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19 November 2007

Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024



Re: PYCO Industries - Feeder Line - SAW, F.D. 34890; -220742
KJRY - Feeder Line - SAW, F.D. 34922; -220743
PYCO Industries - Alternative Rail Service - SAW,
F.D. 34802; and -220746
PYCO Industries - Alternative Rail Service - SAW,
F.D. 34889 -220744

Dear Mr. Secretary:

Pursuant to the authority granted by this Board in F.D. 34890, PYCO Industries, Inc. (PYCO) closed a transaction with South Plains Switching, Ltd. (SAW) and a related company on 9 November 2007 by which PYCO commenced operations (through a contract carrier) over SAW's former rail lines in Lubbock as of 12:01 AM, Saturday, 10 November 2007. This coupled with a settlement agreement moots the pending petitions for reconsideration in F.D. 34890 and 34922. In the settlement agreement, SAW reserved the right to continue to litigate compensation issues arising out of F.D. 34802 and 34889. However, PYCO views these issues as effectively foreclosed for the reasons stated in the attached Withdrawal of Petition and Status Report, tendered herewith for filing.

Respectfully submitted,

Charles H. Montange
Counsel for PYCO Industries, Inc.

Encls (orig plus ten)

cc. Counsel per certificate of service (w/encls)

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BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO Industries, Inc. --)
Feeder Line Application --) F.D. 34890
Lines of South Plains Switching, Ltd. Co.)

Keokuk Junction Railway -)
Feeder Line Application --) F.D. 34922
Lines of South Plains Switching, Ltd. Co.)

PYCO Industries, Inc. --)
Alternative Rail Service -) F.D. 34889
South Plains Switching, Ltd.)

PYCO Industries, Inc. --)
Alternative Rail Service -) F.D. 34802
South Plains Switching, Ltd. .)

Withdrawal of Petition
for Reconsideration in F.D. 34890/34922
as Moot

and

Status Report in F.D. 34802 and 34889

I. F.D. 34890/34922

On November 9, 2007, PYCO Industries, Inc. (PYCO), acquired the lines of South Plains Switching, Ltd. (SAW), pursuant to this Board's Decision served August 31, 2007, in F.D. 34890, as supplemented by a settlement agreement entered into between PYCO, SAW, and Choo Choo Properties, Inc., on September 20, 2007. PYCO commenced operations (through a contract carrier) on the former SAW lines at 12:01 AM on November 10, 2007.

The closing moots PYCO's petition for reconsideration in F.D. 34890/34922 from the August 31, 2007, decision. The Board can no longer grant effective relief on the issues PYCO presents.

In addition, the two remaining petitions for reconsideration (on behalf of Floyd Trucking and WTL) are similarly moot in light of PYCO's acquisition of the SAW property pursuant to this Board's Decision in F.D. 34890, and PYCO's settlement agreement.

II. F.D. 34802/34889

The September 20 settlement agreement settles all claims between the parties to the agreement, except that SAW reserved its position that it was entitled to compensation for alternative rail service in F.D. 34802 and F.D. 34889.

As indicated below, SAW has not raised the issue of compensation in F.D. 34802 at all, and has failed properly to raise it in F.D. 34889. Instead, SAW in March 2007 apparently sued STB in federal district court to enjoin alternative rail service on the ground that SAW was not receiving compensation. PYCO understands that lawsuit was dismissed on jurisdictional grounds, but that SAW has evidently filed an appeal, docketed as SAW v. STB, Fifth Cir. 07-11121 (docketed Oct. 25, 2007).

SAW apparently has avoided asking the Board to set terms for compensation in order to maintain its argument (totally misplaced) in court that alternative service to PYCO is void due to lack of compensation. This ruse by SAW is now moot in that, as discussed below, alternative service automatically lapsed when PYCO acquired the SAW lines pursuant to 49 U.S.C. 10907 on November 9, 2007.

The mootness of SAW's ruse does not justify any award of compensation to SAW. SAW never requested this Board to establish compensation, and it is now too late to do so. If SAW were permitted to make a tardy request, SAW on substantive grounds is still not entitled to any further compensation. .

1. Law. Both 49 U.S.C. 11102(a) and the preamble to this Board's Part 1146 and Part 1147 alternative service regulations (Expedited Relief for Service Inadequacies, Ex Parte 628, served Dec. 21, 1998, at p. 14) anticipates that the parties will work out compensation for alternative service. As the Board indicated the referenced decision, it will only step in if the parties cannot agree. It follows that an aggrieved party must timely request the Board to act. That has not happened here.

2. F.D. 34802. Upon review of the pleadings in F.D. 34802 (Part 1146 alternative service), it is clear that although SAW resisted alternative service in that docket on many grounds, it never raised any compensation issue before this Board. This constitutes a waiver of, or failure to preserve, any claim for compensation for alternative service in F.D. 34802.

Moreover, the last extension of the alternative service authorization in F.D. 34802 was by Decision served August 18, 2006, and that extension was at the request of SAW. Indeed, the August 18, 2006 Decision is the last Board action in F.D. 34802. The authorization for alternative service in that docket

automatically expired on November 22, 2006. The proceeding has been over for a year and the relief afforded therein long since has expired. By this late date, SAW must be viewed as having waived any right to compensation. In any event, it is manifestly too late for SAW to raise the issue now: the regulatory deadline for parties to file timely requests for reconsideration is 20 days (unless the Board authorizes up to an additional 20 more). 49 C.F.R. 1115.3(e). A party is not entitled to reconsideration for alleged "material error" concerning an issue it never timely raised. See Topeka, P. & W. Rwy v. STB, 462 F.3d 734, 753 (7th Cir. 2006).

2. F.D. 34889. PYCO sought alternative service pursuant to 49 C.F.R. Part 1147 in a petition filed on July 3, 2006. SAW did not oppose this petition on any substantive ground. This Board authorized alternative service under Part 1147 and 49 U.S.C. 11102(a) commencing November 23, 2006 in the Decision in F.D. 34889, served November 21, 2006, slip op. at p. 3. Pursuant to the statement at page 5 of that Decision, the alternative service authorization automatically expired on November 9, 2007, when PYCO closed purchase of the SAW lines pursuant to this Board's August 31, 2007, Decision in F.D. 34890.

One day after this Board issued its Decision authorizing Part 1147 alternative service, SAW petitioned to terminate such service. In light of the closing on November 9, 2007, and the

automatic termination of this Board's Part 1147 authorization on that date, SAW's petition to terminate is now moot.

SAW failed to request this Board to establish a compensation term. The first instance in which SAW raised any question about compensation for alternative service under F.D. 34889 before this Board was at page 5 of its "Emergency Petition for Partial Modification of Operating Protocols" filed on or about February 15, 2007.¹ In that pleading, SAW did not request the Board to establish compensation; instead, SAW stated that lack of compensation or "adequate... security" for same was another ground for termination of alternative service. SAW "Emergency Petition" p. 5. SAW's position in its "Emergency Petition" appears to echo SAW's subsequent lawsuit against STB seeking to enjoin alternative service on the ground that STB had now provided for compensation.

¹ PYCO understands that Delilah Wisener sent a letter to Mr. M. Clemens, STB Office of Compliance, dated December 26, 2006, complaining about use of Track 9200. SAW served this in docket F.D. 34890 as an exhibit to its opposition to certain relief requested by Hanson Aggregates. In that letter, Mrs. Wisener also asserted a compensation claim to Mr. Clemens for \$75/carload. However, SAW's counsel never represented it as a request for relief in any pleading, and it failed to constitute adequate notice of such a claim. In a "Status Report" dated January 30, 2007, for filing in F.D. 34890, F.D. 34889, and F.D. 34802, PYCO reserved all its objections to any SAW compensation claim (p. 5, asking for an opportunity to be heard), and noting that any compensation should be no greater than PYCO's offer in March of 2006 (\$2.90/carload), subject to adjustment for the derailment repairs (documents were attached showing the cost to exceed \$27,000) due to SAW's failure to maintain.

PYCO responded by pleading dated February 20. PYCO objected to SAW's tardy compensation argument as procedurally defective and requested it be stricken, and noted that SAW's failure timely to raise the issue constituted waiver.

As STB stated in Expedited Relief for Service Inadequacies, it lacks power to set compensation ab initio. SAW's basic legal position in its untimely supplement to its now moot petition to terminate is thus wrong.

In all events, SAW is not entitled to any further compensation. As PYCO observed in its February 20 pleading, the preamble to STB's Part 1146 and Part 1147 regulations indicated that compensation for alternative service was limited to compensation for property of the incumbent railroad used for the service, and reimbursement for services the incumbent railroad provided, and specifically did not include compensation for lost profits.² Moreover, the applicable statute (49 U.S.C. 11102(a))

² Expedited Relief for Service Emergencies, STB Ex Parte 628, served Dec. 21, 1998, slip op. at p. 14 (although incumbent railroad is entitled to fair compensation for "whatever services and facilities it provides" it is not entitled to "lost profits for service it is not providing").

SAW effectively has admitted that it provided no services to PYCO or PYCO's alternative service provider (WTL) during the period of alternative service. In particular, although this Board found that SAW was responsible to maintain the track (Decision in F.D. 34802 served June 21, 2006, slip op. at 8: "[a]s the owner of track that WTL is using to serve PYCO, SAW has the responsibility to inspect and to adequately maintain the trackage used by WTL. We expect that SAW will adequately maintain the trackage used by WTL"), SAW instead wrongly argued that WTL bore that responsibility. E.g., Letter of James Gorsuch

provides that upon appropriate request, "the Board may establish ... compensation for use of facilities under the principle controlling compensation in condemnation proceedings." Had SAW timely and properly requested this Board to set compensation under this principle, the amount is offset by PYCO's and WTL's increased costs resulting from SAW's failure properly to maintain the very facilities in question.

Based on SAW's representation to PYCO and WTL of the exact SAW facilities being used for alternative service,³ PYCO applied this Board's "principle controlling compensation in condemnation proceedings" to calculate that SAW was entitled to \$2.90 per carload in a memorandum dated March 11, 2006.⁴ This amount was duly offered to SAW by PYCO's alternative service provider in March 2006. SAW never responded. PYCO and WTL believed that SAW

to Ed Ellis, dated July 16, 2007, attached as Exhibit B to PYCO Motion to Permit Inspection and Repair, served August 6, 2007 in F.D. 34889; SAW Reply dated for filing August 10, 2007, in F.D. 34889, at pp. 1-2 (arguing that WTL has all duties to repair). Having neglected the trackage and having provided no services whatsoever to PYCO or WTL during the period of alternative service, the only possible reimbursement to which SAW is entitled pursuant to this Board's precedent is reimbursement for use of SAW facilities.

³ To refresh the record, that representation is included in Exhibit A hereto. All this information has previously been placed in the record as part of the March 11, 2006 memorandum filed with PYCO's status report dated January 30, 2007, in this proceeding, and with PYCO's February 20, 2007 reply.

⁴ To refresh the record, a copy of the previously filed March 11, 2006 memorandum is attached as Exhibit B.

felt the matter too insignificant to pursue (i.e., that SAW waived it).

In any event, SAW did not contest any of these calculations or present any other evidence for calculating a different amount of compensation. Under the circumstances, should this Board determine that SAW has sufficiently requested this Board to determine compensation, this Board should enter an order consistent with the evidence presented by PYCO, subject to the proviso that any such compensation must be offset by the increased costs incurred by PYCO and WTL to date due to SAW's failure to maintain its track.

Although SAW claims it is not responsible for maintaining its track, this Board has already determined that SAW had the maintenance responsibility. Decision in F.D. 34802, served June 21, 2006, at p. 8. Costs incurred by PYCO and WTL arising from SAW's failure to maintain its facilities are a proper set-off to any claim by SAW for compensation for use of those facilities. After all, PYCO and WTL should not be required to pay for facilities that do not work. PYCO has previously supplied an expert opinion that WTL sustained a derailment and track repair expenses in connection with the SAW facilities due to failure by SAW to maintain its track.⁵

⁵ Eldon Martin Declaration, para. 2, Attachment G to PYCO's Verified Petition for Alternative Rail Service in F.D. 34889.

In our February 2007 pleading at p. 13, PYCO indicated that to be done with the compensation issue, PYCO would not object if the Board ordered payment to SAW in the amount of \$2.90 per carload, subject to set-off's for track repair by WTL to SAW track. PYCO noted specific set-offs totaling \$27,759.50.⁶

Under the evidence of record, SAW is due no compensation in light of PYCO's \$27,759.50 set-off for documented track and re-railment expenses.⁷

⁶ The documentation establishing the set-off's is attached to several pleadings, including PYCO's January 30, 2007, status report at Exhibits B and C, filed in F.D. 34890, 34889, and 34802.

⁷ As noted, under 49 U.S.C. 11102(a), the Board upon proper request is supposed to establish compensation in accordance with its condemnation principle. The situation here is relatively unique in that the Board has now already applied its condemnation principle to the SAW assets in question. In particular, this Board adopted PYCO's calculation of net salvage value of rail in its Decision in F.D. 34890, served August 31, 2007 (p. 18 of Decision). Using those valuations results in an adjustment to some of the numbers employed in PYCO's March 11, 2006 memorandum, but the adjustments do not help SAW. To summarize, using the track, OTM, take-up and freight, and profit figures adopted by this Board in F.D. 34890 (a condemnation proceeding), PYCO's table in its March 11, 2006 memorandum, found at p. 18 of PYCO's February 20, 2007 pleading, would be adjusted to provide for a \$330 purchase price per ton for 90# reroll, \$245/ton for OTM, \$75/ton take-up and freight, and 15% salvager profit.

The total value for the 2.41 miles SAW stated were used exclusively for PYCO service would then be recalculated as follows: \$125,928 for 381.6 net tons assuming all 90# reroll quality; \$18,688.40 for 76.32 tons OTM; less 457.88 tons take-up and freight at \$75/ton = \$34,341, less 15% for salvager profit, for a total of \$93,754 (rounded). SAW indicated that 1.69 miles were shared 50/50. The revised valuation adjusted per the above would be \$88,275 for reroll 90#, \$13,112 for OTM, less \$24,084 (take-up/freight at \$75/ton) less 15% salvager profit = \$65,708. PYCO's "share" would be half that, or \$32,853.77. \$32,853.77 plus

Conclusion

The pending petitions for reconsideration in F.D. 34890/34992 are moot; and PYCO withdraws its petition. There is no compensation request pending in any pertinent alternative service proceeding, it is too late to file one, and if the question were nonetheless reached, SAW is not entitled to any given PYCO's legitimate set-off's. All other pending

88,275 = \$121,129 (rounded up). This is slightly less than PYCO estimated at p. 18 of its February pleading. The reason for the difference is that although the price per ton of salvage material less take-up costs went up, PYCO did not take into account salvager profit in its original estimate.

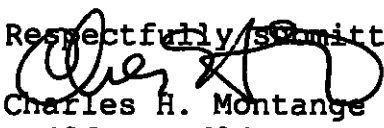
PYCO's land value estimate at p. 18 of the February 20 pleading is too high, because all the land in question is west of MLK Boulevard and properly valued at \$4000/acre, not \$4800, per the feeder line decision. The land value thus adjusts down to \$78,120, less a 15% cost of sale (found appropriate by the Board in the feeder line proceeding), or \$66,402.

Adding \$121,129 to \$66,402 yields a total of \$187,531. Multiplying this sum by 10.1% [Railroad Cost of Capital, Ex Parte 558 (Sub-no. 8), served June 20, 2005] yields \$18,941 (rounded up). Dividing this sum by the assumed 7000 carloadings would yield \$2.71 per carloading. This amount is slightly less than PYCO originally calculated for that estimated number of carloadings. If one uses the most recent Railroad Cost of Capital, Ex Parte 558 (Sub-no.9), served September 20, 2006, one would multiply \$187,531 by 12.2%. This would yield \$22,880 (rounded up). Dividing this by the assumed 7000 carloadings yields \$3.26 per carload, slightly above PYCO's March 11, 2006 calculation.

Since alternative service is over, the projected carloadings are no longer relevant. In the circumstances here, only the total amount of compensation and the amount of PYCO's set-off is relevant. PYCO's set-off (\$27,759.25) exceeds the maximum amount of compensation (\$18,941 at 10.1%, or \$ 22,880 at 12.2%) which SAW can assert against PYCO (or WTL) for use of SAW facilities to provide alternative service to PYCO. In light of the set-off, SAW obviously is not entitled to any net compensation from PYCO (or WTL).

motions/petitions for relief in F.D. 34889 are similarly now no longer relevant or moot.

Respectfully submitted,


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Of counsel:

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Exhibit A - tabulation of facilities employed for alternative service, from SAW

Exhibit B - 11 March 2006 memorandum

Certificate of Service

I hereby certify service on November 19, 2007, by deposit for express next business day) delivery to Thomas McFarland, 208 South LaSalle St., Suite 1890, Chicago, IL 60604-1112 (for SAW and Choo Choo); William A. Mullins, Baker & Miller, 2401 Pennsylvania Ave., NW, Suite 300, Washington, D.C. 20037 (for Pioneer/KJRY); Adrian Steel, Mayer Brown, 1909 K Str., N.W., Washington, D.C. 20036 (for BNSF); and John Heffner, 1750 K St., N.W., Suite 350, Washington, D.C. 20006; and by US Mail, postage pre-paid, first class, upon Michael Hyer, General Counsel, Hanson Bldg. Materials, 8505 Freeport Pkwy, Suite 138, Irving, TX 75063; Mr. O.E. Floyd, Floyd Trucking, PO 50, Brownfield, TX 79316; and Andrew Goldstein, McCarthy, Sweeney & Harkaway, 2175 K St., N.W., Suite 600, Washington, D.C. 20036.

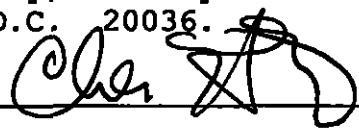


Exhibit A

SECTION 4 - COMPENSATION

ATTACHMENT A

Page 1 of 4

49 U.S.C. § 11123(b)(2), provides that railroads may establish between themselves the terms of compensation for operations and use of facilities and equipment. If the parties do not agree on the terms of compensation, the STB may establish the terms.

WTL will have use of SAW infrastructure to conduct its operations for a period of five months, or approximately 23 weeks. During this time WTL will have exclusive use of 12,720 ft of SAW infrastructure and shared use of an additional 17,840 ft. Details on tracks in feet and use are shown below:

WTL use of SAW infrastructure

Exclusive WTL use

<u>Description</u>	<u>Length</u>
Track #5 SAW yard	2,400
Track #1 SAW yard	2,100
Track 9200	3,900
Track 9298 (to the old BN bridge)	4,320
Total	12,720 ft.

Shared SAW & WTL use

<u>Description</u>	<u>Length</u>
Track 9298 SAW yard	5,000
Track 231 lead to 9200/9298	960
Track lead PYCO plant 2 to 50 th St	6,280
Track 310 through Farmers 1	5,600
Total	17,840 ft.

Even though WTL control of the shared track is well over 50% of available time, we have split use of the shared track on a 50 / 50 basis.

Summary of WTL control and use

<u>Description</u>	<u>Length</u>
Exclusive WTL use	12,720
Shared use 50%	8,920
Total	21,640 ft

In summary WTL has use of over four miles of SAW infrastructure. Clearly this requires compensation by WTL for its use.

Exhibit B

11 March 2006

Memorandum to John Heffner, Esq.
counsel for West Texas and Lubbock

Re: reimbursement for services and facilities furnished
by SAW in connection with WTL alternative rail
service to PYCO

From: Chas. Montange,
counsel for PYCO Industries

Summary

Based on the methodology indicated in the preamble to STB's Part 1146 regulations, SAW is entitled to compensation for facilities or services provided in connection with alternative rail service, but not for lost profits. The only facility or service provided by SAW to WTL for alternative service to PYCO Industries is certain trackage. In order to avoid controversy but without admission, we have made the following conservative assumptions (i.e., favoring SAW): that the rail is 90# reroll, that the ties are a wash, that SAW owns the fee in the underlying property, and that SAW owns an average of 6 acres per track mile (i.e., a 50 foot right of way for each track mile). We have further assumed a 10.1% rate of return (STB's most recent cost of capital calculation for railroads), and 7000 PYCO carloadings per year. Under these assumptions, SAW would be entitled to \$2.90/carload. All other demands by SAW are simply veiled attempts to obtain profit from the alternative rail service.

Reservation

In making the computations herein, PYCO has employed a series of assumptions favoring SAW. PYCO reserves the right to recalculate all values herein based on information which may be developed in subsequent research or discovery.

Discussion

Thank you for the opportunity to review Mr. McFarland's proposed compensation for SAW during the period of alternative service. Mr. McFarland's methodology appears designed to score as high a level of profit for SAW as possible. STB rejected this approach. The preamble to the relevant regulations make it clear that compensation is to be based on costs incurred by the incumbent carrier, including return on investment with respect to facilities used to provide alternative rail service. Mr. McFarland's approach is clearly not based on such methodology.

The relevant preamble statement concerning compensation is as follows:

Various parties address the need for the incumbent carrier to be fairly compensated if it is required to provide services and/or facilities to the alternative carrier. NITL et al. argue that any payment to the incumbent carrier should be limited to costs incurred by the incumbent, including a return on investment, and not include compensation for lost profits. They suggest that fair compensation can be developed from our railroad cost accounting system, known as URCS. We agree that the incumbent railroad is entitled to fair compensation for whatever services and facilities it provides, but not for lost profits for service it is not providing. Because the type of access to an incumbent carrier's facilities and the services the incumbent will be required to provide to an alternative carrier will vary widely, depending on the service inadequacy and the relief that is fashioned, we will not attempt to prescribe in the abstract a compensation formula applicable to all situations. Rather, where appropriate we will be guided by established precedent, taking into account the circumstances of the particular case.

It is PYCO's understanding that WTL receives no services from SAW (indeed, we understand that WTL provides services to SAW). That being the case, the only compensation required is that for SAW facilities employed by WTL to serve PYCO.

Fortunately, Mr. McFarland identifies the facilities which SAW claims are provided to WTL. In order to move the alternative service compensation issue along (but without admitting that Mr. McFarland's statements are accurate for any other purpose), we will assume arguendo that they are correct here. There are two possible costs for SAW associated with those facilities: (a) maintenance and (b) return on investment.

As to maintenance, it is our understanding that SAW employs a deferred maintenance program, replacing ties and fixing switches only when broken. It is our understanding that WTL is paying SAW the full cost of all repairs necessary when a tie or switch breaks during use by WTL. It seems to us that adequately reimburses SAW for maintenance under SAW's deferred maintenance program.

Return on investment is straightforward to calculate. SAW, of course, paid nothing for the property: it was transferred to SAW by BNSF for no consideration. Although one could argue that the true investment, we will assume arguendo (solely for purposes here) that SAW nonetheless is entitled to a

return on the current value of the assets donated to SAW by BNSF.

According to Mr. McFarland, WTL is using the following facilities of SAW: 2.41 miles of track, exclusively, and 1.69 miles of track, shared 50/50 between SAW and WTL. As indicated, we will assume arguendo for alternative service compensation purposes only that Mr. McFarland's representations are correct.¹

SAW's track is comprised of 90 pound and 85 pound rail. We are advised by former SF employees that the track was worn out before SAW purchased it, and that SAW only repairs track on a deferred maintenance (i.e., when broken) bases. Most of the track is in the dirt, essentially no longer balances, and the ties are essentially a wash (so many are scrap that they offset any value associated with ties that might be useful for some economic purpose). We will nonetheless assume arguendo that all the track is 90 pound and in good enough shape to be marketable as reroll quality. The following tables compute the relevant track/tie/other track material values:

2.41 miles which SAW says are used exclusively by WTL

	Net Tons	Price/ton	Total
90# reroll	381.6	285.00	\$108,756
OTM	76.32	220.00	\$ 16,790
Less take up costs, freight		100/ton	(45,792)
Net sale price in the ground:			\$ 79,754.40

1.69 miles which SAW says are shared 50/50:

90# reroll	267.60	285.00	\$ 76,266.00
OTM	53.52	220.00	\$ 11,774.40
Less take up costs, freight		100/ton	(32,112.00)

¹ We do not believe Mr. McFarland's representations are correct. For example, it is our understanding that BNSF retains certain rights to use tracks 9200 and/or 9298. Thus to say these tracks are exclusively in use by WTL to provide service to PYCO is incorrect.

Net sale price in the ground: \$ 55,928.40

PYCO currently anticipates approximately 7000 carloadings in 2006. The most recent cost of capital computed by STB is 10.1%/. The formula for computing a return on the current value of the rail assets donated to SAW as used to provide alternative service to BNSF is as follows:

$(\text{NLV exclusive assets})(10.1\%)/7000 +$
 $1/2 (\text{NLV shared assets})(10.1\%)/7000$

or

$79,754.40 (.101) \text{ divided by } 7000 = \1.15 plus
 $1/2 (55,928.40) (.101) \text{ divided by } 7000 = \0.40

For a total of \$1.55/car for the track, ties, and OTM.

In addition, SAW holds interests in land under some of its track and tie. If we assume arguendo each right of way involved here is 50 feet wide, this totals approximately 6 acres per mile. Some of this right of way is likely easement. The NLV of easement property is zero. Assuming arguendo (only for purposes here) that SAW owns all the underlying rights of way involved here in fee, we would have

$2.41 \times 6 = 14.46$ acres exclusive use
and

$1.69 \times 6 = 10.14$ acres for shared use. On a 50/50 basis, this would be the same as 5.07 acres for use to provide service to PYCO. The total acreage for purposes of an NLV calculation is thus 19.53 acres.

While we have not attempted to calculate an appraisal, the upper bounds are indicated by the asking price of comparable property being offered through Westmark Realty for property at Elm and 56th. That price is \$200,000 for 42 acres, or \$4800/acre. $19.53 \text{ acres multiplied by } 4800 = \$93,744.00$. Multiplying this amount by 10.1% (STB's most recent cost of capital for railroads) yields \$9468.14, and dividing this by 7000 results in a per car charge of \$1.35.

The maximum return on investment to which SAW may be entitled is thus \$1.55/carload on track, ties and OTM, and \$1.35/carload on land, or \$2.90/carload total.

PYCO can think of no other service provided by SAW, nor cost of SAW in connection with the alternative rail service being provided by WTL. If WTL is providing services to SAW that are not reimbursed by BNSF, then WTL would appear entitled to an offset for those services.