



SEDA-COG JOINT RAIL AUTHORITY MEETING  
WEDNESDAY, MARCH 11, 2009  
SEDA-COG, LEWISBURG, PENNSYLVANIA  
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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**AUTHORITY MEMBERS PRESENT**

John Gummo, Clinton 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  
Frank Sawicki, Northumberland County  
Dennis Shaffer, Union County  
Jim Spendiff, Mifflin County  
Jerry Walls, Lycoming County

**GUESTS PRESENT**

Al Bubb, NRHS  
Darlene Hartman, Property Owner, Mill Hall  
Paul Hartman, Property Owner, Mill Hall  
Mark Murawski, Lycoming County  
Jeff Pontius, Railroad Operating Companies  
Dick Robey, Railroad Operating Companies  
Mimi Robey, Rail Operating Companies  
Gary Shields, Railroad Operating Companies  
Diana Williams, Railroad Operating Companies  
Robert Yannaccone, West Shore Railroad

**STAFF PRESENT**

Steve Hurvitz, Esq., McQuaide Blasko  
Tom Schrack, Esq., McQuaide Blasko (via speaker phone)  
Kay Aikey  
George Fury  
Steve Kusheloff  
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.



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**Approval of the February 11, 2009, Meeting Minutes of the SEDA-COG Joint Rail Authority**

***Mr. Henry made a motion to approve the February 11, 2009, meeting minutes of the SEDA-COG Joint Rail Authority with noted corrections; Mr. Harvey seconded the motion; motion carried.***

**Approval of the February 25, 2009, Special Meeting Minutes of the SEDA-COG Joint Rail Authority**

***Mr. Henry made a motion to approve the February 25, 2009, special meeting minutes of the SEDA-COG Joint Rail Authority; Mr. Jenkins seconded the motion; motion carried.***

Mr. Walls stated there is a minor correction to page 8 regarding the gas well drilling. This sentence needs to be revised to read "Mr. Walls added Lycoming County is expecting 250 or more wells to be drilled this year in Lycoming County alone."

Mr. Fury stated another correction is needed on page 8, third paragraph from the bottom, second sentence. The sentence should be changed to read "Bulkmatic" is providing transload and inventory management services not "he" is providing.

***Mr. Henry made a motion to accept the corrections to the February 25, 2009, special meeting minutes of the SEDA-COG Joint Rail Authority; Mr. Jenkins seconded the motion; motion carried.***

**Treasurer's Report**

Mr. Harvey presented the Treasurer's Report for the month of February 2009.

***Mr. Herman made a motion to approve the Treasurer's Report for the month of February 2009; Mr. Spendiff seconded the motion; motion carried.***

**Legal Issues**

Attorney Hurvitz stated his firm sent a letter to Mr. and Mrs. Hartman regarding a property dispute along the NBER Main near Mill Hall. The Hartmans were at the meeting and addressed the Authority regarding the letter they received.

Mr. Hartman stated one of his pressing concerns is he would like the Authority to produce the letter that he purportedly mailed to the JRA which was mentioned in the last minutes of the Authority.

The Hartman file had been loaned to the McQuaide Blasko law offices for copying of its contents. Attorney Hurvitz replied that a call has been put into his office to ask the secretary to locate the letter as the file is in the State College office.

Mr. Hartman stated he had another issue he wanted to address which was the way he was treated November 5, 2008, by some Nittany & Bald Eagle Railroad employees. The crew was at the site repairing a broken rail in one of the Hartman's two private crossings. Mr. Hartman wanted it to go on record that he would be willing to take a polygraph to verify his statements to the board.

Mr. Walls asked Mr. and Mrs. Hartman if in the future they have concerns, questions, or issues that it would be appropriate for them to speak to Mr. Stover as the Rail Authority is the owner of the tracks. Mr. Stover will then make sure responsible party takes care of the problem.

Mrs. Hartman stated the January 2009 meeting minutes referred to a letter being sent by them demanding clarification of the Authority's ownership. She added they did not send a letter, but would like to see the letter referred to in the meeting minutes.

Mr. Stover stated the Hartmans have two crossings because they own land on both sides. A normal private grade crossing agreement is written so that if the railroad has to do maintenance work in a crossing and tear it out, it is the responsibility of the land owner to replace it. The Rail Authority does not have such an agreement with the Hartmans because this crossing was a pre-existing crossing due to the fact the Hartman's own property on either side of the railroad.

Mr. Stover asked Mr. Robey to restore the crossing to its condition prior to the break in the rail.

Mr. Hartman stated he would have appreciated a call ahead of time that the crossing was going to be ripped out. Mr. Stover said it was an emergency repair since an NS coal train was waiting and a broken rail was discovered which could have caused a train derailment.

Attorney Hurvitz stated Mr. Hartman is correct as he did not send a letter; there is an error in the meeting minutes of January 14, 2009. Attorney Hurvitz suggested the Board make a modification to those minutes. Attorney Hurvitz stated based upon the Authority's understanding, Mr. Hartman had requested clarification of ownership and that was the reason the Authority requested a letter be sent to him. The letter sent to Mr. Hartman had to do with the incident that took place at his property. Attorney Hurvitz apologized to Mr. and Mrs. Hartman for the error in the minutes.

Attorney Hurvitz read the section from the January 14, 2009 meeting minutes indicating Mr. Hartman had sent a letter. The minutes read "Attorney Hurvitz stated the only issue is the property dispute issue taking place in the Lock Haven area with Mr. Hartman who had sent a letter demanding clarification of the Authority's ownership of the portion of the property."

Attorney Hurvitz advised the Board that the minutes be revised to state "Attorney Hurvitz stated that the only issue is the property dispute taking place in the Lock Haven area with Mr. Hartman who sought clarification of the Authority's ownership of a portion of the property."

Mr. Walls stated what the board members heard is what Attorney Hurvitz had previously stated; therefore the minutes were not in error. The issue will be clarified via the record in the March 11, 2009 minutes. The minutes were not wrong; the minutes reflected what was said.

Mr. Stover stated there was a need to establish where the property lines were and Attorney Schrack performed detailed deed research to verify JRA ownership at that location.

Mr. Walls stated it will be important to carefully review the minutes of March 11, 2009 relative to this issue so the Authority establishes the facts as Attorney Hurvitz corrected it. Mr. Walls then stated the minutes from January 2009 should stand because that is what was heard at that time.

Mr. Walls asked Solicitor Hurvitz if that is correct procedure. Attorney Hurvitz stated he believes it is correct.

Mr. Hartman made a final comment regarding the letter he received regarding the property line situation and wanted it to go on the record that he totally disagrees with the letter, the map, the existing conditions, Pennsylvania law, and taking of his land.

Attorney Hurvitz stated this is a legal issue and not for the Authority to be making a decision on it.

Mr. Hartman asked this his comment be forwarded to Attorney Schrack and that he disagrees with his interpretation of ownership.

Mr. Walls stated the Authority appreciates Mr. and Mrs. Hartman coming forward and asking questions. Mr. Walls asked Mr. Hartman that if after a reasonable period of time this is not resolved he should get in touch with Mr. Stover. The Rail Authority as a public authority does not want aggravated property owners along the track.

Mr. Hartman replied the Authority will only hear from him when his personal property is degraded.

Mr. Stover stated he will contact the Nittany & Bald Eagle Railroad regarding their need to make repairs to the crossing.

Mr. Hartman stated that he had spent \$30,000 of his own money on the property. Mr. Herman asked Mr. Hartman what that money was spent on. Mr. Hartman replied that it was spent on his property.

Mr. Hartman thanked the Rail Authority and left the meeting with Mrs. Hartman.

Mr. Walls asked Attorney Hurvitz if there are any other legal issues and Attorney Hurvitz replied no other legal issues.

Mr. Sawicki asked if there is an inventory of all Authority crossings that are legal and agreements for those crossings. Mr. Stover replied there is a list of all crossings, but for some private crossing there are no agreements if it was part of the deed.

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

Mr. Stover presented the events calendar for March and April, the projects map, and the staff report.

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

Mr. Shields referred to the Operator's Report included in the packet and presented a business forecast.

A revised Operator's Report was provided to members due to changes in last year's monthly revenue and year-to-date total revenue for the JVRR and NBER.

Mr. Shaffer asked for clarification regarding number of carloads and revenue for the month for North Shore Railroad. Ms. Williams detailed some of the traffic and revenue data for the last two months. Mr. Robey stated when North Shore sold the Wellsboro and Corning Railroad, North Shore entered into an agreement with them to operate the railroad for the first quarter even though they owned it and there was a payment of \$85,000 which went into North Shore accounts.

Mr. Shields reported that a unit coal train is being loaded in Newberry. In addition, a contract with Modern Transportation has been finalized to set up a frac sand operation in Avis with property owned by Avis Realty. There are 35 carloads of sand already loaded in Northern Canada awaiting shipment to Modern Transportation.

Mr. Shields provided the following information regarding revenue and carloads:

Overall, North Shore is 9.8% down in revenue through March 9, 2009 and 11.5% down in carloads compared to last year. Nationally, short lines saw a decline of 21.08% for the same period.

Mr. Spendiff commented that revenue for January is down 25% vs. a year ago. He wondered why revenue would be down that much taking into account the extra \$85,000 and rail traffic being down only 10% through early March.

Mr. Robey explained January 2008 experienced accounting adjustments made when the accrual system was adopted. Mr. Walls stated the number of transactions which Mr. Shields reported is somewhat different than the financial differences that Mr. Spendiff was asking about. Ms. Williams explained the adjustments. Mr. Spendiff asked that a comparison of this information be included in future reports and that a written explanation of variances be included in the Operator's monthly financial report.

Mr. Walls asked Ms. Williams to provide a written supplement of the additional information she presented at the meeting.

At this time Attorney Schrack joined the meeting via speaker phone to discuss the Newberry South Bulk Transfer Facility.

### **Newberry South Bulk Transfer Facility**

Attorney Schrack reported on his conference call with Bulkmatic's attorneys regarding the lease situation.

Attorney Schrack stated the lessee is Railway Unloading Services LLC, a new start up company with no assets, which is a subsidiary of Bulkmatic Transport Company, Inc.

Attorney Schrack reported much of the discussions have related to making sure the Authority's lessor position is secured. This could be done with a guarantee from the parent company. Bulkmatic's attorney, Mr. Bill Lewis, is seeking to keep the parent company removed from the lease. Attorney Schrack explained to their attorney the Authority needs security in the form of a letter of credit or other surety for the rent obligations during the term of the lease.

Attorney Schrack further stated that another issue of concern for the lessee is the maintenance obligations. The way the lease is drafted states that the lessee would be responsible for paying for all maintenance to the four tracks for which they will have exclusive use. Their attorney wants the Authority to be responsible for paying for all maintenance to those tracks.

Regarding the maintenance obligations for the building, the lease is drafted so that the tenant is responsible for paying for all maintenance costs to upkeep the building. Attorney Lewis had stated he would prefer that the tenant not be obligated to pay for any structural damage. Attorney Schrack went on to say that the lessee is asking that the tenant only be responsible to pay for normal day-to-day upkeep and routine maintenance of the building, but not for structural damage or any significant damage to the building.

Attorney Schrack added there are a few other items that were more specific issue with timeframes in the lease and delivery of certain documents, but the above three items were the main issues that came up in the conversation.

Mr. Stover stated Bulkmatic has three or four lease agreements for tracks with the Rail Authority which is the standard agreement and the lease states that the tenant is responsible for maintenance of tracks.

Mr. Walls stated the following point:

1. A conference call needs to be held with the Property Manager, Executive Director, Attorney Schrack, Mr. Flaxmayer, his legal counsel and other people from his company to explain the provisions in the existing Authority-Bulkmatic leases.
2. The Rail Authority needs to determine what it will accept in terms of surety. There are other types of surety that could be used. Various options had been discussed and Attorney Hurvitz and he had approved the letter of credit concept.

The bank will need to accept the security as well.

Mr. Walls asked if the Rail Authority should consider something less than the 20 year life as the irrevocable letter of credit or should it be structured in some parts?

Attorney Hurvitz responded that the Authority is relying on this income to pay debt service and it becomes a question of what risk is the Authority willing to take. The risk is, if Bulkmatic defaults the Authority is holding a letter of credit paying some portion of the loan as opposed to the entire loan. It comes down to a business decision of the Authority as to what amount they would wish to be unsecured for, if any.

Attorney Hurvitz stated the lending institution is requiring that the Authority assign to them a lease with Bulkmatic not with a shell entity that was created and does not have any assets in it.

Mr. Walls stated the Authority needs to talk directly to Fred Flaxmayer who is the Bulkmatic CFO. Attorney Hurvitz stated that future discussions regarding this issue are appropriate for executive session.

At this time, Mr. Walls recessed the regular meeting and members entered into executive session at 1:40 p.m. for the purpose of discussing this issue.

The regular meeting reconvened at 2:05 p.m.

A special meeting was set for Friday, March 20, 2009 at 12:30 p.m. at SEDA-COG to further discuss the Newberry South Bulk Transfer Facility. Any board member not able to attend in person may participate by phone.

#### **PROPERTY MANAGEMENT COMMITTEE**

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

#### **Verizon Pennsylvania Inc. (SVRR)**

Mr. Redin reported Verizon Pennsylvania Inc. has requested a permanent easement along the Shamokin Valley Railroad at MP 13.72 just east of the Reading Turnpike Road grade crossing. This is for a fiber optic line aerial occupation spanning the railroad. This has been reviewed by staff and the Property Management Committee. The easement fees totaled \$7,000.

***Mr. Redin made a motion for the full board to accept the request for an easement for Verizon Pennsylvania Inc.; Mr. Henry seconded the motion; motion carried.***

### Derry Township Sanitary Sewer Authority (JVRR)

Mr. Redin reported Derry Township Sewer Authority has requested a permanent easement for portions of its Maitland Area Sanitary Sewer Extension. There are bores under the tracks and also some amount of linear easement requested for pipe. The total easement cost is in the amount of \$50,500 plus a \$200 application fee. The request has been reviewed by staff and the Property Management Committee.

***Mr. Redin made a motion for the full board to accept the request for an easement for Derry Township Sewer Authority upon receipt of the easement fee of \$50,700; Mr. Kramer seconded the motion; motion carried.***

### Suburban Lock Haven Water Authority (NBER)

Mr. Redin reported Suburban Lock Haven Water Authority has requested a permanent easement for portions of a waterline installation project between Castenea and Mill Hall. This is a multi component easement consisting of both bores and linear occupations. The fees for this easement total \$14,800. This easement has been fully reviewed by staff and the Property Management Committee.

***Mr. Redin made a motion for the full board to approve the easement for Suburban Lock Haven Water Authority upon receipt of the \$14,800 easement fee; Mr. Harvey seconded the motion; motion carried.***

### Pennsylvania American Water Company NSHR)

Mr. Redin stated this item has been tabled to the April meeting.

### PennDOT Agreements (LVRR)

Mr. Redin stated members may recall at last months' meeting there was a discussion relating to the Avis Branch of the LVRR where work was to be done. PennDOT fees were involved and as a matter of routine, the fees would go via the JRA by PennDOT to the operator. This was approved at last month's meeting, but since that time, there has been a change as a consequence of federal dollars necessitating a change of language in the document. The agreement signed last month is null and void.

***Mr. Redin made a motion for the full board to approve the "pass through" arrangement involving federal funds as well as state funds; Mr. Shaffer seconded the motion; motion carried.***

### Newberry North – Bulkmatic Frac Sand Unloading Site (LVRR)

Mr. Redin stated there is a situation that has come up at the Bulkmatic sand unloading site in the Newberry North Yard. The sand is handled via conveyors and the sand is then transported via the conveyor between rail cars and trucks. The drainage in the yard is presenting a problem as it always does in the spring. Bulkmatic was forced with shutting down their operation because of the amount of water and mud and trucks getting bogged down and inability to move the conveyor. As an emergency measure, Larson Design Group was contacted and they made a recommendation that involves putting down a geotextile and stone bed so the conveyor can be moved from point to point. The cost of doing this was \$34,865.00 and Bulkmatic has committed to pay half of the cost.

***Mr. Redin made a motion for the full board to approve the expenditure in the amount of \$17,432.50 for the emergency repairs to the Newberry North Bulkmatic frac sand site; Mr. Henry seconded the motion; motion carried.***

Mr. Walls added that the Property Management Committee had also discussed looking at the drainage situation and looking at a more complete fix of the drainage problem. This would be something in addition to what has already been done.

Mr. Shaffer stated that in terms of the income to the board, the JRA does lease the property to Bulkmatic and the expenditure of the money into Authority property should be more related to that. Mr. Walls stated the Authority would have a complete favorable cost ratio.

Mr. Gummo asked what the projected duration is of the fix. Mr. Fury replied it would be permanent along with the next phase which would include construction of a truck lane.

### **Newberry Yard Plan**

Mr. Redin stated the meeting that had been scheduled for March 9 was postponed. Mr. Redin would like to propose that several target meetings be scheduled to address specific issues in the Newberry Yard. A handout prepared by Mr. Redin of the Newberry Yard Plan was distributed to board members. Mr. Redin stated he will schedule these meetings and asked the operator to gather with his own staff and secure from them their list of needs and to prioritize the list. Mr. Redin would like to have this list by April's board meeting.

Mr. Walls referred to Mr. Redin's handout which outlines his suggested planning procedures. Part of the discussion at these meetings would be not only for needs but for opportunities.

Mr. Walls asked Mr. Fury to provide him with a CD of the Newberry Yard survey. Mr. Walls will provide these files to Lycoming County so that county property records might be corrected if the parcel boundaries are not consistent with those in the tax records.

### **OLD BUSINESS**

#### **Short Line Tax Credit**

Mr. Stover stated the Authority has worked with Attorney O'Brien on proposed tax credit language that would require a lessee railroad operator to secure the approval of a non-operating railroad owner in order to use the short line tax credits. The Authority previously sent a letter to its congressional delegation with this recommendation. An updated congressional letter prepared by Attorney O'Brien was provided to board members. The Northeast PA Regional Rail Authority is advocating the same position as the JRA.

***Mr. Redin made a motion to authorize the Executive Director to send a letter of support to the congressional delegation; Mr. Kramer seconded the motion; motion carried.***

Mr. Stover referred to a draft letter proposed to be sent to Mr. Robey related to tax credits. The Authority is asking the operator for the following:

1. By what mechanism did the shipper receive the "shipping credits"? Were those credits netted against the "Gross Freight Revenues?" This is important to determine whether the Authority received the appropriate operating fees.
2. Were the proceeds of the tax credit sale included in "Gross Freight Revenues" against which the operating fees were calculated?

3. How were the "shipping credits" and "tax credits" calculated and the net effect on the fees paid to the Authority for years 2007, 2008, and the projection for 2009?

***Mr. Jenkins made a motion to authorize the Executive Director to forward the letter regarding Short Line Tax Credits to Mr. Robey; Mr. Kramer seconded the motion; motion carried.***

Mr. Spendiff noted that Mr. Robey has answered this question in writing for the 2007 and 2008 tax credits as part of his annual report. Mr. Robey stated the tax credits did not affect the fees paid to the Authority.

Mr. Stover stated this issue is in the package going down to Washington in April with SEDA-COG board members and county commissioners.

### **Public Forum**

There was discussion regarding how the Board should deal with issues presented to it by a member of the public.

Mr. Walls suggested that a sign in register at the entry to the JRA meeting can be a way for someone who has a concern to note their reason for wanting to address the board. Staff can then check the register and speak to those guests and advise them at what point on the agenda the Authority will be discussing their concerns.

Mr. Spendiff stated the Board may want to allow a certain amount of time for those who wish to address the Board.

### **ADJOURNMENT**

Mr. Walls adjourned the meeting at 2:50 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 March 20, 2009.

  
\_\_\_\_\_  
Secretary/Assistant Secretary