

EMPLOYER STATUS DETERMINATION ON RECONSIDERATION
Southern Gulf Railway Company

This is the determination of the Railroad Retirement Board on reconsideration of its decision dated May 21, 2003 (B.C.D. 03-39), concerning the status of Southern Gulf Railway Company as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

In that decision, a majority of the Board held Southern Gulf to be an employer under the Acts effective February 1, 2000. As stated in that decision, Southern Gulf owns a rail line of approximately 4.28 miles which connects with a line jointly owned by Burlington Northern and Santa Fe Railway Company (BNSF) (B.A. No. 1621) and Union Pacific Railroad Company (UP) (B.A. No. 1713). Southern Gulf has no employees and serves as connector track between the Roy S. Nelson Generating Station and the connection with the BNSF and UP. Rail operations over the track began in February 2000 after the signing of a contract between Entergy Gulf States (the parent company of Southern Gulf) and BNSF for the transportation of coal to the Generating Station. Maintenance and rail operations over the track are performed by TimberRock Railroad, Inc., a covered employer under the Acts (B.A. No. 2877). In Surface Transportation Board Finance Docket No. 34184, Southern Gulf filed a notice of exemption to grant trackage rights over the line to BNSF.

In B.C.D. 03-39, the Board cited its decision regarding Railroad Ventures, Inc. (B.C.D. 00-47), where the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board then described a three-part test to be applied in making this determination, which is that an entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

A majority of the Board found that the purpose of Southern Gulf is to enable its affiliate, Entergy Gulf States, to market coal, a primary business purpose being therefore to enable that company to profit from the operation of the Southern

Gulf rail line. Accordingly, a majority of the Board found that Southern Gulf does not meet all three Railroad Ventures factors and held it to be a covered rail carrier employer.

In its request for reconsideration, Southern Gulf advised that its primary business purpose is to reduce the transportation cost of coal used by the Roy S. Nelson Generating Station and thereby reduce the electric energy cost paid by the customers of its affiliate Entergy Gulf States, Inc.

In a letter dated October 30, 2006, Cory R. Cahn, Senior Counsel for Entergy Services, Inc., clarified that Entergy Gulf States, Inc. ("EGS") is a state-regulated electric public utility operating company that under the existing rules of the state regulatory commissions that regulate EGS's electric rates and service, is required to pass through savings in its fuel transportation costs to its customers.

The Board finds that the clarification provided by attorney Cahn supports a finding that the primary purpose of Southern Gulf is not to profit from railroad activities.

Since Southern Gulf does not operate or retain the capacity to operate the rail line, and since the operator of the rail line is already covered by the Acts administered by the Board, the Board concludes that Southern Gulf meets all three of the criteria stated in Railroad Ventures.

Accordingly, the Board grants the request for reconsideration, and finds that Southern Gulf Railroad Company is not a covered employer under the Acts.

Original signed by:

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