

**RAIL TRANSPORTATION AGREEMENT  
BNSF-C-12829**

This Rail Transportation Agreement ("Agreement") is made pursuant to 49 U.S.C. Section 10709 as of this 30 day of July, 2017, among BNSF Railway Company ("BNSF or Railroad"), a Delaware corporation, Louisville Gas and Electric Company ("LG&E"), and Kentucky Utilities Company ("KU") (LG&E and KU shall be referred to herein collectively as "Shipper"), each a Kentucky corporation. Railroad and Shipper are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

1. **Term:** This Agreement shall be effective on the last date herein signed ("Effective Date"), shall apply on shipments to Destinations (defined below) for furtherance via barge to Shipper's Trimble County Station ("Shipper's Plant") commencing on January 1, 2018, and shall continue in force through December 31, 2019 (the "Term"). Payments and other rights, remedies or obligations arising under this Agreement and accruing prior to its termination or expiration shall survive termination or expiration of this Agreement and remain due and payable or performable, as applicable.
2. **Commodity:** The commodity shipped under this Agreement must be Coal, STCC 11-212-XX ("Coal"), and shall not include beneficiated, enhanced, processed or synthetic coal. Coal treated with additives used exclusively for dust control, combustion suppressant, or to reduce freezing shall not be considered "enhanced."
3. **Origins:** This Agreement shall apply on shipments originating from BNSF served mines in Wyoming (collectively referred to as "Origins" and each individual loading point an "Origin").
4. **Destinations:** Four Rivers Coal Terminal located at Paducah, KY ("Four Rivers"), Hall Street Coal Terminal located at St. Louis, MO ("Hall Street"), Cook Coal Terminal located at Metropolis, IL ("Cook"), and CCT Coal Terminal located at Calvert City, KY ("CCT") (individually referred to as a "Destination" and collectively as "Destinations") for furtherance via barge to Shipper's Plant.
5. **Loading Provisions:** The loading of trains transporting Coal pursuant to this Agreement shall be governed by BNSF Price List 6041-Series, and any supplements thereto or successor versions thereof ("BNSF 6041"), in effect on the date such loading occurs. Shipper acknowledges that BNSF does not guarantee observance of scheduled dates and times that trains may arrive at an Origin at any time, 365 days a year.
6. **Unloading Provisions:** The unloading of trains transporting Coal pursuant to this Agreement shall be governed by BNSF 6041, in effect on the date such unloading occurs; provided, however, that for purposes of this Agreement, "Unloading Free Time" in Item 110 of BNSF 6041 shall be 18 hours. Shipper acknowledges that BNSF does not guarantee observance of scheduled dates and times that trains may arrive at a Destination at any time, 365 days a year.
7. **Coal Dust Mitigation:** Coal loaded for transportation pursuant to this Agreement shall be subject to the loading provisions specified in Section 5 above, which include measures required to be taken by Shipper or Shipper's Coal producer to prevent undue loss of Coal or Coal dust in transit.
8. **Minimum Volume Requirements:** During each of calendar years 2018 and 2019, Shipper shall load or cause to be loaded, for transportation pursuant to this Agreement, the Minimum Annual Volume Requirement ("MAV"), which shall be the greater of (i) one hundred percent (100%) of any Coal received and/or utilized at Shipper's Plant from Origins (less any Shortfall Tons determined under Section 13), and (ii) Shipper's Annual Tonnage Nomination provided pursuant to Section 10 (less any Shortfall Tons determined under Section 13).
9. **Utilization of Coal:** All Coal transported pursuant to this Agreement shall only be burned at Shipper's Plant.
10. **Annual Tonnage Nomination:** By not later than August 1, 2017, and by each August 1 thereafter, during the Term of this Agreement, Shipper shall provide to BNSF a written nomination of the tonnage it intends to load or cause to be loaded during the next calendar year for transportation pursuant to this Agreement by month ("Annual Tonnage Nomination").
11. **Ratability of Shipments.** Shipper agrees to cause all Coal transported pursuant to this Agreement to be loaded in reasonably even monthly increments unless a planned outage event, which is reflected in Shipper's Annual Tonnage Nomination, impacts monthly ratability in which case the ratability requirement for the

months(s) affected by the outage shall be waived to the extent so impacted; however, Shipper will preserve the ratability of the other months in the calendar year.

**12. Coal Forecasting Tool:** All Coal that Shipper and Shipper's Coal supplier intend to cause to be loaded for transportation pursuant to this Agreement shall be entered into BNSF's web-based Coal Forecasting Tool ("CFT"), or successors thereto, pursuant to published CFT Protocols.

**13. BNSF's Failure to Transport:** BNSF shall use commercially reasonable efforts to transport Shipper's Annual Tonnage Nomination. If, during a calendar quarter, Shipper is unable to load or cause to be loaded 21% of its Annual Tonnage Nomination due to BNSF's failure to transport such tons (which shall not include, without limitation, tons not moved for causes attributable to Shipper, or Shipper's coal suppliers, terminals or vessel carriers or conditions qualifying for force majeure treatment under Section 15) ("Volume Shortfall Period"), then, within ten (10) days of the end of such calendar quarter, Shipper shall provide BNSF, in writing, with its supporting calculations showing "Shortfall Tons," which shall be the amount of Coal that Shipper was incapable of loading for transportation pursuant to this Agreement due to BNSF's failure to transport such Coal (which shall not include, without limitation, tons not moved for causes attributable to Shipper, or Shipper's coal suppliers, terminals or vessel carriers or conditions qualifying for force majeure treatment under Section 15). Within ten (10) days of BNSF's receipt of Shipper's calculations, BNSF shall notify Shipper as to whether BNSF agrees with Shipper's calculation determining the amount of Shortfall Tons. Shipper's MAV contained in Section 8 for the calendar year in which the Volume Shortfall Period occurred shall be reduced by the amount of the Shortfall Tons. The relief provided for in this Section shall be Shipper's sole remedy for BNSF's failure to transport any tons, including Shipper's Annual Tonnage Nomination or Shortfall Tons, under this Agreement.

**14. Certification:** By no later than January 30, 2019 and each January 30 thereafter during the Term of this Agreement, Shipper shall provide to BNSF a written statement certifying the following for the previous calendar year: (i) the total tonnage of Coal transported to Shipper's Plant pursuant to this Agreement, (ii) the total tonnage of Coal transported from Origins to Shipper's Plant via any transportation mode, and (iii) whether Shipper has met the Minimum Annual Volume Requirement.

**15. Force Majeure:** A Party may be excused from its contractual obligations under this Agreement if and to the extent that it is unable to meet such obligations because of any of the following force majeure conditions: Act of God, including but not limited to flood, storm, earthquake or other geological disturbance, hurricane, tornado, accumulation of snow or ice, or other severe weather or climatic conditions; authority of law; fire; explosion; labor disputes; acts of public enemy; riot or other civil disturbance; embargo; blockade; war; insurrection; vandalism; accident; wreck; washout; explosion; embargo or AAR service order; governmental law, orders or regulation; unplanned plant outages; actual or threatened terrorist activity; derailment; destruction or damage to right-of-way; mechanical or electrical breakdown of equipment; or like causes beyond its reasonable control. Conditions qualifying as Force Majeure pursuant to this Section affecting a Party through another party (i.e., Shipper's coal suppliers, terminals or vessel carriers) shall be considered Force Majeure. It shall not, however, include any change in demand or projected demand for electrical power or generating facilities, whether foreseeable or not. This Agreement shall be suspended but not extended during any force majeure period, provided the Party claiming shall make reasonable efforts to continue to meet its obligations for the duration of the force majeure period. The Party claiming force majeure shall notify all other Parties as soon as practicable upon the beginning and ending of a force majeure period.

**16. Shipper's Failure to Load:** If, during a calendar year, Shipper fails to load or cause to be loaded tons sufficient to meet its MAV for reasons not attributable to BNSF's performance failure and/or due to conditions qualifying for force majeure treatment under Section 15, then within thirty (30) days of receipt of Shipper's Certification, Railroad shall provide Shipper in writing with supporting calculations, the "Shipper Shortfall Tons", which shall be the difference between the actual tons transported by Railroad pursuant to this Agreement and the total number of tons required to be transported pursuant to the MAV contained in Section 8. Within ten (10) days of receiving Railroad's Shortfall Ton notice, except in circumstances described in the first (1<sup>st</sup>) sentence above, Shipper shall pay to Railroad (not as a penalty, but as compensation for lost traffic) in the form of liquidated damages, an amount equal to the applicable Volume Shortfall Rate in effect during the fourth quarter of the calendar year during which the Shipper Shortfall Tons were incurred, multiplied by each ton by which Shipper failed to meet such MAV. This provision is not intended to create a unilateral or absolute right of excuse from performance hereunder. It is solely intended to provide a measure of damages for good faith inability to meet the performance obligations herein. This provision shall not be construed to create any partial or total buyout rights hereunder and does not authorize or permit Shipper to make shipments of Coal subject to this Agreement on any carriers other than Railroad.

**17. Route:** Four Rivers, Hall Street and Cook - BNSF Direct. CCT – BNSF – Paducah, KY – PAL.

**18. Railcar Supply:** All Coal transported pursuant to this Agreement to Four Rivers or CCT shall be in trains comprised of BNSF-provided rapid discharge type aluminum railcars. Shipper and BNSF agree that they will assume their respective responsibilities as designated in the "Interchange Rules" adopted by the Association of American Railroads presently in effect, and as those rules may be changed from time to time and shall comply with applicable rules and regulations of the Federal Railroad Administration. In the event of conflict between the Interchange Rules and this Agreement, the terms of this Agreement shall govern.

**19. Train Size:** The "Minimum Train Size" under this Agreement shall be 130 railcars. Additionally, if it is operationally feasible at a Destination to accommodate larger trains, then BNSF may require Shipper to increase the Minimum Train Size.

**20. Base Transportation Rates:** For trains transporting Coal pursuant to this Agreement from an Origin to Four Rivers for furtherance via barge to Shipper's Plant, Shipper shall pay to BNSF - \$2,122.00 per railcar.

For trains transporting Coal pursuant to this Agreement from an Origin to Hall Street for furtherance via barge to Shipper's Plant, Shipper shall pay to BNSF - \$1,828.00 per railcar. Railroad and Shipper shall establish a mutually agreeable schedule prior to any train loading to transport Coal to Hall Street. Such schedule shall be confirmed in writing (including via email).

For trains transporting Coal pursuant to this Agreement from an Origin to Cook for furtherance via barge to Shipper's Plant, Shipper shall pay to BNSF - \$2,023.00 per railcar. Railroad and Shipper shall establish a mutually agreeable schedule prior to any train loading to transport Coal to Cook. Such schedule shall be confirmed in writing (including via email).

For trains transporting Coal pursuant to this Agreement from an Origin to CCT for furtherance via barge to Shipper's Plant, Shipper shall pay to BNSF - \$2,228.00 per railcar.

The Base Transportation Rates in this Section 20 shall be subject to adjustment pursuant to Section 22 below.

Shipper shall pay to BNSF the applicable Effective Transportation Rate in effect on the date the railcars comprising such shipment commence loading, multiplied by the greater of (i) the Minimum Train Size, or (ii) the actual number of railcars in such shipment.

**21. Volume Shortfall Rate:** \$6.50 per net ton. The Volume Shortfall Rate shall not be subject to adjustment pursuant to Section 22 below.

**22. Adjustment to Transportation Rates:** On July 1, 2017, the Base Transportation Rates contained in Section 20 herein shall be adjusted by 100% of the quarterly percentage change in the All Inclusive Index – Less Fuel (with Forecast Error Adjustment) ("All-LF"). Such Base Transportation Rates, as adjusted, shall be the "Adjusted Transportation Rates". Beginning October 1, 2017 and each January 1, April 1, July 1, and October 1 thereafter during the Term of this Agreement, the Adjusted Transportation Rates from the previous calendar quarter shall be adjusted by 100% of the quarterly percentage change in the All-LF. During each calendar quarter, the greater of the Base Transportation Rates and Adjusted Transportation Rates shall be referred to herein as "Effective Transportation Rates". For each adjustment, the All-LF for the current quarter will be divided by the All-LF for the previous quarter. The previous quarter's Adjusted Transportation Rates will be multiplied by the resulting factor to produce the Adjusted Transportation Rates for the current quarter. Once the Adjusted Transportation Rates have been calculated, any fraction less than one-half cent shall be dropped and any fraction equal to or greater than one-half cent shall be increased to the next whole cent.

**23. Fuel Surcharge:** In addition to the Effective Transportation Rate, Coal shipments moving under this Agreement shall be subject to the BNSF mileage-based fuel surcharge provisions of BNSF Rules Book 6100-Series, Item 3383, which applies a fuel surcharge based on a \$2.50 per gallon U.S. Average Price of Retail On-Highway Diesel Fuel (HDF) strike price.

**24. Weight Limit:** Railcars transported pursuant this Agreement shall not be loaded in excess of 286,000 pounds gross weight on rail.

**25. Weighing:** Railroad shall have no obligation to weigh railcars under this Agreement. All weighing shall be performed by Shipper or Shipper's agent at no cost to Railroad on certified scales approved by BNSF.

**26. Billing and Payment:** Shipper shall order all cars under the terms of a Uniform Straight Bill of Lading. All railcars in a unit train shall be billed on one (1) Bill of Lading referencing BNSF-C-12829. Failure to reference such Agreement number in the Bill of Lading shall not constitute breach. The rates hereunder shall not appear on the Bill of Lading. Shipper or its agent shall provide train weights to BNSF via facsimile transmission within twenty-four (24) hours after a train is loaded. Freight charges shall be billed by BNSF. In the event of a conflict between this Agreement and the Bill of Lading, the terms of this Agreement shall govern. All payments on invoices shall be due and payable on or within fifteen (15) days of Shipper's receipt of the invoice. Payments shall be deemed paid upon confirmation of valid wire/electronic fund transmission to BNSF's designated account. Whenever a payment due under this Agreement is not made when due (including payments withheld in connection with disputed bills which are thereafter determined or resolved to have been payable), such amounts shall bear interest at the lower of (i) 12% per annum calculated from the day after the payment to which interest applies was due (or settled in the case of disputed bills), until the date said payment is made, both dates inclusive, or (ii) the maximum interest allowed by applicable law. Any claims for overcharges must be brought within one (1) year of the date on the applicable Bill of Lading.

**27. Liability:** Standard Common Carrier liability shall apply to movements under this Agreement pursuant to 49 U.S.C. Section 11706. Except as otherwise provided for herein, each Party shall assume and be responsible for any and all liability for loss and damage to property whatsoever, and for personal injury, including death to any person whomsoever, caused by its own negligence, and arising out of or connected with the performance of this Agreement. In the event any liability is due to the joint and concurring negligence of the Parties, the Parties' liability shall be apportioned in accordance with their respective negligence, provided however that Shipper shall be responsible for any and all liability for loss and damage to property whatsoever, and for personal injury, including death, to any person whomsoever, caused by self-ignition or spontaneous combustion of Coal and not involving the gross negligence or willful misconduct of Railroad or its agents.

**28. Other Provisions:** Shipments made under the provisions of this Agreement are subject to the Uniform Freight Classification 6000-Series or its successors, applicable federal regulatory rules and regulations, AAR Rules, BNSF 6041, BNSF Rules Book 6100-Series and other accepted practices within the industry as the same may be amended from time to time. Services and other matters not specifically addressed in this Agreement shall continue to be governed by and paid for under rules, regulations, tariffs and statutes which would apply if the transportation service were provided under tariffs otherwise applicable to these shipments, including but not limited to BNSF 6041, BNSF Rules Book 6100-Series and all other applicable rules and tariffs and any supplements thereto and successor versions thereof in effect at the time of shipment. In the event of conflict between the above referenced rules, regulations, etc., and this Agreement, this Agreement shall govern.

**29. Assignment:** This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, provided however that no consent shall be required for (i) any assignment or transfer of all of the rights and obligations under this Agreement by way of merger, consolidation or reorganization, or as part of a transfer of all or substantially all of the assets of the assignor or transferor (and no partial assignment shall be made), (ii) any assignment of Railroad's account receivables, or (iii) any assignment to a lender(s) as security for financing. The parties acknowledge that Shipper's performance of its obligations in this Agreement may be performed by one or more agents, including without limitation LG&E and KU Services Company; Shipper shall be liable for the actions or omissions of such agents.

**30. Dispute Resolution:** If a question or controversy arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained herein or the rights or obligations of either Party under this Agreement, such question or controversy shall in the first instance be the subject of a meeting between the Parties to negotiate a resolution of such dispute. If, within thirty (30) days after the meeting, the Parties have not negotiated a resolution or mutually extended the period of negotiation, then either Party may seek resolution of the question or controversy pursuant to binding arbitration. The Parties intend that any dispute arising out of this Agreement that cannot be resolved through negotiation as provided above must be resolved through binding arbitration as provided herein.

The Party calling for arbitration ("Initiating Party") shall give written notice to the other Party setting forth: (a) a statement of the issue(s) to be arbitrated; (b) a statement of the claim showing that the Initiating Party is entitled to relief; and (c) a statement of the relief to which the Initiating Party claims to be entitled. Within twenty (20) days from the receipt of such notice, the other Party ("Receiving Party") may submit its written response and give notice in the same manner required above of additional issues to be arbitrated. The Initiating Party shall have ten (10) days from receipt of said response to respond to any issues submitted for arbitration by the Receiving Party.

Within sixty (60) days of the date of the Initiating Party's written notice requesting arbitration, each Party shall designate a competent and impartial person to act as that Party's designated arbitrator, with the two (2) persons designated selecting a third neutral arbitrator within thirty (30) days of their designation. In the event the first two designated arbitrators cannot agree on the third neutral arbitrator, the neutral arbitrator shall be selected pursuant to the rules of the American Arbitration Association ("AAA"). The arbitration proceeding shall be conducted in accordance with the Commercial Arbitration Rules of the AAA.

The decision and award of the arbitration panel shall be rendered within thirty (30) days of the close of the arbitration proceeding. Any decision and award of the majority of the panel shall be final and binding upon the Parties. The arbitrators shall not award any special, indirect, incidental, consequential, punitive or exemplary damages against either Party. Judgment upon the decision or award rendered may be entered in any court of competent jurisdiction. The Parties shall each bear the expense of their respective designated arbitrator as well as their own fees and costs. The expense of the neutral arbitrator shall be shared equally by the Parties.

**31. Entirety and Amendment:** This Agreement comprises the entire agreement and merges and supersedes all prior understandings and representations between the Parties concerning the subject matter or in consideration thereof and may not be modified or changed except by written amendment signed by an authorized representative of all Parties.

**32. Applicable Law:** This Agreement shall be deemed to be an agreement made in the State of Texas and governed by and construed according to the laws the State of Texas.

**33. Interpretation:** The terms as set forth in this Agreement have been arrived at after arms-length mutual negotiation between the Parties and, therefore, it is the intention of the Parties that its terms may not be construed against either of the Parties by reason of the fact that it was prepared by one of the Parties.

**34. Notices:** Any notices made pursuant to this Agreement shall be in writing, delivered by U.S. Mail or an express letter service and addressed as follows:

Attn: Group Vice President, Coal  
BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, Texas 76131-2830

Attn: Louisville Gas and Electric Company/Kentucky Utilities Company  
220 West Main Street  
P.O. Box 32010  
Louisville, Kentucky 40232  
Attn: Director Corporate Fuels and By Products

**35. Non-Waiver:** The failure of any Party to demand strict performance of any or all of the terms of this Agreement, or to exercise any or all rights conferred by this Agreement, shall not be construed as a waiver or relinquishment of that Party's right to assert or rely upon any such right in the future and the same shall continue and remain in full force and effect. No term or provision of this Agreement may be waived or discharged orally, but only by an instrument in writing signed by the Party against whom the enforcement of the waiver or discharge is sought.

**36. No Third Party Beneficiaries:** Nothing in this Agreement shall be construed to give any person or entity other than Railroad and Shipper and their respective successors and permitted assigns any legal or equitable right, remedy or claim under this Agreement.

**37. Limitation of Damages:** No Party shall be liable to another Party for any consequential, indirect, incidental, exemplary, special or punitive damages (including but not limited to, cost of capital, decline in market value, business interruption expenses, attorney's fees and lost sales) of any kind arising out of this Agreement regardless of whether the Party against whom such damages might be otherwise sought knew or reasonably should have known of the possibility of such damages.

**38. Default:** Except as otherwise provided in this Agreement, no default by a Party ("Defaulting Party") in its performance of any of its covenants or obligations hereunder which, except for this provision, would be a legal or equitable basis for rescission or termination of this Agreement by the other Party ("Non-Defaulting Party") shall give or result in such a right unless and until the Defaulting Party shall fail to correct the default within twenty (20) days after written notice of such default is given to the Defaulting Party by the Non-Defaulting Party. Except to the extent limited by the terms of this Agreement, each Party shall have each and every other right and remedy afforded it by law or in equity.

**39. Confidentiality:** Each Party shall maintain the confidentiality of this Agreement and shall not disclose the terms hereof without the prior written consent of the other Parties. Notwithstanding the foregoing, this Agreement may be disclosed when required by law, regulation or court order provided that the Party disclosing this Agreement will notify the other Parties in advance of such disclosure and furnish only that portion of this Agreement that is legally required by law and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded this Agreement. Further notwithstanding the foregoing, either Party may disclose to Relevant Third Parties those portions of this Agreement related to operational requirements for transportation services hereunder, including without limitation car loading and train length requirements. The term "Relevant Third Party" shall mean any third parties involved in the supply and movement of Coal that is transported hereunder. For the avoidance of doubt, nothing in this Section 39 shall be deemed to require that Shipper obtain consent from Railroad prior to disclosing this Agreement to the Kentucky Public Service Commission ("PSC") as required under Kentucky Law, and Railroad acknowledges that: (i) current PSC practices do not provide the ability for Shipper to obtain confidential treatment of this Agreement and (ii) when so disclosed, current PSC practices may result in all or part of the Agreement being made public.

**40. Signature:** This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and counterparts of this Agreement may also be exchanged via electronic transmission and any electronic transmission of a Party's signature by such Party shall be deemed to be an original signature for all purposes.

**41. Several Liability:** LG&E and KU shall be severally but not jointly liable to BNSF for obligations of Shipper, hereunder. Such several liability shall not preclude any separate allocation, right of contribution or indemnity, solely as between LG&E and KU against each other; provided such separate allocation, right of contribution or indemnity has no impact on this Agreement and amounts billed to and owed by Shipper to BNSF.

IN WITNESS WHEREOF, the Parties have caused duly authorized representatives to execute this Agreement as of the date first written above.

**BNSF RAILWAY COMPANY**

By: [Signature]

Title: OROUT VP

Date: 7.19.17

**LOUISVILLE GAS AND ELECTRIC COMPANY**

By: [Signature]

Title: VP Energy Supply & Analysis

Date: 7-14-17

*EtL  
JPF*

**KENTUCKY UTILITIES COMPANY**

By: [Signature]

Title: VP Energy Supply & Analysis

Date: 7-14-17

*EtL  
JPF*