

SURFACE TRANSPORTATION BOARD

ORDER DENYING WESKAN’S MOTION FOR PROTECTIVE ORDER

Docket No. FD 36849

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

Decided: September 29, 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 (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).

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).

On September 25, 2025, Weskan filed a Motion for Protective Order, which requests that it not be required to respond to the discovery propounded by K&O. Weskan complains that it served discovery upon K&O (and UP), but K&O did not serve reciprocal discovery upon Weskan until later, which is a “mere two days before the deadline set to complete discovery.” (Motion at 2-4). Weskan argues that this is “untimely.” (Id. at 4.) Weskan argues and requests that K&O’s discovery cannot be had. (Id. at 4.) Further, Weskan requests expedited consideration, because its responses are due on October 6, 2025, with document production starting that day. (Id. at 5 & n.2.)

K&O replied to Weskan’s motion for protective order on September 26, 2025. K&O argues that its discovery is timely. (Reply at 2-3.) K&O requests that the motion for protective order be denied and that this ALJ:

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.

(Id. at 5.)

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”). An order may be entered for good cause and which justice requires, to protect from “annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of the issues untimely or inappropriate to the proceeding.” 49 C.F.R. § 1114.21(c). Protective orders may include that discovery not be had or that discovery be had only on specified conditions. 49 C.F.R. 1114.21(c)(1)-(2).

K&O’s discovery is not “untimely.” K&O’s discovery can be completed before the discovery completion date. Thus, Weskan’s Motion for Protective Order is denied, because Weskan has not demonstrated the requirements for the entry of a protective order.

Weskan’s responses and objections are due on October 6, 2025, with document production starting that day. The deadline to complete discovery is October 8, 2025, which is set by the Board. I will **not** make a recommendation to the Board about the deadlines it sets. Requests to modify the procedural schedule are properly addressed to the Board.

Weskan and K&O are ordered to meet and confer on K&O’s discovery requests before a discovery dispute is filed. See Decision at 2 n.2 (June 25, 2025). The Board’s June 25, 2025, Decision frames the discoverable issues. Decision (June 25, 2025). The STB’s regulations provide for broad discovery.

K&O and Weskan are encouraged to resolve as many discovery disputes as practicable before requesting that the Board extend the procedural schedule, which may obviate the need for Board intervention. Moreover, K&O and Weskan are strongly encouraged to meet and confer before K&O submits its discovery responses and first document production on October 6, 2025.

For these reasons, the undersigned denies Weskan’s Motion for Protective Order. Weskan’s request for expedited consideration, however, is granted.

It is ordered:

1. Weskan's Motion for Protective Order is denied. Weskan's request for expedited consideration is granted.

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

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