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June 8, 2017

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E. Street, S.W.  
Washington, D.C. 20423-0001

By electronic filing

**Re: STB FINANCE DOCKET NO. 36117  
LRY, LLC D.B.A. LAKE RAILWAY-- PETITION FOR DECLARATORY  
ORDER — RAIL LINE IN LAKE COUNTY, OR AND MODOC COUNTY, CA**

Dear Ms. Brown:

Petitioner LRY, LLC respectfully requests the Board's leave to file this limited rebuttal to Lake County's June 7, 2017 reply to LRY's motion to strike in the within matter to correct a false or misleading statement by Respondent's counsel; and to raise a new objection to an additional conflict of interest disclosed in Mr. Heffner's reply.

1. Lake County counsel is the custodian of commercially sensitive LRY information

Perhaps the passage of time has dimmed Mr. Heffner's memory, but the trail of electronic correspondence casts counsel's pervasive involvement in the Lake County-LRY lease *cum* dispute in quite a different light. Before switching sides, Mr. Heffner was the counter signatory to a representation agreement with Mr. Didelius which reposes to this very day in Mr. Heffner's control, custody and possession; as in fact do LRY's legal files. Moreover, the electronic record reveals indisputably that Mr. Didelius entrusted Mr. Heffner with commercially sensitive information on such matters as LRY's projected Class I interactions, carload volumes, maintenance responsibilities, insurance limits and anticipated revenues on the Rail Line. See attached, May 5, 2009 Heffner email. This information remains as commercially sensitive today as it did in 2009.

2. Mr. Heffner represents Cornerstone without LRY's consent

Mr. Heffner's June 7, 2017 verified statement reveals not only that he represents Lake County without Mr. Didelius' consent as required by the Boards conflicts Rules, but also in October 2016 came to represent Cornerstone in a rate dispute with LRY. Cornerstone now

opposes LRY in this proceeding. Mr. Heffner was mindful of the Cornerstone-LRY conflict, taking the prophylactic measure of disclosing same to the firm where he is currently of counsel, but not taking the concomitant step of seeking Mr. Didelius' consent to represent Cornerstone averse to LRY. Such flagrant flaunting of the conflicts Rules should not be countenanced by this Board in any setting.

For the foregoing reasons, LRY renews its call for the Board to disqualify Mr. Heffner due to his multiple conflicts of interest in this dispute. We thank the Board for its consideration. If there are any questions about this matter, please contact me directly, either by telephone (908) 361-7097 or by email [jsavagelaw@aim.com](mailto:jsavagelaw@aim.com).

Respectfully submitted,

*S/ James H. M. Savage*  
by electronic signature

James H. M. Savage  
Counsel for LRY, LLC

cc: John Heffner (via email)  
James Bailey (via email)

**From:** J. HEFFNER <J.HEFFNER@VERIZON.NET>

**To:** 'Jim Savage (E-mail)' <jsavagelaw@aim.com>

**Subject:** FW: Draft of LRY Agreements

**Date:** Tue, May 5, 2009 5:06 pm

**Attachments:** LRY - Lakeview Railway - Lease of Modoc Branch.doc (73K)

Check with Paul on the railroad name. I'm a little confused. John

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**From:** Paul Didelius [<mailto:pd@frontierrail.com>]

**Sent:** Tuesday, May 05, 2009 2:42 PM

**To:** [REDACTED]

**Cc:** 'J. HEFFNER'

**Subject:** RE: Draft of LRY Agreements

John, A few items from my review of lease doc. I will start there and get on to the other docs in turn.

Our name: LRY LLC – "Lake Railway" will be a d.b.a. [This due to a Lake County political objection / confusion related to use of the municipality name 'Lakeview']. Appears throughout docs;

Section 2.01 – reference to commencement date. We request that this be ultimately spelled out in agreement or notice from [REDACTED] as it starts the 5 year term;

Section 3.01 [REDACTED] retaining right to operate passenger trains. While I doubt this will be a significant issue there is no mechanism spelled out (trackage rights, for instance) for how [REDACTED] would conduct such an operation. We will assume if they were to operate for instance a business special that [REDACTED] would coordinate with LRY on conducting the operation of train across LRY line;

Section 6.01 – Maintenance to Class II / 25 m.p.h. – if we are accepting the line with all faults would we not maintain to standard in which it is given to us? Subject to limited apparent deficiencies from 25 m.p.h. railroad as maintained by [REDACTED] approaching date of commencement, we could probably commit. [REDACTED]

Section 6.04 – Perez to Canby fire breaks: Where or with whom can we obtain information on the nature and requirements of such breaks / maintenance?

Section 10 – under review;

Section 12 – under review;

Section 13 – Taxes. Can someone at [REDACTED] provide what the taxes Perez to Alturas amount to?

Section 14.01 – protection from sale by [REDACTED] provided for grounds of lease we are using in connection with our rail freight operations – [REDACTED] provide [REDACTED] and [REDACTED] are looking at selling such and such [REDACTED]

[REDACTED] real estate personnel take into account LRY has an operation around centerline of track [REDACTED]

Section 14.03 – standard forms – we will need these included with Lessee Agreements;

Section 15.01 – reference to Klamath Falls as interchange...

Section 22.03 – agreement to favor BMW – [REDACTED] or can we strike [REDACTED]

Section 23.04 – reference to Modoc Northern does not apply;

#### ON THE INSURANCE EXHIBIT E:

Frontier Rail has maintained with [REDACTED] for three years GL insurance of [REDACTED] million per occurrence and [REDACTED] million aggregate for the year. I understand that was suitable for [REDACTED] shortlines and as of last year was to work for [REDACTED] lease. [REDACTED] are considering going to 10 million / 20 million depending upon the award of a contract which [REDACTED]

would require [REDACTED], but for which the new customer would essentially pay our increase. When I have quoted 25 million coverage in the past it is well over [REDACTED] which is QUITE steep for a railroad which will likely generate in the neighborhood of [REDACTED] in revenues! [Our CMA revenue requirements for the 104 mile line were based on 5 million [REDACTED] million.]

I request [REDACTED] modify the insurance Exhibit E to reflect requirement for GL coverage of 10 million per occurrence / 20 million aggregate.

For what it is worth – this line handles under [REDACTED] cars per year, handled no haz mat in 2008, traverses a relatively unpopulated geography, and does not adjoin a [REDACTED] main line corridor / line hosting passenger operations.

I will get back to you on the Interchange Agreement and CMA [which I assume is substantially the CMA I reviewed last month].

**Thank you,  
Paul Didelius, Owner  
509 540-9499**

**LRY LLC**