



**PRESERVING
RAIL FREIGHT
SERVICE**

SEDA-COG JOINT RAIL AUTHORITY MEETING
Wednesday, June 9, 2021
Union County Government Center, Lewisburg, PA
12:30 p.m.

AUTHORITY MEMBERS

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

JRA OPERATOR

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

GUESTS

Erik Bergenthal, Esq., Houston Harbaugh (for Carload Express) (via teleconference)
Cliff Grunstra, Carload Express (via teleconference)
Alex Lang, Carload Express (via teleconference)
Mark Rosner, Carload Express
Ed Sigl, First National Bank
Sam Simon, Esq., Houston Harbaugh (for Carload Express) (via teleconference)

LEGAL COUNSEL

John Bee, Esq., McQuaide Blasko (via teleconference)
Tom Schrack, Esq., McQuaide Blasko (via teleconference)

Affiliated with
SEDA Council of Governments



JRA CONSULTING PROFESSIONALS

Dan Mazur, Operating Agreement Consultant

Jason Shura, P.E., Stiffler McGraw

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 12:33 p.m.

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 on October 1, 2020, the Pennsylvania Supreme Court held that this Board’s July 8, 2015, 7-3 vote was in fact, effective to pass the motion to award the Operating Agreement to Carload Express. On May 18, 2021, the trial court issued an Order granting Carload Express’ Motion for Summary Judgment but erred as a matter of law by attempting to limit the Supreme Court’s Order, preserving SURCs defective Counterclaim, and by entering an improper preliminary injunction. The trial court’s error is highlighted by its statement that it was enjoining the JRA from doing something that according to the Pennsylvania Supreme Court the JRA Board already did back in 2015 – namely, award the new Operating Agreement to Carload Express.

Back in 2015, the JRA asked a simple question of the Court, whether or not the 7-3 vote on the motion to award the Operating Agreement to Carload Express had passed. That question has been answered definitively. But now the JRA is needlessly protracting this litigation by failing to defend itself against SURC and hiding behind a cloak of "neutrality." This is the same JRA that sued Carload Express and took its case all the way to the Pennsylvania Supreme Court and lost and now it wants to claim "neutrality."

Mr. Rosner stated that there is no question that the JRA moved for summary judgment against SURC. The closing paragraph of the JRA's motion read: "WHEREFORE, the SEDA-COG Joint Rail Authority respectfully requests that this Honorable Court dismiss with prejudice the Counterclaim of Susquehanna Union Railroad Company." Its proposed order sought that "the Counterclaims of all Defendants be dismissed with prejudice."

Despite this statement to the Court back in 2016, the JRA in 2021 refused to acknowledge before that same court that it had moved for summary judgment against SURC. This is not neutrality, but it does look like something else, something very disturbing.

How can a Board have an RFP, vote to award the Operating Agreement to Carload Express, litigate whether the vote passed all the way to the Pennsylvania Supreme Court, and now refuse to support the declared winner of the RFP? How is that neutral? Why were you not neutral when you were prosecuting your claims against Carload Express for five years? You stood opposite of us every step of the way. It is really convenient that we win at the Supreme Court and now you're neutral.

Carload Express urges the JRA to change its position regarding SURC's Counterclaim and at least join the appeal challenging the illegal injunction entered by the court.

Despite the Supreme Court ruling, the JRA appears to be doing everything in its power to not execute the Operating Agreement with Carload Express. An extremely safe operator with a proven track record of superior customer service and growth. A proposer who would provide the JRA with much higher operating fees than the JRA receives today. Mr. Rosner stated that he estimates that all of this litigation has cost the JRA more than four million dollars between lost operating fees and legal fees incurred. Mr. Rosner stated he is baffled by how this would be acceptable to anyone and is baffled by this board's behavior. Mr. Rosner stated he sincerely hopes that the JRA will reevaluate its positions.

Carload Express won the Operating Agreement fair and square. The vote has been confirmed by the Pennsylvania Supreme Court. Carload Express looks forward to partnering with the JRA as the operator on the JRA lines and helping businesses grow in

Central Pennsylvania. Mr. Rosner stated please do the right thing and appeal the trial court's decision.

ADMINISTRATIVE ITEMS

Approval of the May 12, 2021, JRA Meeting Minutes

Dr. Spychalski made a motion for the Board to approve the May 12, 2021, JRA Meeting Minutes; Ms. Wakeman seconded the motion; motion carried.

Treasurer's Report

Mr. Harvey presented the Treasurer's Report for the month of May 2021, as well as the JRA's loan summary, the JRA Money Market Account Financial Statement, the PIB Loan Financial Statement, and the JRA's detailed accounting associated with the operating fees paid by the Operator.

Ms. Wakeman made a motion for the Board to accept the Treasurer's Report for the month of May 2021 and file for audit; Mr. Jones seconded the motion; motion carried.

Staff Report and Events Calendar

Mr. Stover summarized the status of various construction projects and calendar highlights.

Mr. Postupack shared a slide of the North Yards Scrap (JVRR – Burnham). The slide showed the rail crane that is being scrapped.

Operator's Status Report

The Operator's Status Report was provided as a handout at the meeting.

Ms. Williams stated that 2021 is looking strong with an increase of 16% to revenue year to date and 15% increase to carloads for the same time period. The year is progressing as planned. Maintenance is in full swing and monthly reports are provided to Mr. Mazur. The Operator has closed out three of their state funded projects and are working on their fourth one.

OLD BUSINESS

Bridge Engineer's Report

The Bridge Engineer's Report was included in the meeting packet.

Mr. Shura provided the following updates:

- The bridge safety inspections are complete, all reports have been drafted and will be submitted to the JRA pending final review.
- NSHR Bridge 195.88 2015 RTAP Project (Bear Camp Bridge) was awarded to Lycoming Supply on June 1, 2021.
- Reduced scope project for Poppy Road Bridge over SVRR was advertised on May 28, 2021 with bids due July 1, 2021.

NSHR Bridge Repair at Rupert MP 191.52

Mr. Shura stated that bridge inspectors from SMA (working under his direction) found a 65 inch long hole in a bridge beam which carries the NSHR over Fishing Creek at MP 191.52 in Rupert. Mr. Shura stated he immediately followed up and advised a slow order while plans were prepared for an emergency repair.

The following two bids were received:

Gregori Construction – \$26,750

Lycoming Supply - \$42,515

Mr. Postupack shared a slide showing the location of the emergency repair that is needed for NSHR Bridge at Rupert MP 191.52.

Dr. Spychalski made a motion for the Board to ratify the emergency repair contract for NSHR Bridge at Rupert 191.52 to Gregori Construction in the amount of \$26,750; Mr. Graham seconded the motion; motion carried.

Poppy Road Bridge Repair (SVRR)

Mr. Stover stated that he had previously reported to the Board that none of the Multimodal applications have been funded for replacement of the concrete deck of the Shamokin Township bridge over the SVRR. Since the deck replacement is now a longer term situation, Engineer Shura advises that concrete curb repairs be completed this summer to avoid posting of weigh limits. Bids are due July 1, 2021, and the bid award will be on the JRA's July 14th agenda.

Mr. Stover stated that no action is needed at this meeting.

BUILD (RAISE Grant) (LVRR – Platt Township)

Mr. Stover stated that once again, Lycoming, Clinton, and Tioga counties are teaming up to resubmit a BUILD grant application for a regional trail project which includes the raising of bridge LVRR 171.30 over SR220 just east of Jersey Shore. Total cost of the rail bridge project in the last application was \$592,625. The new name of the BUILD program is now RAISE under the Biden administration.

Last April the JRA agreed to support the application and commit \$70,250 toward preliminary engineering. Mr. Shura is updating the costs for 2021. JRA staff has a call set with Scott Williams from Lycoming County Planning to further discuss.

Mr. Postupack shared a slide of the Lycoming Valley Railroad – Avis Branch which also showed the LVRR Bridge 171.30

Mr. Harvey made a motion for the Board to renew the commitment at a higher number not to exceed \$80,000; Mr. Winslow seconded the motion.

Mr. Graham asked Mr. Shura how high the raise will be. Mr. Shura replied that the raise will be 15" to 15'6".

Motion carried.

NEW BUSINESS

Milesburg Bridge Multimodal Application

Mr. Stover stated that the next round of applications for the CFA Multimodal Transportation Fund (MTF) concludes on July 31. In the 2020 CFA round, the total cost was \$1,332,000; the grant request was \$932,000. Mr. Shura is revisiting last year's budget for a possible update.

The Borough of Milesburg asked that the application be resubmitted for the road/rail bridge in the borough. The Centre County Planning Department asked that a request for county transportation funds be made ASAP. In 2020, the county approved \$45,000 for this project which went toward the local share.

In the last application the shares were: Milesburg Borough - \$100K; NBER - \$100K, and SEDA-COG JRA \$155K.

Mr. Stover stated that staff is seeking authorization to start the application with final approval set for the July meeting agenda.

Mr. Stover stated that discussions with Port Matilda are ongoing and approval to resubmit its application may need to be added to this agenda item.

Mr. Postupack shared a slide of the Milesburg MTF Project NBER Bridge 30.93.

Mr. Shura explained flooding issues in the borough and the condition of concrete under the railroad bridge.

Mr. Stover stated that action will be taken at the July 14th Board meeting.

PROPERTY MANAGEMENT COMMITTEE

LVRR Building – Parking Lot Upgrades and Site Security

Mr. Postupack stated that the LVRR office parking lot is in poor condition and there are stormwater issues related to the existing grades which allows water to enter the building during very heavy storms.

Mr. Shura has come up with an estimate and a design that would rectify the stormwater issues by adding an additional inlet in the parking lot, correcting the grades to keep water out of the building, and reconnecting the downspouts on the east side of the warehouse/dock to the storm sewer.

An advertisement for a future pre-bid meeting for paving contractors will be submitted to the newspaper in the next couple of weeks.

Ms. Wakeman made a motion for the Board to authorize staff to advertise for a mandatory pre-bid meeting for paving contractors to correct the stormwater issues and repave the LVRR office parking lot; Mr. Postal seconded the motion; motion carried.

Paving at NBER Engine House for Sanding

Mr. Postupack stated that the Operator has approached JRA staff about a safety project that would allow engine crews to add sand to locomotives in a safe manner. Mr. Ray O'Brien, Chief Mechanical Officer for NSHR, developed and fabricated a safety platform that would allow engine crews to add sand to locomotives. For the safety project to be completed, new asphalt will have to be installed and a concrete pad will have to be poured to create a solid base for the platform to be used.

In addition to making the locomotive sand filling process safer, the asphalt and concrete will improve the parking area which is currently dirt and gravel.

The Operator and JRA staff met with Mike Cleck Paving on-site on May 20, 2021, to discuss the project. Mike Cleck Paving submitted an estimate of \$12,900 to spread stone and pave a total of 1,100 square feet at depths of 4" to 12". An estimate of \$3,600 to pour a 10' x 36' concrete pad at 6" thick was submitted by Elite Concrete & Service. The cost from Mike Cleck Paving and Elite Concrete & Service will be split between the NBER and the JRA.

Mr. Postupack shared a slide showing the NBER Engine House and the 1,100 square feet of pavement to be added and a 360 square foot concrete pad to be poured.

Mr. Jenkins made a motion for the Board to authorize staff to contribute \$6,450 towards the cost of the addition of new asphalt and \$1,800 to pour a concrete pad at the NBER engine house to improve the existing area; Ms. Wakeman seconded the motion; motion carried.

Tyrone Transload Track Rehabilitation (NBER)

Mr. Postupack stated that staff and NBER representatives have been working with an off-line manufacturer that seeks to transload product in Tyrone. The JRA has a track adjacent to American Eagle Paper that would work well for a transload site, but the track needs to be upgraded significantly. Further, an existing gravel grade crossing needs to be rebuilt and extended to allow for truck circulation. To complete the access road, a timber and gravel crossing will need to be built.

Attorney Schrack has prepared a draft lease for the use of the track and drive areas. The company will pay for a solid access road parallel to the siding. They are seeking bids for that work from local contractors.

Staff and NBER propose that we cooperate on a labor-materials arrangement as previously done for new customers. Mr. Zac Mahaffey prepared a rehabilitation estimate of \$49,954.20 to upgrade over 300 feet of track. The materials cost (crossties, lags, and stone) to the JRA would be \$13,370.

Mr. Postupack shared a slide of the Tyrone Team Track Transload Project.

Mr. Park made a motion for the Board to authorize a payment of \$13,370 to the Nittany & Bald Eagle Railroad for the track materials needed to put the Tyrone Transload into operation for a new customer; Mr. Hormell seconded the motion; motion carried.

Everstream License Agreement (SVRR – Paxinos)

Mr. Postupack stated that Everstream approached JRA staff about installing a new 48-count fiber optic cable over the SVRR just south of the SR-487 grade crossing in Paxinos. The vertical clearance of the wire 26'-2" above top of rail with sag. The cable will serve multiple businesses.

An annual fee of \$2,300, subject to CPI increases, and an \$800 application fee will be assessed per the JRA's Fee Schedule. All plans have been reviewed and approved.

Mr. Postupack shared a slide of the area showing the location of the fiber optic cable.

Mr. Postal made a motion for the Board to approve this license and authorize its execution by the Authority's officers; Mr. Schultz seconded the motion; motion carried.

LEGAL

Legal Issues

Attorney Schrack stated that on Friday, May 28th, the JRA Board held an executive session call relating to the ongoing RFP litigation.

Chairman Showers recessed the regular meeting at 1:29 p.m. to convene into executive session at 1:39 p.m.

Chairman Showers reconvened the regular meeting at 2:13 p.m.

Attorney Schrack stated that the JRA Board had an executive session regarding the ongoing RFP litigation and a potential real estate matter. No action was taken, and no action is recommended at this time.

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