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Before the

SURFACE TRANSPORTATION BOARD

Docket No. FD 36005

**KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC
- FEEDER LINE APPLICATION -
IN CROWLEY, PUEBLO, OTERO AND KIOWA COUNTIES, CO**

**REPLY OF V AND S RAILWAY, LLC TO
APPLICANTS' MOTION FOR ORDER REQUIRING V AND S RAILWAY, LLC TO
VERIFY CURRENT STATE OF THE LINE AT ISSUE**

On July 31, 2017, the Board issued a decision (the "July 31 Decision"), finding that Applicants KCVN, LLC and its subsidiary Colorado Pacific Railroad, LLC ("Applicants") have met the applicable feeder line requirements to acquire the 121.9 mile Towner Line (the "Line") in Colorado owned by V and S Railway, LLC ("V&S"). The July 31 Decision did not establish a net liquidation value ("NLV") for the Line; however, the Board did accept as the best evidence presented, V&S's inventory and classification of the materials comprising the Line. July 31 Decision, pp. 14-16. The July 31 Decision also asked the parties to confirm whether they were willing to mediate the NLV of the Line. By letter filed today, V&S has confirmed that it is willing to do so.

Applicants have now filed a motion (the "Motion") seeking to require V&S to re-verify the current asset inventory and classification.¹ The request seems to be yet another attempt for

¹ The asset inventory and classification accepted by the Board (July 31 Decision, pp. 14-16), was included in the R.L. Banks and Associates ("RLBA") 2016 Verified Statement.

Applicants to be able to challenge the inventory and classification. The Board has not requested additional evidence on these issues, Applicants' have not justified the request, and the Motion should be denied.

Applicants indicate that they are worried that there may have been "material changes" in the Line since last August. However, they define "material" as "any" changes. Motion, p. 2. Thus, the relief requested would require V&S to go back out and re-inspect every aspect of the Line to ensure there has not been "any" iota of change. The Board full well knows that Applicants dispute the inventories and classifications; a certification as to assets and their condition will just give the Applicants another opportunity to re-argue their dispute about the condition of assets by arguing that the condition is not the same as the evidence submitted to the Board (regardless of whether in fact there has been any change). Applicants have already had the opportunity to submit evidence on the inventory and condition, and the Board should not reopen these issues.

Moreover, there is no basis for believing there have been any material changes. The mere passage of time would not result in material changes. As noted in the July 31 Decision, p. 14, there was little change between the RLBA asset inventories of 2014 and 2016. Similarly, the RLBA valuations found little changes between the classifications of the assets. *See* RLBA Verified Statement, pp. 21-29, attached to the August 30, 2016 Comments of V and S Railway, LLC as Exhibit F-1. Since the Line has been unused for the past year except for the storage of cars, there is no reason to believe that the condition of the assets would have changed materially.

There is currently a Board order in another proceeding (Docket No. NOR 42140) enjoining V&S from dismantling or removing the tracks or related assets on the Western

Segment (July 31 Decision, p. 4). V&S has not violated the order.² Applicants have provided no evidence or indication to the contrary. Similarly, because V&S has not obtained abandonment authority on the Eastern Segment, it has not dismantled or removed any tracks or related assets on the Eastern Segment.

As disclosed in the V&S Comments filed in August 2016, there was a fire in June 2016 that destroyed a wooden bridge west of Haswell. *See* July 31 Decision, pp. 9, 13. The bridge has not been rebuilt. However, the destruction of the bridge had no effect on the NLV of the Line as bridges are usually valued at -0- for NLV purposes since the cost to remove a bridge generally exceeds the salvage value of its component parts.

IV. Conclusion

For the foregoing reasons, the Board should deny the Motion of Applicants.

Respectfully submitted,



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Dated: August 10, 2017

² Because there have been cars stored on much of the Western Segment, it would be difficult for any of the assets to have been removed or dismantled.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2017, I served a copy of the foregoing document on the following by email:

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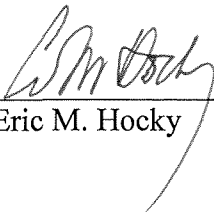
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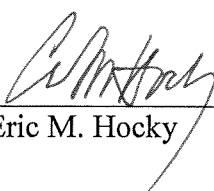
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