

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34922

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

Decided: August 17, 2006

In PYCO Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd. Co., STB Finance Docket No. 34890, et al. (STB served July 3, 2006) (July 3 decision), the Board accepted the feeder line application of PYCO Industries, Inc. (PYCO), to acquire, under 49 U.S.C. 10907 and 49 CFR 1151, a portion of the rail lines of South Plains Switching, Ltd. Co. (SAW), in Lubbock, TX.¹ On August 4, 2006, Keokuk Junction Railway Co. (KJRY) filed, under 49 CFR 1151.2(c), a competing application to acquire the same portion of SAW’s lines. That application was assigned STB Finance Docket No. 34922. On August 14, 2006, PYCO filed a motion to reject KJRY’s application, arguing that KJRY’s application is not complete under the applicable regulation at 49 CFR 1151.3(a). On August 16, 2006, KJRY filed a reply to PYCO’s motion and a supplemental verified statement. This decision accepts KJRY’s competing application.²

¹ The portion of SAW’s lines to be acquired is set forth below:

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 Because it will not prejudice any party, KJRY’s supplemental evidence will be accepted into the record.

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." 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, because of insufficient evidence of PYCO's financial responsibility and of the inadequacy of the current rail service 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 the July 3 decision, the Board denied the appeal, but accepted the revised application for Alternative Two because PYCO furnished sufficient evidence of both its financial responsibility and of the inadequacy of current rail service for a majority of the shippers located on the lines comprising Alternative Two. Thereafter, KJRY submitted its competing application for Alternative Two. PYCO replied, arguing that KJRY's application is deficient in several respects.

DISCUSSION AND CONCLUSIONS

A competing feeder line application must substantially include the information set forth at 49 CFR 1151.3(a). Discussed below are the deficiencies alleged by PYCO in KJRY's competing application.

Going Concern Value (49 CFR 1151.3(a)(4)). A complete application requires an estimate of both the going concern value (GCV) and the net liquidation value (NLV) of the rail line to be acquired. PYCO does not assail the completeness of KJRY's estimate of the line's NLV at \$606,000, which is the same as PYCO's NLV estimate. PYCO contends, however, that KJRY's GCV estimate of \$935,070.92 lacks credibility because it double counts normal maintenance expenses and does not take into consideration necessary, extensive rehabilitation of the line. This is not the time to judge the credibility of KJRY's GCV estimate. Indeed, KJRY will have the opportunity to rebut the claims of a double count in, and a missing element of, its GCV estimate at a later date. Accordingly, the basis for the GCV estimate is sufficiently documented in KJRY's application to be considered complete.

Financial Responsibility (49 CFR 1151.3(a)(3)). An application must include information sufficient to demonstrate that the applicant is a financially responsible person, able to pay the higher of NLV or GCV of the line to be acquired and to cover expenses associated with providing service over the line for at least the first 3 years after acquisition of the line.

KJRY states that, through the financial resources of its parent corporation, Pioneer Railcorp (Pioneer), KJRY has the financial resources to purchase these lines at the higher estimate (a GCV of approximately \$935,000) and to operate these lines for not less than 3 years, without jeopardizing Pioneer's other operations. In this regard, Pioneer's President, Chief Executive Officer, and Chief Financial Officer, J. Michael Carr, states that Pioneer has available, and will make available to KJRY for the purposes of acquiring and operating these rail lines, up to \$3 million. KJRY also submitted, under seal, Pioneer's consolidated financial statements for 2004 and 2005, which adequately support Mr. Carr's statements.

National City Bank of Michigan/Illinois provided a statement confirming that Pioneer has approximately \$1.5 million available through a working capital line of credit, which could be used to fund the purchase of these rail lines, and indicating that the bank believes that Pioneer has sufficient cash flow from operations to service the debt payments on that line of credit.

Citing the Director's decision (on its original application), PYCO contends that KJRY's initial evidence of financial responsibility is insufficient because KJRY did not provide a calculation of 3 years' operating costs. In its supplemental submission, KJRY explains that, in stating that these rail lines could be operated profitably for 3 years without a subsidy or additional revenue funding, KJRY relied upon the study of PYCO's witness, R.L Banks, which demonstrated that there would be positive cash flow for post-acquisition operations.³ Because PYCO's studies were deemed sufficient to show PYCO's financial responsibility to operate the line for 3 years, those studies are likewise deemed sufficient to demonstrate KJRY's parallel financial responsibility.

Public Convenience and Necessity Criteria (49 CFR 1151.3(a)(11)). PYCO asserts that KJRY's application is contrary to the public convenience and necessity (PC&N), but PYCO does not mention any deficiency in KJRY's application. Indeed, KJRY addressed each of the elements of a PC&N showing in its application.⁴ Thus, PYCO's challenge addresses the merits of KJRY's application rather than its completeness.

Conclusion. KJRY's competing feeder line application for the lines comprising Alternative Two is accepted.

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

³ The cited studies are included in PYCO's original feeder line application, which has been incorporated in PYCO's revised feeder line application in STB Finance Docket No. 34890.

⁴ The elements are listed at 49 CFR 1151.3(a)(11)(i)(A) through (E).

It is ordered:

1. KJRY's competing application is accepted.
2. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary