

SERVICE DATE – FEBRUARY 5, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33753 (Sub-No. 1)<sup>1</sup>

SOUTH PLAINS SWITCHING, LTD. CO.—ACQUISITION EXEMPTION—  
BNSF RAILWAY COMPANY

Decided: February 4, 2008

By notice of exemption served and published at 64 FR 38233-34 on July 15, 1999, (Exemption Notice), the Board authorized South Plains Switching, Ltd. Co. (SAW) to acquire under 49 CFR 1150.41 approximately 74,384 feet of rail lines of The Burlington Northern and Santa Fe Railway Company (BNSF)<sup>2</sup> in Lubbock, TX. In conjunction with the acquisition, the Board also authorized SAW to acquire incidental trackage rights over approximately 3 miles of BNSF's main line at Lubbock between track 9298 and BNSF's Lower Yard. In 1999, SAW purchased the lines and began operating over them and interchanging cars and equipment with BNSF.

By petition filed on July 16, 2007, BNSF asks for clarification that these trackage rights allow SAW to operate over BNSF's main line *only* between track 9298 and BNSF's Lower Yard. BNSF states that SAW has filed an action in a state court in Texas, in which SAW alleges that, pursuant to Exemption Notice, SAW also acquired trackage rights over an additional segment of BNSF's main line at Lubbock. In a pleading filed on August 3, 2007, SAW opposes the petition for clarification or, in the alternative, asks the Board to interpret Exemption Notice by finding that SAW has an easement by necessity allowing it to operate over the additional segment of BNSF's main line at Lubbock. In a pleading filed on August 21, 2007 (BNSF Response), BNSF opposes what it calls SAW's request for an easement and trackage rights over the additional segment of BNSF's main line. Finally, SAW questions whether BNSF's Response constitutes an impermissible "reply to a reply" and asks that a letter SAW filed on August 22, 2007, be accepted into the record if BNSF's Response is accepted.

All of SAW's rail lines and related property were sold to PYCO Industries, Inc. (PYCO) effective November 9, 2007, pursuant to the Board's order in PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd. Co., STB Finance Docket No. 34890, et al. (STB served Aug. 31, 2007), and a settlement agreement between PYCO, SAW, and a

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<sup>1</sup> The docket number is corrected to STB Finance Docket No. 33753 (Sub-No. 1), which superseded an earlier notice in STB Finance Docket No. 33753. See Exemption Notice at 1, n.1.

<sup>2</sup> Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company. In this decision, "BNSF" will refer to both entities.

company related to SAW. In light of that recent sale of all of SAW's rail lines and related property, SAW no longer provides any rail service. BNSF does not contend that PYCO, as the purchaser of SAW's Lubbock trackage, presses SAW's claim to additional trackage rights over BNSF's main line at Lubbock and, thus, there does not appear to remain a live controversy for the Board to resolve. Consequently, BNSF's petition for clarification of the extent of SAW's right to operate over BNSF's main line at Lubbock will be dismissed as moot.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF's petition for clarification is dismissed.
2. This decision is effective on its service date.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan  
Acting Secretary