EMPLOYER STATUS DETERMINATION
Eastern Berks Gateway Railroad

This is the determination of the Railroad Retirement Board concerning the status of Eastern Berks Gateway Railroad (Eastern Berks), 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.).

Information regarding Eastern Berks was provided by Nathaniel C. Guest, President of Eastern Berks. Eastern Berks was previously owned by U.S. Rail Partners, Ltd. and sole ownership was transferred to the Colebrookdale Railroad Preservation Trust (Colebrook), a Pennsylvania not-for-profit corporation which has no other corporate affiliates, effective January 2, 2014. Operations by Eastern Berks began at that time with Colebrook as the parent company. The railroad is 8.6 miles in length and its terminal points are Pottstown and Boyertown, Pennsylvania. It interchanges with Norfolk Southern, a covered employer, at Pottstown, Pennsylvania.

Mr. Guest stated that Eastern Berks expects to operate tourist excursions on behalf of Colebrookdale and to provide local freight and switching services on an as-needed basis to industries between Boyertown and Pottstown, Pennsylvania. This is done through a lease with the Redevelopment Authority of the County of Berks which has ownership of the property and fixed assets constituting the rail line. At the time of Mr. Guest’s response, he did not have an estimate of freight traffic volume and Eastern Berks did not have any employees and did not expect to hire any. He also stated that he was unable to confirm if Eastern Berks had any employees under the previous ownership but he did state that Colebrook did not acquire any rail equipment from the previous owners.

According to Surface Transportation Board (STB) Finance Docket No. 35383 (decided October 6, 2010), on September 13, 2010, Eastern Berks Gateway Railroad Company (EBGRC) filed an application for a modified certificate of public convenience and necessity to operate an approximately 8.6-mile line of railroad between milepost 0.0 at Pottstown and milepost 8.6 at Boyerstown in Berks County, Pennsylvania. As noted above, the line in question was previously owned and operated by U.S. Rail Partners, Ltd. until January 2, 2014, when it was sold to Colebrookdale, Eastern Berks’ parent company. As a result, this STB decision was issued while the line was owned by U.S. Rail Partners. To
STB in *East Penn Railroad- Abandonment Exemption- In Berks and Montgomery Counties, Pa.*, Docket No. AB 1020X (STB served Nov. 18, 2008). Although authorized for abandonment, the line was subsequently acquired by the county of Berks County, Pennsylvania. Pursuant to a lease and operating agreement between Berks County and EBGRC, EBGRC agreed to commence freight rail operation on or about September 15, 2010, for a term of 5 years. EBGRC agreed to provide freight service twice weekly or on an as-needed basis to the only interline connection, Norfolk Southern Railway Company at milepost 0.0 at Pottstown, Pennsylvania. The STB decided that the rail segment qualified for a modified certificate of public convenience and necessity.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," to include

(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 **.*.

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) & (b)). Section 10501 of Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board has jurisdiction over rail carrier:

** transport in the United States between a place in –

(A) a State and a place in the same or another State as part of the interstate rail network. [49 U.S.C. § 10501(a)(2)(A).]

In addition, section 202.3 of the Board’s regulations states that:

§ 202.3 Company or person principally engaged in non-carrier business.

| distinguish between the line under U.S. Rail Partners, Ltd. ownership and Colebrookdale ownership, this decision refers to the line as EBGRC, the same abbreviation used in the STB decision, under U.S. Rail Partners, Ltd. ownership. Eastern Berks states that no Surface Transportation Board Financial Docket was required for the transition of Eastern Berks stock ownership to Colebrookdale. |
(a) With respect to any company or person principally engaged in business other than carrier business, but which, in addition to such principal business, engages in some carrier business, the Board will require submission of information pertaining to the history and all operations of such company or person with a view to determining whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer. The determination will be made in the light of considerations such as the following:

(1) The primary purpose of the company or person on and since the date it was established;
(2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;
(3) The amount of its carrier business and the ratio of such business to its entire business;
(4) Whether its carrier business is a separate and distinct enterprise.

20 CFR §202.3

With respect to the common carrier operations related to freight and switching services, the evidence of record indicates that Eastern Berks is a carrier operating in interstate commerce. But the tourist excursion service provided by Eastern Berks may be characterized as a tourist or excursion railroad operated solely for recreational and amusement purposes. Since passengers are transported solely within one state, under section 10501(a) (2)(A), above, Eastern Berks would not be subject to Surface Transportation Board jurisdiction and would therefore also not fall within the definition of "employer" set out in section 1(a)(1)(i) of the Railroad Retirement Act with respect to the excursion services which provides. The information submitted also shows that the primary purpose of Colebrookdale’s acquisition of Eastern Berks was not interstate commerce, but rather operation of a tourist train. Colebrookdale is a not-for profit corporation and Eastern Berks was acquired in order to provide tourist excursion service on behalf of Colebrookdale. The freight operation would only be done on an as-needed basis and no estimates of the volume were available.
Accordingly, Eastern Berks 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 with respect to its common carrier, freight and switching operations. Employees engaged in this part of Eastern Berks’ operations are considered covered by the Acts as of January 2, 2014, the date on which Colebrook acquired the line and operations began. Regarding Eastern Berks’ tourist excursion service, Eastern Berks is not considered an employer under the Acts and therefore may segregate those employees under section 202.3 of the Board’s regulations.

Original signed by:

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