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**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

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**STB Docket No. AB-1071**

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**STEWARTSTOWN RAILROAD COMPANY  
– ADVERSE ABANDONMENT –  
IN YORK COUNTY, PA**

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**REPLY IN OPPOSITION TO JAMES RIFFIN'S  
MOTION TO HOLD IN ABEYANCE AND OTHER BOARD ACTION**

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**October 26, 2012**

**Attorneys for the Estate of  
George M. Hart**

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SURFACE TRANSPORTATION BOARD  
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The Estate of George M. Hart (the “Estate”) hereby responds to James Riffin’s (“Riffin”) curiously-titled “Motion to Hold this Proceeding in Abeyance – Additional Evidence the Line Is Still Needed and Motion for a Position Statement” (the “Riffin Motion”) filed on October 10, 2012. For the reasons set forth herein, the Riffin Motion should be denied in its entirety. There is absolutely no need to delay agency action on the pending application to abandon the rail line (the “SRC Line”) owned by the Stewartstown Railroad Company (“SRC”). The Estate is aware of agency precedent discussing the applicability of an offer of financial assistance (“OFA”) in an adverse abandonment context, including Denver and Rio Grande Railway Historical Foundation – Adverse Abandonment – In Mineral County, CO,<sup>1</sup> and other, more recent cases. The Estate respectfully submits that at this time the Board needs only to rule upon the merits of the Estate’s adverse abandonment application, and to do so promptly in the interests of all concerned.

Preliminarily, the Estate questions the Board’s acceptance of the Riffin Motion. It was submitted well out-of-time, disrupts an already too-prolonged regulatory process, and, among other

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<sup>1</sup> STB Docket No. AB-1014 (STB served Oct. 18, 2007).

things, attempts (without requesting leave to do so) to revisit the merits of the Estate's application. As such, the Riffin Motion should be rejected as procedurally defective.<sup>2</sup>

The Board has demonstrated an unfortunate tendency to accommodate procedural abuse as typified by the Riffin Motion. Because the agency may uphold acceptance of the Riffin Motion despite its obvious procedural deficiencies, the Estate has little choice but to commit additional time and resources to respond. Accordingly, the Estate responds as follows:

- At the time it filed the subject adverse abandonment application, the Estate envisioned the possibility that a legitimate offeror might come forward in a timely fashion to purchase the SRC Line at fair market value. For this reason, the Estate stated a preference for allowing OFAs in accordance with 49 U.S.C. § 10904 and the corresponding procedures at 49 C.F.R. § 1152.27. No one tendered an OFA within the statutory deadline, and no one has requested or obtained relief from the OFA deadline.
- Assuming an interested party *ever could have* filed an OFA, the time for pursuing such a forced line sale process has passed. Riffin very belatedly expressed an interest in filing an OFA, but he has not filed one. Riffin's OFA – were he to file one – would be untimely for the reasons the Estate and SRC explained in their January 20, 2012 joint filing. Neither the Estate nor SRC are willing to negotiate with Riffin regarding his proposed acquisition of the SRC Line. Neither regards him as trustworthy, financially responsible, fit to serve as a legitimate common carrier, or willing to offer fair value for the SRC Line.
- An OFA to acquire the SRC Line or any portion of it is no longer timely under the applicable statute, so whether or not the OFA provisions should extend to this or any other adverse abandonment, as Riffin has proposed, is a moot question.
- The Estate would prefer allowing *timely* OFAs to go forward on a case-by-case basis in adverse abandonment proceedings, but the Estate would not object to a determination that the OFA process is unavailable or inapplicable in all adverse abandonment proceedings.<sup>3</sup>
- While it would prefer to see the SRC Line preserved, the Estate has learned that to secure the full value of the SRC Line its track assets will have to be salvaged and its assembled

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<sup>2</sup> The Board should reject the Riffin Motion on its own initiative. The Estate is not moving to strike the filing, and this reply should not be construed as a motion to strike.

<sup>3</sup> The Estate's application demonstrates that the public convenience and necessity ("PC&N") warrant abandonment of the SRC Line for a very specific purpose – to permit the Estate to take appropriate steps under state law to collect the debt SRC owes it. The Estate acknowledges that an argument can be made that an OFA would be fundamentally inconsistent with the requested PC&N finding, but, for reasons discussed below, the trails use issue that Riffin has tried to link to the OFA question is driven by very different considerations.

right-of-way corridor sold or otherwise disposed of as appropriate. The Estate has determined over the pendency of this proceeding that the SRC Line has minimal value as a going concern compared to the SRC Line's net liquidation value. In light of the York County Rail Trail Authority's ("YCRTA") strong interest in the SRC Line right-of-way for historic and recreational purposes, and in view of the continued absence of any need of the Line for rail common carrier purposes,<sup>4</sup> the Estate believes that the most advantageous disposition of the SRC Line would be as follows:

1. The Board permits the Estate to pursue foreclosure upon the SRC Line's track, track material, and any other SRC-owned real or personal property under applicable state law processes to satisfy SRC's debt;<sup>5</sup>
  2. SRC retains possession of the SCR Line right-of-way, and, under Board oversight, negotiates interim trails use with YCRTA; and
  3. If the Estate's debt obligations are not fully satisfied by foreclosure upon the SRC Line's track, track material, and other SRC-owned real or personal property, the Estate may attach such proceeds from the aforementioned trails use arrangement to satisfy any outstanding debt still remaining.
- The Estate has one goal – to recoup the debt owed to it.<sup>6</sup> The SRC Line's net liquidation value derives primarily from salvageable track material<sup>7</sup> and from its value to YCRTA as a

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<sup>4</sup> Riffin, simply to weasel his way into becoming a railroad by acquiring some or all of the SRC Line at below fair market value, contends that SRC's alleged advertisement of car storage service shows that the SRC Line is needed for common carrier purposes. Riffin is wrong. Car storage is not common carrier transportation. For example, the Board has permitted rail line abandonments under the two-year-out-of-service class exemption where the rail line was used in the past two years for car storage. See, e.g., Alabama & Florida Railway Co., Inc. – Abandonment Exemption – in Geneva, Coffee and Covington Counties, Ala., STB Docket No. AB-1073X (STB served Aug. 9, 2011); cf. The City of Chicago – Adverse Abandonment – Chicago Terminal Railroad in Chicago, Ill., STB Docket No. AB-1036 (STB served Jun. 16, 2010) (adverse abandonment granted over the incumbent carrier's objection that the line could be used for car storage; a claim that the Board found was undercut by evidence that the line in question was not needed for car storage). The car storage angle is all the more baseless here because, to the best of the Estate's knowledge, the SRC Line lacks an operational outlet to the balance of the interstate rail network. See Estate Application at 24-26.

<sup>5</sup> The net salvage value of the SRC Line's track and track material, along with related SRC-owned personal property may be sufficient to satisfy SRC's debt obligations.

<sup>6</sup> See Estate Application (filed on July 7, 2011) at 27-28.

<sup>7</sup> The SRC Line's right-of-way consists of easement. SRC appears to hold fee title to little real property. SRC vigorously disputes the Estate's assessment of SRC's land holdings, but SRC hasn't supplied (and probably cannot supply) a reliable expert opinion to bolster its claim. The scope of SRC's land holdings bears upon the ratio between the debt owed the Estate and the SRC Line's net liquidation value.

rail trail. Accordingly, it appears that abandonment will result in the salvage of all or substantial portions of the SRC Line.

- According to the record, SRC has offered the SRC Line for sale to would-be rail operators for some time. The Estate's efforts to foreclose upon the SRC assets by way of an adverse abandonment are a matter of public record, and have been for some time. This abandonment proceeding has been pending at the Board for over a year now, but no one has contacted the Estate to discuss the possible terms for the sale of the SRC Line for continued rail service, and the Estate knows of no progress by SRC toward the sale of the railroad as a going concern.<sup>8</sup> The absence of buyers willing to acquire SRC's assets for continued rail purposes indicates that the SRC Line will need to be salvaged to satisfy SRC's debt obligations.
- Riffin recklessly suggests that the Board deny the Estate's abandonment application so that the matter may be foisted upon a bankruptcy court. Such a step would add a costly administrative layer onto the Estate's collection efforts to the benefit of no one. SRC, for example, would be assigned a trustee compensated out of the limited assets of an inactive railroad. Riffin, no stranger to personal bankruptcy to be sure, appears to lack experience with railroad bankruptcies, and he may not know (or care) that, as a matter of law, the Board would still have to render an opinion on abandonment if a bankruptcy court were to entertain a trustee's recommendation for liquidation. In light of the inexplicably-prolonged pendency of this matter at the Board, a decision in which the agency merely "punts" on the merits as Riffin recommends would add insult to the Estate's injury.
- Riffin fails to explain why the Board should hold the proceeding in abeyance to discuss OFA issues if he believes that the better course is denial of the Estate's application.
- Consistent with Board precedent (including precedent quoted in the Riffin Motion), the application of the trails use provisions in an adverse abandonment proceeding can and should be addressed on a case-by-case basis. Although a decision on the issue either way will not affect the Estate's pursuit of the subject adverse abandonment, the Board should consider the following: (1) none of the interested parties – the Estate, SRC, and a willing trail user – favors a prohibition against interim trails use; (2) rejection of interim trails use not only deprives the local community of a recreational corridor, but it also deprives SRC of the value of its right-of-way as a recreational corridor (thus constituting an unlawful taking of SRC's property without compensation); and (3) a PC&N determination that the SRC Line is not needed now and therefore may be abandoned should not foreclose the possibility of the future restoration of rail service via corridor preservation where that is not inconsistent with the Estate's objectives in seeking abandonment authority.
- The Board's interim trails use provisions can and should apply here. YCTRA is an established, ready and willing trail user with which SRC is willing to negotiate. If the Board

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<sup>8</sup> Admittedly, Riffin has tried to weasel his way into the purchase of some or all of the SRC Line. For several reasons, including the fact that Riffin demonstrates neither the willingness nor the ability to negotiate for the sale of the SRC Line at amounts approaching the line's fair market value, the Estate and SRC agree that negotiating with Riffin would be counterproductive and ultimately contrary to the public interest.

permitted it to happen, the Estate could, for example, foreclose upon the SRC Line's track assets and related personal property to satisfy SRC's debt obligations to the Estate, and SRC would be free to negotiate YCRTA's acquisition of the SRC Line corridor for recreational purposes, and preservation of the corridor for possible future restoration of rail service. Such arrangements are common in conventional abandonment proceedings, and the Estate sees no reason why such an arrangement should not be available here merely because the Estate has been forced to use the adverse abandonment process to achieve a result that would have been achievable were SRC to have sought to abandon the SRC Line voluntarily.

It is in everyone's best interests for the Board to conclude this proceeding promptly. Under the Board's rules, the record in this proceeding officially closed over a year ago, yet the parties still await a Board decision. Because of the Board's inexplicable delay, the Estate is beset with substantive third party filings from Riffin that the Board should not permit to be filed in the first place. Sadly, The Riffin Motion, which is nothing more than the product of idle hands, could (if it remains in the record) prolong a proceeding for which a decision on the merits is overdue. In any event, for the reasons discussed above, the Riffin Motion should be denied in all of its aspects, unless the Board acts first on its own motion to reject it.

Respectfully submitted,



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Dated: October 26, 2012

Attorneys for the Estate of George M. Hart

## CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing reply to be served upon all parties of record by first class mail (postage prepaid) or by more expeditious means of delivery.

  
Robert A. Wimbish

Dated: October 26, 2012