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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36849

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

**UNION PACIFIC'S REPLY TO WESKAN'S MOTION TO EXTEND
PROCEDURAL SCHEDULE**

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**UNION PACIFIC’S REPLY TO WESKAN’S MOTION TO EXTEND
PROCEDURAL SCHEDULE**

Union Pacific hereby replies to Weskan’s Motion to Extend Procedural Schedule, filed July 29, 2025, to correct Weskan’s inaccurate claims about Union Pacific’s willingness to participate in discovery.

In its Motion, Weskan incorrectly claims Union Pacific’s counsel told Weskan’s counsel that Union Pacific would not engage in discussions about voluntarily producing material responsive to Weskan’s discovery requests until August 8, 2025. In fact, Union Pacific told Weskan that it would participate in discovery voluntarily, as long as it could serve its written responses and objections within 30 days (August 8, 2025) of receiving Weskan’s requests, rather than within 15 days as Weskan demanded, and as long as it could complete its production of documents within 120 days (November 6, 2025) of receiving Weskan’s requests, rather than on August 11, 2025, as contemplated by the current procedural schedule. *See Attachment A* (email correspondence).

Union Pacific’s counsel told Weskan’s counsel that Union Pacific’s proposal was reasonable not only in light of Weskan’s extensive discovery requests (21 document requests, 9 interrogatories, 4 requests for admissions) covering a lengthy time period (2016 to the present), but also in comparison with discovery schedules established in

other Board proceedings. In particular, Union Pacific pointed to the time allowed for discovery in *Savage Tooele*, in which Union Pacific is responding to fewer requests (11 document requests, 8 interrogatories) covering a shorter time period (2019 to present). *See BNSF Ry.—Petition for Enforcement—Interchange with Savage Tooele R.R.*, FD 32760 (Sub. No. 50), slip op. at 7 (STB served Apr. 28, 2025) (establishing a 120-day discovery period).

In sum, Union Pacific told Weskan that it is willing to participate in discovery voluntarily, as long as it is given a reasonable amount of time. Union Pacific remains willing to participate in discovery voluntarily. In anticipation of Weskan’s agreement to its reasonable request, Union Pacific has already begun collecting and reviewing potentially responsive documents, and it remains willing to provide written responses and objections by August 8, 2025, and to produce documents, subject to any unresolved objections, by November 6, 2025.

Respectfully submitted,

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July 31, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 31st of July, 2025, I have caused the foregoing document to be served by email on all parties of record in this proceeding.

/s/ Michael L. Rosenthal

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Wednesday, July 23, 2025 10:49 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Subject: RE: Discovery Close

[EXTERNAL]

Mike – I appreciate the prompt response, but you did not satisfactorily address why UP is refusing to even start the process outlined by the Board in the Evergy case before August 8. And Weskan cannot agree at this time to extending the discovery period to 120 days, while UP refuses to come off that number. At this point, I will revisit this issue with you early next week after we receive the K&O's responses and objections, which we expect to receive tomorrow as they did not also seek an extension beyond the 15 days allotted by the requests.

Regards,
Tom

Thomas W. Wilcox

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From: Rosenthal, Michael <mrosenthal@cov.com>
Sent: Monday, July 21, 2025 10:12 PM
To: Tom Wilcox <tom@twilcoxlaw.com>
Subject: RE: Discovery Close

Tom,

Your “cart before the horse” statement makes no sense. Union Pacific’s proposal was no different

than the type of proposal it would make in a similar case in which it is a party. In such a case, Union Pacific would serve written answers and objections, and the parties would meet and confer to resolve any disagreements about the appropriate scope of discovery while Union Pacific searches for and processes documents responsive to requests for which there are no disagreements. Union Pacific proposed a schedule designed to provide sufficient time to follow that standard process. Union Pacific is maintaining its proposal because it offered a very reasonable proposal, rather than an artificial bargaining position, at the outset. To place that proposal in perspective, in the ongoing Savage proceeding, with which you are familiar, the Board gave the parties 120 days to complete discovery. BNSF didn't serve its requests immediately, but neither did your client here, and BNSF had many fewer discovery requests than Weskan: 11 Requests for Production and 8 Interrogatories, compared with Weskan's 21 Requests for Production, 9 Interrogatories, and 4 Requests for Admission. In addition, BNSF's requests involved a significantly shorter time period (2019 to present) than Weskan's requests (2016 to present). Union Pacific's request for 120 days from the date of Weskan's discovery requests to complete discovery voluntarily is more than reasonable.

I hope your client will reconsider its position so we can avoid the costs and delays inherent in litigating over a subpoena.

Regards,
Mike

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Monday, July 21, 2025 5:10 PM
To: Rosenthal, Michael <mrosenthal@cov.com>
Subject: RE: Discovery Close

[EXTERNAL]

Mike - We are disappointed that UP refuses to budge off its initial demand for 30 days to submit its written objections and responses, and that the overall discovery phase should be nearly tripled to 120 days, especially after you and I discussed how UP's production could be streamlined by eliminating materials that K&O will likely produce.

In keeping with the Board's policy, the salient discussion here is whether we can voluntarily come to an agreement on what UP will produce in response to the requests, which UP has had since July 9. If it is UP's position that that discussion cannot even begin until after August 8, this is not acceptable, and nor is it being cooperative. Moreover, since there is no voluntary agreement for UP to produce any information or documents, UP's demand for a 120-day discovery period puts the cart before the horse.

We believe July 31 provides more than enough time for UP to prepare its written objections and responses to the modest discovery requests Weskan has submitted. That being said, there is no reason why we cannot have the foregoing "meet and confer" about what UP will agree to produce voluntarily prior to that date. I am available this week except for Friday, and all next week. If you prefer, we can set August 1 as the date for such a discussion after we receive and review UP's

objections and responses on July 31.

In summary, UP's demands are not reasonable and would unnecessarily and substantially delay the overall procedural schedule into early 2026 at a minimum. We again ask UP to reconsider.

Regards,
Tom

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From: Rosenthal, Michael <mrosenthal@cov.com>

Sent: Friday, July 18, 2025 5:27 PM

To: Tom Wilcox <tom@twilcoxlaw.com>

Subject: RE: Discovery Close

Tom,

Thanks for getting back to me. Union Pacific gave considerable thought to its offer to respond to Weskan's discovery requests without a fight over a subpoena, as long as Weskan would agree that Union Pacific could have a reasonable amount of time to respond -- 30 days from the date of Weskan's requests to serve its written responses and objections and 120 days from the date of Weskan's requests to complete its production of documents. Based on recent experience, 120 days to produce documents will be challenging (even assuming the requests are appropriately narrowed), but Union Pacific thinks it can complete its production in 120 days. Union Pacific is not willing to ask the Board to set a deadline that it does not believe it can meet. (I'll also note that September 25 is not 90 days from the date Weskan actually served its discovery requests on Union Pacific.)

As I've told you, Union Pacific is very willing to accommodate Weskan's need for additional time to prepare its filing in light of the extended discovery period (and we assume the parties will agree to adjust the other scheduled filing dates -- i.e. Aug. 25, Oct. 8 -- to maintain the same basic filing pattern.

I'm hoping your client reconsiders and we can move forward in the spirit of cooperation

Regards,
Mike

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Thursday, July 17, 2025 11:09 AM
To: Rosenthal, Michael <mrosenthal@cov.com>
Subject: RE: Discovery Close

[EXTERNAL]

Mike – I heard back from the client. Weskan is agreeable to giving UP another week to submit its written objections and responses, so July 31, and to ask the Board to extend the discovery deadline to accommodate UP's issues to September 25, which doubles the decision's 45 days to 90. We can talk about further extensions once we get into the process. Let me know if this works for you and we can work on an appropriate filing. I'll be traveling a bit later today but available all day tomorrow.

Regards,
Tom

Thomas W. Wilcox

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