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THOMAS F. MCFARLAND

June 22, 2007

By e-filing

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Finance Docket No. 34802, *PYCO Industries, Inc. -- Alternative Rail Service -- South Plains Switching, Ltd. Co.*

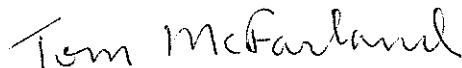
Finance Docket No. 34889, *PYCO Industries, Inc. -- Alternative Rail Service -- South Plains Switching, Ltd. Co.*

Finance Docket No. 34890, *PYCO Industries, Inc. -- Feeder Line Application -- Lines of South Plains Switching, Ltd. Co.*

Dear Mr. Williams:

Hereby transmitted is a Petition For Leave To Supplement The Record With Argument That Penny Newman Grain Company Is A Necessary Party That Has Failed To Join In The Petitions For Alternative Rail Service And The PYCO Feeder Line Application, for filing with the Board in the above referenced matters.

Very truly yours,



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

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34802
	)	
PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34889
	)	
PYCO INDUSTRIES, INC. -- FEEDER	)	
LINE APPLICATION -- LINES OF	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34890

**PETITION FOR LEAVE TO SUPPLEMENT THE RECORD
WITH ARGUMENT THAT PENNY NEWMAN GRAIN COMPANY
IS A NECESSARY PARTY THAT HAS FAILED TO JOIN IN THE
PETITIONS FOR ALTERNATIVE RAIL SERVICE AND
THE PYCO FEEDER LINE APPLICATION**

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

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(312) 201-9695 fax
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Its Attorney

DATE FILED: June 22, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34802
	)	
PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34889
	)	
PYCO INDUSTRIES, INC. -- FEEDER	)	
LINE APPLICATION -- LINES OF	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34890

**PETITION FOR LEAVE TO SUPPLEMENT THE RECORD
WITH ARGUMENT THAT PENNY NEWMAN GRAIN COMPANY
IS A NECESSARY PARTY THAT HAS FAILED TO JOIN IN THE
PETITIONS FOR ALTERNATIVE RAIL SERVICE AND
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Pursuant to 49 C.F.R. § 1117.1, SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby seeks leave to supplement the record in these proceedings with argument that Penny Newman Grain Company (Penny Newman) is a necessary party that has failed to join in the Petitions for Alternative Rail Service and the PYCO Feeder Line Application.

If such leave were to be granted, SAW hereby requests, based on the supplemental argument, that the alternative rail service orders be voided, and that the PYCO feeder line application be dismissed, unless and until Penny Newman joins in those filings and provides evidence regarding the quality of rail service on shipments that it controls from PYCO's facilities at Lubbock, TX.

Petition For Leave To File Supplemental Argument^{1/}

SAW has not heretofore advanced the argument set out below because until now SAW has not opposed the feeder line applications on their merits. However, it has now been seven months after expiration of Part 1146 alternative rail service without there having been a decision on the merits of the feeder line applications. That may have been acceptable if at the end of Part 1146 alternative rail service, the segments of rail line subject to alternative rail service had been rightfully returned to SAW for operation.

That was not done. Instead, a new alternative rail service has been imposed since November, 2006 under 49 C.F.R. Part 1147, which continues for each day that the Board fails to issue a decision in the feeder line case. This is fine for PYCO, but not for SAW. That action is unlawful. It is provided in 49 U.S.C. § 11103(a), which is the governing statute for the regulations in Part 1147, that the Board may not order one rail carrier to operate over the tracks of another carrier under that statute unless compensation therefor has been paid or has been adequately secured. No such compensation was paid to SAW under the Part 1147 alternative rail service at any time, nor has any such compensation been adequately secured. For that reason, alternative rail service has been unlawful for seven months since November, 2006, and for every additional day that such alternative rail service continues.

Having been subjected to unlawful alternative rail service for seven months and on a continuing basis, SAW now expresses its opposition to PYCO's feeder line application, in addition to its continuing opposition to Part 1147 alternative rail service. The argument set out

^{1/} Leave to file additional evidence should not be required. The information submitted in support of this Supplemental Argument is already in the record.

below should be accepted into the record of these proceedings in support of SAW's position in those respects.

SUPPLEMENTAL ARGUMENT

Penny Newman is a necessary party in these proceedings because it was both the consignor and the consignee of the distinct majority of rail shipments to or from PYCO's facilities at Lubbock, TX during the period of time in which rail service allegedly was inadequate at such facilities. Attached to this Petition as Appendix 1 is a copy of Waybill #659237 dated November 28, 2005. That waybill shows that Penny Newman was consignor and consignee of a shipment of 17 carloads of cottonseed from Lubbock, TX to Fresno, CA. That traffic originated at PYCO's facilities at Lubbock. Penny Newman was the responsible party for shipment of those 17 cars as both shipper and receiver. PYCO was not a responsible party as to that shipment. The shipment was merely loaded at PYCO's facilities.

The waybill in Appendix 1 is typical and representative of numerous other shipments made by Penny Newman during the period under consideration. Attached to this Petition as Appendix 2 is a copy of a compilation that shows that during the 13-month period between January, 2005 and January, 2006, inclusive, Penny Newman was both consignor and consignee on 3,765 shipments, which was approximately two-thirds (64 percent) of all shipments to or from PYCO's facilities at Lubbock, TX. SAW has waybills in its possession that support the information in Appendix 2. SAW would furnish all of those numerous waybills if required to do so.

Penny Newman is clearly a necessary party in any alternative rail service proceeding or feeder line proceeding in which relief is sought based on inadequate rail service at PYCO's

facilities in Lubbock, TX. That is so because, as shown, Penny Newman was the responsible party on many more shipments to or from the PYCO facilities than was PYCO itself. In order for the record to lawfully support orders for alternative rail service or for acquisition under the feeder line statute, the record must reflect Penny Newman's actions in regard to quality of SAW rail service on Penny Newman's shipments. For example, did Penny Newman contact SAW to complain about rail service on shipments wholly controlled by Penny Newman? Did Penny Newman request extra weekday switching or weekend switching to alleviate congestion at the PYCO facilities? Only Penny Newman can testify as to these issues. These were not PYCO shipments.

Similarly, the fact that Penny Newman accounted for such a large majority of shipments to or from PYCO at Lubbock would undermine Board findings under the criteria of the feeder line statute, including the criterion that requires that rail service be inadequate for the majority of shippers that use the rail line.

The fact that Penny Newman accounts for a distinct majority of rail shipments to or from the PYCO facilities at Lubbock, and that PYCO itself accounts for little more than one-third of such shipments, must be taken into account by the Board in making its findings in this matter. The Board cannot lawfully find that rail service at SAW's facilities has been inadequate when only PYCO has sought alternative rail service and has filed a feeder line application, where PYCO accounted for such a small percentage of the traffic to and from such facilities.

The upshot of the foregoing is that Penny Newman is a necessary party if there are to be lawful orders for alternative rail service and for acquisition under the feeder statute. The Board cannot lawfully enter such orders based on petitions filed by PYCO alone, who accounts for only

one-third of the traffic under consideration.

WHEREFORE, in the absence of Penny Newman as a Petitioner for alternative rail service and as an Applicant for acquisition under the feeder line statute, the Board should void the orders for alternative rail service, and should dismiss the PYCO feeder line application unless and until Penny Newman joins in such application, and provides evidence of the quality of rail service on rail shipments that it controls from PYCO facilities at Lubbock.

Respectfully submitted,

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

A handwritten signature in cursive script that reads "Thomas F. McFarland".

THOMAS F. McFARLAND
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Its Attorney

DATE FILED: June 22, 2007

APPENDIX 1

Fax from : 8068283345

NOV-28-2005 03:48PM FROM-PENNY NEWMAN

+801-758-8488

00 10 01 11:33 19: 0
1-033 P 001/001 P-028

Page 1 of 1

11/28/2005

PENNY NEWMAN GRAIN CO

B/L #

Shipper	PENNY NEWMAN GRAIN CO	MEMPHIS	TN
Ship From	PYCO INDUSTRIES	LUBBOCK	TX
Consignee	PENNY NEWMAN GRAIN TRACK S551	FRESNO	CA
Third Party Pay	PENNY NEWMAN GRAIN 2691 S. CEDAR	FRESNO	CA 93725

Origin:	LUBBOCK	TX	Prepared by:	KAY MENGLE
Destination:	FRESNO	CA	Phone Number:	901-758-8422
Sec 7 (Y/N):	No			
Freight Charges:	"To Be Prepaid"		Patron Code:	0497630001

Route: BNSF

Origin Switch Road:

Junction:

Delivery Switch Road: UP

Rule 11 (Y/N):

No

Embargo Permit Number:

Contract(s) #:

BNSF-BNSF4023

Permit:

Grain Auth Nbr:

COTTONSEEDS

0114110 Loaded 17

Carload Shipper Scale Weights

Net Weights
3,219,500 Pounds

SEAL:

Full Visible Capacity

INIT	NUMBER	WEIGHT	COT #	INIT	NUMBER	WEIGHT	COT #
BN	587198	194750		BN	585297	188700	
BN	587133	195300		BN	587160	194300	
BN	585283	188200		BN	587266	186700	
BN	587219	187450		BN	587655	185100	
BN	585294	186850		BN	587095	193000	
BN	587375	186400		BN	587250	189950	
BN	587241	188200		BN	587350	187000	
BN	587653	188350		BN	587334	191400	
BN	585272	187850					

STATUS: Accepted-824

Date: 11/28/2005 Time: 14:23 CST WAYBILL #: 659237

<http://www.bnsf.com/bnsf.was5/awi/AwiController>

11/28/2005

11/28/05 @ 2.23

APPENDIX 2

OUTBOUND CARS SOUTH PLAINS SWITCHING									
Month	Year	PYCO	Penny- Newman	Total	% PYCO	% Penny- Newman	Ship Days	Average total cars	
Jan	2006	165	228	395	42%	58%	21	per day	19
Dec	2005	192	242	434	44%	56%	18		24
Nov	2005	127	247	374	34%	66%	18		21
Oct	2005	170	305	475	36%	64%	16		30
Sep	2005	190	400	590	32%	68%	16		37
Aug	2005	183	301	484	38%	62%	15		32
Jul	2005	142	334	476	30%	70%	14		34
Jun	2005	182	265	447	41%	59%	20		22
May	2005	174	271	445	39%	61%	18		25
Apr	2005	197	260	457	43%	57%	15		31
Mar	2005	146	384	510	29%	71%	16		32
Feb	2005	132	326	458	29%	71%	18		25
Jan	2005	125	221	346	36%	64%	16		22

2,128 3,765 5,893 36% 64%

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2007, I served the foregoing document, Petition For Leave To Supplement The Record With Argument That Penny Newman Grain Company Is A Necessary Party That Has Failed To Join In The Petitions For Alternative Rail Service And The PYCO Feeder Line Application, by UPS overnight mail, on the following:

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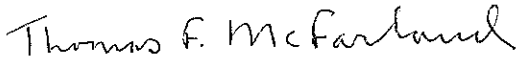
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