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BEFORE THE
SURFACE TRANSPORTATION BOARD

NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

**KANSAS & OKLAHOMA RAILROAD, LLC'S REPLY IN OPPOSITION TO
WESKAN GRAIN LLC'S AMENDED PETITION FOR WAIVER**

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Dated: May 4, 2026

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Kansas & Oklahoma Railroad, LLC (“K&O”) hereby replies in opposition to the Amended Petition for Waiver (the “Petition”) filed in the above docket on April 17, 2026, by Weskan Grain LLC (“Weskan”). Weskan files this Petition in connection with its intent to initiate a rate reasonableness complaint against K&O under the Surface Transportation Board’s Stand-Alone Cost (“SAC”) standards, alleging unreasonable common carrier rates under 49 U.S.C. §§ 10701 and 10704. In the Petition – nominally seeking “expedited consideration” without offering any narrative justification for such haste – Weskan seeks an unprecedented, retroactive waiver of the Board’s mandatory 70-day pre-filing notice and mediation rules under 49 C.F.R. §§ 1111.1 and 1109.4.

The Board should deny the Petition. Weskan fails to meet the “good cause” standard required for a regulatory waiver under 49 C.F.R. § 1110.9. Instead, Weskan attempts to bypass mandatory regulatory procedures by manufacturing an emergency and by cynically and baselessly dismissing K&O’s past and present willingness to negotiate in good faith. As demonstrated below, the current dispute involves new operational requests and rates that have *never* been mediated.

Weskan faces zero financial or legal prejudice from adhering to the Board's 70-day timeline. Furthermore, the waiver request is a highly prejudicial pressure tactic designed to force K&O into immediate, burdensome SAC litigation defense while simultaneously managing other major regulatory deadlines. Ultimately, both the procedural context of the Petition and its apparent substantive and precedential deficiencies speak for themselves.

Request for Procedural Clarification.

K&O seeks clarification regarding Weskan's election to file its Amended Petition and Complaint under the pre-existing NOR 42185 docket. As the record reflects, Weskan's December 2025 Notice of Intent in NOR 42185 pertained to a specific set of rate quotes. The April 17, 2026 Complaint, however, challenges new rates issued in March 2026, involving different service parameters.

Weskan has not formally withdrawn its December Notice of Intent, nor has it advised the Board of its intent to abandon its challenge to those initial rates. Given that the current Complaint targets a distinct service offering that did not exist when the original Notice of Intent was filed, K&O seeks the Board's guidance as to whether it is procedurally appropriate to reuse the original docket here, or whether a new docket number is appropriate. K&O raises this issue simply for clarification, to ensure an accurate administrative record, and to establish the proper procedural framework for the new rate challenge going forward.

Weskan Fails to Establish Good Cause for Such Unprecedented Relief.

Under 49 C.F.R. § 1110.9, a petitioner must demonstrate “good cause” to justify waiver of a Board rule. *See Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Parishes, La.*, FD 36447, slip op. at 2 (STB served Feb. 2, 2023). In a SAC rate case context, Weskan’s burden is particularly high, yet it cites no precedent – and K&O is aware of none – where the Board has waived its mandatory 70-day pre-filing notice and mediation requirements. These rules are enforced to promote commercial resolution and protect the Board’s docket from unnecessary, costly litigation. *See Expediting Rate Cases*, EP 733, slip op. at 4-5, 16 (STB served Nov. 30, 2017) (the pre-complaint period allows parties to focus on mediation without the distractions of fully active litigation and to prepare for litigation if mediation is unsuccessful).

Remarkably, to support its request to bypass mediation, Weskan cites two agency procedural orders – *City & County of Denver—Petition for Declaratory Order*, FD 36263 (STB served Sept. 27, 2019), and *Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian National Railway*, FD 35743 (STB served Nov. 14, 2019) – where the Board exercised its waiver authority not to bypass mediation, but to *extend* it. In both decisions, the Board waived the regulatory 30-day time limit on mediation to allow the parties more time to negotiate, making it clear in the process that “[t]he Board favors the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible.” *City & Cnty. of Denver—Pet. for Declaratory Ord.*, FD 36263,

slip op. at 2; *Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry.*, FD 35743, slip op. at 1; *see also BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry.*, FD 32760 (Sub-No. 46), slip op. at 2-3 (STB served July 3, 2019) (waiving a regulation *restricting* access to mediation so the Board could facilitate additional mediation). Weskan's own citations do not support its attempt to skip mediation. They definitively refute it.

Weskan's attempt to bypass these rules is not based on a showing of hardship or impracticality, but on a subjective and unsupported claim that mediation would be "futile." To grant such unprecedented relief on so thin a basis would subvert the Board's clear policy favoring commercial negotiation over immediate, adversarial discovery – a policy that is vital given the extreme evidentiary and financial burdens of a SAC presentation. Weskan's disdain for alternative dispute resolution does not constitute good cause necessary to set aside these established regulatory processes.

The Current Dispute Involves New Rates and Operations That Have Never Been Mediated.

Weskan's primary argument for waiving mediation – that prior mediation renders further discussion "futile" – fundamentally misstates the nature of the current dispute.

First, the prior mediation was predicated on original service requests from Weskan that failed to comport with the physical and operational capacity of Weskan's own facilities. Consequently, the current dispute centers on *new* service requests from Weskan and K&O's corresponding *new* responsive rate quotes.

Second, the mandatory 70-day period would afford K&O a critical window to evaluate a traffic flow that has no historical precedent. K&O hasn't before participated in westward traffic flows to Weskan's Stockton Siding. No such service demand existed until recently. Indeed, the line west of Towner was inactive for many years, and K&O traffic volumes are oriented to K&O interchange points to the east. Because Weskan very recently (after the filing date of its Petition, in fact) began shipping traffic under K&O's recently quoted rates, the 70-day window would allow K&O to observe actual traffic volumes and operational demands and assess those against Weskan's own general forecasts and volume expectations.

This empirical data is essential to K&O's operational planning and economic analysis, including the procurement and deployment of motive power, crew hiring and scheduling, and track upkeep necessary to support this new westward flow. Gaining an appreciation for these volumes during the mediation period may directly inform future pricing and service scenarios, potentially averting the need for litigation. Mediation is the forum designed to bridge this operational gap, not a step to be skipped simply because the parties do not initially agree on service capabilities.

***K&O Has Consistently Negotiated in Good Faith;
the Brevity of Mediation in the Past Proceeding
Cannot Be Attributed to K&O.***

Weskan attempts to cast K&O as an obstructionist responsible for the "abbreviated" nature of the prior mediation. The reality is very different.

The brevity of the prior mediation was largely the result of administrative delays – including intervening holidays and government scheduling constraints – that consumed the 70-day pre-filing period before the Board could formally appoint mediators. Furthermore, K&O demonstrated its commitment to the process by offering to travel to Washington, D.C., for the in-person mediation sessions preferred by the Board’s appointed mediators. It was *Weskan* who could not produce availability for an in-person meeting, forcing the parties into an abbreviated virtual stopgap.

K&O remains ready and willing to engage in a robust mediation process. Opposing counsel’s assumption that mediation will be fruitless suggests that it is *Weskan*, not K&O, that lacks the intention to negotiate in good faith during the 70-day pre-complaint window.

Weskan Suffers No Prejudice, But the Requested Waiver Would Be Highly Prejudicial to K&O.

Weskan’s claim of prejudice is meritless. As noted, *Weskan* has shipped traffic under K&O’s most recently quoted rates. More importantly, the Board’s rate reasonableness framework explicitly cures any alleged financial harm: if the Board ultimately finds the rates unreasonable, *Weskan* is entitled to reparations in the form of damages and interest under 49 U.S.C. § 11704. *See Rate Regul. Reforms*, EP 715, slip op. at 12 (STB served July 18, 2013), *pet. for rev. granted on other grounds sub nom. CSX Transp., Inc. v. STB*, 754 F.3d 1056 (D.C. Cir. 2014). The 70-day mediation period causes no financial prejudice to *Weskan*.

Conversely, the requested waiver is highly prejudicial to K&O, largely because Weskan has improperly framed it as a *retroactive* request. Weskan's expectation of retroactive application is not merely inferred; it is proven by its own actions. Had Weskan genuinely sought prospective relief, it would have filed its waiver request and awaited the Board's ruling before initiating litigation. Instead, Weskan blew past the mandatory notice of intent filing, attached its complaint directly to the Petition, and contemporaneously served initial discovery requests upon K&O. It is one thing to petition the Board for an unprecedented waiver and quite another to unilaterally presume the waiver's approval and proceed as if the litigation phase has already commenced. Granting retroactive relief under these circumstances would severely prejudice K&O by instantly stripping the railroad of its regulatory right to a pre-filing window, forcing it to immediately ramp up a burdensome SAC discovery defense with absolutely no runway.

In its Petition, Weskan attaches informal correspondence to complain of a subjectively perceived "mocking tone" in K&O's unremarkable refusal to waive the Board's mandatory regulations. Regardless of any offense counsel genuinely may have taken, the substance of K&O's message is self-explanatory in expressing K&O's enduring commitment to negotiate in good faith.

The Board's regulations explicitly mandate negotiations, and for good reason. K&O was, and is, disappointed that Weskan would attempt such evasion. Additionally, Weskan's asserted "urgency" is entirely manufactured. Weskan initially indicated its intent to file its complaint and waiver request by April 10, as

the record reflects, yet it strategically sat on the filing for an additional week until April 17. This delay was a clear tactical move to ensure K&O's response deadline to the Petition would closely coincide with K&O's impending May 4 deadline in FD 36849. This is not an emergency. It is a carefully orchestrated and one-sided attempt to prejudice K&O.

Conclusion

For the foregoing reasons, K&O respectfully requests that the Board deny Weskan's Amended Petition for Waiver. Because Weskan failed to file a standard Notice of Intent and to provide for the intended amount of time for pre-filing activities, including mediation, the Board should consider the effective date of its decision on Weskan's Petition to be the filing date of the Notice of Intent. At the very most, the Board should treat the April 17 filing date of the Complaint as the filing date of the Notice of Intent and strictly enforce the prospective 70-day pre-filing and mediation period from that date forward.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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**ATTORNEYS FOR KANSAS &
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Dated: May 4, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have, this 4th day of May, 2026, served a copy of the foregoing filing via electronic mail to all parties of record in this docket.

/s/ *R. A Wimbish*

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**Counsel for Kansas & Oklahoma
Railroad, LLC**