

310435

ENTERED
Office of Chief Counsel
December 4, 2025
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36849

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

**SUPPLEMENT TO KANSAS & OKLAHOMA RAILROAD, LLC'S
PETITION FOR EXEMPTION**

Robert A. Wimbish
Colleen Konicek
Carlin Comerouski-Peterson
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, IL 60606-3208
rwimbish@fletcher-sippel.com
(312) 252-1500

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

Dated: December 4, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36849

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

SUPPLEMENT TO KANSAS & OKLAHOMA RAILROAD, LLC’S
PETITION FOR EXEMPTION

The single, and specific, competitive concern that had prompted the Surface Transportation Board (the “Board”) to initiate a formal proceeding in this docket has been resolved by voluntary, unilateral action. Kansas & Oklahoma Railroad, LLC (“K&O”) hereby files this Supplement to its Petition for Exemption¹ as the Board has directed it to do to advise the Board of a material change in circumstance: Union Pacific Railroad Company (“UP”) has proposed to waive the Fourth Supplement’s Asset Use Fee for all K&O-CXR interchange traffic for the balance of the current lease term (hereinafter, “UP’s Offer”). UP’s Offer directly and definitively resolves the only alleged competitive harm – economic foreclosure of interline traffic between K&O and Colorado Pacific Railroad LLC (“CXR”) –

¹ K&O acknowledges that the Board had directed K&O to file a “*verified* supplement” to its petition for exemption in this docket addressing the issues of concern to Weskan and the Board. But K&O respectfully submits that favorable developments discussed herein obviate the need for detailed supplemental evidence and argument in defense of the subject interchange commitment as that provision would now stand, and that, in turn, the need for factual verification by K&O business representatives would be similarly unnecessary.

rendering all registered opposition moot. Accordingly, K&O submits that the underlying lease transaction is consistent with the public interest, the only articulated concern with the transaction having now been addressed, and that the subject petition for exemption (the “Petition”) should be approved.

PROCEDURAL BACKGROUND

This proceeding has its origins in the Board’s decision in *Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Central Kansas Railway, LLC*, FD 34030 (STB served Feb. 25, 2025) (“*FD 34030*”). In *FD 34030*, Weskan Grain, LLC (“Weskan”) petitioned for the Board to reopen and partially revoke K&O’s 2001 exemption authorizing its lease and operation of certain UP-owned railroad lines (the “Leased Lines”). Weskan alleged that the interchange commitment in the subject lease arrangement was “unlawful” because it rendered K&O’s transportation of grain westward for interchange with CXR via the K&O-CXR connection at Towner, Colorado economically infeasible. In its February 25th decision, the Board denied Weskan’s petition as moot, holding that the contested 2019 interchange commitment was unrelated to the 2001 exemption. Instead, the commitment arose from what the Board considered to be “unauthorized” lease “renewals” and subsequent amendments (the Third and Fourth Supplements)²

² K&O questions the Board’s characterization of the 2018 Third Supplement and 2019 Fourth Supplement as having accomplished a “renewal and modification of the [1997] Lease,” respectively. FD 34030, slip op. at 3. K&O regarded both documents as implementing internal changes—one extending the term, the other replacing the interchange commitment—to the base 1997 contract, rather than constituting an entirely new lease agreement or “renewal” in the typical sense. Consequently, the Board’s decision leaves unclear whether the requirement for

requiring new Board authorization. Accordingly, the Board directed K&O to file a petition for exemption or application to obtain after-the-fact authority to “renew” the Lease and implement any amendments thereto by March 27, 2025.

K&O’s Petition, filed under 49 U.S.C. § 10502, initiated the present docket to seek such Board authorization.³ The lease presented in the present Petition includes terms that limit K&O’s interchange of traffic originating or terminating on the Leased Lines with any connecting carrier other than UP. On April 16, 2025, Weskan filed a reply in opposition (the “Reply”), arguing that the commitment is anticompetitive and intended to “preserve UP’s market power and to restrict competition” by making interchange with CXR economically infeasible. Reply at 10.

In a June 25, 2025 Acting Director’s Order (the “June 25 Order”), the Board instituted a formal proceeding under 49 U.S.C. § 10502. The clear focus of this proceeding was and remains the interchange commitment, manifested as an Asset Use Fee contained in the Fourth Supplement to the original 1997 Lease, and, in particular, its impact on K&O-CXR traffic flows. The Order also adopted a

supplemental authorization was triggered by the 2018 renewal alone, the 2019 interchange commitment modification alone, or the combination of both supplements. This ambiguity regarding the specific regulatory trigger is highly relevant to practitioners before the Board potentially facing similar lease amendment scenarios.

³ The Board’s February 25th Order in *FD 34030* promptly engendered criticism regarding the agency’s assumed statutory authority to mandate formal supplemental authorization of a previously-authorized lease based on mere commercial term modifications. See W.A. Mullins & M. Mastroianni, *Regulatory Authority for Lease Renewals and Amendments? C’mon Man!*, J. Transp. L. Logist. & Pol’y, Vol. 92, No. 1, 81 (2025).

procedural schedule. Among other things, Board directed K&O to provide a verified supplement to its Petition with additional evidence and argument in defense of the subject interchange commitment considering Weskan's objection. Specifically, the June 25 Order directed K&O to: (1) discuss the proposed Fourth Supplement's interchange commitment within the framework articulated in *Review of Rail Access and Competition Issues – Renewed Petition of the Western Coal Traffic League*, EP 575 (STB served Oct. 30, 2007) ("*Review of Rail Access*"); (2) explain how the proposed transaction satisfies 49 U.S.C. § 10502(a)'s requirements, including the objectives of the rail transportation policy (49 U.S.C. § 10101); and (3) provide additional evidence and argument explaining why regulation is not needed to protect shippers from an abuse of market power (49 U.S.C. § 10502(a)(2)(B)). The June 25 Order also invited UP to participate by either filing its own comment in support of the Petition or by filing jointly with K&O.

Subsequently, the Board served an order on August 8, 2025, granting a 58-day extension of the procedural schedule in response to a Weskan's motion. Recognizing ensuing discovery disputes and the difficulty in meeting the original deadline, the Board formally ratified and appointed Administrative Law Judge Jenifer Soulikias to manage all discovery matters in this proceeding. The new schedule required discovery to be completed by October 8, 2025, and directed K&O to file its verified supplement by October 22, 2025. All parties were directed to submit copies of all filings to Judge Soulikias.

During the discovery phase, Weskan served extensive information requests upon K&O and UP, probing for data on K&O's general traffic patterns and rates across its entire system, including lines not subject to this proceeding, the shipping preferences of Weskan's competitors from points all along the K&O system, and traffic moving to non-CXR interline connections.⁴ The record reflects that this extensive and dubious scope elicited concern from K&O and from Weskan's grain shipper competitors (also K&O customers) addressed to Judge Soulikias, prompting recurring resort to ALJ-administered discovery dispute resolution.

K&O, in turn, directed discovery to Weskan and to CXR, with Weskan unsuccessfully attempting to evade substantive responses via a so-called "motion for protective order" (subsequently denied by Judge Soulikias). For its part, CXR refused to offer substantive responses entirely, despite an ALJ-issued *subpoena duces tecum*, insisting that, because Judge Soulikias' order provided for discovery responses from CXR after the October 8, 2025 close of discovery, Board procedural preference superseded (and effectively nullified) the ALJ's order, the intervening closure of the federal government notwithstanding.

⁴ K&O has confirmed with UP that the original lease's rental escalator and the Fourth Supplement's Asset Use Fee are each forms of an interchange commitment applicable *only* to traffic originating or terminating on the Leased Lines and interchanged with third-party carriers other than UP. Neither commitment applies to traffic originating or terminating on K&O lines other than the Leased Lines. Weskan's existing, K&O-served grain loading facilities are located on K&O-owned lines, are therefore entirely excluded from the reach of these restrictions, and would remain so under the Fourth Supplement. While Weskan is contemplating a new facility on the Leased Lines, its current loading facilities on K&O are categorically unaffected by the present transaction or the involved interchange commitment.

Finally, on November 14, 2025, the Board further revised the procedural schedule. This revision was necessitated by the tolling of all deadlines following a lapse in the Board's appropriations on October 1, 2025. The new, governing schedule established the following deadlines: K&O was directed to file its verified supplement by December 4, 2025; Weskan's reply would be due by January 5, 2026; and K&O's (and presumably, also, UP's) submission of responsive argument and evidence would be due by January 19, 2026.

In response to this November 14th order that K&O now files the present verified supplemental evidence and argument.

SCOPE OF THE PROCEEDING: CONFINED TO THE K&O-CXR INTERCHANGE

The exclusive predicate for this formal proceeding is the competitive harm Weskan alleges would stem from the contested interchange commitment's impact on K&O-CXR interline traffic flows. An analysis of the regulatory record – including the Board's June 25 Order, the underlying Weskan opposition filing, and the absence of comments from BNSF Railway Company ("BNSF") or other shippers on the Leased Lines – confirms that this case is narrowly and appropriately limited to the effect of the interchange commitment on K&O–CXR interchange traffic that could move via the Towner, Colorado connection.

The Board's focus is upon K&O-CXR interchange.

In initiating a proceeding here, the Board confirmed that the impetus for regulatory scrutiny was Weskan's competitive foreclosure claim tied exclusively to K&O's western outlet to CXR, as reflected in the Board's own language:

- The Board required K&O to address Weskan’s claim that the proposed transaction would discourage the efficient management of railroads “by economically foreclosing shorter western routes via CXR [over the Towner Line] and forcing all traffic to move hundreds of miles east to interchanges with UP before they go to western destinations.” (June 25 Order, Slip op. 3, fn. 3).
- “The Board also invited CXR and other shippers located along the Lines [and BNSF, as an affected K&O interchange partner for eastward traffic flows] to offer comments and evidence on the potential anticompetitive effect of the interchange commitment...” (June 25 Order, Slip op. 4). CXR, Weskan’s common carrier affiliate, was the only entity to act on this invitation, submitting comments that addressed the commitment’s impact on K&O-CXR traffic flows via Towner, further confirming that the interchange commitment issue is localized to that specific connection.

Weskan’s opposition is explicitly confined to K&O-CXR interline traffic.

Weskan’s pleadings repeatedly and explicitly limit opposition to the competitive impact on K&O-CXR/Towner traffic flows, establishing the narrow scope as follows:

- Weskan established the scope of its opposition by stating that the 2019 Fourth Supplement “inserted an interchange commitment for the purpose of making it economically infeasible for K&O to participate in the rail transportation of agricultural products originating in Kansas to points west of Towner, Colorado...” (Weskan Reply at 2).
- Weskan’s entire claim that the transaction violates the Rail Transportation Policy (RTP) at 49 U.S.C. § 10101 focuses upon a claim that the subject interchange commitment economically forecloses K&O’s interchange of traffic with CXR, tying Weskan’s opposition functionally and exclusively to the Towner connection. *Id.* at 7-9.

The Board’s June 25 Order, Weskan’s April 16 Reply, and CXR’s November 20 Comments individually and collectively compel the conclusion that the sole issue here is the interchange commitment’s effect upon the K&O-CXR interchange via Towner. Accordingly, UP’s voluntary solution targeting the

otherwise-applicable restriction on K&O-CXR interchange fully resolves the competitive harm alleged and supports prompt approval of the Petition.

EVIDENCE AND ARGUMENT

UP's offer ends the foundational controversy, suggesting that Weskan's continued opposition may be attempting to gain out-of-scope accommodations.

K&O heartily endorses UP's proposal to waive the application of the Fourth Supplement's Asset Use Fee – the sole source of controversy in this proceeding – for all K&O-CXR interline traffic originating or terminating on the Leased Lines for the balance of the current lease term (expiring as of September 12, 2027). K&O understands that UP advanced this proposal – to waive the Asset Use Fee interchange commitment for all relevant K&O-CXR traffic for the remaining lease term – directly to Weskan expecting that it would fully resolve Weskan's objections and permit Weskan to withdraw its opposition. K&O submits that UP's Offer constitutes a material change in circumstances, rendering all tendered opposition to the proposed lease transaction moot and warranting prompt approval of the Petition.

Again, K&O understands that UP has offered to waive the application of the Fourth Supplement's Asset Use Fee (the interchange commitment in this case) for all traffic originating or terminating on the Leased Lines and interchanged between K&O and CXR for the balance of the current lease term (expiring as of September 12, 2027). K&O understands that UP has advanced this proposal

expecting that it would fully resolve Weskan's objections to the transaction, permitting Weskan to withdraw its opposition to the Petition.

Apparently, Weskan and UP representatives met separately from K&O on October 31, 2025, to discuss the specifics of this waiver offer. However, Weskan has since advised K&O that it has, for undisclosed reasons, rejected Union Pacific's proposal as insufficient to warrant withdrawal of its opposition. Despite K&O's multiple requests, Weskan has declined to offer any settlement terms that would permit K&O to resolve its remaining concerns, if any (although Weskan may have extended confidential demands directly to UP during its October 31 meeting).

UP's definitive offer is fully consistent with K&O's repeated position that Weskan's issues should be resolved through private negotiation, a preference explicitly endorsed by the Board in *FD 34030* (at 6, citing precedent) where the parties were urged "to discuss potential avenues for a negotiated resolution to address the concerns raised in the petition." UP's Offer is a definitive step in this direction, eliminating the sole competitive issue through negotiation, thereby satisfying the Board's stated preference for private resolution.

The fact that UP and K&O (the parties to the underlying Lease) have offered a resolution that specifically addresses the K&O-CXR interchange restriction, while Weskan has resisted the settlement efforts, further confirms that the competitive issue is resolved. Weskan's rejection of this definitive, commercially-agreed resolution, its refusal to offer counter-terms, and its thoroughly overreaching and weaponizing deployment of discovery (designed,

among other purposes, to assess other K&O customer traffic flows and rates having nothing to do with potential K&O-CXR traffic opportunities),⁵ strongly suggests Weskan's continued opposition seeks to achieve an outcome far beyond the specific competitive foreclosure concerns that prompted this proceeding. K&O believes this is driven by the commercial demands of Weskan's Stockton Siding shuttle elevator facility, whose success may rely on procuring western Kansas grain volumes from K&O-served sources at below-market railroad transportations rates.

Because Weskan (the grain marketer) and CXR (the affiliated rail carrier serving Stockton Siding) are commonly controlled, Weskan's continued opposition may be driven by ulterior objectives unrelated to the interchange commitment: (1) CXR securing an interest in the Leased Lines (e.g., concurrent operating rights or leasehold transfer), granting Weskan's affiliate railroad full control over transportation costs; or (2) using K&O's litigation risk to force rate and service concessions. K&O suspects such goals – consistent with a motive to acquire operational control – may have been advanced directly to UP during the October 31 meeting, a suspicion fueled by Weskan's refusal to share any meeting details. Regardless, relief of this nature is entirely unrelated to the at-issue interchange commitment and is beyond the scope of this exemption proceeding.

⁵ For example, Weskan's weaponized discovery sought information concerning K&O interline traffic flows for non-Weskan grain traffic originating from locations along K&O-owned portions of the K&O system – interline traffic to which the at-issue UP interchange commitment categorically does not apply. Such unfettered discovery, of its own, bespeaks an ulterior motive, a point that Weskan does not genuinely contest.

K&O submits that UP's proposal eliminates the entire basis for the current proceeding, which focuses exclusively on the interchange commitment's impact at the Towner connection. Thus, the Board should, in light of the application of the UP offer, approve the underlying lease transaction as in the public interest.

UP's offer resolves the competitive issue, obviating the need for detailed Board scrutiny.

The Board's June 25 Order directed K&O to file a verified supplement that included, among other things, detailed arguments addressing the proposed interchange commitment within the *Review of Rail Access* framework and explaining why regulation is not needed to protect shippers from an abuse of market power. K&O respectfully submits that the filing of such detailed informational components is now unnecessary because UP's offer has rendered the underlying competitive issue moot.

The Board's original expectation for a verified supplement was based on the challenged interchange commitment, which, at that time, was perceived to pose a possible threat of competitive commercial harm for K&O-CXR traffic flows (specifically for grain destined from K&O-served points on the Leased Lines to the CXR-served Weskan elevator at Stockton Siding). However, K&O's focus here is not to defend the competitive merits of that commitment. K&O accepted the at-issue interchange commitment as a necessary precondition to pursuing the short line business opportunity; K&O's current focus is now to endorse a private resolution that eliminates the complained-of competitive threat entirely.

As a general procedural matter, non-carrier-to-short-line and existing short line transactions – even ones involving interchange commitments – presumptively satisfy Section 10502’s exemption criteria as reflected in the class exemption regulations at 49 C.F.R. part 1150, subparts D and E, respectively. K&O understands it was denied the option of seeking supplemental lease authorization by way of the Board’s class exemption procedures – and was instead forced into this formal application – due to the passage of time, anticipated Weskan opposition to the interchange commitment due to the experience in the FD 34030 proceeding, and agency interest in assessing the scope of shipper and third-party rail carrier concern for the transaction beyond Weskan, *if any*. *See FD 34030*, slip op. at 6 n.11.

Given that the only competitive constraint justifying this formal regulatory inquiry has been definitively resolved by UP’s Offer, K&O believes that the informational components directed by the June 25th Order concerning the competitive defense of the interchange commitment are moot and thus no longer material to the Board’s decision. K&O therefore rests its argument for approval upon the material change in circumstance provided by the UP’s Offer.

CXR’s Comments confirm the limited scope of this proceeding and reinforces that the foundational issue has been resolved.

CXR’s formal comments filed on November 20, 2025 – the only interested third-party comments offered at all – reaffirm that the focus of this proceeding is and has been the subject interchange commitment’s economic impact on moving grain traffic from K&O origins to Weskan’s CXR-served Stockton Siding

facility. UP's Offer directly and fully eliminates the sole source of competitive harm that CXR alleges.

CXR Confirms the narrow scope while undercutting its own claim.

CXR argues that the interchange commitment “prevents or significantly disincentivize [undisclosed] Kansas shippers” from utilizing K&O-CXR interline service. CXR concludes that the Board should not approve the lease transaction “unless the interchange commitment is removed and other [once again undisclosed] appropriate relief is granted.” CXR Comments at 9-10.

First, K&O categorically denies CXR's allegation that the interchange commitment contained in the 2019 Fourth Supplement *newly* imposed or expanded restrictions on K&O-CXR interline traffic. As K&O consistently has maintained, a different third-party interchange restriction was present in the original 1997 lease terms, but the original interchange commitment was no less applicable to K&O-CXR interline routings involving traffic originating or terminating at points along the Leased Lines. The 2019 interchange commitment provision was an administrative mechanism (the Asset Use Fee) intended to better manage and enforce the existing commitment that K&O understood UP would insist upon; it was not designed to expand the reach of the original commitment or to newly foreclose interline traffic.

Second, the comments highlight CXR's strategic ambiguity. CXR attributes the lack of interchanged traffic to *both* the interchange commitment penalty and K&O's “extremely high rates.” Id. at 8-9. This distinction is critical:

the former issue is the only one pertinent to this proceeding's competitive review and is now eliminated by UP's Offer. The latter issue – K&O's rate levels absent an applicable interchange commitment – is purely commercial, non-germane to the interchange commitment issue, and outside the scope of this exemption docket. CXR's aforementioned final demand for "other appropriate relief" therefore confirms that its opposition is driven by a desire to gain out-of-scope commercial demands, such as rate concessions or operational rights untethered to the Fourth Supplement's interchange commitment or any other, rather than resolving the specific interchange commitment issue raised in this docket.

The longstanding absence of a written K&O-CXR interchange arrangement is a commercial matter, not a competition issue. This inter-carrier side show could have, and should have, been resolved by now under the reasonable terms K&O has already offered.

CXR's comments detail the history of negotiations regarding interchange, further demonstrating that the competitive issue is moot and the remaining dispute is commercial. The current physical connection between K&O and CXR at Towner lacks facilities essential to support the safe, efficient and bi-directional exchange of freight cars. K&O has actively sought to resolve this operational detail through private – and entirely routine – negotiation, separate and apart from the now-mooted interchange commitment issue.

Specifically, K&O offered trackage at Walkinghood, Kansas (at approximately Milepost 741 of the Leased Line) as a reasonable facility to support bi-directional interchange. As part of that proposal, K&O also offered CXR an

interchange agreement based upon contemporary “no-fault” industry standards—a contract model widely employed by K&O, its short line affiliates, and various Class I railroads. CXR’s rejection of both this standard agreement and the Walkinghood facility indicates that this typically mundane operational issue⁶ is entangled in Weskan’s litigation-leveraging aspirations. (CXR and Weskan are, after all, represented by the same legal counsel.) K&O has rejected CXR’s most recent proposal – that K&O should resume common carrier service over CXR’s line (see Exhibit A) – an issue that, in any event, is not germane to the interchange commitment issue at hand.

CONCLUSION

UP’s voluntary, unconditional offer to waive the Asset Use Fee for K&O-CXR interline traffic completely eliminates the lone competitive concern raised by a single interested party in this proceeding (along with its closely-affiliated common carrier affiliate). All remaining Weskan and CXR arguments – including discussion of disputes over unnecessarily-extended interchange discussions, and K&O interline rates (not affected by any interchange commitment) and service via the Towner connection – are either irrelevant to the Petition for Exemption or reflect what may be an attempt to leverage this proceeding for unrelated commercial advantage. The Board’s foundational concern is now resolved, leaving no basis for *Review of Rail Access* analysis. K&O therefore

⁶ See *Norfolk Southern Railway Company – Petition for Declaratory Order – Interchange with Reading Blue Mountain & Northern Railroad Company*, NOR 42078 (STB served Apr. 29, 2003).

respectfully requests that the Board find the proposed lease transaction consistent with the public interest and approve K&O's Petition.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Colleen Konicek

Carlin Comerouski-Peterson

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, IL 60606-3208

rwimbish@fletcher-sippel.com

(312) 252-1500

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

Dated: December 4, 2025

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36849

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

SUPPLEMENT TO KANSAS & OKLAHOMA RAILROAD, LLC'S
PETITION FOR EXEMPTION

EXHIBIT A

From: Michael E. Gray <mgray@watco.com>

Sent: Thursday, November 13, 2025 10:56 AM

To: Tom Wilcox <tom@twilcoxlaw.com>; Ed J. Verlanic JR <Edward.Verlanic@Watco.com>; Patrick J. Forbes <pforbes@watco.com>; Luke A. Lohrmeyer <Luke.Lohrmeyer@watco.com>

Cc: Robert A. Wimbish <RWimbish@fletcher-sippel.com>;

jjones@cxrgrr.com <jjones@coloradopacific.com>; Tim Bivens <tbivens@coloradopacific.com>; Matt Rengel <Matt.Rengel@watco.com>

Subject: RE: CXR - KO Interchange Agreement

Tom,

K&O very much wishes to conclude interchange terms with CXR. We would be able to do so quickly if CXR would accept the industry-standard interchange terms K&O has offered for the use of our facilities. These are terms, incidentally, that apply to K&O's interchanges with carriers at other locations on its system.

K&O's proposal is not an "unfair proposal." In fact, K&O would accept identical indemnity terms if, in reversing roles, CXR were to insist upon receiving interchange at a reasonable location on its own lines (as it is legally entitled to do). If CXR or its rail carrier affiliates have executed interchange agreement terms with other partners that deviate from the pervasive, no-fault industry norm for a hosted interchange, please send them my way for review. I would be happy to look at them. We have asked for you to provide this comparative data previously, but you have ignored that request.

To be very clear on our legal positions: K&O designates the Walkinghood Industrial Track (WIT) as the location where we desire to receive traffic in interchange from CXR, as we are legally entitled to do. CXR, in turn, is legally entitled to designate a reasonable location on its railroad where it will receive traffic from K&O. We assume that location would be Stockton, unless you specify otherwise. It remains possible, however, for the parties to agree to bi-directional interchange at the WIT, as K&O initially proposed. K&O is not willing to operate over the east end of CXR's system for any purpose other than as necessary to facilitate interchange (under the terms of an appropriate, written interchange agreement). Accordingly, K&O is not interested in CXR's offer for K&O to resume common carrier operations or operating rights over any portion of CXR's system.

As a result, I see there being two paths forward:

1. The parties negotiate terms for bi-directional interchange on the WIT, based on K&O's initial terms.
2. The parties negotiate reciprocal terms for interchange at WIT (inbound to K&O) and at a reasonable location on CXR (inbound to CXR).

In either case, we believe the interchange agreement must provide for no-fault liability in keeping with the industry standard for the use of another carrier's track capacity. There is absolutely nothing unreasonable or unfair about our proposal. We will not continue to entertain unsubstantiated claims of 'unfairness' regarding industry-standard contracts used

regularly by large and small railroads.

We are prepared to hop on another call with you to resolve, but the delay in reaching an agreement is solely attributable to CXR's refusal to accept industry-standard indemnity for a hosted exchange. If CXR wishes to move ahead in good faith to permit interchange, it would appear CXR needs to agree to one of the aforementioned paths. We look forward to hearing from you. Thanks.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 2025, a copy of the foregoing Supplement was served upon all parties of record and upon Administrative Law Judge Jenifer Soulikias.

/s/ *R. A. Wimbish*
Robert A. Wimbish