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THOMAS E. MCFARLAND

March 13, 2007

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

218791
Re: Finance Docket No. 34889, *PYCO Industries, Inc. -- Alternative Service -- South Plains Switching, Ltd. Co.*

218792
Finance Docket No. 34890, *PYCO Industries, Inc. -- Feeder Line Application -- Lines of South Plains Switching, Ltd. Co.*

218793
Finance Docket No. 34985, *Hanson Aggregates, Inc. and Hanson Aggregates WRP, Inc. -- Alternative Rail Service -- South Plains Switching, Ltd. Co.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition For Leave To File The Reply Verified Statement Of Shad Wisener In Reply To The Reply Of PYCO Industries, Inc. Filed March 7, 2007. for filing with the Board in the above referenced matters.

ENTERED
Office of Proceedings

MAR 17 2007

Part of
Public Record

Very truly yours,

Tom McFarland

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

BEFORE THE
SURFACE TRANSPORTATION BOARD



PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.) NO. 34889
)
PYCO INDUSTRIES, INC. -- FEEDER)
LINE APPLICATION -- LINES OF) FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.) NO. 34890
)
HANSON AGGREGATES, INC. AND)
HANSON AGGREGATES WRP, INC. --) FINANCE DOCKET
ALTERNATIVE RAIL SERVICE --) NO. 34985
SOUTH PLAINS SWITCHING LTD. CO.)

**PETITION FOR LEAVE TO FILE THE REPLY
VERIFIED STATEMENT OF SHAD WISENER
IN REPLY TO THE REPLY OF PYCO
INDUSTRIES, INC. FILED MARCH 7, 2007**

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

Petitioner

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Attorney for Petitioner

DATE FILED: March 14, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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VERIFIED STATEMENT OF SHAD WISENER
IN REPLY TO THE REPLY OF PYCO
INDUSTRIES, INC. FILED MARCH 7, 2007**

Pursuant to 49 C.F.R. § 1117.1, SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby petitions for leave to file the attached Reply Verified Statement of Mr. Shad Wisener. Mr. Wisener's Statement is in reply to a Reply of PYCO Industries, Inc. (PYCO), filed March 7, 2007. SAW is aware that replies to replies are not contemplated by the Board's rules. SAW is also aware that the rule prohibiting such replies is honored in the breach. Such replies are often accepted for the sake of a complete record. Mr. Wisener's Statement is in that category. It is certainly no objection that consideration of Mr. Wisener's Statement would unduly delay disposition of these proceedings. We are now in the fourth month after expiration of the 270-day alternative service period, with no decision on the applications for acquisition under the feeder

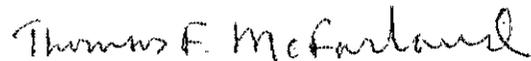
line statute, and continuation of alternative rail service for which there is absolutely no statutory authority in the absence of payment or compensation of adequate security therefor. Acceptance of a reply to a reply is hardly earth-shaking in comparison to that fundamental unfairness.

WHEREFORE, the Reply Verified Statement of Shad Wisener should be accepted for filing.

Respectfully submitted,

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

Petitioner



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DATE FILED: March 14, 2007

REPLY VERIFIED STATEMENT OF SHAD WISENER

My name is Shad Wisener. I am an employee of South Plains Lamesa Railroad, Ltd. Co., in Slaton, Texas. As part of my duties I act as a representative of South Plains Lamesa Railroad, Ltd. Co. and South Plains Switching, Ltd. Co., in Lubbock, Texas. Mrs. Delilah Wisener, owner of SAW, is my mother. I am familiar with the allegations made by PYCO and the allegations made by Mr. Montange on PYCO's behalf in PYCO's Reply dated March 6, 2007. Please allow me to make just a few points concerning this continuing distortion of truth by Mr. Montange.

Mr. Montange argues that a reopening can only be permitted because of "new evidence" or "changed circumstances." The current lack of a service emergency and PYCO's current output of only two or three cars per day is certainly a changed circumstance. Demand by our car storage customers for more capacity in the last few months is likewise a "changed circumstance." Additionally, Mr. Robert Lacy's sworn testimony in a Lubbock County Court (*SAW v. BNSF*) confirms that "service" was never really an issue, but rather the charges imposed by the SAW and the SAW's refusal to allow PYCO's trackmobile to operate in the SAW Yard were the motivating factors behind PYCO's actions. A copy of Mr. Lacy's testimony is attached to this Statement as Appendix 1. This surely would be regarded as "new evidence."

SAW has not lost any additional common carrier business. However, as SAW has not made any profit from PYCO's business it is fair to assert that revenues are down. Also let us remember that PYCO testified to the Board that they would not be needing any SAW trackage beyond the 270 day Alternative Service Order.

As for the “near service meltdown” at the end of January, 2006, PYCO severely reduced the number of cars they loaded in order to create this “emergency.” My crew and I discussed often the low output by PYCO and wondered what must be wrong. Their strategy was revealed in the form of their Emergency Alternative Service Request. As the saying goes “Figures don’t lie, but Liars can figure.” Also, of course the current protocol works for PYCO. They have the WTL come over every day and take both of their cars to the BNSF for delivery. Then the WTL picks up the inbound interchange for delivery back to PYCO. Now rather than PYCO being captive to a railroad, they have a captive railroad, and five miles of track on which to store their cars on for free. That would work for anybody.

Addressing Mr. Montange’s assertion that the storage of offline railcars is not a common carrier obligation, he is right in spades. Likewise, it is not a common carrier obligation to store its own customers’ railcars. If it were, then the offline railcar storage customers we service would not need us, or any car storage facility for that matter, would they? A shipper can be expected to have adequate trackage from which to conduct their business. The service railroad is not obligated to provide additional trackage to a customer. It is also very common for Shortlines to supplement their incomes by storing railcars for both online and offline customers. What is an uncommon practice however is to store such cars free of charge. Storing cars for offline customers has always been an integral part of the SAW business plan. Tracks 9200 and 9298 have historically been used for the following: Storage of flatcars for an offline customer; Storage of grain cars for an online customer; Storage of box cars for a Class I railroad; Storage of tank

cars for an offline customer; Storage of box cars for an online customer; Storage of plastic pellet cars for an offline customer; Aggregate unloading, and yes at one point even storage of PYCO cars. As is evident, PYCO's claims of traditional and historical use are more than a bit overstated. Of all these historical uses of these tracks, the only one that never generated a dime of revenue for the SAW was the storage of PYCO cars. The cost of their "lease" was only one dollar and they never even paid that.

Tracks One and Five were allocated by SAW to the Alternative Service Protocol because they are the longest tracks in the yard. SAW made a good-faith effort to work through this mess and we thought our business would be returned to normal. Apparently PYCO had other plans. Mr. Lacy's visual inspection of SAW's facilities mean nothing as PYCO management has demonstrated repeatedly that they know nothing about their own rail needs, much less the needs of anyone else. This ignorance is evidenced by the constant changing of everything they ever initially asked for. PYCO has gone from not needing any of SAW's trackage to needing all of it. PYCO asked for four hours of Alternative Service Window and later demanded twenty hours.

As for storing additional railcars at Slaton, TX, the Slaton facility is full. The SLAL currently has approximately ten miles of storage cars at Slaton. I have offered this even though it really isn't PYCO's business what we do at Slaton. Also, as a point of fact, Slaton is eighteen miles from Lubbock, not eight.

The failure of the Board to return the requested trackage to SAW drastically impedes SAW's ability to maximize the profitability of its assets.

SAW is not asking to profit from Alternative Rail Service. Instead, SAW is merely seeking the right to utilize SAW infrastructure in the best interest of SAW. PYCO also failed to mention that they have at least 35-40 car lengths of track that has been built in their own plant yards that is currently unoccupied. They have excess private track for storage, and oppose SAW's effort to use its own tracks for storage.

As for other business at Slaton, the customer purchasing the rock, that would be the man writing the check, wants the rock delivered to Slaton, TX. Again, Slaton is eighteen miles from Lubbock, not eight. This rock goes to Slaton because the road project is at Slaton, thereby saving a near 40 mile round trip to unload rock on the ground at Slaton by truck from Lubbock. The Slaton stockpile is approximately 400 yards from where it is transloaded from the cars at Slaton. Once against just to clarify THE CUSTOMER (DUNNICK) WANTS THE ROCK AT SLATON!

