

SERVICE DATE – JUNE 30, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42179

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

v.

BNSF RAILWAY COMPANY

Decided: June 30, 2023

On April 14, 2023, Navajo Transitional Energy Company, LLC (NTEC), filed a complaint and petition for declaratory order alleging that BNSF Railway Company (BNSF) has breached its common carrier obligation, failed to provide adequate car service, and engaged in unreasonable practices with respect to coal transportation service from NTEC's Spring Creek mine in Big Horn County, Mont., (Spring Creek) to the Westshore Terminals facility at Roberts Bank, B.C., Canada (Westshore).¹ BNSF filed an answer to NTEC's complaint and petition on May 5, 2023.

On May 23, 2023, pursuant to 49 C.F.R. § 1111.11, NTEC filed a report on the parties' preliminary scheduling conference. NTEC states that the parties were unable to agree on a proposed procedural schedule and requests that the Board adopt its proposed schedule. (NTEC Report 1.) BNSF, also on May 23, filed a separate motion for the Board to adopt its proposed procedural schedule.² In short, NTEC's proposal would close discovery in mid-August and close the evidentiary record on November 16, 2023; BNSF's would close discovery in September (following exchange of expert reports in August) and close the record in February, 2024.

The Board, after reviewing the parties' proposals, will adopt the procedural schedule outlined below:

¹ In a separate docket, NTEC filed an ex parte application seeking an emergency service order pursuant to 49 U.S.C. § 11123 and, or alternatively, a preliminary injunction pursuant to 49 U.S.C. § 1321(b)(4). By a decision served on June 23, 2023, the Board issued a preliminary injunction ordering BNSF to transport a minimum of 4.2 million tons of coal on an annual basis in 2023 from Spring Creek for service destined to Westshore, and an additional one million annual tons as capacity is available to serve NTEC. The Board also directed BNSF and NTEC to file regular status reports. See Navajo Transitional Energy Co.—Ex Parte Pet. for Emerg. Serv., NOR 42178 (STB served Jun. 23, 2023).

² The parties both also note that they are conferring regarding an appropriate protective order. (BNSF Mot. 2; NTEC Report 2.)

Discovery ends	August 14, 2023
NTEC Opening	September 22, 2023
BNSF Reply	November 2, 2023
NTEC Rebuttal	November 30, 2023

It is ordered:

1. The procedural schedule described above is adopted.
2. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.