

ENTERED
Office of Proceedings
June 25, 2025
Part of Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

Complainants,

v.

BNSF RAILWAY COMPANY

Defendant.

Docket No. NOR 42180

COMPLAINANTS' OPENING EVIDENCE

REDACTED, PUBLIC VERSION

EVERGY, INC.
EVERGY METRO, INC.
EVERGY KANSAS CENTRAL, INC.
1200 Main Street, Suite 29
Kansas City, MO 64105

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
kjd@sloverandloftus.com
abk@sloverandloftus.com
dmj@sloverandloftus.com

Of Counsel:

Slover & Loftus LLP
1828 L Street, N.W., Suite 1000
Washington, D.C. 20036

Dated: June 25, 2025

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

TABLE OF CONTENTS

	<u>Page</u>
FACTUAL BACKGROUND	2
A. Complainants And The Evergy System.....	2
B. State Regulators And The Southwest Power Pool	4
C. Historic BNSF Coal Transportation Service To Iatan And LEC.....	7
D. BNSF Service To Iatan And LEC In 2022	11
E. Implementation Of Coal Conservation	13
ARGUMENT.....	15
I. BNSF’s Actions Violated 49 U.S.C. § 11101(a).....	16
A. Complainants’ Requests For Service In 2022 Were Reasonable	16
B. BNSF’s Infrastructure And System Capacity Were More Than Adequate	18
C. BNSF Violated Its Common Carrier Service Obligations	21
II. BNSF’s 2022 Trainset Limitations Were An Unreasonable Practice	24
III. BNSF’s Actions In 2022 Violated 49 U.S.C. § 11121(a)	27
IV. BNSF’s Service Failures Were Not Beyond The Carrier’s Control	30
V. Complainants Are Entitled To Damages With Interest.....	37
A. Complainants Are Entitled To Lost Opportunity Damages	38
B. Complainants Are Entitled To Damages For Net Additional Costs Incurred To Meet Load Requirements In SPP.....	41
C. Complainants Are Entitled To Compensatory Damages To Recover Additional Costs Incurred At Iatan And LEC	44

D.	Complainants Should Be Awarded Interest On Their Principal Damages.....	46
E.	Adjustments To Complainants' Original Damages Estimates	48
	CONCLUSION	50

VERIFIED STATEMENTS

Verified Statement of Lloyd Jackson

Verified Statement of Jessica L. Tucker

Joint Verified Statement of Robert D. Mulholland and Timothy D. Crowley

Verified Statement of John Denny

Verified Statement of Michael Crosby

Verified Statement of Hsin Foo

**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’ OPENING EVIDENCE

Complainants Evergy, Inc. (“Evergy”), Evergy Metro, Inc. (“Evergy Metro”) and Evergy Kansas Central, Inc. (“EKC”) (collectively “Evergy” or “Complainants” as the context indicates), in accordance with the revised Procedural Schedule adopted by the Board for this case in its Decision served May 14, 2025, submit this Opening Evidence. It is demonstrated herein that: (1) in 2022, Defendant BNSF Railway Company (“BNSF”) violated its statutory obligations to Complainants under 49 U.S.C. §§ 11101(a), 10702(2) and 11121(a) in connection with the transportation of coal in common carrier service to Evergy Metro’s Iatan Generating Station (“Iatan”) and EKC’s Lawrence Energy Center (“LEC”); and (2) pursuant to 49 U.S.C. § 11704(b), Complainants are entitled to an award of damages as a consequence of those violations, including applicable interest, all as further described in and supported by the evidence submitted

herewith.¹ As explained in detail in Part V, *infra*, Complainants’ principal damages total \$22,211,624.65.

Complainants’ Opening Evidence is presented through the Verified Statements of Lloyd Jackson, Jessica L. Tucker, Michael Crosby and Hsin Foo, all employees of Evergy, together with their respective Exhibits and Workpapers; the joint Verified Statement of Robert D. Mulholland and Timothy D. Crowley of L.E. Peabody & Associates, Inc., together with their Exhibits and Workpapers; and the Verified Statement of John Denny, Assistant/President Directing General Chairman of the International Association of Machinists and Aerospace Workers (“IAM”), District #19. The evidence is summarized and Complainants’ legal arguments in support of the relief sought are presented here.

FACTUAL BACKGROUND

A. Complainants And The Evergy System

Evergy, Evergy Metro and EKC all are headquartered in Kansas City, Missouri. Evergy and Evergy Metro are Missouri corporations, while EKC is incorporated in Kansas. Evergy is the successor company resulting from the 2018 merger between the former Kansas City Power & Light Company (“KCPL”) and the former Westar Energy

¹ The original Complaint in this matter also included a Count IV seeking declaratory relief pursuant to 5 U.S.C. § 554(e). In a Decision served November 14, 2024, the Board dismissed that Count, finding that the disposition of the merits of the other Counts in this case would serve the purpose sought through the original Count IV.

Company. Several years prior to that merger, KCPL acquired the utility assets of the former Aquila, Inc.

Electric generation facilities in the Evergy system include power plants fueled by coal, natural gas, nuclear fuel and oil, as well as wind and solar resources. Evergy's coal and nuclear facilities are the most reliable from the standpoint of delivered energy, largely because their fuel can be stored to provide a reserve. Gas-fired plants can be economically operated when gas prices are within a reasonable range, but those prices can be and have been quite volatile and gas supplies are subject to interruption due to pipeline constraints, particularly in Winter. *See* V.S. Jackson at 3. Wind and solar resources are relatively inexpensive to operate, but because the wind does not always blow and the sun is not always shining these are among Evergy's least reliable resources in terms of availability. *Id.*

Among the principal coal-fired generating stations in the Evergy system are five (5) power plants that are operated by Evergy subsidiaries. In addition to the 1640-megawatt capacity Iatan Station near Weston, Missouri, Evergy Metro operates the 1578-megawatt La Cygne Generating Station near La Cygne, Kansas and the 594-megawatt Unit 5 at the Hawthorn Generating Station in Kansas City. In addition to the 518-megawatt capacity LEC near Lawrence, Kansas, EKC operates the 2160-megawatt Jeffrey Energy Center near Jeffrey, Kansas.² All of Evergy's coal-fired assets rely on coal

² The capacity measures for Iatan and LEC correct figures shown in Paragraph 4 of the Complaint in this proceeding.

from the Southern Powder River Basin region of Wyoming, which is delivered by rail to the various facilities. *Id.* These shipments all move primarily in sets of railcars owned or leased by Evergy and/or its operating subsidiaries. Evergy has approximately 3,500 railcars in its fleet, which translates into an average of about 26 trainsets. V.S. Tucker at 5.

The coal-fired facilities operated by Evergy Metro and EKC make up 54.43% and 52.47%, respectively, of these companies' overall generating capacity. The larger Evergy system also includes other coal, gas, nuclear, wind and solar resources. Additionally, when necessary Evergy has the ability to purchase power, either through arrangements with other providers at agreed upon prices or on the open power market. V.S. Jackson at 4.

B. State Regulators And The Southwest Power Pool

Evergy's operating subsidiaries – including Evergy Metro and EKC – are subject to state regulatory agencies in Missouri and Kansas. Evergy Metro, which operates assets serving both Missouri and Kansas, is under the authority of the Missouri Public Service Commission (“MPSC”) and the Kansas Corporation Commission (“KCC”). EKC is regulated by the KCC. Both agencies exert jurisdiction over retail rates for electric service, energy conservation programs, and other utility practices. A key concern for MPSC and KCC is energy resource reliability, *i.e.*, ensuring that utilities in both states have adequate capacity to meet the consumer and commercial demand for electricity (or “load”) throughout a year, including during peak periods in each day and in peak seasons (*e.g.*, mid-Summer and Winter). *Id.* at 4-5.

To maintain compliance with the MPSC and KCC regulatory regimes, Evergy Metro and EKC file Integrated Resource Plans (“IRPs”) with the regulators showing that each company will have the resources needed to meet its designated forecasted load responsibility, plus a reserve margin. The IRPs are prepared every three (3) years and are updated annually. *Id.* at 4. For the coal-fired assets such as Iatan and LEC, a related obligation is the planning and maintenance of minimum and target levels of coal inventory at each station, to provide generation fuel insurance against unanticipated interruptions in supplies, breakdowns of train unloading equipment or other contingencies. The decision to set the target inventory is left to the informed discretion of the operating company. However, if inventory falls below a designated level (measured in days’ anticipated burn for plant operations), MPSC and KCC can require the filing of inventory reports until the designated level is restored. *Id.* at 5. The agencies also can mandate the submission of mitigation plans, demonstrating the measures taken to protect remaining inventory and to replenish shortfalls. Reliable and adequate coal transportation plays a critical role in meeting the operating companies’ inventory targets and state regulators’ inventory standards.

Evergy Metro, EKC and other Evergy operating subsidiaries are members of the Southwest Power Pool (“SPP”). SPP is a regional transmission organization created under the auspices of the Federal Energy Regulatory Commission to coordinate the reliability of the transmission system within its boundaries and balance electric supply and demand in a 14-state region ranging from Missouri and Arkansas west to Colorado and Wyoming, and from North Dakota and Minnesota south to Louisiana and the Texas

border. *Id.* Evergy Metro and EKC are designated as Load Responsible Entities (“LREs”) within SPP, meaning that each has an obligation to meet a specified level of electrical load. A LRE is required to purchase its load requirements from SPP and to offer generation to SPP at specified prices. V.S. Crosby at 3. If the revenue from generation sales exceeds the cost of purchasing load, the LRE earns a margin or profit. Load requirements will vary by season, days in the week and hours in a day. As Mr. Jackson explains, coal supply and transportation requirements for Iatan and LEC – as well as target inventory levels at the stations – are determined largely based on Evergy Metro’s and EKC’s load requirements in SPP. V.S. Jackson at 5-6.

SPP generation members (as well as open market load-only participants) offer generation in megawatt-hours (“MWhs”) (the number of megawatts generated in an hour) for each hour in the day after the day in which the offer is submitted, which is known as a “day-ahead” offer. In the ordinary course, generation from Iatan and LEC is offered at prices calculated based on the expected operating costs for the generation units during the time periods to which the offers apply, including delivered fuel costs and variable unit operation and maintenance costs. V.S. Crosby at 6-7. SPP collects the large number of offers submitted and on an hourly basis determines the generation resources that will be committed, the MWhs and the “market clearing” prices for the generation to meet the projected demand. The “market clearing” prices that are paid to generation resources are based on the SPP-calculated hourly Locational Marginal Prices (“LMP”)³ that vary from

³ A LMP is the marginal price for energy at the location where it is to be delivered, generally known as a “node.” *See, e.g.*, <https://www.spp.org/markets->

negative to positive values. If Iatan and/or LEC are committed and dispatched, net positive revenues are earned for the MWhs delivered. However, as LREs with responsibility to purchase all of their load requirements from SPP, if the generation that would have been used to balance load or exceed those purchases is not delivered, then Evergy Metro and/or EKC incur a higher net cost to meet the load requirement. Settlements of generation revenue credits compared to load purchase costs are processed hourly, and SPP clears members' and other participants' accounts weekly. Depending on whether a LRE's committed generation met, exceeded or fell short of its SPP load requirements, the settled account for these revenue credits and charges could be positive or negative. V.S. Jackson at 6-7.

C. Historic BNSF Coal Transportation Service To Iatan And LEC

BNSF is the only rail carrier capable of providing coal transportation service to Iatan and LEC, and rail is the only feasible means of transporting millions of tons of coal each year hundreds of miles from the Southern Powder River Basin to the stations. For well over twenty (20) years, coal moved to Iatan and LEC under a series of negotiated coal transportation contracts with BNSF and its predecessor company under 49 U.S.C. § 10709 (previously 49 U.S.C. § 10713). The contracts often included different specific provisions, but always contained essential terms related to duration, rates and rate adjustments, annual coal volumes, shipment schedules and equipment supply. *See* V.S.

operations/#:~:text=Locational%20Marginal%20Price%20(LMP)%20is.meeting%20SPP%20Operating%20Reserve%20requirements.

Tucker at 3-4. In more recent years, the agreements called for Evergy⁴ to schedule coal shipments monthly using BNSF's Coal Forecasting Tool ("CFT") computer platform, according to procedures prescribed by BNSF. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }

As noted *supra*, the annual coal volumes scheduled for shipment to Iatan and LEC were determined principally by the stations' forecasted load requirements in SPP, which in turn reflected the seasonal influences on coal-fired generation (*i.e.*, lower monthly volumes in Spring and Fall and higher volumes in the peak seasons of Summer and Winter). Evergy's monthly CFT schedules generally reflected this seasonality. As Ms. Tucker explains, private trainset requirements then flowed directly from estimated monthly volumes, taking into account factors such as anticipated BNSF cycle times from and to the coal sources and scheduled outages of generating units for maintenance. V.S. Tucker at 5-6. The then-current and expected levels of coal inventory also would be considered.

Similarly, as the number of private trainsets needed in service historically has been keyed to the monthly scheduled coal volumes (in accordance with BNSF contract

⁴ Evergy is responsible for making coal supply and transportation arrangements on behalf of its operating subsidiaries. See V.S. Tucker at 3.

requirements), the pattern of approved sets was reasonably consistent over the years prior to 2022. *See* V.S. Tucker at 16-21, Tables 8 through 12.

During 2020, Evergy entered into negotiations with the rail carriers (including BNSF) that could provide transportation service to each of the five (5) coal-fired power plants in the Evergy system described above, starting in 2021 for LEC and in 2022 for Iatan and the other stations. While Iatan and LEC are captive to BNSF, the other stations have access to alternative rail carriers. At the conclusion of that process, Evergy entered into contracts with carriers other than BNSF for future coal transportation to the Jeffrey, La Cygne and Hawthorn stations. This represented a shift away from BNSF service and in favor of another railroad. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } In December of 2020, BNSF provided Evergy with Tariff BNSF 60024, a copy of which is appended to the Complaint in this proceeding as Exhibit 1. *See* V.S. Tucker at 7.

Tariff BNSF 60024 established rates and various service terms for coal transportation to LEC. Two features of the tariff that were consistent with historic experience were the requirement that LEC shipments be scheduled monthly using BNSF's CFT, and the presumption that shipments would be transported in railcars

supplied by Evergy at no cost to BNSF.⁵ However, the tariff also included a provision entitled “Service Limitation Notice”:

The provision of service and acceptance of any tenders for movement under this publication, including the supply of carrier equipment and/or the introduction of shipper train sets on BNSF for the movement of coal pursuant to this Common Carrier Pricing Authority shall, for the foreseeable future, be subject to BNSF’s sole discretion.

Complaint, Exhibit 1 at 2.

Throughout 2021, Evergy and BNSF discussed the possibility of entering a new contract for post-2021 coal transportation to Iatan. However, negotiations were not successful, { [REDACTED] }⁶ With no alternative available, Evergy requested, and BNSF presented a new tariff – BNSF 60029 – to govern coal transportation service to Iatan beginning January 1, 2022. That tariff established rates and other terms applicable to transportation in Evergy-supplied railcars (provided at no cost to BNSF) and prescribed the use of BNSF’s CFT to schedule monthly shipments to Iatan. Like Tariff BNSF 60024, the Iatan tariff also included the “Service Limitation Notice”:

The provision of service and acceptance of any tenders for movement under this publication, including the supply of carrier equipment and/or the introduction of shipper train sets on BNSF for the movement of coal pursuant to this Common

⁵ See Complaint, Exhibit 1 at 3, Exhibit 2 at 3. Subsequent versions of the tariff included rates for shipments in BNSF-supplied railcars, but the private railcar rate remained the primary rate intended for application to LEC coal shipments. See Complaint, Exhibit 3 at 3-4.

⁶ See V.S. Tucker at 7-8.

Carrier Pricing Authority shall, for the foreseeable future, be subject to BNSF's sole discretion.⁷

As noted in the Complaint, versions of Tariffs BNSF 60024 and 60029 applicable to transportation service in 2022 (for LEC) and 2023 (for both stations) also included the Service Limitation Notice. Complaint, ¶¶ 14, 15.

D. BNSF Service To Iatan And LEC In 2022

Following the procedures prescribed in Tariffs BNSF 60024 and 60029, Evergy submitted annual nominations and then scheduled monthly coal shipments to Iatan and LEC during 2022 using BNSF's prescribed CFT. CFT-scheduled volumes for Iatan totaled 4,882,000 tons and CFT-scheduled volumes for LEC totaled 1,440,800 tons. This aggregate total of 6,322,800 tons fell comfortably within the typical range of annual volumes that BNSF historically transported to the two stations. V.S. Tucker at 8-10.⁸

In the same way, Evergy made its request for the number of private trainsets to be placed into service over the course of the year to transport the scheduled tonnage, drawing on the years of experience that both Evergy and BNSF had in the transportation of Iatan's and LEC's essential coal fuel and on reasonable expectations (based on past performance) regarding BNSF cycle times between the Southern Powder River Basin and the two stations. Consistent with both, Evergy advised BNSF that it would need seven (7) total trainsets to be in service during the months of March through May and October

⁷ See Complaint, Exhibit 4 at 2.

⁸ The original Complaint (¶ 4) referred to the 2022 preliminary tonnage nomination for LEC as its "requirements." The station's actual requirements and associated requests for BNSF service were set forth in the schedules using BNSF's CFT platform.

through November, and eight (8) total trainsets during the months of January, February, June through September and December. These trainset numbers were consistent with Evergy's historic service requirements as well, and Evergy had the requisite trainsets available and ready for deployment. V.S. Tucker at 14-16, 45-48.

Despite Evergy's approved shipment schedules and the clear correlation with trainset requirements, in 2022 BNSF limited Evergy to a combined total of four (4) trainsets for Iatan and LEC for most of the year. { [REDACTED]

[REDACTED] }⁹ Throughout the first and second quarters of 2022, Evergy consistently protested BNSF's trainset limitations, and warned BNSF that the resulting shortfalls in coal deliveries would threaten Evergy's ability to meet its reliability commitments to state regulators and responsibilities within SPP.¹⁰ However, with the exception of a single additional set placed into service in July of 2022, BNSF maintained its position and would not allow into service the number of sets needed to transport Evergy's scheduled tons.¹¹

Over the course of 2022, BNSF's trainset limits led to accumulating shortfalls of coal deliveries to Iatan and LEC compared to scheduled shipments. Evergy communicated with BNSF on a regular basis, estimating the shortfalls to date and

⁹ See V.S. Tucker at 11.

¹⁰ See V.S. Tucker at 21-25.

¹¹ {{ [REDACTED] }} See, e.g., Counsel's Exhibit Nos. 1, 2 and 3.

repeatedly requesting that BNSF accept the necessary trainsets to stanch the deficits and allow Evergy to begin to recover the shortfalls. V.S. Tucker at 30-36. Evergy also advised BNSF that the shortages of coal deliveries were drawing down fuel inventories at Iatan and LEC, causing Evergy to incur additional inventory reclamation and management costs, and that it would be necessary for Evergy to implement coal conservation measures that would adversely impact its ability to balance its load requirements in SPP with Iatan and LEC generation. *Id.* { [REDACTED] }¹² By the end of 2022, the accumulated tonnage shortfalls attributable to BNSF's trainset limitations totaled 1,785,580 tons at Iatan (or 37% of Evergy's scheduled tons) and 256,020 tons at LEC (18% of scheduled tons and 33% of Summer peak requirements). V.S. Tucker at 25-26, 28.

E. Implementation Of Coal Conservation

The accumulating coal delivery shortfalls caused by BNSF's trainset limitations in 2022 initially compelled Evergy Metro and EKC to reclaim coal from inventory stockpiles to make up the difference needed to fuel generation at Iatan and LEC. However, Evergy Metro and EKC were able to forecast that as the high demand Summer months approached the inventories at the stations would be depleted to levels that threatened their reliability in those expected periods of peak power demand. V.S. Tucker

¹² See V.S. Tucker at 23 and Exhibit JT-6. { [REDACTED] } See Counsel's Exhibit No. 4.

at 36-39. To address this impact of BNSF's restrictions, { [REDACTED] }, Evergy Metro and EKC implemented measures to conserve coal by limiting its use in the Iatan and LEC generating units.

The principal method of coal conservation used in 2022 involved the application of “adders” to the prices at which Iatan and LEC generation was offered to SPP in the day-ahead market. Initially, Evergy determined the percentage adder to be applied consistent with SPP standards, which allowed self-determined adders up to about 25% of the cost-based offer. As the impact of the coal shortfalls became more pronounced, Evergy consulted with the office of SPP's Market Monitor – which observes and supervises the evaluation of SPP member and participant offer prices and LMP determinations – and SPP determined higher price adders using its Opportunity Cost Calculator. V.S. Crosby at 9. These measures were intended to – and did – push Iatan's and LEC's MWh offer prices during certain hours above the expected LMPs, so that it would be less likely that SPP would commit the generation and coal that otherwise would have been consumed was conserved. V.S. Tucker at 38-39. Evergy would forego the revenue credits that would have been earned for the MWhs that were not generated due to the adders, but as LREs, Evergy Metro and EKC still remained obligated to purchase their respective load requirements from SPP and would be exposed to additional net costs of those purchased loads.¹³ Coal conservation measures were in effect at Iatan during the

¹³ LEC units have the capability to generate electricity using natural gas. An alternative short-term coal conservation measure implemented at LEC was the use of higher cost gas

period from April 29 through December 20, 2022, and at LEC from April 29 until November 22, 2022.¹⁴

ARGUMENT

When evaluated under the statutory provisions and legal standards applicable to Complainants' claims against BNSF, the evidence submitted herewith clearly demonstrates that BNSF's acts and omissions in 2022 with respect to coal transportation service to Iatan and LEC (1) violated BNSF's obligations as a common carrier under 49 U.S.C. § 11101(a); (2) violated the prohibition against unreasonable practices set out in 49 U.S.C. § 10702(2); and (3) violated the requirement of reasonable and adequate car service practices prescribed by 49 U.S.C. § 11121(a)(1), all of which resulted in significant economic harm to Complainants and their electric ratepayers.¹⁵ Consequently,

in lieu of coal to supplement minimum generation levels during off-peak hours in the period between May 1 and October 20, 2022. *See* V.S. Crosby at 12; V.S. Foo at 6 n.2.

¹⁴ V.S. Crosby at 9.

¹⁵ In a decision earlier this year in *N. Am. Freight Car Ass'n v. Union Pac. R.R.*, STB Docket NOR 42144 (STB served Jan. 15, 2025), the Board indicated that in some cases a claim subject to adjudication and analysis under one statutory provision that "specifically govern[s]" the conduct in question need not be evaluated under other provisions that encompass the conduct more generally. *Id.* at 12-13 (citing *Entergy Ark., Inc. v. Union Pac. R.R.*, STB Docket NOR 42104 (STB served June 26, 2009) at 10). In this case, different aspects of BNSF's conduct in 2022 triggered violations of all three (3) cited provisions of Title 49, in manners similar to the circumstances presented in other cases where the Board has considered service-related shipper complaints under multiple sections of the statute. *See, e.g., Navajo Transitional Energy Co., LLC v. BNSF Ry.*, STB Docket NOR 42179 (STB served June 30, 2023); *Cent. Valley Ag. Grinding, Inc. v. Modesto and Empire Traction Co.*, STB Docket NOR 42159 (STB served July 25, 2018); *Grain Land Coop v. Canadian Pac., Ltd.*, STB Docket NOR 41687 (STB served Dec. 8, 1999).

Complainants are entitled to an award of principal damages under 49 U.S.C. § 11704(b), as well as applicable interest.

I. BNSF's Actions Violated 49 U.S.C. § 11101(a)

Section 11101(a) of Title 49 provides that “[a] rail carrier providing transportation service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request.” The evidence presented herein shows that BNSF failed to meet this obligation with respect to coal transportation service to Iatan and LEC in 2022, and under applicable law and agency and court precedent BNSF is liable to Complainants for the consequences of its violation of the governing statute.

A. Complainants' Requests For Service In 2022 Were Reasonable

Established case law under Section 11101(a) provides that a “reasonable request is one that is specific as to the volume, commodity and time of shipment.” *Michael H. Meyer, Trustee v. North Coast R.R. Auth.*, STB Docket FD 34337 (STB served July 27, 2005) at 4 (citing *LI Acquisition Corp. – Abandonment Exemption – In Montgomery County, PA*, ICC Docket AB-405 (Sub-No. 1X) (ICC served Aug. 23, 1994) at 9, and *Atchison, T. & S.F. Ry. – Abandonment Exemption – In Lyon County, KS*, ICC Docket AB-52 (Sub-No. 71X) (ICC served June 17, 1991) at 6). The evidence of Complainants' requests for service and railcar deployments in 2022 shows that both were reasonable.

Evergy Metro's and EKC's 2022 monthly entries into BNSF's online CFT scheduling platform conformed with BNSF's rules of use and specified the coal volumes to be loaded as well as the origin mines. *See* V.S. Tucker at 5-6, 8-9. Plainly, they were “specific as to the volume, commodity and time of shipment.” As Ms. Tucker also

explains, the coal volumes scheduled for Iatan and LEC in 2022 were consistent with Evergy's pattern of shipments via BNSF over the most recent 2017-2021 period (notwithstanding the effect of the Covid pandemic on 2020 shipments):

BNSF Historic Deliveries and 2022 CFT Schedules

<u>Year</u>	<u>Iatan</u>	<u>LEC</u>	<u>Total</u>
2017	6,045,789	1,661,512	7,707,301
2018	4,227,517	1,742,176	5,969,693
2019	4,730,041	1,488,900	6,218,941
2020	3,969,555	1,081,509	5,051,064
2021	4,572,587	1,282,730	5,855,317
<i>Average</i>	<i>4,709,098</i>	<i>1,451,365</i>	<i>6,160,463</i>
2022 CFT	4,882,000	1,440,800	6,322,800

Id. at 9, Table 4. There was nothing extreme, unexpected or out of the ordinary about Complainants' 2022 service requests. Both in form – which was prescribed by BNSF – and in substance considering historic precedent, Evergy Metro's and EKC's 2022 service requests were reasonable.

Similarly, the requests made by Complainants for the placement of private trainsets in service during 2022 were reasonable. Coal movements to Iatan and LEC have taken place in Evergy-supplied railcars for decades, and the rates established in BNSF's Tariffs (BNSF 60024 and BNSF 60029) that were intended for application to actual shipments were predicated on the use of private equipment. As Ms. Tucker explains, trainset requirements historically were determined based on scheduled coal shipments, coal inventory targets and estimated BNSF unit train cycle times, and 2022 was no exception. V.S. Tucker at 14-21. To transport the Iatan and LEC volumes scheduled in 2022, BNSF was advised that Evergy Metro and EKC required the

placement of a total of seven (7) trainsets into service during the months of March through May and October through November of that year, and eight (8) trainsets during the months of January and February, June through September, and December of 2022. Those requests were consistent with the number of sets that BNSF had accepted into service during previous years. *Id.* at 5, 15-21.

Under the governing standards, there should be no real question whether Complainants' requests were "reasonable." BNSF may claim that Evergy's requests somehow were not reasonable considering alleged crew shortages and locomotive power constraints, but as shown in detail *infra*, any such limitations were the predictable result of BNSF's own, deliberate operational decisions, and cannot serve as a legitimate excuse for violating Section 11101(a).

**B. BNSF's Infrastructure And System Capacity
Were More Than Adequate**

As part of their Opening Evidence, Complainants are presenting the joint Verified Statement of Robert D. Mulholland and Timothy D. Crowley, Executive Vice President and President, respectively, of L.E. Peabody & Associates, Inc., recognized experts in rail transportation operations and economics whose work has been accepted by the Board repeatedly over many years. Using data produced by BNSF in discovery, Mr. Mulholland and Mr. Crowley analyzed BNSF's operations, traffic flows and volumes (both for coal and non-coal shipments), train performance, and crew levels and power availability over the 2019-2022 period, both system-wide and on the routes used by BNSF to provide service to Iatan and LEC.

For the BNSF system, Mr. Mulholland and Mr. Crowley found that BNSF's physical infrastructure (miles of track, sidings and support facilities, etc.) remained largely unchanged between 2019 and 2022. Over the same period, however, BNSF significantly reduced its train crew employees and the size of its road locomotive pool and experienced an overall decline in carloads transported over the system. This in turn led to increases in system average train speeds and a decline in average terminal dwell times in 2022 as compared with 2019. V.S. Mulholland/Crowley at 9-10. As Mr. Mulholland and Mr. Crowley show, however, {{ [REDACTED] [REDACTED] [REDACTED] }} *Id.* at 27-28, 30.

Focusing specifically on the BNSF routes from the Powder River Basin to Kansas City and beyond to Lawrence, Kansas – the routes used to serve Iatan and LEC – Mr. Mulholland and Mr. Crowley found that there were no significant changes in BNSF's infrastructure between 2019 and 2022. Over that same period, however, {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] }} *Id.* at 2, 21-22, and Exh. 14. They conclude that BNSF had sufficient track capacity along the Iatan/LEC route to transport the trains necessary to deliver Evergy Metro's and EKC's scheduled tons for Iatan and LEC in 2022. *Id.* at 3.

While track capacity was adequate to handle Evergy Metro and EKC's reasonable requests for service, Mr. Mulholland's and Mr. Crowley's analyses of the data that BNSF produced concerning crew employment levels, mechanical staffing levels, and locomotive power resources show serious deficiencies in those categories that are wholly attributable to BNSF's operating plans. Though average reported enroute train delays

{{ [REDACTED]

[REDACTED]

[REDACTED] }} *Id.* at 33. Similarly, total train delay minutes on the Iatan/LEC route {{ [REDACTED]

[REDACTED]

[REDACTED] }} *Id.* Messrs. Mulholland and Crowley explain that the

{{ [REDACTED]

[REDACTED]

[REDACTED] }} *Id.* at 30-33. As with the BNSF system data, Mr.

Mulholland's and Mr. Crowley's analyses also show that the reductions in employment and power resource levels specific to the Evergy routes {{ [REDACTED]

[REDACTED]

[REDACTED] }} *Id.* at 24-30.

In sum, the analyses of BNSF's own data by Messrs. Mulholland and Crowley demonstrate that over the 2019-2022 period BNSF's physical capacity on the portion of its system used to serve Iatan and LEC did not materially change, and {{ [REDACTED]

[REDACTED]

[REDACTED] } } As detailed further in Part IV, *infra*, those resource reductions were entirely within BNSF’s control.

C. BNSF Violated Its Common Carrier Service Obligations

The statutory requirement that a rail carrier must provide service on reasonable request “reflects the well-established principle that railroads ‘are held to a higher standard of responsibility than most private enterprises.’” *GS Roofing Products Co. v. Surface Transp. Bd.*, 143 F.3d 387, 391 (8th Cir. 1998) (citing *General Foods Corp. v. Baker*, 451 F. Supp. 873, 875 (D. Md. 1978)). *See also State of Montana v. BNSF Ry.*, STB Docket NOR 42124 (STB served April 26, 2013) at 5. The obligation of a common carrier “is comprehensive and exceptions are not to be implied.” *Am. Trucking Ass’n v. Atchison, T. & S.F. Ry.*, 387 U.S. 397, 407 (1967). Significantly, the service that the carrier provides also must be *adequate*. *Granite State Concrete Co. v. Surface Transp. Bd.*, 417 F.3d 85, 92 (1st Cir. 2005). “Adequate service” is considered part of the general definition of a common carrier’s obligations. *Nat’l Grain and Feed Ass’n v. United States*, 5 F.3d 306, 311 (8th Cir. 1993); *Wales Transp., Inc. v. ICC*, 728 F.2d 774, 780 n.9 (5th Cir. 1984).

While BNSF obviously provided rail service to Iatan and LEC in 2022, that service fell well short of adequate and fully responsive to Complainants’ reasonable

needs and requests.¹⁶ As shown above, Evergy's requested and scheduled 2022 volumes were consistent with the previous years' volumes with which BNSF was very familiar, so there is no plausible scenario in which BNSF could be said to have been surprised by or uncertain as to Complainants' transportation needs. *See, e.g.*, V.S. Tucker at 9, Table 4. With respect to the trainset deployments that Complainants requested for 2022, BNSF had direct knowledge of Evergy's historic (and then-present) needs and of the correlation between scheduled volumes and railcar trainset requirements throughout the course of the year, based on decades of experience transporting coal to Iatan and LEC and regular communications between Evergy's Fuels Department personnel and their BNSF counterparts. *Id.* at 12-21, 24-25.

Despite its knowledge of Complainants' legitimate needs and its breadth of experience in meeting them in the past,¹⁷ in 2022 BNSF imposed and maintained limits on the number of Evergy trainsets in service { [REDACTED] } [REDACTED] }.¹⁸ Even if BNSF somehow credibly could claim ignorance at the outset, Evergy regularly and consistently communicated to BNSF that the limitations were leading to coal volume shortfalls, with predictably serious and

¹⁶ As the Board noted in *State of Montana, supra*, service that falls short of meeting a shipper's reasonable request amounts to a functional denial of that request. STB Docket NOR 42124 (STB served April 26, 2013) at 1 n.2.

¹⁷ Though BNSF moved coal to Iatan and LEC under contracts for the years prior to 2022 and 2021, respectively, the patterns of annual coal volumes and associated private trainset requirements were quite consistent throughout those years. V.S. Tucker at 9, Table 4.

¹⁸ { [REDACTED] }
[REDACTED] } *See* Counsel's Exhibit Nos. 1, 2 and 3.

adverse economic consequences. *Id.* at 30-36. Indeed, after being advised that the accumulating shortfalls risked compelling Every to implement coal conservation measures, BNSF made no change to its trainset limit and { [REDACTED] }¹⁹

In the public interest, the law requires of every common carrier “the utmost fairness and good faith on its part in dealing with the shipper and in the discharge of its duties to him.” *Chicago & E.I. R.R. v. Collins Produce Co.*, 249 U.S. 186, 193 (1919); *Minneapolis & St. L. Ry. v. Pac. Gamble Robinson Co.*, 215 F.2d 126, 134 (8th Cir. 1954). A railroad cannot refuse or restrict service because of operational inconvenience or based on its opinion whether the transportation is “worth it.” *GS Roofing Prods. Co.*, 143 F.3d at 391; *Pejepscot Indus. Park, Inc. – Pet. for Decl. Order*, STB Docket FD 33989 (STB served May 15, 2003) at 13. A carrier “must adhere to its statutory obligations even if it suffers hardship in so doing.” *Id.*, STB Docket FD 33989 (citing *Decatur County Comm’rs v. Surface Transp. Bd.*, 308 F.3d 710, 715 (7th Cir. 2002)). The evidence presented here shows that Complainants’ requests for service and accompanying private trainset deployments in 2022 were reasonable and fully consistent with BNSF’s long history and experience in transporting coal to Iatan and LEC. With specific knowledge of Complainants’ transportation needs and more than adequate physical system capacity to meet them, BNSF nonetheless restricted its service to a level that BNSF knew was certain to cause coal supply shortfalls that would jeopardize

¹⁹ See V.S. Tucker at 23, Exhibit JT-6.

Complainants' compliance with their commitments to SPP, increase Complainants' costs, and result in substantial economic harm, all of which occurred. BNSF's acts and omissions in 2022 were in violation of 49 U.S.C. § 11101(a). *See Navajo Transitional Energy Company, LLC – Ex Parte Pet. for Emergency Service Order*, STB Docket NOR 42178 (STB served June 23, 2023) at 7 (BNSF's failure to provide service consistent with past levels presented a "very strong showing" of a likely violation of Section 11101(a)).

II. BNSF's 2022 Trainset Limitation Was An Unreasonable Practice

BNSF's deliberate failure to transport Complainants' scheduled coal tonnages in 2022, and its claimed "sole discretion" to limit service and the number of trainsets that it would allow into that service as set out in the tariffs applicable to Iatan and LEC coal transportation constituted an unreasonable practice in violation of 49 U.S.C. § 10702(2).

The inquiry into whether a rail carrier's practices fail to meet the requirements of Section 10702(2) is fact-specific, and the Board's discretion to conduct such an inquiry is quite broad. *See Granite State Concrete Co.*, 417 F.3d at 92; *N. Am. Freight Car Ass'n v. BNSF Ry.*, STB Docket NOR 42060 (Sub-No. 1) (STB served Jan. 26, 2007) at 6.

Railroad "tariff provisions and conditions of service" are within the scope of the Board's Section 10702(2) jurisdiction,²⁰ and it is well-established that rail carrier practices – whether implemented through tariffs or otherwise – that impact the handling or allocation of railcars, including private railcars, can be challenged as unreasonable and subject to Board sanction and an award of damages. *Grain Land Coop*, NOR 41687 (STB served

²⁰ *See, e.g., Cent. Valley Ag. Grinding, Inc.*, NOR 42159 (STB served July 25, 2018) at 3.

Dec. 8, 1999) at 3; *Shippers Committee, OT-5 v. Ann Arbor R.R.*, 5 I.C.C.2d 856, 863 (1989).

In 2022, BNSF arrogated to itself the “sole discretion” to determine whether, when, and how it would provide coal transportation service to Iatan and LEC, and whether and on what terms it would accept railcar trainsets into service to meet Complainants’ reasonable requests for transportation. *See* Complaint, Exh. 1 at 2; Exh. 4 at 2. BNSF then exercised that “discretion” in a manner that it knew would cause a significant shortfall in coal deliveries to Iatan and LEC, as compared to the properly prepared CFT tonnage schedules. Over a century ago, the Board’s predecessor held that such a claim of unilateral authority over common carrier service would amount to “regulation of the industries and commerce of the country by its railroads” and cannot be permitted. *In re Investigation of Advances in Rates by Carriers in Western Trunk Line, Trans-Missouri, and Illinois Freight Committee Territories*, 20 I.C.C. 307, 350-51 (1911). More recently, the agency has held that it is an unreasonable practice to refuse to transport a shipment in private equipment if the railroad is not prepared to supply the necessary railcars itself. *Shippers Committee, OT-5*, 5 I.C.C.2d at 865; *Grain Land Coop*, NOR 41687 (STB served Dec. 8, 1999). In the instant case, the tariff rates applicable to BNSF service to Iatan and LEC in 2022 were predicated on Everyg supplying the necessary railcars, and at no point did BNSF offer its own cars to transport the tons of coal needed to prevent the almost 2,000,000 ton shortfall that resulted from its limitations on private trainsets. The “Service Limitation Notice” provisions in BNSF 60024 and BNSF 60029 which were in effect in 2022, as well as BNSF’s associated refusal to accept

a sufficient number of Evergy railcars to meet its reasonable requests for service, constituted unreasonable practices and violated 49 U.S.C. § 10702(2).

The fact that BNSF removed the Service Limitation terms’ “sole discretion” claim from the Iatan and LEC tariffs in 2023 is of no relevant consequence. For one thing, removing the provisions in 2023 had no impact on the statutory violations that already had occurred in 2022, when those provisions were in effect. For another, evidence on the record in the *NTEC* litigation²¹ showed that even without the Service Limitation Notice, BNSF still claimed that it possessed sole discretion to ignore reasonable requests for service when they did not fit the carrier’s preferred operational plans and to ration both service and railcar availability irrespective of a shipper’s legitimate needs. In the May 10, 2023, hearing held in the *NTEC* proceeding, BNSF acknowledged that there was *no substantive difference* in its coal transportation tariffs between those that included the Service Limitation Notice and those that did not. *See* Transcript of May 10, 2023, Hearing at 192:10-20 (“CHAIRMAN OBERMAN: You had this word sole discretion in your original tariff, and then you took it out. Is there any difference in BN’s obligation to provide service to NTEC between the one that had the word sole discretion in it, and the ones that don’t – the one that doesn’t have the word sole discretion in it. What’s the significance of taking the words out? MR. STRAFFORD: No. There’s no difference.”).

²¹ *Navajo Transitional Energy Co. – Ex Parte Pet. for Emergency Service Order*, STB Docket NOR 42178.

The inclusion and enforcement of the Service Limitation Notices in BNSF 60024 and BNSF 60029 in 2022 were unreasonable practices under 49 U.S.C. § 10702(2), for which Complainants are entitled to relief.

III. BNSF's Actions In 2022 Violated 49 U.S.C. § 11121(a)

The governing statute (specifically 49 U.S.C. § 11121(a)(1)) mandates that a rail carrier “providing transportation subject to the jurisdiction of the Board,” as BNSF did with respect to Evergy Metro and EKC in 2022, must “establish, observe, and enforce reasonable rules and practices on car service.” The Board is empowered to provide relief from unreasonable car service practices if it finds that (A) the practice advanced by a complainant will not “materially and adversely affect” the carrier’s ability to provide safe and adequate transportation; (B) any amounts that the carrier would be required to spend to implement the practice (including a return on any capital investment) will be recovered; and (C) implementing the practice or “providing the facilities” will not impair the railroad’s ability to attract capital. *Id.* The statute effectively codifies a longstanding element of the common carrier obligation recognizing that “[o]rdinarily a shipper, on reasonable demand, would be entitled to all the cars which it could promptly load with freight to be transported over the carrier’s line.” *Pennsylvania R.R. v. Puritan Coal Mining Co.*, 237 U.S. 121, 133 (1915). *See also* NTEC, NOR 42178 (STB served June 23, 2023) at 4 (BNSF’s common carrier obligation “requires it to ‘provide at least [as] much service...[as it has] the capacity to handle....’”); *Pennsylvania R.R. v. Sonman Shaft Coal Co.*, 242 U.S. 120, 126 (1916) (the number of railcars to which the shipper was entitled “was to be measured by its reasonable requests based upon its actual needs.”).

While most of the case law involving Section 11121(a) historically focused on circumstances in which a railroad was responsible for providing railcars for a shipper's use, the statute's applicability to a railroad's management of private cars also has been affirmed. *See, e.g., APL Land Transp. Servs., Inc. v. Burlington N. and S.F. Ry.*, STB Docket NOR 42003 (STB served July 14, 1999) at 1, 9; *Shippers Committee, OT-5*, 5 I.C.C.2d at 863-65. Likewise, the principle underlying the statute that a common carrier railroad has an obligation to treat all tariff shippers fairly is part and parcel of the overall responsibility of a common carrier under 49 U.S.C. § 11101(a).²²

In *Nat'l Grain and Feed Ass'n v. U.S.*, the court reviewed the ICC's consideration of a challenge to a Burlington Northern Railroad Company ("BN") railcar allocation scheme as a violation of Section 11121(a). Analogous to the instant case, BN there claimed the discretion to decide whether and how railcars were to be assigned to shippers based on its own devised system, without regard to "historical demand." *Nat'l Grain and Feed Ass'n*, 5 F.3d at 308. The court found that while the ICC had "acknowledged" the issue of equitable allocation of BN's resources, it failed to consider whether and how BN's unilaterally determined car allocation approach violated its "common carrier obligation to provide equitable and adequate car service on reasonable request." *Id.*, 5

²² *See, e.g., Pennsylvania R.R. v. Puritan*, 237 U.S. at 133. The Supreme Court recognized that a carrier's obligation is not "absolute," and could be excused in the case of "sudden and great demands" that it had no reason to expect. *Id.* As shown *supra* and discussed further in this section and the next, however, there was nothing unexpected about Every's request for service and the admission of adequate private trainsets, and any perceived limits on BNSF's capabilities were the result of its own operating decisions and deliberate force reductions.

F.3d at 311. In the present case, BNSF claimed for itself the “sole discretion” to determine if, when and how Evergy Metro and EKC would be permitted to place trainsets into service to meet their 2022 transportation needs, despite the consistency of their service and trainset requests with “historical demand.” Evergy Metro’s and EKC’s reasonable requests for service – to which they were statutorily entitled – were subordinated to BNSF’s self-assessed operating convenience. Further, as shown *infra*, any obstacles to BNSF’s meeting that demand were of its own deliberate making and therefore do not provide an excuse for BNSF’s failure to meet its legal obligations. The same evidence that supports a finding that BNSF violated 49 U.S.C. § 11101(a) in 2022 demonstrates that the carrier also failed to comply with Section 11121(a)(1)’s directive that it must establish and maintain reasonable car service practices vis-à-vis coal transportation service to Iatan and LEC.

Imposing liability on BNSF for a violation of Section 11121(a)(1) would not conflict with the criteria specified in Section 11121(a)(1)(A)-(C). As shown in the joint Verified Statement of Witnesses Mulholland and Crowley, BNSF had more than adequate system capacity in 2022 to accept into service the trainsets needed to transport Evergy Metro’s and EKC’s nominated coal volumes,²³ and { [REDACTED] [REDACTED] [REDACTED] } } Accepting the necessary private trainsets into service would not have “materially and adversely” affected BNSF’s legitimate ability to provide “safe and

²³ See V.S. Mulholland/Crowley at 2-3.

adequate transportation.” *See* 49 U.S.C. § 11121(a)(1)(A). BNSF would not have had to spend or recover any amounts for the use of those trainsets, as Evergy provides private equipment to BNSF for its use in transporting coal to Iatan and LEC at no charge. *See* 49 U.S.C. § 11121(a)(1)(B). And accepting the requisite number of Evergy trainsets into service would have had no negative impact on BNSF’s ability to attract capital (49 U.S.C. § 11121(a)(1)(C)). Indeed, throughout 2022 BNSF’s return on investment as measured by the Board substantially exceeded the railroad industry’s cost of capital. *See Railroad Revenue Adequacy – 2022 Determination*, STB Docket EP 552 (Sub-No. 27) (STB served Sept. 5, 2023) at 1-3.

IV. BNSF’s Service Failures Were Not Beyond The Carrier’s Control

In both its Answer to the Complaint and in its Motion to Dismiss Count IV of the original Complaint, BNSF raised the allegation that its failures to meet Evergy’s reasonable requests for service in 2022 were due to crew shortages and a lack of adequate power resources that were beyond the carrier’s reasonable control. *See, e.g.*, BNSF May 20, 2024 Answer at Paragraphs 18 and 22. BNSF’s Motion claimed that 2022 was a year of “significant challenges” (BNSF May 17, 2024 Motion to Dismiss at 3) and that a lack of employees, equipment and warehouse resources required BNSF to implement a “service recovery plan” that included limiting the number of private railcar trainsets in service on its system. *Id.* at 4-5. According to BNSF, “network-wide congestion” justified and excused its refusal to accept sufficient Evergy trainsets to transport nominated and scheduled tons of coal to Iatan and LEC. *Id.* at 6.

The accompanying joint Verified Statement of Robert Mulholland and Timothy Crowley clearly demonstrates that BNSF's coal network in 2022 had ample capacity to permit the deployment of sufficient Evergy trainsets to transport Evergy Metro's and EKC's nominated and scheduled coal tonnages. Mr. Mulholland and Mr. Crowley show that the total number of coal trains handled by BNSF over the route used to serve Iatan and LEC in 2022 was {{ [REDACTED] [REDACTED] }} V.S. Mulholland/Crowley at 13-14 and Exh. 4. If the only issue facing BNSF was whether there was "room on the railroad" to meet Evergy Metro's and EKC's reasonable requests for service, Complainants would not have experienced the coal volume shortfalls that led to the economic damages sought in this proceeding. As BNSF has acknowledged, its refusal to admit enough private trainsets to meet Complainants' needs was predicated on a lack of employees and equipment (principally locomotives).

It is a matter of public record that any employee or locomotive power shortages that BNSF experienced in 2022 were a consequence of its own deliberate decisions and operations plans put in place well before the Covid pandemic occurred, not the result of Covid or any other circumstance beyond its control. As a matter of law, such self-imposed capacity constraints cannot excuse failure to respond to reasonable requests for service. The Board should reject any such defense.

The evidence adduced on the record in the Board's *Ex Parte No. 770* proceedings clearly established that BNSF's adoption of cost-cutting operations in the years prior to the arrival of Covid resulted in force reductions and retrenched power and equipment

deployments that left BNSF ill-positioned to meet Evergy’s reasonable and predictable transportation needs in 2022. For example, during the hearings held on April 26 and 27, 2022, the Board heard uncontradicted testimony that in the five (5) years prior to the pandemic, BNSF purposely cut its employee forces by 27%²⁴ and closed coal train inspection facilities in Wyoming and South Dakota where trains could be inspected in four (4) hours, shifting the work to more distant sites where inspections took 24-48 hours to complete.²⁵ Other witnesses testified that BNSF policies restricting time off and disincentivizing employees from taking medical or family leave exacerbated tension within the workforce,²⁶ and that BNSF made “working as an engineer and a conductor extremely undesirable” by consolidating work in ways that “stretch[ed] the limits of the true territorial qualifications” and made both recruiting new employees and inducing furloughed employees to return more difficult.²⁷ Former STB Chairman Daniel Elliott concluded that these kinds of pre-pandemic job cuts and other actions left BNSF ill-prepared for a predictable post-Covid restoration of the general demand for service.²⁸ In a decision not long after the conclusion of the hearings, the Board acknowledged the “massive workforce reductions undertaken both before and during the pandemic” and specifically referenced BNSF’s admission that it failed to have the “right resources” in

²⁴ See Hr’g Tr. 111:20-112:2, Apr. 26, 2022, *Urgent Issues in Freight Rail Serv.*, STB Docket EP 770.

²⁵ *Id.* at 139:13-20.

²⁶ *Id.* at 118:14-119:9.

²⁷ *Id.* at 163:18-22.

²⁸ *Id.* at 359:10-22.

place to respond to 2022 service demands. *Urgent Issues in Freight Rail Service – Railroad Reporting*, STB Docket EP 770 (Sub-No. 1) (STB served June 13, 2022) at 7, 10.

In the months after the hearings in *Ex Parte No. 770*, the Railroad Labor Unions²⁹ supplemented the record with additional evidence showing, *inter alia*, that any resource constraints that BNSF experienced in 2022 were a consequence of deliberate force and available power reductions that BNSF undertook in the years before the pandemic as part of its cost-cutting program. For example, the Unions showed that prior to 2019, BNSF locomotive shop closings and force reductions led to fewer locomotives available for service and reduced inspections (increasing the risk of breakdowns).³⁰ They documented a steady decline in maintenance of way and structures and maintenance of equipment forces (STB reporting codes L300 and L400) between 2016 and 2022,³¹ and force reductions among BNSF maintenance of way workers (-5%), locomotive and railcar shop employees (-26.6%), and train and engine crew members (-19.7%) between 2019 and 2022.³² Data collected by individual rail labor organizations and presented by the Unions

²⁹ The Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers/Mechanical Division; International Association of Boilermakers; International Association of Machinists and Aerospace Workers District #19; National Conference of Firemen and Oilers 32BJ/SEIU; and Transport Workers Union of America.

³⁰ See *Ex Parte Nos. 770 and 770 (Sub-No.1)*, Unions' Supplemental Comments, May 22, 2023, Loos Decl. at 8-10; Allred Decl. at 3-9.

³¹ *Id.*, Exhibit 1.

³² *Id.*, Exhibit 2 (also drawn from STB-reported data).

corroborated BNSF's deliberate reductions in critical operating personnel that began well before the start of the Covid pandemic, showing a 10% reduction in engineers and trainmen, a 21.8% decline in maintenance of way forces, a 15.7% reduction in signalmen, a 15.7% reduction in machinists, and a 15.6% decline in electrical workers, all between 2016 and 2022.³³

The Unions' Second Supplemental Comments³⁴ corroborated and added relevant context to the evidence previously submitted. For example, the Unions showed that the force reductions in maintenance of way personnel resulted in a 20% *increase* in the number of track-miles per maintenance/inspection employee, adding stress to the system and increasing the risk of service curtailments due to maintenance-related issues.³⁵ Moreover, data that had been reported by BNSF to the STB confirmed the previous showings by individual rail labor organizations regarding the deliberate force reductions from 2016 (well before the pandemic) to 2022 in three key areas: L300 (maintenance of way and structures), which were down 17.8%; L400 (maintenance of equipment), down 19.6%; and L600 (train and engine personnel), down 14.3%.³⁶ Over the same time period, BNSF's carloadings declined by only 3% and its tons handled by only 7%, so any argument that force reductions were in response to transportation market changes would

³³ *Id.*, Exhibit 4.

³⁴ *Ex Parte Nos. 770 and 770 (Sub-No.1)*, Unions' Second Supplemental Comments, Nov. 30, 2023.

³⁵ *See id.* at 3-4.

³⁶ *Id.*, Addendum A.

ring hollow.³⁷ See also Hr'g Tr. at 135, Sept. 16, 2024, *Hearing on Growth in the Rail Industry*, STB EP 775. Finally, the Unions showed that because of shop closures and reduced inspections, BNSF had 500 fewer locomotives in active service in 2022 as compared to 2015.³⁸

Included in this Opening Evidence is the Verified Statement of John Denny, who represents IAM District #19 and members of that organization employed by BNSF who directly experienced the force reductions and deferred locomotive maintenance cost-cutting strategies implemented by the carrier in the years before the pandemic. Corroborating the extensive evidence collected by the Board in the *Ex Parte Nos. 770, 770 (Sub-No.1)* and 775 proceedings, Mr. Denny presents data from BNSF's manpower records showing the earlier pre-Covid force reductions and corresponding reductions in and deferrals of essential locomotive inspections.

In addition to the foregoing evidence, the analyses of BNSF's own data produced in discovery that were conducted by Complainants' expert Witnesses Mulholland and Crowley confirm that any claimed limitations on resources available to meet Complainants' reasonable transportation needs in 2022 were a consequence of BNSF's own decisions and deliberate actions. As noted *supra*, their analyses showed that reductions in crews and power resources available for service on the routes used to transport coal to Iatan and LEC between 2019 and 2022 { [REDACTED]

³⁷ *Id.*, Addendum B.

³⁸ *Id.*, Addendum D.

_____}} V.S.

Mulholland/Crowley at 24-30, 33.

In its June 23, 2023 Decision in the *NTEC* proceeding, the Board stated that “self-imposed capacity constraints, such as voluntary reductions in crew levels,” would not excuse a failure or refusal to respond to “reasonable requests for service.” *Id.* at 4 n.6. That observation is consistent with established case law holding that where a rail carrier’s deliberate actions or omissions lead to consequences inconsistent with the governing statute, liability will be found. For example, in *Interstate Commerce Comm’n v. Baltimore & Annapolis R.R.*, 398 F. Supp. 454 (D. Md. 1975), *aff’d*, 537 F.2d 77 (4th Cir. 1976), the court considered a claim that a rail carrier had unlawfully abandoned its service obligations. When the carrier argued that it was unable to operate due to poor track conditions beyond its control, the court rejected the defense based on a finding that the conditions had resulted “in large part” from the railroad’s decision to defer maintenance. *Id.*, 398 F. Supp. at 463. *See also ICC v. Chicago, Rock Island & Pac. R.R.*, 501 F.2d 908, 915 (8th Cir. 1974). To the same effect, the U.S. Supreme Court ruled in 1919 that a rail carrier could not escape liability for cargo lost when military authorities confiscated it, because the railroad had invited the authorities onto its property. *Chicago & E.I. R.R. v. Collins Produce Co.*, 249 U.S. 186, 193 (1919). *See also Johnson v. Chicago, M., St. P. & P. R.R.*, 400 F.2d 968, 972 (9th Cir. 1968) (“The carrier is not excused [from providing adequate service] if the interference with its

service could have been avoided by forethought.... A carrier must anticipate problems and provide against them.”). The common thread in these precedents is that a rail carrier cannot claim excuse for failure to meet its legal obligations when its own actions and decisions were a cause of the failure.

The large body of evidence assembled by the Board in *Ex Parte Nos. 770, 770 (Sub-No. 1)* and 775 – as supplemented by the testimonies of Messrs. Mulholland, Crowley and Denny in this case – clearly establishes that any resource constraints that BNSF experienced which prompted its 2022 limitations on Evergy trainsets and contributed to its failure to meet Evergy’s reasonable requests for transportation were the result of deliberate operational and cost-cutting decisions made several years prior to the onset of the Covid-19 pandemic. Those decisions, and the consequences thereof, were not beyond the carrier’s reasonable control. Any argument to the contrary offered by BNSF should be rejected.

V. Complainants Are Entitled To Damages With Interest

The evidence presented herein demonstrates that in 2022 BNSF failed to provide transportation to Evergy Metro and EKC on reasonable request in violation of 49 U.S.C. § 11101(a); engaged in an unreasonable practice in the establishment and application of common carrier tariff terms in violation of 49 U.S.C. § 10702(2); and failed to establish and maintain reasonable car service practices in violation of 49 U.S.C. § 11121(a)(1). As such, and in accordance with 49 U.S.C. § 11704(b), BNSF is liable to Complainants for damages sustained because of these violations. In this case, those damages fall into three

(3) distinct categories, each of which has been recognized in previous Board and/or Interstate Commerce Commission decisions.

A. Complainants Are Entitled To Lost Opportunity Damages

As explained *supra* and in the Verified Statement of Jessica Tucker, because of the coal volume shortfalls at Iatan and LEC resulting from BNSF's trainset limitations in 2022, Evergy Metro and EKC were compelled to implement measures to conserve coal at those two stations. Initially determined internally and later by and in coordination with the SPP Market Monitor, during certain hours on certain days "adders" were applied to the prices at which generation from Iatan and LEC otherwise would have been offered to SPP with the intent (and effect) of reducing the likelihood that the offered generation cleared the market, such that it was not committed by SPP and the generation did not take place. But for the adders, the Iatan and LEC MWhs would have been offered at the cost of generation and would have been dispatched at the prevailing market LMPs. *See pp. 14-15, supra*; V.S. Tucker at 38-39. The SPP settlement value that Evergy Metro and EKC would have realized from those generated and dispatched MWhs represents a "lost opportunity" (or lost profits), which has been recognized as an approved category of damages under 49 U.S.C. § 11704(b). *See Louisiana Railcar, Inc. v. Missouri Pac. R.R.*, 5 I.C.C.2d 542, 547-49 (1989). *See also Johnson v. Chicago, M. St. P. & Pac. R.R.*, 400 F.2d at 975; *GS Roofing Products Co., Inc. v. Surface Transp. Bd.*, 262 F.3d 767, 777-78 (8th Cir. 2001); *Brampton Enters., LLC v. Norfolk S. Ry.*, STB Docket NOR 42118 (STB served Mar. 16, 2011) at 2-5.

The calculation of Complainants' lost opportunity damages, including a detailed explanation of the methodology employed and the underlying supporting data, is set out in the Verified Statement of Michael Crosby, Evergy's Lead Reliability and Data Analysis specialist. Mr. Crosby describes how generation from Iatan and LEC is dispatched by and within SPP; explains how net revenues earned by Evergy from generation dispatched by SPP are determined; presents a calculation of actual net revenues earned from Iatan and LEC generation in 2022; explains the coal conservation measures that Evergy was required to take because of coal volume shortfalls in 2022; and shows the calculation of net revenue (lost opportunity) that Evergy would have earned but for the required coal conservation.

Using a spreadsheet analysis and the actual SPP Day-Ahead Energy (MWh) and actual Day-Ahead SPP LMP prices (\$/MWh) and expected operating costs (including delivered fuel costs and variable unit operation and maintenance costs) that were a result of the offer prices including adders, Mr. Crosby shows the calculation of actual settlement revenue and costs attributable to Iatan and LEC during 2022, including the hours and days when coal conservation measures were in effect. V.S. Crosby at 10-14. Mr. Crosby then used the publicly available GenTrader computer program³⁹ and ran the program without the price adders to determine the "but for" Day-Ahead Energy (MWhs), thus

³⁹ Modeling using GenTrader has been acknowledged in federal regulatory proceedings. *See, e.g., Montana Generation, LLC*, Docket No. ER07-827-000, 119 FERC ¶ 61,339, at 7 (2007). The GenTrader program is not susceptible to manipulation by an operator. Its outputs essentially are driven by its inputs. V.S. Crosby at 14-15.

calculating the additional net settlement revenue that Evergy would have experienced had it not been necessary to implement coal conservation. *Id.* at 14-17. In presenting this “but for” case, Mr. Crosby made several adjustments to his process to ensure against overstatements.

First, Mr. Crosby recognized that had Iatan and LEC been available for full commitment to SPP and had the generation been offered at cost and dispatched, the LMPs at the relevant generation delivery points would have been lower than the actual LMPs during the coal conservation periods in 2022, due to the availability of more low-cost coal generation. Relying on a computer simulation of SPP LMPs without the artificial limits on Iatan and LEC generation prepared by Evergy Witness Hsin Foo and discussed further *infra*, Mr. Crosby calculated the “but for” net revenues using the lower LMPs. *Id.* at 16.⁴⁰

Second, Mr. Crosby excluded MWhs that Iatan and LEC did not generate in 2022 for reasons other than coal conservation. These included actual Iatan and LEC outages and derate hours as submitted to SPP, amounts awarded to Evergy Metro or EKC for ancillary services, and the inclusion of “ramp rates” to ensure that hourly changes in unit output in response to market shifts were realistic. *See id.* As detailed by Mr. Crosby and supported by his Exhibit and workpapers, the principal amount of Complainants’ lost

⁴⁰ As Mr. Crosby explains, GenTrader is not capable of generating LMP data; it is an input to the program. V.S. Crosby at 16.

opportunity damages because of BNSF's statutory violations in 2022 totals \$16,962,878.

Id. at 18.

B. Complainants Are Entitled To Damages For Net Additional Costs Incurred To Meet Load Requirements in SPP

Applicable precedent also supports an award of damages under 49 U.S.C. § 11704(b) to compensate an aggrieved party for additional costs that it incurred because of a rail carrier's violation of one or more sections of Title 49. *See Overbrook Farmers Union Coop. Ass'n v. Missouri Pac. R.R.*, 21 F.3d 360, 365 (10th Cir. 1994); *Louisiana Railcar*, 5 I.C.C.2d at 547-48. In this case, Complainants are entitled to recover these compensatory damages in two categories, the first of which is the net additional costs that Complainants experienced in purchasing their load requirements from SPP.

As discussed *supra* and in the accompanying Verified Statements of Lloyd Jackson and Jessica Tucker, both Evergy Metro and EKC are LREs within SPP, with specific load requirements. V.S. Jackson at 5-6. Evergy Metro's and EKC's loads must be purchased from SPP, and they are required to offer generation to SPP and thereby can earn revenue credits that would offset or (in most cases) exceed those costs. In a case where generation is reduced through the application of an offer price "adder," the generator both loses the opportunity to earn the LMPs for the conserved generation and incurs an additional net cost to buy the equivalent MWhs needed to meet its load requirements, due to the higher LMPs resulting from the reduced availability of low-cost coal generation.

Complainants' Witness Hsin Foo is an Evergy analyst with extensive experience in the use of the production cost model known as PROMOD. This model is the "gold

standard” of production cost modeling in the electric utility industry, and as Ms. Foo explains in her accompanying Verified Statement, it is widely accepted by state utility regulators for multiple purposes, including the forecasting of utility generation costs for consumer rate-setting purposes and the simulation of the operation of the SPP marketplace. *See* V.S. Foo at 4-5. *See also* “Production Cost Model Fundamentals,” Iowa State University College of Engineering, www.engineering.iastate.edu.

PROMOD’s industry ubiquity also has been acknowledged by federal courts. *See, e.g., In re Mirant Corp.*, 334 B.R. 800, 813 (Bankr. N.D. Tex. 2005); *Northern Ind. Pub. Serv. Co. v. Colo. Westmoreland, Inc.*, 667 F. Supp. 613, 622-23 (N.D. Ind. 1987). In the context of a systemwide calculation of net additional costs to meet load, PROMOD is the optimal modeling program because it calculates the LMPs that drive the analysis, and it uses SPP systemwide generation unit input data. As noted in Mr. Crosby’s testimony, GenTrader requires unit-specific actual data that is not feasibly available for the 100+ generation sources within the Evergy system.⁴¹ The edition of the model used by Ms. Foo (PROMOD IV) is a self-contained model that – like GenTrader – is not subject to internal modification or manipulation by the operator, and relies on input data supplied by the user to produce specific outputs, including the hourly state of each modeled generating asset (such as MWs dispatched), the LMP at each generating unit and statistics for the modeled region. V.S. Foo at 3-4. Like the Rail Traffic Controller model

⁴¹ V.S. Crosby at 19.

that the Board is familiar with in the maximum railroad rate context, the accuracy of PROMOD IV's output depends exclusively on the input data used.⁴²

Ms. Foo ran PROMOD IV with an input data set that replicated the actual Evergy conditions in 2022, including specifically the coal conservation measures implemented for Iatan and LEC. *Id.* at 6-7. She then modified the inputs only to remove the coal conservation “adders” and compared the total costs of power purchases to meet load requirements. This model run also produced the lower “but for” LMPs that Mr. Crosby used to calculate Evergy's lost opportunity damages. The outputs showed a total additional cost incurred by Evergy to meet its load requirements attributable to conservation at Iatan and LEC of \$37,509,755. *Id.* at 9.

The additional costs incurred because of coal conservation at Iatan and LEC were attributable to the higher LMPs that were in effect during the hours of conservation. However, those same higher LMPs had the effect of increasing the revenue credits earned by other generators operated by Evergy operating subsidiaries. As Ms. Foo explains, any benefits realized by other assets in the Evergy system because of these higher LMPs have to be offset against the additional load costs associated with Iatan and LEC in order to arrive at a *net* damages figure. *Id.* at 8-9. Drawing on the outputs from these PROMOD IV runs, Ms. Foo determined that other Evergy generators realized a total of \$32,881,872 in benefits from the higher LMPs in effect during Iatan and LEC coal conservation hours.

⁴² On June 4, 2025, Evergy completed its production of past PROMOD and GenTrader run inputs and outputs in response to the Board's May 14, 2025 Decision. *See* Counsel's Exhibit No. 5.

Id. at 10. In her Verified Statement, Ms. Foo shows these calculations and presents a net compensatory damages figure for additional SPP load requirement costs of \$4,627,883.

Id.

C. Complainants Are Entitled To Compensatory Damages To Recover Additional Costs Incurred At Iatan And LEC

The second category of compensatory damages to which Complainants are entitled under 49 U.S.C. § 11704(b) is comprised of the additional costs that were incurred at the Iatan and LEC facilities because of BNSF's trainset limitations in 2022. These include otherwise avoidable costs related to the reclamation of coal from inventory to replace the shipments that BNSF was not delivering, the restoration of resulting depleted inventory, and the costs to Evergy for storage of railcars that otherwise should have been deployed in coal transportation service.

The Verified Statement of Jessica Tucker describes how in the ordinary course the most cost-effective way for coal fuel to be fed into the boilers at Iatan and LEC is for delivering trains to be unloaded directly, using equipment that transfers coal into the generating units for combustion. Coal inventory is maintained at Iatan and LEC to deal with exigencies or prolonged failures of transportation, but reclaiming coal from inventory (and then later restoring it) is costly and therefore is not the most efficient approach. V.S. Tucker at 40. In 2022, as in prior years, Evergy Metro and EKC scheduled coal shipments with BNSF that were calibrated to have trains arrive at the generating stations at a pace that would permit the direct unloading of coal for transfer to the units, consistent with the expected demand for generation.

Because of BNSF's trainset limitations and the resulting accumulation of shortfalls in delivered tons of coal versus scheduled tons, Evergy Metro and EKC were required to reclaim coal from inventory at Iatan and LEC from the early months of 2022 to meet the plants' generation requirements. *Id.* at 41-45. These reclamations would not have taken place had BNSF met Evergy's reasonable requests for service and accepted sufficient trainsets to transport the scheduled tons, consistent with the parties' decades-long commercial relationship. Later in 2022, Evergy incurred costs to move coal back into inventories to restore them to reasonable levels. These costs likewise would not have been incurred had BNSF met Evergy's reasonable needs. As described by Ms. Tucker, the additional costs incurred in connection with the reclamations and subsequent restorations were for fuel to operate the equipment to pull tons from inventory and then to shift additional tons back to replenish depleted inventory, because of BNSF's trainset restrictions. Conservatively, Ms. Tucker did not propose to apportion other costs (*e.g.*, equipment maintenance, mileage-driven overhauls, etc.) that also were affected by the increased equipment use attributable to BNSF's actions. *Id.* at 41-42, 44. She calculates the principal amount of the additional fuel cost to be \$395,113.65 and provides supporting sources in her workpapers.

Ms. Tucker's Statement also describes the instances of trainset storage in 2022 that Evergy was forced to utilize because BNSF refused to accept a sufficient number of railcars into service to transport the coal volumes that had been scheduled for delivery to Iatan and LEC using BNSF's CFT platform. Her Tables 29 and 30 show the duration of storage for these trainsets, as well as the applicable costs. *Id.* at 45-48. Her calculations

only consider trainset storage made necessary by BNSF's imposed limitations, where Everyg did not have other more reasonable options for storing cars at a lower or no cost. Complainants' principal railcar storage expense damages total \$225,750.00.

**D. Complainants Should Be Awarded Interest
On Their Principal Damages**

As summarized above, the principal amount of damages to which Complainants are entitled totals \$22,211,624.65. Complainants respectfully submit that the Board also should award interest calculated from the date of the Complaint (January 31, 2024) at the rate prescribed in 49 C.F.R. § 1141.1.

The Board and its predecessor, with court approval, have affirmed that interest on damages awarded in cases other than those involving challenges to the reasonableness of rail rates is an appropriate part of the remedies for carriers' violations of 49 U.S.C. § 11101(a). *See Louisiana Railcar, Inc. v. Missouri Pac. R.R.*, 7 I.C.C.2d 30, 44 (1990). *See also Eastman Kodak Co. v. Westway Motor Freight, Inc.*, 949 F.2d 317, 321 (10th Cir. 1991). 49 C.F.R. § 1141.1 is the endorsed measure for the calculation of interest. *Louisiana Railcar*, 7 I.C.C.2d at 44. The applied standard for an award of interest is (1) whether the award would compensate the injured party, and (2) whether consideration of the equities precludes an award. *Overbrook Farmers*, 21 F.3d at 366. Complainants easily satisfy this test.

An award of interest on damages in this case would be purely compensatory and not punitive in nature. Had BNSF acknowledged and satisfied its obligation to reimburse Complainants for their lost opportunity and additional costs incurred because of BNSF's

statutory violations no later than when Complainants made their formal claim on January 31, 2024, Complainants – and not BNSF – would have had use of the money equivalent from that point forward. *See id.* As the Supreme Court held in 1919, since the defendant never offered to pay compensation for the lost value and additional costs, “unless interest is to be allowed there seems to be no means of making the claimants whole for the wrongs sustained by violations of the statute.” *Pennsylvania R.R. v. Minds*, 250 U.S. 368, 370-71 (1919). *See also Louisiana Railcar, Inc.*, 7 I.C.C.2d at 44 (“A delay in the receipt of payment for damages is as much a source of injury as the initial loss of income comprising the damages awarded.”).

Likewise, the equities in this case do not preclude the award of interest. As described in detail in Part I, *supra*, and in the Verified Statement of Jessica Tucker, the damages sustained by Complainants were a consequence of BNSF’s deliberate actions { [REDACTED] } See, e.g., notes 12 and 13, *supra*. This is not a case where the harm suffered by Complainants was the result of an accident or circumstances beyond BNSF’s control. *See* Part IV, *supra*. To the contrary, in its tariffs applicable to service to Iatan and LEC in 2022 BNSF claimed “sole discretion” to determine if, when and how Complainants would receive service without regard to their reasonable requests, which in 2022 were consistent with decades of previous experience. Moreover, Complainants are only seeking interest applied from the date that this proceeding began, which was close to two years after the events giving rise to their principal damages. *Cf. Louisiana Railcar, Inc.*, 7 I.C.C.2d at 44. Complainants are not

looking back beyond the point when BNSF was on formal notice of the claims in this case. Given that the statutory violations shown herein were the result of BNSF's deliberate actions and given the narrow temporal scope of the interest to be applied, it cannot seriously be argued that "the equities would preclude the award of ... interest" on Complainants' principal damages. *Eastman Kodak Co.*, 949 F.2d at 321.

E. Adjustments To Complainants' Original Damages Estimates

As shown herein, Complainants' lost opportunity damages resulting from BNSF's violations of its statutory responsibilities total \$16,962,878, prior to the application of interest. Complainants' damages for the net additional costs of meeting their SPP load requirements that directly resulted from BNSF's actions total \$4,627,883, again before interest. These amounts differ from the good faith estimates provided in certain averments in the original Complaint regarding the adverse economic impacts on Evergy, Evergy Metro and EKC of BNSF's failures to meet its statutory obligations. Specifically, page 3 of the Complaint includes the statements that Complainants' "lost profits and opportunity costs ... exceed \$20,000,000 before interest" and that "Evergy experienced a reduction in the dispatch of electrical power across the system and incurred additional costs in excess of \$35,000,000 before interest."

Complainants' Witness Crosby explains in his Verified Statement that in undertaking a final calculation of Complainants' lost opportunity damages for submission in this Opening Evidence presentation, he determined that the appropriate LMPs to be used in the analysis were those that would have been in effect had Iatan and LEC generation not been limited by coal conservation, as opposed to the higher LMPs that

actually were in effect during the hours that coal conservation was implemented. V.S. Crosby at 16. This adjustment – which leads to a more accurate measure of the actual lost opportunity resulting from BNSF’s statutory violations in 2022 – is the principal driver of the difference between Witness Crosby’s pre-interest calculation and the estimated figure included in the Complaint. The adjustment had not been apparent to Complainants at the time of the original Complaint.

Complainants’ Witness Foo’s calculation of total additional *costs* incurred to meet Evergy Metro’s and EKC’s load requirements (\$37,509,755) is consistent with the cost estimate included in the Complaint. *See* V.S. Foo at 9. To accurately calculate *damages*, however, she subsequently determined that the costs had to be offset by the measure of additional revenue earned by other Evergy generators because of the higher LMPs that were caused by the coal conservation measures in place at Iatan and LEC (\$32,881,872). It is this netting feature that adjusts the original estimated additional total cost number in the Complaint to produce a more accurate damages figure.⁴³

Federal courts routinely endorse amendments to pleadings when necessary to conform to the evidence adduced at trial. *See* Fed. R. Civ. P. 15(b)(1). The only exception is where the conformity would operate to prejudice the opposing party. *Id.* In this case, Complainants’ presentation of final damages calculations that are *lower* than the good faith estimates in the original Complaint not only does not prejudice BNSF, but

⁴³ Earlier in this proceeding, a witness for BNSF endorsed Ms. Foo’s netting approach. *See* BNSF Railway Company’s Motion to Compel, filed Sept. 27, 2024, Exhibit 1 at 8.

clearly inures to its benefit. While Complainants do not believe that a formal amendment to the Complaint should be needed in this case, they will submit an appropriate amendment if the Board determines that the record should be updated.

CONCLUSION

On the basis of the evidence presented herein and the legal authorities summarized *supra*, the Board should find that BNSF violated 49 U.S.C. §§ 11101(a), 10702(2) and 11121(a)(1) in connection with its provision of coal transportation service to Complainants' Iatan and LEC facilities in 2022, and that Complainants are entitled to redress in the form of an award of damages pursuant to 49 U.S.C. §11704(b) in the principal amounts described herein (totaling \$22,211,624.65), together with interest calculated from January 31, 2024 until the date paid in accordance with 49 C.F.R. § 11141.1.

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
kjd@sloverandloftus.com
abk@sloverandloftus.com
dmj@sloverandloftus.com

Of Counsel:

Slover & Loftus LLP
1828 L Street, N.W., Suite 1000
Washington, D.C. 20036

Dated: June 25, 2025

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

CERTIFICATE OF SERVICE

I hereby certify that this 25th day of June 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

Counsel's Exhibits 1 through 4

REDACTED

Counsel's Exhibit 5



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

June 4, 2025

By Hand Delivery and Email

Timothy J. Strafford, Esq.
Anthony J. LaRocca, Esq.
Tara A. Woods, Esq.
Steptoe LLP
1330 Connecticut Ave., NW
Washington, D.C. 20036

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

Dear Counsel:

In response to the Board's Decision served May 14, 2025 ("Decision"), Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc.'s ("Evergy") hereby make this sixteenth production of documents. This production is Bates-numbered as EVERGY-DATA-002.

Consistent with the Board's Decision, this production includes "all PROMOD and PCI GenTrader production cost modeling inputs and outputs created or used by Complainants in the ordinary course of business in 2022, to the extent that Complaints have retained that information." Decision at 5. We have collected and are producing all existing, responsive materials, regardless of the purpose of the subject run.

A. PROMOD

Evergy's enclosed production includes input and output files for thirty-eight (38) separate 2022 PROMOD runs, with separate sets of zipped input and output folders included for each run. Evergy's production of output data also includes certain multi-year runs, but those stem from the same input folder, with separate output years denoted by the folder names.

B. PCI GenTrader

Within calendar year 2022, Evergy performed PCI GenTrader runs for a relatively short period of time (*i.e.*, approximately two months). During that same general time period, Evergy determined to purge its GenTrader output, which involved approximately one hundred different stochastic scenarios for each model run, thus generating a substantial volume of material. Evergy retained the inputs for its 2022 GenTrader runs, and all of the enclosed inputs are

Timothy J. Strafford, Esq.
Anthony J. LaRocca, Esq.
Tara A. Woods, Esq.
June 4, 2025
Page 2

viewable with the GenTrader software. Outputs are viewable after executing “Run Stochastics” with the GenTrader software.

Everygy’s 2022 GenTrader activity also included the preparation of “derivative” output (*i.e.*, Excel files and pdf files that included portions of actual GenTrader output). That derivative output includes data that averages the results of the contemporaneously run stochastic scenarios. Everygy has retained those derivative-output materials and has included them in the enclosed production.

* * *

Please note that all of the enclosed information is “Highly Confidential” information under the Board’s May 31, 2024 Protective Order.

We will send the password for the enclosed drive via email.

Sincerely,

/s/ Andrew B. Kolesar III

Andrew B. Kolesar III

Enclosure

cc: Justin Waggoner, Esq. (via email)
Alexander M. Wolf, Esq. (via email)

Verified Statement of Lloyd Jackson

VERIFIED STATEMENT OF LLOYD JACKSON

My name is Lloyd Jackson, and I am the Managing Director of Energy Marketing and Trading for Evergy, Inc. (“Evergy”). I am making this Statement based on information personally known by me and on information obtained from business records provided to me by individuals working at my direction and under my supervision.

I have been in my current position since 2015. Prior to that I was Managing Director of Energy Marketing and Trading, nationally for BNP Paribas, a position that I held for 10 years. I have a bachelor’s degree in economics from the University of Houston. As Managing Director of Energy Marketing and Trading, my responsibilities include providing the strategy and vision to guide the overall direction and management of fuel procurement, operational execution, energy trading origination, and business development, which entails developing and implementing comprehensive strategies to optimize fuel procurement operations, setting long-term goals and objectives to drive cost savings and efficiencies for our customers, ensuring all activities comply with relevant regulations and standards, maintaining the highest level of integrity and transparency, and implementing policies and procedures to ensure regulatory compliance and risk management. The procurement of coal and coal transportation for use in generating electricity at facilities operated by companies within the Evergy system also fall under my authority, including Evergy Metro (“Metro”) and Evergy Kansas Central (“EKC”), who together with Evergy are the Complainants in this Surface Transportation Board proceeding.

The purposes of this Statement are to (a) describe Evergy's organizational structure and operating subsidiaries, including Metro and EKC; (b) describe the company's overall generation profile; (c) explain the roles and obligations of Evergy, Metro and EKC as members of the Southwest Power Pool ("SPP"); and (d) explain the concept of "coal conservation" in the context of electric generation. Other witnesses appearing on behalf of Evergy, Metro and EKC in this proceeding will provide additional details with respect to several of these topics and explain the circumstances that required Metro and EKC to conserve coal in 2022.

A. EVERGY'S STRUCTURE AND GENERATION PROFILE

Evergy was created in 2018 as a result of a merger between Kansas City Power & Light Company ("KCPL") and Westar Energy Company ("Westar"). Several years before the merger, KCPL acquired the assets of a utility generation company known as Aquila, Inc., so those assets became part of Evergy as well (some, such as the Sibley Generating Station, have since been retired). Because the generation assets of the two merging entities companies were in different states (Missouri and Kansas) with different state regulatory agencies (the Missouri Public Service Commission and the Kansas Corporation Commission), the "KCPL" and "Westar" labels continue to be used to distinguish the different jurisdictions.

The Evergy system is vertically integrated, meaning that its operating companies are engaged in generating and marketing electricity as well as transmitting it from its sources to our customers and ratepayers. Metro's and EKC's service territories encompass approximately 1,355,000 ratepayers across 67 counties in western Missouri

and eastern Kansas. Generation facilities include power plants fueled by coal, natural gas, oil, and nuclear fuel, as well as wind and solar resources. Coal-fired and nuclear power plants are very reliable, in large part because their fuel can be stored in inventory for future use. In contrast, gas-fired facilities are exposed to fuel price volatility and pipeline delivery reliability, especially in the winter months when pipeline capacity often is constrained or otherwise limited. Wind and solar assets are relatively inexpensive to operate, but their availability is intermittent and, of course, their “fuel” cannot be stored. As a consequence of these factors, Metro’s and EKC’s coal-fired assets, which make up the largest share of their overall generating capacity at approximately 54.43% and 52.74%, respectively, are critical to our ability to reliably meet our commitments to our rate-paying customers.

Evergy’s system currently includes five (5) coal-fired power plants operated by Evergy subsidiaries. Metro runs the 1640-megawatt capacity Iatan Generating Station (“Iatan”) near Iatan, Missouri, the 1578-megawatt capacity La Cygne Generating Station in La Cygne, Kansas, and the 594-megawatt capacity Unit 5 at the Hawthorn Generating Station in Kansas City. EKC operates the 518-megawatt capacity Lawrence Energy Center (“LEC”) near Lawrence, Kansas and the 2160-megawatt capacity Jeffrey Energy Center near Jeffrey, Kansas. All Evergy coal-fired assets use coal from the Southern Powder River Basin region of Wyoming and is transported to our facilities by rail. The railcars themselves are owned or leased by Evergy companies, and the system currently has approximately 3500 railcars in its fleet, or about 26 full trainsets.

In addition to energy generated by Evergy companies, our system relies on arrangements with other providers that allow us to purchase power at agreed upon prices. As described further below, we also have the ability when necessary to purchase power on the open market. Evergy companies develop Integrated Resource Plans (“IRP”) that include forecasts of necessary future generating capacity based on forecasted demands for energy and ensure that the companies will have the resources needed to meet those capacity requirements over the next twenty (20) years. The IRPs are filed with the state commissions every three (3) years and are updated annually.

B. STATE REGULATORS AND THE SOUTHWEST POWER POOL

As noted above, Evergy companies are subject to regulation at the state level by the Missouri Public Service Commission and/or the Kansas Corporation Commission, depending on the location of their generating facilities and their customer service territories. While the regulatory regimes in each state differ in certain respects, both exercise jurisdiction over the review and approval of retail rates for electricity, demand-side management plans and other utility practices, and the reliability of energy resources to meet customer demand. The Evergy companies’ IRPs are filed with and reviewed by the state regulators, and regular reports are submitted addressing expected asset retirements and demand-side and supply-side additions over a twenty (20) year planning horizon to meet forecasted customer needs and SPP requirements at the lowest reasonable cost. This analysis relies on an evaluation of multiple factors including resource adequacy, SPP capacity requirements, impacts of commodity prices and carbon restrictions on generation, generation technology economics, and various uncertain

market risk factors. Of particular relevance to our coal-fired assets, our operating companies are required to report to the regulatory commissions whenever coal inventory at a generating station falls below a level that could negatively impact normal operations and continue that reporting until inventory is restored. In addition to reporting, the commissions may require the submission and active implementation of a mitigation plan.

Evergy companies – including Metro and EKC – are members of SPP, a non-profit regional transmission organization mandated by the Federal Energy Regulatory Commission. SPP is responsible for coordinating the reliability of the transmission system within its regional footprint and balancing electric supply and demand in a 14-state region stretching from Missouri and Arkansas to Colorado and Wyoming, and from North Dakota and Minnesota to Louisiana and the Texas border. It oversees a fleet of more than 1,000 different generation resources, including Iatan and LEC.

Electric utilities have an option of participating in SPP as members, or as “market participants” only. The latter are able to offer generation to SPP, but do not assume responsibility for meeting a particular level of regional demand for electricity. Metro and EKC are members of SPP and are designated as Load Responsible Entities (“LRE”). A LRE has an obligation to SPP to maintain the capacity to meet a specific level of demand or “load” within its service territory. A LRE can offer excess available generation to the open market but has primary responsibility to ensure adequate resources to meet its load requirements. Those requirements reflect the anticipated demand for electricity, which will vary by season, days of the week, and hours within a day, and include a reserve margin to cover unanticipated variations. Coal supply and transportation requirements

for Iatan and LEC, as well as target coal inventory levels at each station, are determined by reference to Metro's and EKC's forecasted load requirements within SPP.

In the typical scenario, Iatan and LEC generation is offered to SPP the day before the generation would occur. The offer (in megawatt hours or "MWH") is accompanied by a price, which usually is determined based on the expected operating cost for the generating unit(s) during the time period to which the offer applies. SPP then determines the Locational Marginal Price ("LMP") based on the multitude of offers submitted. LMP is generally defined as the marginal price for energy at the location where it is to be delivered (often called a "node"). If there are no transmission constraints at any of the delivery locations, the LMP will be the same throughout a region. The LMP then becomes the "market clearing price" for energy. If the offer price for particular generation is at or below the market clearing price, SPP will commit to accept that generation and the offering entity is credited with the day ahead LMP for the MWHs offered. The following day, the committed generation follows the dispatch instructions from SPP that are based on the real-time LMP. If the real-time LMP is higher during the same hour as the corresponding day ahead LMP and the generator has additional MWH capability that wasn't committed in the day ahead awards, an additional revenue opportunity exists. Conversely, if the real-time LMP is lower than the cost to generate (which also would be below the corresponding day ahead LMP) the generator has the opportunity to produce fewer MWHs than committed in the day ahead and buy back the MWHs at a price lower than the cost to produce. However, if the offering entity is a LRE and the generation that would have been used to meet its load requirements is not

delivered, the entity will be purchasing more MWHs than its generation revenue credits offset, and it will incur higher costs on a net basis than if it had the undelivered generation available. SPP revenue account settlements are calculated on an hourly basis and accounts are cleared by SPP (positive or negative) monthly.

There are some exceptions to the process that I described above. For example, in some instances an entity's offer price might be higher than the LMP but SPP elects to commit to it anyway due to transmission congestion that threatens the deliverability of other, lower priced generation. In that case, if it turns out that the higher priced generation is not needed there is a "make whole" payment to the offering entity. Conversely, there are occasional circumstances where a utility will "self-commit" a unit; that is, elect to run it regardless of whether the market LMP clears at or above the offer price, because of other considerations such as a need for testing after an outage. For the most part, however, whether and when a given coal unit runs will be determined by the relationship between offer prices and market-clearing LMPs.

C. COAL INVENTORY AT IATAN AND LEC

Evergy relies on a model developed by the Electric Power Research Institute known as the Utility Fuel Inventory Model to set target levels of coal inventory at Iatan, LEC and other stations operated by Evergy companies. By way of summary, the model measures the replacement cost of coal-fired generation (that is, the economic consequence of running out of fuel) against the cost of maintaining coal inventory. Where the two lines cross is the optimal inventory level. Numerous factors are considered in these calculations, including delivered fuel costs, operation and

maintenance expenses, the associated generating unit's estimated capacity factor, and the risk of interruptions in transportation.

If it is necessary to reclaim coal from inventory, costs are incurred for labor, equipment fuel and maintenance, and ultimately restoration of the inventory that was used. For this reason, efficient generating unit management includes scheduling coal deliveries to match the rate of coal consumption by the unit, so that fuel can be unloaded from railcars directly onto the unit's conveyor system. These practices are employed at Iatan and LEC, among other Evergy facilities. While some natural fluctuation in coal inventory levels is inevitable due to weather, unanticipated peak energy demands and similar forces, higher and otherwise avoidable costs result when rail transportation is interrupted or fails to meet Evergy's coal volume nominations and associated shipment schedules. Since the principal purpose of coal inventory is to ensure the ability to meet peak power demands, reduced inventory negatively impacts the reliability of the affected generating unit(s).

Optimal coal inventory at Iatan is approximately 50 days' normal seasonal rate of coal burn, or about 1,100,000 tons. For LEC, the target inventory is 40-45 days' normal operating burn, or approximately 200,000 tons. As noted previously, if coal inventory at a station falls below a set level, state regulatory intervention will result. For example, if Iatan's inventory drops by 50% or more, we are required to report that to the Missouri Public Service Commission and submit a mitigation/remediation plan.

D. COAL CONSERVATION

There are circumstances in which Evergy may be required to decide to curtail generation at a coal unit during one period of time in order to conserve coal and ensure its availability during a later period when demand for electricity may be more acute. During periods of conservation, a unit that otherwise would contribute generation to SPP and revenue to Evergy would be underutilized in the interest of future reliability. In addition to unplanned unit outages – when coal conservation is a consequence rather than a choice – principal causes of deliberate measures to conserve coal are unexpected threats to supply (such as a coal producer bankruptcy) or transportation failures. The key factor in making the decision to conserve is the level of coal inventory measured against forecasted peak generating unit demand or load. When coal conservation is necessary, Evergy has two measures available for use.

The first and principal option involves applying an artificial opportunity cost “add” to the offer price that otherwise would be presented to SPP for the generation in question. SPP has an office known as a “market monitor” that functions in a general oversight capacity. Using near term forecasts of LMPs, the monitor can recommend an adder that will push the offer price above the LMP for the period of concern, thereby making it more likely that the generation will not be committed. Evergy also has the option of calculating its own adder. In either case, a generating unit that would have been dispatched by SPP if its offer price was based on cost doesn’t run, and coal fuel is conserved. One consequence, of course, is that Evergy (or its operating subsidiary) loses any margin that it otherwise would have earned had the unit been committed. However,

as I noted previously, if coal conservation by a LRE (such as Metro and EKC are) meant that a load requirement could not be met with generation, a second consequence would be the additional cost incurred to purchase the MWHs that otherwise would have been generated at a profit.

A second conservation measure is a straightforward generation limitation. In this scenario, the Evergy company would constrain a unit from running during off-peak demand periods or only offer it to SPP when necessary to meet its minimum load obligations. The company also could change the operating status of the unit from “market” – meaning available at an offer price that clears the market – to “reliability,” where the unit only would be available to run when needed to avoid SPP from having inadequate resources to meet demand.

VERIFICATION

I, Lloyd Jackson, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on June 4, 2025.

A handwritten signature in black ink that reads "Lloyd Jackson". The signature is written in a cursive style with a large, stylized 'L' and 'J'.

Lloyd Jackson

Verified Statement of Jessica L. Tucker

VERIFIED STATEMENT OF
JESSICA L. TUCKER

My name is Jessica L. Tucker. My business address is 1200 Main Street, Kansas City, Missouri 64105. I am the Senior Manager, Fuels & Emissions for the various operating subsidiaries of Evergy, Inc. (collectively, “Evergy”). That set of companies includes two that are Complainants in this case, *i.e.*, Evergy Metro, Inc. (“Evergy Metro”) and Evergy Kansas Central, Inc. (“EKC”). I am making this Statement based on information personally known by me and on information obtained from Evergy records with which I am familiar and routinely rely on in fulfilling my responsibilities to the company.

I. Purpose and Background

The purpose of this Statement is to explain: (1) the historic relationship between Evergy and BNSF Railway Company (“BNSF”) with respect to coal transportation to Evergy Metro’s Iatan Generating Station (“Iatan”) and EKC’s Lawrence Energy Center (“LEC”); (2) the procedures under which Evergy consistently has scheduled coal shipments via BNSF to those facilities; (3) BNSF’s actions to change the longstanding form of service to Iatan and LEC from contract service to common carrier service; (4) the 2022 events that led to Evergy experiencing a roughly two million ton shortfall in BNSF coal deliveries to those stations (as compared with Evergy’s reasonable needs and requests for the year); and (5) certain categories of economic harm that Evergy experienced as a result of BNSF’s 2022 service failures.

A. Personal Background

My primary responsibilities at Evergy include management and oversight of fuel procurement and logistics (apart from natural gas) as well as fuel additive procurement and coal combustion residual product management and marketing for Evergy-operated generating stations.

I graduated *summa cum laude* from Kansas State University in December 1999 with a Bachelor of Science degree in Agriculture. I began my career in the energy industry in January 2001 with Aquila, Inc. as an Associate Hourly Trader. In this role, my efforts were focused on executing short term physical power transactions in the real-time market across various North American Electric Reliability Corporation (“NERC”) regions. My employment with Evergy’s corporate-predecessor, Kansas City Power & Light Company (“KCP&L”), began in August of 2002 as an Hourly Trader on the real-time desk.

From August 2002 to May 2006, my role focused on buying and selling power in the real-time market. In June 2006, I was promoted to Interchange Marketer, which focused my trading activity on day ahead and monthly power transactions. I also was a part of KCP&L’s Regional Transmission Organization (“RTO”) integration team that prepared the generation dispatching and trading area for participation in the Southwest Power Pool (“SPP”) Energy Imbalance Service (“EIS”) market, which launched on February 1, 2007. In November 2010, I was promoted to Manager, System Operations (Power). My primary responsibility was to oversee 24 x 7 Power Control Center functions, which consisted of real time and day ahead power trading, power scheduling, and generation dispatching operations. This responsibility not only included overseeing our participation in the SPP market but also included compliance with applicable NERC Reliability Standards. I also was responsible for preparing the dispatching and trading group for participation in the SPP Integrated Marketplace, which launched on March 1, 2014. In April 2015, I was promoted to Senior Manager, Power System Operations. In July 2017, I moved into the position of Senior Manager, Fuels & Emissions within the Fuels group.

As part of my role, I regularly interact with BNSF personnel (or I oversee such interactions by my staff) to coordinate rail transportation matters.

B. Evergy

Evergy Metro operates the 1,640-megawatt Iatan station in Weston, Missouri, and EKC operates the 518-megawatt LEC facility in Lawrence, Kansas. Both stations' generating units burn coal originating in the Southern Powder River Basin region of Wyoming ("SPRB"). BNSF transports that coal from the mine origins to Iatan and LEC. BNSF is the only rail carrier capable of serving Iatan and LEC directly, and rail is the only feasible mode of transporting the considerable volumes of coal that move to each station each year.

Under the rules and regulations of the SPP Integrated Marketplace, Evergy offers its generating resources into the SPP market, including Iatan and LEC. Evergy is responsible for procuring coal and coal transportation for Iatan and LEC as well as other coal-fired Evergy stations, including the La Cygne Generating Station near La Cygne, Kansas and the Hawthorn Generating Station in Kansas City, Missouri.

As is the case with most coal-fired electric generating facilities, the fuel requirements for Iatan and LEC vary over the course of a year. Typically, our need for coal deliveries is highest during the Summer and Winter months, when seasonal weather drives up the demand for electricity, and that need tends to moderate in the Spring and Fall. Schedules for coal deliveries generally track this variability, and as the sole transporter of coal to Iatan and LEC for decades, BNSF has been well aware of this aspect of these stations' coal delivery service requirements.

II. Historic BNSF Coal Transportation Service to Iatan and LEC

For more than twenty years, BNSF moved SPRB coal to Iatan and LEC under a series of rail transportation contracts. Those contracts typically ran for time periods on the order of { [REDACTED] [REDACTED] }. Shipments under these contracts moved in unit trains comprised of railcars that Evergy supplied { [REDACTED] }

As is common with coal transportation agreements, our contracts included essential terms related to the duration of each contract, the applicable rates and rate-adjustment mechanisms, the annual volumes, the scheduling of shipments, and responsibility for equipment supply.

From 2017 to 2021, BNSF's coal deliveries to Iatan averaged roughly 4.71 million tons per year and BNSF's coal deliveries to LEC averaged 1.45 million tons per year for a total of approximately 6.16 million tons per year:

Table 1¹

BNSF Historic Deliveries & 2017-2021 Averages (Tons)			
Year	Iatan	LEC	Total
2017	6,045,783	1,661,511	7,707,294
2018	4,227,518	1,742,176	5,969,694
2019	4,730,041	1,488,900	6,218,940
2020	3,969,555	1,081,509	5,051,064
2021	4,572,587	1,282,730	5,855,317
Average	4,709,097	1,451,365	6,160,462

Those 2017-2021 averages would have been even higher but for the 2020 volume aberrations attributable to the Covid pandemic. In fact, average deliveries for 2017-2019 and 2021 were 4.89 million tons at Iatan and 1.54 million tons at LEC for a total average of 6.44 million tons:

¹ Excel versions of each Table in this Verified Statement appear in my electronic workpapers. See Tucker electronic workpaper "Tucker Op. V.S. Tables.xlsx."

Table 2

BNSF Historic Deliveries & 2017-2021 Averages (w/o 2020) (Tons)			
Year	Iatan	LEC	Total
2017	6,045,783	1,661,511	7,707,294
2018	4,227,518	1,742,176	5,969,694
2019	4,730,041	1,488,900	6,218,940
2020			
2021	4,572,587	1,282,730	5,855,317
Average	4,893,982	1,543,829	6,437,811

Historically, Evergy has maintained a total, system-wide fleet of approximately 3,500 railcars (either through purchase or lease). In the years prior to 2022, taking into consideration seasonal variability, we generally had: (i) at least four to five trainsets (targeting 135 cars per set) in service to Iatan; and (ii) at least two and sometimes three trainsets in service to LEC. The actual number of trainsets that we would provide (and that BNSF would use in transporting our coal) each year correlated with the annual volumes of coal that were required at Iatan and LEC and with the pattern and frequency of coal shipments over the course of the year. More trainsets typically were (and are) needed during the Winter and Summer months when demand for electric generation from Iatan and LEC tends to be higher than in the Spring and early Fall. Given its long history serving Iatan and LEC, BNSF was well aware of these trainset requirements.

III. Coal Transportation Scheduling Procedures

With some minor adjustments, the series of contracts between Evergy (or our corporate predecessors) and BNSF for decades up through 2020 called for Evergy initially to make preliminary annual nominations (estimates) of the total volume of coal that we intended to ship to each station (usually subject to minima and maxima). Actual monthly shipment schedules then would be set, in more recent years using a BNSF computer-based platform known as its Coal

Forecasting Tool or “CFT.” Shipment schedules typically reflected the seasonal variations in our coal transportation needs, with higher volumes in Summer and Winter and lower numbers in Spring and Fall.

We determined the number of private trainsets that we would commit to providing for each station based on several factors. Those factors included: (i) seasonal shifts in power demand, which influenced our coal needs; (ii) the estimated time that BNSF would take to move a loaded train from the SPRB to a station or interchange point and return it back to the SPRB after unloading (“cycle time”); (iii) scheduled time periods when a station or generating unit would be idled for maintenance or repair (“outage time”); and (iv) coal inventory management needs. As I describe in greater detail below, inventory management is an important consideration for us because it is substantially more efficient to unload a train directly to our generating units. We incur additional costs to move large volumes of coal from the unloading points at Iatan and LEC to each plant’s inventory location or to reclaim coal from inventory.

IV. BNSF’s Shift to Common Carrier Service

For many years prior to 2020, BNSF was successful in securing contracts not only for the solely-served Iatan and LEC plants, but also for service from the SPRB to Kansas City for delivery to Evergy’s Hawthorn and La Cygne Generating Stations. Kansas City Southern Railway (“KCS”) (now part of CPKC) is the only carrier capable of serving Hawthorn and La Cygne, but both BNSF and Union Pacific Railroad (“UP”) have the ability to move coal from the SPRB to interchanges with KCS in Kansas City. UP also has a single-line route from the SPRB to Evergy’s Jeffrey Energy Center, near St. Mary’s, Kansas.

In 2020, we solicited proposals for what would be the next iteration of our coal transportation contracts. After evaluation, we elected to enter into a contract with UP – rather than with BNSF – for origin-segment service for Hawthorn and La Cygne starting in 2022.

We continued to seek new or extended contracts with BNSF for service to LEC starting in 2021 and to Iatan starting in 2022. { [REDACTED] } During 3Q2020, BNSF advised us that it would not offer a contract for LEC and instead established a tariff (BNSF 60024) for common carrier service. BNSF’s decision to switch to common carrier service was contrary to what we would have preferred.

BNSF 60024 included a Service Limitation Notice purporting to give BNSF “sole discretion” with respect to the introduction of trainsets into service:

Service Limitation Notice: The provision of service and acceptance of any tenders for movement under this publication, including the supply of carrier equipment and/or the introduction of shipper train sets on BNSF for the movement of coal pursuant to this Common Carrier Pricing Authority shall, for the foreseeable future, be subject to BNSF’s sole discretion.

During 2021, we attempted to negotiate a new contract with BNSF for service to Iatan, but { [REDACTED] } those negotiations were not successful. BNSF established a tariff (BNSF 60029) applicable to Iatan service starting January 1, 2022. As had been the case a year earlier with respect to LEC, BNSF’s decision to switch to common carrier service at Iatan was not consistent with our preferences. Like BNSF’s tariff for service to LEC, BNSF’s tariff 60029 for service to Iatan included BNSF’s “sole discretion” Service Limitation Notice. BNSF later renewed BNSF 60029 (including the Service Limitation) to apply in 2023.

BNSF 60024 and BNSF 60029 each also included “ratability” requirements that called for shipments to be scheduled evenly throughout a year. This requirement conflicted with the understood seasonal variability that routinely has impacted Evergy’s coal transportation needs for Iatan and LEC.

V. BNSF’s Common-Carrier Service in 2022

BNSF’s total 2022 deliveries to Iatan and LEC fell far below our needs, principally because BNSF refused to allow sufficient trainsets into our service. Historically, we have needed up to a total of seven trainsets in BNSF service to Iatan and LEC during the months of March through May and October through November, and a total of up to eight trainsets in BNSF service during the months of June through September and December through February.

As I document below, we repeatedly requested that BNSF allow more trainsets into our service, and we regularly informed BNSF regarding the adverse impact that its trainset limits were having on our inventory. Nevertheless, BNSF declined to take action to improve the situation,

{ [REDACTED]
[REDACTED] }.

Our combined BNSF scheduled volumes for 2022 were approximately 6.32 million tons. Of that total, Iatan’s scheduled volumes for 2022 were approximately 4.88 million tons. LEC’s 2022 scheduled volumes were approximately 1.44 million tons:

Table 3

Evergy 2022 CFT Schedules (Tons)			
	Iatan	LEC	Total
Jan	407,500	79,000	486,500
Feb	293,400	94,800	388,200
Mar	342,300	111,200	453,500
April	260,700	79,000	339,700
May	326,000	110,000	436,000
June	472,400	142,200	614,600
July	423,800	143,200	567,000
Aug	439,600	158,400	598,000
Sept	519,200	142,200	661,400
Oct	453,700	173,800	627,500
Nov	423,800	142,200	566,000
Dec	519,600	64,800	584,400
Total	4,882,000	1,440,800	6,322,800

These volumes were consistent with BNSF's historic deliveries to Iatan and LEC:

Table 4

BNSF Historic Deliveries and 2022 CFT Schedules (Tons)			
Year	Iatan	LEC	Total
2017	6,045,783	1,661,511	7,707,294
2018	4,227,518	1,742,176	5,969,694
2019	4,730,041	1,488,900	6,218,940
2020	3,969,555	1,081,509	5,051,064
2021	4,572,587	1,282,730	5,855,317
<i>Average</i>	<i>4,709,097</i>	<i>1,451,365</i>	<i>6,160,462</i>
<i>Average w/o 2020</i>	<i>4,893,982</i>	<i>1,543,829</i>	<i>6,437,811</i>
2022 CFT	4,882,000	1,440,800	6,322,800

Given this consistency with past service levels, BNSF should have been able to deliver our scheduled coal volumes for 2022, particularly since coal volumes across the BNSF system generally have declined in recent years. Significantly, however, BNSF substantially restricted the

number of trainsets that it allowed in Evergy service, therefore compromising BNSF’s ability to meet our service requirements.

As a result of the BNSF-imposed trainset limitations, BNSF delivered only 3,096,420 tons to Iatan and 1,184,780 tons to LEC in 2022, for a total 2022 service level of 4,281,200 tons or only 67.7% of our 2022 CFT tons:

Table 5

2022 CFT Schedules vs. Deliveries (Tons)			
Item	Iatan	LEC	Total
CFT Schedules	4,882,000	1,440,800	6,322,800
Deliveries	3,096,420	1,184,780	4,281,200
Difference	1,785,580	256,020	2,041,600
% of CFT Schedules Delivered	63.4%	82.2%	67.7%
% Shortfall	36.6%	17.8%	32.3%

Throughout this Statement, I base my actual “delivery” figures on data drawn from Evergy’s own records. In preparing this Statement, however, I also have reviewed actual shipment and delivery data available through BNSF’s online CFT system. Those BNSF records show that BNSF’s deliveries in 2022 were more than 70,000 tons *lower* than what I show in Table 5.² A cross-check of train manifest records from 2022 in the months where our respective shipment records materially differ confirms that Evergy’s shipment figures are correct. In any event, BNSF’s 2022 deliveries fell far below Evergy’s CFT Schedules under either Evergy’s or BNSF’s delivery records.

² See Tucker electronic workpapers “BNSF 2022 CFT Report in Excel.xlsx” and “BNSF Downloaded CFT Report Historical Data.pdf.” According to BNSF’s CFT records, BNSF delivered a total of only 4,209,684 total tons to Evergy in 2022 (*i.e.*, only 66.6% of our CFT Schedules), including 3,013,604 tons delivered to Iatan and 1,196,080 tons delivered to LEC.

A. BNSF’s Restrictions on Trainsets in Service

The origin of BNSF's 2022 trainset restrictions dates back to August of 2021. At that time, BNSF informed us that it would substantially restrict the number of sets that it would allow in future Iatan and LEC service. Ultimately, BNSF reduced the number of trainsets that it would allow in Evergy service from seven-to-eight sets down to four sets for much of 2022.

1. Iatan

By letter dated August 20, 2021 (Exhibit JT-1), BNSF's Patrick Moynihan wrote that BNSF was decreasing the total number of Everygy sets { [REDACTED] } [REDACTED] } BNSF provided this notice with only four months left under the then-current contract applicable to that service.

2. LEC

That same day (*i.e.*, August 20, 2021), BNSF informed us that { [REDACTED] } Exhibit JT-2. Then, less than two weeks later, { [REDACTED] } See Exhibit JT-3 ({ [REDACTED] }). BNSF invoked the Service Limitation Notice in BNSF 60024 in imposing this further restriction.

We responded to these notices by letter dated September 2, 2021, observing that { [REDACTED] }

[REDACTED]

[REDACTED] } Exhibit JT-4. We emphasized in our response that { [REDACTED] }

[REDACTED]

[REDACTED]

[REDACTED]

3. 2022 Trainsets in Service

Table 6 (below) identifies the combined number of trainsets that BNSF allowed in its 2022 service for Iatan and LEC. For purposes of this table, I have identified the highest number of trainsets in service during the subject week (as opposed to the average number of trainsets in service during the week or the lowest number of sets). As such, my quantification is conservative.

Table 6 shows that BNSF imposed a significant cap on the number of sets that we were permitted to place in service and virtually ensured that we would not receive our full requested coal transportation service. Most notably, Table 6 shows that BNSF ratcheted our allowable set count down to a combined total of four (4) sets as of the week of March 12, 2022. That four-set limitation remained in place through July 15, 2022 (and under BNSF's communications to us, was to have remained in effect even longer):

Table 6³

Trainsets in BNSF 2022 Service for Iatan and LEC					
Week	Start	End	Iatan	LEC	Total
1	1/1	1/7	6	1	7
2	1/8	1/14	5	1	6
3	1/15	1/21	3	2	5
4	1/22	1/28	3	2	5
5	1/29	2/4	3	2	5
6	2/5	2/11	3	2	5
7	2/12	2/18	3	2	5
8	2/19	2/25	3	2	5
9	2/26	3/4	3	2	5
10	3/5	3/11	3	2	5
11	3/12	3/18	2	2	4
12	3/19	3/25	2	2	4
13	3/26	4/1	2	2	4
14	4/2	4/8	2	2	4
15	4/9	4/15	2	2	4
16	4/16	4/22	2	2	4
17	4/23	4/29	2	2	4
18	4/30	5/6	2	2	4
19	5/7	5/13	2	2	4
20	5/14	5/20	2	2	4
21	5/21	5/27	2	2	4
22	5/28	6/3	2	2	4
23	6/4	6/10	2	2	4
24	6/11	6/17	2	2	4
25	6/18	6/24	2	2	4
26	6/25	7/1	2	2	4

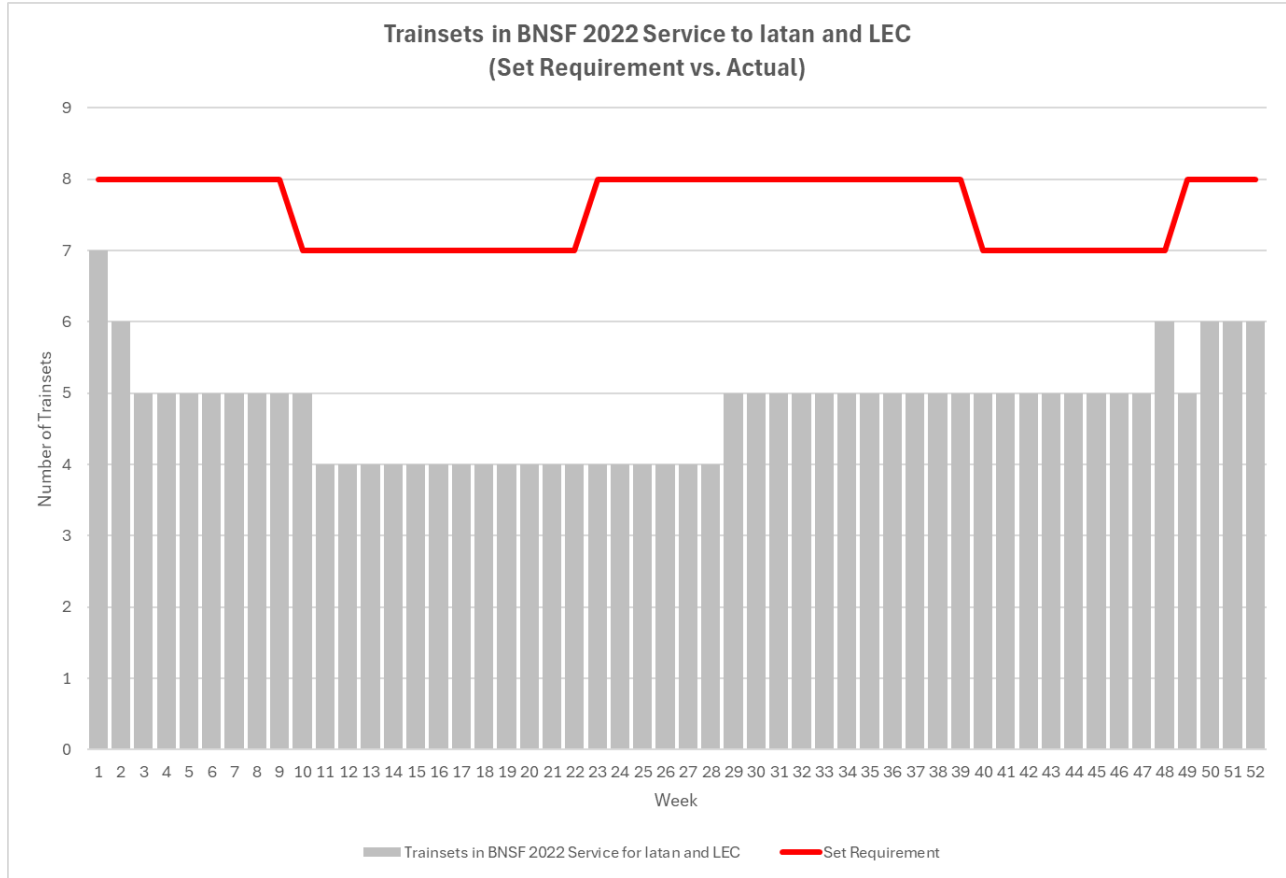
³ See Tucker electronic workpapers within the workpaper folder “Daily Train Trace Reports 2022.” The listed weekly value is the highest number of trainsets in service on any given day during each individual week.

Week	Start	End	Iatan	LEC	Total
27	7/2	7/8	2	2	4
28	7/9	7/15	2	2	4
29	7/16	7/22	3	2	5
30	7/23	7/29	3	2	5
31	7/30	8/5	3	2	5
32	8/6	8/12	3	2	5
33	8/13	8/19	3	2	5
34	8/20	8/26	3	2	5
35	8/27	9/2	3	2	5
36	9/3	9/9	3	2	5
37	9/10	9/16	3	2	5
38	9/17	9/23	3	2	5
39	9/24	9/30	3	2	5
40	10/1	10/7	3	2	5
41	10/8	10/14	3	2	5
42	10/15	10/21	3	2	5
43	10/22	10/28	3	2	5
44**	10/29	11/4	3	2	5
45	11/5	11/11	3	2	5
46	11/12	11/18	3	2	5
47	11/19	11/25	3	2	5
48	11/26	12/2	4	2	6
49	12/3	12/9	3	2	5
50	12/10	12/16	4	2	6
51	12/17	12/23	4	2	6
52	12/24	12/30	4	2	6

** Note: Due to data-availability limitations, trainset figures for Week 44 have been conformed to those of the preceding and subsequent weeks.

The number of trainsets in service in 2022 fell far below the number of sets that Evergy historically has utilized and that would have been necessary to deliver all of Evergy’s scheduled coal volumes to Iatan and LEC. As noted above, Evergy has regularly required up to eight sets in service during the Summer (June through September) and Winter (December through February) months and up to seven sets in service for the Spring (March through May) and Fall (October through November) months, which is shown below as “Set Requirement”:

Table 7

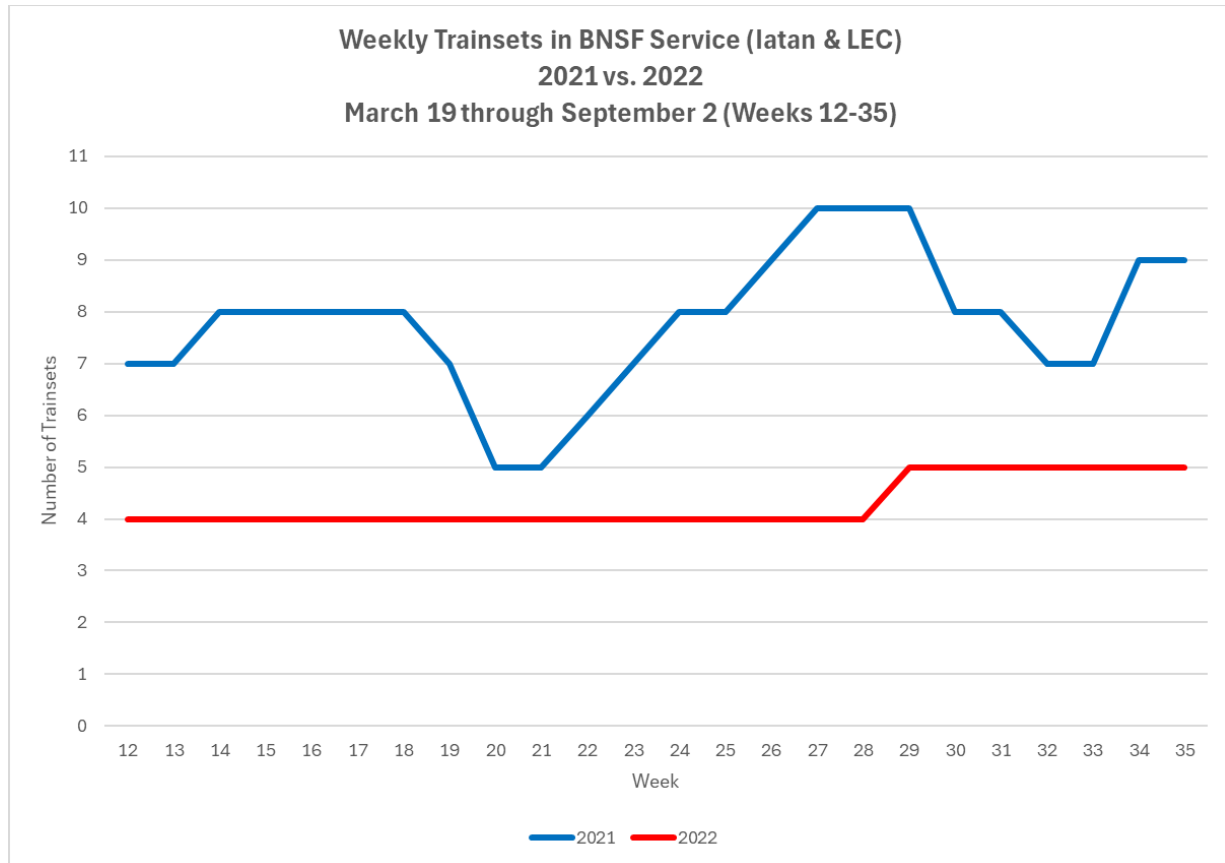


Had BNSF responded positively to our requests, each additional trainset in Evergy service would have been capable of delivering roughly 1,050,000 tons per year to Iatan (*i.e.*, 65 trips per year x 16,130 tons per trainset) or roughly 670,000 tons per year to LEC (*i.e.*, 42 trips per year x 15,800 tons per trainset). BNSF could have delivered Evergy’s entire 2022 CFT scheduled volumes had it accepted into service the number of trainsets that Evergy requested for these stations.

The sharp reduction in the number of Evergy trainsets that BNSF allowed into service is evident even as compared with 2021. During the more than five-month period from March 19, 2021 through September 2, 2021 (which includes our critical Summer generation period), BNSF allowed a higher number of trainsets into our service than it did during that same time period in

2022. In fact, there were eleven weeks during this time period in which the number of trains in service to Iatan and LEC at a given point in time was at least *double* the number of sets that BNSF allowed into our service for those same weeks in 2022 (*i.e.*, weeks 14 through 18 and weeks 24 through 29):⁴

Table 8



⁴ See Tucker electronic workpapers within the workpaper folder “Daily Train Trace Reports 2021.”

Table 9

Trainsets in BNSF Service for Evergy (latan & LEC)							
2021 vs. 2022							
Week	Start	End	2021			2022	Difference '22-'21
			latan	LEC	Total		
1	1/1	1/7	3	2	5	7	2
2	1/8	1/14	3	2	5	6	1
3	1/15	1/21	2	2	4	5	1
4	1/22	1/28	4	2	6	5	-1
5	1/29	2/4	3	2	5	5	0
6	2/5	2/11	3	2	5	5	0
7	2/12	2/18	3	2	5	5	0
8	2/19	2/25	3	2	5	5	0
9	2/26	3/4	3	2	5	5	0
10	3/5	3/11	0	2	2	5	3
11	3/12	3/18	4	2	6	4	-2
12	3/19	3/25	5	2	7	4	-3
13	3/26	4/1	4	3	7	4	-3
14	4/2	4/8	5	3	8	4	-4
15	4/9	4/15	5	3	8	4	-4
16	4/16	4/22	5	3	8	4	-4
17	4/23	4/29	5	3	8	4	-4
18	4/30	5/6	5	3	8	4	-4
19	5/7	5/13	5	2	7	4	-3
20	5/14	5/20	5	0	5	4	-1
21	5/21	5/27	5	0	5	4	-1
22	5/28	6/3	5	1	6	4	-2
23	6/4	6/10	6	1	7	4	-3
24	6/11	6/17	6	2	8	4	-4
25	6/18	6/24	6	2	8	4	-4
26	6/25	7/1	6	3	9	4	-5
27	7/2	7/8	7	3	10	4	-6
28	7/9	7/15	7	3	10	4	-6
29	7/16	7/22	7	3	10	5	-5
30	7/23	7/29	5	3	8	5	-3
31	7/30	8/5	5	3	8	5	-3
32	8/6	8/12	4	3	7	5	-2
33	8/13	8/19	4	3	7	5	-2
34	8/20	8/26	6	3	9	5	-4
35	8/27	9/2	6	3	9	5	-4
36	9/3	9/9	4	2	6	5	-1
37	9/10	9/16	4	2	6	5	-1

Note: I again have followed the convention of identifying the highest number of sets in service on any given day during each listed week. 2021 data is inclusive of trainsets from other Evergy stations diverted to latan under previous BNSF contract service. BNSF accepted these additional trainsets into latan service.

Week	Start	End	2021			2022	Difference '22-'21
			latan	LEC	Total		
38	9/17	9/23	4	2	6	5	-1
39	9/24	9/30	4	2	6	5	-1
40	10/1	10/7	4	1	5	5	0
41	10/8	10/14	4	1	5	5	0
42	10/15	10/21	4	1	5	5	0
43	10/22	10/28	4	1	5	5	0
44	10/29	11/4	7	1	8	5	-3
45	11/5	11/11	4	1	5	5	0
46	11/12	11/18	4	1	5	5	0
47	11/19	11/25	6	1	7	5	-2
48	11/26	12/2	2	1	3	6	3
49	12/3	12/9	3	1	4	5	1
50	12/10	12/16	3	1	4	6	2
51	12/17	12/23	3	1	4	6	2
52	12/24	12/30	3	1	4	6	2

As I explained previously in this Statement, BNSF began imposing its trainset cap around the start of September 2021. That limitation is one reason that the foregoing table shows similar trainset counts in late 2021 and late 2022. Nevertheless, it remains the case that BNSF's 2022 trainset limitations represented a substantial change from the service that BNSF provided to us during the prior calendar year, as well as the many previous years.

Calendar year 2021 is not unique in reflecting a substantial difference in our trainset count as compared with 2022. For example, BNSF accepted significantly more sets into service in 2019 than it allowed in 2022:⁵

⁵ See Tucker electronic workpapers within the workpaper folder "Daily Train Trace Reports 2019."

Table 10

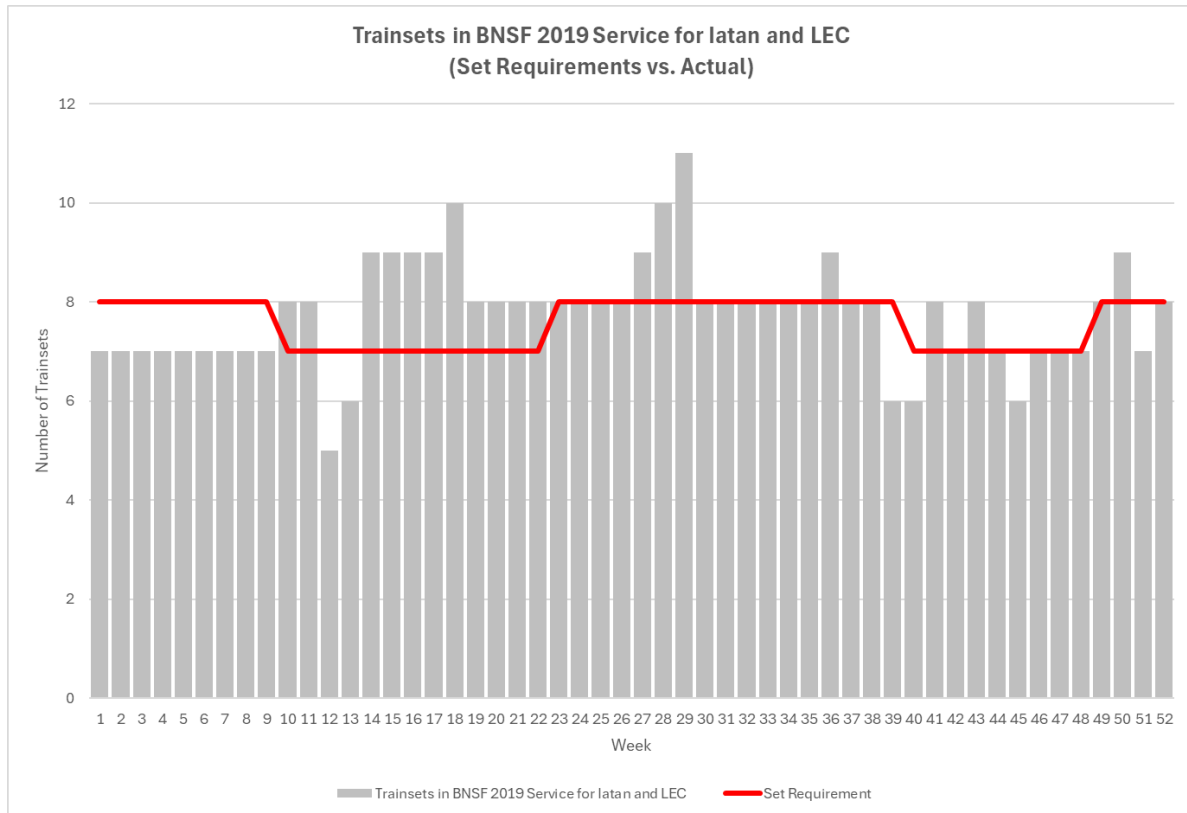
Trainsets in BNSF 2019 Service for Iatan and LEC					
Week	Start	End	Iatan	LEC	Total
1	1/1	1/7	5	2	7
2	1/8	1/14	5	2	7
3	1/15	1/21	5	2	7
4	1/22	1/28	5	2	7
5	1/29	2/4	5	2	7
6	2/5	2/11	5	2	7
7	2/12	2/18	5	2	7
8	2/19	2/25	5	2	7
9	2/26	3/4	5	2	7
10	3/5	3/11	6	2	8
11	3/12	3/18	6	2	8
12	3/19	3/25	3	2	5
13	3/26	4/1	4	2	6
14	4/2	4/8	7	2	9
15	4/9	4/15	7	2	9
16	4/16	4/22	7	2	9
17	4/23	4/29	7	2	9
18	4/30	5/6	7	3	10
19	5/7	5/13	5	3	8
20	5/14	5/20	5	3	8
21	5/21	5/27	5	3	8
22	5/28	6/3	5	3	8
23	6/4	6/10	5	3	8
24	6/11	6/17	5	3	8
25	6/18	6/24	5	3	8
26	6/25	7/1	5	3	8
27	7/2	7/8	6	3	9
28	7/9	7/15	7	3	10
29	7/16	7/22	8	3	11
30	7/23	7/29	5	3	8
31	7/30	8/5	5	3	8
32	8/6	8/12	5	3	8
33	8/13	8/19	5	3	8
34	8/20	8/26	5	3	8
35	8/27	9/2	5	3	8
36	9/3	9/9	6	3	9

Note: Once again, I have followed the convention of identifying the highest number of sets in service on any given day during each listed week. 2019 data is inclusive of trainsets from other Every stations diverted to Iatan under previous BNSF contract service. Again, however, BNSF accepted these additional trainsets into Iatan service.

Week	Start	End	latan	LEC	Total
37	9/10	9/16	5	3	8
38	9/17	9/23	5	3	8
39	9/24	9/30	3	3	6
40	10/1	10/7	3	3	6
41	10/8	10/14	5	3	8
42	10/15	10/21	4	3	7
43	10/22	10/28	5	3	8
44	10/29	11/4	5	2	7
45	11/5	11/11	4	2	6
46	11/12	11/18	5	2	7
47	11/19	11/25	5	2	7
48	11/26	12/2	5	2	7
49	12/3	12/9	6	2	8
50	12/10	12/16	7	2	9
51	12/17	12/23	5	2	7
52	12/24	12/30	6	2	8

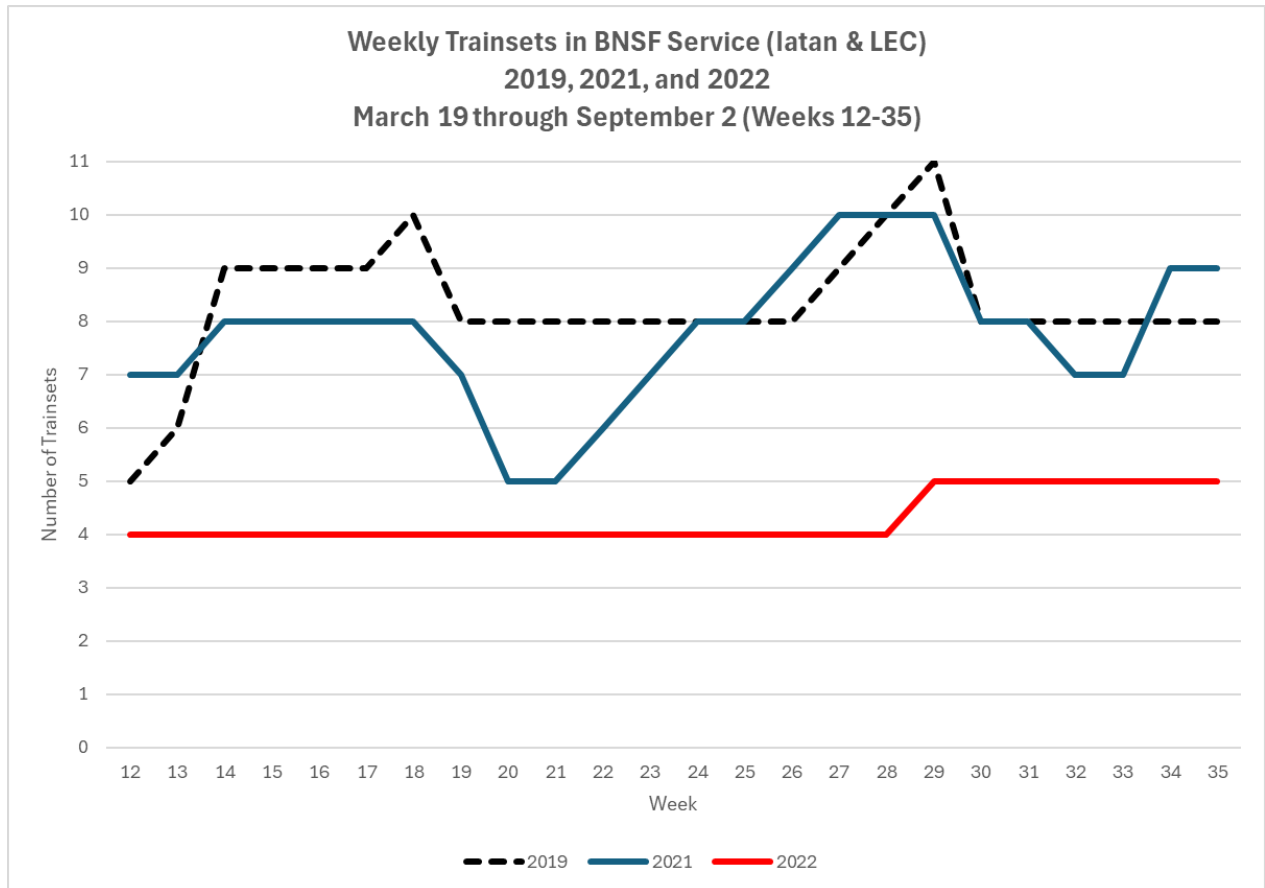
With rare exceptions, BNSF's 2019 trainset allowances matched or exceeded our set requirements:

Table 11



During the March through September timeframe, which is inclusive of the critical summer period that I mentioned earlier with respect to 2021, the trainset pattern for 2019 closely matches (and/or exceeds) the 2021 example and differs substantially from BNSF's 2022 service:

Table 12



B. BNSF's Failure to Provide Adequate Service in 2022

We communicated repeatedly with BNSF in 2022 regarding the number of trainsets in service and our low inventory levels, but BNSF declined to provide any meaningful assistance to us. { [REDACTED] }

1. Communications with BNSF Through April of 2022

In early 2022, we grew increasingly concerned about BNSF's service and trainset limitations. In that regard, I wrote to Patrick Moynihan on March 3, 2022 (Exhibit JT-5) to address our service expectations, object to BNSF's hesitancy to allow for the historic seasonality in rail service to our plants, and respond to BNSF's request earlier that same week for a temporary reduction in the number of trainsets in service to Iatan. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We took two actions in response { [REDACTED] }. First, I sent a letter to Mr. Moynihan on April 27 detailing our concerns about BNSF's ongoing trainset limitations (Exhibit JT-7). Second, we implemented coal-conservation measures as part of our SPP market offer process within four days of receiving BNSF's message.

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On the basis of these observations and our significant concerns regarding the adverse impact of BNSF's set limitations, I requested that BNSF take immediate action to remedy the

situation through the acceptance of a sufficient number of trainsets into service to handle our scheduled tonnage.

We started the process of conserving coal at Iatan and LEC { [REDACTED] } [REDACTED]. We began imposing an internally developed { [REDACTED] } adder on our SPP market offer prices as of April 29, 2022 for Iatan units 1 and 2 and for LEC units 4 and 5. Later in the year, adders of a greater measure that were developed by the SPP Market Monitor using its Opportunity Cost Calculator (“OCC”) were applied. In their accompanying Verified Statements, Evergy Witnesses Michael Crosby and Hsin Foo address these measures and their economic impacts on Evergy.

2. 2022 Monthly Shortfall Data

A review of BNSF’s 2022 monthly coal deliveries relative to the CFT Schedules confirms the seriousness of the situation that we faced during 2022, with the most pronounced difficulty starting in the April to May 2022 time period.

Iatan

BNSF began falling behind our monthly CFT Schedules for Iatan in January and the shortfall only grew thereafter. By May (and through the balance of the year), BNSF consistently missed our schedules by roughly 100,000 to 200,000 tons per month or more. BNSF’s 1,785,580-ton shortfall at Iatan constituted thirty-seven percent (37%) of our total scheduled Iatan tonnage for the year:

Table 13

Iatan 2022 (Tons)				
	CFT Schedules	Deliveries	Shortfall	Cumulative Shortfall
Jan	407,500	336,414	71,086	71,086
Feb	293,400	192,328	101,072	172,158
Mar	342,300	225,457	116,843	289,002
April	260,700	212,687	48,013	337,015
May	326,000	242,550	83,450	420,465
June	472,400	210,144	262,256	682,721
July	423,800	242,636	181,164	863,885
Aug	439,600	325,179	114,421	978,306
Sept	519,200	276,286	242,914	1,221,220
Oct	453,700	275,609	178,091	1,399,311
Nov	423,800	286,731	137,069	1,536,381
Dec	519,600	270,400	249,200	1,785,580
Total	4,882,000	3,096,420	1,785,580	1,785,580

Table 14

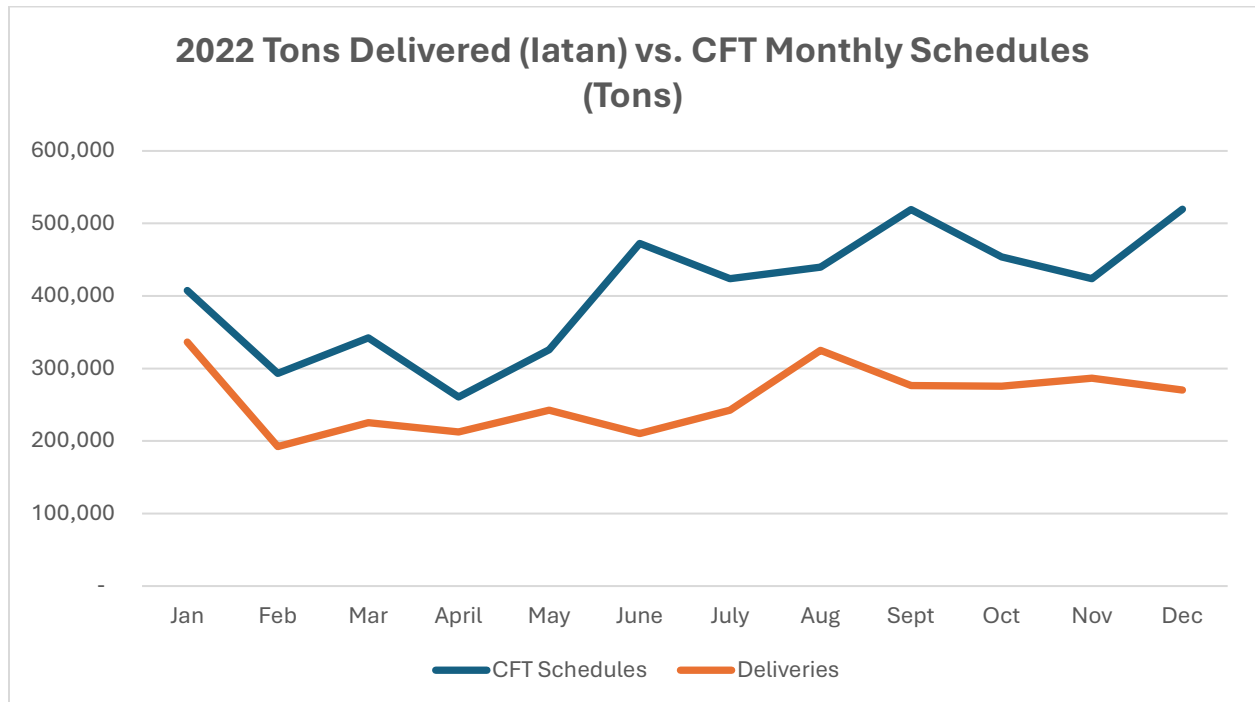
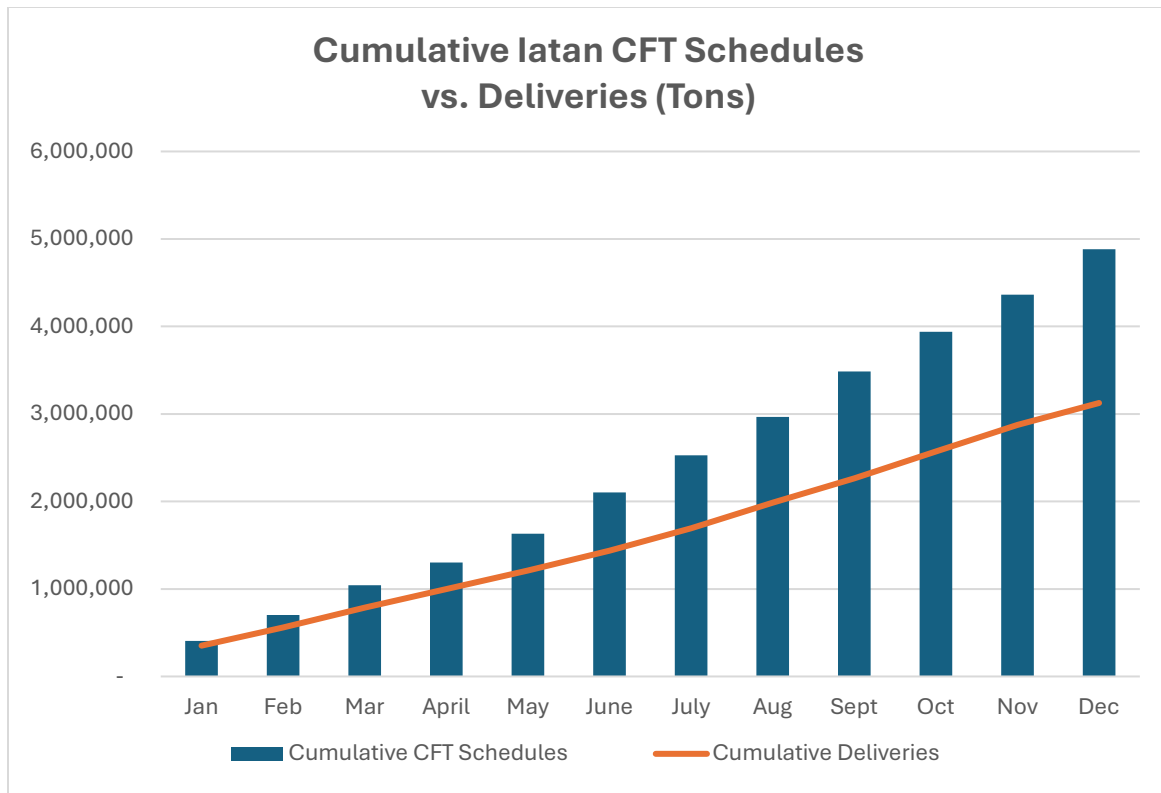


Table 15



Table 16



LEC

At LEC, BNSF started to consistently fall behind the CFT Schedules as of May, with the cumulative gap in volumes growing every month through November of 2022. BNSF's 256,020 ton shortfall at LEC constituted eighteen percent (18%) of our total scheduled 2022 requirements. During the peak Summer months (June-August), however, BNSF's shortfall amounted to thirty-three percent (33%) of our scheduled volumes (*i.e.*, a 144,576 ton shortfall on 443,800 Scheduled tons):

Table 17

LEC 2022 (Tons)				
	CFT Schedules	Deliveries	Shortfall	Cumulative Shortfall
Jan	79,000	63,336	15,664	15,664
Feb	94,800	110,787	(15,987)	(323)
Mar	111,200	94,057	17,143	16,821
April	79,000	78,876	124	16,945
May	110,000	95,316	14,684	31,628
June	142,200	94,575	47,625	79,254
July	143,200	95,100	48,100	127,354
Aug	158,400	109,550	48,850	176,204
Sept	142,200	111,055	31,145	207,349
Oct	173,800	126,231	47,569	254,918
Nov	142,200	110,875	31,325	286,243
Dec	64,800	95,023	(30,223)	256,020
Total	1,440,800	1,184,780	256,020	256,020

A February 7, 2023 letter to BNSF erroneously utilized tons “shipped” rather than tons “delivered,” so there is a minor discrepancy between the letter and the shortfalls shown above and in the table related to 2022 deliveries to Iatan. This was due to the fact that there were a few trains still in transit on December 31, 2022. However, the overall magnitude of the shortfalls clearly was significant.

Table 18

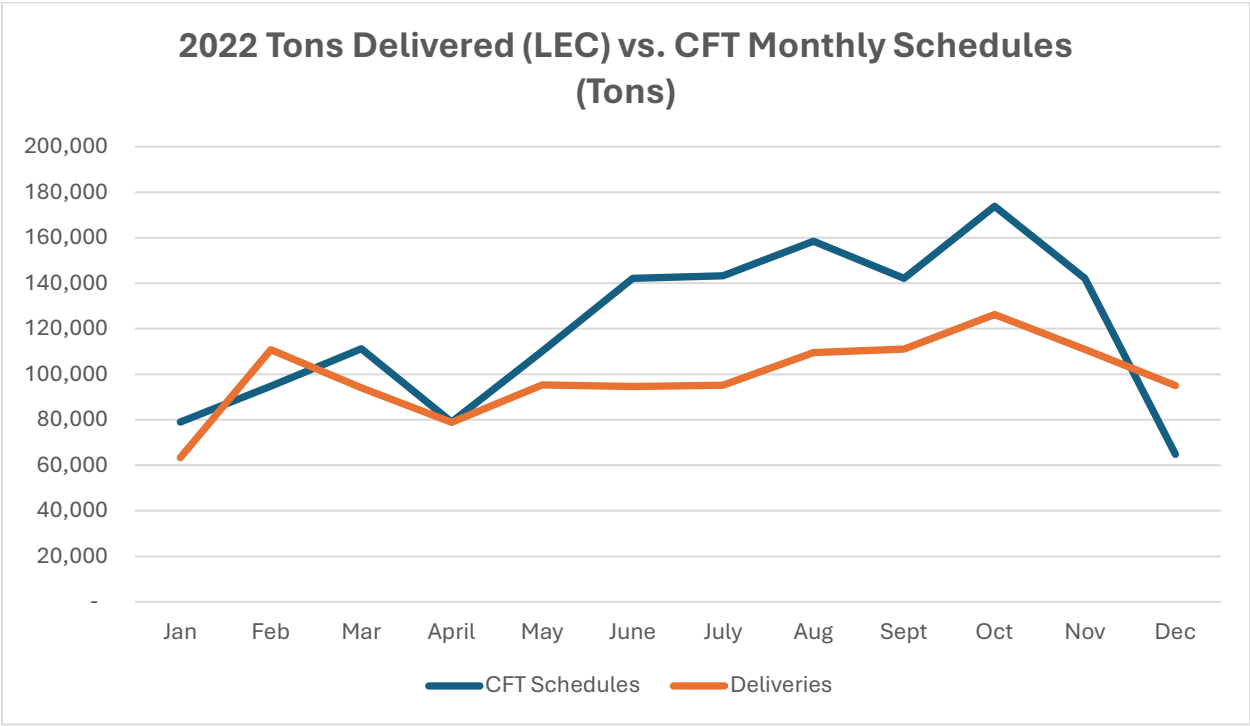


Table 19

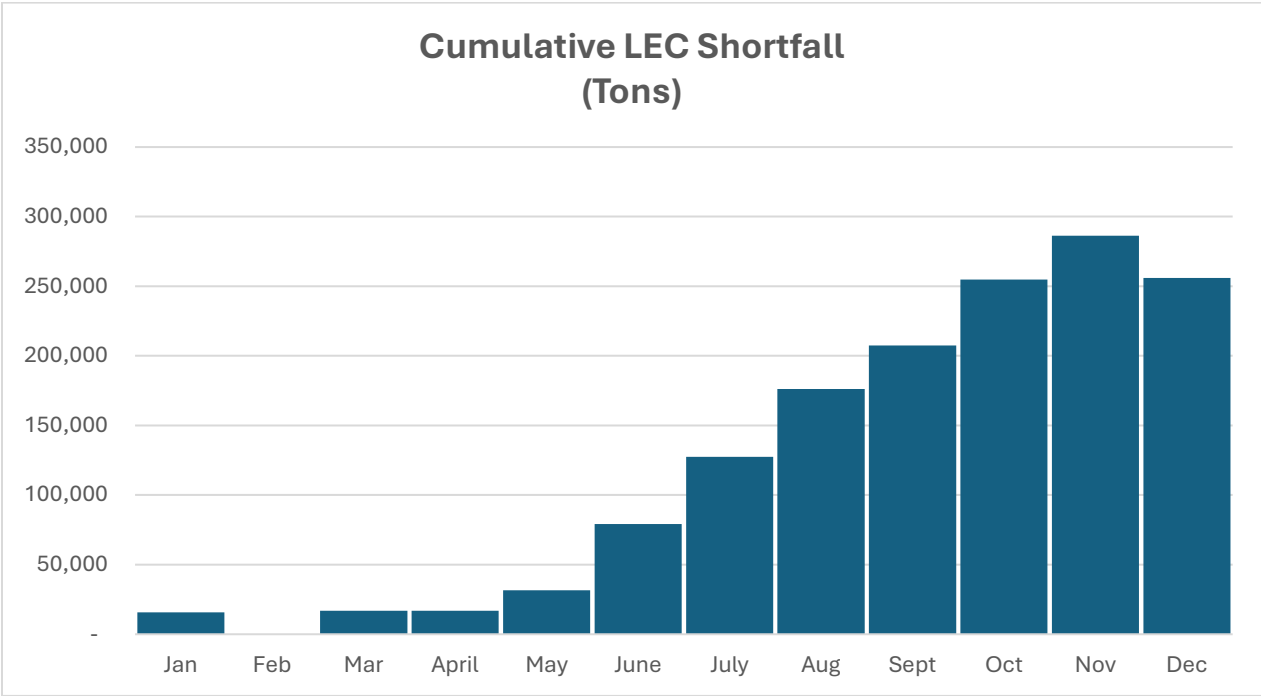
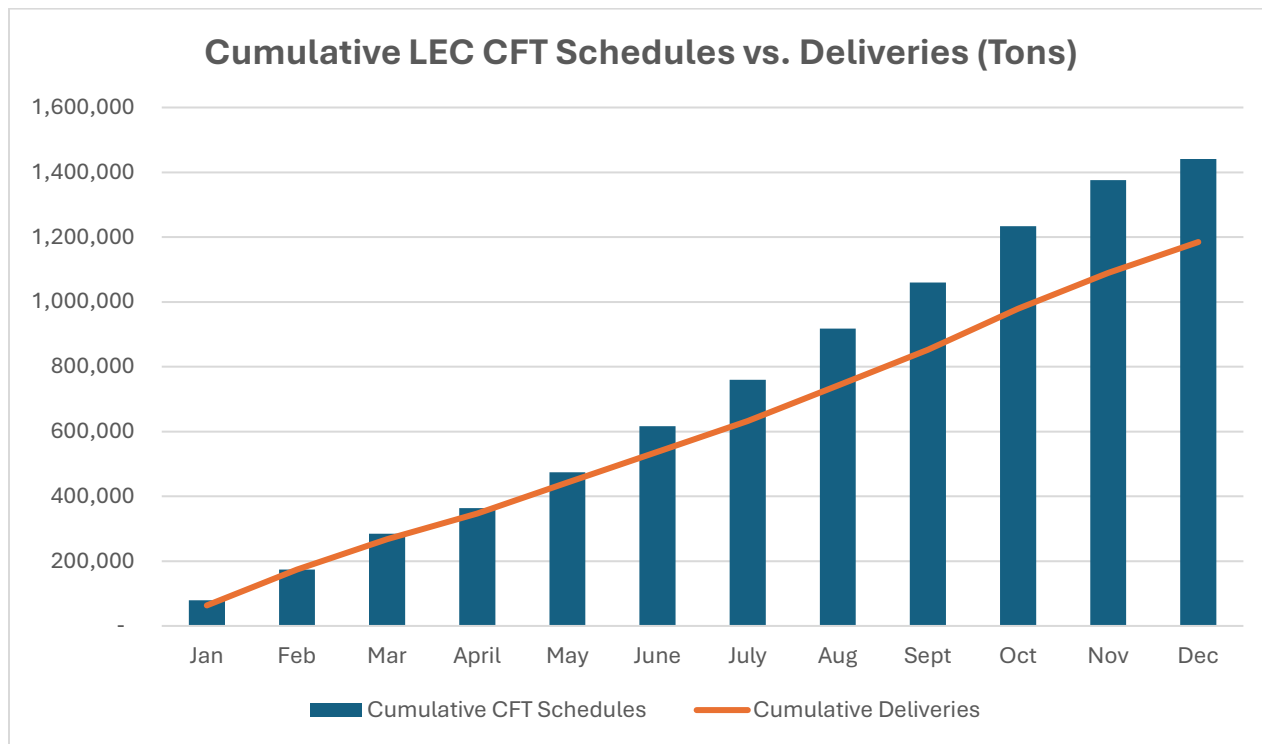


Table 20



3. Communications with BNSF From June of 2022 through February of 2023

In light of the trainset limitations that we faced (and with the tonnage shortfalls accumulating as I have described above), I continued to correspond with my BNSF counterpart throughout the Summer of 2022. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

During the week of July 16, 2022, BNSF added one trainset to our Iatan service, increasing our total set count from four to five but still falling well short of the trainsets that we needed in the Summer to meet our 2022 delivery requirements.

{ [REDACTED]

[REDACTED]

[REDACTED] }

Between August 2022 and the end of the year, we repeatedly communicated with BNSF, detailing the accumulating coal shortfalls due to BNSF's trainset limitations, the resulting threats to inventory levels at Iatan and LEC, and the consequences of the coal conservation measures that already had been implemented and were certain to be continued if BNSF did not act promptly to accept additional trainsets into service consistent with our scheduled coal volumes. Exhibits JT-10 through JT-15.

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } Although BNSF finally allowed a single additional set to come into our service in late July 2022 and referred to possible set increases in Q3 & Q4, at no point from January 1 to December 31, 2022 did BNSF offer any firm assurances of relief for us in terms of lifting the trainset limitations (even as the adverse impacts of those limitations continued to compound). { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

} In sum, we made written requests for the acceptance by BNSF of a sufficient number of Everygy trainsets to transport our scheduled coal volumes to Iatan and LEC, as well as a specification of what those numbers were. We had the requisite trainsets available and both the scheduled volumes and the requested numbers of trainsets were fully consistent with previous years and BNSF's extensive prior experience in transporting coal to these stations. When BNSF refused our requests, throughout 2022 we repeatedly asked BNSF to reconsider and allow that necessary number of trainsets into service for Iatan and LEC. We advised BNSF regarding the substantial negative effect that BNSF's trainset cap was having on our coal inventory levels, and we informed BNSF that its refusal to accept more trainsets had required us to take costly coal-

conservation measures. Despite our requests, however, BNSF repeatedly failed to take corrective action during the year.

VI. 2022 Coal Inventory Levels at Iatan and LEC⁶

We set coal inventory targets at Iatan and LEC by reference to forecasted generation levels, among a variety of other considerations, including rail delivery risk. While there is no “one size fits all” standard for determining when to conserve coal, a number of factors – including speed and availability of coal deliveries, forecasted burns, weather forecasts, and market mechanisms – all have a role to play.

The availability of physical space for coal inventory and state regulators’ standards for cost recovery also play significant roles. Evergy Metro and EKC cannot feasibly expand inventory capacity at Iatan or LEC beyond current capabilities without extensive new capital investment and environmental permitting changes. Both the Missouri Public Service Commission (which has jurisdiction over Iatan) and the Kansas Corporation Commission (which regulates both LEC and Iatan) require the Company to carry prudent levels of coal inventory that balance the risk of having inadequate coal supplies with the cost to carry additional inventory in order to receive cost recovery. Additionally, there is an extensive regulatory process that Evergy must go through in order to change inventory volumes for which we are allowed cost recovery, which creates

⁶ We use two separate systems to track coal inventory at our stations. The first is our Daily Fuels System which we use for operational purposes. The second is our “Align” System which is a feeder system or subsidiary ledger that feeds our general ledger and reflects our official system of record. The figures in the two systems are very close to each other, but the Align system tracks inventory tonnage levels to multiple decimal places whereas the Daily Fuels System rounded figures to the nearest ton in 2022. For purposes of this Statement, I have relied upon the Align data, but I have included both sets of records in my electronic workpapers. See Tucker electronic workpapers “Iatan 2022 Align Inventory On Hand by Date.xls,” “LEC 2022 Align Inventory On Hand by Date.xls,” and “Daily Fuel System Inventory Records (Iatan & LEC).xlsx.” Very minor variations in the two data sources exist due to rounding.

regulatory lag from a cost recovery standpoint. Simply storing more coal is not a reasonable option for anticipating rail transportation service limitations. BNSF's refusal to allow sufficient trainsets into our service for 2022 placed significant pressure on our inventory levels at both Iatan and LEC. Our 2022 inventory levels at each facility fell far below our desired levels for substantial portions of the year.

On May 31, 2022, the Iatan coal inventory level, as set forth in our records, stood at {{[REDACTED]}}. See "Iatan 2022 Align Inventory On Hand by Date.xls." Over the next four months, that inventory dropped below our desired level ({{[REDACTED]}}) and fell to a low of {{[REDACTED]}} on September 24, 2022. This substantial decline in inventory was inclusive of a {{[REDACTED]}} ton write-down on June 30, 2022 that resulted from our annual coal inventory pile measurement survey. Even after netting out the tons associated with the June 2022 write-down, however, the Iatan coal inventory still dropped by {{[REDACTED]}} in under four months notwithstanding our efforts to conserve coal (as I describe in Part VII of this Statement below).

As I explained earlier, BNSF began imposing restrictions on the number of Evergy trainsets in service even before the start of 2022. [REDACTED]
[REDACTED]
[REDACTED] We put coal conservation measures into effect on April 29, 2022 (see Part VII below). Our Iatan inventory remained relatively stable throughout May of 2022, but eventually the demand for Iatan generation (especially during the peak Summer months) and the absence of sufficient BNSF deliveries forced us to begin drawing substantial coal volumes from our inventory.

Our inventory at LEC experienced similar difficulties. That LEC inventory fell from a February 17, 2022 level (as reflected in our Align System data) of {{[REDACTED]}} to as low as {{[REDACTED]}} on September 4, 2022. See “LEC 2022 Align Inventory On Hand by Date.xls.” This decline in inventory was inclusive of a {{[REDACTED]}} write-down on August 18, 2022 that resulted from our annual coal inventory pile measurement survey. Again, even after netting out tons associated with the August 2022 write-down, however, the LEC coal inventory still dropped by {{[REDACTED]}} over roughly six months notwithstanding our efforts to conserve coal (again, as I describe below). Moreover, our LEC inventory remained continuously below our desired levels from late February through the end of the year.

VII. The Coal Conservation Process

As an electric utility and a member of SPP, Evergy and its operating companies do not have an option to burn through our entire coal inventory. Reliability concerns mandate that we take actions to preserve a reasonable margin to continue coal-fired generation operations when needed in the event of unexpected fuel supply interruptions, particularly during peak months of a year. In order to achieve that objective, if coal deliveries do not meet schedules and volume expectations (and/or if coal deliveries are not expected to meet schedules and volume expectations due to causes such as continuing railroad refusals to allow adequate numbers of trainsets into service), it may be necessary to utilize SPP market tools which can aid in the preservation of fuel. A principal procedure that we follow to effectuate that sort of conservation involves the use of an “add.”

There are two main types of adders that may be used. The first is a margin adder, which is developed internally by Evergy. The margin adder is a small adder to the offer price in order to curb fuel burn and is generally less than 25%. The second and more impactful adder is determined by SPP using the OCC. The OCC tool is used in the case of serious restrictions to increase our

offer prices into SPP in order to better reflect the opportunity costs associated with burning the limited fuel source now versus at a later time. When utilized for fuel preservation purposes, these adders reduce the chance that SPP will call upon the Evergy unit(s) in question to generate power using coal. The purpose of the OCC adder (which is calculated by and coordinated with the SPP Market Monitoring Unit) is to ensure that in times of limitation or restrictions, a unit is committed and dispatched only when it is most needed, even when it otherwise normally would be fully committed and dispatched. These measures help to ensure that the unit(s) in question is (are) available when system operating conditions most depend on the generation.

As I explained above, we followed that procedure in 2022 beginning several days after BNSF acknowledged that we were unlikely to see permission for additional trainsets and { [REDACTED] [REDACTED] }. The specific timeline and scope of our coal-conservation process were as follows:

Table 21⁷

Units	Start Date	End Date	Action
LEC 4&5	April 29	Nov. 23	{{ [REDACTED] }}
Iatan 1&2	April 29	Dec. 21	{{ [REDACTED] }}
LEC 4&5	Aug. 19	Oct. 20	{{ [REDACTED] }}
Iatan 2	Sept. 22	Oct. 20	{{ [REDACTED] }}
Iatan 1	Sept. 28	Oct. 20	{{ [REDACTED] }}

⁷ See Tucker electronic workpaper “2022_CoalConservation_OfferData.xlsx.”

VIII. Additional Costs Incurred by Evergy

Evergy experienced significant economic harm as a result of BNSF's actions and inactions regarding 2022 coal shipments to Iatan and LEC, including otherwise avoidable increased costs for purchased power and lost opportunity to earn revenue and profits. Other Evergy witnesses address those categories.

There are two additional categories of expense related to operations at Iatan and LEC that were due to BNSF's trainset limitations: additional costs for inventory management and railcar storage costs.

A. Inventory Management Costs

The most efficient way to unload trains is to unload the coal from the train directly for use in the generating units at Iatan and LEC. That is the preferred approach to plant operations because it allows us to avoid the time and expense of pushing large volumes of coal between our train unloading locations and our stockpile areas, and/or reclaiming coal from that inventory to fuel the generating units. As a result of BNSF's 2022 refusal to allow sufficient trainsets in service, however, we were forced to draw substantial volumes of coal from inventory.

The additional expenses that we incurred at Iatan and LEC as a result of the need to draw coal from inventory and then to replenish that inventory are detailed below. In particular, the net change in inventory at each plant (from peak to trough and then again from trough to peak) was quantified and is discussed in the following paragraphs.

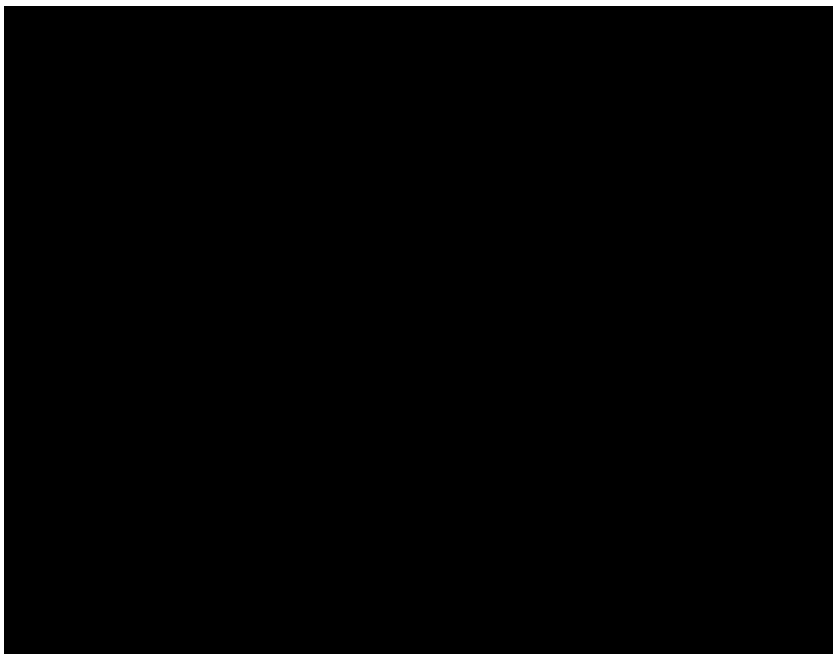
1. Iatan Inventory Management

At Iatan, we began substantially drawing from our inventory as of May 31, 2022. As noted above, our inventory level recorded in our Align system as of that day was {{ [REDACTED] [REDACTED] }}. Our inventory level reached its lowest point on September 24, 2022 {{ [REDACTED] [REDACTED] }}

{}}, reflecting a net “pull” from inventory of {{{}}} since May 31, 2022, even after netting out the June 2022 inventory survey write-down.

From September 24, 2022 through December 14, 2022, we partially replenished our inventory at Iatan, with each of the {{{}}} pushed back into inventory requiring costly bulldozer work due to BNSF’s refusal to allow sufficient railcar sets in service. The sum of our Iatan pull and push activity in 2022 was {{{}}}:

Table 22 {{{



}}

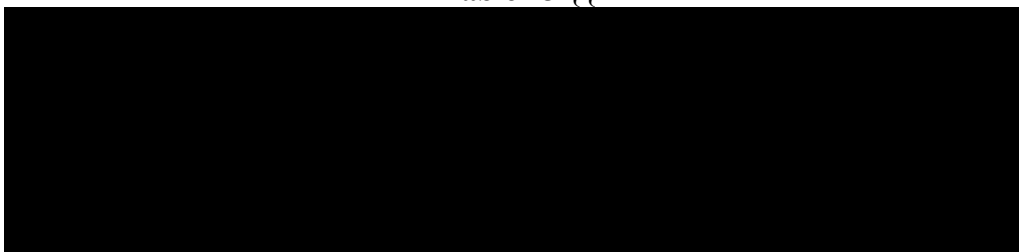
At Iatan, we utilize CAT 854 dozers for inventory-management purposes. Each CAT 854 is capable of moving 320 tons per hour from the Iatan unloading location to the station’s inventory location. Dividing the {{{}}} that we pushed or pulled by the 320-ton per hour figure yields a total of {{{}}} of dozer work.

There are many different incremental dozer expenses that BNSF’s trainset limitation forced Evergy to incur. In particular, the substantial rise in dozer use greatly increased Evergy’s fuel expense and similarly consumed a significant share of the dozer-utilization hours available

between periodic engine overhauls, transmission overhauls, complete engine rebuilds, and even oil changes. Each one of those various overhauls, rebuilds, etc. involves a significant cost (with some dozer overhauls costing several hundred thousand dollars or more). Nevertheless, for purposes of seeking monetary damages from BNSF, this Statement calculates only the incremental fuel expense for the dozers at each station. Accordingly, the incremental expense calculation is conservative and substantially understates the actual harm that we incurred as a result of BNSF's railcar set limitations.

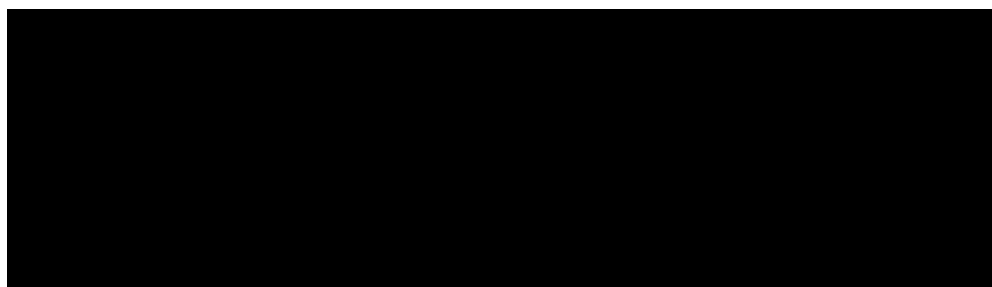
Based upon Iatan's average 2022 per gallon fuel price,⁸ the total incremental fuel expense for dozer work at Iatan was {{[REDACTED]}} per hour:

Table 23 {{

A large rectangular area of the document is completely blacked out, redacting the content of Table 23.

}} Multiplying that hourly incremental expense by the {{[REDACTED]}} of dozer work performed at Iatan yields an incremental inventory management fuel expense of \$308,419.24:

Table 24 {{

A large rectangular area of the document is completely blacked out, redacting the content of Table 24.

}}

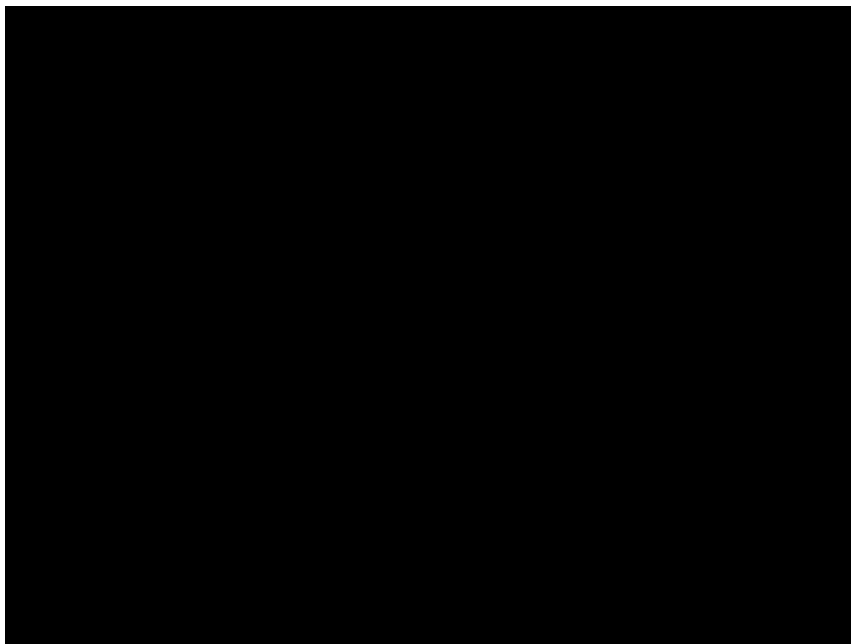
⁸ See Tucker electronic workpapers "Iatan Average Diesel Fuel Price.xlsx" and "CAT Fuel-Consumption Values.pdf." Our high-volume dozer use in pushing and pulling coal at Iatan and at LEC fits within the "High" consumption category with its 10% idle-time assumption.

2. LEC Inventory Management

At LEC, we began drawing substantial volumes from our inventory as of mid-February 2022. Our inventory level on February 17, 2022 was {{[REDACTED]}}. As of late February 2022, our inventory had fallen below our desired minimum level of {{[REDACTED]}} and it continued its downward trend for more than six months thereafter. Our LEC inventory level reached its lowest point on September 4, 2022; *i.e.*, {{[REDACTED]}}, reflecting a net “pull” from inventory of {{[REDACTED]}}, even after accounting for our August 18, 2022 write-down at LEC. That net pull required bulldozer work due to BNSF’s refusal to allow sufficient railcar sets in service.

