



**PRESERVING
RAIL FREIGHT
SERVICE**

SEDA-COG JOINT RAIL AUTHORITY MEETING
Wednesday, July 14, 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
Rick Jenkins, Columbia County (via teleconference)
Brent Jones, Clinton County
Dave Park, Columbia County (via teleconference)
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

Loni Briner, PR & Media Manager
Jeb Stotter, President & CEO
Diana Williams, Treasurer/Controller

GUESTS

Mark Rosner, Carload Express
Sam Simon, Esq., Houston Harbaugh (for Carload Express) (via teleconference)
Jeff Snyder, Commissioner, Clinton County
Matt Weigle, Sekisui/Kydex

LEGAL COUNSEL

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

JRA CONSULTING PROFESSIONALS

Dan Mazur, Operating Agreement Consultant
Jason Shura, P.E., Stiffler McGraw (via teleconference)

Affiliated with
SEDA Council of Governments



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

Chairman Showers asked for introduction of guests, board members and staff in attendance and on teleconference.

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 he sent a letter via email to Chairman Showers and Executive Director Stover the morning of July 14th and he hopes that the Board gives this letter some serious consideration.

Mr. Rosner stated he looks forward to the Board’s response and would make himself available for a meeting to discuss any of the related issues.

Commissioner Snyder was recognized by the Chairman.

Commissioner Snyder stated that he would be remiss in saying how proud Clinton County is of the two Clinton County representatives, Mr. Gummo and Mr. Jones. They are long-time

representatives of the JRA and Commissioner Snyder stated he was able to participate in re-electing them to these positions and is very proud of what they do for Clinton County and other counties in doing work of the JRA.

Chairman Showers made the following statement:

I speak to inform you of the current status of the litigation involving a Request for Proposals or RFP issued by the SEDA-COG Joint Rail Authority, also known as the JRA for a new operating agreement for rail freight operations. As you may know, the JRA issued its RFP in 2014. It should be noted that this was not done out of disappointment with its current rail freight operator. Rather, it was done to ensure that the JRA would obtain the best possible arrangement for rail customers in the Central Pennsylvania region.

Unfortunately, due to the complexity of the litigation involved in the RFP process, the litigation has taken several years and remains ongoing. Last October, the Pennsylvania Supreme Court resolved the single issue raised by the JRA – the applicable voting standard to award an operating agreement. Indeed, while the JRA did not commence the litigation at issue, it asked only for declaratory judgment of its rights and duties under applicable law. The JRA acknowledges that following the rulings by the appellate courts, an operating agreement was awarded to Carload Express, also known as Carload, pursuant to its plurality vote held on July 8, 2015. However, other issues remain outstanding in the litigation. In particular, the Clinton County Court of Common Pleas, the Trial Court, recently decided this May that an outstanding counterclaim addressing the alleged actions of certain former JRA Board members remains a live controversy in the litigation, notwithstanding the Supreme Court's ruling on the applicable voting standard. According to the other party in the litigation – Susquehanna Union Railroad Company also known as SURC – resolution of its counterclaim may result in the award to Carload being set aside. In 2017, the parties worked together to ensure uninterrupted continuity of rail service to customers along the JRA's lines by agreeing that the JRA could extend its existing operating agreement with SURC at least until a final order has been entered in the litigation. A final order is one that disposes of all claims and all parties. Given the Trial Court's recent ruling concerning the continued efficacy of SURC's counterclaim, the litigation presently remains pending and the JRA presently remains bound in contract under the Extension Agreement with SURC, which was entered with Carload's consent.

Its sole issue having been conclusively determined by the appellate courts, the JRA is conserving its resources and observing a neutral posture in the litigation while fulfilling its contractual obligations to all parties in the interim. It will be left to the other parties in the litigation – SURC and Carload – to actively litigate SURC's Counterclaim. The JRA has faith in the judicial system to render justice and will abide by the judicially-

determined outcome, whatever that may be. If the Trial Court determines that SURC's counterclaim lacks merit, the JRA stands ready to execute the operating agreement previously awarded to Carload on July 8, 2015.

Ultimately, the JRA entered into this process with the utmost intention of ensuring a fair, competitive RFP process for all interested proposers. We are confident, however, that when the process concludes, a very professional, competent operating company will serve well the needs of Central Pennsylvania rail customers located along the JRA's lines.

ADMINISTRATIVE ITEMS

Approval of the June 9, 2021, JRA Meeting Minutes

Dr. Spychalski made a motion for the Board to approve the June 9, 2021, JRA Meeting Minutes; Mr. Gummo seconded the motion; motion carried.

Approval of the June 29, 2021, JRA Special Meeting Minutes

Dr. Spychalski made a motion for the Board to approve the June 29, 2021, JRA Special Meeting Minutes, Mr. Schultz seconded the motion; motion carried.

Treasurer's Report

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

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

Revised 2020 Audit Engagement Letter

Mr. Stover stated that Courtney Solomon, CPA of Herring, Roll and Solomon, provided a revised engagement letter for the 2020 audit. This is necessary since the earlier engagement letter did not include the services for a federal single audit which is required due to the magnitude of federal Section 130 grade crossing funds expended last year. The total cost for the JRA audit will now be \$10,500.

Ms. Wakeman made a motion for the Board to approve the revised 2020 JRA audit engagement letter from Herring, Roll and Solomon; Mr. Graham seconded the motion; motion carried.

Staff Report and Events Calendar

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

Operator's Status Report

A copy of the Operator's Report was distributed to Board members.

Mr. Stotter stated that due to the multitude of storms, the operator's maintenance of way staff were kept extremely busy cutting down trees and were able to keep on schedule with the maintenance of way plan.

Ms. Williams stated that the operator has continued growth in revenue and carloads with an increase of 16-18% compared to the same timeframe last year. There is a 24% increase in operating fees paid to the JRA.

OLD BUSINESS

Bridge Engineer's Report

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

Mr. Shura provided the following updates:

- Continue to move forward on the RTAP projects.
- A project update meeting is scheduled to discuss the anticipated schedule for SVRR Bridge 14.93 (Shamokin). Work is scheduled to begin the week of July 26th.
- Notice to proceed has been issued for NBER Bridge 33.84 (Curtin Bridge). Easement from ACOE has been executed.
- Notice to process has been issued for NSHR Bridge 195.10 (Bear Camp Bridge).
- Emergency repair work was completed on June 23rd for NSHR Bridge 191.52. Specs and frequency will continue to be done on a 12-month cycle.

Underwater Bridge Inspection RFO

Mr. Shura stated that three bids for underwater inspections of selected bridges have been received.

W. J. Castle, PE & Associates, P.C.	\$86,450.00
Pennoni	\$97,915.27
Pickering, Corts and Summerson	\$123,250.00

Mr. Shura and JRA staff discussed the bids that were received, and it was decided to readvertise this project in order to get some additional interest in the project. Mr. Shura stated it is his recommendation to readvertise this project in order to get additional response prior to the August Board meeting.

Mr. Hormell made a motion for the Board to reject the bids received and authorize JRA staff to rebid the RFQ; Mr. Winslow seconded the motion.

Mr. Graham asked if there is a budget number for this project. Mr. Shura replied that the bids received were higher than what was anticipated. He stated he was anticipating more than three responses and he wants to make sure the JRA is getting a good competitive bid for this project.

Motion carried.

Poppy Road Bridge Repair (SVRR)

Mr. Stover stated as previously reported to the Board, none of the Multimodal applications have been funded for replacement of the concrete deck of the Shamokin Township, Northumberland County, 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 weight limits.

An advertisement for bids was published last month, and two bids have been received to repair the bridge:

Kevin Raker Construction	\$10,514.52
Mar Allen Concrete Products	\$15,835.00

Mr. Shura stated the engineer's estimate was \$20,000. Mr. Shura stated he reviewed the bids, and everything appears to be in order. Kevin Raker Construction had all the necessary items in their bids and recommends that the Board award this project to Kevin Raker Construction in the amount of \$10,514.52. Mr. Shura stated that Kevin Raker Construction is located in Sunbury.

Ms. Hoover made a motion for the Board to award the Poppy Road bridge deck repair contract to Kevin Raker Construction in the amount of \$10,514.52; Ms. Wakeman seconded the motion; motion carried.

Port Matilda and Milesburg Bridge Multimodal Applications

Mr. Stover stated that staff is working with Jason Shura on updated costs to undertake the Milesburg and Port Matilda Multimodal applications to the Commonwealth Financing Authority (CFA).

The Milesburg application will be submitted by the JRA. The application staff is writing for the Borough of Port Matilda is the Borough's application.

Mr. Shura stated his cost for the Port Matilda application is approximately \$290,000. Mr. Stover stated that the size and cost of the project has shrunk because of the grade crossing project that was completed. The proposed local share of \$27,500 will be split between the JRA and the NBER, and the other shares will be Port Matilda - \$10,000 and \$60,000 from Centre County. Staff is requesting approval only for the local share, not to submit the application. The application is due July 31, 2021. This project will be for 2023 if it is funded.

Dr. Spychalski made a motion for the Board to approve a letter of commitment that the Authority commit up to \$30,000 of local share for the Port Matilda Multimodal project if it is funded; Mr. Winslow seconded the motion; motion carried.

The Milesburg application is the Rail Authority's application. This project has grown from \$1.35 million to \$1.5 million, and this is for a bridge in Milesburg. There are two structures that carries the NBER main line over Moose Run, a stream that causes a lot of havoc in the Borough of Milesburg. It is a tributary of Bald Eagle Creek and there is also a parallel borough street, Railroad Street that runs together. Both structures are undersized for hydrology, and it induces flooding to nursing homes and some businesses and homes, but also the structure of the borough bridge has some issues. The Authority's bridge is undersized, but it has not fallen down.

Mr. Shura stated that the bridge replacement is driven by the condition of the portion of the bridge that is supporting the borough road. The need for the entire project is relevant to frequent flooding that occurs there. The intent is to increase the hydraulic opening and do some stream preventative work to improve flood resiliency within the borough. That requires that both the bridge that supports the NBER main line as well as the borough river road requires replacement. There is also some stream bed work that will be included in the estimate that will be completed from the NBER main line bridge upstream to the Bellefonte branch bridge over Moose Run. There are no modifications to the Bellefonte bridge structure included in the proposal.

Mr. Stover stated the local share is \$455,000. The breakout as proposed is:

Borough of Milesburg – \$100,000

NBER - \$100,000

Centre County - \$55,000

JRA - \$255,000 which was approved last year toward this project, but with the money from Centre County the amount for the JRA has now dropped to \$205,000

Mr. Stover stated that staff is looking for approval from the Board to authorize the application for the bridge and also commit to \$205,000 if it is funded. This would be a project on the 2023 construction budget. The CFA application is due July 31, 2021.

Mr. Schultz made a motion for the Board to authorize the application for the Borough of Milesburg project and commit up to \$205,000 local share; Mr. Harvey seconded the motion; motion carried.

PROPERTY MANAGEMENT COMMITTEE

Committee Chair Rick Jenkins stated that the Property Management Committee held a virtual meeting on July 8, 2021.

JRA Fee Schedule Additions & Revisions

Mr. Postupack stated that JRA staff is proposing to add an engineering review fee under Section 3. Public Highways/Rights-of-Way to the Fee Schedule. Historically, an application fee was charged for an agreement of a facility located wholly within the public right-of-way. According to the PUC, the JRA cannot assess a fee for the occupation, but an agreement is drafted to memorialize the facility. However, the JRA is permitted to assess an engineering fee.

JRA staff is proposing to add a \$500 engineering review fee which covers the review of any proposed facility that would cross JRA property but lies within the public right-of-way. The cost covers the review of the JRA's engineer as well as JRA staff's time. The PMC recommends approval of the addition of a \$500 engineering review fee to Section 3. Public Highways/Rights-of-Way to the JRA's Fee Schedule.

The addition of a \$500.00 engineering review fee for projects within the public right-of-way and under the PUC's jurisdiction would read as follows:

3. **Public Highways/Rights-of-Way.** There shall be no rental, easement or license fee charged by the rail Authority for crossings to be located wholly within the limits of a public highway or right-of-way and not supported by or attached to poles or structures of the Rail Authority for those holding proper franchise rights; however, an agreement memorializing the occupation of Rail Authority property will be required, which may allocate the costs of maintenance, construction, reconstruction, repair, relocation or removal of any occupation of a public right of way on, under or above property to which the Rail Authority holds title, subject to the ultimate jurisdiction of the Pennsylvania Public Utility Commission ("PUC").

Additionally, an engineering review fee of \$500,00 may be assessed by the Rail Authority for the review of plans and drawings as well as any field views attended by the Rail Authority's engineer or staff. The Commonwealth or the applicable municipality should first be contacted to determine the confines of the public right-of-way. If the proposed occupation is

found to be within the public right-of-way, the Pennsylvania Public Utility Commission should then be contacted. No work shall begin under the Public Utility Commission has issued its Order or Secretarial Letter sanctioning the facility and the applicant has entered into an agreement with the Rail Authority.

Mr. Jenkins made a motion for the Board to approve the PMC's recommendation of the addition of a \$500 engineering review fee to Section 3. Public Highways/Rights-of-Way to the JRA's Fee Schedule; Mr. Jones seconded the motion; motion carried.

Shale Rail License Agreement (Newberry Yard – North Yard)

Mr. Postupack stated that with some urgency, JRA staff was contacted by Shale Rail, LLC on July 2nd to find to a spot to unload 15 cars of frac sand. In response, the JRA's solicitor, the operator and staff worked expeditiously to draft a license agreement to locate Shale Rail in the Newberry Yard North where Mervis was located last year for their car-cutting operation.

The initial agreement is for 30 days, and discussion will continue between the JRA staff and Shale Rail to potentially enter into a long-term agreement.

Shale Rail will be assessed \$750 for the 30-day license as well as an \$800 application fee.

Mr. Postupack shared a slide of the location of the leased site for Shale Rail.

Mr. Jenkins made a motion for the Board to approve the PMC's recommendation and ratification of the 30-day license agreement with Shale Rail, LLC; Dr. Spsychalski seconded the motion; motion carried.

Everstream License Agreement (NBER – Bellefonte – Railroad Street)

Mr. Postupack stated that Everstream approached JRA staff about installing a new 48-count fiber optic cable over the NBER – Bellefonte Franch at the intersection of Railroad Street and Sunnyside Blvd. The vertical clearance of the wire 30'-7" 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. Jenkins made a motion for the Board to approve the PMC's recommendation of this license agreement and authorize its execution by the Chairman and Secretary; Mr. Winslow seconded the motion; motion carried.

Everstream License Agreement (NBER – Bellefonte – West Lamb Street

Mr. Postupack stated that Everstream approached JRA staff about installing a new 48-count fiber optic cable over the NBER – Bellefonte Branch at West Lamb Street. The vertical clearance of the wire 29'-4" 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. Jenkins made a motion for the Board to approve the PMC's recommendation of this license agreement and authorize its execution by the Chairman and Secretary; Mr. Gummo seconded the motion; motion carried.

Everstream License Agreement (NBER – Bellefonte – Lower Coleville Road

Mr. Postupack stated Everstream approached JRA staff about installing a new 48-count fiber optic cable over the NBER – Bellefonte Branch new Lower Coleville Road. The vertical clearance of the wire 29'-6" above top of rail with sag.

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. Jenkins made a motion for the Board to approve this license agreement and authorize its execution by the Chairman and Secretary; Mr. Hormell seconded the motion; motion carried.

LEGAL

Legal Issues

Attorney Schrack stated that the Authority Board held an executive session call on Monday, July 12, 2021, at 3 p.m. to discuss 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. There will be action to take when the public meeting is reconvened.

Chairman Showers reconvened the regular meeting at 2:57 p.m.

Attorney Schrack stated that the JRA Board held an executive session with its legal counsel to discuss the ongoing RFP litigation. No action was taken, and no action is recommended to be taken with regard to the litigation matters at this time.

Chairman Showers called on Board member Dave Park. Mr. Park stated: "It has been a honor and a privilege to serve the community for 10 ½ years on the JRA Board representing Columbia County. Per the request of the county commissioners of Columbia County, I am resigning from the JRA Board effective July 15, 2021. Thank you."

Chairman Showers thanked Mr. Park for his valuable years of service to the Board, not only as a member representing Columbia County, but also as the Vice Chair.

Chairman Showers stated he had asked Mr. Winslow, Chair of the Nominating Committee to convene the Nominations Committee. The committee has been discussing issues among the members.

Mr. Winslow, Chair of the Nominating Committee gave the following report: Mr. Winslow stated that the Nominating Committee met informally and have the following recommendation: In Mr. Park's departure as Vice Chairman, Mr. Russ Graham will be appointed as the position of Vice Chairman which leaves as vacancy of Assistant Secretary. The Nominating Committee is recommending that Mr. John Gummo fill the position of Assistant Secretary.

Mr. Winslow made a motion for the Board to approve the recommendations of the Nominating Committee; Mr. Hormell seconded the motion; motion carried.

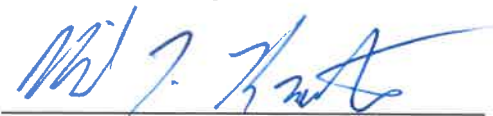
With there being no further business to come before the JRA Board, Chairman Showers adjourned the meeting at 2:59 p.m.

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 August 11, 2021.



Secretary/Assistant Secretary