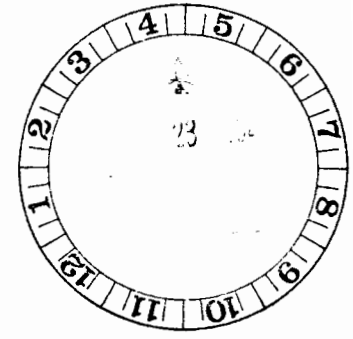


212616



BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Finance Docket No. 34614

PERMIAN BASIN RAILWAYS, INC.
- ACQUISITION OF CONTROL EXEMPTION
ARIZONA EASTERN RAILWAY COMPANY, INC.

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

FILED

NOV 23 2004

**SURFACE
TRANSPORTATION BOARD**

Respectfully submitted,

Permian Basin Railways, Inc.

By its attorney,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036
(202) 263-4180

FEE RECEIVED

NOV 23 2004

**SURFACE
TRANSPORTATION BOARD**

Dated: November 23, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Finance Docket No. 34614

PERMIAN BASIN RAILWAYS, INC.
- ACQUISITION OF CONTROL EXEMPTION -
ARIZONA EASTERN RAILWAY 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 CFR 1180), Permian hereby gives notice of a transaction that qualifies for an exemption under section 1180.2(d)(2) of those rules.

2. As relevant here, Permian is presently a noncarrier and short line railroad holding company. As of the date of this filing, Permian owns the stock of two existing class III short line railroads, West Texas and Lubbock Railway Company, Inc. ("WTLR") and the Austin & Northwestern Railway Company, Inc. d/b/a Texas New Mexican

Railroad ("TNMR").¹ The lines of these railroads do not connect and there is no plan to connect them.

3. On or about December 1, 2004, Permian will acquire 100% of the outstanding stock of the Arizona Eastern Railway Company, Inc. ("AERC").² AERC is currently owned by Kyle Railways, Inc. ("KRI"), a wholly owned subsidiary of RailAmerica Transportation Corp. ("RailAmerica"), another short line railroad holding company.

4. Under section 1180.2(d)(2) of the Board's consolidated rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, section 1180.2(d)(2) exempts the acquisition of nonconnecting carriers where (i) the railroads will not connect with each other or any railroad in their corporate family, (ii) the acquisition 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.

¹ Copies of STB decisions authorizing these transactions are attached hereto as Exhibit A and B, respectively.

² Simultaneously with this filing, in STB Finance Docket No. 34613, Permian is also filing a verified notice of exemption to acquire control of another class III short line railroad, West Texas and Lubbock Railroad Company, Inc. ("WTLRR"). WTLRR's tracks do not connect with those of AERC.

5. 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 or Proposed Transaction: **49 CFR §**

1180.6(a)(1)(i)

Permian proposes to acquire 100% of the stock of AERC, a short line railroad currently owned by KRI. This short line does not connect to Permian's existing two short line railroad subsidiaries. But for the availability of this exemption, Permian would have to obtain Board approval to acquire AERC under 49 U.S.C. 11323.

Applicant's name, address, and telephone number:

Permian Basin Railways, Inc.
P.O. Box 618181
Chicago, IL 60661
312-466-0900

Legal counsel to whom questions should be addressed:

John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036
(202) 263-4180

Schedule for consummation: **49 CFR §**

1180.6(a)(1)(ii)

The parties intend to consummate the proposed transaction on or about December 1, 2004.

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 a light density branch line from a large short line railroad holding company to a smaller, locally focused, low overhead entrepreneurial short line operator. Permian expects to be able to profitably operate rail lines that have been marginal for the present owner. Permian intends to work closely with the local community on developing the potential of this rail line.

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

AERC is located entirely in the state of Arizona.

Map: **49 CFR § 1180.6(a)(6)**

Attached hereto as Exhibit C.

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

Applicant will furnish the Board a copy of the final, executed Purchase and Sale Agreement under seal if the Board requests one.

Other information / Certification:

Permian hereby certifies that (1) the lines of the rail carrier to be acquired pursuant to this notice of exemption do not connect with Permian's existing short line subsidiaries, (2) the subject acquisition proceeding is not a 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 CFR 1105.7(e)(4) or (5). In addition, this proceeding is exempt from historic review under 49 CFR 1105.8(b)(1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are at least 50 years old. Accordingly, no historic report is required.

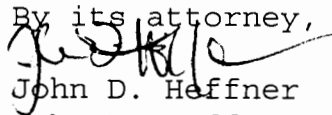
Labor Protection to be Imposed

No labor protection applies on transactions involving only class III railroads. See, 49 U.S.C. 11326(c).

Respectfully submitted,

Permian Basin Railways, Inc.

By its attorney,


John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036
(202) 263-4180

Dated: November 23, 2004

EXHIBIT A

SURFACE TRANSPORTATION BOARD DECISION DOCUMENT
Decision Information

Docket Number: **FD_34205_0**

Case Title: **WEST TEXAS AND LUBBOCK RAILWAY COMPANY, INC.--
ACQUISITION AND OPERATION EXEMPTION--WEST TEXAS AND
LUBBOCK RAILROAD COMPANY, INC.**

Decision Type: **Notice**

Deciding Body: **Director Of Proceedings**

Decision Summary

Decision Notes: **NOTICE THAT RAILWAY HAS FILED A VERIFIED NOTICE OF
EXEMPTION TO ACQUIRE BY LEASE (WITH A FUTURE PURCHASE
OPTION) AND OPERATE TWO RAIL LINES OWNED BY RAILROAD.**

Full Text of Decision

32796

SERVICE DATE - JUNE 14, 2002

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

[STB Finance Docket No. 34205]

West Texas and Lubbock Railway Company, Inc.-Acquisition and Operation Exemption-West Texas and Lubbock Railroad Company, Inc.

West Texas and Lubbock Railway Company, Inc. (Railway), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease (with a future purchase option) and operate two rail lines owned by the West Texas and Lubbock Railroad Company, Inc. (Railroad): (1) between milepost 06.3 on the outskirts of Lubbock and the end of the line at milepost 63.8 at Seagraves; and (2) between milepost 3.2 at Lubbock and milepost 38.9 at Whiteface. In addition, Railway will acquire by

assignment approximately 5 miles of trackage rights which Railroad presently holds over The Burlington and Northern and Santa Fe Railway Company (BNSF) between BNSF milepost 83.6 at Broadview and BNSF milepost 88.6 at Canyon Junction in the vicinity of Lubbock. These trackage rights shall be used for the purpose of interchange only. The total trackage involved is approximately 107 miles.⁽¹⁾

Railway certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed \$5 million.

The transaction was scheduled to be consummated on or after the May 24, 2002 effective date of the exemption, 7 days after the exemption was filed.

This transaction is related to 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., wherein Permian Basin Railways, Inc. (Permian) has concurrently filed a verified notice to continue in control of Austin & Northwestern Railroad Company, Inc. and Railway, upon Railway's becoming a Class III railroad.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34205, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, 555 12th Street, N.W., Suite 950N, Washington, DC 20004.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: June 7, 2002.

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

Vernon A. Williams

Secretary

1. Due to a track relocation project, the mileposts do not accurately reflect the actual length of the rail line.

Decision Attachments

32796.wpd

9 KB

32796.pdf

6 KB

Size of PDF File: **0.01 MB**

Approximate download time at 28.8 kb: **0 Minutes**



Note:

Some installations of Adobe Acrobat 3 browser plug-ins cannot open large PDF files. If you experience problems viewing our files, we recommend upgrading to an Acrobat Reader 4 or above available free at www.adobe.com.

EXHIBIT B

SURFACE TRANSPORTATION BOARD DECISION DOCUMENT
Decision Information

Docket Number: **FD_34206_0**

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

Decision Type: **Notice**

Deciding Body: **Director Of Proceedings**

Decision Summary

Decision Notes: **NOTICE THAT PERMIAN HAS FILED A VERIFIED NOTICE OF EXEMPTION TO (1) ACQUIRE CONTROL THROUGH STOCK PURCHASE OF AUSTIN, AND (2) CONTINUE IN CONTROL OF AUSTIN AND RAILWAY, UPON RAILWAY'S BECOMING A CLASS III RAILROAD.**

Full Text of Decision

32797

SERVICE DATE - JUNE 14, 2002

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

[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.

Permian Basin Railways, Inc. (Permian), a noncarrier holding company, has filed a verified notice of exemption to (1) acquire control through stock purchase of Austin & Northwestern Railroad Company, Inc. (Austin), ⁽¹⁾ a Class III rail carrier, and (2) continue in control of Austin and West Texas and

Lubbock Railway Company, Inc. (Railway), upon Railway's becoming a Class III railroad.

This transaction was scheduled to be consummated on or after the May 24, 2002 effective date of the exemption, 7 days after the exemption was filed.

This transaction is related to STB Docket No. 34205, West Texas and Lubbock Railway Company, Inc.- Acquisition and Operation Exemption-West Texas Lubbock Railroad Company, Inc., wherein Railway seeks to acquire and operate approximately 107 miles of rail line by lease (with a future purchase option) and assumption of trackage rights from West Texas Lubbock Railroad Company, Inc.

Permian states that: (i) the railroads will not connect with each other or any railroads 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. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34206, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, 555 12th Street, N.W., Suite 950N, Washington, DC 20004.

Boards decisions and notices are available on our website at "www.stb.dot.gov."

Decided: June 7, 2002.

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

Vernon A. Williams

Secretary

1. See Austin & Northwestern Railroad Company, Inc.-Acquisition and Operation Exemption-Missouri

Pacific Railroad Company, Finance Docket No. 31444 (ICC served May 22, 1989).

Decision Attachments

32797.wpd

9 KB

32797.pdf

6 KB

Size of PDF File: **0.01 MB**

Approximate download time at 28.8 kb: **0 Minutes**

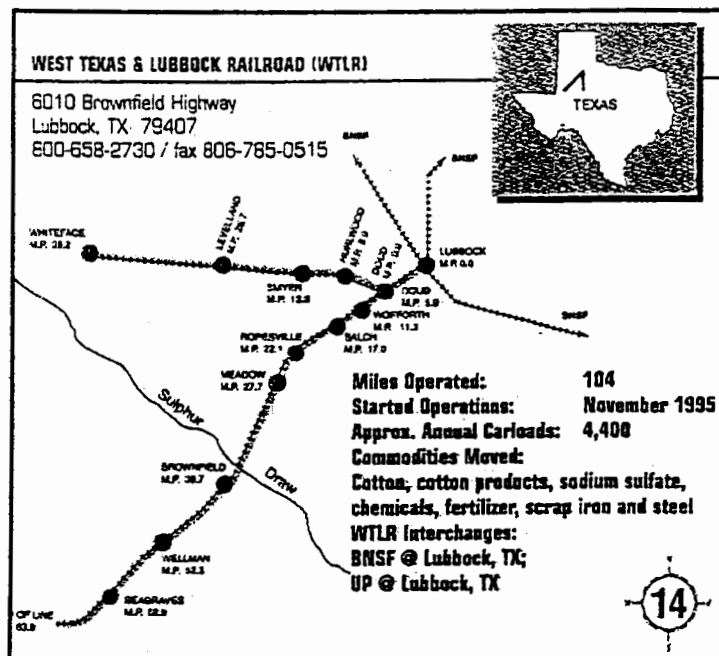
ⓘ Note:

Some installations of Adobe Acrobat 3 browser plug-ins cannot open large PDF files. If you experience problems viewing our files, we recommend upgrading to an Acrobat Reader 4 or above available free at www.adobe.com.

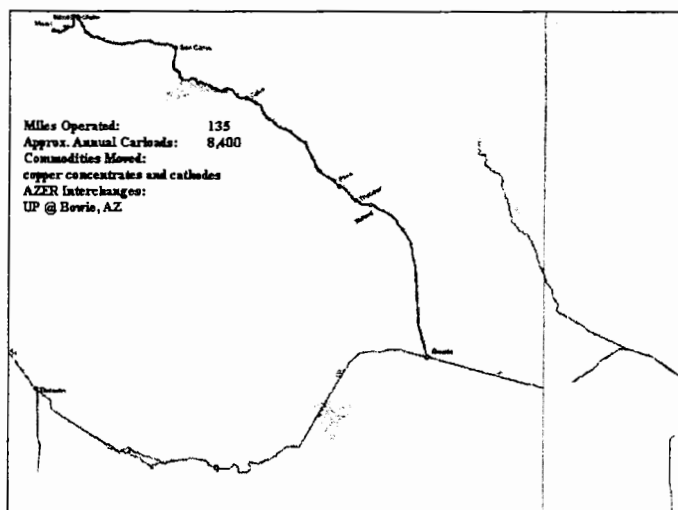
EXHIBIT C

Maps

Map 1 - West Texas and Lubbock Railroad



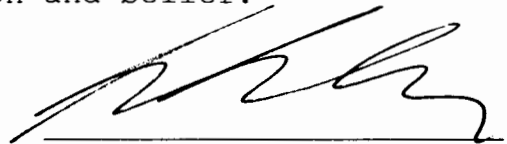
Arizona Eastern Railway



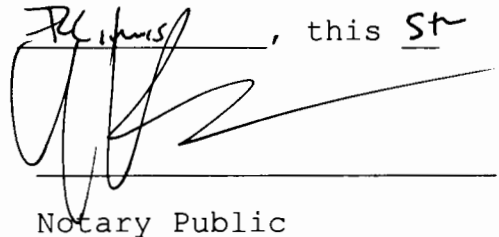
VERIFICATION

STATE OF)
) SS
CITY OF)

EDWIN ELLIS, being duly sworn according to law,
hereby deposes and states that (s)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 (her)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 5th
day of November


Notary Public

My Commission expires:

