

EXPEDITED CONSIDERATION REQUESTED

244055

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
August 7, 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**

**MOTION FOR ORDER REQUIRING V&S RAILWAY, LLC
TO VERIFY CURRENT STATE OF THE LINE AT ISSUE**

On July 31, 2017, the Surface Transportation Board served a Decision in this proceeding in which it determined that KCVN, LLC (“KCVN”) and Colorado Pacific Railroad, LLC (“CPRR”), the Applicants in this feeder line proceeding, have met the requirements of 49 U.S.C. §10907(c)(1), §10907(b)(1)(B), and the Board’s regulations. Accordingly, the Board found that the public convenience and necessity requires or permits the forced sale of the railroad line and related assets at issue in this proceeding to CPRR, a financially responsible party. Applicants are carefully considering the Board’s request that they participate in Board-sponsored mediation to attempt to agree on a Net Liquidation Value (“NLV”) for the railroad line and track assets at issue.

As part of its Decision, the Board determined that “the Line” that would be sold to CPRR should this proceeding advance to that stage is comprised of the asset inventory submitted by V&S Railway, LLC (“V&S”) in its Comments of V and S Railway (“Comments”) on the Feeder

Line Application, submitted August 30, 2016. *Decision* at 14. The Board further determined that the NLV of the Line would be determined using the material classification of the asset inventory also submitted by V&S's experts with V&S's Comments. *Id.* at 16.

It has been nearly a year since V&S submitted the asset inventory and classification on which the Board's Decision is based. In light of (1) the Board's finding that Applicants have met the requirements of §10907, (2) its determination that V&S's August 30, 2016 asset inventory is the best evidence of record on this subject, (3) its request that the parties' agree to participate in Board-sponsored mediation, and (4) the possibility that the Board may be called upon to determine the NLV for the Line, it is reasonable and appropriate for the Board at this time to direct V&S to confirm that the Line that would be sold to CPRR does not differ in any material respects from the asset inventory V&S submitted to the Board on August 30, 2016, or the condition of the assets as represented by V&S. Applicants consider a difference to be "material" if any of the listed rail track and assets have been sold, destroyed, damaged, removed, or otherwise disposed of since August 30, 2016.

Applicants believe the need for such an order at this time is particularly acute given the passage of time since V&S's Comments were filed, combined with V&S's documented history of neglecting the Line and its undisputed previous attempt to sell some of the track assets at the same time it led KCVN and other parties to believe a sale of the entire Line was still possible, an action the Board eventually enjoined. *Decision* at 9 and 12.

WHEREFORE, Applicants request the Board to expeditiously issue an order directing V&S, pursuant to a verified statement submitted by an officer of the company, to certify that the track and rail assets making up the Line that would be sold to CPRR pursuant to the July 31 Decision (and any subsequent decisions served in this docket), and the condition of said track

and rail assets, do not differ in any material respect from the list of rail assets of the Towner Line submitted by V&S in its Comments, and the condition V&S represented them to be in at that time. If V&S cannot so certify, then V&S should be directed to expeditiously submit a revised inventory of the Line that specifically identifies the differences from the August 30, 2016 inventory and a detailed explanation of the reasons for such differences.

Applicants further request that V&S should be directed to provide this information prior to the start of any Board-sponsored mediation, or any further deliberations by the Board over the appropriate NLV for the Line at issue should Board-sponsored mediation not occur, or not be successful.

Respectfully submitted,



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August 7, 2017

CERTIFICATE OF SERVICE

I do hereby certify that on this 7th day of August, 2017, I have served a copy of the foregoing Applicants' Motion for Order Requiring V&S Railway, LLC to Verify Current State of the Line at Issue by email and first class mail on the following persons or entities:

Eric M. Hocky, Esq.
Clark Hill PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103

And by first class mail to the other entities on the official service list for this proceeding.



Thomas W. Wilcox