

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34802

PYCO INDUSTRIES, INC.–ALTERNATIVE RAIL SERVICE–
SOUTH PLAINS SWITCHING, LTD. CO.

Decided: February 16, 2006

In a decision served on January 26, 2006 (the January Decision), pursuant to 49 U.S.C. 11123 and 49 CFR part 1146, we granted the petition of PYCO Industries, Inc. (PYCO), for an order authorizing West Texas & Lubbock Railway Company, Inc. (WTL), to provide interim alternative rail service to PYCO, over the lines of South Plains Switching, Ltd. Co. (SAW) in Lubbock, TX, for an initial period of 30 days. We also directed PYCO and SAW promptly to enter into operating protocols that would allow for safe joint operations and to report when the required protocols were in place.

Following consultations with the Board's Office of Compliance and Enforcement (OCE), WTL and SAW signed an operating protocol. However, since that time, several problems have arisen precluding adequate service. In requests filed separately on February 8, 2006, PYCO and WTL each ask us to impose additional terms in the operating protocol to enable WTL to provide adequate service to PYCO.¹ We will impose terms that are necessary to permit safe and adequate service to PYCO and the other shippers on this line.

BACKGROUND

PYCO is a rail-dependent processor of cottonseed oil and related products. Until the January Decision, SAW, the only rail carrier that served PYCO, provided switching service between PYCO's two plants at Lubbock and the yard of a linehaul carrier, BNSF Railway Company (BNSF). SAW's service to PYCO deteriorated in spring and early summer of 2005, improved for a time, and deteriorated again beginning in mid-November 2005. In the January Decision, we found that PYCO had experienced "a substantial, measurable deterioration or other demonstrated inadequacy in rail service" provided by SAW. After examining the course of dealings between PYCO and SAW, we determined that SAW was unlikely to restore adequate rail service to PYCO within a reasonable time, and authorized WTL to provide alternative rail service to PYCO using SAW's lines for an initial period of 30 days (and not to exceed a total of 270 days), commencing at 11:59 p.m. on January 26, 2006. Due to the opportunity for both WTL and SAW to be operating on SAW's lines at the same time, we ordered the parties to

¹ On February 9, 2006, SAW filed a Petition to Terminate Alternative Rail Service (SAW Petition to Terminate), which will be the subject of a separate decision.

establish an operating protocol that would allow for safe and adequate operations by both carriers.

With the assistance of OCE, the parties subsequently talked on several occasions to develop the required operating protocol. According to PYCO and WTL, SAW circulated for signature a proposed operating protocol that did not adequately account for the operational realities at Lubbock or for BNSF's operational needs. WTL reports that, initially, it did not sign the proposed protocol because of serious reservations about the ability of WTL to serve PYCO and of SAW to serve the other customers on its lines. WTL evidently sought a change in the proposed protocol, but SAW was unwilling to negotiate further. After SAW gave WTL an ultimatum to sign the draft protocol, WTL signed the protocol as tendered, notwithstanding its reservations. Now, PYCO and WTL point to problems with that operating protocol and ask us to impose additional terms to enable WTL to provide adequate service to PYCO.

PYCO reports that, under the existing operating protocol, service problems have resulted from congestion in BNSF's yard, which caused BNSF to shift cars onto two SAW tracks (9298 and 9200). According to PYCO, the problems were compounded when BNSF was unable to reach SAW to have SAW dispatch those tracks to remove the stored cars. PYCO states that, because the existing operating protocol assigned those tracks as "the primary means" to provide service to PYCO's Plant No. 2, the stored cars prevented service at Plant No. 2 the next day.

Other problems arose when, according to PYCO, SAW obstructed a different track (No. 310), delaying a needed switch at Plant No. 2 until late in the day. In addition, PYCO states that on another day WTL could not provide another switch at Plant No. 2 because WTL was unable to get permission to cross the BNSF main line during the hours that the operating protocol permits WTL to operate.

DISCUSSION AND CONCLUSIONS

In requiring the parties to develop and agree to appropriate operating protocols, our objective was to allow for safe and adequate service to all the shippers during the period that SAW and WTL both operate on SAW's lines. We expected the parties to arrange hours of operation and other protocols that would fulfill that objective.

Our alternative service expectations have not been fully met by the existing operating protocol. The reported service difficulties reveal an apparent mismatch between the operating hours allotted to WTL and the hours when switching carriers easily may gain access to BNSF's yard (to retrieve cars needed for interchange), as well as an inability to communicate with SAW when there was a need to clear blocked tracks. We find that these problems have prevented adequate and timely service to PYCO by WTL. Consequently, we will intervene to facilitate improved service by the two carriers that currently share this line.

The agreed-upon protocol currently limits the operations of both WTL and SAW to daytime hours, 7 a.m. to 7 p.m. However, BNSF has informed PYCO that it is much easier for a

switching carrier to interchange with BNSF during the evenings, between 6 p.m. and midnight, when there is a lull of activity in BNSF's yard. Entry to BNSF's main line and yard is critical to providing adequate service to PYCO and to the other shippers on SAW's line. Therefore, we find that, although SAW may choose not to operate at night, WTL should not be prevented from doing so, when it is easier to obtain access to BNSF's track and yard.

Affording WTL additional hours of operation also should facilitate SAW's service to its own shippers as well as service to PYCO, because WTL has agreed to move cars for SAW's customers between BNSF's yard and SAW's yard. Indeed, WTL has moved such cars to SAW's yard.² Consequently, in addition to times already agreed upon, we will impose a term permitting WTL to operate from 7 p.m. to 7 a.m., 7 days a week, to facilitate safe and adequate service to all shippers on SAW lines, including PYCO.

Adequate service for PYCO has also been impeded by the inability of the other carriers involved, WTL and BNSF, to communicate with SAW at times when operational problems occur. The empty cars that BNSF placed on tracks 9200 and 9298 would not have been as great an impediment to service at PYCO's Plant No. 2 if BNSF could have promptly informed SAW of the cars and obtained SAW's help in removing the blockage. Accordingly, we will impose a term requiring SAW to designate a contact person (or persons) knowledgeable about SAW's operations to be available 24 hours a day, 7 days a week, with whom BNSF and WTL can communicate and resolve operational issues as they arise. We emphasize that this term does not require SAW to operate at all hours, but simply to make available (by telephone) a person or persons who can promptly resolve any operational problems.

Finally, the blockage of tracks 9298 and 9200 has prevented WTL from providing adequate service to PYCO's Plant No. 2. These tracks must remain clear so that WTL, in coordination with BNSF, can provide service on the tracks designated as the primary means to serve that plant. Accordingly, we will impose, as part of the protocol, a term requiring that these tracks remain clear. Because the existing operating protocol assigns track 9298 as the primary means to serve Plant No. 2, WTL logically also must have authority to use the route between that track and Plant No. 2.

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

It is ordered:

1. The operating protocol attached to WTL's February 8, 2006 request is modified by adding the following terms:

² SAW Petition to Terminate, Verified Statement of Delilah Wisener at 9 (indicating that SAW received a few empty and loaded cars from WTL).

a. WTL shall have the right to operate between 7 p.m. and 7 a.m., 7 days per week, to facilitate safe and adequate service to all shippers on the SAW lines, including PYCO.

b. SAW shall immediately designate a contact person (or persons) knowledgeable about SAW's operation and who will be available to discuss and to resolve operational issues 24 hours per day, 7 days per week, and provide the telephone number of that person or persons to WTL and BNSF.

c. Tracks 9200 and 9298 shall remain clear of cars so that WTL, in coordination with BNSF, can provide service at PYCO Plant 2. WTL shall have authority to use the route between tracks 9200 and 9298 and Plant No. 2 to provide this service.

2. These terms shall apply for the same duration as the existing operating protocol.

3. This decision is effective on its date of service.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary