

WISCONSIN RIVER RAIL TRANSIT COMMISSION

FULL COMMISSION MEETING - FRIDAY, MAY 11TH, 2012 @ 10AM
 DANE COUNTY HWY GARAGE, 2302 FISH HATCHERY RD, MADISON, WI

1. 10:00 AM **Call to Order** – *Karl Nilson, Chair*
2. Roll Call. **Establishment of Quorum** – *Mary Penn*

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|----------|--|------------------|----------|-----------------------------|-------------------|
| Crawford | Tom Cornford, X-Committee | x | Rock | Ben Coopman, Alternate | |
| | Rocky Rocksford | x | | Wayne Gustina | x |
| | Vacant | | | Alan Sweeney, Vice Chair | x |
| | | Terry Thomas | | | |
| Dane | Gene Gray, Treasurer, | x | Sauk | Marty Krueger, Alternate | |
| | Jim Haefs-Fleming | X; left 11:00 | | Carol Held | x |
| | Forrest Van Schwartz, Advocate | x | | John Miller | x |
| | | Dennis Polivka | | X 10:02 | |
| Grant | Ivan Farness | | Walworth | Jerry Grant | |
| | Vern Lewison | x | | Richard Kuhnke, X-Committee | |
| | Robert Scallon, 2 nd Vice Chair | x | | Allan Polyock | |
| Iowa | Charles Anderson, X-Committee | x | Waukesha | Karl Nilson, Chair | x |
| | William G Ladewig | x | | Richard Manke | x |
| | Jack Demby | x | | Fritz Ruf | X 10:19, 12:14 |

Other present for all or some of the meeting:

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| <ul style="list-style-type: none"> • Mary Penn, WRRTC Administration; • Ken Lucht, Bill Gardner, WSOR; • Frank Huntingdon, Marty Morin, WDOT; • Eileen Brownlee, Kramer & Brownlee, Legal Counsel | <ul style="list-style-type: none"> • Alan Anderson, Pink Lady Rail Transit Commission • Blair Dillman, Brian Dillman, Prairie Sand & Gravel • Tim Karp, WSOR 10:09 |
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Following the Roll Call, Karl Nilson made welcome to the new members of the Commission, including Vern Lewison, Grant County, William G. Ladewig and Jack Demby, Iowa County, and Carol Held, John Miller, and Dennis Polivka, Sauk County.

3. Action Item. **Certification of Meeting’s Public Notice** – *Noticed by Penn, Motion to Approve Public Notice, Manke/Gustina, Passed Unanimously*
4. Action Item. **Approval of Agenda** – *Prepared by Penn, Motion to Approve Agenda, Van Schwartz/Cornford, Passed Unanimously*
5. Action Item. **Approval of draft April Meeting Minutes**– *Prepared by Penn, Motion to Approve April Meeting Minutes, Anderson/Gray, Passed Unanimously*
6. Updates. **Public Comment** – *No Public Comment*

7. Updates. **Correspondence & Communications** – Mary Penn distributed a handout (“Surface Transportation Board Final Rules on Railroad ROW”) and Van Schwartz informed the Commission that it was the 2nd paragraph of the handout which contained the “meat” of the communiqué and that for more information, the entire document could be read via the included web address. Penn next distributed copies of a letter from Sen. Herb Kohl to Mr. Karl Nilson in response to his HR-721 letter. Bill Gardner said that WSOR had spoken to Sen. Kohl to try to push the issue along to Sec. of Transportation Ray LaHood and that it “went well”. Lastly, Van Schwartz updated the Commission on the Freight Rail Economic Impact Analysis study (Penn noted that the contract for that study had been signed and she had received a copy) and that he had spoken with PI Dr. Steve Deller with Lia Bonneville of WDOT and Ken Lucht of WSOR on the study’s progress, saying that the database identifying users of WSOR’s services had been created. Next week the WDOT has been asked to meet with State Transportation Secretary Mark Gottlieb to convince him to send a letter of support to the project. The letter would be sent under WDOT letterhead. He also said that the WSOR Marketing Group will be emailing a survey to all railroad customers to gather data. Overall, the project is expected to be completed by the end of June or July. WSOR has already paid the first half of the project. Gene Gray asked about the survey content and questions and Karl Nilson said that the study would be an ongoing agenda item.

