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April 18, 2017

242948

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
April 18, 2017
Part of
Public Record

Re: Docket No. FD 36005, *KCVN, LLC and Colorado Pacific Railroad, LLC*
– *Feeder Line Application – Line of V and S Railway, LLC, Located in*
Crowley, Pueblo, Otero, and Kiowa Counties, Colorado

Dear Ms. Brown:

Accompanying this letter for e-filing in the referenced docket is the Second Supplemental Rebuttal Verified Statement (“SSVRS”) of Thomas D. Crowley and Daniel L. Fapp. This brief statement is being submitted for the limited purpose of responding to the letter to the Board from Mr. Ryan Wannamaker of Cando Rail Services, Ltd., which was accepted into the record of this proceeding on April 17, 2017. Acceptance of this SSVRS into the record will ensure that the Board has a more complete record of the facts and issues discussed in Mr. Wannamaker’s letter.

Do not hesitate to contact the undersigned with any questions or if you need additional information.

Sincerely,

Thomas W. Wilcox
Attorney for KCVN, LLC and Colorado Pacific
Railroad, LLC

GKG Law, P.C.

Ms. Cynthia T. Brown
April 18, 2017
Page Two

Cc: All parties on the official service list for FD 36005

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36005

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)
) **KCVN, LLC and Colorado Pacific**
) **Railroad, LLC – Feeder Line Application**
) **– Line of V and S Railway, Located in**
) **Crowley, Pueblo, Otero and Kiowa**
) **Counties, Colorado**
)

Second Supplemental Rebuttal
Verified Statement

of

Thomas D. Crowley
President

and

Daniel L. Fapp
Senior Vice President

L. E. Peabody & Associates, Inc.
On Behalf Of

KCVN, LLC
And Colorado Pacific Railroad, LLC

April 18, 2017

We are Thomas D. Crowley and Daniel L. Fapp. We are the same Thomas D. Crowley and Daniel L. Fapp who submitted a Supplemental Rebuttal Verified Statement ("SRVS") on behalf of KCVN, LLC and its wholly owned subsidiary, Colorado Pacific Railroad, LLC ("KCVN/CPRR") in this Surface Transportation Board ("STB" or "Board") proceeding on April 7, 2017. Page 11 of that SRVS includes the following paragraph:

To ensure we were capturing as much wholesale pricing information as possible, we also contacted Cando Rail after reviewing Mr. Kern Schumacher's Verified Statement ("Schumacher VS") filed by V&S in its Supplemental evidence. We spoke with Mr. Ryan Wannamaker at Cando Rail Services, the person who provided the letter included as Exhibit A to the Schumacher VS, to clarify the pricing information included in the letter. According to Mr. Wannamaker, the market values listed in Exhibit A to the Schumacher VS are the retail, or end user prices, for the Towner Line materials and not the wholesale prices. Mr. Wannamaker went on to say that the prices listed in the Schumacher VS Exhibit A are not the prices Cando would pay for the materials, rather, they are the prices in the current retail market.

We have been asked by KCVN/CPRR to respond to the letter filed in this proceeding on April 17, 2017 by Mr. Wannamaker. In his letter, Mr. Wannamaker refers to "my telephone discussion with Thomas Crowley and Dan Fapp regarding the pricing" contained in the March 29, 2017 letter included as Schumacher VS Exhibit A. He further represents that during that telephone conversation he "did not tell or mean to suggest to Messrs. Crowley and Fapp that my March 29th letter contained the retail prices for which I believe Cando could sell the materials to its customers."

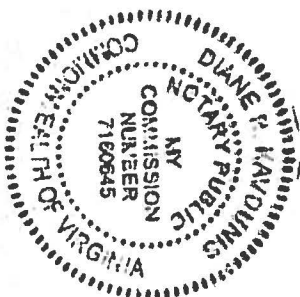
The telephone discussion Mr. Wannamaker describes did not take place. Neither of us spoke directly with Mr. Wannamaker, either individually or at the same time. Rather, Mr. Wannamaker had a telephone discussion Mr. Christopher Gomez, an employee of L.E. Peabody & Associates, Inc. whom we assigned the task of contacting Mr. Wannamaker and asking him certain specific questions about his March 29 letter. Mr. Gomez was also the L.E. Peabody

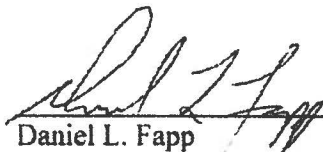
employee assigned this task for the other rail salvage companies we identified in our SRVS. *See* Attachment 1 to our SRVS. We incorporated the answers Mr. Gomez received from Mr. Wannamaker into our SRVS. Accordingly, the use of the word “we” in the foregoing paragraph of our SVRS refers to not only ourselves but also to our employee we assigned to call Mr. Wannamaker and report to us his responses. Attachment 1 to this SSRVS is a true and correct copy of Mr. Gomez’s handwritten notes taken during his telephone conversation with Mr. Wannamaker, which took place on April 3, 2017. These notes state that in response to the question: “Do the prices in Exhibit A reflect the wholesale prices?,” Mr. Gomez recorded that Mr. Wannamaker responded that they were “retail or end user” prices, “prices for retail market,” and “not what Cando would pay.” These responses were incorporated into our SVRS.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

I, DANIEL L. FAPP, verify under penalty of perjury that I have read the foregoing
Second Supplemental Rebuttal Verified Statement of Thomas D. Crowley and Daniel L.
Fapp, that I know the contents thereof. and that the same are true and correct. Further, I
certify that I am qualified and authorized to file this statement.




Daniel L. Fapp

Sworn to and subscribed
before me this 18th day of April, 2017


Diane R. Kavounis
Notary Public for the State of Virginia

My Commission Expires: November 30, 2020
Registration Number: 7160645

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

I, THOMAS D. CROWLEY, verify under penalty of perjury that I have read the foregoing Second Supplemental Rebuttal Verified Statement of Thomas D. Crowley and Daniel L. Fapp, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.




Thomas D. Growley

Sworn to and subscribed
before me this 18th day of April, 2017

Diane R. Kavounis
Diane R. Kavounis
Notary Public for the State of Virginia

My Commission Expires: November 30, 2020
Registration Number: 7160645

Questions to Ask Cando's Ryan Wannamaker

1) What are the unit prices for the materials reflected in Exhibit A?

↳ list of materials

2) Do the prices in Exhibit A reflect the wholesale prices?

↳ retail or end user - what they are worth?

↳ not to include removal or transportation

↳ prices for retail market

↳ not what Canon would pay

3) Did he inspect the track materials in person or did he receive pictures of the track

while quoting the prices of the materials?

↳ Canon based on their materials list & grade
↳ no pictures / or seeing them in person
↳ can't vouch for grades

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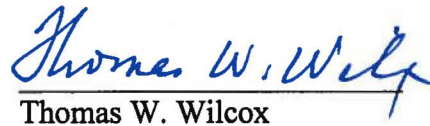
CERTIFICATE OF SERVICE

I do hereby certify that on this 18th day of April, 2017, I have served a copy of the foregoing Second Supplemental Rebuttal Verified Statement by email and first class mail on the following persons or entities:

Eric M. Hocky, Esq.
Clark Hill PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103

The Honorable Judge John P. Dring
Federal Energy Regulatory Commission
Office of Administrative Law Judges
888 First Street, N.E.
Washington, D.C. 20426
(also via email at carlos.clemente@ferc.gov)

And by first class mail to the other entities on the official service list for this proceeding.


Thomas W. Wilcox