

**EMPLOYER STATUS DETERMINATION  
Luzerne County Rail Corporation**

This is the determination of the Railroad Retirement Board concerning the status of the Luzerne County Rail Corporation (LCRC) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

Information about LCRC was furnished by Mr. Robert P. Connolly, its Executive Director, and by Mr. Richard M. Rusnok, its Assistant Executive Director. LCRC was incorporated under Pennsylvania law on May 25, 1994, as a non-profit corporation. In Interstate Commerce Commission (ICC) Finance Docket No. 32509 (service date June 14, 1994), LCRC filed a notice of exemption to lease and operate a total of approximately 55.5 miles of rail line owned by F&L Realty and Pocono Northeast Railway, Inc. (Pocono) (BA No. 3257) in Luzerne and Lackawanna Counties, Pennsylvania. The rail line is divided into three branches: (1) Wilkes-Barre Branch, which runs from Pittston City to Ashley Borough; (2) Kingston Branch, which runs from Harding (Exeter Township) to the Municipality of Kingston; and (3) Suscon Branch, which runs from Hughestown Borough to the Suscon Section of Pittston Township. At the same time that LCRC acquired the leased line of rail in May 1994, it granted trackage rights to the Delaware-Lackawanna Railroad Company, Inc. (D-L) (BA No. 2260) in accordance with ICC authority obtained in Finance Docket No. 32510 (service date June 14, 1994). In August 1994, the Luzerne and Susquehanna Railway Company (L&SR) (BA No. 2262) acquired the sub-lease of the rail lines that LCRC leases from Pocono and F&L pursuant to authority in ICC Finance Docket No. 32563. L&SR operates on the lines under lease to LCRC, and D-L has trackage rights on those lines. In its operations on those lines, L&SR interchanges with Conrail (BA No. 1321) and CP Rail. LCRC has no employees and does not conduct any railroad operations itself.

Section 1 of the RRA defines the term "employer" to include:

any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of title 49 [45 U.S.C. §231(a) (1) (i)].

Section 1 of the RUIA contains essentially the same definition.

Although LCRC does not conduct railroad operations, it has arranged through lease and trackage rights agreements to have railroad operations conducted over the rail line which it has acquired. The information furnished by Mr. Connolly and Mr. Rusnok indicates that LCRC should be considered to be a carrier by railroad subject to the jurisdiction of the Interstate Commerce Commission for the reasons set forth below.

First of all, LCRC obtained authority from the ICC in Finance Docket No. 32509 to lease and operate the rail lines. The Verified Notice of Exemption which LCRC filed with the ICC stated with reference to the operation of the property that:

Pursuant to the trackage rights agreement between LCRC and D-L, D-L will operate all of the Subject Lines on which currently active rail customers are located. LCRC will be responsible for the provision of rail service to any customers


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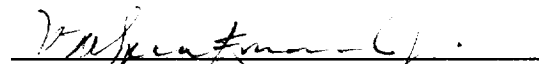
which might locate on other portions of the Subject Lines. LCRC would meet any such service obligation with its own forces or under a purchase of services agreement with D-L or a third party.

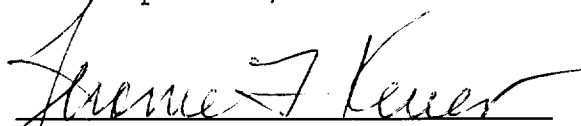
Thus, LCRC advised the ICC that it would be responsible for certain rail service and obtained ICC authorization to provide rail service.

In addition, the Trackage Rights Agreement between LCRC and D-L, dated May 24, 1994, states in Section 8, entitled "Management and Operations," that LCRC "shall have the right to propose changes in the operations on the Subject Trackage as in its judgment may be necessary, expedient or proper." The Lease and Operating Agreement between LCRC and L&SR, dated August 26, 1994, provides that representatives of L&SR and LCRC shall meet "at least monthly" to review and discuss revenue, costs, operations, marketing, maintenance, and service problems. The agreement provides further that L&SR shall inform LCRC and affected shippers of any major action or event related to the subject rail lines which may affect rail freight service to those shippers as soon as such action or event is known to L&SR and that LCRC will inform L&SR of any problems or concerns related to the rail freight service. Both of these provisions indicate that LCRC is actively involved on a regular basis with the railroad operations over the rail lines which it acquired and over which it obtained authority to operate.

For the reasons discussed above, the Board finds that Luzerne County Rail Corporation became a common carrier by rail subject to ICC jurisdiction and an employer under the RRA and the RUIA effective May 25, 1994, the date on which it was incorporated.

  
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