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SERVICE DATE - JULY 27, 2000

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-567 (Sub-No. 1X)]

Rutherford Railroad Development Corporation--Abandonment Exemption--in Rutherford County, NC

[STB Docket No. AB-568 (Sub-No. 1X)]

Southeast Shortlines, Inc., d/b/a Thermal Belt Railway--Discontinuance of Service Exemption--in Rutherford County, NC

Rutherford Railroad Development Corporation (RRDC) and Southeast Shortlines, Inc., d/b/a Thermal Belt Railway (TBRY) have filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances for RRDC to abandon and TBRY to discontinue service over a 7.87-mile line between milepost SB-180.47 in Spindale and milepost SB-188.34 near Gilkey in Rutherford County, NC.<sup>1</sup> The line traverses United States Postal Service Zip Codes 28160 and 28139.

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<sup>1</sup> TBRY's lease and operation of the involved line was approved in Southeast Shortlines, Inc., d/b/a Thermal Belt Railway--Lease, Operation and Acquisition Exemption--A Rail Line in Rutherford, NC, Finance Docket No. 31484 (ICC served June 22, 1989).

The Bechtler Development Corporation (BDC) filed a request for a notice of interim trail use for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address BDC's trail use request and any others that may be filed in a subsequent decision.

RRDC and TBRY have certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, the exemptions will be effective on August 26, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR

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<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 7, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 16, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Fritz R. Kahn, P.C., 1920 N Street, N.W., Washington, DC 20036-1601.

If the verified notice contains false or misleading information, the exemption is void ab initio.

RRDC and TBRY have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 1, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRDC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and

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<sup>3</sup> Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

fully abandoned the line. If consummation has not been effected by RRDC's filing of a notice of consummation by July 27, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at  
"WWW.STB.DOT.GOV."

Decided: July 19, 2000.

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

Vernon A. Williams

Secretary