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SERVICE DATE – LATE RELEASE AUGUST 16, 2006

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: August 16, 2006

This decision accepts the feeder line application of PYCO Industries, Inc. (PYCO) to purchase the entirety of the rail lines of South Plains Switching, Ltd. Co. (SAW) in Lubbock, TX, and amends the procedural schedule in these feeder line proceedings in light of recent filings.

BACKGROUND

In May 2006, PYCO, a processor and shipper of cottonseed products, filed an application under the feeder line provision at 49 U.S.C. 10907 to acquire the entirety of SAW's rail lines. PYCO labeled this the "All-SAW option." In the alternative, PYCO sought to acquire a portion of SAW's rail lines to provide rail service to itself and to two other shippers located near one of

PYCO's plants. This option was labeled "Alternative Two."¹ In PYCO Industries, Inc.—Feeder Line Acquisition—South Plains Switching, Ltd. Co., STB Finance Docket No. 34844 (STB served June 2, 2006) (Director's decision), PYCO's application was rejected as incomplete for either alternative, in part because of insufficient evidence that rail service was inadequate for a majority of the shippers on either the entirety of SAW's lines or the portion comprising Alternative Two. The rejection was without prejudice to PYCO's filing a new application.

PYCO appealed the Director's decision and also filed a revised application for Alternative Two. In a decision served on July 3, 2006 (July 3 decision), the Board denied the appeal, but accepted the revised application for Alternative Two because, as relevant here, PYCO furnished sufficient evidence that SAW's rail service was inadequate for a majority of the shippers located on the lines comprising Alternative Two.

The Board also set a procedural schedule in the July 3 decision, including a due date of July 18, 2006, for filing competing feeder line applications. On July 18, 2006, Keokuk Junction Railway Co. (KJRY) sought an enlargement of time to file a competing application for the All-SAW option. PYCO objected² and, in a decision served on July 21, 2006 (July 21 decision), the Board granted KJRY additional time, until August 4, 2006, to file a competing feeder line application.

On August 2, 2006, PYCO submitted additional statements indicating that a majority of the shippers on SAW's entire rail system view SAW's service as inadequate. PYCO also submitted the request of a potential rail shipper located on SAW's lines, Floyd Trucking, Inc., to accept PYCO's application for the All-SAW option. PYCO joined in that request, claiming that

¹ The rail lines comprising Alternative Two are as follows:

Track 5, SAW yard,	2,400 feet;
Track 1, SAW yard,	2,100 feet;
Track 9200,	3,900 feet;
Track 9298, east of BNSF main,	4,320 feet;
Track lead to PYCO plant 2 to 50th St.,	6,280 feet;
Track 231 lead to 9200/9298,	960 feet;
<u>Track 310 through Farmers 1,</u>	<u>5,600 feet;</u>
TOTAL:	25,560 feet

In addition, all of Track No. 6 from the western end of SAW yard to the western clearpoint of the easternmost switch of the "wye" track connecting to Track No. 6 from the south, and also the western branch of said "wye" from its southern clearpoint north to and including its connection with Track No. 6, estimated to be 1,100 feet. Also, a crossing right as follows: Crossing right Track 9298 to and through SAW yard, 5,000 feet.

² Among other objections, PYCO argued that KJRY should not be permitted to file a competing application for a greater amount of rail lines than PYCO's application for Alternative Two.

there would be no prejudice to the other parties because KJRY was also expected to file a competing application for that option.

Also on August 2, 2006, SAW submitted comments and evidence on PYCO's application, including a valuation of the portion of SAW's rail lines comprising Alternative Two. In the pleading, SAW argued that PYCO's application does not show that the public convenience and necessity (PC&N) permit the sale of that portion of SAW's rail lines.

In another pleading filed on August 2, 2006, BNSF Railway Company (BNSF)—the only rail carrier whose lines connect with those of SAW—expressed no position on whether PYCO's application for Alternative Two should be approved. However, BNSF asked that, in any approval, the Board impose a condition to preserve BNSF's ability to operate at Lubbock efficiently and without undue interference.

On August 4, 2006, in STB Finance Docket No. 34922, KJRY filed a competing feeder line application for Alternative Two. KJRY stated that it would have preferred to file an application for the All-SAW option, but did not do so because of PYCO's objection and the press of time. KJRY indicated that it would attempt to acquire the remainder of SAW's rail lines through negotiation, or alternatively, if the Board were to accept PYCO's All-SAW application, KJRY would also submit a parallel competing application.

Also on August 4, 2006, SAW submitted a letter stating that, because a majority of shippers now favor the sale of the entirety of its rail lines, SAW is reevaluating its prior position on whether the PC&N permit the sale of its rail lines. In that letter, SAW asked for additional time, until August 18, 2006, to determine its position on the PC&N issues and to provide supplemental evidence addressing the valuation of the entirety of its rail lines.

Thereafter, in a letter filed on August 8, 2006, PYCO objected to KJRY having a second opportunity to submit an application for the All-SAW option. PYCO cited the July 21 decision, in which the Board afforded KJRY the opportunity to submit (by August 4) an application for the All-SAW option. PYCO contended that granting KJRY a second chance would delay the processing of the feeder line applications, contrary to the Board's earlier expressions of the need to decide this proceeding promptly.³

³ In the July 3 decision, the Board indicated the need for a prompt decision on the feeder line applications because the authorization for alternative rail service granted to PYCO in a series of decisions in PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co. (Alternative Service), STB Finance Docket No. 34802 (STB served Jan. 26, Feb. 24, and June 21, 2006) will expire on October 23, 2006.

PRELIMINARY MATTER

In a pleading filed on August 10, 2006, KJRY moved to strike PYCO's August 8, 2006 letter, arguing that the letter was not authorized under the Board's orders or regulations and duplicates PYCO's August 2, 2006 submission. In response to the substance of the PYCO letter, KJRY argues that, if the Board now accepts the All-SAW application, it would upset the orderly processing of the applications for Alternative Two and also could deprive any interested persons of their right to submit a competing All-SAW application.

PYCO's August 8 letter formalizes its earlier suggestion for acceptance of its application for the All-SAW option, and opposes affording additional time for KJRY to submit a competing application of parallel scope. Because KJRY responded to the substance of the August 8 letter, some of which is repetitive of an earlier pleading, no one will be prejudiced by its acceptance into the record. Accordingly, KJRY's motion to strike will be denied.

DISCUSSION AND CONCLUSIONS

The parties agree that it would be preferable for the entirety of SAW's rail lines to be operated by one rail carrier. Toward that end, both PYCO and KJRY seek to have the Board consider their respective applications for the All-SAW option. KJRY is also attempting to acquire all of SAW's rail lines through private negotiation in combination with its competing feeder line application for Alternative Two. SAW also desires that only one carrier operate on its lines, because in SAW's view, splitting up its rail lines would be the worst possible result for all parties.

There likely would be fewer operational difficulties if only one carrier operates on the entirety of SAW's tightly configured rail lines. Several safety issues have arisen recently during the period of alternative rail service for PYCO with two different carriers currently operating on the lines, each serving different shippers.⁴ Thus, proceeding with applications for the All-SAW option would help to avoid the congestion on the rail lines and in the yards of both SAW and BNSF, and would also promote energy conservation by making rail operations more efficient.

KJRY, however, contends that, to consider PYCO's All-SAW application, the Board must require PYCO to file a new application and begin the process all over again. KJRY argues that due process requires taking that approach so that interested members of the public may file a competing application for the All-SAW option. But requiring PYCO to start anew would mean that a decision on these feeder line applications and sale of the line, if any applications are approved, could not occur prior to October 23, 2006, the end of the authorized alternative service period.

⁴ See Alternative Service (STB served June 21, 2006).

For all of these reasons, PYCO's application for the All-SAW option, together with the new shipper statements, will be accepted. For simplicity's sake, the application for the All-SAW option will continue to be processed in STB Finance Docket No. 34890. (PYCO's entire original application, submitted in STB Finance Docket No. 34844 has been incorporated in its new application.) Notice of the acceptance of PYCO's All-SAW application will promptly be published in the Federal Register to provide adequate public notice and give interested parties the opportunity to submit competing applications to acquire the entirety of SAW's rail lines.

Having accepted PYCO's application for Alternative Two as complete, KJRY must similarly be afforded the opportunity to expand its application to encompass the entirety of SAW's rail lines. Thus, neither applicant would be forced to start over by filing a completely new application for the All-SAW option.

PROCEDURAL SCHEDULE

SAW should file its valuation evidence for the entirety of its rail lines by August 18, 2006, as it has requested. (That filing should also state clearly SAW's position on the PC&N criteria.) In preparing its valuation, SAW likely will rely on materials (track charts and the like) that also respond (in part) to PYCO's interrogatories and requests for document production. Thus, SAW will have 3 additional days, until August 21, 2006, to provide discovery responses to PYCO concerning the portion of its rail lines that were not included in Alternative Two.

PYCO will have 7 days after receipt of SAW's forthcoming responses to discovery to file (if it desires) its amended valuation evidence for the All-SAW option. (For example, if PYCO receives the discovery responses on August 21, 2006, its amended valuation evidence (if any) will be due on August 28, 2006.)

A decision accepting or rejecting KJRY's competing feeder line application for Alternative Two is expected to be served on August 18, 2006. All further filing deadlines for KJRY pleadings will apply only if KJRY's application for Alternative Two is accepted as complete. KJRY will have until August 28, 2006, to file expand its application and furnish its valuation evidence for the All-SAW option.

Within 14 days after the filing of PYCO's amended valuation evidence (if any) for the All-SAW option, any other party may file a reply to PYCO's amended valuation evidence. On the same date, any other party may file a reply to KJRY's application (if accepted) concerning Alternative Two and/or the All-SAW option. Parties responding to both PYCO's and KJRY's applications may do so in one document.

Each applicant will have the opportunity to file a rebuttal concerning the replies to its application. These rebuttals will be due 7 days after the latest filing of any replies referred to in the preceding paragraph.

It is ordered:

1. PYCO's feeder line application for the All-SAW option is accepted. Notice will be published in the Federal Register on August 22, 2006.
2. SAW shall file any valuation of the entirety of its rail lines on or by August 18, 2006.
3. As concerns the remainder of SAW's rail system (other than the lines comprising Alternative Two), SAW shall provide responses to PYCO's discovery on or by August 21, 2006.
4. PYCO shall have 7 days after receipt of the discovery responses referred to in the preceding paragraph to file any amended valuation evidence for the All-SAW option. If PYCO chooses not to amend any of its prior valuation evidence, it shall have 7 days after receipt of the discovery responses referred to in the preceding paragraph to file a statement that it is not submitting any amended valuations.
5. If KJRY's competing feeder line application for Alternative Two is accepted, KJRY shall file any valuation evidence for the All-SAW option on or by August 28, 2006.
6. Within 14 days after the filing of PYCO's amended valuations, any party may file a reply to PYCO's amended valuation evidence. These replies may be combined with the replies referred to in paragraph 7 below.
7. Within 14 days after the filing of PYCO's amended valuation evidence, any party may file a reply to KJRY's application concerning Alternative Two (if accepted) and/or the All-SAW option. These replies may be combined with the replies referred to in paragraph 6 above.
8. Each applicant (whose application has been accepted) may file a rebuttal concerning the replies to its own application, within 7 days after the latest filing of any replies to its own application.
9. Competing feeder line applications to PYCO's application for the all-SAW option (except for a competing All-Saw application by KJRY, for which a separate deadline of August 28, 2006, is established in this decision) are due by September 6, 2006.
10. The motion to strike filed by KJRY on August 10, 2006, is denied.

11. This decision is effective on August 16, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary