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December 19, 2003

BY HAND DELIVERY

The Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423



Re: Finance Docket No. 34453, Genesee & Wyoming Inc. – Control
Exemption – Arkansas, Louisiana & Mississippi Railroad Company and
Fordyce & Princeton Railroad Company

Finance Docket No. 34454, Genesee & Wyoming Inc. – Control
Re: Exemption – Chattahoochee Industrial Railroad

Dear Secretary Williams:

Please find enclosed an original and 10 copies of (i) non-carrier Genesee & Wyoming Inc.'s ("GWI's) petition for exemption from 49 U.S.C. § 11323 for filing in Finance Docket No. 34453, and (ii) GWI's notice of exemption, pursuant to 49 CFR § 1180.2(d), for filing in Finance Docket No. 34454. For each proceeding, as required by 49 CFR § 1180.6(a)(6), we also enclose 20 additional unbound copies of the pertinent maps.

In addition, pursuant to 49 CFR §§ 1002.2(f)(39)(vi) and 1002.2(f)(39)(iv), please find our check in the amount of \$8,000 to cover the filing fees for these proceedings.

Please acknowledge receipt, by date-stamping the enclosed acknowledgment copies of this letter, the petition for exemption and the notice of exemption, returning them to our messenger.

Sincerely,

Troy W. Garriss

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**SURFACE
TRANSPORTATION BOARD**

Enclosures

cc: Mark Hastings

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209698

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34453



GENESEE & WYOMING INC.
– CONTROL EXEMPTION –
ARKANSAS, LOUISIANA & MISSISSIPPI RAILROAD COMPANY AND FORDYCE &
PRINCETON RAILROAD COMPANY

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PETITION FOR EXEMPTION
FROM
49 U.S.C. § 11323

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PETITION FOR EXEMPTION
EXPEDITED HANDLING REQUESTED **SURFACE
TRANSPORTATION BOARD**

Genesee & Wyoming Inc. ("Petitioner"), pursuant to 49 U.S.C. § 10502 and 49 CFR Parts 1121 and 1180, hereby petitions the Surface Transportation Board ("Board") to exempt from the prior approval requirements of 49 U.S.C. § 11323 Petitioner's acquisition from Georgia Pacific Corporation ("GP Corp.") of all of the stock of (and thereby control over) the two following class III rail carriers: Arkansas, Louisiana & Mississippi Railroad Company ("ALM") and Fordyce & Princeton Railroad Company ("FP") (ALM and FP are together referred to herein as the "Railroads").¹ The Railroads are operated separately but connect at Crosset, Arkansas. Petitioner currently controls several other rail carriers.

Petitioner anticipates that the stock purchase transaction will occur prior to the Board's issuing a decision in this matter. Petitioner, therefore, will transfer control of the Railroads into a voting trust (as necessary) to prevent any unauthorized control until the Board issues its decision.

¹ This proceeding is related to Genesee & Wyoming Inc. – Control Exemption – Chattahoochee Industrial Railroad, STB Finance Docket No. 34454, in which Petitioner has concurrently filed a notice of exemption to acquire from Great Northern Nekoosa Corp., a subsidiary of GP Corp., the stock of a non-connecting carrier.

STATEMENT OF FACTS

Petitioner is a non-carrier holding company, a Delaware corporation, with principal offices located at 66 Field Point Road, Greenwich, CT 06830. Petitioner currently controls Buffalo & Pittsburgh Railroad, Inc., a class II carrier operating in New York and Pennsylvania, and the following class III rail carriers: Allegheny & Eastern Railroad, Inc., operating in Pennsylvania; Bradford Industrial Rail, Inc., operating in Pennsylvania and New York; Corpus Christi Terminal Railroad, Inc., operating in Texas; Dansville and Mount Morris Railroad Company, operating in New York; Genesee & Wyoming Railroad Company, Inc., operating in New York; Golden Isles Terminal Railroad, Inc., operating in Georgia; Illinois & Midland Railroad, Inc., operating in Illinois; Louisiana & Delta Railroad, Inc., operating in Louisiana; Pittsburg & Shawmut Railroad, Inc., operating in Pennsylvania; Portland & Western Railroad, Inc., operating in Oregon; Rochester & Southern Railroad, Inc., operating in New York; Savannah Port Terminal Railroad Inc., operating in Georgia; South Buffalo Railway Company, operating in New York; Utah Railway Company ("Utah"), operating in Colorado and Utah; and Willamette & Pacific Railroad, Inc., operating in Oregon.

Petitioner also controls (i) the following class III rail carriers through ownership of non-carrier Rail Link, Inc.: Commonwealth Railway, Inc., operating in Virginia; and Talleyrand Terminal Railroad, Inc., operating in Florida; (ii) the following class III rail carriers, through ownership of Emons Transportation Group, Inc., which in turn, owns Emons Railroad Group, Inc.: St. Lawrence & Atlantic Railroad Company, operating in Vermont, New Hampshire and Maine; St. Lawrence & Atlantic Railroad (Quebec), Inc., operating in Vermont; and York Railway Company ("York"), operating in Pennsylvania;² and (iii) Salt Lake City Southern Railroad company through

² GWI also controls, through its control of Emons Transportation, two non-operating class III common carriers, which separately hold the rail assets over which York operates; Maryland and Pennsylvania Railroad, LLC

ownership of Utah. The direct and indirect subsidiary rail carriers of GWI are collectively referred to herein as the "Affiliates." Maps depicting the lines of the Affiliates are attached hereto as Exhibit A.

The Railroads are class III rail carriers. FP operates an approximately 57-mile line from a point at or near Fordyce to a point at or near Crosset, Arkansas. ALM operates an approximately 53-mile line from a point at or near Crosset, Arkansas to a point at or near Monroe, Louisiana. The Companies have been operated in a coordinated manner to provide services to their parent's (*i.e.*, GP Corp.'s) facilities. FP interchanges with UP in Fordyce, and ALM connects with KCS at Monroe. Petitioner will acquire control of the Railroads through purchase of all of the stock of the companies from GP Corp. Maps depicting the lines of the Railroads are attached hereto as Ex. B.

Petitioner and GP Corp. have entered an agreement on the terms of the proposed stock sale transaction. Under the proposal, ownership of the Railroads would change, but it is anticipated that the general nature of the Railroads and the scope of their operations generally would remain the same. Rail service will continue to be available to and from the same shippers, and future shippers can request common carrier service. It is intended that no shipper currently served by the Railroads will experience a reduction in its transportation options as a result of the transaction. Furthermore, as members of a family of shortlines, the Railroads likely will be able to provide more flexible and responsive service to local shippers, and will have a more sound financial future.

This transaction may in fact qualify for an automatic exemption under the notice of exemption procedure at 49 CFR § 1180.2(d)(2). The proposed control transaction does not

and Yorkrail, LLC. See Maryland and Pennsylvania Railroad Company and Yorkrail, Inc. – Intracorporate Family Transaction Exemption, STB Finance Docket No. 33815 (served Dec. 13, 1999).

involve a class I carrier. No connection between the Railroads, or between the Railroads and the Affiliates, will result from the transaction. Also, the transaction is not part of a series of anticipated transactions that would result in such connections. The only connecting lines involved in this proceeding, the connection between the two Railroads at or near Crosset, Arkansas, already exists, and was long ago authorized by the Interstate Commerce Commission. See Georgia Pacific Corporation – Continuance in Control Exemption – Arkansas, Louisiana & Mississippi Railroad Company, ICC Finance Docket No. 31907 (served July 29, 1991) (“Georgia Pacific”). Nevertheless, as the language of 49 CFR 1180.2(d)(2) could be construed to preclude use of the notice procedures under circumstances such as these, where two already connecting class IIIs are being acquired, and out of an abundance of caution, Petitioner has filed this petition.

ARGUMENT

I. EXEMPTION CRITERIA SATISFIED.

The acquisition of control of a rail carrier by a person that is not a carrier but that controls any number of carriers requires the prior approval of the Board. 49 U.S.C. § 11323(a)(5). As Petitioner is a non-carrier that controls other carriers, its control of the Railroads would be subject to the Board’s prior approval requirements, absent exemption.

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from the prior approval requirements when the Board finds that: (1) prior approval is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the “RTP”); and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power. 49 U.S.C. § 10502. In this case, all three criteria are satisfied.

A. Regulation Is Not Needed to Carry Out the Rail Transportation Policy.

Detailed scrutiny of Petitioner's control over the Railroads is not needed to carry out the objectives of the RTP. To the contrary, an exemption from the prior approval requirements here will promote several of these objectives. By minimizing the expense and delay associated with the application process, and by permitting Petitioner to ensure continuation of rail service provided by the Railroads (without unnecessarily putting at risk the existing assets of Petitioner and the Affiliates), exemption of this transaction will "minimize the need for Federal regulatory control over the rail transportation system," 49 U.S.C. § 10101(2), and "reduce regulatory barriers to entry into and exit from the industry," 49 U.S.C. § 10101(7). *See, e.g., Genesee & Wyoming Inc. – Control Exemption – South Buffalo Railway Company*, STB Finance Docket No. 34107 (served Nov. 21, 2001) ("GWI 2001").³

Also, by allowing Petitioner to integrate the Railroads into its existing family of shortlines, with attendant experience, logistics, capital and administrative support, the exemption will "promote a safe and efficient rail transportation system by allowing carriers to earn adequate revenues" (49 U.S.C. § 10101(3)), "ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public and the national defense" (49 U.S.C. § 10101(4)), "foster sound economic conditions in transportation and . . . ensure effective competition and coordination between rail carriers and other modes" (49 U.S.C. § 10101(5)), and "encourage honest and efficient management of railroads" (49 U.S.C. § 10101(9)). *See, e.g., GWI 2001, supra*.⁴

This transaction may in fact qualify for an automatic exemption under the notice of exemption procedures at 49 CFR 1180.2(d)(2) ("[t]he Board has found that its prior review and

³ *See also RailAmerica, Inc. – Control Exemption – RailTex, Inc.*, STB Finance Docket No. 33813 (served Jan. 7, 2000) ("RailAmerica").

⁴ *See also RailAmerica, supra* (permitting holding company to realize cost savings furthers the objectives of the RTP); *Summit View, Inc. – Control Exemption – Mahoning Valley Railroad Company*, STB Finance Docket No. 34026 (served May 11, 2001) (enabling carrier to become part of a family of small carriers furthers the RTP).

approval of these transactions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101"). If it does not, the only reason would be because of the existing connection between the Railroads at or near Crossett, Arkansas, which connection has already been approved by the ICC. Ownership by GWI will make no substantive change in the competitive balance or the operating relationships currently existing between FP and ALM. Georgia Pacific, *supra*. However, even where new connections are formed, exemptions repeatedly have been held to be appropriate in the short line context, including transactions involving this very Petitioner. *See, e.g., GWI 2001; Genesee & Wyoming, Inc. – Continuance In Control Exemption – Pittsburg & Shawmut Railroad, Inc., STB Finance Docket No. 32904 (served June 21, 1996) ("GWI 1996").⁵ Indeed, in this case, the fact of the connection between the Railroads *promotes* elements of the RTP, as it fosters improved operating efficiencies without foreclosing transportation options presently open to shippers. *See, e.g., Emons Transportation Group, Inc. and Emons Railroad Group, Inc. – Continuance in Control Exemption – St. Lawrence & Atlantic Railroad*, STB Finance Docket No. 33678 (served Nov. 20, 1998); Summit, *supra* (transaction likely to enhance rail service options).*

Finally, an exemption here would expedite handling and resolution of Board proceedings. 49 U.S.C. § 10101(15). Other aspects of the RTP will not adversely be affected. On the other hand, requiring a full-blown application proceeding in this case would contravene these very goals, while benefiting no one.

B. The Transaction Is Limited In Scope.

⁵ *Cf. also H. Peter Claussen and Linda C. Claussen – Continuance in Control Exemption – Georgia & Florida Railroad Co., Inc.*, ICC Finance Docket No. 32681 (served June 23, 1995) ("Georgia"); *H. Peter Claussen and Linda C. Claussen – Continuance in Control Exemption – Albany Bridge Company, Inc.*, ICC Finance Docket No. 32208 (served Jan. 27, 1993) ("Albany"); *William T. Bright – Control Exemption – The Buffalo Creek Railroad Company*, ICC Finance Docket No. 31969 (served Mar. 9, 1992); *Steve May – Control Exemption – Lackawanna Valley Railroad Corporation and Lackawanna Railway, Inc.*, ICC Finance Docket No. 31937 (served Sept. 12, 1991).

It is well settled that acquisition of a short line operating in a limited geographical area generally is a traction of limited scope. *See, e.g., Genesee & Wyoming Industries, Inc. – Continuance in Control Exemption – Allegheny & Eastern Railroad, Inc.*, ICC Finance Docket No. 32149 (served Oct. 23, 1992) (“Genesee 1992”) (involving a 147-mile line); *Emons Holdings, Inc. – Continuance in Control Exemption – York Rail, Inc.*, ICC Finance Docket No. 31170 (served Dec. 18, 1987); *Albany, supra*. Here, Petitioner will acquire carriers operating just 53 and 57 miles of line, respectively, in a discrete geographic area. The service provided is primarily for the benefit of GP Corp., the seller in this transaction. Control by Petitioner will not result in a reduction of transportation options on the Railroads’ lines, and the common control of the Railroads and the Affiliates will not adversely affect the previously authorized operations of any of the carriers.

Also, when a transaction merely adds a separately incorporated class III carrier to an existing family of shortlines, a finding of limited scope is appropriate. *See Georgia, supra*. Here, Petitioner’s control of the Railroads merely will add to Petitioner’s group of short lines, two additional, but corporately distinct, class III carriers. The Railroads will be separately managed, and assume the direct and indirect risks of owning and operating their respective lines. Business dealings, if any, between Petitioner, the affiliates and the Railroads will be contractual in nature, and will be based on fair, arms-length type arrangements. Under these circumstances, a finding of limited scope clearly is warranted.

C. Regulation of the Transaction Is Not Needed to Protect Shippers From Abuse of Market Power.

Because Petitioner’s proposed control over the Railroads is limited in scope, it is not even necessary to consider whether prior review is needed to protect shippers from an abuse of railroad market power. 49 U.S.C. § 10502(a)(2)(A). *See, e.g., Indiana Rail Road Company –*

Petition for Exemption – Acquisition and Operation – Illinois Central Railroad Company – Line Between Sullivan, IN and Browns, IL, 6 I.C.C.2d 1004 (1990). In any event, there is no potential for such abuse here.

In the proposed transaction, ownership will change hands but operations and service will not suffer any material adverse change. Two small carriers operating in a discrete geographic area simply will be added to a group of separate short lines controlled by Petitioner. The seller, GP Corp., is the primary shipper. No shipper located on the lines is expected to lose rail service options as a result of the transaction. *See, e.g., GWI 2001, supra; GWI 1996, supra* (common control by a holding company of an additional class III carrier does not expose shippers to an abuse of market power where there is no significant change in service or competitive alternatives). To the contrary, the more likely result will be enhanced rail service, as shippers will benefit from personalized, localized service and the substantial experience and resources of Petitioner. For these reasons, regulation of the transaction is not needed to protect shippers from an abuse of market power. *See, e.g., GWI 2001, supra.*

II. LABOR PROTECTION.

The Proposed Transaction will be subject to the labor protective conditions set forth in 49 U.S.C. § 11326(b). Genesee & Wyoming Inc.-Control Exemption-Utah Railway Company and Salt Lake City Southern Railroad Company, STB Finance Docket No. 34235 (served Sept. 16, 2002).

III. NO SIGNIFICANT ENVIRONMENTAL OR HISTORIC IMPACT.

Under 49 CFR § 1105.6(2)(i), no environmental documentation need be prepared for a control transaction that will not result in (1) a traffic diversion from rail to motor carriage of more than 1000 carloads per year or 50 carloads per mile; (2) a 100 percent increase in rail traffic or rail yard activity; (3) increases of more than 10 percent or 50 vehicles per day in truck traffic;

or (4) prescribed level increases in rail or truck traffic in class I or non-attainment areas under the Clean Air Act. *See* 49 CFR §§ 1105.7(e)(4) and (5). Petitioner's control of the Railroads basically involves a change in ownership of the Railroads and will not lead to significant changes in rail operations or traffic volumes. As such, the threshold for requiring environmental documentation will not be met, and no such documentation is required. *See, e.g., GWI 2001, supra.*

Similarly, 49 CFR § 1105.8(b)(3) provides that a control transaction that will not substantially change the level of maintenance of railroad property is exempt from the requirement of preparing a historic report. As the transaction in question contemplates no significant changes in maintenance or operations over the Railroads' respective lines, no historic report is required. *See, e.g., GWI 2001, supra.*

IV. VOTING TRUST.

Petitioner anticipates closing the transaction prior to the Board's decision in this proceeding. In such event, Petitioner will have the shares of FP and ALM placed into an independent, irrevocable voting trust to prevent any unauthorized control, until such time as the Board issues its decision in this matter. A copy of the form of voting trust agreement is attached hereto as Exhibit C.

V. EXPEDITED HANDLING NECESSARY.

The Board has indicated that it will grant requests for expedited disposition in the appropriate circumstances. *See, e.g., GWI 1992, supra; Steve May – Control Exemption – Lackawanna Valley Railroad Corporation and Lackawanna Railway, Inc., ICC Finance Docket No. 31937 (served Sept. 9, 1991).* Here, Petitioner's need for expedited handling is acute.

Successful operation of the Railroads' respective lines will require that Petitioner swiftly make critical business decisions regarding the Railroads. Under such circumstances, interim

control of the operations over the Railroads by a trustee would prevent Petitioner from giving the Railroads the specialized treatment demanded, and can only be detrimental. For this reason, Petitioner requests that the Board expedite this matter, issuing a decision as soon as practicable.

CONCLUSION

For these reasons, Genesee & Wyoming Inc. requests that its petition for exemption to control Arkansas, Louisiana & Mississippi Railroad Company and Fordyce & Princeton Railroad Company expeditiously be granted.

Respectfully submitted,



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Troy W. Garris
Weiner Brodsky Sidman Kider PC
1300 19th Street, NW
Fifth Floor
Washington, DC 20036-1609
(202) 628-2000

Attorneys for:

GENESEE & WYOMING INC.

Dated: December 19, 2003

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BEFORE THE
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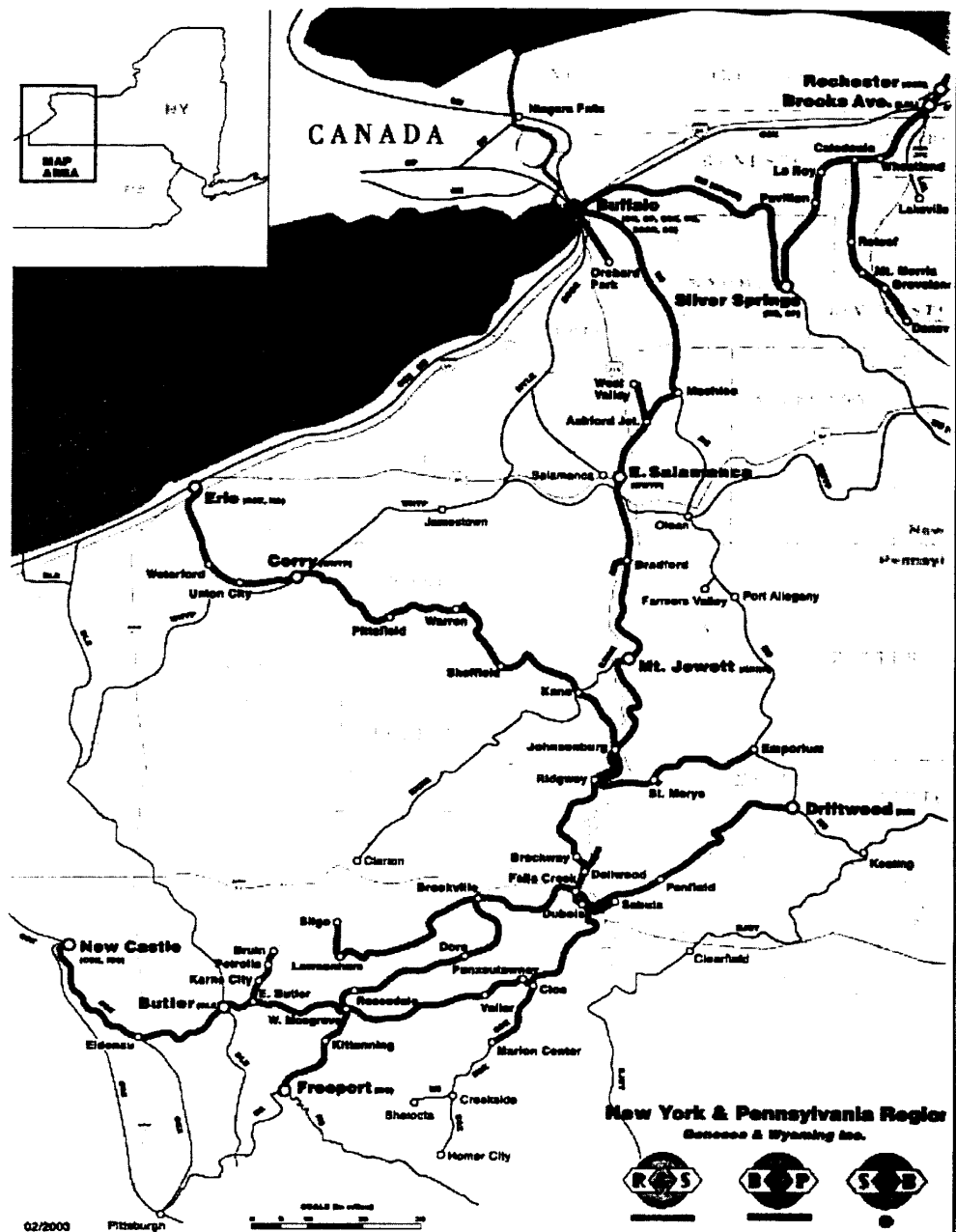
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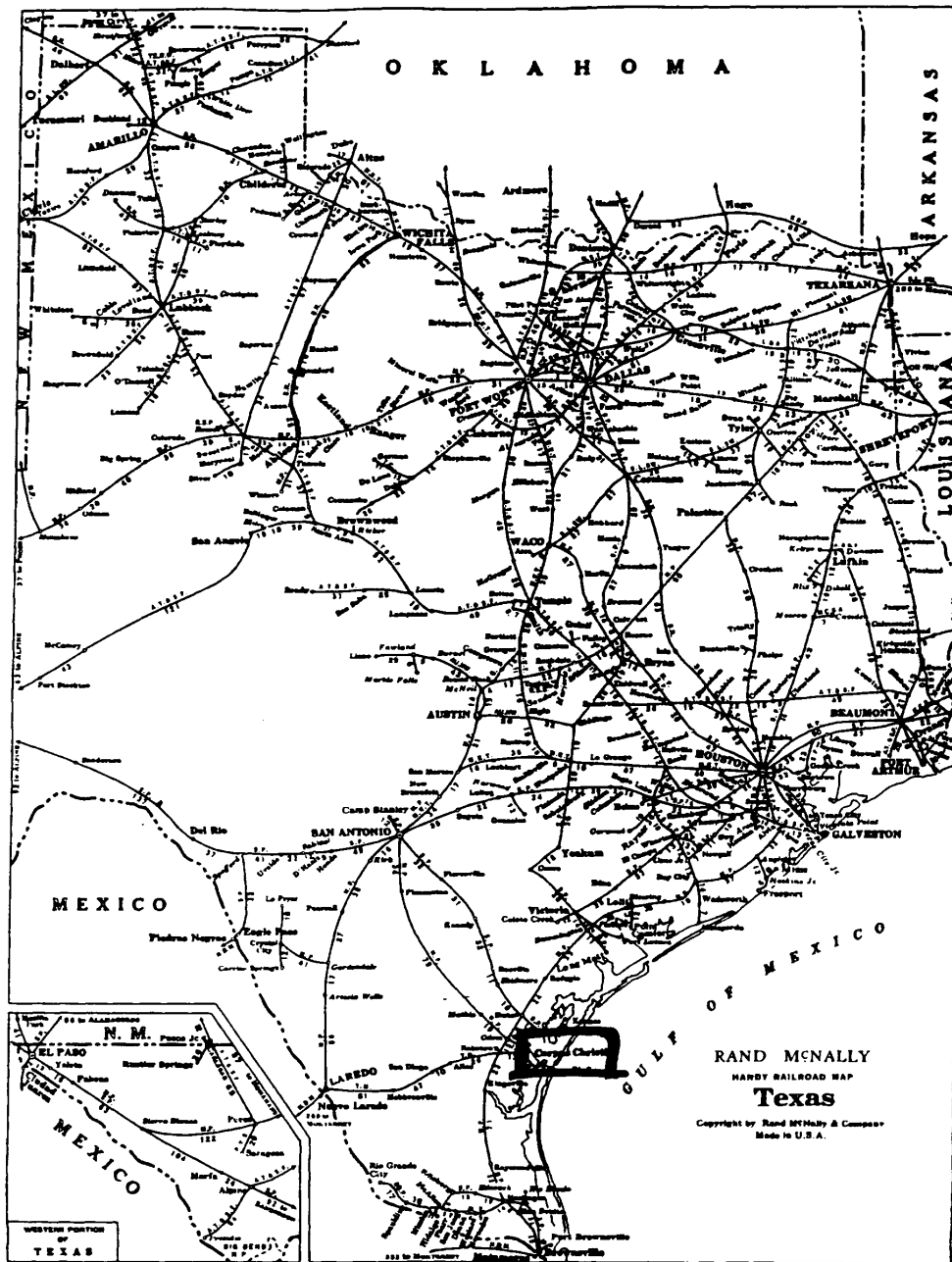
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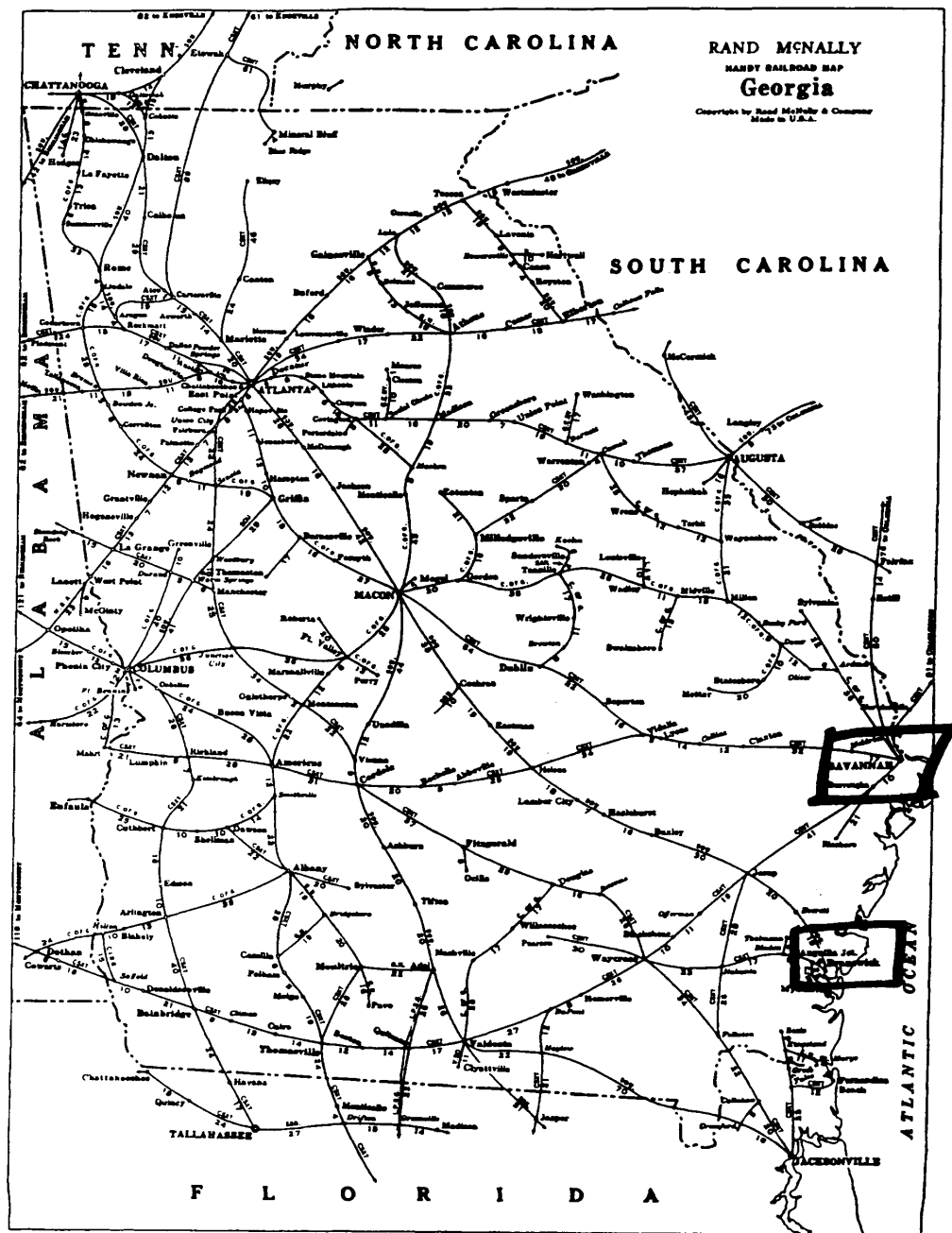
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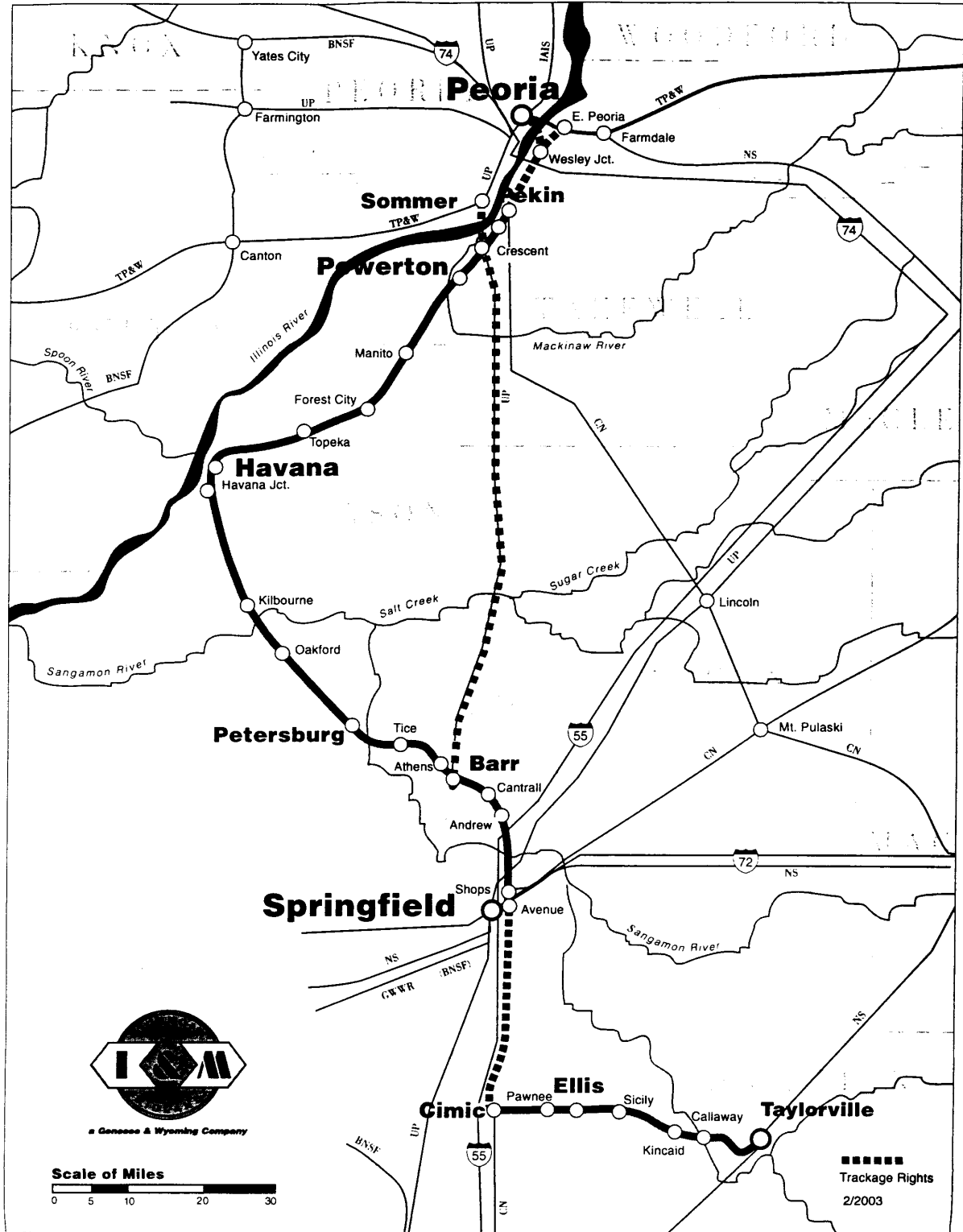
EXHIBIT A

MAPS
AFFILIATES











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Louisiana & Delta - Route Map

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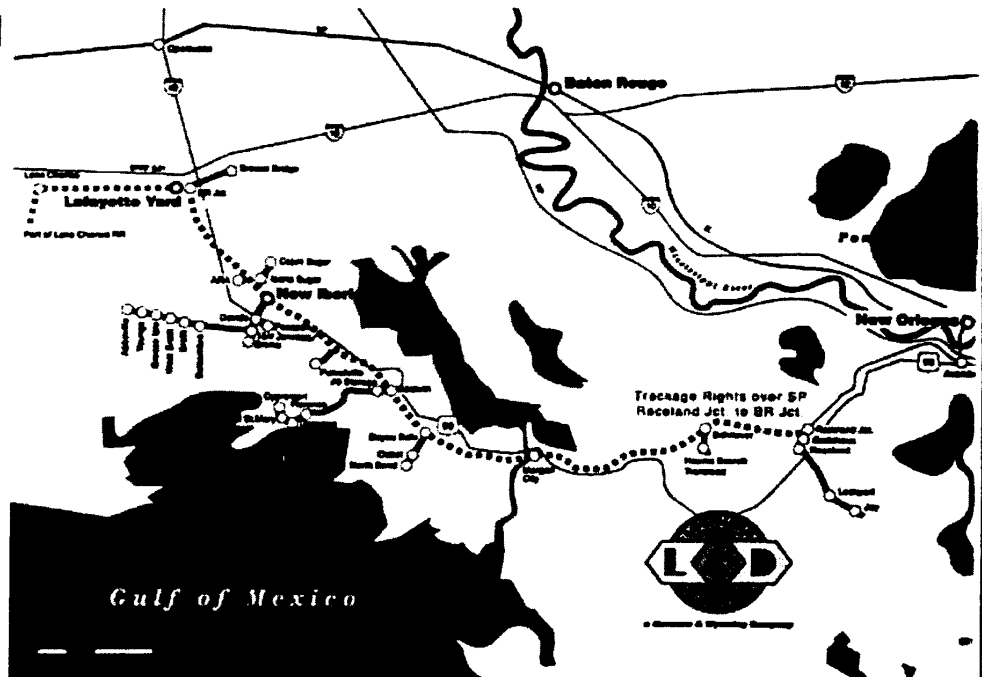
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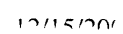
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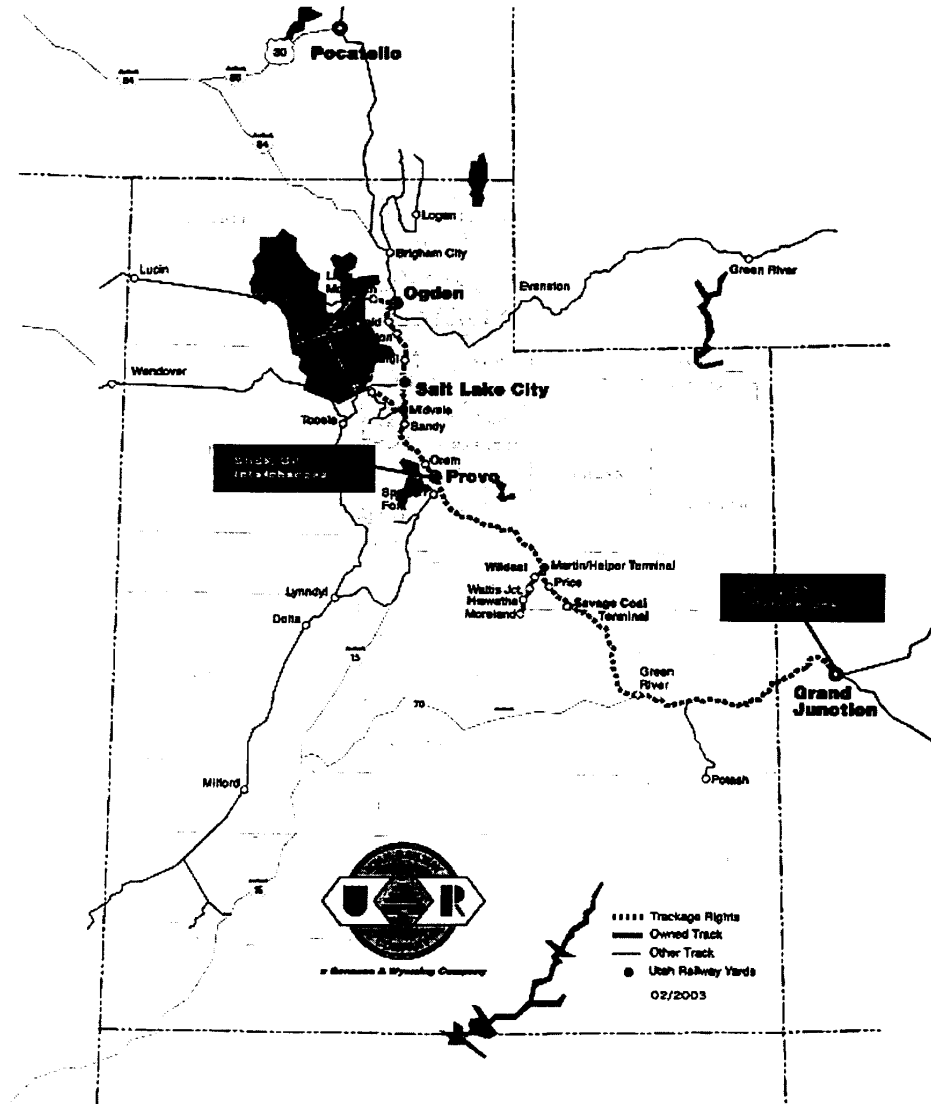
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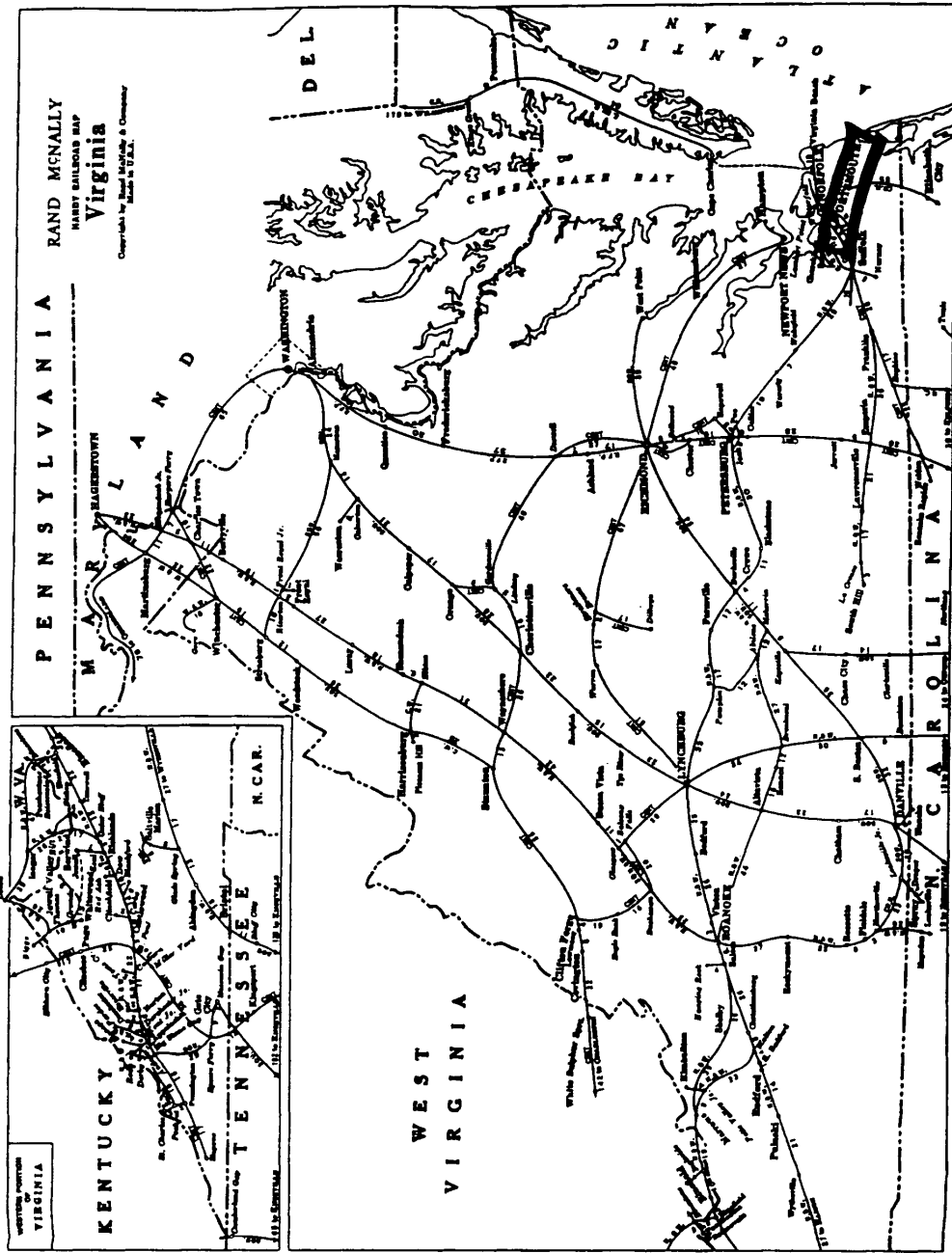
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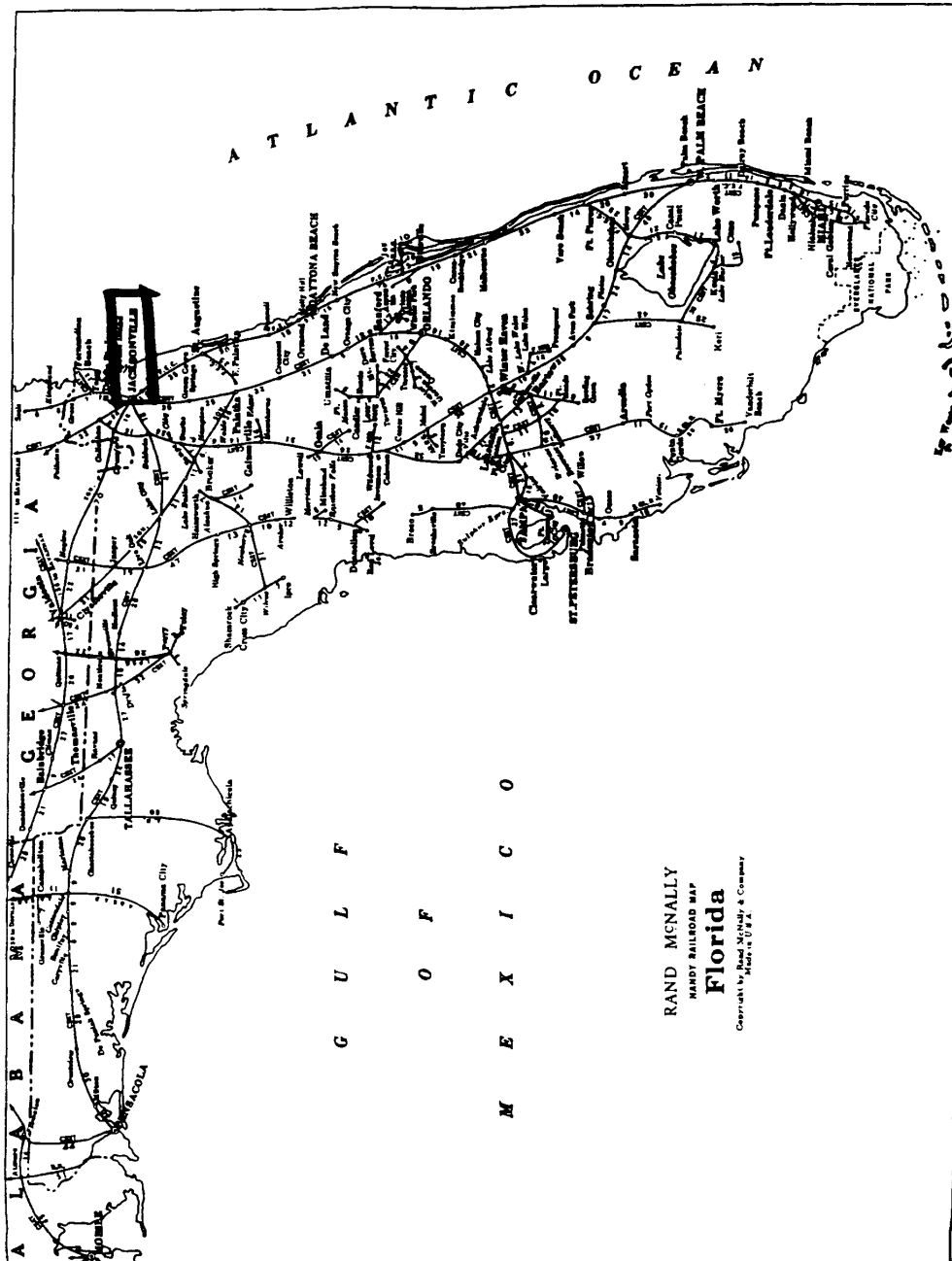
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RAND McNALLY
HANDY RAILROAD MAP
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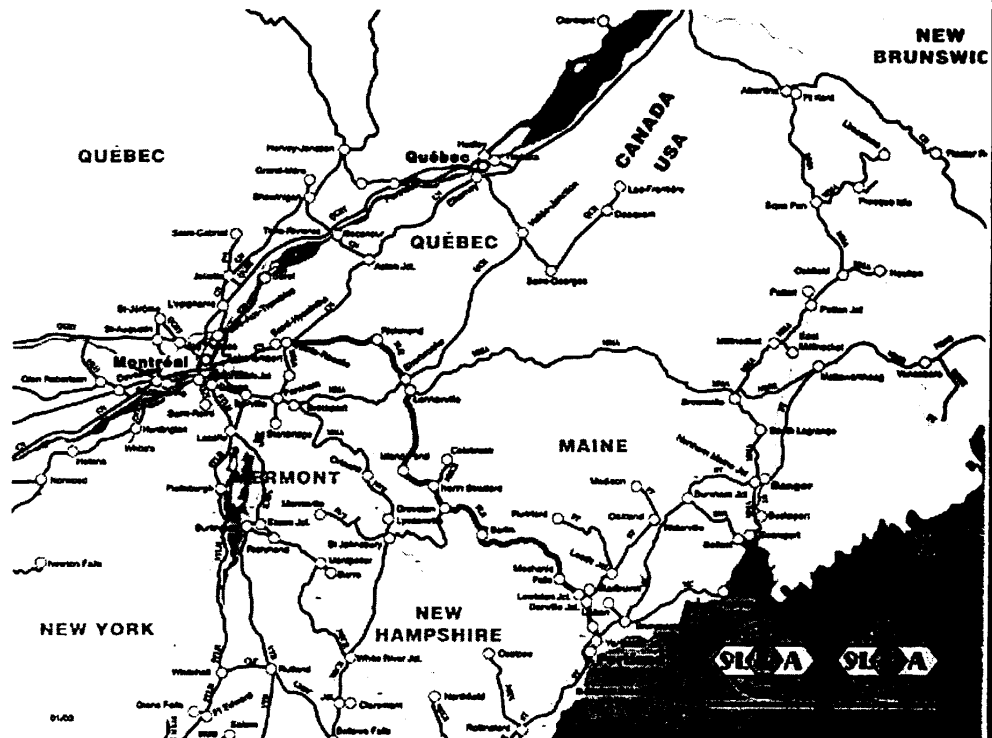
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York Railway Company (YRC) - Route Map

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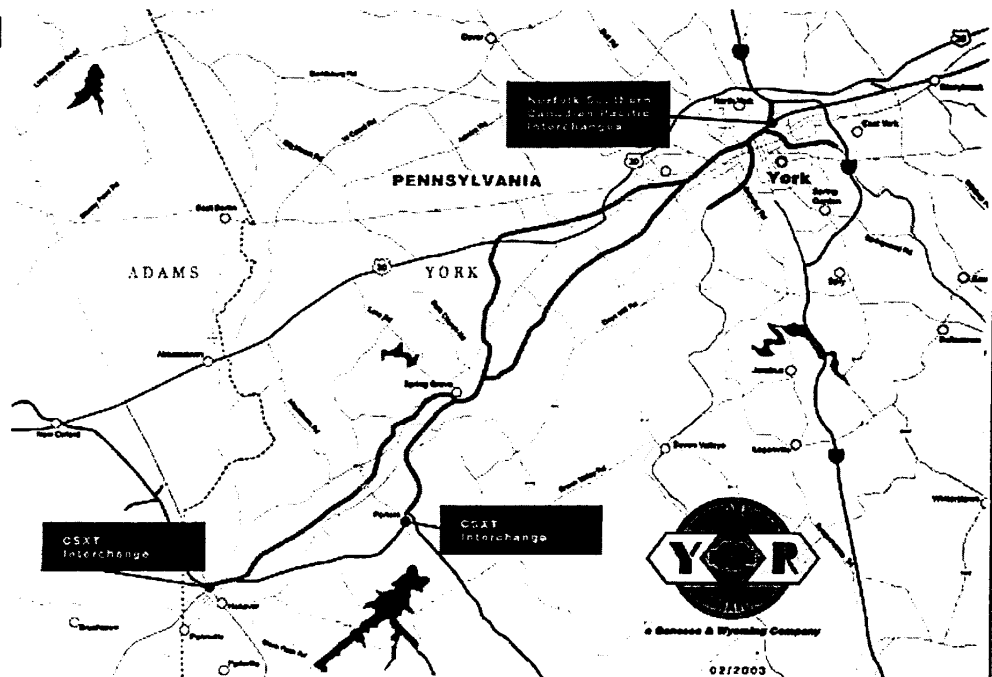
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BEFORE THE
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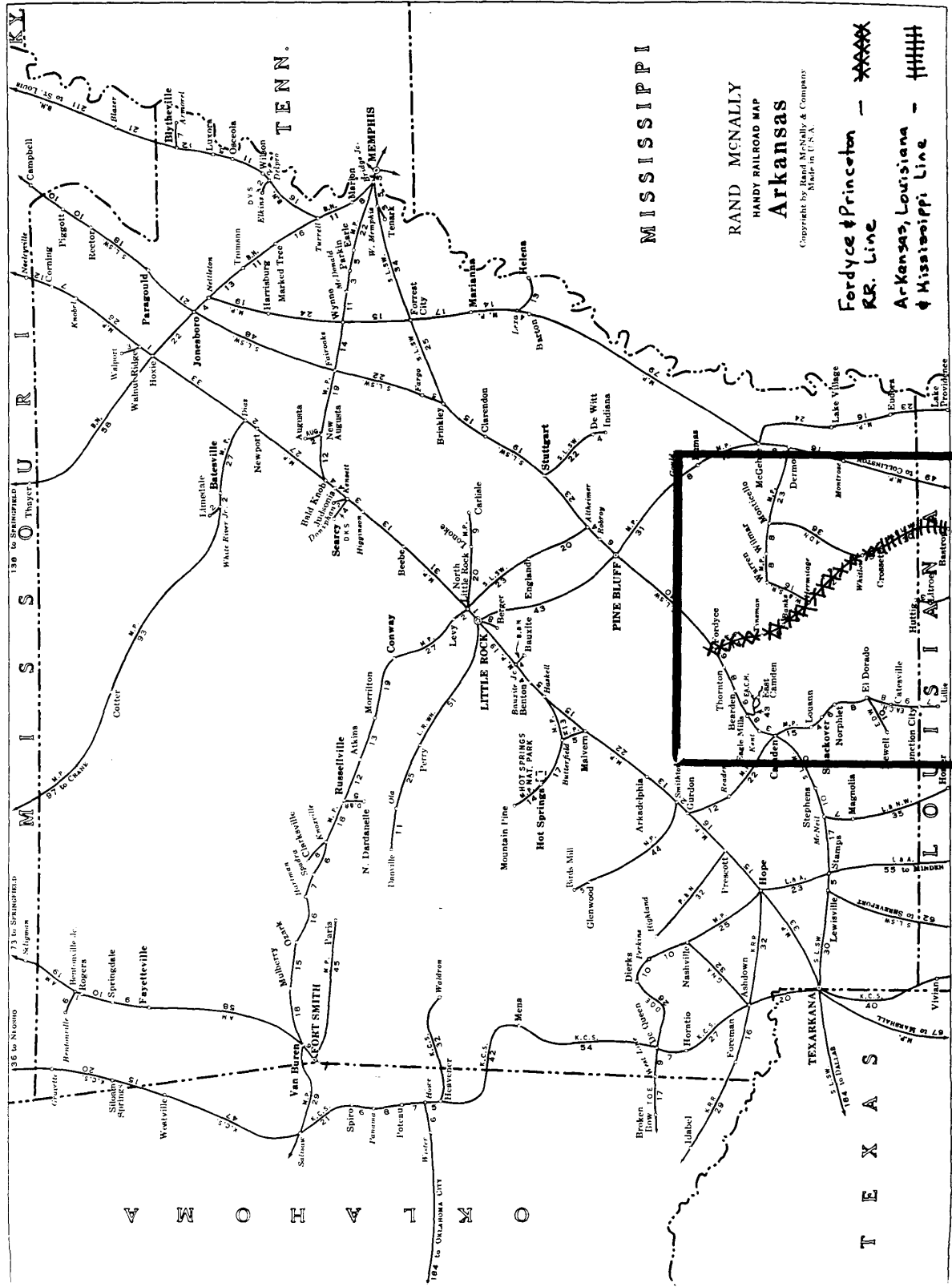
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GENESEE & WYOMING INC.
– CONTROL EXEMPTION –
ARKANSAS, LOUISIANA & MISSISSIPPI RAILROAD COMPANY AND FORDYCE &
PRINCETON RAILROAD COMPANY

PETITION FOR EXEMPTION
FROM
49 U.S.C. § 11323

EXHIBIT B

MAPS
ACQUIRED RAILROADS



Fordyce & Princeton - *****
RR. Line
Arkansas, Louisiana
& Mississippi Line - #####

RAND McNALLY
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To Kansas

RAND McNALLY
HANDY RAILROAD MAP
Louisiana

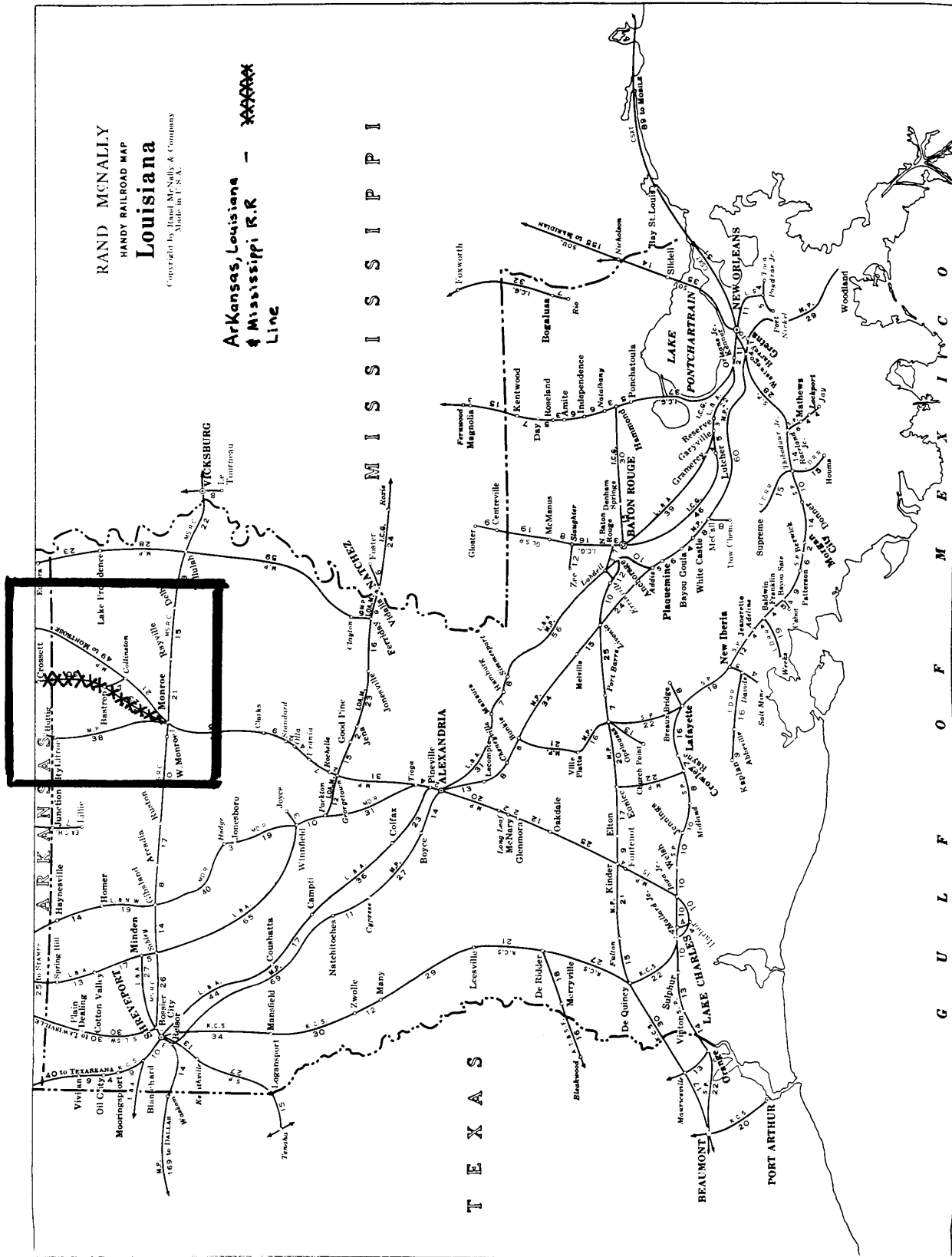
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Arkansas, Louisiana
& Mississippi R.R. - XXXXX
Line

M I S S I S S I P P I

T E X A S

G U L F O F M E X I C O



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34453

GENESEE & WYOMING INC.
– CONTROL EXEMPTION –
ARKANSAS, LOUISIANA & MISSISSIPPI RAILROAD COMPANY AND FORDYCE &
PRINCETON RAILROAD COMPANY

PETITION FOR EXEMPTION
FROM
49 U.S.C. § 11323

EXHIBIT C

FORM OF
VOTING TRUST AGREEMENT

VOTING TRUST AGREEMENT

THIS VOTING TRUST AGREEMENT (the "Voting Trust" or "Agreement") is made and entered into this ____ day of _____, 2003, by and between Genesee & Wyoming Inc., a Delaware corporation ("GWI" or "Settlor"), and Norman Carlson (the "Trustee"), whose address is 1351 Whitmore Court, Lake Forest, Illinois, 60045-1566. This Voting Trust is being entered into pursuant to the Guidelines for the Proper Use of Voting Trusts as set forth in 49 CFR Part 1013.

W I T N E S S E T H:

WHEREAS, Settlor is a railroad holding company that directly controls the following freight rail common carriers: Allegheny & Eastern Railroad, Inc.; Bradford Industrial Rail, Inc.; Buffalo & Pittsburgh Railroad, Inc.; Corpus Christi Terminal Railroad, Inc.; Dansville and Mount Morris Railroad Company; Genesee & Wyoming Railroad Company; Golden Isles Terminal Railroad, Inc.; Illinois & Midland Railroad, Inc.; Louisiana & Delta Railroad, Inc.; Pittsburgh & Shawmut Railroad, Inc.; Portland & Western Railroad, Inc.; Rochester & Southern Railroad, Inc.; Savannah Port Terminal Railroad, Inc.; South Buffalo Railway Company; Utah Railway Company ("Utah"); and Willamette & Pacific Railroad, Inc., and indirectly controls the following additional railroads: (i) Commonwealth Railway, Inc., and Talleyrand Terminal Railroad, Inc., through ownership of Rail Link, Inc.; (ii) Maryland and Pennsylvania Railroad Company, LLC, St. Lawrence & Atlantic Railroad Company, St Lawrence & Atlantic Railroad (Quebec) Inc., York Railway Company and Yorkrail, LLC, through ownership of noncarrier holding company Emons Transportation Group ("Emons") and Emons' noncarrier subsidiary Emons Railroad Group, Inc.; and (iii) Salt Lake City Southern Railroad Company, through ownership of Utah.

WHEREAS, it is intended that Settlor will complete a purchase of the outstanding shares of stock of the Arkansas, Louisiana & Mississippi Railroad Company and the Fordyce & Princeton Railroad Company (each, a "Company," together, the "Companies") pursuant to a Stock Purchase Agreement between Settlor and Georgia-Pacific Corp. (the "Stock Purchase Agreement");

WHEREAS, GWI will file with the Surface Transportation Board (the "Board") a petition for exemption pursuant to 49 U.S.C. § 10502, for an exemption from the requirements of 49 U.S.C. § 11323 to control the Companies;

WHEREAS, Settlor desires to isolate the control of the Companies from the Settlor and any company controlled by or affiliated with Settlor by depositing all shares of the Companies into an independent irrevocable voting trust pursuant to the Board's regulations at 49 C.F.R. Part 1013, in order to avoid any allegation or assertion that Settlor is controlling or has the power to control the Companies prior to receipt of the Board's approval or exemption of the Settlor's control of the Companies;

WHEREAS, the Trustee is willing to act as voting trustee pursuant to the terms of this Voting Trust.

NOW THEREFORE, in consideration of the premises and mutual undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Settlor hereby irrevocably appoints Norman Carlson as Trustee hereunder, and Norman Carlson hereby accepts said appointment and agrees to act as Trustee under this Voting Trust as provided herein.

2. This Voting Trust shall be irrevocable by Settlor and shall terminate only in accordance with the provisions of this Agreement.

3. Settlor agrees that, prior to acceptance of any tendered shares of a Company pursuant to the Stock Purchase Agreement, Settlor will assign, transfer and deliver such shares in trust to the Trustee, at 1351 Whitmore Court, Lake Forest, Illinois, 60045-1566, and will direct that any and all additional shares of a Company hereafter acquired by Settlor during the term of this Voting Trust be likewise assigned, transferred and delivered to Trustee. All such shares shall be duly endorsed or accompanied by proper instruments duly executed for transfer thereof to the Trustee, with all applicable transfer taxes and fees having been paid by Settlor, in exchange for Trust Certificates (as described in Paragraph 4 hereof). The delivery of certificates for such shares may be made at such other place as may be designated by the Trustee. All shares of each Company at any time deposited with the Trustee hereunder are hereinafter referred to as the "Trust Stock."

4. The Trustee shall hold in trust and shall dispose of, pursuant to the terms and conditions of this Voting Trust, all Trust Stock which may now or afterwards from time to time be delivered by or for the account of the Settlor. In exchange for the Trust Stock, the Trustee shall cause to be issued and delivered to the Settlor, voting trust certificates ("Trust Certificates") substantially in the form attached hereto as Exhibit A, with the blanks therein appropriately filled.

5. The Trust Certificates issued by the Trustee may be transferred on the books of the Trustee by the registered holder or holders of the Trust Certificates (each, a "Holder," together, the "Holders") upon the surrender thereof, properly endorsed by the Holder, in person or by an authorized attorney of the Holder, according to rules from time to time established for that purpose by the Trustee. Title to the Trust Certificates, when endorsed, shall, to the extent permitted by law, be transferable with the same effect as in the case of negotiable instruments. Delivery of the Trust Certificates, endorsed in blank by a Holder, shall vest title to and all rights under the Trust Certificates in the transferee thereof to the same extent and for all purposes as would delivery under

like circumstances of negotiable instruments payable to bearer; *provided*, however, that the Trustee may treat the Holder of record, or, when presented endorsed in blank, the bearers, as the owners for all purposes whatsoever, and shall not be affected by any notice to the contrary; provided further, however, that the Trustee shall not be required to deliver any Trust Stock without the surrender and cancellation of the corresponding Trust Certificate(s). Except to the extent provided otherwise in Paragraph 12 hereof, every transferee of a Trust Certificate shall, upon the receipt of such properly endorsed Trust Certificate, become a party to this Voting Trust as though an original party, and shall assume all attendant rights and obligations under this Voting Trust. In connection with, and as a condition of making or permitting any transfer or delivery of any Trust Stock or Trust Certificate under any provision of this Voting Trust, the Trustee may require the payment of a sum sufficient to pay or reimburse the Trustee for any stamp tax or other governmental charge in connection with the transaction.

6. From the date first written above, and until such time as the Voting Trust shall terminate in accordance with the provisions in the Agreement, the Trustee, subject to the limitations contained in the Agreement, shall have the full right to vote and to execute consents with respect to the Trust Stock, and shall be duly bound to exercise such voting rights, either in person or by proxy, at all meetings of the shareholders of each Company for any purpose, and shall possess in respect of any and all the Trust Stock, and shall be entitled to exercise, all the powers of absolute owners of the Trust Stock and all rights of every nature in respect of such Trust Stock, including the right to vote and to execute consents for every purpose and to receive distributions thereon, unless otherwise directed by a court of competent jurisdiction. The Trustee shall not exercise the voting powers of the Trust in any way so as to cause any dependence or intercorporate relationship between Settlor or companies controlled by or affiliated with Settlor, on the one hand, and each

Company or companies controlled by or affiliated with each respective Company on the other hand, other than such dealings as permitted pursuant to Paragraph 7 hereof. (The term "affiliate" or "affiliates" wherever used in this Voting Trust shall have the meaning specified in 49 U.S.C. § 11323(c)). The Trustee may not vote the Trust Stock for any transaction that would result in a violation of 49 U.S.C. § 11323; provided, however, that the Trustee may, with the consent of the Holder(s) representing at least two-thirds of the shares of a Company at the time held pursuant to this Voting Trust, vote with respect to the following:

- (a) the sale, lease or exchange of all or substantially all of the property and assets of that Company to any company other than a company controlled by or affiliated with Settlor, or a dissolution of that Company;
- (b) the consolidation or merger of the Companies with or into any company other than a company controlled by or affiliated with Settlor.

In the case of any such sale, lease, exchange, consolidation, merger or dissolution so made with the consent of the Holder(s) representing at least two-thirds of the shares of a Company at the time held in trust, the Trustee shall have the power to sell, exchange, surrender or otherwise dispose of all or any part of the ownership interest of that Company at the time held in trust, pursuant to the terms of or in order to carry into effect such sale, lease, exchange, consolidation, merger or dissolution.

Subject to the provisions, and until termination, of this Voting Trust, the Trustee may vote or consent, or issue proxies to vote or consent at shareholders' meetings of each Company and otherwise, as the Trustee shall determine in his uncontrolled discretion, and no voting or other right or power with respect to the Trust Stock and other securities held in trust shall pass to any Holder or to others by or under the Trust Certificates, or by or under this Voting Trust, or by or under any other agreement.

7. Neither the Trustee, nor any director, officer, or company controlled by or affiliated with the Trustee, may serve as an officer or member of the board of directors of Settlor or any company controlled by or affiliated with Settlor, or be a shareholder of Settlor or any company controlled by or affiliated with Settlor, or have any direct or indirect business arrangements or dealings, financial or otherwise, with Settlor or any company controlled by or affiliated with Settlor (other than this Voting Trust), that could be construed as creating an indicium of control by Settlor over Trustee. The Trustee has the responsibility to manage the Companies through casting his votes for each Company's Board of Directors and to exercise the voting rights and execute consents as provided in paragraph 6 hereof. The Trustee's duties are therefore not merely custodial in nature. Nothing in this Voting Trust shall restrict the ability of companies controlled by or affiliated with Settlor to enter into or continue commercial dealings with each Company in the ordinary course of business, based on arm's-length bargaining, during the term of this Voting Trust, including without limitation the following:

- (a) the provision of rail service over a Company's rail line by any company controlled by or affiliated with the Settlor;
- (b) the leasing by a Company of rolling stock or other equipment or assets or services from any company controlled by or affiliated with Settlor, and
- (c) the provision by a Company of such documents and information as Settlor may reasonably request in connection with presenting its position regarding control of a Company to the Board or a court of competent jurisdiction.

8. In voting or giving directions for voting the Trust Stock, the Trustee will exercise his best judgment to elect suitable directors in the best interest of the affairs of each Company. The

Trustee, however, assumes no responsibility with respect to acts or omissions of the directors of each Company (other than the gross negligence or willful misconduct of the Trustee himself).

9. The Trustee shall be entitled to receive reasonable and customary compensation for all services rendered by Trustee under the terms of the Agreement and shall be entitled to indemnity from Settlor against any and all expenses, claims and liabilities incurred in connection with or with respect to the performance of Trustee's duties under this Voting Trust; provided, that the indemnification of the Trustee by the Settlor shall not extend to expenses, claims or liabilities resulting from or in connection with the willful misconduct or gross negligence of the Trustee. The Trustee shall submit to Settlor quarterly invoices for services with appropriate documentation, and Settlor shall pay such statements within thirty (30) days after receipt thereof.

10. From and after the deposit of the Trust Stock with Trustee, and until the termination of this Voting Trust pursuant to the terms hereof, a Holder shall be entitled to receive, from time to time, payment of any cash distributions collected by the Trustee upon the ownership interests in a Company represented by the Trust Certificates. Immediately following receipt of any such cash distribution, the Trustee shall pay the same over to or as directed by the transferee or Holder thereunder as then known to the Trustee.

11. In the event that any distribution other than cash is received by the Trustee, such distribution shall be held by the Trustee in accordance with the terms of this Voting Trust as though it is Trust Stock that was initially deposited with the Trustee by Settlor under this Voting Trust. With respect to such distribution, the Trustee shall issue new or additional Trust Certificates, or an applicable equivalent thereto, to the Holders entitled to receive any such distribution.

12. (a) This Voting Trust is accepted by the Trustee subject to the rights hereby reserved to the Holder(s) at any time to sell or make any other disposition, in whole or in part, of its

Trust Stock, whether or not an event described in subparagraph (b) below has occurred. The Trustee will at any time upon the receipt of written instructions from a Holder designating the person or entity to whom the Holder has sold or otherwise disposed of the whole or any part of such Holder's Trust Stock, and certifying in writing that such person or entity is not a shareholder, officer or director of Settlor, or a company controlled by or affiliated with Settlor, or a shareholder, officer or director of a company controlled by or affiliated with Settlor, (upon which written certification the Trustee shall be entitled to rely), immediately transfer to such person or entity therein named all of the Trustee's right, title and interest in such amount of the Trust Stock as may be set forth in such instructions and shall cooperate with such person or entity in having such Trust Stock reissued in the name of such person or entity. If such instructions result in the transfer of all of the Trust Stock subject to this Voting Trust as of the date of such instructions, then upon transfer of the Trustee's right, title and interest therein, and in the event of a sale thereof, upon delivery of the proceeds of such sale, this Voting Trust shall cease and come to an end. If such instructions relate to only a part of the Trust Stock, then this Voting Trust shall cease as to such part upon such transfer, and the receipt of proceeds in the event of sale, but shall remain in full force and effect as to the remainder of the Trust Stock. In the event of a sale of Trust Stock by a Holder, the net proceeds of such sale shall be payable to the Trustee and upon receipt thereof the Trustee shall promptly pay or cause to be paid such net proceeds to that Holder. It is the intention of this subparagraph that no violations of 49 U.S.C. § 11323 will result from a termination of this Voting Trust.

(b) In the event that: (1) Title 49 of the United States Code or other controlling law is amended to allow Settlor to acquire control of the Companies without obtaining Board or other governmental approval or exemption, (2) the Board by final order approves or exempts the

control of the Companies by Settlor, or (3) Settlor is entitled under the regulations of the Board to file a verified notice of exemption; then immediately upon the delivery of a copy of such order of the Board or exemption with respect thereto, or an opinion of independent counsel selected by the Trustee that no order of the Board or other governmental authority or exemption is required, the Trustee shall either vote the Trust Stock as directed in writing by the Holder(s), or transfer to the Holder(s) or transfer upon the order of the Holder(s) as then known to the Trustee, Trustee's right, title and interest in and to all of the Trust Stock or such part as may then be held by Trustee (as provided in subparagraph (a) hereof), and upon such transfer this Voting Trust shall cease and come to an end.

(c) In the event that: (1) the Board or a court of competent jurisdiction denies Settlor authority to control the Companies and that order becomes final after judicial review or failure to appeal, (2) the Board or a court of competent jurisdiction orders the Trustee to divest himself of the Trust Stock, and that order becomes final after judicial review or failure to appeal, or (3) the Holder(s) determine in light of any other final order that the Trust Stock should be sold, the Trustee shall use best efforts to dispose of the Trust Stock under the terms of the Board or court order and in accordance with any instructions of Holder(s) not inconsistent with the requirement of the terms of any Board or court order. To the extent that registration is required under the Securities Act of 1933 or any other applicable securities laws in respect of any distribution of Trust Stock as contemplated in the Agreement, the Holder(s) shall reimburse the Trustee for any expenses incurred by Trustee. The proceeds of the sale shall be distributed, on a pro rata basis, to or upon the order of the Holder(s) hereunder as then known to the Trustee. The Trustee may, in his reasonable discretion, require the surrender to Trustee of the Trust Certificates hereunder before paying to the Holder such Holder's share of the proceeds.

(d) Unless sooner terminated pursuant to any other provision herein contained, this Voting Trust shall terminate one (1) year after the day and year first written above, so long as no violation of 49 U.S.C. § 11323 will result from such termination, and provided that this Voting Trust may be extended by the mutual agreement of the parties hereto pursuant to applicable state law, until such time as the ICC Termination Act of 1995 and the regulations promulgated thereunder by the Board as presently in effect shall no longer require that the Trust Stock be held in a voting trust. All Trust Stock and any other property held by the Trustee hereunder upon such termination shall be distributed to or upon the order of the Holder(s) hereunder as then known to the Trustee. The Trustee may, in his reasonable discretion, require surrender to the Trustee of the Trust Certificates hereunder before the release or transfer of the Trust Stock evidenced thereby. Upon termination of this Voting Trust, the Holder(s)' respective rights, titles and interests in and to the Trust Stock then held by the Trustee shall be transferred to such Holder(s) in accordance with the terms and conditions of this Voting Trust, and upon such transfer, this Voting Trust shall cease and come to an end.

(e) The Trustee shall promptly inform the Board of any transfer or disposition of Trust Stock pursuant to this Paragraph 12.

13. The Trustee shall not, by reason of this Voting Trust, or by the exercise of any powers or duties pursuant to this Voting Trust, incur any responsibility as shareholder, manager, trustee or otherwise by reason of any error of judgment, or mistake of law or fact, or of any omission of any agent or attorney, or of any misconstruction of this Voting Trust, or for any action of any sort taken or omitted or believed by the Trustee to be in accordance with the terms of this Voting Trust or otherwise, except for the individual willful misconduct or gross negligence of the Trustee. The Trustee shall not be responsible for the sufficiency or accuracy of the form,

execution, validity or genuineness of the Trust Stock or of any endorsement thereof, or for any lack of endorsement thereof, or for any description therein, nor shall the Trustee be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such Trust Stock or endorsement on the Trust Stock, except for the execution and delivery of this Voting Trust by the Trustee. Settlor agrees that it will at all times protect, indemnify and save harmless the Trustee from any loss, cost, or expense of any kind or character whatsoever in connection with this Voting Trust except those, if any, arising from or in connection with the gross negligence or willful misconduct of the Trustee, and, except for such costs and expenses arising from or in connection with the gross negligence or willful misconduct of the Trustee, (i) Settlor will at all times undertake, assume full responsibility for, and pay all costs and expenses of any suit or litigation of any character, with respect to the Trust Stock or this Voting Trust, and (ii) if the Trustee shall be made a party thereto, Settlor will pay all costs and expenses, including reasonable attorneys' fees, to which the Trustee may be subject by reason thereof. The Trustee may consult with counsel, and the opinion of such counsel shall constitute full and complete authorization and protection in respect of any action taken or omitted or suffered by the Trustee hereunder in good faith and in accordance with such opinion. Notwithstanding any provision herein to the contrary, and without limiting the foregoing, Settlor shall indemnify and save harmless Trustee from and against any and all liability, losses and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with claims asserted against a Company or Settlor, or related to the ownership or operation of a Company's properties, under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5105 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control

Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), each as may be amended from time to time, and analogous state or local laws (and regulations and orders issued thereunder); *provided*, that this indemnity shall not apply to the extent that such liability, losses or expenses arise out of or in connection with the gross negligence or willful misconduct of the Trustee.

14. The Trustee may at any time or from time to time appoint an agent or agents and may delegate to such agent or agents the performance of any administrative duty of the Trustee. The Trustee may at any time remove any agent so appointed by the Trustee and appoint a new agent to carry out the purposes herein.

15. The Trustee may at any time resign by delivering to Settlor Trustee's resignation in writing, such resignation to take effect the earlier of thirty (30) days after the date such notice is sent, or the date of the appointment of a successor trustee. Trustee shall cease to act as trustee hereunder effective upon the appointment of a successor trustee as hereinafter provided. Upon receiving notice of resignation, Settlor shall within fifteen (15) days appoint a successor trustee, who shall satisfy the requirements of Paragraph 7 hereof. If no successor trustee shall have been appointed and shall have accepted appointment within twenty (20) days after such notice of resignation, the resigning Trustee may petition any federal court for the appointment of a successor trustee consistent with the terms and conditions of this Agreement. In the event of Trustee's death or his inability to perform his duties under this Agreement, the Settlor shall, within fifteen (15) days after such death or inability to perform, appoint a successor trustee who shall satisfy the requirements of Paragraph 7 hereof. Upon written assumption by the successor trustee of the Trustee's powers and duties hereunder, Settlor shall be notified of such assumption, whereupon the Trustee shall be discharged of his powers and duties hereunder and the successor trustee shall

become vested therewith. In the event of any material violation of the terms and conditions of this Voting Trust, the Trustee shall become disqualified from acting as Trustee hereunder as soon as a successor trustee hereunder shall have been selected in the manner provided by this paragraph.

16. Except as provided in this Agreement, the Trustee herein appointed, or any successor trustee, shall not, in the Trustee's individual capacity or otherwise, buy, sell or deal in the shares of either Company, or the shares or membership or partnership interests, as applicable, of any company affiliated with or controlled by Settlor.

17. The Trustee accepts the powers and duties under this Voting Trust subject to all the terms, conditions and reservations contained in the Agreement and agrees to exercise the powers and perform the duties of Trustee as set forth in the Agreement; *provided*, however, that nothing contained herein shall be construed to prevent the Trustee from resigning as Trustee pursuant to paragraph 15 hereof.

18. All notices, demands, requests or other communications that may be or are required to be given, served or sent to the Trustee or Settlor pursuant to this Voting Trust shall be in writing and shall be deemed to have been properly given or sent by mailing by registered or certified mail, return receipt requested, or by a national overnight delivery service, appropriately addressed to the Trustee or Settlor, as applicable, as follows:

If to the Trustee:

Norman Carlson
1351 Whitmore Court
Lake Forest, Illinois, 60045-1566

If to Settlor:

Genesee & Wyoming Inc.
66 Field Point Road

Greenwich, Connecticut 06830

With copies to:

Jo A. DeRoche
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, D.C. 20036-1609

Each notice, demand, request or communication which shall be mailed by registered or certified mail, or sent by national overnight delivery service, in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Upon Trustee's receipt of a notice to a Holder other than Settlor, or in the event Trustee is required to or sends notice to a Holder other than Settlor, Trustee shall forward or send such notice to the Holder of record at the last known address of such Holder listed on the books maintained by Trustee.

19. Copies of this Voting Trust shall be on file in the principal office of each Company in the State(s) of Arkansas, and shall be open to any officer of Settlor daily during normal business hours.

20. In order to permit Trustee to perform the duties and obligations of this Voting Trust, Settlor shall provide Trustee with all corporate records and Board orders concerning the Trust Stock of the Companies promptly upon Settlor's receipt or creation of such documents.

21. If, at any time, the Trustee is of the opinion that any tax or governmental charge is payable in respect of any Trust Stock held by the Trustee, or in respect of any distributions or other rights arising from the subject matter of this Voting Trust, the Trustee may, but shall not be

required to, pay such tax or governmental charge. The Trustee shall have a first lien, in the sum of any amount so paid, along with interest at a rate of six percent (6%) per annum, against the Trust Stock held by the Trustee and/or against any distributions or other rights arising from the subject matter of this Voting Trust, and may be satisfied therefrom.

22. If any term or provision of this Voting Trust is illegal, invalid or unenforceable under or inconsistent with present or future laws, including, but not limited to, the ICC Termination Act of 1995 and regulations promulgated thereunder by the Board, as may be in effect at that time, then it is the intention of the parties hereto that the remainder of this Voting Trust shall not be affected thereby and shall be valid and shall be enforced to the fullest extent permitted by law. In the event that the Board shall at any time hereafter by final order find that compliance with law requires any other or different action by the Trustee than is provided herein, the Trustee shall, upon receipt of such final order, act in accordance with such final order instead of the provisions of this Voting Trust.

23. This Voting Trust may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

24. This Voting Trust shall be governed and construed in accordance with the laws of the State of Connecticut.

25. This Voting Trust may from time to time be modified or amended by agreement executed by the Trustee and Settlor: (a) pursuant to an order of the Board; (b) with prior approval of the Board; or (c) upon receipt of an opinion of counsel satisfactory to Trustee and Settlor that an order of the Board approving such modification or amendment is not required, provided that a copy of such modification or amendment shall have been provided to the staff of the Board, pursuant to 49 CFR Part 1013 or any successor provision.

26. This Voting Trust shall be binding upon the successors and assigns of the parties hereto.

27. Once the Settlor has caused the Trust Stock acquired from the Companies pursuant to the Stock Purchase Agreement to be deposited with the Trustee, all references to "Settlor" in this Agreement shall be deemed to include any subsequent Holders.

IN WITNESS WHEREOF, the parties hereto have executed this Voting Trust as of the date first written above.

TRUSTEE:

SETTLOR:

GENESEE & WYOMING INC.

By: _____

Its: _____

EXHIBIT A

No. _____

_____ Shares

VOTING TRUST CERTIFICATE

FOR

OWNERSHIP INTEREST OF

THIS IS TO CERTIFY that _____ will be entitled, on the surrender of this Certificate, to receive on the termination of the Voting Trust Agreement ("Voting Trust") hereinafter referred to, or otherwise as provided in Paragraph 12 of the Voting Trust, all right, title and interest in a certificate or certificates for _____ Class _____ shares of _____ (the "Company"). This Certificate is issued pursuant to the Voting Trust, dated as of _____, 2003, by and between Genesee & Wyoming Inc., a Delaware corporation ("Settlor"), and _____ ("Trustee"). A copy of the Voting Trust is on file in the registered office of the Company, and open to inspection by the holder hereof. The Voting Trust, unless earlier terminated or extended pursuant to the terms thereof, will terminate one year from the date on which it was made, as shown above, so long as no violation of 49 U.S.C. § 11323 will result from such termination.

The holder of this Certificate shall be entitled to the benefits of the Voting Trust, including the right to payments equal to the cash distributions, if any, paid by the Company on a pro rata basis with respect to the shares represented by this Certificate.

This Certificate shall be transferable only on the books of the undersigned Trustee or any successor, to be kept by such Trustee or successor, upon surrender hereof by the registered holder in person or by an attorney duly authorized in accordance with the provisions of the Voting Trust, and until so transferred, the Trustee may treat the registered holder as the owner of this Certificate for all purposes whatsoever, unaffected by any notice to the contrary.

By accepting this Certificate, the holder hereof assents to all provisions of, and becomes a party to, the Voting Trust.

IN WITNESS WHEREOF, the Trustee has signed this Certificate.

TRUSTEE

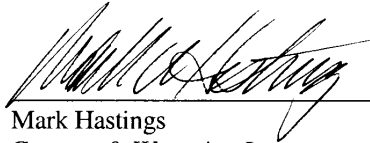
Signature: _____

Printed Name: _____

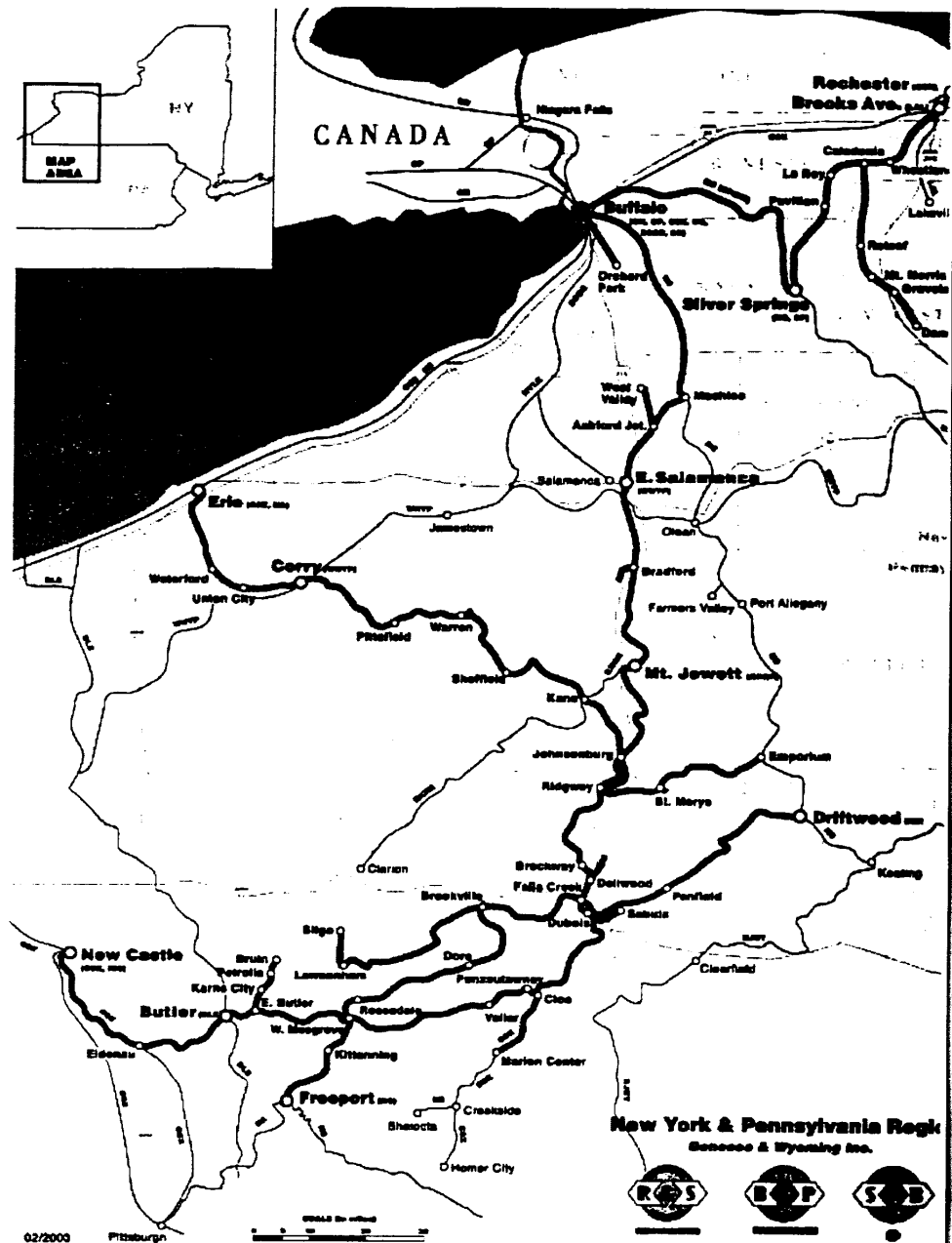
Dated: _____

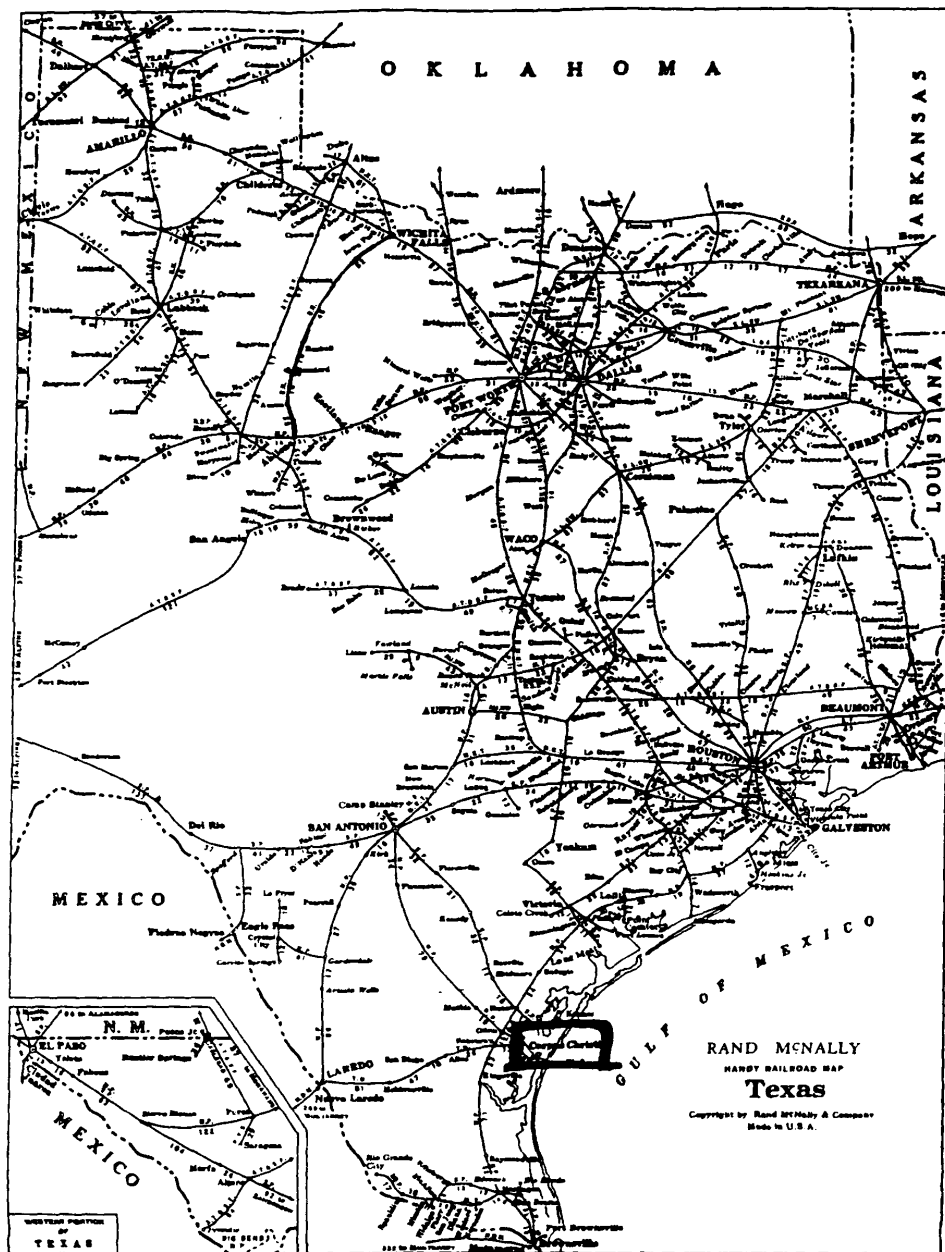
VERIFICATION

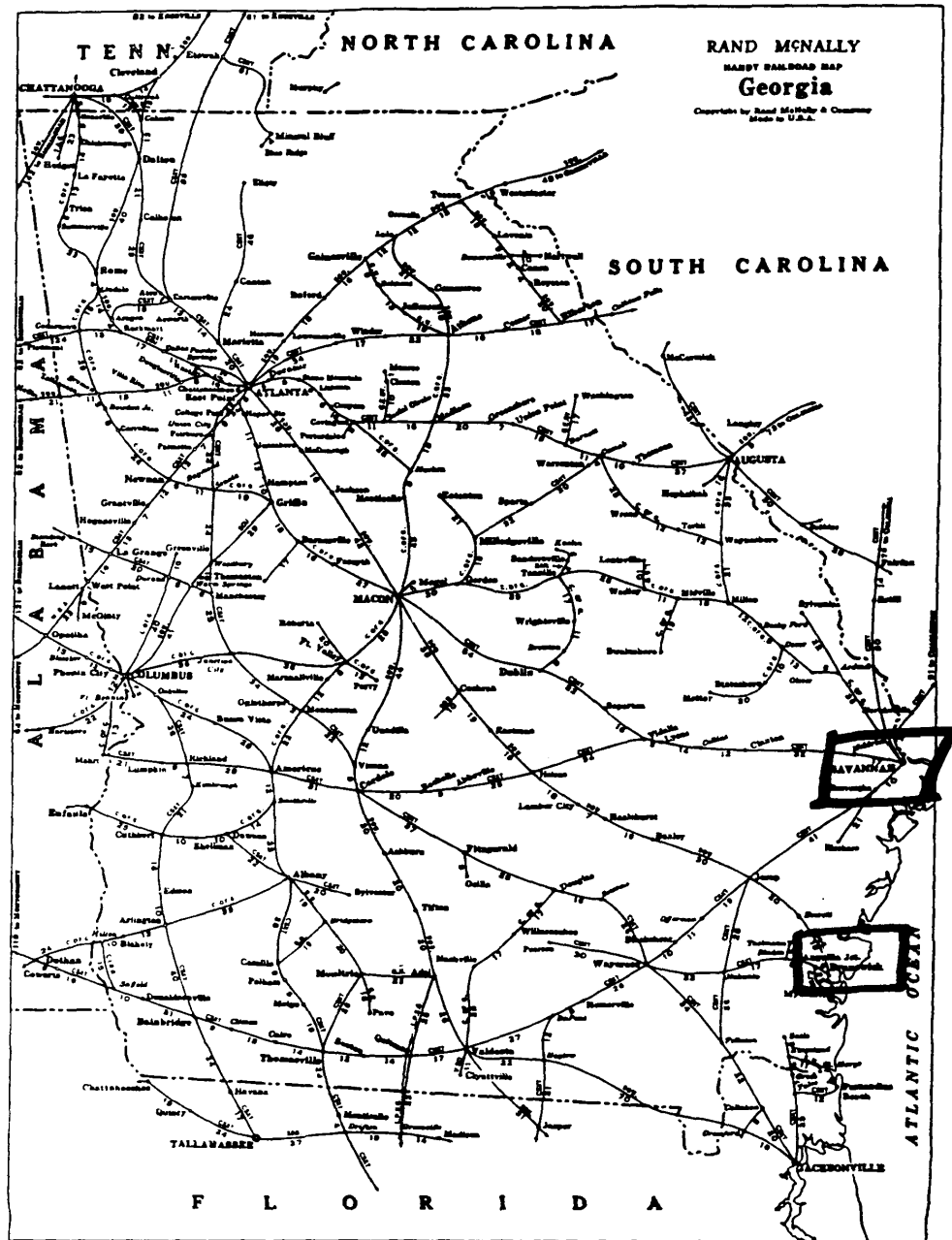
I, Mark Hastings, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file the foregoing document.

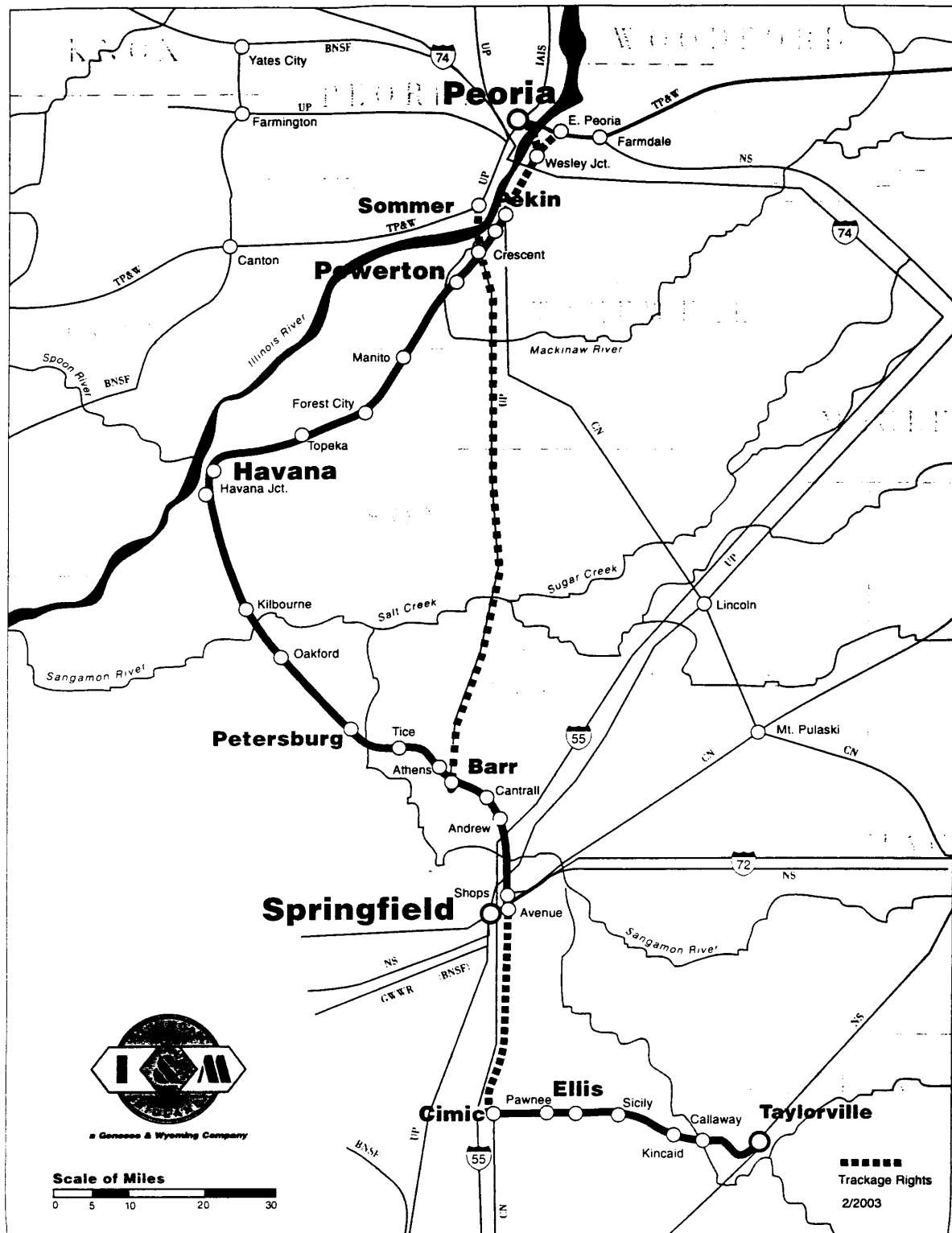

Mark Hastings
Genesee & Wyoming Inc.

Dated: December 19, 2003











Genesee & Wyoming Inc.

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Genesee & Wyoming
55 Field Point Road
Greenwich, CT 06830
Telephone: 203.629.3722
Fax: 203.651.4106

Rail Operations

Rail Operations

Maps

North America

United States

[Illinois](#)

[Maine/NH/VT](#)

[NY/PA](#)

[Oregon](#)

[Utah](#)

[Rail Link](#)

[Louisiana](#)

[Pennsylvania](#)

Canada

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Mexico

[Chiapas-Mayab](#)

South America

[Bolivia](#)

[Oriental](#)

Australia

[Australian RR Group](#)

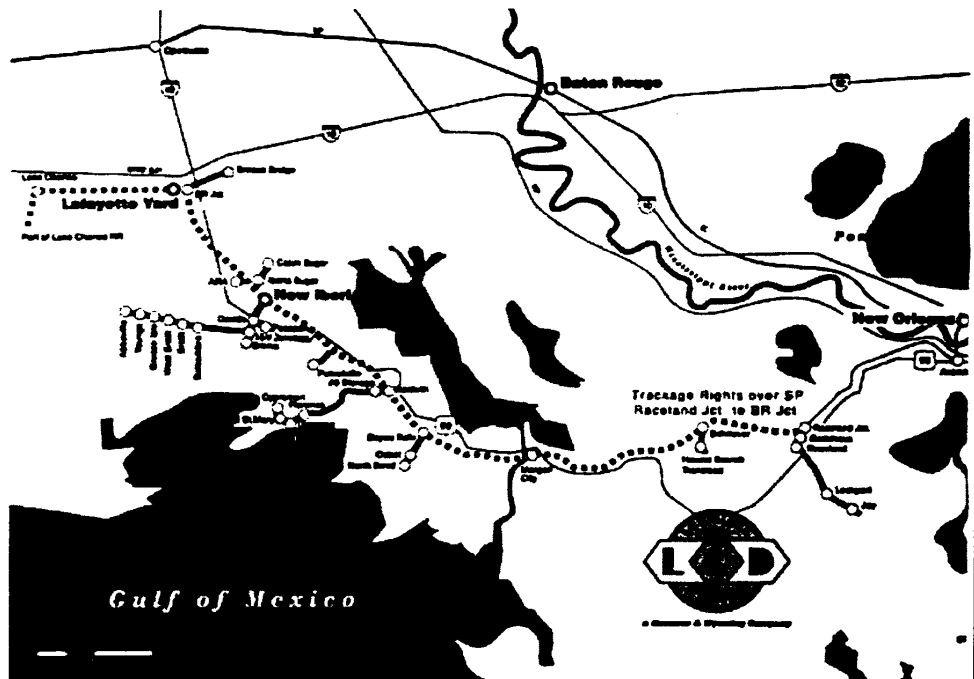
[WestNet Rail](#)

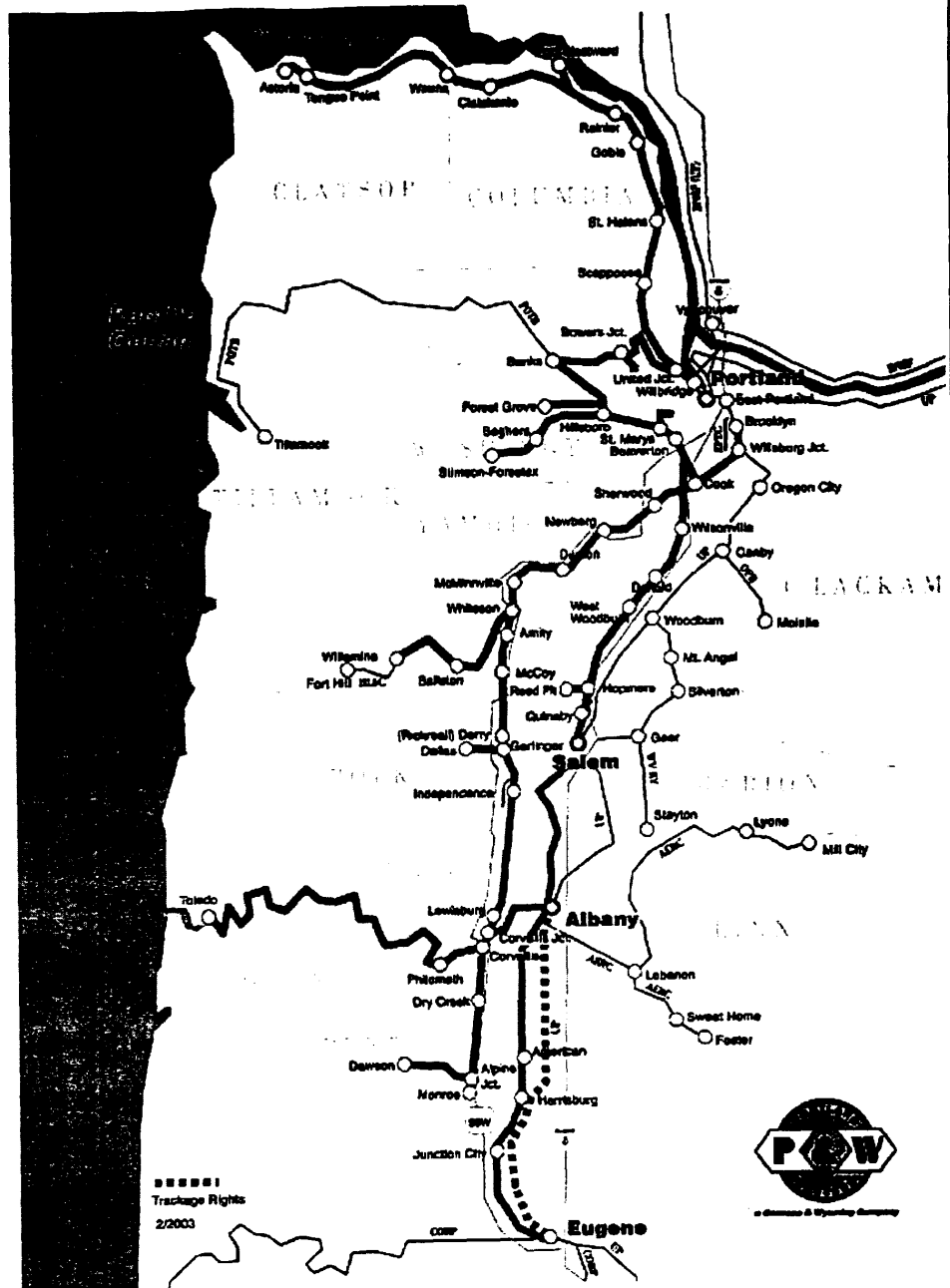
Home

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Louisiana & Delta - Route Map

[General Information](#) | [Regional Contacts](#) | [Route Map](#) | [Print Map](#)







Genesee & Wyoming Inc.

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Genesee & Wyoming
66 Field Point Road
Greenwich, CT 06830
Telephone: 203.629.3722
Fax: 203.661.4106

Utah - Route Map

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Rail Operations

Rail Operations

Maps

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South America

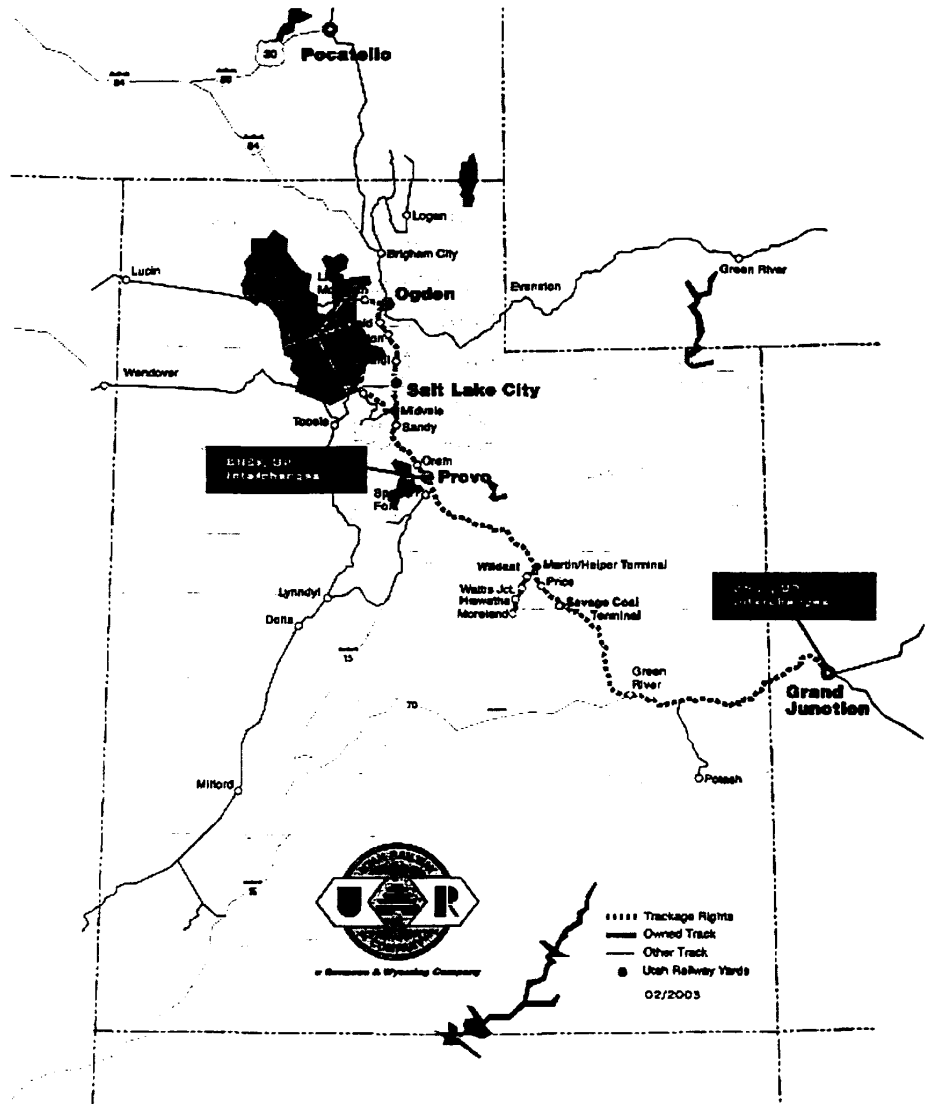
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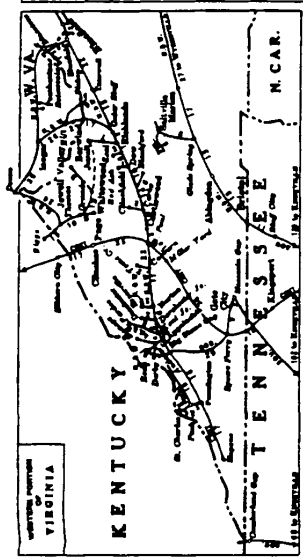
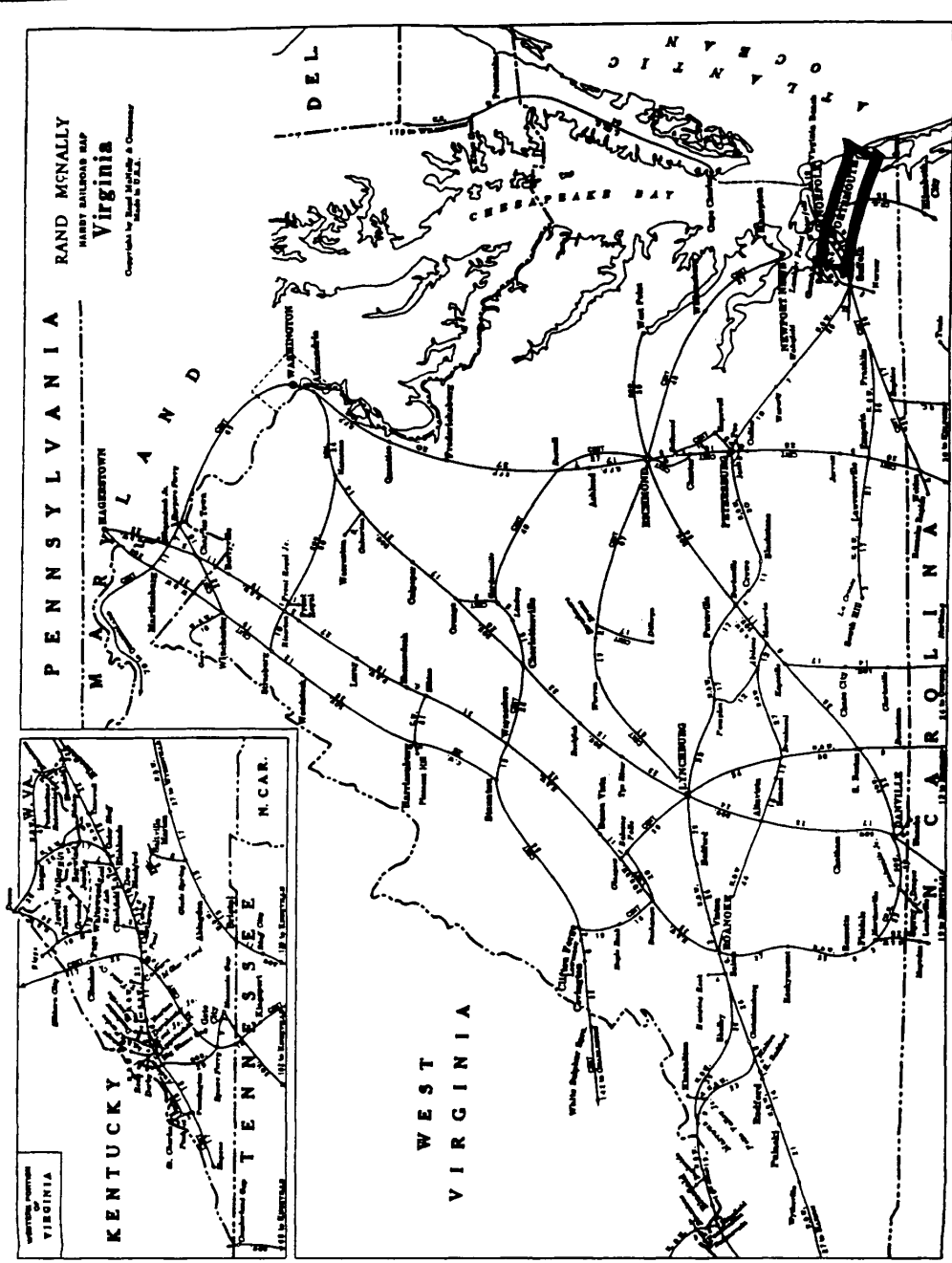
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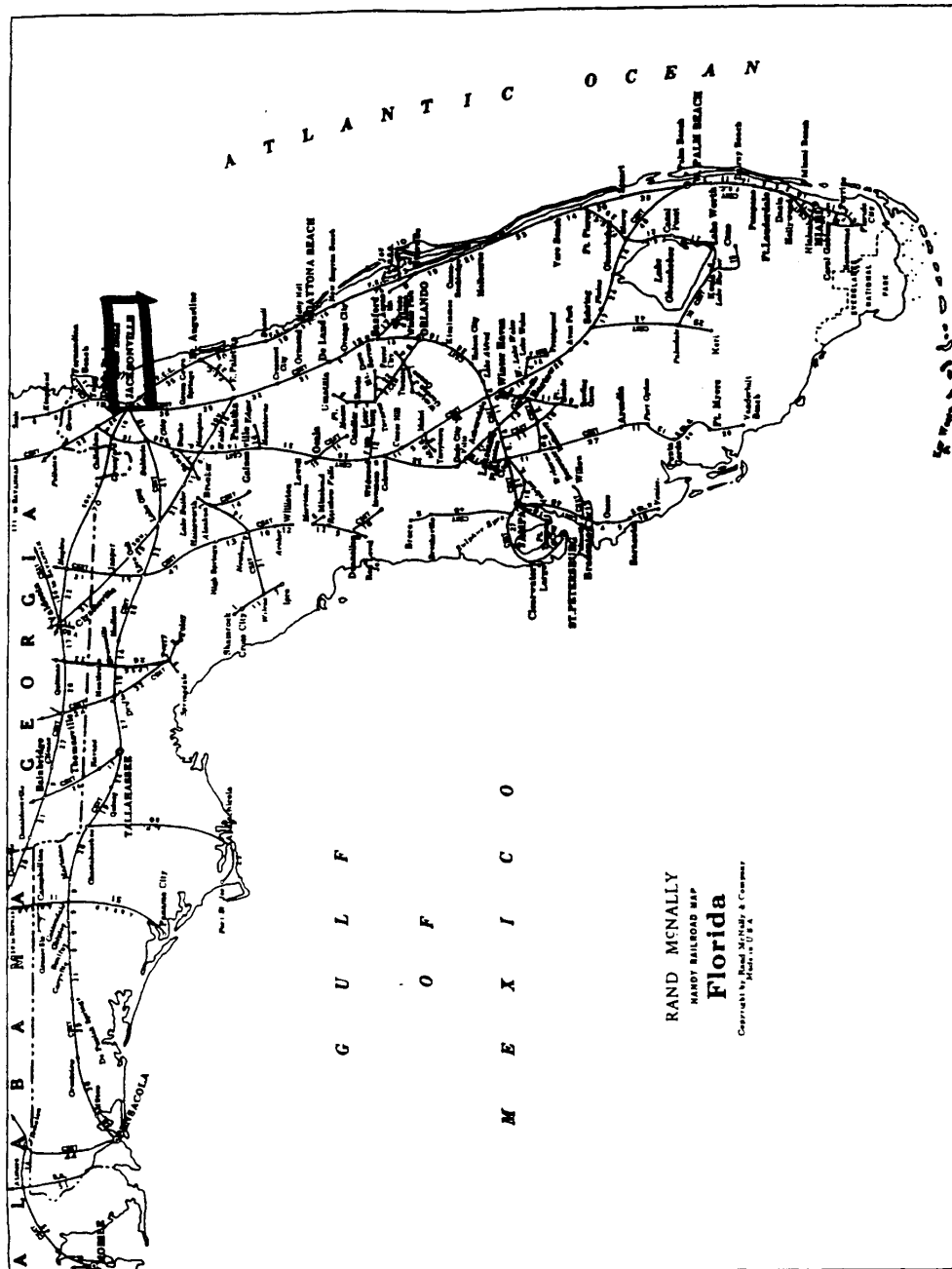
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[NY/PA](#)
[Oregon](#)
[Utah](#)
[Rail Link](#)
[Louisiana](#)
[Pennsylvania](#)

Canada

[Huron Central](#)
[Quebec-Gatineau](#)
[St. Lawrence & Atlantic](#)

Mexico

[Chiapas-Mayab](#)

South America

[Bolivia](#)
[Oriental](#)

Australia

[Australian RR Group](#)
[WestNet Rail](#)

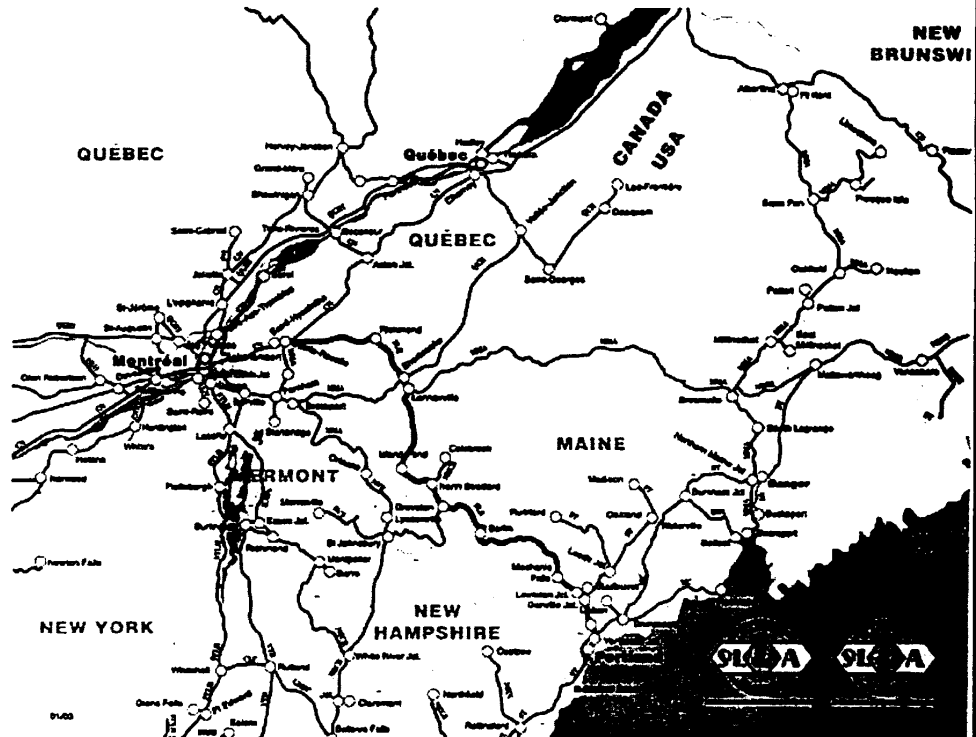
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Rail Operations

Rail Operations

Maps

North America

United States

[Illinois](#)
[Maine/NH/VT](#)
[NY/PA](#)
[Oregon](#)
[Utah](#)
[Rail Link](#)
[Louisiana](#)
[Pennsylvania](#)

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[Huron Central](#)
[Quebec-Gatineau](#)
[St. Lawrence & Atlantic](#)

Mexico

[Chiapas-Mayab](#)

South America

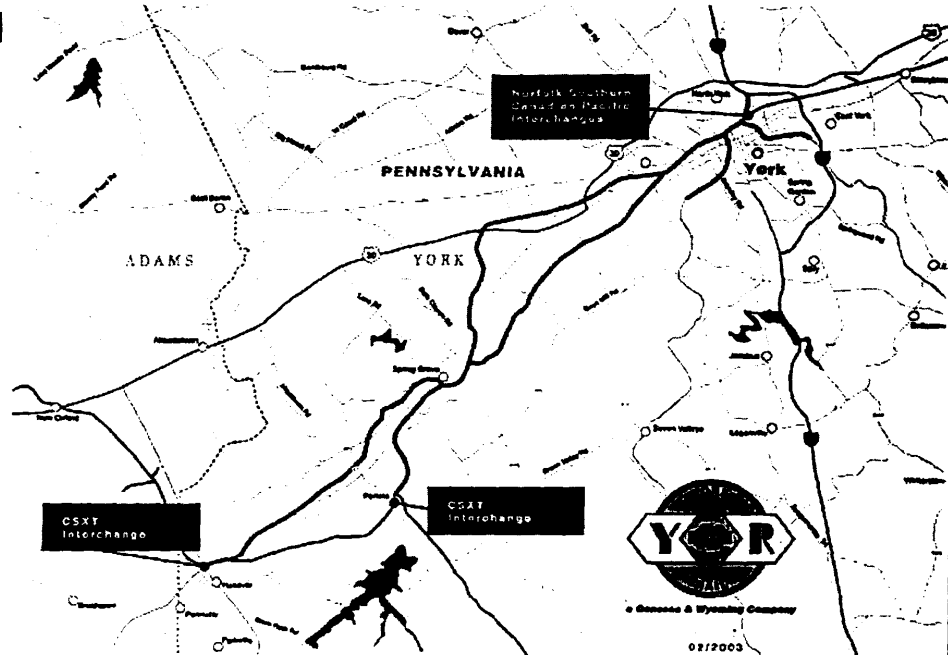
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[Oriental](#)

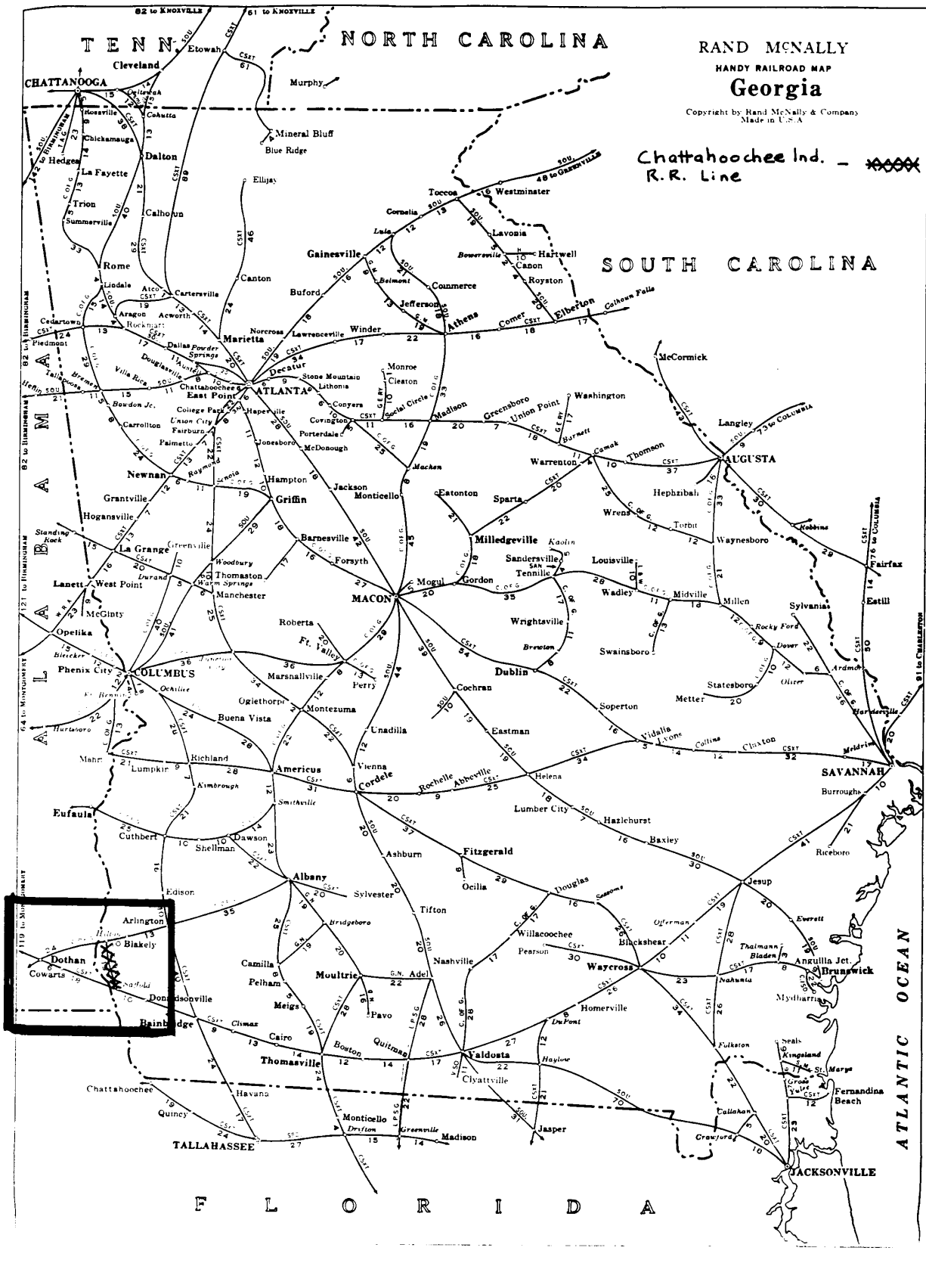
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HANDY RAILROAD MAP
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