

**MINUTES OF THE OHIO RAIL DEVELOPMENT COMMISSION
REGULAR BIMONTHLY MEETING
NOVEMBER 10, 2005**

CALL TO ORDER AND ROLL CALL

Chairman James E. Betts called the meeting of the Ohio Rail Development Commission (ORDC) to order at 10:13 a.m. on November 10, 2005. The meeting was held on the 31st floor of the Vern Riffe Center in Columbus. Commissioners in attendance were as follows: Chairman James Betts, Solomon Jackson, Eric Neff, Herk Wolfe, Dan Roberts, Tom McOwen, Senator Larry Mumper and Andrew Gall (for Howard Wood - ODOT). Seven voting members were present and one non-voting member was present.

Members absent included James Hartung, Larry Sowers, Representatives Stephen Buehrer and Allan Sayre and Senator Robert Hagan.

APPROVAL OF THE MINUTES OF THE SEPTEMBER MEETING

Chairman Betts asked for a motion to approve the Minutes of the September 29, 2005 Commission meeting. Commissioner Wolfe moved to approve the Minutes and Commissioner Neff seconded the motion. The Minutes were approved as presented.

EXECUTIVE DIRECTOR'S REPORT

Executive Director James E. Seney presented his report to the commissioners. Director Seney reported on an item listed under "Safety" in his report: whether ORDC should require a subpoena prior to giving testimony. In the past, ORDC has always given voluntary testimony without requiring the subpoena but recently this policy was misinterpreted as "stooging" for the railroads. Discussion followed among the commissioners. Upon discussion, Chairman Betts resolved that it is the desire of the Commissioners that ORDC/Director Seney require a subpoena prior to giving any additional testimony on behalf of the Commission. Director Seney responded by asking that the Chairman set an "effective date" for this new process so as not to change the procedure on any issues the Commission currently has pending. Chairman Betts agreed by setting the effective date at December 15, 2005 and asked that a motion be made "that the policy of the Commission, effective December 15, 2005 on all new closures or any requests by any state agency with legislative reporting duties, be to require a subpoena prior to giving testimony." Commissioner Wolfe moved to approve the motion and Commissioner Jackson seconded the motion. Commissioner Jackson then inquired about the possibility of requests to give depositions. Chairman Betts responded that a deposition would mean some type of litigation is pending and that would require a subpoena anyway but that the Commission would address this issue should the need arise. Commissioner Roberts reiterated the motion for additional clarification which he felt needed to be amended slightly to say "upon receipt of a request to provide any type of testimony, Commission staff should require a subpoena or other appropriate order prior to providing the testimony." Chairman Betts asked if Commissioner Roberts was moving to amend the motion. Commissioner Roberts responded in the affirmative. Commissioner Jackson seconded the motion. Chairman Betts inquired if Commissioner Wolfe was in favor of the amendment as stated by Commissioner Roberts. He responded that he was.

Chairman Betts asked for a vote to “amend the motion as stated by Commissioner Roberts.” All in favor answered “aye.” None were opposed. Chairman Betts then asked for a vote to “approve the amended motion.” All in favor answered “aye.” There was no opposition to the amended motion. The amended motion of *The policy of the Commission, effective December 15, 2005, is that upon receipt of a request to provide any type of testimony, Commission staff should require a subpoena or other appropriate order prior to providing testimony* was adopted by unanimous voice vote.

Director Seney reported that the funding plan for the economic impact study for the Ohio Hub was approved by the State Controlling Board and both the TEMS and Sam Staley contracts have been approved as well. The first meeting for the “next steps” is scheduled for November 16th at ODOT.

Commissioner McOwen asked for clarification in Director Seney’s report about the 80/20 federal match and whether it was still part of the federal passenger rail bill. Director Seney responded by indicating that it was still in the bill and explained why it is so important to Ohio; i.e., projects that Ohio has already completed can qualify as the required 20 percent state share of monies that need to be expended before federal dollars can be allotted for a project - the Ohio Hub plan. Director Seney said “we need to get credit for something (the projects) we are doing anyway.”

Chairman Betts inquired about the current Table of Organization for ORDC and asked if the Commission is functioning okay with its reduced staff and whether or not any of the positions vacated through recent retirements would be filled. Director Seney indicated that ORDC does not intend to fill any of the vacated positions at this time and reported that it is his intent to utilize the experience base at ODOT for any project ORDC cannot handle.

FINANCE REPORT

Secretary-Treasurer Matthew Dietrich presented his Finance Report to the Commissioners (page nine of the Commission packet). Mr. Dietrich wanted first to identify an error in the Approved Project Briefing for Engage Public Affairs (page 33 of the Commission packet). In the first paragraph it identifies a contract amount of both \$18,000 and \$43,810. The later amount, \$43,810, is the correct amount of the contract for Marie Keister of Engage Public Affairs.

Mr. Dietrich reported that the early retirement initiative (“buy-out”) is now complete and four employees, Dave Reid, Keith Shaffer, Susan Jenkins and Lynda Nelson, all took advantage of the retirement initiative. Mr. Dietrich reported that the current Table of Organization for the remaining employees was included as part of his report on page 10 of the packet.

Mr. Dietrich reported that three staff members, Lou Jannazo, Tim Perkins and Mike Forte, recently completed BNSF’s Track Inspection and Maintenance Course at its training facility in Overland Park, Kansas. He indicated it is the intent of the Commission to have the remaining staff members trained as well sometime next year.

Mr. Dietrich announced that if all projects presented before the Commission at this meeting are approved, ORDC will have a remaining GRF balance of approximately \$650,000 and a loan

balance of nearly \$2 million, bringing the total ORDC funds available for projects to \$2,632,774.

PROJECTS

Resolution 05-08; City of Lima Greater Ohio Ethanol Project

Lou Jannazo, ORDC Chief of Project Development, presented the Greater Ohio Ethanol Project grant request by the City of Lima. Mr. Jannazo reported that the City of Lima is requesting a \$200,000 grant to be used to help pay for 4,017 feet of new “off-site” rail track along the Indiana & Ohio mainline to the property line of the new Greater Ohio ethanol plant. Mr. Jannazo introduced Mr. Gary Sheely, Public Utilities Director for the City of Lima, who was present for any questions the Commissioners might have regarding this project. Commissioner Jackson inquired about the logistics of the project and if the new “off-site” track would be on I&O’s property. Mr. Sheely indicated that the track would be on the railroad’s property, but that the City of Lima will have a perpetual lease which will allow them to legally remain on that property.

Chairman Betts asked for a motion to approve Resolution 05-08. Commissioner McOwen moved to approve the motion and Commissioner Wolfe seconded the motion. Roll call was taken and the motion was approved with seven votes in the affirmative.

Note: Greater Ohio will be requesting a loan in the amount of \$1.5 million to assist with 11,000 feet of “on-site” rail at the new Lima plant. This loan request will be coming before the Commission at a later date.

Resolution 05-09; Information Briefing on ORDC's intent to fund the Norfolk Southern Heartland Corridor Project

NOTE: Commissioner Jackson recused himself prior to Mr. Jannazo giving the presentation on this proposed project.

Mr. Jannazo reported that Resolution 05-09 is an information briefing to allow the Commissioners to be aware that this project will be coming before them for consideration in the near future. The grant requests will be over two fiscal years for \$836,355 to provide double stack clearance for Norfolk Southern from Columbus through West Virginia to the Port of Hampton Roads, Norfolk. This amount represents 90 percent of the funds necessary to eliminate these obstacles in Ohio. Due to the fact that NS has not yet raised the \$67 million in remaining funds necessary to complete this project, ORDC is unable to commit the funds at this time. However, ORDC staff is requesting that the Commissioners demonstrate their intent to fund this project through this Resolution. Mr. Jannazo reported that the total project cost is estimated to be \$186 million.

Chairman Betts asked Bill Harris, Manager of Public Affairs, NS, to speak on behalf of the company. Mr. Harris spoke about this project and how important it is to the success of the new intermodal facility at Rickenbacker. Mr. Harris thanked the Commission for its support of this project. A short discussion followed with Chairman Betts requesting a motion to approve Resolution 05-09. Commissioner Wolfe moved to approve the resolution and Commissioner McOwen seconded the motion. Roll call was taken with six votes in the affirmative; one recused. The motion was approved.

APPROVED PROJECT BRIEFINGS

Cleveland Commercial Railroad

Ms. Bev Lee reported on Cleveland Commercial Railroad Company, LLC's request for a loan of \$20,000 to assist with the construction and installation of a new power line under a road and two railroad tracks to reach an existing source of electricity to provide "hot starts" for the company's engines to prevent freezing.

Commissioner Jackson inquired how the railroad was formed. Mr. William Brown of Cleveland Commercial Railroad responded that his railroad is a shortline railroad affiliated with the Wheeling & Lake Erie Railway (W&LE) whose officials were not happy with the operation of that section of the line so they formed another shortline railroad to serve two customers along that section of track. Cleveland Commercial leases the 10.5 mile line from the W&LE.

Butler County Transportation Improvement District Electric Lock Project

Mr. Jannazo reported on the Butler County TID's request for a \$50,000 grant to assist with the installation of an electric lock on the turnout along the CSX Cincinnati to Toledo mainline which serves the Symmes Industrial Park in Hamilton. Mr. Jannazo reported that the TID is trying to resolve a safety issue with this request as the switch is currently hand-thrown and the main dispatch center in Jacksonville, Florida cannot tell when it is safe for another train to pass through the area. As a result, the mainline traffic must be stopped when local crews switch the industries. The electric lock will resolve this issue and allow mainline trains to use the track while local crews service industries in the industrial park off the mainline. Mr. John Fonner, Director of the Butler County Port Authority, and Mr. Steve Davis, Manager of Economic Development for CSX, were present for questions from the Commissioners. Mr. Fonner thanked the Commission for its assistance and indicated that this issue has been present over the past several years which has resulted in a decrease in rail traffic along this portion of the line and has increased truck traffic on the local roads.

Engage Public Affairs, LLC

Director Seney reported on the personal services contract for Marie Keister of Engage Public Affairs in the amount of \$43,810. Director Seney reported that this contract is a continuation of the previous contract for Engage Public Affairs and will assist ORDC in promoting the Ohio Hub study and continuing dialogue with its affected stakeholders.

Dan Van Epps

Director Seney indicated that this personal services contract is for a total of \$2000 for Mr. Van Epps to provide a report of general fiber optic issues related to the spread of broadband access in the state of Ohio in relation to railroad rights of way and infrastructure.

Raymond Hicks

Director Seney reported on the personal services contract for Mr. Ray Hicks and indicated his contract is for a total of \$12,500 for fiscal year 2006 in which Mr. Hicks will research existing railroad charges for telecommunications carriers utilizing railroad right of way. Director Seney reported that based on this research, Mr. Hicks will develop a price structure for fiber optic carriers wishing to access state-owned railroad right of way which is consistent with comparable

market rates. Mr. Hicks will also prepare a proposal to the telecommunications carriers wishing to utilize state-owned railroad right of way.

Commissioner Jackson inquired about the skill set of both Mr. Hicks and Mr. Van Epps. Director Seney reported on both gentlemen's credentials and apologized for not including their bios in the Commission packet. Director Seney offered to provide Commissioner Jackson with their information after the meeting.

OLD BUSINESS

Commissioner Wolfe requested an update on the RAPID System which Director Seney had spoken about earlier in the year. Director Seney reported that officials in Philadelphia were uncomfortable being involved in a project in Ohio until the issue of the potential sale of the Panhandle was resolved. He indicated that no correspondence has taken place as of late.

NEW BUSINESS

None.

PUBLIC COMMENT

Mr. Art Arnold spoke on the proposed legislation for photo reinforcement requiring law enforcement to be present to issue a ticket to the violator and its potential affect on railroads. Mr. Arnold indicated it is his position that if the legislation does pass that grade crossing photo monitoring still be permitted at the crossings. A short discussion followed with Director Seney echoing Mr. Arnold's comments that this is a safety issue. ORDC's position is that this is a powerful tool in preventing "drive-arounds" at gates and is much cheaper than installing quad gates at a crossing.

ADJOURNMENT

Chairman Betts adjourned the meeting at 11:53 a.m.