

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-868X¹

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

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: August 6, 2004

By decision and notice of interim trail use or abandonment served on July 26, 2004, the Board, under 49 U.S.C. 10502 exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Mississippi Tennessee Holdings, LLC (MTH) of, and discontinuance of service by Mississippi Tennessee Railroad, LLC over, a 43.2-mile line of railroad extending from milepost 324.2 near New Albany to the end of the line at milepost 281.0 near Houston, in Union, Pontotoc and Chickasaw Counties, MS, subject to trail use, public use, environmental and standard employee protective conditions. The exemption was scheduled to become effective on August 25, 2004, unless an offer of financial assistance (OFA) was filed on or before August 5, 2004.

On August 5, 2004, Hust Brothers, Inc. (HB) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the 43.2-mile line for \$1,252,232.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). HB has submitted financial information, showing that it has the financial resources to acquire and operate the line. HB is thus found to be financially responsible.

MTH's petition for exemption valued the track and materials on the line at \$2,714,688 and did not include real estate.² HB indicates that it has determined the net liquidation value (NLV) of the line to be \$1,253,232. HB contends that its valuation differs from that of MTH primarily in three areas: ties, ballast, and bridge materials. HB asserts that MTH has

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

² See Exhibit E to verified statement of Barry S. McClure.

significantly overstated the quality and quantity of ties on the line and apparently has not included costs for disposing of scrap ties and repairing road crossings in calculating take-up costs. HB also contends that MTH should not have included the value of ballast, because there is an insufficient amount of this material to be economically salvaged. Finally, HB asserts that the bridges have no value because removal costs exceed their salvage value. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), HB has explained the basis for the difference between its lower estimate for the line and MTH's estimated value for the line.

HB has stated that it intends to provide rail service over the line. Because HB is financially responsible and has offered assistance, the effective date of the exemption authorizing abandonment will be postponed.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$16,800. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

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

It is ordered:

1. The effective date of the exemption authorizing the abandonment is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If MTH and HB cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before September 7, 2004. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary