

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36471

ENTERED
Office of Proceedings
January 26, 2021
Part of
Public Record

COLORADO, MIDLAND & PACIFIC RAILWAY COMPANY
--LEASE AND OPERATION EXEMPTION CONTAINING INTERCHANGE
COMMITMENT--
UNION PACIFIC RAILROAD COMPANY

REPLY TO MOTION TO REJECT NOTICE OF EXEMPTION

Colorado, Midland & Pacific Railway Company ("CMPR") hereby files in opposition to the Motion To Reject filed by Colorado Pacific Railroad, LLC ("CP") and KCVN LLC ("KCVN") in this proceeding and the various individuals residing near the line ("Commenters").¹

KCVN argues that it is misleading for CMPR to suggest that CMPR can interchange traffic at Dotsero. While KCVN is technically correct that CMPR's rights currently end at Sage and not Dotsero, in its negotiations with Union Pacific Railroad Company ("UP") CMPR was informed that once the line is rehabilitated, UP will consider granting CMPR overhead trackage rights to Dotsero with a right to interchange with BNSF. Once those rights are granted, CMPR will make a supplemental filing with the Board.

KCVN further argues that the Notice is in error because it fails to identify Rock & Rail, Inc. ("RRRR") as a potential interchange partner at Parkdale. CMPR is aware of RRRR's

¹ CP claims to be a non-carrier. Because CP acquired a rail line pursuant to 49 USC 10907, CP became a carrier. Since KCVN was a co-applicant in that proceeding, KCVN also became a carrier.

presence at Parkdale, however, given the nature of RRRR's operations and the limited scope of its operations, CMPR considers it very unlikely that there will ever be any interchanges.²

KCVN and a few Commentators consider the Notice misleading because CMPR projects annual revenues of less than \$5 million. CMPR's primary objective in leasing the line is to provide passenger operations. At this time it is difficult to project what CMPR annual revenues will be in the foreseeable future. But CMPR does not project gross revenues in excess \$5 million in the near term. In any event, the estimate of revenues is largely irrelevant in this proceeding. If CMPR's projected revenues were in excess of \$5 million all CMPR would be required to do is provide notice to employees and union on the line. But there have been no employees or unions on this line for well over 20 years. *See* 49 CFR 1150.32(e). CMPR understands that the rehabilitation costs will be substantial. CMPR is hopeful to obtain grants to assist with those costs.

KCVN and some Commentators further argue that the Notice procedures do not apply because CMPR is seeking to lease and operate a dormant line. Section 1150.31 applies to all acquisition and operations under section 10901. If the Interstate Commerce Commission had intended to limit the scope of the rule it would have simply stated that the exemption applies to active rail properties only. In fact, the Board has authorized the lease of dormant lines in the past. *See e.g.* Finance Docket No. 36028, *Kanawha River Railroad, L.L.C. – Lease Exemption Containing Interchange Commitment – Norfolk Southern Railway Company* (not printed), served July 15, 2016.

² If the Board deems it necessary or helpful, CMPR would be willing to amend its Notice to exclude Dotsero as an interchange location and include RRRR as a potential interchange partner.

Many of the Commenters have apparently been misled by false reports in local Newspaper articles that erroneously report that CMPR is intending to ship oil, coal and Hazardous chemicals over the line. As previously indicated, CMPR's primary interest in leasing the line is to provide passenger rail service. There are numerous individuals that work in nearby ski resorts that must travel to the resort by bus or car because they cannot afford to reside at or near the resort. Also, some Commenters have pointed out that many individuals travel to sites along the line for recreation. These individuals will hopefully become customers of CMPR's passenger trains. CMPR urges the Commenters to reconsider their opposition to CMPR's lease of the line and enjoy the economical and environmentally friendly passenger Operations.

On January 19, 2021, the Town of Avon and Eagle County, CO filed a Petition For Stay. But they do not mention much less satisfy the criteria for granting a Stay. Consequently, the request should be denied.

Respectfully submitted



Karl Morell

Dated January 28, 2021

Cc: All parties of record