

SERVICE DATE – AUGUST 8, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36849

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

Digest:¹ This decision amends the procedural schedule in this proceeding and assigns and authorizes an administrative law judge to address discovery matters.

Decided: August 8, 2025

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

On April 16, 2025, Weskan Grain LLC (Weskan) filed a reply in opposition to the petition for exemption. By decision served on June 25, 2025 (June 2025 Order), a proceeding was instituted and a procedural schedule was established. As relevant here, the procedural schedule provided for a discovery period, with a deadline for discovery to be completed by August 11, 2025.

BACKGROUND

On July 29, 2025, Weskan filed a motion to extend the procedural schedule in this proceeding by approximately 70 days to allow additional time to complete discovery. (Mot. 1, 3.) Weskan states that it served discovery requests on K&O and UP on July 9, 2025, and set a 15-day period (until July 24, 2025) for K&O and UP to submit written responses and objections (R&Os) to the requests. (Id. at 2.) Weskan asserts that K&O submitted its R&Os on July 24, 2025, which included broad objections to the requests. (Id.) Weskan also asserts that it approached K&O about consenting to an extension, but that K&O would consent to the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

extension only if Weskan agreed not to serve any “new” discovery requests on K&O during the extended period. (*Id.* at 3-4.) Although Weskan states that it was unwilling to make such an agreement, Weskan notes that it “does not contemplate ‘new’ requests” at this time. (*Id.* at 4.) Weskan further states that on July 15, 2025, counsel for UP and Weskan conferred about UP’s participation in discovery as a non-party, and that counsel for UP advised that UP is open to “engag[ing] in discussions about voluntarily producing material responsive to Weskan’s requests.” (*Id.* at 2.) According to Weskan, UP was unwilling to engage in those discussions until August 8, 2025, and indicated that it would need “a significantly longer time” than 45 days to collect, review, and produce material to Weskan. (*Id.*) Weskan asserts that, in light of its discussions with K&O and UP, it will not be possible to complete discovery by August 11, 2025. (*Id.* at 3.) Weskan argues that there is good cause for the requested extension under 49 C.F.R. § 1104.7, (*id.* at 1), and that an extension would “enable (1) Weskan and UP to try to engage in discovery without a formal subpoena request, and (2) Weskan and K&O to attempt to resolve their discovery disputes without Board intervention,” (*id.* at 3).

On July 31, 2025, UP filed a reply to Weskan’s motion for an extension “to correct Weskan’s inaccurate claims about [UP’s] willingness to participate in discovery.” (UP Reply 1.) UP states that it told Weskan that UP would participate in discovery voluntarily, as long as UP could serve its R&Os within 30 days of receiving Weskan’s requests (i.e., by August 8, 2025), and as long as UP could complete its production of documents within 120 days of receiving the requests (by November 6, 2025). (*Id.*) UP asserts that its proposal is reasonable because Weskan’s discovery requests are “extensive,” with 21 document requests, nine interrogatories, and four requests for admissions covering 2016 to the present. (*Id.*) UP also argues that a longer discovery period would be consistent with the procedural schedule established in BNSF Railway—Petition for Enforcement—Interchange with Savage Tooele Railroad, FD 32760 (Sub-No. 50), slip op. at 7 (STB served Apr. 28, 2025) (establishing a 120-day discovery period). (UP Reply 2.)

On August 1, 2025, K&O filed a reply “to clarify its position on Weskan’s request to extend the discovery interval.” (K&O Reply 1.) K&O confirms that it conditioned its consent to an extension on an agreement from Weskan not to serve more discovery on K&O during the extended period. (*Id.*) Like UP, K&O describes Weskan’s discovery requests as “extensive.” (*Id.* at 3; *see id.* at 2 n.2 (noting that Weskan served K&O with 21 requests for production, 10 interrogatories, and four requests for admission).) K&O states that it “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.” (*Id.* at 3 (citing June 2025 Order, FD 36849, slip op. at 2 n.2 (“To the extent any party wishes to raise a discovery dispute with the Board, it must first make a good faith effort to meet and confer with the person or party failing to answer discovery.”))).

