

MACKINAC STRAITS CORRIDOR AUTHORITY
INAUGURAL PUBLIC MEETING
December 19, 2018 – 1:00 pm
Little Bear Arena, St. Ignace, Michigan
MEETING MINUTES

Members Present: Mike Nystrom, MSCA
 Anthony England, MSCA
 J.R. Richardson, MSCA

Members Absent: None

Also Present: James Shell, Assistant Attorney General - MSCA Attorney
 Anne Armstrong, Director, Michigan Agency for Energy
 Keith Creagh, Director, Michigan Department of Natural Resources
 Robert Reichel, Assistant Attorney General – Assigned Counsel for the
 Administration
 Valerie Brader, Attorney for the Governor
 Dr. Mike Mooney

I. **WELCOME**

Mike Nystrom called the meeting to order at 12:55 p.m.

Mr. Nystrom stated the business at hand: to review the proposed tunnel agreement provided to the Mackinac Straits Corridor Authority by the Governor. If the agreement meets the criteria of Public Act 359, the agreement must be approved by law. Comments that focus on the merits of the agreement are welcome.

II. **ELECT CHAIR**

Motion by Anthony England to elect Mike Nystrom as MSCA Chair. J.R. Richardson seconds the motion. All in favor. Motion carried; Mike Nystrom is elected Chair.

III. **RESOLUTION FOR INITIAL BOARD PROCEDURES**

Motion by J.R. Richardson for board to authorize the Chair, Mike Nystrom, as signer to sign the necessary documents to conduct business (Tunnel Agreement, bylaws, etc.). Anthony England seconds the motion. All in favor. Motion carried; Mike Nystrom is authorized as signer.

Motion by J.R. Richardson to set limit on public comment to 3 minutes per individual, 5 minutes per individual representing an organization. No shared time for groups or giving unused/extra time to others. Anthony England seconds the motion. All in favor. Motion carried.

IV. CORRESPONDENCE/CALLS RECEIVED

Mike Nystrom stated that all comments or correspondence received from the public will be made publicly available in the near future.

V. PRESENTATION OF PROPOSED STRAITS UTILITY CORRIDOR DOCUMENTS

Mike Nystrom invited Valerie Brader to summarize the statutory requirements for the agreement presented to the MSCA by the Governor which was created on December 14, 2018 and updated on December 17, 2018.

Requirements under the statute:

The first requirement under the statute requires that the proposed agreement allow for the use of the tunnel by multiple utility companies. The Preamble, Section 1, Article 6, Section 3.3, and Schedule 1 all provide the opportunity for the tunnel to connect the peninsulas and provide multiple utility services.

The second requirement is that the proposed agreement allow for the gathering of geotechnical information before construction of the tunnel. Sections 1.1, 7.1, 7.3, and 17.1 address and require this.

The third requirement is that the proposed agreement require the MSCA to have a mechanism in place to ensure the tunnel is built to sufficient technical specifications for operation and maintenance with a design life of no less than 99 years. Article 6 and Sections 1.1, 5.3, 7.2, 7.5, 7.8, and 7.11 address this.

The fourth requirement is that there be no obligation of state funds inconsistent with the law. Article 5, and Sections 5.1 and 5.2 provide this.

The fifth requirement is that the proposed agreement does not require use of eminent domain. Neither version ever allowed for the use of eminent domain. This is described in Section 3.1 with Section 1.2 defining the "Subsurface right of Way."

The sixth requirement is that the proposed agreement does not exempt any entity involved in the construction or use of the tunnel from the obligation to obtain permits or approvals for the construction or use of the tunnel. This is addressed in Article 4 and Sections 1.1, 7.9, and 7.11. It is also addressed in the Tunnel Lease in Sections 1.1 and Article 3. In addition, the Term and Conditions of the Assignment of Easement Rights to Enbridge addresses this.

The seventh requirement is that the proposed agreement does not exempt any entity using the tunnel from payment of tax.

The eighth requirement is that the proposed agreement does not require the MSCA to bring or defend claims for which the Attorney General is not required to provide counsel. In compliance, there is no such provision. See Article 12.

The ninth requirement under the statute is that the agreement requires leasing of space for utilities and that the MBA be reimbursed from any and all lost profit for leasing of space for utilities. Addressed in Section 3.3 and also Schedule 1 of the proposed lease.

The tenth requirement under the statute requires development of a plan on how to engage the state labor pool in the project and to provide the means and methods for recruitment, training, and utilization. This is included in Section 7.5.

Robert Reichel takes the floor to explain the substantive changes/revisions from the original agreement dated December 14, 2018, to the updated version dated December 17, 2018.

The first change is in the definition of applicable law under Section 1.1c. This is important because the agreement and lease require that all activities be done in conformance with “applicable laws.” The first version included a clause specific to “all laws in effect on the date of execution.” The updated version does not include that clause, i.e., does not specify “in effect on the date of execution.” As revised, “applicable laws” includes laws adopted after the date the agreement is executed. The same change was made to the definition of “applicable laws” in the proposed lease.

The next change is in the definition of the scope of the tunnel project in Section 6.1. The original version sets forth the characteristics of the tunnel and refers to a diameter of approximately 10 feet. The updated version makes it clear that this is not a limitation, and the goal would be to come up with a diameter that would be appropriate to efficiently construct the tunnel, depending on geotechnical conditions, methods used, etc. Design will be based on the most efficient way to construct the tunnel with the required characteristics, including allowing for multiple utilities. Ten feet is not meant to be a restriction.

The next change is to the language regarding the timeframe for completing the geotechnical investigations in Section 7.3. The original version included an anticipated target for completion. The updated version allows for a possible extension of time (subject to approval by the MSCA) to complete the gathering of geotechnical data to ensure it is sufficient. This clarification is not changing the goal, but rather, it builds flexibility.

The next change is in Article 11, regarding indemnification. If claims are asserted against the MSCA or the state regarding activities contained within the agreement, Enbridge would indemnify the state and defend the claims, i.e., maintain insurance and tender a defense. In the updated version, if a claim is asserted and the state gives notice to

Enbridge, Enbridge would then have the insurance company take over financial responsibility for the defense of such claim. If Enbridge failed or refused to do so, they would have to pay the MSCA for having to hire its own attorney. Article 11 also makes clear that the duty by Enbridge to parties covered by indemnification extends to contractors who are retained by the MSCA, i.e., broadens Enbridge's indemnification obligation.

Discussion ensued relating to Article 6, *Project Description*, and the Authority agreed to clarify language to state that the tunnel shall not be less than 10 feet in diameter in a letter of agreement with Enbridge.

This concludes the summarization of the substantive changes from the original agreement dated December 13, 2018, to the updated version on December 17, 2018.

VI. PUBLIC COMMENT

Refer to recording available at <https://livestream.com/MDOT/MSCAmeeting121918/videos/184980944>.

VII. PROPOSED STATE UTILITY CORRIDOR DOCUMENT DISCUSSION

Chair Nystrom inquired of Attorney Shell if the legal requirements have been met. Mr. Shell stated that he has reviewed the documents and the legal memorandum discussing how the *Tunnel Agreement* complies with the requirements. He indicated that he does not dispute the findings of the legal memorandum.

Motion to approve the *Tunnel Agreement* by Anthony England. J.R. Richardson seconds the motion. All in favor, motion carried.

Motion to allow MSCA to grant assignments of rights within the *Easement to Construct and Maintain Underground Utility Tunnel at the Straits of Mackinac* to Enbridge by J.R. Richardson. Anthony England seconds the motion. All in favor, motion carried.

Motion by J.R. Richardson to approve service contracts to provide independent technical assistance. Anthony England seconds the motion. All in favor, motion carried.

Motion by J.R. Richardson to authorize MSCA Chair to sign letter of agreement with Enbridge that tunnel shall not be less than 10 feet in diameter. Anthony England seconds the motion. All in favor, motion carried.

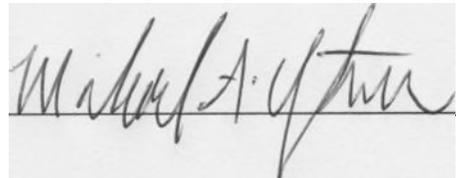
X. ESTABLISH NEXT MEETING DATE

Motion by Anthony England to hold the next MSCA meeting on April 15, 2019. Motion seconded by J.R. Richardson. All in favor, motion carried. The next meeting will be held Monday, April 15, 2019, time and place to be determined.

XI. ADJOURN

With no further business at hand, Chair Mike Nystrom declared the meeting adjourned at 4:29 p.m.

Approved:



A handwritten signature in cursive script, appearing to read "Mike Nystrom", is written over a horizontal line. The signature is contained within a rectangular box that is partially cut off on the right side.