

WISCONSIN RIVER RAIL TRANSIT COMMISSION

FULL COMMISSION MEETING - FRIDAY, JANUARY 10, 2014 @ 10AM
 DANE COUNTY HWY GARAGE, 2302 FISH HATCHERY RD, MADISON, WI

1. 10: 05 AM **Call to Order** – Alan Sweeney, 1st Vice Chair
 2. Roll Call. **Establishment of Quorum** – Mary Penn

Crawford	Tom Cornford, 3 rd Vice Chair (XCom)	x	Rock	Ben Coopman, Alternate	
	Rocky Rocksford	x		Wayne Gustina	x
	Vacant			Alan Sweeney, 1 st Vice Chair (XCom)	x
				Terry Thomas	Excused
Dane	Gene Gray, Treasurer (XCom)	x	Sauk	Marty Krueger, Alternate	
	Jim Haefs-Fleming	x		Carol Held	Excused
	Chris James	x		John Miller	
				Dennis Polivka, Asst. Secretary (XCom)	x
Grant	Gary Ranum	Excused	Walworth	Jerry Grant	Excused
	Vern Lewison	Excused		Richard Kuhnke, 4 th Vice Chair (XCom)	x
	Robert Scallon, 2 nd Vice Chair (XCom)	Excused		Allan Polyock	Excused
Iowa	Charles Anderson, Secretary (XCom)	Excused	Waukesha	Karl Nilson, Chair (XCom)	x
	William G Ladewig	x		Dick Mace	x
	Jack Demby	Excused		Fritz Ruf	x

Commission met quorum.

Others present for all or some of the meeting:

<ul style="list-style-type: none"> Mary Penn, WRRTC Administrator Eileen Brownlee, Corp. Counsel Jim Matzinger, Dane County Forrest Van Schwartz, pro bono Consultant Ken Lucht, Jim Fuchs, Tim Yinati, WSOR Kim Tollers, Roger Larson, Frank Huntington, LeAnna B Wall, Marty Morin, WDOT Alan Anderson, Pink Lady RTC 	<ul style="list-style-type: none"> Mark Stephans, Brooklyn SnoHornets Mike Paul, Depot Days Bill Gardner Ben Wehmeir, John Molinaro, Jefferson County Kim Erdmann, WEDO Sam Landes, AWSC – Dane Co. Snowmobilers Bill Wentzel
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3. Action Item. **Certification of Meeting’s Public Notice** – Noticed by Penn
 • Motion to approve public notice of meeting – Ruf/Gustina, Passed Unanimously
4. Action Item. **Approval of Agenda** – Prepared by Penn
 • Motion to approve agenda – Ruf/Cornford, Passed Unanimously
5. Action Item. **Approval of draft December Full Commission Meeting Minutes** – Prepared by Penn
 • Motion to approve December Full Commission Meeting Minutes – Gray/Mace, Passed Unanimously
6. Updates. **Public Comment** – Time for public comment may be limited by the Chair

Bill Gardner talked about how long it had been since he had attended the WRRTC meetings and that he continued to be updated on the Commission’s activities. Nilson explained to newcomers that Gardner was the former owner of WSOR. Alan Sweeney asked the public to introduce themselves. Ben Wehmeir introduced himself and said that Jefferson County was excited to be getting involved

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with the Commission and noted that the Jefferson County Board was meeting January 14th at which time he anticipated they would join the Commission by resolution.

7. Updates. **Correspondence & Communications** – *Discussion may be limited by the Chair*

Penn distributed an article from Forrest Van Schwartz and updated the Commission on correspondence she had received.

8. Updates. **Announcements by Commissioners** – *No Discussion Permitted*

Van Schwartz spoke briefly about the article distributed in Correspondence after getting confirmation from Penn regarding whether they had gotten the letter of notice of intent from WSOR for the Evansville line. Penn said she had only received an email saying they had received the Commission's request. She had not yet received the letter from WSOR.

REPORTS & COMMISSION BUSINESS

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

- Treasurer's Report for December and Payment of Bills

Jim Matzinger gave his report, saying that the Commission was in good shape for the end of the year and was on budget. There were three checks to distribute.

Checks included:

- ✓ Check #1254, Westbrook, \$855.89 for bridge inspection
- ✓ Check #1253, Johnson Block, \$3,750.00 for 2012 audit
- ✓ Check #1254, Dane County, \$161.44 for November 2013 accounting

- *Motion to approve Treasurer's Report and Payment of Bills – Polivka/Gustina, Passed Unanimously*

10. **Wisconsin & Southern Railroad's Report on Operations**

- Update on Monthly Maintenance Activities
- Update on Capital Projects
- Update on Business Development
- Other continuing issues/topics

Ken Lucht gave his report after first introducing the other WSOR staffer in attendance, Jim Fuchs, WSOR General Manager. Lucht gave a brief report, saying that in Capital projects they were moving forward on the Oregon rehabilitation project including bids for brush cutting and tree removal. He noted that the Lycon facility wanted service as soon as possible. He said that the Janesville side track RFP had been sent out and that contract would be awarded very soon. He gave a brief report on WSOR's safety record improvements, emphasizing how much safety incidents counts had improved tremendously. For Human Factor Incidents, in 2011 WSOR had 123 reportable incidents. In 2012 they had had 89 reportable incidents and in 2013 only 28 reportable incidents. For Reportable Injuries, in 2011 WSOR had 19; in 2012 there were 5 and in 2013 3. Sweeny asked if these were company safety counts. Lucht confirmed these were company counts. Dick Mace asked for clarification on the type of incidents being counted.

Fuchs greeted the Commission and said that WATCO's primary goal is safety. The 2nd goal was to make their team members grow and develop their skills and team development and thirdly to advance WSOR's financial goals. He pointed out WSOR's On-Time-Delivery (OTD) was 98.6%, meaning that 98.6% of their cars were delivered on time to the customer. Gene Gray asked if there were any industry standard to compare that with.

Ladewig asked about the effect of the recent cold weather on the lines. Lucht said that weather definitely made an impact, both heat and cold. In cold weather there was the potential of line breakages and said that early in the week train speeds dropped in response to the cold snap, although that restriction had been lifted 2 days ago. He reassured the Commission that WSOR was in daily contact with their customers, trying to meet their needs for shipping and delivery although he noted that overall service did slow as a result of the cold. Nilson asked about the temperature restrictions thresholds and Lucht said they were -10 / +90 F.

11. **WDOT Report**– *Frank Huntington, WDOT*

Frank Huntington said there was no deal yet on the Reedsburg acquisition but they were making good progress with Union Pacific (UP) and hopefully by the February meeting he could report a final, positive decision. He said that some projects had been delayed due to not knowing the full acquisition cost but that there had been three projects awarded recently. Once the UP acquisition was complete, WDOT would know how much monies were available for additional projects. He said that 2-year biennium budget was expected to still supply the needs of the acquisition as well as new projects.

12. **WRRTC Administrator’s Report** – *Mary Penn, WRRTC Admin.* Penn reported she had posted and attended the WRRTC Committee Meeting December 18th, 2013 in Watertown in Jefferson County.

13. **Discussion and Possible Action regarding the new Grant and Land Use Agreements between WRRTC and WisDOT for the Madison to Reedsburg/Cottage Grove lines**– *Frank Huntington, WDOT*

Frank Huntington asked for input from the attendees of the December 18th Committee meeting. He said there was only one thing in the Land Use agreement brought up in regard to the Commission contracting. In the language “contract with” had been removed as that might be problematic for the Surface Transportation Board (STB) and Huntington suggested “work with” as replacement language. He noted that Van Schwartz had suggested some changes and Huntington had utilized some of those suggestions. Regarding insurance, he said there was new language that would be incorporated into the other agreements. Compared to what they had had in the past, the insurance amount had been increased significantly as was the deductible, primarily because WATCO was a larger company. Huntington said this provided a larger Self Insured Retention. He repeated that this language had been put in all the new agreements, noting that most of the language had not been changed but the key thing they were trying to do was satisfy the STB and confirm that WDOT did not become an operator.

