

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34870

PYCO INDUSTRIES, INC.

v.

SOUTH PLAINS SWITCHING, LTD. CO.

Decided: June 6, 2007

On April 19, 2006, PYCO Industries, Inc. (PYCO), filed a complaint and a request for civil penalties and other appropriate relief against South Plains Switching, Ltd. Co. (SAW). PYCO alleges that SAW violated various provisions of the Interstate Commerce Act, as amended. On May 9, 2006, SAW moved to dismiss the complaint and filed an answer. By decision served May 4, 2007 (May 4 decision), the Board adopted a procedural schedule because the requirements of 49 CFR 1111.10(a) were not satisfied. This decision addresses several procedural requests filed by the parties in the wake of the May 4 decision.

BACKGROUND

By letter filed on May 8, 2007, SAW requests the Board to vacate the May 4 decision in light of the parties' alleged joint report to the Board under 49 CFR 1111.10(a), dated May 18, 2006, which requests that the Board defer discovery and procedural scheduling pending disposition of SAW's motion to dismiss the complaint. Also on May 8, 2007, PYCO submitted a motion to apply the protective order in STB Finance Docket No. 34890, PYCO Industries, Inc.–Feeder Line Acquisition–Lines of South Plains Switching, Ltd. Co. (Finance Docket No. 34890), to this proceeding's discovery process.

On May 17, 2007, PYCO filed an Amendment/Supplement to the Complaint and Statement Concerning Damages in this proceeding. By letter filed on May 17, 2007, SAW, in light of PYCO's amended/supplemented complaint, requests an extension of the discovery cut-off date in the May 4 decision, until 30 days after the due date for SAW's answer to the amended/supplemented complaint¹ This request, if granted, would move the date for the completion of discovery to July 6, 2007. By letter filed on May 22, 2007, SAW, after reviewing the amended/supplemented complaint filed by PYCO on May 17, 2007, again requests the Board

¹ Pursuant to 49 CFR 1111.4(b), SAW's answer to the amended/supplemented complaint must be filed within 20 days after the date of its service (June 6, 2007).

to vacate the May 4 decision and requests that the Board hold the complaint in abeyance pending disposition of its motion to dismiss PYCO's complaint.²

By letter filed on May 31, 2007, SAW's counsel, in light of an impending medical procedure, requests a 30-day extension to file an answer to PYCO's amended/supplemented complaint. This request, if granted, would establish July 6, 2007, as the due date for SAW's answer. Therefore, SAW's earlier request to extend the deadline for the completion of discovery would have to be modified accordingly. In order to allow the parties 30 days after the filing of SAW's answer, the completion of discovery would have a deadline of August 6, 2007.

DISCUSSION AND CONCLUSIONS

The Board will deny SAW's motion to vacate the May 4 decision establishing a procedural schedule for this case and its request to hold the proceeding in abeyance. The Board has no record of the parties' May 18, 2006 joint report regarding discovery and procedural scheduling. Furthermore, the Board's May 4 decision stated that SAW's motion to dismiss would be addressed at a future date. Thus, the Board might address the motion to dismiss after it receives SAW's answer to the amended/supplemented complaint or after the procedural schedule outlined in this decision is completed.

There is good cause to grant PYCO's motion to extend the protective order issued in Finance Docket No. 34890 to this proceeding. The unrestricted disclosure of confidential, proprietary, or commercially sensitive material can cause serious competitive injury. Extension of the protective order will ensure that material submitted or otherwise produced in response to discovery requests will be used only in connection with this proceeding and not for any other purpose. The protective order and undertakings adopted in the Appendix to the Board's decision in Finance Docket No. 34890 and served on July 6, 2006, will be adopted in this decision.

The Board will grant the motion for a 30-day extension of the due date for SAW's answer to PYCO's amended/supplemented complaint (until July 6, 2007). The Board will also grant SAW's motion to extend the deadline for the completion of discovery. In light of the new due date for SAW's answer to PYCO's amended/supplemented complaint, the procedural schedule will now require the completion of discovery within 30 days after SAW's answer is due (August 6, 2007). The remainder of the procedural schedule adopted in the May 4 decision will be adjusted accordingly.

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

² By letter filed on May 31, 2007, PYCO opposes SAW's request that the proceeding be held in abeyance.

It is ordered:

1. The motion to vacate the procedural schedule adopted by the Board in the May 4 decision and the request to hold the proceedings in abeyance are denied.
2. PYCO's motion to extend the protective order served on July 6, 2006, in Finance Docket No. 34890 to this proceeding is granted. The protective order and undertakings in the Appendix to that decision are adopted for this proceeding.
3. SAW's motion for a 30-day extension for the due date of its answer to PYCO's amended/supplemented complaint (until July 6, 2007) is granted.
4. SAW's motion for an extension for the completion date of discovery in this proceeding is granted.
5. The procedural schedule for this proceeding is amended as follows:

Completion of discovery	August 6, 2007
Complainant's opening statement due	August 31, 2007
Respondent's reply statement due	September 25, 2007
Complainant's rebuttal statement due	October 5, 2007
6. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary