

AGENDA ITEM 8-B
ACTION ITEM

TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD

FROM: DALE ZEHNER

DATE: MAY 18, 2007

SUBJECT: AUTHORIZATION TO EXTEND AMENDED OPERATING/ACCESS AGREEMENT WITH NORFOLK SOUTHERN

RECOMMENDATION:

The VRE Operations Board is being asked to recommend that the Commissions authorize the Chief Executive Officer to execute an extension of the existing Amended Operating/Access Agreement with Norfolk Southern to January 31, 2008.

BACKGROUND:

VRE has an Operating/Access Agreement with Norfolk Southern (NS) relating to VRE operations in the Manassas to Washington corridor. That agreement, entered into in 1999, has been amended and extended several times, most recently this past January 2007, with an agreed upon extension to June 30, 2007. A further extension is being requested at this time to provide sufficient time to complete negotiations of a new agreement.

Following detailed negotiation sessions with Norfolk Southern representatives, an agreement in principle was reached on all the following contract items with the exception of liability coverage. The Operations Board and Commissions approved these terms at their June and July, 2005 meetings respectively, and authorized execution of a new agreement that conformed to each of those items.

Item	Current Contract	New Contract	Notes
Term	5 years	5 years with five 1 year automatic renewals	After fifth year, either party can request changes at end of each year with 90 days notice
Escalator	4%/ year	AAR Index	Should reduce annual increase in base cost and per train mile charge
Incentive	None	Up to \$15K per month or \$50 per train	
Liability coverage	\$250M (no terrorism)	Want \$500M with terrorism	VRE not able to fund or obtain \$500M in coverage – \$250M with terrorism is maximum VRE will offer

Subsequent to the Commissions' action, however, it became clear that an agreement on the level of liability coverage could not be reached and the contract could not be executed. Norfolk Southern insists on including \$500 million in liability and terrorism coverage in the new agreement. Currently, VRE has \$250 million in coverage. An extension of the current agreement is needed while staff continues to attempt to resolve the insurance issue.

In the meantime, VRE has asked APTA for assistance in resolving the increasing demands of host freight railroads on commuter agencies for higher levels of liability coverage. APTA has initiated discussions with key House and Senate members requesting that the federal government assume a larger role. Topics being considered are modification of the current \$200 million federal cap to include coverage for third parties, establishing an insurance pool among commuter agencies to gain purchasing economies and to reduce premium payments, and requesting the federal government to cover liability exposure above a specific threshold similar to liability coverage in the nuclear power industry. A series of meetings are planned over the next three months to discuss the above issues with House and Senate staff, commuter agencies, risk managers, and legal experts.

FISCAL IMPACT:

Funding for the Norfolk Southern track access fees have been budgeted in the FY 2007 and FY 2008 budgets, including an escalation of 4% annually.

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FROM: DALE ZEHNER
DATE: MAY 18, 2007
RE: AUTHORIZATION TO EXTEND AMENDED OPERATING/ACCESS
AGREEMENT WITH NORFOLK SOUTHERN

RESOLUTION
8B-05-2007
OF THE
VIRGINIA RAILWAY EXPRESS
OPERATIONS BOARD

WHEREAS, the Commissions currently have an Operating/Access Agreement with Norfolk Southern related to VRE operations in the Manassas to Washington corridor, with said agreement ending on June 30, 2007; and,

WHEREAS, staff has reached an agreement in principle on many substantive items relating to a new agreement following detailed negotiation sessions with Norfolk Southern representatives; and,

WHEREAS, a proposal to extend the existing agreement to January 31, 2008, without any changes to the existing agreement is expected from NS; and,

WHEREAS, the purpose of this extension is to allow time to negotiate and resolve the outstanding insurance issues relating to a new agreement; and,

WHEREAS, necessary funding has been incorporated into the FY 2007 and FY 2008 budgets to allow VRE to continue its operations over Norfolk Southern tracks via this contract extension.

NOW, THEREFORE, BE IT RESOLVED THAT, the VRE Operations Board recommends that the Commissions authorize the Chief Executive Officer to execute an extension of the Amended Operating/Access Agreement with Norfolk Southern through January 31, 2008.