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Office of Proceedings
January 15, 2021
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January 15, 2021

By E-Filing

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

Re: Docket No. FD 36471, *Colorado, Midland & Pacific Railway Company – Lease Exemption Containing Interchange Commitment – Union Pacific Railroad Company*

Dear Ms. Brown:

By this letter Colorado Pacific Railroad, LLC ("Colorado Pacific") and KCVN, LLC ("KVCN") briefly respond to the Reply to Motion for Access to Confidential Documents filed by the Colorado, Midland & Pacific Railway Company ("CMPR") and ask that the Board accept this response into the record of this proceeding. In its Reply CMPR opposes granting either Colorado Pacific or KCVN access to the lease agreement between CPRM and the Union Pacific Railroad Company ("UP") for the purpose of reviewing the interchange commitment contained therein on the sole grounds that Colorado Pacific and KCVN only want to see the terms of the lease "so that it¹ can seek to acquire or lease the rail line." CMPR provides no further explanation of how having access to the lease terms would actually, in practice, facilitate either Colorado Pacific or KCVN acquiring or leasing the line at issue.

¹ CMPR has erroneously combined CPRR and KCVN into one corporate entity.

As an initial point, the Reply reveals that CMPR had no intention of consenting to a motion filed under 49 C.F.R. §1150.33(h) despite representing to counsel for Colorado Pacific and KCVN that CMPR might consider consenting, albeit under the unacceptable condition of first reviewing Colorado Pacific's and KCVN's filings.

Second, CMPR's position that KCVN is not a rail shipper is flatly wrong, as explained in the Motion to Reject Notice of Exemption that accompanied the Motion for Access to Confidential Documents. KCVN and its affiliated companies ship thousands of tons of grain by railroad, and are actively pursuing opportunities to ship grain west over the Tennessee Pass Line. But in any event, there is no requirement in §1150.33(h) that only a shipper may seek access to confidential documents. Rather, the regulation specifically states "a shipper *or other affected party*" may seek such access. (emphasis supplied). Colorado Pacific and KCVN have described in detail in the Motion for Access and the accompanying Motion to Reject that both parties would be substantially and adversely affected by an unlawfully restrictive interchange commitment in the proposed lease between CMPR and UP.

Finally, CMPR ignores the fact that the Board's standard Protective Order - a draft of which is attached to the Motion for Access - provides CMPR with adequate protection from its apparent concerns. Specifically, if CMPR is truly concerned about Colorado Pacific and KCVN wanting to see the lease for purely commercial purposes (false), as opposed to analyzing whether the interchange commitment contained in the lease is anti-competitive and contrary to law (true), it need only designate the documents it provides in response to the Motion for Access as Highly Confidential, which restricts access to only outside counsel and consultants who execute a strictly worded Undertaking prohibiting disclosure of the information to commercial personnel.

For all the foregoing reasons good cause exists for accepting this letter into the record of this proceeding.² I also hereby certify that a copy of this letter has been served on all parties on the official Service List for this proceeding.

Please do not hesitate to call me if you have any questions

Sincerely,



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

² See, e.g., F.D. 35960, *Petition of Union Pac. R.R. Co. for Declaratory Order* (served Sept. 30, 2016); F.D. 35157, *The City of Alexandria, Virginia – Petition for Declaratory Order* (served Nov. 6, 2008); F.D. 35765, *Wichita Terminal Association, BNSF Railway Company and Union Pacific Railroad Company – Petition for Declaratory Order* (served May 20, 2014). See also 49 C.F.R. §1100.3 ("The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.").