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SERVICE DATE – JANUARY 20, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1089X

MISSISSIPPI & SKUNA VALLEY RAILROAD, LLC.–ABANDONMENT EXEMPTION–IN  
YALOBUSHA AND CALHOUN COUNTIES, MISS.

Decided: January 17, 2012

Digest:<sup>1</sup> This decision allows Mississippi & Skuna Valley Railroad, LLC to end its obligation to provide rail service over a 21-mile line of railroad in Yalobusha and Calhoun Counties, Miss. MSV has consented to negotiate with local governmental entities interested in turning the rail line into a recreational trail.

By petition filed on October 18, 2011, Mississippi & Skuna Valley Railroad, LLC (MSV), a class III rail carrier, seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon its 21-mile rail line extending between milepost 21.0 at Bruce Junction, and milepost 0.0 at Bruce, in Yalobusha and Calhoun Counties, Miss. (the line), which constitutes its entire system. Notice of the filing was served and published in the Federal Register on November 7, 2011 (76 Fed. Reg. 68,830). On December 19, 2011, the Board of Supervisors of Yalobusha and Calhoun Counties, acting for themselves and on behalf of the Mississippi & Skuna Valley Rails-To-Trails Recreation District (MSV Rails-To-Trails), late-filed a request for issuance of a notice of interim trail use (NITU) to provide time to negotiate trail use/rail banking.<sup>2</sup> We will grant the exemption subject to a trail use condition.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The November 7, 2011 notice instituting the exemption proceeding provided that trail use/rail banking requests were to be filed by November 28, 2011. The MSV Rails-To-Trails request for issuance of a NITU was not filed until December 19, 2011. The late-filed submission will be accepted because it has not delayed this proceeding, and the railroad does not object. See Lassen Valley Ry.—Aban. Exemp.—In Washoe Cnty., Cal., AB 1074X (STB served Aug. 8, 2011).

## BACKGROUND

The line was completed in 1926,<sup>3</sup> and MSV acquired it from the Mississippi & Skuna Valley Railroad Company (MSVR) in November 2010.<sup>4</sup> Because the line has not carried any traffic since April 17, 2008, MSV has not incurred operating costs or generated revenue from the line. Should the Board grant abandonment, MSV states that it plans to salvage the track and materials, but leave the bridges and culverts in place for interim trail use.

MSV asserts that continuing to own the line will place a burden on it and on interstate commerce and that abandoning the line will not harm shippers or local interests. The railroad also claims that abandoning the line would save approximately \$126,000 in annual maintenance costs.<sup>5</sup> MSV further asserts that its continued ownership of the line will force it to incur \$374,217 in opportunity costs.<sup>6</sup>

According to MSV, there are no active shippers on the line. The only prior shipper mentioned in the record is Weyerhaeuser NR Company (Weyerhaeuser), the parent company of MSVR, and it has not filed a protest. Furthermore, MSV asserts that there are alternative transportation services available. The area is served by local roads and by Mississippi Route 330, which runs parallel to the line. Other highways in the area include Mississippi Routes 7, 9, and 32.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation

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<sup>3</sup> See Petition, Exh. B 9.

<sup>4</sup> See Miss. & Skuna Valley R.R. LLC—Acq. & Operation Exemp.—Miss. & Skuna Valley R.R., FD 35429 (STB served Nov. 5, 2010).

<sup>5</sup> MSV estimates that amount by using an average maintenance cost of \$6,000 per mile of line, a figure accepted in prior abandonment proceedings. In support, MSV cites Delta Southern Railroad, Inc.—Abandonment Exemption—in Desha and Chicot Counties, Ark., AB 384 (Sub-No. 3X) (STB served Mar. 25, 2011), and Consolidated Rail Corporation—Abandonment—Between Warsaw and Valparaiso, in Kosciusko, Marshall, Starke, La Porte and Porter Counties, Ind., 9 I.C.C.2d 1299, 1304 (1993).

<sup>6</sup> This number is slightly inflated. MSV has applied a nominal rate of return of 17.24%. We must, however, adjust the nominal rate of return to reflect our most recent cost of capital determination in Railroad Cost of Capital – 2010, EP 558 (Sub-No. 14) (STB served Oct. 3, 2011). Applying the properly adjusted nominal rate of return of 16.88% to the investment base yields an opportunity cost of \$366,403.

policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy. An exemption will allow MSV to avoid costs associated with maintaining the line, foster sound economic conditions, and encourage efficient management by permitting the rationalization of an unnecessary rail line, on which no traffic has moved in over 2 years, consistent with 49 U.S.C. §§ 10101(3), (5) and (9). In addition, by minimizing the administrative expense of the application process, an exemption will expedite regulatory action and reduce regulatory barriers to exit in accordance with 49 U.S.C. §§ 10101(2) and (7). Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power.<sup>7</sup> As explained earlier, there are no active shippers on the line. The only prior shipper mentioned in the record, Weyerhaeuser, has not filed in opposition to the abandonment proposal. Nevertheless, to ensure that Weyerhaeuser is informed of our action, we will require MSV to serve a copy of this decision on Weyerhaeuser so that it is received within 5 days of the service date of this decision and certify contemporaneously to the Board that it has done so.

Where, as here, the carrier is abandoning its entire system, the Board generally does not impose labor protection under 49 U.S.C. § 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See W. Ky. Ry.—Aban. Exemp.—in Webster, Union, Caldwell and Crittenden Cntys., Ky., AB 449 (Sub-No. 3X) (STB served Jan. 20, 2011); Honey Creek R.R.—Aban. Exemp.—in Henry Cnty., Ind., AB 865X (STB served Aug. 20, 2004); Wellsville, Addison & Galetton R.R.—Aban. of Entire Line in Potter & Tioga Cntys., Pa., 354 I.C.C. 744 (1978); and Northampton & Bath R.R.—Aban. near Northampton and Bath Junction, in Northampton Cnty., Pa., 354 I.C.C. 784 (1978). Because the record does not indicate that MSV has a corporate affiliate or parent that will continue similar operations or that could benefit from the proposed abandonment, we will not impose employee protective conditions here.

MSV has submitted an environmental and historic report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 C.F.R. § 1105.11. Our Office of Environmental Analysis (OEA) has examined the environmental and historic report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and issued an Environmental Assessment (EA) for public comment. The EA was served on December 16, 2011, and comments to the EA were due

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<sup>7</sup> Because we find that regulation of the proposed abandonment is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed abandonment is limited in scope.

by January 16, 2012. In the EA, OEA has not recommended the imposition of any environmental conditions on a decision granting abandonment authority.

Comments to the EA were due by January 16, 2012. No comments to the EA were received. Accordingly, based on OEA's recommendation, we conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation or energy resources.

Although OEA indicated in the EA that the right-of-way may be suitable for public use under 49 U.S.C. § 10905, no one has sought a public use condition, and therefore none will be imposed.<sup>8</sup>

As previously noted, MSV Rails-To-Trails filed a request for issuance of a NITU under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.29 for the entire line. MSV Rails-To-Trails has submitted a statement of willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required under 49 C.F.R. § 1152.29. MSV Rails-To-Trails has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the line for rail use. By letter filed December 19, 2011, MSV states that it agrees to negotiate with MSV Rails-To-Trails regarding a trail use agreement.

Because the MSV Rails-To-Trails request complies with the requirements of 49 C.F.R. § 1152.29, and MSV is willing to enter into interim trail use negotiations, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, MSV may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

It is ordered:

1. MSV Rails-To-Trails late-filed request for issuance of a NITU is accepted.
2. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment of the above-described line, subject to the condition that MSV comply with the interim trail use/rail banking procedures set forth below.
3. MSV is directed to serve a copy of this decision and notice on Weyerhaeuser NR Company so that it is received within 5 days of the service date of this decision and notice, and to certify contemporaneously to the Board that it has done so.

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<sup>8</sup> Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by November 28, 2011.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for the management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and the payment of any and all taxes that may be levied or assessed against, the right-of-way.

5. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the trail user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented and subsequently the trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by July 18, 2012, interim trail use may be implemented. If no agreement is reached by that time, MSV may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1).

8. An OFA under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by January 30, 2012, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 C.F.R. § 1002.2(f)(25).

9. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

10. Provided no OFA has been received, this exemption will be effective on February 19, 2012. Petitions to stay must be filed by February 6, 2012, and petitions to reopen must be filed by February 14, 2012.

11. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), MSV shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by MSV's filing of a notice of consummation by January 20, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.