



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

DANIEL M. JAFFE

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May 16, 2023

Via E-Filing

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

Re: *Navajo Transitional Energy Company, LLC v. BNSF Railway Company*,
STB Docket No. 42178

Dear Ms. Brown:

Late yesterday afternoon, BNSF filed what it has labeled “Responses to Board Questions” (“Responses”) in the above-referenced proceeding. BNSF’s Responses are notable both for what BNSF has included – 10+ pages of repetitive or irrelevant legal argument that the Board did not request – and for what BNSF has excluded – the materials the Board actually asked BNSF to submit following the oral argument of May 10, 2023. BNSF’s latest filing only reinforces NTEC’s grave concerns that, absent Board action and oversight, BNSF will continue to self-define its common carrier obligation and other obligations it owes this Board and the public, while denying NTEC its reasonably requested common carrier service.

First, and most troublingly, BNSF takes the extraordinary position that { Redacted

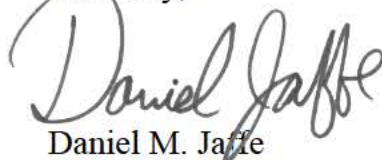
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Second, BNSF again claims that no emergency exists and that, in the five days since the oral argument, it has extinguished any need for the Board to act or to continue oversight of its service while NTEC's Complaint in NOR 42179 is pending. Yet, BNSF's latest declaration is contradicted repeatedly by BNSF's own statements and omissions in this case. BNSF's filings and its statements at the oral argument made it plain that it believes it has the sole discretion to decide NTEC's service levels and that it intends to *reduce* NTEC's train count in July. At the same time, BNSF continues to omit any assurances that it will provide the level of service that NTEC has requested – or any specific level of service at all – and its latest filing again makes no such representations.

NTEC respectfully requests that the Board grant NTEC's requested relief and continue to exercise oversight during the pendency of NTEC's Complaint case.

Sincerely,



Daniel M. Jaffe
*Counsel for Navajo Transitional
Energy Company, LLC*

cc: Counsel for BNSF