

PANHANDLE ADVISORY COMMITTEE MEETING

MAY 2, 2008

Panhandle Committee members met on Friday, May 2, 2008 at the offices of the Ohio Rail Development Commission. Chairman McOwen called the meeting to order at 11:20 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. Also present for the meeting were Bill Strawn, President, Ohio Central Railroad Systems; Rod Wilcox, Attorney for Ohio Central Railroad Systems; Daniel Van Epps; Wendy Zucal, Dennison Depot & Museum; Mark Demaline, Wheeling & Lake Erie Railway; and Nikos Kaplanov, State of Ohio, Office of Budget & Management.

Approval of the Minutes of the April 11, 2008 Panhandle Committee Meeting

Chairman McOwen asked for a motion to approve the minutes of the April 11, 2008 Panhandle Committee meeting. Commissioner Jackson moved to approve the minutes and Commissioner Gibson seconded the motion. The motion was approved.

Tour of the Panhandle Line

Chairman McOwen raised the point that at the last committee meeting Commissioner Gibson mentioned she had never toured the line. As a result, Chairman McOwen made the suggestion the committee members look at some potential dates for a train trip along the Panhandle and inquired if they would be interested. Everyone stated they would in fact be interested and a short discussion regarding some potential dates in June took place. It was decided that a two-day trip (with no overnight stay) would be the best course of action. After additional discussion regarding the proposed dates and the committee not reaching a consensus, Chairman McOwen determined it would be best to move on with the meeting agenda and stated he would propose some dates in June at a later time for consideration.

Review of Rent Handout – Revised May 2, 2008

Chairman McOwen asked Matt Dietrich and Megan McClory to provide a review of the Rent handout as revised on May 2, 2008.

Matt Dietrich reported staff met to discuss the suggested revisions of the Rent section (suggested at the previous committee meeting). He indicated consideration of both Commissioners Jackson and Gibson's comments regarding the economic development aspect of the lease, i.e., state-ownership of permanent assets put into the ground, was captured by adding "investing in track and fixtures specifically to serve shippers who are newly located along the line or are new rail customers." The addition of this provision under "Extraordinary Capital Expenditures" will allow for a rent deduct and accommodate the committee's desire to incentivize the operator.

Director Dietrich then reported on the normal vs. extraordinary maintenance aspect of the lease and indicated staff had decided to stick to classic track guidelines of what is considered to be normal and keep the list previously decided upon as being extraordinary maintenance.

Megan McClory, ORDC's Secretary-Treasurer, reported she had attempted to incorporate all suggestions/concerns identified at the last committee meeting. She indicated the rent will be composed of a couple of items: fixed rent (items the railroad would be required to pay) and variable rent (variable rent based on extraordinary capital expenditures).

Ms. McClory spoke about the issue of ORDC's Executive Director having the authority to approve projects for later deductions based upon an "emergency" situation rather than having to wait until the next commission meeting as an issue that staff will need further clarification from the committee.

Ms. McClory reported she had addressed the issue of a negative rent situation by adding the following language: "The amount of the deduction for extraordinary capital expenditures shall not exceed the amount of the variable rent in any year."

Bill Strawn made the comment his company appreciates the committee's consideration of the economic development activities the railroad is doing.

Commissioner Jackson reported he is pleased with what staff has come up with to further categorize the intent of the rent section of the lease but cautioned that the final version not be made out to read like the IRS tax code and that everyone should be 100 percent clear as to what will/will not qualify for a credit. He stated maybe there should be categories added that help to identify what qualifies for a deduction on the operator's rent.

Extensive discussion regarding the process of granting credits took place. Director Dietrich inquired whether clear-cut language that identifies specifically what ORDC will accept as normal and extraordinary without getting into too much detail is the best way to handle this situation. Commissioner Jackson reiterated the need for the deductions to be specifically identified.

Commissioner Gibson added we need to think ahead of where we are today. There will be new technologies and new ways of addressing issues of environmental impacts such as run-off and emissions. She indicated as a state we need to be very aware of these concerns.

Commissioner Jackson stated we have moved from preservation of a railroad to the economic development of a railroad.

Nikos Kaplanov inquired what the benefit is of granting a credit to the operator rather than setting up a fund where monies could be used for other projects along the line. Director Dietrich responded by indicating staff explored that option but determined allowing for the credit would be the most beneficial to both parties as the focus is on the partnership between the state and the operator in order to maintain a viable rail line. He reported the likelihood of capital intensive repairs being necessary at some point during the lease is great and the chance that the new account could be swept of its funds and the dollars unavailable to assist with any repairs is too risky.

Discussion regarding “director discretion” (of the credits) being added to the agreement also took place. Commissioners Jackson and Gibson reported they were both okay with that language being included. The same procedures ORDC follows for other projects will apply.

Additional discussion regarding the creation of headings (categories) to the agreement, as Commissioner Jackson had previously mentioned, took place. The categories suggested are as follows: Industrial Development, Extraordinary Capital Expenditures, Safety and Innovation. ORDC staff will meet and try to import the suggestions for approval by the committee at the next meeting.

Chairman McOwen requested Commissioner Jackson work with staff to be sure he is comfortable with what is being added to the language. Commissioner Jackson agreed.

Commissioner Jackson also suggested that a discussion take place eventually on the possibility of adding real estate and equipment to the language.

Next Steps

Megan McClory will report on the status of the appraisal of the Panhandle Line based upon the result of the State Controlling Board meeting scheduled for May 5, 2008.

Director Dietrich stated stakeholders will need to bring justification of the benefits of non-freight activities on freight corridors to any effort to change state liability laws. One question the industry needs to answer is whether they will help fund a study to document those benefits.

Stu Nicholson, ORDC’s Public Information Officer, will organize another liability task force meeting prior to the next Panhandle Committee meeting and will report on its events. Chairman McOwen requested Stu contact ORTA to ensure their participation. Mr. Nicholson said he would.

Director Dietrich suggested revisiting passenger/excursion/commuter service in future meetings.

Next Meeting

The next meeting of the Panhandle Committee will take place on Wednesday, May 28, 2008 beginning at 11:00 a.m. at the offices of the Ohio Rail Development Commission.

Adjournment

Chairman McOwen called the meeting adjourned at 1:25 p.m.