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THOMAS F. MCFARLAND

November 22, 2006

By e-filing

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

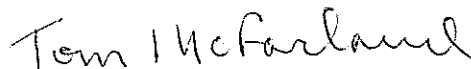
Re: Finance Docket No. 34899, *PYCO Industries, Inc. -- Alternative Rail Service -- South Plains Switching Ltd.*

Ex Parte No. 346 (Sub-No. 14C), *Rail General Exemption Authority -- Misc. Agricultural Products -- PYCO Industries, Inc.*

Dear Mr. Williams:

Hereby transmitted is Petition Under 49 C.F.R. § 1147.1(c)(1) To Terminate Alternative Rail Service for filing with the Board in the above referenced matters.

Very truly yours,



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

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cc: All parties of record
Mrs. Delilah Wisener
Mr. Dennis Olmstead

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING LTD.	)	NO. 34899
	)	
RAIL GENERAL EXEMPTION	)	
AUTHORITY -- MISC. AGRICULTURAL	)	EX PARTE NO. 346
PRODUCTS -- PYCO INDUSTRIES, INC.	)	(SUB-NO. 14C)

**PETITION UNDER 49 C.F.R. § 1147.1(c)(1) TO
TERMINATE ALTERNATIVE RAIL SERVICE**

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: November 22, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
ALTERNATIVE RAIL SERVICE --	)	FINANCE DOCKET
SOUTH PLAINS SWITCHING LTD.	)	NO. 34899
	)	
RAIL GENERAL EXEMPTION	)	
AUTHORITY -- MISC. AGRICULTURAL	)	EX PARTE NO. 346
PRODUCTS -- PYCO INDUSTRIES, INC.	)	(SUB-NO. 14C)

**PETITION UNDER 49 C.F.R. § 1147.1(c)(1) TO
TERMINATE ALTERNATIVE RAIL SERVICE**

Pursuant to 49 C.F.R. § 1147.1(c)(1), SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby petitions for termination forthwith of alternative rail service ordered in the Board's decision served November 21, 2006.

Alternative rail service should be terminated forthwith because at present there are no serious service problems that warrant that extraordinary temporary relief. According to the alternative rail service provider itself, the emergency that initially warranted alternative rail service is over. That being the case, the necessary predicate for alternative rail service no longer exists. Accordingly, alternative rail service should be terminated forthwith in a decision made effective on the date of its service.

Attached to this Petition as Appendix 1 is a copy of a letter from John D. Heffner, Esq., counsel for the alternative rail service provider, to the Board dated November 15, 2006. Mr. Heffner there described action taken by that service provider "in substantial part because of the significant reduction in PYCO's freight traffic due to the changed demands of the marketplace,"

and because “operations over the trackage that is subject to this proceeding are now reasonably fluid.” (Appdx. 1 at 2). The existing conditions thus described by counsel certainly do not reflect “serious service problems,” nor a service “emergency.” That being the case, alternative rail service is not warranted under 49 U.S.C. § 11102(a), nor under the Board’s implementing regulations.

PYCO filed its Petition for Alternative Rail Service under 49 C.F.R. Part 1147 on July 2, 2006 as a hedge against the Board’s failure to have disposed of feeder line applications on a final basis prior to the expiration of alternative rail service under 49 C.F.R. Part 1146. That situation has come to pass. A petition like PYCO’s is contemplated in the Board’s decision in *Expedited Relief for Service Inadequacies*, 3 S.T.B. 968 (1998), at 971-973. However, alternative rail service under Part 1147 can be “tacked on” at the end of alternative rail service under Part 1146 only if conditions warrant alternative rail service at the end of the alternative rail service period under Part 1146. As is evident from counsel’s letter marked Appendix 1, current conditions do not warrant alternative rail service.

As stated in *Expedited Relief for Service Inadequacies*, *supra*, the Part 1147 rules address “serious service problems and only to the extent necessary to meet a demonstrated need for rail service” (3 S.T.B. at 973). As the Board made clear in that case (*id* at 982):

Of course, under both Parts 1146 and 1147, the incumbent railroad will be free to terminate the relief as soon as the emergency is over, regardless of when that occurs . . . (emphasis added).

According to counsel’s letter (Appendix 1), the transportation emergency at PYCO was over as of November 15, 2006, the date of counsel’s letter. As of that date, PYCO’s traffic was reduced and operations were “reasonably fluid.” Under any reasonable definition of “serious

service problems” and “emergency,” no such problems or emergency existed at PYCO’s plants as of that date.

Based on past history, PYCO can be expected to respond that SAW should not be permitted to serve PYCO because SAW retaliated against PYCO by prohibiting PYCO’s trackmobile from operating on SAW’s tracks, by refusing to extend the term of a track lease, and the like. It doesn’t matter to PYCO that those actions were perfectly legal inasmuch as PYCO had no right to operate over SAW tracks in the first place, or to demand an extension of the term of the lease. It is apparent that those lawful actions do not constitute inadequate rail service in the context of PYCO’s feeder line application. But even if they did, they would not warrant alternative rail service under Part 1147 where, as here, it is undisputed that there are no serious service problems or a service emergency at PYCO’s facilities.

The Board has attempted to bolster its decision by observing that SAW did not oppose PYCO’s Part 1147 Petition on the merits (Decision served Nov. 20, 2006 at 4 - “Moreover, SAW did not oppose on the merits PYCO’s request for temporary alternative rail service under 49 C.F.R. part 1147”). That observation is most disingenuous. As the Board well knows from SAW’s reply dated August 8, 2006, SAW did not oppose PYCO’s Petition because the procedural schedule in the Board’s decision served July 3, 2006 contemplated a final decision on the feeder line application that was accepted for filing in that decision to coincide with the expiration of alternative rail service under Part 1146 (decision served July 3, 2006 at 6 - “In light of the expiration date for alternative rail service to PYCO, October 23, 2006, we shall provide a shortened schedule for the submission of these pleadings in this case, as set forth below”). But even if SAW had been indifferent to the merits of PYCO’s Petition, that would not justify the

Board in ordering alternative rail service under Part 1147 where it is acknowledged that there are no current service problems, let alone serious service problems or a service emergency.

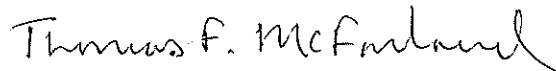
Inasmuch as there was no justification for this order of alternative rail service, such service should be terminated forthwith. SAW is ready, willing and able to provide rail service to PYCO until the feeder line proceedings are completed. Contrary to PYCO's misleading rhetoric, SAW has consistently delivered every car ordered by PYCO on a timely basis, and would do so now.

WHEREFORE, the alternative rail service authorized in the Board's decision served November 21, 2006 should be terminated forthwith.

Respectfully submitted,

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

Petitioner



THOMAS F. McFARLAND
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DATE FILED: November 22, 2006

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November 15, 2006

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

ATTN: Mr. Melvin Clemens

RE: STB Finance Docket No. 34802, Petition of Pyco Industries, Inc., for Alternative Rail Service over the tracks and facilities of South Plains Switching Ltd.

RE: STB Finance Docket No. 34899, Verified Petition of PYCO Industries, Inc., for Alternative Rail Service, Temporary Relief for Service Inadequacies, 49 CFR Part 1147;

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

RE: STB Finance Docket No. 34922, Keokuk Junction Railway Co., Feeder Line Application - Lines of South Plains Switching, Ltd. Co.;

Dear Mr. Williams:

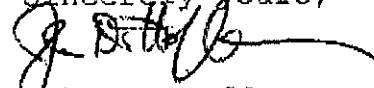
I am writing on behalf of the West Texas & Lubbock Railway ("WTLR"), the rail carrier designated by the Board in the above-captioned proceeding to provide alternative rail service over the facilities of South Plains Switching Ltd. ("SAW") to PYCO Industries, Inc., at Lubbock, TX.

My purpose in writing is to advise you that WTLC has discontinued the daily morning conference call that it initiated back in February 2006 to insure a smooth coordination of operations between WTLC, BNSF Railway, PYCO, and, ideally, SAW. As you will recall, SAW declined to participate in these conference calls.

WTLC is discontinuing this daily call in substantial part because of the significant reduction in PYCO's freight traffic due to the changed demands of the marketplace, as highlighted in recent filings with the Board. Also operations over the trackage that is subject to this proceeding are now reasonably fluid, there is good coordination between WTLC, BNSF, and PYCO, and SAW still refuses to participate. WTLC will reinstate conference calls should a need arise again.

Thank you for your assistance in this matter. I am submitting an original and 10 copies of this letter for the record. Please date stamp and return one copy.

Sincerely yours,



John D. Heffner

cc: Mr. Melvin Clemens (by fax)
Charles Montange, Esq. (fax and mail)
Gary McLaren, Esq. (fax and mail)
Thomas McFarland, Esq. (fax and mail)
William Mullins, Esq. (fax and mail)
William Sippel, Esq.
Adrian Steel, Esq. (fax and mail)
Andrew Goldstein, Esq.
Mr. Edwin Ellis
Mr. Steve Gregory (email)

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2006, I served the foregoing document, Petition Under 49 C.F.R. § 1147.1(c)(1) To Terminate Alternative Rail Service, by UPS overnight mail, on the following:

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Seattle, WA 98177

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Phillips & McLaren
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Lubbock, TX 79413

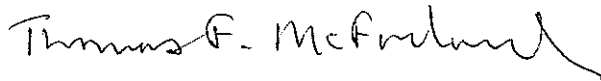
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