

PUBLIC VERSION**BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
August 4, 2025
Part of
Public Record

FINANCE DOCKET NO. FD 36849

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

MOTION TO COMPEL DISCOVERY

Pursuant to 49 C.F.R. §1114.31(a), Weskan Grain LLC (“Weskan”) hereby files this motion seeking an order from the Surface Transportation Board (“STB” or “Board”) compelling Kansas & Oklahoma Railroad, LLC (“K&O”) to respond to Weskan’s First Discovery Requests (“Requests”), which were served on K&O on July 9, 2024. On July 24, 2025, K&O submitted written “Answers and Objections to Weskan Grain LLC’s First Discovery Requests” (“Answers and Objections”)¹, by which K&O broadly and unjustifiably objected to all the Requests, and otherwise provided very limited information in response to only a few of the Requests. Copies of the Requests and K&O’s Answers and Objections are attached to this Motion as Exhibit A.

After K&O served its Answers and Objections, counsel for K&O and Weskan engaged in email correspondence about the breadth of K&O’s objections and the need for counsel to meet and confer about them and potential paths forward for trying to resolve the apparent disputes without Board intervention. However, such a discussion did not take place between July 25, 2025 and

¹ K&O submitted separate “Answers and Objections” documents to Weskan’s requests for admissions, interrogatories and requests for documents, respectively.

August 1, 2025, in part because Weskan's counsel's suggestion that the parties confer on July 31, 2025 or August 1, 2025 went unanswered. *See* email correspondence at Exhibit B.

While Weskan is optimistic that the parties can resolve at least some of K&O's broad objections through a "meet and confer" process, 49 C.F.R. §1114.31(a) requires a party to file a motion to compel within 10 days "after the expiration of the period allowed for answers to interrogatories." The Board's application of this regulation in practice has been labelled "confusing" in the past. *See* Docket No. EP 733, *Expediting Rate Cases* (served March 31, 2017) at 10-11 (where Board declined an invitation to clarify that the regulation does not apply to requests for documents, but stated that it applies "in certain instances"). Also, the 10-day deadline has not been enforced if the Board concludes parties are actively engaged in discovery and resolution of the discovery dispute would not unduly delay the proceeding. Docket No. FD 35981, *Finch Paper LLC – Petition for Declaratory Order* (served August 16, 2016). However, given the lack of clarity on the application of the rule to discovery requests other than interrogatories, the question of whether K&O and Weskan are actively involved in discovery at this time, and the fact that the deadline has not otherwise been extended, Weskan is filing this Motion to ensure compliance with the Board's regulations.

The Board should direct K&O to provide complete responses to Weskan's Requests for the following reasons:

First, K&O's sweeping objections² that the Lease Agreement between K&O and UP entered into on September 12, 1997 "has no relevance to the issues in this matter,"³ and that the

² Weskan is not addressing each and every objection posed by K&O, which literally number in the dozens. However, Weskan reserves all arguments against every objection raised.

³ Answers and Objections, Interrogatories, at 3.

Third Supplement to the Lease Agreement, and the Fourth Supplement to the Lease Agreement are “not relevant to the instant proceedings”⁴ (sic) are clearly and obviously unfounded.⁵ These agreements contain the interchange commitments that Weskan has challenged in this proceeding. K&O has stated on the record its belief (which Weskan does not share) that the original interchange commitment in the 1997 Lease Agreement applied to the interchange between K&O and Union Pacific Railroad Company’s (“UP”) former Towner Line, which at that time was owned by the state of Colorado and was acquired by Colorado Pacific Railroad LLC (“CXR”) in January 2018. K&O and UP have also sought to apply the interchange commitment as amended by the Fourth Supplement to transportation requested from K&O by Weskan, and K&O applied to UP for a partial “waiver” of the Asset Use Fee in response to a request for transportation from Weskan.

The evolution of the interchange commitment, its original purpose and intent, and the reasons why K&O and UP decided to amend the original Lease Agreement and interchange commitment starting in 2016 as the Colorado Pacific Railroad LLC explored purchasing the Towner Line and making K&O the operator of the line are all therefore highly relevant to the issues presented in this proceeding. As are all documents and correspondence between UP and K&O referring or relating to the application of the interchange commitment, in whole or in part, to Weskan.

⁴ Id at 4-5

⁵ Indeed, K&O stretches these absurd positions to the point of objecting to Interrogatory No. 9 in part because “the Leased Lines . . . are not relevant to this proceeding.”

For this reason, K&O should be directed to provide full responses of non-privileged information and documents in response to Interrogatories Nos. 3, 4,⁶ 5, 6, and 7, Request for Admission Nos. 2, and Requests for Documents Nos. 1, 3, 4, 6,

Second, K&O has also broadly objected to producing any information or documents related to the Operating Agreement entered into between CXR and K&O on January 1, 2019, by which K&O was designated the operator of the Towner Line. The Operating Agreement was negotiated contemporaneously with K&O's and UP's negotiation of the Fourth Supplement, which was executed on November 21, 2019. The facts surrounding the negotiations and drafting of the Operating Agreement, including the extent to which K&O shared drafts of the agreement with UP and received input from UP on its terms, are highly relevant to this dispute. For example, how did K&O reconcile inclusion of the prohibitively high Asset Use Fee in the Fourth Supplement with Section 6.6 of the Operating Agreement, which obligated K&O to "provide competitive interline service" in part by establishing and maintaining interchange tracks at Towner? *See* Exhibit A, Weskan Request for Admission No. 2. K&O's objections to producing any information on this critical aspect of the dispute are unfounded.

For the foregoing reasons and other reasons, such as that K&O has no grounds to claim such production would be unduly burdensome, K&O should be directed to produce all non-privileged information in response to Request for Admission Nos. 1 and 2, Interrogatory Nos. 8, 9, and 10, and Request for Documents Nos. 1, 5, 11, 12, and 21.

Third, contrary to K&O's broad objections, information pertaining to K&O's service to other shippers located along the Leased Lines compared to Weskan is highly relevant to this

⁶ K&O provided an answer to Interrogatory No. 4 subject to numerous unfounded objections, and consequently it is incomplete and not fully responsive to the Request.

proceeding. Weskan believes such information will demonstrate the extent to which UP and K&O are utilizing the interchange commitment and other factors to deny the movement of Weskan's grain west for interchange with CXR at Towner for delivery to the Stockton Facility in order to prevent competition with BNSF. As such, K&O's refusal to produce any documents in response to Request for Documents Nos. 10, 15, 16, and 17 on multiple grounds including lack of relevance, is baseless.

Finally, K&O has unreasonably refused to provide information and documents in response to other Requests posed by Weskan. For example, K&O has refused to produce any documents in response to Request for Documents No. 14, which ask for any documents in K&O's possession and control referring or relating to the ability of BNSF Railway Company ("BNSF") to directly serve Weskan's Stockton Facility. This information is clearly relevant to this dispute, since Weskan has alleged that the Asset Use Fee was imposed for the purpose of precluding the ability of BNSF to compete with UP for western grain movements from that facility. K&O's knowledge and treatment of this competitive alternative to UP is highly relevant. Additionally, where K&O had opportunities to work with Weskan in good faith to resolve inadvertent typographical errors in Weskan's Requests, K&O chose to prolong this process by declining to do so. *See* K&O responses to Requests for Production of Documents Nos. 18, 19, and 20. Refusal to respond to these Requests on this ground is baseless.

