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November 19, 2010

**Via Federal Express**

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



Re: Stewartstown Railroad Company – Adverse Abandonment – York County, PA,  
STB Docket No. AB – 1071

Dear Ms. Brown:

On behalf of Stewartstown Railroad Company, enclosed herewith please find the Reply in Partial Opposition to the Petition for Exemption and Request for Waivers (“Petition”) for filing with the Board in the above referenced matter.

Sincerely,



Alex E. Snyder

AES/jaf:3066437\_1  
Enclosure  
cc: Keith G. O’Brien, Esquire  
cc: James J. Gillotti, Esquire

ENTERED  
Office of Proceedings  
NOV 22 2010  
Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Docket No. AB – 1071



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STEWARTSTOWN RAILROAD COMPANY  
ADVERSE ABANDONMENT  
YORK COUNTY, PA

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**REPLY IN PARTIAL OPPOSITION TO PETITION FOR EXEMPTION AND  
REQUEST FOR WAIVERS**

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STEWARTSTOWN RAILROAD COMPANY  
P. O. Box 155  
Stewartstown, PA 17363

Replicant

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Attorney for Replicant

ENTERED  
Office of Proceedings

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Part of  
Public Record

DUE DATE : November 22, 2010

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  
YORK COUNTY, PA

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**REPLY IN PARTIAL OPPOSITION TO  
PETITION FOR WAIVER AND EXEMPTION**

Pursuant to 49 C.F.R. 1104.13 (a), the Stewartstown Railroad Company (“Stewartstown”) hereby replies in partial opposition to the “Petition for Waiver and Exemption” (“Petition”) filed by the Estate of George M. Hart (“Petitioner”).

The Stewartstown is a Class 3 short line railroad located in southern York County, Pennsylvania which has been in continuous independent corporate existence since its formation in 1884. Although the Stewartstown is not presently in operation, significant efforts have been made to restore the railroad to operating condition as a freight carrier. In particular, the Stewartstown has performed continued maintenance on its line and has actively solicited customers in the area for freight service. The Stewartstown has developed a business plan for future operations which, if followed, will result in the renewal of freight and passenger service that will generate sufficient revenue to continue operations indefinitely. Moreover, the Stewartstown has obtained private donations to repair portions of its track so as to bring the railroad back into operating condition. It is believed and therefore averred that the railroad can be brought back into service in less than one year.

Like many small businesses, the Stewartstown has faced significant economic difficulties over the past five years that have hampered its ability to operate as a freight and passenger

carrier. But the railroad's directors have no intention of abandoning the Stewartstown or ceasing operations. Nor has the Stewartstown ceased operations as a railroad. Rather, its board of directors has continued to organize maintenance of the tracks and stations, and has hired a professional fundraiser to speed the process of bringing the line back into service.

Compounding the Stewartstown's difficulties is a debt owed to the estate (the "Estate") of a former board member, George Hart, in the amount of \$352,415. During his life, Hart never indicated that it was his desire to force the liquidation of the railroad to pay the debt, or even that he would seek its collection. Indeed, he affirmatively indicated to the contrary. These discussions are reflected in the minutes of the Stewartstown directors' meeting at which the documents evidencing Hart's debt were executed. For reasons that are not apparent to the Stewartstown, Hart directed in his will that his executor should pursue collection of the outstanding debt. It is believed and therefore averred that the residuary beneficiary of Hart's estate, the Bucks County Historical Society ("BCHS"), which has annual revenues of nearly two million dollars and assets worth over ten million, is now leading the charge for the collection of the outstanding amount.

Over the past several years, the Stewartstown made repeated efforts to contact the Estate and negotiate a payment of the debt. These attempts were initially rebuffed, but the Stewartstown ultimately succeeded in scheduling a meeting with members of the BCHS. At this meeting, which occurred in early 2010, the Stewartstown presented an offer to pay off the debt to the Hart Estate over a five year period. Based on its business plan, the Stewartstown could raise funds to return the railroad to freight service, begin generating revenue, and pay off the obligation in installments. The BCHS and Estate rejected this offer, but indicated that they would refrain from further action until the end of 2010, at which time the parties would consider the success of the Stewartstown's fundraising efforts. During that period, as noted previously,

the Stewartstown raised significant funds to restore the line to operation. Yet prior to the expiration of the BCHS' own deadline, the Hart Estate now seeks to force the abandonment of the Stewartstown so that it can recoup the debt. The Estate has stated that its sole reason for such action is its need to close out the administration process.

The present Petition for Waiver and Exemption by the Estate of George Hart must be recognized for what it is. The Estate is seeking to force the abandonment of a railroad not for the public convenience and necessity, but for its own private pecuniary gain. The Estate has made minimal efforts to consult with the Stewartstown about the proceeding or to understand the extent of its efforts to bring the railroad back into operation. It has flatly ignored a viable payment plan that would allow the debt to be paid off once the railroad is back in service. Perhaps most notably, at present, the Estate requests the Board to brush aside the procedural requirements that are proscribed for an abandonment proceeding. At a minimum, the Board should proceed cautiously by requiring adherence to the procedures set forth in 49 U.S.C. § 10903 *et seq.* and 49 C.F.R. § 1152.20 *et seq.* Only by observing these procedural mandates can the Board reach a reasoned conclusion as to whether the abandonment of the Stewartstown is in the public convenience and necessity.

Additionally, it must be noted that the "Background" section of the Petition as well as the text of several of the waiver and exemption requests contain factual errors, misstatements and incorrect assumptions on the part of the Estate. Those matters will be addressed in this Reply.

While this Reply is not the place for rebuttal of that material, Stewartstown will provide proof to correct the record in due course. Stewartstown should not be viewed as in agreement with any of the allegations in the Petition as a result of refraining from premature rebuttal of the material.

## **BACKGROUND**

Stewartstown contests the following statements made in the “BACKGROUND” portion of the Petition:

1. “Stewartstown has not contested the enforceability of the subject loans...”

The correct statement should be that “Stewartstown has not yet contested the enforceability of subject loans.” Stewartstown reserves the right to do so in the appropriate civil proceedings, and Petitioner’s stated belief that they could not be contested successfully is a matter to be decided in such a proceeding. Petitioner’s stated belief in the potential outcome of a potential future civil case is irrelevant in this proceeding.

2. “Stewartstown has responded that it is unable to fulfill its debt obligations “ and” has no operating revenues from which to make payment, and has no cash reserves sufficient to repay the loans.”

Stewartstown has never made such statements to Petitioner. Stewartstown has, as previously stated, proposed a repayment plan to settle the outstanding debt to the Estate. Stewartstown does in fact have operating revenues and is making every reasonable effort to locate additional sources of funding which could be used to expedite a return to freight and passenger service and the repayment of the debt.

3. The stated mileposts are incorrect.

Stewartstown, Pennsylvania on the Line is Milepost 7.2 not 7.4.

4. “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.”

As the Board is aware, Track Safety Standards are the jurisdiction of the Federal Railroad Administration (FRA) and, in this case, the Pennsylvania Public Utilities Commission (Pa PUC) and not the Board. Due to the fact that the line is currently and temporarily out of service for train operations while repairs are underway, neither FRA nor Pa PUC have made recent

inspections of the line with regard to Track Safety Standards. Therefore, Petitioner has no reliable and reputable basis on which to make this assertion and its unsupported and unqualified opinion of track conditions is irrelevant. Furthermore, maintenance of the Line is, in fact, proceeding at this time.

5. “Petitioner also understands that Stewartstown has two locomotives and certain railroad rolling stock, all of which are in poor condition.”

Stewartstown has two locomotives presently out of service pending routine servicing and inspections as required by the applicable regulations. The condition of these locomotives and their compliance with applicable safety regulations is, again, a matter under the jurisdiction of the FRA and Pa PUC and irrelevant in this proceeding.

Stewartstown does not have any railroad rolling stock other than the two locomotives as noted above. All other railroad rolling stock currently located on Stewartstown property and right of way is owned by private parties. This includes four (4) passenger coaches and one (1) flatcar currently owned by the Estate.

6. “Based on an August 2009 estimate prepared by TranSystems that has been supplied to Petitioner, the Stewartstown’s locomotives and rolling stock had an aggregate value of \$40,120.”

Since Stewartstown has no rolling stock, TranSystems evidently mistakenly estimated and included in their report the value of rolling stock belonging to private parties that are not parties to this proceeding. Petitioner has the burden of providing the Board with correct information in this matter.

7. “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 estimate 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 an aggregate estimated 2007-8 value of between \$675,000 and \$856,000.”

Stewartstown asserts that with the volatility of scrap metal markets and the generally downward trend of real estate markets since 2007 and 2008, any such estimates prepared three to

four years ago are likely to be inaccurate. Petitioner has the burden of providing the Board with current and timely information regarding its opinion of the values of Stewartstown's assets, rights of way and real estate.

8. "Abandonment of the Stewartstown Line is not only financially justified, but the line has virtually no realistic prospect in the near term of becoming an outlet for railborne interstate commerce."

The first part of this statement clearly shows the entire proceeding brought by Petitioner to be out of the realm of jurisdiction of the Board. The Board is charged with determining whether abandonment of the line is in the public convenience and necessity and not whether it is justified for the financial gain of a private party.

The second part of this statement is based on the mere speculation of Petitioner which, to Stewartstown's knowledge, has not conducted a rail freight or heritage rail tourism marketing study of the region and is not in a position to make such a broad and unfounded statement.

9. "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. (Referring to the connecting and out of service "USRA Line 145 "or" "Northern Central Line" owned by York County, PA). There is no practical possibility that the Line could be reactivated, and the track that remains in place serves no useful purpose."

Again, Petitioner resorts to making broad and unsubstantiated statements reflecting nothing more than speculation about the current condition, practicality of repair and restoration and current and/or future usefulness of the subject rail infrastructure. Petitioner has failed to undertake the responsibility and burden of providing verifiable data and factual information to support this and other similar statements made throughout the Petition.

## ARGUMENT

### **I. Legal Standard for Abandonment**

Throughout its argument, Petitioner deliberately strays from the basic standard and burden of proof in an adverse abandonment proceeding. As the Stewartstown submits that the

standard and corresponding burden are highly relevant to the disposition of the present Petition for Exemptions and Waivers, they are set forth briefly herein.

A third party seeking an adverse discontinuance has the burden of demonstrating that the public convenience and necessity require or permit the discontinuance. *Chelsea Property Owners - Aban. - The Consol. R Corp.*, 81.C.C.2d 773 (1992) ("*Chelsea*"), *aff'd sub nom Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (D.C. Cir. 1994). The ICC and the Board have generally denied adverse abandonment and discontinuance applications whenever there was a potential for continued operations. The function of the Board's "exclusive and plenary jurisdiction over a trackage rights discontinuance is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service." STB Docket No. AB-103 (Sub-No. 14), *The Kansas City Southern Railway Company - Adverse Discontinuance Application - A Line Of Arkansas And Missouri Railroad Company* (not printed), served March 26, 1999, *slip op.* at 7. See also STB Docket No. AB-400 (Sub-No. 4), *Seminole Gulf Railway. LP. -Adverse Abandonment - In Lee County. FL* (not printed), served November 18, 2004 (adverse abandonment application denied because railroad was actively seeking new business for the line); STB Docket No. AB-33 (Sub-No. 183), *Salt Lake City Corporation-Adverse Abandonment - In Salt Lake City. UT* (not printed), served March 8, 2002 (adverse abandonment application denied even though railroad had not operated over line in more than 2 years, but expressed an intent to use the line in the future); STB Docket No. AB-600, *Yakima Interurban Lines Association-Adverse Abandonment-In Yakima County, WA* (not printed), served November 19, 2004 (adverse abandonment denied even though the line had been out of service for years and was in serious disrepair because there was a potential for future rail service). The Board has a statutory duty to preserve and promote continued rail

service where the railroad expresses a desire to continue operations and has taken reasonable steps to acquire traffic. *See* Chelsea at 779.

Furthermore, the Board has determined that, “[a]lthough we never had an adverse abandonment proceeding where potential passenger service was cited as a reason to keep the line in the national rail system, passenger service could factor into the PC & N analysis if revenue from existing or potential passenger service on a line might make more than a de minimus amount of rail freight service feasible.” *Denver & Rio Grande Railway Historical Foundation - Adverse Abandonment - In Mineral County, Co.*, STB Docket No. AB-1014 (2007) (hereinafter “*Mineral County*”).

## **II. Exemptions**

Stewartstown opposes the Estate’s requests for exemptions as follows:

### **A. Posting of Notice (49 U.S.C. § 10903(a)(3)(B))**

Petitioner suggests that it is exempt from the notice requirement of 49 U.S.C. § 10903(a)(3)(B) because the Estate is not a carrier. In response, Petitioner’s technical argument is inconsistent with the plain meaning of the statute. The notice requirement is particularly important at present to notify businesses and the community of Petitioner’s attempt to force the abandonment of the Stewartstown.

Second, Petitioner suggests that, if the notice provision is applicable, posting requirement is “impracticable.” Petitioner suggests that it would need the permission of Stewartstown to post notices on the property and that it would likely not receive such permission. In response, Petitioner puts the cart before the horse by arguing that posting should not be required because it would have to ask permission to post notices. Petitioner has in fact never approached Stewartstown to request permission to post notices of any kind, choosing instead to proceed with the immediate Petition. The Petitioner has likewise consistently rebuffed Stewartstown’s

attempts to engage in any meaningful dialogue about its future. Furthermore, at present, the notice requirement is particularly important. Petitioner, a private entity, is seeking to force the abandonment of the railroad. By posting notice on railroad property, Petitioner would at least ensure that previous local businesses that relied upon the railroad for freight service would have some means of being notified of the proceeding. Stewartstown certainly should not be charged with this notification responsibility, as it does not intend to cease operations unless forced to do so. In particular, Stewartstown has previously provided freight service to the following businesses: Mann & Parker Lumber Co., New Freedom, Pa, Columbia Forest Products, New Freedom, Bull's Supply, New Freedom, the Lumberyard ( Wolf's Supply ), Stewartstown, Pennsylvania, and Metropolitan Edison.

**B. Service on Shippers (49 U.S.C. § 10903(a)(3)(D))**

The Stewartstown does not contest this requested exemption, provided that Petitioner is required to comply with the notice requirements of 49 U.S.C. § 10903(a)(3)(B), which would serve to notify local businesses that had previously used the railroad for freight service of the proceeding.

**C. System Diagram Map (49 U.S.C. § 10903(c))**

Petitioner requests exemption from the requirement that it submit the Stewartstown's SDM. A Class 3 rail carrier is **not** required to submit a System Diagram Map of proposed abandonments. A written statement will suffice. In any event, Stewartstown has not submitted either because it has no intention of filing for abandonment and has every intention of continuing in business.

Furthermore, Petitioner relies on other cases in which the Board determined that the SDM requirement was not feasible for third party applicants. Once again, however, Petitioner seeks to lessen its burden of proving that the forced abandonment of the Stewartstown by a private party

is in the public convenience and necessity. At a minimum, Petitioner should be required to obtain additional information on the system diagram through the discovery process and submit that information to the Board. Only in this way will the Board be privy to sufficient information to determine whether the forced abandonment sought by the Estate is justified under the applicable standard.

**D. Offers of Financial Assistance (49 U.S.C. § 10904)**

The Stewartstown objects to any attempt by Petitioner to subvert the financial assistance that may be provided to the railroad by third parties in any form.

**E. Trails Use/Rail Banking**

The Stewartstown does not object to a case-by-case review of the potential for trails use/banking, consistent with its prior approach in adverse abandonment proceedings.

**III. Waivers**

Stewartstown opposes the Estate's requests for waivers as follows:

**A. Service of Notice on Users of the Line (49 CFR § 1152.20(a)(2)(i))**

Petitioner suggests that no notice is necessary because "there has been no rail service during the past six years" and Petitioner has no knowledge or information about any users of the line. Stewartstown would respond that Petitioner's statement is simply inaccurate. Although the railroad has not been used for freight service in the last six years, the line has been opened for other users.

Moreover, Petitioner's lack of knowledge of these users should not provide a means for it to avoid the notice requirement. Rather, as the party with the burden of proving that the abandonment of the railroad is in the public convenience and necessity, Petitioner should be required to report in comprehensive fashion to the Board on the use and potential use of the railroad line. The waiver of the notice requirement merely serves as an unwarranted shifting of Petitioner's burden of proof, and should therefore not be granted.

**B. Service on Labor Organizations (49 CFR § 1152.20(a)(2)(xii))**

The Stewartstown does not contest this waiver as no labor organizations are involved in its operation. It is notable, however, that the Stewartstown has several employees who are presently furloughed pending the repair of the line.

**C. Posting of Notice (49 CFR § 152.20(a)(3))**

Petitioner submits that it is entitled to a waiver of the notice posting requirement of 49 CFR § 152.20(a)(3) for the same reasons that which would be allowed to avoid the notice requirements of 49 U.S.C. § 10903(a)(3)(B). Once again, to avoid duplicity, the Stewartstown incorporates its previous responses to Petitioner's arguments.

In addition, Petitioner suggests that, on information and belief, Stewartstown does not have any agency stations or terminals to which business for the involved line could be received or forwarded and that it does not expect to be granted access to Stewartstown's property for purposes of any posting. In response, in the background section of its own pleading, Petitioner hints that it is in possession of an appraisal of the railroad property. If Petitioner reviewed this appraisal, it would know that Stewartstown does, in fact, have an open agency freight and passenger station located at its operating headquarters in Stewartstown, PA and additionally has pre-pay freight stations at Turnpike (Shrewsbury) and New Freedom, PA as listed in the Official Railway Guide and Open and Prepay Station List. Mistaken assertions by Petitioner as to Stewartstown's ability to conduct railroad business through agency stations and its failure to undertake the burden of requesting permission to enter Stewartstown's property are not sufficient grounds for the Board to grant a waiver of its regulations.

**D. Notice of Intent (49 CFR § 1152.21)**

Stewartstown submits that, for the reasons set forth herein, the exemptions and waivers requested by Petitioner should not be granted beyond those that are not contested. For this

reason, it is appropriate for Petitioner to use the prescribed language from § 1152.21 mandated for the Notice of Intent with the exception of the exemptions and waivers that are not contested.

**E. System Diagram Map (49 CFR §§ 1152.229(a)(5) and 1152.24(e)(1))**

The Stewartstown opposes waiver of the requirements of 49 CFR §§ 1152.229(a)(5) and 1152.24(e)(1) for the same reasons set forth above in relation to 49 U.S.C. § 10903(c).

**F. Line Condition, Description of Service, and Revenue and Cost Data (49 CFR § 1152.22(b) – (d))**

Petitioner requests a waiver of the requirement that it provide description of line condition, description of service and revenue and cost data of the Stewartstown. Once again, Petitioner's reasoning is that it "does not have direct knowledge of the present condition of the affected railroad lines" and does not presently have the information necessary to make the submission.

In response, Petitioner should not be permitted to shift the burden to the Stewartstown to produce the information required to defend an adverse abandonment proceeding. Petitioner, the party seeking to force the railroad's abandonment, should be required to furnish information on the condition of the Stewartstown's lines, service, revenue and costs. In particular, Petitioner goes to great lengths to argue that Stewartstown is out of operation. In this way, Petitioner asks the Board to take it at its word on this issue by granting a waiver of the requirements of 49 CFR § 1152.22(b) – (d). It is notable that Petitioner has made no attempt to obtain this information from the Stewartstown despite the Stewartstown's repeated attempts to open a meaningful dialogue.

At a minimum, as in *Mineral County*, Petitioner should be required to undertake discovery on the condition of the Stewartstown line, its costs and revenues and service history so that the Board can be furnished with information sufficient to determine whether the railroad can

be returned to operating condition and ultimately whether abandonment of the line is in the public convenience and necessity.

**G. Draft Federal Register Notice (49 CFR 1152.22(i))**

As noted previously, for the reasons set forth herein, the exemptions and waivers requested by Petitioner should not be granted beyond those that are not contested by the Stewartstown. For this reason, it is appropriate for Petitioner to use the prescribed language from § 1152.22 for the mandated Draft Federal Register Notice, with the exception of those exemptions and waivers that are not contested.

**H. Offer of Financial Assistance – Subsidy Provisions (49 CFR § 1152.27)**

The Stewartstown objects to any attempt by Petitioner to subvert the financial assistance that may be provided to the railroad by third parties in any form.

**I. Duration of Abandonment Authority; Notice of Consummation (49 CFR § 1152.29(e)(2))**

Stewartstown does not oppose Petitioner's request for a waiver from the one year time limitation on abandonment set forth in 49 CFR § 1152.29(e)(2). As Stewartstown will oppose any efforts to force it out of operation, it will likewise contest any additional legal processes undertaken by the Estate to obtain control of railroad property for its private benefit.

**J. Contents of the Application**

For the reasons set forth herein, with the exception of the exemptions and waivers that are not contested, Petitioner should be required to submit all of the items set forth in 49 C.F.R. § 1152.22, which contains the list of submissions that are mandated in an abandonment proceeding. The Stewartstown strongly contests any attempt by Petitioner to reduce its burden of providing these materials.

**K. Request for Expedited Consideration**

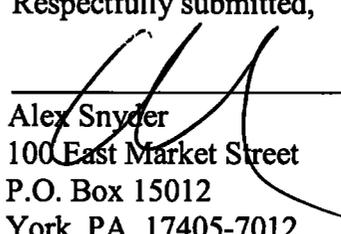
Petitioner requests expedited consideration of the abandonment application which it intends to file as early as January. Notably, Petitioner's stated justification for expedited treatment is that "all concerned will benefit from prompt consideration of the abandonment application." Petitioner's bold statement is consistent with the remainder of its Petition in which it seeks to subvert the interest of the railroad in providing service as a freight and passenger carrier to the private, pecuniary benefit of the Estate. It is difficult to see how expediting this process could be beneficial to the railroad, which is simultaneously attempting to raise funds to restore itself to operation as a freight and passenger carrier. It is likewise difficult to see how the interests of businesses and members of the community that have previously used the railroad for freight services could be benefited by speeding the process of an abandonment proceeding. Further, the numerous exemptions and waivers requested by the Petitioner would have the direct effect of limiting the information presented to the Board to determine whether abandonment is appropriate. It is therefore in the Board's interest to take adequate time to gather the necessary information to determine whether the forced abandonment of a short line railroad for the pecuniary benefit of a private entity is in the public convenience and necessity.

Finally, broadly speaking, it is questionable that an abandonment proceeding is the best alternative for the Estate to collect its debt. The Stewartstown has suggested that the debt be transferred to the residuary beneficiary of the estate, the Bucks County Historical Society, and that all parties agree to a viable repayment plan over a five year period. Even assuming that the abandonment is successful, it will come at a significant cost to the Estate in terms of the time, legal fees and the expenses.

For the reasons set forth herein, the Stewartstown Railroad Company respectfully requests that the Board deny the exemptions and waivers requested by the Estate other than those

that are not contested by the railroad, and that the Estate's request for expedited consideration be likewise denied.

Respectfully submitted,



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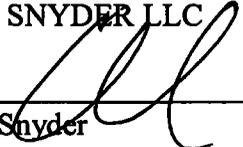
**CERTIFICATE OF SERVICE**

I hereby certify that on this date the foregoing Reply in Partial Opposition to the Petition for Exemption and Request for Waivers ("Petition") is being served by first class mail, postage prepaid at York, Pennsylvania, addressed as follows:

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