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July 1, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

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July 1, 2026
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Public Record

Re: Docket No. FD 36849 (Sub-No. 1), Joint Opposition to Weskan's
Request for Discovery

Dear Chief of Case Administration,

The Kansas & Oklahoma Railroad, LLC ("K&O") and Union Pacific Railroad Company ("Union Pacific") write to oppose Weskan Grain LLC's ("Weskan") request for issuance of a procedural schedule that allows for additional discovery. Weskan Reply at 24.

"In any proceeding, the Board may determine the proper scope of discovery"—including that no discovery should be had. *Del Grosso—Pet. for Dec. Order*, Docket No. FD 35652, at 3 n.7 (STB served May 8, 2013), *vacated and remanded on other grounds*, 804 F.3d 110 (1st Cir. 2015). Here, further discovery is not warranted because the parties have already engaged in a full round of discovery on the very topics at issue. K&O's May 4, 2026 Petition for Exemption ("Petition") seeks an exemption in this subdocket for the same lease amendments that were previously the subject of a prior petition for exemption that was denied without prejudice in Docket No. FD 36849. A robust period of discovery—in which tens of thousands of pages of discovery were produced to Weskan—occurred in the first iteration of this proceeding. Despite the fact that the protective order in Docket No. FD 36849 would allow use of these documents in this "related proceeding[]," *see* Protective Order at 1 ¶ 1(d) (STB served Apr. 8, 2025), Weskan used none of that produced material to support its reply filing. In these circumstances, Weskan should not be allowed to delay this proceeding through further discovery and associated litigation.

Even if there were some limited topics that would be appropriate for further discovery, Weskan has not articulated a specific need or reason why further discovery should be had. Given the prior round of discovery on the very lease amendments at issue, such a showing should be required before any further discovery period is ordered. In support of its request, Weskan argues that the Petition is unverified—but that is not a basis for imposing a broad-based discovery period, and in any event the regulations at Part 1121 do not require verification. And while Weskan claims a desire for "limited discovery," the scope of its request (discovery on "relevant factual issues") is so broad as to be boundless. Weskan's request should be denied.

K&O and Union Pacific believe that the record is complete and ripe for a final decision on the merits. The Petition fully addresses the legacy lease structure and the associated Asset Use Fee in accordance with the Board's March 20, 2026 decision in Docket No. FD 36849. Furthermore, Union Pacific has responded with robust evidence reinforcing that an exemption is appropriate in this case. If, however, the Board finds that further development of the record would assist in its determination, it can request supplemental evidence and argument on any specific points of interest, thereby managing the docket and Board and party resources while ensuring a proper scope of inquiry.

Respectfully submitted,

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cc: Parties of Record