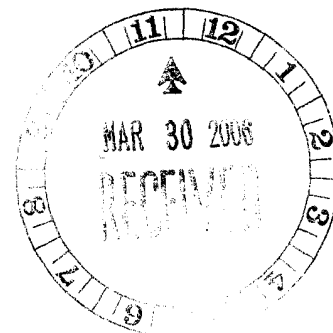


BEFORE THE
SURFACE TRANSPORTATION BOARD

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



**PETITION TO TERMINATE
ALTERNATIVE RAIL SERVICE**

216125

CHIEF OF BUREAU
MAR 30 2006
Public Record

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

Petitioner

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

Attorney for Petitioner

DATE FILED: March 30, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**PETITION TO TERMINATE
ALTERNATIVE RAIL SERVICE**

Pursuant to 49 C.F.R. § 1146.1(d)(1), SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby petitions for termination of alternative rail service in this proceeding.

SUPPORTING EVIDENCE

This petition is supported by the verified statement of Mrs. Delilah Wisener, owner of SAW, which is attached as Appendix 1, and by the affidavit of James L. Gorsuch, Esq., an attorney for SAW, which is attached as Appendix 2.

BACKGROUND

By decision served January 26, 2006, the Board ordered West Texas & Lubbock Railway Company, Inc. (WTL) to provide alternate rail service over SAW's tracks to PYCO Plants 1 and 2 at Lubbock TX for a 30-day period. The Board's action was taken under 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146.1(a).

In a decision served February 25, 2006, the Board extended that alternate rail service for four additional months, until June 25, 2006. The Board's action was taken under 49 U.S.C. § 11123(c) and 49 C.F.R. § 1146.1(c). That decision also denied a Petition to Terminate Alternative Rail Service filed by SAW. Although labeled as a Petition to Terminate, that Petition

essentially was a request under 49 C.F.R. § 1146.1(c) that the Board not extend the alternative rail service beyond the initial 30-day period.

The Petition hereby filed seeks termination of alternative rail service under 49 C.F.R. § 1146.1(d)(1) on the ground that any prior service emergency at PYCO Plants 1 and 2 no longer exists, and that SAW is prepared to provide adequate rail service to PYCO at those Plants.

JUSTIFICATION FOR TERMINATION OF ALTERNATIVE RAIL SERVICE

The demand for rail service at PYCO's Lubbock Plants has returned to normal levels. Based on the personal observation of Mrs. Wisener, there is no evidence of a continuing emergency or pressing need for PYCO to receive alternative rail service. PYCO is no longer working seven days per week as it was earlier in the alternative rail service. SAW is prepared and willing to provide PYCO with whatever rail services are needed for PYCO to conduct its operations. (Appendix 1 at 1).

The loss of revenue from not being able to transport PYCO's traffic is having a serious adverse effect on SAW. This record shows that PYCO's traffic constituted 42 percent of SAW's total rail traffic in 2005. A small rail carrier like SAW cannot survive a revenue loss of that magnitude for a sustained period of time. SAW has been punished enough by the alternative rail service order. (Appendix 1 at 1).

SAW strongly denies that its employees have interfered with WTL's operations in any way. Allegations to that effect in WTL's prior filings are completely unfounded. (Appendix 1 at 1).

SAW is concerned that BNSF, PYCO and WTL are attempting to build a case for extension of alternative rail service for PYCO, or, worse yet, an order for alternative rail service

to other SAW customers. SAW is not receiving traffic for SAW customers from WTL and BNSF in a timely manner. That is unreasonably delaying SAW's service to those customers. As in the case of service to PYCO, those customers blame SAW for the failure to make timely delivery, but it is BNSF that is the real culprit by not interchanging the traffic in a timely manner.

These are not idle concerns or paranoia on the part of SAW. SAW wants the Board and the public to be aware that calculated actions and refusals to act on the part of BNSF have been a major cause of the service difficulties experienced by PYCO. The Board is respectfully referred to the verified statement of Mrs. Wisener and the affidavit of Mr. Gorsuch for identification of numerous specific actions and refusals to act by BNSF that have had a material adverse effect on SAW's ability to provide adequate rail service to PYCO. A fair reading of those sworn statements leads inevitably to the conclusion that BNSF is, and has been engaged in concerted action to harm SAW in retaliation for SAW's judicial actions to enforce its agreement with BNSF.

PYCO has been caught in BNSF's crossfire against SAW. SAW has been made the fall-guy for BNSF's actions. SAW should not be punished for BNSF's transgressions. In any event, the transportation emergency at PYCO no longer exists. That being the case, alternative

rail service to PYCO no longer is justified. Accordingly, the Board should enter an order terminating alternative rail service effective as of the date of service of the Board's order.

Respectfully submitted,

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

Petitioner

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 Petitioner

DATE FILED: March 30, 2006

APPENDIX 1

VERIFIED STATEMENT OF DELILAH WISENER

My name is Delilah Wisener. I am the sole owner of South Plains Switching, Ltd. Co. (SAW). I have provided a verified statement earlier in this proceeding.

There is no evidence of any continuing emergency or pressing need for PYCO to receive alternative rail service based upon my personal observation that PYCO is not working seven days a week. Additionally, SAW is prepared and willing to provide PYCO whatever services are needed to conduct their operations.

The STB order has punished SAW enough. I believe WTLC, BNSF and PYCO are actively trying to build a case for continuing the directed service order. WTLC is not getting SAW interchanges in a timely manner causing unreasonable delays in service that SAW is still trying to give the rest of its customers.

I wish to categorically deny that I or my employees have interfered with WTLC operations in any way and express my displeasure with such unfounded accusations.

After the sale in 1999, BNSF pulled three switches leading to tracks purchased by SAW. One of these was switch 320, a direct route to PYCO Plant 2. It didn't seem to matter if PYCO service suffered.

SAW prevailed in the Fort Worth courts in the ownership and the use of track 9200. When SAW tried to return the customer back to track 9200 the 231 switch was locked by BNSF to prevent SAW from utilizing its track. Again, the shipper suffered.

After the 231 switch was locked, track 9298 was leased to PYCO for 1 year. SAW hoped this would force BNSF to open the 231 switch. The 231 switch was locked from November, 2004 until April, 2005, and BNSF refused to unlock the switch until they called for a settlement

negotiation and SAW refused to talk until switch 231 was unlocked. PYCO's lease of track 9298 expired by its own terms. The reason for locking switch 231 was to keep SAW from servicing a customer on track 9200.

BNSF is taking other action to circumvent the Fort Worth jury verdict. The Fort Worth jury determined that SAW is entitled to a non-unit-train division of revenue when shipments are waybilled to more than one consignee. BNSF is instructing one or more of its shippers to waybill its shipments to one consignee so that BNSF can pay the lower unit-train division, even though the shipments are in fact destined for multiple consignees. SAW is suffering substantial lost revenues as a result of falsification of waybills in that manner.

SAW is being substantially harmed as a result of BNSF's withholding payment of divisions of revenue to SAW. The current unpaid amount due is \$139,467.26. Unpaid amounts go back as far as June, 2005. Nonpayment of revenues of that magnitude is extremely harmful to a small railroad like SAW.

PYCO has been used as a pawn in this legal battle between BNSF and SAW. BNSF had a meeting in Lubbock with PYCO without SAW being represented and then PYCO has lists of all problems they have with their service. Now fingers are pointing at me after the meeting BNSF had with PYCO without me or my representative being present.

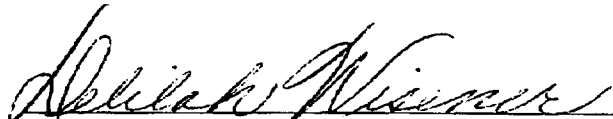
Now the STB has been involved and when I try to explain what is going on, I get accused of endless finger pointing. If I ignore these ridiculous allegations lodged against me . . . then the STB says they must be true since I did not refute! Frankly, it appears that when you have a battle with the BNSF . . . you also have a battle with the STB.

The loss of revenue for the 60 days of this unprecedented action for alternative rail service has placed undo financial hardships on my company. I have repeatedly stated SAW's willingness to provide the level of rail service required by PYCO.

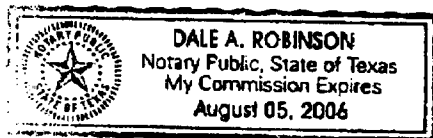
VERIFICATION

STATE OF TEXAS)
)
COUNTY OF LUBBOCK)

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


DELILAH WISENER

SUBSCRIBED AND SWORN TO before me on this the 29th day of March, 2006.




NOTARY PUBLIC

My Commission Expires: August 2006

APPENDIX 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

PYCO INDUSTRIES, INC. –	§	
ALTERNATIVE RAIL SERVICE –	§	F.D. 34802
SOUTH PLAINS SWITCHING LTD.	§	

AFFIDAVIT OF JAMES L. GORSUCH

IN SUPPORT OF THE FILINGS OF SOUTH PLAINS SWITCHING, LTD. CO.,

before me, the undersigned authority, personally appeared James L. Gorsuch, who, being by me first duly sworn, deposed and stated as follows:

“My name is James L. Gorsuch. I am over the age of twenty-one years. I am of sound mind. I am fully capable of making this Affidavit. I have never been convicted of a felony or a misdemeanor involving moral turpitude. I have personal knowledge of every statement made herein and every statement made herein is true and correct.

“I have been licensed to practice law in the State of Texas since November of 1978. I have practiced law since that date in Lubbock County, the surrounding counties, and various other counties in the State of Texas. In late 2003, I was retained by South Plains Switching, Ltd. Co. and South Plains Lamesa Railroad, L.L.C., as counsel of record in a case filed in Tarrant County, Texas, styled ‘*Burlington Northern and Santa Fe Railway Company (BNSF) v. South Plains Switching, Ltd. Co., and South Plains Lamesa Railroad, L.L.C.*; Cause No. 348-192452-02.’

“This suit was a declaratory judgment action by BNSF to determine the rights of the parties under an Asset Sale Agreement signed between the parties in May of 1999. One of the issues was ‘access’ to Track 9200. The track was just southeast of the main BNSF yard. The testimony at trial was that this track was used for unloading rock trains from Vulcan Materials. Vulcan Materials’ trains could be moved onto that track and unloaded to the nearby roads. Under the Asset Sale Agreement, the track and the business along the track was conveyed to South Plains. The issue in the Tarrant County trial was whether or not South Plains would have the right to interchange and serve Vulcan Materials on Track 9200. The jury found in favor of South Plains, and that BNSF’s access to the track was for storage purposes only. On appeal, the Court of Appeals reversed this holding and found that as a

matter of law, BNSF could have access to the track for any purpose. However, access to the track is subject to dispatch control of South Plains under the Asset Sale Agreement. There was no testimony in the Tarrant County trial that Track 9200 was used for either unloading or storing Pyco cars at any time prior to the time of that trial.

“Another issue in the Tarrant County case was the ownership of the track and customer at Burris, Texas. In the Asset Sale Agreement and the Quitclaim Deed the transferring of tracks, property and business to South Plains Switching, Ltd. Co., Tracks 4, 7 and 12 at Burris, Texas, were included. BNSF claimed in the Tarrant County suit that their inclusion in the contract was a result of a ‘mutual mistake’. The jury found that the inclusion of the tracks at Burris was not a mutual mistake. That portion of the jury’s verdict was not appealed. Therefore, the Burris tracks and the business along those tracks belong to South Plains.

“A second suit was filed in Lubbock County styled ‘*South Plains Switching, Ltd. Co., and South Plains Lamesa Railroad, L.L.C. v. BNSF*’; Cause No. 2004-526,559, in the 72nd District Court, on June 1, 2004. This suit sought damages on behalf of South Plains Switching, Ltd. Co., for the failure of BNSF to allow South Plains to handle Vulcan Materials trains on Track 9200, the improper rerouting of Vulcan Materials trains in both Slaton and Lubbock, Texas, and the failure of BNSF to allow South Plains to service the customer at Burris, Texas.

“In August, 2004, the case was tried and the jury returned its verdict. The jury found that BNSF breached the Asset Sale Agreement between the parties by refusing to allow South Plains to service Vulcan Materials tracks on Track 9200. The jury further found that BNSF breached the Asset Sale Agreement by failing to allow South Plains to serve the customer at Burris, Texas, and that BNSF had improperly rerouted Vulcan Materials trains in violation of the Asset Sale Agreement with South Plains Switching and with South Plains Lamesa Railroad, L.L.C. Damages were awarded by the jury for each breach of contract.

“In the Lubbock County trial, Vulcan Materials representatives testified that prior to the sale of the lines in 1999, Track 9200 was used to unload their rock trains. They testified it was the desire of Vulcan Materials that Track 9200 be used at all times and that they use South Plains Switching, Ltd. Co., to unload on the track. There was no testimony at the Lubbock County trial by any party that Track 9200 had ever been used for the storage or unloading of Pyco cars. The jury found BNSF breached the Asset Sale Agreement by failing to allow South Plains to spot Vulcan trains to Track 9200.

“After the Tarrant County trial but before the Lubbock County trial, South Plains moved a rock train onto Track 9200 through Track 231. Track 231 is the connecting track between the main line, BNSF’s lower yard, and Track 9200. After

the movement was made, Track 231 was locked by BNSF, thereby limiting access to Track 9200. A number of depositions were taken in the Lubbock County case. BNSF personnel testified at deposition that Track 231 was locked on orders from Fort Worth, the headquarters of BNSF. The locking of the switch hindered Pyco's operation as Track 9200 could not be used to transport cars from the Pyco Plant to either the BNSF yard or South Plains' yard. Track 231 and Track 9200 had been used for operations by South Plains since 1999. In April of 2005, during negotiations after depositions in Fort Worth, BNSF decided to unlock Track 231. At that point, Track 9200 became available for operations.

"In the Lubbock County trial, South Plains brought suit based on breach of contract for BNSF's failure to allow South Plains to serve the customer at Burris, Texas. The jury found that BNSF did breach the Asset Sale Agreement by failing to allow South Plains to serve the customer at Burris, Texas. As set out above, it was established in the Tarrant County trial that the tracks and customer at Burris, Texas, were conveyed to South Plains by virtue of the Asset Sale Agreement and Quitclaim Deed. After the Tarrant County trial and the appeal of the Tarrant County trial, BNSF has refused to allow South Plains to service the customer at Burris, Texas. After the filing of the lawsuit in Lubbock County, BNSF continued to refuse to allow South Plains to serve the customer at Burris, Texas. Since the jury's verdict in the Lubbock County case, BNSF has still failed and refused to allow South Plains to serve the customer at Burris, Texas.

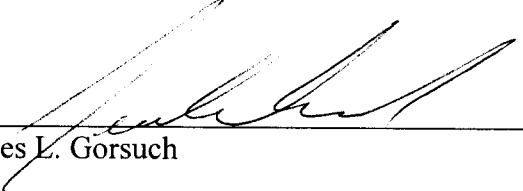
"In the Lubbock County trial, the jury found damages in favor of South Plains because BNSF had failed to allow South Plains to serve the customers at Burris, Texas. It is expected that a judgment will be rendered soon in the Lubbock County case.

"BNSF's failure to allow service by South Plains to the customer at Burris since June of 2004, is the subject of another Lubbock County lawsuit styled '*South Plains Switching, Ltd. Co. v. BNSF*'; Cause No. 2004-526,559-A, in the 72nd District Court of Lubbock County. This case is set to come to trial in July of 2006.

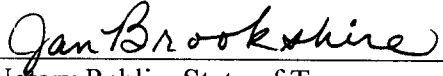
"In addition, Track 320 was a track that was conveyed by the Asset Sale Agreement in 1999 from BNSF to South Plains. However, the switch on the track was removed soon after 1999 by BNSF rendering the switch and the track unusable. Track 320 is a track that is located generally to the northeast of the main rail line and is a direct route to Pyco Plant No. 2.

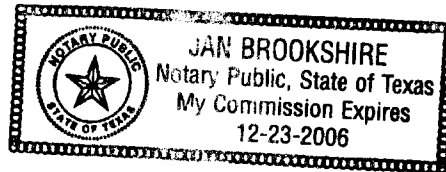
"South Plains has contacted BNSF on many occasions regarding reopening Track 320 after efforts to get BNSF to replace the switch had failed. Track 320 provides the most direct route from the main line to Pyco Plant No. 2. To date, BNSF has refused to replace the switch and has given no reason why the switch in Track 320 could not be replaced."

FURTHER AFFIANT SAYETH NOT.


James L. Gorsuch

SUBSCRIBED AND SWORN TO BEFORE ME, by the said James L. Gorsuch on the
22nd day of March, 2006.


Notary Public, State of Texas



CERTIFICATE OF SERVICE

I certify that on March 29, 2006, I served the foregoing document, Petition To Terminate
Alternative Rail Service, by UPS overnight mail, on the following:

John D. Heffner, Esq.
John D. Heffner, PLLC
1920 N Street, N.W., Suite 800
Washington, DC 20036

Charles H. Montange, Esq.
426 N.W. 162nd Street
Seattle, WA 98177

Gary McLaren, Esq.
Phillips & McLaren
3305 66th Street, Suite 1A
Lubbock, TX 79413

Thomas F. McFarland

Thomas F. McFarland