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March 3, 2008

By e-filing

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Finance Docket No. 34890 *PYCO Industries, Inc. - Feeder Line Application - South Plains Switching, Ltd. Co.*

Dear Ms. Quinlan:

Hereby transmitted is a Reply In Opposition To Motion For Enforcement Or Clarification, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

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

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC -- FLEDER LINE APPLICATION -- SOUTH PLAINS SWITCHING, LTD. CO.	)))	FINANCE DOCKET NO 34890

REPLY IN OPPOSITION TO MOTION FOR ENFORCEMENT OR CLARIFICATION

SOUTH PLAINS SWITCHING, LTD CO
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Replicant

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DUE DATE: March 3, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC -- FEEDER LINE APPLICATION -- SOUTH PLAINS SWITCHING, LTD CO.	)))	FINANCE DOCKET NO 34890

REPLY IN OPPOSITION TO MOTION FOR ENFORCEMENT OR CLARIFICATION

Pursuant to 49 C F R § 1104 13(a), SOUTH PLAINS SWITCHING, LTD CO (SAW) hereby replies in opposition to a Motion for Enforcement or Clarification (Motion) filed by PYCO Industries, Inc (PYCO) on February 11, 2008

The Board may lawfully clarify its decision served August 31, 2007 (August 31 Decision), but it cannot lawfully enforce that decision Pursuant to 49 U S C § 11704(a), any request for enforcement is required to be filed in a United States District Court The statutes cited at pages 2-3 of the Motion do not authorize the Board to enforce its own decision

SAW respectfully requests expedited disposition of the Motion Since November 9, 2007, the date on which the feeder line sale was closed, BNSF has been making payments of $75 per car on traffic to or from Burris to PYCO, rather than to SAW, on the ground that the Burris tracks were included in the feeder line sale As we demonstrate in this Reply, the Burris tracks were explicitly excluded from the feeder line sale Thus, those payments should have been made to SAW, and should be made to SAW going forward Loss of the revenue from those payments has been a significant hardship on SAW Expedited disposition is required so that those payments (past and future) will be made to SAW without additional delay

I. CLARIFICATION OF THE AUGUST 31 DECISION IS NOT REQUIRED BECAUSE SAW HAS RELINQUISHED ITS CLAIM THAT PYCO CANNOT USE SWITCH 310

SAW is in litigation with BNSF in a Texas Court regarding ownership of all main line switches in the area previously served by SAW. That is the litigation that is referred to in PYCO's "Supplemental Memorandum" filed on February 28, 2008. Those switches were conveyed by BNSF to SAW by Bill of Sale in 1999. (BNSF has removed a number of those switches.) The switches conveyed by BNSF to SAW are as follows:

Switch To	Location
Track 310	Lubbock
Track 320 (east and west)	Lubbock
Track 330	Lubbock
Track 340 (east and west)	Lubbock
Track 9298 *(replaced a diamond)*	Lubbock

All of those switches are state-of-the-art 136-pound electronically-controlled power switches able to be operated by a train dispatcher. Unless and until SAW is judicially declared to be the owner of those switches, SAW is not in a position to challenge use of those switches by PYCO or BNSF, nor to seek compensation for such use.

II. CLARIFICATION OF THE AUGUST 31 DECISION IS NOT REQUIRED BECAUSE THAT DECISION CLEARLY PROVIDES THAT TRACKAGE AT BURRIS, TEXAS IS NOT INCLUDED IN THE SALE

Burris is a station that is separate from the station of Lubbock, Texas. Burris is listed in the Official Railway Station Index as Station No. 42280 (see The Official Railway Guide at E125). Lubbock is listed in that Index as Station No. 42200. (*Id.* at E129)

The tracks at Burris are not connected to the tracks at Lubbock that were required to be sold. The tracks at Burris are separated from those Lubbock tracks by BNSF's main line tracks. No shipper at Burris complained about inadequate rail service.

In the August 31 Decision, the Board did not purport to require SAW to sell the tracks at Burris. Had the Board done so, SAW would have sought judicial review of that action. If the Board were to attempt to do so now under the guise of a clarification, SAW would take that action to Court.

The clearest evidence that SAW was not ordered to sell the Burris tracks is at page 35 of the August 31 Decision, *viz.* (emphasis added):

> . . . Neither PYCO nor KJRY has sought any trackage rights over SAW (which would retain only physically separate small lengths of track at Slaton and Burris).

That cannot mean anything other than that SAW would retain the tracks at Burris, i.e., that the sale would not include the Burris trackage.

The remainder of the August 31 Decision bolsters that conclusion. Thus, on the very first page of that decision, the Board ordered SAW to "sell its rail lines in Lubbock, TX" (not its Burris tracks). At page 2 of the decision, the Board described PYCO's feeder line application as directed at SAW's "Lubbock rail lines". At the same page, SAW's rail lines were described as located "in an industrial area of Lubbock".

The remainder of the August 31 Decision is replete with references to SAW's "Lubbock lines" as the subject matter of the feeder line proceeding. (at 3, 4, 5, 8, 9, 12, 13, 15, 17, 18, 33, 34, 35, 36, and 37)

In view of the overwhelming evidence in the August 31 Decision itself that SAW was required to sell "its rail lines in Lubbock, TX," and that SAW would "retain track at Burris", TX, any purported "clarification" issued more than six months later that the requirement to sell also encompassed trackage at the physically-separated, independent station of Burris, Texas would be clearly unlawful

In view of that evidence, the statement of SAW's counsel cited in PYCO (Motion, Attach VI), that SAW would convey to PYCO that which SAW received from BNSF, must be understood to refer to the rail lines in Lubbock that SAW had been ordered to sell by virtue of the August 31 Decision SAW's counsel was not referring to SAW rail lines that SAW was not ordered to sell, i e , the rail lines at Burris that were acknowledged by the Board to have been retained by SAW

At page 10 of its Motion, PYCO claims that the revenue stream from Burris is essential for the economic operation of the Lubbock rail assets This Board in its August 31 Decision found that the rail lines' liquidation value exceeded their value as a going concern It is SAW that is suffering unfairly from loss of the Burris revenue stream

In sum, the August 31 Decision is required to remain undisturbed notwithstanding any confusion caused by SAW's inventory of trackage The Decision does not encompass the Burris trackage because the Board expressly acknowledged that SAW retains that trackage even though it was listed in SAW's inventory

III. CLARIFICATION OF THE AUGUST 31 DECISION IS NOT REQUIRED BECAUSE IT IS CLEAR THAT SAW CONVEYED THE SEGMENT OF TRACK 21 THAT WAS PART OF SAW'S LUBBOCK LINES

PYCO has its facts all wrong in the portion of its Motion relating to Track 21. PYCO describes Track 21 as "a 780 foot long track . . . which goes north directly out of the former SAW (now PYCO) yard." (Motion at 13). PYCO alleges that "the trackage (in Track 21) useful for rail purposes lies between 19th and 23rd Streets, immediately north of the rail yard and PYCO Plant No. 1 complex." (*Id.*). PYCO alleges that Track 21 is included in SAW's track inventory, and was paid for by PYCO. (*Id.*).

The correct facts in regard to Track 21 are as follows. The total length of Track 21 is approximately 3,000 feet. The southern segment of Track 21 extends 1,080 feet from the Yard near PYCO Plant 1 to the south property line of Acme Brick Company, at which point trackage owned by Acme Brick begins. That 1,080 feet of track is shaded in yellow on a station map that is Appendix EWL-1 of the attached verified statement of Edward W. Landreth.[1] That segment of Track 21 is listed in SAW's inventory of trackage. (Motion, Attach. IV). That trackage was part of SAW's Lubbock lines. As such, that trackage was required to be conveyed to PYCO. Contrary to the contention in PYCO's Motion, that trackage was conveyed to PYCO. That trackage is specifically included in SAW's deed to PYCO. PYCO owns that trackage today free from any claim by SAW, Choo-Choo, or anyone else.

The middle segment of Track 21 extends roughly 1,000 feet between 20th and 23rd Streets. That trackage is owned by Acme Brick Company. PYCO has incorrectly alleged at page 14 of its

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[1] The segment of track is shown in two parts of 780 feet and 300 feet because those parts are located in separate sections of land. That is also why those two parts are listed separately in the inventory of SAW trackage. (Motion, Attach. IV).

Motion that Acme Brick recently recorded a deed "from Choo Choo for Choo Choo's property north of 23rd Street." The fact is that the deed recently recorded by Acme Brick was a deed conveyed by South Plains Switching, Ltd. Co. to Acme Brick in 2005 that covered the segment of Track 21 south of 23rd Street to 26th Street. The middle segment of Track 21 is clearly owned by Acme Brick Company. PYCO has no legitimate claim to that segment of Track 21.

The northern segment of Track 21 extends between 19th and 23rd Streets. That is the segment of Track 21 on which PYCO recently stored railcars. That segment of Track 21 was conveyed by South Plains Switching, Ltd. Co. to Choo Choo on April 28, 2006. Choo Choo appropriately requested PYCO to remove the stored railcars from that segment of Track 21. Conveyance of that segment of Track 21 to Choo Choo occurred prior to the filing of PYCO's feeder line application on May 5, 2006. PYCO nevertheless filed a motion with the Board to invalidate that conveyance. That motion was denied in the August 31 Decision by virtue of the Board's generic denial of any pending motions not specifically discussed (at 10). While PYCO may not have relished that result, it is as clear as it can be that the August 31 Decision does not provide PYCO with any legitimate claim to ownership of the segment of Track 21 between 19th and 23rd Streets. That segment of Track 21 is legitimately owned by Choo Choo, not PYCO.

In sum, the August 31 Decision is clear that PYCO received the segment of Track 21 that it was entitled to receive, namely, the 1,080-foot segment at the southern end that was owned by SAW as part of its Lubbock lines at the time that the feeder line application was filed. The August 31 Decision is equally clear that PYCO does not have a legitimate claim to ownership of the middle segment of Track 21 that had been owned by Acme Brick Company since 2005, nor to ownership of the northern segment of Track 21 that was owned by Choo Choo Properties, Inc.

prior to filing of the feeder line application. No clarification of the August 31 Decision is required to reflect those indisputable facts.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Motion should be denied (1) for lack of jurisdiction to the extent that it seeks enforcement of the August 31 Decision, and (2) for the reasons explained herein to the extent that it seeks clarification of that decision.

Respectfully submitted,

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

Replicant

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Attorney for Replicant

DUE DATE: March 3, 2008

VERIFIED STATEMENT OF EDWARD W. LANDRETH, P.E

My name is Edward W Landreth I am a Professional Engineer. I own Landreth Engineering, L L C. which is a railroad civil engineering firm that specializes in design construction and maintenance of railroad track and structures I regularly provide estimates of net liquidation value of railroad track assets

I have been involved in railroad track inspection, maintenance and valuation for over 35 years. In September, 2006, I provided a verified statement in this proceeding in behalf of South Plains Switching, Ltd Co (SAW) My background and qualifications were set out in more detail in that statement

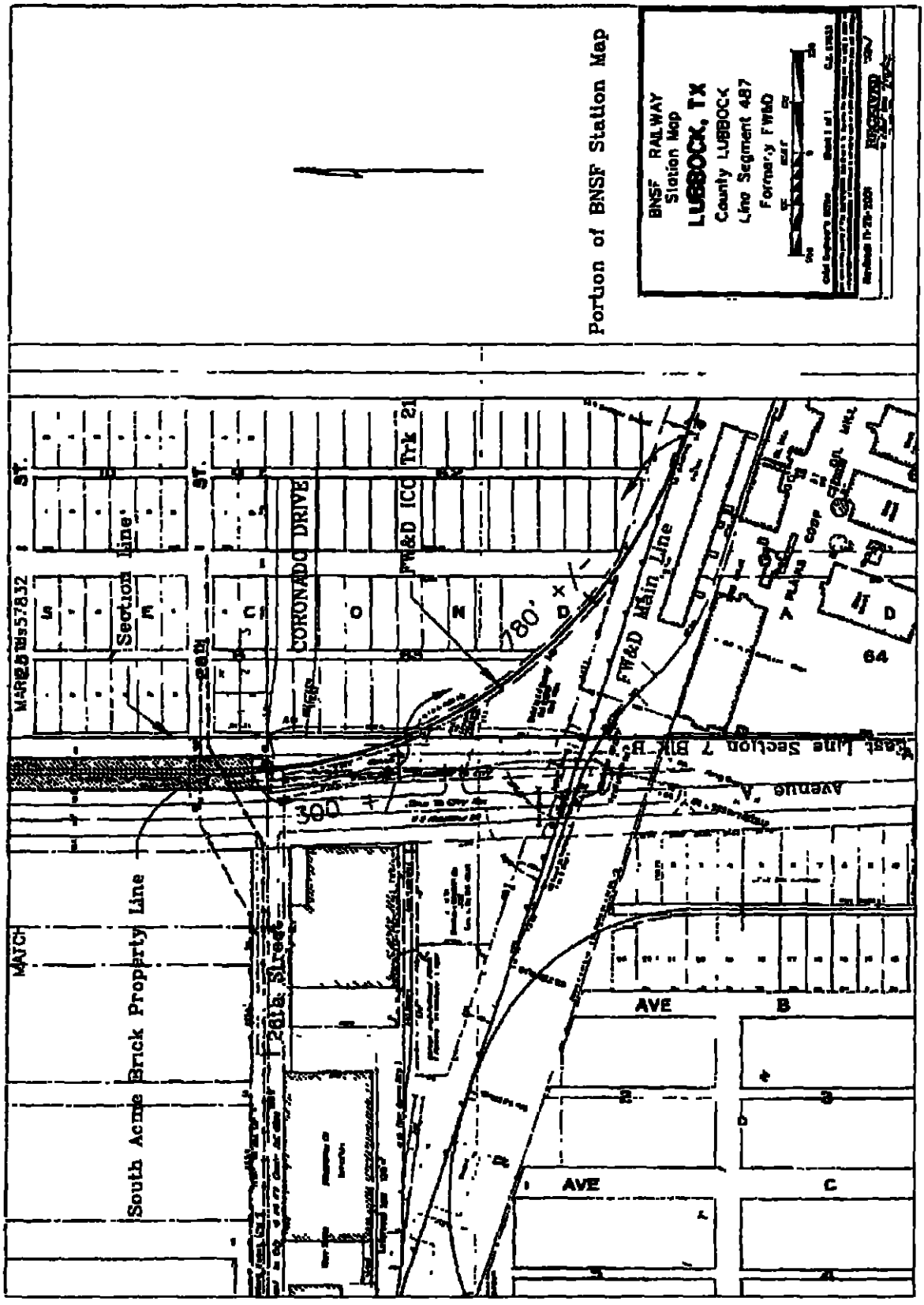
Track 21 is approximately 3,330 feet long It is sometimes referred to as the Acme Brick Lead because it can be used to provide service to Acme Brick Company. Three entities own distinct segments of Track 21

PYCO owns the southern 1,080 feet of Track 21 that extends from PYCO s Yard to the southern property line of Acme Brick Company That 1,080 feet of Track 21 is shaded in yellow on a station map that is attached to my statement as Appendix EWL-1 (A 780-foot portion and a 300-foot portion of that segment are shown separately on that Appendix because those portions are located in different sections of land) That 1,080 feet of Track 21 is shown in my inventory of SAW Trackage (780 feet and 300 feet shown separately) (PYCO Motion, Attach IV at 21) That 1,080 feet of Track 21 was included in SAW's Lubbock lines that were required to be sold to PYCO That 1,080 feet of Track 21 was conveyed to PYCO on November 9, 2007 by virtue of its inclusion in SAW's deed and Bill of Sale to PYCO on that date

Acme Brick Company owns the middle segment of Track 21 that extends roughly between 23rd Street on the north and 26th Street on the south South Plains Switching, Ltd Co conveyed that segment of Track 21 to Acme Brick Company in 2005 Acme Brick did not record that deed until recently

The northern segment of Track 21 that extends between 23rd and 19th Streets is owned by Choo Choo Properties, Inc (Choo Choo) That segment of Track 21 was conveyed to Choo Choo by South Plains Switching, Ltd Co (SAW) on April 28, 2006 That conveyance occurred before PYCO filed its feeder line application

The SAW rail lines in Lubbock that were sold to PYCO constitute a contiguous unit SAW also owns trackage at Burris, TX that is not contiguous to any of the lines in Lubbock that were sold The trackage in Burris and the trackage in Lubbock that was sold to PYCO are separated from each other by BNSF main line trackage Burris and Lubbock are separate and distinct stations Burris is listed as Station No 42280 in the Official Railway Station Index in the Official Railway Guide Lubbock is listed as Station No 42200 in that Index


Portion of BNSF Station Map
BNSF RAILWAY
Station Map
LUBBOCK, TX
County LUBBOCK
Line Segment 487
Formerly FW&D
CORONADO DRIVE
FW&D ICO Trk 21
Section Line
FW&D Main Line
East Line Section 7 Blk B
Avenue A
South Acme Brick Property Line
MATCH
AVE B
AVE C
780'
300'
64

VERIFICATION

STATE OF NEW MEXICO)
) SS:
COUNTY OF BERNALILLO)

EDWARD W LANDRETH, 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.

Edward W. Landreth
EDWARD W. LANDRETH

SUBSCRIBED AND SWORN to
before me this 29 day
of February, 2008.

Cassandra Pethtel
Notary Public

OFFICIAL SEAL
CASSANDRA PETHTEL
Notary Public
State of New Mexico
My Comm Expires 3/21/09

My Commission Expires: 3/21/09

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2008, I served the foregoing document, Reply In Partial Opposition To Motion For Enforcement Or Clarification, by e-mail and UPS overnight mail, on the following

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Thomas F. McFarland

Thomas F. McFarland