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March 2, 2020

Via E-filing

Allison C. Davis
Director, Office of Proceedings
Surface Transportation Board
395 E ST SW
Washington, DC 20423

ENTERED
Office of Proceedings
March 2, 2020
Part of
Public Record

Re: STB Finance Docket No. 36386
KCVN, LLC and Colorado Pacific Railroad, LLC—Feeder Line Application

Dear Ms. Davis:

The February 14, 2020 feeder line application filed by KCVN, LLC and Colorado Pacific Railroad, LLC (collectively “KCVN”) is legally unsupportable. In the coming days, Union Pacific will file a formal request that you reject KCVN’s application. Union Pacific is submitting this short letter to provide you with advance notice of Union Pacific’s intention to oppose KCVN’s application and to place that application immediately into proper context.

Union Pacific initially sought to abandon most of the Tennessee Pass Line (the “Line”) as part of the UP/SP merger in 1996. The Board denied the abandonment request but allowed Union Pacific to discontinue service on significant portions of the Line.¹ Union Pacific soon recognized the wisdom of the Board’s decision to preserve the rail corridor for our future use, and we notified the Board of our intention to retain the Line by removing it from Category 1 on our system diagram map in 1998.² Since then, Union Pacific has retained our right to operate over the entire Line due to its significant value as an intact corridor through the Rocky Mountains and the potential for future rail service.

Although service remains discontinued on most of the Line, Union Pacific has actively considered how rail service could be restored if a sustainable and supportable need arises. Union Pacific has engaged with various parties interested in restoring service since 1998. While those earlier engagements did not come to fruition, Union Pacific continues to see value in retaining the Line intact and pursuing opportunities to restore rail service.

Even now, Union Pacific is actively engaged in promising discussions³ to create new rail service on discontinued portions of the Line, which KCVN’s feeder line application threatens to disrupt. Before

¹ *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996), *aff’d sub nom. Western Coal Traffic League v. STB*, 169 F.2d 775 (D.C. Cir. 1999).

² *See Union Pacific/Southern Pacific Merger*, 3 S.T.B. 987, 1012 n. 95 (1998).

³ Union Pacific will provide additional details regarding these negotiations, including the name of the party involved, subject to a protective order as part of our formal request to reject the KCVN application.

Union Pacific learned of KCVN's application, we already had hosted a meeting with a party interested in a sustainable and beneficial rail use for the Line. The meeting was productive and our negotiations are continuing. But even if these negotiations are ultimately not successful, KCVN should not be allowed to use the feeder line process to acquire the Line. Regardless of whether the current negotiations are successful, Union Pacific will continue to retain rights over the entire Line due to the Line's value as an alternative route through the Rocky Mountains.

The Tennessee Pass Line is simply not an appropriate target for a feeder line application. The feeder line process was created to preserve rail service to existing shippers. It is meant to prevent railroads from allowing active rail lines to fall into such a state of disrepair that shippers can no longer ship via rail. Union Pacific is not aware of any shippers on the active portions of the Line that are receiving, or have complained of, inadequate service. Union Pacific is also not aware of any demands for service from local shippers that it has been unable to satisfy. Nor is Union Pacific aware of any requests for service from potential shippers on the discontinued portions of the Line. The Line is also not currently needed as a through route. Union Pacific is handling all traffic being offered by customers⁴ across the Rockies on our Central Corridor route through the Moffat Tunnel, our Overland Route through Wyoming, and our Sunset Route through the Southwest. Indeed, the overall characteristics of these alternative routes are favorable compared to the everyday logistical realities of using the Tennessee Pass Line (*e.g.*, the 3% grade which burdens that Line).

KCVN's feeder line application does not fall within either the letter or the spirit of the feeder line application procedure.⁵ The Board should not intervene to force Union Pacific to sell the Line and lose a valuable, strategically important corridor where no shipper on the Line is receiving inadequate service. Nor should the Board allow KCVN's attempt to secure the Line through regulatory means to interfere with market participants working toward a privately negotiated transaction. In its imminent filing, Union Pacific will provide you with further factual details and legal arguments, prior to the statutory deadline, that plainly justify rejecting the KCVN application on its face. If the application is accepted, then Union Pacific will vigorously oppose it.

Respectfully Submitted,

/s/ Jeremy M. Berman

Jeremy M. Berman

⁴ Union Pacific is not aware of any shipper complaints concerning the routing of their traffic in this area.

⁵ It nearly goes without saying that this application should be rejected if KCVN is attempting to misuse the feeder line process to wrest the Line from Union Pacific at a commercially unsupportable value or to gain unfair advantage over competing contenders for the Line.

cc: The Honorable Ann D. Begeman, Chairman
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The Honorable Martin Oberman, Vice Chairman
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