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February 11, 2008

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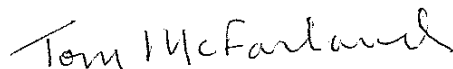
Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Finance Docket No. 35111, *South Plains Switching, Ltd. Co. -- Compensation For Use Of Facilities In Alternative Rail Service -- West Texas and Lubbock Railway Company*

Dear Ms. Quinlan:

Hereby transmitted is a Public Version of the Statement In Support Of Award Of Compensation For Use Of Rail Facilities In Alternative Rail Service for filing with the Board in the above referenced matter.

Very truly yours,



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

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PUBLIC VERSION

SOUTH PLAINS SWITCHING, LTD. CO.)
-- COMPENSATION FOR USE OF) FINANCE DOCKET
FACILITIES IN ALTERNATIVE RAIL) NO. 35111
SERVICE -- WEST TEXAS AND)
LUBBOCK RAILWAY COMPANY)

**STATEMENT IN SUPPORT OF AWARD OF COMPENSATION
FOR USE OF RAIL FACILITIES IN ALTERNATIVE RAIL SERVICE**

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

Claimant

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Attorney for Claimant

DUE DATE: February 11, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

SOUTH PLAINS SWITCHING, LTD. CO.)
-- COMPENSATION FOR USE OF) FINANCE DOCKET
FACILITIES IN ALTERNATIVE RAIL) NO. 35111
SERVICE -- WEST TEXAS AND)
LUBBOCK RAILWAY COMPANY)

**STATEMENT IN SUPPORT OF AWARD OF COMPENSATION
FOR USE OF RAIL FACILITIES IN ALTERNATIVE RAIL SERVICE**

Pursuant to a decision of the Board in this and other proceedings,^{1/} served January 11, 2008 (January 11 decision), ordering paragraph 3, SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby files its Statement in Support of Award of Compensation for Use of Rail Facilities in Alternative Rail Service.

BACKGROUND

On December 13, 2007, SAW filed a Petition Under 49 U.S.C. 11123(b)(2) And 49 U.S.C. 11102(a) For A Determination And Award Of Compensation For Use Of Facilities In Alternative Rail Service (Petition). The Petition was assigned Finance Docket No. 35111.

West Texas and Lubbock Railway Company (WTLC), the service provider under alternative rail service, and PYCO Industries, Inc. (PYCO), the shipper for whom alternative

^{1/} The decision was entered under the lead docket, Finance Docket No. 34889, *PYCO Industries, Inc. - Alternative Rail Service - South Plains Switching, Ltd. Co.*. The decision also encompassed Finance Docket No. 34802, *PYCO Industries, Inc. - Alternative Rail Service - South Plains Switching, Ltd. Co.*

service was provided, filed a pleading essentially seeking dismissal of the Petition for untimeliness and on other grounds.

The January 11 decision in effect denied the requests for dismissal of the Petition. The Board's decision provided for simultaneous filing of statements in support of the position of the parties regarding compensation for use of facilities in alternative rail service, and for simultaneous reply statements. This is SAW's Initial Statement.

FORMAT

SAW's Statement consists of the Verified Statement of Mr. Dennis W. Olmstead, SAW's Rail Transportation Consultant (Tab 1), followed by SAW's Argument identifying the governing legal standards and applying them to the facts in Mr. Olmstead's Verified Statement (Tab 2).

VERIFIED STATEMENT OF DENNIS OLMSTEAD

My name is Dennis Olmstead. I am a Rail Transportation Consultant. My business address is 1124 South 11th Street, Montrose, Colorado 81401.

I have been in the consulting business since my retirement from The Burlington Northern and Santa Fe Railway Company (now BNSF Railway Company) in 1996. Prior to that time, I had been employed by The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) for 26 years in its Marketing and Executive Departments. During the last 6 of those years, I was the Marketing and Executive Department representative on Santa Fe's "line-sale team," a group of employees formed to negotiate sales of Santa Fe's rail lines. During that period, I was actively involved in the sale of 22 rail lines totaling over 3,500 miles. My responsibility included writing line sale proposals as well as evaluation of all responses to those proposals. As a result of that experience, I became familiar with traffic and revenue considerations involving rail lines operated by shortline rail carriers.

I have acted as a Rail Transportation Consultant for South Plains Switching, Ltd. Co. (SAW) since SAW began to operate rail lines at Lubbock, TX in 1999. As a result of consulting for SAW for many years, I became familiar with SAW's rail traffic and revenues. In particular, I regularly compiled SAW's rail traffic.

I provided a verified statement that was included as part of SAW's Petition Under 49 U.S.C. § 11123(b)(2) And 49 U.S.C. § 11102(a) For A Determination And Award Of Compensation For Use Of Facilities In Alternative Rail Service, filed on December 13, 2007.

I have been asked by SAW to provide testimony regarding fair compensation for use of SAW's rail facilities by West Texas & Lubbock Railway Company (WTLC) to provide alternative rail service at Lubbock between January 26, 2006 and November 9, 2007.

How To Determine Fair Compensation For Use Of Facilities

To determine the market value of a cup of coffee in Montrose, Colorado, I would simply determine the price range for a cup of coffee at the local coffee shop and at the local Starbucks. The market value would be somewhere in between those prices. I would not have to determine the cost to grow the coffee beans, the cost to transport those beans to the United States, and the like. The market value is what is being actually charged for a cup of coffee in the local area.

Similarly, to determine the market value of a gallon of gasoline in Montrose, I would determine the price actually being assessed and paid for gas at service stations in the local area. The market value would be between the low and the top range of prices per gallon. I would not have to determine the cost to drill the oil well, the cost to transport the oil to the United States, the cost to refine the oil, and the cost to transport it to the local service station. The market value is right there to see in the price actually being assessed and paid.

The same is true if the inquiry involves the market value of use of an asset. To determine the market value of use of a rental car, I would determine what car rental companies are currently charging for car rentals. I would not have to consider the cost to manufacture the car and the like. The market value of use is there to see in the rental rate actually being assessed and paid.

The same is true for one railroad company's use of another railroad company's facilities. The best way to determine fair market value for such use is to determine whether there is any

contemporary charge that is being assessed and paid for such use of rail facilities in the same general territory.

**The Fair Market Value For Use Of Railroad Tracks
To Serve Shippers In The Lubbock Area Is \$75 Per Car**

There is such a charge. It is a charge of \$75 per car paid by BNSF Railway Company (BNSF) for use of SAW's tracks at Burris, Texas to provide rail service to Jarvis Metals Company. That charge began to be assessed and paid on September 18, 2006. The charge continued to be assessed and paid through November 9, 2007. That period coincides with approximately 14 months of the approximate 21-month period during which WTLC used SAW's facilities at Lubbock in alternative rail service. Attached to this Statement as Appendix DWO-1 is a copy of the Letter Agreement between BNSF and SAW for assessment and payment of that charge, dated September 12, 2006.

For reasons I have explained, that contemporaneous charge for use of rail facilities in the same general area constitutes the best evidence of the fair market value of use by one railroad company of another railroad company's rail facilities to provide service to a shipper.

The \$75-per-car charge does not include profit because it does not cover cost. SAW's operating ratio is similar to the operating ratio of other rail carriers. For example, in 2007, the operating ratio of Kansas City Southern Railway Company (KCS) was 79.2 percent. If SAW would have provided rail service to Jarvis Metals itself, SAW's revenue would have been \$142.72 per car in 2006 and \$146.64 per car in 2007. Application of SAW's operating ratio (which is similar to KCS's) to that revenue would produce costs of \$113.03 per car and net

railway operating income of \$29.69 per car in 2006 ($\$142.72 \times .792 = \113.03 ; $\$142.72 - \$113.03 = \$29.69$), and costs of \$116.14 per car and net railway operating income of \$30.50 per car in 2007 ($\$146.64 \times .792 = \116.14 ; $\$146.64 - \$116.14 = \$30.50$). The charge of \$75 per car is thus shown to be encompassed within SAW's cost base.

According to BNSF itself, BNSF's cost to originate or terminate shipments in the Lubbock area was over \$136 per car prior to sale of the Lubbock rail lines to SAW. I know that because BNSF made a notation of that cost on a map that came into SAW's possession at that time. It did not cost SAW as much to originate or terminate that traffic as it cost BNSF. However, SAW's cost surely was greater than \$75 per car. That is another sound reason to conclude that the \$75-per-car charge paid by BNSF did not contain any element for profit.

It was stated in the recent STB decision that instituted this proceeding that WTLC and PYCO submitted evidence that BNSF agreed to pay SAW \$75 per car to use SAW's tracks at Burris "to settle a lawsuit in which SAW claimed lost profits, which, we have noted, are not recoverable" (decision served Jan. 11, 2008 at 6). It does not follow from that statement that the \$75-per-car charge itself consists of lost profits in whole or in part. Merely because the relief sought in the lawsuit was an award of lost profits does not mean that an amount agreed to be paid in settlement of the lawsuit contains any element of lost profits. The fact is that the \$75-per-car charge does not contain any profit, as I have demonstrated.

It was also stated in that decision that it was not shown that the \$75-per-car payment is comparable to payment for use of SAW's Lubbock trackage because "(t)he variable costs, operating and maintenance expenses, and proportionate usage of the tracks . . . all may differ."

However, to the extent that such factors differ, they would support compensation of more than \$75 per car for use of SAW's trackage, not less compensation. The SAW trackage at Burris used by BNSF consists of 2,641 feet. The SAW trackage at Lubbock used exclusively by WTLC in alternative rail service in the case at hand consists of 12,700 feet. That difference would support a charge much greater than \$75 per car in the case at hand.

**A Charge At Or Near The Amount Offered
By WTLC Would Grossly Under-Compensate SAW**

WTLC has refused to pay more than \$2.90 per car for its use of SAW's trackage. That amount has no relationship to fair market value for use of trackage in the subject territory. Moreover, that amount does not even come close to providing fair compensation for such use. That amount corresponds to less than 2 percent of SAW's revenue per car if SAW had performed the transportation itself. ($\$2.90 \div \$146.64 = .018$). That amount would substantially under-compensate SAW based on fair market value for use of track in the territory.

**SAW Is Entitled To Additional Compensation Because The Excess Track
Used By WTLC, And The One-Sided Operating Protocol In Favor Of
WTLC, Deprived SAW Of Substantial Storage Revenues**

In order to provide service to PYCO Plant Nos. 1 and 2 in alternative rail service, WTLC required use of single tracks between the BNSF Yard on the one hand, and PYCO Plant Nos. 1 and 2 on the other, plus limited use of tracks in SAW's Yard. WTLC required use of those tracks only for a limited number of hours each day to serve those PYCO Plants.

WTLC actually used far more track than that, and had use of that track for a much longer period of time. Thus, WTLC had exclusive use of both Track #5 (2,400 feet) and Track #1

(2,100 feet) to provide service to PYCO Plant No. 1. WTLC had shared use of both the Track Lead between PYCO Plant No. 2 and 50th Street (6,280 feet) and Track #310 through Farmers Plant 1 (5,600 feet) to provide service to PYCO Plant No. 2.

In addition, WTLC had use of extensive trackage for storage of railcars, even though WTLC has its own yard in the Lubbock area where railcars for PYCO could have been stored. Thus, WTLC had exclusive use of 3,900 feet of Track #9200 and 4,320 feet of Track #9298, and shared use of 5,000 feet of Track #9298 in SAW's Yard and 960 feet of Track #231.

Under the operating protocol imposed over SAW's objection, WTLC had use of shared-use trackage for 20 hours out of every 24-hour day, or more than 83 percent of the time.

The excess trackage authorized to be used by WTLC either exclusively or more than 83 percent of the time each day prevented SAW from being able to use that track for its own storage of railcars. That deprived SAW of substantial revenues.

SAW was deprived of use of at least 14,180 feet of trackage for storage of railcars, i.e.:

Track #9298	-	3,900 feet
Track #9200	-	4,320 feet
Track #9298 (yard)	-	5,000 feet
Track #231	-	<u>960 feet</u>
Total	-	14,180 feet or approximately 2.7 miles

A good way to estimate the storage revenue lost by SAW as a result of being deprived of use of that trackage is to apply the provisions of PYCO's own tariff relating to storage of railcars. Item 410 of PYCO's Freight Tariff PSC 8000-A, effective December 18, 2007, assesses charges of \$50 per car for moving cars to storage tracks and \$50 per car for removing cars from storage

tracks. Item 400 of that Tariff assesses a charge of \$1.25 per car per day for storing railcars on PYCO tracks. At average railcar length of 60 feet, SAW would have been able to store approximately 236 railcars on the 14,180 feet of track that SAW was unable to use because of WTLC's use of that track ($14,180 \text{ feet} \div 60 \text{ ft.} = 236 \text{ railcars}$).

Railcars may stay in storage for only a day, or for a much longer period as to some car-types, such as tank cars. A reasonable average storage time on SAW during 2006 and 2007 was three weeks (21 days). On that basis, SAW would have been able to store 7,316 cars during the 652 days of alternative rail service (i.e., $652 \div 21 \text{ days} = 31 \text{ carcycles} \times 236 \text{ cars} = 7,316 \text{ cars}$). Using PYCO's own tariff charges, SAW was thereby deprived of \$923,940 in storage revenue, i.e.:

7,316 cars switch in x \$50	=	\$365,800
7,316 cars switch out x \$50	=	365,800
158,872 car-days x \$1.25 per day	=	<u>192,340</u>
Total	=	\$923,940

That loss of revenue, which does not include profit, is entirely separate and in addition to the charge of \$75 per car as compensation for use of SAW trackage to serve PYCO.

KHH
KELLY HART & HALLMAN LLP
ATTORNEYS AT LAW

ATTACHMENT DO-1

Pg 1 of 2

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FIRM TELEPHONE (817) 332-2500
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September 12, 2006

VIA FAX NO. (806) 771-6476

Mr. James L. Gorsuch
4412 74th Street, Suite A-100
Lubbock, Texas 79424

Re: Cause No. 2004-526,559-A
*BNSF Railway Company f/k/a Burlington Northern and Santa Fe Railway
Company v. South Plains Switching, Ltd. Co.*

Dear Jim:

I am writing to propose BNSF's offer of settlement concerning claims that might arise in the future in favor of South Plains Switching, Ltd. Co. ("SAW") by reason of BNSF's continued service to the Jarvis Metals facility in Burris.

As things currently stand, SAW considers BNSF to be committing a breach of the 1999 Asset Sale Agreement each time service is provided to the Jarvis Metals facility. BNSF disagrees, but recognizes that the issue may not be finally decided in the courts for some time. In an effort to allow continuing service to Jarvis Metals without further uncertainty about the financial risk associated with potential claims, BNSF proposes the following:

a. Effective September 18, 2006, BNSF will pay to South Plains Switching \$75/car for each car handled on behalf of Jarvis Metals. On Monday of each week, BNSF will collect movement and waybill data for cars handled for Jarvis Metals the previous week. An Automated Clearing House ("ACH") transfer will be scheduled for the following Wednesday, and funds should arrive in SAW's account on the following Friday. Each week BNSF will also supply South Plains Switching with copies of the pertinent waybills.

b. So long as the foregoing process remains in effect, SAW releases and forever discharges BNSF from any breach of contract claim, trespass claim or other claim it may have by reason of BNSF's continued service to Jarvis Metals.

201 MAIN STREET, SUITE 2500
FORT WORTH, TEXAS 76102

website: www.khh.com
Offices in Fort Worth and Austin

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Mr. James L. Gorsuch
September 12, 2006
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ATTACHMENT DO-1
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c. This agreement may be terminated by either party upon giving 30 days advance notice. If the agreement is terminated by either party, then each party reserves any claims that may thereafter accrue by reason of the provision of services to customers at Burris.

It is intended that this settlement offer will operate on a "going forward" basis only. In other words, both parties reserve all rights and claims that exist, or may arise, prior to the effective date stated in paragraph "a" above.

If your client is in agreement with this proposal, please indicate by signing below. I have the authority to execute this agreement on behalf of BNSF, and your signature will be a representation that you have similar authority to bind the SAW.

Very truly yours,


Donald E. Herrmann

DEH/dh
03051.0193

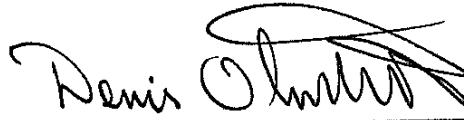
AGREED on this 13th day of September, 2006.


James L. Gorsuch

VERIFICATION

STATE OF COLORADO)
) SS:
COUNTY OF MONTROSE)

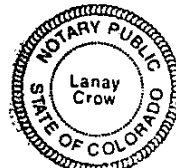
DENNIS OLMSTEAD, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.



