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BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
September 25, 2025
Part of
Public Record

DOCKET NO. FD 36849

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

**KANSAS & OKLAHOMA RAILROAD, LLC’S
PETITION FOR ISSUANCE OF A SUBPOENA**

EXPEDITED CONSIDERATION REQUESTED

Kansas & Oklahoma Railroad, LLC (“K&O”), pursuant to 49 U.S.C. § 1321(c) and 49 C.F.R. § 1113.1, and in light of the procedural schedule established by the Board, files this petition (the “Petition”) requesting that Judge Soulikias issue expeditiously a *subpoena duces tecum* to Colorado Pacific Railroad, LLC (“CXR”) directing it to respond fully and in good faith to discovery served upon it by K&O on September 19, 2025. In support of its Petition and Request, K&O states as follows:

BACKGROUND

This proceeding involves a dispute over specific terms governing K&O’s lease of certain railroad lines from Union Pacific Railroad Company (“UP”), specifically concerning an interchange commitment that restricts K&O’s ability to interchange traffic with railroads other than UP. Weskan Grain, LLC (“Weskan”) has challenged the validity of the subject interchange

commitment, and it opposes after-the-fact Surface Transportation Board (“Board”) authorization due to the interchange commitment’s alleged adverse impact on K&O-CXR interline traffic flows of grain.

Weskan and CXR are closely-affiliated companies under the private control of the Soloviev Group. The two companies are represented here by the same counsel, and they work closely in tandem to expand market share in the shipping of grain from sources in western Kansas and eastern Colorado to markets along the west coast and to foreign markets accessed via Pacific Coast ocean ports.

CXR is a non-party to this proceeding and is the sole third-party railroad with which K&O can interchange traffic from origins in western Kansas to supply Weskan Grain, LLC’s grain elevator at Stockton, Colorado. Given this, CXR is a uniquely situated and necessary stakeholder in this matter, and it is as central to the issues surrounding Weskan’s challenge before the Board as Weskan is itself.

ARGUMENT

The Board, through delegation to presiding officer Judge Soulikias, has the clear authority to issue a subpoena to CXR to compel the production of evidence in this matter. This authority is explicitly granted by Section 1321(c), empowering the agency (and, in turn, by delegation in this case to Judge Soulikias) to issue subpoenas to compel the production of documents from any person.

The Board itself has recognized that CXR is a critical player in this case, directing K&O on more than one occasion to serve copies of its procedural orders on Colorado Pacific. This requirement was intended to assure CXR’s inclusion in the process. This is further evidenced by the Board affording CXR the opportunity to submit comments on the merits of the

pending K&O petition by way of a filing on October 8, 2025. Clearly, the Board sees CXR as an indispensable stakeholder, and this Petition is a necessary step to secure the documents required for a complete and fair record from a party the Board itself has deemed essential.

The information sought from CXR is relevant and essential. This was revealed to K&O during the discovery conference held on September 12, 2025, where, in support of its own, sweeping discovery, Weskan repeatedly elaborated upon its desire to gain broad information about “the grain market” and K&O grain traffic flows generally in ways that expanded beyond the scope of its opposition filing to K&O’s exemption petition. Weskan has also revealed, through its own discovery requests, its desire to better understand K&O’s approach to interline traffic and interchange arrangements with CXR. Clearly, Weskan has made the interrelationship between K&O and CXR a key element of its discovery, and it appears that it will make the interrelationship an issue in subsequent proceedings before the Board.

As the only railroad with which K&O can interchange traffic on the east end of the Towner Line, CXR alone possesses information critical to understanding the effects of the interchange commitment on westward traffic flows. The discovery requests directed to CXR are narrowly tailored and reasonably limited in scope. In many ways, they mirror those that Weskan has served upon K&O. Given CXR’s direct relationship to the interline service and rates at issue in this proceeding and its unique position to possess relevant information, a subpoena is the only means to ensure K&O can obtain the necessary evidence to defend itself fully and fairly.

GOOD-FAITH EFFORTS AND TIMELINESS

K&O’s discovery requests are timely as a matter of STB procedure. Under the Board’s rules, a party has 15 days to respond substantively to a discovery request. K&O served its requests on September 19, 2025. Given that the deadline for discovery completion is October

8, 2025, CXR would be allotted more than 15 days to respond substantively. K&O's requests were therefore served well within a timeframe that permitted a substantive response prior to the discovery deadline. Moreover, because K&O has until October 22, 2025 to file supplemental evidence and argument in support of the pending petition, it would not be prejudiced if CXR were not to complete its production of responsive documents until around October 15, 2025.

Despite these considerations, CXR's counsel has openly asserted that K&O's petition would be untimely because the procedural schedule would not allow for a full reply period before the October 8, 2025, discovery deadline. This predicament is the direct result of CXR's non-responsiveness and its apparent intention to sit on its hands and avoid any responses (including advising K&O definitively as to whether it will voluntarily respond to discovery) until October 6, 2025), and thereby "run out the clock on a procedural technicality. This stonewalling appears to be a coordinated effort with its corporate affiliate Weskan to deprive K&O of discovery information that would be central to K&O's defense. A party cannot deliberately fail to respond to a discovery request and then argue, after having deployed such dilatory tactics, that a petition to compel a response is untimely.

EXPEDITED ACTION REQUIRED

CXR's counsel is attempting to leverage the Board's procedural rules to avoid discovery. This petition is not untimely; it is an unavoidable consequence of Weskan's expansive arguments and CXR's deliberate evasion. Denying K&O's Petition would be fundamentally unfair and would severely prejudice K&O's ability to defend itself. It would create a disproportionate outcome where one party, Weskan, is permitted to seek broad discovery from its opponents, while a closely-affiliated party, CXR, is allowed to withhold crucial and uniquely possessed evidence.

The Board's deadline for K&O to make its first substantive filing is not until October 22, 2025. This provides ample time to incorporate any discovery responses from CXR into our filings. Therefore, even if compelled CXR document production were to occur after October 8, it would cause no prejudice to K&O. In fact, K&O would welcome any responses from CXR up to and beyond October 15, 2025, as this would still allow K&O ample time to prepare. Furthermore, such an order permitting production by or before October 15 would not prejudice Weskan, since, under the applicable procedural schedule, its first substantive filing in this proceeding would not be due until November 20, 2025.

Judge Soulikias has been specifically delegated the responsibility for discovery matters in this case and, she, like the Board, has the discretion to waive or shorten procedural deadlines to ensure a just, speedy, and inexpensive determination of this proceeding. Given the time frames, K&O respectfully requests that this Petition be considered and granted expeditiously to avoid any further delay in the discovery process and to prevent a procedural gambit from frustrating the Board's mission.

WHEREFORE, for the foregoing reasons, K&O respectfully requests that the Board, through Judge Soulikias, act on this Petition either by:

- Granting the Petition by no later than October 1, 2025, and issue the requested subpoena to CXR to compel the production of documents on a rolling basis, with a firm deadline of October 15, 2025 for completion of all production; or alternatively
- Scheduling a hearing on the week of September 28, 2025, to address this petition and any other outstanding discovery disputes, with a decision on the Petition to follow.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

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

Dated: September 25, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

DOCKET NO. FD 36849

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: COLORADO PACIFIC RAILROAD LLC ("CXR")

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: SEE ATTACHED DISCOVERY REQUESTS TO COLORADO PACIFIC RAILROAD LLC ("CXR")

Place: Fletcher & Sippel LLC 29 N. Wacker Drive, Suite 800 Chicago, IL 60606	Date and Time: 15 Days from Issuance of this Subpoena
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☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

Administrative Law Judge

The Honorable Jennifer Soulikias

The name, address, e-mail address, and telephone number of the attorney representing (name of party) _____
Kansas & Oklahoma Railroad, LLC, who issues or requests this subpoena, are:
Robert A. Wimbish, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 800, Chicago, IL 60606
rwimbish@fletcher-sippel.com
(312) 252-1504

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

DOCKET NO. FD 36849

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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

**KANSAS & OKLAHOMA RAILROAD, LLC’S
DISCOVERY REQUESTS TO
COLORADO PACIFIC RAILROAD LLC**

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, Kansas & Oklahoma Railroad, LLC (“K&O”) hereby requests Colorado Pacific Railroad Company (“CXR”) to respond to and produce all information and documents responsive to the following discovery requests to Fletcher & Sippel LLC, 29 North Wacker Dr, Suite 800, Chicago, IL 60606, 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

A. As used herein “Weskan” shall mean Weskan Grain LLC and all divisions, predecessors, successors, and assigns of Weskan and all its officers, directors, employees, managing agents, consultants, and attorneys of Weskan.

B. As used herein, “K&O” shall mean Kansas & Oklahoma Railroad, LLC and all divisions, predecessors, successors, and assigns of K&O and all its officers, directors, employees, managing agents, consultants, and attorneys of K&O.

C. As used herein, “UP” shall mean Union Pacific Railroad Company and all divisions, predecessors, successors, and assigns of UP and all its officers, directors, employees, managing agents, consultants, and attorneys of UP.

D. As used herein, “CXR” shall mean Colorado Pacific Railroad Company and all divisions, predecessors, successors, and assigns of CXR and all its officers, directors, employees, managing agents, consultants, and attorneys of CXR.

E. As used herein, the phrase “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”).

F. As used herein, the term “Operating Agreement” shall mean that Operating Agreement entered into between CXR and K&O dated as of January 1, 2019.

G. As used herein, the word “documents” means any writing, graphic matter and/or other object and/or tangible thing whether written, produced by hand, printed, recorded, produced by photographic or made tangible by any other process including, but not limited to: letters, reports, other written communications, correspondence, telegrams, memoranda, summaries, records of oral conversations, original or preliminary notes, diaries,

calendars, travel records or itineraries, forecasts, analyses, projections, work papers, photographs, slides, motion pictures, tape recordings, models, statistical statements, graphs, laboratory and engineering reports and notebooks, charts, plans, drawings, minutes or records of meetings, minutes or records of conferences, expressions or statements of policy, lists of persons attending meetings or conferences, reports and/or summaries of investigations, opinions or reports of consultants, appraisals, evaluations, records, summaries of negotiations, contracts, agreements, leases, loan agreements, checks, bank statements, income tax withholding statements, income tax returns, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, including preliminary drafts or revisions or copies of any of the foregoing if the copy is in any way different from the original.

H. As used herein, “person” shall mean an individual, firm, partnership, corporation, proprietorship, joint venture, association, or any other organization or entity.

I. As used herein, “and” and “or” shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.

J. Documents “relating” or “related” to any given subject shall mean, without limitation, any document that constitutes, contains, embodies, reflects, identifies, states, refers directly or indirectly to, or is in any way relevant to the particular subject matter identified.

K. As used herein, “identify” shall mean to give the full name, address and telephone number of any individual or entity and/or the title and date of documents.

INSTRUCTIONS

A. These requests shall be deemed to include any and all relevant documents within the possession, custody or control of CXR.

B. Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.

C. If any document responsive to these requests has been destroyed, describe the content of said document, the location of any copies of said document, the date of such destruction and the name of the person who ordered or authorized such destruction.

D. If the production of any documents responsive to these requests is objected to on the ground of privilege or work product, or for any other reasons, with respect to each such document, state:

(1) the date appearing on such document, or if no date appears, the date on which such document was prepared;

(2) the name of each person to whom such document was addressed;

(3) the name of each person, other than the addressee(s) identified in subparagraph (2) above to whom such document or copy thereof was sent, or with whom such document was discussed;

(4) the name of each person who signed such document or, if not signed, the name of each person who prepared it;

(5) the name of each person making any contribution to the authorship of such document;

(6) the job title or position of each person identified in subparagraphs (2), (3), (4) and (5);

(7) the date such document was received or discussed by each person identified in subparagraph (2) or (3) above;

(8) the general nature or description of such document, and the number of pages of which it consists;

(9) the name of each person who currently has custody of such document;
and

(10) the specific ground(s) upon which the claim of privilege rests.

E. In producing the documents requested, indicate the specific request(s) pursuant to which each document or group of documents is being produced.

F. These requests shall be deemed continuing and supplemental production should be provided as additional documents become available.

G. If CXR is not in possession of documents responsive to these requests, but believes that a third party may be in possession of such documents, identify such third party in CXR's response.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all documents, including corporate records, financial records, and communications, that refer or relate to any corporate, financial, or operational relationship between Weskan Grain LLC and CXR.

RESPONSE:

REQUEST NO. 2: Produce all documents, including financial spreadsheets, economic models, and cost-benefit analyses, that refer or relate to any determination by Weskan or CXR that a K&O-CXR interchange is not economically viable or feasible.

RESPONSE:

REQUEST NO. 3: Produce all documents, including communications, proposals, and memoranda, that refer or relate to any discussions, negotiations, or inquiries between Weskan, CXR, or any of their agents, and Union Pacific Railroad Company regarding the potential sale, lease, or operation of the rail lines currently operated by K&O.

RESPONSE:

REQUEST NO. 4: Produce all documents that evidence the operational status of the CXR rail line, including any track segments that are out of service, any speed restrictions, or any other conditions that would limit the volume or type of traffic that could be moved.

RESPONSE:

REQUEST NO. 5: Produce all traffic and revenue forecasts, business plans, or other documents that evidence CXR's efforts to secure grain traffic, including any plans that rely on an interchange with K&O.

RESPONSE:

REQUEST NO. 6: Produce all documents, including Communications, reports, and analyses, exchanged between CXR and any other rail carrier (including, but not limited to, BNSF and Union Pacific) that refer or relate to the competitive position of the Towner Line, potential new business partnerships, or the diversion of grain traffic from other carriers.

RESPONSE:

REQUEST NO. 7: Produce all documents, including Communications, press releases, public statements, and presentations, exchanged between Weskan or CXR and any third party (other than K&O, Union Pacific, or BNSF) that refer or relate to the Lease or the Towner Line interchange.

RESPONSE:

REQUEST NO. 8: Produce all documents that refer or relate to the decision to terminate the operating agreement with K&O, including internal communications, memoranda, and meeting notes.

RESPONSE:

REQUEST NO. 9: Produce all documents, including contracts, agreements, and rate circulars, that refer or relate to any and all interline agreements for the movement of rail traffic between CXR and BNSF Railway Company and between CXR and Union Pacific Railroad Company from January 1, 2022, to the present.

RESPONSE:

REQUEST NO. 10: Produce all documents, including business plans, financial projections, or internal communications, that refer or relate to the potential operation of the K&O leased lines by CXR or any other entity controlled by the Soloviev Group.

RESPONSE:

REQUEST NO. 11: Produce all documents that refer or relate to the Third Supplement to the Lease and Operating Agreement between K&O and Union Pacific Railroad Company, including any internal communications regarding its negotiation and implementation.

RESPONSE:

REQUEST NO. 12: Produce all documents that refer or relate to the Fourth Supplement to the Lease and Operating Agreement between K&O and Union Pacific Railroad Company, including internal communications regarding its negotiation, formation, and implementation.

RESPONSE:

REQUEST NO. 13: Produce all documents and communications that refer or relate to the Operating Agreement under which K&O operated the Towner Line, including documents related to its negotiation, formation, and implementation, as well as any documents discussing its performance before it was terminated.

RESPONSE:

REQUEST NO. 14: Produce all documents that refer or relate to Union Pacific and the Towner Line from 2015 to the present.

RESPONSE:

REQUEST NO. 15: Produce all documents that refer or relate to discussions between Weskan and any other rail customer of K&O on the Leased Lines that reference K&O and/or UP.

RESPONSE:

REQUEST NO. 16: Produce all documents that refer or relate to the actual or potential ability of BNSF to provide service to Weskan's grain elevator facility.

RESPONSE:

REQUEST NO. 17: Produce all documents referring or relating to all contracts and agreements, including but not limited to, pricing authorities, rebate, and allowance contracts, between Weskan, CXR, Union Pacific, and/or any rail carrier or other third party, governing the movement of all rail shipments handled by Weskan as a shipper, receiver, or a party to a contract.

RESPONSE:

REQUEST NO. 18: Produce all documents referring to, relating to, or concerning the statement in the filing regarding the interchange commitment being a mandatory condition, including but not limited to all documents supporting Weskan's understanding that the interchange commitment was anything other than a mandatory condition, or that UP did not intend to divest K&O of its leasehold interest.

RESPONSE:

REQUEST NO. 19: Produce all documents referring or relating to the statement in the STB Docket No. FD 36849 that counsel for UP had advised K&O that UP believed that the Third and Fourth Supplements to the 1997 Lease remain legally binding.

