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THOMAS F. MCFARLAND

July 14, 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. 34890, *PYCO Industries, Inc. -- Feeder Line Development -- South Plains Switching, Ltd. Co.*

Dear Mr. Williams:

On July 13, 2006, the Board granted an "Emergency Motion to Order SAW to Permit Entry on 24 July 2006" that was filed by PYCO Industries, Inc. (PYCO) on July 11, 2006. The Motion was granted on the second day after it was filed, without awaiting a reply by SAW, or even inquiring of SAW whether it opposed entry onto its property on weekdays when rail operations are being conducted. Then, not having allowed SAW a reasonable opportunity to reply, the decision points to the absence of a SAW reply as a ground for granting the Motion, viz. (decision at 2):

... SAW has not stated that beginning the inspection on that date would harm SAW ...

SAW objects to this unfair procedure in the strongest possible terms. PYCO is running roughshod over SAW's procedural and substantive rights with this Board's active support. This Motion was granted 10 days before the proposed track inspection date on a purported "emergency" basis -- the purported emergency being PYCO's representatives need to make airplane reservations, viz. (Motion cover letter at 2):

Because of air schedules of experts, we request action no later than Monday, July 17, 2006 ...

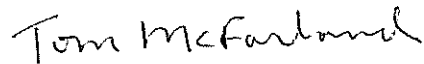
That is a patently unreasonable basis for requesting emergency relief, and the Board's response -- granting the relief four days earlier than even requested, and without a reply from the opposing party -- was singularly inappropriate.

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SAW prepared a reply in opposition to the Motion, with all due haste, which it intended to file at the Board today, only three days after the filing of the Motion. I have attached a copy of that reply to this communication. It may be that SAW's reply would not have caused the Board to deny PYCO's Motion, but it is not at all proper that SAW did not get an opportunity to have its reply considered.

Very truly yours,



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

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cc: Charles H. Montange, Esq.
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Re: Finance Docket No. 34890, *PYCO Industries, Inc. -- Feeder Line Development -- South Plains Switching, Ltd. Co.*

Dear Mr. Williams:

This is the reply of South Plains Switching, Ltd. Co. (SAW) to "Emergency Motion to Order SAW to Permit Entry on 24 July 2006," filed by PYCO Industries, Inc. on July 11, 2006.

SAW strongly opposes the Motion.

Entry on SAW's trackage on weekdays would be unduly disruptive of SAW's rail operations. That is the reason why PYCO sought entry onto SAW's tracks on Saturday in its discovery request. Thus, in the section of Discovery on "Entry," PYCO said (FLA, Ex. P at 12):

Because SAW historically has not operated on weekends, PYCO specifies entry on the first Saturday . . . (emphasis added).

Now PYCO has asked the Board to order SAW to require entry onto SAW's tracks all day Monday, July 24, all day Tuesday, July 25, and all day Wednesday, July 26 (*see* Motion at 3 - "PYCO estimates that at least two and probably three days will be required to complete an inspection . . ."). PYCO's Motion does not provide a substantive justification for changing the proposed entry from weekend days to weekdays. It may be convenient for PYCO's inspector to look at the track during weekdays, but that does not justify the disruption of SAW's rail operations that would result from inspection of the trackage on three consecutive weekdays.

The Board's regulation on Entry requires that a request for entry specify "a reasonable time" for making an inspection. *See* 49 C.F.R. § 1114.30(b). PYCO's request for entry onto SAW's tracks on three weekdays does not specify a reasonable time. Thus, the Motion is

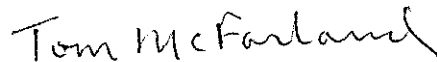
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required to be denied. Entry onto SAW's tracks should go forward on the Saturday specified in PYCO's Discovery (Ex. P at 12-13). The inspection can proceed on Saturday, Sunday and the next Saturday, as necessary.

The heading of PYCO's Motion does not request that the Board order SAW to respond to PYCO's discovery by July 24, and PYCO makes only a lukewarm argument in the body of its Motion that the Board should do so. PYCO undoubtedly realizes the impropriety of requiring a party to respond to discovery during the same period of time that such party is required to prepare its case-in-chief. In that connection, a Board regulation provides that interrogatories cannot be served within 20 days prior to the date of filing of opening statements of fact and argument under modified procedure. *See* 49 U.S.C. § 1114.26(c). Any requirement that SAW respond to PYCO's discovery by the earlier date requested would be highly prejudicial, especially inasmuch as the 60-day period for the filing of SAW's evidence and argument in 49 C.F.R. § 1151.2(e) has already been cut in half.

WHEREFORE, PYCO's Motion should be denied.

Respectfully submitted,



Thomas F. McFarland
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