DENNIS OLMSTEAD

SUBSCRIBED AND SWORN to
before me this 5 day
of February, 2008.


Notary Public



My Commission Expires 05-17-08

My Commission Expires: 5-17-08

ARGUMENT

A. LEGAL STANDARDS GOVERNING COMPENSATION FOR USE OF FACILITIES IN PROVIDING ALTERNATIVE RAIL SERVICE

1. Standards Under 49 U.S.C. § 11123

It is provided in 49 U.S.C. § 11123(b)(2) as follows:

Rail carriers may establish between themselves the terms of compensation for operations, and use of facilities and equipment, required under this section. When rail carriers do not agree on the terms of compensation under this section, the Board may establish the terms for them.

That provision does not prescribe a standard to be used in the determination of such compensation. No other provision in 49 U.S.C. § 11123 provides such a standard.

In *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 (1998), the Board adopted regulations to implement the provisions of 49 U.S.C. § 11123. There was no regulation that provided a standard for determination of compensation under § 11123(b)(2). The Board stated the following in explanation of the absence of a specific standard for determining such compensation (at 980):

... 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.

The upshot is that compensation for use of facilities in alternative rail service under 49 U.S.C. § 11123(b)(2) is to be "fair compensation" as guided by established precedent, taking into account the particular circumstances, but not including an element for lost profit.

2. Standards Under 49 U.S.C. § 11102

It is provided in 49 U.S.C. § 11102(a) as follows:

... The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings.

Thus, the prescribed standard for an award of compensation under 49 U.S.C. § 11102(a) is "the principle controlling compensation in condemnation proceedings."

That principle is "just compensation." *Backus v. Fort Street Union Depot Co.*, 169 U.S. 557, 573 (1898) ("when . . . [the] power of eminent domain is exercised it can only be done by giving the party whose property is taken or whose use and enjoyment of such property is interfered with, full and adequate compensation, not excessive or exorbitant, but just compensation"). The just compensation required by the Constitution is that which constitutes "a full and perfect equivalent for the property taken." *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893). The general standard of just compensation is the market value of the property taken or used, i.e., what a willing buyer or user would pay to a willing seller or owner. *United States v. Miller*, 317 U.S. 369, 374 (1943); *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 275 (1943).

If property is taken or used before compensation is paid, just compensation includes an amount sufficient to produce the full equivalent of value if paid contemporaneously with the taking, i.e., an increment for interest. *United States v. Klamath Indians*, 304 U.S. 119, 123 (1938); *Jacobs v. United States*, 290 U.S. 13, 17 (1933); *Kirby Forest Industries v. United States*, 467 U.S. 1 (1984); *Seaboard Air Line R. Co. v. United States*, 261 U.S. 269, 306 (1923).

The upshot is that compensation payable under 49 U.S.C. § 11102(a) is to be based on the fair market value of use of the property, plus interest if the property is used before compensation is paid.

3. Standards Applicable To The Matter At Hand

Contrary to the tenor of the January 11 decision (at 5-6, 8), the formula for determination of compensation applied in *Dardanelle & Russellville R. Co. - Trackage Rts. Comp. - Arkansas Midland R. Co.*, Finance Docket No. 32625, decision served June 3, 1996 (*Dardanelle* case), is not binding precedent in the case at hand. The Board itself said as much in *Expedited Relief for Service Inadequacies, supra*, which was decided after the *Dardanelle* case, viz., 3 S.T.B. at 980, emphasis added:

... Because the type of access to an incumbent'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. (emphasis added).

The *Dardanelle* formula is not appropriate for application in the case at hand because SAW was deprived of substantial revenues from storage of railcars as a result of use of its tracks to store large numbers of railcars for PYCO, which lacked meaningful plant trackage for railcar storage. That situation did not exist in the *Dardanelle* case, which involved use of limited trackage to provide rail service to a shipper. The compensation formula in the case at hand must address the need to compensate SAW for lost storage revenue in addition to lost revenue from PYCO's traffic.

Thus, there are two distinct elements of compensation payable to SAW, i.e., (1) for use of its tracks to serve PYCO; and (2) for use of its tracks to store railcars for PYCO. Those elements are to be applied separately and independently.

B. APPLICATION OF THE LEGAL STANDARDS TO THE FACTS

1. Use Of Tracks To Serve PYCO

As established in the Verified Statement of SAW Rail Transportation Consultant Dennis Olmstead, the fair market value of use of a rail carrier's trackage by another rail carrier to provide rail service to a shipper located on the owner's trackage is \$75 per car. That value is established by BNSF's payment of \$75 per car to SAW to operate over SAW's trackage to provide rail service to Jarvis Metals, a shipper located on SAW's tracks. That payment was contemporaneous; it was paid during 14 months of the 21-month period during which WTLC operated over SAW's trackage to provide rail service to PYCO. That payment was comparable geographically; it was paid for transportation to or from trackage at Burris, Texas, which is adjacent to Lubbock, Texas (PYCO's locale).

It is stated in the January 11 decision (at 6) that the payment of \$75 per car was agreed to in order to settle a lawsuit in which SAW claimed lost profits, which are not recoverable as compensation in alternative rail service. It does not follow, however, that a payment to settle a lawsuit seeking recovery of lost profits itself consists of lost profits. The charge of \$75 per car was a voluntary, negotiated payment that has nothing to do with lost profits. As clearly demonstrated in Mr. Olmstead's Verified Statement (at 4), the \$75-per-car charge does not have any element of profit in it.

It is also stated in the January 11, 2008 decision (at 6) that the variable costs, operating and maintenance expenses, and proportionate use of the tracks, associated with the \$75-per-car charge may differ from those factors as applied to WTLC's use of SAW's tracks to serve PYCO. However, such differences would support compensation greater than \$75 per car, not less than that amount. A much greater length of SAW's tracks were taken and used to serve PYCO than were used and required to provide rail service to Jarvis Metals. Consequently, the costs and expenses to serve PYCO were necessarily greater than the costs and expenses to serve Jarvis Metals. That warrants compensation for use of trackage to serve PYCO in an amount greater than the charge of \$75 per car for use of trackage to serve Jarvis Metals. (VS Olmstead at 5).

2. Use Of Tracks To Store Railcars

Substantially more of SAW's trackage was taken for use in alternative rail service than was required for simple transportation between BNSF's Yard and PYCO's plants. That additional trackage was taken and used by WTLC to store hundreds of railcars for PYCO because PYCO did not have its own adequate plant trackage for storage of those railcars. Moreover, WTLC was given either exclusive use for 20 hours of every 24-hour day even though WTLC could have stored those cars in its own Lubbock-area yard. (VS Olmstead, at 5-6).

The upshot of the taking and use of that excess trackage by WTLC was to preclude SAW from deriving substantial revenues as a result of itself storing railcars on that trackage. (VS Olmstead at 6).

The SAW trackage taken and used by WTLC for storage of railcars for PYCO was the equivalent of 236 railcar-spots. At an average railcar time in storage of three weeks, SAW was

deprived of revenue of approximately \$923,940 during the 652-day period of alternative rail service. (VS Olmstead at 6-7).

3. Total Compensation Payable

The total compensation payable for use of SAW's facilities in alternative rail service is \$[REDACTED], plus interest as provided for in 49 C.F.R. Part 1141. The principal amount of the compensation is composed of \$[REDACTED] for use of facilities to provide rail service to PYCO (\$75 per car x [REDACTED] loaded cars transported during alternative rail service), and \$923,940 for use of facilities to store railcars.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, WTLC should be ordered to pay \$[REDACTED] to SAW as compensation for use of SAW's facilities in alternative rail service, plus interest on that amount under 49 C.F.R. Part 1141 to the date of payment.

Respectfully submitted,

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

Claimant

Thomas F. McFarland

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Attorney for Claimant

DUE DATE: February 11, 2008

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2008, I served the foregoing document, Statement In Support Of Award Of Compensation For Use Of Rail Facilities In Alternative Rail Service, on Charles H. Montange, Esq., 426 N.W. 162nd Street, Seattle, WA 98177, *c.montange@verizon.net* and on John D. Heffner, Esq., John D. Heffner, PLLC, 1750 K Street, N.W., Suite 350, Washington, DC 20006, *j.heffner@verizon.net* by e-mail and UPS overnight mail.

Thomas F. McFarland

Thomas F. McFarland