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THOMAS F. McFARLAND

May 15, 2006

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

ENTERED
Office of PR Readings

Part of
Public Record

Re: Finance Docket No. 34844, *PYCO Industries, Inc. -- Feeder Line Development -- South Plains Switching, Ltd. Co.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Motion For Rejection Of Alternative Two Of Feeder Line Application, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

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

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. -- FEEDER)
LINE DEVELOPMENT -- SOUTH) FINANCE DOCKET
PLAINS SWITCHING, LTD. CO.) NO. 34844

**MOTION FOR REJECTION OF
ALTERNATIVE TWO OF
FEEDER LINE APPLICATION**

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

Incumbent Carrier

THOMAS F. McFARLAND
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(312) 236-0204

Attorney for Incumbent Carrier

DATE FILED: May 16, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. -- FEEDER	)	
LINE DEVELOPMENT-- SOUTH	)	FINANCE DOCKET
PLAINS SWITCHING, LTD. CO.	)	NO. 34844

**MOTION FOR REJECTION OF
ALTERNATIVE TWO OF
FEEDER LINE APPLICATION**

Pursuant to 49 C.F.R. § 1117.1, SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby moves that the Board reject Alternative Two of the Feeder Line Application filed by PYCO Industries, Inc. (PYCO) on May 5, 2006.^{1/} SAW submits the following in support of this Motion.^{2/}

A feeder line application under the public-convenience-and-necessity (PC&N) standard of 49 U.S.C. § 10907(b)(1)(A)(i) cannot be filed for acquisition of less than the entirety of a rail line that is operated as a unit. *Caddo Antoine and Little Missouri R. Co. v. United States*, 95 F.3d 740, 749 (8th Cir. 1996) ("*Caddo Antoine*"). Thus, a feeder line applicant will not be allowed to "cherry-pick" by seeking to acquire only the most attractive part of a rail line, while leaving the incumbent rail line owner and its shippers with a remaining portion of a line that

^{1/} SAW seeks leave to submit this Motion, if required. As a matter of basic fairness, an incumbent rail carrier should have an opportunity to comment on a feeder line application that potentially could have the very harmful effect of forcing it to dispose of its rail lines involuntarily.

^{2/} The verification of Mrs. Delilah Wisener, Owner of SAW, is attached in support of factual allegations in this Motion in relation to operation of SAW's rail lines.

cannot be operated successfully. *Id.* at 747 (“If the Commission’s position is affirmed in this case, Arkansas Midland will have succeeded in lopping off service to the majority of the former shippers while ‘cherry-picking’ the single, more easily served shipper on the remaining seven percent of the line it elected to retain.”).

That principle is statutorily compelled because the term “a particular railroad line” in § 10907(b)(1)(A)(i) was intended by Congress to refer to the full length of a rail line that is operated as a unit. That statutory term is in contrast to 49 U.S.C. § 10903(a)(1) that permits a rail carrier to abandon “any part” of its railroad lines; and to 49 U.S.C. § 10904(b)(1) that relates to offers of financial assistance to maintain service on a “portion” or “part” of an abandoned rail line; and to 49 U.S.C. § 10907(h) that permits a purchasing rail carrier to propose to sell or abandon “all or any portion of a purchased railroad line.” As articulated by the Court in *Caddo Antoine*, *supra* (95 F.3d at 747, 749):

... (I)n light of CALM’s application to provide service over the entire length of the Norman Branch, a line that had historically operated as a unitary operation, the Commission (now STB) should have treated the entirety of the Norman Branch as “a particular railroad line” and thus have reviewed CALM’s application under the PN&C (*sic*) standard of section 10910(b)(1)(A)(i) (now section 10907[b][1][A][i]) rather than under (A)(ii) (at 747).

* * *

... (W)e conclude that the words ‘a particular railroad line’ when viewed in light of the history of the Norman Branch, the purposes of the feeder line development program, and the circumstances of this case, must be read to describe the entirety of the Norman Branch ... (at 749).

Consistently since acquisition of its rail lines in 1999, SAW has operated those lines as a single unit. All shippers and receivers located on SAW’s rail lines are served by the same locomotives and the same train crews on the same day. SAW does not provide rail service to

PYCO, or to Farmers Compress and Attebury Grain, separately or independently from providing rail service to its many other shippers and receivers. Without question, therefore, SAW's rail lines as a whole constitute "a particular railroad line" within the meaning of 49 U.S.C.

§ 10907(b)(1)(A)(i). The Board is requested to so find.

PYCO's Feeder Line Application is filed in the alternative. Alternative One seeks a forced sale of the totality of SAW's rail lines. It is clear from § 10907(b)(1)(A)(i) and the *Caddo Antoine* case that Alternative One is cognizable by the Board because that alternative encompasses "a particular railroad line," i.e., SAW's rail lines as a whole.

Alternative Two seeks a forced sale of less than the totality of SAW's rail lines. In particular, Alternative Two relates to "... trackage employed to provide service to PYCO ... and coincidentally all tracks needed to provide service to Farmers Cooperative Compress and Attebury Grain ..." (Application at 13). The trackage encompassed in Alternative Two constitutes only about one-third of SAW's rail lines, but rail traffic originated and terminated on that trackage constitutes about two thirds of SAW's total traffic (*id.* at 11, 13, 36).^{3/}

^{3/} According to PYCO, Alternative Two seeks to force sale of 25,560 feet of SAW's total of 74,384 feet of rail lines, or 34 percent of SAW's rail lines. (Applic. at 11, 13). According to PYCO, traffic for PYCO, Farmers Compress and Attebury Grain totaled 8,635 cars of the total of 12,747 cars transported by SAW in 2005, or 66 percent. (Applic. at 36).

Section 10907(b)(1)(A)(i), as interpreted by the Court in the *Caddo Antoine* case, does not permit PYCO to cherry-pick SAW's rail lines as proposed in Alternative Two.^{4/} Thus, Alternative Two of the Feeder Line Application is statutorily required to be rejected by the Board because that alternative does not encompass "a particular railroad line" as required by § 10907(b)(1)(A)(i), i.e., the totality of SAW's rail lines.

WHEREFORE, Alternative Two of the Feeder Line Application should be rejected.

Respectfully submitted,

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

Incumbent Carrier

Thomas F. McFarland

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Attorney for Incumbent Carrier

DATE FILED: May 16, 2006

^{4/} The term "a particular railroad line" in 49 U.S.C. § 10907(b)(1)(A)(i), as interpreted by the Court in *Caddo Antoine*, *supra*, requires that Alternative Two of the Feeder Line Application be rejected notwithstanding that such statutory term is to be applied in a somewhat different context than in the *Caddo Antoine* case. It cannot be argued successfully that such statutory term should be interpreted in one manner in *Caddo Antoine* and in a contrary manner in the present case.

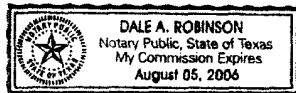
VERIFICATION

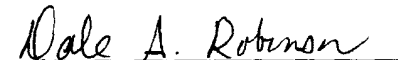
STATE OF TEXAS)
)
COUNTY OF LUBBOCK)

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 15th day of May, 2006.




NOTARY PUBLIC

My Commission Expires: August 05, 2006

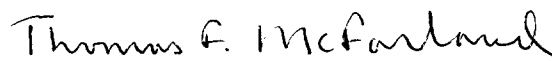
CERTIFICATE OF SERVICE

I certify that on May 15, 2006, I served the foregoing document, Motion For Rejection Of
Alternative Two Of Feeder Line Application, by UPS overnight mail, on the following:

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Thomas F. McFarland