

B.C.D. 11-71
EMPLOYER STATUS DETERMINATION
DeQueen & Eastern Railroad, LLC

July 26, 2011

This is the determination of the Railroad Retirement Board concerning the status of DeQueen & Eastern Railroad, LLC (DQE) 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.). The status of DQE under the Acts has not previously been considered.

Information about DQE was provided by Mr. Wayne Pratt, Payroll Tax Accountant for Weyerhaeuser NR Company, and Mr. Louis E. Gitomer, Attorney for DeQueen & Eastern Railroad, LLC. In Surface Transportation Board Finance Docket No. FD 35427, DeQueen & Eastern Railroad, LLC (DQE) filed a verified notice of exemption to acquire and operate approximately 47 miles of rail line from DeQueen & Eastern Railroad Company, an employer under the Acts. This transaction was related to a transaction in which Patriot Rail, LLC (a non-covered entity) and its subsidiaries entered into an asset purchase agreement on July 21, 2010, to acquire from Weyerhaeuser NR Company certain rail assets and the rail assets of five of its subsidiaries.

According to the letter dated February 3, 2011, from Attorney Gitomer, DQE is owned by Tennessee Southern Railroad Company (B.A. No. 5509) and Patriot Rail, LLC and its subsidiaries Patriot Rail Holdings, LLC (a non-covered entity) and Patriot Rail Corp. (B.A. No. 5406). DQE began operations on December 31, 2010, and has 51 employees¹ who were compensated from that date. DQE interchanges with the Kansas City Southern Railway Company, Union Pacific Railroad Company, and the Texas, Oklahoma & Eastern Railroad, LLC². DQE will provide freight service over its lines to all shippers. No passenger service is proposed.

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;
- (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

¹ These employees include former employees of the DeQueen & Eastern Railroad Company and the Texas, Oklahoma & Eastern Railroad Company.

² The employer status of this company is addressed in a separate decision.

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

The evidence of record establishes that DQE is a class III rail carrier operating in interstate commerce. Accordingly, it is determined that DeQueen & Eastern Railroad, LLC 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 December 31, 2010, the date as of which it began operations and first compensated employees.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board