



SEDA-COG JOINT RAIL AUTHORITY SPECIAL MEETING  
FRIDAY, MARCH 20, 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

**AUTHORITY MEMBERS PRESENT**

Scott Harvey, Lycoming County (via speaker phone)  
Mike Hawbaker, Centre County (via speaker phone)  
Bud Henry, Columbia County  
Tom Herman, Montour County  
Rick Jenkins, Columbia County (via speaker phone)  
Don Kramer, Clinton County  
Michael Krentzman, Mifflin County (via speaker phone)  
Mike Redin, Centre County (via speaker phone)  
Dennis Reitz, Northumberland County  
Frank Sawicki, Northumberland County  
Dennis Shaffer, Union County  
John Showers, Union County  
Jim Spendiff, Mifflin County (via speaker phone)  
Jerry Walls, Lycoming County

**GUESTS PRESENT**

Al Bubb, NRHS  
Seth Keller, Staiman Recycling  
Dick Robey, Railroad Operating Companies  
Gary Shields, Railroad Operating Companies  
Stephen Thaler, Larson Design Group (via speaker phone)

**STAFF PRESENT**

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

**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 and confirmed that an official quorum existed with persons present and on the conference phone. Solicitor Hurvitz confirmed that to be the case.

Mr. Walls stated the purpose of the special meeting is to discuss the Newberry South Bulk Transfer Facility. Since the March 11, 2009 JRA minutes contained factual information relative to this subject it is appropriate to review those minutes.

**SEDA-COG JOINT  
RAIL AUTHORITY**

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Affiliated with  
SEDA Council of Governments

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

***Mr. Henry made a motion to approve the March 11, 2009, meeting minutes of the SEDA-COG Joint Rail Authority; Mr. Sawicki seconded the motion.***

Mr. Herman asked that the minutes include the fact that he had asked Mr. Hartman where he spent the \$30,000 as Mr. Hartman referred several times that he had spent \$30,000 of his own money on his property. Wording to be added to the minutes should read "Mr. Herman asked Mr. Hartman what that money was spent for. Mr. Hartman replied that the \$30,000 was spent on his property."

***Mr. Henry made a motion to accept the addition to the minutes as stated above; Mr. Sawicki seconded the motion; motion carried with Mr. Harvey, Mr. Hawbaker, Mr. Jenkins, Mr. Krentzman, and Mr. Spendiff voting via speaker phone.***

**OLD BUSINESS**

**Newberry South Bulk Transfer Facility (LVRR)**

Attorney Schrack reviewed the Lease Term Sheet which outlines the primary points of the lease.

Attorney Schrack said the primary issue discussed with Bulkmatic was the guaranty. That firm wants a subsidiary, Railway Unloading Services, to be the lessee without a guarantee from its parent. The guaranty issue was discussed between Mr. Musto of Jersey Shore Bank and Bulkmatic's counsel. The bank instructed the lessee that the guaranty was needed if this transaction was to move forward.

At this time Mr. Redin joined the meeting via speaker phone.

Attorney Schrack stated the guaranty had been signed by Bulkmatic Transport Company and delivered. The lease has been signed and delivered by the tenant, Railway Unloading Services.

Regarding "term of agreement," Attorney Schrack stated that initially it was proposed the rent could be adjusted on an annual basis. The lessee would not accept those terms. Therefore the lease does not have an escalation clause. Mr. Stover stated Bulkmatic objected to the escalation clause because they realized they were essentially paying to construct a building that will remain in the Authority's ownership at the end of the lease.

Regarding "building construction," Attorney Schrack stated there is a fairly elaborate part of the lease that describes how the building construction process will take place and at what point the tenant's obligation to take possession and begin paying rent will take place.

Attorney Schrack stated this is a triple net lease meaning the tenant is responsible for paying all taxes relating to the leased premises. The lessee is responsible for paying any utilities used on the leased premises.

Mr. Walls contacted the Chief Assessor for Lycoming County who helped staff to understand how the taxes would be calculated. The amount of the taxes will be approximately \$38,000 which includes city, county, and school district taxes. Bulkmatic is aware of what they will be paying for taxes.

Attorney Schrack stated the maintenance obligations of the tenant have been a point of contention. A reasonable compromise was reached with the tenant being required to perform all day-to-day maintenance and repairs to keep the leased premises in good order and safe condition. After the warranty period, the

tenant is only responsible for any repair to the building up to \$2,000 in the aggregate each year. The Authority is responsible for any repairs above the \$2,000 limit.

Attorney Schrack stated the guaranty is a separate agreement. The lessee did not want the guaranty to be part of the lease. The guaranty has been delivered to the Authority from Bulkmatic. The guaranty states that if the lessee defaults in payment of rent under the lease, then the Authority has the ability to seek the amount due from the parent company. Mr. Walls stated the guaranty is in hand with original signatures from the Bulkmatic CFO. This is subject to approval by the Authority and will have to be approved under separate item.

At this time the floor was opened for questions.

Mr. Shaffer asked if the lessee has exclusive use to the access road (Catawissa Avenue). Attorney Schrack stated they do not have exclusive use to that road. Mr. Walls stated Bulkmatic would be entitled to come in through the current access to the Newberry Yard during construction.

Mr. Shaffer asked if the Authority is covered with the contractor in regard to the date of October 15 as being the date for occupancy. Mr. Stover replied that the Authority will receive a bond after the bid award is given. Hepco cannot go to the bonding company until they have a bid award.

Mr. Herman stated before everything is signed, sealed and delivered, the Authority should have a guaranty that the work is going to be done properly. Mr. Walls stated in the bid specifications, the contractor was allotted a certain time frame to complete the construction. Mr. Stover replied the delay making the award has resulted in the completion date being moved back. Mr. Walls stated the bid specifications required all contractors to submit a bid bond. The contractors are already subject to a performance bond on what they stated as their bid.

Mr. Redin asked what the penalty would be to the contractor if the completion date is not met and how would the Authority be protected. Mr. Fury replied standard with railroad is \$1,000 a day after the "drop dead" date. Mr. Stover stated there is a penalty clause in the bid specs.

Mr. Walls asked Attorney Schrack if he is correct in saying that if the contractor is late in completion of the project, Bulkmatic is entitled to abatement of their rent, but the Authority would be protected by the bond.

Mr. Shaffer added if the work is not done by October 15, Bulkmatic does not have to go forward. Attorney Schrack stated that Bulkmatic only has the right to abate rent beginning on October 15. Mr. Walls stated Bulkmatic would have the right to terminate the lease 60 days after October 15 if the work is not completed.

Mr. Redin asked for clarification of the rent payments to the Authority. Attorney Schrack stated the lessee has the option to begin paying rent on an annual basis beginning in January 2010, but as soon as the lessee takes possession and substantial completion has occurred, they begin paying monthly payments of rent during 2009.

Mr. Shaffer stated the Authority is going to be on the hook when all the documents are signed. He asked what would happen if Hepco stopped the work and Bulkmatic get "cold feet." Bulkmatic could back out of the lease if the building is not complete.

Mr. Walls asked legal counsel if the Authority would have full value of the engineer's estimate of the building under a performance bond if Hepco started the work and then dissolved as a company. Attorney Hurvitz replied what would happen in that situation is the performance bond would bring in another contractor if there is a default in order to finish the job.

Mr. Walls asked in terms of satisfying the completion of a facility that is acceptable as per the lease, is the Authority protected?

Attorney Hurvitz asked Mr. Stover as to the time estimate on construction and asked when the project would be completed if the bid is awarded. Mr. Stover replied the engineer re-evaluated the completion date, which would be October 2. If the bid award is made today, Hepco needs to have the project done by October 2, 2009.

Mr. Herman asked how long does Hepco think it is going to take to complete the project. Mr. Stover replied he is not sure. The timeframe that was put together is a reasonable one given the nature and magnitude of the project. Mr. Flaxmayer had indicated that Bulkmatic can operate with tracks alone and the building doesn't necessarily have to be completed.

Mr. Shaffer stated this was a concern to him as this would give Bulkmatic an out. The Authority needs to have the ability to go to another contractor to have the project finished if something were to happen. Mr. Walls stated that is what the performance bond is about.

Attorney Hurvitz stated a performance bond is about having the work completed and the bonding entity would have to come in and provide or indemnify the Authority for its losses. The performance bond is not going to cover the Authority for losses if they occur because the lease is terminated in 60 days because the timeframe has not been met. The performance bond stands behind the contractor's responsibility.

Mr. Walls suggested that a call be made to Larson Design Group to confirm the number of construction days that it will take to complete the work.

Mr. Redin stated he has a similar concern as he recalls there is no provision either for full-time construction or project management. Mr. Sawicki stated the Authority could elect to hire a construction manager from Larson Design. Mr. Walls replied the Authority could certainly do that. Mr. Walls added that Mr. Fury has the project management skills and understanding of the complexities of the project and could be assigned to stay on top of the project.

Mr. Shaffer stated the Authority should know in advance of October 1 if the project is complete. He asked if there would still be enough time to get another contractor in to finish the job if it isn't completed by then.

Attorney Hurvitz suggested that the Authority go back to Bulkmatic and propose a change to the lease to include a force majeure clause which states that the Authority is not responsible for delays beyond the Authority's reasonable control such as strikes, or an act of God.

At this time Mr. Stephen Thaler of Larson Group joined the meeting via conference call as Mr. Stover had placed a call to him.

Mr. Walls stated that the Authority does not recall whether the specifications in the construction bids included any provisions for force majeure, act of God, or strike which could cause delay by the contractor in completion of the project.

Attorney Hurvitz stated normally the clause would say that to the extent that any time periods are delayed by reason of acts of God which are beyond the Authority's reasonable control, the time period set forth in the agreement will be extended as necessary to resolve those intervening events.

Mr. Walls stated Mr. Flaxmayer or his legal counsel, Attorney Lewis, should be contacted regarding this.

Attorney Hurvitz stated if the Authority wished to proceed in this regard, the lease can be approved as written subject to the additional clause which could be added by addendum and Bulkmatic can then decide whether or not they agree with it.

Mr. Shaffer asked if the Authority is covered on any damage the tenant would cause. Attorney Hurvitz stated damage the tenant would cause is their responsibility.

Mr. Shaffer asked if Track 5 is considered to be part of what the operator will maintain in terms of the operating lease agreement. Mr. Fury replied yes, it is part of the yard trackage.

Mr. Shaffer asked if the \$2 million of insurance coverage is a standard amount and is it enough to cover the Authority. Attorney Schrack replied that Bulkmatic's insurance agent reviewed the lease as well and approved it. Attorney Schrack stated he is comfortable as well with the number. Mr. Walls added Jersey Shore State Bank reviewed it.

As this time, Mr. Walls asked who was still participating via speaker phone. Mr. Thaler, Mr. Redin, Mr. Hawbaker, Mr. Jenkins, Mr. Harvey, and Mr. Stover all were participating via speaker phone. Mr. Spendiff and Mr. Krentzman were not present at this time.

Mr. Shields asked about who would be responsible for snow removal. Attorney Schrack responded that Bulkmatic is responsible for snow removal of the leased premises.

Mr. Thaler stated there is no mention of force majeure in the general conditions of the bid specifications. Mr. Walls stated the Authority will need to ask Bulkmatic to agree to the addendum of a force majeure clause to the lease itself.

Mr. Redin asked if the Authority is exposed to interest growth beyond year 10 under the bank provisions.

Mr. Stover replied that the Authority will not be able to recover anything more from Bulkmatic other than the \$11,750 a month. Mr. Redin added he is uncomfortable with this position. Mr. Walls noted the \$11,750 will be an amount of \$141,000 a year that is greater than the debt service in years 10 through 20; however, it may or may not cover any escalation of the interest rate.

Mr. Redin replied that is the part that concerns him. He added another concern is maintenance issues and the track maintenance issue and does not know why he should approve a deal in which the Authority's standard rental agreement is not being honored. Mr. Stover replied that Bulkmatic has agreed to do day-to-day track maintenance.

Mr. Redin asked if the Authority is going to abandon the standard rental agreement from this point forward and rewrite agreements for customers that come to the Authority. Mr. Stover said no; this is a very unique project that has other factors playing into it.

Mr. Walls stated this facility is different than the Authority's normal track facilities and does not represent policy that applies to the rest of what the Authority operates or owns. Attorney Hurvitz stated the Authority can take everything on its merits based upon the consideration to the Authority as to other benefits the Authority may get from this project. The Authority does not have to treat every transaction the same way.

Mr. Herman added the Authority is not establishing a policy on it. It is an agreement with a particular company.

Attorney Hurvitz clarified that the loan is not a 10-year fixed rate interest loan, it is a 5-year fixed rate interest so debt service can change. He explained that at the end of the construction period it will continue for a

period of 5 years based upon a rate of 5.95% and then it will amortize over 20 years. After year 5, the bank has the right to modify the interest rate based upon a prime interest rate plus 1% with a floor of 5% and a ceiling of 15% per annum. Mr. Stover then referred to the Summary of Borrowing on page 10 of the packet.

Mr. Shields asked for clarification of snow removal of the leased premises. Attorney Schrack referred Mr. Shields to Section 5.1 of the lease which clarifies that the lessee is responsible.

Mr. Harvey asked if the use of the facility is defined in the lease. Attorney Schrack replied use of the leased premises is defined in Section 1.4 of the lease as loading, unloading, storage and processing of rail related materials, office use, truck maintenance, and truck and trailer cleaning, and any other legally permitted use incidental to the foregoing. Mr. Walls added it has to be rail related. Mr. Harvey also asked if that guarantees further income from the rail side and does it obligate Bulkmatic to continue bringing rail cars into that facility.

Mr. Walls asked Attorney Schrack if he is comfortable the Authority is covered there. Attorney Schrack stated initially it was worded in the lease that Bulkmatic wanted the use of the premises for any legally permitted use. Bulkmatic accepted the more rail specific language in the lease.

Mr. Stover stated Bulkmatic only makes money when they are able to transload commodities for local industries. Attorney Schrack's language covers the Authority to the best extent.

Mr. Thaler stated he checked the SEDA-COG Standard General Conditions and AIA document A201 and there is nothing regarding force majeure in either document. Mr. Walls stated it should be a condition of the Authority's approval and conditioned upon acceptance by Bulkmatic that an addendum would be put to the lease to act as a force majeure clause. Attorney Schrack stated he will contact Attorney Lewis.

Mr. Herman stated the only thing that concerns him is the guaranty. Attorney Hurvitz stated there is going to be a separate guaranty and the bank has approved it. The guaranty references the lease agreement.

Mr. Hawbaker asked the solicitor for advice regarding the actions he may vote on and those from which he should abstain. He is a director of the Jersey Shore Bank, and as a contractor has quotes to Hepco for subcontracting work. Attorney Hurvitz advised Mr. Hawbaker that as a bank director he should not vote on approval of a commitment letter or a loan to the Authority. As a potential subcontractor to Hepco, Mr. Hawbaker would not want to vote on the action regarding award of the bid to Hepco. In light of the fact that this transaction is contingent upon the lease taking place, it would be appropriate for Mr. Hawbaker to abstain from voting on the issue of the lease.

#### **Recommended Actions:**

- 1. Mr. Herman made a motion to approve the lease with Railway Unloading Services, LLC, and authorize the Chairman and Secretary to sign the document with the understanding that a lease addendum or some other legal instrument acceptable to the Authority's solicitor to address the force majeure contingency if the Authority was unable to deliver the facility as per the lease time table; Mr. Shaffer seconded the motion; Mr. Harvey, Mr. Henry, Mr. Herman, Mr. Jenkins, Mr. Kramer, Mr. Reitz, Mr. Sawicki, Mr. Shaffer, Mr. Showers, and Mr. Walls voted in favor of the motion; Mr. Redin voted against the motion; Mr. Hawbaker abstained from the vote; motion carried.*

Attorney Hurvitz stated he spoke with Mr. Musto of Jersey Shore State Bank. Mr. Musto provided several corrections to the commitment letter. Those corrections are to: 1) reflect that the correct tenant of the lease

is going to be Railway Unloading Services, LLC and not Bulkmatic Transport Company and to also reflect that Bulkmatic will be providing, as a condition of this loan, a guaranty of the obligation under the lease; 2) the interest rate on the \$2 million loan refers that the interest rate is fixed for a period up to 6 years, amortizing for 5 years at that rate. The correct amortization period is 20 years. The revised commitment letter indicates that it will amortize for 20 years with interest at the initial rate of 5.95% and then after the construction period there is a 5 year window at that 5.95%, then the rate will change to 1 point over prime.

Attorney Hurvitz's suggested resolution would authorize the officers of the Authority to not only to approve the terms of the loan, but to proceed to a loan closing on those terms.

2. ***Mr. Sawicki made a motion for the Authority to approve the securing of a loan from Jersey Shore State Bank comprised of two different components – a \$2 million construction/term loan pursuant to a commitment letter dated March 5, 2009, and a letter of credit loan in the sum of \$719,000 also pursuant to the terms of a commitment letter dated March 5, 2009, and the Authority further authorize the appropriate officers of the Authority to execute all documents required in connection with the securing of said loans; Mr. Showers seconded the motion; Mr. Harvey, Mr. Henry, Mr. Herman, Mr. Kramer, Mr. Reitz, Mr. Sawicki, Mr. Shaffer, Mr. Showers, and Mr. Walls voted in favor of the motion; Mr. Hawbaker abstained from the vote; motion carried.*** (Mr. Jenkins, Mr. Krentzman, Mr. Redin, and Mr. Spendiff had left the conference call earlier.)
3. ***Mr. Henry made a motion to authorize Chairman and Secretary to execute all loan documents with the Commonwealth of PA subject to Attorney Hurvitz's approval; Mr. Kramer seconded the motion; Mr. Harvey, Mr. Hawbaker, Mr. Henry, Mr. Herman, Mr. Kramer, Mr. Reitz, Mr. Sawicki, Mr. Shaffer, Mr. Showers, and Mr. Walls voted in favor of the motion; motion carried.***

Mr. Stover stated that the state may only give the Authority \$700,000 and asked the board to change it to "up to \$719,000" should they loan a lesser amount so the motion would fit the necessary action. Attorney Hurvitz said the words "not to exceed" could be inserted.

***Mr. Henry motioned to accept the change in the motion to authorize the Chairman and Secretary to execute all loan documents with the Commonwealth of PA in an amount not to exceed \$719,000 subject to Attorney Hurvitz's approval; Mr. Kramer seconded the motion. Motion carried.***

4. ***Mr. Herman made a motion to award the bid for building and site improvements to Hepco Construction in the amount of \$2,359,855 and authorize the Chairman to sign the bid award; Mr. Reitz seconded the motion; Mr. Harvey, Mr. Henry, Mr. Herman, Mr. Kramer, Mr. Reitz, Mr. Sawicki, Mr. Shaffer, Mr. Showers, and Mr. Walls voted in favor of the motion; Mr. Hawbaker abstained from the vote; motion carried.***
5. ***Mr. Reitz made a motion to award bid for track work at Newberry South to Ohio Track, Inc., in the amount of \$960,000 base bid and authorize the Chairman to sign the bid award; Mr. Kramer seconded the motion; Mr. Harvey, Mr. Henry, Mr. Herman, Mr. Reitz, Mr. Kramer, Mr. Sawicki, Mr. Shaffer, Mr. Showers, and Mr. Walls voted in favor of the motion; Mr. Hawbaker abstained from the vote; motion carried.***

Mr. Fury stated the Authority received a letter from PennDOT approving the change order for additional trackwork by Ohio Track. This letter was provided as a handout to board members.

6. *Mr. Herman made a motion to approve the change order to increase Ohio Track's base bid contract by \$100,561.21 based upon PennDOT approval and authorize Executive Director or, in his absence, the Chairman to sign the change order on behalf of the JRA; Mr. Sawicki seconded the motion; Mr. Harvey Mr. Henry, Mr. Herman, Mr. Reitz, Mr. Sawicki, Mr. Shaffer, Mr. Showers, Mr. Kramer, and Mr. Walls voted in favor of the motion; Mr. Hawbaker abstained from the vote; motion carried.*


### Public Forum

Mr. Herman asked if anyone has checked about the stimulus money. Mr. Walls replied that he has asked Mr. Murawski, Lycoming County Transportation Planner, to check into this. Mr. Walls stated that at the moment it doesn't appear that there is any stimulus money for the Authority to take advantage of.

### 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 April 8, 2009.



Secretary/Assistant Secretary