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BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
wmullins@bakerandmiller.com

March 9, 2020

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: KCVN, LLC and Colorado Pacific Railroad, LLC – Feeder Line Application – Line of Union Pacific Railroad Company Located in Pueblo, Fremont, Chafee, Lake, and Eagle Counties, Colorado, FD 36386

Dear Ms. Brown:

Rock & Rail, Inc. hereby files, via e-filing, a “Motion For Partial Rejection Of The Feeder Line Application Submitted By KCVN, LLC And Colorado Pacific Railroad, LLC.” If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com. If I am unavailable, you can contact my associate, Crystal M. Zorbaugh, by telephone at (202) 663-7831 or by e-mail at czorbaugh@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosure

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36386

**KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC – FEEDER LINE
APPLICATION – LINE OF UNION PACIFIC RAILROAD COMPANY LOCATED IN
PUEBLO, FREMONT, CHAFEE, LAKE, AND EAGLE COUNTIES, COLORADO**

**MOTION FOR PARTIAL REJECTION OF THE FEEDER LINE APPLICATION
SUBMITTED BY KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
Telephone: (202) 663-7823
Facsimile: (202) 663-7849**

Attorneys for Rock & Rail, Inc.

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SUMMARY OF ARGUMENT

On February 14, 2020, KCVN, LLC (“KCVN”), and its wholly-owned subsidiary, Colorado Pacific Railroad, LLC (“CPRR”) (collectively, “Applicants”), filed a Feeder Line Application under 49 U.S.C. § 10907 and 49 CFR Part 1151.1, (“Application”) asking the Board to direct Union Pacific Railroad Company (“UP”) to sell a line of railroad allegedly owned by UP, i.e. the Tennessee Pass Line,¹ to CPRR for a price not less than the line’s constitutional minimum value (“CMV”), which Applicants estimate to be the Net Liquidated Value (“NLV”) of \$8,835,833.1. See Application at 1. In the opening paragraphs to the Application, Applicants purport that “all of the statutory and policy justifications for a forced sale set forth in Section 10907 and the STB’s feeder line program are easily met in this case.” See Application at 2.

¹ In seeking to acquire as a “particular railroad line” the continuous 228.80-mile line of railroad and 58.23 miles of other tracks running between UP milepost (“MP”) 118.20, near Pueblo, CO and MP 341.9, near Dotsero, CO, historically known as the Tennessee Pass Line (“Tennessee Pass Line”), as will be explained herein, Applicants overlook certain considerations that make the Application inconsistent with the required statutory and policy justifications for feeder line applications and warrant the Board rejecting the Application (either in part or in entirety).

Through this Motion For Partial Rejection Of The Feeder Line Application Submitted By KCVN, LLC And Colorado Pacific Railroad, LLC (“Motion”), Rock & Rail, Inc. (“R&R”)² will demonstrate that the statement is simply not true for two basic reasons: (1) at least for two segments, UP does not have sufficient ownership rights in those segments so as to qualify those two segments as a “railroad line” that KCVN could acquire from UP under the feeder line statute; and (2) under the public convenience and necessity (“PC&N”) standard, which Applicants admit is the appropriate standard,³ Applicants have not shown that the “transportation over such line is inadequate for the majority of shippers who transport traffic over such line” (49 U.S.C. §10907(c)(1)(B) nor met any other of the PC&N standards set forth in that section. As such, the Application should be rejected in whole or in part.⁴

² Royal Gorge Express, LLC (“RGX”). RGX acquired from UP actual ownership rights in 11.75 miles of the Tennessee Pass Line in Freemont County, CO between milepost 171.90 (at Parkdale) and milepost 160.15 (at Cañon City). See Royal Gorge Express, LLC – Acquisition and Operation Exemption – Union Pacific Railroad Company, FD 33622 (STB served July 15, 1998) (“RGX Acquisition”). RGX simultaneously leased the line to R&R, who is the freight operator over the line. Rock & Rail, Inc. – Lease and Operation Exemption – Royal Gorge Express, LLC, FD 33608 (STB served July 15, 1998). R&R owns 50% of RGX. Today, R&R and RGX own and operate both freight and tourist operations over the Cañon City to Parkdale segment.

³ Application at 25-32.

⁴ See Valley Feed Company – Feeder Line Application – Greater Shenandoah Valley Development Company d/b/a Shenandoah Valley Railroad Company Line in Augusta County, Virginia, FD 32334 (ICC served Feb 8, 1994) (stating the Director of OP rejected the Application, due to Valley's failure to: (1) demonstrate that Valley was a "financially responsible person....; (2) provide sufficient evidence supporting the valuation of the ...additional track (3) demonstrate that the public convenience and necessity require or permit the sale of the Line under 49 U.S.C. 10910(c) (“Valley Feed”); and see also Pyco Industries Inc. – Feeder Line Acquisition – South Plains Switching, Ltd. Co., FD 34844 (STB served June 2, 2006) (“PYCO I”) (rejecting the application because PYCO’s evidence did not meet the required showing of inadequate service to a majority of the shippers on the line and discovery would not cure the deficiency in the evidence).

ARGUMENT

I. THE TENNESSEE PASS LINE CONSISTS OF NUMEROUS OWNERS AND OWNERSHIP INTERESTS AND DOES NOT CONSTITUTE A UP OWNED RAILROAD LINE THAT CAN BE ACQUIRED UNDER THE FEEDER LINE STATUTE

As stated in the Application, here, there are two distinct segments, an active segment and an inactive discontinued segment. The 163.1-mile inactive portion of the Tennessee Pass Line owned by UP is between “[b]etween MP 171.9 [Parkdale, CO] and MP 335.0 [Sage, CO], is not in service.” See Application at 8. The Board granted discontinuance authority over those tracks and 40.16 miles of sidings located on the Tennessee Pass Line tracks between Parkdale, CO, and Sage, CO in 1996. See Application at 5. UP continues to own the discontinued segment.⁵

Applicants argue that it is appropriate to treat both the active and inactive segments of the Tennessee Pass Line as a “particular railroad line” because the Tennessee Pass Line sought by Applicants was “historically operated as a continuous, unitary line of railroad extending from Pueblo to Dotsero, and indeed [was] preserved as such by the UP at the Board’s direction in Decision No. 44. Application at 20.” Applicants are wrong. Treating both the active and inactive portions of the Tennessee Pass Line as one rail line (1) is inconsistent with precedent; (2) ignores the fact that the R&R owns and operates the Cañon City to Parkdale segment, has done so for decades, holds superior ownership rights, and UP merely possesses, at best, trackage rights for which a feeder line application is inappropriate; (3) ignores that for the Pueblo to

⁵ R&R is not formally taking a position on whether a feeder line is the appropriate avenue for reinstating common carrier operations over that discontinued segment. R&R notes, however, that the ICC has previously held that when an application is “predicated upon a need for reinstituted service,” the party seeking to reestablish rail service should “petition to have the [railroad’s] discontinuance authority terminated. Should the party prevail in demonstrating that service ought to be resumed, the carrier would have to provide service and if they failed to do so, the shipper seeking to reestablish rail service could renew its feeder application at that time.” See PSI Energy, Inc. – Feeder Line Development – Norfolk Southern Corp. Line Between Cynthaina and Carol, IN, FD 31608, slip op at 4 (ICC served January 3, 1991).

Cañon City Segment (a 41.95-segment between MP 120.18 and MP 160.15 over which R&R has a permanent freight easement), R&R owns many tracks, sidings, spurs, and other rail facilities, has long-held operating rights(with some exceptions), and should UP abandon whatever solely-owned tracks that UP does own in the segment, R&R has the right to purchase them; and (4) completely disregards the fact that R&R has honored its common carrier obligation without any shippers on the active portions of the line complaining of inadequate service. For all of these reasons, contrary to Applicants' claims, the Application fails to satisfy the statutory and policy requirements of 49 U.S.C. § 10907.

A. UP's Has No Ownership Rights In The Active Segments That Can Be Acquired Via A Feeder Line Application

The active segment actually constitutes two separate segments with different ownership and operating rights: (1) the Cañon City to Parkdale segment; and (2) Cañon City to Pueblo. These segments cannot constitute a UP owned "line of railroad" for which KCVN can acquire under the feeder line segment. Congress did not define the term the term "line of railroad." Nonetheless, the Board has said that ICC and judicial precedent must be relied upon to provide a definition. The decisions of the ICC and of the courts indicate that the term "line of railroad," as used in former section 1a (now 10907), denotes a permanent road or way having rails providing a track for freight and passenger cars and other rolling stock, or the equivalent of such a road. See Florida East Coast Railway Company, Petition for Declaratory Order, FD 28664 (ICC served May 7, 1979).⁶ UP's ownership interests in the active line segments do not meet that test.

⁶ Indeed, the statute specifically speaks of both having ownership and operating rights as a condition to invoking the statute. The statute speaks of requiring the "rail carrier owning the railroad line to sell such line," (49 U.S.C. 10907(b)(1)); the "rail carrier operating such line," (49 U.S.C. 10907(c)(1)(A), and of no adverse impacts on the "rail carrier operating such line." (49 U.S.C. 10907(c)(1)(D)). At a minimum, with respect to the Cañon City to Parkdale segment,

Instead, it is R&R that owns and operates the active portions of the “line of railroad” that KCVN seeks to acquire from UP. Having not filed its feeder line against R&R, KCVN’s feeder line application should be dismissed with respect to these active segments.

1. The Cañon City to Parkdale Segment

As noted in footnote 2, UP sold the Cañon City to Parkdale line to RGX and today R&R is the exclusive common carrier operator on this segment. UP allegedly retained permanent irrevocable overhead easement/trackage rights to preserve the integrity of the Tennessee Pass through route. Yet, in the quitclaim deed that accompanied the transaction, UP transferred to RGX all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in and to Grantor's line of railroad from milepost 160.15 in Cañon City, Colorado, to Milepost 171.9 at Parkdale, Colorado as such line of railroad is located in Fremont County, Colorado.” UP did maintain an easement for utility rights, oil and gas, and mineral rights, but there is no retention of a freight easement for UP nor mention of UP retaining even overhead trackage rights. The alleged retention of trackage rights was also not recorded or subjected to regulatory approval.⁷ Merely possessing trackage rights, at best, KCVN’s application should be dismissed. KCVN cannot acquire UP’s allegedly held trackage rights via a feeder line application, and

UP’s interest, constituting trackage rights at best and where UP does not operate at all, does not qualify under the statute.

⁷ In several places, KCVN attempts to characterize UP’s “trackage rights” as “easement” rights. See Application at 4, 9, and 12. KCVN’s counsel attempts to conflate the two terms. There are no such “easement” rights, nor is there any STB regulatory filing indicating UP has “trackage rights” over the RGX/R&R line between Canon City and Parkdale. There is a one sentence footnote in the FD 33622 notice of exemption so indicating. Assuming that is correct, at best, UP has trackage rights. There is no case establishing that one can file a feeder line to acquire “trackage rights,” which is perhaps why KCVN’s counsel has inserted the word “easement” (within brackets sometimes and then removing those brackets at other times) where no such “easement” right exists.

given that KCVN has not filed against the owner/operator of the line – RGX/R&R – there is no UP owned “line of railroad” for which KCVN may acquire via the feeder line process.

2. The Cañon City To Pueblo Segment

Here too UP does not alone possess a sufficient interest in a “line of railroad” that would qualify that active segment for treatment under the feeder line statute. Ownership and operations over this segment are shared between R&R and UP. Indeed, over two decades ago, R&R obtained authority to acquire and operate certain assets from the Burlington Northern and Santa Fe Railway Company (“BNSF”) including a permanent rail freight easement to operate over approximately 41.31 miles of rail line between Pueblo and Cañon City, CO.⁸ In addition, R&R owns many tracks, sidings, spurs, and other rail facilities, and jointly, with UP, owns other industry tracks and sidings as well. Indeed, should UP abandon any of its solely-owned tracks, R&R has the right to purchase that track.⁹ R&R (as the successor to BNSF) and UP have

⁸ See Rock & Rail, Inc. – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company, FD 33738 (STB served April 30, 1999). The lines acquired by R&R were as follows: (1) from milepost 160.30 in Cañon City extending westerly for a distance of approximately 252 feet in Fremont County, CO; (2) from milepost 160.80 in Cañon City extending easterly approximately 256 feet to serve the power plant at or near Cañon City, in Fremont County, CO; (3) BNSF’s trackage rights over Union Pacific Railroad Company’s (UP) rail line between milepost 160.30 in Cañon City and milepost 120.73 in Pueblo, a distance of 39.57 miles in Fremont and Pueblo Counties, CO; and (4) all of BNSF’s connecting sidings, spurs, sidetracks and yard, industrial, team and switching tracks that are owned or leased by BNSF between the end of BNSF’s track, approximately 252 feet west of milepost 160.30 in Cañon City, and the connection between BNSF’s line and UP’s line at milepost 120.73 in Pueblo. R&R also acquired incidental trackage rights over BNSF’s rail line extending easterly from the connection between BNSF’s line and UP’s line at milepost 120.73 in Pueblo and approximately 2,243 feet over Track No. 254, approximately 2,240 feet over Track No. 256, and approximately 4,200 feet over BNSF’s main line track to milepost 619.75, for the purpose of interchanging with BNSF in Pueblo, for a total distance of approximately 1.64 miles in Pueblo County, CO.

⁹ 1947 Agreement.

operated portions of the Pueblo to Cañon City Segment as a joint line dating back to 1880.¹⁰

Given the complexities of the ownership/operations for the Pueblo to Cañon City Segment, UP cannot be considered the sole owning carrier for feeder line purposes, especially given that UP conducts very limited operations over the line segment.

B. Applicants' Reliance On Caddo¹¹ and Caddo III¹² Is Misplaced

Applicants attempt to use Caddo and Caddo III to justify treating all of the portions of the Tennessee Pass Line, including the portion that UP owns (the discontinued segment), the portion that R&R/RGX own and operate, and the portions that R&R/UP have a joint ownership in, as one “particular railroad line” for which a feeder line is applicable. But these cases do not stand for the proposition that one can use a feeder line application to acquire merely trackage rights or that a feeder line applicant can mix and match different ownership and operating interests to cobble together a “particular line of railroad” for feeder line purposes.

In Caddo, the 8th Circuit concluded that “when viewed in the light of the history of the operation of the Norman Branch, the circumstances under which Arkansas Midland and the Commission bifurcated the line, and the legislative history of the feeder line development program, the term “a particular railroad line” in the circumstances of this case include the Norman Branch in its entirety.” But there, the line was owned and operated by the same carrier.

¹⁰ These operations are governed by a series of agreements including a 1903 Agreement, 1926 Agreement, 1931 Agreement, and the 1947 Agreement.

¹¹ In Caddo, the 8th Circuit reviewed the ICC’s March 31, 1995 decision and found that ICC committed error based on the circumstances involved in that case. Caddo Antoine and Little Missouri RR Co., et al v. STB, 95 F.3d 740, 744. (8th Cir. 1996)(“Caddo”)

¹² In Caddo III, the Board set compensation for the entire Norman Branch in light of the 8th Circuit’s holding that based on the circumstances of that case the Norman Branch must be treated as a single entity. Caddo Antoine and Little Mo. R. Co. – Feeder Line Acquisition – Arkansas Midland Railroad Co. Line Between Gurdon and Birds Mill, AR, FD 32479, (STB served May 5, 2000)(“Caddo III”).

The case does not stand for the proposition that for purposes of a feeder line application, the term “a particular railroad line” can include all connected segments of a rail line ever owned and/or operated by a single carrier, irrespective of whether various segments of that rail line have over time been sold to another carrier and/or are jointly owned or operated by entirely different carriers. In asking that the Tennessee Pass Line be treated as “a particular railroad line,” the Applicants completely fail to recognize that the facts underlying the original proceeding, which led to the ICC’s decision in Caddo, and that the facts that existed at the time of UP/SP merger and the approval of the discontinuance are vastly different than those that current exist.¹³

In a more recent decision, PYCO II,¹⁴ the Board shed light on what led the 8th Circuit and subsequently the Board to treat the entire line in Caddo, which was owned and operated entirely by the same carrier, as a “particular railroad line.”

In Caddo, the Board found [the] incumbent rail carrier sought to "cherry pick" the line's heaviest user....[T]he incumbent listed the entire rail line as subject to future abandonment--a listing that automatically subjects a line to potential acquisition under the feeder line provision.... Preferring to retain the revenue from the line's heaviest shipper, however, the incumbent subsequently removed from that listing the very small portion of the line that was needed to serve that one shipper.

¹³ In a decision served March 31, 1995, the ICC originally declined to grant a feeder line application for an entire line after determining that because the owning carrier treated the rail line, which it owned in entirety, as two separate segments, and because shippers on only one segment received inadequate service, only the northern segment qualified for acquisition under section 10910(b)(1)(A)(ii). Because the sole shipper on the southern segment received adequate service, the Board initially found that portion of the rail line was not eligible to be acquired under the feeder line statute. See Caddo Antoine and Little Missouri Railroad Company – Feeder Line Acquisition – Arkansas Midland Railroad Company Line Between Gurdon and Birds Mills, AR, FD 32479 (ICC served March 31, 1995) (“Caddo 1995”). It is important to note that the same carrier owned and operated both the northern and southern segments. That is not the case here.

¹⁴ PYCO II was a feeder line case in which two acquisition alternatives was proposed: (1) acquisition of all of defendant carriers’ rail lines, or (2) purchase of the rail lines necessary to ensure adequate rail service for the applicant and to two other nearby similarly-situated shippers.

The language in PYCO makes clear that the Board will not allow an incumbent carrier to artificially bifurcate a rail line it owns (in entirety) in an attempt to circumvent the otherwise logical conclusion that the entirety of the line it has Board-approval to operate constitutes a particular railroad line. However, nothing in PYCO-II suggests that all potential feeder lines can include all rail line segments of a once continuous line regardless of changes in the ownership interest or regulatory status of the various segments.¹⁵

Of course the distinguishing factor of those two cases, and what makes them inapplicable to the present situation, is that for both Caddo and PYCO II, the connecting rail line segments that were the subject of the feeder line applications were owned and operated entirely by the same carrier. Such is not the case here. Lastly, while service on portions of the rail lines involved in Caddo and PYCO II was insufficient, inadequate, or embargoed, neither rail carrier held discontinuance authority over a segment of the involved lines, as does UP here, nor did any part of the rail operations involve mere possession of trackage rights, as UP allegedly has here over the Cañon City to Parkdale segment.

As such, the holding in the Caddo decision is inapposite and not controlling in this proceeding. Applicants have given the Board no reason to hold that the various lines involved in the proceeding should artificially be combined irrespective of the varying ownership interests or whether the rail segment is active and or discontinued, to be treated as a “particular railroad line”

¹⁵ In 2006, the Board accepted PYCO’s application for Alternative II, after finding that PYCO did not provide the evidence necessary to support an All-SAW feeder line application. See PYCO II. After acceptance of the Alternative II feeder line application and during the Board’s subsequent review, the competing feed line applicants introduced evidence that the majority of shippers on all of SAW’s rail lines received inadequate service. Ultimately the parties agreed that it would be preferable for the entirety of SAW’s rail lines to be operated by one rail carrier. Based on the changed circumstances, the Board changed course and allowed both competing feeder line applicants to file an ALL-SAW feeder line application instead of breaking the line into various segments.

for purposes of the Application. As stated in the Application, here, there are two distinct segments, an active segment and an inactive discontinued segment: the ICC approved the discontinuance of the inactive segment and separately authorized R&R to conduct operations on the two active segments. As explained above, UP does not own or operate all of the segments of the Tennessee Pass Line. For one of the segments, the Cañon City to Parkdale Segment), at best, UP only has overhead trackage rights, and for the other segment, Pueblo to Cañon City, UP and R&R have joint ownership and operating interests. Given these considerations, Applicants have failed to demonstrate why the Board should treat the entire Tennessee Pass Line as "a particular railroad line" based on the precedent that Applicants cited.

III. APPLICANTS HAVE FAILED TO DEMONSTRATE THAT ANY OF THE PC&N FACTORS DIRECTED AT SHIPPERS CAN OR ARE MET

As self-acknowledged, Applicants have filed a feeder line under the PC&N standard. To prevail on a PC&N feeder line, Applicants must demonstrate that the five criteria set forth at 49 U.S.C. § 10907(c)(1) are met and require or permit the forced sale of the entire line. As noted previously, by definition, those criteria focus in large part on the service provided by the “operating” carrier and whether a majority of the shippers who transport traffic over the line agree that their existing service is inadequate. Applicants have failed to meet any of these tests.

Applicants assert that the PC&N is met because UP has no interest in providing service to shippers and provides no service to shippers. Yet, the focus of the statute is on the owner and operator. UP is not the owner or the operator for all of the segments nor have a majority of shippers actually receiving service supported the Application. Having failed to even establish a prima facie showing that the five criteria for meeting the PC&N standard have been met, or could be met with further discovery or evidence, the Application must be rejected.

With respect to the discontinued segment, there is no service on the line because UP has no common carrier obligation over that section. As such, the argument that UP's service is inadequate because UP provides no service and has no interest in doing so must fail. UP does not have to provide service over a discontinued line. If KCVN and other shippers believe the line should no longer be discontinued, they have other remedies, such as filing to revoke the discontinuance or filing an adverse abandonment; thereby removing the STB's jurisdiction and providing for application of eminent domain.

The Application likewise fails to meet the required statutory and policy justifications for feeder line applications for the two active segments: the Cañon City to Parkdale Segment and the Pueblo to Cañon City to Segment. For the Cañon City to Parkdale Segment, Applicants have failed to present evidence sufficient for the Board to make the requisite finding that "owning carrier's service is inadequate for a majority of the segment's shippers." RGX and R&R are the "owning carriers" of that segment and R&R is the operating carrier for that segment.

In the over twenty years since the Cañon City to Parkdale Segment was acquired from UP, R&R has provided service to shippers and honored its common carrier obligation. During those two decades, no shipper ever alleged or filed a complaint against R&R alleging inadequate rail service. Nor has KCVN submitted letters from a majority of shippers who are receiving service from R&R alleging inadequate service and supporting KCVN's Application. As such, Applicants have not proven that service over the Parkdale to Cañon City to Segment is inadequate for the majority of shippers served by the rail line.¹⁶

¹⁶ Of course, as noted previously, for the Cañon City to Parkdale segment, UP is not the owning carrier and has no ownership rights. As such, KCVN has filed against the wrong carrier for that segment. If KCVN had filed against R&R, the Application would still fail for failure to meet the five part test set forth in §10907(c)(1). Furthermore, because R&R is the operating carrier, Applicants have also failed to satisfy the requirements of §1151.3(a)(11)(i)(c), which requires

Similarly, for the Pueblo to Cañon City Segment, Applicants have failed to present evidence sufficient for the Board to make the requisite finding that the owning carrier's service [R&R and R&R/UP] is inadequate for a majority of the segment's shippers. Since acquiring the Pueblo to Cañon City Segment, R&R has provided service to shippers and honored its common carrier obligation, and no shipper has alleged or filed a complaint against R&R or R&R/UP alleging inadequate rail service. This justifies rejection of the Application.

Rather than provide evidence demonstrating that the PC&N warrants granting the Application, the Applicants argue that the Board should grant the Application because doing so "will *likely* result in improved railroad transportation." Application at 28. However, this is not the standard. To grant a feeder line application under 49 U.S.C. § 10907(b)(1), the Board must find that the Applicant has shown that the existing service is inadequate for the majority of shippers and that the sale will benefit shippers without harming the owning carrier.¹⁷ No such showings have been made. Applicants' mere assertion that certain shippers may benefit from improved service does not meet the standard. Applicants do not claim, nor could they do so, that the active shippers are currently receiving inadequate service. Instead, Applicants argue that the sale of the line will likely result in improved railroad transportation for shippers who transport over the line. See Application at 28. This is insufficient to justify acceptance of the application and to begin a proceeding.

Applicants' argument that the Application will *likely* result in improved railroad transportation for shippers is also completely speculative and unsupported. There is not one verified statement or letter of support establishing that an existing shipper might obtain

that Applicants demonstrate that sale of the line would not have a significantly adverse financial effect on the owning carrier.

¹⁷ The Indiana & Ohio Railroad Inc. – Feeder Line Acquisition – Conrail Segment Between Beesons and Connersville, IN., 366 I.C.C. 42, 1981 ICC Lexis 12 (ICC served Nov. 16, 1981).

“improved” service, yet alone is currently experiencing inadequate service. To be clear, none of the shippers discussed in the Application have stated that the current service provided is inadequate.¹⁸ For all of these reasons, Applicants have failed to demonstrate that the PC&N standards are met or can be met with the development of the record. As such, the Application should be denied outright. See Valley Feed and Pyco I.

CONCLUSION

The simple fact is that the Application, while laudable in its goal to restore service over the discontinued portion of the Tennessee Pass Line, cannot be accepted as currently structured. Applicants’ have not established that the interests currently possessed by UP over the various segments of the Tennessee Pass Line meet the criteria of a “railroad line” over which one can file a feeder line application, nor could they. UP does not own and does not operate the Canon City to Parkdale segment and the line between Pueblo and Canon City is owned and operated jointly between UP and R&R. Furthermore, Applicants have failed to establish even a prima facie showing that any of the criteria of §10907(c)(1) are met or can be met with further discovery or an evidentiary proceeding. As such, the Director of OP should reject the Application, or, at a minimum, reject that portion of the Application that pertains to the Cañon City to Parkdale Segment and the Pueblo to Cañon City Segment.

¹⁸ Applicants assert that Freeport-McMoRan, Inc. has expressed an interest in discussing rail access if the common carrier obligation over the discontinued segment is restored, as have other shippers, including Martin Marietta Materials, R&R’s parent company, American Gypsum, and some grain and agricultural shippers. But no active shipper has provided any support or evidence sufficient to meet the criteria of 49 U.S.C. §10907(c)(1)(A), (B), or (E).

Respectfully submitted,



William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
Telephone: (202) 663-7823
Facsimile: (202) 663-7849

March 9, 2020

Attorneys for Rock & Rail, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Motion For Partial Rejection Of The Feeder Line Application Submitted By KCVN, LLC And Colorado Pacific Railroad, LLC was served by first-class mail, postage prepaid, or by a more expeditious manner, this 9th day of March 2020, on counsel for KCVN, LLC And Colorado Pacific Railroad, LLC and all other parties of record.



William A. Mullins
Attorney for Rock & Rail, Inc.