

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177
(206) 546-1936
FAX (206) 546-3739



19 August 2008
express

Memorandum for Anne Quinlan, Acting Secretary
Surface Transportation Board
395 E St., S.W., Room 1149
Washington, D.C. 20024

Re: South Plains Switching - Compensation for Use of Facilities,
F.D. 35111; *223326*
PYCO Industries, Inc. - Feeder Line Application, F.D. 34890

From: Charles Montange,
for PYCO Industries, Inc. *[Signature]* *223326*

Enclosed please find replies on behalf of PYCO Industries to
letter pleadings filed by South Plains Switching Ltd. on or about
August 12, 2008, in the two proceedings noted above.

Thank you for your assistance in this matter.

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Encls.

cc. Counsel per cert. of service.

BEFORE THE SURFACE TRANSPORTATION BOARD

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

223326



Reply to SAW Letter of August 12, 2008

This is a Reply on behalf of PYCO Industries (PYCO), in which West Texas and Lubbock Railway Company (WTL) concurs, to a position flip by South Plains Switching Ltd. (SAW) manifest in its letter pleading filed August 12, 2008, in this proceeding.

Background

This proceeding involves whether SAW is entitled to additional compensation, and if so, how much, for alternative rail service supplied by WTL to PYCO during the pendency of PYCO's ultimately successful feeder line application. PYCO and WTL contend that SAW is entitled to no further compensation due, among other things, to set-offs against the maximum of \$45,116.32 to which SAW would be entitled under the Dardanelle criteria that this Board ruled were applicable.

In a pleading dated February 25, 2008, South Plains Switching LTD. Co. did not dispute, and instead stated that it agreed, that if the Dardanelle criteria were applied, its compensation could not be greater than \$45,116.32, as calculated by PYCO and WTL. SAW contested the various set-offs claimed by PYCO and WTL.

By letter dated August 12, 2008, SAW says its "agreement"

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that \$45,115.32 was the maximum to which it was entitled under Dardanelle was predicated upon this Board issuing a prompt decision. Because SAW says this Board has not acted swiftly enough, it is withdrawing its "agreement."¹

Argument

The length of time for the Board to resolve compensation issues under Dardanelle is not one of the Dardanelle criteria for determining compensation. Thus the factor to which SAW alludes for its change of position has nothing to do with the means of calculating compensation for SAW. SAW's rationale for changing its position is thus not a grounds for changing its position. See note 1. Moreover, SAW provides no evidence in its letter relevant to the calculation of compensation under the Dardanelle criteria. SAW thus is not even the front door with a grounds to reopen the record to change its position.

SAW shows no prejudice to it from a delay in making a decision. There is no prejudice or harm to SAW. In particular, the delay has not caused SAW to shoulder additional costs for on-going alternative service. Alternative service expired long ago

¹ This is not the first time SAW has purported to change a position due to alleged delays by the Board in reaching a decision in disputes between SAW and PYCO. In PYCO Industries, Inc. - Feeder Line Application - Lines of South Plains Switching, Ltd. Co., F.D. 34890, served August 31, 2007, at p. 9, this Board rejected SAW's belated attempt to change its position on an issue in the feeder line proceeding basically because it was subject to alternative service orders longer than SAW expected.

" when PYCO purchased SAW's assets pursuant to the decision referenced in note 1. Indeed, alternative service had ceased long before SAW even filed its claim.

The fact remains that under Dardanelle, compensation can be no greater than the amount SAW conceded (\$45,116.32), and the only matter SAW has placed in dispute is the amount of the set-off's.

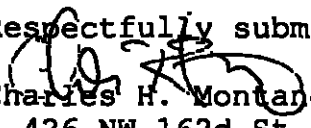
SAW's letter pleading is either a very tardy and impermissible reply to a reply, barred by 49 C.F.R. 1104.13(c). SAW has not sought leave to file it, nor given a legitimate basis to grant such a motion if made. If viewed as a motion to reopen, it should be denied as lacking any relevancy, among other things.

Conclusion

SAW's letter pleading should be stricken or ignored.

I am authorized by WTL's counsel to state that WTL concurs in this pleading.

Respectfully submitted,


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

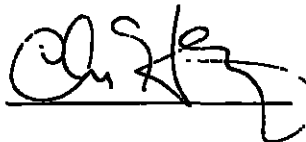
Attorney for PYCO Industries, Inc.

Certificate of Service

By my signature below, I certify service by U.S. Mail, postage pre-paid first class (except as otherwise indicated), this 19th day of August, 2008, upon

Thomas F. McFarland
208 South LaSalle St., Suite 1890
Chicago, IL 60604-1112 (counsel for SAW) (by express service, next day delivery)

John Heffner
1920 N Street NW, Suite 800
Washington, D.C. 20036 (counsel for WTL)

A handwritten signature in black ink, appearing to read "John Heffner", written over a horizontal line.