



LAW OFFICE OF THOMAS W. WILCOX, LLC
1629 K. STREET, NW SUITE 300
WASHINGTON, DC 20006

(202) 508-1065 (O)

(202) 365-8409 (C)

TOM@TWILCOXLAW.COM

WWW.TWILCOXLAW.COM

311756

ENTERED
Office of Chief Counsel
July 9, 2026
Part of
Public Record

PUBLIC VERSION

July 9, 2026

By E-Filing

Ms. Cynthia T. Brown
Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: STB Docket No. FD 36849 (Sub No. 1) *Kansas & Oklahoma Railroad, LLC – Lease with Interchange Commitment – Union Pacific Railroad Company*

Dear Ms. Brown:

Weskan Grain LLC (“Weskan”), through its undersigned counsel, hereby responds to the joint letter submitted in this docket by Kansas & Oklahoma Railroad, LLC (“K&O”) and Union Pacific Railroad Company (“UP”) on July 1, 2026 (“Letter”). The gist of the Letter, which is an unauthorized “reply to a reply” under 49 C.F.R. §1104.13(c)¹, is that K&O and UP oppose Weskan’s request that the Board allow the parties to engage in limited discovery should the Board accept K&O’s renewed Petition for Exemption and commence a proceeding under 49 U.S.C. §10502(b). They suggest as an alternative that the Board could “request supplemental evidence and argument on any specific points of interest.” Letter at 2.

As one of the grounds for their opposition K&O and UP assert that the terms of the protective order served in Docket No. FD 36849 permits any of the documents produced in

¹ The Letter states it is in response to Weskan’s Reply to K&O’s renewed Petition for Exemption but states no grounds why 1104.13(c) should be waived. This being said, Weskan does not object to the Letter being accepted as long as this response is permitted as well.

Law Office of Thomas W. Wilcox, LLC

Letter to Cynthia T. Brown

July 9, 2026

Page 2

discovery in that proceeding to be used in this sub-docket, because the phrase “related proceedings” appears in the definition of “Proceedings” in that protective order. Letter at 1. They combine this assertion with the fact that Weskan did not attach any of those materials to its reply to K&O’s Petition. Weskan has two responses. First, K&O and UP do not address the fact that the rest of the reference they rely upon states “related proceedings *before the Board*,” which strongly implies the reference is to related proceedings pending before the Board when the order was issued. This proceeding was obviously not “before the Board” when that protective order was issued, so there exists some ambiguity.

Second, and more significantly, K&O’s and UP’s position that the protective order in Docket No. FD 36849 applies to this sub-docket such that all documents produced in discovery in that proceeding may be used in this one is exactly the opposite of the position taken by K&O when the renewed Petition was filed on May 4, 2026. Specifically, upon K&O filing the public version of the renewed Petition counsel for Weskan requested a copy of the highly confidential version of K&O’s filing, assuming the prior protective order applied. *See* Exhibit A. However, K&O counsel refused to provide the highly confidential version, stating:

“Please keep in mind that today’s filing (which we’ve supplied to you as a courtesy) initiates a new separate proceeding under Docket No. FD 36849 (Sub – No. 1). The petition is not a continuation of the recently concluded FD 36849. Consequently, prior confidentiality arrangements do not carry over.”

Consistent with this stance that Docket No. FD 36849 was “concluded,” K&O submitted a new draft protective order in this docket. K&O also insisted that Weskan submit its own draft protective order pursuant to 49 C.F.R. §1121.3(d)(2). *Id.* Finally, K&O refused to provide the highly confidential version of the renewed Petition to Weskan or UP until the new order(s) was/were entered. *Id.* K&O’s machinations apparently caused enough confusion in the Board’s Office of Chief Counsel that the normally ministerial issuance of a protective order did not occur until May 25, 2026.² In the meantime, Weskan’s and UP’s outside counsel and outside consultants were deprived of the highly confidential version of K&O’s Petition, resulting in UP requesting (and no party opposing) an extension of the time to reply to the renewed Petition until 20 days after the Board issued a new protective order in this proceeding.

Weskan’s decision to not use material produced in discovery in Docket No. FD 36849 in its Reply to the renewed Petition for Exemption was based in part on the foregoing behavior and spectre of time-consuming and pointless litigation to resolve the issue. For the record, Weskan does not object to materials produced in discovery in Docket No. FD 36849 being used in this sub-docket going forward should that be the Board’s ruling.

Notwithstanding the foregoing, the main reason Weskan did not include discovery materials from Docket No. FD 36849 in its Reply to the renewed Petition is that the renewed

² The decision appropriately denied as moot Weskan’s motion for protective order that K&O demanded it file.

Law Office of Thomas W. Wilcox, LLC

Letter to Cynthia T. Brown

July 9, 2026

Page 3

Petition raises factual issues that were not asserted by either K&O or UP in the prior proceeding and therefore were not the subject of discovery. The Board denied the prior petition for exemption because both K&O and UP refused in Docket No. FD 36849 to provide supplemental argument and evidence on the origin, purpose and effect of the interchange commitment, and why either railroad believes the continuation of the paper barrier and imposition of the Asset Use Fee meets the Board's criteria in Docket No. EP 575³ and the National Rail Policy.

Both railroads have finally attempted to provide that information in the renewed Petition and UP's reply to the renewed Petition, and their filings include the following new factual assertions:

1. That the lease with the interchange commitment provides revenues to K&O that it uses to invest in the leased tracks. Petition at 13, 16
2. That the Asset Use Fee approximates the average contribution UP earned on grain traffic originating in eastern Kansas when the fee was developed and implemented. UP Reply, Daniel McLaughlin V.S. at 10-11.
3. K&O's claim that it invested {{ \$[REDACTED] million }} in the "Leased Lines" between 2012 and 2021 without specifying where such investment was made, only stating that it "funded the installation of thousands of crossties, extensive track surfacing, rail relays, and critical bridge and signal repairs." Petition at 28.⁴
4. UP has apparently granted numerous waivers of the Asset Use Fee and waived other restrictions under the Railroad Industry Agreement process. UP Reply at 25-26.
5. K&O's claim that operations require "continuous capital investment in track maintenance, rehabilitation, and infrastructure upgrades, and the operations face massive challenges associated with seasonal volume shifts and widely varying annual traffic volumes." Petition at 16.
6. K&O carload volumes grew by {{ [REDACTED] % }} between 2005 and 2025 across the entire K&O system, and on the leased lines "traffic has demonstrated remarkable resilience and recent surging demand, increasing from {{ [REDACTED] }} carloads in 2021 to {{ [REDACTED] }} carloads in 2025." Petition at 13.
7. K&O interchanged "substantial volumes of Leased Line traffic" with BNSF Railway Company and Wichita Terminal Association over the past five years. Petition at 23.

³ *Rev. of Rail Access & Competition Issues—Renewed Pet. of the W. Coal Traffic League (Rev. of Rail Access)*, EP 575 (STB served Oct. 30, 2007).

⁴ This claim was accompanied by the absence of any capital investment data for 2022-2026.

Page 4

- Cc: Parties of Record

EXHIBIT A

Tom Wilcox

From: Robert A. Wimbish <RWimbish@fletcher-sippel.com>
Sent: Monday, May 4, 2026 9:14 PM
To: Tom Wilcox
Cc: Angie Harrison; Michael E. Gray
Subject: RE: Surface Transportation Board Docket No. FD 36849 (Sub-No. 1)
Attachments: KO_FD 36849_Sub1_Motion_for_Protective_Order_05042026.pdf

Tom,

Thanks for your note. Please keep in mind that today's filing (which we've supplied to you as a courtesy) initiates a new, separate proceeding under Docket No. FD 36849 (Sub-No. 1). The petition is not a continuation of the recently concluded FD 36849 docket. Consequently, prior confidentiality arrangements do not carry over.

Because the new petition contains two distinct categories of protected information, your access to the Highly Confidential version will be governed by two separate frameworks:

The lease documents, interchange data, and other discussion in the petition surrounding the lease terms were all provided pursuant to the mandatory disclosure requirements of 49 C.F.R. § 1121.3(d) and are subject to automatic protection. You will need to invoke and comply with the specific access procedures set forth in 49 C.F.R. § 1121.3(d)(2) to obtain this material as you've done before.

The petition also contains supplemental operational and commercial data (responsive to the Board's March 20th order in the prior docket) that we have filed under seal pursuant to a new Motion for Protective Order. I have attached a copy of that Motion for your reference. Access to this supplemental data will require the Board to issue the requested protective order and your execution of the applicable Undertaking for this specific Sub-No. 1 docket.

We will promptly provide you with the Highly Confidential version of the petition once the respective procedural requirements for both categories of protected information have been satisfied.

Best,

Rob

From: Tom Wilcox <tom@twilcoxlaw.com>
Sent: Monday, May 4, 2026 6:20 PM
To: Angie Harrison <AHarrison@fletcher-sippel.com>

Cc: Robert A. Wimbish <RWimbish@fletcher-sippel.com>

Subject: RE: Surface Transportation Board Docket No. FD 36849 (Sub-No. 1)

Angie and Rob – Thanks. Please email me a copy of the highly confidential version.

Thanks very much in advance.

Tom

Thomas W. Wilcox

Law Office of Thomas W. Wilcox, LLC

Office: 202.508.1065

Mobile: 202.365.8409

1629 K. Street, NW Suite 300

Washington, DC 20006

tom@twilcoxlaw.com | www.twilcoxlaw.com

This message contains information that may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail and delete the message.

From: Angie Harrison <AHarrison@fletcher-sippel.com>

Sent: Monday, May 4, 2026 6:25 PM

Cc: Robert A. Wimbish <RWimbish@fletcher-sippel.com>

Subject: Surface Transportation Board Docket No. FD 36849 (Sub-No. 1)

Attached is a public version of an individual petition for exemption filed today with the Surface Transportation Board (STB) in FD 36849 (Sub-No. 1). In the attached petition, Kansas & Oklahoma Railroad, LLC (K&O) seeks STB authorization to continue to lease and operate over certain railroad lines in Kansas and Colorado owned by Union Pacific Railroad Company. K&O has leased these lines in question from Union Pacific Railroad Company (UP) and has operated them since 2001.

K&O is obligated under 49 C.F.R. § 1121.3(d)(1)(v) to provide notice of the transaction and related interchange commitment upon all shippers that have made use of the subject lines over the preceding two years, and is serving all other parties copied here in keeping with past STB directives related to this transaction and/or as a courtesy. You are neither required nor expected to respond to the attached petition, but it is certainly your prerogative to participate if you wish to do so.

Kind regards,

Rob Wimbish

Regulatory Counsel for Kansas & Oklahoma Railroad, LLC

Angie Harrison

Assistant to Robert A. Wimbish

Fletcher & Sippel LLC

29 N. Wacker Drive, Suite 800

Chicago, Illinois 60606-3208

Phone: 312-252-1542

Facsimile: 312-252-2400



CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2026, a copy of the foregoing letter was served by electronic mail on representatives of the Kansas & Oklahoma Railroad, LLC and Union Pacific Railroad Company.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox