



*Kendahl -
I think we need
to proceed as task #1.
Please review our
authorities. JF*

March 29, 2023

Dr. Mark Watson
City of Oak Ridge
200 S. Tulane
Oak Ridge, TN 37830

Dear Mark,

As a follow-up to our discussion last week, below are estimates from Fletcher & Sippel LLC, a Chicago based law firm with expertise on STB matters, on what the costs would be to pursue an abandonment application before the STB for the 1.67 miles of Heritage Rail track that will be impacted by the proposed airport. The upper ends of these estimates assume the matter will be contested. Each estimate also includes a brief description of the proposed action:

Estimates from Fletcher & Sippel LLC:

1. **Petition for Exemption: \$25,000-\$50,000 (plus a filing fee of \$7,700, yielding an overall budget of \$32,000 to \$57,000)**

In this action, we ask the Board to “exempt” Heritage Rail from having to offer certain proofs regarding the “public convenience and necessity;” most of these proofs are economic. We would also ask the Board to forego an “offer of financial assistance”—the right of a person (often a shipper or another railroad) to attempt to buy the subject track.

There may be a need for expert testimony to prove the line is not economically viable with the single shipper—particularly if it’s a contested matter. While the “development” of that testimony is included in the budget, this does not include the expert fees the consulting firm will charge for the consultation and development of economic models.

This is the natural “first step” because—we would contend—the economic proofs are overkill for a modest line segment abandonment where there is a single shipper, no real investment in facilities, and a public need for an airport.

2. **Abandonment Application: \$50,000 to \$75,000 (plus a filing fee of \$27,200, for an overall budget of \$92,200).**

This is a “by-the-book” action. It would require development of the exhaustive economic and environmental evidence (and procedures) under 49 C.F.R. Part 1152 Subpart C and D — though we could still ask to be excused from the Offer of Financial Assistance process. Again, this does not include the expert’s time.

Our counsel at Fletcher & Sippel LLC has recommended that we first pursue option #1 above and only if that option is not (or appears it will not be) successful would we then pursue option #2 above.

As we discussed, EnergySolutions is willing to support the City's plans for the proposed airport and is willing to abandon the impacted track subject to the City's renewed commitment to pay the legal costs and filing fees and other third-party expenses (including expert fees) EnergySolutions may incur in connection with seeking the consent of the STB to abandon the impacted track. We believe that these costs should be paid in their entirety by the City of Oak Ridge and that no cap should be placed on this reimbursement obligation.

Furthermore, during the abandonment process in the event that the STB takes step towards allowing an "Offer of Financial Assistance" that would open the possibility of allowing a third party to attempt to buy the impacted track (rather than approving the abandonment application), EnergySolutions expressly reserves the discretion to withdraw its abandonment application so that EnergySolutions can maintain its ownership of the track instead of being forced to sell the track to a third party.

In addition to the items above, I would like to remind you of some other issues I included in my letter to you dated April 16, 2021.

- EnergySolutions requests the City of Oak Ridge pay EnergySolutions \$30,000 in reimbursement for the internal and external costs EnergySolutions will incur to receive TDEC's consent to transfer the radioactive materials license for the abandoned track to another suitable portion of track.
- EnergySolutions requires continuous and uninterrupted road and rail access to our rail transload yard located on South Perimeter Road using South Perimeter Road from Highway 58 or the road connecting Bear Creek Road to South Perimeter Road.
- EnergySolutions and the City of Oak Ridge would need to work together with the Department of Energy (DOE) to reduce the easement granted by the DOE to exclude that portion of land underlying the abandoned track.
- The City of Oak Ridge would be responsible for the costs of removing the abandoned track after the parties obtain STB's consent and DOE has reduced its easement.

Please provide confirmation of your agreement with the items set forth in this letter by signing below. If you have any questions or would like to discuss further, please contact me at 865-220-1413.

Best Regards,



Joe Heckman
Group President, Waste Management
EnergySolutions

Acknowledged and Agreed

By: _____

Dr. Mark Watson, City Manager City of Oak Ridge

Per discussion, these ranges contemplate two distinct “actions” we could take at the STB to abandon the line segment and, on their upper ends, assume the matter will be contested.

1. Petition for Exemption: \$25,000-\$50,000 (plus a filing fee of \$7,700, yielding an overall budget of \$32,000 to \$57,000)

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There may be a need for expert testimony to prove the line is not economically viable with the single shipper—particularly if it’s a contested matter. While the “development” of that testimony is included in the budget, this does not include the expert fees the consulting firm will charge for the consultation and development of economic models.

This is the natural “first step” because--we would contend--the economic proofs are overkill for a modest line segment abandonment where there is a single shipper, no real investment in facilities, and a public need for an airport.

2. Abandonment Application: \$50,000 to \$75,000 (plus a filing fee of \$27,200, for an overall budget of \$92,200).

This is a “by-the-book” action. It would require development of the exhaustive economic and environmental evidence (and procedures) under 49 C.F.R. Part 1152 Subpart C and D (attached to give you a sense of the undertaking)—though we could still ask to be excused from the Offer of Financial Assistance process. Again, this does not include the experts’ time.

Bradon

Bradon Smith
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606

bsmith@fletcher-sippel.com
312.252.1516



*Kendall -
Would this be
good for the \$11M
direct appropriation?*