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VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

RE: *Stewartstown Railroad Company – Adverse Abandonment – In York County, PA,*
STB Docket No. AB-1071

STATUS REPORT

Dear Ms. Brown:

The Estate of George M. Hart ("Estate") hereby offer a status report on discovery and procedural matters as they relate to the above-referenced proceeding in light of the late-release order of the Director of the Office of Proceedings served on June 6, 2011 (the "Director's Order"). This letter is intended to alert the Board to as-yet-unresolved issues between the parties, discussed below, that may have a bearing on the deadlines set forth in the Director's Order.

As the Board well knows, the Estate had previously expressed its intent to file a formal application for a third-party (or "adverse") abandonment of the entire 7.4-mile rail line of the Stewartstown Railroad Company ("SRC"), located in York County, PA, in mid-June. To that end, on May 20, 2011, the Estate filed its formal notice of intent with the Board, served the same upon designated state and federal contacts, and arranged for newspaper publication of the notice in accordance with the applicable Board rules at 49 C.F.R. §1152.20. Also, in anticipation of filing its abandonment application, the Estate served discovery (a combination of interrogatories and document production requests) upon SRC on May 9, 2011, with the hope that such discovery could be concluded satisfactorily on or before May 31, 2011.

In response to the Estate's discovery request, SRC filed on May 25, 2011, a unilateral request to extend the deadline for discovery responses to July 1, 2011. The Estate responded to this extension request by advising the Board that the Estate would accept extending the discovery deadline to June 15, noting that such an extension would necessitate waiver of the Board's rules at 49 C.F.R. § 1152.20(b).

The Director's Order grants SRC until June 20 to respond to the Estate's discovery requests, and grants the Estate a waiver from the provisions of section 1152.20(b), so that the Estate has up to and until June 30, 2011, file its abandonment application. In so doing, the Director's Order specifically states that the extension of the discovery deadline – allowing SRC up to 42 days to respond to discovery – “should permit sufficient time for any disputes between the parties regarding the scope of discovery to be resolved cooperatively and responsive information to be produced.”¹

The Estate is grateful for the Board's intervention in this matter, and it accepts the revised discovery and abandonment application filing schedule. The Estate especially embraces the sentiment of the Director's Order that the time extensions *should* allow enough time cooperatively to resolve any remaining discovery disputes, and to permit for the production of all responsive information. At this juncture, however, it is not clear that, despite the Estate's cooperative efforts, all discovery matters in this proceeding will be satisfactorily resolved by June 20. For that matter, if discovery cannot satisfactorily be completed by June 20, then there is serious doubt about whether the Estate would be able by June 30 to file its abandonment application, despite the fact that the Estate has a vested interest in the swift conclusion to this abandonment proceeding.

While awaiting the Director's Order, the Estate contacted SRC in an effort to reach an accord on when the Estate might expect responses to its discovery, and, to the extent that SRC considered any requests problematic or objectionable, to explore a mutually acceptable accommodation.² Last week, SRC advised that it would endeavor to supply discovery responses by June 15, suggesting, in the Estate's view, that SRC intended to respond substantively to each discovery request. Much to the Estate's alarm, however, SRC also has indicated that it will not be in a position to identify any objections to the discovery requests until June 15.

This turn of events leaves the Estate in the dark. SRC may yet respond timely and in full to all discovery, thereby enabling the Estate to file its abandonment application by or before June 30. On the other hand, SRC may yet object to certain requests, and refuse to respond to them substantively. The Estate, amenable to an expeditious and mutually acceptable narrowing of the issues to refine the scope of discovery, wishes to address any objections or points of difficulty now, but SRC says it will not be in a position to address such matters until about June 15. Thus, the Estate does not know, and will not know for at least another week, whether or to what extent SRC

¹ Director's Order at 2.

² Under the Board's rules, the Estate had until June 10 to file a motion to compel responses to its discovery requests. (That deadline has changed to June 30, due to the Director's Order.) Wishing to avoid the need for such Board intervention, the Estate sought to reach an accord with SRC on all outstanding discovery issues.

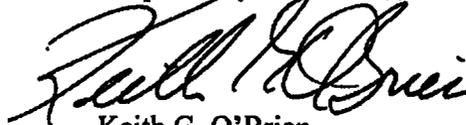
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may refuse to respond substantively to any discovery, and the Estate will not know until later still whether SRC's objections can be resolved through negotiation, or whether the Estate will find it necessary to file a motion to compel.

The Estate is moving forward assuming that, in light of the additional time, SRC will respond in good faith to all requests. However, the Estate intends by this letter filing to alert the Board to this unusual turn of events,³ and its possible ramifications to the discovery and abandonment application filing deadlines. In particular, should the Estate be disappointed to learn that SRC refuses to respond to certain requests, and should it happen that the parties cannot resolve such objections informally, then not only would the discovery process be further prolonged, but the Estate may have no choice but to seek an extension of its abandonment application deadline, as unpalatable as that would be.

We appreciate the Board's attention to this matter, and thank the Director for her timely intervention on discovery matters in this proceeding. The Estate is hopeful that discovery can and will be fully and satisfactorily completed by June 20, just as the Director's order stated should be the case, so that the Board need not take any further action in anticipation of the abandonment application filing. As discussed above, however, the Estate wants the Board to know that there are lingering discovery issues that, despite the Estate's efforts to resolve them, may remain unresolved as of June 20. Should that be the case, the Estate will so inform the Board as soon as possible, and may, as a consequence, seek further Board action in view of any remaining discovery impasse.

Respectfully Submitted,



Keith G. O'Brien
Counsel for the Estate of George M. Hart

cc: All parties of record

³ The current situation reflects SRC's unorthodox handling of discovery. The Estate understands that the Board favors informal efforts to resolve discovery issues swiftly to avoid the need for Board intervention. Under this understanding, the Estate had hoped and expected that SRC would have notified the Estate as soon as possible of its objections to, or problems with specific discovery requests, certainly by no later than May 31. The Estate continues to believe that discovery can most efficiently and expeditiously be addressed and resolved in this way. Furthermore, although SRC has informed the Estate that it will not be prepared to offer specific objections or to work out problematic discovery requests until June 15, the Estate does not understand why this is so. (For what it is worth, SRC has indicated that if discovery is not satisfactorily completed by June 20 – presumably in the presence of a discovery impasse – it would not object to an extension of the Estate's section 1152.20(b) waiver.)