

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

NAVAJO TRANSITIONAL ENERGY COMPANY, LLC,	)	
	)	
	)	
Complainant,	)	306645
	)	
v.	)	Docket No. NOR 42179 ENTERED
	)	Office of Proceedings
BNSF RAILWAY COMPANY,	)	May 23, 2023
	)	Part of
Defendant.	)	Public Record
	)	

**NAVAJO TRANSITIONAL ENERGY COMPANY, LLC'S
REPORT ON CONFERENCE**

NAVAJO TRANSITIONAL
ENERGY COMPANY, LLC

Daniel M. Jaffe
Frank J. Pergolizzi
Andrew B. Kolesar III
SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Complainant

Dated: May 23, 2023

	)	
NAVAJO TRANSITIONAL ENERGY	)	
COMPANY, LLC,	)	
	)	
Complainant,	)	
	)	Docket No. NOR 42179
v.	)	
	)	
BNSF RAILWAY COMPANY,	)	
	)	
Defendant.	)	
	)	

Pursuant to 49 C.F.R. § 1111.11, Complainant Navajo Transitional Energy Company, LLC (“NTEC”) files this report on the parties’ preliminary conference. As required by § 1111.11, NTEC and Defendant BNSF Railway Company (“BNSF”) conferred by telephone on Tuesday, May 16, 2023 regarding the schedule for this proceeding and regarding a proposed protective order. The parties exchanged a number of electronic communications thereafter. The parties were unable to agree on a proposed procedural schedule.

On May 16, 2023, at the start of the parties' discussions, NTEC proposed the following schedule consistent with the urgent nature of this case and the Board's typical filing sequence:

¹ NTEC's initial communication inadvertently identified September 23, 2023 as the Opening date, which is a Saturday. NTEC has corrected that here.

BNSF responded to NTEC's proposal on May 19, 2023 with the following scheduling proposal:

Discovery opens	June 1, 2023
Expert reports exchanged	August 23, 2023
Discovery closes	September 22, 2023
NTEC Opening	November 21, 2023
BNSF Reply	January 22, 2024
NTEC Rebuttal	February 12, 2024

NTEC respectfully submits that the approach that it proposed is more appropriate for the present dispute. NTEC's proposal contemplates that the parties will make opening, reply, and rebuttal submissions. BNSF's proposal, on the other hand, contemplates a more complex approach that would require the filing of separate expert reports, or, at a minimum, summaries of opinions, while discovery is in progress. NTEC's approach is more consistent with historic Board practice insofar as it anticipates unified submissions that combine factual testimony, expert testimony, and legal argument. There is no basis for requiring a preview of expert reports.

In addition, NTEC respectfully submits that the overall duration of its schedule is more appropriate than the schedule that BNSF proposed. NTEC's proposal would allow for the completion of the evidentiary record in this case by mid-November. BNSF's much slower proposal would not allow for the completion of the evidentiary record until mid-February 2024. NTEC anticipates that the parties will engage in discovery, but that the parties can do so in a manner that does not require the extended schedule that BNSF's proposal contemplates.

B. Protective Order

In related matters, the parties are continuing to confer regarding an appropriate protective order for this case and will communicate with the Board when those discussions have concluded.

Respectfully submitted,

NAVAJO TRANSITIONAL
ENERGY COMPANY, LLC

By: /s/ Daniel M. Jaffe
Daniel M. Jaffe
Frank J. Pergolizzi
Andrew B. Kolesar III
SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Complainant

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CERTIFICATE OF SERVICE

I hereby certify that this 23rd day of May, 2023, I have caused copies of the foregoing to be served via email upon counsel for BNSF.

/s/ Andrew B. Kolesar III
Andrew B. Kolesar III

An Attorney for Complainant