

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Defendant.

[illegible]

Docket No. NOR 42178

Attorneys for Applicant-Petitioner

**NAVAJO TRANSITIONAL ENERGY COMPANY, LLC’S
POST-HEARING SUBMISSIONS**

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NTEC Counsel’s Ex. #	Item:
3	Principal BNSF-NTEC 2022 Contract, “Coal Unit Train Commitment Certificate Number BNSF 90068-0099,” effective January 1, 2022 (UNDER SEAL -REDACTED)
4	BNSF Railway Company Common Carrier Pricing Authority BNSF 90068, Revision 92, effective January 1, 2022 (PUBLIC)
5	Counter-Proposed version of Contract BNSF-C-13468, sent by NTEC to BNSF on December 10, 2022 in partially executed form (UNDER SEAL - REDACTED)
6	February 17, 2023 email from Jason Plett (NTEC) to Matthew Babcock (NTEC) summarizing February 17, 2023 call from BNSF regarding BNSF-CP interline service to Westshore (PUBLIC)

Respectfully submitted,

NAVAJO TRANSITIONAL ENERGY
COMPANY, LLC

By: /s/ Daniel M. Jaffe
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May 11, 2023

Attorneys for Applicant-Petitioner

NTEC Counsel's Exhibit 3

REDACTED

BNSF RAILWAY COMPANY
COMMON CARRIER PRICING AUTHORITY BNSF 90068
Revision 92

Effective Date: January 1, 2022

Expiration Date: December 31, 2022

Commodity: Raw coal used for steam purposes, as described in the Standard Transportation Commodity Code Tariff ("STCC") 6001-series, with a STCC number of 11-211-series, 11-212-series and 11-221-series (including bituminous, sub-bituminous and lignite), not including beneficiated, enhanced, processed or synthetic coal ("Coal"). Coal treated with additives used exclusively for dust control or for protection against freezing shall not be considered "beneficiated, enhanced or processed."

Shipper: Party tendering Coal for movement under this publication.

Section 1: Transportation Services

A) BNSF Service.

Service provided pursuant to this publication will be common carrier service for movement of trainloads of Coal as ordinarily and customarily provided by BNSF for such service, and as such, cycle times and schedules may vary from time to time. In the event of a conflict between this publication and another BNSF publication, this publication shall apply.

Service Limitation Notice: The provision of service and acceptance of any tenders for movement under this publication, including the supply of carrier equipment and/or the introduction of shipper train sets on BNSF for the movement of coal pursuant to this Common Carrier Price Authority shall, for the foreseeable future, be subject to BNSF's sole discretion.

B) Other Provisions.

Unless otherwise specified, charges for interline shipments of Coal made pursuant to this Common Carrier Authority include line haul transportation charges of railroads connecting with BNSF on the route of movement from Origins to the Destinations identified herein.

Unless otherwise specified, no transloading, terminaling, switching or other ancillary services provided by a connecting railroad, terminal railroad or transloading facility are included in the rates and payment for any such services provided by the connecting railroad, terminal railroad, or transloading facility shall be the responsibility of the Shipper.

Section 2: Minimum Basis for Assessment of Freight Charges

For shipments designated on a rate per ton basis, the minimum train weight for the assessment of freight charges per trainload shall be THE GREATER OF (1) the actual lading weight of all Coal in a train as determined by weighing pursuant to Tariff BNSF 6041; or (2) the Minimum Train Weight ("MTW").

For shipments designated on a rate per car load basis, the minimum basis for the assessment of freight charges per trainload shall be THE GREATER OF (1) the actual number of railcars in the train multiplied by the applicable rate; or (2) the minimum tender ("Minimum Tender") per train multiplied by the applicable rate.

Section 3: Loading, Unloading, Accessorial Services, and Weighing

Provisions for the loading and unloading of Coal trains, loading and unloading free time, detention, actual and constructive placement, weighing and other accessorial services and related charges therefore are described in BNSF Tariff 6041-series or successors thereto, which shall apply to movements under this publication.

Shipments made pursuant to the provisions of this publication are also subject to the Uniform Freight Classification 6000-Series or its successor, BNSF Rules Tariff 6100-series, other applicable tariffs, statutes, federal regulatory rules and regulations, AAR rules, and other accepted practices within the railroad industry as may be amended from time-to-time.

Shipments originating under this pricing authority shall be subject to loading rules which may include a requirement that appropriate measures to be taken by the shipper's coal producer to prevent undue loss of coal or coal dust in transit.

Section 4: Billing and Payment

BNSF shall bill each trainload under the terms of the Uniform Straight Bill of Lading. All railcars in a train are to be billed on one (1) Bill of Lading with the correct Shipper's name, address and patron code. Freight charges will be billed pre-paid (that is, billed by BNSF) via mail, express service or electric means as soon as practical. Shipper shall pay BNSF within fifteen (15) calendar days of receipt of invoice by electronic means. Late payment and other credit terms shall be governed by BNSF Rules Tariff 6100-series. In the event that Shipper does not pay within fifteen (15) days, or if adverse credit conditions occur, which in BNSF's judgment could affect Shipper's ability to meet payment terms, BNSF may require Shipper to pay cash in advance of service for all amounts for which Shipper is liable under this publication.

Section 5: Modification, Amendment and Cancellation

BNSF reserves the right to modify the terms and conditions of this publication, or cancel this publication in its entirety, by subsequent publication upon not less than 20 days' notice.

In the event of cancellation, discontinuance, or modifications of this publication, Shippers who are shipping pursuant to Commitment Certificates shall continue to be entitled to, and shall be required to comply with, the rates, terms and conditions in effect at the time of tender of such properly completed and executed Commitment Certificate for Shipper's Tonnage Commitment in such Commitment Certificate during the time period covered by the Commitment Certificate.

Section 6: Miscellaneous Provisions.

Upon reasonable request, Shipper shall have the right to divert an empty train provided it is operationally feasible and can be accomplished at no additional cost to BNSF, however, if the diversion requires the unit train to move in reverse of the route of movement, BNSF reserves the right to charge fees and charges stipulated in BNSF-6041-series.

SAMPLE CERTIFICATE

ATTACHMENT A
COAL UNIT TRAIN COMMITMENT CERTIFICATE, No. 90068-0000

Shipper: **Public Service Company, 1000 Main Street, Chicago, IL 00000**

Date of Commencement of Shipment: **January 1, 2017**

Date of Termination of Shipments: **December 31, 2019**

Loading Origin (Mine Group): **Group A**

Plant Name and Location: **Alpha Station, Chicago, IL 00000**

Shipper's Tonnage Commitment: **100% of the coal received annually at Alpha Station.**

Year 2017 Rate: **\$2,000 per car load.**

Year 2018 Rate: **\$2,080 per car load.**

Year 2019 Rate: **\$2,163 per car load.**

Minimum Tender: **120 rail cars per shipment.**

Equipment Car Type: **121 ton aluminum gondolas own or leased by Public Service Company.**

Fuel Surcharge: **Mileage based Coal Fuel Surcharge as published as published in BNSF Rules Book 6100-series, Item 3383.**

BNSF Railway Company (BNSF), for valuable consideration received, will provide to Shipper freight rates in accordance with the terms herein stated and as more fully set forth in Common Carrier Pricing Authority 90068 effective on the acceptance date of this Certificate. Other particulars pertinent to this Certificate will be effective as published, through the BNSF web site or through other applicable tariffs referenced therein, on the date a shipment is tendered under this Certificate.

Shipper hereby accepts BNSF's offer to provide transportation pursuant to such Pricing Authority for the movement described above and agrees to tender Shipper's Tonnage Commitment named on this Certificate during the time period specified in accord with all provisions of Pricing Authority 90068; and Shipper in return shall be entitled to the Term and Volume Rates specified for such movement in Common Carrier Pricing Authority 90068, subject to the terms and provisions of that publication.

PUBLIC SERVICE COMPANY	BNSF RAILWAY COMPANY
By:	By
Title:	Title:
Date:	Date:

NTEC Counsel's Exhibit 5

REDACTED

From: Jason Plett <Jason.Plett@NavEnergy.com>

Sent: Friday, February 17, 2023 1:41 PM

To: Matthew D. Babcock <Matthew.Babcock@NavEnergy.com>

Cc: Vern Lund <Vern.Lund@NavEnergy.com>; Rick Ziegler <Rick.Ziegler@NavEnergy.com>; Bernard Masters <Bernard.Masters@NavEnergy.com>; Daniel Jaffe <dmj@sloverandloftus.com>

Subject: CP Routing

Matt and team, I was advised by BNSF this afternoon that they would no longer ship our export train via the CP to Roberts Bank, and would realign the set to move BNSF direct.

Reasons Cited:

1. Difficulty properly stripe aligning/marshaling the cars for interchange
2. Billing and interchange issues between the two roads
3. Moving on BNSF would be better for NTEC because BNSF controlled the move
4. Moving BNSF direct would be financially beneficial to NTEC.

Jason Plett

Manager of Logistics

Navajo Transitional Energy Company

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O: 720-566-2936 | C: 307-689-1417 | Jason.Plett@navenergy.com



CERTIFICATE OF SERVICE

I hereby certify that this 11th day of May 2023, I have caused copies of the foregoing to be served via email on the parties of record included on the Board's service list for this proceeding.

/s/ Andrew B. Kolesar III

Andrew B. Kolesar III

An Attorney for Applicant-Petitioner