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E-FILE

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: 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

Dear Ms. Brown:

Kansas and Oklahoma Railroad (“K&O”) responds in opposition to the Motion filed by V and S Railway, LLC (“V&S”), on May 25, 2016, requesting the Surface Transportation Board (“Board”) to issue subpoenas to certain third parties, including Watco Transportation Services, LLC (“Watco”), the parent of K&O, requiring the third parties to produce certain documents by June 9, 2016, 2:00 PM EDT. V&S requests the Board to require that any responses or objections to the Motion be filed by June 1, 2016. As of mid-day June 1, 2016, no such order has been issued by the Board. Nevertheless, K&O hereby briefly responds to the Motion.

A third party normally has 20 days to respond to a motion for discovery and not the seven days requested by V&S (which contracted time period includes an intervening holiday). V&S seeks this extraordinary relief from the Board because the comments by V&S are due by June 14, 2016. The Verified Statement by Doug Story, Vice President of Agricultural Marketing of Watco, was filed on March 18, 2016, or 68 days before V&S filed its Motion. In other words, V&S sat on its hands for well over two months before deciding that it needed third-party discovery. This is hardly a plausible excuse for the extraordinary relief requested by V&S.

While K&O is not a party to this proceeding, it appears that V&S has not sought discovery from the other parties before seeking third party discovery. Regardless, V&S is not entitled to

documents it could have received from the Applicants in this proceeding before burdening a non-party with impermissible discovery requests.

Pursuant to the Federal Rules of Civil Procedure, Courts are reluctant to impose unnecessary discovery burdens on third parties, particularly where, as here, the information sought is duplicative and likely to be in the possession of the other parties. For example, V&S seeks from K&O all communications between K&O and Applicants about the future provision of rail service via the Towner Line. V&S, however, fails to demonstrate that such information could not be obtained from the Applicants before burdening K&O. *See* Rule 45(d) of the Federal Rules of Civil Procedure: “A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney’s fees – on a party or attorney who fails to comply.”

In summary, it is V&S, and not the Board nor a party or third party, that has placed V&S in the position of having to seek discovery when the normal response time would be on or after V&S’s deadline for filing its reply. This deficiency is of V&S’s own making. The Board, accordingly, should not reward V&S’s delinquent behavior by granting the request for expedited consideration. More importantly, V&S has failed to substantiate or justify its request for third-party discovery. Accordingly, the request for the issuance of subpoenas should be summarily denied.

If you have any questions regarding this matter, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned below the word "Sincerely,".

Karl Morell

cc: Eric M. Hocky (via e-mail)

Thomas W. Wilcox (via e-mail)