

SERVICE DATE – JUNE 25, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36849

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

Decided: June 25, 2025

This order institutes a proceeding to consider an opposed petition for exemption and provides a procedural schedule for the submission of additional argument and evidence.

On March 27, 2025, Kansas & Oklahoma Railroad, LLC (K&O), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 seeking an exemption from the provisions of 49 U.S.C. § 10902 for after-the-fact authority to renew and amend a lease agreement between K&O and Union Pacific Railroad Company (UP) governing K&O’s possession and use of approximately 165.98 route miles of UP-owned railroad line in western Kansas (the Lease). The leased lines consist of two segments of rail line, which extend (1) between milepost 523.02 at Geneseo, Kan., and milepost 606.0 at McCracken, Kan., and (2) between milepost 664.5 at Healy, Kan., and milepost 747.5 at Towner, Colo. (the Lines).

K&O filed this petition in response to an earlier decision in which the Board (1) denied a petition to reopen and partially revoke a 2001 acquisition exemption filed by Weskan Grain LLC (Weskan), and (2) directed K&O to seek after-the-fact authority to renew the Lease and implement any amendments thereto. See Kan. & Okla. R.R.—Acquis. Exemption—Cent. Kan. Ry. (February Decision), FD 34030 (STB served Feb. 25, 2025). In the February Decision, the Board found that K&O and UP renewed and amended the Lease in recent years without seeking or obtaining the requisite Board authority. Id. at 5. Those amendments included, among other things, a rewriting of the Lease’s interchange commitment provisions. Id. K&O’s petition for exemption discloses that the Lease has “terms that would limit K&O’s interchange of traffic originating or terminating on the Lines with any third-party connecting carrier.” (Pet. 5.) The petition also states that the Colorado Pacific Railroad LLC (CXR) is “[t]he only third-party railroad with which K&O could interchange via the Lines.” (Id. at 6.)

On April 16, 2025, Weskan filed a reply in opposition to the petition for exemption, arguing that the interchange commitment is anticompetitive.¹ Weskan contends that the proposed interchange commitment is intended to “preserve UP’s market power and to restrict

¹ Weskan obtained a copy of the Lease after filing an unopposed motion for disclosure, which the Board granted on April 8, 2025.

competition,” (Weskan Opp’n 10), by making it “economically infeasible for K&O” to transport agricultural products originating in Kansas to points west of the CXR interchange at Towner, (*id.* at 1). One such destination is Weskan’s grain elevator complex near Sheridan Lake, Colo. (the Stockton Facility). (*Id.* at 1, 3-4.) Weskan states the Stockton Facility connects to the Stockton siding located at milepost 752.5 of CXR’s 122-mile rail line known as the Towner Line, which CXR acquired in 2018 following a feeder line proceeding. (*Id.* at 3-4); see KCVN, LLC—Feeder Line Application—Line of V & S Ry., Located in Crowley, Pueblo, Otero, & Kiowa Cntys., Colo., FD 36005 (STB served Dec. 18, 2017) (approving \$10 million purchase price for Towner Line sale to CXR). Weskan further states that the Stockton Facility has access to both UP and BNSF Railway Company (BNSF) via CXR. (Weskan Opp’n 3-4.) Weskan asserts that the amended interchange commitment was inserted into the Lease soon after CXR’s acquisition of the Towner Line for the purpose of “economically prohibit[ing] K&O from interchanging traffic with one railroad – CXR – and forc[ing] all traffic to flow east to be interchanged with UP.” (*Id.* at 7.) According to Weskan, the proposed transaction harms not only shippers located on the Lines but also CXR and its efforts “to make the Towner Line economically viable again.” (*Id.*) Weskan argues that the Board should either deny the petition because the proposed transaction fails to satisfy 49 U.S.C. § 10502(a), (*id.* at 1, 6-10), or commence a proceeding under 49 U.S.C. § 10502(b), (*id.* at 1, 10). If the Board institutes a proceeding, Weskan requests that it issue a procedural schedule that includes a discovery period of at least 90 days and allows for “the presentation of additional evidence on the history, nature, and purpose of the interchange commitment inserted into the Lease and whether it is consistent with the Board’s statutes and policies.” (*Id.* at 1-2; see id. at 10 (indicating that discovery would be focused on “the history and intent of the interchange commitment inserted into the 2019 Fourth Supplement” to the Lease).)

On May 2, 2025, K&O filed a rebuttal to Weskan’s April 16 reply, along with a motion for leave to file the rebuttal. K&O argues that Weskan has failed to establish that the petition should be denied, but that if the Board were to commence a proceeding and “engage in a more thorough assessment of the proposed interchange commitment, UP’s participation, and its explanation for the new interchange commitment (of its own design and intended for its own purposes), would be essential.” (K&O Rebuttal 5.) On May 15, 2025, Weskan filed a reply in opposition to K&O’s motion for leave to file the rebuttal, arguing that the motion should be denied (and proffered rebuttal stricken from the record) and responding to portions of K&O’s rebuttal should the Board decline to strike it from the record. (Weskan Reply 3-7.) On May 23, 2025, K&O filed a reply to Weskan’s May 15, 2025 motion to strike, which includes a motion to strike Weskan’s May 15, 2025 reply. (K&O Reply 3.)

By this decision, the Board is instituting a proceeding under 49 U.S.C. § 10502(b) and issuing a procedural schedule. The schedule includes a 45-day period for the parties to take discovery² and provides for the submission of additional information about the effects of the proposed interchange commitment, as further described below. See 49 CFR § 1121.4(c)(1)

² To the extent any party wishes to raise a discovery dispute with the Board, it must first make a good faith effort to meet and confer with the person or party failing to answer discovery. Any discovery motion presented to the Board should contain a description of the effort made prior to seeking Board intervention to obtain the desired discovery.

(permitting the Board “in its discretion” to direct that additional information be filed in exemption proceedings); see also Middletown & N.J. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35412 (STB served Dec. 23, 2010) (instituting a proceeding to consider a petition to revoke an exemption and seeking additional information, including “evidence and comment[s] concerning the potential anticompetitive effect of the lease credit provision, disclosed pursuant to the Board’s interchange commitment rules”); Adrian & Blissfield R.R.—Continuance in Control Exemption—Jackson & Lansing R.R., FD 35410 et al. (STB served Dec. 28, 2010) (similar).

K&O will be directed to supplement its petition with additional evidence and argument. As the counterparty to the Lease, UP is strongly encouraged to participate in this briefing, either by filing its own comment or by filing jointly with K&O. See, e.g., Review of Rail Access & Competition Issues—Renewed Pet. of the W. Coal Traffic League (Review of Rail Access), EP 575, slip op. at 15 (STB served Oct. 30, 2007) (stating that “[t]he parties to the transaction and other concerned parties will have ample opportunity to present their views” in future cases involving challenges to interchange commitments). The supplement should discuss the proposed interchange commitment within the framework articulated in Review of Rail Access, EP 575, slip op. at 15 (listing non-exhaustive factors that will inform the Board’s case-by-case analysis of interchange commitments). The supplement also should further explain why the proposed transaction, including the amended interchange commitment, satisfies 49 U.S.C. § 10502(a)’s requirements. For example, K&O should elaborate on its assertion that “favorable Board action”—including approval of the proposed interchange commitment—“would not run [sic] thwart any” of the objectives of the rail transportation policy (RTP) set forth at 49 U.S.C. § 10101. (Pet. 8.)³ K&O will also be directed to provide additional evidence and argument explaining why regulation is not needed to protect shippers from an abuse of market power. See 49 U.S.C. § 10502(a)(2)(B). K&O may also provide additional evidence and argument explaining how the transaction is limited in scope. See 49 U.S.C. § 10502(a)(2)(A). Weskan will have the opportunity to submit a reply with supplemental evidence and arguments, and K&O and UP will have the opportunity to submit rebuttal evidence and argument.⁴

The Board also invites CXR and other shippers located along the Lines to submit comments and evidence concerning the potential anticompetitive effect of the interchange commitment and the provision’s impact on price and service, if any. See Middletown & N.J. R.R., FD 35412, slip op. at 2; Adrian & Blissfield R.R., FD 35410 et al., slip op. at 2. BNSF may also file a comment addressing Weskan’s claims about BNSF’s capacity to serve Kansas

³ The petition cites RTP factors that favor expeditious regulatory approvals (49 U.S.C. §§ 10101(2), (7), and (15)), as well as § 10101(9), arguing that granting the petition “will enable K&O to continue to operate its railroad system efficiently.” (Pet. 8; see § 10101(9) (stating the policy of “encourag[ing] honest and efficient management of railroads”).) K&O should address Weskan’s contention that the proposed transaction discourages the efficient management of railroads “by economically foreclosing shorter western routes via CXR [over the Towner Line] and forcing all traffic to move hundreds of miles east to interchanges with UP before they go to western destinations.” (Weskan Opp’n 8.) K&O may also address other relevant RTP factors.

⁴ As a reminder, any rebuttal evidence or argument must be limited to responding to issues and arguments raised in Weskan’s reply.

grain shipments via connection with CXR on the western end of the Towner Line. (See Weskan Opp'n 3-4, 7-9.) To ensure that affected shippers are given an opportunity to participate in this proceeding, K&O will be directed to serve a copy of this decision on each shipper that currently uses or has used the Lines within the last two years. K&O will also be directed to serve copies of this decision on UP, CXR, and BNSF.

Finally, because K&O will have ample opportunity to address the proposed interchange commitment and respond to comments filed in this proceeding, K&O's May 2, 2025 motion for leave to file a rebuttal to Weskan's reply will be denied and its proffered May 2 rebuttal rejected.⁵ As a result, Weskan's May 15 reply, and K&O's May 23 reply are moot and will be stricken from the record. To the extent that a party believes that any of the evidence or arguments presented in the stricken pleadings is relevant to the Board's inquiry articulated herein, it may include that information in its submissions consistent with the procedural schedule below.

It is ordered:

1. Under 49 U.S.C. § 10502(b), a proceeding is instituted.
2. K&O's May 2, 2025 motion for leave to file a rebuttal to Weskan's April 16, 2025 reply is denied.
3. Discovery shall be completed by August 11, 2025.
4. CXR, BNSF, and shippers located on the Lines may submit comments by August 11, 2025.
5. K&O is directed to file a verified supplement addressing the information described above by August 25, 2025. UP is encouraged to participate by either filing its own comment or filing jointly with K&O.
6. Weskan may submit evidence and argument in reply by September 23, 2025.
7. K&O may submit responsive argument and evidence by October 8, 2025. UP is encouraged to participate by either filing its own comment or filing jointly with K&O.
8. K&O shall serve a copy of this decision on each shipper that currently uses the Lines or has used the Lines within the last two years, UP, CXR, and BNSF, and certify to the Board that it has done so by June 30, 2025.

⁵ The parties are also reminded that as a general matter, the Board is more strictly enforcing the rule against a reply to a reply to promote the orderly and efficient administration of cases. See, e.g., Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025).

9. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.