

SERVICE DATE — APRIL 24, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42178

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC—EX PARTE PETITION FOR
EMERGENCY SERVICE ORDER

Decided: April 24, 2023

On April 14, 2023, Navajo Transitional Energy Company, LLC (NTEC), filed an ex parte application seeking an emergency service order pursuant to 49 U.S.C. § 11123. In addition, or alternatively, NTEC seeks a preliminary injunction pursuant to 49 U.S.C. § 1321(b)(4). Specifically, NTEC asks the Board to direct BNSF Railway Company (BNSF) to restore and maintain adequate coal transportation service from NTEC's Spring Creek Mine in Big Horn County, Wyo., to the Westshore Terminals facility at Roberts Bank, B.C., Canada.¹ BNSF filed a confidential reply opposing the application on April 19, 2023, and a redacted public reply on April 20, 2023. NTEC filed a rebuttal on April 21, 2023.

The Board intends to hold an oral argument regarding NTEC's request for emergency/injunctive relief on May 10, 2023. Further details concerning the oral argument will be announced in a future decision.

In preparation for the oral argument, the Board will hold a pre-argument conference with NTEC's and BNSF's outside counsel virtually via Zoom at 9:30 a.m. (EDT) on April 27, 2023. In the pre-argument conference, the Board will discuss expectations for the May 10 oral argument. Due to confidentiality considerations, the pre-argument conference will not be open to the public but will be transcribed. The transcript will be added to the public record, redacted as appropriate under the protective order in this case.

NTEC and BNSF will be directed to provide to the Board, via email at Hearings@stb.gov, by April 25, 2023, the email addresses and phone numbers of their outside counsel who will participate at the conference. No later than April 26, 2023, the participating outside counsel will receive an email from the Board via Hearings@stb.gov titled "pre-argument conference" that includes a link and instructions for how to enter the Zoom meeting. The links will be participant-specific and are not to be forwarded or used by other individuals to observe the conference.

¹ NTEC also has filed, in Docket No. NOR 42179, a related complaint alleging that BNSF has breached its common carrier obligation, failed to provide adequate car service, and engaged in unreasonable practices with respect to the transportation at issue.

For further information regarding the pre-argument conference, contact Jonathon Binet at (202) 245-0368. “Frequently Asked Questions” pertaining generally to participation in Zoom proceedings are posted on the Board’s website at www.stb.gov, under the tab “News & Communications,” by clicking on “Meetings & Hearings.” If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

It is ordered:

1. A pre-argument conference with outside counsel for NTEC and BNSF will be held online via Zoom on Thursday, April 27, 2023, beginning at 9:30 a.m. (Eastern Daylight Time).

2. NTEC and BNSF are directed to provide to the Board, by April 25, 2023, via email at Hearings@stb.gov, the email addresses and phone numbers of their outside counsel who will participate at the pre-argument conference.

3. This decision is effective on its service date.

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