B.C.D. 04-59

DEC 0 2 2004

EMPLOYER STATUS DETERMINATION
Western Rail Switching, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Western Rail Switching, Inc., 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.).

Information regarding Western Rail was provided by Todd Havens, President and Co-Owner. According to Mr. Havens, Western Rail began doing business October 11, 2004. Western Rail currently has two employees.

In Surface Transportation Board Finance Docket No. 34546, decided September 24, 2004, Western Rail filed a notice of exemption to operate, pursuant to an agreement with Spokane County, Washington, approximately 4.93 miles of rail line known as the Geiger Spur. Western Rail will operate on an as needed basis from two to five times per week, moving 200 to 500 freight cars a year. It interchanges with the Burlington Northern Santa Fe Railroad Company.

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;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that Western Rail is a carrier operating in interstate commerce. Accordingly, it is determined that Western Rail is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of October 11, 2004, the date as of which it commenced operations.

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