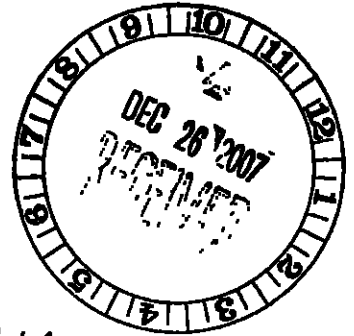


BEFORE THE SURFACE TRANSPORTATION BOARD

South Plains Switching Ltd. -)
Compensation for Use of)
Facilities in Alternative) F.D. 35111
Rail Service - West Texas &)
Lubbock Railway Co.)



- (1) Motion to Intervene by 22/116
PYCO Industries, Inc.;
- (2) Joint Motion of West Texas & Lubbock Railway Co.
and
PYCO Industries 22/117
for a Protective Order and
Opposition to SAW's Request for Schedule at This Time;
and
- (3) Motion for Two Day Extension of Time for Reply

ENTERED
Office of Proceedings
DEC 26 2007
Part of
Public Record

I. Intervention 22/118

PYCO Industries, Inc., hereby moves to intervene as a party to this proceeding.

In Finance Docket (F.D.) 35111, filed on December 13, 2007, South Plains Switching Ltd. Co. (SAW) purports to seek compensation from West Texas & Lubbock Railway Company (WTL), PYCO's alternative service provider in two now-concluded Surface Transportation Board (STB) dockets: PYCO Industries, Inc. - Alternative Rail Service - South Plains Switching Ltd. Co., F.D. 34802, and PYCO Industries, Inc. - Alternative Rail Service - South Plains Switching Ltd. Co., F.D. 34889. As PYCO and WTL intend to show on the due date of their reply to the SAW "petition," the "petition" is nothing more than a motion to reconsider, out-of-time, those two proceedings, without meeting the standards for reopening, and in the face of defenses of waiver and laches. In addition, the "petition" does not provide a basis on which any relief can be granted. Since the "petition"

should have been filed in F.D. 34802 and F.D. 34889 in the first place, PYCO is a proper party to it. In any event, were the compensation sought by SAW to be awarded to WTL, it is undeniable that it would derive from proceedings in which PYCO was the moving party. Under the circumstances, PYCO may be liable for some or all of any compensation award, and is thus a real party in interest. In consequence, PYCO should be permitted intervention with full party status. PYCO and WTL anticipate filing joint pleadings so this will pose no burden to either SAW or the Board.

II. Protective Order and Statement
in Opposition to SAW's Request for Procedural Schedule

Under 49 C.F.R. 1114.21(c)(1), a party or other person with a reasonable interest may move for a protective order providing that discovery not be had. To the extent permitted at this time, WTL and PYCO hereby move for an order holding all discovery requests by SAW in abeyance until this Board rules on the Reply to SAW's Petition.

Based on SAW's filing date of December 13, 2007, a Reply by WTL and PYCO is currently due on January 2, 2008. See 49 C.F.R. 1114.13(a) (20 days for replies).

On December 12, WTL received a set of discovery requests from SAW (delivered to WTL before WTL received service of SAW's petition). SAW provides that the discovery is due 15 days from receipt. This renders the discovery due on December 27, or December 28 if the 15 days is construed to run from the actual filing of SAW's petition. WTL estimates that it would take 14

man-days to assemble the information sought in the discovery requests. This is an unreasonable burden during the Christmas holiday season. In addition, WTL and PYCO have reviewed the discovery requests and are prepared to show that the material SAW seeks is not only totally irrelevant to the standards under which STB would calculate and establish compensation for SAW, but also not likely to lead to relevant information, even if SAW were entitled to compensation, which WTL and PYCO intend to show SAW is not.

Our point here, however, is that any discovery by SAW in this proceeding is vastly premature. SAW has filed a mere "petition." Under this Board's rules, parties opposed must file their reply in 20 days (subject to extensions granted by the Board). 49 C.F.R. 1114.13(a). SAW is not permitted to file a reply to those replies. Id.(c).

This renders discovery by SAW inappropriate, irrelevant, purposeless, and nothing more than an unduly burdensome fishing expedition at this time. No discovery should be permitted until this Board has received the WTL/PYCO Reply to the SAW petition, and has had an informed opportunity to issue a ruling.¹

This result in no way is unfair or burdensome to SAW. If

¹ The last sentence of 49 C.F.R. 1114.21(c) may be read to suggest that WTL and PYCO should simply not respond to SAW's premature, irrelevant, burdensome, and inappropriate discovery requests and then seek a protective order barring discovery if SAW files a motion to compel. WTL and PYCO reserve the right to file additional motions and responses in accordance with this construction of the last sentence of section 1114.21(c). In all events, this pleading should be construed as an objection on the stated grounds to any SAW discovery at this time.

SAW wished to pursue compensation for alternative rail service, it could have and should have timely filed motions for reconsideration in F.D. 34802 and/or F.D. 34889. Moreover, it had ample opportunity to seek discovery in those proceedings (but did not) if it thought it needed more information for a compensation claim. SAW's basic problem is that it never timely or properly raised the issue of compensation in either of those proceedings.

PYCO and WTL note that SAW in its Petition calls on this Board promptly to issue a procedural schedule under which SAW would make two more pleadings concerning its compensation claim. PYCO and WTL intend to show in their Reply due on January 2, 2008, that no procedural schedule is necessary, and that the record in F.D. 34802, 34889, and PYCO Industries, Inc. - Feeder Line Application - Lines of South Plains Switching Ltd. Co., F.D. 34890, already contains all the information necessary to calculate any compensation due SAW, were the Board to determine over PYCO and WTL's objections that something is due SAW.

In general, a party like SAW filing a petition like this one to reconsider under 49 C.F.R. 1115.4 has complete control over the timing of its action, and it bears the burden of proof to sustain its claims. See Burlington Northern - Abandonment Exemption - between Klickitat and Goldendale, WA, AB-6 (Sub-no. 335X), served June 8, 2005, slip op. at p. 3, citing 4 U.S.C. 556(d). "[Parties] have a responsibility to ascertain and collect prior to filing all of the necessary facts to support

their petition." Id.

SAW accordingly should have ascertained and collected all its facts in its December 13 petition, and not file something asking for more bites at the apple, especially without any reasonable justification whatsoever. Again, requiring SAW to conform to the basic rules requiring it to present its case in its petition is not unfair to SAW. SAW has long been on notice of PYCO's position, which accords with that of WTL: PYCO has set forth its position many times, including most recently in a Status Report filed in F.D. 34802, 34889, and 34890 in a pleading dated November 18, 2007. SAW could have and should have presented its case in full, and in doing so it already had the advantage of knowing the thrust of the PYCO/WTL arguments in response. In other words, SAW not only has had ample opportunity (which it ignored) to compile its facts and evidence, and to make a compensation claim, but also it has had ample opportunity to reply to the basic arguments WTL and PYCO will be making when their Reply to SAW's F.D. 35111 Petition is due.

In sum, SAW's plea to file more pleadings not only is contrary to the general obligation that a party state its entire case in its initial petition in situations like this, but also is unnecessary (since the information necessary to decide the petition is already of record) and premature (since PYCO and WTL have not yet replied).

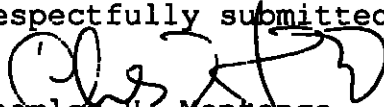
III. Motion for Two-Day Extension

SAW elected to file its Petition on December 13. The 20-day

reply period afforded by STB rules overlaps Christmas and New Years, two of the more significant national holidays in the United States, and a time when even company officials, their attorneys, and their consultants ordinarily wish to spend some time with family and friends, making preparation of responsive pleadings more cumbersome than usual. In addition, the Reply date of January 2 is immediately after a federal holiday in which express delivery services do not function, further eroding the time available to compile a reply. WTL and PYCO accordingly move for a two day extension of the time for their Reply to SAW's Petition from Wednesday, January 2, 2008, to Friday, January 4, 2008.

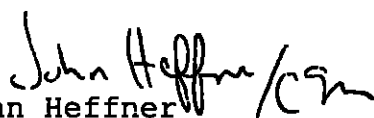
A two-day extension is hardly unfair to SAW, which without any explanation is tardy in asserting its alleged claims by, as we will show, approximately 21 months.

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936

Fax: - 3739
for PYCO Industries, intervenor



John Heffner
1750 K Street, N.W., Suite 350
Washington, D.C. 20006
(202) 296-3334

for West Texas & Lubbock Railway Co.

Certificate of Service

I hereby certify service by deposit for express (next business day) delivery this 21st day of December 2008 upon Thomas McFarland, Esq., 208 South LaSalle St. - Suite 1890, Chicago, IL 60604-1112, counsel for SAW.

