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DEC 28 2005
RECEIVED

THOMAS F. MCFARLAND

December 27, 2005

By UPS overnight mail

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

Re: STB Finance Docket No. 34802, *PYCO Industries, Inc. -- Alternative Rail Service*
-- *South Plains Switching, Ltd. Co.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Reply In Opposition To Petition For Alternative Rail Service, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

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

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Office of Proceedings

Public Room

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.) NO. 34802

REPLY IN OPPOSITION TO PETITION
FOR ALTERNATIVE RAIL SERVICE

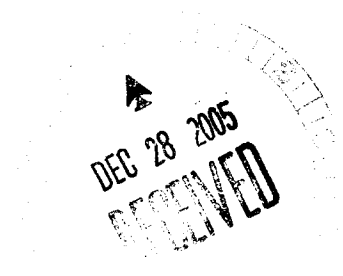
SOUTH PLAINS SWITCHING, LTD. CO.
P.O. Box 64299
Lubbock, TX 79464-4299

Replicant

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Attorney for Replicant

DATE FILED: December 28, 2005



BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34802

**REPLY IN OPPOSITION TO PETITION
FOR ALTERNATIVE RAIL SERVICE**

Pursuant to 49 C.F.R. § 1146.1(b)(2), SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby replies in strong opposition to a Verified Petition for Alternative Rail Service (Petition) filed by PYCO Industries, Inc. (PYCO) on December 20, 2005.

FOREWORD

This Reply consists of the verified statement of Mr. Larry D. Wisener, President of SAW, setting forth the facts regarding SAW's rail service to PYCO since mid-November, 2005, followed by argument applying the governing law to those facts.

SAW's Reply need not address what the Petition characterizes as "the first episode of service inadequacy" during the Spring of 2005. (Petition at 5-7).^{1/} There are numerous inaccurate allegations in regard to SAW's rail service to PYCO at that time that could be rebutted in this Reply. That is unnecessary because PYCO itself acknowledges that SAW's rail service "steadily

^{1/} Nor is it necessary that SAW's Reply address the quality of SAW's rail service to shippers at Lubbock other than PYCO. The Petition does not contain evidence of SAW's rail service to any shipper other than PYCO. There is thus no factual or legal basis for an order of alternative rail service over SAW's trackage that provides service to those other shippers. This Reply shows that on the contrary, SAW's shippers at Lubbock overwhelmingly consider SAW's rail service to be excellent. (Reply, VS Wisener, Appdx. LDW-1).

improve(d)” at that time, causing PYCO to refrain from complaining to the Board. (*Id.*, Ex. C, p. 2, para. 7). Even if there had been service failures earlier in 2005, they were thus not the kind of ongoing service disruptions that the Board’s regulations on alternative rail service are designed to address. See *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968, 974 (1998). The lengthy draft of a complaint that was never filed and the extensive correspondence about rail service in early 2005 that take up disproportionate space in PYCO’s Petition thus have no bearing on whether SAW’s current rail service to PYCO is adequate within the meaning of 49 C.F.R. § 1146.^{2/} The focus of this Reply is on the much more abbreviated portion of the Petition that relates to ongoing SAW rail service since mid-November, 2005.

^{2/} The same is true in regard to PYCO’s inaccurate allegations concerning negotiations for sale of part of SAW’s rail lines to PYCO, which PYCO refers to as “interregnum”. (Petition at 8-10). SAW will not rebut those distortions in this Reply because they have nothing to do with the quality of SAW’s rail service.

VERIFIED STATEMENT OF LARRY D. WISENER

My name is Larry D. Wisener. I am President of South Plains Switching, Ltd. Co. (SAW). SAW is a Class III rail carrier subject to the jurisdiction of the Surface Transportation Board (STB). SAW acquired its rail lines at Lubbock, Texas from BNSF Railway in 1999.

SAW is shocked to be the subject of a petition that seeks to put another carrier on its rail lines because of inadequate service. SAW has consistently provided the highest quality of service to its shippers, including service that it is not obligated to provide as a common carrier. SAW's shippers have testified to the excellence of SAW's rail service, including high marks from PYCO. In 2004, SAW sent a survey to its shippers on the quality of SAW's rail service. The responses of the shippers are attached to this statement as Appendix LDW-1. All 16 shippers that responded to that survey rated SAW's rail service as excellent. In PYCO's response, its representative, Mr. Kelly Jack, stated that "all of the service has been excellent & it is very much appreciated." (Appdx. LDW-1, p. 1).

SAW is continuing to provide excellent rail service to PYCO at present. Every weekday, five days per week, SAW picks up and delivers all of the railcars ordered by PYCO at its Plant 1 up to the maximum number of railcars that PYCO's sidetrack can accommodate. PYCO wants to handle more cars per day than its sidetrack can accommodate, but that is a reflection of insufficient infrastructure at PYCO's plant, not inadequate rail service by SAW. PYCO can solve its own service problem by constructing additional sidetrack to accommodate its desired traffic volume.

An alternative is for SAW to provide additional switching service at PYCO's Plant 1. As set out in more detail later in my statement, SAW has sufficient train personnel and locomotive

power to provide such extra switching; SAW's tariff provides for such extra switching at a reasonable charge; and SAW is willing and able to provide such extra switching.

Instead of incurring the cost of constructing additional sidetrack or paying for extra switching, PYCO wants to handle its increased traffic volume at no extra charge. PYCO's petition is motivated by SAW's refusal to permit PYCO to operate a trackmobile on SAW's yard and lead tracks that enabled PYCO to originate a larger volume of traffic, but which was extremely unsafe. Until mid-November of this year, SAW permitted PYCO to operate a trackmobile over SAW's yard tracks and over a SAW lead track between SAW's yard and PYCO's Plant 1. PYCO was permitted to operate its trackmobile at any hour of the day or night. PYCO used the trackmobile to switch and line cars in the SAW yard and to transport loaded and empty cars between that yard and Plant 1. SAW did not assess a charge for PYCO's trackmobile operation over SAW's yard and lead tracks.

I notified PYCO that the privilege of operating a trackmobile over SAW's trackage would be discontinued effective November 17, 2005. A derail was placed on the SAW lead track to prevent PYCO's trackmobile from operating onto SAW's yard tracks.

I took that action for legitimate safety reasons. SAW's transportation consultant, Mr. Dennis Olmstead, strongly recommended to me that SAW discontinue permission for the trackmobile operation because it is in violation of Federal Railroad Administration (FRA) regulations. An FRA regulation prohibits rail equipment from being operated over common carrier rail trackage unless the equipment operator has been certified by the FRA as a qualified

those buildings through the doors that are shown right next to the scale track. That is a dangerous situation. The third photograph shows plant equipment manned by a PYCO employee working right on top of the scale track. That illustrates the extensive plant activity that poses a danger when combined with rail switching operations. The fourth photograph shows a motor vehicle beginning to cross the scale track. There are no rail crossing warning devices of any kind at any of the several road crossings across the scale track. It is well understood in the rail industry that road crossings over railroad tracks are inherently dangerous.

The fifth and sixth photographs show the beginning and end of the shop track, respectively. The lack of plant activity adjacent to the shop track is apparent in those pictures. The fence separates the shop track from the activities in PYCO's plant. There are no road crossings over the shop track. For those reasons, rail operations on the shop track are conducted safely, whereas rail operations on the scale track would be hazardous. I refuse to put SAW's train crews and PYCO's employees at serious risk by switching cars on the scale track, especially when PYCO's service needs can be met by extra switching on the shop track.

SAW is providing adequate rail service to PYCO's Plant No. 2. SAW was unable to provide service to Plant 2 for a few days last month due to a locomotive breakdown. However, SAW's service to Plant 2 has returned to normal. PYCO's Witness, Mr. Robert Lacy, has acknowledged in his statement that SAW's service to Plant 2 has been restored to the requested 12 railcars per day. (PYCO Petition, Exhibit C, pages 3-4, paragraph 18).

The unsafe trackmobile operations were compounded as a result of substantially increased traffic and resulting increased congestion in SAW's yard. Attached to this statement as Appendix LDW-4 is a compilation of SAW's loaded-car traffic by month from the beginning of 2000 through the end of November, 2005. The Appendix shows that loaded cars handled in August, 2005 were more than three times the number of loaded cars that were handled in August, 2004. That increased traffic in SAW's yard materially increased the chance of a serious accident resulting from PYCO's trackmobile operation in the midst of congested conditions in the yard.

In consideration of all of those unsafe conditions, I concluded that SAW would be virtually inviting a serious lawsuit against itself if it continued to permit PYCO to operate its trackmobile on SAW's yard and lead tracks. Consequently, I notified PYCO that the trackmobile operation would no longer be permitted.

When I so notified PYCO, I invited PYCO representatives to meet with me to discuss alternatives to the trackmobile operation. PYCO did not respond to that invitation. Had PYCO met with me, I was prepared to offer PYCO the option of SAW's performance of extra switching. Section VII of PYCO's tariff provides for such extra switching, as follows:

SAW/SLAL provides service five days a week, Monday through Friday, exclusive of Holidays. In the event switching services are requested at other times SAW/SLAL shall attempt to accommodate customers with a special switch crew. The charge for this miscellaneous service is \$500.00 per special switch crew.

I continue to be willing to provide a second switch to PYCO Plant 1 and/or switches on weekend days if PYCO were to so request. In fact, SAW provided switching for PYCO on the Holiday observance of Christmas on December 26, 2005 in an effort to cooperate with PYCO.

The extra switching that SAW is willing to provide would be likely to enable PYCO to originate approximately 26 railcars per day from Plant 1, as PYCO desires. PYCO's sidetrack at Plant 1 can accommodate approximately 13 railcars per switch. SAW would provide the first switch of 13 cars in the early morning. PYCO would have all morning and afternoon to move those cars into the plant and to spot other cars on the sidetrack for pickup. SAW would provide the second switch of 13 more cars in the evening. In view of the 12-hour work limit for train personnel, a different SAW train crew would have to perform the second switch. The tariff charge for extra switching is designed to cover the added costs for the second train crew and related costs. In the unlikely event that the second switch on weekdays proved to be insufficient to enable origination of the number of cars desired, switching on weekend days is available on request.

I know that PYCO is aware of the option for extra switching because SAW provided extra switching for PYCO at its Plant 2 in 2002. That extra switching was necessitated by a large inbound movement of railcars for PYCO at that time.

I do not know why PYCO has not requested SAW to provide extra weekday switching at Plant 1 at this time. I suspect that the reason is that PYCO does not want to pay the tariff charge for the extra service. However, SAW cannot reasonably be expected to incur the cost of providing a second switch crew and related costs without assessing a charge for the added service.

In summary, PYCO's inability to originate its desired traffic volume at Plant 1 is not attributable to inadequate rail service by SAW, but instead is of PYCO's own making. PYCO

has insufficient track infrastructure at Plant 1; PYCO's sidetracks are not sufficient to accommodate the number of cars in a single switch that are necessary to achieve the desired traffic volume. PYCO has not requested SAW to provide extra switching at Plant 1 that would be likely to enable shipment of the desired traffic volume. The former trackmobile operation is not a viable option because of inconsistency with an applicable FRA regulation and because of the serious unsafe conditions that I have described.

SAW picks up and delivers railcars at PYCO's Plant 1 shop track rather than at the Plant 1 scale track because it is much safer to do so. As an aid to understanding why that is so, I have attached an overhead print of Plant 1 as Appendix LDW-5, and a series of photographs of the shop track and scale track taken on December 22, 2005 as Appendix LDW-6.

The print shows the scale track and shop track highlighted in red. It also shows a fence marked in black. That fence extends along the length of PYCO's property. The critical difference between the scale track and the shop track from the standpoint of safety is that the scale track is located inside PYCO's fence where there are inadequate clearances, numerous road crossings and a bustle of plant activity, whereas the shop track is located outside the PYCO fence where there are no road crossings or plant activity.

The difference in safety conditions is illustrated in my photographs. The first photograph in Appendix LDW-6 shows a sign that warns of inadequate side clearances between the scale track and numerous adjacent buildings. Inadequate clearances put the train crew at risk, as well as PYCO employees entering and exiting the plant buildings. The second photograph shows the numerous plant buildings that are adjacent to the shop track. PYCO employees enter and exit

those buildings through the doors that are shown right next to the scale track. That is a dangerous situation. The third photograph shows plant equipment manned by a PYCO employee working right on top of the scale track. That illustrates the extensive plant activity that poses a danger when combined with rail switching operations. The fourth photograph shows a motor vehicle beginning to cross the scale track. There are no rail crossing warning devices of any kind at any of the several road crossings across the scale track. It is well understood in the rail industry that road crossings over railroad tracks are inherently dangerous.

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PYCO has complained about inadequate boxcar supply at Plant 2. BNSF rather than SAW is responsible for car supply to PYCO. Section 14 of the BNSF-SAW sale agreement provides as follows:

Seller (BNSF) shall make reasonable efforts to make freight cars available at Buyer's (SAW's) request on an Interchange Track as needed by Buyer (SAW) for rail service to or from facilities on or along the Rail Line on a non-discriminatory basis between Seller's (BNSF) needs on similar rail lines and Buyer's (SAW's) car needs; however, Seller (BNSF) makes no guarantee of equipment supply to Buyer (SAW).

PYCO may have been under the impression that SAW was responsible for its boxcar supply because BNSF formerly stored empty boxcars on SAW as a staging point for loading by shippers located on SAW. Those cars were car-hire free on SAW. Obviously, that practice improved PYCO's car supply. However, BNSF discontinued that practice, effective August 15, 2005. Attached to my statement as Appendix LDW-7 is a copy of a letter dated August 12, 2005 from Mr. Eddie Hale of BNSF to me, advising of BNSF's discontinuance of the practice.

Now PYCO is required to order boxcars as needed. SAW switches boxcars to PYCO Plant 2 as and when they are received from BNSF. PYCO has contended that "SAW has filed to deliver box cars at all." (Petition at 9). That is not true. SAW has delivered 23 boxcars to PYCO Plant 2 since November 21, 2005. That is shown in Appendix LDW-8 attached to this statement. That is all the boxcars that BNSF supplied for PYCO Plant 2 and other boxcars that SAW diverted to PYCO from other shippers. That is another example of SAW going an "extra mile" in providing service to PYCO.

I could rebut numerous untrue statements by PYCO about alleged inadequate SAW rail service earlier in 2005, but I have not done so because I was instructed by counsel to confine my testimony to the ongoing SAW service provided since mid-November of this year.

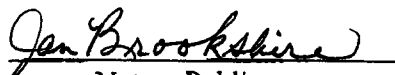
VERIFICATION

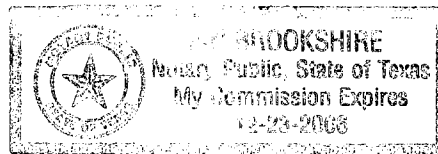
STATE OF TEXAS)
) SS:
COUNTY OF LUBBOCK)

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


LARRY WISENER

SUBSCRIBED AND SWORN to
before me this 21st day
of December, 2005.


Notary Public



My Commission Expires: 12-23-06

APPENDIX LDW-1

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

PYCO

Rail car delivery to facility (1) 2 3 4 5 6 7 8 9 10

Rail car pick up at facility (1) 2 3 4 5 6 7 8 9 10

Additional switching
(requested or required) (1) 2 3 4 5 6 7 8 9 10

Office response for questions (1) 2 3 4 5 6 7 8 9 10

Car supply for loads (1) 2 3 4 5 6 7 8 9 10

Survey Completed by

Kelly Jack

All of the service has been excellent &
it is very much appreciated.

Additional Comments

Guys
on
the
yard ← I think there is some misunderstanding
on our end about when demurrage charges
start. We should be able to eliminate those
all together, but we're still getting some pretty
high bills. We need to see which equipment
is getting charged so I can let the guys on
the yard know what they need to do differently.

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Attebury Grain

Rail car delivery to facility (1) 2 3 4 5 6 7 8 9 10

Rail car pick up at facility (1) 2 3 4 5 6 7 8 9 10

Additional switching (1) 2 3 4 5 6 7 8 9 10
(requested or required)

Office response for questions (1) 2 3 4 5 6 7 8 9 10

Car supply for loads (1) 2 3 4 5 6 7 8 9 10

Survey Completed by

Dean M. Stood

Additional Comments

Larry, Can you please buy out the
BNSF so we can have good service at
all of our locations?
Dean

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Dodson Lumber

Rail car delivery to facility ① 2 3 4 5 6 7 8 9 10

Rail car pick up at facility ① 2 3 4 5 6 7 8 9 10

Additional switching
(requested or required) ① 2 3 4 5 6 7 8 9 10

Office response for questions ① 2 3 4 5 6 7 8 9 10

Car supply for loads 1 2 3 4 5 6 7 8 9 10

Survey Completed by

Hud

Additional Comments

Your entire crew are always very
accomodating and courteous. Very efficient + helpful -
It is a pleasure to work with you. Thanks,
Hud

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Russell E. Womack

Rail car delivery to facility ① 2 3 4 5 6 7 8 9 10

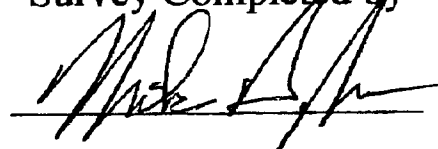
Rail car pick up at facility ① 2 3 4 5 6 7 8 9 10

Additional switching
(requested or required) ① 2 3 4 5 6 7 8 9 10

Office response for questions ① 2 3 4 5 6 7 8 9 10

Car supply for loads 1 2 3 4 5 6 7 8 9 10

Survey Completed by



Additional Comments

We are still having problems with cars getting bunched together by
the BN Railroad.

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Southern Cotton Oil (ADM)

Rail car delivery to facility

① 2 3 4 5 6 7 8 9 10

Rail car pick up at facility

① 2 3 4 5 6 7 8 9 10

Additional switching
(requested or required)

1 2 ③ 4 5 6 7 8 9 10

Office response for questions

① 2 3 4 5 6 7 8 9 10

Car supply for loads

① 2 3 4 5 6 7 8 9 10

Survey Completed by

Del Dawson

Additional Comments

We have been satisfied with the quality of
service. We do prefer switching early mornings

Thank you
Del

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Stock Builders

Rail car delivery to facility 1 ② 3 4 5 6 7 8 9 10

Rail car pick up at facility 1 2 ③ 4 5 6 7 8 9 10

Additional switching 1 ② 3 4 5 6 7 8 9 10
(requested or required)

Office response for questions 1 ② 3 4 5 6 7 8 9 10

Car supply for loads N/A 1 2 3 4 5 6 7 8 9 10

Survey Completed by

James Cyp

Additional Comments

Thank you for all of your help that ya'll do for us!

I wish you had a way of getting cars out of amarillo
that tend to sit there for several days.

APPENDIX LDW-2

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Stock Builders

Rail car delivery to facility 1 ② 3 4 5 6 7 8 9 10

Rail car pick up at facility 1 2 ③ 4 5 6 7 8 9 10

Additional switching 1 ② 3 4 5 6 7 8 9 10
(requested or required)

Office response for questions 1 ② 3 4 5 6 7 8 9 10

Car supply for loads N/A 1 2 3 4 5 6 7 8 9 10

Survey Completed by

James Coy

Additional Comments

Thank you for all of your help that ya'll do for us!

I wish you had a way of getting cars out of amarillo
that tend to sit there for several days.

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Farmers Co-op

Rail car delivery to facility 1 ② 3 4 5 6 7 8 9 10

Rail car pick up at facility ① 2 3 4 5 6 7 8 9 10

Additional switching
(requested or required) ① 2 3 4 5 6 7 8 9 10

Office response for questions ① 2 3 4 5 6 7 8 9 10

Car supply for loads ① 2 3 4 5 6 7 8 9 10

Survey Completed by

Albert Jimenez

Additional Comments

YOUR SWITCH CREW IS DOING AN EXCELLENT
JOB. I KNOW SOMETIMES I REQUEST IF I CAN
GET A SWITCH EARLY BUT GET IT AFTER LUNCH
BUT I UNDERSTAND YOU GUYS ARE VERY BUSY AND CANT
ALWAY GET MY CARS THAT EARLY. I KNOW YOU GOT OTHER
CUSTOMERS BESIDES ME.

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

ABC Supply

Rail car delivery to facility 1 ② 3 4 5 6 7 8 9 10

Rail car pick up at facility

1 2 3 4 5 6 7 8 9 10

we do not monitor.

Additional switching
(requested or required)

N/A

1 2 3 4 5 6 7 8 9 10

Office response for questions

① 2 3 4 5 6 7 8 9 10

* Car supply for loads

1 2 3 4 5 ⑥ 7 8 9 10

Survey Completed by

Brian Delaney
ABC Supply Co.

Additional Comments

** At location of shipper (Malaspina @ Portland, Or.), they sometimes
have problems getting cars.*

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Georgia Pacific

Rail car delivery to facility

(1) 2 3 4 5 6 7 8 9 10

Rail car pick up at facility

(1) 2 3 4 5 6 7 8 9 10

Additional switching
(requested or required)

(1) 2 3 4 5 6 7 8 9 10

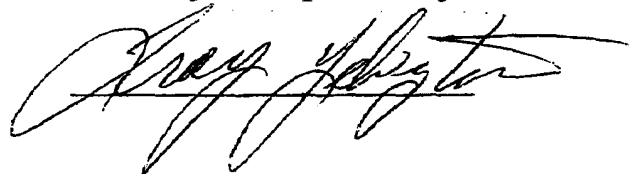
Office response for questions

(1) 2 3 4 5 6 7 8 9 10

Car supply for loads

(1) 2 3 4 5 6 7 8 9 10

Survey Completed by



Additional Comments

EVERY ONE, OFFICE & SWITCHING DOES
EVERYTHING THEY CAN TO SOLVE OUR
PROBLEMS. YOUR SERVICE HAS BEEN
EXCELLENT AND I LOOK FORWARD TO WORKING
WITH ALL OF YOU IN THE FUTURE
THANK YOU FOR THE SERVICE WE RECEIVE
IT IS APPRECIATED.

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

ACME Brick

Rail car delivery to facility 1(2)3 4 5 6 7 8 9 10

Rail car pick up at facility (1)2 3 4 5 6 7 8 9 10

Additional switching (1)2 3 4 5 6 7 8 9 10
(requested or required)

Office response for questions (1)2 3 4 5 6 7 8 9 10

Car supply for loads 1 2 3 4 5 6 7 8 9 10 NA

Survey Completed by

Pat Sattler

Additional Comments

Cars are sometimes delivered with doors on
wrong side to be unloaded.

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Robertson Bonded Warehouse

Rail car delivery to facility ① 2 3 4 5 6 7 8 9 10

Rail car pick up at facility ① 2 3 4 5 6 7 8 9 10

Additional switching ① 2 3 4 5 6 7 8 9 10
(requested or required)

Office response for questions ① 2 3 4 5 6 7 8 9 10

Car supply for loads ① 2 3 4 5 6 7 8 9 10

Survey Completed by

Walter Robertson

Additional Comments

Everyone involved is great to work
with! Very cooperative & communication
is great! Thank you for a job well done!

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Hi Plains Bag - Bagging

Rail car delivery to facility

1 2 3 4 5 6 7 8 9 10

Rail car pick up at facility

1 2 3 4 5 6 7 8 9 10

Additional switching
(requested or required)

1 2 3 4 5 6 7 8 9 10

Office response for questions

1 2 3 4 5 6 7 8 9 10

Car supply for loads

1 2 3 4 5 6 7 8 9 10

Survey Completed by

Cal Kidwell

Additional Comments

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Furrs

Rail car delivery to facility ① 2 3 4 5 6 7 8 9 10

Rail car pick up at facility ① 2 3 4 5 6 7 8 9 10

Additional switching
(requested or required) ① 2 3 4 5 6 7 8 9 10

Office response for questions ① 2 3 4 5 6 7 8 9 10

Car supply for loads ① 2 3 4 5 6 7 8 9 10

Survey Completed by

Erving Dubois
4/26/03

Additional Comments

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Goetz

Rail car delivery to facility 1 2 3 4 5 6 7 8 9 (10)

Rail car pick up at facility 1 2 3 4 5 6 7 8 9 (10)

Additional switching 1 2 3 4 5 6 7 8 9 (10)
(requested or required)

Office response for questions 1 2 3 4 5 6 7 8 9 (10)

Car supply for loads 1 2 3 4 5 6 7 8 9 (10)

Survey Completed by

Bill Davidson

Additional Comments

Great Crew

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

Pantex

Rail car delivery to facility	1 2 ③ 4 5 6 7 8 9 10	
Rail car pick up at facility	1 ② 3 4 5 6 7 8 9 10	
Additional switching (requested or required)	1 2 3 4 5 6 7 8 9 10	N/A
Office response for questions	1 2 ③ 4 5 6 7 8 9 10	
Car supply for loads	1 2 3 4 5 6 7 8 9 10	N/A

Survey Completed by

Mark Garrison

Additional Comments

Service and support comments for South Plains Switching Railroad

Please circle service with 1 being excellent and 10 being poor

84 Lumber

Rail car delivery to facility ① 2 3 4 5 6 7 8 9 10

Rail car pick up at facility 1 ② 3 4 5 6 7 8 9 10

Additional switching 1 2 3 4 5 6 7 8 9 10 N/A
(requested or required)

Office response for questions ① 2 3 4 5 6 7 8 9 10

Car supply for loads ① 2 3 4 5 6 7 8 9 10

Survey Completed by

Pat Beller

Additional Comments

Quality Service is the #1 key so keep
up the good work!

**Scott Crane Service, Inc.**

111 Slaton Hwy. • Lubbock, Texas 79404
(806) 789-7525 • Fax (806) 748-8517

invoice

DATE

INVOICE #

4/15/2005

22480

BILL TO:

South Plains Lamesa Railroad
P. O. Box 64299
Lubbock, TX 79464-4299

91137

P.O. NUMBER

TERMS

PROJECT

Net 15

QUANTITY

DESCRIPTION

RATE

AMOUNT

4.5

70-Ton Hydraulic Crane with operator

205.00

922.50

4.5

70-Ton Hydraulic Crane with operator

205.00

922.50

4.5

Rigger

85.00

382.50

Rerail BN 585294 and BN 585214 at 32nd and Juniper

PAID

check 7467
4/27/05
W

TOTAL

\$2,227.50

invoice

Scott Crane Service, Inc.

111 Slaton Hwy. • Lubbock, Texas 79404
(806) 789-7525 • Fax (806) 748-8517

DATE

INVOICE #

5/26/2005

22630

BILL TO:

South Plains Lamesa Railroad
P. O. Box 64299
Lubbock, TX 79464-4299

91298

P.O. NUMBER

TERMS

PROJECT

Net 15

QUANTITY	DESCRIPTION	RATE	AMOUNT
6	70-Ton Hydraulic Crane with operator <i>PO / POCO</i>	205.00	1,230.00
		TOTAL	\$1,230.00

**Scott Crane Service, Inc.**

111 Slaton Hwy. • Lubbock, Texas 79404
(806) 789-7525 • Fax (806) 748-8517

invoice

DATE

INVOICE #

6/9/2005

22724

BILL TO:

South Plains Lamesa Railroad
P. O. Box 64299
Lubbock, TX 79464-4299

90872

P.O. NUMBER

TERMS

PROJECT

Net 15

QUANTITY	DESCRIPTION	RATE	AMOUNT
3.5	150 ton hydraulic crane with operator to rerail 1 End NAHX 550318 <i>Pd</i> <i>06/22/05</i> <i>RRC # 7635</i> <i>(2350)</i> <i>DN</i>	320.00	1,120.00
		TOTAL	\$1,120.00

APPENDIX LDW-3

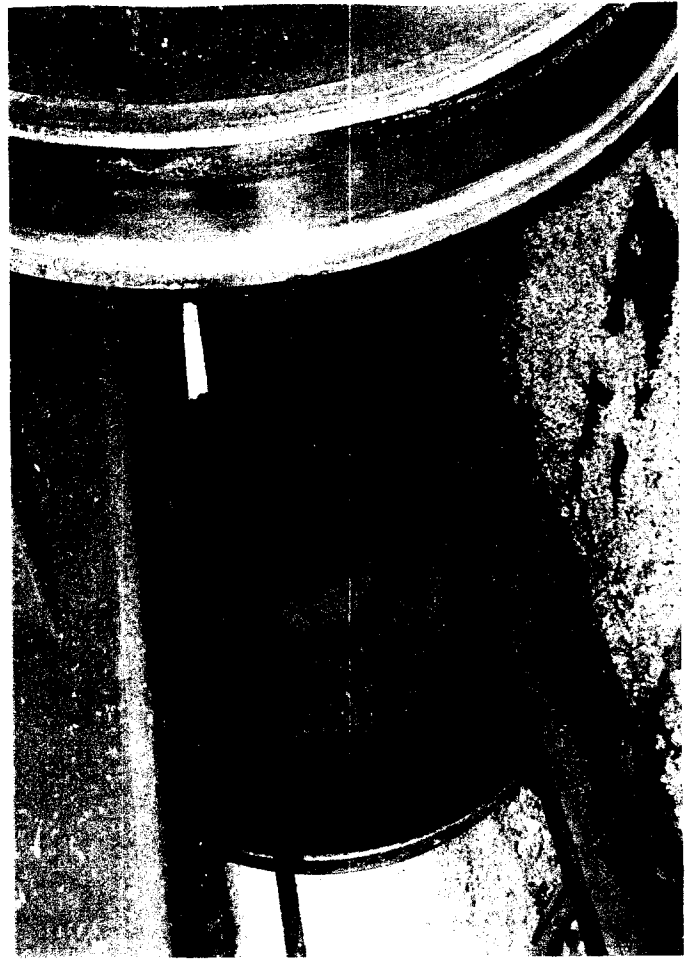


Shop
Track Derailment

April 5, 2005

PVU





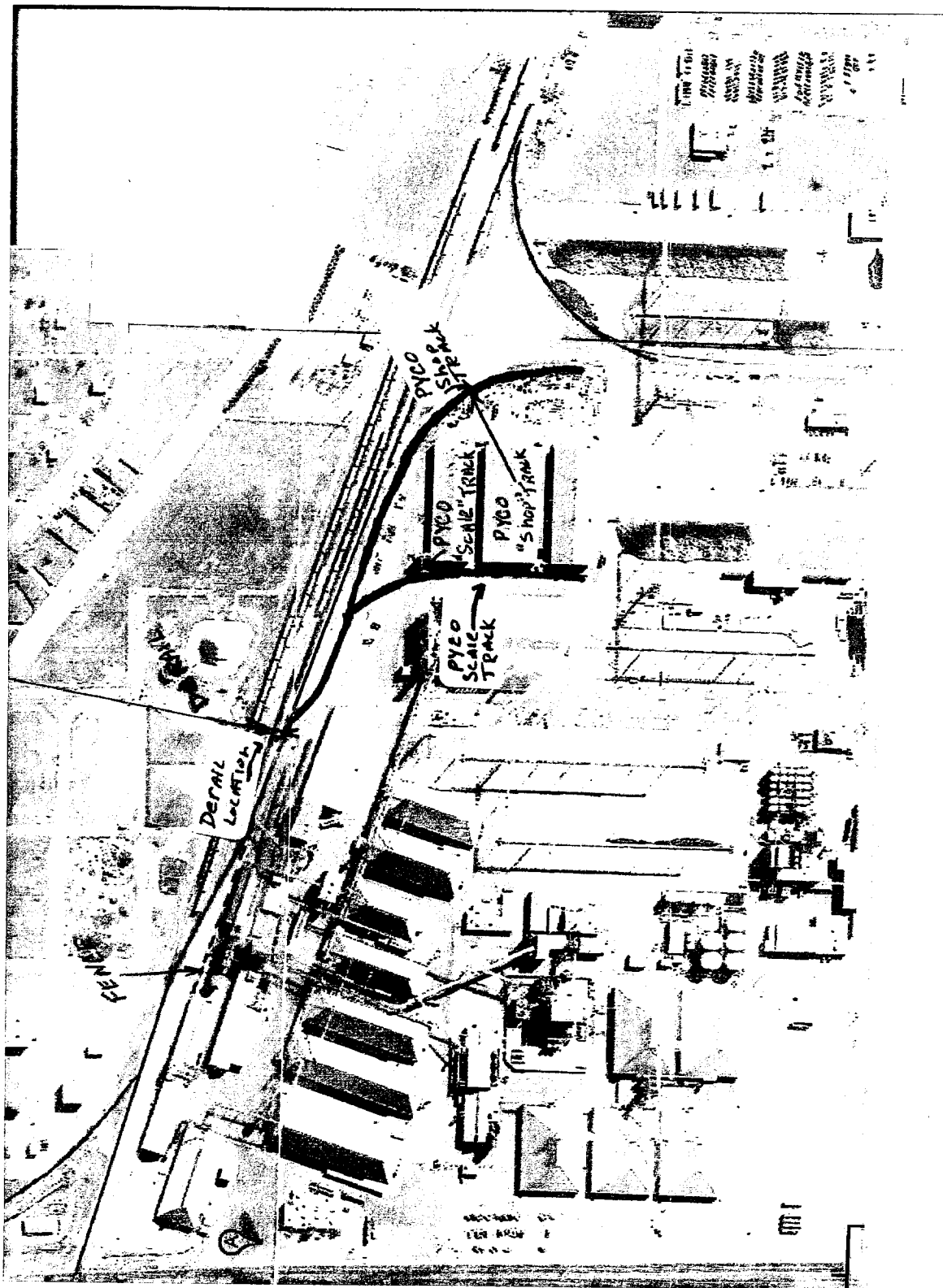
APPENDIX LDW-4

**SAW TOTAL TRAFFIC BY MONTH
LOADED CARS**

MO	<u>YR</u> <u>2005</u>	<u>YR</u> <u>2004</u>	<u>YR</u> <u>2003</u>	<u>YR</u> <u>2002</u>	<u>YR</u> <u>2001</u>	<u>YR</u> <u>2000</u>
DEC		726	662	601	615	257
NOV	1116	659	583	584	837	292
OCT	1287	716	506	816	746	312
SEP	1226	482	543	1072	472	235
AUG	1325	409	411	671	850	451
JUL	1266	560	554	634	558	543
JUN	1237	444	549	662	595	595
MAY	1159	357	503	516	870	656
APR	1401	558	866	724	712	528
MAR	1143	385	375	998	674	755
FEB	983	594	304	585	677	778
JAN	779	649	474	753	251	520
MO AVG	1174	544	527	718	654	493
AVG X12	14088	6528	6324	8616	7848	5916

FILE SAW TOTAL

APPENDIX LDW-5

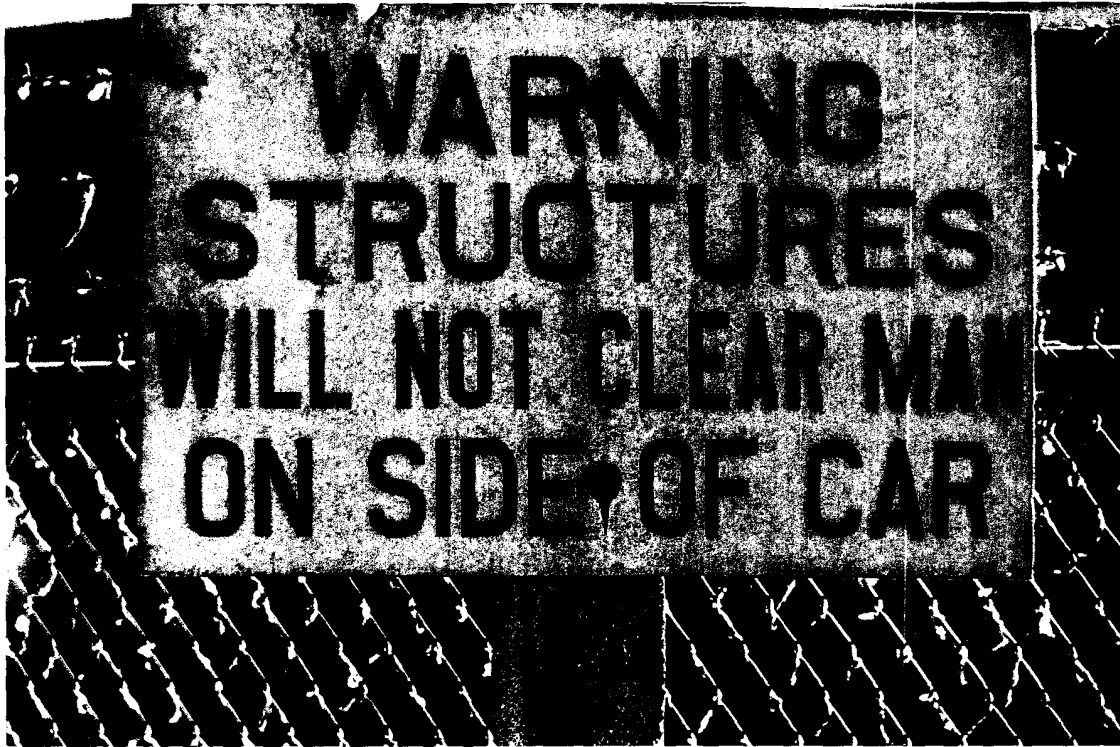


2

APPENDIX LDW-6

**PHOTOGRAPHS OF CONDITIONS IN THE AREA OF
THE SCALE TRACK AND SHOP TRACK AT PYCO PLANT NO. 1 ^{1/}**

Photograph 1 - warning sign of inadequate side clearance alongside buildings adjacent to the scale track.



Photograph 2 - buildings adjacent to scale track - note doorways and road crossing with no warning signals.

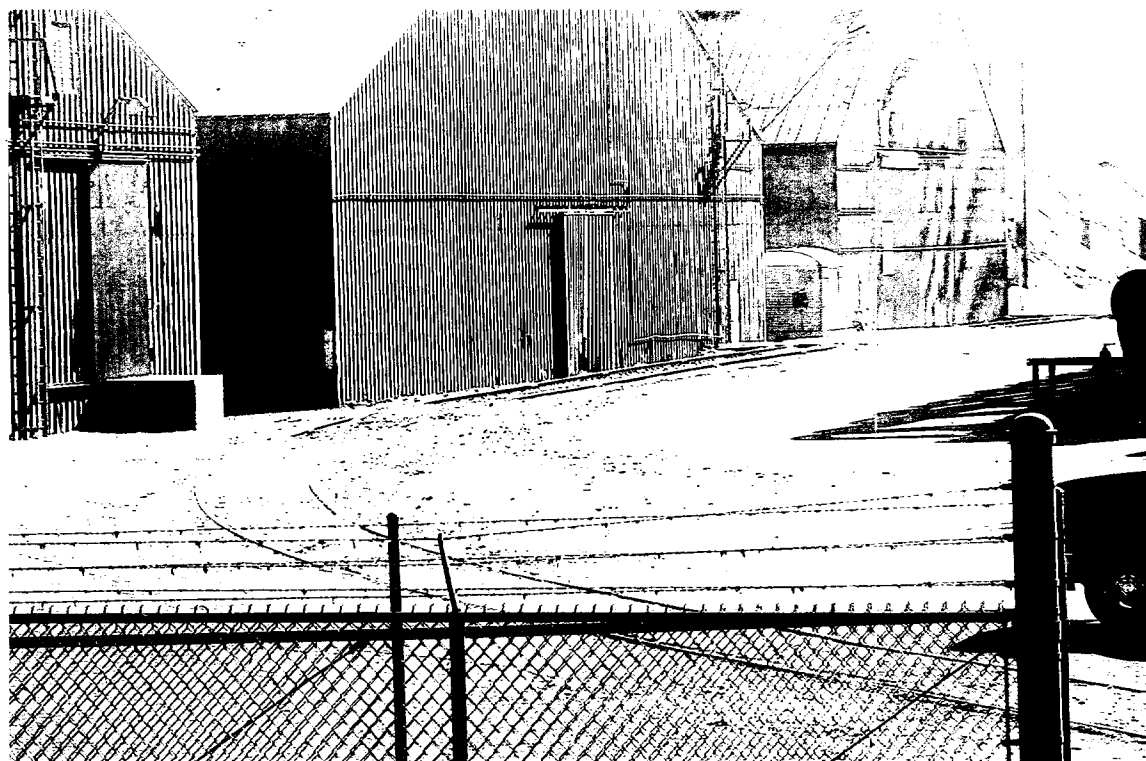


^{1/} All photographs were taken on December 22, 2005

Photograph 3 - scale track entering gate through fence on right - note vehicle and worker directly over scale track.



Photograph 4 - scale track inside PYCO fence - note front of motor vehicle partially shown on the road crossing on the right side of the picture.



Photograph 5 - shop track shown outside of PYCO fence - nothing adjacent to the left of the scale track - note tank car on the shop track in the distance.



Photograph 6 - termination of the shop track on right side of photo - shop track accommodates 13 standard-length cars.



APPENDIX LDW-7



EDDIE HALE
Director
Shortline Development

BNSF Railway Company
2600 Lou Mark Drive
3rd Floor
Fort Worth, Texas 76131-2830
(817) 352-8012
(817) 296-4589 Cellular
(817) 352-7154 Fax
Email: Weldon.Hale@BNSF.com

August 12, 2005

Mr. Larry Wisener
President
South Plains Lamesa Railroad, Ltd.
South Plains Switching, Ltd. Co.
P.O. Box 64299
Lubbock, Texas 79464

Dear Mr. Wisener,

BNSF is no longer using the SAW as a place to store boxcars or as a staging point for prospective loading of boxcars. Effective Monday, August 15, boxcars will no longer be car hire free while on the SAW. Car hire reclaim for boxcars will be the same as provided for other cars in the Sale Agreement.

Regards,

A handwritten signature in black ink, appearing to read "Eddie Hale".

cc: Tina Kanatzar
Dan Sanders

APPENDIX LDW-8

**PYCO written request began
11-21-05**

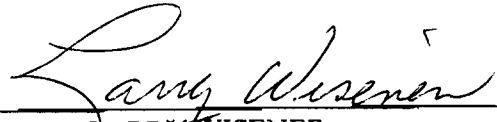
DATE	REQUEST	RECEIVED	COMMENTS
11/21/2005	0	0	
11/22/2005	0	0	
11/23/2005	2	0	SAW had 0 PYCO Box Cars available
11/28/2005	3	0	Did not service Plant 2 11/28/05 due to time limits
11/29/2005	5	3	PYCO requested order from 11/23/05 and 11/28/05
			for a total request of 5 Box Cars. SAW is not have
			PYCO Box Cars available but placed 3 - one marked
			for agent and 2 turned back from another customer
11/30/2005	0	0	
12/1/2005	0	0	
12/2/2005	7	3	Still no Box Cars for PYCO SAW placed 3 from
			another customer
12/5/2005	2	2	
12/6/2005	0	0	
12/7/2005	0	0	
12/8/2005	4	0	SAW had no Box Cars for PYCO
12/9/2005			NO written request form from PYCO
12/12/2005			NO written request form from PYCO
12/13/2005	2	2	
12/14/2005	2	1	
12/15/2005	2	0	Late interchange
12/16/2005	2	2	
12/19/2005	2	2	
12/20/2005	0	0	
12/21/2005	2	2	
12/22/2005	2	2	
12/23/2005	2	2	
12/26/2005	2	2	PYCO faxed switch request for 12/26/05 on 12/23/05
			due to the holiday. Special switch crew came in on
			12/26/05 to switch PYCO. After special crew
			completed PYCO switching, Les contact Rodney to
			inform him that PYCO had decided not to work.

**BOX CAR REQUEST
for PLANT 2**

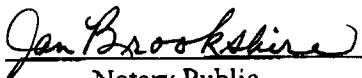
VERIFICATION

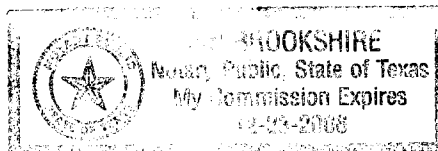
STATE OF TEXAS)
) SS:
COUNTY OF LUBBOCK)

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


LARRY WISENER

SUBSCRIBED AND SWORN to
before me this 21st day
of December, 2005.


Notary Public



My Commission Expires: 12-23-06

LEGAL ARGUMENT

It is a drastic remedy for the Board to order a rail carrier to permit another rail carrier to operate over its tracks to serve its shippers, even for a limited period of time. The circumstances in which the Board is authorized to do so are circumscribed by 49 U.S.C. § 11123(a). One of those circumstances is where a rail carrier “cannot transport the traffic offered to it in a manner that properly serves the public.” *Id.*

In *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 (1998), the Board adopted 49 C.F.R. § 1146.1(a) to implement that statutory provision. It is provided in that regulation that the Board will prescribe alternative rail service 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.”

In adopting that regulation, the Board stated that it was not possible nor appropriate to attempt to delineate or define in the abstract what constitutes adequate service for all traffic under all circumstances at all times. *Expedited Relief for Service Inadequacies, supra*, 3 S.T.B. at 975. Notably, however, the Board clearly described service situations that the rules are not designed to address, viz. (*id.* at 974):

... (T)hese rules are designed only to address serious ongoing service disruptions ... (T)hey (are not) meant for situations where service is adequate, but simply not up to the level that a particular shipper or connecting carrier might desire. In other words, while transportation needs are crucial, individual service desires are not necessarily the proper determinant of the adequacy or inadequacy of rail service ...

The facts identified in Mr. Wisener's statement reflect a situation like that described above where the rail service being provided is adequate, but the shipper's service desires are unrealistic.

Without question, SAW is providing adequate rail service to PYCO's Plant 1. Every weekday, SAW picks up and delivers railcars at PYCO's Plant 1, up to the maximum number of cars that PYCO's sidetrack can accommodate. SAW provides that service consistently and faithfully, without interruption. PYCO has not contended that there are continuing service disruptions at Plant 1. PYCO's complaint instead is that the service provided does not match the level of service desired.

PYCO wants to ship 26 cars per day at Plant 1, but by PYCO's own admission (Petition at 10), only 12 or 13 cars at a time can be switched onto PYCO's Plant 1 sidetrack. PYCO's inability to ship the desired volume of traffic is thus clearly attributable to insufficient PYCO infrastructure, not to inadequate SAW rail service. Inasmuch as the desired volume of daily traffic exceeds the railcar capacity of PYCO's sidetrack, an obvious solution is for PYCO to construct additional sidetrack to be able to originate additional traffic.

An alternative is for PYCO to request SAW to provide additional switching at Plant 1. SAW could switch the desired 26 railcars per day at Plant 1 if SAW were to provide two switches per day instead of one. SAW's tariff provides for such extra switching at a reasonable charge. SAW is willing and able to provide a daily weekday switch at Plant 1 in the morning, and a second switch in the evening in order to accommodate PYCO's service needs. That would allow all morning and afternoon for PYCO to clear its sidetrack of railcars from the morning switch and to position railcars for the evening switch. That would be likely to enable PYCO to ship the desired daily traffic volume, but if not, SAW is willing and able to provide extra

switching on weekend days and Holidays. Indeed, SAW provided rail service to PYCO on the official Christmas Holiday a few days ago on Monday, December 26, 2005.

Instead of constructing lengthier sidetracks at Plant 1 or requesting SAW to provide the needed additional switching service, PYCO has filed this unjustified service complaint against SAW. PYCO's complaint is motivated by SAW's recent withdrawal of permission for PYCO to operate a trackmobile over SAW's yard tracks and over the SAW lead track between SAW's yard and PYCO's Plant 1. That trackmobile operation enabled PYCO to ship increased traffic without the added cost associated with construction of additional sidetrack or payment for extra switching service. It is SAW's refusal to permit that trackmobile operation since mid-November that is alleged by PYCO to have resulted in inadequate PYCO rail service. *See* Petition at 2, note 2.

SAW's permission for that PYCO trackmobile operation was withdrawn for legitimate safety reasons identified and explained in Mr. Wisener's statement, and because the absence of FRA certification of PYCO's trackmobile operators violated an FRA safety regulation. SAW did not have a legal obligation to permit PYCO's trackmobile to operate over SAW's yard and lead tracks. It follows that as a matter of law, SAW's rail service could not have become legally inadequate because of SAW's refusal to permit an unsafe trackmobile operation that SAW did not have a legal obligation to permit in the first instance.

It is unclear whether PYCO is also arguing that SAW's rail service is inadequate on the ground that SAW switches cars to and from the Plant 1 shop track rather than the Plant 1 scale track. The statement of PYCO's witness that PYCO could handle a few more cars per day if SAW would place the cars where requested (Petition, Ex. C, p. 4, para. 20) appears to be

contradicted by the statement of PYCO's counsel that PYCO is limited to handling a maximum of 12 cars per day "if it can use both its scale track and shop track efficiently." (Petition at 10). Even if the witness's statement is deemed to be controlling, a few more cars per day would not result in the level of service that PYCO has alleged to be necessary.

In any event, SAW's placement of cars on the shop track complies with SAW's common carrier service obligation, which is to do no more than place cars on a shipper's private sidetrack in a manner to make the cars reasonably accessible to the shipper. *See Secretary of Agriculture v. United States*, 347 U.S. 645, 647 (1954); *see, also, United States v. American Sheet & Tin Plate Co.*, 301 U.S. 402, 409-410 (1937). It is not SAW's obligation as a common carrier to operate within PYCO's plant in order to place cars on the scale track located inside PYCO's fence line. *See United States v. Pan American Petroleum Corp.*, 304 U.S. 156, 157 (1938) ("... (T)he carriers' obligation of delivery was fulfilled by placing or receiving cars on interchange tracks, and the moving or spotting of cars in the industries' plants formed no part of the service covered by the line-haul rate..."; *see, also, Koppers Co. v. United States*, 114 F.Supp. 741, 747 (D, Minn., 3rd Div., 1937), and *Hanna Furnace Corp. v. United States*, 53 F.Supp. 341, 345 (W.D., N.Y., 1943). Moreover, as explained by Mr. Wisener, SAW places cars on the shop track outside PYCO's plant fence rather than on the scale track inside that fence because that is a much safer operation for both SAW's train crew and PYCO's plant employees.

SAW's inability to have provided service to PYCO's Plant 2 on a few days in late November due to a locomotive breakdown obviously is not a serious ongoing service disruption that the alternative service rules are designed to address. *See Expedited Relief for Service Inadequacies, supra*. That is underscored by the acknowledgment of PYCO's witness that

current SAW rail service to Plant 2 has been restored to an adequate level. (Petition, Ex. C, pp. 3-4, para. 18).

PYCO's contention that SAW's rail service is inadequate on the ground of failure to provide boxcars to Plant 2 is undermined in several respects. First, as set out in Mr. Wisener's statement, BNSF rather than SAW is responsible for boxcar supply to Plant 2. SAW's duty is to switch boxcars to Plant 2 as and when received from BNSF. There is no showing in the Petition that SAW has failed to comply with that obligation. Contrary to PYCO's contention that SAW has not delivered any boxcars at all to Plant 2 (Petition at 9), SAW's records show that it has delivered 23 boxcars to Plant 2 since November 21, 2005. Those are all of the boxcars that BNSF supplied to PYCO as well as some borrowed from other shippers by SAW for PYCO. SAW's service in that respect is thus shown to be more than adequate.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for all of the foregoing reasons, PYCO's Petition should be denied.

Respectfully submitted,

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

Replicant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Replicant

DATE FILED: December 28, 2005

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2005, I served the foregoing document, Reply In Opposition To Petition For Alternative Rail Service, by UPS overnight mail, on Charles H. Montange, Esq., 426 NW 162nd Street, Seattle, WA 98177, and on John D. Heffner, Esq., 4034 Ellicott Street, Alexandria, VA 22304.

Thomas F. McFarland

Thomas F. McFarland