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**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' REPLY TO BNSF'S SECOND MOTION TO COMPEL

***PUBLIC VERSION – CONFIDENTIAL AND
HIGHLY CONFIDENTIAL INFORMATION REDACTED***

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Complainants Evergy, Inc. (“Evergy”), Evergy Metro, Inc. (“Evergy Metro”) and Evergy Kansas Central, Inc. (“EKC”), hereby reply in opposition to Defendant BNSF Railway Company’s (“BNSF”) March 28, 2025 Second Motion to Compel (“Motion”). The Motion repeatedly mischaracterizes salient facts, lacks legal merit, and levels a wholly unfounded accusation alleging the destruction of relevant evidence. The Board should deny BNSF’s Motion in its entirety.

In its Motion, BNSF asks for an order requiring Evergy to produce voluminous documents and data based on the false claim that they are materials that Evergy “continues to refuse to produce *despite the Board’s order of March 4, 2025* on BNSF’s first motion to compel.” Motion at 1 (emphasis added); *see also id.* at 4-5 (claiming that Evergy has withheld document production despite “clear direction from the Board to produce such discovery”); *id.* at 1 (“An order from the Board is therefore, again, necessary to compel” the production of “[t]hese

documents.”). In fact, *none* of the documents and data that BNSF now seeks were subjects of the production order in the Board’s March 4 Decision on BNSF’s first Motion to Compel (“Decision”), and BNSF’s latest arguments wholly fail to justify the new discovery relief that it seeks.

As demonstrated in this Reply, Evergy has complied fully with the Board’s Decision. Rather than seeking enforcement of that Decision, BNSF’s Motion raises new claims over Evergy’s responses to an entirely separate set of profoundly overbroad and objectionable discovery requests that were served five (5) and seven (7) months ago.¹ BNSF has asserted these claims only a few weeks before the date for the filing of Evergy’s Opening Evidence on the merits in this case, a date which already represents a five (5) month extension of the original procedural schedule. A clear inference is that BNSF seeks once again to delay the evidentiary phase of the proceeding. The Board should reject this late-stage tactic.

BNSF’s Motion appears to be directed to its RFPs 58, 71, 90, and 91,² which related to computer modeling data and coal inventory management information. In its September 16, 2024 and November 20, 2024 Responses and Objections (Exhibit Nos. 3 and 4 hereto), Evergy objected to the propounded requests as overbroad, unduly burdensome and beyond the scope of reasonable discovery, and then offered to consider narrowed versions of the requests, produce a

¹ See Exhibit Nos. 1 and 2 hereto. Exhibit No. 2 also includes relevant portions of BNSF’s Third Set of Interrogatories, which BNSF cross-references in its Third RFP’s.

² As the Board noted with respect to BNSF’s First Motion to Compel (*see* March 4 Decision at 9 n.16), BNSF once again fails to offer a consistent, precise identification of the specific requests as to which it seeks relief. *See, e.g.*, Motion at 3 & 5 n.2 (referring to RFPs 58 and 71) (inventory management); *id.* at 5 n.1 (referring to RFPs 22, 32, 58, 71, and 81) (damages claims); *id.* at 6 n.3 (modeling); *id.* at 11 (referring to RFPs 22, 71, 81, 90, and 91) (modeling). BNSF’s practice of referencing broad, loosely defined concepts rather than focusing upon specific RFPs unnecessarily obfuscates the issues presented and provides more insight into the objectionable nature of BNSF’s individual discovery requests.

subset of the overbroad requested materials, and/or produce documents sufficient to show the information that was the subject matter of the requests. The parties discussed these options and Evergy produced responsive documents accordingly. That production included full sets of inputs and outputs from sample runs of the utility production cost models in question (PROMOD and PCI GenTrader) and documents showing Evergy's coal inventory levels at the two generating stations at issue in this case over the multiple years covered by BNSF's requests.

Now, purportedly invoking the Board's specific and limited March 4 ruling directing Evergy to produce additional documents in two categories related to two other Evergy coal-fired generating stations, BNSF has sought to revive its original and overbroad requests directed at very different topics, and to "move the goalposts" regarding the parties' prior discussions of those topics. In its ruling, the Board ordered Evergy to produce certain documents and data related to Evergy's La Cygne and Hawthorn generating stations, and documents and information concerning rail service provided to those stations by carriers other than BNSF. Decision at 8-9. The Board went on to direct the parties to "meet and confer to coordinate the exchange of information and documents in accordance with the determinations in this decision." Decision at 9; *see also id.* ("Given that BNSF's motion fails to identify the specific discovery requests to which its motion applies,[] the Board cannot compel responses to specific discovery requests."). Contrary to BNSF's claim (Motion at 7-8), the Board did not order Evergy to produce documents in response to long-pending, unrelated and overbroad BNSF requests on topics that were not addressed in the Decision.

The March 4 Decision imposed a new procedural schedule and strongly encouraged the parties to "resolve their discovery disputes (including those mentioned in their letters filed on November 21 and 22, 2024) without further Board intervention." Decision at 9. Nothing in the

Decision suggests an intention that BNSF should use the new April 3 discovery closure date as an opportunity to revisit months-old discovery requests to which Evergy had previously objected, in some cases prior to the filing of BNSF's *first* Motion to Compel.³

BACKGROUND

A. BNSF's Discovery Requests

BNSF has served three separate rounds of document production requests in this proceeding, including a First Set with RFP's 1-48 (May 24, 2024), a Second Set with RFPs 49-89 (August 15, 2024), and a Third Set with RFP's 90-91 (October 31, 2024). Evergy served its responses and objections to these requests on June 24, September 16, and November 20, 2024, respectively. Two categories of RFPs are the subjects of BNSF's current Motion.

1. Economic Modeling Requests

When BNSF propounded its economic modeling discovery requests (RFPs 90 and 91), Evergy made a timely objection on the grounds that they were overbroad and unduly burdensome. BNSF had sought the production of *all input and output files* and related data with respect to *any* analysis employing PROMOD or GenTrader (RFP 90) or other "modeling software of any type" (RFP 91) over a five-year time period:

³ Evergy recognizes that the March 4 Decision identifies the close of discovery as an "outer limit" for the filing of motions to compel document production. Decision at 5. Nevertheless, Evergy respectfully submits that the Board should carefully consider the circumstances of "just-in-time" motions to compel filed regarding discovery requests as to which objections were raised months earlier and as to which the stated objections did not give the propounding party any legitimate reason to expect that the production of "all" requested documents would be forthcoming. In a similarly concerning manner, BNSF hints in its Motion that it may file additional motions to compel. Motion at 19 n.8 ("BNSF reserves the right to seek further order to compel for a reasonable time after April 3, 2025, should it prove necessary.").

a. RFP No. 90

“Provide all input data files, output data files, and sufficient documentation to replicate the results of any analysis employing PROMOD or PCI GenTrader between January 1, 2019 to December 31, 2023 as identified in Interrogatory No. 36. . . .” (Exhibit No. 2).

After raising overbreadth and burden objections, Evergy stated in its November 20, 2024 responses (Exhibit No. 4 hereto) that it would “consider a narrower and modified version of this Request should BNSF elect to propound one.”

b. RFP No. 91

“Provide all input data files, output data files, and sufficient documentation to replicate the results of any analysis conducted between January 1, 2019 to December 31, 2023, as identified in Interrogatory No. 38. . . .” (Exhibit No. 2).

Evergy incorporated its objections and response to RFP 90 into its response to RFP 91. (Exhibit No. 4).

2. Inventory Management Requests

BNSF’s original requests for inventory-related data likewise were the subject of Evergy objections based on overbreadth, vagueness and burden. BNSF had requested – for the *entire* time period from January 1, 2019 to the date of its requests – that Evergy produce *all* documents “relating” to coal stockpiles and *all* documents “relating” to Evergy’s “decisions to burn coal inventory.”

a. RFP 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.” (Exhibit No. 1).

After raising its objections to RFP 58, Evergy stated in its September 16, 2024 response that it would “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.” *See* Exhibit No. 3.

b. RFP No. 71

“All Documents relating to Evergy’s decisions to burn coal inventory at its plants.” (Exhibit No. 1).

Once again, after raising overbreadth, vagueness, and burden objections to RFP 71 (Exhibit No. 3), Evergy stated on September 16, 2024 that it “will produce responsive, non-privileged documents sufficient to show the coal reclaimed from inventory and burned at Iatan and Lawrence during 2022.” (Emphasis added).

BNSF does not dispute that Evergy produced documents sufficient to show the subject matters described in its Request Nos. 58 and 71. BNSF admits in its Motion that Evergy produced “responsive, non-privileged documents *sufficient to show* the levels of coal inventory at its Iatan and Lawrence plants from January 1, 2019 through December 31, 2022. Motion at 3 (emphasis in original). While BNSF observes that Evergy’s production of coal inventory data is “more limited than BNSF’s request . . .” (*id.* at 3), that is entirely consistent with Evergy’s previous representations.

Evergy’s objections to Request Nos. 58 and 71 and its stated intent to produce a range of documents more limited than BNSF’s overbroad Requests were served on September 16, 2024. BNSF filed its first Motion to Compel on September 27, 2024. Its Request Nos. 58 and 71 were not among the subjects of that Motion.

B. The Parties' Subsequent Communications

The parties exchanged letters in the weeks following Evergy's November 20, 2024 objections to BNSF's Third Set of Document Requests, in the course of which BNSF acknowledged that its broad request for *all* economic modeling data could be burdensome: "[W]e recognize the possibility that Evergy's widespread use of those models in the ordinary course could create burdens in producing all information relating to them." T. Strafford December 9, 2024 Letter to K. Dowd at 2 (Exhibit No. 5). On the basis of this admission, BNSF's counsel proposed that the parties meet and confer "regarding appropriate parameters that would allow a timely response by Evergy." The parties held such a session on December 17, 2024, and as BNSF's counsel documented by email dated December 18, 2024, Evergy "agreed to produce a sample of input and output files from PROMOD and PCI GenTrader from 2022 related to coal conservation and/or generating decisions *pending input from your client*." T. Strafford December 18, 2024 email to K. Dowd (Exhibit No. 6) (emphasis added).

After obtaining that additional input, counsel for Evergy advised BNSF that Evergy "does not have retained GenTrader or PROMOD run files from 2022 that relate to coal conservation or generation." K. Dowd February 21, 2025 email to A. Wolf (Exhibit No. 7). As counsel for Evergy had advised BNSF's counsel during earlier meetings, production cost modeling at Evergy was (and is) undertaken for many different purposes using many different input variables over the course of a year, and once the information sought by those asking for the model run was provided, in the ordinary course it was not unusual that the full sets of model inputs and outputs would not be retained. Given the unavailability of such information for 2022, Evergy produced (on January 29, 2025) input and output files for a PROMOD run from November 7, 2021 and a

GenTrader run from November 18, 2021. Evergy provided the closest substitute that it could identify for the potential production that the parties had discussed on December 17, 2024.

The parties conferred again on March 10 in response to the Board's March 4 Decision. During that call, BNSF devoted only brief attention to the March 4 Decision itself, and instead focused principally upon earlier differences with respect to Evergy document production in response to BNSF's First, Second and Third Requests that had not been formally challenged and were not referred to in the Decision. Those differences included Evergy's objection to searching for and producing many more PROMOD inputs and outputs, regardless of the purposes of the model's use, Evergy's previous limitations on production in response to BNSF's request for "all documents" related to coal stockpiles at the Evergy plants, and BNSF's request for 2022 GenTrader runs that reasonable inquiry showed did not exist. In terms of the designated purposes of the conference (*i.e.*, the STB's March 4 Decision), Evergy explained its compliance plans and BNSF did not present any objections to those plans at that time.

ARGUMENT

BNSF's Motion to Compel misstates facts and fails to provide any legitimate support for the relief that BNSF seeks. Evergy has produced an extraordinary volume of documents in this proceeding, including nearly 90,000 pages of documents, over 88 gigabytes (GB) of data (not including the sample PROMOD run referenced *supra*) and 2074 spreadsheets in response to BNSF's Document Requests, including extensive data related to the subject matter of the requests that apparently are the focus of BNSF's Motion. Evergy has complied with the Board's March 4 Decision, and BNSF's latest efforts to expand the scope of reasonable discovery mere weeks before the submission of evidence in this case are wholly without merit.

Having failed in its earlier efforts to secure privileged materials regarding damage calculations or post-evidentiary discovery, BNSF now turns its attention to an effort to disrupt the schedule in this proceeding by seeking production of documents in response to substantially overbroad requests that Evergy had addressed several months ago. The Board should not countenance BNSF's effort to distort the facts for its own tactical advantage.

A. Evergy Has Fully Complied with the March 4 Decision

As an initial matter, and contrary to the suggestions in BNSF's Motion, Evergy has fully complied with the March 4 Decision. In that Decision, the Board imposed two production obligations on Evergy, one related to generating stations other than the Iatan Generating Station and Lawrence Energy Center, and one related to rail carriers other than BNSF: (1) "[T]o 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 Hawthorn[] facilities as well, to the extent it has not already been provided" (Decision at 9); (2) "[T]o 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." *Id.* The March 4 Decision required nothing more.

The parties conferred on March 10, 2025. In its summary of the March 10 meeting, BNSF counsel noted that Evergy had committed to produce these Board-identified materials:

We first discussed documents that contain redactions that should be unredacted in light of the Board's Decision. You confirmed that Evergy plans to reproduce [unredacted versions of] documents containing redacted information about other carriers or about the La Cygne and Hawthorn plants (to the extent the information is not otherwise privileged). You also noted that you will be redacting information about rail service to Evergy plants other than Iatan, Lawrence, La Cygne, and Hawthorne (e.g. when producing

Evergy's contracts with other carriers, you plan to redact Jeffrey plant details). You also stated that you would not redact information about plants other than Iatan, Lawrence, La Cygne, and Hawthorne in documents related to generation.

We next discussed the additional documents Evergy plans to produce pursuant to the Board's order. You confirmed that you plan to produce documents within the ambit of the Board's Decision, including, but not limited to: 1) contracts with other carriers; 2) 2022 liquidated damages documents (to the extent there are any); 3) nominations and declaration documents, including internal Evergy correspondence and correspondence with other carriers; and 4) cycle times and coal unloading documents.

T. Strafford March 10, 2025 email to K. Dowd and D. Jaffe (Exhibit No. 8 hereto). Since the date of the parties' conference, Evergy has produced the subject documents. Notably, BNSF's Motion makes no claim of any defects in Evergy's production of documents identified in the March 4 Decision (*i.e.*, documents regarding other generating facilities and other railroads).

Relatedly, BNSF's effort to distort the meaning of the Decision's footnote 11 is entirely unavailing. *See* Motion at 2, 10. In its October 16, 2024 Reply to BNSF's First Motion to Compel (which the Board cites in footnote 11), Evergy stated that it had not objected to producing documents in response to certain of BNSF's Second Requests. Evergy Reply at 12 ("It bears emphasis that Complainants have not objected to producing documents in response to those of BNSF's Second Requests that seek data retained by Evergy, Evergy Metro and/or EKC in the ordinary course of business that could bear on the issue of damages."). This representation manifestly did not extend – and could not have extended – to BNSF's RFP Nos. 90 and 91. Those two modeling-related RFPs appear in BNSF's Third Set of Requests (Exhibit No. 2), which BNSF did not serve until more than two weeks *after* the date of Evergy's Reply to BNSF's first Motion to Compel. Moreover, Evergy's October 16 Reply (at 13) specifically identified the materials that Evergy agreed to produce, and Evergy subsequently produced 61 spreadsheets

comprised of 1.26 GB of data maintained in the ordinary course of business that met the description in footnote 11 of the Board’s March 4 Decision, including but not limited to generation offer price and coal conservation price “adder” information, hourly unit dispatch data, Southwest Power Pool revenue credits and power purchase costs, and unit availability and Locational Marginal Pricing data. *See* Exhibit 9 hereto. There is no basis whatsoever for the suggestion that the Board denied BNSF’s request for the production of privileged PROMOD and GenTrader analyses because it understood that Evergy had committed to produce any and all economic modeling analyses that BNSF might seek in future discovery requests.

B. BNSF Has Failed to Justify its Request for All Economic Modeling Runs

The Argument section of BNSF’s Motion opens with the unremarkable observation that a party ordinarily cannot limit its discovery production to information sufficient to prove its own case. Motion at 9, *citing Seminole Electric Coop., Inc. v. CSX Transp., Inc.*, STB Docket NOR 42110 (STB served Feb. 17, 2009) at 2. However, that decision does not nullify otherwise legitimate objections to overbroad and unduly burdensome discovery requests, and the circumstance it describes is hardly the same as responding to an overbroad discovery request from an opposing party by offering to produce documents sufficient to show the information that is the subject matter of the request. *See Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions*, STB Docket FD 35557 (STB served Mar. 19, 2012) at 3. Indeed, such an objection and response is quite common in discovery practice before the Board, and has been invoked by BNSF itself in this case. *See* BNSF’s Responses and Objections to

Complainants' First Set of Interrogatories and Requests for Documents, June 6, 2024, General Objection No. 2 (excerpt attached as Exhibit No. 10 hereto).

As Evergy responded when they first were propounded in October 2024, BNSF's RFPs 90 and 91 are substantially overbroad. Those requests sought *all* input data files, output data files, and sufficient documentation to replicate the results of *any* PROMOD, GenTrader, or *any other* modeling software over the five-year period between January 1, 2019 and December 31, 2023. In its Motion, BNSF claims that Evergy "refuses to produce historical information" involving the models (Motion at 10), but this is simply untrue. Following earlier discussions and with BNSF's acknowledgement, Evergy produced complete input and output files for historic PROMOD and GenTrader runs as examples of the performance of the models. As noted *supra*, Evergy also produced extensive data retained in the ordinary course of business related to the impact of coal conservation measures implemented in 2022 as a consequence of BNSF's trainset limitations. What Evergy has objected to is a blanket request for *all* inputs, outputs and related files for *every* model run executed over a five-year period.

Evergy personnel execute PROMOD runs frequently throughout a year, for myriad purposes and utilizing a wide range of input assumptions. The outputs generated by PROMOD are used within Evergy in the ordinary course of business, supporting resource investment planning, fuel supply and transportation services planning and procurement, interchange budgeting, scheduling of generation facility outages for maintenance or upgrades, and the planning of transmission projects, among other purposes. Historically, GenTrader has been used to perform stochastic analyses of generation unit dispatch, again on the basis of an array of assumptions and inputs. As shown further *infra*, these hypothetical-driven exercises have little if any relevance to evaluating an actual data-driven analysis that may be submitted by Evergy on

the issue of damages in its Opening Evidence, an analysis which would be accompanied by complete data sources and workpapers confirming the accuracy of the model inputs.

In its March 4 Decision, the Board explained that discovery may be denied if it would be unduly burdensome in relation to the value of the information sought. Decision at 6 (citing *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). As BNSF’s witness Hibbard acknowledges in his Declaration (at ¶ 16), the single set of inputs and outputs from a sample PROMOD run that Evergy produced in this case consists of 140 files and amounts to 16.2 GB in combined size. A sample GenTrader run produced by Evergy comprised about 100 MB of data. While BNSF argues that these data volumes represent a “small fraction” of the discovery produced by the parties to this case (Motion at 15), that discovery amounts to more than 116,000 documents, over 105 GB of data, and almost 4,000 spreadsheets. Even a “small fraction” of that volume still amounts to a prodigious production burden. Searching for, identifying and producing *all* data related to *every* PROMOD and GenTrader run that Evergy performed over a five-year period (assuming that all the data still existed and it was possible to identify and produce it) would involve an extraordinary expenditure of time and resources and an enormous volume of documents and information to search for, review and organize.

BNSF has not demonstrated any genuine need for the broad and multi-year scope of modeling inputs and outputs and related data that it has requested. BNSF presents a series of excerpts from existing Evergy document production (*id.* at 11-12) showing that Evergy uses PROMOD, a fact that Evergy does not deny and has not disputed. Critically, however, BNSF fails to acknowledge that Evergy’s production already includes a substantial volume of material

associated with PROMOD results (including but not limited to an August 2, 2022 PROMOD run on which BNSF seemingly is fixated). In fact, the same spreadsheet that BNSF identified for purposes of its own Exhibit 9 (EVERGY-0014393) details the coal-consumption forecasts associated with the August 2, 2022 PROMOD run. Exhibit No. 11 hereto includes relevant excerpts of this 8 MB, 39-tab Excel spreadsheet. Tab “BurnProjection1” presents a wealth of coal-volume forecast detail (updated as of August 3, 2022) and explicitly sources Evergy’s August 2, 2022 PROMOD run.

Similarly, BNSF identifies EVERGY-0086787 in which Evergy’s Jessica Tucker asks former Evergy employee Kwang Kim to prepare a PROMOD run. Motion at 11. BNSF fails to acknowledge that Evergy’s document production already includes the “latest PROMOD 2022 coal burn forecast” that Mr. Kim completed in response to Ms. Tucker’s request. *See* EVERGY-0086832 (produced in native, Excel format) (excerpts attached as Exhibit 12 hereto).⁴

BNSF also comments on EVERGY-0082893 which refers to a PROMOD run performed by Mr. Kim using a set of assumptions requested by another former Evergy employee to assess the impact of an assumed use of gas rather than coal at the Lawrence station. Once again, however, BNSF fails to acknowledge that Evergy produced the two attached Excel files setting forth the results of the PROMOD runs:

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See, e.g., Motion at 15. {

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Message

From: Eric Peterson [eric.peterson@evergy.com]
Sent: 8/2/2022 7:51:56 PM
To: Kwang Kim [kwang.kim@evergy.com]; Abby Herl [abby.herl@evergy.com]
CC: Jessica Tucker [jessica.tucker@evergy.com]
Subject: FW: Q4 2022 LEC Coal Conservation Impact PROMOD Analysis
Attachments: 220729_DEL_PROMOD_2022_Evergy_Coal_Burn_Forecast_COM220727.xlsx;
220802_DEL_PROMOD_2022_Evergy_Coal_Burn_Forecast_20220802.xlsx

Internal Use Only

Thx Kwang!

* * *

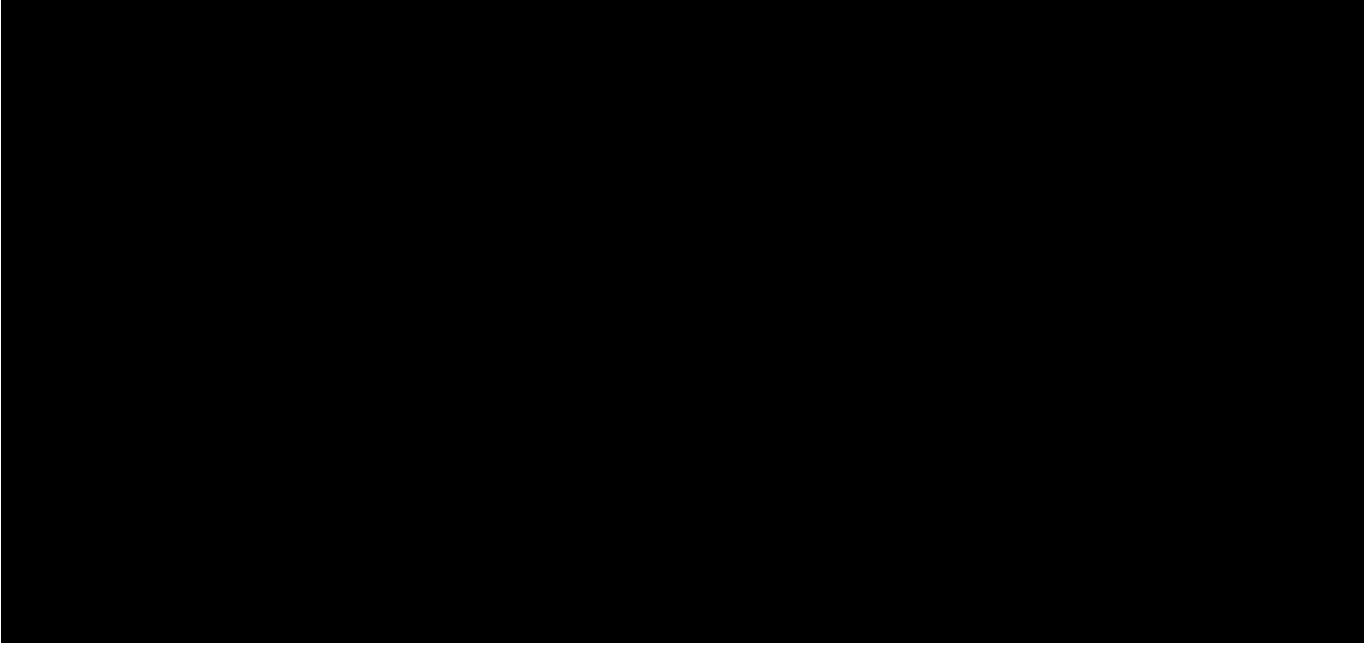
STB Docket No. 42180

EVERGY-0082893

See EVERGY-0082893 to EVERGY-0082895 (relevant excerpts appear in Exhibit No. 14 hereto). These results spreadsheets are dated July 27, 2022 and August 2, 2022, respectively, and each spreadsheet includes, *inter alia*, Evergy’s projected coal fuel cost (by unit and by month), coal consumption (by unit and by month), online days (by unit and by month), and hourly Locational Marginal Prices (“LMP’s”) by unit for each hour in calendar year 2022.

Notably, BNSF’s citation of the email chain beginning on EVERGY-0082907 fails to recount the basic premise of the author’s (Mr. Eric Peterson’s) note. *See* Exhibit No. 15 hereto. Mr. Peterson, another former Evergy employee, observed that so many PROMOD runs had been requested based upon a wide variation of different assumptions – *i.e.*, a “menu of options” – that the Evergy employee responsible for the work (Mr. Kim) simply did not have time for all of those unofficial and speculative exercises:

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A review of BNSF's other citations to the Evergy document production (Motion at 11-12) further confirms that BNSF has failed to provide any meaningful justification for the relief that BNSF seeks in its Motion. These references show only that Evergy makes regular use of PROMOD in the ordinary course of business, something which – as noted *supra* – Evergy has never denied. They offer nothing to counter Evergy's objection to the overbreadth of BNSF's modeling data Requests. *See* BNSF Ex. 6 at 82388 (Evergy uses PROMOD); EVERGY-0082391 (simply showing, as noted repeatedly, that Evergy uses PROMOD for a variety of different purposes); EVERGY-0082446 (noting that the detailed volume forecasts in the PowerPoint presentation that Evergy produced at EVERGY-0082447 used the "most recent" PROMOD runs); EVERGY-086202 (slide deck page confirming that Evergy uses PROMOD).

In its Motion, BNSF relies on its witness Hibbard in arguing that Evergy's overbreadth objection is not valid. However, Mr. Hibbard obviously is not employed by Evergy (and therefore knows nothing about the company's document and information storage regime), and

according to BNSF, Mr. Hibbard does not hold a license to run the PROMOD model.⁵

Accordingly, his opining about the supposed lack of burden associated with identifying, organizing and producing hundreds of gigabytes of input and output data for model runs spanning five (5) years constitutes mere speculation.

Throughout his Declaration accompanying the Motion, Mr. Hibbard proceeds from a false premise that production cost modeling performed on the basis of assumptions and hypothetical inputs with the goal of making *projections* about unit characteristics, operations, coal inventory levels, etc. are key to evaluating a later model run based on actual, historic data. *See* Hibbard Declaration at 3-5. Projections are just that: forecasts of what is *expected* to happen based on a given set of assumptions and estimated inputs. As Evergy will show in its Opening Evidence, both PROMOD and GenTrader are executable, closed-source software packages that cannot be changed or manipulated by the user. The quality and reliability of the programs' outputs depends on the accuracy of the inputs and the data support behind them. A model run based on hypotheticals and/or assumed metrics would have only marginal utility at best in evaluating a run using actual, historic inputs grounded in reliable data sources.⁶

On May 22, 2025, Evergy will submit its Opening Evidence, which will include calculations of damages developed using PROMOD and GenTrader. Evergy will present base cases showing what actually occurred in the relevant power market in 2022, and “but-for” cases

⁵ *See* BNSF Reply in Support of Motion to Compel, October 23, 2024 at 4 & Hibbard October 23, 2024 Decl. at 2.

⁶ Mr. Hibbard also asserts that “every single PROMOD and GenTrader run from 2022 includes information on generation...” (Hibbard Declaration at 8), apparently taking issue with Evergy’s advice to BNSF earlier this year that it had not been able to identify retained PROMOD or GenTrader input and output files from runs in 2022 conducted for “coal conservation and/or generation *decisions*...”. *See* pp. 7-8, *supra*. There is a clear difference between reporting generation information and using that information for actual planning or decision-making.

showing what would have occurred in that market if BNSF had met its statutory obligations. BNSF will have abundant time under the new procedural schedule (*i.e.*, four months rather than only two) in which to analyze Evergy's actual evidence.⁷ That evidence will identify all of the details of Evergy's actual damage calculations, supported by exhibits, data sources and complete workpapers, and will have far more value and relevance to the outcome of this proceeding than any hypothetical modeling run that Evergy may have performed over the course of one or more years.

BNSF's goal through its Motion may be to try and identify any instance(s) in which Evergy conducted a PROMOD or GenTrader model run that used different inputs and assumptions than Evergy uses in its actual evidence in this case. Those sorts of instances undoubtedly will exist, but differences of that nature are not relevant to the legitimacy of Evergy's damages analysis or material to the resolution of this dispute. As explained above, Evergy has run (and continues to run) production cost models on a regular basis in order to test a multitude of different hypothetical scenarios. The fact that one or more runs – out of what could amount to dozens of different historic modeling runs – may have relied upon a different set of assumptions and/or inputs than the analyses presented in Evergy's Opening Evidence would not prove anything other than the fact that Evergy has engaged in substantial modeling for a variety of different purposes and using a variety of different hypotheticals and assumptions.⁸

BNSF has received a substantial volume of data in discovery from Evergy and from the Southwest Power Pool regarding the actual 2022 characteristics, metrics and parameters of the

⁷ “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. . . . The Board disagrees.” Decision at 6.

⁸ In fact, BNSF's Witness Hibbard confirms in his Declaration that he is able to compare and contrast Evergy's PROMOD-run assumptions against the model's default parameters, and he

power market in which the Iatan and Lawrence stations participate. If Evergy was to submit a base case in its Opening Evidence that was predicated on a different set of input parameters than actually existed in 2022, BNSF would be entitled to critique such a difference in its Reply Evidence. But that possibility (however unlikely) does not justify BNSF's attempted fishing-expedition discovery regarding any historic use of PROMOD or GenTrader, which at most could only be marginally relevant given the many different hypothetical model inputs used over the historic time period.

By way of analogy in the railroad context, nothing would be gained with respect to analyzing the actual dispatch and/or capacity of a railroad system by requiring the production of every dispatch modeling run that the railroad may have performed over a multi-year period in order to test multiple and different assumptions about either adding extra track capacity or removing sidings in various locations throughout its system. The materials that BNSF seeks through its Motion constitute the same sort of "what if?" modeling that utilities like Evergy regularly perform in order to assist in their planning. Those prior runs would not constitute efforts to calculate damages for railroad service failures. Similarly, Evergy's non-privileged prior PROMOD and GenTrader runs do not constitute efforts to calculate damages for BNSF's 2022 service. And to the extent that Evergy has undertaken PROMOD and/or GenTrader runs in order to assist counsel's preparation for submitting damages evidence in this case (rather than for

further confirms that Evergy historically has elected to use the model with non-standard assumptions. *See* Hibbard Decl. at ¶ 7 ("[T]he November 2021 PROMOD run that Evergy produced indicates that Evergy customized the input assumptions for its production cost modeling rather than using PROMOD's default inputs."). That divergence is entirely consistent with Evergy's explanation that it did not perform historic PROMOD modeling in a manner designed to correspond to an STB damages analysis. The fact that prior runs used "non-damage" approaches proves nothing in the present case.

some other, more speculative purpose), the Board has recognized that those runs are privileged and immune from production. Decision at 6.

BNSF asserts that modeling conducted for “business purposes” provides a “real-world check” on a presentation offered in litigation (Motion at 13), and that “of course” modeling of estimated coal burns conducted in 2022 would be relevant to Evergy’s damages claims (*id.* at 15). Neither assertion is true in the context of PROMOD and GenTrader. As explained previously, model runs are performed for multiple purposes and are set up with assumed variables and inputs that often bear no relation to actual conditions (*e.g.*, a model run may dramatically inflate the assumed cost of natural gas in order to test the economic sensitivity of a proposed wind power resource investment). Likewise, when it comes to measuring the economic damages incurred by Evergy as a consequence of BNSF’s statutory violations, the relevant metric will be the *actual* levels of coal burn during 2022, not modeled forecasts.

To summarize, BNSF has not made the necessary “substantial showing of relevance and need” in order to outweigh the burden of producing the overly broad set of PROMOD and GenTrader materials that BNSF seeks. *FMC Wyo. Corp.*, NOR 42022, slip op. at 5.

C. BNSF’s PROMOD-Retention Arguments are Meritless

In its Motion, BNSF alleges that a PROMOD run from August 2022 “was not preserved in anticipation of litigation” and that documents indicating that Evergy was conferring with outside counsel in 2022 made the unavailability of the run “troubling.” Motion at 16. This thinly-veiled charge of improper behavior is both scandalous and wholly without foundation, and provides no basis for the Board to inquire about Evergy’s document retention policies.

As demonstrated *supra*, documents and data already produced by Evergy provided BNSF with extensive information drawn from the outputs of the PROMOD run in question, and there is

absolutely no evidence indicating that the former employee who executed the run was even aware of the status of Evergy's relationship with BNSF at the time or that the current unavailability of the input and output files associated with the run was the result of a deliberate act "in anticipation of litigation." The run was conducted approximately *eighteen (18) months* before this proceeding was initiated. BNSF's "troubling" characterization is made of whole cloth.

BNSF's reference to Evergy consulting with counsel likewise looks to find complicity where there is none.⁹ As BNSF and its counsel are very much aware, Evergy's outside counsel for this proceeding has represented Evergy and its predecessor companies for more than three (3) decades in a number of capacities, including commercial negotiations, litigation and regulatory proceedings. It is neither unusual nor noteworthy that Evergy would have consulted counsel during the period of BNSF's service limitations. However, to leap (as BNSF does) to conclude that Evergy was anticipating litigation in 2022 and – more egregiously – was not following normal document handling practices as a result, again without any corroborating evidence, is not worthy of serious Board consideration. That Evergy did not file its Complaint until January 31, 2024 *is* a matter of record, and further negates any potential suggestion that there was anything improper or "troubling" about the fact that like so many other modeling runs conducted in prior years, the input and output files for a single PROMOD run in 2022 were not retained.

D. BNSF's Belated Case for Additional Inventory Discovery is Flawed

Although BNSF does not identify any individual requests as being the subjects of its arguments for additional discovery related to Evergy's coal inventory management at the Iatan and Lawrence stations, its previous inventory-related discovery requests are RFPs 58 and 71,

⁹ Perhaps of greater concern should be BNSF's willingness to try to exploit an apparently inadvertent disclosure of privileged information.

which were served on August 15, 2024. *See* Exhibit No. 1, RFP 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.”); *id.* at RFP 71 (“All Documents relating to Evergy’s decisions to burn coal inventory at its plants.”).

Evergy served its Responses and Objections to those requests on September 16, 2024 (*i.e.*, more than six (6) months before BNSF filed its current Motion). *See* Exhibit No. 3. Therein, Evergy objected to BNSF’s requests as being overbroad and burdensome, and then stated – without equivocation – that it would produce (1) “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” (RFP 58) (emphasis added); and (2) “responsive, non-privileged documents *sufficient to show* the coal reclaimed from inventory and burned at Iatan and Lawrence during 2022.” (RFP 71) (emphasis added). Evergy then proceeded to produce documents in accordance with the terms of its responses. Accordingly, BNSF has known for more than six (6) months that Evergy’s production in response to these requests would consist of daily coal inventory and reclamation levels for each station. Evergy did not commit to produce (or hint that it might produce) the full range of documents described by BNSF. Given that coal inventory is a constant topic of interest for employees of the operator of a coal-fired electric generating facility, a search for “[a]ll Documents ... relating to coal stockpiles” at Evergy’s plants over a five (5) year period would encompass an enormous volume of documents and data. As noted *supra*, BNSF filed its first Motion to Compel on September 27, 2024, eleven (11) days

after Evergy lodged its objections to the Requests and described the documents that it would produce. BNSF's first Motion did not raise an issue with respect to Evergy's objections.

In its current Motion, BNSF attempts to explain away its previous inaction following Evergy's September 16, 2024 responses and objections by suggesting that it had no idea that Evergy would limit its production to daily inventory levels or would refrain from searching for every potentially responsive document in its files. Motion at 17. BNSF states that the parties "recently met and conferred, and Evergy *now* takes the position that it need not search for or produce any communications regarding these subjects." *Id.* at 3 (emphasis added). These claims do not withstand serious scrutiny. Evergy's "position" was known for more than six (6) months. Its responses to BNSF RFPs 58 and 71 – both the objections and the production qualifications – were perfectly clear to BNSF as of September 16, 2024. The type of objections raised and qualifications offered by Evergy were consistent with positions historically taken by litigants before the Board (both complainant shippers and defendant railroads), and as noted earlier, BNSF itself lodged the same objection to Evergy's discovery requests in this case. *See* p. 11, *supra*.

BNSF expresses surprise in its Motion that two inventory-related emails exist (in embedded form) in Evergy's production, and that Evergy did not also produce them in "non-embedded" form. Motion at 17. This should not have come as any surprise, given Evergy's written discovery responses back in September 2024. Similarly, there is no significance to BNSF's speculation that "[t]he existence of these two emails, not produced as stand-alone documents, indicates that there are likely to be other internal communications about this critical issue that Evergy has decided not to produce in discovery." Motion at 17. Evergy objected to BNSF's RFPs 58 and 71 because those requests were overbroad and would encompass too large

a set of responsive documents. The existence of the embedded emails regarding inventory management merely confirms the validity of Evergy’s overbreadth objection. Additionally, a review of Evergy’s production shows that some 1700+ documents related to inventory were provided to BNSF, well in excess of the documents needed to show daily and monthly inventories and reclaimed coal volumes throughout 2022.

In its Motion, BNSF attempts to link its expansive request for documents related to coal inventory to the issue of Evergy’s decisions in 2022 to implement coal conservation measures at Iatan and LEC, as if there was some doubt as to the necessity of those measures. Motion at 18.

{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }

The Board should reject BNSF’s belated challenge to Evergy’s overbreadth objections and (long-since fulfilled) offered scope of production in response to RFPs 58 and 71.

Reasonableness of BNSF Railway Company Coal Dust Mitigation Tariff Provisions, STB Docket FD 35557 (STB served March 19, 2012) at 3 (approving – in response to AECC’s request for documents regarding a supposed change in position by Union Pacific – Union Pacific’s proposed production of documents “sufficient to show” its communications to its customers regarding the application of BNSF’s coal dust operating rule to UP traffic).¹⁰

¹⁰ BNSF’s reliance on *Seminole Elec. Coop., Inc. v. CSX Transp., Inc.*, *supra* is misplaced. Motion at 18. *Seminole* pertained to a situation in which the complainant in a stand-alone cost case sought discovery (over CSXT’s objection) against CSXT’s non-party corporate affiliate. While CSXT offered to produce “sufficient” information out of its own files, the Board held that production of records maintained by the affiliate (CSXI) was required. When discussing CSXT’s separate overbreadth objections, *Seminole* itself noted in its Motion to Compel that, “by targeting its [Requests Nos. 111-113] to documents *sufficient to show* the subject matter, SECI is

If BNSF had wanted to pursue additional, more focused discovery regarding inventory management, it should have served a narrowed request or requests in the weeks following September 16, 2024, or brought the matter to the Board in its first Motion to Compel on September 27, 2024. It is not reasonable for BNSF to wait until six (6) days before the end of an already extended discovery period to file a motion expressing surprise and indignation that Evergy did not produce a substantial volume of documents that Evergy advised BNSF more than six (6) months ago – based on valid overbreadth objections – that it would not search for or produce.

CONCLUSION

For all the reasons set forth herein, the Board should deny BNSF’s Second Motion to Compel in its entirety.

Respectfully submitted,

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Dated: April 17, 2025

*Attorneys for Evergy, Inc.,
Evergy Metro, Inc. and
Evergy Kansas Central, Inc.*

allowing CSXT to limit production to the responsive documents that provide the most detail.” SECI Motion to Compel, at 12 (filed Jan. 23, 2009) (emphasis in original). It also is notable that Seminole filed its Motion to Compel nine days after receiving CSXT’s objections, not more than six months later.

CERTIFICATE OF SERVICE

I hereby certify that this 17th day of April 2025, I have caused copies of the foregoing to be served electronically upon counsel for Defendant BNSF Railway Company.

/s/ Andrew B. Kolesar III

Andrew B. Kolesar III

Exhibit No. 1

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

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Counsel for BNSF Railway Co.

Exhibit No. 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 Third Supplemental 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.

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. 90:

Provide all input data files, output data files, and sufficient documentation to replicate the results of any analysis employing PROMOD or PCI GenTrader between January 1, 2019 to December 31, 2023 as identified in Interrogatory No. 36.

This production should include, but not be limited to, the following input files:

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 generators included in the analysis.
2. The assumed transmission topology used in your model, and any other information needed to model transmission line capability between every generator node and load node included in the analysis.
3. Assumed fuel prices, heat rates, and total fuel costs, by plant, for all generators included in the analysis.
4. Assumed emissions pricing costs, by plant, for all generators included in the analysis.
5. Assumed maintenance, outage, and forced outage schedules, by plant, for all generators included in the analysis.
6. Assumed hourly generation for all renewable generators included in the analysis.

This production should include, but not be limited to, the following output files:

1. All unit commitment and dispatch outcomes for all generators included in the analysis.
2. Bid offers for all generating facilities included in the analysis.
3. All incremental bid adders, including those related to opportunity costs, limited fuel supply, or other transportation supply limitations, for price offers for energy or operating reserves for all generators included in the analysis.
4. Settled quantities and prices paid for energy and operating reserves for all generators included in the analysis.
5. Hourly electricity load by node assumed in the analysis.

6. Hourly electricity net generation for all generating facilities included in the analysis.
7. For any third-party power purchases included in the analysis, please provide the cost, quantity purchased, and the hours in which those purchases were used to meet load obligations in Your service territory.
8. For any third-party power sales included in the analysis, please provide 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. 91:

Provide all input data files, output data files, and sufficient documentation to replicate the results of any analysis conducted between January 1, 2019 to December 31, 2023, as identified in Interrogatory No. 38.

This production should include, but not be limited to, the following input files:

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 generators included in the analysis.
2. The assumed transmission topology used in your model, and any other information needed to model transmission line capability between every generator node and load node included in the analysis.
3. Assumed fuel prices, heat rates, and total fuel costs, by plant, for all generators included in the analysis.
4. Assumed emissions pricing costs, by plant, for all generators included in the analysis.
5. Assumed maintenance, outage, and forced outage schedules, by plant, for all generators included in the analysis.
6. Assumed hourly generation for all renewable generators included in the analysis.

This production should include, but not be limited to, the following output files:

1. All unit commitment and dispatch outcomes for all generators included in the analysis.
2. Bid offers for all generating facilities included in the analysis.

3. All incremental bid adders, including those related to opportunity costs, limited fuel supply, or other transportation supply limitations, for price offers for energy or operating reserves for all generators included in the analysis.
4. Settled quantities and prices paid for energy and operating reserves for all generators included in the analysis.
5. Hourly electricity load by node assumed in the analysis.
6. Hourly electricity net generation for all generating facilities included in the analysis.
7. For any third-party power purchases included in the analysis, please provide the cost, quantity purchased, and the hours in which those purchases were used to meet load obligations in Your service territory.
8. For any third-party power sales included in the analysis, please provide gross revenues, net revenues, quantity sold, and the hours in which those sales were made by all of Your generating facilities.

Dated: October 31, 2024

Respectfully submitted,

/s/ Timothy J. Strafford

Timothy J. Strafford

Anthony J. LaRocca

Steptoe LLP

1330 Connecticut Ave., NW

Washington, D.C. 20036

(202) 429-3000

Justin Waggoner

Alexander M. Wolf

Steptoe LLP

717 Texas Ave., Suite 2800

Houston, Texas 77002

(713) 221-2309

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 Third Supplemental 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. 36:

Identify every instance in which You employed, used, or conducted an analysis using PROMOD or PCI GenTrader between January 1, 2019 to December 31, 2023.

INTERROGATORY NO. 37:

For every instance identified in Interrogatory 36, identify the purpose of the analysis, the individuals responsible for conducting the analysis, the modeling software and version number relied upon, the input data files relied upon, and the output data files produced by the analysis.

INTERROGATORY NO. 38:

Identify every instance in which You employed modeling software of any type between January 1, 2019 to December 31, 2023 to identify hours in which coal conservation was actually or potentially required at Your electric generating facilities, calculate associated bid adders, or evaluate potential lost profits.

INTERROGATORY NO. 39:

For every instance identified in Interrogatory 38, identify the purpose of the analysis, the individuals responsible for conducting the analysis, the modeling software and version number relied upon, the input data files relied upon, and the output data files produced by the analysis.

Dated: October 31, 2024

Respectfully submitted,

/s/ Timothy J. Strafford

Timothy J. Strafford

Anthony J. LaRocca

Steptoe LLP

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(202) 429-3000

Justin Waggoner

Alexander M. Wolf

Steptoe LLP

717 Texas Ave., Suite 2800

Houston, Texas 77002

(713) 221-2309

Counsel for BNSF Railway Co.

Exhibit No. 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' 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.

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

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

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

Counsel for Complainants

Dated: September 16, 2024

Exhibit No. 4

**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
THIRD 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 Third Set of Document Requests for Production (“Requests”) that BNSF Railway Company (“BNSF”) served on October 31, 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. 90:

Provide all input data files, output data files, and sufficient documentation to replicate the results of any analysis employing PROMOD or PCI GenTrader between January 1, 2019 to December 31, 2023 as identified in Interrogatory No. 36.

This production should include, but not be limited to, the following input files:

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 generators included in the analysis.
2. The assumed transmission topology used in your model, and any other information needed to model transmission line capability between every generator node and load node included in the analysis.
3. Assumed fuel prices, heat rates, and total fuel costs, by plant, for all generators included in the analysis.
4. Assumed emissions pricing costs, by plant, for all generators included in the analysis.
5. Assumed maintenance, outage, and forced outage schedules, by plant, for all generators included in the analysis.
6. Assumed hourly generation for all renewable generators included in the analysis.

This production should include, but not be limited to, the following output files:

1. All unit commitment and dispatch outcomes for all generators included in the analysis.
2. Bid offers for all generating facilities included in the analysis.
3. All incremental bid adders, including those related to opportunity costs, limited fuel supply, or other transportation supply limitations, for price offers for energy or operating reserves for all generators included in the analysis.
4. Settled quantities and prices paid for energy and operating reserves for all generators included in the analysis.
5. Hourly electricity load by node assumed in the analysis.

6. Hourly electricity net generation for all generating facilities included in the analysis.
7. For any third-party power purchases included in the analysis, please provide the cost, quantity purchased, and the hours in which those purchases were used to meet load obligations in Your service territory.
8. For any third-party power sales included in the analysis, please provide 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. 2 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 “all” data sources described in 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 this Request should BNSF elect to propound one.

REQUEST FOR PRODUCTION NO. 91:

Provide all input data files, output data files, and sufficient documentation to replicate the results of any analysis conducted between January 1, 2019 to December 31, 2023, as identified in Interrogatory No. 38.

This production should include, but not be limited to, the following input files:

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 generators included in the analysis.
2. The assumed transmission topology used in your model, and any other information needed to model transmission line capability between every generator node and load node included in the analysis.

3. Assumed fuel prices, heat rates, and total fuel costs, by plant, for all generators included in the analysis.
4. Assumed emissions pricing costs, by plant, for all generators included in the analysis.
5. Assumed maintenance, outage, and forced outage schedules, by plant, for all generators included in the analysis.
6. Assumed hourly generation for all renewable generators included in the analysis.

This production should include, but not be limited to, the following output files:

1. All unit commitment and dispatch outcomes for all generators included in the analysis.
2. Bid offers for all generating facilities included in the analysis.
3. All incremental bid adders, including those related to opportunity costs, limited fuel supply, or other transportation supply limitations, for price offers for energy or operating reserves for all generators included in the analysis.
4. Settled quantities and prices paid for energy and operating reserves for all generators included in the analysis.
5. Hourly electricity load by node assumed in the analysis.
6. Hourly electricity net generation for all generating facilities included in the analysis.
7. For any third-party power purchases included in the analysis, please provide the cost, quantity purchased, and the hours in which those purchases were used to meet load obligations in Your service territory.
8. For any third-party power sales included in the analysis, please provide gross revenues, net revenues, quantity sold, and the hours in which those sales were made by all of Your generating facilities.

RESPONSE:

Evergy hereby incorporates its Response to Request No. 90.

Respectfully submitted,

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

Counsel for Complainants

Dated: November 20, 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. § 1114.26, Evergy, Inc. (“Evergy”), Evergy Metro, Inc. (“Evergy Metro”) and Evergy Kansas Central, Inc. (“EKC”) (collectively “Evergy”), hereby provide these Answers and Objections to the Third Set of Interrogatories (“Interrogatories”) that BNSF Railway Company (“BNSF”) served on October 31, 2024.

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. 36:

Identify every instance in which You employed, used, or conducted an analysis using PROMOD or PCI GenTrader between January 1, 2019 to December 31, 2023.

ANSWER:

Evergy incorporates its general objections, including specifically Nos. 1 and 2. Evergy objects to the Interrogatory as overbroad, unduly burdensome and not proportional to the needs of this matter, particularly insofar as it seeks information regarding “every instance” when an analysis meeting the description in the Interrogatory was conducted. Evergy further objects to this Interrogatory on the ground that it is impossible to provide a substantive Answer to this Interrogatory 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 Interrogatory should BNSF elect to propound one.

INTERROGATORY NO. 37:

For every instance identified in Interrogatory 36, identify the purpose of the analysis, the individuals responsible for conducting the analysis, the modeling software and version number relied upon, the input data files relied upon, and the output data files produced by the analysis.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 36.

INTERROGATORY NO. 38:

Identify every instance in which You employed modeling software of any type between January 1, 2019 to December 31, 2023 to identify hours in which coal

conservation was actually or potentially required at Your electric generating facilities, calculate associated bid adders, or evaluate potential lost profits.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 36.

INTERROGATORY NO. 39:

For every instance identified in Interrogatory 38, identify the purpose of the analysis, the individuals responsible for conducting the analysis, the modeling software and version number relied upon, the input data files relied upon, and the output data files produced by the analysis.

ANSWER:

Evergy hereby incorporates its Answer to Interrogatory No. 36.

Respectfully submitted,

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

Counsel for Complainants

Dated: November 20, 2024

Exhibit No. 5

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

December 9, 2024

By Email

Mr. Kelvin J. Dowd
Mr. Daniel M. Jaffe
Mr. Andrew B. Kolesar III
SLOVER & LOFTUS LLP
1828 L Street, N.W., Suite 1000
Washington, D.C. 20036

Re: *Evergy Inc. et al v. BNSF Railway*, STB Docket NOR 42180

Dear Counsel:

We received your letter dated December 2, 2024, that responds to BNSF's letter of November 26, 2024, regarding BNSF's discovery requests related to Evergy's historical use of economic modeling.

First, you are wrong that the subject of BNSF's request for historical modeling information overlaps with or somehow implicates our separate request, which is the subject of a pending motion to compel, for information on the damages claims that you made in the complaint and that you intend to pursue in your evidence. In your letter, you state that "BNSF appears to be conflating Evergy's production of data retained in the ordinary course of business that could relate to the calculation of damages in this case with the execution of production cost models for internal purposes as well as in connection with the preparation of Evergy's Opening Evidence in this case." To the contrary, the modeling information that is the subject of BNSF's November 26, 2024, letter relates to *historical* data and information actually used and generated for internal business purposes during the relevant time period. Regardless of how the STB resolves the pending motion to compel, this data and information is directly relevant to the claims you have made in this proceeding, and BNSF is clearly entitled to this information in discovery. BNSF is entitled to discovery, before the submission of the parties' evidence to the Board, concerning whatever production cost modeling or other analysis supports the damages Evergy claims in its complaint. But irrespective of whether the Board accepts that contention and grants BNSF's motion, there is no question that BNSF is entitled to discovery concerning historical modeling. Such information will allow BNSF to test whether the assumptions and inputs used in whatever modeling Evergy ultimately presents to the Board in support of its damages calculation deviate from those that Evergy used for ordinary business purposes, since such deviation would bear upon the reliability of whatever modeling exercise supports Evergy's damages calculation.

Second, BNSF's November 26 letter noted that there are references in Evergy's and Southwest Power Pool Corporation's productions to Evergy's use of the Opportunity Cost Calculator

December 9, 2024

Page 2

("OCC"), and that Evergy witnesses have testified regarding Evergy's use of the Utility Fuel Inventory Model ("UFIM"). Both models are used to assess coal conservation measures, including the potential costs of conserving coal. Your December 2, 2024 letter conspicuously ignores both models and the historical information that relates to Evergy's use of those models during the relevant time period. Instead, your letter identifies two documents—[REDACTED] and [REDACTED]—as examples of produced documents related to modeling coal inventory. [REDACTED], the third page of [REDACTED], does not appear to be data related to coal inventory management. While [REDACTED] references UFIM, it clearly is not a UFIM run. As to the OCC model, Evergy produced documents that reference the OCC, but it does not appear that Evergy has produced any of the runs of the OCC that were conducted during the ordinary course of business during the relevant time period or any of the input assumptions used to generate OCC results. We cannot see any justification for withholding this information. Unlike the PROMOD and related models discussed below, these models were used for discrete purposes, during limited time periods, and relate directly to the damages claims Evergy has made in this case. We repeat our request that you fully comply with our requests for disclosure of information relating to Evergy's use of those models during the relevant time period.

Third, with regard to production cost modeling, including your use of the PROMOD model and other related models, your response letter reiterates Evergy's position that "the sheer number of model runs and enormous volume of related data falling within the temporal terms and broad descriptions in the requests make substantive responses virtually impossible." We understand that Evergy uses production cost models for a number of different business purposes. Indeed, precisely because Evergy's use of those production cost models is so important to Evergy's business, the information relating to those models we are requesting is likely to be highly relevant in assessing the damages claims Evergy intends to make in this case and is therefore clearly discoverable. Evergy's refusal to date to provide *any* of this modeling is unreasonable and inconsistent with BNSF's due process rights. However, without conceding the validity of your burden assertion, we recognize the possibility that Evergy's widespread use of those models in the ordinary course could create burdens in producing all information relating to them. Therefore, BNSF proposes that the parties meet and confer by the end of this week regarding the appropriate parameters that would allow a timely response by Evergy. In the interim, Evergy should produce samples of the requested production to assist us with evaluating the range of inputs and assumptions Evergy has employed in performing such modeling.

BNSF reserves all rights to raise these issues with the Board at the appropriate time, although we hope that will not be necessary. We appreciate your prompt attention to the above concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy J. Strafford", with a stylized flourish at the end.

Timothy J. Strafford

Exhibit No. 6

From: Strafford, Tim <tstrafford@steptoe.com>
Sent: Wednesday, December 18, 2024 1:53 PM
To: Kelvin Dowd; Daniel M. Jaffe; Andrew B. Kolesar III
Cc: Waggoner, Justin; Wolf, Alex; LaRocca, Anthony; Woods, Tara
Subject: NOR 42180 - meet and confer

Kelvin,

Thank you for meeting with us yesterday. This email memorializes our conversation and follows up on a few of the items we discussed.

First, we covered the production cost modeling that Evergy conducted in the ordinary course of business during the relevant time period. You confirmed that Evergy has not produced any of the input and output files associated with the production cost models, PROMOD and PCI GenTrader, based on Evergy's objections due to the burden associated with volume of runs and the size of the data files. We asked you explain the burden associated with identifying the model runs and collecting the files related to them. You indicated that you did not know the number of times the models were run in the relevant time period and that Evergy may not have retained the input and output data related to the runs of the models. Following up, we asked about the quantity and practice of maintaining the past runs and the data related to them. You agreed to follow up with your client about retention of input and output files beyond your previous, initial query that indicated that Evergy may not have retained the data. You also agreed to produce a sample of input and output files from PROMOD and PCI GenTrader from 2022 related to coal conservation and/or generating decisions pending input from your client.

With regard to other modeling, we discussed both the Opportunity Cost Calculator ("OCC") and the Utility Fuel Inventory Model ("UFIM"). With regard to the OCC, you indicated that the Southwest Power Pool ("SPP") runs the OCC and that your understanding is that the only input to the OCC that Evergy provides to SPP is [REDACTED], regarding which you have produced responsive documents and data. We explained our understanding based on previously produced documents and publicly available sources that Evergy provides other inputs to SPP, including [REDACTED] among others. You agreed to follow up with your client and report back to us whether you have produced the inputs we have requested. Regarding UFIM, you stated that you have asked your client about UFIM runs. You indicated that if your client possesses the data, you will produce it subject to a reasonable burden limitation.

We also asked about power purchase agreements. You stated that you believe such information may be contained in annual reports or in reports to the Securities and Exchange Commission, but that you will inquire with your client regarding whether such agreements exist for 2022.

You asked if BNSF had finished production, and we stated that BNSF has substantially completed production, but that BNSF may produce additional documents if relevant documents become available. You confirmed that Evergy is in the same position.

We look forward to hearing back from you on the above listed items.

Regards,

Tim

Timothy Strafford

Partner

Step toe

Step toe LLP | 1330 Connecticut Avenue NW | Washington, DC 20036

[+1 202 429 8170](tel:+12024298170) direct | [+1 301 346 2819](tel:+13013462819) mobile | tstrafford@step toe.com | www.step toe.com | [Step toe Bio](#)

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Timothy Strafford

Partner

Step toe

Step toe LLP | 1330 Connecticut Avenue NW | Washington, DC 20036

[+1 202 429 8170](tel:+12024298170) direct | [+1 301 346 2819](tel:+13013462819) mobile | tstrafford@step toe.com | www.step toe.com | [Step toe Bio](#)

Exhibit No. 7

From: Kelvin Dowd
Sent: Friday, February 21, 2025 5:41 PM
To: Wolf, Alex; Daniel M. Jaffe; Andrew B. Kolesar III
Cc: Waggoner, Justin; LaRocca, Anthony; Woods, Tara; Strafford, Tim
Subject: RE: NOR 42180 - meet and confer

Good evening, Alex:

After further internal review, we can confirm that Evergy does not have any retained GenTrader or PROMOD run files from 2022 that relate to coal conservation or generation. The [REDACTED] PROMOD run that you referenced in your request apparently was performed by a former Evergy employee, and the inputs/outputs have not been retained. After reasonable inquiry, Evergy was not able to determine the reason for the run or the hypothetical inputs used.

Please let us know if you have any questions or would like to confer.

Regards,
Kelvin

KELVIN J. DOWD
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From: Wolf, Alex <awolf@steptoe.com>
Sent: Thursday, February 20, 2025 2:21 PM
To: Kelvin Dowd <kjd@sloverandloftus.com>; Daniel M. Jaffe <dmj@sloverandloftus.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>
Cc: Waggoner, Justin <jWaggoner@steptoe.com>; LaRocca, Anthony <ALaRocca@steptoe.com>; Woods, Tara <twoods@steptoe.com>; Strafford, Tim <tstrafford@steptoe.com>
Subject: RE: NOR 42180 - meet and confer

All,

Just following up on the below.

Thanks,
Alex

From: Wolf, Alex
Sent: Friday, February 14, 2025 3:30 PM
To: 'Kelvin Dowd' <kjd@sloverandloftus.com>; 'Daniel M. Jaffe' <dmj@sloverandloftus.com>; 'Andrew B. Kolesar III' <abk@sloverandloftus.com>
Cc: Waggoner, Justin <jWaggoner@steptoe.com>; LaRocca, Anthony <ALaRocca@steptoe.com>; Woods, Tara <twoods@steptoe.com>; Strafford, Tim <tstrafford@steptoe.com>
Subject: RE: NOR 42180 - meet and confer

Counsel,

We received Evergy's 12th production of documents on January 29, 2025, which we understand contains input and output files for a PROMOD run from [REDACTED], and a GenTrader run on [REDACTED]. In our December meet and confer, Evergy agreed to produce a sample of input and output files from PROMOD and PCI GenTrader runs in 2022 that were related to coal conservation and/or generating decisions. We have not seen these materials. Can you please let us know the status of them? In particular, we'd like to receive the [REDACTED] PROMOD run that we see reference to in Evergy's produced materials.

Now that you have a better understanding of how Evergy maintained its historical runs and how to produce them, what is your position on producing additional runs from 2022?

Additionally, related to our discussion of the UFIM runs during this time period, could you please produce information/documents sufficient to understand the basis for, and replicate the calculation of, the target inventory figures for Iatan and Lawrence that are referenced in EVERGY-0014393, under the "k-Targets" tab?

Regards,
Alex

From: Kelvin Dowd <kjd@sloverandloftus.com>
Sent: Wednesday, December 18, 2024 1:09 PM
To: Strafford, Tim <tstrafford@steptoe.com>; Daniel M. Jaffe <dmj@sloverandloftus.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>
Cc: Waggoner, Justin <jWaggoner@steptoe.com>; Wolf, Alex <awolf@steptoe.com>; LaRocca, Anthony <ALaRocca@steptoe.com>; Woods, Tara <twoods@steptoe.com>
Subject: [EXTERNAL] RE: NOR 42180 - meet and confer

Tim:
Thank you for your email.
We agree that it is a generally accurate rendition of the substance of our discussion, and we have initiated steps to investigate the availability of the information and/or documents and data that we agreed to address with our client. We will keep you posted on our progress.
Best regards,
Kelvin

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202.347.7170 (general)

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From: Strafford, Tim <tstrafford@steptoe.com>
Sent: Wednesday, December 18, 2024 1:53 PM
To: Kelvin Dowd <kjd@sloverandloftus.com>; Daniel M. Jaffe <dmj@sloverandloftus.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>
Cc: Waggoner, Justin <jWaggoner@steptoe.com>; Wolf, Alex <awolf@steptoe.com>; LaRocca, Anthony <ALaRocca@steptoe.com>; Woods, Tara <twoods@steptoe.com>
Subject: NOR 42180 - meet and confer

Kelvin,

Thank you for meeting with us yesterday. This email memorializes our conversation and follows up on a few of the items we discussed.

First, we covered the production cost modeling that Evergy conducted in the ordinary course of business during the relevant time period. You confirmed that Evergy has not produced any of the input and output files associated with the production cost models, PROMOD and PCI GenTrader, based on Evergy's objections due to the burden associated with volume of runs and the size of the data files. We asked you explain the burden associated with identifying the model runs and collecting the files related to them. You indicated that you did not know the number of times the models were run in the relevant time period and that Evergy may not have retained the input and output data related to the runs of the models. Following up, we asked about the quantity and practice of maintaining the past runs and the data related to them. You agreed to follow up with your client about retention of input and output files beyond your previous, initial query that indicated that Evergy may not have retained the data. You also agreed to produce a sample of input and output files from PROMOD and PCI GenTrader from 2022 related to coal conservation and/or generating decisions pending input from your client.

With regard to other modeling, we discussed both the Opportunity Cost Calculator ("OCC") and the Utility Fuel Inventory Model ("UFIM"). With regard to the OCC, you indicated that the Southwest Power Pool ("SPP") runs the OCC and that your understanding is that the only input to the OCC that Evergy provides to SPP is [REDACTED], regarding which you have produced responsive documents and data. We explained our understanding based on previously produced documents and publicly available sources that Evergy provides other inputs to SPP, including [REDACTED] among others. You agreed to follow up with your client and report back to us whether you have produced the inputs we have requested. Regarding UFIM, you stated that you have asked your client about UFIM runs. You indicated that if your client possesses the data, you will produce it subject to a reasonable burden limitation.

We also asked about power purchase agreements. You stated that you believe such information may be contained in annual reports or in reports to the Securities and Exchange Commission, but that you will inquire with your client regarding whether such agreements exist for 2022.

You asked if BNSF had finished production, and we stated that BNSF has substantially completed production, but that BNSF may produce additional documents if relevant documents become available. You confirmed that Evergy is in the same position.

We look forward to hearing back from you on the above listed items.

Regards,
Tim

Timothy Strafford

Partner

Step toe

Step toe LLP | 1330 Connecticut Avenue NW | Washington, DC 20036

[+1 202 429 8170](tel:+12024298170) direct | [+1 301 346 2819](tel:+13013462819) mobile | tstrafford@step toe.com | www.step toe.com | [Step toe Bio](#)

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Timothy Strafford

Partner

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Exhibit No. 8

From: Strafford, Tim <tstrafford@steptoe.com>
Sent: Monday, March 10, 2025 10:44 PM
To: Kelvin Dowd <kjd@sloverandloftus.com>; Daniel M. Jaffe <dmj@sloverandloftus.com>
Cc: Waggoner, Justin <jWaggoner@steptoe.com>; Wolf, Alex <awolf@steptoe.com>; LaRocca, Anthony <ALaRocca@steptoe.com>; Woods, Tara <twoods@steptoe.com>
Subject: Meet and confer follow-up

Kelvin and Dan,

Thank you for meeting with us today. This email memorializes our conversation and follows up on a few of the items we discussed.

We first discussed documents that contain redactions that should be unredacted in light of the Board's Decision. You confirmed that Evergy plans to reproduce documents containing redacted information about other carriers or about the La Cygne and Hawthorn plants (to the extent the information is not otherwise privileged). You also noted that you will be redacting information about rail service to Evergy plants other than Iatan, Lawrence, La Cygne, and Hawthorne (e.g. when producing Evergy's contracts with other carriers, you plan to redact Jeffrey plant details). You also stated that you would not redact information about plants other than Iatan, Lawrence, La Cygne, and Hawthorne in documents related to generation.

We next discussed the additional documents Evergy plans to produce pursuant to the Board's order. You confirmed that you plan to produce documents within the ambit of the Board's Decision, including, but not limited to: 1) contracts with other carriers; 2) 2022 liquidated damages documents (to the extent there are any); 3) nominations and declaration documents, including internal Evergy correspondence and correspondence with other carriers; and 4) cycle times and coal unloading documents.

We next discussed modeling data. You confirmed that Evergy plans to produce additional Utility Fuel Inventory Model ("UFIM") documents. You noted that you will confirm that Hawthorn was not in coal conservation in 2022 – and that, therefore, there are no Opportunity Cost Calculator ("OCC") documents to produce for this plant.

We also asked about BNSF's RFP No. 58 and you stated that Evergy does not plan to collect or produce any emails or documents responsive to this request, other than the limited data Evergy has produced.

Next, we discussed the production of PROMOD runs. We noted that there are references in produced documents to several PROMOD runs from the relevant period in 2022 that were not produced (e.g., EVERGY-0086787 references a June 2022 run; EVERGY-0082446 references a November 2022 run; and EVERGY-0082386 references monthly runs). We renewed our request for these 2022 runs. You confirmed that you

had reached out to Evergy concerning the 2022 PROMOD runs (and the August 2, 2022 run specifically) and that Evergy reported they did not maintain 2022 PROMOD runs concerning coal conservation or generation planning. You reported that Evergy likely does possess runs performed in 2022 for other purposes.

You confirmed that Evergy does not plan to produce any additional PROMOD runs and further asserted that the burden of producing PROMOD runs (due to the time it takes to locate PROMOD runs, inputs, and outputs and process/format them for production) was so great that Evergy would refuse to produce any more runs.

In addition, you confirmed that you would let us know the purpose behind the 2021 PROMOD run that was produced. You also stated that the August 2, 2022 run was maintained by an analyst who has since left Evergy and that you will get back to us with the name of this individual.

Further, we discussed the sufficiency of Evergy's previous coal inventory and stockpile productions. In particular, we flagged that the produced documents only include data for the summer of 2022 (e.g. EVERGY-0014542) and inquired whether Evergy plans to produce additional documentation covering the rest of 2022. You responded that you would look into this and let us know.

Lastly, we discussed the timing of Evergy's additional productions. You noted that Evergy plans to produce all additional documents by the April 3, 2025 close of discovery.

Although not discussed on the call, we ask that you please also confirm whether Evergy plans to produce all the PCI GenTrader model runs conducted in 2022 that include Evergy's other plants besides Iatan and Lawrence.

We look forward to hearing back from you on the above listed items by COB on Friday, March 14.

Regards,
Tim

Timothy Strafford
Partner

Step toe

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[+1 202 429 8170](tel:+12024298170) direct | [+1 301 346 2819](tel:+13013462819) mobile | tstrafford@step toe.com | www.step toe.com | [Step toe Bio](#)

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From: Kelvin Dowd <kjd@sloverandloftus.com>
Sent: Friday, March 14, 2025 9:16 AM
To: Strafford, Tim <tstrafford@steptoe.com>
Cc: Wolf, Alex <awolf@steptoe.com>; Justin Waggoner <jWaggoner@steptoe.com>; Woods, Tara <twoods@steptoe.com>; Andrew B. Kolesar III <abk@sloverandloftus.com>; Daniel M. Jaffe <dmj@sloverandloftus.com>
Subject: Meet and Confer Follow Up

Good morning, Tim:

This responds to your March 10 email summary of our meet-and-confer earlier that day in connection with the STB's March 4 Decision on BNSF's Motion to Compel in NOR 42180. In many respects, your summary is an accurate rendition of the substance of our discussion. However, there are a few points on which we apparently differ and others that can use some clarification.

1. We confirm that Evergy will produce generation revenue information for all Evergy stations, but we remind BNSF that the data is collated by operating company, not by individual plant. With respect to rail service to Hawthorn and La Cygne in 2022, some of the information to be produced will come through the removal of redactions from previously produced documents. Other information will be in the form of new production. And as we advised during our meeting, there will be minor redactions of terms applicable to service to the Jeffrey Energy Center in the contract between Evergy and Union Pacific Railroad.
2. The documents to be produced regarding service from other railroads in 2022 will include contracts (subject to the Jeffrey redactions noted above), coal nominations, delivery information and communications with the other carriers. In that regard, we can confirm that Evergy made no liquidated damages payments to either UP or the Kansas City Southern (now CPKC) related to 2022 service to Hawthorn or La Cygne. Evergy will produce cycle time and coal unloading documents to the extent that they can be located upon reasonable search in the time allotted.
3. We did not agree to produce additional documents related to the Utility Fuel Inventory Model. What we agreed to do is inquire as to the source of the target inventory figures in the "k-target" tab of document EVERGY-0014393, per Alex Wolf's request on February 14, 2025. We have been advised that the figures in question were based on previous years' inventory targets, historic usage, scheduled outages and anticipated operations, and were input by Evergy staff. There are no separate documents showing the calculation of those figures. With respect to Hawthorn in 2022, we are advised that an Evergy-determined price adder was applied to Hawthorn generation for a brief period in December 2022. However, the SPP Market Monitor was not consulted and Hawthorn data was not submitted to SPP for use in its Opportunity Cost Calculator.
4. You are correct that Evergy's production in response to Document Request No. 58 was limited to documents sufficient to show the information described in the Request, and we do not plan to supplement that production.
5. We confirm, as we previously advised, that Evergy does not have retained inputs and outputs for any PROMOD runs executed in 2022 for purposes related to coal conservation or generation planning. During our meeting, we speculated that Evergy might have retained data for PROMOD runs executed for other purposes, but we have no actual knowledge that this is the case. We also confirm, as we advised on February 20, that the time and effort expended in producing the sample PROMOD and GenTrader runs that were provided on January 29 confirmed that any requests for multiple additional runs would be overbroad and unduly burdensome.

6. We have been advised that the purpose of the 2021 sample PROMOD run produced on January 29 was related to budgetary planning. With respect to the August 2, 2022 PROMOD run that BNSF referenced and we addressed previously, we did not agree to identify the former Evergy employee who executed it. To the contrary, when Justin explained that the identification could assist BNSF in discovering other 2022 runs, we explained that Evergy already had determined that there were no retained inputs and outputs for any conservation or generation planning PROMOD runs executed by anyone at Evergy in 2022.

7. We are looking into the reason why certain produced coal inventory and stockpile documents appear to include data that stops at the end of the Summer of 2022, and will advise you once our inquiry is completed.

8. We plan to complete Evergy's supplemental production by April 3. With respect to your final reference to GenTrader, as we advised on February 20 Evergy will not be producing any additional GenTrader runs. We can confirm, however, that no such runs were executed in 2022 in connection with coal conservation or generation planning at any Evergy station.

All supplemental production will be limited to non-privileged documents or information and will be designated as Highly Confidential under the governing Protective Order.

Please let us know if you have any questions.

Regards,

Kelvin

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Exhibit No. 9



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

DANIEL M. JAFFE

October 31, 2024

VIA EMAIL

Mr. Timothy J. Strafford
Mr. Anthony J. LaRocca
Ms. Tara A. Woods
Steptoe LLP
1330 Connecticut Ave, NW
Washington, DC 20036

Re: *Evergy, Inc., et. al v. BNSF Railway Company*
STB Docket No. 42180

Dear Counsel:

Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc.'s ("Evergy") fourth production of documents is available for download here: <https://ftp.lhediscovery.com/#/>. The username and password are the same ones used for Evergy's first production of documents. We will send the production password in a separate email.

Evergy's document production is subject to the protective order entered by the Board on May 31, 2024. The documents in this production are labeled Highly Confidential or Confidential as required.

This production also includes Evergy's hourly/day-ahead SPP market records. However, due to a change in SPP's method for handling jointly owned units in 2020, Evergy is producing this data from 3Q2020-2023. Given SPP's change, Evergy cannot provide a reliable data set from 2019-2Q2020 without performing a special study.

Please let us know if you have any questions.

Sincerely,

A handwritten signature in dark ink, reading "Daniel Jaffe". The signature is fluid and cursive, with the first name "Daniel" and last name "Jaffe" clearly legible. Below the signature, the name "Daniel M. Jaffe" is printed in a small, black, sans-serif font.

Daniel M. Jaffe

cc: Justin Waggoner
Alexander Wolf

Exhibit No. 10

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**BNSF RAILWAY COMPANY’S RESPONSES AND OBJECTIONS
TO COMPLAINANTS’ FIRST INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to 49 C.F.R. Part 1114, Subpart B, BNSF Railway Company (“BNSF”) hereby responds and objects as follows to Evergy, Inc. (“Evergy”), Evergy Metro, Inc. (“Evergy Metro”) and Evergy Kansas Central, Inc. (“EKC”) (“Complainants”) First Interrogatories and Requests for Production of Documents (“Complainants’ First Set of Requests,” each an “Interrogatory” or a “Request”) served on May 7, 2024, in connection with the above-captioned proceeding.

GENERAL RESPONSES

BNSF makes the following General Responses to the Requests and incorporates them into its responses to each and every Interrogatory or Request, whether or not specifically stated in the individual response.

1. BNSF is conducting a reasonable search for information and documents

responsive to the Interrogatories and Requests. Subject to the specific and general objections that follow, responsive documents will be produced on a rolling basis.

2. Production of information or documents does not necessarily imply that the information or documents are relevant to or admissible in this proceeding and is not to be construed as waiving any objection stated herein.

GENERAL OBJECTIONS

BNSF makes the following General Objections to Complainants' First Set of Requests and incorporates them, as well as the Objections to Definitions and Instructions below, into its responses to each and every Interrogatory or Request, whether or not specifically stated in the individual response. An assertion of the same, similar, or additional objections in response to a specific Interrogatory or Request does not waive any of these General Objections as to that or any Interrogatory or Request. BNSF's failure to object to a specific Interrogatory or Request on a particular ground shall not be construed as a waiver of its right to object on any ground.

1. BNSF objects to Complainants' First Set of Requests, including the Definitions and Instructions, to the extent they impose burdens, obligations, or requirements which are greater than the requirements or permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board ("Board") rules or precedents.

2. BNSF objects to Complainants' First Set of Requests to the extent they seek identification of "all" or "any" documents, data, or a category of information where the production of a subset of documents, data, or information would be sufficient to

respond to the Interrogatory or Request, on the basis that such Interrogatories or Requests are unduly burdensome.

3. BNSF objects to the Complainants' First Set of Requests to the extent they are overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence in the proceeding.

4. BNSF objects to the Complainants' First Set of Requests to the extent they purport to require BNSF to conduct anything beyond a reasonable search of readily accessible sources.

5. BNSF objects to the Complainants' First Set of Requests to the extent they seek documents, data, or information in a form not maintained by BNSF in the regular course of business or not readily available in the form requested by Complainant, where such documents, data, or information could be developed, if at all, only through the preparation of compilations, documents, summaries, analyses, or other special studies of any sort not already in existence, and BNSF by its responses does not, unless otherwise noted, undertake to prepare or produce any special studies. Any production by BNSF of information or documents in this category shall not be considered a waiver of this objection.

6. BNSF objects to the Complainants' First Set of Requests, including the Definitions and Instructions, to the extent a particular Interrogatory, Request, Definition, or Instruction is vague or ambiguous.

Respectfully submitted,

By: /s/ Timothy J. Strafford
Timothy J. Strafford
Anthony J. LaRocca
Steptoe LLP
1330 Connecticut Street NW
Washington, D.C. 20036
(202) 429-3000

Justin Waggoner
Alexander M. Wolf
Steptoe LLP
717 Texas Ave., Suite 2800
Houston, TX 77002
(713) 221-2309

Dated: June 6, 2024

Attorneys for BNSF Railway Company

Exhibit Nos. 11-15

REDACTED