RESPONSE:

REQUEST NO. 20: Produce all documents identifying the location of all facilities located on CXR.

RESPONSE:

REQUEST NO. 21: Produce all documents relied upon, referenced, or otherwise used in the preparation of CXR's responses to K&O's Interrogatories.

RESPONSE:

INTERROGATORIES

INTERROGATORY NO. 1: State with specificity every fact, and identify every document and witness, that supports CXR's contention that the K&O-UP lease is anti-competitive.

ANSWER:

INTERROGATORY NO. 2: State every fact, and identify every document, that CXR will rely on to support the contention that the K&O-CXR interchange is not economically viable or feasible as a result of the Asset Use Agreement in the Lease.

ANSWER:

INTERROGATORY NO. 3: Describe the relationship, including any corporate or financial ties, between CXR and Weskan.

ANSWER:

INTERROGATORY NO. 4: Describe in detail the specific operational and financial steps CXR has taken to make a commercially viable and operational interchange at Towner, Colorado, and state the extent to which your business plan relies on this interchange.

ANSWER:

INTERROGATORY NO. 5: State the specific reason(s) why Weskan and/or CXR terminated the operating arrangement under which K&O operated the Towner Line.

ANSWER:

INTERROGATORY NO. 6: Describe any and all business plans, strategies, or initiatives prepared by or for Weskan, CXR, or any entity within the Soloviev Group that relate to the potential operation of the rail lines currently leased by K&O from Union Pacific.

ANSWER:

INTERROGATORY NO. 7: For each interline agreement between CXR and BNSF or Union Pacific, describe the specific commercial terms, including, but not limited to, the division of revenue, any applicable rates or tariffs, and any service requirements.

ANSWER:

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

rwimbish@fletcher-sippel.com

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

Dated: September 19, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of September, 2025, arranged to serve a copy of the foregoing Kansas & Oklahoma Railroad, LLC's Discovery Requests to Colorado Pacific Railroad LLC 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

DOCKET NO. FD 36849

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

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

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, Kansas & Oklahoma Railroad, LLC (“K&O”) hereby requests Weskan Grain LLC (“Weskan”) to respond to and produce all information and documents responsive to the following discovery requests to Fletcher & Sippel LLC, 29 North Wacker Dr, Suite 800, Chicago, IL 60606, 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

A. As used herein “Weskan” shall mean Weskan Grain LLC and all divisions, predecessors, successors, and assigns of Weskan and all its officers, directors, employees, managing agents, consultants, and attorneys of Weskan.

B. As used herein, “K&O” shall mean Kansas & Oklahoma Railroad, LLC and all divisions, predecessors, successors, and assigns of K&O and all its officers, directors, employees, managing agents, consultants, and attorneys of K&O.

C. As used herein, “UP” shall mean Union Pacific Railroad Company and all divisions, predecessors, successors, and assigns of UP and all its officers, directors, employees, managing agents, consultants, and attorneys of UP.

D. As used herein, “CXR” shall mean Colorado Pacific Railroad Company and all divisions, predecessors, successors, and assigns of CXR and all its officers, directors, employees, managing agents, consultants, and attorneys of CXR.

E. As used herein, the phrase “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”).

F. As used herein, the term “Operating Agreement” shall mean that Operating Agreement entered into between CXR and K&O dated as of January 1, 2019.

G. As used herein, the word “documents” means any writing, graphic matter and/or other object and/or tangible thing whether written, produced by hand, printed, recorded, produced by photographic or made tangible by any other process including, but not limited to: letters, reports, other written communications, correspondence, telegrams, memoranda, summaries, records of oral conversations, original or preliminary notes, diaries,

calendars, travel records or itineraries, forecasts, analyses, projections, work papers, photographs, slides, motion pictures, tape recordings, models, statistical statements, graphs, laboratory and engineering reports and notebooks, charts, plans, drawings, minutes or records of meetings, minutes or records of conferences, expressions or statements of policy, lists of persons attending meetings or conferences, reports and/or summaries of investigations, opinions or reports of consultants, appraisals, evaluations, records, summaries of negotiations, contracts, agreements, leases, loan agreements, checks, bank statements, income tax withholding statements, income tax returns, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, including preliminary drafts or revisions or copies of any of the foregoing if the copy is in any way different from the original.

H. As used herein, “person” shall mean an individual, firm, partnership, corporation, proprietorship, joint venture, association, or any other organization or entity.

I. As used herein, “and” and “or” shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.

J. Documents “relating” or “related” to any given subject shall mean, without limitation, any document that constitutes, contains, embodies, reflects, identifies, states, refers directly or indirectly to, or is in any way relevant to the particular subject matter identified.

K. As used herein, “identify” shall mean to give the full name, address and telephone number of any individual or entity and/or the title and date of documents.

INSTRUCTIONS

A. These requests shall be deemed to include any and all relevant documents within the possession, custody or control of Weskan.

B. Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.

C. If any document responsive to these requests has been destroyed, describe the content of said document, the location of any copies of said document, the date of such destruction and the name of the person who ordered or authorized such destruction.

D. If the production of any documents responsive to these requests is objected to on the ground of privilege or work product, or for any other reasons, with respect to each such document, state:

(1) the date appearing on such document, or if no date appears, the date on which such document was prepared;

(2) the name of each person to whom such document was addressed;

(3) the name of each person, other than the addressee(s) identified in subparagraph (2) above to whom such document or copy thereof was sent, or with whom such document was discussed;

(4) the name of each person who signed such document or, if not signed, the name of each person who prepared it;

(5) the name of each person making any contribution to the authorship of such document;

(6) the job title or position of each person identified in subparagraphs (2), (3), (4) and (5);

(7) the date such document was received or discussed by each person identified in subparagraph (2) or (3) above;

(8) the general nature or description of such document, and the number of pages of which it consists;

(9) the name of each person who currently has custody of such document;
and

(10) the specific ground(s) upon which the claim of privilege rests.

E. In producing the documents requested, indicate the specific request(s) pursuant to which each document or group of documents is being produced.

F. These requests shall be deemed continuing and supplemental production should be provided as additional documents become available.

G. If Weskan is not in possession of documents responsive to these requests, but believes that a third party may be in possession of such documents, identify such third party in Weskan's response.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all documents, including invoices, billing statements, contracts, and financial analyses, that evidence Weskan's costs, revenues, and payments associated with the transportation of grain to and from the Stockton Elevator from January 1, 2022, to the present. This includes documents related to inbound traffic (by truck and short-distance rail) and outbound traffic (by unit train).

RESPONSE:

REQUEST NO. 2: Produce all documents, including internal communications or reports, that refer or relate to any contention or assertion that the Asset Use Agreement provision in the Lease makes purchasing grain from K&O-served sources on the Leased Lines economically unfeasible or uneconomical.

RESPONSE:

REQUEST NO. 3: Produce all documents, including business plans, financial projections, and market analyses, prepared by or for Weskan, that relate to its grain traffic operations or the alleged impact of the Lease on grain shipments from January 1, 2022, to the present.

RESPONSE:

REQUEST NO. 4: Produce all contracts, agreements, pricing authorities, and any related documents, including but not limited to, rebate or allowance contracts, between Weskan and

any rail carrier or other third party that govern the movement of any rail shipments handled by Weskan as a shipper, receiver, or a party to a contract.

RESPONSE:

REQUEST NO. 5: Produce all traffic and revenue forecasts, traffic reports, and shipment records that evidence the actual or projected volumes and ultimate destinations for all grain shipments that were originated or terminated by Weskan at the Stockton Elevator from January 1, 2022, to the present.

RESPONSE:

REQUEST NO. 6: Produce all documents that refer or relate to Weskan's sourcing of inbound grain for the Stockton Elevator, including communications with grain producers or shippers, contracts, and any documents related to the ownership, operation, or use of a trucking service for the transportation of grain.

RESPONSE:

REQUEST NO. 7: Produce all communications between Weskan and any other shipper, producer, or entity concerning the Lease, the proposed interchange commitment, or any alleged anti-competitive effects thereof.

RESPONSE:

REQUEST NO. 8: Produce all documents that refer or relate to the Third Supplement to the Lease and Operating Agreement between K&O and Union Pacific Railroad Company, including any internal communications regarding its negotiation and implementation.

RESPONSE:

REQUEST NO. 9: Produce all documents that refer or relate to the Fourth Supplement to the Lease and Operating Agreement between K&O and Union Pacific Railroad Company, including internal communications regarding its negotiation, formation, and implementation.

RESPONSE:

REQUEST NO. 10: Produce all documents and communications that refer or relate to the Operating Agreement under which K&O operated the Towner Line, including documents related to its negotiation, formation, and implementation, as well as any documents discussing its performance before it was terminated.

RESPONSE:

REQUEST NO. 11: Produce all documents that refer or relate to Union Pacific and the Towner Line from 2015 to the present.

RESPONSE:

REQUEST NO. 12: Produce all documents that refer or relate to discussions between Weskan and any other rail customer of K&O on the Leased Lines that reference K&O and/or UP.

RESPONSE:

REQUEST NO. 13: Produce all documents that refer or relate to the actual or potential ability of BNSF to provide service to Weskan's grain elevator facility.

RESPONSE:

REQUEST NO. 14: Produce all documents referring or relating to all contracts and agreements, including but not limited to, pricing authorities, rebate, and allowance contracts, between Weskan, CXR, Union Pacific, and/or any rail carrier or other third party, governing the movement of all rail shipments handled by Weskan as a shipper, receiver, or a party to a contract.

RESPONSE:

REQUEST NO. 15: Produce all documents referring to, relating to, or concerning the statement in the filing regarding the interchange commitment being a mandatory condition, including but not limited to all documents supporting Weskan's understanding that the

interchange commitment was anything other than a mandatory condition, or that UP did not intend to divest K&O of its leasehold interest.

RESPONSE:

REQUEST NO. 16: Produce all documents referring or relating to the statement in the STB Docket No. FD 36849 that counsel for UP had advised K&O that UP believed that the Third and Fourth Supplements to the 1997 Lease remain legally binding.

RESPONSE:

REQUEST NO. 17: Produce all documents identifying the location of all facilities located on CXR.

RESPONSE:

REQUEST NO. 18: Produce all documents relied upon, referenced, or otherwise used in the preparation of Weskan's responses to K&O's Interrogatories.

RESPONSE:

INTERROGATORIES

INTERROGATORY NO. 1: State with specificity every fact, and identify every document and witness, that Weskan will rely on to support its contention that the Lease is anti-competitive and that the interchange commitment harms Weskan and other shippers.

ANSWER:

INTERROGATORY NO. 2: Identify all shared business services, including but not limited to accounting, legal, and management, and identify all individuals who serve in a leadership or management role for both Weskan and CXR at any time from January 1, 2022, to the present.

ANSWER:

INTERROGATORY NO. 3: Describe Weskan’s current and future transportation needs for grain traffic that originates on the K&O line, including a detailed breakdown of destinations, traffic volumes, and a description of any specific service requirements.

ANSWER:

INTERROGATORY NO. 4: Describe the extent to which Weskan’s business model and/or profitability are dependent on the operational status and services of CXR.

ANSWER:

INTERROGATORY NO. 5: State the specific source(s) of all grain delivered to the Stockton Elevator from January 1, 2022, to the present. For each source, identify the specific entity (e.g., farm, cooperative, or elevator) and provide the total volume of grain received from that source.

ANSWER:

REQUESTS TO ADMIT

REQUEST TO ADMIT 1: Admit or deny that Weskan Grain, LLC and Colorado Pacific Railroad, LLC are owned by the same parent company, the Soloviev Group.

RESPONSE:

REQUEST TO ADMIT 2: Admit or deny that Weskan's grain elevator facility in Stockton, Colorado, was built specifically to be served by the CXR line.

RESPONSE:

REQUEST TO ADMIT 3: Admit or deny that Weskan has a financial interest in the success and viability of the Colorado Pacific Railroad.

RESPONSE:

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

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

Dated: September 19, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of September, 2025, arranged to serve a copy of the foregoing Kansas & Oklahoma Railroad, LLC Discovery Requests to Weskan Grain LLC upon all parties to this proceeding via electronic mail.

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Kansas & Oklahoma Railroad, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of September, 2025, arranged to serve a copy of the foregoing Petition upon all parties to this proceeding via electronic mail.

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Kansas & Oklahoma Railroad, LLC