

BEFORE THE UNITED STATES  
SURFACE TRANSPORTATION BOARDENTERED  
Office of Chief Counsel  
September 26, 2025  
Part of  
Public Record

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FD 36849

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

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**KANSAS & OKLAHOMA RAILROAD, LLC’S  
REPLY TO WESKAN GRAIN, LLC’S MOTION FOR PROTECTIVE ORDER**

Kansas & Oklahoma Railroad, LLC (“K&O”) respectfully replies to Weskan Grain, LLC’s (“Weskan”) September 25, 2025 motion for protective order (“MPO”). That MPO was improperly directed to the Surface Transportation Board (the “Board”), and so K&O directs this Reply to you, Judge Soulikias, recognizing that the Board has assigned discovery disputes such as this to you for resolution. For the reasons set forth below, K&O respectfully requests that you affirm your jurisdiction over this matter, deny the MPO on the merits, and issue an order facilitating the immediate completion of essential, defensive discovery. K&O's immediate filing of this Response—one day after the MPO was served, rather than waiting the full 20 days allowed by the Board’s rules—is a tangible demonstration of K&O’s commitment to the expeditious resolution of these discovery disputes and the overall integrity of the schedule.

***The Board has assigned all discovery disputes, including this motion for protective order, to Judge Soulikias for resolution.***

Weskan’s MPO, addressed directly to the Board, reads as an attempt to circumvent the Board’s explicit procedural directive. The Board’s decision served in this proceeding on August 8, 2025, unequivocally delegated the authority to adjudicate this dispute to you:

The Board hereby assigns and authorizes Administrative Law Judge Jenifer Soulikias to entertain and rule upon discovery matters and to resolve initially ***any disputes concerning discovery in this proceeding...***

Board Order served on August 8, 2025, slip op. at 3 (emphasis added).

A motion for protective order designed, in essence, to quash outstanding discovery requests is, by its nature, a manifestation of a discovery dispute. Weskan's decision to bypass you and file its MPO with the Board seems geared toward undermining your delegated authority over this phase of the proceeding. This lack of regard for the Board's established process and the timing of Judge Soulikias's availability is further evidenced by Weskan's unwillingness to agree to K&O's proposed October 2nd status conference. Accordingly, K&O respectfully requests that you affirm your exclusive jurisdiction over this MPO and reaffirm that the parties should treat all discovery disputes as assigned to your office, thereby reinforcing the orderly process established by the Board.

***K&O's discovery is formally timely and legally permissible. That Weskan is bothered by its later arrival in this phase of the case does not make it untimely or entitle Weskan (or Colorado Pacific Railroad) to duck good-faith, substantive responses.***

Weskan's motion hinges on a fundamental misunderstanding of timeliness. Discovery is "untimely" only if it is served too late to allow a party the full 15-day response period required under the Board's rules prior to the discovery completion deadline. In this case, K&O's requests were served on September 19, 2025, requiring responses on or before October 4, 2025. Because October 4, 2025, is a Saturday, the responses are not due until the next business day, October 6, 2025—four full days before the October 8, 2025 discovery completion deadline. K&O's requests are therefore formally timely and entirely permissible under the Board's rules.

Weskan's recent, self-serving dismissal of the urgent issues raised by K&O as being "all of K&O's making" is a facile argument ignoring the substantive root of the timing

issue. The necessity and timing of K&O's requests arose from the recent revelation of Weskan's expanded claims beyond those contained in its earlier substantive filings days prior to service.

The substance of K&O's discovery was informed by the September 12, 2025, discovery conference you hosted, which was highly productive in its various outcomes, but also was revealing of Weskan's forthcoming litigation strategy and legal theories that are more expansive than are reflected in Weskan's previously-expressed objections to the at-issue interchange commitment. Specifically, it appears Weskan intends to:

- Make this entire proceeding a referendum on K&O's operation of the lines leased from Union Pacific, and not just the impact of the interchange commitment.
- Seek to obtain operating concessions over the subject leased lines.
- Challenge the transportation of all traffic handled by K&O, including traffic not originating on the subject leased lines.

Such a dramatically expanded scope and novel theory for denial of K&O's pending petition for exemption is good cause for K&O to serve discovery requests at this time. The information sought is now essential for K&O to mount a defense against Weskan's recently-articulated, broader objectives.

***The asserted burden is self-inflicted and proportional and, if genuine, could be mitigated through consultation.***

To the extent Weskan claims K&O's discovery requests are unduly burdensome or overbroad, it is a burden entirely of Weskan's own making. K&O's requests are not only warranted but are strictly proportional to the expansive theory of the case and Weskan's sweeping discovery. Weskan has lately, via the September 12 discovery conference, defined the case as a broad-ranging attack on K&O's operations and non-leased lines traffic; it cannot now claim oppression when K&O seeks the necessary facts to defend against such legal argument.

Despite the urgent need for this information, K&O has demonstrated a consistent willingness to resolve any genuine issues outside of judicial intervention. On September 24, 2025, counsel for K&O reached out to Weskan, proposing an immediate meet-and-confer to resolve any outstanding issues and minimize any genuine burden. Weskan’s categorical refusal to engage in this good-faith effort—and its subsequent decision to file a motion for protective order—is a clear indication that it intends to utilize the clock as a tactical weapon to evade its discovery obligations. K&O stands ready to engage in this discussion at any time to ensure the expeditious and just resolution of any substantive discovery issues, provided Weskan abandons its categorical refusal to provide any discovery and its apparent intent to make no true effort whatsoever to provide requested information.

***Judge Soulikias holds broad discretion to waive or adjust procedural rules to ensure justice.***

Weskan repeatedly references the Board’s regulations as if they are inflexible mandates that must lead to the summary denial of K&O’s discovery. This view fundamentally misrepresents the Board’s governing authority. The Surface Transportation Board, as a matter of long-standing practice and inherent authority, retains broad discretion to waive, adjust, or significantly abbreviate its Rules of Practice and procedure when circumstances warrant, particularly to ensure the fair and expeditious disposition of a proceeding. *See, e.g.*, 49 C.F.R. § 1011.7(a)(2)(xiv); *Revisions to Regulations for Expedited Relief for Service Emergencies*, EP 762 (STB served Jan. 24, 2024), slip op. at 6-7 (“the Board . . . may waive its regulations when appropriate”); *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, LA.*, FD 36447 (STB served Feb. 2, 2023); *Spokane, Spangle & Palouse Railway, L.L.C. – Lease and Operation Exemption – Washington State Department of Transportation*, FD 36325 (STB served Aug. 2, 2019).

In matters delegated by the Board, you retain the same necessary discretion. This means that if Weskan continues to claim that compliance with any discovery or subpoena requirement is impossible due to standard regulatory timeframes (e.g., the 20-day response window), you possess the authority, at your discretion, to shorten those timeframes to fit the case's schedule and preserve K&O's right to discovery. Asserting discretion and control of procedural scheduling for the filing of responses to motions, for example, would be a proper and judicious exercise of your authority to ensure this proceeding remains focused on the merits, rather than procedural technicalities.

WHEREFORE, K&O respectfully requests that Administrative Law Judge Jenifer Soulikias:

- Affirm jurisdiction over Weskan's Motion for Protective Order.
- Deny the Motion for Protective Order on the merits.
- Order a Good-Faith Meet-and-Confer among counsel to resolve any remaining genuine scope or burden issues and, following that, recommend or propose a narrow extension of the discovery completion deadline (for document production) to October 15, 2025, thereby allowing for the completion of necessary discovery.

Respectfully submitted,

/s/ *R. A. Wimbish*

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Dated: September 26, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 26<sup>th</sup> day of September, 2025, arranged to serve a copy of the foregoing Reply upon all parties to this proceeding via electronic mail.

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Kansas & Oklahoma Railroad, LLC