SAW has contacted Hanson and has verified that SAW would serve Hanson in Lubbock if needed. Also keep in mind that Hanson's testimony to the Board stated that they would not be back to the Lubbock market as long as the SAW was still in business. I ask you then, "How can cancelling a track lease to Hanson, who stated that it is not coming back to SAW, hurt Hanson?" If anything Hanson's statements concerning their intent to abandon the Lubbock market become perjury. In any event, be it known by all that no Hanson representative has yet contacted Mrs. Wisener, or myself, concerning any attempt to coordinate an aggregate move anywhere on the SAW lines or the SLAL.

Concerning Mr. Lacy's Verified Statement - as to point number 2, SAW still has and maintains the right to protect its property and assets from those who refuse to acknowledge that SAW does in fact have assets and property and that SAW is entitled to protect them.

As to point number 3, once again Mr. Lacy greatly exaggerates points of history and tradition. The railroads were not built just for PYCO. PYCO's projected reduction in car count was not the product of some brilliant and clairvoyant top notch strategy team . . . they lost contracts. It's really that simple. PYCO's incessant whining about the 2006 growing season is tiresome. The 2006 growing season was still a very successful season (I've read it's the third or fourth best ever). PYCO lost the Penny Newman contract, they lost the Frito Lay contract, and I don't know what else they might have lost. But, I do know that the competing oil mill down the street isn't whining, and their output is up. I'm sure PYCO will find a market for its products and will increase carloads, but enough whining about the 2006 growing season already.

PYCO stating that SAW's value is adversely affected by PYCO's low car count is a little suspicious also. I can think of many reasons that PYCO might want its car count to remain abnormally low for a period of time. Remember they have manipulated numbers with their own productivity before.

Mr. Lacy would also do well to remember if he elects to send others out to trespass on private property that trespassing will not be tolerated. Additionally, I can inform interested parties that one of my offline customers has a need to store thousands of railcars. So, theoretically, I could fill every foot of SAW's trackage that was available for car storage with

railcars. Mr. Lacy's accounting of SAW trackage, though not requested, necessary or pertinent, is moot.

As for O.E. Floyd - Mr. Floyd need not blame the "Wiseners" for everything that goes wrong for him. Mr. Floyd began lying to the STB way back when he stated that he had to have his switch put back in because he had cars coming to Lubbock. He never had a car coming to Lubbock, not on the SAW anyway. Mr. Floyd contends that SAW attempted to require him to sign an onerous and uneconomic track agreement. That agreement was the Santa Fe's standard track agreement, with the names changed. Thousands of shippers have signed such an agreement. He never had to sign it because he never intended to receive railcars. If he ever had any intent to receive railcars the track in his facility would at least be visible. Instead it is buried. Attached to my Statement as Appendix 2 are photographs that show the deplorable condition of Floyd's trackage. Besides Mr. Floyd is most likely about to finish up that big aggregate unloading facility on the north side of town that is going to take all the aggregate business away from everybody else anyway. That too was "testimony." Once again to clarify, Slaton is 18 miles from Lubbock. It is my understanding that the owner of the rock was unhappy with the performance of Floyd Trucking during the unloading process. The unloader complained that they were too slow. Mr. Larry Wisener only requested of Dunnick that they have Floyd Trucking provide insurance to SLAL to work on SLAL property. That is standard practice for any industry. The Dunnick representative called back to inform us that we would not be receiving it because Floyd Trucking would not be back on the job. If it had been the intent of the Wiseners

to get Mr. Floyd run off of the job we wouldn't have allowed his company to work that train at all. SLAL holds insurance certificates on other local trucking firms. If the Dunnick representative used Mr. Wisener as an excuse to let Floyd Trucking go, that is not SLAL or Mr. Wisener's fault. Perhaps Mr. Floyd needs to be more responsive to his customer's needs and provide better service.

APPENDIX 1

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REPORTER'S RECORD

TRIAL COURT CAUSE NO. 2004-526,599A

BURLINGTON NORTHERN)	IN THE DISTRICT COURT
SANTA FE RAILWAY)	
VS.)	OF LUBBOCK COUNTY, TEXAS
SOUTH PLAINS SWITCHING)	
LTD. CO.)	72ND JUDICIAL DISTRICT

On the 7th day of February, 2007, the above entitled and numbered Cause came on to be heard in the said Court, Honorable Ruben G. Reyes, Judge Presiding, and the following requested excerpted proceedings were had, to-wit:

TESTIMONY OF MR. ROBERT LEE LACEY, JR.

SUSAN MYATT, CCR, RPR
 CERTIFICATE NO. 3927
 72ND OFFICIAL COURT REPORTER
 LUBBOCK COUNTY COURTHOUSE
 LUBBOCK, TX 79401

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APPEARANCES

FOR THE PLAINTIFF: MR. DONALD E. HERRMANN
KELLY, HART & HALLMAN, P.C.
201 Main Street, Suite 2500
Fort Worth, TX 76102

FOR THE DEFENDANT: MR. JAMES L. GORSUCH
4412 74th Street, Suite B-102
Lubbock, TX 794

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I N D E X

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* * *

1 MR. ROBERT LEE LACEY, JR.,
2 having been first duly sworn by the Court, testified on
3 Direct Examination by Mr. Gorsuch, as follows:

4 Q Good morning, Mr. Lacey.

5 A Good morning.

6 Q Would you state your full name, please, sir?

7 A Robert Lee Lacey, Jr.

8 Q Where do you reside?

9 A Lubbock, Texas.

10 Q How old a man are you?

11 A I am 46.

12 Q How are you employed, Mr. Lacey?

13 A I am Senior Vice President for Marketing at Pyco
14 Industries here in Lubbock.

15 Q How long have you been employed by Pyco
16 Industries?

17 A Sixteen years.

18 Q Would you tell the jury generally what the
19 business of Pyco Industries is?

20 A Pyco Industries is a cottonseed crushing
21 operation. We process cottonseed. We are a cooperative
22 owned by the gins in this area.

23 Q And about how many people are employed at Pyco
24 Industries?

25 A Pyco employs, in Lubbock, about 150 employees.

MR. ROBERT LEE LACEY, JR. - FEBRUARY 7, 2007

1 Q Now, Mr. Lacey, during the year of 2005, did Pyco
2 Industries use and rely on rail service in order to conduct
3 its business?

4 A Yes, we do.

5 Q And you still do today; is that correct?

6 A Yes, sir.

7 Q And what generally do you rely upon rail service
8 to do?

9 A We load cottonseed, cottonseed oil, all of our
10 products that we produce, and we rely on getting empty cars
11 in, loading, and sending them out across the country to our
12 customers.

13 Q What railroad provided switching service to Pyco
14 Industries in 2005?

15 A The SAW Railroad.

16 Q And you see Mr. Wisener sitting here. You know
17 Mr. Wisener; is that correct?

18 A Yes, sir, I do.

19 Q Mr. Lacey, in the course of this trial,
20 Mr. Wisener has testified to his opinion that in 2005, and
21 particularly in the latter part of 2005, the SAW Railroad
22 had adequate equipment and personnel to take on additional
23 business down to Burris, Texas, to serve a customer there,
24 and would not have needed to add personnel or equipment to
25 do that, because it had ample time to provide adequate

MR. ROBERT LEE LACEY, JR. - FEBRUARY 7, 2007

1 service to its customers in Lubbock and to take on that
2 additional business.

3 My question to you, sir, is this: Is that
4 general testimony or statement consistent with your
5 recollection of the kind of service that Pyco received from
6 SAW in the latter half of 2005?

7 A No, sir. In probably October or November of 2005,
8 we had some conflicts, and we had been going -- our company
9 had been going out on the line to pick up cars and to help
10 with the switching.

11 We were told that that was no longer going
12 to be the case. So we signed an insurance agreement with
13 him, so that we would protect him and have -- it was a
14 liability insurance policy, so that we could continue to go
15 out there. We did.

16 The next day, we were contacted and told
17 that we could no longer go out there.

18 MR. GORSUCH: I'm sorry, Your Honor. He has
19 said that "we were contacted and told that we" --

20 A Contacted by Mr. Wisener --

21 THE COURT: Hold on, hold on.

22 MR. GORSUCH: He is getting into a
23 narrative, also. And if he said he was contacted by
24 someone, I think we need to know who that is before we go
25 on.

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THE COURT: Okay. Sustained.

Q (By Mr. Herrmann:) Mr. Lacey, in the latter part of 2005, were you relying upon the SAW to provide the switching that you needed?

A Yes, sir.

Q And 2005 was a big year for your business, right?

A Right. It was big.

Q Did the SAW provide adequate switching to Pyco during that time period?

A We were shipping 25 cars a day, and then, at that point that I was talking about, we were limited to receiving only 11 cars a day in, which was not enough to sustain our business.

Q And when you say it was not enough to sustain your business, what was happening to your business at the time?

A We were shipping cottonseed out to California. We had a big crop. And we always ship our other products, which we will ship ten cars a day out of the other products, but we were shipping an extra 12 to 15 cars of cottonseed out, and that was something that was new to the business at that time.

Q And were you in need of additional switching work that you weren't getting from SAW?

A Yes, sir.

Q Did the -- Did SAW's inability to adequately serve

MR. ROBERT LEE LACEY, JR. - FEBRUARY 7, 2007

1 your company eventually lead you to seek assistance from the
2 Surface Transportation Board in Washington, D.C.?

3 A Yes, sir. In November of that year, we did file
4 with the Surface Transportation Board for alternative
5 service.

6 Q Now, what does that mean?

7 A That means that somebody -- that we weren't
8 getting adequate service, and somebody else was going to
9 come in and serve our industry.

10 Q Another railroad?

11 A Another railroad.

12 Q And in this instance, it was the West Texas and
13 Lubbock Railroad?

14 A Yes.

15 Q And, indeed, did the Surface Transportation Board
16 order that the SAW allow the West Texas and Lubbock Railroad
17 to serve your facility?

18 A Yes, sir. In January of 2006, we got that order.

19 Q And since that time, has your facility been served
20 continuously by the West Texas and Lubbock, instead of the
21 SAW?

22 A Yes.

23 MR. HERRMANN: That is all the questions I
24 have, Your Honor.

25 THE COURT: All right. Mr. Gorsuch?

MR. ROBERT LEE LACEY, JR. - FEBRUARY 7, 2007

CROSS EXAMINATION

1
2 BY MR. GORSUCH OF MR. LACEY:

3 Q Mr. Lacey, my name is Jim Gorsuch. I don't think
4 you and I have met before; is that correct?

5 A I don't think so; huh-uh.

6 Q And you understand that I represent South Plains
7 Switching?

8 A Right.

9 Q In your business at Pyco, are there fixed costs?

10 A Yes, sir.

11 Q What would some of those fixed costs be?

12 A I am not an accountant, sir, but, you know,
13 salaries and electricity, things like that.

14 Q Property taxes?

15 A Yes, sir.

16 Q Utilities?

17 A Yes, sir.

18 Q Insurance?

19 A I am not an accountant. I guess so. Yes, sir.

20 Q Would the office personnel be a fixed expense?

21 A I am not an accountant. I guess it is. I don't
22 know.

23 Q Let me ask you from your --

24 A Okay.

25 Q -- from your viewpoint there, if you have a -- if

MR. ROBERT LEE LACEY, JR. - FEBRUARY 7, 2007

1 there is a normal year, and you have a slight increase the
2 next year, do you hire extra office personnel?

3 A No, sir.

4 Q Would you hire some extra personnel in the yard if
5 you had a slight increase?

6 A We do during the busy season; yes.

7 Q Let's take this scenario.

8 MR. HERRMANN: Your Honor, I am going to
9 object on relevance.

10 Mr. Lacey's testimony here is simply to
11 demonstrate that his company was not receiving adequate
12 service from the SAW during the period of time that
13 Mr. Wisener has testified he had plenty of people and
14 equipment available to serve his customers.

15 I don't think Mr. Gorsuch's cross-examination
16 has anything to do with that testimony whatsoever, and I
17 will object on relevance.

18 THE COURT: Okay. Overruled.

19 Q (By Mr. Gorsuch:) Mr. Lacey, let me ask you, sir:
20 How do you judge your business? Is it in gross sales, or is
21 it in poundage, or if you say we did "X" in 2003, what are
22 we talking about?

23 A We can judge it by the tons that we did, or we can
24 judge it by the gross sales. It doesn't matter.

25 Q On the gross sales, do you recall what your gross

MR. ROBERT LEE LACEY, JR. - FEBRUARY 7, 2007

1 sales were for 2003?

2 A No, sir.

3 Q Do you have an estimate?

4 A 2003? I don't -- I don't recall. It is -- We
5 have been between a hundred and two hundred fifty million
6 for the last two years, so somewhere in that neighborhood.

7 Q So somewhere in that area. If you had a -- let's
8 say you had a hundred million for 2003. Assume that for me.

9 A Okay.

10 Q Assume in 2004 you had two percent extra, --

11 A Okay.

12 Q -- which would be a hundred and two million
13 dollars.

14 A Right.

15 Q A hundred in 2003 and a hundred and two in 2004;
16 would it be necessary for Pyco to increase any of its office
17 staff?

18 A No, sir.

19 Q Would it be necessary to buy any new equipment,
20 assuming that equipment is there?

21 A It can't be measured in that direction. It
22 depends on the price of the products. We are in
23 commodities. So the prices determine what the size of
24 the -- bigger gross sales may not mean anything, except
25 higher prices.

MR. ROBERT LEE LACEY, JR. - FEBRUARY 7, 2007

1 Q Oh, I understand. I understand.

2 A Okay.

3 Q But I am talking about your costs now.

4 A Okay.

5 Q If you had a two percent increase, would there
6 even be any necessity for you to hire extra personnel out of
7 the office?

8 MR. HERRMANN: Your Honor, if I may, I again
9 object on relevance. I don't think it has any purpose to
10 the direct examination, plus there is no predicate that
11 would suggest that the business of Pyco bears any
12 relationship to the railroad business, such that Pyco's
13 experience regarding equipment and personnel requirements
14 would have any pertinence to the railroad requirements. It
15 is completely irrelevant. That is my objection, Your Honor.

16 THE COURT: Okay. I understand. I am going to
17 overrule, but let's link it.

18 MR. GORSUCH: I am sorry?

19 THE COURT: Let's tie it up.

20 MR. GORSUCH: Okay.

21 Q (By Mr. Gorsuch:) I guess my question -- I just
22 have a question on it.

23 A Okay.

24 Q Remember we went -- we had a hundred million in
25 2003. We assumed a hundred and two in 2004.

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1 My question was, sir: If you had that kind of
2 increase, would it even be necessary for you to hire any
3 more people in the yard?

4 A No.

5 Q Now, you had mentioned about being allowed to run
6 a track mobile on the property of South Plains; is that
7 correct?

8 A Yes, sir.

9 Q And that was something that was an accommodation
10 that was given to Pyco by South Plains; is that correct?

11 A Yes.

12 Q There were some problems with the track mobile
13 being derailed in 2005; wasn't that correct, sir?

14 A Probably. I don't remember. I don't recall.

15 Q And SAW made the decision that they would rather
16 not have the track mobile operating on its property by one
17 of your employees; is that right?

18 A Yes, sir.

19 Q And your employee was not a railroad person. It
20 was a person who ran the track mobile; is that correct?

21 A Right.

22 Q And that was the cause of the problem. That was
23 the first cause of the problem; wasn't it, Mr. Lacey?

24 A That was when we went to his office; yes, sir.

25 Q All right, sir. And when you went to the STB, you

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1 asked the STB to allow you to run that track mobile, and
2 they said "no," didn't they?

3 A They -- I don't recall what they said, but it is
4 in the pleadings. But I don't know how to answer the
5 question, because I don't recall.

6 Q I have got a copy of the Order here.

7 A Okay. That is fine.

8 Q Would you agree with me that you had requested for
9 the STB to allow you to run that track mobile, and the STB
10 said "no"?

11 A Okay. That is fine. I mean, I don't recall what
12 the STB said on that occasion, but, yes.

13 Q All right. Now, are you here by subpoena?

14 A No.

15 Q Are you here by agreement?

16 A Yes.

17 Q All right, sir. Now, in the STB complaint that
18 you made, the STB, in their Order, really talked about a
19 lack of service for six days from November 22nd of '05
20 through November 28th of '05. Do you remember that?

21 A Yes.

22 Q And do you remember that South Plains made the
23 assertion that there was an equipment breakdown and a
24 locomotive breakdown during that period of time; do you
25 recall that?

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1 A Yes.

2 Q And do you recall, also, that South Plains had
3 said that there was a problem with cars, because South
4 Plains was not receiving all of the cars as quickly from
5 BNSF as you were demanding them?

6 A We had heard that; yes.

7 Q All right. And you understand that prior to the
8 fall of 2005, South Plains stored a number of cars on its
9 track. So, when Pyco would need a car, you could get a car
10 fairly quickly; is that right?

11 A Yes.

12 Q And then, starting in November, it was more
13 difficult for Pyco to get cars, because the cars weren't in
14 the yard; is that correct?

15 A I don't recall the reason why, but, yes.

16 Q All right. Well, are you aware that prior to
17 August of 2005, that South Plains and BNSF had an agreement
18 where BNSF could send out extra boxcars, stored there, and,
19 if necessary, they could be used by Pyco?

20 A I wasn't involved in those agreements, but that
21 was what I was told.

22 Q All right, sir. And were you aware that Mr. Eddie
23 Hale, sitting right back here, in August of '05, by writing
24 a letter to Mr. Wisener, attempted to cancel that agreement,
25 so that boxcars would no longer be stored on the SAW; did

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1 you know that?

2 A I didn't know that.

3 Q And did you know that from the time of
4 September -- it took about the rest of September, October,
5 and some of November for the cars that were stored there to
6 be used up; did you know that?

7 A No.

8 Q All right, sir. Would you agree with me that if
9 cars were being stored on the South Plains tracks through
10 November and December of 2005, if the cars were there, then
11 they would be more readily available for use by Pyco?

12 A I assume so; yes.

13 Q And would you also agree with me that if South
14 Plains could not get the cars, because they were not stored
15 there, or the BNSF did not deliver them, the cars,
16 obviously, they cannot deliver the cars to you?

17 A I guess so; yes.

18 Q And you understand that South Plains gets paid by
19 interchanging a load of cars; is that correct?

20 A Yes.

21 Q So it is in their interest to interchange as many
22 cars as they can, to all of their customers, because they
23 make more money; isn't that a fair statement?

24 A It is a fair statement.

25 Q Now, what was your track capacity? How many cars

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1 could you hold in November and December of 2005?

2 A I think, inside the plant, it was 11 to 13. I
3 think 13 was the maximum.

4 Q In 2006, did you build more track inside of your
5 plant?

6 A Yes.

7 Q And about how much more track did you build?

8 A I don't know. We probably could store another 20
9 cars, maybe. I don't know how much storage.

10 Q And that decision was made because you had --
11 after 2005, the big year, you wanted to increase your track
12 capacity, so you could load cars quicker; is that correct?

13 A It was made because we were told we weren't going
14 to -- we were going to have to take care of ourselves, so we
15 built the track.

16 Q Well, do you -- is that a beneficial -- is it
17 beneficial for Pyco to have as much capacity for loading and
18 unloading as they can?

19 A It is beneficial to have more. We have done it
20 the way that we were doing it for the past 20 or 30 years,
21 so --

22 Q 2005 was a huge year, wasn't it?

23 A 2004 was also a huge year.

24 Q Yes, sir. And if you had that track back then, it
25 would have helped you, as far as your timing, on loading and

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1 unloading; would it not have, sir?

2 A It could have; yes.

3 Q Well, it could have? It probably would have,
4 wouldn't it?

5 A Well, we loaded as many cars without that track as
6 we did with it. So, yes, it was a good addition, but it
7 didn't help us load any more cars.

8 Q You don't have any plans to take that track out,
9 do you?

10 A Not at this point.

11 Q All right, sir. Do you recall making an
12 arrangement with BNSF for the shipment of a number of WS-4
13 cars to Lubbock?

14 A I don't know what a WS-4 car is.

15 Q Do you recall making any arrangement for cars
16 directly with BNSF?

17 A No. I don't know.

18 Q Do you recall anyone in your company making a
19 direct arrangement with BNSF to bring out a number of cars?

20 A Not anybody with our company, I don't believe.

21 Q Do you recall personally having any involvement in
22 that?

23 A I don't know what you are talking about,
24 truthfully. I need some help here.

25 Q Okay. Well, I am sorry. I said, "WS-4 cars."

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1 Let's call them "wood chip cars." Are you familiar with
2 wood chip cars?

3 A Yes, uh-huh.

4 Q Okay. The same question there; did you, meaning
5 Pyco, reach an agreement with BNSF where a number of wood
6 chip cars would be sent out here?

7 A We did not. The customer did; our customer did.
8 We did not.

9 Q Who is your customer?

10 A Penny Newman Green.

11 Q Did Penny Newman check with SAW before that
12 agreement was made?

13 A We talked to the SAW about being able to load the
14 cars before that agreement was made.

15 Q Did you know all of those cars were going to be
16 stored on the tracks of SAW?

17 A They were supposed to be going back and forth, and
18 that is -- that is the way it always happens. It always
19 gets stuck one place or the other, either here or there.

20 Q So you knew that there was going to be some
21 storage; is that correct?

22 A No, sir, I didn't know there was going to be
23 storage.

24 Q But you know, as it turned out, many of those cars
25 were stored on the tracks of South Plains at no charge; is

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1 that correct?

2 A Yes, sir.

3 Q How many cars is Pyco shipping right out of plant
4 one?

5 A I don't know for sure. Five to seven a day. I
6 don't know.

7 Q What about plant two?

8 A Plant two is not operating at this time.

9 Q Now, prior to the time that you filed the STB
10 proceeding, you conferred with BNSF; did you not?

11 A I did what?

12 Q You conferred -- you talked with BNSF?

13 A We have talked; yes.

14 Q You talked before you filed the STB proceeding; is
15 that correct?

16 A Yes.

17 Q And you advised them that you were going to file
18 that; is that correct?

19 A I think everybody was advised that we were going
20 to file that. I don't know if it was directly just with
21 those guys.

22 Q Well, I am talking about between Pyco and BNSF.
23 Were you involved in conversations before you filed the
24 proceedings with BNSF personnel?

25 A Yeah, probably so.

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1 Q They didn't discourage you from filing that STB
2 action, did they?

3 A No, because we didn't ask them.

4 Q In fact, they encouraged you to file it, didn't
5 they?

6 A They did not discourage us.

7 Q Well, my question is: They encouraged you, didn't
8 they?

9 A Not exactly, but they -- we did that on our own.
10 We wanted to do it. We told everybody that we were going to
11 do it. We told Mr. Wisener that we were going to do it. We
12 told everybody that it was going to be filed.

13 Q Before you did it, you conferred with BNSF, and
14 they certainly didn't have any objections?

15 A They did not have any objections.

16 Q Do you understand that BNSF has intervened in that
17 proceeding in front of the STB?

18 A Yes, sir.

19 Q And do you understand that they are saying that,
20 under the Asset Sale Agreement, they have a first right of
21 refusal for that railroad, should the STB make some Order
22 regarding it?

23 A Yes.

24 Q And have you talked with the BNSF with regard to
25 what would happen if the STB orders that railroad to go to

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1 Pyco; what would happen with BSNF's contract?

2 MR. HERRMANN: I am going to again object as
3 to relevance, Your Honor. I think that we are pretty far
4 afield.

5 THE COURT: Sustained.

6 Q (By Mr. Gorsuch:) Okay. Mr. Lacey, how many tank
7 cars does Pyco have leased?

8 A I am not sure; somewhere around 120.

9 Q And where are those cars located right now?

10 A Some are across the country; some are on 9200;
11 some are in the yard behind the WTL trackage.

12 Q And some of them are stored on the tracks of South
13 Plains; is that correct?

14 A They are stored on 9200, which I don't know if
15 that is South Plains. I don't know whose they are. But the
16 ones behind our facility, which the WTL has --

17 Q Well, assuming that the SAW owns 9200, they are
18 stored on SAW's property, aren't they?

19 A I am not -- I haven't been told that they own that
20 track.

21 Q Okay. If I were to tell you that they did own it,
22 would you have any doubt about that?

23 A Uh-huh, yes.

24 Q Now, in these STB proceedings that you have filed,
25 Pyco initially filed for temporary rail service in December

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1 of 2005; is that correct?

2 A I believe we filed it in November, but --

3 Q And the board, in January, granted that?

4 A Yes.

5 Q And so another railroad is coming in, using the
6 tracks of South Plains Switching, and serving you; is that
7 correct?

8 A Right.

9 Q And you have testified here today, under oath,
10 that you are satisfied with that service?

11 A Yes.

12 Q And you have also executed one or more affidavits
13 in front of the STB saying that you are satisfied with that
14 service?

15 A Yes.

16 Q Notwithstanding that, in May of 2006, Pyco filed a
17 feeder line application; is that correct?

18 A Right.

19 Q And the --

20 MR. HERRMANN: Your Honor, I am going to
21 object on relevance. It has nothing to do with the issue of
22 the quality of service that the SAW was providing to Pyco in
23 late 2005.

24 THE COURT: How is that relevant to this
25 proceeding?

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1 MR. GORSUCH: Your Honor, I think it shows
2 their motivation. We have gotten into the start of the STB
3 proceedings, and with this one question, I am going to
4 finish as to what they are asking, what they want in those
5 proceedings, because I think it gives the jury the complete
6 question.

7 I think it goes to credibility here, as to
8 what they want to do with the STB, and why they are here
9 testifying.

10 THE COURT: I will allow you two additional
11 questions.

12 MR. GORSUCH: Okay. Thank you, Your Honor. I
13 will try to do it in one.

14 Q (By Mr. Gorsuch:) Mr. Lacey, let me ask you this:
15 You filed the application for temporary rail service. You
16 have testified here, and in front of the STB, that you are
17 satisfied with that rail service.

18 Notwithstanding that, Pyco filed a feeder line
19 application in which you are asking the STB to take that
20 railroad from Mrs. Wisener and let you have it. That is the
21 first question. Isn't that correct?

22 A I don't believe it is to let us have it, no, sir,
23 but to let us buy it.

24 Q It would be at a price that would be set by the
25 STB?

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1 A Yes, sir.

2 MR. GORSUCH: Could I have one more, Your
3 Honor?

4 THE COURT: No.

5 Q (By Mr. Gorsuch:) Do you know the amount of
6 business that South Plains was doing in 1999, insofar as the
7 number of cars?

8 A I don't know.

9 Q And you understand, also, Mr. Lacey that if South
10 Plains were to switch you every day, that is, a number of
11 cars, say, it would be 14 or 26, that those cars might wait
12 in the BNSF yard for a train to take them out, and they may
13 wait one day, two days, or longer than that, before that
14 train leaves Lubbock?

15 A It could; yeah.

16 Q And if that were the case, that wouldn't be the
17 fault of South Plains, would it?

18 A It depends on whose yard it is in. That is --

19 Q Assuming it is in the BNSF yard?

20 A I guess no.

21 Q Do you know if your application covers the tracks
22 that are in Burris, Texas? And the application I am talking
23 about is the feeder line application.

24 A I don't recall. Whatever -- if he owns --
25 whatever that Larry Wisener owned is what the application

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1 was for. So I don't know.

2 Q If that application is granted, do you plan to
3 serve the customer at Burris, Texas?

4 A If there is a customer, yes, we plan to serve
5 them.

6 Q If you can, do you wish to make a profit off of
7 that?

8 A Yes.

9 Q Mr. Lacey, I don't know if you know this. Do you
10 understand that Mrs. Wisener owns all of the stock of South
11 Plains Switching, rather than Mr. Wisener?

12 A Yes, I do.

13 Q So that railroad will be taken actually away from
14 Mrs. Wisener, if the STB grants your request?

15 A It is taken away from the SAW Railroad. If she
16 owns it, that is who it is then.

17 MR. GORSUCH: Pass the witness.

18 MR. HERRMANN: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. HERRMANN OF MR. LACEY:

22 Q Well, before I do that, let me ask this question:
23 Mr. Gorsuch asked you a series of questions about the
24 positions that South Plains took before the STB in the
25 proceedings.

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1 My question to you is this: The STB rejected
2 those arguments; isn't that correct?

3 A Yes.

4 MR. HERRMANN: May I approach now, Your Honor?

5 THE COURT: Yes, sir.

6 Q (By Mr. Herrmann:) Let me show you a document
7 that has been marked as Plaintiff's Exhibit 48.

8 Do you recognize that to be the Order of the
9 Surface Transportation Board that was issued on January 25,
10 2006, in connection with your request for alternate service?

11 A Yes.

12 Q You have seen that and read that many, many, many
13 times; is that correct?

14 A Uh-huh, yes.

15 MR. HERRMANN: Your Honor, we will offer
16 Plaintiff's Exhibit 48.

17 MR. GORSUCH: Your Honor, the Order is many
18 pages. It covers a number of different areas not covered
19 here, and it is simply not relevant. We think much of it is
20 not relevant.

21 We think the document has not been properly
22 authenticated. I think that the witness has answered the
23 pertinent questions from both attorneys with regard to the
24 positions in front of the board, and we think this is
25 redundant and irrelevant.

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1 THE COURT: Okay.

2 MR. HERRMANN: Your Honor?

3 THE COURT: Yes, sir.

4 MR. HERRMANN: Let me, in response, say that
5 this is the document that Mr. Gorsuch was questioning the
6 witness about, and I think that makes the document perfectly
7 relevant, and the parts that I intend to go into will deal
8 directly with the areas in contention that Mr. Gorsuch had.

9 THE COURT: Okay. Let me allow you to do
10 that before I make the ultimate decision about the
11 admissibility of the document itself.

12 MR. HERRMANN: Thank you, Your Honor.

13 MR. GORSUCH: Your Honor, may we have a
14 running objection as to questions regarding the document
15 from Mr. Herrmann that were not already covered by either
16 his direct or my cross examination?

17 THE COURT: Let me make sure I understand
18 your objection. State it for me again, please.

19 MR. GORSUCH: I would like to have a running
20 objection as to anything on the document, other than what
21 Mr. Herrmann has already asked, or other than what I have
22 already asked the witness.

23 THE COURT: And what is the basis of the
24 objection?

25 MR. GORSUCH: The basis would be relevance,

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1 Your Honor.

2 THE COURT: Okay. It is overruled, and
3 you may have a running objection. I will return that
4 back to you, sir.

5 Q (By Mr. Herrmann:) Mr. Lacey, before the STB,
6 in the proceedings that led up to the Order of January 26,
7 the SAW asserted that all you really needed to do was
8 to ask for additional -- an additional switching or a
9 second switching service at your plant; isn't that
10 correct?

11 A That is correct.

12 Q And, indeed, at the pertinent time, in October
13 and November of 2005, Pyco had asked that the SAW provide
14 additional switching; isn't that correct?

15 A Yes, sir.

16 MR. GORSUCH: Your Honor, I would object
17 to his leading and suggesting the answer to the witness.

18 THE COURT: Sustained.

19 MR. GORSUCH: I would ask the jury to
20 disregard the question and the answer.

21 THE COURT: Denied.

22 Q (By Mr. Herrmann:) Do you recall whether such a
23 request was made by Pyco prior to these proceedings with the
24 STB?

25 A Yes.

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1 Q And isn't it correct that the SAW responded that
2 it lacked sufficient personnel to provide a second daily
3 switch?

4 A Yes, sir.

5 Q And do you recall that the STB concluded, in its
6 Order, that that was the circumstance?

7 A Yes.

8 Q Do you recall that in the proceedings before the
9 STB, the SAW claimed that it could not provide enough
10 boxcars because of BNSF's decision in August, 2005, not to
11 store boxcars on the SAW's lines for free?

12 A Yes, sir.

13 Q And do you recall that the STB rejected that
14 explanation and determined it was not true?

15 A Yes.

16 Q Do you recall that the SAW claimed before the
17 STB that it couldn't deliver the boxcars because there was
18 a safety issue associated with it?

19 A I don't recall that one, sir.

20 Q Do you recall that the SAW asserted before the
21 STB that you should have come out and visited with them
22 regarding these issues?

23 A Yes.

24 Q And what was Pyco's response to that?

25 A We tried to visit. We had many a visit with him,

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1 but it just -- it was -- it was not a visit. It was a
2 confrontation most of the time.

3 Q Was Mr. Wisener cooperative in any respect?

4 A No.

5 Q Was he threatening?

6 A Yes, he was.

7 Q Was he profane?

8 A Yes, sir.

9 Q Was he bullying?

10 A Yes, sir.

11 Q Did Mr. Wisener actually threaten that he was
12 going to make your business so expensive that you couldn't
13 do business in Lubbock?

14 MR. GORSUCH: I object. He is suggesting the
15 answer. Mr. Herrmann is testifying for him.

16 THE COURT: I will sustain on leading.

17 Q (By Mr. Herrmann:) Did Mr. Wisener actually ever
18 threaten to drive up the cost of your business?

19 A Yes. He told us it would be expensive to do
20 business in Lubbock, Texas.

21 Q Did Mr. Wisener ever threaten to surcharge you to
22 conduct your business?

23 A He did surcharge us; yes.

24 Q Did the STB conclude, in its Order, that based
25 upon all of the circumstances presented, that it was the

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1 STB's opinion that the SAW was unlikely to restore adequate
2 rail services to Pyco?

3 A Yes.

4 Q And as you understood the Order, was that a reason
5 that the STB concluded that you were entitled to alternate
6 rail service?

7 A Yes, sir.

8 MR. HERRMANN: That is all the questions I
9 have.

10 I will reoffer Exhibit 48, Your Honor.

11 MR. GORSUCH: Same objection, Your Honor.

12 THE COURT: Let me see the document again,
13 please, sir.

14 Okay. Mr. Gorsuch, what is your objection?

15 MR. GORSUCH: It is irrelevant, and the
16 document is not properly authenticated.

17 THE COURT: All right. I am going to
18 sustain the objection. P-48 is denied.

19 MR. HERRMANN: No further questions of this
20 witness, Your Honor.

21 THE COURT: Mr. Gorsuch?

22 MR. GORSUCH: Yes, Your Honor.

23 RE CROSS EXAMINATION

24 BY MR. GORSUCH OF MR. LACEY:

25 Q Mr. Lacey, do you understand that South Plains

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1 had the right to surcharge its customers, and that right
2 was granted by BNSF?

3 MR. HERRMANN: I object; speculation; calls
4 for a question of law.

5 THE COURT: I will allow it.

6 Q (By Mr. Gorsuch:) Go ahead, Mr. Lacey.

7 A We received a tariff with that on it; yes,
8 sir.

9 Q Do you understand that BNSF allowed South Plains
10 to charge surcharge?

11 A I guess. I guess that is how it works; yes,
12 sir.

13 Q Do you understand that South Plains has a
14 common carrier obligation to service its customers on
15 the line, including Pyco, and all the rest of the
16 customers?

17 A Right.

18 Q Mr. Lacey, who is this sitting back here?

19 A It is Gary McLaurin.

20 Q Is he the attorney for Pyco?

21 A Yes.

22 MR. GORSUCH: Pass the witness.

23 MR. HERRMANN: No further questions, Your
24 Honor?

25 THE COURT: Sir, you may step down.

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1 MR. HERRMANN: May Mr. Lacey be excused?

2 THE COURT: Any objection to him being
3 excused?

4 MR. GORSUCH: We have no objection, Your
5 Honor.

6 THE COURT: You are excused to go about your
7 affairs.

8 (Testimony of Mr. Lacey concluded.)

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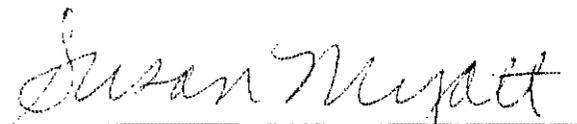
STATE OF TEXAS)
COUNTY OF LUBBOCK)

REPORTER'S CERTIFICATE

I, Susan Myatt, the undersigned Certified Court Reporter for the States of Texas and New Mexico and Registered Professional Reporter, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested by Counsel for the parties to be included in the Reporter's Record in the above styled and numbered Cause, all of which occurred at the time and date and place indicated and were reported by me.

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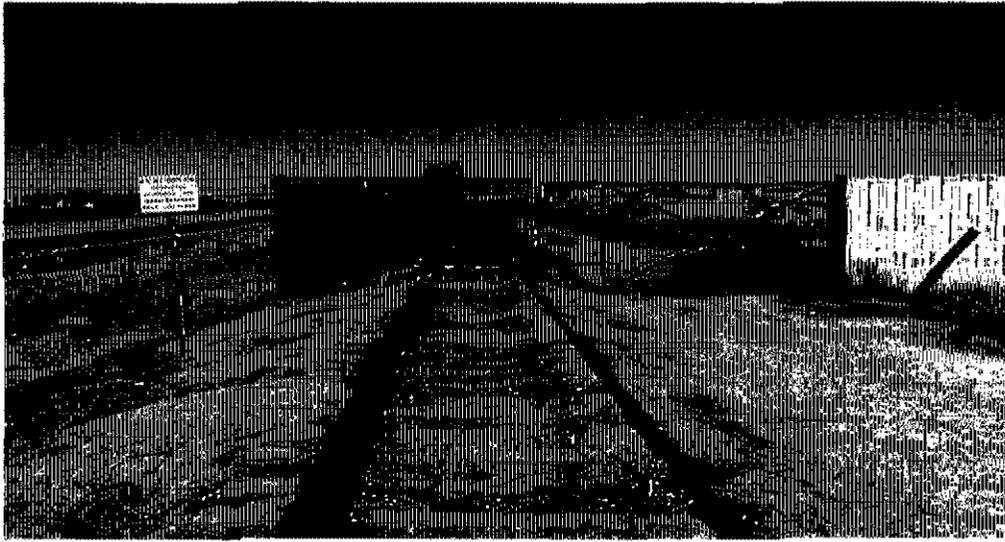
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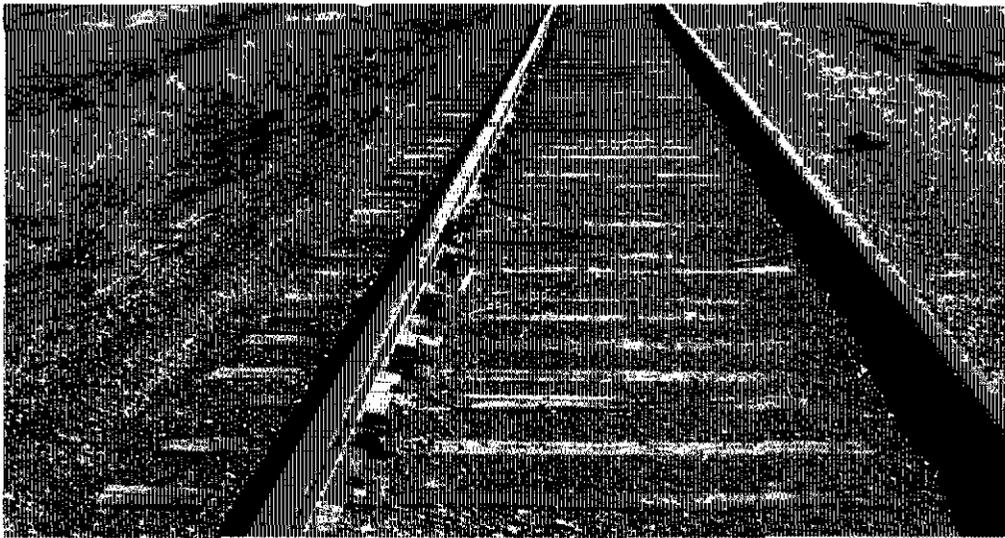
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APPENDIX 2



