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ATTORNEYS AT LAW

KELVIN J. DOWD

October 25, 2024

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The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
October 25, 2024
Part of
Public Record

Re: STB Docket No. NOR 42180, *Evergy, Inc., Evergy Metro, Inc. and
Evergy Kansas Central, Inc. v. BNSF Railway Company*

Dear Ms. Brown:

On October 23, 2024, BNSF Railway Company, Defendant in the above-referenced action, filed Confidential and Public versions of what it styled as a “Reply In Support Of Its Motion to Compel.” In actuality, the pleading is a reply to the Reply To Motion To Compel that Complainants filed on October 16, 2024, and largely repeats points and claims made by BNSF in its Motion or offers arguments that could have been included in the original Motion.

BNSF acknowledges that the Board’s rules prohibit the submission of “replies to replies.” *See* 49 C.F.R. § 1104.31(c) (BNSF Reply at 1). However, BNSF then asks for leave to file in a terse footnote and states that it should be permitted to file because of a desire to “clarify the record,” reargue applicable law, and address “new facts” (*id.* at 2). Complainants submit that these purported justifications are meritless, and that BNSF’s Reply should be rejected and not considered by the Board. Characterizations of a record and contrary legal arguments are features of *any* reply to a pleading, and the “new facts” cited by BNSF were simply supplemental responses to interrogatories that are standard under the Rules of Practice (49 C.F.R. § 1114.29(c)) and were *requested by BNSF* in the instructions included in its original discovery requests. If these were considered adequate to waive 49 C.F.R. § 1104.13(c), then every litigant could justify replying to a reply, and the prohibition would be a mere illusion.

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BNSF's October 23 Reply to Complainants' October 16, 2024 Reply To Motion To Compel should be stricken from the record and not considered by the Board.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelvin J. Dowd". The signature is fluid and cursive, with the first name "Kelvin" written in a larger, more prominent script than the last name "Dowd".

Kelvin J. Dowd
Attorney for
Eversource, Inc.
Eversource Metro, Inc. and
Eversource Kansas Central, Inc.

cc: Counsel of Record