



SEDA-COG JOINT RAIL AUTHORITY MEETING
WEDNESDAY, AUGUST 11, 2010
SEDA-COG, LEWISBURG, PA
12:30 P.M.

**PRESERVING
RAIL FREIGHT
SERVICE**

serving the counties of

Centre

Clinton

Columbia

Lycoming

Mifflin

Montour

Northumberland

Union

**SEDA-COG JOINT
RAIL AUTHORITY**

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Affiliated with
SEDA Council of Governments

AUTHORITY MEMBERS PRESENT

Frank Dombroski, Montour County
John Gummo, Clinton County
Scott Harvey, Lycoming County
Mike Hawbaker, Centre County (via speaker phone)
Bud Henry, Columbia County
Tom Herman, Montour County
Rick Jenkins, Columbia County
Don Kramer, Clinton County
Dennis Reitz, Northumberland County
Dennis Shaffer, Union County
John Showers, Union County
John Spychalski, Ph.D., Centre County
Jerry Walls, Lycoming County

GUESTS PRESENT

Tom Avery, Railroad Operating Companies
Allen Bubb, NRHS
Randy Herring, CPA, Herring & Roll, PC
Todd Hunter, Railroad Operating Companies
Bill Kelly, Lycoming County Planning
Leroy Kline, Delta Development
Shawn Lorson, Jersey Shore Borough
John Mizerak, Delta Development
Mike Musto, Jersey Shore State Bank
Don Purcell, Norfolk Southern – Retired
Dick Robey, Railroad Operating Companies
Mimi Robey, Railroad Operating Companies
Gary Shields, Railroad Operating Companies
Pete Simcox, Railroad Operating Companies
Diana Williams, Railroad Operating Companies
Christine Witmer, Herring & Roll

STAFF PRESENT

Tom Schrack, Esq., McQuaide Blasko Law Offices
Kay Aikey
George Fury
Steve Kusheloff
Tina Showers
Jeff Stover

CALL TO ORDER

Call to Order

Chairman Walls called the meeting to order at 12:30 p.m.

Pledge of Allegiance

Chairman Walls led the Pledge of Allegiance.

ADMINISTRATIVE ITEMS

Chairman Walls called for the introduction of board members and guests present.

Public Forum

Mr. Bubb has seen trains coming into the Northumberland Yard and it is not unusual to see a 160 car train coming in.

Approval of the July 14, 2010, Meeting Minutes of the SEDA-COG Joint Rail Authority

Mr. Henry made a motion to approve the July 14, 2010 meeting minutes of the SEDA-COG Joint Rail Authority; Mr. Jenkins seconded the motion.

Dr. Spychalski asked that he would like the following addition be made to the July 14, 2010 meeting minutes under the Operator's Audit, page 3 of the minutes as follows:

Dr. Spychalski called attention to Note 10 on page 5 of the Operator's Audit. It is stated in the Note that income of \$725,000 from assignment of the tax credit for the year ended December 31, 2009 is included in Other Income in the Combined Statements of Income and Retained Earnings on page 3 of the Annual Report. However, the amount shown on the Other Income line for Year 2009 on page 3 is \$574,898. Dr. Spychalski asked Mr. Bowers to explain why the total amount on the Other Income line is \$150,102 less than the \$725,000 tax credit assignment stated in Note 10. Next, Dr. Spychalski asked Mr. Bowers for information on the components of the amount of \$2,291,858 that is reported for Year 2009 on the General and Administrative Expenses line of the Income and Retained Earnings Statement, page 3 of the Audit Report.

Mr. Bowers responded with an explanation of the \$150,102 difference between the amount of tax credit assignment reported in Note 10 and the amount reported in the Income and Retained Earnings Statement. However, Mr. Bowers did not have detailed information at hand on the components of the \$2,291,858 General and Administrative Expenses entry on the Income and Retained Earnings Statement.

Mr. Shaffer stated he has some corrections and additions to the July 14, 2010 meeting minutes on page 3 as well. He stated he has four points that are important relating to Mr. Bowers' report:

1. *Mr. Bowers reported the Operator had a profit of \$900,000 for the operation of the railroad and \$725,000 for the sale of tax credits for the year 2009, total of \$1,625,000.*

2. *Mr. Shaffer stated that Mr. Bowers was asked who the tax credits were sold and Mr. Bowers refused to say who purchased the tax credits.*
3. *Mr. Bowers indicated that the Rail Authority's properties were assigned to this company for the purpose of selling the tax credits.*
4. *Mr. Bowers indicated that the company that purchased these tax credits obtained a beneficial interest in the Rail Authority's properties.*

Mr. Shaffer also referred to page 7 of the meeting minutes with regard to the motion approving the Settlement Addendum to the Operating Agreement and the Guaranty Agreement, and stated there was a vote taken and he specifically identified the reasons why he was voting against the addendum. They are:

1. *The Board was not provided with information as to what they were voting on or what the results of the vote would be.*
2. *Mr. Shaffer stated it was his opinion that he felt what was voted on and how it was voted on at the meeting violated the provisions of the Pennsylvania Municipal Authorities Act.*

Mr. Walls deferred the action to approve the July 14, 2001 JRA meeting minutes to the September JRA meeting so that all board members can see the addendums that are being proposed to the minutes.

Mr. Shaffer asked if there is a mailing list of people who receive the minutes in addition to the board members. Mr. Walls asked that staff provide a distribution list of who receives the meeting minutes. Mr. Shaffer asked if the minutes are mailed and put on the website after they are approved; Mr. Stover responded that the meeting minutes are put on the SEDA-COG Joint Rail Authority website and mailed out after they are approved and signed.

Treasurer's Report

Mr. Reitz presented the Treasurer's Report for the month of July 2010.

Mr. Herman made a motion to approve the Treasurer's Report for the month of July 2010; Mr. Gummo seconded the motion; motion carried with Mr. Hawbaker abstaining.

Audit Presentation

Mr. Herring presented the SEDA-COG Joint Rail Authority's 2009 Audit.

Mr. Shaffer asked if the depreciation is on rail properties the Authority owns. Mr. Herring stated that a value was attributed to those properties. Mr. Shaffer then asked if the Authority actually paid for those properties or just assigned a value to them. Mr. Herring replied that these were the costs that were actually paid for the properties over the years and is a cumulative total. Mr. Herring stated that the total investment in capital assets by the Authority since day one is \$49 million. Mr. Shaffer asked if the \$43,670,314 included grants or did the Authority lay down money for this amount of depreciation and if it is an accounting value assigned. Mr. Herring responded that in prior years the Authority acquired \$49 million of assets through purchase and a lot of those dollars were funded with grant money but the grant money would be recorded as non operating income coming into the Authority and as the assets were purchased, which would include rail line improvements. There was \$49 million expended and capitalized as assets of the Authority.

Mr. Shaffer then stated for the most part the depreciation line is not really cash; Mr. Herring responded it is a non-cash item.

Mr. Herring commented that historically the Authority has not kept a detailed property inventory record; it relied on the accounting firm to track those asset additions. It is suggested that the Authority maintain their own inventory records. As part of the audit process, a reconciliation of the operator revenues paid to the Authority versus the operator statement and there was some in material discrepancies between the operator's statement and what was reported. Mr. Herring stated that these dollars have been reconciled with the operator. The suggestion is that management do the same type reconciliation on a quarterly basis so there is no type of disparity at the end of the year between the dollars actually being received by the Rail Authority versus what is actually being received and recorded by the operator. These comments are listed in the Management Letter that the Authority will be receiving. *(This letter was provided to board members at the meeting.)*

Mr. Walls asked board members to review the 2009 Audit and direct any questions to the Executive Director before the September meeting. Mr. Walls asked that the Executive Director have a response to each of the management letter recommendations for the next meeting.

Mr. Shaffer asked if operating property and non-operating property are accounted for separately.

Legal Issues

Attorney Schrack stated that there are a few agreements related to property matters and there is an issue related to property acquisition which will be discussed in Executive Session.

Attorney Schrack stated an agreement has been reached regarding the petition to the STB.

Events Calendar/Projects Map/Staff Report

Mr. Stover presented the events calendar for August and September, and Projects Status. He reported that North Shore Railroad has offered to host the October 13, 2010 meeting.

Operator's Status Report and Business Forecast

Mr. Shields reported that one of W. E. Yoder's employees had an injury while working on the Street Running Track in Lewistown. This is a reportable injury but not a reportable injury to the FRA because it is an outside contractor working on JVRR property.

