

EMPLOYER STATUS DETERMINATION
Washington & Idaho Railway, Incorporated

This is the determination of the Railroad Retirement Board concerning the status of Washington & Idaho Railway, Incorporated, as an employer under the Railroad Retirement Act (RRA)(45 U.S.C. 231 et seq.) and the Railroad Unemployment Insurance Act (RUIA)(45 U.S.C. 351 et seq.). The status of this company under the Acts has not previously been considered.

In a letter dated November 9, 2006, the President of the Washington & Idaho Railway, Inc., (Washington & Idaho) notified the Chief of Audit and Compliance of the Railroad Retirement Board that his company had entered into a contract with the Palouse River and Coulee City Railroad (Palouse and Coulee) to operate and maintain approximately 138 miles of track running roughly northwest to southeast across state lines from Marshall, Washington to Moscow, Idaho, and Palouse, Washington to Princeton, Idaho, with an east-west branch line in Washington from Pullman Junction to Thera. The rail lines interchange with the BNSF Railway at Marshall, and with the Palouse and Coulee at Winona, Washington. The Washington & Idaho began operations with three employees on September 25, 2006, using two locomotives leased from the Palouse and Coulee.

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 (RTTA).

The Washington & Idaho has not filed notice of the transaction with the Surface Transportation Board, and there is no evidence that the STB has otherwise asserted jurisdiction over Washington & Idaho as a rail carrier subject to Part A of subtitle IV of title 49, United States Code. However, section 12(l) of the RUIA, which is also incorporated by reference by 7(a) of the RRA, grants to the Board "all powers and duties necessary to administer or incidental to administering this Act." The power to determine whether a company must file a return of compensation under section 6 of the RUIA and section 9 of the RRA; or to decide the entitlement of a claimant for benefits under either Act based on

service to a covered employer, is at least incidental to administration of these sections. Moreover, section 8(k) of the RUIA confers upon the Board, with

respect to assessment and collection of contributions under the RUIA, the authority vested in the Secretary of the Treasury to collect taxes under the RRTA. Accordingly, while the Board considers any decision of the STB with respect to the status of a particular company as a rail carrier subject to Part A of subtitle IV of title 49, United States Code, the Board clearly has independent authority to determine the status of an entity as an employer under the Acts it administers. See B.C.D. 04-22 *H&M International, Inc.* (accepting for RRA and RUIA purposes the STB decision that H&M conducted only private rail carrier operations which were not subject to STB jurisdiction). The lack of a decision regarding the status of the operation of Washington & Idaho under Part A of subtitle IV of title 49, United States Code does not prevent a determination by the Board that the Washington & Idaho is a rail carrier employer under the RRA and RUIA.

In this regard, the Board notes that on September 19, 1996, the Surface Transportation Board approved the purchase from the Burlington Northern Railroad by the Palouse River and Coulee City Railroad of three connected rail lines totaling approximately 277 miles of track. The notice stated the rail lines ran between Cheney and Coulee City in Washington; between Marshall, Washington and Arrow, Idaho; and between Palouse, Washington and Bovill, Idaho. See: Palouse River & Coulee City Railroad, Inc.—Acquisition Exemption—Burlington Northern Railroad Company, Surface Transportation Board (STB) Finance Docket No. 33041, 61 Fed. Reg. 50903, September 27, 1996. The Railroad Retirement Board subsequently determined the Palouse and Coulee to be a covered rail carrier employer under the Acts administered by the Board. See B.C.D. 97-28 *Palouse River & Coulee City Railroad, Inc.*

The Washington & Idaho has now contracted to operate 138 miles, or about one-half, of the total 277 miles of track owned by the Palouse and Coulee, while the Palouse and Coulee will continue to maintain and operate train service over the remaining one-half. The Washington & Idaho provides freight service to the general public over this line between points in the states of Washington and Idaho which would otherwise have been conducted by the Palouse and Coulee as a rail carrier employer. Moreover, the Washington & Idaho interchanges with both the Palouse and Coulee and the BNSF Railway, an interstate trunk line rail carrier. The Board finds that the evidence of record establishes that Washington & Idaho is a rail carrier operating in interstate commerce.

Accordingly, it is determined that the Washington and Idaho Railway, Inc., became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective September 25, 2006, the date it began operations. Cf. Rev. Rule. 82-100, 1982-1 C.B. 155.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever