

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

DIRECT DIAL: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

October 3, 2006

VIA ELECTRONIC FILING

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

RE: STB Finance Docket Nos. 34890 and 34922
*PYCO Industries, Inc. — Feeder Line Application — Lines Of South Plains
Switching, Ltd. Co.; Keokuk Junction Railway Co. — Feeder Line Application —
Lines of South Plains Switching, Ltd. Co.*

Dear Secretary Williams:

Keokuk Junction Railway Co. ("KJRY") has, as of late this morning, received a copy of "Request For Clarification; Associated With Pending Motion To Compel; Action Requested By October 4, 2006." ("Request"). This has apparently been filed with the Board by Pyco Industries ("PYCO") concurrently with its service on KJRY. KJRY hereby replies to the Request.

KJRY supports clarification that the scope of the Board's protective order issued in Finance Docket No. 34890 extends to any documents filed at the Board or produced in discovery in Finance Docket No. 34922. Indeed, it was KJRY who voluntarily advised counsel for PYCO that such clarification and/or the issuance of a protective order in Finance Docket No. 34922 would be appropriate to facilitate discovery and to ensure the protection of KJRY's confidential and highly confidential materials.

As the Board knows, even though discovery was never properly filed against KJRY in accordance with the Board's regulations, KJRY has agreed to respond on October 5 to all relevant discovery addressed in PYCO's Motion to Compel of September 26, 2006. In so doing, KJRY anticipates producing confidential and/or highly confidential documents. Rather than waiting until October 5 to inform PYCO of the need to seek clarification or a new protective order, and in the interest of facilitating discovery in accordance with PYCO's procedural

BAKER & MILLER PLLC

The Honorable Vernon A. Williams

October 3, 2006

Page 2

concerns, KJRY brought this issue to PYCO's attention shortly after it determined that there was a valid question as to the scope of the protective order. By acting expeditiously on the issue, KJRY has given PYCO sufficient time to seek clarification or, in the alternative, request issuance of a new protective order on or before October 5. This was the purpose of KJRY's letter to PYCO's counsel, which PYCO has grossly misconstrued as an effort to prolong discovery or prejudice PYCO.

However, rather than simply seeking clarification, which KJRY supports, PYCO has once again resorted to name-calling and personal attacks on the motives of KJRY. The Board should remind PYCO of its obligations under 49 CFR Part 1103 and § 1104.10. KJRY is entitled to rely upon the Board's rules, regulations, and precedent regarding timeframes for responding to motions and discovery requests. If PYCO is frustrated by those timeframes that frustration is of its own making. It is PYCO that wanted an expedited procedural schedule, but then when the timeframes within the regulations don't fit neatly within PYCO's expectations, PYCO cries foul. If PYCO wanted different timeframes regarding filing responses and different rules regarding discovery, it could have requested them. It didn't. It is not a violation of PYCO's due process for KJRY to rely upon the rules as written.¹

Likewise, it is not true that if PYCO does not receive a "full and complete response from Pioneer and KJRY" by close of business Friday that it has been deprived of an opportunity for meaningful discovery.² There is no basis for such a statement. PYCO simply assumes that because it has asked certain questions and requested certain documents that all of those requests are relevant and necessary to its response. Yet, PYCO has not established that any of its propounded discovery against Pioneer (and by extrapolation – KJRY) is relevant or necessary for PYCO to address KJRY's financial responsibility. There has been no discussion in the record or justification set forth in any of its pleadings as to why even one of the interrogatories or documents requests is necessary. Absent such a record, there is no basis for PYCO's claims.

In any event, KJRY has provided more than sufficient information for PYCO to assess and then address whether it believes KJRY is a financial responsible person. KJRY has

¹ In fact, if PYCO believes that it cannot litigate in accordance with the Board's rules, it is free to request changes to the procedural schedule so as to accommodate its desire to file discovery. Instead, it wants to have an expedited schedule, force parties to conform to that schedule, simply ignore or do away with regulations that conflict with that schedule, and then claim that it was a victim when it doesn't get its way.

² KJRY has stated on the record that it will respond to PYCO's discovery requests in full, subject to appropriate objections, on October 5, 2006. KJRY is in no way indicating by its challenged actions here that it will now do otherwise, provided that appropriate protections are in place. Whether by way of Board clarification or issuance of a new protective order, KJRY is confident that the Board will be a facilitator of the process in this regard. If so, then PYCO will have its responses from KJRY.

BAKER & MILLER PLLC

The Honorable Vernon A. Williams

October 3, 2006

Page 3

presented two verified statements by its President and CEO. It has produced Pioneer's consolidated financial statements. It has provided pro-formas confirming that SAW can be operated without subsidy. It has produced a commitment letter by the National City Bank of Michigan/Illinois encompassing more than enough funding to cover acquisition costs. If PYCO takes issue with any of this evidence, it may offer its own witnesses and studies refuting this evidence.

Finally, KJRY has endeavored to be cooperative. It has committed itself to providing responses to PYCO's discovery as it had offered to do through consultation with PYCO's counsel. In that regard, KJRY stresses that it spent almost a week trying to resolve PYCO's discovery concerns and to work out an accommodation with PYCO. Yet, PYCO rejected those overtures. Throughout this proceeding, KJRY has voluntarily agreed to respond to motions shorter than the rules require. KJRY has, out of courtesy, pointed out the need to obtain clarification of the protective order. KJRY stands willing and able to work with PYCO if PYCO believes it needs more time to review KJRY's discovery and to resolve any remaining issues concerning the scope of PYCO's discovery.

KJRY encourages prompt action on PYCO's request for clarification. PYCO should have limited its comments to that issue alone. Had it done so, KJRY's response here would have been much shorter and still would have supported the chief objective of PYCO's request. There was no reason to expand that objective by attacking KJRY's motives and making unsubstantiated and unsupported demands.

Respectfully submitted,



William A. Mullins

Attorney for Keokuk Junction Railway Co.

cc: All Parties of Record