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October 13, 2006

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

RE: STB Finance Docket Nos. 34890 and 34922
*PYCO Industries, Inc. — Feeder Line Application — Lines Of South Plains
Switching, Ltd. Co.; Keokuk Junction Railway Co. — Feeder Line Application —
Lines of South Plains Switching, Ltd. Co.*

Reply to PYCO's Request for Adjustment in Schedule

Dear Secretary Williams:

On October 12, 2006, PYCO Industries, Inc. ("PYCO") filed what it entitled in part a "Request for Adjustment in Schedule For Rebuttal Pleading In F.D. 34890" ("Request"). Via electronic filing, The Keokuk Junction Railway Co. hereby files its "Reply Of Keokuk Junction Railway Co. To The Request For Adjustment In Schedule Filed By PYCO Industries, Inc." If there are any questions about this filing, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com.

Respectfully submitted,



William A. Mullins
Attorney for Keokuk Junction Railway Co.

cc: All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. 34890
STB DOCKET NO. 34922**

**PYCO INDUSTRIES, INC. — FEEDER LINE APPLICATION —
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.**

**KEOKUK JUNCTION RAILWAY CO. — FEEDER LINE APPLICATION —
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.**

**REPLY OF KEOKUK JUNCTION RAILWAY CO. TO THE REQUEST FOR
ADJUSTMENT IN SCHEDULE FILED BY PYCO INDUSTRIES, INC.**

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Attorneys for Keokuk Junction Railway Co.

DATED: October 13, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. 34890
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**PYCO INDUSTRIES, INC. — FEEDER LINE APPLICATION —
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.**

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LINES OF SOUTH PLAINS SWITCHING, LTD. CO.**

**REPLY OF KEOKUK JUNCTION RAILWAY CO. TO THE REQUEST FOR
ADJUSTMENT IN SCHEDULE FILED BY PYCO INDUSTRIES, INC.**

On October 12, 2006, PYCO Industries, Inc. (“PYCO”) filed what it has entitled as, among other things, a “request for an adjustment in schedule for rebuttal pleading in F.D. 34890” (“Request”). PYCO has asked for Board action on the Request by no later than October 17, 2006. Included with the Request are initial comments on the expanded feeder line application (“Expanded FLA”) of Keokuk Junction Railway Co. (“KJRY”), which was filed on September 27, 2006, and additional evidence in support of PYCO’s petition for alternative rail service over the lines of South Plains Switching, Ltd. Co. (“SAW”). KJRY hereby replies in opposition to PYCO’s Request¹ and urges the Surface Transportation Board (“STB” or “Board”) to deny the Request as soon as possible.

¹ KJRY’s limits its reply to PYCO’s request for an adjustment to the procedural schedule, which warrants an immediate response. After a brief review of the balance of the document, it is unlikely that KJRY will respond to the other parts of PYCO’s October 12 filing except as contained herein. KJRY reserves the right to reply to the balance of PYCO’s October 12 filing.

As will be shown below, PYCO's request is highly prejudicial and unsupported. As the procedural schedule currently stands, replies filed in response to PYCO's amended valuation evidence were filed yesterday, on October 12. PYCO now has seven (7) days to file its Rebuttal. As such, PYCO's Rebuttal is due October 19. PYCO's Request would give PYCO an additional 12 or 13 days (19 or 20 days total) to prepare and file a rebuttal, but would leave KJRY with the originally-prescribed 7 days to prepare and file its rebuttal in response to PYCO's anticipated reply to KJRY's Expanded FLA. Granting PYCO's Request, instead of granting both parties equal extensions of time to prepare rebuttals, would be highly prejudicial to KJRY.

PRELIMINARY MATTER

Out of what appears to be calculated malice coupled with a complete disregard for the facts, PYCO's counsel continues to refer to "Pioneer d/b/a/ Keokuk Junction Railway Co. (Pioneer/KJRY)" even though PYCO knows full well that Pioneer Railcorp ("Pioneer") is not a party to these proceedings and that KJRY is not a d/b/a of Pioneer. Although some might believe that PYCO's counsel's antics are amusing, this is a legal proceeding, not a sideshow. As a matter of corporate law and due to the potential confusion that any Board reference or order treating Pioneer and KJRY as one and the same could have on Pioneer, it is extremely important that the Board require PYCO to stop claiming that KJRY is a d/b/a of Pioneer and to stop referring to Pioneer and KJRY as one entity. Furthermore, Pioneer is not a party to these proceedings. It was called upon to supply relevant information in response to discovery only as a source of funding for KJRY. PYCO must stop referring to Pioneer as a party, and, if it does not, KJRY and Pioneer implore the Board to require it to do so for the reasons set forth immediately above. Accordingly, KJRY requests the Board either to strike all references to "Pioneer d/b/a KJRY" in the Request, or in the alternative, to clarify that Pioneer and KJRY are

separate corporate entities, that Pioneer is not a party to this proceeding, and to order PYCO to cease and desist from referring to them as if they are one and the same legal entity, which they are not.²

BACKGROUND

In a decision served on October 5, 2006, the Board instructed Pioneer to respond to PYCO's discovery requests concerning the financial status of Pioneer and Pioneer's subsidiaries and affiliated companies. The Board also granted PYCO 14 days from the date it received final discovery responses from Pioneer to submit comments on the entirety of KJRY's Expanded FLA, instead of just granting PYCO additional time to supplement its comments as necessary in connection with information obtained from Pioneer's discovery responses.³ Pioneer produced information responsive to PYCO's discovery requests on October 10, 2006, in addition to the discovery responses PYCO received on October 5, 2006.⁴ On both October 5 and 10, counsel

² There are significant ramifications to Pioneer and KJRY being treated as one and same party well beyond the scope of these proceedings. Should PYCO be permitted to continue with its objectionable behavior on this issue, KJRY and Pioneer will seek sanctions against it in this or another forum. In the meantime, the Board should remind PYCO's counsel of his obligations under 49 CFR 1103.27.

³ PYCO will benefit from the extra time that it will have to prepare its reply comments compared to KJRY. Certainly PYCO will be able to devote, and probably has been devoting, considerable time since September 27 to assessing elements of KJRY's Expanded FLA aside from the issue of Pioneer's financial status. In addition, KJRY produced discovery response on October 5. Thus, rather than simply requiring PYCO to respond to KJRY's Expanded FLA and the October 5 information on October 12 in accordance with the procedural schedule and then allow PYCO to supplement its response with information gained from Pioneer discovery, the Board's order provided PYCO with an expansion of time to respond to everything. By being able to devote an additional 13-14 days to the development of its reply to information that has been in its possession since Sept. 27 and October 5, PYCO has already reaped a significant windfall from the Board's orders.

⁴ In response to that discovery, KJRY and Pioneer have, collectively, produced hundreds of pages of documents and have responded in substantive fashion to PYCO's interrogatories. Notwithstanding this response, and apparently construing its role here as that of a character assassin, PYCO complains in its Request that Pioneer has objected to, and has declined to

for KJRY and Pioneer arranged service of responses by two means – electronic service (email) and overnight delivery. Electronic service – evidence of the October 10 discovery response is attached hereto as Exhibit A – ensured that counsel for PYCO obtained copies of the responses on the very day they were completed. Overnight delivery was intended to provide paper copies of the responses the next business day.

PYCO, however, claims that it did not get Pioneer's discovery responses until October 11, 2006, and so insists that its comments on KJRY's Expanded FLA are due on October 25, 2006. PYCO is wrong. As Exhibit A shows, PYCO received discovery responses on October 10, 2006, the date the Board's order required Pioneer to respond. As such, PYCO's reply comments on KJRY's Expanded FLA are due on October 24, 2006, not October 25 as claimed by PYCO. Besides ruling upon PYCO's Request, this schedule dispute also requires Board clarification, since it affects not only the appropriate due date for PYCO's comments, but, in turn, the due date for KJRY's rebuttal thereto.

On October 12, 2006, KJRY replied to PYCO's amended valuation evidence for All-SAW ("KJRY's Reply") in keeping with the Board's procedural schedule. PYCO now has 7 days (or until October 19, 2006) to file its rebuttal in support of its All-SAW feeder line application ("FLA"). The current procedural schedule also affords KJRY 7 days to rebut reply comments directed to its Expanded FLA. As noted, such PYCO reply comments on KJRY's

provide responses to, discovery seeking information on *all* litigation in which Pioneer or one of its affiliates and/or subsidiaries has been engaged over the past several years. Despite its objections, KJRY has responded for itself. Pioneer has objected to providing information concerning litigation in which Pioneer and its affiliates and subsidiaries have been engaged because it is totally irrelevant to this proceeding, unreasonably burdensome, and is easily obtainable through other sources. PYCO plainly ignores KJRY's response when it complains to the Board. PYCO also ignores the fact that any such litigation is a matter of public record and can be readily obtained through public sources.

Expanded FLA are due October 24 (14 days after Pioneer produced its discovery). As such, KJRY's rebuttal should be due on October 31.

PYCO has now filed its Request asking for additional time to file its October 19 rebuttal in response to KJRY's October 12 Reply. Specifically, PYCO asks that the due date for its rebuttal on its FLA be extended from October 19 to October 31 so that it would be due on the same day as KJRY's rebuttal on KJRY's Expanded FLA. PYCO suggests that it could use more time to prepare its rebuttal,⁵ argues that the procedural modification it is requesting would render the process "more fair to PYCO," and claims that the simultaneous submission of rebuttals would not prejudice anyone (even though it acknowledges that KJRY would still have only 7 days to prepare its rebuttal). PYCO's request is highly prejudicial to KJRY and should be denied.

ARGUMENT

Perhaps emboldened by its unchecked ability to ignore the Board's procedural rulings and the Board's regulations, PYCO is at it again, seeking even more such accommodation in its typical cliché-spouting style. Now, PYCO is asking for an extension (for itself only) to file its rebuttal in support of its FLA for All-SAW out of an obsession with having the "final word." PYCO's petition is so self-serving and such a violation of the Board's long standing procedural rules and regulations that it hardly warrants a response. But respond to it KJRY must, because the Request would be blatantly prejudicial to KJRY if granted.

⁵ In seeking additional time for its rebuttal, it appears that PYCO contemplates developing additional evidence, either in support of its FLA or, worse, in criticism of KJRY's FLA. As discussed below, such action would be inappropriate for rebuttal.

The essence of PYCO's request is this: In the interest of simultaneously filed "final words" from the litigants, PYCO should be granted as much as 19/20 days (depending upon when the clock began running for PYCO to reply to KJRY's Expanded FLA) to file its rebuttal, while KJRY should be held to the 7 days originally granted to it for filing a rebuttal in support of its FLA. This is "fairness" only in the mind of PYCO's counsel. Such an arrangement would be both extraordinarily prejudicial to KJRY – allowing KJRY virtually a *third* of the time to prepare rebuttal as would be given to PYCO – and violative of the basic principles of due process, and PYCO knows it.⁶

The timing of the Request reveals PYCO's underhanded strategy. Although it learned of the relevant adjustments to the procedural schedules on October 5, it has waited until October 12 to seek a change. By waiting until October 12 to file its Request, the day that KJRY's Reply to PYCO's FLA was due, PYCO knew that the procedural schedule changes it sought would *exclude* postponement of KJRY's Reply and that KJRY's Reply would have already been filed. (Had PYCO filed its request earlier, it is quite possible, and might even have been essential, to push back the due dates for some or all remaining filings in this proceeding, including KJRY's Reply.) As it is, PYCO asks for 19/20 days to prepare its rebuttal while already having

⁶ In requesting changes to a procedural schedule, it is customary for the party seeking the adjustment to consult with other parties to obtain support or nonopposition to the request. In this case, PYCO has chosen not to consult with KJRY's counsel. This is telling, because counsel for KJRY has previously conveyed in writing to PYCO's counsel his willingness to discuss adjustments to the procedural schedules governing these proceedings to the extent that the tight Board-imposed timeframes prove difficult for PYCO. See letter from William A. Mullins to Charles H. Montange, dated September 21, 2006, and attached hereto as Exhibit B. Given the patent unfairness of its Request, it is not at all surprising that PYCO's counsel would depart from the normal custom of advance consultation here.

possession of KJRY's Reply. In light of PYCO's shady efforts to manipulate the procedural schedule to its advantage alone, its Request should be denied promptly.

Nothing in these proceedings or in the Board's feeder line rules generally is necessarily guided by the idea of "simultaneously-submitted last words,"⁷ and, in this case, such a goal unquestionably would prejudice KJRY however it might be attempted. The application-reply-rebuttal structure of these proceedings ensures that each feeder line applicant will get its "last word" on its feeder line application in due course and nothing more. The Board's current schedule ensures such a fair and balanced approach.

PYCO's justification for its highly prejudicial Request is that it needs more time to prepare both a rebuttal on its feeder line application and its reply to KJRY's Expanded FLA. Why? It has already received extra time to file its Reply to KJRY's Expanded FLA and it will get the same 7 days as KJRY to file a rebuttal. There is no justification for giving extra time just because counsel may have to work on two pleadings at the same time.

PYCO then claims that the fact that KJRY gets the last word on its feeder line application will somehow allow KJRY to rebut PYCO's October 19 rebuttal; requiring PYCO to get an additional 12 to 13 days to file its rebuttal and on the same day as KJRY. Yet, there is no legal or policy basis for such a claim. KJRY's rebuttal, just like PYCO's, must be limited to issues presented in the reply comments that PYCO should file on October 24 and that SAW filed on October 12. Neither applicant may submit new evidence at the rebuttal phase of the proceeding.

⁷ PYCO's Request has nothing to do with fairness. It is about PYCO wanting at least an equal chance of having the "last word" in these proceedings and gaining for itself a procedural advantage over KJRY. PYCO's conduct demonstrates that it would rather retain the first, middle, last and every other "word" for itself, regardless of the procedural schedule. PYCO's past and future filings in this case bear this out repeatedly.

See, e.g., Texas Municipal Power Agency v. The Burlington Northern & Santa Fe Railway Company, STB Docket No. 42056 (STB served Mar. 24, 2003) slip op. at 142 (a party may not introduce new evidence on rebuttal); CSX Transportation, Inc. – Discontinuance – At Memphis, In Shelby County, TN, STB Docket No. AB-55 (Sub-No. 618) (STB served Oct. 28, 2002) slip op. at 7 n.19 (the Board will not consider new evidence submitted on rebuttal). Furthermore, rebuttal must be addressed to the merits of the applicant's own application, not the merits of his competitor's application. Since both parties must proceed with those rules in mind, simultaneous submission of rebuttals would be a hollow gesture in addition to being prejudicial to KJRY.

PYCO has failed to give any valid justification whatsoever for an extension of the procedural schedule, and it is clear that PYCO has no pressing need for an extension of any sort, let alone an extension of 12/13 days. As it is, PYCO has already been given at least 27 days to prepare its reply comments on KJRY's Expanded FLA, compared to KJRY's 14. Accordingly, the Board should deny the Request. If, however, PYCO is granted an extension to file its rebuttal, simple fairness and due process require that KJRY be permitted an equal extension of time for filing its rebuttal.⁸

CONCLUSION

Given the timing of the Request and the obvious prejudice that KJRY would suffer if it were granted, it must be denied. In seeking to skew the procedural schedule to its advantage (and attempting to deprive KJRY of due process), PYCO's Request is, as PYCO might put it, the

⁸ The Board will also recall that, up until recently, PYCO's counsel was loudly howling against any extension of any deadline, while simultaneously attempting to blackmail the Board into granting PYCO's demands prior to the expected termination of the Alternative Service Order (the Board will also recall PYCO's counsel even argued that the Board could not extend the A.S.O., as it would deprive PYCO of its leverage for a hasty decision). Where is PYCO's sense of urgency gone?

“height of hypocrisy.” If PYCO’s Request in any way moves the Board to make further accommodations to PYCO, whatever extension PYCO is granted to file its rebuttal must be matched with an equal extension for KJRY. Finally, PYCO’s repeated treatment of Pioneer and KJRY as one and the same is wrong-headed and malicious. It is a calculated tactic that is not just potentially harmful to Pioneer, but is insulting to the Board’s process. It must stop.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William A. Mullins', written over a horizontal line.

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Attorneys for Keokuk Junction Railway Co.

October 13, 2006

CERTIFICATE OF SERVICE

I, Robert A. Wimbish, hereby certify that on October 13, 2006, I caused a copy of the foregoing Reply of Keokuk Junction Railway Co. ("KJRY") to the Request for Adjustment in Schedule of Pyco Industries, Inc. to be served by first class mail, postage prepaid, or by more expeditious service upon all parties of record in Finance Docket Nos. 34890 and 34922.


Robert A. Wimbish



William Mullins/bakermiller
10/10/2006 04:43 PM

To c.montange@verizon.net
cc Robert Wimbish/bakermiller@bakermiller
bcc

Subject Pioneer Discovery Response Cover Letter

Attached is Pioneer's response to PYCO's discovery and the Board's order. You will receive two other e-mails containing the actual documents.



KJRY Response Letter 10.10.06.pdf

William ("Bill") A. Mullins
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William Mullins/bakermiller

10/10/2006 04:43 PM

To c.montange@verizon.net

cc Robert Wimbish/bakermiller@bakermiller

bcc

Subject HC Documents Part 1 of 2



Highly Confidential KJ HC 0115-0162.pdf

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William Mullins/bakermiller
10/10/2006 04:44 PM

To c.montange@verizon.net
cc Robert Wimbish/bakermiller@bakermiller
bcc
Subject HC Documents Part 2 of 2



Highly Confidential KJ HC 0163-0212.pdf

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September 21, 2006

VIA FAX AND OVERNIGHT DELIVERY

Charles H. Montange, Esq.
426 NW 162nd Street
Seattle, WA 98177

Re: STB Finance Docket No. 34890
*Pyco Industries, Inc. – Feeder Line Application – South Plains
Switching, Ltd. Co.*

STB Finance Docket No. 34922
*Keokuk Junction Railway Co. – Feeder Line Application – South
Plains Switching, Ltd. Co.*

Dear Mr. Montange:

I have received your September 20 letter in response to Pioneer Railcorp's ("Pioneer") September 19, 2006 letter in response to the Requests for Production of Documents and Interrogatories tendered to Pioneer by Pyco Industries, Inc. ("PYCO") on August 24, 2006, as subsequently supplemented. I appreciate your efforts to encourage voluntary cooperation and share that goal, but as you might expect, I cannot agree with the merits of your position regarding discovery against Pioneer. Your discovery was unquestionably directed against Pioneer. Every instruction, document request, and interrogatory was referenced to Pioneer. As you know, and your letter basically concedes, Pioneer is not a party to these proceedings. As a nonparty, Pioneer is not required to respond to discovery in these proceedings and will not be doing so.

Nonetheless, in an effort to cooperate with you and pursuant to your alternative request, KJRY will deem your discovery requests as directed against it and not Pioneer. KJRY will deem the discovery as filed against it on September 20, the date of your response. Assuming you agree

BAKER & MILLER PLLC

Charles H. Montange, Esq.

September 21, 2006

Page 2 of 2

with that as the applicable filing date, KJRY will also agree to waive its right to object to the discovery on the basis that it violated the prohibition against filing discovery within 20 days of the due date for an opening filing, such as the soon to be filed competing feeder line application for the All-SAW alternative. 49 CFR 1114.26(c); 49 CFR 1114.27(c). To the extent your discovery is directed at non-privileged documents that are in KJRY's possession and are relevant to the feeder line application that KJRY has filed, they will be produced, subject to standard objections if otherwise applicable. Likewise, to the extent an interrogatory can be construed to apply to KJRY, it too will be answered, subject to standard objections if appropriate. In accordance with the Board's regulations, KJRY will respond on October 6, fifteen days after the discovery has been filed. See 49 CFR 1114.26(a); 49 CFR 1114.27(a).

Finally, your letter appears to express frustration over the time periods involved in this proceeding and the shortened nature of the various filing deadlines. KJRY shares those frustrations but reminds you that those deadlines were a result of PYCO's repeated requests. KJRY remains willing to work with PYCO regarding the various time periods and would consider an extension of the procedural schedule if PYCO and KJRY believe one is necessary. If Pyco has any other concerns, please call me to discuss.

Sincerely,



William A. Mullins

cc: Secretary Vernon A. Williams
J. Michael Carr
Daniel A. LaKemper, Esq.