

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: September 29, 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. On September 26, 2006, PYCO filed a motion to compel Pioneer Railcorp (Pioneer) and its affiliates, including KJRY, to respond to discovery requests by October 3, 2006, or in the alternative, for issuance of a subpoena for documents and the appearance of a witness. KJRY responded by letter on September 28, 2006. In that letter, KJRY urges the Board not to rule on PYCO's motion to compel until KJRY and Pioneer have had an opportunity to reply to the motion and further states that KJRY and Pioneer intend to respond on October 6, 2006. KJRY also states that it will respond to PYCO's discovery request (which it maintains has been tendered to Pioneer and not formally to KJRY) by October 5, 2006, subject to whatever objections it considers appropriate.

PYCO has served on KJRY's counsel interrogatories and requests for production of documents directed to "Pioneer Railcorp d/b/a Keokuk Junction Railway." In the requests, "Pioneer" was defined as including all Pioneer subsidiaries and affiliates, including KJRY. In a September 19 letter included in PYCO's motion, the counsel for both Pioneer and KJRY stated that Pioneer objected to the discovery requests on the ground that Pioneer, as a non-party, is not required to respond because PYCO has not obtained a subpoena for Pioneer to appear. The parties' subsequent efforts to reach a voluntary solution were unsuccessful.

In its motion, PYCO asks the Board to compel Pioneer and its affiliates, including KJRY, to respond to: (a) all requests for documents and information set forth in Exhibit A,¹ a letter dated August 30, 2006 and designated "highly confidential" under a protective order; (b) all

¹ All references are to exhibits to PYCO's motion to compel.

document requests set forth at Exhibit B (PYCO's earlier-propounded discovery requests); and (c) interrogatories 2, 3, 4, 5, 6, 8, 10, 11, 13, 14, and 15 of Exhibit B. In the alternative, PYCO seeks a subpoena requiring a representative of Pioneer to appear and produce documents.

PYCO requests that responses be required no later than October 3, 2006, to afford sufficient time for PYCO to analyze and utilize the information in its comments on KJRY's application, which are due on October 12, 2006.

It appears that expedited action on PYCO's motion is appropriate under the circumstances but that KJRY and Pioneer should be given an opportunity to reply to that motion. KJRY and Pioneer will therefore be directed to reply to the motion by October 2, 2006. This response date should not unduly burden KJRY because, as reflected by PYCO's filing, the parties have already been discussing these matters and KJRY has been in possession of most of the discovery requests since late July 2006. Moreover, KJRY no longer is occupied with preparing an expanded application for the entirety of SAW's rail lines, as that application was filed on September 27, 2006.

The alternative request for issuance of a subpoena will be held in abeyance pending resolution of the motion to compel.

It is ordered:

1. KJRY and Pioneer are directed to reply to the motion to compel discovery by October 2, 2006.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary