

SURFACE TRANSPORTATION BOARD

DECISION

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

Decided: August 17, 2017

On March 18, 2016, KCVN, LLC (KCVN), and its wholly owned subsidiary, Colorado Pacific Railroad, LLC (Colorado Pacific) (collectively, Applicants), jointly filed an application under the feeder line provision at 49 U.S.C. § 10907 for Colorado Pacific to acquire a rail line owned by V and S Railway, LLC (V&S), in southeast Colorado (the Line). The Line consists of approximately 121.9 miles of railroad line and approximately 12 miles of other tracks and facilities, between milepost 747.5, near Towner, and milepost 869.4, near NA Junction, in Pueblo, Crowley, Kiowa, and Otero Counties, Colo.

By decision served on July 31, 2017 (July 31 decision), the Board found that the application meets the statutory criteria for a forced sale under § 10907 and that Colorado Pacific is financially responsible and thus eligible to purchase the Line. The Board requested that the parties engage in Board-sponsored mediation to resolve the net liquidation value (NLV) of the Line and directed the parties to confirm by August 15, 2017 whether they agree to do so. Thereafter, both V&S and Applicants agreed to mediation. (V&S Letter 1, Aug. 10, 2017; Applicants' Letter 2, Aug. 14, 2017.) The Board will initiate that process shortly.

By letter filed on August 10, 2017, V&S requests that the Board extend the deadline for seeking reconsideration of the July 31 decision until (a) 20 days after the termination of mediation (if unsuccessful) or (b) 10 days after a response from Applicants rejecting the mediation proposed by the Board.<sup>1</sup> V&S argues that it does not make sense for the parties to incur the time and expense of reconsideration proceedings in the event they can reach a mediated agreement. On August 14, 2017, KCVN replied in opposition, arguing that extending the deadline would further delay resolution of this matter and that the time and expense of mediating the net liquidation value would be wasted if the Board reversed the July 31 decision. KCVN asserts that there is no reason why reconsideration of the July 31 decision should not proceed in parallel with determination of the NLV.

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<sup>1</sup> Because Applicants have since agreed to mediation, V&S's request is now effectively for an extension until 20 days after the termination of mediation (if unsuccessful).

An extension of the reconsideration deadline will be granted, but it will differ from V&S's request. Regardless of whether mediation on the NLV is successful, the Board will need to issue a further decision so it can either terminate the proceeding or address further the remaining issues. Rather than allowing piecemeal reconsideration of the July 31 decision and the Board's next decision, should the parties fail to reach agreement, requests for reconsideration should address at the same time all contested aspects of the Board's July 31 decision and any post-mediation final decision the Board may issue. A successful mediation presumably would render moot any need to reconsider the July 31 decision; if mediation is not successful, allowing reconsideration of the July 31 decision on the same schedule as reconsideration of the Board's post-mediation final decision would not introduce any additional delay. Indeed, the Board has taken this approach before. See Or. Int'l Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Cent. Or. & Pac. R.R., FD 35160 (STB served Nov. 7, 2008). Therefore, the due date for any petition for reconsideration of the July 31 decision will be calculated based on the service date of any post-mediation final decision the Board may issue.<sup>2</sup>

It is ordered:

1. The due date for petitions to reconsider the July 31 decision will be calculated from the service date of any post-mediation final decision the Board may issue.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

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<sup>2</sup> On August 7, 2017, Applicants requested an order requiring V&S to certify that the inventory of materials comprising the Line and the condition of those materials do not materially differ from the inventory and condition as submitted by V&S in its comments, or, if V&S cannot so certify, requiring V&S to submit a revised inventory. V&S replied in opposition on August 10. Applicants' request will be addressed in a subsequent decision.