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228110

Keith G O'Brien

November 2, 2010

BY HAND DELIVERY

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 – York County, PA, STB Docket No. AB-1071*

EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Brown:

Enclosed please find an original and eleven copies of a Petition for Exemption and Request for Waivers (“Petition”) filed on behalf of the estate of George M. Hart, which intends, upon the issuance of the exemptions and waivers requested herein, to file a formal application for the abandonment of a railroad line that is owned by Stewartstown Railroad Company, and is located in York County, PA. In view of urgent financial issues that are involved, Petitioner requests expedited consideration of this Petition. Please date stamp the extra copy and return it with our courier.

Finally, pursuant to 49 CFR 1002.2(f)(24), I have enclosed a filing fee check in the amount of \$1,800.00. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7852 or by e-mail: kobrien@bakerandmiller.com.

Respectfully submitted,

Keith G. O'Brien

Enclosures

cc: David M. Williamson, President of Stewartstown Railroad Company
Alex E. Snyder, Esq.
John W. Willever

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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**SURFACE
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STB Docket No. AB-1071

STEWARTSTOWN RAILROAD COMPANY
- ADVERSE ABANDONMENT -
YORK COUNTY, PA



PETITION FOR EXEMPTIONS AND REQUEST FOR WAIVERS

EXPEDITED CONSIDERATION REQUESTED

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November 2, 2010

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. AB-1071

STEWARTSTOWN RAILROAD COMPANY
- ADVERSE ABANDONMENT -
YORK COUNTY, PA

PETITION FOR WAIVER AND EXEMPTION

EXPEDITED CONSIDERATION REQUESTED



The Estate of George M. Hart (referred to hereinafter as “Petitioner”), by and through the undersigned counsel, petitions the Surface Transportation Board for an exemption from certain provisions of Subtitle IV of Title 49 of the U.S. Code, and for waiver of certain of the Board’s abandonment regulations at 49 CFR Parts 1152 and 1105. As discussed the sections below, Petitioner seeks exemptions from 49 U.S.C. 10903(a)(3)(B), 10903(a)(3)(D), 10903(c), 10904 (in part); and waivers from 49 CFR 1152.20(a)(2)(i), 1152.20(a)(2)(xii), 1152.20(a)(3), 1152.21 (in part), 1152.22(a)(5) (and 1152.10-14), 1152.22(b)-(d), 1152.22(i) (in part), 1152.24(e)(1), 1152.27 (in part), and 1152.29(e)(2).

BACKGROUND

Over a period of years, Mr. George M. Hart provided substantial sums of money to the Stewartstown Railroad Company (“Stewartstown”) intended to sustain Stewartstown’s railroad functions. The sums Mr. Hart supplied to Stewartstown totaled \$352,415, and they have been acknowledged by both Mr. Hart and Stewartstown as

loans. Those loans are secured by the assets of the railroad as documented by a duly recorded indenture of mortgage and a judgment note. The subject mortgage provides that Stewartstown must pay the entire debt amount immediately upon the demand of the mortgagee (Hart, and now his estate). Stewartstown has not contested the enforceability of the subject loans, and, for reasons that may explained in the formal adverse abandonment, Petitioner believes that they could not be contested successfully.

Mr. Hart passed away on April 17, 2008, and his will instructs the executor of his estate to seek repayment of the amounts loaned to Stewartstown in accordance with the mortgage and judgment note.¹ Petitioner has demanded prompt repayment in full of the debt as directed in Mr. Hart's will. Stewartstown has responded that it is unable to fulfill its debt obligations, because the railroad last provided freight service in 1992, suspended excursion operations in the spring of 2004, has no operating revenues from which to make repayment, and has no cash reserves sufficient to repay the loans. Petitioner understands that the only resources at Stewartstown's disposal to repay its debts are Stewartstown's idle rail line assets, motive power, and rolling stock.

Stewartstown's owns a 7.4-mile rail line (the "Line") extending between milepost 0.0 at New Freedom, PA, and milepost 7.4 at Stewartstown, PA. Petitioner understands that the Line is in dilapidated condition, cannot safely handle train operations in its current state, and continues to deteriorate due to a lack of funds for rail line maintenance. Petitioner also understands that Stewartstown has two locomotives and certain railroad rolling stock, all of which are in poor condition. Based on an August 2009 estimate prepared by TranSystems that has been supplied to Petitioner, the Stewartstown's

¹ Mr. Hart's will was admitted to probate by the Register of Wills of Carbon County, PA, and Mr. John W. Wiilever was appointed as administrator of the estate.

locomotives and rolling stock had an aggregate value of \$40,120, far less than the amount owed to Petitioner. The same TranSystems estimate report also states that the Line (including all appurtenant tracks) has a salvage value of \$487,117. Finally, based upon valuation estimates prepared in 2007 and 2008, Petitioner has learned that Stewartstown possesses interests in the right-of-way and land parcels adjacent to the right-of-way with an aggregate estimated 2007-8 value of between \$675,000 and \$856,000. Petitioner has proposed that Stewartstown voluntarily to pursue the liquidation of portions of its property (including the liquidation of its locomotives and rolling stock) sufficient to satisfy its debt obligations to Petitioner, but Stewartstown has to date refused to take any such remedial action.²

Abandonment of the Stewartstown Line is not only financially justified, but the line also has virtually no realistic prospect in the near term of becoming an outlet for rail-borne interstate commerce. The stub-ended Line connects at milepost 0.0 with the Northern Central Railway (“NCR”) at New Freedom. The NCR property is owned by York County, PA, and it, too, has been out of service for several years. For this reason, even assuming that Stewartstown’s Line was in a condition to handle revenue freight traffic or any traffic – and it is certainly in no such condition – the railroad lacks a viable connection to the balance of the interstate rail network. There is no practical possibility

² Petitioner has contemplated foreclosing upon the ancillary property and railroad equipment owned by Stewartstown, rather than foreclosing upon the Stewartstown-owned Line itself – a step that would not necessarily require a formal abandonment to accomplish – and it has proposed such a step with Stewartstown, which has rejected the idea. Petitioner recognizes that a state court, which Petitioner would expect to oversee foreclosure upon such assets, might hesitate to permit Petitioner to seize Stewartstown’s ancillary property or equipment, due to concerns that the targeted property might be deemed as “facilities” under 49 U.S.C. 10501, and that efforts at the state court level intended to secure the targeted assets could be deemed to be federally preempted.

that the Line could be reactivated, and the track that remains in place serves no useful purpose. Petitioner believes that, under the circumstances, Stewartstown is shirking its financial responsibilities to an acknowledged creditor by declining to do the financially responsible thing by liquidating unused and unneeded rail assets.

Petitioner has an obligation to wrap up the Hart estate as expeditiously as possible, and it has neither the aim nor the incentive to prolong his oversight of the estate any longer than is reasonably necessary. Stewartstown's inaction, however, has needlessly prolonged Petitioner's oversight over the estate and will require the estate to incur additional costs. Having found no other alternative to secure repayment of its loan, and because Stewartstown has refused to take appropriate action voluntarily, Petitioner has no choice but to file an application for adverse abandonment of the Stewartstown's Line in order that Petitioner can, subject to any appropriate processes under Pennsylvania law, foreclose upon that amount of Stewartstown's rail assets and liquidate them as necessary to satisfy Stewartstown's debt obligations.

ARGUMENT

The Board and its predecessor, the Interstate Commerce Commission ("ICC"), consistently have found that much of the information required by statute and by the agency's abandonment application regulations is inapplicable or irrelevant in an adverse abandonment proceeding. See, e.g., CSX Corporation and CSX Transportation, Inc. – Adverse Abandonment – Canadian National Railway Company and Grand Trunk Western Railroad Inc., STB Docket No. AB-31 (Sub-No. 38) (STB served Mar. 2, 2001); City of Rochelle, Illinois – Adverse Discontinuance – Rochelle Railroad Company, STB Docket No. AB-549 (STB served Jun. 5, 1998); and Chelsea Property Owners –

Abandonment – Portion of Consolidated Rail Corporation West 30th Street Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 1094) (ICC served Jul. 19, 1989).

In fact, the exemptions and waivers that Petitioner is requesting here have been requested and granted in other, recent adverse abandonment proceedings. See Denver & Rio Grande Railway Historical Foundation – Adverse Abandonment –In Mineral County, CO, STB Docket No. AB-1014 (STB served Oct. 18, 2007) (“Mineral County”); 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”). Consistent with the foregoing precedents, Petitioner seeks exemptions from certain otherwise applicable statutory provisions, and a waiver of certain regulations governing the development of a formal abandonment application. These exemptions and waivers are discussed in greater detail below.

I. Exemptions

As the Board previously has stated:

In a third party abandonment proceeding, the Board withdraws its primary jurisdiction to permit state, local or other federal law to apply where there is no overriding federal interest in interstate commerce. See Kansas City Pub. Ser. Frgt. Operations – Exempt – Aban., 7 I.C.C.2d 216, 225 (1990); Modern Handcraft, Inc. – Abandonment, 363 I.C.C. 969, 972 (1981). Absent an exemption, section 10904 could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate. If the Board ultimately finds that the public convenience and necessity require or permit withdrawal of its regulatory authority in this adverse abandonment proceeding, it would be fundamentally inconsistent to provide for further Board regulation under section 10904, and thereby negate the Board’s 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) (St. Clair).

St. Joseph County, slip op. at 6.

Adherence to the provisions from which Petitioner seeks relief will serve no useful purpose in view of the findings Petitioner will request, and such adherence is not necessary to carry out the railroad transportation policy (“RTP”) of 49 U.S.C. 10101. Accordingly, the Board should exercise its authority under 49 U.S.C. 10502(a) to grant the exemptions requested herein.

Posting of notice (49 U.S.C. 10903(a)(3)(B)):

Petitioner understands that it is unnecessary to seek an exemption from section 10903(a)(3)(B), because that provision applies only to carriers, and Petitioner is not a carrier. See, Napa Valley Wine Train, Inc – Adverse Abandonment – In Napa Valley, CA, STB Docket No. AB-582 (STB served Mar. 30, 2001) (“Napa Valley”) slip op. at 3, n.6 (“exemption requests [with respect to the underlying statutory provisions of 49 U.S.C. 10903(c) and the notice provisions in 49 U.S.C. 10903(a)(3)] are unnecessary because the statute imposes these requirements only on carriers”). If, however, the subject provision is applicable in this case, Petitioner requests an exemption. Petitioner believes that the subject posting requirement would be impracticable, because Petitioner would need permission to enter on to Stewartstown property to accomplish such posting, which permission, under the circumstances, Petitioner would not likely receive.

Service on shippers (49 U.S.C. 10903(a)(3)(D)):

The subject statutory provision requires that “to the extent practicable,” all shippers making use of the Line during the past 12 months preceding the filing of the application shall be served with a copy of the advance notice of the proposed abandonment. Technically, Petitioner can comply with this regulatory provision and the corresponding regulation at 49 CFR 1152.20(a)(2) by stating (correctly) that there are no

such shippers to serve, because the Line has been without common carrier service of any sort for several years. However, requiring Petitioner to undertake such an unnecessary exercise here – where the Line has long been out of service – is pointless, would elevate form over substance, and imposes undue regulatory requirements contrary to the RTP.

System diagram map (49 U.S.C. 10903(c)):

To the extent that the provisions at section 10903(c) require the carrier that is the subject of a formal abandonment application to file a system diagram map (“SDM”), Petitioner requests an exemption from the requirement. Petitioner has learned that the Board has no record of a Stewartstown SDM, and, because Petitioner believes that Stewartstown could not be compelled to file an SDM facilitating the subject abandonment, Petitioner respectfully requests waiver of the SDM filing requirement as consistent with the RTP.

Offers of financial assistance (49 U.S.C. 10904):

Petitioner has observed that, in other adverse abandonment cases, the party seeking the adverse abandonment has asked for exemptions from – (1) the offer of financial assistance (“OFA”) provisions at 49 U.S.C. 10904 (and/or waiver of the associated regulations at 49 CFR 1152.27); and (2) the public use condition provisions at 49 U.S.C. 10905 (and/or waiver of the associated regulations at 49 CFR 1152.28); and from the trails use/rail banking provisions (and/or waiver of the associated regulations at 49 CFR 1152.29). Here, however, Petitioner does not believe that an appropriate third party’s invocation of the OFA *to purchase the Line* or a public use conditions would be inconsistent with Petitioner’s ultimate objective, which is to recoup the loan amounts due to it. In fact, bona fide transactions facilitated under either the OFA or the public use

condition processes should result in Stewartstown obtaining funds that could be paid to Petitioner, or that Petitioner could attach. Accordingly, as long as the OFA or public uses processes are not employed in a manner that would defraud Petitioner, then Petitioner does not object to the application of either process here.

Petitioner emphasizes that it would not necessarily object to an OFA to *purchase* the Line, but it would strongly object to any offer to “subsidize operations” over the Line. Such a subsidy offer would be contrary to the purpose of the proposed adverse abandonment, and, in fact, would be nonsensical in light of the fact that no freight operations have occurred on the Line in 18 years. For these reasons, Petitioner requests that this proceeding be exempted from the 1-year subsidy provisions of section 10904.

Trails use/rail banking

Petitioner believes that it would be appropriate here for the Board conditionally to exempt this proceeding from the Trail Use Act provisions, and, for that matter, to waive the application of the corresponding regulations at 49 CFR 1152.29. However, Petitioner is aware that the Board has opted to address trails use issues in adverse abandonments on a case-by-case basis. Although Petitioner would prefer a conditional exemption under which Petitioner could evaluate a trails use proposal and consent or object to it, Petitioner would ask that, at a minimum, the Board reiterate its commitment to review trails use in adverse abandonment cases on a case-by-case basis.

II. Waivers

The Board has broad discretion upon appropriate showing to grant waivers from its regulations. In fact, such waivers as are requested here are customarily granted adverse abandonment proceedings. The waivers requested herein, many of which are

counterparts to exemptions requested above, are justified and have been granted in other adverse abandonment cases.

Service of notice on users of the line (49 CFR 1152.20(a)(2)(i)):

For the same reasons set forth in its request for an exemption from 49 U.S.C. 10903(a)(3)(D), Petitioner requests a waiver of section 1152.20(a)(2)(i), requiring service of notice of the proposed abandonment on significant users of the Line. The Line has been out of service for over six years, and there has been no rail service during that time. In any event, Petitioner has no knowledge of, or information about, any users of the Line dating back to the time before the Line was taken out of service.

Service on labor organizations (49 CFR 1152.20(a)(2)(xii)):

Petitioner requests a waiver of section 1152.20(a)(2)(xii), requiring service of the notice on the headquarters of all duly certified labor organizations representing employees on the Line. No rail service has been performed over the Line for over six years, and there are no known employees who would be affected by the abandonment. Further, “employee protective conditions are not imposed in cases involving complete abandonments.” Modern Handicraft, Inc. – Abandonment in Jackson County, MO, 363 I.C.C. 969, 973 (1981); see also Northhampton and Bath R. Co. – Abandonment, 354 I.C.C. 784, 785-787 (1978); Wellsville, Addison & Galetton R. Corp. – Abandonment, 354 I.C.C. 744, 745-746 (1978).

Posting of notice (49 CFR 1152.20(a)(3)):

For the reasons set forth for an exemption from the corresponding provisions of 49 U.S.C. 10903(a)(3)(B), Petitioner requests a waiver from 49 CFR 1152.20(a)(3), which requires that advance notice of the proposed abandonment be posted at each of the

railroad's stations. Upon information and belief, Stewartstown does not have any agency stations or terminals through which business for the involved line could be received or forwarded, and, in any event, Petitioner does not expect to be granted access to Stewartstown property for purposes of any such posting.

Notice of Intent (49 CFR 1152.21):

Section 1152.21 prescribes language to be used in preparing a notice of proposed abandonment under the Board's formal application provisions. Petitioner will file and publish a notice of the proposed adverse abandonment. But, in view of the exemption and waiver requests herein, Petitioner believes the precise wording of the notice, as prescribed in section 1152.21, would be inappropriate. Petitioner therefore proposes instead to be allowed to use a modified form of notice as set forth in Attachment A. Such modified notice is consistent with the Board's decision in Mineral County.³

System diagram map (49 C.F.R. 1152.22(a)(5) and 1152.24(e)(1)):

Petitioner asks for the waiver from sections 1152.22(a)(5) and 1152.24(e)(1), requiring submission the carrier's SDM.⁴ A waiver is consistent with the Board's finding

³ Among other things, the attached draft Notice of Intent excludes reference to feeder line applications under 49 U.S.C. 10907. The draft Notice of Intent omits such a reference, as was the case in the Mineral County proceeding, because Petitioner understands the discussion to be linked to the Line's designation in an SDM. Here, because Stewartstown has not ever filed an SDM, and because Petitioner will seek an exemption and waiver of the otherwise applicable SDM provisions, Petitioner believes that the feeder line application would be unnecessary and/or moot.

⁴ Petitioner also seeks a waiver of all requirements set forth at 49 CFR 1152.10-14. Those provisions relate to filing, amending, and providing notice to the public through a carrier's SDM, and they establish a two-month waiting period between amendment of the SDM and the filing the corresponding abandonment application. Waiver of these regulations is appropriate because Petitioner does not own the affected line and cannot file or amend an SDM for Stewartstown. Again, as the Board has recognized, "exemption requests [with respect to the underlying statutory provisions of 49 U.S.C

in Napa Valley, supra, that compliance with the SDM requirements “is not feasible by a third party applicant.” Other adverse abandonment cases in which waivers and exemptions from SDM requirements have been granted include the following: Grand Trunk Western Railroad Incorporated – Adverse Discontinuance of Trackage Rights Application – A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH, STB Docket No. AB-31 (Sub-No. 30) (STB served Feb. 12, 1998) (“Hamilton County”) (the filing of a SDM is not appropriate in the context of an adverse abandonment); The Western Stock Show Association – Abandonment Exemption – In Denver, CO, Docket No. AB-452 (Sub-No. 1X) (STB served Oct. 19, 1995).

Line condition, description of service, and revenue and cost data (49 CFR 1152.22(b)-(d)):

Petitioner asks for the waiver of sections 1152.22(b)-(d), because – (1) Petitioner does not have direct knowledge of the exact present condition of the affected railroad lines; (2) Petitioner has no information on the estimated costs of deferred maintenance and/or rehabilitation that would be required to restore the Line to usefulness; and (3) there have been no rail operations over the Line for over six years, and, in any event, Petitioner would not have access to information concerning long-since-suspended operations. The same is true concerning revenue and cost data associated with the inactive Line. The Board has recently recognized that information required by section 1152.22(b)-(d) is “generally not available to an adverse abandonment applicant,” and it has granted the subject waivers. St. Joseph County at 5.

10903(c) and the notice provisions in 49 U.S.C. 10903(a)(3)] are unnecessary because the statute imposes these requirements only on carriers.” Napa Valley.

Draft Federal Register notice (49 CFR 1152.22(i)):

Petitioner will submit a draft Federal Register notice with its application, but, in view of the exemption and waiver requests herein, Petitioner believes that strict adherence to the wording of the notice as prescribed in section 1152.22(i) would be inappropriate. Petitioner therefore requests a partial waiver of section 1152.22(i), and proposes to be allowed to use the form of notice as set forth in Attachment B.

Offer of financial assistance – subsidy provisions (49 CFR 1152.27):

For the reasons set forth in the preceding exemption section, Petitioner objects to any effort to thwart the underlying purpose of the proposed adverse abandonment by way of an offer to “subsidize operations” on the Line for a period of one year. Petitioner observes that, in other adverse abandonment proceedings, the Board has granted a complete exemption from the OFA provisions at 49 U.S.C. 10904, and, consistent with such an exemption, a waiver from the corresponding regulations at 49 CFR 1152.27. Here, petitioner is willing to allow for the use of the OFA provisions to permit for the purchase of the Line, but not for purposes of a “subsidy” (whatever that would mean in the case of a railroad that has had no freight operations for nearly 20 years, and no operations of any sort for six years). Accordingly, Petitioner requests a partial waiver of section 1152.27, specifically waiving the subsidy provisions of that regulation.

Duration of abandonment authority; notice of consummation (49 CFR 1152.29(e)(2)):

Petitioner seeks waiver from the of the one-year time limit on abandonment set forth at section 1152.29(e)(2), because Petitioner is likely to have to invoke other legal process to obtain control of the subject property. Such legal processes can be

unpredictable, and could take longer than a year to be completed. Such a request for relief has previously been granted for the same reasons as here. See Mineral County at 4.

III. Contents of the Application

Should the Board grant the requested exemptions and waivers, Petitioner anticipates that the adverse abandonment application would consist of the following contents, based upon a modified presentation structure generally following the informational requirements of 49 CFR 1152.22:

General Information

- (1) Exact name of applicants
- (2) Whether applicant is a common carrier by railroad;
- (3) Relief sought;
- (4) Detailed map of the subject line;
- (6) Detailed statement of reasons for filing application;
- (7) Name, title, and address of applicants' representatives; and
- (8) List of all Postal Service ZIP Codes that the line traverses;

Rural and community impact

- (1) Identification of affected communities;
- (2) Identification of significant users of the subject rail line;
- (3) General description of alternative transportation sources; and
- (4) Statement of whether the subject rail line would be suitable for other public purposes;

Environmental impact

Additional information; and

Draft Federal Register notice

To the extent that the above-outlined adverse abandonment application departs from the standard informational requirements for a formal application, Petitioner submits that the omitted informational requirements are appropriately excluded in accordance with the exemptions and waivers sought and justified herein.

IV. Request for Expedited Consideration

Petitioner intends to file its adverse abandonment application within the next few months – as soon as possible after the issuance of a Board decision granting the requested exemptions and waivers, and as soon as the remaining regulatory provisions governing advance notice, publication, and the preparation and circulation of a consolidated environmental and historic report will allow. All concerned will benefit from prompt consideration of the abandonment application. The precise target date for filing the proposed adverse abandonment will depend in large part upon the scope of the exemptions and waivers ultimately granted, and the date upon which the Board acts on the subject exemption and waiver requests.

The Board's regulations and decisions indicate a preference that waivers be requested and obtained before an adverse application is filed. See 49 CFR 1152.24(e)(5); Hamilton County. In keeping with this agency preference, Petitioner respectfully requests expedited consideration of this exemption and waiver petition, and urges a Board decision on or before December 2, 2010.

CONCLUSION

The foregoing exemption and waiver requests are consistent with exemptions and waivers heretofore granted by the Board in other adverse abandonment proceedings. See, e.g., Mineral County; St. Joseph County; Seminole Gulf Railway, LP – Adverse

Abandonment – In Lee County, FL, STB Docket No. AB-400 (Sub-No. 4) (served Jun. 9, 2004); Napa Valley; CSX Corporation and CSX Transportation, Inc. – Adverse Abandonment – Canadian National Railway Company and Grand Trunk Western Railroad Inc., STB Docket No. AB-31 (Sub-No. 38) (served Mar. 2, 2001); Salt Lake City Railroad Company, Inc. – Adverse Abandonment – Line of Utah Transit Authority in Salt Lake City, UT, STB Docket No. AB-520 (served Aug. 24, 1999). Petitioner respectfully requests that its waiver requests likewise be granted.

Respectfully submitted,



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Attorneys for the Estate of George M. Hart

Dated: November 2, 2010

ATTACHMENT A

DRAFT NOTICE OF INTENT

STB Docket No. AB-1071

Notice of Intent to Abandon or to Discontinue Service

The Estate of George M. Hart (“Petitioner”) gives notice that on or about (January 14, 2011) it intends to file with the Surface Transportation, Washington, DC 20423, an application for adverse abandonment of all of the track of the Stewartstown Railroad Company (“Stewartstown”), extending from milepost 0.0 at New Freedom, PA, to milepost 7.4 at Stewartstown, PA, which traverses through United States Postal Service ZIP Code 17363. There are no stations on this track, which has been out of service for over six years.

The reason for the proposed abandonment is to settle a debt, owed to the Petitioner, by forcing the sale of a line that has virtually no realistic prospect in the near term of becoming an outlet for rail-borne interstate commerce. Over a period of years, Mr. George M. Hart (“Mr. Hart”) provided \$352,415 to Stewartstown intended to sustain Stewartstown’s railroad functions in the form of loans (secured by the assets of the railroad as documented by a duly recorded indenture of mortgage and a separately recorded judgment note.) Mr. Hart passed away on April 17, 2008, and his will instructs the executor of his estate to seek repayment of the amounts loaned to Stewartstown in accordance with the mortgage and judgment note. Petitioner has demanded immediate repayment of the debt as directed in Mr. Hart’s will. Stewartstown has responded that it is unable to fulfill its debt obligations, because the railroad has been inactive since the spring of 2004, has no operating revenues from which to make repayment, and has no cash reserves sufficient to repay the loan. Petitioner understands that the only resources at Stewartstown’s disposal to repay its debts are Stewartstown’s idle rail line assets, motive power, and rolling stock.

The line has virtually no realistic prospect in the near term of becoming an outlet for rail-borne interstate commerce. The stub-ended Line connects at milepost 0.0 with the Northern Central Railway (“NCR”) at New Freedom. The NCR property is owned by York County, PA, and it, too, has been out of service for several years. For this reason, even assuming that Stewartstown’s Line was in a condition to handle revenue freight traffic or any traffic – and it is certainly in no such condition – the railroad lacks a viable connection to the balance of the interstate rail network. There is no practical possibility that the Line could be reactivated, and the track that remains in place serves no useful purpose. Petitioner has encouraged Stewartstown voluntarily to pursue liquidation of assets sufficient to satisfy its debt obligations to Petitioner, but Stewartstown has to date refused to take any such remedial action. Having found no other alternative to secure repayment of its loan, and because Stewartstown has refused to take appropriate action voluntarily, Petitioner has no choice but to file an application for adverse abandonment of the Stewartstown’s Line in order that Petitioner can, subject to any appropriate processes

under Pennsylvania law, foreclose upon that amount of Stewartstown's rail assets and liquidate them as necessary to satisfy Stewartstown's debt obligations. To the best of Petitioner's knowledge and belief, the line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The Surface Transportation Board does not normally impose labor protective conditions when a rail carrier abandons its entire line. see County of Coahoma Mississippi – Abandonment Exemption – In Tallahatchie and Coahoma Counties, Ms, STB Docket No. AB-579X (served June 15, 2001).

The application will include the applicant's entire case for abandonment (case in chief). Any interested person, after the application is filed on January 14, 2011, may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests to it. These filing are due 45 days from the date of filing of the application. All interested parties should be aware that following any abandonment of rail service, and salvage of line, the line may suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of the filing of the application. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following:

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the line:
 - (ii) If protestant does not use the line, information concerning the group or public interest it represents; and
 - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.
- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].

- (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

- (i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;
- (ii) Environmental impact;
- (iii) Impact on rural and community development;
- (iv) Recommended provisions for protections of the interests of employees;
- (v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and
- (vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and §1152.29.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protest should indicate the proceeding designation STB No, AB-1071 and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423, no later than February 28, 2011. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant: Keith G. O'Brien, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Ste. 300, Washington, DC 20037, (202) 663-7852. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement ("EIS"), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other person who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

ATTACHMENT B

DRAFT FEDERAL REGISTER NOTICE

STB Docket No. AB-1071

Notice of Application for Adverse Abandonment

On January 14, 2011, the Estate of George M. Hart (“Petitioner”) filed with the Surface Transportation Board (“Board”), Washington, DC, 20423, an application permitting for the adverse abandonment of all of the track of the Stewartstown Railroad Company extending from milepost 0.0 at New Freedom, PA, to milepost 7.4 at Stewartstown, PA, a distance of 7.4 miles, in York County, Pennsylvania. There are no stations on this line; line has been out of service for over six years, which traverses through United States Postal Service ZIP Code 17363.

To the best of Petitioner’s knowledge and belief the line does not contain federally granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it. The applicant’s entire case for abandonment (case in chief) was filed with the application.

The Surface Transportation Board does not normally impose labor protective conditions when a rail carrier abandons its entire line. see County of Coahoma Mississippi – Abandonment Exemption – In Tallahatchie and Coahoma Counties, Ms. STB Docket No. AB-579X (served June 15, 2001).

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant’s entire opposition case), within 45 days after the application is filed. All interested parties should be aware that following any abandonment of rail service, and salvage of line, the line may suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§1152.28 of the Board’s rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§1152.29 of the Board’s rules) must be filed within 45 days after the application is filed. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

- (i) An offer financial assistance pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);
- (ii) (Employee-entire line);
- (iii) A request for a public use condition under 49 U.S.C. 10905; and

- (iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d)

Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB. No. AB-1071 and should be filed with the Surface Transportation Board, Washington, DC 20423, no later than February 28, 2011. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant: Keith G. O'Brien, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Ste. 300, Washington, DC 20037, (202) 663-7852. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other person who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.