

**RAIL SERVICE COMPETITION COUNCIL (RSCC)  
COUNCIL MEETING MINUTES**

**Tuesday, September 10, 2013  
2701 Prospect Ave. 10:00am – 3:00pm**

**Transportation Commission Room  
Helena, Montana**

**RSCC Members Present: Chairman Michael O’Hara, Carla Allen, Mike Tooley, Mayor Jerry Jimison, Sen. Bruce Tutvedt, Mike Kadas, John Rogers**

**Montana Department of Transportation (MDT) Support: Chris Dorrington, Hal Fossum**

**Other State Agency Representation: Cort Jensen, Chad Lee, Joel Clairmont, Greg Stordahl, Montana Department of Agriculture (AGR); Eric Sommer, U.S. Department of Agriculture National Agricultural Statistics Service; Pat Murdo, Legislative Services Division**

**Public: Dan Kidd, Montana Grain Growers Association; Barbara Ranf, BNSF Railway Company; Kathy Fasso, Port of Montana. Via phone: Daniel Harbeke, Union Pacific Railroad**

**Consultant: Terry Whiteside**

**RSCC Support: Mary Vandebosch**

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**1.0-3.0 Call Meeting to Order, Introductions - Chairman Mike O’Hara**

Chairman O’Hara welcomed everyone and called the meeting to order. Following introductions of the RSCC members, the audience was introduced.

**4.0 Approval of June 25 Minutes**

Jerry Jimison moved to approve the June 25, 2013 minutes with the following correction: Identify Terry Whiteside as a consultant rather than MDT Support. Mike Kadas seconded the motion. Motion carried.

**5.0 Review of the RSCC Purpose**

Documents describing the RSCC’s statutory duties were distributed. The Chairman allowed time for the Council members to review the duties.

**6.0 Financial Report from MDT Staff on RSCC Administrative Data**

Hal Fossum reviewed the RSCC budget and distributed a document reporting on funds and expenditures for fiscal year (FY) 2013 and FY 2014 through September 3, 2013. There were \$4,926 remaining at the end of FY 2013. These funds are not available for FY 2014. As of September 3, 2013, \$49,422 of the FY 2014 funds were remaining. Most funds go to contracted services as determined by the RSCC.

**7.0 Project Updates**

**7.1 Pulse Crops Marketing Research MOU**

Chris Dorrington reported that MDT and AGR completed a memorandum of understanding (MOU) to transfer \$10,000 to AGR to administer pulse crops research. Joel Clairmont reported that AGR will do a dry run before sending out forms. The research should be completed by this time next year.

**7.2 Updated Map of Shuttle Activities**

Chris Dorrington presented two paper maps and solicited feedback in order to refine the maps. The following recommendations were made for revisions to the map showing major facility

owners and storage capacity by volume:

- Denote shuttles with an “S” and unit trains with a “U.”
- Remove numbers.
- Use color to show ownership of storage capacity.
- Create a blow up box for areas where there is a lot of activity.

Dorrington will present the final draft for comment at the next meeting.

Dorrington also presented a web-based map showing Montana grain facilities, including grain elevators. The map could be added to the RSCC website. Public users could click on the map and query by location, ownership, storage capacity, railroad, or by county. Any facility that AGR regulates is on this map. The information is updated whenever the data are updated in the AGR database. Chairman O’Hara asked if the RSCC wanted the map put on the website. Cort Jensen raised the potential issue of whether publishing the map would be creating a mailing list without permission, which is prohibited by law. After looking into the matter, Jensen reported that the information can be freely distributed; publication of mailing and other contact information from these sources is not a concern. Jerry Jimison moved to approve putting the map on the website under the condition that the map can be published in accordance with the law. Sen. Tutvedt seconded the motion. Motion carried.

### **7.3 Port of Northern Montana Ground Breaking**

Mike Tooley reported on the ground breaking for the Port of Northern Montana multi-modal facility in Shelby. He noted that Shelby is a perfect location for a multi-modal facility and that cigarettes are already being exported to Canada.

### **8.0 Research Report**

Chris Dorrington requested feedback from the RSCC regarding what the RSCC perceives as its public comment responsibility. He explained that the only legal requirement is to provide time for public comment at the end of the agenda. The RSCC is not required to respond to public comment. Cort Jensen stated his opinion that public comment would be necessary if the RSCC were to adopt a research report as the official position of the committee.

Senator Tutvedt moved to provide a 30 day public comment period on the research report. Jerry Jimison seconded the motion. Motion carried.

Terry Whiteside distributed copies of a report “The Impact of Paper Barriers on Montana Rail Shippers’ Competitiveness” by Terry C. Whiteside and Gerald W. Fauth III.

In contrast to steel barriers where two railroads do not have an interconnection of their tracks, a paper barrier to movement between railroads can result from a contractual agreement between a selling railroad and a purchasing railroad that provides for the selling railroad to assess a supplemental charge when the purchasing railroad moves a shipment over a connection to a third party railroad. Interchange agreements that limit movements to other railroads are known as “paper barriers.” The Surface Transportation Board (STB) has identified four factors to be applied on a case-by-case basis in evaluating the lawfulness of a specific paper barrier.

The authors surveyed shippers representing 11 different commodity groups. They contacted 31 different companies, but did not get the response they hoped for. They received responses from four different firms. The four companies that did respond did not want to be identified. The authors also contacted representatives of Montana Rail Link (MRL) and BNSF. The railroad representatives expressed concerns that the information requested was confidential, proprietary and/or commercially or competitively sensitive.

The report specifically focuses on agreements between BNSF and MRL. MRL was founded in 1987 through a lease/purchase of over 900 miles of Burlington Northern tracks. The MRL railroad goes from Huntley, Montana to Spokane, Washington. MRL connects with the BNSF on both ends and also at Garrison, Montana. A gap in ownership between Garrison and Helena was closed in 1992.

The report asserts that paper barriers allow BNSF to limit movements of MRL by charging supplemental rents to prevent movement over Silver Bow. BNSF also controls all pricing on any movement off MRL onto any other carrier. Whiteside described how supplemental rents were or were not applied to three categories of movements. He noted that MRL's largest customer is the BNSF.

The authors did not have access to confidential waybill samples. They used the STB Uniform Railroad Costing System (UCRS) methodology to compare rates for moving commodities via MRL and Union Pacific (UP) versus BNSF. The MRL-Silver Bow-UP route to Salt Lake City is significantly shorter and produces UCRS rates which are much lower than all BNSF routing to Salt Lake City.

Key conclusions of the report include:

- Paper barriers assessed are contributing to inefficiency and lack of Montana originated and or terminated movement over Silver Bow.
- The bulk of the evidence leads to the conclusion that Montana producers have reduced access to large markets to the south due to the exercise of paper barriers and Montana producers would be better served if the paper barriers did not exist.

It was noted that the authors did not have access to confidential waybill samples and were able to glean limited data from public waybill samples. The authors did not have access to sufficient data to determine the financial impact on Montana shippers.

Whiteside encouraged the RSCC and Montana rail shippers to open a dialogue with BNSF and MRL on paper barriers issues. There was some discussion about what leverage the RSCC might have to affect these arrangements. Chairman O'Hara noted that transparency can sometimes help to address issues. In response to a question about pursuing a ruling from the STB, Whiteside noted that shippers would have standing and the Attorney General might have standing, but the RSCC would not have standing.

Chris Dorrington clarified that the RSCC commissioned consultant Terry Whiteside to write a report. The current status is that the report has been written; however, the RSCC has not adopted the findings as its position.

Mike Kadas moved that the RSCC hold a 30-day public comment period, specifically request comment from BNSF, MRL, and UP and also invite them to present comments at the next RSCC meeting. Jerry Jimison seconded the motion. Motion carried.

The report will be posted on the website and comments will be submitted to Mary Vandebosch. There was further discussion about allowing for additional public comment and opening the door for shippers to comment at the meeting.

Sen. Tutvedt moved that shippers be allowed time on the agenda to comment on the report. Mike Kadas amended the motion to allow anyone who requested to be on the agenda to make a presentation regarding the paper barrier issue be given time for this purpose. Jerry Jimison seconded the motion. Motion carried. Chairman O'Hara suggested that Russ Hobbs could contact shippers.

## **9.0 Railroad Issues Briefing**

Terry Whiteside made a slide presentation that covered current topics, including the following:

- STB proceedings in October-November that specifically deal with agriculture.
- STB changes to railroad rate reasonableness procedures, in particular the simplified stand-alone cost procedure.
- Disputes over coal dust. The railroads argue that shippers are trespassing on the tracks with coal dust, while shippers argue that they are paying railroads to transport coal. Utilities have had to pay for surfactants to contain the coal dusts.
- Effect of shipping coal, oil and gas on railroad capacity. Whiteside noted that railroad capacity and the commodities moving are constantly changing.
- Federal investment of \$800 million of loans and grants for the Northern Line railroad in Washington.

### **10.0 Railroad Updates**

Barbara Ranf reported that the BNSF Railway Company is spending \$115 million on maintenance and capacity expansion in Montana. Projects include staging tracks east of Glasgow, new technology at Miles City, replacing 100 miles of rail, and signal upgrades. Jerry Jimison stated that 74% of the oil coming out of the Bakken oil field is shipped on BNSF.

Carla Allen reported on the status of the Central Montana Railroad repair. Three bids were received and bids have been opened. The final award is scheduled for Sep. 17 and they anticipate the notice to proceed around Oct. 3.

### **11.0 Review Strategic Plan with Committee Update Reports**

The RSCC discussed subcommittee assignments in light of new members. John Rogers will replace Evan Barrett, Mike Kadas will replace Dan Bucks, and Mike Tooley will replace Tim Reardon on the Energy Shipping subcommittee. Sen. Tutvedt will replace Sen. Windy Boy on the Agriculture subcommittee. Mary Vandenbosch will contact Rep. Lynch regarding subcommittee assignments.

Carla Allen reported that the Agriculture subcommittee did not meet. Jerry Jimison reported that the Energy Shipping subcommittee did not meet. He would like to schedule a conference call after seeing what input has been provided on the Paper Barriers report.

The chairs of the Ports and Multimodal and Forest and Industry Shipping subcommittees were not present.

### **12. Next Council Meeting Date, Location, and Agenda Items**

The next RSCC meeting was set for November 12 at 10 am. in Helena. The agenda will include comments on the Paper Barriers report.

### **13.0 Comments or Issues from Council Members**

No additional comments or issues were brought up by RSCC members.

### **14.0 Formal Public Comment Period**

No public comments were presented.

### **15.0 Adjournment**

With no further business to discuss, Carla Allen moved to adjourn the meeting. John Rogers seconded the motion. Motion carried.