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May 19, 2016
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Public Record

Before the

SURFACE TRANSPORTATION BOARD

Docket No. FD 36005

KCVN, LLC AND COLORADO PACIFIC RAILROAD, LLC
- FEEDER LINE APPLICATION -
IN CROWLEY, PUEBLO, OTERO AND KIOWA COUNTIES, CO

MOTION OF V AND S RAILWAY, LLC
FOR EXTENSION OF TIME FOR
FILING COMMENTS

(Expedited Consideration Requested)

This proceeding was commenced on March 18, 2016, when KCVN, LLC and Colorado Pacific Railroad, LLC (“Applicants”) filed a Feeder Line Application to acquire the “Towner Line” between NA Junction and Towner, Colorado, that is owned by V and S Railway, LLC (“V&S”). In a decision served on April 15, 2016 (the “April 15 Decision”), the Director of the Office of Proceedings made a preliminary finding that the Application was “substantially complete” and established a procedural schedule. The procedural schedule requires that verified statements and comments be filed by June 14, 2016. For the reasons set forth in this Motion, V&S requests pursuant to 49 CFR 1151.2(k) that the date for filing comments be extended until August 1, 2016.

Although the April 15 Decision found that the Applicants had provided substantially all of the information required by 40 CFR 1151.3, it also found that “The applicants should provide some additional information, described below, for the Board’s consideration as the feeder line case proceeds.” April 15 Decision, at 3. The Applicants were given until April 29, 2016 to provide additional information regarding their financial responsibility, the proposed operating

plan, and the limits of the proposed operator's liability insurance. The Applicants filed a Supplement to Feeder Line Application (the "Supplement") on April 29, 2016, but all of the requested additional information was marked as "Confidential" and unavailable to any parties given that there was no protective order in effect. Thereafter, on May 4, 2016, the Applicants filed a motion for a protective order. The Director of the Office of Proceedings granted the motion for a protective order on May 16, 2016. V&S promptly submitted executed Undertakings,¹ and were promptly provided the Confidential version of the Supplement at approximately 5:30 PM on May 16, 2016.

Given the voluminous Application, it did not make sense for V&S to do discovery until, and unless, the Application was accepted by the Board. Similarly, since the Board's decision accepting the Application also required the submission of supplemental information, it did not make sense to start discovery until the Applicants submitted the required information. Now that V&S has available to it all of the information that the Applicants have submitted to support their Application, V&S wishes to conduct some discovery of the Applicants and of third parties, including the proposed operator,² who have provided supporting verified statements and information that have been included in the Application, as supplemented. The Board's regulations generally provide that comments should be due within 60 days after the application is

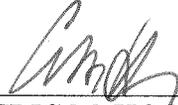
¹ Counsel for the Applicants was also advised at that time that V&S would be filing a motion for an extension of time to file comments. This morning, counsel for the Applicants advised counsel for V&S that the Applicants would be opposing the extension request.

² V&S will be asking the Board to issue subpoenas for the third parties. It is clear that the third parties who provided verified statements to support the Application and the requested change in operators, as well as the new potential operator, have a clear interest in the proceeding and will be directly affected by the outcome. Accordingly, under the Board's standard a general showing that the discovery is tailored to the matters raised in the Application and related verified statements, will support the issuance of the subpoenas. *See Ballard Terminal Railroad Company, LLC – Acquisition and operation Exemption – Woodinville Subdivision*, STB Docket No. 35731 (served May 17, 2013), at 2-4.

accepted. 49 CFR 1151.2(e). However, in this instance good cause exists to extend the due date until at least 60 days after the information in the Supplement became available, i.e., when the Application was complete. The 60 day period from when the Confidential version of the Supplement became available would end on July 15, 2016; however, because counsel for V&S is committed to be out of the office and unavailable from July 8 – July 18, 2016, V&S requests that the due date for comments be extended until August 1, 2016.

Because a decision on the extension request will affect V&S's timing and flexibility for discovery and the preparation of its comments, V&S requests that the Board shorten the time period for responses to this motion, and expeditiously decide on the request.

Respectfully submitted,



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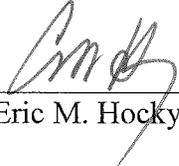
Attorneys for V&S Railway, LLC

Dated: May 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2016, I served a copy of the foregoing document by email on the following:

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By:  _____
Eric M. Hocky