8. WRRTC Financial Report – Jim Matzinger, Dane County CPA / WRRTC Accountant

- Treasurer's Report for April and Payment of Bills

Due to the Dane County Highway Department's summer schedule, Jim Matzinger was not in attendance but had left the Treasurers Report and checks to sign. Nilson said that it was unfortunate Matzinger was not at the meeting since he is needed to explain the Commission's financial matters and he asked Gray to ask Matzinger to come to the meetings regardless of the summer schedule.

- **Motion to approve Treasurers Report and Check #1211 – Sweeney/Anderson, Passed Unanimously**

9. Wisconsin & Southern Railroad's Report on Operations

Nilson introduced Tim Karp of WSOR, and also pointed out the other WSOR representatives (Ken Lucht and Bill Gardner) to the new RTC members. Lucht said that WSOR has begun a dialogue with the State on the budget in regard to capital projects, saying that they are hoping the FRPP funds will return to past funding levels. He said that WSOR will return to WRRTC in the future to ask for support on this issue. He also said that the "Officer on the Train" event will be hosted by WSOR to recognize Safe Crossing Awareness Week. Citations could be made during this exercise; Madison and UW-Madison and City of Middleton are included in the event and will be held May 16th. He noted that there are 30 crossings in a five-mile stretch in Madison alone. He also told the new commissioners the next WSOR newsletter will be printed and mailed soon.

Gardner said that they would send new calendars to the new members as it contained much information. Gardner then said he would "jump the gun" on the agenda in regard to what funding WSOR would be requesting from the state, saying that it had been \$60 million in the past and had been cut 50%, leaving it at \$15 million per year currently. He said they would be asking for a return to the \$60 million level in order to pay for the infrastructure necessary today (there was a map distributed at this point showing the type of track current in WSOR). He said there was discussion of a line item by the governor which would cover the sale of a UP segment to the State. Gardner said that he believes this should not be done via a line item as it makes the sale too apparent. Instead, he said they should ask for \$90 million (\$45 million per year), take \$20 million of one year's funding and buy the UP line (aka Reedsburg line) with those funds and get it under state control, operated by WSOR, which would leave \$25 million to fix the railroad system, saying that "\$25 million could be made to work" to correct the necessary infrastructure needs. He said that there has been buy-in on this proposal and WSOR is still waiting for a response by the State Secretary of Transportation to support this. WSOR would also come back to ask WRRTC's support on the issue at a future meeting. WSOR is meeting with other state representatives in order to make their case as to this proposal. He said he did not want to ask for too much money (e.g. "\$200 million") as that can cause it to be rejected outright as too expensive.

In business development, Gardner reported that WSOR had gotten WDOT approval on their bridge study. There are 286 bridges and not all of them are good enough for bigger, heavier cars. He said they are collapsing as they are run over and are fixed as they fail. Gardner noted that WSOR is running up to six trains per week for Prairie Sand & Gravel (frack sand), adding that ADM is also expanding its grain shipment in Boscobel.

Gardner returned to discussing bridges, saying the next bridge on schedule to be improved is on John Nolan Drive (rail was updated last fall) and this will be begun in June via barges as car traffic cannot be interrupted. He added that grain transport is very important to business and much of it is being shipped even farther than Chicago. He said that yields are increasing and thus WSOR is seeing an increase in its shipping.

At this point, Gardner brought up the HR-721 letter and said WSOR has asked Ron Kind and Tammy Baldwin for their support and asked if those on the Commission would call their offices in support of the HR-721 letter as well, since WSOR has not gotten a response from their calls.

Gardner also said that this fall WSOR will convene a meeting with all counties and rail consortiums at the same time to bring everyone together, interjecting that there is a new RTC in the State (Northwoods RTC), with upwards of 14 counties including some Michigan counties which would equal 34 counties involved in an RTC in Wisconsin which would give added strength to state rail transit commission voices.