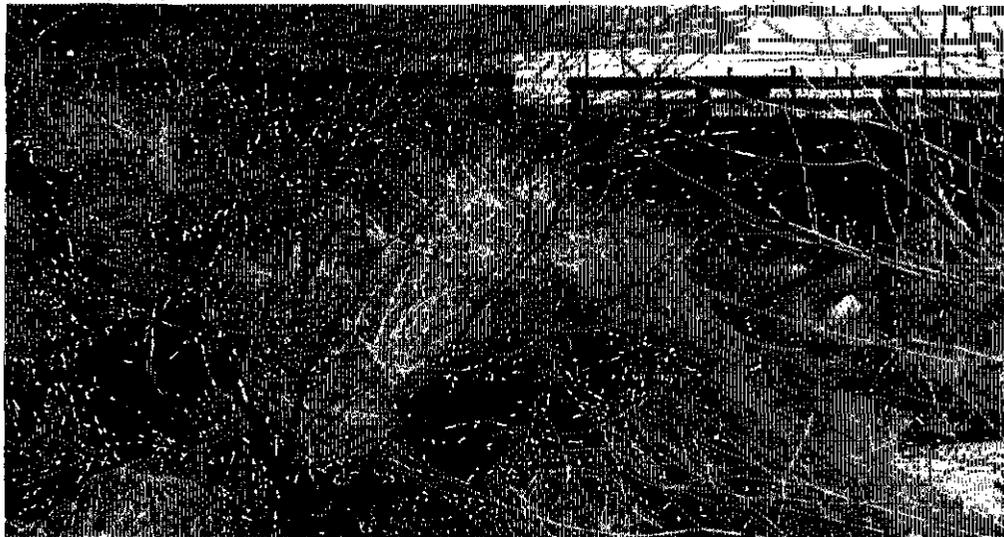
SAW tracks leading to OE Floyd facility
(South Track East Gate - looking West)



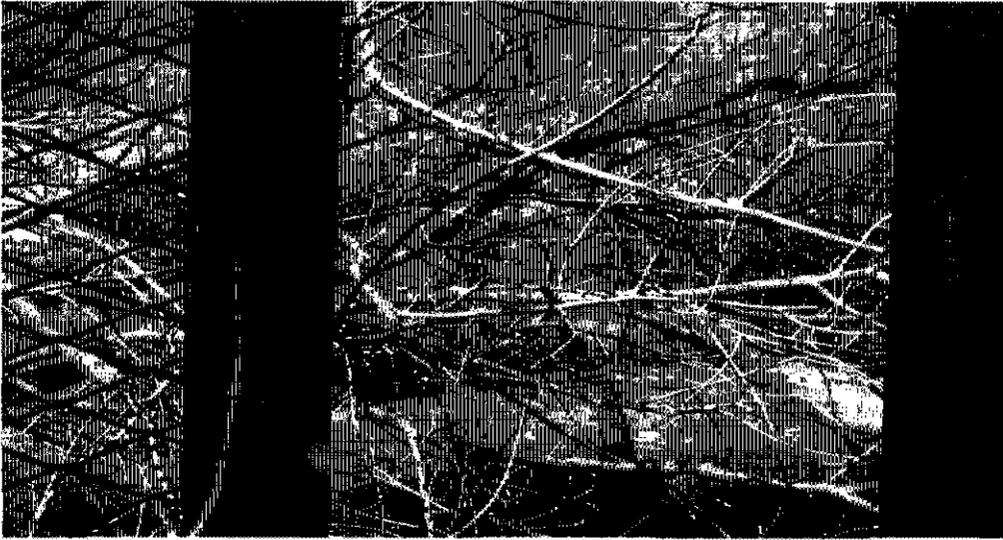
SAW Track #380 - #112 rail
Looking east adjacent to OE Floyd Facility
(one of the tracks PYCO and Banks contend should be replaced)



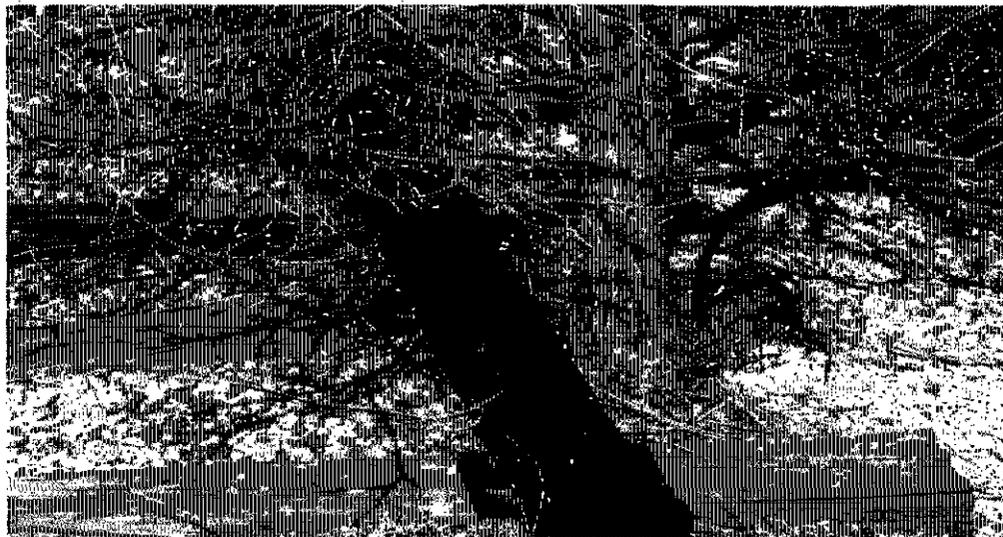
SAW Track #380
Looking West adjacent to OE Floyd Facility
(one of the tracks PYCO/Banks contends should be removed & replaced)



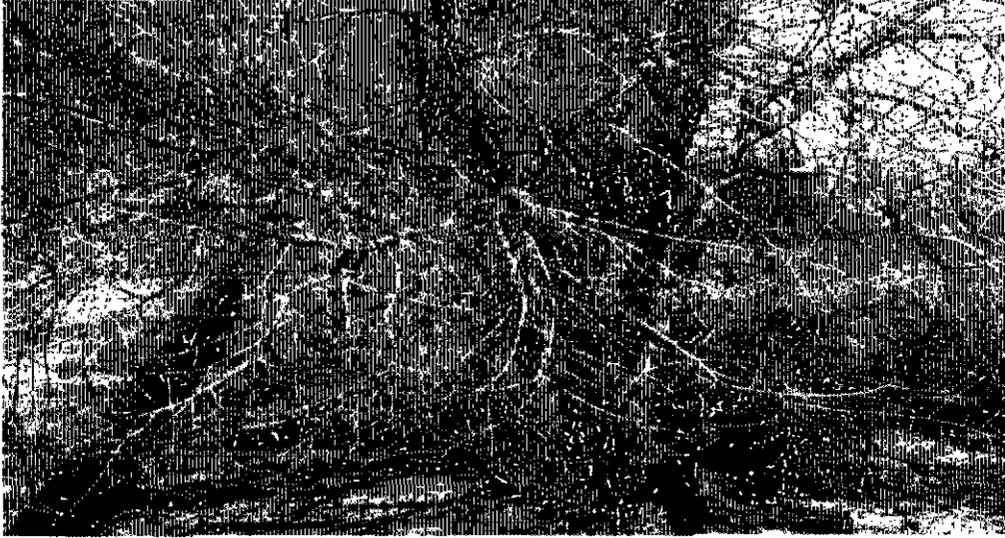
OE Floyd
Outside gates on North Track



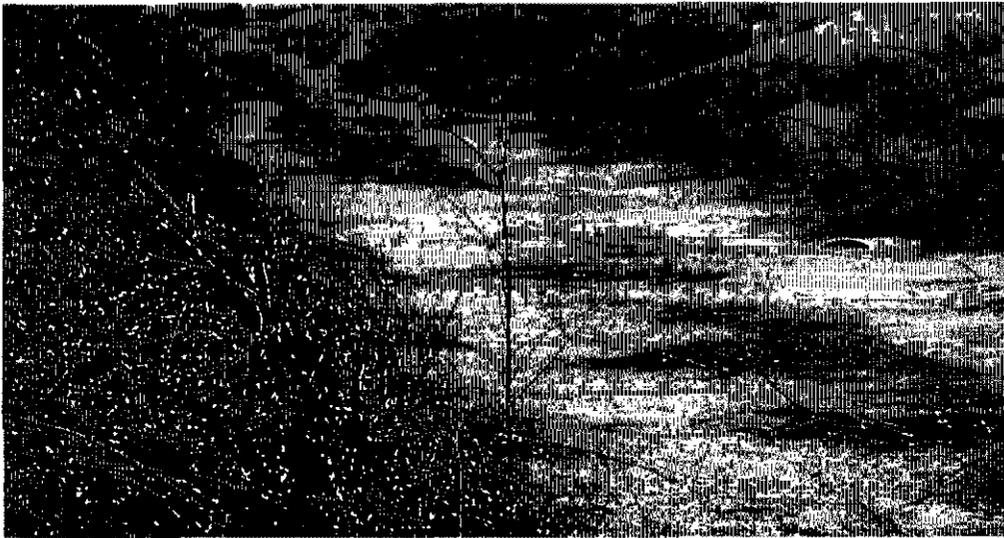
OE Floyd
Look through gates on North Track



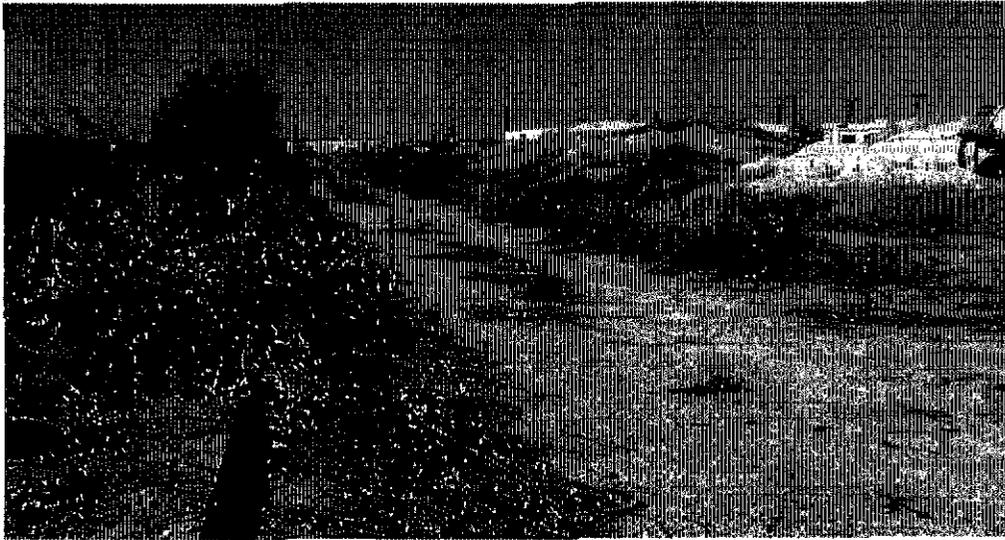
OE Floyd - North Track
Looking West



OE Floyd - North Track
Looking West



OE Floyd - South Track
Looking West



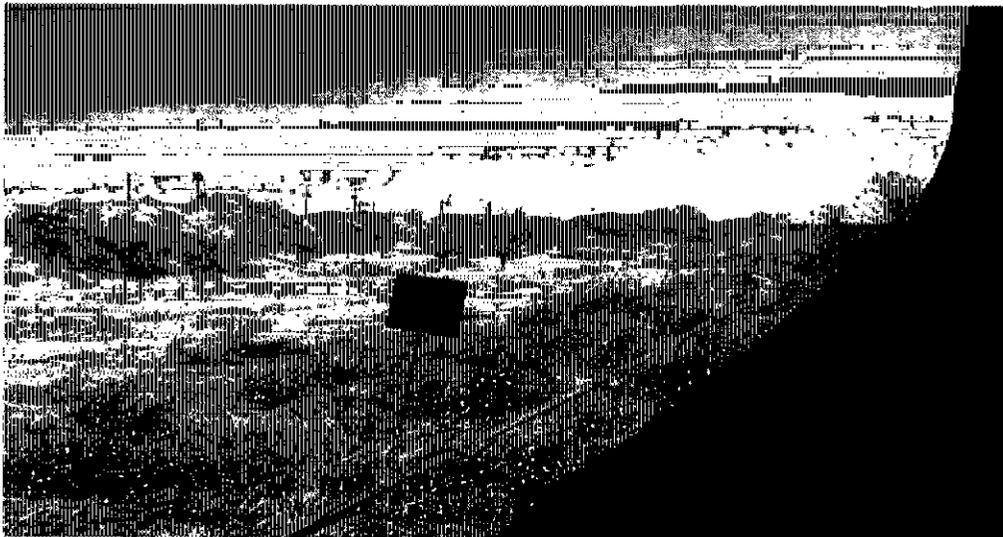
OE Floyd - South Track
Looking West



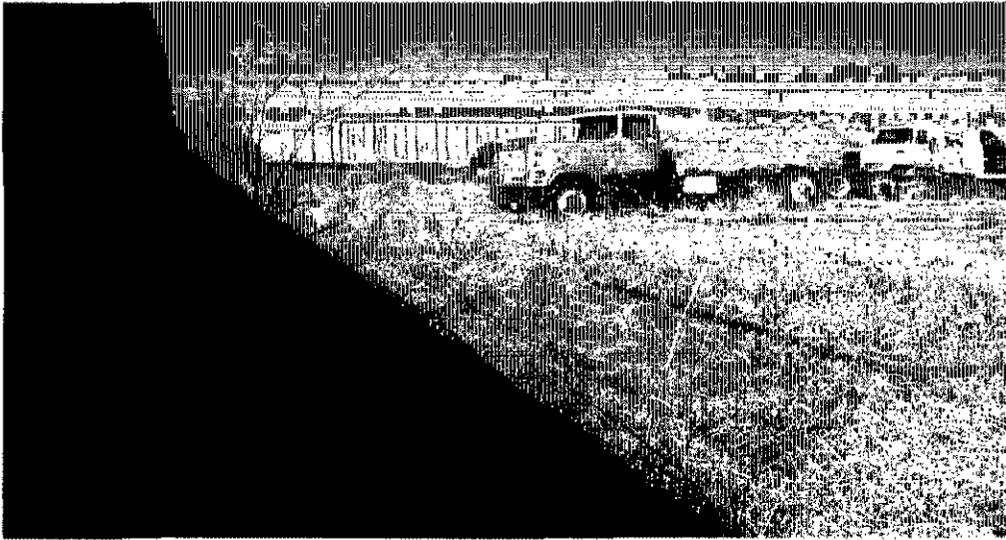
OE Floyd - South Track
Looking West



OE Floyd - South Track
Looking West



OE Floyd - South Track
Looking East



OE Floyd - South Track
Looking West



OE Floyd - South Track
Looking West

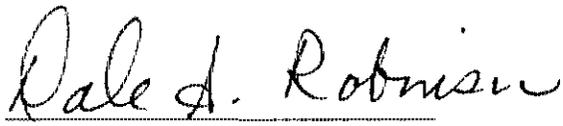
VERIFICATION

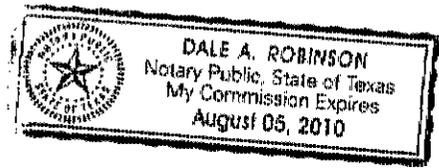
STATE OF TEXAS)
) SS:
COUNTY OF LUBBOCK)

SHAD WISENER, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.


SHAD WISENER

SUBSCRIBED AND SWORN to
Before me this 9th day
of March, 2007.


Notary Public



My Commission Expires: *August 05, 2010*

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2007, I served the foregoing document, Petition For Leave To File The Reply Verified Statement Of Shad Wisener In Reply To The Reply Of PYCO Industries, Inc. Filed March 7, 2007, by UPS overnight mail, on the following:

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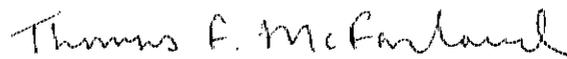
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