B.C.D. 01-30

MAR 2 8 2001

EMPLOYER STATUS DETERMINATION
Pennsylvania Lines, LLC (PRR)

This is the determination of the Railroad Retirement Board concerning the status of Pennsylvania Lines, LLC (PRR) as an employer under the Railroad Retirement Act (45 U.S.C.§ 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA).

Initial information regarding PRR was provided by Mr. Robert M. Kesler, Jr., General Counsel-Taxes for Norfolk Southern Corporation (NS). Mr. Kesler stated that PRR is a Delaware limited liability company wholly-owned by Consolidated Rail Corporation (Conrail). The Chief Executive Officer of PRR is Mr. Tony Ingram. According to Mr. Kesler, PRR is a passive lessor of rail assets. PRR leases all of its assets to NS, which is responsible for the operation and maintenance of the PRR assets. Mr. Kesler stated that PRR does not generate any rail traffic with respect to the PRR assets, but all such traffic is generated by NS. PRR began operations on June 1, 1999 and reportedly initially had no employees. However, Mr. Kesler stated that PRR anticipated hiring a part-time employee to perform some accounting functions (approximately 20 hours per month) by the end of 2000. Mr. Kesler reported that PRR does not interchange with any railroads.

Pursuant to a transaction approved by the STB, and consummated by the parties on June 1, 1999, PRR was assigned assets designated to be operated as part of the NS rail system. As set forth in the STB decision, CSX Corporation (CSXC) is the parent company of CSX Transportation, Inc. (CSXT), a rail carrier employer under the RRA and RUIA (B.A. No. 1524). CSXC and CSXT are referred to collectively as CSX. PRR is a subsidiary of Consolidated Rail Corporation, Inc. (CRC), which is also an employer under the Acts (B.A. No. 1321). On June 1, 1999, CSXT and Norfolk Southern (NS) (B.A. No. 9408) took over railroad operations formerly conducted by Conrail. In connection with the partition of the operations of Conrail by and between CSXT and NS, CSX and NS[1] acquired 100% of the common stock of

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[1] See Surface Transportation Board (STB) Finance Docket No. 33388, Decision No. 89, July 20, 1998. Footnote 3 of this lengthy STB decision explains that:

> "CSXC and CSXT and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as New York Central Lines LLC (NYC), are referred to collectively as CSX. NSC and NSR and their wholly owned subsidiaries, and also the wholly owned CRC subsidiary to be known as Pennsylvania Lines LLC (PRR), are referred to collectively as NS. CRR and CRC, and also their wholly owned subsidiaries other than NYC and PRR, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as applicants (or, sometimes, the primary applicants)."

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Conrail Inc. (CRR), as part of their takeover of the railroad operations of Consolidated Rail Corporation (CRC). See STB Finance Docket No. 33388, Decision No. 89, decided July 20, 1998, p. 23. CRC remains a direct wholly owned subsidiary of CRR. CRR became a direct wholly owned subsidiary of Green Acquisition Corp. (Tender Sub); Tender Sub is now a direct wholly owned subsidiary of CRR Holdings; and CRR Holdings is jointly owned by CSX Corporation and Norfolk Southern Corporation.

According to information provided by Mr.Kesler, PRR began operations June 1, 1999, and has an operating agreement with, and leases equipment to, NS. The operating agreement between PRR and NS provides for NS to pay a fee for the use of assets allocated to the contract. The assets so allocated are not specified in the contract itself. The equipment lease examined in connection with this determination is similar.

According to the operating agreement provided by Mr. Kesler, NS would have the right and obligation to use the rail property for the term of the agreement "in such manner and for such purposes as [NS] considers necessary and appropriate" in connection with the operation of its business. NS will have the exclusive right to operate the property, will sell transportation services, dispatch and run trains, bill customers and otherwise extend its transportation operation onto the property owned by PRR, according to the equipment and operating agreements provided. Additionally, the equipment agreement states that NS will have the obligation to maintain the property of PRR. Regarding the equipment leased under the Equipment Agreement between PRR and NS, the equipment is delineated as the "Allocated Assets." PRR's total track mileage is approximately 7,400 miles, according to Mr. Kesler.

According to the information provided, it appears that all of PRR's revenue will be attributable to the operating agreement and equipment lease agreements with NS.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;
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> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), 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 enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. 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.

Applying this test to the facts of PRR, the Board determines that PRR is a covered rail carrier employer under the Acts. PRR is a wholly owned subsidiary of Consolidated Rail Corporation. We noted in our decision in B.C.D. No. 00-47 that an entity that is affiliated through common ownership with other for profit carriers will be presumed to have as a primary business purpose to profit from the ownership of the line. Additionally, there is no information that would indicate that PRR's intent in purchasing the line is primarily designed to preserve rail service rather than to profit from railroading activities. We do not have to reach the other two considerations, since all three need to be present to remain outside the coverage of the RRA and the RUIA.

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Accordingly, the Board finds that PRR became a rail carrier employer under section 1(a)(1)(i) of the RRA and the corresponding sections of the RUIA beginning June 1, 1999, the date rail operations began on its rail line.

Original signed by:

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