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16 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: Reply to
SAW's "Second Supplement"

✓ South Plains Switching, Ltd. -- Acquisition
Exemption -- BNSF Railway Company, F.D. 33753 (Sub-
no. 1): Petition to Revoke Exemption

Immediate attention requested

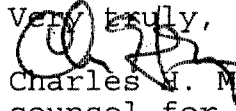
Dear Mr. Secretary:

On behalf of PYCO Industries, Inc. ("PYCO"), enclosed please find an original and ten copies of a Reply to SAW's "Second Supplement" which was filed by SAW on June 13. This Reply relates to cross motions which PYCO believes are currently under consideration for a decision to be issued on or by June 25. PYCO accordingly requests that it be immediately circulated to the Board and staff considering action in F.D. 34802.

The same document also contains a Petition to Revoke SAW's acquisition exemption in F.D. 33753 (Sub-no. 1). I include an original and ten copies of the document for filing in that docket, and a \$200 filing fee.

Thank you for your assistance in this matter.

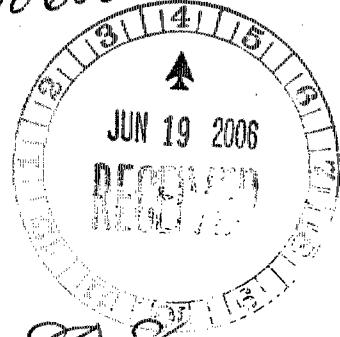
Very truly,


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)
Michael Roper, Esq. (w/encl.) (for BNSF)
William Sippel, Esq. (w/encl.) (for USRP)

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SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

SOUTH PLAINS SWITCHING, LTD)
-- ACQUISITION EXEMPTION --) F.D. 33753 (Sub-no.1)
BNSF RAILWAY COMPANY)

PETITIONER PYCO INDUSTRIES'
REPLY TO SAW'S "SECOND SUPPLEMENT" TO SAW'S SECOND
PETITION TO TERMINATE

and

PETITION TO REVOKE SAW'S
ACQUISITION EXEMPTION

I. REPLY TO SAW'S "SECOND SUPPLEMENT"

The current alternative rail service order provides for such service to PYCO Industries, Inc. (PYCO) through June 25, 2006. On June 7, 2003, PYCO, which ships the majority of carloadings on incumbent rail provider South Plains Switching, Ltd's (SAW's) system in Lubbock, filed a Petition for Extension of Alternative Rail Service for 120 more days. PYCO's Petition for Extension also served as PYCO's reply to SAW's initial "Supplement" (filed May 24) to its pending second Petition to Terminate Alternative Rail Service (filed March 30).¹

On June 13, SAW filed a document entitled "Reply in

¹ In SAW's "Second Supplement" filed June 13, SAW incorrectly states that PYCO responded to SAW's first (May 24) Supplement on May 26. PYCO tries to keep up with SAW's shotgun approach to filing termination petitions, but we are not that fast.

Opposition to Petition for Alternative Rail Service." If that document were intended as SAW's Reply to PYCO's Petition for Extension, then PYCO would not be entitled to a reply under this Board's rules. 49 C.F.R. § 1104.13(c). However, the cover letter from SAW's counsel as well as the very first sentence of SAW's "Reply" (on page 2) does not call the document a reply, nor describe it as such, but instead calls it a "Second Supplement to [SAW's] Petition to Terminate Alternative Rail Service."

1. SAW's Second Supplement should be stricken. Given SAW's own characterization of its pleading, it is simply not permissible under this Board's rules. Just as was SAW's initial supplement,² SAW's "Second 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). The "Second Supplement" also amounts to (by our count) a fourth petition to terminate. As such, 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 fourth petition to terminate while the second and third are still pending. Whatever it is, or is intended to be, the "Second Supplement"

² PYCO raised the same objections to SAW's first supplement. See PYCO Industries' Motion for Extension of Alternative Rail Service filed in this docket on June 7, 2006, at p. 1.

should be stricken.

2. SAW's latest jurisdictional argument. Like SAW's initial "Supplement," SAW's "Second Supplement" appears to raise a jurisdictional question. SAW argues now that this Board lacks "authority" over the tracks at issue in this proceeding.³ SAW asserts that the "tracks are switching tracks as to which the Board does not have abandonment authority by virtue of 49 U.S.C. § 10906. Citing Battaglia Distributing Co., Inc. v. Burlington Northern, 2 STB 323 (1997), SAW says that if the Board lacks authority over abandonment, it lacks authority to order alternative rail service.

a. The service involved is on or immediately adjacent to unabandoned mainline track. PYCO's Plant No. 1 is located on the old Fort Worth and Denver Railway (FWD) mainline from Sterley to Lubbock, abutting the western side of the old FWD freight yard in Lubbock on both the north and south. As SAW admits, PYCO's Plant No. 2 is served off tracks 9298 and 9200, which are also part of the old FWD mainline, and which interconnect with the BNSF yard via track 231.

SAW represents that its yard track 6 interconnects with PYCO's private track serving PYCO Plant No. 1. However, Track 6 also interconnects with a "wye" onto a lead over which several

³ SAW claims that this argument only recently came to the attention of SAW's counsel, and is being presented to the Board for the first time. SAW June 13 pleading at p. 4. To the extent that PYCO needs leave to reply, SAW's statements at the top of the p. 4 provide ample grounds to grant PYCO leave to reply, and PYCO requests leave on that basis if leave is necessary.

other customers or potential customers, including Hi Plains Bag and Bagging are served. Thus track 6 functions as part of a track serving multiple customers. Although the part of track 6 actually accessing the PYCO private tracks is only about 1100 feet in length, it is misleading to represent that this is the track's length, as SAW does in its "Second Supplement" at 6. Similarly, track 310 serving to connect the old FWD mainline with PYCO Plant No. 2 is over one mile long, but it runs through Farmers Cooperative Compress to the south, serves that shipper as well as PYCO, and also serves as an alternative route to Attebury Grain. All these tracks have historically been owned and maintained by the railroad operating them, not by shippers, and they have served multiple shippers.

The FWD mainline was and is a line of railroad unquestionably within this Board's abandonment jurisdiction. Burlington Northern (BN) obtained an exempt abandonment authorization for a portion of the old FWD line from Sterley to Lubbock in Burlington Northern Railroad Company -- Abandonment Exemption --in Floyd, Hale and Lubbock Counties, TX, AB-6 (Sub-no. 337X), dated March 27, 1992 (1992 ICC Lexis 61), but that authorization did not encompass the roughly nine miles of trackage from the old passenger terminal in Lubbock out to about eight miles east of Lubbock (where MP 351.15 is located). For reference purposes, MP 359 is roughly in the center of the old FWD freight yard that PYCO's Plant No. 1 partially surrounds. See track charts attached as Appendix I. The nine miles of old

FWD mainline left after the abandonment in AB-6 (Sub-no. 337X) interconnected with the old Atchison Topeka line through Lubbock. The "remnant" was thus not some kind of isolated or accidental severed fragment, but continued to serve shippers in the Lubbock area. No one has ever sought abandonment authority for it, least of all SAW.

SAW in its "Second Supplement" appears to believe that it can simply arbitrarily reclassify the old FWD as "switch" track and abandon it without STB authorization. SAW is incorrect. In particular, no railroad can unilaterally deprive this Board of jurisdiction by reclassifying mainline track as "switching" track, regardless of weight of rail, number of shippers, or any other factor SAW chooses to cite. Once a railroad undertakes to provide "common carrier" services over a particular line of railroad, the obligation to provide those services continues until the railroad obtains from this Board abandonment (or discontinuance) authorization, "irrespective of any subsequent change in the use or operation of that track or the classification of the track by the carrier."⁴ SAW therefore

⁴ Quotation from ICC's Office of Compliance and Consumer Assistance in Rails to Trails Conservancy et al., Petition for a Declaratory Order, ICC F.D. 31292, Opening Statements of Fact and Argument, dated July 28, 1988, at p. 10. In Oregon Short Line R. Co. Abandonment, 267 ICC 633 (1947), ICC dealt with a claim similar to that presented by SAW here, the main difference being that in Oregon Short Line, the railroad argued that ICC had jurisdiction. The State of Utah challenged ICC's jurisdiction on the ground that the involved line was a spur track, because the amount of service on the line had steadily declined over the years. ICC, however, found the track was clearly a line of railroad for which prior abandonment authorization was required for cessation of operations. ICC

must obtain authority from this Board to abandon historically regulated mainline track, which is the track serving both PYCO Plant No. 1 and Plant No. 2. Likewise this Board clearly has authority to provide for alternative rail service to shippers

explained as follows:

"If a carrier by voluntary reduction of service with or without approval of a State Commission, could change the status of a particular line, our jurisdiction could be defeated entirely. Once having assumed common-carrier obligations subject to the jurisdiction of [ICC] with respect to a particular line of railroad, that obligation remains until appropriate authority for abandonment is obtained."

Id. at 635. Similarly, "[t]he courts have also consistently held" that until a railroad receives federal (ICC or, now, STB) abandonment or discontinuance authority over a line, the railroad's "public service obligation remains notwithstanding any operational changes, preexisting contractual obligations or carrier classification of the line." OCE Opening Statement, supra, at 12, citing New Haven Inclusion Cases, 399 U.S. 392, 461 (1970); Smith v. Hoboken R. Warehouse & S.S. Connecting Co., 328 U.S. 123, 130 (1946); Thompson v. Texas Mexican R.Co., 328 U.S. 134, 144-45 (1946); Gibbons v. United States, 660 F.2d 225, 229 (7th Cir. 1981), 660 F.2d 1227, 1232-35 (7th Cir. 1981); ICC v. Chicago & N.W. T.Co., 533 F.2d 1025, 1028 (8th Cir. 1976); California v. Southland Royalty Co., 436 U.S. 519, 529n.6 (1978). See also Illinois Central R. Co. Construction and Trackage, 307 ICC 493 (1959) (1.4 mile rail line into a port facility not an industrial spur).

Unilateral reclassification of a line is not a permissible means to avoid federal abandonment jurisdiction, even where the line has become shorter due to prior abandonments or changes in use. In Old Colony Railroad Co. et al. Trustees Abandonment, 224 ICC 681, 682-83 (1938), a party claimed that after abandonment of part of a line, the remaining stub-ended section became an industrial spur. ICC held to the contrary, explaining that once a line is under federal jurisdiction, a railroad "may not lawfully reduce [the] ... line ... to the status of industrial spur without our permission to abandon operation...." ICC also explained that a track's "classification by the owner is [not] determinative." Clinchfield Railroad Co. Abandonment, 295 ICC 41, 44 (1955). Accord, Chelsea Property Owners -- Abandonment -- Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in NY, NY, 8 ICC2d 773, AB 167 (Sub-no. 1094), served Sept. 16, 1992, aff'd sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C.Cir. 1994) (line may not be unilaterally reclassified).

served by the old FWD mainline, just as it has authority to provide for alternative rail service for shippers served off any other mainline.

SAW is left to argue that this Board lacks jurisdiction to regulate rail service provided to any shipper if there is some bit of railroad-owned "side" track between the shipper and the mainline. With respect, SAW's argument proves too much. It is hard to imagine how PYCO's Plant No. 1 could be more on the mainline than it is, since it surrounds the western half of the old FWD (now SAW) freight yard. Yet SAW by its argument argues that it has unilateral power to cut PYCO off.

SAW's argument amounts to treating 49 U.S.C. § 10906 as jurisdictional when it is not. 49 U.S.C. § 10501(b) provides STB with exclusive "jurisdiction" over side tracks; 49 U.S.C. § 10906 merely states that the Board has no authority to regulate their abandonment or operation.

The fact that the Board lacks "authority" over abandonment or authorization of side tracks does not mean that a railroad can arbitrarily deny rail service to shippers so long as some smidgen of "side" track is involved. It merely means that, so long as SAW provides adequate service⁵ and an adequate switch,⁶ SAW may provide that service using a track configuration of its

⁵ SAW in PYCO's complaint proceeding has admitted that 49 U.S.C. § 11101(a) is violated when "a rail carrier ... inadequately provides ... reasonably requested rail service." SAW Motion to Dismiss Complaint in F.D. 34838, at p. 4.

⁶ 49 U.S.C. § 11103 requires SAW to provide switches to PYCO's privately owned tracks.

own choosing. Although SAW's tracks are falling apart (SAW has never rehabilitated them, and PYCO and WTL have complained that SAW is failing both to inspect and to perform needed repairs), the existing SAW tracks are the historic and existing means of serving PYCO. They are the switch connections that SAW is obligated to provide under 49 U.S.C. § 11103(a). See Battaglia Distributing Co. v. Burlington Northern, F.D. 32058, served June 27, 1997. Since the Board has jurisdiction to require service to PYCO, the Board has jurisdiction to require it over the tracks historically used for that purpose, at least until something better or at least equivalent is provided by SAW. In other words, this Board may lawfully require alternative service over what is available, even if parts of it are ancillary track. The same basic principle applies in cases involving offers of financial assistance (OFA's). Even though the Board's "authority" does not encompass side tracks, the Board's jurisdiction does. Just as the Board has jurisdiction to order transfer of all ancillary trackage as part of an OFA on abandonment [e.g., Railroad Ventures, Inc. v. STB, 299 F.3d 523, 5550 (6th Cir. 2002)], or as part of a feeder line application, so the Board may authorize service over ancillary tracks.

b. Battaglia does not support SAW. SAW relies on Battaglia, supra. In the Battaglia case, BN abandoned a side track over which service had stopped in 1985 due to construction of a meat packing facility. The track was partially paved over, service did not resume, and BNSF in 1988 informed Battaglia

Distributing that service on the spur in question had been discontinued. BN offered to sell its interests in the spur to Battaglia. The Board in Battaglia merely held that once service had ceased and the spur had been abandoned, the Board lacked authority to require that the spur be reconstructed. However, the Board noted that if Battaglia purchased BN's interests in the spur and restored same for service, then BN would be obligated to provide a switch. Id. at 4-5 (referencing section 11104, now codified at 11103). All that has happened here is that FWD, BNSF, and SAW have discharged their duty to provide the switch by connecting PYCO to the tracks referenced by SAW in its pleading. Battaglia does not apply.

Insofar as Battaglia suggests as SAW thinks that common carriers can arbitrarily sever service to any shipper served off a "side" track, we think it goes too far. But that need not be resolved here, for none of the track here is "side" track for purposes of 49 U.S.C. § 10906. In particular, when parties to a notice of exemption for acquisition specifically reference certain trackage, then the act of reference invokes this Board's jurisdiction. The BNSF/SAW notice of exemption applicable here specifically included all the track at issue here. See South Plains Switching -- Acquisition Exemption -- BNSF, F.D. No. 33753 (Sub-no. 1), served July 15, 1999 (attached as Appendix II). In particular, the notice specifically references tracks 320, 321, 9298 and 9200. When a track is "specifically included among the lines being acquired under an earlier notice of

exemption," this Board acquires jurisdiction even if it otherwise might be a spur. Valley Feed Co. v. Greater Shenandoah Valley Development Company, No. 41068, served Dec. 11, 1998, slip op. at 12, discussing with approval Seminole Gulf Railway, Inc. -- Abandonment Exemption in Lee County, FL, ICC No. AB 400 (Sub-no. 2X), served Dec. 22, 1994 (line listed in notice of exemption for acquisition), and Huron & Eastern Ry. Co. -- Abandonment Exemption -- Sanilac County, MI, ICC No. AB 380X, served Dec. 22, 1992 (line listed in notice of exemption for acquisition).

Although the name "track no. 6" is not specifically referenced in notice of exemption, that "name" is of recent vintage or invention. The map attached to the BNSF/SAW contract (Appendix III) indicates that what SAW now calls track number 6 was part of the track 9200-9205 sequence, and all those tracks are specifically included in the notice of exemption.⁷ Thus track no. 6 in reality is also one of the listed tracks in the notice.

PYCO understands that the BNSF/SAW contract, when read in pari materia with the notice, was intended to create a condition under which SAW could not abandon any trackage necessary or prudent for service of BNSF customers in Lubbock without (a) prior BNSF approval and (b) a proceeding before this Board.

⁷ The map attached as Exhibit B to the BNSF/SAW contract (Appendix II) indicates that what SAW calls track no. 6 is old BNSF track 9204. Track 9204 is specifically included in the F.D. 33753 (sub-no. 1) notice served July 14, 1999.

c. SAW's argument violates its contract with BNSF. The May 3, 1999 contract between BNSF and SAW pertaining to the assets in question in this proceeding bars SAW from seeking abandonment or discontinuance authority for any "rail service" over the "Rail Line" without prior BNSF written consent. See "Agreement for the Sale of Certain Assets" attached as Appendix II at p. 5, ¶ 2(c). The contract defines "Rail Line" to encompass all "rail line segments" in Exhibit A of the Contract. Id. at p. 2, ¶1(a). Because the relevant "notice of exemption" [F.D. 33753 (sub-no. 1), served July 15, 1999] specifically lists all the tracks at issue here (compare Exhibit A to the Contract showing all track segments serving PYCO), SAW must obtain abandonment authority to withdraw service from PYCO. Under the contract, SAW must first obtain BNSF consent. BNSF informs PYCO that SAW has neither sought nor obtained BNSF consent to abandon any service in Lubbock, much less service to PYCO. The BNSF/SAW contract also bars removal of any track from the Rail Line, other than pursuant to exceptions not relevant here, without BNSF prior written consent. BNSF informs PYCO that SAW has neither sought nor obtained BNSF consent for any track removal relevant here. Id. SAW's claim of right to abandon rail service to PYCO or to remove tracks serving PYCO amounts to a repudiation of SAW's contract with and obligations to BNSF.

d. SAW's intent. SAW has now filed a number of pleadings in this proceeding that claim, in effect, that it is exempt from

any common carrier obligation, or that no common carrier obligation applies to it, or that it can unilaterally abandon the lines serving all its shippers in Lubbock, including PYCO. These claims violate the letter and spirit of the SAW/BNSF contract, and the notice of exemption under which SAW acquired the tracks in question.

PYCO is a rail dependent shipper with a substantial investment and commitment to Lubbock and the Texas cotton industry. PYCO needs reliable rail service. SAW's "Second Supplement" not only continues to justify arbitrary and unreliable conduct on the part of SAW, but also amounts to a repudiation of SAW's obligations under the BNSF/SAW contract and the related notice of exemption. As such, the "Second Supplement" itself is not only evidence justifying continuation of alternative rail service but also evidence supporting revocation of SAW's acquisition exemption under which it acquired the property in question from BNSF. The "Second Supplement" in this sense justifies and calls for a petition for revocation of the acquisition exemption in F.D. 33753 (Sub-no. 1). If the exemption were revoked, SAW would have to reconvey the property in question back to BNSF.

PYCO has asked BNSF if BNSF objects to revocation of SAW's acquisition exemption. BNSF has repeatedly stated to PYCO that BNSF has no objection to revocation but believes that a shipper should seek that outcome. Accordingly, PYCO petitions below for revocation of SAW's acquisition exemption.

II. PETITION TO REVOKE

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. Part 1121, PYCO Industries, Inc. ("PYCO"), hereby petitions the Surface Transportation Board (STB or Board) to revoke the exemption by which South Plains Switching, LLC ("SAW") acquired the approximately 74,384 feet of track in F.D. 33753 (Sub-no.1).

In order to ensure that there is no problem arising from "detrimental reliance" by any third party that might inhibit granting this petition for revocation, PYCO further petitions that the revocation be conditioned as follows:

(a) that no leases or sales relating to property on the line be affected by the revocation; and

(b) to the extent SAW can show detrimental reliance with respect to its one possible investment in the line (recent construction of about 5000 feet of storage track), SAW either may keep that storage track or PYCO is prepared to hold SAW harmless for recovery of that investment.⁸

In the event SAW claims detrimental reliance, then PYCO requests the opportunity to conduct limited discovery to ascertain the validity of SAW's claim.

Facts. In 1999, BNSF Railway sold approximately 74,384 of

⁸ PYCO has presented evidence of financial responsibility in the amount of \$69 million in filings on June 12, 2006, in F.D. 34844 and June 14, 2006, in F.D. 34890. PYCO incorporates those showings by reference. This should more than satisfy any question of PYCO's ability to hold SAW harmless for recovery of its investment. PYCO does desire discovery to determine the amount of SAW's investment, if any, and what SAW may recover from other sources.

yard tracks and industrial leads located in the southern portion of the City of Lubbock, Texas, to SAW. The word "sold" is misleading. The transaction was in the nature of a gift, or donation, in that BNSF sold the property to SAW for one dollar (\$ 1). SAW has not made any substantial investment in the property since that time in terms of rehabilitation or extension, with one limited exception: in 2006, SAW constructed approximately one mile of storage track south of the Floyd Trucking Company property in south Lubbock. PYCO understands that the storage track is to store non-revenue cars (i.e., cars for entities who are not shippers on SAW's lines in Lubbock). It is thus not needed to serve shippers on SAW's lines. SAW has made no substantial or meaningful effort to rehabilitate any facilities for shippers in Lubbock. The track is badly deteriorated and needs rehabilitation. See Appendix IV (Sneed Declaration indicating that track is "worn out" and only repaired in cases of derailment).

SAW has engaged in a pattern of threats and intimidation against numerous shippers on its line, in some instances driving off customers (Appendix V, Floyd Declaration⁹) and in other

⁹ Floyd Trucking purchased property in southern Lubbock which included a side track, approximately 2500 feet long, served off an industrial lead then under BNSF ownership. Just before the sale to SAW in 1999, Floyd Trucking thought it had made arrangements to restart service, and arranged for Martin Construction to rehabilitate the lead. However, SAW advised Floyd Trucking that it would never serve Floyd Trucking, and Floyd Trucking therefore suspended rehabilitation work. SAW concocted a make-weight excuse that the switch was defective, and declined delivery of a car ordered by Floyd to the siding, but Floyd proved to the contrary by two independent experts.

instances silencing customers who complain (Appendix VI, Kidwell Declaration¹⁰). See generally Appendix VII (Lacy Verified Statement discussing inter alia physical and economic intimidation and threats by SAW management¹¹). When a

Floyd complained to STB, at which point SAW's Mr. Wisener removed the switch. Mr. Floyd in his statement notes that Mr. Wisener at first threatened removal, and that he knew other shippers who were fearful of coming forward due to fear of reprisal. ¶6.

When STB's Office of Compliance and Enforcement reminded SAW's Mr. Wisener of his responsibility to provide service, Wisener demanded that Floyd pay the bulk of the \$25,000 Wisener claimed it would cost to restore the switch. STB's OCE ultimately got Wisener to restore the switch. However, SAW's Wisener then demanded that Floyd Trucking enter into an industrial trackage agreement which, unlike any similar agreement, provided that Wisener could tear out the entire side track after two years, on payment of salvage value of the trackage to Floyd. Naturally Floyd Trucking was not prepared to agree to service for only two years and then removal of its track. Since SAW had indicated it would never serve Floyd, and apparently would use any ruse or subterfuge to achieve that goal, Floyd Trucking "gave up" on SAW in 2004.

Mr. Floyd specifically supports revocation of the exemption. Dec. at p. 9.

¹⁰ Mr. Kidwell notes that when his company had a service issue with SAW, Mr. Wisener (SAW) "went ballistic" and started "screaming." "He said he could cut us off and do whatever he wanted because it was his railroad." Mr. Kidwell stated this was a clear threat to retaliate, and that Mr. Wisener went on to discuss the "incompetence" of the shipper, the "power" of SAW and his "willingness to use it." Mr. Kidwell explained that Mr. Wisener "intended to and did scare the heck out of us." ¶2. Mr. Kidwell explains that "[a] SAW shipper lives in fear that SAW management on a whim will cease service" and that SAW management is "not compatible with a common carrier railroad." ¶3. Mr. Kidwell specifically supports revocation of the exemption. Id.

¹¹ Mr. Lacy notes that Mr. Wisener in meetings becomes progressively more profane and discusses "throwing out" people who have opposing opinions, making meetings "unpleasant episodes." ¶ 12. Mr. Wisener told PYCO that it would have to "fend for itself" on November 18, 2005 (¶14) (see also log for that date recording that Mr. Wisener told PYCO that PYCO would have to take care of itself). After that date, SAW degraded

railroad's management makes physical as well as economic threats against some of its shippers in order to silence them, then no shipper can count on reliable or adequate rail service. Accord, Appendix VIII (Attebury and Compress letters).

SAW has actively sought to avoid its duties to provide service to BNSF customers pursuant to its 1999 contract with BNSF. In the case of PYCO, SAW claimed in its initial Supplement in this proceeding that it has no duty at all by reason of a commodity exemption for cottonseed, and in its Second Supplement at issue in Part I of this pleading that all the track is side track it can abandon at will. No shipper can rely on a railroad making such claims and representations. SAW has misrepresented its willingness and ability to provide common carrier services, and to assume BNSF's responsibilities in connection with the 74,384 feet of trackage which it obtained from BNSF pursuant to this Board's authorization in F.D. 33753 (Sub-no. 1), served July 15, 1997.

This Board agreed that SAW was providing inadequate service, and granted the alternative service petition. PYCO Industries -- Alternative Rail Service -- South Plains Switching, Ltd., F.D. 34802, served Jan. 26, 2006. SAW immediately purported to remove Mr. Larry Wisener from interface with PYCO, and Mrs. Delilah Wisener purported to assume management of the railroad. PYCO has detected no meaningful

service to the point that PYCO was forced to petition for alternative service under 49 C.F.R. Part 1146.

change in management style between Mr. and Mrs. Wisener. On the very day alternative rail service was to begin, SAW moved cars into its yard so congesting it as to render service virtually impossible. The situation became so chaotic that BNSF's own yard was becoming congested, and BNSF moved cars onto SAW's track 9200, over which it retained certain trackage rights. SAW personnel engaged in what some might term "juvenile" and others might term "passive aggressive" harassment of employees of West Texas and Lubbock, PYCO's alternative rail provider.

Mrs. Wisener hung up on a call with WTL and PYCO executives and attorneys to discuss an operating protocol, with her company basically refusing to negotiate. This Board had to impose modified terms. Decision in F.D. 34802, served Feb. 16, 2006.

SAW moved to terminate alternative service early. PYCO responded that alternative service was working. In the first 17 days of WTL's alternative service, PYCO shipped more than twice as many cars as it was able to ship during the prior 17 days under SAW. BNSF informed PYCO that BNSF was able to load a 70-car unit train every 3 days versus every 5 days when SAW provided service. As this Board recognized, "[t]his quicker loading of unit trains has reduced the number of cars needed by PYCO and has allowed PYCO to move more of its products." Decision at p. 3, F.D. 34802, served February 24. The Board denied SAW's petition to terminate alternative service, and instead extended it for 240 more days. Id. p. 5. On the following Monday, February 27, Mrs. Wisener sent a letter to

PYCO's president and general manager (Mr. Kring) asking for a meeting to discuss "non-operational" issues, and inquiring what PYCO expected in terms of service. Ominously, the letter advised Mr. Kring that the alternative service order ultimately would expire, and he would have to deal with SAW. PYCO responded that it hoped for service like that it was receiving from its alternative service provider, and would be pleased to meet if SAW had a specific proposal to discuss. PYCO has not received a response. Instead, SAW keeps asserting that PYCO will not meet with it. But as PYCO has indicated, SAW hangs up on telephone conferences, and represents that it "throws people out" of meetings. SAW continues to take hostile actions toward PYCO, including blockade of the industrial crossing between PYCO's Plant No. 1 and PYCO's seed stockpile. PYCO certainly attempted to negotiate with SAW, but SAW effectively hung up.

Law. Under 49 U.S.C. § 10502(d), this Board may revoke an exempt acquisition at any time. 49 U.S.C. § 10502(d) provides that

"The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title."

In a recent construction of its authority under 49 U.S.C. § 10502(d), this Board explained that it "may revoke an exemption, in whole or in part," if it finds any one of three things:

"(1) the notice of exemption (or request for exemption) contained false and/or misleading information;

(2) regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101; or

(3) revocation is necessary to ensure the integrity to the Board's processes."

SF&L Railway, Inc. -- Acquisition and Operation Exemption--
Toledo, Peoria and Western Railway Corporation between La Harpe
and Peoria, IL, F.D. 33995, served Oct. 17, 2002, slip op. at p.

10. Revocation is appropriate for all the above reasons.

First, although SAW represented it was submitting to STB regulation of all the various lines acquired from BNSF, its "Second Supplement" confirms that this was false and/or misleading, in that SAW now contends that the lines are completely unregulated.

Second, revocation is appropriate to protect this Board's processes. In SF&L Railway, this Board concluded that an A&K-related "railroad" had acquired a line for the purpose of abandoning and salvaging it, which the Board viewed as abusive in the face of active shipper opposition. In Land Conservancy-- Acquisition and Operation Exemption -- Burlington Northern, 2 STB 673 (1997), this Board concluded that a land trust was primarily interested in acquiring a line for preservation as a railbanked trail, which the Board viewed as abusive in light of opposition first by rail labor, and then by a group of adjacent landowners. Revocation is necessary here to protect the

integrity of the Board's processes. SAW should not be permitted to misrepresent that it intends to be a common carrier and then blatantly degrade or refuse service, blow up at shippers who complain, use physical threats and intimidation, and otherwise operate its lines on a whim. SAW's use of an exemption to acquire the switching operations in south Lubbock is similar to SF&L's (A&K's) acquisition of TP&W's line in Illinois. SF&L intended to abandon and salvage the railroad. SAW intended only to provide service on a whim. Neither intended to operate a common carrier railroad.

In all events, transfer of the switching operations to SAW is contrary to national transportation policy along a medley of fronts. First, it violates sound economic conditions in transportation, and is contrary to effective competition and coordination between rail carriers and other modes [49 U.S.C. § 10101(5)]. Second, it is contrary to the encouragement of honest and efficient management of railroads [49 U.S.C. § 10101(9)]. Third, it encourages rather than prohibits predatory practices [49 U.S.C. § 10101(12)].

The testimony by multiple shippers that SAW employs physical intimidation and threats of economic retaliation is sufficient ground to establish violation of sound economic conditions, inconsistency with honest and efficient management, and predatory practices. Both Hi Plains Bag and Bagging and Floyd Trucking (Appendices V and VI) have attested that SAW management made threats to cut off service and retaliate against

shippers, and that shippers and potential shippers feared that their service could be cut off at the whim of SAW. The various declarations provided herewith indicate that SAW management addresses issues through profanity, screaming, threats, and passive aggressive refusal to deal notwithstanding intervention of regulatory authorities. PYCO has also supplied evidence that its own executives had experienced SAW management's personal intimidation.¹² Moreover, PYCO has complained to the Board concerning SAW's breaches of the protocol in the alternative service proceeding posing physical risks to PYCO personnel.¹³ This Board has found that SAW has provided inadequate service to PYCO. SAW's approach to railroading is not consistent with applicable transportation policies.

The ability of SAW to operate the lines and to protect the interests of shippers is not supported by the record. In such circumstances, an exemption is not appropriate. E.g., Transloaders, Inc. -- Lease and Operation Exemption -- F&L Realty, ICC F.D. 32407, served April 22, 1994, 1994 ICC Lexis 55 at pp. *14-*15.

SAW does not operate its switching business on a rational basis, working with shippers to stimulate business. SAW works as a reflection of the Wisener's business style, which involves

¹² PYCO first discussed the fact that SAW management's tactics included physical intimidation in PYCO's original petition for alternative rail service, dated December 19, 2005. See Appendix VII, Lacy V.S. supra ¶¶ 12 & 15.

¹³ E.g., PYCO Reply and Motion/Petition, Appendix I, ¶ 7, filed in F.D. 34838 and F.D. 34802 on May 26, 2006.

"colorful" language, whimsical likes/dislikes, and reprisals against any who complain. SAW gets away with this for three reasons: (a) SAW's capital investment is very low (it thus has little to lose); (b) SAW is owned by one family, the owners (not the employees) are the problem, and there is thus no responsible oversight to correct the situation; and (c) the cost to enforce common carrier obligations is beyond the means of the smaller shippers, who (until Mr. Wisener "blew up" on PYCO) have borne the brunt of SAW's predatory misconduct.

In Indiana Hi-Rail Corporation -- Lease and Operation Exemption -- Norfolk and Western Railway Co. Line, F.D. 32162, served Jan. 30, 1998, a substantial time had elapsed here between the revocation petition and the original exempt acquisition. In such circumstances, the Board suggested that concerns regarding "administrative finality, repose, and detrimental reliance must be balanced against any benefits to be derived from reopening and revocation of the exemption." Decision at STB Lexis p. *9. From the Board's discussion, it appeared that another railroad had acquired the line in question from the bankrupt Indiana Hi-Rail, such that the petition to revoke might be moot insofar as the shipper was attempting to rid itself of the bankrupt carrier. The Board in any event indicated that it believed that the shipper would draw no benefit from a revocation, and that the shipper could better pursue relief in the form of a complaint for inadequate service, or a feeder line application.

In this case, doctrines of repose, detrimental reliance, and so forth are simply not applicable. First, PYCO has stated that its petition is conditioned (a) on leaving all property transactions (sales, leases) entered into by SAW with respect to the property to date intact, and (b) on allowing SAW to keep its one investment in new facilities (approximately one mile of storage track). Alternatively, if SAW asserts detrimental reliance as to the storage track and does not wish to keep it, then PYCO is prepared to hold SAW harmless for its investment as established after discovery (i.e., PYCO will acquire it from SAW at a price the Board approves). SAW has no significant investment in the line, other than (perhaps) that roughly mile of storage track constructed for non-revenue car storage, making this case especially appropriate for revocation.

Second, other remedies do not appear to be available timely to address the situation. Following the Board's advice in Indiana Hi-Rail, PYCO has pursued a feeder line application and a complaint. On June 2, the STB Director dismissed PYCO's feeder line application (FLA) in F.D. 34844. Although PYCO has both appealed that dismissal and filed a revised FLA (in F.D. 34890), it is unclear that any relief will be available before PYCO's alternative service order expires, given the June 2 dismissal of PYCO's FLA. As to the Complaint, SAW has asserted a commodity exemption covering roughly 4000-5000 of PYCO's roughly 7000 carloadings. PYCO has countered with a petition for partial revocation of the commodity exemption. How this

will play out is not yet clear. Revocation of the acquisition exemption, however, will provide immediate relief to all BNSF's customers, including PYCO, because BNSF will secure an adequate provider of service for its customers in Lubbock.

Third, revocation is uniquely appropriate as a remedy here for other reasons. (a) SAW has purportedly been offering its rail lines for sale for approximately one year now, and indeed asked for PYCO's FLA in F.D. 34844 to be delayed while it pursued sale opportunities. If SAW has been candid with this Board, it now wishes to give up control of its lines.

(b) BNSF clearly envisioned that SAW would be a cooperative partner in Lubbock, working to provide adequate switching services for BNSF customers there. To this end, the contract provides for BNSF for 99 years to establish through routes and rates, and provides that SAW may not impose surcharges absent BNSF consent. Contract ¶16. Unfortunately, rather than cooperate with BNSF to provide service, SAW has engaged in extensive litigation with BNSF, and to this day, fails to participate in daily telephone calls to coordinate service to BNSF customers on SAW lines, or with West Texas & Lubbock, PYCO's alternative service provider. Indeed, SAW continues to blame BNSF for the problems PYCO has experienced from SAW's inadequate service. Revocation will result in a return of the property to BNSF, which then can make arrangements with a more dependable carrier to serve its customers in Lubbock, as originally envisioned in the BNSF/SAW contract, and

thus is again a remedy highly consistent with that contract. We emphasize again that PYCO has repeatedly been assured by BNSF that BNSF has no objection to revocation of the acquisition exemption at issue in this proceeding. Moreover, revocation in the circumstances here would ensure that shippers in Lubbock received adequate rail service.

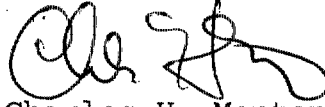
(c) The BNSF/SAW contract obviously envisions substantial control by BNSF over disposition of the assets of SAW; this objective would be accomplished in full by revocation. Under that contract, SAW may not sell all or any portion of its rail lines unless it first provides BNSF a 60 day period to negotiate to purchase the rail lines on the same or substantially similar basis as that set forth in the subsequent sale agreement. If BNSF agrees to pay the average of the three highest bids received by SAW for the property in question, then SAW must convey the property to BNSF. Contract ¶ 7(b). Indeed, SAW may not assign any of its rights except on approval of BNSF, and any assignee must assume obligations arising under the agreement. Contract ¶ 7(a).

Conclusion

For the reasons stated, SAW's "Second Supplement" does not support a termination of alternative rail service. Rather, SAW's "Second Supplement" emphasizes the propriety of revocation of the notice of exemption in F.D. 33753 (Sub-no. 1) whereby SAW acquired these lines in the first instance. PYCO accordingly petitions this Board to revoke that exemption. Pending

revocation, PYCO underscores its continued need for alternative rail service.

Respectfully submitted,



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Appendix I -- track charts
Appendix II -- notice of exemption
Appendix III -- BNSF/SAW contract
Appendix IV -- Sneed Dec.
Appendix V -- Floyd Dec.
Appendix VI -- Kidwell Dec.
Appendix VII -- Lacy Dec.
Appendix VIII -- Attebury and Compress letters
Hanson Aggregate Email

Verification

Pursuant to 28 U.S.C. 1746, I declare and verify under penalties of perjury under the laws of United States of America that I am the Senior Vice President of Marketing for PYCO Industries, that I have been employed by PYCO for fifteen years, that I am responsible for rail shipments for PYCO, that I am familiar with the facts asserted in the foregoing Reply and Petition to Revoke, and that they are true and correct.

Executed on: June 15, 2006

Robert Long

Certificate of Service

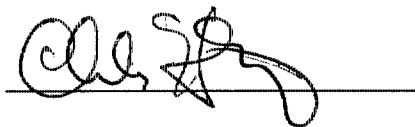
By my signature below, I certify service by depositing the foregoing for express delivery (next business day) on ~~17~~ June 2006 on the following counsel of record:

Thomas McFarland, Esq.
208 South LaSalle St., Suite 1890
Chicago, IL 60604-1112

William C. Sippel, Esq.
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832

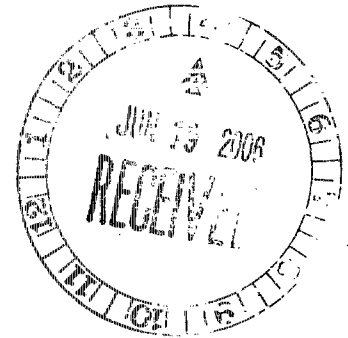
In addition, PYCO is furnishing a courtesy copy by similar means on

Michael Roper, Esq.
BNSF Law Department
2500 Lou Menk Drive
AOB 3d Floor
Fort Worth, TX 76102

A handwritten signature in dark ink, appearing to read "Michael Roper", is written over a horizontal line.

JUN 19 2006

BEFORE THE
Part of
Public Record SURFACE TRANSPORTATION BOARD



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

SOUTH PLAINS SWITCHING, LLC)
-- ACQUISITION EXEMPTION --) F.D. 33753 (Sub-no.1)
BNSF RAILWAY COMPANY)

PETITIONER PYCO INDUSTRIES'
REPLY TO SAW'S "SECOND SUPPLEMENT" TO SAW'S SECOND
PETITION TO TERMINATE

and

PETITION TO REVOKE SAW'S
ACQUISITION EXEMPTION

FEE RECEIVED

JUN 19 2006

SURFACE
TRANSPORTATION BOARD

APPENDIX VOLUME

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(806) 788-0609
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Hanson Aggregate Email

APPENDIX I

FORT WORTH & DENVER RY. CO.
TRACK CHART
AMARILLO DIVISION

CHILDRESS TO AMARILLO

SCALES

VERTICAL 1 INCH = 200 FEET
HORIZONTAL 1 INCH = 1 MILE

OFFICE OF CHIEF ENGINEER
FORT WORTH, TEXAS,

CORRECT TO

CORRECT TO 1-1-71

Index - F.W.t.D. Amarillo Division - D.N. - S.P.

CORRECT TO 1-1-71

APPENDIX II

30370

SERVICE DATE - JULY 15, 1999

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33753 (Sub-No. 1)]

South Plains Switching, Ltd. Co.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

South Plains Switching, Ltd. Co. (South Plains), a Class III rail common carrier, has filed a verified notice of exemption under 49 CFR 1150.41¹ to acquire approximately 74,384 feet of rail lines from The Burlington Northern and Santa Fe Railway Company (BNSF)² in Lubbock, TX, as follows: (1) former ATSF side tracks 0310-0313, 0320, 0330-0332, 0340-0341, 0370, 0372-0373, 0380-0382, 0385, 0387, and 0390; and (2) former BN side tracks 9200-9205, 9208, 9220, 9298, 9310, 9320, 9322, 9330, Orchard Lead, 9304, 9311-9312, 9321, 9323-9326, 9331, 9333, 9401-9406, 9409-9412, 9415, and 9420-9424. In conjunction with the acquisition of these rail

¹ On June 7, 1999, a notice of exemption under 49 CFR 1150.41 was served and published (64 FR 30375) for South Plains. See South Plains Switching, Ltd. Co.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33753. Subsequently, on June 25, 1999, South Plains filed an amended verified notice of exemption. Because the amendment extended the trackage being acquired and decreased the incidental trackage rights being acquired, Board staff notified South Plains' representative that the amended verified notice of exemption would be treated as a new filing under a new docket number and that the filing would require a new filing fee. The notice of exemption in STB Finance Docket No. 33753 (Sub-No. 1) supersedes the earlier notice of exemption served and published on June 7, 1999.

² On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company (ATSF) merged with and into Burlington Northern Railroad Company (BN). The name of the surviving corporation of the merger is The Burlington Northern and Santa Fe Railway Company.

STB Finance Docket No. 33753 (Sub-No. 1)

lines, South Plains will acquire approximately 3 miles of incidental trackage rights over BNSF's mainline between track 9298 and BNSF's Lower Yard at Lubbock.

South Plains reported that it intended to consummate the transaction on or shortly after July 4, 1999. The earliest the transaction can be consummated is July 8, 1999, the effective date of the exemption (7 days after the exemption was filed).³

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33753 (Sub-No. 1), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on William R. Power, Esq., 260 Cordovan Park, 5840 West Interstate Twenty, Arlington, TX 76017.

³ While the amended verified notice of exemption was received at the Board on June 25, 1999, it was not officially filed until July 1, 1999, when South Plains submitted the required filing fee.

STB Finance Docket No. 33753 (Sub-No. 1)

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 8, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

APPENDIX III

5/3/99

AGREEMENT FOR
SALE OF CERTAIN ASSETS, RIGHTS
AND OBLIGATIONS
OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO
SOUTH PLAINS SWITCHING, LTD. COMPANY



AGREEMENT FOR SALE OF CERTAIN ASSETS, RIGHTS AND OBLIGATIONS
OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO SOUTH PLAINS SWITCHING, LTD. COMPANY

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Exhibit A	List of Tracks and Map/Print
Exhibit B	Quitclaim Deed
Exhibit C	Bill of Sale
Exhibit D	Agreements to be Assigned in Part to Buyer

AGREEMENT FOR
SALE OF CERTAIN ASSETS, RIGHTS
AND OBLIGATIONS
OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO
SOUTH PLAINS SWITCHING, LTD. COMPANY

This Agreement is entered into as of the third day of May, 1999, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter referenced as "Seller"), and SOUTH PLAINS SWITCHING, LTD. COMPANY, a Texas limited liability company (hereinafter referenced as "Buyer").

WHEREAS, Seller desires to sell and convey to Buyer on the terms and conditions set forth in this Agreement Seller's interest in a rail line of Seller's in the vicinity of Lubbock, Texas, in Seller's Old BN Yard and former BN and ATSF tracks generally south of the Old BN Yard at Lubbock, Texas, the rail freight transportation business which Seller conducts on this rail line, and certain other rights, obligations and assets as specified in this Agreement; and

WHEREAS, Buyer desires to purchase, pursuant to the terms and conditions set forth in this Agreement, Seller's interest in a rail line of Seller's in the vicinity of Lubbock, Texas, in Seller's Old BN Yard and former BN and ATSF tracks generally south of the Old BN Yard at Lubbock, Texas, the rail freight transportation business which Seller conducts on this rail line, and certain other assets, rights and obligations as specified in this Agreement.

NOW THEREFORE, Buyer and Seller agree as follows:

1. Description of Business Sold.

(a) Seller shall convey to Buyer on the date of Closing, subject to the terms and conditions set forth in this Agreement and the terms, conditions, reservations and exceptions set

forth in the Quitclaim Deed conveying this property, all of Seller's interest in the rail line segments of Seller in the vicinity of Lubbock, Texas, shown on the map print and list attached hereto as Exhibit A, except that Seller's tracks 9200 and 9205 shall be included in the conveyance, as well as the metal depot and contiguous real estate near the Old BN Yard. The above rail line segments, together with related rail corridor property interests, less Seller's retained real property interests and access rights, are described specifically in the Quitclaim Deed set forth in Exhibit B, attached hereto, and are referenced collectively hereinafter as "Rail Line."

Seller shall furnish Buyer a complete legal description of Rail Line, and Seller shall use its best efforts to furnish such description on or prior to the date of Closing. This conveyance is expressly subject to Seller's retained interests, as specified in detail in the Quitclaim Deed, for: (1) an exclusive, permanent easement for construction, maintenance and operation of one or more pipelines or fiber optics communication lines facilities and appurtenances, in, under, across, along and through all or any portion of the Rail Line; (2) mineral rights and related permanent access easements; (3) water rights and related permanent access, construction, maintenance and water pipeline rights; and (4) Seller's continued access by rail to tracks 0340 and 9298, at no cost to Seller, and tracks 9200 and 9205, at no cost to Seller for the first five years following the date of Closing and at the rate of \$1,000 per year commencing the sixth year following the date of Closing (and thereafter until such time as Seller notifies Buyer in writing that Seller no longer desires to use said tracks), such rights to be subject to dispatching control and direction of Buyer.

(b) Seller shall convey to Buyer, on the date of Closing, the rail freight transportation business which Seller conducts on the Rail Line, subject to the terms and conditions set forth in this Agreement, in the Quitclaim Deed, or in any agreement assigned by Seller to Buyer in accordance with the terms of this Agreement.

(c) Seller shall convey to Buyer on the date of Closing, by a Bill of Sale identical in form to the Bill of Sale set forth as Exhibit C attached hereto, all of Seller's interest in all rail, ties, spikes, tie plates, rail anchors, bridges, culverts, signalling equipment, and other supporting structures, ballast, track materials and supplies, and the metal depot at or near the Old BN Yard (excluding any vehicles, maintenance equipment on wheels, radios, and computer equipment) that, on the date of the Closing, are not improvements that constitute the Rail Line, but which then are present on the real property comprising the Rail Line. This conveyance shall be subject to the terms and conditions set forth in this Agreement, including those set forth in Exhibit D, and the terms and conditions set forth in any agreement assigned by Seller to Buyer in accordance with the terms of this Agreement.

(d) Incident to the conveyance of the Rail Line, effective as of the date of the Closing, Buyer shall have the right to operate over Seller's tracks in Seller's Lower Yard at Lubbock, Texas, and over Seller's mainline between track 9298 and Seller's Lower Yard at Lubbock, Texas, all as designated by Seller's operating personnel (which rail line segments shall be referenced collectively herein as "Interchange Access Line"), at no charge to Buyer, for the sole purpose of interchanging rail traffic and equipment between Buyer and Seller at Seller's Lower Lubbock Yard. Buyer shall operate its trains over the Interchange Access Line subject to Seller's dispatching directions. Buyer agrees to keep the Interchange Access Line clear at all times, except when actually switching cars between Buyer and Seller. In dispatching the Interchange Access Line, Seller shall accord trains of Buyer equal priority with trains of Seller. Nothing herein shall preclude Seller from abandoning any portion of the Interchange Access Line if conditions otherwise warrant.

(e) Seller shall assign to Buyer on the date of Closing, subject to all terms and conditions set forth in this Agreement, or in any agreement assigned by Seller to Buyer in accordance with

the terms of this Agreement, all assignable rights and obligations of Seller to the extent that they are related to the Rail Line and are set forth in any agreement identified in Exhibit D, which is attached hereto. Buyer on the date of Closing shall accept the assignment of all such rights and obligations, as of the date of Closing, in accordance with their terms and the terms of this Agreement. Seller shall reserve all rights set forth in any agreement identified in Exhibit D to the extent those rights are related to one or more other rail lines or property of Seller. If any contract is related to the Rail Line and inadvertently is not identified in Exhibit D, it is the intent of Seller and Buyer that such contract be deemed to have been assigned by Seller to Buyer, in whole or in part as appropriate, effective the date of Closing. Seller promptly shall provide to Buyer a copy of any such contract immediately upon locating it. Buyer shall make no claim against Seller arising out of any failure to obtain a consent to assignment from any party to an agreement assigned by Seller to Buyer, in whole or in part. It is the intent of both Seller and Buyer that all assignments of rights and obligations related to the Rail Line shall be effective on the date of Closing, whether or not any consents to such assignments then have been obtained.

2. Consideration for the Sale.

(a) In consideration for Seller's sale of its interest in the Rail Line, and conveyance of the other rights, interests and obligations described in Paragraph 1 of this Agreement, Buyer agrees to all of the following:

- (1) To accept all transferred real and personal property "AS IS, WHERE IS" and "with all faults", except for the specific representations and warranties set forth in this Agreement.

(2) To pay on the date of Closing a purchase price of TEN DOLLARS (\$10.00), for Seller's assets, rights and obligations to be conveyed to Buyer as set forth herein.

(3) To maintain the Rail Line at a level adequate for the required rail service.

(4) To pay in addition to the purchase price all costs of Closing (except Seller's cost of preparation of documents to be delivered at Closing). This includes, but is not limited to, any escrow and service fees, real estate transfer taxes, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement.

(b) Buyer shall obtain the written consent of Seller, which consent shall not be unreasonably withheld or delayed, prior to entering into any agreement with any other party, or issuing any license or permit to any other party, which would allow such other party any right to cross or access any portion of the Rail Line to serve any customer located along the Rail Line.

(c) Without Seller's prior written consent, which consent shall not be unreasonably withheld, (1) Buyer shall not seek authority from the Surface Transportation Board or any other governmental agency having jurisdiction, to abandon or discontinue rail service over the Rail Line; and (2) Buyer shall not remove any track from the Rail Line except in connection with the repair or replacement of the track, unless (i) in the case of house track there has been no movement of revenue freight over the track for a period of three years, or (ii) in the case of lead track there has been no movement of revenue freight over the track for a period of five years.

3. Governmental Approval.

(a) Promptly following execution of this Agreement, Buyer, at its sole expense, shall prepare and file such documents as may be required to secure approval, or exemption from

approval, of this transaction by the Surface Transportation Board of the United States Department of Transportation ("STB"), as appropriate. Buyer shall make all reasonable efforts to obtain this approval or exemption in time for this transaction to close on or before May 31, 1999. Buyer shall permit Seller to review prior to filing all documents proposed by Buyer to be filed with the STB, or any court, to secure legal approval or exemption of this transaction.

4. Representations and Warranties.

(a) Seller hereby represents and warrants to Buyer, and Buyer's successors and assignees, the following facts, as of the date of this Agreement and as of the date of Closing:

- (1) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware;
- (2) Seller has the corporate power and authority to enter into this Agreement and carry out its obligations under this Agreement;
- (3) The execution, delivery and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of Seller, and no further corporate proceedings of Seller are required to complete the transactions covered by this Agreement;
- (4) All of Seller's obligations set forth in this Agreement constitute legal, valid and binding obligations of Seller which are enforceable against Seller in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, insolvency or reorganization law;

- (5) There is no provision in the Certificate of Incorporation or By-Laws of Seller which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (6) The negotiations related to this Agreement have been handled by Seller on its own behalf, without intervention of any agent or other person, so that no party has a valid claim on this basis for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;
- (7) Seller has duly filed with the appropriate agencies of the United States, the State of Texas, and appropriate local governments or political subdivisions in Texas, all tax returns and reports required to be filed; Seller either has paid in full, or is agreeable to paying in full as finally determined, all taxes, interest, penalties, assessments or deficiencies which are due for the period up to the date of Closing; and Seller has made all withholdings of tax which are required to be made under all applicable regulations of the United States, the State of Texas, and local governments in Texas;
- (8) To Seller's knowledge, there is no pending or threatened litigation or arbitration proceeding, or administrative proceeding or investigation, against or affecting the properties or assets comprising the Rail Line, or Seller's rights to conduct rail freight transportation operations over the Rail Line as Seller conducts those operations on the date of this Agreement, the result of which foreseeably would

materially adversely affect Buyer's ability to conduct rail freight transportation operations over the Rail Line on the day following the date of Closing;

- (9) Seller has received no written notice of any pending civil, criminal, or administrative actions with respect to any hazardous or toxic substance on or adjacent to the Rail Line (As used herein, "written notice" shall mean written notice delivered to either Seller's Assistant Vice President-Environmental and Hazardous Materials, or Seller's Director Environmental Remediation and Special Projects, who are the people designated by Seller to receive notice of such matters);
- (10) The physical condition of the Rail Line will be sufficient to enable Buyer to conduct rail freight transportation operations over the Rail Line on the day following the date of Closing; and
- (11) No representation or warranty by Seller in this Agreement contains any untrue statement of a material fact, nor omits any material fact that is necessary to prevent that representation or warranty from being materially misleading.

(b) Buyer hereby represents and warrants to Seller, and Seller's successors and assignees, the following facts as of the date of this Agreement and as of the date of Closing, except where specifically noted to be as of the date of Closing only:

- (1) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and by the date of Closing will be qualified to do business in the State of Texas;

- (2) Buyer has all requisite authority to purchase Buyer's properties and Seller's rights and properties which are conveyed to Buyer by this Agreement; to enter into this Agreement; to conduct rail freight transportation business on the Rail Line; and to perform all of Buyer's obligations under this Agreement;
- (3) The execution of this Agreement and consummation of the transactions which are a part of this Agreement have been duly authorized and approved by all necessary company actions by Buyer, and immediately upon execution of this Agreement by Buyer's authorized representative, all of Buyer's obligations set forth in or referenced in this Agreement shall constitute legal, valid and binding obligations of Buyer, or Buyer's successors or assigns, which obligations are enforceable in accordance with their terms against Buyer or Buyer's successors or assignees;
- (4) There is no provision in the Certificate of Incorporation or By-Laws of Buyer which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (5) As of the date of Closing, Buyer shall have obtained all legal authority which is necessary to enable Buyer lawfully to conduct rail freight transportation operations over the Rail Line as a common carrier and under one or more rail freight transportation contracts, commencing at 12:01 a.m. on the day following the date of Closing;
- (6) The negotiations related to this Agreement have been handled by Buyer on its own behalf, without intervention of any agent or party, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage

commission, or other similar payment in connection with any of the transactions included in this Agreement;

- (7) Neither Buyer nor any of Buyer's equity owners or financing sources, nor any of their partners, is a Class I railroad or affiliated with a Class I railroad; and
- (8) No representation or warranty by Buyer in this Agreement contains any untrue statement of a material fact, nor omits any material fact that is necessary to prevent that representation or warranty from being materially misleading.

5. Inspection and Condition of Rail Line.

(a) By signing this Agreement, Buyer acknowledges that Buyer has inspected the Rail Line, including all improvements and structures on the Rail Line. Buyer further acknowledges that (i) except as set forth in Paragraphs 4(a)(8), 4(a)(9), and 4(a)(10) of this Agreement, no representation has been made by Seller to Buyer concerning the state or condition of the Rail Line, or the age of any improvements on the Rail Line; (ii) Buyer has not relied upon any statement or declaration of Seller with respect to the physical condition of the Rail Line, Seller's title to the Rail Line, Seller's freight traffic volumes to or from the Rail Line, or any other matter, either oral or in writing, as an inducement to entering into this Agreement, other than as stated in this Agreement; and (iii) the sole consideration for execution of this Agreement by Buyer is set forth in this Agreement.

