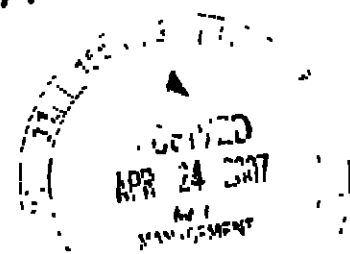


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23 April 2007
fax-filing, and express

Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

Re: PYCO Industries -- Alternative Service --
South Plains Switching, Ltd., F.D. 34889

ENTERED
Office of Public Record Management
APR 24 2007

PYCO Reply to SAW "Second Supplement"
filed April 18

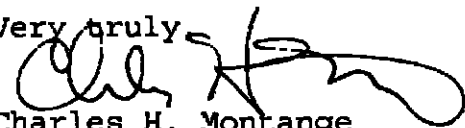
Public Record

Dear Mr. Williams:

On behalf of PYCO Industries, enclosed please find a 14-page (inclusive of exhibit) fax-filing of a Reply in the above-captioned proceeding. The original and ten copies are being supplied by express delivery to STB and to counsel.

Thank you for your assistance.

Very truly


Charles H. Montange
for PYCO Industries, Inc.

Encls.

cc. counsel per certificate of service (w/encl.)
Mr. McLaren (for PYCO) (w/encl.)

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34889
SOUTH PLAINS SWITCHING LTD.)

REPLY
by PYCO INDUSTRIES, INC.
to
"Second Supplement to Petition
to Terminate Alternative Rail Service"
as filed by Incumbent South Plains Switching, Ltd.

The "Second Supplement" filed by incumbent railroad South Plains Switching, Ltd. is contrived and misleading, and states no grounds for termination of alternative rail service. PYCO Industries, Inc., reiterates its opposition to any such termination.¹

Argument

1. Non-compliance with § 1147.1(c)(1). This Board's rules governing both Part 1146 and Part 1147 "alternative service" admonish incumbent rail carriers "not to file ... a petition [to terminate alternative rail service] prematurely." 49 C.F.R. § 1147.1(c)(1) & § 1146.1(d)(1). Incumbent South Plains Switching Ltd. (SAW) filed no opposition to PYCO's petition for Part 1147 alternative service on the merits, but the day after this

¹ Although PYCO believes that SAW's "Second Supplement" constitutes a pleading to which the 20-day reply period prescribed in 49 C.F.R. § 1104.13 is applicable, PYCO is filing this Reply within the five day period provided for replies to petitions to terminate per 49 C.F.R. § 1147.1(c)(2) in order to ensure that our response is timely.

Board's decision authorizing such service was served,² SAW prematurely petitioned to terminate it. Since that time, SAW has peppered this Board with "supplements," an "emergency petition," impermissible replies to replies, and motions for leave to file replies to replies to its various supplements and emergency petitions. Surely it is "premature" for SAW to fire these supplemental cannonades on the Board before the Board has ruled on SAW's first premature petition.

2. SAW's claim that WTLC is failing to serve SAW's shippers. Turning to the "merits" of SAW's latest effusion, there are none. The gravamen of SAW's latest is that the alternative rail service carrier, West Texas & Lubbock Railway Company (WTLC), has "fail[ed] ... to provide alternative rail service to shippers served by SAW." SAW 2d Supp. at p. 3.

This Board has authorized WTLC to provide alternative rail service to PYCO Industries, and not to any other shipper, on the SAW system. WTLC has provided, and is providing, excellent service to PYCO, which is the only shipper WTLC is authorized to serve. One easy response to SAW's claim that WTLC is failing to provide alternative service to SAW's customers other than PYCO is that this Board can readily remedy that "problem" by authorizing WTLC to serve all SAW customers. This in fact is tantamount to relief PYCO essentially is seeking in our pending feeder line proceeding.

² This Board authorized alternative rail service pursuant to Part 1147 in its Decision served in this docket on November 21, 2006.

3. Alleged impairment of SAW. What SAW really seems to be arguing is that WTLC is somehow "impairing" service by SAW to SAW's other customers. In particular, the crux of SAW's heartburn appears to be in the transfer of cars from the BNSF yard in Lubbock to the SAW yard at PYCO's plant no. 1. In order to convenience BNSF, which wants only one carrier to pick up traffic from the BNSF yard, WTLC has picked up traffic for both SAW shippers and PYCO from the BNSF yard, and has spotted the cars for SAW shippers in the SAW yard. Although SAW presents no actual shipper complaints, Shad Wisener through his "Verification" of the "Second Supplement," apparently has sworn under oath that WTLC has repeatedly missed switches from the BNSF yard to the SAW yard.³

The attached Declaration of Steve Gregory, Vice President for WTLC, sets the record straight. As Mr. Gregory notes in his Declaration, SAW in part complains that WTLC has not switched on weekends, but this is "disingenuous." SAW in general does not work on weekends. WTLC is prepared to do so "if SAW advises us the previous Friday or if a SAW customer contacts us." No one has sought such service on the days in question.

