

**EXPEDITED CONSIDERATION REQUESTED**

**BEFORE THE UNITED STATES  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. FD 36849**

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

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**ENTERED**  
Office of Proceedings  
July 29, 2025  
Part of  
Public Record

**MOTION TO EXTEND PROCEDURAL SCHEDULE**

Pursuant to 49 C.F.R. §1104.7 Weskan Grain LLC (“Weskan”) hereby respectfully requests the Surface Transportation Board (“STB” or “Board”) to extend the procedural schedule in this proceeding established in the Board’s decision served on June 25, 2025 (“Decision”) by approximately 70 days. Good cause exists for the requested extension for the following reasons:

1. The Decision created a 45-day period for discovery and stated that “[d]iscovery shall be completed by August 11, 2025.” It also created the following schedule for the following evidentiary submissions:

August 11, 2025    Comments by shippers along the leased lines, BNSF Railway Company (“BNSF”), and Colorado Pacific Railroad LLC (“CXR”)

August 25, 2025    Verified Supplemental Statements by the Kansas & Oklahoma Railroad, LLC (“K&O”) and Union Pacific Railroad Company (“UP”)

Sept. 23, 2025    Weskan Reply Evidence and Argument

October 8, 2025    K&O and UP Responsive Evidence and Argument

2. On July 9, 2025,<sup>1</sup> Weskan served discovery requests on K&O and UP and set a 15-day period for them to submit written responses and objections. K&O is a party to this proceeding. UP has so far taken the position that it is not a party to this proceeding.
3. Because UP is not yet a party to this proceeding, its participation in discovery is governed by the Board's guidance in Docket No. NOR 42180, *Evergy, Inc. et al v. BNSF Railway Company* (served September 24, 2024)(“*Evergy*”) at 3-4. In *Evergy*, the Board instructed that prior to submitting a petition for a third-party subpoena to the STB, a party must demonstrate that it submitted discovery requests to the third-party and attempted to obtain its voluntary agreement to reply to discovery requests.
4. On July 15, 2025, counsel for Weskan conferred with counsel for UP about its participation in the discovery phase of this proceeding. UP counsel informed counsel for Weskan that UP would agree to engage in discussions about voluntarily producing material responsive to Weskan's requests, but UP could not commence that process until August 8, 2025, and that UP would also require a significantly longer time than the 45-day discovery period to collect, review and produce responsive material. UP refused to alter its position in subsequent discussions.
5. On July 24, 2025, K&O timely submitted its responses to Weskan's first discovery requests. However, K&O broadly objected to them to such an extent that, at a minimum, extensive discussions between counsel will be required, and Weskan anticipates that a motion asking the Board to compel the production of some

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<sup>1</sup> Weskan served its requests as soon as reasonably possible after the Decision, and the service date was influenced by (1) counsel for Weskan being out of the country from June 17-30, 2025, and the intervening July 4<sup>th</sup> holiday week.

information and documents may be necessary.<sup>2</sup> Moreover, lead counsel for K&O is on vacation until August 3, 2025.

Based on the foregoing, despite Weskan's good faith efforts, there is no scenario by which discovery in this proceeding can be "completed" by August 11, 2025, if the Board's intention is for all production to end on that date. Weskan accordingly requests that the Board extend the dates in the above procedural schedule to enable (1) Weskan and UP to try to engage in discovery without a formal subpoena request, and (2) Weskan and K&O to attempt to resolve their discovery disputes without Board intervention. The proposed extension would produce the following revised schedule, which contemplates the record being submitted to the Board for decision before the start of the 2025 Holiday Season:

|                   |                                                |
|-------------------|------------------------------------------------|
| October 21, 2025  | Discovery completed                            |
| October 21, 2025  | Comments of shippers, BNSF, and CXR            |
| November 4, 2025  | Verified supplemental statements of K&O and UP |
| December 4, 2025  | Weskan Reply evidence and argument             |
| December 19, 2025 | K&O and UP Responsive Evidence and Argument    |

Finally, prior to filing this motion, the undersigned counsel conferred with counsel for K&O and UP with the aim of representing this motion is unopposed. Neither K&O nor UP expressed disagreement with the general need for an extension of the procedural schedule. However, both railroads conditioned their consent on terms that are unacceptable to Weskan. Specifically, K&O sought to condition its consent on a commitment by Weskan that it would not

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<sup>2</sup> As one example, K&O has flatly objected to producing any documents related to the Fourth Supplement to the 1997 Lease Agreement between K&O and UP, despite the fact that the Fourth Supplement contains the Asset Use Fee interchange commitment Weskan has challenged. The numerous grounds asserted by K&O include the indefensible assertion that "the Fourth Supplement is not relevant to the instant proceedings."

submit any “new” discovery requests to K&O during the extended period. While Weskan does not contemplate “new” requests, it cannot foreclose that possibility, particularly given K&O’s responses. Further, although UP is not yet a party and therefore should not have any say in the procedural schedule, UP nevertheless insists to date that it will only agree to voluntarily participate in discovery if it is allotted time to produce materials that far exceeds what Weskan considers reasonable under these circumstances.

For all the foregoing reasons, good cause exists to grant this motion on an expedited basis.

Respectfully submitted,

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*Attorney for Weskan Grain LLC*

July 29, 2025

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of July, 2025, copies of the foregoing Motion to Extend the Procedural Schedule were served by electronic mail on representatives of Union Pacific Railroad Company and the Kansas & Oklahoma Railroad, LLC.

/ss/ Thomas W. Wilcox  
Thomas W. Wilcox