

RAIL SERVICE COMPETITION COUNCIL (RSCC)
Economic Development Subcommittee
MEETING MINUTES
May 22, 2014

Attendance

Subcommittee Members: Chairman Russ Hobbs, Walt Ainsworth, RSCC; Barbara Ranf and Katie Hofmann, BNSF Railway Company; Dan Lloyd, Governor's Office of Economic Development; Dan Harbeke, Union Pacific Railroad; Jim Lewis, Montana Rail Link

Montana Department of Transportation (MDT) Staff Support: Christopher Dorrington, Diane Myers, Carol Grell Morris

RSCC Administrative Support: Mary Vandenbosch

Welcome and Introductions

Subcommittee Chairman Russ Hobbs welcomed subcommittee members. The following members participated by telephone: Russ Hobbs, Dan Harbeke, and Katie Hofmann (part of meeting). All others participated in person at the Montana Department of Transportation Commission Room in Helena.

Background and Rationale for Subcommittee

Hobbs explained that in creating the subcommittee, the RSCC hoped to bring shippers and transportation providers together to look for opportunities and cases that could result in a "win" for all.

Chris Dorrington referenced the RSCC's statutory duties and noted that seeking improved collaboration fits with the RSCC's charge.

Legal Considerations

MDT staff attorney Carol Grell Morris reviewed relevant laws governing the subcommittee's activities.

RSCC Authority and Duties. (2-15-2511, Montana Code Annotated (MCA)). The RSCC is established as an advisory committee governed by 2-15-122, MCA.

Open Meetings. (T.2, Ch.3, Part 2, MCA) The statutes and extensive case law are clear that publicly funded meetings are open to the public, including the media. Timely notice must be provided. It is acceptable notice to post meeting agendas online and to also send an agenda to anyone who requests one. The exceptions (e.g., when an individual's right to privacy is

involved) do not apply to the RSCC and its subcommittees. Meetings cannot be closed to discuss proprietary trade secrets. Only records can be protected under certain conditions. For example, the Public Service Commission has a process to determine when the secrecy of records containing proprietary information can be protected.

Public Participation and Notice. (T. 2, Ch. 3, Pt. 1, MCA) An opportunity for public participation must be provided and shall be included on each meeting agenda. A board may not take action on a matter that was first brought up through public participation in the same meeting. The chair can limit public comment by establishing an order for providing comments and setting time limits on comments.

Unlawful Restraint of Trade. (T. 30, Ch. 14, Pt. 2, MCA). Fixing prices is prohibited. (30-14-205, MCA)

Grell Morris encouraged members to contact her or Chris Dorrington if they have questions. She can investigate additional questions, if needed.

Representatives of the railroads emphasized that there is a line they cannot cross and they would need to leave the table before violating the law.

Hobbs emphasized that the subcommittee would funnel shippers to transportation providers rather than getting involved in discussions about rates.

Review and Discussion of Subcommittee Charter

The subcommittee reviewed revisions to the draft charter proposed by Dan Harbeke, Union Pacific Railroad. Harbeke noted that the revisions were intended to provide for a forum to share info with shippers and bring business opportunities to railroads.

Hobbs, Ainsworth, and Dorrington emphasized the importance of participation by the Governor's Office of Economic Development. The Office has the necessary expertise to secure the identified opportunities. Representatives of all three railroads noted that they work with customers and economic development agencies every day. They don't know that the extra effort put forth by the subcommittee is necessary; however, they are in favor of more business opportunities. The potential for overlap with other economic development efforts was noted. RSCC members explained that the subcommittee provides an opportunity to get shippers in front of railroads and railroads in front of shippers. General economic development is outside of the scope of this subcommittee.

Questions were raised about subcommittee membership, including the number of members and areas of expertise to be represented. After some discussion, Chairman Hobbs indicated his preference to start small, publish the current list of members on the RSCC website, and reach out to additional members as needed and when opportunities arise.

The subcommittee identified a work plan item involving publicizing and celebrating already successful business development efforts impacted by transportation.

The subcommittee discussed additional revisions to the draft charter. A revised draft is below. Hobbs will review the meeting notes and send another draft to the subcommittee for public comment.

DRAFT CHARTER

An RSCC Committee is established to promote Montana shippers and receivers and develop additional business opportunities for Montana shippers, receivers, and transportation providers.

To accomplish this goal, the committee shall:

- Engage representatives of shippers, rail and motor carriers, economic development organizations, transportation and distribution facilities, and other affected interests in a collaborative dialogue. Committee members will be solicited from these interests and appointed by the Chairman.
- Establish ground rules, develop a work plan, and report to the RSCC at least quarterly.
- The work plan shall include the following elements:
 - Identify target markets of interest to Montana shippers, receivers, and transportation providers.
 - Develop and validate a process for collaboration.
 - Encourage and facilitate private communication between specific shippers and interested carriers on an individual opportunity and participant basis.
 - Publicize committee activities.
- The committee process will be mindful of and comply with legal constraints on communications between and among transportation competitors. For example, shippers will discuss specific rates and services separately and confidentially with each carrier that determines it can participate in the identified route for the commodities identified by the shippers.
- The committee will not be a forum for complaints about rates being offered by any particular carrier.
- The committee will seek and follow legal guidance on these issues.

Public Comment

No one provided public comment.

Adjournment

With no further business to discuss, Chairman Hobbs adjourned the meeting.