



SURFACE TRANSPORTATION BOARD

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STB DENIES BNSF PETITION TO STAY THE PRELIMINARY INJUNCTION REQUIRING THE TRANSPORT OF COAL FOR NTEC

The Surface Transportation Board today announced that it is denying BNSF Railway Company's (BNSF) petition for partial stay of the Board's previous decision in Navajo Transitional Energy Company, LLC – Ex Parte Petition for Emergency Service Order, Docket No. NOR 42178. In that decision, the Board issued a preliminary injunction requiring BNSF to transport coal from Navajo Transitional Energy Company, LLC's (NTEC) Spring Creek mine during 2023.

On April 14, 2023, NTEC filed an application seeking an emergency service order pursuant to 49 U.S.C. § 11123 and sought a preliminary injunction under 49 U.S.C. § 1321(b)(4). NTEC asked the Board to direct BNSF to restore and maintain adequate coal transportation service from NTEC's Spring Creek mine to the Westshore Terminals export facility in British Columbia, Canada. In a separate docket, NTEC filed a related complaint and petition for declaratory order alleging that BNSF has breached its common carrier obligation, failed to provide adequate car service, and engaged in unreasonable practices with respect to the transportation at issue.

On June 23, 2023, the Board ordered BNSF to transport a minimum of 4.2 million tons of coal on an annual basis in 2023 from the Spring Creek mine to the Westshore Terminal, and to transport an additional one million annual tons during 2023 to the extent additional capacity becomes available. On July 17, 2023, BNSF filed a petition for partial stay of the preliminary injunction, the part that is contingent on sufficient trainsets and crews becoming available in addition to those required to meet the baseline tonnage requirements. It argues that its request meets the requirements for a stay, including that it will suffer irreparable harm absent a partial stay of this aspect of the injunction. NTEC filed in opposition on July 24, 2023.

In today's decision, the Board, in a three-to-two vote, denies the petition for partial stay because BNSF has failed to show that irreparable harm will occur if a stay is not granted. The relief ordered by the Board – that BNSF must transport additional tonnage if capacity to do so becomes available – negates the possibility of irreparable harm to BNSF. The additional tonnage portion of the Board's order only comes into force through voluntary actions by BNSF to develop additional capacity.

Board members Patrick Fuchs and Michelle Schultz dissented with separate expressions.

The Board's decision in Navajo Transitional Energy Company, LLC—Ex Parte Petition for Emergency Service Order, Docket No. NOR 42178, may be viewed and downloaded [here](#). More information on the Board's previous decision to grant a preliminary injunction, may be viewed and downloaded [here](#).

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