

EXPEDITED CONSIDERATION REQUESTED**BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
August 26, 2025
Part of
Public Record

DOCKET NO. FD 36849

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

**PETITION FOR EXPEDITED RULING
ON MOTION TO COMPEL**

Pursuant to 49 CFR §1117.1 of the procedural rules of the Surface Transportation Board (“STB” or “Board”), Weskan Grain LLC requests (“Weskan”) that the Board expeditiously issue an order granting Weskan Grain’s Motion to Compel Discovery (“Motion”) from the Kansas & Oklahoma Railroad, LLC (“K&O”) in all respects in light of K&O’s unexcused failure to file a formal reply to the Motion by the deadline of August 25, 2025 established by the Board’s regulations and the decision served in this proceeding on August 8, 2025. In support of this Request, Weskan states the following:

I. Background

Weskan filed its Motion on August 5th after K&O had submitted broad and sweeping objections to all of Weskan’s discovery requests and the parties were unable to conduct a meaningful “meet and confer” session prior to the expiration of the 10-day deadline for filing motions to compel discovery in 49 C.F.R. §1114.31(a). Under the Board’s procedural rules, K&O

was provided 20 days to submit its reply to the Motion, which as noted fell on August 25th. 49 C.F.R. §1104.13(a). In the Motion Weskan noted that it was being filed out of an abundance of caution because of the 10-day limit in §1114.31(a), and that Weskan was optimistic that the parties could resolve at least some of K&O's broad objections through a "meet and confer" process in which Weskan was willing to engage. Motion at 2.

Previously, on July 29th, Weskan had filed a motion to extend the dates for the completion of discovery and evidentiary submissions in light of the slow progress being made during the discovery phase. On August 5th, the parties scheduled a "meet and confer" session to be held on August 8th. On that date, the Board served the aforementioned decision, which extended the dates for completion of discovery and submission of evidence and appointed Administrative Law Judge Jenifer Soulikias to resolve any discovery disputes. While the discovery and evidentiary deadlines were extended, the August 8th decision stated unequivocally that "[t]he deadline for K&O to file a reply to the motion to compel is August 25, 2025." Although the Board's rules permitted K&O to seek an extension of this deadline as late as August 15th,¹ K&O did not do so.

On August 25th K&O submitted a letter to Judge Soulikias, attached as Exhibit A, which stated in part an alleged "belief" on the part of K&O that the August 8th decision appointing her "supersede[d] the need for a full substantive response to the Motion at this time." Exhibit A at 1-2. No regulation or other authority was cited for this alleged "belief," which was also directly contrary to the plain language cited above from the August 8th decision.

In its counsel's letter to Judge Soulikias K&O represented that "[t]he parties have made significant progress in narrowing the scope of the discovery dispute, and many of the issues raised

¹ See 49 C.F.R. §1104.7(b) (motions to extend can be filed not less than 10 days before the due date).

in Weskan’s Motion have been, or are in the process of being, resolved. As such, the Motion addresses discovery requests and responses that are no longer in dispute between the parties.” Exhibit A at 1. This statement is false. After the aforementioned meet and confer session on August 8th, during which K&O acknowledged *it had not even started reviewing its files* despite having the discovery requests since July 9, 2025, and K&O counsel made very few concrete commitments to produce responses to Weskan’s requests, Weskan prepared and submitted a detailed letter to K&O on August 12th summarizing the discussion, clarifying Weskan’s requests, and asking for K&O input. Exhibit B. K&O did not respond to this letter in the 13 days before the August 25th reply deadline despite Weskan counsel’s attempt to illicit one. Exhibit C (email correspondence). Moreover, K&O’s counsel has stated in the letter to Judge Soulikias that K&O does not intend to engage in any further discussions about its discovery responses until “next week,” thereby further putting off K&O’s participation in this time sensitive discovery period. Exhibit A at 1. Consequently, as of the date of this Petition there are *no* concrete agreements between the parties on K&O’s responses to many of Weskan’s discovery requests, and K&O has produced no documents.

II. Argument

K&O’s failure to file a formal reply to the Motion by August 25th means that K&O is out of time to do so and the Motion stands unopposed and ripe for decision. The Board’s regulations and the August 8th decision clearly and unambiguously established this due date, and K&O did not seek to extend it. Weskan could find no authority or Board precedent for K&O’s alleged “belief” that the appointment of Judge Soulikias somehow resulted in the Board implicitly waiving 49 C.F.R. §1104.13(a) and indefinitely staying the August 25th deadline for a formal response to the Motion. Moreover, as stated above, this notion is also directly contravened by the unequivocal

language of the August 8th decision that appointed Judge Soulikias, which clearly stated that “[t]he deadline for K&O to file a reply to the motion to compel is August 25, 2025.” Nothing in the decision even remotely implied that the appointment of Judge Soulikias caused the result K&O asserts. Indeed, the submission of a formal reply to the Motion in a timely manner would have allowed K&O to formally clarify any discovery disputes that Judge Soulikias has been engaged to resolve. K&O has now forfeited this chance.

Nor should the Board excuse K&O’s violation of the Board’s rules based on K&O counsel’s false representations that the parties are engaging in active dialogue and resolving most of their differences. These statements are belied by plain facts. These include, but are not limited to, that K&O (1) initially delayed the parties’ meet and confer session (Motion at 1-2); (2) informed Weskan’s counsel at the outset of the August 8th “meet and confer” session that K&O had not started reviewing its files for responsive material despite having the requests for a month (but nevertheless objected to many requests based on alleged burden) (Exhibit B at 1); (3) ignored Weskan counsel’s August 12th letter; and (4) has proposed to further delay any alleged “dialogue” for at least seven days for no reason.²

III. Conclusion and Relief Sought

K&O’s failure to file a formal reply to the Motion by the August 25th deadline should not be excused, and the Motion should therefore be expeditiously granted in all respects. The Board advised the parties in its August 8th decision that the discovery and procedural phases of this case are constrained by the nine-month statutory timeline applicable to this proceeding under 49 U.S.C.

² K&O is further delaying this proceeding by not complying with the Board’s directive on August 8th that the parties submit their pleadings to Judge Soulikias. *See* Exhibit A at 2 (where K&O informs Judge Soulikias that it is only now “arranging to” to comply with that directive. Weskan complied with the directive on August 18th by emailing all of its filings to Judge Soulikias)

§ 10502(b). It should be clear to the Board from K&O's actions (and inactions) that K&O does not intend to participate in good faith in the discovery phase of this case and instead intends to try to "run out the clock" given the statutory deadline. As such, the Board should expeditiously grant the Motion and – through the offices of Judge Soulikias – direct K&O to immediately begin producing responses and documents to all of Weskan's discovery requests.

Finally, Weskan seeks expedited consideration of this Petition, and asks that the Board direct K&O to file any response to it by 5:00 PM Friday, August 29, 2025.

Respectfully submitted,

/ss/ Thomas W. Wilcox
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August 26, 2025

EXHIBIT A

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August 25, 2025

VIA ELECTRONIC MAIL

The Honorable Jenifer Soulikias
Administrative Law Judge
U.S. Department of Health and Human Services,
Office of Medicare Hearings and Appeals
alj.soulikias.inbox@stb.gov

Re: *Kansas & Oklahoma Railroad, LLC—Lease and Operation Exemption with Interchange Commitment—Union Pacific Railroad Company,*
FD 36849

Dear Judge Soulikias:

Kansas & Oklahoma Railroad, LLC (K&O) offers this letter to apprise you of the status of discovery with Weskan Grain LLC (“Weskan”), and, relatedly, to address Weskan’s August 4, 2025 Motion to Compel (the “Motion”). We appreciate the Board’s August 8th Order assigning you to entertain and resolve discovery matters, and we are grateful for the efficiency it provides to this proceeding.

K&O submits that the Motion was filed prematurely. While K&O had served its objections and responses to Weskan’s discovery requests at the time the Motion was filed, the parties had not yet engaged in the informal meet-and-confer process required by the Board’s rules of procedure and as directed by the Board in a prior order in this proceeding. The initial K&O-Weskan meet-and-confer commenced roughly 30 minutes after the STB issued its August 8th Order.

The parties have made significant progress in narrowing the scope of the discovery dispute, and many of the issues raised in Weskan’s Motion have been, or are in the process of being, resolved. As such, the Motion addresses discovery requests and responses that are no longer in dispute between the parties.

Under strict application of the STB’s rules of procedure, K&O’s reply to Weskan’s Motion would have been due within 20 days of its filing—in this case, by August 25, 2025. However, we believe that the STB’s intervening referral order supersedes the

FLETCHER & SIPPEL LLC

The Honorable Jenifer Soulikias
Administrative Law Judge
U.S. Department of Health and Human Services, OMHA
July 25, 2025
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need for a full, substantive response to the Motion at this time. The parties are committed to continuing an informal resolution process, and K&O is confident that this will yield a far smaller universe of issues, if any, for you to adjudicate. Resorting to a formal motion practice before this process is completed would be unproductive, unnecessary, and inconsistent with the STB's directive as set forth in the agency's June 25, 2025-issued Order at page 2, footnote 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.").

K&O remains committed to working constructively with Weskan to resolve our differences on discovery matters, and to providing Weskan with relevant information where reasonably possible consistent with our obligations and the STB's rules. K&O intends to engage in further dialogue with Weskan's counsel next week. We hope collectively to update you on progress or areas of impasse as we continue our dialogue. We will seek your assistance in resolving any remaining issues only after this process has played out. We believe this approach will best serve the interests of all parties and the efficient administration of this proceeding.

Finally, note that K&O is in the process of arranging to supply you with the required materials from the record as directed by the Board's August 8, 2025 order.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Counsel for Kansas & Oklahoma Railroad, LLC

cc: Surface Transportation Board, Chief, Section of Case Administration
All parties of record

EXHIBIT B



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August 12, 2025

Via Email

Rob Wimbish, Esquire
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29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208

Re: Docket No. FD 36849 – Meet and Confer on August 7, 2025

Dear Rob:

This letter follows up the “meet and confer” between me and your legal team last Friday, and summarizes my takeaways and understanding of the next steps. I have to say at the outset, however, that I was surprised and disappointed to learn that prior to the call K&O and its counsel had conducted no review of K&O’s files in response to Weskan’s First Discovery Requests, which were served on July 9, 2025. This lack of effort is not only contrary to the general duties put on parties in the discovery process, it undercuts all the numerous complaints I heard on the call that responding to the requests as written would be unduly burdensome on K&O and its counsel.

I continue to believe that the universe of documents responsive to the requests is not large, and that K&O knows this, too. Be that as it may, I trust that K&O’s document review began in earnest after our call and will continue during this latest process.

A. REQUESTS FOR ADMISSIONS

In general, Weskan can accept the answers in response to Request for Admissions Nos. 2, and 4 (not 6), provided that K&O’s responses to the Requests for Production of Documents (“Document Requests”) are satisfactory. As for Request for Admission No. 1, Weskan clarifies

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that it asks K&O to admit that it shared copies of the draft Operating Agreement between Colorado Pacific Railroad Company LLC (“CXR”) with UP personnel prior to its effective date of January 1, 2019.

As for Request for Admission No. 3 (misnumbered 5), upon revisiting K&O’s written answer after the call, the answer is not responsive to the question asked, which is to admit that the rates K&O has provided to Weskan are higher than the rates paid to K&O by other rail shippers on the Leased Lines, either as rates or a combination of rates and rebates. Your attempt to narrowly frame the question as limited to customers seeking service “to or from the K&O-CXR connection to Towner” or “rates via the Towner connection” is not correct. The question clearly asks K&O to admit that the rates it has proposed to charge Weskan are higher than rates K&O charges to other customers that are located along the Leased Lines – regardless of the origin of the movement, or the destination. You are free to try to justify in your evidence why the rates to other customers might be lower, but this request clearly is designed to lead to the discovery of admissible evidence. If you need further clarification we can resubmit this request for each of the customers named in K&O’s Petition for Exemption.

B. 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.

Your answer to this Interrogatory confirmed that the CXR is the only railroad that can physically interchange with K&O on the Leased Lines, although the exact location of the interchange tracks is currently being discussed by CSX and K&O.

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.

Your answer explains that the arrangement is that K&O is a handling carrier. In lieu of a detailed explanation of the arrangement, K&O will supply Weskan with a copy of the handling carrier agreement, subject to the protective order.

Interrogatory No. 3

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

Weskan rejects K&O’s attempt to supply an explanation of the reasons that UP and K&O entered into the Third Supplement by simply pointing to the document itself. To the extent there are other reasons that K&O is aware of Weskan is entitled to know them. The response to this

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interrogatory will be supplemented by the documents requested by Document Request No. 3, discussed below.

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.

Similarly, Weskan rejects K&O’s representation that the text of the Fourth Supplement adequately identifies the reasons K&O and UP entered into the Fourth Supplement. The written answer provided by K&O is also insufficient because it does not explain the origins of the Asset Use Fee, the reasons it was set at the level it is, and its purpose and intent. This information was requested because the ninth “Whereas” clause of the Fourth Supplement states that K&O requested that “the Basic Agreement be amended to provide for an Asset Use Fee to replace the existing rental structure.” This statement is at odds with other statements in K&O’s pleadings that UP is the party that insisted that an Asset Use Fee be part of the renewed lease, as well as the level of the fee. The response to this interrogatory will be supplemented by the documents requested by Document Request No. 4, discussed below.

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.

K&O stated that this investigation continues, and Weskan still desires this information. The expectation is that information that is at least partly responsive to this request will be supplied in the documents produced in response to Document Requests Nos. 3 and 4 and other requests.

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.”*

My understanding from the call is that K&O will provide a written explanation of the dispute over rent that arose from the original interchange commitment. The explanation will include a description of the 2018 Traffic Certification. A copy of the certification is also responsive to Document Request No. 1, and Weskan asks for its production.

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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.

On the call, we clarified that this Interrogatory covers any request for waiver of the Asset Use Fee made by K&O to UP, not just the referenced request dated July 18, 2023. My understanding is that K&O is going to supply a more complete answer to this interrogatory.

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.

This interrogatory is straightforward and asks for K&O to describe all the discussions between UP and K&O that occurred about CXR buying the Towner Line, and K&O operating it, in particular whether K&O would provide any operations at all, the rates K&O would charge for such service. To further clarify, responsive information would include the number and frequency of such discussions.

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.

You indicated that K&O does not have any information about whether the Central Kansas Railway, LLC interchanged traffic originating or terminating on the Leased Lines at Towner, Colorado. Accordingly, this Interrogatory can be limited to instances where K&O contemplated, or actually did interchange rail cars of commodities originating or terminating on the Leased Lines at Towner. We discussed on the call how there may not be much responsive information, since by 2001 when K&O acquired the lease, the Towner Line had been purchased by the State of Colorado, and it may not have been used much. The other relevant time frame is from 2005 to 2016, which corresponds to the period the line was owned by the V&S Railway. Even during that timeframe, it appears that V&S stopped providing rail service around 2010. And of course, no traffic has been interchanged since 2018 when CXR acquired the Towner Line.

Interrogatory No. 10

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

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As clarified on the call, this Interrogatory is seeking information about instances where K&O's trains or locomotives may have come onto the Towner Line to service customers at the request of the State of Colorado or V&S Railway under a private arrangement that did not entail obtaining authority from the Surface Transportation Board. The operations would have consisted of coming over the connection at Towner, picking up or dropping off cars, and in each case returning to the Leased Lines.

C. 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.

This request is self-explanatory and K&O has not substantively objected to it.

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.

Weskan has agreed to hold off on seeking to compel documents in response to this request pending the production documents in response to the other Document Requests.

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.

K&O's complaints of burden are overblown and undercut by the fact that K&O had not made any attempt to ascertain the volume of potentially responsive documents. On the call we discussed K&O's apparent need for search terms in order to narrow its searches, and Weskan is willing to discuss such terms. However, this request is very straightforward: it seeks evidence surrounding the negotiation, drafting, and execution of the Third Supplement. This information includes contract drafts, emails and any other correspondence between UP and K&O, and internal correspondence and analysis concerning the Third Supplement. The timeframe for this information is narrow, which is the inception of either UP's or K&O's suggestion of the need to enter into the Third Supplement to the date of its execution.

The request also seeks information about the implementation of the Third Supplement, but Weskan is agreeable to limiting this information to documents referring to the administration of the Rent provision of the 1997 Lease as amended by the Third Supplement. This is a relatively short time period, since the Fourth Supplement was signed November 21, 2019.

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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.

As with Document Request No. 3 K&O's complaints of burden are overblown and undercut by the fact that K&O had not made any attempt to ascertain the volume of potentially responsive documents. On the call we discussed K&O's apparent need for search terms in order to narrow its searches, and Weskan is willing to discuss such terms.

However, like Document Request No. 3 this request straightforwardly seeks evidence surrounding the negotiation, drafting, and execution of the Fourth Supplement. This information includes contract drafts, emails and any other correspondence between UP and K&O, and internal correspondence and analysis concerning the Fourth Supplement. The timeframe for this information is narrow, which is the inception of the talks to create the Fourth Supplement to the date of execution. This should not be a burdensome search, since the Fourth Supplement was apparently negotiated and executed in the 16-month period between July 20, 2018 and November 21, 2019.

This Request also seeks the production of documents related to the implementation of the Fourth Supplement, specifically the administration and application of the amended Rent provision and the Asset Use Fee, the introduction of which was the Fourth Supplement's primary purpose. K&O has asserted that the Asset Use Fee has been applied to movements for other customers, and so this Request encompasses that information. Since the Asset Use Fee is a key aspect of this proceeding, Document Request No. 4 should be construed broadly to include, but not be limited to, all documents related to the Fourth Amendment to the 1997 Lease Agreement that include the term "Asset Use Fee" in their text.

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.

This request is also straightforward, and the universe of responsive documents should not be expansive given the very few actual operations that occurred under the CXR-K&O Operating Agreement. As such, this request seeks all documents and communications that refer or relate to discussions between K&O and UP about the Operating Agreement, both before its execution and after.

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

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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."

This Document Request asks for the documents supporting K&O's response to Interrogatory No. 4, and overlaps with Document Request No. 4.

Request for Production of Documents No. 7

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

This request is additive to prior requests. Weskan agrees to limit the scope of this request to (1) documents that refer or relate to the possibility of K&O providing rail service to Weskan, and (2) documents that refer or relate to the impacts of K&O providing service to Weskan on other shippers located along the Leased Lines.

Request for Production of Documents No. 8

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

This request is additive to prior requests. Weskan agrees to limit the scope of this request to (1) documents that refer or relate to proposals of CXR, KCVN LLC or its affiliates to lease or acquire all or part of the Leased Lines; (2) proposals whereby CXR would acquire trackage or operating rights over all or part of the Leased Lines and (3) documents that refer or relate to the impacts of CXR providing the option for K&O's shipper customers to ship grain west over the Townner Line.

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.

This request is additive to prior requests. Weskan agrees to limit the scope of this request to (1) documents that refer or relate to proposals of KCVN LLC, CXR or its affiliates to lease or acquire all or part of the Leased Lines; (2) proposals whereby CXR would acquire trackage or operating rights over all or part of the Leased Lines and (3) documents that refer or relate to the impacts of CXR providing the option for K&O's shipper customers to ship grain west over the Townner Line.

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.

K&O has asked Weskan to suggest search terms and otherwise narrow this request. K&O also objects to this request because it asks for information from customers on other rail lines leased or owned by K&O. In the first place, the search terms "Weskan" or "Colorado Pacific Railroad"

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will result in many irrelevant documents being culled out. Also, Weskan's Stockton facility was completed in 2023, and its other facilities located between Towner and Scott City, KS were constructed in more recent years, so conducting a search from 2021 to present should further reduce the total documents as to Weskan. Responsive documents as to CXR would date back to 2018 when it acquired the Towner Line. Weskan proposes that K&O start with these search terms and assess the resulting volume and alleged burden.

As with all other requests, the "Leased Lines" are the tracks subject to the 1997 Lease Agreement as amended by the Third and Fourth Supplements. The "other lines leased or owned by K&O" can be refined to cover the rail lines owned by K&O in Kansas.

As discussed on the call, Weskan maintains that the discovery of information concerning K&O's interactions with and service to its other customers producing grain in this area of Kansas is highly relevant to develop evidence of the market for grain transported by K&O, how Weskan has been treated by UP and K&O in comparison to other grain producers K&O serves, and the extent to which the interchange commitment in the 1997 Lease Agreement as amended by the Third and Fourth Supplements influences K&O's and UP's behavior. Discussions between K&O and its other customers about Weskan and CXR are part of this inquiry.

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.

K&O has asked for clarification of this Document Request, but it is straightforward. It seeks the internal documents within K&O that reference the potential acquisition of the Towner Line by CXR in the 2015-2017 timeframe. Such documents include internal discussions about how the acquisition would adversely affect K&O or provide it with increased business opportunities. What did K&O internally believe would become of the Operating Agreement?

The request includes all documents and communications between UP and K&O during this timeframe that refer or relate to discussions between them about the potential acquisition by CXR.

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.

K&O has asked for clarification of this Request, but it is also straightforward. It asks for information in a relatively narrow timeframe, which is from 2016 when the Operating Agreement was drafted and negotiated by CXR and K&O, to the end of 2021, when the Operating Agreement was allowed to expire. The volume of responsive documents should also be further limited by the fact that K&O did not move any railcars under this agreement, so the day-to-day operating

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correspondence complained of by K&O should be minimal. There should be no day-today operating correspondence with UP because UP had no physical ability to participate in any of the operations.

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.

This request is straightforward and K&O has agreed to provide responsive documents.

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.

During our session we discussed K&O's apparent confusion over this request, which I explained was prompted by statements in K&O's reply to Weskan's reply to K&O's motion to submit a rebuttal filing that gave the impression that K&O was not aware that BNSF can provide service to Weskan's Stockton facility, i.e., it is not captive to UP and grain that would move west over the Leased Lines and the Towner Line could be transported by BNSF, with haulage to NA Junction by CXR. This request seeks all documents evidencing that K&O is in fact aware of the fact that BNSF presents a competitive option to UP at the Stockton Facility and other locations along the Towner Line.

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.

As stated above, Weskan maintains that the discovery of information concerning K&O's interactions with and service to its other customers producing grain in this area of Kansas is highly relevant to develop evidence of the market for grain transported by K&O, how Weskan has been treated by UP and K&O in comparison to other grain producers K&O serves, and the extent to which the interchange commitment in the 1997 Lease Agreement as amended by the Third and Fourth Supplements influences K&O's and UP's behavior.. The rates and service terms K&O provides to other customers are highly relevant to this inquiry, and would be protected by the Protective Order in this case. For purposes of response, Weskan is agreeable to limiting the time period to 2022 to present.

Law Office of Thomas W. Wilcox

Letter to Mr. Rob Wimbish

August 12, 2025

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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.

As stated above, Weskan maintains that the discovery of information concerning K&O's interactions with and service to its other customers producing grain in this area of Kansas is highly relevant to develop evidence of the market for grain transported by K&O, how Weskan has been treated by UP and K&O in comparison to other grain producers K&O serves, and the extent to which the interchange commitment in the 1997 Lease Agreement as amended by the Third and Fourth Supplements influences K&O's and UP's behavior. K&O's traffic and/or revenue forecasts are highly relevant to this inquiry and would be protected by the Protective Order in this case. For purposes of response, Weskan is agreeable to limiting the time period to 2022 to present.

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.

To reiterate the discussion on our call, the discovery of information about the final destination of grain shipments originating on the Leased Lines and the rail lines owned by K&O in Kansas is highly relevant to the question of whether the 1997 Lease Agreement, as amended by the Third and Fourth Supplements, is in the public interest. If, as Weskan believes, the presence of the Asset Use Fee is forcing grain that could more efficiently go west over the Towner Line to western or gulf coast destinations is instead being forced longer distances east to interchanges with UP, the lease is not in the public interest. You indicated that K&O has a handling carrier may not possess such information. However, that possibility does not foreclose K&O conducting a reasonable search for such documents.

As above, Weskan is willing to limit the time period for such documents to 2022 to the present.

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.

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K&O has agreed to produce non-privileged documents in response to this Document Request.

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.

K&O has agreed to produce non-privileged documents in response to this request.

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."

K&O has agreed to produce non-privileged documents in response to this request.

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.

We discussed the scope of documents sought by this Document Request, which includes discussions about establishing the interchange between CXR and K&O in 2017-2019 in conjunction with the Operating Agreement, and the more recent discussions regarding the establishment of the interchange from 2021 to the present. The Document Request includes all documents that refer to discussions between K&O and UP about the establishment of the interchange during both time periods.

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Letter to Mr. Rob Wimbish

August 12, 2025

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If you have any questions or wish to discuss any of this letter please give me a call. Also, please let me know when we can expect K&O to supplement its responses and to start producing documents.

Sincerely,



Attorney for Weskan Grain LLC

August 12, 2025

EXHIBIT C

From: [Robert A. Wimbish](#)
To: [Tom Wilcox](#)
Cc: [Colleen Konicek](#); [Carlin Comerouski Peterson](#); [Michael E. Gray](#); [Matt Rengel](#)
Subject: RE: Motion to Compel
Date: Tuesday, August 19, 2025 12:23:37 PM

Hello, Tom.

I expect to have a response to your 8/12 letter out to you soon. I expect to be able to respond to a couple of the document production requests myself this week – offering documents in my possession that are responsive.

As far as other document production is concerned, I will check with my client, and will update you when I can.

What progress have you made with UP?

Rob

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Tuesday, August 19, 2025 11:05 AM
To: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Cc: Colleen Konicek <CKonicek@fletcher-sippel.com>; Carlin Comerouski Peterson <CPeterson@fletcher-sippel.com>; Michael E. Gray <mgray@watco.com>; Matt Rengel <Matt.Rengel@watco.com>
Subject: RE: Motion to Compel

Rob – Just checking in on when I can expect a response to the 8/12 letter, and when K&O intends to begin producing answers and documents. I am traveling a bit starting tomorrow but reachable.

Regards,
Tom

Thomas W. Wilcox

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From: Tom Wilcox

Sent: Tuesday, August 12, 2025 6:18 PM

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

Cc: Colleen Konicek <CKonicek@fletcher-sippel.com>; Carlin Comerouski Peterson <CPeterson@fletcher-sippel.com>; Michael E. Gray <mgray@watco.com>; Matt Rengel <Matt.Rengel@watco.com>

Subject: RE: Motion to Compel

Rob – Attached is a letter following up our “meet and confer” call last Friday. I am traveling this week but available for further discussions. Please let me know when we can expect K&O to start producing documents.

Regards,

Tom

Thomas W. Wilcox

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

Sent: Tuesday, August 5, 2025 3:09 PM

To: Tom Wilcox <tom@twilcoxlaw.com>

Cc: Colleen Konicek <CKonicek@fletcher-sippel.com>; Carlin Comerouski Peterson <CPeterson@fletcher-sippel.com>; Michael E. Gray <mgray@watco.com>; Matt Rengel <Matt.Rengel@watco.com>

Subject: RE: Motion to Compel

Importance: High

Sounds good, Tom. We will look to set up a Zoom or MS Teams virtual meeting for Friday afternoon at 1 Central, depending upon whether there's any preference for virtual meeting platform.

Rob

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Tuesday, August 5, 2025 11:35 AM
To: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Subject: RE: Motion to Compel

Rob – 1:00 CST on Friday is fine. I agree the best scenario would be to reach agreement on everything and then motion would become moot. I look forward to the discussion.

Regards,
Tom

Thomas W. Wilcox

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From: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Sent: Monday, August 4, 2025 6:14 PM
To: Tom Wilcox <tom@twilcoxlaw.com>
Subject: Re: Motion to Compel

Following up with more specificity, Tom.

How about sometime between 1:00 - 3:00pm on Thursday 8/7 or between 1:00 - 4:00pm on Friday 8/8 — all times Central?

Rob

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

Sent: Monday, August 4, 2025 4:19 PM
To: Tom Wilcox <tom@twilcoxlaw.com>
Subject: Re: Motion to Compel

Email and attachments acknowledged, Tom.

Clearly, I overlooked the offer to meet last week on Thursday or Friday. That was a missed opportunity, and that's on me. I will make sure the record in this case accounts for that oversight. Next time, though, don't be shy. Follow up with me if I seem to have overlooked your message. You know where to find me.

First, let's get that meet-and-confer on the calendar this week, if possible. For starters, how do Thursday and Friday afternoon look for you?

Second, we'll respond in time to your avoidable motion to compel, which you could have bypassed with our cooperation, even with the missed opportunity to meet and confer later last week. In fact, once we've met and conferred — which will certainly take place between now and the official due date for a response to your motion — we may want to consider what's left of your current motion at that time, and how best to proceed.

Rob

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Monday, August 4, 2025 10:53 AM
To: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Subject: Motion to Compel

Rob – I filed the attached motion to compel today, primarily to remove any issues about the Board's 10-day rule for filing motions to compel, which the Board has applied in an inconsistent, confusing manner over the years. As the motion explains, it is my intention for you and I to try to come to agreement on most, if not all of K&O's production. Hopefully, we can do that within the 20 days allotted for your reply to the motion. I am out of the office today but am fairly open the rest of the week.

Please let me know your availability this week or next.

Regards,

Tom

Thomas W. Wilcox

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CERTIFICATE OF SERVICE

I hereby certify that on this 26^h day of August, 2025, copies of the foregoing Petition for Expedited Ruling on Motion to Compel were served by electronic mail on representatives of Union Pacific Railroad Company and the Kansas & Oklahoma Railroad, LLC, and Administrative Law Judge Jenifer Soulikias.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox