

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

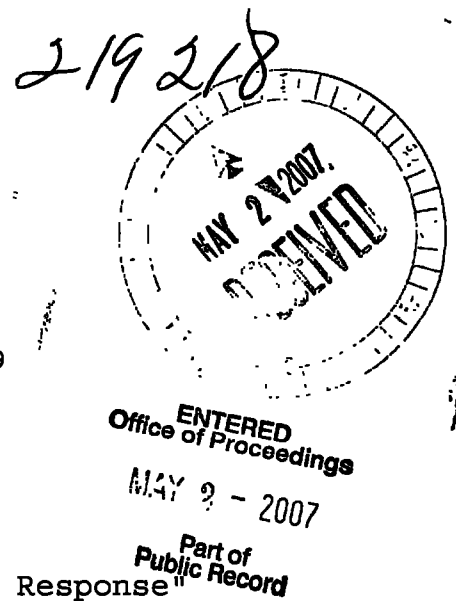
OPPOSITION
by PYCO INDUSTRIES, INC.

to
Letter Motion for Leave to File the "Limited Response"
(e-filing dated April 30) by
South Plains Switching Ltd.

PYCO Industries, Inc. (PYCO) opposes the letter motion of incumbent rail provider South Plains Switching Ltd. (SAW) e-filed under the date of April 30, 2007, for leave to file additional argument allegedly in response to the Gregory Declaration. That Declaration was attached to PYCO's reply to SAW's "Second Supplement" to SAW's petition to terminate alternative rail service.

If the "Second Supplement" was a petition to terminate, then PYCO timely filed its reply by fax transmission on April 23. SAW's rebuttal was due three days later (April 26). 49 C.F.R. § 1147.1(c)(3). As a rebuttal, SAW's letter violates the time limitations provided in the alternative service regulation and must be stricken.

If the "Second Supplement" was not a petition to terminate, then it itself is improper and should be disregarded. A fortiori, anything that SAW wishes to add to an improper pleading is improper and should be stricken as well. But in any event, SAW's latest is at the very least a mere reply to a



reply, and the Board's rule barring replies to replies (49 C.F.R. § 1104.13(c)) forecloses it.

SAW's sole basis for its improper pleading is it thinks Mr. Gregory got some things wrong. He did not.

-- SAW says the obligation to do weed control is on alternative service provider West Texas & Lubbock (WTL) under "49 C.F.R. § 213.6(e)"¹ which is applicable by its terms only to directed service orders under 49 U.S.C. 11123. WTL is operating on the SAW system pursuant to an alternative service authorization under 49 C.F.R. Part 1147. Part 1147 is not an implementation of, and has nothing to do with, 49 U.S.C. 11123. Additionally, in contrast with directed service situations in which generally only one rail carrier operates on a line, SAW operates on the portion of the SAW system (namely its yard) that needed weed control. That is where SAW and WTL interchange. "49 C.F.R. § 213.6(e)" as quoted by SAW thus does not apply either at law or by analogy. SAW is the owner of the track and thus has the obligation to control vegetation under Part 213. SAW did not discharge its weed control obligation (as it now tacitly admits) and would not return telephone calls on the subject (as it also now tacitly admits).

-- SAW never participated in conference calls. The fact that SAW thinks that it has managed to get them discontinued due to its non-cooperation is irrelevant. Mr. Gregory's point is

¹ The latest on-line version of 49 C.F.R. Part 213 from the General Accounting Office does not have a § 213.6(e) in any event. SAW evidently intends to refer to § 213.5(e).

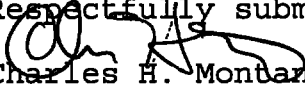
that SAW not only never participated, but also never called WTL concerning any issues which it now seeks to raise, and SAW does not return WTL's calls to SAW to discuss such issues either. SAW cannot complain that WTL is somehow failing to deal with issues that SAW conceals. Moreover, as Mr. Gregory's declaration indicates, no shipper has complained, and that of course supports the view that SAW is misrepresenting the situation. But let's close the books on this one: if SAW would participate in telephone calls, WTL would do so.

-- SAW complains that on April 30 (the date of the e-filing) WTL did not make the switch. For a long time now, WTL has provided the switch in the afternoon or evening, when it can get track time for BNSF and avoid interfering with WTL. In accordance with this long-established policy, WTL provided the switch to SAW on April 30 (see e-mail from Steve Gregory attached). We will not dwell on the oral reaction of WTL officers when they saw what SAW had represented to this Board concerning April 30, or on the broader question of whose records are more reliable, SAW's or WTL's. Among other things, WTL officers observed to PYCO that they were closer to reality than SAW's counsel in Chicago with respect to what was happening in Lubbock. WTL operates a rail system out of north Lubbock; its local staff keep a close watch; and use computer tracking to keep data current. Finally, Mr. Gregory's declaration against which SAW submitted its impermissible April 30 reply to a reply was submitted under penalties for perjury;

SAW's impermissible April 30 reply to a reply was not.

In the end, SAW does not demonstrate any need to correct the Gregory declaration, nor does SAW submit anything qualifying as an evidentiary correction (i.e., something under oath or penalties for perjury). In fact, SAW's "corrections" are simply more SAW disinformation and distortion.

Leave to file should be denied. Enough is enough. There has been enough on SAW's premature termination petitions for quite some time.

Respectfully submitted,

Charles H. Montange
for PYCO Industries, Inc.
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
fax: -3739

Of counsel:

Gary McLaren, Esq.
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Attachment (e-mail on 1 May concerning events 30 April)

Certificate of Service

I hereby certify service of the foregoing by express delivery on 1 May 2007 upon the following:

Thomas McFarland, Esq.
208 South LaSalle 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)

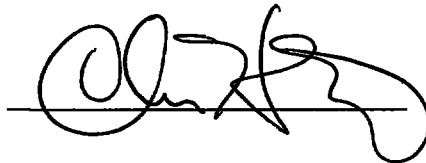
John Heffner, Esq.
1920 N Street, N.W., Suite 800
Washington, D.C. 20036 (for WTL)

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 be "Michael Hyer", written over a horizontal line.

c.montange

From: "Steve Gregory" <gregorys@iowapacific.com>
To: "c.montange" <c.montange@verizon.net>
Sent: Tuesday, May 01, 2007 2:11 PM
Subject: Re: McFarland of April 30

Factoring in my latest email, we left the BNSF yard with 46 cars including the 8 for SAW about 7:30pm. As always the time we get in the yard is controlled by BNSF.

This should make and has not made a difference to SAW. They do not work at night. You'll recall that we began switching in the evening because it was more efficient for BNSF and kept us out of SAW's way.