

SERVICE DATE – MARCH 4, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42180

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

v.

BNSF RAILWAY COMPANY

Digest:¹ This decision grants, in part, BNSF Railway Company’s motion to compel, directs the parties to meet and confer to coordinate the exchange of information and documents in accordance with the determinations in the decision, and updates the procedural schedule.

Decided: March 3, 2025

On January 31, 2024, Evergy, Inc. (Evergy), Evergy Metro, Inc. (Evergy Metro), and Evergy Kansas Central, Inc. (EKC) (collectively, Complainants), filed a complaint against BNSF Railway Company (BNSF), alleging that BNSF violated its obligations under 49 U.S.C. §§ 11101(a), 10702(2), and 11121(a)(1).² BNSF filed its answer on May 20, 2024. On June 10, 2024, the Board adopted a procedural schedule proposed by the parties under which discovery would close November 1, 2024.

On September 27, 2024, BNSF filed a motion asking the Board 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 in opposition 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, 2024.³ The

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The complaint also sought an order declaring the scope of BNSF’s service obligations to Complainants. On May 17, 2024, BNSF filed a motion to dismiss Complainants’ request for a declaratory order. The Board granted BNSF’s motion to dismiss by decision served November 14, 2024. Evergy, Inc. v. BNSF Ry., NOR 42180, slip op. at 1 (STB served Nov. 14, 2024).

³ BNSF and Complainants each filed a letter expressing concerns with the other party’s document productions on November 21 and 22, 2024, respectively.

Board will grant, in part, BNSF's motion to compel, and update the procedural schedule, as discussed below.⁴

BACKGROUND

Evergy, a Missouri corporation, engages in the transmission and distribution of electrical power generated by operating subsidiaries across a system territory covering major portions of Missouri and Kansas. (Compl. ¶ 2.) Evergy Metro and EKC are operating subsidiaries of Evergy. (*Id.* ¶ 3.) Among other facilities, Evergy Metro operates a 1,725-megawatt, coal-fired generating station in Iatan, Mo., and EKC operates a 484-megawatt, coal-fired generating station in Lawrence, Kan. (*Id.* ¶¶ 3-4.) Complainants state that Evergy is responsible for procuring coal and coal transportation for both stations. (*Id.* ¶ 5.)

According to Complainants, for more than 20 years, BNSF transported coal from the Southern Powder River Basin region of Wyoming to the Iatan and Lawrence stations in private railcar unit train configurations pursuant to a series of contracts. (*Id.* ¶¶ 4, 8, 9.) Complainants state that BNSF informed them in 2020, for the Lawrence station, and in 2021, for the Iatan station, that their rail service would no longer be provided under contract but rather pursuant to tariffs. (*Id.* ¶¶ 14-15.)⁵ The tariffs included a "service limitation notice," providing that "[t]he provision of service and acceptance of any tenders for movement under this publication . . . shall, for the foreseeable future, be subject to BNSF's sole discretion." (*Id.* ¶ 14.) The tariffs were renewed annually and, until June 2023, continued to include the service limitation notice. (*Id.* ¶¶ 14-15.)

Complainants allege that, beginning in early 2022, BNSF restricted the number of private railcars it accepted in service for Iatan and Lawrence, citing the service limitation notice. (*Id.* ¶ 18.) Complainants further state that BNSF conditioned its service on Complainants' scheduling shipments "ratably" throughout the year, meaning that the volume of coal scheduled each month was required to be approximately one-twelfth of the total nomination for the year. (*Id.* ¶ 19.) According to Complainants, BNSF stated that it was constrained by train crew shortages and limited locomotive power availability. (*Id.* ¶ 22.) Complainants assert that, as a result of the shortages, they lost opportunities to earn revenues and profits and incurred significant additional costs related to coal conservation measures, coal inventory, and system reliability protection.⁶ (*Id.* ¶ 23.)

⁴ By decisions served November 1, 2024, and December 10, 2024, the deadlines for the close of discovery and for the submission of evidence and final briefs were tolled pending further order of the Board. *Evergy, Inc. v. BNSF Ry.*, NOR 42180, slip op. at 1 (STB served Nov. 1, 2024); *Evergy, Inc. v. BNSF Ry.*, NOR 42180, slip op. at 2 (STB served Dec. 10, 2024).

⁵ The fifteenth numbered paragraph of the complaint is erroneously numbered as a second paragraph 14. All references to that paragraph will be to paragraph 15. The remaining paragraphs in the complaint are numbered correctly.

⁶ Complainants are members of the Southwest Power Pool (SPP), a regional transmission organization responsible for managing the contributions of electricity from individual generating stations to meet consumer demand within its jurisdiction. (Compl. ¶ 21.) Complainants state

In Count I of the complaint, Complainants allege that BNSF refused to meet their reasonable transportation needs in violation of BNSF's common carrier obligations under 49 U.S.C. § 11101(a). (Compl. ¶ 26.) In Counts II and III, Complainants allege that BNSF's establishment and use of the service limitation notice constituted an unreasonable practice in violation of 49 U.S.C. § 10702(2) and a failure to furnish adequate car service and to establish reasonable rules and practices on car service in violation of 49 U.S.C. § 11121(a)(1). (Compl. ¶¶ 28, 30.) Complainants allege damages under 49 U.S.C. § 11704(b) in excess of \$55 million. (Compl. 3; id. ¶¶ 26, 28, 30.)

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. BNSF states that it served two sets of discovery requests on Complainants: a first set of interrogatories and requests for production on May 24, 2024, and a second set of interrogatories and requests for production on August 15, 2024. (BNSF Mot. 6, 8.) According to BNSF, Complainants have refused to answer any of BNSF's requests related to damages, produce information regarding plants other than Iatan and Lawrence, or disclose any modeling software they intend to use. (Id. at 7, 9.) BNSF requests that the Board compel Complainants to (1) disclose the assumptions, calculations and methodology underlying their damages claim, (2) disclose whether they are using a production cost model to calculate damages, and (3) produce additional relevant materials on Complainants' other plants and rail transportation suppliers. (Id. at 2.) BNSF also asks the Board to extend the discovery and evidence schedule to provide BNSF with no less than six months to prepare its reply evidence following disclosure of Complainants' damages information and to allow time for discovery on Complainants' methodologies and assumptions. (Id. at 2, 24.) BNSF argues that permitting Complainants to disclose the requested information related to damages with their opening evidence following the close of discovery would prejudice BNSF, (id. at 11-13), and would be contrary to both the Board's rules and the Federal Rules of Civil Procedure (FRCP), which provide for the disclosure of damages figures and calculations shortly after the filing of a complaint, (id. at 13-18 (citing Fed. R. Civ. P. 26(a)(1)(A)(iii))). BNSF further argues that disclosure of the damages modeling would "serve[] the interest of administrative economy" and lead to a full and complete record. (BNSF Mot. 19.) As for information regarding other plants, BNSF contends that it should be permitted to explore whether and to what extent Complainants' alleged operational limitations at the Iatan and Lawrence plants led to increased revenues at other plants. (Id. at 20-23.) BNSF also claims that poor service from other rail carriers in 2022 is relevant to Complainants' liability claims in this case. (Id. at 23.)

that, as members of SPP, they are required to supply SPP with enough available generating capacity to serve the demand within their operating service territories, along with a reserve margin. (Id.) Complainants state that, under certain circumstances, such as coal inventories falling substantially below target levels, Complainants can be required to implement coal conservation measures. (Id.) According to Complainants, coal conservation measures are steps that can force a utility to increase the prices at which its coal-fired generation is offered so that the market passes on the utility's generation in favor of another source, and the utility conserves the coal that otherwise would have been used. (Id.)

Complainants replied to BNSF's motion on October 16, 2024. They argue, as an initial matter, that the motion to compel is untimely under 49 C.F.R. § 1114.31(a) with respect to BNSF's first set of discovery requests. (Complainants Reply 6-7.) Complainants also assert that they should not be compelled to produce the requested information related to damages because that information is privileged attorney work product and because neither the Board's regulations nor the FRCP require the disclosure of such information in this case. (*Id.* at 14-17.) Complainants further argue that the requested documents and information related to Complainants' other generating stations and other rail transportation suppliers are not relevant to this case. (*Id.* at 18.) Lastly, Complainants argue that BNSF's requested modifications to the procedural schedule are unprecedented and unwarranted.⁷ (*Id.* at 20.)

On October 23, 2024, BNSF filed a "reply in support of its motion to compel." Among other things, BNSF counters Complainants' timeliness argument, suggesting that it is unresolved whether the 10-day deadline for filing motions to compel set forth in 49 C.F.R. § 1114.31(a) applies to requests for production but nevertheless stating that "the rule is met for the discovery requests relevant to the issues BNSF raised." (BNSF Reply 5-6, Oct. 23, 2024.) By letter filed October 25, 2024, Complainants argue that BNSF's October 23, 2024 filing should be rejected. According to Complainants, the filing neither clarifies the record nor addresses new facts, as BNSF contends.⁸

DISCUSSION AND CONCLUSIONS

Timeliness. As noted above, Complainants argue that BNSF's motion to compel is untimely with respect to BNSF's first set of discovery requests. (See Complainants Reply 6-8.) According to Complainants, even though the plain language of 49 C.F.R. § 1114.31(a), which imposes a 10-day deadline for filing motions to compel, refers only to interrogatories and deposition questions, the Board has consistently applied the 10-day deadline in that section to motions to compel document production as well. (*Id.* at 6-7 (citing Kan. City S. Ry.—Adverse Discontinuance Application—a Line of Ark. & Mo. R.R., AB 103 (Sub-No. 14) (STB served Jan. 11, 1999).) Complainants argue that BNSF's motion concerning BNSF's first set of discovery requests was filed well past the 10-day deadline, whether calculated from the date of Complainants' responses to those requests (June 24, 2024) or from the date of the parties' meet-and-confer related to those requests (July 22, 2024). (*Id.* at 7.) Complainants note that BNSF neither sought Complainants' consent for a late filing nor asked the Board for an extension. (*Id.*)

⁷ According to Complainants, they have supplemented their discovery responses to identify the production cost models they intend to use. (Complainants Reply 22 n.27.) Thus, Complainants argue, BNSF's request that the Board compel Complainants to disclose whether they are using a production cost model to calculate damages is moot.

⁸ Although styled as a "reply in support of its motion to compel," BNSF's October 23, 2024 filing is a reply to a reply. Replies to replies are prohibited under the Board's rules. See 49 C.F.R. § 1104.13(c). Here, however, the question of whether the 10-day deadline for filing motions to compel in 49 C.F.R. § 1114.31(a) applies to requests for production is unsettled and was raised for the first time in Evergy's reply. Accordingly, the Board finds that good cause exists to accept BNSF's filing only to the extent it discusses that issue. The remainder of BNSF's filing will be rejected under 49 C.F.R. § 1104.13(c).

In response, BNSF asserts that the question of whether the 10-day deadline in 49 C.F.R. § 1114.31 applies to document production requests is an unresolved matter. (BNSF Reply 6, Oct. 23, 2024.) According to BNSF, this issue was raised in Expediting Rate Cases, EP 733, slip op. at 8 n.9 (STB served Nov. 30, 2017), and the Board declined to rule on the issue. (BNSF Reply 6.) Additionally, BNSF states that “the rule is met for the discovery requests relevant to the issues BNSF raised.” (Id. at 5.)

The Board finds that the 10-day deadline for motions to compel in 49 C.F.R. § 1114.31(a) does not apply to motions to compel document production. The plain language of 49 C.F.R. § 1114.31(a) permits a party seeking discovery to file a motion to compel with the Board “within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories.” Section 1114.31(a), however, does not mention document production or set a deadline for filing a motion to compel responses to requests for production. Motions to compel document production are therefore filed under 49 C.F.R. § 1117.1, which permits a party to petition the Board for relief not provided for in any other rule. Section 1117.1 does not contain a filing deadline. As a practical matter, the close of discovery provides an outer limit for the filing of motions to compel document production. Moreover, parties should endeavor to promptly resolve discovery disputes, including by seeking help from the Board, if necessary, to promote the orderly adjudication of their cases.⁹

As applied here, BNSF’s motion to compel is untimely with respect to BNSF’s first set of interrogatories, which was served May 24, 2024. (See BNSF Mot. 6; id., Ex. 2.) BNSF’s motion to compel was filed on September 27, 2024, which is more than 10 days from when the response for the first set of interrogatories was due.¹⁰ The motion to compel, however, is timely with respect to BNSF’s first set of requests for production.

Merits Analysis. In Board proceedings, parties are entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). Information is relevant when it “might be able to affect the outcome

⁹ Complainants rely on Kansas City Southern Railway, AB 103 (Sub-No. 14), slip op. at 2 (STB served Jan. 11, 1999), to support the proposition that the Board has consistently applied the 10-day deadline in 49 C.F.R. § 1114.31(a) to requests for production. In that case, the Board’s Office of the Secretary rejected a request to extend the deadline to file a motion to compel that sought, among other things, the production of certain waybill data. Notably, the Secretary’s decision assumed that the 10-day deadline in 49 C.F.R. § 1114.31(a) applied to requests for production without discussion of the regulation’s plain language to the contrary. To the extent that decision is inconsistent with today’s decision, it is overruled.

¹⁰ The first set of interrogatories state that Complainants’ response was due “within 20 days or such other time as may be agreed upon by the parties or ordered by the [Board].” (See BNSF Mot., Ex. 2.) Complainants served their response 30 days later, on June 24, 2024. (Id. at 7.) Additionally, the parties unsuccessfully met-and-conferred on July 22, 2024. While it is not clear from the record the precise deadline for Complainants’ response to the BNSF’s first set of interrogatories, all of these dates are more than 10 days before the motion to compel was filed.

of a proceeding.” See Application of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry., FD 35743, slip op. at 8 (STB served Sept. 23, 2014). It is not grounds for objection that the information sought will be inadmissible 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). Under 49 C.F.R. § 1114.21(c), however, discovery may be denied if it would be unduly burdensome in relation to the likely value of the information sought. See, e.g., FMC Wyo. Corp. v. Union Pac. R.R., NOR 42022, slip op at 5 (STB served Feb. 5, 1998) (finding that, when the production of certain evidence is burdensome on its face, a substantial showing of relevance and need is necessary to outweigh the burden of producing evidence).

BNSF requests that the Board compel Complainants to disclose the assumptions, calculations, and methodology underlying their damages claim. The attorney-work-product privilege, however, protects from disclosure documents that might reveal counsel’s mental impressions, conclusions, opinions, or legal theories concerning the case. Farmland Indus., Inc. v. Gulf Cent. Pipeline Co., NOR 40411, slip op. at 3 (ICC served July 9, 1992). Documents protected by this privilege are not disclosed to other parties or to the Board unless the privilege is waived. Dakota, Minn. & E. R.R. Constr. into the Powder River Basin, FD 33407, slip op. at 2 (STB served Sept. 21, 2006). Here, the “assumptions, calculations, and methodology” that form the basis for Complainants’ damages claim are privileged attorney work product until such time and to the extent that this information is filed with Complainants’ opening evidence.¹¹ As such, BNSF is not entitled to receive that information in discovery absent a waiver of the privilege.¹²

BNSF argues that it would be prejudiced if it were required to review and assess the requested information related to damages in the two months post-discovery before BNSF’s reply is due. (BNSF Mot. 12-13.) The Board disagrees. BNSF and Complainants agreed upon and jointly proposed a procedural schedule for this case, which the Board adopted. See Evergy, Inc. v. BNSF Ry., NOR 42180, slip op. at 2-3 (STB served June 10, 2024); (see also Complainants Reply 25). That schedule does not provide for initial disclosures of information related to damages, and the Board is not bound by the FRCP or the initial disclosure requirements

¹¹ Complainants state that they will provide all relevant exhibits, supporting data, and workpapers with their opening evidence, and they have not objected to producing documents requested in BNSF’s second set of discovery requests that seek data retained by Complainants in the ordinary course of business that could bear on the issue of damages. (See Complainants Reply 12-13, 25.)

¹² Complainants state that they objected entirely to BNSF’s request for information about how “price adders” applied to Complainants’ SPP offer prices impacted Complainants’ profits. (Id. at 5 (citing BNSF Mot., Ex. 7 (Responses to BNSF’s Second Set of Interrogatories) at 2-3).) While Complainants do not object to producing documents and data showing the price adders that were applied in 2022, Complainants argue that BNSF’s request for an explanation of if and how price adders impacted Complainants’ profits relates to how they intend to support their claim of lost opportunity, and is attorney work product. (Complainants Reply 5 n.6, 11 & n.13.) The Board agrees with Complainants that the requested information about price adders, beyond what Complainants have already agreed to provide, is privileged attorney work product and therefore protected from disclosure.

contemplated by those rules. (See Complainants Reply 14); Intermountain Power Agency v. Union Pac. R.R., NOR 42127, slip op. at 4 n.12 (STB served Nov. 2, 2012) (citing Am. Trucking Ass’n v. United States, 627 F.2d 1313, 1320-21 (D.C. Cir. 1980)). If BNSF expected initial disclosures, it should have sought to include them in the procedural schedule. BNSF states that it agreed to the proposed procedural schedule with the expectation that Complainants would “not conceal necessary information until its opening evidence.” (See BNSF Mot. 12 n.8.) Complainants, however, are not concealing information but rather declining to disclose information rightfully protected by the attorney work product privilege. Moreover, there is no indication on the record that BNSF communicated its expectation of initial disclosures to Complainants, who may have agreed to the proposed procedural schedule with the expectation that no such initial disclosures would be required.

BNSF will have the opportunity to review and respond to the evidence provided following submission of Complainants’ opening evidence. Nevertheless, given the seeming complexity of the issues involved in the proceeding, the Board will modify the procedural schedule to provide BNSF with an additional two months to prepare its reply evidence.¹³ BNSF requests that, if Complainants are permitted to file the requested information with their opening evidence, the Board permit it to conduct additional discovery post-opening. (BNSF Mot. 18.) However, the record before the Board does not support the need for additional, post-opening discovery, especially where the parties did not provide for such discovery in their jointly proposed procedural schedule. As with the initial disclosures, BNSF had the opportunity to seek post-opening discovery in the procedural schedule. Indeed, such post-opening discovery was incorporated into the procedural schedule in a recent case in which BNSF is a party. See, e.g., Atchison, Topeka & Santa Fe Ry.—Operating Rts.—S. Pac. Transp. Co., FD 22218 (STB served Dec. 5, 2023) (adopting a jointly proposed procedural schedule providing for post-opening “written discovery on opening statements and evidence”). Moreover, the Board expects that Complainants will provide all relevant exhibits, supporting data, and workpapers with their opening evidence, as they have represented. (See Complainants Reply 25.) For these reasons, the Board will deny BNSF’s pending request to add post-opening discovery to the procedural schedule.¹⁴

BNSF also requests that the Board compel Complainants to produce information concerning two additional facilities, La Cygne and Hawthorn. (BNSF Mot. 20.) BNSF argues that what occurs at one of Complainants’ plants can increase revenues at other plants, and

¹³ BNSF requested that it receive six months after Complainants disclose the requested information, to correspond to the time BNSF would have had to review the information had Complainants provided it when the responses to BNSF’s second discovery requests were due. (BNSF Mot. 13.) The Board finds that a period of two additional months, in combination with the other procedural schedule adjustments discussed below, strikes the appropriate balance of providing additional time for BNSF to review complex evidence without unduly delaying the proceeding.

¹⁴ Should BNSF believe that additional discovery is necessary after reviewing Complainants’ opening evidence, it may file a petition for limited additional discovery. Any such petition should detail with specificity the additional discovery requested and explain why the specific discovery requested is justified under the circumstances.

therefore information about these other plants is relevant to Complainants' damages claims. (Id. at 21-22.) BNSF further argues that the production cost modeling in this proceeding will consider data about La Cygne and Hawthorn. (Id. at 22.) Moreover, according to BNSF, because it is entitled to information about Complainants' other plants and because those other plants are served by other carriers, BNSF is therefore entitled to information about the other carriers' deliveries of coal to Complainants' plants. (Id. at 23.) BNSF states that information about the quality of other carriers' service to Complainants' other plants would also be relevant in terms of BNSF's liability, as such data and documents could demonstrate that BNSF acted reasonably in providing common carrier service in 2022. (Id.)

Complainants object to providing the requested information. According to Complainants, the information BNSF seeks about Complainants' other facilities is largely related to actions or conditions that precede generation (and revenue settlement),¹⁵ and therefore are not relevant to the impact of reduced generation at Iatan and Lawrence in 2022. (Complainants Reply 18.) Moreover, Complainants argue that coal to all stations other than Iatan and Lawrence is delivered under contract, and BNSF has not explained why the adequacy of its service under tariff should be assessed by reference to another carrier's performance under contract. (Id. at 19.)

The Board concludes that certain information related to Complainants' La Cygne and Hawthorn facilities, including information about actions and conditions that precede generation, may be relevant to the subject matter of the proceeding and therefore discoverable under the Board's broad discovery regulations. It is plausible, as BNSF contends, that Complainants may have adjusted operations at their other plants to account for a change in the amount of coal burned at the Iatan and Lawrence facilities, or that the regional wholesale price for electricity earned by the other plants increased due to reduced output at the Iatan and Lawrence facilities. (BNSF Mot. 21-22 & n.11.) Any such adjustments could have impacted Complainants' revenues and are therefore potentially relevant to Complainants' damages claims, which are based in part on lost profits and opportunity costs. (See Compl. 3.) Indeed, Complainants have agreed to produce 2022 revenue data for La Cygne and Hawthorn. (See Complainants Reply 17-18; see also id. at 17 nn.20-21.) Permitting discovery of actions or conditions that precede generation at those facilities, as well as pre-2022 revenue generation data, would give BNSF information about La Cygne and Hawthorn that is more fully comparable to that which it received (or will receive) for the Iatan and Lawrence facilities, thereby enabling a more complete assessment of whether and to what extent such adjustments were made. (See, e.g., BNSF Mot., Ex. 7 (Second Set of Document Production Requests) at 6-7 (agreeing to provide responsive, non-privileged information on daily coal inventory or stockpile volumes for Iatan and Lawrence); BNSF Mot., Ex. 3 (Responses to BNSF's First Set of Document Production Requests) at 23 (agreeing to produce pre-2022 revenue information for Iatan and Lawrence).)

BNSF states specifically that information about La Cygne and Hawthorn is "necessary to assess [Complainants'] claims about the impact of BNSF's alleged statutory violations," and that

¹⁵ According to Complainants, this includes, for example, requests seeking documents related to coal unloading times, coal stockpiles, annual coal shipment nominations, coal inventory reclamation, and daily coal deliveries. (Complainants Reply 18.)

Complainants' production cost modeling "will consider data relating to La Cygne and Hawthorn." (BNSF Mot. 20, 22.) Accordingly, to the extent that the discovery requests in dispute seek information about Complainants' other plants and Complainants have provided responsive information about the Iatan and Lawrence facilities, Complainants will be directed to provide responsive information for the La Cygne and Hawthorne facilities as well, to the extent it has not already been provided.

The Board also agrees that certain information about the carriers that serve La Cygne and Hawthorn is discoverable. BNSF suggests that it may rely on information about other carriers' service to support its position that it acted reasonably in providing common carrier service in 2022. (BNSF Mot. 23.) And even if the other carriers provide service pursuant to contract, as Complainants assert, Complainants have failed to explain why information about that contract service would be irrelevant while, as Complainants state, "BNSF's own 20+ year record of contract service to Iatan and [Lawrence] is highly relevant to the issue of BNSF's subsequent common carrier obligations." (Complainants Reply 19.) Accordingly, to the extent that the discovery requests at issue seek information about other carriers, Complainants will be directed to provide responsive information about other carriers' service to La Cygne and Hawthorn in 2022.

Given that BNSF's motion fails to identify the specific discovery requests to which its motion applies,¹⁶ the Board cannot compel responses to specific discovery requests. The Board, therefore, will direct the parties to meet and confer to coordinate the exchange of information and documents in accordance with the determinations in this decision. The Board expects BNSF and Complainants to endeavor to resolve their discovery disputes (including those mentioned in their letters filed on November 21 and 22, 2024) without further Board intervention.¹⁷ The deadline for the close of discovery will be set at April 3, 2025, and all subsequent deadlines will

¹⁶ BNSF's motion identifies particular discovery requests only in the background section. (See BNSF Mot. 6, 8.) It is not clear from the motion, however, whether those requests are the requests at issue or a sampling of the types of information BNSF requested as BNSF described the background of the discovery dispute. Complainants, noting BNSF's failure to identify which particular requests are at issue, provided their own list of the requests they consider to be in dispute. (See Complainants Reply 7-8.) Given Complainants' argument that the motion to compel is untimely with respect to BNSF's first set of discovery requests, Complainants' reply references only BNSF's second set of discovery requests. (*Id.*) BNSF states, in its October 23, 2024 filing, that the 10-day filing deadline "is met for the discovery requests relevant to the issues BNSF raised," seemingly conceding that the dispute relates only to its second set of discovery requests. (BNSF Reply 5, Oct. 23, 2024.)

¹⁷ Should issues remain following the parties' conference, the parties should advise the Board of those issues quickly and with specificity.

be adjusted accordingly. An updated procedural schedule is attached as an Appendix to this decision.¹⁸

It is ordered:

1. BNSF's motion to compel is granted, in part, as discussed in this decision.
2. The parties are directed to meet and confer to coordinate the exchange of information and documents in accordance with the determinations in this decision.
3. BNSF's October 23, 2024 filing is accepted to the extent discussed above.
4. The procedural schedule is modified as set forth in the Appendix to this decision.
5. This decision is effective on the date of service.

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

¹⁸ The modified procedural schedule also includes an additional two months for BNSF to prepare its reply evidence, as discussed above.

APPENDIX

Procedural Schedule

April 3, 2025	Discovery closes.
May 22, 2025	Evergy Opening Evidence due.
September 19, 2025	BNSF Reply Evidence due.
October 23, 2025	Evergy Rebuttal Evidence due.
November 24, 2025	Simultaneous Final Briefs, 30-page limit (including appendices), no new evidence.