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Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: PYCO Industries v. SAW, F.D. 34870

Dear Mr. Williams:

Complainant PYCO Industries, Inc. (PYCO) continues to oppose respondent South Plains Switching, Ltd.'s (SAW's) continued requests to defer this proceeding, as most recently manifest in SAW's letter dated June 19, 2007.

Background. By Decision served June 6, 2007, this Board denied respondent South Plains Switching, Ltd.'s (SAW's) request to vacate this Board's May 4, 2007 order establishing a schedule for discovery and briefing in the above-captioned year old complaint action. In the June 6 Decision, this Board did extend all due dates by 30 days from the otherwise applicable due date (June 6) of SAW's answer to PYCO's amended/supplemental complaint in light of a medical condition on the part of SAW's counsel. Under the revised schedule per the June 6 Decision, SAW's answer is due on July 6, discovery must be completed 30 days thereafter, and so on.

SAW's June 19 letter. By letter dated June 19, 2007, SAW again requests vacation of this Board's orders establishing a schedule for discovery and briefing. SAW's grounds are essentially the same as this Board considered and rejected in its June 6 decision. Complainant PYCO Industries, Inc. (PYCO), opposes SAW's renewed request to vacate the procedural schedule and to hold the proceeding in abeyance.

As PYCO has previously advised this Board, SAW has sued PYCO in state court in Texas to recover various charges and surcharges SAW alleges PYCO must pay it. SAW's alter ego (Choo Choo Properties) has also sued PYCO in state court in Texas to prevent PYCO from using a crossing essential to PYCO's rail-dependent operations. SAW/Choo Choo continues actively to pursue these suits.

In defense of SAW's state court claims against PYCO, PYCO alleges that the various charges and surcharges are unreasonable, discriminatory, and retaliatory, all in violation of various statutes over which this Board has primary and exclusive jurisdiction. These matters are all at the heart of the Complaint proceeding (F.D. 34870) which SAW seeks to defer in its various motions and letters to this Board. It is pointless to litigate in Texas state court over the charges and surcharges SAW demands from PYCO not only when this Board has dispositive jurisdiction over them, but also when the issues have already been tendered to this Board for resolution. SAW's tactic of pressing ahead in Texas on matters governed by this Board's exclusive jurisdiction while arguing that this Board should not address the issues is irrational and Kafkaesque. It is just another manifestation of SAW's efforts unfairly to impose costs on, and otherwise retaliate against, PYCO for invoking this Board's remedies rather than put up with SAW's inadequate service and unlawful conduct.

In its June 19 letter, SAW relies on a suggestion by SAW in which PYCO initially concurred in the May 18, 2006, "joint report" that further proceedings in the Complaint proceeding await a decision on SAW's motion to dismiss. But the situation has changed in the year since May 18, 2006. As already noted, SAW is pursuing state court litigation against PYCO in which the key issues are within the exclusive jurisdiction of this Board. Ironically, SAW in state court is seeking to reopen discovery against PYCO on some of the charges while at the same time SAW is seeking to hold all activity, including discovery, in abeyance in f.D. 34870. It is unfair to PYCO and a waste of resources to all concerned to litigate in Texas what not only is already before this Board but also is clearly within this Board's exclusive jurisdiction. SAW's position that this proceeding should be deferred, and indeed SAW's statement in its June 19 letter that it intends to persist in that position, is inexplicable in light of its behavior in Texas. In any event, it seems reasonable at this point to conclude that the Board wishes a more completely developed record in F.D. 34870 before resolving SAW's motion to dismiss. PYCO is prepared to proceed with the Complaint proceeding.

Schedule adjustment in October. Under the Board's revised schedule set forth in the June 6 order, PYCO's rebuttal statement will be due on October 5, 2007. PYCO's counsel has long been scheduled to be outside of the United States from September 19 to October 7. PYCO accordingly requests that the schedule be adjusted to allow for PYCO's rebuttal to be filed on October 17 (ten days after counsel's scheduled return).

Conclusion. SAW has a habit of filing multiple motions, amendments and supplements seeking the same relief, even after

it has been denied. Enough is enough. The Board has denied what SAW requests, and that should end the matter.

By my signature below, I certify service by express (next day) delivery upon counsel for SAW (Mr. McFarland) at his address of record.

Thank you for your assistance in this matter.

Respectfully submitted,

Charles H. Montange
for PYCO Industries, Inc.

cc. Mr. McFarland (counsel for SAW)