

B.C.D. 11-85
EMPLOYER STATUS DETERMINATION
Conecuh Valley Railway, LLC

August 8, 2011

This is the determination of the Railroad Retirement Board concerning the status of Conecuh Valley Railway, LLC (CVR) 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 CVR under the Acts has not previously been considered.

Information about CVR was provided by Mr. Scott G. Williams, President of RailAmerica Transportation Corp. (RTC). According to Mr. Williams, on May 11, 2011, RTC, a subsidiary of RailAmerica, Inc., acquired assets of three railroads, Three Notch Railroad Company, Inc. (TNHR), the Wiregrass Central Railroad Company, Inc. (WGCR), and the Conecuh Valley Railroad Company, Inc. (COEH), from affiliated companies of Gulf & Ohio Railways, Inc. (G & O). Mr. Williams further explained that new limited liability companies were formed to own the assets and to operate the lines. In Surface Transportation Board (STB) Finance Docket No. 35487, one of those newly formed limited liability companies, Conecuh Valley Railway, LLC (CVR), filed a verified notice of exemption to acquire and operate approximately 15.04 miles of rail line from COEH. CVR certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier.

According to Mr. Williams, CVR began operations on May 11, 2011, and currently has four employees, who have been compensated since operations began on May 11, 2011. CVR interchanges with CSXT. CVR will provide freight service over its lines; no passenger service is proposed. CVR spends 100% of its business time doing business with CSXT, and 100% of its revenue is from CSXT.

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 * * *.

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 CVR is a Class III rail carrier operating in interstate commerce. Accordingly, it is determined that Conecuh Valley Railway, 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 May 11, 2011, the date on which it began operations and first compensated employees.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board