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SERVICE DATE – SEPTEMBER 8, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34890

PYCO INDUSTRIES, INC.—FEEDER LINE APPLICATION—
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.

Decided: September 5, 2008

In a decision served on August 31, 2007 (August 2007 Decision), the Board approved the application of a shipper, PYCO Industries, Inc. (PYCO), and the competing application of a rail carrier, Keokuk Junction Railway Co. (KJRY) to purchase all of the rail lines of South Plains Switching, Ltd. Co. (SAW) in Lubbock, TX, under the feeder line provision at 49 U.S.C. 10907.¹ In that decision, we directed SAW to sell its rail lines to the applicant of its choice, and, in November 2007, SAW sold its lines to PYCO. PYCO claims that, contrary to the Board's August 2007 Decision, SAW did not convey certain property interests in its rail lines at the closing of the feeder line sale. PYCO now asks the Board either to enforce what it perceives as the intent of the August 2007 Decision or to clarify that that decision directed SAW to sell the three disputed property interests—two track segments and certain switches—in its rail lines as part of the feeder line sale.

In this decision, we clarify that we ordered SAW to sell one of the two disputed track segments. Concerning the ownership of the switches, we find that resolving that issue requires interpreting the sales agreement by which SAW initially acquired the lines from another carrier and that that task is within the expertise of the state courts of Texas.

BACKGROUND

In 1999, SAW sought Board authorization to purchase approximately 14 miles of rail lines in Lubbock, TX, from The Burlington Northern and Santa Fe Railway Company (BNSF).² With the Board's authorization, BNSF and SAW entered into a purchase and sale agreement transferring those lines to SAW.

¹ The August 2007 Decision embraced STB Finance Docket No. 34922, Keokuk Junction Railway Co.—Feeder Line Application—Lines of South Plains Switching, Ltd. Co.

² See South Plains Switching, Ltd. Co.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33753 (Sub-No.1) (STB served July 15, 1999) (Acquisition Exemption). BNSF has since changed its name to BNSF Railway Company. We use BNSF to refer to either entity.

PYCO is a shipper and processor of cottonseed oil and related products that has two plants in Lubbock located on the lines acquired by SAW. PYCO depends heavily on rail service to receive and ship its products, and after the 1999 sale, SAW was the only rail carrier providing service to PYCO's Lubbock plants. In 2005, PYCO experienced periods of inadequate rail service from SAW and, beginning in early 2006, obtained authorization from the Board for a different rail carrier to provide PYCO with alternative rail service over SAW's rail lines, first on an emergency basis and later on a temporary basis.³

The Feeder Line Applications and August 2007 Decision.

In May 2006, PYCO sought a more permanent solution to the inadequacy of SAW's rail service by invoking the statutory "feeder line" provision. Under this provision, the Board will order the sale of a rail line that has not been adequately served by its owner if the buyer is found to be financially responsible and the public convenience and necessity require or permit the sale. 49 U.S.C. 10907(b); Toledo, Peoria & W. Ry. v. STB, 462 F.3d 734, 736 n.2 (7th Cir. 2006), cert. denied, 127 S. Ct. 1829 (2007). In such a case, the Board must set the sale price at "not less than the constitutional minimum value," which is statutorily defined as the net liquidation value (NLV) or going concern value (GCV) of the line, whichever is greater. 49 U.S.C. 10907(b)(2). The NLV consists of the net salvage value of the tracks and related materials plus the value of the underlying real estate, August 2007 Decision, slip op. at 15, whereas the GCV is the value of the rail lines as an ongoing business, id. at 19.

In its feeder line application, PYCO sought to acquire either all of SAW's rail lines (the "All-SAW option") or, in the alternative, the portion of SAW's system needed to serve PYCO's plants and two nearby shippers ("Alternative Two"). PYCO included estimates of both the NLV and the GCV for both options. To estimate the net salvage value component of the NLV for the All-SAW option, PYCO relied on an earlier representation by SAW to the Board concerning the length of the lines SAW had acquired from BNSF and on PYCO's own observations of recent additions to and removal of track on those lines. PYCO estimated the NLV for the All-SAW option to be about \$2 million. In estimating the GCV, PYCO took into account the amount that would be needed for repairing and upgrading the lines, resulting in estimates substantially lower than that for the NLV. PYCO offered to pay the higher of the two figures, the NLV.

PYCO spent several months perfecting its application for both the All-SAW option and for Alternative Two, during which time KJRY submitted a competing application for Alternative Two, which it later expanded to encompass All-SAW. Meanwhile, as of August 2006, the Board

³ See PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co., STB Finance Docket No. 34802, et al. (STB served Jan. 26, Feb. 16, Feb. 24, and June 21, 2006) (emergency alternative rail service); PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co., STB Finance Docket No. 34889, et al. (STB served Nov. 21, 2006) (temporary alternative rail service).

had accepted PYCO's application as complete with respect to both options.⁴ At that time, however, the Board explained that the parties had agreed that it would be preferable for the entirety of SAW's rail lines to be operated by one rail carrier. SAW itself desired that only one carrier operate on its lines because splitting up its lines would be the "absolute worst possible result for all concerned."⁵ A procedural schedule was established for completing the submission of evidence relating to the All-SAW option.

In September 2006, SAW responded to PYCO's initial presentation concerning the All-SAW option. SAW stated that it did not object to a finding that the public convenience and necessity permitted the sale of "All-SAW," which it acknowledged referred to "all of [its] rail lines."⁶ But SAW contended that the lines' constitutional minimum value was their GCV, which it said exceeded \$8 million.

Disputing PYCO's claim regarding the need for rehabilitation, SAW submitted evidence on the physical condition of its rail system. The evidence included a comprehensive inventory that listed the trackage SAW owned and the length of each listed track. The inventory indicated that, as of 2006, SAW owned far more trackage than indicated in PYCO's initial estimate. Included in the inventory was certain trackage identified as "Track 21," listed at a total length of 1,080 feet and serving Acme Brick Company, and other trackage in "Burriss," serving another shipper, Jarvis Metals. SAW insisted that the revenues it received from BNSF's operations on the Burriss tracks should be included in determining the GCV of the All-SAW option.

In reply, PYCO modified its proposed NLV to reflect the full length of trackage that SAW claimed to own. PYCO also provided calculations of GCV, both including and excluding revenue that SAW obtained from BNSF for its use of the Burriss tracks to serve Jarvis Metals. In a further response, SAW did not claim that PYCO had improperly factored the Burriss trackage into the NLV calculation. Rather, SAW confirmed its understanding that "[t]he 'All-SAW Option' involves PYCO's . . . attempt to purchase the entirety of All-SAW's rail lines serving

⁴ PYCO Industries, Inc.—Feeder Line Acquisition—South Plains Switching, Ltd. Co., STB Finance Docket No. 34844, et al., slip op. at 5 (STB served July 3, 2006) (Alternative Two); PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd. Co., STB Finance Docket No. 34890, et al., slip op. at 5 (STB served Aug. 16, 2006) (All-SAW option). KJRY's All-SAW application was also eventually accepted as complete. See PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd. Co., STB Finance Docket No. 34890 et al. (STB served Sept. 20, 2007) (describing agency's implicit acceptance of KJRY's "All-SAW" application).

⁵ SAW Statement in Opposition to Revised Feeder Line Application, filed Aug. 2, 2006 (SAW Opposition), at 6.

⁶ SAW Statement in Response to PYCO's Feeder Line Application to Acquire "All-SAW," filed Sept. 18, 2006 (SAW Statement), at 1, n.1.

every All-SAW customer.”⁷ SAW focused instead on the GCV calculation, insisting again that the revenues it received from BNSF’s operations on the Burriss tracks be included.

In the August 2007 Decision, slip op at 4, the Board explained that, since August 2006, the proceedings had focused on the All-SAW option rather than Alternative Two. Devoting its analysis to the former, the Board found that the public convenience and necessity permitted the sale of all of SAW’s rail lines. Id. at 11-14. On the question of the lines’ value, the Board first addressed the NLV. Id. at 15. The Board relied on PYCO’s estimate of the lines’ net salvage value, finding that estimate credible in part “because it relies upon SAW’s own evidence concerning the track length of all of the Lubbock lines.” Id. at 18. In calculating the lines’ GCV, the Board explained that it included “the revenue of \$75 per car that BNSF handles for Jarvis Metals at Burriss.” Id. at 27. The Board determined that the NLV exceeded the GCV and set the purchase price at the higher figure, the NLV of \$2.35 million. Id. at 30. The Board directed SAW to select the applicant to which it would sell its rail lines. SAW selected PYCO, and the sale closed on November 9, 2007.

Origin of the Current Dispute.

After the sale, a rail carrier chosen by PYCO began operating SAW’s former rail lines. BNSF started making payments to PYCO, rather than SAW, of \$75 for each car that BNSF transported for Jarvis Metals on the Burriss tracks. PYCO began using Track 21 for switching and storage and began using a switch (also called a turnout) connecting BNSF’s main line to PYCO’s Track 310 (Switch 310) in order to serve two shippers.

In early 2008, SAW and a related entity, Choo-Choo Properties, Inc., responded to PYCO’s actions. Choo-Choo sent a letter to PYCO claiming that in April 2006, Choo-Choo had acquired ownership of Track 21 between 19th and 23rd Streets. The letter demanded that PYCO cease storing cars on that property. SAW sued PYCO in a Texas state court, claiming ownership of Switch 310 and alleging that PYCO’s use of that switch constituted trespass. SAW also sought a temporary restraining order (TRO), as well as preliminary and permanent injunctions, to block PYCO and its rail carrier from using Switch 310. And finally, SAW amended its claims in a separate state court lawsuit it had pending against BNSF to assert ownership of various main line switches, including Switch 310.

This Petition and Response.

By a petition filed on February 11, 2008 (Petition), PYCO asks us either to enforce the August 2007 Decision or to clarify that in that decision the Board directed SAW to sell the three

⁷ SAW Reply to (1) KJRY’s Expanded Competing Feeder Line Application; and (2) PYCO’s Amended Valuation Evidence, filed Oct. 12, 2006, Reply Verified Statement (V.S.) of Plaistow at 1.

disputed property interests we have discussed: (1) the “Burris” tracks; (2) Track 21, also referred to as the Acme Brick Lead; and (3) SAW’s property interest (if any) in various switches that connect BNSF’s main line to the rail lines PYCO now owns.

In a letter to the Board, SAW responds that it has relinquished its claim that PYCO may not use Switch 310. In a supplement to its Petition (PYCO Supplement), PYCO acknowledges SAW’s letter but notes that SAW continues to claim ownership of the switches (including Switch 310) in its pending lawsuit against BNSF. PYCO also notes that, although SAW has dismissed its lawsuit against PYCO, it did so without prejudice to SAW’s refileing it at any time.

In a reply to the Petition (SAW Reply), SAW contends that the Board lacks the power to enforce the August 2007 Decision but acknowledges that the Board may clarify that decision. On the merits, SAW argues that the feeder line proceeding did not include the sale of the two disputed track segments. Regarding the Burris tracks, SAW contends that, although the Board required it to sell its “Lubbock” tracks, the Board explicitly allowed it to retain its “Burris” tracks.⁸ As for Track 21, SAW contends that PYCO is entitled to the southern 1,080-foot portion, but not to either the middle or northern portions of that track. Concerning the switches, SAW reiterates that it withdrew its state court action seeking to enjoin PYCO’s use of Switch 310 and acknowledges that for the time being SAW may not seek compensation from PYCO for the use of that switch. SAW also states that it will continue to prosecute its separate court action against BNSF for a judicial declaration that SAW owns the switches that connect what are now PYCO’s tracks to BNSF’s main line, including Switch 310.

PYCO also seeks leave to file a tendered Clarification Statement, in which PYCO maintains that Burris is not a separate town from Lubbock. In support, PYCO attaches two maps showing that Jarvis Metals is located within the city limits of Lubbock. Citing 49 CFR 1104.13(c), which bars replies to replies, SAW moves to strike PYCO’s Clarification Statement, arguing that it adds “nothing of substance.” On April 9, 2008, PYCO filed its opposition to the motion to strike, asking leave to submit a pleading that BNSF filed in response to SAW’s lawsuit

⁸ SAW also filed a letter on August 12, 2008, urging the Board to decline to clarify or enforce the August 2007 Decision in the manner requested by PYCO. In that letter, SAW cited two references to SAW’s Burris trackage in PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co., STB Finance Docket No. 34889 et al., slip op. at 7 (STB served Jan. 11, 2008), as support for SAW’s contention that the Burris tracks were not included in the feeder line sale. In that decision, however, the Board was referring to the Burris tracks prior to the feeder line sale, when BNSF entered into an agreement to pay SAW \$75 per car for traffic BNSF carried for a company located on the Burris tracks. On August 21, 2008, PYCO filed a letter urging the Board to strike or ignore SAW’s August 12 submission but there is no need to rule on PYCO’s request because, as just noted, SAW’s submission is unconvincing in any event.

against BNSF. In that pleading, BNSF asked the court to hold the lawsuit in abeyance pending the Board's resolution of PYCO's Petition.

PRELIMINARY ISSUES

We will deny SAW's motion to strike PYCO's Clarification Statement. Contrary to SAW's assertion that the Clarification Statement adds no substance to the record, the statement provides for the first time a map explicitly identifying the Lubbock city limits and a detailed map showing that the Jarvis Metals siding at Burris is within the city limits. These maps were prepared by a third party, the Center for Geospatial Technology at Texas Tech University, whose reliability SAW does not challenge. Indeed, SAW does not dispute the maps' accuracy. Therefore, we will deny the motion to strike the Clarification Statement; PYCO's corresponding motion for leave to file the statement will be granted. Likewise, we will grant PYCO's April 9, 2008 unopposed motion for leave to submit a copy of a pleading filed by BNSF in the related court proceeding concerning ownership of the switches.

DISCUSSION

Burris Tracks.

We hereby clarify that, in the August 2007 Decision, we ordered SAW to sell all of its rail lines, including the Burris tracks. This is clear given the detailed history of the feeder line proceedings described above. Although we will not repeat that history here, we note in particular that PYCO sought to acquire "All-SAW," which it described as all of SAW's rail lines; that all parties agreed that it would be preferable for one carrier to operate the entirety of SAW's rail lines; that PYCO included the Burris tracks when it calculated the net salvage value portion of the NLV; and that we accepted PYCO's calculation of the net salvage value for the All-SAW option and set the purchase price based in part on that calculation.

Despite all this, SAW argues that the Board did not order the sale of its Burris lines because Burris is a separate station from Lubbock in The Official Railway Guide (Railway Guide) and BSNF's main line track separates the Burris tracks from the remainder of SAW's former Lubbock tracks. SAW also relies upon a single, parenthetical statement in the August 2007 Decision, slip op. at 35, indicating that SAW would retain physically separate small lengths of track at Slaton and at Burris after the sale closing. We discuss each point in turn.

The separate listing for Burris in the Railway Guide is not dispositive in this context. The Board did not cite to the Railway Guide in describing the extent of SAW's rail lines to be sold. Rather, in valuing the property to be sold under the feeder line provision, the Board relied on PYCO's calculation of the lines' net salvage value. PYCO based that calculation on SAW's inventory, which, in turn, explicitly included the Burris tracks. Thus, the Board's calculation of the lines' value necessarily included the Burris tracks.

Moreover, SAW's actions paralleled those of PYCO. When SAW stated that it did not object to a finding that the public convenience and necessity allow the sale of "All-SAW," it did not carve out any piece of its rail system that would not be part of the sale, or to which it objected to such a finding. On the contrary, SAW urged the Board not to split up the lines, calling that the absolute worst possible result. SAW explicitly acknowledged that the All-SAW option refers to all of SAW's rail lines. And SAW implicitly acknowledged that the Burris tracks would be part of the sale by including in its calculation of the lines' GCV the revenue SAW was earning from cars delivered on those tracks. The Board accepted SAW's position that the revenue it earned from owning the Burris tracks was properly included in the GCV.

The fact that the BNSF main line in Lubbock separates those lines denominated "Lubbock" from the lines denominated "Burris" also does not show that the Burris tracks were excluded from the sale, as SAW asserts. There is no requirement in the feeder line provision that the rail lines sold must be connected to each other and cannot be connected through the line of a different rail carrier. In addition, as indicated on the maps included in PYCO's Clarification Statement, the Jarvis Metals siding at Burris is within the city limits of Lubbock. We note, however, that even if that siding were technically outside of the Lubbock city limits, we would reach the same result for the reasons discussed earlier, not the least of which is that PYCO bought and paid for the Burris tracks.

As SAW points out, in the August 2007 Decision, slip op. at 35, the Board stated that SAW "would retain only physically separate, small lengths of track at Slaton and Burris." This reference to the Burris tracks, when viewed in context, was a mistake. Indeed, it is the only instance in which the Board made any statement that might be viewed as saying that the Burris tracks would not be sold under the feeder line provision. In all other instances in the August 2007 Decision, the Board specifically stated that only the Slaton track was not included in the sale. See, e.g., August 2007 Decision, slip op. at 2 n.5: "In addition to its service at Lubbock, SAW provides switching service on a separate track at Slaton, TX, about 15 miles from Lubbock." See also id. at 13: "Following the forced sale of its Lubbock lines, SAW would still have a short track at Slaton, TX, where it provides switching service to an unspecified number of customers."⁹ In other words, it is clear from the context of the Board's entire decision that the Burris tracks were included in those to be sold, and were not among those as to which SAW would retain any ownership.

⁹ To clarify any remaining confusion on this matter, we note that SAW provides the rail service on the Slaton track, but it is owned by South Plains Lamesa Railroad (SLAL), a company closely connected to SAW. See SAW Opposition, V.S. of Plaistow at 1 n.1 (explaining that SAW and SLAL have common ownership, that "[v]irtually all of the assets and cash flows of the combined SAW/SLAL flow through the books of SLAL [and that] the only cash flows that appear on SAW's books are those related to the operations at Slaton, TX").

Thus, we clarify that the Burris tracks were included in the property ordered sold in the August 2007 Decision. In view of the fact that PYCO bought and paid for these tracks, PYCO has been entitled, since the closing of the feeder line sale on November 9, 2007, to the payments it has been receiving from BNSF of \$75 per car transported for Jarvis Metals on the Burris tracks. Accordingly, we will order SAW promptly to convey to PYCO, retroactive to November 9, 2007, the Burris property by quitclaim deed and the tracks and all related material on the Burris property by bill of sale.

Acme Brick Lead—Track 21.

PYCO complains that, after the sale closed, it received a notice of trespass from Choo-Choo Properties, Inc. (Choo-Choo) concerning PYCO's storage of rail cars on a segment of Track 21 that runs north-south, just east of Avenue A in Lubbock, for approximately four blocks. As explained in earlier decisions in this proceeding, Choo-Choo's sole officer and shareholder is Larry Wisener, the former president and general manager of SAW and the spouse of SAW's owner, Delilah Wisener.¹⁰

PYCO claims that it purchased all of Track 21 in the feeder line sale. In support of this claim, PYCO focuses on the switch to Track 21, which PYCO states is in the former SAW rail yard. PYCO notes that SAW stated in one of its filings in the related alternative rail service proceeding that this switch is essential to providing service to Acme Brick.

We agree that access to the switch to Track 21 is necessary for PYCO's rail operator to provide service to Acme Brick. The switch is located at the southern end of Track 21, about which there is no ownership dispute; SAW acknowledges that the southern end was included in the property sold and now belongs to PYCO. Thus, PYCO's rail operator may traverse the southern portion of Track 21, which PYCO owns, and then move onto the tracks owned by Acme Brick to access that plant.

But SAW disputes that PYCO owns either the middle or northern segments of Track 21. SAW explains that Track 21 is about 3,000 feet in length and that the only segment included in the feeder line proceeding was the southern portion extending north for 1,080 feet from the former SAW yard near PYCO Plant No. 1 to the southern property line of Acme Brick at 26th Street. SAW states that in 2005 it sold the middle section of Track 21 (approximately 1,000 feet between 26th and 23rd Streets) to Acme Brick and in April 2006 it sold the northern portion of Track 21 (between 23rd and 19th Streets) to Choo-Choo. SAW notes that it was PYCO's storage of rail cars on the northern portion that led to Choo-Choo's trespass notice.

¹⁰ See PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd. Co., STB Finance Docket No. 34890, slip op. at 3-4 (STB served Jan. 24, 2007) (January 2007 Decision).

The record supports SAW's explanation. In response to PYCO's Petition, SAW has provided a map showing that the southern segment of Track 21 is 1,080 feet and ends at Acme Brick's southern property line. This map is consistent with the track list that SAW furnished in September 2006, which shows that, at that time, SAW owned a total of 1,080 feet of Track 21.¹¹ The fact that the track list does not include the remaining length of Track 21 indicates that, at the time of PYCO's feeder line application, SAW did not own the remaining length and PYCO did not pay to purchase the remaining length. In addition, SAW's map and inventory are consistent with a document PYCO provided in support of its "All-SAW" feeder line application. PYCO provided a real estate appraisal indicating that PYCO would buy that portion of Track 21 south of 26th Street, where the Acme Brick property starts.¹²

PYCO asks in the alternative that the Board invalidate the deed by which SAW transferred a portion of Track 21 to Choo-Choo and order the transfer of that portion to PYCO. PYCO argues that such an action is necessary because it paid for the track in question and needs it for its rail operations. As PYCO sees it, the grounds for voiding the transfer at issue here are at least as strong as those the Board found persuasive when in January 2007 it voided another transfer of trackage from SAW to Choo-Choo.

We disagree. As discussed above, SAW did not pay for either the middle or northern segments of Track 21. None of that trackage appeared on SAW's September 2006 inventory of track that it owned. Because the Board relied on that inventory in calculating the purchase price, it follows that PYCO did not pay for any portion of Track 21 north of the Acme Brick property line. The absence of this trackage from SAW's inventory and the fact that PYCO did not pay for this property distinguishes this transfer from the transfer of other trackage that the Board voided in January 2007. And it was Choo-Choo, not SAW, that sent PYCO notice to cease trespassing on that trackage.

Finally, PYCO has not shown that voiding the transfer of the northern segment of Track 21 to Choo-Choo is necessary for its rail operator to conduct effective rail operations. Although PYCO claims that Track 21 is "extremely useful" for the switching and storage of rail cars,¹³ it does not distinguish between the various segments and does not claim that access to the northern segment is essential in order to provide rail service to itself or other shippers. Accordingly, we decline to void the transfer of the northern segment of Track 21 from SAW to Choo-Choo.

¹¹ See SAW Statement, V.S. of Landreth, Attachment 1 at 19 (listing two portions of Track 21 totaling 1,080 feet).

¹² See PYCO FLA, Exh. D-1 at 4 (identifying the northwest corner of the property to be acquired as "26th Street and Avenue A" and describing the real estate SAW owned along Track 21 as "lying East of Avenue A, South of Coronado Drive"). Coronado Drive is just to the south of 26th Street.

¹³ Petition at 13-16.

In sum, we clarify that, regarding Track 21, SAW was required to sell only the southern 1,080-foot portion, from the rail yard to the southern border of the Acme Brick property.

Ownership of Switches.

As mentioned, SAW's court action seeking a TRO to prevent PYCO's chosen rail operator from using Switch 310 was the action that precipitated PYCO's Petition here. In seeking the TRO, SAW claimed ownership of Switch 310 and sought payment for PYCO's use of that switch. As PYCO points out, its rail operator must use Switch 310 to move the freight of two shippers into the flow of interstate commerce.

As also mentioned above, SAW recently withdrew its court action against PYCO. Moreover, SAW acknowledges that "[u]nless and until SAW is judicially declared to be the owner of those switches, SAW is not in a position to challenge use of those switches by PYCO or BNSF, nor to seek compensation for such use."¹⁴

Although SAW's recent actions might seem to moot the dispute concerning PYCO's use of Switch 310, SAW continues to pursue a court action against BNSF in which it claims ownership of various main line switches and has reserved the right to refile its court action against PYCO to stop PYCO's use of Switch 310. Given the potential for this issue to recur and its importance to all concerned, it is appropriate for us to provide as much clarification as we can.

When authorizing SAW to acquire its rail lines from BNSF pursuant to a contract between those parties, the Board did not discuss whether the main line switches were to be conveyed along with the listed rail lines. See Acquisition Exemption. Although SAW made no reference to the switches in its filing with the Board, neither the parties nor BNSF appears to dispute that the Board authorized BNSF to sell the switches along with the rail lines. Accordingly, we presume that the Acquisition Exemption authorized the sale of the switches to SAW.

But that authorization was merely permissive.¹⁵ BNSF was allowed, but not required, to sell the switches. Determining whether or not BNSF actually sold the switches involves the interpretation of the 1999 purchase and sale agreement between BNSF and SAW. That is a matter of state contract law for the courts of Texas to resolve.¹⁶

¹⁴ SAW Reply at 3.

¹⁵ See General Railway Corporation, d/b/a/ Iowa Northwestern Railroad—Exemption for Acquisition of Railroad Line—in Osceola and Dickinson Counties, IA, STB Finance Docket No. 34867, slip op. at 4 (STB served June 15, 2007).

¹⁶ See id.

Regardless of how a state court might resolve the issue of the switches' ownership, this matter, in our view, is a tempest in a teapot. Whoever is the legal owner, PYCO has, and will continue to have, the right to use the switches connecting its lines to BNSF's main line. Should a court determine that BNSF retained ownership of these switches, SAW would have no right to object to PYCO's use of these switches. On the other hand, should a court determine that BNSF sold the switches to SAW in 1999, the switches should have been conveyed to PYCO as part of the "All-SAW" feeder line sale. In such a case, we would encourage SAW and PYCO to work out through private negotiations any unresolved issues concerning the payment for these switches.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. PYCO's March 17, 2008 motion for leave to file the Clarification Statement and April 9, 2008 motion for leave to file BNSF's state court pleading are granted.
2. SAW's motion to strike the Clarification Statement is denied.
3. The August 2007 Decision is clarified as discussed above.
4. By or on October 8, 2008, SAW shall convey to PYCO the Burris rail lines and related property by quitclaim deed and bill of sale, retroactive to November 9, 2007.
5. This decision is effective on October 8, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary