

EMPLOYER STATUS DETERMINATION**Lehigh Railway, LLC**

This is a determination of the Railroad Retirement Board concerning the status of Lehigh Railway, LLC (LRWY) 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). The status of LRWY under the Acts has not previously been considered.

LRWY is a privately held corporation owned by Steven C. May, Lehigh Northern, LLC and Jim Raffa. Mr. May represented that the LRWY rail lines do not connect with any existing rail lines under common ownership. Further, the LRWY lease is not part of a series of transactions that would result in such a connection. LRWY was formed on September 9, 2008 and began operations on January 14, 2009. The first employee was compensated on January 14, 2009 as well.

In Surface Transportation Board (STB) Finance Docket Nos. 35192, decided November 7, 2008, LRWY filed a verified notice of exemption to lease and operate approximately 56.0 route miles of railroad line between milepost 269.5 at Athens, PA and milepost 213.5 at Mehoopany, PA. The subject line is located in Bradford and Wyoming Counties in Pennsylvania. The line is currently owned and was operated by Norfolk Southern Railway Company (NSR). LRWY will interchange with NSR and the lease includes any sidings, sidetracks, yards, or facilities presently owned by NSR that are accessed via the subject line. LRWY will have operating rights to certain designated track North of milepost 269.5 extending into Sayre, PA solely for interchange with NSR. The subject line will not include properties South of milepost 213.5 which have been leased by NSR to the Reading, Blue Mountain, and Northern Railroad (RBMN) and to Proctor and Gamble Corporation at Mehoopany, PA.

Information regarding LRWY was provided by Mr. Eric B. Lee, Vice-President of LRWY. According to documents provided by Mr. Lee, the exemptions filed with the STB became effective on November 14, 2008, and LRWY began operations on January 14, 2009. Mr. Lee did not provide specific information of the volume of freight that would be transferred or handled by LRWY over this line of railroad; however, LRWY certified to the STB that its projected annual revenue as a result of the transaction will not exceed those that qualify it as a Class III rail carrier.

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 (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that LRWY is a rail carrier operating in interstate commerce. Accordingly, it is determined that Lehigh Railway, LLC, 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 January 14, 2009 the date on which LRWY began operations.

Original signed by:

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board