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22 January 2008

Hon. Anne Quinlan
Secretary
Surface Transportation Board
395 E Street, SE
Washington, D.C. 20024

Re: e-filing in South Plains Switching -
Petition for Compensation, F.D. 35111

Dear Ms. Quinlan:

Attached for e-filing is a motion for a protective order in F.D. 35111 on behalf of PYCO Industries, Inc., and West Texas & Lubbock Railway (WTL), and a reply to the South Plains Switching (SAW) motion to compel against WTL.

Respectfully submitted,

Charles H. Montange
for PYCO and WTL

Of counsel for WTL: John D. Heffner, Esq.
John D. Heffner PLLC
1750 K Street, #350
Washington, D.C. 20006

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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.)

Motion for a Protective Order 22/316
and
Reply to Motion to Compel

I. Motion for Protective Order 22/320

Petitioner South Plains Switching Ltd. (SAW) has served a second set of discovery requests upon West Texas & Lubbock Railway Co. (WTL) and an initial set upon PYCO Industries, Inc. (PYCO). In that discovery, SAW seeks, among other things, all leases by WTL or PYCO with a railroad or any person relating to railroad trackage and right of way in the past five years. The information sought by SAW includes information that is business confidential, and revealing same to the general public would be prejudicial to the responding parties.

In order to facilitate a timely response and in order to cure this problem, WTL and PYCO move for entry of a customary protective order.

As it turns out, this Board entered a protective order at the request of PYCO in PYCO Industries, Inc. - Feeder Line Application - Lines of South Plains Switching, Ltd., F.D. 34890, served July 6, 2006, applicable to F.D. 34890 and "any

proceedings before the Board related to [F.D. 34890]."¹ This protective order was clarified to include F.D. 34922, a feeder line proceeding filed by Keokuk Junction Railway, relating to the same property. Id. served Oct. 5, 2006, slip at 1.

One way to provide protection for confidential business information in this proceeding is to issue an order clarifying that the protective order in F.D. 34890 also applies to F.D. 35111. F.D. 35111 involves rail activities during the course of F.D. 34890 over a portion of the rail property at issue in F.D. 34890. An alternative means to safeguard confidential business information is to re-issue the protective order in F.D. 34890 with the Finance Docket number changed to 35111.

WTL and PYCO move that the Board adopt one of these two alternatives.

II. WTL Response to SAW Motion to Compel

SAW filed a motion to compel WTL to answer discovery by SAW asking essentially for all waybills for PYCO traffic handled by SAW. SAW's motion to compel is moot, and in any event misguided. WTL responded to SAW's initial² discovery requests on January 18, 2008.

WTL (and PYCO) continue to maintain that the number of

¹ See Slip op 3, para 1(f).

² At the same time it served its motion to compel, SAW served another round of discovery requests against WTL and an initial round against PYCO.

carloadings during alternative service is irrelevant where, as here, the incumbent railroad sustained no variable costs. Waybills and similar information sought by SAW go to carloadings and are thus irrelevant.³ WTL has objected to SAW's initial discovery on this and other grounds. But independent of all this, WTL did not receive, rely upon, or retain such information in the ordinary course of its business as alternative rail service supplier to PYCO, and is under no duty to produce what it never received, relied upon, or retained.

WTL believes the information, to the extent available, is in electronic form in the computers of a third party (Railcar Management, Inc., or "RMI"). Without waiver of WTL's objections, WTL has offered to authorize RMI to make the information requested available to SAW on the same basis it would be available to WTL. This will permit SAW to obtain the information it describes in its discovery to the extent it is available without the need for a sub poena to that third party, and appears to WTL as well beyond what is required for compliance with 49 C.F.R. 1114.30. Additional detail is provided in WTL's response to SAW.

³ In some cases, where the incumbent railroad provides some service to the alternative service supplier, carloadings may be relevant. But SAW provided no services to WTL. Instead, WTL provided services to SAW. The only carloadings that WTL (or PYCO) see as potentially relevant are the number of cars for SAW customers other than PYCO that WTL pulled for SAW.

WTL stepped forward as an alternative service provider in this case at the request of PYCO and BNSF and to serve the public interest. The record in the alternative service proceedings (F.D. 34802 and 34889) is replete with instances where PYCO and WTL sought relief from this Board due to difficulties posed by SAW, including failure by SAW to maintain its lines. WTL is a small shortline railroad, owned by a holding company which prides itself on providing rail service as opposed to engaging in rail litigation. While WTL of course wishes to be responsive to relevant discovery in STB proceedings, WTL requests not to be burdened with irrelevant and burdensome discovery requests by parties retaliating for WTL's part in serving the public interest. A call from SAW's counsel would have resolved the matter sooner than SAW's misplaced motion to compel.⁴

The motion to compel must accordingly be denied.

⁴ SAW served its initial discovery on WTL before this Board issued its decision rejecting the legal theory on which the discovery appeared predicated. WTL did not know if SAW still desired a response and WTL's counsel was on the verge of contacting SAW's counsel when the motion to compel arrived.

Respectfully submitted,

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Certificate of Service

I hereby certify service by deposit for express (next business day) delivery this 22d day of January, 2008, upon Thomas McFarland, Esq., counsel for SAW, 208 South LaSalle St. - Suite 1890, Chicago, IL 60604-1112.
