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SEC

SERVICE DATE – JULY 3, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34870

PYCO INDUSTRIES, INC.

v.

SOUTH PLAINS SWITCHING, LTD. CO.

Decided: July 2, 2007

On April 19, 2006, PYCO Industries, Inc. (PYCO), filed a complaint and a request for civil penalties and other appropriate relief against South Plains Switching, Ltd. Co. (SAW). PYCO alleges that SAW violated various provisions of the Interstate Commerce Act, as amended. On May 9, 2006, SAW moved to dismiss the complaint and filed an answer. By decision served May 4, 2007 (May 4 decision), the Board adopted a procedural schedule because it appeared at the time that the requirements of 49 CFR 1111.10(a) had not been satisfied. In a decision served on June 6, 2007 (June 6 decision), the Board modified the procedural schedule.

In the June 6 decision, the Board stated that it had no record of a joint report allegedly filed by SAW on May 18, 2006, in which the parties agreed that discovery and procedural scheduling be deferred until the Board ruled on SAW's motion to dismiss the complaint. On June 19, 2007, SAW provided the Board with an automated electronic acknowledgment as proof that the joint report was properly E-filed. SAW again requested that the evidentiary proceedings be held in abeyance pending a ruling on the motion to dismiss the complaint. After investigating the matter, it has been determined that the joint report was properly E-filed. Therefore, the parties were in compliance with the requirements of 49 CFR 1111.10(a).

In a letter filed on May 8, 2007, however, PYCO stated that it was now prepared to proceed with the procedural schedule. In a letter filed on June 26, 2007, PYCO reiterated its opposition to SAW's request to defer development of the record in this proceeding. Both letters suggest that the parties no longer agree regarding deferral of discovery and procedural scheduling until the Board rules on SAW's motion to dismiss the complaint.

The parties are directed to continue with the current procedural schedule, as modified in this decision. As stated in both the May 4 and June 6 decisions, the Board will address SAW's motion to dismiss at a future date. The earliest the Board could address the motion to dismiss will be after it considers SAW's answer to PYCO's amended/supplemented complaint, which is due on July 6, 2007. However, the Board may defer ruling on the motion until after the procedural schedule is completed.

PYCO's June 26 pleading also included a request to adjust the procedural schedule and extend the due date for PYCO's rebuttal statement. PYCO's counsel stated that he has long been scheduled to be outside the United States for an extended period in September and October, and that the current due date for PYCO's rebuttal statement (October 5, 2007) falls during this absence. PYCO's request is reasonable. The Board will grant PYCO's motion to move the due date for its rebuttal statement. The new due date will be October 17, 2007. Given this adjustment, it is also appropriate to extend the due date for SAW's reply statement to October 1, 2007.

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

It is ordered:

1. The joint report of the parties, timely filed by SAW on May 18, 2006, in compliance with 49 CFR 1111.10(a), will be added to the record in this proceeding.

2. The parties are directed to continue with the current procedural schedule, as amended by this decision, outlined in the Board's June 6, 2007 decision.

3. PYCO's motion for an extension of the due date for its rebuttal statement in this proceeding is granted.

4. The procedural schedule for this proceeding is amended as follows:

Completion of discovery due	August 6, 2007
Complainant's opening statement due	August 31, 2007
Respondent's reply statement due	October 1, 2007
Complainant's rebuttal statement due	October 17, 2007

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary