

B.C.D. 16-06

February 24, 2016

**EMPLOYER STATUS DETERMINATION
Texas and New Mexico Railway, LLC (TXN)**

This is a determination of the Railroad Retirement Board concerning the status of Texas and New Mexico Railway, LLC (TXN) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.). The status of TXN under the Acts has not previously been considered.

TXN is a subsidiary corporation of Watco Transportation Services, LLC (BA# 9848) (WTS). WTS was found to be an employer under the Acts in Board Coverage Determination 03-20, issued on February 24, 2003. Craig Richey, Executive Vice President and General Counsel for Watco Companies (the parent company of WTS) provided information regarding the formation and start of operations for TXN. In a letter dated September 4, 2015, Mr. Richey stated that TXN began operations on July 11, 2015, with the first compensated service performed by employees on the same date. Mr. Richey estimated that TXN's annual freight volume would be 22,500 carloads, interchanging with Union Pacific Railroad Company (BA# 1713).

In Surface Transportation Board Finance Docket No. 35930, TXN filed a Verified Notice of Exemption on June 5, 2015 to acquire from Austin & Northwestern Railroad Company (also known as the Texas and New Mexico Railroad, BA# 3865, see Board Coverage Determination 12-10) and operate along approximately 107.191 miles of rail line between milepost 0.079 at Monahans, Texas and milepost 107.27 at Lovington, New Mexico. TXN indicated in its filing that its projected annual revenues would exceed \$5 million, but would not result in TXN becoming a Class II or Class I rail carrier. The Surface Transportation Board granted TXN's request for exemption effective July 8, 2015.

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 TXN is a rail carrier operating in interstate commerce. Accordingly, the Board finds that Texas and New Mexico Railway, LLC became an employer within the meaning of section 1(a)(1) of the Railroad Retirement Act and Section 1 of the Railroad Unemployment Insurance Act effective July 8, 2015, the effective date of TXN's exemption to acquire and operate the rail line.

FOR THE BOARD

Martha P. Rico

Secretary to the Board