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April 12, 2006

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

216232

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

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Reply In Opposition To PYCO's Request For Modification Of Operating Protocol And Request Of SAW For Modification Of Operating Protocol, for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

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

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ENTERED
Office of Proceedings

APR 13 2006
U.S. DEPT. OF JUSTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34802



**REPLY IN OPPOSITION TO PYCO'S REQUEST
FOR MODIFICATION OF OPERATING PROTOCOL
AND REQUEST OF SAW FOR MODIFICATION
OF OPERATING PROTOCOL**

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

Petitioner

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Petitioner

DATE FILED: April 13, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING, LTD. CO.	)	NO. 34802

**REPLY IN OPPOSITION TO PYCO'S REQUEST
FOR MODIFICATION OF OPERATING PROTOCOL
AND REQUEST OF SAW FOR MODIFICATION
OF OPERATING PROTOCOL**

SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby (1) replies in opposition to the request of PYCO Industries, Inc. (PYCO) for a modification of the operating protocol in this matter to require SAW to move railcars that are located on SAW's wye track, and (2) makes its own request for a modification of the operating protocol to require West Texas & Lubbock Railway Company (WTL) to keep SAW tracks that are covered by the protocol clear of railcars when not providing rail service to PYCO and during SAW's operating window.

PYCO's request for modification of the operating protocol was contained in its Opposition to Petition to Terminate Alternative Rail Service, filed April 6, 2006.

This SAW reply serves incidentally to rebut PYCO's Opposition to SAW's Petition to Terminate Alternative Rail Service because it is shown that SAW is acting reasonably and in accordance with the law in storing railcars on its own tracks that are not covered by the operating protocol, and in refusing to permit PYCO to cross its tracks at the site of PYCO's cottonseed. This SAW reply is supported by the attached verified statements of Mrs. Delilah Wisener and Mr. Larry D. Wisener. It is shown that BNSF signed a Private Crossing Agreement with

PYCO's predecessor at another location in PYCO's plant, but not at the site of the cottonseed. SAW is merely continuing BNSF's practice. SAW is honoring the existing Private Crossing Agreement and, like BNSF, SAW is not willing to enter into a private crossing agreement at the cottonseed site. The facts also show that this is not a hardship on PYCO because there are convenience alternative means for PYCO to access its cottonseed.

The modification of protocol requested by SAW is badly needed. Alternative rail service is preventing SAW from providing responsive service to Lubbock customers other than PYCO. WTL is not setting out cars for interchange to SAW on a timely basis. For example, 3 boxcars were delivered electronically by BNSF to SAW on Monday, April 10. As of today, Wednesday, April 12, WTL is holding those cars on Yard Track 5, which it controls under the operating protocol, instead of setting those cars out on a SAW yard track for interchange. As of today, April 12, there are 14 cars for SAW's customers that WTL pulled into SAW's yard, but which WTL left blocking the main track instead of interchanging them to SAW. SAW's customers desperately need those cars. The split operating windows under the protocol is no excuse for WTL. Under the operating protocol, WTL has 20 hours of each 24-day to interchange cars to SAW.

I. OPPOSITION TO PYCO'S REQUEST FOR MODIFICATION OF OPERATING PROTOCOL

The only purpose that would be served by a requirement that SAW move railcars off the SAW wye track would be to enable PYCO to cross SAW's tracks at that location. The Board should not require SAW to move those cars because PYCO is not legally authorized to cross

SAW's tracks, and the Board is not authorized to require SAW to permit PYCO to cross its tracks.

The subject matter of private railroad crossings is governed by State law. In the absence of a state statutory requirement, a rail carrier is not required to construct or to keep open a private railroad crossing. See, e.g., *Summerlin v. Norfolk Southern Railway Co.*, 588 S.E.2d 30, (Ct. of App., NC, 2003). There is no statute in Texas that requires a rail carrier to provide private railroad crossings. It follows that SAW does not have a duty to provide a private railroad crossing for PYCO at the location of the cottonseed pile

There is no Private Crossing Agreement or Easement Deed between SAW and PYCO or their predecessors that would authorize PYCO to cross SAW's tracks at the site of the cottonseed pile as a matter of contract law. The absence of such an Agreement or Deed is indicative of an intent on the part of SAW and its predecessor that PYCO not cross its tracks at that site. When the predecessors of SAW and PYCO intended that there be a private crossing, they knew how to prepare a written Private Crossing Agreement. Reference is made to the Private Crossing Agreement between predecessors of SAW and PYCO governing a crossing at a different plant location, attached as Appendix DW-1 to the verified statement of Ms. Delilah Wisener. SAW's predecessor was not willing to enter into a Private Crossing Agreement at the location under consideration. Neither is SAW in view of the uninsured, unlicensed, uninspected PYCO vehicles that would use the crossing (VS D. Wisener at 3-4).

PYCO is not authorized to cross SAW's tracks by virtue of a prescriptive easement under Texas law. Texas decisions require that use of property be hostile and adverse to the interests of the owner in order to ripen into a prescriptive easement. See, e.g., *Tiller v. Lake Alexander*

Properties, 96 S.W.3d 617 (Tex. App. - Texarkana, 2002, no pet.); *Mack v. Landry*, 22 S.W.3d 524 (Tex. App. - Houston [14th Dist.], 2000, no pet.); and *Stallman v. Newman*, 9 S.W.3d 243 (Tex. App. - Houston [14th Dist.], 1999, no pet.). Use of the crossing at issue by PYCO and its predecessor was not hostile and adverse to the interests of SAW and its predecessor. A prescriptive easement cannot authorize a crossing of a rail carrier's tracks in any event.

The Board does not have authority to nullify Texas law on private railroad crossings. Federal preemption of State law remedies under 49 U.S.C. § 10501(b) does not apply to private railroad crossings because there is no federal remedy on private railroad crossings that could preempt State law. Moreover, Texas State law does not regulate rail carriers in the matter of private railroad crossings. On the contrary, Texas law leaves that matter to the discretion of rail carriers whether to grant private railroad crossings as a matter of contract. Thus, the absence of a Texas statute requiring SAW to grant a private crossing over its wye track at the site of PYCO's cottonseed does not constitute "regulation of rail transportation" under State law so as to be subject to Federal preemption under 49 U.S.C. § 10501(b).

In light of the foregoing, the Board should deny PYCO's request that SAW be required to move railcars off its wye track because no purpose would be served by such a requirement inasmuch as PYCO is not authorized to cross that track and the Board is not authorized to require SAW to permit PYCO to cross that track.

II. SAW'S REQUEST FOR MODIFICATION OF THE OPERATING PROTOCOL

There is a situation that requires modification of the operating protocol. WTL is permanently storing railcars for PYCO on SAW's tracks covered by the operating protocol (i.e., SAW's main track and Yard Tracks 1 and 5, and Tracks 9298 and 9200). The operating protocol

gives WTL use of those tracks during a defined operating window in order to provide rail service to PYCO. However, the operating protocol does not give WTL permanent use of those tracks for storage of cars for PYCO on an around-the-clock basis. WTL has its own yard in the Lubbock area for storage of railcars. WTL should be required to store railcars for PYCO in its own yard at times when WTL is not providing service to PYCO. At a minimum, WTL should be required to store railcars for PYCO in its own yard during SAW's window of rail operation under the operating protocol. Just as SAW is required to keep tracks covered by the protocol clear for WTL's operating during WTL's operating window, WTL should be required to keep those tracks clear for SAW's operating during SAW's operating window. Accordingly, the operating protocol should be modified to require that the tracks covered by the protocol shall be kept clear by WTL when not in use by WTL in providing rail service to PYCO and during SAW's operating window.

CONCLUSION AND REQUESTED RELIEF

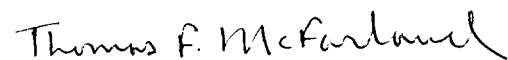
WHEREFORE, the Board should issue a decision (1) denying the request by PYCO for modification of the operating protocol that would require SAW to move railcars off its wye track; and (2) modifying the operating protocol to require that the tracks covered by the protocol shall

be kept clear by WTL when not in use by WTL in providing rail service to PYCO and during SAW's operating window.

Respectfully submitted,

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

Petitioner



THOMAS F. McFARLAND
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208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Petitioner

DATE FILED: April 13, 2006

VERIFIED STATEMENT OF DELILAH WISENER

My name is Delilah Wisener. I am the sole owner of South Plains Switching, Ltd. Co. (SAW). I have provided verified statements in earlier phases of this proceeding. The verified statement that I am submitting at this time is in rebuttal of the verified statement of Mr. Robert Lacy, Senior Vice President-Marketing of PYCO Industries, Inc. (PYCO), which seeks modification of the service protocol ordered by the Surface Transportation Board (STB) in its decision served February 16, 2006. The modification sought by PYCO is "to order SAW to stop blocking PYCO's access from Plant No. 1 to its seed stockpile, to permit PYCO to finish its rail storage construction project and continued operation of its rail dependent business." (VS Lacy, para. 27). Following that rebuttal, I provide facts in support of SAW's own request that the protocol be modified to require West Texas & Lubbock Railway Company, Inc. (WTL) to cease round-the-clock storage of railcars on SAW trackage.

I. Rebuttal of Mr. Lacy's Verified Statement

The numerals in my rebuttal correspond to the numbered paragraphs in Mr. Lacy's verified statement.

1. As owner of SAW, I will continue to honor all written leases, agreements and easements that exist between SAW and PYCO. Mr. Lacy is confusing management decisions that are in the best interests of SAW and which do not benefit PYCO as retaliation against PYCO. The simple fact is that PYCO does not have an easement for a private crossing over SAW's wye track, and it is not in SAW's best interests to grant such an easement.
2. In November, 2005, PYCO was informed that PYCO would be required to comply with provisions that existed in SAW's tariff for many years. PYCO had a copy of that tariff.

SAW's action brought to an end an extended period during which PYCO enjoyed use of SAW's facilities without charge. That prompted PYCO to complain to the STB, but SAW's assessment of reasonable charges for use of its facilities did not warrant an order for alternative rail service.

3. It is not true that SAW is blocking PYCO's completion of its track construction project. In his letter of March 27, 2006 to Mr. Clemens of the STB, Mr. Lacy states that it could take weeks, if not months, for PYCO to obtain approval from the City of Lubbock to create a new access point to the seed pile from another part of PYCO's property. That is not true. SAW's track contractor recently completed construction of extensive trackage on SAW's property that required the City of Lubbock's permission to cut the curb for driveway access to and from MLK Boulevard. The contractor obtained the City permit in two hours. PYCO should pursue that option. From my observation, there is no entrance at the current location for the City Fire Department. That is of great concern because of the proximity of other businesses and a housing project. Telling lies over and over does not make them the truth!
4. PYCO has no right to complain about the placement of railcars on SAW tracks that are not covered by the alternative rail service order. There is no law of which I am aware that prohibits SAW from placing railcars on SAW's wye track, which is not covered by that order. SAW would not block a crossing for which PYCO has an easement or a private crossing agreement, but PYCO has not provided proof of such an easement or agreement. SAW's attorney has advised me that under Texas law PYCO does not have a prescriptive

easement at the proposed crossing site, nor can a shipper unilaterally establish a private crossing over SAW's tracks. Ironically, the railcars located on SAW's wye track were moved to that track from SAW's Track 9200 when the STB's protocol decision required SAW to keep that track clear for WTL-PYCO's use. Those railcars are being stored by SAW on a revenue basis. PYCO wants SAW to move those cars once again, but SAW is entitled to store those cars at a convenient location of its choice in the absence of violation of any law.

- 5-16. These paragraphs cover Mr. Lacy's Photographs 1 through 21. Many of these photographs do not merit a response, such as several pictures of a tape measure. Photographs 3 and 4 show close-clearance violations of PYCO's seed pile in relation to SAW's wye track. The crossing shown in Mr. Lacy's Photograph 5 is located elsewhere in PYCO's plant. That crossing is covered by a Private Crossing Agreement between SAW and PYCO predecessors, which is attached as my Appendix DW-1. That Agreement requires that the crossing be kept clear when not in use. The photograph shows that SAW is abiding by that Agreement. There is no such agreement for a crossing at the point of the seed pile. Photographs 18-21 do not establish that PYCO's track is in compliance with state clearance laws. In his Paragraph 16, and Photographs 18 and 20, Mr. Lacy refers to 49 C.F.R. 213.4 as establishing that PYCO's track complies with clearance provisions for excepted track. That is not so. Attached as Appendix DW-2 is a copy of 49 C.F.R. 213.4. That regulation does not make any reference to track clearance requirements. In fact, PYCO's track violates state clearance laws. Railcars moved over a

portion of PYCO's track encroach on SAW's right-of-way, preventing this area from being fenced.

17. As noted, the railcars on SAW's wye track were moved there from Track 9200 when PYCO demanded use of that track. Now PYCO demands that they be moved again. In the absence of a private crossing agreement, PYCO has no right to require their movement.
18. When predecessors of SAW and PYCO intended that there be a private crossing over railroad tracks, they entered into a Private Crossing Agreement. My Appendix DW-1 is an example of such a Private Crossing Agreement. There is no Private Crossing Agreement nor easement for PYCO to cross SAW's tracks at the site of PYCO's seed pile. The absence of a Private Crossing Agreement or an easement for a crossing is strongly indicative that the parties intended that there be no such crossing at this location. The absence of such an Agreement or easement is particularly telling in that respect because there are two other written agreements between predecessors of SAW and PYCO in the same area: one for an underground electric line (copy attached as Appendix DW-3) and another for overhead conveyor structures (copy attached as Appendix DW-4). SAW's predecessor undoubtedly refused to enter into a private crossing agreement in light of uninsured, unlicensed and uninspected equipment that would operate over tracks at that location. SAW is greatly concerned over potential liability from use of that equipment over its trackage. Mr. Lacy claims that PYCO's crossing of SAW's tracks in

the past has been open and notorious. However, at no time since SAW's acquisition of its rail lines in 1999 has PYCO's crossing been hostile and adverse.

19. At no time since SAW acquired its Lubbock rail lines in 1999, has PYCO's crossing of SAW's tracks at the location of the seed pile been hostile and adverse to SAW. For example, PYCO has never fenced that crossing.
20. PYCO can easily access its seed pile without crossing SAW's tracks. PYCO should license and insure its vehicles for use on public roads. The aerial photographs supplied by PYCO show easy street access to its seed pile. SAW registers and insures all of its vehicles and pays required taxes in accordance with Texas law. PYCO should do the same. SAW is not responsible for PYCO's failure to do so.
21. As noted, SAW is entitled to place railcars on its own tracks in the manner most convenient to SAW in the absence of violation of any contract or law. No contract or law is violated by placement of railcars on SAW's wye track.
22. PYCO should have contacted SAW itself instead of having WTL do so.
23. SAW did not refuse to communicate. SAW's attorney politely informed PYCO's attorney that SAW is not willing to enter into a private crossing agreement at the location of the seed pile.
24. No response is required to the statements in Mr. Lacy's Paragraph 24.
25. No response is required to the statements in Mr. Lacy's Paragraph 25.

26. Mr. Lacy's reference to SAW's lawsuit for recovery of constructive placement surcharges is not germane to the issue of alternative rail service. As the STB said in its decision in this proceeding served Jan. 26, 2006 (at 6):

SAW suggests that PYCO simply is unwilling to pay the surcharge that would be imposed if the second daily switch were outside the crew's regular 12-hour day, and that PYCO's real complaint is that the charges it must pay are too high. Rates or charges that shippers believe are too high are not a basis to order alternative, interim rail service. *See Keokuk Junction Railway Company - Alternative Rail Service - Line of Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34397, slip op. at 6 (STB served Oct. 31, 2003) (denying alternative service order because "[r]ate disputes do not constitute service disruptions or inadequacies within the meaning of 49 U.S.C. 11123"). Here, however, PYCO has made clear that it wants the service it needs, even if it has to pay the surcharge, as that would be less costly to it than the current situation. Thus, we do not view PYCO's request for alternative service as driven by dissatisfaction with the level of charges.

PYCO has claimed that SAW created the need for constructive placement by failure to provide adequate rail service. Presently, there are more than 125 railcars for PYCO stored on SAW's tracks. That must be due to inadequate rail service by WTL.

27. SAW opposes PYCO's request. The STB cannot create a private crossing agreement for PYCO under Texas law.
28. SAW can and will provide rail service needed by PYCO without retaliation for any action taken by PYCO against SAW. I have repeatedly expressed a willingness to talk to PYCO representatives. I am available for a meeting with PYCO at its request.

II. SAW's Request For Modification Of The Protocol

Throughout the period of alternative rail service, WTL has been storing railcars for PYCO on SAW's main track and yard tracks 1 and 5, and on Tracks 9298 and 9200, around the clock. WTL has treated those tracks as if they are part of WTL's yard.

WTL has its own yard in the Lubbock area. WTL should be required to store railcars for PYCO in its own yard, not on SAW's tracks.

WTL can operate over those SAW tracks to provide rail service to PYCO, but WTL should not be permitted to make permanent use of those tracks around the clock to store railcars for PYCO. Under the operating protocol, SAW has the right to operate over those tracks during specified times of each day. Just as SAW is required to keep those tracks clear for WTL's operation during WTL's operating window, WTL should be required to keep those tracks clear for SAW's operation during SAW's operating window.

Consequently, SAW is requesting that the STB modify the operating protocol to provide that SAW's main track and yard tracks 1 and 5, and Tracks 9298 and 9200 shall be kept clear by WTL when not in use by WTL in providing rail service to PYCO. That would require WTL to use its own Lubbock area yard to store railcars for PYCO, and to refrain from storing such railcars on the specified SAW tracks.

APPENDIX DW-1

PRIVATE CROSSING CONTRACT

This AGREEMENT, made this 30th day of March, 19 72, between Fort Worth and Denver Railway Company, party of the first part, hereinafter called "Railway Company," and PLAINS COOPERATIVE OIL MILL, party of the second part,

WITNESSETH: That, WHEREAS, Railway Company controls and operates a line of railway through various counties in the State of Texas, and maintains along the right of way thereof, fences for the protection of property and the prevention of injury to persons and animals; and,

WHEREAS, party of the second part owner, is in charge of a certain tract of land located in the County of Lubbock, State of Texas, and adjoining the right of way of Railway Company, and is desirous of having a private crossing over said Railway Company's track and right of way at Mile Post L-359.45;

NOW, THEREFORE, in consideration of the premises and the promises hereinafter made and to be performed by the parties hereto, IT IS AGREED:

1. For and in consideration of the sum of Fifty & no/100 Dollars (\$ 50.00), receipt of which is hereby acknowledged by Railway Company, party of the second part will within thirty (30) days from the execution of this contract, under the supervision of Railway Company and in compliance with the requirements of Railway Company, construct and erect in the line of Railway Company's fence, not to exceed two (2) gates as well as a crossing over the right of way and tracks of Railway Company at the following location, to-wit: Said private crossings cross over Railway Company's main track, two industry tracks and right of way in a northeasterly-southwesterly direction at main line Mile Post L-359.45.

Party of the second part agrees to bear all expenses incident to the operation of above mentioned crossings.

as shown on ~~blue~~ print marked "Exhibit A", attached hereto and made a part hereof. The said gate or gates and crossing, including cattle guards if deemed necessary, are to be installed at the sole expense of party of the second part, and party of the second part further agrees to maintain said gate or gates and crossing with all appurtenances that may be required, at its sole expense and without cost to Railway Company; provided, however, Railway Company, in the event party of the second part fails to keep said gate or gates and crossing in good repair, shall have the right to repair the same at the cost of party of the second part, and party of the second part shall pay the full cost of such repairs within twenty (20) days of receipt of bill therefor from Railway Company.

X 2. Party of the second part agrees that it will at all times when said crossing is not in use, keep said gate or gates locked or closed so that livestock and persons can not pass upon and over the right of way of Railway Company.

3. Party of the second part agrees that it will at all times indemnify and save harmless Railway Company against any loss of or damage to property, and against all claims, demands, actions or causes of action growing out of the loss of or damage to property, or injury to or death of persons, resulting in any manner from construction, maintenance, use, state of repair, or presence of the crossing upon Railway Company's premises (except where such loss or damage to property or such injury to or death of persons is directly caused by the sole negligence of Railway Company), and shall promptly pay to Railway Company the full amount of any damages which Railway Company may sustain and incur, or become liable for, and all sums which Railway Company may pay or be compelled to pay in settlement or satisfaction of any such claims, demands, actions, or causes of action; it being fully understood and agreed that Railway Company shall not be liable for any damage to the crossing howsoever caused.

4. If at any time party of the second part fails or declines to keep the agreements herein contained, Railway Company may annul and cancel this agreement by giving five (5) days' written notice to party of the second part to that effect; and likewise, at any time, at its own option, upon giving ninety (90) days' notice in writing to party of the second part, its assigns and successors, Railway Company may terminate this contract; whereupon party of the second part shall and will close up said gates permanently, so that they can no longer be used, and in default thereof Railway Company is hereby authorized to do the same at the expense of the party of the second part.

5. It is further agreed and understood that this is a covenant to run with the land of party of the second part, its, his or their heirs, executors, administrators, personal representatives, successors or assigns, and shall be binding upon them.

As one of the considerations herein, it is expressly agreed and understood that this contract is made on behalf of any successors or assigns of Railway Company, and that the same is also made on behalf of and inures to the benefit of any other person, firm, corporation or railway company who may at any time run trains over or in any

manner or way operate the tracks a property of Railway Company; and as such persons, firm, corporation or railway company, whether operating the same in any manner or way by operation of law or otherwise, said party of the second part obligates himself as provided for by the terms of this contract.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first above written.

ATTEST:

FORT WORTH AND DENVER RAILWAY COMPANY

Secretary

APPROVED:

By Asst. to President Party of the First Part

Chief Engineer

Mgr., Ind. Dev. & Real Estate

General Superintendent

PLAINS COOPERATIVE OIL MILL

WITNESS:

ATTEST:

Secretary

By Party of the Second Part

APPROVED AS TO FORM:

General Attorney

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared

known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the day of , 19

Notary Public in and for Tarrant County, Texas

STATE OF TEXAS

COUNTY OF

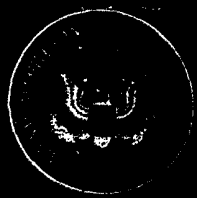
BEFORE ME, the undersigned authority, on this day personally appeared

, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the day of , 19

Notary Public in and for County, Texas

APPENDIX DW-2



49

Parts 200 to 299

Revised as of October 1, 2005

Transportation

§ 213.4 Excepted track.

A track owner may designate a segment of track as excepted track provided that—

(a) The segment is identified in the timetable, special instructions, general order, or other appropriate records which are available for inspection during regular business hours;

(b) *The identified segment is not located within 30 feet of an adjacent track which can be subjected to simultaneous use at speeds in excess of 10 miles per hour;*

(c) The identified segment is inspected in accordance with 213.233(c) and 213.235 at the frequency specified for Class 1 track;

(d) The identified segment of track is not located on a bridge including the track approaching the bridge for 100 feet on either side, or located on a public street or highway, if railroad cars containing commodities required to be placarded by the Hazardous Materials Regulations (49 CFR part 172), are moved over the track; and

(e) The railroad conducts operations on the identified segment under the following conditions:

(1) No train shall be operated at speeds in excess of 10 miles per hour;

(2) No occupied passenger train shall be operated;

(3) No freight train shall be operated that contains more than five cars required to be placarded by the Hazardous Materials Regulations (49 CFR part 172); and

(4) The gage on excepted track shall not be more than 4 feet 10 $\frac{1}{4}$ inches. This paragraph (e)(4) is applicable September 21, 1999.

(f) A track owner shall advise the appropriate FRA Regional Office at least 10 days prior to removal of a segment of track from excepted status.

APPENDIX DW-3

PIPELINE PERMIT
No. PX91-12021



THIS AGREEMENT, made this 25th day of April, 19 91, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington", and Plains Cooperative Oil Mill, hereinafter called "Permittee", whose address is 2901 Avenue A Lubbock Texas 79408.

WITNESSETH:

Burlington, for and in consideration of the fee herein provided to be paid by Permittee to Burlington, and of the covenants and promises hereinafter made to be observed and performed by Permittee, does hereby grant to Permittee license and permission to excavate for, construct, maintain, and operate

Underground Electric Line

hereinafter referred to as "Facility" upon, along or across the right-of-way of Burlington, underneath the surface thereof, and under the tracks of Burlington, as the case may be, at or near Lubbock Station, in the County of Lubbock, State of Texas, to be located as follows, to wit:

MP 359.0

as shown In Red on the plat attached hereto, marked Exhibit "A", dated March 6 1991, and by this reference made a part hereof.

Permittee in consideration of such license and permission hereby covenants and promises as follows:

1. For this Permit, Permittee will pay Burlington, in advance, the sum of Four Hundred Fifty Dollars (\$450) for the entire time this Permit remains in effect and Permittee will also pay or reimburse Burlington for all taxes and assessments that may be levied or assessed against said Facility. Burlington reserves the right to change the fee on future Permits at any time without notice. This provision shall in no way affect Burlington's right to terminate said Permit pursuant to Paragraph 10 hereof.

2. Permittee, at Permittee's sole cost and expense, shall excavate for, construct, reconstruct, maintain and repair said Facility placing same in accordance with the specifications provided in application dated February 4 1991, heretofore approved by Burlington. Permittee shall fill in the excavation and restore the surface of the ground upon which the Facility is located to its previous condition subject to the Division Superintendent's approval. Said Superintendent shall have the right at any time when in his/her judgment it becomes necessary or advisable to require any material used in the work to be replaced with like material or with material of a more permanent character, also to require additional work or change of location of said Facility as a matter of safety and/or appearance, or on account of additional tracks being laid, change of grade thereof, construction of a building, or for any other reason whether or not connected with the operation, maintenance, or improvement of Burlington's railroad, all of which shall be done at the expense of Permittee in the manner herein provided.

3. Permittee shall give to the Division Superintendent at least two (2) days advance notice of any work to be done by Permittee in the excavation for, construction, reconstruction, maintenance, repair, change of location, or removal of said Facility, and shall conduct said work in such a manner as not to interfere with the maintenance and operation of Burlington's railroad.

4. In the event that Burlington, at the request of Permittee, agent, or contractor of Permittee, or for the protection of Burlington property and operations, does any work, furnishes any material or flagging service, or incurs any expense whatsoever on account of the excavation for, construction, reconstruction, maintenance, repair, change of location, removal of the Facility, or otherwise, Permittee shall reimburse Burlington for the cost thereof within twenty (20) days after bills are rendered therefor. If the excavation for, construction, reconstruction, maintenance, repair, change of location, or removal of the Facility, requires any or all of the following work: removal and replacement of track, bridging, protection of track, or other railroad facilities by work or flagging, engineering, and/or supervision, such work is to be performed by Burlington employees and the cost borne by Permittee.

5. (a) Fiber optic cable systems may be buried on Burlington's property. Permittee shall telephone Burlington at 1-800-533-2891 (a 24-hour number) to determine if fiber optic cable is buried anywhere on Burlington's premises to be used by Permittee. If it is, Permittee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on Burlington's premises. In addition to the liability terms elsewhere in this Agreement, Permittee shall indemnify and hold Burlington harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Permittee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by Permittee, and/or its contractor, agents and/or employees, on Burlington's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Burlington's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

6. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the Facility which, in the opinion of Burlington, interferes with train signals in any way, telephone or telegraph lines, or other facilities of Burlington, Permittee, upon being informed by Burlington of such interference, shall forthwith discontinue operation of and remove said grounding system, or take such steps as may be necessary to avoid and eliminate all such interference. Permittee further agrees to indemnify and save harmless Burlington from and against any damages, claims, losses, suits, or expenses in any manner arising from or growing out of interference with the signals, telephone, or telegraph lines of Burlington by the operation, use, or existence of any such grounding system.

7. Permittee shall and hereby releases and discharges Burlington of and from any and all liability for damage to or destruction of said Facility, and any other property of Permittee located on or near Burlington's premises, and shall and hereby assumes any and all liability for injury to or death of any and all persons whomsoever, including officers, employees, and agents of the parties hereto, and loss of or damage to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of the parties hereto, in any manner arising from or during the excavation for, construction, reconstruction, use, maintenance, repair, or removal of said Facility, however such injury, death, loss, damage, or destruction aforesaid may occur or be caused, and shall and hereby does indemnify and save harmless Burlington of and from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses arising or growing out of or in connection with any such injury, death, loss, damage, or destruction aforesaid. Permittee further agrees to appear and defend in the name of Burlington any suits or actions at law brought against Burlington on account of any such personal injuries or death, and loss and damage to or destruction of property, and to pay and satisfy any final judgment that may be rendered against Burlington in any such suit or action. THE LIABILITY ASSUMED BY PERMITTEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BURLINGTON, ITS AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE.

8. Permittee shall not transfer or assign this permit without the written consent of Burlington.

9. Nothing herein contained shall imply or import a covenant on the part of Burlington for quiet enjoyment.

10. It is expressly understood and agreed that Burlington may at any time cancel and terminate this license and permission by giving to Permittee thirty (30) days written notice of its intention to cancel the same and at the expiration of such notice this license and permission shall terminate. Upon receipt of such notice and before the expiration thereof, Permittee, under the supervision and direction of Burlington's Division Superintendent, or his authorized representative, shall remove said Facility from the right-of-way of Burlington and restore the right-of-way and premises of Burlington in a manner and to such condition as shall be satisfactory to said Superintendent. If Permittee fails to remove the Facility and restore said right-of-way to such condition within said thirty (30) day period, Burlington at its option may remove same and restore said right-of-way to its previous condition, and Permittee shall pay to Burlington the cost and expense thereof.

11. Upon any failure of Permittee to punctually and strictly observe and perform the covenants and promises made herein by Permittee to be kept and performed, Burlington may terminate this agreement on ten (10) days notice to Permittee, remove said Facility, and restore said right-of-way to its previous condition at the cost and expense of Permittee.

12. Any notices given under the provisions of this agreement shall be good if properly deposited with the United States Postal Service addressed to Permittee at Permittee's post office address above stated.

13. The license and permission herein granted is subject to permits, leases, and licenses, if any, heretofore granted by Burlington affecting the premises upon which said Facility is located.

Subject to the foregoing provisions, this Agreement and all of the covenants and promises thereof, shall inure to the benefit of and be binding upon the parties hereto, their respective executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, Burlington and Permittee have executed this agreement in duplicate as of the day and year first hereinabove written.

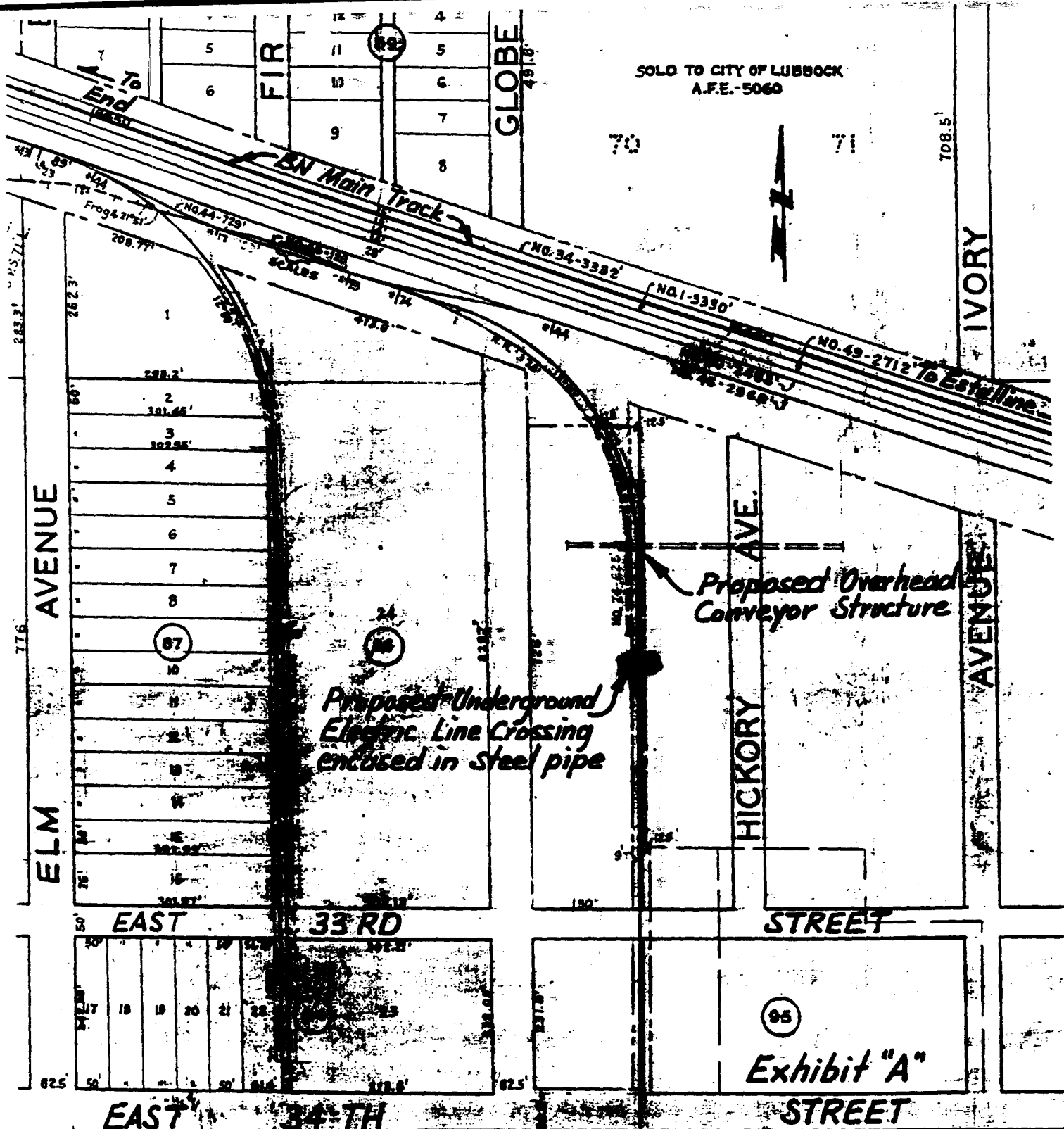
BURLINGTON NORTHERN RAILROAD COMPANY

By D.M. Lato
Title Division Engineer

Ann L. Blount
(Witness)
Mary Press
(Witness)

PLAINS COOPERATIVE OIL MILL
(Permittee)
By Paul Krug
Title Sa.V.P.

SOLD TO CITY OF LUBBOCK
A.F.E.-5060



REVISION

BURLINGTON NORTHERN RAILROAD COMPANY

FORT WORTH DIVISION

PRINT SHOWING

Plains Cooperative Oil Mill
Proposed Underground Electric Line

LINE SEGMENT 487

M.P. 359.0

Lubbock, Lubbock County, Texas

SCALE: 1" = 200'
ENGINEERING DIVISION

DATE: March 6, 1991
FORT WORTH TEXAS

APPENDIX DW-4

PIPELINE PERMIT

No. PX91-12025



THIS AGREEMENT, made this 25th day of April, 19 91, between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Burlington", and Plains Cooperative Oil Mill, hereinafter called "Permittee", whose address is 2901 Avenue A Lubbock Texas 79408

WITNESSETH:

Burlington, for and in consideration of the fee herein provided to be paid by Permittee to Burlington, and of the covenants and promises hereinafter made to be observed and performed by Permittee, does hereby grant to Permittee license and permission to excavate for, construct, maintain, and operate

Overhead Conveyor Structure

hereinafter referred to as "Facility" upon, along or across the right-of-way of Burlington, underneath the surface thereof, and under the tracks of Burlington, as the case may be, at or near Lubbock Station, in the County of Lubbock, State of Texas, to be located as follows, to wit:

MP 359.0

as shown in Red on the plat attached hereto, marked Exhibit "A", dated March 6 1991, and by this reference made a part hereof.

Permittee in consideration of such license and permission hereby covenants and promises as follows:

1. For this Permit, Permittee will pay Burlington, in advance, the sum of Four Hundred Fifty Dollars (\$450) for the entire time this Permit remains in effect and Permittee will also pay or reimburse Burlington for all taxes and assessments that may be levied or assessed against said Facility. Burlington reserves the right to change the fee on future Permits at any time without notice. This provision shall in no way affect Burlington's right to terminate said Permit pursuant to Paragraph 10 hereof.

2. Permittee, at Permittee's sole cost and expense, shall excavate for, construct, reconstruct, maintain and repair said Facility placing same in accordance with the specifications provided in application dated February 4 1991, heretofore approved by Burlington. Permittee shall fill in the excavation and restore the surface of the ground upon which the Facility is located to its previous condition subject to the Division Superintendent's approval. Said Superintendent shall have the right at any time when in his/her judgment it becomes necessary or advisable to require any material used in the work to be replaced with like material or with material of a more permanent character, also to require additional work or change of location of said Facility as a matter of safety and/or appearance, or on account of additional tracks being laid, change of grade thereof, construction of a building, or for any other reason whether or not connected with the operation, maintenance, or improvement of Burlington's railroad, all of which shall be done at the expense of Permittee in the manner herein provided.

3. Permittee shall give to the Division Superintendent at least two (2) days advance notice of any work to be done by Permittee in the excavation for, construction, reconstruction, maintenance, repair, change of location, or removal of said Facility, and shall conduct said work in such a manner as not to interfere with the maintenance and operation of Burlington's railroad.

4. In the event that Burlington, at the request of Permittee, agent, or contractor of Permittee, or for the protection of Burlington property and operations, does any work, furnishes any material or flagging service, or incurs any expense whatsoever on account of the excavation for, construction, reconstruction, maintenance, repair, change of location, removal of the Facility, or otherwise, Permittee shall reimburse Burlington for the cost thereof within twenty (20) days after bills are rendered therefor. If the excavation for, construction, reconstruction, maintenance, repair, change of location, or removal of the Facility, requires any or all of the following work: removal and replacement of track, bridging, protection of track, or other railroad facilities by work or flagging, engineering, and/or supervision, such work is to be performed by Burlington employees and the cost borne by Permittee.

5. (a) Fiber optic cable systems may be buried on Burlington's property. Permittee shall telephone Burlington at 1-800-533-2891 (a 24-hour number) to determine if fiber optic cable is buried anywhere on Burlington's premises to be used by Permittee. If it is, Permittee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on Burlington's premises. In addition to the liability terms elsewhere in this Agreement, Permittee shall indemnify and hold Burlington harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Permittee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by Permittee, and/or its contractor, agents and/or employees, on Burlington's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Burlington's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

6. In the event any cathodic electrolysis or other electrical grounding system is installed in connection with the Facility which, in the opinion of Burlington, interferes with train signals in any way, telephone or telegraph lines, or other facilities of Burlington, Permittee, upon being informed by Burlington of such interference, shall forthwith discontinue operation of and remove said grounding system, or take such steps as may be necessary to avoid and eliminate all such interference. Permittee further agrees to indemnify and save harmless Burlington from and against any damages, claims, losses, suits, or expenses in any manner arising from or growing out of interference with the signals, telephone, or telegraph lines of Burlington by the operation, use, or existence of any such grounding system.

7. Permittee shall and hereby releases and discharges Burlington of and from any and all liability for damage to or destruction of said Facility, and any other property of Permittee located on or near Burlington's premises, and shall and hereby assumes any and all liability for injury to or death of any and all persons whomsoever, including officers, employees, and agents of the parties hereto, and loss of or damage to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of the parties hereto, in any manner arising from or during the excavation for, construction, reconstruction, use, maintenance, repair, or removal of said Facility, however such injury, death, loss, damage, or destruction aforesaid may occur or be caused, and shall and hereby does indemnify and save harmless Burlington of and from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses arising or growing out of or in connection with any such injury, death, loss, damage, or destruction aforesaid. Permittee further agrees to appear and defend in the name of Burlington any suits or actions at law brought against Burlington on account of any such personal injuries or death, and loss and damage to or destruction of property, and to pay and satisfy any final judgment that may be rendered against Burlington in any such suit or action. THE LIABILITY ASSUMED BY PERMITTEE SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BURLINGTON, ITS AGENTS, SERVANTS, EMPLOYEES, OR OTHERWISE.

8. Permittee shall not transfer or assign this permit without the written consent of Burlington.

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13. The license and permission herein granted is subject to permits, leases, and licenses, if any, heretofore granted by Burlington affecting the premises upon which said Facility is located.

Subject to the foregoing provisions, this Agreement and all of the covenants and promises thereof, shall inure to the benefit of and be binding upon the parties hereto, their respective executors, administrators, successors, and assigns.

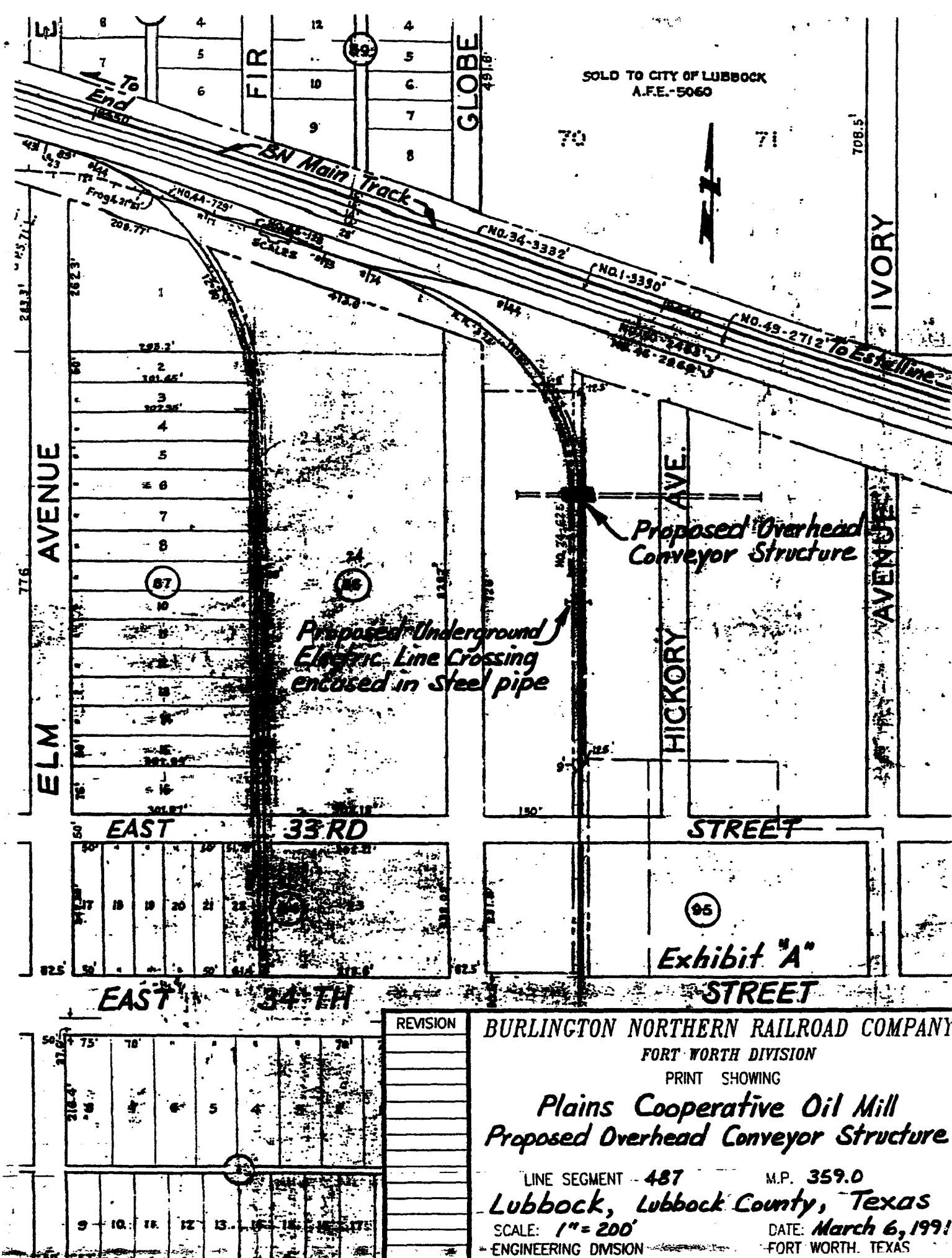
IN WITNESS WHEREOF, Burlington and Permittee have executed this agreement in duplicate as of the day and year first hereinabove written.

BURLINGTON NORTHERN RAILROAD COMPANY

By D. M. Tate
Title Division Engineer

PLAINS Cooperative Oil Mill
(Permittee)
By Paul King
Title Sr. V.P.

Diana L. Blount
(Witness)
Mary Reese
(Witness)



SOLD TO CITY OF LUBBOCK
A.F.E.-5060

*Proposed Overhead
Conveyor Structure*

*Proposed Underground
Electric Line Crossing
encased in Steel pipe*

Exhibit "A"

REVISION

BURLINGTON NORTHERN RAILROAD COMPANY
FORT WORTH DIVISION
PRINT SHOWING

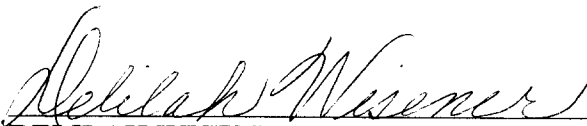
Plains Cooperative Oil Mill
Proposed Overhead Conveyor Structure

LINE SEGMENT - 487 M.P. 359.0
Lubbock, Lubbock County, Texas
SCALE: 1" = 200' DATE: March 6, 1991
ENGINEERING DIVISION FORT WORTH, TEXAS

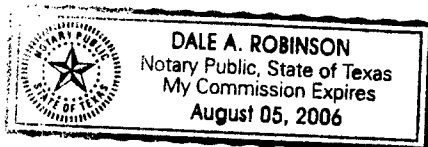
VERIFICATION

STATE OF TEXAS)
)
COUNTY OF LUBBOCK)

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


DELILAH WISENER

SUBSCRIBED AND SWORN TO before me on this the 10th day of April, 2006.




NOTARY PUBLIC

My Commission Expires: August 05, 2006

SOUTH PLAINS LAMESA RAILROAD, LTD. (SLAL)

P.O. BOX 64299, LUBBOCK, TEXAS 79464

PHO: (806)828-4841

FAX: (806)828-4863

Verified Statement of Larry D. Wisener

I, Larry D. Wisener make this response to PYCO Industries and WTLC in their response to SAW Petition to Terminate Alternative Rail Service, filed by South Plains Switching, Ltd.

I am the former President and General Manager of SAW that is involved in these proceedings. I have read WTLC and PYCO's response in opposition to the petition to terminate Alternative Rail Service.

The purpose of this response is to give the Board a broader view of the history of Larry D. Wisener personally, and as an officer of SAW and my relationship involving PYCO Industries.

I own and operate a track construction company that started business in 1991. I have performed rail repairs, new rail construction, and worked derailments for Plains Cooperative Oil Mill (predecessor to PYCO) and others since this time. Currently, I am involved in an \$800,000.00+ rehab project at a fertilizer plant. I have performed track construction services working closely with the former ATSF Marketing and its shippers in three states amounting to an excess of over 100 customers. I believe every one of them with the exception of the current management of PYCO Industries would write a letter of support attesting to my honesty, integrity, business professionalism, and ability to perform to contract requirements and meet all specifications.

In 1993, the ATSF sold me what is referred to as the Lamesa Branch Line. During this time period, I was asked by Mr. Wayne Martin and Mr. Gail Kring for assistance in finding available real estate that was adequately rail served for the construction of a new oil mill. I gladly responded by showing them several locations available with rail service provided by my SLAL railroad. Several other community leaders showed their excitement of the possibility of locating a new oil mill in their community by offering real estate. Talk about extortion, Plains Cooperative Oil Mill was applying pressure on the City of Lubbock because of increased utility rates and taxes. They had threatened to move all its operations out of Lubbock. The City of Lubbock came forward with an incentive package favorable to Plains Cooperative Oil Mill to remain in Lubbock.

My company Track Repair, Inc., was awarded the contract by Plains Cooperative Oil Mill for construction of the rail facilities located at the new Plant 2. This was at a cost savings to Plains Oil Mill of over \$400,000.00 according to their personnel. This project was done with a handshake between myself and Mr. Wayne Martin, former President and CEO of Plains Oil Mill.

In 1998, my construction company was requested by Plains Oil Mill to relay and repair all trackage that was covered under a lease agreement from the BN and removed from rail service by Roadmaster Victor Lopez. This job took approximately 30 days and involved the replacement of all rail and switches covered under the lease.

In 1999, I contacted Mr. Martin and informed him of the possibility that SLAL had to purchase the former BN Properties along with certain ATSF Properties in Lubbock which included the trackage and leases effecting Plains Cooperative Oil Mill. Mr. Martin offered his company's assistance in financing and support if needed to be the successful bidder. He also requested that if I was successful in purchasing this property, Plains Coop wanted to purchase certain leases pertaining to Plant 1 operations. They had been unsuccessful in dealing with the BN in trying to purchase these leases even to the point of withholding lease payments amounting to over \$15,000.00 per year for more than 4 years. SAW sold and transferred the leases requested by Plains Cooperative Oil Mill in 2000. (see attached deed) Rent monies were prorated to SAW for 1999.

In 2006, a search of property records at the local court house reveals that this deed has not been filed of record. SAW is still incurring property taxes. This will be addressed with local appraisal district to request reimbursement of over paid taxes. This also could result in a lawsuit of which I feel sure PYCO will blame this on SAW's management.

In reviewing all statements made by current PYCO personnel I have not seen any claims of dissatisfaction of rail service until November 2004, after SAW/SLAL prevailed in its first lawsuit with BNSF in a Fort Worth, Texas court. This has been an increasing pattern since this time.

I personally tried to explain and inform them of actions most likely to be taken by BNSF in trying to harm our long working relationship because they were and still are the largest shipper of SAW.

I apologize to PYCO for them having been used as a pawn in the on going battle between SAW and BNSF. BNSF's refusal to honor their own contract of 1999 has caused great harm and damaged relationships with SAW and its customers. I would like to assure PYCO's current management that their rail service requirements will be met by current SAW management and its employees because service to its customers has always been a top priority.

The purpose of this history is to show the once excellent working relationship between myself and companies that I represented in a management capacity and PYCO Industries. I feel the allegations against me have brought into question my reputation, integrity and fair business dealings.

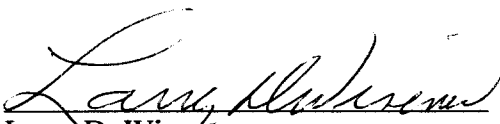
Respectfully submitted this verified statement by Larry D. Wisener

Further affiant saith not.

Pursuant to 28 USC § 1746, I declare and verify under penalties of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on:

April 11, 2006


Larry D. Wisener

APPENDIX LDW-1

After Filing Return To: Pyco Industries, Inc., P. O. Box 1889, Lubbock, Texas 79408

QUITCLAIM DEED

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF LUBBOCK §

THAT the SOUTH PLAINS SWITCHING LTD., COMPANY, a Texas Limited Liability Company, of the County of Lubbock, State of Texas, (hereinafter "Grantor"), for and in consideration of the sum of TEN DOLLARS AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, in hand paid by the grantee herein named, the receipt and sufficiency of which is hereby acknowledged, has **QUITCLAIMED**, and by these presents does **QUITCLAIM** unto **PYCO INDUSTRIES, INC.**, of P. O. Box 1889, Lubbock, Texas 79408, (Hereinafter "Grantee"), all of its right, title and interest, if any, in and to the real property situated in Lubbock County, Texas, more particularly described in Exhibit "A" attached hereto and hereby made a part hereof (Hereinafter "the Property")

 This deed is given and Grantee accepts same subject to those items shown on Exhibit "B" attached hereto and hereby made a part hereof.

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the Property and premises, if any, unto

Grantee, its successors and assigns forever, so that neither Grantor nor its legal representatives or assigns shall have, claim or demand any right or title to the Property, premises or appurtenances or any part thereof.

This conveyance is made without warranty of any kind, express or implied and no covenant of warranty shall be implied from the use of any word or words herein contained, including without limitation any warranty that might arise by common law, or the warranties in Section 5.023 of the Texas Property Code (or its successors). By the acceptance of this deed, Grantee takes the Property "AS IS". Grantor has not made and does not make any representations as to the physical condition, layout footage, expenses, zoning, operation, or any other matter affecting or related to the Property, and Grantee hereby expressly acknowledges that no such representations have been made. Grantor makes no other warranties, express or implied, of merchantability, marketability, fitness or suitability for a particular purpose or otherwise except as set forth and limited herein. Any implied warranties are expressly disclaimed and excluded.

EXECUTED on this the 5th day of December, 2000.

South Plains Switching Ltd., Company

Larry D. Wisener
By: Larry D. Wisener, President

THE STATE OF TEXAS

§

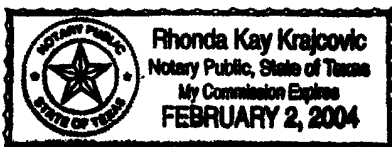
§

COUNTY OF LUBBOCK

§

This instrument was acknowledged before me on this the 5th day of December, 2000 by Larry D. Wisener, President of South Plains Switching, Ltd., Company, a Texas Limited Liability Company, on behalf of said Company.

Rhonda Kay Krajcovic
NOTARY PUBLIC, STATE OF TEXAS



Rhonda Kay Krajcovic
Printed Name of Notary
My Commission Expires: 2-2-04

EXHIBIT "A"

DESCRIPTION

BEGINNING at a ½" iron rod with cap, set in the East line of U. S. Highway 87 (Avenue "A") and the South property line of the South Plains Switching Ltd., Company which is one hundred and fifty feet (150') distance and parallel with the original main track of the Fort Worth and Denver South Plains Railway Company (predecessor company) for the Northwest corner of Lot 1 - A, Plains Cooperative Oil Mill Addition to the City of Lubbock, Lubbock County, Texas and the beginning corner of this tract, whence the Southeast corner of Section 7, Block "B" and the Southwest corner of Section 5, Block "B", Lubbock County, Texas bears South, 1895.38 feet and East, 65.68 feet:

THENCE North 02° 12' 46" West, along the East line of U. S. Highway 87 (Avenue "A"), 110.71 feet to a ½" iron rod with cap, set for the Northwest corner of this tract being a point southwesterly and forty-six and four tenths feet (46.4') distance from and parallel with the original main track of the former Fort Worth and Denver South Plains Railway Company;

THENCE South 71° 36' 45" East, passing the West line of said Section 5, Block "B" 800.00 feet to a ½" iron rod with cap, set for a corner of this tract being a point southwesterly and forty-six and three tenths feet (46.3') distance from and parallel with the original main track of the former Fort Worth and Denver South Plains Railway Company;

THENCE South 68° 04' 49" East, 725.41 feet to a ½" iron rod with cap, set for a corner of this tract being a point southwesterly and ninety-one and no tenths feet (91.0') distance from and parallel with the original main track of the former Fort Worth and Denver South Plains Railway Company;

THENCE South 71° 16' 47" East, 569.33 feet to a ½" iron rod with cap, set for a corner of this tract being a point southwesterly and ninety-four and three tenths feet (94.3') distance from and parallel with the original main track of the former Fort Worth and Denver South Plains Railway Company;

THENCE Southeasterly, along the arc of a curve to the right, 99.40 feet to a ½" iron rod with cap, set for a corner of this tract, said curve has a radius of 507.30 feet, a central angle of 11° 13' 29" and a chord that bears South 68° 22' 45" East, 99.22 feet being a point southwesterly and ninety-nine and nine tenths feet (99.9') distance from and parallel with the original main track of the former Fort Worth and Denver South Plains Railway Company;

THENCE South 62° 45' 20" East, 58.52 feet to a ½" iron rod with cap, set for a corner of this tract being a point southwesterly and one hundred eight and nine tenths feet (108.9') distance from and parallel with the original main track of the former Fort Worth and Denver South Plains Railway Company;

THENCE Southeasterly, along the arc of a curve to the right, 224.76 feet to a ½" iron rod, found for the Northeast corner of Lot 3, Plains Cooperative Oil Mill Addition to the City of Lubbock, Lubbock Count, Texas and the Southeast corner of this tract, said curve has a radius of 374.06 feet, a central angle of 34° 25' 40" and a chord that bears South 47° 36' 42" East, 221.40 feet;

THENCE North 89° 56' 57" West, along the North line of said Lot 3, 88.39 feet to a ½" iron rod, found for a corner of this tract;

THENCE North 00° 00' 04" West, along the North line of said Lot 3, 80.92 feet to a ½" iron rod, found for a corner of this tract being a point southwesterly and one hundred-fifty and no tenths feet (150.0') distance from and parallel with the original main track of the former Fort Worth and Denver South Plains Railway Company;

THENCE North 71° 36' 45" West, along the North lines of said Lot 3 and said Lot 1- A and the South line of South Plains Switching Ltd., Company and passing the East line of said Section 7, Block "B", 2304.13 feet to the Place of Beginning.

ADDITIONALLY

All of the South Plains Switching Ltd., Company's fee or easement interest in real property or improvements within Lot 1- A Plains Cooperative Oil Mill Addition to the City of Lubbock, Lubbock County, Texas (Vol. 1681, p. 955) and Lot 3 Plains Cooperative Oil Mill Addition to the City of Lubbock, Lubbock County, Texas (Vol. 1732, p. 178) being west of and not including the property for Lead Track No. 73 (Burlington Industrial District Lead Track).

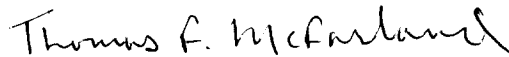
CERTIFICATE OF SERVICE

I certify that on April 12, 2006, I served the foregoing document, Reply In Opposition To PYCO's Request For Modification Of Operating Protocol And Request Of SAW For Modification Of Operating Protocol, by UPS overnight mail, on the following:

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