From September 4, 2022 through December 5, 2022, we replenished our inventory at LEC, with {{[REDACTED]}} pushed back into inventory. As with our net pulls from inventory, our work to push coal back into inventory required bulldozer work due to BNSF’s refusal to allow sufficient railcar sets in service. The sum of our LEC pull and push activity in 2022 was {{[REDACTED]}}:

Table 25 {{[REDACTED]}}



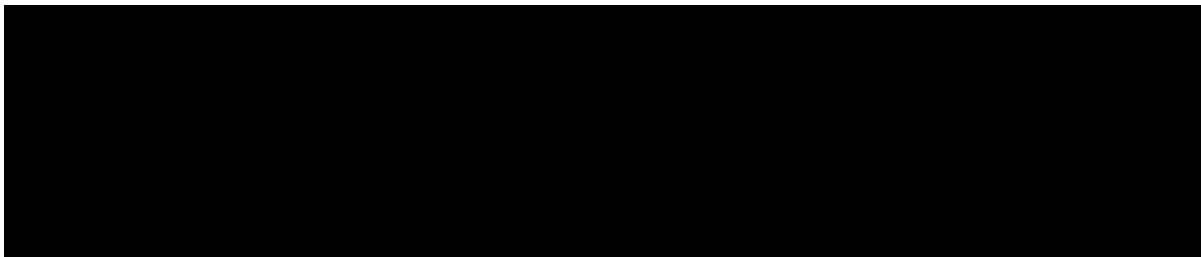
}}

At LEC, we use two different CAT dozers; a CAT 834 and a CAT 844. Based upon our experience and observation at the plant, the CAT 834 can push 200 tons per hour from our stacker area to our inventory area. The CAT 844 can push 333 tons per hour between those same two locations. With both dozers in operation simultaneously, we can push 533 tons per hour.⁹ Dividing the {{ [REDACTED] }} that we pushed or pulled by the 533-ton per hour figure yields a total of {{ [REDACTED] }} of dual-dozer work.

As was the case with respect to Iatan, LEC also incurred a variety of different fuel and non-fuel expenses for each of those extra hours of push/pull activity, but we have limited our damages calculation to the incremental fuel expense associated with our extra work. And once again, that limitation makes our damages estimate conservative and understated.

On the basis of the average 2022 LEC price per gallon of fuel,¹⁰ the total incremental fuel expense for the pair of dozers at LEC was a combined {{ [REDACTED] }} per hour:

Table 26 {{



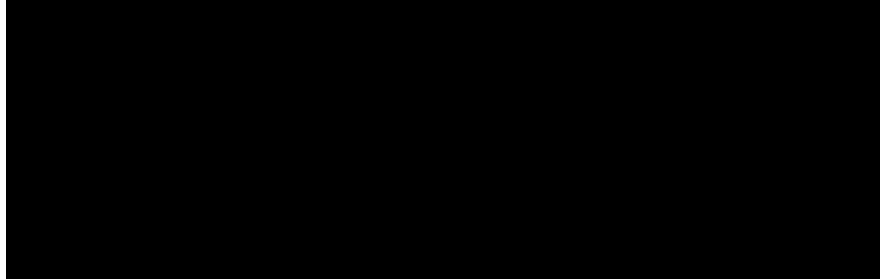
}}

⁹ By way of background, the layout of our LEC facility allows for a significantly shorter distance to push coal to inventory than is required at Iatan. Accordingly, while Iatan utilizes larger dozers, the required pull/push distance is longer.

¹⁰ See Tucker electronic workpapers “LEC Average Diesel Fuel Price for 2022.xlsx” and “CAT Fuel-Consumption Values.pdf.”

Multiplying that hourly expense by the {{[REDACTED]}} of dual-dozer work performed at LEC yields an incremental inventory management fuel expense of \$86,694.41:

Table 27 {{

A large black rectangular box redacting the content of Table 27.

}}

* * *

Combining the incremental fuel expenses at Iatan and LEC, our total 2022 inventory management expense associated with BNSF's refusal to allow sufficient sets in service was \$395,113.65:

Table 28

Incremental 2022 Inventory-Management Fuel Expense	
Iatan	\$ 308,419.24
LEC	\$ 86,694.41
Total	\$ 395,113.65

This total expense figure constitutes a conservative and understated measure of the actual, overall harm that Evergy experienced in terms of incremental inventory-management expense. In fact, the total expense figure in Table 28 amounts to an expense of only about \$0.27 per ton for each of the more than 1.4 million tons of coal that we pulled from or pushed into inventory at the two stations (*i.e.*, \$395,113.65 / 1,445,276 tons = \$0.27 per ton).

B. Railcar Storage Costs for Idled Trainsets

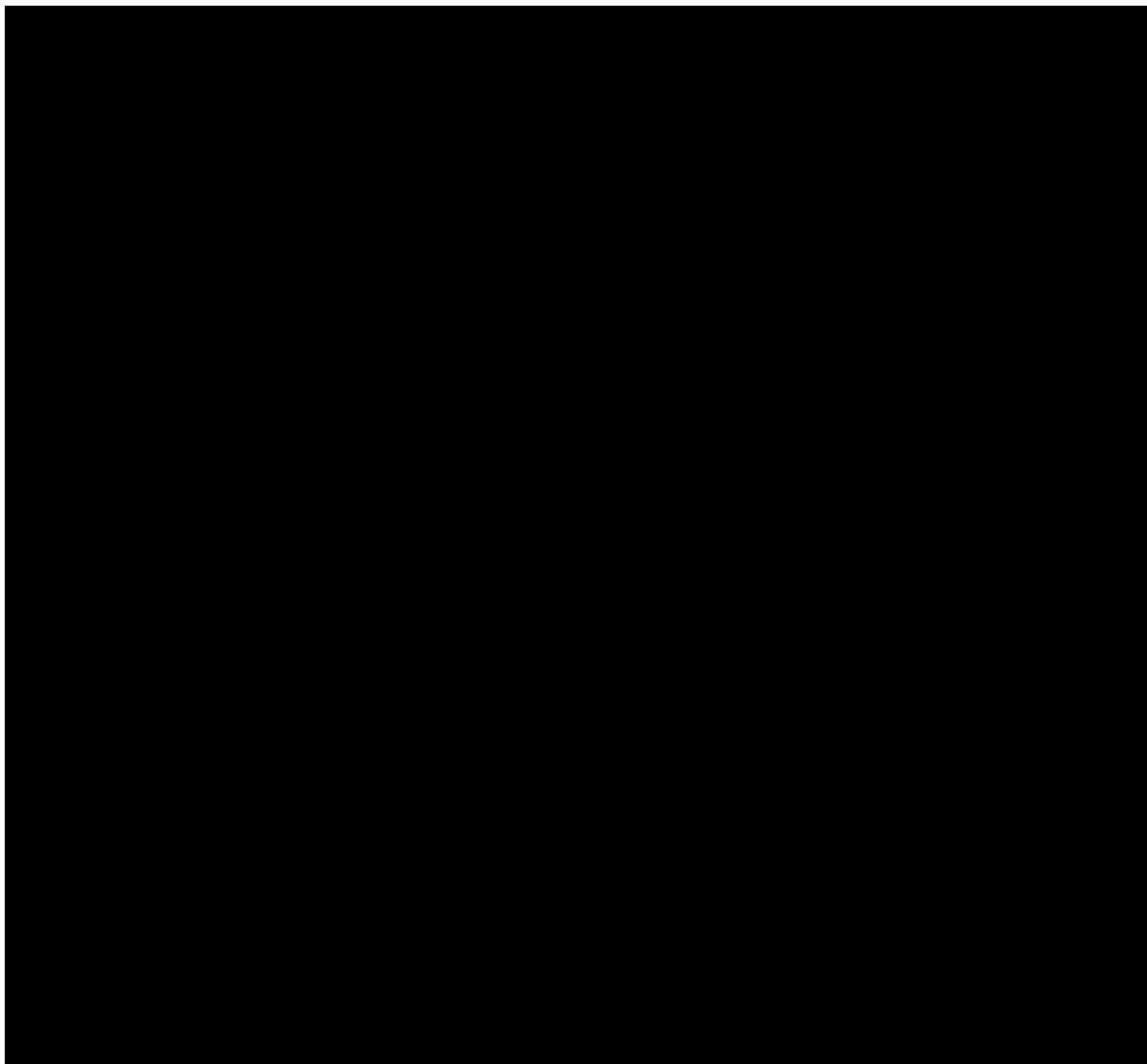
As I stated previously, Evergy owns and/or leases all the railcar sets needed for use in service to Iatan and LEC. Historically, BNSF regularly had allowed us to place a sufficient number of those sets into service to transport scheduled tonnage. In 2022, however, BNSF capped the number of sets in service at levels far below historic requirements.

As a result, it became necessary for us to secure storage locations for those trainsets idled because of BNSF's limitations. The following calculations reflect only those expenses made necessary by BNSF's limitations and represent the lowest-cost storage options that we were able to identify and utilize.¹¹

For storage occurring on or after February 1, 2022 (and extending through December 31, 2022), Manning Rail is the entity on which we principally relied. It is located in the vicinity of Fairmont, Nebraska. We had trainsets in Manning Rail storage for full-year 2022, with the storage for the 134 railcars in set "088" ending as of July 28, 2022, and storage for the 135 railcars in set "040" continuing for the rest of the year:

¹¹ See Tucker electronic workpaper "Railcar Storage Summary 2022.xlsx."

Table 29{{



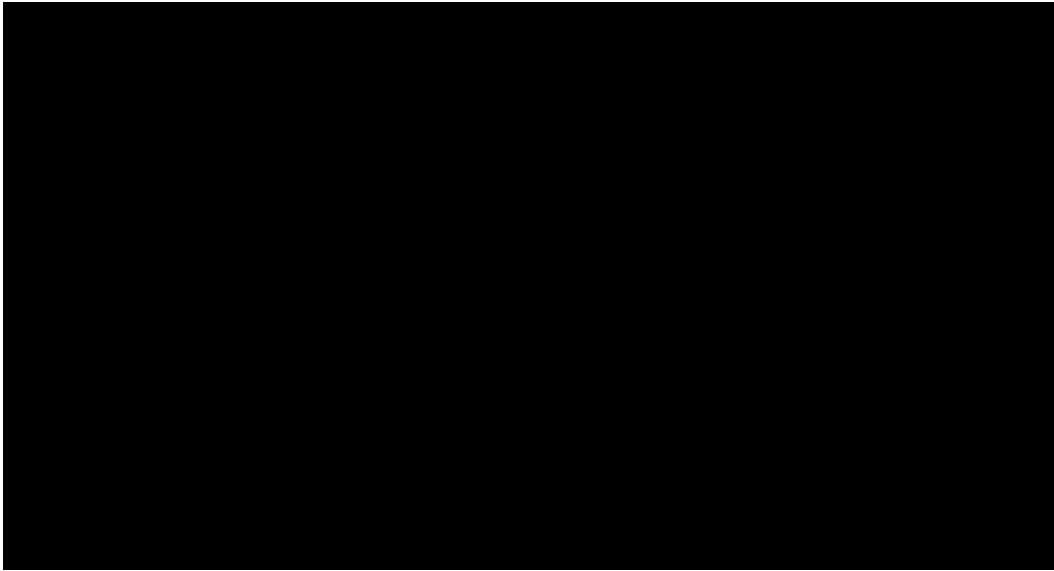
}}

Train “088” initially entered storage on September 4, 2021. Train “040” initially entered storage on September 2, 2021.

We also incurred storage expenses from a facility that we use called Cathcart Repair Facilities, LLC. {{

}}:

Table 30{{



}}

Adding these two expense categories together, our total storage expense for trainsets that BNSF would not allow into service during the time period from February 1, 2022 through December 31, 2022 was **\$225,750.00**.

IX. Conclusion

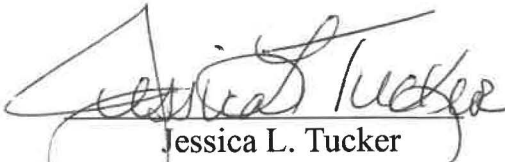
BNSF's 2022 refusal to allow sufficient trainsets into our service prevented us from receiving all the coal that we needed and had scheduled. We repeatedly and emphatically informed BNSF that we were in need of additional rail transportation service, but BNSF consistently failed to provide it. Our service requests for 2022 were consistent with our historic service needs and nothing about our 2022 requests was anomalous or should have come as a surprise to BNSF.

The principal difference of which I am aware regarding 2022 (as opposed to prior years) pertains to the fact that BNSF provided service to Iatan and LEC on a common-carrier basis rather than on a contract basis. That change in service format should not excuse BNSF's substantial failure to meet our reasonable 2022 service needs.

As a result of BNSF's refusal to allow sufficient trainsets in service, we incurred additional expenses in the amounts of \$395,113.65 for coal inventory management and \$225,750.00 for railcar storage, for a combined total of **\$620,863.65**.

VERIFICATION

I, Jessica L. Tucker, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on June 18, 2025.


Jessica L. Tucker

Exhibits JT-1 through JT-17

REDACTED

**Verified Statement of Robert D. Mulholland
and Timothy D. Crowley**

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

VERIFIED STATEMENT

of

Robert D. Mulholland
Executive Vice President

and

Timothy D. Crowley
President

L. E. PEABODY & ASSOCIATES, INC.
ECONOMIC CONSULTANTS

On Behalf Of

EVERGY INC., EVERGY METRO, INC. and EVERGY KANSAS CENTRAL, INC.
(“EVERGY”)

Dated: June 25, 2025

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
I. Introduction.....	1
II. Summary of Findings	2
III. Every Traffic and Route of Movement.....	4
IV. Overview of BNSF Operations During the Study Period.....	6
A. Operating Inputs	6
B. Operating Outputs.....	7
C. Train Performance	9
V. Every Route Analysis	11
A. Route.....	11
B. Train Volumes	12
1. Coal Trains.....	13
2. Non-Coal Trains and Segment Level Operations	16
C. Train Speed and Dwell	17
D. Train Length	21
E. BNSF Double Train operations	22
F. Non-Infrastructure Capacity Limitations.....	24
1. Crew Reductions.....	24
2. Power Pool Reductions.....	28
G. Train Delays.....	30
1. Total Delay	30
2. On-Route Delays	33
3. Delay by Train Type.....	34
4. Every Route Delays	36
5. Train Volumes, Crews, and Delays	38
VI. Conclusion	40

LIST OF EXHIBITS

Exhibit No.	Exhibit Description
(1)	(2)
1	Robert D. Mulholland Statement of Qualifications
2	Timothy D. Crowley Statement of Qualifications
3	Schematic of the BNSF Railway Everygy Route
4	Summary of BNSF Coal Traffic Moving Over the Everygy Route, 2019-2023
5	BNSF System-Wide Operating Inputs, 2019-2023
6	BNSF System-Wide Operating Outputs, 2019-2023
7	Summary of BNSF Train Event Data Production
8	Summary of Trains in BNSF Provided Train Event Data, 2019-2023 by Train Type
9	Summary of Tonnages for BNSF PRB-WY Coal Traffic Moving Over Everygy Route, 2019-2023 by Plant
10	Percentage of Nomination Shipped on the Everygy Route, 2022 by Plant
11	Summary of Average Trains Per Day Over the Everygy Route by Segment, 2019-2023 by Train Type
12	Summary of Train Speeds Over the Everygy Route by Segment, 2019-2023 by Train Type
13	Summary of Reported Train Length for Trains Traversing the Everygy Route, 2019-2023 by Train Type
14	Percent of Sidings Greater Than 5,000 Feet on Single Track Over the Everygy Route Where the Train Length Exceeded the Siding Length at Siding Locations Where Train Length was Reported, 2019-2023 by Train Type
15	Summary of BNSF Train and Engine Employees Along the Everygy Route, 2019-2023
16	Summary of BNSF Locomotive Data, 2019-2023
17	Summary of Delays by Delay Type, 2019 and 2022
18	Selected Delay Categories by Train Type, 2019 and 2022
19	Summary of On-Route Delays by Location, 2019 and 2022

I. INTRODUCTION

We are Robert D. Mulholland and Timothy D. Crowley, Executive Vice President and President, respectively, of L. E. Peabody & Associates, Inc. (“LEPA”). LEPA is an Economic Consulting Firm that specializes in transportation, economic and operating issues, with an emphasis on freight and passenger railroad matters. We have spent most of our consulting careers of 29 and 23 years, respectively, evaluating railroad operations, capacity, costs, and profitability and pricing issues for shippers, producers, railroads and government agencies. Our credentials are included as Exhibit Nos. 1 and 2 to this Verified Statement (“VS”), respectively.

Evergy (in this VS, “Evergy” refers to the Complainants Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc.) asked us to evaluate whether BNSF Railway Company (“BNSF”) had adequate track capacity and resources to transport Evergy’s scheduled coal shipments in 2022 to the Iatan Generating Station (“Iatan”) and Lawrence Energy Center (“Lawrence”), and to identify factors, if any, contributing to the volume shortfalls experienced by Evergy in that year. To make these determinations, we evaluated BNSF waybill, train event, locomotive event, train delay, crew, volume forecast, and density data for the years 2019-2022 inclusive (“Study Period”).¹ We also reviewed track chart data to evaluate changes in BNSF track and structures on the route BNSF used to transport Evergy’s coal (“Evergy Route”).

The results of our analysis are included in this VS below under the following sections:

- II. Summary of Findings
- III. Evergy Traffic and Route of Movement
- IV. Overview of BNSF Operations During the Study Period
- V. Evergy Route Analysis
- VI. Conclusion

¹ Although the Study Period for our VS ends at the conclusion of 2022, BNSF provided data through 2023. We included BNSF’s 2023 data in our analysis and display data for years 2019-2023 in our Exhibits.

II. SUMMARY OF FINDINGS

Based on our review and analyses of BNSF data, we observed the following trends in BNSF operations from 2019 through 2022:

1. There were no significant changes to the BNSF infrastructure along the Evergy Route from 2019 to 2022;
2. Train volumes on the Evergy Route declined by { } from 2019 to 2022, with volumes of coal trains (the largest train group by volume (number of trains)) declining by { };
3. Train speeds for line-haul trains on the Evergy Route segments increased by { } from 2019 to 2022, as train volumes declined. Coal trains increased speeds by { } from 2019 to 2022;
4. Train dwell times for intermodal and merchandise trains at intermediate (crew-change) stations on the Evergy Route decreased sharply, while train dwell times for coal and other unit trains were relatively flat from 2019 to 2022;
5. Although train lengths on the Evergy Route increased on average from 2019 to 2022 { }, the passing sidings along the single track segments of the Evergy Route remained adequate for more than { } of the trains that used those segments in all time periods, and more than { } of the trains that used those segments in 2022, compared to more than { } in 2019;²
6. BNSF reduced its daily train crew staffing levels by { } system-wide, and by { } at crew change locations on the Evergy Route from 2019 to 2022, outpacing the reduction in BNSF train volumes;
7. BNSF reduced its system-wide pool of road locomotives operating over the Evergy Route by more than { }, and reduced the number of locomotives allocated to unit train traffic while it increased the number of locomotives allocated to scheduled intercity intermodal and merchandise traffic from 2019 to 2022. BNSF also reduced its equipment (i.e., locomotive and railcar) maintenance staff by { } from 2019 to 2022;
8. Despite total train delays reported on the Evergy Route decreasing by { } (measured by reported delays), train delays attributed to crew-related causes increased by { }, and delays attributed to power-related and mechanical causes increased by { }, respectively;
9. Train delay minutes attributed to crew-related causes increased by { } (e.g., the trains were sitting while waiting for crews to arrive), and delays attributed

² The number of trains that were too long to fit in available sidings over the single-track segments between Wendover, WY and Northport, NE increased from { } percent in 2019 to { } percent in 2022. The number of trains that were too long to fit in available sidings over the single-track segments between Lincoln, NE and Kansas City, MO increased from { } percent in 2019 to { } percent in 2022.

Public Version - Confidential and Highly Confidential Information Redacted

to power-related and mechanical causes increased by { [REDACTED] } respectively; and,

10. Coal trains incurred more crew-related delays in 2022 and saw a greater increase in crew-related delays from 2019 to 2022, than other line-haul train groups.

Based on the above summarized findings, we conclude that there was sufficient track capacity on the BNSF routes between the Powder River Basin (“PRB”) and Evergy’s Iatan Generating Station and Lawrence Energy Center to handle Evergy’s requested tonnage in 2022. BNSF’s failure to provide the requested coal transportation services to Evergy was attributable primarily to BNSF’s decision to reduce its pool of train crews available to provide the requested service, and to a lesser extent, BNSF’s decision to reduce its locomotive power pool and equipment maintenance staffing at the same time. During 2022, BNSF did not have adequate human resources and equipment to move its trains efficiently, and consequently train delays attributed by BNSF to crew, power, and mechanical- related causes increased sharply. BNSF allocated its reduced resources in greater numbers to its non-coal lines of business, and Evergy did not receive its requested and scheduled volumes.

III. EVERGY TRAFFIC AND ROUTE OF MOVEMENT

Evergy ships sub-bituminous coal over BNSF's rail lines from mines in the PRB in Wyoming to the Iatan Generating Station and Lawrence Energy Center, which are located at Sadler, MO and Lawrence, KS, respectively. Figure No. 1 below is a schematic of the Evergy Route.³

Figure No. 1
Schematic of the Evergy Route

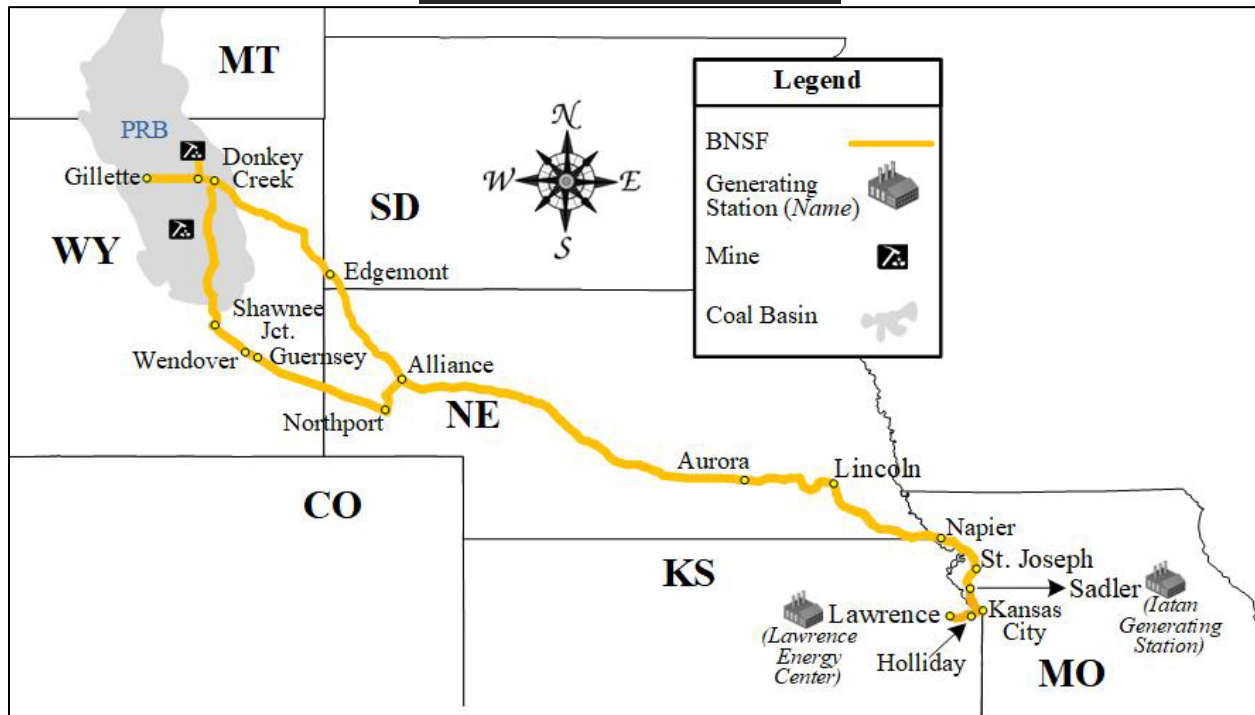


Exhibit No. 3 to this VS contains a more detailed schematic of the issue rail lines showing the major yards and interchanges along the Evergy Route. Evergy shipments to Lawrence moved under contract through 2020, while Evergy shipments to Iatan moved under contract through 2021.⁴ When the respective contracts expired, Evergy continued to ship coal to Lawrence and Iatan under common carrier tariffs issued by BNSF.

³ The route shown in Figure No. 1 is the predominant route of movement for Evergy traffic. In some cases, a train may deviate from the predominant route due to unforeseen issues such as maintenance outages or weather issues.

⁴ See: Complaint at pages 9-10.

Public Version - Confidential and Highly Confidential Information Redacted

In 2022, BNSF did not deliver Evergy's requested volume of coal. Specifically, BNSF transported and delivered 3.1 million of the 4.9 million tons Evergy scheduled for delivery to Iatan, and BNSF delivered 1.2 million of the 1.4 million tons Evergy scheduled for delivery to Lawrence using BNSF's Coal Forecasting Tool ("CFT") in 2022 (68 percent in total).⁵ We understand that Evergy alleges damages due to BNSF's service levels in 2022. This VS does not examine those damages.

⁵ See: Exhibit No. 10, Lines 30 and 53, Columns (4) and (5), and V.S. Tucker at 9-10.

IV. OVERVIEW OF BNSF OPERATIONS DURING THE STUDY PERIOD

BNSF's coal volumes decreased substantially during the Study Period, while the track and structures along its network, including its major coal corridors, remained largely unchanged. These changes in BNSF volumes are discussed further below under the following topics:

- A. Operating Inputs
- B. Operating Outputs
- C. Train Performance

A. OPERATING INPUTS

Operating inputs include the basic infrastructure and operating resources required for BNSF to provide service to its customers. Operating capacity is a function of four primary operating inputs: (1) network infrastructure (miles and configuration of track along the right-of-way ("ROW"), including yards, sidings, and storage facilities); (2) technology (advanced signal systems, computer-aided dispatching, communication networks, remote train monitoring and control systems, and data sharing frameworks); (3) equipment (road and yard locomotives, railcars, and maintenance equipment); and (4) personnel (train crews, dispatchers, and managers).

As shown in Exhibit No. 5 to this VS, from 2019 to 2022, the miles of road on the BNSF system increased by 0.7 percent from 32,619 miles to 32,833 miles while the miles of other track increased by 1.8 percent from 21,398 miles to 21,773 miles.⁶

Our review of BNSF track chart data shows that there were few changes in track and structures over the Evergy Route during the Study Period.⁷ BNSF's track charts showed no

⁶ See: Exhibit No. 5, Line 4, Columns (2), (3), (6) and (7).

⁷ Some minor changes were made to crossover locations and configuration along the route. For example, {

Public Version - Confidential and Highly Confidential Information Redacted

changes in available sidings or the number of available mainline tracks on the Everyg Route over the Study Period.

BNSF continued its deployment of advanced dispatching and train management technologies across its system.⁸ We observed no evidence of reduced infrastructure or technology limitations on the Everyg Route that would restrict network capacity during the Study Period.

We observed a decrease in the locomotive power input. BNSF reduced the number of road locomotives operating on its network by more than six (6) percent during the Study Period.⁹

We also observed a decrease in the personnel operating input. BNSF's train and engine ("T&E") operating personnel declined by *nearly 20 percent* between 2019 and 2022.¹⁰

Everyg provided its own railcars to transport coal.¹¹ Consequently, our conclusions are not influenced by changes in BNSF's railcar fleet during the Study Period.¹²

B. OPERATING OUTPUTS

Operating outputs quantify the results of operations, i.e., how much traffic moved, how much revenue the traffic generated, and what expenses were incurred to move the traffic. Exhibit No. 6 to this VS compares key BNSF operating outputs generated on the BNSF system during the Study Period. Coal traffic volumes, as measured by carloads transported, declined by 15 percent over the Study Period from 1.80 million carloads in 2019 to 1.53 million carloads in 2022.¹³ PRB

⁸ See for example: "BNSF Railway Goes Live with Tideworks' Intermodal TOS" November 8, 2023 available at <https://tideworks.com/bnsf-railway-goes-live-with-tideworks-intermodal-tos/>, "Artificial intelligence: A new frontier for safety, efficiency and service at BNSF" May 12, 2023 available at <http://www.bnsf.com/news-media/railtalk/innovation/bnsf-artificial-intelligence.html>, "Getting into the 'rhythm: New switching technology boosts safety, efficiency" January 18, 2024 available at <http://www.bnsf.com/news-media/railtalk/innovation/switch-technology.html>.

⁹ See: Exhibit No. 5, Line 4, Column (9).

¹⁰ See: Exhibit No. 5, Line 4, Column (8).

¹¹ See: Complaint paragraph 9 at pages 6-7.

¹² BNSF's reported system-wide inventory of all gondola and hopper cars declined between 2.4% and 10.9% from 2019 to 2022, as reported in BNSF's R-1 Schedule 710. See: workpaper "BNSF R-1 Summary_2019-2023_Opening.xlsx" at tab "Sch 710".

¹³ See: Exhibit No. 6, Lines 1, 4, and 9, Column (1).

Public Version - Confidential and Highly Confidential Information Redacted

Coal Loadings also decreased by more than 15 percent, and lagged behind planned PRB Coal Loadings throughout the Study Period.¹⁴ BNSF's non-coal traffic volumes, as measured by carloads, declined by less than five (5) percent during the Study Period.¹⁵

Despite the volume reductions, BNSF coal revenues increased by more than five (5) percent during the Study Period, from \$3.553 billion to \$3.750 billion, while revenues on other traffic increased by more than 11 percent from \$19.557 billion to \$21.769 billion.¹⁶ BNSF earned more revenues while moving less traffic in 2022 compared to 2019.

Although BNSF's operating expenses increased,¹⁷ BNSF's net revenues also increased by 6.5 percent during the Study Period, as shown in Table No. 1 below.

¹⁴ See: Exhibit No. 6, Lines 1, 4, and 9, Columns (11) and (12).

¹⁵ See: Exhibit No. 6, Lines 1, 4, and 9, Column (3).

¹⁶ See: Exhibit No. 6, Lines 1, 4, and 9, Columns (2) and (4).

¹⁷ The increase in operating expenses was largely due to increased fuel expenses, as BNSF's reported rail fuel price increased from \$2.05 per gallon in 2019 to \$3.65 per gallon in 2022. See: workpaper "BNSF R-1 Summary_2019-2023_Opening.xlsx" at tab "Sch 750".

Table No. 1

BNSF System-Wide Net Revenues 2019-2022

<u>Year</u>	<u>Total Railway Operating Revenues 1/</u>	<u>Railway Operating Expenses 2/</u>	<u>Net Revenue From Railway Operations 3/</u>
(1)	(2)	(3)	(4)
A. Dollars in Thousands			
1. 2019	\$23,132,863	\$15,145,542	\$7,987,321
2. 2020	\$20,556,521	\$12,879,347	\$7,677,174
3. 2021	\$22,913,195	\$14,262,647	\$8,650,548
4. 2022	\$25,609,516	\$17,102,565	\$8,506,951
B. Percent Change From 2019 4/			
5. 2019	---	---	---
6. 2020	-11.1%	-15.0%	-3.9%
7. 2021	-0.9%	-5.8%	8.3%
8. 2022	10.7%	12.9%	6.5%

1/ Source: BNSF Annual Report R-1, Sch. 210, Line 13, Column (d).

2/ Source: BNSF Annual Report R-1, Sch. 210, Line 14, Column (d).

3/ Source: BNSF Annual Report R-1, Sch. 210, Line 15, Column (d).

4/ Columns (2) through (4), { } x 100.

C. TRAIN PERFORMANCE

Based on BNSF's public data reporting, system average train speeds for all BNSF trains increased by more than eight (8) percent, from 23.6 mph to 25.6 mph, and coal train speeds increased by more than 20 percent, from 19.8 mph to 23.9 mph during the Study Period.¹⁸ At the same time, BNSF public data indicates that system average dwell times decreased by almost six

¹⁸ See: Exhibit No. 6, Lines 1, 4 and 9, Columns (5) and (6).

Public Version - Confidential and Highly Confidential Information Redacted

(6) percent overall, while dwell times at PRB mines and at major yards along the Evergy issue route decreased by 11 percent and 24 percent, significantly more than the system average decrease.¹⁹

The observed train performance increases were expected given that BNSF's coal volumes were down and dwell times decreased overall. However, these performance benefits were offset by crew, power, and mechanical delays that increased significantly, thereby reducing the available resources to initiate train starts for customers such as Evergy. In other words, trains that were assigned crews and working locomotives faced less congestion as overall train starts dropped. That drop, however, was due at least in part to BNSF's decisions to reduce crews and idle power prior to 2022.

¹⁹ See: Exhibit No. 6, Lines 1, 4 and 9, Columns (7) through (10).

V. EVERGY ROUTE ANALYSIS

We analyzed BNSF data provided in discovery to determine the extent to which trends over the Evergy Route tracked with system-wide BNSF trends over the Study Period. The results of our analysis are included below under the following sections:

- A. Route
- B. Train Volumes
- C. Train Speed and Dwell
- D. Train Length
- E. BNSF Double Train Operations
- F. Non-Infrastructure Capacity Limitations
- G. Train Delays

A. ROUTE

The Evergy Route comprises 1,148 route miles. Although the Evergy Route accounts for just 3.5 percent of BNSF's system-total 32,837 route miles, the Evergy Route includes high-volume segments with extensive double- and triple-track.²⁰ The Evergy Route begins in the PRB, where Evergy coal trains are loaded. Evergy trains can leave the PRB coal fields along two routes: (1) the southern route to Alliance, NE via Northport, NE, or (2) the northern route to Alliance via Edgemont, SD. Loaded Evergy coal trains then move east from Alliance, through Lincoln, NE, to Evergy's Iatan Generating Station in Sadler, MO. Evergy trains destined for Evergy's Lawrence Energy Center continue past Sadler, through Kansas City, MO, then west to Lawrence, KS. Empty Evergy trains return to the PRB mines via the same route, in the reverse direction, completing a train cycle.²¹

²⁰ See: workpaper "Evergy_BNSF 42180 Miles.xlsx" at tab "Segment Miles" and Exhibit No. 5, Line 5, Column (2). $1,148 \div 32,837 = 0.035$.

²¹ See: Exhibit No. 3.

B. TRAIN VOLUMES

BNSF provided train event data for { } trains that operated over the Everyg Route from 2019 through 2023.²² Exhibit No. 8 to this VS shows the total train volume breakdown by train type and year. As shown, train volumes decreased from 2019 to 2022 over the Everyg Route.²³ We observed this downward trend in most train groups, with three notable exceptions. First, BNSF's highest priority service intermodal train ("Z-Trains") volumes increased by { } over the Everyg Route.²⁴ Second, normal priority merchandise trains ("M-Trains") saw an increase of { } along the route.²⁵ Third, unit grain train volumes increased²⁶ by { } as unit coal train volumes decreased by { }.

We also evaluated BNSF train event data for trains operating over non-Everyg Route BNSF line segments and determined that train volumes over other parts of the network also declined from 2019 to 2022.²⁸ Similar to the Everyg Route, this downward trend was observed in most revenue train groups, with two notable exceptions: (1) Z-Train volumes increased by { }, and (2) M-Train volumes increased by { }.²⁹ In addition, light engine moves increased by { } from 2019 to 2022, indicating an increase in locomotive repositioning on the BNSF system.³⁰

Table No. 2 below contains a summary of BNSF train volume changes.

²² See: Exhibit No. 7, Line 7, Column (3).

²³ See: Exhibit No. 8, Line 27, Columns (3), (6) and (8).

²⁴ See: Exhibit No. 8, Line 26, Columns (3), (6) and (8).

²⁵ See: Exhibit No. 8, Line 13, Columns (3), (6) and (8).

²⁶ Loaded and Empty trains combined. See: Exhibit No. 8, Lines 7 and 24, Columns (3) and (6).

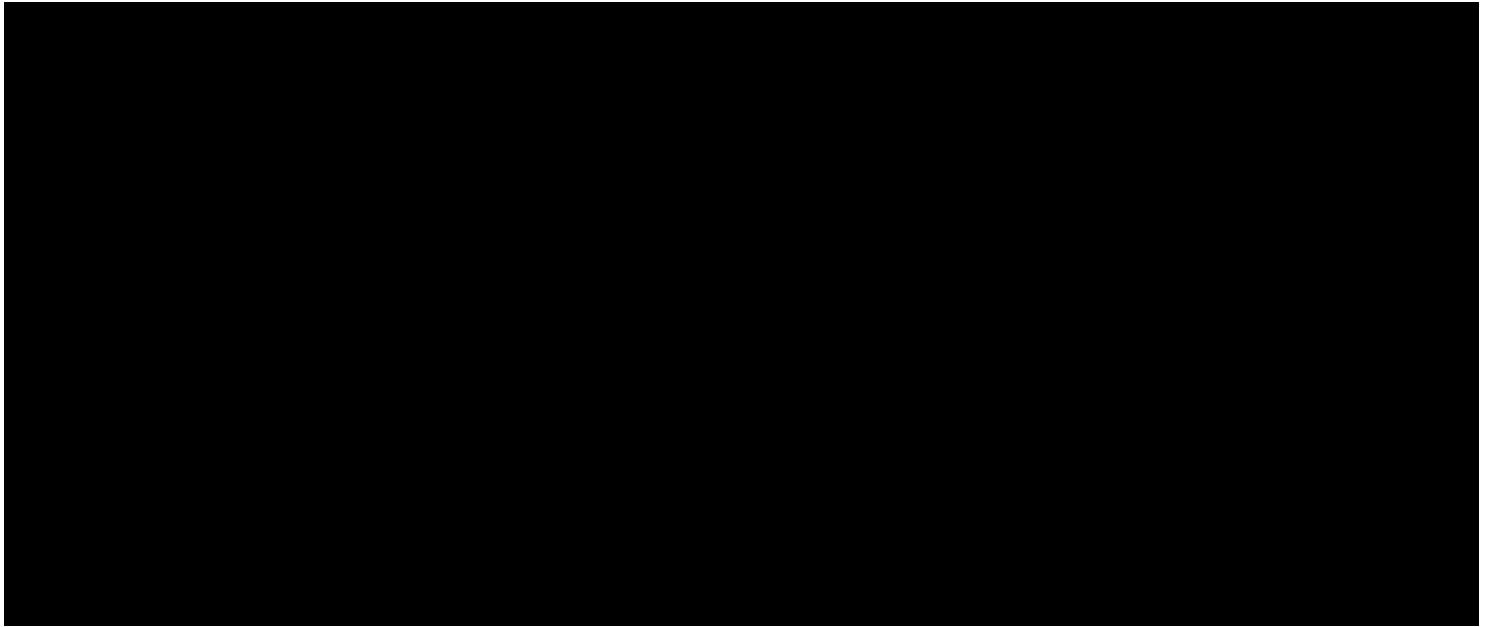
²⁷ Loaded and Empty trains combined. See: Exhibit No. 8, Lines 3 and 5, Columns (3) and (6).

²⁸ See: Exhibit No. 8, Line 27, Columns (9), (12) and (14).

²⁹ See: Exhibit No. 8, Lines 13 and 26, Columns (9), (12) and (14).

³⁰ See: Exhibit No. 8, Line 4, Columns (9), (12) and (14).

{ [REDACTED] }



{ [REDACTED] }

We analyzed the coal and non-coal trains moving over the Evergy Route and discuss our analyses and findings below.

1. Coal Trains

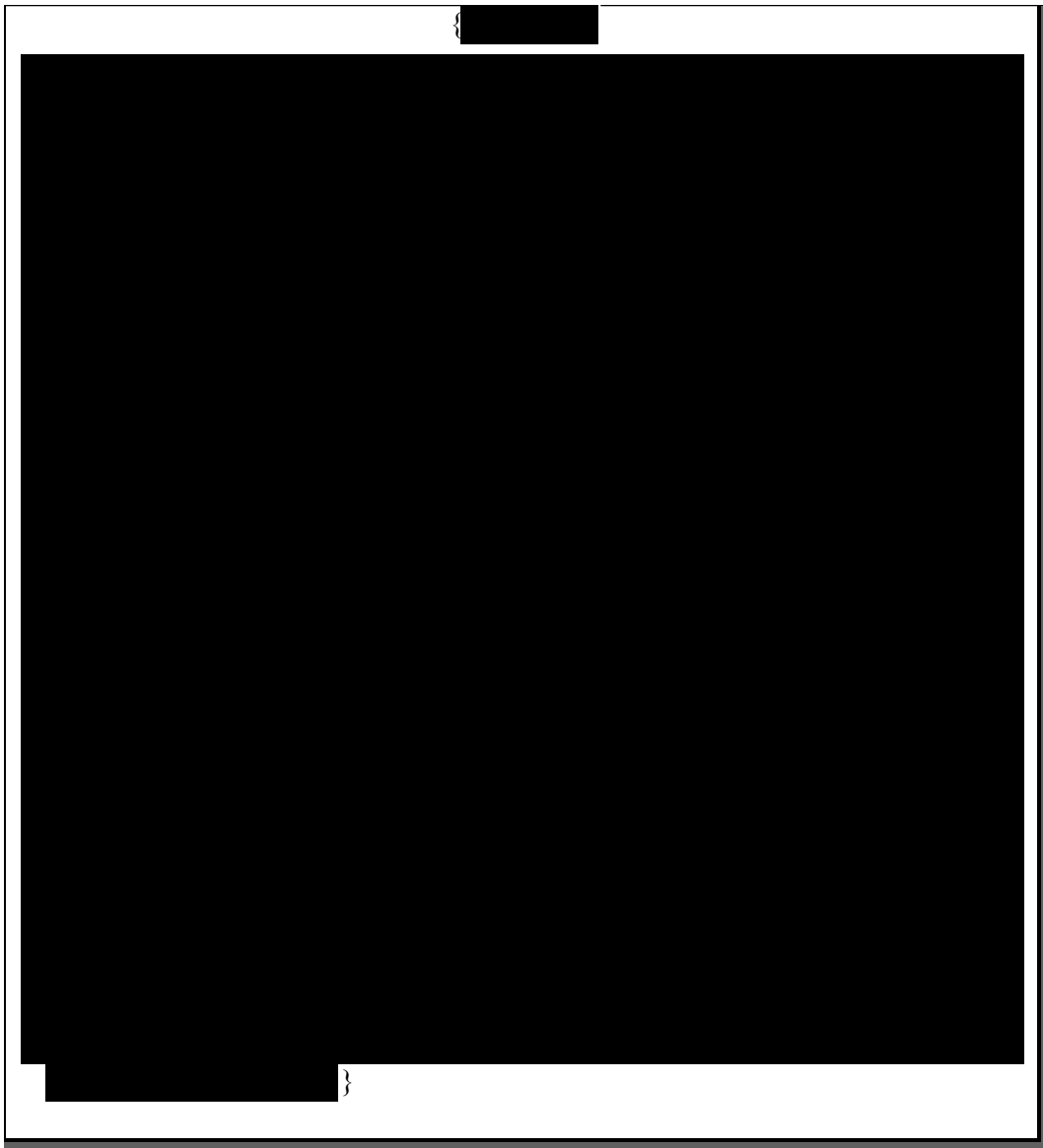
Exhibit No. 4 to this VS summarizes all coal movements along the Evergy Route from 2019 through 2023. In addition to the Iatan Generating Station and Lawrence Energy Center, BNSF moved PRB coal to { [REDACTED] } other power stations and coal docks during the Study Period over the Evergy Route.³¹ Although some coal trains terminate or exit the Evergy Route at Wendover, WY and Northport, NE, more than half of the shipments traverse the same route as the Evergy

³¹ See: Exhibit No. 9.

Public Version - Confidential and Highly Confidential Information Redacted

traffic to Lincoln, NE, and more than one-third of that coal traffic remains on the Evergy Route to Kansas City.³²

Exhibit Nos. 4 and 9 to this VS show a decline in coal volumes over the Study Period. Table No. 3 below summarizes the BNSF coal trains moving over the Evergy Route in 2019 and 2022.



³² See: Exhibit No. 11, Page 2, Lines 2, 8, and 12.

As shown in Table No. 3, Column (5), Lines 3 and 4 above, BNSF moved {█} fewer PRB coal trains for shippers other than Evergy over the Evergy Route in 2022 than in 2019, an {█} percent reduction. The decline in coal trains serving Evergy at Iatan and Lawrence ({█} percent) was more than {█} times (on a percentage basis) greater than coal shippers generally (compare Line 4, Columns (2) and (5)). However, Evergy's requested volume declined to a much lesser degree, from {█} in 2019 to {█} in 2022,³³ a change of {█} percent.

As shown in Exhibit No. 9, Iatan and Lawrence saw some of the largest reductions in coal deliveries of all BNSF coal shippers during the Study Period. Of the {█} facilities that received coal via BNSF in both 2019 and 2022, Iatan's reduction in 2022 coal volumes was the sixth (6th) largest, and Lawrence's reduction was the 19th largest compared to 2019. According to data filed with the EIA, all four of the plants with larger volume reductions than Iatan experienced capacity retirements of between 12 and 50 percent between 2019 and 2022.³⁴

We understand that the reduction in coal volumes to Iatan and Lawrence was not at Evergy's request. As shown in Exhibit No. 10, Iatan received only {█} percent of its scheduled tons in 2022, considerably below average among BNSF's PRB, WY coal shippers.³⁵ Lawrence received {█} percent of its scheduled tons in 2022, which put it near the median.³⁶

Union Pacific Railroad Company's ("UP") coal shippers also move coal trains over the PRB joint line north of Shawnee Jct. BNSF data shows that UP transported an average of {█}

³³ See: workpaper "Tons Shipped as a Percent of Nomination_Opening.xlsx"

³⁴ Xcel Energy's Comanche (CO) plant retired 325 of its 1,410 Megawatt (MW) summer capacity (23%) between 2019 and 2022; Southern Company's Scherer plant retired 860 of its 3,440 MW summer capacity (25%) between 2019 and 2022; Tennessee Valley Authority retired 971 of its 7,886 MW summer capacity (12%) between 2019 and 2022; and TransAlta Centralia Generations' Centralia plant retired 670 of its 1,340 MW summer capacity (50%) between 2019 and 2022. See: workpaper "Summary of All Coal Waybills_Opening.xlsx" at "Retirements" based on retirements reported in EIA 860 data.

³⁵ See: Exhibit No. 10, Line 53.

³⁶ See: Exhibit No. 10, Line 30.

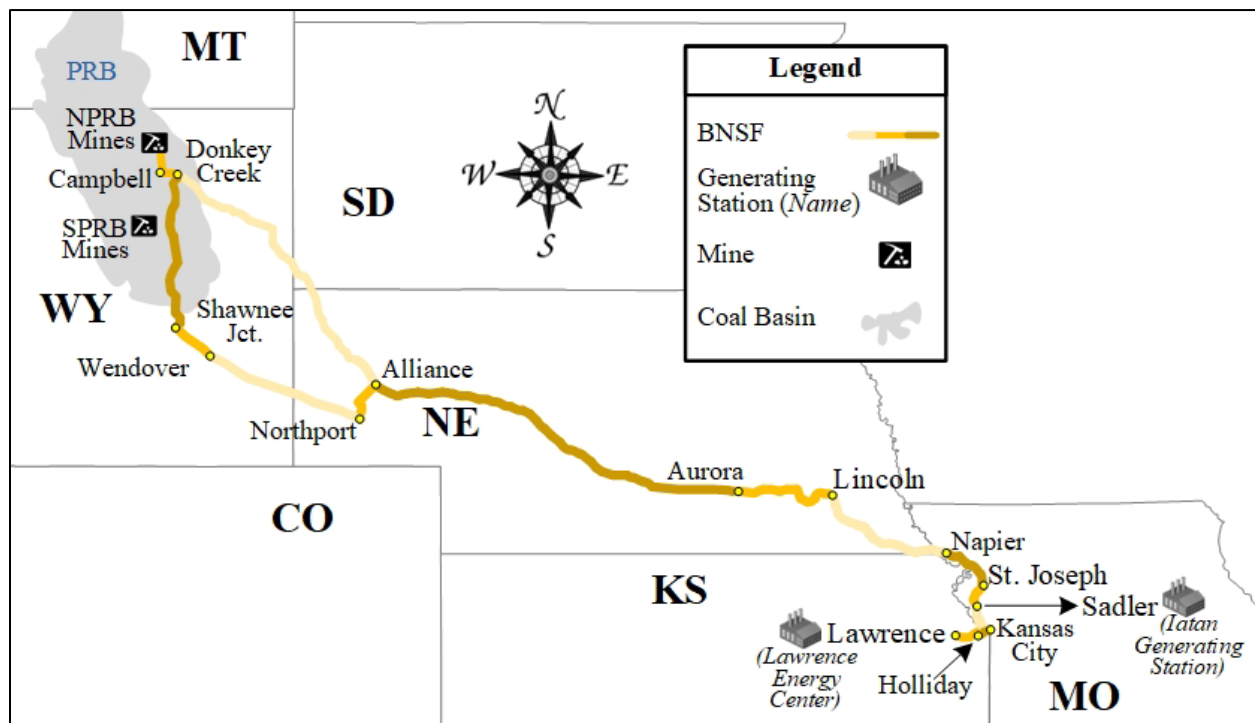
trains per day out of the Southern PRB in 2019, and { } trains per day in 2022.³⁷ As there was no significant change in the volume of UP trains operating in the PRB during the Study Period, the track capacity available to move BNSF coal trains over the PRB joint line was not reduced.

2. Non-Coal Trains and Segment Level Operations

BNSF transports significant volumes of non-coal traffic over portions of the Evergy Route. Scheduled intermodal, manifest, and auto trains traverse all portions of the Evergy Route, along with grain and other unit trains.³⁸

Figure No. 2 below shows the Evergy route broken into operating segments where we observed volume changes in the BNSF train event and density data (i.e., “density segments”).

Figure No. 2
Schematic of the Evergy Route Density Segments



³⁷ See: Exhibit No. 11, Page 3, Line 2, Columns (14), (17), and (19).

³⁸ See: Exhibit No. 11, Pages 4 through 6.

Public Version - Confidential and Highly Confidential Information Redacted

Exhibit No. 11 shows train densities by train type and density segment traversing the Everygy Route during the Study Period. The Everygy Route experienced an overall decline in train volumes during the Study Period, although certain density segments realized volume increases overall and/or for select train groups. Yet, even on the busiest segment of the Everygy Route between Kansas City, KS and Holliday, KS (8.6 miles), volume declined from {█} trains per day in 2019 to {█} trains per day in 2022.³⁹

Overall, BNSF's total train volume operating over the Everygy Route during the Study Period decreased by {█} percent, while coal trains experienced a {█} percent decline.⁴⁰ Accordingly, the largest declines at the segment level were in the Southern PRB, where BNSF's daily coal train volumes declined by {█} percent,⁴¹ and along the southern coal route via Northport, NE, which saw reductions in intermodal and other unit train traffic in addition to the decline in PRB coal trains.⁴² Although some of the train volume reduction can be explained by increases in train length, the {█} percent reduction in train volumes was more than twice the {█} percent increase we observed in train lengths.⁴³ The {█} percent reduction in loaded coal train volumes far exceeded the {█} percent increase in coal train lengths.⁴⁴

C. TRAIN SPEED AND DWELL

We analyzed BNSF data to determine the extent to which train speeds and dwell time for Everygy and other shippers using the Everygy Route deviated from the system-level operating data shown in Exhibit No. 6.

³⁹ See: Exhibit No. 11, Page 1, Line 13, Columns (2) and (5).

⁴⁰ See: Exhibit No. 11, Pages 1 and 2, Line 15, Columns (7) and (13).

⁴¹ See: Exhibit No. 11, Page 2, Line 2, Column (8), (11), and (13).

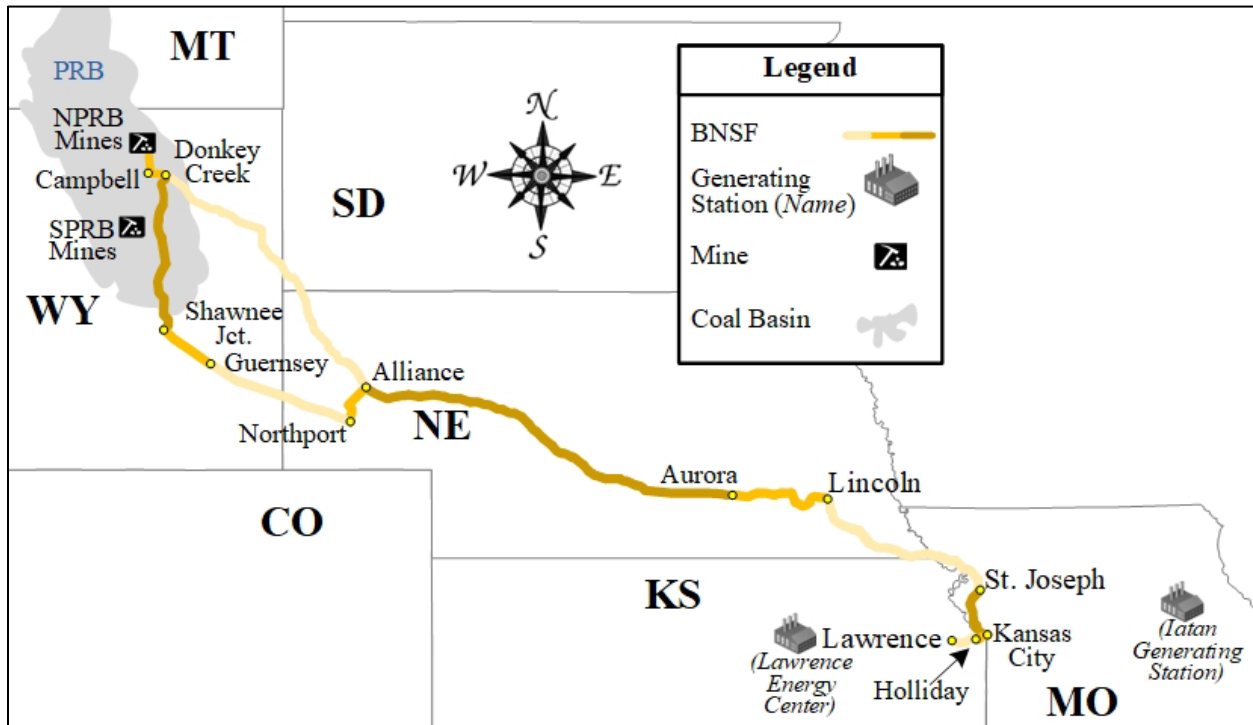
⁴² See: Exhibit No. 11, Pages 2, 4, and 6, Lines 3 and 4, Columns (13), (25), and (37).

⁴³ See: Exhibit No. 8, Line 27, Column (8), and Exhibit No. 13, Line 27, Column (8).

⁴⁴ See: Exhibit No. 8, Line 3, Column (8), and Exhibit No. 13, Line 3, Column (8).

Figure No. 3 below shows the Evergy Route broken into dwell locations and running segments. The nodes (rail stations) shown on the schematic represent intermediate stations where trains routinely stop and report station dwell. Some dwell locations host fueling, re-crew, and train inspection activities, and some are at BNSF classification yards.

Figure No. 3
Schematic of the Evergy Route Running Segments



We developed train speeds by route segment for all trains reporting events at segment endpoints. We then summarized the results by train type for each segment, as shown in Exhibit No. 12. Table No. 5 below contains an aggregate summary for line-haul trains traversing the Evergy Route, by route segment.

However, despite the increase in average speed realized by coal trains along the route, coal train dwell time at intermediate stations was essentially flat. We summarized train dwell time for all trains reporting arrival and departure events at the three (3) major intermediate yards along the Everygy Route. Table No. 6 below contains a dwell summary by train type at Alliance, Lincoln, and Kansas City.

[REDACTED]

⁴⁵ See: Exhibit No. 12, Lines 26 and 39, Columns (2), (5), and (7).

Public Version - Confidential and Highly Confidential Information Redacted

As shown in Table No. 6 above, intermodal train dwell times at Alliance and Lincoln were reduced significantly in 2022 compared to 2019, while intermodal train dwell time in Kansas City remained relatively flat. Merchandise and Vehicle trains also saw significant dwell time reductions at Lincoln, while dwell remained relatively flat at Alliance and Kansas City. In contrast, coal and other unit trains saw a relatively small dwell time reduction at Kansas City, which was offset by small dwell time increases at Alliance and Lincoln, despite the reduction in train volumes along the route. The overall reduction in dwell times from 2019 to 2022 shows that BNSF's trains spent less time in 2022 in its major yards, creating more available capacity in 2022 when compared to 2019 on the Evergy route.

D. TRAIN LENGTH

The relationships among the infrastructure footprint, train volumes, train configurations, and system performance are complex. Logically, reducing the number of trains over a given rail corridor would reduce the number of conflicts between trains and result in better performance. However, this is not always the case. For example, if reducing the number of trains requires increasing the length of trains, problems can occur related to trains exceeding the length of available passing sidings, which effectively reduces the capacity of the line segment.

We compared changes in train lengths and the relationship between train and siding lengths along the Evergy Route over the Study Period. As shown in Exhibit No. 13, average train length increased by over { } feet per train, and the number of trains exceeding 10,000 feet in length { } from 2019 to 2022.⁴⁶ Intermodal and Merchandise train lengths { } than other traffic.⁴⁷

⁴⁶ See: Exhibit No. 13, Line 27, Columns (3), (6), (8), (9), (12), and (14).

⁴⁷ See: Exhibit No. 13, Lines 2, 8, 13, 17, 19, and 26, Columns (3), (6), (8), (9), (12), and (14).

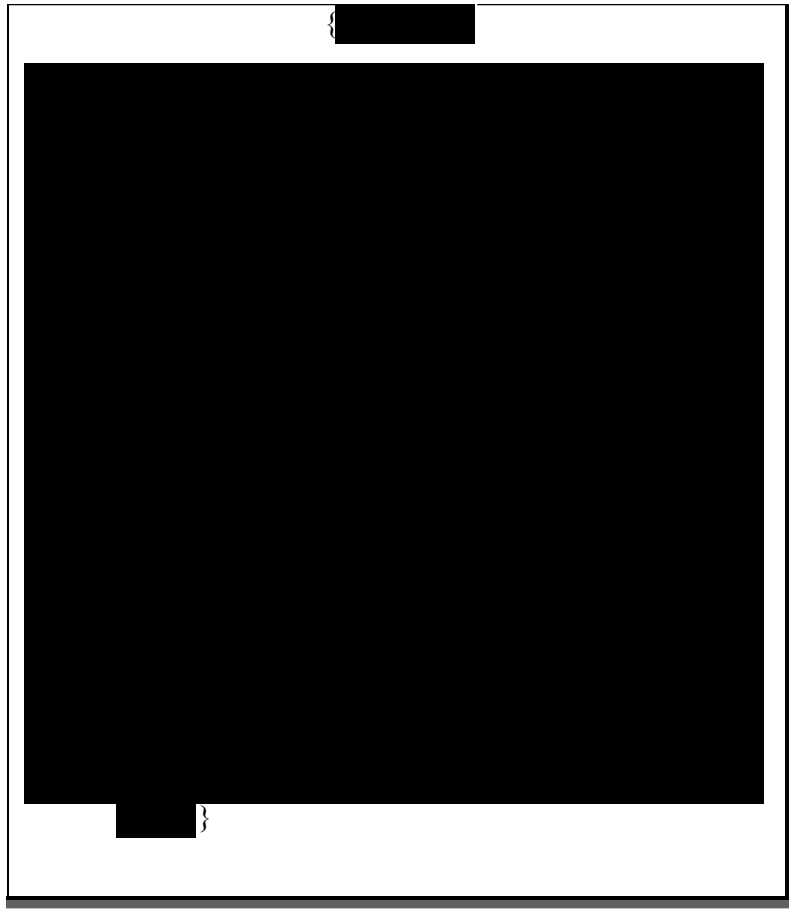
However, the increase in train lengths had no practical impact on the Everygy Route capacity. Specifically, we compared BNSF train lengths to available passing sidings on the two operating segments on the Everygy Route that contain significant stretches of single-track: (1) between Wendover, WY and Northport, NE, and (2) between Lincoln, NE and Kansas City, MO. BNSF train event data showed that only { [REDACTED] } percent of BNSF trains were too long to fit in available sidings along single-track segments in 2022.⁴⁸ Most of the Everygy Route is double- or triple-tracked, where the length of available passing sidings is not as limiting as on single-tracked segments.

E. BNSF DOUBLE TRAIN OPERATIONS

BNSF sometimes couples two (2) otherwise independent coal train consists together and moves them as a single { [REDACTED] } train, generally between Guernsey, WY, and Lincoln, NE, a distance of nearly 500 miles, or between Alliance, NE, and Lincoln, a distance of over 350 miles. This operation was initiated by BNSF in 2019 and continued through at least 2023, as a means for BNSF to achieve greater productivity with fewer crews.

Table No. 7 below summarizes BNSF's double-train operations from 2019 through 2023.

⁴⁸ See: Exhibit No. 14, Lines A.1. and B.1., Column (5).



As summarized Table No. 7 above, double coal train operations peaked in 2021, when {█} percent of BNSF PRB, WY coal trains were combined over these operating segments. However, in 2022, BNSF reduced the frequency of this operation, applying it to only {█} percent of PRB, WY coal trains. BNSF reduced the frequency of this operation again in 2023, to only {█} percent of PRB, WY coal trains.

This practice was used to some extent for nearly all BNSF coal shippers. Roughly {█} {█} of Evergy issue movements were part of a double train operation out of the PRB between 2020 and 2023, and only {█} Evergy trains that moved in 2022 were part of a double

train operation.⁴⁹ Thus, this practice had no material impact on the outcome of service for Evergy and should not have had any material impact on BNSF's decision to limit Evergy's trainset count.

F. NON-INFRASTRUCTURE CAPACITY LIMITATIONS

1. Crew Reductions

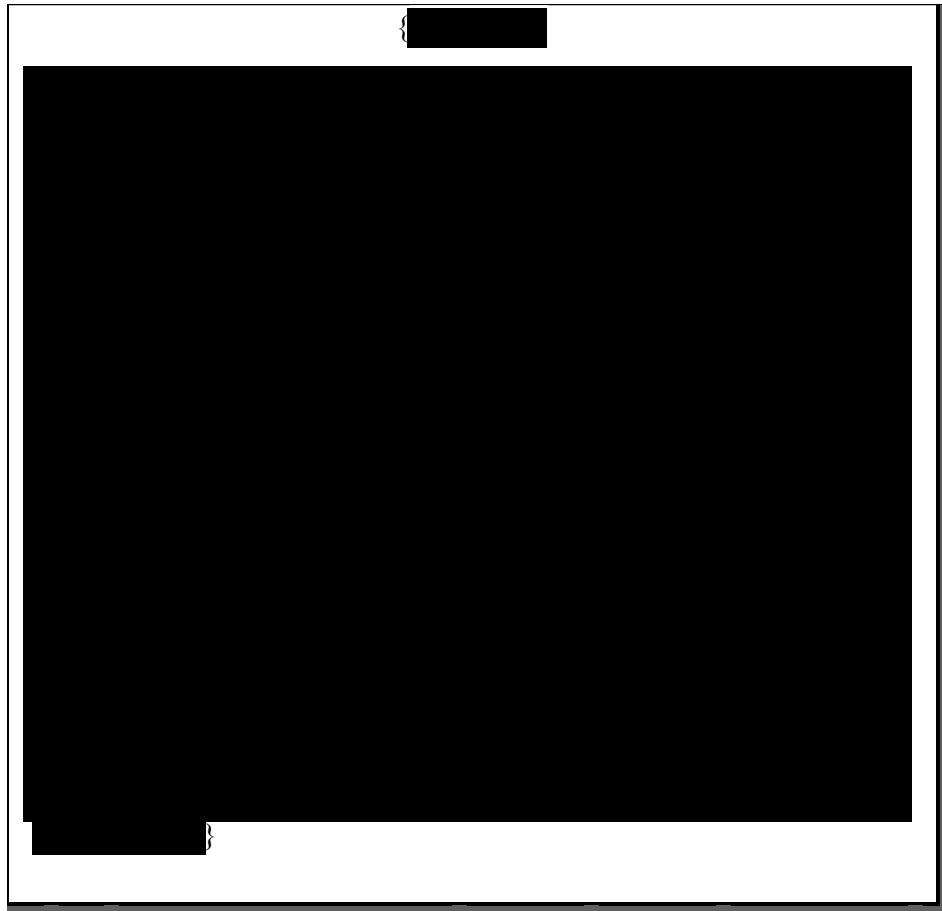
BNSF provided information on employee wages and job assignments covering 2017 through 2023. The data included each employee's:

- a. Unique identification number;
- b. Personnel Area;⁵⁰
- c. Operating position, i.e., engineer, conductor, manager, etc.;
- d. Train assignment as designated by a train symbol;
- e. On-duty FSAC;
- f. Off-duty FSAC; and
- g. Wage type, i.e., trip pay, overtime pay, meal allowance, etc.

We determined the number of T&E personnel reporting at BNSF Personnel Areas along the Evergy Route and evaluated how that metric changed over the Study Period. Table No. 8 below shows the number of T&E employees reporting for duty at the various BNSF Personnel Areas along the Evergy Route during 2019 and 2022.

⁴⁹ See: workpaper "Summary of All Coal Waybills_Opening.xlsx" at tab "Double Trains".

⁵⁰ The personnel area was designated by an alphanumeric code that corresponded to a BNSF station and state.



As shown in Table No. 8 above, the number of T&E employees who operated from BNSF Personnel Areas along the Evergy Route decreased at every location from 2019 to 2022.⁵¹

In addition, the reporting rates for recalled train crews were lower (on average) at locations along the Evergy Route than at locations on other parts of the BNSF network in 2022. Specifically,

⁵¹ Supplemental data provided by BNSF confirms the large reduction in train crew staffing levels at Kansas City (See: workpaper “BNSF-X-EVERGY-0000037 -FlagRte.xlsx” at tab “BNSF-X-EVERGY-0000037” cells BN253 and BN265). Note, however, that relevant crew data were not provided for portions of the Evergy Route north and west of Kansas City (most of the route). The supplemental data production data principally covered the LA-Chicago corridor.

Public Version - Confidential and Highly Confidential Information Redacted

{ } percent of recalled crew staff reported for duty at stations along the Everyg Route in 2022, compared with { } percent on other parts of the BNSF network.⁵²

To account for the possible movement of those employees between locations in a year, we analyzed the number of unique employees who worked out of any of the BNSF Personnel Areas along the Everyg Route in 2019 and 2022, as shown in Table No. 9 below.

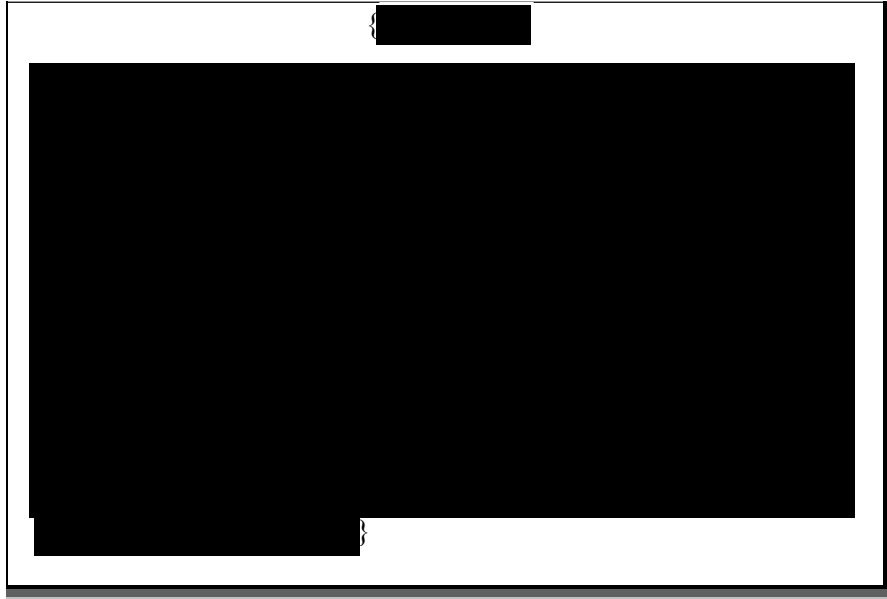


As shown in Table No. 9 above, BNSF reported { } unique T&E employees reporting for duty along the Everyg Route in 2019. By 2022, the number of unique T&E employees reporting for duty along the Everyg Route fell by { }, or a decline of { } percent.

The BNSF employees identified in Table No. 9 above reported for duty as engineers, conductors, brakemen, and switchmen during the year, consistent with BNSF’s Wage Form A and B reporting to the STB.

⁵² See: workpaper “BNSF-X-EVERGY-0000038 -FlagRte.xlsx” at tab “Furlough Recalled Summr_tooltip”, cells D4506, D4511, E4506, and E4511.

Table No. 10 below shows the total number of shifts reported along the Everygy Route in 2019 and 2022 by position.

A large rectangular area is completely redacted with a solid black box. The redaction covers the entire content of Table No. 10, which was supposed to show the total number of shifts reported along the Everygy Route in 2019 and 2022 by position.

As shown in Table No. 10 above, BNSF reported { } T&E employee shifts along the Everygy Route in 2019. By 2022, the number of T&E employee shifts along the Everygy Route fell to { }, a decline of { } percent. As a result, the decline in crews reporting for duty declined { } than the demand for shifts worked along the Everygy Route during the Study Period.

BNSF T&E personnel who reported for duty along the Everygy Route averaged { } shifts per year in 2019,⁵³ and { } shifts per employee in 2022.⁵⁴ Therefore, individual T&E personnel worked { } more shifts (on average) in 2022 than in 2019 to move BNSF's trains. As discussed

53 { }

54 { }

in Section V.G.5. below, {
}.

2. Power Pool Reductions

BNSF provided locomotive event data corresponding to the train event data it provided in discovery.⁵⁵ Additionally, BNSF provided data containing daily locomotive counts, as well as a roster of locomotives owned, usable, and available for service.⁵⁶ Using BNSF data, we determined that the pool of locomotives and the number of locomotives in service on a daily basis decreased over the Study Period, as summarized in Table No. 11 below.



As shown in Table No. 11, Line 2 above, the number of operating locomotives (i.e., locomotives that reported events in BNSF’s locomotive event data) declined by { } percent over the Study Period. However, as shown in Table No. 11, Line 1, the pool of locomotives included in BNSF Daily Locomotive Count data decreased by { } percent over the same period. It is

⁵⁵ See: BNSF_EVERGY_0000013 to BNSF_EVERGY_0000018

⁵⁶ See: workpapers “Summary of Locos_BNSF_EVERGY_0025760 (Locomotive Counts 2019-2023)_Opening.xlsx: at 2019-2023” and “BNSF_EVERGY_0025764 (Loco Snapshot_PR)_Opening.xlsx”.

Public Version - Confidential and Highly Confidential Information Redacted

unclear from the data why the number of locomotives operating daily declined by more than {REDACTED} as much (on a percentage basis) as the daily roster of BNSF locomotives.

Locomotives are deployed across several lines of business. For example, the same locomotive may be used to move coal trains, grain trains, and intermodal trains through the course of a given year. We analyzed the BNSF locomotive event data to identify trends in locomotive deployment. In addition to the overall decline in operating locomotives shown in Table No. 11 above, we observed a reduction in locomotive power allocations to coal and other unit train service, as shown in Table No. 12 below.

[REDACTED]

Public Version - Confidential and Highly Confidential Information Redacted

As shown in Table No. 12 above, there was a { } decline in the number of locomotives that were assigned to unit trains more than 75 percent of the time⁵⁷ (a reduction of 299 units). In contrast, the number of locomotives that were assigned to intermodal, merchandise, and vehicle trains more than 75 percent of the time increased by { } during the study period (an increase of 80 units, despite an overall decrease of 958 units). BNSF's reallocation of locomotives from unit trains to scheduled line-haul trains was not reflective of the respective volume changes of the two (2) train groups. Specifically, there was an { } decline in unit train volumes and a { } decline in intermodal, merchandise, and vehicle train volumes over the Study Period.⁵⁸

G. TRAIN DELAYS

A Train delay occurs when a train is slowed or held unexpectedly and falls behind its planned schedule. BNSF provided data which shows the total delay time for each delay encountered by a train on the BNSF network. BNSF categorized delays by type in its train delay data. Delay categories include maintenance of way, spacing, line operations, terminal, crew, and power, among others.

1. Total Delay

We observed that crew, mechanical, and uncoded delays increased significantly from 2019 to 2022 (crew delays increased 143%).⁵⁹ As explained above, these delays do not reflect trains where a start never occurred due to crew or equipment shortages. For trains that operated, BNSF train delay data shows that the number of reported train delays decreased by { } percent, and total delay minutes decreased by { } percent, from 2019 to 2022.⁶⁰ Specifically, in 2019,

⁵⁷ We used a 75 percent threshold to identify locomotives predominantly assigned to a specific power pool.

⁵⁸ See: workpaper "Summary of Train Event Data_By Train Types_Opening.xlsx" at tab "Train Totals".

⁵⁹ See: Exhibit No. 17, Page 1, Line 2, Column (9).

⁶⁰ See: Exhibit No. 17, Page 1, Line 15, Columns (8) and (9).

Public Version - Confidential and Highly Confidential Information Redacted

BNSF reported {REDACTED} delays, accounting for {REDACTED} total delay minutes {REDACTED} {REDACTED}. In 2022, BNSF reported {REDACTED} delays, accounting for {REDACTED} {REDACTED} total delay minutes {REDACTED}.⁶¹ The change in delay minutes is shown in Table No. 13 below.



⁶¹ See: Exhibit No. 17, Page 1, Line 15, Columns (2) through (5).

Public Version - Confidential and Highly Confidential Information Redacted

As shown in Table No. 13, Column (4), Lines 5 and 13 above, the largest reductions in delay minutes were in the Maintenance of Way and Spacing categories. This would be expected when train volumes decrease as observed over the Study Period, because it is easier to schedule maintenance windows with lower train volumes, and spacing between trains naturally increases when train volumes decrease.⁶²

However, while reductions in those two (2) categories drove decreases in delay events and delay time overall, the number of train delays attributed to crew-related causes *increased by* { } from 2019 to 2022, and delay minutes attributed to crew-related causes *increased by* { }.⁶³ In 2019, BNSF reported { } crew-related delays, accounting for { } total delay minutes, and in 2022, BNSF reported { } crew-related delays, accounting for { } total delay minutes.⁶⁴

Similarly, delay minutes attributed to mechanical failures increased by { } from 2019 to 2022.⁶⁵ Specifically, in 2019, BNSF reported { } minutes of delay attributed to mechanical issues, and in 2022, BNSF reported { } minutes of mechanical delays.⁶⁶ BNSF reduced its equipment maintenance staffing levels by { } over the same period.⁶⁷

⁶² As shown in Table Nos. 13 and 14, BNSF delay data includes a category titled “Missing Delay Or Blank Delay Code”. This group of delays appears to be generated when a train reports operating behind schedule and the cause of delay is not known. This category represents unexplained delay, and it gives an indication of how trains are prioritized by BNSF. Relatively higher priority trains generally report better schedule adherence than relatively lower priority trains. On average, coal trains incurred more delay minutes attributed to unknown causes than other line-haul trains in all periods. In 2022, coal trains incurred { } attributed to unknown causes on average, while intermodal trains incurred { } on average. Within the intermodal category, BNSF’s highest priority intermodal trains incurred only { } of unexplained delay on average. (See: Exhibit No. 18, Page 3, Lines 28, 29, and 26, Column (7).) The data indicates that BNSF generally manages resources to ensure that its high-priority intermodal trains operate on schedule.

⁶³ See: Exhibit No. 17, Page 1, Line 2, Columns (8) and (9).

⁶⁴ See: Exhibit No. 17, Page 1, Line 2, Columns (2) through (5).

⁶⁵ See: Exhibit No. 17, Page 1, Line 6, Column (9).

⁶⁶ See: Exhibit No. 17, Page 1, Line 6, Columns (3) and (5).

⁶⁷ See: workpaper “BNSF Operating Inputs_2019-2023_Opening.xlsx”, Section B, Line 4, Column (6).

Public Version - Confidential and Highly Confidential Information Redacted

In fact, the only category of BNSF employees that increased in size from 2019 to 2022 was the “Total Executives, Official and Staff Assist” category, which increased by {REDACTED}.⁶⁸

In addition, delays attributed to power-related causes increased by {REDACTED} from 2019 to 2022, and delay minutes attributed to power-related causes increased by {REDACTED}.⁶⁹ Specifically, in 2019, BNSF reported {REDACTED} power-related delays, accounting for {REDACTED} total delay minutes, and in 2022, BNSF reported {REDACTED} power-related delays, accounting for {REDACTED} total delay minutes.⁷⁰

The increases in crew delay disproportionally impacted coal and other unit trains, as discussed further in Section 3 (Delay by Train Type) below.

2. On-Route Delays

Train delays along the Evergy Route followed a similar pattern. Total delays decreased by {REDACTED}, and total delay minutes decreased by {REDACTED} from 2019 to 2022.⁷¹ However, train delays attributed to crew-related causes along the Evergy Route *increased by* {REDACTED} from 2019 to 2022, and delay minutes attributed to crew-related causes *increased by* {REDACTED}.⁷² Train delays attributed to mechanical causes along the Evergy Route *increased by* {REDACTED} from 2019 to 2022, and delay minutes attributed to mechanical causes *increased by* {REDACTED}.⁷³ Likewise, delays attributed to power-related causes along the Evergy Route increased by {REDACTED} from 2019 to 2022, and delay minutes attributed to power-related causes increased by {REDACTED}.⁷⁴

⁶⁸ See: workpaper “BNSF Operating Inputs_2019-2023_Opening.xlsx”, Section B, Line 1, Column (6).

⁶⁹ See: Exhibit No. 17, Page 1, Line 10, Columns (8) and (9).

⁷⁰ See: Exhibit No. 17, Page 1, Line 10, Columns (2) through (5).

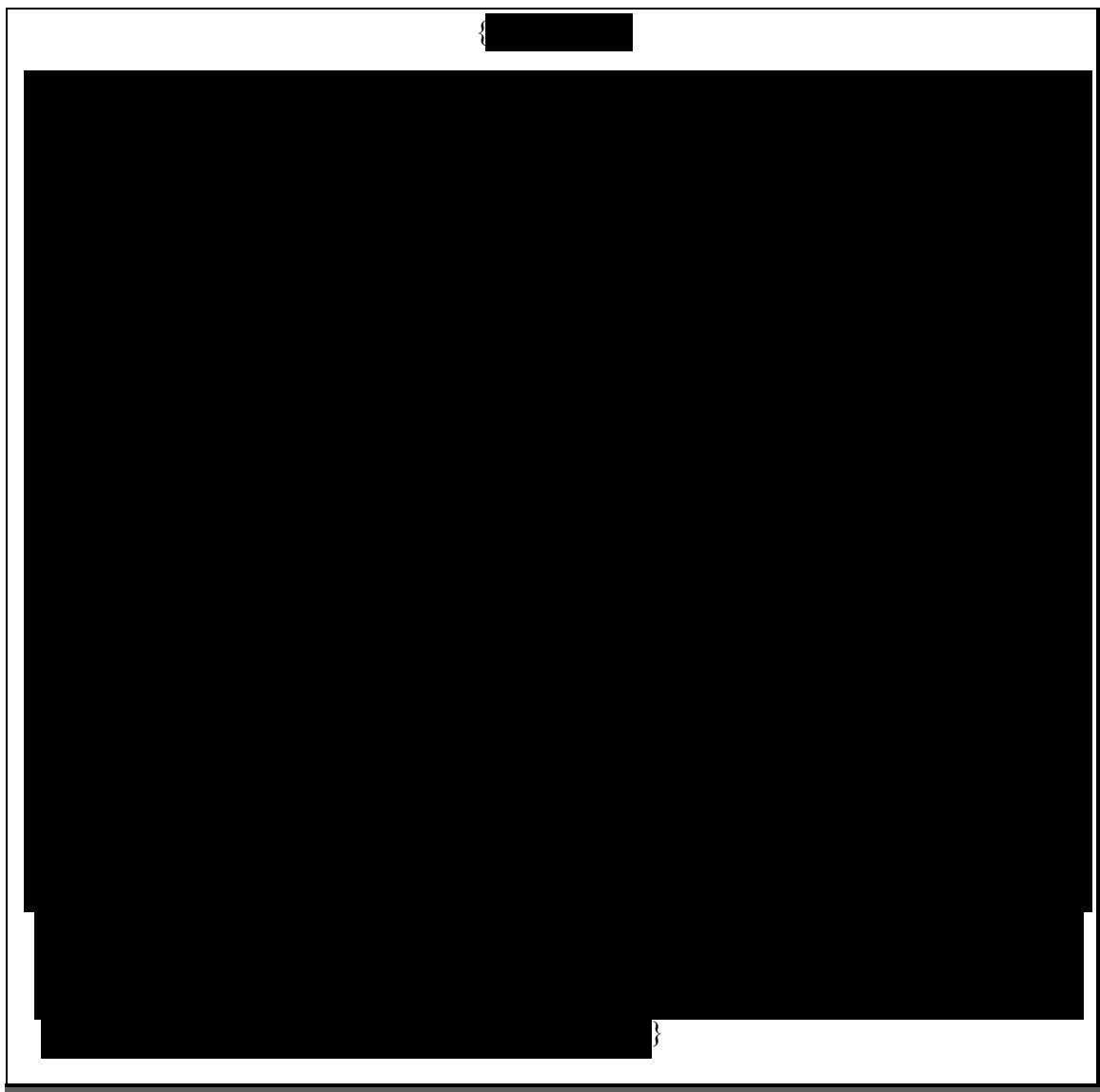
⁷¹ See: Exhibit No. 17, Page 2, Line 15, Columns (8) and (9).

⁷² See: Exhibit No. 17, Page 2, Line 2, Columns (8) and (9).

⁷³ See: Exhibit No. 17, Page 2, Line 6, Columns (8) and (9).

⁷⁴ See: Exhibit No. 17, Page 2, Line 10, Columns (8) and (9).

Table No. 14 below contains a summary of BNSF train delay minutes by category along the Everygy Route.



3. Delay by Train Type

Exhibit No. 18 summarizes select categories of BNSF delays by train type. Crew-related delays increased in both frequency and duration from 2019 to 2022 for all line-haul train groups, as summarized in Table No. 15 below.⁷⁵

⁷⁵ See: Exhibit No. 18, Page 2, Lines 28 through 31, Columns (3) through (11).

	{ [REDACTED] }
[REDACTED]	

As shown in Table No. 15 above, on average, coal trains incurred more delay minutes attributed to crew-related causes than other line-haul trains in all periods. In 2022, coal trains incurred { [REDACTED] } attributed to crew-related causes on average, while intermodal trains incurred { [REDACTED] } on average. Within the intermodal category, BNSF's highest priority intermodal trains incurred only { [REDACTED] } of crew-related delay on average in 2022.⁷⁶

⁷⁶ See: Exhibit No. 18, Page 1, Lines 26, 28, and 29, Column (7).

Coal trains also saw the largest increase in crew-related delay minutes per train over the Study Period. As shown in Table No. 15, crew-related delay for coal trains increased by { [REDACTED] } per train, while intermodal trains saw a { [REDACTED] } per train increase, and BNSF's highest priority intermodal trains saw an increase of only { [REDACTED] } of crew-related delay on average.⁷⁷

4. Evergy Route Delays

Exhibit No. 19 summarizes the number and duration of delays reported at all stations along the Evergy Route. As summarized in Table No. 16 below, all three (3) major crew and power change locations along the Evergy Route (Alliance, Lincoln, and Kansas City) experienced significant increases in crew and power-related delays from 2019 to 2022.

⁷⁷ See: Exhibit No. 18, Page 1, Line 26, Column (10).

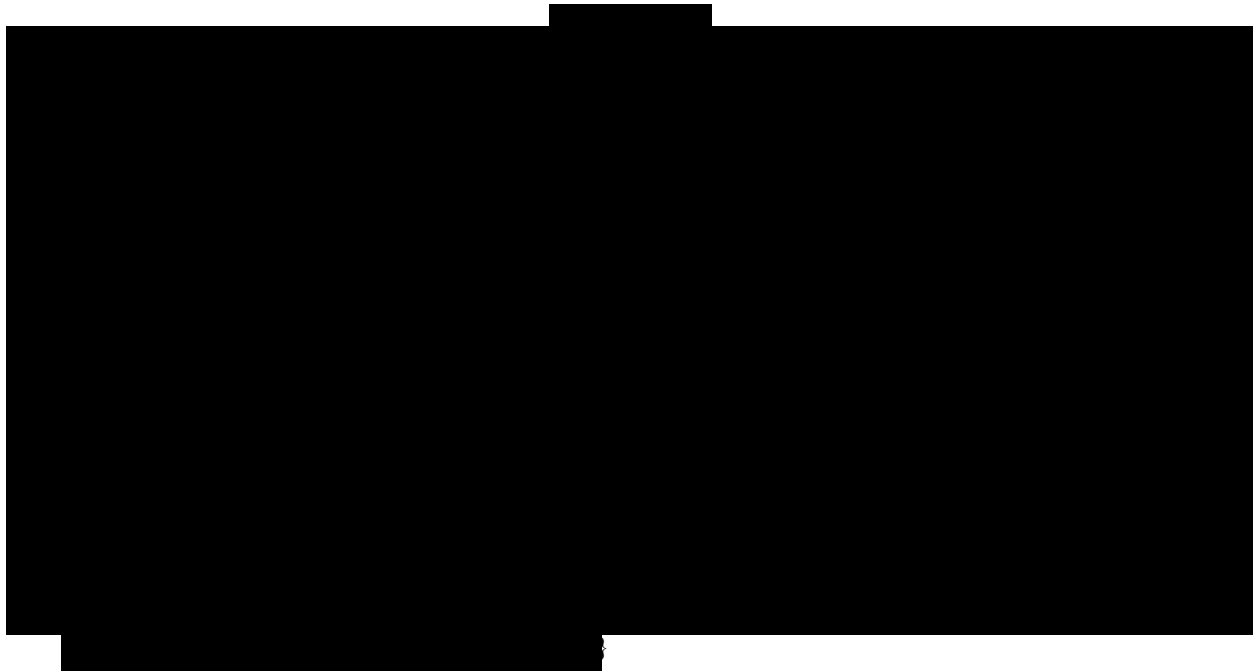
As shown in Table No. 16 above, crew-related delay minutes at Alliance, NE, which is situated in the heart of the BNSF coal corridor between the PRB and Lincoln, NE, increased by

more than { } from 2019 to 2022. Similarly, crew-related delay minutes at Kansas City increased by more than { }.

Power-related delays also increased along the Evergy Route from 2019 to 2022, with Kansas City seeing the largest increase (more than { }) in delays attributed to locomotive power shortages. Delays attributed to mechanical issues increased significantly at Alliance (more than { }) and Lincoln (more than { }).

5. Train Volumes, Crews, and Delays

The increase in delays related to trains waiting on crews is primarily attributable to two (2) variables. During the Study Period, the reduction in BNSF's daily crew starts outpaced BNSF's decline in train volumes. Figure No. 4 below shows the change in train volumes, crews, and crew-related train delays reflected in BNSF data provided in discovery.



As shown in Figure No. 4 above, the number of BNSF trains declined by { } during the Study Period, while the number of BNSF crews deployed on a daily basis declined by { }. At the same time, train delay attributed to crew-related causes increased by { }.

{REDACTED}.⁷⁸ We observed a similar pattern along the Everygy Route, as depicted in Figure No. 5 below.



As shown above, the number of BNSF trains traversing the Everygy Route declined by {REDACTED} {REDACTED} during the Study Period, while the number of BNSF crews reporting on a daily basis along the Everygy Route declined by {REDACTED}, and train delay attributed to crew-related causes along the Everygy Route increased by {REDACTED}.⁷⁹ Based on our analysis, we observed that crew shortages along the Everygy Route caused a sharp increase in train delays, including for coal trains.

⁷⁸ See: workpaper “Train and Crew Figures_Opening.xlsx”

⁷⁹ See: workpaper “Train and Crew Figures_Opening.xlsx”

VI. CONCLUSION

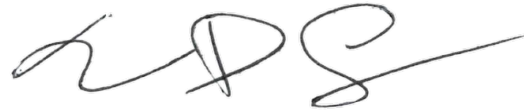
Our evaluation of BNSF operating data covering 2019 to 2022 shows that BNSF implemented changes to its operating plan that resulted in a substantial shortfall in coal volumes delivered from PRB origins to Evergy's Iatan Generating Station and Lawrence Energy Center in 2022, compared to Evergy's scheduled deliveries.

As detailed in this VS and supporting Exhibits, BNSF train volumes decreased significantly from 2019 to 2022, freeing up capacity on its network, which manifested in increased train speeds and reduced terminal dwell times systemwide. We observed these trends both on the Evergy Route and on other portions of BNSF's rail network. However, despite improvements in these operating metrics, we also observed significant reductions in BNSF's train crew staffing levels, equipment maintenance staffing levels, and locomotive power availability. These reductions caused spikes in delays BNSF attributed to crew, mechanical, and power-related causes, despite overall reductions in train delays. Moreover, we observed that available crews and power were reallocated from unscheduled unit train service to scheduled intermodal and manifest train service over the study period.

The compound effect of the operational changes and resource allocation decisions implemented by BNSF resulted in Evergy experiencing a significant deficit in its 2022 coal deliveries.

VERIFICATIONS

I, Timothy D. Crowley, verify under penalty of perjury that I have read this Verified Statement on behalf of Evergy, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

A handwritten signature in black ink, appearing to read 'TDC', is written above a horizontal line.

Timothy D. Crowley

Executed on 6/25/25

* * *

I, Robert D. Mulholland, verify under penalty of perjury that I have read this Verified Statement on behalf of Evergy, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

A handwritten signature in blue ink, appearing to read 'R. D. Mulholland', is written above a horizontal line.

Robert D. Mulholland

Executed on 6/25/25

LIST OF EXHIBITS

Exhibit No.	Exhibit Description
(1)	(2)
1	Robert D. Mulholland Statement of Qualifications
2	Timothy D. Crowley Statement of Qualifications
3	Schematic of the BNSF Railway Evergy Route
4	Summary of BNSF Coal Traffic Moving Over the Evergy Route, 2019-2023
5	BNSF System-Wide Operating Inputs, 2019-2023
6	BNSF System-Wide Operating Outputs, 2019-2023
7	Summary of BNSF Train Event Data Production
8	Summary of Trains in BNSF Provided Train Event Data, 2019-2023 by Train Type
9	Summary of Tonnages for BNSF PRB-WY Coal Traffic Moving Over Evergy Route, 2019-2023 by Plant
10	Percentage of Nomination Shipped on the Evergy Route, 2022 by Plant
11	Summary of Average Trains Per Day Over the Evergy Route by Segment, 2019-2023 by Train Type
12	Summary of Train Speeds Over the Evergy Route by Segment, 2019-2023 by Train Type
13	Summary of Reported Train Length for Trains Traversing the Evergy Route, 2019-2023 by Train Type
14	Percent of Sidings Greater Than 5,000 Feet on Single Track Over the Evergy Route Where the Train Length Exceeded the Siding Length at Siding Locations Where Train Length was Reported, 2019-2023 by Train Type
15	Summary of BNSF Train and Engine Employees Along the Evergy Route, 2019-2023
16	Summary of BNSF Locomotive Data, 2019-2023
17	Summary of Delays by Delay Type, 2019 and 2022
18	Selected Delay Categories by Train Type, 2019 and 2022
19	Summary of On-Route Delays by Location, 2019 and 2022

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

My name is Robert D. Mulholland. I am the Executive Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314 and 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737.

I am a graduate of George Mason University's School of Public Policy, from which I obtained a Master's degree in Transportation Policy, Operations & Logistics, and Bowdoin College, from which I obtained a Bachelor of Arts degree in Government and Legal Studies. I have been employed by L. E. Peabody & Associates, Inc. since 2008 and from 1995 to 2004. From 2004 to 2006, I was the staff economist for the Office of Freight Management and Operations of the Federal Highway Administration ("FHWA") of the United States Department of Transportation ("USDOT"). From 2006 to 2008, I worked for ICF International as a consultant in the transportation group.

L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of passengers and freight. As a result of my extensive consulting experience since 1995 and my participation in and support of maximum-rate, rail merger, service dispute, reasonable practices, and rule-making proceedings before the Surface Transportation Board ("STB"), I have become thoroughly familiar with the major freight and passenger rail carriers in the United States. This familiarity extends to subjects of railroad operations, traffic prioritization, capacity, service, costs and revenues, maintenance, and contract and tariff terms that govern the movement of commodities by rail.

As a consultant, I have directed and conducted economic and operations studies and prepared reports for passenger and freight carriers, shippers, federal agencies, the United States

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

Congress, associations, and other stakeholders dealing with transportation and related economic issues. Examples of studies I have participated in include organizing and directing rail facilities analyses, quantifying the impact of service disruptions for shippers, shared use of rail facilities by passenger and freight traffic, evaluation of traffic and operating factors in connection with single and multiple car movements and unit train operations for various commodities, rate and revenue division analyses, fuel consumption and cost analyses, and other studies dealing with transportation markets for many commodities over various surface modes throughout the United States. Through these studies I have become familiar with railroad costing and operating practices.

I testified in the recent STB proceeding regarding the merger between Canadian Pacific Railway Limited (“CP”) and the Kansas City Southern Railway Company (“KCS”) that formed the Canadian Pacific Kansas City Limited (“CPKC”). I have presented written testimony before the STB related to rail traffic volume and revenue forecasts, cross-over traffic revenue divisions, and train operations in several maximum reasonable rate proceedings on behalf of coal and chemicals shippers. I developed evidence related to rail fuel consumption and cost determinations in an STB unreasonable practice proceeding. I presented written testimony before the STB in Ex Parte proceedings related to proposed changes to the Uniform Railroad Costing System (“URCS”), Class I railroad capital and operating expenditure reporting requirements related to Positive Train Control (“PTC”) implementation, the revenue allocation formula applied to “crossover” traffic in STB maximum reasonable rate proceedings, and other matters.

I have conducted field studies of short line rail systems and rail spurs, and industry-owned rail facilities, and developed Verified Statements and other reports assessing their capacity to accommodate various projected operating scenarios and traffic levels. I have inspected and studied

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

railroad terminal facilities used in handling various commodities to collect data that were used as a basis for the determination of traffic and operating characteristics for specific movements handled by rail.

I have supported the negotiation of transportation contracts between shippers and railroads. Specifically, I have conducted studies concerning transportation rates based on market conditions and carrier competition, movement-specific service commitments, and various cost-based rate adjustment provisions. I have developed numerous variable cost calculations utilizing the formulas employed by the STB for the development of variable costs for common carriers, with particular emphasis on the basis and use of URCS. I have utilized URCS costing principles in studies since the beginning of my career with L. E. Peabody & Associates Inc. in 1995.

I have conducted economic analyses regarding rail transportation matters for dozens of electric utility companies located in all parts of the United States, and for major associations, including the Chlorine Institute, the American Chemistry Council, the Chemical Manufacturers Association, the National Industrial Transportation League, and the Western Coal Traffic League. In addition, I have assisted numerous government agencies in analyzing and solving various transportation-related problems.

In the Western rail merger that resulted in the creation of the present Union Pacific Railroad Company ("UP"), I reviewed the railroads' applications including their supporting traffic, cost and operating data and developed detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed merger.

While employed at FHWA, I was a member of the USDOT inter-agency working group that drafted the National Freight Policy. In addition, I served on the USDOT Freight Gateway

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

Team, a group headed by the Undersecretary for Policy and composed of one representative from each of the surface modal agencies.

While employed at ICF International, I directed and conducted numerous analyses of the rail and trucking industries for federal transportation agencies including the Federal Railroad Administration ("FRA"), the Federal Motor Carrier Safety Administration ("FMCSA"), and the FHWA, including analyses of then-current rail and trucking industry data and forecasts of future trends in both industries.

TIMOTHY D. CROWLEY
STATEMENT OF QUALIFICATIONS

My name is Timothy D. Crowley. I am the President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, and 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737.

I received a Bachelor of Science degree in Management with a concentration in Finance from Boston College in 2001 and graduated cum laude. I have been employed by L. E. Peabody & Associates, Inc. since 2002.

I am a member of the American Economic Association and the American Railway Engineering and Maintenance-of-Way Association ("AREMA").

I have extensive experience with the various formulas employed by the Surface Transportation Board ("STB"), including the Uniform Railroad Costing System ("URCS"), which is the STB's general purpose costing system that estimates unit costs and total variable costs for U.S. Class I railroads. I have reviewed and submitted evidence in numerous proceedings before the STB regarding the implementation and update to various components of the URCS process. I was instrumental in the development of L. E. Peabody & Associates, Inc.'s proprietary URCS program. I have utilized the URCS program to develop countless variable cost calculations for rail shipments across North America, including Canada on all class I railroads and various shortline railroads.

I have sponsored evidence for and participated in numerous maximum rate case proceedings at the STB. The evidence that I sponsored in these proceedings included, but was not limited to: qualitative and quantitative market dominance determinations, which utilizes the STB's URCS Phase III costing program; review of traffic and revenues; development of the rail network and operating plan; development of operating expenses and road property investment; and

TIMOTHY D. CROWLEY
STATEMENT OF QUALIFICATIONS

analyzing results of these analyses in a discounted cash flow model. I have also assisted in developing the return on road property investment realized by major western railroads for specific sections of rail. These studies were used in variable, avoidable, and stand-alone cost analyses.

I have experience with the STB's *Simplified Standards For Rail Rate Cases* issued in Ex Parte 646 (Sub No. 1). I have performed extensive work with the revised guidelines for non-coal proceedings, which incorporates a three-benchmark methodology. The three-benchmark methodology includes calculations using revenue shortfall allocation method ("RSAM"), in which I was trained by members of the STB.

I have been involved and am familiar with procedures used in developing support for Anti-Trust litigation.

I have been involved with Feeder Line Applications presented to the STB, which included evaluating the net liquidation value ("NLV") and going concern value ("GCV") of the subject rail line. I have also conducted numerous NLV and GCV calculations on behalf of our clients for use in the sale or discontinuance of a rail line.

I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, volume commitments, contract reopeners that recognize changes in productivity and cost-based ancillary charges. I have forecasted transportation revenues included in transportation contracts entered into by major companies, taking into account the escalation factors used in specific contracts. Additionally, I have reviewed virtually all major transportation coal contracts between eastern and western railroads and the major consumers of coal in the United States.

TIMOTHY D. CROWLEY
STATEMENT OF QUALIFICATIONS

I have experience evaluating numerous requests for proposal (“RFP”) from both Class I and shortline railroads for the transportation of various commodities via rail, i.e. coal, chemicals, etc. These RFP evaluations included economic, operational, and contractual obligations of the railroads with the goal of obtaining the best and fairest overall transportation package for our clients.

I analyzed and developed cost based rate/price adjustment mechanisms used in long term and short term supply and transportation contracts. I have extensive knowledge of the various rate escalation procedures developed for and employed in transportation and supply contracts. My review of rate escalation procedures demonstrates that application of 100 percent of the change in a price index to existing rate/price levels overcompensates carriers/suppliers for changes in costs.

I have conducted numerous rail transportation marketplace studies to determine the differential between captive and competitive rail shipments for various commodities across all major class I railroads and shortlines.

I have designed and continually monitor economic models which forecast the change in inflation, prices and costs. These economic models forecast general economic indices, certain transportation related indices, certain coal production indices, railroads’ cost of providing service and producers’ cost of mining coal.

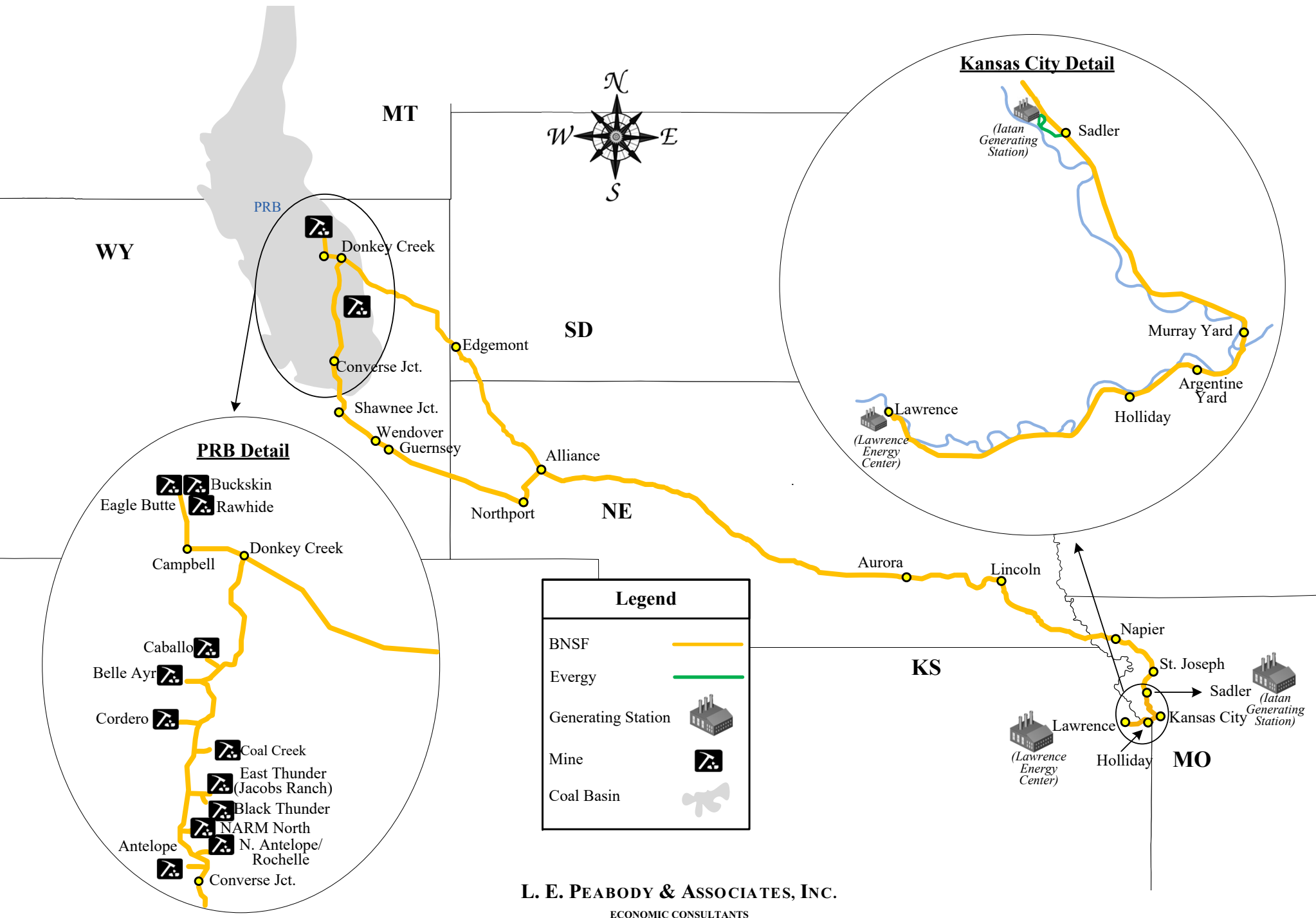
I have managed and assisted in the development of rail car tracking software that is utilized to track the location and status of a client’s railcars in real time. This information can be utilized in pursuing service issues with a rail carrier, maintenance costs associated with use of the railcar, and to calculate various transportation statistics including on-time performance.

TIMOTHY D. CROWLEY
STATEMENT OF QUALIFICATIONS

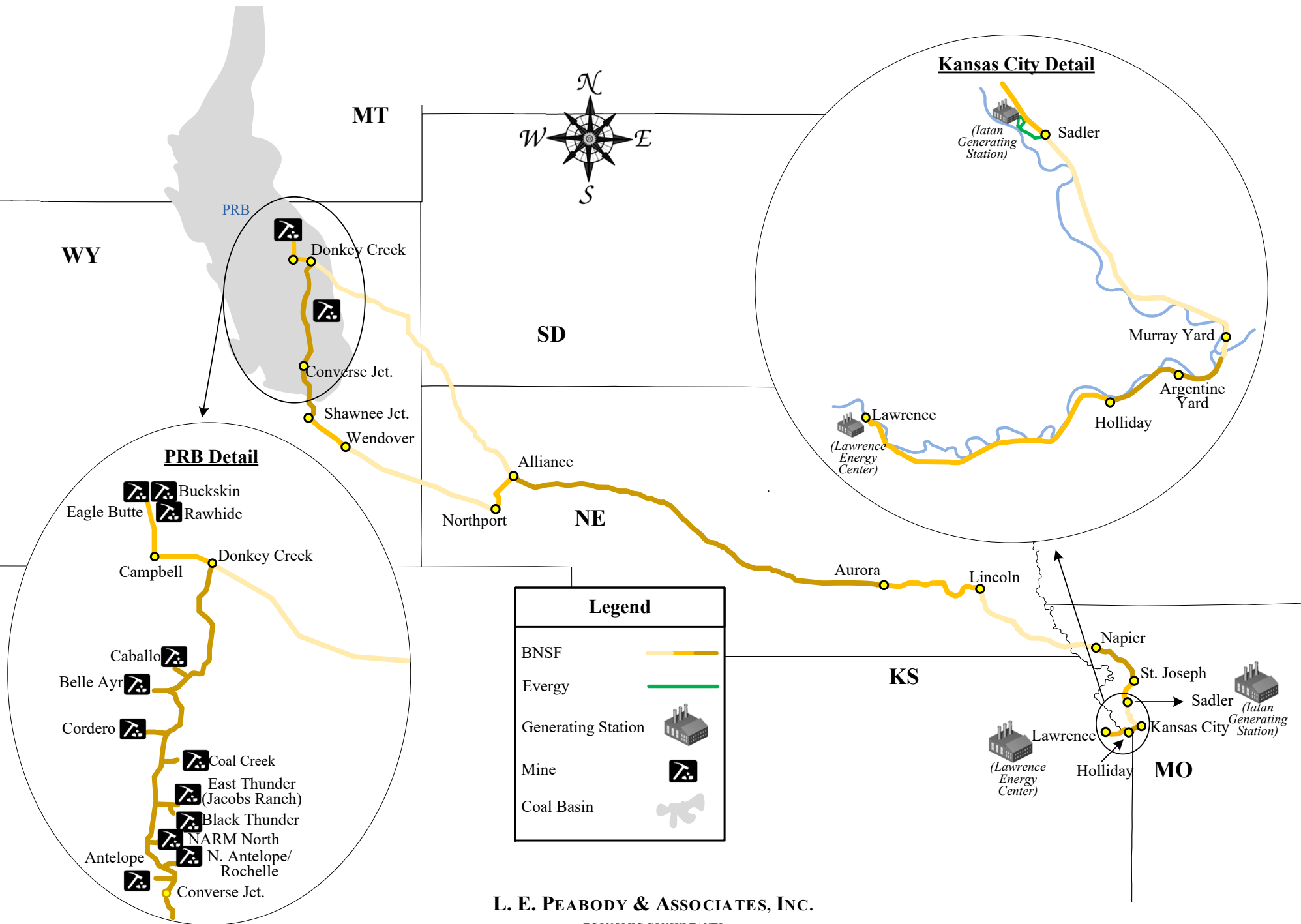
I have established and managed many large databases used to monitor and track railroad related data, including railroad infrastructure, railroad car and train movements and railroad costs and revenues.

I have provided analytical support for both market place and litigation projects sponsored by L. E. Peabody & Associates, Inc. The analytical support included the gathering, review and manipulation of data from the major Class I railroads, the STB and various other government and public sources. Specifically, the analyses that I have conducted include the development of the transportation costs associated with the movement of chemicals, coal and other products to different destinations located throughout the country.

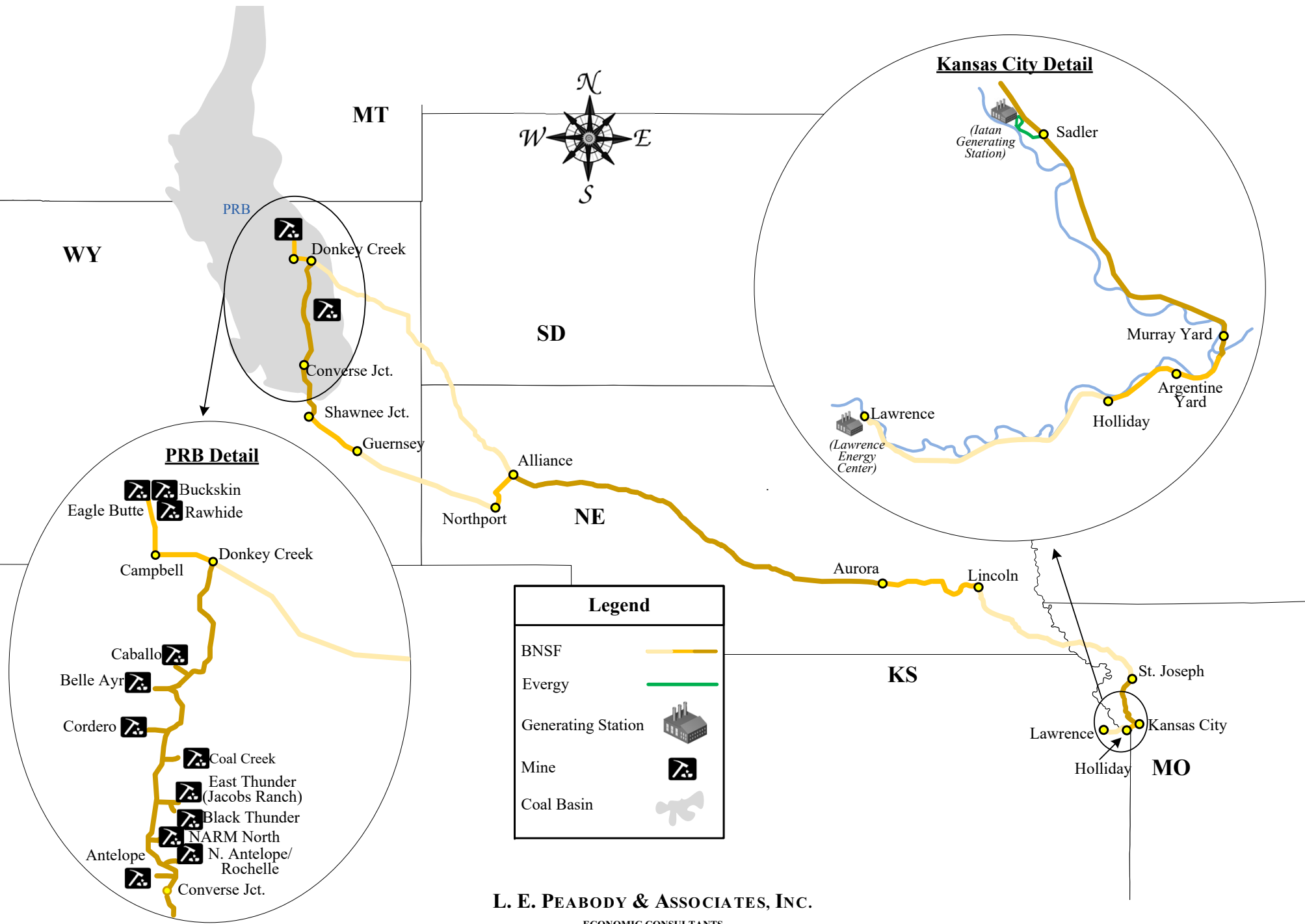
Schematic of the BNSF Railway Everyg Route



Schematic of the Evergy Route Density Segments



Schematic of the Evergy Route Running Segments



Exhibits 4-19

Redacted

Verified Statement of John Denny

VERIFIED STATEMENT OF JOHN DENNY

My name is John Denny, and I am the Assistant/President General Chairman of the International Association of Machinists and Aerospace Workers, District #19. I am making this statement based on my personal knowledge and on information routinely available to me in the course of my duties as Assistant General Chairman. The purpose of my Statement is to provide the Surface Transportation Board with first-hand information regarding BNSF Railway's purposeful reductions in mechanical employee forces over the 2017-2023 time period.

BNSF mechanical staffing levels have significantly decreased in the years since 2017. They have closed several shops along coal route locations, like the Murray Yard location located in Kansas City, MO. BNSF has also scaled back its locomotive inspection. Instead of performing the top level of preventative maintenance (inspection) to ensure they have a reliable fleet, they started performing only FRA mandated inspections which in 2023 failed and forced BNSF to outsource locomotive inspections and maintenance as they could not keep up with the failing fleet. They are so understaffed they have resorted to forcing mechanical employees to work six days a week for weeks on end, just to try to keep their failing locomotive fleet up and running. Understaffing and not performing top-quality preventive maintenance on their locomotive fleet obviously impacts BNSF's ability to provide service to its customers.

BNSF claims that a lot of this change is due to the decline in traffic along the coal routes. Though coal numbers are lower than the peak, they are still moving a significant amount of coal but are trying to do so with a depleting workforce, locomotive fleet, and closed locations. In recent years they made statements to us such as "coal is no longer king" and "our priority is now intermodal, like Swift and Amazon". They also tried to blame a lot of this on Covid but this is not true. BNSF started its force reductions well before Covid arrived, and while Covid has not been an issue for some time now the BNSF

business model has NOT changed or gone back to pre-Covid operations. If you look at the timeline BNSF started this downturn following the PSR model long before Covid. For example, Murray Yard was closed in the 2016-2017 timeframe, clearly proving that coal had ceased to be a top priority for BNSF.

If you look closely at the manpower sheets that are appended to my Statement, the attrition of employees far outweighs the number of new hires that the carrier claims they have. The actual number of employees who resign or retire has reached levels that I have not seen in the 11 years I have been a General Chairman. The manpower numbers for the Machinists have dropped so low that the carrier is now using unskilled labor to perform inspections on locomotives to try and keep actual Machinists working and doing maintenance.

If you look at the overall numbers BNSF has reduced staffing, but is still moving the same number of cars and has shifted its priority from a top-rated transporter to a stock market-driven one, a shift that began in 2016-2017 and continues to the present day.

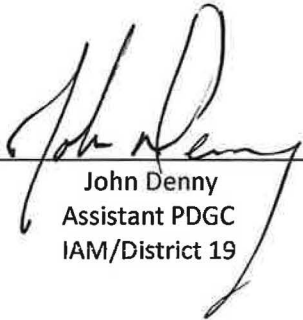
VERIFICATION

VERIFICATION

I, John Denny, state under penalty of perjury that the foregoing is true and correct. Further, I

certify that I am qualified and authorized to file this Verified Statement. Executed on

1/8/, 2025.



John Denny
Assistant PDGC
IAM/District 19

Verified Statement of Michael Crosby

VERIFIED STATEMENT OF MICHAEL CROSBY

My name is Michael Crosby, and I am a Lead Reliability and Data Analytics specialist for Evergy, Inc. (“Evergy”). I am making this Statement based on information personally known by me and on information obtained from Evergy records with which I am familiar and routinely rely on in fulfilling my responsibilities to the company.

BACKGROUND AND PURPOSE OF STATEMENT

I have been in my current position since May 13, 2024. Prior to that I was a Senior Quantitative Analyst for Evergy, Inc., a position that I held for 13 years. I have a Bachelor of Science degree in Electrical Engineering from the University of Missouri, Columbia and a Master’s degree in Engineering Management from the University of Kansas. As Senior Quantitative Analyst, my responsibilities included conducting after-the-fact Generator Lost Opportunity Analysis, Generator Profit & Loss (P&L) Analysis, and other “what-if” Generator Market Analysis studies based on identified sets of variables and inputs. In that capacity, I conducted analyses of coal-fired generating assets operated by companies within the Evergy family, including the Iatan Generating Station (“Iatan”) operated by Evergy Metro, Inc. (“Metro”) and the Lawrence Energy Center (“LEC”) operated by Evergy Kansas Central, Inc. (“EKC”). I also manage and analyze data relative to those stations’ hourly and daily generation offers to the Southwest Power Pool (“SPP”) Day-Ahead and Real-Time Balancing Markets (DA Market and RTBM Market), and the calculation of net energy revenues earned by Metro and EKC when Iatan and Lawrence generation is committed and dispatched by SPP. I also manage data

related to hourly power sales and purchases made by Metro and EKC from the DA Market and RTBM Market. The DA Market manages generation offers to meet forecasted demand and is made during the day prior to the day when the generation would be delivered. The RTBM Market manages offers and commitments that are made during the same day that the generation would be delivered. The RTBM Market focuses on the balance of generation to meet the real-time load requirements while ensuring system reliability.

The purpose of my Statement is to calculate the “lost-opportunity” experienced by Evergy in 2022 because of coal-conservation measures that were required to be implemented at our Iatan and LEC generating stations. I use a combination of common industry software tools (*i.e.*, GenTrader, Microsoft Excel, and Microsoft Access) to determine the additional revenues/profits that Evergy would have earned on sales of electric generation in 2022 had coal conservation not been necessary.

In the balance of my Statement, I first describe how SPP commits and dispatches generation from Iatan and LEC within the SPP system. Next, for Iatan and LEC, in the time periods in 2022 when coal-conservation measures were in place: (a) I provide the “as occurred” offers and the offers that “would have occurred” but for the required coal-conservation measures; and (b) I show the calculation of “actual opportunity” as revenues less cost, with revenues shown as the day-ahead “as occurred” energy revenues and costs calculated as the day-ahead “as occurred” costs (consistent with SPP Market Monitor allowed “at cost” offers) including start-up costs, operational fuel costs, and variable operation and maintenance (“VOM”) costs.

For those same stations and for that same coal-conservation time period, I calculate Evergy’s “lost opportunity” as revenues less costs that Evergy “would have occurred” but for the required coal conservation measures. My calculation of revenues shows the day-ahead “would have occurred” energy revenues and my calculation of costs shows the day-ahead “would have occurred” costs including start-up costs, operational fuel costs, and VOM costs. In addition, I develop the net impact of coal conservation as the difference between Evergy’s “lost opportunity” and its “actual opportunity.” Finally, I summarize the net impact of coal conservation on the Evergy system’s load assets (day-ahead energy costs to meet load requirements) and I summarize the net impact of coal conservation for the remainder of the Evergy generation fleet.

A. IATAN AND LEC COMMITMENT AND DISPATCH IN SPP

Metro and EKC both are Load Responsible Entities (“LREs”) in SPP. As LREs, they are obligated to purchase all electricity needed to meet load from SPP. The purchases must be sufficient to meet actual demand. They also are required to offer all generation into SPP and earn revenue credits that can offset or exceed generation costs and load purchase costs (in the latter case, a net portfolio margin or profit is realized). Metro and EKC maintain specified generation capacities as required by SPP in order to meet peak demand plus a designated planning reserve margin. Iatan and LEC are among the generation resources used for these purposes. Metro and EKC can use a combination of generation resources, though certain resources – such as wind and solar energy – are intermittent and insufficiently reliable to be counted on consistently. For Metro and EKC, coal-fired generation and generation fueled by natural gas are the principal

resources relied upon to meet their LRE obligations consistent with SPP standards and protocols.

Metro and EKC offer generation to SPP in the DA Energy Market and RTBM Market by providing SPP with what is called a two-part generation offer, consisting of no-load costs and incremental costs. The no-load costs represent the fixed cost associated with simply having a generator ready to produce electricity, even when it's not currently generating any power. The incremental costs represent the additional cost of producing each additional unit of electricity once the generator is running. The incremental costs include a series of quantity/price pair combinations representing the incremental cost of energy at various levels of output of a generator. The units of electricity (measured in megawatt hours or “MWh,” which is the amount of energy delivered in an hour) are offered alongside the incremental cost (measured in \$/MWh) for each hour of the day. The SPP Market operators use these two-part offers combined with a number of startup parameters, and most notably startup costs, to determine which generators to commit to the system. The driver for how much power (MWh) to dispatch from each generator is primarily based on incremental offer costs and other operating parameters such as ramp rates that define the rate at which a generator can increase or decrease output (measured in MW per minute).

The SPP DA Market clearing is performed for both Energy and Ancillary Services Markets on a least cost, co-optimized basis and accounts for each resource’s marginal system losses, congestion, and energy cost to minimize the overall production cost. Ancillary Services markets preserve the critical balance of supply and demand as well as

the power quality on the grid. For example, the grid needs resources in reserve to deal with unexpected and sudden events, like a generator outage. SPP has markets for supplemental reserve and spinning reserve products to meet this need. Supplemental reserve markets procure power from suppliers that are not currently operating but are “in reserve” and ready to produce within ten minutes if needed. Spinning reserve markets procure power from power plants that already are operating (that is, “spinning”) but can quickly ramp up to provide additional power when needed. Finally, SPP procures regulation reserves from power plants that are available to assist with power quality on the grid by quickly producing a technical product known as “regulation.” Regulation is necessary to balance generation and load on the grid and maintain the proper frequency.

For purposes of the analyses that are the subject of my Statement, the DA Energy Market is the only Market analyzed, as Iatan and LEC generation is offered into the DA Energy Market, SPP commits to dispatch generation based on offers into that Market, and the Locational Marginal Prices defined below are determined for that Market.

Additionally, the DA Energy Market holds the largest share of overall revenue by far. The RTBM Market and Ancillary Services Markets cannot be included in the analysis because there are no tools available to forecast the 5-minute RTBM Market LMPs or Ancillary Service Market Clearing Prices for the 2022 Lost Opportunity case described in Part C of my Statement below. As I discuss later in my Statement, LMPs are an essential input in my analysis, and the analytic model that I use does not calculate LMPs itself. For that, I rely on SPP Actual LMPs and differential LMPs from the production cost

model known as PROMOD IV. However, PROMOD IV cannot determine LMPs at the 5-minute interval level.

DA Market generation offers to SPP are for delivery the next day during both peak and off-peak hours, at specified prices. “Peak” hours are hours of maximum demand for electricity during a day, typically during early morning hours when residential consumers are preparing for the work and/or school day, and evening hours when those same consumers are using energy for lighting, cooking and heating/air conditioning. During Summer and Winter months, there typically are peak hours during the middle of the day as well, as offices and other commercial users activate air conditioning or heating systems in response to weather conditions. “Off-peak” hours are those when demand for electricity is lower, such as the middle of the night and mid-day hours in Spring and Fall when outside temperatures tend to be more moderate. As a general proposition, prices per MWh tend to be higher during peak hours than in off-peak hours. Exhibit A to my Statement is a spreadsheet showing examples of daily peak and off-peak hours during a typical week. *See also* Crosby electronic workpaper “Exhibit-A-Sample-On-Peak-And-Off-Peak-Hours.xlsx.” The source of the data is shown in the Exhibit.

Under normal conditions (e.g., in the absence of generation constraints), the two part offers submitted into the SPP Market from Evergy coal-fired generation resources such as Iatan and LEC are “at cost with no adders”. Those include costs calculated based on the estimated variable costs of the generation, including delivered fuel costs and

operation and maintenance costs.¹ Evergy Metro and EKC each day offer Iatan and LEC generation to the SPP DA Energy Market for all 24 hours of the following day. Within hours after the SPP DA submission deadline, SPP determines the commitment (online or offline) and dispatch (MWh Output) and DA Market clearing price for each hour of the following day. If Evergy's offer prices are at a level that minimizes SPP's overall congestion, losses and energy costs for the next day, SPP will pay Evergy for each hour's output (MWh) multiplied by the Day-Ahead market clearing price (measured in \$/MWh).

The standard and recognized approach by SPP to setting market clearing prices is through the use of Locational Marginal Pricing (LMP). LMP is defined as the marginal price for energy at the location where the energy is delivered or received (referred to as a "node"), and is based on system conditions (e.g., resource availability, transmission constraints, and transmission losses) and principles of economic dispatch, where generally the lowest cost available resources are used first to meet demand. The SPP DA LMPs for each hour of each historic day are a matter of record. The SPP DA LMPs applicable to offers submitted by Metro and EKC for each hour analyzed in 2022 are shown in my electronic workpapers within the spreadsheet named "Actual Opportunity and Lost Opportunity and Startup Calcs" and identified in the tab named "LMP-DATA".

There are some exceptions to the general commitment rules described above. For example, operators of a generating unit could elect to "self-commit" the unit, meaning

¹ Capital costs associated with the generating resource (including return on investment) typically are recovered through customer (residential and commercial) electric rates approved by State regulators: the Missouri Public Service Commission in the case of Iatan and the Kansas Corporation Commission in the cases of both Iatan and LEC.

providing the offered MWhs regardless of whether the offer price cleared the market LMP, because the operator had a need to run the unit for other purposes, such as testing or after a maintenance outage or remaining online for reliability through cold weather events. Alternatively, SPP could decide to commit a unit to ensure reliable generation heading into an extreme peak demand period (such as very high ambient temperatures in mid-Summer or Winter storms that might threaten gas pipeline deliveries). For the most part, however, the cost-based market offer system sets the standard for Metro and EKC's use of Iatan and LEC in their participation in SPP.

Another relevant factor in terms of the purpose of my Statement relates to Metro's and EKC's status as LREs within SPP. As described above, LREs are responsible for specific load requirements and when they have generating assets endeavor to have the resources available to meet those requirements and offset (or exceed) the cost of purchasing from SPP the generation needed to meet their loads. An operator that is not a LRE could offer generation to SPP in the open market, and if its offer did not exceed the market clearing price it could have its generation committed. If its offer was not cleared, it would not be dispatched and would not receive a revenue credit but otherwise would not face any other consequence. On the other hand, a LRE is required to purchase all of its hourly energy needs from the SPP Market at the aggregate clearing price for the load area. In the circumstance where generation output is less than hourly load demand, the LRE would receive less revenue from the generators than it pays for load. The LRE's account with SPP would be the net of generation revenues less payments for load. If and to the extent that this debit exceeded the operator's cost of generation (that is, the

operator offered its generation at a price above both its cost of generation and the market clearing price for the MWhs in question), then the operator would experience lost revenue credit opportunity when its offered generation was not committed, but still would incur the cost of purchasing its load commitments from SPP. In other words, the generator both loses a profit margin opportunity and incurs higher net costs to meet load.

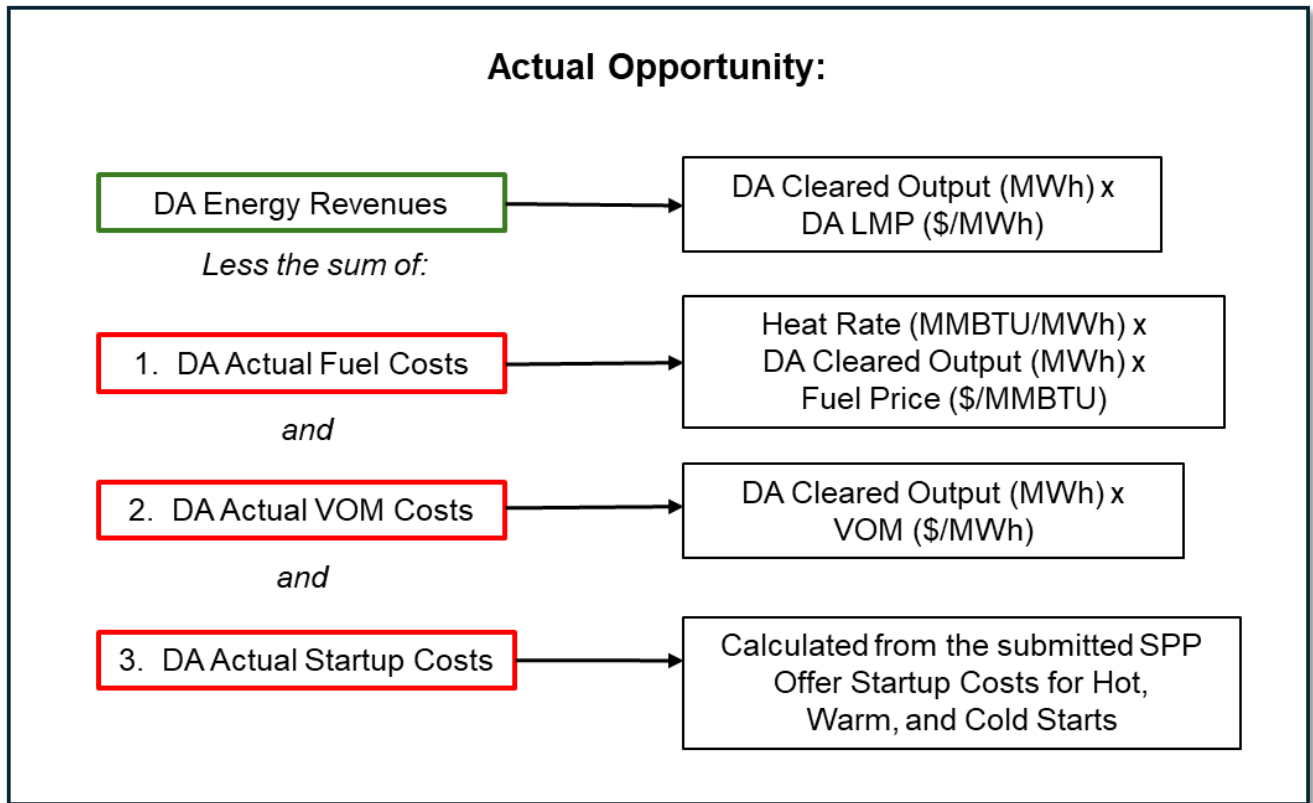
B. OFFERS AS OCCURRED AND WOULD HAVE OCCURRED

During many hours of many days between April 29, 2022 and (i) November 22, 2022 in the case of LEC and (ii) December 20, 2022 in the case of Iatan, Evergy's offer prices to SPP included adders that increased the offer price to a level that did not clear the DA Market or required the units to be dispatched only at the minimum necessary to keep the unit online and available. Initially, the adders applied by Evergy were determined internally according to standards set by SPP. Later in the year, adders of a greater measure were determined in coordination with the SPP Market Monitor. These later adders were developed by SPP's Opportunity Cost Calculator ("OCC"). Evergy provided certain input data regarding unit run limits (in MWhs), unit input/output curves, scheduled outages and other values to SPP, and SPP controlled the OCC function and determined the adder. In both the Evergy-determined and OCC adder cases, the price adders were intended to reduce the likelihood that coal-generated MWhs from Iatan and LEC would be committed by SPP for dispatch, to conserve the coal that otherwise would have been used to generate those MWhs, while continuing to meet the SPP must offer requirement.

Accompanying my Statement as electronic workpaper “Day-Ahead-Offers.xlsx” is a spreadsheet assembled from Evergy records (submitted to SPP as the Day-Ahead Offers) showing the two-part generation offer prices for Iatan and LEC generation with the offer adders that were applied because of coal conservation. My electronic workpaper “Mitigated-Offers.xlsx” is a spreadsheet assembled from Evergy records (submitted to SPP as the Mitigated Offers) showing the two-part generation offers without the adders that would have occurred but for the required coal conservation measures. For Iatan, offers included adders for the time period of April 29, 2022 through December 20, 2022. For LEC, offers included adders for the time period of April 29, 2022 through November 22, 2022.

C. CALCULATION OF 2022 ACTUAL OPPORTUNITY

The formula for the calculation of actual opportunity involves the subtraction of three different cost items from DA Energy Revenues. As shown below, those three cost items include the Day-Ahead Fuel Costs, the Actual VOM Costs, and the Actual Startup Costs:



- DA Energy Revenues are calculated as DA Cleared Output (MWh) x DA LMP.
- DA Actual Fuel Costs are calculated as Heat Input x Fuel Price, where Heat Input = Heat Rate (MMBTU/MWh) x DA Cleared Output (MWh) and the Fuel Price is designated as \$/MMBTU. The Heat Input (MMBTU) at different MWh Output levels, in turn, is found by using the second order Input/Output Curve as provided annually by our Engineering team where:

$$\text{Heat Input} = Ax^2 + Bx + C, \text{ where}$$

$x =$ Generation Output MWh, and A, B, C are coefficients calculated by curve fitting historical heat input data (MMBTU) against energy output data (MWh) for each generator.

- DA Actual VOM Costs are calculated as DA Cleared Output (MWh) x VOM (\$/MWh).

- DA Actual Startup Costs are calculated from the submitted SPP Offer Startup Costs for Hot, Warm and Cold Starts. Each of these startup costs is based primarily on the number of hours the generator is offline and in part on the offers submitted to SPP. The workpapers accompanying my Statement include the data described above.

In the case of LEC, which is capable of generating electricity using either coal or natural gas, DA Actual Fuel Costs are calculated based on the Fuel Operating Mode and based on the “Switchover MW.” The four fuel operating modes are 1) All Coal; 2) Supplemental Gas; 3) Supplemental Coal; and 4) All Gas. For the Supplemental Gas and Supplemental Coal modes, a Switchover MW is defined where all MWh output up to a designated MWh level is fueled by the primary fuel and all MWh output above that level is fueled by the supplemental fuel source. Input/Output curves and fuel prices are similarly used for All Coal and All Gas Modes. For Supplemental MWs, the Supplemental Fuel Costs are calculated at the Switchover Output level and subtracted from the Fuel Costs at the MW Output Level. Table 1 below shows the actual opportunity as calculated and displayed in a spreadsheet model following the equations described above, and all supporting data is included in my workpapers:

Table 1	
Unit	DA Actual P&L w/Startup (Actual Opportunity)
IAT1	57,129,888
IAT2	101,682,569
LEC4	9,667,781
LEC5	33,196,376
Total	\$201,676,614

I performed the process for calculating actual opportunity within a spreadsheet model. This process included first gathering the hourly data necessary to execute the calculations noted above. Four primary sources of data were queried and included in my electronic workpapers within the spreadsheet named “Actual Opportunity and Lost Opportunity and Startup Calcs” and four spreadsheet tabs. The spreadsheet tab named “STARTUP-DATA-MIT” includes Actual Startup Costs submitted to SPP as the Mitigated Offers. The spreadsheet tab named “LMP-DATA” includes DA LMP Prices used to calculate DA Revenues. The spreadsheet tab named “FUEL-COSTS” includes monthly fuel costs as are used for offers without adders. The spreadsheet tab named “PLA-DATA” includes the SPP DA Cleared Output (MWh) for calculating DA Revenues along with the SPP DA Cleared Ancillary Service MWh values that I later used to adjust the Min/Max MW values in the Lost Opportunity as described in Section D. Once I collected the primary sources of data, then within the same spreadsheet noted above, I created one tab for each of the units. Those Tabs, which are named “IAT1 (ACTL PNL),” “IAT2 (ACTL PNL),” “LEC4 (ACTL PNL),” and “LEC5 (ACTL PNL),” include all the hours of the period of the analysis. I manually entered the Input/Output Curve equations and the Variable O&M values into these sheets along with various lookup values as found

in the four primary sources of data noted above. From these tabs, I calculated revenue less costs and included the results in the column labeled DA Actual P&L (\$). For each of the units, I transferred the total values to the tab named “Impact Summary” in the column labeled “DA Actual P&L w/o Startup”.

In order to calculate Actual Startup Costs, I created a Startup Cost sheet for each unit that identifies each of the time frames where a startup occurred. I then calculated the Startup Costs and summed them in the second section of data under the column labeled “ST COST.” For each of the units, I transferred the total values to the tab named “Impact Summary” in the column labeled “DA Actual Startup Costs.”

The column labeled “DA Actual P&L w/Startup (Actual Opportunity)” includes the summation of the preceding two values and is shown in Table 1 above.

D. CALCULATION OF 2022 LOST OPPORTUNITY

Consistent with my explanation of actual opportunity in Part C of my Statement above, the formula for calculating lost opportunity in 2022 due to coal conservation is DA Energy Revenues less the sum of the three separate cost categories – namely, the DA Actual Fuel Costs, Actual VOM Costs, and Actual Startup Costs – that would have occurred but for the required coal-conservation measures. I generated these calculations using the PCI GenTrader Commitment and Dispatch Software. GenTrader is a publicly available software program licensed by PCI Energy Solutions. Evergy has used GenTrader in the past for stochastic forecasting purposes and to run generation unit dispatch analyses based on alternative LMP scenarios. While a user can enter various and alternative inputs into the model, the internal features and workings of the model

itself cannot be changed or manipulated by the user. The model's outputs are driven exclusively by the user's inputs. The dispatch mode used in the calculations described here was price-based dispatch.

I began by populating the program with cost-based inputs taken from day-ahead offer inputs used to calculate DA SPP Offers for Iatan and LEC absent adders. For Iatan and LEC generation in 2022, the key cost-based parameters were input/output curves (translated to GenTrader formatted Incremental Heat Rate Constants and Breakpoint curves), operational fuel prices, and VOM prices. These parameters are consistent with the actual opportunity cost calculations that I described in Part C of my Statement and also included in my electronic workpapers in the spreadsheet named "GenTrader Cost Data Entry" in the tabs named "IHR Constants", "IHR Breakpoint Curve", "IAT1-GT-FUEL", "IAT2-GT-FUEL", "LEC-GT-FUEL", and "Var O&M". Because in GenTrader we can only enter one startup cost dollar amount for the entire period I entered the average of SPP-Submitted Startup Costs for Hot, Warm and Cold modes as cost-based parameters. I averaged Startup Costs as calculated in Section C and identified that cost as the GenTrader Cold Startup Cost since a majority of the starts were considered Cold Starts. In order to calculate the GenTrader Warm Offer Costs, I then used the ratio of the Average of Warm Offer Costs to the Cold Offer Costs and multiplied that value times the GenTrader Cold Startup Cost. In order to calculate the GenTrader Hot Offer Costs, I used the ratio of the Average of Hot Offer Costs to the Cold Offer Costs and multiplied that value times the GenTrader Cold Startup Cost. These calculations may be found in my electronic workpapers in the spreadsheet named "Actual Opportunity and Lost

Opportunity and Startup Calcs” and summarized in the tab named “CALC INPUT TO GT Startup.” The appropriate columns of startup costs used in GenTrader are labeled with “USE in GT.” These startup cost calculations and the remaining other startup parameters in GenTrader format are included in my electronic workpapers in the same spreadsheet named “Actual Opportunity and Lost Opportunity and Startup Calcs,” and the tabs named “GT Startup Costs” and “GT LT Startup Constraints”.

For the revenue-based input and price-based dispatch, I adjusted the DA Actual LMPs, included in my electronic workpapers in the spreadsheet named “GenTrader Adjusted LMP Data Entry” by applying a differential provided to me by Evergy Witness Hsin Foo, based on her analysis. GenTrader itself does not calculate LMPs; they are inputs to the model. The differential reflects the fact that the DA LMPs without the effects of coal conservation at Iatan and LEC would have been lower than the Actual DA LMPs for 2022 (since more lower-cost coal generation would have been offered into SPP).

I then made several other adjustments to ensure against any overstatement of the lost opportunity. To account for the impact of operational constraints, inputs included actual outages and actual derate hours as submitted to SPP, which limited the availability or capacity of Iatan and/or LEC. The actual outages are included in my electronic workpapers in the spreadsheet named “GenTrader Operating Data and Output Adjustments,” in the tab named “Must-Off”. The actual derate hours are included in my electronic workpapers in the spreadsheet named “GenTrader Operating Data and Output Adjustments,” in the top section of the tab named “High Limits”. Also, because the

analysis excludes the Real-Time Balancing Market Impact and Ancillary Services Impact, the low and high MWh output limits of the generators were further reduced by DA Ancillary Services Up and Services Down that were awarded outside of energy revenues. These conservative adjustments are included in my electronic workpapers in the spreadsheet named “GenTrader Operating Data and Output Adjustments,” in the bottom section of the tabs named “Low Limits” and “High Limits” where the adjustments were in the middle sections of these tabs sourced from the appropriate tabs named “DA_DN_QTY_PIVOT” and “DA_UP_QTY_PIVOT”. I also entered Ramp Rates as an input to ensure the realistic movement of output from hour to hour. These values are also shown in my electronic workpapers in the spreadsheet named “GenTrader Operating Data and Output Adjustments,” in the tab named “Operating Constraints”. Ramp Rates are used to reflect the fact that a coal-fired generating unit cannot instantaneously increase or reduce generation in response to changes in electricity market prices.

Once I entered the input values, I ran the analysis and exported the results to Microsoft Access. I queried the data from Microsoft Access for the appropriate time frames and included the identified figures in my electronic workpapers in the spreadsheet named “Actual Opportunity and Lost Opportunity and Startup Calcs,” in the tab named “GT PNL Study Export.” Startup Intervals also were queried and included in the same spreadsheet in the third section of each unit’s appropriate Startup tab. Within these tabs, for more granular accuracy and a more conservative result for each startup, I replaced the GenTrader calculated startup costs with new calculated startup costs based on the appropriately dated Actual Mitigated Offers and transferred the total to the “Impact

Summary” Tab in the column labeled “Study Startup Costs.” The P&L without startup was calculated in the tab named “GT PNL Study Pivot” in the column labeled “P&L w/o Startup” and transferred to the column labeled “GenTrader Study P&L w/o Startup in the “Impact Summary” Tab.

Table 2 below shows the lost opportunity as calculated by GenTrader:

Table 2	
Unit	GenTrader Study P&L w/Startup (Lost Opportunity)
IAT1	59,021,877
IAT2	110,197,325
LEC4	11,534,996
LEC5	37,885,294
Total	\$218,639,492

E. CALCULATION OF IMPACT OF COAL CONSERVATION

Table 3 below shows the total net impact (calculated as the lost opportunity less the actual opportunity) that is attributable to the coal-conservation adders that Evergy applied to its SPP offer prices for Iatan and LEC in 2022, with the conservative adjustments noted above. The resulting principal total amount is \$16,962,878.

Table 3	
Unit	Lost Opportunity Impact
IAT1	1,891,989
IAT2	8,514,755
LEC4	1,867,215
LEC5	4,688,918
Total	\$16,962,878

F. SUMMARY OF 2022 NET ADDITIONAL SPP LOAD COSTS

As discussed earlier in my Statement, Metro and EKC are LREs within SPP and are required to purchase all energy from the SPP Market to serve the load in their respective areas. The absence of lower cost Iatan and LEC coal-fired generation from the DA Energy Market had the effect of increasing the LMPs above levels that would have been calculated had Iatan and LEC been fully committed. This resulted in higher costs incurred by Metro and EKC to purchase load from SPP as LREs. At the same time, however, other Evergy generators that were committed (dispatched) in the hours in question would have earned additional revenue credits due to the higher LMPs. Therefore, it is necessary to offset the latter against the former to determine the actual net impact of coal conservation on Metro's and EKC's costs of serving load. As I noted earlier in my Statement, this consequence of 2022 coal conservation at Iatan and LEC is different and separate from the lost opportunity impact.

There are approximately 100 generating units in the Evergy system, each with multiple input costs and other variables, and it is not feasible to attempt to configure and execute a GenTrader run using actual input data for each one. Also, as I noted above, GenTrader does not calculate LMPs. The most accurate alternative is to model those units using a recognized systemic utility production cost model that does include LMPs among its outputs. PROMOD IV is just such a model, and Evergy Witness Foo has extensive experience and expertise with its operation. As she describes in her Verified Statement, she used PROMOD IV to model the SPP system with and without the coal conservation offer price adders applied to Iatan and LEC in 2022 and determine the

differences in LMPs in each scenario. I used that differential data to adjust the “as occurred” DA LMPs in conservation hours in calculating lost opportunity, as I described above. Ms. Foo also used the PROMOD IV analysis to calculate Evergy’s additional net SPP load requirement costs that resulted from the conservation offer price adders. The total principal amount is \$4,627,883.

All data inputs and other source information that I relied on in performing my calculations and preparing this Statement are included in my electronic workpapers.

VERIFICATION

I, Michael Crosby, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on May 9, 2025.

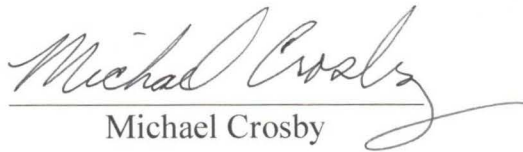

Michael Crosby

Exhibit A

Exhibit A					
Sample Weekly On-Peak Hours (DA LMP)					
Date	DOW	Peak	HE	KCPLIATANUNIAT1	WR.LEC.5
10/3/2022	Monday	On-Peak	7	30.19	30.18
10/3/2022	Monday	On-Peak	8	33.41	32.92
10/3/2022	Monday	On-Peak	9	38.17	37.55
10/3/2022	Monday	On-Peak	10	58.01	57.13
10/3/2022	Monday	On-Peak	11	47.85	47.08
10/3/2022	Monday	On-Peak	12	37.57	36.82
10/3/2022	Monday	On-Peak	13	46.56	45.87
10/3/2022	Monday	On-Peak	14	48.68	47.83
10/3/2022	Monday	On-Peak	15	54.07	53.48
10/3/2022	Monday	On-Peak	16	59.39	58.36
10/3/2022	Monday	On-Peak	17	62.60	61.93
10/3/2022	Monday	On-Peak	18	66.85	66.23
10/3/2022	Monday	On-Peak	19	56.65	56.12
10/3/2022	Monday	On-Peak	20	42.30	44.33
10/3/2022	Monday	On-Peak	21	15.02	12.92
10/3/2022	Monday	On-Peak	22	16.75	13.90
10/4/2022	Tuesday	On-Peak	7	37.89	37.58
10/4/2022	Tuesday	On-Peak	8	36.12	35.78
10/4/2022	Tuesday	On-Peak	9	41.46	41.14
10/4/2022	Tuesday	On-Peak	10	66.57	65.62
10/4/2022	Tuesday	On-Peak	11	55.69	54.77
10/4/2022	Tuesday	On-Peak	12	47.81	47.01
10/4/2022	Tuesday	On-Peak	13	56.48	55.63
10/4/2022	Tuesday	On-Peak	14	67.02	66.17
10/4/2022	Tuesday	On-Peak	15	75.60	74.71
10/4/2022	Tuesday	On-Peak	16	85.34	84.49
10/4/2022	Tuesday	On-Peak	17	88.00	87.28
10/4/2022	Tuesday	On-Peak	18	85.99	85.17
10/4/2022	Tuesday	On-Peak	19	74.08	73.23
10/4/2022	Tuesday	On-Peak	20	63.76	62.97
10/4/2022	Tuesday	On-Peak	21	49.55	48.80
10/4/2022	Tuesday	On-Peak	22	44.42	43.98
10/5/2022	Wednesday	On-Peak	7	50.00	49.75
10/5/2022	Wednesday	On-Peak	8	48.62	48.28
10/5/2022	Wednesday	On-Peak	9	50.74	50.39
10/5/2022	Wednesday	On-Peak	10	73.98	73.43
10/5/2022	Wednesday	On-Peak	11	70.96	70.44
10/5/2022	Wednesday	On-Peak	12	71.46	71.00
10/5/2022	Wednesday	On-Peak	13	72.96	72.57
10/5/2022	Wednesday	On-Peak	14	79.17	79.11
10/5/2022	Wednesday	On-Peak	15	79.05	79.96
10/5/2022	Wednesday	On-Peak	16	77.55	84.49
10/5/2022	Wednesday	On-Peak	17	79.17	87.11
10/5/2022	Wednesday	On-Peak	18	79.30	83.96
10/5/2022	Wednesday	On-Peak	19	83.74	83.48
10/5/2022	Wednesday	On-Peak	20	75.34	74.81
10/5/2022	Wednesday	On-Peak	21	60.10	62.84
10/5/2022	Wednesday	On-Peak	22	53.70	55.87
10/6/2022	Thursday	On-Peak	7	45.21	54.48
10/6/2022	Thursday	On-Peak	8	49.69	56.56
10/6/2022	Thursday	On-Peak	9	40.45	47.58

Source: Evergy internal PCI Data Warehouse (DA LMP by hour for two locations) which reads from SPP Public Information.

10/6/2022	Thursday	On-Peak	10	62.79	71.45
10/6/2022	Thursday	On-Peak	11	62.68	77.72
10/6/2022	Thursday	On-Peak	12	67.92	79.25
10/6/2022	Thursday	On-Peak	13	69.47	79.67
10/6/2022	Thursday	On-Peak	14	69.59	83.14
10/6/2022	Thursday	On-Peak	15	69.68	90.49
10/6/2022	Thursday	On-Peak	16	71.91	93.20
10/6/2022	Thursday	On-Peak	17	75.15	91.42
10/6/2022	Thursday	On-Peak	18	69.68	96.25
10/6/2022	Thursday	On-Peak	19	73.70	84.11
10/6/2022	Thursday	On-Peak	20	63.71	74.40
10/6/2022	Thursday	On-Peak	21	49.46	58.93
10/6/2022	Thursday	On-Peak	22	35.36	41.61
10/7/2022	Friday	On-Peak	7	57.28	64.36
10/7/2022	Friday	On-Peak	8	59.86	68.94
10/7/2022	Friday	On-Peak	9	51.31	56.44
10/7/2022	Friday	On-Peak	10	61.18	68.17
10/7/2022	Friday	On-Peak	11	67.80	73.01
10/7/2022	Friday	On-Peak	12	67.02	69.56
10/7/2022	Friday	On-Peak	13	69.32	69.02
10/7/2022	Friday	On-Peak	14	75.48	75.00
10/7/2022	Friday	On-Peak	15	70.61	70.23
10/7/2022	Friday	On-Peak	16	71.24	71.14
10/7/2022	Friday	On-Peak	17	72.94	72.62
10/7/2022	Friday	On-Peak	18	69.51	69.61
10/7/2022	Friday	On-Peak	19	75.57	80.07
10/7/2022	Friday	On-Peak	20	66.62	72.49
10/7/2022	Friday	On-Peak	21	60.66	66.54
10/7/2022	Friday	On-Peak	22	53.57	57.09

Exhibit A					
Sample Weekly Off-Peak Hours (DA LMP)					
Date	DOW	Peak	HE	KCPLIATANUNIAT1	WR.LEC.5
10/3/2022	Monday	Off-Peak	1	-21.15	-22.87
10/3/2022	Monday	Off-Peak	2	-18.50	-19.97
10/3/2022	Monday	Off-Peak	3	-15.21	-16.60
10/3/2022	Monday	Off-Peak	4	-8.83	-9.73
10/3/2022	Monday	Off-Peak	5	5.65	4.97
10/3/2022	Monday	Off-Peak	6	19.14	18.65
10/3/2022	Monday	Off-Peak	23	11.01	8.17
10/3/2022	Monday	Off-Peak	24	3.12	-0.09
10/4/2022	Tuesday	Off-Peak	1	-15.76	-20.00
10/4/2022	Tuesday	Off-Peak	2	-4.82	-8.27
10/4/2022	Tuesday	Off-Peak	3	4.47	1.58
10/4/2022	Tuesday	Off-Peak	4	11.80	9.43
10/4/2022	Tuesday	Off-Peak	5	18.58	17.24
10/4/2022	Tuesday	Off-Peak	6	27.67	26.80
10/4/2022	Tuesday	Off-Peak	23	40.55	40.12
10/4/2022	Tuesday	Off-Peak	24	33.05	32.69
10/5/2022	Wednesday	Off-Peak	1	30.50	30.19
10/5/2022	Wednesday	Off-Peak	2	30.39	30.11
10/5/2022	Wednesday	Off-Peak	3	28.37	28.15
10/5/2022	Wednesday	Off-Peak	4	30.45	30.23
10/5/2022	Wednesday	Off-Peak	5	32.53	32.30
10/5/2022	Wednesday	Off-Peak	6	42.05	41.81
10/5/2022	Wednesday	Off-Peak	23	46.17	47.03
10/5/2022	Wednesday	Off-Peak	24	41.37	41.37
10/6/2022	Thursday	Off-Peak	1	38.21	44.28
10/6/2022	Thursday	Off-Peak	2	34.46	40.04
10/6/2022	Thursday	Off-Peak	3	31.88	37.04
10/6/2022	Thursday	Off-Peak	4	30.86	35.66
10/6/2022	Thursday	Off-Peak	5	27.84	34.17
10/6/2022	Thursday	Off-Peak	6	36.48	44.66
10/6/2022	Thursday	Off-Peak	23	21.02	27.75
10/6/2022	Thursday	Off-Peak	24	11.98	18.90
10/7/2022	Friday	Off-Peak	1	26.11	24.68
10/7/2022	Friday	Off-Peak	2	22.96	21.59
10/7/2022	Friday	Off-Peak	3	23.48	22.62
10/7/2022	Friday	Off-Peak	4	27.54	28.66
10/7/2022	Friday	Off-Peak	5	28.21	29.81
10/7/2022	Friday	Off-Peak	6	39.16	43.08
10/7/2022	Friday	Off-Peak	23	56.43	62.67
10/7/2022	Friday	Off-Peak	24	45.85	49.89
10/8/2022	Saturday	Off-Peak	1	47.68	48.28
10/8/2022	Saturday	Off-Peak	2	46.65	46.78
10/8/2022	Saturday	Off-Peak	3	47.61	47.78
10/8/2022	Saturday	Off-Peak	4	49.71	49.95
10/8/2022	Saturday	Off-Peak	5	54.09	54.35
10/8/2022	Saturday	Off-Peak	6	55.83	56.11
10/8/2022	Saturday	Off-Peak	7	58.40	58.72
10/8/2022	Saturday	Off-Peak	8	60.37	60.21
10/8/2022	Saturday	Off-Peak	9	67.50	66.73
10/8/2022	Saturday	Off-Peak	10	76.25	75.41
10/8/2022	Saturday	Off-Peak	11	72.34	71.68

Source: Evergy internal PCI Data Warehouse (DA LMP by hour for two locations) which reads from SPP Public Information.

10/8/2022	Saturday	Off-Peak	12	68.78	68.21
10/8/2022	Saturday	Off-Peak	13	67.52	66.98
10/8/2022	Saturday	Off-Peak	14	64.66	64.13
10/8/2022	Saturday	Off-Peak	15	64.21	63.84
10/8/2022	Saturday	Off-Peak	16	64.12	63.90
10/8/2022	Saturday	Off-Peak	17	70.20	69.98
10/8/2022	Saturday	Off-Peak	18	77.10	76.75
10/8/2022	Saturday	Off-Peak	19	81.09	80.67
10/8/2022	Saturday	Off-Peak	20	74.40	73.91
10/8/2022	Saturday	Off-Peak	21	65.54	64.84
10/8/2022	Saturday	Off-Peak	22	58.19	57.51
10/8/2022	Saturday	Off-Peak	23	56.44	56.49
10/8/2022	Saturday	Off-Peak	24	52.56	56.37
10/9/2022	Sunday	Off-Peak	1	49.60	55.44
10/9/2022	Sunday	Off-Peak	2	44.30	47.21
10/9/2022	Sunday	Off-Peak	3	44.40	46.70
10/9/2022	Sunday	Off-Peak	4	47.91	48.04
10/9/2022	Sunday	Off-Peak	5	50.22	50.41
10/9/2022	Sunday	Off-Peak	6	52.46	52.61
10/9/2022	Sunday	Off-Peak	7	53.91	54.02
10/9/2022	Sunday	Off-Peak	8	56.44	56.48
10/9/2022	Sunday	Off-Peak	9	61.67	61.65
10/9/2022	Sunday	Off-Peak	10	80.85	80.19
10/9/2022	Sunday	Off-Peak	11	76.13	75.15
10/9/2022	Sunday	Off-Peak	12	68.50	67.54
10/9/2022	Sunday	Off-Peak	13	65.04	64.15
10/9/2022	Sunday	Off-Peak	14	62.92	62.15
10/9/2022	Sunday	Off-Peak	15	65.17	64.36
10/9/2022	Sunday	Off-Peak	16	70.68	69.81
10/9/2022	Sunday	Off-Peak	17	79.52	78.53
10/9/2022	Sunday	Off-Peak	18	101.33	100.01
10/9/2022	Sunday	Off-Peak	19	93.15	91.98
10/9/2022	Sunday	Off-Peak	20	94.11	93.08
10/9/2022	Sunday	Off-Peak	21	77.85	77.22
10/9/2022	Sunday	Off-Peak	22	64.11	63.69
10/9/2022	Sunday	Off-Peak	23	60.24	59.83
10/9/2022	Sunday	Off-Peak	24	49.07	48.89

Verified Statement of Hsin Foo

VERIFIED STATEMENT OF HSIN FOO

My name is Hsin Foo, and I am a Lead Quantitative Analyst at Evergy, Inc. This Statement is based on information personally known to me, data analyses that I performed, and information or data obtained from Evergy records and various public and regulatory sources described herein, which I am familiar with and routinely rely upon in fulfilling my responsibilities to the company.

I have been employed as a Quantitative Analyst at Evergy since December 2010. Prior to this role, I held the position of Associate at 330 Investment Management in Chicago for two years. Before that, I was a Programmer Analyst within the Market Intelligence group at DTE Energy from 2004 to 2007. I hold a Bachelor of Science degree in Industrial & Operations Engineering from the University of Michigan, and Master of Science degrees in Financial Engineering and Mathematics from Claremont Graduate University. In my current position, I am responsible for developing and managing a Southwest Power Pool (“SPP”) focused electric generation and transmission fundamental model within a software platform called PROMOD IV (“PROMOD”). This model supports various critical analyses, including electric price forecasting, resource planning, regulatory submissions to state and federal regulatory authorities, fuel and interchange budgeting, and other power marketing related activities for Evergy’s operating companies, including Evergy Metro, Inc. (“Metro”) and Evergy Kansas Central, Inc. (“EKC”). Metro operates the Iatan Generating Station near Iatan, Missouri (“IAT”), and EKC operates the Lawrence Energy Center near Lawrence, Kansas (“LEC”).

The purpose of this Statement is to explain the calculation of the net additional costs incurred in 2022 to meet Metro and EKC's load requirements as a consequence of coal conservation measures implemented at IAT and LEC during the year.

PROMOD is a simulation software similar to other fundamental price forecasting models that are commonly used in the electric utility industry. PROMOD is provided by Hitachi Energy (formerly ABB). PROMOD incorporates details of generating unit operating characteristics, transmission grid topology and constraints, and market system operations to model power flows within and across various energy markets. PROMOD performs security-constrained unit commitment and co-optimized economic dispatch to calculate Locational Marginal Prices ("LMPs") at the nodal level. In other words, PROMOD simulates electricity flows through the transmission grid, identifying the most cost-effective way to generate and distribute electricity while adhering to reliability, safety, and transmission limitations.

The PROMOD model utilized in Evergy's routine analyses spans a broad footprint, covering the SPP area and adjacent regions. Its input dataset is populated with assumptions about market demand, supply and transmission, primarily sourced from publicly available reports published by agencies such as the North American Electric Reliability Corporation ("NERC"), Federal Energy Regulatory Commission ("FERC"), Energy Information Administration ("EIA"), Environmental Protection Agency ("EPA"), and various Independent System Operators ("ISOs") and Regional Transmission Organizations ("RTOs"). The demand data includes hourly demand for electric power entities within the model footprint. The supply data contains detailed representations of various types of

generating units within those entities and their operating characteristics, such as capacity, heat rate, fuel type, variable operations and maintenance costs, outage rates, emissions rates, and start-up costs. The generating units include coal-fired generators, natural gas or oil stations, nuclear and hydro facilities, landfill gas generation, and wind and solar assets. Other key inputs include fuel (e.g., coal, natural gas, oil) prices, emission allowance prices, and imports and exports for areas external to the model's footprint. The dataset also includes detailed transmission grid topology, transmission constraints and contingency events.

PROMOD processes this extensive dataset to perform an hourly chronological commitment and dispatch of modeled generation resources, calculating generation costs based on the least-cost unit required to meet demand. It also determines the hourly cost of congestion, which is the added cost of needing higher-cost generators due to transmission constraints. The software aims to minimize system costs while simultaneously adhering to operational constraints and transmission grid limitations to reliably meet electricity demand. PROMOD's internal algorithms are fixed and cannot be manipulated by an operator; operators enter specific data inputs into the model, and the result is the expected condition of the electric market based on those inputs.

The solutions from PROMOD provide detailed hourly snapshots of each modeled generating asset, including metrics such as the hourly megawatt hour ("MWH") dispatch levels and the LMP at each generating unit. Additionally, the results offer comprehensive data and analytics for the modeled region, including hourly congestion costs, transmission flow, regional interchange volumes, and other relevant statistics. These detailed outputs

allow for thorough analyses of the operational and economic performance of the electric grid, reliability assessments, and insights into various power market dynamics, including the market impacts of generation curtailments.

Within Evergy, PROMOD is utilized to model, evaluate and anticipate the system's performance in SPP under a variety of operating scenarios. These scenarios consider factors such as varying generation asset availability; planned maintenance; forced outages and other factors; seasonal weather forecasts and associated projections of power demand within Evergy's primary service territories; fuel cost fluctuations; the application of environmental regulations and emissions controls; changing operation and maintenance costs at individual generation facilities; and impacts of new generation assets, plant retirements, new transmission projects and transmission outages. The economic impacts of such alternative scenarios are quantified by comparing the resulting outcomes to a base scenario, often referred to as a "reference case" or "base case". These variances or differentials can be applied to actual historical outcomes to construct a "but for" scenario, offering insights into potential outcomes under different circumstances.

My team and I execute PROMOD runs throughout the year. 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. To ensure the model's accuracy and relevance, it undergoes regular evaluation and recalibration, maintaining consistency while accounting for market changes that may alter the SPP system.

I have extensive experience with the use of PROMOD and have submitted testimony before the Missouri Public Service Commission presenting my PROMOD-based analyses. Additionally, my analyses have supported filings with the Kansas Corporation Commission. PROMOD results have been accepted by these agencies in proceedings to consider the level of consumer electric rates and in utility prudence determinations.

This Surface Transportation Board proceeding concerns Evergy's implementation of coal conservation measures at IAT and LEC in 2022, which limited the availability of lower-cost energy for dispatch by SPP. The primary conservation method employed by Evergy involved applying "adders" to the prices at which IAT and LEC offered their energy to SPP. Initially these adders were developed internally by Evergy. Later in 2022 Evergy applied adders determined by SPP through the use of its Opportunity Cost Calculator. Both of these adders effectively inflated the cost-based generation prices that Evergy would typically offer, raising them to levels more likely to exceed SPP's marginal cost¹ for the hours in question, thereby preventing the energy from clearing the market. As a result, SPP committed and dispatched generation from IAT and LEC less frequently than it would have otherwise, thereby conserving the coal that otherwise would have been consumed.

¹ The cost a power plant incurs to generate one more unit of electricity (MWH), also called the market clearing price for energy or LMP.

Generally, one would expect LMPs to increase during periods of conservation due to the removal of lower-cost generation from the market.²

Within the SPP structure, Evergy participates in the SPP market as both a seller and buyer of energy. Through its operating companies such as Metro and EKC, Evergy sells electricity generated from Evergy-owned or contracted units to SPP at their respective LMPs (“sales”) and purchases energy from SPP to meet its load requirements at the LMP associated with the load hub³ (“purchases”). In circumstances where the revenue from sales exceeds the cost of purchased power to meet load requirements, Evergy earns a margin, or profit. When the reverse occurs, Evergy incurs a net purchase cost to meet load.

To evaluate the impact of coal conservation measures at IAT and LEC on Evergy’s net cost of serving load in 2022, I utilized PROMOD to model two scenarios. The first scenario simulated the SPP market and Evergy system “with conservation” using actual historical data from 2022 as inputs. Market variables that are publicly available were obtained from SPP through their Integrated Marketplace Portal; these include SPP balancing areas’ 2022 hourly load, and SPP’s 2022 interchange (DC ties to the West and Texas). The monthly fuel prices for coal generating units were based on the reported 2022 values from Form EIA-923. The monthly natural gas fuel prices were based on a

² During the period from May 1, 2022 through October 20, 2022, LEC also conserved coal by switching to gas generation during particular hours. Since gas generation typically is higher-cost than coal-fired power, this would push LMPs higher as well.

³ A load hub is an aggregation of electricity delivery point, or nodes, used for market operations. The LMP at a load hub is typically a load-weighted average of all the LMPs of its member nodes.

combination of prompt-month Henry Hub⁴ and daily settled basis swing futures from 2022 to estimate a monthly delivered gas price for each natural gas generating station. The 2022 monthly average oil fuel prices used were as reported by the U.S. Energy Information Administration (“EIA”). An estimate of the 2022 hourly “actual” wind generation for wind farms provided by 3TIER, a company that specializes in renewable energy assessment and forecasting, also was utilized. I also included an outage schedule for non-Evergy generating units across the modeled region based on 2022 reported Continuous Emission Monitoring Systems (“CEMS”) data. For Evergy-owned units, known “actual” 2022 average monthly values were used for their fuel prices, unit outages and derate inputs. These model inputs described are variables that are regularly updated in the ordinary course of business.

To model the coal conservation measures on IAT and LEC “as occurred”, energy bid cost adders were used during periods where most or all of the month was under coal conservation activity. These adders were input to the model on a monthly basis and were rounded up or down depending on the effective dates. For example, if there was an adder included in a unit’s market offer beginning April 28th, an energy bid cost adder would be included in the model starting May 1st. Likewise, if there was a change in a market offer beginning September 3rd, the change would be implemented in the model for the entire month of September. This scenario represented the modeled “base case”.

⁴ Henry Hub is a major pipeline interchange located in Louisiana. The price of natural gas at Henry Hub is widely used in the industry as a benchmark price for natural gas in North America.

In addition to applying cost adders at IAT and LEC, LEC conserved coal by incorporating natural gas into its operations. The specifics of LEC's gas generation operations are detailed in the statement of Evergy Witness Michael Crosby. However, PROMOD lacks the functionality to accurately model the natural gas switching operations at LEC, and therefore this aspect of LEC's coal conservation actions was excluded from this PROMOD analysis. In the PROMOD model, LEC operates solely on coal as its primary fuel. Since natural gas is typically a more expensive fuel source, keeping LEC on coal would be less expensive than running on natural gas. Consequently, modeling LEC in PROMOD to operate only on coal represents a more conservative approach.

In the "but for" scenario, all model variables were held constant as in the "base case" or "with conservation" scenario, except the energy bid cost adders at IAT and LEC were removed. I then calculated the hourly LMP differentials between the "with conservation" scenario and the "but for" scenario at the IAT and LEC locations and provided them to Mr. Crosby for his use in the calculation of lost opportunity attributable to the 2022 coal conservation at the IAT and LEC stations. This calculated differential recognizes the fact that in the "but for" scenario, LMPs would have been lower due to the availability of more lower cost coal generation. My workpapers show the calculation of the LMP differentials.

To comprehensively evaluate the impact of coal conservation on Evergy, it is necessary to measure the effects across all sources of expenses and revenues. As noted, LMPs are expected to increase during periods of coal conservation, affecting both purchases and sales. It is necessary to assess the rise in purchase costs to meet demand alongside the benefits of higher sales prices for generating units other than IAT and LEC

to determine the overall net economic impact of coal conservation on Evergy's cost of meeting load commitments.

To assess the impact of coal conservation actions on purchases, PROMOD modeled hourly LMP differentials at each jurisdiction's load settlement location were derived from the "with conservation" scenario and the "but for" scenario. These differentials were applied to their respective hourly demand amounts. For example, the difference in the load-weighted average LMP of the load nodes in Metro's service territory between the "with conservation" and "but for" scenario was calculated. This difference was then multiplied by the corresponding hourly actual demand of Metro's customers to determine the increased purchased cost for Metro. The same calculation was performed for each of Evergy's load areas to determine the increased purchased cost for all of Evergy. The result of this step was a calculation of the additional cost incurred by Evergy to meet load requirements as a consequence of coal conservation at IAT and LEC. That total additional cost was \$37,509,755.00.

A similar methodology was used to determine the impact of coal conservation on Evergy sales. For each Evergy-owned and contracted generating unit, excluding IAT and LEC, the PROMOD-modeled LMP differential was applied to the corresponding change in modeled power production to assess the impact on revenue. Additionally, each unit's fuel cost was applied to the respective change in modeled power production to determine the impact on associated operating costs. The combined results of revenue and costs, representing net revenue, quantify the impact on Evergy sales.

In performing the foregoing analysis, the net benefits attributable to IAT and LEC in the “but for” scenario were excluded, as they are already accounted for in Mr. Crosby’s lost opportunity analysis and should not be double-counted. Additionally, during the period when Metro and EKC implemented coal conservation at IAT and LEC, similar measures were also in effect at Metro’s La Cygne Generating Station near La Cygne, Kansas (“LAC”). Unlike IAT and LEC, however, LAC was not served by BNSF Railway in 2022, and the coal conservation measures there resulted from different conditions unrelated to the issues in this proceeding. Consequently, the impact of conservation at LAC within SPP was accounted for in both the “with conservation” and “but for” PROMOD scenarios. This analysis showed that total additional sales revenue for other Evergy units in the “with conservation” scenario amounted to \$32,881,872.00. This figure is subtracted from the total additional cost to meet load to arrive at a net additional power purchase cost attributable to 2022 coal conservation at IAT and LEC.

The total net additional costs incurred by Evergy in 2022 to fulfill its load commitments, attributable to coal conservation at IAT and LEC (net of impacts on other Evergy coal generators) are \$4,627,883. Exhibit A to my Statement summarizes the calculations described above. The source inputs utilized to run PROMOD, the output data relied upon, and all other background supporting data and sources are included in my workpapers. The information in my Exhibit and workpapers will permit any analyst familiar with PROMOD to replicate my results.

VERIFICATION

I, Hsin Foo, state under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on May 7th, 2025.



Hsin Foo

Exhibit A

Redacted