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May 2, 2025
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36849

KANSAS & OKLAHOMA RAILROAD, LLC
– LEASE AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT –
UNION PACIFIC RAILROAD COMPANY

MOTION FOR LEAVE TO FILE REBUTTAL

Robert A. Wimbish
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
rwimbish@fletcher-sippel.com
(312) 252-1500

**ATTORNEYS FOR KANSAS &
OKLAHOMA RAILROAD, LLC**

Dated: May 2, 2025

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On March 27, 2025, pursuant to an earlier Surface Transportation Board (“Board”) order,¹ Kansas & Oklahoma Railroad, LLC (“K&O”) filed an individual petition for exemption (the “Petition”) in the above-referenced docket for after-the-fact authorization to continue (under amended terms) its lease and operation of certain lines of railroad (the “Leased Lines”) owned by Union Pacific Railroad Company (“UP”).

On April 16, 2025, Weskan Grain LLC (“Weskan”) filed a “Reply to Petition for Exemption” (“Reply”) seeking denial of the Petition or, alternatively, for the Board to initiate a proceeding to assess the merits of the Petition in light of the modified interchange commitment included in the lease terms.

The applicable (default) agency rules of procedure do not entitle K&O to respond to Weskan’s Reply (*see* 49 C.F.R. § 1104.13(c)). Nevertheless, agency precedent clearly supports entitling K&O to file a Rebuttal. *See, e.g., Wisconsin*

¹ *Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Central Kansas Railway, LLC*, FD 34030 (STB served Feb. 25, 2025).

Central Ltd. – Abandonment Exemption – In Winnebago County, WI, AB-303 (Sub-No. 2X) (ICC served Feb. 22, 1990), slip op. at 1, n. 1 (“...we do, absent good cause, allow petitioner and those supporting the petition to close the record, as petitioner has the burden of proof. Thus, typically, the petition prompts statements (replies) in support and/or opposition, which are followed by petitioner's rebuttal.”); and *see also Soo Line Railroad Company – Petition for Declaratory Order*, FD 33350 (STB served June 23, 1997) at 2 (acknowledging the Section 1104.13(c) restriction on a “reply to a reply” but finding that “(a)llowing [the petitioner] to close the record is not a reply to a reply, but a rebuttal.”); and *cf. Grand Trunk Western Railway Company – Acquisition of Operating Easement – CSX Transportation, Inc.*, FD 35661 (STB served Sep. 12, 2012) (involving a Board-prescribed procedural schedule in an individual petition for exemption proceeding that permitted the petitioner to file a rebuttal upon which the record would close).

In accordance with such agency precedent, K&O moves for leave to file the concurrently-filed Rebuttal. In further support of this motion, K&O notes that, in the interest of expedition, its Rebuttal has been submitted well within the 20-day time frame for responses to opposition filings set forth at 49 C.F.R. § 1140.13(a).

Under the circumstances and in keeping with applicable agency precedent, K&O's Rebuttal is warranted and should be accepted. Further, clarification of the facts and guiding legal principles as offered in K&O's Rebuttal would ensure a just determination of the issues presented.

WHEREFORE, K&O respectfully moves for leave to file its Rebuttal.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Thomas J. Healey

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, IL 60606-3208

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2025, a copy of the foregoing **Motion for Leave to File Rebuttal** was served upon all parties of record.

/s/ *R. A. Wimbish*

Robert A. Wimbish