(b) EXCEPT AS SET FORTH IN PARAGRAPH 4(a) OF THIS AGREEMENT, SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE RAIL LINE, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY

OF THE MATERIAL OR WORKMANSHIP OF THE RAIL LINE, OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE RAIL LINE OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SELLER OFFERS, AND BUYER ACCEPTS, THE RAIL LINE IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE RAIL LINE.

6. Liability and Indemnity.

(a) Cooperation in Defense. Buyer and Seller agree that, following the date of Closing, they will cooperate as necessary in defense of any claim, demand, investigation or litigation arising out of Seller's or Buyer's ownership or operation of the Rail Line.

(b) Definition of Losses. In this Agreement the term, "Losses" shall include all costs, expenses, fees or liabilities of, or in any way related to the following: (i) any violation of law or regulation; (ii) any damage to property, the environment or to natural resources; (iii) any bodily injury or death of any person; or (iv) the breach of any contract. "Losses" shall include, but not be limited to, all costs of claims, activities in response to enforcement, damages, judgments, awards, orders, decrees, payments, fines, penalties, assessments, court costs, and attorney, consultant and expert witness fees.

(c) General Liability and Indemnity.

- (1) Seller's General Liability and Indemnity. Except as provided in Paragraph 6(d) of this Agreement (environmental liability), Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer fully against, all Losses, which:
- (i) except as limited by clause (iii) just below, arise out of Seller's ownership or operation of the Rail Line on or prior to the date of Closing; (ii) result from any breach by Seller of any of its representations or warranties set forth in Paragraphs 4(a) and 10 of this Agreement, or, except as covered by clause (iv) just below, any failure by Seller to perform any of its obligations under this Agreement; (iii) result from claims of third parties caused by Seller's performance or nonperformance, or Buyer's nonperformance only where Buyer had no knowledge of the existence of the duty to perform, under any material contract, lease, permit, license, easement or commitment related to the Rail Line that is not identified in this Agreement or on Exhibit D; or (iv) occur during Seller's operations on the Interchange Access Line, regardless of Seller's or Buyer's negligence or alleged negligence, solely to the extent that such Losses involve Seller's property or employees or lading on Seller's trains, or where third parties or their property (other than lading on Buyer's or Seller's trains) are involved, the negligent party shall respond in accordance with the law of the applicable jurisdiction.
- (2) Buyer's General Liability and Indemnity. Except as provided in Paragraph 6(d) of this Agreement (environmental liability), and further except for Losses resulting from one or more of Seller's representations or warranties set forth in this

Agreement containing any untrue or materially misleading statement of a material fact, or omitting any material fact that is necessary to prevent the representation or warranty from being materially misleading, Buyer shall be responsible for, and shall indemnify, defend and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller prior to closing, all Losses which:

- (i) except as limited by clause (iii) just below, arise out of Buyer's ownership or operation of the Rail Line after 12:01 a.m. on the day following the date of Closing;
- (ii) result from any breach by Buyer of any of its representations or warranties set forth in Paragraph 4(b) of this Agreement, or any failure by Buyer to perform any of its obligations under this Agreement;
- (iii) result from claims of third parties caused by Buyer's nonperformance or required performance under any material contract, lease, permit, license, easement or commitment relating to the Rail Line, where that contract, lease, permit, easement or commitment either is identified in this Agreement or on Exhibit D, or Buyer has specific knowledge of it, but then only from the time when Buyer acquired such specific knowledge;
- or (iv) arise out of, or are attributable to Buyer's activities or operations on the Interchange Access Line, regardless of Seller's negligence or alleged negligence, except to the extent Losses involve Seller's property or employees or lading on Seller's trains, or where third parties or their property (other than lading on Buyer's or Seller's trains) are involved, in which case the negligent party shall respond in accordance with the law of the applicable jurisdiction.

(d) Environmental Liability and Indemnity.

(1) Buyer Accepts the Rail Line "As Is, Where Is". Buyer acknowledges that Seller has provided Buyer with full access to inspect the Rail Line. Buyer further acknowledges that Seller makes only those representations and warranties to Buyer concerning the existence of any hazardous or toxic substances on or near the Rail Line, or compliance of the Rail Line with any statutes, ordinances, rules, regulations, orders or decisions with regard to hazardous or toxic substances on or near the Rail Line, which are expressly set forth in Paragraph 4(a)(9) of this Agreement.

(2) Seller's Environmental Liability and Indemnity. Notwithstanding any other liability or indemnification provision in this Agreement, Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer fully against, Losses incurred due to any claim, demand or litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any of the following: (i) any chemical, material or substance that is now, or at the time in question, is regulated or governed by any law, the release of which creates any liability under any applicable law; or (ii) any other material which, when released, would cause significant ecological damage (items described by (i) or (ii) above are referenced hereinafter as "Hazardous Materials") located on or near the Rail Line where such Losses:

(a) were caused by one or more acts of Seller that occurred on or prior to the date of Closing; and

(b) result from any written claim ("Claims") that is delivered to Seller within four years following the date of Closing; and

(c) exceed \$10,000.00 in the aggregate in any year.

(3) Buyer's Environmental Liability and Indemnity. As part of the consideration for this Agreement, and notwithstanding any other liability or indemnification provision in this Agreement, Buyer shall be responsible for, and shall indemnify, defend, and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller occurring prior to Closing, Losses incurred due to any claim, demand or litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any Hazardous Materials located on or near the Rail Line where such Losses either:

(a) were not caused by one or more acts of Seller, or Seller's corporate predecessors, regardless of when the act or omission giving rise to the claim occurred; or

(b) regardless of cause, do not result from a Claim delivered to Seller within four years following the date of Closing; or

(c) were caused by Seller and result from a Claim delivered to Seller within four years of the date following Closing, but only up to \$10,000.00 in the aggregate in any year.

Buyer also shall be responsible for, and shall indemnify, defend and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller, Losses incurred due to any claim, demand or

litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any Hazardous Materials on or near the Interchange Access Line, to the extent such Losses arise out of, or are attributable to, Buyer's activities or operations on the Interchange Access Line, except to the extent Losses result from Seller's affirmative negligent acts.

(4) Arbitration of Allocation of Liability Between Buyer and Seller. Any dispute between Seller and Buyer as to allocation between them of Losses for which both Seller and Buyer are responsible under the terms of this Paragraph 6 shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association.

(5) Buyer To Comply With Hazardous Materials Laws. Buyer agrees to comply with all federal, state and local laws, regulations and rules concerning handling and disposal of Hazardous Materials.

(6) Liability Remedies and Obligations Are Exclusive. Buyer and Seller agree that the remedies and obligations set forth in this Paragraph 6 shall be exclusive remedies and obligations of each one to the other with respect to any Losses relating to the release or existence of Hazardous Materials on or near the Rail Line.

(e) Seller to Delivery Property Records to Buyer. Seller shall deliver to Buyer, on or soon following the date of Closing, originals or copies of whatever records, prints, archival information, or other evidence Seller locates in a reasonable search of Seller's records, which

bears upon the use of, maintenance, or title to the real estate comprising the Rail Line during the time the Rail Line was operated by Seller as a common carrier line of railroad. If, at any time after Closing, Seller locates any other documents which bear upon the use of, maintenance, or title to the real estate comprising the Rail Line, Seller promptly shall provide originals or copies of those documents to Buyer.

7. Assignment; Seller's Right of First Refusal.

(a) Buyer may not assign this Agreement, or any rights or obligations under this Agreement, to another railroad, or any party or individual who at the time of the assignment is affiliated with or working for another railroad, without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any assignee, including any successor in interest, of Buyer's or Seller's rights under or property acquired by this Agreement, shall assume in writing all of Buyer's or Seller's continuing and existing or thereafter arising obligations under this Agreement, and under any then effective contract assigned by Seller to Buyer, in whole or in part, in accordance with the terms of this Agreement, which obligations are related to the property or rights involved in the assignment.

(b) Any subsequent agreement by Buyer to sell all or any portion of the Rail Line (except to an affiliate of Buyer) must contain the effective right for Seller to purchase the Rail Line, or portion thereof, from Buyer, on the same, or substantially similar, basis as that set forth in the subsequent sale agreement. Buyer shall deliver to Seller a copy of the executed subsequent sale agreement within seven days following its execution. After receiving such copy, Seller and Buyer then shall negotiate in good faith for sixty days Seller's purchase of the Rail Line, or portion thereof, from Buyer. If Seller, at any time during these sixty days, offers in writing to

purchase from Seller the Rail Line, or portion thereof, on the same, or substantially similar, basis as that set forth in the subsequent sale agreement, and at a purchase price equal to the average of the highest three bids received by Buyer, then Buyer, within seven days, shall accept such offer, and within thirty days thereafter, shall convey such property to Seller. The foregoing shall not apply where Buyer wishes to sell small segments of track or property comprising the Rail Line where such sale would not hinder the overall operations of Buyer on the Rail Line.

8. Obligations are Continuing.

The representations, warranties and obligations of Buyer and Seller in this Agreement are continuing and survive the Closing. Terms of continuing obligations in this Agreement are subject to amendment only by a written contract signed by both Buyer and Seller, or their respective successors or assignees.

9. Liens and Encumbrances.

Seller represents, warrants and covenants that Seller has not caused or suffered, and will not cause or suffer prior to the date of Closing, any liens or encumbrances to be filed against the Rail Line or the Interchange Access Line which would materially adversely affect Buyer's ability to conduct rail freight transportation operations on the Rail Line or the Interchange Access Line on the day following the date of Closing. Buyer agrees to take title to the Rail Line subject to all liens and encumbrances on the Rail Line, except for the liens that would violate one or more of Seller's representations and warranties in Paragraph 4(a) or this Paragraph. The only encumbrances on the Rail Line of which Seller is aware are related to the agreements identified in Part I of Exhibit D, attached hereto, and may encumber the Rail Line on the terms and conditions set forth in those agreements.

10. Pending Public Works Projects.

Seller shall notify Buyer prior to closing of all pending public works projects on the Rail Line of which Seller is aware. Seller shall pay the railroad's share of the cost of whatever work is performed on pending public works projects before the date of Closing, and Buyer shall pay the railroad's share of the cost of whatever work is performed on these projects after the date of Closing. Any payments received by Buyer or Seller from any government body for a pending public works project shall be apportioned on the basis that Seller shall receive that share of the payments applicable to work performed on these projects prior to date of Closing, and Buyer shall receive that share of the payments applicable to work performed on these projects after the date of Closing.

11. Closing.

(a) The closing of this transaction shall occur on May 31, 1999, or an earlier date mutually agreeable to the parties (referenced herein as "Closing").

(b) At Closing, Seller shall deliver to Buyer the following documents:

- (1) A sufficient number of original counterparts of executed Quitclaim Deeds to the Rail Line, in exact form as the Quitclaim Deed attached hereto as Exhibit B, to enable Buyer to file an original Quitclaim Deed in each county in which the real property comprising the Rail Line is located;
- (2) An executed Bill of Sale in exact form as the Bill of Sale attached hereto as Exhibit C;
- (3) A copy of Seller's Articles of Incorporation and By-Laws; and

- (4) An opinion of counsel for Seller to Buyer with respect to those items represented by Seller to Buyer in Paragraphs 4(a)(1), 4(a)(2), 4(a)(3), 4(a)(4), 4(a)(5) and 4(a)(8) of this Agreement.

(c) At Closing, Buyer shall deliver to Seller:

- (1) A copy of Buyer's Articles of Incorporation and By-Laws;
- (2) A Certificate of Insurance establishing that Buyer has effective liability insurance meeting the requirements of Paragraph 16 of this Agreement; and
- (3) An opinion of counsel for Buyer to Seller with respect to those items represented by Buyer to Seller in Paragraphs 4(b)(1), 4(b)(2), 4(b)(3), 4(b)(4), 4(b)(5) and 4(b)(7) of this Agreement.

(d) At Closing, Buyer shall deliver to Seller the purchase price, as set forth in Paragraph 2 of this Agreement.

12. Proration.

(a) Prepaid rentals, utilities, and other income or fees attributable to the contracts related to the Rail Line that are being assigned under Paragraph 1 of this Agreement, shall be prorated between Seller and Buyer in such manner as to allocate to Seller all income received, and all expenses incurred, on or prior to the date of Closing, and to allocate to Buyer all income received, and expenses incurred, after the date of Closing.

(b) Seller shall be responsible for all real estate taxes applicable to the Rail Line for the calendar year 1999. Buyer shall be responsible for all real estate taxes applicable to the Rail Line commencing on and following calendar year 2000.

13. Interchange.

(a) Buyer and Seller shall interchange rail freight cars and equipment to and from each other at Seller's Lower Lubbock Yard. Seller shall have the right to change the location at which such interchange occurs, within the Lubbock, Texas area, if Seller reasonably determines that such change is necessary for operational purposes. Such interchange may include tracks designated by Buyer on Buyer's property as mutually agreed between both parties. Interchange between Buyer and any party other than Seller will not be permitted at any location along the Rail Line other than at Seller's Lower Lubbock Yard. The trackage upon which such interchange takes place shall be referenced hereinafter as "Interchange Track". Buyer will block traffic for interchange with Seller in accordance with written instructions to be furnished by Seller.

(b) Cars and their contents delivered by one party to the other on an Interchange Track shall be deemed to be in the possession of the receiving party as of the time they are placed on the Interchange Track and uncoupled from the delivering party's train or engine, except that if any such car is rejected by the receiving party under the Interchange Rules of the Association of American Railroads ("AAR") or any successor rules, the refused car shall be deemed to remain in the possession of the delivering party until that car is accepted by the receiving party.

14. Car Hire Costs.

In connection with all loaded and empty rail equipment moving in rail freight transportation service to or from the Rail Line and interchanged between Buyer and Seller on an Interchange Track, the party in possession of any car shall be responsible for all car hire costs, per diem expenses and mileage allowances payable with respect to such car, for any per diem charges for trailers or containers carried by such car, and for any equipment use charges

applicable to any RoadRailer equipment or similar carless intermodal technology. Although Buyer is a line haul carrier, the parties acknowledge that for purpose of car hire only, Buyer will be eligible for treatment as a terminal switch carrier entitled to transfer of car hire liability for up to 96 hours within the provisions of Car Hire Rule 5 - Switching Car Hire Expense Recovery, as set forth in the Code of Car Hire Rules administered by the Association of American Railroads. Seller shall make reasonable efforts to make freight cars available at Buyer's request on an Interchange Track as needed by Buyer for rail service to or from facilities on or along the Rail Line, on a non-discriminatory basis between Seller's car needs on similar rail lines and Buyer's car needs; however, Seller makes no guarantee of equipment supply to Buyer. It is the responsibility of Buyer to provide all locomotives, freight equipment for local traffic, and maintenance of way equipment.

15. Liability Insurance.

(a) For so long as Seller conducts any activities on any portion of the Interchange Access Line, Buyer shall maintain a comprehensive general form of insurance covering liability in connection with any of Buyer's activities or operations on or near the Interchange Access Line, including but not limited to Public Liability, Personal Injury and Property Damage, Federal Employers Liability Act Liability, Bill of Lading and Foreign Rolling Stock Liability, and Contractual Liability, with such limits, deductibles and exclusions as Seller may agree are satisfactory, provided however, that: (i) such limits shall not be less than \$2 million per occurrence, and \$4 million in the aggregate; and (ii) policy terms shall not exclude or limit, in connection with any of Buyer's or Seller's activities or operations on or near the Interchange Access Line, coverage where activities or operations are near railroad tracks. Seller shall be

named as an ADDITIONAL INSURED on such liability insurance policy. Such liability insurance must be purchased from an insurance company licensed to do business in Texas, and possessing a current Best's Insurance Guide Rating of B and Class X or better.

(b) Buyer shall provide to Seller evidence of Buyer's liability insurance coverage at Closing, with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 and July 1 of each year. Buyer's failure to provide such evidence shall entitle Seller to purchase such liability insurance, and withhold from the divisions payment forwarded to Buyer the cost of this insurance.

16. Seller's Authority to Establish Through Routes and Offer Through Routes.

Buyer and Seller agree that, with respect to all current and future traffic originating or terminating on or along the Rail Line and interchanged between Buyer and Seller at Lubbock, Texas, for ninety-nine years following the date of Closing, Seller shall have authority to establish through routes and offer through freight rates via through routes involving both Buyer and Seller with interchange between Buyer and Seller at Lubbock, Texas. Buyer shall not impose a surcharge upon this traffic without the prior written consent of Seller, which consent shall not be unreasonably withheld. For these ninety-nine years, Seller shall specify junctions and routes for all traffic, effective the day following the date of Closing. For this same ninety-nine years, following the date of Closing, Buyer automatically concurs in all such through rates established by Seller, whether for present or future freight traffic, so long as Buyer shall receive for transporting the traffic the division of revenues that is set forth in Paragraph 17(a) of this Agreement.

17. Division of Revenue.

(a) Buyer and Seller agree that for so long as Seller establishes through freight rates for interline freight transportation service involving both Buyer and Seller, the through revenue accruing on all existing and future carload traffic movements interchanged between Buyer and Seller at Lubbock, Texas, to or from existing and future rail destinations or origins on or along the Rail Line, shall be divided between Buyer and Seller on the following basis:

- (1) For each carload of freight that originates or terminates on the Rail Line and is interchanged between Buyer and Seller at Lubbock, Texas, billed in a block of 27 or more cars for an individual shipper or receiver, Buyer shall receive \$40.00 per car from Seller.
- (2) Except as provided in subparagraph (3), below, for each carload of freight that originates or terminates on the Rail Line and is interchanged between Buyer and Seller at Lubbock, Texas, not billed in a block of 27 or more cars for an individual shipper or receiver, Buyer shall receive \$125.00 per car from Seller.
- (3) Commencing as of January 1, 2000, should the number of carloads of freight originating and terminating on the Rail Line, interchanged between Buyer and Seller at Lubbock, Texas, and not billed in blocks of 27 or more cars for an individual shipper or receiver exceed 3,300 carloads in any calendar year, Buyer shall receive \$115.00 per car from Seller for each carload commencing with car 3,301 for the duration of that calendar year.

For purposes of computing the division of revenue set forth above, two loaded trailers or containers in intermodal service shall count as one carload.

(b) For all current and future traffic originating or terminating on or along the Rail Line, and interchanged between Buyer and Seller at Lubbock, Texas, for twenty-five years following the date of Closing, the divisions set forth in Paragraph 17(a) shall be adjusted annually, commencing as of January 1, 2001, based on 50% of the increase or decrease between the fourth quarter of 2000 compared to the fourth quarter of 1999, in the Rail Cost Adjustment Factor, unadjusted for productivity, as published by the Association of American Railroads (or, if it ceases to be used, some similar rail cost index), and thereafter as of each January 1 based on 50% of the increase or decrease in the Rail Cost Adjustment Factor in the fourth quarter of the immediately preceding year compared to the fourth quarter of the year before that. However, in no event will Buyer's divisions be reduced to a level less than the amounts specified in subparagraph (a) of this Paragraph 17.

(c) Nothing in this Agreement shall preclude Seller and Buyer from negotiating and mutually agreeing to different divisions than those specified in this Paragraph. Divisions of revenue shall be paid by Seller only where Seller is entitled to receive linehaul revenues for a shipment. Buyer shall not impose any surcharge or any additional or increased charges to shippers without Seller's written consent, which consent shall not be unreasonably withheld.

18. Buyer to Offer to Hire Seller's Qualified Employees.

Buyer shall consider for employment those of Seller's employees who want to work for Buyer on the terms and conditions of employment that are offered by Buyer, at Buyer's sole discretion. Buyer shall give priority hiring consideration to employees of Seller who work on the Rail Lines and are represented by the Brotherhood of Maintenance of Way Employees. Any such individual who Buyer in its sole discretion determines to be qualified for a job that Buyer

has available, shall be offered such job by Buyer on the terms and conditions that Buyer establishes, in Buyer's sole discretion. Buyer promptly shall notify Seller of the name of each of Seller's current employees who Buyer offers to hire, and also the name of each of these employees who Buyer actually hires. Buyer shall assume a neutral stance in any Brotherhood of Maintenance of Way Employees union organizing effort.

19. Transfer of Operations.

All rail operations on the Rail Line shall be transferred from Seller to Buyer at 12:01 a.m. on the day following the date of Closing. Upon reasonable advance notice provided by Buyer to Seller, prior to the Closing Seller will switch up to two of Buyer's locomotives from Buyer's affiliates in Slaton, Texas, and in Oklahoma, to the Rail Line, at no charge to Buyer. Following the date of Closing, Seller will perform (at no cost or charge to Buyer) up to two switch movements per year of Buyer's locomotives between the Rail Line and Slaton, Texas, for locomotive maintenance purposes.

20. Collection of Revenues.

(a) Seller shall submit freight bills or interline settlements for, and shall collect, all revenues due for movements over the Rail Line of all shipments moved over the Rail Line, on or before the date of Closing. Seller shall assess and collect all charges due for all switching services performed on the Rail Line on or before the date of Closing. Seller shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on the Rail Line on or before the date of Closing.

(b) Except as otherwise provided by freight transportation contracts, all shipments which move to, from or via the Rail Line that are interchanged between Buyer and Seller, after 12:01

a.m. on the day following the date of Closing, and which are made under rates and routes established by Seller as set forth in Paragraph 16 of this Agreement, shall be settled between Buyer and Seller on the basis of a modified junction settlement plan, with Seller paying division of revenue payments to Buyer on a weekly basis within five working days following the date on which Seller issues the revenue waybill for the movement. Seller shall submit freight bills for, and shall collect all revenues due for, shipments originating or terminating on the Rail Line that are interchanged between Buyer and Seller, including all prepaid shipments that originate on the Rail Line, and all collect shipments that terminate on the Rail Line, except for shipments where Seller does not receive line haul revenues. Seller has the right to grant, or refuse to grant, credit to any customer on the Rail Line concerning any shipments routed to, from or via the Rail Line that are interchanged between Buyer and Seller. Buyer shall assess and collect all charges due for all switching services performed on the Rail Line at and after 12:01 a.m. on the day following the date of Closing. Buyer shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on the Rail Line at and after 12:01 a.m. on the day following the date of Closing.

21. Transfer of Liabilities; Payment of Charges.

For the period before and including the day of Closing, Seller shall be responsible for: (a) all common carrier rail operations, including car supply, on the Rail Line; (b) any freight loss and damage claims attributable to rail operations over the Rail Line; and (c) all car hire and car mileage allowance payments relating to rail operations over the Rail Line. At and after 12:01 a.m. on the day following the date of Closing, Buyer shall be responsible for: (d) all common carrier rail operations, including car supply, on the Rail Line; (e) any freight loss and damage claims

attributable to rail operations over the Rail Line; and (f) all car hire and car mileage allowance payments relating to rail operations over the Rail Line.

22. Electronic Data Interchange.

Within 30 days following the date of Closing, Buyer must have the ability to send and receive electronically waybills, advanced consists, and bills of lading; as well as Train II reports and passing/placement reportings for performance purposes. Transaction reporting should be at industry standard levels or one level behind.

23. Assignment of Freight Transportation Contracts.

The parties agree that, notwithstanding any other provision of this Agreement, the only freight transportation contracts to be assigned by this agreement are: (a) freight transportation contracts that apply to traffic moving to or from facilities on or along the Rail Line; or (b) freight transportation contracts with or involving shippers or receivers that have facilities on or along the Rail Line, and which would apply to one or more shipments to or from a facility on or along the Rail Line. Seller agrees to send on the date of Closing to each shipper (or consignee), and each railroad, who is a party to any freight transportation contract involving any existing or potential freight traffic movement to or from any rail origin or destination on the Rail Line, a Notice of Assignment, advising those parties of the following: (a) the occurrence of this sale; (b) the fact that all rates and service (and in the case of other railroads, revenue divisions) terms in each contract will remain the same; and (c) the fact that Buyer will replace Seller as the party responsible for all rail service to be performed under the contracts for all movements over all or any part of the Rail Line. Buyer agrees that as between Buyer and Seller, Seller's actions in

accordance with the terms of this Paragraph will discharge in full Seller's responsibility to assign freight transportation contracts to Buyer.

24. Applicable Law.

This agreement shall be governed by and construed in accordance with the laws of the State of Texas.

25. Effect of Waiver.

Any waiver by either Buyer or Seller, or failure of either Buyer or Seller to insist upon full and complete performance by Seller or Buyer of its obligations set forth in this Agreement, shall not constitute a waiver or release of such party's right to insist upon full and complete performance of any other obligations in this Agreement, or a waiver or release of such party's right to insist upon full and complete performance of the obligations that were waived or not enforced for periods prior to, or following, the waiver or failure to insist upon full and complete performance. This Agreement shall be amended or modified only by written agreement signed by the parties hereto.

26. Notices.

All notices and other communications under this Agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, postage prepaid, or, if sent by a national overnight service, when received by the carrier service in a prepaid mailer, return receipt requested, addressed as follows:

Seller: Mr. Jerome M. Johnson
Assistant Vice President
Shortline/Interline Development
The Burlington Northern and Santa Fe Railway Company

2650 Lou Menk Drive
Fort Worth, Texas 76161

Buyer: Mr. Larry D. Wisener
President/Manager
South Plains Switching, Ltd. Company
P.O. Box 676
Slaton, Texas 79364

Either party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other party.

27. Confidentiality.

Except to the extent that the terms of this Agreement are required to be disclosed by the STB, by order of any court of competent jurisdiction or any governmental agency, or by parties involved in financing this purchase, each party to this Agreement shall not disclose the contents of this Agreement to any other party, without the prior written consent of the other party to this Agreement. Any party who learns of any of the terms of this Agreement shall be required by the party to this Agreement who is disclosing the information not to disclose those terms to any other party without the prior written consent of both parties to this Agreement.

28. Entire Agreement; Integration of Agreement.

This document, together with all Exhibits attached hereto, constitutes the entire agreement between Buyer and Seller relating to this transaction. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of Buyer or Seller. All rights and obligations of Buyer and Seller set forth in this Agreement, or in any Exhibit attached hereto, are integral parts of this Agreement. The consideration inducing Buyer and Seller to enter into this Agreement includes all of the commitments by Buyer to Seller, and

by Seller to Buyer, as set forth in this Agreement, including terms set forth in the Exhibits attached hereto.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this agreement as of the third day of May, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: Douglas J. Babb
Title: Senior Vice President
Merchandise Business Unit

SOUTH PLAINS SWITCHING, LTD., CO.

By: Larry Luker
Title: President/Manager

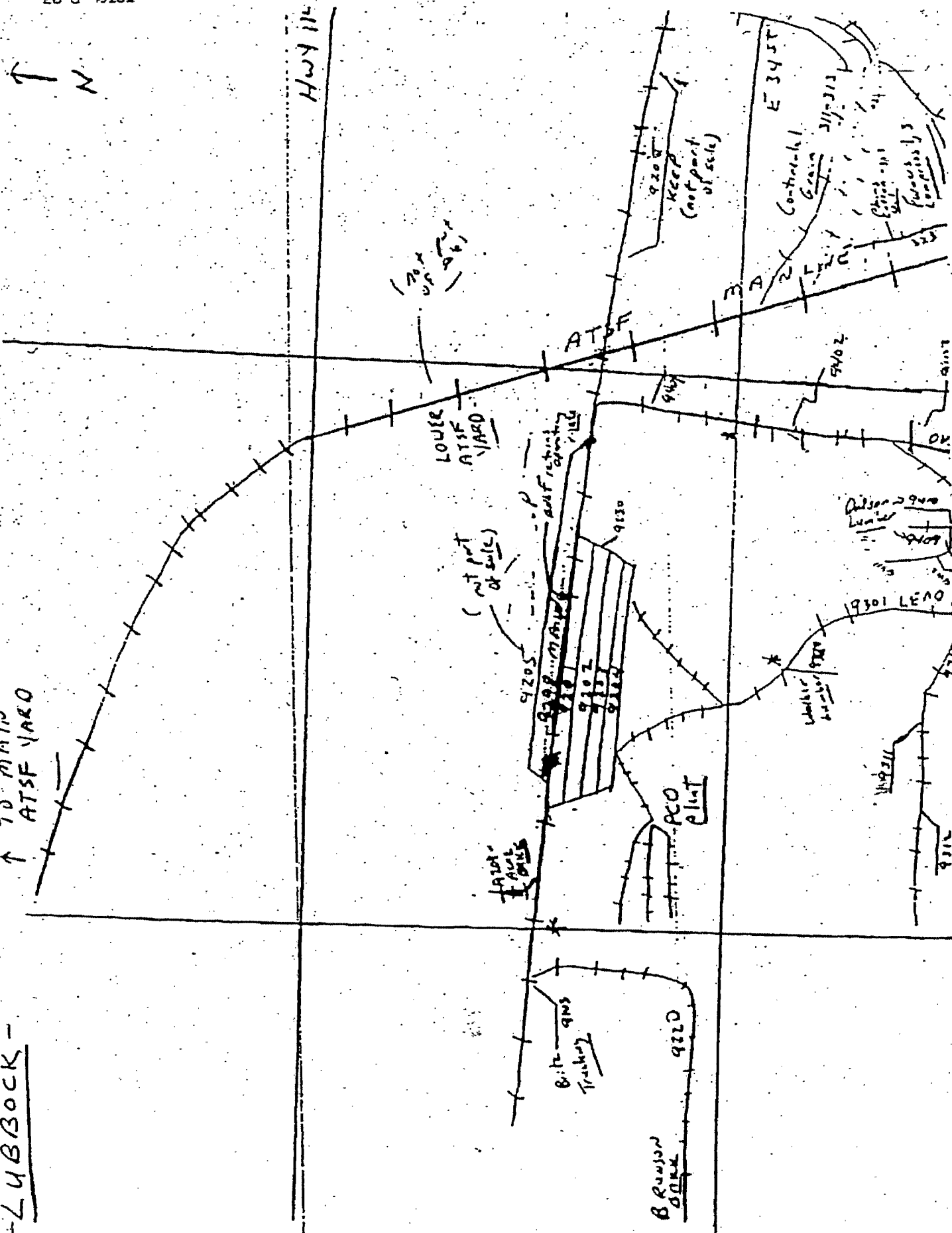
EXHIBIT A

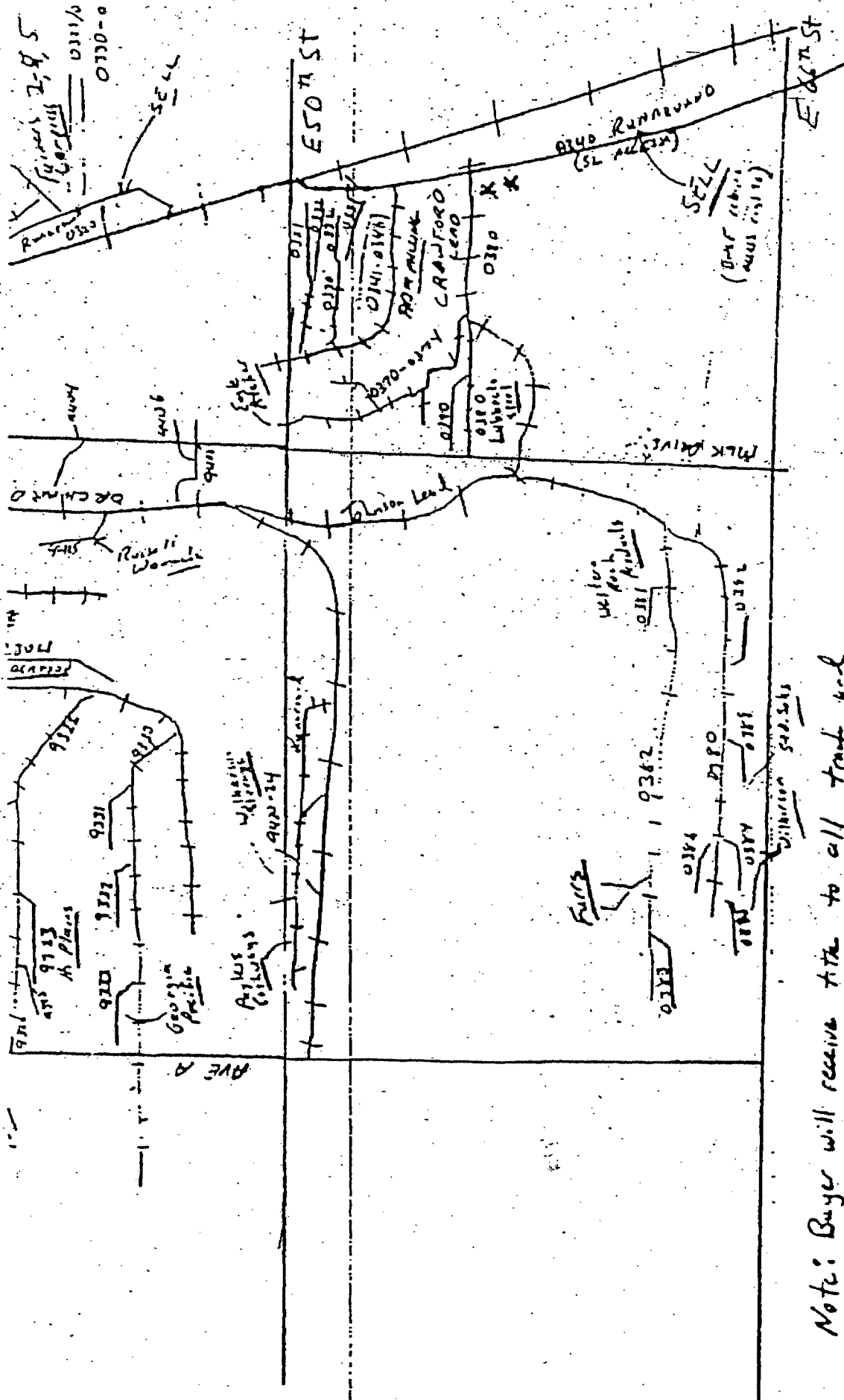
LIST OF TRACKS AND MAP/PRINT OF RAIL LINE

-LUBBOCK-

↑ TO MAIN
ATSF YARD

TOTAL P.03





Note: Buyer will receive title to all track and right-of-way properties as diagrammed in some cases, seller will convey an easement in the exception of tracks owned by shippers (industrial users). Seller will retain: ATSF Mainline, Track 9200 and Track 9205. Seller will also retain rights to operate over Tracks 9298 and 9340.

X = Signalized Cross

EXHIBIT B

QUITCLAIM DEED

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, Grantor, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, to it duly paid, the receipt whereof is hereby acknowledged, does by these presents REMISE, RELEASE and QUITCLAIM, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assignees, unto SOUTH PLAINS SWITCHING, LTD. COMPANY, Grantee, its successors and assignees, forever, all of its all the right, title and interest, if any, in and to a certain strip or parcel of land located in the County of Lubbock, Texas, as described in detail in Attachment 1, attached hereto.

SUBJECT, however, to all existing interests, including but not limited to all reservations, rights-of-way, easements and other encumbrances, of record or otherwise.

EXCEPTING AND RESERVING unto Grantor, its successors and assigns, all of the coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature, including sand and gravel underlying the surface of the premises herein conveyed, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage

structures on the surface of the premises herein conveyed, or unreasonably interfere with the use of such premises, together with the right of access at all times to exercise these rights.

ALSO RESERVING unto Grantor, its successors and assigns, any and all water rights, and the exclusive right to develop and take water by any means, and to all appropriations, priorities, permits and certificates which are appurtenant to, associated with, used upon, flowing over, under, or lying on, in or under the premises herein conveyed, and an exclusive, permanent easement to construct, install, operate, replace, rework, reconstruct, rehabilitate and maintain any and all water diversion, production and transportation structures, equipment, improvements and piping, and to construct, install, operate and maintain water pumps and hydroelectric generation equipment necessary, convenient or related to the production, transportation or delivery of water from, on, under or across the premises herein conveyed, together with the right of access at all times to exercise these rights.

ALSO RESERVING onto Grantor, its successors and assigns, an exclusive, permanent easement for construction, reconstruction, maintenance, use and/or operation of one or more pipelines or fiber optic communication lines, facilities and appurtenances in, under, across, along and through all or any portion of the premises herein conveyed, including the right for Grantor, its successors and assigns, or any of its licensees, to enter, disturb the surface, and occupy the premises herein to be conveyed for purposes of constructing, reconstructing, maintaining, using and/or operating one or more pipelines or fiber optics communication lines, facilities and appurtenances in, under, across, along and through all or any portion of the premises herein to be conveyed; provided however, that all activities in the exercise of these rights shall be performed in a manner which will not damage structures on the surface of the premises herein

conveyed, and that Grantor shall notify Grantee in advance of any such entry, and shall enter and occupy such premises in a manner which does not unreasonably interfere with Grantee's use of such premises.

TO HAVE AND TO HOLD the same unto Grantee, its successors and assignees, forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto, on the ____ day of _____, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

ATTEST:

By: _____
Assistant Secretary

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this ____ day of _____, 1999, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared Douglas J. Babb, Senior Vice President Merchandise Business Unit and an Assistant Secretary, respectively, of The Burlington Northern and Santa Fe Railway Company, the corporation that executed the foregoing instrument, and acknowledged the execution thereof to be the free and voluntary act and deed of such officer and the voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the foregoing instrument and that the seal affixed in the corporate seal of said corporation.

Witness my hand and official seal affixed the day and year first above written.

Notary Public

My commission expires: _____

Attachment 1

[property description]
to be supplied

MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY OF THE PROPERTY, OR THE CONFORMITY OF ANY OF THE PROPERTY TO ITS INTENDED USES. SELLER SHALL NOT BE LIABLE TO BUYER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WHICH IS RELATED IN ANY WAY TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF ANY OF THE PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE; OR THE CONFORMITY OF SUCH PROPERTY TO ITS INTENDED USES. SELLER CONVEYS TO BUYER, AND BUYER, BY ACCEPTANCE OF SELLER'S DELIVERY OF THIS BILL OF SALE, HEREBY ACCEPTS, ALL PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE IN "AS IS, WHERE IS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO SUCH PROPERTY.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed by its duly authorized representative on this _____ day of _____, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

EXHIBIT C

BILL OF SALE

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Seller"), for and in consideration of promises made by SOUTH PLAINS SWITCHING, LTD., COMPANY ("Buyer"), to purchase all of Seller's interest in the rail line segments identified in the Agreement for Sale of Certain Assets, Rights and Obligations of The Burlington Northern and Santa Fe Railway Company To South Plains Switching, Ltd. Company, dated as of May 3, 1999 (which property is hereinafter referenced as "Rail Line"), hereby sells, grants and conveys to Buyer, and Buyer's successors and assignees, all of Seller's rights, interest and title, to the following property constituting the Rail Line, subject to all limitations on Seller's rights, interest and title to the following property:

All rail, ties, spikes, tie plates, rail anchors, turnouts, bridges, culverts, signalling equipment, and other supporting structures, ballast, other track materials and supplies, and the metal depot at or near the Old BN Yard (excluding: (1) any and all vehicles, maintenance equipment on wheels, radios, and computer equipment; and (2) if a notice of interim trail use is filed and accepted as to the Rail Line or if trail use is implemented during the abandonment or discontinuance process, also excluding all bridges, culverts and bridge support structures) that on the date of this Bill of Sale are present on the real property comprising the Rail Line, whether on that date they are installed or uninstalled.

SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY OF THE PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE, ITS

EXHIBIT D

AGREEMENTS TO BE ASSIGNED IN PART
TO BUYER

[To be furnished]

APPENDIX IV

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.

-- FEEDER LINE APPLICATION --

LINES OF SOUTH PLAINS SWITCHING, LLC,

Finance Dkt. No. 34844

DECLARATION OF

MONTEY SNEED

I, Montey Sneed, make this Declaration, pursuant to 28 U.S.C. § 1746, in support of the Feeder Line Application filed by PYCO Industries, Inc., in F.D. 34844.

1. I am a private railroad consultant. I have spent all my professional life in the railroad industry. In the 1970's, I was yard foreman in Lubbock, Texas, for the Fort Worth and Denver Railroad, predecessor to BNSF Railway and South Plains Switching, in respect to the same yard tracks at issue in this proceeding. I began my railroad career in 1970 as a track laborer employed by the Ft. Worth & Denver Railroad. I was promoted to Section foreman three months later and worked this position (at Channing, Stamford and Lubbock, Texas) until 1976. At that time I accepted an offer to work in sales, marketing and real estate working for the

Burlington Northern Railroad (Wichita Falls, Texas). I worked at this position until 1979. At that time I went to work for the Atchison, Topeka and Santa Fe Railway Company (ATSF) as track supervisor located in Lubbock, Texas until 1980. I then transferred to the operating department and became a locomotive engineer. I worked all over the Old Slaton Division, living in the Lubbock, Texas. In 1987 I accepted a buyout from the ATSF and looked for business opportunities to acquire an operating railroad. Because of my knowledge of the different departments within the ATSF in 1989 I purchased a branch line (Lubbock to Crosbyton, Texas) from the ATSF and operated the line for two years, but due to the lack of business I had to abandon the line and became familiar with railroad liquidation. For the last 19 years I have undertaken various railroad consulting jobs including track inspection, rehabilitations, construction, operation, and valuations. As a result of my long experience and expertise, I am familiar with all aspects of railroad salvage, including the grading and pricing of rail, track and other track material.

2. Because I reside within easy driving distance of Lubbock and am familiar with the yard track at issue in this case, I was requested by representatives of PYCO Industries, Inc., to inspect the trackage for purposes of determining the condition of the trackage generally, and the maximum upper bound for the salvage value.

3. The trackage is readily viewable from public streets and intersections. I inspected it on March 6 - 9, 2006. I quickly determined that neither BNSF nor SAW had performed any systematic maintenance program with respect to the trackage since I worked on it as yard foreman in the 1970's. The track was in a worn out condition then, and it remains so today. SAW appears to repair the track only when a derailment occurs; a typical deferred-maintenance approach. Much of the trackage is unballasted, or has not been ballasted since before I was yard foreman, and quite literally is in the dirt. SAW has constructed three new tracks (one short) presumably to receive rock, located immediately south of Floyd Trucking Company's trackage and to the west of Martin Luther King Boulevard. When completed, that will be the only rehabilitated trackage on the system. SAW has removed switches and trackage at no less than three locations: (a) between Avenues A and D south of 30th Street (old station); (b) a lead between 46th and 47th Streets west of Locust Street; and (c) a lead serving one of Mark Weaver's warehouses between 58th and 56th Streets, just east of Elm Street.

4. It is my understanding that PYCO Industries is making its feeder line application in the alternative. Alternative One is for the entire line. Alternative Two is for a subset of SAW lines sufficient to provide service to PYCO, Attebury Grain, and Farmers Co-op Compress.

5. For purposes of my calculation of net liquidation value (NLV), I have made a number of assumptions: I have assumed that SAW owns the trackage free and clear of any encumbrances. According to the STB order at Finance Docket 33753 (Sub.no.1), SAW originally acquired approximately 74,384 feet of track. As I have indicated, SAW has already salvaged out some of the track at no less than three locations. Based on an aerial survey map which I obtained from the City of Lubbock, I calculate that the removed track encompassed at least 1500 feet of what SAW originally obtained. I have therefore assumed, favorably to SAW, that SAW has 73,000 feet of track remaining. SAW is constructing new track south of the Floyd Trucking Company track. I have assumed that SAW owns this track, encompassing 5920 track feet.

6. I have calculated net liquidation value (NLV) for the track, ties, and other track material (OTM) using the methodology customarily employed in Surface Transportation Board abandonment proceedings. This methodology is straightforward: one determines the value of the material in the ground, by calculating the delivered price to a point of sale, and backing out removal costs and salvage company profit. As applied here I took the following steps: First, I inspected the track to determine the quality of the materials. Second, I called various steel mills (e.g. Chicago Heights, SMI and WA Silver) to get a price for reroll/scrap delivered to the mill. For the relay material I called the various relay material vendors (e.g. Progress Rail, Atlanta Track & Turnout, Railroad Materials Salvage). Last I called the railroads and trucking companies for a freight rate to the steel mills or relay material vendors. The spread sheet attached reflects the highest prices quoted by the mills and the relay vendors, and the cheapest freight rates quoted (here, rail). The actual cost to take out the material and the 25% profit retained by the salvager are based on my experience from salvage projects.

7. The track itself is 85 pound and 90 pound rail. To give the benefit of the doubt to SAW, I have assumed that the track is all 90 pound rail. Rail generally comes in three grades: scrap, re-roll, and re-lay. Although all the track (save the track currently being constructed by SAW) is worn-out, I have assumed (in a fashion beneficial to SAW) that it will qualify as re-reroll (which generally commands a substantially higher price). Railroad ties similarly come in three grades: scrap, landscape, and re-lay. Scrap ties generally cost \$2 or greater to remove and lawfully to dispose. Landscape ties command a higher value: generally about \$4. Re-lay ties command a substantially higher value. Based on my inspection and a statistical sampling, I concluded that the vast majority of the ties in these lines (other than the newly constructed track) are scrap, with the number of landscape or re-lay ties being negligible. I concluded that the ties would likely result in a negative valuation, and giving the benefit of the doubt to SAW, have treated the ties as a wash (i.e., positive value of the low number of landscape and re-lay ties offsets the disposal cost for the scrap ties). The SAW lines west of the BNSF mainline encompass a host of paved public crossings. I calculated the area in question to be 15,000 square feet (30 crossings, 50 feet long and 10 feet wide). The cost to restore is \$15/square foot. I deducted crossing repair cost, which lawfully the railroad must bear, to determine NLV.

8. On the above described basis, I calculate the NLV for SAW's 73,000 feet of trackage, remaining from its original acquisition, to be \$206,393.08, and the NLV for the newly constructed SAW trackage (approximately 5,920 track feet) to be \$74,511.36. The total is \$ 276,352.02. A spreadsheet setting forth the details of the calculation is annexed to this Declaration as Appendix I.

9. For the NLV estimate for Alternative Two, it is first necessary to specify what trackage is required to serve PYCO, Attebury, and Compress. SAW's attorney, Mr. McFarland, indicated to West Texas and Lubbock that the following trackage was in use to provide service to PYCO, Attebury and Compress:

Track 5, SAW yard,	2400 feet
Track 1, SAW yard,	2100 feet
Track 9200,	3900 feet
Track 9298,	4320 feet

Track lead to PYCO plant 2 to 50th St.,	6280 feet
Track 231 lead to 9200/9298	960 feet
Track 310 through Farmers 1	5600 feet
TOTAL:	25560 feet

In addition , a portion of the lead (which I will refer to as track 6), the top of the "wye", and the western branch of the "wye" is necessary for safe switching to Pyco Plant #1.

Approximatley 1100 feet of track is involved.

Moreover, PYCO would need to cross some SAW trackage west of the BNSF mainline in order to reach PYCO Plant No. 1. The trackage needed for this purpose, which would be shared with SAW, according to Mr. McFarland, is as follows:

Track 9298 to and through SAW yard	5000 feet
--	-----------

10. Consistent with the assumptions already discussed, I have calculated the NLV for the 26660 feet of trackage described in paragraph 9 to be \$143,328.87. A spreadsheet detailing the calculation is set forth in Appendix II.

11. It is my understanding that PYCO intends to propose a reimbursement amount for use of the 5000 feet of Track 9298 which Mr. McFarland for SAW indicates is necessary to and through the SAW yard. I have calculated the NLV for that 5000 feet of track, under the assumptions already discussed, to be \$26,973.54. A spreadsheet detailing the calculation is set forth in Appendix III. Crossing the SAW yard using Track 9298 will also require the use of 10 switches. Based on my experience, the maintenance cost of a switch is \$120.00/year to clean out the points, gauge rods, oil and adjust.

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.

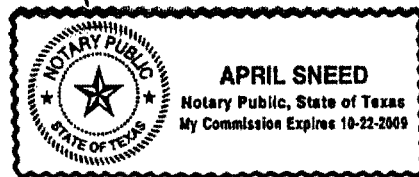
Executed on

3/23/06

[Signature]

Wilbarger County, Texas

April Sneed 3-23-06



□

Appendix I

Appendix I

Alternative # 1 (15.47 track miles)

Rail Relay	Mile Post	Mile Post	Distance	Net Ton	Price per Ton	Total
90	0.00	1.12	1.12	177.41	420.00	\$74,511.36
Relay OTM						
90	0.00	1.64	1.64	35.48	320.00	\$11,354.11
Reroll						
90	0.00	13.83	13.83	2190.67	285.00	\$624,341.52
Scrap OTM			14.95	438.13	220.00	\$96,389.57
Ties	0	0	0	0.00	per tie	\$0.00
Takeup Cost	-\$40.00	per ton		2841.70	tons	-\$113,667.84
Freight by train		-\$35.00	per ton	2841.70	tons	-\$99,459.36
Crossing removal & repair		-\$15.00	per sq. ft.	15,000	square ft.	-\$225,000.00
Salvagers Profit				-25.00%		-\$92,117.34
					NLV	\$276,352.02

Appendix II

Appendix II

Alternative #2 (5.05 track miles)

Rail Reroll	Mile Post	Mile Post	Distance	Net Ton	Price per Ton	Total
90	0.00	5.05	5.05	799.60	285.00	\$227,886.91
Scrap OTM						
90	0.00	5.05	4.84	159.92	220.00	\$35,182.54
Ties	0	0	0	0.00	per tie	\$0.00
Takeup Cost	-\$40.00	per ton		959.52	tons	-\$38,380.95
Freight by train		-\$35.00	per ton	959.52	tons	-\$33,583.33
Salvagers Profit				-25.00%		-\$47,776.29
					NLV	\$143,328.87

Appendix III

Rail Reroll	Mile Post	Mile Post	Distance	Net Ton	Price per Ton	Total
90	0.00	0.95	0.95	150.48	285.00	\$42,886.80
Scrap OTM						
90	0.00	0.95	0.95	30.10	220.00	\$6,621.12
Ties	0	0	0	0.00	per tie	\$0.00
Takeup Cost	-\$40.00	per ton		180.58	tons	-\$7,223.04
Freight by train		-\$35.00	per ton	180.58	tons	-\$6,320.16
Salvagers Profit				-25.00%		-\$8,991.18
					NLV	\$26,973.54

APPENDIX V

BEFORE THE SURFACE TRANSPORTATION BOARD

SOUTH PLAINS SWITCHING, LLC
-- ACQUISITION EXEMPTION --
BNSF RAILWAY COMPANY

Finance Dkt. No. 33753 (Sub-no. 1)

DECLARATION OF
O.E. FLOYD

I, O.E. Floyd, make this Declaration, pursuant to 28 U.S.C. § 1746, in support of the petition to revoke the acquisition exemption in F.D. 33753 (Sub-no.1) by which South Plains Switching LLC ("SAW") acquired certain lines of railroad in Lubbock from BNSF Railway.

1. I am general manager of Floyd Trucking Company, a family owned business, in Lubbock, Texas. My business address is 6201 Martin Luther King Blvd., Lubbock, TX 79404. Floyd Trucking Company has been in business for over forty years as a sand and gravel hauler, with up to 75 trucks at a time. My family is also part owner of Wes-Tex Manufacturing Company, which constructs "belly dumpers" and other special applications for trucks. Although Wes-Tex has some interest in rail service, I will focus my Declaration on the interests of Floyd Trucking Company.

2. Despite repeated efforts by Floyd Trucking Company, we have been unable to obtain rail service on reasonable terms from SAW. This problem dates from the inception of SAW's acquisition of its trackage in Lubbock pursuant to South Plains Switching

LLC -- Acquisition Exemption -- BNSF Railway, F.D. 33753 (Sub-no. 1), served July 15, 1999. As a result of SAW's failure to provide rail service on reasonable terms, Floyd Trucking Company has repeatedly lost business opportunities and sustained losses. As a result of our experience, Floyd Trucking Company believes that shippers and potential shippers will be able to obtain reasonably efficient, reliable, and non-discriminatory service only if SAW is replaced as the provider of rail services in Lubbock. To this end, regulation by this Board is needed. Floyd Trucking therefore supports either the revocation of the exemption under which SAW acquired its Lubbock trackage, or other appropriate relief to ensure management of the lines consistent with discharge of common carrier obligations.

3. Floyd Trucking purchased property located at 6201 Martin Luther King Blvd in Lubbock, Texas, in 1999. The location is depicted on the map attached. Appendix 1. The property has a railroad spur track (switch #0390), approximately 2500 feet long, which parallels on the north side a line of track owned by SAW. Another switch off that spur track branches to the north and then west for about 400 or 500 feet. Prior to my company's purchase of the property at 6201 Martin Luther King Blvd., the spur had been used to load scrap metals and to unload rock. When we acquired the property, I met with representatives of BNSF Railway and Hanson Aggregates for the purpose of making arrangements to upgrade the spur by installing sufficient track to place 100 cars on location to be unloaded. At the time I met

with BNSF, BNSF still owned the switching tracks now owned and operated by SAW. In particular, Floyd Trucking planned to extend our 2500 foot spur to the west and to install a switch into the existing line. This would create a loop facilitating movement of cars onto and off of our property. Although BNSF had been supportive of the plan, BNSF sold its interests to SAW. Our plan was unable to move forward because Mr. Larry Wisener, manager of SAW, told me that our switch was out of service. Two potential customers, DePauw Fly Ash and Capitol Aggregates, supplied me with letters dated September 19 and September 23, 2002, respectively, noting that problems in relation to the spur made them unwilling to do business with my company. Capitol Aggregates indicated that SAW said it would not service Floyd Trucking's spur; DePauw stated it was "extremely wary" and questioned reliability of service. Copies of these letters are attached in Appendix 2. This defeated one of the purposes for which we acquired our property.

4. I telephoned Ms. Nancy Beiter at the Surface Transportation Board, asking her if the track served by switch 0390 was out of service. After checking, Ms. Beiter said that it was not, and further that Mr. Wisener could not deny service. I then telephoned Mr. Wisener stating that STB informed me that the spur was in service and that SAW was required to serve it. Mr. Wisener said that he now owned the switching railroad tracks and that he would never provide service to Floyd Trucking Company's spur.

5. I continued my efforts to obtain service from SAW. Mr. Wisener claimed that the switch was defective and needed repair. Eldon Martin, of Martin Construction, engages in track construction and repair in the Lubbock area. Mr. Martin had performed work on the tracks at the Floyd Trucking facility before its purchase by us. We arranged for Martin Construction to rehabilitate the tracks. Mr. Martin inspected the switch and found no problem. Appendix 3. On September 25, 2002, I had Mr. Rickey Phillips, Motor Track Inspector for BNSF, inspect the switch. Mr. Phillips concluded that the switch and track "qualifies as class one." He "found no defect to render this track out of service." His handwritten report dated 9/25/02 is attached as Appendix 4. We ordered a car of 1" concrete rock from Vulcan Materials, but were denied service. Instead, Mr. Wisener states that he would provide service on trackage approximately two miles away. Appendix 5. By letter dated November 19, 2002, we complained to the Office of Compliance and Enforcement of the Surface Transportation Board, noting that Mr. Wisener was threatening to remove the switch. We also noted that at least three other potential shippers appeared to be experiencing similar problems with SAW but "wish to remain nameless, for fear of reprisal." Appendix 6.

6. At approximately the same time Floyd Trucking complained to OCE, SAW removed the switch. This action can only be explained as an action of retaliation and reprisal.

7. The Director of STB's OCE (Mr. Clemens) on November 25,

2003, wrote Mr. Wisener that SAW was obligated to provide service pursuant to 49 U.S.C. 11101(a), attaching a copy of the BNSF inspection report concerning the switch. Appendix 7. By letter of January 17, 2003, Mr. Clemens complained to Mr. Wisener that Mr. Wisener had not responded. Appendix 8.

8. By letter dated January 15, 2003, copied to Mr. Clemens, Mr. Wisener informed me that it would cost \$30,000 to replace the switch, requesting Floyd Trucking to pay \$25,000 of that amount. The letter also expressed a series of other concerns, conditions, and limitations on SAW's willingness to provide rail service to our spur. Appendix 9. Mr. Clemens responded with a letter dated February 20, 2003, indicating that SAW was not acting in accordance with its common carrier obligations. Appendix 10. Mr. Wisener then retained Mr. McFarland to represent him. Mr. McFarland apparently dissuaded OCE from initiating a complain proceeding. Mr. McFarland wrote me asking, as I understood him, whether our volume of business would justify restoring the switch, but ultimately, evidently under pressure from OCE (letter, OCE to McFarland, dated March 7, 2003), in a letter dated March 13, 2003, appeared to agree that SAW must restore the switch at SAW's expense, and provide rail service to Floyd, "both upon Floyd's reasonable request." Mr. McFarland indicated that a "reasonable request" is specific as to volume, commodity and time of shipment. Appendix 11 (various letters).

9. SAW continued to fail to restore the switch. On

February 25, 2004, I faxed to Mr. Clemens at STB OCE a commitment from D&J Materials to a job that required use of Floyd Trucking's rail spur. Appendix 12. I believe that Mr. Clemens suggested I request service in writing. I then informed SAW by certified mail (delivered 3/8/04 to Mr. McFarland and to SAW) that Floyd Trucking intended to ship 75,000 to 100,000 tons per year of lightweight aggregate, 60 to 80 carloads a month. Appendix 13. By letter dated March 10, 2004, Mr. Wisener stated that he was forwarding a copy of an industry track agreement that previously existed between BNSF and Lubbock Iron & Metal with respect to what is now Floyd Trucking trackage. Mr. Wisener indicated he was preparing a contract between SAW and Floyd Trucking that would contain many of those provisions. However, Mr. Wisener's letter did not contain the BNSF industry track agreement. Appendix 14. On March 19, I requested that agreement and also informed Mr. Wisener that we expected to need service by April 15, 2004. Appendix 15.

10. I then received a letter dated March 22, 2004, from Mr. Wisener, but that letter did not include the BNSF contract. Instead it contained a draft contract made out for Floyd Trucking to sign with SAW. The contract was deficient in numerous particulars. For example, Article I, paragraph 3 required us to "pay the entire cost (or an equitable share thereof) in case other industries shall be serviced by the INdustry Track or a part thereof." This requirement is virtually unintelligible. In any event, since Floyd Trucking

owned and was obligated to repair its own track, we obviously would not obligate ourselves to pay SAW if SAW used the track for other industries. Article I, paragraph 4 spoke of operating a Plant during the term hereof. No term was specified in Article I, and we were not operating a Plant; we sought to provide an unloading facility for aggregates. SAW's true intent is clarified by Article III. In that Article, SAW states that the term is two years, and thereafter can be terminated by either party on three months notice. If terminated, SAW provided that it could acquire and remove Floyd Trucking Company's track upon payment of salvage value. In other words, after two years, SAW would have the right to remove our track upon payment of salvage value. This was wholly unacceptable when dealing with a switching railroad that had indicated it did not wish to provide us any service at all. The unfairness was further compounded by the fact that SAW provided it could terminate the agreement sooner if the nonexistent "Plant" did not operate six out of twelve months. Article II, paragraph 2. This seems wholly arbitrary for possibly seasonable demand, and also given SAW's hostility to our spur generally. A copy of this proposed agreement is attached as Appendix 16.

11. Because the track agreement tendered by SAW was inconsistent with honoring SAW's common carrier obligations, Floyd Trucking declined to sign the agreement. Mr. Wisener is well-known for refusing to negotiate and for using what is commonly called coarse language in dealing with parties who do

not capitulate to his will; his attitude is that what he tenders is non-negotiable, take it or leave it.

12. On April 6, 2004, Mr. McFarland advised STB OCE that the switch was finally restored and that prior to that date SAW's "standard contract for Industry Track" was furnished to Floyd Trucking. Mr. McFarland evidently construed that unacceptable draft agreement SAW prepared for use with Floyd Trucking as SAW's "standard contract." At this point, I through in the towel, figuring that it would be impossible, as Mr. Wisener has indicated, to obtain service from SAW. On June 3, 2004, Mr. McFarland wrote STB OCE that SAW had spent \$15,000 to restore the switch, but that Floyd Trucking had not signed the industry track agreement, made a single rail shipment, nor contacted SAW. Copies of these letters are attached as Appendix 17.

13. SAW's passive aggressive business style makes it impossible for potential shippers to rely upon it to provide common carrier rail services. Our impression is that customers and potential customers of SAW are afraid to criticize SAW because of SAW's track record of retaliating against them, as it did to us. Floyd Trucking continues to wish to market its site as served by rail. Unfortunately, SAW is unwilling to provide any rail service on reasonable request. This has cost us numerous business opportunities, and results in unnecessary costs and inefficiencies in the transportation system. The public convenience and necessity are undermined by SAW's

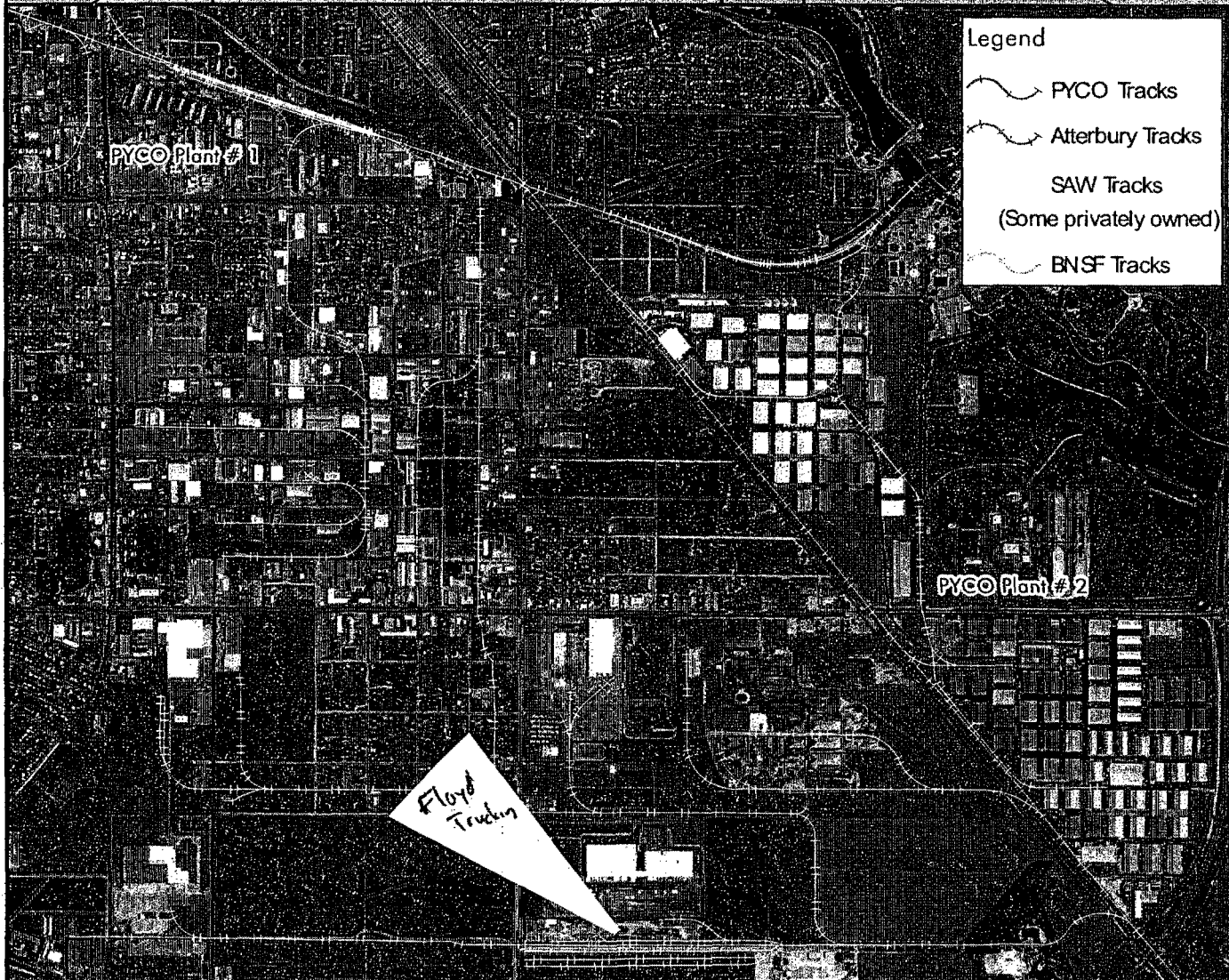
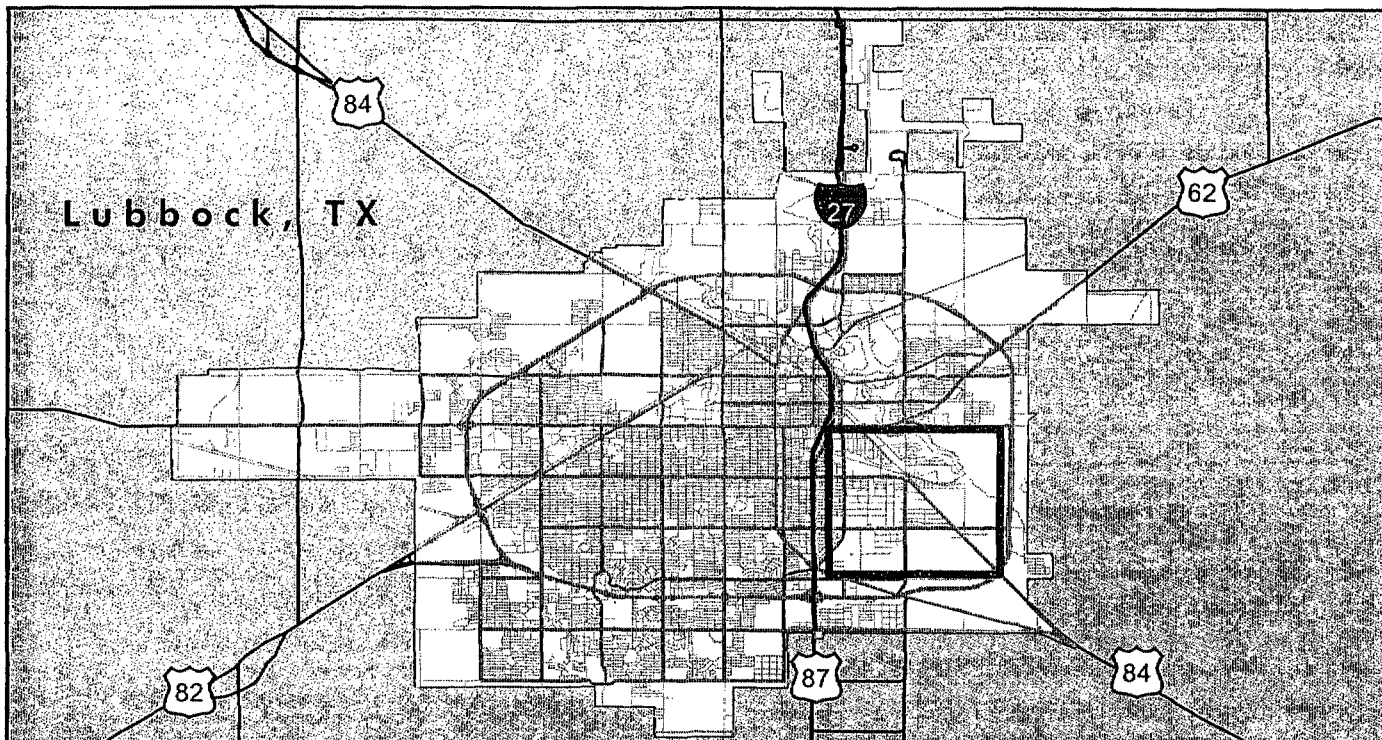
conduct. The Surface Transportation Board should either revoke the notice of exemption under which SAW's acquisition was authorized, or take other appropriate action to assure that the rail lines are placed under responsible management which understands and is ready, willing and able to discharge common carrier obligations in respect to the lines.

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 3-15-06.

D. E. F. Hays

Appendix 1



Appendix 2

DePAUW
FLY ASH
AMARILLO • PHOENIX

P.O. Box 3039

Amarillo, Texas 79116-3039

806/383-7511

Fax 806/381-8169

September 19, 2002

Floyd Trucking Inc
P O Box 3456
Lubbock Tx 79452

Dear Mr. Floyd,

I spoke with you during July, 2002 regarding the availability and use of the rail spur at your Lubbock, Texas yard. The facility itself would have been a very good location for DePauw. However I was extremely wary of the circumstances surrounding that Spur. I was not confident that we could rely on and maintain the type of consistency at that spur that we need. That lack of confidence forced DePauw to move to another spur in Lubbock and set up operations.

We installed scales and two large storage guppies and have moved approximately 200 tons a week through this facility since July 23rd. We estimate 12,000 to 15,000 tons through our Lubbock spur per year. I regret that DePauw felt compelled to use this alternate spur, but under the circumstances we made the only logical choice available to us.

Sincerely,



Doug Beasley

DB/lr

This was another potential customer that declined usage of our rail spur due to the refusal of rail service from South Plains Switching (Larry Wisener, Owner)

With regards,

Floyd Trucking, Inc



CAPITOL AGGREGATES, LTD.
TRANS-PECOS MATERIALS DIV.
P.O. BOX 60408 ATS, MIDLAND, TEXAS 79711, (915) 570-8588
LTD.

Monday, September 23, 2002

O.E. Floyd
Lubbock, Texas

Dear Sir:

Mr. Floyd, my name is Eddie Hickman. I represent Capitol Aggregates. Capitol is a
Aggregate supplier for Highway Construction. We are located near Pecos, Texas.

Capitol was interested in the Lubbock market. However, **South Plains Switching** told us

That switch # 0390 was not in service, that your track could not be serviced until you

Complied to regulation violations. Mr. Floyd when you get this matter resolved, please let us

Know, we are very interested in your location for the Lubbock Area.

Sincerely,

Eddie Hickman

Operations Manager

Appendix 3

MARTIN CONSTRUCTION

9325 West 19th
Lubbock, Texas 79407
806/784-0846

April 02, 2003

To Whom It May Concern:

RE: Floyd Trucking - Lubbock, Texas

Martin Construction has worked on the tracks at Floyd Trucking facility on Martin Luther King Blvd. in Lubbock numerous times in the past. The first time was in June, 1998 when Vulcan had the facility and was unloading rock from gondolas. The track had relay ties installed where needed and regauged, raised, lined and tamped, with walkways provided for trainmen.

Vulcan later moved to a track near the cemetery, and Martin Construction also repaired those tracks. The relocation of Vulcan to this location was due to the facility at M.L.K Blvd. being listed for sale. Mr. O.E. Floyd purchased the property and began to clean up the facility and contacted Martin Construction to inspect and rehab the tracks.

Martin Construction began the rehab of tracks September 24, 2001 through September 30, 2001. Later, Mr. Floyd contacted Martin Construction and said Mr. Larry Wisener refused to provide service, no matter what he did to his tracks. Mr. Floyd then instructed Martin Construction to delay completion on tracks until he resolved the matter with Mr. Wisener.

Mr. Floyd contacted the proper authorities when he had no recourse left, and acted on their recommendation. At some point in time, Mr. Wisener stated the switch on his track was not operable. Afterward, Mr. Floyd contacted Martin Construction and requested us to look at the switch. I, Eldon Martin, owner, inspected the switch and found it to be well within F.R.A. regulation, as stipulated in U.S. Department of Transportation Track Safety Standards. I suggested Mr. Floyd get a neutral party to inspect the switch so there would be no question of conflict of interest, since Martin Construction was contracted to do the work for Mr. Floyd.

Mr. Floyd knew of a Union Pacific track inspector from out of town, and I told him I knew of a local track inspector that was familiar with the track because it used to be in his territory. I then contacted Ricky Phillips and he said he was on vacation and would not mind taking a look at the tracks and the switch in question at this time (September 25, 2002). Mr. Phillips inspected the switch and concurred that it was within the Track Safety Standards published by U.S. Department of Transportation. Photos were taken to show these facts and sent to the proper authorities.

After the proper authorities contacted Mr. Wisener and confronted him on the switch, he removed the switch without notifying anyone. This is the best of my recollection as to the occurrences and as to date, March 18, 2003. Mr. Floyd still has no service and no switch to get service.

Sincerely,



Eldon Martin, Martin Construction

MARTIN RAILROAD CONSTRUCTION ELDON & GWEN MARTIN

MARTIN RAILROAD CONSTRUCTION
9325 WEST 19TH
LUBBOCK TEXAS 79407

Phone 806/784-0846
Fax 806/784-0868

BUSINESS HISTORY

Eldon and Gwen Martin founded Triple T Railroad Construction in 1974 with two partners. We bought the two partners out in 1984 and formed Martin Construction. Martin Construction is owned and operated as a family business. Eldon and Gwen Martin are the primary owners with their three children Chuck, Kirk and Lori Martin as secondary owners.

QUALIFICATIONS

29 years of Railroad Construction Experience for Owner
All MOW Employees are Certified in Code of Operating Rules and Worker Protection Act.
Qualified by Federal Railroad Administration
Fully Insured and Bondable.
Qualified Supervisory Personnel.
In excess of 100 years combined total years Railroad Construction Experience for key personnel.

WORK HISTORY

Eldon Martin

1973-1984

Worked for Burlington Northern Railroad. Foreman in Amarillo yards in 1974. Foreman in charge of laying first ribbon rail in Texas for BN from Amarillo, Tx North from 1975 to 1976 and then from Texline, Tx South from 1976 to 1977. Rebuilt all of Texline yards in 1976. Foreman of tie gangs from 1977 to 1979. Rehabbed Plainview, Tx. yards and main track from Plainview, Tx. to Dimmitt, Tx. from 1980 to 1981. From 1982 to 1984, as Foreman assisted in rehab of track from Estelinc, Tx to Plainview, Tx.. *Eldon has numerous years experience with derailments and building new track and because of his expertise was called out to coordinate the rebuilding of track after a derailment had occurred.*

Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Ballast Regulator, Tamper, Fork-lift, Tie Crane, Speedswing, Spike Driver, Tie Insertter, Motor Grader, Dozer, Hi-Rail, Orgo-Thermit Welds
Roadway Worker Protection Rules Certified - EIC Qualified

FRA Qualified

Current Drivers License - TX 04691313

1984-Present

Gwen Martin

Co-Primary Owner of Martin Construction. Set up and organized business & bookkeeping systems. Actively work as estimator, scope of work planner, on site supervision, operate track equipment.

Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Tamper, Fork-lift, Tie Crane, Spike Driver, Tie Insertter, Hi-Rail.

Roadway Worker Protection Rules Certified - EIC Qualified

FRA Qualified

Current Drivers License - TX 05293323

- Chuck Martin**
 1984-1998 While attending High School and College, I worked for our family business. I assisted in building track, switches, crossings, surfacing track, installing ties, dirtwork and office work.
- 1998 Project Coordinator for Raymond Construction in Dallas, Tx. As Project Coordinator for the Dallas/Ft. Worth and Austin areas, I worked with Architects, Engineers and Subcontractors for six projects worth \$10 million dollars. I also wrote the contracts to the subcontractors, did change orders, as built and schedules.
- 1999-Present Project Supervisor/Owner for Martin Construction. I coordinate with Owners and Engineers for the jobs being done. I do job estimates and job scheduling for our company.

Martin Construction

1984-Present In 1984 we completely rehabbed 17 miles of track and 23 switches for Cargill Inc. in Plainview, Tx. We have built new track and rehabbed existing track for Cargill, ADM and other large companies over the years. We did a 5 year RR budget plan for the V.L.A. (Very Large Array - Radio Telescope) in Socorro, NM. We have installed numerous State Highway RR Crossings in the Lubbock area. While doing these crossings, we have developed a good working relationship with Texas Department of Transportation, City of Lubbock, County of Lubbock and West Texas & Lubbock Railroad. We also have either built or rehabbed numerous spur tracks off of Union Pacific, Southern Pacific and Burlington Northern Santa Fe Railroad Companies and have an excellent rapport with the officials of the serving railroads. We have successfully performed Maintenance Contracts with Seagraves Whiteface & Lubbock Railroad and with RailAmerica subsidiaries West Texas & Lubbock Railroad and Texas New Mexico Railroad. We surfaced approximately 60 miles of track and installed thousands of ties in approximately 65 miles of track for West Texas & Lubbock Railroad. We have installed over 8000 ties for Gulf Colorado San Saba RR and 27 track panels. (Please see attached for list of other clients.) We are on the approved contractors' list for Burlington Northern-Santa Fe and Union Pacific Railroads.

EDUCATION & QUALIFICATIONS

- Given Martin**
 1981-1983 Associate of Science in Business, Clarendon College
- Chuck Martin**
 1992-1995 Associate of Science, South Plains College
 1995-1998 Bachelor of Science in Engineering Technology, Texas Tech University
- The CTEC program specializes in Construction Management, Scheduling, Economic Analysis, Surveying, Estimating and Soil Analysis.
 Student Member of AGC, Association of General Contractors
 Student Member of CSI, Construction Specifications Institute
Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Ballast Regulator, Tamper, Fork-lift, Tie Crane, Speedswing, Spike Driver, Tie Inserter, Motor Grader, Dozer, Hi-Rail, Orgo-Thermit Welds.
EMT-B Expires 08/31/2005
Roadway Worker Protection Rules Certified - EIC Qualified
FRA Qualified
OSHA Certified
Commercial Drivers License Current TX CDL 12583941

OTHER KEY EMPLOYEES WORK HISTORY***Melvin Justus - Estimator & Sales for Martin Construction***

Adjusting and Estimating - Oklahoma State University

Supervisor & Foreman - Burlington Northern Railroad

Helped build north Ft. Worth yards in early 70's

Rip Track Foreman & Estimating - Rock Island Railroad, El Reno, OK

Car repair and derailments

Estimator - Cochran-Stewart, Oklahoma City, OK (private company)

I worked for this company for several years estimating and sales. I completed jobs from a few dollars to 6.3 million for the U.S. government.

Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Ballast Regulator, Tamper, Fork-lift, Tie Crane, Speedswing, Spike Driver, Tie Inserter, Hi-Rail**Roadway Worker Protection Rules Certified****FRA Qualified****Drivers License Current TX 10018963*****Leslie Taylor - Supervisor Martin Construction***

Supervise production tie gangs & surface track - Martin Construction

Built new track & installed switches - Martin Construction & Hulcher Services

Built up Switch Points, Frogs, Scale Rails, Repaired unloading pits, Worked derailments,

Rehab track, Built roadbed, Installed hwy/rr crossings - WTL, TNMR, GCSR & Industries

Section Foreman - Martin Construction on TNMR, WTL

Railroad Qualifications: EIC, Supervisor, Track Inspection, Operate following: Backhoe, Loader, Ballast Regulator, Tamper, Fork-lift, Tie Crane, Speedswing, Spike Driver, Tie Inserter, Motor Grader, Dwyer, Hi-Rail.

Certified Welder - Orgo-Therm welds, Switch Repair, Fabrication RR Crossing Panels

Roadway Worker Protection Rules Certified**FRA Qualified****Commercial Drivers License Current TX CDL 18862927*****Sam Garcia*** - 1968 to 2000 worked for Santa Fe Railroad. From 1968 to 1973 worked as trackman and machine operator. From 1973 to 2000 worked as foreman and track supervisor. Railroad Certifications: EIC, Loader, Backhoe, Autospiker, Inserter-Extractor, Ballast Regulator, Tamper, Speed Swing, Tie Crane, and various other on-track equipment.**Roadway Worker Protection Rules Certified****FRA Qualified****Current Drivers License TX 05091650*****Margarito Banda*** - Railroad Certifications: EIC, Loader, Backhoe, Autospiker, Inserter-Extractor, Ballast Regulator, Jackson 2300 Tamper, Hi-Rail Pick-up.**Roadway Worker Protection Rules Certified****FRA Qualified****Current Drivers License TX 06641798**

Esequil Talamntez, Jr.-Railroad Certifications: EIC, Engineer, Conductor, S.I.E., Loader,
 Backhoe, Autospiker, Tie Insert-Extractor
 Roadway Worker Protection Rules Certified
 FRA Qualified
 Current Drivers License - TX 14161260

Appendix 4



RICKY PHILLIPS
Motor Track Inspector
Lubbock, Texas

Burlington Northern Santa Fe

P.O. Box 2469
Lubbock, Texas 79408
806-765-3955
806-745-1395 Home
888-858-7243 Pin 114948
806-786-0893 Cellular

9/25/02

To whom it may concern

I inspected switch 0390 9/25/02

And found that this switch and track
qualifies under 213.53 class 1

under 213.63 class 1 qualifies
no Defects under 213.133

qualifies under 213.143 class 1

qualifies under 213.135 class 2

qualifies under 213.109 class 1

This switch and Track qualifies as class
one and found no defect to render this
track out of service

Ricky Phillips employee # 646566
Track supervisor BNSF Ry Co.

Track Safety Standards Part 213

Subpart A to F class 1-5

~~Print Date~~ June 9 2001 All Revision index
Print Date Feb 1 2002

Appendix 5

SOUTHWEST DIVISION
VULCAN CONSTRUCTION MATERIALS LP
BROWNWOOD PLANT
P.O. BOX 791550
SAN ANTONIO, TX 78279-1550

May 90 PO
No. **BR 96002**

LBS. GROSS

10-39-02 08:01 PM
240800 1b GR

LBS. TARE

TONS

29.70

LBS. NET

CUSTOMER COPY

P/M

☐ 1/4"

☐ C

☐ CC

☐ B

☐ BB

☐ AA

☐ AA Mod

☐ Black Base

P/C - C/S:

1

2

3

4

5

6

Ballast

Flexible Base

Other

1"

ORDER NUMBER

61400*1b TA

MATERIAL CODE

199400 1b NT

CUSTOMER NUMBER

FREIGHT CODE

WEIGHED BY

LS.

BUYER

Floyd

DESTINATION

Cubber

The description and weight indicated
on this bill of lading are correct.

Subject to verification by the

WESTERN WEIGHING & INSP. BUREAU

According to Agreement.

1059

VULCAN MATERIALS COMPANY
BROWNWOOD PLANT
SWITCH LIST

DATE 9-12-02

[illegible]

THIS SHIPPING ORDER must be legibly filled in, in Ink, in Indefinite Pencil, or in Carbon, and retained by the Agent.

CONTROL NO.

025445

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order,

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood through this contract as meaning any person or corporation in possession of the property under the contract agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Freight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment. Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

OUR B/L NUMBER

7059

CARRIER **ATSF** FROM **Vulcan Materials Company** PLANT **BROWNWOOD STN**

AT **BROWNWOOD** DATE **09/13/2002** CUSTOMER ORDER NO. **750450**

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

CONSIGNEE TO

TRACK #0390
LUBBOCK, TEXAS

DESTINATION

TYPE CAR **CONDOLAS** ROUTE **ATSF** DELIVERING CARRIER **ATSF**

CAR INITIALS AND NUMBER **KMX 9070** GROSS WEIGHT **2608** TARE **614** NET WEIGHT **1994** CODE **057** SIZE & DESCRIPTION **1" CONC AGG.** RATE **9.00** CHECK COL

NET TONS **99.70**

Rec'd \$
to apply in prepayment of the charges on the property described herein.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

\$
"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission."

"If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is 'carrier's or shipper's weight.'"

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

This shipment is correctly described. Correct weight is: **Lbs.** LOADED TO FULL VISIBLE CAPACITY **\$8.00, Per Net Ton**

VULCAN MATERIALS CO., Shipper, Per *Ken Musick* Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

Permanent post-office address of shipper, **BIRMINGHAM, ALABAMA**

AGENT'S COPY

See Product Warning on Reverse Side

FORM 60-661-ACI
REV. 4-90

Appendix 6

FLOYD TRUCKING, INC.

CERTIFIED DBE & HUB CONTRACTOR

P.O. BOX 50

BROWNFIELD, TEXAS 79316

PH. 806-745-2729

November 19, 2002

Surface Transportation Board Office
Compliance and Enforcement
Suite 780 1925 K Street North West
D.C. 20423-0001

Attention: Mel Clemens

Dear Mr. Clemens:

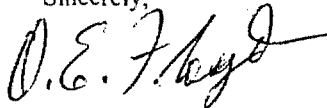
I am O. E. Floyd, and I bought some property in Lubbock, Texas, (6201 Martin Luther King Blvd) in 1999. The property has a railroad spur (Switch # 0390), used to load scrap metal originally and later for a site to unload rock. When we bought this property I met with Hanson Aggregates' representatives, Ronnie Finley and Neal Young and Burlington Northern Santa Fe representative, Wesley E. Mailhos here on location. At that time we were prepared to install enough track to place 100 cars on location to be unloaded. I called Larry Wisener, South Plains Switching, about service. He told me the track was out of service. I was advised to call Surface Transportations board in Washington, D.C. I called December 6, 2001 and talked with Nancy Beiter, telling her about the problem. Ms. Beiter asked for the switch number (0390). She then looked the information up on the computer and told me the track was never out of service and Mr. Wisener could not deny service. I then called Mr. Wisener again advising him the track was never out of service and he told me it didn't make any difference that he owned the short line and he would never give service to this spur.

We have been trying to obtain service from South Plains Switching (Larry Wisener, owner) since 1999. Mr. Wisener has stated the switch is defective and needs to be repaired. He also stated he is considering removing the switch completely.

Mr. Rickey Phillips, Motor Tract Inspector with BNSF did an inspection on 09/25/02 (Ref. his letter) and found no defects. We are enclosing photos and statement of inspection from Mr. Phillips. Also, enclosed are documents pertaining to potential customers that declined usage of our rail spur due to the refusal of rail service from South Plains Switching. We were denied service on one railcar of 1" concrete rock from Vulcan Materials consigned to switch # 0390.

There are three (3) more potential customers, who, at this time, wish to remain nameless, for fear of reprisal. Trusting you to assist us in solving this situation as soon as possible.

Sincerely,



O. E. Floyd
Floyd Trucking, Inc.

Appendix 7



Surface Transportation Board
Washington, D.C. 20423-0001

November 25, 2002

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780
Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Larry Wisener, President
South Plains Lamesa Railroad Ltd.
P. O. Box 676
Slaton, TX 79364-0676

Dear Mr. Wisener:

The purpose of this letter is to advise you of a complaint received by this office from Mr. O. E. Floyd, Floyd Trucking, Inc., (copy enclosed). The complaint outlines the South Plains Lamesa Railroad's (SLAL) refusal to serve Mr. Floyd's facility located in Lubbock, Texas. Further, Mr. Floyd states that they have been attempting to obtain service from the SLAL since 1999 and have been told by you that you did not intend to provide service to this facility. Apparently because of your service refusal and your contention that the track servicing Mr. Floyd's facility is out of service due to a defective switch, Mr. Floyd sought assistance from the Burlington Northern Santa Fe Railway (BNSF). Enclosed is a copy of an inspection report from a BNSF supervisory track inspector indicating that no defects were found as of the date of the report, Sept. 25, 2002.

It is my responsibility, as the Board's chief enforcement official, to advise you that, pursuant to 49 U.S.C. 11101(a), your obligation as a common carrier by railroad requires you to provide transportation or service on reasonable request. Failure to do so constitutes a failure of your obligation and an interruption of interstate commerce. With this in mind, I am requesting that you immediately commence performance of your common carrier obligation by providing the service requested by Floyd Trucking. If Mr. Floyd's requests for service are not satisfied, I will have no alternative but to recommend to the Board that it institute, on its own motion, a formal complaint proceeding to address the lawfulness of your actions and the appropriateness of damages to Floyd Trucking.

Finally, based on your February 15, 2000, verified statement to the Board in Finance Docket 33842 (copy enclosed), which stated that the mission of the SLAL "is to provide safe, timely, railroad service consistent with our customers expectations", I have every reason to assume that you understand your obligations as a rail common carrier. Inasmuch as this is the second such service complaint we have received in recent months, your prompt attention to this complaint is required. Do not hesitate to contact me if you have any questions regarding your duties and responsibilities as a common carrier, or my intentions with respect to assuring compliance with Federal statutes.



Surface Transportation Board
Washington, D.C. 20423-0001

January 17, 2003

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780
Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Larry D Wisener, President/Manager
South Plains Lamesa Railroad, Ltd.
P. O. Box 676
Slaton, TX 79364

Dear Mr. Wisener:

It has been one month since our meeting and to date I have not heard from you regarding what actions are to be implemented to resolve the lack of service to Floyd Trucking. I have, however, heard from Mr. Floyd, who informed me that he also has not heard from you or your representative nor has he received any service from the South Plains Lamesa Railroad.

As I spelled out in my November 25th letter to you, it is my responsibility, as the Board's chief enforcement official, to advise you that, pursuant to 49 U. S. C. 11101(a), your obligation as a common carrier by railroad **requires** you to provide transportation or service on reasonable request. Failure to do so constitutes a failure of your obligation and an interruption of interstate commerce. Your duties and responsibilities have been clearly defined and there is no further need to continue delaying actions. In order to prevent a more formal action on the part of the Board I would urge you to begin implementing a service plan for this customer promptly and to provide this office with the plan.

Sincerely,

Melvin F. Clemens, Jr.
Director

cc: Mr. O. E. Floyd, Floyd Trucking, Inc.

Appendix 8



Surface Transportation Board
Washington, D.C. 20423-0001

January 17, 2003

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

202-565-1573
FAX 202-565-9011

Mr. Larry D Wisener, President/Manager
South Plains Lamesa Railroad, Ltd.
P. O. Box 676
Slaton, TX 79364

Dear Mr. Wisener:

It has been one month since our meeting and to date I have not heard from you regarding what actions are to be implemented to resolve the lack of service to Floyd Trucking. I have, however, heard from Mr. Floyd, who informed me that he also has not heard from you or your representative nor has he received any service from the South Plains Lamesa Railroad.

As I spelled out in my November 25th letter to you, it is my responsibility, as the Board's chief enforcement official, to advise you that, pursuant to 49 U. S. C. 11101(a), your obligation as a common carrier by railroad **requires** you to provide transportation or service on reasonable request. Failure to do so constitutes a failure of your obligation and an interruption of interstate commerce. Your duties and responsibilities have been clearly defined and there is no further need to continue delaying actions. In order to prevent a more formal action on the part of the Board I would urge you to begin implementing a service plan for this customer promptly and to provide this office with the plan.

Sincerely,

Melvin F. Clemens, Jr.
Director

cc: Mr. O. E. Floyd, Floyd Trucking, Inc.

Appendix 9

South Plains Lamesa Railroad, Ltd.
P. O. BOX 676 **SLATON, TEXAS 79364**
PHO: (806)828-4841 **FAX: (806)828-4863**

January 15, 2003

Mr. O. E. Floyd
Floyd Trucking, Inc
PO Box 50
Brownfield, TX 79319

Dear Mr. Floyd:

First, let me say South Plains Switching (SAW) desires rail business and will make every effort to serve any customer.

Please refer to your letter of November 19, 2002, to Mr. Clemens of the Surface Transportation Board about rail service to track #0390.

Your letter stated you had a meeting with Hanson Aggregates representatives and a BNSF representative, Wesley Mailhos at your location. The BNSF representative should have informed you at this meeting that BNSF had sold the track in question along with the business located on said track. Your letter further stated service was requested for one (1) car of rock to property identified as being served from switch #0390.

You were offered use of SAW team track and SAW track #9200 for the unloading of this one (1) car (both are less than 2 miles from your facility). You refused either of these services.

Track #0390 has been out of service since we started operation in July 1999. We also understand the track was out of service prior to that date. The connecting switch has been "spiked" in a straight position since July of 1999. BNSF's failure to furnish Track Inspection Reports prevents SAW from knowing the reason switch #0390 was originally spiked.

If a Track Inspection was requested from SAW as according to CFR 49 Part 213.7, conversations with the appropriate parties would have commenced.

A number of operating and service provisions must be in place before service can be provided. These items are outlined below.

A customer requesting rail service is required to have a track lease agreement with SAW. This document outlines condition of track, maintenance on the lead and industry track and the like. This is a straightforward, standard lease.

All shipments on South Plains are governed by our Demurrage and Special Services Program issued May 1, 2000. This document outlines terms of service, car free time, special service requests and the like. A copy is attached for your reference. We mailed each customer a copy of this document at the time of sale. Your facility was not active at that time and therefore was not provided a copy.

The lead track to your facility had what is known as a "frog" which is a track device allowing automatic switching of cars between two rails. As there was no traffic to your lead, and as the frog was defective and a safety issue, it was removed in November 2002.

Since the sole function of this device is to serve your siding, it needs to be replaced. The cost to replace this device is \$30,000. South Plains is willing to absorb \$5,000.00 of the cost of this unit and request you to fund the other \$25,000.00 of the cost. This would be an up front expense for both of us before any car is moved.

It will also be necessary to inspect your industry track to determine if it is safe for rail service. The industry lease agreement will outline the track safety and inspection process. This inspection must be by a South Plains authorized inspector, and an inspection by someone else is not sufficient.

Our only access between BNSF yard and your facility is via our Orchard lead track. This track winds down city streets and has many road crossings. It is not possible, nor safe to the public, to move large cuts of cars over our Orchard lead. We have negotiated with BNSF on the large rock shipments a provision such that BNSF interchanges larger cuts of cars with us on interchange track #0370. Service to your siding will require a similar agreement with the BNSF.

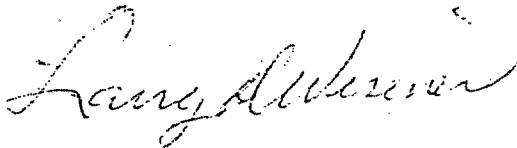
We are not aware of your ability to quickly unload cars. This impacts car hire charges from BNSF for South Plains and demurrage charges for you. SAW will need to know who will be responsible for any demurrage charges.

Through rail rates are set by BNSF. South Plains Switching, Ltd. Co. (SAW) has no rail rate making authority. It will also be necessary for you to determine what rail rates would apply for your shipments; or for those by other potential customers from BNSF.

SAW would need to know the shipper, the rates, and the quantity of material shipped as car storage space is limited.

We are willing to work with you to complete the required contracts and agreements needed to provide you with rail service. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Wisener".

Larry Wisener
President/Manager
South Plains Switching

Cc: Mr. Melvin F. Clemens, Jr.
Director
Surface Transportation Board

Appendix 10



Surface Transportation Board
Washington, D.C. 20423-0001

February 20, 2003

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

Mr. Larry Wisener, President

South Plains Lamesa Railroad Ltd.

P. O. Box 676

Slaton, TX 79364-0676 (And by Facsimile-(806-828-1000),

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages **2**

To O.E. FLOYD	From MELVIN CLEMENS
Dept./Agency	Phone # 202-565-1573
Fax # 806-745-2741	Fax # SURFACE TRANS BOARD
NSN 7540-01-317-7308	5099-101 GENERAL SERVICES ADMINISTRATION

Re; Floyd Trucking complaint, Lubbock, Texas

Dear Mr. Wisener:

This follows my letter to you of November 25, 2002, and our December meeting regarding a complaint received by this office from Mr. O. E. Floyd, Floyd Trucking, Inc., a prospective shipper on the South Plains Lamesa Railroad (SLAL) in Lubbock, Texas which has been seeking rail service since 1999, and our discussions regarding my concerns for your failure to satisfy your common carrier obligation under 49 U.S.C. 11101(a), based on your refusal to provide service to Floyd Trucking. At that meeting I requested that you provide Mr. Floyd and this office with a plan for the provision of the requested rail common carrier services.

I am in receipt of your letter to Mr. Floyd, dated January 15, 2003, purporting to provide such a plan (copy enclosed). The letter outlines the conditions Mr. Floyd must meet in order to receive service, including entering into a track lease agreement with your company, establishing the time period in which cars can be unloaded even though no service is being provided, determining from Burlington Northern Santa Fe Railway (BNSF) what its rates will be for the service Mr. Floyd intends, and subsidizing SLAL's installation of the switch connection to the line on which Mr. Floyd's facility is located in the amount of \$25,000.

Let me begin by clarifying the statutory obligations. First, 49 U.S.C. 11103(a) provides that, on application of the owner of a lateral branch line of railroad or a shipper tendering interstate traffic for transportation, a rail carrier providing transportation subject to the jurisdiction of the Board must construct, maintain and operate a switch connection to connect that branch line or side track with the railroad when the connection is reasonably practicable, can be made safely, and will furnish enough business to justify its construction and maintenance. It is well settled that it is the obligation of the railroad to connect shippers with the rail system in order to provide its common carriers services, and to adopt and observe reasonable practices for the installation and maintenance of switch connections and the prompt delivery of freight. Therefore it is my opinion that it would be considered unreasonable for SLAL to attempt to impose a fee upon a shipper for the installation or reinstallation of a switch connection, and that an effort to impose such a condition would be viewed as an economic embargo and considered unlawful. Moreover, so long as rate making is the responsibility of BNSF, as you have indicated it is, neither Floyd Trucking or any other shipper would responsible to discuss those rate negotiations with SLAL. The presumption is that your revenue relationship would be with BNSF, with the exception of demurrage and charges for ancillary services.

Letter to Larry Wisener, Page 2.

Finally, considering the time period during which Mr. Floyd has been attempting to obtain service from SLAL (since 1999), and the time this matter has been before this office, I believe that you have been given a fair opportunity to address these service issues. As such, I will expect a resolution of these service issues by COB February 28, 2003. Failure to resolve these issues will result in my recommendation to the Board that it institute, on its own motion, a formal complaint proceeding to address the lawfulness of your actions involving Floyd Trucking and possibly other shippers, and the appropriateness of damages for any service failures or unlawful assessments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melvin F. Clemens, Jr.", written in a cursive style.

Melvin F. Clemens, Jr.

Director

Enclosures

cc: Mr. O. E. Floyd, Floyd Trucking, Inc.

Appendix 11

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

February 26, 2003

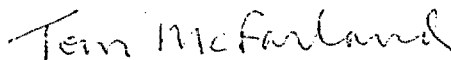
Mr. O.E. Floyd
Floyd Trucking, Inc.
P.O. Box 50
Brownfield, TX 79319

Dear Mr. Floyd:

I represent South Plains Switching, Ltd. Co. (SAW).

In order to determine the propriety of construction of a switch connection to trackage at your place of business at Lubbock, TX, please provide your estimate of the volume of rail traffic that would be transported as a result of that connection and the basis for that estimate.

Very truly yours,



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

TMcf:kl:wp8.0\921\ltroefl

cc: Mel Clemens, STB
Larry Wisener, SAW
Bill Power
Dennis Olmstead



Surface Transportation Board
Washington, D.C. 20423-0001

March 7, 2003

Office of Compliance and Enforcement

1925 K Street, N.W., Suite 780

Washington, DC 20423-0001

202-565-1573

FAX 202-565-9011

Mr. Thomas F. McFarland, Esq.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194 (And by Facsimile (312-201-9695))

Re: South Plains Switching, Ltd. Co.,
Service to Floyd Trucking, Lubbock, Texas

Dear Mr. McFarland:

This confirms receipt of your letter to me of February 26th, informing me that you have been retained by Larry Wisener, of South Plains Switching Ltd. Co. (SAW), and Mr. Wisener's letter of February 25th, responding to my February 20th notice to SAW of my intention to proceed with a complaint against SAW for its failure to fulfill its common carrier obligation by refusing service to Floyd Trucking, a shipper on SAW's line in Lubbock.

I appreciate your opinion that a complaint against SAW is premature, however, I do not agree. This entire matter is predicated upon Mr. Wisener's unilateral action to remove the switch connecting Mr. Floyd's facility to SAW's line. Now, Mr. Wisener has set an unsubstantiated and, in my view, exorbitant cost (\$30,000) to replace the switch-connection that he removed. Apparently, he believes that he should be made whole by the shipper for costs entirely associated with his actions, which is not contemplated by the statute. As I outlined in my February 20th letter to Mr. Wisener, the statute places an affirmative obligation on a rail common carrier to construct, maintain, and operate switch connections when such is reasonably practical. In this case the construction was done and, except for Mr. Wisener's unilateral actions, the existing switch would likely have required only maintenance. Also indicated in my letter to Mr. Wisener of February 20th, was my expectation that, based on the ample time Mr. Wisener has had to resolve this situation, resolution would occur finally by February 28th. Instead, you and Mr. Wisener have only placed additional demands on Mr. Floyd.

This is to inform you that I intend to move forward with the complaint, and an investigation of all of Mr. Wisener's operations. As Counsel, you may want to advise Mr. Wisener of the breadth of the Board's authority with respect to determining damages, making findings of unreasonable practice, and the possible issuance of an order revoking his authority for obstruction of interstate commerce and any other unlawful acts.

Sincerely,

Melvin F. Clemens, Jr.

Director

cc: Mr. O.E. Floyd, Floyd Trucking, Inc.

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

March 13, 2003

By fax to 202-565-9011.
w/confirmation by mail

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W. - Suite 780
Washington, DC 20423-0001

Re: South Plains Switching Ltd. Co.,
Service to Floyd Trucking, Lubbock, Texas

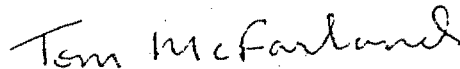
Dear Mel:

This refers to your letter to me of March 7 and prior correspondence about the above subject.

South Plains Switching, Ltd. Co. (SAW) hereby commits to restore the switch connection to the trackage of Floyd Trucking, Inc. (Floyd) at SAW's own expense, and to provide rail service to Floyd, both upon Floyd's reasonable request. A reasonable request by Floyd would be one that is specific as to the volume, commodity and time of shipment. *See CSX Transportation, Inc. -- Aban. -- betw. Bloomington and Montezuma, in Parke County, IN, 2002 STB LEXIS 535 at *21 (2002), and decisions there cited.*

Please let me know if this commitment satisfies your concerns.

Very truly yours,



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

TMcf:kl:wp8.01921\lrmfc2

cc: Messrs. O.E. Floyd
Larry Wisener
Bill Power
Dennis Olmstead

Appendix 12

Floyd Trucking, Inc
P.O. Box 3456
Lubbock, Texas 79452-3456
Phone # 806-745-2729 / Fax # 806-745-2741

FAX

TO: Melvin Clemens DATE: 2/25/04

FROM: D.E. Floyd

PHONE/FAX 202-565-9011

SUBJECT: Rail Spur

NO. OF PAGES (INCLUDING COVER SHEET) 6

COMMENTS:

February 25, 2004

Melvin Clemens, Jr
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W Suite 780
Washington, DC 20423-0001

Mr. Clemens,

Following are correspondence letters from Doug Beasley from D&J Materials. The letter dated February 20th, 2004 is a commitment for a job that needs our rail spur to be working in the near future. The second letter was sent to us in January of 2004. It is approximating the amounts and the possibility of obtaining the supply of material for the activity stated in the first letter. The third letter was received by us in May of 2002. This letter shows the business that we could have had if our rail spur had been accessible at that time and the loss of revenue that occurred because comparable facilities were not available. Please review these letters and contact me if you have any questions.

Thank you,

A handwritten signature in dark ink, appearing to read "O.E. Floyd", with a stylized flourish extending from the end.

O.E. Floyd

FLOYD TRUCKING, INC.

CERTIFIED DBE & HUB CONTRACTOR

P.O. BOX 50

BROWNFIELD, TEXAS 79316

PH. 806-745-2729

February 20, 2004

Mr. Floyd,

As of Monday, February 16, 2004 the prospects of D& J Materials having a supply of Type C Fly Ash for the Lubbock market is highly probable. This agreement would be for approximately 10 years and allow us at least 30,000 tons of fly ash per year to rail into this market. The contract regarding this ash will be signed and completed by June 2004, and will begin with D&J Materials in Lubbock immediately thereafter. Please solidify and finalize any details regarding our availability to your rail spur as we currently have commitments from customers within Lubbock at this time.

Sincerely,



Doug Beasley
D&J Materials
Amarillo, Texas

D&J Materials, LLC

Amarillo, Tx

806-354-8007

Mr. Floyd,

You and I discussed the use of your rail spur by DePauw Const. in and around May, 2002. Our intent at that time was to rail flyash from Kansas into Lubbock and distribute it in that immediate market. As president of DePauw, it was my responsibility to locate a spur and help in developing a market for approximately 30,000 tons of this flyash. As we were discussing this with you, we were also approached by TXI Cement Company to locate a spur and provide off loading and delivery services for cement sold on the Crosstown Expressway in Lubbock. This made it extremely important that we find a spur with the capacity to handle this volume.

You were unable to get your spur opened and we settled for a spur on the North side of Lubbock just inside the loop. However, this spur could only accommodate 3 rail cars at a time. We realized the need for storage and moved three 300 ton guppies or pigs to this particular yard, and at considerable expense. DePauw leased six rail cars to haul the flyash, as more cars would have been useless with so little spur space available. With two turns per rail car per month, we were able to haul and market approximately 1,200 tons of flyash per month, or 14,000-15,000 tons per year. Our expectations and goals had been 30,000 tons per year. This difference in revenue caused the spur to become non-viable. In terms of gross income the difference was considerable:

30,000 tons @ \$26.00/ton = \$780,000 per year

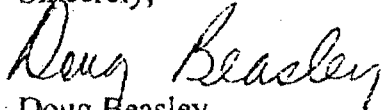
15,000 tons @ \$26.00/ton = \$390,000 per year

I resigned from DePauw in October, 2002 and they viewed the spur as non profitable and withdrew from the flyash business in Lubbock in October, 2003. Our company, D&J Materials, now has the opportunity to market this same 30,000 tons of flyash into this market. In the meantime prices have changed somewhat resulting in a realistic \$28.00/ton market or around \$840,000 of gross income. It is impossible for us to pursue this market without the availability of a spur at least equal in capacity to yours. We have done the research in this market and are positive that it is there for us. As you can readily see the difference in 15,000 tons per year and 30,000 tons per year results in lost revenue to us of approximately \$35,000 per month. Again, we would have to look at the viability of presense there at all.

D&J is also pursuing a lightweight aggregate market in Lubbock and estimating around 10,000-12,000 tons of rock per year @ approximately \$36.00/ton, or \$360,000-\$420,000 per year. This makes the capacity of a spur such as yours even more important. Realistically, the lack of availability of your spur, or one comparable, probably cost DePauw in the neighborhood of \$550,000 over those seventeen months. But I cannot speak

for DePauw. D&J has a very realistic market for flyash and rock of over \$1,000,000 per year in the Lubbock market with opportunities to grow. It is a waste to have available an asset such as your spur and not take advantage of the economic impact it can have on our company and the local economy. Please review every effort available to you to put this spur in working order and please continue your contact with us regarding that availability.

Sincerely,


Doug Beasley

Appendix 13

FLOYD TRUCKING, INC.

CERTIFIED DBE & HUB CONTRACTOR

P. O. BOX 3456

LUBBOCK, TEXAS 79452

PH. 806-745-2729 FAX 806-745-2741

Re: South Plains Switching Ltd. Co.
Service to Floyd Trucking, Lubbock, Texas

Mr. Larry Wisener,

This refers to your letter to me of March 13, 2003. Where South Plains Switching, Ltd. Co. (SAW) hereby commits to restore the switch connection to the trackage of Floyd Trucking, Inc. (Floyd) at SAW's own expense, and to provide rail service to Floyd, both upon Floyd's reasonable request. A reasonable request by Floyd would be one that is specific as to the volume, commodity and time of shipment.

Volume: 75,000 to 100,000 tons per year

Commodity: Lightweight Aggregate

Time: 60 to 80 cars per month

Storage, unloading and delivery from the railcars will be provided by Floyd Trucking for each of these products. Trucking into Lubbock is not an option because of the origins of each product. Your immediate response is requested as we have customers ready for these materials now. We ask these discussions remain confidential for obvious reasons.

Sincerely,

O. E. Floyd
O. E. Floyd
General Manager
Floyd Trucking, Inc.

cc: Mel Clemens, STB
Bonnie Murphy, FRA
Vince Haggard, FRA

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☐ <i>[Signature]</i> ☒ B. Received by (Printed Name) ☐ <i>[Signature]</i> ☒ C. Date ☐ <i>3/18/03</i> ☒ D. Is delivery address different from item 1? ☐ If YES, enter delivery address below: ☐	
1. Article Addressed to:		3. Service Type	
<i>South Plains Switching Ltd. Co.</i>		☐ Certified Mail ☐ Express Mail	
<i>P.O. Box 676</i>		☐ Registered ☐ Return Receipt for Merchandise	
<i>Stanton, TX 79364</i>		☐ Insured Mail ☐ C.O.D.	
2. Article Number		4. Restricted Delivery? (Extra Fee) ☐	
(Transfer from service label)			
<i>7003 2260 0004 2217 88</i>			

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THOMAS McFARLAND
208 SOUTH LA STUE
ST 1890
CHICAGO, IL 60604

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Thomas McFarland ☐ Agent ☐ Addressee

B. Received by (Printed Name) ☐ Date of Delivery

3-8-04

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No

2. Article Number

(Transfer from service label)

7003 2260 0004 2217 8887

PS Form 3811, August 2001

7003 2260 0004 2217 8887

107595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
South Plains Service RP
PO Box 676
Slaton, TX 79364

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* ☐ Agent ☐ Addressee
 B. Received by (Printed Name) *Shallard*
 C. Date of Delivery *3/8/04*
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
 (Transfer from service label) *7003 2260 0004 2217 8820*
 PS Form 3811, August 2001

102595-02-M-1540
 7003 2260 0004 2217 8820

CERTIFIED MAIL

SAW/SLAL
 P.O. BOX 676
 SLATON, TX 79364-0671



7099 3220 0001 3189 6493

RETURN RECEIPT REQUESTED

Received
3-15-04

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Larry Wisener
South Plains Swtchins
PO Box 676
Slaton, TX 79364

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* ☒ Agent ☐ Addressee
 B. Received by (Printed Name) *Larry Wisener*
 C. Date of Delivery *3-22-*
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merch
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
 (Transfer from service label) *7003 2260 0004 2218 2544*
 PS Form 3811 August 2001

102595-02- Domestic Return Receipt
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 THESE FOLD AT DOTTED LINE



9264
 79316

U.S. POSTAGE
 PAID
 SLATON, TX
 MAR 11 2004
 \$4.42
 000-45907-01

Mr. O. E. Floyd
 Floyd Trucking, Inc.
 P. O. Box 50
 Brownfield, TX 79316

79316



79316/0050

Appendix 14

**South Plains Lamesa Railroad, Ltd.
South Plains Switching, Ltd. Co.**

P. O. BOX 676

SLATON, TEXAS 79364

PHO: (806)828-4841

FAX: (806)828-4863

March 10, 2004

Mr. O. E. Floyd
Floyd Trucking, Inc.
P. O. Box 50
Brownfield, TX 79319

Dear Mr. Floyd:

This refers to your letter to me, received on March 8, in which you request that South Plains Switching (SAW) restore the switch connection to the trackage of Floyd Trucking, Inc. and provide rail service to Floyd Trucking.

Your request is sufficiently specific as to volume and commodity, but not as to time of shipment. Bearing in mind that it will take a short time to install the switch connection, please advise regarding your estimate of the first date on which you propose to make or receive rail shipments.

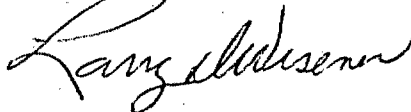
Prior to receiving rail service, you will be expected to execute SAW's standard contract for industry track. I have attached a copy of the contract for industry track between the Santa Fe Railway and Lubbock American Iron & Metal that governed the track that you will use. Most of the provisions of that contract for industry track will be contained in the contract between SAW and your company. The contract for industry track will be provided to you shortly for your signature. At the same time, you will also be provided with a copy of SAW's tariff governing demurrage and ancillary services.

You are requested to provide advance notice to SAW each time shipments move from origin to your track. You should be aware that SAW does not have track space in the Lubbock area for storage of railcars. Consequently, you should not arrange for shipments of railcars in excess of the capacity of your trackage.

All aggregate commodities in Unit trains are received on Track No. 380 in Lubbock. You are requested to contact BNSF to arrange for spotting of your traffic on Track No. 380 in Lubbock.

SAW looks forward to transporting your traffic.

Very truly yours,



Larry D. Wisener, President
South Plains Switching, Ltd. Co.

Appendix 15

March 19, 2004

Larry Wisener
South Plains Switching, Ltd. Co.
P.O. Box 676
Slaton, TX 79364

Dear Mr. Wisener,

In response to your letter dated March 10, 2004, we are needing rail service beginning April 15, 2004. The contract that you mentioned between South Plains Switching Ltd. and Floyd Trucking, Inc was not attached with your letter. Please send us this contract so that we may begin receiving shipments as soon as possible. Thank you for your attention in this matter.

Thanks,

A handwritten signature in cursive script, appearing to read "O.E. Floyd", followed by a horizontal line extending to the right.

O.E. Floyd
Floyd Trucking, Inc.

Appendix 16

South Plains Lamesa Railroad, Ltd.

South Plains Switching, Ltd. Co.

P. O. BOX 676

SLATON, TEXAS 79364

PHO: (806)828-4841

FAX: (806)828-4863

March 22, 2004

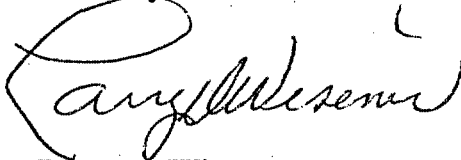
**Mr. O. E. Floyd
Floyd Trucking, Inc.
P. O. Box 3456
Lubbock, Texas 79452**

Dear Floyd:

In response to your letter of March 19, 2004, enclosed please find for your review the Contract of Industry Agreement with Attached Exhibits.

Your letter states that you will need rail service beginning April 15, 2004. It is important that you understand that South Plains Switching will do everything possible to service our customers however, with track work that must be performed and inspection of your industry track and contracts that must be signed, I do not feel that I can make any guarantees that all will be ready for full service at your facilities by April 15, 2004.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry D. Wisener".

**Larry D. Wisener
President**

EXHIBIT "A"
TO CONTRACT BETWEEN
SOUTH PLAINS SWITCHING CO.
And
Floyd Trucking Inc

PQ

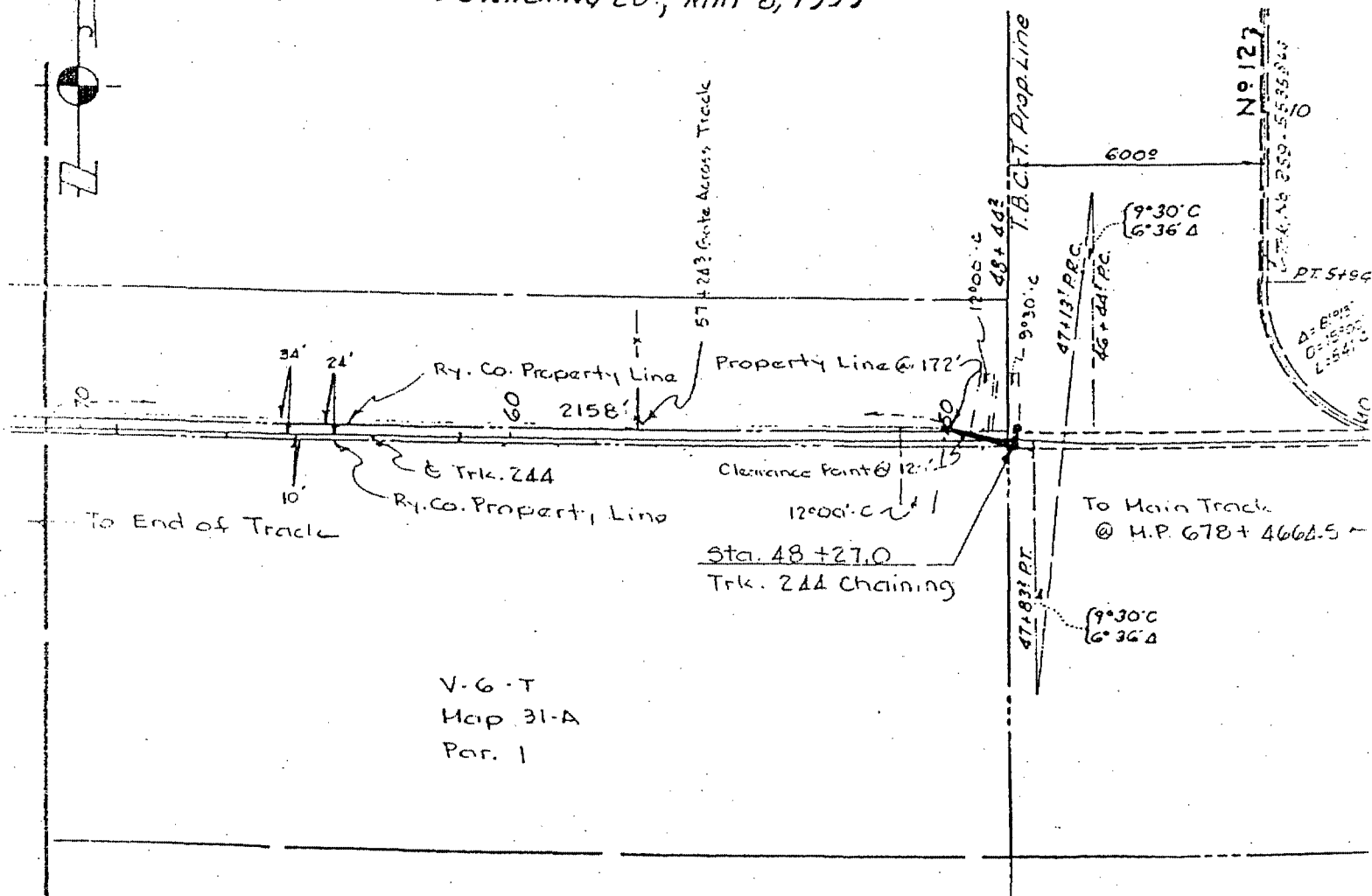
Covering an industry track
AT
LUBBOCK, LUBBOCK COUNTY, TEXAS

SCALE 1" = 400' A.G.M.-ENGINEERING-AMARILLO, TEXAS

No. X-3307

DATED: November 7, 1979

ASSIGNED TO: **SOUTH PLAINS SWITCHING CO., MAY 8, 1999**



DESCRIPTION:

An industry track 2,330 ft. in length as follows:
H.B. to Ry. Co. property line = 172 ft. as shown hereon in **bold**
Ry. Co. property line to end = 2,158 ft. as shown hereon.

CONTRACT FOR INDUSTRY TRACK

Agreement, Made as of this **DRAFT** day of _____ 20____

between South Plains Switching, Ltd. Co., hereinafter called the "Railway Company" party of the first part, and Floyd Trucking, Inc., hereinafter (whether one or more persons or corporation) called the "Industry," party of the second part.

RECITALS: - The Industry has requested the Railway Company to operate a track or track extension, as the case may be, about 2330 feet in length, hereinafter in its entirety referred to as "The Track", at or near the station of Lubbock, Lubbock County, Texas to serve a site for aggregate unloading and storage (hereinafter called the "Plant"), to be operated by the Industry. That portion of The Track, about 172 feet in length, which shall belong to the Railway Company, is shown in bold, and that portion of The Track, which shall belong to the Industry, is shown upon the print hereto attached, marked "Exhibit A" and made a part hereof.

AGREEMENT:

ARTICLE I.

In consideration of the covenants of the Railway Company, the Industry agrees as follow:

1. That it will and hereby does grant to the Railway Company for the term of this agreement, free of cost, a right of way, eight and one-half (8 1/2) feet on each side of the center line thereof, for all that portion, if any, of The Track located on property belonging to the Industry, with the right to operate The Track thereon, and where any part of The Track will lie on a public street or alley, or upon property belonging to third persons or corporations, that it will secure to the Railway Company by ordinance or grant, as the case may be, in form satisfactory to the Railway Company's counsel, and without cost to the Railway Company, the right to operate The Track thereon, together with the right to remove the same; in the case

of a grant, the right of way shall be eight and one-half (8 1/2) feet on each side of the center line of The Track.

2. That Industry trackage will meet Railway Company's standards and specifications and be inspected by a representative of Railway Company and accepted as being safe for service before being placed in operation.
3. That it will pay to the Railway Company, from time to time, within twenty (20) days after bills are rendered therefore, the entire cost (or an equitable share thereof) in case other industries shall be served by the Industry Track or a part thereof. By maintaining and renewing that portion of the Industry Track beyond the clearance point, the Railway Company is to be the judge of the necessity for and character of maintenance required on the Industry Track. It is understood that the expense of maintaining and renewing the Industry Track shall include any expense to which the Railway Company may be put in the way of paving, sewers, crossing protection, or other work, because of the existence of the Industry Track.
4. That it will operate the Plant during the term hereof.
5. The Industry agrees to indemnify and hold harmless the Railway Company for loss, damage or injury from any act or omission of the Industry, its employees or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about The Track; and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto, it shall be borne by them equally.
6. That it will at all times keep a space of eight and one-half (8 1/2) feet from the nearest rail of any railroad track entirely clear of structures, material and obstructions of every sort and will observe an overhead clearance of not less than twenty-five (25) feet above the top of rail; provided, however, if by statute or order of competent public authority different clearances shall be required than those provided for in this Section 6, then the Industry shall strictly comply with such statute or order. In case of a breach of these obligations, or any of them, the Industry assumes and agrees to indemnify the Railway Company against all liability for loss, damage, injury, and death arising therefrom and to reimburse the Railway Company for any sums which the Railway Company may have been required to pay in the way of damages, fines, penalties or other expense resulting from the violation by the Industry of any statute or order as aforesaid.

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ARTICLE II.

In consideration of the covenants of the Industry, and the faithful performance thereof, the Railway Company, subject to the provisions of Section 2 and 3 of Article I hereof, agrees to operate and maintain the Industry Track during the term of this agreement, unless its obligations to maintain it may be sooner terminated as herein provided, and to transfer cars, loaded or empty, thereover to and from the Plant subject to any lawful charges that may be imposed by the Railway Company for such transfer in accordance with South Plains Switching, Ltd. Co.'s, "Demurrage and Rates Program, marked Exhibit "B" (attached).

ARTICLE III.

The parties mutually agree as follows:

1. The title to the Bold Track and to all property furnished in the maintenance thereof shall be in the Railway Company. Title to the Industry Track and to all the property furnished in the maintenance thereof shall be in the Industry. The Railway Company shall have the right to use The Track for other than the express purpose of serving the Plant.
2. If the Industry shall fail for a period of six (6) months in any period of twelve (12) months to operate the Plant, or shall fail or refuse to comply with or carry out any of the covenants or agreements herein contained, the Railway Company may, at its option, expressed in writing, terminate this agreement; but no termination shall release the Industry from any liability or obligation under this agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination.
3. Unless earlier terminated as herein provided, this agreement shall be in force for the term of **TWO YEARS** from its date and thereafter until terminated by either party giving the other three (3) months' written notice of its desire to terminate the same. Upon such or any other termination, the Railway Company shall pay to the Industry the salvage value, at the time, of the materials in such portion of the Industry Track as shall have been paid for by the Industry under the provisions of this agreement and the Railway Company shall have the right to remove the Industry Track and every part thereof. This agreement shall also terminate forthwith in the event the Railway Company shall be dispossessed of the right to operate over any privately owned track.
4. Any notice to be given by the Railway Company to the Industry hereunder shall be deemed to be properly served if the same be delivered to the Industry, or if left at the Plant with any of the agents, servants or employees of the

DRAFT

Industry, or if posted on the Plant, or if deposited in the post office, postpaid, addressed to the Industry at Floyd Trucking, Inc., P.O. Box 3456, Lubbock, Texas 79452.

- DRAFT**
5. In the event that the Industry embraces two or more persons or corporations, all the covenants and agreements of the Industry herein shall be the joint and several covenants and agreements of such persons or corporations.
 6. All the covenants and provisions of this agreement shall be binding upon the successors, legal representatives and assigns of the Industry to the same extent and effect as the same are binding upon the Industry, and each and every covenant herein shall inure in favor of and run to the successors and assigns of the Railway Company and to each and every person, firm or corporation which may hereafter own or be in possession of or operate the railroad of the Railway Company to the same extent and as fully as though such person, firm or corporation were specifically named in this agreement in the place and stead of the Railway Company; provided, however, no assignment hereof by the Industry, its successors, legal representatives or assigns, or any subsequent assignee, shall be binding upon the Railway Company without the written consent of the President or a Vice-President of the Railway Company in each instance.
 7. All of the provisions of Section 5, Article I, are expressly applicable during the operative period of this contract.
 8. Industry shall at all times, and at its sole expense, maintain, or cause to be maintained, the Industry Track, in such safe and satisfactory condition as necessary to conform with Railway Company standards and specifications, and to conform with all applicable standards promulgated by the Federal Railroad Administration and other governmental agencies. Railway Company may at any time, at its option, refuse to operate over or transfer cars upon the Industry Track whenever Railway Company, in its judgment, determines that the track is unsafe. If and when, in Railway Company's judgment, such unsafe condition has been remedied, Railway Company shall resume such operation and transfer of cars upon the Industry Track.
 9. Unless otherwise required by statute or order of competent public authority, Industry may, notwithstanding anything contained in Section 6 of Article I hereof to the contrary, at its sole cost and expense and in a manner satisfactory to Railway Company, construct, maintain and use a gate (equipped with private lock and switch lock) across The Track at the locations shown on said "Exhibit A". said gate to be opened whenever necessary to enable Railway Company to operate over The Track. Said gate shall be deemed to be a part of the Plant, and notwithstanding anything contained in this agreement to the

contrary, Industry shall and will at all times indemnify and save harmless Railway Company against all claims, demands, actions or causes of action arising or growing out of loss of or damage to property, including said gate, and injury to or death of persons, including employees of Railway Company and employees of Industry, resulting in any manner from the construction, maintenance, use, state of repair or presence of said gate across The Track, whether such loss, damage, injury or death be caused or contributed to by the negligence of the Railway Company, its agents or employees, or otherwise and that it will promptly pay to Railway Company the full amount of any loss or damage which Railway Company may sustain, incur or become liable for and all sums which Railway Company may pay or be compelled to pay in settlement of any claims on account thereof.

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate the day and year first above written.

South Plains Switching, Ltd. Co.

by: Larry D. Wissner

Its President/Operating Manager
Title

Floyd Trucking, Inc

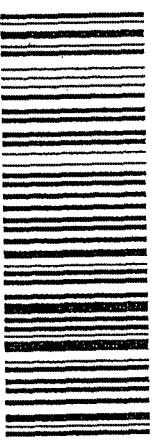
by: O. E. Floyd

Its
Title

With 10/11/11
P.O. Box 676
Horton, Iowa 52364

Return
Receipt Requested

OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL™



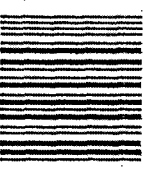
7003 3110 0001 1831 9196

Mr. D. E. Floyd
Floyd Trucking, Inc.
P.O. Box 3456
Hutchins, Iowa 52364

over



9264



79452

3/1/11

Appendix 17

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

April 6, 2004

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W. - Suite 780
Washington, DC 20423-0001

Re: South Plains Switching Ltd. Co.,
Service to Floyd Trucking, Lubbock, Texas

Dear Mel:

As a follow-up to my letter to you of March 10 about the above subject, this is to advise that as of April 1 the switch connection to the Floyd Trucking trackage at Lubbock, TX was restored. Prior to that date, South Plains Switching's standard contract for Industry Track was furnished to Floyd Trucking.

Very truly yours,

Tom McFarland

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

TMcf:kl:wp8.0\921\lrmfc6

cc: Mr. O.E. Floyd
Mr. Larry Wisener
Mr. Dennis Olmstead

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

June 3, 2004

Mr. Melvin F. Clemens, Jr.
Director
Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street, N.W. - Suite 780
Washington, DC 20423-0001

Re: South Plains Switching Ltd. Co.,
Service to Floyd Trucking, Lubbock, Texas

Dear Mel:

This is a further follow-up to my letters to you of April 6, 2004 and March 10, 2004 about restoration of rail service to Floyd Trucking at Lubbock, Texas.

At the specific request of Floyd Trucking, South Plains Switching reinstalled the switch connection to Floyd Trucking's trackage at Lubbock, Texas as of April 1, 2004. The cost of the reinstallation was approximately \$15,000. Prior to that date, South Plains Switching's standard contract for industry track was furnished to Floyd Trucking.

Now over two months later, Floyd Trucking has not signed the industry track contract; has not made a single rail shipment; and has not contacted South Plains Switching to advise of its intentions.

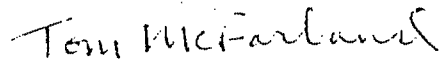
Mr. Larry Wisener, President of South Plains Switching, asked me whether Floyd Trucking, having specifically requested reinstallation of the switch connection, could be forced to ship by rail after the reinstallation, in light of the fact that South Plains Switching was forced to reinstall the switch connection at its own expense. I responded that Floyd Trucking is not required by law to ship anything by rail. I agreed with Mr. Wisener's statement that it is unfair that Floyd Trucking can force South Plains Switching to reinstall the switch, but South Plains Switching cannot force Floyd Trucking to ship by rail after the reinstallation.

THOMAS F. MCFARLAND

Mr. Melvin F. Clemens, Jr.
June 3, 2004
Page 2

I want you to be aware that South Plains Switching abided by the law at significant cost at the request of Floyd Trucking, but Floyd Trucking has made no use of the rail service that it requested.

Very truly yours,



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

TMCF:kl:wp8.0\921\lrmfc7

cc: Mr. O.E. Floyd
Mr. Larry Wisener
Mr. Dennis Olmstead

APPENDIX VI

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.
-- FEEDER LINE APPLICATION --
LINES OF SOUTH PLAINS SWITCHING, LLC,

Finance Dkt. No. 34844

SOUTH PLAINS SWITCHING, LLC
-- ACQUISITION EXEMPTION --
BNSF RAILWAY COMPANY

Finance Dkt. No. 33753 (Sub-no. 1)

DECLARATION OF
CALVIN KIDWELL

I, Calvin Kidwell, make this Declaration, pursuant to 28 U.S.C. § 1746, in support of the Feeder Line Application filed by PYCO Industries, Inc., in F.D. 34844, and in support of the petition to revoke the acquisition exemption in F.D. 33753 (Sub-no.1) by which South Plains Switching LLC ("SAW") acquired certain lines of railroad in Lubbock from BNSF Railway.

1. I am the general manager of Hi-Plains Bag and Bagging Company (HPBB), whose business address is 707 East 44th St., Lubbock, TX 79404. HPBB is not a large rail user like PYCO Industries, but we do receive several inbound shipments per month of twine for cotton bales. This represents a significant cost savings over alternative forms of shipment for us. Our local

switching provider is SAW.

2. To get to the point, SAW's management is scary. Last year, a car was spotted for us in a fashion which we could not unload it. I called SAW's office, and happened to speak with Mr. Larry Wisener. I politely requested that SAW re-spot the car so we could have access. Mr. Wisener went ballistic. He started screaming. He said he could cut us off and do whatever he wanted because it was his railroad. I construed this as it was intended: a threat to retaliate and to deprive us of service if we did not do exactly what he told us to do. I tried to respond that we certainly wished to cooperate, but did not know when his crews would deliver our cars, and asked if SAW would telephone in advance. This got nowhere, and provoked more talk from Mr. Wisener about our incompetence, his power, and his willingness to wield it. He intended to and did scare the heck out of us. We told our staff to listen for his engine, and if they heard it to go to our loading area to make certain that if there was a car it was spotted correctly.

3. A SAW shipper lives in fear that SAW management on a whim will cease service. We are concerned that this Declaration itself will result in retaliation, and if so, we request immediate relief from SAW pursuant to the alternative service order PYCO Industries already has in place. SAW management is not compatible with a common carrier railroad. We support revocation of SAW's exempt

acquisition, or else the immediate sale of SAW's lines to PYCO pursuant to PYCO's feeder line application.

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

04/10/06

Calvin Redwell

APPENDIX VII

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

VERIFIED STATEMENT OF MR. ROBERT LACY
IN SUPPORT OF PETITION FOR
ALTERNATIVE RAIL SERVICE

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, on this day personally appeared **ROBERT LACY**, who after being duly sworn, stated under oath stated as follows:

1. “My name is ROBERT LACY. I am over the age of eighteen (18) years, am competent to make this Affidavit, and affirm that the following statements are within my personal knowledge and are true and correct.
2. I am presently employed by PYCO Industries, Inc. (“PYCO”) as Senior Vice President of Marketing. I have been continuously employed by PYCO for the previous 15 years. As part of my job responsibilities, I oversee rail shipments to and from PYCO’s facilities in Lubbock, Texas, known as Plant No. 1 and Plant No. 2. I also communicate with representatives of South Plains Switching Ltd. (“SAW”), including Mr. Larry Wisener, about the switching of railcars being utilized by PYCO.
3. I began advising SAW in the early days of 2005 that PYCO’s switching needs would be increasing due to the company’s increased sale of cottonseed byproducts resulting from record cottonseed production. I spoke with Mr. Larry Wisener about the projected switching increases in January 2005, informing him that beginning approximately April 1, 2005, PYCO would be increasing its product shipments by rail.
4. Mr. Wisener’s response at that time was that he could not promise any results to PYCO’s increased rail traffic because he was being hampered by the BNSF. When pushed for details, Mr. Wisener gave some details about an ongoing lawsuit between SAW and BNSF and essentially told me that he probably couldn’t accommodate any increases unless PYCO could help relieve switching pressures being placed on him by the BNSF.

5. Accordingly, PYCO contacted the BNSF and ultimately met with an attorney for BNSF, Mr. Don Herrmann, in March 2005. PYCO detailed its anticipated needs to Mr. Herrmann along with a suggested solution related to unlocking a particular switch, Switch #231, to perhaps relieve switching pressures. Mr. Herrmann vowed to relate the information to his client, BNSF, and we believe he did so.

6. During April 2005, Mr. Wisener's attitude towards PYCO stiffened after he mentioned that he learned of our meeting with the BNSF's lawyer. Correspondence was exchanged between our local attorney and Mr. Wisener's attorneys and it became evident to the management of PYCO that Mr. Wisener's bullying attitude was only growing worse and that switching was becoming more of a problem on a daily basis.

7. Accordingly, PYCO grew tired of trying to pursue an amicable solution among all the parties and contacted the Surface Transportation Board ("STB"). After we began discussions with the STB, and began drafting a formal complaint to the STB of which Mr. Wisener gained knowledge, switching operations suddenly began to steadily improve. Since this was PYCO's only goal to begin with, PYCO chose not to file a formal complaint with the STB, thinking that matters had been resolved.

8. On or about September 2005, Mr. Wisener informed me that he wanted to get out of the railroad business and was interested in selling SAW and wanted to know if PYCO was "interested in buying a railroad." I communicated this conversation to our management team at PYCO.

9. On October 11, 2005, PYCO's attorney, Gary McLaren, forwarded a letter he received from one of Mr. Wisener's attorneys, Jim Gorsuch, setting forth a Letter of Intent between PYCO and SAW. The Letter of Intent contained binding language for the purchase of a "shortline railroad business in East Lubbock" for \$5,500,000. A copy is attached as Exhibit "1". There was no listing of the assets included in the offer and no discussion had ever occurred between SAW and PYCO about specifics of such a sale, other than very generalized discussions. Mr. Wisener's lawyer wanted a response within 6 days, before the close of business on October 17, 2005.

10. Having further discussed the matter, we instructed our lawyer on October 13, 2005, to send to Mr. Gorsuch a simple proposed "due diligence" paragraph to be added to the Letter of Intent. This, we believed, was a minimal solution that would allow PYCO to gain financing of a possible solution and to assemble details to be approved by our board of directors. We also believed that a simple paragraph, as opposed to rewriting the entire document, might keep Mr. Wisener in a calm enough state to continue discussions about a purchase of certain assets. A copy is attached as Exhibit "2".

11. On November 3, PYCO received a letter from Mr. Wisener, a copy of which is attached to this verified statement as Exhibit "3". The letter cut off negotiations. This was the first time that PYCO was aware that SAW did not intend to move forward with revising the Letter of Intent or continuing with discussions about the purchase of SAW assets. Then matters between SAW and PYCO grew measurably worse.

12. On November 17, I received an angry call from Larry Wisener. He said that PYCO needed to come to his office and hear from him how things were about to change between SAW and PYCO. Having been to Mr. Wisener's office before in situations where Mr. Wisener progressively becomes more profane and begins discussing how he can "throw out" people that have opposing opinions, none of the PYCO management team wished to suffer through another of these unpleasant episodes.

13. During the November 17 telephone conversation with Mr. Wisener, I came to the conclusion that his tone and attitude represented a genuine business threat to PYCO. I reduced our conversation to written notes and began making contemporaneous notes concerning SAW beginning on November 17. These are attached as Exhibit "4".

14. I called Mr. Wisener on November 18 concerning a letter PYCO received from SAW canceling the lease of track #9298. Mr. Wisener was very belligerent and began telling me that he was in charge of SAW and that PYCO was going to have to fend for itself because doing business with SAW was about to become a lot more costly. It was apparent during the conversation that Mr. Wisener continued to be upset that PYCO did not "buy a railroad."

15. As my attached notes since November 17 indicate, there has been a substantial, measurable deterioration in rail service supplied by SAW since November 17, 2005. All efforts to resolve the switching problems with SAW have been unsuccessful and the attitude of Mr. Wisener towards PYCO continues to be just short of physically confrontational. PYCO management is concerned about possible physical retribution by Mr. Wisener.

16. PYCO utilizes about 6,250 railcars per year. At present, it is not feasible economically to convert any significant percentage of our product shipments from rail to truck due to the transcontinental nature of the shipments and the profit margin of the products being shipped. Consequently, it is imperative to the continued operations of PYCO that adequate rail service be restored.

17. PYCO's present service deficit amounts to 14 railcars per day at Plant No. 1. PYCO needs 26 cars per day at Plant No. 1 and SAW has reduced service to Plant No. 1 to only 12 railcars per day.

18. SAW failed to provide any service to PYCO's Plant No. 2 for approximately six days during the 2005 Thanksgiving holiday period. While

service has been presently restored to the requested 12 railcars per day since Thanksgiving, SAW continues to fail in providing at least one boxcar per day to Plant No. 2 as has been repeatedly requested.

19. Based upon the present number of switches by SAW, PYCO will run out of storage capacity for its products by mid-January 2005. Already the lack of adequate switching has resulted in delayed and cancelled orders with customers of PYCO.

20. PYCO could handle 26 railcars per day at Plant No. 1 if an alternative carrier could utilize SAW trackage. Currently, SAW has placed a derail in such a position so as to limit car movement to track owned by PYCO. Under the present derail placement, the maximum number of cars that PYCO can accommodate is 16 to 17 railcars per day; however, PYCO is forced to order only 12 cars per day because SAW will not place the cars where requested. Consequently, PYCO presently faces a 14 railcar per day shortage, and when coupled with the inability to get boxcar switching at Plant No. 2, PYCO incurs a daily loss as a direct result of SAW's inadequate switching.

21. As a direct result of SAW's switching deficiencies, PYCO is suffering economic losses on a daily basis resulting from delays in shipment by SAW. The slowness of PYCO's rail shipments is resulting in both delayed revenues from slowed shipments and lost sales. I directed PYCO staff to supply me with a summary of all delayed cars and also lost sales due to lack of cars. On the basis of that information, I have prepared the chart below which summarizes the losses mentioned herein that have accrued since November 17, 2005. There are two main sources of damages arising from the SAW service inadequacy: losses due to delays in shipment and losses due to lack of cars resulting in lost sales.

