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**VIA ELECTRONIC FILING**

Chief of Case Administration  
Office of Chief Counsel  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20024

ENTERED  
Office of Chief Counsel  
July 21, 2026  
Part of  
Public Record

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

**KANSAS & OKLAHOMA RAILROAD, LLC'S REPLY IN OPPOSITION TO  
WESKAN GRAIN LLC'S MOTION TO SUBMIT A REPLY TO A REPLY**

Kansas & Oklahoma Railroad, LLC ("K&O") submits this reply in opposition to the "Motion to Submit Reply to Union Pacific Reply" (the "Motion") Weskan Grain LLC ("Weskan") filed in the above-referenced docket on July 6, 2026. Weskan's Motion is an unacceptable attempt to subvert the Surface Transportation Board's ("Board") procedural rules, and its proffered substantive reply to a reply must be stricken entirely in keeping with agency practice.

***Weskan's latest offering directly violates 49 C.F.R. § 1104.13(c).***

Under 49 C.F.R. § 1104.13(c), the Board's rules are unequivocal: a reply to a reply is prohibited. Weskan openly acknowledges that its proffered filing constitutes a reply to a reply, yet it insists on submitting the document anyway in an obvious effort to have the final word.

Weskan is a recidivist in this regard. In the predecessor FD 36849 docket, Weskan attempted this exact maneuver, filing a nearly identical motion for permission to file an unauthorized "sur-rebuttal" on January 26, 2026. The Board rejected that attempt in a March 20, 2026 Decision, firmly establishing (again) that "[t]he Board's rules do not permit a reply to a reply" and stating that Weskan had not provided "sufficient reason for the Board to make an exception here." FD 36849, March 20, 2026 Decision at 7. In light of prior Board action, Weskan's current Motion reflects willful disregard for the agency's strict enforcement of its regulations and its prior admonition to Weskan.

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## ***Allowing Weskan to usurp agency processes would be unfair.***

K&O believes that the administrative record properly closed at the conclusion of the reply phase, where Weskan had a full and fair opportunity to address the merits of K&O's petition. This is particularly true given that the Board has left unresolved whether a petitioner is entitled as a matter of right to file a rebuttal in support of its petition during the interim between the filing of the petition and the 90th day thereafter by which the Board must decide whether to initiate a formal proceeding. See FD 36849, June 25, 2025 Decision at 4 (rejecting a K&O-proffered rebuttal filing, but explaining that "K&O will have ample opportunity" to respond to issues raised at the initial reply period at a later date, and adding that, "To the extent that a party believes that any of the evidence or arguments presented in the stricken pleadings is relevant to the Board's inquiry articulated herein, it may include that information in its submissions consistent with the procedural schedule [for the formal proceeding]."). K&O firmly believes that the current record is abundantly clear and that the subject petition for exemption should be granted based on the filings properly before the Board.

If any party possessed the equitable right to close the administrative record at this phase, it would be K&O as the petitioner bearing the burden of proof. However, K&O has exercised deliberate procedural restraint, mindful of the Board's June 25, 2025 Decision in FD 36849 that indicates the Board's resolve to enforce the rule against a reply to a reply more strictly than heretofore. It is incongruous and entirely unfair for Weskan to attempt to usurp the procedural process to its own advantage while K&O adheres to the Board's directives.

Weskan's "logic" for bypassing Section 1104.13(c)'s clear restrictions rests on the manufactured premise that Union Pacific Railroad Company's ("UP") reply filing was a delayed opening pleading rather than a standard, timely reply in support of the petition. But, of course, UP is neither the petitioner nor a co-petitioner. That role is K&O's and K&O's alone. Accepting Weskan's bogus logic would create an untenable standard wherein any opponent to a petition could unilaterally grant itself the right to submit a supplemental response simply because a non-petitioning party filed a substantive reply in support, even if the opponent had reason to believe (as was the case here) that such a reply would be filed. Weskan's self-serving tactic is inappropriate and destructive to docket discipline.

## ***The Board retains full discretion over future proceedings (if any).***

The agency alone may decide if additional evidence and argument are required after the record closes at the initial reply phase. If the Board determines it is necessary to initiate a formal proceeding here (although no such proceeding is

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needed), it will establish the appropriate scope of inquiry going forward. At that juncture (again, if needed), each side will be afforded a proper, rule-compliant opportunity to present its case for and against granting the subject petition.

. . .

Weskan's attempt to force an impermissible reply to a reply into the record is unacceptable and contrary to the orderly administration of cases. For the foregoing reasons, K&O respectfully requests that the Board deny Weskan's July 6, 2026 Motion and strike its proffered substantive reply to a reply entirely.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Counsel for Kansas & Oklahoma Railroad, LLC

cc: All parties of record