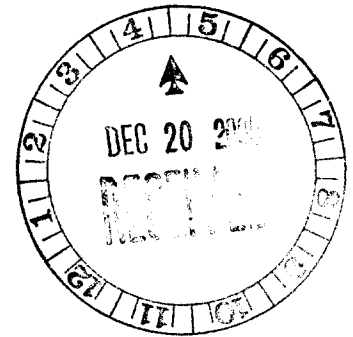


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215391

19 Dec. 2005
by Federal Express

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

Re: PYCO Industries, Inc. -- Alternative Rail Service
-- South Plains Switching, Ltd., F.D. 34802

49 C.F.R. Part 1146: expedited
relief for service inadequacies

Expedited Treatment Requested

Dear Mr. Secretary:

On behalf of PYCO Industries, Inc., enclosed please find an original and ten copies of a request for expedited relief for service inadequacies pursuant to 49 C.F.R. Part 1146 (and other related provisions). The petition arises from lack of adequate service by the incumbent carrier, South Plains Switching, Ltd., in Lubbock, TX.

I also enclose the filing fee (\$200) per STB Ex Parte No. 542 (Sub-no. 12), item (63)(i).

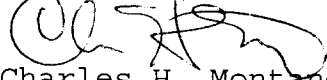
By my signature below, and as required by 49 C.F.R. 1146.1(b)(1)(iv), I certify service on this date by deposit of copies of the request with Federal Express, next business day delivery, upon the following:

- a) South Plains Switching, Ltd. (as incumbent carrier)
10917 -- E. FM 250 & E. Co. Road 78
Slaton, TX 79364
- b) Thomas McFarland, PC
208 South LaSalle St., Suite 1890
Chicago, IL 60604-1112
(counsel for SAW)

- c) John Heffner, Esq.
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
(counsel for West Texas and Lubbock, the
proposed alternative carrier)
- d) Federal Railroad Administration
1120 Vermont Avenue, NW
Washington, DC 20590

Thank you for your assistance in this matter.

Very truly,



Charles H. Montange
counsel for PYCO Industries

Encls.

cc. Gary McLaren, Esq. (w/encl.)
(for PYCO)

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34802
SOUTH PLAINS SWITCHING LTD.)

VERIFIED PETITION FOR ALTERNATIVE RAIL SERVICE
EXPEDITED RELIEF REQUESTED FOR SERVICE EMERGENCY

EXPEDITIOUS TREATMENT REQUESTED

Pursuant to 49 U.S.C. § 11123(a), 49 C.F.R. Part 1146, and other applicable authorities,¹ PYCO Industries, Inc. ("PYCO") hereby petitions the Surface Transportation Board ("Board") for an order authorizing alternative rail service to customers currently served by South Plains Switching Ltd. ("SAW") in Lubbock, Texas. This Petition is verified, and is further supported by the attached Verified Statement of Robert Lacy, and other documents and exhibits.

PYCO is a major rail shipper in Lubbock, using in excess of 6000 carloadings per year. PYCO's high season for demand for rail transport is October through March.

As shown below, this petition is precipitated by the second episode this year in which SAW's failure to honor its common carrier obligations is resulting in disruption of PYCO's business. This time, SAW's actions threaten eminently to shut PYCO down: if adequate rail service is not promptly restored, PYCO will run out of storage capacity by mid-January. If PYCO's

¹ Other potentially applicable authorities include 49 U.S.C. §§ 11102(a), 11102(c), and 10705(a), and 49 C.F.R. Part 1147.

business fails, losses could exceed \$100,000,000. Because restoration of adequate rail service is critical to avert eminent losses, PYCO requests expedited treatment.

I. SPECIFIC RELIEF REQUESTED

PYCO requests an Order authorizing alternative rail service over SAW lines

(i) by West Texas & Lubbock Railroad ("WTL") so as to permit WTL to pick up and deliver all rail traffic for customers currently served by SAW in Lubbock,

and (ii) by PYCO itself solely to permit PYCO employ its own switching equipment to further facilitate movement of cars serving its facilities in Lubbock.²

In the alternative, should this Board not authorize alternative rail service for all SAW's customers in Lubbock, PYCO Industries requests that this Board authorize such service at least for PYCO Industries. In that event, PYCO requests that the Order authorizing alternative rail service over SAW lines

² PYCO is currently not an authorized rail carrier. PYCO does not propose to use its switch engine to interface with other carriers, but rather to operate on a short distance of SAW trackage in order to move rail cars between tracks otherwise located on PYCO property. PYCO for years used its switch engine for this purpose but was precluded by the placement of a derail by SAW this year. Even though PYCO does not propose use of its switch engine for interfacing with other carriers (see Expedited Relief for Service Inadequacies, Ex parte 645, at p. 12, served Dec. 21, 1998), PYCO is concerned that this Board may conclude that PYCO's proposed use of SAW trackage by PYCO's switch engine requires PYCO as a non-carrier to file a notice of exemption under the 7-day notices procedures (at 49 C.F.R. 1150.31) to obtain requisite operating authority. In that event, PYCO requests that this Board authorize the service as requested in the text contingent upon PYCO making a 49 C.F.R. 1150.31 filing.

provide that WTL have control over dispatch from 9 AM until 2 PM Monday through Friday, unless otherwise agreed by WTL and SAW. WTL requires control over dispatch in order to ensure safe operations.

PYCO requests that the Order authorize alternative rail service for the maximum time permitted by the applicable statute.

II. SUMMARY OF FACTS

PYCO Industries, Inc. is the largest cottonseed cooperative serving the southern United States, with over 120 member gins. PYCO operates two cottonseed oil mills in Lubbock and one in Greenwood, Mississippi. PYCO's business, particularly in Lubbock, is heavily rail dependent. PYCO relies on rail service to serve both Plant No. 1 and Plant. No. 2. PYCO Industries produces and markets cotton oil for cooking, whole cottonseed and byproducts of cottonseed processing. These byproducts include meal, hulls and linters. Whole cottonseed and meal are used as nutritional ingredients in the livestock and catfish industries; hulls are a form of fiber in the beef and dairy industries. Cotton linters are used in a variety of consumer products (mattresses, upholstery, high quality paper, plastics).

PYCO had long been a customer of the Burlington Northern and Santa Fe Railroad ("BNSF"). In 1999, BNSF sold SAW certain trackage in Lubbock, Texas, including all trackage serving PYCO. PYCO understands that the sale was for one dollar. After the purchase, SAW became a monopoly supplier to PYCO, in that PYCO

has no access to BNSF or the national rail system other than by means of SAW.

PYCO's cottonseed oil business is heavily rail dependent. Trucks are not a viable or economic alternative. PYCO's current business need exceeds 6000 carloadings annually in Lubbock (currently 26 per day from Plant No. 1, and 12 per day from Plant No. 2, plus at least one additional boxcar/day). PYCO understands itself to be the largest shipper served by SAW.

SAW is a rail carrier providing transportation and services subject to the jurisdiction of this Board. Pursuant to 49 U.S.C. § 11101(a), such a carrier "shall provide the transportation or service on reasonable request." Because SAW stands as a monopoly rail supplier to a major rail-dependent shipper (PYCO), it is particularly important that SAW fulfill the obligation set forth in 49 U.S.C. § 11101(c), or that an alternative rail carrier be allowed to do so. Arkansas Midland Railroad Co. -- Alternative Rail Service -- Line of Delta Southern Railroad, Inc., STB F.D. 34479-0, served March 11, 2004.

In order to facilitate switching between sidings on PYCO property serving Plant No. 1, PYCO operates two track mobiles. Until this year, SAW permitted PYCO to operate its equipment on a portion of SAW trackage sufficient to allow PYCO to move cars between tracks at PYCO's Plant No. 1. This allowed PYCO to ship 26 or more carloads per day from Plant No. 1. SAW has now placed a derail on its track that now prevents PYCO from moving

more than one car at a time. This and related service inadequacies by PYCO limits PYCO to 12 carloads per day at Plant No. 1, a 16 carload/day shortfall. This adds to, and further complicates, the service inadequacies and disruptions discussed below.

First episode of service inadequacy. By 2005, SAW and BNSF were embroiled in a complicated dispute over the terms of the 1999 contract by which SAW acquired the BNSF trackage in Lubbock. Apparently incensed because PYCO declined to take sides in its favor in that contract dispute, SAW by early March stopped spotting and picking up cars on reasonable request at PYCO's two rail-dependent plants in Lubbock. Indeed, shortly before March 11, 2005, Mr. Larry Wisener (owner of SAW) informed PYCO that SAW was terminating service to PYCO's Plant No. 2, evidently due to a dispute between SAW and BNSF over the removal of certain switches. Despite efforts by PYCO to compose the differences between BNSF and SAW, service continued to deteriorate, with Mr. Wisener again threatening to shut down service to Plant No. 2 on April 4, 2005. On April 4, a derailment occurred on the track serving Plant No. 1. Mr. Wisener (SAW) stated that SAW "didn't have time to clean up a mess right now" resulting in suspension of service to Plant No. 1.

On April 5, 2005, PYCO complained in writing to Mr. Melvin Clemens, Director of STB's Office of Compliance and Enforcement ("OCE") about service to both its Lubbock plants. This was

followed by a May 3 letter from PYCO to Mr. Herzig in STB's OCE noting service problems and the threat by SAW to impose a surcharge on PYCO. By letter dated May 23 to STB, PYCO reported it had sustained \$450,000 in losses in April due to "slow switching of railcars" and that the situation had not improved. By letter dated June 8 to STB, PYCO indicated it was "experiencing worse service by the day." On June 17, 2005, Mr. Wisener sent a letter to PYCO (i) directing PYCO to make Mr. Wisener the sole source of contact for all SAW rail services to PYCO, (ii) withdrawing permission for PYCO to operate its equipment on SAW trackage, (iii) imposing surcharges, and (iv) requiring a "formal agreement" for future inbound and outbound service. On June 13, SAW threatened to "embargo any future PYCO shipments from handling." By approximately June 21, PYCO had drafted a petition for alternative rail service under 49 C.F.R. Part 1146. Although this draft was not filed, it summarizes key events in the service disruption which PYCO experienced March through June of 2005, and also collects as exhibits the correspondence discussed above. A copy of this draft petition is attached as Appendix A, along with its exhibits.

Intervention by STB's OCE. Although counsel for PYCO does not understand himself to have all the communications, PYCO understands that Director Clemens of STB's Office of Compliance and Enforcement informed SAW in writing of SAW's obligations to provide service on reasonable request. PYCO is in possession of letters from SAW's counsel to Mr. Clemens offering excuses for

SAW's failure to provide service (SAW chiefly claimed to be limited by policies of BNSF), and Mr. Clemens response of 10 June 2005 indicating that SAW needed to meet its service obligations. See Exhibit B. Due to Director Clemens' intervention, SAW improved service to PYCO at the end of June. PYCO, hoping that this marked a peaceful resolution of its service problems with SAW, did not file the emergency petition with STB for alternate rail service at that time.

Interregnum. In a request for proposals bearing date of May 10, 2005, SAW offered its Lubbock trackage for sale, including the trackage serving PYCO.

In September of 2005, Mr. Wisener informed PYCO's Senior Vice President for Marketing (Robert Lacy) that he (Wisener) wished to sell SAW and get out of the railroad business, and wished to know if PYCO was interested. After consulting internally, PYCO informed SAW that PYCO had an interest. See Exhibit C (Ver. Statement of Robert Lacy). SAW then made a specific demand to PYCO to sign an agreement by which PYCO would be bound to pay SAW \$5,500,000 (5.5 million dollars) for the trackage serving PYCO. That proposed agreement is set forth in a letter dated October 11, 2005, from SAW's Lubbock counsel to PYCO's Lubbock counsel, and is an attachment to the Lacy Verified Statement (Exhibit C). The proposed agreement as tendered by SAW does not specify what property or rights SAW proposed to transfer, nor provide for normal due diligence activities to be conducted and customary concerns to be

satisfied as a condition to closing. PYCO accordingly responded on October 13 that it was "still in the early stages of looking at the purchase" of SAW's assets, and requested a paragraph making the purchase contingent upon the completion of due diligence activities and upon PYCO's obtaining financing satisfactory to PYCO. See Letter attached to Exhibit C.

SAW angrily rejected PYCO's position. SAW's president, Mr. Wisener, orally informed PYCO that SAW intended to make business miserable for PYCO. By letter dated November 3, 2005 (also in Exhibit C), SAW through its president, Larry Wisener, effectively broke off negotiations on acquisition (before they had begun), claiming agreement "cannot be reached." SAW also demanded that PYCO "cease all plant operations on SAW property immediately."³

Second episode of service inadequacy. On or about November 17, SAW placed a derail on the track making it difficult for PYCO to prepare cars for the daily switches. By letter dated November 17, 2005, SAW cancelled PYCO's lease of track #9298.

On November 18, 2005, PYCO contacted Mr. Wisener to request that he move the derail to allow switching. Mr. Wisener initially said he was busy and would look into it later. Then he said he was imposing additional charges on PYCO, and desired

³ Letter attached as part of Exhibit B. It is unclear what Mr. Wisener meant by plant operations. PYCO surmises that he felt PYCO was loading seed cars on SAW trackage, a claim that Mr. Wisener made in a telephone call on November 17, 2005. However, PYCO was loading seed cars on its own trackage. SAW's Mr. Wisener also perhaps meant that he no longer would store cars for PYCO.

PYCO to "come over." PYCO's representative, weary of the confrontational nature of Mr. Wisener in meetings, indicated that if Mr. Wisener had made up his mind, there was no need to come over. Mr. Wisener indicated that PYCO "would have to figure out how to take care of [itself]." Mr. Wisener told PYCO that it would "cost a lot more for [PYCO] to continue doing business with [SAW]." See Exhibit C and attachments thereto.

On November 22, 2005, PYCO determined that if SAW would switch cars on the scale track instead of the shop track, or if it would switch on both, PYCO could load more cars. PYCO asked SAW to switch on the scale track or on both tracks. SAW refused. SAW's representative indicated that Mr. Wisener would allow only one pull per day, and only on the shop track. From that day forward, SAW has refused to switch cars on the scale track and has otherwise engaged in conduct minimizing the number of cars which PYCO can switch each day. By November 29, SAW's policies or inabilities had resulted in PYCO's being unable to load an additional 80 cars at Plant No. 1. This deteriorated situation has continued until the date of filing of this petition.

No switch at all occurred at Plant No. 2 between November 22 and November 28, allegedly because of problems with SAW's locomotive. As a result, PYCO was unable to load 36 gondolas and 6 box cars. SAW has failed to deliver box cars at all, although an average of at least one per day is requested for Plant No. 2.

Summary as to Plant No. 1. PYCO on its own property is limited to handling approximately 12 cars per day maximum, if it can use both its scale track and shop track efficiently. PYCO desires 26 carloads per day at Plant No. 1. Due to the service inadequacy since November 18, PYCO is facing a shortfall of approximately 14 carloads per day at Plant No. 1. This is resulting in inventory accumulation such that PYCO must shut down at some point in mid-January for lack of storage for product. Shipment by truck is not an option. SAW's service to PYCO -- SAW's major shipper -- accordingly is inadequate despite reasonable request for service by PYCO to SAW.

Summary as to Plant No. 2. PYCO requires approximately twelve carloads per day at Plant No. 2. SAW failed to provide service despite reasonable request between November 22 and November 28, inclusive. SAW also fails to deliver boxcars to Plant No. 2 on a regular basis. This also renders SAW's service to PYCO inadequate despite reasonable request for service by PYCO to SAW.

Additional matters. SAW has further threatened to refuse to accept cars for PYCO (and to impose an embargo on shipments to PYCO), and has now for the first time actually billed PYCO for substantial surcharges, switch charges, and storage fees for PYCO cars. PYCO understands that it is the only shipper in Lubbock subject to such charges. This is unlawful discrimination which compounds the service inadequacy. PYCO reserves all rights to pursue its remedies in this connection,

as well as with respect to other losses due to SAW's conduct to date.

Rail cars intended for PYCO are backed up in large part because SAW (a) fails to spot or to pick up cars for PYCO on reasonable request and (b) does not permit efficient switching operations. From time to time, SAW's president, Mr. Wisener, has excused SAW's actions on the ground that SAW lacks adequate equipment and crews to serve PYCO and yet meet the needs of SAW's other rail customers.

Efforts to compose differences between PYCO and SAW are unavailing. Mr. Wisener employs a confrontational style, has engaged in verbal abuse of PYCO representatives, and has threatened physical retaliation against PYCO personnel.⁴ Even if Mr. Wisener were prepared to negotiate, Mr. Wisener's conduct essentially prevents any effort to work out differences for PYCO personnel cannot be placed in a position where they must bear threats of physical violence or incur verbal abuse.

PYCO estimates that it has sustained over \$8,000,000 in lost sales and delay damages between the commencement (17 November) of SAW's most recent round of service inadequacy and December 15, 2005. See Exhibit C (Robert Lacy V.S.) ¶ 21. Due

⁴ It is a criminal violation under 49 U.S.C. § 11902(b) for a person acting for or employed by a rail carrier under this Board's jurisdiction to solicit anything of value intending to be influenced by it in an action by that person relating the supply or movement of rail cars. Although not necessary for the resolution of this Part 1146 Petition, this Board should evaluate whether to refer Mr. Wisener for prosecution for what amounts to demanding a payment of \$5.5 million in return for adequate rail service.

to service inadequacy, PYCO must further curtail operations and indeed will face the need to shut down its plant in mid-January 2006 due to lack of storage space for product. This lack of space is due to SAW's failure to provide service on reasonable request. In short, PYCO has sustained large economic losses, and in the near future faces even greater losses, all the way up to shut down of its plant, loss of customers, and loss of business. If the shut down is long term, PYCO faces the loss of \$95,000,000 in inventory. If the shutdown causes PYCO itself to collapse, the firm's going concern value is approximately \$150,000,000. See Exhibit C (Robert Lacy V.S.) ¶22. Relief is needed on an urgent basis.

III. APPLICABLE LEGAL STANDARD

49 U.S.C. § 11123(a)(1) authorizes this Board to "direct the handling, routing and movement of [rail] traffic of a rail carrier ... over its own or other railroad lines." The implementing regulations for this statute are set forth at 49 C.F.R. Part 1146. 49 C.F.R. § 1146.1(a) provides that

"Alternative rail service will be prescribed under 49 U.S.C. 11123(a) if the Board determines that, over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier."

The showings required for this relief are specified in 49 C.F.R. § 1146.1(b). These showings include

-- a "full explanation, together with all supporting evidence" to demonstrate that the standard for relief specified in section 1146.1(a) is met;

-- a summary of the petitioner's discussions with the incumbent carrier of the service problems and the reasons why

the incumbent carrier is unlikely to restore adequate service consistent with current transportation needs within a reasonable period of time; and

-- a commitment from another available railroad to provide alternative service, an explanation of how this service would be safely provided without degrading service to current customers of the alternative carrier and without unreasonably interfering with the incumbent's overall ability to provide service.

III. PYCO Is Entitled to Relief

A. Rail Service Has Been Inadequate over an Identifiable Period of Time

Section 1146.1 is intended to "handl[e] requests for localized immediate service relief," Service Inadequacies, 3 S.T.B. at 972, n.11. In Arkansas Midland Railroad Company, Inc., supra, this Board observed that interruption of rail service had forced two shippers, totalling approximately 6000 carloads per year, to divert their shipments to motor carriers (at the rate of 90 truckloads/day). This Board indicated that a disruption of this magnitude established the kind of "substantial, measurable deterioration or other demonstrated inadequacy in rail service" which is the predicate for relief under 49 C.F.R. § 1146.1. As already indicated, PYCO normally ships over 6000 carloads per year. Current need at PYCO's Plant No. 1 is 26 carloads/day. Under SAW's inadequate service, carloadings are down to 12 per day, with a resulting inventory build-up which will force shut down of PYCO's facilities shortly. In addition, there has been an episode of total loss of service at Plant No. 2 from November 22 to 28, and SAW fails to deliver boxcars to Plant No. 2 despite reasonable request.

As demonstrated in the factual summary, SAW already is on the second bite of the apple this year. From approximately March 10 through the end of June, 2005, SAW service to PYCO was inadequate. Due to the intervention of STB's Office of Compliance and Enforcement, through its Director Melvin Clemens, SAW improved its service by the end of June.

However, on November 18, SAW's president, Mr. Larry Wisener, advised PYCO in effect that he intended to retaliate against them for refusing to contract to purchase PYCO assets for \$5.5 million without any due diligence or negotiation. Since then, Mr. Wisener's railroad has failed to provide adequate service.

SAW cannot lawfully make discharge of its common carrier obligation contingent upon whether PYCO makes some kind of wild commitment to pay the \$5.5 million SAW demands PYCO pay for SAW's rail property in Lubbock. SAW cannot lawfully make discharge of its common carrier obligation contingent upon the piques or emotional state of SAW's management at any particular moment in time, or upon whether SAW thinks it is "worth it."

"Rather, a carrier must adhere to its statutory obligations contingent even if it suffers hardship in so doing. See, e.g., Decatur County Commissioners v. STB, 308 F.3d 710, 715 (7th Cir. 2002) ("[railroads] may not refuse to provide service merely because to do so would be inconvenient or unprofitable") (citing G.S. Roofing Products Co. v. STB, 143 F.3d 387, 391 (8th Cir. 1998))..."

Pejepscot Industrial Park, Inc. d/b/a Grimm Industries--
Petition for a Declaratory Order, F.D. 33989, served May 15,
2003, at p. 8. This Board further explained that there are only
two lawful ways that "a railroad may employ to excuse itself,
permanently or temporarily, from its common carrier
obligations:" abandonment or embargo. Id.

In the situation at bar here, SAW "has pursued neither."
Id. PYCO is entitled to relief, including relief in the form of
an order providing for alternative rail service by WTL.

B. SAW Is Unlikely to Restore Adequate Rail Service
Consistent with Current Transportation Needs

There are three possible reasons for SAW's service
inadequacies: (a) SAW is unwilling to provide service either
out of the pique of its president (Mr. Wisener) or because Mr.
Wisener hopes by making it impossible for PYCO to do business
that he can force PYCO to buy SAW at a price and on terms which
Mr. Wisener arbitrarily sets, (b) SAW lacks adequate equipment
and personnel, or (c) a combination of (a) and (b). PYCO
believes the most likely general explanation is (a), for SAW was
able to provide service between July and October of this year,
although SAW's management have complained about lack of
resources from time to time.

In all events, SAW has now demonstrated an unwillingness
and inability twice this calendar year to provide adequate rail
service consistent with PYCO's current transportation needs.
While the first instance might have been excusable as part of
SAW's learning process on what it means to be subject to a

common carrier obligation, the second instance indicates that SAW management is inherently unable or unwilling to provide adequate rail service on a reliable basis.

In particular, PYCO has exhausted avenues at peaceful resolution, having already contact STB's Office of Compliance and Enforcement for that Office's assistance in obtaining adequate service. Yet the problem of service inadequacy has recurred.

PYCO believes the problem with SAW to flow at least in part from Mr. Wisener's confrontational style which is characterized by demands to customers which if not acceded to result in retaliation against the customer. Thus, while SAW probably could provide adequate rail service to PYCO if SAW chose to do so, SAW chooses not to do so in retaliation because (a) PYCO refused to purchase SAW's property at the price demanded by SAW without any due diligence or even an appraisal to justify the price, (b) PYCO declined to take SAW's side in SAW's disputes with BNSF, and (C) PYCO complained about SAW service to STB. SAW's approach is manifestly inconsistent with discharge of the federal common carrier obligation.

If the service problems faced by PYCO were not rooted in Mr. Wisener's confrontational and retaliatory style, then presumably they are due to SAW's lack of adequate plant and equipment, for Mr. Wisener sometimes excuses service failures on locomotive unavailability, or inability of his railroad to meet the needs of its customers.

Whether SAW is declining to provide service in order to punish PYCO, or whether SAW is declining to provide service because it lacks capacity, the repeated serious episodes of service inadequacy are sufficient to show that SAW is unlikely to be able to meet PYCO's current transportation needs.

C. Alternative Service Can Be Safely Provided
by the Alternative Carrier without Jeopardizing
that Carrier's Current Shippers or Unreasonably
Interfering with SAW Operations

WTL has informed PYCO that it has adequate equipment and personnel to provide service to PYCO, without impinging on WTL's ability to provide service to WTL's existing customers. WTL already operates in the Lubbock area, is familiar with Federal Railroad Administration (FRA) requirements, and has informed PYCO that it can operate safely. WTL has furnished a letter to PYCO, attached as Exhibit D, confirming WTL's willingness and ability safely to provide alternative rail service to all SAW's current Lubbock customers, including PYCO.

If this Board issues an order making WTL the alternative rail provider for PYCO only, then some arrangement must be made for a sharing of the trackage so that WTL can reach PYCO's two facilities and conduct switching operations over at least some trackage on which SAW continues to operate. Because the management of SAW has exhibited a repeated inability to civil discussion and cooperative agreements, PYCO requests that in the event this Board makes WTL the alternative rail provider for PYCO only that this Board also impose a protocol giving WTL control over dispatch between 9 AM and 2 PM, Monday through

Friday, holidays inclusive, over SAW trackage. In that fashion, safe operations which minimize interference can be better assured.

D. Expedited Treatment Is Required

As demonstrated in the attached verified statements, the existing service disruption is resulting in exhaustion of PYCO's ability to store product, such that PYCO faces an eminent shut down of its Lubbock facilities. PYCO has already sustained over \$8,000,000 in damages due to SAW service inadequacies between November 17 and December 15, 2005. PYCO is now at risk of shut down, and potential loss of its inventory (\$95,000,000) and indeed its business (PYCO's going concern value is estimated at \$150,000,000). While the disruption to PYCO is enormous, this Board should also be mindful that PYCO is comprised of some 120 member gins throughout the southern portion of the United States. SAW's inadequate service threatens the economic viability of PYCO's 120 member gins as well. PYCO will run out of storage by mid-January. PYCO has hastened to place this Petition before this Board as quickly as possible in order to permit this Board to act before PYCO is forced to shut down due to failure of adequate common carrier service in contravention of the ICCTA. PYCO is mindful that the Board's regulations provide five business days for replies and three business days for rebuttals. PYCO requests that the Board adopt a time schedule for a decision permitting alternative service that allows such service to commence as soon as

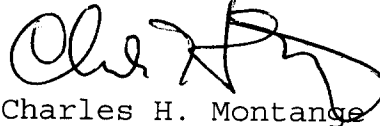
practicable after January 1, 2006.

IV. Conclusion

For the reasons stated above, PYCO petitions this Board to issue an alternate service order.

Certification of service of this petition as provided in 49 C.F.R. § 1146.1(b)(1)(iv) is provided in the transmittal letter to Mr. Williams as STB Secretary.

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
fax: -3739

Of counsel:

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Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Attachments:

Verification by Gail Kring, PYCO Manager and CEO

Exhibit A -- original draft petition (discussing in more detail service inadequacies March-June 05 with attached exhibits)

Exhibit B -- Exchange of letters, counsel for SAW to Mr. Clemens (STB); Mr. Clemens (STB) to counsel for SAW, June 2005

Exhibit C -- Verified Statement of Mr. Robert Lacy, PYCO Sr. V.P. and attached exhibits

Exhibit D -- WTL (proposed alternative carrier) Letter

Verification

I, Gail Krings, depose and state that I am Manager and Chief Executive Officer for PYCO Industries, Inc., that I am authorized to make this Verification, and that I have read the foregoing Petition, and know that the facts asserted therein are true and accurate as stated to the best of my knowledge, information and belief.

Gail Krings
GAIL KRING

Subscribed and sworn to before me on this 15th day of December 2005, by GAIL KRING, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Cynthia J. Harrison
NOTARY PUBLIC, STATE OF TEXAS

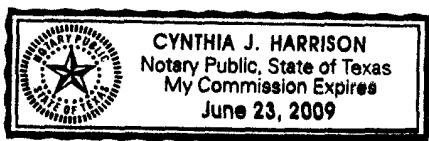


Exhibit A

A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB SERVICE ORDER NO. _____

**PYCO INDUSTRIES, INC.
EMERGENCY SERVICE ORDER**

CONCERNING

SOUTH PLAINS SWITCHING LTD.

PETITION FOR EMERGENCY SERVICE ORDER

EXPEDITED CONSIDERATION REQUESTED

Comes now, Petitioner, PYCO INDUSTRIES, INC. (hereinafter "PYCO") pursuant to 49 U.S.C. § 11123 and 49 C.F.R. § 1146, and files this Petition for Emergency Service Order ("Petition") against and concerning South Plains Switching Ltd. ("SAW") and would show as follows:

PYCO is a Texas corporation headquartered in Lubbock, Texas and engaged in the marketing of cottonseed and in the processing and marketing of cottonseed byproducts, including cottonseed oil. The business has been operating for decades and has a national customer base. PYCO is heavily dependent on rail service for the shipment of its products to all parts of the country.

PYCO has been told by SAW that PYCO is the switching company's largest customer. PYCO is aware that it is one of the largest, if not the largest, rail shipper in the Lubbock, Texas area.

In March 2005, PYCO contacted SAW and the main line carrier, BNSF, to inform both companies of two items. First, timely and adequate rail service to PYCO's two processing facilities was decreasing and PYCO was beginning to receive complaints about the timely shipment of its products by rail from PYCO customers. Second, PYCO informed the railroads that it was going to be increasing production in April 2005, and would need assurance of an adequate supply of railcars, 20 cars per day, timely switched, to handle the increased production.

Representatives from SAW informed PYCO that they would do all possible to meet the needs, but that they were largely hampered by actions of the main line carrier, the BNSF, in blocking SAW switching operations. SAW also noted that PYCO's Plant No. 2 was at one time serviced by four (4) switches and that all but one switch had been removed, thereby slowing switching operations at Plant No. 2.

The timely shipment of railcars is of paramount importance since PYCO in March 2005 had upcoming customer contracts with a product value in excess of \$40,000,000 and requiring somewhere in the neighborhood of 635 railcars to deliver the product. PYCO utilizes a fleet of between 170 and 200 leased railcars to meet its customer's need.

SAW officials indicated to PYCO that the slow service was not of SAW's making, but was instead a retaliatory measure against SAW, with the BNSF blocking SAW's switching operations, resulting from tension between SAW and BNSF over long standing litigation between the two parties. PYCO indicated that it did not want to be 'caught in the middle' of the lawsuit and PYCO's legal counsel sent a letter to BNSF Vice President, Paul Hoefer, on March 11, 2005, detailing its emergency situation and asking for specific assistance unlocking Switch #231 to restore greater

service to its Plant No. 2. A copy of the aforementioned letter is attached hereto and incorporated herein as Exhibit 1.

The BNSF responded to PYCO's letter and a meeting between PYCO and BNSF's legal counsel was held in late March. At that meeting, several options were discussed pertaining to assistance the BNSF might provide to alleviate and provide help for the soon to be increased rail traffic. The possible reinstallation of the previously removed Switch #320 was discussed, as is summarized by PYCO's legal counsel's letter of March 28, 2005 to BNSF's legal counsel, same attached hereto as Exhibit 2 and incorporated herein by reference.

From April to the present date, service has only grown worse at PYCO. None of the discussions between PYCO, BNSF and SAW and their respective legal counsel proved fruitful in gaining an additional switch to serve PYCO's Plant No. 2 or in gaining better service. Timely switching and the provision of twenty (20) cars per day to PYCO has also not been achieved.

On April 5, PYCO first contacted by letter, Mr. Melvin Clemens with the Surface Transportation Board. Attached is said letter, incorporated herein by reference, as Exhibit 3. The letter states that PYCO would be needing the switching of approximately 20 rail cars per day for approximately 90 days and that PYCO was caught in the middle of a fray between BNSF and SAW.

On May 5, PYCO sent correspondence to Larry Herzig with STB detailing the continuing problems and indicating that Mr. Larry Wisener of SAW had informed PYCO that his company was not to blame for the delays, but instead BNSF was only giving SAW limited switching involving the main line and that the problems were that of the BNSF. This letter is incorporated herein by reference and attached as Exhibit 4.

Again on May 23 and June 5, 2005, letters were sent to Mr. Clemens with the STB regarding the ongoing problems and are incorporated herein by reference as Exhibits 5 and 6 respectively.

In the meanwhile, Mr. Wisener of SAW has made physical threats against officials of PYCO, has instituted a surcharge on the switching of railcars and has threatened an embargo.

The latest set of "instructions" sent to PYCO on June 17, 2005, by Mr. Wisener of SAW indicates that he is to be the sole contact for PYCO at SAW concerning switching services. See Exhibit 7 incorporated herein by reference.

PYCO can no longer afford to sit idly by and believe that any resolution is going to be achieved without formal complaint. PYCO is receiving inadequate rail service pursuant to 49 C.F.R. § 1146 and has documented the rail car movements to its facilities and incorporates same as Exhibit 8 of this complaint. A review of the documentation will show that, with few exceptions, PYCO has not been furnished 20 rail cars per day for loading, even though a large number of railcars are supposedly available for immediate switching according to Mr. Wisener's legal counsel's letter dated June 13, 2005, incorporated herein as Exhibit 9.

PYCO has secured a commitment from West Texas & Lubbock Railway dated June 21, 2005, for the provision of switching services. Same is incorporated herein by reference as Exhibit 10. The BNSF has indicated to PYCO that cooperation would be given to PYCO and the alternative switching company should the Board grant this emergency petition.

PYCO continues to lose revenue and the goodwill of purchasers of its products delivered by railcar as a result of the actions expressed in this complaint. All PYCO has ever asked since the initial notification of the rail companies and the STB is the timely provision of 20 cars per day for

PYCO's use. Instead, PYCO continues to be ignored by SAW and given additional requirements for service, service which has been entirely inadequate.

PYCO respectfully requests the emergency action of the STB to remove SAW as the switching entity for PYCO's rail operations in Lubbock and to install West Texas & Lubbock Railway as the switching entity.

Respectfully submitted,

PHILLIPS & McLAREN, L.L.P.
3305 66th Street, Suite 1A
Lubbock, Texas 79413
Telephone: (806) 788-0609
Facsimile: (806) 785-2521

By: _____

Gary R. McLaren
State Bar Number 00791232

ATTORNEYS FOR PYCO INDUSTRIES, INC.

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

BEFORE ME, the undersigned Notary Public, on this date personally appeared GAIL KRING, who, after being duly sworn, stated under oath that he is the President of PYCO INDUSTRIES, INC., Petitioner in this action; that he has read the above Petition for Emergency Service Order; and that every statement contained in the Petition in is within his personal knowledge and is true and correct.

Gail Kring

SWORN TO AND SUBSCRIBED BEFORE ME on this the _____ day of June 2005, to certify which witness my hand and seal of office.

Notary Public State of Texas

EXHIBIT 1

RICHARDS, ELDER, SRADER, PHILLIPS & McLAREN, L.L.P.

ATTORNEYS AT LAW

GARY R. McLAREN

3305 66TH STREET, SUITE 1A
LUBBOCK, TEXAS 79413

TELEPHONE: (806) 788-0609

TELECOPY: (806) 785-2521

gmclaren@respm.com

March 11, 2005

Mr. Paul Hoefer
Vice President
BNSF Railway
Via Telefax 817-352-2399

RE: Emergency Situation - Switch #231, Track #9298, 9200, Lubbock, Texas

Dear Paul:

Please recall that I was with the Lubbock law firm of McWhorter, Cobb and Johnson for years and assisted D. Thomas Johnson in railroad litigation for the Company. I left the firm last year, but have an emergency situation involving my client, and BNSF customer, PYCO Industries, Inc. here in Lubbock.

You will recall that PYCO is a cottonseed oil mill, one of the largest industry sidings in Lubbock, and a longtime BNSF customer. The situation involves their Plant No. 2 and specifically track numbers 9298 and 9200 and switch number 231. Because of an ongoing conflict between BNSF and short line South Plains Lamesa Railroad, switch number 231 has been locked out, effectively stranding millions of dollars of PYCO cottonseed oil dependent on said switch.

Over time, PYCO has suffered as a result of the continuing conflict between BNSF and South Plains. Plant No. 2 originally benefitted from four switches allowing ingress/egress to the plant and is now down to zero. Over the course of the last 48 hours, the owner of South Plains, Mr. Larry Wisener, has told PYCO that all service to Plant No. 2 is now terminated and that no service will be available until new contractual arrangements can be reached between BNSF and South Plains and PYCO.

PYCO, as you can well appreciate, depends on the rail to ship its product. The direct and consequential damages arising from a lock out of switch #231 will be significant. Moreover, PYCO will be entering its heaviest delivery season within the next two weeks. It is imperative that service be restored immediately to PYCO at switch #231.

PYCO does not wish to become a part of the fray between BNSF and South Plains; however, if PYCO cannot ship its product we will have no choice but to seek legal redress and injunctive relief.

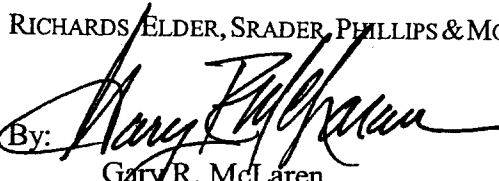
March 11, 2005
Page 2

As a former railroad lawyer, I am asking for your assistance in this matter without need for litigation. My clients and I will be available for conference call at any time during the day or will fly to Fort Worth immediately to address this problem. Notwithstanding that this letter comes to you on Friday morning, for which I wish I could alter the timing but can't, the weekend does not relieve the stress on our client's shipping needs. Consequently, if we need to be at the BNSF campus on Saturday morning, we will be present.

Thank you for your attention to this matter of utmost importance. I look forward to your response.

Very truly yours,

RICHARDS ELDER, SRADER, PHILLIPS & McLAREN, L.L.P.

By: 
Gary R. McLaren

GRM/cjh

EXHIBIT 2

RICHARDS, ELDER, SRADER, PHILLIPS & McLAREN, L.L.P.

ATTORNEYS AT LAW

GARY R. McLAREN

3305 66TH STREET, SUITE 1A
LUBBOCK, TEXAS 79413

TELEPHONE: (806) 788-0609

TELECOPY: (806) 785-2521

gmclaren@respm.com

March 28, 2005

Mr. Donald E. Herrmann
Kelly, Hart & Hallman
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Via Telefax 817-878-9280

RE: PYCO Industries, Inc./BNSF

Dear Don:

Thank you for meeting with the management of PYCO Industries, Inc. and me last Friday to discuss PYCO's rail problems.

I hope that the Burlington Northern Santa Fe ("BNSF") will be able to gain an appreciation of the scope of PYCO's problem here in Lubbock. Consistent with the documents provided to you on Friday, sluggish rail movement at PYCO's Plant Number 2 is only growing worse. As we discussed, PYCO will need to ship in excess of 635 rail cars of product from Plant Number 2 over the course of the next six months. If one considers that the total value of the product needed to be shipped exceeds \$40 million, it is easy to understand PYCO's urgency in gaining a solution to the present problem.

As we discussed, PYCO does not have an interest in the ongoing legal battle between the BNSF and Mr. Wisener. Indeed, PYCO is probably one of the larger customers for both entities in the Lubbock area. However, PYCO will not stand by and allow sluggish rail movements to damage existing and future sales. Certainly, we seek an amicable and business solution short of litigation.

As we discussed, when PYCO constructed Plant Number 2 years ago, it had access to the main lines from four switches. Over time, all but one switch has been removed. Our investigation reveals that the removal of the other three switches is the cause of PYCO's present rail problems and that removal was done between BNSF and Mr. Wisener as a part of the ongoing dispute between those parties, having nothing to do with PYCO, other than the present price that PYCO is having to pay for not getting its product to destinations in a timely manner as a direct result of the feud between BNSF and Mr. Wisener.

March 28, 2005

Page 2

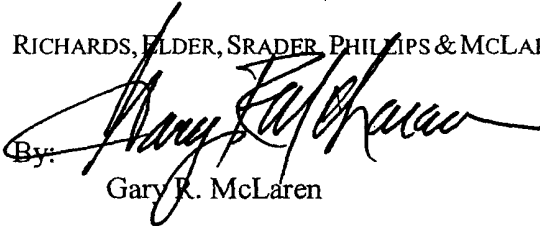
As we also discussed on Friday, a relatively simple solution exists to the problem. If switch 320 were reinstalled, PYCO's Plant Number 2 would once again have the most direct access to rail service, and we are convinced the present problem would be solved. We understand that this will require a certain amount of cooperation between BNSF and Mr. Wisener in order to facilitate our movements along the main line. We have spoken with Mr. Jim Gorsuch, Mr. Wisener's attorney, and he informs us that his client is agreeable to such a reinstallation to solve the existing problems and avoid further litigation.

Don, as you know, time is of the essence. Rail shipments from Plant Number 2 will begin increasing on April 1 as the plant reaches full production capacity. We would urge the BNSF to commit to a reinstallation of Switch 320 as soon as possible.

Thank you for your help in this matter.

Very truly yours,

RICHARDS, ELDER, SRADER, PHILLIPS & McLAREN, L.L.P.

By: 
Gary R. McLaren

GRM/cjh

EXHIBIT 3

P Y C O

P.O. BOX 841
LUBBOCK, TX 79408-0841
TELEPHONE: (806) 747-3434
FAX: (806) 744-3221

PYCO Industries, Inc.
Processors of Cottonseed Products

P.O. BOX 1320
GREENWOOD, MS 38935-1320
TELEPHONE: (662) 453-4312
FAX: (662) 455-6607

April 5, 2005

Via Facsimile 866-254-1792

Mr. Melvin F. Clemens, Jr.
Director, Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street NW, Suite 780
Washington, D.C. 20423-0001

RE: Threat of Discontinuing Rail Service by South Plains Switching, Ltd. Co. and South
Plains Lamesa Railroad, L.L.C. to PYCO Industries, Inc.
Track location - Lubbock, Texas

Dear Mr. Clemens:

PYCO Industries, Inc. ("PYCO") is headquartered in Lubbock, Texas and is the largest cottonseed processing facility in the world. In Lubbock, PYCO operates two plant facilities, each receiving rail service. We believe that PYCO is one of the larger industry sidings in Lubbock.

PYCO leases its rail cars and depends on South Plains Lamesa Railroad, Ltd. and South Plains Switching, Ltd. Co. (collectively referred to as "South Plains") to accomplish switching at Plant Number 1 and Plant Number 2 in Lubbock. After switching, railcars are handed off to the Burlington Northern Santa Fe Railroad ("BNSF") for shipment and empty cars are collected from same.

Approximately one month ago, South Plains was advised by PYCO that beginning around April 1, 2005, the number of railcars that needed to be switched at Plant Number 2 would increase from 6 to 8 railcars per week to 20 railcars per day for a period of approximately 90 days. The increase in railcars pertained to an increase in product being shipped from Plant Number 2 resulting from a large cotton crop.

Upon being told of the planned shipping increase, Mr. Larry Wisener of South Plains advised PYCO management that South Plains might not be able to accommodate the increased switching traffic because of the locking of Switch 231. We have enclosed for your convenience a map showing the location of Plant Number 2 and the subject trackage. As you will note on the map, Plant Number

April 5, 2005
Page 2

2 is supplied by Track Number 310. Mr. Wisener indicated that South Plains and the BNSF were in litigation over a variety of rights pertaining to the BNSF's sale of certain trackage to South Plains. Mr. Wisener indicated to PYCO that South Plains' "hands were tied" and that PYCO needed to speak with the BNSF to make certain that switching could occur at Plant Number 2.

By way of history, when Plant Number 2 was constructed in the mid 1990's, the facility was supplied by track with four switches providing ingress/egress to our industry track. Today, the track serving Plant Number 2 has only one switch, the remainder having been removed or locked out by the BNSF or South Plains.

Aware of the impending problems, PYCO representatives tried to talk with the local BNSF representatives about the possibility of reopening Switch No. 231, which according to South Plains had been locked out by the BNSF. Both PYCO and South Plains are of the opinion that reopening Switch 231 would allow more timely switching at Plant Number 2. The local BNSF representatives said that because of the ongoing litigation between BNSF and South Plains, reopening Switch 231 would not be possible.

On March 11, 2005, PYCO instructed its attorney to draft a letter to BNSF seeking their assistance in the matter. All PYCO wanted, and all PYCO seeks today, is timely rail service not obstructed by the ongoing litigation between the railroads. A copy of PYCO's legal counsel's letter to the BNSF is attached.

BNSF responded by arranging a meeting in Lubbock between PYCO and their attorney, Mr. Don Hermann of Fort Worth, Texas, on March 25, 2005. PYCO was told at that meeting that it was unlikely that BNSF would unlock Switch 231. An alternative of reinstalling Switch 320 was discussed and Mr. Hermann pledged to discuss same with the BNSF. Also attached for your convenience is PYCO's legal counsel's letter dated March 28, 2005, summarizing the meeting.

On Monday, April 4, Mr. Wisener informed PYCO that on Wednesday morning, April 6, South Plains intended to "shut down" service to Plant Number 2 because the industry track was "uneven and unsafe." Mr. Wisener gave no indications as to how long the track would be closed. Mr. Wisener presented no evidence or documentation that an "embargo" on the subject track had been secured. A closure of this track will have direct and consequential damages to PYCO in their not being able to ship contracted product to their customers. Sales on current customer contracts between April 1 and July 1 total over \$40,000,000 in product value. We also enclose our attorney's letter to South Plains's legal counsel dated April 4, 2005.

Finally, during the night between Monday April 4 and Tuesday April 5, a derailment occurred at PYCO's Plant Number 1. Mr. Wisener was called by PYCO and came to the location. Mr. Wisener informed PYCO that he "had customers other than PYCO" and "just didn't have time to clean up a mess right now." As of the time of this letter, South Plains has made no efforts to begin work on the derailment, effectively shutting down Plant Number 1.

April 5, 2005

Page 3

PYCO is in great jeopardy of tremendous financial harm as a result of the actions of the railroads mentioned herein and the contemplated actions in the near future. We would respectfully request that the Surface Transportation Board act immediately to prevent the closure of the track servicing Plant Number 2 of PYCO, and to take action to solve the problems existing between the railroad companies which are using PYCO as a pawn in their litigation. Finally, we would also request the Surface Transportation Board's help in ordering South Plains to begin work to rectify the derailment at Plant Number 1 at PYCO.

This matter is of the utmost importance to our business. I would be happy to provide you with any additional information necessary to assist us in this matter. Please do not hesitate to contact me. Thank you for your cooperation in this matter.

Yours very truly,

PYCO INDUSTRIES, INC.

By: *Gail Kring*
Gail Kring

GK:cjh
Enclosures

EXHIBIT 4

P Y C O

P.O. BOX 841
LUBBOCK, TX 79408-0841
TELEPHONE: (806) 747-3434
FAX: (806) 744-3221

PYCO Industries, Inc.
Processors of Cottonseed Products

P.O. BOX 1320
GREENWOOD, MS 38935-1320
TELEPHONE: (662) 453-4312
FAX: (662) 455-6607

May 3, 2005

Via Facsimile 202-565-9011

Mr. Larry Herzig
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street NW, Suite 780
Washington, D.C. 20423-0001

Re: PYCO Industries, Inc. of Lubbock
Application for relief from inadequate
Service through the Consumer
Assistance Program

Dear Mr. Herzig:

Consistent with our telephone conversation of earlier this afternoon, please find faxed herewith a letter sent to Mr. Clemens and dated April 5, 2005. The contents of the attached letter is supplemented by the information contained in this letter.

As we discussed in our telephone conversation, PYCO continues to be used as a pawn in ongoing litigation between the BNSF and South Plains Lamesa Railroad, Ltd., and South Plains Switching, LTD., Co. (collectively referred to as "South Plains"). Each entity blames the other for the poor service being afforded to PYCO. When a possible solution is proposed by one railroad, the other railroad balks at the solution and claims that the proposal would interfere with the ongoing litigation. Meanwhile the situation grows worse at PYCO.

Railcars loaded at PYCO are resting from four to seven days before being switched onto an outbound train. The amount of time between loading and switching seems to vary based upon the temperament of South Plains or the BNSF. Mr. Larry Wisener claims that BNSF is to blame because the BNSF only gives South Plains a small amount of time to use their track for switching, always on a spur of the moment basis with no regularity, routine or frequency. The BNSF claims that South Plains is given daily access to the mainline. This is one example of the competing excuses voiced by the railroads, while no resolution is ever reached.

PYCO has sought a daily switch on Monday through Friday from the railroads since the problems were first identified in mid-March 2005. Various proposals have been put forth

from BNSF including the installation of a new switch, use of adjoining trackage, etc, but in each instance, the proposals die due to a lack of cooperation between the railroad companies.

As a result of the slowing of car movements PYCO is beginning to accumulate significant financial costs and losses, in addition to customer complaints to PYCO resulting from an inability to timely receive refined cottonseed oil.

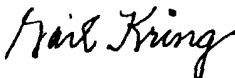
To add insult to injury, South Plains has instigated a per car surcharge and the BNSF has increased its demurrage charge. Efforts to discuss purchase of the South Plains track involved in this situation have stalled due to a lack of ability to receive financial information about the track from South Plains. We also understand that BNSF has a contractual right of first refusal to purchase said trackage, if sold.

Although the circumstances and inter disputes are complex, PYCO seeks only one true measure of relief, timely rail service. We began petitioning the railroad companies before the problems increased. To date, we receive less timely service than when we first began to ask for assistance from these railroads. The promises are many, but the solution never materializes.

We respectfully request the Surface Transportation Board's intervention in this matter. Without your continued assistance to final resolution of the problem, nothing will occur except the continued financial losses occurring to PYCO because of inadequate rail service. Please do not hesitate to contact us for any additional information needed.

Thank you for your consideration of these issues.

Yours truly,

A handwritten signature in cursive script that reads "Gail Kring".

Gail Kring
President

attachment

EXHIBIT 5

P Y C O

P.O. BOX 841
LUBBOCK, TX 79408-0841
TELEPHONE: (806) 747-3434
FAX: (806) 744-3221

PYCO Industries, Inc.
Processors of Cottonseed Products

P.O. BOX 1320
GREENWOOD, MS 38935-1320
TELEPHONE: (662) 453-4312
FAX: (662) 455-6607

May 23, 2005

Via Facsimile 866-254-1792

Mr. Melvin F. Clemens, Jr.
Director, Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street NW, Suite 780
Washington, D.C. 20423-0001

RE: Continuing Inadequate Rail Service by South Plains Switching, Ltd. Co. and
South Plains Lamesa Railroad, L.L.C. to PYCO Industries, Inc.
Track location - Lubbock, Texas

Dear Mr. Clemens:

PYCO Industries, Inc. ("PYCO") has been in contact with your office on several occasions during the previous sixty (60) days concerning problems of inadequate rail service at our two locations in Lubbock, Texas. As you are aware, the South Plains Lamesa Railroad, Ltd. and South Plains Switching Ltd., Co. (collectively referred to as "South Plains" or "SAW") performs switching for PYCO, after which the railcars are handed off to the Burlington Northern Santa Fe ("BNSF") for shipment and empty cars are collected from same.

Our letter to you dated April 5, 2005, copy enclosed for your convenience and same incorporated herein by reference, detailed the beginning of our company's switching problems which began to grow worse in March 2005.

In May, we sent a letter to Larry Herzig with your agency, copy enclosed for your convenience and incorporated herein by reference, which detailed the situation only growing worse, even though South Plains and the BNSF had paid lip service to wanting to "fix" our problem.

Indeed, no "fix" has occurred. We enclose a document entitled Railroad Switching Log which we incorporate herein by reference. This log was compiled by PYCO personnel and details the railcar switching problems for just eight days, from May 11 to May 19, 2005. Moreover, we have attempted to contact Mr. Eddie Hale with the BNSF for over a week concerning rail problems, and Mr. Hale will not return our calls.

As a direct result of the slow switching of railcars, PYCO lost approximately \$450,000 during the month of April. Consequently, pursuant to 49 CFR Section 1146.1, PYCO seeks your

agency's assistance with our rail problems. PYCO has had a substantial measurable deterioration in its rail service over an identified period of time from April 1, 2005, to date.

PYCO's discussions with South Plains and BNSF have not resulted in any positive change to the switching crisis. Each day PYCO's rail problems grow worse, resulting in lost revenues which are directly attributable to poor, and sometimes non-existent rail service. PYCO does not have reason to believe that adequate rail service consistent with its current transportation needs will be restored within a reasonable period of time given the continuing war between the BNSF and South Plains, a war in which PYCO is the casualty.

Our situation is urgent. Please let us know what additional information you need from our company in order to give us some assistance.

Thank you for your help in this matter.

Yours very truly,

PYCO INDUSTRIES, INC.

By: *Gail Kring*
Gail Kring

GK:cjh
Enclosures

EXHIBIT 6

P Y C O

PYCO Industries, Inc.
Processors of Cottonseed Products

P.O. BOX 841
LUBBOCK, TX 79408-0841
TELEPHONE: (806) 747-3434
FAX: (806) 744-3221

P.O. BOX 1320
GREENWOOD, MS 38935-1320
TELEPHONE: (662) 453-4312
FAX: (662) 455-6607

June 8, 2005

Via Telefax No. 202-565-9011

Mr. Melvin F. Clemens, Jr.
Director, Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street NW, Suite 780
Washington, D.C. 20423-0001

RE: Threat of Discontinuing Rail Service by South Plains Switching, Ltd. Co. and
South Plains Lamesa Railroad, L.L.C. to PYCO Industries, Inc.
Track location - Lubbock, Texas

Dear Mr. Clemens:

This morning I received by fax a copy of a letter from Tom McFarland, attorney for South Plains Lames Railroad and South Plains Switching ("SAW") addressed to you. Mr. McFarland's letter of five pages and multiple enclosures entirely blames the BNSF for all of PYCO's rail service problems. Just guessing, we believe you will receive a letter from the BNSF blaming SAW for the problems. Meanwhile, just as I told you in our very first communication, PYCO is stuck in the middle of the fight, experiencing worse service by the day, while the railroads collect their fees and blame one another.

I thought it was the job of the STB to help the shipper of rail freight under circumstances such as described? We began talking with you in April, it is now June, nothing has happened except the continued exchange of finger pointing by the railroads. It would seem that this set of facts would surely warrant the STB taking action on its own to remedy the situation, rather than putting PYCO through the hardship of a formal complaint and subsequent problems of having to deal with the railroads on a daily basis, after our company files a formal complaint.

Our company cannot afford continued delays towards a resolution. Please tell us of the STB's proposed actions in this matter. Meanwhile, we feel that our elected representatives may find these matters of interest as to the rail industry during an era of record railroad industry earnings and declining quality of rail service.

We would appreciate a phone call from you at your earliest convenience.

Yours very truly,

PYCO INDUSTRIES, INC.

By: *Gail Kring*
Gail Kring

cc: Congressman Randy Neugebauer
Longworth House Office Building
Room 1026
Washington, DC 20515

Senator Kay Bailey Hutchison
Russell Office Building
Room 284
Washington, DC 20510

Senator John Cornyn
Russell Office Building
Room 370
Washington, DC 20510

EXHIBIT 7

South Plains Lamesa Railroad, Ltd.**South Plains Switching, Ltd. Co.****P. O. BOX 64299****LUBBOCK, TEXAS 79464****PHO: (806)828-4841****FAX: (806)828-4863**

June 17, 2005

Mr. Gail Kring
PYCO Industries
P. O. Box 841
Lubbock, TX 79408

Dear Mr. Kring:

In reference to the fax I received from Robert Lacey dated June 10, 2005, (copy attached) referencing seed shipments from Plant #2. I do not see where BNSF was notified of this activity nor did I see a date for the re-installation of switch #320, that is needed to insure dependable rail service to Plant #2. Please keep us advised as to when the re-installation will occur.

PYCO personnel will need to contact Larry D. Wisener at the Slaton office (see address and phone numbers in letterhead) concerning all rail services that may be required other than the number of rail cars and the type of car that is needed for each days loading. This daily information may be given to the SAW foreman and /or switch crew.

Any car and /or track damage is the sole responsibility of PYCO. NO repairs of any kind are to be made on SAW property by either PYCO or PYCO's outside contractors.

PYCO is not allowed to conduct switching operations in or on SAW property. Such operations in the last four (4) months have resulted in two (2) major derailments causing extensive track and equipment damage. SAW will no longer assume the liability in these situations.

A formal agreement between PYCO and SAW will need to be entered into concerning designated inbound and outbound tracks. Also a formal agreement will need to be entered into concerning any easements that PYCO may have in use now or may need. A formal agreement will need to be entered into concerning PYCO meeting the

requirements that SAW is requiring for liability coverage for continued assess to SAW property.

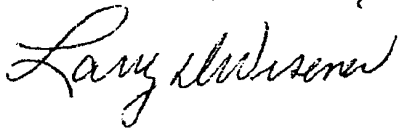
As of June 13, 2005, SAW had in excess of 200 railcars on storage tracks and in SAW's Yard, restricting SAW's switching operations and delaying service to SAW's other customers. As information, total track capacity on these tracks is approximately 320 rail cars.

It is necessary for PYCO to secure its own infrastructure for railcars outside of plant capacity. All railcars that cannot be received by PYCO after July 1, 2005, will be "constructively placed" and will therefore come under SAW Miscellaneous Service Program, Effective April 11, 2005, copy of which was recently given to you.

PYCO personnel should begin to review easements and rights-of-way to determine what is needed at Plant #1, Mr. Wisener should be contacted so that a formal agreement which meets all the requirements, can be agreed upon.

We hope to resolve these issues quickly in order to accommodate both PYCO's and SAW's operational needs.

Sincerely,



Larry D. Wisener
President

Copy Faxed: Gary McLaren
James Gorsuch
Thomas McFarland
Mel Clemens

LDW/dnw

EXHIBIT 8

Railroad Switching Log

Wednesday, May 11th 2005. Tarped and switched fifteen loaded seed cars to #5 track. Only five empty seed cars in SAW switch yard. Forty empty seed cars are setting on #9200 track next to cemetery. SAW sat waiting from 3:30pm to 5:45pm to cross BNSF main line, due to a train with an engine and five cars.

Thursday, May 12th 2005. Tarped and switched five loaded seed cars to #5 track. Put four tank cars on #6 track to be taken to Plant #2. Talked to Rodney (SAW Foreman) at 9:45am, he said the car will be switched to Plant #2 tomorrow morning. Loaded and switched four meal hoppers to #5 track. SAW switched fifteen empty seeds cars to main track from BNSF yard. Switched and cleaned fifteen seed cars.

Friday, May 13, 2005. Tarped and switched fifteen seed cars to #5 track. SAW switched forty-five empty seed cars from BNSF yard and #9200 track to their main. Cleaned twenty seed cars for Sunday loading. The four tank cars from Plant #2 has not been moved and is still on #6 track. Called Rodney at 10:45am about switching the tankers. He said it would be Monday morning. Loaded five meal hoppers and set out on SAW main track.

Saturday, May 14, 2005. Switched and loaded five meal hoppers. Switched to SAW tracks at 2pm.

Monday, May 16, 2005. Tarped and switched twenty seed cars to #5 track. Switched and cleaned twenty seed cars. Tank cars still sitting on #6 track for Plant #2.

Tuesday, May 17, 2005. Tarped and switched twenty seed cars to #5 track. Switched and cleaned eighteen seed cars. Tank cars pulled off #6 track at 10:30am. SAW pulled two lint cars from plant #2 at 2:30pm, but did not have the tank cars with them. Called Rodney at 4:24pm. He said he would spot them at 8:30am Wednesday due to his work load. "They have run out of time!"

Wednesday, May 18, 2005. Tarped and switched eighteen seed cars to #5 track. Tank cars arrived at Plant #2 @ 11am. Eleven empty seed cars on SAW main track, and twenty-one empty seed cars on #9200 track which has been in Lubbock since 4/14/05. Four meal hoppers were loaded and switched to #5 track. SAW brought twelve empty seed cars from BNSF yard to their main track @ 4:35pm. Switched and cleaned four seed cars @ 4:40pm to have at least fifteen cars ready to load.

Thursday, May 19, 2005. Tank cars at Plant #2 filled and weighted out @ 8am. Tarped and switched fifteen seed cars to #5 track. Only eight seed car remained on SAW main track, these were switched and cleaned by 1pm. Talked to Rodney @

11am about empty seeds cars, he said he would have fifteen cars on the main track in about 10 minutes. SAW switched thirteen seed cars on to the main track @ 3pm.

Friday, May 20, 2005. Tarped and switched fifteen seed cars to #5 track. Only six empty seed cars on main track. Talked to Rodney @ 9:45am, he said he would have me twenty seed cars by noon. Switched and cleaned the six seed cars on the main track. Called Rodney @ 1:41pm and he said it was going to after 4pm because of a derail.

Monday, May 23, 2005. Tarped and switched six seed cars to #5 track. Loaded and switched one meal hopper to #5 track. Switched and cleaned the twelve empty seed cars on SAW main track. Penny-Newman showed fifty-three empty cars in town. Track #9200 still has the twenty-one empty seed car sitting on it since April. Talked to Rodney @ 11:35am, he said he would get us at least twenty cars by 5pm. I asked him if he would just bring the cars from #9200 track. His response was he would when they had time; there were a lot of cars needed to be switched in the BNSF yard.

Tuesday, May 24, 2005. Tarped and switched twelve seed cars to #5 track. SAW switched thirty empty seed cars for BNSF yard to their main track. Track #9200 still has the twenty-one empty seed car sitting on it since April. Switched and cleaned fifteen seed cars. Switched and loaded four meal hopper cars to #5 track by 7pm. Talked to Rodney @ 8:25am about making sure to tanks and box cars at plant #2 would be switched today. His response was that he would try. These cars were released to the SAW on Wednesday, May 18, 2005. Cars were switched at plant #2 by the SAW @ 10:30am.

Wednesday, May 25, 2005. Tarped and switched fifteen seed cars to #5 track. SAW switched in around thirty-one empty seed cars to their main track. Cars on track #9200 still have not been moved. Switched and cleaned twenty seed cars. Switched and loaded four meal hoppers to #5 track.

Thursday, May 27, 2005. Tarped and switched twenty seed cars to #5 track. Switched and cleaned fifteen seed cars. Switched and loaded four meal hoppers to #5 track.

Friday, May 27, 2005. Tarped and switched fifteen seed cars to #5 track. Switched and cleaned fifteen seed cars. Switched and loaded six meal hoppers to #5 track. One empty seed car left on SAW main track. Talked to Rodney @ 9:45am about switching the seed cars on #9200 track to their main track. He said they would try to get them switched today sometime. Switched and retarped #BN585294 seed car on #6 track. This car had been sitting on #6 track awaiting parts to repair it.

Tuesday, May 31, 2005. Tarped and switched fifteen seed cars to #5 track. SAW switched thirty-four seed cars in on their main track. Switched and cleaned fifteen seed cars. Do not know if these cars were switched from #9200 track or BNSF yard.

Wednesday, June 1, 2005. Tarped and switched five seed cars to #5 track due to heavy rain. Switched and cleaned five seed cars.

Thursday, June 2, 2005. Tarped and switched eleven seed cars to #5 track. Switched and cleaned eleven seed cars.

Friday, June 3, 2005. No seed cars were loaded or switched due to rain.

Monday, June 6, 2005. Tarped and switched thirteen seed cars to #5 track. Switched and cleaned thirteen seed cars.

Tuesday, June 7, 2005. Tarped and switched ten seed cars to #5 track. Switched and cleaned fifteen seed cars. Track #9200 still has roughly twenty-eight empty seed cars on it and around fifteen empty seed cars on SAW main. Switched and loaded four meal hoppers to track #5.

Wednesday, June 8, 2005. Tarped and switched ten seed cars to #5 track. Switched and cleaned ten seed cars. Derailed clay car on SAW main track @ 5:30pm.

Thursday, June 9, 2005. No switching for seed cars due to tarping 4W seed pile.

Friday, June 10, 2005. Tarped and switched ten seed cars to #6 track. Switched and cleaned six seed cars due to SAW main track being repaired.

Monday, June 13, 2005. Tarped and switched eight seed cars to #6 track.

EXHIBIT 9

JAMES L. GORSUCH, P.C.*Attorney at Law*

4412 - 74th Street, Suite B-102
Lubbock, Texas 79424

Telephone: (806) 771-6474
Facsimile: (806) 771-6476
jgorsuch@nts-online.net

June 13, 2005

Via Facsimile: 785-2521

Mr. Gary R. McLaren
**RICHARDS, ELDER, SRADER,
PHILLIPS & McLAREN, L.L.P.**
3305 66th Street, Suite 1A
Lubbock, Texas 79413

Re: Potential Embargo of PYCO Rail Cars – South Plains Switching

Dear Gary:

Larry Wisener of South Plains Switching informs me that as of Monday, June 13, 2005, there were over 200 PYCO cars in his yard. The yard is plugged and movement of rail cars, including PYCO cars and other customers, cannot occur because there were so many cars in storage.

South Plains Switching plans to embargo any future PYCO shipments from handling. We attach to this letter a copy of Revised Circular TD-1 from the Association of American Railroads regarding embargos.

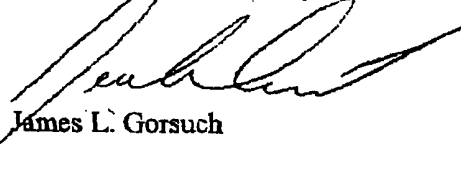
South Plains wishes to notify PYCO in an effort to obtain PYCO's cooperation in rerouting or finding storage places for other cars that may be headed to Lubbock as soon as possible.

If you have any questions, please give me a call.

We remain,

Very truly yours,

JAMES L. GORSUCH, P.C.



James L. Gorsuch

JLG/jeb

EXHIBIT 10



Permian Basin Railways

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

June 21, 2005

Mr. Melvin F. Clemens, Jr.
Director, Office of Compliance and Enforcement
Surface Transportation Board
Suite 780
1925 K Street, N. W.
Washington, DC 20423-0001

RE: PYCO Industries, Inc.

Dear Mr. Clemens:

This is to certify that West Texas & Lubbock Railway (WTLC) is willing to provide alternative rail transportation service to meet the requirements of PYCO Industries, Inc. at Lubbock, Texas.

Sincerely,

E. E. Ellis
President

cc: Mr. Robert Lacy
PYCO Industries, Inc.
Lubbock, Texas

Exhibit B

**Surface Transportation Board**

Washington, D.C. 20423-0001

June 10, 2005

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

Mr. Thomas F. McFarland, P.C.
208 South LaSalle Street - Suite 1890
Chicago, Illinois 60604-1112

202-565-1573

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages = 2

To

Dept./Agency

From

Phone #

Fax #

To: *Mail Kring* From: *Mel Clemens*
Fax # *86-744-3221* Phone # *202-565-1575*

Re: Service Complaint by PYCO Industries, Inc.
against South Plains La Mesa Railroad, LTD.
South Plains Switching, LTD.

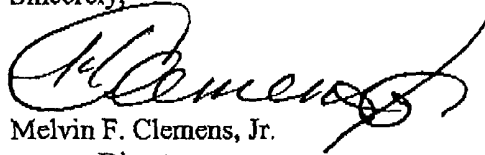
Dear Mr. McFarland:

This responds to your numerous communications in response to my May 25th letter to Larry Wisener, President of South Plains La Mesa Railroad, LTD/South Plains Switching (SAW) in Lubbock, Texas, regarding his failure to provide service to Pyco Industries, a major cotton seed processor. The complaint outlined problems with unreliable switching service and lack of service to the PYCO facilities, provided by South Plains and sought our assistance in resolving this switching problem which Mr. Kring indicates has cost PYCO approximately \$450,000 in lost sales and additional costs. Mr. Kring has also indicated concern for threats by Mr. Wisener of discontinuation of service by SAW.

As we have discussed previously, in issues involving SAW service to its customers, it is our effort to assist rail customers with service problems and to encourage serving carriers to communicate effectively with their customers on service issues so that the Board does not have to become involved formally in these issues. My letter to Mr. Wisener was intended to remind him of his obligation as a common carrier by rail to provide service on request, and to provide him an opportunity to avoid a formal proceeding before the Board by indicating to me those steps being taken by SAW to address PYCO's service concerns. Instead, I have received no response from Mr. Wisener and only endless finger-pointing by you presumably intended to try and excuse SAW from its service failures, which have been ongoing for several months now. In my view your efforts fall far short and only increase the likelihood of a formal proceeding before the Board to address the service issues. Moreover, as noted in recent legislation before Congress, there is an expressed intention in the legislation to significantly revise the Rail Transportation Policy and provisions addressing the Use of Terminal Facilities, to ensure that the Board will take a more proactive role in resolving issues involving rail service and competition. As Counsel to SAW, I would hope that you would encourage Mr. Wisener to respond to my letter and to take a more positive and professional approach to the service issues which PYCO Industries, a major SAW customer, has addressed to him and to this office.

Letter to Tom McFarland. Page 2.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. Clemens, Jr.', with a large, stylized flourish at the end.

Melvin F. Clemens, Jr.
Director

cc: Gail Kring, PYCO Industries.

LAW OFFICE
THOMAS F MCFARLAND, P.C.
208 SOUTH LA SALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

June 8, 2005

By fax to 202-565-9011

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W. - Suite 780
Washington, DC 20423-0001

Re: Service Complaint by PYCO Industries, Inc.

Dear Mel:

This responds to your recent letter about the above subject. Attached to your letter were copies of three letters to the Board from Mr. Gail Kring of PYCO. However, the following attachments to Mr. Kring's letter of April 5, 2005 were omitted and have not been furnished in response to my request:

- (1) letter from PYCO legal counsel to BNSF dated on or about March 11, 2005;
- (2) letter of PYCO's legal counsel dated March 28, 2005 summarizing a meeting between representatives of PYCO and BNSF on March 25, 2005; and
- (3) map showing the location of PYCO Plant Number 2 and related trackage.

The service difficulties being experienced by PYCO have resulted primarily from the following factors, all of which are beyond the ability of South Plains Switching (SAW) to control:

(1) Delay resulting from BNSF's practice of accumulating loaded PYCO cars for larger outbound trainloads. It is alleged in Mr. Kring's letter of May 3, 2005 that railcars loaded at PYCO are resting from four to seven days before being switched onto an outbound train. SAW is informed and believes that the reason for that delay is BNSF's practice of holding loaded PYCO cars near origin to make up larger outbound trainloads. After SAW delivers loaded PYCO cars to BNSF's Lubbock Yard for interchange, BNSF transports those cars several miles to Burris, TX where they are held until enough cars have been accumulated to make a large

THOMAS F. MCFARLAND

Mr. Melvin F. Clemens, Jr.
June 8, 2005
Page 2

trainload. That practice benefits BNSF, but harms PYCO. PYCO is blaming SAW for this delay, but BNSF, not SAW, is solely responsible for this delay.

(2) BNSF's failure to provide SAW with timely access to BNSF's yard for interchange of PYCO's traffic. There have been many days when SAW has had traffic for PYCO and others ready for interchange to BNSF, but BNSF has refused to accept the traffic until the following day or later. Not only does that delay the time when the interchange is accomplished, the traffic unable to be interchanged remains on SAW's tracks causing increased congestion and further delay. Attached to this letter as Appendix 1 are copies of communications sent by SAW to representatives of BNSF documenting BNSF's service failures both before and after PYCO experienced service difficulties at Plant Number 2. Mr. Ice is BNSF's Executive Vice President and Chief Operating Officer at BNSF corporate headquarters in Fort Worth, TX. Mr. Curtright is a regional BNSF operations officer in Kansas City, MO with jurisdiction over Lubbock, TX operations. Mr. McCracken is BNSF Trainmaster locally at Lubbock, TX. Despite SAW's complaints, BNSF's failure to provide reasonable interchange service has worsened, especially during the period of PYCO's increased traffic volume and service difficulties. SAW cannot provide service to PYCO if BNSF will not interchange PYCO traffic with SAW on a timely basis.

(3) BNSF's refusal of requests by both SAW and PYCO to reinstall the switch and track connection to Track No. 330 to permit SAW to serve PYCO in an efficient manner. Attached to this letter as Appendix 2 is a copy of a drawing of trackage in the Lubbock area as it existed in 1992 and at the time of SAW's acquisition of that trackage in 1999.

PYCO's Plant Number 2, which was constructed in 1994, and related trackage have been added to the drawing (extending from Track No. 323 near the center of the drawing). Track No. 330 is shown at the far right of the drawing. Although Track No. 330 was conveyed by BNSF to SAW in the 1999 sale, BNSF on its own volition removed the switch and track connection between Track No. 330 and the BNSF main line shortly after the sale.

As a result, SAW is required to provide service to PYCO by means of Track No. 310, which is shown on the left side of the drawing. Track No. 310 extends through private property owned by Farmers Compress, another SAW shipper. Track No. 310 goes right through Farmers Compress's plant loading dock in Warehouse 1. Track 310 also passes adjacent to Farmers Compress Warehouse 3. Those facilities regularly provide rail traffic for SAW. Track No. 310 is often blocked for extended periods in conjunction with loading, unloading and switching activities being performed at one or both of those Warehouses. That has resulted in considerable delay in providing rail service to PYCO over Track No. 310.

In addition, Track No. 310 is constructed of 90-pound rail, which is inadequate to accommodate the larger volumes of 100-ton cottonseed loads being transported over that Track.

THOMAS F. MCFARLAND

Mr. Melvin F. Clemens, Jr.
June 8, 2005
Page 3

As a result, SAW was required to take Track No. 310 out-of-service for a few days in early April in order to make emergency repairs to ensure safe rail operations. The need for additional repairs of that nature is likely to recur. As a result, SAW and PYCO have attempted to secure BNSF's approval of means to provide service to PYCO more efficiently. Attached to this letter as Appendix 3 is a copy of a letter from an attorney for SAW to an attorney for BNSF, dated March 25, 2005, in which, among other things, SAW, for the benefit of PYCO, requested that BNSF put the switch to Track No. 330 back in place and permit SAW to provide rail service to PYCO via Track Nos. 330, 323 and the main line. According to Mr. Kring's letter to you of April 5, 2005 (at page 2), Mr. Kring made the same request of BNSF at a meeting between PYCO and BNSF on March 25, 2005. BNSF has not responded to the request in SAW's letter of March 25, 2005.

There is no indication in any of Mr. Kring's correspondence that BNSF has responded to PYCO's request. SAW is unable to provide improved rail service to PYCO via Track No. 330 as long as BNSF continues to refuse to restore the switch and track connection to Track No. 330.

(4) PYCO does not have nearly enough of its own track capacity in the Lubbock area to accommodate the larger volumes of traffic that it has recently begun to ship from Lubbock. In view of PYCO's lack of adequate infrastructure, SAW leased its Track No. 9298 to PYCO for storage of cars at nominal rental. A copy of that lease is attached to this letter as Appendix 4. As a further accommodation to PYCO, SAW has not imposed a charge in its tariff of \$50 per car inbound to storage track and \$40 per car outbound from storage for switching cars to and from storage tracks. As a further accommodation to PYCO, SAW has permitted PYCO to move cars on the leased track with PYCO's equipment.

SAW was shocked when PYCO complained to the Board about SAW's service. Without SAW's lease of track to PYCO and other active SAW cooperation, PYCO would not have been able to ship nearly as much traffic from Lubbock as PYCO has been able to ship.

As of the date of this letter, there are more than 150 PYCO loaded or empty cars in the Lubbock area. More than 60 of those cars are located on Leased Track 9298. Another 40 cars are in BNSF's Yard because of the absence of track space on PYCO or SAW. The volume of PYCO's traffic is straining SAW's ability to provide adequate rail service to PYCO and SAW's other customers. SAW has under consideration several alternatives to alleviate the situation, including potential embargo and switching charges to and from storage tracks. The absence of sufficient track space on PYCO property is a major cause of PYCO's service difficulties.

BNSF's failure to interchange traffic with SAW on a reasonable basis and BNSF's refusal to restore the switch and track connection to Track No. 330 are in apparent retaliation against SAW for having brought suit against BNSF to enforce provisions of the Line Sale Agreement between SAW and BNSF for the Lubbock trackage. On April 22, 2004, a jury in a Tarrant County, Texas issued a verdict in favor of SAW and against BNSF on all four issues involved in

THOMAS E MCFARLAND

Mr. Melvin F. Clemens, Jr.
June 8, 2005
Page 4

that lawsuit (copy of jury verdict attached to this letter as Appendix 5).

BNSF's uncooperative behavior toward SAW and its shippers materially worsened after BNSF lost that case. For example, SAW's service records show that there were empty tracks in BNSF's Yard in instances in which BNSF refused to interchange with SAW on the alleged ground of congestion in BNSF's Yard (see Appendix 1 attached to this letter). In other words, BNSF refused to interchange with SAW because BNSF was unwilling to do so, not because it was unable to do so.

A number of allegations in Mr. Kring's several letters to you require a brief response.

- (1) Allegation - April 5, 2005 letter, page 2 - Mr. Wisener's allegedly failed to provide information regarding repairs to the track serving PYCO.

Response - information on that subject was provided in a letter from SAW's counsel faxed to PYCO's counsel on April 5, 2005, item number 6 on page 2 (copy attached as Appendix 6). PYCO was advised that Track No. 310 was between 4 and 4½ inches out of level, with no support for the track on the north rail, requiring immediate repair for safe operations. PYCO was advised that the repairs would take 3 to 5 working days.

- (2) Allegation - April 5, 2005 letter, page 2 - South Plains has made no efforts to repair a derailment near PYCO Plant No. 1.

Response: this was a derailment of three loaded 100-ton cottonseed cars that was caused by a PYCO employee's faulty operation of a switch. Mr. Wisener attempted to get a crane capable of rerailling 100-ton cars on the scene on the same day of the derailment, but a crane of that size was not immediately available. Lubbock is located in a remote area of western Texas. However, Mr. Wisener was able to get such a crane to reraill the cars the very next morning, which was a weekend day. SAW acted promptly in repairing this derailment that SAW did not cause.

- (3) Allegation - May 3, 2005 letter, page 2 - SAW has instigated a per car surcharge.

Response - the surcharge amounts to only \$20 per car. It is designed to partially offset the increased cost of switching and storing cars for PYCO on SAW's tracks. There is a published switching charge of \$50 per car inbound to a storage track and \$40 per car outbound from a storage track in SAW's tariff. SAW could have assessed that charge on all cars in storage for PYCO, but refrained from

THOMAS F. MCFARLAND

Mr. Melvin F. Clemens, Jr.
June 8, 2005
Page 5

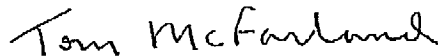
doing so. The much lesser surcharge was published and noticed to PYCO in accordance with the law.

- (4) Allegation - May 23, 2005 letter, page 1 - Attached Railroad Switching Log shows railcar switching problems.

Response - the Log does not identify service failures attributable to SAW. For the most part, service delays were attributable to waiting for BNSF operations (May 11, 2005) and SAW personnel being required to cease operations due to the 12-hour Hours of Service law. (May 17, 2005).

It is respectfully submitted on the basis of the foregoing that there is no basis either for an action for directed service under 49 U.S.C. § 11123, or for a complaint for failure to provide adequate rail service on reasonable request under 49 U.S.C. § 11101(a).

Very truly yours,



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

TMcf:kl:wp8.0\1091\lrmfc1

cc: Mr. Gail Kring, *by fax to 806-744-3221*
Mr. Larry Wisener, *by fax to 806-828-4863*
Gary R. McLaren, Esq., *by fax to 806-785-2521*
James L. Gorsuch, Esq., *by fax to 806-771-6476*

Exhibit C

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	F.D. 34802
SOUTH PLAINS SWITCHING LTD.	)	

VERIFIED STATEMENT OF MR. ROBERT LACY
IN SUPPORT OF PETITION FOR
ALTERNATIVE RAIL SERVICE

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, on this day personally appeared **ROBERT LACY**, who after being duly sworn, stated under oath stated as follows:

1. “My name is ROBERT LACY. I am over the age of eighteen (18) years, am competent to make this Affidavit, and affirm that the following statements are within my personal knowledge and are true and correct.

2. I am presently employed by PYCO Industries, Inc. (“PYCO”) as Senior Vice President of Marketing. I have been continuously employed by PYCO for the previous 15 years. As part of my job responsibilities, I oversee rail shipments to and from PYCO’s facilities in Lubbock, Texas, known as Plant No. 1 and Plant No. 2. I also communicate with representatives of South Plains Switching Ltd. (“SAW”), including Mr. Larry Wisener, about the switching of railcars being utilized by PYCO.

3. I began advising SAW in the early days of 2005 that PYCO’s switching needs would be increasing due to the company’s increased sale of cottonseed byproducts resulting from record cottonseed production. I spoke with Mr. Larry Wisener about the projected switching increases in January 2005, informing him that beginning approximately April 1, 2005, PYCO would be increasing its product shipments by rail.

4. Mr. Wisener’s response at that time was that he could not promise any results to PYCO’s increased rail traffic because he was being hampered by the BNSF. When pushed for details, Mr. Wisener gave some details about an ongoing lawsuit between SAW and BNSF and essentially told me that he probably couldn’t accommodate any increases unless PYCO could help relieve switching pressures being placed on him by the BNSF.

5. Accordingly, PYCO contacted the BNSF and ultimately met with an attorney for BNSF, Mr. Don Herrmann, in March 2005. PYCO detailed its anticipated needs to Mr. Herrmann along with a suggested solution related to unlocking a particular switch, Switch #231, to perhaps relieve switching pressures. Mr. Herrmann vowed to relate the information to his client, BNSF, and we believe he did so.

6. During April 2005, Mr. Wisener's attitude towards PYCO stiffened after he mentioned that he learned of our meeting with the BNSF's lawyer. Correspondence was exchanged between our local attorney and Mr. Wisener's attorneys and it became evident to the management of PYCO that Mr. Wisener's bullying attitude was only growing worse and that switching was becoming more of a problem on a daily basis.

7. Accordingly, PYCO grew tired of trying to pursue an amicable solution among all the parties and contacted the Surface Transportation Board ("STB"). After we began discussions with the STB, and began drafting a formal complaint to the STB of which Mr. Wisener gained knowledge, switching operations suddenly began to steadily improve. Since this was PYCO's only goal to begin with, PYCO chose not to file a formal complaint with the STB, thinking that matters had been resolved.

8. On or about September 2005, Mr. Wisener informed me that he wanted to get out of the railroad business and was interested in selling SAW and wanted to know if PYCO was "interested in buying a railroad." I communicated this conversation to our management team at PYCO.

9. On October 11, 2005, PYCO's attorney, Gary McLaren, forwarded a letter he received from one of Mr. Wisener's attorneys, Jim Gorsuch, setting forth a Letter of Intent between PYCO and SAW. The Letter of Intent contained binding language for the purchase of a "shortline railroad business in East Lubbock" for \$5,500,000. A copy is attached as Exhibit "1". There was no listing of the assets included in the offer and no discussion had ever occurred between SAW and PYCO about specifics of such a sale, other than very generalized discussions. Mr. Wisener's lawyer wanted a response within 6 days, before the close of business on October 17, 2005.

10. Having further discussed the matter, we instructed our lawyer on October 13, 2005, to send to Mr. Gorsuch a simple proposed "due diligence" paragraph to be added to the Letter of Intent. This, we believed, was a minimal solution that would allow PYCO to gain financing of a possible solution and to assemble details to be approved by our board of directors. We also believed that a simple paragraph, as opposed to rewriting the entire document, might keep Mr. Wisener in a calm enough state to continue discussions about a purchase of certain assets. A copy is attached as Exhibit "2".

11. On November 3, PYCO received a letter from Mr. Wisener, a copy of which is attached to this verified statement as Exhibit "3". The letter cut off negotiations. This was the first time that PYCO was aware that SAW did not intend to move forward with revising the Letter of Intent or continuing with discussions about the purchase of SAW assets. Then matters between SAW and PYCO grew measurably worse.

12. On November 17, I received an angry call from Larry Wisener. He said that PYCO needed to come to his office and hear from him how things were about to change between SAW and PYCO. Having been to Mr. Wisener's office before in situations where Mr. Wisener progressively becomes more profane and begins discussing how he can "throw out" people that have opposing opinions, none of the PYCO management team wished to suffer through another of these unpleasant episodes.

13. During the November 17 telephone conversation with Mr. Wisener, I came to the conclusion that his tone and attitude represented a genuine business threat to PYCO. I reduced our conversation to written notes and began making contemporaneous notes concerning SAW beginning on November 17. These are attached as Exhibit "4".

14. I called Mr. Wisener on November 18 concerning a letter PYCO received from SAW canceling the lease of track #9298. Mr. Wisener was very belligerent and began telling me that he was in charge of SAW and that PYCO was going to have to fend for itself because doing business with SAW was about to become a lot more costly. It was apparent during the conversation that Mr. Wisener continued to be upset that PYCO did not "buy a railroad."

15. As my attached notes since November 17 indicate, there has been a substantial, measurable deterioration in rail service supplied by SAW since November 17, 2005. All efforts to resolve the switching problems with SAW have been unsuccessful and the attitude of Mr. Wisener towards PYCO continues to be just short of physically confrontational. PYCO management is concerned about possible physical retribution by Mr. Wisener.

16. PYCO utilizes about 6,250 railcars per year. At present, it is not feasible economically to convert any significant percentage of our product shipments from rail to truck due to the transcontinental nature of the shipments and the profit margin of the products being shipped. Consequently, it is imperative to the continued operations of PYCO that adequate rail service be restored.

17. PYCO's present service deficit amounts to 14 railcars per day at Plant No. 1. PYCO needs 26 cars per day at Plant No. 1 and SAW has reduced service to Plant No. 1 to only 12 railcars per day.

18. SAW failed to provide any service to PYCO's Plant No. 2 for approximately six days during the 2005 Thanksgiving holiday period. While

service has been presently restored to the requested 12 railcars per day since Thanksgiving, SAW continues to fail in providing at least one boxcar per day to Plant No. 2 as has been repeatedly requested.

19. Based upon the present number of switches by SAW, PYCO will run out of storage capacity for its products by mid-January 2005. Already the lack of adequate switching has resulted in delayed and cancelled orders with customers of PYCO.

20. PYCO could handle 26 railcars per day at Plant No. 1 if an alternative carrier could utilize SAW trackage. Currently, SAW has placed a derail in such a position so as to limit car movement to track owned by PYCO. Under the present derail placement, the maximum number of cars that PYCO can accommodate is 16 to 17 railcars per day; however, PYCO is forced to order only 12 cars per day because SAW will not place the cars where requested. Consequently, PYCO presently faces a 14 railcar per day shortage, and when coupled with the inability to get boxcar switching at Plant No. 2, PYCO incurs a daily loss as a direct result of SAW's inadequate switching.

21. As a direct result of SAW's switching deficiencies, PYCO is suffering economic losses on a daily basis resulting from delays in shipment by SAW. The slowness of PYCO's rail shipments is resulting in both delayed revenues from slowed shipments and lost sales. I directed PYCO staff to supply me with a summary of all delayed cars and also lost sales due to lack of cars. On the basis of that information, I have prepared the chart below which summarizes the losses mentioned herein that have accrued since November 17, 2005. There are two main sources of damages arising from the SAW service inadequacy: losses due to delays in shipment and losses due to lack of cars resulting in lost sales.

Calculation of Damages

# Cars	lbs/tns per Car	Total lbs/tns	Avg Price (\$)	Total Revenue	Interest Cost	Carrying Cost (\$)	Total Damages (\$)
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*Losses Arising from Delayed Cars:

Tank Cars Behind Schedule (oil)	8	185,000	1,480,000	0.33	488,400	6.00%	29,304
Box Cars Behind Schedule (lint)	12	129,320	1,551,840	0.14	217,258	6.00%	13,035
Gondola Cars Behind Schedule	50	95	4,750	127.00	603,250	6.00%	36,195
Approximate Total Tons CS			9,375			25.00	234,375

Losses Arising from Lack of Cars Resulting in Lost Sales

Tank Cars	30	185,000	5,550,000	0.33	1,831,500		1,831,500
Gondola Cars (CS)	525	95	49,875	127.00	6,334,125		6,334,125

TOTAL CURRENT DAMAGES

\$8,478,534

*Currently only Interest Cost and Carrying Cost damages. Continued delays will result in additional charges by customers or lost sales.

22. Should PYCO be forced to shut down operations as a result of the above-described switching problems, PYCO's very survival could be threatened. The corporation's value as a going concern is approximately \$150,000,000. Daily, PYCO is placed in the position of losing corporate goodwill and contractual integrity with its owners and customers as a direct consequence of switching problems. Focusing only on the value of the inventory that could be lost through a long term shut down, the inventory at risk is valued at approximately \$95,000,000.

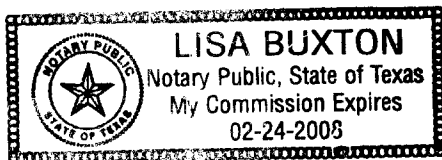
23. All discussions with SAW since November 17, 2005, to restore adequate rail service have proven unfruitful. As a member of PYCO's management team, the present switching difficulties are an imminent threat to the financial wellbeing of PYCO and we have no reason to believe that adequate service is going to be restored within a reasonable period of time short of intervention by the Surface Transportation Board."

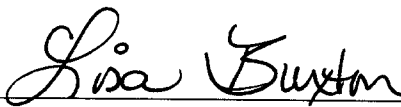
Further, Affiant saith not.



ROBERT LACY

SWORN TO AND SUBSCRIBED BEFORE ME on this the 15th day of December, 2005, to certify which witness my hand and seal of office.





Notary Public State of Texas

EXHIBIT 1

JAMES L. GORSUCH, P.C.*Attorney at Law*

4412 - 74th Street, Suite B-102
Lubbock, Texas 79424

Telephone: (806) 771-6474
Facsimile: (806) 771-6476
jgorsuch@nts-online.net

October 11, 2005

Via Facsimile:

Mr. Gary R. McLaren
**RICHARDS, ELDER, SRADER,
PHILLIPS & McLAREN, L.L.P.**
5214 68th Street, Suite 302
Lubbock, Texas 79424

Re: Sale of Portion of the Assets and Obligations of South Plains Switching, Ltd. Co., to Pyco Industries, Inc.

Letter of Intent

Dear Mr. McLaren:

This Letter of Intent sets forth our agreement and understanding as to the essential terms of the sale to Pyco Industries, Inc. ("Purchaser"), by South Plains Switching, Ltd. Co. ("Seller"), of a portion of Seller's business ("Business") located in Lubbock County constituting a shortline railroad business in East Lubbock. The parties intend this Letter of Intent to be binding and enforceable and will inure to the benefit of the parties and their respective successors and assigns.

1. **Purchased Assets.** At the closing, Purchaser will purchase the specific assets set forth in the Sale Agreement associated with the Business, including all contracts and agreements, and all legally assignable assets and obligations.
2. **Assumed Liabilities.** Purchaser will assume as of Closing Date the liabilities and obligations set forth in the Asset Sale Agreement between South Plains Switching, Ltd. Co., and The Burlington Northern & Santa Fe Railway Company, executed in May of 1999. In addition, Purchaser will assume the liabilities and obligations arising in connection with the operation of the Business by the Purchaser after the Closing Date.
3. **Purchase Price.** The purchase price will be \$5,500,000.00, payable in cash in immediately available funds on the Closing Date.

October 11, 2005

Page 2

4. **Pre-closing Covenants.** The parties will use their reasonable best efforts to obtain all necessary third party and governmental consents, if required, including all certificates, permits and approvals required in connection with Purchaser's operation of the Business. The Seller will continue to operate the Business consistent with past practice. The parties agree to prepare, negotiate and execute a Purchase Agreement which will reflect the terms set forth in this Letter of Intent.
5. **Expenses.** Subject to the provisions of this Letter of Intent, each party will pay all of its expenses, including legal fees, incurred in connection with the acquisition of the Business.
6. **Confidentiality:** Any information obtained by Purchaser from Seller regarding this sale, will be kept strictly confidential.

Seller and Purchaser warrant that they have all required authority to enter into this Letter of Intent, and both Purchaser and Seller represent that they have full permission from the Board of Directors and the Officers to enter into this Letter of Intent.

If you are in agreement with the terms of this Letter of Intent, please sign in the space provided below and return a signed copy to James L. Gorsuch, P.C., by the close of business on October 17, 2005. Upon receipt of a signed copy of this letter, we will proceed with our plans for consummating the transaction in a timely manner.

Very truly yours,

SOUTH PLAINS SWITCHING, LTD. CO.

By: _____
CHIEF OPERATING OFFICER

PYCO INDUSTRIES, INC.

By: _____
CHIEF OPERATING OFFICER

JAMES L. GORSUCH, P.C.*Attorney at Law*

•4412 - 74th Street, Suite B-102
Lubbock, Texas 79424

Telephone: (806) 771-6474
Facsimile: (806) 771-6476
jgorsuch@nts-online.net

FAX COVER SHEET

DATE: *October 11, 2005*

TO: *Gary McLaren
Fax 785-2521*

FROM: *Jim Gorsuch*

RE: *LETTER OF INTENT*

TOTAL NUMBER OF PAGES SENT, INCLUDING THIS PAGE: 3

*If you do not receive legible copies of all pages, please
telephone (806)771-6474 immediately and ask for JAN.*

The information contained in this fax is considered by the sender to be confidential and may be of an attorney-client privileged nature. It is intended only for the use of the individual or entity named above. If the reader of this message is not the named recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is prohibited. If you have received this communication in error, please notify us by collect telephone and return the original message to us at the address above at our expense. This paragraph does not apply to pleadings or other documents intended for filing in public records, or for filing with any department or agency whose records are open to the general public for inspection.

EXHIBIT 2

PHILLIPS & McLAREN, L.L.P.

ATTORNEYS AT LAW

JAMEY LANEY PHILLIPS
jameyp@sbcglobal.net

3305 66TH STREET, SUITE 1A
LUBBOCK, TEXAS 79413
TELEPHONE (806) 788-0609
TELECOPY (806) 785-2521

GARY R. McLAREN
gmclaren@sbcglobal.net

October 13, 2005

Mr. James L. Gorsuch, P.C.
Attorney at Law
4417 74th Street, Suite B-102
Lubbock, Texas 79424
Via Telefax No. 771-6476

RE: Letter of Intent

Dear Jim:

As you know, PYCO is still in the early stages of looking at the purchase of your client's assets. Much remains to be done in terms of investigation and evaluation of the purchase.

We would need to add the following provision to your proposed Letter of Intent in order to move forward.

Purchase Conditional Upon Due Diligence and Financing. Seller acknowledges and agrees that Purchaser's purchase of the assets made the subject of this Letter to Intent is conditional and contingent upon Purchaser's satisfaction with the results of Purchaser's due diligence in the investigation, evaluation and appraisal of said Assets, at Purchaser's sole discretion. Seller further acknowledges and agrees that Purchaser's purchase of said Assets is further conditional and contingent upon Purchaser's ability to obtain financing for the purchase of said Assets at terms and conditions favorable to Purchaser, at Purchaser's sole discretion. Seller further acknowledges and agrees that should Purchaser be dissatisfied with the results of its due diligence concerning these Assets, or be unable to obtain financing for the Assets at terms and conditions favorable to Purchaser, both at Purchaser's sole discretion, then Purchaser is entirely relived of all obligations and duties arising under this Letter of Intent, save and except the duty and obligation of Confidentiality as provided for herein.

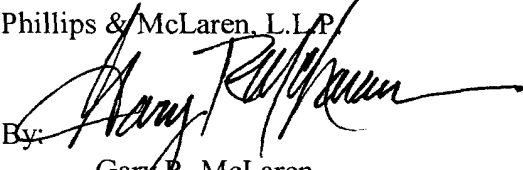
October 13, 2005
Page 2

Please let me know if this is acceptable.

Yours very truly,

Phillips & McLaren, L.L.P.

By:


Gary R. McLaren

GRM/cjh

SENDING CONFIRMATION

DATE : OCT-13-2005 THU 16:33
NAME : GARY MCLAREN
TEL : 806 788 1807

PHONE : 7716476
PAGES : 3/3
START TIME : OCT-13 16:32
ELAPSED TIME : 00'23"
MODE : ECM
RESULTS : OK

FIRST PAGE OF RECENT DOCUMENT TRANSMITTED...

C O V E R
S H E E T

FAX

To: James L. Gorsuch
Fax #: 771-6476
Re: Letter of Intent
Date: October 13, 2005
Pages: 3 including cover sheet

From the desk of...
Gary R. McLaren
Attorney at Law
Phillips & McLaren, L.L.P.
3305 66th Street, Suite 1A
Lubbock, Texas 79413
(800) 788-0809
Fax: (806) 788-0821

EXHIBIT 3

South Plains Lamesa Railroad, Ltd.
South Plains Switching, Ltd. Co.
P. O. BOX 64299 LUBBOCK, TEXAS 79464
PHO: (806)828-4841 FAX: (806)828-4863

November 3, 2005

NOV 03 2005

Mr. Robert Lacey
PYCO Industries
P. O. Box 841
Lubbock, TX 79408

Dear Mr. Lacey:

South Plains Switching, Ltd. Co., (SAW) has come to the conclusion after discussions with PYCO's attorney that an agreement on a letter of "intent to purchase" certain assets of SAW cannot be reached.

SAW is going forward with talks to other prospective buyers, if none are found to be satisfactory, SAW will continue to operate all its property in Lubbock.

However, in the interim, SAW feels it must request, for liability and violation of FRA Rules and Regulations, that PYCO Industries cease all plant operations on SAW property immediately. Storage of and placement of PYCO equipment needed for its operations needs to be addressed as soon as possible.

Please call or have a PYCO representative contact me at my office in Slaton, TX, to discuss future operational and rail service issues required of SAW. Your immediate attention to this matter will be appreciated.

Respectfully,



Larry D. Wisener
President

EXHIBIT 4

South Plains Lamesa Railroad

November 17, 2005

3:45pm

Larry Wisener called to ask me if we had received his letter dated November 3rd (copy of letter available) and was wondering why we haven't been in touch with him to discuss our operational needs. I explained that we had received his letter and that we knew that he was going to make the rules and we didn't believe that we would have any input in his decisions. He said we were ignoring his requests and that we had been loading seed cars on his track again (track between dump 5 and seed stacks). I told him politely "no sir, we have been loading seed inside our plant." He accused me again of the same thing and I politely stated again that "we were loading inside our plant from seed house number one and that we did not have any fumigated seed in the area that he indicated." He started telling me that we were not going to be able to get on his tracks anymore and that he was putting in a derail to make sure that we couldn't get on his property to switch our cars. He said that we needed to sit down with him so he could tell us how much he was going to charge us to store our cars, to service our plant, and that he was canceling the lease on track #9298. He said he had 100 seed cars on that track and that he wasn't going to allow us to keep cars over there for free anymore. He mentioned other leases that he was looking at that he would be canceling soon and that we had better come over and talk. Larry said that he wasn't going to store cars for us anymore and was going to turn them back to the BNSF and they could store them for us.

November 18, 2005

8:30am

Lewis, Ronnie, Kelly, Les, and I went down into the plant to plan how we need to go about our business. Larry did put the derail on the track so that we could not get on his property and we told our people to do what they could do and we would request in writing anything that we needed the SAW to do to service our operation.

9:15am

Lewis came to the office with a plan to move our cars around inside of our plant and asked if we could call Larry and see if he could move the derail back about 100 feet to the drainage ditch where it was place last time. With the derail where it was currently, we did not have enough room to put a car on the switch in order to get it weighed. With the switch moved, we would be able to get all of the cars ready inside our plant in order to have the daily switches ready for them and make everything easier for both parties.

9:30am

Received a letter dated November 17th canceling the lease of track #9298 effective February 28, 2006.

11:00am

I place a call to Larry and ask him if he could move the derail back to the drainage ditch so that we could get all the cars weighed and ready for him daily. He said that he was busy and would have to look at it later. That is all that I wanted from him and asked if he would let me know. He told me that he had been going through all of the leases and encroachments and there were a lot of loose ends that he was going to cancel. He said that it included overhead conveyers and roads that he would be sending a letter out to cancel. And that he wasn't going to store any cars for us and needed us to come and talk to him about how much he was going to charge us for all services. I told him that if he was going to tell us what he was going to do, would there be any need in us coming to talk to him. He said if you care about your operation you need to come over. I said that if he already things set; we didn't need to go sit down with him just to listen to him vent and argue about everything. Larry said that we wouldn't argue about anything because there was nothing for us to argue about. I again said that we didn't need to sit down with him if he had things figure out already. Larry then told me that he was going to set charges for everything that he could and cancel leases and that we would have to try to figure out how to take care of ourselves. I told him that we are working on taking care of ourselves and he stated that is was going to cost a lot of money for us to continue doing

business with his railroad and that we would start receiving letters next week on cancellations and rates that he is going to charge us to switch and store cars. I replied that all I had only the one question for him about the derail and that I didn't intend on getting into any further discussions at this time. Larry then stated that the answer is no, he is not going to move the derail at all. I said okay thanks for your time, bye.

We faxed in the list of cars needed on Friday morning and did receive a switch at both plants at about 4:30pm.

November 21, 2005

9:00am

We sent in our switch list for the day and had everything lined out for them to pick up from within our plants. Les observed Larry and 2 other guys watching us switch from the derail that he had put in on Thursday. We have figured out how to just barely get one car on that at a time in order to get back to our scales and weigh the cars. I wouldn't be surprised if he did not move the derail slightly today so that the one car won't fit anymore.

3:00pm

SAW switched both plants between 3 and 4 pm. Lewis observed only two people on switch crew versus the usual 4-5, Rodney and Shad.

November 22, 2005

9:00am

Our guys have been looking at the track situation inside our plant because of only being able to handle about 12 cars a day currently. They decided that if they had the SAW switch our cars on the scale track instead of the shop track or if we could get cars on both, we would be able to handle more cars each day. Les asked Rodney (SAW) if we could get switched on both and he replied that Larry would only allow them to do one pull per day. They then asked if they would switch on the scale track today. Rodney asked Larry and he said that they would switch only on the shop track. The switch is inside our plant and we could lock it out and have the SAW set the cars where we need them without any input from the Larry.

11:00am

We sent in our request for the days switching a little late because we were waiting for the answer from the SAW concerning the scale track. We are leaving the switch on the shop track for now until we here from our attorney's.

3:30pm

The SAW picked up cars at 10am this morning and did not leave any cars for us to load. We had some seed cars that were not ready yet and they left them. After they were loaded they set them out on our shop track to be picked up this afternoon. This afternoon they pushed cars in on top of the seed cars instead of pulling them out limiting the number of empties that we could bring in to load. Les asked them if they would just put them on the scale track and was told that Larry wouldn't let them. Instead of making a big deal out of it today we conceded to take what we had and will still request in writing on Monday morning when we send our car list in that they set the cars on the scale track. We will see what happens then.

November 23, 2005

9:30am

We sent in our order list as usual this week. We did not specify which track that we wanted the cars to be placed. The SAW sent a notice to our office on the 22nd that they would be closed for the holiday and would not switch on the 24th and 25th. We will start requesting cars be put on scale track on Monday. Rodney (SAW) told Les that he would like to have our switch list by about 5pm for the next day. The next switch will not be until Monday morning and we were making the track change on the switch list so we aren't going to fax until early Monday morning. We did not get a switch at plant #2 today and now will not get any cars to load over the long weekend.

November 28, 2005

7:30am

I sent the switch list to the SAW railroad and requested that the cars be placed on the scale track and the loaded cars pulled from the shop track.

2:45pm

We got switched at plant #1 and they would not place the empty cars on the scale track. They pulled the cars from the shop track and then placed the empties back on the same track. Even though it would be easier to push in on one track and pull out on the other.

4:30pm

Les talked to Rodney and was told they were having problems with their engine today and would not be able to switch us at plant #2 again. We now have not had a switch at plant #2 since November 22nd. We sent the switch list to the SAW for tomorrow and sent a cover letter this time requesting that the inbound cars be placed on the scale track (copy attached) at plant #1 and that they switch as request on the 23rd and 28th at plant #2.

November 29, 2005

8:00am

Les said that Rodney called him this morning and told him that they would be switching at plant #2 this morning because they finally got their locomotive working again. He also told Les that he would pull from the shop track twice today if we could get cars loaded. He did not indicate which track he would push cars into our plant.

12:00pm

We finally got a switch at plant #2. Larry has complained about storing cars for us recently, but if the SAW would have switched us on the 23rd and 28th, we would have been able to load 36 more Gondolas and 6 more box cars by today.

12:30pm

We were switch on the shop track again today. The first day they could have said that they didn't see the instructions, but today there is no reason that the SAW didn't know that we wanted the cars pushed in on the scale track. Larry is being stubborn and is not going to switch the cars like we request. The answer to his problems about having to store our cars and the demurrage that we are incurring on our hopper cars can be attributed directly to the SAW not being willing to switch on the scale track. We could load an additional 5+ cars per day by using the scale track versus the shop track. Since this nonsense began the first part of November, PYCO plant #1 could have loaded an additional 80 cars. At this time we are behind 13 boxcars of Linters, 5 hopper cars, 40 Gondolas, and about 6 tank cars. This could have all been prevented and we would still be abiding by the rules that Larry put in place.

5:00pm

We faxed our list in to the SAW railroad that still shows that we want the cars placed on the scale track. We haven't taken any other steps until we get advice from counsel.

November 30, 2005

2:00pm

We received a switch at plant #2 as requested today. They pulled the cars from the shop track at plant #1 at about 2:30, but when they pushed in our empty cars about 15-20 minutes later it was on the shop track. This is the 3rd day in a row that the crew would not put the cars onto the scale track as requested. That is another 5+ cars that we could have loaded tonight that are going to be lost. It is costing PYCO a lot of money for him to deny our switching requests each day, not to mention we are getting further behind each day. I had noticed that I haven't seen any charges for surcharges, storage, or demurrage yet like was promised on one of our phone calls the other day. Not only has he not sent the charges, but also the letters that he was going to send to cancel all of our leases and easements.

4:45pm

We sent our switching request in along with the cover letter again telling the SAW that we want our cars pushed in on the scale track. This is the fourth day of asking and if it doesn't happen tomorrow, we will need to take additional steps to make sure that he has to switch us on the scale track.

December 1, 2005

11:30am

We were switched at plant #1 they pulled cars from the shop track and then came back and pushed the empties onto the same track. They still will not push the cars on the scale track where we requested.

1:30pm

We received our switch as ordered at plant #2. It seems that we are getting that worked out at the present time.

4:30pm

We sent the fax in to order cars for Friday.

December 2, 2005

8:20am

Rodney at the SAW called and said that they didn't receive the switch list that Kelly had faxed at 4:30pm on Thursday. Les gave Rodney the instructions over the phone and told him that we wanted the cars on the scale track.

11:00am

The SAW pulled from the shop track as requested and then they pushed the empties onto the same track. They still refuse to set the cars on the scale track. We are only ordering the cars that will fit on the shop track; we cannot order more cars until they start pushing the empties onto the scale track.

12:00pm

We received the cars that were requested at Plant #2.

4:30pm

We sent in our order for cars to be placed on Monday. We continue to order the cars for plant #1 to be placed on the scale track.

December 5, 2005

9:00am

We finally received an invoice today for charges incurred on the SAW railroad. The normal bills were received as in the \$20 per car surcharge that the SAW starting sending a while back and \$150 per loaded oil car sent from plant #2 to Plant #1. Those two invoices were normal, but now we are getting and invoice for \$150 per car for each car that is constructively place at either one of our plants. So far he has only billed us for November 21st, 22nd, and 23rd which are a few days after we started keeping this log again. The \$150 charge is on his new tariff that he sent to us in May.

10:30am

The SAW pulled the cars from the shop track and pushed them back onto the same track, they did not give us the gondolas we ordered only the tank cars and hoppers. Les told Rodney again today that we needed the cars pushed on the scale track and was told that Larry still would not allow him to push the cars on the scale track. There is no reason that Larry should be able to dictate which track our cars get placed.

5:00pm

We still have not been switched at plant #2, but Rodney told Les he would get it done before they went home. We will see in the morning. We are sending the list to the SAW for Tuesday.

December 6, 2005

8:00am

We finally got switched at plant #2 at about 6pm last night. Les also told me that at plant #1 we did not get any Gondolas to load yesterday, only tanks and hoppers. Les said that when he would ask Rodney to push the cars on the scale track he would only say that Larry wouldn't let him do it that way.

11:30am

The SAW switched our cars to us, but we had asked for 12 Gondolas and 3 Tank cars and they only had 11 Gondolas and they tried to give us 4 tank cars. We did not need the extra tank car and told Rodney to keep the car.

1:30pm

We received all of the cars that we ask for, but they were pushed in on the shop track again. Les said that he asks Rodney about the scale track every time they talk.

December 7, 2005

9:00am

I had an opportunity to sell 50,000 more tons of cottonseed at \$120 today, but did not take the bid because of our switching situation. This is another case where the SAW is costing PYCO money by preventing us from shipping the seed that we will need to move in order to hold everything that we will receive.

11:00am

The SAW pulled the loaded cars at plant #2 and did not push anything into us today. We had ordered 12 Gondolas and Les was told that they didn't have any empty Gondolas to bring.

11:30am

Rodney pulled the loaded cars from the shop track today and then set in 4 Gondolas to us, allowing us to pull them over to the meal track before he set any more cars. This allowed us to take 16 cars today versus the normal 12 that we have been getting on the shop track. Larry still will not let his employees switch us on the scale track, but Rodney bent the rules a little and let us pull those cars to the other track before he set the ones that we had ordered.

December 8, 2005

10:00am

We received our switch at plant #1. We did not ask for any Gondolas because we were told they did not have any in town, but we did ask for 6 tank cars and 6 box cars to load. We received the 6 tank cars and only 2 of the boxes because we were told that they had run out of box cars also. We have a written order in with the SAW for a certain number of box cars each day and he is responsible for getting them ordered from the BNSF. We did not order any gondolas for plant #2 either, but we ordered 4 boxcars. We were told that they would not switch today because they have no boxcars available. It doesn't look like we are the ones that are sitting on cars and making the SAW use their tracks to store our empty cars. We were loading 6 tank cars, 2-4 boxcar, 2 hoppers, and up to 15 gondolas per day at plant #1 so if they would let us go, we would not have too many cars in town waiting to be loaded.

December 9, 2005

11:00am

We did not order any gondolas for plant #2 for today; only 4 boxes were requested the day before and not received. This morning we received 12 empty gondolas and no boxes. The reason for not ordering gondolas was that we wouldn't be able to load any until Monday because the tarp couldn't be pulled from the fumigated pile until Monday morning. We really need boxcars to load our linters in at both plants, but at plant #2 we have to stack them on the ground because we are out of room.

5:00pm

We finally got a switch today but they only set in 7 tank cars (4-empty, 3-loaded). We didn't get any boxes at plant #1 either which is going to put us further behind each day. We order boxcars a month at a time for both plants and tell the SAW how many cars we need each day. The SAW will send the order to the BNSF or UP railroad on most equipment that we order, but on the boxcars he doesn't. He has a contract to store boxcars for the railroad and says that he can get any boxcars that we need. I would say that isn't the case right now and we are in need of boxcars quick.

December 12, 2005

9:00am

Kelly Jack talked to the SAW about our lack of boxcars today and Dale told him that they sent our order to the BNSF on November 21st, when they received it in their office. Kelly called the BNSF and was told that they don't have an order in from PYCO and haven't seen on since the November order was placed at the end of October. I told Kelly to send in an order immediately to both the SAW and the BNSF so that we could get on record needing the boxcars. I don't know who was at fault on the order, but it wasn't a mistake in our office. The SAW did get the order from us and the problem is between the SAW and the BNSF.

12:00pm

We received 12 gondolas at plant #2, but no boxes. At plant #1 we received 7 tank cars, 4-empty and 3-loaded on the shop track. We still need to get some boxcars in town for us to get caught up on our linter shipments.

December 13, 2005

2:00pm

We received our switch at plant #2 and received 12 gondolas and 2 boxcars as requested. Plant #1 was switched later and we 6 tank cars and 2-hoppers (we just ordered 1) and no boxcars even though we ordered 5. We are still in need of boxcars to ship out our linters.

Exhibit D

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December 19, 2005

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

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

Dear Mr. Williams:

I am writing on behalf of my client, West Texas & Lubbock Railway Co., Inc. ("WTL") in connection with the above-captioned proceeding. Subject to the caveats and conditions identified below and pursuant to the Board's regulations at 49 CFR 1146 (Expedited Relief for Service Emergencies), WTL is willing to provide alternative rail service for Pyco Industries, Inc. (Pyco) and other customers currently served by the South Plains Switching Ltd. (SAW) at Lubbock, TX.

WTL is a class III short line railroad owned by Permian Basin Railways, Inc. (Permian), a short line railroad holding company headquartered in Chicago, IL. WTL currently owns and operates over 100 miles of track in and around Lubbock, TX, and contiguous areas. WTL currently handles approximately 4000 carloads of traffic annually utilizing 3 engines and 10 employees. WTL connects with the Burlington Northern Santa Fe Railway (BNSF) at Lubbock. WTL's owner, Permian Basin, currently owns two other short lines in the southwestern part of the country and will be acquiring a third property on December 22, 2005. Its senior management collectively has over 125 years of experience in providing railroad service, much of it obtained through employment with either class I carriers

or other regional or short line railroads before starting Permian Basin in 2002.

Pyco seeks alternative service from WTL because its current carrier (SAW) is either unwilling and/or unable to provide service. Barring relief from the Board, Pyco and SAW's other Lubbock area customers will either be forced to turn to truck service permanently or even shut down operations. WTL has reviewed the Board's alternative service regulations and believes that Pyco and SAW's other Lubbock area customers are entitled to relief.

Briefly, the Board's regulations require that the alternative rail service provider -- WTL here -- 1) commit to providing service, 2) be able to provide service safely without degrading service to its existing customers, and 3) be able to provide service without unreasonably interfering with the incumbent carrier's ability to service the needs of its own customers.

In response, WTL states:

1. Subject to its making appropriate arrangements with BNSF for interchange of Pyco's traffic and the traffic of SAW's other Lubbock area customers and commercial arrangements with BNSF for transfer of freight and further subject to WTL's determining that it can safely operate over the subject track, WTL will commit to providing service to Pyco and other customers on the subject line of SAW. The fact that WTL has a longstanding, good relationship with BNSF generally and its people in Lubbock specifically should help to insure a smooth takeover of operations.
2. WTL represents that it can undertake to provide the requested service without jeopardizing service to its current customers. WTL has sufficient locomotives, crews, equipment, and experience that it can provide service over SAW without affecting service over its own railroad. In that regard, WTL will assign one of its own engines to serve customers on the affected trackage and is making arrangements to bring in additional power from another subsidiary. Furthermore, because WTL's railroad is physically

separate from SAW's Lubbock trackage, there should be no operating conflicts or other operational problems.

3. Because Pyco seeks alternative rail service authority covering all of SAW's trackage and operations in the Lubbock area, WTL's service would replace that of SAW entirely. Accordingly, WTL's operations should not adversely affect those of the incumbent carrier [SAW].

Please contact me if you have any questions

Sincerely yours,



John D. Heffner
Counsel for West Texas
& Lubbock Railway Co., Inc.

cc: Mr. Melvin Clemens (by fax)
Charles Montagne, Esq.