

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35111

SOUTH PLAINS SWITCHING, LTD. CO.–COMPENSATION FOR USE OF FACILITIES IN
ALTERNATIVE RAIL SERVICE–WEST TEXAS AND LUBBOCK RAILWAY COMPANY

Decided: December 28, 2007

On December 13, 2007, South Plains Switching, Ltd. Co. (SAW), filed a petition under 49 U.S.C. 11123(b)(2) and 49 U.S.C. 11102(a) for a determination and award of compensation payable by West Texas and Lubbock Railway Company (WTL) for WTL's use of SAW's rail facilities at Lubbock, TX, to provide alternative rail service to PYCO Industries, Inc. (PYCO), beginning January 26, 2006 through November 9, 2007.

On December 26, 2007, PYCO and WTL filed a pleading containing: (1) PYCO's motion to intervene as a party to this proceeding; (2) a joint motion for a protective order holding all discovery requests by SAW in abeyance until a reply may be filed, and statement in opposition to SAW's request for a procedural schedule; and (3) a joint motion for a 2-day extension of the deadline for a reply to SAW's petition. On December 27, 2007, SAW filed a letter in reply to PYCO and WTL's joint pleading.

PYCO motion to intervene. PYCO requests that it be made a party to this proceeding. PYCO states that SAW's petition should have been filed in STB Finance Docket No. 34802, PYCO Industries, Inc.–Alternative Rail Service–South Plains Switching, Ltd. Co., and STB Finance Docket No. 34889, PYCO Industries, Inc.–Alternative Rail Service–South Plains Switching, Ltd. Co., proceedings to which PYCO is already a party. PYCO further states it may be liable for some or all of any compensation award, and is therefore a real party in interest. Finally, PYCO states that it anticipates filing joint pleadings, and that this will pose no burden on either SAW or the Board. SAW states that it does not oppose PYCO's motion to intervene. Because PYCO's request to intervene is unopposed and because PYCO has recited that it may incur liability for any compensation award, the request will be granted.

Joint motion for protective order. WTL and PYCO request a protective order holding all discovery requests in abeyance until the Board has ruled on SAW's petition. WTL and PYCO state that WTL is already in receipt of discovery requests from SAW. WTL and PYCO argue that SAW's discovery requests are premature, unduly burdensome, and irrelevant. SAW opposes the requested order and argues that such an order would delay SAW's discovery of relevant information. SAW's discovery requests are not premature and WTL and PYCO have failed to show with any specificity that they are either unduly burdensome or irrelevant. See 49 CFR 1114.21. Accordingly, the joint motion for protective order will be denied.

Joint motion for 2-day extension of time to file reply. WTL and PYCO request a 2-day extension (until January 4, 2008) of the deadline to file a reply to SAW's petition. WTL and PYCO state that the extension is warranted in light of the fact that the 20-day period to reply to SAW's petition encompasses both the Christmas and New Year's Day federal holidays. SAW states that it does not oppose the extension request. The request is reasonable. Accordingly, the request for an extension will be granted.

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 motion to intervene as a party in this proceeding is granted.
2. WTL and PYCO's joint motion for protective order is denied.
3. WTL and PYCO's joint motion for a 2-day extension (until January 4, 2008) of the deadline to file a reply is granted.
4. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary