

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42179

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC

v.

BNSF RAILWAY COMPANY

COMPLAINT AND PETITION FOR
DECLARATORY ORDER

**BNSF RAILWAY COMPANY'S
MOTION FOR PROCEDURAL SCHEDULE**

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Counsel for BNSF Railway Company

Dated: May 23, 2023

Pursuant to 49 CFR § 1111.11, BNSF Railway Company (“BNSF”) and Navajo Transitional Energy Company, LLC (“NTEC”) met by teleconference on May 16, 2023 to discuss discovery and procedural matters. The parties exchanged proposals for a procedural schedule to govern this proceeding but did not come to agreement.

The allegations in the complaint in this proceeding present complex questions of capacity allocation on BNSF’s rail network and potentially implicate claims of damages as a result of lost sales in Asia. As such, third-party and foreign discovery may be necessary and expert testimony is likely. BNSF submits that it will be efficient for the Board to build sufficient time into the procedural schedule on the front end to ensure adequate development of these issues. In addition, to address likely expert testimony, BNSF proposes in the schedule below that the parties exchange preliminary expert reports after 90 days of discovery. These reports would not be final verified statements. Instead, the parties would exchange brief reports that identify expert witnesses, their area of expertise, and a summary of topics that will be addressed in their testimony, thus allowing each party to then conduct any necessary discovery related to those reports. The parties’ filings would then contain witness testimony—from both fact and expert witnesses—in verified statements.

The schedule that BNSF proposes is as follows:

Discovery opens	June 1, 2023
Expert reports exchanged	August 23, 2023
Discovery closes	September 22, 2023

NTEC opening submission	November 21, 2023
BNSF reply submission	January 22, 2023
NTEC rebuttal submission	February 21, 2023

In addition to discussing a procedural schedule, the parties discussed and agreed that a protective order is necessary in this proceeding. BNSF will work with NTEC to submit a protective order for this proceeding.

BNSF respectfully requests that the Board adopt the procedural schedule as proposed by BNSF.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *BNSF Railway Company's Motion for Procedural Schedule* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Onika K. Williams

Onika K. Williams
Attorney for BNSF Railway Company