



**Chautauqua, Cattaraugus, Allegany & Steuben Counties**

# **Southern Tier Extension Railroad Authority**

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**"This institution is an equal opportunity organization"**  
**John Margeson, Chairman**

## **MINUTES OF BOARD OF DIRECTORS ANNUAL MEETING**

### **June 20, 2011**

The Board of Directors of the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority held its Annual Meeting at 9:30 AM on June 20, 2011 in the Conference Room in the office of the Southern Tier West Regional Planning and Development Board, 4039 Route 219, Suite 200, Salamanca, New York. The following persons were in attendance:

#### **Board Members In Attendance**

Michael Brisky  
James Cooper  
Seth Corwin  
William Daly  
Joseph Eade  
Terry Everetts  
Jay Gould  
James Griffin  
John Margeson  
Timothy O'Grady  
Thomas Ryan

#### **Representing**

Cattaraugus County  
Southern Tier West RPDB  
Steuben County  
Chautauqua County  
Cattaraugus County  
Cattaraugus County  
Chautauqua County  
Steuben County  
Allegany County  
Allegany County  
Steuben County

#### **Board Members Not In Attendance**

William Euliano  
Vacant  
Vacant

#### **Representing**

Chautauqua County  
Allegany County  
Seneca Nation of Indians

#### **Others Attending**

Thomas Barnes  
Carl Belke  
William Burt  
Diego Sirianni  
Richard Zink

#### **Representing**

STERA Secretary  
WNYP RR  
General Public  
NYS Empire State Development  
STERA Executive Director

**1. Call to Order and Introduction of Those Present**

Chairman John Margeson called the meeting to order at 9:35 AM. Introductions were made of those present.

**2. Reading and Approval of the Minutes of the March 8, 2011 Meeting**

The Board adopted a resolution approving the minutes of the March 8, Board Meeting (Eade, Cooper, passing unanimously).

**3. Election of Officers**

Mr. Margeson noted that at the March 8, 2011 Board meeting, Mr. Eade had appointed Mr. Brisky, Mr. Corwin, Mr. Daly, and Mr. O’Grady to a Nominating Committee for the presentation of a slate of officers for election at the June 20, 2011 Annual Meeting.

For the Nominating Committee, Mr. Brisky presented the following slate of nominees for election as Board officers:

John Margeson	Chairman
Joseph Eade	Vice Chairman
James Griffin	Second Vice Chairman

There were no other nominations from the floor. The Board approved the election of this slate of officers (Brisky, Daly, passing unanimously).

For the Nominating Committee, Mr. Brisky presented the following slate of nominees for election as Corporate officers:

Richard Zink	Chief Executive Officer (Executive Director) and Treasurer (Chief Financial Officer)
Thomas Barnes	Secretary

There were no other nominations from the floor. The Board approved the election of this slate of officers (Daly, Corwin, passing unanimously).

It was noted that Mr. Zink, by virtue of his position as CEO, is the STERA Contracting Officer, Records Management Officer, and Records Access Officer.

**4. Communications**

Mr. Zink indicated that there were no communications received, excepting tax notices, which are forwarded to WNYP for disposition.

## **5. Treasurer's Report**

### **A. May 31, 2011 Treasurer's Report**

Mr. Zink distributed a Treasurer's Report for May 31, 2011. For the year to date ending May 31, 2010, STERA had a net income of \$6,652.00 on revenues of \$20,000. As of May 31, 2011, STERA had net assets of \$4,978,135 on assets of \$4,991,483, with a cash balance of \$95,579. Accounts payable as of May 31, 2011 were \$13,348.

Mr. Zink discussed four checks that would be drawn to pay bills. The Board authorized the signature of these checks and the payment of the bills (Eade, Gould, passing unanimously).

The Board adopted a resolution approving the Treasurer's Report for May 31, 2011 (Brisky, Everetts, passing unanimously).

Discussion on the internal control procedure relating to review of interim internal financial statements by the Audit Committee was deferred until the Audit Committee and Governance Committee reports.

## **Reports of Committees**

### **6. Executive Committee**

The Board noted that the Executive Committee of the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority (STERA) scheduled to be held at 9:30 AM on March 8, 2011 was cancelled for lack of a quorum. Subsequently, the Executive Committee held a meeting on March 30, 2011.

The Board adopted a resolution ratifying the following actions taken by the Executive Committee at its March 30, 2011 meeting (Eade, Corwin, passing unanimously):

- At the recommendation of the Audit Committee, acceptance and approval of the audit, communication letter from the auditor, and management letter from the auditor for year ending December 31, 2010, the authorization of their inclusion in the Annual Report and their transmission to NYS ABO, and the authorization of taking actions as appropriate per the discussion at the March 30, 2011 Audit Committee meeting in response to the discussion relating to issues raised in the management letter.

These actions are as follows:

- All members of the Audit Committee will review the bank statements and internally prepared financial statements, and the Audit Committee Chairman will sign off on the financial statements. The review and comment on the financial statements can be accommodated through email.

(Additional discussion on this matter was deferred until the Audit Committee and Governance Committee reports.)

- Management (senior contract staff) will henceforth file the Cattaraugus County Ethics Forms.
- The Governance Committee annually will receive copies of the filed Cattaraugus County Ethics Forms, and annually will make a report to the Board and to management, regarding ethics and conflict issues, so as to inform organizational operations.

The audit, communication letter from the auditor, and management letter from the auditor have been transmitted to the entire Board and the audit has been posted on the web site.

- At the recommendation of the Audit Committee, approval of the Assessment of the Effectiveness of Internal Controls for year ending December 31, 2010; the recommendation that the Board make a finding that there are no changes in Authority operations or policies that could be made so as to increase the effectiveness of internal controls or so as to minimize the risk associated with Authority operations, other than those discussed above in the discussion relating to the Management Letter; the transmission of the approved assessment to NYS ABO by the March 31 submission deadline; and the inclusion of the assessment in the STERA Annual Report.

The assessment was made available to all Board members and is posted on the web site.

Per the recommendation of the Executive Committee, the Board adopted a resolution making a finding that there are no changes in Authority operations or policies that could be made so as to increase the effectiveness of internal controls or so as to minimize the risk associated with Authority operations, other than those discussed above in the discussion relating to the Management Letter (Cooper, Eade, passing unanimously).

- Approval of the Annual Report for year ending December 31, 2010 and the authorization of its transmission to NYS ABO.

The Annual Report was made available to all Board members and has been posted on the web site.

- Approval of the Audit Committee Report on the Review of the Audit Committee Charter and approval of the recommended revision of the Audit Committee Charter, at the recommendation of the Audit Committee.

The revised Audit Committee Charter was made available to all Board members and is posted on the web site.

- Approval of the Executive Committee Self-Evaluation Report for year ending December 31, 2010.

No deficiencies in Executive Committee operations were identified for the year ending December 31, 2010, and no change in Executive Committee operations were recommended.

Mr. Margeson reported that the Executive Committee has conducted a self-evaluation of its performance for the year ending December 31, 2010, and has provided to the Board a report on this self-evaluation outlining deficiencies and recommendations for correcting these deficiencies. The report indicated that during 2010, the Committee complied with its functions as regards meetings, operating functions, and regulatory compliance. There were no deficiencies. Mr. Margeson indicated that the Executive Committee would continue to operate so as to avoid any deficiencies in the future. At the recommendation of the Executive Committee, the Board adopted a resolution approving the self-evaluation report (Brisky, Daly, passing unanimously).

The Executive Committee Self-Evaluation Report was made available to all Board members and is posted on the web site.

## **7. Audit Committee**

The Audit Committee also met on March 30, 2011, prior to the Executive Committee meeting. A number of the Board members who are not Audit Committee members also attended the Audit Committee meeting. The Audit Committee also heard the presentation of the audit, communication letter, and management letter. At the March 30, 2011 meeting, the Audit Committee took the following actions:

- Adopted a resolution recommending to the Executive Committee that it accept and approve the audit, communication letter, and management letter; transmit them to NYS ABO by the March 31 submission deadline; include them in the STERA Annual Report; and direct that the Authority take appropriate operational actions as discussed above (i.e., with respect to preparation of internal financial statements and conflicts of interest oversight).
- Adopted a resolution approving the Assessment of the Effectiveness of Internal Controls for year ending December 31, 2010 and recommending that the Board make a finding that there are no changes in Authority operations or policies that could be made so as to increase the effectiveness of internal controls or so as to minimize the risk associated with Authority operations, other than those discussed above in the discussion relating to the Management Letter; approve the assessment; transmit the approved assessment to NYS ABO by the March 31 submission deadline; and include it in the STERA Annual Report.
- After receiving and reviewing a management report on Audit Committee performance during the year ending December 31, 2010, and conducting a self-evaluation of its performance, and noting that there were four deficiencies, all of which have been corrected/implemented by the Audit Committee, the Committee adopted a resolution approving the self-evaluation report, and authorizing its transmission to the Executive Committee and Board of Directors.

The Audit Committee Self-Evaluation Report for year ending December 31, 2010 was made available to all Board members and is posted to the web site. Although the Audit Committee had recommended that the Board adopted a resolution approving the self-evaluation report, the Board did not do so at the June 20 Board meeting.

- After receiving and reviewing a management report on the Audit Committee Charter, and conducting a review of its Charter, the Committee adopted a resolution approving the proposed revisions to the Audit Committee Charter and recommending to the Executive Committee that it approve the revised Audit Committee Charter on behalf of the Board.

Mr. Griffin noted that the Audit Committee met on June 20, 2011, and discussed the proposed internal control procedures document and the process for developing internal interim financial statements. He noted that the Audit Committee has some issues with the proposed internal control procedures document and the process for developing internal interim financial statements. He proposed the following:

- A. STERA would engage an external accountant to review bank statements and internally prepared financial statements before they were presented to the Audit Committee for review.
- B. STERA and Southern Tier West would enter into a written contract for the provision of services by Southern Tier West to STERA.

In response to questions, Mr. Zink indicated that he estimated that engaging an external accountant might cost \$500 to \$600 per year. Mr. Griffin indicated that the Audit Committee would meet with the accountant in advance of the STERA Board meetings.

Mr. Zink also indicated that there was precedent for Southern Tier West would enter into written contracts for the provision of services by Southern Tier West to affiliate entities. The contract would be written by Southern Tier West with the assistance of Brady and Swenson, and reviewed at no charge to STERA by Harris Beach.

After discussion, the Board approved A and B above (Griffin, Brisky, passing unanimously).

Mr. Griffin also indicated that the Audit Committee would be reviewing its recently revised charter and making recommendations for further revision.

## **8. Governance Committee**

Mr. Eade noted that the Governance Committee met on June 20, 2011, and discussed three items:

### **A. Committee Structure – number of members on Audit and Governance Committee**

It was noted that a Board member had suggested that the number of members on each of these committees (currently four on each committee, with each of the four counties having a single representative on each committee) be made an odd number so that ties in voting could be broken. It was noted that adding a fifth member on each committee would not increase the quorum requirement, and in fact would make it easier to obtain a quorum as there would be five members on each committee from which to obtain three members at a given meeting instead of the current need for three of four members to be present.

At the June 20, 2011 Governance Committee meeting, the Governance Committee discussed the desirability of moving toward having an uneven number of members on the Audit and Governance Committees, so as to reduce the theoretical frequencies of tie votes. It noted that

as a practical matter, this has never been an issue with either committee. Currently, the number of members on the Governance and Audit Committee is four, to provide representation from each participating county. The Committee noted that there would be pros and cons of moving to five members. The Committee noted that it could recommending to the Board that as the bylaws are silent on the number of members on these committees, the Board either could simply increase the number of members on each committee or it could amend the bylaws to that effect. After discussion, the Governance Committee had adopted a resolution recommending to the Board that it not make any changes in the number of members on each committee.

The Board decided to take no action to change the number of members on either committee.

**B. Update of Code of Ethics Policy**

At the March 8, 2011 STERA Board meeting, at the recommendation of the Governance Committee, the Board directed the Governance Committee to merge the Ethics Policy and Standards of Conduct Policy into a single policy, inasmuch as there seemed to be some overlap in content, and make certain that the policy complied with both the PAAA and PARA and NYS ABO requirements and with the suggestions of the auditor.

At the June 20, 2011 Governance Committee meeting, the Governance Committee reviewed the merged Code of Ethics policy, and adopted a resolution recommending that the Board adopt the policy. The draft policy has been made available to the STERA Board. After discussion, the Board adopted a resolution approving the Code of Ethics policy (O'Grady, Corwin, passing unanimously).

**C. Internal Control Procedures**

At the March 30, 2011 STERA Executive Committee meeting, at the recommendation of the auditor, the Executive Committee discussed a new internal control procedure for developing internal interim financial statements, under which the Audit Committee would review the statements and the Audit Committee Chairman would sign off on the statements before they were reviewed by the Board. The Executive Committee felt that this was a sound addition to STERA's internal control procedures. At its June 20, 2011 meeting, the Governance Committee discussed this new procedure, and discussed a summary document summarizing STERA's internal control procedures (including the new procedure for developing internal interim financial statements), and adopted a resolution recommending that the Board adopt the summary document and the new procedure for developing internal interim financial statements. At its June 20, 2011 meeting, the Audit Committee also discussed this new procedure, and discussed a summary document summarizing STERA's internal control procedures (including the new procedure for developing internal interim financial statements), and had no issues with either, and had adopted a resolution recommending to the Board that it approve the Internal Control Procedures document and the new procedure for developing internal interim financial statements. However, this discussion was overridden by the prior discussion earlier in the meeting during the Audit Committee meeting report, in which the review by an external account was inserted into the review process prior to review of interim internally prepared financial statements by the Audit Committee. However, the Board took no action on the internal control procedures.

#### **D. Report on Ethics Filings**

Mr. Barnes indicated that he had intended to present a management report on STERA Ethics Filings received by the Cattaraugus County Attorney's Office in 2011. Cattaraugus County had indicated to him that all STERA Board members and management staff had submitted Ethics Filings to the Cattaraugus County Attorney's Office in 2011, so STERA is in compliance with the State requirement (i.e., filings submitted by all Board members) and the STERA policy (i.e., contract management staff also are required to submit filings). He indicated that he had asked Cattaraugus County to copy the submitted forms to him, so that he could prepare a management report for the Governance Committee. However, the forms that Cattaraugus County had transmitted to him were the wrong forms (copies of executed NYS ABO Acknowledgment Forms, instead of executed Cattaraugus County Ethics Filing Forms) and there weren't copies of all executed forms transmitted (e.g., management staff's executed forms were not included). Mr. Barnes handed around the forms that had been transmitted to him by Cattaraugus County, and the members present indicated that they had in fact submitted the executed Cattaraugus County Ethics Filing Forms to Cattaraugus County. There is no explanation as to why Cattaraugus County even had copies of executed Acknowledgment Forms, as these forms are to be retained by STERA and Cattaraugus County has no role with them. Cattaraugus County has indicated that it will transmit the correct forms to STERA, but unfortunately STERA had not received them as of the meeting. If there is a problem with the forms, STERA will ask Board members to submit copies of their executed Ethics Filing Forms, or to execute new forms. Mr. Barnes will prepare the management report for the next Governance Committee meeting. Next, year, STERA will ask Board members to submit the forms to both STERA and the County, to avoid this problem in 2012 and in subsequent years.

#### **Unfinished Business**

#### **9. Operating Status and Proposed Rehabilitation Projects (report by Carl Belke, WNYP RR)**

Carl Belke, President & Chief Operating Officer of the WNYP RR, provided a detailed Management Report to the STERA Board. The Management Report covered the areas of Safety, Financial Status of WNYP RR, Operations and Customer Service, Marketing and Freight Business, Mechanical Issues, Engineering and Maintenance of Way, Bridges and Culverts, Signals and Communication, and Other Projects.

As part of the report, he stressed Norfolk Southern operations, business traffic reductions, and storm events in Allegany County. As to Norfolk Southern operations, reductions in Norfolk Southern personnel and equipment devoted to interchanging with short lines (and movement of these assets into management of intermodal and coal traffic, both of which are surging) have resulted in significant negative impact on WNYP operations and on local shippers. This has caused a reduction in traffic shipping volume, which also is down for other reasons as well, including Pennsylvania's management of fracking water handling and treatment. (He noted that NYS's issuance of a report on Marcellus operations in NYS was delayed from June 1 to July 1.) As regards Allegany County storm events, this is discussed later under New Business.

## **10. NYS 2005 Bond Act Project Status**

Although NYS DOT has announced that STERA has been awarded a grant from the Bond Act for repairing four bridges on the Southern Tier Extension line, STERA has not yet received a contract from NYS DOT. Mr. Belke indicated that he has provided to NYS DOT a detailed work plan for the project, once a contract has been awarded. RONY has appealed to the State to release the Bond Act funds. Mr. Belke indicated that he felt that the contract would probably not be issued in time for 2011 construction.

## **11. Potential NYS DOT RFP for Rehabilitation Funding**

NYS DOT has not yet issued the anticipated RFP for rehabilitation funding discussed at the November 15, 2010 Board meeting.

## **12. Cattaraugus County (Randolph) Remediation Project Status**

Cattaraugus County and STERA executed the easements on the project in May, and the project is now completed.

## **13. Obstruction Study Project Status**

EDA has indicated that the project concept was potentially fundable, and would review the draft grant application and make suggestions for revision to improve fundability. WNYP has provided scoping text to describe the project. However, Mr. Belke indicated that the WNYP Board had not approved providing match funds, and had indicated that it felt that the payback was too lengthy and that it was not clear that the traffic volume of large dimensional freight warranted the study or that the state DOT's would invest in remediating chokepoints. He suggested that WNYP's traffic was more weight sensitive, and that this still was important, but the WNYP recommended that STERA take this study project off the active proposed projects list.

## **14. Site Development Project Status**

Mr. Barnes noted that Southern Tier West has begun to work with Chautauqua, Cattaraugus, and Allegany Counties and with the Seneca Nation of Indians to promote the development of business development sites along the east-west and north-south railroads. Southern Tier West is contemplating submitting funding applications for a project that would enable County-based economic development entities and the Seneca Nation of Indians to acquire land interests and prepare preliminary engineering sufficient for subsequent improvements that would make the individual sites shovel ready.

Mr. Barnes had indicated to Mr. Sirianni that perhaps NYS ESD could be of some help with finding funding for this initiative.

Mr. Griffin indicated that Steuben County had no potential sites and did not wish to be included in the study project.

## **15. Multi-Modal Freight Transfer Facility and Manufacturing Center Project Status**

STERA and Southern Tier West continue to seek funding for line rehabilitation and phase one construction of the transload facility. The Truck-Rail Multi-Modal Freight Facility (Transload Facility) Feasibility Study and Preliminary Engineering Study are downloadable from the Southern Tier West web site ([www.southerntierwest.org](http://www.southerntierwest.org)).

STERA has been contacted by a consultant for EXXON. Exxon is in the process of remediating a brownfield site (Agway/Felmont site in Olean) that is adjacent to and in the southwest corner of the "diamond," which is the intersection of the east-west and north-south railroad lines. The site has adjacency to an I86 interchange and City utilities. The consultant was interested in whether STERA had any interest in developing the site with a rail-related use. Mr. Belke indicated that WNYP has contacted Exxon and encouraged them to seek a rail-shipping developer/tenant.

## **16. Request of Dresser Rand for Rail Siding (Village of Wellsville)**

There is no change in status on this proposal. The project is still do-able, but there is no funding for the installation. NYS DOT has indicated that budgetary funds from the most likely programs probably are not available at this time to fund this project.

Mr. Belke previously had indicated that the estimated cost for reinstallation is about \$200,000, which would cover the re-installation of a switch and the reinstallation of 500 to 600 feet of track. However, he had noted that if this switch were installed, there still may be issues moving freight because of clearance restrictions, the nearest one being on a bridge in east Wellsville. Fixing the clearance issue on the Wellsville bridge would cost approximately \$100,000 to repair or alternately \$1,000,000 to \$1,500,000 to replace the bridge.

Mr. Barnes indicated to Mr. Sirianni that perhaps NYS ESD could be of some help with finding funding for this initiative.

Mr. Sirianni indicated that perhaps some RESTORE funds could be reallocated from a project that had been approved but had not been completed.

Mr. Griffin indicated that Steuben County had a \$150,000 member item that had been returned because of Norfolk Southern, and that perhaps this was a funding avenue.

## **17. Seneca Nation of Indians Representation on STERA Board**

As of this date, the Nation has not appointed a representative to the STERA Board.

## **18. NYS Public Authorities Accountability Act (PAAA) and Public Authorities Reform Act (PARA) Compliance**

### **A. Training Sessions**

Several current members (Mr. Brisky, Mr. Cooper, Mr. Euliano, and Mr. O'Grady) have not yet completed NYS ABO's PAAA compliance training sessions. Mr. Barnes has contacted NYS ABO

regarding the availability of web-based State-approved training for Board members. NYS ABO has indicated that it is “in the process of developing and implementing web-based training which will enable board members to participate in on-line interactive training via a webinar program. We hope to have this training available within the next six months. Authorities will be notified when this training is available.” Mr. Daly indicated that NYS ABO has decertified all of its certified trainers, so training could not be obtained in any event at the current time. STERA will follow developments as they occur, in this regard.

**B. Cattaraugus County Ethics Filing**

According to Cattaraugus County, all Board members and management team (Mr. Zink and Mr. Barnes) have filed the Cattaraugus County Ethics Filing Form prior to the spring 2011 filing deadline. STERA has asked Cattaraugus County for copies of the filed forms, and once these are in hand, management will provide the Governance Committee with a report on the filed forms.

**C. Discussion of Any Desired Policy Modifications**

STERA encourages comments on and suggested revisions to the organizational policies, so as to improve organizational effectiveness and PAAA compliance. The Audit Committee will discuss potential additional revision of the Audit Committee Charter.

**D. Compliance Report**

All reports were filed with the NYS ABO through the PARIS reporting system on a timely basis (i.e., before March 31, 2011). The web site continues to undergo revisions so as to conform to evolving NYS ABO compliance requirements. The Code of Ethics has been revised per Board directions.

**19. Future Status of the Property Tax Abatement Provided by STERA to Norfolk Southern**

In the future, STERA may consider extending the abatement period. The Uniform Tax Exemption Policy adopted by STERA will be an element of any such consideration. Mr. Griffin suggested that STERA begin discussions in the near future. Mr. Brisky requested that a short review of history be provided regarding the abatement process. It was also suggested that STERA could note to Norfolk Southern that it was considering extending the abatement period, and that Norfolk Southern could in turn be more willing to work more positively with STERA and the operator on rail operations affecting the two lines.

**20. Other Old Business**

There was no other Old or Unfinished Business.

**New Business**

**21. Allegany County Storm Event Damage – Authorization of Submission of FEMA Funding Application**

Mr. Belke indicated that April 26 and May 8 storms damaged or threatened to damage the rail line in Allegany County in several places. FEMA has declared the storms a federal disaster, making STERA eligible for FEMA repair funding and mitigation (i.e., preventative) funding. Allegany County also is working with FEMA to finalize its Hazard Mitigation Plan, which is the other condition required for STERA eligibility for FEMA mitigation funds in Allegany County. Mr. Belke noted that WNYPO would provide the 15% match funds required by FEMA. After discussion, the STERA Board adopted a resolution authorizing application for and acceptance of FEMA funds (Brisky, O’Grady, passing unanimously).

**Other New Business**

There was no other New Business.

**22. Public Comment**

There was no public comment.

**23. Next Meeting Date and Agenda for Next Meeting**

The next regularly scheduled meeting of the STERA Board will be on October 17, 2011 at 9:30 AM at the Conference Room at the office of the Southern Tier West Regional Planning and Development Board in Salamanca, NY. STERA may decide to schedule one or more additional meetings of the Board of Directors during 2011. The Audit Committee and Governance Committee each might meet before the Board meeting(s) as necessary to discuss appropriate matters. Special meetings of each Committee also may be called on other dates as needed.

**24. Adjournment**

The meeting adjourned at 11:20 AM (Eade, Brisky, passing unanimously).

I certify that this is an accurate summary of the meeting of the Board of Directors of the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority held on the date indicated above.

Name: Thomas M. Barnes

Office: Secretary

Date: \_\_\_\_\_