

**BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. FD 36849

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

ENTERED
Office of Chief Counsel
September 30, 2025
Part of
Public Record

REPLY TO EMERGENCY MOTION TO EXTEND DISCOVERY SCHEDULE

Weskan Grain LLC (“Weskan”) hereby files this reply in opposition to the Emergency Motion to Extend Discovery Schedule (“Motion”) filed by the Kansas & Oklahoma Railroad, LLC (“K&O”) on September 29, 2025. The Motion seeks an “emergency” extension of the already once-extended October 8, 2025 deadline for completing discovery in this proceeding. K&O is seeking an extension at this time – a little more than a week before the deadline – because it chose to wait until nearly the end of the extended discovery period to seek any discovery from Weskan (and its affiliate Colorado Pacific Railroad LLC (“CXR”).

Because there is no actual “emergency” justifying the Motion (the term only appears once in body of the Motion) K&O tries to manufacture one by falsely asserting Weskan is the cause of the alleged emergency. Specifically, K&O asserts that an expedited extension of the date to complete discovery is needed because “the necessity for 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.” Motion at 2. K&O then goes on to make claim that its extremely belated attempt to seek discovery from Weskan was also

prompted by Weskan's alleged "new objective" - also supposedly revealed during the discovery conference - that Weskan seeks to "invalidate" the lease agreement K&O has asked the Board to approve in this proceeding and then "wrest the operation of those lines from K&O." *Id.* Both of these assertions are false and were fabricated to cover up the fact that there really is no "emergency" here justifying an extension of the discovery schedule. Rather, K&O waited too long to seek discovery from Weskan in the first place, and it served extensive discovery near the deadline for completion of discovery for the primary purpose of harassing and trying to unfairly burden Weskan (and CXR) as the parties enter the evidentiary phase of the case.

K&O's first manufactured claim that Weskan raised "significantly expanded theories" at the September 12, 2025 discovery conference is easily debunked. Weskan's first and only discovery requests were served on K&O on July 9, 2025. Weskan subsequently took pains to confer with K&O counsel after that date to explain the rationale for the requests, including preparing a detailed letter to counsel for K&O dated August 12, 2025 (Exhibit 1). The discovery conference before Judge Soulikias on September 12, 2025 was merely a continuation of those discussions (notably, the August 12, 2025 letter did not prompt any discovery from K&O to Weskan). Accordingly, K&O's claim in its motion that its failure to serve discovery on Weskan prior to September 19, 2025 was justified by alleged revelations by Weskan during the discovery conference about significantly expanding the scope of the case is therefore a red herring, and simply not true.

Respectfully, K&O's second allegation is both absurd and false. The allegation is absurd because this entire proceeding is about whether the Board should provide after-the-fact authorization for K&O and Union Pacific Railroad Company ("UP") to enter into their amended lease arrangement. That K&O would think the potential outcome of the lease arrangement not

being approved is a “fundamental alteration of the case’s scope” is astounding. More significantly, the representatives for Weskan present at the discovery conference made no statements whatsoever that would even imply that Weskan’s “new objective” in this proceeding is to “wrest” the operation of the lines from K&O. K&O’s request for an emergency extension is therefore based in part on what Weskan will generously describe as a misinterpretation of the discussion before Judge Soulikias. Regardless, there has been no “fundamental alteration of the case’s scope” as described by K&O.

In its August 8, 2025 Decision in this proceeding, the Board granted a request by Weskan to extend the procedural schedule in this case. The Board admonished the parties that “[c]onsidering the statutory deadline for completion of this proceeding, the Board will disfavor, absent extraordinary circumstances, further extensions to the procedural schedule.” Decision at 3. Weskan submits that there are no “extraordinary circumstances” here. Rather, K&O has attempted manufacture such circumstances in an attempt to cover up its untimely – and Weskan believes ill-intended – attempt to seek discovery from Weskan and CXR.

Moreover, Judge Soulikias’ September 5, 2025 decision scheduling the aforementioned discovery conference¹ reiterated the need to complete discovery in this proceeding, stating that “[i]mportantly, the Board’s August 8, 2025, Decision states that discovery shall be completed by October 8, 2025. See Decision (Aug. 8, 2025). Thus, this proceeding is nearing the end of its discovery phase, *and discovery shall be completed as the Board ordered.*” ALJ Decision at 2 (emphasis supplied).

¹ The decision also directed the parties to hold a “meet and confer” session on Wednesday, September 10, 2025.

Finally, on September 29, 2025, Judge Soulikias denied Weskan Grain's motion for a protective order regarding K&O's discovery requests. As stated in the motion, Weskan Grain intends to comply in good faith with the Judge's decision. However, Weskan Grain also believes there should be consequences for parties that disregard procedural deadlines established by the Board and then seek "emergency" relief from their behavior based on highly questionable grounds. Weskan therefore opposes any further extension of the discovery deadline. Nevertheless, should the Board consider granting K&O's motion despite its glaring deficiencies, Weskan implores the Board to firmly emphasize that all discovery is to be completed on or before the extended date, meaning that the only discovery-related activity permitted after that date is (1) completing any production agreed to prior to that date; and (2) follow up regarding documents or information produced prior to that date.

Respectfully submitted,

/s/ Thomas W. Wilcox
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August 12, 2025

Via Email

Rob Wimbish, Esquire
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Re: Docket No. FD 36849 – Meet and Confer on August 7, 2025

Dear Rob:

This letter follows up the “meet and confer” between me and your legal team last Friday, and summarizes my takeaways and understanding of the next steps. I have to say at the outset, however, that I was surprised and disappointed to learn that prior to the call K&O and its counsel had conducted no review of K&O’s files in response to Weskan’s First Discovery Requests, which were served on July 9, 2025. This lack of effort is not only contrary to the general duties put on parties in the discovery process, it undercuts all the numerous complaints I heard on the call that responding to the requests as written would be unduly burdensome on K&O and its counsel.

I continue to believe that the universe of documents responsive to the requests is not large, and that K&O knows this, too. Be that as it may, I trust that K&O’s document review began in earnest after our call and will continue during this latest process.

A. REQUESTS FOR ADMISSIONS

In general, Weskan can accept the answers in response to Request for Admissions Nos. 2, and 4 (not 6), provided that K&O’s responses to the Requests for Production of Documents (“Document Requests”) are satisfactory. As for Request for Admission No. 1, Weskan clarifies

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that it asks K&O to admit that it shared copies of the draft Operating Agreement between Colorado Pacific Railroad Company LLC (“CXR”) with UP personnel prior to its effective date of January 1, 2019.

As for Request for Admission No. 3 (misnumbered 5), upon revisiting K&O’s written answer after the call, the answer is not responsive to the question asked, which is to admit that the rates K&O has provided to Weskan are higher than the rates paid to K&O by other rail shippers on the Leased Lines, either as rates or a combination of rates and rebates. Your attempt to narrowly frame the question as limited to customers seeking service “to or from the K&O-CXR connection to Towner” or “rates via the Towner connection” is not correct. The question clearly asks K&O to admit that the rates it has proposed to charge Weskan are higher than rates K&O charges to other customers that are located along the Leased Lines – regardless of the origin of the movement, or the destination. You are free to try to justify in your evidence why the rates to other customers might be lower, but this request clearly is designed to lead to the discovery of admissible evidence. If you need further clarification we can resubmit this request for each of the customers named in K&O’s Petition for Exemption.

B. INTERROGATORIES

Interrogatory No. 1

Identify all railroads that K&O interchanges with on the Leased Lines, along with the locations at which the interchanges occur.

Your answer to this Interrogatory confirmed that the CXR is the only railroad that can physically interchange with K&O on the Leased Lines, although the exact location of the interchange tracks is currently being discussed by CSX and K&O.

Interrogatory No. 2

Describe in detail the commercial relationship between UP and K&O for serving shippers located on the Leased Lines, including but not limited to whether it is a trackage agreement, haulage arrangement, joint line movements, “Rule 11,” and/or some other arrangement.

