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ALJ

SERVICE DATE – SEPTEMBER 5, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36849

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

Decided: September 5, 2025

This discovery matter is before the undersigned pursuant to a ruling by the Surface Transportation Board. *See* Decision (Aug. 8, 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. On April 16, 2025, Weskan Grain LLC (Weskan) filed a reply in opposition to the petition for exemption.

On August 4, 2025, Weskan filed a Motion to Compel Discovery against K&O. On August 25, 2025, K&O submitted a letter to address Weskan's Motion to Compel. On August 26, 2025, Weskan filed a Petition for Expedited Ruling on Motion to Compel, which requested that K&O file any response by August 29, 2025.

On August 27, 2025, K&O filed a discovery response letter with the Board, with a courtesy copy to the undersigned that contained the subject matter "August 8, 2025 Meet and Confer." A review of that letter demonstrates that K&O would produce relevant documents on or before the end of that week (*i.e.*, August 29, 2025) or September 5, 2025, which are the subject of Weskan's Motion to Compel. (Interrogatory Nos. 2, 4, 5, 6, and 7; Requests for the Production of Documents Nos. 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 18, 19, 20, and 21.) K&O wrote it would agree to a second meet and confer to further narrow discovery issues or eliminate unresolved points of disagreement. Aug. 27, 2025, Letter at 7.

The Surface Transportation Board regulations provide for broad discovery. These regulations provide that "[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). The Board has recognized that this regulation allows for broad discovery. *See Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 7)*, FD 36500, slip op. at 4 (Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under 49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery "[b]roadly"); *CSX Transp.*

& Del. & Hudson Ry.—Joint Use Agreement, FD 35348, slip op. at 3 (STB served Aug. 16, 2010) (parties are entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding and relevance means that information might be able to affect the outcome of a proceeding) (citing 49 C.F.R. § 1114.21).

Weskan requested an Expedited Ruling on its Motion to Compel. K&O argues it is producing documents that are the subject of that motion. See Aug. 27, 2025, Letter at 7. Generally stated, Weskan disagrees with K&O's characterization of its discovery engagement. See e.g., Petition at 2-3.

For these reasons, the undersigned GRANTS IN PART as follows Weskan's Petition for Expedited Ruling on Motion to Compel.

Importantly, the Board's August 8, 2025, Decision states that discovery shall be completed by October 8, 2025. See Decision (Aug. 8, 2025). Thus, this proceeding is nearing the end of its discovery phase, and discovery shall be completed as the Board ordered. Rather than ordering K&O respond to Weskan's motion and requiring the ALJ to sort out the discovery disputes "on the papers," the ALJ will streamline the process due to the impending discovery deadline. Accordingly, this ALJ requires that Weskan and K&O **meet and confer a second time** in an effort to resolve the remaining issues raised in Weskan's Motion to Compel on or before Wednesday, September 10, 2025.

If Weskan's Motion to Compel is not resolved in full during the second meet and confer, then the ALJ will hold a Status Conference on Friday, September 12, 2025, at 9:00 a.m. Central Time. Counsel for parties will be contacted with call-in information. Any remaining issues from the motion to compel will be discussed and resolved then.

It is ordered:

1. Weskan's Petition for Expedited Ruling on Motion to Compel is granted in part.
2. Weskan and K&O shall meet and confer on or before **Wednesday, September 10, 2025.**
3. If Weskan's Motion to Compel is not resolved, in full, then the ALJ will hold a Status Conference on Weskan's Motion to Compel on **Friday, September 12, 2025, at 9:00 a.m. Central Time.**
4. This decision is effective on the date of service.

By the Board, Jenifer J. Soulikias, Administrative Law Judge.