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April 19, 2017

VIA EL-FILING

Cynthia T. Brown
Chief, Section of Administration - Office of
Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
April 19, 2017
Part of
Public Record

Re: KCVN, LLC and Colorado Pacific Railroad, LLC -
Feeder Line Application -
In Crowley, Pueblo, Otero and Kiowa Counties, Colorado
STB Docket No. FD 36005

Dear Ms. Brown:

This letter is being sent on behalf of V and S Railway, LLC ("V&S") in response to the letter and Second Supplemental Rebuttal Verified Statement ("SSRVS") of Thomas D. Crowley and Daniel L. Fapp submitted by the Applicants on April 18, 2017. Because the SSRVS does nothing to present the Board with a more complete record of the facts and issues in this proceeding, the SSRVS should not be accepted into the record.

Messrs. Crowley and Fapp had previously submitted a Supplemental Rebuttal Verified Statement ("SRVS") in which they summarized discussions that they had with Mr. Ryan Wannamaker at Cando Rail Services. SRVS, p. 11. Mr. Ryan reviewed the SRVS, and believed that the SRVS did not accurately reflect his discussions with L.E. Peabody, and accordingly submitted a letter dated April 13, 2017 (docketed April 17, 2017) correcting and clarifying his

discussions.¹

Essentially all that the SSRVS provides is a copy of the notes of an L.E. Peabody employee that presumably reflect his impressions of what was discussed/said in the conversation with Mr. Wannamaker. V&S concedes that the SRVS is consistent with the notes; however, that does not contradict or change the import of Mr. Wannamaker's letter indicating that L.E. Peabody misunderstood or misconstrued what he said. The SSRVS merely indicates that the L.E. Peabody notes similarly reflect a misunderstanding of what was said. The SSRVS does not reflect any written confirmation from Mr. Wannamaker, or any recording of the phone conversation, that indicate that L.E. Peabody's notes are more accurate than Mr. Wannamaker's letter summarizing his discussions.

The SSRVS, pp. 1-2, indicates that the same L.E. Peabody employee had the discussions with the other rail salvage companies. To the extent that this employee misconstrued or misunderstood the information provided by Mr. Wannamaker, the Board should consider whether he may also have misconstrued or misunderstood the information provided by the other railroad salvage companies, and that the report of such information should therefore be considered unreliable.

For the foregoing reasons, the SSRVS does not add any facts to the record and should not be considered by the Board.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e

cc: All persons on the attached certificate of service

¹ The SRVS, p. 11, indicated that "we" contacted Cando Rail and that "we" spoke with Mr. Wannamaker, although the SSRVS states that in fact another employee of LE Peabody actually spoke with Mr. Wannamaker. Mr. Wannamaker's letter similarly generically refers to his conversation with Messrs. Crowley and Fapp instead of with their company L.E. Peabody or their representative. There is nothing false or misleading about either reference.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day April, 2017, I served a copy of the foregoing letter on the following parties by the method indicated:

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By:  _____
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