

## **EMPLOYER STATUS DETERMINATION**

### **Live Oak, Perry & Georgia Railroad Company, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Live Oak, Perry & Georgia Railroad Company, Inc. (LOPG), 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).

In Interstate Commerce Commission (ICC) Finance Docket 32811, decided on December 19, 1995, LOPG filed a notice of exemption to acquire and operate approximately 83.5 miles of rail line of Norfolk Southern Railway Company, B.A. No. 1525, and its subsidiary, Georgia Southern and Florida Railway Company, B.A. No. 1513. The rail line includes: (1) the segment from milepost GB 1.0 at Adel, Georgia, to milepost 77.3 at Perry, Florida, in Cook, Lowndes, and Brooks Counties, Georgia, and Madison and Taylor Counties, Florida; and (2) the segment from milepost LO 45.75 at Perry, Florida, to milepost 39.0 at Foley, Florida in Taylor County, Florida. LOPG and Georgia & Florida Railroad Company (G&FR), B.A. No. 5562, entered into a contract agreement on December 15, 1995 in which G&FR agreed to handle all railroad operations for LOPG. See also, ICC, Finance Docket 32812, decided December 20, 1995 (G&FR concurrently filed a notice of exemption to operate over the line acquired by LOPG). Although G&FR operates over the line, LOPG retains a residual obligation to provide common carrier service. In Surface Transportation Board<sup>1</sup> (STB) Finance Docket No. 32813, decided March 13, 1996, H. Peter Claussen and Linda C. Claussen, the owners of LOPG, filed a petition for exemption to continue to control LOPG and seven other rail carriers covered under the Acts upon LOPG's becoming a carrier.

Information regarding LOPG was provided by Mr. H. Peter Claussen, CEO for LOPG. He stated that through a contract agreement with G&FR, G&FR provides rail operations on LOPG's rail line, effective December 14, 1995. He stated that LOPG does not have any employees; however, employees compensated by G&FR are providing rail operations. G&FR transports approximately 5,500 carloads each year on LOPG's rail line. LOPG's rail line interchanges with Norfolk Southern, CSX Transportation and Georgia & Florida Railroad Company.

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board.



**Live Oak, Perry & Georgia Railroad Company, Inc.**

Section 1(a)(1) of the RRA 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;

(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 \* \* \*. [45 U.S.C. §231(a)(1)(i) and (ii)].

Section 1(a) of the RUIA (45 U.S.C. §351(a)) contains essentially the same definition.

The evidence establishes that LOPG is currently not an employer covered by the Acts, as it is not actually operating the rail line. LOPG has no employees or equipment. Rather, the line is operated pursuant to an agreement with G&FR, a covered employer under the Acts. That employer reports the employee service rendered to LOPG to the Board. This determination will be reevaluated if LOPG hires its own employees or if it begins utilizing a non-employer under the Acts to perform railroad service.

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Glen L. Bower

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V. M. Speakman, Jr.

(Dissenting)

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Jerome F. Kever

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