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CHARLES H. MONTANGE
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26 January 2006
by Fax and Federal Express

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

ENTERED
Office of Proceedings
JAN 27 2006
Part of
Public Record

Re: PYCO Industries, Inc. -- Alternative Rail Service
-- South Plains Switching, Ltd., F.D. 34802

Request for Imposition of Service
Protocol

Expedited Treatment Requested

Dear Mr. Secretary:

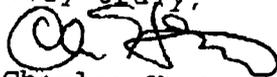
This Board on the morning of 26 January issued a decision in the above-referenced proceeding authorizing alternative rail service, and directing the parties to negotiate a service protocol. Immediately on 26 January, alternative service provider West Texas & Lubbock Railroad through its attorney and its management attempted to negotiate with incumbent rail provider South Plains Switching (SAW) a protocol to permit WTL to provide alternative service to PYCO Industries. WTL reports to PYCO that SAW is intransigent, unwilling to allow any access to PYCO Plant No. 2 in Lubbock, unwilling to allow any service at all on weekends, and unwilling to allow either a sufficient service window or any other form of access adequate reliably to perform the two switches per day minimally required for PYCO's Plant No. 1. PYCO can only remark that this fits SAW's pattern of non-cooperation, dictation, and the creation of artificial and contrived imbroglios. Unfortunately, it forces us to return to this Board for an order imposing a service protocol.

Please accept the enclosed "Request for Imposition of an Operating Protocol" for fax filing. I shall deposit the original and ten copies with an express service for delivery to the Board on Monday, 30 January, and I shall request John Heffner, counsel for WTL, to furnish eleven copies of a faxed version of this enclosure for circulation as soon as possible on Friday morning, 27 January. PYCO is anxious for alternative

rail service, and respectfully requests expeditious treatment of this request for a protocol. We have worked with WTL to achieve a simple, straightforward and workable protocol.

Thank you for your assistance in this matter.

Very truly,



Charles H. Montange
counsel for PYCO Industries

Encl.

cc. Melvin Clemens, Director, OCE
John Heffner, Esq. (for WTL)
Thomas McFarland, Esq. (for SAW)
Gary McLaren, Esq. (for PYCO)
all w/encl.

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34802
SOUTH PLAINS SWITCHING LTD.)

REQUEST FOR IMPOSITION
OF
AN OPERATING PROTOCOL

Expeditious Treatment Requested
to permit service Saturday, 28 January

Shipper Pyco Industries hereby requests this Board immediately to impose an operating protocol for alternative rail service to PYCO's Plant No. 1 and Plant No. 2 as follows:

1. Seven day service: Alternative rail service provider West Texas & Lubbock Railroad (WTL) has exclusive control of dispatch 12 hours per day, 7 AM to 7 PM, for all leads and lines necessary to provide service from the BNSF interchange to PYCO Plant No. 1 and PYCO Plant No. 2.

3. Free and clear of other cars: All leads between BNSF interchange and PYCO plant trackage to be kept free and clear of other cars during the exclusive window above.

I. Background

PYCO Industries originally filed its alternative rail service petition on December 20, 2005, based on a repeated episodes of inadequate rail service from incumbent rail provider South Plains Switching (SAW), with the most recent installment of inadequate service commencing on or about November 17, 2005. By the time PYCO filed its petition, PYCO's inventory of cottonseed oil, cottonseed and cottonseed meal was rapidly

increasing due to lack of adequate rail service. PYCO indicated that it was facing a shortfall of roughly 16 carloads per day at its Plant No. 2, where it was receiving only one switch per day from SAW, limited to a maximum of 12 cars.

This problem has persisted to the point that PYCO's inventory is bursting at the seams. PYCO needs two switches per day, seven days per week service, especially if PYCO is not allowed to use its trackmobile (which it currently is not) to switch cars for itself. If PYCO's alternative service provider can provide two switches, PYCO can achieve at least 24 carloads per day, and perhaps as many as 32 if both its shop and scale tracks are used for switching (SAW insisted on using only one).

1. Initial Effort to Negotiate Protocol

By letter dated 12 January 2006 (attached as Exhibit A),¹ PYCO advised SAW that PYCO was rapidly running out of storage space. PYCO indicated to SAW that it was prudent to work out operating protocols for alternative rail service should the Board authorize same. PYCO attached an email from WTL indicating the following proposed protocol:

a) exclusive "window" to serve Pyco from 7 AM to 7 PM, 7 days per week;

b) both the "main track" and the lead to Plant 2 from the BNSF interchange to the PYCO plant trackage to be kept clear of cars by SAW during that interval.

¹ A copy of this letter was supplied to STB's Office of Compliance and to the Secretary for inclusion in the record.

Unfortunately, SAW made no response, other than to indicate that Mr. Wisener had left on a trip.

2. Impasse on 26 January

On Thursday, January 26, this Board authorized alternative rail service for PYCO. PYCO directed its alternative service provider (WTL) to attempt to work out a mutually satisfactory service protocol with SAW, as provided in this Board's order. WTL has now advised PYCO Industries that SAW is unwilling to permit any service to PYCO on weekends (Saturday and Sunday), that SAW is unwilling to agree to joint use of tracks on weekdays sufficient to allow the two switches to PYCO necessary to ensure adequate rail service to PYCO's Plant No. 1, and that SAW is refusing to permit access to PYCO's Plant No. 2 at all. See email, Ed Ellis (WTL) to C. Montange, attached as Exhibit B.

In particular, WTL advises that SAW (a) refuses any use of track (so-called compress track) necessary to serve PYCO's Plant No. 2 and (b) will only agree to allow WTL to serve PYCO's Plant No. 1 from 9 AM until 2 PM on Mondays through Fridays.

1. Plant No. 2. Access to PYCO's Plant No. 2 is over the "compress" track. SAW's refusal to negotiate a protocol to allow any service to Plant No. 2 is totally incompatible with this Board's January 26 decision. Thus, any protocol for service to Plant No. 1 must clearly be understood to be applicable to Plant. No. 2 as well. We will not discuss the protocol needed for Plant No. 1.

2. Weekend service. Since SAW has told PYCO that SAW does

not provide weekend service, there is no reason for SAW's refusal to agree to allow WTL use of SAW trackage to serve PYCO on weekends, other than spite. PYCO needs weekend service to work off the huge inventory overhang that has built up due to SAW's inadequate service. PYCO accordingly requests that this Board immediately impose a protocol giving WTL exclusive control over dispatch from 7 AM to 7 PM Saturday and Sunday.

3. Monday-Friday service. SAW tells WTL it will agree only to permit WTL to use trackage to serve PYCO's Plant No. 1 for five hours each weekday. WTL has advised PYCO that this does not provide sufficient time for WTL to pick up empty cars at the BNSF interchange, move them to PYCO, move loaded cars at PYCO to the BNSF interchange, and return loaded cars to that interchange so as reliably to complete two switches per day. WTL has advised that it needs 12 hours per day reliably to accomplish these two switches, between the hours of 7 AM and 7 PM. See email, Ed Ellis (WTL) to C. Montange, attached as Exhibit B. PYCO accordingly requests that WTL have exclusive control of dispatch for that interval. With WTL in control of dispatch, adequate service to PYCO can be achieved, and safe shared operation still be assured should SAW desire joint use of the track during this period.

4. Obstructions. SAW sometimes leaves cars stored for other shippers on tracks necessary to serve PYCO. Any protocol must require SAW to keep other cars off these tracks, and not otherwise foul the tracks, during the service interval provided

for PYCO.

Continued non-cooperation by SAW. In our original Petition, PYCO noted that SAW has "exhibited a repeated inability to civil discussion and cooperative agreements." In anticipation that SAW would refuse to negotiate a reasonable service protocol should alternative service be ordered, PYCO requested a protocol giving WTL exclusive control over dispatch from 9 AM to 2 PM, five days per week, holidays inclusive. Pet. at 17. This Board noted that request in its January 26 decision, but did not impose a protocol at that time, requesting that the parties first negotiate in good faith to achieve a protocol. Jan. 26 decision at p. 9.

Unfortunately, PYCO underestimated the time to make up trains in its original petition, and PYCO's suggestion did not take into account the expansion of PYCO's needs due to the inventory build-up between December 20 and January 26. By way of explanation, we note that alternative rail service petitions are responses to emergency kinds of situation.

But it is even more unfortunate that what was true in December remains true today: SAW continues to be intransigent and to refuse to cooperate. WTL advises PYCO that SAW adopted a fixed position on 26 January and declined to negotiate an arrangement allowing WTL to serve PYCO's Plant No. 2 at all, or to reliably and adequately serve PYCO's Plant No. 1. Accordingly, PYCO unfortunately must once again make an urgent request to this Board to impose an operating protocol allowing

enough time for PYCO to receive two switches per day.

If WTL has exclusive dispatch between 7 AM and 7 PM, WTL will provide adequate service to PYCO and ensure safe joint operations. If WTL is not granted exclusive dispatch, the intransigent and uncooperative nature of SAW's management will threaten rail service for all shippers in Lubbock served by SAW.

Conclusion

As events have demonstrated, PYCO's management pattern is to eschew cooperation and negotiation in favor of dictation, demands and contrived impasses, embargoes and problems. The only way in the circumstances to provide adequate, safe and cooperative rail service under the alternative service order is for WTL to control dispatch for a period sufficient to ensure reliable service -- 12 hours per day. PYCO Industries accordingly requests that this Board impose a service protocol (1) granting WTL control over dispatch on the SAW trackage in Lubbock for 12 hours per day, seven days per week, between 7 AM and 7 PM, for PYCO's Plant No. 1 and Plant No. 2, and (2) requiring SAW to keep all leads and tracks serving PYCO between the BNSF interchange and PYCO's Plant No. 1 and Plant No. 2 free and clear of other cars during that interval.

PYCO requests that this protocol be granted immediately so alternative rail service can commence as early as Saturday, 28 January 2006, or as soon thereafter as possible.

Respectfully submitted,



Charles H. Montange
for PYCO Industries, Inc.

426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
fax: -3739

Of counsel:

Gary McLaren, Esq.
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Att. Exhibit A -- 12 January Letter, PYCO counsel to SAW
counsel
Exhibit B -- 26 January WTL email

Certificate of Service

I hereby certify that I caused copies of the foregoing to be transmitted by fax on the evening of 26 January, or in the early morning hours of 27 January, 2006 to the Thomas McFarland, counsel for SAW, at 312-201-9695, and that I have placed a copy addressed to Mr. McFarland in an express service receptacle, next business day delivery.

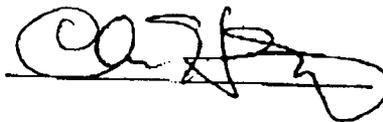


Exhibit A

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

12 Jan. 2006

Fax: Tom McFarland (SAW) 312-201-9695
John Heffner (WTL) 202-296-3939
Gary McLaren (PYCO) 806-785-2521

Hon. Vernon Williams, Secretary, STB
202-565-9002
(original and ten by Fed X)

Mel Clemens (Director, OCE) 02-565-9011
(Fed X)

Re: F.D. 34802

From: Charles Montange (for PYCO)

2 pages

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177
(206) 546-1938
FAX: (206) 546-3739

12 January 2006
by fax transmission and postal confirmation

Thomas McFarland, Esq.
208 South LaSalle St., Suite 1890
Chicago, IL 60604-1112

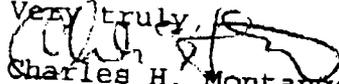
Re: PYCO Industries, Inc. -- Alternative Rail
Service -- South Plains Switching,
P.D. 34802

Dear Mr. McFarland:

As matters have evolved, there will now be little time between the issuance of an alternative service order, should the Board do so in the above proceeding, and the time when PYCO Industries will be out of storage space. Although we had anticipated sufficient time to work out operating protocols, it now appears prudent to do so in advance of an order so that we might avoid further delays. I attach hereto an email which I received this afternoon from our proposed alternative service provider (West Texas and Lubbock) setting forth an acceptable operating protocol.

On behalf of PYCO Industries, I request that your review the protocol and get back to me as soon as possible.

I certify service of this letter on this date as indicated to each recipient.

Very truly,

Charles H. Montange
for PYCO Industries, Inc.

Encl. (email from Mr. Ellis, WTL)

cc. Gary McLaren, Esq. (for PYCO, in Lubbock) (fax)
John Heffner, Esq. (for WTL, in WDC) (fax)

Secretary, Surface Transportation Board (by Fed X)
Mr. Melvin Clemens, STB OCE Director (by Fed X)
all copies w/encl.

c.montange

From: "Ed Ellis" <ellise@iowapacific.com>
To: "c.montange" <c.montange@verizon.net>
Cc: <jheffner@comcast.net>; "Steve Gregory" <gregorys@iowapacific.com>
Sent: Thursday, January 12, 2006 2:18 PM
Subject: Pyco Alternative Rail Service

Charles,

PYCO has advised us that due to continued inadequate rail service by SAW, PYCO is rapidly running out of storage space for, among other things, rail-dependent oil. In order to ensure that, if the Board rules as PYCO has requested, WTL can supply alternative rail service so PYCO does not sustain costly shutdowns, curtailments, and other ramifications, it is important that you initiate the process of working out an operating protocol with SAW. While WTL is prepared to provide service to all SAW customers, and is ready, willing and able to do so, it is possible that STB may order service only for PYCO, or for PYCO and other SAW customers whose service must be coordinated with service to PYCO due to track layout. In the event STB orders service only to PYCO, it would save time, especially if we must approach STB to have a protocol imposed, to have one already prepared and ready to be implemented.

WTL has carefully evaluated PYCO's service needs. Because PYCO will require multiple switches daily, seven days per week, to take care of its current production, plus additional switches to work off the large inventory that has accumulated since November 17, WTL needs the following:

- a) an exclusive window to serve PYCO from 7 AM until 7 PM each day, 7 days per week.
- b) the "main track" and the lead to Plant 2 leading from the BNSF interchange to PYCO plant trackage to be kept clear of cars stored for, or being loaded or unloaded for, Attebury Grain and the compress during that interval. SAW sometimes leaves Attebury or compress cars on those tracks. WTL can provide service to Attebury and/or the compress during its exclusive window.

Please request that SAW advise us of its agreement to this protocol as soon as possible, and we suggest by Friday, Noon, Central Time.

WTL has already worked out a satisfactory protocol with BNSF.

Because it may be important to document discussions concerning a protocol, please forward your request to the Board.

Ed Ellis
West, Texas & Lubbock Railway

1/12/2006

SENT BY: CHARLES H MONTANGE;

206 546 3739;

JAN-27-06 4:44AM;

PAGE 15/16

Exhibit B

c.montange

From: "Ed Ellis" <ellise@iowapacific.com>
To: "c.montange" <c.montange@verizon.net>; "John D. Heffner" <j.heffner@verizon.net>; <jheffner@comcast.net>; "Steve Gregory" <gregorys@iowapacific.com>
Sent: Thursday, January 26, 2006 12:38 PM
Subject: Fw: PYCO service requirements

----- Original Message -----

From: Ed Ellis
To: Ed Ellis; c.montange
Cc: jheffner@comcast.net; John D. Heffner; Steve Gregory
Sent: Thursday, January 26, 2006 2:35 PM
Subject: Re: PYCO service requirements

Also, SAW has denied use of the Compress track, which we had asked for subject our obtaining approval from the owner. We need to use this track for access to plant 2.

----- Original Message -----

From: Ed Ellis
To: c.montange
Cc: jheffner@comcast.net; John D. Heffner; Steve Gregory
Sent: Thursday, January 26, 2006 1:56 PM
Subject: Fw: PYCO service requirements

Charles -

For your information, and for the STB: Given the passage of time between the initial PYCO filing to STB and the STB decision, PYCO now requires 2 switches per day, approximately 8 hours apart, 7 days per week. WTL advises they need dispatching control from SAW between 7:00am and 7:00pm daily to accomplish this. SAW is only willing to allow access, let alone dispatching control, from 9 to 2 weekdays.

Ed



26 January 2006
10:30 PM Pacific

Fax: Vernon Williams, Secretary STB and Office of Proceedings for fax filing	202-565-9002
Melvin Clemens, Director, OCE	202-565-9011
Thomas McFarland, Esq. (for SAW)	312-201-9695
John Heffner, Esq. (for WTL)	202-296-3939
Gary McLaren, Esq. (for PYCO)	806-785-2521

Re: F.D. 34802

From: Charles H. Montange (for PYCO)

PLEASE DISTRIBUTE IMMEDIATELY.