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Office of Proceedings

SEP 26 2006

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Public Record



25 September 2006
by express

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

Re: PYCO Industries -- Feeder Line Application --
South Plains Switching, Ltd., F.D. 34890-217632
and related proceeding F.D. 34922 -217633

MOTION TO COMPEL/SUB POENA; ACTION REQUESTED
BY SEPTEMBER 29, 2006

Dear Mr. Williams:

On behalf of PYCO Industries, enclosed please find an original and ten copies of a motion to compel discovery directed at Pioneer Rail Corp and Keokuk Junction Railway. Because of the expedited nature of this proceeding, PYCO requests an order by close of business, September 29, 2006. Exhibit A is furnished under seal in a separate envelope, as it is marked "highly confidential" pursuant to the applicable protective order.

Please note that Exhibit A is being provided only to Pioneer/KJRY's counsel, Mr. Mullins, at this time pending receipt of signed undertakings from other counsel pursuant to the protective order.

Thank you for your assistance.

Very truly,

Charles H. Montange
for PYCO Industries, Inc.

Encls.

cc. counsel per certificate of service (w/encl.)
Mr. McLaren

SEP 26 2006

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --
FEEDER LINE DEVELOPMENT --
SOUTH PLAINS SWITCHING LTD.

)
) F.D. 34890 - 217632
) (and related F.D. 34892) - 217633

REQUEST FOR ISSUANCE OF SUB POENA/
MOTION TO COMPEL
on behalf of PYCO Industries, Inc.
against PIONEER RAIL CORP and its Subsidiary KJRY

Immediate distribution requested
Order requested by September 29, 2006

PYCO Industries, Inc. hereby requests the Board to issue a sub poena (49 U.S.C. § 721) and otherwise compel [49 C.F.R. § 1114.31(a)] Pioneer Rail Corporation and its affiliates, including Keokuk Junction Railway (KJRY) to respond in full to (a) all requests for documents and information set forth in Exhibit A, a letter dated 30 August 2006 and marked "highly confidential" pursuant to the applicable protective order, (b) all Document Requests set forth at pp. 3-5 of Exhibit B, Requests for Production of Documents and Interrogatories served 24 July 2006, and (c) interrogatories 2, 3, 4, 5, 6, 8, 10, 11, 13, 14 and 15. Exhibit A is provided separately for filing under seal pursuant to the protective order.

PYCO originally set September 19 as the due date for Pioneer/KJRY's discovery responses.¹ On September 19, PYCO received a faxed letter (Exhibit C) from Mr. Mullins, counsel

¹ PYCO reserved the right to specify an earlier due date if Pioneer/KJRY tendered discovery to PYCO providing less than 25 days to respond, which Pioneer/KJRY subsequently in fact did.

for Pioneer/KJRY, in which Pioneer/KJRY declined to respond. Pioneer argued that although the discovery defined Pioneer to include KJRY and all subsidiaries, it was addressed to Pioneer, and Pioneer was not required to respond as it was not a party. Pioneer also argued that discovery requests should be deferred until after Pioneer filed its all-SAW feeder line application (projected for September 28).

Efforts by PYCO to Reach Voluntary Solution

On September 20, PYCO faxed a response (Exhibit D) noting that PYCO basically defined Pioneer just as KJRY/Pioneer filed "railroad" for purposes of Pioneer/KJRY's discovery requests for PYCO, and should deem it all as directed to KJRY in any event. PYCO noted that under the procedural schedule, PYCO could not wait to propound discovery until after Pioneer/KJRY filed an all-SAW application, because there would be insufficient time for Pioneer/KJRY to prepare a response, for PYCO's experts to consider it, and for PYCO to incorporate it in PYCO's comments.

On September 21, Pioneer/KJRY offered to respond by October 6 (Exhibit E). In PYCO's response faxed the same day, we noted that PYCO must file comments on Pioneer/KJRY's feeder line application by October 12, 2006 under the STB procedural schedule, and that receipt of responses on Friday, October 6, would provide inadequate time to distribute same to our experts let alone incorporate their comments. In compromise, PYCO requested that document responses be in the hands of PYCO's counsel by October 3, and interrogatory responses by October 4,

for distribution to and consideration by PYCO's experts. We also requested clarification that these would include responses on behalf affiliates of KJRY (including Pioneer and its financial statements which were relied upon by the Director, Pioneer and KJRY in this proceeding). By letter faxed September 22, 2006, Pioneer/KJRY offered to respond by October 4, but only for KJRY. Pioneer/KJRY basically stated it would withdraw its offer and assert it was not served if PYCO seeks to compel a response from Pioneer. In other words, Pioneer and KJRY counsel appears to indicate his clients will both impede discovery if PYCO seeks information from Pioneer. Pioneer/KJRY counsel has no basis for this action: he cannot claim KJRY was not served; he is counsel for KJRY; PYCO serves him with all papers which we understand to require service on other parties in this proceeding.

Request for Sub Poena and Motion to Compel

KJRY, a subsidiary of Pioneer, unquestionably relied upon Pioneer's consolidated financial statement for purposes of its showing of financial responsibility, on which the Director ruled before PYCO even received a copy to review. PYCO's experts upon examination of the statement have raised a number of questions. KJRY also relied upon the experience of Pioneer and its affiliates in connection with claims made by KJRY that it could provide adequate rail service in Lubbock. All contacts on behalf of KJRY to PYCO and to our knowledge the Board, other shippers and SAW, have been by Pioneer's president or Pioneer's

general counsel. Indeed, LaKemper, Pioneer's general counsel, represented to PYCO that Pioneer intended to file in the feeder line proceeding. He made no reference to KJRY. KJRY is simply Pioneer's nom de guerre here. Under the circumstances, discovery is clearly appropriate against KJRY and all affiliated entities, including especially KJRY's parent and sister corporations. Pioneer/KJRY should not be permitted to evade discovery of what amounts to their joint activity by pointing fingers at each other or by use of other cute tricks.

PYCO may seek an order compelling discovery responses within ten days of a refusal to provide discovery. 49 C.F.R. § 1114.31(a). On September 19, Pioneer and KJRY refused to provide discovery responses. On September 22, Mr. Mullins (counsel for Pioneer and KJRY) refused to make responses for Pioneer and any affiliate of same other than KJRY, and also refused as to KJRY if PYCO sought relief from this Board as to Pioneer and its other affiliates. This motion to compel is timely.

In any event, this Board has power to inquire into the business of related corporations and to obtain information necessary to carry out its regulatory responsibilities (49 U.S.C. § 721(b)(2)&(3), and sub poena witnesses and documents. 49 U.S.C. § 721(c)&(d). Pursuant to this authority, PYCO seeks an order from this Board requiring Pioneer to provide the information and documents sought by PYCO in Exhibits A and B, to the extent provided in the first paragraph of this Motion, and a

sub poena directing Pioneer to furnish a witness with same for examination in Lubbock, Texas on October 3, 2006, at the offices of Gary McLaren, Richards, Elder, et al., 3305 -- 66th St., Suite 1A, Lubbock, TX 79413 at 10 AM, Texas time.

Pioneer is wrong to the extent it claims some kind of corporate veil protection from discovery. In any event, it is certainly subject to information requests and sub poena under 49 U.S.C. § 721. Nothing in Application of the National Railroad Passenger Corp. under 49 U.S.C. 24308(A) -- Springfield Terminal Railway Company, F.D. 33381, served May 6, 1997, cited by Pioneer/KJRY in its letter of September 19 is to the contrary. That case merely indicated that the party seeking discovery could obtain the information it sought from Amtrak and did not require third party discovery. The other alleged precedent cited by Pioneer (a letter from the Secretary) is not set forth as a Decision for the Board on the website, or apparently otherwise available on the STB website. We do not know if the Secretary in fact said what Pioneer claims, or said what Pioneer claims in a context relevant here, but in any event the alleged document is still not precedent.

Pioneer suggests that PYCO wait until Pioneer/KJRY files its application for all of SAW later this week. Under the procedural schedule set forth by this Board, Pioneer/KJRY must file its application by September 28, in which event PYCO must file its comments on Pioneer's application by October 12, 2006. PYCO will not have time to frame discovery, obtain responses,

provide same to its experts, receive their input, and prepare comments.

Moreover, Pioneer claims in its letter of September 21 that discovery must be tendered within 20 days of the due date of an opening pleading, and a feeder line application is essentially an opening pleading. PYCO accordingly framed questions which will be germane whatever Pioneer/KJRY files, and seeks responses as to those questions. We may have additional or more refined questions after reviewing Pioneer's application, but the expedited schedule precludes delay. To the extent Pioneer or KJRY attempt to avoid response under some regulatory provision, that provision should be waived to the extent necessary to compel a response that is meaningful and consistent with this Board's procedural schedule.

Pioneer/KJRY have been on notice of PYCO's discovery since August 30 for Exhibit B and August 25 for Exhibit A. They should have responded on September 19. Under applicable procedural orders, the Pioneer/KJRY application for all-SAW is due on September 27 or 28. In order to avoid conflict with that filing but allow PYCO time for some review of the discovery responses, we request that Pioneer/KJRY be required to furnish its discovery response no later than Tuesday, October 3, 2006, at 10 AM, applicable Texas time.

In its September 19, 21 and 22 letters, Pioneer/KJRY tries to create technicalities to avoid discovery. Pioneer and its subsidiary are involved in this proceeding at their volition.

They should be prepared to cooperate in reasonable discovery. They have tendered discovery to PYCO to which PYCO intends to respond. They should do likewise. Pioneer claims that the discovery was misaddressed to Pioneer, not KJRY. This is absurd. In any event, in our fax of September 20, we stated that Mr. Mullins must deem the discovery directed to KJRY and all affiliated parties and individuals.²

This is an expedited proceeding. PYCO supports continued expedition, because it does not wish to be subject to inadequate rail service and retaliation by SAW. Because this is an expedited proceeding, the parties should cooperate to provide discovery responses in a timely fashion consistent with the rest of the procedural schedule. Pioneer/KJRY claim they are entitled to a 15 day minimum, and claim October 3 is less than 14 days from September 20. There is no minimum "processing" period for documents; they must be provided in a "reasonable" amount of time. October 3 is amply reasonable in the circumstances here. As to interrogatory answers, Pioneer and KJRY have been on notice since August 25 and August 30. If that fifteen period flows, it flows from those dates, not September 20, and to the extent otherwise, PYCO moves it be waived for purposes here.

The discovery PYCO seeks against Pioneer cannot be obtained

² Mr. Mullins evidently contrives this to mean that PYCO is seeking information on the financial responsibility of Pioneer employees. This is absurd. Discovery generally must be provided by officers, employees and agents of a corporation.

against KJRY alone. KJRY/Pioneer relies on Pioneer's consolidated financial statements; KJRY apparently will not disclose information sought about those unless ordered by the Board. In addition, contacts between SAW and Pioneer which prompted KJRY/Pioneer involvement were between SAW and Pioneer, and any due diligence and correspondence was evidently by Pioneer, not KJRY. Finally, PYCO's discovery on all points for which compulsion of response is sought is relevant and material.

Pioneer/KJRY make other claims in their letters, but these are all irrelevant, immaterial, unsupported, or histrionic.

Conclusion

For the reasons stated above, PYCO requests this Board to issue an order compelling Pioneer/KJRY to respond to the discovery identified in the first paragraph in this motion in full with all non-privileged information no later than Tuesday, October 3, 2006, or, in the alternative, to sub poena that information to be presented through a witness and the requested documents at the offices of Gary McLaren in Lubbock, Texas on October 3, 2006.

Because of the deadlines, PYCO requests that the Board issue an order compelling discovery or sub poenaing the documents and a witness to the extent necessary by close of business September 29, 2006.

Respectfully submitted,

Charles H. Montange
for PYCO Industries, Inc.
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
fax: -3739

Of counsel:

Gary McLaren, Esq.
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Exhibit A -- August 30 letter with information/document
requests (under separate cover/seal)
Exhibit B -- discovery served August 24 on Pioneer/KJRY
Exhibit C -- Mullins letter to Montange, Sept. 19
Exhibit D -- Montange letter to Mullins, Sept. 20
Exhibit E -- Mullins letter to Montange, Sept. 21
Exhibit F -- Montange fax to Mullins, Sept. 21
Exhibit G -- Mullins letter to Montange, Sept. 22

Certificate of Service

I hereby certify service of the foregoing Appeal and Petition upon the following counsel of record by express service, next business day delivery, this 25th day of September 2006:

Thomas McFarland
208 South LaSalle Street, Suite 1890
Chicago, IL 60606-1112 (for SAW)

William Sippel, Esq.
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2832 (for US Rail Partners)

Williams Mullins, Esq.
Baker & Miller
2401 Pennsylvania Ave. NW, Suite 300
Washington, D.C. 20037 (for Pioneer and KJRY)

Adrian Steel, Esq.
Mayer, Brown, Rowe & Maw
1909 K Street, N.W.
Washington, D.C. 20006-1101 (for BNSF)

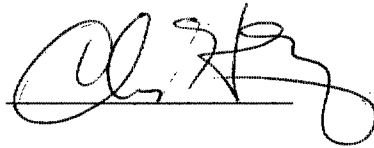
A handwritten signature in black ink, appearing to read 'A. Steel', written over a horizontal line.

Exhibit B

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. --	)	
FEEDER LINE APPLICATION--	)	F.D. 34890
SOUTH PLAINS SWITCHING LTD.	)	
KEOKUK JUNCTION RAILWAY CO.	)	
-- FEEDER LINE APPLICATION --	)	F.D. 34922
SOUTH PLAINS SWITCHING LTD.	)	

To: PIONEER RAILCORP d/b/a Keokuk Junction Railway

REQUESTS FOR PRODUCTION OF DOCUMENTS
AND
INTERROGATORIES

ON BEHALF OF
PYCO INDUSTRIES, INC.

Definitions

For purposes of these discovery requests, "document" shall include electronic recordings, maps, charts, schematics, notes, and all other written materials, and shall include documents in the possession of Pioneer Railcorp ("Pioneer"), its officers, directors, employees, agents, or contractors.

"Pioneer" as used herein shall include all Pioneer subsidiaries and affiliates, including Keokuk Junction Railway.

"Identify" shall mean to disclose the name, address, and telephone number.

"Shipper" shall mean anyone who receives from, or deliveries to, SAW shipments for rail transportation in Lubbock, Texas.

"Potential shipper" means anyone who expresses possible interest in receiving or delivering shipments by rail over SAW

lines in Lubbock, Texas.

"BNSF" means BNSF Railway Company, including any employee, agent or officer thereof.

"SAW" means South Plains Switching, Ltd. including any employee, agent or officer thereof, and including Larry Wisener.

I. DOCUMENT REQUESTS

Pursuant to 49 C.F.R. § 1114.30 and 49 C.F.R. § 1151.2, applicant PYCO Industries, Inc. ("Applicant" or "PYCO"), makes this request to Pioneer for production of documents.

A. Instructions

Pursuant to 49 C.F.R. § 1114.30(b), applicant PYCO provides the following instructions concerning time, place, and manner of making the inspection of documents:

Applicant requires Pioneer to produce all documents requested herein for inspection no later than Tuesday, September 19, 2006. NOTE: This date is based upon the schedule resulting from STB orders served during the period August 16-18 in F.D. 34890. Should STB alter that schedule, PYCO reserves the right to alter the due date of Pioneer's responses hereunder. If Pioneer tenders any discovery request to PYCO specifying a shorter period of response than 25 days, then the response deadline for these discovery requests shall be deemed modified to such shorter period of time.

If Pioneer asserts an objection on ground of privilege against disclosure of any document otherwise responsive document, please identify the document by name of author, name

of recipient, and date of document.

Documents shall be produced at the law offices of Charles H. Montange, 426 N.W. 162d St., Seattle, WA 98177. PYCO will pay reasonable costs for duplication and, if necessary, express delivery.

B. Document Requests

Please provide the following documents in accordance with the instructions and definitions above, and as provided in the regulations of the Surface Transportation Board:

1. (a) All documents received from SAW by Pioneer.
(b) All documents delivered to SAW by Pioneer.
(c) All consultant reports prepared at the request of Pioneer relating in any way to property currently owned by SAW in Lubbock, Texas.
2. Any agreements, proposed agreements, or drafts of agreements or proposed agreements between SAW and Pioneer.
3. All notes, records, reports or other documents bearing on meetings or telephone conferences between SAW and Pioneer.
4. All notes, records, reports or other documents bearing on inspection of the SAW lines in Lubbock by Pioneer.
5. All notes, records, reports or other documents showing or arising out of communications with any shipper or potential shipper in Lubbock, Texas, and Pioneer.
6. From January 1, 1985 to the date on which Pioneer responds to this document request:
 - (a) All complaints filed in court or before a regulatory

agency (e.g., Surface Transportation Board or Interstate Commerce Commission) by a shipper, a governmental entity owning a railroad, or another railroad naming Pioneer (including one of its affiliates or subsidiaries or officers or directors) as a defendant or cross-defendant.

(b) All judicial and administrative decisions relating to any complaint provided in response to 6(a).

(c) All complaints filed in court or before a regulatory agency by Pioneer Railcorp against a governmental entity owning a railroad, a shipper, or another railroad for breach of contract or for failure to pay a tariff, surcharge and/or fee.

(d) All judicial and administrative decisions relating to any complaint provided in response to 6(c).

7. All documents relating to any informal complaints or objections made by a governmental entities or shippers or potential shippers to the Interstate Commerce Commission or the Surface Transportation Board concerning Pioneer Railcorp.

8. All documents showing the nature and scope of any proposed or possible rehabilitation of all or any portion of SAW lines in Lubbock, Texas, including all rehabilitation cost estimates.

9. All documents showing expected costs of operations, including maintenance of way expenses, should Pioneer acquire any or all of the SAW lines.

10. All documents showing the source or possible sources of funds for acquisition, rehabilitation, and operation of the

SAW lines should Pioneer acquire such lines.

11. All documents, including meeting notes, bearing on any contacts between Pioneer and BNSF in connection with SAW property in Lubbock.

12. All financial projections and business plans prepared by Pioneer or for Pioneer in connection with possible purchase and operation of SAW's lines in Lubbock by Pioneer.

13. All title reports or information, and all appraisals or estimates of value, in the possession of Pioneer relating to any real estate, fixtures, track or ties which Pioneer has proposed to acquire from SAW, or intends to propose to acquire from SAW in Lubbock, Texas.

14. All documents reflecting any agreement between Pioneer and SAW should Pioneer not acquire any of SAW's rail property in Lubbock from SAW.

II. INTERROGATORIES

Pursuant to 49 C.F.R. § 1114.26 and 49 C.F.R. § 1151.2, applicant PYCO Industries, Inc. (PYCO), propounds the interrogatories set forth herein to Pioneer Railcorp (as defined in the document requests).

A. Instructions

Pursuant to 49 C.F.R. § 1114.26, applicant PYCO provides the following instructions concerning time for answering interrogatories.

Applicant requires Pioneer to answer all interrogatories fully and completely no later than September 19, 2006 -- twenty five (25) days from the date of receipt by express (August 25, 2006) of these interrogatories.

Answers to interrogatories shall be served upon the undersigned counsel at his address of record. Should Pioneer elect to produce documents in lieu of answering an interrogatory in accordance with § 1114.26(b), said documents shall be produced at undersigned counsel's address on the date the answers are otherwise due.

B. Interrogatories

Please answer the following interrogatories fully and completely in accordance with the instructions and definitions above, and as provided in the regulations of the Surface Transportation Board:

1. Identify (by providing the name(s) of all defendants and plaintiffs, the attorneys representing same, the name of case, the date of filing of the initial complaint, the name of the tribunal adjudicating the matter, the date of any substantive opinion concerning the dispute, the date of any settlement, and who may have copies of the complaint and any decisions or settlement documents) all litigation (i) between Pioneer and a shipper, (ii) between Pioneer and another railroad, or (iii) between Pioneer and a governmental entity owning a railroad in which one or more of the following claims was alleged or litigated: (a) breach of contract; (b) unlawful

imposition of a rate increase, or surcharge, or other fee; (c) failure to maintain track; (d) unlawful removal of railroad assets; or (d) breach of common carrier obligations.

2. (a) Identify all persons, including outside consultants, whom Pioneer has employed or relied upon for purposes of estimating the value of SAW's assets in Lubbock which Pioneer has proposed or contracted to acquire, the date of that employment, and summarize the estimate of value provided and the basis for that estimate.

(b) Identify all persons, including outside consultants, whom Pioneer has employed or relied upon for purposes of estimating the cost for rehabilitation of SAW's assets in Lubbock which Pioneer has proposed or contracted to acquire, the date of that employment, and summarize the estimate of rehabilitation costs provided and the basis for that estimate.

(c) Identify all persons, including outside consultants, with knowledge of how Pioneer proposes to finance acquisition and rehabilitation of SAW's assets in Lubbock which Pioneer has proposed or contracted to acquire; and summarize the knowledge that person has concerning such funding for Pioneer.

(d) Identify all persons, including outside consultants, whom Pioneer has employed or relied upon for purposes of contacting BNSF or shippers or potential shippers with respect to SAW's assets in Lubbock which Pioneer has proposed or contracted to acquire; the date of each contact; and summarize the information supplied or received in connection with each

such contact.

3. (a) Has Pioneer received or prepared any report, appraisal, estimate, or information (oral or in writing) bearing upon the value of SAW's assets, or any portion thereof, in Lubbock, or the cost to rehabilitate such assets for rail purposes?

(b) If the answer to 3(a) is yes, please identify each such report by listing title, subject matter, person who prepared it, person who received it, date of preparation, date of receipt, amount paid by Pioneer for the information, and also provide a summary of the value or cost information set forth and the basis therefore.

4 (a). Does Pioneer have an agreement, orally or in writing, with SAW or any other person for reimbursement of Pioneer should Pioneer's efforts to acquire SAW's lines in Lubbock not be successful?

(b) If the answer to 4(a) is yes, please set forth the terms of the agreement.

5. State how Pioneer first became aware of the possibility of acquiring the SAW assets in Lubbock.

6. (a) Should Pioneer acquire rail assets from SAW in Lubbock for operation, state whether Pioneer (i) intends to impose a surcharge or other charge or tariff (or increase in an existing charge or tariff) to obtain compensation from shippers in addition to what it receives from BNSF as a division of the line haul tariff, or (ii) is considering imposing such a

surcharge or other charge or tariff, or increase, to obtain compensation from shippers in addition to what it receives from BNSF as a division of the line haul tariff.

(b) if the answer to 6(a) is yes, state (i) whether this issue has been discussed with BNSF and if so, who discussed it with BNSF and with whom at BNSF, and whether BNSF consented to any such surcharge or other charge or tariff; (ii) the identities of those shippers upon whom Pioneer is considering imposing a surcharge or other charge or tariff; and (iii) the amount of the surcharge or other charge or tariff to be imposed or under consideration for each shipper.

7. In an email sent by Mr. Carr to Mr. Kring on August 23, 2006 (copy attached), Mr. Carr states that "[PYCO's] attorney's portrayal of [Pioneer] is completely false." Please state each aspect of the alleged portrayal that Pioneer contends is false, and state all facts and evidence on which Pioneer relies for that purpose.

8. If rail lines require rehabilitation, does Pioneer agree that a railroad acquiring the lines should have the financial capability of paying for that rehabilitation? If the answer is no, please state all facts and arguments on which you rely for that answer.

9. In Pioneer's "Reply to Motion to Reject" at p. 11, Pioneer refers to "financial information provided by SAW" that Pioneer alleges was provided to PYCO. Please identify the information Pioneer believes was provided to PYCO and all facts

on which Pioneer relies for that belief.

10. In Pioneer's "Reply to Motion to Reject" dated August 16 at p. 11, Pioneer claims that "SAW did not call Pioneer first." (a) Why did Mr. Carr make a contrary representation to BNSF on or about August 2, 2006? (b) Why did Mr. LaKemper make a contrary representation to PYCO's Lubbock counsel (Mr. McLaren) on July 18, 2006? (c) When did SAW first contact Pioneer concerning possible sale of SAW assets in Lubbock to Pioneer? (d) State the date of each subsequent contact between SAW and Pioneer concerning possible sale of SAW assets in Lubbock to Pioneer. (e) For each date listed in response to (c) or (d), state the name of the person(s) involved for SAW and for Pioneer. (f) State the date of the contact referenced in Pioneer's Reply at p. 11 n.6, the persons involved, who is referred to by the word "its" and whether Pioneer disclosed it was considering filing a competing feeder line application.

11. (a) State all the facts on which Pioneer relies for the claim that "PYCO knows the value of SAW's operations and appears to be trying to steal that value at artificially low NLV prices" as stated by Pioneer in its "Reply to Motion to Reject" at p. 12 (b) Describe in detail how PYCO can "steal" property that is valued by the Surface Transportation Board under 49 U.S.C.. § 10907, as claimed by Pioneer in its "Reply to Motion to Reject" at p. 11. (c) Is Pioneer contending that 49 U.S.C. § 10907 is an unconstitutional taking of property as applied to SAW? (d) If the answer to the forgoing is "yes," then please

state all facts on which Pioneer relies.

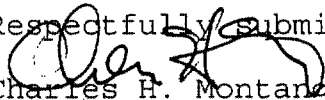
12. State all the reasons that (to paraphrase Pioneer's "Reply to Motion to Reject" at p. 12) Pioneer from the inception of its involvement in this proceeding "has chosen to attack" PYCO "rather than work with it"?

13. (a) Is it Pioneer's contention that PYCO seeks to acquire SAW assets in order to create for itself an unfair competitive advantage? (b) If so, state the party or parties over whom Pioneer so contends PYCO seeks to create an unfair competitive advantage, and state all the facts on which Pioneer relies for that allegation.

14. (a) Is it Pioneer's contention that rehabilitation must be postponed if engages in rehabilitation would result in failure to make a reasonable profit from a rail line? (b) Please state all facts and arguments on which Pioneer relies for its answer to (a). (c) In Pioneer's view, do rehabilitation costs increase or decrease over time if they are postponed? (d) Please state all facts on which Pioneer relies for its answer to (c).

15. Please state in full Pioneer's definition of "reasonable profit" (see Pioneer's "Reply to Motion to Reject" at p. 12).

Respectfully submitted,

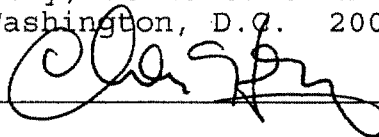

Charles H. Montange
for PYCO Industries, Inc.
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
fax: -3739

Of counsel:

Gary McLaren, Esq.
Phillips & McLaren
3305 66th St., Suite 1A
Lubbock, TX 79413
(806) 788-0609
for PYCO Industries, Inc.

Certificate of Service

I hereby certify service of the above discovery requests on 24 July 2006 upon William Mullins, counsel for Pioneer Railcorp, by express service, next day delivery, at Baker & Miller, 2401 Pennsylvania Ave., NW, Suite 300, Washington, D.C. 20037.



c.montange

From: "Gail Kring" <gkring@pycoindustries.com>
To: "c.montange" <c.montange@verizon.net>
Sent: Thursday, August 24, 2006 6:48 AM
Subject: FW: Pioneer Railcorp

e-mail I received this morning. Gail

From: JM1Carr@aol.com [mailto:JM1Carr@aol.com]
Sent: Wednesday, August 23, 2006 3:56 PM
To: gkring@pycoindustries.com
Subject: Pioneer Railcorp

Dear Gail:

Thanks for taking my call earlier today, I am sorry I did not hear back from you. We are convinced you are allowed to talk to me, and it is my opinion that your attorney probably advised you against it so he can keep running up your legal bill. No offense, but it looks to me like he is doing a very good job in that regard, and I dislike seeing that happen. The purpose for my call was to suggest to you that it would make sense, for all involved, at some point to put the lawyers on the sideline and try to work out a mutually acceptable resolution. This is the preferred approach by the Surface Transportation Board. You should also know that your attorney's portrayal of our company is completely false. If we are successful in our attempt to acquire all of SAW's operating railroad, I am confident you will be extremely satisfied with our service and professionalism. I look forward to talking to you under those circumstances.

Regards,

Mike Carr
CEO – President
Pioneer Railcorp

8/24/2006

Exhibit C

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
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William A. Mullins

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September 19, 2006

VIA FAX AND OVERNIGHT DELIVERYCharles H. Montange, Esq.
426 NW 162nd Street
Seattle, WA 98177

Re: STB Finance Docket No. 34890
*Pyco Industries, Inc. – Feeder Line Application – South Plains
Switching, Ltd. Co.*

STB Finance Docket No. 34922
*Keokuk Junction Railway Co. – Feeder Line Application – South
Plains Switching, Ltd. Co.*

Dear Mr. Montange:

This letter will serve as Pioneer Railcorp's ("Pioneer") comprehensive response to the Requests for Production of Documents and Interrogatories tendered to Pioneer by Pyco Industries, Inc. ("PYCO") on August 24, 2006, as subsequently supplemented. Pioneer's response to PYCO's discovery is offered pursuant to the Surface Transportation Board's ("STB" or "Board") regulations at 49 C.F.R. §1114.21, and related regulations. Furthermore, because I am counsel for both Pioneer and Keokuk Junction Railway ("KJRY"), I am also authorized to provide you with KJRY's comments upon the information PYCO is seeking from Pioneer, even though it is not the party to which PYCO's discovery was directed.

As an initial matter, Pioneer reiterates that it is *not* a party to these proceedings. It is a noncarrier holding company that controls several common carrier railroads, including KJRY. Pioneer most emphatically states that, for obvious legal reasons, it is not KJRY's alter ego and it does not conduct business under the trade name "Keokuk Junction Railway." As a nonparty, Pioneer is not required to respond to discovery in these proceedings, and PYCO has made no effort to include Pioneer by way of a subpoena. See 49 CFR 1114.21, 1114.26, and 1114.30; *San*

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Charles H. Montange, Esq.

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Jacinto Rail Limited Construction Exemption and The Burlington Northern and Santa Fe Railway Company Operation Exemption – Build-out to the Bayport Loop Near Houston, Harris County, TX, STB Finance Docket No. 34079, Letter from STB Secretary sent to Galveston Bay Conservation and Preservation Association dated February 11, 2003 (discovery in not available from an entity that is not a party to a proceeding); *cf. Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a) – Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company*, STB Finance Docket No. 33381 (STB served May 6, 1997) (discovery against third parties generally not available absent a subpoena). Moreover, PYCO has not demonstrated that the information it seeks could not be obtained from KJRY or another party to this proceeding. Accordingly, Pioneer objects to PYCO's discovery in its entirety because it is not a party to this proceeding.

To the extent that PYCO might consider propounding the same, or essentially the same, discovery upon KJRY in a revised request, KJRY believes that such a request directed to KJRY would be premature, although KJRY would, of course, respond formally to such discovery requests if served upon it and in accordance with the Board's regulations and timeframes provided for responding. KJRY believes that any discovery served upon it at this time would be premature because it would be filed before KJRY has filed its feeder line application ("FLA") covering all of the lines of South Plains Switching, Ltd. Co. ("SAW"). Just as PYCO has done in expanding its Alternative Two FLA to encompass an "All-SAW" alternative, KJRY has likewise obtained STB permission to do the same. KJRY will file an expanded FLA covering the so-called "All-SAW" option on or before September 27, 2006.

PYCO, SAW, and KJRY have all stated on the record that it would be preferable for the STB to sanction an All-SAW transfer, rather than a partial sale of SAW's lines under so-called Alternative Two. The focus of KJRY's ongoing efforts and upcoming FLA will thus be upon an All-SAW option. On the other hand, the focus of the present discovery is on the Alternative Two proceeding. KJRY submits that PYCO's interests would be better served by reviewing the soon to be filed FLA rather than simply turning around and resubmitting discovery requests that are not even directed at the most relevant proceeding. Indeed, KJRY believes that KJRY's expanded FLA will likely render PYCO's need to obtain any discovery unnecessary. Nonetheless, PYCO can reassess its discovery strategy at that time and in light of previous efforts by interested parties in other FLA proceedings to obtain discovery.¹

As discussed above, Pioneer objects to PYCO's discovery requests in their entirety. Pioneer is not a party to these proceedings, and therefore is under no obligation to respond. Moreover, to the extent that PYCO may subsequently seek to propound the same or similar

¹ In particular, KJRY urges PYCO to consider the Board's treatment of both the relevancy of and the scope of discovery in previous feeder line cases. *Keokuk Junction Railway Company – Feeder Line Acquisition – Line of Toledo, Peoria & Western Railway Corporation Between La Harpe and Hollis, IL*, STB Finance Docket No. 34335 (STB served Nov. 13, 2003).

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discovery against KJRY, Pioneer's corporate subsidiary and a party in these proceedings, KJRY submits that such a request would be premature and not even related to the proceeding that all the parties agree is the most relevant proceeding. Indeed, after it reviews KJRY's expanded FLA, PYCO can then reassess whether, in the light of that filing, its present discovery remains either appropriate or necessary or whether it needs to file revised discovery. Pending KJRY's expanded FLA filing, however, it appears that PYCO's present discovery requests, especially if they are simply revised and refiled against KJRY, are directed more at harassing KJRY and besmirching KJRY's good reputation rather than attempting to address the relevant statutory standards and the relevant proceeding.

Sincerely,



William A. Mullins

cc: Secretary Vernon A. Williams
J. Michael Carr
Daniel A. LaKemper, Esq.

Exhibit D

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET

SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739

September 20, 2006
by fax and express delivery

William A. Mullins, Esq.
Baker & Miller
2401 Pennsylvania Avenue, NW
Suite 300
Washington, D.C. 20037

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

and KJRY -- FLA -- SAW, F.D. 34892

Dear Mr. Mullins:

The above proceedings so far are being conducted under an abbreviated briefing schedule. In order to adhere to that schedule, or to come close to adhering to that schedule, it is obviously important that PYCO obtain discovery in a timely fashion. In your September 19 letter, you decline to respond at all to PYCO's August 28 and August 30 discovery requests (due by their terms on September 19) on two grounds.

In order to encourage voluntary cooperation on the part of your client in making discovery responses before approaching the Surface Transportation Board (STB) with a motion to compel, I am providing you with this reaction to your letter.

1. You claim that the discovery requests were aimed at Pioneer, which you say is not a party. Your client's own discovery served on PYCO defines "railroad" to include all affiliated entities. You have waived the objection you make, even were it otherwise valid, which it is not. PYCO's discovery requests are addressed to you as counsel for KJRY/Pioneer, and clearly encompass Keokuk Junction Railway and all affiliated railroads. You are obligated to respond. Moreover, your client based its financial responsibility upon Pioneer's consolidated financial statements, and PYCO is entitled to make inquiry into those statements. All questions and requests which we have made are relevant and should be answered by KJRY/Pioneer based on all information available to KJRY and affiliated entities like Pioneer. In the alternative, you should immediately deem all the discovery to be directed to

KJRY and any affiliated party or individual.

2. You claim the discovery is premature because Pioneer/KJRY has not filed its all-SAW feeder line application. You state or imply that PYCO's discovery is aimed at Alternative Two, not all-SAW, which you say or imply is now (or soon will be) the relevant property at issue. With respect, PYCO's discovery to your client is clearly designed to obtain relevant and material information on whatever package of SAW assets is selected by your client (Alternative Two or all-SAW), and most certainly it encompasses and includes all-SAW. One thing that is clear: it is not limited to Alternative Two, nor does it require duplication of effort in terms of a response. It is thus neither premature nor irrelevant. I looked it all over again to verify that fact. If you believe otherwise, I cordially invite you to call me and we will work it out.

If we waited until you filed your all-SAW application to tender discovery, then under STB's briefing schedule, PYCO would not have time to formulate and tender, Pioneer/KJRY would not have time to respond, and PYCO would not have time to incorporate information from that response in PYCO's pleadings. Under these circumstances, it appears a smokescreen to claim that PYCO's discovery requests are premature.

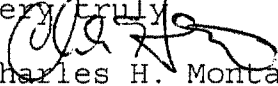
On the other hand, we note that you say you are filing a competing application on September 27. In prior orders, STB has indicated that it wishes to be sensitive that discovery responses not interfere with preparation of valuations. As we read the Board's orders, the Board is allowing SAW to serve its discovery responses two days after filing its valuation information. We tried to pick a date (September 19) for a Pioneer/KJRY response which would give you ample time within the confines of the briefing schedule but not interfere with your September 27 filing. Now that you have missed the September 19 date, as a courtesy to you we will extend the due date to September 29, provided (a) you agree in writing sent by fax to me by Noon, Eastern Daylight Time, on September 21 to respond substantively and completely with all non-privileged information to our already tendered discovery by September 29 and (b) you extend us the same courtesy as to discovery which you have tendered to PYCO in which you demand a response by us on September 27. That date is essentially the due date under STB orders for our revised valuation, assuming SAW complies with the STB schedule for making discovery responses to us.¹

We otherwise reserve the right to move to compel or to

¹ Our revised valuation is due on September 27, assuming Mr. McFarland responds to our discovery requests today, as we read the STB orders to require.

seek other relief as appropriate. Since you copied the STB Secretary with your letter of September 19 refusing to make discovery responses, by copy of this letter to STB, we indicate our effort to resolve the dispute voluntarily, and also to alert the agency that we may be filing a motion to compel a response to our discovery by your client in the near future.

By my signature below, I certify service of this letter by fax transmission and overnight express delivery on the date above.

Very truly

Charles H. Montange
for PYCO Industries, Inc.

cc. Hon. Vernon Williams, STB Secretary
Thomas McFarland, Esq. (for SAW)
John Heffner, Esq. (for WTL)
Gary McLaren, Esq. (for PYCO)

Exhibit E

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September 21, 2006

VIA FAX AND OVERNIGHT DELIVERY

Charles H. Montange, Esq.
426 NW 162nd Street
Seattle, WA 98177

Re: STB Finance Docket No. 34890
*Pyco Industries, Inc. – Feeder Line Application – South Plains
Switching, Ltd. Co.*

STB Finance Docket No. 34922
*Keokuk Junction Railway Co. – Feeder Line Application – South
Plains Switching, Ltd. Co.*

Dear Mr. Montange:

I have received your September 20 letter in response to Pioneer Railcorp's ("Pioneer") September 19, 2006 letter in response to the Requests for Production of Documents and Interrogatories tendered to Pioneer by Pyco Industries, Inc. ("PYCO") on August 24, 2006, as subsequently supplemented. I appreciate your efforts to encourage voluntary cooperation and share that goal, but as you might expect, I cannot agree with the merits of your position regarding discovery against Pioneer. Your discovery was unquestionably directed against Pioneer. Every instruction, document request, and interrogatory was referenced to Pioneer. As you know, and your letter basically concedes, Pioneer is not a party to these proceedings. As a nonparty, Pioneer is not required to respond to discovery in these proceedings and will not be doing so.

Nonetheless, in an effort to cooperate with you and pursuant to your alternative request, KJRY will deem your discovery requests as directed against it and not Pioneer. KJRY will deem the discovery as filed against it on September 20, the date of your response. Assuming you agree

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Charles H. Montange, Esq.

September 21, 2006

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with that as the applicable filing date, KJRY will also agree to waive its right to object to the discovery on the basis that it violated the prohibition against filing discovery within 20 days of the due date for an opening filing, such as the soon to be filed competing feeder line application for the All-SAW alternative. 49 CFR 1114.26(c); 49 CFR 1114.27(c). To the extent your discovery is directed at non-privileged documents that are in KJRY's possession and are relevant to the feeder line application that KJRY has filed, they will be produced, subject to standard objections if otherwise applicable. Likewise, to the extent an interrogatory can be construed to apply to KJRY, it too will be answered, subject to standard objections if appropriate. In accordance with the Board's regulations, KJRY will respond on October 6, fifteen days after the discovery has been filed. See 49 CFR 1114.26(a); 49 CFR 1114.27(a).

Finally, your letter appears to express frustration over the time periods involved in this proceeding and the shortened nature of the various filing deadlines. KJRY shares those frustrations but reminds you that those deadlines were a result of PYCO's repeated requests. KJRY remains willing to work with PYCO regarding the various time periods and would consider an extension of the procedural schedule if PYCO and KJRY believe one is necessary. If Pyco has any other concerns, please call me to discuss.

Sincerely,



William A. Mullins

cc: Secretary Vernon A. Williams
J. Michael Carr
Daniel A. LaKemper, Esq.

Exhibit F

Fax Cover Page

To: William Mullins, for Pioneer/KJRY

Copy to: Hon. Vernon Williams, STB

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

KJRY -- Feeder Line Application -- SAW, F.D. 34892

From: Charles H. Montange
426 NW 162 St.
Seattle, WA 98177 (for PYCO)

(206) 546-1936
fax: 546-3739

Date: 21 Sept. 2006 (corrected version)

Message:

This responds to your letter of 21 September, which you copied to STB, so I also with this.

PYCO of course remains interested in an expeditious STB proceeding, as provided by National Transportation Policy. PYCO and other shippers require assurance of relief from inadequate rail service by the incumbent rail provider. If you detect any frustration, it must flow from our perception that other parties fail to cooperate in providing discovery responses on issues clearly germane to the case. Pioneer/KJRY voluntarily is participating in the proceeding, and should be prepared to cooperate in reasonable discovery from the outset. As to your continued claim that our discovery did not encompass KJRY, again I note that our discovery defined "Pioneer" to include KJRY and affiliated entities, in a fashion essentially identical to yours to us. Your client remains obligated to provide a timely response.

By my reading of STB's procedural schedule, any comments which PYCO cares to make on KJRY's filing (due Sept. 28) as to all SAW will be due on October 12, 2006. You propose to provide interrogatory answers on October 6. October 6 falls on a Friday, and gives inadequate time for our experts to review the response and provide input for our comments, which must be at the agency on October 12. You suggest October 6 on the basis of

49 C.F.R. § 1114.26(a) which gives 15 days from propounding for preparation of answers. The latest of our interrogatories/document requests were in your hands on August 30. Since your client has already had more than 15 days notice, section 1114.26(a) is not applicable as a time constraint. Without waiver of our position, PYCO will accept your responses (assuming they are complete as to non-privileged information) as timely if in our hands by Wednesday, October 4. Hopefully this will allow our experts three days to consider what you provide and then give us a day to incorporate their input. That seems the minimum we could accept.

There is no 15 day limit for responsive documents. They should be provided immediately, and certainly in full in my hands no later than Tuesday, October 3. We anticipate it will be more cumbersome to provide them to our experts, and our experts request them in their hands by October 4 to digest for purposes of incorporation into our comments.

So, will you agree to a response on documents by October 3, and on interrogatories by October 4? Assuming my reading of the procedural schedule to be in accordance with yours and accurate, then October 3 and 4 will be acceptable to us, although we request you make a good faith effort to respond sooner. Please do let me know by Friday, Noon, your time. I do wish to resolve this without taking it to STB, if we can get it done by tomorrow and on terms that allow us some time for review.

If you file Pioneer/KJRY's case earlier than September 28, we request that the discovery deadline set forth above be moved up similarly, as our response per STB's schedule moves up.

Finally, if it is your position that you do not have to provide information on entities affiliated with KJRY such as Pioneer and affiliated entities (and thus that we can not obtain information from Pioneer about its financial statement on which KJRY and the Director relied for the initial determination of financial responsibility), please do let me know immediately, for we likely of necessity must take that issue to STB. It is not proper for you or STB to rely on information on which discovery is refused or in your view unavailable.

Attached page(s): 0

Exhibit G

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September 22, 2006

VIA FAX AND OVERNIGHT DELIVERYCharles H. Montange, Esq.
426 NW 162nd Street
Seattle, WA 98177Re: STB Finance Docket No. 34890
*Pyco Industries, Inc. – Feeder Line Application – South Plains
Switching, Ltd. Co.*STB Finance Docket No. 34922
*Keokuk Junction Railway Co. – Feeder Line Application – South
Plains Switching, Ltd. Co.*

Dear Mr. Montange:

I have received your September 21 response to my letter of the same date. Keokuk Junction Railway ("KJRY") remains willing to work with Pyco Industries, Inc. ("PYCO") on a voluntary basis to resolve PYCO's discovery concerns, but it will not simply acquiesce to your assertions that discovery is appropriate against both Pioneer Railcorp ("Pioneer") and KJRY. You are correct that your definition of Pioneer contained in your discovery did include KJRY and its affiliates. Thus, if your discovery against Pioneer had been appropriate, Pioneer would have been under an obligation to either object to your definition or to produce documents relevant to both Pioneer and KJRY. My objection, and it remains valid, is that your discovery was served and directed at Pioneer, a non-party to this proceeding. Discovery against non-parties is not allowed. Pioneer was under no obligation to respond; regardless of whether or not your definition included KJRY. Likewise, because your discovery was not directed at nor served upon KJRY, it too was not required to respond.

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Charles H. Montange, Esq.

September 22, 2006

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Nonetheless, in an effort to cooperate with you and pursuant to your request, KJRY has agreed to deem the discovery requests directed at Pioneer as being refiled and directed at KJRY. You are amenable to that approach, but have requested responses on October 4 for the interrogatories and the production of responsive documents on October 3. KJRY will agree to an October 4 date for both interrogatories and responsive documents. This is because the Board's discovery rules allow KJRY to respond to interrogatories by producing documents. 49 CFR 1114.26(b). Thus, our responses for both interrogatories and documents should be on the same date.

Despite its willingness to cooperate, KJRY must continue to object to your request to seek information regarding Pioneer. It is not a party to this proceeding. The fact that Pioneer would provide financing to KJRY is no different than a bank providing financing to PYCO for its acquisition and operation of the lines. PYCO didn't include its bank as an applicant in its feeder line, but nonetheless, under your theory, KJRY should be entitled to discovery against PYCO's bank, the personal finances of PYCO's owners, and any other non-party that may have information regarding PYCO's financial situation. I know of no basis in STB precedent for such a theory, nor do I believe PYCO would want such a rule applied against it.

KJRY believes that its proposal accommodates your goals and fits within the relevant procedural timeframes. If PYCO continues to insist on discovery against Pioneer and files a motion to compel, then KJRY will withdraw its proposal and respond accordingly.

Sincerely,



William A. Mullins

cc: Secretary Vernon A. Williams
J. Michael Carr
Daniel A. LaKemper, Esq.