On August 4, 2025, Weskan filed a motion to compel K&O to respond to Weskan’s discovery requests. Weskan states that 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,” but that no such discussion took place prior to Weskan’s filing of the motion to compel. (Mot. to Compel 1-2.) The deadline for K&O to file a reply to the motion to compel is August 25, 2025.

DISCUSSION & CONCLUSIONS

Motion for Extension. The Board has discretion to extend deadlines upon request and with good cause. See 49 C.F.R. § 1104.7(b). Based on Weskan's motion and the replies thereto, and taking into consideration the statutory deadline for completion of this proceeding, see 49 U.S.C. § 10502(b), the Board will grant a 58-day extension of the procedural schedule. Accordingly, the procedural schedule will be amended as follows:

- Discovery shall be completed by October 8, 2025.
- Colorado Pacific Railroad LLC (CXR), BNSF Railway Company (BNSF), and shippers located on the Lines may submit comments by October 8, 2025.
- K&O is directed to file a verified supplement addressing the information described in the June 2025 Order by October 22, 2025. UP is encouraged to participate by either filing its own comment or filing jointly with K&O.
- Weskan may submit evidence and argument in reply by November 20, 2025.
- K&O may submit responsive argument and evidence by December 5, 2025. UP is encouraged to participate by either filing its own comment or filing jointly with K&O.

Considering the statutory deadline for completion of this proceeding, the Board will disfavor, absent extraordinary circumstances, further extensions to the procedural schedule.² The Board will also decline K&O's request to prohibit Weskan from serving additional discovery requests during the extended discovery period. It is unnecessary for the Board to limit the scope of discovery during the discovery period, as the recipient of any discovery request has recourse to object to the requests on the grounds that they are irrelevant, privileged, overly broad, unduly burdensome, or for other valid legal reasons.

Discovery Matters and Motion to Compel. The Board has signed a Memorandum of Understanding with the U.S. Department of Health and Human Services Office of Medicare Hearings and Appeals to employ the services of administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge Jenifer Soulikias to entertain and rule upon discovery matters and to resolve initially any disputes concerning discovery in this proceeding, including Weskan's August 4, 2025 motion to compel. The parties are directed to send copies of all their filings and documents in

² The case UP cites as supporting a longer discovery period, BNSF Railway—Petition for Enforcement—Interchange with Savage Tooele Railroad, FD 32760 (Sub-No. 50) (STB served Apr. 28, 2025), was not governed by the 9-month statutory timeline applicable to this proceeding under 49 U.S.C. § 10502(b).

this proceeding, including submissions already filed with the Board, to Judge Soulikias at alj.soulikias.inbox@stb.gov.

K&O is directed to serve a copy of this decision on each shipper that currently uses the Lines or has used the Lines within the last two years, UP, CXR, and BNSF by August 8, 2025, and certify to the Board that it has done so.

It is ordered:

1. The procedural schedule applicable to this proceeding is amended as outlined above.
2. The Board hereby ratifies the loan of Administrative Law Judge Soulikias to the office of administrative law judge in the Surface Transportation Board, under terms and conditions prescribed in 5 U.S.C. § 3344 and 5 C.F.R. § 930.208, and the Board today approves her appointment as the Board's own action under the Constitution. Judge Soulikias is assigned to entertain and rule upon discovery matters and to resolve initially any disputes concerning discovery in this proceeding, including Weskan's August 4, 2025 motion to compel.
3. In addition to filing pleadings with the Board and serving copies on parties of record, parties must send a copy of all filings and documents, including submissions already filed with the Board, to Judge Soulikias at alj.soulikias.inbox@stb.gov.
4. Judge Soulikias will be added to the service list in this proceeding and a copy of this decision will be served upon her.
5. A copy of this decision will be served on the U.S. Office of Personnel Management (OPM), at Human Resource Solutions, Administrative Law Judge Program, 1900 E Street N.W., Suite 2469, Washington, DC 20415-9400 and electronically at lenor.thompson-watkins@opm.gov. Judge Soulikias shall send a copy of the notice or order that constitutes the final disposition of her assignment of this case to OPM at the above address.
6. By August 8, 2025, K&O shall serve a copy of this decision on each shipper that currently uses the Lines or has used the Lines within the last two years, UP, CXR, and BNSF, and certify to the Board that it has done so.

This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.