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6 June 2006

by Federal Express



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

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

Action Requested Before 25 June 2006

Dear Mr. Secretary:

On behalf of PYCO Industries, Inc. ("PYCO"), enclosed please find an original and ten copies of a Motion for Extension of Alternative Service. The Motion is effectively verified by Paragraph 9 of Appendix I (a Declaration by Mr. Kring).

By my signature below, I certify service of the motion and this cover letter by express, next business day delivery, upon the following counsel of record:

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Chicago, IL 60604-1112

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Thank you for your assistance in this matter.

Very truly,


Charles H. Montange
counsel for PYCO Industries

Encls. (orig. and 10)

cc. Thomas McFarland, Esq. (w/encl.) (for SAW)
Gary McLaren, Esq. (w/encl.) (for PYCO)
John Heffner, Esq. (w/encl.) (for WTL)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

PETITIONER PYCO INDUSTRIES'
MOTION FOR EXTENSION OF ALTERNATIVE SERVICE

PYCO Industries, Inc., hereby moves for continuation of alternative service authority, currently set to expire on or about June 25, for 120 further days to and through October 23, 2006.

This Motion also serves as an opposition to the "Supplement to Petition to Terminate Alternative Rail Service" filed by incumbent rail provider South Plains Switching LLC ("SAW") on or about May 24, 2006. SAW has filed two petitions to terminate alternative rail service so far in this proceeding. This Board denied the first; the second remains pending. SAW's "Supplement" is both out of time (in violation of 49 C.F.R. § 1104.6) and an impermissible reply to a reply (in violation of 49 C.F.R. § 1104.13). It should accordingly be stricken. Insofar as the "supplement" may be construed to be a third petition to terminate (and it sometimes so reads), it should still be stricken as contrary to the policy stated in 49 C.F.R. § 1146.1(d)(1). The last sentence of that regulation states that "[c]arriers are admonished not to file ... a petition [to terminate] prematurely." It is surely premature to file a third petition to terminate while the second is still pending.

Because the "supplement" argues that the Board lacks jurisdiction to extend the alternative service order and otherwise reads like a preemptive "reply" to PYCO's (anticipated) motion to extend alternative rail service, PYCO will nonetheless address arguments presented in the "supplement" in this motion.

Background

Faced with a mounting stockpile of cottonseed oil which it could not ship out due to inadequate rail service, as well as a number of actions by incumbent rail provider South Plains Switching, Ltd. (SAW), that dramatically curtailed PYCO's ability to ship by rail, PYCO Industries on December 19, 2005, filed a petition for alternative rail service. Over opposition by SAW, this Board found that SAW was providing inadequate service, and authorized alternative rail service by West Texas & Lubbock Railroad (WTL) served January 26, 2006. PYCO was rapidly running out of storage space for cottonseed oil by the time the alternative rail service was authorized.

SAW sought to impose terms to an operating protocol for alternative rail service which simply would not work. PYCO and WTL filed reservations and concerns. This Board issued modifications to the protocol by decision served February 16. One of the modifications ordered by this Board was that SAW keep tracks 9200 and 9298 clear of cars so that WTL in coordination with BNSF could supply service to PYCO Plant No. 2. This Board also authorized WTL to operate between 7 PM to 7 AM (evenings),

7 days per week, to ensure service.

SAW almost immediately moved to terminate alternative rail service, but PYCO sought to continue it. As PYCO indicated in its papers then and has emphasized since, PYCO shipped over twice as many rail cars in the first 17 days of alternative rail service by WTL than in the last 17 days of service by SAW.¹ BNSF remarked to PYCO on the vastly improved velocity of rail cars.² This Board on February 24 issued an order continuing alternative rail service for 120 more days and denying SAW's first petition to terminate.

Within a few weeks, SAW again moved to terminate alternative rail service. PYCO opposed the petition to terminate. PYCO also noted that SAW was violating the protocol ordered by this Board in that SAW had failed to designate a contact person available 24/7. SAW also failed to participate in daily calls to deal with service-related issues, and SAW continued to operate outside the hours assigned by the agreed upon protocol to WTL operations to serve Plant No. 1. PYCO noted that there had been incidents when SAW operation outside protocol hours put personnel engaged in rail switching for PYCO

¹ PYCO shipped 369 cars in the first 17 days of alternative rail service, versus 164 during the last 17 days of SAW service. PYCO Reply to Motion to Dismiss [in STB F.D. 34838 (non-coal complaint proceeding) and Motion/Petition for Immediate Revocation [in Ex Parte 346 (sub-no. 14C)], and filed in this docket May 26, 2006, Appendix I (Gail Kring Declaration, ¶ 6). For ease of reference, we attach that Appendix as Appendix I to this Motion.

² BNSF indicated that it could assemble a 70 unit train in 3 rather than 5 days. Id. ¶6.

at risk. (These incidents continue, as noted in counsel's letter of 25 May in this docket and in paragraph 7 of Kring Declaration attached in Appendix II hereto.) In addition, PYCO explained that commencing in mid-March, SAW began blocking access between PYCO's Plant No. 1 and PYCO's cottonseed stockpile with rail cars. PYCO asked for a protocol modification to require SAW to keep what we understand is called track number 6, including the "wye," clear during protocol hours assigned to WTL to serve PYCO.

Because PYCO's seed stockpile was beginning to heat (rot), PYCO filed an emergency motion for the Board for relief to clear track number 6 and the appurtenant wye.

While these requests were pending, SAW on May 24 filed a "Supplement" to its second termination petition, contending that this Board lacks jurisdiction to provide alternative rail service. SAW claims the Board lacks jurisdiction because roughly 4000 carloadings per year from PYCO consist of cottonseed or linters which are exempt commodities under 49 C.F.R. § 1039.10.

I. STB Jurisdiction

Because SAW has now charged that this Board lacked jurisdiction to issue the alternative service order and also lacks jurisdiction to extend it, PYCO will examine that issue immediately.

The commodity exemption claimed by SAW is found in 49 C.F.R. § 1039.10. Although SAW unquestionably knows the various

products shipped by PYCO, SAW did not raise the issue of the exemption until SAW filed its Supplement in this proceeding on May 24. The exemption is not applicable here for at least three reasons, which presumably is why SAW did not raise the question before.

First, section 1039.10 applies "except that carriers must ... send a letter of notification to the docket ... within 30 days, of the fact that they are using the exemption." Upon inquiry by counsel, PYCO was informed that there is no indication that SAW filed a letter of notification with ICC or the Board claiming use of the exemption. It is thus not applicable at all. In addition, SAW operates pursuant to a contract with BNSF requiring it to switch BNSF's south Lubbock customers. SAW cannot claim an exemption from this duty.

Second, in all events, this Board continues to have jurisdiction over shipments of exempt commodities. The fact that they are exempted does not mean that a state of nature prevails; it merely means shipments of those commodities are not actively regulated by the Board. The Board still retains jurisdiction with respect to the shipments.

Additionally, PYCO on May 26 filed a motion/petition to revoke the exemption claimed by SAW as to SAW. See "Reply to Motion to Dismiss and Motion/Petition for Immediate Revocation of Claimed Commodity Exemptions" filed in Rail General Exemption Authority -- Misc. Agricultural Products, PYCO Industries Petition for Partial Revocation, Ex Parte 346 (Sub-no. 14C), and

filed in PYCO Industries v. SAW, F.D. 34838. PYCO also filed a copy of this pleading in this docket in partial response to SAW's claim that this Board lacks jurisdiction to issue an alternative service order. This Board's precedent indicates that if a shipper has a complaint about inadequacy of rail service involving an exempt commodity, the appropriate recourse is to file for relief including a petition for partial revocation of the exemption. FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Co.; Rail General Exemption Authority -- Selected Commodities, STB Dkt. 42022, STB Ex Parte No. 346 (Sub-no. 46A), served August 31, 1998, 1998 STB Lexis 230 at *4.

Although this Board previously granted an exemption from regulation as to the commodities in section 1039.10 (provided a carrier claiming the exemption complied with the requirements stated in the "except" clause in the first sentence of the regulation), this Board retains jurisdiction over shipments of the exempt commodities and is empowered to order relief as appropriate. Thus the fact that an exemption is possibly applicable does not mean that the Board lacks jurisdiction to order relief wherever and whenever the Board finds that rail service is inadequate. Here, this Board has found that rail service is inadequate and PYCO's showing of rail dependency on all products which it ships by rail is uncontested.

No one has claimed or is claiming that PYCO can shift to trucks or other rail carriers to move its product. PYCO has

filed several verified statements and declarations indicating that PYCO cannot so shift. Indeed, leaving aside cottonseed oil and meal (on which PYCO is unquestionably rail dependent), Mr. Kring (PYCO's Chief Executive Officer and General Manager, who has worked for PYCO for 39 years) notes that PYCO shipped 3754 carloads of cottonseed to the California dairy industry in 2005, and 526 carloads of linters. Appendix II, ¶3. Although these two commodities are part of 49 C.F.R. § 1039.10, Mr. Kring states that PYCO is rail dependent for these shipments. Appendix II, ¶3. Mr. Kring explains a number of changed circumstances in the cottonseed mill industry since cottonseed and linters were included in section 1039.10 in 1983 and today, all of which indicate that the industry, as well as PYCO, has become rail dependent in respect to these products. Appendix II, ¶¶ 2-4.

Third, and in any event, PYCO ships non-exempt commodities. PYCO is an oil mill and its chief product is cottonseed oil. PYCO also produces cottonseed meal as a byproduct. PYCO relies on rail to ship both these products, and neither are exempt. Mr. Kring in his Declaration (Appendix II at ¶3) explains that PYCO shipped 1321 tankcars of cottonseed oil in 2005, and in fact leases a fleet of 120 cars for that purpose. Moreover, PYCO shipped 384 carloads of cotton meal or mash. Neither cottonseed oil nor cottonseed meal or mash is an "exempt" commodity. 1700 carloads of non-exempt commodities is a substantial amount of carriage, and PYCO's oil production (85%

of which ships by rail) constitutes approximately 25 to 30% of the total cottonseed oil production in the U.S. Loss of that transport due to service inadequacies by SAW would create economic displacement, not just as to cottonseed oil but as to the Texas and national cotton industries. Appendix II, ¶ 5. Mr. Kring indicates that PYCO is rail dependent for these shipments and that trucks are not a substitute. Appendix II, ¶3.

In its "Supplement," SAW argues that the fact that the majority of PYCO's products are eligible for the section 1039.10 exemption means that no relief can be afforded to PYCO for any of its products, evidently on the theory that the non-exempt are too intermingled with the exempt to be separated out for relief. PYCO cannot find any case where an argument such as SAW's has ever been raised, let alone given credence.

PYCO agrees that its rail service needs are too intermingled to separate out the non-exempt from the exempt. To attempt to segregate cottonseed oil cars from cottonseed cars, and cottonseed mash cars from cottonseed linter cars, for purposes of local switching, so that inadequate service may be provided as to cottonseed and linters, but adequate service may be provided for the oil and mash would be uneconomic as well as ludicrous. But this does not mean that the Board lacks power to ensure that PYCO receives adequate rail service for its cottonseed oil and mash. It means that to receive adequate rail service for its non-exempt commodities, it must also receive

adequate rail service for its shipments regardless of status under section 1039.10. The Board unquestionably retains jurisdiction over all shipments.

SAW's argument that the non-exempt and exempt are too intermingled to be disentangled at PYCO amounts to an admission that the exemption claimed by SAW should be partially revoked as to all PYCO's rail business with SAW. It certainly amounts to an admission that if there is alternative rail service, it must apply to all PYCO's shipments at Lubbock.

II. Extension Is Required

Since the inception of the alternative service authorization, SAW has failed to take any action indicating that it is ready, willing, or able to provide adequate rail service to PYCO. Instead, all SAW actions in connection with PYCO not only have been hostile personally to PYCO personnel and executives, but also costly in an economic sense, with no benefit to SAW. The mystery is why a switch railroad would so behave to its major shipper. To that we have no explanation except the personality of its management and that management's feeling that it can get away with it.

SAW is not ready, willing or able to provide adequate rail service to PYCO. Instead, SAW remains fixed to Larry Wisener's pledge last November, in retaliation for PYCO's refusal to hand over \$5.5 million he demanded for unspecified SAW assets, not just to make life expensive for PYCO, but to force PYCO to take care of itself in terms of meeting its rail

needs.³ To this end, rather than attempt to negotiate, SAW has hung up when PYCO called. The most recent hang-up occurred when SAW interfered with completion of PYCO's shop track renovation in mid-March. At that time, SAW blocked repair of the crossing over the shop track and "wye" track that PYCO had long relied upon to move cottonseed from the outdoor storage pad into the oil mill (Plant No. 1). SAW blocked its own "wye" with non-revenue cars. When PYCO called to negotiate, SAW hung up. PYCO asked for WTL to see if it could speak to SAW. Again, SAW hung up.⁴ The only reason to block the crossing is to increase PYCO's costs, by requiring PYCO to install new driveways and gates, and employ equipment lawful for use in city streets as opposed to an industrial crossing. PYCO is incurring that expense (roughly \$250,000) rather than watch its seed rot. The point to draw from this is the hostile attitude of SAW, its corrosive mindset vis-a-vis its dominant shipper, and its unwillingness or inability to negotiate. Because SAW believes that its roll is to dictate whatever terms it wishes, and a shippers' roll is to take whatever SAW chooses to offer, all SAW needs to do is hang up.

PYCO has not attempted further to negotiate with SAW since

³ See Lacy Declaration attached to Petition Alternative Rail Service ¶¶12-14 and log for Nov. 17-18. Mr. Wisener, then manager of SAW, has become progressively more profane in meetings, and causes shippers to fear physical retribution by him. See, e.g., Lacy Dec., *supra*, ¶¶ 12 & 15.

⁴ SAW also effectively hung up during a conference call with PYCO and WTL representatives, including counsel, to discuss the operating protocol.

SAW's latest hang up. SAW confirms in its Supplement that SAW's position is that everything it does is perfectly lawful, and that any service problems faced by PYCO are the fault of BNSF or PYCO itself. How this can be given the fact that PYCO has had no service problems with the same plant and same BNSF when the service is provided by alternative service provider WTL is, of course, a flaw in SAW's argument that SAW ignores and can never explain.

The problem with SAW seems to be inherent in its management. SAW basically refuses to coordinate service with BNSF. BNSF and WTL have daily conference calls to discuss service issues. PYCO and SAW can both participate. SAW never has and never does. It is not interested in coordination. It has sued BNSF in state court and wishes to blame BNSF for all service "problems" that arise on the SAW system. SAW variously claims that BNSF locks out this switch or that track, and blames degraded service on BNSF. That whole scenario played out in early 2005 when SAW degraded service and blamed BNSF. SAW makes the same claims now. But WTL has answered that argument by the fact that WTL has provided excellent service on the same physical plant connecting with the same main line carrier (BNSF) as SAW. PYCO does not wish to go back to the days of SAW degradation of service as SAW attempts to score points against BNSF.

At the very inception of alternative service, SAW congested its own yard and sought to block WTL/PYCO use of

tracks 9200/9298 to prevent service to PYCO Plant No. 2. Tracks 9200 and 9298 had traditionally been used to stage cars and to provide service to PYCO Plant No. 2. When SAW attempted to block use of 9200 and 9298, this Board responded with a protocol order served February 16 requiring SAW to keep these tracks clear and allowing WTL to use them to serve PYCO. Rather incredibly, SAW to this day resists this use, claiming in its "Supplement" a legal right to terminate PYCO's lease to the tracks, and impliedly then to devote them to the non-revenue car storage that is SAW's preferred form of business as opposed to honoring common carrier obligations.

If SAW is permitted to congest tracks 9200/9298 after expiration of the current alternative service order on June 25, PYCO will lose adequate rail service to Plant No. 2.

It is deeply troubling to PYCO that SAW now argues that it owes no duty to provide service whatsoever to PYCO because the bulk of PYCO's rail dependent shipments are commodities eligible for exemption under 49 C.F.R. § 1030.10, and that it has a legal right to take all the actions which it took which resulted in inadequate service to PYCO. SAW seeks an end to alternative rail service not by arguing that it has reformed its management objectives or practices, but by arguing it has the absolute right to do everything it did before and more, and by blaming the problems that arose on others. With respect, this is exactly the same SAW mindset and set of circumstances that prevailed before this Board authorized alternative rail service.

The main difference is that SAW has taken a series of additional hostile and costly acts against PYCO (including a state court lawsuit, blockade of PYCO's industrial crossing, and physical intimidation of PYCO employees during switching operations). PYCO is currently receiving adequate rail service from WTL. PYCO suffered a substantial and measurable degradation of service from SAW. SAW by its very arguments demonstrates that it is neither ready, nor willing, nor able to provide adequate rail service at this time. The alternative service order should be extended for an additional 120 days.

PYCO is mindful that alternative rail service under 49 C.F.R. Part 1146 is limited to 270 days, and this period is up on or about October 23, 2006. PYCO is evaluating more extended relief, and currently expects to file a petition under 49 C.F.R. Part 1147 for that purpose. In addition, PYCO currently expects either to appeal or to refile its feeder line application during the interval. The additional period through October 23 will permit continued alternative service pending consideration of application of Part 1147. In order to stay in business, PYCO, which is rail dependent, needs continued reliable and adequate rail service, and SAW's actions to date continue to indicate that SAW has no desire to do that.

SAW says that PYCO's arguments "seek to mislead the Board," in that SAW is merely withdrawing or refusing to provide "privileges that are not required by law." SAW Supplement at p. 9. But even a switch railroad and thus has a

set of obligations to its shippers. SAW overtops any "privilege" when it congests its system to the point of providing inadequate service to PYCO. That SAW's service was demonstrably inadequate is shown by the fact that WTL moved twice as many PYCO cars as SAW in an equivalent interval before and after the alternative service order. The yard tracks and leads in Lubbock operate as a system. While SAW claims a right to congest its own system, including track 9298 or its own yard, to the point that PYCO cannot be served, then not only is SAW's obligation to provide adequate service to PYCO breached, but also BNSF's own yard becomes backed up and rail customers in the entire system sustain deteriorated service. Rather than admit mismanagement or prior cluelessness, SAW continues to excuse its (mis)conduct, to assert a legal right to do exactly what it had been doing, and to blame BNSF or PYCO for all problems experienced to date. By its very arguments, SAW concedes that its future service to PYCO will be exactly the same as that which precipitated the alternative service petition in the first place.

PYCO believes that SAW has now inflicted all the economic damage it possibly can on PYCO by the withdrawal of "privileges." Any further "privilege" withdrawal would amount to not providing rail service and shutting down PYCO, which is pretty much what Larry Wisener indicated to Mr. Lacy that SAW desired to do to PYCO on November 18, 2005. Thus, SAW's stated desire simply to withdraw more "privileges" (i.e., to revert to

the status quo prior to alternative rail service) amounts to a request by SAW to this Board for permission to congest up the leads and yards serving PYCO, once again threatening PYCO's continued operations and once again threatening to disrupt BNSF's own yard operations in Lubbock. The proper response is to extend alternative rail service a further 120 days.

III. Other SAW Arguments

Although the "Supplement" filed by SAW should be stricken, we will take this opportunity to summarize a response to some of the arguments made by SAW in that pleading.

-- SAW and Ms. Wisener continue to suggest that inadequate service is somehow due to BNSF.

During the course of this proceeding, Delilah Wisener or her husband Larry Wisener have repeatedly stated that problems in providing service to PYCO are the result of failings by BNSF (D. Wisener Statement at p. 2 bottom fragment paragraph), including BNSF's lock on a switch to track 231 (SAW "Supplement" p. 8). The quick answer to these claimed problems is that WTL has had no problem in coordinating with BNSF and in providing service to PYCO. SAW declines to participate in the daily calls to coordinate service between BNSF and WTL, despite invitation.

-- Ms. Wisener claims that the service problems were due to PYCO's alleged lack of sufficient plant track.

Ms. Wisener states that PYCO has now constructed an addition to PYCO's "shop track" sufficient to accommodate 35 to 50 cars. She says SAW can now accommodate PYCO service in a single

switching movement. D. Wisener Statement, p.3. The capacity of the shop track has never been the problem. WTL provided adequate service before and after the extension. The real reason for the expansion was to store equipment so as to avoid SAW charges for "constructive placement" (storage) arising in large part from SAW's failure to provide adequate switching.

Ironically, SAW has interfered with completion of PYCO's shop track improvement on which Ms. Wisener relies in her statement. The last part of the project was to improve the industrial crossing over the shop track and "wye" track between Plant No. 1 and the PYCO seed stockpile. In mid-March, SAW spotted non-revenue cars on the crossing to prevent PYCO from completing the project.

-- Ms. Wisener claims that SAW never limited PYCO to one switch per day.

This statement is untrue. When Mr. Wisener in November 2005 blew up at PYCO, he instructed his crews to limit PYCO to one switch per day, placed a derail to limit PYCO's ability to move cars around its plant as well as to self-switch, refused to place cars on the scale track at all. All these actions hamstrung operations at Plant No. 1 and continued throughout the pendency of the alternative use proceeding. SAW personnel themselves told PYCO that Mr. Wisener had told them to limit switching to one pull per day, and only to PYCO's shop track. See Lacy Dec. log for Nov. 22, 2005, attached to PYCO's Petition for Alternative Rail Service.

-- Ms. Wisener claims that SAW is now willing to provide

additional switches as required without additional surcharges or other limitations.

Ms. Wisener claims SAW is now willing to provide additional switches (D. Wisener Statement p. 3), but she also says that no additional switches are now needed (id.) due to track construction. Ms. Wisener says her offer of additional switches is "long standing." Id. Mr. Kring in his Supplemental Declaration (Appendix I) notes that there is no offer; SAW has basically hung up on PYCO calls.⁵ Indeed, SAW has taken a number of hostile actions to PYCO: SAW is blocking PYCO's industrial crossing, SAW has sued PYCO in state court, SAW has physically threatened PYCO staff during switching operations. It is very presumptuous for SAW to suggest it has made some kind of offer to PYCO. So far as PYCO can tell, SAW's position is exactly that stated by Mr. Wisener to Mr. Lacy on November 18, 2005: Larry Wisener said SAW "was going to set charges for everything that he could and cancel leases and [PYCO] would have to try to figure out how to take care of ourselves." See Lacy Dec., supra, log for Nov. 18, 2005.

Ironically, SAW argues to this Board the following excuse

⁵ The only contact from SAW concerning an additional switch was a communication from SAW's lawyer late on Friday, January 6, 2006, the same day that SAW electronically filed a "Petition" with this agency. The "Petition" states that it was to serve as the basis for an agreement between SAW and PYCO. PYCO responded to that "Petition" on or about January 9, 2006, noting that the proposed "settlement" offering of a second switch applied only in very limited circumstances and conditions. SAW never followed up, or provided any clarifications. SAW subsequently responded to all efforts by PYCO to discuss problems by abruptly hanging up on PYCO personnel.

for its blockade of the industrial crossing over the shop track and the "we": SAW claims it had to move the blockading cars there from track 9298. See SAW Supplement at 9. The first problem with this argument is that this Board's protocol order requiring SAW to unblockade 9200/9298 was in mid-February. The blockade of the "we" started in mid-March. The second problem for SAW is that SAW completed construction of 5000 feet of track in south Lubbock south of 50th Street this past spring. The track construction was not for a revenue customer, but to store cars for non-revenue customers. So far as PYCO can tell, SAW has ample storage space. It need not block the leads and industrial crossings used by shippers with non-revenue cars it is storing for purposes of its side businesses. SAW's play here is illustrative: SAW's business practice is to congest leads into the plants or warehouses of BNSF shippers served by SAW, or to take out switches to their leads, unless the shippers pay a ransom to SAW (i.e., "lease" the lead back at a hefty price, or agree to pay money for a switch to be replaced. Through this practice, SAW effectively evades the provision in its contract with BNSF that SAW provide switching service for a division of the BNSF tariff.

SAW in its Supplement rolls out its prior attempted justifications for each of the actions by which it rendered service inadequate to PYCO; we have already responded to them and will not continue to belabor the point. SAW continues to blame the service inadequacy on BNSF or on PYCO itself. The

easy answer, as we have indicated, is that under the alternative service order, WTL has been providing excellent service, belying all of SAW's "explanations" that the fault lies somewhere other than with SAW. Since SAW continues to refuse to coordinate service through the daily conferences with BNSF, since SAW claims a right to congest track 9298 and thus upset service to Plant No. 2, since SAW continues to attempt to upset PYCO's ability to operate Plant No. 1, and since SAW hangs up rather than negotiates, SAW is not yet exhibiting any true willingness or ability to provide adequate service to PYCO. Rather, SAW continues to exhibit the Wiseners' intent to cripple PYCO. PYCO accordingly requests that the alternative service order be extended for 120 more days, through and including October 23, 2006.

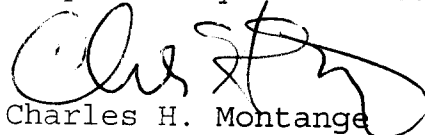
IV. Track Repairs

In a letter dated May 17, 2006, filed by Mr. Heffner on behalf of WTL on or about May 22, 2006 (and attached hereto as Appendix III), WTL indicates that SAW has made no inspection or maintenance of trackage used by WTL for alternative rail service, and "[t]here are some serious track problems developing." WTL informs PYCO that track on the SAW lead into PYCO Plant No. 1 requires repair in order to avoid derailment. Assuming that alternative rail service is authorized for continuation, PYCO requests this Board to order SAW to discharge its duties to inspect and to repair per 49 C.F.R. Part 213.

Conclusion

The alternative service order should be extended a further 120 days through and including October 23, 2006. All SAW petitions to terminate should be denied.

Respectfully submitted,



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Attachments:

Appendix I: Supplemental Declaration of Mr. Kring

Appendix II: Declaration of Mr. Kring (previously filed)

Appendix III: WTL Letter, May 17, 2006

Appendix I

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

1

refuses to allow PYCO to stage cars there, then PYCO will not receive adequate service to Plant No. 2. SAW indicates that it intends to continue with the lease termination, so it effectively is telling the world it intends to provide degraded and inadequate service to Plant No. 2.

3. PYCO has been in the process of expanding and upgrading its shop track to provide in-plant storage. This does not mean the upgrade or expansion was needed for adequate service, but was a response to SAW's charging PYCO \$150 for "constructive placement" of PYCO cars on SAW tracks during periods when SAW degraded service to PYCO. SAW used degraded service as an excuse to charge PYCO (and evidently only PYCO) with fees in excess of its tariff division from BNSF for PYCO shipments. SAW interfered with completion of PYCO's shop track upgrade and expansion by moving non-revenue cars onto the immediately adjacent "wye" track to prevent PYCO's contractor from completion of repaving the private industrial crossing located on the shop track and the wye. SAW excuses its blockade on the ground that it needed space to store cars since this Board required it not to use track 9298 in mid-February. This claim is false for two reasons. First, SAW did not blockade the wye for the next month and obviously did not move cars from 9298 down to the wye. Second, SAW has recently constructed approximately 5000 feet of track in south Lubbock across from Floyd Trucking (i.e., just south of 50th). So far as PYCO can tell, the new track is for use chiefly if not exclusively to

store non-revenue cars. Based on visual inspection on Monday, June 5, 2006, there is ample space for SAW to store the non-revenue cars which it is using to block PYCO's industrial crossing on this newly constructed storage track which has no other evident purpose. There has been ample space for the past month on SAW's storage track to store non-revenue cars.

4. When PYCO telephoned SAW offices to discuss SAW's blockade of PYCO's industrial crossing and possibly other issues, SAW abruptly hung up. PYCO asked WTL to see if it would have better luck, but WTL did not. SAW has evinced no interest in negotiating with PYCO. SAW's consistent position in respect to PYCO since November 2005 is that PYCO must accept whatever terms and conditions SAW wishes to impose, and whatever service SAW wishes to tender. PYCO is now incurring approximately \$250,000 in additional expenses to construct facilities to haul its cottonseed stockpile by a circuitous route onto city streets, thence across the same SAW lead that the "wye" is on, and thence back to PYCO's Plant No. 1. This route is less safe for all concerned than use of the blockaded industrial crossing.

5. SAW continues to operate on lead number 6 and its "wye" in close proximity to PYCO workers conducting switching operations during WTL's agreed upon protocol hours for serving PYCO plant no. 1. This endangers PYCO workers due to some close clear distances between PYCO's shop and scale tracks and SAW's adjacent tracks.

6. Ms. Wisener in her statement seeks to reiterate

several claims SAW made prior to the granting of the alternative service petition. I offer the following brief responses:

-- Based on my knowledge or what I have learned from staff, SAW told PYCO to place certain car orders through SAW, but SAW then declined, which put us behind. In contrast, WTL has assisted us in supplying cars.

-- Although Ms. Wisener suggests the SAW yard is congested with PYCO cars, the SAW yard has traditionally been used to stage cars for PYCO Plant No. 1. Its trackage is otherwise in large part surplus. WTL manages to stage cars for PYCO using only two of the six tracks in the SAW yard, and suggests to us that the bulk of the yard is unused. Also, because WTL provides adequate service, car velocity is higher and even temporary storage needs less.

-- Ms. Wisener speaks of inability of BNSF to exchange cars with SAW. Again, WTL seems to have no problem in that regard.

-- Ms. Wisener states that she reiterates a long standing offer to provide a second switch for plant no. 1 without extra charge. She needs to make the offer before it can be deemed long standing and it would help if she did not hang up the telephone on us before discussing anything, including offers she claims to make. The only SAW "offer" we know of was made in a pleading filed with this Board early last January, that offer was ambiguous and not as summarized by Ms. Wisener, and SAW never followed up on it.

-- As to Plant No. 2, the lease termination threatened (and

continues to threaten) shut down of Plant No. 2 operations; in addition, Mr. Lacy's log filed in this proceeding indicates that SAW failed to switch Plant No. 2 from November 22 to 28, a total of six days.

-- Rather than debate SAW over how many days of this and how many days of that, the bottom line is that in the 17 days prior to alternative rail service, SAW managed to transport only 164 PYCO cars; in the 17 days after alternative rail service, WTL managed to transport 369 cars, more than twice as much and this during start-up of operations. That is the measure of the inadequate service PYCO received from SAW. SAW's inadequate service threatened congestion of the BNSF yard, and was an inefficient use of rolling stock for all rail customers.

7. I have reviewed the legal opinion SAW's attorney Gorsuch supplied this Board discussing "adverse possession." My short answer as a 39 year employee of PYCO and as its Chief Executive Officer is that his opinion misses the point. The only reason that adverse possession would not be applicable to PYCO's situation would be that SAW's predecessor (BNSF) consented to the crossing because it stimulated railroad business from an important customer. Once we invested in our plant expansion, the railroad cannot then renege, nor may its successor. As I see it, the chief reason for SAW to stay off the "we" (which we now understand is part of track "6") and track 6 in general as far as and including the we during the hours that the protocol provides for WTL switching for Plant No.

1 is to protect our employees and WTL employees. There have been several incidents in which SAW equipment without warning has endangered PYCO personnel switching our cars on our adjacent trackage during the WTL protocol hours. In addition, we believe that an order to remove the blockade would ensure that SAW does not raise a preemption defense in state court litigation over the right to cross. SAW's only reason to blockade the crossing is to cause PYCO to incur a quarter million in needless costs or to lose its outdoor seed stockpile. It is merely a retaliation against PYCO for filing and obtaining an alternative service order.

9. I have reviewed PYCO's Motion to Extend Alternative Service and to the best of my knowledge, all factual statements therein are true and correct.

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 6-06-06.

Paul Krug

Appendix II

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.)
V.) F.D. 34838
SOUTH PLAINS SWITCHING LTD.)

DECLARATION OF GAIL KRING

I, Gail Krings, make this Declaration in support of the Reply filed by PYCO Industries (PYCO) to the Motion to Dismiss filed by South Plains Switching ("SAW") in this proceeding. The Declaration also serves to support PYCO's petition for an immediate partial revocation of the exemption in 49 C.F.R. Part 1039 with respect to cottonseed, linters and hulls as applied to SAW and to the extent claimed by SAW in its motion to dismiss.

1. I am the Chief Executive Officer and General Manager of PYCO Industries, Inc., and have been employed by PYCO for 39 years. PYCO is a large rail dependent cottonseed mill with two plants in Lubbock, Texas and another plant in Mississippi. PYCO is a co-operative owned by approximately 100 member cotton gins, and is contractually bound to accept a minimum of 55% of the cottonseed produced by those gins. PYCO processes roughly two-thirds of the cottonseed which it receives into cottonseed oils, meal, linters and other by-products. PYCO sells the remaining cottonseed primarily as animal feed. PYCO also markets cottonseed by-products (in particular cottonseed oil) for two other cottonseed mills at the current time. As chief executive officer of PYCO, and as a

PYCO employee for 39 years, I am very familiar with the cottonseed industry, marketing patterns of the industry, and transportation needs of the industry. Moreover, I of course am familiar with PYCO's own practices and transportation needs.

2. The nature of the cottonseed industry has changed dramatically since the early 1980's. The number of cottonseed mills has decreased from 74 in 1980 to only 13 today. Three of those mills are owned by PYCO (two at Lubbock and one in Mississippi). Four mills are owned by ADM, including one at Lubbock. Of the remaining six mills, four are cooperatives and the remaining two are owned by private companies. PYCO markets the cottonseed oil for two of these remaining six mills. PYCO believes that it encompasses roughly 30% of the cottonseed mill industry; ADM a comparable share; and the others the remaining 40%. I attach a table [Nat'l Cottonseed Products Ass'n (NCPA), Statistical Database, Feb. 2006] showing mill consolidation.

3. The decline in the number of cottonseed mills has a major impact on transportation needs and modalities employed in our industry. Because the industry is more concentrated, mills are much more remote from their markets. The transportation distance from mill to customer is much greater, with the result that the industry's rail dependence has steadily increased. At this point in time, PYCO is dependent on rail for 85% or more of its cottonseed oil shipments. We believe that the situation is

similar for other mills in our industry. Indeed, because of our rail dependency for cottonseed oil shipments (1321 tankcars in 2005), we lease our own fleet of 120 rail tankcars. It is our understanding that other major cottonseed concerns, like ADM, also own or lease tankcar fleets as well. In the event rail is unavailable, trucks would not be readily substitutable. It would be extremely difficult to assemble an adequate fleet of trucks that would meet requirements to be treated as kosher, and the fleet would not be economic for the distances in question. PYCO is also rail dependent for virtually all our production of linters, shipping approximately three boxcars per weekday (526 cars in 2005). Again, trucks are no longer a substitute. Finally, although some of PYCO's cottonseed stocks are sold locally to local feedlots as cattlefeed, well over one half are transported by rail to California for use in the dairy industry. PYCO shipped 3754 carloads of cottonseed by rail to the California dairy industry in 2005. We expect this level to increase. This entire movement is rail dependent. When PYCO began experiencing service inadequacy from SAW in 2005, PYCO could not sell some of its product to Penny Newman Grain. Penny Newman indicates that securing alternative supplies elsewhere cost an additional \$750,000. In 2005, PYCO also shipped 384 carloads of cotton meal or mash (residual from oil production) as feed. We cannot economically substitute trucks for these products. Since most other cottonseed mills are to the east

of PYCO, we believe their cottonseed sales are equally rail dependent. To summarize, based on our knowledge and experience (which includes marketing oil for two co-op mills other than ourselves), we believe that other mills are now dependent on rail for movement not just of cottonseed oil but also linters and cottonseed to market. This is a substantial and permanent change, not a passing event, and has arisen since the early 1980's.

4. Another factor in the changed market is the increase in production of cottonseed due to improved crops. According to NCPA data (based upon USDA data), total cottonseed production in 83/84 was 3,076,000 tons. The 2004-05 figure is 8,242,000 tons. USDA's estimate is for over 8,500,000 tons for 2005-06. The amount of cottonseed shipped for animal feed (primarily to dairies) increased from 1983-04's 698,000 tons to 2004-05's 4,777,000 tons -- about seven-fold. The California dairy industry has become a major market for cottonseed. I attach another NCPA (Feb. 2006) table outlining this data. Not only has the industry become more concentrated and more rail dependent, but total industry volume has increased. There has not only been a shift from trucks to rail for transportation, but also overall need has increased.

5. Disruption of the cottonseed industry would have much wider effects. PYCO, for example, is contractually bound to absorb a minimum of 55% of the cottonseed produced by its member gins. We believe that but for these sales to us, many of our member gins

would not survive. Texas (in particular 25 cottonbelt counties in Texas) accounts for roughly 25% of U.S. cotton production and SAW's tactics thus threaten to disrupt a major segment of the national cotton market. Another way to gauge the cottonseed industry is in comparison to other oilseed crops. Soybeans are of course the largest oilseed crop, with about 20 billion pounds of oil production. However, after corn, the next oilseed crop is cottonseed, with 990,000,000 pounds of oil, followed by canola (776,000,000) and then sunflower (588,000,000) pounds. Again, I attach an NCPA table showing the relevant data.

6. PYCO's plant no. 1 was located adjacent to, and essentially to surround, the old Fort Worth and Denver rail yard in Lubbock for ease of rail shipment. Due to rail mergers and consolidations, that yard is no longer on a mainline through Lubbock. Thus, although PYCO is a BNSF customer, paying a tariff to BNSF for transport of its product on a through route established by BNSF, PYCO is dependent on a local switching railroad to deliver its product to BNSF. The local switch provider is South Plains Switching, Ltd. ("SAW"). The management of SAW in the person of Mr. Larry Wisener has developed a reputation of making demands and threatening retaliation if his demands are not met. He also is known to employ "colorful metaphors" and his hefty size in a fashion that many characterize as consistent with an effort to intimidate. This business style would perhaps be bearable in a

railroad management if adequate rail service were provided, but that is not the case with SAW in Lubbock. SAW has arbitrarily refused to deal with some potential customers, and in early 2005, PYCO began itself to sustain a severe deterioration in service. The second episode of inadequate service commenced in November 2005, shortly after SAW demanded that PYCO pay SAW \$5.5 million for assets used to provide rail service to PYCO. When PYCO asked for an opportunity to do due diligence, Mr. Wisener blew up, indicating that henceforth PYCO would have to figure out how to take care of itself. SAW service to PYCO was curtailed to the point that PYCO was facing a shutdown. Mr. Lacy and I have detailed PYCO's experience in verified statements filed in connection with PYCO's Petition for alternative rail service in STB Finance Docket 34802. This Board granted PYCO's petition on January 26, 2006. Alternative service provider West Texas and Lubbock was able to work off PYCO's inventory, virtually doubling service levels over those provided by SAW. In particular, our records indicate that in the first 17 days of alternative service (January 30 to February 15), we shipped 369 cars; in the preceding 17 days under SAW, we shipped 164 -- less than half as many. Our shipping people tell me that we could have shipped even more in the first 17 days under WTL, but SAW was hoarding boxcars and we had to reorder from BNSF and WTL. BNSF informs us that it can now assemble a 70 unit train in 3 rather than 5 days, and that has to be beneficial not only to

us but to other BNSF shippers. While SAW attempts to explain away its service inadequacies, blaming BNSF, PYCO or others, the fact remains that WTL has been able to provide consistently excellent service to PYCO. This itself belies SAW's "explanations." SAW has continued to take actions against SAW for the purpose of threatening irreparable harm to PYCO's business despite the alternative service order, including most recently blockading PYCO's traditional method of transporting its seed stockpile to its Plant No. 1 facility for processing.

7. In addition, PYCO has become, and I personally have become, increasingly concerned with SAW's repeated violations of the service protocol. Under the protocol, WTL is supposed to have control of the yard tracks to serve PYCO plant No. 1 between 7 AM and 10 AM each day. Yet SAW operates on that track during those hours in violation of the protocol. This endangers PYCO personnel, who operate PYCO switching equipment on PYCO private track (the shop and scale tracks) immediately adjacent to SAW yard track. Yesterday, Wednesday, May 24, PYCO employees were conducting switching operations on PYCO track adjacent to SAW yard track using PYCO's trackmobile. At approximately 8 AM, the SAW locomotive approached without warning, seriously endangering PYCO's employee operating PYCO's trackmobile on PYCO's track.

8. SAW's tactics are not consistent with efficient transportation or sound practices. They are harmful not just to

PYCO, its customers and its suppliers, but also to BNSF and BNSF customers at large. SAW is abusing its strategic position to prevent PYCO from obtaining transportation services from BNSF. To the extent that SAW relies on a commodity exemption to allow it to pursue its irrational, disruptive, and destructive tactics, that commodity exemption should be revoked.

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 5-25-06.

Trail Krueger

Attachments:

- Exhibit -- NCPA Statistical Database, Number of Operating
 Cottonseed Crushing Mills (Feb. 2006)
- Exhibit -- NCPA, Cottonseed: Supply and Discontinuance
 (Feb. 2006)
- Exhibit -- NCPA, US Supply of Fats & Oils
 (Feb. 2006)

Statistical Database of the Cottonseed Processing Industry



*The Most Complete Source of Data for
the Cottonseed Industry*

February 2006



Table 3

**NUMBER OF OPERATING COTTONSEED CRUSHING
MILLS AND TONS OF SEED CRUSHED
IN THE U.S. FOR SELECTED YEARS**

Crop Year start Aug 1	No. of Mills	Tons Seed Crushed (000)	Crop Year start Aug 1	No. of Mills	Tons Seed Crushed (000)
1859	7	-	1950	320	3,723
1869	26	-	1960	181	5,352
1871	-	53	1970	105	3,382
1879	45	181	1980	74	3,698
1889	119	874	1985	58	3,447
1899	369	2,479	1992	35	3,629
1904	715	3,345	1993	32	3,470
1909	817	3,269	1994	33	3,947
1914	882	5,780	1995	33	3,882
1921	610	3,008	1996	28	3,860
1925	535	5,558	1997	29	3,885
1927	574	4,654	1998	24	2,719
1929	553	5,016	1999	21	3,079
1931	504	5,328	2000	21	2,753
1934	478	3,550	2001	17	2,791
1937	447	6,326	2002	14	2,495
1940	369	4,398	2003	13	2,643
1944	382	4,253	2004	13	2,923

*many
mills
Trucking
possible.*

Rail has to be utilized to

Source: Jones, L.A., C.C. King, "Cottonseed Oil", Chap. 4, Y.H. Hui, ed., in Bailey's Industrial Oil & Fat Products, Fifth Edition, Volume 2, 1996; NCPA data and US Census.

Table 4

Cottonseed: Supply & Disappearance

(1,000 short tons)

Year Beginning Aug 1	SUPPLY		DEMAND			Ending Stocks		
	Beginning Stocks	Production	Total *	Crush	Exports & Residual		Total	
83/84	371	3,076	3,447	2,583	50	698	3,331	116
84/85	116	5,149	5,265	3,514	60	1,285	4,859	406
85/86	406	5,279	5,685	3,417	9	1,912	5,338	347
86/87	347	3,801	4,148	2,520	17	1,422	3,959	189
87/88	189	5,769	5,958	3,396	50	2,153	5,599	359
88/89	359	6,062	6,421	3,730	40	1,986	5,756	665
89/90	665	4,677	5,342	2,964	46	1,966	4,976	366
90/91	366	5,969	6,337	3,369	53	2,264	5,686	651
91/92	651	6,926	7,579	3,981	161	2,977	7,119	460
92/93	460	6,230	6,690	3,629	192	2,504	6,325	365
93/94	365	6,343	6,708	3,470	157	2,649	6,276	432
94/95	432	7,604	8,036	3,947	232	3,306	7,485	551
95/96	551	6,849	7,399	3,882	114	2,886	6,882	517
96/97	517	7,144	7,661	3,860	116	3,182	7,158	523
97/98	523	6,935	7,553	3,885	149	2,957	6,990	563
98/99	563	5,365	6,135	2,719	68	2,955	5,742	393
99/00	393	6,354	7,055	3,079	198	3,505	6,781	274
00/01	274	6,436	7,084	2,753	235	3,669	6,657	427
01/02	427	7,452	8,206	2,791	274	4,742	7,807	400
02/03	400	6,184	6,688	2,495	371	3,475	6,341	347
03/04	347	6,665	7,013	2,643	354	3,594	6,592	421
04/05 (e)	421	8,242	8,664	2,923	379	4,770	8,072	592
05/06 (f)	592	8,501	9,118	3,100	425	4,963	8,488	630

High

Seed shipped
to dairies

f - forecast Feb. 2006

* includes imports

Source: Oil Crops Outlook & Situation Report, USDA

U.S. SUPPLY OF FATS & OILS

(Oct.-Sep marketing year; million lbs.)

Stocks October 1		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004 (e)	2005 (f)
Cocunut		152	279	277	188	279	188	251	164	163	84	150	393	152	136	260	227	216
Corn		99	127	138	156	150	118	241	116	129	102	135	267	117	104	119	153	156
Cottonseed		147	80	137	78	81	106	82	94	66	79	76	49	93	39	37	109	76
Lard		42	23	24	27	26	34	24	23	20	40	21	18	14	10	9	11	13
Palm		37	29	53	44	52	44	33	36	16	31	47	36	46	57	61	53	49
Palm Kernel		86	110	53	49	54	48	89	72	55	22	50	63	74	48	155	93	59
Safflower		38	24	25	51	50	25	40	65	86	41	40	31	31	32	77	99	60
Soybean		62	42	28	28	18	31	21	44	27	38	48	35	21	8	10	24	11
Sunflower		1,715	1,305	1,786	2,239	1,555	1,103	1,137	2,015	1,520	1,382	1,520	1,993	2,767	2,359	1,489	1,076	1,699
Canola		02	38	47	100	56	65	82	147	93	60	121	157	136	23	27	40	22
Tallow - edible		20	24	41	71	71	67	137	54	77	65	112	169	206	110	52	68	91
Totals		2,516	2,114	2,650	3,104	2,433	1,865	2,188	2,865	2,300	1,990	2,364	3,250	3,706	2,951	2,321	1,974	2,476
Production																		
Corn		1,470	1,556	1,821	1,878	1,906	2,227	2,139	2,231	2,335	2,374	2,501	2,403	2,461	2,453	2,396	2,392	2,450
Cottonseed		1,039	1,154	1,280	1,126	1,119	1,312	1,229	1,216	1,224	832	939	847	876	725	874	957	990
Lard		909	934	1,016	1,011	740	725	690	671	732	740	723	716	743	744	775	775	795
Peanut		193	213	356	286	212	321	299	356	342	451	548	617	231	286	173	126	219
Canola		130	18	32	49	49	406	299	356	342	451	548	617	641	582	486	601	776
Safflower		103	78	69	87	111	115	126	103	115	111	91	88	76	84	92	56	56
Soybean		13,004	13,408	14,345	13,778	13,951	15,613	15,240	15,752	18,143	18,078	17,825	18,420	18,898	18,430	17,080	19,360	20,040
Sunflower		475	536	911	730	580	1,165	860	840	999	1,177	1,046	873	673	345	585	285	588
Tallow - edible		1,193	1,202	1,515	1,414	1,535	1,550	1,559	1,407	1,517	1,677	1,792	1,764	1,932	2,068	1,781	1,779	1,780
Totals		18,516	19,199	21,345	20,359	20,204	23,427	22,463	22,797	25,543	25,585	25,695	25,906	26,531	25,717	24,263	26,311	27,694
Imports																		
Cocunut		1,038	946	841	1,163	999	1,100	874	1,188	1,438	781	926	1,115	1,093	862	796	924	1,030
Corn		na	na	na	na	7	10	11	14	28	42	18	27	61	66	66	49	60
Cottonseed		13	3	18	38	26	0	0	0	0	48	8	0	0	21	0	2	0
Lard		na	na	na	na	3	2	2	1	2	2	2	3	6	9	5	5	5
Olive		192	211	216	253	273	281	251	326	355	375	417	468	480	485	540	548	580
Palm		249	284	220	267	368	217	236	323	282	284	345	400	473	385	621	762	1,102
Palm Kernel		370	306	342	302	304	280	262	393	359	400	393	364	310	489	575	520	400
Peanut		5	10	1	0	11	187	5	14	8	73	13	79	39	70	127	33	35
Canola		391	583	815	861	861	902	938	1,086	1,075	1,088	1,060	1,139	1,193	1,108	981	1,223	1,134
Safflower		31	22	22	15	16	26	35	30	47	51	33	35	33	28	34	58	60
Sesame		na	na	na	na	15	15	16	15	16	16	18	19	22	22	23	26	27
Soybean		22	17	1	10	68	17	95	53	60	83	83	73	46	46	306	26	65
Sunflower		5	33	9	0	7	1	2	22	8	5	4	8	36	61	25	75	30
Tallow - edible		na	na	na	na	15	18	8	5	2	3	10	32	7	8	1	1	1
Totals		2,316	2,415	2,484	2,908	2,958	3,040	2,725	3,466	3,678	3,258	3,321	3,732	3,794	3,653	4,100	4,251	4,528
TOTALS		23,346	23,728	26,479	26,371	25,596	26,331	27,377	29,128	31,522	30,833	31,380	32,888	34,031	32,321	30,684	32,535	34,698

Source: USDA ERS, Mar. 2006

p - preliminary; f - forecast

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Appendix III

JOHN D. HEFFNER, PLLC

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ORIGINAL

216588



BY FAX AND MAIL

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May 17, 2006

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

ATTN: Mr. Melvin Clemens

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

Dear Mr. Williams:

I am writing on behalf of the West Texas & Lubbock
Railway ("WTLC"), the rail carrier designated by the Board
in the above-captioned proceeding to provide alternative
rail service over the facilities of South Plains Switching
Ltd. ("SAW") to PYCO Industries, Inc., at Lubbock, TX.

Pursuant to the Board's orders dated January 25 and
February 24, 2006, WTLC continues to provide service to
PYCO as the Board directed. However, there are three
issues that WTLC desires to bring to your attention that
adversely affect its ability to provide service to PYCO.
They are:

1. SAW continues to unnecessarily block a crossing
PYCO needs for its trucks with storage cars that could be
stored elsewhere. WTLC believes it could move the cars in
question onto a PYCO track to get it out of the way if
authorized to do so.

2. SAW continues to violate the agreed upon operating protocol by switching in the yard at the same time WTLC is supposed to be switching, creating a potentially severe safety hazard.

3. To the best of WTLC's knowledge, no maintenance or inspection of SAW or PYCO trackage used by WTLC has been performed by SAW since alternative rail service operations began. WTLC does not have the authority to perform inspection or repair of track. There are serious track problems developing.

WTLC requests your assistance in resolving these matters. Please feel free contact me by telephone if you have any questions. WTLC would be pleased to participate in any conference call arranged by your office with SAW and/or its representatives.

I am submitting an original and ten copies of this letter by mail for the docket. Please date stamp and return the copy so marked.

Sincerely yours,


John D. Heffner

cc: Mr. Melvin Clemens (by fax)
Charles Montange, Esq. (by fax)
Thomas McFarland, Esq. (by fax)
Mr. Edwin Ellis