

BEFORE THE  
SURFACE TRANSPORTATION BOARD



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STB DOCKET NO. AB-1071

233153

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STEWARTSTOWN RAILROAD COMPANY  
ADVERSE ABANDONMENT  
IN YORK COUNTY, PENNSYLVANIA

ENTERED  
Office of Proceedings  
OCT 10 2012  
Part of  
Public Record

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**MOTION TO HOLD THIS PROCEEDING IN ABEYANCE**

**ADDITIONAL EVIDENCE THE LINE IS STILL NEEDED**

**AND**

**MOTION FOR A POSITION STATEMENT**

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1. Comes now James Riffin ("Riffin"), who herewith files his Motion to Hold This Proceeding in Abeyance, and in support thereof states:
2. The last substantive pleading in this proceeding was filed in March, 2012. Recently, the STB has received letters from two entities requesting that the STB expeditiously render a decision addressing the Adverse Abandonment petition.
3. On or about October 1, 2012, it was suggested that Riffin should read the STB's decisions in the *Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment – In Mineral County, CO*, STB Docket No. AB-1014, STB served October 18, 2007, and in particular, pages 4-5 of that decision. Riffin did.

4. Buried in the *Denver & Rio Grande* decision was the STB's holding that "the OFA, feeder line, and public use provisions would be fundamentally inconsistent with the purpose of the Board's adverse abandonment decision." Op. at 4-5.

5. In this proceeding, the Estate of George Hart is seeking adverse abandonment of the Stewartstown Railroad in order to remove the STB's jurisdiction over the Line, with the goal of utilizing Pennsylvania's State law to collect a debt owed to George Hart's Estate by the Stewartstown Railroad. The Estate of George Hart has repeatedly stated that it does not seek to cause the abandonment of the Line. It merely seeks a means by which it can collect its debt. The Estate of George Hart has repeatedly stated that it would favor an Offer of Financial Assistance ("OFA") being made, so that the Line could be saved from actual abandonment.

6. Riffin suspects that counsel for George Hart's Estate, and counsel for the Stewartstown Railroad, are not aware of the STB's *Denver & Rio Grande* decision, just as Riffin was not aware of the decision prior to October 1, 2012.

7. Riffin would ask that the STB hold this proceeding in abeyance for 30 days or so, in order to give the Estate of George Hart and the Stewartstown Railroad, time to read and discuss the impact the STB's *Denver & Rio Grande* decision is likely to have in this proceeding.

8. While one never knows what the STB will decide until it has made its decision, Riffin would expect that the STB would, on its own motion, if it grants the adverse abandonment, exempt this proceeding from the OFA procedures, and would cite its reasoning in the *Denver & Rio Grande* decision to justify the OFA exemption.

9. If this were to happen, the Estate of George Hart would get only part of what it seeks: The right to pursue collection of its debt in a Pennsylvania State court. The Estate of George Hart would also get something it **does not** want: The abandonment and scraping of the Stewartstown Railroad. And the folks that have indicated a desire to use the Stewartstown Railroad right-of-way for a trail, would also **not get** their trail, since Rail Banking under the

Interim Trail Act retains the STB's jurisdiction over the Line, which, as the STB stated in the *Denver & Rio Grande* decision, is “ fundamentally inconsistent with the purpose of the Board's adverse abandonment decision.”

10. Riffin would argue that the Estate of George Hart is using the wrong forum to achieve its goal of collecting a debt. The Estate of George Hart should have filed an Involuntary Bankruptcy Petition, and should be arguing its case before a bankruptcy judge.

11. A bankruptcy court has the power and authority to order the sale of a line of railroad in order to monetize the asset for the benefit of the debtor's creditors. A sale of a line of railroad pursuant to a bankruptcy court order **does not necessarily** result in the line of railroad being abandoned. If the high bidder desires to acquire the line at a bankruptcy sale, and then operate the line as a line of railroad, the high bidder need only file a Notice of Exemption with the STB prior to acquiring the Line. If an NOE were to be filed by the high bidder, then thirty days after filing the NOE, the high bidder could / would acquire the line as a line of railroad.

12. Riffin would suggest that the Estate of George Hart dismiss its adversary abandonment petition, then file an involuntary bankruptcy petition. Doing so would permit the Estate of George Hart to use the proceeds from the sale of the Stewartstown Railroad, to pay off a portion of the debt that it is owed. Doing so also would permit the Line to be saved as a line of railroad, rather than being scrapped. An involuntary bankruptcy petition would permit the Estate of George Hart to realize **both** of its goals: It would get paid and the Stewartstown Railroad Line would be preserved as a line of railroad.

13. If the present owners of the Stewartstown Railroad were to be the high bidder, then they would also be able to achieve their goal of preserving the Stewartstown Railroad. All they have to do is be the high bidder!

14. If the Stewartstown Railroad desires to control the bankruptcy proceeding, they could file a Chapter 11 bankruptcy petition. Doing so would enable it to be the seller, rather than having a

bankruptcy trustee be the seller. [For the first 120 days after filing a Chapter 11 petition, the debtor has the exclusive right to put forth its reorganization plan, see 11 U.S.C. § 1121(b), which could be to sell the Line to another entity, see 11 U.S.C. § 1123(a)(5)(D).]

### **ADDITIONAL EVIDENCE LINE IS STILL NEEDED**

15. Riffin was made aware that the Stewartstown Railroad is now advertising the use of its line of railroad for the storage of rail cars, a legitimate use of a line of railroad.<sup>1</sup> If the Stewartstown Railroad were to actually begin to store rail cars on its Line, that would demonstrate that the Line is still needed for the ‘public convenience and necessity,’ and would argue against the granting of adverse abandonment of the Line.

### **MOTION FOR A POSITION STATEMENT**

16. In the *Denver & Rio Grande* proceeding, the City of Creede sought adverse abandonment of a portion of the Denver & Rio Grande’s right-of-way, so that the City of Creede could use the right-of-way for a parking lot, a grocery store, and a ball field. The City of **Creede asked the STB to exempt the proceeding from the OFA procedures.** The San Luis & Rio Grande railroad filed an OFA to acquire the portion subject to the abandonment petition. In its October 18, 2007 decision granting the requested exemptions, the STB, on pages 4-5 of its decision, said the following regarding the OFA:

“The requests for exemptions from and waivers of the OFA, feeder line, and public use provisions will be granted. **The purpose of the third-party abandonment process is to withdraw the Board’s primary jurisdiction so as to permit state, local or other federal law to apply where there is no overriding federal interest in interstate commerce.** See *Norfolk Southern Railway Company – Adverse Abandonment – St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286) (STB served Oct. 26, 2006) (*St Joseph County*). [**U. of Notre Dame.**] **In contrast, the purpose of the OFA and feeder line provisions is to keep**

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<sup>1</sup> [www.railswap.org](http://www.railswap.org); click on: Free Classified; Services; Car Storage; East Coast Railcar Storage. (717) 746-8123.

**a rail line within the Board’s jurisdiction for the purpose of providing service. The public use condition also keeps the line under the Board’s jurisdiction** for the purpose of preventing a railroad, upon abandonment or discontinuance of service, from disposing of rail properties found to be appropriate for other public uses. Thus, **should the Board ultimately find that the public convenience and necessity require or permit withdrawal of its regulatory authority in this adverse abandonment proceeding, the OFA, feeder line, and public use provisions would be fundamentally inconsistent with the purpose of the Board’s adverse abandonment decision.** See *East St. Louis Junction Railroad Company – Adverse Abandonment – in St. Clair County, IL*, STB Docket No. AB-838 *et. al.* (STB served June 30, 2003) (addressing 49 U.S.C. 10904). Bold added.

With respect to the City’s request for waiver of the trail use provisions of 49 CFR 1152.29, as the City notes, the Board has never addressed fully the issue of whether trail use provisions can and should apply in cases where adverse abandonment authority has been granted. See *St. Joseph County*, slip op. At 6-7. The City argues, however, that this case would be appropriate for waiver of the trail use procedures because ‘the land in question is within the city limits and is owned by the City.’ Despite the City’s argument, there is no need to waive the trail use provisions at this time. These trail use provisions would be applicable only if and when the Board grants the City’s adverse abandonment application. Therefore, **this issue can be addressed, if need be, in a later decision.**” Bold added.

17. In the STB’s May 23, 2008 decision granting the Creede adverse abandonment, the STB had no reason to address the ‘trails’ issue (no one submitted an Interim Trails Request), so the STB did not address the issue of whether granting an Interim Trails Request would be “fundamentally inconsistent with the purpose of the Board’s adverse abandonment decision.” Since the STB has not, to date, addressed this ‘Trails’ issue, it stated in its July 27, 2011 decision:

“The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. § 1247(d) (49 C.F.R. §1152.29) must be filed by August 22, 2011, and should address that issue.”

18. This proceeding and the *Creede* proceeding have two significant differences:

A. In *Creede*, the petitioner sought exemption from the OFA procedures. In this proceeding the Petitioner **has not** sought exemption, and instead, has **expressly**

**stated**, several times, that it **does not want the proceeding exempted from the OFA procedures**.

B. In *Creede*, the petitioner sought exemption from the Interim Trails provisions. The STB **did not** address this issue, since no one indicated an interest in using the abandoned right-of-way for a trail. In this proceeding, the Petitioner has expressly stated that it would not oppose a trails request, and the Stewartstown Railroad has indicated that it would be willing to negotiate a trails agreement. Likewise, in this proceeding the York County Rail Trail Authority has expressed a desire to use the right-of-way as a trail.

19. Since there are two significant differences between this proceeding and the *Creede* proceeding, the parties may believe that the STB would permit the OFA / trails use procedures to move forward, were the STB to grant the adverse abandonment petition. [Or the parties may not have been aware of the STB's *Creede* decision, and may not have realized that the STB has already held that "the OFA, feeder line, and public use provisions would be fundamentally inconsistent with the purpose of the Board's adverse abandonment decision."

20. The Petitioner evidently did not realize that the STB has already held that an adverse abandonment petition is 'fundamentally inconsistent' with the OFA procedures. (Why else would the Petitioner expressly state that it did not want the proceeding exempted from the OFA procedures?)

21. While Riffin believes that the STB's *Creede* decision is quite clear (Adverse abandonment: withdraws STB jurisdiction; OFA: keeps STB jurisdiction), there is a small amount of 'wiggle' room: When permitting the OFA procedure to move forward, the STB holds the abandonment petition in abeyance, and if the OFA is consummated, the STB dismisses the abandonment petition. Likewise, in this proceeding, the STB could find that there is sufficient grounds to grant adverse abandonment, then hold the adverse abandonment in abeyance to permit the OFA process to proceed. If the OFA is consummated, then the STB

would dismiss the adverse abandonment petition.

22. On the other hand, adverse abandonment is different from carrier-instituted abandonment. In carrier-instituted abandonment, the carrier is merely trying to be relieved of its obligations. This can be accomplished with an OFA. In adverse-abandonments, a third-party is seeking to remove the STB's jurisdiction in order to be able to invoke some State, local or other Federal law, which other law cannot be invoked so long as the STB continues to have jurisdiction. Permitting the OFA process would likely defeat the very reason for filing the adverse abandonment petition in the first place: to seize the real estate / track infrastructure associated with the line. In addition, making a finding that the public convenience and necessity permits the abandonment of a line of railroad (the line is no longer needed for continued rail service) appears to be fundamentally inconsistent with the OFA procedures, since a basic finding to permit the OFA process to move forward, is that the line is in fact 'needed for continued rail service,' i.e. the line is needed for the public convenience and necessity. A line either is / or is not, needed for continued rail service. Both states cannot simultaneously exist.

23. In this proceeding, the Petitioner is not trying to seize the unique real estate / track infrastructure associated with the Line. The Petitioner is attempting to monetize the real estate / track infrastructure, then seize the **proceeds** from the sale of the real estate / track infrastructure. In this proceeding, it is the **monetary value** of the Line that the Petitioner seeks, **not** the unique land and track infrastructure associated with the Line. The Petitioner in this proceeding has actually argued both sides of the coin: The Petitioner has argued that the Line is not needed for continued rail service, and could not be used for continued rail service, and has simultaneously argued that it does not want the proceeding exempted from the OFA process (which indicates the Petitioner actually believes that the Line is needed for continue rail service, since continued rail service is a prerequisite for an OFA).

24. Since the goal of the Petitioner in this proceeding **is different** from the goal of the *Creede* petitioner, the STB **may** make an exception to its *Creede* decision. However, waiting until the STB renders a decision on the adverse abandonment Petition, to learn that the STB **is**

**not willing** to make an exception in this proceeding, **would be disastrous**, for once adverse abandonment authority is granted, there is no going back. The Line will forever be lost. And since the Stewartstown Railroad only has fee simple title to a few very small parcels, the real estate underlying the Line would revert back to the adjacent property owners, most of whom have expressed their desire to have the land back in their possession.

25. WHEREFORE, for the foregoing reasons, and in order to reduce uncertainty, and to make it clear to the Petitioner what the ultimate consequence will be if the adverse abandonment petition is granted, and to provide the Petitioner with some incentive to use a more appropriate venue (bankruptcy court) to resolve its debt dispute with the Stewartstown Railroad, Riffin would ask that the STB indicate whether:

- A. This proceeding **would be** subject to the STB's *Creede* decision, i.e., the STB's OFA, feeder line and public use conditions are fundamentally inconsistent with the granting of an adverse abandonment; OR
- B. This proceeding **would not** be subject to the STB's *Creede* decision, i.e., when an adverse abandonment petitioner expressly states that it **does not** want the proceeding exempted from the OFA procedures, and only seeks the **value** of the line, rather than the unique real property and track infrastructure, the STB would permit the OFA process to move forward if the STB finds that there is sufficient evidence to grant the adverse abandonment.

26. The STB might also do as it did in *Union Pacific Railroad Company – Abandonment Exemption – In Rio Grande and Mineral Counties, CO*, STB Docket No. AB-33 (Sub-No. 132X), Served June 22, 2004, op. at 8, wherein the STB denied the City of Creede's petition to reopen the abandonment proceeding, then suggested that a more appropriate way for the City of Creede to go about accomplishing its goal, would be to file an adverse abandonment petition, rather than a petition to reopen. In this case, the STB could deny the adverse abandonment

petition, then suggest that the Estate of George Hart file an involuntary bankruptcy petition, since the Estate's goal is to collect a debt, rather than to cause the abandonment of a line of railroad.

27. I certify under the penalties of perjury that the facts presented in this pleading are true and correct to the best of my personal knowledge.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of October, 2012, a copy of the foregoing Motion to Hold This Proceeding in Abeyance, was served by first class mail, postage prepaid, upon Alex Snyder, Barley Snyder, P.O. Box 15012, York, PA 17405-7012, counsel for the Stewartstown Railroad and upon Keith G. O'Brien, Baker and Miller, Ste 300, 2401 Pennsylvania Ave, Washington, DC 20037, counsel for the estate of George Hart.



James Riffin