Your answer explains that the arrangement is that K&O is a handling carrier. In lieu of a detailed explanation of the arrangement, K&O will supply Weskan with a copy of the handling carrier agreement, subject to the protective order.

Interrogatory No. 3

Provide a detailed explanation of all the reasons why UP and K&O entered into the Third Supplement.

Weskan rejects K&O’s attempt to supply an explanation of the reasons that UP and K&O entered into the Third Supplement by simply pointing to the document itself. To the extent there are other reasons that K&O is aware of Weskan is entitled to know them. The response to this

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interrogatory will be supplemented by the documents requested by Document Request No. 3, discussed below.

Interrogatory No. 4

Provide a detailed explanation of all the reasons why UP and K&O entered into the Fourth Supplement, including but not limited to why the parties amended Section 4 of the 1997 Lease Agreement to delete it in its entirety and replace it in part with Section 4.01 containing an “Asset Use Fee.” As part of your response please explain in detail the origin of the “Asset Use Fee,” the reasons why it was set at the level in the Fourth Supplement, and its purpose and intent.

Similarly, Weskan rejects K&O’s representation that the text of the Fourth Supplement adequately identifies the reasons K&O and UP entered into the Fourth Supplement. The written answer provided by K&O is also insufficient because it does not explain the origins of the Asset Use Fee, the reasons it was set at the level it is, and its purpose and intent. This information was requested because the ninth “Whereas” clause of the Fourth Supplement states that K&O requested that “the Basic Agreement be amended to provide for an Asset Use Fee to replace the existing rental structure.” This statement is at odds with other statements in K&O’s pleadings that UP is the party that insisted that an Asset Use Fee be part of the renewed lease, as well as the level of the fee. The response to this interrogatory will be supplemented by the documents requested by Document Request No. 4, discussed below.

Interrogatory No. 5

Provide the names and titles of all K&O and UP personnel who participated in the drafting and negotiation of the Third Supplement and the Fourth Supplement.

K&O stated that this investigation continues, and Weskan still desires this information. The expectation is that information that is at least partly responsive to this request will be supplied in the documents produced in response to Document Requests Nos. 3 and 4 and other requests.

Interrogatory No. 6

Describe in detail the dispute between UP and K&O over rent owed under the 1997 Lease Agreement described in the eighth “Whereas” clause of the Fourth Supplement, including but not limited to:

- a. The basis for UP’s claim that K&O owed \$1,140,000 in rent*
- b. A detailed description of the “2018 Traffic Certification.”*

My understanding from the call is that K&O will provide a written explanation of the dispute over rent that arose from the original interchange commitment. The explanation will include a description of the 2018 Traffic Certification. A copy of the certification is also responsive to Document Request No. 1, and Weskan asks for its production.

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Interrogatory No. 7

Describe in detail the process or processes by which K&O has sought any waiver or modification of the Asset Use Fee from UP after November 21, 2019, including the “Request Under Railroad Industry Agreement” submitted by K&O to UP dated July 18, 2023, and identify and describe UP’s response to such request and the terms and conditions of any such waiver or modification.

On the call, we clarified that this Interrogatory covers any request for waiver of the Asset Use Fee made by K&O to UP, not just the referenced request dated July 18, 2023. My understanding is that K&O is going to supply a more complete answer to this interrogatory.

Interrogatory No. 8

Please identify and describe in detail all discussions between UP and K&O referring or relating to the potential provision of rail service by K&O over CXR’s Towner Line pursuant to the Operating Agreement prior to and after its execution, including discussions regarding revenue divisions and/or rates.

This interrogatory is straightforward and asks for K&O to describe all the discussions between UP and K&O that occurred about CXR buying the Towner Line, and K&O operating it, in particular whether K&O would provide any operations at all, the rates K&O would charge for such service. To further clarify, responsive information would include the number and frequency of such discussions.

Interrogatory No. 9

Please identify and describe any and all instances whereby K&O or its predecessor in interest contemplated interchanging traffic, and/or actually interchanged traffic, originating or terminating on the Leased Lines at Towner, Colorado, from 1997 to the present.

