

**MINUTES OF THE OHIO RAIL DEVELOPMENT COMMISSION
REGULAR BI-MONTHLY MEETING
November 19, 2009**

CALL TO ORDER

The meeting of the Ohio Rail Development Commission was called to order by Chairman James Bradley at 10:08 a.m. on Thursday, November 19, 2009. Chairman Bradley introduced himself to the Commission and indicated that he is a graduate of Carnegie Tech (now Carnegie Mellon) and spent 40 years in the steel industry. His last role was as CEO of the Wheeling-Pittsburgh Steel Corporation.

MEMBERS PRESENT

Members present included: Chairman James Bradley, Commissioners Tom McOwen, Solomon Jackson, Herk Wolfe, Rob Greenlese, Bill Lozier, Mandy Kisling Bishop, Larry Sowers and Representative Robert Hagan, Josh Williams for Senator Jason Wilson, Kimberly Wheeler for Senator Steve Buehrer, and Nick Brusky for Representative Terry Boose. Members absent included Commissioner Barbara Bennett. Commissioner William Murdock arrived at 10:17 a.m. There were nine voting members present therefore a quorum was obtained.

APPROVAL OF THE MINUTES OF THE SEPTEMBER MEETING

Chairman Bradley asked for a motion to approve the minutes of the September 10, 2009 meeting. Commissioner Wolfe moved to approve the minutes and Commissioner Greenlese seconded the motion. Roll call was taken. The minutes were approved as presented with eight votes in the affirmative.

EXECUTIVE DIRECTOR'S REPORT

Director Dietrich presented the Executive Director's Report on page 15 of the meeting packet. He noted a couple of items of interest. Regarding the State Rail Plan, Wilbur Smith and Associates have been hired as consultants. The primary purpose of the initial plan is to comply with the federal requirements that are detailed in the Passenger Rail Investment and Improvement Act, which was passed in 2008. We intend to present a draft to the Commission at the January meeting for approval, again understanding the timelines and the need to have this plan in place.

The Amtrak Report was presented as a draft report in September and included in our ARRA application for passenger rail. We are working with Amtrak Staff to make revisions based on our review and comment period. We have had conference calls with Amtrak and they are revising the document. We are still slated to receive the final report in December.

Previously, ORDC teamed with the Department of Development and the Department of Transportation in project recommendations for the State Stimulus Logistics and Distribution Program that was a \$100 million program. To date, approximately \$50 million in funding has been allocated.

On October 22, ORDC received an offer to purchase the state-owned Piney-Fork Rail Line (page 17 of meeting packet). Ohi-Rail has operated the line since 1984. The line was purchased by the Ohio Rail Transportation Authority in 1982. In 2004 an appraisal was conducted with an estimated net liquidation value of approximately \$1.3 million. We will continue discussions with Ohi-Rail on this. Richard Delatore, the Vice President of Ohi-Rail Corp. said they had submitted a letter with an offer to purchase the Piney Fork Rail Line four or five years ago. At

the time, they just couldn't put the deal together. The price at that time was approximately \$1.4 million. Mr. Delatore wants to make sure the Commission understands they are not interested in liquidation. They are interested in preservation. It is going to be risky and it is not going to be easy, but they figure they can do it. They are making a commitment to the area. They would like the Commission's consideration.

Director Dietrich reported that last week he testified before the Sunset Review Committee, which is a legislative committee that reviews various state committees and commissions on a five year cycle, on the Interstate High Speed Intercity Rail Passenger Network Compact and just received notice from the committee chairman's office that the Midwest Interstate Passenger Rail Compact will be up for review possibly the first week of December.

Director Dietrich noted that Tod Darfus was an expert witness in a closure case that was before the PUCO. As a result of the work of the railroad and Mr. Darfus' testimony, the PUCO ordered that crossing in Marion County to be closed.

Director Dietrich said there were a couple of points of clarity to be made on the letter from Ohi-Rail. They say they have a renewed commitment to restart freight operations. Commissioner Lozier asked if it is now not active. Director Dietrich said that it is in various states, but much of it is not necessarily in good shape. Commissioner Lozier also asked about the letter stating that Ohi-Rail intends to have the line appraised. Will there be a new appraisal? Director Dietrich said that is one of the discussion points that we will have with Ohi-Rail moving forward. For appraisals, we normally follow the standard state processes. Commissioner Lozier commented that he thought it was great that Ohi-Rail wants to get this line active and that this is moving forward.

Commissioner Jackson asked if Ohi-Rail is asking the state to help finance it or what is there plan should we reach an agreement on price. Director Dietrich said we have not had these conversations yet.

Commissioner Jackson had one other question in the Executive Director's Report. At the retreat, there was a considerable amount of confusion over the task of Wilbur Smith and Associates. The overall question is, have we eliminated the amount of confusion that many of the commissioners had at the time with regard to the assignment and also do we have someone in place to monitor the work to ensure that we will get what we need. One of his concerns is that we will have a Commission Meeting in January and see the information in January and it is not quite clear that they are on the right path.

Director Dietrich said there is a team on the administrative side. This state plan resulted from a request to the DOT and so there is an engaged contract administrator/project manager, as well as engagement by Commissioner Bennett and members of the ORDC Staff. From the retreat there was a sense of a great deal of wants from the Commission and then also we needed to try to mesh those with what we need to do to be in compliance with the federal regulations. After that, we can get into the wants of the Commission in terms of what do we want above and beyond the minimum requirements. Commissioner Bishop is leading the Transportation Futures Plan effort for ODOT and Director Dietrich is the ORDC representative to the interagency working group so there is plenty of opportunity to make sure that the State Rail Plan will fit into that broader vision. Commissioner Bishop said from the get-go, they scoped these two plans together and they have always had every intention of taking the elements from the State Rail Plan and

molding them into the Futures Plan so that the documents were coherent and that they weren't duplicating efforts. Director Dietrich said once we get minimum requirements then we can look at the additional desires of the Commission and then we can make a firm assessment of whether those items should be part of the State Rail Plan and/or the Futures Plan.

Representative Hagan asked the Director for a quick review on Piney Fork. Director Dietrich said the line is 43 miles long and is located in Jefferson, Carroll, and Harrison counties. In the 80's it was saved as part of our Rail Line Preservation Program. The preservation of rail lines is first and foremost one of our missions as Commissioner Wolfe has often reminded us. In terms of fitting into the larger picture, it is an asset. It has some potential of a through route and has other potentials as the coal mines are still active there. In terms of fitting with the State Rail Plan, we are in the process of developing the State Rail Plan. There are some lines that have national strategic interest; there are some lines that are lightly traveled, maybe not in the best shape, but those communities and companies they serve consider them the lifeblood for economic reasons. How this line specifically fits into the State Rail Plan, he does not know at this point.

Representative Hagan said there is great interest throughout his area about saving the Ravenna connection. Approximately 15 years ago, it was going to cost \$500,000 to just put in the connection. Today it is estimated at \$10 million. If we wait any longer, history will show that in the future we will pay additional. Director Dietrich said we are moving forward on the Cleveland/Pittsburgh Corridor on two fronts. The PRIIA Act in the fall directed the USDOT Secretary to study the feasibility of rail in that corridor. Working with our partners in the State of Pennsylvania, we have pulled all the information out of our Ohio Hub Study, and we have submitted that to the USDOT Secretary with a joint cover letter from the Governor of Pennsylvania and the Governor of Ohio, basically providing a study for the Secretary to make that determination for High Speed Rail Designation. In addition, part of the \$7 million in PEIS funding received from the TRAC will look at the Cleveland/Pittsburgh Corridor and critical to that are the connections. From the federal standpoint, once we have the route designations, and the routes identified through the PEIS, then we can start making those investment decisions in terms of preserving.

Representative Hagan expressed concern about the way that some of the stimulus funds that have not been needed for the projects for which they were originally designated have been reallocated. He thinks we have to be a little bit stronger in our lobbying and make some effort to make sure that those projects that may be second tier are at least considered. He just wanted to make the Commission aware of that and to just give them a heads up.

Commissioner Bishop stated that as far as the stimulus money goes, what the department really did and the Governor's Office, is work within the confines of the federal regulations and particularly the time constraints. ARRA may not have been the program to do some of the things we would have liked to do.

FINANCE REPORT

Megan McClory, ORDC's Secretary-Treasurer, presented the Finance Report to the Commissioners, which can be found on page 22 of the commission packet. Ms. McClory reported that the packet includes Current Financial Statements regarding outstanding loans and project balances for the Commission's information. Ms. McClory said our major effort right

now is wrapping up authorization of a number of stimulus projects. We are very close to the December 1 deadline that ODOT has established to get a lot of those project details wrapped up and working those agreements and environmental documents and project plans has been quite a challenge and very time consuming. They are getting close and the projects are in good shape to move forward. We are also working with the recipients that we were already able to authorize to get construction underway on those. In the Springfield/Mechanicsburg area, the West Central Ohio Port Authority is doing tie replacement and grade crossing reconstruction at this time. We have other projects out to bid. The Wheeling and Lake Erie was able to do a significant amount of tie replacements along their Cleveland line and a couple of other locations.

The Finance Section also participated in some of the major funding applications that ORDC submitted in September and October. There were two TIGER applications that this Commission approved, the US Rail Car LLC manufacturing facility and the CSX National Gateway initiative. Those were filed on time and we have not received any response other than thanking us for submitting the applications. We are still waiting on word for the passenger application as well.

Gloria Howard and Ms. McClory have been providing staff support to the Human Resources Committee.

We have had some problems with some of our Commissioners' reimbursements in getting the accounting details straightened out. Ms. McClory thinks that will all come together today or tomorrow so the checks should be on their way.

Ms. McClory introduced Suzy Pettet who is from the DOT Division of Transportation System Development. She is helping out today with the minutes. Ms. McClory appreciates Commissioner Bishop's willingness to allow her to help out.

A Staff note for the Fiscal Section – Tom Burns has passed the state bar exam and has been admitted to the bar.

PROJECT BRIEFING: ASHLAND RAILWAY MANSFIELD TO WILLARD LINE LOAN

Lou Jannazo presented the briefing, found on page 27 in the commission packet. The loan amount request is \$280,000. The funds will be used to purchase materials that ASRY will install with its own equipment and its own forces over the course of the 2010 construction season. Don Cleland said that the primary customer is AK Steel and the line provides ASRY's primary connection to CSX. ASRY began operations in 1985 and the track has been lowered to "excepted" status because of a lack of investment. His goal is to raise the condition of the track, however that is complicated by the downturn in production at AK Mansfield over the past year. Mr. Cleland further stated that there are hazmat restrictions on the line now and if it is not addressed, they may not be able to operate at all. Commissioner Hagan asked if it was previously a CSX line. Mr. Cleland said that it was. It was purchased from CSX in the 1990s and he understands at one time it was 40 mph track. Commissioner Hagan said he thinks it is now walking speed in some cases. Commissioner Lozier has a concern if AK Steel would drop off in production. AK Steel would need to continue to be a major customer in order for the loan to be repaid. Mr. Cleland said that AK Steel expects to be on a regular production schedule in January. Commissioner Bishop moved to approve the briefing for Ashland Railway Mansfield to Willard Line Loan. Commissioner Greenlese seconded the motion. Roll call was taken with

nine votes in the affirmative.

APPROVED PROJECT BRIEFING: REPAIR OF OHIO CENTRAL SWING BRIDGE OVER THE MUSKINGUM RIVER PARKWAY CANAL

Lou Jannazo said that the briefing can be found on page 36 in the commission packet. The Grant Request is for \$131,015. The bridge is 102 years old and is over a canal. It was an old freight waterway and it hasn't been used for freight for many years. The swing bridge rotates. It has to be opened for large pleasure crafts. Ohio Central is in the process of changing their practices. The current bridge and the procedure needed to open it is dangerous and time consuming. The railroad has done extensive research and provided photos to Commissioners of the bridge and its operation.

Commissioner Jackson said from an economic standpoint, it does not improve their bottom line. If they left it closed and just did routine maintenance that would be the way to go. Mr. Pohlod said they would love to leave it closed, but the Army Corps of Engineers requires it to be opened. Commissioner Jackson asked if there were any abilities to renegotiate or is it just the way it has to be. Mr. Pohlod said that the Army Corp of Engineers says that is the way it has to be.

Commissioner Lozier asked about the design life with the nature of repairs. Are Jerry Klein and Mr. Pohlod indicated that they expect the hydraulic system that will be installed to be long-lasting. Right now, they manually open the bridge. The project would allow the process to take between 15-30 minutes instead of 4 hours. Mr. Pohlod confirmed that the bridge is structurally sound.

APPROVED PROJECT BRIEFING: INDIANA EASTERN RAILROAD BRIDGE REPAIRS

Lou Jannazo said that the briefing can be found on page 42 in the commission packet. The Grant Request is for \$100,000. The Indiana Eastern Railroad was established in 2005. They have a long term lease from CSX and the repairs in this phase include items to be of Priority 2 or Priority 3. The IERR's corporate goal is to rid the line of all deferred maintenance in five years. The Ohio portion has a couple of good chemical shippers. Currently, the Ohio portion of the line is more profitable than the Indiana section.

APPROVED PROJECT BRIEFING: CITY OF LEBANON, LM&M TOURIST RAILROAD REHABILITATION PROJECT

Lou Jannazo said that the briefing can be found on page 50 in the commission packet. The Grant Request is for \$25,000. The City of Lebanon owns 5 miles of railroad between Lebanon and Hageman Junction. It used to be a decent freight line, but the last freight car was in 2007. Tourists generate a lot of economic activity with over 100 businesses. In 2009, the City of Lebanon paid \$273,000 for bridge repairs. Commissioner Bishop asked if there was a financing plan for the next two years. Jason Mallard with the City of Lebanon said that they do plan on asking for additional funding.

PROJECT BRIEFING: MARNE BRIDGE REMOVAL

Megan McClory said that the briefing can be found on page 54 in the commission packet. Ms. McClory stated that they hope this to be the culmination of a long standing issue along the state owned Panhandle line. The bridge in question is part of the package that came with the state's purchase of the line in 1992. It is a wooden deck bridge with steel girders and piers and is 160'

long and 12' wide. The bridge is not in good condition both in terms of the wooden decking and the support structure. The property owner, who is otherwise land-locked, started contacting the Commission back when the line was purchased in the early 1990s. Earlier minor decking repairs were made, but the bridge is now in the condition even if we made the deck repairs, it would not be in a condition to carry emergency vehicles which is obviously a major safety concern for the individual living in the property across the bridge. Staff has worked with Ohio Central and has reached an agreement. The railroad has put out bids to remove the bridge and put in a private at-grade crossing to allow access to the property. The briefing is for the Commission to fund the bridge removal and the installation of the crossing.

Commissioner Lozier asked if it has been considered to construct a public road. Ms. McClory said that the railroad has been extremely helpful with working with the adjoining property owner who does have access to a public road. The adjoining property owner did agree to a driveway so that his neighbor could access a public road, but only on a temporary basis. Director Dietrich said that we have looked at every feasible option. This was the only solution we could reach where everyone is satisfied. Mr. Pohlod said that the land owner does have a right to force us to rebuild the bridge. Chairman Bradley asked what the cost would be to rebuild the bridge. Mr. Pohlod said it would be between \$400-500,000. Commissioner Greenlese asked about the location of the bridge. Mr. Pohlod said it is 5 miles east of Newark, Ohio.

PANHANDLE LONG-TERM LEASE COMMITTEE REPORT

Commissioner McOwen reported that they finally had a meeting on this subject. He gave a quick history of the lease. They have been working on a long term lease on this property for well over a year and due to the sale of Ohio Central everything was put on hold. They basically reviewed where we are on the lease. We have a lot of background we need to share. Where we came out is that the railroad is going to go back with a fresh prospective and look at the draft of the lease we have so far, and see if we can't make it a little bit easier to read and fix some of the wording that is not quite right. They will be back to us with a new draft and we will have further meetings. Chairman Bradley asked if we had established any type of a proposed timeline as to coming to some kind of an agreement. Commissioner McOwen said we have not. The driving force for even having a 25 year lease was the inability of the previous owners to get a long term finance agreement. If they had a long term lease, they could go to the FRA and get some long term funding for the line. Director Dietrich and Commissioner McOwen will meet to review the lease once the draft is back. The committee will then have a meeting.

STANDING COMMITTEE REPORTS

Budget & Finance Committee – Chairman McOwen

No report.

Human Resources – Chairman Jackson

Committee Chairman Jackson reported that the HR Committee had a meeting on November 3. The purpose was twofold. The first issue was to fine tune a position description for the Project Manager position. During that process, they had invited ODOT Personnel to help navigate on issues that could be encountered should they go ahead and post the position. They had a good discussion about those items and are getting close to having that position posted. The second issue that was discussed and debated was based on discussion at the retreat and the information that was put together concerning staff needs. Chairman Jackson suggests a bold approach to staffing in the Planning Section. The committee will continue that discussion on December 2 at

its next meeting. He welcomes anyone that wants to participate.

Economic Development and Strategic Planning Committee – Director Dietrich

Director Dietrich reported that their focus has been on the State Rail Plan. Director Dietrich, Chairwoman Bennett, ORDC Staff, and Leonard Evans met with Wilbur Smith and Associates to clarify some guidelines. They have a meeting on November 20 to discuss the benefits calculator that has been drafted for the State Rail Plan.

Legislative Committee – Commissioner Molitoris

No report.

Chairman Bradley stated that he has experience with Standing Committees, ad hoc Committees, etc. They are very good ways to improve the efficiency of a group like this. He is interested in exploring how the Commission is organized, looking at the committees that are currently in existence, and considering whether changes should be made. Chairman Bradley proposed that a Special Advisory Committee be organized. Chairman Bradley, Director Dietrich, Commissioner McOwen, and Commissioner Lozier will spend time looking at the organization and report back at the January meeting.

Chairman Bradley made a motion that a Special Advisory Committee be formed to analyze and study the organization of committees that are part of this Commission. Commissioner McOwen seconded the motion. Roll call was taken with nine votes in the affirmative.

OLD BUSINESS

Chairman Bradley said that the 2010 Schedule, presented in draft form, can be found on page 58 in the commission packet. He is not aware of anything that needs changed. If nothing needs to be changed, this will be considered the final schedule for 2010.

The Commission approved a motion at the July meeting to give staff the authority to develop a workout of the Columbiana County Port Authority Loan. Megan McClory will provide an update as well as presenting Resolution 09-25. Ms. McClory stated that the ORDC made a loan of up to \$2.1 million in 2003 to rehabilitate the former Youngstown and Southern line. She then summarized the Commission and staff actions to date.

Staff recommends reamortizing the remaining principal balance. The outstanding balance is just over \$1.2 million, and staff recommends a term of 60 months and a final payment to consist of all late fees accrued to date, but not paid yet. In addition, to the payment that will be required as part of the new amortization schedule, we propose that Eastern States would pay an additional per car amount in excess of a base to try to repay that principal more quickly than the 60 month term. As a further incentive to speed up the repayments, we are also recommending a provision that allows staff to waive some or all of the outstanding late fees accumulated to date.

Commissioner Lozier asked if they go out of business, where do we rank in getting paid. Director Dietrich confirmed that they do have other outstanding debt. The Port Authority and Eastern States both bear certain responsibilities to guarantee the loan and we hold a shared first or second position on the property.

Commissioner Murdock asked Ms. McClory if there were any additional downsides or concerns

she was worried about. She stated that the Commission has a long history with this loan of trying to find terms that will meet the shared and balanced goals of receiving full repayment of the Commission's and State's funds, but also not forcing a situation where the railroad ends up out of business and we are looking again for someone to save the line.

Commissioner Jackson has a number of concerns about the message we are sending and what kind of message do we want to send. He will be really frustrated if this comes back again. Ms. McClory agrees, but her concern is without our having a clear first position on the line, and with the Port Authority still owning the line, it is the Columbiana County Port Authority along with us who is in the very difficult position here. Ms. McClory is not sure that we would be well served in terms of recovering our investment if we moved forward in declaring the loan in default.

Director Dietrich stated that our purpose is to save rail lines. The line is being preserved. Director Dietrich very much understands Commissioner Jackson's concerns.

Chairman Bradley said he appreciated the comments and concerns. As a state agency it is likely that the Commission gets asked for things that don't pass muster for a commercial loan. Loans are a risky proposition by nature and while we can't throw money away we need to recognize elements of risk. Perhaps the committees can review loan policies but we can't avoid risk.

Commissioner Wolfe stated that staff does a wonderful job and as long as the borrower is paying, he is okay. He hates to see a problem come back. Commissioner McOwen added that in light of our mission to preserve rail service, and because we are getting money back and the company is in business, he is okay with the workout.

Commissioner Murdock made a motion to approve Resolution 09-25 Re: Columbiana County Port Authority Youngstown & Southern Rail Line Rehabilitation Loan Assignment of Loan. The motion was seconded by Commissioner Wolfe. Roll call was taken with nine votes in the affirmative. Commissioner Sowers left after the Columbiana County Resolution 09-25.

NEW BUSINESS

Tom Burns gave a presentation regarding the ORDC/ODOT Railroad Signal Preemption Program. The Power Point slides are filed with the commission packet. He defined the process of preempting a traffic signal based on the approach of a train. Mr. Burns further described the ORDC and ODOT initiative to establish a state standard and to identify crossings and establish a plan for corrective action at intersections that have or should have preemption, and discussed the progress. Overview training sessions were offered in November at 5 training sites statewide and were attended by 154 people. Technical training sessions will be offered in early December and on an on-going basis. Director Dietrich pointed out that Ohio will be the third state in the nation to have a preemption standard. Art Arnold of the Ohio Railroad Association commented that he attended the first overview training presentation and thinks a lot of crossings that have active warning devices and continue to have crashes may have preemption problems. He stated that local highway officials are starting to recognize these issues.

Commissioner McOwen, Don Damron, and Leonard Evans gave a presentation of Passenger Equipment Options. Commissioner McOwen stated that it was recognized early on that the timing of construction of equipment will be a limiting factor for implementation of 3C service. As such, a working group of Commissioner McOwen, Mr. Damron, and Mr. Evans was formed

to review characteristics, performance, 3C capacity needs, and available equipment options. The working group presented an overview of its findings, which are filed with the commission packet. Diesel Multiple Units (DMUs) have the potential to reduce train-run time, fuel usage, emissions, and maintenance costs. The next steps will be to review 3C vertical clearances; initiate discussions with manufacturers; explore plan and design modifications; and investigate obtaining the services of a nationally recognized expert on passenger rail equipment to assist ORDC/ODOT with the procurement effort. Commissioner McOwen said that they need input from the Commission to tell them if they are on the right track. Chairman Bradley thanked them for all the work they did to present the key issues.

Commissioner Wolfe made a motion that the ORDC recommends that bi-level Diesel Multiple Units be considered the preferred vehicle for the 3C Quick Start Passenger Rail Service at this time. Staff is authorized to continue to investigate this equipment. Commissioner Bishop pointed out that US Railcar LLC is the only domestically-owned manufacturer of an FRA compliant car. In response to a question from Commissioner Wolfe, Chairman Bradley indicated that if Ohio purchases equipment from US Railcar, the Ohio cars will not be made in Gahanna, but that US Railcar has stated an Ohio order would be a factor in their location decision. Commissioner Bishop seconded the motion. Roll call was taken with seven votes in the affirmative.

PUBLIC COMMENT

Erwin Hoffman of Cincinnati is an avid rider of trains. He thinks the Commission needs to look into the café car. Is that really the type of car we need between here and Cleveland? Maybe we should look at a different kind of food service. Also, the trains need to have Wi-Fi. The business cars could have special facilities. Do we have flexibility? Chairman Bradley said we have total flexibility. Commissioner McOwen thought about those things, too. They are going to start looking at refinements. Ohioans haven't taken a train for 30 years. Mr. Hoffman asked if there was a website he could access. Commissioner Bishop told him to go to the 3cisme.ohio.gov website and that comments can be submitted there.

ADJOURNMENT

Chairman Bradley wanted it noted that he appreciates very much Commissioner McOwen serving as Acting Chair of the Commission and for helping during the transition.

Chairman Bradley called the meeting of the Ohio Rail Development Commission adjourned at 12:55 p.m.

****Readers please note: a good-quality recording of the meeting is not available. These minutes were compiled based on staff notes from the meeting.****