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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:

Accompanying this letter for e-filing in the referenced docket on behalf of KCVN, LLC and Colorado Pacific Railroad, LLC (“Applicants”) is their Reply to Comments of V AND S Railway, LLC. Because this filing contains commercially sensitive information, Applicants have prepared a Highly Confidential version to be filed under seal, and a Public Version that can be placed in the public docket of this proceeding. We will also today be hand delivering to you the electronic work papers of Applicants’ experts under separate cover.

Do not hesitate to contact me with any questions or if you need additional information.

Sincerely,

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

GKG Law, P.C.

Ms. Cynthia T. Brown

September 27, 2016

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Cc: All parties on the Official Service List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

REPLY TO COMMENTS OF V AND S RAILWAY, LLC

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September 27, 2016

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**BEFORE THE
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REPLY TO COMMENTS OF V AND S RAILWAY, LLC

**I.
INTRODUCTION**

KCVN, LLC (“KCVN”) and its wholly owned subsidiary, Colorado Pacific Railroad, LLC (“CPRR”)(together “Applicants”), hereby submit their Reply to the Comments of V AND S Railway, LLC (“V&S”) on their Feeder Line Application. The Application seeks an order from the Board pursuant to 49 U.S.C. §10907 and 49 CFR Part 1151 requiring V&S to sell a 121.9 mile line of rail known as the Towner Line to CPRR for its constitutional minimum value.

For the reasons set forth herein, V&S’s Comments confirm the assertions in the Application that the Towner Line is an obvious candidate for a forced line sale pursuant to §10907 due to the fact that V&S has absolutely no intention of ever restoring common carrier rail service over the Towner Line. Rather, V&S’s Comments affirm that it is resisting this Application for the sole reason that it desires to (1) reap as much revenue as it can from storing cars on some of the tracks of the Towner Line – which is the sole reason it withdrew a notice of

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exemption to abandon the entire Towner Line pursuant to a litigation settlement agreement - and then (2) abandon the line and sell and/or scrap what is left of the Towner Line's railroad assets for profit once this source of revenues dries up.

While V&S tries to characterize feeder line proceedings as "extraordinary" and presents various arguments asking the Board to take a very narrow and restrictive view of the evidence and applicable law, the reality is that Board policy encourages feeder line applications. STB Finance Docket No. 34335, *Keokuk Junction Railway Co. – Feeder Line Acquisition – Line of Toledo and Peoria and Western Railway Corp. Between La Harpe and Hollis, Il.* (served May 9, 2003)("Keokuk") at 5. Indeed, the current rules were promulgated for the express purpose of making the feeder line procedures "less expensive and easier to use," such that "[b]y making the feeder line procedures more open and flexible, the acquisition of rail line will be easier for applicants, including shippers, community groups, and other small entities." Docket No. Ex Parte No. 395, *Revision of Feeder Railroad Development Rules*, 7 I.C.C. 2d 902, 903, and 914 (1991). Thus, despite V&S's strained efforts to the contrary, the Application must be viewed and considered in the context of this policy.

II. THE TOWNER LINE IS CLEARLY ELIGIBLE FOR FORCED SALE PURSUANT TO §10907

A. The Line Meets the Criteria of §10907(b)(1)(A)(ii)

In their Application, KCVN and CPRR argue that the criteria of 49 U.S.C. §10907(b)(1)(A)(ii) are met because, under Board precedent and its decision promulgating 49 C.F.R. §§1151.10 and 1151.11, V&S has demonstrated the requisite intent to abandon the Towner Line despite not complying with Board regulations by either filing a system diagram map ("SDM") showing lines it intends to abandon or submitting a narrative description of such

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lines. Application at 15-18. The STB should not reward short lines who fail to comply with Board regulations by restricting parties who seek relief under §10907 to utilize only the “public convenience and necessity” prong of §10907(b)(1)(A)(i), when, as in the case of V&S, there is indisputable evidence over a period of years that the short line has no intention to offer common carrier service and intends to abandon its line of rail. In response, V&S cites a single decision where the STB upheld the decision of the Director of the Office of Proceedings to reject a feeder line application based solely on §10907(b)(1)(A)(ii) because the applicant frivolously claimed that a legal notice in a newspaper constituted the railroad’s actual system diagram map. Comments at 4. This decision is hardly dispositive of the question raised by Applicants, which they admit is one of first impression.

Further, V&S’s claim that because subparagraphs of §1152.10(b) refer to abandonment or discontinuance “applications” there is supposedly no SDM requirement if a railroad intends to abandon its line through a notice of exemption - and therefore no ability for parties to use §10907(b)(1)(A)(ii) - misses the point. The Board in Ex Parte No. 537, *Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. 10903*, was addressing the issues associated with Class III railroads, which V&S acknowledges rarely, if ever seek abandonment through a full application. Comments at 5, note 5. In that rulemaking proceeding, the Board discussed how Class III railroads must still meet the SDM requirements of the statute, but could do so through a less burdensome narrative description, precisely so parties seeking to acquire lines from a Class III railroad pursuant to §10907 could utilize §10907(b)(1)(A)(ii). Application at 18. In these particular factual circumstances the Board should find that the criteria of §10907(b)(1)(A)(ii) are met.

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B. The Public Convenience and Necessity Require the Sale of the Towner Line

Should the Board decide that §10907(b)(1)(A)(ii) is not applicable in these circumstances, Applicants have clearly met all of the requirements of §10907(b)(1)(A)(i) and §10907(c), and sale of this line to them to prevent its eventual permanent abandonment and removal is clearly required by the public convenience and necessity. In a vain attempt to counter the mountain of evidence supporting this conclusion, V&S would first have the Board ignore the V&S's many prior actions and filings related to its elimination of all rail service over the line and V&S's discouragement of any resumption of service. V&S would then have the Board apply a standard of demand for rail service that is nowhere found in §10907, the Board's feeder line regulations, or any Board precedent governing feeder line applications. Moreover, V&S's attempts in its Comments to dispute that the public convenience and necessity requires the sale of the line actually *support* this conclusion, because the Comments confirm V&S (1) is only objecting to this Application because it is currently receiving railcar storage revenues, (2) has no intention of taking any pro-active measures to restore common carrier freight rail service over the Towner Line and develop it, and (3) instead intends to allow the infrastructure to continue to deteriorate, which will eventually compel the line's abandonment due to lack of repair and maintenance.

1. V&S Has Made no Efforts to Provide Adequate Service to Shippers Along the Towner Line (§10907(c)(1)(A))

a. V&S's Active Role in Eliminating all Rail Traffic on the Towner Line and Discouraging its Resumption Cannot be Ignored

In their Application, KCVN and CPRR provided the Board with a detailed summary of the history of V&S actions before this Board since acquiring the Towner Line in 2005. This

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tenure has been marked with numerous questionable filings at this Board, but it also demonstrates an overall intent of V&S to cease any common carrier obligations over the line beginning in 2012 for the purpose of eventually abandoning the line and selling its assets once the two year period for exempt abandonments in 49 C.F.R. §1152.50 had expired. Application at 20-29.

The Application explains how the cessation of service in 2012 was brought on by V&S suddenly increasing its rates to levels that made it uneconomic for even its largest shipper customer, Bartlett Grain, to continue to transport its wheat by railroad on the V&S. This increase in rates and cessation of transportation service was then followed by a series of filings before the Board to first, discontinue the obligation to provide service over the western half of the Towner Line, and then to abandon it in a piecemeal manner to try and minimize public and Board scrutiny. *Id.* at 22-26.

The Application also explains how the surrounding counties, the State of Colorado, and other parties have filed statements with the STB in proceedings involving the Towner Line complaining about the V&S's ownership of the line and its failure to take any measures to develop freight rail service over it, and its intent to abandon it. *Id.* at 23-24. Finally, the Application contains statements from potential shippers along the line who potentially could use the Towner Line for shipping their grain, and how potential new strains of drought resistant wheat have been developed and new western markets could be pursued, if not for the futility of dealing with the V&S to restore freight rail service. *Id.* at 29-34.

In light of the foregoing, which clearly demonstrate that the actions of V&S starting in 2011 were part of a successful scheme to permanently eliminate rail service over the Towner Line so it could eventually be abandoned and sold, statements in V&S's Comments that "there

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have been no allegations that V&S has ever been unresponsive to shipper requests for service,” Comments at 6, or “Bartlett . . . has made no requests for service since February 2012,” *Id.* at 7, or that none of the farmers who provided verified statements have shipped or received anything on the Towner Line since 2005, *Id.* at 8, or other similar statements, ring hollow and are disingenuous.¹ V&S tries to argue that the fundamental increases in its tariff rates in 2011 that made rail transportation uneconomic for all of the actual and potential grain rail shippers along the Towner Line “were not set up to drive away traffic,”² Comments at 9 and Verified Statement of Aaron Parsons at 7. However, the undisputed facts of the matter are that (1) the huge rate increase and other changes to the tariff *did* drive away all rail traffic on the Towner Line starting in 2012, and (2) V&S has made no effort whatsoever in the ensuing four years to change its rate structure to make rail transportation economically feasible, or to develop any new opportunities over the line. Rather, it is undisputed that since 2012 V&S’s efforts have instead been focused on a plan to abandon the Towner Line and sell its track assets, a plan that was only halted by (1) an injunction obtained by KCVN in Colorado State Court, (2) an injunction issued by this

¹ V&S strains to show it made an effort to provide service to shippers by weakly stating it repaired sidetracks it leased to Bartlett Grain in 2008, which is four years before V&S summarily raised its rates to uneconomic levels and ceased all rail service over the Towner Line. Comments at 7. This “example” is therefore obviously irrelevant to the issues in the Application.

² V&S’s apparent claim that the Applicants cannot meet the requirements of 49 U.S.C. §10907(c)(1)(A) in part because “no one has demonstrated that the V&S tariff rates are unreasonable,” *Id.* at 8, is specious. As the Board well knows, no grain shipper has filed a rate case against any railroad operating over an *active* line for over 30 years for the reasons discussed by commenters in STB Docket No. EP 665, *Rail Transportation of Grain*. To posit that a shipper on the Towner Line would challenge the reasonableness of the rates of a railroad whose track is *out of service* and would require millions of dollars to rehabilitate, and who has demonstrated no interest in operating its line is simply untenable, to say the least.

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Board;³ and (3) an opportunity that fell into V&S' lap to be paid to store cars on the Towner Line track. The extensive record of V&S's attempts to abandon the line and its lack of interest in repairing it or restoring service is strong evidence that the criterion of §10907(c)(1)(A) have been met. See, e.g., STB Finance Docket No. 35160, *Oregon International Port of Coos Bay – Feeder Line Application – Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.* (served October 31, 2008) slip op. at 5 (“*Coos Bay*”) (“CORP’s abandonment application is evidence that it does not intend to make the repairs necessary to restore service on the embargoed section. Nor does CORP represent that intends to take action to improve service on the active section of the Line. Thus, CORP’s failure to make the repairs and to provide service that is adequate to meet the shipper’s needs meets the refusal-to-provide-adequate-rail-service criterion.”).

b. KCVN and CPRR Have Provided Plausible Support There is Sufficient Demand for Rail Service Over the Towner Line

In an effort to argue that applicants cannot meet requirements of §10907(c)(1)(A), V&S tries to downplay the level of traffic and commodities that Applicants and the probable operator of the line the Kansas & Oklahoma Railroad (“K&O”), state could be transported on the Towner Line if service was resumed over it. In addition to being wrong, V&S’s analysis suffers from the fatal flaw of applying a standard that is nowhere found in §10907, the Board’s regulations, or agency precedent. Specifically, the underpinning of V&S’s arguments that insufficient demand is present is based on the erroneous view that applicants in feeder line cases must produce specific evidence of “commitments” by shippers to transport “specific amounts” of commodities and traffic. Comments at 9, 10, 12, 13, 14, and 22. According to V&S, unless a feeder line

³ STB Docket No. 42140, *Colorado Wheat Administrative Committee, Colorado Association of Wheat Growers, Colorado Wheat Research Foundation, and KCVN, LLC v. V AND S Railway, LLC* (served October 31, 2014)(“*Docket NOR 42140*”).

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applicant can produce “specific request[s] for service” or “firm commitment[s] to use rail service to, from or over” the line at issue, the applicant cannot meet the requirements of §10907(c)(1)(A).⁴ See Comments at 13. V&S cites no decision of the Board in a feeder line proceeding that articulates this standard, and indeed there is none. Rather, V&S appears to derive its “specific commitment” standard from a 1996 *abandonment* proceeding involving the Towner Line that was part of the UP/SP merger proceeding. Comments at 13, quoting STB Finance Docket No. 32760, *Union Pacific, et al – Control and Merger – Southern Pacific Rail Corporation, et al.* Decision 44 (served August 12, 1996) slip op. at 204-205.

While the Board has placed emphasis on finding specific commitments for service in cases where abandonments are contested⁵ it has never required such a showing in feeder line application or other proceedings involving active railroad lines. Indeed, in *Docket NOR 42140* the Board determined that KCVN’s offer to V&S to purchase the line for \$10,000,000 in 2014, and “other information in the record adds support to the claim that there is a demand for rail service” on the Towner Line. *Docket NOR 42140* (served May 7, 2015) slip op. at 6. The Board found that the testimony of Mr. Darrell L. Hanavan regarding the potential development of Snowmass, a strain of hard white wheat, combined with KCVN’s \$10,000,000 offer to purchase the Towner Line, “provides the kind of plausible support for rail service that the Board did not find in [

].” *Id.* at 5. The

Board did not deem it necessary in *Docket NOR 42140* for KCVN to provide evidence of

⁴ Moreover, as discussed below V&S wrongly extends this non-existent standard of requiring “specific commitments” to the operating plan component of a feeder line application. See *id.* at 12 (wrongly asserting that an operating plan must contain “specific shippers [and] commodities,” as well as agreements with carriers interchanging with the line sought to be acquired).

⁵ See, STB Docket No. AB-6 (Sub No. 300), *Burlington Northern Railroad Co. – Abandonment- in Crawford and Labette Counties, KS* (served February 1, 1989) slip op. at 11

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specific shippers with specific commitments to ship specific volumes of this wheat. V&S's citation to *Ballard* in support of its "commitment" standard (Comments at 13) is therefore inapposite, since the Board has already determined that decision is not applicable to these facts.

KCVN and CPRR have greatly expanded the prior evidence of record demonstrating actual and potential demand for service over the Towner Line in their Application. This evidence includes the verified statement⁶ of the General Director of Transportation of Bartlett Grain, the largest former shipper on the Towner Line, and verified statements from several wheat farmers located along the line who all testified they would use rail service if it was reinstated on the line. V&S's Comments and related testimony on this evidence confirms that the public convenience and necessity require the Application to be granted. Specifically, nowhere in V&S Comments does it even intimate that it has made *any* efforts to develop or market the potential business along the Towner Line, particularly after 2011 when it raised its rates and changed its service terms and all traffic stopped. This, despite the facts that: (1) Bartlett's elevators took in nearly [] bushels of wheat from Colorado farmers between 2012-2015;⁷ (2) V&S admits it became aware of the potential new development of Snowmass and other hard white wheat varieties on farm land in the vicinity of the Towner Line in October, 2014;⁸ and (3) V&S's own expert witness posits that 30% of all of the hard red winter wheat grown in Kiowa county could

⁶ Another key difference from this case and the *Ballard* proceeding on which V&S relies is that in *Ballard*, a single purported shipper submitted a letter into the record asserting its alleged need for rail service, which carries considerably less evidentiary weight than a verified statement.

⁷ Exhibit D-1 to V&S Comments. These statistics from Bartlett show that only [176,412] bushels moved by rail on V&S in 2012, which was the last train transported on the Towner Line. Moreover, it shows that [all other wheat unloaded at the two Bartlett elevators was transported by truck].

⁸ Verified Statement of Aaron Parsons at 5-6.

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be transported over the Towner Line (a percentage Applicants believe is low, for the reasons discussed below).

V&S's Comments also attempt to downplay the fact that KCVN made a request for rail transportation of around 100,000 bushels of wheat over the Towner Line on June 29, 2016. That request was immediately and summarily rejected by V&S, which made no attempt to follow up or pursue the potential traffic this opportunity presented. The circumstances surrounding this request and V&S's rejection are summarized in the Verified Statement of John M. (Jack) Zenner, KCVN's Agricultural Commodities Director, attached as Exhibit A ("Zenner V.S."). Mr. Zenner explains that KCVN was obviously aware of the poor condition of the Towner Line, including the fact that a bridge had recently been destroyed by fire, and so KCVN's request included both a request for service in August of 2016, but also an alternative inquiry into when the Towner Line could be capable of transporting wheat tendered by KCVN to N/A Junction, either from Towner, CO or other locations along the Towner Line. Zenner V.S. at 3. KCVN's request was rejected by Mr. Parsons, who dismissively informed Mr. Zenner that V&S [

]. Parsons V.S., Exh. 3.

Mr. Parsons provided no timetable for replacement of the burned bridge being repaired or the other tracks repaired. Some of the 100,000 bushels of wheat covered by KCVN's request were eventually transported by truck to other destinations, while some remained in storage for later shipment to eastern destinations by other railroads. Zenner V.S. at 4.

Mr. Zenner also replies to the statements in V&S's Comments that attempt to minimize the extent of KCVN's land holdings (which V&S describe as "disparate") and potential traffic on the Towner Line. In summary, KCVN's land holdings in Colorado have increased since this

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proceeding was commenced, and now total over 30,000 acres in Kiowa County alone. *Id.* at 2. KCVN's crops include hard red winter wheat, sorghum, and other dryland commodities, and this year KCVN's hard red wheat harvest was 354,447 bushels. *Id.*

Applicants have also included as Exhibit B to this Reply the Reply Verified Statement of Mr. Hanavan, who spent over three decades working in and analyzing the markets for wheat and other agricultural commodities in the region of Colorado through which the Towner Line runs, and who now serves as a consultant to the Colorado wheat industry. ("Hanavan R.V.S."). Mr. Hanavan rebuts the simplistic and limited analysis presented by V&S's witness Mr. Hoegemeier, whose credentials reveal that he has virtually no actual experience with the Colorado wheat markets or even the rail transportation of agricultural commodities in general. As Mr. Hanavan explains, Mr. Hoegemeier's analysis is limited only to a single commodity – hard red winter wheat – and is flawed in any event. Hanavan R.V.S. at 3-7. Moreover, the failure of Mr. Hoegemeier to include potential volumes of hard white winter wheat and sorghum, both of which are grown in the vicinity of the Towner Line and could be transported over it if freight service over the line was reinstated, results in a substantial understatement of the actual potential traffic. Specifically, Mr. Hanavan concludes after his analysis that the actual potential annual draw volume for the Towner Line is 5,480,000 bushels, which includes hard red winter wheat and hard white winter wheat (4,633,000 bushels) and grain sorghum (847,000 bushels). This is nearly four times the potential bushels potentially available for rail transportation calculated by Mr. Hoegemeier. *Id.* at 11.

Finally, V&S attempts to argue that the demand for other commodities and traffic identified by K&O (primarily [] traffic sourced from Pueblo, Colorado in the short term) is too speculative in large part because K&O did not demonstrate that it has reached

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agreements with the BNSF Railway to use its tracks from N/A Junction to Pueblo. Comments at 12. In the first place, there is nothing in the Board's feeder line regulations that require agreements between interchanging railroads and a potential operator of an acquired line to be in place prior to the filing of a feeder line application. Such a requirement would be unrealistic and extremely onerous. Second, Mr. Doug Story, Vice President of Agricultural Marketing for Watco Transportation Services, LLC ("Watco") states in his Second Verified Statement⁹ in reply to V&S's Comments that:

the K&O is obviously aware of the fact that the Towner Line does not extend all the way to Pueblo, and that agreements will have to be entered into with BNSF Railway to either permit the K&O to use the BNSF's tracks to transport Towner Line trains from N/A Junction to Pueblo, or for BNSF and/or Union Pacific Railroad Company [] to transport such trains over the BNSF tracks. Upon approval of the acquisition of the Towner Line by KCVN and CPRR through this feeder line proceeding, we intend to immediately enter into discussions with the BNSF Railway about transportation of Towner Line trains to and from N/A Junction."

Story Second V.S. at 4.

Applicants further note that V&S produced in response to discovery served on it by Applicants two interchange agreements between BNSF and UP and V&S that appear to still be in effect. Exhibit D. Whether these interchange agreements are still valid, and whether they can or should be assigned to CPRR as the owner of the track and/or K&O, affects the N/A Junction interchange issue as well.

Applicants have therefore provided ample evidence demonstrating that demand for rail traffic on a reinstated Towner Line is clearly plausible, and indeed highly probable. The "specific commitment" standard advanced by V&S in its Comments is not supported by §10907, the applicable regulations, or any agency precedent. In any event, such a stringent "specific commitment" standard in feeder line applications would be flatly contrary to the Board policy

⁹ Exhibit C ("Story Second V.S.").

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favoring feeder line applications referenced above, and would be particularly onerous in circumstances such as the Towner Line, where the incumbent railroad has driven all traffic off of its line nearly five years ago and discouraged any new traffic, has allowed the track to fall into disrepair, and has engaged in activities evidencing a clear intent to abandon the line and scrap it. Such a standard would also be contrary to the Board's general policy that "[R]ail carriers should be encouraged to sell lines they could not profitably serve or were not interested in serving to entities who would continue to operate them." ICC Docket No. 3116, *et al, Buffalo & Pittsburgh RR, Inc. – Exemption – Acquisition and Operation of Lines in New York and Pennsylvania* (served June 20, 1989) slip op. at 10.

2. Transportation Over the Towner Line is Clearly Inadequate Because V&S Does Not Provide It and Has No Intention of Doing So.

V&S's arguments that Applicants have not met the requirements of §10907(c)(1)(B) can be dismissed out of hand. The requirements of this subsection are obviously met because V&S provides *no* rail service over the Towner Line, having driven all traffic off of the line in 2012, and the evidence in this proceeding clearly demonstrates that V&S has made no efforts to resume rail service to either shippers located along the line, or to potential new shippers who could utilize the line under rates and service terms that permitted such traffic. Ceasing all service over a line of rail and then discouraging any renewal of traffic through high rates, lack of maintenance or repairs, and lack of marketing or development of the line is more egregious than providing "inadequate" service, since at least in the latter case *some* service is being provided. In any event, the feeder line cases cited by V&S involving patterns of abusive or retaliatory behavior from railroads that, unlike V&S were actually operating their lines, have no application to these facts. Comments at 14.

3. The Sale of the Line Will Not Have a “Significantly Adverse Financial Effect” on V&S

V&S admits, as it must, that the car storage revenues V&S currently receives are not revenues associated with common carrier railroad operations. Comments at 15. V&S also does nothing to obscure the bald fact that it is trying to retain ownership of the Towner Line in the short term *solely* to maximize car storage revenues, and that that *none* of the revenues from car storage are being invested in rehabilitation or maintenance of the Towner Line. Instead, 100% of the revenues are being pocketed by V&S for other purposes. *See* Comments at 7 (V&S will only use these monies “to maintain the tracks and provide service if it is reasonably requested.”). It is also clear from V&S’s Comments that the sole reason V&S withdrew its notice of exemption to abandon the Towner Line was because of its car storage opportunity, and also that this is the only use of the line currently, even though V&S represented to the Board it would also “use the tracks for other opportunities.”¹⁰

Holding onto a common carrier line of railroad solely for private monetary gain, and then arguing that the STB cannot require the sale of the line to a party who is willing to make the investment to rehabilitate the line and resume common carrier freight operations over it because it will result in financial hardship has nothing to do with the public convenience and necessity. Rather, it has everything to do with using a common carrier line of rail for purely private gain. This is not the “significantly adverse financial effect” contemplated by §10907(c)(1)(C). Rather, the Board looks to whether the sale would have an effect on any existing *common carrier*

¹⁰ Docket No. AB 603 (Sub-No. 4X) , *V AND S Railway, LLC – Discontinuance Exemption – in Pueblo, Crowley, Kiowa and Otero Counties, Colo. – Verified Notice of Exemption*, filed November 20, 2015 at 3, note 2.

operations over the line, such as whether the line is being operated at a loss. *Coos Bay, supra*, at

5.

4. The Sale of the Line Will Not Have Any Adverse Effect on The Overall Operational Performance of V&S Because It Provides No Common Carrier Rail Operations

V&S has conceded that the criteria for §10907(c)(1)(D) have been met in this case so no further discussion is necessary.

5. The Sale of the Towner Line Will Likely Result In Improved Rail Service to Shippers Located Along the Line and Others Who Ship Traffic Over It

Applicants have clearly met the criteria for §10907(c)(1)(E), since they have provided a sufficiently detailed operating plan and identified shipper demand that could potentially be met by the K&O's operation of the Towner Line. V&S, who has provided *no* rail service over the line in nearly five years, nevertheless attempts to argue that the sale of the line to CPRR for operations by K&O would somehow not be an improvement over V&S's provision of no service. First, V&S attempts to argue that the rates charged by K&O will not be any lower than the rates in V&S's tariff by erroneously presuming that all traffic will move under K&O's tariff rates. Comments at 15. As explained by Mr. Story in his Second Verified Statement, neither the Applicants nor K&O have ever represented that K&O's tariff rates would apply to the transportation of any commodities over the Towner Line. Story Second V.S. at 3. As Mr. Story explains, given the circumstances surrounding the Towner Line (i.e., its poor physical state and the lack of any service being provided over it for so long) "it is quite possible, and even probable, that K&O will negotiate contract rates with shippers desiring to use the Towner Line that enable traffic on the line to be resumed and developed over the first three years of ownership." *Id.* Finally, V&S's complaints regarding the K&O's plan to initially restore the

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track to FRA Class 1 standards because in 2005 when V&S purchased the line it had previously been maintained to FRA Class 2 standards are particularly brazen, considering that since acquiring the Towner Line V&S has allowed it to deteriorate through lack of maintenance to the point that the Towner Line is not currently physically capable of handling freight service, and indeed is in such poor condition it has been embargoed. In any event, such collateral attacks on the operating plan contained in the Application are time-barred by 49 C.F.R. §1011.2(a)(7) for the reasons discussed in section VI.A. below.

6. The Persistent Opposition to V&S's Continued Ownership of The Towner Line By Surrounding Counties, The State of Colorado, and Other Entities Also Supports a Finding That the Public Convenience and Necessity Require the Sale of The Towner Line to CPRR

The Application includes a discussion of how throughout V&S's tenure as owner of the Towner Line its failure to provide service over the line and its multiple efforts in recent years to abandon the line and remove and sell its assets have been opposed by surrounding counties and other entities. Application at 23-25. These parties have filed numerous statements in other dockets involving filings by V&S. An additional letter from Kiowa County, one of V&S's more vocal critics, was attached as Exhibit M to the Application. Among other things, this letter reiterated past complaints of the County that the failure to reinstitute rail service on the Towner Line will mean the continuation of heavy truck traffic on the county roads, along with the associated emissions and safety issues. Exhibit M at 2. These complaints are validated by the information V&S obtained from Bartlett Grain in discovery, which states that in 2015 alone [] bushels of wheat were transported by truck from Bartlett's two grain elevators located on the Towner Line. Parsons V.S., Exhibit D-1. This translated into hundreds of heavy trucks

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operating on Colorado highways transporting wheat that could have been transported by railroad on the Towner Line if V&S was interested in fulfilling its common carrier obligations.¹¹

Moreover, the State of Colorado, Department of Transportation (“CDOT”) has participated in proceedings involving the Towner Line. In a letter submitted in this proceeding on June 27, 2016, CDOT stated “CDOT continues to believe there is value to Colorado farmers & ranchers that the rail line remains in operation, and CDOT further believes KCVN to be making a good faith effort in that regard.”

As it has throughout its tenure as owner of the Towner Line in other STB proceedings, V&S completely ignores the comments submitted by these entities in its Comments. However, these and the filings made by other local entities and affected parties lend additional, probative support to a conclusion that the public convenience and necessity require the sale of the Towner Line to CPRR.

III.

THE APPLICATION STILL MEETS ALL OF THE BOARD’S REGULATORY REQUIREMENTS

A. V&S’s Collateral Attacks on the Director’s Decision Accepting the Application are Time-Barred

The Application was filed on March 18, 2016. On April 15, 2016, the Director of Proceedings, by authority granted her pursuant to 49 C.F.R. §1011.7(a)(2)(vii)(A) to accept or reject feeder line applications, served a decision that accepted the Application (“April 15

¹¹ In his Reply Verified Statement at page 10, Mr. Hanavan utilizes a number of 667 bushels of wheat per truck to estimate that rail shipments of the total amount of wheat he believes would be available on a reactivated Towner Line (4,633,000 bushels using 2015 data) would eliminate 6,946 trucks from Colorado highways. Applying the 667 bushels per truck number to Bartlett’s [] bushels would equate to removing [] trucks from the highways in Colorado. See also Exhibit M at 2 (According to the Kiowa County Board of Commissioners, “The Towner Line will protect the environment in that one train may result in 300 less trucks on the highway . . .”).

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Decision”). In the *April 15 Decision*, the Director suggested that KCVN and CPRR should submit some additional information related to financial responsibility, specifically “financial statements showing a breakdown of three years of service costs, including maintenance costs.” The director also suggested that the Applicants should submit additional information related to the operating plan, and liability insurance. *April 15 Decision* at 3-4. Applicants submitted the requested information on April 29, 2016. Some five months later, V&S now questions the Director’s acceptance of the Application, criticizing her findings that: (1) that the Applicants meet the criteria for being “financially responsible;” (2) the proposed operating plan meets the requirements of C.F.R §1151.3(a)(7); and (3) the Application was accepted subject to a subsequent determination of whether an environmental report should be prepared.

All of V&S’s belated arguments are meritless but the Board needn’t consider them because V&S’s collateral attacks on the *April 15 Decision* are time-barred. Under the Board’s regulations, V&S had 10 days to appeal the *April 15 Decision* pursuant to 49 C.F.R. §1011.2(a)(7), as V&S should well know from a recent case involving the very line at issue here. *See*, Docket No. AB 603(Sub-No. 3X) *V AND S Railway, LLC – Abandonment Exemption – In Kiowa County, Colorado* (served October 23, 2014) at 3 (“The Board has reserved for itself the consideration and disposition of all appeals of initial decisions issued by the Director under §1011.7”).¹² V&S raised no objection to any aspect of the Application when it was filed. Nor

¹² Appeals of initial decisions by the Director pursuant to delegated authority must be based on one or more of the following grounds: (1) that a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record; (2) that a necessary legal conclusion or finding is contrary to law, Board precedent, or policy; (3) that an important question of law, policy, or discretion is involved which is without governing precedent; and (4) that prejudicial error has occurred. Docket No. AB-167 (Sub-No. 1094), *et al. Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation’s West 30th Street Secondary Track in New York, NY*, (STB served June 13, 2005).

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did V&S appeal the April 15 Decision when it was issued. Nor did V&S question the sufficiency of the Application or the decision to accept it after KCVN and CPRR submitted their supplemental information on April 29, 2016. Accordingly, all of the arguments now raised by V&S for the first time in its Comments challenging: (1) the Director's determination of financial responsibility; (2) the Director's acceptance of the operating plan; and (3) the Director's determination to accept the Application subject to a further determination on what, if any, environmental review is required in this case, are time barred by §1011.2(a)(7).

B. V&S's Objections are Meritless In Any Event

Even if the Board were to consider V&S's belated attacks on the Application to be timely, V&S's arguments are meritless, as explained in the following sections.

1. Financial Responsibility

In the April 15 Decision the Director found that, based on the information submitted in the Application, "Colorado Pacific appears to have access to considerable funds to pay the expenses of acquiring and rehabilitating the Towner Line." Decision at 3-4. The information on which the Director based this determination on included: (1) that KCVN's assets included approximately 58,000 acres of land in Colorado valued at \$50,000,000;¹³ (2) KCVN's principals have considerable land holdings and personal financial resources and are indisputably committed to fund the CPRR's acquisition of the Towner Line and to make the financial commitments necessary to restore freight rail service over it; (3) "KCVN offers to post a line of credit in favor of CPRR in any amount required by the Board"; (4) CPRR holds \$6,000,000 in cash in a corporate account for the purpose of acquiring the line and as an initial amount for the

¹³ Since the Application was filed KCVN has purchased about 7,800 additional acres in Kiowa and Prowers counties, Colorado. KCVN now owns and operates over 30,000 acres of farmland in Kiowa County alone. *See Zenner V.S.* at 2.

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rehabilitation, operation and maintenance of it; (5) in July, 2014 KCVN had placed into escrow \$1,000,000 in cash in the account of a Kiowa County, Colorado title company when it submitted its \$10,000,000 purchase offer to V&S in 2014; and (6) “to the extent this feeder line application process results in a final purchase price for the Towner Line in excess of the amount CPRR has offered in this Application and/or to the extent additional funds are needed to finance rehabilitation, maintenance and operating costs in the short term, they will be financed through direct cash infusions from KCVN or its owners.” Verified Statement of William Osborn, Attorney-in-Fact for KCVN and CPRR, Exhibit A to Application at 4-5; *see also*, Application at 25.

Accordingly, even if the Board was to allow V&S to raise questions about the financial responsibility of KCVN and CPRR at this juncture, V&S’s arguments are frivolous. For example, V&S’s claim that “no evidence was presented with regard to any committed or available lines of credit or other loans,” is directly contradicted by the testimony of Mr. Osborn referenced above, particularly that “KCVN offers to post a line of credit in favor of CPRR *in any amount required by the Board*,” (emphasis added); and that “to the extent this feeder line application process results in a final purchase price for the Towner Line in excess of the amount CPRR has offered in this Application and/or to the extent additional funds are needed to finance rehabilitation, maintenance and operating costs in the short term, they will be financed through direct cash infusions from KCVN or its owners.” The Director’s decision to not require KCVN to post a letter of credit, and the conclusion that KCVN and CPRR have access to “considerable funds” to pay the expenses of acquiring and rehabilitating the Towner Line, were well founded.

There is also no basis for the supplemental information provided to the Board on operating and maintenance costs to alter that conclusion. V&S’s questioning of Applicants’

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expert Mr. Fauth's estimate of rehabilitation costs in an attempt to argue that the costs incurred the first three years of CPRR's ownership would be higher than estimated lack credibility for the simple reason that V&S itself has no idea how much it would cost to rehabilitate its own track, or the costs it would incur to restart rail freight traffic on the line. Comments at 18, note 18. This is a particularly telling admission by V&S that further confirms V&S's disinterest in fulfilling its common carrier obligations associated with the Towner Line. Nor does V&S cite any authority for its assertion that the Board should make an independent determination of K&O's financial responsibility. Such a determination is not necessary in any event, since KCVN and CPRR have shown they have the ability to cover all rehabilitation and operating costs. However, it is also not necessary given the fact that K&O is one of the largest short line railroads in the United States with a long-established presence in Kansas and Oklahoma, and it is one of 35 railroads owned and operated by Watco, the largest privately held short line railroad operator in the United States. *See*, Story Second V.S. at 2. V&S cites no basis for the Board to question the financial strength of these entities.

In summary, there is no basis for disturbing the Director's finding that KCVN and CPRR are financially responsible, to the extent V&S's belated collateral attack on that finding is even permitted. Nevertheless, Applicants recognize that under these circumstances, where a railroad operating a 121.9 mile long line of rail has stopped providing common carrier freight service over a period of years and permitted its track assets to deteriorate and even be destroyed in part, the final costs of acquiring, rehabilitating, maintaining, and operating the line cannot be accurately estimated beforehand. For this reason, to reiterate the KCVN and CPRR pledge in their Application, they stand ready to comply with any conditions or assurances the STB deems appropriate to confirm that the CPRR will have sufficient funds to carry out its responsibilities

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under §10907 and the Board's regulations, including the posting of any bond or letter of credit in any amount required by the Board as a condition of its approval of the Application.

2. Operating Plan

V&S has also raised untimely complaints about the Director's *April 15 Decision* to accept the operating plan submitted by Applicants. That plan envisions the Towner Line being operated by the K&O Railroad upon acquisition of the Towner Line by CPRR and the finalization of the appropriate lease and/or operating agreements. These objections should be denied for being time-barred for the reasons discussed above, but V&S's objections to the operating plan should also be rejected because they proceed from a fundamental misunderstanding of the applicable rules and standards.

Specifically, 49 C.F.R. §1151.3(a)(7) requires a feeder line application to include:

An operating plan that identifies the proposed operator; attaches any contract that the applicant may have with the proposed operator; describes in detail the service that is to be provided over the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition.

In its Comments, V&S belatedly argues that the operating plan information submitted by Applicants does not adequately demonstrate that adequate transportation will be provided. Comments at 20. First, V&S appears to complain that Applicants have not finalized an agreement with K&O. *Id.* at 20-21. However, the regulation does not require a final agreement to be in place with a proposed operator to be in place for relief under §10907 to be granted. Negotiations continue between KCVN/CPRR and K&O concerning the final terms and conditions of K&O's operation of the line. Second, V&S criticizes the estimated maintenance costs provided by the K&O in response to the Director's request as being too low. *Id.* at 21.

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However, V&S provides no alternative estimate, and nor could it, since V&S has not performed more than rudimentary maintenance to the Towner Line in nearly five years.¹⁴

Finally, V&S attempts to argue that there is insufficient demand for rail service based on its previously discredited standard that there must be specific commitments in place with specific shippers for certain volumes of traffic, and that K&O did not provide estimates of projected revenue. *Id.* at 21. As to this latter point, Mr. Story explains in his Second Verified Statement that K&O is confident that the revenues it conservatively estimates for car storage and the traffic projections it provided to KCVN in response to the *April 15 Decision* will exceed the costs K&O has estimated for maintaining and operating the Towner Line over the next three years. He explains how estimated revenues can be derived from taking the minimum carloads projected by K&O in years one, two and three in the supplemental information provided to the Board by Applicants, and multiplying them by a very conservative line haul rate of [] per carload. Story Second V.S. at 3-4. When this revenue is added to his conservative estimate of car storage revenues the first three years of CPRR's ownership, Mr. Story estimates that the combined revenues would be a minimum of [] the first year, and [] in years two and three. Even at these conservative levels, the revenues would exceed the [] in annual operating and maintenance expenses K&O has estimated for the line over the first three years. *Id.* at 4.

¹⁴ The only maintenance V&S appears to have performed on the Towner Line since 2011 was to refill two areas along the Towner Line with dirt that were washed out by torrential rains in 2014. See Fauth opening V.S. at 84-86 (explaining (and including pictures) that no attempt was made to re-establish the road bed at these locations, and the "repair" was simply to replace the dirt that had been washed away.). V&S has provided no evidence of other maintenance in its Comments.

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3. Environmental Reporting Requirements

Finally, the Director accepted the Application subject to a subsequent determination by the Office of Environmental Analysis of whether KCVN and CPRR would be required to prepare an Environmental Report. *April 15 Decision* at 3. This process has been adopted in other feeder line proceedings. *See Keokuk, supra*, (decision served July 9, 2003) at 5 (where Director of Proceedings conditionally accepted application subject to preparation of an environmental report). In this case, the Director stated in the *April 15 Decision* that “the Board’s Office of Environmental Analysis will determine what, if any environmental review is required in this case and coordinate with the applicants.” *April 15 Decision* at 3. The undersigned counsel for the Applicants and the Director of the Office of Environmental Analysis conferred by telephone to discuss this matter contemporaneous with the filing of the Application, and counsel understood that the Office of Environmental Analysis would make a determination as to what, if any Environmental Report would be required after the Board received the supplemental information requested by the *April 15 Decision*. There has been no further contact from the Office of Environmental Analysis on this aspect of the Application, and Applicants remain ready and willing to unquestioningly comply with any environmental reporting requirements the Board may impose on them.

IV.

**THE BOARD SHOULD ACCEPT APPLICANTS’ NLV CALCULATION, AS
UPDATED AND MODIFIED IN THIS REPLY**

Included with the Application is the Verified Statement of Gerald W. Fauth III, President of G.W. Fauth & Associates, Inc., who performed an analysis of the Net Liquidation Value (“NLV”) of the Towner Line pursuant to the Board’s precedent and procedures. Mr. Fauth has over three decades of experience working on matters related to the North American freight

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railroad industry, including being employed by the Board as Chief of Staff to Vice Chairman Wayne O. Burkes from 1999-2003. See Opening Verified Statement of Gerald W Fauth III, Appendix GWF-1. Mr. Fauth has utilized his expertise in many ICC and STB proceedings concerning valuations of railroad lines, and he has personally inspected hundreds, if not thousands, of miles of railroad lines and facilities. Reply Verified Statement of Gerald W. Fauth III (“Fauth R.V.S.”) attached as Exhibit E, at 4. Nevertheless, in its Comments V&S and its experts engage in an unusually personal and aggressive attack on Mr. Fauth’s professional qualifications that is wholly unjustified and without any factual support.

Mr. Fauth’s calculation of the Towner Line NLV submitted with the Application was \$2,594,551. Fauth R.V.S. at 10. In its Comments, V&S has submitted an alternative calculation of the Towner Line NLV in the amount of \$23,931,500. This number is extraordinarily high, and although it is less than the previous NLV of \$27,023,000 calculated by V&S in mid-2015, it is still considerably higher than the approximately \$10,000,000 V&S purchased the Towner Line for from the State of Colorado. All three of the NLV’s calculated for the Towner Line for V&S have been prepared by the consulting firm R. L. Banks & Associates, Inc. (“RLBA”). In his opening Verified Statement, Mr. Fauth included a lengthy critique of the two prior NLVs prepared by RLBA, pointing out that they suffered from the fundamental flaws of (1) significantly overstating the amount of “relay rail” quality railroad line that remains on the Towner Line given its age and V&S failure to rehabilitate or maintain the line, as well as V&S’s aborted attempt to remove nearly half of the tracks assets; and (2) applying market prices that were far in excess of actual market prices for the various weights and grades of the track making up the Towner Line.

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The updated NLV included in V&S's comments suffers from the same flaws as the prior versions. In his R.V.S., Mr. Fauth reviews and summarizes the continuing errors and assumptions utilized by RLBA related to the track assets and their quality. He also discusses the flaws in V&S's attempts to use sales data from its parent company A&K Materials, to justify its NLV calculation. In addition, Applicants include in this Reply as Exhibit F the Reply Verified Statement of Thomas D. Crowley and Daniel L. Fapp, President and Vice President of L.E. Peabody & Associates, Inc., respectively, in which they discuss how the unit prices utilized by RLBA to arrive at the final NLV proposed in V&S's Comments number are unrealistic, unsupported, and produce a NLV that is grossly overstated. As part of their analysis, Mssrs. Crowley and Fapp obtained pricing information directly from several market participants that is flatly contrary to representations made by V&S in its Comments, including EVRAZ Rocky Mountain Steel, in Pueblo, Colorado, on whose purported prices V&S heavily relies. Crowley/Fapp R.V.S. at 10-13.¹⁵

Finally, Mr. Fauth provides a revised and updated NLV calculation based on updated market pricing and other considerations, of \$7,021,901. Fauth R.V.S. at 3, Figure 2. As explained by Mr. Fauth, the primary reasons for this increase over the \$2,594,551 included in the Application are as follows:

1. A revised value for relay rail of \$480.00 per ton which was based on the study prepared by Mssrs Crowley and Fapp. (this is an increase over the \$450.00 per ton used in Mr. Fauth's opening verified statement);

¹⁵ In footnote 21 of their Reply Verified Statement Mssrs. Crowley and Fapp note they received additional pricing information from North American Rail Products just before the filing deadline for this Reply. This information was received too late to incorporate into table 2 of their R.V.S., or the statement of Mr. Fauth. However, this information has been included in their workpapers. The prices supplied by North American Rail Products are lower than those supplied by Harmer Steel, and so the prices in Table 2 represent the high end of the market, according to Mssrs. Crowley and Fapp.

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2. Updated (September 9, 2016) AMM values for reroll rail at Chicago of \$225.00 per net ton (this is an increase over the \$169.64 per ton used in Mr. Fauth's opening verified statement);
3. Updated (September 9, 2016) AMM values for scrap metal (#1 HMS) at Chicago of \$178.57 per net ton (this is an increase over the \$133.93 per ton used in Mr. Fauth's opening verified statement);
4. A modified assumption that the older and lighter rail 112 lb. and 115 lb. rail making up the Towner Line was reroll rather than scrap quality (i.e., \$225.00 per ton versus \$133.93 per ton used in Mr. Fauth's opening verified statement); and
5. Mr. Fauth accepted the 2014 and 2015 relay, landscape and scrap tie percentages estimated by V&S's experts, which results in more ties being valued as relay and landscape ties.

Fauth R.V.S. at 45. Accordingly, based on their updated NLV calculation, Applicants revise their offer to purchase under 49 C.F.R. §1151.3(a)(5) to be \$7,021,901.

V.

V&S HAS OVERREACHED CONCERNING ITS RIGHT TO REPURCHASE

Section 10907(h) states that, if a purchasing carrier in a feeder line proceeding proposes to abandon or sell all or any portion of the line, it must offer the right of first refusal to the selling carrier. The provision further states that "such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation." In its Comments, V&S asserts that "the statute does not contemplate that the Applicants of K&O can remove or replace any of the line with materials of lesser weight or quality." Comments at 29. Further, V&S asks that the Board to include in its order requiring Towner Line to be sold to Applicants, "a condition that prohibits the purchaser from removing any of the rail or materials unless they are replaced with rail or materials of the same or greater weight or quality," citing STB Docket No. AB-573X, *Trinidad Railway, Inc. – Abandonment Exemption – In Las Animas County, CO* (served April 17, 2002). V&S's requested condition

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should be denied, as it finds no support in neither §10907(h) nor the case V&S cites (which is not even a feeder line case). First, §10907(h) refers only to “improvements,” which could be from rail assets that are of lesser weight or quality than existing rail, depending on the circumstances. The fact that improvements to a purchased line could be made with rail of lesser weight is supported by the very case that V&S cites. In *Trinidad*, a party submitting an Offer of Financial Assistance under 49 U.S.C. §10904 proposed initially to sell the 115-pound rail on the line to be acquired and replace it with less expensive 90-pound rail, and then use the earnings to finance the acquisition. *Trinidad* at 3. However, during the pendency of the proceeding unit train service was resumed over the line. This prompted the Board to impose a condition on the purchasing railroad that the heavier track in the line be retained, subject to the Board’s approval to its later replacement with lighter rail. This was so the Board could ensure it was suitable to handle unit train traffic. *Id.* at 7. Consequently, the Board did not prohibit the use of the lesser weight rail in *Trinidad*, as V&S tries to imply. Thus, V&S’s requested condition finds no support in §10907(h), and the case it cites is completely inapposite to this feeder line case, where there is currently no traffic over the line, let alone unit train traffic, and it could well be that “improvements” to the Towner Line to restore freight service might consist of rail that is of lesser weight and quality to the existing rail,¹⁶ but better because it is new rail.

VI. CONCLUSION

For all the reasons set forth in the Application and this Reply, KCVN and CPRR meet all the criteria of §10907 and 49 C.F.R. Part 1151, and the Application should be granted. Moreover, KCVN and CPRR have presented this Board with the most reasonable and supported

¹⁶ Neither KCVN, CPRR, nor the K&O have any current plans to replace the rail on the Towner Line with rail of lesser weight and quality, but this still does not warrant imposing the condition V&S has requested.

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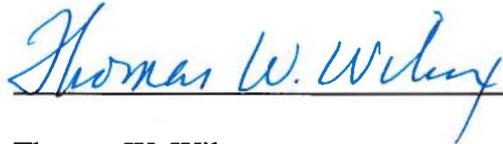
NLV calculation for the Towner Line. In addition, this feeder line application was filed because V&S reneged on its agreement to abandon the line reached with KCVN and other parties in settlement of the Colorado Court proceeding. Had V&S followed through, the line would have been potentially acquired by KCVN/CPRR through the Board's Offer of Financial Assistance process. As V&S's own comments confirm, V&S is now trying to hold on to the Towner Line for the sole purpose of reaping revenues from car storage, while letting the line continue to deteriorate. Since car storage was the only reason for withdrawing its abandonment application, it follows that once the market for stored cars declines, V&S and its parent company A&K Materials will simply renew their attempt to abandon the line and sell its assets. The bridge destroyed by fire in June, for which V&S has no apparent plans or timetable to replace, is the latest manifestation of this.

V&S's rote mantra that it will repair its tracks, resume maintaining them, and fulfill its obligations as a common carrier if only someone would make a "reasonable request" is disingenuous and merely offered to try and use STB authority over V&S's ownership of the Towner Line as a shield to prevent parties such as KCVN and CPRR from acquiring it for the purpose of restoring common carrier freight operations over the line. Because V&S has for years demonstrated no intention of operating the Towner Line and meeting and/or developing the need for rail service of shippers who could utilize it, it cannot be disputed that failure to grant this Application will result in further deterioration of the Towner Line's assets and right-of-way, a continuing lack of common carrier service, and the line's eventual abandonment by V&S. At that point, the further deterioration of the Towner Line will likely lead to V&S finally achieving the goal it set for this line in 2011 - the removal and sale of the track assets— since purchase,

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rehabilitation, and operation of the line by third parties such as KCVN and CPRR who desire to reinstitute common carrier freight service over it would by then likely be cost prohibitive.

Respectfully submitted,

A handwritten signature in blue ink that reads "Thomas W. Wilcox". The signature is written in a cursive style and is positioned above a horizontal line.

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

September 27, 2016

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EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

VERIFIED STATEMENT OF JOHN M. ZENNER

My name is John M. (Jack) Zenner. I am the Agricultural Commodities Manager of KCVN, LLC (“KCVN”). I have held this position since mid-November, 2015. I joined KCVN after a 34 year career in the agricultural industry, holding various administrative, risk management, and merchandising positions for the Pillsbury Company, the Scoular Company, United Coop Services, Farmers Elevator Company, and West Plains Company. A copy of my resume is attached this verified statement.

As Agricultural Commodities Manager for KCVN, I perform a wide range of functions related to KCVN’s ownership and operation of over 100,000 acres of farmland in the states of Colorado, Kansas, and New Mexico. These duties include (1) managing inventory and the logistics of storage, insurance and sale of the commodities grown on KCVN’s farms, which include hard red winter wheat, white wheat, and sorghum; (2) arranging for the transportation of the crops produced by these landholdings; (3) identifying hedging strategy options, managing

day-to-day price risk, processing and sale of commodities; (4) analyzing price and market trends for regional, domestic and international markets; (5) creating and executing merchandising strategies around facility storage, daily processing demands, local cross country truck movements, rail imported grain and container export demands; and (6) assisting KCVN ownership in the preparation of financial forecasts. I have also been asked by KCVN to take a lead role in identifying and soliciting shippers who could use the Towner Line to transport their crops should KCVN and its subsidiary, the Colorado Pacific Railroad, LLC acquire the line through their Feeder Line Application submitted to the Surface Transportation Board that is the subject of this proceeding.

I have reviewed the Public Version of the Comments of V&S Railway, LLC ("V&S") in response to the Feeder Line Application. The purpose of this Verified Statement is to respond to certain factual assertions made by the V&S in that document, and to comment on V&S's response to a request for railroad transportation made by KCVN to V&S in June of this year.

First, V&S described KCVN's landholdings as "disparate properties." I disagree. KCVN owns approximately 68,835 acres of farmland in Kiowa, Cheyenne, and Prowers, Counties, Colorado, and another 12,794 acres in Kansas. Since KCVN and CPRR's Application was filed in March, 2016, KCVN has purchased about 7,800 additional acres in Kiowa and Prowers counties. KCVN now owns and operates over 30,000 acres of farmland in Kiowa County alone. KCVN's landholdings consist of farms that grow hard red winter wheat, sorghum and other dryland farming commodities. The commodities produced by these farms are transported to market by truck but also by railroad when feasible. This year was a particularly good harvest for hard red winter wheat on KCVN's farms, as production from our land reached 354,447 bushels.

In June, we identified some opportunities to sell 100,000 bushels of our hard red winter wheat grown in Colorado to receivers in Los Angeles and possibly Arizona. KCVN believes that the markets west of Colorado provide good opportunities for selling the wheat produced by our farms. One potential means for transporting wheat to these western markets is the Towner Line, which runs from Towner, KS to N/A Junction, Colorado. At N/A Junction, opportunities exist for the operator of the Towner Line to enter into agreements with BNSF Railway or Union Pacific Railroad Company for movement of the wheat to Pueblo, Colorado and beyond.

KCVN is of course well aware of the extremely poor physical state of the Towner Line due to the failure of V&S to maintain it for many years. In June of this year we also became aware of the fact that a bridge along the line had been destroyed by a fire. However, we are also aware of the fact that the V&S currently has a rate in place to transport trainloads of wheat across the Towner Line to N/A Junction. Because we had a need for rail transportation of wheat, and V&S had a rate in place, on June 29, 2016 we made a request to Mr. Alan Parsons of V&S for the rates and terms to transport the 100,000 bushels of hard red winter wheat to N/A Junction. See attachment 2 to this Verified Statement. We realized it was unlikely that V&S would be able to fulfill this particular request in a timely manner, and so specifically asked V&S that if it could not provide the requested transportation in August due to the physical condition of the track or other circumstances, to please let us know when the track would be capable of transporting wheat tendered by KCVN to N/A Junction, either from Towner or other locations along the Towner Line. As such, our request was intended in part to give V&S an opportunity to discuss possible longer term transportation possibilities if it wished to do so.

Mr. Parsons responded to my letter on July 1, 2016 by (1) informing us that

; and (2) asserting that

. Mr. Parsons provided no timetable for when V&S might rebuild the bridge, and he made no attempt whatsoever then or subsequently to engage in discussions - or to even inquire - about future transportation of KCVN's wheat, the volumes that might be available, locations along the line it could be tendered, potential rates or service terms, or any other information about this potential business opportunity. V&S has never followed up this exchange with any status reports on the bridge or requests for information about KCVN's transportation needs.

Mr. Parsons also characterized KCVN's request as lacking sufficient detail, and that it made for an improper purpose, although he did not elaborate on what the improper purpose might be. In any event, I disagree with both these assertions. KCVN's need for transportation of its wheat in August was real and immediate. Some of the 100,000 bushels of wheat at issue were eventually transported by truck to various other destinations. Some of the wheat remained in storage, and will be shipped by railroad to eastern mill markets since no economic railroad access is available to western mill markets. Moreover, KCVN's production of hard red winter wheat and other commodities will continue to expand into the future. We are also aware of the demand for hard white wheat and the potential for it to be grown in Kiowa County and surrounding counties, and have plans to expand our program for cultivation of this wheat on our farms.

In summary, KCVN's properties are not "disparate" and its need for transportation of commodities our farms produce is real, as was its June 23 request to V&S. In my view, V&S's response to KCVN's request demonstrated that V&S has no interest in fulfilling the rail transportation needs of KCVN or other rail shippers, and it has no interest in even exploring

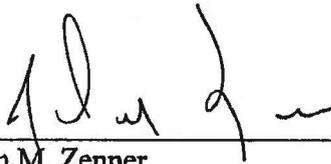
potential opportunities to develop opportunities for traffic that would support the line and permit development of surrounding farms and communities.

Verification

I, John M. Zenner, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed September 28, 2016



John M. Zenner

Public Version

ATTACHMENT 1

JOHN M. (Jack) ZENNER
1545 Miramont Drive
Fort Collins, Colorado 80524
Home: (970) 493-7434
Cell (970) 215-1061
Email: jz1545@aol.com

SUMMARY:

Thirty four years of experience in the agriculture industry, with substantial administrative, risk management and merchandising responsibilities.

EXPERIENCE:

2014 March -- current: Team Leader, Chemical Management Unit, Environmental Health Services, Colorado State University

- Communicate with building proctors, principal investigators and lab managers regarding the Chemical Management Unit objectives and action plan.
- Conduct individual laboratory walk-through and schedule inventory procedures.
- Coordinate daily schedules for inventory team members.
- Assist lab personnel with EHS online chemical inventory software capabilities.

2007 – July 2013: Vice-President, Risk Manager and "Prop Trader", West Plains Company

- Provide oversight and direction to insure that all cash grain/byproducts, futures, options, and spread positions are consistent with Company, and location position limits.
- Assist grain business units with development of business plans and marketing programs, consistent with Company goals and objectives.
- Provide administrative assistance and oversight to all merchandising and grain/byproduct handling locations.
- Pursue business development opportunities for Company consistent with strategic vision and plan.
- Manage, and trade, proprietary corporate profit center consistent with Company business plan and position limits.

2002-2006: Vice-President, Grain Division Manager, Farmers Elevator Company (FEC).

- Develop annual business plan and budget for grain division.
- Supervise management of 8 country grain elevators, grain origination and support staff.
- Coordinate marketing strategy and manage risk for all grain division cash commodity positions.
- Coordinate freight logistics (truck and rail) for all grain division commodity positions.
- Administer personnel reviews for all elevator managers, divisional merchants and divisional support staff.
- Conduct grain marketing seminars for producer groups.
- Assist FEC Executive Board and General Manager with business development strategy

1996 – 2002: Executive Vice-President, United Coop Services, a wholly owned subsidiary of Farmers Elevator Coop (Chappell, NE), High Plains Coop (Kimball, NE) and Crossroads Coop (Sidney, NE).

- Coordinate and execute cash grain merchandising strategies for all three members of UCS; primary grains include wheat, corn and millet.
- Coordinate rail transportation logistics for all three members of UCS.
- Assist individual Coop merchants with risk analysis profile - flat price, spreads, options and cash derivatives.
- Assist individual Coop managers with strategic planning--short and long-term.
- Conduct producer marketing meetings and instructional seminars.

1992 – 1995: Vice President, Product Group Manager, The Scoular Company.

- Coordinated commodity futures clearing operations with Chicago, Kansas City and Minneapolis Commission houses.
- Assisted product group managers with risk analysis profile – flat price, spreads, options, synthetics.
- Coordinated flow of market information to product group managers.
- Traded agricultural futures as a profit center for the company.

1987 – 1992: Vice-President, Regional Manager, The Scoular Company.

- Supervised management of 16 country grain elevators, regional merchandising staff, and regional support staff.
- Coordinated marketing strategy and managed risk for all regional trading positions.
- Developed quarterly projections for all regional profit centers.
- Administered personnel reviews and incentive programs for all elevator managers, regional merchants and regional support staff.
- Coordinated commodity futures clearing operations with Chicago and Kansas City commission houses.
- Conducted grain marketing seminars for producer groups.

1981 – 1987: Grain Merchandiser, The Scoular Company.

- Developed market strategy for 25 country grain elevators.
- Assisted individual managers with all phases of elevator management, with primary focus on logistics and market execution.
- Participated in monthly P & L reconciliation and annual personnel evaluations for all country elevators.
- Recruited personnel and developed training programs for merchandising staff.
- Developed job descriptions and administered personnel reviews for support staff.

1979 – 1981: Grain Merchandiser, The Pillsbury Company

- Developed market strategy to determine trading approach.
- Developed relationships with farmers, country elevators, re-sellers, and consumers to facilitate the origination and liquidation of various grains.
- Participated in development of monthly P & L summaries.

1974 – 1979: Administrative Assistant, Dairyman's Cooperative Association, Tulare, California

- Responsible to Chief Executive Officer. Involved in milk product pricing, feed cost analysis, feed ingredient acquisition, cost accounting projects, capital expenditure budget control, feasibility studies, and systems design.

EDUCATION:

- B.S. Business Administration and Economics, University of San Francisco, 1973; GPA; 3.3
- Tulare Union High School, Valedictorian, 1969; GPA 4.0

ADDITIONAL TRAINING:

- Microsoft Windows, Word and Excel
- Agris operating software
- World Bank Task Force, Uganda Warehouse Warrant Technical Mission 1995
- Leadership Fort Collins, 1994
- Predictive Index Behavioral Assessment System

PERSONAL:

- Hobbies include long distance running/walking, yoga, coaching youth baseball, bicycling, gardening, reading and travel.
- Board member and Treasurer Long Pond Association, effective March 2014
- Competitive Committee member Fort Collins Baseball Club
- Windsor High School volunteer assistant coach C team baseball

Public Version

ATTACHMENT 2

KCVN LLC

1545 Miramont Drive
Fort Collins, CO 80524

June 29, 2016

Mr. Aaron Parsons
Assistant Vice President & General Manager
V&S Railway LLC d/b/a Towner Railway
P.O. Box 26421
Salt Lake City, Utah 84126

Dear Mr. Parsons:

As you know, KCVN LLC owns wheat farmland in Kansas and Colorado. As this year's harvest is approaching, some of our farms in Colorado and Kansas will have approximately 100,000 bushels of wheat that KCVN desires to ship by rail to receivers in Los Angeles and possibly Arizona. This wheat will be harvested and readied for shipment in July, 2016 and we desire to ship it in early August, 2016. KCVN would tender between 15-29 cars of wheat at one time. We are contemplating tendering this wheat to V&S either at Towner, Colorado via its connection with the Kansas & Oklahoma Railroad, or through a truck-to-transload operation at Eads, Colorado, for transportation by V&S to N/A Junction for interchange with BNSF or UP.

Please let me know at your earliest opportunity whether V&S can provide this requested transportation under either option, and the terms and conditions that V&S proposes would govern it. If V&S cannot provide the requested transportation in August due to the physical condition of the track or other circumstances, please let us know when the track will be capable of transporting wheat tendered by KCVN to N/A Junction, either from Towner or other locations along the Towner Line.

Regards,

Jack Zenner



Agricultural Commodities Manager
KCVN, LLC

Cc: Thomas Wilcox; William Osborn

Public Version

EXHIBIT B

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**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**

REPLY VERIFIED STATEMENT OF DARRELL L. HANAVAN

My name is Darrell L. Hanavan. I am the same Darrell L. Hanavan whose verified statement is included as Exhibit G to the Feeder Line Application of KCVN, LLC and its subsidiary the Colorado Pacific Railroad, LLC (CPRR) submitted in this proceeding on March 18, 2016. I have been asked by KCVN and CPRR to review the Verified Statement of John Hoegemeier submitted by V AND S Railway, LLC (V&S) in its Comments on the Application.

For the past 34 years I was directly involved in the wheat industry in Colorado. I also served as Executive Director of Colorado Sorghum Producers from 2007 to 2016. In early 2016 I retired and stopped my work for the entities described in my prior Verified Statement on behalf of the Colorado Wheat Administrative Committee (CWAC), Colorado Association of Wheat Growers (CAWG), and the Colorado Wheat Research Foundation (CWRF), and I am now an outside consulting expert to entities involved in the agricultural industry. My qualifications and experience are summarized in the updated version of my Vitae attached this statement.

FOCUS ON MARKET DEVELOPMENT

As stated in my previous Verified Statement, in my capacity leading the wheat industry in Colorado, I was instrumental in working with local grain merchandisers/handlers, domestic flour milling companies and foreign trade teams focusing on developing marketing of Colorado

wheat domestically and for export. We worked through the CWAC and CWRP in the development of new wheat varieties at Colorado State University focusing on the demands of grain merchandisers, the domestic flour milling industry, and export customer needs and desires for quality. One of those companies I worked very closely with was Ardent Mills, which is a joint venture of ConAgra Mills and Horizon Mills, who recently located its national headquarters in Denver.

Over the three decades of my career, I developed relationships with all Colorado winter wheat handlers/shippers since they are required to collect the wheat assessment for CWAC. I also organized CWAC-sponsored elevator operator/shipper trips to Gulf of Mexico and Pacific Northwest ports since 80 percent of Colorado's winter wheat production is typically exported to 60 different countries.

CWAC and CAWG have a long history with the Towner Line, which runs for nearly 122 miles from Towner Junction, Colorado to NA Junction, Colorado. CAWG and I led the lobbying effort in 1998 to gain introduction and passage of HB 1395 by the Colorado General Assembly, which appropriated \$10.4 million for the immediate acquisition of the rail line as part of the state rail bank after the STB approved the abandonment of the rail line as part of the Union Pacific – Southern Pacific rail merger. V&S were the third lease operators on this line for the Colorado Department of Transportation (CDOT) and CAWG and CWAC was not consulted by CDOT in the leasing of this line. I am aware that the V&S lease was apparently a 6-year lease with a purchase option, which V&S exercised in 2011. On August 14, 2014, the Board of Directors of CWAC and CAWG passed a motion with unanimous vote to “oppose the abandonment and scrapping of the Towner Rail Line by the V&S and supports the sale and continued operation of this rail line to KCVN, LLC or other viable rail line operator.”

THREE MAJOR MARKETS FOR COLORADO WINTER WHEAT PRODUCTION

Agricultural producers and shippers in Colorado have three major markets for their products: domestic consumption, markets accessible from tidewater transfer points (export) and international markets in Mexico. What is common to all of these three markets is that in order for agriculture production to have or create value to the farm producers, the farm products must be moved from the field to the ultimate markets in good condition. The distance of the move and the amount of the harvest can vary from a few miles and a few truckloads to thousands of miles and hundreds of thousands of carloads. Generally, agricultural commodities require movement in bulk. Without access to railroad service it would be virtually impossible to move the Colorado annual winter wheat production of 68.3 million bushels from the farm to the ultimate markets. It would require over 100,000 truckloads per year moving 24 hours per day.

REBUTTAL OF VERIFIED STATEMENT of JOHN J. HOEGEMEIER

I have reviewed Mr. Hoegemeier's Verified Statement and have found it to have numerous flaws and inaccurate statements. First, Mr. Hoegemeier appears to have conducted only a "desktop" analysis based on internet research. He also limits his analysis to only hard red winter wheat, when KCVN and other farmers have expressed a strong interest in developing the market for hard white winter wheat which is described further below. He also does not consider any of the sorghum production in the Kiowa, Cheyenne and Prowers counties, which could also move by railroad over the Towner Line. Further, in his investigation of the movement of hard red winter wheat he incorrectly estimates the harvest volumes and cuts off his analysis at 2014, thereby excluding production of 5,028,000 bushels of winter wheat in 2015, according to the National Agricultural Statistics Service (NASS). Mr. Hoegemeier's continuing reference to hard

red winter wheat is misleading because NASS reports “winter wheat” production and does not report any hard red winter wheat numbers. Mr. Hoegemeier also incorrectly shows that there was zero (0) production in 2008 when there was actual production of 3,046,300 bushels of winter wheat. Mr. Hoegemeier also states that shuttle facilities located near the Towner Line (the Cargill elevator at Cheyenne Wells, CO on the UP and the Scouler Grain Elevator at Coolidge, KS on the BNSF) offer competition for eastern Kiowa county grain. This statement may be true for hard red winter wheat but it is not true for hard white winter wheat since, to my knowledge, neither Cargill or Scouler Grain will accept harvest time delivery of hard white winter wheat since they do not have the storage capacity to segregate hard red winter and hard white winter wheat. This would give a competitive advantage to elevators/handlers on the Towner Line whose focus is on hard white winter wheat.

Mr. Hoegemeier also states large facilities such as shuttles are more efficient and have lower storage and transportation costs and will have a greater draw radius than other elevators. This assumption does not take into consideration the marketing draw area potential for hard white winter wheat on the Towner Line due to freight access to the Commerce City markets, southern California domestic market, Gulf export market or the Mexican market – all potential movements westbound off the Towner Line.

Mr. Hoegemeier also states that elevators with lower costs should result in subsequent higher bid and grain purchase prices thereby increasing the draw radius than other elevators. However, this statement does not take into consideration that Ardent Mills is currently paying a base premium of \$0.40 - \$0.60 per bushel for hard white winter wheat varieties over hard red winter wheat bids for the hard white winter wheat varieties of Thunder CL and Sunshine and \$0.80 to \$1.00 per bushel over hard red winter wheat for the had white winter wheat variety

Snowmass.¹ Other hard white winter wheat varieties can command premiums of \$0.30 - \$0.50 per bushel over hard red winter wheat in domestic and export markets. The premiums of \$0.30 to \$1.00 per bushel for hard white winter wheat over hard red winter wheat prices will more than offset lower costs at competing elevators and ensure higher bid and grain purchase prices on the Towner Line.

Finally, Mr. Hoegemeier concludes that the competitive impacts of other grain elevators in close proximity to the Towner Line limit the draw area of Towner Line elevators to only about 30% of the hard red winter wheat in the Kiowa county harvest area. Mr. Hoegemeier's exclusion of hard white winter wheat from his analysis (and sorghum as well as discussed below) results in an understatement of the total volumes of wheat that could potentially be transported on the Towner Line if freight service was reinstated over it. Specifically, the draw area of the Towner Line for hard red winter wheat and hard white winter wheat due to hard white winter wheat premiums expands to include Kiowa, Cheyenne, Prowers and Bent counties. According to NASS, production of winter wheat in 2015 was as follows: Kiowa (5,028,000 bushels); Cheyenne (5,555,000 bushels); Prowers (2,880,000 bushels); and Bent (production is currently so small NASS does not estimate).

In my prior Verified Statement, I estimated approximately 500 wheat farmers, representing approximately 500,000 acres of farm land, could potentially ship their crops to domestic terminal and export markets by rail service over the Towner Line. This estimate was based upon hard white winter wheat production in Kiowa, Cheyenne, Prowers and Bent counties.

¹ The source of this information is www.plainsgold.com; the link to the CWRF Ultragrain Premium Program is: <http://plainsgold.com/resources/ultragrain-program-2/>.

As I've stated previously, the hard white wheat variety named Snowmass is exclusively licensed to Ardent Mills for Ultragrain High Performance whole white wheat flour. This wheat variety is now being grown in limited quantities around the Towner Line and there are newly developed domestic and international markets for this breakthrough hard white winter wheat. Through my work in the Colorado wheat markets, I am aware that Ardent Mills wants to increase production of hard white winter wheat and is thus willing to pay premiums to encourage increased production. Currently, all hard white winter wheat produced near the Towner Line is transported by truck because of the lack of receiving points on the Towner Line. In my prior Verified Statement I indicated that based upon my experience and my belief, the development of this revolutionary wheat variety could be a "game changer" and provide great impetus for the farmers and elevators located on the Towner Line in the production and marketing of this variety of wheat. I still believe this to be the case, but the acreage and production of Snowmass has not increased in the Towner Line draw area, and will not increase until handlers can be established on the Towner Line. Producers of Snowmass must currently truck their production long distances to approved handlers/shippers. Ardent Mills desperately needs increased production of Snowmass from the Towner Line draw area to fill growing demand. Snowmass will be a "game changer" for the area only if the Towner Line is functional and operating.

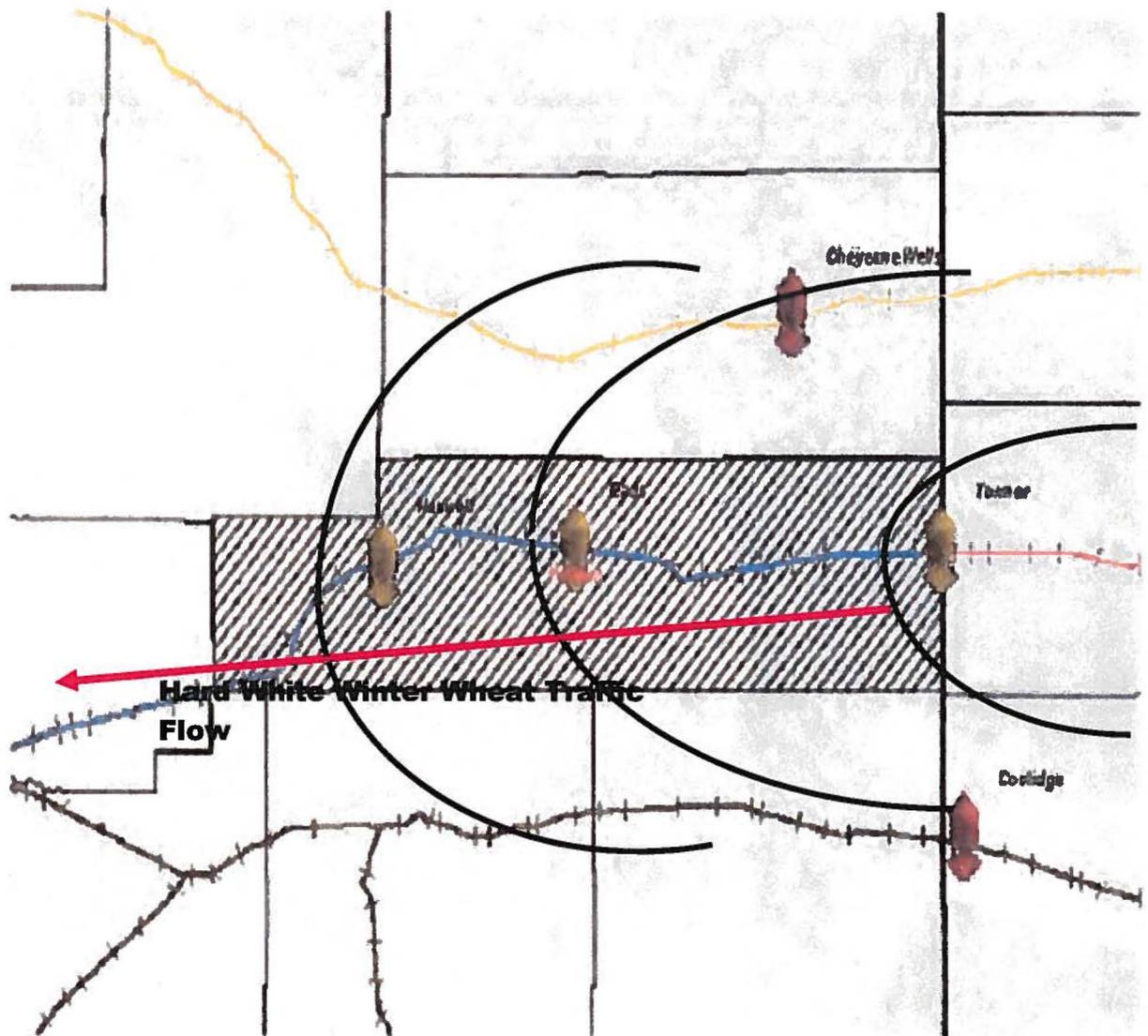
Mr. Hoegemeier's statement focuses on hard red winter wheat production (even though no precise numbers exist for solely this commodity) to analyze current wheat movements with a Towner rail line in a non-functioning capacity. Based upon my many years of experience and my knowledge of the growing and future hard white winter wheat industry in Colorado, I have developed this marketing focus on a functioning Towner Line, and a developing hard white winter wheat production market from Kiowa, Cheyenne, Prowers and Bent counties.

I believe developing markets for Snowmass marketed as Ultragrain High Performance and Thunder CL and Sunshine marketed as *Ultragrain* wheat is bright with a functioning Towner Line. The area around the Towner Line fits the growing profile for these *Ultragrain* varieties of hard white winter wheat. Other hard white winter wheat varieties such as Antero that are not included in the Ultragrain program but command a market premium also fit the growing profile for the area. The upside potential of the marketing of these upcoming hard white winter wheat varieties requires access to the Commerce City, southern California and Mexican markets. The rail routes for Towner grown *Ultragrain* will be over the Towner Line westbound over NA Junction. *Ultragrain* has developed a positive path forward in the grain marketing industry. What we have in this area is potential grower acreage and merchandiser/consumer demand. What is needed now is access to economical and adequate transportation services. This Towner Line draw area is uniquely positioned, and the opportunity for development of this new variety is present day.

With the rise of Snowmass production in the area, the prospects are bright for future shipments of Snowmass, Thunder CL, Sunshine and Antero on this line. The closest other shipping points are at Cheyenne Wells, Colorado and Coolidge, Kansas and they provide access predominantly for eastern movements and, as previously stated, neither accept harvest time delivery of the hard white winter wheat varieties.

The draw area of the Towner Line for hard red winter wheat and hard white winter wheat would include Kiowa, Cheyenne, Prowers and Bent counties. According to NASS, production of winter wheat in 2015 was as follows: Kiowa (5,028,000 bushels); Cheyenne (5,555,000 bushels); Prowers (2,880,000 bushels); and Bent (production is so small NASS does not estimate) for total production of 13,463,000 bushels.

Below is the Towner Line Draw Area:



When defining the draw area on this line for westbound movement, the draw areas would be appearing to be comet trails feathering to the east. This depiction is the classic draw patterns

in this case for westbound movements with typical freight rate structures intended to encourage westbound movements.

I would estimate the draw volume potential for hard red winter wheat and hard white winter wheat on the Towner Rail Line as follows:

County	Production/bu. (2015)	Estimated Market Share	Estimated Draw Volume (bu.)
Kiowa	5,028,000	50%	2,514,000
Cheyenne	5,555,000	20%	1,111,000
Prowers	2,880,000	35%	1,008,000
Total	13,463,000	34%	4,633,000

The estimated draw volume is 4,633,000 bushels of hard red winter wheat and hard white winter wheat.

There is also draw volume potential for grain sorghum, a major crop grown along the Towner Line, which is not estimated by Mr. Hoegemeier as potential movement over the rail line. Kiowa county grain sorghum production was 3,380,000 bushels in 2015 according to NASS. Kiowa county grain sorghum production provided by NASS for 2006 – 2015 is as follows: 2006 (809,000 bushels); 2007 (1,159,000 bushels); 2009 (1,715,000) bushels; 2010 (1,551,000 bushels); 2013 (1,550,000 bushels); and 2015 (3,380,000 bushels) for an average of 1,694,000 bushels. I would estimate market share for the Towner Line at 50% and the estimated draw volume at 847,000 bushels. Ordway Cattle Feeders with a 55,000 head lot is located on the Towner Line and currently receives all its grain (corn, grain sorghum) by truck.

In conclusion, Mr. Hoegemeier's analysis is deficient because of his very limited experience with, and understanding of, the wheat and sorghum markets in Colorado, and because of his misunderstanding of the winter wheat production numbers published by the NASS. It thus

is flawed by excluding Snowmass and other hard white wheat varieties currently grown and its future potential production growth, as well as excluding grain sorghum production. The potential game changing impact of Snowmass and other hard white wheat varieties to the handlers/shippers and farmers on and around the Towner Line cannot be overstated, but it requires a functional, operating Towner Line to fully develop. The actual potential annual draw volume for the Towner Line is a total of 5,480,000 bushels which includes hard red winter wheat and hard white winter wheat (4,633,000 bushels) and grain sorghum (847,000 bushels).

VERIFICATION:

I hereby certify that the foregoing is true and correct on penalty of perjury.

S/ *Darrell L. Hanavan* Date: September 23, 2016

Darrell L. Hanavan
President
Dhanavan & Company
(303) 981-4430
dhanavanco@gmail.com

Public Version

ATTACHMENT 1

VITAE
Darrell L. Hanavan

Darrell L. Hanavan served as Executive Director of the Colorado Wheat Administrative Committee (CWAC) from June 1982 until February of 2016. CWAC is the research and promotion organization representing the state's 8,000 wheat farmers. He also served as the Executive Director of the Colorado Association of Wheat Growers (CAWG) since 1998. CAWG is the membership and lobbying organization representing the State's wheat growers. Hanavan was instrumental in forming and served as Executive Director of the Colorado Wheat Research Foundation (CWRF) since 1989. CWRF is a non-profit corporation developed by CWAC to acquire ownership of all new wheat technology (wheat varieties and novel traits) developed at Colorado State University (CSU). In addition, Hanavan was instrumental in forming and also served as Executive Director of Colorado Sorghum Producers (CSP) since 2007. CSP is a membership and research and promotion organization whose purpose is to promote, protect and safeguard the industry of growing sorghum in Colorado.

Numerous successes and the recent exponential growth of CWAC, CWRF and CAWG, were all accomplished under Hanavan's vision and leadership, including the development of a world class wheat breeding program and wheat research program at Colorado State University ("CSU"). Following is a partial summary of Hanavan's accomplishments:

- Led campaigns for the passage of successful wheat farmer referendums to double the assessment and CWAC budgets in 1988 and 2007 which resulted in CWAC investing additional Grant-in-Aid funding of nearly \$5.0 million to support the CSU Wheat Breeding Program and wheat-related research.
- Coordinated the development and passage of the Russian wheat aphid initiative (RWA) by the Colorado General Assembly in 1987 which led to the development of the first RWA-resistant wheat variety named "Halt" by the CSU Wheat Breeding Program in 1994 that was successfully commercialized by CWRF. Base funding for RWA research of \$460,000 annually is the only new agricultural research funding appropriated by the Colorado General Assembly to CSU since 1987.
- Organized CWRF in 1989 and negotiated the historic CWRF/CSU/CSGA Agreement in 1995, 2001, 2007 and 2013 for the ownership of CSU wheat varieties and novel traits by CWRF to return royalties to CSU to further support the wheat research funding from CWAC. CWRF has invested nearly \$4.1 million to support the CSU Wheat Breeding Program and wheat-related research since inception of this program in 1995 and is projected to invest over \$1.0 million in 2016.
- Conceptualized and negotiated the historic 10-year Master Research and Development Agreement between CWRF, CWAC and CSU in 2016 (to replace and expand the CWRF/CSU/CSGA/CSURF Agreement in place from 1995-2016). Under this new Agreement, CWAC and CWRF commit total aggregate funding of \$20 million to support research into new wheat varieties and novel traits with production and health-related benefits, improved disease and insect resistance, herbicide-resistant weed management, and improved grain quality for the domestic and global wheat markets.
- Increased the Colorado market share of CSU-developed varieties owned by CWRF and marketed under its innovative "PlainsGold" brand from less than 13 percent in 1996 to over 72 percent in 2015 which is the highest percentage of any major wheat state in the U.S.

- Led the effort for CWRF to become the first entity to commercialize the first novel trait in wheat in 2001 after CSU was the first public university or private company to release "Above" with the patented, novel Clearfield Wheat herbicide tolerance trait developed by private industry (BASF). This was the first public-private partnership model of its type in U.S. wheat history.
- Led the successful development of a novel herbicide tolerance trait for grassy weed control by CSU and began patenting of this trait in 53 countries that will be owned and commercialized by CWRF beginning in 2017. When fully commercialized this trait should generate \$1-5 million in royalties annually over the next 20 years to be invested in wheat research at CSU.
- Negotiated and administered a Memorandum of Agreement with Ardent Mills and the innovative CWRF Ardent Mills Ultragrain® Premium Program which includes Snowmass, Thunder CL and Sunshine. This program adds value to Colorado wheat farmers through premium payments of up to \$1 per bushel and gives Ardent Mills a competitive advantage in the market with Snowmass-quality which is very unique.
- Credited by Colorado Governor John Hickenlooper in his State of the State address on January 9, 2014 with helping him persuade Ardent Mills to locate their company with annual sales of \$4.0 billion here in Colorado which benefits Colorado wheat farmers by creating a higher value for wheat and stimulating research and innovation of new revolutionary wheat varieties and human health traits at CSU.
- Collaborated with CSU Wheat Breeder Dr. Scott Haley to turn Colorado into a state known for "high quality" wheat and price premiums instead of a "low quality" wheat that domestic and export buyers avoided which resulted in price "basis" discounts to farmers of 10 to 25 cents per bushel.
- Hosted over 100 trade teams of wheat buyers from all over the world and participated in market development missions to over 25 countries to increase exports of Colorado wheat.

Hanavan served as Chairman of the National Jointed Goatgrass Research Program from its inception in 1994 until its conclusion in 2010. This program administered a special federal grant totaling \$4.2 million to reduce the impact of jointed goatgrass on winter wheat production and provide scientific and stewardship practices that were used in launching the Clearfield wheat program.

Hanavan also served as Chairman of the joint U.S. Wheat Associates/National Association of Wheat Growers Biotechnology Committee from its inception in 2000 until 2008. This committee developed the first unified policy on biotechnology for the U.S. wheat industry which has led to development of biotechnology traits in wheat and public-private collaborations.

Honors/Awards:

Hanavan was named an "Honorary Member" of the American Society of Agronomy (2012), Crop Science Society of America (2012), Western Society of Weed Science (2001) and the Colorado Young Farmers Association in 1990; recognized for "Outstanding Service" to the CSU Colorado Extension Advisory Council (2015); awarded USDA's "Certificate of Appreciation" by Deputy Secretary of Agriculture Richard Rominger (2000), "Certificate of Recognition for Meritorious Service" by Colorado Commissioner of Agriculture Don Ament (1999), "The Distinguished Achievement in Agriculture" Award of Merit by the CSU Chapter of the Honor Society of

Agriculture Gamma Sigma Delta (1998); and named "State Friend of Extension" by CSU Cooperative Extension (1990 and 2004).

Education:

Hanavan received a B.A. in Political Science and Economics from the University of Northern Colorado in 1973 and a M.A. in Economics from the University of Denver in 1977.

Background/Personal:

Hanavan is a Colorado native born on a diversified wheat, corn and cattle farm and ranch near Cheyenne Wells and is a member/partner/owner in Hanavan Farms LLC. He is the second oldest of twelve children of parents Charles and Patsy Hanavan. He has two grown daughters and two grandsons.

Public Version

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

SECOND VERIFIED STATEMENT OF DOUG STORY

My name is Doug Story. I am the Vice President of Agricultural Marketing for Watco Transportation Services, LLC. I am the same Doug Story who submitted a verified statement that includes as Exhibit C to the Feeder Line Application filed by KCVN, LLC and its wholly owned subsidiary the Colorado Pacific Railroad, LLC. I also supplied KCVN with more information about the proposed operating plan of the Kansas and Oklahoma Railroad (“K&O”) in response to the Board’s April 15, 2016 Decision accepting the Feeder Line Application but suggesting that KCVN and CPRR provide additional information concerning the operating plan. That supplemental information was submitted by KCVN and CPRR on April 29, 2016.

The purpose of this second verified statement is to respond to certain factual allegations and statements made by the V&S Railway, LLC (“V&S”) in its Comments on the Application. I have received and reviewed the Public Version of V&S’s filing, and have reviewed it in

conjunction with my initial verified statement and the Confidential version of the Supplement filed by KCVN and CPRR.

V&S asserts the K&O's proposed operating plan is deficient as lacking specificity in terms of commitments from specific rail shippers along the line, and K&O's projections for annual carloads of traffic. However, given the fact that V&S has conducted no rail operations over the line for over four years, has not performed any maintenance of the track and has permitted it to deteriorate to the point that rail service is not presently possible, and has made no attempt to develop or pursue any traffic from rail shippers – in fact has given every indication it desires to abandon the rail line and remove and sell the track assets – any estimates of traffic and business once the track is acquired by CPRR are necessarily speculative to some degree.

Watco is the largest privately held short line operator in the United States. K&O is one of the largest single short line railroads in the United States, and it operates in markets immediately adjacent to the Towner Line. The K&O's estimates of potential traffic on the Towner Line over the next three years are therefore based on its knowledge and understanding of those markets, including past use of the Towner Line by shippers such as Bartlett Grain. We have had preliminary discussions with KCVN, Bartlett Grain, and with an aggregate producer in Pueblo, and we expect that resumption of rail traffic over the line and development of new traffic will proceed as quickly as possible once the Towner is acquired by the CPRR and the necessary repairs and rehabilitation of it can be performed.

V&S also criticizes K&O for not providing specific revenue projections over the next three years to cover estimated operating costs. K&O is confident that its revenues will exceed the costs of maintaining and rehabilitating the line over the next three years. As with traffic

projections, however, specific revenue projections are extremely difficult to provide due to V&S stopping all railroad service over the line in 2012, and then actively discouraging any resumption of rail traffic and refusing to develop the existing wheat production or other potential traffic that could use the Towner Line. To reiterate the information provided in my prior verified statement and the Supplement, K&O intends for its revenues to consist of a combination of car storage revenues and line haul rate revenues from wheat movements in at least the first year, supplemented by revenues from other commodities such as aggregates, propane, salt, gypsum,, building materials, and crushed marble.

Based on the experience of K&O and Watco's other short line operators, we estimate that car storage revenues on the Towner Line will be at least _____ in the first year, and rise to at least _____ in years two and three, depending on the storage car market conditions. As for anticipated revenues from hauling freight, V&S in its Comments criticizes the lack of such information in K&O's operating plan, but it is extremely hard to accurately estimate annual traffic levels and revenues given the circumstances surrounding the Towner Line, i.e., its poor physical state and the lack of rail service being provided over it for so long. Additionally, V&S's reliance on K&O's general tariff to establish the rates that would apply to transportation on the Towner Line is misplaced. In the first place, neither myself, nor the Applicants have stated that K&O's tariff rates would apply to Towner Line traffic. Given the circumstances surrounding the Towner Line, it is quite possible, and even probable, that K&O will negotiate contract rates with shippers desiring to use the Towner Line that enable traffic on the line to be resumed and developed over the first three years of ownership.

In any event, the K&O anticipates that revenues will easily exceed estimated operating costs. Specifically, based on our analysis of the current and potentially new business available to

a reactivated Towner Line, we have projected between carloads in the first year, and between additional carloads in subsequent years as a result of marketing and development. Even if one were to assume a low per car rate of for all traffic (which is obviously simplistic given the differing commodities, volumes, trainsizes, etc.), and the minimum estimated annual carloads, the combined storage and freight revenues would be a minimum of in the first year, and in years two and three. Even at these conservative levels, the revenues over the first three years would clearly exceed the annual in annual operating and maintenance costs we have estimated for the Towner Line.

Finally, the K&O is obviously aware of the fact that the Towner Line does not extend all the way to Pueblo, and that agreements will have to be entered into with BNSF Railway to either permit the K&O to use the BNSF's tracks to transport Towner Line trains from N/A Junction to Pueblo, or for BNSF and/or Union Pacific Railroad Company to transport such trains over the BNSF tracks. Upon approval of the acquisition of the Towner Line by KCVN and CPRR through this feeder line process, and the K&O becoming the designated operator of the Towner Line, we intend to immediately enter into discussions with the BNSF Railway about transportation of Towner Line trains to and from N/A Junction.

Verification

I, Doug Story, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed, September 23, 2016

A handwritten signature in black ink, appearing to read "Doug Story", is written over a horizontal line.

Doug Story

EXHIBIT D

Highly Confidential (Redacted)

Public Version

EXHIBIT E

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**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**

**REPLY VERIFIED STATEMENT
OF
GERALD W. FAUTH III**

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., (“GWF”) an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. I previously submitted testimony in this Surface Transportation Board (“STB”) proceeding on behalf of KCVN, LLC (“KCVN”) and Colorado Pacific Railroad, LLC (“CPRR”) (Collectively “KCVN/CPRR”) on March 18, 2016, which was included as Exhibit D of KCVN/CPRR’s Feeder Line Application to purchase the so-called “Towner Line” in southeastern Colorado. My testimony focused on the current Net Liquidation Value (“NLV”) of the Towner Line based on STB’s standards and precedent.

The Towner Line is currently owned by V and S Railway, LLC (“V&S”), which is a short line railroad company headquartered in Salt Lake City, Utah. V&S is owned by A&K Railroad Materials, Inc. (A&K), a company specializing in acquiring and selling railroad scrap materials.

PUBLIC VERSION

On August 30, 2016, V&S filed comments on KCVN/CPRR's Application. I have been asked by KCVN/CPRR to submit these comments in reply to the V&S's comments. Included in V&S's comments is the joint verified statement of Ralph Lee Meadows, Jr. P.E., Charles H. Banks and John D. Ireland, who are "associated" with R.L. Banks & Associates ("RLBA"), a consulting firm based in Arlington, Virginia ("RLBA Joint V.S."). RLBA Joint V.S. maintains that I have understated the NLV of the Towner Line. The following table compares our NLV calculations:

Figure 1
Comparison of GWF and RLBA NLV Valuation
Assessments of The Towner Line

Ln.	Item	GWF NLV	RLBA NLV
1.	Gross Salvage Value	\$8,104,866	\$30,544,600
2.	Removal and Liquidation Costs	\$5,510,315	\$6,613,100
3.	Net Salvage Value (L.1 minus L.2)	\$2,594,551	\$23,931,500
4.	Real Estate/Land Value	\$0	\$0
5.	Net Liquidation Value (NLV) (L.3 plus L.4)	\$2,594,551	\$23,931,500

As can be seen, the most significant difference between our calculations is in the calculated Gross Salvage Value ("GSV") (i.e., L.1 - \$8,104,866 versus \$30,544,600) of the line. As indicated herein, the primary reason for this difference is RLBA's erroneous assumption that 93% of the salvaged rail on the Towner Line would be categorized and sold as "Relay" rail that would be sold at very high and overstated retail prices.

PUBLIC VERSION

Summary of Findings

Since it has now been six months since my opening verified statement and in response to the RLBA Joint V.S., I have updated and restated my NLV calculation based on updated (September 9, 2016) reroll rail and scrap metal pricing and other considerations discussed in this verified statement. My updated and restated NLV calculation is summarized in the following table:

Figure 2
Towner Line NLV
(September 2016)

Ln.	Item	Amount
1.	Gross Salvage Value	\$14,116,235
2.	Removal and Liquidation Costs	\$7,094,334
3.	Net Salvage Value (L.1 minus L.2)	\$7,021,901
4.	Real Estate/Land Value	\$0
5.	Net Liquidation Value (NLV) (L.3 plus L.4)	\$7,021,901

This developed NLV is set forth in detail in Appendix Reply GWF-1. As can be seen, although this updated and restated NLV is higher than my initial determination, it is significantly lower than the \$23,931,500 million NLV developed by RLBA. As indicated herein, the updated NLV that I have developed is very conservative and therefore likely overstates the actual NLV of the Towner Line.

PUBLIC VERSION

GWF Railroad Valuation Experience

V&S questions my qualification to prepare and present a NLV valuation assessment:

“There is nothing in Fauth's biographical materials or education that indicate that he has any railroad engineering background or education, or that he is qualified to inspect or evaluate a rail line.” (V&S Comments, page 25).

The attached RLBA Joint V.S. states:

“Fauth clearly demonstrates his significant experience in rail economics, rail regulation and the inner workings of the STB but glaringly fails to advance any notable experience in railroad engineering, the rail line liquidation process, or the secondary railroad material markets, disciplines within the railroad industry critical to the successful development of an accurate NLV calculation.” (RLBA Joint V.S., page 10)

Like Mr. Banks, I do not have an engineering degree, but an engineering degree is not required to perform a NLV valuation, which (like the alternative Going Concern Value (“GCV”) valuation approach), is an economic exercise involving STB regulations and precedent. I have developed and reviewed numerous railroad line NLV calculations in the last 38 years working on STB related projects and proceedings. Over the years, I have personally inspected hundreds, if not thousands, of miles of railroad lines and facilities. I am clearly qualified to prepare and present a NLV valuation assessment of the Towner Line.

I prepared and developed the economic valuation evidence and submitted testimony in the first Feeder Line case before the Interstate Commerce Commission (“ICC”) - ICC Finance Docket No. 31012, Cheney Railroad Co.--Feeder Line Acquisition--CSX Transportation, Inc. Line Between Greens and Ivalee, AL, 5 I.C.C.2d 250 (1989) (“Cheney”). The *Cheney* proceeding involved the acquisition of 54.61 miles of track in Alabama. Like the instant proceeding, our client, Cheney Railroad Company (CRC), and the line owner, CSX Transportation, Inc. (CSXT), were far apart on a purchase price, which was to be based on the NLV of the line.

PUBLIC VERSION

In the *Cheney* case, the ICC accepted and utilized valuation adjustments that I developed in its final decision. For example, CSX initially maintained the land value was \$2,095,094, however, the ICC accepted our calculated land value of only \$9,419. In addition, I have prepared evidence and submitted testimony concerning the railroad valuation issues in many other ICC and STB proceedings.¹ While serving at the STB for 3½ years as the senior advisor and chief of staff to one of the three STB Board Members, I was directly involved in the decision-making process in many STB proceedings involving the rail line valuations, many of which involved the establishment of the NLV of railroad lines.²

In addition to my work on valuation issues in ICC and STB proceedings, I have also been involved in private arbitration proceedings and negotiations involving railroad line valuation issues. For example, I was actively involved in: the valuation of a rail line in Indiana which was being purchased by a utility company; the valuation of a rail line in Michigan which involved reversionary property rights through a summer resort area; and the NLV valuation of a rail line in Virginia, which was purchased by a short line from a Class I under a lease with an option to purchase provision based on the NLV of the line according to STB standards.

¹ See, for example, STB Docket No. AB-459 (Sub-No. 2X), Central Railroad Company of Indiana – Abandonment Exemption – in Dearborn, Decatur, Franklin, Ripley and Shelby Counties, Indiana, and ICC Docket No. 31608, PSI Energy, Inc. – Feeder Line Development – Norfolk Southern Corporation Line Between Cynthiana and Carol Indiana.

² See, for example, STB Docket No. FD 32479, Caddo Antoine and Little Missouri Railroad Company -- Feeder Line Acquisition -- Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR, served May 20, 2000, which established the NLV of a 52-mile line at \$961,096 (page 11), and STB Docket No. AB 33 (Sub-No.140), Union Pacific Railroad Company--Abandonment--In Lancaster and Gage Counties, NE, And Marshall County, KS, served December 17, 1999, which accepted an NLV of \$2,869,501 for a 57.72 mile line (page 7).

PUBLIC VERSION

The valuation of railroad assets is an integral part of the STB's Stand-Alone Cost ("SAC") approach used in rate reasonableness cases. The STB's current rate reasonableness guidelines are set forth in decisions in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines – Nationwide. SAC cases involve the valuation of railroad assets on a large, system-wide basis involving hundreds of miles road property in most cases. SAC cases are based on an economic "replacement" cost methodology, i.e., the hypothetical replacement of the existing rail service with a new hypothetical railroad competitor. Consequently, a careful and meticulous review and analysis of the existing rail assets and valuation records is required in these SAC cases. GWF was the first consulting firm to apply and successfully use these SAC guidelines in an ICC proceeding. In this case, the complainant, Pennsylvania Power & Light Company (PP&L), charged that the rates assessed by Consolidated Rail Corporation (Conrail) for coal movements to its generating stations in Pennsylvania exceeded a maximum reasonable level. The ICC found that the rates exceeded a reasonable level based on the SAC system that we developed from Conrail's valuation records. In the PP&L proceeding, I was primarily responsible for reviewing Conrail's valuation data and developing the SAC economic evidence and testimony. In addition, I prepared and submitted testimony and economic valuation evidence in two other cases that employed the SAC test.³ As a result of my work in these ICC and STB cases, I have personally spent many hundreds of hours analyzing railroad valuation records in order to determine what railroad assets needed to be retained and what assets could be shed in the building of hypothetical SAC railroads.

³ ICC Docket No. 37931S, The Metropolitan Edison Company v. Consolidated Rail Corporation and ICC Docket No. 38279S, The Detroit Edison Company v. Consolidated Rail Corporation, et al.

PUBLIC VERSION

In addition to my work in several of the first SAC cases to come before the ICC, I was involved in the decision-making process of several major SAC cases that came before the STB during that period.⁴ My work in these proceedings involved reviewing many volumes of confidential valuation and other data filed by the individual parties.

Valuations of railroad lines often involve on-the-ground inspections of the lines to determine various factors that could impact the value. The condition of the bridges and trestles, rail, ties, and other track material can also impact the value of the line. The railroad right-of-way may have crossings, encroachments or other factors that impact the value of the land. I have inspected hundreds, if not thousands, of miles of railroad lines over the years. After personally inspecting railroad lines throughout the U.S., I believe that I have acquired the ability to distinguish a good railroad tie from a bad one. I also have the ability to inspect rail, determine rail sizes (which is usually stamped on the side with the sizes and production dates) and evaluate the amounts and condition of other track materials.

It does not require an engineer to observe and/or to measure the wear on steel rails. For my inspection of the Towner Line, I utilized a Rail Wear Gage (1/32" Increment Scale) for 112, 115, 119, 132, 133, 136, & 141 lb. rail sold by Winchester Industries, Inc. (Model W698), which is accurate and simple to operate and read. (see Appendix Reply GWF-2)

⁴ See: STB Docket No. 41685, CF Industries, Inc. v. Koch Pipeline Company, LP.; STB Docket No.42022, FMC Wyoming Corp. and FMC Corp. v. Union Pacific Railroad Company; STB Docket No. 42051, Wisconsin Power & Light Company v. Union Pacific Railroad Co.; and STB Docket No. 42054, PPL Montana LLC v. The Burlington Northern and Santa Fe Railway Company.

PUBLIC VERSION

V&S's unusual and vigorous attack on my qualifications and experience is merely an attempt to "kill the messenger" in order to distract from the fact that V&S has sponsored and RLBA has prepared an erroneous, unreasonable and unsupported NLV calculation that is grossly overstated.

Previous Engineering Reports

Prior to my first inspection of the line in December, 2014, the line had been inventoried and inspected by at least four different engineers since 1995. Their findings concerning the inventory of the line were not significantly different. The following table lists the identified rail inventory for the line, which was reflected in the previous engineering reports:

Figure 3

Prior Rail Inventory Estimates for the Towner Line

Item	1995 UP LKB	1998 CDOT KORVE	2004 CDOT PBQD	2014 V&S RLB
136 lb. Rail Tons	11,824	12,423	12,423	12,101
133 lb. Rail Tons	0	0	0	82
132 lb. Rail Tons	0	0	0	871
115 lb. Rail Tons	11,668	11,334	11,334	11,203
113 lb. Rail Tons	0	0	0	627
112 lb. Rail Tons	3,761	4,021	4,021	3,676
<u>90 lb. & 85 Lb. Rail Tons</u>	<u>926</u>	<u>524</u>	<u>524</u>	<u>349</u>
Total Rail Tons	28,180	28,302	28,302	28,909

PUBLIC VERSION

RLBA is critical of the fact that I did not conduct a new inventory of the entire Towner Line and related assets (RLBA Joint V.S., page 37). Since the line had been inspected and inventoried by at least four different engineers prior to my inspections and since it had been only lightly used since 1995 and had been out of service for many years, it was not necessary to hire an outside engineer to re-inventory the line, as V&S did. Moreover, in order to be conservative, I accepted the inventory that the individuals hired by RLBA⁵ and V&S had developed, as I have done in my restatement, even though the RLBA inventory was and is higher, in terms of rail tonnage and OTM, than the previous three NLV studies.

GWF Towner Line Inspections

As indicated in my opening verified statement, I performed two two-day inspections (or a total of four days) of the entire Towner Line on December 2 and 3, 2014 and on October 5 and 6, 2015. The Towner Line closely follows and parallels Colorado Route 96 and contains over 80 public and private crossings. As a result, during my four days of inspecting the line, I was able to closely inspect the physical condition of the Towner Line and its sidings at many locations. I closely inspected the track at every crossing in each direction.

⁵ For the 2014 report prepared by RLBA, Mr. Banks retained the services of a former employee, Crew S. Heimer, who he listed as RLBA's "Director of Transportation Engineering," but, in reality, Mr. Heimer was a Rail Technical Specialist II at Whitman Requardt & Associates, LLC. For the V&S comments, Mr. Banks retained the services of R. Lee Meadows, Jr., who is also listed on the RLBA website as the "Director of Engineering." In reality, however, Mr. Meadows heads his own firm called Mountain Railway Consulting, Inc. and his Linked-In page makes no mention of his "association" with RLBA.

PUBLIC VERSION

The primary purpose of my inspections was to confirm that the assets remained in place, since it had been reported and confirmed that V&S's parent company, A&K, had started efforts to harvest rail from the line without STB authority and had halted this work only after KCVN had obtained injunctive relief. I also wanted to confirm the findings of the previous engineering reports and make notes of any subsequent changes in the condition of the line since the previous inspections. In addition, I wanted to take rail wear readings at various locations on the line in order to evaluate the condition of the rail.

Although the Towner Line has not seen much rail traffic in the last two decades, there have been several changes to the line which were not reflected in the previous four studies of the line and which diminished the value of the line to some extent:

- (1) In 2014, V&S removed spikes and rail anchors from both rails for over 20 miles (leaving them in place only in approximately every fifth tie) in an area between milepost ("MP") 821 and MP 848 before KCVN obtained an injunction;
- (2) Rudimentary repairs were made to sections of the line as a result of two significant wash-outs in 2014 approximately two miles east of NA Junction near a grade crossing with Route 96; and
- (3) In June 2016, a grass fire burned and destroyed a railroad trestle near Haswell, Colorado.⁶

⁶ The fire took place after my last inspection of the line, therefore, I have not reviewed the fire damage other than via pictures.

PUBLIC VERSION

In addition to inspecting the areas where the spikes had been removed from the heavy-duty CWR and the areas which had been repaired, I closely inspected the rails, ties, track materials, ballast and other characteristics of the track at every crossing and siding. I took many pictures of the track, road bed, crossings, bridges, culverts and adjoining facilities. I also took rail wear measurements of both the north and south rails at over 30 representative locations on the line. I found that the different types of rail on the line generally had fairly uniform wear, as can be expected since the line was primarily used for overhead traffic and since local traffic was originated from only a few locations. The ties are in generally poor condition and completely covered with dirt and vegetation in many locations.

I determined that most of the heavier 136 lb. CWR rail was in relatively good condition but had 1/8 inch vertical wear (height or head wear) and side wear ranging from 1/31 to 1/16 inches. The area with 136 lb. rail with the greatest wear was near NA Junction, some of which had head wear ranging from 1/4 to 3/8 inches. Mr. Heimer's work papers indicate that he found uniform wear for the 136 lb. CWR, with head wear increasing the closer to NA Junction. However, Mr. Heimer apparently did not take measurements of the rail near NA Junction, where, logically, more wear would be expected.⁷ Mr. Heimer's inspection report make no mention of the spikes being removed from a major section of the 136 lb. CWR, and his report is also deficient in this respect.

⁷ NA Junction is MP 869.4. Mr. Heimer inspected the 136 lb. rail at 6 locations. He found greater than 1/8" wear at MP 859.9, south rail. His closest inspection to NA Junction appears to be MP 865 (4.4 miles away).

PUBLIC VERSION

Most of the 115 lb. and 112 lb. jointed rail on the Towner Line was produced in the late 1940's and early 1950's. Consequently, it was in place on the Towner Line for many decades when it was an active Missouri Pacific ("MOPAC") main line moving a significant amount of overhead traffic over the line. As a result, more significant head wear was expected on the older, lighter and mostly jointed rail, which was confirmed by my inspections. I also found fairly uniform, but more significant, wear, in many cases exceeding 1/4 inch head wear. I also observed many separated and flattened joints.^{8 9}

After inspecting the line, I decided to accept Mr. Heimer's inventory calculations (despite the fact that they were higher than the previous studies) in order to be conservative and because during my inspections I was able to confirm the existence of small amounts of 133 lb., 132 lb. and 113 lb. rail that had been missed by the other engineers. Mr. Heimer's inventory also differentiated between CWR and jointed rail, which had not been done in the previous engineering report. Therefore, his inventory appeared to be more accurate than the previous engineering reports.

Although I accepted Mr. Heimer's rail inventory, I did not and do not agree with his classifications, assumptions and valuation of the rail, which concluded that most of the rail on the line could be sold as high-quality "relay," which he maintained could command extraordinarily high prices of up to \$870.00 per ton for the rail.

⁸ The 2004 Parsons Brinckerhoff Quade & Douglas, Inc (PBQD) report, which valued the entire rail inventory as scrap rail, also noted that the "Jointed rail has some batter and vertical bent ends." (page 2).

⁹ Mr. Heimer inspected the 115 lb. rail at 7 locations. He found greater than 1/8" head wear at MP 765 and MP 820.5 and found greater than 1/4" head wear at MP 775.

PUBLIC VERSION

2014, 2015 and 2016 RLBA NLV Studies

The 2014 RLBA study prepared by Mr. Heimer determined that the NLV of the line was \$26,951,300, which was significantly higher than any previous valuation of the line. RLBA prepared at least two more NLV calculations for V&S: a study dated August 7, 2015, which was an update of the 2014 Heimer study prepared by Mr. Banks, and determined that the NLV of the line was \$27,023,500; and a study dated July 19, 2016, which was included as part of the RLBA Joint V.S. by Messrs. Banks, Meadows and Ireland, which determined that the NLV of the line was \$23,931,500. The following table summarizes these previous NLV studies:

Figure 4

Previous NLV Estimates of The Towner Line

Item	Net Salvage Value	Land	Net Liquidation Value
1996 STB UP LKB	\$9,811,169	\$450,955	\$10,262,124
1998 CDOT Korve	\$11,616,448	\$468,600	\$12,085,048
2004 CDOT PBQD ¹⁰	\$3,890,069	\$0	\$3,890,069
2014 V&S RLBA	\$26,951,300	\$0	\$26,951,300
2015 V&S RLBA	\$27,023,500	\$0	\$27,023,500
2016 V&S RLBA	\$23,931,500	\$0	\$23,931,500

¹⁰ The 2004 CDOT PBQD Report concluded that the NLV of the Towner Line was \$7,116,869. However, the 2004 CDOT PBQD Report failed to account for track removal (\$2,636,000) and Miscellaneous Removal/Cleanup (\$131,800), which were included in the 1998 CDOT Korve Report. With these adjustments, the corrected NLV would have been \$3,890,069.

PUBLIC VERSION

As a result, RLBA has now prepared at least three different NLV calculations, all of which suffer from the same fundamental flaw, *i.e.*, they all wrongly assume that most of the rail and other track materials (“OTM”) of the Towner Line line could be sold as high-quality “relay” rail that would command extraordinarily high prices per ton.

The following table summarizes the inventory and classification of the rail on the Towner Line as developed by Mr. Heimer (used in the 2014 and 2015 RLBA studies) and Mr. Meadows (used in the 2016 RLBA study):

Figure 5

V&S RLBA Rail Tonnage Classifications

Item	2014 Heimer Rail Inventory				2016 Meadows Rail Inventory			
	Relay	Reroll	Scrap	Total	Relay	Reroll	Scrap	Total
136 lb. CWR Tons	11,802	299	0	12,101				
136 lb. Jointed Tons	0	0	0	0				
133 lb. CWR Tons	82	0	0	82				
132 lb. CWR Tons	0	871	0	871				
115 lb. CWR Tons	597	0	0	597				
115 lb. Jointed Tons	10,606	0	0	10,606				
113 lb. CWR Tons	627	0	0	627				
112 lb. Jointed Tons	3,628	46	2	3,676				
90 lb. Jointed Tons	71	21	3	95				
85 lb. Jointed Tons	0	203	51	254				
Total Rail Tons	27,413	1,440	56	28,909				
% Total Rail	94.83%	4.98%	0.19%	100.00%	93.13%	0.00%	6.87%	100.00%

As can be seen, both Mr. Heimer and Mr. Meadows assumed that nearly all of the rail could be sold as relay rail, with 94.83% and 93.13% relay tonnages, respectively.

PUBLIC VERSION

The following table shows the relay and scrap amounts and percentages for the two largest assets on the Towner Line, the rail and OTM as determined in the most recent RLBA study:

Figure 6

RLBA Gross Salvage Value for Rail and OTM

Item	Percent	Amount
Relay Rail	97.58%	
<u>Scrap Rail</u>	<u>2.42%</u>	
Total Rail	100.00%	
Relay OTM	97.01%	
<u>Scrap OTM</u>	<u>2.99%</u>	
Total OTM	100.00%	
Total Relay Rail & OTM	97.41%	
<u>Total Scrap Rail & OTM</u>	<u>2.59%</u>	
Total Rail & OTM	100.00%	

These assumptions that the vast majority of the rail and OTM (97% of the value) would be classified and sold as relay rail and OTM are simply incorrect, inaccurate and unrealistic and result in a significant overstatement of the NLV.

Rail Classification

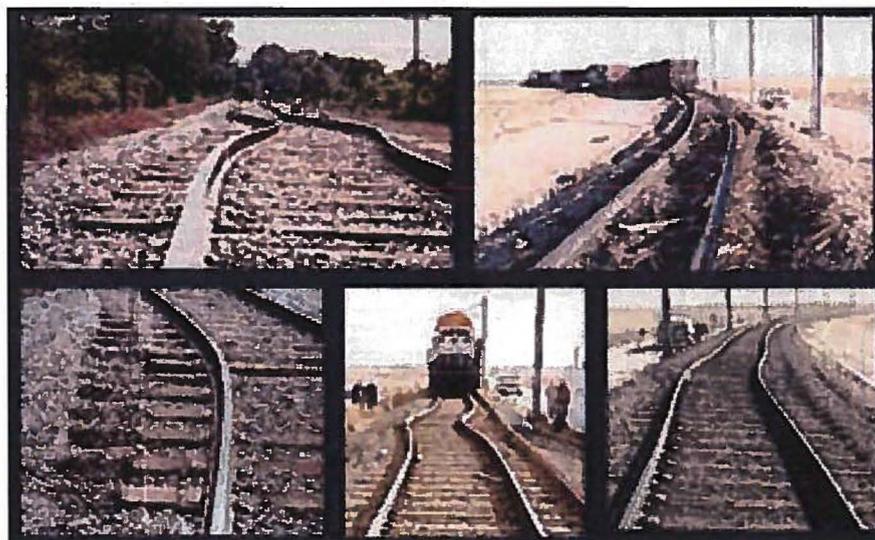
Based on my inspections of the Towner Line and the identified characteristics and condition of the rail, I developed the GSV based on the allocations of the rail into relay, reroll and scrap categories. I found that approximately 26.30 miles of the 136 lb. CWR (6,786 tons) is good quality, heavy-duty rail with head wear of 1/8" or less which could qualify and be sold as relay rail.

PUBLIC VERSION

However, I determined that the remaining 136 lb. CWR (28.35 miles or 6,786 tons) is likely not suitable for relay based either the wear of the rail around NA Junction (which had 1/4 to 3/8" head wear) or the fact that in 2014 V&S started removing spikes and tie plates from over a 22-mile section of 136 lb. CWR. Left unsupported for over two years with the removal of spikes and overall poor tie condition, the 136 lb. CWR could have easily been damaged because of the severe temperature swings from the summer to winter months. It is a well-known fact that steel rail expands in the heat and contracts in the cold. CWR, because of its fixed end, can experience tensile and compressive stress and fracture in extreme cold and heat and result in lateral alignment defects. It is also well-known in the rail industry that unsupported or poorly supported CWR can "buckle," which I first observed while inspecting Southern Pacific tracks in Texas in the 1980's.¹¹ The following are some example pictures of buckled rail:

Figure 7

Examples of Track Buckling



¹¹ See, for example, <http://onlinepubs.trb.org/Onlinepubs/trr/1991/1289/1289-010.pdf>; and www.volpe.dot.gov/infrastructure-systems-and-technology/structures-and-dynamics/track-buckling-research.

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While I did not observe any track buckling yet on the Towner Line, the removal of spikes over a large section of 136 lb. CWR over two years ago, combined with the poor tie condition, have left the CWR inadequately supported, which has definitely increased the risk for rail stress and buckling. V&S indicates that cars are being stored on the western section of the line and the line has been hi-railed without a problem, but this does not mean that the rail has not been damaged by the lack of support.¹² As a result, it is reasonable to assume that 28.35 miles of the heavy-duty 136 lb. CWR would only be suitable for sale as reroll or scrap rail.

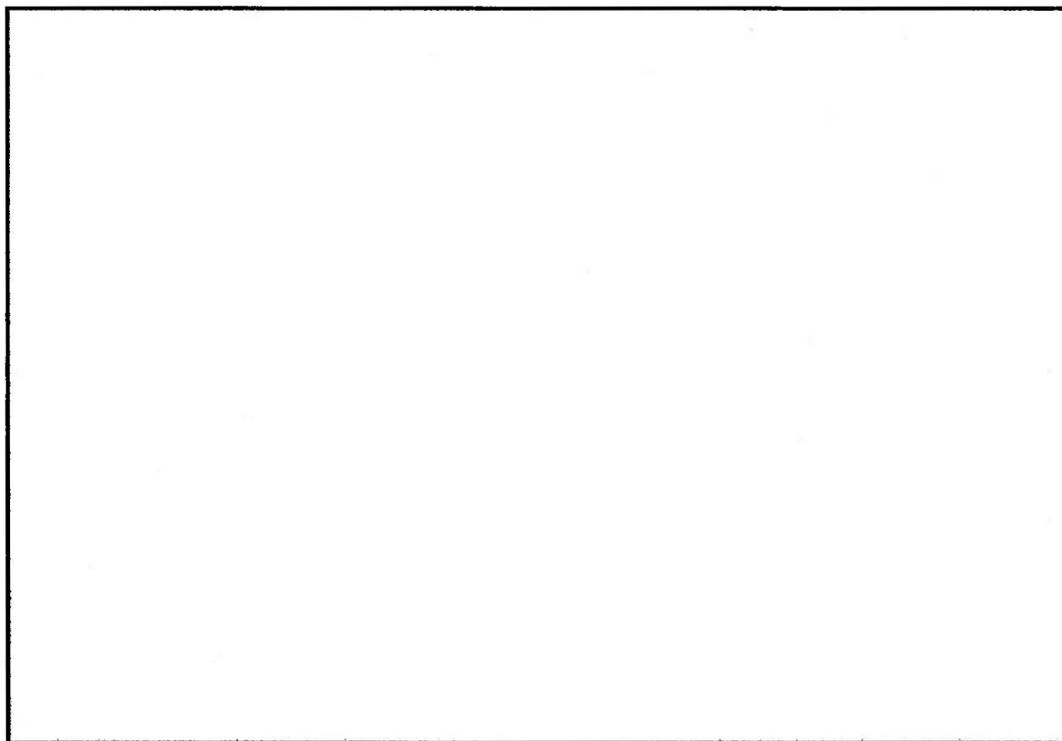
Even if one erroneously assumes that *all* the heavy-duty rail on the Towner Line (132 lb. or greater) (13,141 tons according to Mr. Meadows) should be classified as Relay #1 quality (which it is not), it is unreasonable to also assume that nearly all the heavy-duty rail could be sold as relay. Specifically, A&K's transaction data for the period included as Appendix 8 to the RLBA Joint V.S. indicated that there were no heavy duty relay rail transactions for the period from March 2014 through May, 2016. Indeed, the Appendix 8 data indicates that there was a sharp decline in all A&K relay, reroll and scrap rail sales starting in 2014:

¹² Rail stress damage is difficult to detect with a visual inspection and would likely require a special railcar with ultrasonic inspection technology, which is mentioned by RLBA on page 42. RLBA states that this is "an expensive process not economically feasible to undertake in the context of an NLV."

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Figure 8

**A&K Relay, Reroll & Scrap Rail Transaction Tons
(March 2014 - May 2016)**



Assuming there is a market for 136 lb. CWR, it would therefore take many years for A&K to sell 13,141 tons of the heavy-duty rail. As V&S's Comments confirm, there is a very small relay market for heavy-duty CWR relay rail. As I explained in my Opening Verified Statement, the largest consumer of heavy-duty CWR rail are the Class I railroads. V&S Witness Rhonda Nicoloff, A&K's President and Co-Owner, indicates the "A&K has not sold any relay rail, similar to that found on the Towner Line, to a Class 1 railroad since 2014." and "[i]n general, Class I railroads are not in the market for relay rail, but rather buy new, heavy-weight welded rail directly from the mills for their busiest main lines, and then use the rail that is being replaced elsewhere on their own system."

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In fact, V&S admits that there is only a small relay market for all CWR. The RLBA Joint V.S. states “There is relatively little data on market prices of relay-quality CWR, evidenced by the fact that A&K (the largest relay rail vendor in the country) does not have listed prices of any weight of CWR.” (RLBA Joint V.S. Appendix 10, page 98).

V&S attempts to blame the lack of heavy-duty CWR rail sales on a lack of supply. Although A&K had no heavy-duty relay rail transactions for the period from March 2014 through May, 2016, A&K did sell tons of heavy duty “reroll rail” during this period.¹³ Reroll rail is a lesser quality than relay rail, and is therefore sold at lower, more predictable prices. Since A&K did have heavy-duty rail in its inventory, it is reasonable to assume that, if, as V&S claims, there had been an active and robust secondary market for high-priced, heavy-duty relay rail during this period, then some of the heavy duty reroll tons would have been sold as relay rail.

Despite its parent company having no sales of heavy-duty relay rail since at least 2014, V&S bases its claim that there is an active heavy-duty rail market primarily based on single 2014 transaction involving tons (miles) of lb. CWR. However, this “transaction” never took place. Ignoring the fact that this heavy-duty rail transaction never took place and, therefore, should be rejected outright as comparable sale, this -ton rail transaction would have been very unusual, to say the least. V&S indicates that the transaction would have been with , a subsidiary of . V&S indicates that the transaction had to be canceled as a result Temporary Restraining Order issued by the Colorado State Court. (RLBA Joint V.S., page 44).

¹³ A&K also sold tons of scrap rail during this period. This scrap rail tonnage likely included some heavy duty rail, but the rail sizes were not included in the scrap description.

PUBLIC VERSION

In addition to have never taken place, it would not have been a clean sale, but rather it also involved a swap or trade of railroad materials. Under the proposed transaction, would have acquired the miles of lb. CWR from the Towner Line (which corresponds to the area in which V&S removed spikes from the line) in exchange for rail and other track materials swapped from and another subsidiary,

. One cannot evaluate the proposed (and cancelled) sale of tons of 136 lb. CWR from the Towner Line for \$ (the transactions also included tie plates) without knowing the characteristics value of the swapped materials. All that is revealed about the traded and railroad materials is the value (\$). Moreover, this -ton heavy-duty relay rail transaction would have been much bigger, by far, than any other A&K relay rail transaction from March 2014 through May 2016. A review of these transactions indicates that A&K largest transaction during this period (which appears as transactions) involved the sale of approximately tons of lb. rail on . As a result, this unusual transaction that never took place should be rejected as a comparable sale for valuation purpose. It is interesting to note that this large transaction was also cancelled about the same time that steel prices and A&K sales (see Figure 8) began to plummet.

I determined that the remaining 79.45 miles of mostly older, worn, lighter and jointed 115 lb., 112 lb., 90 lb. and 85 lb. rail would be suitable only for scrap. Most of this jointed rail was produced in the late 1940's and early 1950's. Much of it has significant head wear ($\geq 1/4$ inch in many places). I also noticed many open and flattened joints, which would significantly reduce its suitability for relay rail.

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The A&K transaction data included as Appendix 8 to the RLBA Joint V.S. confirms V&S's claim that there is a small relay market for lighter jointed rail. The A&K transaction data indicates that it sold _____ tons of _____ lb. rail from March 2014 through May 2016, which equals an average _____ tons per month, and _____ tons of _____ lb. rail during the same period, which equals _____ tons per month.¹⁴ However, the majority of the 115 lb. and 112 lb. jointed rail sold by A&K was Relay #1, which generally has less than 1/8 inch headwear. At best, some of the older 115 lb. and 112 lb. jointed rail on the Towner Line may qualify as Relay #2, but, based on the A&K transaction data, there is a much smaller market for Relay #2. For example, from March 2014 to May 2016, A&K sold _____ tons of 115 lb. Relay #1, but only _____ tons of 115 lb. Relay #2 and, in the last seven months (November 2015 through May 2016), A&K recorded sales of only _____ tons of 115 lb. Relay #2.

As indicated, most of this 115 lb. and 112 lb. jointed rail on the Towner Line is now nearly 70 years old. V&S maintains that the "The age of the rail is not material in evaluating the quality of the rail which is dependent of the remaining useful life." (V&S Comments, page 25). The RLBA Joint V.S. also maintains that age is not a factor:

¹⁴ The Verified Statement of Rhonda Nicoloff, A&K's President and Co-Owner, included in V&S's comments indicates that A&K sold _____ tons of relay rail since 2014 (page 2). The A&K transaction data (included as RLBA Joint V.S. Appendix 8) indicates _____ tons of relay sales during this period (which excludes January and February, 2014). The A&K transaction data does show that A&K sold _____ tons of relay and reroll rail, combined.

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. . . In the case of rail, remaining service life is not defined by years but rather by the amount of wear on the rail, a function of the volume of tonnage that has travelled over a rail line, the extent to which it is placed in curves and the extent to which it is subjected to heavier types of trains (for example, unit coal train movements) and the greater impacts on jointed rail in particular of the synchronized pounding of track structure associated with hosting unit trains. In fact, the date of manufacture factors so little into the useful utility of railroad materials, including rail, that vendors of used rail, including A&K, do not even internally track such data. Furthermore, nowhere in the AREMA Manual is there any specific mention of manufacture year as a factor to take into consideration when determining the useful remaining life of rail. (RLBA Joint V.S., page 41)

To deny that age is a factor in rail quality is to deny basic physics by ignoring the fact that steel rails expand and contract with the change in temperature. The Towner Line runs through south-eastern Colorado, which experiences significant temperature swings. For example, the average high for Eads, Colorado in July is 91° and the average low in January is only 15°. ¹⁵ Nearly 70 years of expanding and contracting with these significant temperature swings has likely taken its toll and adversely impacted the quality of the older jointed rail.

For my NLV restatement, I have accepted Mr. Meadow's revised (and larger) rail inventory. However, I do not agree with his unreasonable and unrealistic classifications of almost all of the rail (93%) as relay. In order to be conservative, however, I have valued the older jointed rail as reroll (which has a higher value) instead of scrap. The following table compares Mr. Meadows' inventory and classifications with my revised classifications:

¹⁵ <http://www.usclimatedata.com/climate/eads/colorado/united-states/usco0512>

PUBLIC VERSION

Figure 9

Rail Inventory and Classifications

Rail Size	Type of Rail	Condition	RLBA			GWF		
			Miles	Tons/Mile	Tons	Miles	Tons/Mile	Tons
136	CWR	Relay #1				23.48	239.36	5,620.17
136	CWR	Relay #2				0.00	239.36	0.00
136	CWR	Reroll				28.35	239.36	6,785.86
136	CWR	Scrap				0.00	239.36	0.00
136	CWR	Total				51.83		12,406.03
136	Jointed	Relay #1				0.00	239.36	0.00
136	Jointed	Relay #2				0.00	239.36	0.00
136	Jointed	Reroll				0.19	239.36	45.48
136	Jointed	Scrap				1.10	239.36	263.30
136	Jointed	Total				1.29		308.77
133	CWR	Relay #1				0.00	234.08	0.00
133	CWR	Relay #2				0.00	234.08	0.00
133	CWR	Reroll				0.31	234.08	72.56
133	CWR	Scrap				0.00	234.08	0.00
133	CWR	Total				0.31		72.56
132	CWR	Relay #1				0.00	232.32	0.00
132	CWR	Relay #2/#3				0.00	232.32	0.00
132	CWR	Reroll				1.50	232.32	348.48
132	CWR	Scrap				0.00	232.32	0.00
132	CWR	Total				1.50		348.48
115	CWR	Relay #1				0.00	202.40	0.00
115	CWR	Relay #2				0.00	202.40	0.00
115	CWR	Reroll				2.17	202.40	439.21
115	CWR	Scrap				0.00	202.40	0.00
115	CWR	Total				2.17		439.21
115	Jointed	Relay #1				0.00	202.40	0.00
115	Jointed	Relay #2				0.00	202.40	0.00
115	Jointed	Reroll				52.97	202.40	10,721.13
115	Jointed	Scrap				0.00	202.40	0.00
115	Jointed	Total				52.97		10,721.13
113	CWR	Relay #1				0.00	198.88	0.00
113	CWR	Relay #2				0.00	198.88	0.00
113	CWR	Reroll				3.14	198.88	624.48
113	CWR	Scrap				0.00	198.88	0.00
113	CWR	Total				3.14		624.48
112	Jointed	Relay #1				0.00	197.12	0.00
112	Jointed	Relay #2/#3				0.00	197.12	0.00
112	Jointed	Reroll				18.01	197.12	3,550.13
112	Jointed	Scrap				0.00	197.12	0.00
112	Jointed	Total				18.01		3,550.13
90	Jointed	Relay #1				0.00	158.40	0.00
90	Jointed	Relay #2				0.00	158.40	0.00
90	Jointed	Reroll				0.00	158.40	0.00
90	Jointed	Scrap				2.75	158.40	435.60
90	Jointed	Total				2.75		435.60
85	Jointed	Relay #1				0.00	149.60	0.00
85	Jointed	Relay #2				0.00	149.60	0.00
85	Jointed	Reroll				0.00	149.60	0.00
85	Jointed	Scrap				0.63	149.60	94.25
85	Jointed	Total				0.63		94.25
Total		Relay #1				23.48		5,620.17
Total		Relay #2				0.00		0.00
Total		Reroll				106.64		22,587.33
Total		Scrap				4.48		793.14
Total		Total				134.60		29,000.65

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RLBA maintains that there is great demand for relay rail and that V&S's parent company, A&K, could easily sell the rail from the Towner Line:

Based on the information presented thus far throughout this VS, RLBA is confident in the pricing numbers employed in all three RLBA NLVs. Simply put, the comparable sales data in this VS clearly shows that there is demand for types of material found on the Towner Line at the prices provided to RLBA by A&K in response to RLBA's request. (RLBA Joint V.S., page 59)

* * * *

Despite what Fauth may believe personally, there is, in fact, an active and robust market in the lighter, jointed rail found on the Towner Line, as demonstrated in Table 18. In fact, so active is the market in lighter, relay, jointed rail that, at the current sales rate, A&K could sell all of the 115 RE and 112 RE jointed rail which could be harvested from the Towner Line in less than three years. (RLBA Joint V.S., page 60)

To support its claim of a robust demand and high prices, RLBA included recent A&K transactional data as RLBA Joint V.S., Appendix 8. As Figure 8 shows, there was a sharp decline in all A&K relay, reroll and scrap rail sales starting in 2014. Therefore, there does not appear to be a robust market for any for salvaged rail. As the joint reply verified statement of Thomas D. Crowley and Daniel L. Fapp (Crowley/Fapp V.S.) demonstrates, the relay rail and scrap rail markets are depressed and far from robust and active.

As Figure 9 shows, most of the Towner Line rail tonnage is either 136 lb. CWR (12,406 tons) or 115 lb. jointed rail (10,721 tons). As previously indicated, A&K had no sales of heavy-duty relay rail from March 2014 through May 2016. Moreover, A&K had only limited sales of 115 lb. relay, which is reflected in the following table:

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Figure 10

Summary of A&K 115 lb. Relay Rail Transactions

Item	115 lb. Relay Rail Tons		
	Relay #1	Relay #2	Total Relay
March 2014			
April 2014			
May 2014			
June 2014			
July 2014			
August 2014			
September 2014			
October 2014			
November 2014			
December 2014			
January 2015			
February 2015			
March 2016			
April 2015			
May 2015			
June 2015			
July 2015			
August 2015			
September 2015			
October 2015			
November 2015			
December 2015			
January 2016			
February 2016			
March 2016			
April 2016			
<u>May 2016</u>			
Total			
Average Per Month			
Average Per 12 Months			

As previously indicated, with its wear and age, at best, some of the 115 lb. relay on the Towner Line would qualify as Relay #2. Based on A&K's rate of _____ tons per year of 115 lb. Relay #2 transactions, it would take over _____ years to sell the 115 lb. rail on the Towner Line. Even assuming the 115 lb. rail was all Relay #1 quality rail, which it is not, it would potentially take over _____ years at A&K rate of _____ tons per year.

PUBLIC VERSION

Other Track Material

Like its treatment of the vast majority of rail as relay, V&S also erroneously assumed that nearly all (97%) of the OTM (i.e., tie plates, joint bars, rail anchors, spikes and bolts and washers) should be classified and valued as relay OTM. The following table summarizes the GSV for OTM as included in the RBLA Joint V.S:

Figure 11

Summary of RBLA Gross Salvage Value for OTM

tem	Condition	Miles	Per Mile	Amount	Percent	Unit	RLBA Value
8 x 16 DS	Relay						
8 x 14 DS	Relay						
8 x 13 DS	Relay						
Tie Plates	Relay						
5.125 x 9 SS	Scrap						
Total Tie Plates							
Jt. Bars 136#	Relay						
Jt. Bars 132#	Relay						
Jt. Bars 115# 36"	Relay						
Jt. Bars 112# 24"	Relay						
Jt. Bars	Relay						
Jt. Bars 112# 36"	Scrap						
Jt. Bars 90#	Scrap						
Jt. Bars 85#	Scrap						
Joint Bars	Scrap						
Total Joint Bars							
Rail Anchors Welded	Relay						
<u>Rail Anchors Joints</u>	Relay						
Rail Anchors	Relay						
Rail Anchors	Scrap						
Total Rail Anchors							
<u>Spikes</u>	Scrap						
Spikes							
<u>Bolts & Washers</u>	Scrap						
Bolts & Washers							
Total OTM	Relay						
<u>Total OTM</u>	Scrap						
Total OTM	Total						

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As can be seen, RLBA maintains that the tie plates, which are valued at \$ million, are the most valuable OTM on the Towner Line. Again, RLBA has assumed that the vast majority the tie plates would be suitable for and sold as relay tie plates. The 1995 NLV developed by UP estimated that the tie plates had a GSV value of \$1.375 million. Therefore, despite after more than 20 years of rusting on the open ground, RLBA maintains that the tie plates have actually increased in value by almost \$ million.

The RLBA analysis maintains that the OTM value has not significantly decreased in the last two years, during which time new and scrap steel prices significantly decreased along with A&K's salvaged rail transactions (see Figure 8). The 2014 RLBA report estimated that the OTM GSV was \$9,889,200, whereas the new 2016 RLBA maintains that the OTM GSV is now \$. The 2014 RLBA report used relay tie plate values ranging from \$8.00 to \$10.00 per tie plate, whereas the 2016 RLBA study used values of \$ to \$ per tie plate. For tie plates, the RLBA GSV only slightly decreased from \$7,833,600 in 2014 to \$ in 2016.

The following table summarized A&K's tie plate transactions from 2014 to 2016. The exact dates are not provided, but they likely cover the same period as the relay rail, i.e., March 2014 through May, 2016.

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Figure 12

Summary of A&K Relay Tie Plate Transaction (2014-2016)

Item	Condition	Miles	Number	Amount	Value
A&K 2014 Transactions					
7 ¾ x 13 DS	Relay				
7 ¾ x 14 DS	Relay				
8 x 13 DS	Relay				
8 ½ x 13 DS	Relay				
<u>8 x 14 DS</u>	<u>Relay</u>				
Total Tie Plates	Relay				
A&K 2015 Transactions					
7 ¾ x 13 DS	Relay				
7 ¾ x 14 DS	Relay				
8 x 13 DS	Relay				
8 ½ x 13 DS	Relay				
8 ¾ x 13 DS	Relay				
8 x 14 DS	Relay				
<u>8 ¾ x 14 DS</u>	<u>Relay</u>				
Total Tie Plates	Relay				
A&K 2016 Transactions					
7 ¾ x 13 DS	Relay				
7 ¾ x 14 DS	Relay				
8 ¾ x 13 DS	Relay				
8 x 14 DS	Relay				
<u>8 ¾ x 14 DS</u>	<u>Relay</u>				
Total Tie Plates	Relay				
Total A&K 2014 to 2016 Transactions					
Total Tie Plates	Relay				

As can be seen, A&K's tie plate transactions appear to have significantly decreased during this period, which is indicative of the sharp decline of new and scrap steel market and prices during the same period.

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A&K's average transaction price decreased from \$ [redacted] per tie plate in 2014 to \$ [redacted] per tie plate in 2016. As previously stated, RLBA used relay prices from \$ [redacted] to \$ [redacted] in the 2016 study, which are all higher than the 2016 average of \$ [redacted] per tie plate. A&K sold [redacted] tie plates from 2014 to 2016, which equals [redacted] miles worth of tie plates based on [redacted] tie plates per mile utilized in the RLBA studies. RLBA has assumed that [redacted] tie plates from the Towner Line are relay quality, which is significantly more than A&K's entire tie plate sales for the period ([redacted] tie plates). In addition, A&K had [redacted] sales of 8 x 16 DS tie plates, which represent [redacted] tie plates on the Towner Line. Certainly, the sale [redacted] relay tie plates would likely take many years and could flood the market and result in reduced relay prices.

The 2016 RLBA study maintains that [redacted] tie plates on the Towner Line are relay quality. The 1995 NLV developed by UP estimated that less than half of the tie plates (395,850) were relay quality. The 2004 PBQD study valued all the tie plates as scrap. Certainly, there is a small relay OTM market and some of the Towner Line OTM could be reused, but it is clearly unreasonable to assume, as V&S did, that nearly all of the OTM would be sold as high-value relay OTM. Like relay rail, there is a significant amount of competition in the OTM market and the Class I railroads generally purchase new and imported OTM rather than used OTM. Like the 2004 PBQD Report, in my opening statement I assumed that all of the OTM on the Towner Line should be valued as scrap.

For the purpose of this restatement, I have assumed that the OTM underlying the newer, heavy-duty rail would be classified as relay, whereas, the older OTM underlying the jointed rail should be valued as scrap. This is a reasonable approach, given the age and size differences of the rail.

PUBLIC VERSION

Relay Rail & OTM

The RLBA study includes the following prices for relay rail:

Figure 13

Relay Rail Prices Utilized By RLBA

Item	Amount/Ton
Rail 136 pound per yard, CWR, Fit #1	
Rail 136 pound per yard, CWR, Fit #2	
Rail 136 pound per yard, Jointed, Fit #2	
Rail 133 pound per yard, CWR, Fit #1	
Rail 132 pound per yard, CWR, Fit #2	
Rail 132 pound per yard, CWR, Fit #3	
Rail 115 pound per yard, CWR, Fit #1	
Rail 115 pound per yard, Jointed, Fit #1	
Rail 113 pound per yard, CWR, Fit #2	
Rail 112 pound per yard, Jointed, Fit #3	

The highlighted rail sizes and prices for 136 lb. CWR #1 and 115 lb. Jointed #1 represent the two largest groups of rail sizes and types in the RLBA study, with _____ and _____ tons respectively. As can be seen, RLBA used the same price of \$ _____ for these two major rail categories. RLBA estimates that the GSV of the rail on the Towner Line was \$ _____ which equals an average of \$ _____ per ton, which reflects the heavy weighting of the \$ _____ per ton pricing.

The Crowley/Fapp V.S. demonstrates the pricing for relay rail is depressed and the prices utilized by RLBA are significantly higher than current market prices. These relay rail prices also appear high in comparison to A&K most recent (May 2016) transactions.

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As previously indicated, A&K had _____ tons or revenue) heavy-duty rail transactions during the period. In May, A&K sold only _____ tons of 115 lb. Relay #1 involving three small transactions for an average of \$ _____ per ton, which is significantly lower than \$ _____ per ton for 115 lb. CRW and \$ _____ per ton for 115 lb. jointed rail used by RLBA, especially considering that RLBA assumes that _____ tons of 115 lb. jointed and _____ tons of 115 lb. CWR would be sold Relay #1. In May 2016, A&K sold _____ tons of 112 lb. Relay #1 for an average of \$ _____ per ton and _____ tons of 112 lb. Relay #2 for an average of \$ _____ per ton.

In my opening verified statement, I applied a relay rail price of \$450.00 per ton. In 2015, the Class I railroads replaced 664 miles with relay rail at an average cost of \$391.38 per ton.¹⁶ Therefore, my initial estimate appears reasonable. The research included in the Crowley/Fapp V.S., indicates that 136 lb. CWR Relay #1 is currently priced between \$385 to \$575 per ton, which is an average of \$480 per ton (see Crowley/Fapp Table 1). I have used this average value (\$480.00 per ton) in my restatement. However, this should result in a significant overstatement of the relay rail value, since, as the Crowley/Fapp V.S. shows, the average cost to purchase 136 lb. CWR Relay #1 would be only \$240 per ton (Crowley/Fapp Table 2)., which is exactly one-half of the value that I have utilized in my restatement.

Likewise, RLBA uses inflated relay values for OTM. The Crowley/Fapp V.S also demonstrates the depressed market for OTM. For example, RLBA's analysis has valued tie plates based on retail prices ranging from \$ _____ to \$ _____ per tie plate, whereas Crowley/Fapp show tie plate values from \$2.50 to \$3.25 per tie plate.

¹⁶ Based on an analysis of STB Class I Annual R-1 Reports, Schedule 723.

PUBLIC VERSION

In my opening statement, I valued the OTM as scrap. RLBA assumed that the vast majority of OTM was relay quality and assigned high relay values. For restatement purposes and in order to be conservative, I have assumed that 54.9 miles of the tie plates and rail anchors underlying the newer heavy-duty track would be relay quality and could be sold as relay. I have used an average relay price of \$ per tie plate, which was A&K's average transaction price per tie plate for 2016 (see Figure 12). Based on the data include in the Crowley/Fapp V.S., this should result in an overstatement of the OTM value.

Reroll and Scrap Rail & Scrap OTM

I have also updated my NLV development to reflect the most current (September 9, 2016) American Metals Market (AMM) prices to Chicago, which are \$200.00 per gross ton for scrap and \$252.00 per gross ton for rerolling rail, effective September 9, 2016, which equate to \$178.57 per net ton and \$225.00 per net ton, respectively. In my NLV update and restatement, I have applied a rate of \$225.00 per ton to reroll quality rail and \$178.57 per ton to scrap quality rail and scrap OTM.

RLBA maintains that A&K can obtain high relay and scrap prices in Pueblo and cites EVRAZ Rocky Mountain Steel ("EVRAZ") as a potential purchaser. As the Crowley/Fapp V.S. points out, EVRAZ would only pay \$127.00 per ton for such rail scrap, which is approximately \$50 per ton less than the current Chicago scrap price (\$178.57). Therefore, the use of the AMM Chicago prices would result in an overstatement of the scrap values.

PUBLIC VERSION

Railroad Ties

The Board summarized its valuation process in STB finance Docket No. 35160, Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of The Central Oregon & Pacific Railroad, Inc., served March 12, 2009 (Coos Bay):

⁷ The Port points out that in Caddo Antoine the ICC included removal costs for scrap ties even though the scrap ties did not have any market value. But scrap ties are merely a portion of a line's overall tie asset. See Caddo Antoine (cross ties category includes relay ties, landscape ties, and scrap ties). All ties are removed by the same process and at the same time, with the exact quality of the ties not even determined until after removal. Accordingly, the Board values ties as a single asset category although it does value particular ties differently depending on whether they are relay, scrap or landscape. See Fillmore Western Ry. Co.—Abandonment Exemption—In Fillmore County, NE, AB-492 (Sub-No. 2X), slip op. at 12 app. (STB served Oct. 31, 2001); Caddo Antoine at 15 app. C. But the agency has not permitted removal costs, no matter how great, to reduce the value of ties overall below zero in an OFA or feeder line case. Thus, even though we calculated removal costs in Caddo Antoine, the value of the ties (\$384,417) exceeded the combined removal costs of the scrap and relay ties (\$264,405). As a result, the NSV of the ties was positive. (Coos Bay, page 4)

In my opening verified statement, I utilized the following percentages for relay ties, landscape ties, and scrap ties in my opening statement: 0.5% relay ties; 25.0% landscape and 74.5% scrap. Based on these percentage, I estimated that the ties have a GSV of \$65,334, but estimated that the total removal costs (based on a reasonable removal cost estimate of \$2 per tie), would be \$871,382, which would greatly exceed the GSV. Thus, in accordance with the Board precedent, I included no (\$0) value for ties.

The 1995 UP study estimated 107,485 ties, or approximately 25% the ties, were only scrap quality. Nearly a decade later, the 2004 CDOT PBQD Report states: "At this point in time; numerous sources indicate that there is virtually no market for and no net value in used ties. The 2004 study used a value of \$1 per tie for a GSV of \$425,714. However, the report states that "The cost of removal may actually exceed any residual value."

PUBLIC VERSION

In the 21 years since the UP study, very few ties have been replaced and there has been very little or no vegetation control and a concomitant significant deterioration of the ballast, which, combined with 21 years of sun, snow, rain and wind, has resulted in significant additional deterioration of the ties on the Towner Line. The 2014 and 2015 RLBA Reports also point to the fair to poor tie condition:

“Ties Because tie installation costs often approach tie material costs, only recently installed ties are suitable for rail reuse. The cost to sort, handle, transport and inventory ties are high, and in comparison with the wholesale prices they command generally yield only a low net salvage value. Overall tie condition on the inspected V&S track was fair to poor. (2014 and 2015 RLBA Reports, page 8 of 15)

The 2014 and 2015 RLBA Report estimated that only % could be reused for Relay ties. The reports estimated that approximately % could be used as Landscape ties (either #1 or #2 quality), and maintained that the remaining ties (%) were only scrap value, which they assigned a negative \$ per tie value, presumably for disposal costs. Based on this approach, the 2014 and 2016 RLBA Reports determined that the ties had a GSV of \$

Despite concluding in 2014 that “Overall tie condition on the inspected V&S track was fair to poor” and two additional years of no vegetation control, poor ballast, harsh weather conditions and additional decay and rot, RLBA now concludes that the GSV for the ties on the Towner Line has increased by nearly \$1 million from \$1,258,200 to \$. The following table compares the two RLBA tie GSV calculations:

PUBLIC VERSION

Figure 14

RLBA Estimates of Tie Gross Salvage Value

Item	2014 & 2015 RLBA	2016 RLBA¹⁷
Miles	121.90	
Ties Per Mile	3,249	
Total Ties	396,053	
Relay %	2.17%	
Relay Ties	8,583	
Relay Ties Unit Cost	\$18.00	
Relay Ties Salvage Value	\$154,500	
Total Landscape %	61.33%	
Total Landscape Ties	242,913	
Total Landscape	\$5.73	
Total Landscape Ties Salvage Value	\$1,392,800	
Scrap %	36.50%	
Scrap Ties	144,550	
Scrap Ties Unit Cost	(\$2.00)	
Scrap Ties Salvage Value	(\$289,100)	
Total Tie Gross Salvage Value	\$1,258,200	

The 2014 and 2015 RLBA Reports understated the number of ties on the line (396,053 versus), which accounts for part of the difference. However, the 2016 RLBA also assumes that the number of good quality relay ties (which it states are limited “recently installed ties”) has increased from 8,583 to ties. Ties have been replaced in only a few limited areas along the Towner Line, such as the 2014 wash-out area. The new relay tie estimate equates to miles of “recently installed ties,” which is certainly extremely overstated.

¹⁷ The number of ties shown in Figure 14 are slightly different than show in RLBA Table 7 (page 29) to due RLBA’s rounding.

PUBLIC VERSION

The 2016 RLBA study also shows the number of scrap have been reduced from 144,550 ties to only ties, which RLBA now assigns no (\$0) value. Like its development of rail and OTM values, RLBA has greatly overstated the number of relay ties and understated the number of scrap ties.

In order to be conservative for this restatement, I have utilized relay, landscape and scrap tie percentages developed by Mr. Heimer and used in both the 2014 and 2014 RLBA Reports (i.e., 2.17% relay, 61.33% landscape and 36.50% scrap). The estimated relay ties included in the 2016 RLBA study (relay ties or relay tie miles) are clearly overstated and the number scrap ties are clearly understated (scrap ties versus 144,500 scrap ties included in the 2014 and 2016 RLBA Reports and 107,485 scrap ties determined by UP in 1995).

Based on my inspections of the ties on the Towner Line at many locations, the estimates developed by Mr. Heimer (i.e., 2.17% relay, 61.33% landscape and 36.50% scrap) also appear to overstate the number of relay and landscape quality ties and understate the number of scrap ties. As indicated, I utilized the following percentages in my opening verified statement: 0.5% relay ties; 25.0% landscape and 74.5% scrap. However, I will accept Mr. Heimer's estimates to be conservative.

In my opening verified statement, I utilized a conservative value of \$28.00 per tie for the limited number recently installed relay ties. The 2014 and 2015 RLBA Reports also used a value of \$28.00 per tie for relay ties. I utilized conservative values of \$8.00 per tie for Landscape #1 ties and \$4.00 per tie for Landscape #2 ties, which were also reflected in the 2014 and 2015 RLBA Reports. I also used a negative \$2 per tie value for scrap ties in order to account for tie disposal cost.

PUBLIC VERSION

RLBA maintains that the current price of relay ties is \$ to \$ per tie (RLBA Table 16, page 55). However, RLBA utilized \$ per tie for relay ties. RLBA maintains that Landscape #1 ties currently go for \$ to \$ per tie and Landscape #2 ties go for \$ to \$ per tie (RLBA Table 16, page 55), but RLBA used a value of \$4.00 for all landscape ties.

As noted by the Board in Coos Bay, the STB Board values ties as a “single asset category.” Although RLBA developed a separate GSV for ties, RLBA did not develop a separate tie removal cost, which is required by the Board in order to properly evaluate ties as a single asset category. Although the 2016 RLBA rates may appear reasonable, RLBA maintains the tie removal is somehow included in this pricing: “RLBA did not develop a removal cost because “used crossties were assumed sold in bulk to a broker at a net wholesale price reflecting removal by the broker.” (2016 RLBA, page 9).¹⁸ Since RLBA does not separately express the tie removal costs, it is not possible to properly evaluate the values utilized in the 2016 RLBA study. Therefore, RLBA’s tie values cannot be accepted here.

In my opening verified statement I utilized relay value of \$28.00 per tie. This relay tie was the relay tie value used in the 2014 and 2015 RLBA Reports and appears to be very reasonable based on the research included in the Crowley/Fapp V.S., which found that the currently relay tie value is only \$17.00 per tie. Therefore, I have continued to use this relay tie value in my restatement.

¹⁸ RLBA may have assumed that tie removal cost was included in RLBA’s track removal cost estimates, i.e., \$ per mile for relay and \$ per mile for scrap. However, RLBA’s Table 9 indicates that these removal rates are only for “Fit Rail and OTM Removal” and “Scrap/Reroll Rail & OTM Removal.”

PUBLIC VERSION

I have also continued to utilize the conservative values of \$8.00 per tie for Landscape #1 ties and \$4.00 per tie for Landscape #2 ties, which were also reflected in the 2014 and 2015 RLBA Reports. I also used a negative \$2 per tie value for scrap ties in order to account for tie disposal cost. This value appears to be very conservative since based on the research included in the Crowley/Fapp V.S., which found that the currently scrap tie value is negative \$12.00 per tie. I have used a value of \$2.00 per tie for tie removal, which is reasonable considering the time, effort and machinery required to remove a tie. Based on this reasonable and conservative approach, I have determined that the ties, after removal, would have a NLV of \$ \$609,621.

Turnouts

The 1995 UP study values all the turnouts on the line as scrap. The 1998 Korve Report estimated that there are 28 turnouts on the line (4 – 112 lb.; 12 - 115 lb.; and 12 - 136 lb.). The 2004 PBQD Report also used 28 turnouts. Both the 1998 and 2004 reports utilized \$4,000 per turnout for 112 lb. turnouts, \$5,000 per turnout for 115 lb. turnouts, and \$9,000 per turnout for \$136 lb. turnouts. Both used a GSV of \$184,000 for turnouts.

Mr. Heimer discovered an additional turnout and used 29 turnout on the Towner Line. He estimated that 18 of the turnouts were relay quality and 11 were scrap quality. Using values of \$6,000 per turnout of 136 lb. turnouts and \$4,000 for 112 lb. turnouts, and a scrap value of \$323.00 per ton for the 11 scrap turnouts, he estimated that the GSV for turnouts was \$111,200. In my opening statement, I accepted Mr. Heimer's augmented turnout inventory (i.e., 29 versus 28), however, since these are older manual turnouts with significant age and wear, I valued all the turnouts as scrap, as UP had done 21 years earlier, and estimated the turnouts had a GSV of \$18,837.

PUBLIC VERSION

Apparently, Mr. Meadows discovered yet another turnout and used turnouts in the 2016 RLBA analysis. I was only able to locate and identify 28 turnouts during my inspections, but I may have missed one or even two. Therefore, I will accept Mr. Meadows' turnout number () to be conservative. However, I do not accept his valuation that out of turnouts are relay quality. I will accept the fact that the newer and heavy-duty 136 lb. turnouts may have a relay value, but he also included older 115 lb. turnouts as relay, which I have valued as scrap in my restatement.

Administrative & Marketing Relay Cost

The RLBA reports and study all use 13% to estimate the administrative and marketing costs associated with selling relay materials and only 5% to estimate the administrative and marketing costs associated with selling reroll and scrap materials. RLBA maintains that it normally would use 15% to administer and market relay materials, but "has decreased cost to administer liquidation and market steel assets to thirteen percent in an effort to reflect the more efficient practices of an experienced liquidator such as A&K." In my opening verified statement, I utilize 20% for relay materials and 10% for scrap materials. I continue to believe that these percentages are reasonable. It should be noted that both RLBA and I have excluded the costs of money and profit. In Coos Bay, the Board indicated that the cost of money was 2.1897% of the GLV and the expense of profit was 11.6277% of the GLV or 13.8%. If these values were added to the 13% and 5% values used by RLBA, the administrative and marketing costs would be higher than the cost that I developed.¹⁹

¹⁹ See Coos Bay, served November 20, 2008, page 4.

PUBLIC VERSION

Transportation Costs

For the purposes of this proceeding, I accepted the estimated transportation rate to Chicago utilized in the 2015 V&S RLB Report, i.e., \$5,776 per carload. The 2016 RLBA study utilized a rate of only \$ per car, which maintains is the freight rate to Pueblo, Colorado:

The increase in removal cost is related to the discovery of EVRAZ Rocky Mountain Steel in Pueblo, CO discussed earlier. In addition to not accepting reroll material, the EVRAZ plant also requires that all scrap rails be cut into three foot lengths. (RLBA Joint V.S., page 33)

“RLBA has adjusted the transportation cost in the 2015 V&S RLBA Report to reflect the assumption that relay rail also would be transported to Pueblo, CO, where it would be warehoused and eventually sold, likely in piecemeal fashion.” (RLBA Joint V.S., page 34)

Historically, the STB has used reroll and scrap steel prices in Chicago as a benchmark, since there is an active market there and values are verifiable. RLBA maintains that A&K can obtain high relay and scrap prices in Pueblo and cites EVRAZ as a potential purchaser. While EVRAZ does operate a steel mill in Pueblo, RLBA admits that the mill does not handle reroll rail.

Although much of the rail on the line is reroll quality, which commands a higher price than scrap rail (the current average price for rerolling rails in \$252 per gross ton compared to only \$200 per gross ton for No. 1 Heavy Melt in Chicago), RLBA assumes that reroll quality rail would be instead sold as scrap to take advantage of the lower transportation costs to Pueblo. RLBA also assumed that over tons of relay rail “would be transported to Pueblo, CO, where it would be warehoused and eventually sold, likely in piecemeal fashion.”

PUBLIC VERSION

RLBA does not address whether or not EVRAZ could handle the _____ tons of rail and over _____ OTM tons from the Towner Line. As indicated in the Crowley/Fapp V.S., EVRAZ indicates would take several months to receive and process the scrap from the Towner Line. Since the EVRAZ facility in Pueblo is a steel mill and not a relay rail dealership or storage yard, it is unlikely that EVRAZ would purchase and warehouse the relay rail for “piecemeal” resale. Moreover, as Crowley/Fapp indicate, EVRAZ would not pay Chicago prices for the salvaged steel from the Towner Line (i.e., \$127.00 per ton versus \$178.57 per net ton). In addition, RLBA has failed to account for any additional warehousing costs associated with storing the relay rail in Pueblo.

In reality, once A&K has harvested the rail and OTM from the Towner Line, A&K would likely ship the salvaged assets to one of A&K’s twelve permanent retail yards. A&K’s website maintains that it has yards in: Dolomite, AL; Stockton, CA; Mira Lima, CA; Hamden, CT; Granite City, IL; Gary, IN; Kansas City, KS; New Orleans, LA; Toledo, OH; Eagle Lake, TX; Salt Lake City, UT; and Tacoma, WA. The Kansas City or Salt Lake City yards would be the closest. After shipment to one of A&K’s yards, the materials would be sold and shipped to A&K customers.

I have reviewed A&K’s relay, reroll and scrap transaction included as part of the RLBA Joint V.S. A&K’s relay customers have locations throughout the U.S. For example, A&K sold and shipped over _____ tons of relay rail to

_____, which is a short line railroad operating in _____ and _____, and sold over _____ tons of relay rail to _____, which has facilities in _____

As a result, the relay rail transportation costs could be significant.

PUBLIC VERSION

In my restatement of the NLV, I have accepted that the scrap rail and OTM from the owner Line could be sold and transported to Pueblo. However, I assumed that the relay and reroll rail would be transported to Chicago, which is reasonable considering the potential transportation costs.

RLBA's "Updates" of Previous Studies

As part of its effort to justify the extraordinarily high NLV, V&S is asserting for the Towner Line the RLBA Joint V.S. attempts to criticize my comparison of the RLBA NLV calculation to NLV's generally, and to the previous NLV's performed for the Towner Line (RLBA Joint V.S. at pages 65-81). As to NLV's generally, RLBA compares the NLV "per mile" of its NLV to 42 prior examples (Table 21), and concludes that "the RLBA NLVs are closer to the average value per mile than the Fauth NLV on a dollar basis" (RLBA Joint V.S. at page 66). However, this simplistic analysis is flawed because it does not take into account the effect of the length of the track segment. Specifically, RLBA's work papers include public NLV data from 42 STB proceedings.²⁰ The 42 data points correspond to rail line segments ranging from 0.8 to 233 miles in length and include NLV ranging from \$8,385 to \$1.3 million per mile.²¹ However, two of the included segments are clear outliers, with NLV of \$0.8 million and \$1.3 million per mile, while the other 40 segments had NLV of \$8,385 to \$231,989 per mile.

²⁰ See, RLBA work paper "VS_000320.xlsx" at tab "NLV per mile."

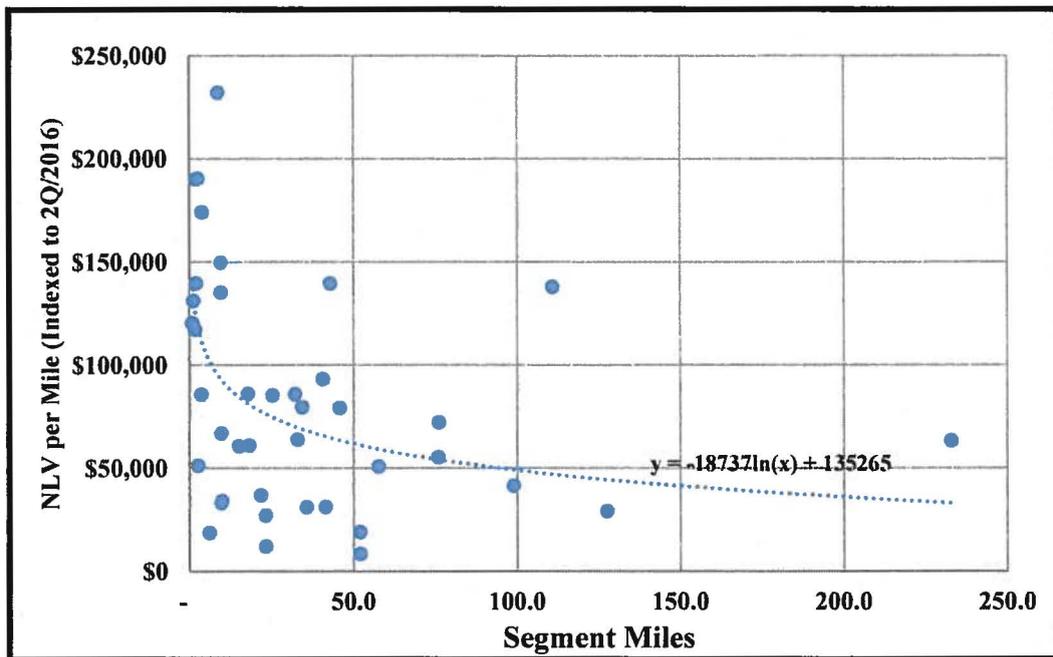
²¹ The NLV figures included in RLBA's analysis have nominal values ranging from \$ to \$ million per mile, but they are pulled from STB proceedings decided between 1997 and 2015. All of the NLV figures are restated at 3Q/2016 levels using the Rail Cost Adjustment Factor (Adjusted for Productivity) ("RCAF-A") index before conducting the regression analysis.

PUBLIC VERSION

Figure 15 below plots the 40 rail segments with segment miles across the X-axis and NLV per mile along the Y-axis. The figure below also shows the logarithmic trend line associated with the plotted data points.

Figure 15

NLV Per Mile vs. Length of Segment



As shown in Figure 15 1 above, NLV per mile goes down as segment miles increase. This is logical and easily explainable. When long segments of rail are abandoned/retired, the market is flooded with materials. This predictably results in relatively low prices for the salvaged materials.

Figure 16 below shows the result of applying the logarithmic regression function developed from the observations plotted above to the miles of the Towner Line segment, and compares the resulting NLV per mile estimate to the 2016 estimate developed by RLBA and my opening NLV.

PUBLIC VERSION

Figure 16

Comparison of NLV Per Mile Estimates

Witness	Miles	NLV per Mile		Absolute Value Difference
		Included in Witness' Analysis	Based on Logarithmic Regression	
(1)	(2)	(3)	(4)	(5)
GWF	134.10	\$19,348	\$43,480	\$24,132
RLBA				

As shown in Table Figure 16 above, my opening NLV calculation was much closer aligned with the trend observed from the public data included in RLBA’s work papers. My revised NLV is actually higher than the NLV per mile when analyzed on a per mile basis, which is consistent with my conservative approach.

RLBA also tries to justify its huge NLV for the Towner Line by first, criticizing the methodologies used for those NLVs and second, “updating” the market pricing data to be applied. RLBA’s attempt to diminish the credibility of the past NLVs because they were not “designed to be filed with the STB,” should be rejected. (RLBA Joint V.S. page 70). These so-called “back of the envelope” valuations served important purposes, including establishing the value of the line when it was sold to the State of Colorado in 1998 and then subsequently sold to V&S in 2005. As for RLBA’s attempt to inflate the prior NLVs by applying updated market prices, this exercise suffers from the same flaws as RLBA’s most recent analysis: applying grossly overstated market prices for relay rail, reroll and scrap.

PUBLIC VERSION

Conclusion

As shown in Figure 2, I estimate that the NLV of the Towner Line effective September 2016 is **\$7,021,901**. As indicated herein, this NLV is very conservative and therefore likely overstates the actual NLV of the Towner Line. This updated and revised NLV determination is higher than my initial NLV estimate of \$2,594,551 for several reasons:

- I applied as revised value for relay rail of \$480.00 per ton which was based on the study prepared by Witnesses Crowley and Fapp. (\$450.00 per ton was used in my opening statement);
- I utilized an updated (September 9, 2016) AMM value for rerolling rail at Chicago of \$225.00 per net ton (\$169.64 per ton was used in my opening statement);
- I utilized an updated (September 9, 2016) AMM values for scrap metal (#1 HMS) at Chicago of \$178.57 per net ton (\$133.93 per ton was used in my opening statement);
- I categorized the older and lighter rail 112 lb. and 115 lb. rail as reroll rather than scrap quality (i.e., \$225.00 per ton versus \$133.93 per ton used in my opening verified statement); and
- I accepted the 2014 and 2015 relay, landscape and scrap tie percentages utilized in the 2014 and 2015 RLBA Reports, which results in more ties being valued as relay and landscape ties.

Verification

I, Gerald W. Fauth III, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed September 26, 2016



Gerald W. Fauth III

**NET LIQUIDATION VALUE OF THE TOWNER LINE
(September 2016)**

NLV	
Item	Value
Relay #1 Rail GSV	\$2,616,752
Relay #2 Rail GSV	\$0
Reroll Rail GSV	\$4,929,685
<u>Scrap Rail GSV</u>	<u>\$137,383</u>
Total Rail GSV	\$7,683,820
Relay OTM	\$3,046,299
<u>Scrap OTM</u>	<u>\$1,796,213</u>
Total OTM	\$4,842,511
Relay Turnouts	\$84,000
<u>Scrap Turnouts</u>	<u>\$21,652</u>
Total Turnouts	\$105,652
Relay Ties	\$265,720
Landscape #1 Ties	\$929,904
Landscape #2 Ties	\$607,868
<u>Scrap Ties</u>	<u>(\$319,240)</u>
Total Ties	\$1,484,252
Total Gross Salvage Value	\$14,116,235
Total Track & OTM Removal Cost	\$2,117,240
Total Tie Removal Cost	\$874,631
Total Restoration Cost	\$131,600
Total Administrative & Marketing Cost	\$1,837,903
<u>Total Transportation Costs</u>	<u>\$2,132,960</u>
Total Liquidation Costs	\$7,094,334
Net Liquidation Value	\$7,021,901

NET LIQUIDATION VALUE OF THE TOWNER LINE
(September 2016)

RAIL GSV								
Rail	Type	Condition	Miles	Tons/Mile	Tons	Percent	Unit Value	Value
136	CWR	Relay #1	23.5	239.36	5,620.17	97%	\$480.00	\$2,616,752
136	CWR	Relay #2	0.0	239.36	0.00	97%	\$0.00	\$0
136	CWR	Reroll	28.4	239.36	6,785.86	97%	\$225.00	\$1,481,013
<u>136</u>	<u>CWR</u>	<u>Scrap</u>	<u>0.0</u>	<u>239.36</u>	<u>0.00</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$0</u>
136	CWR	Total	51.8		12,406.03		\$330.30	\$4,097,766
136	Jointed	Relay #1	0.0	239.36	0.00	97%	\$0.00	\$0
136	Jointed	Relay #2	0.0	239.36	0.00	97%	\$0.00	\$0
136	Jointed	Reroll	0.2	239.36	45.48	97%	\$225.00	\$9,926
<u>136</u>	<u>Jointed</u>	<u>Scrap</u>	<u>1.1</u>	<u>239.36</u>	<u>263.30</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$45,606</u>
136	Jointed	Total	1.3		308.77		\$179.85	\$55,532
133	CWR	Relay #1	0.0	234.08	0.00	97%	\$0.00	\$0
133	CWR	Relay #2	0.0	234.08	0.00	97%	\$0.00	\$0
133	CWR	Reroll	0.3	234.08	72.56	97%	\$225.00	\$15,837
<u>133</u>	<u>CWR</u>	<u>Scrap</u>	<u>0.0</u>	<u>234.08</u>	<u>0.00</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$0</u>
133	CWR	Total	0.3		72.56		\$218.25	\$15,837
132	CWR	Relay #1	0.0	232.32	0.00	97%	\$0.00	\$0
132	CWR	Relay #2 (#3)	0.0	232.32	0.00	97%	\$0.00	\$0
132	CWR	Reroll	1.5	232.32	348.48	97%	\$225.00	\$76,056
<u>132</u>	<u>CWR</u>	<u>Scrap</u>	<u>0.0</u>	<u>232.32</u>	<u>0.00</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$0</u>
132	CWR	Total	1.5		348.48		\$218.25	\$76,056
115	CWR	Relay #1	0.0	202.40	0.00	97%	\$0.00	\$0
115	CWR	Relay #2	0.0	202.40	0.00	97%	\$0.00	\$0
115	CWR	Reroll	2.2	202.40	439.21	97%	\$225.00	\$95,857
<u>115</u>	<u>CWR</u>	<u>Scrap</u>	<u>0.0</u>	<u>202.40</u>	<u>0.00</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$0</u>
115	CWR	Total	2.2		439.21		\$218.25	\$95,857
115	Jointed	Relay #1	0.0	202.40	0.00	97%	\$0.00	\$0
115	Jointed	Relay #2	0.0	202.40	0.00	97%	\$0.00	\$0
115	Jointed	Reroll	53.0	202.40	10,721.13	97%	\$225.00	\$2,339,886
<u>115</u>	<u>Jointed</u>	<u>Scrap</u>	<u>0.0</u>	<u>202.40</u>	<u>0.00</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$0</u>
115	Jointed	Total	53.0		10,721.13		\$218.25	\$2,339,886
113	CWR	Relay #1	0.0	198.88	0.00	97%	\$0.00	\$0
113	CWR	Relay #2	0.0	198.88	0.00	97%	\$0.00	\$0
113	CWR	Reroll	3.1	198.88	624.48	97%	\$225.00	\$136,293
<u>113</u>	<u>CWR</u>	<u>Scrap</u>	<u>0.0</u>	<u>198.88</u>	<u>0.00</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$0</u>
113	CWR	Total	3.1		624.48		\$218.25	\$136,293
112	Jointed	Relay #1	0.0	197.12	0.00	97%	\$0.00	\$0
112	Jointed	Relay #2 (#3)	0.0	197.12	0.00	97%	\$0.00	\$0
112	Jointed	Reroll	18.0	197.12	3,550.13	97%	\$225.00	\$774,816
<u>112</u>	<u>Jointed</u>	<u>Scrap</u>	<u>0.0</u>	<u>197.12</u>	<u>0.00</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$0</u>
112	Jointed	Total	18.0		3,550.13		\$218.25	\$774,816
90	Jointed	Relay #1	0.0	158.40	0.00	97%	\$0.00	\$0
90	Jointed	Relay #2	0.0	158.40	0.00	97%	\$0.00	\$0
90	Jointed	Reroll	0.0	158.40	0.00	97%	\$225.00	\$0
<u>90</u>	<u>Jointed</u>	<u>Scrap</u>	<u>2.8</u>	<u>158.40</u>	<u>435.60</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$75,452</u>
90	Jointed	Total	2.8		435.60		\$173.21	\$75,452
85	Jointed	Relay #1	0.0	149.60	0.00	97%	\$0.00	\$0
85	Jointed	Relay #2	0.0	149.60	0.00	97%	\$0.00	\$0
85	Jointed	Reroll	0.0	149.60	0.00	97%	\$225.00	\$0
<u>85</u>	<u>Jointed</u>	<u>Scrap</u>	<u>0.6</u>	<u>149.60</u>	<u>94.25</u>	<u>97%</u>	<u>\$178.57</u>	<u>\$16,325</u>
85	Jointed	Total	0.6		94.25		\$173.21	\$16,325
Total		Relay #1	23.5		5,620.17		\$465.60	\$2,616,752
Total		Relay #2	0.0		0.00		\$0.00	\$0
Total		Reroll	106.6		22,587.33		\$218.25	\$4,929,685
<u>Total</u>		<u>Scrap</u>	<u>4.5</u>		<u>793.14</u>		<u>\$173.21</u>	<u>\$137,383</u>
Total		Total	134.6		29,000.65		\$264.95	\$7,683,820

**NET LIQUIDATION VALUE OF THE TOWNER LINE
(September 2016)**

TRACK & OTM REMOVAL COST	
Item	Value
Relay Rail Miles	23.48
Relay Track & OTM Removal Cost Per Mile	\$16,000
Relay Track & OTM Removal Cost Per Mile	\$375,680
Scrap Rail Miles	111.12
Scrap Track & OTM Removal Cost Per Mile	\$15,500
Scrap Track & OTM Removal Cost Per Mile	\$1,722,360
Relay Turnouts	14
Relay Turnout Removal Cost Per Turnout	\$800
Relay Turnout Removal Cost	\$11,200
Scrap Turnouts	16
Scrap Turnout Removal Cost Per Turnout	\$500
Scrap Turnout Removal Cost	\$8,000
Total Track & OTM Removal Cost	\$2,117,240

RESTORATION COST	
Item	Value
Public Crossings	64
Public Crossing Restoration Cost Per Crossing	\$2,000
Public Crossing Restoration Cost	\$128,000
Private Crossings	12
Private Crossing Restoration Cost Per Crossing	\$300
Private Crossing Restoration Cost	\$3,600
Total Crossing Restoration Cost	\$131,600

ADMINISTRATIVE & MARKETING COST	
Item	Value
Total Relay Rail GSV	\$2,616,752
Total Relay OTM GSV	\$3,046,299
Total Relay Turnouts GSV	\$84,000
Total Relay Steel Materials	\$5,747,051
Admin. & Marketing Relay Steel Cost %	20%
Total Admin. & Marketing Relay Cost	\$1,149,410
Total Reroll & Scrap Rail GSV	\$5,067,067
Total Scrap OTM GSV	\$1,796,213
Total Scrap Turnouts GSV	\$21,652
Total Ties GSV	\$0
Total Non-Relay Steel Materials	\$6,884,932
Admin. & Marketing Scrap Cost %	10%
Total Admin. & Marketing Scrap Cost	\$688,493.16
Total Administrative & Marketing Cost	\$1,837,903

**NET LIQUIDATION VALUE OF THE TOWNER LINE
(September 2016)**

TRANSPORTATION COST	
Item	Value
Relay Rail Tons (97%)	5,452
Relay Rail Tons Per Car	100
Relay Rail Carloads	54.52
Reroll Rail Tons (97%)	21,910
Reroll Rail Tons Per Car	100
Reroll Rail Carloads	219.10
Scrap Rail Tons (97%)	769
Scrap Rail Tons Per Car	100
Scrap Rail Carloads	7.69
Relay Tie Plates Tons (97%)	5,802
Relay Joint Bars Tons (97%)	0
Relay Anchors Tons (97%)	202
Relay Spike Tons	0
Relay Bolts & Washers Tons	0
Relay Turnouts Tons	<u>112</u>
Relay OTM and Tunouts Tons	6,116
Relay OTM and Tunouts Carloads	61.16
Scrap Tie Plates Tons (97%)	8,416
Scrap Joint Bars Tons (97%)	770
Scrap Anchors Tons (80%)	242
Scrap Spike Tons (80%)	545
Scrap Bolts & Washers Tons (80%)	86
<u>Scrap Turnouts Tons</u>	<u>125</u>
Scrap OTM and Tunouts Tons	10,184
Scrap OTM and Tunouts Carloads	101.84
Relay & Reroll Cars to Chicago	335
Estimated Shipping Cost to Chicago	\$5,776
Relay & Reroll Transportation Cost	\$1,934,960
Scrap Cars to Pueblo	110
Estimated Shipping Cost to Pueblo	\$1,800
Scrap Transportation Cost	\$198,000
Transportation Cost	\$2,132,960

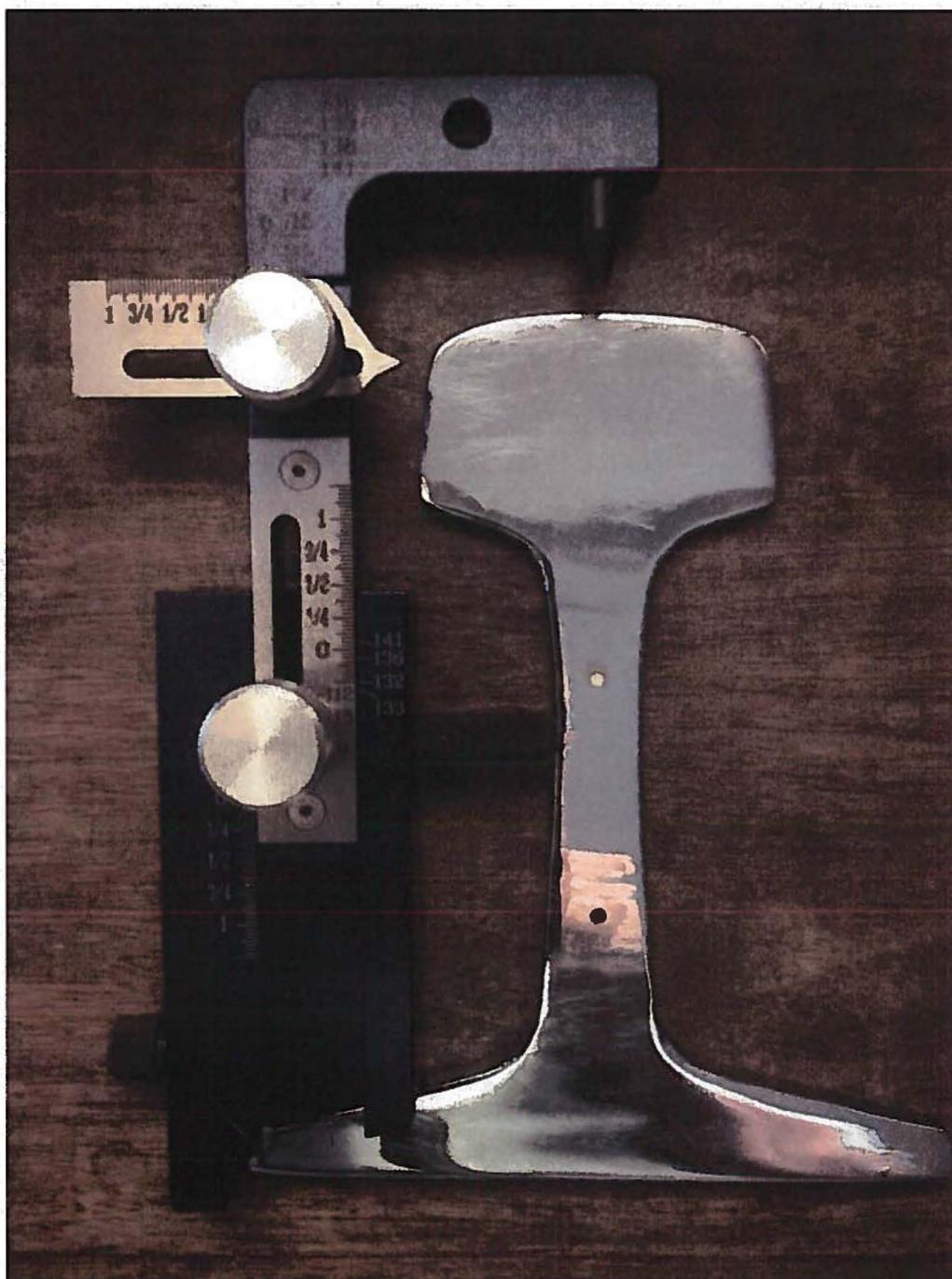


EXHIBIT F

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36005

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**KCVN, LLC and Colorado Pacific
Railroad, LLC – Feeder Line Application
– Line of V and S Railway, Located in
Crowley, Pueblo, Otero and Kiowa
Counties, Colorado**

Reply
Verified Statement

of

Thomas D. Crowley
President

and

Daniel L. Fapp
Vice President

L. E. Peabody & Associates, Inc.
On Behalf Of

KCVN, LLC
And Colorado Pacific Railroad, LLC

Due Date: September 27, 2016

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Exhibit Title</u>
(1)	(2)
1	Thomas D. Crowley Qualifications
2	Daniel L. Fapp Qualifications
3	Companies L. E. Peabody & Associates, Inc. Contacted for Quotes
4	Relay and Scrap Rail Selling Price Comparison
5	Relay and Scrap Rail RLBA Compared to Purchase Prices

I. INTRODUCTION

We are Thomas D. Crowley and Daniel L. Fapp. We are economists and President and Vice President, respectively, of L. E. Peabody & Associates, Inc., an economic consulting Firm that specializes in solving economic, transportation, marketing, financial, accounting and fuel supply problems. Mr. Crowley has spent most of his consulting career of over forty (40) years evaluating fuel supply issues and railroad operations, including railroad costs, prices, financing, capacity and equipment planning issues. His assignments in these matters were commissioned by railroads, producers, shippers of different commodities, and government departments and agencies. A copy of Mr. Crowley's credentials is included as Exhibit No. 1 to this reply verified statement ("RVS").

Mr. Fapp has been with L. E. Peabody & Associates, Inc. since 1997. During this time, he has worked on numerous projects dealing with railroad revenue, operational, economic and financial issues. Prior to joining L. E. Peabody & Associates, Inc., Mr. Fapp was employed by BHP Copper Inc. in the role of Transportation Manager - Finance and Administration, where he also served as an officer of the three BHP Copper Inc. subsidiary common carrier railroads. A copy of Mr. Fapp's credentials is included as Exhibit No. 2 to this RVS.

We have been asked by KCVN, LLC and its wholly owned subsidiary, Colorado Pacific Railroad, LLC ("KCVN/CPRR") to address the unit price calculations for track infrastructure assets included in the Track Asset Valuation performed by R. L. Banks & Associates, Inc. ("RLBA") as part of a Net Liquidation Value ("NLV") analysis of the V and S Railway's rail line between Towner Junction, CO and NA Junction, CO. included in the comments of V and S Railway, LLC ("V&S") filed in this proceeding on August 30, 2016.

Our statement does not analyze RLBA's classification of the various types of rail and other assets that make up the Towner Line.

We identified three (3) issues with the unit prices used by RLBA, based on our review of RLBA's verified statement,¹ accompanying exhibits and work papers. First, the unit prices used by RLBA either came from prices supplied A&K Railway Railroad Materials ("A&K"), the current owner of the V&S, or from anonymous rail asset suppliers, and are therefore, either partial or unverifiable. Second, the rail asset unit prices RLBA used in its analysis are substantially higher than recently obtained prices from suppliers other than A&K. Third, the market for rail products and the steel market, in general, currently face supply gluts that put downward pressure on prices for relay and scrap rail and other track materials ("OTM").

The results of our review are summarized in the remainder of this RVS and accompanying Exhibits. Specifically, our comments are organized under the following topical headings:

- II. RLBA's Reliance on Partial or Unverifiable Unit Prices
- III. RLBA's Unit Prices are Higher than Current Market Prices
- IV. Oversupply in the Steel and Rail Products Markets
- V. Conclusion

¹ Included as Exhibit F-1 in Volume II of II to V&S Comments.

**II. RLBA'S RELIANCE ON PARTIAL OR
UNVERIFIABLE UNIT PRICES**

Parties presenting evidence before the Surface Transportation Board ("STB") must support their evidence with verifiable data, up to and including identifying the sources of the information relied upon. In large, maximum rate case proceedings, for example, the STB requires that "[parties] must provide appropriate documentation to support their estimates."² Similarly, parties contesting rates under the STB's simplified standards must meet the same burden "[parties must provide] all work papers and documentation necessary to support [their] calculations."³

The same standard of support also holds true in abandonment cases before the STB. The Code of Federal Regulations ("CFR") requires carriers attempting to abandon a rail line to provide supported and verifiable data when filing for abandonment under exemption.

In an exemption proceeding, the data to be provided must at a minimum include the carrier's estimate of the net liquidation value of the line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in a line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use), and, if an offer of subsidy is contemplated, an estimate of the cost of rehabilitating the line to Federal Railroad Administration class 1 Safety Standards (49 CFR part 213).⁴

The strength of a parties' evidence is dependent on the veracity of the data upon which the evidence is based.

As Mr. Gerald W. Fauth III states in his reply verified statement accompanying KCVN/CPRR's Reply to the Comments of V&S Railway, LLC on their feeder line application, RLBA has not provided any legitimate support for the relay rail and OTM unit prices used in its

² See, e.g., Ex Parte No. 657 (Sub-No. 1), *Major Issues In Rail Rate Cases*, served October 30, 2006, at page 8.

³ See, Ex Parte No. 646 (Sub-No. 1), *Simplified Standards For Rate Cases*, served September 5, 2007, at page 26.

⁴ See, 49 CFR 1152.27.

NLV calculation. RLBA states that it obtained unit price information for relay rail and OTM used in its NLV calculation from A&K, and subsequently confirmed the validity of A&K's prices by contacting anonymous vendors of new and used track materials.⁵ However, the only two pricing sources identified in work papers⁶ provided by RLBA in support of its analysis are A&K and Lee Meadows ("LM"), the Director of Transportation Engineering for RLBA who conducted the physical inspection of the Towner Line. This raises serious questions about the validity of RLBA's analysis.

Specifically, RLBA relied upon pricing data provided by A&K that was allegedly produced in the normal course of business. A&K is a major supplier within the rail materials industry, and would normally be seen as qualified to provide pricing information for rail and OTM. However, as the current owner of the Towner Line, A&K stands to benefit significantly from a high NLV calculation for the issue rail line. Therefore, A&K cannot be viewed as an unbiased source of pricing data.

RLBA's use of anonymous and internal sources to nominally verify A&K's prices does not validate the partial pricing data used. The STB's adversarial proceedings rely upon each party to verify the other's data. Without knowing the companies contacted and procedures followed which RLBA used to verify the A&K's prices, it is not possible to independently verify the prices.

⁵ See, RLBA VS at pages 16-17.

⁶ The work papers provided by RLBA appear to be incomplete. Specifically, the provided work papers include links to two excel spreadsheets that were not provided ("Lee's NLV Original.xlsx" linked at tab "CURRENT PRICES (MASTER)" of RLBA work paper "VS_000316.xlsx" and "Shortline CapEx Data.xlsx" linked at tab "Chart" of RLBA work paper "VS_000319.xlsx"). In addition, RLBA's work papers do not include the NLV and GLV calculations that were included in RLBA's VS. The Towner Line NLV table provided in RLBA's work papers at tab "NLV" of RLBA work paper "VS_000296.xlsx" contains values that do not match the values found in Appendix One of RLBA's VS.

Furthermore, RLBA's prices include unverified and improperly applied adjustments to the A&K price sheet upon which they are ostensibly based. Specifically, the A&K price sheet lists prices for four separate classes of 136 lb. rail.⁷ The most expensive category is identified as "136#, 38' & 39' and priced at {{ }} per net ton.⁸ RLBA claims to have applied a {{ }} CWR premium to develop its {{ }} per net ton price for category "Rail 136 pound per yard, CWR, Fit #1".⁹ The only support for this adjustment is the following note: "{{

}}".¹⁰ No detail was provided for the referenced {{ }} sale comp.

In addition, RLBA misapplied the pricing discounts specified in page 2 of the A&K price sheet included in its work papers. The page 2 instructions include the following statement: "Rail graded as #2 sold at a {{ }}"¹¹ RLBA applied the discount to its adjusted {{ }} per net ton CWR price rather than the {{ }} per net ton price listed in the A&K price sheet. Second, RLBA's discounted price does not reflect the required adjustment. A {{ }} discount applied to a price of {{ }} would result in a price of {{ }}, and a {{ }} discount applied to the list price of {{ }} would result in a price of {{ }}, but RLBA applied a price of {{ }} for Fit #2 rail.¹² Similarly, a {{ }} discount applied to a price of {{ }} would result in a price of {{ }}, and a {{ }} discount applied to the list price of {{ }} would result in a price of {{ }}, but RLBA applied a price of {{ }} for Fit #3 rail.¹³

⁷ See, tab "AK Relay Rail Price Sheet" of RLBA work paper "VS_000316.xlsx" at lines 54-57.

⁸ *Id.*, line 57.

⁹ See, tab "CURRENT PRICES (MASTER)" of RLBA work paper "VS_000316.xlsx" at line 2.

¹⁰ *Id.*

¹¹ See, tab "AK Relay Rail Price Sheet" of RLBA work paper "VS_000316.xlsx", page 2.

¹² See, tab "CURRENT PRICES (MASTER)" of RLBA work paper "VS_000316.xlsx" at lines 3 and 6.

¹³ *Id.*, line 7.

III. RLBA'S UNIT PRICES ARE HIGHER THAN CURRENT MARKET PRICES

The A&K- provided prices used by RLBA range between {{ }} and {{ }} per ton for relay quality rail, depending upon the rail weight and structure, {{ }} per ton for reroll quality rail and {{ }} per ton for scrap rail.¹⁴ Although it is not explicitly stated in RLBA's testimony, the prices used by RLBA appear to reflect selling prices rail customers pay for these materials and not the purchase price a company would pay to acquire the product from a rail line liquidation.¹⁵

There is a distinct difference between prices a company will pay for acquiring a product and the prices a seller will seek in selling the product. RLBA attempts to account for this difference by deducting 13 percent from the gross liquidated value ("GLV") of the line to account for what it terms administration and marketing expenses.¹⁶ However, RLBA does not indicate what specific cost items are included in its assumed administration and marketing expenses, so it is not possible to determine if the deduction includes all administrative and marketing costs. For example, we cannot tell if the administrative costs include costs for insurance coverage, executive salaries, or general overheads. We also cannot tell if the administrative costs include costs for preparing and inventorying product before it can be sold. These are all items a seller of products must take into consideration in making pricing decisions.

Moreover, RLBA states that the 13 percent reduction applied to its GLV calculation is below the 15 percent reduction it customarily uses in NLV calculations because it presumes

¹⁴ See, RLBA VS at page 18, Table 2.

¹⁵ See, RLBA Exhibit F-2, Appendix 10 indicating {{
}}.

¹⁶ See, RLBA Exhibit F-2, Appendix One of Appendix 6.

A&K could sell the materials more efficiently and at a lower cost than other vendors.¹⁷ However, RLBA has not shown in any way that A&K would be more efficient than the other major vendors in the used rail market in disposing of the assets, so the two (2) percent haircut RLBA gave is unsupported.

To test RLBA's unit prices for relay and scrap rail and OTM, we contacted a number of different rail material merchants and suppliers to obtain current purchasing and selling prices for rail and OTM. We also performed detailed market research to see what, if any, pricing information was available. A list of the companies we contacted and the companies that post publicly available prices are included as Exhibit No. 3 to this RVS.

As RLBA indicated,¹⁸ the railroad materials market is competitive and participants are sometimes reluctant to provide prices. {{
}}.¹⁹ However, even with these limitations, we were able to obtain current market prices from reputable vendors for many of the rail and OTM items included in RLBA's NLV analysis.

For relay rail, we obtained current market prices either from publicly available quotes or from conversations with vendors for seven (7) different weights and grade of rail. The price data we collected are shown in Exhibit No. 4 to this RVS and summarized for Fit No. 1 rail in three (3) weights in Table 1 below. Table 1 also includes RLBA prices for comparative purposes.

¹⁷ See, RLBA Exhibit F-2, Appendix 6 at page 10.

¹⁸ See, RLBA VS at page 17, note 6.

¹⁹ See, RLBA Exhibit F-2, Appendix 10.

Table 1
Current Relay Rail Selling Prices Per Ton 1/

Company (1)	136# CWR Fit No. 1 (2)	133# CWR Fit No. 1 (3)	115# CWR Fit No. 1 (4)
1. RLBA (selling)	{{ }}}	{{ }}}	{{ }}}
2. Nevada Railroad Materials (selling)	2/	\$625	2/
3. Rail Iron (selling)	\$385	2/	\$560
4. Omaha Track (selling)	\$575	2/	2/

1/ Source: Exhibit No. 4.

2/ No price provided.

As shown in Table 1 (Line 1) above, the selling prices RLBA used in its pricing analysis are significantly higher than prices we received from other vendors. In the case of 136 pound, CWR, Fit No. 1 relay rail, RLBA indicates the current market selling price is {{ }} per ton. However, Rail Iron indicates it is currently selling the same weight and grade of rail for \$385 per ton, or {{ }} percent less. RLBA estimated a selling price of {{ }} per ton for 133 pound, CWR, Fit No. 1 relay rail, but Nevada Railroad Materials indicated its price is only \$625 per ton, or {{ }} percent lower. For 115 pound, CWR, Fit No. 1, RLBA estimates a selling price of {{ }} per ton, but Rail Iron posts a selling price of \$560 per ton, or {{ }} percent lower than RLBA's prices.

We also sought the prices purchasers of rail and scrap rail and OTM are paying for materials obtained from an abandoned rail line in today's market place. We believe the purchasers' prices provide a better estimate of the true value of the assets being disposed of because they indicate what a purchaser would be willing to pay for the assets instead of attempting to discern the value through the use of adjusted selling prices. We interviewed two

(2) different vendors that provided the prices they would currently pay for some, or all of the Towner Line assets. First, Harmer Steel²⁰ provided the current prices it would be willing to pay for most grades of relay rail and OTM included in RLBA's NLV analysis. As shown in Exhibit No. 5 to this RVS, and summarized in Table 2 below, Harmer's purchase prices are significantly less than the selling prices used by RLBA.²¹

Company (1)	136# CWR Fit No. 1 (2)	133# CWR Fit No. 1 (3)	115# CWR Fit No. 1 (4)	Scrap (5)
1. RLBA (selling)	{{ }}}	{{ }}}	{{ }}}	{{ }}}
2. Harmer (purchase)	\$240	\$260	\$330	2/
3. EVRAZ (purchase)	2/	2/	2/	\$127

1/ Source: Exhibit No. 5.
2/ No price provided.

As shown in Table 2 above, Harmer Steel's September 2016 purchase prices for rail and OTM are significantly below RLBA's assumed selling prices.²² For the single largest category of relay rail included in RLBA's analysis—136 pound CWR Fit #1—Harmer Steel's purchase price (\$240 per ton) is less than {{ }} of the prices provided by A&K and used by RLBA ({{ }} per ton.)

²⁰ Harmer Steel is one of North America's leading rail products suppliers, with offices throughout the United States and in Canada. More information on Harmer Steel can be found at <http://harmersteel.com/>.

²¹ In addition to the purchase prices provided by Harmer Steel, we received additional purchase price information from North American Rail Products just before the filing date of this statement. North American Rail Products' purchase prices (included in our work papers at "Peabody...Track Material Unit Price Quote CO.xlsx") were lower than Harmer Steel's purchase prices for all three classes of track shown in Table 2. Therefore, the Table 2 purchase prices represent the high end of the market based on our research and evaluation.

²² In several instances, Harmer Steel provided prices for certain weights and grades of rail below current salvage prices. This was due to the company currently having enough of this type of rail in inventory, and not seeking additional volume of this type of product.

In addition to Harmer Steel, we obtained the current purchase price of scrap rail from EVRAZ Rocky Mountain Steel (“EVRAZ”). Conversations with EVRAZ’s scrap purchasing manager indicated the company is paying \$100 to \$127 per ton for pre-sized scrap rail as of September 2016.²³ In comparison, RLBA assumed a scrap rail and OTM selling price of {{ }} per ton based on current scrap prices being reported in the Chicago market. This price differential, between the assumed scrap price in RLBA’s NLV analysis, which is roughly {{ }} EVRAZ’s quoted price, is particularly significant because RLBA’s analysis specifically presumes that all scrap and reroll rail will be shipped to EVRAZ’s Pueblo Mill for reuse. RLBA took this approach because of the claimed reduction in transportation costs between transporting scrap rail to Pueblo, CO instead of to Chicago, IL. While this may be an acceptable solution, RLBA must use consistent assumptions between pricing and location. RLBA has assumed that it could receive Chicago scrap prices in the Pueblo, CO market. This is clearly not the case based on the price EVRAZ indicated it was willing to pay. RLBA’s assumption that Chicago market prices apply to all regions is erroneous and significantly overstates the Towner Line’s NLV.

²³ As discussed below, the \$127 per ton is the current maximum EVRAZ would pay for scrap steel. It would pay less if the scrap is received in a non-conforming manner.

IV. OVERSUPPLY IN THE STEEL AND RAIL PRODUCTS MARKETS

Asian steel production has continued at a high level despite slow global economic growth. Steel producers in the U.S. and abroad have curtailed production because the market is flooded with low-priced Chinese steel.²⁴ As a result, pricing is depressed for both scrap and relay grade rail.

A. PRICING IS DEPRESSED FOR SCRAP RAIL

The laws of supply and demand have resulted in prices for all finished steel products being low. Scrap steel is an input to the steel recycling process. As finished steel prices have dropped, input prices have dropped accordingly. Moreover, because production has been reduced and facilities have been shuttered, demand has been reduced even further (there is a shortage of scrap buyers.)

1. RLBA's Assumptions Regarding a Colorado Scrap Steel Merchant Are Not Valid

RLBA assumes that EVRAZ, a steel mill located in Pueblo, CO, would be willing and able to take the scrap rail and OTM from a Towner Line abandonment, and that EVRAZ would pay scrap and reroll prices based on the Chicago market.

We researched the EVRAZ mill in Pueblo, including calling and speaking with their scrap materials manager. EVRAZ indicated that the mill will be down in October 2016 for a few weeks, which will limit capacity in the short term, but normally the mill has enough capacity to

²⁴ Since 2012, the global economy has been experiencing average growth rates of less than three (3) percent. As a result, demand for steel has weakened. Despite the procyclical nature of the global steel market, some nations, most notably China, are producing large amounts of steel, thereby driving down the price." See: <http://www.heritage.org/research/reports/2016/09/the-us-steel-market-needs-free-trade-not-favoritism>.

handle 2,400 tons of scrap rail within a month of notice. EVRAZ reports that it could take anywhere from 2,000 to 10,000 tons per month assuming the seller entered into a monthly contract, depending on the mill production schedule. If a significant portion of the rail on the Towner Line were to be scrapped, it would take several months to process all of it. EVRAZ estimates five months to accept and process 25,000 tons.

In addition, EVRAZ stated that the scrap price is dependent on the way the material is received. Specifically, prepared scrap rail (rail received in sections of less than four (4) feet) is optimal and is priced higher than scrap rail received in longer sections. EVRAZ reports currently paying between \$100 per ton (without a monthly contract) and \$127 per ton (with a contract) for prepared rail as of September 2016. Scrap rail received in sections longer than four (4) feet are discounted and must be cut to length by a contractor on site. The price difference between prepared rail and unprepared rail (four (4) foot and longer sections) is currently between \$20 and \$30 per ton as of September 2016. EVRAZ also stated that the scrap market is in decline and expects prices to continue to fall another \$10 to \$20 per ton through December 2016, before stabilizing.

Even assuming RLBA's classification of rail as relay vs. scrap is correct, RLBA overstated the market value of the scrap rail by at least {{ }} percent because it used an inflated scrap steel unit price of {{ }} per ton.²⁵

²⁵ RLBA Table 8 -- Comparison of Heimer and Meadows Gross Liquidation Value.

**B. PRICING IS DEPRESSED FOR
RELAY RAIL**

Due to the steel market supply glut, prices for all finished steel products—including new rail and OTM—are low. Low pricing on new rail applies downward pressure on pricing for relay rail.

In addition to the general steel market supply glut, there is also a glut in the relay rail market. According to the companies we interviewed, there are more sellers than buyers in the relay market.

An executive at Harmer Steel indicated that relay rail prices are lower than what he has seen in the past and have dropped in the last year. This same executive indicated that his company is not aggressively pursuing purchasing opportunities at this time.

We obtained pricing data from this executive and compared them to the prices in RLBA's NLV calculation. As shown in Section III above, even assuming RLBA properly categorized the rail by grade, its relay rail price estimate of {{ }} per ton²⁶ is overstated by as much as {{ }} percent based on current market prices. Furthermore, introducing over 25,000 tons of relay rail into the already saturated market would send market prices even lower. If the Towner Line were abandoned in this market, it would be a significant challenge to find buyers for over 25,000 tons of relay rail recovered from the site.

²⁶ RLBA Table 8 -- Comparison of Heimer and Meadows Gross Liquidation Value.

V. CONCLUSION

The unit prices used by RLBA were provided by A&K, which has a vested interest in this proceeding, and they are not corroborated by any other independent sources in RLBA's testimony or work papers. Therefore, in our opinion, RLBA's NLV analysis is built on a shaky foundation.

Furthermore, there is currently a supply glut in the steel market (including the rail products segment) that has put downward pressure on prices for relay and scrap rail and OTM. The rail asset unit prices RLBA used in its analysis are substantially higher than current prices we obtained from market participants in developing this RVS. As a result, RLBA's estimate of the NLV of the Towner line is significantly overstated.

Companies L. E. Peabody & Associates, Inc. Contacted for Quotes

Company

(1)

1. Railroad Salvage & Restoration
2. Harmer Steel
3. Progress Rail
4. National Salvage & Service Corporation
5. LB Foster
6. Birmingham Rail @ Locomotive
7. Atlantic Track
8. Nevada Railroad Materials
9. Omaha Track
10. North American Rail Products
11. EVRAZ Rocky Mountain Steel

Publicly Available Pricing

1. Rail Iron

Relay and Scrap Rail Selling Price Comparison

Rail Weight and Grade (1)	Selling Price Per Net Ton			
	RLBA (2)	Nevada Railroad Materials 1/ (3)	Rail Iron 2/ (4)	Omaha Track 3/ (5)
1. Rail 136 pound per yard, CWR, Fit #1 78/80'	{{ }}	4/	\$385.00	\$575.00
2. Rail 136 pound per yard, CWR, Fit #2	{{ }}	4/	4/	4/
3. Rail 136 pound per yard, Jointed, Fit #2	{{ }}	4/	4/	4/
4. Rail 133 pound per yard, CWR, Fit #1	{{ }}	\$625.00	4/	4/
5. Rail 133 pound per yard, Arema Fit #2	4/	\$575.00	4/	4/
6. Rail 132 pound per yard, CWR, Fit #2	{{ }}	4/	4/	4/
7. Rail 132 pound per yard, CWR, Fit #3	{{ }}	4/	4/	4/
8. Rail 115 pound per yard, CWR, Fit #1 78/80'	{{ }}	4/	\$560.00	4/
9. Rail 115 pound per yard, Jointed, Fit #1	{{ }}	4/	4/	4/
10. Rail 115 pound per yard, Fit #2	4/	4/	\$560.00	4/
11. Rail 113 pound per yard, CWR, Fit #2	{{ }}	4/	4/	4/
12. Rail 112 pound per yard, Jointed, Fit #3	{{ }}	4/	4/	4/
13. Rail 112 pound per yard, Fit #2	4/	4/	\$535.00	4/
14. Rail 90 pound per yard, Arema Fit #1	4/	\$425.00	\$460.00	4/
15. Rail Reroll (Gross Ton)	{{ }}	4/	4/	4/
16. Rail Scrap (Gross Ton)	{{ }}	4/	4/	4/

1/ Nevada Railroad Materials: Truckload (24 tons), 133 lb AREMA Spec #1, in the midwest, \$625 per ton; Truckload (24 tons), 133 lb AREMA Spec #1, in the midwest, \$575 per ton; Truckload (24 tons), 90 lb AREMA Spect #1, in the midwest, \$425 per ton. In addition, our conversation with Shane Hunter on September 15, 2016 included other useful information: "markets change like crazy", "prices are good for 30 days", "price fluctuates based on where supply is located" and "\$50 is a good 'rule of thumb' for the difference between Fit #1 and Fit #2".

2/ Source: <http://railiron.com/> - "We currently have 7000 tons of various rail for sale." 75 tons of 112 - #2 relay \$535.00 per ton; Torch cut drilled rail in to 39' sections located in MO; 400 tons of #1 136 lb RE rail, Torch cut, located in MO. \$385 per ton; 24 tons of #141 lb rail. Located in MO - 40' sections; 325 tons of #1 90 lb rail, located in MO, 39' sections, drilled, \$460 per ton; 300 tons of 115 lb rail, \$560 per ton, located in MO; 350 tons of #1 115 lb rail, located in MO.

3/ Quote provided via email on September 20, 2016: "#1 136 market pricing on the west coast is around \$575 ton."

4/ Price not provided or published.

Relay and Scrap Rail RLBA Compared to Purchase Prices

Commodity (1)	RLBA Selling (2)	Purchase Price	
		Harmer Steel 1/ (3)	EVRAZ Rocky Mountain Steel (4)
A. Steel (Rail) (per net ton)			
1. Rail 136 pound per yard, CWR, Fit #1 78/80'	{{ }}	\$240.00	2/
2. Rail 136 pound per yard, CWR, Fit #2	{{ }}	\$32.00	2/
3. Rail 136 pound per yard, Jointed, Fit #2	{{ }}	\$32.00	2/
4. Rail 133 pound per yard, CWR, Fit #1	{{ }}	\$260.00	2/
5. Rail 133 pound per yard, Arema Fit #2	2/	2/	2/
6. Rail 132 pound per yard, CWR, Fit #2	{{ }}	\$32.00	2/
7. Rail 132 pound per yard, CWR, Fit #3	{{ }}	\$32.00	2/
8. Rail 115 pound per yard, CWR, Fit #1 78/80'	{{ }}	\$330.00	2/
9. Rail 115 pound per yard, Jointed, Fit #1	{{ }}	\$310.00	2/
10. Rail 115 pound per yard, Fit #2	2/	2/	2/
11. Rail 113 pound per yard, CWR, Fit #2	{{ }}	\$32.00	2/
12. Rail 112 pound per yard, Jointed, Fit #3	{{ }}	\$32.00	2/
13. Rail 112 pound per yard, Fit #2	2/	2/	2/
14. Rail 90 pound per yard, Arema Fit #1	2/	2/	2/
15. Rail Reroll (Gross Ton)	{{ }}	2/	2/
16. Rail Scrap (Gross Ton)	{{ }}	2/	\$127.00
B. Steel (OTM) (per unit)			
1. Scrap OTM (Gross Ton)	{{ }}	2/	2/
2. Tie Plates, D/S, 8" x 16" 6"	{{ }}	\$2.50	2/
3. Tie Plates, D/S, 8" x 14" 6"	{{ }}	\$3.25	2/
4. Tie Plates, D/S, 8" x 13" 6"	{{ }}	\$3.15	2/
5. Joint Bars, 136 pound per yard, Fit six hole	{{ }}	\$17.00	2/
6. Joint Bars, 133/132/131 pound per yard, Fit six hole	{{ }}	\$17.00	2/
7. Joint Bars, 119/112 pound per yard, Fit six hole	{{ }}	\$17.00	2/
8. Joint Bars, 115 pound per yard, Fit six hole	{{ }}	\$17.00	2/
9. Joint Bars, 90 pound per yard, Fit four hole	{{ }}	\$14.75	2/
10. Joint Bars, 85 pound per yard, Fit four hole 5x5x5	{{ }}	\$14.75	2/
11. Anchors, Fit 6"	{{ }}	\$0.14	2/
C. Timber - Ties (per unit)			
1. Relay 7x9x9' hardwood	{{ }}	\$17.00	2/
2. Landscape 7x9x9'	{{ }}	(\$5.00)	2/
3. Scrap 7x9x9'	{{ }}	(\$12.00)	2/
D. Turnouts			
1. Weight 136 #9 AREMA relay	{{ }}	\$2,800.00	2/
2. Weight 115 #9 AREMA relay	{{ }}	\$2,800.00	2/

1/ Source: Dave Lynn, Vice President/Division Manager at Harmer Steel, September 14, 2016. These "are typical prices that I would pay under current market conditions." Very low prices (\$32.00 per ton) due to Harmer not being in the market for this weight and grade of rail.

2/ Price not provided or published.

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 7 Horicon Avenue, Glens Falls, New York 12801.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of all commodities. As a result of my extensive economic consulting practice since 1971 and my participation in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers and the traffic they move over the major coal routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, cost of capital, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of traffic by rail.

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic

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problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with single car and multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of numerous commodities handled by rail.

I have frequently been called upon to develop and coordinate economic and operational studies relative to the rail transportation of various commodities. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments

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required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Railroad Administration, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level

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of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the *Staggers Rail Act of 1980*, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Chemistry Council, American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, the Chlorine Institute, Coal Exporters Association, Edison Electric Institute, the Fertilizer Institute, Mail Order Association of America, National Coal Association, National Grain and Feed Association, National Industrial Transportation League, North America Freight Car Association and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that

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existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al.* which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company.*

STATEMENT OF QUALIFICATIONS

My name is Daniel L. Fapp. I am Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, VA 22314; 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737; and 21 Founders Way, Queensbury, New York 85737.

I received a Bachelor of Science degree in Business Administration with an option in Marketing (cum laude) from the California State University, Northridge in 1987, and a Master of Business Administration degree from the University of Arizona's Eller College of Management in 1993, specializing in finance and operations management. I am also a member of Beta Gamma Sigma, the national honor society for collegiate schools of business.

I have been employed by L. E. Peabody & Associates, Inc. since December 1997. Prior to joining L. E. Peabody & Associates, Inc., I was employed by BHP Copper Inc. in the role of Transportation Manager - Finance and Administration, and where I also served as an officer and treasurer of the three BHP Copper Inc. subsidiary railroads, The San Manuel Arizona Railroad, the Magma Arizona Railroad (also known as the BHP Arizona Railroad) and the BHP Nevada Railroad. I have also held operations management positions with Arizona Lithographers in Tucson, AZ and MCA-Universal Studios in Universal City, CA.

While at BHP Copper Inc., I was responsible for all financial and administrative functions of the company's transportation group. I also directed the BHP Copper Inc. subsidiary railroads' cost and revenue accounting staff, and managed the San Manuel Arizona Railroad's and BHP Arizona Railroad's dispatchers and the railroad dispatching functions. I served on the company's Commercial and Transportation Management Team and the company's Railroad Acquisition Team where I was responsible for evaluating the acquisition of new railroads,

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including developing financial and economic assessment models. While with MCA-Universal Studios, I held several operations management positions, including Tour Operations Manager, where my duties included vehicle routing and scheduling, personnel scheduling, forecasting facilities utilization, and designing and performing queuing analyses.

As part of my work for L. E. Peabody & Associates, Inc., I have performed and directed numerous projects and analyses undertaken on behalf of utility companies, short line railroads, bulk shippers, and industry and trade associations. Examples of studies which I have participated in organizing and directing include, traffic, operational and cost analyses in connection with the rail movement of coal, metallic ores, pulp and paper products, and other commodities. I have also analyzed multiple car movements, unit train operations, divisions of through rail rates and switching operations throughout the United States. The nature of these studies enabled me to become familiar with the operating procedures utilized by railroads in the normal course of business.

Since 1997, I have participated in the development of cost of service analyses for the movement of coal over the major eastern and western coal-hauling railroads. I have conducted on-site studies of switching, detention and line-haul activities relating to the handling of coal. I have also participated in and managed several projects assisting short-line railroads. In these engagements, I assisted short-line railroads in their negotiations with connecting Class I carriers, performed railroad property and business evaluations, and worked on rail line abandonment projects.

I have been frequently called upon to perform financial analyses and assessments of Class I, Class II and Class III railroad companies. I have determined the Going Concern Value

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of privately held freight and passenger railroads, including developing company specific costs of debt and equity for use in discounting future company cash flows. My consulting assignments regularly involve working with and determining various facets of railroad financial issues, including cost of capital determinations. In these assignments, I have calculated railroad capital structures, market values, cost of railroad debt, cost of preferred railroad equity and common railroad equity. I am also well acquainted with and have used financial industry accepted models for determining a firm's cost of equity, including Discounted Cash Flow Model ("DCF") models, Capital Asset Pricing Model ("CAPM"), Fama-French Three Factor Model and Arbitrage Pricing Models. Based on these assignments, I have frequently spoken and provided guest lectures on developing divisional, corporate and industry costs of equity to undergraduate and graduate level classes.

In my tenure with L. E. Peabody & Associates, Inc., I have presented stand-alone cost evidence in numerous proceedings before the STB, and presented evidence in several STB Ex Parte proceedings, including proceedings addressing railroad fuel surcharges and railroad industry cost of capital. In addition, my reports on railroad valuations have been used as evidence before the Nevada State Tax Commission.

Public Version

CERTIFICATE OF SERVICE

I do hereby certify that on this 27th day of September, 2016, I have served copies of the Public and Highly Confidential Versions of the foregoing Reply to Comments of V AND S Railway, LLC by E-mail and First Class Mail on the following persons or entities:

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The Honorable Judge John P. Dring
Federal Energy Regulatory Commission
Office of Administrative Law Judges
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Washington, D.C. 20426

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