

SERVICE DATE — MAY 5, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42178

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

Decided: May 5, 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.

In an April 24, 2023 decision, the Board stated its intent to hold an oral argument in this proceeding. In preparation for oral argument, the Board held a pre-argument conference with NTEC's and BNSF's outside counsel on April 27, 2023. A redacted transcript of the pre-argument conference will be posted to the public record.

The oral argument regarding NTEC's request for emergency/injunctive relief will begin at 9:30 a.m. EDT on May 10, 2023, in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001. There will be no live stream of the argument on YouTube, but the public may attend in-person any portions of the argument that do not include discussion of confidential information. Only counsel and designated representatives for the parties, as discussed below, will be permitted to participate.

NTEC will present opening argument, BNSF will reply, and NTEC will rebut. The Board expects the parties to have representatives present at the oral argument who can address factual matters and who have authority to make factual representations to the Board.

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.

Instructions for Attendance at Oral Argument

All persons attending the oral argument must use the main entrance to the Board's headquarters, located at 395 E Street, S.W. There will be no reserved seating, but party representatives will be seated separately from the public to facilitate transitions into confidential sessions. The building will be open to the public at 8:00 a.m. There is public parking in the building. The two closest Metro stops are Federal Center S.W. (3rd and D Streets, S.W., serving the Blue, Orange, and Silver Lines) and L'Enfant Plaza (6th and D Streets, S.W., serving the Yellow, Green, Blue, Orange, and Silver Lines). Upon arrival, check in at the security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or federal government identification); sign in at the security desk; submit to an inspection of all briefcases, handbags, etc.; and pass through a metal detector. Persons who exit the building during the oral argument will be subject to these security procedures again if they choose to re-enter the building. Counsel for NTEC and BNSF must check in with the clerk at the front of the Hearing Room.

Any speaker who wishes to make a visual presentation at the oral argument should email a copy of the presentation to the Board at Hearings@stb.gov no later than 1:00 p.m. EDT on May 9, 2023. The presentations will be loaded onto a Board laptop for use at the in-person hearing.²

Members of the media should contact Michael Booth in the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-1760 if they plan to attend the oral argument.

For further information regarding the oral argument, contact Jonathon Binet at (202) 245-0368. The Hearing Room complies with the Americans with Disabilities Act, and if you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

It is ordered:

1. An oral argument will be held in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001 on Wednesday, May 10, 2023, beginning at 9:30 a.m. (Eastern Daylight Time).
2. Counsel for NTEC and BNSF are directed to appear at the oral argument before the Board on May 10, 2022, at 9:30 a.m.

² Laptops and recorders may be used in the Hearing Room. Wi-Fi will be available, and a password will be available in the Hearing Room. Cell phones may be used quietly in the corridor outside the Hearing Room or in the building's main lobby.

3. This decision is effective on its service date.

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