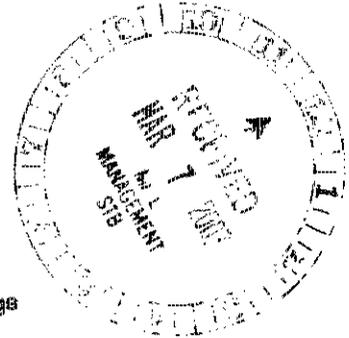


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6 March 2007
by express

ENTERED
Office of Proceedings

MAR - 7 2007

Part of
Public Record

Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

Re: PYCO Industries -- Alternative Service -- South
Plains Switching, Ltd., F.D. 34889; 218763

PYCO Industries -- Feeder Line Development --
South Plains Switching, Ltd., F.D. 34890; 218764

Hanson Aggregates -- Alternative Service --
South Plains Switching, Ltd., F.D. 34985 218765

PYCO Reply to SAW "Emergency Petition"

Dear Mr. Williams:

On behalf of PYCO Industries, enclosed please find an original and ten copies of a Reply on behalf of PYCO Industries with respect to the "emergency petition" filed by SAW in F.D. 34889 on February 15, 2007. The SAW petition seeks to alter the service protocol in Lubbock currently governing use of SAW trackage for alternative service to PYCO. Because the issue of track allocation may come up in docket F.D. 34985 and under docket F.D. 34890 generally (given the orders in that docket to preserve the status quo), PYCO requests that this pleading be filed in F.D. 34890 and F.D. 34985 as well as F.D. 34889.

Thank you for your assistance.

Very truly,

A handwritten signature in black ink, appearing to read "Charles H. Montange".

Charles H. Montange
for PYCO Industries, Inc.

Encls.

cc. counsel per certificate of service (w/encl.)
Mr. McLaren (for PYCO) (w/encl.)

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34889
SOUTH PLAINS SWITCHING LTD.)

PYCO INDUSTRIES, INC. --)
FEEDER LINE APPLICATION --) F.D. 34890
SOUTH PLAINS SWITCHING LTD.)

REPLY
by PYCO INDUSTRIES, INC.

to
"Emergency Petition for Partial Modification
of Operating Protocols" filed by South Plains Switching, LTD.

PYCO Industries, Inc. (PYCO) opposes the relief sought by South Plains Switching, Ltd. (SAW), in its alleged "emergency petition." The petition is an out-of-time petition to reopen the Board's Part 1147 decision served over three months ago, and makes none of the showings required for reopening.

Background

1. Part 1147 Relief for PYCO. By decision served November 21, 2006, this Board authorized alternative rail service pursuant to 49 C.F.R. Part 1147 to PYCO Industries, Inc. (PYCO) by West Texas & Lubbock Railroad (WTL). Incumbent rail provider South Plains Switching, Ltd. (SAW), had not substantively opposed PYCO's Part 1147 Petition. However, SAW moved to terminate Part 1147 relief the very next day (November 22). PYCO timely opposed the SAW termination effort. SAW's precipitous petition remains pending.

2. SAW's latest petition. On February 15, 2006, incumbent rail provider South Plains Switching (SAW) e-filed a pleading

SAW styled an "Emergency Petition" ostensibly pursuant to Part 1117 for a modification of operating protocols governing alternative rail service (pursuant to 49 C.F.R. Part 1147) being provided West Texas & Lubbock Railroad (WTL) to PYCO Industries, Inc. (PYCO). The "Emergency Petition" also contained additional out-of-time arguments purportedly supplementing SAW's still-pending petition to terminate PYCO's Part 1147 alternative service. Because this Board's regulations afford only five days for responses to petitions to terminate, PYCO responded to that portion of SAW's "emergency" on February 20, 2007.¹

This paper deals with SAW's purported Part 1117 "emergency petition" insofar as it is directed at the protocols. SAW's "emergency petition" seeks to divert track 5 (one of the tracks in the SAW yard near PYCO's Plant No. 1 in Lubbock) from WTL/PYCO use to SAW use, apparently for storage of empty rail cars for private owners who are not shippers on the SAW lines.

3. Protocol as relevant here. Pursuant to a proposal first put forward by SAW in F.D. 34802 (by letter e-filed February 6, 2006), WTL employs tracks 1 and 5 in the yard for switching for PYCO, and SAW employs tracks 2 and 3 for its other customers served out of that yard. Without objection from SAW, this Board in issuing its Part 1147 order served November 21, 2006, merely adopted the F.D. 34802 (Part 1146) alternative service protocol for alternative service under for F.D. 34889

¹ SAW's attorney has filed additional replies to replies since that time, all of which should be stricken pursuant to 49 C.F.R. § 1104.13(c) (barring replies to replies).

(Part 1147).

Argument

SAW's Part 1117 petition has no merit. Indeed, it is not a true Part 1117 petition, but instead is a late-filed petition to reopen this Board's decision served November 21, 2006 authorizing alternative service and imposing a protocol in the first place. Reopening is permitted only if the petitioner shows material error, new evidence, or changed circumstances. 49 C.F.R. § 1115.4. SAW shows none of these.

SAW is supposed to "state in detail" the basis for any petition to reopen which it files. Since SAW does not even mention the requirements of 49 C.F.R. § 1115.4, we are left to conjecture how SAW's claimed basis fits the regulatory requirement. But this itself suggests SAW has no legitimate basis, for otherwise SAW's experienced counsel would have happily laid it out for us.

No material error. SAW's bare-bones pleading does not suggest any "material error" in respect to the protocol, nor could it. SAW proposed allocation of tracks 1 and 5 for WTL to use to serve PYCO in a letter e-filed in F.D. 34802 in February 2006. SAW never heretofore contested this aspect of the protocol. It could therefore hardly be material error for the Board to impose it.

No "new evidence." "New evidence" for purposes of a petition to reopen is evidence that could not have been produced in a timely fashion. The only "new evidence" SAW submits in its

e-filed February 15, 2007 "emergency petition" is a letter dated November 15, 2006, from WTL's counsel to this Board which, according to SAW, indicates that there had been a "significant reduction" in PYCO's rail traffic. But this letter was extant and in SAW's hands before issuance of this Board's November 21 decision, and is thus not "new evidence," or even "newly discovered evidence" justifying a petition to reopen out of time.

No changed circumstance. The gravamen of SAW's petition to reopen thus must be the existence of some sort of "changed circumstance" justifying reopening. SAW seems to assert that due to lack of any revenue from PYCO traffic, it must resort to storing cars for private car owners to raise revenue in these hard times. This is not a changed circumstance. SAW has not earned profits from PYCO since the inception of alternative service (authorized in F.D. 34802) in late January 2006.²

Speculation. If there is any "changed circumstance," one can only speculate what that is. We conjecture that what SAW is

² Certainly PYCO's reduced rail demand is not a "changed circumstance." PYCO indicated that this would occur in a filing in F.D. 34890 (PYCO's feeder line application) served October 19, 2006. PYCO's Rebuttal in F.D. 34890 and 34992, filed 19 October 2006, Exhibit B (Lacy Declaration) and especially highly confidential Appendix I to the Lacy Declaration. The projection in Appendix I appears to be correct. That PYCO's October 2006 projections are accurate is hardly a "changed circumstance" (nor does this fact constitute "new evidence"). The only thing "new" or "changed" is that SAW acknowledges the truth in what PYCO said. But the fact that the incumbent railroad now admits the truth in what a shipper said is not the kind of change in reality that justifies reopening; it is only acknowledgement of pre-existing reality. In short, SAW fails to meet the requirements for reopening under section 1115.4.

worried about is that it has lost common carrier business generally, wholly apart from PYCO. But if that is SAW's argument, then it needs to be explicit. Otherwise it is sufficient to say that SAW's revenue shortfall is chargeable to its own misconduct, and SAW's own shortcomings are not a grounds to reduce agreed-upon facilities for alternative service to PYCO. PYCO is especially wary of reducing trackage assigned for alternative use under the protocol, because SAW provoked a near service meltdown at the inception of alternative service at the end of January 2006 by moving all PYCO cars into tracks 1 and 5. This Board was forced to respond with a protocol order than required SAW to keep clear of tracks 9200 and 9298. The protocol as ordered by this Board currently works. At least in connection with PYCO, SAW tends to work hard to break things like the protocol that work.

SAW's reference to 49 U.S.C. § 11102(a). While enough has been said to reject SAW's petition out of hand, for the benefit of a complete record, PYCO also has some additional objections to SAW's petition. SAW basically claims that a protocol modification to allow SAW to store cars for private owners on Track 5 is necessary to enhance SAW's revenue. SAW intimates it otherwise is impaired in its ability to operate its business in violation of 49 U.S.C. § 11102(a). This argument is flawed legally and factually, and either flaw is fatal to it.

First, SAW argues for conversion of Track 5 into revenue storage for car owners in order to avoid "impairing" its ability

to "handle its own business" for purposes of 49 U.S.C. § 11102(a). SAW Pet. at 2. This argument is unavailing. General storage of cars for private owners is fundamentally different from providing a common carrier switching service, and we do not understand such general storage to be per se a common carrier service at all. In contrast, switching and storing cars which may be used by the railroad's shippers is a common carrier service. Track 5 is currently being used by PYCO and WTL for common carrier purposes (switching cars to and from PYCO). SAW in seeking to convert that clear common carrier use to what amounts to the non-common carrier use of the track to generate revenue by storing cars for non-shippers.³ SAW could just as well argue that it needs Track 5 in order to park cabooses and private passenger cars on it to rent out to rail buffs, or that it needs Track 5 to rent out as a dog run, or because it wishes to operate a golf driving range on that part of its rail yard. The point is that SAW's intended use in effect is an admission that it does not need the track itself to carry out its common carrier duties. But if the track is not needed to serve SAW's actual shippers, then depriving SAW of use of Track 5 in no way

³ Car storage charges in general are supposed to enhance transportation efficiency by encouraging better track and equipment utilization for the provision of common carrier services. See North American Freight Car Association v. BNSF, STB dkt. 42060 (Sub-no. 1), served Jan. 26, 2007, at p. 6, citing Mr. Sprout v. U.S., 8 F.3d 118, 127 (2d Cir. 1993). The idea was not to encourage switch railroads to deprive shippers like PYCO of common carrier services in favor of using track necessary for that purpose to store cars for car owners who are not shippers. Indeed, SAW's objective seems to be the reverse of what car storage charges are supposed to be about.

"impairs" SAW's ability to handle its own common carrier business, which is all that 49 U.S.C. § 11102(a) is about, assuming arguendo that statute otherwise applicable as SAW argues it is.

The problem can be approached from another angle. This Board has indicated that an incumbent carrier is not entitled to a "profit" from use of its trackage for alternative service.⁴ By seeking to divert Track 5 to revenue car storage, SAW is simply seeking a profit on trackage otherwise assigned for alternative service in contravention of this Board's stated policy during Part 1146 and Part 1147 alternative service.

SAW in any event fails to demonstrate it needs Track 5 for revenue car storage, much less that its need surmounts PYCO's need for the track for common carrier service. As indicated in the attached Declaration of Robert Lacy, visual inspection of the SAW facilities indicates ample track and side track within the SAW system to store rail cars. Exhibit A, paras 6-7. Indeed, as Mr. Lacy notes, SAW had two tracks in its yard

⁴ When this Board adopted the Part 1146 and Part 1147 regulations, this Board stated, in response to comments, that it agreed that the incumbent carrier was not entitled to any lost profits, but instead only to compensation use of its facilities and for any services it provided. Expedited Relief for Service Inadequacies, Ex Parte No. 628, served Dec. 21, 1998, slip op. at p. 14. The Board declined "to prescribe an abstract formula" applicable to all the possible situations. Id. at p. 15. In essence the matter of compensation was to be worked out by the parties, with disputes brought to the Board for resolution. PYCO and WTL have offered to pay SAW \$2.90 per carload, with a set off for amounts expended by WTL to repair SAW's rail, using methodology customarily employed by this Board to calculate costs. SAW has not contested the \$2.90 calculation.

allocated to it that were free of any cars already. If SAW wants to store cars in its yard for others, it should start with what it already has first, and not raid the portion which on SAW's own recommendation was allocated to WTL use for PYCO.

Moreover, the same Wisener family that owns SAW also owns South Plains Lamesa Railroad in nearby Slaton. E.g., Exhibit A at para 8. These same Wisener's constructed additional (apparently unused) track at the south end of SAW's trackage this past year in the name of South Plains Lamesa. The Wisener family does not show why it cannot store revenue cars for private car owners on its Slaton trackage, or its new trackage in Lubbock.

SAW claims it needs revenue. If it needs revenue, then SAW should provide adequate service to its shippers, but failed to do so in connection with its largest shipper, PYCO, as this Board has repeatedly found in F.D. 34802, F.D. 34890, and now F.D. 34889. Nor should SAW retaliate against its shippers, such as its second largest customer (Hanson Aggregates), by terminating its lease and attempting to cut it off from its transload facility in Lubbock. See Decision, F.D. 34890, served Jan. 24, 2007 (granting relief to Hanson Aggregates against SAW). Moreover, SAW should not complain of loss of revenue in Lubbock when it seeks to divert traffic from Lubbock to the Wisener family owned railroad eight miles away in Slaton. If SAW is sustaining a revenue shortfall, it is a result of SAW's retaliatory attitudes, poor management, outright refusal to do

business with various individuals who incur Larry Wisener's displeasure,⁵ and diversion of business to Slaton. In all events, SAW can hardly complain of revenue shortfalls due to lack of shipments when SAW's own conduct is causing lack of shipments. Mr. Wisener should be working with shippers to increase their demand for rail service rather than trying to figure out ways to deprive them of service directly or indirectly.

If SAW is contending that a protocol modification is appropriate because PYCO's rail service needs are one third or less of PYCO's service levels required in the past two cotton seasons,⁶ this fact is also unavailing. The two switch tracks in the SAW yard are necessary to provide historic switching for PYCO's operations, not just for the years 2005 or 2006, but in all years. PYCO indicated its expected shipping levels to the

⁵ See Declaration of O.E. Floyd attached (recounting retaliation by Mr. Wisener that took place against Floyd Trucking on March 2, 2007).

⁶ Although SAW does not specifically list a particular fractional decline, SAW says that PYCO's Plant No. 2 is shutdown, and that Plant No. 1 is using only 4 or 5 railcars/day. Last year, PYCO's Plant No. 2 was in operation with roughly a dozen carloads per day, and Plant No. 1 required roughly 20 or more carloads per day. Thus SAW is acknowledging a decline in PYCO rail service requirements to 1/6 of prior levels. Mr. Lacy discusses PYCO's current service demand in his Declaration attached. Mr. Lacy indicates that PYCO's demand is in accord with his projections in his verified statement served October 19, 2006 in F.D. 34890 and the attachments thereto. Mr. Lacy indicates that PYCO's current demand is considerably less than 1/3 of 2005/2006 levels. However, he also notes that Plant No. 2 is expected to restart, and shipments are expected to pick up somewhat.

Board and to SAW in PYCO's October 19, 2006 submission.⁷ No one contested the protocol on the basis of PYCO's shipping levels then, and there is no "change" in condition cited by SAW which justifies a revisit now. As indicated, SAW makes no showing of any need for Track 5 to serve any of its other shippers.

The actual relevance of SAW's petition. In the end, the only real relevance of SAW's "emergency petition" is that it is tantamount to an admission by SAW that SAW's expert in F.D. 34890 (the feeder line proceeding) vastly overstated projected future rail traffic on the SAW system, and thus vastly overvalued SAW. It is appropriate that SAW's de facto admission that it overstated future use and revenue, and thus value, be incorporated into the feeder line proceeding. To this end, PYCO hereby incorporates the final paragraph of p. 3 of SAW's "emergency petition" insofar as the SAW "emergency petition" constitutes an admission by SAW that PYCO's traffic is substantially less than 1/3 of 2005/2006 levels at "present," in the "immediate future," and in the "foreseeable future" (the quoted terms are all used by SAW on page 3 of its February 15 petition).⁸ In sum, SAW's own admission eviscerates SAW's

⁷ See, e.g., PYCO's Rebuttal in F.D. 34890 and 34992, filed 19 October 2006, Exhibit B (Lacy Declaration) and especially highly confidential Appendix I to the Lacy Declaration. The projection in Appendix I appears to be correct.

⁸ Nothing in this incorporation constitutes indorsement of any legal conclusions drawn by SAW. As the text makes clear, PYCO disagrees with all SAW's legal conclusions, as well as SAW's reasoning.

valuation case in F.D. 34890.

Continued SAW retaliation; augmented need for alternative service. SAW continues to take retaliatory action against shippers supporting PYCO's feeder line application. Mr. O.E. Floyd supplies a Declaration submitted herewith that demonstrates that as recently as Friday, March 2, 2007, Wisener family members were engaged in serious retaliatory economic coercion against Floyd Trucking, solely because of Floyd Trucking's support of PYCO's feeder line application. In particular, Larry Wisener evidently informed a rock company that had received a rail shipment that Mr. Wisener would not permit Floyd Trucking to enter his family's property to transload rock. See, e.g., Floyd Declaration attached as Exhibit B.

Clearly PYCO can expect no quarter should it be faced again by SAW as local switch provider, and any shipper with the temerity to side with PYCO in the feeder line application now only has increased reason to fear economic retaliation. PYCO's need for WTL's alternative rail service to PYCO is not simply undiminished; Mr. Wisener's treatment of Hanson and Floyd Trucking shows that it is enhanced. PYCO supports relief to Hanson and to Floyd Trucking from economic coercion by SAW and its sister company.

Conclusion

SAW's latest late-filed petition to reopen should be denied. SAW states no grounds justifying relief.

Respectfully submitted,

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Of counsel:

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Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Exhibit A -- Second Rebuttal Declaration of Mr. Lacy
Exhibit B -- Declaration of O.E. Floyd

Certificate of Service

I hereby certify service of the foregoing Reply to SAW's "Emergency Petition" upon the following counsel of record by express service, next business day delivery, this 6th day of March 2007:

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Chicago, IL 60606-1112 (for SAW)

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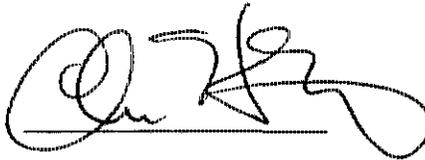


Exhibit A

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)	
ALTERNATIVE RAIL SERVICE --)	F.D. 34889
SOUTH PLAINS SWITCHING LTD.)	
PYCO INDUSTRIES, INC. --)	
FEEDER LINE APPLICATION --)	F.D. 34890
SOUTH PLAINS SWITCHING)	

Second Rebuttal Declaration of
Robert Lacy

I, Robert Lacy, make this Second Rebuttal Declaration in support of PYCO Industries, Inc.'s Opposition to the "emergency petition" by incumbent rail provider South Plains Switching (SAW). SAW seeks to change the service protocol allocating switch tracks 1 and 5 in the SAW yard for use by PYCO's alternative service provider (West Texas & Lubbock, or WTL) during alternative service under 49 C.F.R. Part 1147. (My initial Rebuttal Declaration in F.D. 34889 was directed at SAW's petition to terminate alternative service filed November 22, 2006.)

1. I am the Senior Vice President-Marketing for PYCO Industries, Inc., and am responsible for overseeing shipment of product to customers. As such, I am familiar with PYCO's rail-dependent operations. This Declaration is made on behalf of PYCO.

2. PYCO continues to experience efforts by SAW to retaliate against PYCO for seeking relief from this Board from inadequate rail service provided by SAW. For example, SAW continues to seek to employ local court actions to sever PYCO's access to its outdoor

seed storage area and to disrupt various other crossings and utility rights necessary for operation of PYCO's Plant No. 1.

3. PYCO's plant no. 1 essentially surrounds the SAW rail yard in Lubbock. Tracks in the SAW rail yard have traditionally and historically been used to switch cars for PYCO's plant no. 1, as well as cars for PYCO's plant no. 2, located on the other side of the mainline. Tracks 9200 and 9298, on the other side of the BNSF mainline from the SAW yard, have traditionally and historically been used to store PYCO's tank cars (SAW purported to cancel PYCO's track lease for that purpose), as well as to switch cars for PYCO's plant no. 2. When SAW originally proposed the basic structure of the protocol in F.D. 34802, SAW proposed to allocate Tracks 1 and 5 to use by PYCO. To relieve severe congestion caused by PYCO's termination of PYCO's track lease for Track 9200, this Board ordered SAW to keep tracks 9200 and 9298 clear of SAW cars as well. Indeed, one of the tactics that SAW has used to retaliate against PYCO in the past has been to create congestion hamstringing service to PYCO.

4. SAW's "emergency" motion is directed at Track no. 5. SAW now wishes to allocate that track in the SAW yard to SAW use for storing cars for private owners, rather than for use to switch cars for PYCO. SAW argues that PYCO does not need the track on two grounds. SAW states "on information and belief" (a) that PYCO's Plant No. 2 is not in operation and (b) that PYCO is using only 4

or 5 rail cars per day at Plant No. 1. In essence, SAW argues that PYCO's demand for rail service is reduced now and for the foreseeable future by at least 2/3 the level in either of the two previous cotton seasons. PYCO admits that its rail use is down by at least 2/3 or more from the prior two years, roughly to the extent argued by SAW. We projected such a reduction in our valuation case filed in F.D. 34890. I filed a verified statement (with a highly confidential attachment) in connection with a PYCO pleading filed on or about October 19 in the feeder line proceeding which forecast the downturn due to the 2006 growing season. All agribusiness in the Lubbock area has been so affected. But the fact that agribusiness demand for rail, or PYCO demand for rail, does not constitute an "emergency" requiring alteration of the protocol. What it does indicate is that SAW vastly overstated the economic value of its properties in the feeder line proceeding, because 2007 rail demand is far below what SAW projected. In other words, SAW's "emergency" petition in fact corroborates the lower GCV estimates provided by PYCO.

5. SAW cannot argue that the lower service requirements justify termination of alternative service. The service inadequacy which PYCO faces from SAW flows from the retaliatory management decisions of SAW, not from lack of resources. SAW continues to demonstrate that it wishes to employ all means which it thinks it can get away with not only to harm PYCO, but also to harm other

companies which have supported PYCO's feeder line application. This is evidenced by the problems brought to the Board's attention by Hanson Aggregates in the feeder line proceeding (F.D. 34890) and by economic coercion experienced by Floyd Trucking in the past week.

6. SAW also argues that it needs track 5 for revenue storage of railcars. By observation, overall rail traffic is down in Lubbock, not just PYCO's traffic. The same poor growing season that reduced cotton yields in Texas has reduced all agribusiness "exports" from the Lubbock market. As a result, SAW appears to have ample track available in its yard to meet the switching needs of its customers. This again underscores that SAW does not need track 5 to serve demand for common carrier services of any of its customers.

7. SAW instead is seeking use of track 5 for purposes of storing cars for parties for whom it does not provide common carrier services. SAW in effect claims that it needs additional space for revenue car storage. While we dispute the legal basis of this argument, it lacks factual basis as well. According to SAW's track expert in the feeder line proceeding, SAW owns approximately 23 miles of railroad lines in Lubbock, inclusive of sidings. Of that amount, approximately five miles are devoted to PYCO's use, or shared between SAW and WTL. This leaves approximately 18 miles of SAW-owned track and sidings for SAW to employ for revenue car

storage. Members of my staff under my direction personally inspected SAW's tracks on February 28 (Wednesday), March 1 (Thursday) and March 2 (Friday). We found as follows:

Wednesday, Feb. 28:

- 11 TIZX flat cars south of 50th St. by Llano Logistics
- 16 RBOX cars north of 50th St. by South Plains Food Bank
- 8 tank cars at Robertson Bonded Warehouse
- Approximately 19 cars in the SAW yard
- 5 flat cars and 2 tanks west of Avenue

There was ample additional SAW trackage, including ample side track, for SAW to engage in revenue storage of rail cars on Wednesday, Feb. 28, without resort to use of any track currently allocated to PYCO.

Thursday, March 1:

- 11 TIZX flat cars south of 50th near Llano Logistics
- 16 RBOX cars north of 50th by South Plains Food Bank
- 9 tanks at Robertson Bonded Warehouse
- 14 tanks and 2 lumber cars in SAW yard (two SAW tracks in the yard were completely empty)
- 5 flat cars and two tanks west of Avenue A
- 2 box cars and 1 flat car on the track to Acme

There was ample additional SAW track, including ample side track, for SAW to engage in revenue storage of rail cars on Thursday, March 1, without resort to use of any track currently allocated to PYCO.

Friday, March 2:

- 14 tanks in SAW yard (two SAW tracks in yard were completely empty)
- 9 tanks cars near Robertson Bonded
- 16 RBOX cars and 1 box car north of 50th St. by SPF Bank
- 5 flat cars and two tanks west of Avenue A.
- 2 Box cars and one flat on track to Acme

Again, there was ample additional SAW track, including ample side track, for SAW to engage in revenue storage of rail cars on Friday, March 2, without resort to use of any track currently allocated to PYCO. Indeed, on all days of inspection, SAW had space in the yard on its own trackage if it wished to store cars for others. In sum, based on our survey, the results of which are reported above, SAW has ample vacant side track and rail spurs in Lubbock to engage in revenue storage of railcars. SAW need not disrupt switching for PYCO under Part 1147 or the basic service patterns for any of its other customers to have space for more revenue car storage.

8. In addition, the Wisener family owns South Plains Lamesa Railroad in Slaton, about eight miles southeast of Lubbock. The Wisener family has attempted to divert business involving Hanson Aggregates to Slaton. The Wisener family can store cars there as well. We understand that the Wisener family has suggested that rail shippers use Slaton rather than Lubbock. The Wisener family appears to be attempting to divert business from its Lubbock tracks to its Slaton tracks. SAW and its owners should address revenue issues SAW claims to be having in Lubbock by desisting from encouraging shippers to switch to Slaton and by providing them with adequate rail service in Lubbock.

9. PYCO remains rail dependent. We must use railcars to ship

the vast bulk of our cottonseed oil production, which although itself down somewhat this year, remains relatively constant in quantity from year to year. Trucks are not an alternative for that purpose. We need access to the two switch tracks allocated to WTL use for PYCO in the SAW yard under the protocol in order to switch our tank cars for Plant No. 1. In addition, we continue to employ tracks 9298 and 9200 for our tank car fleet and for access to Plant No. 2 per the protocol. While PYCO's Plant No. 2 is not processing at this time, it is receiving seed to process or to ship later in the season. We expect volumes to increase, although of course not to 2005 or 2006 levels. In addition, we expect to ship cottonseed from April forward, and it is possible that shipments will resume this month if deals close. PYCO therefore opposes the protocol changes sought by SAW. They would disrupt service to PYCO and do nothing to enhance SAW revenue beyond what SAW could do without disrupting service to PYCO.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 6, 2007

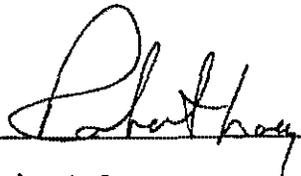

Robert Lacy

Exhibit B

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.
-- FEEDER LINE APPLICATION --
LINES OF SOUTH PLAINS SWITCHING, LTD.,

Finance Dkt. No. 34890

PYCO INDUSTRIES, INC.
-- ALTERNATIVE RAIL SERVICE --
SOUTH PLAINS SWITCHING, LTD.,

Finance Dkt. No. 34889

DECLARATION OF
O.E. FLOYD

I, O.E. Floyd, make this Declaration, pursuant to 28 U.S.C. § 1746, in connection with the Feeder Line Application filed by PYCO Industries, Inc., in F.D. 34890, the alternative rail service petition filed by PYCO Industries, Inc. in F.D. 34889, and the alternative rail service petition filed by Hanson Aggregates in F.D. 34895.

1. I make this Declaration to document yet another instance of retaliation against Floyd Trucking by the owners of South Plains Switching, Ltd. ("SAW").

2. I previously supplied PYCO Industries, Inc. with a Declaration in support of PYCO's feeder line application proceeding. As I indicated in that Declaration, I am general manager of Floyd Trucking Company, a family owned business, in

Lubbock, Texas. My business address is 6201 Martin Luther King Blvd., Lubbock, TX 79404. Floyd Trucking Company has been in business for over forty years as a sand and gravel hauler, with up to 75 trucks at a time. My family is also part owner of Wes-Tex Manufacturing Company, which constructs "belly dumpers" and other special applications for trucks. In my earlier Declaration, I explained that despite repeated efforts by Floyd Trucking Company, we have been unable to obtain rail service on reasonable terms from South Plains Switching, LLC ("SAW"). As I further explained, SAW removed our switch in retaliation and reprisal against our efforts to obtain service. Intervention by this Board's Mr. Clemens resulted in eventual restoration of the switch, but (as explained in more detail in my earlier declaration) Mr. Wisener contrived to prevent our use of it by imposing onerous and uneconomic conditions on that use. I stated in my declaration that Mr. Wisener has a reputation for threats and retaliation. Our continued denial of service is retaliatory for our going to this Board for relief in the first place. Floyd Trucking was, and remains, denied common carrier service to our property by SAW.

3. On Friday, March 2, 2007, the owners of SAW again retaliated against Floyd Trucking for our support of PYCO's feeder line application. Floyd Trucking customarily handles trucking of rock and aggregates for Duininck Brothers. Duininck Brothers received by rail a shipment of rock at Slaton, and requested Floyd

Trucking to transport the rock from the rail siding to the job site. Slaton is about eight miles southeast of Lubbock. Local rail switching service in Slaton is provided by South Plains Lamesa Railroad. South Plains Lamesa Railroad is owned and managed by the same Wisener family that owns and manages SAW. On Friday, March 2, Mr. Larry Wisener told Duininck Brothers that he would not allow Floyd Trucking on "his" property, and that Duininck must have someone else provide trucking services or face interruption of service. Because of Mr. Wisener's local market power, Duininck was compelled to accede to his request, with the result that Floyd Trucking lost this work. The one and only explanation Mr. Larry Wisener's actions resulting in this loss of business for Floyd Trucking was Floyd Trucking's support for the PYCO feeder line application.

4. Floyd Trucking renews its request that this Board authorize and permit PYCO to acquire SAW's lines on reasonable terms pursuant to PYCO's feeder line application. This Board should consider further enforcement action against Mr. Larry Wisener and South Plains Lamesa Railroad, as appropriate.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 3-5-07.

