

**EMPLOYER STATUS DETERMINATION
Keolis Rail Services Virginia, LLC**

This is the determination of the Railroad Retirement Board concerning the status of Keolis Rail Services Virginia, LLC (KRSV) 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.).

On December 21, 2009, Virginia Railway Express (VRE), a commuter rail service which connects the northern Virginia suburbs to Washington D.C.'s Union Station¹ via two lines (the Fredericksburg Line from Fredericksburg, Virginia and the Manassas Line from Bristow, Virginia) awarded a five-year contract to Keolis Rail Services America, LLC (KRSA) to oversee commuter-rail operations and maintenance services². VRE's operations/maintenance contract was previously with Amtrak, an employer under the Acts (B.A. No. 8301).

Information regarding KRSA was provided by Steve H. Townsend, President of KRSA and Mr. Colin J. Byrne of KRSA. Additional information was provided in a letter dated March 25, 2010 from Attorney Ronald Lane. According to Mr. Townsend, KRSA, a wholly-owned subsidiary of Keolis America Inc.³, was incorporated on August 10, 2009, to provide commuter rail services throughout the United States. Mr. Lane explained that KRSA entered into an Operations and Maintenance contract on December 21, 2009 to operate VRE service beginning on June 28, 2010. Upon being awarded the VRE contract, KRSA formed Keolis Rail Services Virginia, LLC (KRSV) to perform the VRE contract. KRSV was formed on January 4, 2010, and is a wholly-owned subsidiary of KRSA.

According to Mr. Lane, KRSV began non-operating activity on January 4, 2010, and rail operations will commence June 28, 2010. Two management employees were first compensated on January 4, 2010, and operating employees will be first compensated June 28, 2010⁴. Under the contract with VRE, KRSV will provide train operations, locomotive and railcar equipment maintenance and repair, yard operations, and warehouse management. Mr. Lane explained that KRSV will perform train and yard operations with its own employees, and locomotive and

¹ VRE is not an employer covered under the Acts.

² The Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission oversee VRE, and gave final approval of the change.

³ Keolis America Inc. is a wholly-owned subsidiary of Keolis SA (Keolis). According to Mr. Townsend, Keolis "is a leading passenger transportation operator in seven European countries and Canada. With annual revenue of over \$4.4 billion, Keolis is the largest private transportation operator in France".

⁴ Mr. Lane noted that some engineers not currently working in the service may be trained in advance of June 28, 2010.

railcar repair and maintenance, and warehouse management will continue to be subcontracted.

Under the Operations and Maintenance contract entered into by VRE and KRSV there is a transition period prior to June 28, 2010, during which KRSV must establish policies, develop software, hire and train a workforce, and perform other startup activities. During this transition period, VRE service will continue to be performed by Amtrak and mechanical operations will continue to be performed by Amtrak's subcontractor, RailPlan International (RPI). KRSV will take over operations on June 28, 2010, and on that day train crews employed by KRSV (some of whom may be former Amtrak employees currently performing that service) will operate the trains; mechanical work will continue to be performed by RPI, but as a subcontractor to KRSV⁵, rather than as subcontractor to Amtrak. Operating employees of KRSV will perform work on right-of-way owned by Norfolk Southern, CSX Transportation Company, and Amtrak.

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 Surface Transportation Board has jurisdiction over rail transportation in the United States between a place in a State and a place in the same or another State as part of the interstate rail network. See 49 U.S.C. 10501(a)(2)(A). The VRE commuter rail system is comprised of 2 lines of railroad which are part of the interstate rail network. In addition to the commuter service provided between Virginia and Washington, D.C. Amtrak provides intercity rail passenger service over the same lines⁶.

In light of the evidence as summarized above, it is determined that KRSV became 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

⁵ The Operations and Maintenance Agreement was executed on December 18, 2009.

⁶ Amtrak service to Richmond, Virginia runs over the Fredericksburg Line, and Amtrak service to Atlanta, Georgia and New Orleans, Louisiana runs over the Manassas Line.

Unemployment Insurance Act as of January 4, 2010, the date it first compensated employees for the purpose of setting up its rail operation. Cf. Rev Ruling 82-100, 1982-1 C.B. 155, wherein the Internal Revenue Service ruled that a railroad becomes an employer subject to taxes under the Railroad Retirement Tax Act when the company first hires employees to perform functions directly related to its carrier operations.

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