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THOMAS F. MCFARLAND

February 8, 2006

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: STB Finance Docket No. 34802, *PYCO Industries, Inc. -- Alternative Rail Service*
-- South Plains Switching, Ltd. Co.

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition To Terminate Alternative Rail Service, 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.

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BEFORE THE
SURFACE TRANSPORTATION BOARD



PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.) NO. 34802

**PETITION TO TERMINATE
ALTERNATIVE RAIL SERVICE**

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

Petitioner

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Attorney for Petitioner

DATE FILED: February 9, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.) NO. 34802



**PETITION TO TERMINATE
ALTERNATIVE RAIL SERVICE**

Pursuant to 49 C.F.R. § 1146.1(d)(1), SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby petitions for termination of alternative rail service in this proceeding. SAW's seeks termination of alternative rail service by the 30th day after commencement of that service, i.e., by February 25, 2006. This Petition is supported by the Verified Statement of Delilah Wisener, owner of SAW, which is attached as Appendix 1.

BACKGROUND

Pursuant to a decision in this proceeding served January 26, 2006, West Texas & Lubbock Railway Company, Inc. (WTL) was authorized to provide alternative rail service to PYCO Industries, Inc. (PYCO) on SAW's rail lines for 30 days commencing at 11:59 PM on the service date of the decision, and SAW was directed to allow such operations on its lines. The Board's action was taken under 49 C.F.R. § 1146.1, which implements 49 U.S.C. § 11123, as amended by the ICC Termination Act of 1995. It is provided in 49 C.F.R. § 1146.1(d)(1) that the incumbent carrier over whose lines alternative rail service is being provided can petition to terminate the alternate rail service. This is SAW's petition to terminate the alternative rail service that was authorized in the decision served January 26, 2006. The alternative rail service

should be terminated as of February 25, 2006, the 30th day after the service began, because there is no continuing transportation emergency in regard to rail service to PYCO.

LEGAL STANDARDS

As here pertinent, it is provided in 49 U.S.C. § 11123(a)(1) that the Board may direct the handling of the traffic of a rail carrier, and the distribution of that traffic over that carrier's own or other railroad lines, for a period not to exceed 30 days, if the Board determines that the rail carrier cannot transport the traffic offered to it in a manner that properly serves the public. In implementing that statutory provision, the Board has provided in 49 C.F.R. § 1146.1(a) that alternative rail service will be prescribed if the Board determines that over an identified period of time, there has been a substantial measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier.

It is provided in 49 U.S.C. § 11123(c)(1) that the Board may extend its action beyond 30 days "if the Board finds that a transportation emergency described in subsection (a) continues to exist." In implementing that statutory provision, the Board has provided in 49 C.F.R. § 1146.1(c) that unless otherwise stated in its decision, its action under § 1146.1(a) establishes a rebuttable presumption that the transportation emergency will continue for more than 30 days from the date of its action. The Board's decision served January 26, 2006 provided for such a rebuttable presumption.

There is little guidance in the regulations and case law as to what must be shown to rebut that presumption. It is provided in 49 C.F.R. § 1146.1(d)(1) that the incumbent carrier should show that it "is providing or is prepared to provide adequate service." Reference to 49 U.S.C. § 11123(c)(1) indicates that the incumbent carrier should show that the "transportation

emergency” that prompted Board action does not continue to exist. SAW has not located a decision in which the Board has ruled on a petition to terminate relief under 49 C.F.R.

§ 1146.1(d)(1).^{1/} In adopting the provision for a rebuttable presumption in *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 (1998), the Board said that in attempting to rebut the presumption, it should be shown that “the emergency is over so that the relief is no longer needed” (at 982).

As set forth below, SAW’s Petition satisfies those legal standards so that alternative rail service should be terminated without delay.

ARGUMENT

I. A TRANSPORTATION EMERGENCY DOES NOT EXIST AT PYCO PLANT 2; SAW IS PREPARED TO PROVIDE ADEQUATE SERVICE TO PYCO PLANT 2

Any presumption that there is a continuing transportation emergency at PYCO Plant 2 was rebutted by PYCO’s own action in shutting down that Plant for five consecutive business days practically on the eve of the alternative rail service for a reason unrelated to transportation. Mr. Gail Kring, Chief Executive Officer and General Manager of PYCO, stated the following in a declaration filed with the Board on January 27, 2006:

... PYCO did not order cars on five business days for Plant No. 2 for January, because PYCO has to fumigate the cottonseed and cannot ship for a five day period afterward ...

^{1/} Alternative service was extended beyond 30 days in *Arkansas Midland Railroad Company, Inc. -- Alternative Rail Service -- Line of Delta Southern Railroad, Inc.*, 2004 STB LEXIS 282 (Finance Docket No. 34479, decision served May 4, 2004), but the incumbent carrier in that case withdrew opposition to the alternative rail service so that no petition to terminate that service was filed.

How can there be a "continuing transportation emergency" when a shipper closes its plant for a reason unrelated to transportation? How can there be a "continuing transportation emergency" when a shipper has not requested any transportation service for more than a week? How can there be a substantial, measurable inadequacy in SAW's rail service to PYCO Plant 2 when SAW has not been requested to provide service for an extended period?

The obvious answers to these rhetorical questions compel a determination that any transportation emergency that may have existed previously at Plant 2 does not continue to exist at present. PYCO's own action shows that any transportation emergency at Plant 2 is over so that alternative rail service is no longer needed. That being the case, consistently with the legal standards identified in this Petition, the Board is required to terminate alternative rail service at Plant 2 effective on the 30th day after the Board's initial decision, i.e., as of 11:59 PM on February 25, 2006. The Board is urgently requested to do so.

Alternative rail service also must be terminated because any transportation emergency at PYCO Plant 2 ended long before PYCO removed any doubt by shuttering its Plant for more than a week. The only claim of transportation emergency at Plant 2 in PYCO's evidence is that "SAW failed to provide any service to PYCO's Plant No. 2 for approximately six days during the 2005 Thanksgiving holiday period," and "SAW continues to fail in providing at least one boxcar per day to Plant No. 2" (PYCO Pet. for Alternative Rail Service, Ex. C, VS Lacy, para. 18, pp. 3-4).

A. November Service Failure

But neither of those claims is factually accurate, and neither constitutes a continuing transportation emergency in any event. The daily logs attached as Exhibit 4 to Mr. Lacy's statement (PYCO Pet., Ex. C, Ex. 4) show the following:

Monday, Nov. 21 - scheduled service was provided to Plant 2
Tuesday, Nov. 22 - scheduled service was not provided
Wednesday, Nov. 23 - scheduled service was not provided
Thursday, Nov. 24 - Thanksgiving Day - no scheduled service
Friday, Nov. 25 - no log - no scheduled service
Saturday, Nov. 26 - no log - no scheduled service
Sunday, Nov. 27 - no log - no scheduled service
Monday, Nov. 28 - scheduled service was not provided (locomotive breakdown)
Tuesday, Nov. 29 - scheduled service was provided to Plant 2

Those logs allege a scheduled service failure by PYCO on three occasions, not six as claimed by Mr. Lacy. But except for service prevented by a locomotive failure on November 28, SAW's records refute Mr. Lacy's contention that service to Plant 2 was not provided on November 22 and 23. SAW's records show that on Monday, November 21, PYCO requested 12 empty gondola cars at Plant 2. On Tuesday, November 22, PYCO requested 12 empty gondola cars at Plant 2. On November 22, SAW transported 29 loaded cars to the BNSF yard, including 12 loaded gondola cars from Plant 2. On November 23, PYCO requested 12 empty gondola cars at Plant 2. On November 23, SAW transported 25 loaded cars to the BNSF yard, including 11 loaded gondola cars and one "bad ordered" car from Plant 2. SAW's records thus establish that PYCO received scheduled rail service on both November 22 and 23. The only day on which PYCO did not receive scheduled rail service was November 28 when a locomotive broke down. It was repaired promptly, and scheduled service was resumed the next day.

There is no way that an isolated service glitch such as occurred on that single day can reasonably be treated as a “serious ongoing service failure” that would warrant an order of alternative rail service under 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.1(a). *See Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 (1998) at 974 (“... (T)hese rules are designed only to address serious ongoing service disruptions . . .”). No railroad would be safe from an alternative service order if a one-day service interruption due to equipment failure warranted Board action.

Even if a one-day failure of service due to a locomotive breakdown constituted inadequate service within the meaning of 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.1(a), PYCO freely acknowledged that it was not a continuing transportation emergency. In a verified statement signed on December 15, 2005, PYCO Witness Lacy said (Pet., Ex. C, para. 18, p. 4):

... (S)ervice has been presently restored to the requested 12 railcars per day since Thanksgiving . . .

PYCO made numerous filings in this proceeding from December 20, 2005 through January 27, 2006. In none of those filings did PYCO allege that SAW failed to provide adequate rail service to PYCO Plant 2 during that period, even for a single day.

The isolated, single-day, long-ago-corrected service failure by SAW at Plant 2 is thus not the kind of substantial, measurable and ongoing service failure that warrants the drastic remedy of alternative rail service. It follows that the Board committed material error in relying on that service failure as support for its determination that there has been a substantial, measurable inadequacy of SAW rail service at PYCO Plant 2 (Jan. 26, 2006 decision at 4).

As particularly pertinent in regard to this Petition to Terminate, it is clear that there is no rational basis in fact or law for a finding that there is a “continuing transportation emergency” at Plant 2. As freely acknowledged by PYCO Witness Lacy on December 15, “service has been presently restored to the requested 12 railcars per day.” Moreover, more recently, PYCO closed Plant 2 for more than a week for a non-transportation purpose, during which it did not request any rail transportation. That is as far away from a continuing transportation emergency as it is possible to get.

B. Boxcar Supply

This record does not support a determination that SAW’s supply of boxcars to PYCO Plant 2 has been inadequate at any time, let alone that there has been a continuing transportation emergency as a result of continuing inadequate boxcar supply. As noted, PYCO Witness Lacy alleged that SAW continues to fail to furnish at least one boxcar per day to Plant 2 (PYCO Pet., Ex. C, para. 18, p. 4). Counsel for PYCO alleged that “SAW has failed to deliver box cars at all” (*id.* at 9). Perhaps the Board was taken in by PYCO’s contention that SAW was failing to furnish any boxcars at all to Plant 2.

Contrary to those allegations, the fact is that between November 21, 2005 and December 26, 2005, SAW provided 23 of the 41 boxcars that were requested by Plant 2. The log of cars requested and received at Plant 2 in that time frame appears as Appendix LDW-8 attached to the verified statement of SAW Witness Larry Wisener filed on December 28, 2005 as part of SAW’s Reply in Opposition to Petition for Alternative Rail Service.

The Rebuttal filed by PYCO on January 3, 2006 did not challenge that evidence of SAW boxcar supply to PYCO Plant 2, nor otherwise refer to that SAW evidence in any way.

Therefore, SAW's evidence of boxcar supply to PYCO Plant 2 in that time frame stands un rebutted.

The Board committed material error in treating SAW's boxcar supply as a ground for ordering alternative rail service to Plant 2. Referring to Appendix LDW-8, the Board said (at 3):

. . . SAW also admits that it has not recently provided as many boxcars as PYCO requests at that plant (Plant 2) . . .

Later, the Board relied on "the continued lack of delivery of sufficient boxcars to serve Plant 2" as a predicate for its finding of inadequate rail service (*id.* at 4).

The legal requirement for an adequate boxcar supply is not "to provide as many boxcars as (a shipper) requests." If that were the standard, no rail carrier would be safe from having its shippers taken away from it on the ground that its car supply was less than 100 percent. Moreover, it has always been widely known in the railroad industry that shippers are prone to request more cars than they need in the expectation of obtaining a satisfactory percentage of those requested. The Board's finding that SAW failed to provide adequate rail service to PYCO Plant 2 on the ground that SAW did not provide as many boxcars as PYCO requested is thus contrary to law.

Moreover, SAW continued to supply boxcars to Plant 2 on a regular basis until SAW's service was suspended by the Board. During the period between January 1, 2006 and January 29, 2006, SAW supplied all 16 boxcars requested by PYCO Plant 2. That is reflected in SAW's car supply record attached to this Petition as Appendix 2. That is an adequate boxcar supply even under the erroneous legal standard applied in the decision served January 26, 2006. Here, too, Plant 2's boxcar supply is as far away from a continuing transportation emergency as it is

possible to get. Therefore, there is no rational basis in fact or in law for a finding that there is a continuing transportation emergency at PYCO Plant 2 on the ground of a failure to provide an adequate supply of boxcars.

The foregoing establishes conclusively that neither predicate for the Board's order of alternative rail service at PYCO Plant 2 -- i.e., service failure in November and failure to furnish all boxcars requested -- constitutes a continuing transportation emergency that would warrant extension of alternative rail service at Plant 2 beyond 30 days. Consistently with the legal standards identified herein, therefore, the Board is required to terminate alternative rail service at Plant 2 effective at 11:59 PM on February 25, 2006. SAW urgently requests the Board to do so.

Alternative rail service can be terminated at Plant 2 without terminating such service at Plant 1, and vice versa. Plant 1 and Plant 2 are located on opposite sides of the BNSF main line at Lubbock, TX. Rail service is provided separately to Plant 2 independently of service to Plant 1. Different facts and circumstances affect transportation service to Plant 2 vis-a-via Plant 1. There is no rational basis for treating Plant 2 and Plant 1 as a single service unit. Alternative rail service should be terminated at Plant 2 immediately.

II. A TRANSPORTATION EMERGENCY DOES NOT EXIST AT PYCO PLANT 1; SAW IS PREPARED TO PROVIDE ADEQUATE SERVICE TO PYCO PLANT 1

The Verified Statement of Delilah Wisener, attached as Appendix 1, rebuts the presumption of a continuing transportation emergency at PYCO Plant 1 in a number of ways. Mrs. Wisener's statement is convincing that SAW is "prepared to provide adequate rail service" at Plant 1. *See* 49 C.F.R. § 1146.1(d)(1).

A highly meaningful change since the Board ordered alternative rail service is the resignation of Mr. Larry D. Wisener as President and General Manager of SAW, and Delilah Wisener's assumption of day-to-day responsibility for SAW's rail operations. The Board's decision served January 26, 2006 is filled with statements that it was Mr. Wisener's personality and management style that prevented SAW and PYCO from reaching mutually acceptable rail service arrangements. That can no longer be the case.

It is significant that among Mrs. Wisener's first on-the-ground actions as manager of SAW has been to seek a meeting with PYCO Chief Executive Officer Gail Kring to attempt to resolve differences between SAW and PYCO, and to establish a sound working relationship between them. Sadly, Mr. Kring has not responded to that request, and instead has made sharply negative statements about the effect of Mr. Wisener's resignation. That attitude does not further resolution of the issues in this matter. However, Mrs. Wisener is undeterred, *viz.* (Appendix 1 at 10):

. . . I will continue to attempt to schedule a meeting with Mr. Kring. As a last resort, I will ask for a meeting with PYCO's Board of Directors. I recognize, as should Mr. Kring, that in the end SAW will be PYCO's service provider. We should try to resolve any differences between our companies immediately and return to a good working relationship as soon as possible.

The Board is requested to find that the actions taken by Mrs. Wisener reflect a sincere commitment to provide adequate rail service to PYCO, and that Mr. Kring's failure to respond is not in furtherance of adequate rail service to his company.

Another material change since alternative rail service was ordered is PYCO's construction of a 50-car track in Plant 1, which is scheduled for completion in approximately 60 days. (Appendix 1 at 6). Construction of that track reflects a belated acknowledgment by PYCO

that its in-plant track capacity has been grossly inadequate to accommodate substantially increased traffic resulting from above-average cotton harvests like the record 2005 crop. Mrs. Wisener's Appendix DW-7 shows that PYCO's traffic in 2005 more than tripled from the previous year, and SAW's overall traffic more than doubled. It is a tribute to SAW's dedication and quality of service that such a huge traffic increase was accommodated. Unquestionably, PYCO's failure to have increased its in-plant rail track capacity by even a single car-length, despite knowledge that a record cotton crop was on the way, was a major factor contributing to the difficulties experienced by PYCO Plant 1 in getting its products to market. The 50-car track under construction will be of material benefit in that respect. The Board is requested to find that a primary cause of PYCO's inability to get its products to market efficiently in the 2005 shipping season is its own inadequate in-plant private track structure, not inadequate SAW rail service.

Another primary cause in that respect is consistent obstructive tactics on the part of BNSF that has thwarted efforts by SAW to maintain and improve rail service to PYCO. Reference is made to the detailed chronology of events in Mrs. Wisener's verified statement (at 2-7) that document both SAW's activities in behalf of PYCO and BNSF's disruptive tactics. The Board is respectfully requested to give careful consideration to the chain of events that is identified and explained in Mrs. Wisener's statement because that chronology accurately depicts BNSF's actions and motivations in orchestrating events that have led directly to this unfortunate litigation. The Board should find that a primary cause of PYCO's inability to get its products to market efficiently in the 2005 shipping season is BNSF's obstructive tactics.

Another compelling reason to terminate alternative rail service is that the alternative rail carrier is not providing adequate rail service. Mrs. Wisener's verified statement establishes that

WTL is not up to the task of providing service to PYCO. Worse yet, WTL is not operating safely and is impairing SAW's ability to provide adequate rail service to its own customers. (VS Wisener at 7-13). A review of the day-by-day log kept by Mrs. Wisener reveals a sorry litany of unsafe switching practices, a "Form B" violation for operating onto a closed track on which maintenance of way employees were working, a derailment, use of inadequate locomotive power requiring rescue by BNSF locomotives, operation onto property owned by Acme Brick Company, numerous activities and operations in disregard of operating agreements, and consistent failure to provide switching service for SAW's shippers. BNSF has compounded the problems by making an unauthorized unilateral movement of cars onto SAW trackage. Womack Bean Company has had to suspend operations because of the inability of WTL and BNSF to switch its traffic to SAW for interchange and delivery. Southern Cotton Oil Company (ADM) is "up in arms" over its inability to get WTL and BNSF to switch its cars to SAW for delivery. PYCO itself refers to the activity of WTL and BNSF as resulting in a "meltdown" (PYCO's Memorandum Stating Reservations Concerning Service Protocol, filed February 7, 2006, at 2). The Board should find that WTL is not providing adequate rail service to PYCO; is not operating safely and within its operating agreements; and is impairing SAW's ability to provide adequate rail service to its own shippers.

SAW is prepared to provide adequate rail service to PYCO Plant 1. Unlike WTL, SAW has adequate locomotive power and competent operating personnel to provide the required rail service to PYCO. SAW reiterates its offer to provide a second daily switch at PYCO Plant 1 without additional charge under either of the following: (1) if SAW provides the second switch within its train crew's 12-hour operating limit, or (2) if PYCO releases 24 cars or more in the

total of the two switches. For clarification, the second switch would be provided free of additional charge if at least 24 cars were to be released in the two switches, even if SAW had to provide two train crews to provide the two switches. If the second switch were to be provided outside the train crews 12-hour limit and if less than 24 cars were to be released in the two switches, the second switch would be performed at SAW's tariff charge of \$500. BNSF's charge for an additional switching crew is a minimum of \$2,000. (BNSF Switching Book 8005-C, Item 190A, effective Nov. 26, 2005).

In light of SAW's offer, there is no rational basis for the Board's finding at page 6 of the decision served January 26, 2006 that SAW is unlikely to restore adequate rail service to PYCO within a reasonable period of time. The Board there said that notwithstanding SAW's offer it was not convinced that SAW would restore adequate service because of a "broader pattern of conduct," including cancellation of a track lease and refusal to spot cars on PYCO's scale track. (*Id.*) But that was Mr. Larry D. Wisener's conduct, not Delilah Wisener's. Mrs. Wisener has attempted to meet with Mr. Kring of PYCO to work out service details such as those listed by the Board. For example, SAW is willing to consider spotting and pulling cars from PYCO's scale track if reasonable arrangements were to be made to insulate SAW from liability in doing so. But Mr. Kring has not responded to Mrs. Wisener's request for a meeting, which is the reason that negotiations have not commenced for a mutually advantageous working relationship. The Board is requested to find that based on SAW's extremely liberal offer for second daily switches, SAW is likely to restore adequate rail service to PYCO Plant 1 within a reasonable time.

CONCLUSION AND REQUESTED RELIEF

Based on all of the foregoing, the Board is requested to find that a transportation emergency at PYCO Plant 1 and PYCO Plant 2 within the meaning of 49 U.S.C. § 11123(c)(1) does not continue to exist, and that SAW is prepared to provide adequate rail service to PYCO Plant 1 and PYCO Plant 2 within the meaning of 49 C.F.R. § 1146.1(d)(1). Based on those findings, the Board is requested to issue an order terminating its prior order of alternative rail service at PYCO Plant 1 and PYCO Plant 2, effective at 11:59 PM on February 25, 2006.

Respectfully submitted,

SOUTH PLAINS SWITCHING, LTD. CO.
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Petitioner



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Attorney for Petitioner

DATE FILED: February 9, 2006

TAB 1

VERIFIED STATEMENT OF DELILAH WISENER

My name is Delilah Wisener. Since the creation of South Plains Switching, Ltd. Co. (SAW) in 1999, I have been the sole owner of SAW. In a declaration signed on January 27, 2006, Mr. Gail Kring, Chief Executive Officer and General Manager of PYCO Industries, Inc. (PYCO), stated that SAW is owned by Larry Wisener, his wife Delilah, and their two children. Attached to this Statement as Appendix DH-1 is a copy of a certificate dated April 21, 1999 showing that I own 100 percent of the stock of SAW. My ownership of SAW has remained 100 percent from that date to the present. I am one of few female owners of a rail carrier.

I previously filed with the Board a copy of the resignation of Mr. Larry D. Wisener as President and General Manager of SAW, and my acceptance of his resignation. In the Kring declaration referred to above, it is stated that there is absolutely no reason to believe that Mr. Wisener's resignation will result in any change in SAW's policies, operations, manner of doing business, or ability or willingness to provide adequate rail service. That very negative attitude on the part of PYCO is unfortunate. Mr. Wisener's resignation was designed to remove personality conflicts that were alleged by PYCO to prevent reasonable resolution of issues between PYCO and SAW. I stand ready to work hard toward resolution of any such issues. I have already requested a meeting with Mr. Kring to attempt to resolve our differences. Mr. Kring has not responded to that request. Those who participated in a conference call with me last week on operating protocols can attest that I am a clear communicator and willing to listen to all sides of issues. As a female owner of a railroad, I have had to be firm, yet flexible. My participation in attempting to resolve the service issues in this matter, in lieu of Mr. Larry D. Wisener, is a significant positive change since alternative service was ordered.

In its many filings in this matter, PYCO has distorted the facts regarding SAW service to PYCO. The truth is that SAW has made numerous good faith efforts to provide adequate rail service to PYCO which have been hampered and blocked by actions taken by BNSF Railway Company (BNSF). My statement is in three parts: (1) a review of the historical record; (2) the dismal service performance and operating practices of West Texas & Lubbock Railway Co., Inc. (WTL) during the initial stages of alternative rail service; and (3) continued efforts to satisfy PYCO's concerns as well as to serve other SAW rail customers.

1. Review of the Historic Record

A detailed chronology demonstrates how SAW attempted to serve PYCO adequately, but was hampered and blocked by BNSF.

Reference is made to a letter from Mr. Gary McLaren of PYCO to Mr. Paul Hoefler of BNSF, dated March 11, 2005 that is Exhibit 1 to Exhibit A of PYCO's Petition filed December 20, 2005. BNSF had placed a lock on the switch to Track 231 that provides access to SAW Tracks 9298 and 9200 that are used to provide service to PYCO Plant 2. PYCO was stressing the importance of Track 231 and expressing concern that it is in the middle of disputes between BNSF and SAW.

Reference is made to a letter from Mr. McLaren to Mr. Don Herrmann, an attorney representing BNSF, dated March 28, 2005 that is Exhibit A2 of that PYCO Petition. That letter refers to a meeting between PYCO and BNSF regarding SAW's service to PYCO. It is disturbing to SAW that BNSF and PYCO met to discuss SAW service to PYCO without SAW being represented at that meeting. The letter states that Mr. Herrmann will consult with BNSF

about PYCO's request that BNSF reinstall the switch to Track 320. Track 320 is a track that was sold by BNSF to SAW, and which provides an uncongested route to PYCO's Plant 2. BNSF removed the switch to Track 320 after that track was sold to SAW. PYCO's letter also acknowledges that Mr. Wisener of SAW was agreeable to whatever was necessary to restore service to PYCO.

Reference is made to a letter from Mr. Kring of PYCO to Mr. Mel Clemens of the STB staff, dated April 5, 2005 that is Exhibit A3 of the PYCO Petition. In that letter, PYCO complains about having lost rail service and about needing switches replaced in order to obtain relief.

Reference is made to a letter from Mr. Kring of PYCO to Mr. Larry Herzog of the STB's staff, dated May 3, 2005 that is Exhibit A4 of the PYCO Petition. In that letter, PYCO complains about being a pawn in a dispute between BNSF and SAW. PYCO also complains that its cars are being held for days at a time at Burris, TX on BNSF.

Reference is made to a letter from Mr. Kring to Mr. Clemens, dated May 23, 2005, in which PYCO makes further complaints about inadequate rail service. That letter is Exhibit A5 of the PYCO Petition.

Attached as Appendix DW-2 is a copy of a letter from Mr. Clemens to Mr. Wisener about PYCO's service complaint, dated May 25, 2005. It should be noted that during this entire time, BNSF had a lock on the switch to Track 231, which impeded service to PYCO.

Reference is made to a letter from Mr. Kring to Mr. Wisener, dated June 8, 2005, in which PYCO continues to complain about service. That letter is Exhibit A6 of the PYCO Petition.

Reference is made to a letter from Mr. Wisener to Mr. Kring, dated June 17, 2005 that is Exhibit A7 to the PYCO Petition. In that letter, SAW asks PYCO when PYCO notified BNSF of increased shipments and when PYCO will have BNSF reinstall the removed switches. SAW requests a formal meeting with PYCO on service issues. PYCO's owned and operated trackmobile had already derailed twice on SAW property at this time. SAW let PYCO know that PYCO had 200 cars on SAW's tracks.

Reference is made to a letter from Mr. James Gorsuch, an attorney for SAW, to Mr. McLaren, dated June 13, 2005, advising PYCO of a potential embargo due to too many PYCO cars on SAW's tracks. That letter is Exhibit A9 of the PYCO Petition.

Reference is made to a letter from Mr. Thomas McFarland, an attorney for SAW, to Mr. Clemens, dated June 8, 2005, responding to Mr. Kring's letter. That letter is part of Exhibit B of the PYCO Petition.

Reference is made to a letter from Mr. Clemens to Mr. McFarland, dated June 10, 2005, urging SAW to respond to PYCO's service complaint. That letter is also part of Exhibit B of PYCO's Petition.

Attached as Appendix DW-3 is a copy of a letter from Mr. McFarland to Mr. Clemens, dated August 4, 2005, requesting the assistance of STB staff in persuading BNSF to restore the switch to Track 320 in order to aid SAW in providing adequate rail service to PYCO Plant 2.

That letter makes reference to a letter to Mr. Clemens that had been written by Mr. Michael Roper of BNSF stating that SAW does not have trackage rights over BNSF to reach Track 320 even if BNSF were to restore the switch. BNSF's statement is not consistent with the STB's statement in the decision served January 26, 2005 (at 3) that SAW has approximately 3 miles of trackage rights over BNSF to reach trackage sold by BNSF to SAW. This was a sincere effort to improve SAW's rail service to PYCO that was hampered by BNSF's intransigence in refusing to reinstall the Track 320 switch. SAW sent a copy of that letter to PYCO, yet Mr. Kring's declaration in this case signed January 27, 2006 states that "SAW has manifested a consistent pattern of noncooperation, an unfortunate willingness to create, contrive and magnify disputes, and a repeated tendency to bully, retaliate and embargo PYCO's shipments." It seems apparent from Appendix DW-3, however, that SAW has a clear record of working to improve PYCO service but was not having success with BNSF or the STB. The switch to Track 320 remained uninstalled.

Mr. Clemens appeared to appreciate SAW's efforts in behalf of PYCO even if PYCO did not. Shortly after receipt of the letter dated August 4, 2005, Mr. Clemens stated to Mr. McFarland that he appreciated SAW's attempts to improve PYCO's rail service. Mr. Clemens indicated that he was going to contact or write Mr. Wisener to convey that message, but no such contact took place.

Attached as Appendix DW-4 are copies of letters from Mr. Gorsuch to Mr. McLaren, dated October 11, 2005, and from Mr. McLaren to Mr. Gorsuch, dated October 13, 2005. Those letters relate to the potential sale of a portion of SAW's rail lines to PYCO.

Attached as Appendix DW-5 is a copy of a letter from Mr. Wisener to Mr. Clemens, dated December 12, 2005. That letter was sent within a week before PYCO's Petition for Alternative Rail Service. In that letter, SAW again asks for the STB's help in persuading BNSF to restore the switch to Track 320 to permit more adequate rail service to be provided to PYCO Plant 2. That letter was not answered. The switch to Track 320 remains uninstalled.

Reference is made to a letter from Mr. McFarland to the Board dated January 6, 2006, which is in the record. In that letter, SAW advised the Board of Mr. Wisener's resignation, and offered to provide a second daily switch (and weekend switching) to PYCO Plant 1 at no extra charge if either (1) the second switch was within the train crew's 12-hour operating window, or (2) PYCO has 24 or more cars tendered on that day from Plant 1. That was the number of cars that PYCO said that it could originate per day with adequate switching. In the decision served January 26, 2006, the STB said that it was not persuaded by that "eleventh-hour offer." That was not an 11th-hour offer by SAW. As the above chronology shows, SAW had been attempting to resolve service issues for PYCO with STB assistance continuously during the prior six months.

Attached as Appendix DW-6 is a copy of a signed operating protocol dated February 1, 2006, and a draft letter to the STB from Mr. McFarland that explains why the protocol was not signed until February 3. WTL was violating that protocol when it was a verbal agreement in principle, and has continued to violate it thereafter. WTL left the mainline in SAW's yard blocked on Saturday, February 4 and put SAW's cars on a WTL-controlled track on February 6.

Reference is made to the PYCO filing of January 19, 2006 in which it was contended that the record cotton crop in Lubbock County, Texas has nothing to do with PYCO service. In that

filing, PYCO states that "SAW seems to be submitting that it lacks capacity to serve PYCO due to an alleged record cotton harvest. It is PYCO that lacks capacity to handle the record cotton crop due to its inadequate infrastructure. That is demonstrated by PYCO's current construction of a new 50-car track two years after being advised by SAW of the need to do so. The new 50-car track is scheduled for completion within approximately 60 days. PYCO's attempted distinction between the cotton crop and PYCO's shipments is unfounded. If there is more cotton in the Lubbock area, it follows that there are more cotton products to be shipped by PYCO. Mr. Kring well knows that the 2005 cotton crop is a record crop. It should also be pointed out that PYCO has stored its tank cars in SAW's yard and BNSF owns the gondola cars used by PYCO for cottonseed shipments and is responsible for dwell time of that equipment.

Reference is made to Mr. Kring's declaration of January 27, 2006 in which PYCO claimed to account for much more than half of SAW's business. Attached as Appendix DW-7 is a compilation of SAW's traffic for 2003, 2004 and 2005. Even in the huge cotton crop year of 2005, PYCO was much less than half of SAW's traffic. The traffic figures also show (1) SAW's overall stellar performance in transporting substantially increased rail traffic in 2005; and (2) the need to protect the interests of SAW's other shippers who account for more than half of SAW's traffic.

At page 2, paragraph 2 a. of that declaration, Mr. Kring states that SAW did not offer weekend service. However, Mr. Kring does not provide documentation of any request for weekend service or for second switches. In paragraph 2 c. Mr. Kring criticizes SAW for blaming BNSF for SAW's failure to provide service in the Spring of 2005 via Track 9298. PYCO had a

lease of Track 9298 at that time and knew that the BNSF lock on the switch to Track 231 prevented access to Track 9298. BNSF had a lock on the switch to Track 231 from November, 2004 to April, 2005.

2. The Dismal Service Performance and Operating Practices of WTL

WTL is not providing adequate rail service to PYCO. To make matters worse, WTL is preventing SAW from providing adequate service to SAW's shippers. This is best shown by a day-to-day summary of WTL's activities.

January 27 - January 29, 2006.

SAW was operating to clear outbound loads to space and get outbound equipment to BNSF. This was done to provide maximum space in SAW yard for the start of next week's service. No service by WTL, or operating contact over the weekend. It is not known if PYCO had requested service from WTL.

Monday, January 30, 2006

WTL was on SAW property with one locomotive. Service was noted of a "drop and kick" type switching which is not allowed by SAW operating rules. In this type switch crews push cars, pull the pin and the cars drift on yard tracks. That is a dangerous practice.

WTL also was utilizing the Acme Brick lead track for their operation. This lead is not part of the SAW yard, and in fact is owned by Acme Brick.

On Monday there was a long conference telephone call between all parties and Mr. Clemens of the STB attempting to establish an operating protocol between SAW and PYCO. It was during this phone call that BNSF again stated they could not separate outbound (from BNSF

to SAW or WTL) equipment and they required all interchanges be made to WTL. It was SAW's position that this BNSF operation would delay service of SAW customers at least one full day.

There was no resolution of the operating protocol. Please note that one primary purpose of such a protocol is to guarantee safe and efficient operations. No protocol gives more chance for misunderstanding and employee injury or death.

SAW was done with their service by noon, not having loads or empty equipment to deliver. Other SAW traffic was tied up someplace in BNSF / WTL operation.

Tuesday, January 31, 2006

The BNSF / WTL were still searching for hot loads for Womack Bean. That SAW customer had loads somewhere on the BNSF and they were expected the week before. The shipper finally sent his entire work force home as they had no product to work. The other hot equipment was for ADM (Southern Cotton Oil). Those empty cars had somehow been sent to a closed ADM facility on WTL.

A second long conference call was made concerning the operating protocol. Again, Mr. Clemens was in on the phone call. This time an agreement was made and each point was clearly outlined. It was agreed that my lawyer would put the agreement on paper and forward to WTL. It should be noted that I did not participate directly in either of these protocol discussions, but was fully aware of both the discussion and outcome. It was a relief to have a protocol in place that was good for both parties, ensured safe rail operation, and was good for SAW customers. It was late in the day on Tuesday that SAW received a few empty and loaded cars from WTL. As

I feared it to be, it was far too late to make equipment spots to my customers. My customers lost a full day of rail service.

Wednesday, February 1, 2006

The operating protocol was faxed to WTL for review and signature. The protocol was not returned by WTL on Wednesday.

There is a statement in the Board's decision served Jan. 26, 2006 (at 6) that SAW has not disputed WTL's ability to provide safe and adequate service. There is now a basis in actual operations for SAW to dispute WTL's ability in that respect. In the first week of operation WTL had inadequate horsepower to make interchange into BNSF Yard resulting in blocking BNSF mainline for extended period of time. WTL finally had to be rescued by BNSF Yard engine, 52 car interchange, one locomotive, but WTL stated they had 3 locomotives. Where are the other 2 WTL locomotives?

Thursday, February 2, 2006

As we had not heard back on the operating protocol issue from WTL yet another mid-morning conference call was made between all parties. This time I was on the conference call.

There was agreement on wording on the first three points. Those points deal with times WTL in SAW yard, and how each railroad would best operate. The discussion then turned to WTL service to PYCO Plant 2.

About 30 minutes into this conference call my employees called me to say there was an emergency situation in the BNSF yard. This was also noted just before my call when John

McCracken of BNSF said he needed to talk with Mr. Gregory as soon as possible. I felt it was necessary to continue the discussion on protocol at a later time in order to deal with a possible operating emergency.

It turned out that the operating emergency involved WTL operating on a BNSF track which was designated closed and had maintenance of way workers on it. This is called a Form B violation and is very serious. BNSF removed that WTL crew from their property. I understand that the WTL locomotive engineer's operating license has been suspended for 30 days.

It should be noted that SAW has had safety awards from ASLRRA on each and every year of its operation.

During the night BNSF placed PYCO related empty equipment on SAW Tracks 9298 and 9200. This operation by BNSF was made with no contact between BNSF and SAW. It was after normal office / operating hours of SAW but in this situation it is our feeling that for safety reasons alone BNSF operation on SAW should not have occurred.

Please note that the primary WTL access to PYCO Plant 2, Track 9298, is now full of PYCO empty equipment. BNSF effectively blocked the agreed upon route to be used by WTL to PYCO Plant 2. When BNSF was asked why, BNSF employee Eddie Hale stated to Mr. McFarland that BNSF had to clear their Yard as it was very congested.

Friday February 3, 2006

Having not heard from WTL on signature of the operating protocol I called Mr. Gregory. He stated that he had not agreed to all of the items. Please note this is the same agreement made on the prior Tuesday telephone session which included Mr. Clemens.

I informed Mr. Gregory that either he sign the document by noon or I would write the STB saying that even though we had an agreement on Tuesday that it now appeared that such was not the case.

Just prior to noon I received a fax from Mr. Gregory with a pen change to the document. This was not satisfactory and I informed him that I would so state to Mr. Clemens of the STB. This was followed in short order, with a signed protocol, with a cover letter requesting WTL sole use of SAW yard between 7 PM and 7 AM, 7 days a week. That was never discussed in negotiations.

The last item on Friday was derailment by WTL of a cut of cars on track owned by Attebury Grain. PYCO must have been very demanding to WTL for service as they attempted service to PYCO Plant 2 through Attebury Grain private tracks. While successful in getting through the elevator they were unsuccessful in returning.

There was a derailment of 2 cars causing undetermined track damage and blocking operations of elevator. WTL crew cut off their engine and left elevator property.

SAW Foremen Kern was informed of derailment by Attebury who assumed it was SAW's crew. Attebury then informed WTL crewman Hans Grostueck, after he returned to the scene of the derailment, that WTL was requested to stay off all Attebury property in Lubbock.

Attebury has requested SAW to work with a crane service to re-rail cars and provide car inspections as required by FRA and to remove the remaining PYCO cars from their property.

SAW has re-railed the equipment and is in the process of track and switch repair. It is not clear who will pay for this work, but clearly it should not be Attebury, nor SAW.

I was contacted by Tony Dawson of ADM saying that Southern Cotton Oil had to be placed in "Shutdown mode" because they could not get tank cars that were setting in BNSF Yard and WTL inability to pull interchange. Southern Cotton Oil is a direct competitor of PYCO.

Dodson Lumber, another customer, was in desperate need of his shipment of lumber, also sitting in BNSF Yard.

February 6, 2006

WTL pulled interchange to SAW track set 2 cars on 3 track and then set the rest of SAW interchange on 5 track.

SAW was cleared to make an outbound interchange by BNSF dispatcher when John McCracken came on the radio and said the contract he was looking at did not allow for the SAW to make an interchange. He told SAW crew that his contract was between BNSF and WTL.

February 7, 2006

WTL left SAW mainline blocked over night - 5 track clear.

February 8, 2006

Mike McConvell with WTL contacted SAW office at 9:48 AM requesting the extra 15 minutes as per the protocol, to complete switching operation in the SAW yard. SAW crew was informed at 9:52 AM that WTL had been granted the extra 15 minutes to complete switching in SAW yard. SAW crew acknowledged that they would not begin their switching until 10:15 AM as agreed. SAW crew also noted that at the time the request was made and granted, WTL was in the BNSF Lubbock yard and not the SAW yard.

3. Continued Efforts To Satisfy PYCO's Concerns As Well As To Serve Other SAW Rail Customers

As I stated in accepting Mr. Wisener's resignation, my first priority has been to set up a meeting with Mr. Kring to explore a mutually satisfactory resolution of the current litigation. So far, Mr. Kring has not responded to my request. I will continue to attempt to schedule a meeting with Mr. Kring. As a last resort, I will ask for a meeting with PYCO's Board of Directors. I recognize, as should Mr. Kring, that in the end SAW will be PYCO's service provider. We should try to resolve any differences between our companies immediately and return to a good working relationship as soon as possible.

It is clear from WTL's initial period of operation that PYCO's ability to ship by rail has been impaired. In addition, WTL's inability to provide adequate rail service is severely impacting all other SAW customers.

I respectfully request the Board to review all documents in this matter with a sincere interest in being fair and impartial, and to lift the alternative rail service against SAW to prevent further deterioration of service to SAW customers. I am willing to cause SAW to file monthly reports to the STB of the service being provided to PYCO.

I wish to affirm to the STB my willingness to work honestly and diligently with PYCO and its representatives to accomplish an understanding with them if Mr. Kring will agree to a meeting.

APPENDIX DW-1



NUMBER

1

Ownership
SHARES

100%

SOUTH PLAINS SWITCHING, LTD. CO.,
A Limited Liability Company

This Certifies that DELLIAH WISENER is the registered holder of One Hundred (100%) of all ownership Shares transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed

this 21st day of April A.D. 1999

Deborah Wisener
SECRETARY / TREASURE

Larry Anderson
PRESIDENT

APPENDIX DW-2



Surface Transportation Board
Washington, D.C. 20423-0001

May 25, 2005

JUN 01 2005

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780
Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Larry Wisener, President
South Plains La Mesa Railroad, LTD.
South Plains Switching, LTD.
P.O. Box 64299
Lubbock, TX 79464-4299

Re: Service Complaint by PYCO Industries, Inc.

Dear Mr. Wisener:

The purpose of this letter is to advise you of complaints received by this office from Gail Kring on behalf of PYCO Industries, Inc. (copies enclosed). The complaints outline problems with unreliable switching service to the PYCO facilities, provided by South Plains and seek our assistance in resolving this switching problem which Mr. Kring indicates has cost PYCO approximately \$450,000 in lost sales and additional costs. Mr. Kring has also indicated concern for threats of discontinuation of service by South Plains, Switching.

As we have discussed previously, it is our effort to assist rail customers with service problems and to encourage serving carriers to communicate effectively with their customers on service issues so that the Board does not have to become involved formally in these issues. I know that you are aware that your Common Carrier Obligation does not allow you to discontinue authorized services without Board approval, and therefore threats of such action should be avoided. I am sure that your long experience in the railroad industry also provides you with a clear sense of what is required and what is appropriate. As such, I would ask that you meet with Mr. Kring to try and work through his service issues, and that you advise me of the actions taken by South Plains to resolve these issues. Failure to do so will leave me no alternative but to recommend to the Board that we institute, on our own motion, a formal complaint proceeding to address the reasonableness of your actions and the appropriateness of damages to PYCO.

Thank you for your prompt attention to this request and please do not hesitate to contact me if you have any questions.

Sincerely,

Melvin F. Clemens, Jr.
Director

Enclosures

cc: Gail Kring, PYCO Industries.

APPENDIX DW-3

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

August 4, 2005

By fax to 202-565-9011,
w/confirmation by mail

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W. - Suite 780
Washington, DC 20423-0001

Re: PYCO

Dear Mel:

I am writing to correct false and misleading statements made in Mike Roper's letter to you of July 12 about rail service to PYCO at Lubbock, TX.

By virtue of its Asset Sale Agreement with BNSF dated May 3, 1999, SAW acquired former ATSF Track No. 320. Track No. 320 would provide a much more efficient means of providing rail service to PYCO's Plant No. 2 than Track No. 310, which is the current means of providing that service. That is because Track No. 320 is unobstructed between the BNSF main line and PYCO's Plant, whereas access to that Plant via Track No. 310 is obstructed by very congested facilities of another shipper, Farmers Compress.

Soon after SAW's acquisition of Track No. 320, BNSF removed the switch that connected the BNSF main line to Track No. 320. Both PYCO and SAW have requested BNSF to restore that switch in order to permit SAW to provide more efficient service to PYCO, but BNSF has refused to do so.

Construction of PYCO Plant No. 2 began in February, 1996. That Plant began to receive cottonseed in October, 1996. That Plant becomes operational in March, 1997. Between that date and SAW's acquisition of Track No. 320 in July, 1999, ATSF (and later BNSF) transported substantial quantities of cottonseed from PYCO Plant No. 2.

THOMAS E. MCFARLAND

Mr. Melvin F. Clemens, Jr.
August 4, 2005
Page 2

In his letter to you dated July 12, Mr. Roper misleadingly implies that ATSF and BNSF transported that traffic via Track No. 310 in the same manner that SAW is transporting that traffic at present. Thus, Mr. Roper stated:

... Traffic has been moving to and from this plant since before SAW purchased the railroad. Nothing has changed SAW's ability to serve PYCO using SAW's existing operating authority ...

The fact is that ATSF and BNSF transported that traffic in the most efficient manner via Track No. 320. There are several persons in the Lubbock area who personally witnessed routing of that traffic in that manner. Thus, contrary to the impression attempted to be created in Mr. Roper's letter, ATSF and BNSF used the most efficient route for PYCO's traffic, but later prevented SAW from doing so by removing the connecting switch to Track No. 320.

It is also very misleading for Mr. Roper to have stated that SAW would not have authority to operate over the BNSF mainline to reach Track No. 320 if BNSF were to reinstall the switch to that Track. By virtue of the BNSF-SAW Asset Sale Agreement, SAW was provided with trackage rights between SAW Track No. 9298 and the BNSF Lower Yard. Neither Track No. 310 nor Track No. 320 is encompassed within the trackage covered by those trackage rights. Nevertheless, since the line sale in 1999, the BNSF dispatcher regularly provides dispatching authority for SAW to operate over the BNSF mainline between East Lubbock and West Burris. That enables SAW to reach Track No. 310. As stated by Mr. Roper:

By agreement, the SAW operates over BNSF's mainline to a switch on the west end of track 310, at approximately milepost 676.6 ...

The fact is that SAW currently operates on the BNSF mainline virtually to Track No. 320 pursuant to BNSF's dispatcher's authority when SAW interchanges lengthy trains with BNSF. On August 2, 2005, for example, SAW occupied the BNSF mainline virtually as far as Track No. 320 in conjunction with interchange of a 125-car grain train with BNSF. That has been a regular occurrence since SAW acquired its rail line in 1999.

The same dispatching authority between East Lubbock and West Burris that SAW receives from BNSF on a daily basis would enable SAW to operate over the BNSF mainline to reach Track No. 320 if BNSF were to reinstall the switch to that Track. Such an operation would not involve a greater volume of traffic moving over the BNSF mainline than is presently moving over that mainline via Track No. 310. In light of SAW's daily operation over BNSF's mainline to serve PYCO via Track No. 310, there is no valid operating reason for BNSF to refuse to permit SAW to operate a similar distance over the mainline to serve PYCO via Track No. 320.

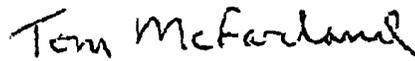
*Ref STB
Letter Eklitz
on Trackage
Rights.*

THOMAS F. MCFARLAND

Mr. Melvin F. Clemens, Jr.
August 4, 2005
Page 3

Nevertheless, Mr. Roper's letter to you states in essence that BNSF will not permit SAW to operate over the mainline to provide service to PYCO via Track No. 320. It should be apparent to you, therefore, that the sole cause of PYCO's inability to obtain the more efficient rail service that it needs is BNSF's stubborn refusal to reinstall the switch to Track No. 320 and to permit SAW to operate over its tracks to provide that efficient service to PYCO via Track No. 320.

Very truly yours,



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

TMcF:kl:wp8.0110911brmfc3

cc: Michael E. Roper, Esq.
James Gorsuch, Esq.
Gary McLaren, Esq.
Mr. Larry Wisener
Mr. Dennis Olmstead

APPENDIX DW-4

JAMES L. GORSUCH, P.C.

Attorney at Law

4412 - 74th Street, Suite B-102
Lubbock, Texas 79424

Telephones: (806) 771-6474
Facsimile: (806) 771-6476
jgorsuch@nts-online.net

October 11, 2005

Via Facsimile:

Mr. Gary R. McLaren
**RICHARDS, ELDER, SRADER,
PHILLIPS & McLAREN, L.L.P.**
5214 68th Street, Suite 302
Lubbock, Texas 79424

Re: **Sale of Portion of the Assets and Obligations of South Plains Switching, Ltd. Co., to Pycro Industries, Inc.**

Letter of Intent

Dear Mr. McLaren:

This Letter of Intent sets forth our agreement and understanding as to the essential terms of the sale to Pycro Industries, Inc. ("Purchaser"), by South Plains Switching, Ltd. Co. ("Seller"), of a portion of Seller's business ("Business") located in Lubbock County constituting a shortline railroad business in East Lubbock. The parties intend this Letter of Intent to be binding and enforceable and will inure to the benefit of the parties and their respective successors and assigns.

1. **Purchased Assets.** At the closing, Purchaser will purchase the specific assets set forth in the Sale Agreement associated with the Business, including all contracts and agreements, and all legally assignable assets and obligations.
2. **Assumed Liabilities.** Purchaser will assume as of Closing Date the liabilities and obligations set forth in the Asset Sale Agreement between South Plains Switching, Ltd. Co., and The Burlington Northern & Santa Fe Railway Company, executed in May of 1999. In addition, Purchaser will assume the liabilities and obligations arising in connection with the operation of the Business by the Purchaser after the Closing Date.
3. **Purchase Price.** The purchase price will be \$5,500,000.00, payable in cash in immediately available funds on the Closing Date.

October 11, 2005

Page 2

4. **Pre-closing Covenants.** The parties will use their reasonable best efforts to obtain all necessary third party and governmental consents, if required, including all certificates, permits and approvals required in connection with Purchaser's operation of the Business. The Seller will continue to operate the Business consistent with past practice. The parties agree to prepare, negotiate and execute a Purchase Agreement which will reflect the terms set forth in this Letter of Intent.
5. **Expenses.** Subject to the provisions of this Letter of Intent, each party will pay all of its expenses, including legal fees, incurred in connection with the acquisition of the Business.
6. **Confidentiality:** Any information obtained by Purchaser from Seller regarding this sale, will be kept strictly confidential.

Seller and Purchaser warrant that they have all required authority to enter into this Letter of Intent, and both Purchaser and Seller represent that they have full permission from the Board of Directors and the Officers to enter into this Letter of Intent.

If you are in agreement with the terms of this Letter of Intent, please sign in the space provided below and return a signed copy to James L. Gorsuch, P.C., by the close of business on October 17, 2005. Upon receipt of a signed copy of this letter, we will proceed with our plans for consummating the transaction in a timely manner.

Very truly yours,

SOUTH PLAINS SWITCHING, LTD. CO.

By: _____
CHIEF OPERATING OFFICER

FYCO INDUSTRIES, INC.

By: _____
CHIEF OPERATING OFFICER

PHILLIPS & McLAREN, L.L.P.

ATTORNEYS AT LAW

3305 66TH STREET, SUITE 1A
LUBBOCK, TEXAS 79413
TELEPHONE (806) 788-0609
TELECOPY (806) 785-2521

GARY R. McLAREN
gmclaren@sbcglobal.net

JAMEY LANEY PHILLIPS
jameyp@sbcglobal.net

October 13, 2005

Mr. James L. Gorsuch, P.C.
Attorney at Law
4417 74th Street, Suite B-102
Lubbock, Texas 79424
Via Telefax No. 771-6476

RE: Letter of Intent

Dear Jim:

As you know, PYCO is still in the early stages of looking at the purchase of your client's assets. Much remains to be done in terms of investigation and evaluation of the purchase.

We would need to add the following provision to your proposed Letter of Intent in order to move forward.

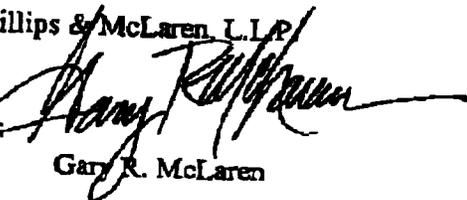
Purchase Conditional Upon Due Diligence and Financing. Seller acknowledges and agrees that Purchaser's purchase of the assets made the subject of this Letter to Intent is conditional and contingent upon Purchaser's satisfaction with the results of Purchaser's due diligence in the investigation, evaluation and appraisal of said Assets, at Purchaser's sole discretion. Seller further acknowledges and agrees that Purchaser's purchase of said Assets is further conditional and contingent upon Purchaser's ability to obtain financing for the purchase of said Assets at terms and conditions favorable to Purchaser, at Purchaser's sole discretion. Seller further acknowledges and agrees that should Purchaser be dissatisfied with the results of its due diligence concerning these Assets, or be unable to obtain financing for the Assets at terms and conditions favorable to Purchaser, both at Purchaser's sole discretion, then Purchaser is entirely relieved of all obligations and duties arising under this Letter of Intent, save and except the duty and obligation of Confidentiality as provided for herein.

October 13, 2005
Page 2

Please let me know if this is acceptable.

Yours very truly,

Phillips & McLaren, L.L.P.

By: 

Gary R. McLaren

GRM/cjh

APPENDIX DW-5

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

December 12, 2005

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N. W. - Suite 780
Washington, DC 20423-0001

Re: Rail service to PYCO Industries, Inc. at Lubbock, TX

Dear Mr. Clemens;

As a result of continuing complaints of inadequate rail service by PYCO Industries, Inc., I am hereby requesting that you address a letter to BNSF stating that if BNSF fails to restore the switch to Track No. 320 at Lubbock, TX, you will recommend to the Board that it institute, on its own motion, a formal complaint proceeding addressing the lawfulness of BNSF's continuing refusal to restore that switch.

There has been considerable prior correspondence in this matter, the upshot of which is as follows:

- South Plains Switching, Ltd. Co. (SAW) is unable to provide adequate rail service to PYCO via SAW Track No. 310 at present because SAW must operate through very congested facilities of another shipper (Farmers Compress) to reach PYCO's plant via that track.
- SAW Track No. 320 is not congested, and could be used to provide efficient rail service to PYCO's plant, but SAW cannot access that Track because BNSF removed the switch to that Track after that Track was sold to SAW.
- PYCO and SAW have specifically requested BNSF to restore the switch to Track No. 320.

- BNSF has failed and refused to do so.
- As a result, inadequate rail service to PYCO continues.

Counsel for SAW has advised me that in the circumstances, BNSF's failure and refusal to restore that switch constitutes a failure to provide reasonable and proper facilities for the interchange of traffic in violation of 49 U.S.C. § 10742. Counsel says that because BNSF sold Track No. 320 to SAW, there is a legal obligation on the part of BNSF to provide a reasonable means of access to that Track. That access requires operation by SAW over BNSF main track for an inconsequential distance beyond present SAW operations. As set out in Counsel's letter to you dated August 4, 2005 (copy attached for ready reference), that operation, which is customary pursuant to dispatcher's authority, does not provide a legal justification for BNSF's refusal to restore the switch to Track No. 320.

In 2003, you sent me a letter that was virtually the same as that I am asking you to send to BNSF (dated February 20, 2003, copy attached). Your letter to me was sent in conjunction with a request by Floyd Trucking, Inc. (Floyd) that SAW restore a switch to a track on property that Floyd was using. There were strong indications that BNSF prepared that request for Floyd as an act of retaliation against SAW, against whom BNSF was litigating at the time. Floyd failed and refused to provide a projection that any specific traffic would move by rail if the switch were to be replaced. Floyd had not moved any traffic to or from the switch at any time in the past.

Nevertheless, in light of your letter to me, SAW restored the switch to Floyd's track a significant expense to SAW. Confirming my suspicion that Floyd's request was put up by BNSF, not a single carload of freight has been tendered for transportation by Floyd in the years since the switch was restored by SAW.

In contrast, PYCO ships or receives approximately 2,000 carloads per year at its Lubbock Plant No. 2, which would be transported over Track No. 320 if BNSF were to restore the switch to that Track. In contrast to the Floyd situation, there is a strong traffic and service justification for restoring the switch to Track No. 320.

In addition, as a matter of fundamental fairness, BNSF should not be permitted to thumb its nose at PYCO's and SAW's legitimate requests that BNSF restore the switch to Track No. 320 when SAW was forced to restore a switch in response to Floyd's unjustified request.

For all the reasons explained above, you are respectfully requested to send a letter to BNSF directing BNSF to restore the switch to Track No. 320 or face the consequences of its refusal.

Sincerely,



Larry D. Wisener
President

- CC: Mr. Roger Nober
Chairman
Surface Transportation Board
1925 K Street, N. W. - Suite 780
Washington, DC 20423-0001
- CC: Mr. W. Douglas Buttrey
Vice Chairman
Surface Transportation Board
1925 K Street, N. W. - Suite 780
Washington, DC 20423-0001
- CC: Mr. Francis P. Mulvey
Commissioner
Surface Transportation Board
1925 K Street, N. W. - Suite 780
Washington, DC 20423-0001
- CC: Mr. James L. Gorsuch
4412 - 74th Street, Suite B-102
Lubbock, TX 79424
- CC: Mr. Thomas F. McFarland
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-9695
- CC: Mr. Dennis W. Olmstead
1124 South 11th Street
Montrose, CO 81401

APPENDIX DW-6

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

THOMAS E MCFARLAND

February 1, 2006

Re: e-mail to j.heffner@arizona.net

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

Re: STB Finance Docket No. 34802, *PYCO Industries, Inc. - Alternative Rail Service - South Plater Switching, Ltd. Co.*

Dear John:

This is intended to implement the agreement on operating protocols and other issues that were reached during conference telephone calls on January 30 and January 31.

During the period between January 27, 2006 and February 26, 2006, inclusive, control of dispatch over tracks used to provide rail service to PYCO Plant 1 and Plant 2, as identified below, shall be as follows, seven days per week:

- (1) 7 AM to 10 AM - WTL at PYCO Plant 1, SAW at Farmers' Plants 1 and 2, or Amstbury Grain
- (2) 10 AM to 2 PM - WTL at PYCO Plant 2, SAW in Yard
- (3) 2 PM to 7 PM - WTL at Yard, PYCO Plant 1 or PYCO Plant 2

Those times shall be flexible in the sense that neither party shall object to the other party holding over for short periods of time not to exceed 15 minutes in duration.

The control of dispatch shall apply to the following tracks:

- (1) Track No. 1, Track No. 5 and the main track in SAW's Lubbock yard;
- (2) The lead track used to provide service to PYCO Plant 1;
- (3) Track 9298 as the primary means to provide service to PYCO Plant 2, except that Track 310 can be used for that purpose if it is not blocked and if complete movement to Plant 2 would not delay operations of Farmers Compress Company.

WTL's locomotives shall be tied up off SAW's tracks.

THOMAS E MCFARLAND

John D. Heffner, Esq.
February 1, 2006
Page 2

On each inbound switch from the BNSF yard, WTL shall transport cars for PYCO and for SAW's customers to SAW's yard, where the cars for SAW's customers shall be set off onto Trucks 2 and 3.

SAW shall perform its outbound switch in the BNSF yard separately and independently of WTL's outbound switch. SAW shall be able to provide its outbound switch at any time during the day, provided that the switch does not unreasonably interfere with WTL's operations.

WTL shall move empty cars located on Track Nos. 2 and 3 in SAW's yard for loading by PYCO before bringing additional empty cars of the same type from the BNSF yard for loading by PYCO.

Please sign below if this implements the agreement accurately.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for SAW

Tef:hp-p8.0/144e-melJDE/

AGREED: WEST TEXAS & LUBBOCK RAILWAY CO., INC.

By: *John D. Heffner*

Title: VICE PRESIDENT

DRAFT 2-3-06

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THOMAS F. MCFARLAND

February 3, 2006

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

RE: STB Finance Docket No. 34802, PYCO Industries, Inc. --Alternative Rail Service --
South Plains Switching, Ltd Co.

Dear Mr. Williams:

This supplements and supersedes the filing of South Plains Switching Ltd Co. (SAW) on January 27, 2006 on the issue of operating protocols.

Through the good graces of Mr. Mel Clemens of your agency's Bureau of Enforcement, two multiple-hour conference telephone calls were held to resolve the issue of operating protocols on January 30 and January 31. In addition to representatives of SAW and West Texas & Lubbock Railway (WTL), the affected shipper, PYCO Industries, Inc. (PYCO) participated in both telephone conferences.

The telephone conferences resulted in an agreement on one of two compromise operating protocols proposed by SAW. As agreed, counsel for SAW reduced the agreement to writing promptly and furnished it by letter to counsel for WTL the next morning. A copy of that letter dated February 1, 2006 that contains the agreed protocols is attached to this supplemental filing.

However, instead of signing the compromise letter agreement, WTL and PYCO requested yet another conference telephone call to discuss the agreement further. They did not invite Mr. Clemens to participate in that call. During this conference call, the operating protocols in the first three numbered points on page 1 of the compromise agreement were expressly reviewed. Neither WTL nor PYCO requested any substantive change or addition in those operating protocols. The parties were in the process of reviewing the second three numbered provisions on page 1 of the compromise agreement when the conference had to be terminated because Mrs. Wisener had to deal with an operating emergency resulting from a dangerous unauthorized WTL train movement.

This morning, February 3, SAW representatives contacted representatives of WTL to request prompt execution of the letter containing the agreed compromise operating protocols. Instead of signing that agreement, WTL added a provision that had never been raised in either of the lengthy conference calls in which Mr. Clemens participated and which led to the compromise operating protocols agreed to by all parties. Even more disturbing, the provision that WTL now wants to add would amend the compromise operating protocols in the first three points on page 1 despite the express agreement of WTL and PYCO to those protocols in a conference call the previous day.

Vernon A. Williams, Secretary
Surface Transportation Board
February 3, 2006
Page 2

The Board should understand clearly that this is not a matter of WTL claiming that SAW did not accurately reduce the agreement to writing. Instead, it is a matter of WTL attempting to change that to which it has agreed. WTL should be held to its agreement.

In the circumstances, the Board is respectfully requested to issue an order adopting the operating protocols contained in the attached agreement. These protocols are badly needed so the parties can understand and enforce applicable operating protocols.

Very truly yours,

Thomas F. McFarland

CC: John Heffner, Esq.
Charles H. Montange, Esq.
Gary McLaren, Esq.

APPENDIX DW-7

SUMMARY PYCO		INBOUND		OUTBOUND		TOTAL		WORKING		INBOUND		OUTBOUND		ALL		PYCO	
YEAR	MONTH	PYCO	PYCO	PYCO	PYCO	PYCO	PYCO	DAYS	DAYS	PER DAY	PER DAY	PER DAY	PER DAY	SHIPERS	SHIPERS	PERCENT	PERCENT
2006	TOTAL	309	5641	5960	257	1.2	21.9	14048	42.3								
2004	TOTAL	393	1627	1920	267	1.5	5.9	6539	29.4								
2003	TOTAL	483	1512	1995	257	1.9	5.9	6939	29.2								

DETAIL PYCO		INBOUND		OUTBOUND		TOTAL		WORKING		INBOUND		OUTBOUND		ALL		PYCO	
YEAR	MONTH	PYCO	PYCO	PYCO	PYCO	PYCO	PYCO	DAYS	DAYS	PER DAY	PER DAY	PER DAY	PER DAY	SHIPERS	SHIPERS	PERCENT	PERCENT
2005	DEC	11	443	454	21	0.5	21.1	1126	40.3								
2005	NOV	14	403	417	21	0.6	19.2	1116	36.1								
2005	OCT	10	476	486	21	0.5	22.6	1267	37.7								
2005	SEP	14	596	610	22	0.6	27.1	1226	49.7								
2005	AUG	40	494	534	23	1.7	21.5	1326	40.3								
2005	JUL	27	477	504	20	1.4	23.8	1266	39.8								
2005	JUN	24	479	503	22	1.1	21.8	1237	40.7								
2005	MAY	41	483	524	22	1.9	21.9	1159	45.2								
2005	APR	47	479	526	21	2.2	22.8	1401	37.5								
2005	MAR	42	508	550	23	1.8	22.0	1143	48.1								
2005	FEB	20	468	478	20	1.0	22.9	983	48.6								
2005	JAN	19	346	365	21	0.9	16.5	779	46.8								
2004	DEC	14	411	425	21	0.7	19.6	726	68.6								
2004	NOV	24	170	194	21	1.1	8.1	659	28.4								
2004	OCT	18	147	163	21	0.8	7.0	716	22.8								
2004	SEP	2	167	169	22		7.8	482	36.1								
2004	AUG	13	103	116	23	0.7	4.5	409	28.4								
2004	JUL	2	70	72	20		3.5	560	12.8								
2004	JUN	22	82	104	22	1.0	3.7	444	23.4								
2004	MAY	33	84	117	22	1.5	1.5	367	32.8								
2004	APR	38	72	110	21	1.8	3.4	568	19.7								
2004	MAR	17	74	91	23	0.7	3.2	385	23.6								
2004	FEB	78	80	158	20	3.9	4.0	594	26.5								
2004	JAN	134	67	201	21	6.4	3.2	649	21.2								
2003	DEC	211	121	332	21	10.0	5.8	662	50.1								
2003	NOV	108	93	201	21	5.1	4.4	583	34.4								
2003	OCT	66	87	153	21	3.1	4.1	506	30.2								

SUMMARY PYCO		INBOUND PYCO	OUTBOUND PYCO	TOTAL PYCO	WORKING DAYS	INBOUND PER DAY	OUTBOUND PER DAY	ALL SHIPPERS	PYCO PERCENT
2005 TOTAL	309	5641	5950	267	1.2	21.9	14048	42.3	
2004 TOTAL	393	1527	1920	257	1.5	5.9	6539	28.4	
2003 TOTAL	483	1512	1995	257	1.9	5.9	6839	29.2	

DETAIL PYCO		INBOUND PYCO	OUTBOUND PYCO	TOTAL PYCO	WORKING DAYS	INBOUND PER DAY	OUTBOUND PER DAY	ALL SHIPPERS	PYCO PERCENT
2005	DEC	11	443	454	21	0.5	21.1	1126	40.3
2005	NOV	14	403	417	21	0.6	19.2	1116	36.1
2005	OCT	10	475	485	21	0.6	22.6	1287	37.7
2005	SEP	14	596	610	22	0.6	27.1	1226	49.7
2005	AUG	40	494	534	23	1.7	21.5	1325	40.3
2005	JUL	27	477	504	20	1.4	23.8	1286	39.8
2005	JUN	24	479	503	22	1.1	21.8	1237	40.7
2005	MAY	41	483	524	22	1.9	21.9	1159	45.2
2005	APR	47	479	526	21	2.2	22.8	1401	37.5
2005	MAR	42	508	550	23	1.8	22.0	1143	48.1
2005	FEB	20	458	478	20	1.0	22.9	983	48.6
2005	JAN	19	346	365	21	0.9	16.5	779	46.8
2004	DEC	14	411	425	21	0.7	19.6	726	58.5
2004	NOV	24	170	194	21	1.1	8.1	659	29.4
2004	OCT	16	147	163	21	0.8	7.0	716	22.8
2004	SEP	2	167	169	22		7.8	482	35.1
2004	AUG	13	103	116	23	0.7	4.5	409	28.4
2004	JUL	2	70	72	20		3.5	560	12.8
2004	JUN	22	62	104	22	1.0	3.7	444	23.4
2004	MAY	33	84	117	22	1.5	1.5	357	32.8
2004	APR	36	72	110	21	1.8	3.4	556	19.7
2004	MAR	17	74	91	23	0.7	3.2	385	23.6
2004	FEB	78	80	158	20	3.9	4.0	594	26.5
2004	JAN	184	67	201	21	6.4	9.2	949	21.2
2003	DEC	211	121	332	21	10.0	5.8	652	50.1
2003	NOV	108	93	201	21	5.1	4.4	583	34.4
2003	OCT	66	87	153	21	3.1	4.1	505	30.2

2003	SEP	14	112	126	22	0.8	5.1	543	23.2
2003	AUG	4	145	149	23		4.5	411	36.2
2003	JUL	19	150	169	20	0.9	7.5	564	30.5
2003	JUN	7	149	156	22	0.3	6.7	549	28.4
2003	MAY	17	145	162	22	0.8	6.6	503	32.2
2003	APR	7	142	149	21	0.3	3.4	886	17.2
2003	MAR	7	118	125	23	0.3	5.1	375	33.3
2003	FEB	12	134	146	20	0.6	6.7	304	48.0
2003	JAN	11	116	127	21	0.5	5.5	474	26.8

Version
2/2/06

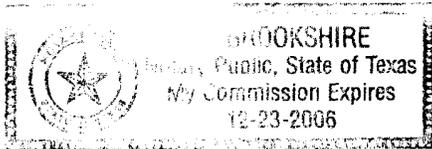
VERIFICATION

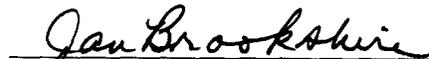
STATE OF TEXAS)
)
COUNTY OF LUBBOCK)

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

SUBSCRIBED AND SWORN TO before me this 8th day of February, 2006.





Notary Public

My Commission Expires: 12-23-06

TAB 2

PYCO
 Box Car Request to Plant 2
 January 1, 2006 through January 29, 2006

	Request	Received
1/2/06	2	2
1/3/06	2	2
1/4/06	0	0
1/5/06	2	2
1/6/06	2	0
1/9/06	0	0
1/10/06	0	2
	Requested 12 gons 0 boxes/ out of gons placed 9 Gons and 2 Boxes	
1/11/06	0	0
1/12/06	0	0
1/13/06	0	0
1/16/06	4	4
1/17/06	4	4
1/18/06	0	0
1/19/06	0	0
1/20/06	0	0
1/23/06	0	0
1/24/06	0	0
1/25/06	0	0
1/26/06	0	0
1/27/06	0	0
1/28/06	0	0
1/29/06	0	0

CERTIFICATE OF SERVICE

I certify that on February 8, 2006, I served the foregoing document, Petition To Terminate Alternative Rail Service, by UPS overnight mail, on the following:

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

John D. Heffner, Esq.
John D. Heffner, PLLC
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Thomas F. McFarland

Thomas F. McFarland