

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34890

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

STB Finance Docket No. 34922

KEOKUK JUNCTION RAILWAY CO. – FEEDER LINE APPLICATION –  
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.

Decided: October 17, 2006

These proceedings involve, in STB Finance Docket No. 34890, the feeder line application of PYCO Industries, Inc. (PYCO), under 49 U.S.C. 10907, to purchase all or a portion of the rail lines of South Plains Switching, Ltd. Co. (SAW), in Lubbock, TX, and in STB Finance Docket No. 34922, the competing application of Keokuk Junction Railway Co. (KJRY) to acquire all or a portion of SAW's rail lines. KJRY is a subsidiary of Pioneer Railcorp (Pioneer), a noncarrier. PYCO moved to compel discovery, or alternatively, for a subpoena for Pioneer to appear and produce documents. In a decision served on October 5, 2006 (October 5th decision), the procedural schedule was modified in order to accommodate Pioneer's inclusion in the discovery process. PYCO was allowed 14 days from the receipt of KJRY's and Pioneer's final discovery responses to submit comments. KJRY would then have 7 days after PYCO's comments were submitted to file a rebuttal. In a pleading filed on October 12, 2006, PYCO requested a further schedule modification to move the due date of PYCO's rebuttal filing in STB Finance Docket No. 34890 to the same due date of KJRY's rebuttal in STB Finance Docket No. 34992. On October 13, 2006, KJRY filed a reply in opposition to PYCO's request.

PYCO submitted its amended valuations for the entirety of SAW's rail lines on September 28, 2006. Comments on PYCO's amended valuations were submitted on October 12, 2006. PYCO's rebuttal to these comments is currently due on October 19, 2006. Comments on KJRY's expanded application were submitted on October 12, 2006. However, PYCO is not required to submit comments until October 24, 2006 (KJRY and Pioneer supplied a final discovery response to PYCO on October 10, 2006).<sup>1</sup> KJRY has 7 days from the filing of PYCO's comments to file a rebuttal. Therefore, KJRY's rebuttal would be filed after PYCO's

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<sup>1</sup> Although PYCO stated that it received KJRY and Pioneer's final discovery response on October 11, 2006, KJRY has demonstrated that its response was delivered on October 10, 2006. Therefore, the due date for PYCO's comments is October 24, 2006.

rebuttal. PYCO requests a schedule modification to allow for simultaneous rebuttal. This would change PYCO's rebuttal date from October 19, 2006, to a date no later than October 31, 2006.

PYCO states that the current schedule is unfair and will allow KJRY to convert its rebuttal into a sur-rebuttal of PYCO's rebuttal. PYCO argues that the regulations governing competing feeder line applications contemplate fairness, and that fairness requires simultaneous filing. PYCO further states that there is no prejudice in allowing simultaneous rebuttal, and that the scheduling change will not add unnecessary delay to these proceedings.

KJRY argues that PYCO's request is prejudicial and unsupported. KJRY states that PYCO's proposed scheduled modification would allow PYCO as much as 19-20 days to file its rebuttal, while KJRY would be limited to its original 7-day period. Further, KJRY states that nothing in the Board's feeder line rules requires "simultaneously-submitted last words" for competing applications. KJRY argues that the Board's procedures ensure that each feeder line applicant has the final word on its application, and that there is no justification for granting PYCO extra time to rebut the comments regarding its feeder line application.

The rules governing feeder line applications at 49 CFR part 1151 envision each applicant having the last word on its application. In the case of competing applications, it would be prejudicial to allow one party to have a longer period to prepare a rebuttal. The October 5th decision established a fair and reasonable procedural schedule. Accordingly, because PYCO's request is unsupported by the Board's rules, and because the scheduling change would prejudice KJRY, the procedural schedule established in the October 5th decision shall remain in effect.

It is ordered:

1. PYCO's request for a modification of the procedural schedule, as amended by the Board's October 5, 2006 decision, is denied.
2. PYCO, in accordance with the October 5, 2006 decision, shall file its comments on KJRY's feeder line application in STB Finance Docket No. 34992 no later than October 24, 2006.
3. KJRY, in accordance with the October 5, 2006 decision, shall file its rebuttal in STB Finance Docket No. 34992 no later than 7 days after the filing of the latest comments on its feeder line application.
4. PYCO, in accordance with the October 5, 2006 decision, shall file its rebuttal in STB Finance Docket No. 34890 no later than 7 days after the filing of the latest comments on its feeder line application.

5. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary