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THOMAS F. MCFARLAND

August 10, 2009

By UPS overnight mail

Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W., Suite 100  
Washington, DC 20024

**FILED**

AUG 11 2009

**SURFACE  
TRANSPORTATION BOARD**

Re: Finance Docket No. 34890, *PYCO Industries, Inc. -- Feeder Line Development --  
Lines of South Plains Switching, Ltd. Co.*

Dear Ms. Quinlan:

Enclosed please find an original and 10 copies of a Petition For Partial Reopening And Reconsideration Of Decisions Served September 8, 2008 And August 31, 2007, for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$250 for the filing fee.

**ENTERED**  
Office of Proceedings

AUG 11 2009

Part of  
Public Record

Very truly yours,

*Tom McFarland*

Thomas F. McFarland  
Attorney for Petitioner,  
South Plains Switching, Ltd Co.

TMcf.kl enc:wp8 0\1386\lstrsb1

**FEE RECEIVED**

AUG 11 2009

**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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PYCO INDUSTRIES, INC. -- FEEDER ) FINANCE DOCKET  
LINE DEVELOPMENT -- LINES OF ) NO. 34890  
SOUTH PLAINS SWITCHING, LTD. CO. )

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**FILED**  
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SURFACE  
TRANSPORTATION BOARD

**PETITION FOR PARTIAL REOPENING  
AND RECONSIDERATION OF DECISIONS  
SERVED SEPTEMBER 8, 2008 AND AUGUST 31, 2007**

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Public Record

**FEE RECEIVED**  
AUG 11 2009  
SURFACE  
TRANSPORTATION BOARD

SOUTH PLAINS SWITCHING, LTD. CO.  
P.O. Box 64299  
Lubbock, TX 79464-4299

Petitioner

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Attorney for Petitioner

DATE FILED: August 11, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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PYCO INDUSTRIES, INC. -- FEEDER            )    FINANCE DOCKET  
LINE DEVELOPMENT -- LINES OF           )    NO. 34890  
SOUTH PLAINS SWITCHING, LTD. CO.       )    

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**PETITION FOR PARTIAL REOPENING  
AND RECONSIDERATION OF DECISIONS  
SERVED SEPTEMBER 8, 2008 AND AUGUST 31, 2007**

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Pursuant to 49 U.S.C. § 722(c) and 49 C.F.R. § 1115.4, SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby petitions for partial reopening and reconsideration of the Board's decisions in this proceeding served September 8, 2008 and August 31, 2007 to the extent that they ordered SAW to sell Track Nos. 4, 7 and 12 at Burriss Station, Lubbock, TX ("Burriss Trackage"). Upon reopening and reconsideration, the Board should order PYCO Industries, Inc. (PYCO) to reconvey the Burriss Trackage to SAW and order SAW to repay the net liquidation value of the Burriss Trackage to PYCO.

**GENERAL ALLEGATIONS IN SUPPORT OF REOPENING**

It is one thing for a rail carrier to be deprived of a rail line as a result of a Board finding that the service that it provided to shippers on that line was inadequate. That was the case as to the contiguous rail lines that SAW operated in Lubbock. SAW firmly believes that the Board's order that SAW sell those lines was unjustified, but SAW has not sought to reopen that element of the Board's decisions because it recognizes the Board's broad discretion to make findings regarding inadequacy of service actually provided.

It is quite a different thing for a rail carrier to be deprived of a rail line on the ground that its service over that line was inadequate when it has never provided service over that line, and when there is no basis to impute to it the service actually performed over the line by an unaffiliated rail carrier. That was the case as to the Burriss Trackage. As will be demonstrated herein, there is no statutory basis, and no other rational basis, for an order requiring SAW to sell the Burriss Trackage over which it never provided service and in the absence of any contention by shippers on that Trackage, let alone proof, that service over that Trackage was inadequate in any respect.

This Petition is based on the material error provision of 49 U.S.C. § 722(c). The Board decisions identified above are materially erroneous in part because a prerequisite of an order that a rail carrier sell a rail line under 49 U.S.C. § 10907(b)(1)(A)(i) is a finding under 49 U.S.C. § 10907(c)(1)(A) that the rail carrier operating that rail line is providing inadequate service to shippers on that line, and because the Board's finding that SAW provided inadequate service over the Burriss Trackage is erroneous in one or both of the following respects:

- (1) the Burriss Trackage has never been operated by SAW, and there is no rational basis on which operation of that Trackage by BNSF Railway Company (BNSF) can be imputed to SAW; and
- (2) even if BNSF's operation of that Trackage could rationally be imputed to SAW, there has been no contention, let alone proof, that rail service over that Trackage has been inadequate in any respect.

## **EXPLANATION FOR DELAY IN BRINGING THE ISSUES BEFORE THE BOARD**

SAW was ordered to sell rail lines in Lubbock, TX in a Board decision served August 31, 2007. There was confusion in that decision as to whether SAW was thereby ordered to sell the Burris Trackage. That confusion led to further briefing on that issue. That issue was resolved in the affirmative in a Board decision served September 8, 2008.

SAW sought judicial review of those decisions insofar as SAW was ordered to sell the Burris Trackage. During the course of briefing in Court, it became apparent that SAW had failed to raise the above allegations of material error at the Board before raising them in Court. Accordingly, SAW filed a motion for voluntary dismissal of its review action, which the Court granted in an order entered on June 22, 2009. This Petition for Partial Reopening and Reconsideration has been filed so that those allegations of material error can be addressed by the Board.

The delay in bringing those issues to the attention of the Board is not fatal to SAW's Petition because it is provided in 49 U.S.C. § 722(c) that such a petition can be filed "at any time" and because SAW filed this Petition without undue delay following the Court's voluntary dismissal of the Petition for Review.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Set forth below is a summary of the factual and procedural background that is pertinent to resolution of the issues raised in this Petition. These are not "new facts," and this Petition is not based on new evidence. Instead, facts already in record are restated here in order to permit a clear understanding of the allegations of material error.

In 1999, a predecessor of BNSF, conveyed approximately 74,384 feet of trackage in Lubbock, Texas to SAW. *See South Plains Switching, Ltd. Co. -- Acquisition Exemption -- The Burlington Northern and Santa Fe Railway Company*, 1999 STB LEXIS 422 (Finance Docket No. 33753 [Sub-No. 1], decision served July 15, 1999), copy attached to this Petition as Appendix 1.

The deed conveying that property included the Burris Trackage, which totals 1,446 feet in length. Track Nos. 7 and 12 are used to provide rail service to Jarvis Metals Company (Jarvis). Track No. 4 is used to provide rail service to Lubbock Feed Mill (LFM).

When the 1999 conveyance to SAW had been closed, SAW began to provide rail service over all of the trackage thereby conveyed, except the Burris Trackage. BNSF took the position that inclusion of the Burris Trackage in that conveyance deed had been a mutual mistake. On that basis, BNSF refused to permit SAW to provide rail service over that Trackage.

In 2004, a Texas Court entered judgment on a jury verdict that conveyance of the Burris Trackage to SAW was not a mutual mistake. *See The Burlington Northern and Santa Fe Railway Company v. South Plains Switching, Ltd. Co.*, 348<sup>th</sup> Jud. Dist., Tarrant County, TX, No. 348-192452-2, decision entered on August 23, 2004, copy attached as Appendix 2.

The effect of that judgment was that SAW, as owner of the Burris Trackage, was legally entitled to provide rail service over that Trackage. However, in order to avoid congestion on its main line tracks if SAW were to operate over them to access the Burris Trackage, BNSF offered to pay SAW \$75 for each railcar that BNSF transported over the Burris Trackage, in exchange for SAW's agreement that BNSF could continue to provide the sole rail service over that Trackage. SAW accepted that offer. Attached to this Petition as Appendix 3 is a copy of the

agreement to that effect, dated September 12, 2006. Pursuant to that agreement, BNSF paid SAW \$75 for each railcar that BNSF transported over the Burriss Trackage from September 19, 2006 until August 31, 2007, the latter being the service date of the decision in which the Board ordered SAW to sell trackage.

The upshot of the foregoing is that SAW has never operated the Burriss Trackage. That Trackage was operated solely by BNSF throughout the period covered by the record in this matter. There is no corporate, financial, or other affiliation of any kind between BNSF and SAW. SAW has not been involved in any way in transportation over the Burriss Trackage. Unlike a haulage arrangement, that transportation is not performed in SAW's name, and the railcars are never in SAW's account. BNSF issues the bills of lading for transportation over the Burriss Trackage and bills and collects the freight charges therefor.

The Burriss Trackage is the only former SAW trackage that is not contiguous to other former SAW trackage. Unlike all other former SAW trackage, therefore, it would have been necessary for SAW to operate over BNSF's main line tracks in order to provide service over the Burriss Trackage. When SAW stated, during the course of prior proceedings, that SAW's trackage should be operated by one rail carrier rather than two, and when SAW referred to the "all-SAW" alternative, SAW was referring to the contiguous trackage, all of which was operated by SAW, not the Burriss Trackage that SAW has never operated. It is evident that SAW's reference in that respect did not include the Burriss Trackage because the Burriss Trackage and the contiguous SAW trackage were operated by two rail carriers throughout SAW's ownership of such trackage, and SAW specifically agreed to continued operation of the Burriss Trackage by BNSF.

The Burris Trackage was not involved in any way in the Board's determination that public convenience and necessity (PC&N) require that SAW sell its rail lines in Lubbock. There has never been a contention by Jarvis, nor by LFM, nor by PYCO, nor by anyone else, let alone proof, that the rail service provided by BNSF over the Burris trackage has been inadequate in any respect. Neither Jarvis nor LFM was included in the listing of shippers served by SAW that was relied on by PYCO in contending that rail service was inadequate for a majority of shippers on SAW's rail line. Attached to this Petition as Appendix 4 is the listing of shippers served by SAW (page 1) and the listing of 11 shippers in addition to PYCO who alleged that SAW's rail service was inadequate (page 2). If Jarvis and LFM had been included as shippers served by SAW, the shippers who alleged that SAW's rail service was inadequate would not have constituted a majority of all shippers served by SAW.

In the valuation phase of the Board proceeding, SAW mistakenly included the Burris Trackage in the inventory of trackage whose net liquidation value constituted the purchase price of SAW's rail lines. As a result of that mistake, PYCO paid to SAW, as part of the purchase price, an amount equal to the net liquidation value of the Burris Trackage. If PYCO were to be required to reconvey the Burris Trackage to SAW, SAW would commit to repaying PYCO an amount equal to the net liquidation value of that Trackage. That amount is ascertainable from the existing record.

At page 24 of the Board's decision served August 31, 2007 in which SAW was ordered to sell rail lines, the Board stated that after that sale, SAW "would retain (a) physically separate, small length( ) of track at . . . Burris." SAW concluded, primarily on the basis of that statement,

that it had not been ordered to sell the Burris Trackage. Accordingly, the deed and bill of sale by which SAW conveyed its rail lines to PYCO did not include the Burris Trackage.

PYCO filed a petition requesting the Board to enforce its decision or to clarify that such decision required that SAW sell its Burris Trackage. SAW opposed that petition on the ground that the decision excepted the Burris Trackage from the sale requirement.

In its decision served September 8, 2008, the Board clarified that its prior decision required SAW to sell the Burris Trackage. The Board stated that it was mistaken when it stated in that prior decision that SAW would retain the Burris tracks after the sale. In compliance with that decision, SAW conveyed the Burris Trackage to PYCO, but that conveyance was specifically made under protest.

Shortly thereafter, SAW filed a Petition for Review of the Board's decisions served August 31, 2007 and September 8, 2008 in the United States Court of Appeals for the District of Columbia Circuit, No. 08-1309, *South Plains Switching, Ltd. Co. v. STB, et al.* The Petition sought review of the Board's decisions to the extent that they required SAW to sell the Burris Trackage. Following initial briefing in that review case, SAW filed a Motion for Voluntary Dismissal of the Petition without prejudice. In a decision entered on June 22, 2009, copy attached as Appendix 5, the Court voluntarily dismissed that Petition.

This Petition for Partial Reopening raises the issues of material error that were not presented to the Board when the Board clarified that SAW must sell the Burris Trackage to PYCO.

## STATUTES INVOLVED

This Petition for Partial Reopening and Reconsideration is filed under 49 U.S.C. § 722(c), which provides as follows:

(c) Reconsidering Actions.--The Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances--

- (1) reopen a proceeding;
- (2) grant rehearing, reargument, or reconsideration of an action of the Board; or
- (3) change an action of the Board.

An interested party may petition to reopen and reconsider an action of the Board under this subsection under regulations of the Board.

More specifically, this Petition is filed under the material error provision of that statute.

SAW acknowledges that it has the burden to prove that the Board's decision ordering SAW to sell the Burriss Trackage is predicated on material error.

The substantive statute at issue is the feeder line statute, 49 U.S.C. § 10907, a copy of which is attached to this Petition as Appendix 6.

## ARGUMENT

Under 49 U.S.C. § 722(c) and 49 C.F.R. § 1115.4, interested persons may at any time petition to reopen and reconsider any administratively final Board action based on material error.

*Railroad Exempt. - Filing Quotations - Section 10721, 7 I.C.C. 2d 325, 327-328 (1991).*

(reversing prior agency action where the arguments advanced in the Petition undermined the rationale expressed in the prior decision).

Here, the Board's requirement that SAW sell the Burriss Trackage is based on material error, as demonstrated in the following:

**I. The Board's Finding That SAW Provided Inadequate Service Over The Burris Trackage Is Erroneous Because SAW Has Never Provided Service Over The Burris Trackage, And There Is No Rational Basis For Imputing BNSF's Service Over That Trackage To SAW**

It is provided in 49 U.S.C. § 10907(b)(1)(A)(i) that the Board shall require a rail carrier “owning” a particular railroad line to sell such line to a financially responsible person when the Board finds that PC&N require or permit such sale.

The Board is often afforded wide discretion in determining whether PC&N warrant particular Board action. However, the Board's discretion under § 10907(b)(1)(A)(i) is constrained by 49 U.S.C. § 10907(c)(1), which provides that the Board “may determine that public convenience and necessity require or permit the sale of a railroad line if the Board determines, after a hearing on the record,” that the five findings in §§ 10907(c)(1)(A)-(E) can be made.

Whereas § 10907(b)(1)(A)(i) directs the Board to require the rail carrier owning the railroad line to sell the line if the Board determines that PC&N require or permit such a sale, the criteria of § 10907(c)(1) are directed at the service performance of the rail carrier operating such line (subsections A and B) and the financial and operational effect on that operating rail carrier of a requirement that it sell such line (subsections C and D).

In the great majority of cases, that distinction is of no moment because almost all rail carriers operate the railroad lines that they own. That was the case as to all of the contiguous railroad lines that SAW was ordered to sell, constituting more than 98 percent of the total lines ordered to be sold. But it was not the case as to the Burris Trackage. SAW owned the Burris Trackage, but BNSF has always operated that Trackage.

The Board committed material error in applying 49 U.S.C. § 10907(c)(1)(A) to SAW's Burris Trackage because those criteria are directed at the rail carrier operating the rail line under consideration, and because SAW never operated the Burris Trackage. BNSF operated the Burris Trackage continuously throughout the period covered by this record. BNSF's operation of that Trackage cannot be rationally imputed to SAW. Unlike a haulage arrangement, transportation over the Burris Trackage has always been performed solely in BNSF's name, not SAW's, and traffic over that Trackage has always been solely in BNSF's account, not in SAW's. SAW has never been involved in any way in transportation over the Burris Trackage. BNSF has always issued the bills of lading for that transportation and has always billed and collected the freight charges. Moreover, there is no corporate, financial, or other affiliation of any kind between SAW and BNSF.<sup>1/</sup>

The Burris Trackage and the contiguous rail lines operated by SAW in Lubbock cannot be deemed to constitute "a particular railroad line" as that term is used in 49 U.S.C. § 10907(b)(1)(A)(i) because those rail lines are not operated as a unit. The Burris Trackage and the contiguous rail lines in Lubbock are unlike the rail line involved in *Caddo, Antoine & Little Missouri RR Co. v. United States*, 95 F.3d 740 (8<sup>th</sup> Cir. 1996) that was found to be "a particular railroad line" under that statute because "from the date of its construction (it) has been operated as a unitary line of railroad" (at 747). The Burris Trackage and the contiguous rail lines that SAW operated in Lubbock were not operated as a unitary line of railroad. Indeed, whereas SAW

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<sup>1/</sup> Cf. *Milford-Bennington R. Co. -- Feeder Line Acq. -- Boston & Maine Corp. Hillsborough Branch*, 1991 ICC LEXIS 250 (Finance Docket No. 31701, decided on October 16, 1991). (Lessor railroad could not escape application of the feeder line statute on the ground that the rail line was operated by its affiliated lessee railroad).

actively operated its contiguous rail lines in Lubbock continuously from the date that it acquired those lines, SAW never operated the Burris Trackage. The Burris Trackage is thus fundamentally distinct from the contiguous rail lines that SAW actively operated. Consequently, whereas the provisions of §§ 10907(c)(1)(A)-(E) relating to “the rail carrier operating such line” could be, and were rationally applied to the contiguous rail lines that SAW operated, those provisions could not be rationally applied to the Burris Trackage that SAW never operated.

In appropriate context, therefore, the so-called “all SAW” alternative referred to SAW’s contiguous rail lines in Lubbock that were operated as a unitary railroad, not including the Burris Trackage that SAW never operated. It is thus entirely inconsequential that SAW argued for an “all SAW” alternative, in which those contiguous rail lines would be operated by one rail carrier, rather than being split between two rail carriers. The “all SAW” alternative did not involve the Burris Trackage at all.

For the same reason, rail service over the Burris Trackage cannot be considered to be inadequate on the ground that under 49 U.S.C. § 10907(c)(1)(B) rail service was found to be inadequate for the majority of shippers who transport traffic over SAW’s contiguous rail lines in Lubbock. Under § 10907(c)(1)(B), there may be a legitimate inference that if rail service is inadequate for the majority of shippers who ship traffic over rail lines operated by a rail carrier, rail service is deemed to be inadequate over other rail lines operated by that carrier, even if there is no specific evidence of inadequate service over those other rail lines. But that inference cannot rationally be extended to rail lines operated by a rail carrier other than the carrier who operates over the lines on which service is inadequate for a majority of shippers. Thus, there is no rational basis for an inference that BNSF provided inadequate rail service over the Burris Trackage

predicated on the Board's finding that SAW provided inadequate service for a majority of shippers providing traffic over SAW's contiguous rail lines in Lubbock.

SAW's mistaken inclusion of the Burris Trackage in the inventory of SAW rail lines in the valuation phase of the proceeding added an element of confusion to resolution of the issues, as did the Board's own mistaken statement that SAW would retain the Burris Trackage after completion of the feeder line sale. But the appropriate means to correct SAW's mistake is to require SAW to repay PYCO for the net liquidation value of the Burris Trackage as a condition to PYCO's reconveyance of that Trackage to SAW, not to amplify that mistake by erroneously ordering sale of a line that SAW never operated. If PYCO is ultimately required to reconvey the Burris Trackage to SAW, SAW hereby commits to repay PYCO for the net liquidation value of that Trackage.

**II. Even If BNSF's Operation Of The Burris Trackage Could Be Imputed To SAW, The Board Erred In Finding That SAW Provided Inadequate Service Over That Trackage Because There Has Been No Contention, Let Alone Proof, That Service Over That Trackage Was Inadequate In Any Respect**

As has been shown in the foregoing, BNSF's operation of the Burris Trackage cannot be imputed to SAW. However, even if it could, the Board erred in finding that SAW provided inadequate service over that Trackage because there has been no contention, let alone proof, that rail service over that Trackage has been inadequate in any respect.

The only two shippers on the Burris Trackage are Jarvis and LFM. Neither of them alleged that rail service on that Trackage was inadequate in any respect. Neither did PYCO, nor any other party. There was zero evidence that rail service over the Burris Trackage was inadequate.

There is no basis for an inference under 49 U.S.C. § 10907(c)(1)(B) that rail service over the Burris Trackage was inadequate on the ground that rail service was alleged to be inadequate by a majority of shippers served by SAW. As noted, neither Jarvis nor LFM alleged that rail service was inadequate over the Burris Trackage. Neither Jarvis nor LFM was included in the total number of shippers served by SAW. The record showed that of the total of 23 shippers served by SAW, 12, or a bare majority, alleged that SAW's rail service was inadequate. If the shippers on the Burris Trackage (i.e., Jarvis and LFM) were to be included in the total number of shippers served by SAW, as would have to be the case if the Burris Trackage were to be included as part of SAW's "particular railroad line," 12 of the 25 shippers served by SAW would have alleged that SAW's rail service was inadequate. That is less than a majority, which would negate any inference under § 1097(c)(1)(B) that rail service was inadequate for a majority of shippers served by SAW. That, too, would be fatal to the Board's decision because a finding under § 10907(c)(1)(B) is every bit as essential to the validity of a Board order under § 10907(b)(1)(A)(i) for sale of a rail line as is a Board finding under § 10907(c)(1)(A).

Just as Jarvis and LFM were not considered in the Board's determination of whether a majority of SAW's shippers considered SAW's rail service to be inadequate, the Burris Trackage played no role in the Board's determination that SAW's rail service was inadequate under § 10907(c)(1)(A). Thus, SAW's mistaken inclusion of the Burris Trackage in the inventory of SAW property to be sold related solely to the valuation phase of the proceeding, and not to the determination of adequacy of rail service in the PC&N phase of the case.

### **III. The Board's Errors Are Material**

The Board can order a sale under the PC&N standard of 49 U.S.C. § 10907(b)(1)(A)(i) only if it can make affirmative findings under all of the five criteria of 49 U.S.C.

§§ 10907(c)(1)(A)-(E). *Caddo, Antoine & Little Missouri RR Co. v. United States*, 95 F.3d 740 at 746.

As demonstrated in the foregoing, the Board cannot lawfully make an affirmative finding under 49 U.S.C. § 10907(c)(1)(A) that SAW provided inadequate service over the Burriss Trackage. In addition, the Board cannot lawfully make an affirmative finding under 49 U.S.C. § 10907(c)(1)(B) that SAW's rail service was inadequate for the majority of shippers served by SAW if Jarvis and LFM are included as shippers served by SAW, as they must be if the Burriss Trackage is considered to be part of SAW's "particular railroad line."

### **CONCLUSION AND REQUESTED RELIEF**

It follows that the Board's order cannot stand as to the Burriss Trackage. Upon reopening and reconsideration, the Board should order PYCO to reconvey the Burriss Trackage to SAW, conditioned on the requirement that SAW repay to PYCO an amount equal to the net liquidation value of the Burriss Trackage.

Respectfully submitted,

SOUTH PLAINS SWITCHING, LTD. CO.  
P.O. Box 64299  
Lubbock, TX 79464-4299

Petitioner

Thomas F. McFarland

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Attorney for Petitioner

DATE FILED: August 11, 2009



LEXSEE 1999 STB LEXIS 422

South Plains Switching, Ltd. Co.--Acquisition Exemption--The Burlington Northern and  
Santa Fe Railway Company

[STB Finance Docket No. 33753 (Sub-No. 1)]

SURFACE TRANSPORTATION BOARD

1999 STB LEXIS 422

SERVICE DATE: July 15, 1999

July 8, 1999

OPINIONBY: [\*1]

KONSCHNIK

OPINION:

South Plains Switching, Ltd. Co. (South Plains), a Class III rail common carrier, has filed a verified notice of exemption under 49 CFR 1150.41 n1 to acquire approximately 74,384 feet of rail lines from The Burlington Northern and Santa Fe Railway Company (BNSF) n2 in Lubbock, TX, as follows: (1) former ATSF side tracks 0310-0313, 0320, 0330-0332, 0340-0341, 0370, 0372-0373, 0380-0382, 0385, 0387, and 0390; and (2) former BN side tracks 9200-9205, 9208, 9220, 9298, 9310, 9320, 9322, 9330, Orchard Lead, 9304, 9311-9312, 9321, 9323-9326, 9331, 9333, 9401-9406, 9409-9412, 9415, and 9420-9424. In conjunction with the acquisition of these rail lines, South Plains will acquire approximately 3 miles of incidental trackage rights over BNSF's mainline between track 9298 and BNSF's Lower Yard at Lubbock.

n1 On June 7, 1999, a notice of exemption under 49 CFR 1150.41 was served and published (64 FR 30375) for South Plains. See South Plains Switching, Ltd. Co.--Acquisition Exemption--The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33753. Subsequently, on June 25, 1999, South Plains filed an amended verified notice of exemption. Because the amendment extended the trackage being acquired and decreased the incidental trackage rights being acquired, Board staff notified South Plains' representative that the amended verified notice of exemption would be treated as a new filing under a new docket number and that the filing would require a new filing fee. The notice of exemption in STB Finance Docket No. 33753 (Sub-No. 1) supersedes the earlier notice of exemption served and published on June 7, 1999.

[\*2]

n2 On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company (ATSF) merged with and into Burlington Northern Railroad Company (BN). The name of the surviving corporation of the merger is The Burlington Northern and Santa Fe Railway Company.

South Plains reported that it intended to consummate the transaction on or shortly after July 4, 1999. The earliest the transaction can be consummated is July 8, 1999, the effective date of the exemption (7 days after the exemption was filed). n3

n3 While the amended verified notice of exemption was received at the Board on June 25, 1999, it was not officially filed until July 1, 1999, when South Plains submitted the required filing fee.

1999 STB LEXIS 422, \*

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 does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33753 (Sub-No. 1), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control [\*3] Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on William R. Power, Esq., 260 Cordovan Park, 5840 West Interstate Twenty, Arlington, TX 76017.

Board decisions and notices are available on our website at "[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV)."

NO. 348-192452-02

**THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY,**  
*Plaintiffs and Counter-Defendants*

§ IN THE DISTRICT COURT  
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§

v.

TARRANT COUNTY, TEXAS

**SOUTH PLAINS SWITCHING, LTD. CO.  
AND SOUTH PLAINS LAMESA  
RAILROAD, LTD.,**  
*Defendants and Counter-Plaintiffs*

348th JUDICIAL DISTRICT

FINAL JUDGMENT

On the 19<sup>th</sup> day of April, 2004, came on to be heard the above styled and referenced cause, and Plaintiff, **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY** ("BNSF"), appeared by and through its representatives and counsel and announced ready for trial and the Defendant, **SOUTH PLAINS SWITCHING, LTD. CO.** ("SOUTH PLAINS") appeared by and through its representative and its attorneys and announced ready for trial and the court proceeded to hear said cause.

The Parties conducted voir dire of the jury, and after voir dire, a jury of twelve (12) jurors were selected to hear the case. The Parties' attorneys were allowed to make opening statements and the evidence was offered and introduced. At the close of the evidence, both Parties, through their attorneys, made a motion for directed verdict. Each motion was denied by the court.

The charge of the court was read to the jury and the Parties' attorneys were allowed to make closing statements on April 21, 2004.

On Thursday, April 22, 2004, the jury did return into open court its verdict, said verdict constituting the answers to four jury questions submitted to the jury. The jury questions and the answers of the jury were as follows:

Jury Question No. 1

Did BNSF act unreasonably by withholding consent to SOUTH PLAINS' request to impose a surcharge under the Asset and Sale Agreement?

Answer "Yes" or "No".

ANSWER: Yes

Jury Question No. 2

Did the Asset Sale Agreement's provision for "continued access by rail" to "Tracks 9200 and 9205" permit BNSF to continue to provide rail service to VULCAN MATERIALS on Track 9200.

Answer "Yes" or "No".

ANSWER: No

Jury Question No. 3

It is your duty to interpret the following language of the Asset Sale Agreement:

- (1) For each carload of freight that originates or terminates on the rail line and is interchanged between Buyer and Seller in Lubbock, Texas, billed on a block of twenty-seven (27) or more cars for an individual shipper or receiver, Buyer shall receive \$40.00 per car from Seller.
- (2) Except as provided in subparagraph (3) below, for each carload of freight that originates or terminates on the rail line, it is interchanged between Buyer and Seller at Lubbock, Texas, not billed in a block of twenty-seven (27) or more cars for an individual shipper or receiver, Buyer shall receive \$125.00 per car from Seller.

You must decide its meaning by determining the intent of the Parties at the time of the Asset Sale Agreement. Consider all the facts and circumstances surrounding the making of the

Agreement, the interpretation placed on the Agreement by the Parties, and the conduct of the Parties.

Under the above quoted division of revenue provision of the Asset Sale Agreement, does the term "billed" mean "billed to the customer," or "way billed"?

Answer "Billed to the Customer" or "Way Billed".

ANSWER: Way Billed

Jury Question No. 4

Do you find that the granting of Tracks 4, 7 and 12 <sup>in</sup> ~~the~~ the Quitclaim Deed and Asset Sale Agreement to SOUTH PLAINS was the result of a mutual mistake of fact by the Parties?

A mutual mistake results from a mistake of fact common to both Parties, if both Parties had the same misconception concerning the fact in question. A mistake by one Party, but not the other is not a mutual mistake.

Answer "Yes" or "No".

ANSWER: No

The court, having accepted the verdict in open court as a verdict of the jury, and having made such implied findings of fact and of law as the court is entitled to make hereby enters the following judgment:

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff, THE BURLINGTON NORTHERN AND SANTE FE RAILWAY COMPANY, take nothing from the Defendant, SOUTH PLAINS SWITCHING, LTD. CO., on all of its causes of action asserted herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs of court are to be paid by the party incurring them. (u)

All relief not expressly granted herein is hereby expressly denied.

This Judgment is a final appealable order <sup>(u)</sup> and incorporates the Court's prior interlocutory orders, including but not limited to the May 7, 2003 "Order on Defendants' Motion for Partial Summary Judgment."

SIGNED this 23<sup>rd</sup> day of August, 2004.

David M. Hancock  
JUDGE PRESIDING



**KELLY HART & HALLMAN LLP**  
ATTORNEYS AT LAW

WRITER'S DIRECT DIAL NUMBER: (817) 878-3548  
EMAIL ADDRESS: donald.hallman@khh.com

FIRM TELEPHONE (817) 332-1500  
FIRM TELECOPY (817) 878-8280

September 12, 2006

VIA FAX NO. (806) 771-6476

Mr. James L. Gorsuch  
4412 74<sup>th</sup> Street, Suite A-100  
Lubbock, Texas 79424

Re: Cause No. 2004-526,559-A  
*BNSF Railway Company f/w/a Burlington Northern and Santa Fe Railway  
Company v. South Plains Switching, Ltd. Co.*

Dear Jim:

I am writing to propose BNSF's offer of settlement concerning claims that might arise in the future in favor of South Plains Switching, Ltd. Co. ("SAW") by reason of BNSF's continued service to the Jarvis Metals facility in Burris.

As things currently stand, SAW considers BNSF to be committing a breach of the 1999 Asset Sale Agreement each time service is provided to the Jarvis Metals facility. BNSF disagrees, but recognizes that the issue may not be finally decided in the courts for some time. In an effort to allow continuing service to Jarvis Metals without further uncertainty about the financial risk associated with potential claims, BNSF proposes the following:

a. Effective September 18, 2006, BNSF will pay to South Plains Switching \$75/car for each car handled on behalf of Jarvis Metals. On Monday of each week, BNSF will collect movement and waybill data for cars handled for Jarvis Metals the previous week. An Automated Clearing House ("ACH") transfer will be scheduled for the following Wednesday, and funds should arrive in SAW's account on the following Friday. Each week BNSF will also supply South Plains Switching with copies of the pertinent waybills.

b. So long as the foregoing process remains in effect, SAW releases and forever discharges BNSF from any breach of contract claim, trespass claim or other claim it may have by reason of BNSF's continued service to Jarvis Metals.

---

201 MAIN STREET, SUITE 2500  
FORT WORTH, TEXAS 76102

website: [www.khh.com](http://www.khh.com)  
Offices in Fort Worth and Austin

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Mr. James L. Gorsuch  
September 12, 2006  
Page 2

c. This agreement may be terminated by either party upon giving 30 days advance notice. If the agreement is terminated by either party, then each party reserves any claims that may thereafter accrue by reason of the provision of services to customers at Burris.

It is intended that this settlement offer will operate on a "going forward" basis only. In other words, both parties reserve all rights and claims that exist, or may arise, prior to the effective date stated in paragraph "a" above.

If your client is in agreement with this proposal, please indicate by signing below. I have the authority to execute this agreement on behalf of BNSF, and your signature will be a representation that you have similar authority to bind the SAW.

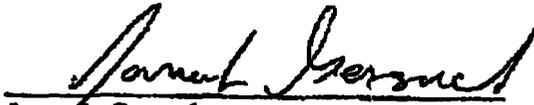
Very truly yours,



Donald E. Herrmann

DEH/dh  
09051.0103

AGREED on this 13<sup>th</sup> day of September, 2006.

  
James L. Gorsuch

**South Plains Switching, Ltd. Co.****P. O. BOX 64299****LUBBOCK, TEXAS 79464****PHO: (806)828-4841****FAX: (806)828-4863**

JUNE 15, 2006

**List of SAW Customers:**

- |                                |   |
|--------------------------------|---|
| 1) Farmrail                    | 13) Blue Linx   |
| 2) PYCO                        | 14) International Fiber Products                                    |
| 3) Teinert Metals, Inc.        | 15) Farmers Compress  |
| 4) Dodson Lumber               | 16) Attebury Grain  |
| 5) Russell E. Womack           | 17) Southern Cotton Oil   |
| 6) 84 Lumber                   | 18) Hanson Aggregate  |
| 7) Wilkerson Storage           | 19) Brite Trucking  |
| 8) Vulcan Materials            | 20) ABC Supply  |
| 9) Acme Brick                  | 21) Dynamic Foods   |
| 10) Robertson Bonded Warehouse | 22) South Plains Warehouse  |
| 11) Stock Builders             | 23) Hi Plains Bag and Bagging                                       |
| 12) Pantex                     | Soon to be 24) Weaver Grain Company<br>(sent track lease yesterday) |

CHARLES H. MONTANGE  
ATTORNEY AT LAW  
426 NW 162ND STREET  
SEATTLE, WASHINGTON 98177  
(206) 546-1936  
FAX: (206) 546 3739



2 August 2006  
by Express

Hon. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: PYCO Industries, Inc. -- Feeder Line Application  
-- South Plains Switching, F.D. 34890; also  
tendered for Finance Dockets 34802, 34889, 34870,  
and 33753 (Sub-no. 1)  
*217210* *217207* *217208* *217209*

Shipper Comments: Due 2 August 06 in F.D. 34890

Dear Secretary Williams:

Enclosed please find a Compilation of Shipper Comments, submitted on behalf of listed shippers and PYCO Industries, Inc., for filing in F.D. 34890. Because many of the shipper comments reflect a pattern of retaliatory and abusive conduct on the part of incumbent rail provider South Plains Switching, Ltd. (SAW), PYCO also submits them as additional evidence in F.D. 34802, 34889, 34870, and 33753 (Sub-no. 1).

The following shipper comments are tendered herewith (Exhibit B to Compilation)

- Floyd Trucking
- PYCO and Compress (no letter)
- Attebury
- Goetz & Sons (South Plains Warehouses)
- International Fiber Packaging
- Hanson
- Stock Building Supply
- Wilkerson Storage
- Dodson Wholesale Lumber
- Pan Tex
- Weaver Grain

ENTERED  
Office of Proceedings  
AUG 2 2006  
Part of  
Public Record

Please note that with these letters, a majority of shippers now indicate that they do not view SAW service as adequate. Floyd Trucking in its letter specifically requests that PYCO be permitted to acquire the entirety of SAW pursuant to its feeder line application. As indicated in the compilation, PYCO joins

in that request. In its ruling of July 21, this Board allowed KJRY until August 4 to file an application for the entirety of SAW. SAW supported an extension for such a purpose. In light of the Board's ruling and SAW's support, there is no prejudice to SAW, nor need to delay the proceeding, if PYCO is permitted to pursue the entirety of SAW in this proceeding, as a majority of shippers now clearly desire and support.

PYCO continues to seek relief effective by October 23, the date PYCO's alternative service order expires.

By my signature below, I certify service upon the following counsel of record by express (next business day) delivery on the above date:

Thomas McFarland  
208 South LaSalle St., Suite 1890  
Chicago, IL 60604-1112 (SAW)

William A. Mullins  
Baker & Mullins  
2401 Pennsylvania Ave. NW #300  
Washington, D.C. 20037 (KJRY)

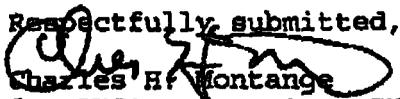
William Sippel  
Fletcher & Sippel  
29 North Wacker Drive, Suite 920  
Chicago, IL 60606-2875 (USRP)

John Heffner  
1920 N Street, NW #800  
Washington, DC 20036 (WTL)

Adrian Steel  
Mayer Brown Rowe & Maw  
1909 K Street, NW  
Washington, D.C. 20006-1101

Thank you for your assistance in this matter.

Respectfully submitted,

  
Charles H. Montange  
for PYCO Industries, Inc.

Encls.

cc. Counsel (per above) (w/encl.)  
Mr. McLaren (w/encl.)

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 08-1309****September Term 2008****STB-34890****Filed On: June 22, 2009**

South Plains Switching, LTD, Co.,

Petitioner

v.

Surface Transportation Board and United  
States of America,

Respondents

-----  
PYCO Industries, Inc.,  
Intervenor  
-----

Consolidated with 08-1347

**BEFORE:** Ginsburg and Griffith, Circuit Judges, and Silberman, Senior Circuit  
Judge**ORDER**

Upon consideration of the motion for voluntary dismissal of No. 08-1309 and the opposition thereto, it is

**ORDERED** that No. 08-1309 be dismissed. The court takes no position on the effect of this voluntary dismissal on petitioner's ability to seek further court review. It is

**FURTHER ORDERED** that South Plains Switching, LTD, Company pay any allowable costs to the Surface Transportation Board and PYCO Industries. The Surface Transportation Board and PYCO Industries may submit a bill of costs incurred in No. 08-1309. See D.C. Cir. Rule 39(a). It is

**FURTHER ORDERED** that South Plains Switching, LTD, Company show cause by July 2, 2009, why attorneys' fees should not be awarded in favor of the Surface Transportation Board and PYCO Industries. The response to the order to show cause

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 08-1309**

**September Term 2008**

may not exceed 20 pages. The Surface Transportation Board and PYCO Industries may reply to South Plains Switching, LTD, Company's response.

**Per Curiam**

**FOR THE COURT:**

Mark J. Langer, Clerk

BY: /s/

Jennifer M. Clark

Deputy Clerk

From the U.S. Code Online via GPO Access  
[www.gpoaccess.gov]  
[Laws in effect as of January 3, 2007]  
[CITE: 49USC10907]

[Page 293-295]

TITLE 49--TRANSPORTATION

SUBTITLE IV--INTERSTATE TRANSPORTATION

PART A--RAIL

CHAPTER 109--LICENSING

Sec. 10907. Railroad development

(a) In this section, the term ``financially responsible person'' means a person who--

- (1) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; and
- (2) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

Such term includes a governmental authority but does not include a Class I or Class II rail carrier.

(b) (1) When the Board finds that--

- (A) (i) the public convenience and necessity require or permit the sale of a particular railroad line under this section; or
- (ii) a railroad line is on a system diagram map as required under section 10903 of this title, but the rail carrier owning such line has not filed an application to abandon such line under section 10903 of this title before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section; and
- (B) an application to purchase such line has been filed by a financially responsible person,

the Board shall require the rail carrier owning the railroad line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

(2) For purposes of this subsection, the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater.

(c) (1) For purposes of this section, the Board may determine that the public convenience and necessity require or permit the sale of a railroad line if the Board determines, after a hearing on the record, that--

- (A) the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;
- (B) the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;
- (C) the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;
- (D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and

(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

(2) In a proceeding under this subsection, the burden of proving that the public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application to acquire such line. If the Board finds under this subsection that the public convenience and necessity require or permit the sale of a particular railroad line, the Board shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

(d) In the case of any railroad line subject to sale under subsection (a) of this section, the Board shall, upon the request of the acquiring carrier, require the selling carrier to provide to the acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier. The Board shall require the acquiring carrier to provide the sell

[[Page 294]]

ing carrier reasonable compensation for any such trackage rights.

(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.

(f) In the case of a railroad line which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year, whenever a purchasing carrier under this section petitions the Board for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Board shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable joint rates and divisions over such route.

(g) (1) Any person operating a railroad line acquired under this section may elect to be exempt from any of the provisions of this part, except that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

## Prior Provisions

Provisions similar to those in this section were contained in section 10910 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, Sec. 102(a).

Prior sections 10907 to 10910 and 10921 to 10936 were omitted in the general amendment of this subtitle by Pub. L. 104-88, Sec. 102(a).

Section 10907, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1407, related to rail carriers entering into arrangements for joint use or ownership of spur, industrial, team, switching, or side tracks, and deprived Interstate Commerce Commission of authority over such tracks when located in one State or over certain electric railways. See sections 10102, 10501, and 10906 of this title.

Section 10908, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1407, related to discontinuing or changing interstate train or ferry transportation subject to State law.

Section 10909, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1408, related to discontinuing or changing train or ferry transportation in one State.

Section 10910, added Pub. L. 96-448, title IV, Sec. 401(a), Oct. 14, 1980, 94 Stat. 1939; amended Pub. L. 97-468, title V, Sec. 506(a), Jan. 14, 1983, 96 Stat. 2553; Pub. L. 103-272, Sec. 4(j)(27), July 5, 1994, 108 Stat. 1369, related to railroad development. See section 10907 of this title.

Section 10921, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1409, related to requirement for certificate, permit, or license. See section 13901 of this title.

Section 10922, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1409; Pub. L. 96-296, Sec. Sec. 5(a), 6, 34(a), July 1, 1980, 94 Stat. 794, 796, 825; Pub. L. 96-454, Sec. 10(a), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97-261, Sec. Sec. 6(a)-(c), (g), 7, 8, Sept. 20, 1982, 96 Stat. 1103, 1107, 1108; Pub. L. 98-554, title II, Sec. Sec. 225(a), (b), 226(b), Oct. 30, 1984, 98 Stat. 2847, 2848, 2850; Pub. L. 100-17, title III, Sec. Sec. 339, 340(a), Apr. 2, 1987, 101 Stat. 243, 245; Pub. L. 100-690, title IX, Sec. 9111(g), Nov. 18, 1988, 102 Stat. 4533; Pub. L. 102-240, title III, Sec. 3003(b), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 103-272, Sec. 5(m)(25), July 5, 1994, 108 Stat. 1378; Pub. L. 103-311, title II, Sec. 207, Aug. 26, 1994, 108 Stat. 1686; Pub. L. 103-429, Sec. 7(a)(4)(D), Oct. 31, 1994, 108 Stat. 4389, related to certificates of motor and water common carriers. See section 13902 of this title.

Section 10923, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1410; Pub. L. 96-258, Sec. 1(9), June 3, 1980, 94 Stat. 426; Pub. L. 96-296, Sec. Sec. 10(a)(2), (3), 34(b), July 1, 1980, 94 Stat. 799, 800, 825; Pub. L. 97-261, Sec. 13(a), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 99-521, Sec. 8(a)(1), (2), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 103-311, title II, Sec. 208, Aug. 26, 1994, 108 Stat. 1687, related to permits of motor and water contract carriers and household goods freight forwarders. See section 13903 of this title.

Section 10924, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1412; Pub. L. 96-296, Sec. 17(a), July 1, 1980, 94 Stat. 810; Pub. L. 97-261, Sec. 14(a)-(c), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 103-272, Sec. 4(j)(28), July 5, 1994, 108 Stat. 1370, related to licenses of motor carrier brokers. See section 13904 of this title.

Section 10925, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1412; Pub. L. 96-296, Sec. Sec. 10(e), 17(b), July 1, 1980, 94 Stat. 801, 811; Pub. L. 97-261, Sec. Sec. 13(b), 22, Sept. 20, 1982, 96 Stat. 1114, 1123; Pub. L. 97-449, Sec. 5(g)(6), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 99-521, Sec. 8(b), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 103-311, title II, Sec. 209, Aug. 26, 1994, 108 Stat. 1688, related to effective periods of certificates, permits, and licenses. See section 13905 of this title.

Section 10926, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1413; Pub. L. 99-521, Sec. 8(c), Oct. 22, 1986, 100 Stat. 2996, related to transfers of certificates and permits.

Section 10927, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1413; Pub. L. 96-296, Sec. 29, July 1, 1980, 94 Stat. 820; Pub. L. 97-261, Sec. 18(h), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 98-554, title II, Sec. 226(c)(2), (3), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 99-521, Sec. 8(d), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 100-690, title IX, Sec. 9111(h), Nov. 18, 1988, 102 Stat. 4534; Pub. L. 103-272, Sec. 5(m)(26), July 5, 1994, 108 Stat. 1378, related to security of motor carriers, brokers, and freight forwarders. See section 13906 of this title.

Section 10928, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1414; Pub. L. 96-296, Sec. 23, July 1, 1980, 94 Stat. 814; Pub. L. 97-261, Sec. 15, Sept. 20, 1982, 96 Stat. 1114, related to temporary authority for motor and water carriers.

Section 10929, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1415, related to temporary authority for previously exempt water transportation.

Section 10930, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1415; Pub. L. 96-296, Sec. 10(b), July 1, 1980, 94 Stat. 800; Pub. L. 99-521, Sec. 8(e), Oct. 22, 1986, 100 Stat. 2996, related to limitations on certificates and permits.

Section 10931, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1416, related to motor common carriers providing transportation entirely in one State.

Section 10932, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1417, related to motor carrier savings provisions.

Section 10933, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1418; Pub. L. 99-521, Sec. 8(f)(1), (2), Oct. 22, 1986, 100 Stat. 2996, 2997, related to authorizing abandonment of household goods freight forwarder service.

Section 10934, added Pub. L. 96-454, Sec. 5(a)(1), Oct. 15, 1980, 94 Stat. 2013; amended Pub. L. 98-554, title II,

[[Page 295]]

Sec. 227(a)(2), Oct. 30, 1984, 98 Stat. 2852, related to household goods agents. See section 13907 of this title.

Section 10935, added Pub. L. 97-261, Sec. 16(a), Sept. 20, 1982, 96 Stat. 1115; amended Pub. L. 103-272, Sec. 5(m)(27), July 5, 1994, 108 Stat. 1378, related to discontinuing bus transportation in one State.

Section 10936, added Pub. L. 103-311, title II, Sec. 211(a), Aug. 26, 1994, 108 Stat. 1689, related to limitation on State regulation of intrastate passengers by bus.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2009, I served the foregoing document, Petition For Partial Reopening And Reconsideration Of Decisions Served September 8, 2008 And August 31, 2007, by UPS overnight mail, on the following:

Charles H. Montange, Esq.  
426 N.W. 162<sup>nd</sup> Street  
Seattle, WA 98177

John D. Heffner, Esq.  
John D. Heffner, PLLC  
1920 N Street, N.W., Suite 800  
Washington, DC 20036

*Thomas F. McFarland*

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Thomas F. McFarland