



Fax Cover Page

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Date: 17 July 06

Message: On behalf of PYCO Industries, please find for fax filing PYCO's reply to two letters submitted by South Plains Switching (SAW) dated for e-filing on 14 July 2006 in

PYCO Industries -- feeder line -- SAW, F.D. 34890. 247090

SAW's letters dispute PYCO's entry for inspection (discovery) authorized and now scheduled for July 24. The SAW letters may be construed as a request for reconsideration (which should be denied) of this Board's order authorizing inspection on July 24. Because the date is so proximate, we are fax-filing our response.

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CHARLES H. MONTANGE

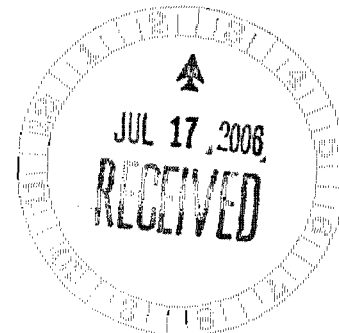
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17 July 2006
by Fax and Express

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

Re: PYCO Industries, Inc. -- Feeder Line Application
-- South Plains Switching, F.D. 34890

Reply to SAW Letters of July 14, 2006

Dear Mr. Secretary:

To the extent that South Plains Switching, Ltd. (SAW) intends its letters dated and e-filed July 14 to be a request for reconsideration of this Board's order of July 13 allowing applicant PYCO Industries ("PYCO") to enter the premises for inspection commencing July 24, SAW's motion should be denied.

Background

Feeder line applicant PYCO Industries, Inc. has sought discovery from South Plains Switching, Ltd. (SAW) since May 4, 2006. The discovery is necessary to refine PYCO's valuations of SAW assets and to be prepared to counter incorrect information tendered by SAW.

To date, PYCO has received nothing from SAW. Since PYCO properly tendered its discovery requests to SAW over two months ago, PYCO under such circumstances has a substantive and procedural right to receive a response that it can meaningfully use in the feeder line proceeding. SAW, which has had plenty of notice, has no substantive or procedural right to deny PYCO the information it seeks. Yet incredibly SAW whines that the Board and PYCO are somehow "running roughshod over SAW's procedural and substantive rights." This is a bit like a bank robber suing the bank because he got caught. If anyone is running roughshod on someone's rights, it is SAW that is the perpetrator and PYCO the victim.

The situation is all the more absurd in that SAW apparently has purported to sell portions of its rail yard to Larry Wisener d/b/a/ Choo Choo Properties, Inc., and is using that ploy as a ruse to terminate PYCO's leases, permits and licenses to hamstring PYCO's ability not just to ship by rail but to operate. Yet SAW is trying to conceal its shedding of assets

from scrutiny. That matter is more fully discussed in our pleading tendered for filing July 17 in dockets F.D. 34802, 34889, 34890, 34838, and 33753. As that filing makes clear, if anyone is sustaining prejudice so far, it is PYCO. SAW's basic strategy is to draw things out at the STB so it can inflict as much economic harm on PYCO as possible, in the hope that PYCO will throw in the towel. SAW's effort to prolong or to defeat PYCO's discovery efforts is part and parcel of its underlying strategy of retaliating against PYCO in the hope of breaking the cooperative.

Opposition to Further Delay in Inspection

Now, as to the merits, SAW in one of its July 14 letters asserts prejudice from an inspection on July 24 but shows none. July 24 is the one day under this Board's accelerated schedule that all PYCO's experts can assemble in Lubbock. Allowing the inspection comports with the expedited proceeding, and serves SAW's interest by minimizing the amount of time inspectors will be on the premises. It does not distract anyone on the SAW side from assembling SAW's evidence, or case in chief. Since SAW has seen PYCO's case in chief since May 4, SAW has had ample time to prepare in any event, and the distraction SAW professes it would endure by responding to discovery pre-August 2 are a matter of either its own lack of foresight, or its focus on delay tactics and retaliation against PYCO rather than moving the proceeding along. In any event, prior to the contrived objections of July 14, SAW's only objection to any discovery (documentary or entry for inspection) on the July 24 date was it would disrupt SAW's preparation of its case in chief (per the Board's order, due for filing August 2). Inspection down in Lubbock on July 24 does not prejudice a lawyer's work preparing a case up in Chicago, whatever date inspection occurs.

PYCO's experts have now made their reservations and set the date of July 24 down in their schedules. It is counsel's understanding that alternative dates are no longer available that meet the expedited schedule for this proceeding.

PYCO's experts will minimize any interference with SAW operations during the inspection. PYCO notes that SAW has already agreed to a protocol with WTL in F.D. 34802. PYCO's inspection will adhere to this protocol to the extent appropriate and applicable, thus minimizing any potential for interference with any rail operations. Also, PYCO's experts (companies like R.L. Banks) are familiar with the nature of railroads and have the judgment and knowledge to minimize any potential interference. It is in PYCO's interest to get the inspection completed as soon as possible. However, SAW violates the agreed upon protocol (see our pleading tendered July 17) and may attempt to interfere with the inspection. Additionally, PYCO and its experts wish to do a competent job. Under the

circumstances, it is not possible to ensure that the inspection can be completed in one day. The inspection will include work to verify rehabilitation costs, maintenance of way costs, salvage values, and property lines and areas for the Alternative Two scenario. All these matters are highly germane to issues in the proceeding and the results of the inspection will improve the quality of the record for the Board's decision.

SAW unfairly attempts to use against PYCO the generosity of PYCO's counsel in discovery response times. When PYCO tendered its discovery on May 4, PYCO anticipated that the Board would initiate a proceeding using the time schedule for replies and rebuttals provided in Part 1151. PYCO's counsel in his instructions gave SAW more time than the minimums required in the Board's regulations to respond because the extra time was compatible with the standard Part 1151 schedule. However, due to intervening events, the Board ultimately ordered an expedited schedule, which PYCO certainly welcomes. But PYCO's May 4 discovery instructions were not consistent with the July 3 schedule, and PYCO accordingly modified them to conform to the new schedule (we read the Board's July 3 decision to anticipate that this might happen). SAW has no grounds to object to the modification in the circumstances.

PYCO's revised instruction still afforded SAW a minimum of 15 days notice. SAW nonetheless objected, and when PYCO moved to compel a response on July 24, this Board allowed SAW to respond to the written discovery on August 4, two days after SAW is supposed to file its case in chief. August 4 is the date the written discovery would have been due under PYCO's original instructions, and is basically all that SAW's objection called for. This certainly eviscerates any claim of prejudice that SAW might have. Since inspection on July 24 will not impinge on SAW's case preparation, the Board allowed it to go forward. SAW has no reasonable grounds to object to that result and does not present any in its letters.

II. Requested Clarification

PYCO notes that under this Board's orders, PYCO will now expect to receive SAW's complete response to PYCO's discovery requests on August 4. Under ¶6 of the decision in F.D. 34890 served July 3, 2005, PYCO has seven days (i.e., until August 11) to file any discovery-related modifications.¹

If PYCO makes any discovery-based modifications, then SAW has a seven day period to respond (i.e., until August 18). PYCO anticipates that it will make at least some discovery-

¹ This assumes that SAW does not interfere with inspection and it is completed before August 4.

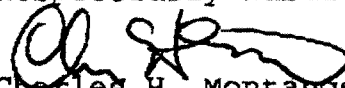
related modifications on August 11. PYCO therefore anticipates that SAW will make a reply to those on August 18.

The Board's July 3 decision at paragraph 7 provides that PYCO's final reply must be filed on August 14, or 15 days after SAW's comments (if any) on any discovery-based modifications made by PYCO. Assuming the schedule above, on August 14, PYCO will not know if SAW on August 18 will be replying to PYCO's August 11 modifications. This would force PYCO to prepare two replies (one August 14, and one within 15 days of August 18) should SAW reply to any modifications. This seems confusing, duplicative and unwarranted. PYCO proposes that this Board clarify the situation to provide that PYCO (and any other "interested party") will file its final reply ten days after SAW makes its reply to any modifications, or on August 28, 2006, whichever is later. (The ten day date should fall on August 28, 2006 if SAW adheres to the schedule.) This clarification will expedite completion of briefing, minimize confusion, avoid duplicative final briefs by PYCO, and not prejudice SAW or any other party to the proceeding. The Board may continue to provide that if PYCO makes no modifications on August 11, then PYCO (and other "interested parties" will file their final brief(s) on August 14.

PYCO is not attempting to extend any briefing deadline provided by the Board's July 3 order by this clarification; PYCO is simply trying to avoid confusion and duplication which might arise now that the discovery schedule is falling into place.

PYCO remains very concerned that it receive relief in either this feeder line application proceeding (F.D. 34890), its Part 1147 proceeding (F.D. 34889), or the revocation proceeding (F.D. 33753) by October 23, 2006, when the interim relief afforded in F.D. 34802 expires. PYCO wishes to see briefing completed in F.D. 34890 so the Board can take the entire case as fully submitted by the end of the month of August.

Respectfully submitted,



Charles H. Montange
for PYCO Industries, Inc.

Certificate of Service

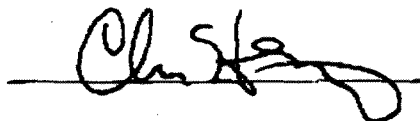
By my signature below, I certify service upon the following by express (next business day) delivery by placing same with an appropriate service on July 17, 2006, and by faxing same:

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cc. Gary McLaren, Esq. (for PYCO)