

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
July 27, 2026
Part of
Public Record

Docket No. FD 36849 (Sub-No. 1)

**KANSAS & OKLAHOMA RAILROAD, LLC—LEASE AND OPERATION
EXEMPTION WITH INTERCHANGE COMMITMENT—UNION PACIFIC
RAILROAD COMPANY**

**UNION PACIFIC'S REPLY OPPOSING WESKAN'S
MOTION TO SUBMIT SURREPLY**

Union Pacific opposes Weskan's latest attempt to submit an unauthorized surreply.

The Board's rules generally prohibit the filing of a reply to a reply. While there are certain exceptions that the Board has recognized, such as replies to new requests for relief, Weskan's proposed filing falls into none of those exceptions and fails to demonstrate a basis for departing from the Board's rule. Weskan's filing is cumulative, adds material that could have been submitted earlier, and undermines the orderly case administration the Board's rule is designed to protect.

The Board has recently emphasized that interests of efficiency and orderly case administration justify stricter enforcement of 49 C.F.R. § 1104.13(c).¹ It has already rejected one surreply filed by Weskan in these proceedings.²

¹ See, e.g., *Sunflower State Indus. Ry.—Pet. for Declaratory Ord.*, Docket No. FD 36714 (Sub-No. 1), at 2 n.3 (STB served Mar. 28, 2025).

² *Kan. & Okla. R.R.—Lease & Operation Exemption With Interchange*

Weskan’s principal justification for filing a surreply here—that it “could not have anticipated much of the substantive information” in Union Pacific’s reply³—is not credible. Union Pacific provided Weskan extensive discovery in late 2025 concerning the same issues Weskan now claims are new.

For example, Weskan already had Union Pacific’s explanation of how the Asset Use Fee was determined. Union Pacific explained during discovery that the fee was “set at the level provided in Section 4.01 based on evaluation of similar traffic originating or terminating in Kansas.”⁴ Documents produced to Weskan likewise supported how the Asset Use Fee was determined.

Nor can Weskan plausibly claim it lacked information about the “formation and purpose” of the lease amendments.⁵ K&O addressed that issue in its Petition for Exemption and Union Pacific explained during discovery that the recitals to the Fourth Supplement set out the reasons for the amendment.⁶ Weskan also received traffic certifications—including the 2018 traffic certification file referenced in the recitals—and documents concerning the development of the Fourth Supplement during discovery.

Commitment—Union Pac. R.R., Docket No. FD 36849, at 7 (STB served Mar. 20, 2026).

³ Weskan Mot. at 3.

⁴ See Exhibit A, Excerpts of Union Pacific’s Discovery Responses In Docket No. FD 36849 (served Sept. 8, 2025), Interrogatory No. 4.

⁵ Weskan Mot. at 2.

⁶ See Exhibit A, Interrogatory Nos. 4, 6.

In any event, Weskan's claimed inability to predict another party's arguments and evidence is not a basis for a surreply. The Board's rules provide that the party seeking an exemption—here, K&O—must file its case-in-chief.⁷ Public comments are not generally sought, unless the Board, in its discretion, requests public comment or directs that additional information be filed.⁸ To the extent that non-applicants—here, Union Pacific and Weskan—may comment on a petition for exemption, the rules allow a single round of replies to the petition.

Weskan's reliance on older cases accepting unauthorized replies is misplaced.⁹ The Board has since announced an intention to enforce the rule more strictly.¹⁰

Finally, the proposed surreply improperly reprises facts and arguments from earlier filings. Weskan concedes that many of the issues addressed in Union Pacific's reply were already raised by K&O and previously answered by Weskan.¹¹ It also attempts to introduce materials that could have been included with the Weskan initial reply. The proposed verified statement, for instance, includes generalized assertions about Class I operating ratios and materials from a 2022

⁷ See 49 C.F.R. § 1121.3(a).

⁸ See 49 C.F.R. §§ 1121.4(a), 1121.4(c)(1).

⁹ Weskan Mot. at 3 (citing *City of Alexandria, Va.—Pet. for Declaratory Ord.*, Docket No. FD 35157, at 2 (STB served Nov. 6, 2008)).

¹⁰ See *Sunflower State Indus. Ry.*, Docket No. FD 36714 (Sub-No. 1), at 2 n.3.

¹¹ Weskan Proposed Surreply at 2.

Board proceeding¹²—material that “was not, but could have been, included”¹³ in Weskan’s reply and which is not even responsive to Union Pacific’s submission. Thus, this surreply would neither promote efficiency nor complete initial pleadings.¹⁴ Nor would it give the moving party “the last word” as it is K&O, not Weskan, who is the moving party.¹⁵ It would instead reward Weskan for withholding arguments and evidence until after the authorized pleading cycle has closed.

The Board has already rejected a Weskan attempt to submit an unauthorized surreply in these proceedings. Union Pacific respectfully submits the Board should deny yet another unauthorized Weskan surreply.

¹² Weskan Proposed Surreply, Peabody Verified Statement at 9.

¹³ *Review of Replies to Replies*, Docket No. EP 790, at 2 (STB served May 18, 2026).

¹⁴ *See id.*

¹⁵ *See id.*

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Dated: July 27, 2026

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of July, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding.

/s/ Stephen S. Laudone

Stephen S. Laudone

Exhibit A

**Excerpts of Union Pacific's Discovery Responses
In Docket No. FD 36849**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36849

**KANSAS & OKLAHOMA RAILROAD, INC.—LEASE AND
OPERATION EXEMPTION WITH INTERCHANGE
COMMITMENT—UNION PACIFIC RAILROAD COMPANY**

**UNION PACIFIC'S RESPONSES AND OBJECTIONS
TO WESKAN GRAIN LLC'S FIRST SET OF DISCOVERY REQUESTS**

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September 8, 2025

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Interrogatory as unduly burdensome in that it purports to require Union Pacific to “[p]rovide a detailed explanation” of information that can be ascertained from business records. *See* 49 C.F.R. § 1114.26(b).

Subject to and without waiving its objections, Union Pacific directs Weskan to the “Recitals” in the Third Supplement to the Lease Agreement Between Union Pacific Railroad Company and Kansas & Oklahoma Railroad, LLC, executed July 20, 2018.

INTERROGATORY NO. 4

Provide a detailed explanation of all the reasons why UP and K&O entered into the Fourth Supplement, including but not limited to why the parties amended Section 4 of the 1997 Lease Agreement to delete it in its entirety and replace it in part with Section 4.01 containing an “Asset Use Fee.” As part of your response please explain in detail the origin of the “Asset Use Fee,” the reasons why it was set at the level in the Fourth Supplement, and its purpose and intent.

Union Pacific Response

Union Pacific objects to this Interrogatory as seeking information more appropriately obtained from K&O to the extent it seeks information regarding K&O’s reasons for entering into the Fourth Supplement. Union Pacific further objects to this Interrogatory as unduly burdensome in that it purports to require Union Pacific to “[p]rovide a detailed explanation” of information that can be ascertained from business records. *See* 49 C.F.R. § 1114.26(b).

Subject to and without waiving its objections, Union Pacific directs Weskan to the “Recitals” in the Fourth Supplement to the Lease Agreement Between Union Pacific Railroad Company and Kansas & Oklahoma Railroad, LLC, executed November 21, 2019. Union Pacific further states that the “Asset Use Fee” was set at

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the level provided in Section 4.01 based on evaluation of similar traffic originating or terminating in Kansas.

INTERROGATORY NO. 5

Provide the names and titles of all K&O and UP personnel who participated in the drafting and negotiation of the Third Supplement and the Fourth Supplement.

Union Pacific Response

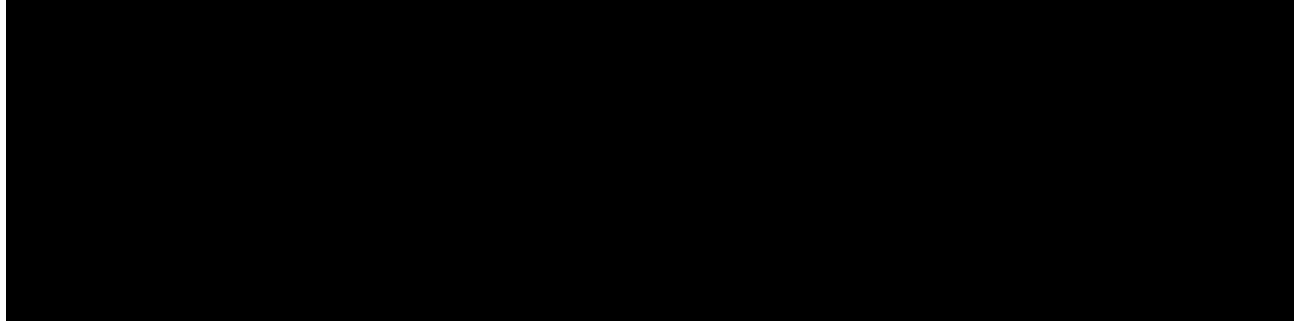
Union Pacific objects to this Interrogatory as seeking information more appropriately obtained from K&O, because K&O is a party in this proceeding. Union Pacific further objects to this Interrogatory as overbroad and as seeking information that is not relevant to the subject matter in this proceeding in that it requests information about K&O and Union Pacific personnel who participated in the drafting and negotiation of provisions other than the interchange commitment at issue in this matter. Union Pacific also objects to this Interrogatory as seeking information within the possession, custody, and control of K&O to the extent it seeks information about personnel employed by K&O. Union Pacific also objects to this Interrogatory in that it imposes undue burdens on Union Pacific that outweigh any probative value the information sought may have in this proceeding in requiring Union Pacific to search for and provide the names and titles of “all” personnel who participated in the drafting and negotiation of documents that were executed many years ago without any showing that such information is relevant to the current matter.

Subject and without waiving its objections, Union Pacific believes the following list of employees have relevant knowledge about the drafting and negotiation of the Third Supplement and the Fourth Supplement, and Union Pacific is providing the

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job title of their position as of July 9, 2025:

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INTERROGATORY NO. 6

Describe in detail the dispute between UP and K&O over rent owed under the 1997 Lease Agreement described in the eighth “Whereas” clause of the Fourth Supplement, including but not limited to:

- a. The basis for UP’s claim that K&O owed \$1,140,000 in rent
- b. A detailed description of the “2018 Traffic Certification.”

Union Pacific Response

Union Pacific objects to this Interrogatory as seeking information more appropriately obtained from K&O, because K&O is a party in this proceeding. Union Pacific further objects to this Interrogatory as unduly burdensome in that it purports to require Union Pacific to “[d]escribe in detail” information that can be ascertained from business records. *See* 49 C.F.R. § 1114.26(b).

Subject to and without waiving its objections, Union Pacific states that it will produce business records from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26(b). Union Pacific further directs Weskan to Section IV. Rent of the Lease Agreement for the applicable terms, as supplemented and amended, the “Recitals” in the Fourth Supplement to the Lease Agreement

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Between Union Pacific Railroad Company and Kansas & Oklahoma Railroad, LLC, executed November 21, 2019, and the “2018 Traffic Certification.”

INTERROGATORY NO. 7

Describe in detail the process or processes by which K&O has sought any waiver or modification of the Asset Use Fee from UP after November 21, 2019, including the “Request Under Railroad Industry Agreement” submitted by K&O to UP dated July 18, 2023, and identify and describe UP’s response to such request and the terms and conditions of any such waiver or modification.

Union Pacific Response

Union Pacific objects to this Interrogatory as seeking information more appropriately obtained from K&O, because K&O is a party in this proceeding. Union Pacific further objects to this Interrogatory as unduly burdensome in that it purports to require Union Pacific to “[d]escribe in detail” information that can be ascertained from business records. *See* 49 C.F.R. § 1114.26(b).

Subject to and without waiving its objections, Union Pacific states that it will produce business records from which the answer to this Interrogatory can be derived or ascertained. *See* 49 C.F.R. § 1114.26(b).

INTERROGATORY NO. 8

Please identify and describe in detail all discussions between UP and K&O referring or relating to the potential provision of rail service by K&O over CXR’s Towner Line pursuant to the Operating Agreement prior to and after its execution, including discussions regarding revenue divisions and/or rates.

Union Pacific Response

Union Pacific objects to this Interrogatory as overbroad and as seeking information that is not relevant to the subject matter in this proceeding in that it requests information about matters unrelated to the interchange commitment at