

SOUTH DAKOTA STATE RAILROAD BOARD MEETING MINUTES

Wednesday, November 20, 2024 at 11:00 a.m. CST

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

MEMBERS PRESENT: Jeff Burket, Chairman
Jack Nelson, Vice-chairman
Steve Scharnweber
Scott Lockwood
Ralph Schmidt
Greg Carmon

DOT STAFF PRESENT: Joel Jundt, Karla Engle, Perry Griffith, Misty Siedschlaw, Katie Wilkerson,
and Kari Kroll

DOT STAFF PRESENT

VIA CONFERENCE CALL: Kellie Beck and Jack Dokken

OTHER PRESENT: Jeff Cooley – Civil Design Inc (CDI); Kevin Kjorsvik – Ring-neck Energy & Feed, LLC; Danci Baker – Ringneck Energy; Mike Lauritsen– Mitchell Area Development Corporation; Toby Morris – Colliers Securities LLC; Tom Kersting – South Dakota Soybean Processors/High Plains Processing, LLC; and Bob Mercer – KELOLAND News

OTHERS PRESENT

VIA CONFERENCE CALL: Chadd Thimesch - Ringneck & Western Railroad, LLC; Dick Huff; and Cory Lund – Rapid City, Pierre & Eastern Railroad, Inc. (RCPE)

Chairman Jeff Burket called the meeting of the South Dakota State Railroad Board (the “Board”) to order at 11:00 a.m. CT. A roll call was taken, and a quorum was determined.

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

Karla Engle, Chief Legal Counsel, addressed the Board with a reminder to submit annual conflict of interest disclosures if a previously waived potential conflict continues into the present year. She asked that any disclosures be sent to the Department of Transportation (the “Department”) so they may be addressed at the next meeting.

Board member Greg Carmon verbally disclosed a potential conflict of interest with the agenda item concerning consideration of a railroad trust fund loan request from Davison Regional Railroad Authority that would benefit High Plains Processing, LLC (HPP). Carmon explained that he is an investor in HPP. He indicated he would recuse himself from the discussion and vote on this agenda item.

A MOTION WAS MADE by Lockwood and seconded by Schmidt that the matter disclosed by Board member Carmon is fair, reasonable, and not contrary to public interest. All presented vote aye by voice vote except Carmon who abstained. The motion carried.

No other conflicts of interest were disclosed, and no waivers were requested.

Burket asked for a motion to approve the Board meeting minutes from June 12, 2024.

A MOTION WAS MADE by Scharnweber and seconded by Nelson to approve the Board meeting minutes from June 12, 2024. All present voted aye by voice vote. The motion carried.

Burket acknowledge that he received a complaint letter from Dick Huff and shared it with the Board as a handout. No action nor decision would be made on the matter since it was not on the agenda for this meeting. He asked the Board if they'd like to consider putting it on a future agenda.

The Board expressed a need to obtain more information from Dick Huff about the nature of his complaint before deciding whether it merits consideration as an agenda item. Dick Huff agreed to contact the chairman to share additional details about his complaint.

Karla Engle presented for Board consideration a request to amend the legal services agreement with Slover and Loftus, LLP. She requested authorization to amend the agreement by extending it one year, which would set the new expiration date as December 31, 2025.

A MOTION WAS MADE by Carmon and seconded by Lockwood to authorize the Secretary of the South Dakota Department of Transportation, or his designee, to execute all documents necessary to amend the agreement for legal services with Slover & Loftus LLP to extend the term of the agreement to December 31, 2025. All present voted aye by voice vote. The motion carried.

Burket opened the floor to public input.

Kevin Kjorsvik of Ring-neck Energy & Feed, LLC (Ring-neck Energy) addressed the Board to explain that Ring-neck Energy will be requesting an extension of time for repayment of the railroad trust fund loan made to Sully County Regional Railroad Authority, as the balloon payment is coming due soon. Additionally, the Sully County Regional Railroad Authority will be requesting an additional loan of approximately \$1.3 million to help Ring-neck Energy build a roughly 2,400 foot track extension, which will increase the train capacity at the Ring-neck facility.

No other members of the public addressed the Board nor offered input.

Burket asked for a motion for the Commission to enter into executive session.

A MOTION WAS MADE by Nelson and seconded by Scharnweber to enter into executive session pursuant to SDCL 1-25-2(3) for the purpose of consulting with legal counsel and reviewing communications from legal counsel about proposed or pending litigation or contractual matters. All present voted aye by voice vote. The motion carried.

Executive session began at 11:12 a.m.

Executive session ended at 11:57 a.m. CT.

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

- Congress passed a continuing resolution that will provide federal funding through December 20, 2024. This action will provide short term federal funding during this time, and funding will be limited to last year's budgeted amount with federal funds only being partially appropriated based on the December 20, 2024 date. It is not anticipated that Congress will take up the full year appropriations legislation until sometime into the new year, i.e., February or March.
- In October, the Federal Railroad Administration (FRA) approved the eligibility of six projects submitted by the Department for Special Transportation Circumstance (STC) grants. He also noted that the Notice of Funding (NOFO) for the upcoming STC grants has not been announced yet.
- The Department presented a budget request to the Governor via the Bureau of Finance and Management with increases for supplies like salt and snowplow blades. On the second Tuesday of December, the Governor will give her budget address and the Department will learn how the requests were received.

Jundt presented to the Commission the proposed meeting dates for CY2025. No Board members raised objections to the dates presented.

Board member Carmon recused himself from the discussion and vote on the following item concerning a loan request from Davison Regional Railroad Authority. He took a seat in the gallery.

Jundt presented for Board consideration a loan request in the amount of \$16.1 million from Davison Regional Railroad Authority to install loop track infrastructure to serve the HPP plant in Mitchell. Jundt explained that \$16.1 million represents an estimate of the cost of the track infrastructure that would be eligible for a loan request. Toby Morris of Colliers Securities, LLC explained the purpose of the loan

request. Tom Kerstring of South Dakota Soybean Processors and HHP presented additional details to the Board about the loan request. Mike Lauritsen from the Davison Regional Railroad Authority expressed the support of the authority for this project.

Secretary Jundt shared with the Board the current guidelines of the Transportation Commission regarding loan requests. He explained that they generally use a base interest rate of 2.7% but add additional interest of 0.25% in recognition of the administrative costs associated with a loan. He then shared the current funding availability for the railroad trust fund at approximately \$35 million. He noted that \$10.8 million of that has already been obligated and the Department has received notice of upcoming loan requests from other entities that total around \$14.5 million. Jundt suggested the Board may not wish to deplete the trust fund in order to have contingency funds available in the event of an emergency that impacts railroads- especially state owned railroads. Lastly, his recommendation to the Board was to award a loan for \$12.6 million for 7 years amortized at 15 years with a total annual interest rate of 2.95%.

The Board discussed the different options based on the funds available. Kerstring, Morris and Lauritsen encouraged the Board to grant the entire loan of \$16.1, describing the railroad project as ready to build and an economic advantage to the state. Kerstring also asked that the Board impose an annual interest rate of only 2.0%, which has been the rate generally extended to railroad trust fund loans in the past.

A MOTION WAS MADE by Scharnweber and seconded by Lockwood to authorize the Secretary of the South Dakota Department of Transportation, or his designee, to execute all necessary documents to issue a railroad trust fund loan for construction of the above-referenced loop track infrastructure project subject to the following terms and conditions:

- The loan will be made to the Davison Regional Railroad Authority;
- The loan amount may not exceed Twelve Million Six Hundred Thousand Dollars (\$12,600,000.00)
- The amount of the annual loan payments will be based on a fifteen-year amortization schedule at an interest rate of 2.95% per annum on the unpaid balance. A balloon payment for the entire unpaid loan balance will become due seven (7) years after the first loan repayment installment is due;
- High Plains Processing, LLC will execute a promissory note and guaranty for the loan.

All present voted aye by voice vote except Carmon who had recused himself. The motion carried.

Board member Carmon rejoined the meeting table at 12:27 p.m.

Secretary Jundt explained that due to anticipated additional loan requests, the December 18, 2024 meeting should be in person. The Board concurred.

With no further business to come before the Board, Burket declared the meeting adjourned at 12:39 p.m. CT.