As to weekday deliveries in March, Mr. Gregory reports

³ SAW's pleading is odd. SAW's Appendix I purports to be a letter from Delilah Wisener allegedly summarizing service inadequacies but is not sworn or submitted in the form of a declaration. SAW's Appendix II is a general verification by Shad Wisener, but Shad Wisener does not represent that he is an officer of the company nor otherwise indicate he can verify pleadings for SAW. The entire evidentiary foundation for SAW's "Second Supplement" is accordingly unreliable and improper.

that in March, one switch was prevented due to a derailment, and two switches by inability to access the BNSF yard. On all other days cited by SAW, WTLC in fact made the switches. As to weekday deliveries in April, WTLC in fact made the switches on two of the days on which SAW claims no switch was made; "on the other days [WTLC] records show no cars for SAW were available to [WTLC] from BNSF."

At most, WTLC could be accountable for missing one switch in March, but that was due to a derailment and certainly not a pattern. Moreover, no shipper complained. Equally clearly, SAW has misrepresented what happened in its averments, some of which appear to be beyond misleading and instead to be actually false.

But the broader issue is SAW's failure to communicate, which is the first step toward cooperation. As Mr. Gregory confirms, SAW never participated in the morning conference calls specified in the applicable service protocols ordered by this Board for the purpose of coordinating service. Consistent with that failure, SAW did not call WTLC about the alleged failures to switch in March and April on which it purports now to base its "Second Supplement." If there was a problem, SAW should have called WTLC, immediately.

But matters are even worse: SAW seems actually to be avoiding any communication. Mr. Gregory indicates that WTLC began calling SAW on March 28 in connection with weed control

issues at the SAW yard.⁴ SAW's lack of weed control was creating an "unsafe condition for [WTLC] employees." (SAW's lack of attention to this unsafe condition also impairs service to all customers on the SAW system.) But neither Delilah Wisener nor Shad Wisener responded to telephone messages which WTLC left for them. Ultimately, WTLC employees controlled the weeds, "using material and equipment supplied by PYCO, at the expense of WTLC and PYCO."

In confirmation that the "problem" alleged by the Wiseners in their Second Supplement is fictional, Mr. Gregory for WTLC affirms that "[w]e have heard from no customer of SAW with a service issue in the time period referred to, in fact going back to the middle of 2006." Mr. Gregory reiterates that

"WTLC has no desire or can possibly benefit in any way from discriminating against SAW customers. Quite the contrary, we regard service to SAW customers as equal to or greater than our mandate to service PYCO. There have been occasions in the past when we delivered cars to SAW, when available from BNSF, when no service to PYCO was required."

Because SAW apparently suffers from an informational deficit, WTLC has now instructed its staff to fax to SAW "a list of cars delivered to SAW" at SAW's letterhead fax number.

As Mr. Gregory for WTLC indicates, WTLC is prepared to cooperate for the benefit of SAW's customers. Alternative

⁴ The Lubbock area has experienced high spring rainfall creating a substantial weed control problem.

service by WTLC is not "impairing" SAW's ability to serve its other customers; if there is any impairment, it flows from SAW's deliberate refusal to coordinate service. SAW must participate in the effort to serve its customers, and not contrive to sabotage that effort.

SAW makes some other claims in its filing which appear to be either irrelevant⁵ or summarizations of prior arguments. For the reasons stated above and in our prior pleadings, PYCO denies SAW has set forth any legitimate basis to terminate alternative service in its "Second Supplement" or elsewhere. SAW's "Second Supplement" is contrived, and upon analysis, demonstrates that SAW is refusing to communicate and to cooperate in providing service over its lines. The only thing the Second Supplement accomplishes in conjunction with this Reply is to corroborate that SAW itself claims its service is "impaired"; but the impairment, if any, is due to SAW; and thus SAW's service continues to be inadequate. SAW continues to make the case against itself.

Conclusion

There are two plausible responses to SAW's latest addition to its blizzard of paper in this docket: ignore it or deny it.

⁵ For example, SAW complains that WTLC has moved PYCO cars from Track 9200, but as Mr. Gregory indicates in his Declaration, this is in order to stage additional cars for cottonseed movement, consistent with historic use of the track. "At no time did this affect SAW negatively."

Respectfully submitted,



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Of counsel:

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Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Exhibit -- Declaration of Steve Gregory

Certificate of Service

I hereby certify service of the foregoing Reply to SAW's "Second Supplement" upon the following counsel of record by express service, next business day delivery, this 23d day of April 2007:

Thomas McFarland, Esq.
208 South Lousily Street, Suite 1890
Chicago, IL 60606-1112 (for SAW)

William Sippel, Esq.
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832 (for US Rail Partners)

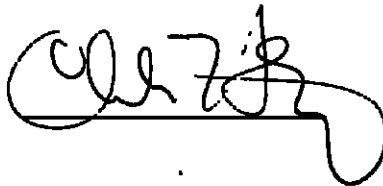
John Heffner, Esq.
1920 N Street, N.W., Suite 800
Washington, D.C. 20036 (for WTLC)

William A. Mullins, Esq.
Baker & Miller
2401 Pennsylvania Ave. NW, Suite 300
Washington, D.C. 20037 (for Pioneer/KJRY)

Adrian Steel, Esq.
Mayer, Brown, Rowe & Maw
1909 K Street, N.W.
Washington, D.C. 20006-1101 (for BNSF)

Andrew Goldstein, Esq.
McCarthy, Sweeney & Harkaway
2175 K Street, N.W., Suite 600
Washington, D.C. 20037

Michael Hyer, Esq.
Vice President and General Counsel
Hanson North America
300 East John Carpenter Freeway, Suite 1645
Irving, TX 75062

A handwritten signature in black ink, appearing to read "Michael Hyer", with a long, sweeping underline that extends to the right.

Before the Surface Transportation Board

Pyco Industries, Inc. -)
Alternative Service -) F.D. 34889
South Plains Switching)

DECLARATION OF
STEPHEN GREGORY

Stephen Gregory hereby declares and verifies pursuant to 28 U.S.C. 1746 as follows:

My name is Stephen Gregory. I am a Vice President of Permian Basin Railways, a short line railroad holding company and corporate owner of the West Texas & Lubbock Railway ("WTLC"). My business address is 118 S. Clinton Street, Suite 300, Chicago, IL 60661.

WTLC is a class III short line railroad with operating headquarters in Brownfield, TX. As relevant here, WTLC is the railroad authorized by the Surface Transportation Board to provide alternative rail service to PYCO Industries, Inc. ("PYCO"). Pursuant to the Board's order served January 26, 2006, as subsequently amended, in F.D. 34802 WTLC provided service pursuant to Part 1146 over the railroad lines of incumbent railroad South Plains Switching, Ltd. Co. ("SAW"). Pursuant to the Board's order served November 21, 2006, in F.D. 34869, WTLC has provided service pursuant to Part 1147.

In the April 17, 2007 letter attached to the April 18, 2007 Petition of SAW, SAW alleges several failures to interchange cars to SAW from BNSF on WTLC's part in March and April.

Our records show a different picture. The only interchange we did not make in March due to a WTLC operational problem was on March 26, 2007, when the crew assigned to this service was caught behind a derailment on WTLC. Two other interchanges, on March 9 and 30, were prevented due to our inability to get access to the BNSF Lubbock yard. On the other weekdays cited WTLC did deliver cars to SAW. Similarly in April, WTLC did deliver on two days cited; on the other days our records show no cars for SAW were available to us from BNSF.

SAW's statements regarding weekend service are somewhat disingenuous. It is our understanding that SAW has not worked weekends, before or after our involvement as the alternative service provider. Nonetheless we have been willing, and reiterate here our readiness, to switch between BNSF and SAW on weekends if the need arises, if SAW advises us the previous Friday or if a SAW customer contacts us.

SAW's lack of responsiveness on service or maintenance issues, and its non-participation in the daily conference

call as outlined in previous filings, indicates it has no desire to communicate with us in the interest of service to its customers or in safe railroad operation. For example, on March 28 we began trying to reach SAW in connection with weed control on their property, the lack of which was causing an unsafe condition for our employees. Our Vice President - Operations Mike McConville left a voice message for Ms. Delilah Wisener that was not returned.

Superintendent Hans Grosstueck tried to call Mr. Shad Wisener but his phone was not answered. Ultimately, we had to deal with the unsafe condition. On April 3 WTLC forces sprayed the weeds, using material and equipment supplied by PYCC, at the expense of WTLC and PYCO.

It seems to me that if SAW were truly concerned about service to its customers, and that service was affected by interchanges, SAW would contact us rather than engage in exercises before the Board. Similarly one would expect SAW would lose no time in blaming WTLC for a service problem with its customers, and those customers would contact us for a resolution. We have heard from no customer of SAW with a service issue in the time period referred to, in fact going back to the middle of 2006.

There is a reference to moving cars from track 9200 without any explanation of why this is a bad thing in SAW's

view. The record in this case demonstrates that historically this track was used to stage cars for PYCO. Although PYCO has not shipped cottonseed since last Fall, it anticipated a movement this spring and asked WTLC to hold PYCO's leased tank cars on WTLC tracks in order to make room for cars for cottonseed loading. WTLC did this, an example of using our resources to benefit PYCO consistent with the alternative service directive. At no time did this affect SAW negatively.

As I have repeatedly stated in the past, WTLC has no desire or can possibly benefit in any way from discriminating against SAW customers. Quite the contrary, we regard service to SAW customers as equal to or greater than our mandate to service PYCO. There have been occasions in the past when we delivered cars to SAW, when available from BNSF, when no service to PYCO was required.

It could be that SAW has inaccurate or incomplete information regarding interchanges in this time period. In order to improve communication on cars we deliver to SAW, we have instructed our crews to fax a list of cars delivered to SAW at their fax number shown on their letterhead. This may accelerate the transmission of the information compared to when our clerical forces process it.

We stand ready to work with SAW for the benefit of its customers.

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

Executed on: April 23, 2007.

A handwritten signature in black ink, appearing to read "Stephen Gregory". The signature is written in a cursive, flowing style with a large initial 'S'.

Stephen Gregory