

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
August 14, 2017
Part of
Public Record

Finance Docket No. 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**

REPLY TO REQUEST FOR EXTENSION OF TIME

KCVN, LLC (“KCVN”) and the Colorado Pacific Railroad, LLC (“CPRR”)(together “Applicants”) hereby file this Reply to the letter request of V and S Railway, LLC (“V&S”) to extend the time for seeking reconsideration of the July 31, 2017 Decision in this case imposed by 49 C.F.R. §1115.3. V&S’ request should be denied.

The sole purpose of the mediation requested by the Board in its July 31 Decision is for the parties to attempt to resolve the net liquidation value (“NLV”) to be used by the Board to establish the constitutional minimum value Applicants would pay for the Line.¹ The rest of the Decision, which held that Applicants have met the requirements of 49 U.S.C. §10907, became effective on July 31, 2017 and is not at issue in the requested mediation. Thus, any motion for reconsideration of the Decision filed by V&S would have no impact in the mediation. Nevertheless, V&S has requested that the deadline to seek reconsideration of the *entire* decision

¹ By separate letter filed contemporaneously with this Reply, Applicants have accepted the Board’s invitation to participate in Board-sponsored mediation.

be tolled pending completion of the requested mediation of just the NLV. There is no valid basis for the Board to grant this request.

First, the only practical effect of extending the deadline for seeking reconsideration would be to further delay final resolution of this matter, which has now been before the Board since March 18, 2016 when Applicants filed their Feeder Line Application. Of course, as the Board catalogues in the Decision, the many issues surrounding V&S's ownership and neglect of the Line extend much farther back in time.

Second, V&S argues that incurring the time and expense related to a reconsideration proceeding doesn't make sense if the parties reach a mediated solution on the NLV. Letter at 1.² However, it is equally the case that incurring the time and expense of mediating the NLV issue would be wasted if the Board reversed its Decision on reconsideration. If V&S is simply going to seek reconsideration of the entire Decision at the conclusion of the mediation if Applicants do not pay a NLV that only V&S desires, then V&S should seek reconsideration now. Accordingly, if V&S desires to appeal any aspect of the Decision other than the portion dealing with the NLV determination³ it should be required to do so in accordance with the Board's rules and deadlines. There is absolutely no reason why the two efforts should not proceed in parallel, and thereby avoid adding even more delay to the final resolution of this matter.

² Since no issue other than the NLV is being mediated, V&S' statement that "no petition for reconsideration would be necessary" if the mediation were successful is merely a statement that V&S *might* consider foregoing appealing the Decision as a whole if Applicants agree to a high enough NLV in mediation.

³ Should mediation of the NLV issue be unsuccessful, the Board will establish the NLV for the line and decide any other remaining issues – such as the terms of closing - in a subsequent decision. Either party could seek reconsideration of that decision at that time should they choose to do so.

WHEREFORE, for the reasons set forth above, Applicants request that the Board deny V&S's request to extend the deadline for seeking reconsideration of the Decision established by 49 C.F.R. §1115.3.

Respectfully submitted,



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August 14, 2017

CERTIFICATE OF SERVICE

I do hereby certify that on this 14th day of August, 2017, I have served a copy of the foregoing Reply to Request for Extension of Time by email and first class mail on the following person:

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