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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

RESPONSE TO WESKAN GRAIN LLC'S MOTION TO
EXTEND PROCEDURAL SCHEDULE

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

Dated: August 1, 2025

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EXTEND PROCEDURAL SCHEDULE**

On July 29, 2025, Weskan Grain LLC (“Weskan”) filed a motion (the “Motion”) with the Surface Transportation Board (the “Board”) to extend the discovery schedule in this proceeding by an additional 70 days beyond the Board-prescribed August 11, 2025, completion date. Kansas & Oklahoma Railroad Company, LLC (“K&O”) hereby replies to the Motion to clarify its position on Weskan’s request to extend the discovery interval.

As Weskan has represented, K&O would consent to a reasonable extension of the discovery period¹ if Weskan would agree not to use the additional time to serve yet more discovery upon it.² K&O remains amenable to an extension to permit it to work constructively with Weskan to resolve issues involving

¹ Weskan initially represented to K&O that it would be seeking a modest extension of time to conduct discovery (approximately 30 days), but its Motion as filed seeks an additional 70 days from the 45 already allowed by the Board.

² Weskan has already issued twenty-one (21) Requests for Production, ten (10) Interrogatories, and four (4) Requests for Admission to K&O.

Weskan's extensive discovery requests, including, if truly needed, Weskan's resort to seeking a Board order compelling responses (an outcome K&O wishes to avert).

Weskan "does not contemplate 'new' requests, [but] it cannot foreclose that possibility..." Motion at 4. Weskan should not be awarded a substantial extension to engage in open-ended discovery against K&O, particularly where Weskan nowhere has argued that the Board's original procedural schedule was insufficient for it to assess its need for relevant information and to propound corresponding, fulsome discovery upon both K&O and Union Pacific Railroad Company ("UP"). If a genuine need were to arise in the future, Weskan may seek the Board's dispensation to present additional discovery requests to K&O.

K&O has not yet reached an agreement with Weskan on its extensive discovery. Beyond its sheer volume, much of that discovery is problematic in phrasing and scope. But K&O desires to confer with Weskan to see if K&O's objections to various parts of Weskan's discovery can be resolved swiftly and amicably in keeping with the Board's stated expectations.³ *See, e.g.*, Wimbish 7.29.25 Email, attached hereto ("I am opti[m]is[ti]c about the prospects of a meet-and-confer. I believe such a meeting (which could be arranged for soon - this week) can and will reduce our objections considerably, if not entirely, considering how Weskan's discovery was phrased in many instances. I anticipate a constructive,

³ FD 36849 (STB served June 25, 2025), slip op. at 2, n.2 ("[If] 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.").

pragmatic dialogue.”). In the interest of time, and out of respect for the Board’s desire for an efficient proceeding, K&O’s undersigned counsel (supported as he is by colleagues thoroughly experienced in discovery matters) offered to meet with Weskan this week while he is on vacation as disclosed in the above-referenced email communication. Yet, with several business days remaining between now and August 11, Weskan has filed its Motion without acting upon K&O’s invitation to meet. K&O is troubled to find that Weskan, at this early point, “anticipates that a motion asking the Board to compel the production of some information and documents may be necessary.” Motion at 2-3.

Now, far along into discovery, Weskan has concluded that the 45 days allotted for this phase of the proceeding is inadequate, and so it seeks even more time to engage in discovery than the 90 days Weskan proposed in its reply in opposition to K&O’s lease and operation petition for exemption (the “Petition”).⁴ Weskan and UP, it appears from recent filings, may be moving toward a separate agreement for an adjustment of the discovery schedule accounting for UP’s asserted needs, although the record suggests that they each see the focus and results of recent discovery discussions very differently. But even in that case Weskan has not argued it has lacked sufficient time through July to concoct and serve discovery.

⁴ Weskan replied to K&O’s Petition on April 16, 2025, contemplating then that it would engage in discovery if the Board were to initiate a proceeding. Practically speaking, Weskan has already had over 90 days to formulate the discovery it would serve upon K&O in the foreseeable event of a proceeding on the merits.

For the foregoing reasons, if the Board were to grant Weskan's Motion, the Board should do so under the direction that, because Weskan has already been afforded sufficient time to develop discovery against K&O, Weskan may not use the additional time to serve additional discovery requests upon K&O.

Respectfully submitted,

/s/ *R. A. Wimbish*

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

Dated: August 1, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2025, a copy of the foregoing **Response to Weskan Grain LLC's Motion to Extend Procedural Schedule** was served upon all parties of record.

/s/ *R. A. Wimbish*

Robert A. Wimbish

From: Robert A. Wimbish <RWimbish@fletcher-sippel.com>

Sent: Monday, July 28, 2025 11:39 PM

To: Tom Wilcox <tom@twilcoxlaw.com>

Subject: Re: K&O Discovery Responses

Hello, Tom.

I think we could be amenable to an extension, provided we could agree on certain parameters.

First, I am optimistic about the prospects of a meet-and-confer. I believe such a meeting (which could be arranged for soon - this week) can and will reduce our objections considerably, if not entirely, considering how Weskan's discovery was phrased in many instances. I anticipate a constructive, pragmatic dialogue. Even so, I understand the practicalities if you felt that you had to go to the STB on a motion to compel under current procedural time frame (although I genuinely hope it does not have to come to that).

Second, I appreciate that pulling UP into the ring (so to speak) could be a process for you and the agency, so I understand the timing issue there. Much of the discovery you've put to K&O may be more productively addressed by UP anyway.

Third, we'd be receptive to an extension if we were to agree that it would not be used as extra time for Weskan to generate new discovery requests to K&O going forward. (Relatedly, I read the STB's rules and current procedural schedule together as time-barring any new discovery by Weskan and K&O at this point in the proceeding).

Finally, if we can reach an accord under the above parameters, I hope it will also set the tone of the STB filing itself.

Best,

Rob

Sent from my Verizon, Samsung Galaxy smartphone

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From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Monday, July 28, 2025 11:28:18 AM
To: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Subject: RE: K&O Discovery Responses

Rob – I decided to work backwards from 12/19/25, the weekend before Christmas. That produces a 71 day extension. Note that the decision states “discovery shall be completed by August 11, 2025,” which is not possible, given UP’s position, and your strident objections.

Thomas W. Wilcox

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From: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Sent: Monday, July 28, 2025 1:57 PM
To: Tom Wilcox <tom@twilcoxlaw.com>
Subject: Re: K&O Discovery Responses

Hello, Tom.

I got your below message, and have forwarded it along to the client for guidance on the extension request.

I appreciate that you took the time to reach out to Angie Harrison as well. But I will be checking my email periodically each day I am on vacation this week, and so I should be able to see this through directly with you.

I am awaiting guidance from Kansas & Oklahoma, and will follow up as soon as I have more to offer.

Rob

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From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Monday, July 28, 2025 7:48:03 AM
To: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Subject: K&O Discovery Responses

Rob – I am disappointed in K&O's discovery responses. At this point, as we discussed, I am going to need to seek an extension of the procedural schedule to address the issues presented by your responses and UP's positions to date. My proposal is to mutually agree to extend all dates on the procedural schedule 60 days. Let me know today if K&O agrees.

Regards,
Tom

Thomas W. Wilcox

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