

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Chief Counsel
January 20, 2026
Part of
Public Record

Docket No. FD 36849

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

UNION PACIFIC'S RESPONSE TO WESKAN'S REPLY

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
TANYA L. SPRATT
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

January 20, 2026

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36849

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

UNION PACIFIC’S RESPONSE TO WESKAN’S REPLY

The reply evidence filed by Weskan Grain LLC (“Weskan”) does not rebut the showing by Kansas & Oklahoma Railroad, LLC (“K&O”) that the lease transaction at issue in this proceeding satisfies the requirements of 49 U.S.C. § 10502(a). The Board should therefore grant the requested exemption.

Weskan initiated this proceeding by asserting that an interchange commitment in a lease agreement between K&O and Union Pacific Railroad Company (“Union Pacific”) prevented the lease transaction from meeting § 10502(a)’s requirements. As Union Pacific has explained, however, the interchange commitment does not prohibit K&O from interchanging Weskan’s traffic with a carrier other than Union Pacific, and the dispute centers on rates K&O has quoted Weskan.¹ Weskan’s own December 17, 2025, pre-filing notice of a complaint confirms what Union Pacific has maintained from the outset: the dispute is about K&O’s rates, not the interchange commitment.²

¹ See Union Pacific’s Reply to Weskan Grain’s Supplement to Petition to Reopen and Partially Revoke Exemption, *Kansas & Oklahoma R.R., Inc.—Acquisition Exemption—Central Kansas Ry., LLC*, FD 34030 (Feb. 6, 2025).

² See Pre-Filing Notice of Complaint Challenging the Reasonableness of a Rail Rate, STB Docket No. NOR 42185, *Weskan Grain LLC v. Kansas & Oklahoma R.R.* (Dec. 17, 2025).

Weskan's arguments that the fee is anticompetitive ignore the fee's procompetitive purpose and function. The asset use fees allow short lines to provide shippers with competitive benefits and exist for a short line lessee of a rail line to compensate the owner of the rail line for their use. Under the lease, Union Pacific is entitled to compensation when K&O uses Union Pacific's line to interchange traffic with another carrier. Although K&O alone determines how it accounts for the fee when setting rates, Union Pacific removed the asset use fee issue from this case by waiving its right to collect the fee for Weskan traffic for the remainder of the lease. Weskan's continued pursuit of this case and its pre-filing notice of a rate case against K&O confirm that the asset use fee is not the true source of the dispute.³

In its reply, Weskan argues that Union Pacific's waiver is irrelevant because Union Pacific might reimpose the fee if the lease is extended and such fees are inherently anticompetitive. But Union Pacific's asset use fees are procompetitive: they allow short lines to provide shippers with the competitive benefits of their services without paying fixed rent, while retaining full ability to interchange with other carriers. The fees vary with traffic levels, enabling short lines to shift traffic as market conditions warrant. Union Pacific would have to significantly restructure its relationships with many short lines if the parties could not employ asset use fees, and the parties might be unable to agree to terms that allow for continued short line operations.

³ In its reply, Weskan wrongly criticizes Union Pacific for revealing settlement discussions. Union Pacific appropriately told the Board that it had informed Weskan about its waiver of its right to collect the asset use fee from K&O, which further established that the asset use fee was not truly at issue. Weskan's continued pursuit of the case after receiving that information spoke for itself.

Further, Weskan offers no evidence that the asset use fee at issue—now waived—is anticompetitive. Nor does it challenge that the fee was the product of negotiation between commercial partners. Weskan also offers no evidence that the fee before Union Pacific waived it reflected anything other than a good faith, negotiated measure of appropriate compensation for K&O’s use of Union Pacific’s assets for traffic K&O interchanges with a carrier other than Union Pacific. Weskan relies on a single internal document that, even taken out of context, does not show anticompetitive intent. The document simply reflects an employee asking a practical question: {{

}}⁴ Other documents attached to Weskan’s own reply confirm Union Pacific’s actual objective in its dealings with all parties involved in this proceeding was to establish a level playing field among potentially affected short lines and customers: {{
}}⁵

Weskan’s broader references to actions by K&O to discourage grain shipments from Kansas to Colorado are irrelevant to the asset use fee at issue, to asset use fees generally, and to the statutory criteria governing this exemption proceeding.⁶

Union Pacific has made a significant concession by waiving its right to collect its asset use fee for Weskan traffic for the duration of the lease. Weskan is now following the appropriate legal path Union Pacific identified at the outset of these proceedings by

⁴ See Weskan Reply at 6 n.6 (citing UP-Weskan-0000127).

⁵ See Weskan Reply, Ex. B (UP-Weskan-0001904); *see also id.* ({

}); *id.* ({

}}).

⁶ See Weskan Reply at 11–12.

PUBLIC VERSION

pursuing a rate complaint against K&O. Because Union Pacific has waived the fee that formed the basis of Weskan's challenge and Weskan is now pursuing the appropriate forum for its rate concerns, the Board need not address the original fee or broader questions about asset use fees. The record fully supports granting K&O's petition for exemption.

Respectfully submitted,

CHRISTINA B. CONLIN
JAMES B. BOLES
TONYA W. CONLEY
TANYA L. SPRATT
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

January 20, 2026

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2026, I caused a copy of the foregoing document to be served electronically on counsel for Weskan Grain LLC and Kansas & Oklahoma Railroad, LLC, and the Administrative Law Judge assigned to this matter.

/s/ Michael L. Rosenthal