K&O's objections to Documents Requests Nos. 7, 8 and 9 are also unfounded. These Requests simply seek documents in K&O's possession and control that contain references to Weskan, CXR, or KCVN LLC, and their employees and principals, which in all likelihood only pertain to the Leased Lines and the discussions about rail service by K&O for interchange with CXR for service over the Towner Line. The notion that there are "thousands of pages that have

no relevance to the instant proceeding” responsive to these Requests seems farfetched. There is no basis for K&O to refuse to produce any documents in response to these requests.

For all the foregoing reasons, good cause exists to grant this Motion to Compel in all respects. Weskan will continue its attempt in good faith to reduce, and hopefully eliminate the parties’ differences, and will promptly inform the Board of any agreements that narrow the discovery issues for the Board to decide.

Respectfully submitted,

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August 4, 2025

PUBLIC VERSION

EXHIBIT A

BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36849

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

**WESKAN GRAIN LLC’S FIRST DISCOVERY REQUESTS TO KANSAS &
OKLAHOMA RAILROAD, INC.**

Pursuant to 49 U.S.C. §1321(c), the Surface Transportation Board’s (“STB”) regulations governing discovery, and the decision served in this proceeding on June 25, 2025, Weskan Grain LLC (“Weskan”) hereby requests Kansas & Oklahoma Railroad, Inc. (“K&O”) to respond to and produce all information and documents responsive to the following discovery requests to the Law Office of Thomas W. Wilcox, LLC, 1629 K. Street NW, Suite 300, Washington, DC 20006, or via electronic delivery means, in accordance with the Definitions and Instructions below and within 15 days or such other time as may be agreed upon by the parties or ordered by the STB.

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.

2. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.

3. “BNSF Railroad Company” or “BNSF” shall mean BNSF, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

4. “Communication” or “Communications” means the transmittal or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, electronic mail, text messages, instant messages, written memorandum, and in-person conversations.

5. “CXR” means the Colorado Pacific Railroad LLC and its employees, agents, representatives, parents, subsidiaries, and affiliates.

6. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

7. “Including” shall mean “including, without limitation” and “including but not limited to.”

8. “K&O” shall mean the Kansas & Oklahoma Railroad, LLC and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

9. “Leased Lines” shall mean the tracks owned by UP and leased to K&O pursuant to the Lease Agreement dated September 12, 1997 produced to Weskan Grain LLC in discovery, as amended by the Third Supplement to the Lease Agreement Between Union Pacific Railroad Company and Kansas & Oklahoma Railroad, LLC executed July 20, 2018 (“Third Supplement”) and the Fourth Supplement to the Lease Agreement Between Union Pacific Railroad Company and Kansas & Oklahoma Railroad, LLC executed November 21, 2019 (“Fourth Supplement”).

10. “Operating Agreement” shall mean that Operating Agreement entered into between CXR and K&O dated as of January 1, 2019.

11. “Relating to” as used herein with reference to a subject shall mean both of the following:

- a. Containing, compromising, constituting, stating, setting forth, recording, contradicting, referring to, evidencing or in any way pertaining to, in whole or in part, that subject; and
- b. Describing, discussing, reflecting, interpreting, identifying, concerning, in any way pertaining to, in whole or in part, that subject, or to be in any way logically or factually connected with the matter discussed.

12. “Union Pacific Railroad Company” or “UP” shall mean Union Pacific Railroad Company and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

13. “You” and “Your” shall refer to K&O as defined above.

14. The use of the singular shall be deemed to include the plural, as appropriate in context.

15. “Weskan” shall mean Weskan Grain LLC and its affiliates, employees and representatives.

INSTRUCTIONS

The following Instructions apply to each Request for Admission, Interrogatory or Request for Production set forth herein (all referred to generally as a “Request” or “Requests”) and are deemed incorporated in each Request:

1. Separate and complete certified responses (or, as the case may be, separate objections) are required for each Request.

2. In answering these Requests, K&O must furnish all information, however obtained and including hearsay, that is available to K&O, that can be located by K&O's reasonable inquiry, or is subject to K&O's access or control, including information in K&O's actual or constructive possession.

3. If K&O cannot answer an Request in full, K&O should respond to the extent possible, specifying the reason(s) for K&O's inability to respond to the remainder of the Request and stating the name, business address, residential address, and occupation of any Person who K&O consulted in an effort to obtain information to respond to the Request.

4. If K&O objects or otherwise declines to set forth in K&O's response any of the information requested by any part of a Request, K&O must set forth the exact basis for the objection with specificity so as to permit the Board to determine the legal sufficiency of K&O's objection or position, and respond to all parts of the Request to which K&O does not object.

5. Where Interrogatories request that K&O identify a Person or Persons, please include for each Person identified the individual's name, job title, and dates of employment, in addition to any other information requested in the Interrogatory.

6. Unless otherwise provided, the relevant time period for these Requests is January 1, 2016 to Present.

7. In responding to these Requests, produce all Documents within the possession, custody, or control of K&O, which includes in K&O's actual or constructive possession or control, including, without limitation, Documents, tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media.

8. If there is no Document responsive to a particular Request, K&O shall so state in writing.

9. If any Document or Communication called for by any Request is withheld because K&O claims that it is privileged or otherwise protected from disclosure, K&O must identify in a privilege log or other suitable writing the Document or Communication so withheld and the privilege or doctrine K&O claims. In the case of Documents of Communications that K&O claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

10. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless of whether K&O considers the entire Document to be relevant or responsive to these Requests. If K&O has redacted any portion of a Document for privilege, stamp the word "redacted" on each page of the Document which K&O has redacted, identifying the basis for such redaction.

11. K&O must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

12. If K&O objects to any Request or part of a Request, set forth the basis for K&O's objection with particularity and respond to all parts of the Request to which K&O does not object.

13. All responsive Documents in existence as of the date of production are to be produced. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

14. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information ("ESI").

15. ESI should be produced in accordance with the following specifications:

- a. Form of Production. Produce electronically stored information in single-page TIFF format (Group IV TIFF at 300 dpi) with standard Concordance formatted load file (.dat), including all metadata. Name each TIFF file with a unique name matching the Bates number (or similar identifying mark) labeled on the corresponding page. Group every 1000 tiffs into a new folder; do not create a separate folder for each document.
- b. Image Load File. Provide an image load file (Opticon file) that contains document boundaries and page counts.
- c. Document Text. For documents that were originally stored as native electronic files and which do not have redactions, produce the extracted full text (not OCR) from the body of each document in separate document-level *.txt files named for the beginning Bates number of the associated document. Provide OCR text for documents without extracted text available (non-searchable PDFs, etc.). Group 1000 document text files per incrementally named "TEXT" directories, separate from image directories. For documents that were originally stored as native electronic files and which have redactions, produce the OCR text from the redacted image(s) associated with each document, in separate document-level *.txt files named for the beginning Bates number of the associated document. Clearly label any redacted material to show the redactions on the TIFF image.

- d. Native Production For Certain File Types. For files that reasonably require viewing in their native format for a full understanding of their content and meaning (including but not limited to certain PowerPoint or other special presentation programs or database files), produce the files in native and TIFF formats to the extent it is reasonably possible to do so. Name the produced native file with the Bates number on the first page of the corresponding TIFF production of the file / document or on the TIFF placeholder document (i.e. “slipsheet”). For Excel files, produce in native format with a slip sheet that includes a Bates number and text indicating “This document was produced in Native format.” Group native files within incrementally named “NATIVE” directories; separate from images directories.
- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location. Documents should be produced in such fashion as to identify the location of the document and, where applicable, the natural Person in whose possession it was found.

16. Each Request shall be construed according to its own terms, subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting any other.

17. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request. Each Request is continuing in nature. If, after responding, You obtain or become aware of any additional Documents responsive to these Requests, You shall produce such additional Documents forthwith.

18. These discovery requests are continuing in nature. If You receive or otherwise become aware of additional or different information responsive to any Request or Interrogatory, You must promptly supplement Your response.

INTERROGATORIES

Interrogatory No. 1

Identify all railroads that K&O interchanges with on the Leased Lines, along with the locations at which the interchanges occur.

Interrogatory No. 2

Describe in detail the commercial relationship between UP and K&O for serving shippers located on the Leased Lines, including but not limited to whether it is a trackage agreement, haulage arrangement, joint line movements, “Rule 11,” and/or some other arrangement.

Interrogatory No. 3

Provide a detailed explanation of all the reasons why UP and K&O entered into the Third Supplement.

Interrogatory No. 4

Provide a detailed explanation of all the reasons why UP and K&O entered into the Fourth Supplement, including but not limited to why the parties amended Section 4 of the 1997 Lease Agreement to delete it in its entirety and replace it in part with Section 4.01 containing an “Asset Use Fee.” As part of your response please explain in detail the origin of the “Asset Use Fee,” the reasons why it was set at the level in the Fourth Supplement, and its purpose and intent.

Interrogatory No. 5

Provide the names and titles of all K&O and UP personnel who participated in the drafting and negotiation of the Third Supplement and the Fourth Supplement.

Interrogatory No. 6

Describe in detail the dispute between UP and K&O over rent owed under the 1997 Lease Agreement described in the eighth “Whereas” clause of the Fourth Supplement, including but not limited to:

- a. The basis for UP’s claim that K&O owed \$1,140,000 in rent
- b. A detailed description of the “2018 Traffic Certification.”

Interrogatory No. 7

Describe in detail the process or processes by which K&O has sought any waiver or modification of the Asset Use Fee from UP after November 21, 2019, including the “Request Under Railroad Industry Agreement” submitted by K&O to UP dated July 18, 2023, and identify and describe UP’s response to such request and the terms and conditions of any such waiver or modification.

Interrogatory No. 8

Please identify and describe in detail all discussions between UP and K&O referring or relating to the potential provision of rail service by K&O over CXR’s Towner Line pursuant to the Operating Agreement prior to and after its execution, including discussions regarding revenue divisions and/or rates.

Interrogatory No. 9

Please identify and describe any and all instances whereby K&O or its predecessor in interest contemplated interchanging traffic, and/or actually interchanged traffic, originating or terminating on the Leased Lines at Towner, Colorado, from 1997 to the present.

Interrogatory No. 10

Please identify and describe all instances from 1997 to the present where K&O operated trains over the Towner Line.

REQUESTS FOR ADMISSIONS

Request for Admission No. 1

Admit that K&O provided copies of the draft Operating Agreement, or provisions of the agreement, to UP personnel prior to the Operating Agreement being executed, and that K&O discussed the proposed terms and conditions with UP prior to the Operating Agreement being executed.

Request for Admission No. 2

Admit that K&O's payment of the Asset Use Fee to UP pursuant to the Fourth Supplement would have adversely impacted K&O's ability to perform under the Operating Agreement, in particular (but not limited to) Section 6.6, which stated

It is the intent of the parties hereto that RAILROAD shall exercise its best efforts to provide competitive interline rail freight service on the Rail Line. In that regard, RAILROAD agrees to (1) establish appropriate tariff and service arrangements applicable to all customers and commodities via any and all connecting carriers; and (2) establish and maintain interchange tracks at Towner connecting the Rail Line to RAILROAD's line at Milepost 747.5 at Towner of rail and terms and conditions for interchange that facilitate and encourage development of traffic over the Rail Line.

Request for Admission No. 5

Admit that the rail transportation rates K&O has provided to Weskan in response to its requests for rates and service terms to K&O are higher than the rail transportation rates paid to K&O by other rail shippers with facilities located on the Leased Lines, either by the rates of the other shippers being initially established at lower levels or through rebates paid to them by K&O.

Request for Admission No. 6

Admit that K&O and UP personnel discussed the level of rates and service terms that K&O would provide to Weskan for transportation from other grain facilities owned or operated by Weskan that are located along the Leased Line.

DOCUMENT REQUESTS

Request for Production of Documents No. 1

Please produce all documents referred to or relied upon in responding to each of the Interrogatories set forth above.

Request for Production of Documents No. 2

To the extent the response to any of the foregoing Requests for Admission is other than an unqualified “Admit,” please provide all documents relating or referring to the subject matter of the Request.

Request for Production of Documents No. 3

Please provide all Documents that refer or relate to the Third Supplement, including but not limited to all drafts, economic analyses, and internal Communication.

Request for Production of Documents No. 4

Please provide all Documents that refer or relate to the Fourth Supplement, including but not limited to all drafts, economic analyses, and internal Communication.

Request for Production of Documents No. 5

Please provide all Documents and Communications between UP and K&O that refer or relate to the Operating Agreement before it was executed by K&O and CXR, and all Documents and Communications between UP and K&O after the Operating Agreement went into effect.

Request for Production of Documents No. 6

Please provide all Documents referring or relating to the Asset Use Fee that was inserted into Section 2 of the Fourth Supplement, including but not limited to all Documents referring or relating to K&O’s alleged “request that the Basic Agreement be amended to provide for an Asset Use Fee to replace the existing rental structure.”

Request for Production of Documents No. 7

Please produce all Documents referring or relating to Weskan on any subject.

Request for Production of Documents No. 8

Please produce all Documents referring or relating to CXR on any subject.

Request for Production of Documents No. 9

Please produce all Documents referring or relating to KCVN LLC and its officers, owners, affiliates, representatives, or employees on any subject.

Request for Production of Documents No. 10

Please produce all Documents that refer or relate to discussions between K&O and any other rail customer of K&O on the Leased Lines or other rail lines leased or owned by K&O that reference Weskan and/or CXR.

Request for Production of Documents No. 11

Please produce all Documents referring or relating to the potential acquisition of the Towner Line by CXR or its affiliates, including but not limited to any Documents and Communications between UP and K&O concerning such potential acquisition.

Request for Production of Documents No. 12

Please produce all Documents referring or relating to K&O's role as the operator of the Towner Line pursuant to the Operating Agreement, including but not limited to all Communications between K&O and UP referring or relating to that agreement.

Request for Production of Documents No. 13

Please produce all Documents referring or relating to the rates and terms established by K&O in response to any and all requests made by Weskan for rates and service terms applicable to transportation over the Leased Lines, including but not limited to all correspondence between UP and K&O concerning such rates and terms.

Request for Production of Documents No. 14

Please produce all Documents referring or relating to the actual or potential ability of BNSF to provide service to Weskan's grain elevator facility located at Milepost 752.5 of the railroad track known as the Towner Line owned and operated by CXR, including all Communications between K&O and UP.

Request for Production of Document No. 15

Please produce all pricing authorities and contracts, including but not limited to rebate and allowance contracts, governing the movement of all rail shipments handled on the Leased Lines and other rail lines owned or operated by K&O in Kansas as originating, terminating, overhead, or single-line carrier.

Request for Production of Documents No. 16

Please produce all traffic and/or revenue forecasts produced in the normal course of business for all rail shipments handled by K&O, and all actual volumes transported by K&O, as originating, terminating, overhead, or single-line carrier on the Leased Lines and other rail lines owned or operated by K&O in Kansas.

Request for Production of Documents No. 17

To the extent not provided in Documents produced in response to Requests No. 16 and 17, please produce documents that show the ultimate destinations of all grain shipments, and the volumes delivered to each destination, that originated or terminated on the Leased Lines and other rail lines owned or operated by K&O in Kansas, or were projected to originate or terminate on such lines, by K&O as originating, terminating, or single-line carrier on the Leased Lines.

Request for Production of Documents No. 18

Please produce all documents supporting the statement in K&O's Petition for Exemption in STB Docket No. FD 36859 at page 6 under the heading "49 C.F.R. 1121.3(d)(1)(vii)," which statement K&O designated "Highly Confidential" pursuant to the Protective Order entered in this proceeding.

Request for Production of Documents No. 19

Please produce all Documents referring to, relating to, or supporting the following statement in K&O's proffered Rebuttal filing in STB Docket No. FD 36859:

"K&O understands that the interchange commitment is and was a mandatory condition to the lease arrangement, and that, without it, UP claims a right to terminate the lease arrangement and, in turn, to divest K&O of its leasehold interest going forward – evidently to resume UP operations,"

Including but not limited to all Documents supporting K&O's understanding that (a) the interchange commitment was "a mandatory condition," (b) UP "claims a right to terminate the lease," (c) UP's intent to "divest K&O of its leasehold interest," and (d) UP's intent to resume operations.

Request for Production of Documents No. 20

Please produce all Documents referring or relating to, constituting, supporting, and/or responding to, the statement in K&O's proffered Rebuttal in STB Docket No. FD 36859 that "counsel for UP recently has advised K&O in writing that UP believes that the Third and Fourth Supplements to the 1997 Lease remain legally binding upon the parties, the Board's February 25 ruling in FD 34030 notwithstanding."

Request for Production of Documents No. 21

Please produce all Documents referring or relating to the establishment of interchange tracks between K&O and CXR at or near Towner, Colorado, including but not limited to all Communications between K&O and UP concerning the establishment of such interchange tracks, and the terms and conditions for such interchange.

Respectfully submitted,

/s/ Thomas W. Wilcox

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July 9, 2025

BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD

FD 36849

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

**KANSAS & OKLAHOMA RAILROAD, LLC’S ANSWERS AND OBJECTIONS TO
WESKAN GRAIN LLC’S FIRST DISCOVERY REQUESTS, INTERROGATORIES**

Kansas & Oklahoma Railroad, LLC (“K&O”), incorrectly identified herein as Kansas & Oklahoma Railroad, Inc., by and through its attorneys, Fletcher & Sippel LLC, for its Answers and Objections to Weskan Grain LLC’s (“Weskan”) First Discovery Requests, Interrogatories, (“Requests for Admission”) as follows:

GENERAL OBJECTIONS

1. K&O objects to Weskan’s Interrogatories to the extent that they call for the disclosure of information which is protected from disclosure by the attorney-client privilege.
2. K&O objects to Weskan’s Interrogatories to the extent that they call for the production of information which is protected from disclosure by the attorney-work product privilege.
3. K&O objects to Weskan’s Interrogatories to the extent that they impose any obligations on K&O beyond those permitted under the discovery provisions of the Surface Transportation Board at 49 C.F.R. Part 1114.
3. K&O’s Answers made herein are solely for the purpose of this proceeding. Each Answer is subject to any and all objections to competency, relevancy, materiality, propriety and

admissibility, and to any and all other objections and grounds that would require the exclusion of any information identified herein if the information was asked of or disclosed by a testifying witness, all of which objections and grounds are hereby expressly reserved and may be interposed at a later date.

4. K&O objects to the Interrogatories on the ground and to the extent that they seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

5. K&O objects to the Interrogatories on the grounds and to the extent that they are compound or otherwise assume or appear to assume that any fact or event is true. By responding to any such Interrogatory, K&O does not concede the accuracy of any such conclusion or assumption.

6. These General Objections are hereby incorporated by reference into each and every specific objection and Answer below. The fact that an answer is given does not waive any general or specific objection.

7. With respect to documents classified as Highly Confidential and produced under Protective Order entered by STB Decision FD 52540, to the extent these documents have been identified under any Answer or Response, the same Confidentiality applies and any failure to assert the Confidentiality is merely an oversight and not a waiver. This Confidentiality runs to all interrogatory answers, responses to requests to admit and discovery responses wherein said Confidential information and/or documents are referenced.

8. K&O objects to the Interrogatories to the extent that they call for the disclosure of documents or seek information that predates K&O's operation and/or its operation over the Leased Lines as K&O has no duty to search for records or information not in its custody or control.

INTERROGATORIES

Interrogatory No. 1

Identify all railroads that K&O interchanges with on the Leased Lines, along with the locations at which the interchanges occur.

ANSWER: K&O objects to this interrogatory because it is unduly burdensome, not reasonably limited in scope or place and seeks irrelevant information. Details about railroads that K&O interchanges with are not relevant to this matter because they are not probative of any fact actually related to the proceeding. Further objecting, the Lease Agreement between UP and K&O has no relevance to the instant matter, UP is not a party to these proceedings and Weskan is not a party to the Lease Agreement. Further objecting, the Lease Agreement has no relevance to the issues in this matter. Without waiving said objections, K&O's publicly accessible Petition for Exemption Pursuant to 49 U.S.C. § 10502(a) at page six, states as follows: "The only third-party railroad with which K&O could interchange via the Lines is CXR. No other third-party railroads connect with the Lines." The "Leased Lines" of this interrogatory are the same as the "Lines" discussed in the foregoing passage. K&O currently does not interchange traffic with CXR, however, owing to the absence of interchange facilities at Towner, Colorado, the point at which CXR's and K&O's lines connect, and the lack of an agreement stipulating where and how K&O-CXR interchange would occur. K&O is engaged with CXR to arrive at mutually acceptable interchange arrangements in or around Towner to enable future interchange to take place between the two railroads.

Interrogatory No. 2

Describe in detail the commercial relationship between UP and K&O for serving shippers located on the Leased Lines, including but not limited to whether it is a trackage agreement, haulage arrangement, joint line movements, "Rule 11," and/or some other arrangement.

ANSWER: K&O objects to this Interrogatory on the grounds that it is unduly burdensome, not reasonably limited in time or scope, and seeks irrelevant information. Further objecting, the commercial relationship between UP and K&O has no relevance to the instant matter, UP is not a

party to these proceedings. Further objecting, Weskan is not a party to the Lease Agreement, and the Lease Agreement has no relevance to the issues in this matter. Further objecting, the terms “detail” and “commercial relationship” as used in this Interrogatory are vague and ambiguous, not adequately defined and are subject to interpretation. Subject to and without waiving said objections, and to the extent K&O accurately understands the Interrogatory, for purposes of traffic moving to and from the Leased Lines in interline service with UP, K&O is a handling line carrier.

Interrogatory No. 3

Provide a detailed explanation of all the reasons why UP and K&O entered into the Third Supplement.

ANSWER: Answering for K&O only, K&O objects to this Interrogatory on the grounds that it is unduly burdensome, not reasonably limited in time or scope, seeks irrelevant information, and calls for a narrative answer. K&O objects to the Interrogatory and its reference to the Third Supplement which is not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Third Supplement. K&O objects to this Interrogatory on the grounds that the term “detailed explanation” is vague and ambiguous, not adequately defined and is subject to interpretation. K&O further objects to the extent the Interrogatory requests information protected by the work-product and/or attorney-client privileges. Further objecting, Weskan cannot speak to the state of mind of the UP. Further objecting, the Third Supplement speaks for itself and adequately identifies the reasons for entering into the Third Supplement.

Interrogatory No. 4

Provide a detailed explanation of all the reasons why UP and K&O entered into the Fourth Supplement, including but not limited to why the parties amended Section 4 of the 1997 Lease Agreement to delete it in its entirety and replace it in part with Section 4.01 containing an “Asset Use Fee.” As part of your response please explain in detail the origin of the “Asset Use Fee,” the reasons why it was set at the level in the Fourth Supplement, and its purpose and intent.

ANSWER: Answering for K&O only, K&O objects to this Interrogatory on the grounds that it is compound, unduly burdensome, not reasonably limited in time or scope, seeks irrelevant information, and calls for a narrative answer. K&O objects to the Interrogatory and its reference to the Fourth Supplement which is not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Fourth Supplement. K&O objects to this Interrogatory on the grounds that the term “detailed explanation” is vague and ambiguous, not adequately defined and is subject to interpretation. K&O further objects to the extent the Interrogatory requests information protected by the work-product and/or attorney-client privileges. Further objecting, Weskan cannot speak to the state of mind of the UP. Further objecting, the Fourth Supplement speaks for itself and adequately identifies the reasons for entering into the Fourth Supplement. Subject to and without waiving said objections, {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].}}

Interrogatory No. 5

Provide the names and titles of all K&O and UP personnel who participated in the drafting and negotiation of the Third Supplement and the Fourth Supplement.

ANSWER: K&O objects to this Interrogatory on the grounds that it is compound, unduly burdensome, not reasonably limited in time or scope and seeks irrelevant information. K&O objects to the Interrogatory and its reference to the Third Supplement and Fourth Supplement

which are not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Third Supplement and Fourth Supplement. K&O further objects to the extent the Interrogatory requests information protected by the work-product and/or attorney-client privileges. Subject to and without waiving said objections, see signatories to the Third Supplement and Fourth Supplements—documents that Weskan has in its possession (classified as Highly Confidential and produced under Protective Order entered by STB Decision ID 52540). Investigation continues.

Interrogatory No. 6

Describe in detail the dispute between UP and K&O over rent owed under the 1997 Lease Agreement described in the eighth “Whereas” clause of the Fourth Supplement, including but not limited to:

- a. The basis for UP’s claim that K&O owed \$1,140,000 in rent
- b. A detailed description of the “2018 Traffic Certification.”

ANSWER: K&O objects to this Interrogatory on the grounds that it is compound, unduly burdensome, not reasonably limited in time or scope, seeks irrelevant information, and calls for a narrative answer. K&O objects to the Interrogatory and its reference to the Lease Agreement and Fourth Supplement which are not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Lease Agreement and Fourth Supplement. K&O objects to this Interrogatory on the grounds that the phrases “describe in detail” and “detailed description of” are vague and ambiguous, not adequately defined and are subject to interpretation. K&O further objects to the extent the Interrogatory requests information protected by the work-product and/or attorney-client privileges. K&O objects to the Interrogatory as it inaccurately quotes the language of the eighth “Whereas” clause of the Fourth Supplement. K&O further objects to the extent that this information is not reasonably within its knowledge or control because K&O cannot answer on behalf of UP. Subject to and without waiving said objections, the “Disputed Amount” involved the penalty provision. See the preambles set forth in the Third and

Fourth Supplements—documents that Weskan has in its possession (classified as Highly Confidential and produced under Protective Order entered by STB Decision ID 52540). Further answering and objecting, see Answer and Objections to Interrogatory No. 4.

Interrogatory No. 7

Describe in detail the process or processes by which K&O has sought any waiver or modification of the Asset Use Fee from UP after November 21, 2019, including the “Request Under Railroad Industry Agreement” submitted by K&O to UP dated July 18, 2023, and identify and describe UP’s response to such request and the terms and conditions of any such waiver or modification.

ANSWER: K&O objects to this Interrogatory on the grounds that it is compound, unduly burdensome, not reasonably limited in time or scope, seeks irrelevant information, and calls for a narrative answer. K&O objects to the Interrogatory and its reference to the Request Under Railroad Industry Agreement which is not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Request Under Railroad Industry Agreement. K&O objects to this Interrogatory on the grounds that the phrases “describe in detail” and “process or processes” are vague and ambiguous, not adequately defined and are subject to interpretation. K&O further objects to the extent the Interrogatory requests information protected by the work-product and/or attorney-client privileges. K&O objects to the Interrogatory as it fails to define the phrases “Asset Use Fee” and “Request Under Railroad Industry Agreement.” K&O further objects to the extent that this information is not reasonably within its knowledge or control because K&O cannot answer on behalf of UP. Subject to and without waiving said objections, and to the extent K&O accurately understands the Interrogatory, K&O refers Weskan to the Request Under Railroad Industry Agreement and UP’s response to the Request Under Railroad Industry Agreement produced in the STB proceedings, which Weskan has in its possession (classified as Highly Confidential and produced under Protective Order entered by STB Decision ID 52540).

Interrogatory No. 8

Please identify and describe in detail all discussions between UP and K&O referring or relating to the potential provision of rail service by K&O over CXR's Towner Line pursuant to the Operating Agreement prior to and after its execution, including discussions regarding revenue divisions and/or rates.

ANSWER: K&O objects to this Interrogatory on the grounds that it is compound, unduly burdensome, not reasonably limited in time or scope, seeks irrelevant information, and calls for a narrative answer. K&O objects to the Interrogatory and its reference to the Operating Agreement which is not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Operating Agreement. K&O objects to this Interrogatory on the grounds that the phrases "describe in detail" and "the potential provision of rail service" are vague and ambiguous, not adequately defined and are subject to interpretation. Further objecting, the term "discussions" is not adequately defined. K&O further objects to the extent the Interrogatory requests information protected by the work-product and/or attorney-client privileges. Further objecting, the operation of CXR's railroad lines west of Towner are subject to prior STB authorization which are not relevant to these proceedings. Further objecting, Weskan is uniquely in possession of knowledge related to the operation of CXR's railroad lines west of Towner through its affiliate, CXR. Subject to and without waiving said objections, and to the extent K&O accurately understands the Interrogatory, none known, investigation continues.

Interrogatory No. 9

Please identify and describe any and all instances whereby K&O or its predecessor in interest contemplated interchanging traffic, and/or actually interchanged traffic, originating or terminating on the Leased Lines at Towner, Colorado, from 1997 to the present.

ANSWER: Answering for K&O only, K&O objects to this Interrogatory on the grounds that it is compound, unduly burdensome, not reasonably limited in time or scope, seeks irrelevant information, and calls for a narrative answer. K&O objects to the Interrogatory and its reference to the Leased Lines which are not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Lease Agreement. K&O further

objects to the phrase “predecessor in interest” as it inaccurately attempts to ascribe an affiliation between K&O and an unnamed and unidentified entity. K&O objects to this Interrogatory on the grounds that it seeks information not reasonably within K&O’s knowledge or control as it relates to an unnamed and unidentified entity. K&O affirmatively denies any knowledge of any considerations of any entity other than K&O with respect to the Leased Lines at Towner, Colorado. Subject to and without waiving said objections, none known, investigation continues.

Interrogatory No. 10

Please identify and describe all instances from 1997 to the present where K&O operated trains over the Towner Line.

ANSWER: K&O objects to this interrogatory because it is unduly burdensome, not reasonably limited in scope, place or time and seeks irrelevant information. Details about K&O’s operations, if any, of trains over the Towner Line are not relevant to this matter because they are not probative of any fact actually related to the proceeding.

Respectfully submitted,

/s/ *R. A. Wimbish*

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

Dated: July 24, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th Day of July, 2025, arranged to serve a copy of the foregoing Kansas & Oklahoma Railroad, LLC Answers to Weskan Grain LLC's discovery requests upon all parties to this proceeding via electronic mail.

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Kansas & Oklahoma Railroad, LLC

BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD

FD 36849

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

**KANSAS & OKLAHOMA RAILROAD, LLC’S RESPONSES AND OBJECTIONS TO
WESKAN GRAIN LLC’S FIRST DISCOVERY REQUESTS, DOCUMENT REQUESTS**

Kansas & Oklahoma Railroad, LLC (“K&O”), incorrectly identified herein as Kansas
& Oklahoma Railroad, Inc., by and through its attorneys, Fletcher & Sippel LLC, for its
Responses and Objections to Weskan Grain LLC’s (“Weskan”) First Discovery Requests,
Document Requests, (“Request(s)”) as follows:

GENERAL OBJECTIONS

1. K&O objects to Requests to the extent that they call for the disclosure of documents that are protected from disclosure by the attorney-client privilege.
2. K&O objects to Requests to the extent that they call for the production of documents that are protected from disclosure by the attorney-work product privilege.
3. K&O objects to Requests to the extent that they impose any obligations on K&O beyond the obligations imposed by the discovery provisions of the Surface Transportation Board at 49 C.F.R. Part 1114.
4. K&O’s Responses made herein are solely for the purpose of this STB action. Each Response is subject to any and all objections to competency, relevancy, materiality, propriety and admissibility, and to any and all other objections and grounds that would require the exclusion of any information identified herein if the information was asked of or disclosed by a witness present and testifying in court, all of which objections

and grounds are hereby expressly reserved and may be interposed at a later date.

5. K&O objects to the Requests on the ground and to the extent that they seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

6. K&O objects to the Requests on the grounds and to the extent that they are compound or otherwise assume or appear to assume that any fact or event is true. By responding to any such Requests, K&O does not concede the accuracy of any such conclusion or assumption.

7. With respect to documents classified as Highly Confidential and produced under Protective Order entered by STB Decision FD 52540, to the extent these documents have been identified under any Answer or Response, the same Confidentiality applies and any failure to assert the Confidentiality is merely an oversight and not a waiver. This Confidentiality runs to all interrogatory answers, responses to requests to admit and discovery responses wherein said Confidential information and/or documents are referenced.

8. K&O objects to Requests to the extent that they call for the disclosure of documents or seek information that predates K&O's operation and/or its operation over the Leased Lines as K&O has no duty or search for records or information not in its custody or control.

9. These General Objections are hereby incorporated by reference into each and every specific Objection and Response below. The fact that a response is given does not waive any general or specific objection.

DOCUMENT REQUESTS

Request for Production of Documents No. 1

Please produce all documents referred to or relied upon in responding to each of the Interrogatories set forth above.

RESPONSE: Subject to all objections set forth in K&O's Answers to Interrogatories, none known. K&O will supplement this Response when, and if, discoverable documents are received.

Request for Production of Documents No. 2

To the extent the response to any of the foregoing Requests for Admission is other than an unqualified "Admit," please provide all documents relating or referring to the subject matter of the Request.

RESPONSE: Objection. The Request is nonsensical as the Requests for Admission purported to seek admissions of facts or authenticity of documents, thus no “documents” relate or refer to the subject matter of the Request. Further objecting, the Request is unduly burdensome, not reasonably limited in time or scope, seeks irrelevant information, is vague and improperly puts the burden on K&O to identify the “subject matter” of Weskan’s Requests for Admission.

Request for Production of Documents No. 3

Please provide all Documents that refer or relate to the Third Supplement, including but not limited to all drafts, economic analyses, and internal Communication.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time or scope and seeks irrelevant information. K&O objects to the reference to the Third Supplement which is not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Third Supplement. K&O further objects to the extent Request seeks documents protected by the work-product and/or attorney-client privileges. Subject to and without waiving said objections, K&O refers Weskan to the Third Supplement which Weskan has in its possession (classified as Highly Confidential and produced under Protective Order entered by STB Decision ID 52540).

Request for Production of Documents No. 4

Please provide all Documents that refer or relate to the Fourth Supplement, including but not limited to all drafts, economic analyses, and internal Communication.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time or scope and seeks irrelevant information. K&O objects to the reference to the Fourth Supplement which is not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Fourth Supplement. K&O further objects to the extent Request seeks documents protected by the work-product and/or attorney-client privileges. Subject to and without waiving said objections, K&O

refers Weskan to the Fourth Supplement which Weskan has in its possession (classified as Highly Confidential and produced under Protective Order entered by STB Decision ID 52540).

Request for Production of Documents No. 5

Please provide all Documents and Communications between UP and K&O that refer or relate to the Operating Agreement before it was executed by K&O and CXR, and all Documents and Communications between UP and K&O after the Operating Agreement went into effect.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time or scope and seeks irrelevant information. K&O objects to the reference to the Operating Agreement which is not relevant to the instant proceedings. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Operating Agreement. K&O further objects to the extent Request seeks documents protected by the work-product and/or attorney-client privileges. Subject to and without waiving said objections, K&O refers Weskan to the Operating Agreement which Weskan has unique access to through its affiliate CXR.

Request for Production of Documents No. 6

Please provide all Documents referring or relating to the Asset Use Fee that was inserted into Section 2 of the Fourth Supplement, including but not limited to all Documents referring or relating to K&O's alleged "request that the Basic Agreement be amended to provide for an Asset Use Fee to replace the existing rental structure."

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome and not reasonably limited in time or scope. K&O objects to the Request and its reference to the Asset Use Fee without including a citation to or attaching the relevant pages of said document to which it is quoting. Further objecting, UP is not a party to these proceedings and Weskan is not a party to the Fourth Supplement. K&O further objects to the extent this Request seeks documents protected by the work-product and/or attorney-client privileges. Subject to and without waiving said objections, K&O refers Weskan to the Fourth Supplement which Weskan has in its possession (classified as Highly Confidential and produced under Protective Order entered by STB Decision ID 52540).

Request for Production of Documents No. 7

Please produce all Documents referring or relating to Weskan on any subject.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks documents not relevant to these proceedings. Further objecting, the Request is nonsensical as it contemplates the production of tens of thousands of pages of documents that have no relevance to the instant proceeding, without definition or limitation. K&O further objects to the extent the Request calls for the production of documents not in the control or custody of K&O.

Request for Production of Documents No. 8

Please produce all Documents referring or relating to CXR on any subject.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks documents not relevant to these proceedings. Further objecting, the Request is nonsensical as it contemplates the production tens of thousands of pages of documents that have no relevance to the instant proceeding, without definition or limitation. K&O further objects to the extent the Request calls for the production of documents not in the control or custody of K&O.

Request for Production of Documents No. 9

Please produce all Documents referring or relating to KCVN LLC and its officers, owners, affiliates, representatives, or employees on any subject.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks documents not relevant to these proceedings. Further objecting, the Request is nonsensical as it contemplates the production tens of thousands of pages of documents that have no relevance to the instant proceeding, without definition or limitation. K&O further objects to the extent the Request calls for the production of documents not in the control or custody of K&O.

Request for Production of Documents No. 10

Please produce all Documents that refer or relate to discussions between K&O and any other rail customer of K&O on the Leased Lines or other rail lines leased or owned by K&O that reference Weskan and/or CXR.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks documents not relevant to these proceedings. Further objecting, the Request is nonsensical as it contemplates the production of countless pages of documents that have no relevance to the instant proceeding, without definition or limitation. K&O further objects to the extent the Request calls for the production of documents not in the control or custody of K&O.

Request for Production of Documents No. 11

Please produce all Documents referring or relating to the potential acquisition of the Towner Line by CXR or its affiliates, including but not limited to any Documents and Communications between UP and K&O concerning such potential acquisition.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks documents not relevant to these proceedings. K&O further objects to the extent the Request calls for the production of documents not in the control or custody of K&O. K&O objects to the Request of production of documents uniquely in the control and custody of Weskan and its affiliates. Further objecting, UP, CXR and its affiliates are not parties to these proceedings and the potential acquisition of the Towner Line has no relevance to the instant proceedings.

Request for Production of Documents No. 12

Please produce all Documents referring or relating to K&O's role as the operator of the Towner Line pursuant to the Operating Agreement, including but not limited to all Communications between K&O and UP referring or relating to that agreement.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks irrelevant information. Further objecting, the

Operating Agreement is not relevant to the instant proceedings, UP is not a party to these proceedings and Weskan is not a party to the Operating Agreement.

Request for Production of Documents No. 13

Please produce all Documents referring or relating to the rates and terms established by K&O in response to any and all requests made by Weskan for rates and service terms applicable to transportation over the Leased Lines, including but not limited to all correspondence between UP and K&O concerning such rates and terms.

RESPONSE: K&O objects to the Request of production of documents uniquely in the control and custody of Weskan. Subject to and without waiving said objections, K&O refers Weskan to the documents already made a part of the STB record which Weskan has in its possession (some classified as Highly Confidential and produced under Protective Order entered by STB Decision ID 52540). Further Responding and without waiving said objections, K&O will supplement this response when and if relevant information is identified.

Request for Production of Documents No. 14

Please produce all Documents referring or relating to the actual or potential ability of BNSF to provide service to Weskan's grain elevator facility located at Milepost 752.5 of the railroad track known as the Towner Line owned and operated by CXR, including all Communications between K&O and UP.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks irrelevant information. K&O objects to the Request of production of documents uniquely in the control and custody of Weskan. Further objecting, Weskan's grain elevator facility located at Milepost 752.5 of the railroad track known as the Towner Line is not relevant to the instant proceedings, and neither BNSF nor CXR are parties to these proceedings.

Request for Production of Document No. 15

Please produce all pricing authorities and contracts, including but not limited to rebate and allowance contracts, governing the movement of all rail shipments handled on the Leased Lines and other rail lines owned or operated by K&O in Kansas as originating, terminating, overhead, or single-line carrier.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks irrelevant information. Further objecting, other rail lines owned or operated by K&O in Kansas have no relevance to the instant proceedings.

Request for Production of Documents No. 16

Please produce all traffic and/or revenue forecasts produced in the normal course of business for all rail shipments handled by K&O, and all actual volumes transported by K&O, as originating, terminating, overhead, or single-line carrier on the Leased Lines and other rail lines owned or operated by K&O in Kansas.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks irrelevant information. The traffic and/or revenue forecasts for all rail shipments handled by K&O has no relevance to the instant proceedings. Further objecting, other rail lines owned or operated by K&O in Kansas have no relevance to the instant proceedings. Further objecting, volumes transported by K&O, as originating, terminating, overhead, or single-line carrier on the Leased Lines have no relevance to the instant proceedings.

Request for Production of Documents No. 17

To the extent not provided in Documents produced in response to Requests No. 16 and 17, please produce documents that show the ultimate destinations of all grain shipments, and the volumes delivered to each destination, that originated or terminated on the Leased Lines and other rail lines owned or operated by K&O in Kansas, or were projected to originate or terminate on such lines, by K&O as originating, terminating, or single-line carrier on the Leased Lines.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time, scope, or place, and seeks irrelevant information. K&O further objects to the extent the Request calls for the production of documents not in the control or custody of K&O. Further objecting, other rail lines owned or operated by K&O in Kansas have no relevance to the instant proceedings. Further Responding and without waiving said objections, K&O will supplement this response when and if relevant information is identified.

Request for Production of Documents No. 18

Please produce all documents supporting the statement in K&O's Petition for Exemption in STB Docket No. FD 36859 at page 6 under the heading "49 C.F.R. 1121.3(d)(1)(vii)," which statement K&O designated "Highly Confidential" pursuant to the Protective Order entered in this proceeding.

RESPONSE: K&O objects to the Request as it is not a party to any proceeding identified as STB

Docket No. FD 36859.

Request for Production of Documents No. 19

Please produce all Documents referring to, relating to, or supporting the following statement in K&O's proffered Rebuttal filing in STB Docket No. FD 36859:

"K&O understands that the interchange commitment is and was a mandatory condition to the lease arrangement, and that, without it, UP claims a right to terminate the lease arrangement and, in turn, to divest K&O of its leasehold interest going forward – evidently to resume UP operations,"

Including but not limited to all Documents supporting K&O's understanding that (a) the interchange commitment was "a mandatory condition," (b) UP "claims a right to terminate the lease," (c) UP's intent to "divest K&O of its leasehold interest," and (d) UP's intent to resume operations.

RESPONSE: K&O objects to the Request as it is not a party to any proceeding identified as STB

Docket No. FD 36859. K&O objects to this Request on the grounds that it is unduly burdensome.

Subject to and without waiving said objections, K&O refers Weskan to the documents already made a part of the STB record which Weskan has in its possession (some classified as Highly Confidential and produced under Protective Order entered by STB Decision ID 52540).

Request for Production of Documents No. 20

Please produce all Documents referring or relating to, constituting, supporting, and/or responding to, the statement in K&O's proffered Rebuttal in STB Docket No. FD 36859 that "counsel for UP recently has advised K&O in writing that UP believes that the Third and Fourth Supplements to the 1997 Lease remain legally binding upon the parties, the Board's February 25 ruling in FD 34030 notwithstanding."

RESPONSE: K&O objects to the Request as it is not a party to any proceeding identified as STB

Docket No. FD 36859.

Request for Production of Documents No. 21

Please produce all Documents referring or relating to the establishment of interchange tracks between K&O and CXR at or near Towner, Colorado, including but not limited to all

Communications between K&O and UP concerning the establishment of such interchange tracks, and the terms and conditions for such interchange.

RESPONSE: K&O objects to this Request on the grounds that it is unduly burdensome, not reasonably limited in time or scope, and seeks irrelevant information. Further objecting, UP, CXR and its affiliates are not parties to these proceedings. Further objecting, the Request seeks the production of documents uniquely in the control and custody of Weskan and its affiliates. Further Responding and without waiving said objections, K&O will supplement this response when and if relevant information is identified.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Colleen Konicek

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

Dated: July 24, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th Day of July, 2025, arranged to serve a copy of the foregoing Kansas & Oklahoma Railroad, LLC Responses to Weskan Grain LLC's discovery requests upon all parties to this proceeding via electronic mail.

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Kansas & Oklahoma Railroad, LLC

BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD

FD 36849

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

**KANSAS & OKLAHOMA RAILROAD, LLC’S RESPONSES AND OBJECTIONS TO
WESKAN GRAIN LLC’S FIRST DISCOVERY REQUESTS,
REQUESTS FOR ADMISSION**

Kansas & Oklahoma Railroad, LLC (“K&O”), incorrectly identified herein as Kansas & Oklahoma Railroad, Inc., by and through its attorneys, Fletcher & Sippel LLC, for its Responses and Objections to Weskan Grain LLC’s (“Weskan”) First Discovery Requests, Requests for Admission, (“Requests for Admission”) as follows:

GENERAL OBJECTIONS

1. K&O objects to Weskan’s Requests for Admission to the extent they seek legal conclusions.
2. K&O objects to the Requests for Admission to the extent that they purport to impose any obligations beyond the obligations imposed by the discovery provisions of the Surface Transportation Board at 49 C.F.R. Part 1114.
3. K&O’s Responses made herein are solely for the purpose of this STB action. Each Response is subject to any and all objections to competency, relevancy, materiality, propriety and admissibility, and to any and all other objections and grounds that would require the exclusion of any information identified herein if the information was asked of or disclosed by a witness present

and testifying in court, all of which objections and grounds are hereby expressly reserved and may be interposed at a later date.

4. K&O objects to the Requests for Admission on the ground and to the extent that they seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

5. K&O objects to the Requests for Admission on the grounds and to the extent that they are compound or otherwise assume or appear to assume that any fact or event is true. By responding to any such Requests, K&O does not concede the accuracy of any such conclusion or assumption.

6. With respect to documents classified as Highly Confidential and produced under Protective Order entered by STB Decision FD 52540, to the extent these documents have been identified under any Answer or Response, the same Confidentiality applies and any failure to assert the Confidentiality is merely an oversight and not a waiver. This Confidentiality runs to all interrogatory answers, responses to requests to admit and discovery responses wherein said Confidential information and/or documents are referenced.

7. K&O objects to Document Requests to the extent that they call for the disclosure of documents or seek information that predates K&O's operation and/or its operation over the Leased Lines as K&O has no duty or search for records or information not in its custody or control.

8. These General Objections are hereby incorporated by reference into each and every specific Objection and Response below. The fact that a response is given does not waive any general or specific objection.

REQUESTS FOR ADMISSIONS

Request for Admission No. 1

Admit that K&O provided copies of the draft Operating Agreement, or provisions of the agreement, to UP personnel prior to the Operating Agreement being executed, and that K&O discussed the proposed terms and conditions with UP prior to the Operating Agreement being executed.

RESPONSE: K&O objects to the compound nature of this Request. Further objecting, this Request is not a proper request to admit as it does not properly identify or attach the document it is referring to. K&O further objects to this Request on the basis that it is not a proper request to admit as it does not request an admission of fact that is relevant to the genuineness of any relevant documents. Further objecting, the Operating Agreement between CXR and K&O has no relevance to the instant matter, CXR is not a party to these proceedings and Weskan is not a party to the Operating Agreement.

Request for Admission No. 2

Admit that K&O's payment of the Asset Use Fee to UP pursuant to the Fourth Supplement would have adversely impacted K&O's ability to perform under the Operating Agreement, in particular (but not limited to) Section 6.6, which stated

It is the intent of the parties hereto that RAILROAD shall exercise its best efforts to provide competitive interline rail freight service on the Rail Line. In that regard, RAILROAD agrees to (1) establish appropriate tariff and service arrangements applicable to all customers and commodities via any and all connecting carriers; and (2) establish and maintain interchange tracks at Towner connecting the Rail Line to RAILROAD's line at Milepost 747.5 at Towner of rail and terms and conditions for interchange that facilitate and encourage development of traffic over the Rail Line.

RESPONSE: K&O objects to the compound nature of this Request and its reference to the Fourth Supplement and Operating Agreement, neither of which are relevant to the instant proceedings. K&O objects to this Request as improper as it does not properly identify or attach the documents it is referring to. K&O further objects to this Request on the basis that it is not a proper request to admit as it does not request an admission of fact that is relevant to the

genuineness of any relevant documents. Further objecting, the Fourth Supplement between UP and K&O has no relevance to the instant matter, UP is not a party to these proceedings and Weskan is not a party to the Fourth Supplement. Further objecting, Weskan is not a party to the Operating Agreement, and the Operating Agreement has no relevance to the issues in this matter. K&O further objects to this Request on the grounds that the terms “adversely impacted” and “ability to perform” are vague and ambiguous, not adequately defined and are subject to interpretation. Subject to and without waiving said objections, and to the extent K&O accurately understands what is meant by “adversely impacted” and “ability to perform”, denied, because, the request calls for speculation based upon hypothetical circumstances. Specifically, during the term of the Operating Agreement, no customer requested “tariff and service arrangements” for the movement of traffic between points on K&O’s lines and points on CXR’s lines. And, even if a customer had during the term of that agreement requested such service, K&O would have exercised its best efforts to “provide competitive interline rail freight service on the Rail Line.” Further, generally higher service charge does not necessarily impair a party’s ability to provide competitive interline freight service.

Request for Admission No. 5 [sic]

Admit that the rail transportation rates K&O has provided to Weskan in response to its requests for rates and service terms to K&O are higher than the rail transportation rates paid to K&O by other rail shippers with facilities located on the Leased Lines, either by the rates of the other shippers being initially established at lower levels or through rebates paid to them by K&O.

RESPONSE: Objection. The Request is unduly burdensome, compound, and contrary to K&O’s right to the confidentiality of its rate information. Subject to and without waiving said objections, K&O can neither admit nor deny this Request because as stated there is no objective standard by which to make an accurate comparison—other rail shippers not only originate from a different location than Weskan, but also ship different distances and direction. No customer, other than Weskan, has requested rates to or from the K&O-CXR connection at Towner, and so there is no

pertinent frame of reference to assess how K&O's proffered rates to Weskan via Towner compare to any other customer's rates via the Towner connection.

Request for Admission No. 6

Admit that K&O and UP personnel discussed the level of rates and service terms that K&O would provide to Weskan for transportation from other grain facilities owned or operated by Weskan that are located along the Leased Line.

RESPONSE: K&O objects to the compound nature of this Request. Subject to and without waiving said objections, K&O admits that personnel discussed certain service terms for transportation from other grain facilities owned or operated by Weskan that are located along the Leased Line with UP. Subject to and without waiving said objections, after reasonable inquiry, K&O can neither admit nor deny that K&O personnel discussed with UP personnel the level of rates for transportation from other grain facilities owned or operated by Weskan that are located along the Leased Line with UP, but denies that it has evidence of any such discussion.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish
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29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500
rwimbish@fletcher-sippel.com

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

Dated: July 24, 2025

CERTIFICATE OF SERVICE

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/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Kansas & Oklahoma Railroad, LLC

EXHIBIT B

From: [Tom Wilcox](#)
To: rwimbish@fletcher-sippel.com
Subject: Motion to Extend Schedule
Date: Tuesday, July 29, 2025 2:22:00 PM
Attachments: [FD36849 Weskan Motion to Extend.pdf](#)

Rob – I filed the attached motion this afternoon. Hopefully, K&O will support it and drop its demand about “new” requests. Weskan is not seeking an extension for that reason but cannot rule out additional requests, particularly after the approach K&O has taken with its objections and “responses”. I am going to start drafting a motion to compel but am of course open to discussing if we can reach agreement on K&O’s production. I have some time on Thursday afternoon and Friday.

Regards,
Tom

Thomas W. Wilcox

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CERTIFICATE OF SERVICE

I hereby certify that on this 4^h day of August, 2025, copies of the foregoing Motion to Compel Discovery 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