Mace had two minor comments, one to define the operator as WSOR or as defined in the grant agreement. The other to numerous references to language not found in the agreement. Huntington said that he had made those errors and would correct them by referring to language in the other agreements and abbreviating the language in the Land Use Agreement. Eileen Brownlee confirmed that cross referencing would protect against inconsistencies. Ladewig asked Huntington to explain why the Commission needed to comply with the STB. Huntington said the STB has authority over all railroads in the country. He said WDOT was trying to acquire the physical assets of the Reedsburg line but not operating authority. He said that the authority of the Commission over the railroad would be much the same except in the case of a default which in that case would go to the STB. H said if the State wanted the authority they could assume it but the State did not want that. He added that the Commission could assume operating authority if they wanted. Ladewig asked what the Commission’s role would be. Huntington said their role would be much the same. He added that any customer could approach the STB as well as the Commission and that the Commission could become the operator if they so choose. Nilson said as the Commission was made up of the member counties, it gave them a direct connection to the operator, thereby connecting all the counties. Huntington gave some history on the railroads and why the Commissions had been formed, adding that the Commission’s involvement was important. Mike Paul asked if Oregon and Fitchburg would retain operating authority; Frank said they could equally share operating authority if they chose but it is up to the communities.

- *Motion to approve Land Use agreement with recommended changes with latitude on the part of the Commission staff to adjust non-substantive language as necessary – Mace/Ruf, Passed With Majority, one abstention (Ladewig)*

In regard to the Grant Agreement, Huntington said he had gotten one comment from Van Schwartz on the first “whereas” language about trackage rights. Huntington the agreement language had been the same for 30 years and they had tried to not change much language that would require more time for renegotiation. He said again that the insurance language had been updated and that the hold harmless language was the same as had been used for 30 years. The one difference was the option to purchase. He said that the EWCRC had an “option to purchase” language in their agreements and Huntington had included it. For “first right to acquire”, Huntington said this would give the railroad first right of refusal. In regard to financial statements, Article 10 language was new and Huntington said that had been covered in previous meetings. He spoke briefly about the language regarding financial reporting and said they had modified the language to more closely reflect the actual way they did reporting. Language regarding discrimination had not yet been updated but Huntington said WDOT counsel was working on it and that it would be updated.

In Section 13.12, Huntington said the language regarding arbitration had been requested by WATCO. He said the State could arbitrate but it was not guaranteeing payment as that would take legislative action. He said the State might agree to the language but it was very limited on their part.

- *Motion to approve Grant agreement with recommended changes and latitude on the part of the Commission staff to adjust non-substantive language as necessary – Mace/Kuhnke, Passed Unanimously*

Prior to the vote, Ladewig asked Huntington about the authority of the agreements and asked for clarification on same. There was discussion on the assignment of authority, as well as on the issue of merging and who would have authority. Mace asked about a clause on page 2 of the agreement and the identification of parties. He asked if “the state” should be included. Huntington said WDOT was not party to the agreement between the Commission and the operator. Nilson said the Land Use agreement gave the Commission the authority to act as the land manager. Mace then brought up some other items requiring more information and clarification, particularly in regard to specifically named companies in the agreement. Huntington said that the language did not limit them. Brownlee suggested “included but not limited to” and there was general agreement to that suggestion. Mace asked about Class II standards and the speed limits thereto and was told the limit was 25 mph. He asked if the line would only be class 2. Huntington said that WDOT’s goal was to get the whole system to Class II. Nilson asked for an explanation of a Class 1 railroad and a Class 1

track. Huntington explained the track classes: Class 2 (max 25 mph, Class 3, 40 mph). Class 1 railroad was a national line, Class 2 were regional lines. Mace asked that be defined in the agreements but Brownlee recommended against that, saying that because classes could change, she did not recommend their definitions be explicit.

Mace asked about the maintenance plan. Huntington said it was the State's agreement with the Commission. He clarified that this agreement stipulated the requirements between the State and the Commission. Mace said he thought rail banking should be defined. Van Schwartz said a formal definition was available from STB and that the definitions restricted the agreement to WSOR. Huntington said if that changed the agreement would have to be revisited. In item O Huntington said his understanding was that "successors or assigns" be added to that language. Van Schwartz said leaving item O as it was gave the Commission more leeway and protection. Huntington agreed with Van Schwartz. Brownlee said if there was a provision in the operating agreement, why this was an issue in the grant agreement. Huntington said he would prefer that the language be kept consistent with other agreements. Sweeney asked that the suggested amendment, to keep item O as written, not be added to the motion. Huntington said that in the interest of time he preferred not to address this now. Mace said he would withdraw his suggestion regarding "successors or assigns" and then asked about the identification as to whether it was WATCO or WSOR, saying that the operator was not always identified as WSOR. Huntington said that WATCO was used specifically for specific agreements. Ladewig asked if WSOR would have language showing their agreement. Brownlee said that WSOR's signature would show their agreement. The vote was made at this time.

14. Discussion and Possible Action regarding the new Operating Agreement between WRRTC and WSOR for the Madison to Reedsburg/Cottage Grove lines, and the Fitchburg to Evansville line – Frank Huntington, WDOT

Huntington said in regard to the operating agreement, in some cases "agreement" had been changed to "agreements". He said he had adjusted the language to reflect their connection with the Grant and Land Use agreements to be consistent, adding that he had made some changes suggested by Van Schwartz and that some of those changes were still in progress. Huntington said this agreement referred to the Commission's ability to charge rent. At this point he assumed the rent would not change at this time referring to the Commission's action in December. Mace asked about the default time in the different agreements. Huntington explained there was time gap and that the Commission was sometimes given more time to act (45 days vs 30 days). There was discussion about the contingencies of the situation in terms of time limits and the response on part of the Commission and/or the state. Huntington said the STB would be the authority in the case of a default. Brownlee gave added clarification on the issue in the case of a possible default and the responses of the STB in that event. Ladewig asked about the relationship with the STB and the ability for the Commission to refer to them. There was more discussion regarding the authority of the STB and the obligations on the part of the Commission, the State, and the operator in the event of a default. Brownlee said there were a variety of responses available to the Commission.

Mace asked relative to environmental protection did the Commission know who owned the real estate through Devil's Lake State Park. Huntington said at this time UP owned the ROW and said the State was in the process of acquiring it (Reedsburg line). Huntington gave more information on options of action on the part of the Commission in the event of a default. There was more discussion on the ROW in Devil's Lake and the legal description of the ROW. Gene Gray asked if all the financial reporting was in Article 10.

- *Motion to approve new Operating agreement with recommended changes and latitude on the part of the Commission officers to adjust non-substantive language as necessary – Polivka/Gustina, Passed Unanimously*

Huntington said it was the State's intention to bring the agreements back to the Commission to show the updates on the agreements but the action taken now allowed them to sign and submit them to the STB if necessary.

15. Discussion and Possible Action regarding Amendments in the existing Grant, Land Use and Operating Agreements between WRRTC and, WisDOT and WSOR – Frank Huntington, WDOT

Huntington said this agenda item referred to the agreements from 1987 and 1997 and said this just referred to the hold harmless and insurance language and also the reporting language already discussed in the above agenda items. Brownlee said all this language would conform to the language approved, making language consistent.

- *Motion to approve insurance and reporting language amendments in the existing Grant, Land Use, and Operating Agreements between WRRTC, WDOT and WSOR – Nilson/Ruf, Passed With Majority, one abstention (Ladewig)*

16. Discussion and Possible Action concerning Jefferson County's intent to join the WRRTC – Alan Sweeney, 1st Vice Chair

Sweeney asked if the Jefferson County attendees had any questions. John Molinaro said he anticipated the Jefferson County Board would pass the resolution to join the Commission at their County Board meeting January 14. He asked about the assignment of commissioners and the requirements best needed by a new Commissioner. Brownlee said she had a packet of information that she had put together and could share with them.

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Nilson said the next meeting would be an Executive Committee meeting. Van Schwartz offered to give Jefferson County a presentation on the Commission, as well as one on the economic study. Ladewig asked if any documents needed to be amended to reflect Jefferson coming into the Commission. Brownlee said she had provided a document in that case and said that the resolution laid out the situation with the stipulations of assignment, the contract with the County.

- *Motion to adopt a resolution authorizing Jefferson County to join the WRRTC – Ladewig/Cornford, Passed Unanimously*

17. Action Item. Adjournment

- *Motion to adjourn at 11:32 AM, Gustina/Mace, Passed Unanimously*