

EMPLOYER STATUS DETERMINATION

BCD 2025-25

Empire River Rail, LLC (ERR)

BA No. 4908

April 24, 2025

This is a decision of the Railroad Retirement Board concerning Empire River Rail, LLC's (ERR) status as an employer 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.*

Mr. Bernard Brown, ERR's Chief Operating Officer, provided information regarding ERR. Mr. Frank Rosso is ERR's Chief Executive Officer. ERR is a wholly owned subsidiary of Empire Diversified Energy, Inc., a non-carrier.

On March 1, 2025, ERR commenced common carrier operations over approximately 0.464 miles of rail line as well as additional yard track at Follansbee, West Virginia (the Line). ERR also provides common carrier switching services at Follansbee, West Virginia. The Line has a point of interchange with Norfolk Southern Railway Company's (NSR) (B.A. 1525) Wells Industrial Track at approximately NSR milepost 3.6. Mr. Brown stated that an estimated three employees would be hired once ERR began common carrier operations.

In Surface Transportation Board (STB) Finance Docket No. 36750, ERR filed an operation exemption to operate the Line as the exclusive common carrier service provider. *Empire River Rail LLC—Operation Exemption—in Brooke County, W. Va.*, 2023 STB Fin. Dkt. 36750. In its decision, effective January 21, 2024, the STB approved the commencement of common carrier operations.

Under section 1(a)(1)(i) of the RRA, insofar as relevant here, a covered employer is defined as "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." RRA § 1(a)(1)(i), 45 U.S.C. § 231(a)(1)(i). Section 1 of the RUIA and section 3231(a) of the Railroad Retirement Tax Act (RRTA) contain substantially similar definitions. RUIA § 1, 45 U.S.C. § 351; RRTA, 26 U.S.C. § 3231.

Here, the record establishes that ERR is a rail carrier operating in interstate commerce subject to the STB's jurisdiction. Accordingly, it is determined that Empire River Rail, LLC, became an employer within the meaning of the Acts effective on March 1, 2025, the date it commenced operations.

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board