

216978

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

July 10, 2006

By e-filing

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 34890, *PYCO Industries, Inc. -- Feeder Line Development -- South Plains Switching, Ltd. Co.*

Dear Mr. Williams:

This constitutes a Reply of SOUTH PLAINS SWITCHING, LTD CO. (SAW) to a "Notice" for "Modifications of Discovery Requests in Light of STB Decision Served 3 July," received from PYCO Industries, Inc. (PYCO) at the close of business on Friday, July 7, 2006. The "Notice" purports to move the date for SAW to file responses to discovery forward to July 24, 2006. The "Notice" purports to do so by modifying the instructions that PYCO provided in its discovery requests.

PYCO cannot lawfully unilaterally change the discovery response date by "Notice" where, as here, the discovery requests were filed as part of PYCO's feeder line application (Exhibit P), and the Board made findings on the discovery requests in the decision served July 3, 2006. By virtue of the Board's decision served July 3, 2006, PYCO's discovery requests are not deemed to have been propounded until July 14, 2006, which is the effective date of that decision (decision at 6):

... Because PYCO served its original application on the entities from which it seeks discovery, SAW and BNSF, we deem those discovery requests to be propounded as of the date of this decision takes effect for the purposes of calculating the time for responses.

The "date this decision takes effect" is July 14, 2006. (Ordering Paragraph 8 at 7).

THOMAS F. MCFARLAND

Vernon A. Williams
July 10, 2006
Page 2

By virtue of Exhibit P of the application, which was not suspended or modified in the decision served July 3, 2006, responses to discovery are due 15 business days after the discovery requests are propounded. In the case at hand, therefore, responses to discovery are due on August 4, 2006, which is 15 business days after the discovery requests are deemed to have been propounded.

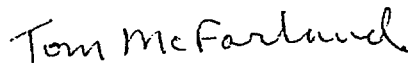
That date is later than the August 2, 2006 due date for filing verified statements addressed to the application, but the Board addressed the effect of that timing in Ordering Paragraph 6 of the decision served July 3, 2006 (at 7) by providing for the filing of amended valuations seven days after receipt of discovery responses.

PYCO's Notice would have the effect of requiring SAW to prepare responses to discovery at the same time as SAW is required to prepare its evidence in opposition to the application. The Board's regulation at 49 C.F.R. § 1114.26(c) prohibits the filing of discovery requests that would have that effect.¹¹

PYCO's "Notice" has no more practical merit than legal merit. As a practical matter, the evidence that SAW intends to file on August 2, 2006 in response to the Board's procedural decision will contain much of the information that PYCO has sought in discovery. SAW should not be required to submit that information twice.

In view of the foregoing, SAW will file its discovery responses 15 business days after the date on which the discovery is deemed to be propounded, as provided in Exhibit P of the application and the Board's decision served July 3, 2006.

Very truly yours,



Thomas F. McFarland
*Attorney for South Plains
Switching, Ltd. Co.*

TMcf:kl:wp8.0\1169\lrefilestb1

¹¹ "No written interrogatories shall be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure ..."

THOMAS F. McFARLAND

Vernon A. Williams

July 10, 2006

Page 3

cc: Charles H. Montange, Esq.
Gary McLaren, Esq.
John Heffner, Esq.
William Sippel, Esq.
Mrs. Delilah Wisener
Mr. Dennis Olmstead