

September 26, 2006

BY HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001



MAYER
BROWN
ROWE
& MAW

Mayer, Brown, Rowe & Maw LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www.mayerbrownrowe.com

Adrian L. Steel, Jr.
Direct Tel (202) 263-3237
Direct Fax (202) 263-5237
asteel@mayerbrownrowe.com

Re: Finance Docket No. 34890, PYCO Industries, Inc.– Feeder
Line Application – Lines of South Plains Switching, Ltd. Co.

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

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Dear Secretary Williams:

BNSF Railway Company (“BNSF”) has received the Reply in Opposition to BNSF’s Petition for Leave to Intervene filed by South Plains Switching, Ltd. Co. (“SAW”) in these proceedings. In its Reply, SAW has made two assertions which are manifestly incorrect. BNSF has had no previous opportunity to respond to those assertions, and BNSF is submitting this brief letter to correct the assertions.¹

First, SAW has opposed intervention by BNSF “on the ground that the Board does not have authority to take the actions that BNSF would request if BNSF were permitted to intervene.” The standard which SAW proposes for ruling on BNSF’s Petition is, however, nowhere justified in the Board’s regulations. Indeed, under 49 CFR 1112.4, the Board may grant a petition to intervene if intervention will not unduly disrupt the schedule and would not unduly broaden the issues raised. As shown in BNSF’s Petition, these standards are both clearly met here. The standard which SAW seeks to impose goes to the merits of BNSF’s requested relief. Those merits should be addressed by the Board in the proceedings themselves, and whether or

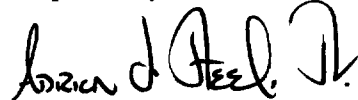
¹ Since BNSF could not have reasonably anticipated that SAW would make the two assertions at issue, BNSF believes that this letter is not prohibited by the Board’s general rule that a reply to a reply is not permitted. See 49 CFR 1104.13(c). To the extent that the Board’s rule would be applicable here, BNSF respectfully requests leave to submit this letter. BNSF has addressed no aspect of SAW’s Reply other than the two assertions.

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not BNSF is ultimately entitled to the relief it seeks is not determinative as to whether it should be permitted to intervene.²

Second, SAW has asserted at page 3 of its Reply that, in *Milford-Bennington R. Co., Inc. – Feeder Line Acq. – Boston & Maine Corp.*, 1991 ICC LEXIS 250 (FD No. 31701, decided Oct. 16, 1991), the Interstate Commerce Commission found that it has “statutory authority to remove encumbrances to sale of a line under the feeder statute” (emphasis original). The ICC, however, found just the opposite and held that the feeder line applicant in that case took the lines at issue subject to the existing encumbrance (*i.e.*, a lease between the line owner and one of its affiliates). There is nothing in the decision that holds that encumbrances such as BNSF’s contractual right of first refusal can or should be held inapplicable in a feeder line proceeding. Indeed, the Commission stated that, if it were to grant the feeder line application, the applicant “would be authorized simply to acquire [the owner’s] interest in the line, whatever that interest might be” and would have to deal with the encumbrance. *Id.* at *10. As applied here, the successful applicant (whether it be Keokuk Junction Railway Company or PYCO Industries, Inc.) would acquire the line subject to BNSF’s right of first refusal.

Respectfully submitted,



Adrian L. Steel, Jr.
Counsel for BNSF Railway Company

cc: Thomas F. McFarland, Esq.
Charles H. Montange, Esq.
Gary McLaren, Esq.
John D. Heffner, Esq.
William C. Sippel, Esq.
William A. Mullins, Esq.
Andrew Goldstein, Esq.
James L. Gorsuch, Esq.

² With respect to the merits of BNSF’s requested relief, BNSF respectfully suggests that, if the Board would find it useful, BNSF would be glad to submit comments and evidence in support of its requested relief, and other parties could have the opportunity to respond thereto in accordance with a procedural schedule to be set by the Board.