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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34206



PERMIAN BASIN RAILWAYS, INC.
-- CONTINUANCE IN CONTROL EXEMPTION --
WEST TEXAS AND LUBBOCK RAILWAY COMPANY, INC.
AND AUSTIN & NORTHWESTERN RAILROAD COMPANY, INC.

ENTERED
Office of the Secretary

MAY 20 2002

Part of
Public Record

VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d)(2)

FILED

MAY 17 2002

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MAY 17 2002

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Respectfully submitted,

John D. Heffner
555 Twelfth Street, N.W.
Suite 950N
Washington, D.C. 20004
Tel: (202) 737-4335

Counsel for Permian Basin
Railways, Inc.

Dated: May 17, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34206

PERMIAN BASIN RAILWAYS, INC.
-- CONTINUANCE IN CONTROL EXEMPTION --
WEST TEXAS AND LUBBOCK RAILWAY COMPANY, INC.
AND AUSTIN & NORTHWESTERN RAILROAD COMPANY, INC.

VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d)(2)

COMES now Permian Basin Railways, Inc. ("Permian"), a noncarrier and short line railroad holding company, and states as follows:

1. Pursuant to the provisions of Section 1180 of the Board's Railroad Consolidation Rules (49 C.F.R. § 1180), Permian hereby gives notice of a transaction which qualifies for exemption under Section 1180.2(d)(2) of those rules.

2. As relevant here, Permian is presently a non-carrier and short line railroad holding company. As of the date of filing, Permian does not own any other carriers engaged in providing transportation for compensation subject to the jurisdiction of the Board.

3. On or about May 24, 2002, Permian will acquire 100% of the outstanding stock of the Austin & Northwestern Railroad Company, Inc. ("Austin"), a class III short line railroad doing business as the Texas New Mexico Railroad

("TNMR"). Austin's stock is currently owned by RailTex, Inc., which is in turn owned by RailAmerica, Inc. ("RailAmerica").

4. TNMR is an existing class III railroad authorized by the former Interstate Commerce Commission to conduct operations in New Mexico and western Texas. A copy of TNMR's operating authority is attached to this filing as Exhibit A. Austin does not presently own any other rail lines or provide any other rail service.

5. On or about May 24, 2002, West Texas And Lubbock Railway Company, Inc. ("Railway"), a newly established class III short line railroad wholly owned by Permian, expects to consummate a transaction with West Texas And Lubbock Railroad Company, Inc. ("Railroad")¹ to lease and operate (with a future purchase option) approximately 107 miles of trackage in western Texas presently owned by Railroad. Railway plans to consummate that transaction on May 24, 2002.² A copy of Railway's operating authority is attached as Exhibit B.

6. Under Section 1180.2(d)(2) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control.

1 Railroad is a wholly owned subsidiary of RailAmerica, Inc.

2 Concurrently with this filing, Railway is submitting a verified notice of exemption for the lease, operation, and future purchase of this trackage. This filing is docketed as Finance Docket No. 34205.

Specifically, Section 1180.2(d)(2) exempts the continuance-in-control of nonconnecting carriers where (i) the railroads will not connect with each other or any railroad in their corporate family, (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a class I carrier.

7. In order to claim the Section 1180.2(d)(2) exemption, Section 1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in Sections 1180.6(a)(1)(i)-(iii), 1180.6(5)-(6), and 1180.6(a)(7)(ii) of those rules. That information is provided as follows:

Summary of Proposed Transaction: 49 CFR § 1180.6(a)(1)(i)

Permian proposes to acquire simultaneously two short line railroad properties, resulting in common control requiring Board approval (or an exemption from the approval requirements).

First, Permian will acquire 100% of the outstanding stock of Austin. Second, Permian will continue in control of Railway at the time it consummates a transaction involving the lease and operation (with a future purchase option) of two rail lines presently owned and operated by Railroad. Upon consummation, Permian will control two rail carriers. Accordingly, Permian must obtain Board approval (or an exemption from approval) to

control both Austin and Railway.

Applicants' name, address and telephone number

Name: Permian Basin Railways, Inc.
Address: P.O. Box 618181
Chicago, IL 60661

Telephone: (312) 922-8404

Name: Austin Northwestern Railroad Company, Inc.
Address: P.O. Box 618181
Chicago, IL 60661

Telephone: (312) 922-8404

Name: West Texas and Lubbock Railway Company, Inc.
Address: P.O. Box 618181
Chicago, IL 60661

Telephone: (312) 922-8404

Legal counsel to whom questions should be addressed:

John D. Heffner
555 Twelfth Street, N.W.
Suite 950N
Washington, D.C. 20004
Tel.: (202) 737-4335

Schedule for consummation: 49 CFR § 1180.6(a)(1)(ii)

The parties intend to consummate the proposed transaction on or about May 24, 2002.

Purpose to be accomplished by the transaction:

49 CFR § 1180.6(a)(1)(iii)

The purpose of this transaction is to transfer the operation of two light density branch lines from a large short line railroad holding company to a smaller, locally focused, low

overhead entrepreneurial short line operator. Railway expects to be able to operate profitably rail lines which have been marginal for the present owner. Railway will focus more resources and business development on the local community than the present operator.

State(s) in which the property of each carrier is situated:
49 CFR § 1180.6(a)(5)

Austin: western Texas and eastern New Mexico

Railway: central western Texas

Map showing relationship between Austin and Railway:
49 CFR § 1180.6(a)(6)

Attached hereto as Exhibit C.

Copy of Agreement: 49 CFR § 1180.6(a)(7)(ii)

Not applicable.

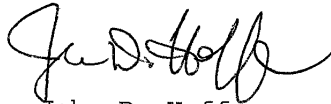
Other Information / Certification:

Permian, Austin, and Railway hereby certify that -- (1) the rail carriers to be controlled pursuant to this notice of exemption would not connect with each other, (2) the subject control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (3) the transaction does not involve a class I carrier.

Environmental and Historical Considerations:

This acquisition of control proceeding is exempt from environmental review under 49 CFR § 1105.6(c)(2)(i) because the proposed action will not cause any operating changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). In addition, this proceeding is exempt from historic review under 49 C.F.R. § 1105.8(b)(1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Accordingly, no historic report is required

Respectfully submitted,



John D. Heffner
555 Twelfth Street, N.W.
Suite 950N
Washington, D.C. 20004
Tel: (202) 737-4335

Counsel for Permian Basin
Railways, Inc.

DATED: May 17, 2002

EXHIBIT A

TNMR
2.2
mrl

EC

SERVICE DATE

MAY 22 1989

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 31444

AUSTIN & NORTHWESTERN RAILROAD COMPANY, INC.--ACQUISITION AND
OPERATION EXEMPTION--MISSOURI PACIFIC RAILROAD COMPANY

Decided: May 16, 1989

By joint petition filed March 31, 1989, Austin & Northwestern Railroad Company, Inc., (AUNW) and Missouri Pacific Railroad Company (MP) seek exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343-11345, for AUNW to acquire and operate approximately 107 miles of MP's line in Lea County, NM, and Winkler and Ward Counties, TX. Railway Labor Executives' Association and United Transportation Union request the imposition of labor protective conditions. We will grant the exemption.

The line, known as the Texas-New Mexico Branch, is owned and operated by MP, a Class I railroad and subsidiary of Union Pacific Corporation. It extends from a junction with the MP main line at Monahans, TX, through an essentially rural area, ending at Lovington, NM. Traffic over the line in 1988 totalled 1,748 carloads, consisting mainly of chemicals and petroleum products, general commodities, scrap, and cotton. Traffic levels are expected to remain constant, or even increase. However, MP has determined that revenues will not support long-term investment and has slated the line for abandonment.¹

AUNW is a Class III railroad operating 162 miles of rail line in Texas. Its tracks do not connect with the Texas-New Mexico Branch, and it has no plans to establish a connection.

Petitioners assert that AUNW's lower cost structure and local management will allow profitable operations. AUNW also intends to increase frequency of service and to offer rail transportation contracts. It expects that no shippers will suffer any loss of service. The petition is supported by three shippers, who accounted for more than one-half of the 1988 carloads, and by the Lovington Chamber of Commerce and the Industrial Development Corporation of Lea County. United States Senator Jeff Bingaman also submitted a letter in support of the proposal.

Under section 11343, a rail carrier may acquire and operate the rail property of another carrier only with the approval and authorization of the Commission. However, under 49 U.S.C. 10505 we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed acquisition and operation under sections 11343-11345 is not necessary to carry out the rail transportation policy. Exemption will expedite regulatory decisions and reduce barriers to entry [49 U.S.C. 10101a (2) and

¹ The line appears in Category I of MP's system diagram map. See 49 CFR 1152.10(b)(1).

² Climax Chemical Company, Lov-Cot Industries, and Lovington Storage Co., Inc.

Finance Docket No. 31444

(7)], and foster sound economic conditions and encourage efficient management (49 U.S.C. 10101a (3), (5), and (10)). Other aspects of the rail transportation policy are not affected adversely. For example, the development and continuation of a sound rail transportation system that meets the needs of the public is not affected adversely and may in fact be enhanced by the introduction of regional rail operations.

The transaction is of limited scope. The Texas-New Mexico Branch has only one connection to a main line, traverses a rural area just west of the Texas Panhandle, and will not connect with AUNW's present system. The transaction represents essentially a change in operator and a possible expansion of service.

Regulation is unnecessary to protect shippers from the abuse of market power because they will continue to receive service on a line that might otherwise be abandoned. Moreover, they will benefit from having access to AUNW's local management and from projected increases in service options and frequency of service. In fact, three of the shippers have commented in support of the exemption. However, to ensure that the line's shippers are informed of its status, we will require petitioners to serve each of them with a copy of this exemption decision and certify to us that service has been effected within 5 days of the service date.

Under 49 U.S.C. 10505(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Our review of the proposal indicates that exemption will not significantly affect the quality of the human environment or conservation of energy resources. Petitioners have notified the appropriate agencies in Texas and New Mexico of the opportunity to submit information concerning the environmental and energy impact of the proposed acquisition and operation of the line in accordance with 49 CFR 1105.11. Pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), we are consulting with the State historic preservation officer to resolve whether any historic properties may be affected by the proposed transaction. Until the Section 106 process has been completed, AUNW must not take any action that would jeopardize the integrity of potentially historic [e.g., 50 years old and older, 36 CFR 60.4, 46 F.R. 56189 (1981)] sites, structures, and/or culturally significant locations.

Petitioners request that our decision be made effective before May 31, 1989, to avoid delaying a plant facility expansion planned by a shipper. We will make the decision effective 20 days after publication to accommodate petitioners while still according notice to shippers.

It is ordered:

1. Under 49 U.S.C. 10505, we exempt from the requirements of 49 U.S.C. 11343-11345 the acquisition and operation by Austin & Northwestern Railroad Company, Inc., of the above-described line of the Missouri Pacific Railroad Company, subject to: (1) the employee protective conditions in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979); and (2) a condition that the historic integrity of the line and related structures 50 years old or older be maintained pending completion of the process under Section 106 of the National Historic Preservation Act.

2. Notice will be published in the Federal Register.

Finance Docket No. 31444

3. Petitioners must serve a copy of this decision on each shipper on the line and certify to this Commission that service has been effected within 5 days after this decision is served.

4. This decision is effective on June 12, 1989.

5. Petitions for stay must be filed by June 2, 1989, and petitions for reconsideration must be filed by June 19, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee
Secretary

(SEAL)

EXHIBIT

B

SERVICE DATE

DEC 27 1995

FR-7035-01-P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32796]

West Texas and Lubbock Railroad Company, Inc.--Purchase and
Operation Exemption--Seagraves, Whiteface and Lubbock
Railroad Company

The West Texas and Lubbock Railroad Company (WTLR) has
filed a notice of exemption to acquire from Seagraves,
Whiteface and Lubbock Railroad Company (SWGR)¹ and operate
the approximately 113-mile SWGR rail system, consisting of
three connecting branch lines as follows: (1) between
milepost 0.0 at Lubbock, TX (Burlington Northern and Santa
Fe connection), and milepost 63.8 at Seagraves, TX; (2)
between milepost 0.0 at Doud, TX (connection with SWGR
Lubbock to Seagraves line), and milepost 39.2 at Whiteface,
TX; and (3) The Pan American Spur from milepost 36.3 (at
Coble, TX) to "end of track" (approximately 9.3 miles).
WTLR will also obtain ancillary overhead trackage rights
currently held by SWGR over certain lines and yard tracks of
The Atchison, Topeka and Santa Fe Railway Company ("ATSF")
as follows: Milepost 88 + 0748.6 feet and Lubbock
Subdivision milepost 675 + 518.5 feet, including tracks
numbers 40, 292, 93, 92, 25, 4, 3, 90, 58, 57, 56, 36 and 2
in ATSF's Lubbock Yard. These incidental trackage rights

¹ Anderson Grain Corporation (Anderson), of Levelland,
Texas, filed an "objection" to this notice. The Commission will
issue a separate decision on Anderson's pleading.

will enable WTLR to interchange cars with connecting class I carriers. The lines described in this paragraph are located in Gaines, Terry, Cochran and Hockley Counties, TX.

The proposed transaction was expected to be consummated on October 25, 1995. WTLR certified that its projected revenues do not exceed those that would qualify it as a class III carrier.

WTLR owns no railroad lines and conducts no rail operations subject to the Commission's jurisdiction. Rail America, Inc. (RAI) owns 100% of WTLR's stock. RAI owns or controls six other class III shortline railroads.

This transaction is related to a notice of exemption filed in RailAmerica, Inc. -- Continuance in Control Exemption -- West Texas and Lubbock Railroad Company, Inc. and Plainview Terminal Company, Finance Docket No. 32797, for RAI to continue in control of WTLR and Plainview Terminal Company (PTC) and five other class III railroads upon PTC and WTLR becoming class III rail carriers.

Any comments must be filed with the Commission² and served on: Robert A. Wimbish, Rea, Cross and Auchincloss, 1920 N Street, N.W., Suite 420, Washington, D.C. 20036.

This notice is filed under 49 CFR 1150.31. If the

² Legislation to sunset the commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 19, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

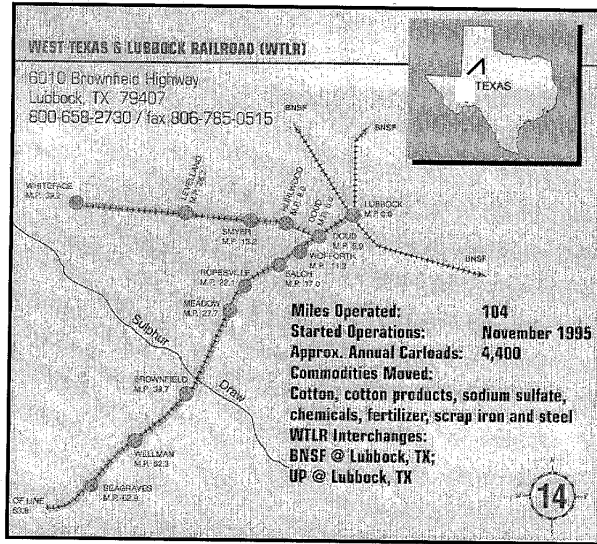
Vernon A. Williams

Secretary

(SEAL)

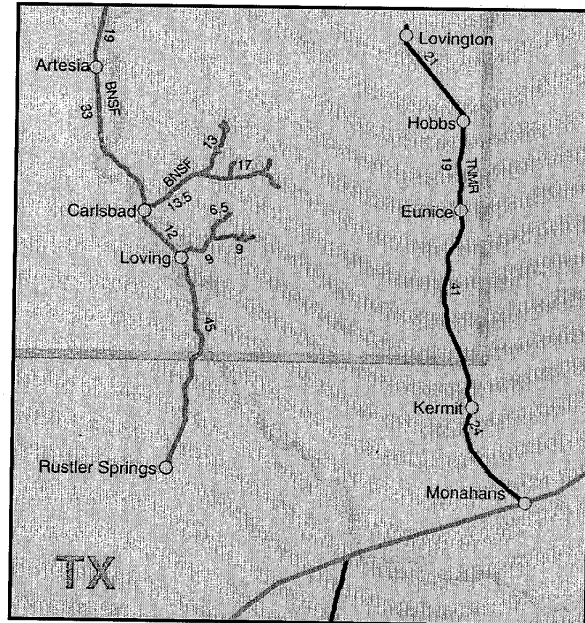
p. 1

Maps



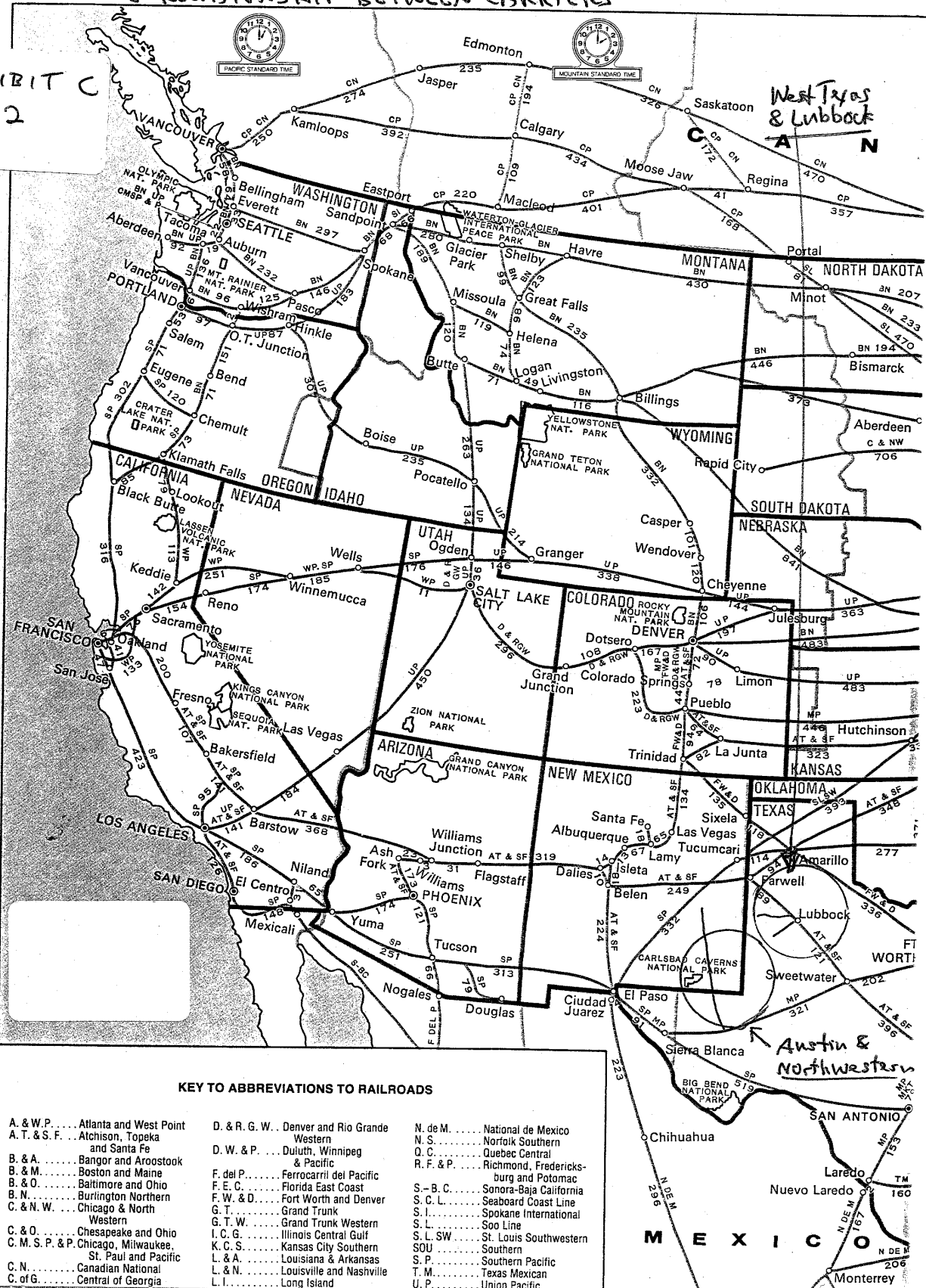
Map 1 - West Texas and Lubbock Railroad

Map 2 - Texas New Mexico Railroad



MAP SHOWING RELATIONSHIP BETWEEN CARRIERS

EXHIBIT C
P. 2



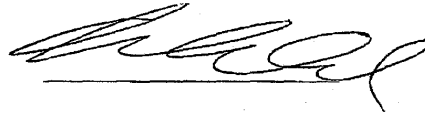
VERIFICATION

STATE OF ILLINOIS)

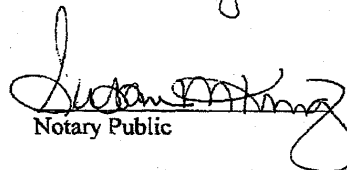
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CITY OF CHICAGO)

EDWIN ELLIS, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.



Subscribed and sworn to before me, a Notary Public, in and for the City of Chicago in the State of Illinois this 17 day of May.


Notary Public

My Commission expires:

Jan 11, 2003