



SEDA-COG JOINT RAIL AUTHORITY MEETING  
WEDNESDAY, JUNE 10, 2009  
LAUREL RUN FARM, BEECH CREEK, PENNSYLVANIA  
12:30 P.M.

**PRESERVING  
RAIL FREIGHT  
SERVICE**

*serving the counties of*

Centre

Clinton

Columbia

Lycoming

Mifflin

Montour

Northumberland

Union

**AUTHORITY MEMBERS PRESENT**

John Gummo, Clinton County  
Mike Hawbaker, Centre County  
Scott Harvey, Lycoming County  
Bud Henry, Columbia County  
Tom Herman, Montour County  
Rick Jenkins, Columbia County  
Don Kramer, Clinton County  
Michael Krentzman, Mifflin County  
Mike Redin, Centre County  
Dennis Reitz, Northumberland County  
John Showers, Union County  
Dennis Shaffer, Union County  
Jerry Walls, Lycoming County

**GUESTS PRESENT**

Al Bubb, NRHS  
Mark Murawski, Lycoming County  
Russ Nicodemus, Railroad Operating Companies  
Dick Robey, Railroad Operating Companies  
Mimi Robey, Railroad Operating Companies  
Gary Shields, Railroad Operating Companies  
Bud Webb, Clinton County  
Diana Williams, Railroad Operating Companies

**STAFF PRESENT**

Steve Hurvitz, Esq., McQuaide Blasko  
Kay Aikey  
George Fury  
Jeff Stover

**ADMINISTRATIVE ITEMS**

**Call to Order**

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

**Pledge of Allegiance**

Mr. Walls led the Pledge of Allegiance.

**SEDA-COG JOINT  
RAIL AUTHORITY**

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Affiliated with  
SEDA Council of Governments

Mr. Stover presented Mr. Webb with a framed photograph as a token of appreciation for his many years of serving on the SEDA-COG Joint Rail Authority Board. Mr. Webb was a long standing member from 1986-2008.

#### **Approval of the May 13, 2009, Meeting Minutes of the SEDA-COG Joint Rail Authority**

*Mr. Henry made a motion to approve the May 13, 2009 meeting minutes of the SEDA-COG Joint Rail Authority; Mr. Herman seconded the motion; motion carried.*

#### **Treasurer's Report**

Mr. Reitz presented the Treasurer's Report for the month of May 2009.

*Mr. Harvey made a motion to approve the Treasurer's Report for the month of May 2009; Mr. Kramer seconded the motion; motion carried.*

#### **Legal Issues**

Attorney Hurvitz stated there are no legal issues other than the Memorandum of Understanding with the City of Williamsport regarding the Kennedy-King project which will be discussed later in the agenda.

#### **Special Counsel**

Mr. Stover stated that he and Mr. Walls will be having conference calls with two separate attorneys from Harrisburg on Thursday, June 11 with the results of the calls reported at the July meeting.

#### **Events Calendar/Projects Map/Staff Report**

Mr. Stover presented the events calendar for June and July, the projects map, and staff report.

#### **Operator's Status Report and Business Forecast**

Mr. Robey referred to the Operator's Report included in the packet. Mr. Shields presented a business forecast, with business levels thus far in 2009 showing an approximate 12% decline.

Mr. Robey stated the G.W. Peoples Company, which is the company doing the railroad's tie program, has started work. Ties have been distributed and G.W. Peoples has submitted a production schedule that indicates the work will be completed around Labor Day. The quantity of ties being installed is in excess of 10,000.

Members entered into brief discussion regarding the possible use of the NBER in the 20<sup>th</sup> Century Fox movie, "Unstoppable".

#### **PROPERTY MANAGEMENT COMMITTEE**

Mr. Redin stated the Property Management Committee met and there are a number of items requiring action from the full board.

### Aqua Pennsylvania Easement (SVRR)

Mr. Fury reported that Aqua Pennsylvania, Inc. has requested a permanent easement along the Shamokin Valley Railroad for the installation of a new 12" water main between Paxinos and Tharptown. Total cost of the easement is \$6,700.

***Mr. Redin made a motion for the full board to accept the request for an easement for Aqua Pennsylvania, Inc. and execution by the Chairman and Secretary; Mr. Kramer seconded the motion; motion carried.***

### Verizon Pennsylvania, Inc. (LVRR)

Mr. Redin reported that Verizon Pennsylvania has submitted a right-of-way agreement for the installation of new phone lines into Newberry South to service the Bulkmatic facility.

***Mr. Redin made a motion for the full board to approve the Verizon Pennsylvania, Inc. request for a right-of-way agreement for phone service line to the Newberry Yard and authorize the Chairman and Secretary to execute the agreement; Mr. Herman seconded the motion; motion carried.***

### JRA Fee Schedule

Mr. Redin stated that staff has provided a proposal to amend the rate schedule for utility occupations for Rail Authority property. The rates have not been adjusted since 2003. Staff has done some investigation as to what may be more appropriate as well as inquiries to Blue Mountain & Reading Railroad as to what their rates are. Included in the proposal are the base fees, which would ratchet up but never down each year with movements in the consumer price index. Existing agreement fees currently are subject to annual CPI adjustments; however the base rates for each type of crossing occupation are based on the old 2003 rate schedule. The proposed new fee schedule will change the base rate yearly in accordance with the consumer price index.

***Mr. Henry made a motion for the full board to approve the revised fee schedule with full implementation of the new rates on July 1, 2009; Mr. Kramer seconded the motion.***

Mr. Harvey referred to the first paragraph in the fee schedule that states the Authority reserves the right to make case specific modifications in certain instances at its own discretion.

Mr. Shaffer stated his concern was if as a municipal authority the fee schedule is approved can someone say they are entitled to it even if the authority wants to do something different.

Attorney Hurvitz responded there is no requirement to have uniformity of rates and the Authority can do it on a case by case basis.

Mr. Walls stated the point is that case specific exceptions can be reviewed as a case specific matter.

Mr. Fury said any other facility not covered by this schedule will be subject to case specific consideration on an individual basis.

Mr. Walls stated the records should show that the Authority will review the fee schedule on an annual basis.

With there being no further discussion on the fee schedule the motion carried.

**Request for a Track Inspection Variance for the Year 2009**

Mr. Redin stated Mr. Jannotti requested a track inspection variance for the year 2009.

Mr. Stover stated the reason for the track inspection variance is that staff and Mr. Jannotti have been discussing that the spring inspection for 2009 would be less comprehensive than the fall inspection. Mr. Stover further stated that Mr. Simcox and the operator are in support of this. Staff is asking for approval from the full board to not do the spring 09 inspection and that a comprehensive fall track inspection under the M/W program would be done.

Mr. Shields stated the Operating Agreement requires two track inspections a year so the agreement would have to be changed to reflect this request. The operator supports the request to go to one track inspection for 2009 and that a thorough and comprehensive fall inspection be done with quantifiable data.

Mr. Walls stated he is not sure that it takes a change to the Operating Agreement and asked Attorney Hurvitz if there is mutual agreement the agreement could stand as is. Attorney Hurvitz replied that the spring inspection can be waived.

Mr. Walls asked Mr. Robey and Mr. Shields if they concur in waiving the spring 2009 track inspection. Mr. Shields replied that a thorough inspection would need to be done in the fall to make sure there is compliance with the Operating Agreement.

Mr. Shaffer asked if it would be more appropriate to give staff the authorization to waive or modify as they see appropriate.

Mr. Walls said he would disagree with this as it is a board matter because it is a contractual matter.

***Mr. Herman made a motion to waive the spring 2009 track inspection; Mr. Reitz seconded the motion and added with concurrence of the operator; motion carried.***

**OLD BUSINESS**

**Kennedy-King Project (LVRR)**

Mr. Stover stated that a fully executed DCED grant agreement in the amount of \$1 million has been received.

Attorney Schrack has prepared a Memorandum of Understanding which has been forward to the City of Williamsport which references a subgrant of \$250,000 for the City to do the clearing of the Kennedy-King site.

Mr. Walls stated there is a lot to the demolition of the structures and does not want the Authority to get involved with it other than the passing through of grant funds. Mr. Walls and Mr. Stover will attend a city council finance committee meeting and Mr. Walls will be at the regular city council meeting on behalf of the Authority when this is acted upon on behalf of the Authority. There is also an engineer's coordination meeting set for June 17.

Mr. Walls asked Attorney Hurvitz if an MOU is an adequate instrument to use between the Rail Authority and the City.

Attorney Hurvitz responded that an MOU is equivalent to a contract and sets forth the terms of the agreement understanding.

Mr. Stover said the intent is to have the MOU in final form for the July meeting.

### **Retaining Wall Bids Reconsideration (NBER and SVRR)**

Mr. Fury reviewed the retaining wall bids:

Tyrone Wall Project: Phase 1 of the project is more of a safety issue as there are a lot of trees at the top of the wall that the City has expressed concern to Mr. Conrad. Phase 1 is to cut all the trees on the railroad embankment up to the track starting at the 10<sup>th</sup> Street Bridge all the way around the curve to the end of the property line. The top layer of the current wall will be removed and then the slope of the fill will be graded back, stabilizing the embankment. Once that is done, phase 2 can begin and will consist of constructing a wall with two rows of gabions about 3 feet in height.

Mr. Walls asked if the removal of the top layer of the wall will affect the stability of it. Mr. Fury responded no and this is the reason the embankment is being graded back.

Bellefonte Mill Race Wall Project: The winning bid for this project was for the placement of gabion baskets after the collapsed wall is removed. The subbase material unit price total is \$1,200.00 to replace the material if the railroad embankment would collapse. The low bid for this project is \$20,871.00 for removal of the rock wall out of the Mill Race plus what is left standing and then replacing it with gabion baskets.

Shamokin Valley Railroad, Mile Post 1.2 Wall Construction: The \$20,004.90 cost includes the contractor providing all materials to do the job. Otherwise the Authority would have to supply rail and timber tie for the walls. At this location the embankment has eroded over a period of time.

Mr. Stover stated all three projects were discussed with the operator. Certain items are capital and certain items are maintenance. With the Tyrone Retaining Wall Project, the operator stated he would be willing to do the tree removal in the 2010 M/W program. The problem is the tree removal and excavation must occur prior to the start of Phase 2.

Regarding the Bellefonte Mill Race Wall repairs, Mr. Stover stated this is an existing wall that has been there since day one that has deteriorated over time. Staff thinks this is more of a maintenance item rather than capital one.

Regarding the Shamokin Valley Railroad project, staff agrees this is a Rail Authority responsibility as there is nothing there now. This would be a capital improvement because it is an embankment that would be stabilized with the tie wall and would be a prudent thing to do.

Mr. Walls asked the operator what he would be willing to do to help with approaching this project.

Mr. Robey reiterated the operator is obligated and intends to fulfill the contract with the Rail Authority to maintain the property. One of the problems with this particular situation is the Authority staff came up the separate projects, put them out for bid, received bids, and got them all to the point of having the Authority board approve them and then says they think the operator should do this and should be contributing that much. It becomes a problem for the operator as there is an accepted process for how to do the M/W program. This is outside of the normal process being done. Mr. Robey further stated the proper process is to put it into the annual maintenance program.

Mr. Stover stated the Borough of Tyrone expressed the problem with the embankment; the one in Bellefonte was brought to staff's attention by the borough and has been a deteriorating situation. The other option is to reject all the bids and discuss it in the 2010 M/W program.

Mr. Walls asked as to the urgency project by project. Mr. Fury replied it would be the Bellefonte project. When this project was formulated it was done as a JRA project and there was no intention to have the operator involved. A question was raised at the last JRA meeting as to if the operator should be asked to participate. Mr. Fury stated he is of the opinion that it is a JRA project and the JRA should pay for it and is not fair to throw it on the operator and expect him to comply. This project needs to be done because this branch carries the Hawbaker trains and if the track fails, all train movements will cease for some time.

Mr. Fury stated the Authority would never see bid prices like this again.

Mr. Shaffer asked what the grand total is of the projects. Mr. Fury replied about \$70,000.

Mr. Walls stated if there were to be participation by the operator for what is determined to be a maintenance item, what is the optimum dollar value that it would represent?

Mr. Herman stated it should be recommended that staff should move forward with the one project and iron out the rest later. Mr. Herman stated his opinion is to move ahead with the Bellefonte Mill Race Wall Repairs.

Mr. Redin stated it is clear in his mind that the operator should not be asked to participate in these projects as they are capital issues. The Authority should get moving on some of these projects and iron out the wrinkles later. It should be an arbitration process that the Authority and operator can agree upon.

Mr. Walls stated it should be face-to-face negotiations as reasonable people can come to a reasonable solution if there is a good working relationship. He is concerned about surrendering the decision making either from the operator or from the Authority to some outside arbitrator. Mr. Walls stated he supports what Mr. Herman suggested.

Mr. Reitz stated the wall in Bellefonte has a maintenance component. The Tyrone project is the same situation and has a maintenance component as well. This needs to be negotiated with the Authority, the staff and the operator.

Mr. Fury stated he just spoke to Mr. Robey and he has agreed to come up with a number that would be part of the railroad M/W project next year and would reimburse the Authority for the work they are doing this year.

*Mr. Herman made a motion for the full board to approve staff recommendation to award the Bellefonte Mill Race Wall project in the amount of \$20,871 to Schlegal Excavating plus the \$1,200 cost for subbase material and the operator has agreed that a portion of the Bellefonte project would be negotiated to be reimbursed in 2010 to the Rail Authority; Mr. Redin seconded the motion; motion carried.*

*Mr. Hawbaker made a motion for the full board to approve staff recommendation to move forward with projects #1 and #3, and the operator has agreed that a portion of the project would be negotiated to be reimbursed in 2010 to the Rail Authority; Mr. Showers seconded the motion; motion carried.*

#### Newberry South Bulk Transfer Facility Change Orders (LVRR)

Mr. Stover stated some additional change orders have come in. Larson Design Group has recommended approval of change order #1 with a net cost of \$32,442.00.

*Mr. Jenkins made a motion for the full board to approve the change orders with a net impact of \$32,442.00 and execution by the Chairman and Secretary; Mr. Reitz seconded the motion; motion carried with Mr. Hawbaker abstaining.*

#### **NEW BUSINESS**

Mr. Krentzman stated during the discussion of retention of special counsel, he wanted to bring to the attention of the Board, Attorney Hurvitz, and Mr. Walls that his sister-in-law is employed by the law firm of McNees Wallace & Nurick and he would like to be involved in the decision making and reviewing of who the Authority is looking for as special counsel. He further stated he can abstain from the votes due to the appearance of a conflict.

Attorney Hurvitz stated he didn't think Mr. Krentzman has an obligation to abstain because his sister-in-law is an associate at that law firm.

#### Public Forum

No comments from the public.

#### Work Session

Mr. Walls and Mr. Stover met with Mr. Robey and Mr. Shields and it is evident that there have been some honest disagreements and concerns on a variety of matters and there will always be differences of view on some things. It is important that the Authority work collaboratively and cooperatively at redefining the relationship with the operator. This has been conveyed to Mr. Robey and Mr. Shields and they are interested in this as well. This is not addressing the contract; it is about getting along and working collaboratively to do the mission of the Rail Authority as productively and collaboratively as possible. Mr. Walls stated he intends to find a way with the solicitor to have a face-to-face sit down with as many board members as are interested to just talk about issues and concerns with the intent to improve and redefine the working relationship. Mr. Walls asked Attorney Hurvitz how such a session would be possible.

Attorney Hurvitz stated it could be done as a work session.

Mr. Herman asked if the law has changed on the work session and does it have to be advertised.

Attorney Hurvitz replied that if it is truly a work session and no action comes out of it, there is no need to have a publicly advertised meeting.

A work session is scheduled for July 8, 2009 after the board meeting.

#### **ADJOURNMENT**

Mr. Walls adjourned the meeting at 2:20 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 July 8, 2009.

  
Secretary/Assistant Secretary