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SERVICE DATE – JULY 6, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-868X<sup>1</sup>

MISSISSIPPI TENNESSEE HOLDINGS, LLC–ABANDONMENT EXEMPTION–  
IN UNION, PONTOTOC AND CHICKASAW COUNTIES, MS

Decided: July 5, 2006

By decision and notice of interim trail use or abandonment served on July 26, 2004, the Board granted a petition for exemption under 49 U.S.C. 10502 permitting Mississippi Tennessee Holdings, LLC (MTH) to abandon, and Mississippi Tennessee Railroad, LLC to discontinue service over, a 43.2-mile line of railroad in Union, Pontotoc and Chickasaw Counties, MS, extending from milepost 324.2 near New Albany to the end of the line at milepost 281.0 near Houston, MS. A decision served on November 18, 2004, terminated the offer of financial assistance process and permitted the abandonment authorization to become effective on the service date of the decision. However, a decision served on October 21, 2005, granted a request by MTH for an extension of 1 year in the deadline, until November 18, 2006, for filing a notice of consummation of abandonment in this proceeding, to allow continued negotiations with local government agencies for acquisition of the rail line for rail banking and interim trail use.

On June 19, 2006, the City of New Albany, MS (City) filed a request for the issuance of a notice of interim trail use (NITU) for the entire 43.2-mile rail line, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, in order to negotiate with MTH for acquisition of the right-of-way for use as a trail.<sup>2</sup> The City has submitted a statement of willingness to assume financial responsibility for the management of, for 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 for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29,

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<sup>1</sup> Prior decisions in this proceeding have also embraced Mississippi Tennessee Railroad, LLC–Discontinuance of Service Exemption–in Union, Pontotoc and Chickasaw Counties, MS, STB Docket No. AB-869X.

<sup>2</sup> The City also filed a request for imposition of a public use condition under 49 U.S.C. 10905. The Board, however, previously imposed a public use condition in this proceeding, which expired pursuant to the statute 180 days from the November 18, 2004 effective date of the abandonment exemption.

and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a response filed on June 27, 2006, MTH indicated that it has not consummated the abandonment of the line and that it is willing to negotiate with the City for interim trail use for a period of 90 days.

Because the City's request complies with the requirements of 49 CFR 1152.29 and MTH is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 90-day period prescribed below.<sup>3</sup> If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 90 days, MTH may fully abandon the line, provided the previously imposed environmental conditions are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The decision and notice served on July 26, 2004, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 90 days from the service date of this decision and notice.
2. 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 management of, for 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 for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
4. If interim trail use is implemented, and subsequently the 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.

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<sup>3</sup> Although the City requested a 180-day negotiating period, MTH has agreed only to a 90-day negotiating period. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU for more than the 90 days agreed to by MTH in this proceeding. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

5. If an agreement for interim trail use/rail banking is reached by October 4, 2006, interim trail use may be implemented. If no agreement is reached by that time, MTH may fully abandon the line, provided the previously imposed environmental conditions are met.

6. This decision and notice is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary