

SUREFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42185

WESKAN GRAIN LLC V. KANSAS & OKLAHOMA RAILROAD, LLC

Digest:¹ This decision grants in part and denies in part Weskan Grain LLC’s amended petition for waiver and complaint, accepts the draft complaint attached to the amended petition as the pre-filing notice required by the Board’s regulations, and shortens the mediation period from 60 days to 30 days.

Decided: June 9, 2026

On April 17, 2026, Weskan Grain LLC (Weskan) filed an amended petition for waiver and complaint (Amended Petition)² asking the Board to waive the pre-filing procedures for stand-alone cost (SAC) cases at 49 C.F.R. §1111.1, which require that complainants file a pre-filing notice at least 70 days before filing a complaint, and the mandatory 60-day mediation period for such cases under 49 C.F.R. § 1109.4. Weskan also asks the Board to accept the complaint that it attached to the Amended Petition as Exhibit A and to commence the discovery and evidentiary phases of the proceeding. In the alternative, Weskan requests that, if the Board determines that mediation is necessary, it “establish a period substantially less than 60 days” and allow discovery to begin. (Am. Pet. 7.) The Board will grant the Amended Petition in part and deny it in part, treating the Amended Petition as the pre-filing notice and establishing a 30-day mediation period.

BACKGROUND

On December 17, 2025, Weskan filed a notice (Notice) pursuant to 49 C.F.R. § 1111.1(a) to initiate the pre-filing phase of a SAC rate reasonableness case. In its Notice, Weskan indicated its intent to file a formal complaint against the Kansas & Oklahoma Railroad, LLC (K&O), challenging the reasonableness of a rate K&O established for rail transportation of grain commodities that Weskan ships. Following the filing of the Notice, the parties engaged in

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² Weskan initially filed a petition for waiver and complaint earlier that same day, stating that it sought a waiver of 49 C.F.R. § 1111.1. (Pet. 1.) In its Amended Petition, Weskan clarifies that it seeks a waiver of both 49 C.F.R. § 1111.1 and 49 C.F.R. § 1109.4. (Am. Pet., Cover Letter.)

Board-sponsored mediation as required by 49 C.F.R. § 1109.4. On March 6, 2026, the Board-appointed mediators sent a letter to the Board informing the Board that the mediation had terminated as of the date of the letter. While the parties were unable to resolve the dispute during the mediation, they reached “general agreement and mutual understanding on certain operating and service parameters, which narrowed the scope of the dispute.” (Am. Pet. 3.) Following the termination of the mediation, Weskan submitted a request for rates and service terms to K&O “based on the operating parameters discussed in the mediation.” (*Id.*) On March 19, 2026, in response to Weskan’s request, K&O provided Weskan with a modified rate, which is the subject of the complaint attached to Weskan’s Amended Petition. (*Id.*) Then, on March 26, 2026, Weskan informed K&O that it would begin shipping under the offered rates. (*Id.* at 4.)

In its Amended Petition, Weskan argues that there is good cause to waive the Board’s regulations at 49 C.F.R. §§ 1109.4 and 1111.1 for its challenge of the modified rate. (*Id.* at 4.) First, although it acknowledges that the challenged rate is different than the rate identified in its Notice, Weskan asserts that the differences are “minor.” (*Id.*) Second, Weskan contends that the purposes underlying 49 C.F.R. §§ 1109.4 and 1111.1 have been met. (*Id.* at 5.) Weskan states that K&O has had notice of its intent to file a complaint since December 2025, when Weskan filed its Notice, and the parties have already engaged in mediation. (*Id.*) Weskan further argues that both parties are aware of the type and scope of discovery that will be sought regarding the rates and movements at issue. (*Id.*) Third, Weskan argues that additional mediation would be futile. (*Id.* at 6.) Weskan states that the previous 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.” (*Id.*) Finally, Weskan requests that, should the Board be inclined to order mediation, that the Board establish a period “substantially less than 60 days” and allow the parties to engage in discovery during the pendency of the mediation. (*Id.* at 7.)

On May 4, 2026, K&O filed a reply in opposition to Weskan’s Amended Petition. K&O argues that the Board should deny Weskan’s Amended Petition because it fails to meet the “good cause” standard required to waive the Board’s regulations. (Reply 2.) K&O contends that the current dispute involves new operational requests and rates that have never been mediated. (*Id.*) K&O also asserts that the Amended Petition is a “pressure tactic” meant to “force K&O into immediate, burdensome SAC litigation defense while simultaneously managing other major regulatory deadlines.” (*Id.* at 3.) K&O argues that the Board has never waived the pre-filing notice or mediation requirements in a rate case before and that Weskan does not provide the Board with good cause to do so now. (*Id.* at 4.) Moreover, K&O states that waiver of the mediation requirements would go against the Board’s precedent favoring “the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible.” (*Id.* (citing, among others, City & Cnty. of Denver—Pet. for Declaratory Ord., FD 36263, slip op. at 2 (STB served Nov. 14, 2019)).)

K&O disagrees with Weskan’s assessment that further mediation would be futile. (*Id.* at 5-7.) First, according to K&O, the original rate in the Notice was based on a request for service “that failed to comport with the physical and operational capacity of Weskan’s own facilities.” (*Id.* at 5.) The rate that is the basis of Weskan’s current complaint is based on a new service and a new rate. (*Id.*) Moreover, K&O contends that the 70-day pre-filing period will

allow it to “evaluate a traffic flow that has no historical precedent.” (*Id.* at 6.) K&O states that 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.” (*Id.*) K&O suggests that “[g]aining an appreciation” for the new service “may directly inform future pricing and service scenarios, potentially averting the need for litigation.” (*Id.*) K&O makes clear that it “remains ready and willing to engage in a robust mediation process.” (*Id.* at 7.) It also notes that, if the Board denies the Amended Petition, Weskan will not suffer any prejudice because, if the rate is found to be unreasonable, Weskan will be entitled to damages and interest, whereas if the Amended Petition is granted, K&O would be prejudiced by being forced to immediately ramp up a burdensome SAC discovery defense. (*Id.*)

DISCUSSION & CONCLUSIONS

The Board will grant the Amended Petition in part and deny it in part, as discussed below. The Board finds that its regulations at 49 C.F.R. §§ 1109.4 and 1111.1 are applicable to the modified rate, and Weskan has not shown that good cause exists to fully waive the requested regulations. As Weskan concedes, the modified rate differs from the rate identified by Weskan in its Notice. (*See* Am. Pet. 3.) In particular, the dollar amount is lower, and the new rate is for a movement that was made possible by an interchange agreement between K&O and Colorado Pacific Railroad LLC that did not exist at the time of the Notice. (*Id.* at 3-4.) Additionally, the Board favors the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible. *See, e.g., Lake Providence Port Comm’n—Feeder Line Appl.—Line of Delta S. R.R. Located in E. Carroll & Madison Pars., La.*, FD 36447, slip op. at 3 (STB served Oct. 21, 2021).

Although the pre-filing notice will not be waived, the Board will consider the Amended Petition, including the draft complaint attached as Exhibit A, as Weskan’s pre-filing notice under 49 C.F.R. § 1111.1. The Amended Petition contains all the information required by that regulation and provides K&O with adequate notice regarding the service and rates being challenged. In addition, for administrative efficiency, the Board will allow the challenge to the modified rate to proceed within this docket. As such, the protective order entered on January 12, 2026, in this docket will remain in effect, and the Board-appointed liaison will remain the same.

The Board will not waive the mediation requirement altogether but will grant Weskan’s alternative request for a shortened mediation period. Because, as noted above, the previously challenged rate was based on different operating and service parameters, (*see* Am. Pet. 3), and because the modified rate has not yet been subject to mediation, the Board is not convinced that further mediation would be futile. However, the Board finds that the full 60-day mediation period is unnecessary here since the parties have already engaged in one round of meditation regarding the movement of the same commodities to and from a similar origin and destination. The Board therefore will shorten the mediation period to 30 days, after which Weskan may file its complaint.

Weskan’s request to begin discovery during the mediation period will be denied. Even if the parties are unable to fully resolve their dispute during mediation, they may further narrow the issues, which could change the scope of discovery, and the Board encourages the parties to focus

their resources on mediation during the mediation period. Therefore, as provided under 49 C.F.R. § 1111.9(a), discovery will commence if and when a complaint is filed.³

It is ordered:

1. Weskan's Amended Petition is granted in part and denied in part as described above.
2. Weskan's Amended Petition, including the draft complaint attached as Exhibit A, is treated as Weskan's pre-filing notice under 49 C.F.R. § 1111.1.
3. The mediation period under 49 C.F.R. § 1109.4(f) is shortened from 60 days to 30 days.
4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

³ Under 49 C.F.R. § 1111.9(a), the procedural schedule for a SAC case provides for the discovery period beginning upon the filing of a complaint, which follows the pre-complaint period.