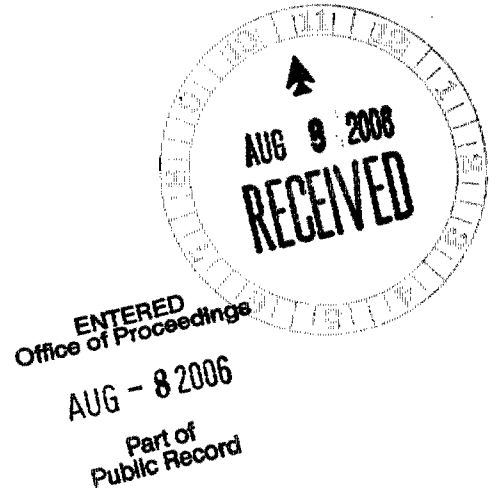


CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

7 August 2006
by 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
Procedural Issues Arising Out of August 4 filings

Please distribute immediately

Dear Secretary Williams:

217240

I. Summary on Relief Sought

As indicated below, PYCO Industries, Inc. (PYCO) supports incumbent railroad South Plains Switching, Ltd.'s (SAW's) request to be permitted to file SAW's valuation for all-SAW by August 18. PYCO further requests that this Board expeditiously issue an order allowing PYCO to pursue all of SAW in its feeder line application. PYCO also moves for an immediate order requiring SAW's valuation evidence for that alternative by August 18, the date suggested by SAW so as to avoid confusion or delay in the proceeding.

On August 4, Pioneer Railcorp d/b/a Keokuk Junction Railway (KJRY) served a competing application for "Alternative Two" (portion of SAW serving PYCO, Attebury and Compress), and purported to reserve the right to file a competing application for more of SAW. This Board already granted an extension to KJRY through August 4 to file a competing application for all of SAW. KJRY elected not to do so. Any further delay for KJRY to file another competing application is highly prejudicial to PYCO and other shippers, and is not required by either the statute or the regulations. It should not be permitted.

II. Discussion

"All-SAW" issues. On August 2, the due date for shipper comments, PYCO Industries, Inc. (PYCO) filed a compilation of shipper comments in which a majority of shippers stated that service by incumbent railroad South Plains Switching, Ltd.

(SAW), was inadequate. Floyd Trucking, joined by PYCO, asked that PYCO be permitted to pursue acquisition of all of SAW under 49 U.S.C. § 10907 in lieu of only "Alternative Two" (the PYCO, Attebury, Compress only option).¹ PYCO, joined by other shippers, requested that the proceeding continue expeditiously such that a new carrier may be in place by October 23, 2006.

On August 4, SAW e-filed a letter indicating that, as a result of the August 2 statements by shippers, SAW was evaluating whether the public convenience and necessity allowed or permitted a feeder line sale of the entirety of SAW. SAW requested that the Board permit it until August 18 to file its case on valuation of "all-SAW."

PYCO does not object to SAW supplementing its filing on August 18 to include evidence of SAW's valuation of the all-SAW

¹ PYCO's application in F.D. 34890 is "complete" as to the all-SAW alternative. PYCO all along has included all the relevant valuation evidence, financial responsibility information, and representations of willingness to pay the indicated amounts for all-SAW. The only issue has been whether a majority of shippers had received inadequate service. This Board indicated that it would not presume inadequacy on the basis of evidence of inadequacy as to some coupled with showings of intimidation and economic retaliation by the incumbent provider. On August 2, a majority of shippers represented that they viewed service as inadequate.

PYCO initially opposed KJRY's July 18 request for an extension to file a "competing application" for all-SAW as a petition for reconsideration. This Board rejected that view in its July 21 decision. In its "competing application" filed August 4, KJRY presents no shipper comments, and asserts that the shipper comments filed by PYCO are not "new evidence" in that PYCO could have furnished them before. This issue seems irrelevant under the Board's July 21 decision, which PYCO construed to mean that the Board would entertain expanding the proceeding to encompass all-SAW. If the Board would do so for KJRY, then the Board certainly should for PYCO and the shippers on the SAW lines. As PYCO has repeatedly indicated, shippers on the SAW line have been disabled from furnishing the letters due to fear of catastrophic economic retaliation. The Hanson letter specifically noted this problem. PYCO could not present the "evidence" as defined by this Board's decisions until Hanson felt it was no longer disabled by SAW's threats of retaliation. The same problem exists for other shippers still subject to SAW retaliation.

alternative.² PYCO does not believe this will result in any need to delay the proceeding.

PYCO accordingly requests that this Board issue an order extending PYCO's feeder line application to all of SAW and establishing August 18 as the due date for SAW's valuation evidence.

Opposition to further competing feeder line applications by KJRY. By a decision issued July 21, this Board granted KJRY an extension until August 4 to file a "competing application." This Board indicated, over the objection of PYCO, that the competing application could pertain to the entirety of SAW.

On August 4, KJRY filed a "competing application" but only for Alternative Two (lines necessary for PYCO, Attebury and Compress only).³ KJRY stated that it reserved the right to file yet another competing application for all of SAW should this Board allow PYCO to pursue its feeder line application for all of SAW.

PYCO opposes any further "competing applications" by KJRY. There must be a limit on how much KJRY can parasitize PYCO and the shippers on the SAW lines. KJRY has already had two opportunities to file (July 18 and August 4); any further delays for additional competing applications will necessarily result in delay prejudicial to PYCO and other shippers; and no further relief to KJRY is required to ensure compliance with any reasonable expectations arising from the relevant statute or regulation.

1. This Board originally required competing applications by July 18. On KJRY's belated request (filed on the due date for the competing application) for an extension to file a competing application for all of SAW, this Board granted KJRY a further extension through August 4. Now, rather than do what it said it would, KJRY has elected to file for Alternative Two.

2 This Board gave SAW until August 4 to respond to PYCO's discovery requests. SAW responded on August 4 only as to Alternative Two. In response to an e-mail inquiry by PYCO's counsel, SAW has indicated that it will supplement its discovery response to cover all-SAW on August 18 or immediately thereafter. In light of this representation, PYCO will not move to compel.

3 As of the time of service of this letter, KJRY's "competing" filing due August 4 is not listed on the STB website. PYCO received the KJRY filing on August 7, and assumes arquendo that it was timely filed. If it was not, then PYCO objects to the filing as out of time, and requests that it be stricken.

It has had one extension to file for the whole line; it shows no basis for another.⁴ No shipper supports KJRY; the August 2 shipper comments contain many statements in opposition to KJRY.

2. Any further round of competing applications at this point would surely mean that this proceeding cannot be completed by October 23, 2006. All shippers commenting on August 2 to this Board in support of PYCO's feeder line application desire a new provider by that date in order to avoid retaliation and unwarranted economic damage. Certainly PYCO requests relief by October 23: as PYCO has already indicated, KJRY has become involved in this proceeding at the behest of SAW/Larry Wisener. The strategy of SAW/Wisener to date has included retaliation, and the creation of delay in order to achieve the ultimate retaliation: expiration of the alternative service order in Finance Docket 34802 on October 23 such that rail-dependent SAW is again at the mercy of SAW at the beginning of cotton rush. Obviously service to shippers is a primary concern under the feeder line statute (the statute triggers on a showing of service inadequacy). In the circumstances, neither the incumbent railroad nor a prospective competing feeder line applicant should be permitted to manipulate the process to cause delay harmful to shippers already receiving inadequate service.

3. If KJRY wanted to preserve an all-SAW alternative in its competing feeder line application, it should have filed its case on August 4 in the alternative. It had notice to do so from this Board, and a cursory review of the decisions and pleadings would have indicated the importance of acting in a cooperative fashion to allow a decision by October 23. KJRY's "competing application" filed August 4 affirmatively indicates that as of that date KJRY could not show financial responsibility sufficient to acquire the entirety of SAW in any event.⁵

4. KJRY is not relying on outside experts for its competing applications. It is relying on KJRY employees to remark on evidence compiled by PYCO's outside experts. It needs no additional time for such filings.

KJRY should be allowed no further extensions for additional

⁴ KJRY's sole excuse for failing to file as to the whole line is that PYCO objected to a KJRY filing as beyond the scope of the proceeding. But since the Board rejected PYCO's objection on July 21, that excuse hardly carries weight. Moreover, PYCO objected to any filing by Pioneer, and all three of the shippers in Alternative Two have said that they do not want Pioneer to be their service provider. That has not deterred KJRY from filing as to Alternative Two.

⁵ KJRY Exhibit 1 to KJRY App. I says that KJRY is seeking a loan to buy the entire line, but the bank has not yet committed to provide it.

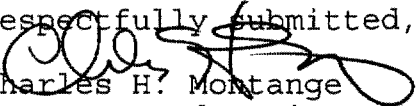
competing applications.

III. Conclusion on Relief Sought

PYCO requests an order allowing it to pursue the entirety of SAW, and (as suggested by SAW) establishing August 18 as the due date for SAW's case in that regard. PYCO opposes any further extensions of time for KJRY to file additional competing applications. PYCO continues to seek relief in this proceeding effective by October 23, the date PYCO's alternative service order expires.

Reservation of right to comment further on KJRY competing application. This Board's August 3 decision indicates that SAW must file comments on KJRY's competing application by August 14, and that the Board will issue a decision accepting or rejecting the application on August 18. PYCO reserves the right to comment further but no later than August 14 on the application which KJRY has filed. Our point here is that PYCO should not have to deal with yet another competing application at some point in the future.

Thank you for your assistance in this matter.

Respectfully submitted,

Charles H. Montange
for PYCO Industries, INC.

Encls.

cc. Counsel (per above) (w/encl.)
Mr. McLaren (w/encl.)

Certificate of Service

By my signature below, I certify service upon the following counsel of record by express (next business day) delivery on 7 August 2006:

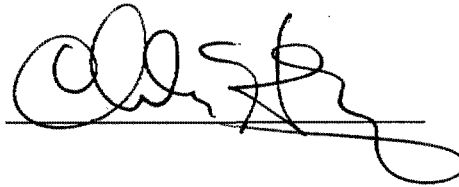
Thomas McFarland
208 South LaSalle St., Suite 1890
Chicago, IL 60604-1112 (SAW)

William A. Mullins
Baker & Mullins
2401 Pennsylvania Ave. NW #300
Washington, D.C. 20037 (KJRY)

William Sippel
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2875 (USRP)

John Heffner
1920 N Street, NW #800
Washington, DC 20036 (WTL)

Adrian Steel
Mayer Brown Rowe & Maw
1909 K Street, NW
Washington, D.C. 20006-1101

A handwritten signature in black ink, appearing to read 'Adrian Steel', written over a horizontal line.