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SERVICE DATE – DECEMBER 10, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42180

EVERGY, INC., EVERGY METRO, INC., AND EVERGY KANSAS CENTRAL, INC.

v.

BNSF RAILWAY COMPANY

Decided: December 10, 2024

On January 31, 2024, Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. (collectively, Complainants), filed a complaint against BNSF Railway Company (BNSF), alleging that BNSF has violated its obligations under 49 U.S.C. §§ 11101(a), 10702(2), and 11121(a)(1).¹ BNSF filed its answer on May 20, 2024.

On September 27, 2024, BNSF filed a motion to compel Complainants to produce and disclose certain information in response to BNSF's written discovery requests and asking the Board to extend the discovery and evidence schedule. Complainants replied on October 16, 2024. On October 23, 2024, BNSF filed a "reply in support of its motion to compel," to which Complainants responded by letter filed October 25, 2024. BNSF and Complainants each filed a letter expressing concerns with the other party's document productions on November 21 and 22, 2024, respectively.

By decision served November 1, 2024, the deadline for the close of discovery was tolled pending further order of the Board. Evergy, Inc. v. BNSF Ry., NOR 42180, slip op. at 1 (STB served Nov. 1, 2024). Pursuant to the procedural schedule in this case, Complainants are scheduled to file their opening evidence on December 20, 2024. See Evergy, Inc. v. BNSF Ry., NOR 42180, slip op. at 2 (STB served June 10, 2024). Because BNSF's motion to compel remains pending before the Board, all deadlines in this proceeding will be tolled pending further order of the Board.

It is ordered:

1. All deadlines are tolled pending further order of the Board.

¹ The complaint also sought an order declaring the scope of BNSF's service obligations to Complainants. However, the Board later granted a motion by BNSF to dismiss that count of the complaint. Evergy, Inc. v. BNSF Ry., NOR 42180, slip op. at 1 (STB served Nov. 14, 2024).

2. This decision is effective on the date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.