

EMPLOYER STATUS DETERMINATION

Grand Elk Railroad, LLC (GDLK)

This is a determination of the Railroad Retirement Board concerning the status of Grand Elk Railroad, LLC (GDLK) 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 GDLK under the Acts has not previously been considered.

GDLK is a privately held corporation owned by Watco Transportation Services, Inc. (BA # 9848). Ms. Rita Mitchell, a representative of Watco Transportation, represented that GDLK began operations on March 1, 2009. The first employees were compensated on March 13, 2009.

In Surface Transportation Board (STB) Finance Docket No. 35187, submitted November 3, 2008, and effective January 30, 2009, GDLK filed a verified notice of exemption to lease and operate approximately 122.9 route miles of railroad line between a point just outside Elkhart Yard in Indiana and Grand Rapids, Michigan via Kalamazoo, Michigan. GDLK will also acquire incidental trackage rights over a 0.43 mile segment in Botsford Yard to connect to the Kalamazoo Branch. The line is currently owned and was operated by Norfolk Southern Railway Company (NSR). GDLK will interchange with NSR, Marquette Railroad, Canadian National, Mid-Michigan Railroad, CSX, and Grand Rapids Eastern Railroad.

According to documents provided by Ms. Mitchell, the exemptions filed with the STB became effective on January 30, 2009 because GDLK corrected its original certification in compliance with 49 CFR 1150.32(e) on December 1, 2008. GDLK began operations on March 1, 2009. GDLK will handle freight cars only with an expected volume of 20,000 carloads per year. GDLK anticipates total business time spent with each carrier named to be NSR 76%, Canadian National 5%, CSX 10%, Grand Rapids Eastern Railroad 2%, Mid-Michigan Railroad 1%, Marquette Railroad 2%, and MSO 4%; however, GDLK certified to the STB that its projected annual revenue as a result of the transaction will not exceed those that qualify it as a Class III rail carrier.

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 GDLK is a rail carrier operating in interstate commerce. Accordingly, it is determined that Grand Elk Railroad, LLC, 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 March 1, 2009, the date on which GDLK began operations.

Original signed by:

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board