Next, Gardner said that he had flown with Lycon down to Chicago looking for sites; Lycon is pushing to have its facility up by next spring in Oregon and WSOR has given them rates for shipping : this is an ongoing project. Nilson asked in regard to the Northwoods RTC (Pembine to Barron, up to Ashland, spur to White Pine, MI) what the member counties might be and Frank Huntington will supply the Commission with the names of the member counties. The line in question is owned by CN and there is concern by northern counties shippers about the level of service so the counties are working to try to improve service. Huntington said there could be the possibility of state acquisition of service. Van Schwartz said there is a lot of interest. Dennis Polivka asked Lucht about rail safety on rural crossings. Lucht said that rural crossing problems are mainly vehicles not stopping or yielding. About 10 yrs ago Gardner said he had asked towns in rural locations for stop signs on rural town crossings. With stop signs in place, safety has increased in rural areas. Gardner said that there are rural crossings where there have been close misses, noting that safety can be "Russian roulette". He

reminded the Commission of the case of the bus which stopped within the gate zone so the gate was hitting the bus top. Polivka asked about the amount of frack sand coming out of Prairie. Gardner said there is an uptick on sand, decking material, and grain shipping. Polivka said that he was kind of torn because there are a lot of people against frack sand mining in Sauk County. Gardner said that if "we" (the country) wants to be energy independent, the sand and oil deposits in the country need to be available. Karp said that frack sand is not the issue, it is the chemical solution used for fracking that is sensitive. Ladewig asked if there was a bridge-fix priority list. Gardner said there is no list because they can only fix as they fail. Huntington said there is a short list but the priority shifts due to the level of problems, adding that he would try to bring a list of the top-fix-bridges to the next meeting, noting that an upcoming fall project will help identify bridges needing work. Gardner said the feds are requiring WSOR meet new standards but with so many fixes to make, WSOR will not be able to meet the federal standards. He said that the very old bridges were not made with rebar and with the weight of the cars, parts of bridges are shearing off and repairs are on-going.

10. WRRTC Administrator's Report – Mary Penn, WRRTC Admin.

Penn updated the Commission on her activities of the past month, noting she had met with representatives of WDOT, WATCO, and WSOR to discuss insurance and operating agreement issues, had met, along with SWWRPC staff, with WDOT's Kim Tollers to discuss working together to create an integrated database with the hope that it would lead to a searchable website, to allow the public more access to the RTC's work. She also told the Commission she had sent out another permit to the Village of Blue River as the old permit had expired. Next, Penn distributed maps of the Village of Spring Grove and Hatchery Road and explained she had been contacted by the Village Administrator asking for the Commission's direction on upgrading the road. Brownlee said that the Village has been a perennial problem and requested Mary to ask that the Village submit a work proposal to the Commission that would include a disclaimer to protect the Commission's property. Nilson said that Penn will work with Brownlee to draft the proposal. Lastly, Penn told the Commission that SWWRPC was updating its website and RTC information would still be available and she would keep them posted as to when the new site would go "live".

11. WisDOT Report – Frank Huntington, WisDOT

Huntington reported that WDOT is dealing with 20 – 30 projects currently and mentioned WDOT is doing an economic study in the northern part of the state (in regard to the proposed Northwoods RTC). He said there are no new projects in the southern part of the State except near Sheboygan, where a reconstruction project has been initiated; specifically, a line with track that has been idle for 15-20 years. He added there are a number of projects in Marinette County as well (particularly track for a ship building concern). Huntington also said there was an issue of buying a line located in Chippewa County. This began 3 or 4 years ago but due to an increase in frack sand shipping, the state will not be acquiring the line as the current owners are using them much more now. He also said there are eight different FRPP applications pending. Nilson asked about the bridges on the newly acquired rail, and Huntington said they need work and one bridge in particular that UP/WSOR will have to fix as it is not owned by the state.

Nilson called break at 11 AM.

Nilson recalled the meeting at 11:12 AM.

Gardner said during the break there had been a question regarding the executive committee and full commission and who should attend which? Nilson said that for the executive committee, the RTC tries to have representation from each county. Nilson asked Brownlee for her input. She said that if non-executive committee members come to meetings and there is a quorum equal to a full commission meeting, then the meeting should be posted as a full meeting, so as not to violate open-meeting law. Nilson asked if Crawford County's Tom Cornford had been appointed by the RTC? Cornford said yes. Alan Sweeney asked Brownlee if the agenda could add if there was quorum then it would be a full commission meeting? She said that that it is not necessarily compliance (with the open-meeting law). Van Schwartz said that all new members would be invited to a RR 101 class to give them an overview of how RTCs work and the WSOR takes part in that. Robert Scallon asked if someone else could represent the county that is not on the executive committee? Nilson said in that case the RTC lets them vote which is not necessarily proper but it works.

12. Prairie du Sac Building Encroachment Issue – WSOR/WDOT/B. Sieger

Penn said she had contacted B. Sieger beforehand but he did not attend. Huntington said that the last email between he and Sieger had made it clear that the RTC had to make a decision before the architect could take any action.

13. Presentation regarding a request from Blair Dillman to relocate the spur track adjacent to the City Harbor in Prairie du Chien. – Blair Dillman, Prairie Sand & Gravel

Blair Dillman distributed a handout highlighting the Thompson Dredge made in the 30's or 40's. He said he had gotten permission by the City to use a site just north of the city harbor with the requirement that the track on that location be moved (over). He said that the harbor could be used even with this facility since if this track could be moved, it could be made more useable. He said the dredge could be a museum of the original railroad of Prairie de Chien (the Milwaukee / Mississippi). He reiterated that the main purpose of the project is to make this museum. The dredge is due to arrive at the City in June and Dillman said the site is "great for it". He said if the track were moved the movement would not hamper the use of the rail and it would provide a facility for the City that has much

local support. Nilson asked if the boat would be tied up permanently? Dillman said that there was an old foundation of an old mill at the site, the boat could be floated in, set on ground (where the track currently is presumably), and made permanent on that foundation. He showed the Commissioners a blueprint of the whole area plan which includes an historic icehouse. Nilson asked again if the dredge would be tied up? Dillman said rooms could be used for educational purposes. Sweeney asked if there were action required on this today? Nilson said this issue had been refused last month's meeting and this was only an opportunity for questions. Jack Demby asked why the spur would need to be moved? Dillman explained that 15' of the ROW would need to be purchased by the City and a new ROW would need to be granted to the RTC. Charles Anderson asked what Dillman wanted? Dillman said they wanted to move the spur via the City buying the spur. Gardner praised Dillman for his work for the City and explained that WSOR and WATCO have met with Dillman and have proposed a deal which is pending but there would need to be reciprocation on the agreement. He said that WATCO would like to talk to Dillman again and WSOR would support this if WSOR gets what it wants from the pending proposal: If there was an agreement, the item could come back to the RTC. Demby then asked if the City had been involved and Dillman said that they had given approval pending approval by RTC, WDNR, and WSOR. Nilson said that if Dillman meets with all interested parties to come back at a later date when there is something more set. Nilson asked Huntington for WDOT's input and Huntington replied that WDOT wants input from the RTC and the railroad. William Ladewig said that before they next meet on this issue that everyone get a copy of the proposed project as Dillman had only one copy with him.

14. Presentation regarding location of a turn table on rail corridor property. – *Blair Dillman, Prairie Sand & Gravel*
Blair Dillman presented an existing plan of a turn-table which would involve closing two streets (which has been approved by the City of Prairie de Chien). He said that putting in a spur line on City property for the 100' turn-table would be similar to the space which existed in the 19th century which was a loop, not a turn-table but the same size. Dillman said there would be a switch put in and would part of the whole complex. Nilson asked if it were a working turn-table? Dillman said it is workable and would be put back in to be active. Van Schwartz then asked about the level of groundwater at the proposed site? Dillman said it was 14-15' to river level. When asked by Van Schwartz how often the river floods, Dillman said every time the river floods. He said during floods the water flows east, not south. The turn-table would cover a large area and would provide a site for lots of activities and perhaps have a gazebo that would revolve. Gardner said to "wait and see" in regard to the WSOR proposal and that added the turn-table would be a liability issue so there would have to be insurance on it. Dillman said it would be covered. Huntington asked if the table would be on WDOT or RTC property and Dillman said it is on City property. Ladewig then asked for an architectural rendering to see the layout.

15. Consideration and possible approval of amendments to WRRTC-WSOR-WisDOT contracts in regard to insurance and reporting. The insurance and reporting language will need to be reviewed and possibly changed in all three agreements: WisDOT-WRRTC Land Use Agreement, WisDOT-WRRTC Grant Agreement, and WRRTC-WSOR Operating Agreement – *Frank Huntington, WisDOT*

Huntington gave a brief history of the issue in regard to insurance and the need to revisit this issue due to the operator becoming part of a bigger company. The issue at hand is to increase insurance and their Self Insured Retention (SIR). Brownlee, EWRC, WRRTC, and WSOR have all been working on the issue. Tim Karp spoke to the Commission about WSOR having its own insurance, the types of insurance, and what it covered. He explained that WSOR's insurance had been incorporated into WATCO during its insurance renewal process. In reviewing agreements, Karp said WATCO's insurance needs are greater than WSOR's needs and its ability to pay so WATCO has increased its liability (crossing incidents, trespass, employee injuries, etc.) as well as increased the SIR. He explained that SIR is similar to what is commonly referred to as a "deductible". Karp said WSOR had had a \$25 million policy for one incident. The level now would go from \$25 million to \$250 million and the aggregate would go up to \$430 million (for multiple incidents). Karp said in the operating agreements there are certain required SIR's that were designed for a much smaller railroad that are not appropriate any longer. Brownlee said that much of the language in the agreements is older and "carried over" from other agreements. Karp said that WSOR/WATCO has agreed to hold harmless the WRRTC and WDOT. The occurrence level would go from \$10 million to \$5 million because it is only for property damage. WOSR/WATCO is asking for the WRRTC's approval on increasing the levels of positives and the deductibles and because things are somewhat different, how did the RTC feel about this? Brownlee said that she didn't necessarily disagree and added that the language needs to be updated but with the SIR, from her and the state's perspective, with a larger operation, is the money there? And how many times has it been encumbered? For this contract, she said, is there enough money because there are a number of entities, not just WSOR as it was in the past? Otherwise, Brownlee said she did not have a problem with this. Karp said that to try and give comfort, WATCO has a higher line of credit and has access to more money if necessary. WATCO would be linked to a Line of Credit and if that credit dropped to \$10 million, the bank would notify the Commission and the WRRTC would get a Letter of Credit (LOC) so that in the case of a derailment, the Commission would have \$1 million to help pay for the accident clean-up. Karp said the bank would have to honor the LOC if an accident happened and this LOC would give the RTC confidence that there would be money if needed. Nilson asked if the \$430 million would be available? It was then clarified that the SIR would be \$250,000 for liability (currently at \$100,000) and it would administered in-house. Ladewig asked if any money was being segregated? and was the proposal for two LOCs? One for \$250,000 SIR and one for \$1 million? Karp said the \$250,000 would be included in the \$1 million. Ladewig asked if the cash would not be available? Karp said that there was no specific set-aside other than ongoing corporate cash flow. Demby then asked if the LOC was currently available and if the approval was made, would it be conditional? Anderson asked if it were WATCO or WSOR's policy being increased? Would the County's insurance increase? Brownlee pointed out that the county insurance is a totally different policy. Karp then said that WATCO's

insurance policy was the one being discussed and it has a policy for each of its member companies and WSOR is one of those companies. Brownlee said that if you have a company with lots of insurance but is not contracted with you, it doesn't matter. Since WSOR has the contract with WRRTC, and thus required to provide insurance, now as a part of WATCO, the contract is not valid unless WATCO's insurance shows that WSOR is insured. WSOR is essentially a co-owner in the policy because WATCO's policy is WSOR's policy: it is a joint policy. Gardner said that WATCO is trying to "put WSOR under the same insurance umbrella". Van Schwartz said that there are at least three other similar WATCO type companies that have this identical policy. Nilson asked for a motion to have Eileen work this issue out with the railroad and if it passes her scrutiny, to go forward.

- **Motion that the insurance proposal from WSOR as distributed on May 11, 2012 be approved contingent upon approval by WRRTC counsel and WDOT – Van Schwartz, F. Ruf, Passed Unanimously**

Before voting, Manke asked if the Commission Attorney agreed with the language of the motion and Huntington said that the numbers distributed are in the "ballpark" and there still need to be finalized language on ratios which are not yet available and there are still things needed to negotiate, Van Schwartz noted that the EWRC have already approved this.

16. Update on possibility of comprehensive rewrite of WRRTC-WSOR Operating Agreement

Brownlee said that as pointed out in the previous agenda item, the operating agreement between the WRRTC and WSOR is about 15 years old and it has not been reviewed nor updated in about 15 years. Therefore there is a need for an update to include all the amendments, insurance language, and updating old language as to legal relevance. In respect to the insurance question, there has been talk redoing the whole operating agreement although it has a 50 year life. She said that staff is looking at the possibility of doing this in the future.

17. WRRTC 2012 Election of Officers

Nilson opened the elections by asking those present officers if they would be willing to continue to serve?

- **Motion to nominate Karl Nilson, Chair – F. Ruf/Manke, Passed Unanimously**
- **Motion to nominate Alan Sweeney, First Vice Chair – Gustina/Cornford, Passed Unanimously**

At this point Brownlee clarified the language in the Charter as how it accommodates additional counties and explained why there are 1st, 2nd Vice Chairs. In order to give each county representation on the executive committee, additional vice chair positions were added as counties were added as otherwise there would not be enough officer positions for all the member counties. Therefore she recommended that the Charter members (i.e. executive committee) be elected first. Anderson asked in order to be a voting member of the executive committee you would have to be an officer?

- **Motion to nominate Charles Anderson as Secretary – Sweeney/LAdewig, Passed Unanimously**
- **Motion to nominate Gene Gray Treasurer – Scallon/ Van Schwartz, Passed Unanimously**
- **Motion to nominate Dennis Polivka Assistant Secretary - Scallon/ Miller, Passed Unanimously**
- **Motion to nominate Robert Scallon 2nd Vice Chair – Anderson/Van Schwartz, Passed Unanimously**
- **Motion to nominate Tom Cornford 3rd Vice Chair – Polivka/Anderson, Passed Unanimously**
- **Motion to nominate Kuhnke 4th Vice Chair – Van Schwartz/Demby, Passed Unanimously**

Nilson then asked if both Gray and Van Schwartz attended an executive committee meeting, could Van Schwartz vote? Brownlee said no. The Commission concurred that he does a good job advocating for the WRRTC and would decide to keep him as an advocate but according to Brownlee, it is not a formal, voting position. Brownlee said that if the Commission wanted to create a formal position of Advocate it would involve going back to all the member counties and having them amend the Charter. Nilson asked what the quorum of the executive committee is and she replied that it would have to be greater than half (in WRRTC's case, four members).

Anderson then asked if all the counties would have to agree to a change in the Charter? Brownlee said yes. She said the Charter allows for alternates for full commission members but not for executive committee. Huntington wasn't sure why it was arranged like that. Van Schwartz asked if the Commission has the right to appoint staff? Brownlee said yes, noting herself, WRRTC Attorney, Mary Penn, Administrator, and Jim Matzinger, Financial Matters. Nilson suggested that Brownlee look into modifying the Charter to allow for executive committee to have alternates. She said the goal of the executive committee is to have representation for each county.

DRAFT

WRRTC MINUTES

She said she could look into having executive committee alternates (via amending the Charter). Manke asked if Nilson is absent, who would chair? Brownlee said the Vice Chair would lead the meeting. Nilson said that Brownlee would look into this issue and it should be an agenda item for next month.

18. **Motion to adjourn meeting at 12:28 PM** – *Lewison/Demby, Passed Unanimously*