

**EMPLOYER STATUS DETERMINATION**

**Austin Western Railroad, Inc.**

This is a determination of the Railroad Retirement Board concerning the status of Austin Western Railroad, Inc. (AWRI) 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). The status of AWRI under the Acts has not previously been considered.

AWRI is a subsidiary of Watco Transportation Services, Inc. Mr. Richard B. Webb is the CEO of AWRI. AWRI began operations and first began compensating employees on October 1, 2007.

In Surface Transportation Board (STB) Finance Docket No. 35072, decided September 6, 2007, AWRI filed a verified notice of exemption to operate approximately 164.83 miles of railroad line owned by Capital Metropolitan Transportation Authority (CMTA). The rail line begins approximately at milepost 0.0 west of Giddings, TX and continues to milepost 56.4 near Austin, TX; then continues from that point to milepost 154.1 near Llano, TX. AWRI will also operate the line starting at milepost 0.0 near Fairland, TX to milepost 6.5 near Marble Falls, TX to include the 3.3 mile Scobee Spur and the .93 mile Burnett Spur. The STB decision stated that AWRI and CMTA intended to consummate the transaction on or about the first day of operations, October 1, 2007. AWRI will interchange freight with Burlington Northern and Santa Fe Railroad and Union Pacific Railroad.

Information regarding AWRI was provided by Mr. Craig Richey. According to Mr. Richey, Watco Transportation Services Inc. (B. A. No. 9848) is the owner of AWRI. Mr. Richey stated that AWRI began rail operations over its 164.83 miles of rail line on October 1, 2007. AWRI expected to hire 26 employees to begin work on or after October 1, 2007. Mr. Richey further stated that AWRI provides common carrier freight service and expects to handle approximately 45,800 freight cars annually. Mr. Richey also stated that AWRI will perform no passenger service.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (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;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that AWRI is a rail carrier operating in interstate commerce. Accordingly, it is determined that Austin Western Railroad, Inc. became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective October 1, 2007, the date on which it began operations and as of which its first employee was first compensated. [Cf. Rev. Rule. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever