

EMPLOYER STATUS DETERMINATION**Coos Bay Rail Line, Inc.****Oregon International Port of Coos Bay**

BA # 5756

This is the determination of the Railroad Retirement Board concerning the statuses of Coos Bay Rail Line, Inc. (Coos Rail) and Oregon International Port of Coos Bay (the Port) as employers under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) (collectively, “the Acts”). RRA, 45 U.S.C. § 231 *et seq.*; RUIA, 45 U.S.C. § 351 *et seq.* In Board Coverage Decision 13-24 (B.C.D. 13-24), issued August 28, 2013, the Port was determined to not be a covered rail employer under Acts, while the status of Coos Rail under the Acts has not previously been considered.

Information about Coos Rail and the Port was provided by Lanelle Comstock, Director of Administrative Services for Coos Rail and Chief Administrative Officer for the Port, as well as by Aukjen Ingraham, attorney for the Port. According to the information provided, Coos Rail is a wholly-owned subsidiary of the Port. The Port is a municipal entity in Coos Bay, Oregon that owns the Coos Bay rail line. As discussed in B.C.D. 13-24, the Port originally acquired the Coos Bay rail line in order to aid the economy of the South Coast of Oregon and to prevent the loss of rail service to the region due to abandonment. The Port formed Coos Rail to operate the line and to take over rail operations from Coos Bay Railroad Operating Company, LLC, d/b/a Coos Bay Rail Link (CBR)¹, the former operator of the line for the Port. The Port entered into a formal Railroad Operating Agreement with Coos Rail to operate the line.

In Surface Transportation Board (STB) Finance Docket No. 36241, Coos Rail filed a verified notice of exemption to assume operations over two interconnected lines owned by the Port, which extend from milepost 652.114 at Danebo, Oregon, to milepost 763.13 at Cordes, Oregon and from milepost 763.13 at Cordes to milepost 785.5 at Coquille, Oregon, a total distance of approximately 133 miles. At the time of filing its notice of exemption, the line was operated by CBR, and Coos Rail sought an exemption to replace CBR as operator of the two rail lines. That transaction was related to a concurrently filed verified notice of exemption in STB Finance Docket No. 36242, wherein the Port sought approval to continue in control of Coos Rail upon Coos Rail’s becoming a Class III rail carrier. Both exemptions became effective November 19, 2018.

According to Ms. Comstock, Coos Rail will interchange with Union Pacific Railroad, Portland & Western Railroad, and Central Oregon and Pacific Railroad with an expected volume of 7,103 car loads per year. Coos Rail certified to the STB that its projected annual retail revenues as a result of the transaction will not exceed \$5 million, and will not result in Coos Rail becoming a class I or class II rail carrier.

Ms. Comstock also indicated that Coos Rail’s operations were expected to begin by November 1, 2018, and that Coos Rail would hire all of the existing employees from the former operator, CBR, if they wished to continue employment on the Coos Bay rail line. On February 28, 2019, Ms. Ingraham confirmed that employees were hired on November 1, 2018.

¹ CBR was determined to be an employer within the meaning of the Acts in B.C.D. 11-92.

Section 1(a)(1)(i) of the RRA, insofar as relevant here, defines a covered employer as:

[A]ny carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code.

45 U.S.C. § 231(a)(1)(i). Section 1 of the RUIA and section 3231 of the Railroad Retirement Tax Act contain substantially similar definitions. 45 U.S.C. § 351(a); 26 U.S.C. § 3231.

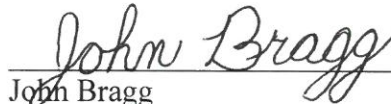
Regarding the employer status of Coos Rail, the evidence of record discussed above establishes that Coos Rail is a rail carrier operating in interstate commerce. Accordingly, it is determined that Coos Bay Rail Line, Inc. became an employer within the meaning of section 1(a)(1)(i) of the RRA and the corresponding provision of the RUIA as of November 1, 2018, the date it began operations and hired employees.

Regarding the employer status of the Port, the same analysis the Board applied in B.C.D. 13-24 where the Board found that the Port was not a covered rail employer, applies here. In such decision the Board used the analytical framework described in the Board Coverage Decision *Railroad Ventures, Inc.* (B.C.D. 00-47). In *Railroad Ventures*, the Board enunciated a three-part test for entities that, like the Port, have STB authority to operate a rail line, but lease or contract with another entity to perform the rail operations. Such entities are covered rail carriers unless all three of the following criteria are satisfied: 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.

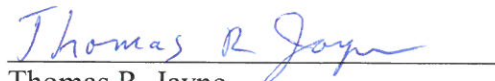
In the instant case, the only material factors that differ from B.C.D. 13-24 are that Coos Rail is assuming operating duties from CBR, and that Coos Rail is a wholly-owned subsidiary of the Port, while CBR was not. However, as stated above, the Port did enter into a formal Railroad Operating Agreement with Coos Rail to operate the line. The evidence shows that the Port does not have as a primary business purpose to profit from rail activities, it does not have the capacity to operate the rail line, and another entity covered by the Acts conducts rail operations over the rail line. The Board finds that the Port still satisfies each part of the *Railroad Ventures* test, and is therefore not a covered employer under the Acts.



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