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PUBLIC VERSION

November 9, 2006

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

ENTERED
Office of Proceedings

NOV 9 2006

Part of
Public Record

**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-
Application-Lines of South Plains Switching, LTD Co.**

Dear Mr. Williams:

I am writing on behalf of the West Texas & Lubbock Railroad ("WTL") and also on behalf of PYCO counsel Charles Montange in connection with a filing submitted on November 6, 2006 by counsel for Keokuk Junction Railway ("KJRY"). Out of respect for KJRY's request for confidentiality, I am submitting this response in two versions, one designated as a public version and another designated as a highly confidential version.

First, at pages 6-7 of its November 6 filing, KJRY accused PYCO of violating the protective order adopted in these proceedings by allegedly disclosing information contained in materials designated as highly confidential that KJRY asserts were referred to and included with financial statements related to KJRY's owner, Pioneer RailCorp. More specifically, KJRY complained that PYCO revealed the identity of KJRY's major customer and, in its words, "tying it to Pioneer's highly confidential financial statements." KJRY asked the Board to strike all materials that PYCO submitted with its October 31 filing related to that shipper and find PYCO in violation of the terms of the protective order and thus subject to appropriate sanctions.

In response, the undersigned reviewed the Board's decision dated July 6, 2006, in FD No. 34890, granting PYCO's request for a protective order. As relevant, that decision stated,

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2. "[i]f any Party to the Proceeding determines that any part of (a) a document it submits, (b) a discovery request it propounds or a hearing in which it participates, (c) a discovery response it produces, (d) a transcript of a deposition of a hearing in which it participates, or (e) a pleading or other paper to be submitted, filed, or served in the Proceedings contains shipper-specific rate or cost data; divisions of rates, trackage rights compensation levels, or other compensation between carriers; or other competitively sensitive or proprietary information, then that Party may designate and stamp such Confidential Information and Confidential Documents as "HIGHLY CONFIDENTIAL." *Any information or documents so designated or stamped [emphasis supplied] shall be handled as provided hereinafter.*"

...

10. "[n]o party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as 'Confidential Materials Subject to Protective Order.' See, 49 CFR 1104.14."

It is true that KJRY did identify this customer in the "Response of Keokuk Junction Railway Co. To Discovery Requests of PYCO Industries, Inc.," dated October 5, 2006. The specific question and answer are as follows:

"Supplemental Request 4. Identify the major customer referenced in note 9 to the consolidated financial statements furnished on August 22, and provide the revenues, carloads, and commodities delivered to or received from this customer by KJRY for 2004 and 2005."

"Response: KJRY objects to this request because it seeks irrelevant information, is unduly burdensome, and would require the disclosure of sensitive business information of an existing KJRY customer that is not located on the SAW lines that are the subject of the current feeder line proceedings. Notwithstanding its objections and without waiving them, KJRY will provide the identity of that shipper: [information deleted]-----
----- . KJRY objects to, and for the sake of its customer, will not provide, any further information in connection with this request." "Response of Keokuk Junction

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Railway Co. To Discovery Requests of PYCO Industries, Inc.,"
dated October 5, 2006 at page 24.

If KJRY had wanted or intended that its response be treated as "highly confidential," it could and should have designated that document accordingly. But it did not do so, whether intentionally or inadvertently. Neither PYCO nor WTL should be asked to pay a price for the mistake of KJRY's otherwise experienced counsel.

The identity of KJRY's shipper is a matter of common knowledge of which the Board can, should, and has taken official notice. The identity of this customer was the subject of numerous filings in FD No. 32549, Burlington Northern, Inc. And Burlington Northern Railroad Company-Control And Merger-Santa Fe Pacific Corporation And the Atchison, Topeka And Santa Fe Railway Company reported at 10 I.C.C.2d 661 (1995). KJRY identified the shipper in question "as its largest single shipper" at page 7 of the Public Version of its Responsive Application filed in that proceeding. The undersigned counsel is in a position to speak with authority on that subject because he was KJRY's General Counsel at that time when KJRY was an independently owned carrier and the undersigned was the lawyer who prepared that application.¹ Moreover, the identity of this customer is known to virtually every rail fan in the Midwest and to every citizen in the City of Keokuk. A Keokuk resident can identify the customer by the odors emanating from that customer's plant. PYCO and WTL submit that any privilege of confidentiality has been waived.

Second, and obviously at a loss for any substantive arguments, KJRY noted that PYCO's October 31 filing and certificate of service were signed by an individual with the initials "JDH" and the name John D. Heffner. KJRY complains that the undersigned should have been designated and identified as PYCO's "surrogate counsel" or counsel for the purpose of signing and filing pleadings. KJRY's counsel even goes so far as to suggest, wrongly so, that the failure to clarify this association represents "a lack of candor and fairness in dealing with other litigants ... and suggests an impermissible fee-splitting arrangement contrary to the standards of ethical conduct...and

¹ A copy of that page is submitted with the highly confidential version of this letter.

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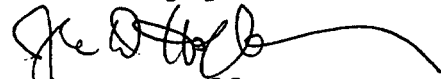
does not appear to be in keeping with the attestation and verification requirements of 49 CFR 1104.4." For these reasons, KJRY asserts, PYCO and WTL should be subject to appropriate sanctions.

The undersigned counsel assisted PYCO's regular counsel with the assemblage and service of this filing in order to avoid the onerous task of mailing an original and ten copies of an inch thick filing. KJRY does not claim any prejudice by suggesting some sort of inappropriate work sharing arrangement and cannot because none exists. The undersigned counsel can only believe that KJRY's counsel got caught up with all of the election campaign-related hysteria and wanted to try it out in an administrative proceeding. With the elections over, it is time for KJRY and its counsel to "chill out."

In conclusion, PYCO and WTL urge the Board to give KJRY's assertions their due value - zero - and concentrate on the substantive issues in these proceedings. There is no basis for sanctions or other relief against PYCO and WTL.

I am enclosing an original and ten copies of the public and highly confidential versions of this letter should the Board decide to accept them into the record.

Sincerely yours,



John D. Heffner

Attachments omitted from Public Version

cc: David Konschnik, Esq. (By fax)
Charles Montange, Esq.
All parties (by fax or mail)