

# **SOUTH DAKOTA STATE RAILROAD BOARD MEETING AGENDA**

**Wednesday, September 21, 2022 at 11:00 a.m. CDT**

Becker-Hansen Building/Commission Room – 700 East Broadway Avenue, Pierre, SD

## **MEMBERS PRESENT**

**VIA CONFERENCE CALL:** Jerry Cope, Chairman  
Jeff Burket, Vice-chairman  
Jon Kirby  
Jack Nelson  
Steve Scharnweber  
Greg Carmon

**DOT STAFF PRESENT:** Joel Jundt, Karla Engle, Kellie Beck, Perry Griffith, Misty Siedschlaw, Kyle Weinman, Katlyn Wieme, and Kari Kroll

**OTHERS PRESENT:** Dean Krogman – Rapid City, Pierre & Eastern (RCP&E)

## **OTHERS PRESENT**

**VIA CONFERENCE CALL:** Scott Van Den Top – D&I Railroads; Ryan Yanez – Ringneck & Western Railroad; Dan Kippley – Ellis and Eastern Railroad; Jerry Vest – RCP&E; Bruce Lindholm; Dan Bilka – All Aboard; Dick Huff; Alex Huff; Mark Trottier – Dakota, Missouri Valley, & Western (DMVW); Dave Scott; Hollie Stalder – Belle Fourche Development Corporation; and Mark Wagner – Sisseton Milbank Railroad Company

Chairman Jerry Cope called the meeting of the South Dakota State Railroad Board (the “Board”) to order at 11:01 a.m. CDT. A roll call was taken, and a quorum was determined.

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Cope opened the floor to Board members to disclose potential conflicts of interest and to present requests for waiver pursuant to the South Dakota Codified Law (SDCL) chapters 3 – 23.

Karla Engle, Office of Legal Counsel, presented an annual disclosure and waiver received from Jack Nelson concerning a potential conflict of interest. A copy of the request for waiver is attached to and incorporated into these minutes as **ATTACHMENT A**. Nelson accepted a position at Agtegra starting September 23, 2022, and the waiver request relates to agreements between Agtegra and the South Dakota Department of Transportation. These agreements do not come before the Board for approval.

A MOTION WAS MADE by Carmon and seconded by Kirby that the matters disclosed in the annual disclosure and waiver request are fair, reasonable, and not contrary to public interest. All present voted aye by roll call vote, except Nelson who abstained. The motion carried.

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Cope asked for a motion to approve the August 17, 2022 Board meeting minutes.

A MOTION WAS MADE by Burket and seconded by Kirby to approve the Board meeting minutes for August 17, 2022. All present voted aye by roll call vote. The motion carried.

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Karla Engle, Office of Legal Counsel, requested the Commission set a hearing date for October 19, 2022, to consider amendments to Administrative Rules of South Dakota (ARSD) Article 70:05.

Engle explained the process for amending administrative rules.

A MOTION WAS MADE by Burkett and seconded by Carmon to set a hearing date for October 19, 2022, to consider amendments to ARSD Article 70:05. All present voted aye by voice vote. The motion carried.

**RESOLUTION #2022 – B08 was adopted.**

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Cope opened the floor to public input.

Mark Trottier of Dakota, Missouri Valley, & Western Railroad, Inc. (DMVW) informed the Board that DMVW plans to submit an application for an estimated \$15 million Special Transportation Circumstance (STC) grant when the grants become available. The grant would be to upgrade the line from mile marker (MRM) 115.4 to the North Dakota border and from Jarret Junction to the Britton Grain terminal.

Dan Kippley of Ellis & Eastern Company (Ellis & Eastern) also shared that Ellis & Eastern plans to submit an STC application.

Ryan Yanez of Ringneck & Western Railroad, L.L.C. (Ringneck & Western) also shared that Ringneck & Western intends to submit an STC application.

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Secretary Jundt presented the following items in the Secretary's Report to the Board:

- No decision has been made by the U.S. Congress regarding the Federal Reauthorization and Appropriations bills. Jundt anticipates a continuing resolution will go into place October 1, 2022.
- The Notice for Funding for the STC Grants has not been announced and it is not expected until late fall or after the first of the year. Jundt informed the Board the Department of Transportation (the “Department”) will issue a press release asking for applications with an October deadline. The Board would have time to review applications before hearing from the applicants at the November Board meeting with the intent to approve grant applications at the December Board meeting. Approximately \$17 million dollars would be available for STC Grants consisting of \$4 million carry over from last year and \$13 million dollars for the current year.
- Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant notice of funding have been announced. The Department issued a press release about this opportunity. There is \$1.427 billion available with 25%, or \$376 million, set aside for rural projects. The criteria for these grants: no maximum nor minimum amount required, it is paid by reimbursement, and it is at a minimum 80% percent federal funds and 20% percent non-federal funding match. The applicant will need to complete the application and the Department would submit the application to the Federal Railroad Administration (FRA) on the applicant’s behalf as well as administer the grant if awarded. CRISI grant application deadline is December 1, 2022.

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Mark Wagner of Sisseton Milbank Railroad Company (SMRR) presented to the Board a request to apply for the CRISI grant. SMRR had previously applied for a Rebuilding American Infrastructure with Sustainability and Equality (RAISE) grant in February 2022 without success. SMRR will modify the RAISE grant Application to meet the CRISI grant criteria.

The project proposal is to use \$24,761,728 in federal funds and \$6,190,378 (estimated) in local funds for the grant eligible portion of the project and an additional \$150,000 (estimated) in local funds for non-grant eligible preliminary costs. Concerning the local fund contribution, SMRR requests \$6,250,000 as a loan from the Board and the remaining \$90,378 will be provided by SMRR. SMRR acknowledged the amount of CRISI grant funds is limited to the grant amount – so any costs over the grant amount will be borne by SMRR. Local matching funds are not conditional, nor do they have an expiration date.

A MOTION WAS MADE by Carmon and seconded by Scharnweber to authorize the Secretary or his designee to execute all documents necessary to submit the CRISI application for federal funding in the amount of \$24,761,728 for the proposed SMRR project, contingent upon SMRR agreeing to contribute funds (currently estimated at \$6,340,378) toward the total project costs of \$31,102,106. All present voted aye by roll call vote. The motion carried.

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Karla Engle presented for Board consideration a state railroad loan to the Roberts County Regional Railroad Authority for the CRISI grant project proposed by SMRR. The Board had previously approved a loan contingent upon approval of SMRR’s RAISE grant application, but that application has now been

denied. Engle described the conditions the Board placed on the RAISE grant application and proposed that the same conditions apply, except for the following revisions: change all references from a RAISE grant to a CRISI grant and change the total project estimate from \$31,250,000 to \$31,102,160.

A MOTION WAS MADE by Carmon and seconded by Kirby to authorize the Secretary or his designee to execute a loan agreement and any other necessary documents to make a loan to Roberts Regional Railroad Authority for necessary project costs to reconstruct the railroad line from Milbank to Sisseton (excluding the Lake Farley Bridge) to AREMA Class II standards. The loan will be subject to the following conditions: (1) a resolution or official minutes from the Roberts Regional Railroad Authority authorizing the execution of all documents necessary to receive the loan; (2) a loan guarantee executed by Sisseton Milbank Railroad Company and Twin Cities and Western Railroad Company; (3) approval of a CRISI grant by the U.S. Department of Transportation for the reconstruction project; (4) limiting the loan amount to the lesser of \$6,250,000.00 or the difference between the actual, reasonable and necessary project costs minus the amount of the CRISI grant awarded by the U.S. Department of Transportation; (5) interest on the loan will be at the rate of 1.5% per year and the loan will be amortized over 15 years with a final balloon payment after seven years; (6) proceeds from project salvage shall be applied first to any actual, reasonable and necessary project costs in excess of \$31,102,160 and then to repayment of the loan; and (7) the Sisseton Milbank Railroad Company and Twin Cities and Western Railroad Company will work cooperatively with the Department to meet project and grant deadlines. All present voted aye by roll call vote. The motion carried.

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Jerry Vest of Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E) presented to the Board a request to apply for a CRISI grant. The initial total project cost is \$23,250,000 funded with a request for federal and RCP&E match of \$11,650,000 each or 50/50 match. The grant request is to assist in the construction of the new locomotive shop in Huron.

Vest also requested approval of a CRISI grant application for the purchase of rehabilitated locomotives.

A MOTION WAS MADE by Burket and seconded by Nelson to authorize the Secretary or his designee to execute all documents necessary to submit the CRISI application on behalf of RCP&E for a total project funding amount \$28,650,000, with \$14,325,000 in federal funding and RCP&E contributing at least an additional \$14,325,000 toward the project costs. All present voted aye by roll call vote. The motion carried.

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With no other business to come before the Board, Cope adjourned the meeting at 12:53 p.m. CDT

STATE OF SOUTH DAKOTA  
~~AERONAUTICS COMMISSION~~

*Railroad Board*

REQUEST FOR STATE BOARD WAIVER  
PURSUANT TO SDCL 3-23-3

Date: 9/23/2022

Name of Board Member or Former Board Member: Jack Nelson

Brief explanation of contract for which a waiver is requested:

- a) Parties to the contract: AGTEGRA & DOT
- b) Board Member's role in the contract: I will be the Southern Region Manager for AGTEGRA and will not have any direct role with the locations which have agreements with DOT. My employment with AGTEGRA starts 9/23/22
- c) Purpose and objective of the contract: Agreements with DOT concerning construction and maintenance of highway/railroad crossings and other appurtenances and for installation of equipment at DOT facilities.
- d) Consideration or benefit conferred or agreed to be conferred upon each party: Payment of installation of equipment.
- e) Duration of the contract: Crossings and lights are life of the project. Equipment installation is when work is complete.

Signature of Requesting Party: \_\_\_\_\_

*Jack Nelson*

Date

*9-14-22*

ANNUAL DISCLOSURE FOR AUTHORITY/BOARD/COMMISSION MEMBER  
PURSUANT TO SDCL CHAPTER 3-23

**THIS IS A PUBLIC DOCUMENT**

Name of Member: Jack Nelson

Name of Board, Authority, or Commission: South Dakota DOT Railroad

The Member shall disclose below any contract in which the Member has an interest or from which the Member derives a direct benefit if the contract is:

- 1) With the state agency to which the Member's board, authority, or commission is attached for reporting or oversight purposes and which contract requires the expenditure of government funds;
- 2) With the state and which contract requires the approval of the Member's board, authority, or commission and the expenditure of government funds; or
- 3) With a political subdivision of the state if the political subdivision approves the contract and:
  - a. is under the regulatory oversight of the authority, board, or commission, or
  - b. is under the regulatory oversight of the agency to which the Member's board, authority, or commission is attached.

The Member shall disclose the contract even though no additional authorization is needed from the Member's board, authority, or commission to have an interest or derive a benefit from the contract.

The Member shall also identify every entity in which the Member possesses an ownership interest of five percent or greater if:

- 1) The entity receives grant money from the State, either directly or by a pass-through grant or
- 2) The entity contracts with the State or any political subdivision for services.

1. **Contracts in which you have an interest pursuant to SDCL Chapter 3-23 and which do not violate any other provision of law** – Provide the following for each contract in which you have, or will have, an interest. For further information see SDCL 3-23-2.1 and 3-23.3.1.

Description of the contract	Parties	Description of your interest/role in the contract	Date contract was previously disclosed, if applicable
Agtegra has entered into agreements with DOT concerning construction and maintenance of highway/railroad crossings and other railroad related appurtenances and for installation of equipment at DOT facilities.	AGTEGRA & DOT	As I will be the manager of the southern region I will not have any direct involvement with the locations which have agreements with DOT. My employment with Agtegra starts 9/23/2022	NA

Attach additional pages, if necessary.

2. **Contract in which you have a direct benefit pursuant to SDCL Chapter 3-23** – Provide the following for each contract from which you derive, or will derive, a direct benefit. For more information see SDCL 3-23-2, 3-23-2.2, and 3-23-3.1.

Description of the contract	Parties	Description of the direct benefit	Date contract was authorized

3. Entities in which you possess an ownership interest of five percent or more that receive grant money from the State, either directly or by a pass-through grant, or that contract with the State or any political subdivision for services – Provide the following for each such entity. See SDCL 3.23-3.1.

Description of the contract or grant	Party in which you possess the interest	State agency or subdivision

*Attach additional pages, if necessary.*

The Member shall complete a separate authorization request for any contract identified above that requires authorization from the Member's board, authority, or commission in order for the Member to legally derive a direct benefit.

Signature of Member: \_\_\_\_\_

*Jack Dubon*

Date \_\_\_\_\_

*9-14-22*