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Submitted via e-filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

***Re: NOR 42178, Navajo Transitional Energy Company, LLC – Ex Parte Application
for Emergency Service Order***

Dear Ms. Brown:

BNSF Railway Company (“BNSF”) is writing to update the Surface Transportation Board (“Board”) regarding service for Navajo Transitional Energy Company, LLC (“NTEC”) since the Board held an oral argument in this proceeding on May 10, 2023. Consistent with representations made by BNSF at the argument, BNSF moved 27 trains (approximately 418,500 tons) from the Spring Creek Mine to Westshore Terminals in May. BNSF continues to forecast that it will move 22 NTEC trains (approximately 341,000 tons) in June and is on pace to do so. BNSF has been able to increase its forecast for July from 20 to 23 trains (approximately 356,500 tons) and communicated to NTEC that it expects to also move 23 trains in August. BNSF remains of the belief that this significant amount of transportation demonstrates that there is no basis for the extraordinary remedies of a Board emergency service order or a preliminary injunction.

During the oral argument, the Board strongly encouraged the parties to engage in settlement discussions. Consistent with that encouragement, BNSF reached out to NTEC shortly after the argument with a proposed commercial solution building on areas of previous consensus between the parties. NTEC rejected that proposal and declined to engage in any further settlement discussions. This approach suggests a belief that regulatory intervention will be more favorable to it than a commercially negotiated agreement, which has significant broader competitive and policy consequences that BNSF has addressed in its prior filings. Despite

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NTEC's current apparent unwillingness to seek a negotiated outcome with mutual commitments, BNSF believes that a Board-sponsored mediation would be a productive step towards resolution.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'T. J. Strafford', is positioned above a horizontal line.

Timothy J. Strafford

Anthony J. LaRocca

Attorneys for BNSF Railway Company

cc: Parties of Record