

41823
DO

SERVICE DATE – AUGUST 24, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1071

STEWARTSTOWN RAILROAD COMPANY—ADVERSE ABANDONMENT—IN YORK COUNTY, PA.

Decided: August 24, 2011

On July 7, 2011, the Estate of George M. Hart (Estate) filed an application under 49 U.S.C. § 10903 requesting that the Surface Transportation Board (Board) authorize the third-party, or “adverse,” abandonment of an approximately 7.4-mile line of railroad in York County, Pa., between milepost 0.0 at New Freedom, Pa., and milepost 7.4 at Stewartstown, Pa. (the Line). The Line is owned by the Stewartstown Railroad Company (SRC). In a notice served and published in the Federal Register on July 27, 2011 (76 Fed. Reg. 44,987), the Board invited interested persons to file written comments or protests concerning the proposed abandonment.

By letter filed on August 8, 2011, Preservation Pennsylvania, an organization dedicated to the protection of historically and architecturally significant properties, filed comments requesting to participate as a consulting party in the historic review process under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. In those comments, Preservation Pennsylvania also requests a 180-day “stay” of proceedings to allow it to examine the historic significance of the SRC right-of-way, including track materials and method of construction.

On August 11, 2011, the Estate filed a letter opposing Preservation Pennsylvania’s stay request. The Estate asserts that Preservation Pennsylvania failed to satisfy the traditional stay criteria set forth in Washington Metropolitan Area Transit Commission v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977) or show that the possible historic impacts of the proposed abandonment cannot or will not be appropriately evaluated under Section 106. The Estate does not object, however, to Preservation Pennsylvania’s participation in the Board’s environmental and historic review process.

On August 12, 2011, the Board’s Office of Environmental Analysis (OEA) served its Environmental Assessment (EA), recommending, among other things, that, should the Board approve the adverse abandonment, it impose a Section 106 historic preservation condition that would prevent salvage of the line or consummation of the adverse abandonment until the Section 106 process is completed and the Board removes the condition. In the EA, OEA also states that, should the Board impose a Section 106 condition, OEA would invite Preservation Pennsylvania (and any other interested party) to be a consulting party.

Although Preservation Pennsylvania has referred to its requested relief as a “stay,” the stay criteria of Holiday Tours are not relevant here, as there is no Board decision at issue to be stayed. Rather, Preservation Pennsylvania’s request will be deemed a request to hold the proceeding in abeyance for 180 days. See, e.g., Decatur Cnty. Comm’rs v. Cent. R.R. Co. of Ind., FD 33386 (STB served Sept. 30, 1997).

The abeyance request will be denied. Preservation Pennsylvania has not shown that the ongoing environmental and historic review processes are insufficient to permit Preservation Pennsylvania’s full and meaningful participation. Should the Board approve the adverse abandonment and impose a Section 106 condition as OEA has recommended, OEA has indicated that it would invite Preservation Pennsylvania to be a consulting party. Neither salvage of the line nor consummation of the adverse abandonment would be permitted until completion of the Section 106 process. And even if the Board were to conclude that a Section 106 condition is unnecessary, the standard procedural schedule, under which the Board’s decision typically is made effective 30 days after its service date, would still afford Preservation Pennsylvania the opportunity to seek reopening of the Board’s decision on that issue. In sum, Preservation Pennsylvania has not shown that historic review in this case requires holding consideration of the adverse abandonment application in abeyance.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Preservation Pennsylvania’s request to hold this proceeding in abeyance for 180 days is denied.
2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.