Mr. Shields referred to the Operator's Report included in the packet.

OLD BUSINESS

TIGER II Application

Mr. Kline, President of Delta Development Group, provided an overview to board members of the TIGER II application and stated they are 12 days from submitting the application. Mr. Kline said he is pleased to report that an application will be submitted with 130 letters of support for the project. The letters of support include townships where rails are located, county, state representatives, state senators, congressmen, and U.S. senators. What is being shown for each piece of the track is the political

affiliation for each and a letter of support specific to that group. It is important to show the business or practical aspects of the operation so there will be letters of support from people who utilize or who will be utilizing the rail. Delta has met personally with all the state representatives and state senators and provided comprehensive briefings. Approximately 2,200 applications were submitted with the pre-application process so there will be competition for the dollars and the first comment made in response to the pre-application is the ability to demonstrate the local match required for the project opportunity. With this application there is approximately 35% local share funding, making this application competitive as well as having the documentation required.

Dr. Spsychalski made a motion to approve submitting the TIGER II application; Mr. Herman seconded the motion.

Mr. Shaffer asked what commitment the JRA would be making by doing this.

Mr. Stover explained the funding strategy and reviewed the PA Capital Budget and TIGER II handout and the Loan Summary and Proposed Financing for TIGER. Mr. Stover stated staff is seeking JRA approval to request the release of \$3,855,000 million from the Rail Capital Budget. The releases are from the following existing line items: SEEDCO, Baker Runaround and Newberry Intermodal Facility.

The motion was revised as follows:

Dr. Spsychalski made a motion to approve submitting the TIGER II application with the understanding that should the federal funding not materialize, the Rail Authority is not obligated to do the projects and with the understanding that if federal funding materializes but at a smaller number than requested, that the Rail Authority will have the prerogative to determine which projects can be afforded and undertaken; Mr. Herman seconded the motion; motion carried with Mr. Hawbaker abstaining.

Dr. Spsychalski made a motion for the Rail Authority to allow submission of the PA Capital Budget application by August 13, 2010, and that the Rail Authority would commit to the local share of \$1.65 million; Mr. Reitz seconded the motion; motion carried with Mr. Hawbaker abstaining.

Newberry South Pocket Track Bids (LVRR)

Mr. Fury stated there is \$307,000 available from the PennDOT Capital Budget grant agreement for the Newberry Bulk Transfer project. With match added back in the total project cost would total \$439,000. Using a portion of those dollars Newberry tenant Marcellus Energy Services is seeking an additional 900 feet long track for their sand cars. Marcellus Energy will pay the 30% local share. A prebid meeting will be held on August 12 with Mr. Jannotti with bids due on August 24.

Mr. Kramer made a motion that if acceptable to Mr. Jannotti and Attorney Schrack that the Authority award bids to the lowest acceptable bidder with final ratification at the September JRA meeting; Mr. Henry seconded the motion; motion carried.

Koppers Easement Agreement (LVRR)

Mr. Stover stated that this is the agreement between the Rail Authority and Koppers which will allow for the Rail Authority's operator to run the trains over the tracks owned by Koppers to get access to the 55-acre site now owned by Halliburton. The attorney for Koppers (Ed Mitchell) and Attorney Schrack have prepared a final draft of the track easement. The agreement calls for the JRA to be responsible for upgrades and maintenance of tracks used for this purpose.

Mr. Harvey made a motion that the Rail Authority approve the Koppers easement agreement; Mr. Kramer seconded the motion; motion carried.

Mr. Harvey asked what happens if the property changes hands. Attorney Schrack replied that the easement is binding on all successors.

COMMITTEE REPORTS

Property Management Committee

Pine Creek Rail Extension

Mr. Kramer reported that Attorney Schrack has drafted the easement for JRA land requested by the Borough of Jersey Shore to link Pine Creek Trail with the downtown area and river. The cost of the easement is \$1.00. The easement is to the borough or its assignees and will revert to the JRA if the intended use of the property changes.

Mr. Herman made a motion that the Rail Authority approve the Borough of Jersey Shore trail easement and execution by the Chairman and Secretary; Mr. Harvey seconded the motion; motion carried.

Nittany Oil Sublease (LVRR)

Mr. Kramer reported that this item was tabled until the September meeting.

Mr. Fury stated that Nittany Oil has submitted a written request to sublease to Reagent Chemical. They will be providing the Authority with site plans and are currently going through the permit process through DEP. This is approximately a 300 car a year business. The lease would be increasing by \$300/month. No action will be taken until September once all the site plans and amendment to the lease have been reviewed.

Norfolk Southern Agreement (SVRR)

Mr. Fury reported that Norfolk Southern has approached staff regarding a fiber optic cooperation agreement for a transverse occupation of the railroad just east of Haas Avenue in Sunbury at the dike wall. Norfolk Southern will pay the JRA \$7,000 over two years for the agreement.

Mr. Showers made a motion for the Rail Authority to approve the Norfolk Southern Agreement and execution by the Chairman and Secretary; Mr. Kramer seconded the motion; motion carried.

James Wood Property Acquisition (LVRR)

Mr. Walls called for an Executive Session at 2:35 p.m.

The regular meeting reconvened at 3:05 p.m.

Mr. Walls stated the purpose of the Executive Session was to discuss a potential property acquisition that involves some private matters at the request of the property owner.

Attorney Schrack stated there is also a license agreement that is going to allow the Authority to access the property through an agreement of sale to be executed to do some pre-closing site work. There will be a lease agreement be in connection with the approval of the agreement of sale to allow the current tenant on the property to remain another year and have the option to lease a portion of the property for up to an additional three years. That tenant would be paying rent of \$1,000/month.

Mr. Harvey made a motion to approve the recommendation of the Property Management Committee to authorize an agreement of sale to purchase the James Wood property at Lycoming Creek Road in Williamsport; Mr. Jenkins seconded the motion; motion carried.

Commerce Park Drive Fencing (LVRR)

Mr. Fury stated there is a rail dock along the LVRR at Commerce Park Drive. The JRA previously coordinated with Lycoming County to route the county's bike and pedestrian path along the southern border of JRA's property at this location. The proximity of the trail is not a problem except for parking. Trail users have begun to clog the truck turning area for the loading dock. Lycoming County had their engineers design a first-class barrier and gate arrangement that would be kept locked except when a railroad customer needed access. This would prohibit trail users parking on JRA property. Cost for this barrier is \$30,000 with a 20% local share of \$6,000. Lycoming County is willing to pay for half of the local share and asked the JRA to split it with them. Loysock Township has also been approached and it appears likely they will cost share. If they contribute then the shares for all three partners is \$2,000.

Mr. Showers made a motion that the Rail Authority approve up to \$3,000 participation to have this fence installed at Commerce Park dock area; Mr. Dombroski seconded the motion; motion carried.

Passenger Excursion Committee

Mr. Gummo reported that a second meeting of the Passenger Excursion Committee was held on July 21, 2010. The primary groups involved are Montour, Columbia, Lycoming/Williamsport, and Bellefonte Historical Society. Mr. Gummo stated there are several different options the committee is looking at and one of those is the Hawbaker offer of providing locomotive power.

Mr. Walls called for an Executive Session at 3:20 p.m.

The regular meeting reconvened at 3:46 p.m.

The purpose of the Executive Session was a contract and potential leasing issue.

Mr. Gummo made a motion to authorize the Executive Director working with the Passenger Excursion Committee to negotiate an agreement with the appropriate parties to resume passenger excursions for this Christmas season and such other opportunities for excursion services as may be practical, and to authorize the Executive Director to arrange for inspection of any rail cars used; Mr. Herman seconded the motion; motion carried.

Operating Agreement Committee

Mr. Stover stated that Attorney Wilson's letter of July 28, 2010 related to the STB filing is included in the meeting packet as well as the letter from Attorney Keith O'Brien.

At the request of a board member Mr. Walls called for an Executive Session at 3:50 p.m. to discuss a personnel matter.

Mr. Walls reconvened the regular Board meeting at 4:10 p.m.

ADJOURNMENT

Mr. Walls adjourned the meeting at 4:11 p.m.

Respectfully submitted,



Jeffery K. Stover, Executive Director

I hereby certify these minutes were approved by the SEDA-COG Joint Rail Authority Board of Directors on September 8, 2010.



Secretary/Assistant Secretary