

BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
September 29, 2025
Part of
Public Record

FD 36849

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

**KANSAS & OKLAHOMA RAILROAD, LLC’S
EMERGENCY MOTION TO EXTEND DISCOVERY SCHEDULE**

EXPEDITED CONSIDERATION REQUESTED

Kansas & Oklahoma Railroad, LLC (“K&O”) respectfully moves the Surface Transportation Board (the “Board”) for an emergency, non-prejudicial extension of the discovery completion deadline in this proceeding from Wednesday, October 8, 2025, to Wednesday, October 15, 2025.

This modest, seven-day adjustment would ensure complete, good-faith responses to K&O’s discovery requests, encompassing the subpoena directed to Colorado Pacific Railroad, LLC (“CXR”) as issued by Judge Soulikias, and the corresponding substantive responses that both CXR and Weskan Grain, LLC (“Weskan”) must give. The extension would prevent abuse of the compressed schedule without affecting any subsequent filing deadlines as set forth in the Board’s August 8, 2025 order.

BACKGROUND

Kansas & Oklahoma Railroad, LLC (“K&O”) served discovery requests on both Weskan Grain, LLC (“Weskan”) and its affiliate, CXR, on September 19, 2025, proposing to counsel for Weskan and CXR to arrange an expedited meet-and-confer to manage the limited schedule. The timing of K&O’s requests was dictated by Weskan’s altered (expanded) theory of the case. Specifically, the necessity for this defensive discovery was triggered when, in support of its extensive discovery requests (directed to K&O) during the September 12, 2025, discovery conference, Weskan explained that it intended to raise significantly expanded theories in opposition of K&O’s lease and operation petition for exemption.

K&O understood Weskan’s original objective to be to seek invalidation of the interchange commitment affecting the Towner gateway and flows of inbound grain by K&O-CXR interline arrangements to Weskan’s Stockton Elevator. But the discovery conference revealed Weskan’s new objective: to invalidate K&O’s entire leasehold arrangement for the lines and to thereby attempt to wrest the operation of those lines from K&O (or, in the alternative, to secure operating rights over them). This fundamental alteration of the case’s scope required K&O to conduct targeted, defensive discovery.

On September 22, 2025, counsel for Weskan and CXR responded, asserting that K&O’s discovery efforts were “clearly untimely and improper,” signaling an intent not to respond substantively, and refusing to engage in a good-faith meet-and-confer prior to the October 6, 2025 deadline for answers to the

discovery requests. See email exchange, attached hereto. Subsequently, on September 25, 2025, Weskan filed a Motion for Protective Order (“MPO”) seeking to nullify K&O’s discovery requests entirely. K&O filed a reply arguing the requests were formally timely under the Board's rules (responses due October 6, 2025).

On September 26, 2025, K&O completed responses and production in response to discovery requests directed to K&O, turning over hundreds of documents to Weskan in compliance with its obligations. On that same day, Administrative Law Judge Jenifer Soulikias granted K&O’s petition for issuance of a subpoena to permit K&O to take discovery of CXR, thereby finding the evidence essential for a complete and fair record. Judge Soulikias expressly noted that K&O must request any extension of the discovery deadline from the Board.

CXR is a non-party that seeks to evade discovery outright, and, given the subpoena was served on September 26, 2025, K&O does not expect complete production from CXR – or perhaps any – before the current October 8, 2025, deadline. Moreover, K&O anticipates that Weskan will meet the October 6, 2025, response deadline with categorical refusals to provide substantive information, a tactic that effectively would run out the clock and compounds the need for the extension to enable Judge Soulikias to intervene as is likely to be necessary.

ARGUMENT

The extension preserves the integrity of Judge Soulikias' ruling and does not affect the Board's evidentiary schedule.

The Board, in its August procedural order, expressed concern about further schedule adjustments due to the statutory timeline under 49 U.S.C. § 10502. K&O honors this constraint and is requesting only a surgical adjustment to the discovery phase. Under the present motion, if granted, the procedural schedule would be as follows:

Deadline Event	Original Date	Requested Date	Change
Discovery Completion	October 8, 2025	October 15, 2025	+7 Days
CXR/Interested Party Comments	October 8, 2025	October 8, 2025	Unchanged
K&O Supplemental Evidence/Argument	October 22, 2025	October 22, 2025	Unchanged
Weskan Reply/Comments	November 20, 2025	November 20, 2025	Unchanged
K&O Rebuttal	December 5, 2025	December 5, 2025	Unchanged

Adjusting the Discovery Completion date ensures that Judge Soulikias determination that CXR's substantive responses to discovery are necessary (along with Weskan's) is not rendered meaningless by the calendar. K&O does not seek to affect any party's filing timeframes, including its own.

Denying the extension would prejudice K&O and nullify a lawful order.

Judge Soulikias' issuance of the subpoena directed to CXR tacitly supports an extension. To deny it would effectively nullify a lawful order of discovery, which is an inequitable result.

- **Modesty of Request is Evident:** The requested seven-day extension is extremely modest. Weskan would not be prejudiced, given Weskan itself initially requested an extension of approximately 70 days—and Union Pacific indicated a need for 120 days of production time—as noted in the Board's August 8, 2025 Order.
- **Cause of Predicament:** K&O's need for this extension stems directly from Weskan's decision to substantially expand the original scope of its opposition to the petition for exemption to invalidate K&O's entire leasehold, combined with Weskan's and CXR's indications to this point that they hope to evade responding in good-faith to K&O's discovery (as evidenced by the email from Weskan's counsel in response to discovery, and the MPO). K&O has a documented history of seeking amicable, swift resolution of discovery disputes, an expectation Weskan has recently ignored.
- **Reasonable Effort Required:** K&O acknowledges the compressed timeframe, but Weskan and CXR are not relieved of their obligation to make a reasonable and good-faith effort to provide information responsive to a lawfully issued subpoena. Weskan/CXR are required to tailor their production, not categorically refuse it.
- **No Prejudice to Opposing Parties:** The extension affects only document production. The evidentiary phase of the procedural schedule remains protected and unchanged, proving the extension is non-prejudicial to the overall schedule.

Expedited Board consideration and action are needed

K&O respectfully requests that the Board act on this motion prior to the current Discovery Completion deadline of October 8, 2025. Failure to rule on the requested extension before this date would effectively nullify the subpoena granted

by Judge Soulikias, as it would be impossible for K&O to receive and review the critical discovery from CXR and Weskan in time to meet the subsequent October 22, 2025 deadline for supplemental evidence and argument. Expedited relief is required to prevent prejudice to K&O's ability to build a complete evidentiary record.

WHEREFORE, for the foregoing reasons, K&O respectfully requests that the Board grant this motion on an expedited basis, and extend the discovery completion deadline from October 8, 2025, to October 15, 2025, while leaving all subsequent procedural deadlines unchanged.

Respectfully submitted,

/s/ *R. A. Wimbish*

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

Attachment

Dated: September 29, 2025

From: [Tom Wilcox](#)
To: [Colleen Konicek](#)
Cc: [Robert A. Wimbish](#); [Carlin Comerouski Peterson](#); alj.soulurias.inbox@stb.gov; Mrosenthal@Cov.Com
Subject: RE: Kansas & Oklahoma Railroad - FD 36849 Discovery Responses Status Update
Date: Monday, September 22, 2025 1:54:34 PM
Attachments:

Colleen - Good afternoon. In response to your email below from late last Friday afternoon, Colorado Pacific Railroad LLC ("CXR") is reviewing the discovery requests propounded to it. This being said, as you note, subpoenas for third party discovery are handled via a petition to the STB, not the "civil action" court form attached to your email.

Under the STB's rules, a third party has 20 days to reply to a petition. Even if K&O filed a petition today, which would be ill-advised because it would plainly violate clear recent STB precedent (attached) that requires the filing to be preceded by discussions between CXR and K&O to identify any disagreements, the date for just CXR's reply to the petition (which would precede any production) would be well beyond the October 8, 2025 date set by the Board for completion of discovery. K&O's attempt to use the STB's third-party subpoena process at this very late stage of the procedural schedule is therefore clearly untimely and improper.

Second, as to the discovery belatedly served on Weskan, the STB's rules establish that written responses and objections to discovery are due not less than 15 days from the service date. Again, I note that the response date per the STB's rules is a mere two days before the October 8 deadline for all discovery to be completed, and so I also question the usefulness of going through that process for Weskan when discovery is to be "completed" on that date, not "commenced" on that date, which from a practical standpoint is what K&O is attempting to do. I therefore do not see the need for a "meet and confer" session under these circumstances, but if one is held, it will not occur prior to Weskan's submission of its written responses and objections, per established STB practice, assuming discovery to Weskan is even permitted at this very late stage.

Regards,
Tom Wilcox

Thomas W. Wilcox

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From: Colleen Konicek <CKonicek@fletcher-sippel.com>

Sent: Friday, September 19, 2025 5:04 PM

To: Tom Wilcox <tom@twilcoxlaw.com>

Cc: Robert A. Wimbish <RWimbish@fletcher-sippel.com>; Carlin Comerouski Peterson <CPeterson@fletcher-sippel.com>; alj.soulíkias.inbox@stb.gov; Mrosenthal@Cov.Com

Subject: RE: Kansas & Oklahoma Railroad - FD 36849 Discovery Responses Status Update

Tom – Attached please find K&O’s discovery to Weskan and to CXR. I’ve also attached a subpoena directed to CXR, however, I’m anticipating that CXR will voluntarily respond to the discovery, much as UP has voluntarily agreed to respond without the need for a subpoena. If this is not the case, please advise as soon as possible so we may take the appropriate steps to petition for issuance of the subpoena for the discovery. We’d appreciate a response by COB Monday. Additionally, we propose a meet & confer on the discovery for either Friday, September 26, or Monday, September 29. Please advise which date is best for you.

Thank you for your anticipated cooperation and have a nice weekend,

Colleen Konicek

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CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of September, 2025, arranged to serve a copy of the foregoing Motion upon all parties to this proceeding via electronic mail.

/s/ *R. A. Wimbish*

Robert A. Wimbish

Attorney for Kansas & Oklahoma Railroad, LLC