

ITEM 12-B.3

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**POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION**

RESOLUTION

MOTION: _____

**RESOLUTION NO. 08-11-____
OFFICIAL COMMISSION MEETING
NOVEMBER 6, 2008**

SECOND: _____

RE: APPROVAL OF LEASE-PURCHASE OF FOUR BUSES

WHEREAS, management is recommending amendments to a plan that the Potomac and Rappahannock Transportation Commission (PRTC) provisionally approved in July 2008 to counteract the effects of a rapid rise in fuel prices, including a ridership surge that is compelling the scheduling of more service to alleviate overcrowding on the OmniRide routes; and

WHEREAS, the recommended amendments include an allowance for four more buses to be lease-purchased because the pattern of overcrowding is such that the present size of the fleet is constraining management's ability to schedule service as required for this purpose; and

WHEREAS, management and PRTC's Legal Counsel have concluded that overcrowding on the OmniRide routes qualifies as an "emergency" as defined under PRTC's adopted purchasing policy, warranting the use of expedited purchasing and financing solicitation methods to minimize the lead time for acquiring additional buses and passengers' exposure to overcrowded conditions that place them at risk; and

WHEREAS, management has concluded expedited competitive solicitations for buses available for immediate purchase and for financing companies, and presented the results of these competitive solicitations to the Commission; and

WHEREAS, the Commission finds that management's analysis and recommendations are soundly premised.

NOW, THEREFORE, BE IT RESOLVED that the Potomac and Rappahannock Transportation Commission does hereby authorize the execution of a lease-purchase transaction with the Wells Fargo Equipment Finance in substantially the same form as described in the accompanying staff report; and

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ITEM 12-B.3

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BE IT FURTHER RESOLVED that the Chairman and/or the Executive Director are hereby authorized to execute any and all documents necessary to complete this transaction in a form approved by Commission's Counsel.

November 6, 2008

TO: Chairman Jones and Commissioners
FROM: Alfred H. Harf
Executive Director
RE: Lease-Purchase of Four Buses

Recommendation:

Authorize the execution of a lease-purchase transaction with Wells Fargo Equipment Finance for four Motor Coach Industries (MCI) buses required to alleviate overcrowding.

Background:

In July 2008, management presented and the Commission provisionally approved a plan to counteract the effects of the rapid rise in fuel prices (hereinafter referred to as the "provisionally approved plan"). The provisionally approved plan provided for budget adjustments to cover unbudgeted fuel expenses and additional service hours, and the deployment of the last three "contingency fleet" buses in PRTC's possession as "active fleet" buses so service could be added to alleviate OmniRide overcrowding at times when the existing fleet was (is) already in maximum use. Since July, ridership has increased to an even greater extent than the provisionally approved plan envisioned, such that OmniRide overcrowding has become more pervasive and the OmniRide fleet size is again hampering efforts to add service as necessary.

In light of this continuing ridership growth, management advised the Commission in October that amendments to the provisionally approved plan are necessary, including fleet supplementation. The presentation made at the Commission's October meeting indicated that as many as seven more buses are needed, and concluded with a series of prospective actions that the Commission would be asked to consider. Three of those prospective actions were slated for the November meeting: one amending the provisionally approved plan; a second calling for a mid-year fare increase; and a third to acquire additional buses as needed. The first two items appear elsewhere on this month's meeting agenda, and this is the third of the three.

The typical lead time for bus acquisitions is a minimum of six months commencing from the time they are bought (or leased) new, because bus manufacturers do not maintain inventories of buses built on speculation¹. The fact that some of the overcrowding problems on PRTC's OmniRide routes can't be remedied without additional buses is a situation requiring more immediate action, and the Commission was advised in October that management and PRTC's Legal Counsel have concluded that this situation qualifies as an "emergency" as defined under PRTC's adopted purchasing policy², permitting the use of expedited solicitation methods for seeking prospective existing bus acquisitions³. To that end, the October presentation described existing buses that management had identified via telephone and email communication canvasses of known bus suppliers (including both new and used bus suppliers) which appeared to be promising candidates, and observed that further assessment work would be necessary to ready a recommended course of action for the Commission's consideration at the November meeting. The tabular summary of existing buses identified at the October Commission meeting has been replicated here for your ease of reference (attachment two).

Management has now completed its assessment of these candidate buses, the results of which have naturally shaped what is being recommended. Because the amendments to the provisionally approved plan recommended as a separate action item elsewhere on this month's agenda call for the addition of only four more buses based on more refined analysis of the overcrowding pattern, the recommended lease-purchase transaction described here is confined to four buses.

Virtually all of the buses described in the October presentation have been inspected first-hand, and management has relied heavily on its contractor's (First Transit) maintenance expertise in forming opinions about the comparative merits of the choices. The fact that MCI coaches are the mainstay of PRTC's commuter bus fleet is a legitimate consideration, since fleet standardization and maintenance technicians' familiarity with the mechanical features of the buses are universally recognized as important tenets for keeping maintenance costs down and maintaining fleet reliability. Consequently, management has a natural predisposition towards MCI coaches, although buses manufactured by other suppliers were also assessed and might have been recommended if the facts of the comparative evaluation had turned out differently.

¹ This is true whether the buses are competitively procured independently, via a "piggyback", or via a state contract, because in all cases the buses ordered are built thereafter from scratch.

² A copy of PRTC Legal Counsel's opinion appears here as attachment one. It highlights the criteria appearing in applicable statutes/regulations/guidance defining an emergency (and, in the case of federal guidance, the criteria governing the use of sole source procurements including the presence of an "emergency" situation).

³ Including used buses and buses already being manufactured as vendor demos.

Based on the completed comparative evaluation, management is recommending the acquisition of four MCI buses that are new or near-new which are still in MCI's ownership. Because these buses were/are being built as "demonstration" vehicles to facilitate sales, there is virtually no waiting time for delivery – two can be delivered in November and two in January. All four are virtual mirror images of the MCI coaches PRTC already owns, and MCI has proposed prices that match the favorable unit prices for MCI coaches acquired via the Commonwealth's state contract⁴, less depreciation (to account for already logged, low mileage and minor differences in specifications).

MCI's quoted costs for the four buses are shown in the table below:

Coach	Cost	Comments
"APTA Demo"	\$452,029	Was manufactured for showcasing at the APTA Expo
Commuter Bus Demo	\$452,029	In the late stages of manufacture
Commuter Bus Demo	\$452,029	In the late stages of manufacture
Commuter Bus Demo	\$432,276	Was manufactured earlier as a traveling demo; has logged approximately 20,000 miles

Thus the total cost for the four coaches if they were purchased without financing is \$1.79 million.

Management's assessment of the other candidate buses identified in the October presentation is summarized in attachment three.

In the same expedited fashion used to identify candidate buses for acquisition on a "competitive" basis, management has also invited competition from companies engaged in vehicle financing. Three companies were contacted and all three submitted fully responsive financing proposals for a variety of financing structures of varying durations. After evaluating all the proposals received, management is recommending a lease-purchase transaction⁵ with Wells Fargo Equipment Finance. Because all three financing companies are known, highly reputable companies, the recommendation is based simply on a comparative evaluation of the

⁴ PRTC's most recent acquisitions of MCI coaches have been via the Commonwealth's state contract. PRTC management participated in the competitive procurement that led to the selection of MCI as the supplier of such coaches on the state contract.

⁵ The recommended transaction can also be thought of as an installment purchase because PRTC would be the eventual owner of the buses (unlike a straight lease where the buses are simply being rented for a defined period and the lessor retains ownership thereafter).

terms proposed for the "lease-purchase" structure, as summarized in the table below (entries in the table are confined to the shortest term / lowest quoted interest rate, which is what management is recommending for reasons discussed following the table):

Company	Terms
Municipal Services Group, Inc.	Two year term: 4.0%
Key Government Finance, Inc.	Three year term: 4.62%
Wells Fargo Equipment Finance	Two year term: 3.83%

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The Wells Fargo interest rate incorporates an allowance for "locking-in" the rate until the last two buses are delivered, and this "lock-in" allowance is an estimated eight basis points. Because it is an estimate and because the actual lock-in won't occur unless and until the Commission approves the transaction, the rate is subject to slight variation. Consequently, management's recommended resolution acknowledges this and seeks authorization to consummate the transaction "in substantially the same terms as described here".

Since the recommended lease-purchase structure permits PRTC to buy the buses prior to the expiration of the term (by paying the remainder of the principal at the time; hereinafter referred to as the "buy out"), no matter how long a lease-purchase term is chosen, the "term" decision is simply a matter of assessing how long it will be before PRTC will be in the position to fully fund the acquisition. To this end, management considered the following in reaching its conclusion that the shortest plausible term / lowest quoted interest rate would be best:

1. Both the "lease" payments and the eventual "purchase" payment of the remaining principal qualify for federal and state grant participation. That is, PRTC will be able to use grant funding it receives from federal and state sources to cover a major portion of these expenses⁶.

⁶ This is not additional federal money – it is federal formula funding that PRTC receives annually which is accumulated and used for planned, periodic bus replacement investments. Because the amount of federal formula funding PRTC receives each year does not mirror the schedule for bus replacements, however, residual federal funding intended for the next bus replacement investment is often available, and it is this residual federal funding that management proposes to tap as the source of funds for making the lease-purchase payments as required. Since these residual federal funds already have an eventual planned use (i.e., for bus replacements), and since the lease-purchase is an added expenditure, there needs to be an offsetting added source of revenue to reinstate the funding intended for bus replacements. The added source of revenue management is recommending

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2. While most of the federal and state grant funding already in-hand is "spoken for" by other ongoing or planned expenditures, federal formula grant awards of already-appropriated funds for buses are anticipated in November 2008 and March 2009, which will provide sufficient additional funding to permit federalization of both the "lease" payments and the "purchase" payment. Since the second of these grants is only five months in the future, it is in PRTC's interest to opt for as short a lease term as necessary to minimize interest costs. The amendments to the provisionally approved plan appearing as an action item elsewhere on this month's agenda account for this.

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Since the reason underlying the need for these four buses is the run-up on fuel prices and the resultant ridership surge/overcrowding problem, the Commission will surely be interested in understanding management's thinking about "lease-purchase" vs. "straight lease" structures. As noted earlier, a "lease-purchase" transaction as the term is used here is simply a way of spreading the cost of an acquisition, while a straight lease is a rental for an asset that may or may not be needed for the entire life of the asset. Mindful of these differences, it is reasonable to ask "why does PRTC management think these buses will be needed for the entire life of the asset, since this need is a consequence of the fuel price run-up and since it is certainly possible that prices could drop even more than they have, potentially lessening demand?"

While fuel prices are clearly an important influence on ridership and a further price drop is certainly plausible, the probability that conditions could reverse themselves enough to render these four buses surplus is extremely low. Management can state this with confidence because there are twelve over-aged buses in the active fleet at this point (three of which are nearly 20 years old). If conditions were to reverse themselves, the reversal would have to be large enough to cause PRTC's peak fleet requirement to shrink by more than twelve buses, which is 16.5% of the buses needed for OmniRide service. A drop of this magnitude seems well near impossible. A lesser reversal would simply mean being able to reduce our dependence on over-aged buses, which is clearly desirable, and thereby lessening the need for future "replacement bus" acquisitions.

The essential point here is that because there is a very high probability of needing these buses for the life of the asset, the risk of owning buses that are not needed in the long term is very small and therefore the cost of "safeguarding" against this possibility is not a cost worth bearing. This "safeguarding" cost can be seen by comparing "lease-purchase" vs. "straight lease" terms⁷ – quoted "straight lease" costs exceed "lease-purchase" costs for leases longer than several years, so buses that are needed for longer than that end up costing more to lease than to

is a higher fare increase for OmniRide in the "with buses" plan, as described in the companion action items on this month's agenda.

⁷ A straight lease as I've referred to it here is also termed a "TRAC lease" by some.

lease-purchase. This is entirely understandable, since the lessor bears the risk of having to find another lessee or purchaser at the end of a straight lease term and since straight leases require tax payments inasmuch as the owner is a private party that has tax obligations rather than a governmental entity like PRTC that enjoys tax exempt status.

It is also entirely reasonable to ask "what would the consequences be if this recommended transaction is disapproved?" Management has considered this question and answered it in part by showing two alternative sets of amendments to the provisionally approved plan in the action item appearing elsewhere on this month's agenda -- one which assumes approval of this transaction (termed the "with buses" plan) and the other assuming it is not approved (termed the "without buses" plan) -- but a full explanation of the consequences of disapproval has been left for discussion here.

Management's recommended amendments in the "without buses" plan have been conceived with the aim of minimizing overcrowding, and doing so involves compromises with risks of a different sort. More specifically, the "without buses" plan:

1. Slows the progression of mid-life overhauls by limiting the number of Orion buses being overhauled at any given time from two to one, so the "extra" bus can be used to alleviate overcrowding. PRTC has awarded a contract to Midwest Bus Corporation for a mid-life overhaul of its thirteen Orion buses. The overhaul was planned to allow the overhaul of two buses at a time, and this would be shrunk to one at a time for a period of ten months (until the fall of 2009) so we have one more Orion bus on the premises for service⁸. Slowing the Orion overhaul project means postponing the mid-life overhauls of the 38 2002-vintage MCI coaches that are next in line, with attendant risks of buses not being overhauled on a timely basis and being more vulnerable to breakdowns⁹.
2. Forces the continued use of the nearly 20 year-old RTS buses just shifted from the "contingency" fleet to the "active" fleet for longer than desired. If the Commission authorizes the lease-purchase of the four buses as recommended, our dependency on RTS buses as "active fleet" buses would cease in March 2009. Without the four lease-purchased buses, the RTS buses would remain as "active fleet" buses for eight months longer.

⁸ The contract PRTC has with Midwest Bus Corporation does not prescribe that two buses at a time must be provided for overhaul work so there is not a contractual penalty of any sort if we were to limit it to one at a time.

⁹ The MCI overhauls will require two years to complete once they have been started, so some of the MCIs will be nine years old before they are overhauled even with the present schedule, and older still if the Orion rehab is slowed.

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The “without buses” plan has the added drawback of not permitting all the trips experiencing chronic overcrowding to be alleviated quickly – two trips would remain overcrowded for months because of fleet constraints.

Stated differently, the consequences of disapproving the lease-purchase transaction are not simply a matter of protracted overcrowding. Because disapproval means longer reliance on 20-year old buses and slowing the mid-life overhaul program, the quality of the bus operation would more vulnerable for nearly a year.

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To recap, management is recommending the execution of a lease-purchase transaction with Wells Fargo Equipment Finance for four new/nearly new MCI coaches, structured with a two-year term.

Fiscal Impact:

The total cost of the recommended transaction is \$1,860,583 assuming the purchase does not happen until the end of the recommended two-year term. A “buy out” before the end of the two-year lease term would lessen this cost, since interest costs are lowered if a “buy out” happens (as expected). As noted earlier, all the required payments can be and would be federalized using existing federal funds. A transaction requiring an interest expense is being recommended only because PRTC’s traditional practice of arranging for a “bridge loan” internal to PRTC or in cooperation with Prince William County is not seen as a viable solution at this time.

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These payments have been accounted for in the “amendments to the provisionally approved plan” action item referenced earlier.



COUNTY OF PRINCE WILLIAM

1 County Complex Court, Prince William, Virginia 22192-9201
 (703) 792-6620 Metro 631-1703 FAX: (703) 792-6633

COUNTY ATTORNEY

Ross G. Horton
 County Attorney

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 County Attorney

October 29, 2008

NOTE: PRTC EXECUTIVE DIRECTOR
 CONFERRED WITH PRTC LEGAL COUNSEL
 TO ASK IF OPINION CAN BE DISCLOSED
 AS A MATTER OF PUBLIC RECORD (IT
 CAN).

TO: ALFRED HARF
 PRTC Executive Director

FROM: ANGELA HORAN *Angela Horan*
 PRTC General Counsel

RE: DOES CURRENT OVERCROWDING SITUATION ON PRTC
 BUSES QUALIFY AS AN "EMERGENCY" UNDER FEDERAL
 AND VIRGINIA PROCUREMENT LAW?

You relate that PRTC buses have recently become overcrowded due to fluctuations in gas prices and other economic uncertainty. PRTC staff is trying to provide more service to alleviate these potentially dangerous conditions, which could result in injuries, and if an accident occurs to take a bus out of service, serious disruption to the service. One of the approaches is to obtain more buses on a leased basis. You have asked whether the procurement of leased buses is subject to all the requirements of the Virginia Procurement Act, or whether, given the exigent circumstances, PRTC can relax compliance with some of the more time-consuming steps of a full competitive procurement process. You wonder if the current situation, which we expect to remain the same or become more pronounced in the foreseeable future, qualifies as an "emergency" under §2.2-4304(F), VA Code Ann., which is part of the Virginia Public Procurement Act. You have also asked whether these circumstances give rise to the exemptions from federal procurement requirements contained in Federal Transit Administration ("FTA") Circular 4220.1.E, which you understand to be effective until November 1, 2008, and/or FTA Circular 4220.1.F, which will supersede 4220.1.E as of November 1.

In my opinion, the answer to both questions is yes. While the Procurement Act does not contain a definition of the term "emergency," and I have been unable to find any Virginia case law or Attorney General's opinion helpful on this point, I believe the courts would give it its common meaning – a situation produced by a set of largely unforeseeable factors which, if not addressed in short order, poses a potential harm. In this context, I believe a substantial threat to the delivery of a service the PRTC is set up to offer, along with the strong potential of personal injury to bus riders, constitutes an

emergency. I believe that if investigation reveals, as it is already doing, information that the potential harm can only be effectively averted by a procurement, and compliance with all the rules that normally pertain to planned procurements will delay action beyond what a reasonable government agency will find acceptable, that a court will find that this situation is an "emergency" within the meaning of §2.2-4303(F).

You may be interested in Prince William County's attempt to define "emergency" in its Purchasing Regulations:

"Emergency" shall be deemed to exist when there is a breakdown in any County service, or at any time that supplies or services are needed for immediate use in work which may be essential to or may vitally affect the public health, safety or general welfare. An emergency may include work undertaken under a court order or in anticipation of a court order."

PRTC is certainly not bound to follow the County's Purchasing Regulations, but you may find this a practical and, therefore useful, approach to defining an emergency and drafting a justification. If I were to try to improve on this definition, I would include a "potential" breakdown as an emergency, and I would also include a procurement of "supplies or services needed for immediate use to avert potential injury in the operation of a PRTC service."

As you know, §2.2-4303(F) imposes certain documentation and public notice requirements whenever a public agency decides to conduct an emergency procurement. Here is the full text of §2.2-4303(F) for your ease of reference:

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, **such procurement shall be made with such competition as is practicable** under the circumstances. A **written determination** of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a **written notice** stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. **This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award** the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

In my view, the greater the extent to which competitive principles are observed in an emergency procurement, the more likely it is that a court reviewing the matter will accept the judgment of a public agency that an emergency exists under Virginia law.

As you know, both versions of the FTA Circular you sent me authorize an exemption from the normal competitive requirements that obtain in federally funded transit procurements under circumstances where "the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation." The excerpt of the FTA Best Practices Manual which you sent me notes "in an emergency situation, it is not unusual for health and safety issues to be a factor in the decision to proceed with a sole source." Based on this, and the line of reasoning set forth above, I conclude that the circumstances in which PRTC currently finds itself should qualify as an

"emergency" within the meaning of FTA's Circulars 4220.1.E and 4220.1.F. I have found no authority to the contrary, or anything which indicates that FTA's line of reasoning might differ from what I have set forth here.

Please let me know what additional information or assistance I can provide.

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Vehicle Lease/Purchase Options

Sampling of what's on the market now:

Company	Make/Year	#	Mileage	Available	Purchase	Lease/mo.*	Comments
MCI	MCI D Series/2008	6	0-23k	4 Now 2 January	\$458k - \$476k	???	Most like current fleet - consistent
ABC	Van Hool/2007	11	45k - 180k	Now	\$385k - \$399k	~\$6,900	Charter style (lavatories, 53 pax., TVs.); not Buy America - can't buy new so if we bought these they'd be "orphans;" no headsigns; most MCIs have high miles.
	MCI J Series/2006	6	205k - 413k	Now	\$310k - \$335k	~\$5,600	
Complete Coach Works	Express/2008	8	0-8k	Now	\$325k	~\$11,659	Largely untested in public transit market; lease could be good way to "test the waters;" 50% of payments applied if decide to buy.
Midwest	MCI J series/2006-7	10	???	Now	\$360k	~\$7,240	Same as ABC buses; Extra \$60k each to convert to commuter -style.

*Based on 12 month lease

Summary of Assessment of Other Candidate Buses

1. The used buses owned by ABC that appear in attachment two are a combination of MCI and Van Hool coaches. All are in the process of being acquired by ABC from a California-based charter operator on a trade-in basis, as part of a new "charter bus" transaction. The MCI coaches are relatively recent vintage (i.e., 2006) but have logged very high mileage (i.e., between 200,000 and 400,000 miles, all with their original engines still in-place. The MCI coaches are so-called "J"-model coaches, which differ in multiple respects from the "D-models" in PRTC's possession.

The ABC-owned Van Hool coaches are also recent vintage (i.e., 2007), with less logged mileage (i.e., less than 200,000 miles). These coaches would be "orphans" if they become part of the PRTC fleet, since there are no Van Hool coaches in PRTC's fleet inventory at present, and First Transit advises that Van Hool's reputation as it relates to parts and technical support is wanting. Samples of both sets of coaches were inspected in California by First Transit and all were judged to be reasonably well maintained though extensively used. They have fewer seats than PRTC's 45-foot long coaches, owing in part to the fact that they are all equipped with lavatories as expected for a charter operation.

2. The buses owned by Complete Coach Works that appear in attachment two are virtually new, having been built by the supplier as demonstrations. Complete Coach Works built these buses in a continuing effort to break into the commuter bus business; to date, Complete Coach Works has confined its bus business to school buses and smaller transit coaches. One of the buses was inspected first-hand by PRTC and First Transit at the PRTC Transit Center, which highlighted the many ways in which this bus differs from those that are already part of the PRTC fleet. While the price proposed by Complete Coach Works is very enticing, these buses would also be "orphans" at PRTC, and PRTC would be a "guinea pig" since there are no buses of this sort in commuter service at the present time. First Transit advises that Complete Coach Works also has a reputation for poorly manufactured vehicles, which company officials appeared to be mindful of in discussing steps the company has taken in the course of a recent corporate acquisition to improve in this area.
3. The buses owned by Midwest that appear in attachment two were not inspected and management was unable to learn much more than previously reported about them. Absent complete information about these buses, they were ruled out for further consideration. What is known about them is that, like the ABC buses, they have been used as charters and therefore are also equipped with lavatories reducing the numbers of seats.