

SERVICE DATE – MARCH 20, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36849

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

Digest:¹ This decision denies Kansas & Oklahoma Railroad, LLC's petition for exemption to lease and operate two rail lines in Kansas and Colorado owned by Union Pacific Railroad Company.

Decided: March 19, 2026

On March 27, 2025, Kansas & Oklahoma Railroad, LLC (K&O), a Class III rail carrier, filed a petition under 49 U.S.C. § 10502 seeking an exemption from the provisions of 49 U.S.C. § 10902 for after-the-fact authority to renew and amend a lease agreement between K&O and Union Pacific Railroad Company (UP) governing K&O's possession and use of approximately 165.98 route miles of UP-owned railroad line in western Kansas (the Lease). The leased lines consist of two segments of rail line, which extend (1) between milepost 523.02 at Geneseo, Kan., and milepost 606.0 at McCracken, Kan., and (2) between milepost 664.5 at Healy, Kan., and milepost 747.5 at Towner, Colo. (the Lines). K&O states that the Lease involves contract terms that would limit K&O's interchange of traffic originating or terminating on the Lines with any third-party connecting carrier.

Upon consideration of the evidence and argument presented during the proceeding, the Board will deny K&O's petition.² As discussed more fully below, the Board finds that K&O has failed to meet its burden to demonstrate that continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101.

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 While attempting to avoid references to confidential or highly confidential information in Board decisions, the Board reserves the right to rely upon and disclose such information in decisions when necessary. See Consumers Energy Co. v. CSX Transp., Inc., NOR 42142, slip op. at 1 n.2 (STB served Jan. 11, 2018). In this case, the Board determined that it could not adequately present its findings with respect to the issues without disclosing certain information designated as confidential.

BACKGROUND

On May 25, 2001, K&O filed, in Kansas & Oklahoma Railroad—Acquisition Exemption—Central Kansas Railway, Docket No. FD 34030, a verified notice of exemption under 49 C.F.R. § 1150.31 to, among other things, acquire the Lease by assignment from the Central Kansas Railway, L.L.C. (CKR). Notice of the exemption was served and published in the Federal Register on June 12, 2001 (66 Fed. Reg. 31,751). At that time, the Lease encompassed a through route between Geneseo and Towner, consisting of portions of the historic Missouri Pacific Railroad Company (MoPac) Council Grove and Horace Subdivisions and all of MoPac’s Hoisington Subdivision, which was acquired by UP on January 1, 1997. (Pet. 4.) Subsequently, in 2004, a segment between milepost 606.0 at McCracken and milepost 664.5 at Healy was abandoned. See Union Pac. R.R.—Aban. Exemption—in Lane, Ness, & Rush Cntys, Kan., AB-33 (Sub-No. 214X) et al. (STB served Oct. 15, 2004).

On November 27, 2024, Weskan Grain LLC (Weskan) filed a petition to reopen and partially revoke the 2001 acquisition exemption K&O obtained in Docket No. FD 34030. During the course of that proceeding, it came to the Board’s attention that the Lease, which was executed by UP and CKR and assigned to K&O in 2001, had been renewed and amended in 2018 and amended again in 2019. See Kan. & Okla. R.R.—Acquis. Exemption—Cent. Kan. Ry. (February 2025 Decision), FD 34030, slip op. at 5 (STB served Feb. 25, 2025). Those amendments included, among other things, a rewriting of the Lease’s interchange commitment provisions. See February 2025 Decision, FD 34030, slip op. at 5. Neither the 2018 amendments nor the 2019 amendments were authorized by the Board. Id. Because K&O did not seek or obtain Board authority to enter into the modified lease agreement from which Weskan sought relief, the Board found that Weskan’s petition was moot and directed K&O to file a petition for exemption or application to obtain after-the-fact authority to renew the Lease and implement the amendments thereto. Id. at 5-6.

K&O filed this petition for exemption in response to the February 2025 Decision. K&O’s petition discloses that the Lease has “terms that would limit K&O’s interchange of traffic originating or terminating on the Lines with any third-party connecting carrier.” (Pet. 5.) K&O states that the interchange commitment affects its interchange at Wichita, Kan., with BNSF Railway Company (BNSF), South Kansas & Oklahoma Railroad, LLC, and Wichita Terminal Association, and at Hutchinson, Kan., with BNSF. (Id.) Both of these interchange locations are located on a K&O-owned line. The petition states that Colorado Pacific Railroad LLC (CXR) is “[t]he only third party railroad with which K&O could interchange via the Lines.” (Id. at 6.) K&O interchanges with CXR at Towner. The petition also states that there are 10 customers currently using the Lines or that have used them in the last two years: Bartlett Grain, Thunderbird Grain, The Scoular Company, ADM Grain, Seaboard Foods, Scott Coop, Midland Marketing, United Ag Services, Hess Services, and Heartland Mills. (Id. at 5-6.)

K&O argues that the Lease is “consistent with the goals articulated in the National Rail Transportation Policy (‘RTP’) set forth in 49 U.S.C. § 10101.” (Pet. 8.) Specifically, K&O cites to 49 U.S.C. §§ 10101(2), (7), and (15) of the RTP, which favor minimizing federal regulatory control over the rail transportation system, expediting regulatory decisions, and reducing barriers to entry and exit from the industry, respectively. (Id.) K&O also contends that denial of the

petition for exemption “would run counter to the objectives of Sections 10101 and 10502, by leaving the K&O-UP leasehold arrangement subject to outdated lease terms dating back to 1997, and forcing the two railroads to conduct themselves under specific contract terms that no longer serve either party well.” (*Id.* at 9.) K&O goes on to argue that the proposed transaction is of limited scope. K&O states that the proposed transaction involves the lease and operation of approximately 165.98 route miles of railroad located in one state. (*Id.* at 9.) In addition, K&O states that it has leased and operated the Lines for nearly 24 years and asserts that continuation of the Lease will have no impact on service, dispatching, maintenance, employees, the environment, or historic resources. K&O contends that this means the proposed transaction “clearly” is of limited scope and, as a result, it need not prove that regulation is not needed to protect shippers from market abuse. (*Id.*) K&O contends that it does not have market power to exercise or abuse. (*Id.*)

On April 16, 2025, Weskan filed a reply in opposition to the petition for exemption, arguing that the interchange commitment is anticompetitive.³ Weskan contends that the proposed interchange commitment is intended to “preserve UP’s market power and to restrict competition,” (Weskan Opp’n 10, Apr. 16, 2025), by making it “economically infeasible for K&O” to transport agricultural products originating in Kansas to points west of the CXR interchange at Towner, Colo. One such destination is Weskan’s grain elevator complex near Sheridan Lake, Colo. (the Stockton Facility). (*Id.* at 1, 3-4.) Weskan states that the Stockton Facility is located on the line operated by CXR (the Towner Line). (*Id.* at 3-4). Weskan asserts that the amended interchange commitment was inserted into the Lease soon after CXR’s acquisition of the Towner Line for the purpose of “economically prohibit[ing] K&O from interchanging traffic with one railroad – CXR – and forc[ing] all traffic to flow east to be interchanged with UP.” (Weskan Opp’n 7.) According to Weskan, the proposed transaction harms not only shippers located on the Lines but also CXR and its efforts “to make the Towner Line economically viable again.” (*Id.*) Weskan argues that the Board should either deny the petition because the proposed transaction fails to satisfy 49 U.S.C. § 10502(a), (*id.* at 1, 6-10), or commence a proceeding under 49 U.S.C. § 10502(b).

By decision served on June 25, 2025 (June 2025 Order), the Board instituted a proceeding on this matter and established a procedural schedule allowing for all parties to submit additional evidence and argument.⁴ Specifically, the June 2025 Order directed K&O to provide additional evidence and argument to supplement its petition on the following issues:

... discuss the proposed interchange commitment within the framework articulated in Review of Rail Access, EP 575, slip op. at 15 (listing non-exhaustive factors that will inform the Board’s case-by-case analysis of interchange commitments). The supplement also should further explain why the proposed transaction, including the amended interchange commitment, satisfies 49 U.S.C. § 10502(a)’s requirements.

³ Weskan obtained a copy of the Lease after filing an unopposed motion for disclosure, which the Board granted on April 8, 2025.

⁴ The procedural schedule established by the June 2025 Order was subsequently revised by the Board on August 8, 2025, and again on November 14, 2025.

