

SERVICE DATE – SEPTEMBER 17, 2025

SURFACE TRANSPORTATION BOARD

ORDER GRANTING IN PART WESKAN’S MOTION TO COMPEL

Docket No. FD 36849

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

Decided: September 17, 2025

This discovery matter is before the undersigned pursuant to a ruling by the Surface Transportation Board, see Decision (Aug. 8, 2025), following the status conference held on September 12, 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 Lease). 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).

The Board’s June 25, 2025 Decision summarized, in relevant part:

On April 16, 2025, Weskan Grain LLC (Weskan) filed a reply in opposition to the petition for exemption, arguing that the interchange commitment is anticompetitive. Weskan contends that the proposed interchange commitment is intended to “preserve UP’s market power and to restrict competition,” (Weskan Opp’n 10), by making it “economically infeasible for K&O” to transport agricultural products originating in Kansas to points west of the CXR interchange at Towner, (*id.* at 1). One such destination is Weskan’s grain elevator complex near Sheridan Lake, Colo. (the Stockton Facility). (*Id.* at 1, 3-4.) Weskan states the Stockton Facility connects to the Stockton siding located at milepost 752.5 of CXR’s 122-mile rail line known as the Towner Line, which CXR acquired in 2018 following a feeder line proceeding. (*Id.* at 3-4); see KCVN, LLC—Feeder Line Application—Line of V & S Ry., Located in Crowley, Pueblo, Otero, & Kiowa Cntys., Colo., FD 36005 (STB served Dec. 18, 2017) (approving \$10 million purchase price for Towner Line sale to CXR). Weskan further states that the Stockton Facility has access to both UP and BNSF Railway Company (BNSF) via CXR. (Weskan Opp’n 3-4.) Weskan asserts that the amended interchange

commitment was inserted into the Lease soon after CXR's acquisition of the Towner Line for the purpose of "economically prohibit[ing] K&O from interchanging traffic with one railroad – CXR – and forc[ing] all traffic to flow east to be interchanged with UP." (*Id.* at 7.) According to Weskan, the proposed transaction harms not only shippers located on the Lines but also CXR and its efforts "to make the Towner Line economically viable again." (*Id.*)

June 2025 Order at 1-2. Weskan's Reply appends a Schematic of the ownership of the K&O Rail Line and the Towner Line. (Weskan Opp'n Exh. A, Att. 1.)

The Board instituted a petition pursuant to 49 U.S.C. § 10502(b) and issued a procedural schedule by its decision dated June 25, 2025. The Board ordered K&O to supplement its petition and encouraged UP to participate. June 2025 Order at 3-4. Importantly, the Board ordered information about the effects of the proposed interchange commitment; the proposed interchange commitment within the framework articulated in Review of Rail Access & Competition Issues—Renewed Pet. of the W. Coal Traffic League (Review of Rail Access), EP 575, slip op. at 15 (STB served Oct. 30, 2007); and why regulation is not needed to protect shippers from an abuse of market power. *Id.* at 3. The Board ordered that K&O should address Weskan's contention that the proposed transaction discourages the efficient management of railroads "by economically foreclosing shorter western routes via CXR [over the Towner Line] and forcing all traffic to move hundreds of miles east to interchanges with UP before they go to western destinations." *Id.* n.3 (quoting Weskan Opp'n 8). The Board noted that K&O may address any additional relevant RTP factors and how the transaction is limited in scope. *Id.* & n.3.

In turn, Weskan may reply and file supplemental evidence and argument. *Id.* at 3. Then, K&O may submit rebuttal evidence and argument. *Id.* Other shippers located on the two Lines at issue may also "submit comments and evidence concerning the potential anticompetitive effect of the interchange commitment and the provision's impact on price and service, if any." *Id.*

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 discovery response letter with the Board, with a courtesy copy to the undersigned that contained the subject matter "August 8, 2025 Meet and Confer."

Considering the discovery deadline and status of pending discovery in this proceeding, on September 5, 2025, the undersigned granted in part Weskan's Petition for Expedited Ruling on Motion to Compel. Weskan and K&O were ordered to meet and confer a second time. If they did not resolve Weskan's Motion to Compel, in full, a status conference was scheduled for September 12, 2025.

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).

At the status conference, the outstanding issues discussed and resolved were from Weskan’s Motion to Compel Request for Production of Documents. All other issues from Weskan’s Motion to Compel were resolved amicably or were not at issue, and accordingly are denied as moot. This order memorializes the understandings and rulings made at the status conference for the avoidance of any doubt.

Weskan would identify four (4) custodians by the close of business Monday, September 15, 2025, for K&O to conduct a search of their discoverable documents.

For Requests for Production Numbers 3, 4, 6, 7, 8, 9, 10 and 18-21, Weskan would provide to K&O proposed alternative search terms by the close of business Friday, September 12, 2025. K&O will then perform those searches and produce responsive documents.

For Requests for Production Numbers 7, 8, 9 and 10, K&O advised it learned of a technical issue running search terms with an ampersand (&), e.g., “K&O.” However, the issue was identified, and its technical team was working on a resolution. K&O would notify Weskan of its progress by Monday, September 15, 2025, about how the issue would be resolved.

K&O’s search for Request for Production Number 5 (regarding the Operating Agreement) yielded no results.

Finally, for Requests for Production Numbers 15, 16, and 17 (generally regarding market, pricing, and circuitous route requirements), Weskan’s Motion to Compel is granted in part. The lines are limited to those at issue in this proceeding, and specifically to the ones shown on the map during the status conference and found at Exhibit A to Weskan’s Reply. (Weskan Opp’n Exh. A, Att. 1.) As Weskan agreed to narrow the time frame, the requests are limited to 2022 and later. Weskan further agreed to limit the requests to grain—the relevant commodity Weskan argues is affected by the alleged anticompetitive lease and agreements. (Weskan Opp’n 4-5.) Further, the handling agreements are limited to the two specific separate companies identified at the status conference.

K&O argued that it should not be required to produce this discovery, because it is about highly confidential sensitive information. A protective order has been entered in this proceeding to alleviate this concern. Kan. & Okla., LLC—Lease & Operation Exemption with Interchange Commitment—Union Pac. R.R., FD 36849 (STB served April 8, 2025). **That Protective Order must be followed.**

The original requests were overly broad. However, Weskan agreed to narrow the scope of the requests. As Weskan agreed, by narrowing down the time frame and to grain, those discovery request have been significantly tailored toward the discoverable evidence in this proceeding according to Weskan's Reply.

Weskan and K&O may agree to extend these deadlines by mutual agreement. They must keep in mind the discovery deadline, however, which is October 8, 2025.

For these reasons, the undersigned, grants Weskan's Motion to Compel in part. The remainder of Weskan's motion to compel is denied as moot.

It is ordered:

1. Weskan's Motion to Compel is granted in part. The remainder of Weskan's Motion to Compel is denied as moot.

2. This decision is effective on the date of service.

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