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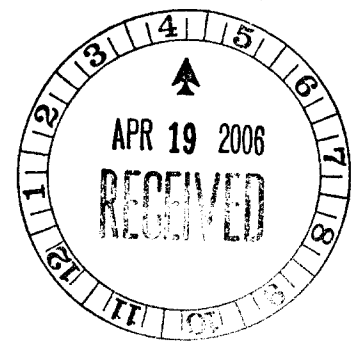
2/6/29/

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --
ALTERNATIVE RAIL SERVICE --
SOUTH PLAINS SWITCHING LTD.

)
) F.D. 34802
)



PETITIONER PYCO INDUSTRIES'
OBJECTIONS to SAW's
"Reply in Opposition to PYCO's Request for
Modification of Operating Protocol
and Request of SAW for Modification of Operating Protocol"

On 30 March, South Plains Switching (SAW) filed its second petition to terminate alternative rail service, in as many months, in this proceeding.¹ On April 6, PYCO Industries (PYCO) filed a timely opposition, noting (among other things) that SAW was continuing its pattern of trying to hamper PYCO's rail-dependent operations and to retaliate against PYCO. In particular, PYCO's evidence showed that SAW was interfering with the times provided for alternative rail service to PYCO in the Board-approved protocol. In addition, PYCO showed that on March 21, 2006, SAW began arbitrarily obstructing the rail crossing between PYCO's outdoor cottonseed storage pads and PYCO's plant no. 1. SAW engaged in this obstruction for no rail purpose: SAW obstructed the crossing with non-revenue flatcars that are not being used to serve any SAW customers; SAW was storing the cars for TTX or its

¹ This second petition was filed notwithstanding this Board's admonition to carriers "not to file such a petition prematurely." 49 C.F.R. § 1146.1(d)(1).

agents; and SAW could have accomplished that elsewhere. See Steve Gregory's Verified Statement at p. 4 (Exhibit C to PYCO Opposition). PYCO sought a modification to the Protocol to return the crossing to its status quo -- unblockaded by SAW.

SAW filed a "Reply in Opposition to PYCO's request for a Modification" on April 13. SAW's Reply also represents that it incidentally rebuts PYCO's Opposition to SAW's Petition to Terminate. Finally, SAW's Reply itself seeks a modification in the protocol, and in particular asks the Board to bar West Texas and Lubbock from using tracks assigned to it under the protocol from staging cars for PYCO on those tracks.

PYCO objects to SAW's filing, and the relief SAW purports to seek, as set forth below.

1. Out of time rebuttal. SAW's April 13 pleading states that its purpose is "incidentally [to] rebut PYCO's Opposition to SAW's Petition to Terminate Alternative Rail Service." See SAW Reply, p. 2, third paragraph. Per 49 C.F.R. § 1146.1(d)(3), SAW must file any rebuttal, incidental or otherwise, within three business days after PYCO's "opposition" was filed. Since PYCO's opposition was filed on April 6, it follows that any SAW rebuttal must be filed on or before April 11. The document SAW filed is two days out of time. SAW ventured no excuse for its lack of timeliness, and the document should be disregarded for purposes of SAW's petition to terminate the alternative rail service order.

2. SAW's puzzling request for modification. In its April 13 pleading, SAW requests that the service protocol be modified to "require West Texas & Lubbock Railway Company (WTL) to keep SAW tracks that are covered by the protocol clear of railcars when not providing rail service to PYCO and during SAW's operating window." SAW Reply at p. 2.

SAW seems to imply that WTL is somehow obstructing SAW's service to its customers. Nothing could be further from the truth. WTL is not obstructing SAW's service; instead, WTL is working diligently to make certain SAW has no reason for complaint. See Supplemental VS of Steve Gregory (Exhibit A). SAW has not complained to WTL about any WTL actions, nor has any SAW customer. Id.

WTL is making no use of any trackage covered by the protocol which in any way interferes with timely service to SAW customers. What is happening is this: PYCO receives cottonseed cars from BNSF by unit train in lots of up to 108. These cars historically have been spotted on tracks 9200 and 9298 south of the BNSF yard and just north of PYCO's plant No. 2 in Lubbock, and then returned to BNSF for a unit train outbound once unloaded. By experience, the BNSF yard becomes congested if 9200/9298 are not so used.

In addition, PYCO's plant No. 1 in Lubbock is located on the north and south sides of SAW's yard, for ease of rail service. Traditionally, some of the yard tracks are employed to stage cars

for PYCO.

In late January, when this Board issued its alternative service order in this proceeding, SAW moved the PYCO cars from 9200/9298 into the SAW yard; placed a smattering of non-PYCO cars on 9200/9298 to block use of that track; and the result was congestion of the BNSF yard as well as SAW's own yard. PYCO understands that BNSF communicated its concerns to the Board, and certainly PYCO did so by filing "Reservations" concerning a service protocol which SAW was then attempting to dictate. This Board responded by providing, in its order in this proceeding served February 16, 2006, at p. 4, that

"Tracks 9200 and 9298 shall remain clear of cars so that WTL, in coordination with BNSF, can provide service at PYCO Plant 2. WTL shall have authority to use the route between tracks 9200 and 9298 and Plant No. 2 to provide this service."

In addition, the protocol assigned use of Tracks 1 and 5 in the SAW yard to WTL for use in providing service to PYCO, as required to serve PYCO's plant No. 1.

Pursuant to the protocol as modified by the Board, SAW has been required to keep 9200 and 9298 clear of rail cars, and WTL has employed these tracks (and tracks 1 and 5 in the SAW yard) to stage cars for PYCO. SAW has no need to employ any of these tracks to serve other shippers on the SAW system.

As Mr. Gregory's supplemental verified statement indicates, WTL's use is by no means "permanent" storage as Mrs. Wisener seeks to portray it in her verified statement. Instead, it is how rail

service is provided in an era of unit trains for large rail users like PYCO. It is required for safe and efficient operations, and benefits all shippers on SAW's system, as well as BNSF's system, by minimizing congestion and maximizing circulation of railcars. More specifically, it prevents congestion of the BNSF yard and the SAW yard.

Neither SAW in its April 13 Reply, nor Mr. or Mrs. Wisener in their verified statements, indicate any harm to SAW, or any shippers being served by SAW, flowing from the use of 9200 and 9298, or tracks 1 and 5, to provide service to PYCO in accordance with the protocol, as ordered by this Board on April 13. Certainly it does not interfere with any service to SAW customers.

Once this point is understood, the only possible conclusion is that Mr. and Mrs. Wisener appear to be seeking a protocol modification merely to create congestion at BNSF or on their own system. They have no need for tracks 9200 or 9298, or tracks 1 and 5 in the yard, to serve their customers. Indeed, the only customer who must be served via 9200/9298 is PYCO, and other tracks in the SAW yard afford more than enough capacity for SAW's remaining customers served out of that yard. SAW, and the Wiseners, are acting like the proverbial dog in the manger (Exhibit B): SAW has no use for the rail, but tries to prevent those who do from using it for its intended purpose, evidently solely from a churlish desire to inflict as much pain and suffering as possible.

Indeed, "evidently" as used in the preceding sentence is too weak a term. Mr. Wisener told PYCO's management in November 2005 that he intended to force PYCO "to figure out how to take care of [itself]" and that it would "cost a lot more for [PYCO] to continue doing business," all in retaliation apparently for PYCO's failure immediately to agree to his demand to be paid \$5.5 million for unspecified SAW assets. The existing protocol, which requires SAW to keep clear of tracks 9200/9298 and tracks 1 and 5, by its nature limits the ability of the Wiseners to congest their system to the detriment of PYCO and other shippers. SAW's request for a protocol modification is merely an audacious attempt here to enlist this Board in the Wiseners' on-going efforts to create service problems for PYCO.

Mrs. Wisener's other allegations are otherwise rebutted in the Supplemental Verified Statement of Steve Gregory, attached as Exhibit A, and incorporated herein. PYCO underscores that SAW has never complained to WTL about WTL's use of SAW trackage. See Exhibit A. SAW has never telephoned WTL to request anything. Id. Moreover, SAW has never participated in the daily conference call between BNSF and WTL, despite invitation to participate, to address service issues. Id. This suggests that if SAW is having "problems," the problems are due to SAW, not WTL or BNSF.

PYCO, through its counsel, contacted BNSF to determine BNSF's views concerning SAW's motion to change the protocol. Mr. Weldon

("Eddie") Hale, Director of Shortline Development for BNSF, indicated that BNSF was "very satisfied with WTLC service" and that it saw "[n]o need for a change in the protocol -- except for SAW to start abiding by it." Email exchange, C. Montange and Weldon Hale, Exhibit C.

PYCO concurs with Mr. Hale's assessment that there is no need for the protocol change sought by SAW; what is needed is for SAW to abide by the protocol and to stop harassing WTL and PYCO employees during switching operations. We discuss the problem of SAW's continued and dangerous violations of the protocol below.

3. Recent developments. There is a problem in terms of railcars on the system in violation of the protocol, but it is not the problem alluded to by SAW. The problem is that SAW is operating its equipment on the lines in violation of the protocol. The incident log attached to Mr. Gregory's Supplemental Verified Statement (Exhibit A) identifies essentially daily instances of SAW operations in contravention of the protocol, including an instance on April 12. PYCO attaches hereto as Exhibit D an incident report (attested pursuant to 28 U.S.C. § 1746) prepared by Les Howell (PYCO's Purchasing Director/Seed Management Director) concerning the April 12 incident, which was particularly unnerving. In that incident, SAW pulled into the "we" track from the westernmost switch from track no. 6, which WTL was using to complete work for PYCO. As Mr. Howell reports, SAW in violation of the protocol

operated its engine outside the time provided in the protocol interfering with the PYCO switch. Mr. Howell notes that

"[t]his situation has become very dangerous for our employees and for WTLC. There is no form of communication between SAW and the WTLC. SAW is not obeying the STB set protocol on switching. SAW switches whenever they want, with total disregard to the safety of our employees and WTLC employees."

In order to understand this incident, PYCO attaches hereto a schematic map (Exhibit E) showing the relevant portion of the SAW yard. WTL must use the western portion of what is labeled as track 6 to gain access to PYCO's Plant No. 1 trackage, and in particular PYCO's "scale" and "shop" tracks. PYCO's "shop" track essentially parallels the western branch of the "wye." Both the western and eastern branches of the "wye" connect to track no. 6 as well. SAW's use of the western switch on the "wye" contributed to the incident on April 12. SAW should not have operated there under the existing protocol during WTL's window. To emphasize this point, and to help in ensuring safer operations, this Board should modify the protocol to provide that, during the WTL operating window, SAW must keep all its equipment out of and clear of (a) track no. 6 from the west edge of the yard to the eastern-most switch onto the "wye" trackage, and (b) the western segment of the "wye" trackage itself.

In the end, SAW's misconduct under the protocol, as well as SAW's request to modify the protocol in a fashion harmful to PYCO and unneeded by SAW, is simply further evidence that SAW's petition to terminate alternative rail service remains premature and inappropriate. SAW's modus operandi continues to underscore and to confirm that SAW is not interested in meeting common carrier obligations, but instead remains interested in inducing as much havoc for PYCO as SAW can manage, in keeping with what Mr. Wisener said he would do last November.²

4. SAW's basic inconsistency. On the one hand, SAW and the Wiseners contend that PYCO is all wrong, but on the other hand, they say that PYCO is an innocent pawn of bad things being done by BNSF. The Janus-faced argument SAW presents is inherently contradictory.

² SAW's mentality is further demonstrated by the nature of SAW's defense of its blockade of PYCO's (the largest rail shipper on SAW's system) access from Plant 1 to its cottonseed stockpile. SAW does not claim its blockade serves any shipper. SAW cannot. Instead, SAW mounted its blockade of a shipper (PYCO) with non-revenue railcars which it is storing for non-shippers.

The irony is palpable here. SAW claims it lacks facilities to store cars for its own shippers. Yet SAW here is caught red-handed blocking PYCO with non-revenue cars it is storing for non-shippers.

SAW should be directed to stop blockading the crossing and to return the crossing to its status quo. If SAW wishes to contest PYCO's right to cross on the grounds that PYCO has no right to cross by adverse possession (SAW argues that adverse possession of a crossing right is preempted by this Board's jurisdiction), then SAW should bring a quiet title action in state court. SAW should not be permitted to invoke this Board's preemptive jurisdiction as a basis to retaliate against PYCO for obtaining an alternative service order.

In her latest statement, Mrs. Wisener seems to imply that one of PYCO's top executives is a liar,³ and SAW argues, citing Mrs. Wisener's statement for support, that she and SAW have an absolute legal right to inflict maximum pain and suffering on PYCO by blocking access from Plant 1 to its seed stockpile, on the ground that the "PYCO has no right to complain about the placement of railcars on SAW tracks that are not covered by the alternative rail service order."⁴ Mrs. Wisener then complains that WTL has been "storing" PYCO cars "around the clock" on SAW's tracks assigned under the protocol to WTL use. She asks that these tracks be kept clear for SAW operation (even though no one -- and certainly not SAW -- has a rail need for them other than to serve PYCO).

Then, on the next SAW channel, we hear that PYCO is not at fault at all, instead the culprit is BNSF. Mrs. Wisener in her statement filed March 30 with SAW's second petition to terminate (WTL Petition to Terminate, Appendix I, at p. 1), and Mr. Wisener in his declaration dated April 11 (attached to SAW's Reply) both suggest that the problems faced by Lubbock arise from some unspecified Machiavellian plot of BNSF, and that PYCO is merely a pawn. Indeed, Mr. Wisener in his most recent statement (second to last paragraph) even "apologize[s]" to PYCO for BNSF.

³ Delilah Wisener VS, sworn to April 10, 2006, at para 3, attached to SAW Reply.

⁴ Id. para 4.

If, as SAW claims, there is a problem at BNSF, why then is SAW so disingenuously seeking (a) to complicate PYCO's plant operations and (b) to disrupt WTL's service to PYCO? Why is SAW so categorically refusing to participate in the daily telephone calls with BNSF and WTL to work out service issues?

Why has velocity, service and car handling so markedly improved for PYCO under the auspices of WTL?

If, as SAW claims, the problem is PYCO, why is WTL so able to provide service, and to win praise from both PYCO and BNSF for working off backlogs, relieving congestion, and improving velocity?

A railroad with a common carrier obligation presumably should follow a business model in which it makes money by discharging its common carrier obligations, and not a business model in which it claims, under the alleged protection of preemption flowing from this Board's regulatory jurisdiction, to be able with impunity to cut off a rail dependent shipper's access to its raw material and to disrupt its rail service.

SAW should not be permitted to use PYCO as a pawn, or its other shippers as pawns, in SAW's on-going efforts to evade its service obligations, nor should SAW be permitted to retaliate against PYCO by depriving WTL of use of track to stage cars for PYCO or by blockading long-established crossings at PYCO's plant 1 for no reason other than retaliation. SAW shows no basis for the protocol modification which it seeks, and any protocol modification

at this point should be in the nature of ensuring that SAW stops retaliating and begins to operate safely.

5. Conclusion. The protocol change requested by SAW has no merit. This Board should underscore the need for SAW to keep clear of the yard area during WTL's operating window. Given the recent incident on April 12, when SAW entered the "we" on the west side endangering WTL and PYCO employees during WTL's window, it is appropriate to modify the protocol on safety grounds to require that during the WTL operating window, SAW must keep all its equipment out of and clear of (a) track no. 6 from the west edge of the yard to the eastern-most switch onto the "we" trackage, and (b) the western segment of the "we" trackage itself.⁵

Respectfully submitted,

Charles H. Montange
Charles H. Montange
for PYCO Industries, Inc.

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

Of counsel:

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

⁵ This safety modification would moot PYCO's request for this Board to require SAW to stop blocking access to PYCO's cottonseed stockpile, because the area in question will encompass the western arm of the "we" which is where SAW is currently spotting non-revenue cars to block PYCO's access.

Exhibit A -- Supplemental Steve Gregory VS
Exhibit B -- dog in a manger
Exhibit C -- Montange (for PYCO)/Hale (BNSF) email exchange
Exhibit D -- Les Howell Declaration
Exhibit E -- SAW yard schematic (not to scale) showing
track 6, "wye" and PYCO leads

Exhibit A

VERIFIED STATEMENT OF
STEPHEN GREGORY

Stephen Gregory, being duly sworn, deposes and states as follows:

My name is Stephen Gregory. I am the same individual who previously testified on behalf of West Texas & Lubbock Railway ("WTL") in this proceeding.

SAW counsel alleges two instances of WTL failure to promptly deliver cars to SAW in the week of April 10. Our records show nine loads and seven empties delivered to SAW on April 9, a Sunday, which should have provided improved service on these cars since SAW has typically not worked on weekends. WTL also delivered seven loads and ten empties on the 10th, and four loads plus eleven empties on the 12th.

I am not aware of the delays counsel alleges. Since no specific car numbers were cited it is impossible for us to analyze the alleged situations for any process improvements necessary. More importantly, SAW made no effort to contact WTL at the time of the alleged incidents to represent its customers' interests, nor did any SAW customers contact us about delays on WTL.

I have emphasized in my previous Verified Statements, and repeat here, that WTL is committed to prompt delivery of SAW cars in interchange. Perhaps it bears repeating that

we can only switch cars that BNSF places on the designated interchange track in the BNSF yard and deliver them to the designated SAW tracks. We have been in frequent contact with one SAW customer who alerts us to needed inbound cars and we communicate that to BNSF. As SAW well knows, cars may be reported in Lubbock by the rail industry's tracing system but that does not mean they are available to WTL for delivery to SAW.

SAW has never availed itself of our daily toll-free conference call, and only on April 18 did Ms. Wisener provide what appears to be a 24-hour contact number as directed by the Board. (WTL Senior General Manager Mike McConville is our 24-hour contact.) Thus it appears SAW prefers to make claims to the STB rather than take positive action to address alleged service issues.

With respect to complaints regarding the protocol, SAW counsel and Ms. Wisener appear to believe that service to PYCO does not require the temporary holding of surplus cars. As SAW well knows, the practical realities of rail service for a high-volume customer like PYCO dictate surge capacity for handling the occasional imbalance of car flows. It is our understanding that tracks 9200/9298 were used for this purpose in the past and we are merely continuing that practice. Surely SAW does not expect BNSF

to provide in interchange the precise number of cars that PYCO may require on any given day.

WTL does not "permanently" store cars on SAW tracks. Again, SAW should realize that customers may require the temporary holding of cars for future loading, for inventory control, for causes beyond the customer's control such as changes in its customers' demand, etc. The usual commercial relationship between short lines and their customers calls for short lines to support their customers in this way as long as commercially and operationally feasible, and SAW has (or should have done) the same thing in the past.

SAW may not be aware that WTL has moved cars to WTL's own yard at our Doud station on the west side of Lubbock. On April 1 WTL moved 15 surplus tank cars to Doud in order to relieve congestion on SAW tracks used for PYCO switching designated in the protocol. This was done on our initiative to maintain service to PYCO and obviously did not require an appeal to the Board. What was ironic in this case is that SAW had plenty of room on its designated protocol tracks 2 and 3, so the congestion in question would not have occurred if all SAW tracks had been available to service PYCO as well as its other customers. It is likely that traffic imbalances required the use of some portion of all SAW yard tracks to serve PYCO in the past, so in this

respect SAW has benefited from WTL's presence by having additional space on tracks 2 and 3 under the protocol.

Despite periods of congestion resulting from imbalances in car flows WTL has not blocked tracks necessary for SAW to switch its other customers. Again, if SAW felt this was not the case, it was and is free to contact us, but has chosen not to do so.

Ms. Wisener states that "Just as SAW is required to keep those tracks clear for WTL's operation during WTL's operating window . . ." indicating SAW's recognition of the protocol, but SAW's operating practices contradict this. The past incident logs we have submitted, along with the updated one attached to this statement, are replete with SAW's daily violation of the protocol. Again, WTL is open to shared operation at the SAW yard with proper local coordination. However, as recently as April 18 Ms. Wisener refused to supply Mr. McConville a copy of the SAW operating timetable, normally a routine procedure in cases where one railroad operates over another.

WTL has used the tracks designated in the protocol to serve PYCO in a manner consistent with the Board's decisions and requests that the Board deny the request of SAW that WTL not be able to follow past practice in using

these tracks for temporary holding of surplus cars not required on a daily basis.

In light of the incident referenced in the log on April 12, WTL recommends that the protocol be expanded to include WTL access to track 6 in the SAW yard between the west end of the yard to and including the wye on the same basis as the protocol now provides for Plant 1, i.e. exclusive access by WTL before 10:00am and after 2:00pm. It is hoped this would provide increased safety to all concerned in light of SAW's apparent reluctance to coordinate operations on a daily basis.

SAW Event Log

Friday 3/31

0720 SAW switching in east end of yard while WTL switching on west end.

Monday 4/3

1500 SAW switching in east end of yard.

Tuesday 4/4

0810 SAW switching in east end of yard while WTL switching on west end.

Wednesday 4/5

1445 SAW moving from BNSF to SAW yard outside protocol window

Thursday 4/6

0730 SAW switching on west end of yard, preventing WTL from switching until 0815.

Saturday 4/8

0730 SAW switching on west end of yard, preventing WTL from switching until 0800. Potentially conflicting train movements as SAW was on same track as WTL .

Monday 4/10

0745 SAW switching at east end of yard.

Tuesday 4/11

0835 SAW switching at east end of yard.

Wednesday 4/12

0930 SAW switching on west end of yard track 6, conflicting with both WTL and PYCO car mover, creating a potentially dangerous situation to both WTL and PYCO personnel. All PYCO switching was stopped until SAW was clear of west end of the yard.

"Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

Executed on: April 19, 2006.

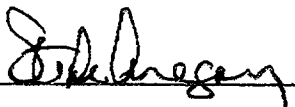

Stephen Gregory

Exhibit B

Glossary entry for dog in the manger

From **Brewer's Dictionary of Phrase & Fable**:

A mean-spirited individual who will not use what is wanted by another, nor yet let the other have it to use; one who prevents another enjoying something without any benefit to himself. The allusion is to the fable of the dog that fixed his place in a manger and would not allow the ox to come near the hay but would not eat it himself.

From **The Dictionary of Cultural Literacy**:

A person who spitefully refuses to let someone else benefit from something for which he or she has no personal use: "We asked our neighbor for the fence posts he had left over, but, like a dog in the manger, he threw them out rather than give them to us." The phrase comes from one of Aesop's fables, about a dog lying in a manger full of hay. When an ox tries to eat some hay, the dog bites him, despite the fact that the hay is of no use to the dog.

Contributed by Judy Kennedy

Van references in:

- "Rough God Goes Riding" (on **The Healing Game**)

Part of The Van Morrison Website

Exhibit C

c.montange

From: "Hale, Weldon E" <Weldon.Hale@bnsf.com>
To: <c.montange@verizon.net>
Sent: Friday, April 14, 2006 11:33 AM
Subject: Re: PYCO in Lubbock

Welcome home.

You're correct. SAW's arguments on protocol changes are aimed at blocking access to 9200 and 9298. Same with arguments against WTLC' use of crossings in the SAW yard.

To answer your questions:

1. BNSF is very satisfied with WTLC service. Equipment velocity remains high.
2. No need for a change in the protocol - except for SAW to start abiding by it.

I'm out of the office today, but if you need to speak with me don't hesitate to call me on my cell at 817-296-4589.

Eddie Hale
Shortline Development
BNSF Railway

-----Original Message-----

From: c.montange
To: Hale, Weldon E
Sent: Fri Apr 14 13:01:57 2006
Subject: PYCO in Lubbock

Mr. Hale, I am back from Turkey, and am getting ready to respond to SAW's latest, which includes a motion to change the protocol, which I construe to be an effort to prevent WTL/PYCO from using tracks 9200/9298 to place cars for PYCO either as empties or fulls. It is my understanding that 9200/9298 have traditionally been so used.

1. Is BNSF satisfied with the rail service being provided by WTL? Does BNSF have any complaints concerning WTL's performance?
2. Does BNSF see any need or beneficial purpose for the protocol change being sought by SAW (per its Wed. 13 April filing)?

4/17/2006

Exhibit D

INCIDENT REPORT

By Les Howell

Parties involved: SAW Railroad, WTLC Railroad & PYCO's Switch Crew**Date & Time:** April 12, 2006 @ 9:45am.**Where:** SAW's Yard tracks and PYCO's tracks.**Subjects:** Disregard for STB protocol and unsafe working environment.

SAW almost caused what could have been a fatal collision between their switch engine and our switch crew. Our switch crew was trying to switch to our scale track from the shop track to allow WTLC to bring cars in by using the switch that goes off Y-track that connects to #6 track, when SAW's engine came down #6 track headed west. WTLC was pushing cars off of #1 track east coming down #6 track to our shop track. Both WTLC and PYCO's switch crews stopped and backed up to allow SAW's engine to pass. SAW did not give a warning to either crew that they were on the tracks and moving. SAW engine proceeded down #6 track headed west, switched on to the Y-track and coupled up to three flat cars. SAW then pulled the three flat cars off of the Y-track onto #6 track and proceeded down #6 track headed east. During all this time SAW never signaled once when they were switching nor yield to when approaching the other engines. SAW is not scheduled to be on the tracks from 7am to 10am.

This situation has become very dangerous for our employees and for WTLC. There is no form of communication between SAW and the WTLC. SAW is not obeying the STB set protocol on switching. SAW switches whenever they want, with total disregard to the safety of our employees and WTLC employees. I have instructed our switch crew, if they see SAW on the yard switching, they are to stop and get off the tracks. I will not take chance on someone getting hurt or possibly killed because of the irresponsible acts of SAW management. Something needs to be done before it comes to that!

Pursuant to 28 U.S.C.1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

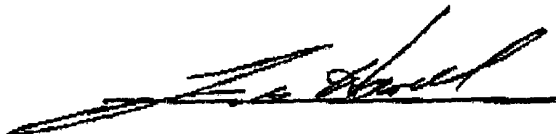
 4/17/06

Exhibit E

To: Steve Gregory
John Heffner
From CM

4/18/2006

RAIL SYSTEM

E

Office

OFFICE

PYCO DUMP STORAGE

CROSSING DUMP 5

NEW PYCO

PYCO SCALE

34 STREET

SCALE

SCALE

MEAL

84 L E D R E M U

No 6

SATU

SATU

SATU

SATU

SCALE

N

No. 937 811E
Engineer's Computation Pad

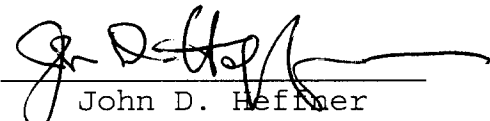
STAEDTLER

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the Reply in Opposition to PYCO's Request for Modification of Operating Protocol was served on April 19, 2006 to the following:

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60606
by: Overnight Mail

All Other Parties
by: First-class Mail


John D. Heffner