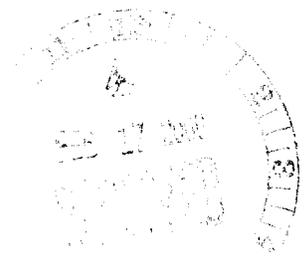


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THOMAS F. MCFARLAND

February 16, 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

ENTERED
Office of Proceedings

FEB 17 2006

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Public Record

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 Reply In Opposition To (1) Proposed "Addendum" To Operating Protocols and (2) Motion Filed As Part Of "Memorandum Stating Reservations Concerning Service Protocols," for filing with the Board in the above referenced matter.

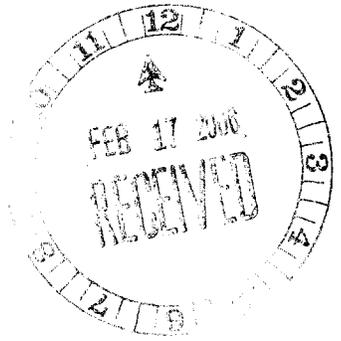
Very truly yours,

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

**REPLY IN OPPOSITION TO (1) PROPOSED "ADDENDUM"
TO OPERATING PROTOCOLS AND (2) MOTION FILED AS
PART OF "MEMORANDUM STATING RESERVATIONS
CONCERNING SERVICE PROTOCOLS"**

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Public Record

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

Replicant

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Attorney for Replicant

DATE FILED: February 17, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**REPLY IN OPPOSITION TO (1) PROPOSED "ADDENDUM"
TO OPERATING PROTOCOLS AND (2) MOTION FILED AS
PART OF "MEMORANDUM STATING RESERVATIONS
CONCERNING SERVICE PROTOCOLS"**

Pursuant to 49 C.F.R. § 1104.13(a), SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby replies in opposition to (1) a proposed "Addendum" to operating protocols contained in a letter to the Board from West Texas & Lubbock Railway Company, Inc. (WTL), dated February 7, 2006 ("Addendum"); and (2) a motion for additional operating protocols contained in a pleading filed by PYCO Industries, Inc. (PYCO) on February 7, 2006 headed "Memorandum Stating Reservations Concerning Service Protocol" ("Motion").

OVERVIEW

There are numerous compelling reasons why the operating protocols filed with the Board should not be amended, as sought by WTL and PYCO, i.e.:

- (1) the protocols are the result of a freely-negotiated agreement. Under our legal system, it is reasonable for a party to expect that the other party to an agreement will perform its undertakings. The Board should require WTL to live up to its agreement;

- (2) the protocols reflect a balancing of diverse interests which would be disrupted by the amendments sought. WTL received eight of the twelve premium daylight hours of service. SAW is able to stage cars and to provide service, if necessary, in hours of darkness before 7 AM and after 7 PM. WTL negotiated use of the two lengthiest tracks in SAW's yard plus access trackage serving PYCO's plants, with SAW retaining its other tracks for use as needed. WTL has the right to provide all inbound switches from the BNSF yard for both PYCO and SAW traffic, but SAW retained the right to provide its own outbound switches to the BNSF yard. The BNSF stated they were unable to separate PYCO from other traffic and they required all inbound interchange be to WTL. That delicate balancing of interests, resulting from give-and-take negotiations, would be unfairly disrupted if additional provisions favorable only to WTL and PYCO were to be unilaterally imposed;
- (3) the protocols reflect a compromise agreement. There may be additional provisions that would make operations easier for WTL at SAW's expense, just as there may be added provisions that would make operations easier for SAW at WTL's expense. Neither WTL nor SAW got everything that it sought in negotiations, but that is the hallmark of a compromise. The additional provisions sought by WTL and PYCO would unjustifiably skew the existing compromise agreement;
- (4) the additional provisions sought by WTL and PYCO would result in a further degradation of rail service for SAW's shippers and receivers. SAW has received

angry complaints from Brite Reload, Womack Bean Company, Southern Cotton Oil Mill (ADM), Dodson Lumber Company and others that their rail service has been adversely affected since WTL took over rail service to PYCO. Some of those shippers have voiced their complaints to the Board. The additional protocol provisions favor WTL and PYCO and would further worsen rail service for those customers. The interests of those SAW shippers and receivers are entitled to protection; and;

- (5) the additional provisions sought by WTL and PYCO are not just and reasonable. SAW's tracks cannot reasonably be taken for WTL to store cars for PYCO. The Board's order requires use of SAW's tracks to provide service to PYCO, not to store cars for PYCO. WTL has its own yard in the area that is required to be used for storage of PYCO cars. The service problems set out in PYCO's pleading are attributable to actions and inactions of BNSF and WTL and not to any deficiency in the agreed operating protocols.

For any or all of those reasons, WTL's proposed "Addendum" and PYCO's Motion should be denied.

ARGUMENT

I. THE PROPOSED ADDITIONS TO THE OPERATING PROTOCOLS SHOULD BE REJECTED BECAUSE THEY WOULD DISRUPT THE DELICATE BALANCING OF INTERESTS REFLECTED IN THE NEGOTIATED COMPROMISE AGREEMENT

This matter should not be before the Board on the issue of operating protocols. Operating protocols are supposed to be negotiated by the carriers, not litigated before the Board. The

Board's decision served January 26, 2006 required SAW and West Texas & Lubbock (WTL) to negotiate for operating protocols (at 3). SAW and WTL initially negotiated unsuccessfully. However, with a nudge from Office of Compliance and Enforcement Director Mel Clemens, and as a result of lengthy conference telephone calls in which PYCO and BNSF had full say in addition to WTL and SAW, compromise operating protocols were negotiated and agreed to. This matter is before the Board now only because WTL and PYCO are attempting to add provisions to the protocols that were never discussed during the two lengthy telephone conference calls. Any change would fundamentally alter the delicate balancing of interests that is reflected in the compromise agreement of operating protocols. In other words, WTL and PYCO are attempting to have the Board bail them out of an agreement that they freely negotiated.

The operating protocols that were successfully negotiated represent the essence of a compromise agreement. The parties initially were miles apart. SAW argued for the 9 AM-to-2:30 PM operating time for WTL that PYCO itself requested in its Petition for Alternative Rail Service filed on December 20, 2005. WTL argued for a 7 AM-to-7 PM operating time, thereby claiming all daylight hours for itself and relegating SAW's operations to periods of darkness. SAW and WTL both made filings at the Board in support of those diverse operating protocols.

On January 30, 2006 Director Clemens made a request of SAW that it propose compromise operating protocols to break the impasse in negotiations. SAW agreed to do so. Two such compromise operating protocols and related matters were proposed by SAW in a lengthy conference telephone call on January 30, 2006, in which representatives of PYCO and BNSF participated in addition to SAW and WTL. Director Clemens monitored that entire conference. WTL expressed potential agreement to a proposed compromise which ultimately

became the agreed protocols. Neither PYCO nor BNSF expressed disagreement with that proposed compromise. Negotiations then proceeded on related matters, such as which tracks would be used by WTL and the like. While substantial progress was made in this negotiating session, the conference adjourned without a final agreement.

Negotiations resumed the following day, January 31, 2006, in a second conference telephone call in which numerous representatives participated. Director Clemens monitored this entire negotiating session as well. After lengthy discussion and considerable give-and-take, final agreement on compromise operating protocols was reached. All parties also agreed that counsel for SAW would put the agreed terms on paper for signature.

Counsel for SAW promptly did so in the form of a letter agreement dated February 1, 2006 that was transmitted to counsel for WTL on that date. Having monitored the negotiating sessions that resulted in the compromise operating protocols, Director Clemens is in a position to attest that the letter agreement dated February 1, 2006 accurately reflects all matters that were agreed to.

Instead of signing the letter agreement reflecting the agreed terms, WTL requested yet another conference telephone call, which was held on February 2, 2006. WTL, PYCO, BNSF and SAW participated in that conference. During that conference, the protocols on operating times were discussed and agreement on them was reaffirmed. The parties were in the process of discussing the operating protocols on tracks to be used when the conference was cut short due to an operating problem that required the attention of SAW representative Delilah Wisener.

The next morning, February 3, 2006, Mrs. Wisener called WTL representative Steve Gregory to request that the letter agreement reflecting the compromise operating protocols be

signed by WTL. During that telephone call, Mr. Gregory acknowledged to Mrs. Wisener that the letter agreement accurately reflects all matters that were agreed to as a result of the lengthy January 30 and January 31 negotiating sessions. Notwithstanding the agreement of January 31, WTL proposed an additional provision relating to operating times that was not discussed nor agreed to in those negotiating sessions nor in the follow-up conference call on the previous day. Mrs. Wisener's response was that WTL should sign the letter agreement reflecting the compromise operating protocols that had jointly been agreed to and separately, by letter, request any changes for SAW's consideration. Mrs. Wisener told Mr. Gregory that if WTL refused to sign the compromise provisions that it agreed to, SAW intended to submit the matter for Board consideration. If that was considered to be an "ultimatum" by WTL (see "Addendum" at 2, point No. 1), it certainly was not at all unreasonable in the circumstances.

Later on February 3, 2006, WTL sent the letter agreement to SAW signed by Mr. Gregory, but with an additional provision penned in and initialed by Mr. Gregory. Mrs. Wisener again requested that WTL abide by its negotiated agreement by signing the letter agreement as prepared, and separately request the proposed additional provision. Mrs. Wisener told Mr. Gregory that if WTL refused to abide by the negotiated agreement, SAW intended to submit the matter for Board consideration. Maybe that is what WTL considered to be an "ultimatum," but it was hardly unreasonable for a party to insist that the other party live up to what both parties agreed to do.

Late in the afternoon of February 3, 2006, SAW received the signed letter agreement from WTL along with a separate letter requesting an additional provision. SAW intended to give consideration to that additional request when the letter agreement reflecting the agreed

compromise operating protocols was filed at the Board. On Monday, February 6, 2006, counsel for SAW prepared a proposed joint letter for signature by counsel for SAW and WTL transmitting the letter agreement of compromise operating protocols to the Board.

In the late afternoon of February 7, 2006, counsel for SAW received a copy of a letter from counsel for WTL to the Board transmitting the letter agreement of compromise operating protocols for filing, but also submitting an "Addendum" containing not only the provision sought to be added to the compromise protocols on February 3, but also two more brand new provisions never before brought up nor discussed between the parties.

Also in the late afternoon of February 7, 2006, PYCO chimed in with a pleading titled "Memorandum Stating Reservations Concerning Service Protocol," but which contained a motion that the Board impose still more protocol provisions that not even WTL had yet dreamed up.

SAW promptly notified the Board that it would reply to these attempts to materially change the agreed compromise protocols. This is SAW's response.

In an apparent attempt to minimize the negotiations that resulted in the compromise protocols, WTL says that "the parties have met or talked on several occasions in an attempt to negotiate a mutually satisfactory protocol." (WTL Feb. 7, 2006 filing at 1). In fact, there were lengthy conference telephone calls on two consecutive days with Board staff involvement that resulted in this compromise agreement.

The following troubling statements appear on pages 1 and 2 of WTL's February 7 filing:

... Counsel for SAW has prepared the enclosed letter dated February 1, 2006, purporting to represent such a (mutually satisfactory) protocol. Initially, WTLC did not sign this document because it had serious reservations about the

ability of both WTLC and SAW to serve their respective customers under this protocol. At the urging of the Board's Melvin Clemens, WTLC has now signed and is now filing the enclosed protocol with the following addendum . . .

Those statements are very troubling because (1) they appear to indicate that WTL's action was influenced by Mr. Clemens in an ex parte discussion, and (2) they reflect a retreat from WTL's acknowledgment that the letter agreement dated February 1, 2006 accurately reflects all matters agreed to in the January 30-31 negotiation conferences.

PYCO's February 7 filing is worse yet. As if the freely-negotiated compromise operating protocols had never been agreed to, PYCO says (at 1): "The proposed protocol was prepared by SAW." The operating protocols reduced to writing by SAW are agreed compromise operating protocols, not "proposed" protocols. PYCO says (at 1-2): ". . . (O)n or about Thursday, February 2, Ms. Delilah Wisener on behalf of SAW refused to negotiate the protocol . . .". What Ms. Wisener refused to do was to add provisions in favor of WTL to carefully-negotiated compromise protocols that were earlier agreed to as fair and reasonable by all parties, including PYCO. Representatives of PYCO were participants in both negotiating sessions on January 30 and January 31 and in the follow-up conference call on February 2. PYCO is thus well aware that the operating protocols that were agreed to are compromise agreements that resulted from substantial give-and-take. Try as it may, PYCO cannot escape the fact that WTL agreed to freely-negotiated operating protocols that are valid and must be binding on all parties.

The extensive negotiations on operating protocols in this matter led to a balancing of interests that enabled the parties to compromise on agreed protocols. WTL received 8 of the 12 daylight hours of service that it sought. SAW retains only 4 daylight hours, but is able to stage and switch cars and to provide service as necessary during less desirable hours of darkness before

7 AM and after 7 PM. WTL has use of the two longest tracks in SAW's yard, plus trackage to reach PYCO's plants, with SAW retaining other trackage for use as needed. WTL has the right to provide all inbound switches from the BNSF Yard for both PYCO and SAW traffic, with SAW retaining the right to provide its own outbound switches to the BNSF Yard. Neither WTL nor SAW got everything that it sought in negotiations, but that is the essence of a balancing of interests resulting in a compromise.

The Board should reject the requests by WTL and PYCO for imposition of numerous additional operating protocols that would favor WTL, PYCO and/or BNSF at SAW's expense, and which would upset the delicate balancing of interests that is embodied in the agreed to compromise operating protocols. All parties are entitled to equal consideration in determining fair and reasonable operating protocols. In this instance, overriding weight should be given to the fundamental principle that a party should abide by the agreements that it has made, especially so where, as here, the agreement under consideration is a carefully-negotiated compromise that balances the interests of both parties. For these reasons, the Board should decline to impose the additional protocols in WTL's "Addendum" and in PYCO's Motion.

II. THE PROPOSED ADDITIONS TO THE OPERATING PROTOCOLS SHOULD BE REJECTED BECAUSE THEY ARE NOT JUST AND REASONABLE

A. RESPONSE TO ADDITIONS SOUGHT IN WTL'S "ADDENDUM"

The additions sought by WTL are very substantial variations from anything that was discussed and agreed to in the negotiating sessions on January 30-31 and in the follow-up discussion on February 2. Adherence to agreements and undertakings is a critical factor in joint rail operations that are taking place in Lubbock. That difficult joint operation will be completely

unworkable if WTL and PYCO are permitted to make up the operating rules as they go along, as they propose here.

The “ultimatum” that SAW allegedly presented to WTL (p. 2, para. 1) was a choice: “sign the letter agreement that you acknowledge to contain that which you agreed to, or we will submit the matter for Board consideration.” There was nothing unreasonable about presentation of that choice.

SAW opposes the proposal that Track 9200 be used for storage of inbound empty cars for PYCO (p. 2, para. 2[a]). Track 9200 has not been used for that purpose in the past. It is thus not correct, as alleged by WTL, that use of Track 9200 for storage of PYCO empties would maintain the capacity available for handling PYCO empties that was in effect before February 1. Track 9200 was used by BNSF for placement of trainloads of aggregates for Vulcan Materials. The current use of Track 9200 is by SAW for revenue-producing storage of TTX freight cars. It would not be just and reasonable for the Board to take that revenue use of Track 9200 away from SAW and award a new use of that track to WTL.

The declaration that WTL seeks in Paragraph 2(b) on page 2 is beyond the authority of the Board to make. Attebury Grain Company owns and controls track between Track 9298 and PYCO Plant 2. Farmers Compress owns and controls track between Track 310 and PYCO Plant 2. That private ownership and control complicates operations to PYCO Plant 2. That is why both SAW and PYCO on several occasions have requested the Board to order BNSF to restore the switch to Track 320 that BNSF removed after BNSF sold Track 320 to SAW. Track 320 is not congested nor impeded by any private track ownership and control. BNSF refuses to restore that switch.

SAW opposes the proposal that WTL have the right to operate after 7 PM or before 7 AM (p. 2, para. 2[c]). That proposal is considerably broader than the request in WTL's letter to SAW dated February 3, 2006 (copy attached as Appendix 1), i.e.:

... on a variable basis ... WTLC will be allowed to use SAW trackage to interchange with BNSF between the hours of 7:00 p.m. and 7:00 a.m., without interference to SAW's operations ...

That action would of necessity interfere with SAW's operations. SAW stages and switches cars during those hours, and provides service to shippers, as needed. SAW has only four daylight hours to serve 17 shippers, compared to WTL's eight daylight hours to serve only one shipper. It would not be just nor reasonable for the Board to increase WTL's already-dominant rail service hours at the further expense of SAW and SAW's shippers and receivers.

B. REPLY TO ADDITIONAL PROTOCOLS SOUGHT BY PYCO

There is no basis for PYCO's contention (at 1) that the parties lacked time to analyze operational realities in Lubbock before the operating protocols were agreed to. Before the Board's decision was issued, WTL sent proposed protocols to SAW. Surely, WTL must have consulted with PYCO on the proposed operations. There were three days of negotiations that took into account actual operations on and after January 30. The compromise operating protocols were well thought out by all parties. It is not the protocols that are causing operational problems for PYCO, but rather inefficient operations by WTL.

PYCO need not be concerned about the protocols not taking into account the operating needs of BNSF (at 1). BNSF has shown that it is fully capable of taking care of its own operating needs. BNSF's movement of PYCO cars onto SAW Tracks 9298 and 9200 without dispatching authority from SAW are good examples of BNSF looking out for BNSF.

There has been no “traditional reliance” on Tracks 9298 and 9200 for staging of cars to be moved to PYCO (at 1). Track 9200 has not been used to hold empty cars for movement to PYCO. Track 9200 was used by BNSF to terminate trainloads of aggregates for Vulcan Materials. Track 9200 is now being used by SAW for revenue storage of empty TTX cars. Track 9200 is not available for use by WTL to stage cars for PYCO. Track 9298 was not “traditionally” used for holding empty cars for PYCO. A one-year lease of that track from SAW to PYCO expired by its terms and was not renewed. Track 9298 is used by both WTL and SAW to provide rail service to customers.

At pages 1-2 of its pleading, PYCO makes it appear that the operating protocols were unfairly forced upon PYCO, and that SAW is unfairly refusing to negotiate fair protocols. That is definitely not true. The operating protocols are not “proposed” (at 1). They are agreed. PYCO participated in the conference negotiating sessions that led to agreement on the protocols. The protocols were not “prepared by SAW” (at 1). SAW merely put the agreed protocols in writing. PYCO has not contended that the Letter Agreement of February 1, 2006 misstates anything that was agreed. Mrs. Wisener did not “refuse() to negotiated the protocol” (at 2). Ms. Wisener refused to add provisions that had not been discussed nor agreed to. The “ultimatum” that WTL was given was to sign a Letter Agreement of protocols that it acknowledged to contain the agreed provisions or to not sign the agreement. How can that be unfair? There was no legal obligation nor practical occasion for the operating protocols to be sent to BNSF for review. BNSF was not a party to the protocols, but BNSF participated in the negotiations that led to the protocols and did not voice any objection to them. BNSF has no legal right to use Track 9298. BNSF has a very limited right to use Track 9200: for empty car storage when space is available,

and only with SAW's dispatch. As noted, Track 9200 is being used by SAW for revenue purposes. In sum, none of the reasons put forth by PYCO constitutes justification for not enforcing the agreed compromise operating protocols as written.

PYCO is mistaken in its understanding (at 2) that BNSF retained a right to operate on Track 9298 after sale of that track to SAW. BNSF has no rights whatsoever in regard to Track 9298. As noted, BNSF's right to operate on Track 9200 is limited and is subject to SAW's dispatch. It is undisputed that BNSF moved empty cars onto Tracks 9298 and 9200 on February 2-3 without SAW's dispatching authority. BNSF lacked any color of authority to move cars onto Track 9298, and it lacked authority to move cars onto Track 9200 without SAW's dispatching authority, just as SAW would lack authority to enter onto BNSF's main line without dispatching authority. BNSF's movement of cars onto Tracks 9298 and 9200 constituted an unlawful trespass. It is disturbing that the Board's Office of Compliance and Enforcement apparently engaged in an ex parte discussion with BNSF about BNSF's action in that respect (at 2, note 2).

PYCO complains that service to Plant 2 via Track 9298 was not available on February 3 due to this "meltdown" (at 2), but the meltdown was none of SAW's doing. The meltdown resulted solely from BNSF's trespass in moving cars onto Track 9298 that BNSF has no authority to use.

The derailment sustained by WTL on February 3 (at 2) in providing service to Plant 2 occurred on right-of-way and trackage owned by Attebury Grain Company. WTL failed to contact Attebury for permission to use that track. Attached to this Reply as Appendix 2 are signs stating "Engines Must Not Pass This Point" that appear at each end of the Attebury Grain Company track. The switches on that private track became defective only after that derailment.

PYCO's reference to SAW's red-flagging Track 310 on February 4 (at 2) fails to point out that the red-flag was up due to SAW personnel maintaining a "low spot" condition on Track 310. That repair work had been coordinated between SAW and WTL.

These episodes again emphasize the serious service impediment to PYCO Plant 2 that resulted from BNSF's removal of the switch to Track 320 following sale of that track to SAW and BNSF's refusal to restore that switch. Track 320 does not suffer from the service impediments of the other tracks. PYCO is aware of SAW's unsuccessful efforts to have the Board order BNSF to replace that switch. However, PYCO fails to give SAW credit for those efforts in PYCO's behalf.

It is unfortunate that WTL could not provide service to PYCO Plant 2 on February 5 due to WTL's inability to get permission from BNSF to cross the BNSF main line (at 3). SAW has had to deal with similar problems over the years. It is a fact of life that complicates operations in Lubbock.

Not one of these service failures was remotely related to the agreed compromise operating protocols. Instead, they stemmed from (1) BNSF trespass that blocked WTL's access to Plant 2, (2) a WTL derailment resulting from its unauthorized use of private right-of-way and track, and (3) operating complications from the need to cross BNSF's main line. None of those factors warrants amendment of the compromise operating protocols.

The fact that PYCO has put forth "BNSF Suggestions" at page 3-7 of PYCO's pleading reflects a strange alliance between PYCO and BNSF. BNSF's unauthorized action in blocking Track 9298 is the reason PYCO Plant 2 was not served on February 3. It is BNSF that

steadfastly refuses to restore the switch to Track 320, and thus stymies improved rail service to PYCO Plant 2.

BNSF's suggestion that it control use of Tracks 9200 and 9298 (at 3-4) has no basis in law or in fact. The Board cannot lawfully order use of SAW's trackage by a nonparty like BNSF. BNSF has no legal right to use Track 9298 and its right to use Track 9200 is subject to SAW's dispatching authority. Track 9200 has not been used to stage cars for PYCO. Track 9200 is being used for a revenue purpose by SAW. Use of Track 9200 by BNSF thus would compromise SAW's ability to serve other customers. That is also true as to Track 9298, which may be used by SAW in its operating window in conjunction with providing service to Farmers Compress and Attebury Grain Company.

BNSF's suggestion that it interchange only with WTL, and not with SAW, at the BNSF Lower Yard (at 4) unlawfully and unjustifiably disregards (1) BNSF's contractual obligation to interchange with SAW by virtue of Section 13 of the SAW-BNSF Asset Sale Agreement dated May 3, 1999; (2) BNSF's statutory obligation to interchange with SAW by virtue of 49 U.S.C. § 10742; (3) the agreed provision in the compromise operating protocols that SAW would interchange with BNSF on outbound traffic from points on SAW; and (4) the statement by BNSF Trainmaster Brent Westbrook in negotiations on this matter that he had no problem with interchanging with SAW on outbound traffic. BNSF's suggestion is an unjustified 180-degree change of position. This unlawful suggestion would delay SAW traffic by two days: one day on the inbound move and another day on the outbound. The Board is required to take into account the degradation of SAW traffic that would result from this suggestion. Inasmuch as "suggestions" are being put forth here, SAW has its own suggestion: inasmuch as WTL has

always operated out of the northern end of the BNSF yard and SAW has always operated out of the southern end of that yard, the WTL interchange of PYCO traffic should take place at the customary interchange point for WTL-BNSF traffic at the north end of Lower Yard.

There is no justification for restricting interchange at BNSF Lower Yard to a 6 PM-Midnight window (at 4). The operation of BNSF's local trains has nothing to do with interchange times at the Yard. During the day, those local trains are usually out of the BNSF yard on the north side of Lubbock or at Slaton or Post for the south local. Those local trains do not cause daytime congestion in BNSF's Lower Yard. There is no stated evidence of a lull in BNSF's Yard between 6 PM and Midnight. The BNSF main line at Lubbock is part of BNSF's transcontinental rail system. Trains operate through Lubbock at all hours of the day and night. BNSF should have to provide evidence to prove that there is a 6 PM-Midnight operating lull before this suggestion is even considered.

There is no justification for BNSF's suggestion that SAW and WTL operate 24 hours per day (at 4). WTL itself takes the position that 24-hour operation is unnecessary and unduly expensive (*id.*). It is also unsafe and impractical. Operation in the dead of night would require that SAW navigate 30 unsignalized road crossings. None of SAW's customers operates 24 hours per day. Even PYCO itself does not want service in darkness, as it stated during negotiations. Except for loading railcars with product, PYCO's plants are not open at night. It would be unduly expensive for either shortline rail carrier to pay for two traincrews providing service at one location.

As explained previously, PYCO is wrong in stating (at 4-5) that Tracks 9200 and 9298 have traditionally been used to stage cars for PYCO. Track 9200 has never been used for that

purpose. Moreover, Track 9200 is in revenue use by SAW, and Track 9298 is used by both WTL and SAW in their operating windows. Here is another SAW suggestion: stage empties for PYCO at the WTL Yard each evening. WTL has a large yard in the area that is suitable for that purpose. It is WTL's primary duty to store PYCO cars and stage them for movement to PYCO. WTL should use its own property for that purpose.

SAW has responded earlier to the BNSF "suggestions" discussed by PYCO at pages 4-6. SAW adopts those responses as its response to PYCO's discussion.

SAW does not have "preferential access" to Farmers Compress on Track 310 compared to WTL's service to PYCO Plant 2 over that Track, as alleged by PYCO at page 6. SAW need not operate through the facilities of Farmers Compress to serve Farmers Compress, but WTL is required to operate through those facilities to serve PYCO Plant 2 via Track 310. The difficulties experienced by WTL-PYCO in that respect are attributable to ownership and control of part of Track 310 by Farmers Compress, which sometimes impedes access to Plant 2, not to any "preferential access" by SAW to Farmers Compress. SAW has used its best efforts to obtain relief for that service problem by urging the Board to cause BNSF to restore the switch to Track 320 that BNSF removed after it sold Track 320 to SAW. PYCO's current close ally, BNSF, has steadfastly refused to restore that switch to improve service to PYCO.

The operating "meltdown" on February 2-5 that PYCO has described did not occur because SAW did not have a round-the-clock contact person (at 7). It occurred because BNSF performed improper transportation of cars onto Tracks 9298 and 9200 to store PYCO cars that should have been tendered to WTL for movement to WTL's own yard for storage and staging for PYCO.

The service difficulties described by PYCO have nothing to do with any deficiency in the agreed compromise operating protocols. The service “meltdown” instead is attributable to unauthorized BNSF action that blocked Track 9298, a WTL derailment that resulted from unauthorized use of a shipper’s private track, and to normal operating complications in a busy railroad terminal. PYCO’s pleading thus does not warrant any amendment of the agreed compromise operating protocols.

The compromise operating protocols should not be amended because that would further lessen the quality of service to SAW’s shippers and receivers. Those companies have already had their service degraded as a result of WTL’s alternative rail service for PYCO. Many of them have complained vociferously to SAW (and perhaps to the Board). Included among those complaining are Brite Reload, Southern Cotton Oil Company (ADM), Womack Bean Company and Dodson Lumber Company. The Board must consider the interests of those shippers and receivers in adopting operating protocols. *See Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 at 23 (“Petitions for relief under these rules must show how the alternative carrier would provide the service safely and without . . . unreasonably interfering with the incumbent’s overall ability to provide service . . .”). That is especially the case where, as here, the incumbent carrier is operating in the same area as the alternative carrier. Amendment of the agreed operating protocols thus would be unfair and unreasonable not only in its effect on SAW, but also in aggravating the adverse effect on SAW’s shippers and receivers.

CONCLUSION

For any or all of the foregoing reasons, the Board should decline to amend the agreed compromise operating protocols. Accordingly, WTL's proposed "Addendum" and PYCO's Motion should be denied.

As the evidence in this matter shows, SAW's rail line, including its trackage serving PYCO, is difficult to operate. It consists of old track, scattered customers, and service required on both sides of BNSF's main line. SAW has distinct advantages over WTL in style of operation, skill and experience in providing service on such a rail line. SAW's operation is characterized by a fine-tuned, less-than-12-hours-per-day operation, serving all customers with adequate locomotive power (5 locomotives). WTL's operation is a big club-style operation requiring service 12 to 24 hours per day serving only PYCO (and degrading all other service) with inadequate motive power (one or at most two locomotives). No wonder PYCO is observing "meltdowns" as WTL-BNSF rail service settles in.

Respectfully submitted,

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

Replicant

Thomas F. McFarland

THOMAS F. McFARLAND
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Attorney for Replicant

DATE FILED: February 17, 2006

**Permian Basin Railways**

Texas-New Mexico Railroad
West Texas & Lubbock Railway
Post Office Box 618181
Chicago, IL 60661

February 3, 2006

Mr. Thomas F. McFarland
Ms. Delilah Wisener
VIA FACSIMILE 312-201-9695

Dear Mr. McFarland and Ms. Wisener:

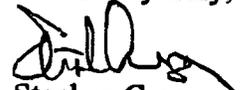
Mr. McFarland's letter of February 1 is enclosed, approved for West Texas & Lubbock Railway. I add the following for the record.

Ms. Wisener, in your fax cover sheet received this afternoon you state "You are now over the 12:00 Noon time given you to sign the ORIGINAL operating protocol." As you know, we discussed my proposed change, and you indicated I should make the proposed change and return the document, which I did, before noon.

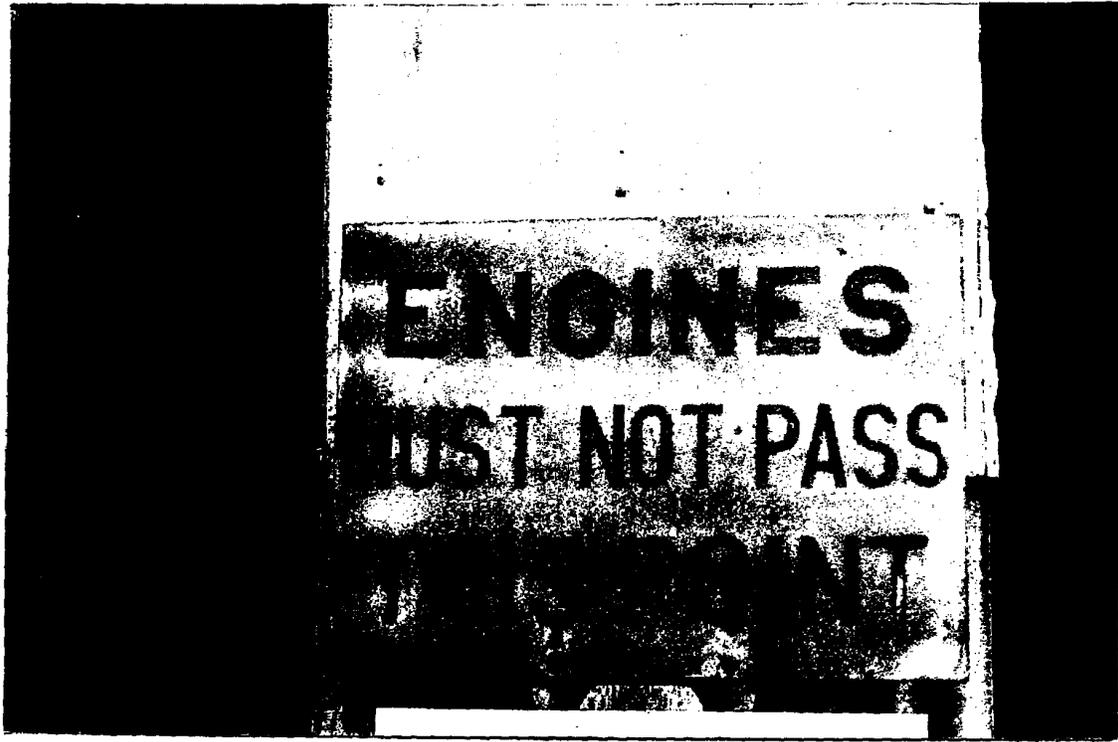
Your assertion that "You are refusing to sign an operating protocol that was agreed to by all parties. . ." as well as the first paragraph of Mr. McFarland's letter, is incorrect. PYCO, WTLC, and BNSF had a different understanding of the arrangements. However the first items (1) - (3) are more flexible for WTLC and SAW than the original protocol, and an improvement for both parties, a position we could have made clear had we been able to have a reasonable discussion of the merits of the letter.

It would be in the interests of all SAW customers including PYCO if we are able to agree on a variable bases that WTLC be allowed to use SAW trackage to interchange with BNSF between the hours of 7:00pm and 7:00am, without interference to SAW's operations, and I hope you will consider this as your statement that you are willing to remain flexible implies.

Yours very truly,


Stephen Gregory
Vice President

cc: John Heffner
Charles Montagne



These signs on each end of Attlebury



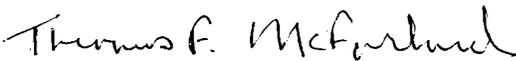
CERTIFICATE OF SERVICE

I certify that on February 16, 2006, I served the foregoing document, Reply In Opposition To (1) Proposed "Addendum" To Operating Protocols and (2) Motion Filed As Part Of "Memorandum Stating Reservations Concerning Service Protocols," by UPS overnight mail, on the following:

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Thomas F. McFarland