B.C.D. 04-11

EMPLOYER STATUS DETERMINATION

FEB 27 2004

Quincy Railroad Company
Sierra Pacific Industries, Incorporated, Quincy Railroad Division
SierraPine LLP

This is the determination of the Railroad Retirement Board concerning the status of Sierra Pacific Industries, Incorporated, Quincy Railroad Division (Sierra Pacific); the Quincy Railroad Company (Quincy Railroad); and Sierra-Pine LLP, as employers 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.). The Quincy Railroad has previously been determined to be a covered employer (BA 3731) under the Railroad Unemployment Insurance Act and the Railroad Retirement Acts of 1974 and 1937, with service creditable from November 1917 to date. The status of Sierra Pacific and Sierra-Pine have not previously been the subject of formal consideration by the Board.[1]

Sierra Pacific is a privately held California corporation formed in 1969 which owns timber land and lumber mills. See: "Profile of Sierra Pacific Industries", George Draffan, Endgame Corporate Profile website. Sierra Pacific ranks among the Forbes 500 list of private corporations, and has over 3,000 employees. The company's own internet site states that it owns approximately 1.5 million acres, making Sierra Pacific the largest private timberland owner in North America. The evidence is that Sierra Pacific has also acquired three lines of railroad: the Quincy Railroad, the Amador Central Railroad, and the Susanville-Wendel line.

In a letter dated December 17, 2002, Sierra Pacific stated that in May 1976, it purchased a lumber mill located in Quincy, California from the DiGiorgio Lumber Company. Sierra Pacific acquired in that transaction the plant itself, title to the 60 acre mill site. and the Quincy Railroad Company. The Quincy Railroad consisted of three miles of track from the lumber mill at Quincy to a junction with a trunk line now operated by the Union Pacific Railroad, the entire line lying within Plumas County. Because there was no other shipper on the line other than the lumber mill, DiGiorgio Lumber and Sierra Pacific believed the line to be a private track, and did not seek approval of the sale by the former Interstate Commerce Commission. On December 21, 1995, Sierra Pacific filed a certificate of ownership with the California Secretary of State which certified as sole owner that it had merged Quincy Railroad into Sierra Pacific. Sierra Pacific sought no approval of this transaction from the ICC or the Surface Transportation Board (STB) as well. Sierra Pacific continues to use the line to bring lumber from the mill to the junction with the Union Pacific, operating as the Quincy Rail Road division of Sierra Pacific. No notices have ever been filed with the STB regarding Sierra Pacific's conduct of this operation.

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1 Both Sierra Pacific and SierraPine have been the subject of prior coverage reviews by the Audit and Compliance section of the Board's Bureau of Fiscal Operations which were closed without referral to the members of the Board for decision.

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In a separate letter also dated December 17, 2002, Sierra Pacific stated that on April 21, 1986 the Quincy Railroad began leasing from the Southern Pacific Transportation Company (now the Union Pacific Railroad) a 25 mile-long rail line running from Susanville to Wendel in Lassen County, California. The line serves a lumber mill owned by Sierra Pacific and a millwork plant operated by Jeld-Wen, both located in Susanville, and interchanges with the Union Pacific at Wendel. Following merger of Quincy Railroad into Sierra Pacific in December 1995, operation of the line has been conducted by the Quincy Railroad division of Sierra Pacific. There is no physical connection between the Susanville-Wendel rail line and the Quincy rail line, which lie approximately 30 miles apart. There is no record that the ICC ever approved the original lease between the Southern Pacific and Quincy Railroad, or that the STB has ever been notified of the continued lease between the Union Pacific and Sierra Pacific.

In Surface Transportation Board (STB) Finance Docket No. 33378, decided April 3, 1997, Sierra Pacific did file a verified notice of exemption to acquire and operate an approximately 12 mile line of track between Ione and Martel, California formerly owned and operated by the Amador Central Railroad Company. See: Sierra Pacific Industries; Acquisition and Operation Exemption—Amador Central Railroad Company 62 Fed. Reg. 17284, April 9, 1997. By letter dated August 19, 1997, Sierra Pacific notified the Board that when it acquired the Amador Central from its prior owner, Georgia Pacific Corporation, it hired none of the former Amador Central employees, and did not intend to conduct rail operations itself. On November 7, 1997, the Board determined that following sale of the line to Sierra Pacific, Amador Central "no longer possesses the characteristics of an operating railroad company" and therefore ceased to be an employer under the Acts. B.C.D. 97-101, *Amador Central Railroad Company*. No determination was rendered by the Board regarding the status of Sierra Pacific.

Consistent with its August 1997 letter to the Board, Sierra Pacific filed a notice with the STB that it intended to sell the Amador Central line to the Sierra Railroad, an unrelated short line. See: Sierra Railroad Company---Acquisition and Operation Exemption—Sierra Pacific Industries 62 Fed. Reg. 63747, December 2, 1997, However, the sale was not completed. Sometime during 1998, SierraPine LLP, which is evidently a California limited partnership between Rockland Timber Co., a Delaware corporation, Sierra Pacific, and others[2], purchased a particle board plant located in Martel. On

2 SierraPine is a privately held company owned by the principals of Timber Products Company and Sierra Pacific Industries. "Weyerhaeuser to sell composite products facilities, ply-veneer plant to SierraPine Limited," Business Wire, April 13, 1999.

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December 15, 1998, SierraPine leased the line of the Amador Central from Sierra Pacific. SierraPine filed a notice of this transaction with the STB. See SierraPine—Lease and Operation Exemption—Sierra Pacific Industries, Finance Docket No. 33679, 63 Fed. Reg. 68505, December 11, 1998. Later, SierraPine sought to revoke the STB determination that the line was subject to its jurisdiction on grounds that the line of rail was actually a private switching line. Id., November 21, 2001. The STB denied the petition to revoke, and subsequently denied reconsideration of the denial. Id., August 22, 2002.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, 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;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

Decisions of the Board in prior cases have concluded that where a short line of track is operated as a common carrier, the operator is a rail carrier employer under the Acts. B.C.D. 96-19 *GWI Switching Services, L.P.* Whether the operator owns the rail line, or leases the line from another company does not affect the outcome, but where the operator does not hold itself out as a common carrier, the Board has concluded that the track is operated as a private carrier, and consequently is not a covered rail carrier employer. See, e.g., B.C.D. 94-29 *Hardin Southern Railroad Company*; B.C.D. 94-105.2 *Great Miami & Western Railway.*

Regulations of the Board at 20 CFR 202.2 provide that "Any company or person principally engaged in carrier business is an employer" within the meaning of section 1(a)(1) of the RRA and 1 of the RUIA. Where the principal business of a company is not carrier business, Board regulations further provide that the Board will consider whether some identifiable and separable enterprise is considered to be the employer. See: 20 CFR 202.3(a). That regulation further provides that in determining whether a segregable portion of a business may be determined to be a rail carrier employer, the Board will consider evidence such as:

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(1) The primary purpose of the company or person on and since the date it was established;

(2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;

(3) The amount of its carrier business and the ratio of such business to its entire business;

(4) Whether its carrier business is a separate and distinct enterprise.

Where a line of railroad is owned by one entity but operated as a rail carrier by a second, unrelated entity, the RRA, the RUIA and the agency's regulations do not directly address the status under the Acts of the lessor company as an employer. In November 2000, the Board defined the circumstances under which it would consider that the lessor-owner of a rail line leased to another would be a rail carrier employer under the Acts. See Board Coverage Decision 00-47, *Railroad Ventures, Inc.*, (reconsideration decision). Pursuant to that decision, the Board will determine the lessor to be an employer unless:

(1) the lessor does not have as a primary purpose to profit from railroad activities;

(2) the lessor does not operate or retain the capacity to operate the rail line; and

(3) the operator of the rail line is already a covered employer under the RRA and RUIA. See: B.C.D. 02-13, *Bellingham International Railroad*, LLC (decision on reconsideration).

Applying these standards to the companies under consideration here, the evidence regarding the Quincy Railroad is that it merged with its parent corporation Sierra Pacific in December 1995 and ceased to exist as a corporate entity. Regulations of the Board provide that the status of a company as an employer covered by the Acts ends "whenever such company or person loses any of the characteristics essential to the existence of an employer status." 20 CFR 202.11. Accordingly, the Board determines

that the status of the Quincy Railroad as a covered employer ended December 21, 1995, when it lost its corporate identity. Moreover, from at least the time of sale to Sierra Pacific in May 1976 and continuing to the present, the Quincy lumber mill owned by Sierra Pacific has been the only shipper on the line. The switching operation conducted by the Quincy Railroad division of the Sierra Pacific is in reality the movement of rail cars for itself over track it owns to a junction siding connecting to a trunk carrier. The Board concludes that effective December 22, 1995, Sierra Pacific has engaged in private carriage over the former Quincy Railroad which is not rail carrier service within the meaning of the RRA and RUIA.

As noted above, the Board previously determined that Amador Central Railroad Company ceased to be an employer under the Acts effective with the sale to Sierra Pacific of all its rail assets March 31, 1997. There is no evidence contradicting Sierra Pacific's assertion at the time of sale that it would not operate the Amador Central line itself. Rather, the record shows Sierra Pacific immediately sought to resell the line to a rail carrier. When that transaction failed, Sierra Pacific then entered into the operating lease with SierraPine. However, since at least the time of the SierraPine purchase of the particle board plant in Martel, the Amador Central rail line has served two shippers. The record also shows that over the objection of SierraPine, the STB has twice determined that SierraPine's operation of the Amador Central rail line remains subject to STB jurisdiction. In the words of the STB:

> Here, SierraPine sought and acquired authority via exemption to provide common carrier service over a line that has historically been operated as a regulated line of railroad. Petitioner cannot unilaterally extinguish its common carrier obligation on the basis that it did not in the past, and does not now, require regulatory authority to conduct what it describes as its primarily private carrier, switching operations. SierraPine—Lease and Operation Exemption—Sierra Pacific Industries, Finance Docket No. 33679, August 26, 2002.

As the matter stands, the STB has determined, reviewed and re-determined that SierraPine is a rail carrier subject to its jurisdiction.[3] Of course, section 1(a)(i) of the

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3 SierraPine appealed the decision of the STB to the United States Court of Appeals for the District of Columbia Circuit. Sierra Pine v. Surface Transportation Board, No. 02-1327, (U.S. Court of Appeals, D.C. Circuit, filed October 24, 2002). The Clerk of the Court of Appeals advises that on September 8, 2003, the Court granted the motion of petitioner SierraPine to dismiss the case.

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RRA and section 1 of the RUIA define a covered rail carrier employer as "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". Based on the STB decision that SierraPine is a rail carrier with respect to the operation of the Amador Central line under lease, the Board therefore determines that SierraPine is a rail carrier employer under the RRA and RUIA, effective December 15, 1998, the date SierraPine assumed operations on the Amador Central line. However, it is clear that SierraPine is primarily in the lumber business rather than a common carrier by rail. Pursuant to section 202.3(a) of the Board's regulations regarding segregation of the rail carrier portion of a company's business (20 CFR 202.3(a)), SierraPine is an employer only with respect to its operation of the former Amador Central rail line.

It remains to consider the status of Sierra Pacific as operator of the Susanville-Wendel line, and as owner-lessor of the Amador Central. The circumstances of Sierra Pacific's operation of the Susanville-Wendel line are similar to those of SierraPine's operation of the former Amador Central in that both lines serve another shipper in addition to the plant of the rail line operator. Unlike the Amador Central, however, at the time of transfer of ownership, the Susanville-Wendel rail line was only a spur of a trunk rail line rather than a complete short line railroad. Although no decision of the former Interstate Commerce Commission has been located, the transfer of ownership from the Southern Pacific Railway to one of the two shippers on the line would appear to be an abandonment, potentially within jurisdiction of the ICC. See, The Atchison, Topeka and Santa Fe Railway Company—Abandonment Exemption—In Lyon County, KS, Docket AB-52 (Sub-No. 71X)(June 17, 1991). Absent a decision to the contrary by the ICC or STB, in the Board's view, the abandonment by the Southern Pacific and subsequent Sierra Pacific operation of the Susanville-Wendel rail line for itself and Jeld-Wen renders the operation private rather than common carriage. An operator of a rail line as a private carrier is not a rail carrier employer under the Acts. *Hardin Southern Railroad Company*, supra.

The last matter for consideration is the status of Sierra Pacific as an employer by reason of its lease of the Amador Central line to SierraPine. The Board is satisfied that the *Railroad Ventures* factors noted above are met. The size of Sierra Pacific's lumber business in relation to the rail line, and the location of its mill on the line evidence that the primary purpose for obtaining the Amador Central was to maintain rail access to the mill, not to profit from railroad activities. Under the second factor, it is noteworthy the

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STB determined SierraPine to be a rail carrier on the basis of STB's analysis of the lease as leaving the lessor without recourse to operate the line itself upon lessee SierraPine's default. See: SierraPine—Lease and Operation Exemption—Sierra Pacific Industries, Finance Docket No. 33679, August 26, 2002. The Board defers to the STB's finding that Sierra Pacific does not retain the capacity to operate the Amador Central line itself. Under the final *Railroad Ventures* factor, the Board has with this decision determined that SierraPine is an employer with respect to operation of the line. As all three of the factors required by *Railroad Ventures* are present, the Board consequently determines that Sierra Pacific is not a lessor rail carrier employer under the Acts.

Original signed by:

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