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SEC

SERVICE DATE – FEBRUARY 5, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35111

SOUTH PLAINS SWITCHING, LTD. CO.–COMPENSATION FOR USE OF FACILITIES IN
ALTERNATIVE RAIL SERVICE–WEST TEXAS AND LUBBOCK RAILWAY COMPANY

Decided: February 4, 2008

On December 13, 2007, South Plains Switching, Ltd. Co. (SAW), filed a petition under 49 U.S.C. 11123(b)(2) and 49 U.S.C. 11102(a) for a determination and award of compensation payable by West Texas and Lubbock Railway Company (WTL) for WTL's use of SAW's rail facilities at Lubbock, TX, to provide alternative rail service to PYCO Industries, Inc. (PYCO), beginning January 26, 2006, through November 9, 2007. In a decision served on December 28, 2007, the Board granted PYCO's motion to intervene as a party to this proceeding.

On January 16, 2008, SAW filed a motion to compel WTL's response to discovery requests submitted on December 12, 2007. Specifically, SAW seeks information regarding the number of loaded railcars transported by WTL pursuant to alternative rail service. On January 22, 2008, PYCO and WTL filed a motion for a protective order or, in the alternative, for clarification of whether the protective order served in STB Finance Docket No. 34890¹ on July 6, 2006, also covers this proceeding. PYCO and WTL's January 22 pleading also stated that SAW's motion to compel is either moot because WTL provided a response to SAW on January 18, 2008, or irrelevant because the information sought is not relevant to this proceeding.

Clarification of the Coverage of the Protective Order Issued in STB Finance Docket No. 34890. The protective order issued on July 6, 2006, applies to STB Finance Docket No. 34890 and "any proceedings before the Board related to" that docket. See Protective Order at par. 1(f). This is a proceeding related to STB Finance Docket No. 34890. Therefore, the existing protective order covers this proceeding.

SAW's Motion to Compel. PYCO and WTL state that, on January 18, 2008, WTL provided a response to the discovery request that is the subject of SAW's January 16, 2008 motion to compel. PYCO and WTL argue that WTL did not receive, rely upon, or retain the information that SAW seeks in the ordinary course of WTL's business as PYCO's alternative service provider. WTL states, however, that any such information, to the extent available, is currently kept in electronic form by a third party, Railcar Management, Inc. (RMI). WTL states that its response to SAW's discovery, without waiver of its objections, included an offer to make

¹ PYCO Industries, Inc.–Feeder Line Application–Lines of South Plains Switching, Ltd. Co., STB Finance Docket No. 34890.

the requested carload information available to SAW on the same basis it would be available to WTL. Given that WTL states that it has answered SAW's discovery request, and SAW has not further commented to the Board regarding the adequacy of WTL's answer and offer regarding the carload data, the Board will not rule on the motion to compel at this time.

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

It is ordered:

1. The protective order issued in STB Finance Docket No. 34890 on July 6, 2006, also applies to STB Finance Docket No. 35111.
2. The Board will not rule on SAW's motion to compel, unless SAW notifies the Board that WTL's discovery response is inadequate.
3. This decision is effective on the date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary