LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

JUL 3 2006
RECEIVED

225136
~~216922~~

June 30, 2006

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Public Record

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 34844, *PYCO Industries, Inc. -- Feeder Line Development -- South Plains Switching, Ltd. Co.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Motion For Rejection Of Revised Feeder Line Application, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

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

TMcF:kl:enc:wp8.0\1169\ltrstb7

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. -- FEEDER LINE DEVELOPMENT -- SOUTH PLAINS SWITCHING, LTD. CO.	)))	FINANCE DOCKET NO. 34844

216922

MOTION FOR REJECTION OF
REVISED FEEDER LINE APPLICATION

ENTERED
Office of Proceedings

JUL 03 2006

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Public Record

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

Respondent

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Respondent

DATE FILED: July 3, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. -- FEEDER LINE DEVELOPMENT-- SOUTH PLAINS SWITCHING, LTD. CO.	)))	FINANCE DOCKET NO. 34844

MOTION FOR REJECTION OF
REVISED FEEDER LINE APPLICATION

Pursuant to 49 C.F.R. § 1117.1, SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby moves that the Board reject a Revised Feeder Line Application (RFLA) filed by PYCO Industries, Inc. (PYCO) on June 14, 2006 on the following grounds:

A. GROUNDS APPLICABLE TO BOTH THE RFLA AS A WHOLE AND TO ALTERNATIVE TWO

(1) There is insufficient evidence to show that transportation is inadequate for the majority of shippers who transport traffic over the line, as required by 49 U.S.C. § 10907(c)(1)(B); and

(2) The Board does not have authority to order sale of the tracks under 49 U.S.C. § 10907 because the tracks are switching tracks within the meaning of 49 U.S.C. § 10906; inasmuch as the Board lacks authority under 49 U.S.C. § 11101(a) to require SAW to provide adequate service over such tracks, it also lacks authority under 49 U.S.C. § 10907 to order sale of the tracks on the ground that service over such tracks is inadequate.

B. GROUNDS APPLICABLE ONLY TO ALTERNATIVE TWO

(1) The Board does not have authority to order sale of tracks comprising Alternative Two because those tracks do not constitute a "particular railroad line" within the meaning of 49 U.S.C. § 10907(b)(1)(A)(i); and

(2) there is insufficient evidence to show that sale of tracks comprising Alternative Two will not have a significant adverse financial effect on SAW, as required by 49 U.S.C. § 10907(c)(1)(C).

The facts asserted in this Motion are verified by Mrs. Delilah Wisener, owner of SAW, whose verification is attached as Appendix 1.

ARGUMENT

I. THE RFLA IS REQUIRED TO BE REJECTED BECAUSE THERE IS INSUFFICIENT EVIDENCE TO SHOW THAT TRANSPORTATION IS INADEQUATE FOR THE MAJORITY OF SHIPPERS WHO TRANSPORT TRAFFIC OVER THE LINE, AS REQUIRED BY 49 U.S.C. § 10907(c)(1)(B)

The Board cannot order the sale of a particular railroad line under 49 U.S.C. § 10907(b)(1)(A)(i) on the ground that public convenience and necessity require or permit such a sale unless the Board is able to make all five findings specified in 49 U.S.C. §§ 10907(c)(1)(A)-(E). The finding required by § 10907(c)(1)(B) is that "transportation over such line is inadequate for the majority of shippers who transport traffic over such line." One of the reasons for rejection of the FLA in the decision of Director Konschnik served June 2, 2006 was the absence of sufficient evidence in the FLA to permit that finding to be made on a prima facie basis. The RFLA is also required to be rejected on that ground because it does not contain the required evidence.

It is a universally recognized standard in the railroad industry, as well under the law, that transportation or service is "inadequate" when upon reasonable request, a rail carrier fails to pick up and/or deliver particular shipments on a timely basis, or fails to pick up and/or deliver such shipments at all. The evidence required to support a finding that service is inadequate on that basis must be specific: i.e., date and time requested for pick up and/or delivery of specifically-identified shipments, and date and time such shipments were actually picked up and/or delivered, or that such shipments were not picked up and/or delivered at all. That is the evidence that must be provided to establish that transportation is inadequate for the majority of shippers under 49 U.S.C. § 10907(c)(1)(B).

There is only one SAW shipper -- PYCO -- who has alleged that SAW's rail service has been inadequate on the basis of that applicable standard. However, PYCO has failed to provide evidence in support of that allegation. PYCO's evidence is filled with bluster and general statements that it has been unable to ship the volume of traffic available for shipment because of inadequate rail service by SAW. However, PYCO has failed to support those statements with the specific evidence required by law, i.e., specific requests for SAW to pick up and/or deliver specific shipments, which SAW either failed to pick up and/or deliver or was unduly late in picking up and/or delivering.

Hi-Plains Bag and Bagging Co. (Hi-Plains) has not alleged that SAW ever failed to pick up and/or deliver any of its shipments on a timely basis. In fact, SAW has never received a complaint by Hi-Plains of inadequate rail service -- not once in the seven years that SAW has been providing service at Lubbock. According to the statement of Hi-Plains adopted in the RFLA, Hi-Plains' complaint instead is that a representative of SAW yelled at Hi-Plains'

representative on one isolated occasion. The SAW representative does not recall any such incident and denies that it took place. But even if it did, it would not constitute inadequate transportation within the meaning of 49 U.S.C. § 10907(c)(1)(B). Rail carrier representatives should not yell at shipper representatives (and vice versa), but § 10907(c)(1)(B) is aimed at timely pick up and/or delivery of shipments, not at civil tones of conversation.

Floyd Trucking Company (Floyd) has not alleged that SAW ever failed to pick up and/or deliver any of its shipments on a timely basis. Floyd could not have so alleged because Floyd has never requested SAW to provide transportation of specific shipments. Floyd has never been a shipper on SAW. The unrebutted evidence is that SAW expended a significant sum to restore the switch connection to Floyd's private track, and provided the standard Atchison, Topeka & Santa Fe Railway industry track agreement that had applied to Floyd's predecessor for the same track, but Floyd did not sign that agreement and never shipped a single carload of freight.

Neither Farmers Cooperative Compress (Farmers) nor Attebury Grain Company (Attebury) has alleged that SAW ever failed to pick up and/or deliver any of their shipments on a timely basis. In fact, SAW has never received a complaint by Farmers or Attebury of inadequate rail service -- not once in the seven years that SAW has been providing rail service at Lubbock. According to the statements of Farmers and Attebury submitted as Exhibit B of the RFLA, their complaints instead are predicated on fear that in the future they may suffer retaliation or service degradation similar to that allegedly suffered by PYCO, Hi-Plains and Floyd, *viz.* (RFLA, Ex. B):

> . . . When a switching railroad takes these kinds of actions toward some of its shippers, it can no longer be regarded as reliable by any of its shippers because they may become the subject of similar retaliation or service degradation at any time . . .

That is not a legitimate allegation of inadequate transportation under 49 U.S.C. § 10907(c)(1)(B). The plain meaning of that statutory provision is that a majority of shippers must have experienced inadequate transportation themselves before the Board may order involuntary sale of a rail line, not that they merely fear or expect that transportation may become inadequate for them at some time in the future.

Although Hanson Aggregates, Inc. (Hanson) states that it "believes that (SAW's) service is inadequate" (RFLA, Ex. C), Hanson has not alleged that SAW ever failed to pick up and/or deliver any of its shipments on a timely basis. In fact, SAW has never received a complaint by Hanson of inadequate rail service -- not once in the seven years that SAW has been providing rail service at Lubbock. The Hanson statement is lacking in credibility and is not entitled to weight because Hanson has not provided explanation nor support for its "belief" that SAW's service is inadequate.

Thus, only one shipper -- PYCO -- has alleged that SAW failed to pick up and/or deliver its shipments on a timely basis, but specific evidence was not submitted to support that allegation. An unsupported allegation of inadequate transportation by a single shipper does not come close to satisfying PYCO's burden of proof under 49 U.S.C. § 10907(c)(1)(B) that transportation is inadequate for the majority of shippers who transport traffic over the line. Even if it were to be assumed that PYCO proved that SAW's transportation for PYCO was inadequate, that would constitute only one out of the 23 shippers on the rail line as a whole, and only one out

of the 3 shippers on the tracks comprising Alternative Two.[1/] In neither instance under that assumption would there be evidence that transportation is inadequate for the majority of shippers.

None of the allegations of other shippers relates at all to inadequate transportation within the meaning of 49 U.S.C. § 10907(c)(1)(B). The fear expressed by Farmers and Attebury that transportation will become inadequate at some point in the future does not qualify because inadequate transportation under that statute must have been actually experienced to warrant the drastic remedy of involuntary sale of a rail line. Hanson's "belief" that transportation is inadequate does not qualify because it does not constitute an allegation, let alone proof, that transportation has been inadequate as to any specific shipment for Hanson. Hi-Plains' allegation that a representative of SAW treated its representative harshly on one occasion does not constitute inadequate transportation or any other activity prohibited by the Interstate Commerce Act. As a nonshipper, Floyd's allegations are not material; the evidence refutes Floyds' contention that SAW prevented it from shipping by rail in any event.

PYCO was not able to present legitimate evidence from other shippers of inadequate transportation service by SAW because SAW has a consistent record of picking up and/or delivering shipments on a timely basis. As a result, PYCO was forced to submit shipper statements such as Hi-Plains' that allege that SAW acted discourteously, not that it did not provide timely pick up and/or delivery of specific shipments. That is insufficient to satisfy PYCO's burden of proof under 49 U.S.C. § 10907(c)(1)(B) as a matter of law: As in *Keokuk Junction Ry. Co. -- Feeder Line Acq. -- Line of Toledo, Peoria & Western Ry. Corp. betw. LaHarpe and Hollis, IL*, 2003 STB LEXIS 238 (Finance Docket No. 34335, decision served May

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[1/] The 23 shippers on SAW (soon to be 24) are listed in the attached Appendix 2.

9, 2003), at *8, the shipper statements submitted by PYCO in the RFLA "can only be viewed as a novel attempt to circumvent the statutory requirement" that transportation service be shown to be inadequate for the majority of shippers who transport traffic over the line. The RFLA should be rejected on that basis.

Many shippers prefer to stay out of an ugly dispute such as that between PYCO and SAW. However, six of SAW's shippers listed below want to go on record that SAW's rail service to them has been excellent, *viz.*:

(1) Dodson Wholesale Lumber Co., Inc.
(2) Brite Reload
(3) Robertson Bonded Warehouse, Inc.
(4) Stock Building Supply
(5) Russell E. Womack, Inc.
(6) Teinert Metals, Inc.

The letters of those shippers attesting to the adequacy of SAW's rail service to them are attached to this Motion as Appendix 3.

II. THE BOARD DOES NOT HAVE AUTHORITY TO ORDER SALE OF THE LINE UNDER 49 U.S.C. § 10907 BECAUSE THE TRACKS ARE SWITCHING TRACKS WITHIN THE MEANING OF 49 U.S.C. § 10906; INASMUCH AS THE BOARD LACKS AUTHORITY UNDER 49 U.S.C. § 11101(a) TO REQUIRE SAW TO PROVIDE ADEQUATE SERVICE OVER THOSE TRACKS, IT ALSO LACKS AUTHORITY UNDER 49 U.S.C. § 10907 TO ORDER SALE OF THE TRACKS ON THE GROUND THAT SERVICE OVER SUCH TRACKS HAS BEEN INADEQUATE

SAW's tracks are properly characterized as "switching tracks" as that term is used in 49 U.S.C. § 10906. The most significant criterion in the determination of whether particular tracks are switching tracks is the use to which the tracks are put. Tracks that are used exclusively for switching of cars to and from shipper facilities are exempt "switching tracks" notwithstanding that other characteristics might point to classification of the tracks as part of a line of railroad,

such as the volume of traffic moved over the tracks and the number of shippers served. *Chevron USA, Inc. -- Lease & Oper. Exempt. -- Richmond Belt Railway*, 1995 ICC LEXIS 137 at *5 (Finance Docket No. 32352, served June 12, 1995).

SAW's tracks are quintessentially "switching tracks" under the "use" test. SAW's tracks are located within the Lubbock, Texas switching limits and terminal area. Those tracks are used exclusively to switch cars between the BNSF South Yard in Lubbock and the facilities of shippers and receivers served by SAW. SAW is exclusively a switching rail carrier operating within the Lubbock terminal, as its name signifies. SAW's rail service is confined to pick up and delivery of cars at the plants of its shippers and receivers. SAW's tracks are never used in conjunction with line-haul transportation. Under *Chevron USA, Inc.*, *supra*, a finding is compelled on the foregoing basis that SAW's tracks are "switching tracks" as that term is used in 49 U.S.C. § 10906.

In finding that the SAW tracks used to provide service to PYCO are not "switching tracks," the Board, in *PYCO Industries, Inc. -- Alternative Rail Service -- South Plains Switching, Ltd. Co.*, 2006 STB LEXIS _____ (Finance Docket No. 34802, served June 21, 2006) ("*PYCO Feeder* case"), relied on the following: (1) SAW received Board authority to acquire the tracks in 1999; and (2) the tracks are used to serve more than one shipper (at *_____). However, the need for Board authority arose from the principle of the *Effingham* [2/] and *Bulkmatic* [3/] cases to the

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[2/] *Effingham RR Co. - Pet. for Declaratory Order*, 2 S.T.B. 606 (1997), *aff'd sub nom. United Transp. Union v. STB*, 183 F.3d 606 (7th Cir. 1999).

[3/] *Bulkmatic R. Corp. -- Acq. & Oper. Exempt. -- Bulkmatic Transport Co.*, 2002 STB LEXIS 691 (Finance Docket No. 34145, served Nov. 19, 2002), recons. denied., 2003 STB LEXIS 256 (served May 15, 2003).

effect that a rail carrier that acquires trackage that is exempt under 49 U.S.C. § 10906 nevertheless requires Board entry authority if such tracks would constitute the carrier's entire rail line. That does not mean that the tracks lose their exempt status for all future purposes. And the *Chevron USA* case, *supra*, is authority for the proposition that the fact that a track is used to serve more than one shipper does not warrant characterization of the track as a line of railroad where the track is used exclusively to switch traffic to and from the facilities of shippers on the line.

By virtue of 49 U.S.C. § 10906, tracks characterized as switching tracks are not subject to Board authority for their acquisition or abandonment. Under *Battaglia Distributing Co. v. Burlington Northern*, 2 S.T.B. 323 (1997) ("*Battaglia*"), and *Valley Feed Co. v. Greater Shenandoah Valley Devel. Co.*, 1995 ICC LEXIS 323 (Docket No. 41068, served Dec. 21, 1995) ("*Valley Feed*"), a rail carrier cannot be found to have violated 49 U.S.C. § 11101(a) by failing to provide adequate service over tracks that are classified as switching tracks or other exempt tracks under § 10906. *Battaglia*, *supra*, 2 S.T.B. at 328; *Valley Feed*, *supra*, 1995 ICC LEXIS 323 at *13-20. <u>It necessarily follows that a rail carrier cannot be required to sell switching tracks or other exempt tracks under the feeder line statute on the ground that it failed to provide adequate service over such tracks</u>. If a rail carrier cannot be required to provide adequate service over switching tracks, neither can it be required to sell those tracks on the ground that its service over them has been inadequate. The RFLA is required to be rejected on that basis.[4]

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[4] In the *PYCO Feeder* case, *supra*, the Board attempted to distinguish the *Battaglia* and *Valley Feed* decisions from the case at hand on the ground that the exempt tracks in those decisions were abandoned, whereas the tracks in the present case are not abandoned (2006 STB LEXIS _____ at *_____). That is a distinction without a legal difference. A rail carrier cannot be found to have provided inadequate service over exempt tracks regardless of whether the tracks were previously abandoned.

III. THE BOARD DOES NOT HAVE AUTHORITY TO ORDER SALE OF TRACKS COMPRISING ALTERNATIVE TWO BECAUSE THOSE TRACKS DO NOT CONSTITUTE A "PARTICULAR RAILROAD LINE" WITHIN THE MEANING OF 49 U.S.C. § 10907(b)(1)(A)(i)

SAW hereby incorporates by reference the "Motion for Rejection of Alternative Two of Feeder Line Application" that it filed in this proceeding on May 16, 2006. The Board did not decide that Motion because the Feeder Line Application was rejected in its entirety on other grounds.

PYCO filed a Reply to that Motion in which it attempted to distinguish the case at hand on factual grounds from *Caddo Antoine and Little Missouri R. Co. v. United States*, 95 F.3d 740, 749 (8th Cir. 1996), in which it was held that a feeder line application under the public convenience and necessity standard of 49 U.S.C § 10907(b)(1)(A)(i) cannot be filed for acquisition of less than the entirety of a rail line that is operated as a unit.

PYCO's attempted distinction is ineffective. The Court in that case held as a matter of statutory interpretation that the term "a particular railroad line" in § 10907(b)(1)(A)(i) was intended by Congress to encompass the entirety of a rail line that is operated as a unit. Thus, the Court said (95 F.3d at 749):

> . . . (W)e conclude that the words 'a particular railroad line,' when viewed in the light of the history of the Norman Branch, the purposes of the feeder line development program, and the circumstances of this case, must be read to describe the entirety of the Norman Branch . . .

That statutory term cannot be legitimately read differently as to SAW's trackage, which SAW has operated as a unit since acquiring such trackage in 1999.

Moreover, the Court condemned the practice of "cherry-picking" the most profitable parts of a rail line in a feeder line case, *viz.* (95 F.3d at 747):

> . . . If the Commission's position is affirmed in this case, Arkansas Midland will have succeeded in lopping off service to the majority of its former shippers while 'cherry-picking' the single, more easily served shipper on the remaining seven percent of the line it elected to retain . . .

Alternative Two of PYCO's RFLA represents unmistakable cherry-picking. The shippers located on the tracks comprising Alternative Two provide two-thirds of SAW's total traffic, but those tracks constitute only about one-third of SAW's total trackage. (FLA at 11, 13, 36). In Alternative Two, PYCO wants to cherry-pick the shippers with the greatest volume of traffic and corresponding revenue, wile leaving SAW with not enough traffic and revenue to maintain and operate the extensive trackage that would remain. That is not legally permissible under § 10907(b)(1)(A)(i) as interpreted by the Court in the *Caddo Antoine* case, *supra*. Alternative Two of the RFLA is required to be rejected on that basis.

IV. ALTERNATIVE TWO OF THE RFLA IS REQUIRED TO BE REJECTED BECAUSE THERE IS INSUFFICIENT EVIDENCE TO SHOW THAT SALE OF TRACKS COMPRISING ALTERNATIVE TWO WILL NOT HAVE A SIGNIFICANT ADVERSE FINANCIAL EFFECT ON SAW, AS REQUIRED BY 49 U.S.C. § 10907(c)(1)(C)

If Alternative Two of the RFLA is not rejected on the statutory basis set out in Section III of this Motion, it should be rejected because there is no evidence to show that sale of tracks comprising Alternative Two will not have a significant adverse financial effect on SAW, as required by 49 U.S.C. § 10907(c)(1)(C). On the contrary, it is clear from the evidence that SAW would be seriously harmed financially if tracks comprising Alternative Two were sold and SAW was left with the remaining trackage. As noted above, SAW would lose two-thirds of its traffic and revenue if tracks comprising Alternative Two were to be sold, but there would not be a proportionate reduction of trackage -- only one-third of the total trackage would be sold.

It is evident that SAW would not be able to maintain and operate the remaining trackage on a profitable basis if SAW were to lose two-thirds of its traffic base and the revenues that correspond to that traffic. SAW would be financially drained by the resulting operating losses. That is what § 10907(c)(1)(C) is designed to avoid.

In addition, there would be a significant adverse operational effect on SAW. Through experience gained during alternative rail service to PYCO, SAW can attest to the fact that it is an operational nightmare when two rail carriers operate within the confined south Lubbock Terminal. Either SAW should operate the entire south Lubbock Terminal, or PYCO should. From both an operational and financial standpoint, the south Lubbock Terminal should not be divided between two carriers, as proposed in Alternative Two.

The absence of evidence to show that sale of tracks comprising Alternative Two will not have a significant adverse effect on SAW is an additional ground for rejection of Alternative Two.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the RFLA is required to be rejected. If the RFLA is not rejected in its entirety, Alternative Two of the RFLA is required to be rejected for the reasons stated herein.

Respectfully submitted,

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

Respondent

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Respondent

DATE FILED: July 3, 2006

Finance Docket No. 34844

APPENDIX 1

VERIFICATION

STATE OF TEXAS)
) SS:
COUNTY OF LUBBOCK)

DELILAH WISENER, being duly sworn on oath, deposes and states that she has read the foregoing statement, that she knows the contents thereof, and that the facts therein stated are true and correct.

Delilah Wisener
DELILAH WISENER

SUBSCRIBED AND SWORN to
Before me this 30th day
of June, 2006.

Dale A Robinson
Notary Public

DALE A. ROBINSON
Notary Public, State of Texas
My Commission Expires
August 05, 2006

My Commission Expires: August 05, 2006

Finance Docket No. 34844

APPENDIX 2

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

Soon to be 24) Weaver Grain Company
(sent track lease yesterday)

DODSON
Wholesale Lumber Co., Inc.

June 15, 2006

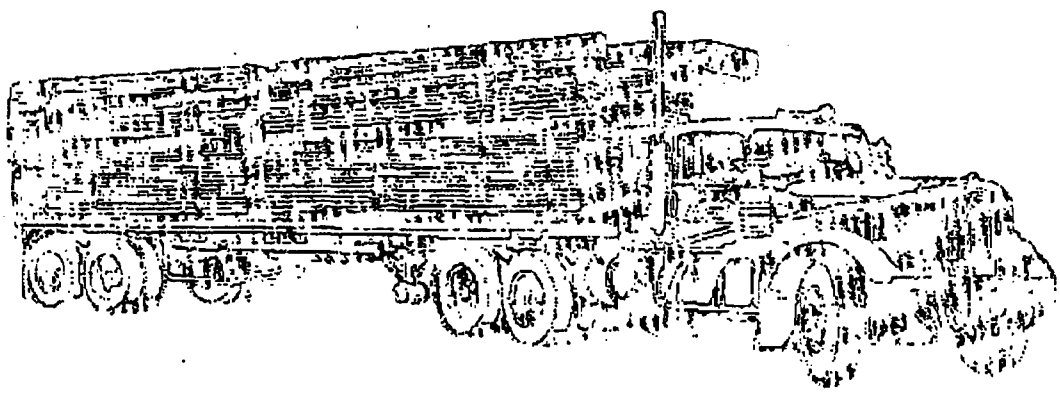
To Whom It May Concern:

My name is Derrick Chavez with Dodson Wholesale Lumber Co. in Roswell, NM. We have a warehouse in Lubbock and received 65 railcars in 2005. The SAW has never failed us. I fact, they are the only company associated with the railroad industry I can depend on. They have gone beyond the call of duty many times to try to accommodate our needs. Please feel free to call me to go over specific instances. 800-545-7850

Thank you

Derrick Chavez

Traffic Manager
Dodson Wholesale Lumber Co.



P.O. BOX 1851 • 1701 NORTH GARDEN • ROSWELL, NEW MEXICO 88202-1851 • (505) 622-3278 • FAX (505) 624-1138

Kenny Ferrell
Brite Reload
PO Box 537
Lubbock, TX 79408
806-744-1563 FAX 806-744-8926

May 25, 2006

South Plains Switching, LTD. Co
PO Box 64299
Lubbock, TX 79464

Attn: Delilah Wisener

Mrs. Wisener,

I would like to thank you for the service that your company has provided to Brite Reload over the past few years. The personal service that you and your employees have provided speak volumes for the type of business that you operate.

We appreciate the fact that our tracks have been maintained, and that any of the problems that we have spoken about have been addressed in a timely manner, with no expense to my company. I do not feel that we could ask for any better service than we have been provided by the SAW.

It is utmost wish that we will be able to maintain our business relationship far into the future.

With utmost gratitude,

Kenny Ferrell

Robertson
Bonded Warehouse, Inc

833 East 40th • Lubbock, Texas 79404
(806) 765-8233
Fax (806) 765-9241
WWW.RobertsonBonded.com

Finance Docket No. 34844

APPENDIX 3 (Pg 3 of 6)

May 25, 2006

South Plains Switching, LTD, Co.
P. O. Box 64299
Lubbock, TX 79464

We are very satisfied with the service that SAW has provided for us in the past. We look forward to continuing our relationship with SAW.

Thank you.

Karen L. Robertson

Karen L. Robertson

STOCK Building Supply
a company

801 E. 40th Street
Lubbock, Texas 79404
Ph. 806-763-6431
Fax 806-763-8354

May 22, 2006

South Plains Switching, Ltd. Co.
P.O. Box 64299
Lubbock, Texas 79464

Ms. Wisener:

Stock Building Supply- Lubbock is satisfied with the service that South Plaines Switching, Ltd. Co. has provided us over the years.

Sincerely,

Jackie Cox
West Texas Market Manager
Stock Building Supply

RUSSELL E. WOMACK, INC.

PREMIUM QUALITY PINTO BEANS

Finance Docket No. 34844

APPENDIX 3 (Pg 5 of 6)

May 22, 2006

To whom it may concern:

South Plains Switching has given us excellent service, and has not forced us to make unnecessary repairs on the tracks by our facility.

Yours Sincerely,

Mike Byrne
Co-President

PHONE: (806) 747-2581 FAX: (806) 747-2583

P.O. BOX 3967 • LUBBOCK, TEXAS 79452 1300 EAST 42ND STREET • LUBBOCK, TEXAS 79404

Teinert
METALS, INC.

62nd & M.L.K. Blvd.
P.O. Box 3217
Lubbock, Texas 79452

Ph 806-687-5991
Fax 806-687-5999
Toll Free 877-687-5991

May 22, 2006

To Whom It May Concern:

We have had exceptional service from South Plains Switching, LTD. Co.

We are a steel/metal service center company and it is very necessary that we have good rail service to receive our steel in a timely manner. We have never been required to have any necessary or unnecessary repairs to the track or extensions.

We have been very satisfied with our service and hope to have a long lasting relationship with South Plains Switching, LTD. Co.

Sincerely,

Randy Teinert
President

RBT/wj

CERTIFICATE OF SERVICE

I certify that on June 30, 2006, I served the foregoing document, Motion For Rejection Of Revised Feeder Line Application, by UPS overnight mail, on the following:

Charles H. Montange, Esq.
426 N.W. 162nd Street
Seattle, WA 98177

Gary McLaren, Esq.
Phillips & McLaren
3305 66th Street, Suite 1A
Lubbock, TX 79413

John D. Heffner, Esq.
John D. Heffner, PLLC
1920 N Street, N.W., Suite 800
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William C. Sippel, Esq.
Fletcher & Sippel, LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2875

Thomas F. McFarland

Thomas F. McFarland