

**EMPLOYER STATUS DETERMINATION  
Olympia & Belmore Railroad, Inc.**

This is a determination of the Railroad Retirement Board concerning the status of Olympia & Belmore Railroad, Inc. 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 Acts”). The status of Olympia & Belmore Railroad, Inc. under the Acts has not previously been considered.

Olympia & Belmore Railroad, Inc. (OBRR) is a Delaware corporation that is 100% owned by Genesee & Wyoming, Inc. (GWI). GWI is not a covered employer under the Acts.<sup>1</sup>

In Surface Transportation Board Finance Docket No. 35999 decided February 23, 2016, OBRR, at the time a non-carrier, filed a verified notice of exemption including interchange commitment under 49 CFR 1150.31 to lease from BNSF Railway Company (BNSF) and operate approximately 13.06 miles of rail near Olympia, Washington. In its concurrently filed Surface Transportation Board Finance Docket No. 36000 decided February 23, 2016, OBRR’s parent company GWI filed a verified notice of exemption pursuant to 49 CF 1180.2(d)(2) to continue in control of OBRR upon OBRR’s becoming a class III rail carrier. It appears that Surface Transportation Board Docket No. 35999 is when OBRR first obtained its authority to operate a line of rail.

Surface Transportation Board Finance Docket No. 35999 indicates that OBRR will lease from BNSF and operate approximately 13.06 miles of rail, consisting of: (1) 5.50 miles of track between milepost 9.07 near Olympia, Washington and milepost 14.57 near Belmore, Washington in Thurston County, Washington; (2) incidental overhead trackage rights over approximately 7.56 miles of Union Pacific Railroad Company track between East Olympia, Washington and Olympia, Washington; and (3) joint use of terminal trackage at Olympia, Washington pursuant to a lease agreement. OBRR certified that its projected annual revenues do not exceed those that would qualify it as a Class III rail carrier.

Jennifer Rowe, Corporate Payroll Manager for Genesee & Wyoming Railroad Services, Inc. provided information regarding the formation and start of operations

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<sup>1</sup> Board Coverage Decision 03-6 dated January 16, 2003.

for OBRR<sup>2</sup>. Ms. Rowe stated that OBRR entered into a Lease of Rail and Personal Property with BNSF Railway Company on February 12, 2016. The Surface Transportation Board's notice of exemption issued February 26, 2016 confirms the effective date of the exemption would be March 13, 2016. James Irvin is the President of OBRR, and OBRR does not have a chief executive officer.

Ms. Rowe indicated that OBRR expected to begin operations on March 16, 2016. In addition, she advised that OBRR does not expect to have any employees based on current traffic volumes, but will operate as a rail carrier and should be considered a covered employer under the acts. Thus, it appears that the first date employees performed service for OBRR was March 16, 2016. Existing services provided by OBRR will be handled by contracted employees of Puget Sound & Pacific Railroad (PSAP). Ms. Rowe noted that all employees supplied by PSAP are paid by PSAP, which is a covered employer under the Acts<sup>3</sup>. Regarding traffic volumes, Ms. Rowe indicated that customers on the OBRR line ship approximately 700 carloads annually.

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, or the receipt delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

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<sup>2</sup> While OBRR was the acronym used in Surface Transportation Board Finance Docket numbers 35999 and 36000 and so has been used herein, Ms. Rowe used the acronym OYLO in her March 15, 2016 questionnaire responses

<sup>3</sup> See STB FD 35714. Also, see B.C.D. 03-9.4, Puget Sound & Pacific Railroad, which is part of B.C.D. 03-9.

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 OBRR is a rail carrier operating in interstate commerce. Accordingly, the Board finds that Olympia & Belmore Railroad, Inc. became an employer within the meaning of section 1(a)(1) of the RRA and Section 1 of the RUIA effective March 16, 2016, the date on which it began operations.

Original signed by:

FOR THE BOARD  
Martha P. Rico  
Secretary to the Board