

EXPEDITED CONSIDERATION REQUESTED**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
April 17, 2026
Part of
Public Record

WESKAN GRAIN LLC	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR 42185
	)	
KANSAS & OKLAHOMA RAILROAD, INC	)	
	)	
Defendant	)	
	)	

PETITION FOR WAIVER OF 49 C.F.R §1111.1 AND COMPLAINT

Weskan Grain LLC (“Weskan”) hereby petitions the Surface Transportation Board (“Board”) for a waiver of 49 C.F.R. §1111.1 to the extent this pre-filing notice requirement still applies in this proceeding. For the reasons set forth below, good cause exists for the Board to exercise its discretion to waive this regulation (should it still be applicable) and accept for filing the Complaint attached as Exhibit A and commence the procedural schedule for determining the maximum reasonable levels of the challenged rates.¹ Weskan and defendant Kansas & Oklahoma Railroad Company, LLC (“K&O”) have already gone through a pre-filing notice and mediation period which was not successful, but during which the scope of the rates and service parameters were narrowed, resulting in modifications to the rates and terms subject to challenge. Based on K&O’s behavior leading up to the initial pre-filing notice, how far apart the parties were at the conclusion of the first mediation, and

¹ Contemporaneously with the filing of this Petition Weskan has also served initial discovery requests on defendant.

K&O's response to the modified rate request submitted at the conclusion of the mediation, Weskan believes requiring it to prepare another pre-filing notice is unnecessary. Moreover, another 70-day waiting period and mediation would be futile and prejudicial to Weskan. As additional grounds for this requested waiver, Weskan states as follows:

I. **Background**

The relationship between Weskan and K&O has been contentious, as evidenced by the filings by Weskan and K&O and the Board's decisions in Docket No FD 36849, *Kansas & Oklahoma Railroad, Inc. – Lease and Operation Exemption with Interchange Commitment – Union Pacific Railroad Company*; and Finance Docket No. 34030, *Kansas & Oklahoma Railroad, Inc. – Acquisition Exemption – Central Kansas Railway, Inc.* The parties' disagreements have centered on the inability of Weskan to receive reasonable rates and service terms from K&O for the transportation of grain commodities produced in Kansas to Weskan's grain elevator facility located near Stockton, Colorado. In fact, K&O has never shipped any grain from Kansas to the Stockton Facility since it became operational in 2023. All of the rates and terms provided by K&O to Weskan pursuant to K&O's statutory obligations under 49 U.S.C. §11101 and 49 C.F.R. Part 1300 have been unreasonable in Weskan's estimation.

On December 17, 2025, Weskan filed a Pre-Filing Notice of Complaint Challenging the Reasonableness of a Rail Rate ("Pre-Filing Notice") pursuant to 49 C.F.R. §1111.1(a). The Pre-Filing Notice addressed certain rates and terms provided by K&O on December 5, 2025. The Board appointed a liaison for the case pursuant to Section 1111.1(b) on December 31, 2025. When no mediators had been appointed by the Board by January 14, 2026,² Weskan contacted the Board to

² 49 C.F.R. §1109.4(b) states that the Board will appoint one or more mediators to the case within five business days of the shipper submitting the pre-filing notice.

inquire when the appointment would occur and the mediation would begin.³ Two Board mediators were subsequently appointed on January 15, 2026 and the parties engaged in a 50-day mediation period that included multiple sessions. On March 6, 2026, the mediators informed Chairman Fuchs that they were terminating the mediation period prior to the Board-established March 16, 2026 end date because the parties could not reach a mutually acceptable commercial solution. It can reasonably be inferred from this action that the mediators concluded continuing the mediation would be futile.

Although the mediation was not successful and the parties ended up far apart in key areas, the sessions nevertheless resulted in the parties reaching general agreement and mutual understanding on certain operating and service parameters, which narrowed the scope of the dispute.⁴ This included reaching agreement on the origin and destination to which the challenged rates would apply, and the location and terms by which K&O would make final delivery of grain unit train deliveries to Weskan at the Stockton facility pursuant to an interchange agreement with the Colorado Pacific Railroad LLC, owner of the track connected to the Stockton facility.

Contemporaneously with the mediation being terminated, Weskan submitted a formal request for rates and service terms to K&O based on the operating parameters discussed in the mediation. Exhibit B. Consistent with those discussions and Weskan's past requests for unit train service, Weskan requested rates from its Scott City East facility in 50-car shuttle trains.⁵ K&O replied to this request on March 19, 2026, but it did not provide Weskan with rates for shuttle train rates as the parties had discussed and Weskan had requested. Instead, K&O established rates for "Non-dedicated

³ K&O chose to remain silent during this period.

⁴ Such a discussion was necessary because K&O has never moved any railcars from the Weskan Scott City East facility to the Stockton destination.

⁵ Weskan also requested rates from its smaller Scott City Kirk facility but those rates are not the subject of the Complaint.

manifest service, 50-car blocks.” Exhibit B. The rate K&O has established for movements from Weskan’s Scott City East facility to the Stockton facility is \$850 per car in K&O supplied cars, and \$825 in cars that would be supplied by Weskan, plus fuel surcharges. Weskan believes both all-in rates are unreasonably high.

On March 25, 2026, Weskan informed K&O it would nevertheless begin shipping under the offered rates. It did this so needed grain shipments could begin while the maximum reasonable rate for this transportation was determined in this docket.

Finally, on April 8, 2026 the undersigned counsel for Weskan contacted counsel for K&O to obtain K&O’s consent to a request by Weskan for a waiver of Section 1111.1. Through counsel, K&O declined to grant the requested consent without offering any alternative proposal. Exhibit C. Weskan is accordingly filing this petition out of abundance of caution because these circumstances appear to be a case of first impression, but also because of K&O’s refusal to concede any part of Section 1111.1 should be waived and to agree that the discovery and evidentiary phases of this complaint proceeding should begin.

II. Argument

The Board has discretionary authority to waive its regulations for good cause. *See, e.g.*, Docket No. FD 36263, *City and County of Denver – Petition for Declaratory Order* (Served September 27, 2019)(mediation period); Docket No. FD 35743, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(a) – Canadian National Railway Company* (served November 14, 2019)(mediation period). Good cause exists here. The only reason that Section 1111.1 might be applicable at all is because the rates and terms challenged by the attached Complaint are slightly different from the rates and terms that were included in the Pre-Filing Notice as a result of the mediation sessions. But the minor differences in the challenged rates resulting from the narrowing

of issues in the mediation should not require a new pre-filing notice to be filed and a new 70-day mediation period to be established. There are several compelling reasons for this.

A. The Purpose and Goals of the Pre-Filing Notice Requirement Have been Met

There is no need for another pre-filing notice and a 70-day waiting period because all the purposes of Section 1111.1 have been met. The obvious first purpose of the pre-filing requirement is to provide notice to the defendant of a possible complaint and the challenged rates. K&O has had notice since December 18, 2025 that Weskan intends to file a formal complaint if needed to obtain a reasonable rate, and K&O is well aware of the rates and terms that are being challenged. The second purpose of the rule, which is to require the parties to engage in Board-sponsored mediation, has also been fulfilled, albeit unsuccessfully. A third purpose of the rule is to “put parties on notice as to what they likely will need to produce in discovery and enable parties to begin many activities that typically would occur only after a complaint is filed.”⁶ As a result of the mediation sessions K&O is now on notice of the type and scope of discovery Weskan will seek about the issue rates and movement. Indeed, both parties have already retained railroad economic experts experienced in Stand-Alone Cost rate cases to assist them in the discovery and evidentiary phases, and each party’s expert participated in the mediation sessions.

Other purposes of Section 1111.1 have also been met. On December 31, 2025 the Board appointed a liaison for the case pursuant to Section 1111.1(b). And on January 12, 2026, the Board granted a motion submitted by Weskan pursuant to Section 1111.1(a) to issue a Protective Order in the case. Duplicating these efforts would be wasteful and superfluous.

B. Another Mediation Would be Futile

As stated, K&O has shown a resistance lasting several years now to provide any service to

⁶ Docket No. EP 733, *Expediting Rate Cases* (served November 30, 2017) at 4.

Weskan's Stockton Facility, and it has responded to Weskan's formal requests for common carrier rates with rates set at unreasonably high levels accompanied by unreasonable service terms. The mediation did not result in the parties closing the broad chasm between what each thinks is the appropriate solution to their dispute, to the point that the Board's mediators terminated the mediation two weeks before its scheduled end date. Unfortunately, Weskan has no confidence that holding another mediation of any duration - let alone 70 days - would produce a different result. The rates challenged by the attached Complaint are for transportation parameters that were discussed at length and refined during the mediation. If K&O was really serious about negotiating a commercial solution acceptable to both parties and avoiding the attached Complaint being filed, K&O had every opportunity to do so in the 50 days the mediation took place. Its response to Weskan's post-mediation rate request is further proof that K&O is highly unlikely to change its entrenched position. And finally, the mocking tone of K&O counsel's refusal to give consent to this waiver request and the lack of K&O's concession that any part of Section 1111.1 should be waived, indicates that K&O's refusal is more for the purpose of delaying the start of the discovery and evidentiary phases of this proceeding than engaging in another mediation where K&O would possibly change its positions.⁷

III. **Conclusion**

For all the foregoing reasons, good cause exists for the Board to grant this request that any lingering requirement that Weskan comply again with Section 1111.1 should be waived. The Board should accept the attached Complaint for filing and commence the discovery and evidentiary phases of this proceeding. In the alternative, should the Board nevertheless determine that another mediation session is necessary, Weskan requests the Board to establish a period substantially less than 70 days,

⁷ Exhibit C. Weskan encourages the Board to solicit the respective views of the two Board-appointed mediators as to their views on whether a second mediation would be futile.

and that it allow the parties to begin to engage in discovery during the pendency of the mediation.

Respectfully submitted,

/s/ Thomas W. Wilcox

Thomas W. Wilcox

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202-508-1065

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Attorney for Weskan Grain LLC

April 17, 2026

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WESKAN GRAIN LLC	)	
	)	
Complainant,	)	
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v.	)	Docket No. NOR 42185
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KANSAS & OKLAHOMA RAILROAD, INC	)	
	)	
Defendant	)	
	)	

COMPLAINT

COMES NOW Complainant, Weskan Grain LLC (“Weskan”), pursuant to 49 U.S.C. §11704, and 49 C.F.R. Part 1111 and files this Complaint with the Surface Transportation Board (“Board” or “STB”) against Defendant, Kansas & Oklahoma Railroad, LLC (“K&O”) for establishing unreasonable rates for the railroad transportation of agricultural commodities in violation of 49 U.S.C. §§ 10701, 10704, 10707.

As explained in more detail below, the common carrier rates for this rail transportation should be evaluated by the Board using the Board’s constrained market pricing standards, in this case the Board’s Stand-Alone Cost rate reasonableness standards.

In support hereof, Weskan states as follows:

IDENTITY OF THE PARTIES

1. Weskan is a limited liability corporation organized under the laws of Delaware with its principal place of business in Sheridan Lake, Colorado.

2. Weskan owns and operates a grain handling and storage facility connected to tracks

owned and operated by K&O at 701 N Taos Rd, Scott City, KS (the “Scott City East” facility). Scott City East was acquired by Weskan in 2023, and since acquiring it Weskan has invested \$18 million in expanding the facility to enable loading and originating shuttle trains transporting grain commodities, primarily corn, wheat, sorghum and milo.

3. In 2023, Weskan and its affiliates completed construction of a \$25 million grain elevator complex connected to the main line of the Colorado Pacific Railroad, LLC (“CXR”) at MP 752.5 of the CXR. The facility is called the Stockton Facility due to its location on the CXR’s Stockton Siding. The Stockton Facility has 3.1 million bushels of upright grain storage capacity and 2.2 million bushels of ground storage capacity. It is also constructed to ship and receive grain commodities by rail utilizing shuttle trains.

4. K&O is a Class III rail carrier engaged in the common carriage of freight in interstate commerce. K&O is subject to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. §10101, et seq., and to the jurisdiction of the Board.

5. K&O owns the mainline railroad track connected to Scott City East, and it holds operating rights granted by the Board over the mainline tracks that extend from the end of K&O’s track at MP 682.5 in Scott City to MP 752.5 in the vicinity of Towner, CO, where the tracks connect to CXR’s main line.¹ The tracks over which K&O operates are owned by the Union

¹ In 2001 K&O received authority from the Board to lease and operate the referenced line of railroad pursuant to lease agreement with UP with a term that expired around 2017. Docket No. FD 34030, *Kansas & Oklahoma Railroad, Inc.—Acquisition Exemption—Central Kansas Railway, LLC* (served June 12, 2001). On March 20, 2026, the Board denied without prejudice a petition for exemption filed by K&O seeking after-the-fact authorization to continue to lease and operate the line from UP. Docket No. FD 36849, *Kansas & Oklahoma Railroad, LLC – Lease and Operation Exemption with Interchange Commitment – Union Pacific Railroad Company* (served March 20, 2026). Consequently, on information and belief, K&O retained its authority to be the common carrier operator of the line and the obligation to respond to requests for common carrier service, but

Pacific Railroad Company (“UP”).

6. K&O can transport Weskan’s grain commodities directly to the Stockton Facility using the tracks K&O owns that are connected to Scott City East and its operating rights over the track owned by UP to its connection with CXR, whereupon K&O can make final delivery to the Stockton Facility pursuant to an interchange agreement between K&O and CXR. As such, K&O is the origin and destination carrier for the issue movement.

7. As the only rail carrier involved in the line haul portion of the issue movement from origin to destination, K&O exerts sole control over the line haul transportation rates charged to Weskan for this transportation.

WESKAN’S EFFORTS TO OBTAIN REASONABLE RATES AND SERVICE TERMS

8. Between 2023 when the Stockton Facility was constructed and November 2025, Weskan and K&O engaged in correspondence and discussions concerning rates and service terms that failed to result in Weskan shipping any grain commodities utilizing K&O.

9. On November 12, 2025 Weskan submitted a formal request for rates and service terms to K&O that, as relevant to this complaint, sought such rates and terms for the transportation of sorghum, wheat and corn from Scott City East to the Stockton Facility. The request sought such terms for K&O’s transportation of 75-car shuttle trains.

10. On December 5, 2025 K&O responded to the request, but instead of supplying rates and service terms for 75-car shuttle trains as requested K&O supplied rates and service terms for “manifest service from Scott City East Facility with maximum of 25 loaded cars pulled per service.”

the terms and conditions that govern its presence on UP’s line are not entirely clear as of the filing date of this complaint.

11. On December 17, 2025, Weskan filed a Notice of Intent to Commence a rate case pursuant to 49 C.F.R. §1111.1(a).

12. On January 15, 2026, the Chairman of the Surface Transportation Board issued a letter to the parties indicating that the Board mediators had been appointed pursuant to 49 C.F.R. §1109.4 and established a mediation period ending March 16, 2026.

13. Between January 15, 2026 and March 5, 2026, Weskan and K&O engaged in good faith with the assistance of the Board-appointed mediators, but the parties were unable to come to agreement on the rates and service terms that would apply to the transportation of corn, wheat and sorghum to Scott City East.

14. On March 5, 2026, Weskan submitted another request for rates and service terms to K&O that was informed by the parties' discussions during the mediation period. Specifically, Weskan requested rates and service terms for the transportation of wheat, corn, and sorghum in "50-car shuttle trains" of cars supplied by either K&O or by Weskan.

15. On March 6, 2026, the Board-appointed mediators informed the Board that the mediation was unsuccessful and terminated it.

16. On March 19, 2026, K&O responded to Weskan's request. However, once again, K&O did not supply rates and service terms for the transportation requested by Weskan. Instead of supplying such terms for 50-car shuttle trains, K&O responded with rates and terms for transporting "Non-dedicated manifest service, 50-car blocks" from Scott City East to the Stockton Facility. Exhibit A.

17. On March 25, 2026, while reserving all rights, Weskan informed K&O that it would begin shipping under the rate supplied by K&O for transportation of K&O supplied railcars from Scott City East to Stockton Siding. As of the date of this complaint K&O has not transported any railcars pursuant to the rates and terms it provided.

**K&O HAS MARKET DOMINANCE OVER THE
TRANSPORTATION COVERED BY THE CHALLENGED RATES**

18. There is no economically feasible transportation alternative to K&O rail service for the transportation of grain from Scott City East to the Stockton Facility. K&O thus has qualitative market dominance over the transportation covered by the challenged rate.

19. There is no effective intramodal competition for the rail transportation subject to the challenged rate. K&O is the only railroad with physical access to Scott City East, and K&O owns or controls via its operating rights all the mainline tracks between Scott City East and the Stockton Facility, with the exception of the CXR-owned tracks used for interchange at the Stockton Facility. There are thus no railroad alternatives that effectively constrain K&O's pricing power over the transportation of grain from Scott City East to the Stockton Facility.

20. There is also no effective intermodal competition for the issue traffic. Transporting the volumes of grain Scott City East was constructed to process and ship by truck would be prohibitively costly compared to maximum reasonable rail rates. The cost of trucking the same volume of grain over the distance of the rail movement covered by the issue rates poses no effective competitive constraint on the rail rates K&O can charge absent Board intervention.

21. There is also no waterway that could be used for barge transportation between Scott City East and the Stockton Facility.

22. K&O also has quantitative market dominance over the transportation covered by the challenged rate. The common carrier transportation rate established by K&O for transportation of grain from Scott City East to the Stockton Facility in K&O-supplied railcars produces revenues to K&O that are 285% of K&O's variable costs of providing the transportation in shuttle service to the CXR Interchange at the Stockton Facility. Similarly, the same transportation in railcars supplied by Weskan produces revenues to K&O that are 343% of its variable costs for the same service. Both

are far in excess of the 180% Jurisdictional Threshold, meaning K&O has quantitative market dominance over this rail transportation, as described in 49 U.S.C. § 10707(d).

23. Because K&O possesses both qualitative and quantitative market dominance over the transportation for which it has supplied rates and service terms to Weskan, the Board has jurisdiction over the reasonableness of the common carrier rates, rules and practices established by K&O for this transportation. 49 U.S.C. § 10701(d)(1).

**THE COMMON CARRIER RATES ESTABLISHED
BY K&O ARE UNREASONABLE**

24. The common carrier transportation rates and service terms established by K&O from Scott City East to the Stockton facility in Weskan's March 5, 2026 request are unreasonable, unlawful, and exceed the maximum reasonable level permitted by 49 U.S.C. §§ 10701, 10704, and the principles of constrained market pricing.

25. This Complaint encompasses any changes or successors to the challenged rate, and all future iterations, issuances, or forms of common carrier tariffs, price documents, rates, charges, rules, and service terms applicable to the transportation by K&O to the CXR Interchange.

26. The Board should order K&O to establish reasonable rates and service terms for transportation of grain from Scott City East to the Stockton Facility. 49 U.S.C. § 10704. The Board should also order that reparations be paid, plus interest, for any unlawful charges assessed by K&O from and after March 19, 2026. 49 U.S.C. § 11704.

CONCLUSION

27. Neither this proceeding nor the granting of the relief requested will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, Complainant Weskan prays that Defendant Kansas & Oklahoma

Railroad, LLC be required to answer the charges herein; that this Complaint be assigned for hearing under 49 CFR Part 1111; and that, after due hearing and investigation, this Board:

- (1) find that the common carrier railroad rates K&O has established are unreasonable in violation of 49 U.S.C. §§ 10701(d)(1) and 10704;
- (2) issue an order pursuant to 49 U.S.C. § 10704(a)(1) which prescribes just and reasonable rates and related rules and service terms applicable to K&O's rail transportation of Weskan's grain from Scott City East to the Stockton Facility
- (3) award Weskan reparations, plus any applicable interest, as calculated based on the record in this proceeding, in accordance with 49 U.S.C. § 11704 for the unlawful charges assessed by K&O from and after March 19, 2026; and
- (4) grant to Weskan such other and further relief as the Board may deem proper under the circumstances.

Respectfully submitted,

/ss/ Thomas W. Wilcox
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Attorney for Complainant Weskan Grain LLC

Dated: April 17, 2026

EXHIBIT B

KO rate proposal for volume moving in non-dedicated manifest service

Rate:

- \$850 per car in Watco supplied covered hoppers.
- \$825 per car in Weskan owned or leased covered hoppers with zero car hire or mileage charges.

Origin:

- Weskan's facility located at 701 N Taos Rd, Scott City, KS (Scott City East facility)

Destination:

- Weskan's Stockton grain elevator facility, located at approximately MP 752.5 of the tracks of the Colorado Pacific Railroad

Commodities:

- Sorghum, Wheat, and Corn

Train size:

- Non-dedicated manifest service, 50-car blocks

Key Terms:

- Rates are subject to KO/Watco fuel surcharge program
- KO will provide power and personnel to move volume in non-dedicated manifest service
- Rates are only applicable from the Weskan Grain origins and destinations stated above
- The provisions of Tariff WTS 9012 Series will apply.
- Rate offer is valid for 30 days.
- Rates, if accepted, will be published for one year.

EXHIBIT C

From: [Robert A. Wimbish](#)
To: [Tom Wilcox](#); [Michael E. Gray](#)
Cc: [Valerie O. Quinn](#); [Bill Brennan](#); [Kim Hillenbrand](#)
Subject: RE: Query
Date: Thursday, April 9, 2026 4:53:13 PM

Dear Tom,

It is always a pleasure to hear from you. Please accept my apology for the slight delay in responding to your note from yesterday morning. Michael and I were simply coordinating on who would bear the privilege of responding.

Regarding your question about the service of Weskan's anticipated (and premature – more on that below) complaint, please direct the formal service to Michael Gray. I would also kindly ask that you copy me on that correspondence, as I know you would do anyway, so that I am kept fully in the loop.

As for your request that we consent to a waiver of the mandatory 70-day pre-complaint notice and mediation provisions, I am afraid we must respectfully decline.

We are genuinely disappointed to hear your view that a mediation period would be fruitless, and that the STB would see it as you do. We disagree. We remain optimistic about the value of open, constructive dialogue, and we expect that the STB will be inclined to promote dispute resolution consistent with K&O's perspective. Beyond holding genuine potential for a comprehensive settlement, our experience has proven that these negotiations are incredibly enlightening and invaluable for narrowing the issues.

While we remain fully committed to engaging in a good-faith dialogue via STB-sponsored mediation, your request for a waiver makes us wonder if your client does not share that same collaborative spirit. We certainly hope that a reluctance to come to the table in earnest is not the true underlying driver behind Weskan's desire to bypass this valuable process.

We always welcome the opportunity to sit down in good faith and work through these matters with you, Tom, and your client, and we look forward to doing exactly that.

Warmest regards,

Rob

From: Tom Wilcox <tom@twilcoxlaw.com>

Sent: Wednesday, April 8, 2026 9:00 AM

To: Michael E. Gray <mgray@watco.com>; Robert A. Wimbish <RWimbish@fletcher-sippel.com>

Subject: Query

Michael and Rob – Greetings. Weskan is preparing to file its rate complaint with the STB. I have two questions for you: First, the STB rules require service of the complaint to be by regular or overnight mail to the “chief legal officer” of the defendant. Is that you for K&O, Michael, or is there someone else? I could not tell from an online search. Second, under these circumstances it makes no sense for the 70-day notice provision to apply, and I’m confident the Board will agree. But to confirm this I intend to file a brief petition for waiver of the rule. May I represent that K&O has no objection to, or does not oppose such a request?

Thanks in advance. We are looking to get the complaint on file by the end of the week, so if you could please respond before then we would appreciate it.

Regards,

Tom

Thomas W. Wilcox

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2026, copies of the foregoing Petition for Waive and Complaint were served by electronic mail on representatives of Kansas & Oklahoma Railroad, LLC, and a copy was also served via first class mail on Michael Gray, Assistant General Counsel of WATCO.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox