

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE AND ABANDONMENT

STB Docket No. AB-868 (Sub-No. 1X)

MISSISSIPPI TENNESSEE HOLDINGS, LLC—ABANDONMENT EXEMPTION—IN  
HARDEMAN COUNTY, TN AND TIPPAH AND UNION COUNTIES, MS

Decided: June 23, 2008

Mississippi Tennessee Holdings, LLC (MTH) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon: (1) an approximately 19.55-mile rail line extending between approximately milepost 367.65 in Middleton, Hardeman County, TN, and milepost 348.1 in Ripley, Tippah County, MS, and (2) an approximately 1.36-mile rail line between milepost 325.56 in New Albany, Union County, MS, and milepost 324.2 in Union County, MS, a total distance of 20.91 miles. Notice of the exemption was served and published in the Federal Register on September 28, 2006 (71 FR 57020-21), as corrected in a decision served on March 20, 2007.<sup>1</sup> The notice provided that, if consummation of the abandonment had not been effected by MTH's filing of a notice of consummation by September 28, 2007, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire. See 49 CFR 1152.29(e)(2). By decision served on November 16, 2007, the Board granted MTH's request to extend the deadline for consummation of the abandonment as to the 1.36-mile segment until September 28, 2008.<sup>2</sup>

On June 6, 2008, GM&O Rails-to-Trails Recreational District of North Mississippi (GM&O) and MTH jointly filed a letter in which GM&O requests the issuance of a notice of interim trail use (NITU) for the 1.36-mile line segment pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. GM&O 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 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

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<sup>1</sup> In STB Docket No. AB-869 (Sub-No. 1X), Mississippi Tennessee Railroad, LLC—Discontinuance of Service Exemption—in Hardeman County, TN and Tippah and Union Counties, MS, Mississippi Tennessee Railroad, LLC (MTRR) filed a notice of exemption under 40 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for MTRR to discontinue service over the same lines described above. Notice of the exemption was served and published and later corrected along with MTH's notice.

<sup>2</sup> On June 15, 2007, MTH and MTRR filed a notice stating that MTH had consummated abandonment and MTRR had consummated discontinuance of rail service over the 19.55-mile line originating in Tennessee.

1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service.<sup>3</sup> Also, in the letter, MTH states that it agrees to negotiate with GM&O.

Because the GM&O'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 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, MTH may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

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

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on September 28, 2006, as corrected in a decision served on March 20, 2007, exempting the abandonment of the 1.36-mile line segment described above, is modified to the extent necessary to implement interim trail use/ rail banking as set forth below to permit MTH to negotiate with GM&O for trail use of the subject line, for a period of 180 days commencing from the service date of this decision and notice until December 22, 2008.
3. 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.
4. 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.
5. 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> On June 12, 2008, GM&O and MTH filed a letter stating that, in its June 6, 2008 filing, one ending milepost was incorrectly identified as Milepost 324.3, and that the correct location of that ending milepost is Milepost 324.2. On June 16, 2008, GM&O filed a letter stating that the NITU it seeks is for 180 days from the date of the Board's decision issuing the NITU.

6. If an agreement for interim trail use/rail banking is reached by December 22, 2008, interim trail use may be implemented. If no agreement is reached by that time, MTH may fully abandon the line.

7. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary