

Louisiana Transportation Authority
Meeting
Louisiana State Capitol
House Committee Room 4
Baton Rouge, LA
Thursday, October 14, 2010

MINUTES

I CALL TO ORDER

Secretary Sherri LeBas welcomed everyone and called the meeting to order at 1:00 p.m.

II ROLL CALL

Board Members Present:

Sherri LeBas

Camille P. Conaway

Paul B. Sawyer

Rep. James H. Morris

Sen. Joe McPherson

Jackie Adcock

Representative Aubert is filling in as proxy for Rep. Nita Hutter

Board Members Absent:

Sen. Joel T. Chaisson

Kevin Davis

Second

III READING AND APPROVAL OF MINUTES OF January 14, 2010

Motion & Second

No Objection

Secretary LeBas: Do we have a quorum? Yes

READING AND APPROVAL OF MINUTES of July 8, 2010

Motion & Second

No Objections.

IV OLD BUSINESS

A: ETC Claims Litigation Status of Electronic Toll System by Kirk Bergeron

Since the last meeting of the Authority on July 29, 2010 of this year, the Department on behalf of the LTA and on behalf of the DOTD filed the lawsuit against ETC for the recovery of the several different elements of loss and damage that have incurred by DOTD as the result of defects in the computer system that was delivered by ETC. In addition to delivering a defective system there were other breaches of the contract of

failure to submit deliverables that were due under that contract and a failure to complete a system acceptance test that would have demonstrated and would have given DOTD and ETC an opportunity to complete the system. ETC filed a counter suit on July 29, 2010 seeking damages and injunctive relief. That lawsuit alleges that ETC fully completed, tested and implemented and that DOTD accepted the system that ETC delivered. We have filed pleadings that deny those allegations and that objected to their pleadings on multiple grounds. The request for injunctive relief was based on allegations that DOTD had not the full contract price. That is the full sum that ETC claims to be due under the contract and therefore, had not and did not pay what ETC alleges to be the purchase price of the software. Based on that allegation, they argued that DOTD did not have the right to use the software. Initially in their injunctive relief request they alleged that what DOTD was doing was a violation of the Louisiana Unfair Trade Practices Act and a separate violation of the Louisiana Trade Secrets Act. DOTD filed objections to the pleadings that sought that injunctive relief and also filed a vigorous opposition and the motion for injunctive relief by ETC was heard in 19th Judicial Court on August 27, 2010. At that time the presiding judge, Honorable Wilson Fields, overruled our exceptions and objections to the ETC pleadings and proceeded to hear the ETC's motion for preliminary injunction and after approximately 5 hours of hearing and without reading the exhibits that were offered, multiple exhibits and approximately 50 separate evidentiary exhibits, Judge Fields granted the preliminary injunction. However, in the course of the hearing ETC had narrowed their demands. Instead of seeking an injunction that would have shut down the entire computer system, they narrowed their request to one particular subsystem, the LA 1 Toll Facility Violations Processing Subsystem and on the record the attorneys for ETC dropped their claim under the Unfair Trade Practices Act and said their claims were based strictly on violations of the Louisiana Trade Secrets Act. The software that we are using, particularly the one subsystem is confidential, proprietary and subject to copyright laws and copyright protections and because, "we (DOTD) had not paid the purchase price" we did not have the right to use it and, therefore, using it was a "miss appropriation of trade secret." Initially Judge Fields granted the motion for preliminary injunction and with some colloquy between Judge Fields and counsel narrowed it to the single subsystem the LA 1 Violation Processing Subsystem and initially did not set bond but with prompting from counsel from ETC set bond in the amount of \$10,000 and effectively ruled against DOTD but on this very narrow basis. The attorneys for ETC did not submit an actual injunctive relief order for signature for Judge Fields until September 3, 2010 but by September 9, 2010 the order was still not signed and DOTD filed an application for supervisory relief and LA 1st Circuit of Appeal requesting a stay and requesting relief overruling, reversing and vacating Judge Fields order. That is Judge Fields decision to grant the injunctive relief in the first place. On the day we filed the application the Court of Appeals granted a stay order that effectively adjoined the injunctive relief proceedings before Judge Fields in the 19th Judicial Court and took up for review the remainder of our application where it remains today. We expect a ruling relatively soon but cannot tell you when the ruling will come down. In the meantime, the CCCD struggles to maintain and operate the defective system that was delivered by ETC. The costs and loss to DOTD continue to mount. That is the status of today.

Secretary LeBas: Thank you Kirk. Are there any questions?
No questions we will move on.

B: DRAFT TOLLS AND REGULATIONS by Brandon Brown

As part of the package that you have in front of you we have draft rules for tolls for tolls for LA 1. This previous legislative session some exemptions for tolls were passed and it is our duty to write them into the rules and regulations. That is all we have done here. We have written the exemptions that were passed in this year's legislation into the existing LA 1 Tolls Rules and Regulations and we would ask that the Authority adopt those so that they can be put out for promulgation in Louisiana Administrative Code.

Secretary LeBas: Brandon, can you point out what changes were made.

Brandon Brown: The residents of Grand Isle were granted exceptions and the free passes to local bearing vehicles of the Grand Isle Port Commission. That would be under D2. The residents of the Grand Isle exemption were added as Section J.

Secretary LeBas: Members, you should have that in your packet of information.

Brandon Brown: There was also some additional language regarding emergency vehicles with lights available for use that was added pursuant to the legislation that was passed this session.

Secretary LeBas: We do have a question.

Sen. McPherson: This has been brought to our attention by Rep. Gisclair and he requested that we add to legislation. What does this do to our bonding, if anything, what is the reduction in the amount of money? Does it affect our ratios or anything?

Brandon Brown: I don't believe that it does but I would ask if Meredith would like to address that.

Meredith Hathorn: As we have indicated to during the Legislative Session, basically the indenture requires that tolls be set at a level that is sufficient to collect revenues that are equal to 1.2 times debt service related to the senior lien and junior lien bonds. There is nothing that prohibits you from fixing or changing or doing something to the toll schedule but every if affected and then effects on whether or not you are going to meet your 120 coverage will then require you to increase your tolls at some point in time, if and when you do not meet those.

Sen. McPherson: That is what I am asking. Where are we at meeting that requirement currently and how much are we taking away from that with this proposal.

Michael Bridges: Undersecretary for the Department. The tolls that were estimated for an annual basis for the Grand Isle residents is \$35,000. It's a minor amount. We

have provided the rate covenant letter to the trustee. We have met the coverage requirements for 2010 and we project to be covered for 2011. We are ok right now.

Sen. McPherson: What ratio are we at?

Michael Bridges: I don't have that information in front of me, sir, I know that it was over 1.2 for the senior lien and I believe it's 1.1 for...

Sen. McPherson: The \$35,000 is such a minor amount that it would not affect it in any way.

Meredith Hathorne: Yes that is correct.

Sen. McPherson: Thank you.

Secretary LeBas: Thank you. Are there any other questions. I don't see any. Do we have a motion?

Brandon Brown: You can move....

Secretary LeBas: So moved. Thanks Sen. .
Do I have a second? Yes, thank you.

Secretary LeBas: Next item is 4C

4C: Violation Hearings – Brandon Brown

We are giving the Authority a quick update on the LA 1 Toll Violation Hearings. I have appointed Ed Michel, one of the Attorney Supervisors in my office as the hearing office for the LA 1 Toll Violations. As of this date there have only been 4 persons presented with toll violations that had a disagreement and have asked for a hearing. Of those 4 they have been essentially addressed. Two of them were dismissed by Mr. Michel after hearing evidence. One on a summary procedure and a dispute involving an attorney in a rental car. Those 2 have been dismissed because it was not timely. Notice was not sent to the person requesting the hearing, we did not send back, and that problem has since been corrected and will not happen again. We had 2 additional requests for hearings that were filed more recently but upon being given notice of the hearing those 2 persons presented themselves and paid the toll violation. So at this date there are no violation hearing meetings scheduled because we have had no protests from people paying their toll violation. Tentatively a hearing is scheduled for November 5, 2010. That hearing will be held at the Crescent City Connection Division offices. They will hold these on a Friday after, later in the day to accommodate those who work and want to come present their case. We want to accommodate them as best as we can. As of right now there are no violations scheduled. So if there aren't we will simply roll the next violation date over and wait and see if any others ask for an appeal of that.

Secretary LeBas: I don't see any questions. Thank you Brandon. So we will move to the next agenda item.

4D: Transportation Mobility Fund Draft Rules & Regulations – Brandon Brown

Once again these are draft rules and regulations for the functioning of the Transportation Mobility Fund. They are part of your handouts as well. These were drafted by Sherryl Tucker in my office. Ms. Tucker is out today and I am here to present those to you and we can answer any questions. Again, just like the LA 1, we would ask that the Authority adopt these rules and regulations so that they can be promulgated through the Louisiana Administrative Code.

Secretary LeBas: We do have a question.

Rep. Morris: If we adopt these today and if the Committee wanted to change them, what is the procedure for changing them. I know we put a lot of work into this and it has been ongoing for several years to try to get to this point. I was wondering what the rules are for changing this.

Brandon Brown: If the committee would like to change the rules as written now, we can simply go back and redraft those and present them to the next Transportation Authority meeting and then we will put them out for promulgation in the Administrative Code. If we adopt these and promulgate them and they go out and become part of the Administrative Code, then they can be adopted by rule changes, which again we would have to advertise these rule changes and go through that administrative process to change them if we wanted to tweak these rules. But if there is a problem, or a question or a concern about as they are drafted now, I think the better process would be to address that, and if there is a better way to draft them before they are promulgated, initially, we would do that.

Rep. Morris: The reason why I am asking is I know there were a lot of questions about this particular document over the last several years that I served here. I assume those have been addressed. I didn't have the opportunity to go back and check it. I looked at it and reviewed it but I didn't have the opportunity to look at all the different aspects to see if they had actually been addressed. I can assume they have been.

Brandon Brown: I can tell you that Ms. Tucker, that this draft is fairly recent, within the last 6 months. It was done before the previous meeting of the LTA. So these are recent and would incorporate any concern that was expressed up to that day. So, I guess, drafted before the last meeting of the LTA, and would have addressed any concerns up to that date. They have not been touched since that meeting up till now. They have been kept as is.

Rep. Morris: I'll make a motion to move them forward.

Secretary LeBas: Do I have a second? Thank you, Sen. McPherson.

Brandon Brown: With those approvals we'll go ahead and promulgate these LA 1 Toll Exemptions Rule and the Transportation Mobility Fund Rules. Rep. Morris stated if there are any concerns you can certainly contact me directly. We'll address that. Ms. Tucker is excellent.

Secretary Lebas: Thank you very much.

V Other Business

Proposal to Outsource the Toll Collection Operation – Michael Bridges

Michael Bridges, Undersecretary for the Department, back in 2005 the LTA and the DOTD entered into a memorandum of understanding that all of the operations of the LA 1 is the responsibility of the DOTD. You also have been briefed on the problems with the existing electronic toll system. So what we propose is that we go out for a bid for the outsourcing of the toll collection operation for the LA 1 facility. We would do that. DOTD is responsible for the operations including the toll system. We would do that through our processes and we would use the services of a toll consultant that we have on board now, to help us draft those specifications. We would include in there, total responsibility for the toll collection operation...software, staffing. So that we would have what I call, "one throat to choke". There will be no pointing fingers at somebody else that they didn't do their part. It would be the total operation, turnkey service and we would include in there some performance measures. The one I'm thinking of and looking at our toll consulting engineer to put this together for other performance measures, but the one I am looking at is that they guarantee efficiency for collections which would be a factor of how much leakage. There is a theoretical revenue that you should collect based on the actual count of the vehicles going through the toll gantry. We would require them to collect a certain percentage of that toll revenue, that theoretical toll revenue, and if they didn't then their contract would be reduced by whatever leakage they have, so, we think that it is a good idea. There are many companies out there that have electronic toll systems and I believe that we would get a lot of interest. So we would like to try it, no guarantee that we will end up with a contract we will go forward with, but I think it is at least worth the effort. So this is mainly a heads up. This is something that DOTD would like to do. It's not going to be a contract between LTA and the toll consultant mainly because it is the DOTD's responsibility for operations of the facility. I will glad to answer any questions.

Secretary LeBas: Ok. We do have a question.

Sen. McPherson: Mr. Bridges, you had this conversation with me, but remind me publicly, what happened to the current system and how do we get out of it?

Michael Bridges: The current system was developed over a period of years and went live last July. How do we get out of it? It's part of that litigation that we are dealing with right now, but, we believe that it is going to have to be replaced. We're litigating with the company that developed it. It is incomplete. We don't believe that one of the

solutions is going to be them coming in and fixing it and then everything will be fine. So we believe that we are going to need to replace it. Another advantage that we see of going forward with this is to split out LA 1 toll collection operations and electronic toll system from the CCCD and have 2 separate systems. We will have to look at what is going to happen to CCCD and their system, but as you know, there is possibility that the tolls will cease in 2012 so we are going to have to see how we can make that system last until that time. We believe that there is an advantage to have LA 1 as a standalone system.

Sen. McPherson: You say it is in litigation and you believe these things are going to happen, that we will have to have another system and all that. I guess that is why it is in litigation because somebody else thinks something different than ya'll do. What if they are right and you are wrong and we are hung with that other system that they are given an opportunity to perfect it or fix whatever problems exist or something. Then would you not go forward with the other proposal at that point are would you already be committed to it and then you would have a dual collection system?

Michael Bridges: I think it that the answer to that question will come out about the same time as we get the bids.

Sen. McPherson: So you think that litigation will conclude before you enter into some other agreement, you are just going to do the RFP to have it available so that you know what you could put it?

Michael Bridges: I believe that's probably a good guess on how things are going to shake out. It is my understanding that the litigation is moving forward and there is going to be depositions happening between now and the first of the year. And we may have a real good idea of where it is going to go around January. It will take us that long to procure this thing.

Sen. McPherson: You mentioned that one of your concerns and something you want to build into your contract if you do an RFP for a new provider is to make sure they don't have, I forget the term you use, slippage or whatever you said....leakage. Do you have a significant amount of that now with this system that is not working properly?

Michael Bridges: We do and it is all part of the license plate subsystem that you were briefed on a little bit earlier that is not working.

Sen. McPherson: So these are people....do we know that they are not paying their tolls and going through and we are not able to catch them as a result of this?

Michael Bridges: We have been working very hard to identify the violators and to send out notices. It is suppose to work automatically.

Sen. McPherson: We know we have leakage. We know there are a significant percentage of people that we are not collecting tolls from.

Michael Bridges: Right and nationwide there will always be some leakage in toll systems.

Sen. McPherson: We have more that we are supposed to have?

Michael Bridges: We do believe.

Sen. McPherson: And we are still meeting our bond covenants even with that.

Michael Bridges: Yes sir.

Sen. McPherson: That sounds kind of promising there I guess you can actually have an opportunity to go ahead.

Michael Bridges: Keep in mind that the debt service is not due to begin on the TIFIA loan until 2013. So we are meeting debt service requirements on the senior lien bonds only.

Sen McPherson: I got you.

Meredith Hathorn: I believe you are going to have to have an adjustment sooner rather than later on the toll schedule.

Sen. McPherson: Even if you fix these problems?

Meredith Hathorn: Depends on the magnitude but what is happening is that debt service, which is what always how it's done for toll bridges, that you expect a ramp up period. So we are kind of in the honeymoon period, having to ramp up and getting people ongoing. The debt service will increase.

Sen. McPherson: You can't anticipate that. Was our projections wrong originally on the amount of traffic.

Meredith Hathorn: We are not meeting the projections exactly when they were done.

Sen. McPherson: Boy, I had to ask several questions to get that answer, didn't I?

Meredith Hathorn: Well I was going to tell you when he was talking about that. We do believe, I think I've said that before is that I am very concerned about where we are and we need to continue to look at it. That is why they have the toll consultant.

Sen. McPherson: That is the reason why I made my statement. Because if thought is, it wasn't a rosy picture and I thought for a minute there I heard a rosy picture. But sometimes the sun only comes out for a minute.

Michael Bridges: We are hopeful that the economy is going to turn around in the next 2 years and the main thing that is affecting the reduced toll collections is truck traffic directly related to Port Fourchon activity and we are hoping with them lifting the moratorium and maybe with a better economy it will pick back up. So we are not panicking yet.

Sen. McPherson: Did we see a dip that we thought was a result of the moratorium?

Michael Bridges: We didn't see any change. Keep in mind that we didn't start this thing until August of last year and that was well into the economy downturn. We believe that any reduction that had to do with the moratorium due to the oil spill itself was offset by the increased recovery activity or cleanup activity down there. So if you look at the data that we have there is no dip it is just marked lower than the forecast. We contribute that to the economy and the port activity.

Sen. McPherson: If we do think we have to increase tolls at some point I guess that goes back to the first question, even though \$35,000 is insignificant in the thing that you are going the wrong way. If you reduce them for one segment and knowing that you are going to have to increase them for everyone else. At some point I would appreciate it that we can get at each of our meetings is ya'll be surer of that and give us some figures with some numbers attached to those statistics.

Michael Bridges: We do intend to go ahead and authorizing the consulting firm that we brought on board with the toll experience to begin the task of doing a new toll revenue analysis. We know we are going to have to do one. What they will do they will take the date when they used the last one and then take the most recent data and do an economic forecast of what we believe is going to happen. They will develop a new toll schedule. So we will have that I would say in the spring of next year but we will not need to do any adjustments for 2010 and 2011 because we are covered, and 2012, it's really 2013 that fifth year services.

Meredith Hathorn: I am not going to go on record for that. I would just say that we need to look at the numbers and continue to monitor it.

Sen. McPherson: I don't think that any of the representatives or senators from that area wants a surprise that all of a sudden we wake up and start talking about raising those tolls. Ok. Thank you.

Secretary LeBas: I do want to say we are working to tweak the system that we have so that we do pick up the violators and I am going on record to saying that. Because we have found in the past when meetings such as this are held people seem to think they are not being caught when they are violating, don't follow the law and not paying the tolls. I want to let people know that we are working on those violations and we can and trying to go back in time so that we can get those violations, so we can get the tolls collected that are due for the system. I do want to make that point. Are there any other questions? I don't see any other questions on this. I am going to go ahead and ask the

committee, I'm not really sure; I am going to ask Brandon if we need a motion to outsource but I certainly want this committee support in our efforts to look at this. So do I have a motion to outsource? Well maybe I don't. Do I need one Brandon?

Brandon Brown: I think the support of the committee is important.

Secretary LeBas: Do I have to do one for a RFP?

Brandon Brown: RFP we are authorized before we enter into any contracts we will seek the approval.

Secretary LeBas: We will go on record that we do not need approval to do an RFP. Next on the agenda is 5B.

5B: Amendment of the toll schedule – Meredith Hathorn

We basically need authority to revise the toll schedule of the LTA to just eliminate the one line item that talks about the residents of Grand Isle because obviously the schedule has that obviously under state law we can impose that toll schedule. It just a very minor correction to the toll schedule but we need it approved by your board.

Secretary LeBas: Sen. McPherson moved and Rep. Morris second. Thank you Meredith. Next item on agenda is the meeting schedule for 2011. We have been meeting 4 times a year. Sen. McPherson I believe you will be taking over as chairman at our next meeting. The dates that I would like to propose and to see if this works for the committee is January 13, 2011, April 14, 2011, July 14, 2011 and October 13, 2011. I don't see any questions so I am going to assume that those dates are satisfactory to you all.

VI PUBLIC COMMENTS

Secretary LeBas: We will have a moment for public comments if there are any. Seeing that we don't then we will move to No. 7.

VII ADJOURNED at 1:52 p.m.

Respectfully submitted,


Secretary-Treasurer

Date Approved: 1-13-11