For example, K&O should elaborate on its assertion that “favorable Board action”—including approval of the proposed interchange commitment—“would not run [sic] thwart any” of the objectives of the rail transportation policy (RTP) set forth at 49 U.S.C. § 10101. (Pet. 8.) K&O will also be directed to provide additional evidence and argument explaining why regulation is not needed to protect shippers from an abuse of market power. See 49 U.S.C. § 10502(a)(2)(B). K&O may also provide additional evidence and argument explaining how the transaction is limited in scope. See 49 U.S.C. § 10502(a)(2)(A).

Id. at 3. Additionally, the Board directed K&O to address certain arguments raised by Weskan, including, “Weskan’s contention that the proposed transaction discourages the efficient management of railroads ‘by economically foreclosing shorter western routes via CXR [over the Towner Line] and forcing all traffic to move hundreds of miles east to interchanges with UP before they go to western destinations.’” Id. at 3 n.3. The June 2025 Order also invited other interested parties to file comments.

Consistent with the procedural schedule established by the June 2025 Order, as amended, CXR filed comments in opposition to the petition for exemption on November 20, 2025. CXR is a Class III carrier that owns and operates the Towner Line, a 121.9-mile rail line that CXR acquired in January 2018 pursuant to a feeder line application under 49 U.S.C. § 10707 and 49 C.F.R. part 1151.1. See KCVN, LLC—Feeder Line Appl.—Line of V & S Ry. in Crowley, Pueblo, Otero, & Kiowa Cntys, Colo., FD 36005 (STB served July 31, 2017). CXR connects to K&O at Towner to the east and with BNSF and UP in the west at NA Junction near Pueblo, Colo. (CXR Comments 2, 4, Nov. 20, 2025.) CXR states that it acquired the Towner Line for \$10 million and has invested over \$3.5 million to upgrade the main line track, bridges, and sidings to bring the entire Towner Line up to FRA Class 2 status. (Id. at 3.) CXR states that it invested an additional \$3.5 million to reestablish and upgrade previously existing interchange tracks with UP and BNSF at NA Junction, Colo. (Id. at 4.) In January 2019, CXR and K&O entered into an operating agreement establishing K&O as the common carrier over the Towner Line.⁵ (Id. at 6.) That agreement expired two years later. (Id. at 7.) During those two years, K&O did not transport any railcars that originated on the Lines over the Towner Line. (Id. at 6.) In fact, K&O used the Towner Line primarily for car storage. (Id.) After the operating agreement expired, CXR assumed operations over the Towner Line. (Id. at 7.) Since 2023, CXR has transported approximately 5,200 carloads of grain over the Towner Line. (Id. at 4.) However, since CXR assumed operations of the Towner Line, no carloads have been interchanged between K&O and CXR. (Id. at 8.) While CXR does not know the specifics of the interchange commitment, it “suspects that the lack of new rail freight traffic development on the Towner Line over the term of the Operating Agreement [with K&O] was due at least in part to this restriction in K&O’s lease with UP.” (Id. at 8.) CXR asks the Board not to approve the Lease unless the interchange commitment is removed. (Id. at 9-10.)

On December 4, 2025, K&O filed its supplemental petition. K&O contends that there has been a “material change in circumstances,” which resolves the “only alleged competitive

⁵ See Kan. & Okla. R.R.—Operation Exemption—Colo. Pac. R.R., FD 36310 (STB served June 24, 2019).

harm . . . rendering all registered opposition moot.” (Suppl. Pet. 1-2.) K&O represents that UP has proposed to waive the interchange commitment, which is in the form of an asset use fee,⁶ for “all K&O-CXR interchange traffic for the balance of the current lease term.”⁷ (*Id.* at 1.) K&O submits that because UP’s offer addresses “the only articulated concern with the transaction,” the underlying lease transaction “is consistent with the public interest” and its petition for exemption should be approved. (*Id.* at 2.) K&O acknowledges that the June 2025 Order directed K&O to provide a verified supplement to the Petition with additional evidence and argument in defense of the interchange commitment. (*Id.* at 4, 11.) However, K&O contends “that the filing of such detailed informational components is now unnecessary because UP’s offer has rendered the underlying competitive issue moot.” (*Id.* at 11.) K&O states that its focus “is not to defend the competitive merits of” the interchange commitment, but rather “to endorse a private resolution that eliminates the complained-of competitive threat entirely.” (*Id.*) In addition, K&O appears to question whether the Board has statutory authority to require that K&O seek authorization for the modified Lease. (*See* Suppl. Pet. 3 n.3.)

UP also filed comments on December 4, 2025. UP characterizes its offer with regard to the interchange commitment differently than K&O does. While K&O describes UP’s offer as waiving the interchange commitment for “all” K&O-CXR interchange traffic for the balance of the current lease term, UP represents that it will waive “the asset use fee when K&O interchanges *Weskan*’s traffic with another carrier for the duration of the current lease.” (UP Comments 3 (emphasis added).) UP makes no representations about the applicability of the asset use fee regarding the 10 shippers currently located on the Lines.

Weskan filed a reply to K&O’s and UP’s supplemental information on January 5, 2026. Weskan argues that K&O failed to offer any evidence or argument that the Lease complies with the requirements of 49 U.S.C. § 10502(a) or answer any of the Board’s questions regarding the interchange commitment. (Weskan Reply 2, Jan. 5, 2026.) As such, Weskan argues that K&O and UP should be foreclosed from submitting any evidence or argument justifying the interchange commitment on rebuttal. (*Id.* at 5.) Weskan expresses concern about UP’s and K&O’s disclosure of settlement discussions with Weskan but contends that it acted reasonably in rejecting UP’s offer.

In its reply, Weskan contends that UP’s offer to waive the asset use fee does not end the controversy. Weskan states that it “continues to acquire and develop grain handling properties on the [Lines].” (*Id.* at 9.) Its goal is to move product west “utilizing either UP or BNSF in competition with each other.” (*Id.*) Weskan contends that its investments in these properties would “instantly be made uneconomic by reinstitution of the Asset Use Fee.” (*Id.*) Weskan

⁶ Pursuant to the Lease, K&O must pay UP an “asset use fee” for each car that originates or terminates on the Lines that it interchanges with a carrier other than UP. (Pet. 122.) The fee is adjusted annually based on a formula described in the Lease. (*Id.* at 123.)

⁷ The current lease term ends September 12, 2027. (Suppl. Pet. 8.) The Lease contemplates seven ten-year extensions, of which five remain. (Pet. 105.) It is unclear whether UP’s offer to waive the asset use fee applies to any of the remaining lease extensions. It appears that whether to waive the asset use fee for future extensions remains within UP’s discretion.

argues that if the asset use fee is not removed from the Lease it could “economically prohibit” all shipments that originate from Weskan’s current and future facilities located on the Lines from being interchanged with CXR. (*Id.* at 12.) With its reply, Weskan includes an email obtained during discovery that Weskan contends supports its argument that the asset use fee is intended to prevent competition. (*Id.* at 6 n.6 (discussing Ex. A).) In the email chain, UP employees discuss K&O’s request for a waiver of the asset use fee for Weskan traffic and the risk of UP losing “locked up” traffic if UP grants the request. (*Id.*) Weskan asks the Board not to approve the Lease if it contains the interchange commitment, (*id.* at 10), and argues that, because K&O has failed to meet its burden under 49 U.S.C. § 10502(a), its petition for exemption should be denied. (*Id.* at 12-13.)

On January 20, 2026, K&O filed a rebuttal in which it insisted that any controversy “ended on December 4, 2025, when UP filed its supplement unilaterally waiving the asset use fee for the duration of the lease term with K&O.” (K&O Rebuttal 2, Jan. 20, 2026.) K&O reiterates that it need not answer the Board’s questions posed in the June 2025 Order because UP’s offer to waive the asset use fee “rendered the Board’s inquiry moot.” (*Id.* at 4.) According to K&O, because UP has waived the asset use fee,⁸ Weskan cannot demonstrate any harm and lacks evidence of any anticompetitive intent. (*Id.* at 6.) Moreover, Weskan’s arguments regarding its facilities at or east of Scott City are irrelevant because those facilities are not on the Lines and, therefore, not subject to the asset use fee. (*Id.* at 11.) K&O argues that Weskan’s claims would be better addressed by challenging the rate. (*Id.*; see also *id.* at 5.) K&O contends that Weskan’s objections to the Lease are moot, and the Board should grant its petition for exemption. (*Id.* at 3.) K&O states that Weskan’s argument that the asset use fee could be reinstated in the future need not be addressed by the Board at this time because any lease renewal would require K&O to seek authority from the Board. (*Id.* at 7-8.)

UP also filed comments in response to K&O’s reply. UP argues that the present “dispute is about K&O’s rates, not the interchange commitment.” (UP Rebuttal 1, Jan. 20, 2026.) UP contends that Weskan’s arguments ignore the general “procompetitive purpose and function” of the asset use fee. (*Id.* at 2.) And, according to UP, Weskan does not offer any evidence that the asset use fee is “anything other than a good faith, negotiated measure of appropriate compensation for K&O’s use of Union Pacific’s assets.” (*Id.* at 3.) UP asserts that because it

⁸ In response to Weskan’s argument that UP and K&O improperly disclosed settlement discussions when it disclosed UP’s offer to waive the asset use fee for Weskan traffic, K&O argues that the Board is not bound by the Federal Rules of Evidence and that the waiver speaks to the scope of the transaction under review. (*Id.* at 8-9.) Therefore, K&O contends that the Board should consider the waiver in determining whether to grant its petition. (*Id.*) Even if the Board was bound by Federal Rule of Evidence 408, which prohibits the admission of statements or proposals made during settlement discussions for certain purposes, its consideration of the waiver is appropriate because it is not being used to prove the validity or amount of the controversy. (*Id.*) Rather, it is consistent with the Board’s directive in the June 2025 Order for the parties to try to negotiate a resolution. Nonetheless, the protection of Rule 408 belongs to the offeror (here, UP), and Weskan should not be permitted to use the rule as a sword and a shield. (*Id.* at 9-11.)

has waived the asset use fee and Weskan is now pursuing a rate case,⁹ “the Board need not address the original fee or broader questions about asset use fees.” (Id. at 4.)

PRELIMINARY MATTER

On January 26, 2026, Weskan filed a motion for leave to file a surrebuttal to UP’s comments filed on January 20, 2026. Weskan argues that UP’s comments included new and inconsistent representations regarding UP’s offer to waive the asset use fee and new argument defending the interchange commitment. (Weskan Mot. 1.) K&O filed a reply in opposition to that motion on February 12, 2026. UP also filed a response in opposition to the motion for leave on February 19, 2026, contending that the representations made in its January 20 comments were not new and were consistent with the representations made in its comments filed on December 4, 2025, to which Weskan had an opportunity to respond. (UP Opp’n 1, Feb. 19, 2026.)

The Board’s rules do not permit a reply to a reply. See 49 C.F.R. § 1104.13(c).¹⁰ Weskan has not provided sufficient reason for the Board to make an exception here. UP’s characterization of its offer to waive its asset use fee was not materially different from the representations that it made in its December 4, 2025 comments. Moreover, UP did not offer more than statements of general applicability in defense of the interchange commitment. (See UP Comments 2, Jan. 20, 2026.) Weskan’s motion for leave to file a surrebuttal will be denied.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10502(a), the Board shall, to the maximum extent consistent with 49 U.S.C. subtitle IV, part A, exempt a transaction or service from regulation if it finds that: (1) regulation is not necessary to carry out the Rail Transportation Policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction is limited in scope or (b) regulation is not needed to protect shippers from the abuse of market power. As the proponent of the exemption, K&O must show that its transaction satisfies the statutory criteria for an exemption. See Keokuk Junction Ry.—Lease & Operation Exemption—BNSF Ry., FD 34974, slip op. at 5 (STB served Dec. 6, 2007).

K&O has not met this burden. Use of the exemption process, which is designed to minimize regulatory burdens, is appropriate only when the information provided is sufficient, under the circumstances, for the Board to reach an informed decision. Where there is an inadequate record on which to reach an informed decision whether to grant an exemption, a petition for exemption will be denied. See Lake State Ry.—Aban. Exemption—in Otsego Cnty., Mich., AB 534 (Sub-No. 3X), slip op. at 5 (STB served July 16, 2007). Here, there is an

⁹ See Pre-Filing Notice of Complaint, Weskan Grain v. Kan. & Okla. R.R., NOR 42185 (STB filed Dec. 17, 2025).

¹⁰ As a general matter, to promote the orderly and efficient administration of cases, the Board is more strictly enforcing 49 C.F.R. § 1104.13(c), the rule prohibiting replies to replies. See, e.g., Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025).

insufficient evidentiary record to permit the Board to find that regulation is not necessary to carry out the policy of the RTP.¹¹ Accordingly, the Board will deny K&O's petition for exemption.

As an initial matter, to the extent that K&O suggests otherwise, the Board confirms that K&O is required to obtain Board authority to renew the Lease. Renewing a previously authorized lease constitutes a transaction that requires Board authority, even where "only an extension in time is involved." 49 C.F.R. § 1180.2(d)(4); see, e.g., C&NC R.R.—Lease Renewal Exemption—Norfolk S. Ry., FD 35529, slip op. at 1 n.1 (STB served June 28, 2011) (noting that 49 C.F.R. § 1180.2(d)(4) applies to lease renewals "where the Board has previously authorized the transaction and only an extension of time is involved" and determining that 49 C.F.R. § 1150.41 applied where a renewed lease by a Class III carrier included a new credit provision and milepost adjustments); N. Plains R.R.—Lease Exemption—Soo Line R.R., FD 35382, slip op. at 2 n.2 (STB served Aug. 6, 2010) (same). The transaction at issue here involves not only an extension of time but also substantive amendments to the Lease.

The RTP provides that it is the policy of the federal government, in regulating the railroad industry, to, among other things, "allow to the maximum extent possible, competition and the demand for services to establish reasonable rates," 49 U.S.C. § 10101(1); "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers," 49 U.S.C. § 10101(4); "foster sound economic conditions in transportation," 49 U.S.C. § 10101(5); and "prohibit predatory pricing and practices, to avoid undue concentrations of market power," 49 U.S.C. § 10101(12). In weighing these policies, this agency has consistently preserved competition where a sale or lease would otherwise reduce a shipper's rail service options from two carriers to one, by requiring trackage rights or other conditions for approval that would preserve the shipper's competitive options. See Keokuk Junction Ry., FD 34974, slip op. at 5 (STB served Dec. 6, 2007). The Board has also expressed concerns about the possible anticompetitive impact of some interchange commitments and has made clear that it will examine interchange commitments on an individual basis to assess whether they are contrary to the public interest. Rev. of Rail Access & Competition Issues—Renewed Pet. of the W. Coal Traffic League (Rev. of Rail Access), EP 575 et al., slip op. at 7-8 (STB served Oct. 30, 2007). The Board requires disclosure of proposed interchange commitments in new transactions to facilitate this review and to allow parties to challenge their usage. Id. at 8.

K&O has not met its burden to show that regulation of the lease is not necessary to carry out the RTP. Despite the Board's directive to provide further evidence and argument on its assertion that this particular interchange commitment would not run afoul of the objectives of the RTP, K&O declined to do so. Instead, K&O only references the RTP regarding efficiencies,

¹¹ K&O contends that the reason the Board is requiring K&O to file a petition or application for authorization of the Lease is how much time has passed since the amendment was executed, citing a footnote in the February 2025 Decision. However, the February 2025 Decision makes clear that it is not only the timing of the authorization sought, but also the concerns raised regarding the potential competitive impact of the interchange commitment that prompted the Board to find that this transaction is not eligible for the class exemption process.

specifically 2, 7, and 15, which concern minimizing federal regulatory control over the rail transportation system, expediting regulatory decisions, and reducing barriers to entry and exit from the industry, respectively. (Pet. 8.) These policy objectives are necessarily implicated in every exemption proceeding – by its very nature, granting an exemption furthers these objectives. However, where, as here, other aspects of the RTP are clearly implicated, such as those concerning competition, the Board must give due weight to those goals as well. See Major Issues in Rail Rate Cases, EP 657 (Sub-No. 1), slip op. at 60 (STB served Oct. 30, 2006) (“In administering ICCTA, the Board must weigh and balance the various elements of the RTP and ‘arrive [] at a reasonable accommodation of the conflicting policies.’”) (quoting Assoc. of Am. R.R. v. STB, 306 F.3d 1108, 1111 (D.C. Cir. 2002)). Accordingly, K&O has not shown that the Lease is consistent with the provisions of the RTP, given the expressed concern about the potential competitive harm that the Lease could cause shippers, including but not limited to Weskan. Nor has K&O demonstrated that there are benefits under other provisions of the RTP that would outweigh K&O’s failure to make this showing.

In Review of Rail Access, the Board determined that the propriety of any given interchange commitment is best considered on a case-by-case basis. The Board emphasized that it would “weigh the benefits of a particular interchange commitment against its potential for harm,” an inquiry considered to be “necessarily fact-specific.” Rev. of Rail Access, EP 575 et al., slip op. at 8. As the Board further explained, when it considers whether a proposed interchange commitment is in the public interest, the Board examines the relevant facts and circumstances surrounding that agreement. Id. at 15; see also Adrian & Blissfield R.R.—Continuance in Control Exemption—Jackson & Lansing R.R., FD 35410, slip op. at 8-10 (STB served Sept. 27, 2011) (analyzing the facts and circumstances surrounding an interchange commitment). The Board also considers whether the interchange agreement is part of a lease or a sale of a line, and it looks at the duration of the restriction. Rev. of Rail Access, EP 575 et al., slip op. at 15. The agency examines the manner in which the interchange commitment discourages interchange with other carriers and the degree to which interchange is effectively foreclosed. Id. And the Board cautioned that parties should expect a higher level of scrutiny on agreements that contain a total ban on interchange with other carriers or continue in perpetuity. Id. Under its case-specific review, the Board examines the particular facts of the case, the competitive conditions before and after the interchange commitment, the nature of the commitment, and its actual or likely effects. Id.

Here, CXR and Weskan have presented evidence that no carloads originating or terminating on the Lines have interchanged with CXR. (See CXR Comments 8.) Given that the interchange commitment was already in effect, this lack of interchanged traffic creates a strong inference that the interchange commitment has effectively foreclosed interchange with CXR. K&O has offered no rebuttal on this point. There is also no evidence in the record regarding whether and to what extent K&O has interchanged traffic on the Lines with carriers other than UP, including BNSF, South Kansas & Oklahoma Railroad, LLC, and Wichita Terminal Association.

Nor have K&O and UP explained why the asset use fee aspect of the interchange commitment, the addition of which seemed to coincide with CXR’s purchase of the Towner Line, is not a penalty that discourages interchange with carriers other than UP. It applies to

every revenue carload that originates or terminates on the Lines interchanged with any carrier other than UP and has no cap or limit. See, e.g., Adrian & Blissfield R.R., FD 35410, slip op. at 10 (finding that the potential competitive impact of an interchange commitment was somewhat mitigated because the lease credit only applied to a finite number of cars). The Board also notes the amount of the asset use fee is significantly more than the tariff rate for the same movement. (Pet. 122-23; Weskan Reply 6 n.6, Apr. 16, 2025.) Moreover, neither K&O nor UP has offered any justification or explanation for the potential duration of the interchange commitment.¹² See, e.g., Adrian & Blissfield R.R., FD 35410, slip op. at 10. The fact that UP has offered to waive the asset use fee for one shipper for an indeterminate length of time does not moot the Board's concerns expressed in the February 2025 Decision, FD 34040, or the June 2025 Order. The Board's public interest inquiry is not limited to the impact of the transaction on a complaining shipper but rather concerns the impact on rail transportation as a whole. See Rev. of Rail Access, EP 575 et al., slip op. at 8 (explaining factors that the Board will consider when assessing whether an interchange commitment is in the public interest). Moreover, neither K&O nor UP has offered any evidence or argument regarding the benefits of this interchange commitment. See id.

In this proceeding, the evidence is not sufficient for the Board to make an informed decision on the merits of K&O's proposed lease and operation of the Lines under 49 U.S.C. § 10502(a). Therefore, K&O's petition for exemption will be denied without prejudice. Given that K&O is seeking after-the-fact authorization, K&O will be directed to file a fully supported petition for exemption or application to obtain authority to renew the Lease and implement any amendments thereto by May 4, 2026.

If K&O seeks authority to renew a version of the Lease that contains an interchange commitment (whether it is the asset use fee presented in this petition or a modified interchange commitment), K&O must disclose the existence of that provision and provide additional related information consistent with the Board's directives in its June 2025 Order. See 49 C.F.R. § 1121.3(d); Rev. of Rail Access, EP 575 et al., slip op. at 16 n.39; see also Disclosure of Rail Interchange Commitments, EP 575 (Sub-No. 1), slip op. at 2 (STB served May 21, 2008) (noting that the disclosure requirements are intended "[t]o facilitate a more informed case-by-case analysis of interchange commitments").

It is ordered:

1. K&O's petition for exemption is denied.
2. Weskan's motion for leave to file surrebuttal denied.
3. K&O is directed to seek authority for its renewal of the Lease as described above by May 4, 2026.

¹² See supra note 7.

4. This decision is effective on its service date.

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