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| NAVAJO TRANSITIONAL   | ) |                      |
| ENERGY COMPANY, LLC,  | ) |                      |
|                       | ) |                      |
| Applicant-Petitioner, | ) |                      |
|                       | ) |                      |
| v.                    | ) | Docket No. NOR 42178 |
|                       | ) |                      |
| BNSF RAILWAY COMPANY, | ) |                      |
|                       | ) |                      |
| Defendant.            | ) |                      |
|                       | ) |                      |

Pursuant to the Board’s June 23, 2023 Decision and Order (“Decision”), Navajo Transitional Energy Company, LLC (“NTEC”) hereby submits the following report:

1. After the initial April 27, 2023 pre-hearing conference, BNSF indicated that, in June, it would increase NTEC's trainset count from 16 to 22 trains. The Board's Decision then ordered BNSF to provide 23 trains per month. However, BNSF's actual performance levels in June have resulted in NTEC receiving only 17 trainsets. BNSF advises that it hopes to be able to provide the required minimum 23 trainsets in July, but NTEC continues to be concerned that service will remain challenged in July. The current service issues BNSF is experiencing are apparently operational and to our knowledge are not based on any railcar capacity issues.

2. Given the service levels currently available to NTEC, it does not appear to NTEC that additional trainsets are needed to permit BNSF to be able to provide the service that it has been ordered to provide for July. Nevertheless, NTEC is continuing to monitor the marketplace for available trainsets in the event that BNSF advises it is in need of additional railcar capacity. NTEC has been in contact with suppliers and currently believes at least four sets are available to BNSF, two for lease and two for purchase, in the event that BNSF is unable to provide sufficient sets. Further, NTEC is aware of continuing anecdotal evidence of a ready supply of trainsets for lease and/or purchase if the need arises for such equipment.

3. In related matters, NTEC notes that approximately two (2) hours after the Board posted the June 23, 2023 Decision on its website, BNSF provided notice that NTEC's freight rate for shipments from Spring Creek to Westshore will increase by 2.6% beginning July 15, 2023. BNSF did not provide any prior notice of this new increase and offered no justification for its imposition. The new increase marks the second increase since BNSF's common carrier rate went into effect on January 1, 2023. In total, BNSF now has increased NTEC's common carrier rate by approximately 7% in the space of six months, all while railroad costs have decreased in 2023. These rate levels, combined with BNSF's retaliatory rate practices, continue to challenge NTEC's ability to participate in the export coal market and expose NTEC and the Navajo Nation to significant risk of further harm.

Respectfully submitted,

NAVAJO TRANSITIONAL ENERGY  
COMPANY, LLC

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June 30, 2023

*Attorneys for Applicant-Petitioner*

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this 30th day of June 2023, caused copies of the foregoing to be served via email on all counsel of record.

/s/ Andrew B. Kolesar III

Andrew B. Kolesar III

An Attorney for Applicant-Petitioner