

B.C.D. 14-11

February 10, 2014

EMPLOYER STATUS DETERMINATION

Santa Cruz and Monterey Bay Railway Company (SCMBR)

This is a determination of the Railroad Retirement Board concerning the status of the Santa Cruz and Monterey Bay Railway Company (SCMBR) 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 SCMBR under the Acts has not previously been considered.

SCMBR is a privately held company owned by Permian Basin Railways, Inc. (Permian), BA # 9368, which has been ruled to be covered under the RRA and RUIA. Mr. Daniel Marko, General Counsel of Permian, supplied information regarding the formation and start of operations for SCMBR in a response dated April 5, 2013, to an Audit and Compliance questionnaire and provided as an enclosure the Surface Transportation Board (STB) decisions regarding SCMBR's operations. Mr. Marko stated that SCMBR began operations in October, 2012 with no compensated employees under its tax identification number.

Authority for SCMBR's operations is found in multiple STB Finance Docket decisions. In STB Finance Docket No. 35653, service date September 7, 2012, the STB ruled on the Santa Cruz County Regional Transportation Commission's (Transportation Commission) petition for declaratory order asking the Board to determine that it did not have regulatory authority over the Transportation Commission's proposed acquisition of the physical assets of the Santa Cruz Branch line. The STB agreed with the Transportation Commission and ruled that the acquisition would not cause the Transportation Commission to become a common carrier. The Transportation Commission acquired the physical assets of the Santa Cruz Line in order to preserve freight rail service and to allow the operation of tourist excursions. Although the Transportation Commission acquired the physical assets of the line, the Union Pacific Railroad (UPR) retained a permanent, exclusive freight easement and common carrier obligation. The UPR then transferred its retained easement to SCMBR.

In STB decision numbers 42585, 42576, and 42577, all decided August 17, 2012, SCMBR jointly filed various verified notices of exemption. Notice of Exemption 42585 was to acquire and operate approximately 33 miles of track. Terminal points are located at Watsonville, California (Mile Post 0.0, beginning of track), Santa Cruz, California (Mile Post 19.5), and Davenport, California (Mile Post 32,

end of track). At the time of the filings, the track was owned by UPR and operated by Sierra Northern Railway. In notice of Exemption 42576, Iowa Pacific Holdings, LLC and Permian sought to continue in control of SCMBR upon SCMBR's becoming a Class III rail carrier. Lastly, in notice of exemption 42577, SCMBR sought to acquire by assignment from Sierra Northern Railway, the lease and operating rights over the track.

SCMBR operates year round freight service and seasonal rail passenger service. SCMBR certified that its projected annual revenues would not exceed levels that would 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 SCMBR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Santa Cruz and Monterey Bay Railway Company 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 October 1, 2012, the date on which SCMBR began operations.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board