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October 17, 2006

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By overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

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.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Motion To Strike (1) Letter Of Floyd Trucking, Inc., Dated October 5, 2006; And (2) Reply Of BNSF Railway Company To PYCO's Revised Valuation Evidence And To KJRY's All-SAW Application, for filing with the Board in the above referenced matters.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for South Plains
Switching, Ltd. Co.

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BEFORE THE
SURFACE TRANSPORTATION BOARD



KEOKUK JUNCTION RAILWAY CO.. --	)	
FEEDER LINE APPLICATION -- LINES	)	FINANCE DOCKET
OF SOUTH PLAINS SWITCHING, LTD.	)	NO. 34922
CO.	)	
	)	
PYCO INDUSTRIES, INC. -- FEEDER	)	FINANCE DOCKET
LINE APPLICATION -- LINES OF	)	NO. 34890
SOUTH PLAINS SWITCHING, LTD. CO.	)	

**MOTION TO STRIKE (1) LETTER OF FLOYD TRUCKING, INC.,
DATED OCTOBER 5, 2006; AND (2) REPLY OF BNSF RAILWAY COMPANY
TO PYCO'S REVISED VALUATION EVIDENCE AND TO
KJRY'S ALL-SAW APPLICATION, FILED ON OCTOBER 12, 2006**

SOUTH PLAINS SWITCHING, LTD. CO.
P.O. Box 64299
Lubbock, TX 79464-4299

Respondent

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
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Attorney for Respondent

DATE FILED: October 18, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

KEOKUK JUNCTION RAILWAY CO.. --	)	
FEEDER LINE APPLICATION -- LINES	)	FINANCE DOCKET
OF SOUTH PLAINS SWITCHING, LTD.	)	NO. 34922
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**MOTION TO STRIKE (1) LETTER OF FLOYD TRUCKING, INC.,
DATED OCTOBER 5, 2006; AND (2) REPLY OF BNSF RAILWAY COMPANY
TO PYCO'S REVISED VALUATION EVIDENCE AND TO
KJRY'S ALL-SAW APPLICATION, FILED ON OCTOBER 12, 2006**

Pursuant to 49 C.F.R. § 1117.1, SOUTH PLAINS SWITCHING, LTD. CO. (SAW), Respondent herein, hereby moves to strike (1) a letter dated October 5, 2006 filed in behalf of Floyd Trucking, Inc. (Floyd Letter); and (2) a Reply to (1) KJRY Expanded Competing Feeder Line Application and (2) PYCO's Amended Valuation Evidence filed in behalf of BNSF Railway Company (BNSF) on October 12, 2006 (BNSF Reply).

GROUND FOR MOTION

The Floyd Letter and the BNSF Reply should be stricken on the ground that they are not permitted by the procedural order contained in the Board's decision served August 16, 2006, as modified by the Board's decision served August 18, 2006. Whereas those procedural orders permitted the filing, on or before October 12, 2006, of replies to KJRY's competing feeder line application and/or PYCO's amended valuation evidence, the Floyd Letter and BNSF Reply instead constitute unauthorized replies to SAW's Statement in Response to PYCO's Feeder Line

Application to Acquire All-SAW, filed September 18, 2006 (SAW Statement), and in the case of the BNSF, constitutes an additional unauthorized reply to arguments made in SAW's Reply in Opposition to BNSF's Petition for Leave to Intervene (SAW Intervention Reply), filed on September 20, 2006. The Floyd Letter should be stricken on the additional ground that Floyd is not a party of record in these proceedings, and thus is not authorized to file pleadings therein.

ARGUMENT IN SUPPORT OF MOTION

The procedural decision in this matter, served August 16, 2006, as modified by decision served August 18, 2006, permitted the filing of replies by October 12, 2006, as follows (at 5):

... any other party may file a reply to PYCO's amended valuation evidence (and) ... any other party may file a reply to KJRY's application (if accepted) concerning Alternative Two and/or the All-SAW option ... (emphasis added).

The pleading filed by BNSF on October 12, 2006 is headed as a reply to the KJRY All-SAW application and to PYCO's amended valuation evidence. However, the substance of BNSF's reply is directed virtually exclusively to arguments made by SAW in the SAW Statement and in the SAW Intervention Reply. That is shown conclusively by the following lead sentences at pages 4-7 of the BNSF Reply:

1. "SAW asserted in its Statement in Response to PYCO's Feeder Line Application to Acquire "All-SAW" filed on September 18, 2006 ("SAW Statement") that the GCV should include revenues of \$75 per car on traffic for Jarvis Metals at Burris, TX that BNSF has agreed to pay pursuant to a haulage agreement . . ." (at 4).

2. “SAW also asserted in its Statement that the GCV should include revenues which would be received through the imposition of a \$60 surcharge on shipments of less than 27 cars at a time and \$40 per car on shipments of 27 or more cars . . .” (at 4).
3. “SAW also argues that there is no legal or factual basis for contending that SAW’s authorized surcharges would divert rail traffic from SAW . . .” (at 5).
4. “SAW’s inclusion of surcharges is, however, unjustified on several grounds . . .” (at 5).
5. “With respect to SAW’s claim that the issue of traffic diversion has been judicially determined . . .” (at 6).
6. “As Mr. Hale notes, if SAW’s arguments are correct that the imposition of a \$60 surcharge on shipments of less than 27 cars at a time and \$40 per car on shipments of 27 or more cars would have absolutely no effect on traffic levels . . .” (at 6).
7. “SAW’s current arguments regarding the surcharge issue are even more counterintuitive when viewed in the light of the arguments that SAW made at trial as to why the surcharge was necessary in the first place . . .” (at 7).

In light of the foregoing, BNSF’s reply is unquestionably aimed exclusively at SAW’s Statement, not at the KJRY application, nor at PYCO’s amended valuation evidence. Having attempted to characterize SAW’s position in each of the lead sentences quoted above, BNSF then proceeded to reply to them. That was unauthorized and improper. The procedural decision authorized the filing on October 12 of replies only to the KJRY application and/or to PYCO’s valuation evidence. It would be procedurally improper and unfair to permit BNSF to misuse the Board’s procedural order to file an unauthorized reply to SAW’s Statement.

As a consequence, the BNSF Reply should be stricken as procedurally improper. That would not result in unfairness to BNSF. BNSF waited until August 31, 2006, to seek intervention in this matter. By that time, the Board's procedural decision had already been issued (on August 16, 2006). That procedural decision did not provide for filings by subsequent intervenors. Indeed, BNSF's petition for leave to intervene stated (at 1) that BNSF did not take a position on the merits of the feeder line applications, and that BNSF sought intervention for "limited purposes" that did not include the subject matter argued at pages 4-7 of the BNSF Reply. Thus, there would be no unfairness in holding BNSF to its own representations.

The matter argued at pages 7-12 of the BNSF Reply is objectionable for the same reason, i.e., that it is aimed at matter argued by SAW, not by KJRY or PYCO. That matter also constitutes an objectionable reply to SAW's Intervention Reply. Actually, that matter is BNSF's second objectionable reply to reply, the first having been in the form of a letter to the Board, dated September 26, 2006.

On August 31, 2006, BNSF filed a Petition for Leave to Intervene in this matter. As here pertinent, BNSF there stated that a primary purpose for seeking intervention was to preserve its contractual right of first refusal (at 1).

On September 20, 2006, SAW filed its Intervention Reply. SAW there argued that the Board does not have authority to apply BNSF's contractual right of first refusal to sale of SAW's rail lines under the feeder statute (at 2-5).

On September 26, 2006, BNSF filed a reply to SAW's reply. SAW did not file a motion to strike that reply because the reply was limited to minor aspects of SAW's reply.

The current BNSF Reply is different; it contains extensive matter that replies directly to the matter contained in SAW's Reply on the issue of the relationship between BNSF's contractual right of first refusal and involuntary sale of SAW's rail lines under the feeder statute (BNSF Reply at 7-12). As such, the matter in BNSF's Reply is clearly a reply to a reply that is prohibited by virtue of 49 C.F.R. § 1104.13(c). Accordingly, the identified matter in BNSF's Reply is required to be stricken for that additional reason.

The Board sometimes accepts matter into the record that is in the nature of a reply to reply, subject to the objecting party's opportunity to reply to the otherwise objectionable matter. That is not possible here because of the highly accelerated procedural schedule. Procedural fairness here dictates that the BNSF Reply be stricken as unauthorized and inappropriate.

The same can be said in regard to the Floyd Letter, only more so. Not only is the Floyd Letter an unauthorized reply to SAW's Statement, it is additionally objectionable as an ad hominem attack against Mr. Wisener. But the overriding point is that Floyd is not a party to these proceedings. Floyd has never sought nor received the right to intervene as a party of record. The Board's procedural decision permitted "any other party" to file a reply on October 12, 2006 (emphasis added). Floyd is not a party. As a consequence, Floyd did not have the right to file a reply, and even if it did, its reply would have been required to have been directed only to the pleadings filed by KJRY and/or PYCO. Instead, it is directed solely to SAW. For those multiple reasons, the Floyd Letter is required to be stricken.

CONCLUSION AND REQUESTED RELIEF

The Board's procedural decision permitted the filing on October 12, 2006 of replies to KJRY's competing feeder line application and/or to PYCO's amended valuation evidence. The BNSF Reply and the Floyd Letter should be stricken as inconsistent with that procedural decision in that they reply exclusively to matters argued by SAW, not to the KJRY application or PYCO's valuation evidence. Pages 7-12 of the BNSF Reply are objectionable for the additional reason that they constitute a reply to SAW's Intervention Reply, which is prohibited by 49 C.F.R. § 1104.13(c). The Floyd Letter is objectionable for the additional reasons that Floyd is not a party of record, and thus Floyd is not authorized to file pleadings in these proceedings.

WHEREFORE, the BNSF Reply and the Floyd Letter should be stricken.

Respectfully submitted,

SOUTH PLAINS SWITCHING, LTD. CO.
P.O. Box 64299
Lubbock, TX 79464-4299

Respondent

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DATE FILED: October 18, 2006

CERTIFICATE OF SERVICE

I certify that on October 17, 2006, I served the foregoing document, Motion To Strike (1) Letter Of Floyd Trucking, Inc., Dated October 5, 2006; And (2) Reply Of BNSF Railway Company To PYCO's Revised Valuation Evidence And To KJRY's All-SAW Application, Filed On October 12, 2006, by overnight mail, on the following:

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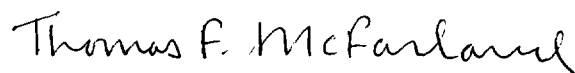
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