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7 February 2006

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Secretary, STB  
for filing by fax 202-565-9002

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Re: PYCO Industries -- Alternative Rail Service, FD 34802  
Service Protocol Memorandum

Please distribute immediately

From: Charles H. Montange  
counsel for PYCO Industries

Total pages: 13 plus cover

It is PYCO Industries' understanding that WTL is filing a proposed service protocol with certain reservations this afternoon (7 February). PYCO is fax-filing the attached Memorandum stating its concerns with the protocol, and will supply the original and ten copies for distribution tomorrow.

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

PYCO INDUSTRIES' MEMORANDUM STATING  
RESERVATIONS CONCERNING SERVICE PROTOCOL

While shipper PYCO Industries believes the duty to come up with a workable service protocol should reside with the rail carriers involved, PYCO is concerned about the proposed service protocol prepared by counsel for incumbent carrier South Plains Switching (SAW), and signed by alternative carrier West Texas and Lubbock Railroad (WTL) on or about 3 February. PYCO believes that the parties lacked time to analyze operational realities in Lubbock, and that the protocol is insufficient and fundamentally flawed to ensure reasonably adequate and reliable service to PYCO, as evinced by events contemporaneous with the signing of the protocol.

In particular, the protocol fails to take into account both the operating needs of Burlington Northern and Santa Fe Railway (BNSF) in Lubbock, and the traditional reliance on PYCO Industries for use of tracks 9298 and 9200 for staging of cars for service to PYCO. Lest our silence on the issue be taken as some kind of implicit consent, we will state our reservations and objections for the record.

Background Facts

The proposed protocol was prepared by SAW. In a telephone call on or about Thursday, February 2, Ms. Delilah Wisener on

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behalf of SAW refused to negotiate the protocol and gave WTL an ultimatum to sign it by noon on February 3. WTL evidently complied with the ultimatum, thinking some protocol was better than no protocol. However, so far as PYCO is aware, neither SAW nor WTL provided the protocol to BNSF for review, nor was WTL aware at the time of rights held by BNSF over tracks which the protocol directs be used for access to PYCO Plant 2.

On Thursday night and Friday (essentially at the same time SAW was dictating and WTL was signing the proposed protocol), BNSF found its own Lubbock yard congested, and was compelled to shift cars onto tracks 9298 and 9200.<sup>1</sup> These two tracks are owned by SAW, but PYCO understands that BNSF retained the right to operate on them subject to SAW dispatch when it sold the lines to SAW. BNSF informs PYCO that SAW was unavailable to discharge its dispatch function.<sup>2</sup>

As a result of this meltdown, track 9298 (on which the proposed protocol relies for service to PYCO plant 2) was not available on Friday for WTL to provide service to plant 2. WTL sustained a derailment on Friday attempting to use an alternative route, which proved to have defective switches. Then on Saturday, SAW "redflagged" and obstructed track 310, essential to provide service to Plant 2, which condition was not

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<sup>1</sup> A rough schematic showing the location of the trackage relevant to the discussion is attached as Exhibit A.

<sup>2</sup> It is PYCO's understanding that representatives of BNSF contacted STB's Office of Compliance and Enforcement (OCE) about the congested conditions on Friday.

removed to permit a switch until some time late in the day. On Sunday, PYCO understands that WTL could not switch Plant 2 because WTL could not get permission to cross the BNSF main during the time periods provided in the protocol. WTL was able to relieve congestion by moving loaded PYCO cars to BNSF on Sunday evening, evidently from the SAW yard.

Under the circumstances, it would be ill-advised for PYCO to appear to consent to the proposed protocol, because its inadequacy to ensure reliable or adequate service to PYCO has been demonstrated before it has even been tendered to this Board.

#### BNSF Suggestions

On Monday, 6 February, when PYCO was apprised that SAW demanded WTL file the SAW/WTL protocol with this Board, PYCO independently contacted BNSF, furnished the proposed protocol, and asked BNSF for its views. BNSF immediately responded with a set of suggestions.<sup>3</sup> The chief suggestions, in summary, were as follows:

---- BNSF suggests that it control use of SAW's tracks 9200 and 9298.<sup>4</sup> BNSF notes that these tracks are "valuable to efficient service at PYCO, and can be used without compromising the SAW's ability to serve other customers."

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<sup>3</sup> A copy of these suggestions appears in Exhibit B. The suggestions were based on events that occurred Thursday night and Friday, February 2 and 3.

<sup>4</sup> PYCO understands this suggest to relate to trackage on the east side of the BNSF mainline in Lubbock. Some of 9298 is also on the west side of the BNSF mainline.

BNSF further states that it needed to use 9200 and 9298 to relieve congestion in its yard on Thursday night, and could not reach SAW for dispatch. BNSF states that 9200 and 9298 should be available 24 hours per day, and that it is willing to limit its use of the tracks to holding cars to and from PYCO, and that BNSF will not use the cars for revenue generating purposes.

---- BNSF suggests that WTL be designated as the shortline responsible for interchanging cars to/from BNSF. BNSF states that designating one interchange carrier as the point of contract will reduce the number of times SAW and WTL will need access to BNSF's mainline, and this "should allow more cars to move more efficiently between BNSF's Lower Yard and SAW's yard."

---- Designate the interchange window as 6 PM to 12 midnight, seven days per week. BNSF states that after 6, its locals have finished their work, and 6 PM to midnight represents a lull.

---- Order WTL and SAW to operate 24 hours per day. BNSF believes this would permit WTL and SAW to stage cars for customers in the morning allowing more efficient operations during daylight hours.

WTL informs PYCO that it has no problem with any of BNSF's suggestions, but feels that 24 hour operations seven days per week may be unnecessary and unduly expensive.

Because tracks 9200 and 9298 have traditionally been used

to stage cars for PYCO (PYCO had track 9298 under lease until the lease was terminated by SAW in November), PYCO certainly concurs with BNSF's first point that tracks 9200 and 9298 should be available seven days per week, 24 hours per day (24/7) for use to stage cars for PYCO. Because BNSF is not a party to this alternative rail proceeding, PYCO does not know if STB has authority to place the tracks under BNSF operational control. If this is not possible, the tracks should be placed under WTL operational control. Either carrier is more available for contact than SAW should operational needs arise.

Because access across BNSF's mainline for both SAW and WTL to move cars between SAW's yard and BNSF's lower yard is frequently difficult, as was demonstrated over the weekend, PYCO sees great merit for all in BNSF's second suggestion (WTL to provide the switch between the BNSF lower yard and SAW yard). However, allowing WTL to use an evening interchange window may address this concern.

BNSF's third and fourth points -- an evening interchange window and 24/7 operations -- also have merit. The most important factor is that WTL be able to operate and conduct switches during BNSF's "lull" from 6 PM until midnight. This is the period in which permission to cross the BNSF mainline is most likely to be granted. WTL could use this window to switch cars for reliable service. The SAW/WTL proposed protocol authorizes WTL to operate, inter alia, in the late afternoon and early evening only until 7 PM. There is no assurance either SAW

or WTL can even cross the BNSF mainline between 8 AM and 6 PM, and if such crossing is not possible on a given day, then there is no service for PYCO (or conceivably anyone) under the proposed protocol. Although WTL sought to modify SAW's dictated protocol to allow WTL to operate after 7 PM, SAW refused to add this to the protocol. This refusal was unreasonable, and renders the SAW protocol unreliable and unlikely to ensure adequate service to PYCO, or anyone else for that matter.

24/7 operations may be unduly costly and may be required only infrequently. For now, PYCO believes that could be left to the discretion of the carriers, provided BNSF or WTL have control over 9200 and 9298 east of the BNSF mainline, 24/7, to prevent congestion.

We believe that unless the carriers arrange otherwise among themselves, this Board at the very least should adopt BNSF's suggestion to the extent of authorizing WTL to operate after 7 PM seven days per week. This would certainly enhance the chances of moving at least some traffic from, to, or between BNSF's lower yard, the SAW yard, PYCO plant 2, and shippers generally in Lubbock.

PYCO notes that the protocol grants a sort of preferential access by SAW to its shipper Compress on track 310. Track 310 is essential to serve PYCO's Plant 2 under any conceivable operating scenario. The parties will need to work together to ensure that Compress traffic does not block service to Plant 2. Should problems arise, WTL and PYCO may have to seek a

modification of the protocol in this respect.

Finally, SAW is difficult to reach in the event operational issues arise. BNSF could not reach SAW on Thursday night, when congestion threatened to break down service in Lubbock. WTL could not reach SAW at one point last week for permission to move cars during what we understand were normal business hours. SAW should be required to appoint a person who is available to discuss and to resolve operational issues 24/7, and that person's number should be made available to BNSF and to WTL. Lubbock is not a 100 carload a year operation; traffic volumes exceed 10,000 carloads per year. It is time that service were provided for the carloadings at issue.

#### Relief

PYCO moves that this Board direct both SAW and WTL to consult with BNSF and then to propose a revised protocol taking into account BNSF's concerns and the traditional use of track 9298 and 9200 to stage cars for PYCO. Those tracks should be available 24/7, and this can best be accomplished if operational control is assigned to WTL or to BNSF for the pendency of the alternative service order in this proceeding. Some means to ensure switching during BNSF's lull (6 PM to midnight) must also be provided.

As an alternative to further consultations, PYCO moves that this Board modify SAW's proposed service protocol at least as follows:

- a) Provide that WTL (or BNSF, if this Board has

jurisdiction to do so) shall control the use of SAW's tracks 9200 and 9298. (If BNSF is authorized to control the dispatch, then BNSF has agreed to limit its use to holding cars to and from PYCO, and that BNSF shall not use the tracks for revenue generating purposes.)

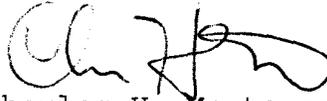
b) Provide that WTL be permitted to operate after 7 PM, seven days per week.

c) Provide that SAW designate a point of contact available to discuss and to resolve operational issues 24 hours per day, 7 days per week.

#### Conclusion

Any protocol imposed by this Board should ensure reliable and adequate service for PYCO and for other shippers. The SAW protocol signed by WTL last week is manifestly inadequate to that end, as demonstrated by events contemporaneous to its very signing. Moreover, PYCO Industries has no wish to see SAW compel WTL into an operating protocol which does not take into account BNSF's operational needs and operational realities. That will only result in service failures and SAW trying, as it has done for the past year, to pin the blame on BNSF or someone, anyone other than itself, for conditions for which it is the chief cause. PYCO continues to seek adequate and reliable service, and that should not be dictated by demands and deadlines specified by SAW.

Respectfully submitted,



Charles H. Montange  
for PYCO Industries, Inc.

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(806) 788-0609  
for PYCO Industries, Inc.

Att. Exhibit A -- schematic map  
Exhibit B -- BNSF email

Certificate of Service

I hereby certify that I caused copies of the foregoing to be transmitted by fax on 7 February 2006 upon Thomas McFarland, counsel for SAW, at 312-201-9695, and upon John Heffner, counsel for WTL, at 202-263-4180 and that I have placed a copy addressed to both counsel in U.S. Mail, postage pre-paid, first class.

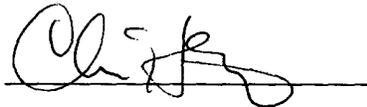
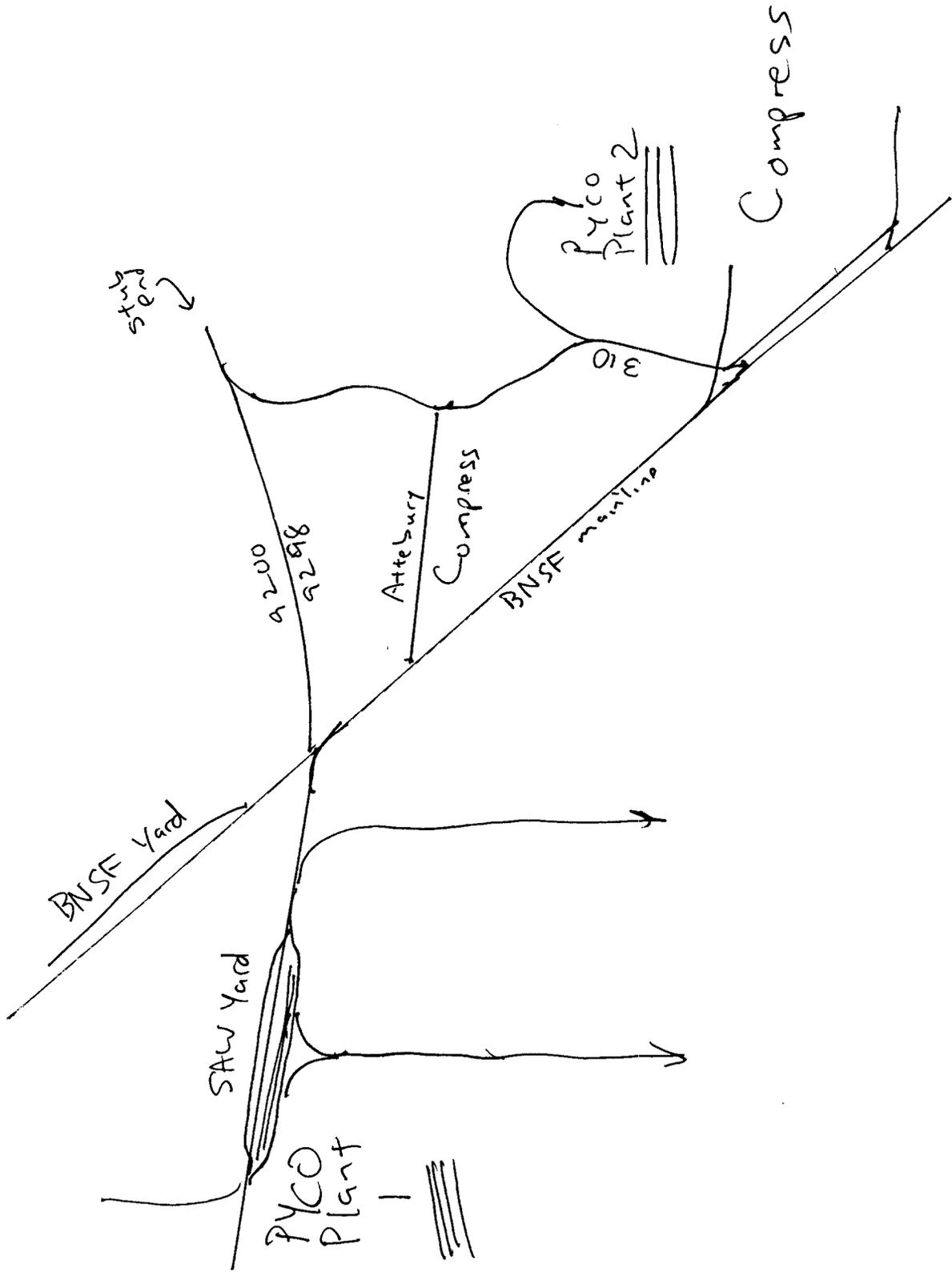


Exhibit A

↑ North



Schematic. Not to scale. All tracks not shown.

Exhibit B

**c.montange**

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**From:** "Roper, Michael E" <Michael.Roper@bnsf.com>  
**To:** <c.montange@verizon.net>  
**Cc:** "Hale, Weldon E" <Weldon.Hale@bnsf.com>; "Schmidt, R Mark" <Mark.Schmidt2@BNSF.com>  
**Sent:** Tuesday, February 07, 2006 6:40 AM  
**Subject:** Operating Protocol

We understand that SAW and WTL have signed on operating protocol and that there are several areas of concern to PYCO. It is my understanding that PYCO may seek to have the protocol modified. From BNSF's perspective, we believe the following steps would significantly improve operations and service to PYCO if they were to be incorporated into the protocol:

- For the duration of the STB's order, allow BNSF to control the use of SAW's tracks 9200 and 9298. These tracks are valuable to efficient service at PYCO, and can be used without compromising the SAW's ability to serve other customers. As we saw yesterday evening, the need to use these tracks arose at a time when the SAW could not be reached. These two tracks should be accessible 24 hours per day, and the most direct way to affect that access is to place the tracks under temporary BNSF control. We are willing to stipulate that BNSF's use of tracks 9200 and 9298 will be limited to holding cars to/from PYCO and BNSF will not use the cars for revenue generating purposes.
- For the duration of the STB's order, designate WTLC as the shortline responsible for interchanging cars to/from BNSF. Designating one interchange carrier will allow one point of contact and reduce the number of times the SAW and/or WTLC need access to BNSF's mainline. This should allow more cars to move more efficiently between BNSF's Lower Yard and the SAW's yard.
- For the duration of the STB's order, define the interchange window to be 6 pm to 12 midnight, seven days per week. After 6 pm, BNSF's locals have finished their work, and these hours represent a lull in activity in the yard.
- Given #3, and again for the duration of the STB's order, order both SAW and WTLC to operate 24 hours per day. Even though the majority of the customers may not be receiving switches, the additional 12 hours of operation should provide opportunity for both SAW and WTLC to switch the interchange cuts received from BNSF and work in SAW's yard to prepare for daylight switching operations. Adding these hours also allows for the inevitable times when BNSF may experience a delay or problem with preparing the interchange cut forcing the interchange to occur sometime after 12 midnight.

Eddie and I are available for a discussion if you believe that would be useful.

**Mike Roper**  
**817-352-2353**

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2/7/2006