



**COLORADO**  
**Department of Transportation**  
 Office of the Executive Director  
 4201 East Arkansas Ave, Suite 262  
 Denver, CO 80222



June 2, 2016

Mr. Daniel R. Elliott III, Chairman  
 Ms. Deb Miller, Vice-Chair  
 Ms. Ann D. Begeman, Member

**240984**

**ENTERED**  
**Office of Proceedings**  
**June 27, 2016**  
**Part of**  
**Public Record**

Ms. Cynthia T. Brown, Chief Section of Administration  
 Office of Proceedings  
 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&S Railway LLC located in  
 Crowley, Pueblo, Otero, and Kiowa Counties, Colorado

Dear Honorable Board Members of the STB and Ms. Brown:

The above-referenced rail line goes by the common name, the Towner Line, in Colorado. The Colorado Department of Transportation (CDOT) has a long history with this line and is writing in support of KCVN LLC's position that this line can be viable for continued operation and service to Colorado farmers, ranchers, and business people in the southeastern part of the state.

In 1997, the General Assembly enacted Part 13 of the Colorado Revised Statutes, Section 43-1-1301, et seq., which provided direction to CDOT regarding the acquisition of unused railroad right-of-way. The intent of the legislation is to "to establish and endorse policies to encourage the continued use of existing rail lines, preserve lines and rights-of-way, and promote the future use of railroad rights-of-way for transportation and interim recreational purposes." The State Rail Bank was created in conjunction with this legislation for the department to establish funds to preserve rail right-of-way.

In 1998, the Statute was amended to require CDOT to purchase the Towner Line using general fund money from the State Rail Bank. CDOT purchased the line from the Union Pacific Railroad for \$10,217,512.00. Additionally, the Department was directed to lease or sell the line to a rail operator. The first attempt at a lease purchase agreement between CDOT and a rail operator proved unsuccessful when the rail operator had financial issues. In 2002, the Statute was amended to require any future lessee must be financially solvent and responsible.

In December 2005, a six year lease/purchase agreement was signed with V&S Railway to operate the line. A down payment of \$1,000,000.00 was paid on the lease/purchase agreement with the remaining funds to be paid at the end of the contract if V&S decided to purchase the line. V&S proposed a purchase price of \$10,356,000.00 which CDOT accepted. The lease/purchase agreement was divided into two phases: the first three years was defined as the "initial operating period" with stringent directives specified for the operator during this phase. During the second three year period, these directives were largely eliminated and V&S was to provide rail service as a financially responsible railroad operator.



On October 4, 2011, V&S finalized the lease/purchase contract with CDOT. CDOT deposited the final payment into the State Rail Bank as required in statute. The Towner legislation was repealed effective upon the date CDOT notified the reviser of statutes of the sale.

In accordance with the agreement, if V&S chose to sell or abandon the line CDOT retained a right of first refusal to repurchase the line. If CDOT chose or was directed to repurchase the line, CDOT must pay the lesser of; the cost of the line plus the cost of capital improvements at eight percent per annum calculated at the time the cost was incurred by V&S, or the salvage price as determined by competitive bids.

In December of 2011, V&S notified CDOT of its intent to abandon the line which was required by the terms of the contract and by Colorado Statute. At that time, the impacts of the economy had greatly impacted the state budget and CDOT was not able to consider repurchasing the line. In June 2012, V&S began the process to abandon the western 79.5 miles of the line, from North Avondale (N.A.) Junction to Eads, which would have reduced rail connections within Colorado. In December 2014, V&S began the process to abandon the remaining 39.5 miles of the line, Eads to Towner Colorado, which would reduce rail connectivity to Kansas.

CDOT continues to believe there is value to Colorado farmers & ranchers that the rail line remain in operation, and CDOT further believes KCVN to be making a good faith effort in that regard. The price for V&S to sell the line to KCVN is a matter for the two private companies to settle, considering the facts, and considering Colorado's desire to have a long-term financially solvent and responsible party operating the line.

Sincerely,



Shailen P. Bhatt  
Executive Director

cc: Mark Imhoff, CDOT Division of Transit & Rail, Director  
Jason Wallis, CDOT Freight Senior Authority and Manager; Freight & Planning Analysis Programs  
Rob Martindale, CDOT Division of Project Support



The following Parties of Record in FD 36005 received a copy of this filing.

Party Of Record	Dring, John P.	Federal Energy Regulatory Commission Office Of Administrative Law Judges 888 First Street, N.E. Washington, DC 20426 Tel: Fax:		
Party Of Record	Hocky, Eric M.	Clark Hill, Plc One Commerce Square 2005 Market Street, Suite 1000 Philadelphia, PA 19103 Tel: <a href="tel:215-640-8500">215-640-8500</a> Fax: <a href="tel:215-640-8501">215-640-8501</a>	<a href="mailto:EHocky@Thorpreed.Com">EHocky@Thorpreed.Com</a>	V & S Railway, Llc
Party Of Record	Knief, Robert	Bartlett Grain Company, L.P. 4900 Main Street, Suite 1200 Kansas City, MO 64112 Tel: <a href="tel:816-753-6300">816-753-6300</a> Fax:		Bartlett Grain Company, L.P.
Party Of Record	Morell, Karl	Ball Janik LLP 655 Fifteenth Street, Nw Suite 225 Washington, DC 20005 Tel: <a href="tel:202-638-3307">202-638-3307</a> Fax: <a href="tel:202-783-6947">202-783-6947</a>	<a href="mailto:KarlM@Karlmorell.Com">KarlM@Karlmorell.Com</a>	Kansas And Oklahoma Railroad
Party Of Record	Wilcox, Thomas W.	Gkg Law Pc 1055 Thomas Jefferson Street, N.W., Ste 500 Washington, DC 20007 Tel: <a href="tel:202-342-5248">202-342-5248</a> Fax:	<a href="mailto:twilcox@gkglaw.com">twilcox@gkglaw.com</a>	Kcvn, Llc And Colorado Pacific Railroad, Llc

I certify that I have this day served copies of document upon all parties of record in this proceeding, by U.S. Mail (all), and by email (as available above).

Signature

*David Kuntang*

Date

*6/27/2016*



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Department of Transportation  
Division of Transit & Rail