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SERVICE DATE – JULY 27, 2011

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1071]

Stewartstown Railroad Company—Adverse Abandonment—In York County, Pa.

On July 7, 2011, the Estate of George M. Hart (Estate), filed an application under 49 U.S.C. § 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment of an approximately 7.4-mile line of railroad (Line) in York County, Pa., extending from milepost 0.0 at New Freedom, Pa., to milepost 7.4 at Stewartstown, Pa. The Line is owned by the Stewartstown Railroad Company (SRC), and traverses United States Postal Service Zip Codes 17349, 17361, and 17363. There are 2 rail stations on the Line. The application is available on the Board's website at WWW.STB.DOT.GOV, or a copy can be secured from applicant's counsel, whose name and address appear below.

The Estate asserts that it seeks abandonment so that it may facilitate the sale of the Line through the Board's Offers of Financial Assistance (OFA) procedures, or, barring that, foreclose upon SRC's assets to satisfy SRC's debt obligations, subject to any appropriate processes of state law. To support its abandonment application, the Estate asserts that the Line is dilapidated, cannot safely handle train operations in its current state, and continues to deteriorate due to a lack of funds needed for rail line maintenance. Further, the Estate maintains that there have been no freight operations over the Line for

nearly 20 years, that there is no foreseeable need for rail service, and that there are no “significant users” of the Line as defined in 49 C.F.R. § 1152.2(l).

In a decision served in this proceeding on March 10, 2011 (March decision), the Estate was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 C.F.R. pt. 1152 that were not relevant to its adverse abandonment application or that sought information not available to it. Specifically, the Estate was granted waivers of and exemptions from the notice requirements at 49 C.F.R. § 1152.20(a)(3), 49 U.S.C. § 10903(a)(3)(B), 49 C.F.R. § 1152.20(a)(2)(i), 49 U.S.C. § 10903(a)(3)(D) (except that the Estate must mail a copy of its notice of intent to former shippers of the Line), 49 C.F.R. § 1152.20(a)(2)(xii), and 49 C.F.R. § 1152.21; waivers of and exemptions from the application requirements of 49 C.F.R. §§ 1152.10-14, 49 C.F.R. § 1152.22(a)(5), 49 U.S.C. § 10903(c), 49 C.F.R. § 1152.22(c), 49 C.F.R. § 1152.22(d), 49 C.F.R. § 1152.24(e)(1), and 49 C.F.R. § 1152.29(e)(2); partial waiver of and exemption from the offer of financial assistance (OFA) procedures at 49 C.F.R. § 1152.27 and 49 U.S.C. § 10904; and waiver of portions of the Federal Register notice language requirements at 49 C.F.R. § 1152.22(i).

According to the Estate, the Line does not contain Federally granted rights-of-way. Any documentation in the Estate’s possession will be made available promptly to those requesting it. The Estate asserts that it filed its entire case for adverse abandonment with its application.

The interests of affected railroad employees, if there are any, will be protected by the conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen

Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by August 22, 2011. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements in 49 C.F.R. § 1152.25. Any OFA under 49 C.F.R. § 1152.27 to acquire the lines for continued rail service must be filed by no later than 10 days after service of a decision granting the application.¹ In accordance with the Board's March decision, the Board will not consider OFAs to subsidize continued rail service. Because this is an adverse abandonment proceeding, public use requests are not appropriate and will not be entertained. The Estate's reply is due by September 6, 2011.

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. § 1247(d) (49 C.F.R. § 1152.29) must be filed by August 22, 2011, and should address that issue. Each trail use request must be accompanied by a \$250 filing fee. See 49 C.F.R. § 1002.2(f)(27).

¹ Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 C.F.R. § 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB 1071 and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; (2) Keith G. O'Brien (representing the Estate), Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Ste. 300, Washington, DC 20037; and (3) Alex E. Snyder (representing SRC), Barley Snyder LLC, 100 East Market Street, P.O. Box 15012, York, PA 17405-7012.

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 C.F.R. pt. 1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 C.F.R. § 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Office of Environmental Analysis (OEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact OEA by phone at the number listed below. 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.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment/discontinuance regulations at 49 C.F.R. pt. 1152. Questions concerning environmental issues may be directed to OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Board decisions and notices are available on our website at
"WWW.STB.DOT.GOV."

Decided: July 22, 2011.

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