

# CLARK HILL

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September 1, 2016

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## VIA E-FILING

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024

ENTERED  
Office of Proceedings  
September 1, 2016  
Part of  
Public Record

Re: KCVN, LLC and Colorado Pacific Railroad, LLC -  
Feeder Line Application -  
In Crowley, Pueblo, Otero and Kiowa Counties, Colorado  
STB Docket No. FD 36005  
*Errata to Comments of V and S Railway, LLC*

Dear Ms. Brown:

Upon review of the public version of the Comments filed by V and S Railway, LLC on August 30, 2016, it appears that there were some references to confidential information that were inadvertently not redacted. Enclosed are corrected pages 12 and 16 of the Comments with all of the confidential information fully redacted. V&S requests that the Board and each party that received a public version of the Comments insert the corrected pages, and remove and destroy the original pages.

Additionally, V&S discovered a missing page reference on page 23 of the Comments. Enclosed is a corrected with page references filled in (and underlined to show the change). The same page numbers should be inserted in the highly confidential version of the Comments.

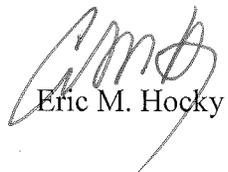
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Thank you for your assistance in making these corrections.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e

Enclosures

cc: All parties of record (w/encls.)

The suggestions of KCVN, Mr. Hanavan and Mr Stum that there might be significant amounts of wheat to move westbound over the Towner Line is belied by the lack of any evidence that there have been any commitments to move wheat in that direction. V&S does not view KCVN's recent inquiry as a serious indication of potential use given that KCVN was aware of the bridge being destroyed as well as the discontinuance of the Western Segment. Moreover, the inquiry only related to the possible handling of up to 30 cars of grain. Parsons VS at 4.

Not only is the potential wheat traffic overstated, but the traffic for other overhead shippers that allegedly will be developed seems equally speculative. (No additional online customers or facilities are suggested by the Applicants or K&O.) While a number of commodities are listed as potential traffic for the Line, no specific shippers or commodities are identified. As noted previously, based on a presentation by K&O produced in discovery, it appears that it sees the primary source of potential traffic to be [

] Exhibit D-5. *See also* Exhibit D-4 (email dated 4/27/16), and Exhibit D-7 (email dated 4/19/16). While [ ] reaches Pueblo for interchange with Union Pacific and BNSF Railway, the Towner Line does not reach all the way to Pueblo, and K&O would need to reach an agreement with BNSF Railway to use the tracks from NA Junction into Pueblo, and obtain additional rights to use tracks there to [ ]. K&O's responses to discovery did not include any documents or indication that there had been any agreements, or even discussions, with other carriers about the arrangements that would be necessary for this traffic to move.

In connection with the Union Pacific / Southern Pacific merger proceeding, Union Pacific's Missouri Pacific Railroad Company ("MP") subsidiary which then owned the Towner Line proposed abandoning it. The Board's discussion of the traffic at the time supports the

of applicable rates for sample moves between 35 and 45 miles (Eads is approximately 38 miles from Towner), ranging from \$425 to \$1025.<sup>16</sup> No multiple-car rates are provided.

K&O suggests that the Line will only be maintained to FRA Class 1 condition which limits freight operations to 10 mph. Story VS at 3. At that speed, a crew would take a full 12 hours to traverse the entire 121.9 mile line – assuming it did not make any stops to serve shippers along the way. On the other hand, beginning with V&S's purchase of the Line at the end of 2005, the Line was maintained to FRA Class 2 condition which allowed for freight service to be provided at 25 mph. Thus, the K&O maintenance plan does not seem to contemplate better or faster service.

Additionally, while K&O suggests that it will run regular train service [ ] to start (Supplemental Application, Osborn VS at 3), Mr. Story originally indicated that K&O would only be providing service "as needed." Story VS at 3. The [ ] service is based on each train averaging [ ] of traffic [ ]. To the extent, as discussed above, these traffic estimates are wildly inflated, service is much more likely to be sporadic and provided only when there is a sufficient volume of traffic to support a train start, *i.e.*, not any different than has been provided by V&S.

This is not like the situation in *Pyco/SAW*, slip op. at 14, where there was evidence that rail service would improve under a new operator because there was an alternative rail service provider appointed, and service had improved under the interim rail service provider. Here the

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<sup>16</sup> See, for example, Towner to Leoti, \$425 (39.5 miles); Colwich to Hutchinson, \$767 (35.1 miles); Ellinwood to Hutchinson, \$921 (41.5 miles); Frederick to Hutchinson, \$1025 (43.7 miles).

completed, parties have had an opportunity to comment, and any determination on mitigation or other actions has been made.

**V. If the Board were to find that the Towner Line should be sold under the feeder line program, the Board must determine the constitutional minimal value.**

**A. Applicants have the burden of establishing the constitutional minimal value.**

Under 49 U.S.C. §10907(b)(1), if the Board finds that a line is required to be sold, then it sets the purchase price in an amount “not less than the constitutional minimum value.” The “constitutional minimum value” is defined in 49 U.S.C. §10907(b)(2) as “the net liquidation value of such line or the going concern value of such line, whichever is greater.” The burden is on the Applicants to establish the purchase price in their case in chief. *KJRY/TPW, supra* (served February 7, 2005), slip op. at 4.

Applicants assert that V&S has not had any operating revenues from the Towner Line since 2012, and that therefor there is no going concern value (“GCV”) for the Line. V&S does not dispute that there have not been any operating revenues, although as discussed above at pp. 7, 14-15, V&S is earning storage revenues from the Line. Even if storage revenues were used to calculate a GCV, V&S believes the GCV would be less than the properly calculated net liquidation value (“NLV”).

As the Board has noted, NLV calculations in feeder line proceedings use similar standards and valuation methodologies to NLV calculations in offer of financial assistance (“OFA”) proceedings in connection with abandonments. *See Port of Coos Bay/CORP* (served October 31, 2008), slip op. at 14 citing *Railroad Ventures, Inc. v. STB*, 299 F.3d 523, 556 (6<sup>th</sup> Cir. 2002). In these forced sale contexts, the burden of proof as to compensation is on the offeror (here the Applicants). *Trinidad Railway, Inc. – Abandonment Exemption – In Las*