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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:

BNSF's letter of June 9, 2023 is another disingenuous effort to avoid its common carrier obligation service obligation and to forestall a Board order. BNSF's position is understandable given that it has, without question, discriminated against NTEC, and retaliated against NTEC, in failing to meet its common carrier obligation in 2023 and before. BNSF again unilaterally concludes that its current service levels are consistent with or otherwise meet its common carrier obligation despite falling well short of the approximately one train per day service that NTEC has asked this Board to ensure. Neither the Board, nor NTEC, has any reason to take any comfort in BNSF's suggestion it will continue to provide fair and reasonable service without an order making clear that such service is required. Indeed, BNSF made it plain at the hearing that it retains the sole discretion to determine adequate service levels. BNSF's letter also indicates, once again, that it does not want the Board to regulate it in this matter despite a plethora of evidence presented in BNSF's own pleadings and the May 10 hearing which demonstrates that the Board must step in to rectify this situation.

BNSF, in violation of the settlement confidentiality terms it demanded, also characterizes its so-called settlement overtures as following through on the Board's request for the parties to talk and perhaps settle this issue. Then BNSF suggests that NTEC spurned BNSF in favor of a regulatory solution. NTEC will not follow BNSF in violating the confidentiality of settlement discussions. We will simply reiterate that NTEC's urgent need for immediate Board assistance has not abated.

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BNSF's letter needs to be read for what it is, a transparent attempt to forestall Board action on NTEC's pending petition for relief both through suggesting again that they have "solved" any emergency or other stratagems, such as holding a decision up in favor of Board-sponsored mediation. Without the sharp eye of the Board constraining and overseeing BNSF, BNSF will continue to delay and obfuscate. NTEC hereby reiterates its appreciation to the Board for the May 10 hearing. But that hearing, without a timely decision is not enough. Accordingly, NTEC respectfully requests that the Board provide the relief that NTEC requested as soon as practicable.

Sincerely,

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

cc: Parties of Record