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February 15, 2007

By e-filing

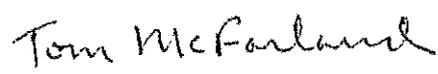
Vernon A. Williams, Secretary  
Surface Transportation Board  
Case Control Unit, Suite 713  
1925 K Street, N.W.  
Washington, DC 20423-0001

Re: Finance Docket No. 34889, *PYCO Industries, Inc. -- Alternative Rail Service -- South Plains Switching Ltd.*

Dear Mr. Williams:

Hereby transmitted is Emergency Petition For Partial Modification Of Operating 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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cc: All parties of record  
Mrs. Delilah Wisener  
Mr. Dennis Olmstead

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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PYCO INDUSTRIES, INC. -- ) FINANCE DOCKET  
ALTERNATIVE RAIL SERVICE -- ) NO. 34889  
SOUTH PLAINS SWITCHING, LTD. CO. )

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**EMERGENCY PETITION FOR PARTIAL  
MODIFICATION OF OPERATING PROTOCOLS**

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

Petitioner

THOMAS F. McFARLAND  
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Attorney for Petitioner

DATE FILED: February 15, 2007

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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PYCO INDUSTRIES, INC. --                    ) FINANCE DOCKET  
ALTERNATIVE RAIL SERVICE --            ) NO. 34889  
SOUTH PLAINS SWITCHING LTD.            )

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**EMERGENCY PETITION FOR PARTIAL  
MODIFICATION OF OPERATING PROTOCOLS**

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Pursuant to 49 C.F.R. § 1117.1, SOUTH PLAINS SWITCHING, LTD. CO. (SAW)  
hereby submits this *Emergency Petition for Partial Modification of Operating Protocols*.

**RELIEF REQUESTED**

The Operating Protocols imposed in the Board's decision served November 21, 2006  
(at 5) should be modified to provide for SAW's use of Track 5 in the Yard for revenue purposes,  
including revenue storage of railcars. That modification should be made effective forthwith, and  
should remain in effect until PYCO Industries, Inc. (PYCO) demonstrates a need for use of that  
Track.

**JUSTIFICATION FOR RELIEF**

The Operating Protocols are required to take into account the interests of the incumbent  
rail carrier as well as the alternative rail service carrier. The governing statute authorizes the  
Board to require alternative rail service only if it can do so "without substantially impairing the  
ability of the rail carrier owning the facilities . . . to handle its own business." 49 U.S.C.  
§ 11102(a). Alternative rail service is designed to most effectively address identified service

problems, not to punish the incumbent carrier. *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968, 980 (1998).

The Operating Protocols should be modified to provide for use by SAW of Track 5 in the Yard for revenue purposes, including revenue storage of railcars, because without such use, alternative rail service would substantially impair the ability of SAW to handle its own business. That would constitute a violation of 49 U.S.C. § 11102(a), *supra*; *see, also*, 49 U.S.C. § 11123(c)(2)(B).

SAW has the opportunity for revenue storage of a significant number of railcars, but SAW does not have sufficient trackage at Lubbock, TX to accommodate storage of those cars. Revenue from storage of those cars is vital to SAW inasmuch as alternative rail service at Lubbock has very substantially diminished SAW's revenues.

The Operating Protocols should be modified to permit SAW to store railcars on Track 5 in the Yard because SAW needs the use of such Track for revenue storage of railcars, and because PYCO does not need the use of such track at present or for the immediate future. SAW is informed and believes that PYCO's Plant No. 2 at Lubbock is not presently in operation, and that it will not be operating in the foreseeable future. SAW is informed and believes that PYCO's Plant No. 1 at Lubbock is shipping or receiving only 4 or 5 railcars per day. PYCO can easily accommodate that relatively light rail traffic volume without the use of Track 5 in the Yard. It is just and reasonable, therefore, that the Operating Protocols be modified to provide for use of Track 5 in the Yard by SAW who has a need for such use, rather than by PYCO, who does not have such a need.

If SAW were permitted to use Track 5 in the Yard, PYCO would retain use of two other lengthy tracks in the Yard, as well as nearby tracks such as Track 9200 and Track 9298.

Moreover, PYCO has the ability to store cars in the Lubbock-area rail yard of the alternative rail service carrier, West Texas & Lubbock Railroad. The requested modification of the Operating Protocols is thus a very reasonable accommodation of the interests of PYCO and SAW.

It should be recalled that on November 15, 2006, West Texas & Lubbock Railroad wrote to the Board that there had been "a significant reduction in PYCO's freight traffic due to the changed demands of the marketplace," and that operations over the alternative rail service trackage "are now reasonably fluid." A copy of that communication is attached to this Petition as Appendix 1. Moreover, PYCO previously testified that it would not need as much SAW trackage when construction of private trackage in its plant was completed. That private trackage is now in place.

The Board should grant this Petition forthwith. SAW has an immediate need for use of Track 5 in the Yard. SAW will lose the opportunity for revenue storage of the involved railcars unless Track 5 (or equivalent track) is made available to SAW on an expedited basis. The inability to obtain revenue from storage of those cars would seriously harm SAW.

**CONTINUING OBJECTION TO ALTERNATIVE  
RAIL SERVICE UNDER 49 C.F.R. PART 1147**

On November 22, 2006, SAW filed a Petition Under 49 C.F.R. § 1147.1(c)(1) To Terminate Alternative Rail Service in this proceeding. No Board action has been taken in regard to that Petition. The filing of SAW's current Petition for Modification of Operating Protocols is without prejudice to the position taken by SAW in that earlier Petition.

SAW hereby raises an additional ground for termination of alternative rail service in this proceeding. The governing statute, 49 U.S.C. § 11102(a), provides for the payment of compensation for required use of an incumbent rail carrier's facilities. That statute provides that:

... The compensation shall be paid or adequately secured before a rail carrier can begin to use the facilities of another rail carrier under this section.

No such compensation was paid to SAW, nor was any such compensation secured, before West Texas & Lubbock Railroad began to use SAW's facilities. That is in direct violation of the statutory terms. Indeed, neither West Texas & Lubbock Railroad, nor PYCO, has ever offered to compensate SAW for use of SAW's facilities under 49 C.F.R. § 1147, either formally or informally. That being the case, the statute expressly precluded commencement of alternative rail service, and requires immediate termination of such service pending compliance with the statutory terms.

Respectfully submitted,

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

Petitioner

*Thomas F. McFarland*

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DATE FILED: February 15, 2007

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BY FAX AND MAIL  
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November 15, 2006

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

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Office of Proceedings  
NOV 15 2006  
Part of  
Public Record

ATTN: Mr. Melvin Clemens

RE: STB Finance Docket No. 34802, Petition of Pyco Industries, Inc., for Alternative Rail Service over the tracks and facilities of South Plains Switching Ltd.

RE: STB Finance Docket No. 34899, Verified Petition of PYCO Industries, Inc., for Alternative Rail Service, Temporary Relief for Service Inadequacies, 49 CFR Part 1147;

RE: STB Finance Docket No. 34890, PYCO Industries, Inc., Feeder Line Application - Lines of South Plains Switching, Ltd. Co.;

RE: STB Finance Docket No. 34922, Keokuk Junction Railway Co., Feeder Line Application - Lines of South Plains Switching, Ltd. Co.;

Dear Mr. Williams:

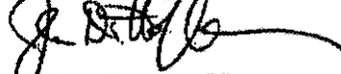
I am writing on behalf of the West Texas & Lubbock Railway ("WTLC"), the rail carrier designated by the Board in the above-captioned proceeding to provide alternative rail service over the facilities of South Plains Switching Ltd. ("SAW") to PYCO Industries, Inc., at Lubbock, TX.

My purpose in writing is to advise you that WTLC has discontinued the daily morning conference call that it initiated back in February 2006 to insure a smooth coordination of operations between WTLC, BNSF Railway, PYCO, and, ideally, SAW. As you will recall, SAW declined to participate in these conference calls.

WTLC is discontinuing this daily call in substantial part because of the significant reduction in PYCO's freight traffic due to the changed demands of the marketplace, as highlighted in recent filings with the Board. Also operations over the trackage that is subject to this proceeding are now reasonably fluid, there is good coordination between WTLC, BNSF, and PYCO, and SAW still refuses to participate. WTLC will reinstate conference calls should a need arise again.

Thank you for your assistance in this matter. I am submitting an original and 10 copies of this letter for the record. Please date stamp and return one copy.

Sincerely yours,



John D. Heffner

cc: Mr. Melvin Clemens (by fax)  
Charles Montange, Esq. (fax and mail)  
Gary McLaren, Esq. (fax and mail)  
Thomas McFarland, Esq. (fax and mail)  
William Mullins, Esq. (fax and mail)  
William Sippel, Esq.  
Adrian Steel, Esq. (fax and mail)  
Andrew Goldstein, Esq.  
Mr. Edwin Ellis  
Mr. Steve Gregory (email)

**CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 2007, I served the foregoing document, Emergency Petition For Partial Modification Of Operating Protocols, by UPS overnight mail, on the following:

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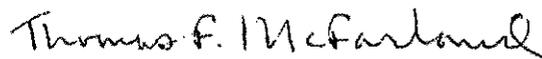
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