B.C.D. 14-32 **December 18, 2014**
EMPLOYER STATUS DETERMINATION
Mule Sidetracks, L.L. C. (MSLLC)

This is a determination of the Railroad Retirement Board concerning the status of Mule Sidetracks, L.L.C. (MSLLC) 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.).

In Surface Transportation Board (STB) Finance Docket 35773, decided October 22, 2013, MSLLC filed a verified notice of exemption under 49 CFR § 1150.31 to acquire from Columbiana County Port Authority (CCPA) a line of railroad currently operated by the Youngstown & Southeastern Railway Company (Y&SR) (BA No. 2287), between milepost 0.0 in Youngstown, Ohio and milepost 35.7 in Darlington, Pennsylvania ("the Line"). MSLLC also intends to receive permanent assignment of CCPA's agreements and operating rights to approximately three miles of continuous track segments running east of milepost 0.0 that connects to the Line and that facilitates interchange with Norfolk Southern Railway Company (NSR) and CSX Transportation, Inc. (CSXT). The STB Finance Docket stated that MSLLC will be a common carrier on the line, and once the line was acquired, MSLLC intended to continue operations with Y&SR. MSLLC also will be the common carrier for the three miles of continuous track segments extending east of milepost 0.0 that connect with the Line, with Y&SR operating on the lines solely as an agent of and in the name of MSLLC.

Information regarding MSLLC was furnished by Mr. Richard H. Streeter, attorney for MSLLC. According to Mr. Streeter, MSLLC is owned by MarkWest Energy Partners, L.P., which is a publicly traded master limited partnership formed in Janaury 2002. MSLLC has no employees who are engaged in any railroad operations; all individuals who are engaged in operations over the Line are employees of Y&SR. Mr. Streeter further stated that MSLLC does no amount of business with any railroad carrier. Mr. Streeter provided a list of MSLLC's affiliated companies (i.e., companies owned by MarkWest Energy Partners, L.P.), none of them are employers covered under the Acts. According to Mr. Streeter, MSLLC acquired the Line from CCPA on February 13, 2014.

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 contains essentially the same definition.

In its decision regarding the employer status of *Railroad Ventures, Inc*. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

Applying this to the facts of MSLLC, the Board determines that MSLLC is not an employer covered under the Acts. As the evidence of record shows, MSLLC's primary business purpose is not to profit from its railroad activities. With respect to the second part of the *Railroad Ventures* test, MSLLC will not operate the Line, nor will MSLLC retain the capacity to operate that Line, but instead Y&SR will continue to perform such operations and will be the sole operator of the Line. Turning to the third criteria, Y&SR is already covered by the Railroad Retirement and Unemployment Insurance Acts (the Acts) (B.A. 2287). The Board therefore finds that MSLLC is not a carrier under the test set forth in our *Railroad Ventures* decision.

Accordingly, the Board finds that Mule Sidetracks, L.L.C. is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

Michael S. Schwartz

Walter A. Barrows

Steven J. Anthony