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216191
ORIGINAL



BY HAND

April 6, 2006

Hon. Vernon A. Williams
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

RE: FD No. 34802, Pyco Industries, Inc. -
Alternative Rail Service-
South Plains Switching, LTD. CO.

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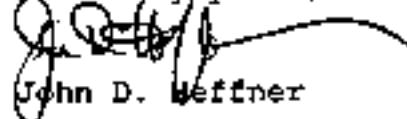
Dear Mr. Williams:

On behalf of Respondent Pyco Industries, Inc., and its regular STB counsel, Charles Montange, Esq., I am filing an original and ten copies of its "Opposition to Incumbent Rail Carrier's Petition to Terminate Alternative Rail Service and Request for Modification of Service Protocol," due today. Please note that Pyco's regular STB counsel, Charles Montange, is out of the country and will return on April 12, 2006.

I am also enclosing a computer disk formatted in MS Word containing this filing and the supporting verified statements.

Please date stamp and return two copies of this filing.

Sincerely yours,


John D. Heffner

cc: Mr. Melvin Clemens
All parties

216191

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --)
ALTERNATIVE RAIL SERVICE --) F.D. 34802
SOUTH PLAINS SWITCHING LTD.)



PYCO INDUSTRIES' OPPOSITION
TO INCUMBENT RAIL CARRIER'S
PETITION TO TERMINATE ALTERNATIVE RAIL SERVICE
AND
REQUEST FOR MODIFICATION OF SERVICE PROTOCOL

Respectfully submitted,

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ATTORNEYS FOR PYCO INDUSTRIES, INC.

Date due: April 6, 2006

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	F.D. 34802
SOUTH PLAINS SWITCHING LTD.	)	

PYCO INDUSTRIES' OPPOSITION
TO INCUMBENT RAIL CARRIER'S
PETITION TO TERMINATE ALTERNATIVE RAIL SERVICE
AND
REQUEST FOR MODIFICATION OF SERVICE PROTOCOL

Pursuant to 49 CFR 1146.1(d)(2), Respondent PYCO Industries, Inc. ("PYCO") replies to the latest "Petition to Terminate Alternative Rail Service" South Plains Switching, LTD. CO. ("SAW") filed with the Board March 30, 2006. PYCO urges the Board to reject SAW's Petitions for the many of the same reasons that led it to deny the relief SAW sought in its previous Petition filed February 9, 2006. Contrary to the Board's requirements, its Petition provides not a shred of evidence demonstrating that SAW is prepared to provide adequate service at this time. Moreover, PYCO requests that the Board order continuation of alternative service until at least June 25, 2006, the present expiration date. Finally, PYCO requests relief by the Board from certain retaliatory actions taken by SAW in response to the present alternative service order.

Background

On January 26, 2006, the Board granted PYCO's initial Petition for Alternative Rail Service under 49 U.S.C. 11123(a) and 49 CFR 1146.1, authorizing the West Texas & Lubbock Railway Company, Inc. ("WTL") to provide service to PYCO over SAW's tracks and facilities. In time, the Board extended that alternative rail service order until June 25, 2006, due to SAW's

continuing refusal to cooperate. In granting PYCO's request for relief, the Board noted that "there is a rebuttable presumption that the alternative service would need to continue for more than 30 days" and that this additional 120 day period [until June 25] will give SAW "an opportunity to make a clear showing that it is prepared to restore service to PYCO at levels needed and requested by PYCO."¹ The Board's regulations caution incumbent carriers against filing such petitions to terminate "prematurely." 49 CFR 1146.1(d)(1).

In denying its first petition, the Board reasoned that despite SAW's "new management" and promises of cooperation, its actions belie any change in behavior. For instance, the Board noted SAW's refusal to take part in the early morning conference calls intended to insure a safe coordination of operations between and among carriers at Lubbock. It stated that PYCO is now entering its most "rail-dependent season" with a large bumper crop expected and that WTL has thus far been successful in cutting PYCO's shipping backlog and meeting current demand. For these reasons, the Board concluded that SAW has not "met its burden of showing that the emergency is over or that it could and would provide the same level of service that WTL is providing."²

The Current Position

PYCO continues to receive adequate rail service from its alternative service provider, WTL. Now, shortly after this Board received SAW's first petition to terminate, SAW again petitioned to terminate alternative rail service. SAW's latest petition is based upon the "personal observation" of SAW's owner, Mrs. Wisener, and her bases for termination are as follows:

¹Surface Transportation Board Decision, STB Finance Docket No. 34802, decided February 24, 2006, p.1.

1. PYCO is not "working" seven days a week;
2. SAW is prepared to provide PYCO with "whatever rail services are needed";
3. SAW is losing revenue as a result of the alternative rail service order; and
4. SAW is not to be blamed for rail service problems, but rather BNSF.³

With the exception of item 2 above, PYCO does not believe that any of the other bases, even if true, are contemplated by 49 C.F.R. § 1146.1(d)(1) relating to termination of alternative rail service. All will be addressed below, including SAW's hollow representation that it is ready, willing and able to reform its past actions and provide satisfactory service to PYCO.

Indeed, not only does SAW not provide evidence for alternative service termination through its petition, SAW should be further enjoined by the Board for SAW's recent retaliatory actions taken against PYCO, to PYCO's further and continuing detriment.

On March 21, 2006, SAW escalated its retaliation against PYCO by blocking PYCO's access to complete rehabilitation of a crossing from PYCO's outdoor cottonseed storage pads to PYCO's Plant No. 1. SAW's action threatens imminent curtailment of PYCO's rail dependent operations. PYCO therefore is forced to request a modification of the service protocol entered by STB in this docket in its decision dated February 16, 2006. The modification should require SAW to cease parking equipment on the grade crossing thereby allowing PYCO to complete crossing work or use of the crossing during the period of the alternative service order. This will maintain status quo and allow continuation of PYCO's rail-dependent operations at Plant No. 1.

²*Id.* at p.4.

³SAW Pet. at 3-4.

Argument

The starting point for the Board's analysis of this most current Petition To Terminate is the simple fact that PYCO continues to receive adequate rail service from its alternative service provider, WTL.

I. Round Up The Usual Suspects

Although addressed in the later part of SAW's subject petition, SAW claims that in addition to PYCO and WTL's faults, the core of PYCO's rail service problems are attributable to BNSF not to SAW. SAW and its counsel go to considerable lengths to detail SAW's legal battles with BNSF and its effect on PYCO. PYCO can only respond that if the problem is actually the BNSF, and not SAW, why has WTL been able to provide good rail service to PYCO, when WTL also has to also work with BNSF.

SAW seems incapable of accepting responsibility for its actions and shortcomings and intent upon blaming the same group of entities, no matter the circumstances of SAW's own making.

When STB issued a service protocol for the parties by decision served February 16, 2006, the Board provided (over SAW's objection) in essence that SAW could not obstruct tracks 9200 and 9298, because those tracks were needed to serve PYCO's Plant No. 2.

By similar token, a grade crossing between parcels of PYCO property, discussed fully below, which PYCO is seeking to rehabilitate and use is essential for continued rail dependent operation of PYCO's Plant No. 1, and SAW has absolutely no railroad reason to block the crossing. SAW is doing so only to obstruct PYCO's ability to operate and to retaliate against PYCO for seeking this Board's assistance. PYCO requests this Board to modify the protocol to require SAW to keep the crossing clear. If SAW wishes to contest PYCO's use of the crossing,

SAW should bring an action in state court to establish its legal right.

II. Erroneous Observation, False Conclusion

First, Mrs. Wisener makes her "personal observation" that PYCO is not "working seven days a week."⁴ Wisener and SAW seem to claim that rail service has returned to normal levels, implying that SAW now is able to provide service with its foreshortened capacity.

In fact, PYCO continues to operate its plants seven days a week, twenty four hours a day, and has throughout the pendency of the alternative service order.⁵ PYCO's rail dependent operations continue to demand a quality of rail service well beyond the inadequate service provided by SAW prior to this Board's alternative service order. PYCO continues to face significant rail shipping requirements equaling, if not exceeding, those that gave rise to these proceedings before the Board.⁶

Although Mrs. Wisener has no knowledge of PYCO's operating schedule, and makes erroneous personal observations about same, it is nonetheless not the number of days a week that PYCO "works" that form a basis for termination of alternative service. If PYCO only operated one day a week, and inadequate rail service was present, SAW would still be subject to an alternative service order. A shipper's operations schedule should be of no consequence to the Board under circumstances where the shipper has maintained its operation schedule for years, where the incumbent rail provider, for no better reasons than SAW's, begins to provide inadequate rail service.

As evidenced by the affidavit of PYCO's chief executive officer, Gail Kring, nothing has changed from the previous circumstances warranting the Board's subject order relating to heavy

⁴Verified Statement of Mrs. Wisener at 1.

⁵Verified Statement of Gail Kring, Exhibit A, para. 4-5.

demand for rail service over the coming months by PYCO.⁶ PYCO is still operating at full capacity and has a large cottonseed crop to work off through rail shipments of its cottonseed byproducts. PYCO's need for adequate service is the same or greater than when we filed our original petition.⁸

If SAW's point to this Board is to falsely represent that PYCO has reduced its operations and things are returning to a 'normal' rail shipping level that SAW could accommodate, nothing could be further from the truth. SAW either refused, or could not provide, adequate rail service at the time the Board issued its order. Nothing about PYCO's operational facts has changed that would allow SAW to claim that such a fact alone should be used as a basis for termination of alternative rail service.

III. Same Leopard, Same Spots

Next, SAW represents to the Board that alternative service should be terminated because SAW is "prepared and willing" to provide PYCO with adequate rail service. Mrs. Wisener makes this statement in her supporting verified statement without further elaboration or evidence. PYCO is essentially requested to 'just trust her' as the sole owner of SAW.

There are several reasons why PYCO doesn't just accept Mrs. Wisener's statement. These reasons all are centered on Mrs. Wisener and SAW's actions, not words. Indeed, PYCO's previous response to SAW's previous request to terminate alternative rail service, filed February 16, 2006, suggested that just as a leopard can't change its spots, neither would SAW change its actions.⁹ The analogy was prophetic.

⁶Id. at para. 15-17.

⁷Id. at para. 5, 15-16.

⁸Id.

⁹See PYCO's Opposition to Pet. to Terminate, p. 4-9.

In SAW's Opposition To Petition For Alternative Rail Service filed on December 28, 2005, Mr. Larry Wisener claimed in his verified statement that PYCO was partially to blame for its rail service problems because of "insufficient track infrastructure."¹⁰

The "insufficient track infrastructure" is alleged lack of storage track. But PYCO's need for storage track is largely a function of SAW's prior inadequate service, which caused a backlog of cars. PYCO, to reduce its dependency on SAW for car storage (arising due to SAW's inadequate service in the first place), undertook extensive track construction. As the construction proceeded, SAW watched PYCO's progress on track construction from its property.¹¹ Just prior to completion of the rail construction project, on March 21, 2006, SAW parked a cut of empty cars on its "wye" track adjacent and parallel to one of the newly refurbished tracks of PYCO.¹²

This cut of cars was positioned in such a manner on SAW's track as to prevent the completion of asphalt surfacing of the private grade crossing over PYCO and SAW's tracks.¹³ This grade crossing is fully discussed in the affidavit of PYCO's senior vice president, Mr. Robert Lacy.¹⁴

The subject grade crossing has served PYCO continuously since the early 1990's, and is used to transport cottonseed from two large outdoor storage piles to processing equipment located to the west across the subject tracks.¹⁵ Under Texas easement laws, PYCO possesses, at a minimum, an implied prescriptive easement, or easement by estoppel in part, due to its

¹⁰See Verified Stmt. of Larry Wisener, p. 5-6 attached as exhibit to SAW's Opposition To Petition For Alternative Rail Service.

¹¹Verified Statement of Robert Lacy Exhibit B, para. 4.

¹²Id.

¹³Id. at para. 4-15.

¹⁴Id.

continuous use of the grade crossing for a period exceeding ten years without objection by the dominant estate. Presently, there is cottonseed valued at a cost of \$11 million stored across the tracks from PYCO's equipment, and stranded by SAW's actions in blocking the crossing.

PYCO notified WTL that the cut of cars needed to be moved in order to complete track construction.¹⁶ WTL in turn notified SAW by telephone, and advised PYCO that SAW's response to the request was a "NO" and a hangup by SAW to the phone call without further discussions.¹⁷

PYCO has learned that SAW is storing the subject cars for another entity and that there is abundant storage space for the subject cut of cars on other SAW track.¹⁸

SAW's action in parking the cut of empty cars is simply retaliation to the Board's alternative service order. Next, PYCO attempted resolution of moving the cut of cars via communication between the parties' respective lawyers.¹⁹ SAW refused such cooperation.

PYCO then notified the STB by letter dated March 27, 2006, of the situation.²⁰

SAW's response: a letter to the Board from Mrs. Wisener dated March 28, 2006, never offering to resolve the matter "honestly and diligently" - as Mrs. Wisener indicated in her February 8, 2006 verified statement - but instead claiming that PYCO was trying to use the STB, gain an easement PYCO didn't have, gain complete control of SAW's yard, claim violation of state clearance laws, criticize PYCO and WTL, and claim that PYCO is "harassing SAW."²¹

But SAW, the would-be cooperative leopard, was not yet finished. On the same day,

¹⁵ Id. at para. 18.

¹⁶ Id. at para. 22.

¹⁷ Id.

¹⁸ See Verified Statement of Stephen Gregory, Exhibit C.

¹⁹ Id. at para. 23.

²⁰ Id. at para. 24.

March 29, 2006, that Mrs. Wisener gave her verified statement accompanying SAW's present Petition To Terminate Alternative Service, SAW's Lubbock lawyer drafted a letter to PYCO's counsel threatening that any use of the subject grade crossing would be considered trespassing and SAW would utilize all legal remedies available to it.²²

Moreover, two days earlier, on March 27, 2006, SAW filed suit against PYCO in state district court in Lubbock, Texas, to collect some \$49,000 in "constructive placement" surcharges levied against PYCO since January 2006.²³ These are the actions of SAW's "new management" that contradict their own verified statements. Just as the leopard does not change its spots, nothing has changed at SAW except that now SAW seeks to retaliate directly against PYCO in the face of STB's order.

More than adequate track space exists to uncouple the lead car blocking the crossing and shove the cut forward (south) on SAW's track to accommodate surfacing and access to the cottonseed by PYCO.²⁴

More than adequate track space also exists to shove the entire cut of cars back on SAW's track (north) to accommodate PYCO's request.²⁵

The subject crossing has been used continuously to reach the outdoor cottonseed storage area since at least 1991, many years prior to SAW purchasing the subject track from BNSF

²¹Id.

²²Id. at para. 25.

²³See PYCO Rebuttal to SAW Reply filed January 3, 2006, p. 1-4 under Section III Argument, Verified Statement Lacy at para. 29.

²⁴Verified Statement of Lacy at para. 12.

²⁵Id. at para. 14.

in 1999.²⁶

Although no written agreement between BNSF, SAW and PYCO has been located, SAW and its counsel are well aware that for the entire period of time SAW has owned the track, and before that BNSF, PYCO has continuously utilized the grade crossing with no objection from SAW or BNSF.²⁷

Now, time is of the essence in gaining access to the cottonseed on the opposite side of SAW's tracks. As Mr. Lacy's affidavit details, as temperatures begin to rise in Texas during April, PYCO has historically processed these particular storage piles of seed because their large tonnage makes them particularly prone to rapid deterioration.²⁸ Deterioration through heat build up in the cottonseed will result in damages to PYCO the longer the cottonseed is stranded by SAW's actions.²⁹

Moving the subject seed via truck on busy 34th Street, as suggested by SAW, is not possible with PYCO's off-road equipment. Moreover, moving the seed on city streets would pose significantly increased hazards to the public traveling on 34th Street, as a result of a high volumes of truck traffic.³⁰

SAW doesn't wish to work with PYCO. SAW doesn't wish to acknowledge PYCO's rights or accept responsibility for SAW's shortcomings, factual or legal. SAW furnishes no

²⁶Id. at para. 18-19.

²⁷Id.

²⁸Id. at para. 20.

²⁹Id.

³⁰Id.

evidence that it is prepared to resume service to PYCO, but PYCO furnishes ample evidence of SAW's retaliatory efforts against PYCO and effectively against the STB.

PYCO correctly predicted the leopard would not change its spots. Instead, SAW acted in such a way as to further reveal the existing spots.

IV. A Point Of Understanding Between PYCO And SAW

As mentioned, SAW complains in its petition that it is losing revenue as a result of the alternative rail service order. PYCO also has incurred significant expenses as a result of SAW's improper service. Now thanks to SAW's retaliatory efforts, PYCO continues to expend further resources to answer SAW's inappropriate actions. PYCO wishes SAW would cease its unnecessary retaliation in order that both companies might conserve their economic resources. However, the fact that SAW's strategy is costing SAW money is not relevant.

The only ground to terminate such service is that SAW will provide adequate service. SAW's own strategy and tactics demonstrate that providing adequate service to PYCO is the last thing on SAW's mind, and SAW's intent remains what it was in November 2005: to cause as much disruption to PYCO as SAW possibly can achieve.

This is hardly compatible with discharge of a common carrier obligation. SAW's hostile attitude is further demonstrated by SAW's failure, in violation of the service protocol issued by this Board, to designate a representative available twenty four hours a day, seven days a week to address service issues, and to participate in the daily teleconference with WTL and BNSF to deal with service issues. SAW has also engaged in other disruptive conduct toward PYCO's alternative service provider, WTL.³¹

³¹See Verified Statement of Stephen Gregory, Exhibit C.

Conclusion

In November 2005, SAW's management told PYCO that PYCO "would have to figure out how to take care of [itself]" and that SAW intended to create conditions "to cost a lot more for [PYCO] to continue doing business." See PYCO's original petition at p. 9 and sources cited. This continues to be SAW's tactic and strategy. It challenges credibility for SAW in the circumstances once again to file a petition to revoke alternative rail service, so soon after this Board ordered a 120-day continuation and denied the previous alternative service request.

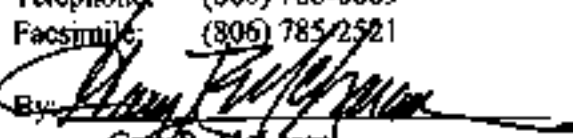
For the reasons stated in this Opposition and the attached statements, this Board should maintain the existing alternative service order and modify the existing protocol to require SAW to keep long standing crossing used by PYCO clear of obstructions during the course of this alternative service order.

Respectfully submitted,

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ATTORNEYS FOR PYCO INDUSTRIES, INC.

Exhibit A – V.S. Gail Kring
Exhibit B – V.S. Robert Lacy
Exhibit C – V.S. Stephen Gregory

Certificate of Service

The undersigned hereby certifies service of the foregoing (a) by electronic transmission to Thomas McFarland, counsel for SAW, at mcfarland@aol.com, and (b) by placing a copy with Federal Express addressed to Mr. McFarland at 208 South LaSalle St., Suite 1890, Chicago, IL 60604-1112, on April 6, 2006.



John D. Hoffman

ORIGINAL



EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. -)
ALTERNATIVE RAIL SERVICE --)
LINE OF SOUTH PLAINS SWITCHING LTD.)

F.D. 34802



Verified Statement of
Gail Kring

I, Gail Kring, make this verified statement in response to the Petition to Terminate Alternative Rail Service filed by South Plains Switching ("SAW") in this proceeding, and in support of continuation of the alternative rail service provided by West Texas & Lubbock Railroad ("WTL") which PYCO Industries, Inc. ("PYCO") has been receiving commencing on 30 January.

1. I am the Chief Executive Officer and General Manager of PYCO and have been employed by PYCO for 39 years.

2. I have read SAW's Petition To Terminate Alternative Rail Service, Mrs. Wisener's letter to the STB dated March 28, 2006, the letter to PYCO dated March 29, 2006 from SAW's lawyer, James Gorsuch, and the lawsuit filed in the state district court by SAW against PYCO attempting to collect surcharges for constructive placement of rail cars. I respond to those documents herein.

3. The second paragraph of Mrs. Wisener's Verified Statement begins by stating there is no need for alternative rail service to continue based upon her personal observation that PYCO "...is not working seven days a week."

4. Mrs. Wisener's personal observation about our company's operations is wrong. PYCO operates seven days a week, twenty four hours a day, for 330 days out of the 365 days in a year. This has been PYCO's operations schedule for many years. The 35 days that we do not

operate are a predetermined 14 days in July, at which time all plant vacations are taken, and a 21 day repair and maintenance shutdown. Because of the nature of the equipment and processes involved, the repair and maintenance period is also a predetermined event.

5. At no time during the alternative service period has PYCO failed to operate less than seven days a week, twenty four hours a day. In fact, PYCO could not afford to operate any less a period of time given the production backlog stemming from SAW's earlier switching inconsistencies.

6. The next sentence of the second paragraph of Mrs. Wisener's Verified Statement states that alternative service should cease because SAW is prepared and willing to provide PYCO, "...whatever services are needed to conduct [PYCO's] operations."

7. Mrs. Wisener's statement belies the actions of the company of which she is the sole shareholder. Indeed, over the course of the last several days, SAW has sued PYCO in state district court, impeded completion of construction of PYCO's rail storage tracks, blocked PYCO's access to \$11 million dollars worth of cottonseed, threatened PYCO with trespass over an easement PYCO has used continuously without objection for over 10 years, and claimed in a March 28, 2006, letter to the STB that PYCO was trying to "use" the STB, take "complete control of SAW rail yard", "violate state clearance laws" and was "harassing SAW."

8. The recent statements and actions of Mrs. Wisener and SAW don't seem to square with Mrs. Wisener's Verified Statement of February 8, 2006, accompanying her first Petition To Terminate Alternative Rail Service.

9. In that statement to the STB, Mrs. Wisener wanted to "...resolve any differences between our companies immediately and return to a good working relationship as soon as possible."

Wisener went on, "I wish to affirm to the STB my willingness to work honestly and diligently with PYCO...." (emphasis added)

10. PYCO doesn't believe that SAW is working honestly or diligently with PYCO. SAW earlier complained that one of the reasons for PYCO's rail problems was PYCO's inadequate infrastructure, i.e., storage tracks.

11. PYCO took the complaint to heart and began construction of storage track on our property. SAW personnel parked on their property and watched as construction proceeded. Just prior to track completion, SAW parked a cut of empty cars in such a manner as to halt the completion of the surfacing of the grade crossing over the new track. Now, SAW has refused to move the cut of cars to allow completion of the very storage tracks that SAW at one time pointed to as PYCO's problem.

12. PYCO does not believe that SAW's actions fall within the definition of "working honestly and diligently."

13. Further, PYCO doesn't believe that SAW wants to "resolve differences between our companies" by threatening trespass against PYCO concerning a track crossing that PYCO has used continuously for over 14 years, eight years before SAW ever bought the railroad.

14. In fact, SAW under Mrs. Wisener's leadership is no different than SAW under Mr. Wisener's leadership. There is no longer a reason to believe that a change from husband to wife as chief executive officer of SAW will produce any positive effect, given the recent actions of SAW and the fact that we now know that Mrs. Wisener has always been the sole shareholder since the company bought the subject railroad in 1999. A supposed change in management, as a result of the alternative service order, amounted to little more than window dressing for benefit of trying to persuade the STB of a change in corporate management styles.

15. Recognizing that PYCO is rail dependent and its needs were increasing, PYCO approximately one year ago began planning to increase its rail storage capacity. To this end, we have constructed additional storage track.

16. Unfortunately, our construction of such track in and of itself will not alleviate inadequate service from SAW (we need more service than SAW by its actions will provide), and in any event SAW is interfering with our efforts to complete construction and operate our business.

17. Fortunately, through our alternative service rail provider, WTL, PYCO is receiving adequate rail service with a positive working relationship between PYCO and WTL. Unlike our experiences with SAW, WTL has never engaged in the antics of telling us they would throw us out of their office, or threatening retaliatory actions. Working with WTL has been along the lines of what one would expect between two corporations respectful of each others needs and industry.

18. PYCO sees no reason in the circumstances for any person to expect adequate rail service from SAW. Thus, conditions continue to exist that require PYCO to receive said service from WTL. Indeed, as outlined in Mr. Robert Lacy's Verified Statement of this same date, of which I have read and agree, SAW's retaliation against PYCO in blocking access to \$11 million dollars worth of cottonseed is not only further indication of a need for continuation of the alternative service order, but is evidence of a need for the STB to take additional action against SAW in ordering that such retaliatory actions immediately cease and desist.

19. Finally, SAW and Mrs. Wisener devote the remainder of the subject petition and accompanying verified statements towards the expenses associated with the alternative service order, and finger pointing at WTL and BNSF. PYCO responds that the proceeding has been expensive for all concerned, but given the performance of WTL under the same conditions as SAW, it would

appear that the parties have only SAW to blame for the entire set of circumstances and accompanying use of economic resources.

20. PYCO does not believe SAW has presented any evidence or shown any inclination that would warrant termination of the alternative service order and PYCO does not wish for the subject order to be terminated at this time under these retaliatory conditions imposed by SAW.

Further Affiant saith not.

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

Executed on April 5, 2006

Gail Kring
Gail Kring

ORIGINAL



EXHIBIT B

F.D. 34802

Robert Lacy

3. SAW is continuing to do exactly what it told PYCO it would do in November 2005 - act in a retaliatory fashion to PYCO and do its utmost to ensure inadequate rail service. This is illustrated by SAW's recent action, commenced March 21, 2006, in which SAW has blocked completion of PYCO's rail storage expansion project and, even more urgently, of PYCO's operations.

4. During the final phases of our rail construction project, on March 21, 2006, SAW parked a cut of empty, flatbed cars in such a manner as to prohibit the completion of pouring an asphalt surface over the area of the PYCO and SAW tracks that form a grade crossing to the subject cottonseed on the opposite side of these tracks. This cut of cars still blocks the grade crossing as of the date of this verified statement. For days prior to taking this action, SAW personnel had watched the construction progress.

5. Photograph No. 1 is an aerial photograph of Plant No. 1 showing the relative locations of the SAW yard bordering PYCO's property to the north, Avenue A to the west, and 34th Street to the south.

6. Photograph No. 2 is an enhancement of Photograph 1 and depicts PYCO's subject "shop track," SAW's "wye or Y" track, the grade crossing blocked by SAW's cut of cars and the cottonseed storage pile at issue. This photograph was made prior to the cut of cars blocking the crossing.

7. Photograph Nos. 3 and 4 were made on March 21, 2006, the date on which SAW first blocked the subject crossing. The photographs made on PYCO property looking east at PYCO's outdoor cottonseed storage pile show a double gate located across the tracks. This gate is aligned with the crossing that has been used by PYCO for over 10 years to access PYCO's outdoor cottonseed storage pile located on the east side of the tracks.

8. Photograph No. 5 is very telling on SAW. This photograph is made on PYCO's property at Plant No. 1 and depicts SAW's uncoupling of a cut of cars on their track to accommodate a grade crossing similar to the one at issue. It seems that SAW does know how to accommodate a crossing.

9. Photograph No. 6 is made on PYCO's property facing east and looking at the two outdoor storage piles of 100,000 tons of cottonseed. The picture depicts the asphalt grade crossing on the west side of PYCO's refurbished shop track.

10. Photograph Nos. 7 and 8 depict the southerly car of the cut blocking the crossing and show respective measurements.

11. Photograph No. 9 is depicting a northerly view and shows the measurement from the car south to a safe distance of 80 feet. Photograph No. 10 substantiates Photograph No. 9.

12. Photograph No. 11 depicts measurements indicating that the southerly car could be uncoupled from the cut and pushed south to a safe distance, allowing passage over the crossing.

13. Photograph Nos. 12 and 13 depict similar measurements of the blocking cut of cars as to the north side of the grade crossing.

14. Photograph Nos. 14, 15 and 16 depict measurements and indications that the cut of cars could be shoved northerly on SAW's track to clear the crossing.

15. Photograph No. 17 provides an aerial view of the crossing and SAW's cut of cars blocking completion of construction and passage to the seed storage piles on the other side. This photograph is exemplary of SAW's retaliatory actions and management philosophy.

16. Photograph Nos. 18-21 show center to center track measurements between the PYCO and SAW tracks. PYCO's track contractor advises that SAW is operating under Regulation #213.4 as an excepted track and that contrary to Mrs. Wisener's allegations, PYCO's track is not in violation of state clearance laws.

17. WTL informs PYCO that there is more than adequate room for SAW to store this cut of cars in other areas of SAW track, and that the cars are being stored by SAW for an entity that is not a shipper on SAW's line.

18. The subject grade crossing across SAW's track has been in continuous use by PYCO to load and unload cottonseed since at least 1991. At least by the early 1990's, PYCO constructed dump #5 and two adjacent outside cottonseed storage pads shown in many of the attached photographs. PYCO and BNSF have made a comprehensive search for documentation for the grade crossing. But PYCO's use was open, notorious, and BNSF made no objection.

19. In 1999, SAW took over the subject track from BNSF, and PYCO has continuously used the track in such a manner as was in use at the time BNSF owned the track, without objection from SAW.

20. Beginning the first week of April, PYCO will need to begin moving cottonseed across the subject crossing to accommodate processing of same. This process is critical and time sensitive given the fact that the two pads of cottonseed will begin to deteriorate rapidly beginning in April as a result of increasing outside temperatures. The price paid by PYCO to purchase this seed is approximately \$11 million dollars, and is significantly higher when evaluated from the perspective of value added after processing. PYCO's vehicles for moving the seed are not registered for use on public roads. Unless PYCO can use the blocked crossing, PYCO's rail dependent operations at Plant No. 1 will have to be curtailed, at great loss to PYCO.

21. Contrary to Ms. Wisener's suggestion that the track is needed by SAW for car storage, WTL has indicated that SAW has adequate storage for the blocking out of cars at numerous other SAW track locations. Further, as evidenced by photographs, if the cut of cars was moved a mere 40 feet, the retaliatory issues before the STB would be moot, assuming SAW allowed PYCO reasonable access to the crossing in the future to accomplish the earlier described operations.

22. PYCO attempted to resolve the grade crossing blockage with SAW, initially asking WTL to ask SAW to move the cut of cars. WTL reported that the phone call to SAW with such request was met with a "No" and a hangup by SAW.

23. PYCO next tried to communicate the need to move the subject rail cars through the companies respective lawyers. SAW refused.

24. On March 27, 2006, I sent a letter to the Board asking for assistance in the matter. I attach PYCO's letter and SAW's responsive letter to this verified statement and incorporate same by reference.

25. SAW's lawyer then sent PYCO's lawyer a letter dated March 29, 2006, threatening trespass actions against PYCO concerning the subject crossing. I also attach this letter to my verified statement and incorporate same by reference.

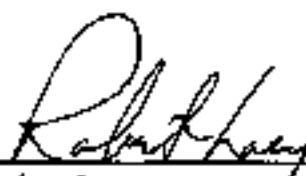
26. SAW has also sued PYCO in state district court in Lubbock over "constructive placement" surcharges levied since January 2006. We believe that PYCO is the only SAW shipper levied with such charges and that same are illegal, discriminatory and retaliatory. SAW created a need for "constructive placement" by SAW's failure to provide adequate rail service in the first place. A copy of the instant lawsuit is also attached to this verified statement and incorporated herein by reference.

27. In order to avoid disruption of PYCO rail dependent operations, PYCO requests STB to modify the protocol as ordered by the STB in F.D. 34802, served February 16, 2006, 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. The problem is essentially the same as SAW's blockage of tracks 9200/9298 which STB addressed in the protocol issued on February 16, 2006.

28. PYCO opposes termination of the alternative service order at this time given the extreme and extraordinary retaliatory actions of SAW, and SAW's continued threats to PYCO's rail dependent business.

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

Executed on April 5, 2006



Robert Lacy

ORIGINAL



EXHIBIT C

VERIFIED STATEMENT OF
STEPHEN GREGORY



Stephen Gregory, being duly sworn, deposes and says
as follows:

My name is Stephen Gregory. I am a Vice President of Permian Basin Railways, a short line railroad holding company and corporate owner of the West Texas & Lubbock Railway ("WTL"). My business address is P.O. Box 618181, Chicago, IL 60661.

WTL is a class III short line railroad with operating headquarters in Brownfield, TX. As relevant here, WTL is the railroad designated by PYCO Industries, Inc. ("PYCO") to be its alternative rail service provider in these proceedings before the federal Surface Transportation Board. Pursuant to the Board's order dated January 26, 2006, WTL has been providing alternative rail service over the railroad lines of South Plains Switching, Ltd. Co. ("SAW") for an initial 30 day period beginning on Jan. 27, 2006, and extended for an additional 120 days pursuant to the Board's order dated February 24, 2006.

I am the WTL corporate officer responsible for coordinating rail commercial and operating matters with both BNSF Railway, Inc. ("BNSF") and SAW. I have read the "Petition to Terminate Alternative Rail Service" filed

March 30, 2006 prepared by SAW's counsel and the accompanying Verified Statement of Delilah Wisener and am prepared to address allegations in each.

The primary allegation relating to WTL in both the Petition and the Verified Statement is that WTL has failed to deliver SAW interchange traffic in a timely manner.

WTL takes its obligation to deliver SAW cars in a timely manner seriously. WTL's operating plan is to deliver SAW cars as soon as possible after receipt from BNSF, and this is normally accomplished within 1 - 2 hours after receipt, sometimes to the detriment of PYCO traffic. WTL works weekend days in some cases primarily to handle SAW interchange traffic even if PYCO traffic does not necessitate weekend work. Surely this provides improved service to SAW customers since SAW has rarely worked on weekends since January 27 and we understand rarely worked on weekends before that.

We have been ready, willing and able to assist SAW customers with information on their cars to the extent of our ability, which is primarily advice on when we expect cars from BNSF and when they are delivered to SAW. I have responded to all SAW customers who choose to contact us on these matters.

We also stand ready to coordinate with SAW to address specific needs of SAW customers, but SAW has yet to contact us for this purpose. We maintain a morning toll-free conference call to coordinate operations with SAW but SAW has yet to make use of this service.

Coordination would improve efficiency and the safety margin-of-error; the attached Event Log covering the period since the last Petition was filed by SAW indicates many instances where trains of SAW and WTL were operating in the same vicinity without direct communication.

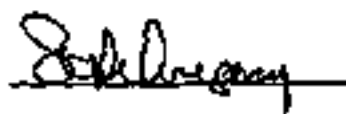
Most of the incidents noted in the Event Log involve cases of SAW's operating outside the protocol, which SAW itself aggressively pushed WTL to approve. (The operating protocol was described in the Board's decision of February 16, 2006.) WTL is flexible and has no objection to SAW's violation of the protocol except when it affects our ability to make use of the time allotted to us, but we believe that coordination between the two railroads on these occasions is the prudent course.

The Board's February 16 decision also directed that SAW advise WTL of a contact person to be available at all times to resolve operational issues. This has not been done.

PYCO has inquired of WTL whether WTL is aware of a railroad operating on commercial purpose that is served by TTX flatcars positioned to block a road crossing in the SAW yard heretofore frequently used by PYCO vehicles. We responded to PYCO by saying that to our knowledge these cars are not used by present SAW customers but are stored on behalf of TTX or its agents (WTL has participated in similar arrangements in the past). At PYCO's request WTL Superintendent Hans Grosstueck called Ms. Wiesner on or about March 23, 2006 to ask whether SAW would move the cars; he received a curt reply of "no" and she hung up. At the time of the inquiry there appeared to be ample track space in the SAW yard or other SAW locations for these cars, but of course we cannot speak for SAW.

"Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

Executed on: April 5, 2004


Stephen Gregory

SAW Event Log

Wednesday 2/15

0945 SAW shoved cars to yard from BNSF main. No contact with WTL; movement was outside protocol window.

Thursday 2/16

0700 Several switch positions changed in west end of SAW yard, vs. the way WTL crew left them the night before. No known SAW operations would account for this.

0915 SAW train approaching WTL train enroute to BNSF yard. Operation outside protocol window, safety would be enhanced by movement coordination.

Monday 2/20

0615-0700 SAW switching west end of yard.

0700-0900 SAW switching east end of yard, including use of track assigned to WTL. Both actions outside of protocol with no coordination.

Thursday 2/23

1515 SAW train movement potentially conflicting with WTL train movement outside protocol window.

Friday 2/14

1530 Obscene gestures directed to WTL crew by SAW employees.

1615 SAW train movement to BNSF yard outside protocol window.

Monday 2/27

SAW switching throughout the day outside protocol window.

Tuesday 2/28

SAW switching throughout the day outside protocol window.

Wednesday 3/1

SAW switching throughout the day outside protocol window.

Thursday 3/2

1000 SAW blocked access to Plant 2 via Compress with cars.

Friday 3/3

SAW switching throughout the day outside protocol window.

Monday 3/6

0645 SAW switching outside protocol window.

0745 Shad Wisener advises WTL Superintendent Grosstueck that he was not allowed in a vehicle on access road adjacent to a PYCO track. Grosstueck responded that STB orders provided authorization. Shad replied that the SAW Owner disagreed.

0825 WTL route to BNSF blocked by SAW moving PYCO car from track 5 (assigned to WTL). WTL forced to move out of the way.

1050 Shad made a list of PYCO cars in WTL train.

Tuesday 3/7

0745 SAW switching east end of yard outside protocol window.

1350 WTL and SAW were in BNSF yard interchanging at same time. After SAW departed red flags on both ends of WTL train were removed. SAW was the only other crew in the BNSF yard at the time.

Wednesday 3/8

0815 SAW switching in east end of yard outside protocol window. SAW occupied same track as WTL, causing WTL to cease operations not knowing direction or intention of SAW movement.

Thursday 3/9

0900 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Monday 3/13

0820 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Tuesday 3/14

0845 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Wednesday 3/15

0815 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Thursday 3/16

0830 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Monday 3/20

0800 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Tuesday 3/21

0810 SAW switching in east end of yard outside protocol window while WTL switching on west end.

0915 WTL moving east on yard main when SAW pulled out on same track in front of WTL. Per GCOR rule WTL stopped and the SAW train backed out of this track.

Wednesday 3/22

0730 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Friday 3/24

0700 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Monday 3/17

0700 SAW switching in east end of yard outside protocol window while WTL switching on west end.

Tuesday 3/28

0700 SAW switching in east end of yard outside protocol window while WTL switching on west end.

0900 Shad driving at high rate of speed through yard, WTL crew must be on lookout for this when on the ground.

Wednesday 3/29

0700 SAW switching in east end of yard outside protocol window while WTL switching on west end. Shad driving at high rate of speed through yard, WTL crew must be on lookout for this when on the ground

ORIGINAL

PYCO Plant #1 Tracks

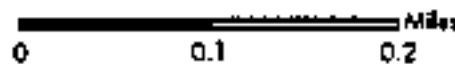


BNSF VTL



Legend

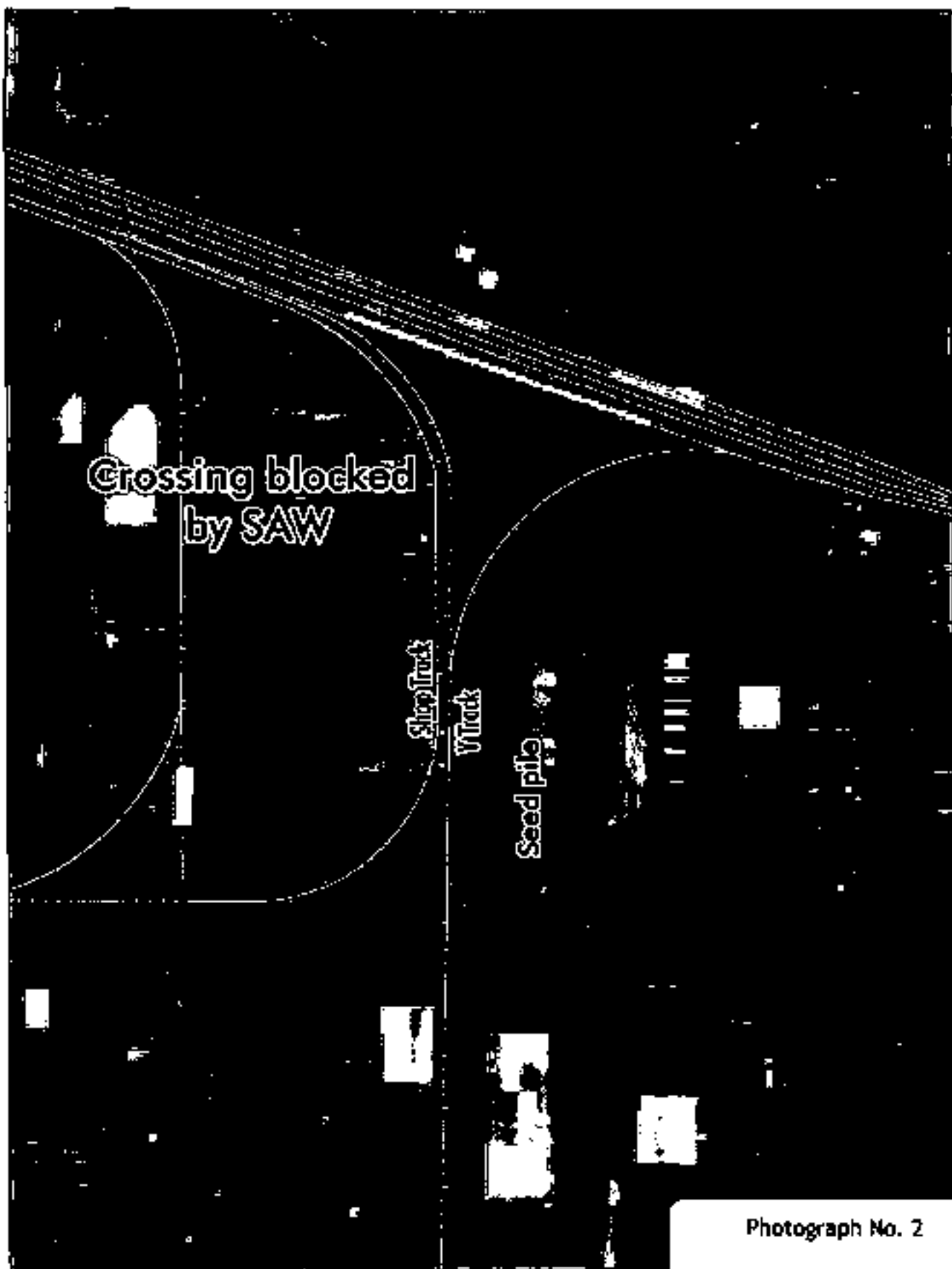
-  PYCO - Existing Lines
-  PYCO - Under Construction
-  PYCO - Future Development
-  SAW Lines
-  Other Lines



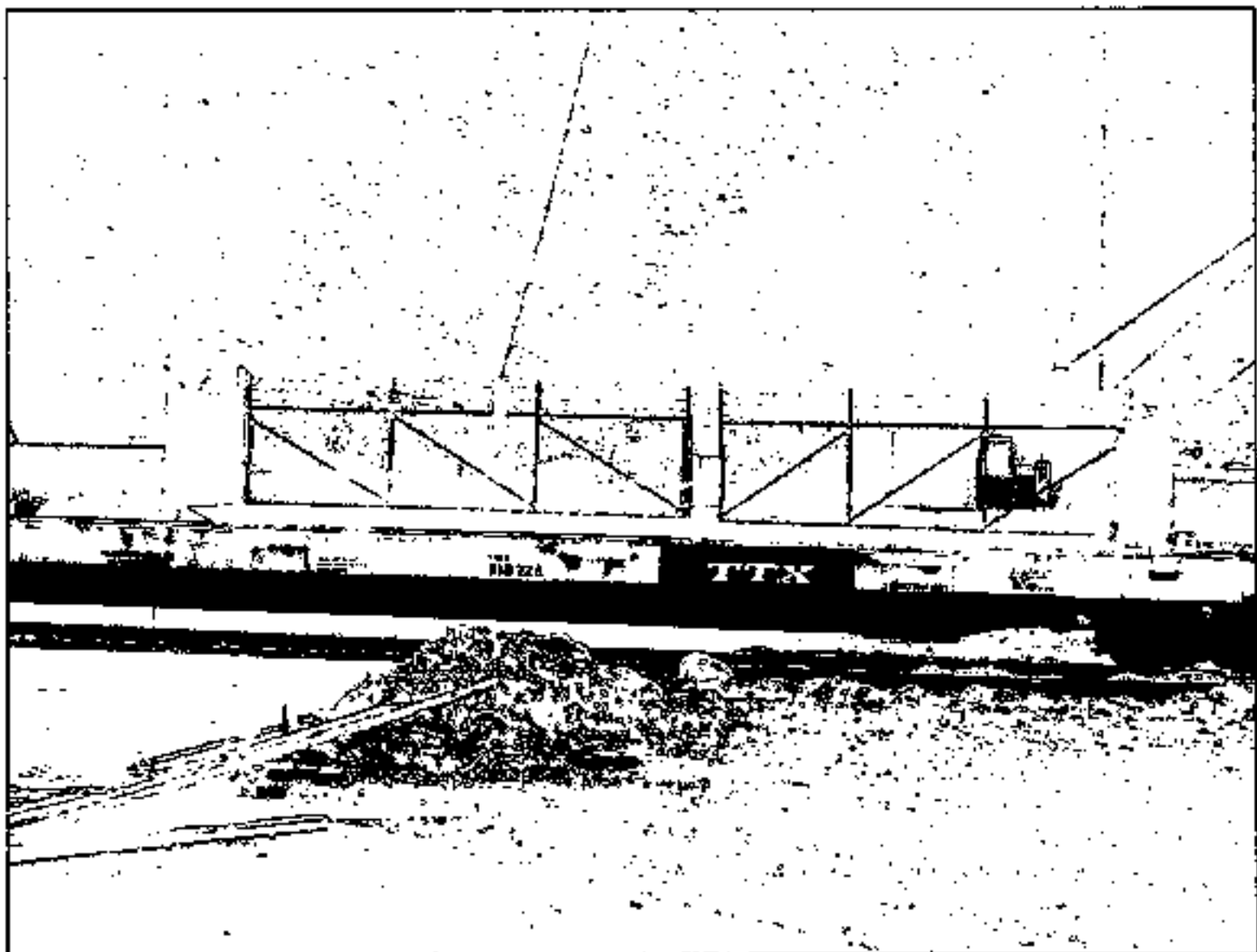
Source: Image is from the National Agriculture Image Program 2005.

Projection: Universal Transverse Mercator Zone 14 North; North American Datum 1983

Photograph No. 1



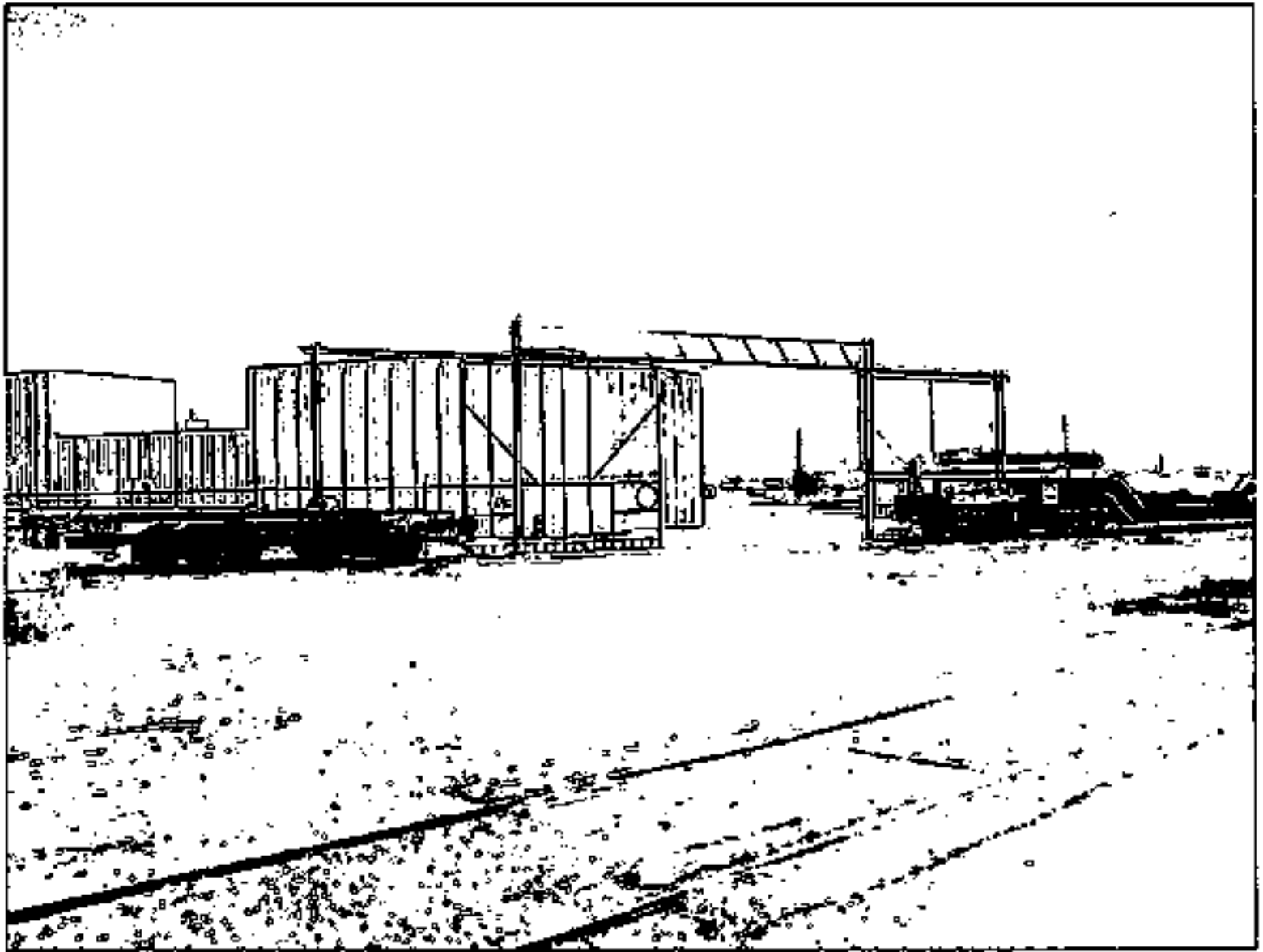
Photograph No. 2



Photograph No. 3



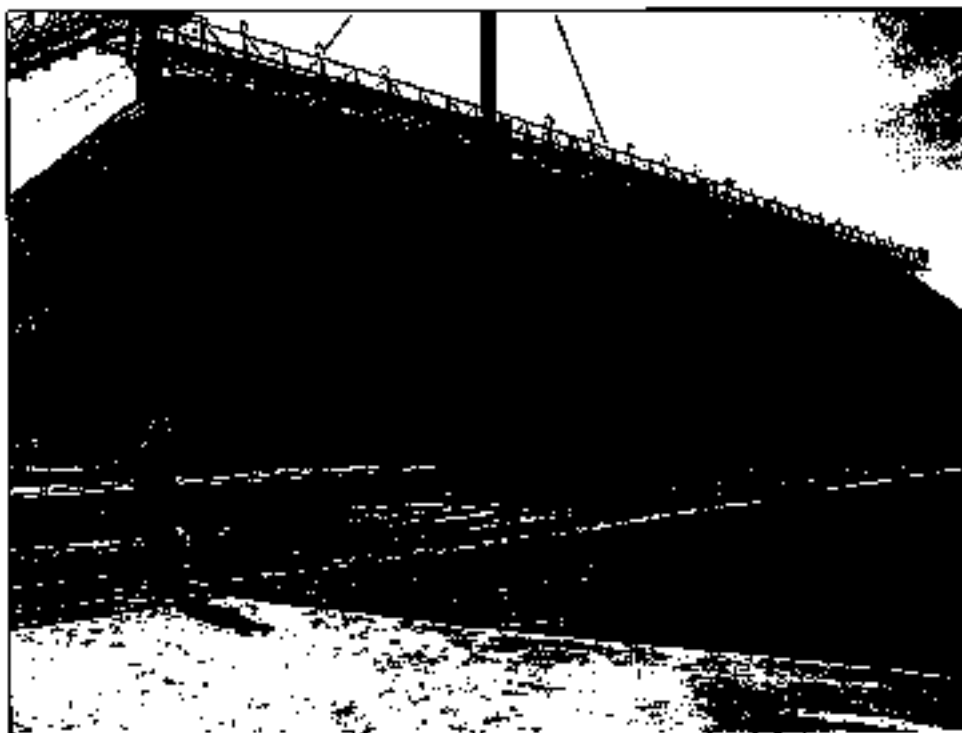
Photograph No. 4



Photograph No. 5

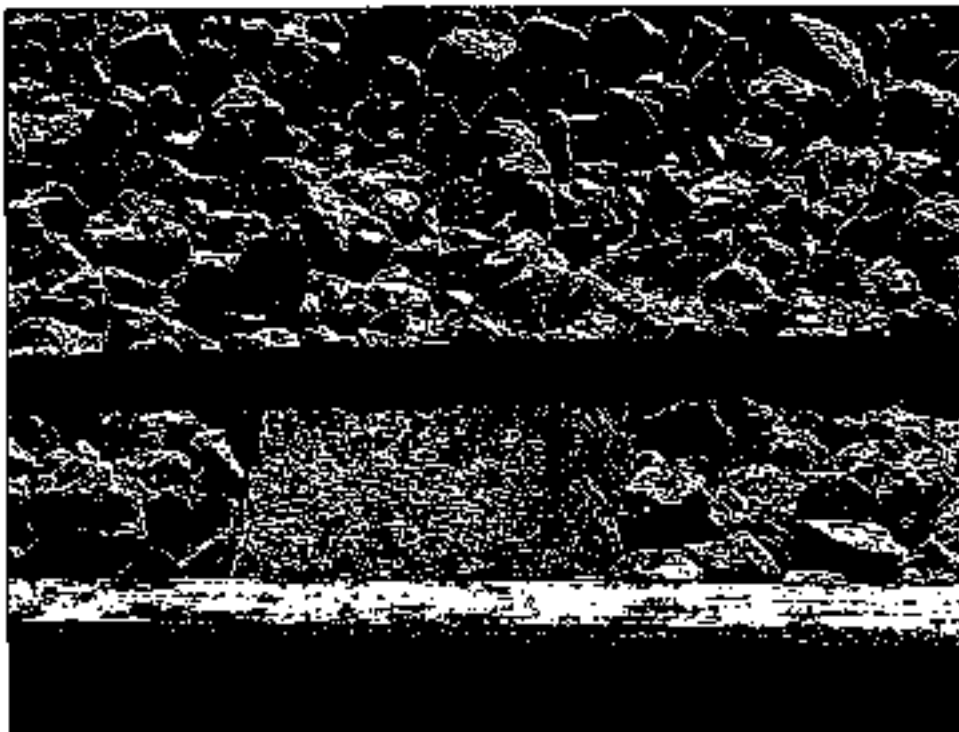


Driveway is 39 feet, 3 inches wide.

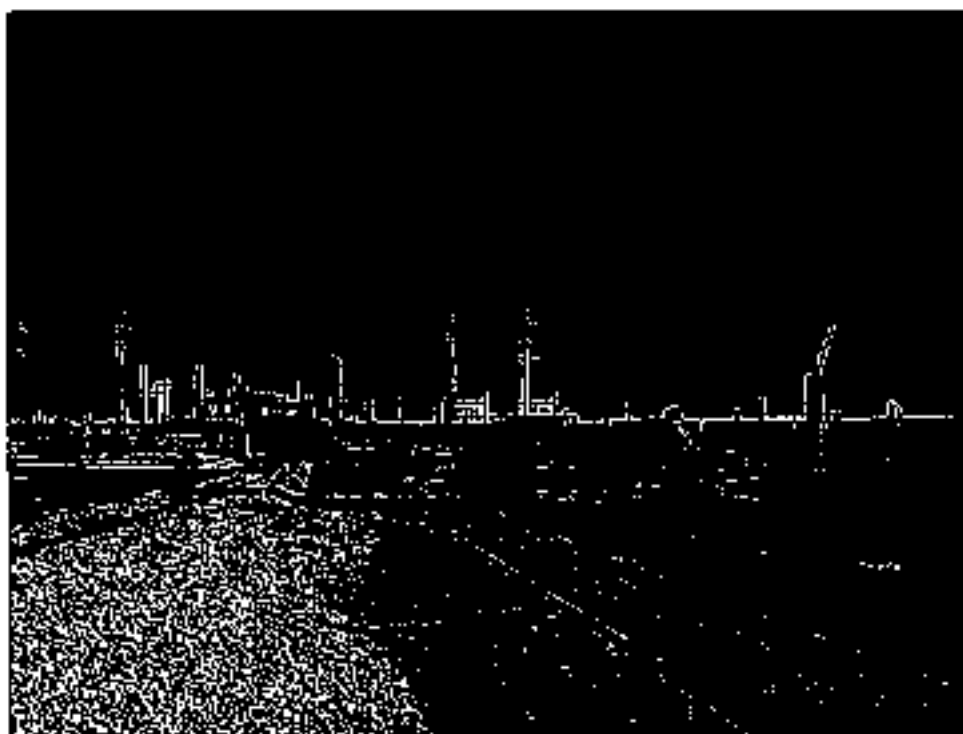


Measurement from south edge of driveway to end of car is 35 feet.

Photograph No. 7



Measurement of south end to end of car.



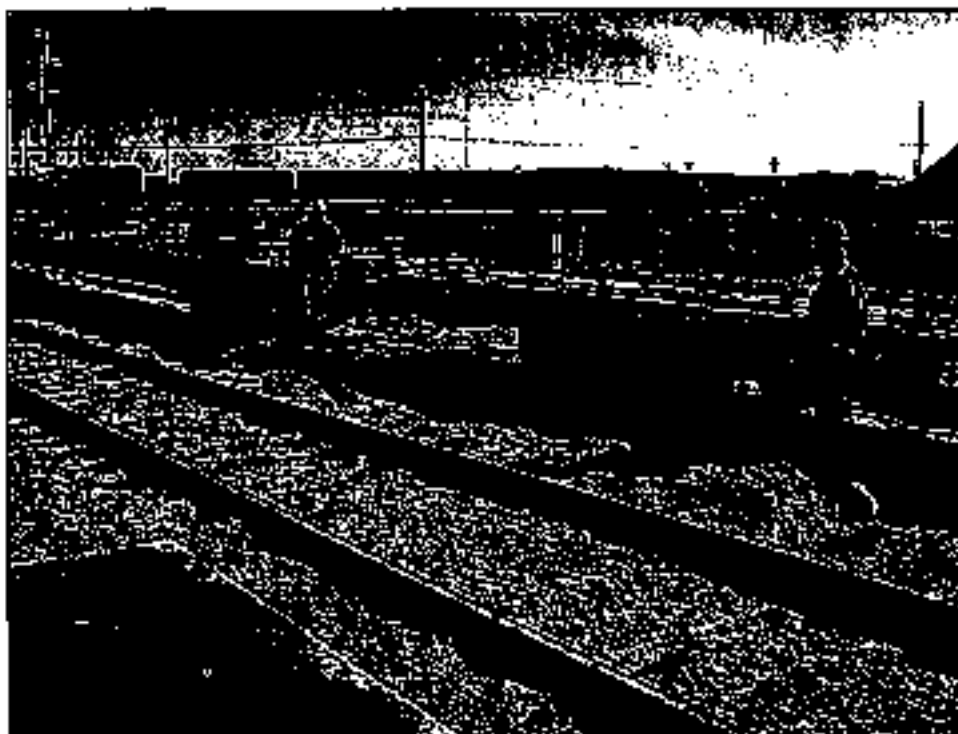
Measuring from end of car south to a safe distance is 80 feet.



Measurement from end of car to safe distance.



Overall length of car is 94 feet. Distance between the south edge of the driveway to the end of sale
Distance is 115 feet.



Shows the measurement from north end of driveway to end of car. 22 feet.



Measurement is 22 feet.

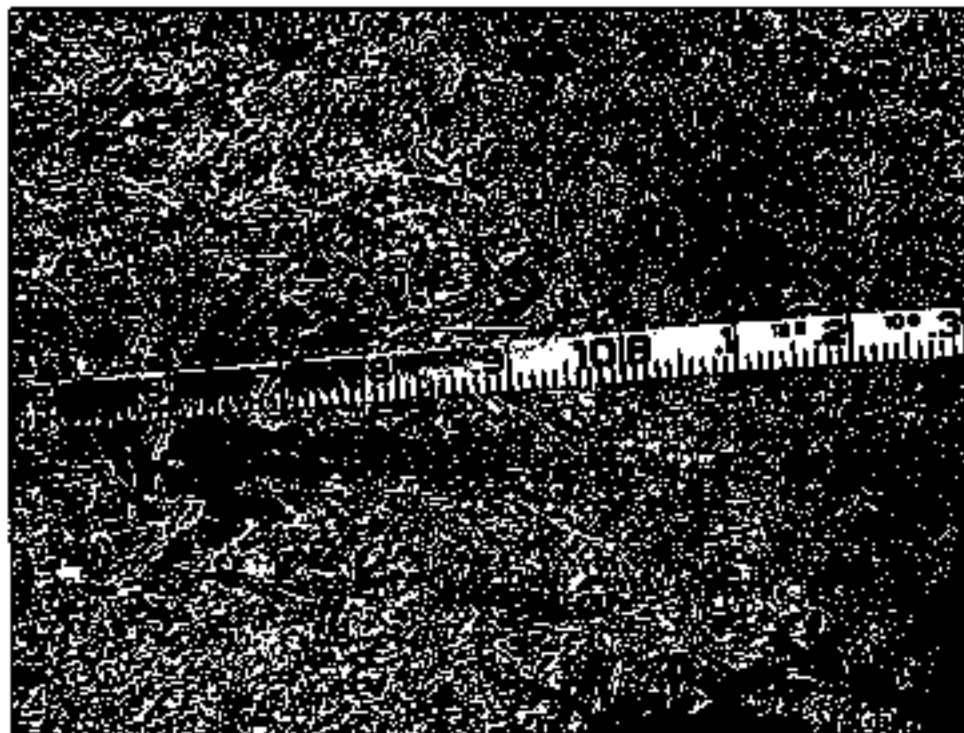


North end of rail cars. Six track and Y track intersection.

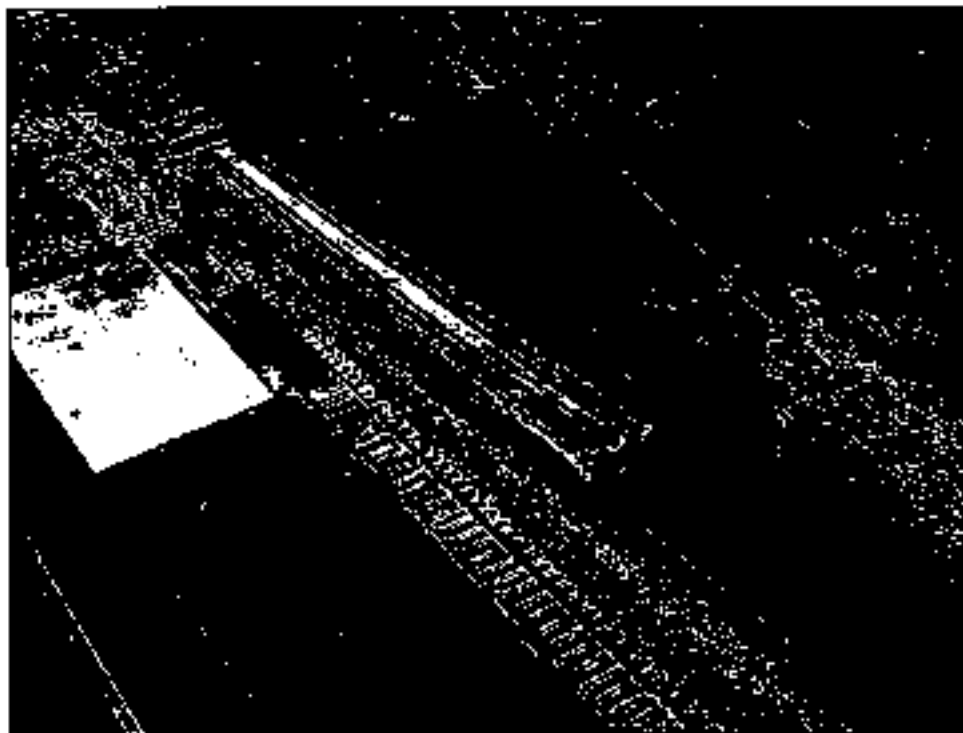


Measurement of end of car to safe distance which is 108 feet.

Cars could be moved north by 108 feet with safe clearance for Six track.



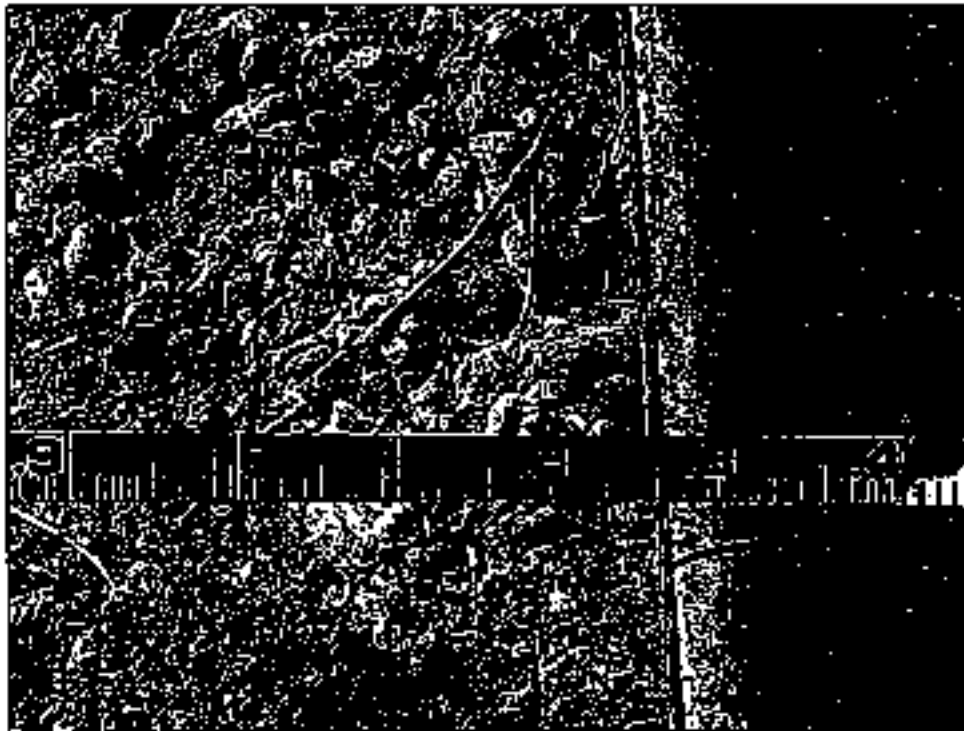
Measurement shown.



Aerial view of crossing.



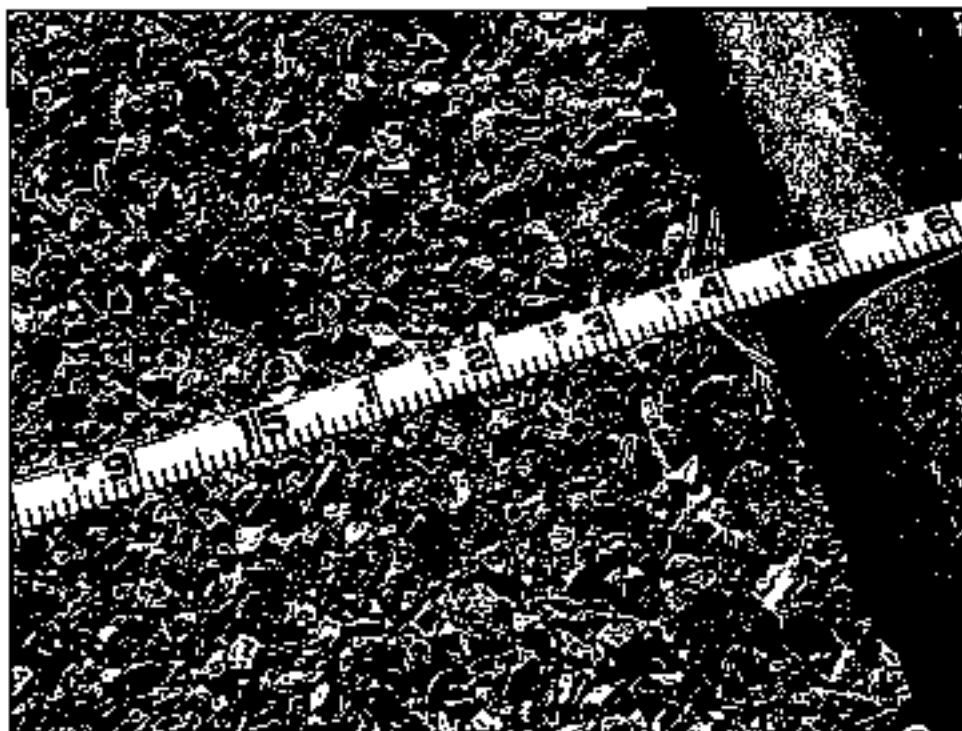
End of safe distance, center to center distance is 15 feet, 2 ½ inches.
Regulation # 213.4 Excepted track measurements is 13 feet.



Photograph No. 19



Regulations # 213.4 Excepted track is 13 feet. At safe distance measurement is 15 feet, 4 ½ inches.



Measurement shown.

PYCO

P.O. BOX 841
LUBBOCK, TX 79408-0841
TELEPHONE: (806) 747-3434
FAX: (806) 744-3221

PYCO Industries, Inc.
Processors of Cottonseed Products

P.O. BOX 1320
GREENWOOD, MS 38935-1320
TELEPHONE: (662) 453-4312
FAX: (662) 455-8607

March 27, 2006

Via Telefax No. 202-565-9811

Mr. Melvin F. Clemens, Jr.
Director, Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street NW, Suite 780
Washington, D.C. 20423-0001

RE: Retaliatory Actions by South Plains Switching Ltd. Co. against PYCO

Dear Mr. Clemens:

PYCO wishes to inform the Surface Transportation Board of the latest retaliatory efforts of South Plains Switching Ltd. Co. ("SAW"), in light of STB's order relieving SAW of its switching duties to PYCO.

For some months, PYCO has been constructing new track storage within its property. The partially new, partially refurbished "Shop Track" is parallel to SAW's "Y Track."

PYCO completed a portion of its Shop Track last Thursday, March 23. PYCO installed an asphalt surface over a portion of the refurbished track that has been used for decades as a crossing by PYCO, across SAW's Y Track, to reach PYCO's property on the other side of the Y Track.

In order for the crossing to function, PYCO needed to asphalt surface the portion of the track right of way lying next to SAW's Y Track. The paving is essential to restore the surface to a condition that will allow tracks and equipment to cross the tracks in order to reach PYCO's stored cottonseed on the opposite side of the parallel PYCO and SAW tracks.

For several days, SAW has been storing a cut of three to four, empty rail cars on SAW's Y Track in the area that is 'dead center' of where the crossing traverses the track. SAW personnel has watched the progress of the track construction and crossing from their property.

Aware of SAW's penchant for unreasonable acts, PYCO's alternative switcher, WTL, contacted SAW by telephone last week to inquire of moving the cars to allow for surfacing of the crossing.

WTL's call to SAW was met by a "No" to their inquiry and a hang up by SAW.

PYCO's attorney spoke with SAW's attorney about asking SAW to move the cars. SAW responded that they would not move the cars.

Now, it appears that our company will be forced to file suit in state district court to remedy this set of circumstances. PYCO has informed the STB before of the irrational and severe choices taken by SAW against PYCO, their largest shipper. The problems continue to persist.

Here is an instance in which SAW has adequate storage for this cut of cars on numerous other places on its tracks, according to WTL. Indeed, if SAW would allow the cut to be moved a short distance in either direction of the "Y Track," the problem would be resolved.

SAW has stated that Larry Wisener is no longer managing SAW and that things would be different under the management of Mrs. Wisener. These vengeful actions simply go to show that the more things change, the more things remain the same with SAW.

SAW's actions in blocking access to PYCO's cottonseed will affect PYCO's operations by the end of this week. A large quantity of seed on the other side of the subject track crossing is presently blocked by SAW's two cars.

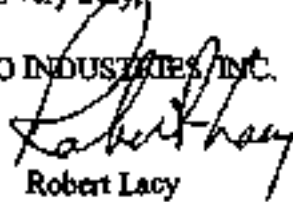
The seed blocked by SAW's cars cannot be accessed other than via the subject grade crossing. In order for PYCO to access the seed in another manner, PYCO would have to obtain approval from the City of Lubbock to create a new access point from another part of the property. This process could take weeks, if not months. Meanwhile, \$11 million dollars worth of seed is held hostage by SAW's cut of empty cars that could be moved a short distance and immediately eliminate the need for additional expenditure of resources by all parties.

PYCO would appreciate any assistance possible in this dire set of circumstances. Thank you for your cooperation in this matter.

Yours very truly,

PYCO INDUSTRIES, INC.

By:


Robert Lacy

RL/cjb

cc: Mr. Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1890
Chicago, Illinois 60604-1112
Via Telefax No. 312-201-9695

South Plains Switching, Ltd. Co.
P. O. BOX 64299 LUBBOCK, TEXAS 79464
PHO: (806)828-4841 FAX: (806)828-4863

March 28, 2006

VIA FACSIMILE 202-565-9011

Mr. Melvin F. Clemens, Jr.
Director, Office of Compliance and Enforcement
Surface Transportation Board
1925 K Street NW, Suite 780
Washington, D.C. 20423-0001

RE: False Accusations of Retaliatory Actions Against PYCO

Dear Mr. Clemens:

PYCO is trying once again to use the STB. This time to gain an easement over SAW property that they do not have. Their attorney stated to Mr. McFarland that in fact they did benefit from an easement. Thorough searches of my records indicate no easement ever existed between PYCO the Fort Worth and Denver or the BN, predecessors to the SAW. I asked them to produce the easement and they now say they cannot find it.

It is apparent by Mr. Lacey's statements that if PYCO is not allowed to have complete control of the SAW rail yard for its operations then SAW is accused of "vengful actions".

With PYCO's extension of the shop track, PYCO had a contractor to remove and destroy lead track and wye track roadbed within SAW property lines without permission from SAW, to accommodate their track tie in. The use of a portion of their new track will be in direct violation of state clearance laws. Operation of track can only proceed with movements encroaching over SAW property for which they also have no agreement.

The wye track in question is being utilized for storage of cars that were located on track 9200 and were removed by STB order. Mr. Lacy also states, according to the WTLC that SAW has adequate storage in other places. I respectfully submit that the STB order

Page 1 of 2

placed the WTLC on SAW property to service PYCO only. The WTLC seems be unable to follow the STB order as they continually leave the Main blocked preventing SAW access to Brice Trucking. No. 1 and No. 5 tracks that were taken by STB order for switching purposes remain filled to capacity with storage cars for PYCO. SAW understood PYCO storage cars were to be taken to WTLC yard for storage. SAW is still being used as a storage facility with no compensation from PYCO. The STB order has allowed PYCO to use SAW free of charge for the past 60 days. PYCO has forced SAW to file suit in district court in an effort to collect \$48,000.00 for rail service charges incurred prior to issuance of the STB order. PYCO is using the STB order to deny payment.

I was contacted by Mike McConville of the WTLC in the AM for additional time for switching on March 24, 2006. Request granted, again as I have several times in the past 60 days. I was contacted in the PM on March 24, 2006, by WTLC personnel, he was rude and abusive informing me of PYCO's request that WTLC move the cars off SAW wye track. I said no and hung up. I have on several occasions tried to get a meeting with PYCO representatives through their attorney to no avail. I was informed that there was nothing to talk about. Now PYCO instead of talking to the owner of the railroad, asks train crew members to call me and relay their messages.

Utilizing SAW property to serve the remaining SAW customers is not an attempt to impact PYCO's plant operations, nor interfere with WTLC service to PYCO as required under the STB order.

PYCO has excellent access to the stored cottonseed located on opposite side of SAW rail tracks via a four lane city street. (map attached)

Perhaps now the Board realizes that SAW has been and continues to be held responsible for PYCO's inability to operate its plant under current management.

SAW has not had anything to do with PYCO in 60 days but they are still harassing SAW.

I remain,



Delilah Wisener
Owner

CC: Mr. Gary McLaren
3305 66th Street, Ste. 1A
Lubbock, Texas 79413
VIA FACSIMILE: 806 785-2521

◆ ◆ ◆

South Plains Switching, Ltd. Co.
P. O. Box 64299
Lubbock, Texas 79464
PH: (806) 328-4243
FAX: (806) 828-4263

To: Gary McLane Fax: 806-785-2521

From: Delilah Winters; SAW **Date:** 03/28/2006

No: PYOD Accusations **Pages:** 4 pages including cover

CC: Mr. [REDACTED]
 [REDACTED]

14

64-7987-6010

JAMES L. GORSUCH, P.C.

Attorney at Law

4412 - 74th Street, Suite B-102
Lubbock, Texas 79424

Telephone: (806) 771-6474
Facsimile: (806) 771-6476
jgorsuch@mts-online.net

March 29, 2006

Mr. Gary R. McLaren
PHILLIPS & McLAREN, L.L.P.
3305 66th Street, Suite 1A
Lubbock, Texas 79413

Re: SAW - PYCO Rail Matters - Easement Across "WYE" Track

Dear Mr. McLaren:

As you know, this firm represents South Plains Switching, Ltd. Co. ("SAW"), in connection with local rail matters. This firm represents SAW in connection with all matters dealing with operations other than those brought before the Surface Transportation Board.

Please be advised that SAW has searched their records and has not been able to locate a lease or an easement covering the road crossing the "WYE" track owned and operated by SAW. While Pyco permissively used the road for several years over "WYE" track, it appears there was no written lease or easement covering the road in question.

Therefore, SAW hereby places Pyco on notice that Pyco employees are not to use the road crossing the "WYE" track. Unless Pyco can provide us with some type of written document that indicates that a lease or an easement was ever granted by SAW or any of its predecessors, any use of the road would be trespassing upon SAW property.

SAW has located two leases in the same area, one dealing with utility and one dealing with an overhead conveyor.

Any use of the crossing from this date forward by Pyco personnel will result in SAW utilizing all legal remedies available to it.

Please contact us in the future on any local issues dealing with SAW outside of the realm of STB jurisdiction.

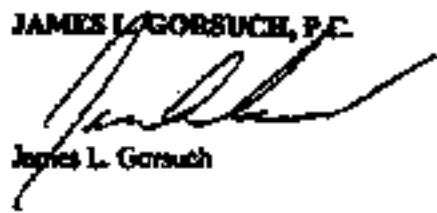
March 29, 2006

Page 2

We remain,

Very truly yours,

JAMES L. GORSUCH, P.C.



James L. Gorsuch

JLG/jeb

cc: Via Facsimile: 828-4861
Mr. Larry Wiscato
SOUTH PLAINS SWITCHING, LTD., CO.
P.O. Box 64299
Lubbock, Texas 79464-4299

Via Facsimile: 312/281-9693
Mr. Thomas F. McFarland
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, #1890
Chicago, Illinois 60604-1194

TRC 99 CITATION GENERAL CIVIL

pg 101

THE STATE OF TEXAS

TO: Pyco Industries by serving Gail Kring
2901 Avenue A, Lubbock, TX

Defendant, Greetings:

NOTICE

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk of the Court who issued this citation by 10 o'clock a.m. on the Monday following expiration of 20 (twenty) days after you have been served this citation and Original Petition, a default judgment may be taken against you.

Said Plaintiff's Original Petition was filed in the 237th District Court of Lubbock County, Texas, on the March 27, 2006. The file number of said suit being NO. 2006-534,461.

South Plains Switching, LTD, Co.

Plaintiff

vs.

Pyco Industries, Inc.

Defendant

The nature of Plaintiff's demand is set out and shown by a true and correct copy of Plaintiff's Original Petition, accompanying this citation, and made a part thereof.

Plaintiff is represented by: James L. Gorsuch, 4412 71st Ste B-102.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates hereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Lubbock County, Texas, this the 27 day of March, 2006.

Barbara Suesy, District Clerk
904 Broadway
Lubbock, Lubbock County, Texas 79401

By , Deputy
Jeannette Arledge

NO. 2006-534,401

SOUTH PLAINS SWITCHING, LTD. CO.

v.

PYCO INDUSTRIES, INC.

IN THE 337th DISTRICT COURT

OF

LUBBOCK COUNTY, TEXAS

2006 MAR 27 AM 8:00

FILED FOR RECORD
BY: [Signature]
CLERK, LUBBOCK CO.
DISTRICT COURT

PLAINTIFF'S ORIGINAL PETITION

SOUTH PLAINS SWITCHING, LTD. CO. ("SOUTH PLAINS"), Plaintiff herein, files this, its Original Petition and Request for Injunctive Relief, against PYCO INDUSTRIES, INC. ("PYCO"), Defendant herein, and for cause of action would show to the court as follows:

I.

Discovery Level

SOUTH PLAINS anticipates that discovery will be conducted under Level III of the applicable Texas Rule of Civil Procedure for the reason that it is anticipated that the court will enter a Scheduling Order in this case.

II.

Parties

SOUTH PLAINS is a limited liability company created, established and operating in good standing with the State of Texas, with its principal of business in Lubbock, Lubbock County, Texas.

PYCO is a corporation authorized to do business in the State of Texas and may be served by and through its Registered Agent, Mr. Gail Kring, 2901 Avenue A, Lubbock, Texas 79404.

III.

Jurisdiction and Venue

This court has jurisdiction of this matter for the reason that the relief sought by SOUTH

COPY

PLAINS is within the jurisdictional subject matter of this court and any damages sought herein are within the jurisdictional limits of this court.

Venue of this case is proper in Lubbock County. PYCO'S principal place of business is in Lubbock County, SOUTH PLAINS' principal place of business is in Lubbock County, and the acts, omissions and events giving rise to the case all occurred in Lubbock County.

IV.

Effective May 1, 2000, with revisions made on November 1, 2001, and March 21, 2005, SOUTH PLAINS issued a Demurrage, Surcharge, Storage and Miscellaneous Service Program ("Program"). The Program went into effect for customers of SOUTH PLAINS, including PYCO. Attached as Exhibit "A" is a true, correct and accurate copy of the South Plains Demurrage, Surcharge Storage and Miscellaneous Service Program.

Under the Program cars that were "constructively placed" meant cars that were held on the side or hold track because the industry did not have track capacity or was unable to accept the car at their siding or team track. Cars that were constructively placed on the tracks of SOUTH PLAINS were subject to demurrage charges. The Program also set demurrage charges on cars that were placed at industry siding or team tracks. These demurrage charges commenced after forty-eight hours and covered charges for the next seventy-two hours, up to ten days. In addition, charges were to be levied for cars held above fifteen calendar days. Cars that are constructively placed were subject to an additional \$150.00 switch charge when placed at an industry siding or team track. The Program also called for a surcharge of \$20.00 per car charge to PYCO, with the new revision effective April 11, 2005.

V.

Attached as Exhibit "B" is a true, correct and accurate copy of Invoice No. 42123 sent to PYCO. The invoice is for cars released from constructive placement on the tracks of SOUTH PLAINS and switched to the Lubbock West Texas Railroad. Under the Program, cars "constructively placed" are subject to a \$150.00 switch charge when placed at an industry siding or team track. The cars were released to Lubbock West Texas Railroad and are subject to the charge. The total amount of the invoice is \$12,750.00.

Attached as Exhibit "C" is a true, correct and accurate copy of Invoice No. 42121. This invoice covers cars that were constructively placed on the tracks of SOUTH PLAINS and switched to PYCO at the request of PYCO. Under the Program, cars that are constructively placed are subject to an additional \$150.00 switch charge when placed at an industry siding or team track. PYCO requested these cars be placed at an industry siding or team track. The total amount of the invoice is \$17,950.00.

Attached as Exhibit "D" is a true, correct and accurate copy of a Surcharge sent on each of the cars released as set out in the invoice. The surcharge to PYCO, under the Program, is \$20.00 per car. The total amount of the invoice is \$2,160.00.

Attached as Exhibit "E" is a true, correct and accurate copy of the Demurrage invoice. The demurrage invoice was sent pursuant to the Program which shows demurrage fees for the number of days the cars sat at PYCO. The Demurrage charges were calculated under the Program. The total amount of the invoice is \$15,882.00.

VI.

Despite the invoices being sent and despite the invoices being based on the Program and the

agreement of PYCO to abide by the Program, PYCO has failed and refused and still fails and refuses to pay any amounts due under the invoices. The total sum due under the four invoices attached is \$48,742.00. By failing to pay the invoices, PYCO has breached its contract with SOUTH PLAINS. In the alternative, SOUTH PLAINS is entitled to recover \$48,742.00 from PYCO based on the theory of quantum meruit.

VII.

SOUTH PLAINS has been required to retain the undersigned attorney to prosecute its claim for PYCO'S breach of the agreement as set out above. Therefore, SOUTH PLAINS is entitled and recover its reasonable and necessary fees, both for preparation and trial, for an appeal to the Court of Appeals in Amarillo, and for an appeal to the Supreme Court of Texas.

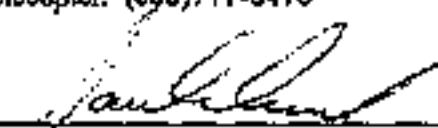
VIII.

Prayer

WHEREFORE, Premises Considered, SOUTH PLAINS prays for damages resulting to SOUTH PLAINS from PYCO'S breach of the Demurrage in Surcharge Storage and Miscellaneous Service Program, plus reasonable and necessary attorney's fees, and maximum pre-judgment and post-judgment interest as provided by law.

Respectfully submitted,

JAMES L. GORSUCH, P.C.
4412 74th Street, Suite B-102
Lubbock, Texas 79424
Telephone: (806)771-6474
Telecopier: (806)771-6476

By: 
James L. Gorsuch
State Bar No. 08221250

Demand for Jury

SOUTH PLAINS, Plaintiff herein, hereby respectfully demands and trial by jury in this
cause.



James L. Gorsuch

**SOUTH PLAINS SWITCHING, LTD
SOUTH PLAINS LAMESA RAILROAD, LTD.**

**DEMURRAGE, SURCHARGE, STORAGE AND
MISCELLANEOUS SERVICE PROGRAM**

Demurrage charges, applicability of demurrage charges, hold track program and charges, cars received empty, not loaded and sent out empty, switching between industries, surcharge, storage charges, special services, effective dates and credit policy

Effective May 1, 2000
Demurrage Program and Rates

Revision Effective November 1, 2001
Cars Received Empty, not loaded provisions
"Constructively Placed" Car Charges

REVISION
PUBLISHED March 21, 2005
Surcharges effective April 11, 2005
"Constructively Placed" Car Charges effective April 11, 2005

The following charges shall apply on all cars subject to demurrage "placed" or "constructively placed" on all lines of South Plains Switching (SAW) or South Plains Lamesa Railroad (SLAL).

"Placed" means cars actually placed at industry siding or team track.

"Constructively placed" means cars are held on a side or hold track because the industry has no track capacity or is unable to accept the car at their siding or team track.

I. DEMURRAGE CHARGES:

First 48 hours placed or constructively placed at customer industry

NO CHARGE



Thereafter:

- a. Next succeeding 72 hours placed or constructively placed at an industry:
\$36.00 per 24 hour period
- b. Next succeeding period after the initial 120 hours, up to 10 calendar days following:
\$48.00 per car per 24 hour period, except that if car hire is more to SAW/SLAL than \$48.00 per car, then the actual car hire cost will be assessed
- c. For periods of time cars are held over the above 15 calendar days, \$52.00 per 24 Hour period, or fraction thereof. Where car hire cost to SAW/SLAL is higher, actual car hire cost shall apply.
- d. Cars "constructively placed" will be subject to an additional \$150.00 switch charge when "placed" at industry siding or team track. (New provision effective April 11, 2005)
- e. In the event of unit or multiple car shipments moving under connecting carrier tariffs or contracts which limit the time industries may hold equipment for loading or unloading, the payments, restrictions and conditions in those tariffs or contracts apply for cars held in excess of the allotted time.

FREE TIME

The term "24 Hour Period", "Days" and "Hours", includes all weekends, holidays and other days, except cars placed or constructively placed after 10:00 a.m. on Friday or the day before a legal holiday shall not begin to accrue time until 12:01 a.m. Monday, or 12:01 a.m. the day following the legal holiday.

NOTIFICATION

SAW/SLAL shall notify customer when cars are placed or constructively placed. Customer shall notify SAW/SLAL when cars, loaded or empty, are released.

CHARGES

Demurrage charges are assessed monthly, first day to last day of the month.

II. APPLICABILITY OF DEMURRAGE CHARGES

This demurrage program applies on all rail cars except those with an "X" in their AAR Alpha markings if those cars do not incur car hire cost to South Plains. The

program applies to all other cars, including those marked with and "X" in their AAR Alpha marking if the cars accrue car hire or mileage costs to SAW/SLAL.

III. HOLD TRACK AND PROGRAM CHARGES

SAW/SLAL strives to accommodate all customers by providing rail switching services to our customers. We do not have unlimited track space to hold equipment.

At the same time we realize that customer car supply is always under their control. At times market conditions and supply of cars results in cars being held off South Plains track. Cars being held often include those with "X" Alpha marking, which are exempt from SAW/SLAL demurrage plans.

Given our limited track storage space our hold track program allows some compensation for cars with or without "A" AAR Alpha marking, which are held for more than 7 calendar days on SAW/SLAL. The charge for this holding service is \$1.25 per car per day.

SAW/SLAL reserves the right to reject or hold any cars held longer than 7 days, or to require the customer to find other locations to store or hold such cars.

IV. CARS RECEIVED EMPTY, NOT LOADED AND SENT OUT EMPTY

SAW/SLAL receives no revenues on cars received empty, not loaded and sent out empty. Customers should attempt to avoid having this occur. In the event that cars are received empty and sent out empty and not specified by shipper to be in a hold situation as shown above, the following switching charges shall apply:

Charge to switch inbound empty car:	\$50.00 per car switched
Charge to switch outbound empty car:	\$50.00 per car switched

V. SWITCHING BETWEEN INDUSTRIES

When requested by shipper, in writing, SAW/SLAL will move a car within the switching territory in Lubbock, Texas for a charge of \$150.00 per loaded or empty rail car.

VI. SURCHARGE

In accordance with SAW and Burlington Northern Santa Fe (BNSF) contract agreement, dated May 8, 1999, SAW asked for and received permission to implement a per car surcharge of up to \$60.00 per single car and up to \$40.00 per unit car effective May 4, 2004. (New revision effective April 11, 2005)

CHARGES

When implemented, surcharges will be assessed on a weekly basis, for all inbound and outbound revenue (loaded) cars. FYCO Industries assessment is \$20.00 per car.

VII. STORAGE PROGRAM AND CHARGES

SAW/SLAL has limited space for storage of rail cars. If space is available SAW/SLAL will store empty rail cars as follows:

Charge to switch car to the storage track \$30.00 per car switched
Charge to switch car out of the storage track \$40.00 per car switched
Charge per 24 hour period (or fraction of day) per car held \$1.25

Switch service includes transfer to or from connecting carrier at Lubbock or Slaton, Texas. In the event customers desire to store loaded cars it is necessary to contact SAW/SLAL for availability of storage as there are restrictions on some commodities held for storage.

VIII. MISCELLANEOUS SERVICES

SAW/SLAL provides service five days a week, Monday through Friday, exclusive of Holidays. In the event switching services are requested at other times SAW/SLAL shall attempt to accommodate customers with a special switch crew. The charge for this miscellaneous service is \$500.00 per special switch crew.

IX. EFFECTIVE DATES OF THIS PROGRAM AND CREDIT POLICY

The provisions outlined above shall become effective at 12:01 a.m. on May 1, 2000 and remain in effect until such time SAW/SLAL amends any provisions or charges. A minimum of 20 days notice of any change which results in increased charges to customers shall be given by SAW/SLAL.

Billing and payments of all charges shown above is subject to SAW/SLAL credit policy.

SOUTH PLAINS CREDIT POLICY

Damrrage Accounts more than 30 days past due are subject to termination of rail service.

Surcharge Accounts are due and payable upon receipt of the invoice. Rail service will be discontinued to any customer for non-payment of this surcharge when implemented.

SOUTH PLAINS SWITCHING LTD., CO.

Invoice

P. O. BOX 64299
LUBBOCK, TX 79462-4299

Date	Invoice #
7/31/2006	42123

BIL To

PYCO INDUSTRIES
P. O. BOX 841
LUBBOCK, TEXAS 79408

P.O. No.

Terms

Project

Due Upon Receipt

Quantity	Description	Rate	Amount
81	ALL CARS RELEASED FROM CONSTRUCTIVE PLACEMENT: BN 461715, 448799, HS 25386, RBUX 43732, 31398, ATSF 600601, ABOX 58003, ATSF 600706, RBUX 20277, 32910, ACPX 95775, 55712, NATX 250695, 250718, 251008, 250461, DBUX 250504, NATX 250582, 250706, 250463, 250595, QATX 54950, ACPX 95797, CROX 8262, DBUX 250483, NATX 251013, NATX 250698, DBUX 250488, BN 587364, 585296, 587280, 585301, 587653, 585283, 587663, 585275, 585284, 587439, 585362, 587632, 585333, 587240, 587203, 587101, 587640, 587329, 587635, 585280, 585209, 587411, 585244, 587154, 587374, 587361, 587266, 587045, 587132, 587607, 587060, BNSF 541009, BN 587365, 587018, 587639, 587410, 587486, 587080, 585223, 587288, 587197, 585270, 587080, 587204, 587105, 587467, 587177, 587219, 587172, 585214, 585305, 587244, 587399, 587299, 587284, 587449, 587377	150.00	12,750.00
Should you have any questions concerning this invoice contact DELILAH WISENER at 806-838-4841.		Total	\$12,750.00

EXHIBIT

B

SOUTH PLAINS SWITCHING LTD., CO.

P. O. BOX 64299
LUBBOCK, TX 79462-4299

Invoice

Date	Invoice #
1/30/2006	42121

Bill To PYCO INDUSTRIES P. O. BOX 841 LUBBOCK, TEXAS 79408
--

P.O. No.	Terms	Project
	Due Upon Receipt	

Quantity	Description	Rate	Amount
10	JANUARY 27, 2006 PLANT 1: REQUEST 6 MTY GONS, 4 MTY TANKS CARS PLACED: BN 587324, 587442, 585315, 587374, 587306, 587933, DBUX 258432, NATX 250724, ACPX 93735, NATX 250975	150.00	1,500.00
14	JANUARY 27, 2006 PLANT 2: REQUEST 12 MTY GONS, 2 MTY TANKS CARS PLACED: BN 587407, 585282, 587521, 587140, 587378, 587079, 587268, 587618, 587045, 585251, 585263, 587369, NATX 250587, ACPX 93728	150.00	2,100.00
15	JANUARY 28, 2006 PLANT 1: REQUEST 12 MTY GONS (PER LBS), 3 MTY HOPPERS (PER LBS) CARS PLACED: BN 587296, 587672, 587532, 587694, 587628, 587469, 587118, 585228, 587114, 587212, 587223, 585221, 462326, BNSF 431599, HS 25767	150.00	2,250.00
0	JANUARY 28, 2006 PLANT 2: NO REQUEST FOR SWITCH	150.00	0.00
12	JANUARY 29, 2006 PLANT 1: REQUEST 12 MTY GONS CARS PLACED: BN 587639, BNSF 341409, BN 587351, 585316, 587360, HPDX 147588, BN 587687, 587205, HPDX 147619, 147551, BN 587530, 587623	150.00	1,800.00
12	JANUARY 29, 2006 PLANT 2: REQUEST 12 MTY GONS CAR PLACED: BN 587585, 587202, 587567, 587584, 585344, 587180, 587226, 587248, 587315, 587386, HPDX 147560, 147552	150.00	1,800.00
1	CHARGE FOR SPECIAL SWITCH CREW FOR JANUARY 28, 2006	500.00	500.00
1	CHARGE FOR SPECIAL SWITCH CREW FOR JANUARY 29, 2006	500.00	500.00

Should you have any questions concerning this invoice contact DELIAH WISNER at 806-828-4841.

Total 517,950.00

Bill To

PYCO INDUSTRIES
P. O. BOX 841
LUBBOCK, TEXAS 79408

P.O. No.

Terms

Project

Due Upon Receipt

Quantity	Description	Rate	Amount
24	SURCHARGE ON 17 CARS RELEASED FOR OUTBOUND AND 7 INBOUND LOADS 1/23/06 CARS RELEASED: BN 585218, 585291, 585348, 587238, 587398, 587488, 587514, 587593, DBUX 250413, NATX 250467, 251015, DBUX 250494, NATX 250976, 251042, ABOX 50036, 5298, RBOX 33499 INBOUND LOADS: NATX 250726, ACFX 95739, PLCX 221866, 221882, ACFX 95774, DBUX 250484, ACFX 95736	20.00	480.00
9	SURCHARGE ON 9 CARS RELEASED FOR OUTBOUND 1/24/06 CARS RELEASED: ACFX 95749, DBUX 250411, NATX 250966, 250991, ACFX 95769, 95757, NOEL 822028, BN 468639, ABOX 51243, ATSF 600670	20.00	180.00
13	SURCHARGE ON 12 CARS RELEASED FOR OUTBOUND AND 1 INBOUND LOAD 1/25/06 CARS RELEASED: BN 587473, 589330, 587245, 587366, 587396, BN58 541116, NATX 251005, ACFX 95757, NATX 250728, 250465, RBOX 32857, 41192 INBOUND LOAD: NATX 250718	20.00	260.00
11	SURCHARGE ON 11 CARS RELEASED FOR OUTBOUND 1/26/06 CARS RELEASED: BN 587180, 587211, ABOX 51893, 53014, NATX 250709, ACFX 95716, NATX 250726, RBOX 20405, 39384, 32439, ATSF 606586	20.00	220.00
16	SURCHARGE ON 16 CARS RELEASED FOR OUTBOUND 1/27/06 CARS RELEASED: RBOX 31011, 34200, BN 585281, 587241, 587392, 587298, 587350, 587515, 587533, 587570, 587634, 587641, 587138, 585278, NATX 250574, 250730	20.00	320.00
35	SURCHARGE ON 15 CARS RELEASED FOR OUTBOUND 1/29/06 CARS RELEASED: BN 585231, 587079, 585263, 585282, 587025, 587148, 587268, 587369, 587378, 587618, 585315, 587038, 587306, 587374, 587442, 587521, 587324, 585221, 585228, 587114, 587118, 587212, 587223, 587296, 587469, 587532, 587628, 587672, 587694, NATX 250373, NATX 250714, DBUX 250499, HB 25767, HNSF 431299, BN 462326	20.00	700.00
Should you have any questions concerning this invoice contact DELILAH WISENER at 806-428-4341.		Total	\$2,160.00

EXHIBIT

"D"

DEMURRAGE INVOICE
For Cars Released from
01/01/06 through 01/28/06

In Account Of
PYCO INDUSTRIES
P. O. BOX 841
LUBBOCK, TEXAS 79405

Please Remit To:
South Plains Switching Co.
P. O. Box 678
Stam, Texas 79364-0678

Station: 42200 South Plains Switching

Run Date 2/1/2006
Invoice Date 2/1/2006

INVOICE NO: 0801002



DEMURRAGE AGREEMENT									
SEQ	FIELD	CAR	CAR	PLACED	RELEASED	TOTAL CREDIT	AMOUNT		
	FOR		TYPE	DATE	TIME	DATE	TIME	DAYS	DUE
1	Load	RBOX 30878	B	1/2/2006	10:30	1/6/2006	8:00	4	2 \$ 72.00
2	Load	RBOX 32986	B	1/2/2006	10:30	1/6/2006	8:00	4	2 \$ 72.00
3	Load	BN 458578	C	12/23/2005	18:30	1/4/2006	8:00	12	4 \$ 348.00
4	Load	ABOX 51083	B	12/29/2005	8:30	1/3/2006	8:00	5	2 \$ 108.00
5	Load	ATSF 421482	R	12/29/2005	13:00	1/3/2006	8:00	6	2 \$ 156.00
6	Load	RBOX 37539	B	12/29/2005	8:30	1/3/2006	8:00	5	2 \$ 108.00
7	Load	BN 467850	C	12/23/2005	18:30	1/2/2006	8:00	10	4 \$ 282.00
8	Load	BN 422079	C	12/23/2005	18:30	1/10/2006	8:00	18	4 \$ 678.00
9	Load	RBOX 21410	B	1/4/2006	13:30	1/10/2006	8:00	6	2 \$ 156.00
10	Load	RBOX 32907	B	1/4/2006	13:30	1/10/2006	8:00	6	2 \$ 156.00
11	Load	ABOX 61085	B	12/23/2005	16:30	1/8/2006	8:00	17	4 \$ 618.00
12	Load	ABOX 51999	B	12/27/2005	18:30	1/8/2006	8:00	13	2 \$ 502.00
13	Load	BN 446608	C	12/23/2005	16:30	1/8/2006	8:00	17	4 \$ 618.00
14	Load	RBOX 51477	B	12/27/2005	13:30	1/8/2006	8:00	13	2 \$ 502.00
15	Load	RBOX 37310	B	12/22/2005	16:30	1/8/2006	8:00	16	2 \$ 782.00
16	Load	NOKL 822028	C	1/18/2006	13:00	1/24/2006	12:35	6	2 \$ 168.00
17	Load	ATSF 600687	A	1/3/2006	12:30	1/17/2006	8:00	14	2 \$ 580.00
18	Load	BN 743536	A	1/3/2006	12:30	1/17/2006	8:00	14	2 \$ 580.00
19	Load	ABOX 62252	B	1/8/2006	14:30	1/13/2006	13:00	7	4 \$ 108.00
20	Load	CSXT 507785	A	1/8/2006	14:30	1/13/2006	13:00	7	4 \$ 108.00
21	Load	RBOX 31011	B	1/18/2006	17:00	1/27/2006	14:00	11	2 \$ 396.00
22	Load	RBOX 34300	B	1/18/2006	17:00	1/27/2006	14:00	11	2 \$ 396.00
23	Load	ATSF 600682	A	1/3/2006	12:30	1/27/2006	12:05	24	2 \$ 1,140.00
24	Load	BN 777278	A	12/30/2005	14:30	1/27/2006	12:05	28	4 \$ 1,258.00
25	Load	ABOX 51892	B	1/16/2006	17:00	1/26/2006	13:00	10	2 \$ 348.00
26	Load	ABOX 52014	B	1/16/2006	17:00	1/26/2006	13:00	10	2 \$ 348.00
27	Load	ATSF 600608	A	1/3/2006	18:30	1/25/2006	8:00	23	2 \$ 1,082.00
28	Load	RBOX 20405	B	1/18/2006	17:00	1/26/2006	8:30	10	2 \$ 348.00

EXHIBIT

"E"

DEMURRAGE INVOICE
For Cars Released from
01/01/06 through 01/25/06

DEMURRAGE AGREEMENT										
SEQ	HELD FOR	CAR	CAR TYPE	PLACED DATE	PLACED TIME	RELEASED DATE	RELEASED TIME	TOTAL DAYS	CREDIT DAYS	AMOUNT DUE
29	Load	RBOX 32439	B	1/22/2006	14:38	1/26/2006	8:00	24	2	\$ 1,140.00
30	Load	RBOX 38384	B	1/13/2006	14:00	1/26/2006	8:00	13	4	\$ 396.00
31	Load	WCKL 828682	C	1/18/2006	13:00	1/25/2006	8:00	7	2	\$ 204.00
32	Load	RBOX 32857	B	1/13/2006	14:00	1/26/2006	8:00	12	4	\$ 348.00
33	Load	RBOX 41192	B	1/13/2006	14:00	1/26/2006	8:00	12	4	\$ 348.00
34	Load	ATSF 600670	A	1/22/2006	14:30	1/24/2006	12:35	22	2	\$ 1,024.00
35	Load	BN 468639	C	1/18/2006	13:00	1/24/2006	12:35	6	2	\$ 196.00
36	Load	BN 462326	C	1/26/06	14:30	1/29/2006	19:00	3	2	\$ 108.00
37	Load	SNCF 431589	C	1/26/06	14:30	1/29/2006	19:00	3	2	\$ 108.00
38	Load	H8 25757	C	1/25/06	14:30	1/29/2006	19:00	3	2	\$ 108.00
TOTAL LOADING						38 CARS		440	98	\$ 15,862.00
TOTAL AMOUNT DUE										\$ 15,862.00

Cause No. 2006-534,401South Plains Switching Ltd. Co.
(Plaintiff/Petitioner)Pigas Industries Inc.
(Defendant/Respondent)§
§
§
§
§IN THE
OF

LUBBOCK COUNTY, TEXAS

IN THE 237th DISTRICT COURT

MAR 27 AM 8:03

FILED FOR RECORD
CLERK LUBBOCK CO
COURT

CIVIL CASE INFORMATION SHEET

All original petitions filed in civil cases MUST be accompanied by: (1) an original *Case Information Sheet*, (2) the required number of copies of the information sheet to provide for service upon each defendant/respondent, (3) a copy of the form for delivery to the coordinator of the court and (4) a copy for the Dispute Resolution Center. All such sheets shall be prepared by the attorney or pro se litigant. The data set forth in the information sheet must be accurate information as it exists at the time of filing. This form does not constitute a discovery request, response or supplementation, and is not admissible at trial.

Service must be obtained promptly. Pursuant to the Lubbock County Local Rules, notice is hereby given that any case in which no answer has been filed or default judgment signed SIX (6) MONTHS from filing date will be eligible for DISMISSAL FOR WANT OF PROSECUTION.

Type of Action: ☒ Commercial ☐ Personal Injury ☐ Death ☐ Other

Check all claims pled:

- | | | |
|---|--|--|
| ☐ Account due | ☐ Foreclosure | ☐ Malpractice/Other |
| ☐ Condemnation | ☐ Forfeiture | ☐ Note |
| ☒ Contract | ☐ Fraud | ☐ Premises liability |
| ☐ Declaratory Judgment | ☐ Garnishment | ☐ Product liability |
| ☐ Discrimination | ☐ Insurance bad faith | ☐ Sequestration |
| ☐ DTPA | ☐ Injunction/TRO | ☐ Tax |
| ☐ Employment Discharge | ☐ Malpractice/Legal | ☐ Other (explain: e.g. 'Friendly Suit') |
| ☐ Expiration | ☐ Malpractice/Medical | |

Has this dispute previously been in the Lubbock County courts? ☐ No ☐ Yes _____
(Court Designation)

Monetary damages sought: ☒ Less than \$100,000 ☐ Greater than \$100,000 Discovery Level: _____

ADR: MEDIATION IS REQUIRED FOR ALL CONTESTED CASES

Printed Name of Attorney or Pro Se Litigant:
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E-Mail Address

FOR COURT USE ONLY:

Track Assignment:

Level I _____

Level II _____

Level III _____

Date filed: _____

Date of Service: _____

Answer Date: _____

Scheduling Order due: _____

Trial Date: _____

Date DRC notified: _____

Date Attorney(s) notified of trial date: _____