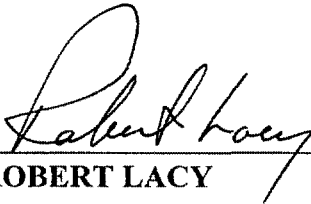
Calculation of Damages	# Cars	lbs/tns per Car	Total lbs/tns	Avg Price (\$)	Total Revenue	Interest Cost	Carrying Cost (\$)	Total Damages (\$)
*Losses Arising from Delayed Cars:								
Tank Cars Behind Schedule (oil)	8	185,000	1,480,000	0.33	488,400	6.00%		29,304
Box Cars Behind Schedule (lint)	12	129,320	1,551,840	0.14	217,258	6.00%		13,035
Gondola Cars Behind Schedule	50	95	4,750	127.00	603,250	6.00%		36,195
Approximate Total Tons CS			9,375				25.00	234,375
/								
Losses Arising from Lack of Cars Resulting in Lost Sales								
Tank Cars	30	185,000	5,550,000	0.33	1,831,500			1,831,500
Gondola Cars (CS)	525	95	49,875	127.00	6,334,125			6,334,125
TOTAL CURRENT DAMAGES								\$8,478,534

*Currently only Interest Cost and Carrying Cost damages. Continued delays will result in additional charges by customers or lost sales.

22. Should PYCO be forced to shut down operations as a result of the above-described switching problems, PYCO's very survival could be threatened. The corporation's value as a going concern is approximately \$150,000,000. Daily, PYCO is placed in the position of losing corporate goodwill and contractual integrity with its owners and customers as a direct consequence of switching problems. Focusing only on the value of the inventory that could be lost through a long term shut down, the inventory at risk is valued at approximately \$95,000,000.

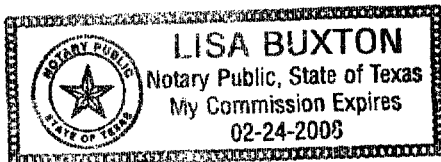
23. All discussions with SAW since November 17, 2005, to restore adequate rail service have proven unfruitful. As a member of PYCO's management team, the present switching difficulties are an imminent threat to the financial wellbeing of PYCO and we have no reason to believe that adequate service is going to be restored within a reasonable period of time short of intervention by the Surface Transportation Board."

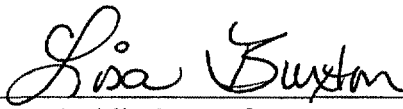
Further, Affiant saith not.



ROBERT LACY

SWORN TO AND SUBSCRIBED BEFORE ME on this the 15th day of December, 2005, to certify which witness my hand and seal of office.





Notary Public State of Texas

EXHIBIT 1

JAMES L. GORSUCH, P.C.*Attorney at Law*

4412 - 74th Street, Suite B-102
Lubbock, Texas 79424

Telephone: (806) 771-6474
Facsimile: (806) 771-6476
jgorsuch@nts-online.net

October 11, 2005

Via Facsimile:

Mr. Gary R. McLaren
**RICHARDS, ELDER, SRADER,
PHILLIPS & McLAREN, L.L.P.**
5214 68th Street, Suite 302
Lubbock, Texas 79424

Re: Sale of Portion of the Assets and Obligations of South Plains Switching, Ltd. Co., to Pyco Industries, Inc.

Letter of Intent

Dear Mr. McLaren:

This Letter of Intent sets forth our agreement and understanding as to the essential terms of the sale to Pyco Industries, Inc. ("Purchaser"), by South Plains Switching, Ltd. Co. ("Seller"), of a portion of Seller's business ("Business") located in Lubbock County constituting a shortline railroad business in East Lubbock. The parties intend this Letter of Intent to be binding and enforceable and will inure to the benefit of the parties and their respective successors and assigns.

1. **Purchased Assets.** At the closing, Purchaser will purchase the specific assets set forth in the Sale Agreement associated with the Business, including all contracts and agreements, and all legally assignable assets and obligations.
2. **Assumed Liabilities.** Purchaser will assume as of Closing Date the liabilities and obligations set forth in the Asset Sale Agreement between South Plains Switching, Ltd. Co., and The Burlington Northern & Santa Fe Railway Company, executed in May of 1999. In addition, Purchaser will assume the liabilities and obligations arising in connection with the operation of the Business by the Purchaser after the Closing Date.
3. **Purchase Price.** The purchase price will be \$5,500,000.00, payable in cash in immediately available funds on the Closing Date.

October 11, 2005

Page 2

4. **Pre-closing Covenants.** The parties will use their reasonable best efforts to obtain all necessary third party and governmental consents, if required, including all certificates, permits and approvals required in connection with Purchaser's operation of the Business. The Seller will continue to operate the Business consistent with past practice. The parties agree to prepare, negotiate and execute a Purchase Agreement which will reflect the terms set forth in this Letter of Intent.
5. **Expenses.** Subject to the provisions of this Letter of Intent, each party will pay all of its expenses, including legal fees, incurred in connection with the acquisition of the Business.
6. **Confidentiality:** Any information obtained by Purchaser from Seller regarding this sale, will be kept strictly confidential.

Seller and Purchaser warrant that they have all required authority to enter into this Letter of Intent, and both Purchaser and Seller represent that they have full permission from the Board of Directors and the Officers to enter into this Letter of Intent.

If you are in agreement with the terms of this Letter of Intent, please sign in the space provided below and return a signed copy to James L. Gorsuch, P.C., by the close of business on October 17, 2005. Upon receipt of a signed copy of this letter, we will proceed with our plans for consummating the transaction in a timely manner.

Very truly yours,

SOUTH PLAINS SWITCHING, LTD. CO.

By: _____
CHIEF OPERATING OFFICER

PYCO INDUSTRIES, INC.

By: _____
CHIEF OPERATING OFFICER

JAMES L. GORSUCH, P.C.*Attorney at Law*

•4412 - 74th Street, Suite B-102
Lubbock, Texas 79424

Telephone: (806) 771-6474
Facsimile: (806) 771-6476
jgorsuch@nts-online.net

FAX COVER SHEET

DATE: *October 11, 2005*

TO: *Gary McLaren
Fax 785-2521*

FROM: *Jim Gorsuch*

RE: *LETTER OF INTENT*

TOTAL NUMBER OF PAGES SENT, INCLUDING THIS PAGE: 3

*If you do not receive legible copies of all pages, please
telephone (806)771-6474 immediately and ask for JAN.*

The information contained in this fax is considered by the sender to be confidential and may be of an attorney-client privileged nature. It is intended only for the use of the individual or entity named above. If the reader of this message is not the named recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is prohibited. If you have received this communication in error, please notify us by collect telephone and return the original message to us at the address above at our expense. This paragraph does not apply to pleadings or other documents intended for filing in public records, or for filing with any department or agency whose records are open to the general public for inspection.

EXHIBIT 2

PHILLIPS & McLAREN, L.L.P.

ATTORNEYS AT LAW

JAMEY LANEY PHILLIPS
jameyp@sbcglobal.net

3305 66TH STREET, SUITE 1A
LUBBOCK, TEXAS 79413
TELEPHONE (806) 788-0609
TELECOPY (806) 785-2521

GARY R. McLAREN
gmclaren@sbcglobal.net

October 13, 2005

Mr. James L. Gorsuch, P.C.
Attorney at Law
4417 74th Street, Suite B-102
Lubbock, Texas 79424
Via Telefax No. 771-6476

RE: Letter of Intent

Dear Jim:

As you know, PYCO is still in the early stages of looking at the purchase of your client's assets. Much remains to be done in terms of investigation and evaluation of the purchase.

We would need to add the following provision to your proposed Letter of Intent in order to move forward.

Purchase Conditional Upon Due Diligence and Financing. Seller acknowledges and agrees that Purchaser's purchase of the assets made the subject of this Letter to Intent is conditional and contingent upon Purchaser's satisfaction with the results of Purchaser's due diligence in the investigation, evaluation and appraisal of said Assets, at Purchaser's sole discretion. Seller further acknowledges and agrees that Purchaser's purchase of said Assets is further conditional and contingent upon Purchaser's ability to obtain financing for the purchase of said Assets at terms and conditions favorable to Purchaser, at Purchaser's sole discretion. Seller further acknowledges and agrees that should Purchaser be dissatisfied with the results of its due diligence concerning these Assets, or be unable to obtain financing for the Assets at terms and conditions favorable to Purchaser, both at Purchaser's sole discretion, then Purchaser is entirely relieved of all obligations and duties arising under this Letter of Intent, save and except the duty and obligation of Confidentiality as provided for herein.

October 13, 2005
Page 2

Please let me know if this is acceptable.

Yours very truly,

Phillips & McLaren, L.L.P.

By:

Gary R. McLaren

GRM/cjh

SENDING CONFIRMATION

DATE : OCT-13-2005 THU 16:33
NAME : GARY McLAREN
TEL : 806 788 1807

PHONE : 7716476
PAGES : 3/3
START TIME : OCT-13 16:32
ELAPSED TIME : 00'23"
MODE : ECM
RESULTS : OK

FIRST PAGE OF RECENT DOCUMENT TRANSMITTED...

C O V E R
S H E E T

FAX

To: James L. Gorsuch
Fax #: 771-6476
Re: Letter of Intent
Date: October 13, 2005
Pages: 3, including cover sheet

From the desk of ...
Gary R. McLaren
Attorney at Law
Philips & McLaren, L.L.P.
3305 6th Street, Suite 1A
Lubbock, Texas 79413
(806) 765-0602
Fax: (806) 765-0621

EXHIBIT 3

**South Plains Lamesa Railroad, Ltd.
South Plains Switching, Ltd. Co.
P. O. BOX 64299 LUBBOCK, TEXAS 79464
PHO: (806)828-4841 FAX: (806)828-4863**

November 3, 2005

NOV 03 2005

Mr. Robert Lacey
PYCO Industries
P. O. Box 841
Lubbock, TX 79408

Dear Mr. Lacey:

South Plains Switching, Ltd. Co., (SAW) has come to the conclusion after discussions with PYCO's attorney that an agreement on a letter of "intent to purchase" certain assets of SAW cannot be reached.

SAW is going forward with talks to other prospective buyers, if none are found to be satisfactory, SAW will continue to operate all its property in Lubbock.

However, in the interim, SAW feels it must request, for liability and violation of FRA Rules and Regulations, that PYCO Industries cease all plant operations on SAW property immediately. Storage of and placement of PYCO equipment needed for its operations needs to be addressed as soon as possible.

Please call or have a PYCO representative contact me at my office in Slaton, TX, to discuss future operational and rail service issues required of SAW. Your immediate attention to this matter will be appreciated.

Respectfully,



Larry D. Wisener
President

EXHIBIT 4

South Plains Lamesa Railroad

November 17, 2005

3:45pm

Larry Wisener called to ask me if we had received his letter dated November 3rd (copy of letter available) and was wondering why we haven't been in touch with him to discuss our operational needs. I explained that we had received his letter and that we knew that he was going to make the rules and we didn't believe that we would have any input in his decisions. He said we were ignoring his requests and that we had been loading seed cars on his track again (track between dump 5 and seed stacks). I told him politely "no sir, we have been loading seed inside our plant." He accused me again of the same thing and I politely stated again that "we were loading inside our plant from seed house number one and that we did not have any fumigated seed in the area that he indicated." He started telling me that we were not going to be able to get on his tracks anymore and that he was putting in a derail to make sure that we couldn't get on his property to switch our cars. He said that we needed to sit down with him so he could tell us how much he was going to charge us to store our cars, to service our plant, and that he was canceling the lease on track #9298. He said he had 100 seed cars on that track and that he wasn't going to allow us to keep cars over there for free anymore. He mentioned other leases that he was looking at that he would be canceling soon and that we had better come over and talk. Larry said that he wasn't going to store cars for us anymore and was going to turn them back to the BNSF and they could store them for us.

November 18, 2005

8:30am

Lewis, Ronnie, Kelly, Les, and I went down into the plant to plan how we need to go about our business. Larry did put the derail on the track so that we could not get on his property and we told our people to do what they could do and we would request in writing anything that we needed the SAW to do to service our operation.

9:15am

Lewis came to the office with a plan to move our cars around inside of our plant and asked if we could call Larry and see if he could move the derail back about 100 feet to the drainage ditch where it was place last time. With the derail where it was currently, we did not have enough room to put a car on the switch in order to get it weighed. With the switch moved, we would be able to get all of the cars ready inside our plant in order to have the daily switches ready for them and make everything easier for both parties.

9:30am

Received a letter dated November 17th canceling the lease of track #9298 effective February 28, 2006.

11:00am

I place a call to Larry and ask him if he could move the derail back to the drainage ditch so that we could get all the cars weighed and ready for him daily. He said that he was busy and would have to look at it later. That is all that I wanted from him and asked if he would let me know. He told me that he had been going through all of the leases and encroachments and there were a lot of loose ends that he was going to cancel. He said that it included overhead conveyers and roads that he would be sending a letter out to cancel. And that he wasn't going to store any cars for us and needed us to come and talk to him about how much he was going to charge us for all services. I told him that if he was going to tell us what he was going to do, would there be any need in us coming to talk to him. He said if you care about your operation you need to come over. I said that if he already things set; we didn't need to go sit down with him just to listen to him vent and argue about everything. Larry said that we wouldn't argue about anything because there was nothing for us to argue about. I again said that we didn't need to sit down with him if he had things figure out already. Larry then told me that he was going to set charges for everything that he could and cancel leases and that we would have to try to figure out how to take care of ourselves. I told him that we are working on taking care of ourselves and he stated that is was going to cost a lot of money for us to continue doing

business with his railroad and that we would start receiving letters next week on cancellations and rates that he is going to charge us to switch and store cars. I replied that all I had only the one question for him about the derail and that I didn't intend on getting into any further discussions at this time. Larry then stated that the answer is no, he is not going to move the derail at all. I said okay thanks for your time, bye.

We faxed in the list of cars needed on Friday morning and did receive a switch at both plants at about 4:30pm.

November 21, 2005

9:00am

We sent in our switch list for the day and had everything lined out for them to pick up from within our plants. Les observed Larry and 2 other guys watching us switch from the derail that he had put in on Thursday. We have figured out how to just barely get one car on that at a time in order to get back to our scales and weigh the cars. I wouldn't be surprised if he did not move the derail slightly today so that the one car won't fit anymore.

3:00pm

SAW switched both plants between 3 and 4 pm. Lewis observed only two people on switch crew versus the usual 4-5, Rodney and Shad.

November 22, 2005

9:00am

Our guys have been looking at the track situation inside our plant because of only being able to handle about 12 cars a day currently. They decided that if they had the SAW switch our cars on the scale track instead of the shop track or if we could get cars on both, we would be able to handle more cars each day. Les asked Rodney (SAW) if we could get switched on both and he replied that Larry would only allow them to do one pull per day. They then asked if they would switch on the scale track today. Rodney asked Larry and he said that they would switch only on the shop track. The switch is inside our plant and we could lock it out and have the SAW set the cars where we need them without any input from the Larry.

11:00am

We sent in our request for the days switching a little late because we were waiting for the answer from the SAW concerning the scale track. We are leaving the switch on the shop track for now until we here from our attorney's.

3:30pm

The SAW picked up cars at 10am this morning and did not leave any cars for us to load. We had some seed cars that were not ready yet and they left them. After they were loaded they set them out on our shop track to be picked up this afternoon. This afternoon they pushed cars in on top of the seed cars instead of pulling them out limiting the number of empties that we could bring in to load. Les asked them if they would just put them on the scale track and was told that Larry wouldn't let them. Instead of making a big deal out of it today we conceded to take what we had and will still request in writing on Monday morning when we send our car list in that they set the cars on the scale track. We will see what happens then.

November 23, 2005

9:30am

We sent in our order list as usual this week. We did not specify which track that we wanted the cars to be placed. The SAW sent a notice to our office on the 22nd that they would be closed for the holiday and would not switch on the 24th and 25th. We will start requesting cars be put on scale track on Monday. Rodney (SAW) told Les that he would like to have our switch list by about 5pm for the next day. The next switch will not be until Monday morning and we were making the track change on the switch list so we aren't going to fax until early Monday morning. We did not get a switch at plant #2 today and now will not get any cars to load over the long weekend.

November 28, 2005

7:30am

I sent the switch list to the SAW railroad and requested that the cars be placed on the scale track and the loaded cars pulled from the shop track.

2:45pm

We got switched at plant #1 and they would not place the empty cars on the scale track. They pulled the cars from the shop track and then placed the empties back on the same track. Even though it would be easier to push in on one track and pull out on the other.

4:30pm

Les talked to Rodney and was told they were having problems with their engine today and would not be able to switch us at plant #2 again. We now have not had a switch at plant #2 since November 22nd. We sent the switch list to the SAW for tomorrow and sent a cover letter this time requesting that the inbound cars be placed on the scale track (copy attached) at plant #1 and that they switch as request on the 23rd and 28th at plant #2.

November 29, 2005

8:00am

Les said that Rodney called him this morning and told him that they would be switching at plant #2 this morning because they finally got their locomotive working again. He also told Les that he would pull from the shop track twice today if we could get cars loaded. He did not indicate which track he would push cars into our plant.

12:00pm

We finally got a switch at plant #2. Larry has complained about storing cars for us recently, but if the SAW would have switched us on the 23rd and 28th, we would have been able to load 36 more Gondolas and 6 more box cars by today.

12:30pm

We were switch on the shop track again today. The first day they could have said that they didn't see the instructions, but today there is no reason that the SAW didn't know that we wanted the cars pushed in on the scale track. Larry is being stubborn and is not going to switch the cars like we request. The answer to his problems about having to store our cars and the demurrage that we are incurring on our hopper cars can be attributed directly to the SAW not being willing to switch on the scale track. We could load an additional 5+ cars per day by using the scale track versus the shop track. Since this nonsense began the first part of November, PYCO plant #1 could have loaded an additional 80 cars. At this time we are behind 13 boxcars of Linters, 5 hopper cars, 40 Gondolas, and about 6 tank cars. This could have all been prevented and we would still be abiding by the rules that Larry put in place.

5:00pm

We faxed our list in to the SAW railroad that still shows that we want the cars placed on the scale track. We haven't taken any other steps until we get advice from counsel.

November 30, 2005

2:00pm

We received a switch at plant #2 as requested today. They pulled the cars from the shop track at plant #1 at about 2:30, but when they pushed in our empty cars about 15-20 minutes later it was on the shop track. This is the 3rd day in a row that the crew would not put the cars onto the scale track as requested. That is another 5+ cars that we could have loaded tonight that are going to be lost. It is costing PYCO a lot of money for him to deny our switching requests each day, not to mention we are getting further behind each day. I had noticed that I haven't seen any charges for surcharges, storage, or demurrage yet like was promised on one of our phone calls the other day. Not only has he not sent the charges, but also the letters that he was going to send to cancel all of our leases and easements.

4:45pm

We sent our switching request in along with the cover letter again telling the SAW that we want our cars pushed in on the scale track. This is the fourth day of asking and if it doesn't happen tomorrow, we will need to take additional steps to make sure that he has to switch us on the scale track.

December 1, 2005

11:30am

We were switched at plant #1 they pulled cars from the shop track and then came back and pushed the empties onto the same track. They still will not push the cars on the scale track where we requested.

1:30pm

We received our switch as ordered at plant #2. It seems that we are getting that worked out at the present time.

4:30pm

We sent the fax in to order cars for Friday.

December 2, 2005

8:20am

Rodney at the SAW called and said that they didn't receive the switch list that Kelly had faxed at 4:30pm on Thursday. Les gave Rodney the instructions over the phone and told him that we wanted the cars on the scale track.

11:00am

The SAW pulled from the shop track as requested and then they pushed the empties onto the same track. They still refuse to set the cars on the scale track. We are only ordering the cars that will fit on the shop track; we cannot order more cars until they start pushing the empties onto the scale track.

12:00pm

We received the cars that were requested at Plant #2.

4:30pm

We sent in our order for cars to be placed on Monday. We continue to order the cars for plant #1 to be placed on the scale track.

December 5, 2005

9:00am

We finally received an invoice today for charges incurred on the SAW railroad. The normal bills were received as in the \$20 per car surcharge that the SAW starting sending a while back and \$150 per loaded oil car sent from plant #2 to Plant #1. Those two invoices were normal, but now we are getting an invoice for \$150 per car for each car that is constructively placed at either one of our plants. So far he has only billed us for November 21st, 22nd, and 23rd which are a few days after we started keeping this log again. The \$150 charge is on his new tariff that he sent to us in May.

10:30am

The SAW pulled the cars from the shop track and pushed them back onto the same track, they did not give us the gondolas we ordered only the tank cars and hoppers. Les told Rodney again today that we needed the cars pushed on the scale track and was told that Larry still would not allow him to push the cars on the scale track. There is no reason that Larry should be able to dictate which track our cars get placed.

5:00pm

We still have not been switched at plant #2, but Rodney told Les he would get it done before they went home. We will see in the morning. We are sending the list to the SAW for Tuesday.

December 6, 2005

8:00am

We finally got switched at plant #2 at about 6pm last night. Les also told me that at plant #1 we did not get any Gondolas to load yesterday, only tanks and hoppers. Les said that when he would ask Rodney to push the cars on the scale track he would only say that Larry wouldn't let him do it that way.

11:30am

The SAW switched our cars to us, but we had asked for 12 Gondolas and 3 Tank cars and they only had 11 Gondolas and they tried to give us 4 tank cars. We did not need the extra tank car and told Rodney to keep the car.

1:30pm

We received all of the cars that we ask for, but they were pushed in on the shop track again. Les said that he asks Rodney about the scale track every time they talk.

December 7, 2005

9:00am

I had an opportunity to sell 50,000 more tons of cottonseed at \$120 today, but did not take the bid because of our switching situation. This is another case where the SAW is costing PYCO money by preventing us from shipping the seed that we will need to move in order to hold everything that we will receive.

11:00am

The SAW pulled the loaded cars at plant #2 and did not push anything into us today. We had ordered 12 Gondolas and Les was told that they didn't have any empty Gondolas to bring.

11:30am

Rodney pulled the loaded cars from the shop track today and then set in 4 Gondolas to us, allowing us to pull them over to the meal track before he set any more cars. This allowed us to take 16 cars today versus the normal 12 that we have been getting on the shop track. Larry still will not let his employees switch us on the scale track, but Rodney bent the rules a little and let us pull those cars to the other track before he set the ones that we had ordered.

December 8, 2005

10:00am

We received our switch at plant #1. We did not ask for any Gondolas because we were told they did not have any in town, but we did ask for 6 tank cars and 6 box cars to load. We received the 6 tank cars and only 2 of the boxes because we were told that they had run out of box cars also. We have a written order in with the SAW for a certain number of box cars each day and he is responsible for getting them ordered from the BNSF. We did not order any gondolas for plant #2 either, but we ordered 4 boxcars. We were told that they would not switch today because they have no boxcars available. It doesn't look like we are the ones that are sitting on cars and making the SAW use their tracks to store our empty cars. We were loading 6 tank cars, 2-4 boxcar, 2 hoppers, and up to 15 gondolas per day at plant #1 so if they would let us go, we would not have too many cars in town waiting to be loaded.

December 9, 2005

11:00am

We did not order any gondolas for plant #2 for today; only 4 boxes were requested the day before and not received. This morning we received 12 empty gondolas and no boxes. The reason for not ordering gondolas was that we wouldn't be able to load any until Monday because the tarp couldn't be pulled from the fumigated pile until Monday morning. We really need boxcars to load our linters in at both plants, but at plant #2 we have to stack them on the ground because we are out of room.

5:00pm

We finally got a switch today but they only set in 7 tank cars (4-empty, 3-loaded). We didn't get any boxes at plant #1 either which is going to put us further behind each day. We order boxcars a month at a time for both plants and tell the SAW how many cars we need each day. The SAW will send the order to the BNSF or UP railroad on most equipment that we order, but on the boxcars he doesn't. He has a contract to store boxcars for the railroad and says that he can get any boxcars that we need. I would say that isn't the case right now and we are in need of boxcars quick.

December 12, 2005

9:00am

Kelly Jack talked to the SAW about our lack of boxcars today and Dale told him that they sent our order to the BNSF on November 21st, when they received it in their office. Kelly called the BNSF and was told that they don't have an order in from PYCO and haven't seen one since the November order was placed at the end of October. I told Kelly to send in an order immediately to both the SAW and the BNSF so that we could get on record needing the boxcars. I don't know who was at fault on the order, but it wasn't a mistake in our office. The SAW did get the order from us and the problem is between the SAW and the BNSF.

12:00pm

We received 12 gondolas at plant #2, but no boxes. At plant #1 we received 7 tank cars, 4-empty and 3-loaded on the shop track. We still need to get some boxcars in town for us to get caught up on our linter shipments.

December 13, 2005

2:00pm

We received our switch at plant #2 and received 12 gondolas and 2 boxcars as requested. Plant #1 was switched later and we 6 tank cars and 2-hoppers (we just ordered 1) and no boxcars even though we ordered 5. We are still in need of boxcars to ship out our linters.

APPENDIX VIII

FARMERS COOPERATIVE COMPRESS



P.O. Box 2877
Lubbock, Texas 79408-2877
Phone: 806/763-9431
FAX: 806/763-3251

June 9, 2006

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20036

Re: PYCO Industries-Feeder Line Application
STB Finance Docket 34844

Mr. Williams:

Farmers Cooperative Compress (FCC) is a shipper of cotton bales that are marketed all over the world. We are concerned about the problems that PYCO is having with SAW. FCC is aware of incidents in which SAW management has blown up at shippers who seek to raise issues with their service, and has threatened retaliation. PYCO Industries included a statement by the manager of Hi Plains Bag and Bagging to that effect in its feeder line application. In another statement, the manager of Floyd Trucking discussed how he finally gave up on obtaining service from SAW. More recently, SAW management threatened PYCO and so degraded service to PYCO that PYCO sought and obtained alternative rail service. When a switching railroad takes these kinds of actions toward some of its shippers, it can no longer be regarded as reliable by any of its shippers because they may become the subject of similar retaliation or service degradation at any time. Thus service by SAW has become inadequate and unreliable for our merchant customers and company.

Sincerely,

Ron Harkey
President

Attebury Grain, LLC

P.O. BOX 2707 - AMARILLO, TEXAS 79105
Capacity Over 150,000,000 Bushels
Telephone: (806) 335-1639
Fax: (806) 335-1165

June 9, 2006

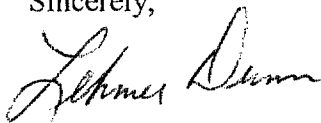
Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D. C. 20423

RE: PYCO Feeder Line Application, STB Finance Docket 34844

This letter is in reference to the above-mentioned Docket. Attebury Grain, LLC is aware of incidents in which SAW management has blown up at shippers who sought to raise issues with their service, and SAW has threatened retaliation. PYCO Industries included a statement by the manager of Hi Plains Bag and Bagging to that effect in its feeder line application. In another statement, the manager of Floyd Trucking discussed how he finally gave up on obtaining service from SAW. More recently, SAW management threatened PYCO and so degraded service to PYCO that PYCO sought and obtained alternative rail service. When a switching railroad takes these kinds of actions toward some of its shippers, it can no longer be regarded as reliable by any of its shippers because they may become the subject of similar retaliation or service degradation at any time. On this basis, we feel that the service by SAW has become inadequate and unreliable for our purposes and our company.

Our Company, which uses rail service provided by SAW, supports PYCO's feeder line application.

Sincerely,



Lehmer Dunn
Vice President

MEMBER: National Grain and Feed Association, Texas Grain and Feed Association,
Oklahoma Grain and Feed Association, Panhandle Grain and Feed Association,
Kansas Grain and Feed Association.

c.montange

From: "Hyer, Michael (Irving) NA" <Michael.Hyer@hanson.biz>
To: <c.montange@verizon.net>
Cc: "Dacus, Stan (Irving) NA" <Stan.Dacus@hanson.biz>
Sent: Monday, June 12, 2006 11:23 AM
Subject: PYCO Industries - Feeder Line Application, STB 3484

Mr. Montange,

This confirms our conversation that you are authorized to state in the above referenced Surface Transportation Board proceeding that Hanson Aggregates, Inc. ships constructions aggregates into Lubbock using South Plains Switching LLC rail service and believes that service is inadequate.

Please let me know if you have any questions in this regard.

Mike

Michael H. Hyer
Vice President and General Counsel
Hanson Building Materials America, Inc.
8505 Freeport Parkway, Suite 138
Irving, Texas 75063
Tel (469) 417-1300
Fax (469) 417-1487
michael.hyer@hansonamerica.com

This message and any attached documents contain information from the General Counsel of Hanson Building Materials America, Inc. that may be confidential and/or privileged. If you received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message. Thank you.

6/13/2006