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December 11, 2017

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 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*

Dear Ms. Brown:

Attached for filing in the above referenced proceeding is a Joint Motion for Approval of Net Liquidation Value and Closing Terms filed on behalf of KCVN, LLC, Colorado Pacific Railroad, LLC, and V AND S Railway. Please note that the Exhibit to the joint motion is CONFIDENTIAL pursuant to the terms of the protective order in this proceeding, and so the parties are filing CONFIDENTIAL and PUBLIC versions of the filing.

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

Sincerely,



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

Cc: Eric M. Hocky, Esquire (via email)
Rachel Campbell (via email)
Francis O'Connor (via email)
All parties on the official service list for FD 36005

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36005

**KCVN, LLC/COLORADO PACIFIC RAILROAD, LLC – FEEDER LINE
APPLICATION –LINE OF V AND S RAILWAY, LLC, LOCATED IN CROWLEY,
PUEBLO, OTERO, AND KIOWA COUNTIES**

**JOINT MOTION FOR APPROVAL OF NET LIQUIDATION VALUE
AND CLOSING TERMS**

The Applicants in this proceeding - KCVN, LLC and its wholly owned subsidiary, Colorado Pacific Railroad, LLC (“CPRR”)(together the Applicants) – and the V AND S Railway, LLC (“V&S”), hereby jointly request the Surface Transportation Board (“Board” or “STB”) to approve their agreement on the purchase price for the railroad line at issue and the closing terms that will apply to the sale of the line to Applicants. In support of this motion, the Applicants and V&S state the following:

On July 31, 2017, the Board served a decision in this proceeding (the “*Decision*”) in which it found that Applicants had met the criteria and eligibility requirements for the forced sale and acquisition of an approximately 121.9-mile line of railroad in southeastern Colorado owned by V&S known as the Towner Line. More specifically, the Board determined that the Towner Line “meets the statutory criteria for a forced sale under 49 U.S.C. 10907 and that Colorado Pacific is financially responsible and thus eligible to purchase the line.” *Decision* at 1. The

Board further determined that the railroad line and assets to be sold by V&S and purchased by CPRR consisted of the asset inventory and material classifications submitted by V&S in its August 30, 2016 Comments on the Feeder Line Application. *Id.* at 14-16. V&S later confirmed the validity of the August 30, 2016 submission in a September 5, 2017 Certification of V&S Railway, LLC it was directed to file by the Board by decision served August 24, 2017.

Although the Board determined that the Towner Line should be sold to Applicants pursuant to 49 U.S.C. §10907, for a purchase price equal to the net liquidation value (“NLV”) of the line, the Board declined to resolve the dispute between the parties over the NLV. *Id.* at 16. Instead, the Board requested that the parties participate in Board-sponsored mediation pursuant to 49 C.F.R. Part 1109 “to resolve the NLV for the Line based on V&S’s classification of assets and inventory.” *Id.* Applicants and V&S accepted the Board’s invitation and participated in a Board-sponsored mediation which began with a face-to-face session in the Board’s offices on October 11, 2017. The mediation process continued outside of the Board’s offices and the mediation period is currently extended until December 11, 2017. The parties are pleased to report to the Board that they have reached agreement on (1) the NLV to be used for purposes of this proceeding, and (2) although not specifically requested to do so by the Board in the *Decision*, the closing terms applicable to the sale. The closing terms are based on the closing terms utilized by the Board in its most recent feeder line proceedings,¹ as modified by mutual

¹ STB FD 35160, *Oregon International Port of Coos Bay – Feeder Line Application – Coosbay Line of the Central Oregon and Pacific RR, Inc.* (served October 31, 2008) at 15; STB FD 34890, *Pyco Industries, Inc. – Feeder Line Application – Lines of South Plains Switching, Ltd. Co., et al*, (served August 31, 2007) at 26; and STB FD Docket 34335, *Keokuk Junction Ry. Co. – Feeder Line Application – Line of Toledo, Peoria and Western Ry Corp. between La Harpe and Hollis, Ill.* (served October 28, 2004) at 25.

agreement between the parties as permitted in those proceedings. The NLV and closing terms, which the parties are requesting that the Board approve by this Motion, are as follows:

1. For the purposes of this proceeding, the NLV for the Towner Line, as that rail line is described and defined in the *Decision*, is \$10,000,000.
2. CPRR shall pay to V&S at closing \$10,000,000 by electronic transfer to an account designated by V&S prior to closing.
3. Closing of the transaction shall occur on January 5, 2018, at the Kiowa County Abstract Company, 1304 North Goff Street, Eads, Colorado, 81036. Documents may be exchanged or provided to Kiowa County Abstract Company by overnight delivery, or electronic delivery, as reasonably acceptable to Kiowa County Abstract Company.
4. V&S shall convey all property by quitclaim deed. The quitclaim deed may include reference to potential reserved rights of the State of Colorado and Colorado Department of Transportation ("CDOT"), of Union Pacific Railroad Company, and to the rights of V&S pursuant to 49 U.S.C. §10907(h).
5. V&S shall deliver all releases from any mortgages to CPRR or to Kiowa County Abstract Company within 90 days after closing.
6. All taxes shall be prorated as of the date of closing.
7. CPRR shall pay all deed recording fees, while mortgage or lien release taxes or recording fees shall be paid by V&S.
8. V&S shall provide to Washington counsel of KCVN and CPRR, within 30 days after closing, all available records of V&S concerning the property being purchased, including any and all deeds, valuation maps, easement records, engineering drawings, contracts, bridge inspection records, and all other records related to the property being purchased, *provided however*, that V&S shall endeavor to begin providing such documents prior to and after the closing date to the extent they are readily available and can be provided without V&S incurring undue burden.

In addition to the foregoing agreements on the NLV and the closing terms based on the STB's standard closing terms, Applicants and V&S have entered into a confidential letter agreement addressing several other matters that are related to the sale of the Towner Line to CPRR, and also to the parties' achievement of a final resolution of their overall dispute over the

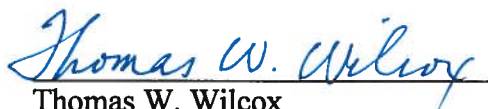
Towner Line which began in 2014. A true and correct copy of the executed letter agreement is attached to the Confidential Version of this Motion as Exhibit A.

WHEREFORE, Applicants and V&S respectfully request the Board grant this Motion. Given that the parties have agreed upon a closing date of January 5, 2018, they also respectfully request that the Board act expeditiously so that closing is not delayed.

Respectfully submitted,

Handwritten signature of Eric M. Hocky in blue ink, with the initials "TWW" written at the end.

Eric M. Hocky
Clark Hill PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
Attorneys for V AND S Railway, LLC

Handwritten signature of Thomas W. Wilcox in blue ink.

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(202) 342-5248
*Attorneys for KCVN, LLC and Colorado
Pacific Railroad, LLC*

December 11, 2017

Exhibit A (Redacted)

CERTIFICATE OF SERVICE

I do hereby certify that on this 11th day of December, 2017, I have served a copy of the foregoing Joint Motion for Approval of Net Liquidation Value and Closing Terms by first class mail on each of the following persons or entities:

John P. Dring (via email)
Federal Energy Regulatory Commission
Office of Administrative Law Judges
888 First Street, NE
Washington, DC 20426

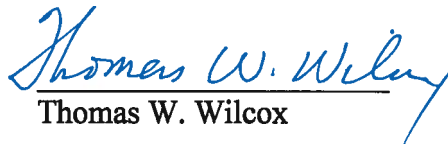
By US mail, postage prepaid:

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Thomas W. Wilcox