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SEDA-COG JOINT RAIL AUTHORITY SPECIAL MEETING

Tuesday, June 29, 2021

Virtual Meeting Via Teleconference – 1:30 p.m.

AUTHORITY MEMBERS

Frank Dombroski, Montour County
Russ Graham, Centre County
John Gummo, Clinton County
Scott Harvey, Lycoming County
Lisa Hoover, Northumberland County
Rick Jenkins, Columbia County
Brent Jones, Clinton County
Michael Krentzman, Mifflin County
Dave Park, Columbia County
Rob Postal, Mifflin County
David Schultz, Lycoming County
John Showers, Union County
John Spychalski, Centre County
Jennifer Wakeman, Montour County
Eric Winslow, Union County

JRA OPERATOR

Jeb Stotter, President & CEO
Diana Williams, Treasurer/Controller

GUESTS

Tyler Glass, Reading, Blue Mountain & Northern Railroad
Mark Rosner, Carload Express
Ed Sigl, First National Bank

LEGAL COUNSEL

Tom Schrack, Esq., McQuaide Blasko

JRA CONSULTING PROFESSIONALS

Dan Mazur, Operating Agreement Consultant

Affiliated with
SEDA Council of Governments



SEDA-COG Joint Rail Authority serving the counties of

CENTRE • CLINTON • COLUMBIA • LYCOMING • MIFFLIN • MONTOUR • NORTHUMBERLAND • UNION

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JRA STAFF

Kay Aikey, Program Assistant

Kyle Postupack, Property & Maintenance of Way Manager

Jeff Stover, Executive Director

CALL TO ORDER

Call to Order

The Chairman called the meeting to order at 1:34 p.m.

Chairman Showers stated that the purpose of the JRA Special Meeting is to award a bid for Juniata Street Grade Crossing in Lewistown. There have also been some litigation developments, so there will also be an executive session.

Pledge of Allegiance

The Chairman led the Pledge of Allegiance.

Welcome – Chairman’s Statements

The Chairman stated that the use of audio or video recording devices at the public meeting is permitted. The Authority does not require pre-registration for recording purposes; however, any individual intending to record all or any part of the meeting must notify the Chairman or the Executive Director in advance of such recording. If the Authority recesses to Executive Session, no recording of that session shall be permitted.

Public Forum

The Chairman asked if there is any public comment to come before the Board. Mr. Rosner was recognized by the Chairman.

Mr. Rosner stated that Carload Express has been patient and respectful throughout the entire RFP, which is now in its 7th year. Carload’s position now is the same as Carload’s position in 2014. Carload Express remains ready, willing, and able to work with the JRA to provide industry leading freight services to support new and existing rail served customers, and to support economic development within the JRA’s service area. Carload Express responded to the JRA’s Request for Proposals in good faith, and in five years of grueling and expensive litigation there has not been a single allegation that Carload Express did anything improper.

When Carload Express asserted its belief that the 7-3 vote had passed, it was the JRA that sued Carload Express – not the other way around. Last October, the Supreme Court vindicated Carload's position and held that the July 8, 2015 vote had passed. SEDA-COG itself has recognized that the effort of that vote was to award the Operating Agreement to Carload Express. Specifically, the SEDA-COG press release issued after the Supreme Court's decision stated that "the Authority's July 2015 7-3 vote was a passing vote, which effectively awarded the new operating agreement to Carload Express, Inc." and "the Joint Rail Authority recognizes that the July 8, 2015 vote awarded the operating agreement to Carload Express."

Despite those statements recognizing the effect of the Supreme Court's ruling, the JRA has never moved to execute the Operating Agreement, and the JRA has now asserted a position of "neutrality" in regard to SURC's supposed counterclaim. That "neutrality" appears to take the form of the JRA choosing not to defend itself legally, declining to support its own Motion for Summary Judgment, and also declining to defend itself against SURC's counterclaim. That "neutrality" is a recent development. It was the JRA that sued Carload Express. It was the JRA that argued not only that its own vote failed, but that Carload Express was estopped from even responding in court. It was the JRA that moved for summary judgment against Carload Express and SURC. It was the JRA that appealed from the Commonwealth Court to the Supreme Court. It was the JRA that opposed Carload Express before three different courts. Those were clearly not neutral acts.

On the afternoon of June 25th, Carload Express sent the JRA a letter with a simple request. The letter did not ask the JRA to take a side in the litigation. Instead, it asked the JRA to agree to seek an immediate resolution of the issues raised by Carload Express regarding SURC's counterclaim. Mr. Rosner stated he is not sure how many of the JRA's members have seen the letter, but stated he was extremely disappointed to see that the JRA chose to ignore Carload Express's letter and immediately filed another statement of so called neutrality first thing the next morning (June 26th).

Mr. Rosner stated make no mistake, by claiming neutrality, the JRA has decided against a swift resolution to SURC's Counterclaim, in the most expeditious and cost-effective manner. There is no doubt that proceeding with a trial on SURC's Counterclaim will result in the JRA incurring substantial additional legal fees as well as significant lost revenues as the transition to a new operator is delayed once again. Legal fees and lost revenues that could be avoided by having the Commonwealth Court immediately address the issues raised by Carload Express, rather than wait until the conclusion of another potentially lengthy legal proceeding.

Again, this is not neutral. The JRA unambiguously moved for summary judgment against SURC. It has now conveniently changed its legal position to avoid the consequences of that summary judgment – namely the immediate execution of the operating agreement with Carload Express. Now the JRA refuses to even seek immediate resolution of the jurisdictional issue it created with its so-called neutrality. The only possible explanation is that the JRA is actively attempting to delay the execution of the Operating Agreement.

The JRA should be concerned that this could be interpreted as a breach of its ethical and fiduciary obligations. How can the JRA rationalize the continued loss of revenue and spending additional legal fees in an attempt to avoid executing an Operating Agreement to the proposer that was declared the winner by the Pennsylvania Supreme Court? A proposer that would generate millions in additional revenue for the JRA beyond the current operator. The JRA must end this sham of neutrality. The JRA must stop sticking its thumb on the scale under the farce of “neutrality.”

NEW BUSINESS

Bid Award for JVRR Juniata Street Grade Crossing

Mr. Stover stated that bids were opened on June 24th for the reconstruction of the Juniata Street grade crossing on the JVRR in the Borough of Lewistown. This is a 100 foot long grade crossing also noted as Route 22/522 in downtown Lewistown. This project is funded partially by the Section 130 program and \$200,000 is coming from Section 130.

The following bids were received:

CTW	\$309,928
CPS Railway	\$361,615
Kennedy Railroad	\$365,271
RCC of So. Jersey	\$388,000

Mr. Stover stated that Mr. Paul Jannotti has sent a letter indicating his recommendation for approving this award to the lowest bidder. Mr. Mark Schultz, Grade Crossing Liaison of PennDOT District 2-0 in Clearfield has also concurred on this award.

Mr. Stover stated that the JVRR has committed \$25,000 toward the local share of this project and the balance of the local share will be coming from the JRA.

Mr. Stover stated that PennDOT is doing a major repaving of this section of roadway.

Mr. Jenkins made a motion for the Board to award the JVRR Juniata Street Grade Crossing reconstruction project to CTW in the amount of \$309,928; Mr. Krentzman seconded the motion; motion carried.

Legal Issues

Attorney Schrack suggested the Board enter in executive session to discuss the ongoing RFP litigation. He stated he does not anticipate there will any action by the Board for public session.

Chairman Showers recessed the regular meeting at 1:47 p.m. to convene into executive session at 1:57 p.m.

Chairman Showers reconvened the regular meeting at 2:38 p.m.

Attorney Schrack stated that the JRA Board had an executive session for the purpose of discussing the ongoing RFP litigation with its solicitor. No action was taken, and no action is recommended to be taken at this time.

With there being no further business to come before the JRA Board, Chairman Showers adjourned the meeting at 2:39 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 14, 2021.



Secretary/Assistant Secretary