You indicated that K&O does not have any information about whether the Central Kansas Railway, LLC interchanged traffic originating or terminating on the Leased Lines at Towner, Colorado. Accordingly, this Interrogatory can be limited to instances where K&O contemplated, or actually did interchange rail cars of commodities originating or terminating on the Leased Lines at Towner. We discussed on the call how there may not be much responsive information, since by 2001 when K&O acquired the lease, the Towner Line had been purchased by the State of Colorado, and it may not have been used much. The other relevant time frame is from 2005 to 2016, which corresponds to the period the line was owned by the V&S Railway. Even during that timeframe, it appears that V&S stopped providing rail service around 2010. And of course, no traffic has been interchanged since 2018 when CXR acquired the Towner Line.

Interrogatory No. 10

Please identify and describe all instances from 1997 to the present where K&O operated trains over the Towner Line.

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As clarified on the call, this Interrogatory is seeking information about instances where K&O's trains or locomotives may have come onto the Towner Line to service customers at the request of the State of Colorado or V&S Railway under a private arrangement that did not entail obtaining authority from the Surface Transportation Board. The operations would have consisted of coming over the connection at Towner, picking up or dropping off cars, and in each case returning to the Leased Lines.

C. DOCUMENT REQUESTS

Request for Production of Documents No. 1

Please produce all documents referred to or relied upon in responding to each of the Interrogatories set forth above.

This request is self-explanatory and K&O has not substantively objected to it.

Request for Production of Documents No. 2

To the extent the response to any of the foregoing Requests for Admission is other than an unqualified "Admit," please provide all documents relating or referring to the subject matter of the Request.

Weskan has agreed to hold off on seeking to compel documents in response to this request pending the production documents in response to the other Document Requests.

Request for Production of Documents No. 3

Please provide all Documents that refer or relate to the Third Supplement, including but not limited to all drafts, economic analyses, and internal Communication.

K&O's complaints of burden are overblown and undercut by the fact that K&O had not made any attempt to ascertain the volume of potentially responsive documents. On the call we discussed K&O's apparent need for search terms in order to narrow its searches, and Weskan is willing to discuss such terms. However, this request is very straightforward: it seeks evidence surrounding the negotiation, drafting, and execution of the Third Supplement. This information includes contract drafts, emails and any other correspondence between UP and K&O, and internal correspondence and analysis concerning the Third Supplement. The timeframe for this information is narrow, which is the inception of either UP's or K&O's suggestion of the need to enter into the Third Supplement to the date of its execution.

The request also seeks information about the implementation of the Third Supplement, but Weskan is agreeable to limiting this information to documents referring to the administration of the Rent provision of the 1997 Lease as amended by the Third Supplement. This is a relatively short time period, since the Fourth Supplement was signed November 21, 2019.

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Request for Production of Documents No. 4

Please provide all Documents that refer or relate to the Fourth Supplement, including but not limited to all drafts, economic analyses, and internal Communication.

As with Document Request No. 3 K&O's complaints of burden are overblown and undercut by the fact that K&O had not made any attempt to ascertain the volume of potentially responsive documents. On the call we discussed K&O's apparent need for search terms in order to narrow its searches, and Weskan is willing to discuss such terms.

However, like Document Request No. 3 this request straightforwardly seeks evidence surrounding the negotiation, drafting, and execution of the Fourth Supplement. This information includes contract drafts, emails and any other correspondence between UP and K&O, and internal correspondence and analysis concerning the Fourth Supplement. The timeframe for this information is narrow, which is the inception of the talks to create the Fourth Supplement to the date of execution. This should not be a burdensome search, since the Fourth Supplement was apparently negotiated and executed in the 16-month period between July 20, 2018 and November 21, 2019.

This Request also seeks the production of documents related to the implementation of the Fourth Supplement, specifically the administration and application of the amended Rent provision and the Asset Use Fee, the introduction of which was the Fourth Supplement's primary purpose. K&O has asserted that the Asset Use Fee has been applied to movements for other customers, and so this Request encompasses that information. Since the Asset Use Fee is a key aspect of this proceeding, Document Request No. 4 should be construed broadly to include, but not be limited to, all documents related to the Fourth Amendment to the 1997 Lease Agreement that include the term "Asset Use Fee" in their text.

Request for Production of Documents No. 5

Please provide all Documents and Communications between UP and K&O that refer or relate to the Operating Agreement before it was executed by K&O and CXR, and all Documents and Communications between UP and K&O after the Operating Agreement went into effect.

This request is also straightforward, and the universe of responsive documents should not be expansive given the very few actual operations that occurred under the CXR-K&O Operating Agreement. As such, this request seeks all documents and communications that refer or relate to discussions between K&O and UP about the Operating Agreement, both before its execution and after.

Request for Production of Documents No. 6

Please provide all Documents referring or relating to the Asset Use Fee that was inserted into Section 2 of the Fourth Supplement, including but not limited to all Documents referring or relating

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to K&O's alleged "request that the Basic Agreement be amended to provide for an Asset Use Fee to replace the existing rental structure."

This Document Request asks for the documents supporting K&O's response to Interrogatory No. 4, and overlaps with Document Request No. 4.

Request for Production of Documents No. 7

Please produce all Documents referring or relating to Weskan on any subject.

This request is additive to prior requests. Weskan agrees to limit the scope of this request to (1) documents that refer or relate to the possibility of K&O providing rail service to Weskan, and (2) documents that refer or relate to the impacts of K&O providing service to Weskan on other shippers located along the Leased Lines.

Request for Production of Documents No. 8

Please produce all Documents referring or relating to CXR on any subject.

This request is additive to prior requests. Weskan agrees to limit the scope of this request to (1) documents that refer or relate to proposals of CXR, KCVN LLC or its affiliates to lease or acquire all or part of the Leased Lines; (2) proposals whereby CXR would acquire trackage or operating rights over all or part of the Leased Lines and (3) documents that refer or relate to the impacts of CXR providing the option for K&O's shipper customers to ship grain west over the Townner Line.

Request for Production of Documents No. 9

Please produce all Documents referring or relating to KCVN LLC and its officers, owners, affiliates, representatives, or employees on any subject.

This request is additive to prior requests. Weskan agrees to limit the scope of this request to (1) documents that refer or relate to proposals of KCVN LLC, CXR or its affiliates to lease or acquire all or part of the Leased Lines; (2) proposals whereby CXR would acquire trackage or operating rights over all or part of the Leased Lines and (3) documents that refer or relate to the impacts of CXR providing the option for K&O's shipper customers to ship grain west over the Townner Line.

Request for Production of Documents No. 10

Please produce all Documents that refer or relate to discussions between K&O and any other rail customer of K&O on the Leased Lines or other rail lines leased or owned by K&O that reference Weskan and/or CXR.

K&O has asked Weskan to suggest search terms and otherwise narrow this request. K&O also objects to this request because it asks for information from customers on other rail lines leased or owned by K&O. In the first place, the search terms "Weskan" or "Colorado Pacific Railroad"

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will result in many irrelevant documents being culled out. Also, Weskan's Stockton facility was completed in 2023, and its other facilities located between Towner and Scott City, KS were constructed in more recent years, so conducting a search from 2021 to present should further reduce the total documents as to Weskan. Responsive documents as to CXR would date back to 2018 when it acquired the Towner Line. Weskan proposes that K&O start with these search terms and assess the resulting volume and alleged burden.

As with all other requests, the "Leased Lines" are the tracks subject to the 1997 Lease Agreement as amended by the Third and Fourth Supplements. The "other lines leased or owned by K&O" can be refined to cover the rail lines owned by K&O in Kansas.

As discussed on the call, Weskan maintains that the discovery of information concerning K&O's interactions with and service to its other customers producing grain in this area of Kansas is highly relevant to develop evidence of the market for grain transported by K&O, how Weskan has been treated by UP and K&O in comparison to other grain producers K&O serves, and the extent to which the interchange commitment in the 1997 Lease Agreement as amended by the Third and Fourth Supplements influences K&O's and UP's behavior. Discussions between K&O and its other customers about Weskan and CXR are part of this inquiry.

Request for Production of Documents No. 11

Please produce all Documents referring or relating to the potential acquisition of the Towner Line by CXR or its affiliates, including but not limited to any Documents and Communications between UP and K&O concerning such potential acquisition.

K&O has asked for clarification of this Document Request, but it is straightforward. It seeks the internal documents within K&O that reference the potential acquisition of the Towner Line by CXR in the 2015-2017 timeframe. Such documents include internal discussions about how the acquisition would adversely affect K&O or provide it with increased business opportunities. What did K&O internally believe would become of the Operating Agreement?

The request includes all documents and communications between UP and K&O during this timeframe that refer or relate to discussions between them about the potential acquisition by CXR.

Request for Production of Documents No. 12

Please produce all Documents referring or relating to K&O's role as the operator of the Towner Line pursuant to the Operating Agreement, including but not limited to all Communications between K&O and UP referring or relating to that agreement.

K&O has asked for clarification of this Request, but it is also straightforward. It asks for information in a relatively narrow timeframe, which is from 2016 when the Operating Agreement was drafted and negotiated by CXR and K&O, to the end of 2021, when the Operating Agreement was allowed to expire. The volume of responsive documents should also be further limited by the fact that K&O did not move any railcars under this agreement, so the day-to-day operating

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correspondence complained of by K&O should be minimal. There should be no day-today operating correspondence with UP because UP had no physical ability to participate in any of the operations.

Request for Production of Documents No. 13

Please produce all Documents referring or relating to the rates and terms established by K&O in response to any and all requests made by Weskan for rates and service terms applicable to transportation over the Leased Lines, including but not limited to all correspondence between UP and K&O concerning such rates and terms.

This request is straightforward and K&O has agreed to provide responsive documents.

Request for Production of Documents No. 14

Please produce all Documents referring or relating to the actual or potential ability of BNSF to provide service to Weskan's grain elevator facility located at Milepost 752.5 of the railroad track known as the Towner Line owned and operated by CXR, including all Communications between K&O and UP.

During our session we discussed K&O's apparent confusion over this request, which I explained was prompted by statements in K&O's reply to Weskan's reply to K&O's motion to submit a rebuttal filing that gave the impression that K&O was not aware that BNSF can provide service to Weskan's Stockton facility, i.e., it is not captive to UP and grain that would move west over the Leased Lines and the Towner Line could be transported by BNSF, with haulage to NA Junction by CXR. This request seeks all documents evidencing that K&O is in fact aware of the fact that BNSF presents a competitive option to UP at the Stockton Facility and other locations along the Towner Line.

Request for Production of Document No. 15

Please produce all pricing authorities and contracts, including but not limited to rebate and allowance contracts, governing the movement of all rail shipments handled on the Leased Lines and other rail lines owned or operated by K&O in Kansas as originating, terminating, overhead, or single-line carrier.

As stated above, Weskan maintains that the discovery of information concerning K&O's interactions with and service to its other customers producing grain in this area of Kansas is highly relevant to develop evidence of the market for grain transported by K&O, how Weskan has been treated by UP and K&O in comparison to other grain producers K&O serves, and the extent to which the interchange commitment in the 1997 Lease Agreement as amended by the Third and Fourth Supplements influences K&O's and UP's behavior.. The rates and service terms K&O provides to other customers are highly relevant to this inquiry, and would be protected by the Protective Order in this case. For purposes of response, Weskan is agreeable to limiting the time period to 2022 to present.

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Request for Production of Documents No. 16

Please produce all traffic and/or revenue forecasts produced in the normal course of business for all rail shipments handled by K&O, and all actual volumes transported by K&O, as originating, terminating, overhead, or single-line carrier on the Leased Lines and other rail lines owned or operated by K&O in Kansas.

As stated above, Weskan maintains that the discovery of information concerning K&O's interactions with and service to its other customers producing grain in this area of Kansas is highly relevant to develop evidence of the market for grain transported by K&O, how Weskan has been treated by UP and K&O in comparison to other grain producers K&O serves, and the extent to which the interchange commitment in the 1997 Lease Agreement as amended by the Third and Fourth Supplements influences K&O's and UP's behavior. K&O's traffic and/or revenue forecasts are highly relevant to this inquiry and would be protected by the Protective Order in this case. For purposes of response, Weskan is agreeable to limiting the time period to 2022 to present.

Request for Production of Documents No. 17

To the extent not provided in Documents produced in response to Requests No. 16 and 17, please produce documents that show the ultimate destinations of all grain shipments, and the volumes delivered to each destination, that originated or terminated on the Leased Lines and other rail lines owned or operated by K&O in Kansas, or were projected to originate or terminate on such lines, by K&O as originating, terminating, or single-line carrier on the Leased Lines.

To reiterate the discussion on our call, the discovery of information about the final destination of grain shipments originating on the Leased Lines and the rail lines owned by K&O in Kansas is highly relevant to the question of whether the 1997 Lease Agreement, as amended by the Third and Fourth Supplements, is in the public interest. If, as Weskan believes, the presence of the Asset Use Fee is forcing grain that could more efficiently go west over the Towner Line to western or gulf coast destinations is instead being forced longer distances east to interchanges with UP, the lease is not in the public interest. You indicated that K&O has a handling carrier may not possess such information. However, that possibility does not foreclose K&O conducting a reasonable search for such documents.

As above, Weskan is willing to limit the time period for such documents to 2022 to the present.

Request for Production of Documents No. 18

Please produce all documents supporting the statement in K&O's Petition for Exemption in STB Docket No. FD 36859 at page 6 under the heading "49 C.F.R. 1121.3(d)(1)(vii)," which statement K&O designated "Highly Confidential" pursuant to the Protective Order entered in this proceeding.

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K&O has agreed to produce non-privileged documents in response to this Document Request.

Request for Production of Documents No. 19

Please produce all Documents referring to, relating to, or supporting the following statement in K&O's proffered Rebuttal filing in STB Docket No. FD 36859:

"K&O understands that the interchange commitment is and was a mandatory condition to the lease arrangement, and that, without it, UP claims a right to terminate the lease arrangement and, in turn, to divest K&O of its leasehold interest going forward – evidently to resume UP operations,"

Including but not limited to all Documents supporting K&O's understanding that (a) the interchange commitment was "a mandatory condition," (b) UP "claims a right to terminate the lease," (c) UP's intent to "divest K&O of its leasehold interest," and (d) UP's intent to resume operations.

K&O has agreed to produce non-privileged documents in response to this request.

Request for Production of Documents No. 20

Please produce all Documents referring or relating to, constituting, supporting, and/or responding to, the statement in K&O's proffered Rebuttal in STB Docket No. FD 36859 that "counsel for UP recently has advised K&O in writing that UP believes that the Third and Fourth Supplements to the 1997 Lease remain legally binding upon the parties, the Board's February 25 ruling in FD 34030 notwithstanding."

K&O has agreed to produce non-privileged documents in response to this request.

Request for Production of Documents No. 21

Please produce all Documents referring or relating to the establishment of interchange tracks between K&O and CXR at or near Towner, Colorado, including but not limited to all Communications between K&O and UP concerning the establishment of such interchange tracks, and the terms and conditions for such interchange.

We discussed the scope of documents sought by this Document Request, which includes discussions about establishing the interchange between CXR and K&O in 2017-2019 in conjunction with the Operating Agreement, and the more recent discussions regarding the establishment of the interchange from 2021 to the present. The Document Request includes all documents that refer to discussions between K&O and UP about the establishment of the interchange during both time periods.

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If you have any questions or wish to discuss any of this letter please give me a call. Also, please let me know when we can expect K&O to supplement its responses and to start producing documents.

Sincerely,



Attorney for Weskan Grain LLC

August 12, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2025, copies of the foregoing Reply to Motion for Emergency Motion to Extend Discovery Deadline were served by electronic mail on representatives of Union Pacific Railroad Company and the Kansas & Oklahoma Railroad, LLC, and a copy was also provided via electronic mail to Administrative Law Judge Jenifer Soulikias.

/ss/ Thomas W. Wilcox

Thomas W. Wilcox