

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 36849

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

**KANSAS & OKLAHOMA RAILROAD, LLC'S REPLY IN OPPOSITION TO
WESKAN GRAIN, LLC'S MOTION FOR LEAVE TO FILE SURREBUTTAL**

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

Dated: February 12, 2026

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INTRODUCTION

Kansas & Oklahoma Railroad, L.L.C. (“K&O”) hereby replies in opposition to the Motion for Leave to File Surrebuttal (“Motion”) filed by Weskan Grain, LLC (“Weskan”) on January 26, 2026.

The Board should deny the Motion because: (1) it violates the “law of the case” and the Board’s strict prohibition on replies to replies; (2) it contradicts the standards Weskan championed earlier in this docket; and (3) it is a transparent attempt to buttress a prior filing Weskan fears was insufficient on its own.

ARGUMENT

Weskan’s Motion violates the procedural “law of the case” and the Board’s renewed commitment to procedural discipline.

Weskan’s Motion would subvert the fundamental structure of this proceeding. In a petition for exemption proceeding, the petitioner bears the burden of proof and holds the right to close the record. The Board affirmed this principle in

its June 25, 2025 Order, prescribing a schedule that expressly concluded with K&O and Union Pacific Railroad Company (“UP”) rebuttal. The Board has never indicated that Weskan – the respondent – is entitled to a second bite at the apple.

Weskan’s request is particularly ill-timed given the Board’s explicit shift toward strict enforcement of its rules to curb unauthorized “replies to replies.” This is not merely an unwritten preference; the Board has broadcast this policy globally. As the agency recently stated: “While the Board has in the past often accepted replies to replies... [the rule] will be more strictly enforced going forward to promote the orderly and efficient administration of cases.” *See* Surface Transportation Board, *New from the Board: While the Board has in the past...*, LinkedIn, https://www.linkedin.com/posts/us-surface-transportation-board_new-from-the-board-while-the-board-has-activity-7311412698066354176-zLTx (last visited Feb. 6, 2026) (citing *Sunflower State Industrial Railway – Petition for Declaratory Order*, FD 36714 (Sub-No. 1) (STB served Mar. 28, 2025)).

The June 25 Order warned that “Replies to replies are not permitted” (at page 4, n.5). By ignoring that directive now, Weskan is asking the Board to make an exception to standard agency procedure.

Weskan’s Motion ignores its own stated standards.

Weskan’s request flatly contradicts its position from May 2025, when it successfully objected to a K&O filing by arguing that “a ‘reply to a reply’ is clearly prohibited by both 49 C.F.R. § 1104.13(c) and Board precedent.” *See* Weskan Opposition to Motion for Leave, filed May 15, 2025, at 1-2. The Board agreed with

Weskan then. Fairness dictates the Board apply the same standard to Weskan now. Weskan cannot use the Board's procedural rules as a shield in May and then discard them for convenience's sake in January.

Weskan knows its Surrebuttal is the wrong remedy.

Weskan justifies its extraordinary request by claiming that UP's Rebuttal contained "new and inconsistent representations." Motion at 1. Even if this were true (it is not), the proper remedy under Board practice is a Motion to Strike the offending portions, not a Surrebuttal. In dispensing with a motion to strike in favor of more argument, Weskan confirms the record is valid but simply wishes to argue against it one last time. That is no basis for revisiting the record.

Weskan's Surrebuttal belatedly attempts to regain footing in this case, float new arguments, and revise its request for specific Board action.

A review of the tendered Surrebuttal reveals why Weskan is desperate to file it, and why it has the temerity to do so. Weskan recognizes that UP's Asset Use Fee waiver has mooted their case. Weskan clearly fears that its January 5 Reply failed to counter that point.

Weskan's choice of procedural vehicle is telling. In seeking to offer surrebuttal instead of a motion to strike, Weskan reveals that its true goal is not to remove "new" matter from the record, but to inject additional argument into it. The Board's rules do not exist to cure a party's "filer's remorse." If Weskan feels its January 5 Reply was insufficient to overcome the mootness issue or other arguments raised, that is Weskan's strategic failure, and not a justification for

violating the Board's Order. The Surrebuttal merely rehashes Weskan's legal theory that a temporary waiver is insufficient – an argument already present in the record. Repeating it now, with slightly more desperation, adds nothing to the Board's deliberation.

CONCLUSION

For the foregoing reasons, K&O respectfully requests that the Board deny Weskan's Motion for Leave to File Surrebuttal and reject the tendered filing.

Respectfully submitted,

/s/ *R. A. Wimbish*

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Dated: February 12, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2026, a copy of the foregoing Reply was served upon all parties of record and upon Administrative Law Judge Jenifer Soulikias.

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