

**EMPLOYER STATUS DETERMINATION  
LD Commodities, Inc. (LDC)**

This is a determination of the Railroad Retirement Board concerning the status of LD Commodities, Inc. (LDC) 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) (jointly, the Acts). The status of LDC under the Acts has not previously been considered.

LDC is a buyer and seller of grain and grain products, both domestically and for export. According to its internet web site, LDC is also called Louis Dreyfus Commodities. Per the website, LDC is “privately held by the Louis-Dreyfus family, controlled by the Robert Louis-Dreyfus trust and approximately 20% employee-owned.” Additionally, the company “is a world leader in the processing of agricultural products and the merchandising of a diverse range of commodities.” Lastly, LDC is “the number one cotton and rice merchant worldwide and ranks in the top three in orange juice, wheat, corn and sugar and in the top five in oilseeds and coffee. In addition, LDC is the second largest sugarcane crushing group in the world.”

Mr. Andrew Goldstein of McCarthy, Sweeney & Harkaway, P.C. supplied information regarding LDC’s operations. Mr. Goldstein represented that LDC began rail-related operations in 2000. The Surface Transportation Board (STB) has not rendered any decision regarding the status of LDC.

LDC leases and operates an export grain elevator in Galena Park, Texas. In conjunction with the grain elevator, LDC also leases 25,000 feet of industrial yard track that it uses to support its business activities. The grain elevator is served by Union Pacific Railroad (UP). LDC has no common control with UP and is not an affiliate carrier of UP. UP engines enter the track area to deliver and pick up cars. LDC operates two engines and two two-person crews, primarily full time, to move rail cars as necessary for storage. LDC moves the cars from place to place in the yard as is necessary for unloading.

LDC does not hold out its service as any type of rail or switching carrier to the general public. Occasionally, LDC must also move railcars from the other company, Shippers Stevedoring, which has a facility adjacent to the yard track

when the yard is congested. Shippers Stevedoring does not pay LDC for this service.

LDC has been requested to also receive rail cars from another company, Vopak, Inc. (Vopak) which is adjacent to LDC's industrial yard. Vopak also is serviced by UP and has a current need for storage and switching services. LDC is currently negotiating a contract with Vopak. Neither Shippers Stevedoring nor Vopak has any corporate affiliation with LDC. LDC has stated that it will not hold out similar services to any other party. Furthermore, LDC states that there are no other companies within service range of LDC's industrial yard.

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  
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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).

Section 10501 of Title 49 provides that the Surface Transportation Board (STB) has jurisdiction over transportation by rail carrier that is between a place in a State and a place in the same or another State as part of the interstate rail network [49 U.S.C. §10501(a)]. Section 10102 defines "railroad" to include:

“(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.” [49 U.S.C. §10102(6)(C)]

The evidence of record establishes that LDC is operating as a switching railway for itself and possibly for one paying customer within a private parcel terminal. The information provided demonstrates that LDC operates lines of track only within this private terminal. LDC interchanges with a Class I railroad but only on private property for its own business and possibly for Vopak. Information also indicates that LDC is not actively seeking more switching work at additional terminals.

A common carrier may be defined in general as one which holds itself out to the public as engaging in the business of transporting people or property from place to place for compensation. It is the right of the public to demand service that is the real criterion determinative of an entity's character as a common carrier. In contrast, a private carrier is one which, without making it a vocation or holding itself out to the public as ready to act for all who desire the service, undertakes by special agreement in a particular instance only, to transport property or persons from place to place. Private carriers thus undertake not to carry for all persons indiscriminately, but rather transport only for those with whom they see fit to contract individually.

Decisions of the Board in prior cases reflect that where the operator does not hold itself out as a common carrier, the Board has concluded that the track is operated as a private carrier, and consequently is not a covered rail carrier employer. See B.C.D. 94-29, *Hardin Southern Railroad Company*; B.C.D. 94-105.2, *Great Miami & Western Railway*. Additionally, a company that performs intra-plant switching as a private carrier is not a covered employer under the RRA and RUIA. *Cf. Rapid Switching Services, LLC*, B.C.D. 01-3. LDC fits this description due to its performance of loading and off-loading services only for itself and possibly one customer and its lack of any plans to continue to expand to additional terminals to work further with Class I railroads.

Turning to the affiliate definition of an “employer” under section 1(a)(1)(ii) of the Railroad Retirement Act (RRA), the evidence shows that LDC has no corporate affiliation with either Shippers Stevedoring or Vopak, Inc., neither of which are rail carriers. There is no evidence that LDC is either owned by a covered rail carrier employer or under common control with a covered rail carrier. Because LDC does not meet the first part of the definition of an affiliate employer, we will not address the issue of whether LDC provides a service in connection with railroad transportation. The Board finds that LDC is not an employer under the

affiliate definition in section 1(a)(1)(ii) of the RRA and the corresponding provision of the RUIA.

The evidence further establishes that LDC does not operate equipment and facilities and perform services as a common carrier by railroad but rather as a private carrier. Accordingly, consistent with earlier decisions of the Board, it is determined that LD Commodities, Inc. does not meet the definition of 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.

Original signed by:

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