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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1071

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

Decided: June 6, 2011

This decision (1) grants a request by the Estate of George M. Hart (Estate) to waive the regulation at 49 C.F.R. § 1152.20(b) regarding the date by which the Estate may file an adverse abandonment application; and (2) grants in part a request by Stewartstown Railroad Company (SRC) for an extension of time to respond to the Estate's first discovery requests.

On May 20, 2011, the Estate filed a notice of intent to file an adverse abandonment application in which it would seek a finding that the present or future public convenience and necessity require or permit the abandonment of a 7.4-mile line of railroad in York County, Pa., owned by SRC. Concurrently, the Estate also filed a request for waiver of the requirement at 49 C.F.R. § 1152.20(b) that a notice of intent be served at least 15 days, but not more than 30 days, prior to the filing of an abandonment application and be fully published¹ within the 30-day period prior to the filing of an application. Attached as an exhibit to the petition was a copy of a motion by SRC (which at that time the Board itself had not yet received) for an extension of time to respond to discovery requests propounded by the Estate.² The Estate explains that, on May 9, 2011, it served on SRC its first set of discovery requests intended to produce evidence needed to develop the Estate's adverse abandonment application. In anticipation of timely receiving the requested information, it proceeded with publication of its notice of intent in the *Central Pennsylvania Business Journal*.³ According to the Estate, if SRC's request for extension of time were granted, absent the requested waiver, the Estate would have to file its adverse abandonment application by June 17, without having received necessary information sought in discovery. The Estate agrees to an extension of SRC's deadline for

¹ The notice of intent must be published at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located. 49 C.F.R. § 1152.20(a)(4).

² The Estate requested that SRC respond to the discovery requests by May 31, 2011. SRC's motion requests an extension to July 1, 2011.

³ See 49 C.F.R. §§ 1152.20(a)(4) and (b)(3).

responding to discovery until June 15, provided that the Estate's request for waiver is granted.

On May 25, 2011, SRC filed its request for extension of time for responding to the Estate's discovery requests. SRC argues, among other things, that an extension of the response deadline to July 1 is necessary because the discovery requests are extensive and unusual, the issues presented are novel, and the timeframe for responding is insufficient given the historical research that will need to be performed.

Under the circumstances, a partial grant of each party's request is warranted. Given that the Board's regulations allow a party to obtain responses to discovery in as little as 15 days,⁴ SRC's conclusory assertions are insufficient to justify an extension until July 1. Although the Estate has agreed to an extension until June 15, an extension to June 20 will be allowed. That should permit sufficient time for any disputes between the parties regarding the scope of discovery to be resolved cooperatively and responsive information to be produced.

In light of this extension, the Estate's request for waiver of § 1152.20(b) will also be granted. The Board ordinarily would reject a notice of intent or an abandonment application that does not substantially conform to the requirements of 49 C.F.R. pt. 1152, subpart C. However, in appropriate instances, the Board will waive inapplicable and unneeded provisions.⁵ Here, it does not appear that strict adherence to § 1152.20(b) is necessary. The Estate reports that it has served the notice of intent upon all applicable entities identified in § 1152.20(a)(2). Further, in accordance with §§ 1152.20(a)(4) and (b)(3), the notice of intent will run for 3 consecutive weeks in the Central Pennsylvania Business Journal. Therefore, it appears that all interested parties have received sufficient notice of this proceeding and would not be prejudiced by a short postponement of the application filing deadline sufficient to permit the prompt completion of pending discovery. The Estate's waiver request is therefore reasonable and will be granted to the extent needed to permit the Estate to file its application by June 30.

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

⁴ 49 C.F.R. § 1114.26(a).

⁵ See Napa Valley Wine Train, Inc.—Adverse Aban.—In Napa Valley, Cal., AB 582 (STB served Mar. 30, 2001), and cases cited therein.

It is ordered:

1. SRC shall respond to the Estate's first discovery requests no later than June 20, 2011.
2. The Estate's request for waiver of § 1152.20(b)(2) is granted to the extent necessary to permit the filing of its adverse abandonment application by June 30, 2011.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.