

BEFORE THE
SURFACE TRANSPORTATION BOARD

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EVERGY, INC., EVERGY METRO, INC. and
EVERGY KANSAS CENTRAL, INC.

v.

BNSF RAILWAY COMPANY

**BNSF RAILWAY COMPANY'S
MOTION TO COMPEL**

BNSF Railway Company (“BNSF”) respectfully petitions the Surface Transportation Board (“STB” or “Board”) for an order compelling Evergy, Inc., Evergy Metro, Inc. (“Evergy Metro”), and Evergy Kansas Central, Inc. (“EKC”) (collectively, “Evergy”) to produce information, data, and documents described below in response to BNSF’s written discovery requests. Despite purporting to seek over \$55 million in damages from BNSF, Evergy has failed to disclose or produce (A) its damages figures, methodologies, or calculations, and the accompanying data, inputs, and assumptions; (B) data and documents requested by BNSF regarding other plants in Evergy’s fleet that are relevant to both damages and liability; and (C) data and documents regarding other rail carriers that are relevant to both damages and liability.¹

Each of BNSF’s Interrogatories and Requests that are at issue in this Motion seek information that is relevant to a fact that Evergy has put at issue in this

¹ Counsel for BNSF conferred in good faith with counsel for Evergy in an attempt to obtain the discovery at issue without Board intervention, as described below.

proceeding. BNSF is entitled to take such discovery. BNSF needs the information it requested in order to prepare its reply evidence—and it needs sufficient time to review the requested data, pursue further discovery if needed, and prepare its own calculations and any needed damages modeling. This is particularly so because of the complex nature of damages in cases involving the electricity market, like this one.²

Evergy's position, that it can conceal such information until after the close of discovery, is patently unfair and contrary to basic due process principles. If Evergy employed this tactic in federal court, its damages claims would be excluded in full. And if Evergy is allowed to engage in such tactics here, it will irrevocably harm BNSF. To ensure that BNSF is not unduly prejudiced, has a full and fair opportunity to conduct discovery in this matter, and has adequate time to prepare its reply evidence, BNSF must now request that the Board compel Evergy to disclose the assumptions, calculations and methodology underlying the damages claim it made in the Complaint, disclose whether it is using a production cost model to calculate damages, and produce additional relevant materials on other Evergy plants and rail transportation suppliers. The Board should also extend the discovery and evidence schedule in this matter to account for the delay that has already prevented BNSF from addressing Evergy's damages claims. If Evergy had responded properly in early September with the requested damages information when it was requested, BNSF would have had about six months from then to evaluate the information before filing

² In seeking an order to compel discovery regarding damages, BNSF does not waive any argument or concede in any way that Evergy's allegations regarding alleged violations of the Interstate Commerce Act have merit or that the STB has the authority to award the damages that Evergy seeks in this dispute.

its reply evidence. The Board should now restore that time period by ruling that BNSF's reply evidence will be due six months from the time that Evergy produces the requested damages information.³

I. INTRODUCTION

In its Complaint, Evergy claims that BNSF breached its common carrier obligation in relation to rail service transporting coal from the Southern Powder River Basin ("SPRB") region in Wyoming to Evergy's generating facilities located near Lawrence, KS and Iatan, MO ("Lawrence" and "Iatan"). Specifically, Evergy alleges that in 2022, BNSF violated its obligation to provide adequate rail service on reasonable request and violated its obligation to provide a "safe and adequate car supply" when it did not place Evergy's requested private cars into service. Evergy alleges that, due to the limited number of trainsets, Evergy was required to conserve coal at Iatan and Lawrence and suffered damages.⁴

Evergy generally alleges that it suffered damages of more than \$55 million in lost profits and opportunity costs. *See* Complaint at 3. However, Evergy has yet to provide any discovery whatsoever in this matter supporting its enormous claim. BNSF is entitled to discovery on this complex issue, which is expected to require significant review and analysis once received.

³ For example, if Evergy is ordered to produce the requested damages information on November 1, BNSF's reply evidence would be due six months from that date, or May 1, 2025.

⁴ Evergy also seeks a declaratory order defining BNSF's common carrier obligation with respect to Iatan and Lawrence. BNSF filed a motion to dismiss this request, which remains pending.

Evergy participates in the electricity market in a broad, multistate region known as the Southwest Power Pool (“SPP”). SPP wholesale market electricity prices, and the revenues that power plant owners like Evergy earn, are a complicated function of the hour-by-hour coordinated “dispatch” of all the power plants in the SPP region, as discussed more below and in the accompanying Declaration of BNSF’s expert Paul Hibbard. *See* Ex. 1 at ¶ 7. Evergy alleges that one of SPP’s member obligations is to ensure that market participants maintain a certain level of coal resources to provide SPP with sufficient generating capacity to meet demand. Complaint at 12. If coal resources drop below a certain threshold, Evergy alleges that SPP can require a plant owner to implement “coal conservation measures,” which increase the prices of coal so that the market does not put the owner’s plants into service, resulting in lost revenue. Evergy further alleges that “as a consequence of BNSF’s trainset imitations and service shortfalls, Evergy was compelled to implement coal conservation measures at Iatan and Lawrence” and suffered damages as a result. *Id.* at 12-13. Evergy claims that it: suffered lost profits and opportunity costs that “exceed \$20,000,000 before interest”; “experienced a reduction in the dispatch of electrical power across the system, and incurred additional costs in excess of \$35,000,000 before interest”; and “incurred additional and otherwise avoidable costs.” *See* Complaint at 3. Yet, at present, Evergy has failed to produce to BNSF any evidence supporting the need to conserve coal or any resulting damages to Evergy.

Evergy’s position is that it will submit its damages figures, calculations, and methodologies, including any modeling, in its opening evidence on December 20,

2024. *See* Ex. 3 & Ex. 7 (Evergy's responses to BNSF's first and second set of interrogatories). But to defend against Evergy's damages claim, BNSF will need to assess Evergy's assumptions about the impact of BNSF's alleged violations on the market for electricity in which Evergy participates. For example, complex modeling known as production cost modeling is ubiquitous in the energy market industry to assess these types of economic issues, and Evergy has alluded in its discovery responses to the fact that it has used such a model here. But modeling requires time to assess the underlying assumptions (and possibly seek additional discovery relating to the assumptions being made) and to prepare reply evidence. As a result of the allegations Evergy made, BNSF requires the information it requested from Evergy and therefore promptly sought the information in discovery.

Until BNSF receives Evergy's damages information, BNSF cannot evaluate and test the facts underlying Evergy's damages claim. Evergy has no valid reason to refuse to produce the requested damages information. Evergy even refuses to disclose whether it is using a production cost model or the specific model it is using. This refusal to engage in discovery is highly prejudicial. Discovery is intended to give the defendant an opportunity to probe and understand the allegations made in the Complaint. *See* 49 C.F.R. § 1114.21(a)(1) (allowing discovery of "any matter, not privileged, which is relevant to the subject matter involved in a proceeding."). Evergy made specific allegations in the Complaint about the type and extent of supposed damages it suffered, including specific dollar amounts, and it is not entitled to hold back that information when it is requested in discovery. Evergy is attempting to gain

a litigation advantage by withholding relevant and important information—conduct that would be impermissible in federal court and should not be countenanced by the STB.

II. BACKGROUND

A. Evergy Refuses to Produce Relevant Damages Information

On January 31, 2024, Evergy filed its Complaint with the Board. After the conclusion of an agreed abeyance, BNSF filed a Motion to Dismiss Evergy’s request for a forward-looking declaration of BNSF’s common carrier obligation on May 17, 2024, which remains pending. BNSF filed its Answer to the Complaint on May 20, 2024. The parties met and conferred by email on May 31, 2024 and June 3, 2024 regarding scheduling, and jointly submitted a proposed schedule with a six-month discovery period.

One week after filing its motion to dismiss and answer, on May 24, 2024, BNSF served its First Set of Interrogatories and Requests for Production to Evergy (“BNSF’s First Requests”). Ex. 2. BNSF’s First Requests asked Evergy to “State the total amount of each category of damages You claim to have suffered in connection with Your allegations in the Complaint, and provide a detailed description of the manner in which you calculated these amounts” (Interrogatory No. 4). BNSF’s First Requests also asked Evergy to identify its lost profits, opportunity costs, and other costs that Evergy claims it incurred (Interrogatories Nos. 5-7). And BNSF requested documents concerning Evergy’s La Cygne and Hawthorn plants (Requests for Production No. 38, 39, 43, 48).

Evergy served its Responses and Objections to BNSF's First Requests on June 24, 2024, and refused to answer any of BNSF's damages-related requests. Ex. 3. Evergy took the position that such requests were "premature" and "inconsistent with the STB's schedule for this proceeding," since Evergy "will be submitting its proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, after discovery is completed." Evergy repeatedly cited *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) ("*Minnesota Power*"), a case that (a) does not stand for the proposition that Evergy can refuse to produce damages figures or calculations, and (b) ordered the production of information in that proceeding analogous to what BNSF is seeking here. Evergy also refused to produce information regarding its other plants, contending that such requests "seek[] documents which are wholly irrelevant to the matters at issue in this proceeding."

BNSF sent Evergy a letter outlining deficiencies in Evergy's responses on July 12, 2024, and requesting to meet and confer on the deficiencies. The letter also noted that BNSF would like to discuss "Evergy's position on disclosing damages calculations in advance of opening evidence." Ex. 4 at 1.

BNSF and Evergy met and conferred on July 22, 2024. BNSF thereafter sent an email memorializing the discussion, and noted with respect to damages: "BNSF understands that Evergy does not intend to produce calculations or workpapers related to damages until the submission of Evergy's opening evidence, but that

Evergy will produce other documents and emails pertaining to damages during discovery, to the extent they exist and are not privileged.” Ex. 5 at 2.

Shortly thereafter, on August 15, 2024, BNSF served a Second Set of Interrogatories and Requests for Production (“BNSF’s Second Requests”) that focused on any damages software that Evergy intended to use and models, data, and other documents that BNSF needs to prepare its reply evidence. Ex. 6. BNSF’s Second Requests asked Evergy to identify, “including by name and version number, any modeling software You used to calculate Your estimates of purported damages in Your Complaint and/or anticipate using in Your opening evidence due on December 20, 2024” (Interrogatory No. 34; *see also* RFP No. 89). BNSF asked for related damages information, including: when Evergy used “price adders” (Interrogatory No. 34); models, analyses, and data that Evergy used to quantify opportunity costs (RFP No. 81); and various hourly data (RFP No. 82) and input data (RFP No. 86) that BNSF will require to rebut Evergy’s damages calculations. BNSF also asked for relevant information about Evergy’s other coal-fired generation facilities, including: Evergy’s revenue from these facilities (RFP No. 77), coal inventories (RFP No. 58, 88, 71), inventory modeling and calculations (RFP No. 67, 68), coal nominations (RFP No. 65), and models for quantifying opportunity costs (RFP 81). All of these items are necessary to permit BNSF to review and analyze Evergy’s claimed damages.

Evergy responded on September 16, 2024, Ex. 7, and refused to disclose any modeling software or otherwise provide any damages information.⁵ Instead, Evergy repeatedly stated that “it will be submitting proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, and will produce responsive, non-privileged documents in support of its claims,” and again cited *Minnesota Power*. As of the filing of this motion, Evergy has not yet produced any data whatsoever regarding its alleged damages in this matter. With respect to BNSF’s requests related to information regarding plants other than Iatan and Lawrence, Evergy again objected, stating that such data and documents were not relevant.

Evergy’s failure to produce any of the requested data to date stands in marked contrast to BNSF’s productions. BNSF began producing documents on a rolling basis starting August 14, 2024. BNSF has produced extensive data—including instructional and linkage documents to connect the documents and databases—on BNSF-handled waybill movements and logistics; locomotive events; train events; geographic station point locations; train delays; and coal loadings and unloadings. BNSF has also produced over 4,500 pages of track charts and tariffs.⁶ BNSF is continuing to produce responsive documents on a rolling basis.

⁵ Evergy’s responses were due on September 4, 2024, 20 days after BNSF served them. On September 5, 2024, Evergy informed BNSF that it would provide its responses no later than September 16, 2024.

⁶ Evergy stated in its discovery responses that it will produce a limited amount of information underlying its damages claim but has yet to do so, notwithstanding that the close of discovery is currently a little more than a month away.

B. Evergy's Use of Modeling Software Will Require Extensive Analysis Before BNSF Can Reply.

Evergy's purported damages in this case stem from its alleged inability to burn the volume of coal that it wanted to burn, due to BNSF's alleged violations of the governing statute. Some of Evergy's alleged damages are lost profits and opportunity costs: money that Evergy claims it would have received had it been able to burn the coal it wanted. And some of Evergy's damages are costs that it claims it incurred because of a "reduction in the dispatch of electrical power across the system."

Evergy identified three types of software (and four versions) called production cost models that it uses in the ordinary course of its business. But Evergy did not disclose which software it might use for its damages calculation and did not disavow using such software—suggesting that Evergy intends to use modeling software.

Production cost models are complex and require voluminous data, inputs, and assumptions. BNSF's expert Mr. Hibbard describes such models in his attached declaration. Ex. 1. Generally, to ensure proper vetting of a model's outputs, one must carefully assess its inputs and assumptions and test its results through simultaneous independent modeling of the system, using the same software and the same version as the original model. *See* Ex. 1 ¶ 18. Production cost modeling software is expensive to license, and the licensing process typically takes several weeks. *See* Ex. 1 ¶ 21.

BNSF needs, as part of discovery in this matter, both the underlying data and other facts requested from Evergy, as well as information about any modeling Evergy intends to submit with its evidence, including the outputs, methodologies, calculations, data, inputs, and assumptions used in developing the model.

III. Argument

A. Everygy should be compelled to produce immediately the requested information, and the procedural schedule should be extended to enable BNSF to assess and reply to the requested information.

1. BNSF will be prejudiced and unable to adequately defend itself if Everygy is permitted to conceal its damages figures, methodology, and calculations—including any modeling software and version, inputs, and assumptions—until December 20, 2024.

Everygy is using its opening evidence deadline of December 20, 2024 as an opportunity to conceal its damages figures, methodology, and calculations, including any modeling software, inputs, and assumptions. Everygy has been able to prepare and fine-tune its damages calculations since filing its Complaint eight months ago on January 31, 2024—and Everygy could have begun this process before filing. Everygy has another three months from now until its opening evidence is due.

But once Everygy submits its opening evidence, BNSF will have only two months to prepare its reply evidence, which is due on February 18, 2025. Even if Everygy produces all of BNSF's requested *data* by the close of discovery—and very little information has been produced to date—BNSF will not be in a position to begin evaluating Everygy's damages methodology or preparing its own damages calculations until BNSF receives Everygy's methodology, calculations, and modeling. As noted above, the parties are one month from the discovery deadline, and Everygy has not produced any damages information yet.⁷

⁷ No emails or other documents that BNSF has requested have been produced to date. While Everygy has represented that it will produce this information, BNSF reserves the right to file another motion to compel in the event Everygy fails to satisfy its commitment to produce these additional materials.

If Evergy uses production cost modeling—as its discovery responses suggest may be the case—BNSF’s prejudice will be compounded. BNSF will only learn of Evergy’s production cost modeling software and version on December 20. There is a high likelihood that BNSF will be unable to license that software and have it delivered until after January 1, 2025, given the holidays and the standard timeframe for licensing software. In such a situation, BNSF would be unable to begin *any* production cost modeling until a matter of weeks before its February 18 deadline. And unlike Evergy, BNSF does not have in-house staff who specialize in energy market production cost modeling.

BNSF propounded discovery requests in ample time for Evergy to respond and for BNSF to prepare its reply evidence. Had Evergy provided its damages methodology, model, and data on September 4, 2024, when its responses to BNSF’s Second Request were due, BNSF would have had nearly six months to prepare its own damages methodology, license any necessary software, and prepare any needed modeling before submitting its reply evidence. Instead, Evergy is attempting to use the case schedule to gain an unfair litigation advantage over BNSF.⁸

Evergy’s refusal to produce relevant information is preventing BNSF from testing facts asserted by Evergy. It would be prejudicial to require BNSF to review and assess Evergy’s damages assumptions, including any damages modeling, only

⁸ Evergy may contend that BNSF should be held to the case schedule because BNSF agreed to it. BNSF agreed to the case schedule, with its six-month discovery timetable, with the expectation that Evergy would engage in meaningful reciprocal discovery and not conceal necessary information until its opening evidence. But Evergy’s refusal to disclose required information has left BNSF facing significant risk of prejudice.

after discovery has closed, and with less than two months before BNSF's response is due on February 18, 2025. If Evergy is using production cost models, there are numerous types of modeling software (Evergy uses three different types in its regular business operations). BNSF must wait until Evergy discloses its software and version before BNSF can reasonably seek a license of the software. And because of the numerous inputs and assumptions that go into such a model, BNSF must wait until Evergy discloses its inputs and assumptions before BNSF can begin testing Evergy's damages calculations and preparing its own.

The complexity of energy markets makes it imperative that Evergy comply with its discovery obligations relating to damages. The delay imposed by Evergy's refusal to produce information relating to its damages calculations has already undermined the procedural schedule in this matter and requires an extension so that BNSF can assess Evergy's damages assumptions and, if necessary, conduct further discovery about those assumptions. If Evergy uses production cost modeling, the prejudice to BNSF would be particularly acute. The Board should therefore order that BNSF's reply evidence will be due six months from the time that Evergy discloses the requested damages data (corresponding to the time period that would have existed if Evergy had responded to BNSF's original requests) to give BNSF the ability to adequately test Evergy's assumptions and calculations.

2. Evergy's refusal to produce the requested damages information is directly contrary to the Board's rules and federal litigation practice intended to ensure procedural fairness to defendants.

Evergy's refusal to produce relevant damages information is plainly contrary to the Board's rules. Pursuant to 49 C.F.R. § 1114.21(a)(1), parties may obtain

discovery regarding “any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” The regulation goes on to clarify that the information sought in discovery need not be admissible as evidence “if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 49 C.F.R. § 1114.21(a)(2). A party seeking discovery “is entitled to all relevant and potentially admissible information . . . not only the information that [the responding party] believes is sufficient.” *Seminole Elec. Coop., Inc. v. CSX Transp., Inc.*, NOR 42110, slip op. at 2 (served Feb. 17, 2009).

The case Evergy relies on for the proposition that it need not disclose damages calculations or modeling until its opening evidence, *Minnesota Power*, actually supports BNSF’s request. In *Minnesota Power*, the Board rejected the railroad’s request for an order compelling discovery of documents supporting allegations that (1) the challenged rate exceeded 180% of variable costs; (2) the railroad was market dominant; (3) the challenged rate exceeded maximum reasonable levels; and (4) the railroad’s tariff lacked sufficient specificity to comply with various statutory provision. The Board reasoned that the complainant would not know what its case would entail on these issues until after it obtained information from the railroad in discovery and that the railroad would have sufficient time to respond to the complainant’s opening evidence. *Minnesota Power*, NOR 42038, slip op. at 4. Here, in contrast, the damages Evergy is claiming do not depend on discovery from BNSF, have already been estimated, and, BNSF will not have sufficient time to review

Evergy's modeling, license a model, and perform its own calculations under the current procedural schedule.

In federal court, Evergy would have had to disclose its damages figures and calculations shortly after filing its complaint. Under the Federal Rules of Civil Procedure, at the outset of a case and “without awaiting a discovery request,” each party must provide the other with “a computation of each category of damages claimed by the disclosing party,” and must “make available for inspection and copying ... the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.” Fed. R. Civ. P. 26(a)(1)(A)(iii).

Under Rule 26(a), “[a] plaintiff is to provide more than a lump sum statement of damages sustained.” *Doggett v. Perez*, No. CS-02-282-AAM, 2004 U.S. Dist. LEXIS 29568, at *14 (E.D. Wash. Mar. 4, 2004) (granting defendant's motion to compel). The court in *Doggett* explained that “Plaintiffs must specify the types of general damages claimed, the amounts, and provide the supporting documents or other evidentiary materials on which the computations are based, including materials bearing on the nature and extent of injuries suffered. The same goes for any ‘special damages.’” *Id.* at *15.

Such timely disclosure promotes fairness, avoids surprise, and allows defendants to explore damages issues during discovery—which they are entitled to do. Here, Evergy made specific allegations about damages that BNSF must be afforded the opportunity to explore. There are relevant facts and assumptions

underlying Evergy's claims, and these are a legitimate subject of discovery and must be disclosed for BNSF to perform an assessment of Evergy's claims. Evergy's position that it need not disclose its damages calculations *or even its damages figures* until *after the close of discovery* is inherently unfair, because it prevents BNSF from taking discovery on Evergy's damages positions. *See Am. Realty Tr., Inc. v. Matisse Partners, L.L.C.*, No. 3:00-CV-1801-G, 2002 U.S. Dist. LEXIS 12560, at *17 (N.D. Tex. July 10, 2002) (granting defendants' motion to exclude evidence of damages, and explaining: "The court finds that the plaintiffs made a tactical decision to ambush the defendants by withholding their main claim for damages until after the close of discovery. . . . The plaintiffs should have disclosed their damage claim based on the information available at the beginning of this case.").

Courts routinely compel recalcitrant plaintiffs to produce their damages figures, calculations, and underlying data during the discovery phase. *See, e.g., Doggett*, 2004 U.S. Dist. LEXIS 29568, at *15, 21-22; *Torsh, Inc. v. Audio Enhancement, Inc.*, No. 22-2862, 2023 U.S. Dist. LEXIS 204359, at *22-24 (E.D. La. Nov. 15, 2023) (ordering plaintiff to supplement its answer to interrogatories related to damages).⁹

⁹ *See also Bartley v. Isuzu Motors Ltd.*, 151 F.R.D. 659, 660-61 (D. Col. 1993) (granting defendants' motion for a protective order) (explaining that rationale for providing access to an expert's computer models and simulations is that "[a]ll of the information used [by a party] in generating the computer simulations is relevant to [a party's] challenge of this evidence, not merely the information which conforms to [that party's] theory of the case"; "[w]hen one party seeks to present a computer study, in order to defend against the conclusions that are said to flow from these efforts, the discovering party not only must be given access to the data that represents the computer's work product, but he also must see the data put into the computer, the programs used to manipulate the data and produce the conclusions, and the theory or logic employed by those who planned and executed the experiment.").

And a plaintiff's failure to disclose damages information is prejudicial and typically results in the exclusion of the plaintiff's damages theories at trial. *See, e.g., MKB Constructors v. Am. Zurich Ins. Co.*, No. C13-0611JLR, 2014 U.S. Dist. LEXIS 141374, at *11-13 (W.D. Wash. Oct. 2, 2014) (denying plaintiff's motion for reconsideration of the court's order excluding plaintiff's use at trial of a damages computation that was not disclosed until after the discovery cutoff); *Estate of Gonzalez v. Hickman*, No. ED CV 05-00660 MMM (RCx), 2007 U.S. Dist. LEXIS 84390, at *15-16, 19 (C.D. Cal. June 28, 2007) (excluding Plaintiff's damages evidence; "Plaintiffs' failure to disclose the Estate's damages calculation precluded defendants from taking the necessary discovery and obtaining an appropriate expert opinion.").

These examples are but the tip of the iceberg. *See, e.g., Dynegy Mktg. & Trade v. Multiut Corp.*, 648 F.3d 506, 514-15 (7th Cir. 2011) (holding that district court did not err in excluding damages declaration because exclusion was an appropriate sanction when distributor failed to make timely disclosures of its computation of damages during discovery) ("But even after Dynegy filed several motions to compel and repeatedly sought (and occasionally obtained) sanctions, [defendants/counter-claimants] failed to disclose how they arrived at those numbers. . . . Without an idea of where the defendants' numbers were coming from, Dynegy was unable to investigate and raise arguments against the claimed damages; the district court did not err in concluding the omissions were not harmless."); *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 295-96 (2d Cir. 2006) (affirming district court judgment that

precluded employer from presenting evidence in support of its lost profits claim, where employer had not disclosed the computation of the lost profits); *Bessemer & Lake Erie R.R. Co. v. Seaway Marine Transp.*, 596 F.3d 357, 366-70 (6th Cir. 2010) (affirming the district court’s rejection of plaintiff’s lost-profits claim); *Am. Realty Tr., Inc.*, 2002 U.S. Dist. LEXIS 12560, at *14 (“The court agrees with the defendants . . . that they have been significantly prejudiced by the plaintiffs’ failure to disclose this element of damages, and by their failure to provide the necessary supporting calculations and documentation.”).

If the Board allows Evergy to proceed with its “tactical decision to ambush” BNSF, *see Am. Realty Tr., Inc.*, 2002 U.S. Dist. LEXIS 12560, at *17, BNSF will be severely prejudiced. The Board can remedy this prejudice by ensuring that BNSF has a sufficient amount of time to prepare its damages calculations, including any modeling, after Evergy discloses its damages figures, methodologies, and calculations, including any modeling software, version, inputs, and assumptions. If Evergy had disclosed this information on September 4, 2024, as it should have, BNSF would have had nearly six months to prepare its response. The Board should provide a comparable period. Therefore, if Evergy is permitted to hold off on making its disclosures until December 20, 2024, then BNSF’s reply evidence should be due no sooner than June 20, 2025, with the deadline for BNSF to conduct additional discovery in the matter extended through at least April 25, 2025.

3. The disclosure of damages modeling serves the interest of administrative economy and will lead to a full and complete record.

The Board is well aware of the challenges raised by computer models and has long required parties to make models, the underlying data, calculations, and computer programs available to the Board and other parties to the proceeding. *See, e.g., Canadian Nat'l Ry. Co.—Common Control*, FD 33842, slip op. at 4 & n.12 (Dec. 28, 1999); *Tex. Mun. Power Agency v. Burlington N. Santa Fe Ry.*, 6 S.T.B. 573, 646 (2003). The history and importance of providing opposing parties with access to modeling software in Board proceedings has been reflected in several Board proceedings related to the Rail Traffic Controller (RTC) and the MultiRail modeling programs.

In several stand-alone cost rate cases between 2000 and 2006, the STB was confronted with parties using different models to test proposed operating models. Complainants relied on a proprietary “string-diagram” model and railroads relied on a commercially available RTC model, leading to protracted litigation over the models. *See, e.g., PSC of Colo. D/B/A Xcel Energy v. BNSF Ry.*, 7 S.T.B. 589, 613 (2004); *Otter Tail Power Co. v. BNSF Ry.*, NOR 42071 (STB served Feb. 18, 2005) (clarifying an order that complainants could supplement their string-model diagram model evidence with RTC evidence). Similarly, the Board has had to adjudicate disputes regarding the use of the MultiRail program used in SAC cases to integrate information regarding blocking plans and optimized train schedules. *See E.I. Dupont de Nemours v. Norfolk S. Ry.*, NOR 42125 et al. (STB served Mar. 27, 2013).

The core issue raised by these cases has been ensuring the Board’s ability to develop a record on which it can discharge its obligation to render a reasoned decision. *See AEP Tex. N. v. BNSF Ry.*, NOR 41191 (Sub-No. 1), slip op. at 1 (STB served at Mar. 17, 2006) (“The failure of the parties to present evidence that can be compared and matched up against the other party’s evidence leaves us with an incomplete record.”). Even when both parties use the same computer software, there have been substantial issues raised by modeling and the Board has determined that a technical conference has been necessary to evaluate some evidentiary issues. *Total Petrochems. & Refin. USA, Inc. v. CSX Transp.*, NOR 42121 (STB served May 18, 2015) (ordering a technical conference to discuss the parties’ operating plans and RTC models); *Appl of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp.*, FD 36496, slip op. at 2 (STB served June 10, 2022) (modifying the protective order because one party “will be at a significant disadvantage vis-à-vis [the other parties] in preparing and submitting additional evidence that is responsive to the evidentiary issues raised by the Board”).

B. Evergy should be compelled to produce information concerning Evergy’s other plants.

As noted above, BNSF also requested information about two other Evergy electricity generating facilities that operate in the SPP market alongside Evergy’s Iatan and Lawrence facilities. Such information is necessary to assess Evergy’s claims about the impact of BNSF’s alleged statutory violations on Evergy. BNSF and the Board cannot know the impact on Evergy of the alleged operational limitations at Iatan and Lawrence without knowing how it also affected the revenues at all the

plants in Evergy's portfolio, yet Evergy has refused to produce the requested information.

Evergy's position that its La Cygne and Hawthorn plants are irrelevant to this case, and that it therefore need not produce any data or documents concerning them, is wrong. Evergy's position on relevance is inconsistent with the broad discovery permitted by the STB rules.¹⁰ *See* 49 C.F.R. § 1114.21(a)(1). Because Evergy has claimed damages based on its lost opportunity costs and such data and documents are directly relevant to damages, BNSF is entitled to discovery of them and the Board should compel Evergy to produce them.

Evergy has told its regulators that all of its plants within the regional electricity market, SPP, are interconnected and that they manage their generation at an enterprise-wide level.¹¹ This admission undermines Evergy's position here that La Cygne and Hawthorn are irrelevant and can be considered siloed, separate from Iatan and Lawrence. The workings of the electricity market reflect that what happens at Iatan/Lawrence is relevant to La Cygne/Hawthorn and vice versa. What occurs at one

¹⁰ To the extent Evergy objects based on confidentiality grounds, the Board has entered a protective order that allows Evergy to designate documents and data as confidential or highly confidential.

¹¹ *See* Direct Testimony of Jessica L. Tucker on behalf of Evergy Missouri Metro, Missouri Public Service Commission Case No. ER-2022-0129 (Jan. 2022) at 9: "Evergy Missouri Metro holds fuel inventory because of the uncertainty inherent in both fuel requirements and fuel deliveries. Both fuel requirements and deliveries can be impacted by weather. Fuel requirements can also be impacted by unit availability, both the availability of the unit holding the inventory and the availability of other units in the Evergy Missouri Metro or Southwest Power Pool ("SPP") system" (emphasis added); *id.* at 10: "If a plant is low on fuel, SPP might reduce the operation of that plant to conserve inventory. *This could require other plants under SPP's dispatch to operate more and to use more fuel than they normally would.* One can view this as a transfer of fuel "by wire" to the plant with low inventory. To determine the best inventory level, Evergy Missouri Metro balances the cost of holding fuel against the expected cost of running out of fuel" (emphasis added).

of Evergy's plant and the decisions Evergy makes can increase revenues at another plant. *See* Ex. 1 at ¶ 16 (Hibbard declaration). The price that a power plant owner receives in a given hour is dependent on what the "offer" is for the last (or marginal) power plant turned on (or dispatched) to meet demand in that hour. This offer price becomes the price earned by all power plants operating in that hour. A system change—such as the shutdown of a single power plant—can cause the regional price for electricity in that hour to be higher, with the result that every power plant operating during that hour earns a higher price. Evergy owns many power plants whose revenues would be affected by a change in the wholesale electricity price. BNSF cannot know the impact on Evergy of the alleged operational limitations at two power plants without knowing how it affected the revenues at all the plants in Evergy's portfolio. *Id.* BNSF is entitled to documents and data to determine if Evergy decision to burn less coal at Iatan and Lawrence caused its other plants to earn increased revenues.

Given the close interconnection between revenues at all the plants and electricity dispatch decisions involving all of the plants within the Evergy family, documents concerning those plants are relevant to damages. As but one example, internal Evergy emails may address Evergy's potentially increased revenues at other plants *due to* Evergy burning less coal at Iatan and Lawrence. BNSF is entitled to explore these issues during fact discovery.

If Evergy employs production cost modeling in this proceeding, its model will consider data relating to La Cygne and Hawthorn. Running such a model would

require Evergy to simulate the “as-found” and “but-for” scenarios at its plants to be able to assess the portfolio-wide impact of system changes. *See* Ex. 1 at ¶ 9 (Hibbard declaration). Contrary to Evergy’s position in its discovery responses, in order to be accurate, any damages model Evergy uses must consider La Cygne, Hawthorn, and other plants in its portfolio. Similarly, if BNSF needs to conduct modeling, it will need data concerning these plants.

Finally, if Evergy’s other plants received poor rail service from other rail carriers in 2022, that is also relevant to Evergy’s liability claims in this case. Such data and documents would support BNSF’s position that it acted reasonably in providing common carrier service in 2022. BNSF is entitled to discovery into these issues.

Because of the interrelation between Evergy’s plants and the possibility that Evergy earned greater revenues at other plants *because* Iatan and Lawrence allegedly burned less coal, BNSF is entitled to discovery concerning those other plants. And Evergy’s other coal plants were served by another rail carrier in 2022. This means that BNSF is entitled to discovery concerning those rail carriers’ deliveries of coal to Evergy’s plants. Any rail service that impacts coal stockpile and burn rates at other Evergy plants necessarily affects Evergy’s alleged damages. Additionally, evaluating the reasonableness of BNSF’s actions may require comparison to practices of other railroads and actions taken by other railroads to address circumstances in the transportation market.

IV. CONCLUSION

For the reasons set forth above, the Board should order Evergy to promptly disclose its damages figures, methodology, and calculations, including any software and version, inputs, and assumptions. Evergy's position that it can conceal this information until after the close of discovery is patently unfair and contrary to basic due process safeguards. Federal courts would not allow such tactics, and neither should the Board. If Evergy is allowed to engage in such tactics here, it will irrevocably harm BNSF.

Assuming that Evergy discloses that it will engage in modeling to establish its damages evidence in this proceeding, the Board should adjust the schedule in this proceeding given the fairness considerations and the complexity of the modeling of electricity markets demonstrated above. The Board should grant BNSF no less than six months to prepare its reply evidence following Evergy's disclosure of its damages information and allow ample time for discovery on the methodologies and assumptions used, including any follow on requests necessitated by the information that Evergy ultimately produces.

The Board should also order Evergy to produce discovery regarding its other plants and rail carriers that served those plants. This information is relevant to Evergy's damages and its liability claims and it is a valid subject of discovery.

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Respectfully submitted,

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Counsel for BNSF Railway Company

Dated: September 26, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Tara A. Woods
Attorney for BNSF Railway Company
September 26, 2024

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EVERGY, INC.,
EVERGY METRO, INC. and
EVERGY KANSAS CENTRAL,
INC.
1200 Main Street
Kansas City, Missouri 64105

Complainants,
v.

BNSF RAILWAY COMPANY
2650 Lou Menk Drive
Fort Worth, Texas 76131

Defendant.

Docket No. NOR 42180

Declaration of Paul J. Hibbard

I. INTRODUCTION

1. I am a Principal at Analysis Group, an economic, financial and strategy consulting firm, headquartered in Boston, Massachusetts. I provide consulting services to clients in the areas of energy and environmental markets, regulation, and policy. I have been with Analysis Group for approximately eighteen years, from 2003 to April 2007 and from August 2010 to the present. In between, from April 2007 to June 2010, I served as Chairman of the Massachusetts Department of Public Utilities (“Department”). While Chairman, I also served as a member of the Massachusetts Energy Facilities Siting Board, the New England Governors’ Conference Power Planning Committee, and the NARUC Electricity Committee and Procurement Work Group. I also served as State Manager for the New England States Committee on Electricity and as Treasurer to the Executive Committee of the 41-state Eastern Interconnect States' Planning Council.

2. I previously worked in energy and environmental consulting with Lexecon, Inc. from 2000 to 2003. Prior to working with Lexecon, I worked in state energy and environmental agencies for almost ten years. From 1998 to 2000, I worked for the Massachusetts Department of Environmental Protection on the development and administration of air quality regulations, Clean Air Act State Implementation Plans, and emission control programs for the electric industry with a focus on criteria pollutants and carbon dioxide, as well as various policy issues related to controlling pollutants from electric power generators within the Commonwealth of Massachusetts. From 1991 to 1998, I worked in the Electric Power Division of the Department on cases related to the setting of utility rates, restructuring of the electric industry in Massachusetts and New England, quantification of environmental externalities, integrated resource planning, energy efficiency, utility compliance with state and federal emission control requirements, regional electricity market

structure development, and coordination with other states on electricity and gas policy issues through the staff subcommittee of the New England Conference of Public Utility Commissioners.

II. EVERGY'S DAMAGES CLAIMS AND THE SOUTHWEST POWER POOL ELECTRICITY MARKET

i. Evergy's claim of damages is based on its participation in electricity markets in a broad, multistate region known as the "Southwest Power Pool" or "SPP."

3. Evergy claims that in 2022, it had to limit operations at two of its coal-fired power plants, Iatan and Lawrence, which are located in SPP ("at-issue power plants"). Evergy's claims of damages due to its alleged limits on operation include "lost profits and opportunity costs," "reduction in the dispatch of electrical power across the system," and "costs related to railcar utilization and storage, purchased power requirements, and the reclamation of coal from station inventories."¹

4. Evergy's at-issue power plants are only 2 of 50 power plants owned by or under contract with Evergy in SPP.² There are 967 power plants comprising over 1,561 separate electric generating units in total that participate in the SPP wholesale electricity markets.³

ii. Like Other Electricity Markets, the SPP Wholesale Power Market is Complex

5. Electricity markets are complex and highly regulated. Generally, suppliers "offer" to provide their product (electricity from a power plant) at a certain price based on their costs, and consumers purchase electricity. The price of electricity is a function of where the "supply curve" (of power plant offer prices) meets the "demand curve" (of total consumer demand).

¹ Evergy Inc. et al. v. BNSF Railway Company, Complaint and Petition for Declaratory Order, Before the Surface Transportation Board, Docket No. NOR 42180, January 31, 2024, p. 3.

² Evergy 2023 Form 10-K, pp. 30-32.

³ SPP, "Fast Facts," available at <https://www.spp.org/about-us/fast-facts/>. EIA, "Preliminary Monthly Electric Generator Inventory (based on Form EIA-860M as a supplement to Form EIA-860)," available at: <https://www.eia.gov/electricity/data/eia860m/>.

6. In the SPP electricity market, SPP carries out the economic dispatch of power plants using the offers submitted by suppliers (power plant owners) in every hour of the year, and this “clearing” of the market determines the “clearing price” earned by every power plant owner that is dispatched in each hour. In other words, every power plant owner is paid the clearing price, which is based on the price offered by the last (i.e., most expensive) power plant dispatched by SPP to meet demand in that hour.

7. SPP wholesale market electricity prices and the revenues earned by power plant owners are a complicated function of the minute-by-minute and hour-by-hour coordinated “dispatch” of all power plants in the 14-state SPP region. “Dispatch” refers to the process by which SPP turns on (or turns off) and adjusts the level of power plant output up and down to meet the constantly changing demand for electricity in SPP. SPP dispatches power plants based on cost, moving from lower to higher cost sources as electric demand increases. This is often referred to as “economic dispatch.”⁴

8. The administration of electricity markets is complicated by the consideration of various operational and technical constraints that are included in the economic dispatch algorithm, reflecting the diverse operational attributes of a variety of different kinds of power plants and electric transmission infrastructure across a large, multi-state region.

⁴ SPP, “Fast Facts,” available at <https://www.spp.org/about-us/fast-facts/>.

III. EVERGY'S DAMAGES CLAIMS

i. **Evaluating Evergy's Claim of Damages Requires A Comparison of Evergy's Actual Revenues to Revenues in a But-For World Without Coal Conservation Measures**

9. Evergy alleges that it voluntarily reduced the operation of the generating units of two power plants at issue in this case – Iatan and Lawrence – in order to “conserve coal.”⁵ To understand how reduced operation at a given power plant (or unit) could lead to changed revenues earned by a power plant owner, one needs to understand two scenarios: (1) what the actual wholesale electricity prices in the market were, and thus what revenues were earned at the power plant, in each hour of the year (the “actual historical” or “as found” case), and (2) what the wholesale electricity prices would have been – and thus what revenues would have been earned at the power plant – *but for* the alleged limitations on power plant operations (the “but for” case). Importantly, a material difference in the clearing price between the as-found and but-for cases not only affects the revenues earned at the power plant in question, but affects the revenues earned by *all power plants* in the region.

10. Understanding Evergy's total revenues in the as-found case can be determined based on facts obtained during the discovery phase of litigation. Understanding what Evergy's total revenues would have been in the but for case – i.e., *but for* the alleged operational limitations associated with coal conservation – is far more complicated, and requires a *ceteris paribus* analysis of how markets would have operated had the alleged operational limits on the two power plants not occurred.

⁵ The Iatan Power Plant consists of two separate generating “units,” Iatan Unit 1 and Iatan Unit 2. The Lawrence Power Plant similarly consists of two units, Lawrence Unit 4 and Lawrence Unit 5. Each unit can operate independently of the other (e.g., Iatan Unit 1 can operate when Iatan Unit 2 is shut down, and vice versa), and Evergy submits price offers to SPP separately for each unit at each of its power plants. This is true for most coal and natural gas-fired generators operating in the SPP market.

ii. How to Simulate the But-For World to Determine Damages.

11. This type of *but for* analysis is typically completed using “production cost models” (“PCM”), which are ubiquitous in the energy industry to evaluate the impact of power market changes on power plant operations. Specifically, PCM analyses are used by utilities, regional transmission organizations (like SPP), electricity market participants (like power plant and transmission system owners), policymakers (like state and federal regulatory agencies), and industry practitioners in all states and regions across the country, and in a wide range of regulatory contexts at the state and federal level.

12. PCMs are routinely used to simulate the operation of power systems on a state, regional, and national basis. Specifically, PCMs are used to conduct analysis in the following types of proceedings and studies: litigation, regulatory disputes, market valuation/pro forma analyses for new power plant and transmission system infrastructure assessments, contract disputes, short- and long-term planning studies, and policy analyses.

13. For example, Evergy routinely uses production cost modeling software for the purposes of “generating market price forecasts, resource planning decisions, fuel and interchange budgeting, purchase and sales analysis, etc.”⁶ Specifically, Evergy uses PCM software in its Integrated Resource Plan (“IRP”) filings before the Kansas and Missouri state regulators.⁷ Additionally, production cost modeling software is routinely used for the purposes of interregional

⁶ “Direct Testimony Of Eric T. Peterson On Behalf Of Evergy Missouri West,” Missouri Public Service Commission Case No. ER-2022-0130, January 2022, available at: <https://efis.psc.mo.gov/Document/Display/321828> (“Peterson Testimony”), p. 7.

⁷ Evergy Metro, Integrated Resource Plan, 2023 Annual Update, Missouri Public Service Commission Docket No. EO-2023-0212 - Item 9, June 2023, p. 3 (“Expanded use of PLEXOS software for production cost modeling and capacity expansion, which was first implemented for 2022 IRP”); Evergy Missouri West, Integrated Resource Plan, 2023 Annual Update, Missouri Public Service Commission Docket No. EO-2023-0213 - Item 9, June 2023, p. 3; Evergy Kansas Central and Evergy Metro, 2024 Integrated Resource Plan, Volume 5 Integrated Resource Plan and Risk Analysis, Kansas Corporation Commission Docket No. 24-EKCE-387-CPL, May 2024.

transmission planning by regional power system operators subject to the review and approval of the FERC.⁸

iii. PCMs are Routinely Used to Evaluate the Fundamental Energy Market Dynamics Like Those at Issue in this Proceeding

14. The fundamental question raised by Evergy's damages claims is: how does a specific change in system operations affect electricity market prices and power plant owner revenues, for individual power plants or – more importantly – a company's entire power plant portfolio?

15. PCMs simulate the “dispatch” of all power plants used to meet electricity demand in a region (like SPP) in every hour of every year studied, based on the costs to operate each power plant. This is exactly the decision rule used by system operators (like SPP) to conduct the economic dispatch of power plants to meet total regional electricity demand on an hour-by-hour basis. Importantly, how an electricity market change affects the revenues earned by a single power plant owner (like Evergy) is not limited only to the power plant(s) in question; it is a function of the full market dispatch of all power plants in a given region, and the aggregate impact of the change in power prices on all power plants in the power plant owner's portfolio. For example, as noted earlier, the price received by a power plant operating in a given hour is dependent on what the “offer” is for the last (or marginal) power plant dispatched to meet demand in the hour. This offer price becomes the price earned by all power plants operating in that hour. If a system change (e.g.,

⁸ For example, MISO uses PROMOD IV for the economic evaluation of its Long Rate Transmission Planning (LRTP) portfolio (<https://misocrm.powerappsportals.us/knowledgebase/article/KA-01397/en-us>). SPP uses PROMOD IV for the economic evaluation of its integrated transmission planning process (https://www.spp.org/documents/58416/action%20item%20186%20-%20itp%20economic%20model%20data%20requests_draft.pdf).

the shutdown of a single power plant) results in the regional price for electricity being higher in that hour, every power plant operating that hour earns a higher price.⁹

16. In particular, Evergy's purported coal conservation measures would have affected the revenues earned not only at Iatan and Lawrence, but at all of Evergy's power plants. Evergy owns many power plants – not just the two at issue – whose revenues would be affected by changes in wholesale electricity prices. One cannot know the impact on Evergy of the alleged operational limitations at two power plants without knowing how it affected the revenues at all of the power plants in Evergy's power plant portfolio. For example, if because Iatan and/or Lawrence had to hold back generation due to the alleged need to conserve coal in a given hour, this could have reduced operation at these power plants, and reduced net revenues to those plants.¹⁰ **However, the market impact of coal conservation in SPP could have been an increase in prices due to reduced supply in the market. This would *increase* revenues at every other power plant owned by Evergy and in operation at that time, thus potentially increasing Evergy's total revenues in that hour.**

iv. PCM Analysis is Commonly Employed in the Electric Power Industry and is Also Highly Complex

17. Running a PCM is complex, requires modeling expertise, involves time and expense for licensing of the model and associated data, requires substantial vetting of model inputs and assumptions, and is time consuming. Specifically, PCMs involve complicated code that integrates power plant operational modes and operating limits, power plant fuel prices and variable

⁹ The actual price impact of the change in dispatch between the two scenarios is not exactly the same across the entire SPP region. In reality there can be geographical variations across the SPP system in the magnitude of the price impact associated with the change in dispatch due to physical factors related to limits on the transmission of electricity and the degree of electrical line losses across the system.

¹⁰ The *net* revenue earned by a power plant operating in a given hour is the difference between the market price it receives and its cost to operate.

operating costs, transmission system configuration and individual transmission line operating limits, renewable resource annual generation shape functions, hourly electricity demand on a circuit-by-circuit basis across a large and electrically diverse multi-state region, and fuel availability constraints. All of these data are needed to competently complete a PCM analysis.

18. Importantly, many of the model configuration decisions, system data, and assumptions can have meaningful impacts on model outcomes. It is thus relatively easy for a PCM user to vary inputs to achieve different outcomes. Only competent evaluation of the modeler's inputs and assumptions and the testing of results through simultaneous independent modeling of the system can ensure proper vetting of the model outcomes. For example, in a recent rate case, Evergy staff made a number of adjustments to the default input data accompanying their production cost software, PROMOD IV, in order to tailor the PCM exercise to the analysis in question.¹¹

19. In Evergy's response to BNSF Interrogatory No. 33, it listed three separate PCM software programs that it has used since 2022: "Evergy has used ABB's PROMOD IV for fuel adjustment filings with regulatory agencies and PLEXOS 8.3 and 9.1 for Integrated Resource Planning production cost modeling. Evergy also has used PCI Energy Solutions Market software V.24.1.3.76 to manage generation resources within SPP."¹²

¹¹ These adjustments include: "SPP Purchased Power Administrative Fees, the Renewable Energy Rider ("RER") program, and impacts relating to Nucor Steel Sedalia, LLC ("Nucor"), a non-residential customer of Evergy Missouri West, that should be excluded from the Fuel Adjustment Clause ("FAC"). Adjustments are also made for ancillary services purchases and sales, line loss payments related to the Missouri Iowa Nebraska Transmission ("MINT") line, and SPP Revenue Neutrality Uplift ("RNU") charges." Source: Peterson Testimony, p. 11.

¹² Complainants' Answers and Objections to BNSF's Second Set of Interrogatories, Before the Surface Transportation Board, Docket No. NOR 42180, September 16, 2024, Response to BNSF Interrogatory No. 33.

IV. BNSF REQUIRES ADEQUATE TIME TO RESPOND TO EVERGY'S DAMAGES CALCULATIONS

20. If Evergy chooses to employ PCM software to estimate damages, BNSF would require substantial time to license the common software, ensure data consistency, run the model, and properly evaluate and respond to Evergy's damages claims.

21. First, the time and cost to license PCM software is significant. Each of the three PCM software options listed above requires a separate license. Based on my prior experience, licensing the types of PCM software employed by Evergy is a major expense. Moreover, several weeks are often required by the vendor to arrange user agreements and prepare the model and data for delivery of the PCM software. Unlike Evergy, BNSF is not already set up and pre-licensed to run PCM software. BNSF can only start this process once it understands Evergy's damages calculation method, modeling software, and data used in its damages estimate. By contrast, Evergy already has PCM software licensed and configured, has already vetted key system configuration files, data inputs and assumptions, has been operating PCM software in related contexts for years, and (assuming that Evergy uses PCM to estimate damages) will have completed the exercise of using PCM software to develop its damages estimate in this case.

22. Second, if Evergy chooses to estimate damages using a PCM, it will be of critical importance that BNSF is able to respond using the same PCM software and version, and input configurations. Different versions of PCM software can produce meaningfully different results even when using similar input data. Thus, it is important for BNSF to have enough lead time to license the same modeling software with the same underlying data input configurations as Evergy to estimate damages. Doing so will not only require obtaining the PCM software and base case data, but also developing an understanding through discovery of precisely what data and

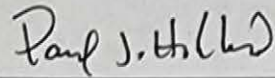
assumptions are being used by Evergy. Doing so is necessary to minimize the disputes over data and assumptions that the STB will need to adjudicate in this case.

23. Third, the time it takes to complete modeling analysis using PCM software is on the order of several months. If Evergy uses a modeling platform, once it is known which one, it will be necessary for BNSF to obtain the same software and data, process the data to ensure it is consistent with planning studies conducted by SPP and Evergy in the region in question, ensure the representation of the system is appropriate for the region being studied (SPP), develop the as-found and but-for cases, run the model and address any modeling issues that arise, generate and process the results, and fully audit the analysis to ensure it is robust and correct.

24. Based on my experience in conducting analyses using various PCM software models, if Evergy uses PCM modeling, BNSF will require a *minimum of six months* (from the time Evergy's damages approach, data sources and assumptions, and analysis is fully explained and understood) to properly evaluate Evergy's claims through investigation of Evergy's power system modeling configuration, data inputs, and assumptions through a full independent modeling of the alleged system changes using a PCM.

VERIFICATION

I, Paul J. Hibbard, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.



Paul J. Hibbard
111 Huntington Avenue, 14th Floor
Boston, MA 02199

Executed: September 26, 2024

EXHIBIT 2

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42180

EVERGY, INC., EVERGY METRO, INC. and
EVERGY KANSAS CENTRAL, INC.

v.

BNSF RAILWAY COMPANY

COMPLAINT AND PETITION FOR
DECLARATORY ORDER

BNSF's First Set of Interrogatories to Evergy, Inc.

Pursuant to 49 C.F.R. § 1114.26, BNSF Railway Company ("BNSF") hereby submits to Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. (collectively, "Evergy") the following interrogatories ("Interrogatories," and each an "Interrogatory") to be responded to by Evergy in writing, under oath, and in accordance with the Definitions and Instructions below, within 20 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board.

DEFINITIONS

1. Except as otherwise provided herein, BNSF hereby incorporates by reference all Definitions set forth in BNSF's First Set of Request for Production of Documents to Evergy.

INSTRUCTIONS

The following Instructions apply to each Interrogatory set forth herein and are deemed incorporated in each Interrogatory:

1. Separate and complete certified responses (or, as the case may be, separate objections) are required for each Interrogatory.
2. In answering these Interrogatories, Evergy must furnish all information, however obtained and including hearsay, that is available to Evergy, that can be located by Evergy's reasonable inquiry, or is subject to Evergy's access or control, including information in Evergy's actual or constructive possession.

3. If Evergy cannot answer an Interrogatory in full, Evergy should respond to the extent possible, specifying the reason(s) for Evergy's inability to respond to the remainder of the Interrogatory and stating the name, business address, residential address, and occupation of any Person who Evergy consulted in an effort to obtain information to respond to the Interrogatory.

4. If Evergy objects to or otherwise declines to set forth in Evergy's response any of the information requested by any part of an Interrogatory, Evergy must set forth the exact basis for the objection with specificity so as to permit the Court to determine the legal sufficiency of Evergy's objection or position, and respond to all parts of the Interrogatory to which Evergy does not object.

5. If Evergy withholds, in whole or in part, any response to any Interrogatory on the basis of privilege or attorney work product doctrine, Evergy must provide the nature of the information so withheld and the privilege or doctrine Evergy claims.

6. Where these Interrogatories request that Evergy identify a Person or Persons, please include for each Person identified the individual's name, job title, and dates of employment, in addition to any other information requested in the Interrogatory.

7. Unless otherwise provided, the relevant time period for these Interrogatories is January 1, 2019 to Present.

8. These Interrogatories are continuing in nature and require supplemental or additional responses.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all Persons with information relevant to any claim or defense in this Action, and Describe each Person's knowledge.

INTERROGATORY NO. 2:

Identify every witness upon whose written or oral testimony You may rely in connection with any motion, hearing or argument in this Action.

INTERROGATORY NO. 3:

Identify any Person whom You intend to call upon to provide expert opinions or testimony in this Action, describe the substance of the expected testimony or opinions, and describe the Person's qualifications to render such opinions.

INTERROGATORY NO. 4:

State the total amount of each category of damages You claim to have suffered in connection with Your allegations in the Complaint, and provide a detailed description of the manner in which you calculated these amounts.

INTERROGATORY NO. 5:

Identify and Describe all lost profits and opportunity costs You claim to have sustained as a result of BNSF's purportedly deficient rail transportation, as alleged in the Complaint's summary.

INTERROGATORY NO. 6:

Identify and Describe all costs you incurred due to "a reduction in the dispatch of electrical power across the system," as alleged in the Complaint's summary.

INTERROGATORY NO. 7:

Identify and Describe all "otherwise avoidable costs" you incurred "related to railcar utilization and storage, purchased power requirements, and the reclamation of coal from station inventories," as alleged in the Complaint's summary.

INTERROGATORY NO. 8:

Identify all customers or potential customers with whom you have had discussions related to the volume of rail service that you receive from BNSF, Identify when those discussions took place, and Describe the substance of those discussions.

INTERROGATORY NO. 9:

Identify all Persons, other than counsel to Evergy who provided information contained in Evergy's responses to these Interrogatories or participated in the preparation of the responses to these Interrogatories.

INTERROGATORY NO. 10:

Describe how You manage Iatan and Lawrence's coal stockpiles, to whom You are required to report stockpile figures, at what levels You must report stockpile figures, at what levels stockpile figures may be deemed insufficient, and what consequences You may face if stockpile figures are insufficient.

INTERROGATORY NO. 11:

Identify all applicable requirements regarding coal stockpiles, whether from the Southern Power Pool (SPP) tariff, market protocols, operating procedures, NERC requirements, or any other authority that SPP or Evergy may have relied on.

INTERROGATORY NO. 12:

Describe any coal conservation measures that Evergy was required to take, including supporting reference to applicable tariff sections, SPP rules, or other applicable rules or authorities.

INTERROGATORY NO. 13:

For each of the past five years (2020, 2021, 2022, 2023, and 2024), Identify each/every load responsible entity (LRE) in the SPP representing Evergy loads in Kansas, Missouri, or elsewhere. For each LRE, Describe the load that each LRE was or is responsible for.

INTERROGATORY NO. 14:

For each LRE identified above, Describe the relationship between each LRE and each Evergy company (Evergy, Inc., Evergy Metro, Inc., Evergy Missouri West Inc., and Evergy Kansas Central, Inc.).

INTERROGATORY NO. 15:

Identify, for each year since 2020, every generating resource owned or operated by any Evergy company, any generating resource with which Evergy has a power purchase agreement, and any other generating or demand-side resource that Evergy (and/or the LRE(s) identified above) has used to demonstrate compliance with SPP Resource Adequacy requirements for any and all Evergy Companies in SPP.

INTERROGATORY NO. 16:

For each LRE and each year identified above, Describe how Iatan and Lawrence were assigned for the purpose of the LRE meeting its demonstration of resource adequacy to SPP.

INTERROGATORY NO. 17:

Explain why You decided to retire Lawrence in 2021, listing all reasons and all individuals involved in the decision.

INTERROGATORY NO. 18:

Explain why You reversed Your decision to retire Lawrence, listing all reasons and all individuals involved in the decision.

INTERROGATORY NO. 19:

Explain why You decided to change rail carriers for Ly Cygne and Hawthorn from BNSF to Union Pacific.

INTERROGATORY NO. 20:

Explain how You determine the figures You list in Your coal transportation declarations, and Identify the individuals typically involved in making this determination.

INTERROGATORY NO. 21:

Explain how You determine the figures You enter into BNSF's Coal Forecasting Tool, and Identify the individuals typically involved in making this determination.

INTERROGATORY NO. 22:

Explain how you determine the amount of coal that is actually tendered for shipment, and Identify the individuals typically involved in making this determination.

INTERROGATORY NO. 23:

Describe Your obligations with respect to resource adequacy requirements (including but not limited to SPP market rules, transmission tariff, market participant agreements, operating procedures and other documents).

INTERROGATORY NO. 24:

Describe the obligations of any Evergy company and any LRE identified above with respect to Resource Adequacy requirements.

INTERROGATORY NO. 25:

For each month in 2022, Identify the amount of coal that You believe BNSF was obligated to move to Iatan and Lawrence.

Dated: May 24, 2024

Respectfully submitted,

/s/ Timothy J. Strafford

Timothy J. Strafford

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Counsel for BNSF Railway Co.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42180

EVERGY, INC., EVERGY METRO, INC. and
EVERGY KANSAS CENTRAL, INC.

v.

BNSF RAILWAY COMPANY

COMPLAINT AND PETITION FOR
DECLARATORY ORDER

BNSF's First Set of Requests for Production of Documents to Evergy, Inc.

Pursuant to 49 C.F.R. § 1114.30, BNSF Railway Company ("BNSF") hereby requests that Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. (collectively, "Evergy") produce all documents responsive to the requests below (the "Requests," and each a "Request") to the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below and within 20 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board.

DEFINITIONS

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. "Action" shall mean Evergy, Inc. Evergy Metro, Inc. and Evergy Kansas Central, Inc. v. BNSF Railway Company, Docket No. NOR 42180, filed before the Surface Transportation Board.

2. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.

3. "Any" shall be construed as "all" and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.

4. "BNSF Railway Company" or "BNSF" shall mean BNSF Railway Company, and its predecessors and successors in interest, as well as the present and

former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

5. “Communication” shall mean every manner or means of disclosure, transfer, or exchange of information (in the form of facts, ideas, inquiries, or otherwise) whether oral, written, visual, or electronically stored, including letters, memoranda, electronic mail, invoices, interviews, discussions, text messages, messages sent via Internet-connected application, telephone conversations, face-to-face meetings, and other similar forms of communication or correspondence.

6. “Complaint” shall mean the Complaint and Petition for Declaratory Order that Every filed before the Surface Transportation Board on January 31, 2024, in the Action.

7. “Concerning” shall mean relating to, referring to, describing, reflecting, evidencing, constituting, or comprising.

8. “Contracts” or “Agreements” is used in the broadest possible sense permissible, and includes agreements, purchase orders, pricing authorities, or contracts in any form, howsoever made, including all documents referred to in the said Contracts or Agreements which set out the rights and obligations of the parties thereunder.

9. “Describe” shall mean to identify the date, sender or author of the requested information, Person or Persons involved, a complete and detailed description and explanation of the facts, circumstances, context, analysis, and any other information relating to the subject matter of the specific Request.

10. “Document” or “Documents” is used in the broadest possible sense permissible and includes, without limitation, all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts, whether printed or recorded (through a sound, video, or other electronic, magnetic, or digital recording system) or reproduced by hand, of the following: letters, correspondence, telegrams, telexes, memoranda, records, text messages, communications via Internet-connected application, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” or similar notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins,

photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations or transcriptions thereof, electronic messages, voice mail messages, interoffice communications, advertising, packaging and promotional materials, material of any sort and in any format maintained or available at any time on the World Wide Web (whether formerly, currently, or both), and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, even if not yet printed out.

11. “Including” shall mean “including, without limitation” and “including but not limited to.”

12. “Identify,” when used in reference to a natural Person, means to state the Person’s: (a) full name; (b) present (or last known) home and business address; (c) present (or last known) occupation, current business affiliation and job title; (d) business affiliation and job title from 2019-present; (e) present (or last known) business phone number (including direct dial number); (f) present (or last known) business and personal email address; (g) present (or last known) mobile telephone number and (h) present (or last known) counsel’s contact information to the extent relevant.

13. “Evergy” shall mean Evergy, Inc., Evergy Metro, Inc. and Evergy Kansas Central, Inc. and their predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all Persons acting or purporting to act on their behalf.

14. “Iatan” refers to the Iatan Generating Station in Missouri.

15. “Lawrence” refers to the Lawrence Energy Center in Kansas.

16. “Hawthorn” refers to the Hawthorn Station in Missouri.

17. “La Cygne” refers to the La Cygne Generating Station in Kansas.

18. “Union Pacific” refers to Union Pacific Railroad, including its predecessors and successors in interest, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices.

19. “Person” or “Persons” shall mean any natural person or any entity including, but not limited to: any corporation, partnership, association, company, estate, business, governmental entity, or agency (public or private), having a separate identification, which is recognized either in law or in fact.

20. “Relating to” as used herein with reference to a subject shall mean both of the following:

- a. Containing, compromising, constituting, stating, setting forth, recording, contradicting, referring to, evidencing or in any way pertaining to, in whole or in part, that subject; and
- b. Describing, discussing, reflecting, interpreting, identifying, concerning, in any way pertaining to, in whole or in part, that subject, or to be in any way logically or factually connected with the matter discussed.

21. “STB” or “Board” shall mean the Surface Transportation Board.

22. “Tariff” shall mean a publication issued by carriers or their agents, showing rates, fares, charges, classifications, or rules of the carrier covering common carrier shipments.

23. “You” and “Your” shall refer to Evergy as defined above.

24. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

The following Instructions apply to each Request set forth herein and are deemed incorporated in each Request:

1. In responding to these Requests, produce all Documents within the possession, custody, or control of Evergy, which includes in Evergy’s actual or constructive possession or control, including, without limitation, Documents, tangible things, and electronically stored information located in personal files, hard copy files, computer systems, smartphones, Internet-enabled messaging applications, networks, servers, CDs, DVDs, memory sticks, zip drives, hard drives, floppy disks, magnetic tapes, and other electronic media.

2. If there is no Document responsive to a particular Request, Evergy shall so state in writing.

3. If any Document or Communication called for by any Request is withheld because Evergy claims that it is privileged or otherwise protected from disclosure, Evergy must identify the Document or Communication so withheld and the privilege or doctrine Evergy claims. In the case of Documents or Communications that Evergy claims are privileged that relate to meetings or to other conversations, all participants in the meeting or conversation shall be identified.

4. Each Document requested herein must be produced in its entirety and without deletion, abbreviation, redaction (except for information that is both non-responsive and commercially sensitive), expurgation, or excisions, regardless of whether Evergy considers the entire Document to be relevant or responsive to these Requests. If Evergy has redacted any portion of a Document for privilege, stamp the word “redacted” on each page of the Document which Evergy has redacted, identifying the basis for such redaction.

5. Evergy must produce entire Documents including all attachments, cover letters, memoranda, and appendices, as well as the file, folder tabs, and labels appended to or containing any produced Documents. Copies that differ in any respect from an original shall be produced separately.

6. If Evergy objects to any Request or part of a Request, set forth the basis for Evergy’s objection with particularity and respond to all parts of the Request to which Evergy does not object.

7. All responsive Documents in existence as of the date of production are to be produced. These Requests are continuing in nature, up to and during the course of any hearing. Any Documents created or obtained after the date of production are to be produced under Evergy’s obligation to supplement Evergy’s production immediately upon the creation or identification of additional responsive Documents.

8. For any responsive Documents that are no longer in existence, indicate the nature of the Document, its approximate date of creation, its author(s), and recipient(s), its approximate date of destruction or disposal, and the reason for and method by which its destruction or disposal took place.

9. All Documents responsive to these Requests shall be produced in accordance with any applicable rules and orders of the Surface Transportation Board, and subject to any agreement negotiated by and between the parties regarding the production of electronically stored information (“ESI”).

10. Electronically stored information should be produced in accordance with the following specifications:

- a. Form of Production. Produce electronically stored information in single-page tiff format (Group IV tiff at 300 dpi) with standard Concordance formatted load file (.dat), including all metadata. Name each tiff file with a unique name matching the Bates number (or similar identifying mark) labeled on the corresponding page. Group every 1000 tiffs into a new folder; do not create a separate folder for each document.
- b. Image Load File. Provide an image load file (Opticon file) that contains document boundaries and page counts.

- c. Document Text. For documents that were originally stored as native electronic files and which do not have redactions, produce the extracted full text (not OCR) from the body of each document in separate document-level *.txt files named for the beginning Bates number of the associated document. Provide OCR text for documents without extracted text available (non-searchable PDFs, etc.). Group 1000 document text files per incrementally named "TEXT" directories, separate from image directories. For documents that were originally stored as native electronic files and which have redactions, produce the OCR text from the redacted image(s) associated with each document, in separate document-level *.txt files named for the beginning Bates number of the associated document. Clearly label any redacted material to show the redactions on the tiff image.
- d. Native Production For Certain File Types. For files that reasonably require viewing in their native format for a full understanding of their content and meaning (including but not limited to certain PowerPoint or other special presentation programs or database files), produce the files in native and tiff formats to the extent it is reasonably possible to do so. Name the produced native file with the Bates number on the first page of the corresponding tiff production of the file / document or on the tiff placeholder document (i.e. "slipsheet"). For Excel files, produce in native format with a slip sheet that includes a Bates number and text indicating "This document was produced in Native format." Group native files within incrementally named "NATIVE" directories; separate from images directories.
- e. Metadata. Produce extracted metadata for each document in the form of a Concordance load file (.dat), including the following fields (where applicable): Bates range begin, Bates range end, Bates family range begin, Bates family range end, email subject line, document subject, file name, email sent date, email sent time, created date, created time, last modified date, last modified time, family date, family time, author, from, to, CC, BCC, custodian, source and/or source folder, file extension, file type, page count, MD5 hash value, and native file path location. Documents should be produced in such fashion as to identify the location of the document and, where applicable, the natural Person in whose possession it was found.

11. Each Request shall be construed according to its own terms, subject to these Definitions and Instructions, unless otherwise specified. Although some of the Requests may overlap with others, no Request should be read as limiting any other.

12. If, in responding to these Requests, You claim any ambiguity in a Request, or in a Definition or Instruction applicable to a Request, such claim shall not be utilized as a basis for refusing to respond, but You shall set forth as part of Your response the language deemed to be ambiguous and the interpretation used in responding to the Request.

13. Unless otherwise provided, the relevant time period for these requests is January 1, 2019 through present.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

All Documents relied on in preparing Your responses to any interrogatories served on you in this Action.

REQUEST FOR PRODUCTION NO. 2:

All Documents on which You may rely to support any of Your claims in this Action.

REQUEST FOR PRODUCTION NO. 3:

All Documents relating to any of Your allegations in the Complaint.

REQUEST FOR PRODUCTION NO. 4:

Organizational charts for Evergy (all entities encompassed within the definition) or Documents sufficient to show the ownership and organizational structure of Evergy, for 2019 to the present.

REQUEST FOR PRODUCTION NO. 5:

Evergy's detailed annual financial statements for 2019 to the present.

REQUEST FOR PRODUCTION NO. 6:

All Documents related to coal market forecasts, including but not limited to forecasts of demand for coal and internal forecasts of coal volumes and revenues for shipments of coal from the Powder River Basin to Iatan and Lawrence, for 2019 to the present.

REQUEST FOR PRODUCTION NO. 7:

All Documents related to market analyses of the coal market, including but not limited to analyses of the profitability of the coal market for Evergy and other coal producers, for 2019 to the present.

REQUEST FOR PRODUCTION NO. 8:

All Documents and Communications related to contract negotiations with BNSF.

REQUEST FOR PRODUCTION NO. 9:

All Documents that support Evergy's contention, in the summary of its Complaint, that "The lost profits and opportunity costs attributable to Iatan and

Lawrence due to BNSF's trainset limitations and related service failures in 2022 exceed \$20,000,000 before interest."

REQUEST FOR PRODUCTION NO. 10:

All data, worksheets, and calculations you used to reach the \$20,000,000 figure cited in the Complaint.

REQUEST FOR PRODUCTION NO. 11:

All Documents that support Evergy's contention, in the summary of its Complaint, that "as a direct result of BNSF's failures to deliver necessary coal volumes to Iatan and Lawrence in 2022, Evergy experienced a reduction in the dispatch of electrical power across the system, and incurred additional costs in excess of \$35,000,000 before interest."

REQUEST FOR PRODUCTION NO. 12:

All data, worksheets, and calculations you used to reach the \$35,000,000 figure cited in the Complaint.

REQUEST FOR PRODUCTION NO. 13:

All Documents that support Evergy's contention, in the summary of its Complaint, that "as a direct result of BNSF's actions and inactions, Complainants incurred additional and otherwise avoidable costs related to railcar utilization and storage, purchased power requirements, and the reclamation of coal from station inventories."

REQUEST FOR PRODUCTION NO. 14:

All Documents that support, refute, or tend to support or refute, Your alleged damages in this Action.

REQUEST FOR PRODUCTION NO. 15:

All Documents and Communications related to the acquisition, including but not limited to the planned acquisition, potential acquisition, inquiries about acquisition, and consideration or analysis of acquisition, of train sets for use in Evergy's coal business.

REQUEST FOR PRODUCTION NO. 16:

All Documents and Communications related to Kansas City Southern's participation in the movement of coal for Evergy.

REQUEST FOR PRODUCTION NO. 17:

All Communications with consultants or third parties regarding coal purchases and/or purchasing rail services for transporting coal.

REQUEST FOR PRODUCTION NO. 18:

All Communications with Evergy's parents, owners or affiliates regarding coal purchases and/or purchasing rail services for transporting coal.

REQUEST FOR PRODUCTION NO. 19:

All Documents related to Evergy's 2021 decision to retire Lawrence.

REQUEST FOR PRODUCTION NO. 20:

All Documents related to Evergy's reversal of its 2021 decision to retire Lawrence.

REQUEST FOR PRODUCTION NO. 21:

All Documents related to how Evergy manages its coal piles at Lawrence and Iatan.

REQUEST FOR PRODUCTION NO. 22:

All Documents related to how Evergy manages its generation decisions.

REQUEST FOR PRODUCTION NO. 23:

All Documents related to Evergy's interactions with regulators.

REQUEST FOR PRODUCTION NO. 24:

Documents sufficient to permit modeling of Your internal costing system.

REQUEST FOR PRODUCTION NO. 25:

For every hour that the operations of Iatan and/or Lawrence were limited (if any of these figures are constant or varied less frequently than on an hourly basis, then so state and specify the values and time periods they were effective), provide Documents sufficient to show the following:

- a. Coal Requests – When it was requested, how much was requested and when it was delivered;
- b. Coal Deliveries – When it was delivered and how much was delivered;

- c. Coal pile amount that Evergy targeted to have available, coal pile amount that requires change in operations, submission to SPP or any other circumstance (including reason for that change) based on the coal pile amount;
- d. Actual coal pile amount at that time;
- e. Iatan and Lawrence heat rate for each unit;
- f. Energy production from each unit;
- g. Actual coal burn;
- h. All data submitted to SPP, including within the market submissions for Iatan and Lawrence that implemented limitations based on coal pile amount, as well as what those limits would have been if not limited by coal pile amount;
- i. Any other method that was used within the market or out of market to implement coal conservation based on coal pile amount;
- j. SPP locational marginal price (LMP) at each unit delivery to transmission system;
- k. Opportunity cost and how it was calculated, including references to publicly available information in its determination;
- l. Any lost revenue and how it was calculated, including references to publicly available information in its determination;
- m. Any Communications to or from SPP to Evergy for Iatan and/or Lawrence related to any restrictions on operations of those units based on coal pile amount, including but not limited to, identifying any SPP requirements from the SPP transmission tariff, market protocols, operating procedures, NERC requirements and/or any other authority that SPP or Evergy relied on to change the operations of Iatan and/or Lawrence based on the coal pile amount; and
- n. Any changes to any of the SPP requirements, including tariff, market protocols, operating procedures, NERC requirements and/or any authority that SPP and/or Evergy relied on to change the operations of Iatan and/or Lawrence based on the coal pile amount.

REQUEST FOR PRODUCTION NO. 26:

Produce all Communications between Evergy and SPP, including those regarding resource adequacy requirements, coal stockpile, coal conservation measures, and any capacity limitations on Evergy.

REQUEST FOR PRODUCTION NO. 27:

For every time the coal pile amount limited the capacity of Iatan or Lawrence, please provide Documents sufficient to disclose:

- i. Time the limitation was determined;
- ii. Amount of capacity limitation for Iatan and/or Lawrence by unit;
- iii. Amount of total capacity of Evergy and the require capacity on Evergy from Evergy and/or SPP;
- iv. Every and each way that Evergy responded to this limitation whether capacity purchases or any other method. Must include the cost of that response; and
- v. All Communications between Evergy and SPP on the matter of these limitations.

REQUEST FOR PRODUCTION NO. 28:

Provide all Documents and Communications regarding the obligation of any Evergy company with respect to resource adequacy requirements (including but not limited to SPP market rules, transmission tariff, market participant agreements, operating procedures and other documents).

REQUEST FOR PRODUCTION NO. 29:

Provide all documentation (including but not limited to SPP market rules, transmission tariff, market participant agreements, operating procedures) related to the responsibilities and obligations of every generating or demand-side resource identified in response to Interrogatory No. 15 with respect to:

- a. Availability of the resource on an hourly, daily, monthly, seasonal, and annual basis;
- b. Demonstration to the SPP of the availability of the resource through any mechanism including, but not limited to, the filing of operational data or other information and any testing/physical demonstration requirements. Please provide the results of any demonstration of unit availability for the

Iatan and Lawrence generating facilities in any year, season or month since 2020;

- c. Submittal of price offers to provide energy in the SPP Integrated Marketplace Day-Ahead and Real-Time Balancing Markets;
- d. Demonstration of Price Offer Components to SPP and the SPP market monitor for any offer made by a resource in the SPP Integrated Marketplace;
- e. Response to unit commitment instructions issued by SPP in the SPP Integrated Marketplace; and
- f. Response to unit dispatch instructions issued by SPP in the SPP Integrated Marketplace.

REQUEST FOR PRODUCTION NO. 30:

Provide all Communications with and Documents provided to the Kansas Corporation Commission (KCC) from 2018 to the present, including but not limited to Integrated Resource Plans, rate filings, and generating unit performance reports.

REQUEST FOR PRODUCTION NO. 31:

Provide all Communications with and Documents provided to the Missouri Public Service Commission (MPSC) from 2018 to the present, including but not limited to Integrated Resource Plans, rate filings, and generating unit performance reports.

REQUEST FOR PRODUCTION NO. 32:

Provide all Documents and Communications that mention, concern, or relate to coal conservation.

REQUEST FOR PRODUCTION NO. 33:

For every hour in the past five years (2020, 2021, 2022, 2023, and 2024) in which Evergy took steps to “conserve coal” at the Iatan or Lawrence generating facilities:

- a. Provide Documents sufficient to disclose all data related to such coal conservation efforts, including but not limited to:
 - i. Each specific hour in which the output of Iatan or Lawrence was curtailed to “conserve coal,”

- ii. The amount by which the output of Iatan or Lawrence was curtailed to “conserve coal,”
- iii. For each single or multi-hour incident during which the output of Iatan or Lawrence was curtailed to “conserve coal,” the resulting quantity of fuel that was preserved, and
- iv. For each single or multi-hour incident during which the output of Iatan or Lawrence was curtailed to “conserve coal”:
 - 1. the price that had been or would have been offered in the SPP Integrated Market to operate the Iatan or Lawrence generating facility,
 - 2. the specific resource or resources that were operated or purchased in place of the reduced output of the Iatan or Lawrence generating facility, and
 - 3. the price of the resource or resources that were operated in place of the Iatan or Lawrence generating facility.
- b. Provide all Communications with SPP related to Evergy’s intention or action to “conserve coal”;
- c. Provide all Communications with the SPP market monitor related to (a) Evergy’s intention or action to “conserve coal” and/or (b) Evergy’s adjustment to offer prices for Iatan or Lawrence generating facilities designed to “conserve coal”;
- d. Provide all Communications with KCC and MSPC related to Evergy’s intention or action to “conserve coal”; and
- e. Provide all Documents related to Evergy’s intention or action to “conserve coal.”

REQUEST FOR PRODUCTION NO. 34:

For every hour beginning 12:00 AM January 1, 2020 to the present, provide Documents sufficient to disclose the following data and information for the Iatan generating facility and the Lawrence generating facility:

- a. All unit status information (including but not limited to in service, out of service, maintenance outage, forced outage, forced derate, etc.);
- b. Available capacity;
- c. Price(s) offered in the SPP Day-Ahead Market;

- d. Commitment of the unit by SPP in the Day-Ahead Market, and whether the unit was committed economically or out of merit;
- e. If committed out of market, the reason for the out of market commitment;
- f. SPP's dispatch of the unit in real-time;
- g. Total quantity of MWh dispatched in real time; and
- h. Locational marginal price earned by the resource.

REQUEST FOR PRODUCTION NO. 35:

Provide for each unit of the Iatan generating resource and the Lawrence generating resource (and total for each facility), for every month from January 2020 through the present, and totaled for each year 2020 - 2023:

- a. All revenues earned through the sales of energy, reserves, capacity, and/or ancillary services through the SPP market or any other sale (e.g., bilateral sales); and
- b. All costs to maintain and operate the facility, including fixed and variable operating costs and all capital expenses (and any associated financing costs). For any significant capital costs, please provide a description of the purpose of the cost incurrence.

REQUEST FOR PRODUCTION NO. 36:

All Documents regarding Your decision to change rail carriers for La Cygne and Hawthorn from BNSF to Union Pacific.

REQUEST FOR PRODUCTION NO. 37:

All Documents and Communications relating to Your contract negotiations with Union Pacific over La Cygne and Hawthorn, including all final contracts.

REQUEST FOR PRODUCTION NO. 38:

Documents sufficient to show Your declarations to Union Pacific for each month in 2022 for La Cygne and Hawthorn.

REQUEST FOR PRODUCTION NO. 39:

Documents sufficient to show the volumes of coal that Union Pacific moved for each month in 2022 for La Cygne and Hawthorn.

REQUEST FOR PRODUCTION NO. 40:

All Documents regarding Your future plans for Lawrence and Iatan.

REQUEST FOR PRODUCTION NO. 41:

All Documents regarding Your assessment, analysis, evaluation, or discussion of the future of mining, shipping, and using coal.

REQUEST FOR PRODUCTION NO. 42:

All Communications with the STB in 2022.

REQUEST FOR PRODUCTION NO. 43:

All filings with any regulator that referenced Lawrence, Iatan, La Cygne, or Hawthorn.

REQUEST FOR PRODUCTION NO. 44:

All Documents and Communications regarding Your investments in railcars, including purchasing or leasing new or used railcars, selling or decommissioning railcars, strategic considerations around these issues, and related Documents and Communications.

REQUEST FOR PRODUCTION NO. 45:

All Documents and Communications regarding Your investments in, evaluation of, and strategy concerning solar and wind power.

REQUEST FOR PRODUCTION NO. 46:

All Documents and Communications related to the requests for coal transportation that You submitted to BNSF.

REQUEST FOR PRODUCTION NO. 47:

All Documents and Communications regarding investments You considered or made in train sets and track infrastructure.

REQUEST FOR PRODUCTION NO. 48:

All Documents and Communications regarding Your staffing and hiring decisions at Iatan, Lawrence, La Cygne, and Hawthorn.

Dated: May 24, 2024

Respectfully submitted,

/s/ Timothy J. Strafford

Timothy J. Strafford

Anthony J. LaRocca

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717 Texas Ave., Suite 2800

Houston, Texas 77002

(713) 221-2309

Counsel for BNSF Railway Co.

EXHIBIT 3

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

	)	
EVERGY, INC.,	)	
EVERGY METRO, INC. and	)	
EVERGY KANSAS CENTRAL, INC.	)	
	)	
Complainants,	)	
	)	
v.	)	Docket No. NOR 42180
	)	
BNSF RAILWAY COMPANY	)	
	)	
Defendant.	)	
	)	

**COMPLAINANTS' ANSWERS AND OBJECTIONS
TO BNSF'S FIRST SET OF INTERROGATORIES**

Pursuant to 49 C.F.R. § 1114.26, Evergy, Inc. ("Evergy"), Evergy Metro, Inc. ("Evergy Metro") and Evergy Kansas Central, Inc. ("EKC") (collectively "Evergy"), hereby provide these answers and objections to the First Set of Interrogatories ("Interrogatories") that BNSF Railway Company ("BNSF") served on May 24, 2024.

A. GENERAL OBJECTIONS

In addition to the specific objections raised below, Evergy objects generally to BNSF's Interrogatories as follows:

1. Evergy objects to the Interrogatories to the extent they are overly broad and/or vague as to the timeframe and/or subject matter, seek information and data that is not relevant to any of the parties' claims or defenses in this matter and are not proportional to the needs of this matter.

2. Evergy objects to each Interrogatory to the extent that it seeks information or documents protected by the attorney-client privilege, the work-product doctrine, and/or any other applicable privilege protecting such documents from discovery. Any disclosure or production of a privileged document or communication is inadvertent and should not be deemed a waiver of any privilege.

3 Evergy objects to Instruction Nos. 1 through 6 to the extent that they seek to impose any requirement or discovery obligation greater than or different from those required by 49 C.F.R. § 1114.

4. Evergy objects to each Instruction, Definition, and Interrogatory as overly broad and unduly burdensome to the extent that it seeks “all information,” “all sources,” “all other means,” “each and every person,” “all other persons,” and the equivalent.

5. Evergy objects to each Instruction, Definition, and Interrogatory as unduly burdensome to the extent it seeks information or documents that are accessible to BNSF from BNSF’s own files, from information or documents in BNSF’s possession, publicly available sources, or from information or documents that Evergy previously made available or provided to BNSF. Responding to such Interrogatories would be unreasonably cumulative and/or duplicative, unduly burdensome, and unnecessarily expensive, and BNSF’s burden in obtaining information or documents sought in such Interrogatories would be no greater than, and likely less than, the burden placed on the Evergy in responding.

6. Evergy objects to disclosing confidential, proprietary, trade secret or commercially sensitive business information and data relating to Evergy, its suppliers,

and/or any other third-party. Notwithstanding this objection, Evergy will produce relevant non-privileged, responsive documents and/or information subject to the governing May 31, 2024 Protective Order.

7. Evergy objects to Instruction Nos. 3, 5, and 6 as overly broad, unduly burdensome, and/or beyond the permissible scope of discovery to the extent they seek to require Evergy to review and identify information: (i) not responsive to the Interrogatories; (ii) not relevant to any claims and/or defenses raised by either party; and (iii) not proportional to the needs of this matter.

8. Evergy further objects to the Interrogatories insofar as they might require the disclosure of testifying and non-testifying expert witnesses that Evergy may have consulted with regarding the claims and defenses in the proceeding. Such disclosure is beyond the scope of permissible discovery and is inconsistent with the timing and scope of evidentiary filings in this proceeding as ordered by the Board.

9. Evergy reserves the right to supplement, amend, or modify these Responses as necessary during the course of Evergy's ongoing discovery efforts.

B. SPECIFIC OBJECTIONS AND ANSWERS

INTERROGATORY NO. 1:

Identify all Persons with information relevant to any claim or defense in this Action, and Describe each Person's knowledge.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to the Interrogatory as overbroad to the extent that the universe of encompassed individuals might include anyone at Evergy, BNSF, or a third party with any knowledge of any matter that gives rise to a claim asserted in Evergy's Complaint. Subject to and without waiver of its objections, Evergy states that, upon information and belief, the following individuals employed by Evergy have knowledge relevant to the claims and defenses in this Action:

Eric Peterson
Director, Analytics & Shared Services
Evergy, Inc.
1200 Main Street
Kansas City, Missouri 64105

Jessica Tucker
Sr. Manager – Fuels & Emissions
Evergy, Inc.
1200 Main Street
Kansas City, Missouri 64105

These individuals are current Evergy employees and can be contacted via Evergy's counsel in this matter.

To the extent that any other personnel at Evergy have knowledge of the claims and defenses in this Action, such knowledge is duplicative of the knowledge of the foregoing Evergy personnel.

INTERROGATORY NO. 2:

Identify every witness upon whose written or oral testimony You may rely in connection with any motion, hearing or argument in this Action.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 8. Evergy objects to this Interrogatory as overbroad to the extent that the universe of encompassed individuals might include anyone at Evergy, BNSF, or any third party that may participate in this Action. Evergy objects to this Interrogatory as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) ("*Minnesota Power*"). Evergy also objects to this Interrogatory to the extent that it seeks information that is in the possession, custody, and control of BNSF that will be the subject of and requested in discovery in this proceeding and is unknown at this stage. Subject to and without waiver of these objections, and without prejudice to its right to reserve judgment on the witnesses that it might present to establish its claims, Evergy states that it will be submitting proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, after discovery is completed, including its use of fact and/or expert witnesses, if any, and it has not made any final decisions on the selections and use of such witnesses to assist in its presentation of evidence.

INTERROGATORY NO. 3:

Identify any Person whom You intend to call upon to provide expert opinions or testimony in this Action, describe the substance of the expected testimony or opinions, and describe the Person's qualifications to render such opinions.

ANSWER:

Evergy incorporates its general objections, including specifically No. 8. *See also, Minnesota Power.* Evergy further states that it will be submitting its proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, after discovery is completed, including in its use of expert witnesses, if any, and it has not yet made any final decisions on the selection or use of such witnesses to assist in its presentation of evidence.

INTERROGATORY NO. 4:

State the total amount of each category of damages You claim to have suffered in connection with Your allegations in the Complaint, and provide a detailed description of the manner in which you calculated these amounts.

ANSWER:

Evergy incorporates its general objections, including specifically No. 8. In addition, Evergy objects to this Interrogatory as premature, as discovery is ongoing and some of the relevant documents and/or data related to the amounts and computation of damages likely are in BNSF's possession. Evergy objects to this Interrogatory as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power.* Subject to and without waiver of these objections, and without prejudice to its rights to reserve judgment on the witnesses it might present to compute damages, Evergy

states that it will be submitting its proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, after discovery is completed, and Evergy will produce non-privileged responsive documents that pertain to the damages that Evergy seeks to recover.

INTERROGATORY NO. 5:

Identify and Describe all lost profits and opportunity costs You claim to have sustained as a result of BNSF's purportedly deficient rail transportation, as alleged in the Complaint's summary.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 4.

INTERROGATORY NO. 6:

Identify and Describe all costs you incurred due to "a reduction in the dispatch of electrical power across the system," as alleged in the Complaint's summary.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 4.

INTERROGATORY NO. 7:

Identify and Describe all "otherwise avoidable costs" you incurred "related to railcar utilization and storage, purchased power requirements, and the reclamation of coal from station inventories," as alleged in the Complaint's summary.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 4.

INTERROGATORY NO. 8:

Identify all customers or potential customers with whom you have had discussions related to the volume of rail service that you receive from BNSF, Identify when those discussions took place, and Describe the substance of those discussions.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to this Interrogatory on grounds of vagueness, as the term “customers” is not defined. Subject to and without waiver of these objections and based on its understanding of the meaning of “customer,” upon information and belief there are no persons or entities that meet the description in this Interrogatory.

INTERROGATORY NO. 9:

Identify all Persons, other than counsel to Evergy who provided information contained in Evergy’s responses to these Interrogatories or participated in the preparation of the responses to these Interrogatories.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Subject to and without waiver of these objections, Evergy states that these Answers to BNSF’s Interrogatories are based on information primarily from and verified by the following persons:

Eric Peterson
Director, Analytics & Shared Services
Evergy, Inc.
1200 Main Street
Kansas City, Missouri 64105

Jessica Tucker
Sr. Manager – Fuels & Emissions
Energys, Inc.
1200 Main Street
Kansas City, Missouri 64105

INTERROGATORY NO. 10:

Describe how You manage Iatan and Lawrence's coal stockpiles, to whom You are required to report stockpile figures, at what levels You must report stockpile figures, at what levels stockpile figures may be deemed insufficient, and what consequences You may face if stockpile figures are insufficient.

ANSWER:

Energys incorporates its general objections, including specifically Nos. 1 and 5. Energys objects to this Interrogatory as vague and overbroad, particularly in its use of the term "consequences." Subject to and without waiver of these objections, coal inventories at Iatan and Lawrence are managed toward the goal of ensuring an adequate reserve supply of coal to meet the generation needs of each station. Coal inventories are reported to the Missouri Public Service Commission and the Southwest Power Pool ("SPP") in accordance with 20 Code of State Regulations (Missouri) § 4240-3.190 3(D) and the SPP Balancing Authority Emergency Operating Plan. Those are publicly available rules and regulations and BNSF's burden in obtaining them would be no greater than the burden placed on Energys in responding.

INTERROGATORY NO. 11:

Identify all applicable requirements regarding coal stockpiles, whether from the Southern Power Pool (SPP) tariff, market protocols, operating procedures, NERC requirements, or any other authority that SPP or Energys may have relied on.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 5. Evergy further objects to this Interrogatory insofar as it asks what “authority” SPP “may have relied on,” as that information is beyond the scope of Evergy’s knowledge. Subject to and without waiver of these objections, SPP’s only requirement applicable to Evergy’s coal inventory is that Evergy maintains an adequate supply of coal fuel to support electric generation. For further answer, Evergy refers BNSF to the Missouri Public Service Commission and SPP rules and regulations cited in the Answer to Interrogatory No. 10.

INTERROGATORY NO. 12:

Describe any coal conservation measures that Evergy was required to take, including supporting reference to applicable tariff sections, SPP rules, or other applicable rules or authorities.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Subject to and without waiver of the foregoing objections, Evergy’s required conservation measures were based on Evergy’s obligation to maintain an adequate supply of coal fuel to support electric generation pursuant to SPP’s Emergency Operations Plan (Section 5) and SPP Planning Criteria 7.1.9. Evergy was required to take coal conservation measures in 2019 as a consequence of the flooding of the Missouri River, which impeded rail deliveries of coal to BNSF-served stations, and in 2022 as a consequence of BNSF’s actions that are the subject of Evergy’s Complaint in this proceeding. Conservation measures included the application of a “price adder” to

Evergy's generation offer prices to SPP with the approval of the SPP market monitor, and the placement of generation limits during "off peak" time periods.

INTERROGATORY NO. 13:

For each of the past five years (2020, 2021, 2022, 2023, and 2024), Identify each/every load responsible entity (LRE) in the SPP representing Evergy loads in Kansas, Missouri, or elsewhere. For each LRE, Describe the load that each LRE was or is responsible for.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Subject to and without waiver of these objections, pursuant to 49 C.F.R. § 1114.26(b), Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

INTERROGATORY NO. 14:

For each LRE identified above, Describe the relationship between each LRE and each Evergy company (Evergy, Inc., Evergy Metro, Inc., Evergy Missouri West Inc., and Evergy Kansas Central, Inc.).

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 13.

INTERROGATORY NO. 15:

Identify, for each year since 2020, every generating resource owned or operated by any Evergy company, any generating resource with which Evergy has a power purchase agreement, and any other generating or demand-side resource that Evergy (and/or the LRE(s) identified above) has used to demonstrate compliance with SPP Resource Adequacy requirements for any and all Evergy Companies in SPP.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 13.

INTERROGATORY NO. 16:

For each LRE and each year identified above, Describe how Iatan and Lawrence were assigned for the purpose of the LRE meeting its demonstration of resource adequacy to SPP.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 13.

INTERROGATORY NO. 17:

Explain why You decided to retire Lawrence in 2021, listing all reasons and all individuals involved in the decision.

ANSWER:

Evergy incorporates its general objections, including specifically No. 4. Evergy objects to this Interrogatory as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “all reasons” and “all individuals involved” with respect to the subject matter of the Interrogatory. Evergy further objects to this Interrogatory insofar as it uses the terms “decided” and “decision” inaccurately as regards the subject matter of the Interrogatory. Subject to and without waiver of these objections, pursuant to 49 C.F.R. § 1114.26(b) Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

INTERROGATORY NO. 18:

Explain why You reversed Your decision to retire Lawrence, listing all reasons and all individuals involved in the decision.

ANSWER:

Evergy incorporates its general objections, including specifically No. 4. Evergy objects to this Interrogatory as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “all reasons” and “all individuals involved” with respect to the subject matter of the Interrogatory. Evergy further objects to this Interrogatory insofar as it uses the terms “reversed” and “decision” inaccurately as regards the subject matter of the Interrogatory. Subject to and without waiver of these objections, pursuant to 49 C.F.R. § 1114.26(b) Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

INTERROGATORY NO. 19:

Explain why You decided to change rail carriers for Ly Cygne and Hawthorn from BNSF to Union Pacific.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1, 6 and 7. Evergy further objects to this Interrogatory on the grounds that it seeks information which is wholly irrelevant to the matters at issue in this proceeding.

INTERROGATORY NO. 20:

Explain how You determine the figures You list in Your coal transportation declarations, and Identify the individuals typically involved in making this determination.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 5. Evergy objects to this Interrogatory as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks information regarding generating stations other than Iatan and Lawrence. Subject to and without waiver of these objections, Evergy bases its annual coal transportation nominations for Iatan and Lawrence on a variety of factors, including but not limited to forecasts of generation demand, estimated railroad cycle times, planned generation unit outages, coal supply availability and the availability of private railcar trainsets, as coal transportation to Iatan and Lawrence historically has taken place using railcars supplied by Evergy at no cost to BNSF. Individuals typically involved in developing nominations include those identified in Evergy's Answer to Interrogatory No. 1.

INTERROGATORY NO. 21:

Explain how You determine the figures You enter into BNSF's Coal Forecasting Tool, and Identify the individuals typically involved in making this determination.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 20. For further answer, the figures entered into BNSF's Coal Forecasting Tool also are determined by considering any limitations that BNSF has placed on the number of Evergy trainsets that will be accepted into service.

INTERROGATORY NO. 22:

Explain how you determine the amount of coal that is actually tendered for shipment, and Identify the individuals typically involved in making this determination.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 20. For further answer, the amount of coal actually tendered for shipment also is determined by considering any limitations that BNSF has placed on the number of Evergy trainsets that will be accepted into service, as well as the timing of BNSF's arrival at coal loading facilities.

INTERROGATORY NO. 23:

Describe Your obligations with respect to resource adequacy requirements (including but not limited to SPP market rules, transmission tariff, market participant agreements, operating procedures and other documents).

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 5. Subject to and without waiver of these objections, pursuant to 49 C.F.R. § 1114.26(b), Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

INTERROGATORY NO. 24:

Describe the obligations of any Evergy company and any LRE identified above with respect to Resource Adequacy requirements.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 23.

INTERROGATORY NO. 25:

For each month in 2022, Identify the amount of coal that You believe BNSF was obligated to move to Iatan and Lawrence.

ANSWER:

Evergy incorporates its general objections, including specifically No. 5. Evergy further states that it previously provided the information sought in this Interrogatory to BNSF in the ordinary course of business.

Respectfully submitted,

By: /s/ Kelvin J. Dowd
Kelvin J. Dowd
Andrew B. Kolesar III
SLOVER & LOFTUS LLP
1828 L Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 347-7170

Counsel for Complainants

Dated: June 24, 2024

	)	
EVERGY, INC.,	)	
EVERGY METRO, INC. and	)	
EVERGY KANSAS CENTRAL, INC.	)	
	)	
Complainants,	)	
	)	
v.	)	Docket No. NOR 42180
	)	
BNSF RAILWAY COMPANY	)	
	)	
Defendant.	)	
	)	

Pursuant to 49 C.F.R. § 1114, Evergy, Inc. (“Evergy”), Evergy Metro, Inc. (“Evergy Metro”) and Evergy Kansas Central, Inc. (“EKC”) (collectively “Evergy”), hereby provide these responses and objections to the First Set of Document Requests for Production (“Requests”) that BNSF Railway Company (“BNSF”) served on May 24, 2024.

In addition to the specific objections raised below, Evergy objects generally to BNSF's Requests as follows:

1. Everyy objects to the Requests to the extent they are overly broad and/or vague as to the timeframe and/or subject matter, seek information and data that is not relevant to any of the parties' claims or defenses in this matter and/or are not proportional to the needs of this matter.

2. Evergy objects to each Request to the extent that it seeks information or documents protected by the attorney-client privilege, the work-product doctrine, and/or any other applicable privilege protecting such documents from discovery. Any disclosure or production of a privileged document or communication is inadvertent and should not be deemed a waiver of any privilege.

3. Evergy objects to Instruction Nos. 1 through 12 to the extent that they seek to impose any requirement or discovery obligation greater than or different from those required by 49 C.F.R. § 1114, or as agreed to by the parties.

4. Evergy objects to each Instruction, Definition and Request as overly broad and unduly burdensome to the extent that it seeks “all documents,” “all information,” “all sources,” “all other means,” “each and every person,” “all other persons,” and the equivalent. Evergy further objects to the extent such Requests seek information, documents, or communications that are not relevant to the claims and/or defenses raised by the parties in this proceeding or are not proportional to the needs of this matter.

5. Evergy objects to each Instruction and Definition as unduly burdensome to the extent it seeks information or documents that are accessible to BNSF from BNSF’s own files, from information or documents in BNSF’s possession, publicly available sources, or from information or documents that Evergy previously made available or provided to BNSF. Responding to such Requests would be unreasonably cumulative and/or duplicative, unduly burdensome, and unnecessarily expensive, and BNSF’s burden in obtaining information or documents sought in such Requests would be no greater than, and likely less than, the burden placed on the Evergy in responding.

6. Evergy objects to disclosing confidential, proprietary, trade secret or commercially sensitive business documents, information, and data relating to Evergy, its suppliers, and/or any other third-party. Notwithstanding this objection, Evergy will produce relevant non-privileged, responsive documents and/or documents or information in accordance with the May 31, 2024 Protective Order in this proceeding.

7. Evergy objects to Instruction Nos. 3, 5, and 6 as overly broad, unduly burdensome, and/or beyond the permissible scope of discovery to the extent they seek to require Evergy to review and produce documents not responsive to the Requests for Production, that are not relevant to any claims and/or defenses raised by either party or are not proportional to the needs of this matter.

8. Evergy further objects to the Requests insofar as they might require the disclosure of testifying and non-testifying expert witnesses that Evergy may have consulted with regarding the claims and defenses in the proceeding. Such Requests go beyond the scope of permissible discovery and are inconsistent with the timing and scope of evidentiary filings in this proceeding, as ordered by the Board.

9. Evergy incorporates by reference its General Objections set forth in its Answers and Objections to BNSF's First Set of Interrogatories.

10. Evergy reserves the right to supplement, amend, or modify these Responses as necessary during the course of Evergy's ongoing discovery efforts.

II. RESPONSES AND SPECIFIC OBJECTIONS:

REQUEST FOR PRODUCTION NO. 1:

All Documents relied on in preparing Your responses to any interrogatories served on you in this Action.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 4, as well as Evergy's Answers and Objections to BNSF's First Set of Interrogatories. Evergy further objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "All Documents" relied on in preparing Evergy's interrogatory responses. Evergy further objects to this Request to the extent that it seeks information, documentation and/or communications that are within the possession, custody or control of BNSF. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents that Evergy identified or that Evergy substantively relied upon in preparing its Answers and Objections to BNSF's Interrogatories.

REQUEST FOR PRODUCTION NO. 2:

All Documents on which You may rely to support any of Your claims in this Action.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power, Inc. v. Duluth, Missabe & Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) ("*Minnesota Power*"). Evergy also

objects to this Request to the extent that it seeks information in the possession, custody or control of BNSF that will be the subject of and requested in discovery in this proceeding and is unknown at this stage. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 3:

All Documents relating to any of Your allegations in the Complaint.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power*. Evergy also objects to this Request to the extent that it seeks information that is in the possession, custody or control of BNSF that will be the subject of and requested in discovery in this proceeding and is unknown at this stage. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 4:

Organizational charts for Evergy (all entities encompassed within the definition) or Documents sufficient to show the ownership and organizational structure of Evergy, for 2019 to the present.

RESPONSE:

Evergy will produce non-privileged documents, or organizational charts, sufficient to show the ownership and organizational structure of Evergy for the requested time period.

REQUEST FOR PRODUCTION NO. 5:

Evergy's detailed annual financial statements for 2019 to the present.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 5. Evergy also objects to the term "detailed" on grounds that it is vague and ambiguous as to the level of detail requested and may also be overbroad, unduly burdensome and not proportional to the needs of this matter. Subject to and without waiver of these objections, Evergy will produce its official annual financial statements for the relevant time period.

REQUEST FOR PRODUCTION NO. 6:

All Documents related to coal market forecasts, including but not limited to forecasts of demand for coal and internal forecasts of coal volumes and revenues for shipments of coal from the Powder River Basin to Iatan and Lawrence, for 2019 to the present.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "All Documents" documents that may be "related" to the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show the coal market forecasts or forecasts for coal demand relied upon by Evergy in determining coal requirements for the Iatan and Lawrence generating stations in the ordinary course of business.

REQUEST FOR PRODUCTION NO. 7:

All Documents related to market analyses of the coal market, including but not limited to analyses of the profitability of the coal market for Evergy and other coal producers, for 2019 to the present.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 1. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter. Evergy also objects to this Request insofar as it seeks irrelevant and/or non-existent information, as Evergy is not a coal producer and does not earn profits from coal sales. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show the coal market analyses relied upon by Evergy during the ordinary course of business.

REQUEST FOR PRODUCTION NO. 8:

All Documents and Communications related to contract negotiations with BNSF.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy specifically objects to this Request to the extent that it seeks information, documentation and/or communications that are within the possession, custody or control of BNSF. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents related to contract negotiations with BNSF to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 9:

All Documents that support Evergy's contention, in the summary of its Complaint, that "The lost profits and opportunity costs attributable to Iatan and Lawrence due to BNSF's trainset limitations and related service failures in 2022 exceed \$20,000,000 before interest."

RESPONSE:

Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "all" documents that support the referenced contention. Evergy further objects to this Request as premature and inconsistent with the STB's schedule in this proceeding. *See Minnesota Power*. Evergy also objects to this Request to the extent that it seeks information that is in the possession, custody or control of BNSF that will be the subject of and requested in discovery in this proceeding and is unknown at this stage. Subject to and without waiver of these objections, Evergy states that it will be submitting proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, after discovery is completed, and will produce responsive, non-privileged documents in support of its claims.

REQUEST FOR PRODUCTION NO. 10:

All data, worksheets, and calculations you used to reach the \$20,000,000 figure cited in the Complaint.

RESPONSE:

Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks "All data, worksheets, and

calculations...”. For further response, Evergy hereby incorporates its Response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 11:

All Documents that support Evergy’s contention, in the summary of its Complaint, that “as a direct result of BNSF’s failures to deliver necessary coal volumes to Iatan and Lawrence in 2022, Evergy experienced a reduction in the dispatch of electrical power across the system, and incurred additional costs in excess of \$35,000,000 before interest.”

RESPONSE:

Evergy hereby incorporates its Response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 12:

All data, worksheets, and calculations you used to reach the \$35,000,000 figure cited in the Complaint.

RESPONSE:

Evergy hereby incorporates its Response to Request for Production No. 10.

REQUEST FOR PRODUCTION NO. 13:

All Documents that support Evergy’s contention, in the summary of its Complaint, that “as a direct result of BNSF’s actions and inactions, Complainants incurred additional and otherwise avoidable costs related to railcar utilization and storage, purchased power requirements, and the reclamation of coal from station inventories.”

RESPONSE:

Evergy hereby incorporates its Response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 14:

All Documents that support, refute, or tend to support or refute, Your alleged damages in this Action.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents” that may “tend to support or refute” Evergy’s damages claims. Evergy further objects to this Request as premature and inconsistent with the Board’s schedule for this proceeding. *See Minnesota Power*. Evergy also objects to this Request to the extent that it seeks information that is in the possession, custody or control of BNSF that will be the subject of and requested in discovery in this proceeding and is unknown at this stage. Subject to and without waiver of these objections, Evergy states that it will be submitting proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, after discovery is completed, and will produce responsive, non-privileged documents in support of its claims.

REQUEST FOR PRODUCTION NO. 15:

All Documents and Communications related to the acquisition, including but not limited to the planned acquisition, potential acquisition, inquiries about acquisition, and consideration or analysis of acquisition, of train sets for use in Evergy’s coal business.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks “All Documents and Communications related to” the subject of the Request. Subject to and without waiver of these objections, Evergy

will produce non-privileged documents sufficient to show plans for and terms of any trainset acquisitions made by Evergy since January 1, 2019.

REQUEST FOR PRODUCTION NO. 16:

All Documents and Communications related to Kansas City Southern's participation in the movement of coal for Evergy.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 6. Evergy objects to this Request on the ground that it seeks documents which are wholly irrelevant to the matters at issue in this proceeding.

REQUEST FOR PRODUCTION NO. 17:

All Communications with consultants or third parties regarding coal purchases and/or purchasing rail services for transporting coal.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 2 and 4. Evergy objects to this Request on the ground that it seeks documents which are wholly irrelevant to the matters at issue in this proceeding insofar as it seeks documents related to the purchase of services from rail carriers other than BNSF. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent reasonably available in a manner consistent with and subject to the Protective Order in this proceeding.

REQUEST FOR PRODUCTION NO. 18:

All Communications with Everygy's parents, owners or affiliates regarding coal purchases and/or purchasing rail services for transporting coal.

RESPONSE:

Everygy incorporates its general objections, including specifically No. 4. Everygy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "All Communications" regarding the subject matter of the Request. Subject to and without waiver of these objections, Everygy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 19:

All Documents related to Everygy's 2021 decision to retire Lawrence.

RESPONSE:

Everygy incorporates its general objections, including specifically No. 4. Everygy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "All Documents" regarding the subject matter of the Request. Everygy further objects to this Request insofar as it uses the term "decision" inaccurately as regards the subject matter of the Request. Subject to and without waiver of these objections, Everygy will produce responsive, non-privileged to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 20:

All Documents related to Everygy's reversal of its 2021 decision to retire Lawrence.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents” regarding the subject matter of the Request. Evergy further objects to this Request insofar as it uses the terms “reversal” and “decision” inaccurately as regards the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 21:

All Documents related to how Evergy manages its coal piles at Lawrence and Iatan.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents” regarding the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 22:

All Documents related to how Evergy manages its generation decisions.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents” regarding the subject matter of the Request. Evergy also objects to the Request’s use of the term “generation decisions” as vague, because it is not defined. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 23:

All Documents related to Evergy’s interactions with regulators.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents” regarding the subject matter of the Request. Evergy further objects to this Request on the ground that it is impossible to provide a substantive Response to the Request as propounded because it would require the review of potentially thousands of pages of documents and/or massive amounts of electronic data. Evergy will consider a narrower and modified version of the Request should BNSF elect to propound one.

REQUEST FOR PRODUCTION NO. 24:

Documents sufficient to permit modeling of Your internal costing system.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 2, 5 and 6. Subject to and without waiver of these objections, Evergy states that the term “internal costing system” is vague, undefined, and does not correlate with any model or system utilized by Evergy. Counsel for Evergy is prepared to confer with counsel for BNSF in an effort to clarify the subject matter of this Request.

REQUEST FOR PRODUCTION NO. 25:

For every hour that the operations of Iatan and/or Lawrence were limited (if any of these figures are constant or varied less frequently than on an hourly basis, then so state and specify the values and time periods they were effective), provide Documents sufficient to show the following:

- a. Coal Requests – When it was requested, how much was requested and when it was delivered;
- b. Coal Deliveries – When it was delivered and how much was delivered;
- c. Coal pile amount that Evergy targeted to have available, coal pile amount that requires change in operations, submission to SPP or any other circumstance (including reason for that change) based on the coal pile amount;
- d. Actual coal pile amount at that time;
- e. Iatan and Lawrence heat rate for each unit;
- f. Energy production from each unit;
- g. Actual coal burn;
- h. All data submitted to SPP, including within the market submissions for Iatan and Lawrence that implemented limitations based on coal pile amount, as well as what those limits would have been if not limited by coal pile amount;
- i. Any other method that was used within the market or out of market to implement coal conservation based on coal pile amount;

- j. SPP locational marginal price (LMP) at each unit delivery to transmission system;
- k. Opportunity cost and how it was calculated, including references to publicly available information in its determination;
- l. Any lost revenue and how it was calculated, including references to publicly available information in its determination;
- m. Any Communications to or from SPP to Evergy for Iatan and/or Lawrence related to any restrictions on operations of those units based on coal pile amount, including but not limited to, identifying any SPP requirements from the SPP transmission tariff, market protocols, operating procedures, NERC requirements and/or any other authority that SPP or Evergy relied on to change the operations of Iatan and/or Lawrence based on the coal pile amount; and
- n. Any changes to any of the SPP requirements, including tariff, market protocols, operating procedures, NERC requirements and/or any authority that SPP and/or Evergy relied on to change the operations of Iatan and/or Lawrence based on the coal pile amount.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 26:

Produce all Communications between Evergy and SPP, including those regarding resource adequacy requirements, coal stockpile, coal conservation measures, and any capacity limitations on Evergy.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “all Communications” regarding

the subject matter of the Request. Evergy further objects to this Request on the ground that it is impossible to provide a substantive Response to the Request as propounded because it would require the review of potentially hundreds of thousands of pages of documents and/or massive amounts of electronic data. Evergy will consider a narrower and modified version of the Request should BNSF elect to propound one.

REQUEST FOR PRODUCTION NO. 27:

For every time the coal pile amount limited the capacity of Iatan or Lawrence, please provide Documents sufficient to disclose:

- i. Time the limitation was determined;
- ii. Amount of capacity limitation for Iatan and/or Lawrence by unit;
- iii. Amount of total capacity of Evergy and the require capacity on Evergy from Evergy and/or SPP;
- iv. Every and each way that Evergy responded to this limitation whether capacity purchases or any other method. Must include the cost of that response; and
- v. All Communications between Evergy and SPP on the matter of these limitations.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 2 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks information on “Every and each” way that Evergy took a particular action and “All Communications” regarding the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 28:

Provide all Documents and Communications regarding the obligation of any Evergy company with respect to resource adequacy requirements (including but not limited to SPP market rules, transmission tariff, market participant agreements, operating procedures and other documents).

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 2 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “all Documents and Communications” regarding the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 29:

Provide all documentation (including but not limited to SPP market rules, transmission tariff, market participant agreements, operating procedures) related to the responsibilities and obligations of every generating or demand-side resource identified in response to Interrogatory No. 15 with respect to:

- a. Availability of the resource on an hourly, daily, monthly, seasonal, and annual basis;
- b. Demonstration to the SPP of the availability of the resource through any mechanism including, but not limited to, the filing of operational data or other information and any testing/physical demonstration requirements. Please provide the results of any demonstration of unit availability for the Iatan and Lawrence generating facilities in any year, season or month since 2020;
- c. Submittal of price offers to provide energy in the SPP Integrated Marketplace Day-Ahead and Real-Time Balancing Markets;

- d. Demonstration of Price Offer Components to SPP and the SPP market monitor for any offer made by a resource in the SPP Integrated Marketplace;
- e. Response to unit commitment instructions issued by SPP in the SPP Integrated Marketplace; and
- f. Response to unit dispatch instructions issued by SPP in the SPP Integrated Marketplace.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Subject to and without waiver of those objections, Evergy states that the information described in the Request is available from documentation maintained by SPP that is publicly available, and that the burden on BNSF in obtaining such documentation would be no greater than the burden placed on Evergy in responding.

REQUEST FOR PRODUCTION NO. 30:

Provide all Communications with and Documents provided to the Kansas Corporation Commission (KCC) from 2018 to the present, including but not limited to Integrated Resource Plans, rate filings, and generating unit performance reports.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “all Communications with and Documents provided to” the named entity. Evergy further objects to this Request on the ground that it is impossible to provide a substantive Response to the Request as propounded because it would require the review of potentially hundreds of thousands of pages of documents and/or massive amounts of

electronic data. Evergy will consider a narrower and modified version of the Request should BNSF elect to propound one.

REQUEST FOR PRODUCTION NO. 31:

Provide all Communications with and Documents provided to the Missouri Public Service Commission (MPSC) from 2018 to the present, including but not limited to Integrated Resource Plans, rate filings, and generating unit performance reports.

RESPONSE:

Evergy hereby incorporates its Response to Request for Production No. 30.

REQUEST FOR PRODUCTION NO. 32:

Provide all Documents and Communications that mention, concern, or relate to coal conservation.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks “all Documents and Communications” regarding the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to describe the coal conservation measures undertaken with respect to Lawrence and Iatan in 2022.

REQUEST FOR PRODUCTION NO. 33:

For every hour in the past five years (2020, 2021, 2022, 2023, and 2024) in which Evergy took steps to “conserve coal” at the Iatan or Lawrence generating facilities:

- a. Provide Documents sufficient to disclose all data related to such coal conservation efforts, including but not limited to:
 - i. Each specific hour in which the output of Iatan or Lawrence was curtailed to “conserve coal,”
 - ii. The amount by which the output of Iatan or Lawrence was curtailed to “conserve coal,”
 - iii. For each single or multi-hour incident during which the output of Iatan or Lawrence was curtailed to “conserve coal,” the resulting quantity of fuel that was preserved, and
 - iv. For each single or multi-hour incident during which the output of Iatan or Lawrence was curtailed to “conserve coal”:
 - 1. the price that had been or would have been offered in the SPP Integrated Market to operate the Iatan or Lawrence generating facility,
 - 2. the specific resource or resources that were operated or purchased in place of the reduced output of the Iatan or Lawrence generating facility, and
 - 3. the price of the resource or resources that were operated in place of the Iatan or Lawrence generating facility.
- b. Provide all Communications with SPP related to Evergy’s intention or action to “conserve coal”;
- c. Provide all Communications with the SPP market monitor related to (a) Evergy’s intention or action to “conserve coal” and/or (b) Evergy’s adjustment to offer prices for Iatan or Lawrence generating facilities designed to “conserve coal”;
- d. Please all Communications with KCC and MSPC related to Evergy’s intention or action to “conserve coal”; and
- e. Provide all Documents related to Evergy’s intention or action to “conserve coal.”

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4.

Evergy objects to this Request as overbroad, unduly burdensome and not proportional to

the needs of this matter, particularly insofar as it seeks information that is unrelated to “coal conservation” as Evergy understands the term. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 34:

For every hour beginning 12:00 AM January 1, 2020 to the present, provide Documents sufficient to disclose the following data and information for the Iatan generating facility and the Lawrence generating facility:

- a. All unit status information (including but not limited to in service, out of service, maintenance outage, forced outage, forced derate, etc.);
- b. Available capacity;
- c. Price(s) offered in the SPP Day-Ahead Market;
- d. Commitment of the unit by SPP in the Day-Ahead Market, and whether the unit was committed economically or out of merit;
- e. If committed out of market, the reason for the out of market commitment;
- f. SPP’s dispatch of the unit in real-time;
- g. Total quantity of MWh dispatched in real time; and
- h. Locational marginal price earned by the resource.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 35:

Provide for each unit of the Iatan generating resource and the Lawrence generating resource (and total for each facility), for every month from January 2020 through the present, and totaled for each year 2020 - 2023:

- a. All revenues earned through the sales of energy, reserves, capacity, and/or ancillary services through the SPP market or any other sale (e.g., bilateral sales); and
- b. All costs to maintain and operate the facility, including fixed and variable operating costs and all capital expenses (and any associated financing costs). For any significant capital costs, please provide a description of the purpose of the cost incurrence.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4.

Evergy objects to this Request as unduly burdensome insofar as it seeks “totaled” amounts that are not maintained by Evergy in the ordinary course of business. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 36:

All Documents regarding Your decision to change rail carriers for La Cygne and Hawthorn from BNSF to Union Pacific.

RESPONSE:

Evergy hereby incorporates its Response to Request for Production No. 16.

REQUEST FOR PRODUCTION NO. 37:

All Documents and Communications relating to Your contract negotiations with Union Pacific over La Cygne and Hawthorn, including all final contracts.

RESPONSE:

Evergy hereby incorporates its Response to Request for Production No. 16.

REQUEST FOR PRODUCTION NO. 38:

Documents sufficient to show Your declarations to Union Pacific for each month in 2022 for La Cygne and Hawthorn.

RESPONSE:

Evergy hereby incorporates its Response to Request for Production No. 16.

REQUEST FOR PRODUCTION NO. 39:

Documents sufficient to show the volumes of coal that Union Pacific moved for each month in 2022 for La Cygne and Hawthorn.

RESPONSE:

Evergy hereby incorporates its Response to Request for Production No. 16.

REQUEST FOR PRODUCTION NO. 40:

All Documents regarding Your future plans for Lawrence and Iatan.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 2, 4 and 6. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents” related to the subject matter. Evergy also objects to the Request’s use of the term “future plans” as vague, because it is not defined. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 41:

All Documents regarding Your assessment, analysis, evaluation, or discussion of the future of mining, shipping, and using coal.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 2, 4 and 6. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents” regarding the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 42:

All Communications with the STB in 2022.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 5. Evergy objects to this Request on the ground that it seeks documents that are a matter of public record, and BNSF’s burden in obtaining them would be no greater than the burden placed on Evergy in responding.

REQUEST FOR PRODUCTION NO. 43:

All filings with any regulator that referenced Lawrence, Iatan, La Cygne, or Hawthorn.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome, not proportional to the needs of this matter, and on the ground of irrelevance insofar as it seeks documents related to generating stations other than Lawrence and Iatan. For further response, Evergy hereby incorporates its Response to Request for Production No. 23.

REQUEST FOR PRODUCTION NO. 44:

All Documents and Communications regarding Your investments in railcars, including purchasing or leasing new or used railcars, selling or decommissioning railcars, strategic considerations around these issues, and related Documents and Communications.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 2 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents and Communications regarding” the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce non-privileged documents sufficient to show its investment in, purchases or leases of, and sales or decommissioning of railcars subsequent to January 1, 2019.

REQUEST FOR PRODUCTION NO. 45:

All Documents and Communications regarding Your investments in, evaluation of, and strategy concerning solar and wind power.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 2 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents and Communications regarding” the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce non-privileged documents sufficient to show its investments in solar and wind power generation facilities since January 1, 2019.

REQUEST FOR PRODUCTION NO. 46:

All Documents and Communications related to the requests for coal transportation that You submitted to BNSF.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 2 and 5. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents that have not previously been provided to BNSF and were created on or after January 1, 2019, to the extent that they are reasonably available.

REQUEST FOR PRODUCTION NO. 47:

All Documents and Communications regarding investments You considered or made in train sets and track infrastructure.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 2 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not

proportional to the needs of this matter, particularly insofar as it seeks “All Documents and Communications” regarding the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce non-privileged documents sufficient to show its investments in trainsets and track infrastructure at the Lawrence and Iatan generating stations since January 1, 2019.

REQUEST FOR PRODUCTION NO. 48:

All Documents and Communications regarding Your staffing and hiring decisions at Iatan, Lawrence, La Cygne, and Hawthorn.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 2 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents and Communications” regarding the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce non-privileged documents sufficient to show staff employed at the Lawrence and Iatan generating stations after January 1, 2019.

Respectfully submitted,

By: /s/ Kelvin J. Dowd
Kelvin J. Dowd
Andrew B. Kolesar III
SLOVER & LOFTUS LLP
1828 L Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 347-7170

Counsel for Complainants

Dated: June 24, 2024

EXHIBIT 4

Timothy Strafford
+1 202 429 8170
tstrafford@Step toe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.step toe.com

Step toe

July 12, 2024

VIA ELECTRONIC TRANSMISSION

Kelvin J. Dowd
Slover & Loftus LLP
1828 L Street NW
Suite 1000
Washington, D.C. 20036

Re: *Evergy, Inc., et al. v. BNSF Railway Company*, STB Docket No. NOR 42180

Dear Counsel:

BNSF Railway Company (“BNSF”) has reviewed Evergy, Inc.’s, Evergy Metro, Inc.’s, and Evergy Kansas Central, Inc.’s (together, “Evergy”) June 24, 2024 Responses and Objections to BNSF’s First Set of Interrogatories and Document Production Requests. BNSF appreciates Evergy’s willingness to provide information and documents responsive to certain requests, but it is BNSF’s position that Evergy’s responses to BNSF’s interrogatories and requests for production require clarification and are largely deficient. As such, BNSF requests a meet and confer to discuss the following specific requests:

- Interrogatory: 19
- Requests for Production: 16, 17, 23, 24, 26, 29, 30, 31, 36-39, 42, and 43

BNSF would also like to discuss the following topics:

- Evergy’s position on disclosing damages calculations in advance of opening evidence;
- Whether Evergy will produce documents related to Boston Consulting Group’s evaluations, studies, and reports in response to Request for Production 17;
- What data Evergy will produce in response to Requests for Production 25, 27, 28, and 33-35; and

- Evergy's expected timetable for the production of documents.

BNSF proposes a meet and confer the week of July 15, 2024. Please let us know several dates and times during that week that work for you.

This letter should not in any way be construed as an acceptance or waiver by BNSF of the sufficiency of the responses. BNSF is continuing to review Evergy's responses and intends to bring any further deficiencies to Evergy's attention.

Sincerely,

/s/ Timothy Strafford

Timothy Strafford

EXHIBIT 5

From: Strafford, Tim
Sent: Wednesday, July 24, 2024 3:48 PM
To: Daniel M. Jaffe; Kelvin Dowd
Cc: Waggoner, Justin; Wolf, Alex; Woods, Tara; Andrew B. Kolesar III; Wolf, Alex
Subject: RE: STB NOR 42180 Discovery Conference

Dan,

Thank you for the clarification.

Regards,
Tim

From: Daniel M. Jaffe <dmj@sloverandloftus.com>
Sent: Wednesday, July 24, 2024 9:36 AM
To: Strafford, Tim <tstrafford@steptoe.com>; Kelvin Dowd <kjd@sloverandloftus.com>
Cc: Waggoner, Justin <jWaggoner@steptoe.com>; Wolf, Alex <awolf@steptoe.com>; Woods, Tara <twoods@steptoe.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>; Wolf, Alex <awolf@steptoe.com>
Subject: [EXTERNAL] RE: STB NOR 42180 Discovery Conference

Tim,

We reviewed the call summary below. Section 1(4) mischaracterizes our discussion. As we explained, depending on BNSF's proposed revisions/narrowing to Requests for Production Nos. 16, 36-39, Everygy would reconsider its present objections. For Request No. 32, we indicated that Everygy would not rule out the production of documents responsive to this request for other stations if they exist.

Sincerely,
Dan



DANIEL M. JAFFE
DMJ@SLOVERANDLOFTUS.COM
SLOVER & LOFTUS LLP

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1828 L ST. N.W., SUITE 1000, WASHINGTON, D.C. 20036
WWW.SLOVERANDLOFTUS.COM

From: Strafford, Tim <tstrafford@steptoe.com>
Sent: Tuesday, July 23, 2024 6:00 PM
To: Kelvin Dowd <kjd@sloverandloftus.com>
Cc: Waggoner, Justin <jWaggoner@steptoe.com>; Wolf, Alex <awolf@steptoe.com>; Woods, Tara <twoods@steptoe.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>; Daniel M. Jaffe

<dmj@sloverandloftus.com>; Wolf, Alex <awolf@steptoe.com>

Subject: RE: STB NOR 42180 Discovery Conference

All,

Thanks for speaking with us yesterday. To make sure we're all on the same page, I'm writing to confirm my understanding of the points we discussed:

1. Evergy's Responses & Objections to BNSF's Discovery Requests
 - a. BNSF will consider providing updated RFPs to Evergy that are narrowed in scope.
 - b. BNSF understands that Evergy does not intend to produce calculations or workpapers related to damages until the submission of Evergy's opening evidence, but that Evergy will produce other documents and emails pertaining to damages during discovery, to the extent they exist and are not privileged.
 - c. We understand that you are working with Evergy to locate and determine the nature of the Boston Consulting Group studies and documents.
 - d. We understand that you will not produce any documents in response to any of our requests concerning plants other than latan and Lawrence.
2. Document Productions
 - a. Both parties agree to produce documents on a rolling basis.
3. ESI Protocol
 - a. The parties are in agreement on the attached ESI protocol.
 - b. In addition, the parties: (1) will not exchange privilege logs in the first instance and (2) will use email threading for productions (to the extent possible).

Please let us know if believe any of this is inaccurate.

Thanks,
Tim

Timothy J. Strafford
Partner

Step toe

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(202) 429-8170 direct | (301) 346-2819 cell | tstrafford@steptoe.com | www.steptoe.com

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From: Kelvin Dowd <kjd@sloverandloftus.com>

Sent: Tuesday, July 16, 2024 9:39 AM

To: Strafford, Tim <tstrafford@steptoe.com>

Cc: Waggoner, Justin <jWaggoner@steptoe.com>; Wolf, Alex <awolf@steptoe.com>; Woods, Tara <twoods@steptoe.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>; Daniel M. Jaffe

<dmj@sloverandloftus.com>; Wolf, Alex <awolf@steptoe.com>

Subject: [EXTERNAL] RE: STB NOR 42180 Discovery Conference

Tim:

2:00pm EDT/1:00 CDT will work on our end. If you'd like to set up the call, please go ahead.

Thanks,

Kelvin

From: Strafford, Tim <tstrafford@steptoe.com>

Sent: Tuesday, July 16, 2024 9:34 AM

To: Kelvin Dowd <kjd@sloverandloftus.com>

Cc: Waggoner, Justin <jWaggoner@steptoe.com>; Wolf, Alex <awolf@steptoe.com>; Woods, Tara

<twoods@steptoe.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>; Daniel M. Jaffe

<dmj@sloverandloftus.com>; Wolf, Alex <awolf@steptoe.com>

Subject: RE: STB NOR 42180 Discovery Conference

Kelvin,

Thank you for your reply. We would be available on Monday, July 22, any time between 2:00 – 6:00 pm EDT / 1:00 - 5:00 pm CDT. We think a half-hour slot would be sufficient for our discussion. Let us know if you have availability in that window.

Thanks,

Tim

Timothy J. Strafford

Partner

Steptoe

Steptoe LLP | 1330 Connecticut Avenue, NW | Washington, DC 20036

(202) 429-8170 direct | (301) 346-2819 cell | tstrafford@steptoe.com | www.steptoe.com

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From: Kelvin Dowd <kjd@sloverandloftus.com>

Sent: Tuesday, July 16, 2024 7:15 AM

To: Strafford, Tim <tstrafford@steptoe.com>

Cc: Waggoner, Justin <jWaggoner@steptoe.com>; Wolf, Alex <awolf@steptoe.com>; Woods, Tara

<twoods@steptoe.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>; Daniel M. Jaffe

<dmj@sloverandloftus.com>

Subject: [EXTERNAL] STB NOR 42180 Discovery Conference

Good morning, Tim:

We received your letter of July 12, and are agreeable to a meet-and-confer regarding the discovery issues that your outlined. Unfortunately, we are not able to schedule a call this week. Are there times on July 22 that work for you and your team? Please let us know.

Best regards,

Kelvin

KELVIN J. DOWD
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202.454.4414

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EXHIBIT 6

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42180

EVERGY, INC., EVERGY METRO, INC. and
EVERGY KANSAS CENTRAL, INC.

v.

BNSF RAILWAY COMPANY

COMPLAINT AND PETITION FOR
DECLARATORY ORDER

BNSF's Second Set of Interrogatories to Evergy, Inc.

Pursuant to 49 C.F.R. § 1114.26, BNSF Railway Company ("BNSF") hereby submits to Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. (collectively, "Evergy") the following interrogatories ("Interrogatories," and each an "Interrogatory") to be responded to by Evergy in writing, under oath, and in accordance with the Definitions and Instructions below, within 20 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board.

DEFINITIONS

1. Except as otherwise provided herein, BNSF hereby incorporates by reference all Definitions set forth in BNSF's First Set of Requests for Production of Documents to Evergy.

INSTRUCTIONS

1. Except as otherwise provided herein, BNSF hereby incorporates by reference all Instructions set forth in BNSF's First Set of Interrogatories to Evergy.

INTERROGATORIES

INTERROGATORY NO. 26:

Identify and Describe any and all instances in which Evergy decided to buy power in 2022, including the reason why Evergy made the purchase.

INTERROGATORY NO. 27:

Identify and Describe any and all instances in which Evergy used a “price adder,” opportunity cost, fuel supply limitation, or transportation limitation in 2022, and explain if and how the price adder or other limitation impacted Evergy’s profits.

INTERROGATORY NO. 28:

Identify each rail car and/or train set owned or leased by Evergy placed out of service since 2019, including the start and end date.

INTERROGATORY NO. 29:

Identify all instances in which BNSF refused to accept Evergy trainsets prior to January 1, 2021.

INTERROGATORY NO. 30:

Identify the total number of Evergy trainsets for all BNSF-served plants in service by month and year on BNSF over the past two decades (related to Complaint paragraph 12).

INTERROGATORY NO. 31:

In paragraph 12 of the Complaint, Evergy alleges that “over at least the past two (2) decades,” “a total of seven (7) unit trainsets of Complainants’ private railcars were needed to meet Complainants’ coal transportation service needs for Iatan and Lawrence during the months of March through May and October through November, and a total of eight (8) trainsets were required during the months of June through September and December through February.” Identify and Describe all instances in the past two decades in which any of the trainsets in service for Iatan and Lawrence delivered coal to any plants other than Iatan and Lawrence. For each instance, Identify and Describe the timeframe in which the trainset delivered coal to other plants, the other plant or plants served, and by how many trainsets.

INTERROGATORY NO. 32:

Identify all instances from January 1, 2019 to present in which Iatan or Lawrence experienced an outage or were otherwise unable to receive deliveries of coal. For each instance, identify the cause of the outage/inability to receive coal and the start and end time of the outage/inability to receive coal.

INTERROGATORY NO. 33:

Identify, including by name and version number, any production cost modeling software You used for the purposes of managing Your generator fleet, supporting Integrated Resource Planning filings, or any other regulatory planning processes in 2022, 2023, or 2024.

INTERROGATORY NO. 34:

Identify, including by name and version number, any modeling software You used to calculate Your estimates of purported damages in Your Complaint and/or anticipate using in Your opening evidence due on December 20, 2024.

INTERROGATORY NO. 35:

For any third-party power sales, please explain the extent to which such sales resulted in a reduction to energy bills paid by Your customers or an increase in net operating income for Evergy.

Dated: August 15, 2024

Respectfully submitted,

/s/ Timothy J. Strafford

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42180

EVERGY, INC., EVERGY METRO, INC. and
EVERGY KANSAS CENTRAL, INC.

v.

BNSF RAILWAY COMPANY

COMPLAINT AND PETITION FOR
DECLARATORY ORDER

BNSF's Second Set of Requests for Production of Documents to Evergy, Inc.

Pursuant to 49 C.F.R. § 1114.30, BNSF Railway Company ("BNSF") hereby requests that Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. (collectively, "Evergy") produce all documents responsive to the requests below (the "Requests," and each a "Request") to the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, or via electronic delivery means, in accordance with the Definitions and Instructions below and within 20 days or such other time as may be agreed upon by the parties or ordered by the Surface Transportation Board.

DEFINITIONS

Except as otherwise provided herein, BNSF hereby incorporates by reference all Definitions set forth in BNSF's First Set of Requests for Production of Documents to Evergy.

The following Definitions apply to each Request contained herein and are deemed incorporated in each Request.

1. "Kansas City Southern" refers to Kansas City Southern Railway Company, including its predecessors and successors in interest, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices.
2. "Market Monitor" means the Market Monitor at Southwest Power Pool.
3. "Recording" shall mean any written, audio, or other record.
4. "SPP" means Southwest Power Pool.

5. “Jeffrey” refers to the Jeffrey Energy Center in Kansas.

6. “Price adder” means the coal conservation measure identified in your response to BNSF’s Interrogatory No. 12.

INSTRUCTIONS

Except as otherwise provided herein, BNSF hereby incorporates by reference all Instructions set forth in BNSF’s First Set of Requests for Production of Documents to Evergy.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 49:

All Documents and Communications between Evergy and SPP, including the SPP Market Monitor, relating to Evergy adjusting its bid price or withholding generation capacity. For each instance of adjusted bid prices or generation capacity withholding, please provide Documents sufficient to show (1) the date, time, and duration of the requested reduction in output; (2) a copy of the document, email, or telephone log through which the request was made; and (3) documentation of any response of the asset owner.

REQUEST FOR PRODUCTION NO. 50:

All Documents and Communications between Evergy and SPP relating to rail transportation, including any contracts or agreements.

REQUEST FOR PRODUCTION NO. 51:

All audio or video recordings of Communications between Evergy and SPP relating to rail transportation, coal stockpiles, coal conservation, changes to Evergy’s bid price, or withholding of generation capacity.

REQUEST FOR PRODUCTION NO. 52:

All Documents and Communications relating to any instances in which Evergy purchased power in 2022 instead of running one of its coal-fired power plants, including agreements for the purchase of power and data reflecting the amount and cost of each megawatt of purchased power.

REQUEST FOR PRODUCTION NO. 53:

All Documents and Communications relating to Evergy’s use of a price adder, opportunity cost, fuel supply limitation, or transportation limitation in bids to SPP in 2022.

REQUEST FOR PRODUCTION NO. 54:

Documents and Communications sufficient to show all instances when Iatan and Lawrence experienced an outage, including, but not limited to, identifying the start and end time of each outage and the cause.

REQUEST FOR PRODUCTION NO. 55:

Documents and Communications sufficient to show all instances when Iatan and Lawrence were unable to receive deliveries of coal, including, but not limited to, identifying the start and end time of each such period and the cause.

REQUEST FOR PRODUCTION NO. 56:

All Documents and Communications relating to rail unloading time at each of Evergy's coal plants, including, but not limited to, any consideration of options to improve rail unloading time.

REQUEST FOR PRODUCTION NO. 57:

All Documents and Communications relating to the statement that "[o]n information and belief, any crew or power shortages that BNSF may have experienced in 2022 were the consequences of deliberate operational decisions made and policies adopted by BNSF, prioritizing perceived short-term operating cost savings over service to rail shippers and energy consumers."

REQUEST FOR PRODUCTION NO. 58:

All Documents and Communications relating to coal stockpiles at each of Evergy's coal plants, including, but not limited to, daily coal inventory or stockpile volume for each day from January 1, 2019 to present (including tons and heat content), monthly coal inventory or stockpile volume for each month from January 1, 2019 to present, adequacy of coal stockpiles, configuration of the coal stockpiles, and consideration of options to increase storage capacity for coal stockpiles.

REQUEST FOR PRODUCTION NO. 59:

All Documents and Communications relating to claims or possible claims of liquidated damages relating to rail transportation of coal since 2019, including, but not limited to, any fees or liquidated damages paid to rail carriers if minimum volumes were not met.

REQUEST FOR PRODUCTION NO. 60:

Documents sufficient to identify the amount of coal Evergy was contractually committed to purchase by origin mine in each year since 2019.

REQUEST FOR PRODUCTION NO. 61:

All Documents related to the quality and adequacy of rail service provided by BNSF.

REQUEST FOR PRODUCTION NO. 62:

All Documents related to the quality and adequacy of rail service provided by rail carriers other than BNSF, including but not limited to Union Pacific and Kansas City Southern.

REQUEST FOR PRODUCTION NO. 63:

All Documents related to the impact of changes in the price of natural gas on the generation of electricity by coal-fired units at Evergy's plants.

REQUEST FOR PRODUCTION NO. 64:

All Documents related to the impact of the availability of wind power on the generation of electricity by coal-fired units at Evergy's plants.

REQUEST FOR PRODUCTION NO. 65:

All Documents and Communications relating to coal nominations that Evergy submitted to rail carriers for all of Evergy's coal plants.

REQUEST FOR PRODUCTION NO. 66:

All written agreements with former Evergy employee Eric Peterson.

REQUEST FOR PRODUCTION NO. 67:

All Documents relating to Evergy's calculations and modeling for its inventory at its coal plants, including under the Electric Power Research Institute's Utility Fuel Inventory Model ("UFIM"), as discussed in Jessica Tucker's February 2024 testimony before the Missouri Public Service Commission, available at <https://efis.psc.mo.gov/Document/Display/770175>.

REQUEST FOR PRODUCTION NO. 68:

The UFIM model that Evergy used at each of its coal plants.

REQUEST FOR PRODUCTION NO. 69:

All Documents relating to hedging and the impact of hedging (as related to coal and coal supply) on Evergy's power purchases.

REQUEST FOR PRODUCTION NO. 70:

All Documents relating to any differences in volumes between coal nominations or Coal Forecasting Tool (CFT) entries that Evergy submitted to railroads and the volume needs at Evergy's plants.

REQUEST FOR PRODUCTION NO. 71:

All Documents relating to Evergy's decisions to burn coal inventory at its plants.

REQUEST FOR PRODUCTION NO. 72:

All Documents and Communications sufficient to identify each rail car and/or train set owned or leased by Evergy placed out of service since 2019, including the start and end date.

REQUEST FOR PRODUCTION NO. 73:

All Documents and Communications relating to Evergy's claim in paragraph 9 of the Complaint that it acquired 1,152 railcars "at BNSF's behest or direction as part of BNSF's agreement to contract with Complainants."

REQUEST FOR PRODUCTION NO. 74:

Documents and Communications relating to each instance in which BNSF refused to accept Evergy trainsets prior to January 1, 2021.

REQUEST FOR PRODUCTION NO. 75:

Documents and Communications sufficient to show the total number of Evergy trainsets for all BNSF-served plants that were in service by month and year on BNSF's rail network over the past two decades (*see* Complaint paragraph 12).

REQUEST FOR PRODUCTION NO. 76:

All studies and analyses related to rail service levels for the delivery of coal to Evergy's coal-fired power plants.

REQUEST FOR PRODUCTION NO. 77:

Documents relating to the revenue Evergy received for the generation of electricity at Jefferies, La Cygne, and/or Hawthorne in relation or comparison to

revenues associated with electric generation at Iatan and/or Lawrence from January 1, 2019 to present.

REQUEST FOR PRODUCTION NO. 78:

All Documents and Communications relating to SPP Recommendation Report RR502, Opportunity Cost Revisions Addressing Coal Transportation Issues.

REQUEST FOR PRODUCTION NO. 79:

All settlement and resettlement statements that Evergy submitted to SPP in 2022 or covering 2022.

REQUEST FOR PRODUCTION NO. 80:

Data documenting all coal deliveries from January 1, 2019 to present at the Iatan and Lawrence plants, with information by rail carrier, the date of delivery, the quantity of coal delivered, and the heat content of the coal delivered.

REQUEST FOR PRODUCTION NO. 81:

All documents, data, analyses, and models that Evergy employed to quantify the economic value of the opportunity cost of coal usage for the purposes of modifying energy bids from coal-fired plants or generation supply from coal-fired plants, including scheduled outages or self-supply decisions.

REQUEST FOR PRODUCTION NO. 82:

Documents sufficient to show, for every hour since 12:00 AM January 1, 2020:

1. All unit commitment and dispatch instructions received from SPP for all units at the Iatan and Lawrence generating facilities, including instructions related to the conservation of coal inventories;
2. Price offers You submitted for the Iatan and Lawrence generating facilities for energy and operating reserves;
3. Bid adders You submitted for the Iatan and Lawrence generating facilities to price offers for energy or operating reserves for the purposes of coal conservation; and
4. Settled quantities and prices paid for energy and operating reserves at the Iatan and Lawrence generating facilities.

REQUEST FOR PRODUCTION NO. 83:

Please provide the 2020, 2021, 2022, and 2023 Resource Adequacy Requirement filings that You submitted to SPP for any Evergy load responsible entity (LRE) that identified capacity from Iatan or Lawrence as contributing to meeting the LRE's Resource Adequacy needs.

REQUEST FOR PRODUCTION NO. 84:

For each instance of adjusted bid prices or generation capacity withholding identified in response to RFP No. 49, provide Documents sufficient to demonstrate how any approved reduction in coal output from Iatan or Lawrence was reviewed by SPP's Market Monitoring Unit, and how such a request complied with SPP's market mitigation rules.

REQUEST FOR PRODUCTION NO. 85:

Provide all Documents, including policies and procedures, relating to the conditions under which You, as a generation resource owner, are permitted to submit offer prices in excess of the resource's variable costs to SPP, including if SPP allows such increases to preserve fuel inventory.

REQUEST FOR PRODUCTION NO. 86:

Provide all data input, system topology files, and assumptions used in any model You used to calculate Your estimates of purported damages in Your Complaint and/or that You anticipate using in Your opening evidence due on December 20, 2024. This should include, but not be limited to, the following:

1. Variable operations and maintenance costs, fixed operations and maintenance costs, start-up costs, minimum run times, minimum generation levels, and nameplate capacities for all of Your generating facilities, and, to the extent tracked by Evergy for the purposes of generation dispatch or planning, for all other generators in SPP;
2. Your assumed SPP transmission topology used in your model, and sufficient to model transmission line capability between every generator node and load node;
3. Assumed fuel prices, heat rates, and total fuel costs, by plant, for Your fleet and for all other generators in SPP;
4. Assumed emissions pricing costs, by plant, for Your fleet and for all other generators in SPP;

5. Assumed maintenance, outage, and forced outage schedules, by plant, for Your fleet and for all other generators in SPP; and

6. Assumed hourly generation for all renewable generators in Your fleet and for all other generators in SPP.

REQUEST FOR PRODUCTION NO. 87:

For every hour from January 1, 2019 to December 31, 2023, please provide:

1. A list of hours in which Evergy was conserving coal, whether through restrictions on coal generation or through the inclusion of a bid adder approved by the SPP Market Monitor for Iatan, Lawrence, and all other plants in Your generation fleet, including but not limited to Hawthorn, Jeffrey, and La Cygne;

2. All unit commitment and dispatch instructions received from SPP for Your entire generation fleet, including instructions related to the conservation of coal or other fuel inventories for Your entire generation fleet;

3. Bid offers submitted to SPP for all of Your generating facilities for energy and operating reserves;

4. All incremental adders included in Your bid offers to SPP, including those related to opportunity costs, limited fuel supply, or other transportation supply limitations, submitted by You for all of Your generating facilities to price offers for energy or operating reserves;

5. Settled quantities and prices paid for energy and operating reserves at all of Your generating facilities;

6. Hourly electricity load for Your customers and, to the extent tracked by Evergy for the purposes of generation dispatch or planning, system-wide SPP load;

7. Hourly electricity net generation for all of Your generating facilities and, to the extent tracked by Evergy for the purposes of generation dispatch or planning, for all other generators in SPP;

8. For any third-party power purchases, the cost, quantity purchased, and the hours in which those purchases were used to meet load obligations in Your service territory; and

9. For any third-party power sales, gross revenues, net revenues, quantity sold, and the hours in which those sales were made by all of Your generating facilities.

REQUEST FOR PRODUCTION NO. 88:

For the period January 1, 2019 to December 31, 2023, please provide daily coal inventories and a log of coal deliveries by rail carrier that includes the volume of coal delivered, the price paid for the coal, and the heat content of the delivered coal, for (a) Iatan and Lawrence, and (b) all other coal plants in Your fleet, including but not limited to: Hawthorn, La Cygne, and Jeffrey.

REQUEST FOR PRODUCTION NO. 89:

Any model you intend to use in calculating your damages.

Dated: August 15, 2024

Respectfully submitted,

/s/ Timothy J. Strafford

Timothy J. Strafford
Anthony J. LaRocca
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(202) 429-3000

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(713) 221-2309

Counsel for BNSF Railway Co.

EXHIBIT 7

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

	)	
EVERGY, INC.,	)	
EVERGY METRO, INC. and	)	
EVERGY KANSAS CENTRAL, INC.	)	
	)	
Complainants,	)	
	)	
v.	)	Docket No. NOR 42180
	)	
BNSF RAILWAY COMPANY	)	
	)	
Defendant.	)	
	)	

**COMPLAINANTS' ANSWERS AND OBJECTIONS
TO BNSF'S SECOND SET OF INTERROGATORIES**

Pursuant to 49 C.F.R. § 1114.26, Evergy, Inc. (“Evergy”), Evergy Metro, Inc. (“Evergy Metro”) and Evergy Kansas Central, Inc. (“EKC”) (collectively “Evergy”), hereby provide these Answers and Objections to the Second Set of Interrogatories (“Interrogatories”) that BNSF Railway Company (“BNSF”) served on August 15, 2024.

A. GENERAL OBJECTIONS

Evergy hereby incorporates by reference each of the General Objections set forth in its June 24, 2024 Answers and Objections to BNSF’s First Set of Interrogatories.

B. SPECIFIC OBJECTIONS AND ANSWERS

INTERROGATORY NO. 26:

Identify and Describe any and all instances in which Evergy decided to buy power in 2022, including the reason why Evergy made the purchase.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to the Interrogatory as overbroad in its use of the term “any and all instances,” and in its mischaracterization of the manner in which Evergy may rely on purchased power in lieu of Evergy generation. Subject to and without waiver of its objections, pursuant to 49 C.F.R. § 1114.26(b), Evergy will produce responsive, non-privileged documents to the extent that they are reasonably available.

INTERROGATORY NO. 27:

Identify and Describe any and all instances in which Evergy used a “price adder,” opportunity cost, fuel supply limitation, or transportation limitation in 2022, and explain if and how the price adder or other limitation impacted Evergy’s profits.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to the Interrogatory as vague in its use of undefined terms, and as premature and inconsistent with the STB’s schedule for this proceeding. *See Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) (“*Minnesota Power*”). Subject to and without waiver of its objections, and without prejudice to its right to reserve judgment on the manner in which it might present evidence to establish its claims, Evergy states that it will be submitting

proof and legal arguments in support of its damages claims in the evidence that it presents in this proceeding, after discovery is completed.

INTERROGATORY NO. 28:

Identify each rail car and/or train set owned or leased by Evergy placed out of service since 2019, including the start and end date.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to the Interrogatory as vague, in that it does not define “placed out of service” or provide any descriptives as to circumstances (e.g., for maintenance, repairs, seasonal storage or re-lease, etc.) or causation. Subject to and without waiver of these objections, and pursuant to 49 C.F.R. § 1114.26(b), Evergy will produce responsive, non-privileged documents sufficient to show the pattern of Evergy owned or leased trainsets in service on BNSF’s lines during the time period covered by the Interrogatory.

INTERROGATORY NO. 29:

Identify all instances in which BNSF refused to accept Evergy trainsets prior to January 1, 2021.

ANSWER:

Evergy incorporates its general objections, including specially No. 5. Subject to and without waiver of these objections, Evergy states that the information sought in the Interrogatory is accessible to BNSF from BNSF’s own files or from information in BNSF’s possession.

INTERROGATORY NO. 30:

Identify the total number of Evergy trainsets for all BNSF-served plants in service by month and year on BNSF over the past two decades (related to Complaint paragraph 12).

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 5. Evergy objects to the Interrogatory as overbroad, unduly burdensome and not proportional to the needs of this matter. Subject to and without waiver of these objections, pursuant to 49 C.F.R. § 1114.26(b), Evergy will produce responsive, non-privileged documents to the extent reasonably available.

INTERROGATORY NO. 31:

In paragraph 12 of the Complaint, Evergy alleges that “over at least the past two (2) decades,” “a total of seven (7) unit trainsets of Complainants’ private railcars were needed to meet Complainants’ coal transportation service needs for Iatan and Lawrence during the months of March through May and October through November, and a total of eight (8) trainsets were required during the months of June through September and December through February.” Identify and Describe all instances in the past two decades in which any of the trainsets in service for Iatan and Lawrence delivered coal to any plants other than Iatan and Lawrence. For each instance, Identify and Describe the timeframe in which the trainset delivered coal to other plants, the other plant or plants served, and by how many trainsets.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to the Interrogatory as unduly burdensome and not proportional to the needs of this matter, and on the ground of relevance insofar as it seeks information related to generating stations other than Iatan and Lawrence. Evergy further objects to

the Interrogatory on the ground that it would be impossible to provide a substantive response to the Interrogatory as propounded because it would require the review of a massive volume of records, assuming that the records referenced in the Interrogatory even exist. Evergy will consider a modified version of the Interrogatory should BNSF elect to propound one.

INTERROGATORY NO. 32:

Identify all instances from January 1, 2019 to present in which Iatan or Lawrence experienced an outage or were otherwise unable to receive deliveries of coal. For each instance, identify the cause of the outage/inability to receive coal and the start and end time of the outage/inability to receive coal.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 5. Subject to and without waiver of these objections, pursuant to 49 C.F.R. § 1114.26(b), Evergy will produce responsive, non-privileged documents to the extent reasonably available.

INTERROGATORY NO. 33:

Identify, including by name and version number, any production cost modeling software You used for the purposes of managing Your generator fleet, supporting Integrated Resource Planning filings, or any other regulatory planning processes in 2022, 2023, or 2024.

ANSWER:

Evergy has used ABB's PROMOD IV for fuel adjustment filings with regulatory agencies and PLEXOS 8.3 and 9.1 for Integrated Resource Planning production cost

modeling. Evergy also has used PCI Energy Solutions Market software V.24.1.3.76 to manage generation resources within SPP.

INTERROGATORY NO. 34:

Identify, including by name and version number, any modeling software You used to calculate Your estimates of purported damages in Your Complaint and/or anticipate using in Your opening evidence due on December 20, 2024.

ANSWER:

Evergy objects to the Interrogatory as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power*. Subject to and without waiver of this objection, Evergy states that it will be submitting proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, and will produce responsive, non-privileged documents in support of its claims.

INTERROGATORY NO. 35:

For any third-party power sales, please explain the extent to which such sales resulted in a reduction to energy bills paid by Your customers or an increase in net operating income for Evergy.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to the Interrogatory as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks information regarding "any third-party power sales," a term which is not defined. Evergy further objects to the Interrogatory on the ground that it is impossible to provide a substantive response to the Interrogatory as propounded because it would require the review of

potentially thousands of documents and/or massive amounts of electronic data. Everygy will consider a narrower and modified version of the Interrogatory should BNSF elect to propound one.

Respectfully submitted,

By: /s/ Kelvin J. Dowd
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Counsel for Complainants

Dated: September 16, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

	)	
EVERGY, INC.,	)	
EVERGY METRO, INC. and	)	
EVERGY KANSAS CENTRAL, INC.	)	
	)	
Complainants,	)	
	)	
v.	)	Docket No. NOR 42180
	)	
BNSF RAILWAY COMPANY	)	
	)	
Defendant.	)	
	)	

**COMPLAINANTS' RESPONSES AND OBJECTIONS TO BNSF'S
SECOND SET OF DOCUMENT PRODUCTION REQUESTS**

Pursuant to 49 C.F.R. § 1114, Evergy, Inc. ("Evergy"), Evergy Metro, Inc. ("Evergy Metro") and Evergy Kansas Central, Inc. ("EKC") (collectively "Evergy"), hereby provide these Responses and Objections to the Second Set of Document Requests for Production ("Requests") that BNSF Railway Company ("BNSF") served on August 15, 2024.

I. GENERAL OBJECTIONS

Evergy hereby incorporates by reference each of the General Objections set forth in its June 24, 2024 Responses and Objections to BNSF's First Set of Document Production Requests.

II. RESPONSES AND SPECIFIC OBJECTIONS:

REQUEST FOR PRODUCTION NO. 49:

All Documents and Communications between Evergy and SPP, including the SPP Market Monitor, relating to Evergy adjusting its bid price or withholding generation capacity. For each instance of adjusted bid prices or generation capacity withholding, please provide Documents sufficient to show (1) the date, time, and duration of the requested reduction in output; (2) a copy of the document, email, or telephone log through which the request was made; and (3) documentation of any response of the asset owner.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents and Communications” that might be “relating to” the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show communications with the SPP Market Monitor related to coal conservation in 2022.

REQUEST FOR PRODUCTION NO. 50:

All Documents and Communications between Evergy and SPP relating to rail transportation, including any contracts or agreements.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks “All Documents and Communications” related to the subject matter. Evergy further objects to this Request on grounds of relevance, insofar as it seeks documents related to generating stations other than

Iatan and Lawrence or rail carriers other than BNSF. Subject to and without waiver of these objections, Evergy will conduct a reasonable search and produce responsive, non-privileged documents evidencing communications with SPP in 2022 related to BNSF, if they exist.

REQUEST FOR PRODUCTION NO. 51:

All audio or video recordings of Communications between Evergy and SPP relating to rail transportation, coal stockpiles, coal conservation, changes to Evergy's bid price, or withholding of generation capacity.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4.

Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "All" recordings "relating to" the subject matter of the Request. Subject to and without waiver of these objections, Evergy will conduct a reasonable search and produce audio or video recordings of communications with SPP in 2022 related to the matters described in the Request, if they exist.

REQUEST FOR PRODUCTION NO. 52:

All Documents and Communications relating to any instances in which Evergy purchased power in 2022 instead of running one of its coal-fired power plants, including agreements for the purchase of power and data reflecting the amount and cost of each megawatt of purchased power.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4.

Evergy objects to this Request as vague, overbroad, unduly burdensome and not

proportional to the needs of this matter. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show the coal conservation measures implemented by Evergy in 2022, to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 53:

All Documents and Communications relating to Evergy's use of a price adder, opportunity cost, fuel supply limitation, or transportation limitation in bids to SPP in 2022.

RESPONSE:

Evergy hereby incorporates its Response to Request No. 52.

REQUEST FOR PRODUCTION NO. 54:

Documents and Communications sufficient to show all instances when Iatan and Lawrence experienced an outage, including, but not limited to, identifying the start and end time of each outage and the cause.

RESPONSE:

Evergy incorporates its general objections, including specially Nos. 1, 4 and 5. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents that have not been provided to BNSF previously, to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 55:

Documents and Communications sufficient to show all instances when Iatan and Lawrence were unable to receive deliveries of coal, including, but not limited to, identifying the start and end time of each such period and the cause.

RESPONSE:

Evergy hereby incorporates its Response to Request No. 54.

REQUEST FOR PRODUCTION NO. 56:

All Documents and Communications relating to rail unloading time at each of Evergy's coal plants, including, but not limited to, any consideration of options to improve rail unloading time.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "All Documents and Communications" relating to the subject matter. Evergy further objects to this Request on the ground of relevance, insofar as it seeks documents related to generating stations other than Iatan and Lawrence. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show the subject matter of the Request, to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 57:

All Documents and Communications relating to the statement that "[o]n information and belief, any crew or power shortages that BNSF may have experienced in 2022 were the consequences of deliberate operational decisions made and policies adopted by BNSF, prioritizing perceived short-term operating cost savings over service to rail shippers and energy consumers."

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 4 and 5. Evergy objects to this Request as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power, Inc. v. Duluth, Missabe & Iron Range Ry. Co.*, STB Docket No. 42038 (STB served May 11, 1999) ("*Minnesota Power*"). Evergy also objects to this Request to the extent that it seeks information in the possession, custody or

control of BNSF that is the subject of and has been requested in discovery in this proceeding and is unknown at this stage. Subject to and without waiver of these objections, Evergy states that it will be submitting proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, after discovery is completed, and will produce responsive, non-privileged documents in support of its claims.

REQUEST FOR PRODUCTION NO. 58:

All Documents and Communications relating to coal stockpiles at each of Evergy's coal plants, including, but not limited to, daily coal inventory or stockpile volume for each day from January 1, 2019 to present (including tons and heat content), monthly coal inventory or stockpile volume for each month from January 1, 2019 to present, adequacy of coal stockpiles, configuration of the coal stockpiles, and consideration of options to increase storage capacity for coal stockpiles.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks "All Documents and Communications" relating to the subject matter of the Request. Evergy objects to this Request on the ground of relevance insofar as it seeks documents related to generating stations other than Iatan and Lawrence. Evergy objects to this Request as overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks documents (if they exist) related to "daily coal inventory" and "stockpile volume for each month from January 1, 2019 to present" Subject to and without waiver of these objections, Evergy will produce responsive and non-privileged documents sufficient to

show the levels of coal inventory at Iatan and Lawrence from January 1, 2019 through December 31, 2022.

REQUEST FOR PRODUCTION NO. 59:

All Documents and Communications relating to claims or possible claims of liquidated damages relating to rail transportation of coal since 2019, including, but not limited to, any fees or liquidated damages paid to rail carriers if minimum volumes were not met.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks “All Documents and Communications relating” to the subject matter of the Request. Evergy objects to this Request on the ground of relevance insofar as it seeks documents related to rail carriers other than BNSF. Evergy further objects to this Request because it seeks documents and information that are or should already be in BNSF’s possession. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show claims for liquidated damages by and liquidated damages paid to BNSF during the time period covered by the Request, to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 60:

Documents sufficient to identify the amount of coal Evergy was contractually committed to purchase by origin mine in each year since 2019.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 1. Evergy objects to this Request on the ground of relevance insofar as it seeks documents related to

coal contract commitments for generating stations other than Iatan and Lawrence. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show contractual coal supply commitments for Iatan and Lawrence during the time period covered by the Request, to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 61:

All Documents related to the quality and adequacy of rail service provided by BNSF.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this proceeding insofar as it seeks “All Documents” related to the subject matter of the Request. Evergy objects to this Request on the ground of relevance insofar as it seeks documents related to BNSF rail service to shippers other than Evergy or to generating stations or other destinations other than Iatan and Lawrence. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents related to the adequacy of BNSF rail service in 2022 to Iatan and Lawrence that have not previously been provided to BNSF, to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 62:

All Documents related to the quality and adequacy of rail service provided by rail carriers other than BNSF, including but not limited to Union Pacific and Kansas City Southern.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 6. Evergy objects to this Request on the ground that it seeks documents which are wholly irrelevant to the matters at issue in this proceeding.

REQUEST FOR PRODUCTION NO. 63:

All Documents related to the impact of changes in the price of natural gas on the generation of electricity by coal-fired units at Evergy's plants.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "All Documents" that may be "related" to the subject matter. Evergy further objects to this Request on the ground that it is impossible to provide a substantive Response to the Request as propounded because it would require the review of potentially thousands of pages of documents and/or massive amounts of electronic data. Evergy will consider a narrower and modified version of this Request should BNSF elect to propound one.

REQUEST FOR PRODUCTION NO. 64:

All Documents related to the impact of the availability of wind power on the generation of electricity by coal-fired units at Evergy's plants.

RESPONSE:

Evergy hereby incorporates its Response to Request No. 63. For further response, Evergy refers BNSF to the Integrated Resource Plans previously produced in this proceeding.

REQUEST FOR PRODUCTION NO. 65:

All Documents and Communications relating to coal nominations that Evergy submitted to rail carriers for all of Evergy's coal plants.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks "All Documents and Communications" regarding the subject matter of the Request. Evergy further objects to this Request on the ground of relevance insofar as it seeks documents related to generating facilities other than Iatan and Lawrence. Subject to and without waiver of these objections, Evergy states that documents or information sufficient to respond to the non-objectionable parts of this Request already are in BNSF's possession.

REQUEST FOR PRODUCTION NO. 66:

All written agreements with former Evergy employee Eric Peterson.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 6. Evergy objects to this Request on the ground that it seeks documents which are wholly irrelevant to matters at issue in this proceeding.

REQUEST FOR PRODUCTION NO. 67:

All Documents relating to Evergy's calculations and modeling for its inventory at its coal plants, including under the Electric Power Research Institute's Utility Fuel Inventory Model ("UFIM"), as discussed in Jessica Tucker's February 2024 testimony before the Missouri Public Service Commission, available at <https://efis.psc.mo.gov/Document/Display/770175>.

RESPONSE:

Evergy incorporates its general responses, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks “All Documents” relating to the subject matter of the Request. Evergy further objects to this Request on the ground of relevance insofar as it seeks documents or information related to generating stations other than Iatan and Lawrence. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show the calculations and modeling used for coal inventory at Iatan and Lawrence.

REQUEST FOR PRODUCTION NO. 68:

The UFIM model that Evergy used at each of its coal plants.

RESPONSE:

Evergy hereby incorporates its Response to Request No. 67.

REQUEST FOR PRODUCTION NO. 69:

All Documents relating to hedging and the impact of hedging (as related to coal and coal supply) on Evergy’s power purchases.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 6. Subject to and without waiver of these objections, Evergy states that the term “hedging” is vague, undefined, and does not correlate to any system used by Evergy. Counsel for Evergy is prepared to confer with counsel for BNSF in an effort to clarify the subject matter of this Request.

REQUEST FOR PRODUCTION NO. 70:

All Documents relating to any differences in volumes between coal nominations or Coal Forecasting Tool (CFT) entries that Evergy submitted to railroads and the volume needs at Evergy's plants.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4, 5 and 6.

Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks "All Documents" related to the subject matter of the Request. Evergy objects to this Request on the ground of relevance insofar as it seeks documents or information related to rail carriers other than BNSF or generating stations other than Iatan and Lawrence. Subject to and without waiver of these objections, Evergy states that information or documents sufficient to respond to the non-objectionable parts of this Request already are in BNSF's possession.

REQUEST FOR PRODUCTION NO. 71:

All Documents relating to Evergy's decisions to burn coal inventory at its plants.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 4.

Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks "All Documents" relating to the subject matter of the Request. Evergy objects to this Request on the ground of relevance insofar as it seeks documents or information related to generating stations other than Iatan and Lawrence or time periods other than 2022. Subject to and without waiver of these

objections, Evergy will produce responsive, non-privileged documents sufficient to show the coal reclaimed from inventory and burned at Iatan and Lawrence during 2022.

REQUEST FOR PRODUCTION NO. 72:

All Documents and Communications sufficient to identify each rail car and/or train set owned or leased by Evergy placed out of service since 2019, including the start and end date.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks “All Documents and Communications” related to the subject matter of the Request. Evergy objects to this Request on the ground of relevance insofar as it seeks documents or information related to rail carriers other than BNSF. Evergy objects to this Request as vague on the ground that the term “placed out of service” is undefined and is unqualified as to cause or consequence. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents sufficient to show the information sought in the Request insofar as it relates to trainsets in service on BNSF.

REQUEST FOR PRODUCTION NO. 73:

All Documents and Communications relating to Evergy’s claim in paragraph 9 of the Complaint that it acquired 1,152 railcars “at BNSF’s behest or direction as part of BNSF’s agreement to contract with Complainants.”

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not

proportional to the needs of this matter, particularly insofar as it seeks “All Documents and Communications” relating to the subject matter. Evergy objects to this Request as premature and inconsistent with the STB’s schedule for this proceeding. *See Minnesota Power*. Evergy states that it will be submitting proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, and will produce responsive, non-privileged documents in support of its claims. For further response, Evergy states that documents sufficient to show the information sought by this Request already are in BNSF’s possession. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents that have not already been provided to BNSF to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 74:

Documents and Communications relating to each instance in which BNSF refused to accept Evergy trainsets prior to January 1, 2021.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 5. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 75:

Documents and Communications sufficient to show the total number of Evergy trainsets for all BNSF-served plants that were in service by month and year on BNSF’s rail network over the past two decades (*see* Complaint paragraph 12).

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 5.

Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 76:

All studies and analyses related to rail service levels for the delivery of coal to Evergy's coal-fired power plants.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 2, 4, 6 and 7. Evergy objects to this Request on the ground that it seeks documents which are wholly irrelevant to the matters at issue in this proceeding insofar as it seeks documents related to the purchase of rail services from rail carriers other than BNSF. Evergy further objects to this Request insofar as it is duplicative of a previous Request to which Evergy previously responded (*see* BNSF Request for Production No. 17). Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent reasonably available in a manner consistent with and subject to the Protective Order in this proceeding.

REQUEST FOR PRODUCTION NO. 77:

Documents relating to the revenue Evergy received for the generation of electricity at Jefferies, La Cygne, and/or Hawthorne in relation or comparison to revenues associated with electric generation at Iatan and/or Lawrence from January 1, 2019 to present.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 6. Evergy objects to this Request on the ground that it seeks documents which are wholly irrelevant to the matters at issue in this proceeding.

REQUEST FOR PRODUCTION NO. 78:

All Documents and Communications relating to SPP Recommendation Report RR502, Opportunity Cost Revisions Addressing Coal Transportation Issues.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks “All Documents and Communications” relating to the subject matter of the Request. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents that are not publicly available, where the burden on BNSF in obtaining them would be no greater than the burden placed on Evergy in responding.

REQUEST FOR PRODUCTION NO. 79:

All settlement and resettlement statements that Evergy submitted to SPP in 2022 or covering 2022.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as overbroad and unduly burdensome, particularly insofar as it seeks “All ... statements” that are the subject matter of the Request. For further response, Evergy states that it does not “submit” the described statements to SPP, and that

the SPP statements described in the Request are processed through the SPP Integrated Marketplace Settlement Portal, which Evergy does not control.

REQUEST FOR PRODUCTION NO. 80:

Data documenting all coal deliveries from January 1, 2019 to present at the Iatan and Lawrence plants, with information by rail carrier, the date of delivery, the quantity of coal delivered, and the heat content of the coal delivered.

RESPONSE:

Evergy incorporates its general objections, including specifically No. 5. Subject to and without waiver of this objection, Evergy states that the information sought by this Request is accessible to BNSF from BNSF's own records or from information in BNSF's possession.

REQUEST FOR PRODUCTION NO. 81:

All documents, data, analyses, and models that Evergy employed to quantify the economic value of the opportunity cost of coal usage for the purposes of modifying energy bids from coal-fired plants or generation supply from coal-fired plants, including scheduled outages or self-supply decisions.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 2, 4, 6 and 7. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter. Evergy objects to this Request on the ground of relevance insofar as it seeks information regarding generating stations other than Iatan and Lawrence. Evergy further objects to this Request as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power*. Subject to and without waiver of these objections, Evergy states that it will be submitting proof and legal

arguments in support of its claims in the evidence that it presents in this proceeding, and will produce responsive, non-privileged documents in support of its claims.

REQUEST FOR PRODUCTION NO. 82:

Documents sufficient to show, for every hour since 12:00 AM January 1, 2020:

1. All unit commitment and dispatch instructions received from SPP for all units at the Iatan and Lawrence generating facilities, including instructions related to the conservation of coal inventories;
2. Price offers You submitted for the Iatan and Lawrence generating facilities for energy and operating reserves;
3. Bid adders You submitted for the Iatan and Lawrence generating facilities to price offers for energy or operating reserves for the purposes of coal conservation; and
4. Settled quantities and prices paid for energy and operating reserves at the Iatan and Lawrence generating facilities.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4, 5 and 7.

Evergy objects to this Request on the ground of relevance insofar as it seeks information regarding the subject matter for years other than 2022. Evergy further objects to this Request as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power*. Evergy further objects to this Request insofar as it is duplicative of previous Requests to which Evergy previously responded (*see* BNSF Requests for Production Nos. 25, 27, 32 and 33).

REQUEST FOR PRODUCTION NO. 83:

Please provide the 2020, 2021, 2022, and 2023 Resource Adequacy Requirement filings that You submitted to SPP for any Evergy load responsible entity (LRE) that

identified capacity from Iatan or Lawrence as contributing to meeting the LRE's Resource Adequacy needs.

RESPONSE:

Evergy objects to this Request as duplicative of a previous Request (*see* Request for Production No. 28) in response to which Evergy stated that it would produce responsive, non-privileged documents to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 84:

For each instance of adjusted bid prices or generation capacity withholding identified in response to RFP No. 49, provide Documents sufficient to demonstrate how any approved reduction in coal output from Iatan or Lawrence was reviewed by SPP's Market Monitoring Unit, and how such a request complied with SPP's market mitigation rules.

RESPONSE:

Evergy hereby incorporates its Response to Request No. 49.

REQUEST FOR PRODUCTION NO. 85:

Provide all Documents, including policies and procedures, relating to the conditions under which You, as a generation resource owner, are permitted to submit offer prices in excess of the resource's variable costs to SPP, including if SPP allows such increases to preserve fuel inventory.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4 and 5. Evergy objects to this Request as vague, overbroad, unduly burdensome and not proportional to the needs of this matter insofar as it seeks "all Documents" related to the subject matter of the Request. For further response, Evergy states that it does not have "policies and procedures" as described in the Request, or documents memorializing same. For further response, Evergy refers BNSF to SPP Protocols

Appendix G and SPP Emergency Operating Plan, which are publicly available and as to which the burden on BNSF in obtaining them would be no greater than the burden placed on Evergy to produce them.

REQUEST FOR PRODUCTION NO. 86:

Provide all data input, system topology files, and assumptions used in any model You used to calculate Your estimates of purported damages in Your Complaint and/or that You anticipate using in Your opening evidence due on December 20, 2024. This should include, but not be limited to, the following:

1. Variable operations and maintenance costs, fixed operations and maintenance costs, start-up costs, minimum run times, minimum generation levels, and nameplate capacities for all of Your generating facilities, and, to the extent tracked by Evergy for the purposes of generation dispatch or planning, for all other generators in SPP;
2. Your assumed SPP transmission topology used in your model, and sufficient to model transmission line capability between every generator node and load node;
3. Assumed fuel prices, heat rates, and total fuel costs, by plant, for Your fleet and for all other generators in SPP;
4. Assumed emissions pricing costs, by plant, for Your fleet and for all other generators in SPP;
5. Assumed maintenance, outage, and forced outage schedules, by plant, for Your fleet and for all other generators in SPP; and
6. Assumed hourly generation for all renewable generators in Your fleet and for all other generators in SPP.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 2 and 8. Evergy objects to this Request as premature and inconsistent with the STB's schedule in this proceeding. *See Minnesota Power*. Subject to and without waiver of these objections, Evergy states that it will be submitting proof and legal arguments in support

of its claims in the evidence that it presents in this proceeding, and will produce responsive, non-privileged documents in support of its claims.

REQUEST FOR PRODUCTION NO. 87:

For every hour from January 1, 2019 to December 31, 2023, please provide:

1. A list of hours in which Evergy was conserving coal, whether through restrictions on coal generation or through the inclusion of a bid adder approved by the SPP Market Monitor for Iatan, Lawrence, and all other plants in Your generation fleet, including but not limited to Hawthorn, Jeffrey, and La Cygne;
2. All unit commitment and dispatch instructions received from SPP for Your entire generation fleet, including instructions related to the conservation of coal or other fuel inventories for Your entire generation fleet;
3. Bid offers submitted to SPP for all of Your generating facilities for energy and operating reserves;
4. All incremental adders included in Your bid offers to SPP, including those related to opportunity costs, limited fuel supply, or other transportation supply limitations, submitted by You for all of Your generating facilities to price offers for energy or operating reserves;
5. Settled quantities and prices paid for energy and operating reserves at all of Your generating facilities;
6. Hourly electricity load for Your customers and, to the extent tracked by Evergy for the purposes of generation dispatch or planning, system-wide SPP load;
7. Hourly electricity net generation for all of Your generating facilities and, to the extent tracked by Evergy for the purposes of generation dispatch or planning, for all other generators in SPP;
8. For any third-party power purchases, the cost, quantity purchased, and the hours in which those purchases were used to meet load obligations in Your service territory; and
9. For any third-party power sales, gross revenues, net revenues, quantity sold, and the hours in which those sales were made by all of Your generating facilities.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1, 4, 6, 5 and 7. Evergy objects to this Request as overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks information for years other than 2022. Evergy objects to subparts 2 through 7 of this Request on the ground that the information sought is maintained by SPP and that the burden on BNSF in obtaining such information would be no greater than the burden placed on Evergy in producing it. Evergy objects to this Request insofar as it is duplicative of previous Requests to which Evergy previously has responded (*see* Requests for Production Nos. 25, 27, 32 and 33). Evergy further objects to this Request on the ground that it is impossible to provide a substantive response to the Request as propounded because it would require the review of potentially thousands of pages of documents and/or massive amounts of electronic data, which is wholly disproportionate to the needs of this matter.

REQUEST FOR PRODUCTION NO. 88:

For the period January 1, 2019 to December 31, 2023, please provide daily coal inventories and a log of coal deliveries by rail carrier that includes the volume of coal delivered, the price paid for the coal, and the heat content of the delivered coal, for (a) Iatan and Lawrence, and (b) all other coal plants in Your fleet, including but not limited to: Hawthorn, La Cygne, and Jeffrey.

RESPONSE:

Evergy incorporates its general objections, including specifically Nos. 1 and 5. Evergy objects to this Request on the ground that it seeks documents which are wholly irrelevant to the matters at issue in this proceeding insofar as it seeks documents related to the purchase of services from rail carriers other than BNSF and documents

related to generating stations other than Iatan and Lawrence. Evergy further objects to this Request insofar as it seeks information that is accessible to BNSF from BNSF's own records or from information in BNSF's possession. Subject to and without waiver of these objections, Evergy will produce responsive, non-privileged documents to the extent reasonably available.

REQUEST FOR PRODUCTION NO. 89:

Any model you intend to use in calculating your damages.

RESPONSE:

Evergy objects to this Request as premature and inconsistent with the STB's schedule for this proceeding. *See Minnesota Power*. Subject to and without waiver of this objection, Evergy states that it will be submitting proof and legal arguments in support of its claims in the evidence that it presents in this proceeding, after discovery is completed, and will produce responsive, non-privileged documents in support of its claims.

Respectfully submitted,

By: /s/ Kelvin J. Dowd
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Dated: September 16, 2024