



Chautauqua, Cattaraugus, Allegany & Steuben Counties

Southern Tier Extension Railroad Authority

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

FINANCIAL DISCLOSURE AND ETHICS REPORT

October 17, 2011

This is STERA management's report for the year 2011 regarding issues arising from financial issues and ethical issues arising from STERA operations and/or as indicated by the Ethics Forms (financial disclosure forms) submitted by STERA Board members and STERA Corporate Officers to the Cattaraugus County Attorney's Office by April 30, 2011.

A. Compliance with Financial Disclosure Filing Requirements:

All STERA Board members and both STERA Corporate Officers have completed and transmitted the required Ethics Form to the Cattaraugus County Attorney's Office by April 30, 2011. This has been confirmed by both statements of STERA Board members and both STERA Corporate Officers and statements of the Cattaraugus County Attorney's Office. Accordingly, STERA is in compliance with the NYS ABO Policy Guidance 07-02 annual filing requirement regarding financial disclosure.

However, when asked by STERA for copies of these filed Ethics Forms, the Cattaraugus County Attorney's Office provided to STERA one (1) ethics form and the (10) or eleven (11) acknowledgement forms, instead of the anticipated thirteen (13) STERA Board member Ethics Forms (one vacancy each, Allegany County and Seneca Nation of Indians) and the anticipated two (2) STERA Corporate Officers Ethics Forms. In subsequent discussion with the Cattaraugus County Attorney's Office, STERA management has been unable to resolve this discrepancy, but has been assured by the Cattaraugus County Attorney's Office that STERA is in compliance with the NYS ABO Policy Guidance 07-02 annual filing requirement regarding financial disclosure, despite STERA's inability to verify this information directly from the filed Ethics Forms.

At the June 20, 2011 STERA Board of Directors meeting, the STERA Board has directed that Board members will send copies of the 2012 Ethics Forms filings to both the Cattaraugus County Attorney's Office and STERA management, so that this issue will not arise in the future.

B. Disclosures of Actual or Potential Financial Issues or Ethical Issues in Ethics Forms Filed Per NYS ABO Policy Guidance 07-02:

The Cattaraugus County Attorney's Office has indicated that there were no disclosures in the Ethics Forms (financial disclosure forms) submitted by STERA Board members and STERA Corporate Officers to the Cattaraugus County Attorney's Office by April 30, 2011 that indicated that any STERA Board members or STERA Corporate Officers might be in a situation of actual or potential conflict of interest or where their independent judgment in the exercise of their duties for STERA may be impaired.

C. Other Issues Arising from STERA Operations:

- 1) STERA has one instance of a Board member who is a member of the Board of Directors of the WNYP Railroad (James Griffin). Mr. Griffin had disclosed to STERA his membership on the Board of Directors of the WNYP Railroad and had raised the issue of whether there might be an actual or perceived conflict of interest situation or an ethical issue present. At the request of Mr. Griffin, in 2006 STERA received an attorney's opinion from Harris Beach PLLC which examined Mr. Griffin's status and activities on behalf of both STERA and WNYP, and reviewed the applicable sections of the New York Municipal Law, the applicable sections of the New York Public Officers Law, and STERA's Standards of Conduct Policy as was in place at that time. The attorney's opinion noted that:

"1. It is not necessary for Mr. Griffin to resign or be removed from the Board of Directors of STERA provided that he recuses himself from any vote and/or abstains from officially acting with respect to WNYP."

"2. Mr. Griffin complied with STERA's Standards of Conduct Policy by disclosing to STERA his appointment to the WNYP Board of Directors."

This situation has not changed since the opinion was issued, and Mr. Griffin regularly makes a practice of abstaining from officially acting as a STERA Board member in circumstances where he feels that he may be in conflict or where his independent judgment in the exercise of his duties for STERA may be impaired. Accordingly, Mr. Griffin's circumstances do not appear to pose an ethical issue that would possibly impair his independent judgment in the exercise of his duties for STERA, either currently or going forward, provided that he continues to recuse himself from any vote and/or abstains from officially acting with respect to WNYP.

- 2) STERA has two instances of Board members (William Euliano and Terry Everetts) who are employed by companies who are either actual or potential freight shippers using the Southern Tier Extension and doing business with WNYP Railroad.

Previously, STERA had another member of its Board of Directors who similarly had been employed by a freight shipper that used the Southern Tier Extension and did business with WNYP Railroad. This Board member disclosed to STERA his employer-company's status as a freight shipper that used the Southern Tier Extension and did business with WNYP Railroad, and raised the issue of whether there might be an actual or perceived conflict of interest situation or ethical issue present. The Board member had requested that STERA obtain an attorney's opinion regarding conflict of interest or ethical issues with his membership and activity on the STERA Board. In 2006 STERA received an attorney's opinion from Harris Beach PLLC which examined the Board member's status and activities on behalf of both STERA and his employer, and reviewed the applicable sections of the New York Municipal Law, the applicable sections of the New York Public Officers Law, and STERA's Standards of Conduct Policy as was in place at that time.

The attorney's opinion noted that a critical element is whether the Board member has a financial interest in his employer such as stock ownership, options, or compensation based upon his employer's operations/performance, i.e., beyond a straight salary that is not otherwise based on his employer's operations/performance. As the Board member did not have a financial interest in his employer such as stock ownership, options, or compensation based upon his employer's operations/performance, the attorney's opinion indicated that it does not appear that any official activity that the Board member would be performing for STERA would directly affect the operations of his employer, and hence impact his own personal financial situation, so as to possibly impair the Board member's independent judgment in the exercise of his duties for STERA.

The attorney's opinion also noted that another critical element is whether there is a direct relationship between STERA and the Board member's employer-company. If there is no such direct relationship, the attorney's opinion indicated that it does not appear that any official activity that the Board member would be performing for STERA would directly affect the operations of his employer. However, as it also reasonable to concluded that certain actions of STERA could indirectly affect the employer-company, which could possibly impair the Board member's independent judgment in the exercise of his duties for STERA, the attorney's opinion indicated that even a substantial conflict of interest may be negated by an abstention from voting or otherwise officially acting with respect to the subject matter affected.

The Harris Beach PLLC attorney indicated that determining when recusal is necessary may become more difficult in this case than in the case of Mr. Griffin (discussed earlier) and would need to be done on a case by case basis. The attorney indicated that although one could argue that every decision or official action by the Board member in question has an indirect affect on the employer-company and should result in recusal; however, the attorney indicated that he believed such a position is unnecessarily strict and goes beyond the intent of the applicable conflicts policies. The attorney indicated that he did believe that when certain actions that will result in a material impact on the users of the rail are under consideration by STERA, the Board member in question would be required to recuse himself in order to avoid the conflict of interest.

The attorney's opinion noted that:

"1. It is not necessary for (the Board member in question) to resign or be removed from the Board of Directors of STERA provided that he recuses himself from any vote and/or abstains from officially acting with respect to any matter that affects (the employer-company) as a rail user."

The circumstances of this earlier situation are the same as those of Mr. Euliano and Mr. Everettt, and the situation has not changed since the opinion was issued. Accordingly, neither Mr. Euliano's and Mr. Everettt's circumstances appear to pose an ethical issue that would possibly impair either Board member's independent judgment in the exercise of their duties for STERA, either currently or going forward, provided that each continues to recuse himself from any vote and/or abstains from officially acting as a STERA Board member with respect to any matter that affects each Board member's employer-company as a rail user.

D. Summary:

There do not appear to be any financial issues or ethical issues arising from STERA operations and/or as indicated by the Ethics Forms (financial disclosure forms) submitted by STERA Board members and STERA Corporate Officers to the Cattaraugus County Attorney's Office by April 30, 2011 that would indicate that any STERA Board members or STERA Corporate Officers might be in a situation of actual or potential conflict of interest or where their independent judgment in the exercise of his duties for STERA may be impaired.

Submitted to the STERA Governance Committee

On October 17, 2011

By



Thomas M. Barnes
STERA Corporate Secretary