solution to the issue of liability is just not possible according to Mr. McCarthy. He indicated when the \$200 million insurance limit is imposed (as indicated in the O.R.C) most operators are unable to afford the premiums of \$500,000 and above. Mr. McCarthy also reported that when a short term purchase of insurance is required, if the operator is able to find such short-term coverage, those premium amounts can equal almost the premium for a full year of the coverage; making the cost of coverage for a short time period extremely high. Discussion regarding legislative involvement took place with Director Dietrich reporting that we will need documentation of the economic benefits of excursion services versus the risks of liability prior to engaging the legislature.

Chairman McOwen reiterated he would like to see what the other states are doing with respect to this issue. Alan Klodell indicated he had looked into this issue previously to examine the best practices of a number of states and reported if attorneys find it difficult to bring forth a case at the state level they will simply file in federal court. Federal law preempts state law.

### **Motion to Approve Minutes of February 28, 2008 Committee Meeting**

Commissioner Gibson moved to approve the minutes and Commissioner Jackson seconded the motion. The minutes are approved as presented.

### **Review of BSE Valuation Report – Megan McClory**

Megan McClory, ORDC Secretary-Treasurer, reviewed the BSE Valuation Report with everyone present. She distributed a handout (7 pages) which contained the valuation methods used, the cost of equity, cost of debt, etc. and ultimately the value of what they believe the 25 year lease to be (\$799,000 per year). She offered availability of the full report to anyone who would like to review it.

Ms. McClory reiterated this valuation report does not include real estate; the report takes into account track and fixtures only. Commissioner Gibson expressed her concern over that issue in that she believes the valuation should include the real estate. Extensive discussion took place with Chairman McOwen inquiring if the committee felt another updated appraisal was warranted since this report was completed in 2004. After additional discussion it was decided that a new appraisal needed to be done to reflect current market values.

Director Dietrich responded to Commissioner Gibson's concern by stating that ORDC (i.e., State of Ohio) opted not to include the real estate in order to maintain the opportunity to enter into contracts or anything else the state deemed necessary in the future.

Discussion regarding what happens at the end of the current operating agreement took place, and particularly whether a 2012-2017 agreement could be advertised for competitive bids. Alan Klodell pointed out that the current lease does not "allow" for a competitive bid if the operator, C&OR, is meeting all of the standards set forth in the contract. However, if the C&OR and ORDC cannot reach agreement on the terms of a new agreement, there are provisions for competitively selecting a new operator.

Commissioner Jackson again made the point about the amount of investment the operator has put into the line over the past sixteen years. He reported we cannot dismiss this fact. All agreed.

Commissioner Gibson raised the issue again that she would like to know the value of the real estate as well as the value of the track and fixtures. "(The line) is an asset we have to manage;" the real estate value is important to the strategic future of the organization. Extensive discussion took place about whether to include the real estate in the updated appraisal as well as what to do with that number once we have it. It was decided to include the real estate so we have all the current information possible to make an informed decision on the rent.

### **Next Steps**

Discussion regarding what should be reviewed at the next meeting took place. Commissioner Gibson reported she would like to discuss potential cost savings passed along by the state (through the operator) to the shippers along the line.

Commissioner Jackson asked for a list of items to review at the next scheduled meeting. Director Dietrich reported ORDC is waiting on a list of improvements/investment the operator is planning. This cost, per the agreement, is currently covered by the operator. This item will need to be discussed at the next meeting as to whether the state will cover all maintenance along the

line but charge a higher amount for the rent. Mr. Jannazo asked if excursion service should be on the agenda for the next meeting. After discussion it was decided the committee will maintain its previously decided upon position that the lessor will reserve the right to permit excursion service but will not mandate excursion service. Negotiation on this issue will have to be done by the excursion service operator and the operator of the railroad.

**Next Meeting**

Chairman McOwen announced that the next meeting of the Panhandle Committee meeting will take place on Monday, March 24, 2008 beginning at 11:00 a.m. at the offices of the Ohio Rail Development Commission.

**Adjournment**

Chairman McOwen called the meeting adjourned at 1:20 p.m.