

**West Virginia Board of Public Works  
Wednesday, November 16, 2022 – 10:30 a.m.  
Governor’s Cabinet and Conference Room  
Minutes**

**Attendees:**

Members

Governor Jim Justice  
Secretary of State Mac Warner  
Attorney General Patrick Morrisey  
Commissioner of Agriculture Kent Leonhardt  
State Superintendent of Schools David Roach  
State Auditor John B. McCuskey  
Sarah Canterbury for State Treasurer Riley Moore

Guests:

Erik Hirsch, Norfolk Southern  
H. Toney Stroud, Marshall University  
Ryan Ivey, Kroll LLC by teleconference line  
Erin Winter, Deputy Tax Commissioner  
Frank Capehart, Property Tax Division, Tax Department  
Berkeley Bentley, Governor’s Office  
Jeff Waybright, Auditor’s Office  
Callie Cart, Auditor’s Office  
Steven Travis, Attorney General’s Office  
Doug Buffington, Attorney General’s Office  
Lindsay Marchio, Treasurer’s Office  
Phyllis Mease, Treasurer’s Office  
Steve Adams, Ogden Newspapers  
Donald Kersey, Secretary of State’s Office  
Maureen Lewis, Secretary of State’s Office  
Denys Snodgrass, Garrett Reporting

The West Virginia Board of Public Works re-convened on Wednesday, November 16, 2022 at 10:30 a.m. in the Governor’s Cabinet and Conference Room, Building 1, Suite 10 of the State Capitol Complex. The meeting was called to order and chaired by Governor Justice. A quorum of members was established.

The second item on the agenda was the approval of minutes from the September 27, 2022 Board of Public Works meeting. Attorney General Morrisey made a motion to approve the minutes. Commissioner Leonhardt seconded. The motion carried.

The third item on the agenda was to receive comments from public utility companies concerning notices of tentative assessed values for tax year 2023. Erik Hirsch addressed the Board concerning the tentative assessment for Norfolk Southern Corporation. He stated that his purpose is not to talk about taxation or go in to actual values. The company is still in discussion with the Tax Department to work through some problems. These are similar to what they

worked through last year, and they were able to reach an agreement. He is confident it is heading in that direction again this year. His purpose is to register that the discussion is still ongoing while working through the issues. He asked if there were any questions. Auditor McCuskey asked if their revenue was based on the price of coal or the amount of coal. Mr. Hirsch asked if he was referring to the revenue specific to coal. Auditor McCuskey responded he meant when transporting coal, does it cost more to transport expensive coal than it does to transport cheap coal. Mr. Hirsch stated he did not know enough of the details to give a direct answer. Governor Justice stated it is argumentative whether a ton of coal originating at the same spot, going to the same destination cost the same to transport. It could depend on whether it's a thermal ton of coal or a metallurgical ton of coal. The metallurgical producers charge a great deal more. The rate is determined by the coal market. Auditor McCuskey clarified that his question was more if it is market driven, or price driven? Mr. Hirsch replied that he wasn't sure but will look in to it.

Ryan Ivey addressed the Board next. He explained that Kroll LLC represents 3 parent companies with the 5 subsidiaries listed on the agenda. Frontier West Virginia, Frontier Communications Online & Long Distance, and Citizens Telecom Company are subsidiaries of Frontier Communications. Hardy Cellular is a subsidiary of United States Cellular. Texas Eastern Transmission is a subsidiary of Enbridge. He continued that they are still in discussions with the Tax Department. There have been multiple conversations. They are narrowing the differences, but no agreements have been reached. Mr. Ivey stated that some of the procedures used in the tentative assessments have resulted in some significant valuation increases. When compared to last year's assessments, Citizens has increased 25%; Frontier WV has increased 46%; Frontier Online & Long Distance has increased 307%. He continued that Frontier Communications has recently gone through a bankruptcy and re-organization. He stated that he thinks the primary reason for the large increases is the capitalization rate used in the income approach model by the State Tax Department. More emphasis is being placed on that approach this year. They have expressed these concerns to the Tax Department. He thinks they are making progress but have not reached a resolution.

Mr. Ivey continued his comments by referring to the other two companies. He stated that for the cellular company, the updated inputs have resulted in an initially proposed 82% decrease. They are requesting that it be more in line with what the value has been in prior years. He asked if there were any questions. Attorney General Morrissey stated he had a question pertaining to Frontier which likely does not directly involve their assessment. He would be interested in getting an updated briefing as to the progress that Frontier has made with respect to the resources it was granted from the latest round of the RDOF funding. The Attorney General's office has oversight over broadband and the challenges that the State has faced. There was a significant settlement with Frontier in 2015. Therefore, he would like to put in a public request to get extensively briefed on the status of the build out, progression and estimated completion dates. Progress in this area is an important issue for the State. Mr. Ivey replied that he understands the request, but as their tax consultant, he does not have access or knowledge of the specifics on the rollout in West Virginia. He will relay the request to his counterparts. Auditor McCuskey asked when the referenced bankruptcy ended. Mr. Ivey replied that the bankruptcy commenced in April 2020, and they emerged in April 2021. Auditor McCuskey asked how a bankruptcy that ended a year before the tax year is relevant to this year's assessment. Mr. Ivey stated that the assessments being discussed are based on January 1, 2022 financial information. As part of Frontier's bankruptcy, they were required to go through a process called Fresh Start Accounting

in which all of their assets and liabilities are restated as of the date of emergence from bankruptcy. Since that was in April 2021, this assessment as of January 1, 2022 is the first assessment that encompasses the essentially new company. There are some impacts from the bankruptcy process. Auditor McCuskey asked if the argument is that since emerging from bankruptcy, their property is worthless. Mr. Ivey responded that the proposed assessment for this year is a significant increase from last year. The company is not advocating for a decrease over prior years, but the significant increase is not justified. Auditor McCuskey asked if the increases have anything to do with the RDOF funding received and what is being built. Mr. Ivey replied that RDOF funding is not nearly big enough to account for that. Auditor McCuskey asked if it is an arbitrary increase they are disputing. Mr. Ivey replied that it is a difference in calculation methodology that they are discussing with the State Tax Department. Auditor McCuskey asked if the Tax Department changed their methodology. Mr. Ivey replied that they have placed more emphasis on different components of the appraisal. The biggest change is the very low capitalization rate being used.

Governor Justice asked if there were any other companies that would like to address the Board. There were no responses.

Commissioner Leonhardt asked if the Board should send a formal letter to Frontier asking for the extensive briefing that the Attorney General requested. Attorney General Morrissey stated he would update the Board on the briefing.

The next item on the agenda was the consideration and approval of the following deed:

1. Between Huntington Municipal Development Authority and Marshall University Board of Governors, dated November 1, 2022.

Toney Stroud addressed the Board. He explained that the property is approximately 5.6 acres. It is part of the City of Huntington's commitment to the construction of the new baseball facility at Marshall University. Attorney General Morrissey asked what the timeline is for the first pitch. Mr. Stroud replied that they hope to play ball in March of 2024. Attorney General Morrissey made a motion to approve the deed. Superintendent Roach seconded. The motion carried.

With no further business, Auditor McCuskey made a motion to recess until the next meeting. Commissioner Leonhardt seconded. The motion carried. The meeting recessed.



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Mac Warner, Secretary of State  
And Ex-Officio Secretary of the  
Board of Public Works